

SURFACE TRANSPORTATION BOARD 12/03/97 FD #33388 1-60 1+

UNITED STATES OF AMERICA

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SURFACE TRANSPORTATION BOARD

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STB EX PARTE NO. 573

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RAIL SERVICE IN THE WESTERN UNITED STATES

+ + + + +

WEDNESDAY

DECEMBER 3, 1997

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

(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 efforts 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

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1 harvest and seasonal traffic.

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

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

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

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

21 As was the case five weeks ago, we have
22 before us a great deal of information. Data from UPSP

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1 and substantial written material from both
2 participants in the oral hearing and other interested
3 parties.

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

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

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

15 According to shippers, significant surface
16 problems remain.

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

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

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1 involved.

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

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

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

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

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

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

21 In this regard, very recently the
22 president and the chief executive officer of The

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1 Association of American Railroads, M. B. Oglesby,
2 issued a release recognizing that the service crisis
3 in the West is an industry-wide issue and that
4 industry-wide cooperation is necessary and forthcoming
5 to solve it.

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

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

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

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

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

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

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

12 Please conclude your remarks when you hear
13 the chime.

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

18 Finally, I note that at the last hearing
19 the Board members did not interrupt witnesses with
20 questions while they were presenting their testimony,
21 but rather asked our questions after each oral
22 presentation was concluded.

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1 This time we may well interrupt you during
2 your testimony so that we may get to the issues that
3 concern us.

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

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

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

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

21 VICE CHAIRMAN OWEN: Thank you. Finally,
22 we have arrived.

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1 I have some casual remarks this morning,
2 that I would like to make. It is regarding the
3 Thanksgiving morning that I went home to California.

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

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

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

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

20 The thing that was brought to my attention
21 that was very interesting to me was, in as much as we
22 are stacking containers at the ports now, more so than

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1 before, each time you off-load an container it is
2 \$150.00. Each time you move that container each time
3 thereafter, it is \$75.00.

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

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

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

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

16 The other the coal trains, they built coal
17 facilities there to move coal to Asia and help offset
18 our balance of payments. We used to have four to five
19 trains per week. Currently, we have one train per
20 week coming in with coal. Hopefully, that will
21 improve. Indications are that it is improving to some
22 degree.

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1 Then I visited with Metrolane and chatted
2 with those people. They had had a number of stoppages
3 and delays, throughout southern California.

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

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

10 So, there must be some improvement there.

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

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

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

22 The reason that I bring this up is I just

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1 want to know that when I go throughout the country,
2 when I go back and forth to the West Coast and go
3 home, I try to make it a point to stop off and see
4 some of the facilities and talk to the people who are
5 actually doing the work.

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

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

16 But in going through the briefs, I see so
17 much finger-pointing and I think it time that it
18 ceases. I think that it is time that Mr. Oglesby and
19 Mr. Chambers pulled together all of the rail
20 industries and said, hey folks, we have got to work
21 together, to cooperate to a greater degree. And not
22 fight over the shippers we currently have and the

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1 customers we currently have.

2 As I said before, in giving speeches
3 around this country, there are an awful lot of
4 customers out there waiting to work with the
5 railroads, once you get your act together where you
6 can deliver on time and perform. And I think it is
7 more important that we focus on getting trucks off the
8 freeway to a greater degree, and assisting them with
9 their problems of delivery on time. And focus on
10 that.

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

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

20 Thank you.

21 CHAIRMAN MORGAN: Thank you.

22 First of all, the last hearing we held was

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1 twelve hours. I promise you this hearing will not be
2 twelve hours.

3 Let's begin with Union Pacific, Southern
4 Pacific, Mr. Davidson, Mr. King and Mr. Martinez.

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

8 MR. DAVIDSON: That's correct, Madam
9 Chairman. Perhaps more at the front.

10 CHAIRMAN MORGAN: Thirty minutes now and
11 15 at the end?

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

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

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

18 CHAIRMAN MORGAN: Good morning.

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

22 However, in reporting back as we agreed to

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1 do, on the 27th we said that we thought we could have
2 our railroad back to a substantially fluid situation
3 shortly after Thanksgiving. And I know that during
4 the interim period you have been reading in the
5 newspapers saying we can't do it. It will never work.

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

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

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

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

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

22 Traffic flowing to and from the country of

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1 Mexico in the month of November crossed at Laredo in
2 record volumes.

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

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

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

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

22 That integration will start in the middle

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1 of this month and will take about six weeks to get
2 fully integrated. But service will continue to
3 improve substantially as that happens.

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

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

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

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

19 Then, just as we got cranked up again, we
20 got an eight car derailment on a grain train that
21 blocked both main lines across Nebraska where we run
22 125 to 130 trains a day.

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1 So, you can get a substantial backup.
2 That followed along with the cold snap that resulted
3 in some broken rails and some pull-aparts and that
4 just really clobbered our system.

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

7 MR. DAVIDSON: A broken rail.

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

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

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

20 Our total car inventory has dropped from
21 a high of over 257,000 cars when we were at our worst,
22 down to just over 330,000 as of this morning.

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1 So, clearly the progress is substantial.

2 The blocked sidings are down by more than
3 80 per cent and are today at what could be considered
4 normal levels.

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

9 Service to coal and grain customers is
10 clearly improving.

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

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

17 For grain, I would say in the last two to
18 three weeks, we have been moving very high levels due
19 to allocating additional power to our grain trains.
20 But I will be quick to add that we will never have a
21 grain car fleet, nor will the railroad industry ever
22 have a grain car fleet that can meet the needs of our

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1 grain shippers at their peak period. We don't have
2 the church that will hold the crowd on Easter Sunday.

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

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

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

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

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

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

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1 our recovery.

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

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

12 But I will tell you that is not true.
13 service is clearly better and getting better rapidly.

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

20 Additionally, we go through all the
21 details every morning of our operation, seven days a
22 week, to quantify just how well we are doing.

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1 I think that some of the rhetoric that you
2 hear here is clearly spin that people put on the
3 information for various reasons.

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

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

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

16 In other areas, and Vice Chairman Owen,
17 you will have to forgive me, you have been given mis-
18 information or data that is absolutely inaccurate.

19 I am going to try to set that straight.

20 As an example, when you talk about the
21 container business in southern California, the CPUC
22 has filed a statement that the UP has backed container

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1 traffic up and is still continuing to back container
2 traffic up.

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

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

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

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

21 Similarly, we just can't agree with what
22 BNSF has said about blocked sidings on the Houston to

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1 Iowa Junction line, nor the Houston to Memphis line.

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

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

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

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

22 There are also times that we know that BN

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1 Santa Fe actually runs trains out of their initial
2 terminal without sufficient time left on their hours
3 to complete the run, and their own trains end up tying
4 up on this piece of track.

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

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

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

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

21 None the less, while many of our customers
22 have said they haven't seen the improvement, I can

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1 tell you there are dozens of customers who have said
2 that they have seen the improvement. A number of
3 customers have spoken to me personally and said it was
4 great to see us coming back and getting our service
5 back in line. As late as yesterday I was told that by
6 one of our major customers.

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

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

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

20 We also implemented the Board's October
21 31st order in full, as soon as we received it. And
22 the service situation is well on the way to complete

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1 resolution. We would say that there isn't any need to
2 renew the order. We think that, at this point, the
3 order would be superfluous.

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

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

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

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

20 Secondly, I would like to say that there
21 is zero justification for what is happening in Houston
22 where the Tex-Mex is trying to pick up what amounts to

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1 about another half a dozen cars a day on a very busy
2 piece of track.

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

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

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

19 You're focus on improving the situation
20 was exactly right. We have the greatest motivation of
21 anybody in this room to fix our problems. We have
22 53,000 employees whose livelihood depends on running

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1 a good business.

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

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

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

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

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

21 What they have done is just re-warmed
22 their proposal that they put forward in the original

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1 merger and served it up again.

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

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

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

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

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

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

20 What we need to do is run an efficient,
21 cost effective, high quality operation that generates
22 profits so that we can reinvest those profits in the

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1 track structure and expand our capacity to handle
2 business and do the right things for our customers and
3 for the employees.

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

7 Thank you.

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

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

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

16 CHAIRMAN MORGAN: Mr. Davis, how are you?

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

20 MR. KING: Good morning.

21 Last time we went over the railroad we
22 separated into a southern tier and a northern tier and

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1 that is the way that I will approach my remarks today.

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

5 Let's start in the Houston area.

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

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

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

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

21 That is due to the state of the railroad
22 that we got it back into. That is focusing on

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1 productivity of our yards, getting trains out on time,
2 getting the right cars to the right trains on the
3 right day, and getting customers switched every day.

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

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

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

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

21 Buck Cord has been down in our Houston
22 control center off and on and the day that he was

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1 there he watched the BN Santa Fe get a train out that
2 hadn't been inspected, block both main tracks for
3 eight hours.

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

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

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

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

21 VICE CHAIRMAN OWEN: Excuse me on that
22 particular point.

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1 Joint supervision of switching and
2 dispatching, would that help resolve some of that?

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

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

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

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

21 MR. DAVIDSON: Well, they went far beyond
22 what we contemplated. We have got our new dispatching

1 center down there that encompasses a great deal of the
2 Houston area that we operate.

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

6 CHAIRMAN MORGAN: Go ahead.

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

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

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

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

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1 January and February, 1998.

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

8 Volumes are much more current going
9 through this yard.

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

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

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

18 Eagle Pass has had some congestion from a
19 BN Santa Fe derailment and what appears to be the
20 start of the Mexican privatization which has caused
21 some trouble on the Mexican side. We have some small
22 congestion areas around Eagle Pass now.

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1 We have also implemented since the last
2 hearing, directional running between Fort Worth and
3 San Antonio which is offering big benefits between
4 Fort Worth and San Antonio.

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

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

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

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

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

22 Our job there is to work on getting the

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1 connections from Houston into these yards more on time
2 to make the connection.

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

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

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

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

21 Two weeks ago, we had not returned to
22 normal, Dick talked about the winter storm and the

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1 derailment service interruptions. Grain and coal
2 shipments were not moving very effectively.

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

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

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

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

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

18 Grain, as of this morning, there were only
19 15 grain trains filled for shipment in Nebraska and
20 power was en route to move five of those.

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

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1 there?

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

8 VICE CHAIRMAN OWEN: Thank you.

9 MR. KING: The grain fleet, about two
10 weeks ago when we began this was about 70 per cent and
11 7 per cent spottage, or 77 per cent of the covered
12 hopper fleet.

13 I can say that that volume has dropped to
14 61 per cent and that 7 per cent spottage has grown to
15 9. And these are all indications that we are about to
16 regain our velocity in the central corridor.

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

19 On grain, even though we are not caught
20 up, I mentioned about the cancellations and the first
21 quarter shift, the grain is still there to move. So,
22 we will clean up what is left on the orders.

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1 When the orders begin to reappear we will
2 certainly be in shape to handle everything that comes
3 at us.

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

7 The North Platte terminal which is kind of
8 the pin that holds this whole northern and central
9 corridor together, we are back into handling 120 to
10 130 trains a day.

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

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

17 In Wyoming, the flows are normal for
18 manifests.

19 Colorado Coal, where we were experiencing
20 problems is vastly improved. We are not yet at the
21 record volume that we were handling earlier in the
22 year, but we hope to be there very soon.

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1 Flows to the Pacific Northwest are
2 improving. Grain and soda ash units are moving to the
3 ports of Portland and Seattle.

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

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

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

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

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

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

21 MR. KING: We don't want them to dry out
22 too early.

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1 But we will say that even the empties that
2 we moved up there will exceed the demand.

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

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

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

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

21 Trains, at times, out of L.A. are
22 improving. We are making special trains out of

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1 industrial support yards such as Montclair to try to
2 speed up the return of empties back up to Eugene,
3 Oregon and the Pacific Northwest.

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

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

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

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

21 I might take just a second to re-cap some
22 of the major things that I have talked about.

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1 We have started directional running in
2 several places: Houston to Fort Worth, Houston to
3 Brownsville and Fort Worth to San Antonio.

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

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

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

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

20 Now, we still have some big drivers to
21 come. I talked about the TCS cutover that happened
22 December 1 and it will prove to be a real driver

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1 improvement in the Texas and Louisiana area as it gets
2 better and better and the people get used to it.

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

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

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

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

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

19 For example, what Dick talked about, only
20 65 sidings blocked this morning on the entire
21 railroad. Our trains held for power crews and
22 congestion was only 70. Then our inventory numbers

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1 that Dick went through, just slightly over 330, and
2 Texas and Louisiana dropped below 100,000 for the
3 first time this morning.

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

12 Thank you very much.

13 MR. DAVIDSON: Okay, thank you.

14 CHAIRMAN MORGAN: Mr. Martinez?

15 MR. MARTINEZ: Thank you.

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

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

20 I have been with Union Pacific going on 22
21 years now. The last two years I have worked the Fort
22 Worth to Houston freight run.

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1 This past summer has probably been one of
2 the worst summers I have ever experienced throughout
3 my 22 years with the railroad.

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

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

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

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

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

21 We were called for a freight train out of
22 Houston, we were going north, going home. If you have

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1 ever been to Houston in the summer time, it is hot and
2 the humidity there is awful.

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

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

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

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

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

22 So, we called the dispatcher and told him

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

4 So, we did it.

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

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

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

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

21 Anybody have any questions?

22 CHAIRMAN MORGAN: Well, first of all, to

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1 you Mr. Martinez, say thank you to you and all the
2 employees at Union Pacific for your commitment to make
3 sure that the company provides the kind of service
4 that you have been proud of in the past and will
5 continue to be proud of.

6 MR. MARTINEZ: Thank you, ma'am.

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

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

19 MR. MARTINEZ: Thank you.

20 CHAIRMAN MORGAN: So, I want you to take
21 that back, if you will to the people with whom you
22 work.

1 Let me also, to you Mr. Davidson, express
2 my appreciation as I did at the last hearing for your
3 continued commitment and sincerity in trying to
4 resolve this difficult matter.

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

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

14 Is that a summary of where you are?

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

20 CHAIRMAN MORGAN: But as you have also
21 indicated, we are hearing from users of the system
22 that the situation is not resolved and the Board

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1 cannot ignore those comments. We have an obligation
2 to listen to the users in this situation, as well as
3 to listen to you.

4 Are they all wrong?

5 MR. DAVIDSON: No, they are not.

6 I don't want to restate what I said.

7 CHAIRMAN MORGAN: Excuse me, I didn't plan
8 that darkness too well.

9 Where are the lights?

10 w Maybe there is a control panel.

11 CHAIRMAN MORGAN: Are the lights fixed
12 now?

13 It must have been something that I said.

14 MR. DAVIDSON: I was just glad it wasn't
15 lightening.

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

21 CHAIRMAN MORGAN: Yes.

22 MR. DAVIDSON: Just as candidly as I can

1 say this, the railroad is fluid. We have cleared the
2 siding, our locomotives are being redeployed to move
3 coal, grain, chemicals.

4 We are just restarting our mobile
5 operations.

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

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

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

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

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

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

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

10 CHAIRMAN MORGAN: And I appreciate what
11 you say.

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

15 MR. DAVIDSON: I don't know.

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

19 MR. DAVIDSON: Chairman Morgan, I can't
20 answer for them, but I would suspect most of them
21 would have to acknowledge that they are seeing some
22 signs of improvement. But they would hasten to say

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1 that it is not nearly what they want or what they
2 deserve or what they will get ultimately.

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

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

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

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

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

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1 all the time myself.

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

8 CHAIRMAN MORGAN: Certainly I understand
9 individual interests.

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

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

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

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

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1 else.

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

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

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

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

22 But then I also look at some of the other

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1 data that you have submitted -- the most recent data
2 -- and I see for example, that the number of sidings
3 blocked system-wide jumped 26 percent from one week to
4 the next, and I look at the average time under load
5 for grain cars, between the graph and the Pacific
6 Northwest, and that's increased 40.5 percent.

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

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

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

19 CHAIRMAN MORGAN: Never --

20 (Laughter.)

21 I don't know who's in charge today. It's
22 certainly not me.

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1 MR. KING: Well, we started -- by Saturday
2 morning we had them all cranked up, but that did skew
3 the numbers that we did that. The grain car cycles as
4 I talked about, in the last two weeks we had really --
5 that was our focus.

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

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

20 CHAIRMAN MORGAN: Well, clearly today,
21 we're going to hear from some agricultural shippers
22 who continue to be concerned that their commodities

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1 are not moving, and painting a pretty serious picture
2 of what is out there. Now, with respect to grain
3 that's on the ground, or stored on the ground or
4 elsewhere, have you established any kind of priority
5 for moving that grain? How are you handling
6 prioritizing the grain? Maybe you're not the right
7 one to ask that --

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

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

22 Now sometimes that is focused towards

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

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

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

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

20 CHAIRMAN MORGAN: Oh, yes. Yes. West
21 Colten -- we'll go there first. I did talk about how
22 many trains were backlogged before. One of the

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1 measurements we look at is the fact of what we have
2 trying to get into L.A. Basin. It is a huge, huge,
3 market; very, very different market from Houston in
4 that you have more smaller receivers and shippers than
5 what you do in Houston, just by pure number.

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

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

19 The 19 jobs that I talked about we put on
20 was put on weekend shifts and offers some shippers
21 second switches where their volume and they were
22 willing to staff to do that. And so we've done that.

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1 Now, to say that we've caught up, no way. Is our
2 transit time in or out to where we need to be? No,
3 but we're making great progress in that and we will
4 continue.

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

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

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

21 MR. KING: Not West Colten. I don't know
22 what help someone could really offer us because it

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1 goes into the complex of the L.A. Basin, and the
2 customers are scattered all over. Now what -- the
3 intermodals, we've caught that up. What was backing
4 up part of were our routes with intermodal trains
5 waiting to get in and out of our ramps.

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

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

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

22 And as a longer-term solution, as we

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

9 CHAIRMAN MORGAN: Vice Chairman, you had
10 something?

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

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

22 VICE CHAIRMAN OWEN: But the connection

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1 itself, that takes a little bit of time. What about
2 the diamonds themselves, in the operation of that; I
3 think it's currently being managed by Sante Fe, is
4 that true?

5 MR. KING: That's correct.

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

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

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

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

22 MR. KING: Yes.

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

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

22 MR. DAVIDSON: Vice Chairman, on the --

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1 what Mr. King is talking about there is a system-wide
2 effort -- at one time that aggregated all of our
3 dispatching control into one center in Omaha,
4 Nebraska.

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

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

17 MR. KING: Right. That sometimes is an
18 issue with that communication. That's why we're
19 moving that out there and that will help facilitate --
20 it's better right now, today, because the backlog
21 isn't there and the dispatchers are better able to
22 function on the train movements than working through

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1 the backlog and not having places to meet trains. And
2 when we move the rest of the dispatching of L.A. Basin
3 out there next year that will help that even more.

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

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

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

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

17 CHAIRMAN MORGAN: Yes, that was --

18 MR. KING: -- get so involved in L.A.
19 here. In Englewood, Englewood I would have to say is
20 improved. Englewood is one of those yards that SP
21 continually had issues with. It is a fragile yard to
22 handle the volumes that try to go through there right

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1 now. That's why it's so key. What we're starting to
2 do in the 16th is to shift some volumes between
3 Cedagast and Englewood.

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

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

19 And when we're done with the shifts and
20 the directional running toward North Little Rock and
21 Pine Bluff, where Pine Bluff becomes a southbound
22 blocking yard for all of Houston and all of Texas,

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1 we'll be able to make blocks that can actually bypass
2 all the yards in Houston, go straight to the PTR, A,
3 straight to other industrial areas.

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

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

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

18 How do you respond to that?

19 MR. KING: Well, of the three cutovers
20 that we've done so far, this was the largest. We did
21 the DRGW, then we did the Cotton Belt, and now we're
22 doing it from New Orleans to all of New Mexico -- all

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1 the way through New Mexico in this cutover.

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

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

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

19 And we were talking about our vice
20 president who runs our NCSC -- which is sometimes one
21 of more critical judges and successful -- when he told
22 us that he thought it had gone very well we certainly

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1 took that as a barometer of how well it was going.

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

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

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

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

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

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

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

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

14 What is your response to proposals like
15 that?

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

21 CHAIRMAN MORGAN: Let me -- I have a
22 couple of other questions. Coal, let's talk about

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1 coal for a minute. We've talked about grain, but we
2 will be hearing from some coal shipper representatives
3 today who are very concerned that their service is
4 still not where they would like it -- or where you
5 would like it, I'm sure -- and in fact, they feel that
6 it has deteriorated in some instances.

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

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

18 Now, we're hoping to work that up with the
19 resources and the capacity we've put in to get up in
20 the 28 trains a day. That's 28 loads of trains loaded
21 every day in the Powder River Basin. That means
22 there's 56 or 60 trains going up and down that North

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1 Platte sub leading up the Power River Basin every day.

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

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

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

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

20 MR. KING: Well, we think they should be
21 seeing it now. What they have been telling us -- and
22 you're absolutely right -- there will be a lag time in

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1 building the inventories back up. We've got to be
2 very dedicated -- and we are -- to maintain and
3 improve the cycles.

4 We were down in the low 60s as far as
5 cycle time; we're up to 82. We need to be -- and
6 we're going to work to get up -- 90 and into the mid-
7 90s. And when we're seeing numbers like that, what we
8 pump up to then generally is capacity of the mines or
9 utilities protect the trains in a very fast method.
10 But we're going to work very hard to get that shield
11 in someone else's foot, and that's the way we're going
12 to work toward it.

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

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

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1 again.

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

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

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

21 We asked them, and they turned us down, to
22 take coal trains from up at Council Bluffs, supply the

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1 power and crews and haul that coal into Chicago
2 because we wanted the power back. Because Council
3 Bluffs to Chicago we don't have a capacity issue or a
4 crew issue.

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

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

17 But we are using them through New Orleans
18 and they've accomplished quite a bit there. We have
19 used them in Chicago and they helped us there with
20 hauling out of that. So we have used them. It's just
21 that these two items -- actually, the coal we were
22 really surprised because we did ask them to take

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1 trains from us at Council Bluffs and haul them, and
2 they turned us down because they said they had no
3 power.

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

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

17 CHAIRMAN MORGAN: Let me ask about claims
18 for a minute, Mr. Davidson. Shippers have expressed
19 concern about damages and have indicated that because
20 of the unique nature of what we have faced in the last
21 several months, that perhaps another mechanism for
22 handling damages might be appropriate. You have

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1 indicated, or one of your statements your company has
2 indicated, that you're following the normal procedures
3 for handling claims, following the Board's rules,
4 dealing with the issues in court as appropriate.

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

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

14 CHAIRMAN MORGAN: It can be.

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

21 CHAIRMAN MORGAN: Let me ask Mr. Martinez
22 just one question. Obviously you've heard a lot of

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1 discussion today about some of the specifics regarding
2 the UP/SP system and what the Board feels we need to
3 deal with in terms of rail service on the system.

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

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

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

20 CHAIRMAN MORGAN: So whatever we decide,
21 we want to make sure that we do not undercut the
22 efforts that you all have made to bring the UP to

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1 where it is today as a system. Is that a pretty fair
2 summary?

3 MR. MARTINEZ: Yes, yes.

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

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

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

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

18 CHAIRMAN MORGAN: Thank you. Next we will
19 have a panel of railroads. First we will hear from
20 the Burlington Northern and Sante Fe Railway Company,
21 Matthew Rose, and you will have 15 minutes; the Kansas
22 City Southern Railroad Company and the Texas Mexican

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1 Railway Company, Larry Fields and Mike Haverty; and
2 lastly, the Brownsville and Rio Grande International
3 Railroad, Larry Cantu.

4 MR. ROSE: Good morning, Madam Chairman.

5 CHAIRMAN MORGAN: Good morning.

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

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

18 First on the grain situation, as you all
19 are aware, we've seen a record corn and soy bean
20 harvest. Certainly our order fill or our ability to
21 deliver what our customers have asked us to deliver
22 has not been what we wanted it to be.

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1 Thirty days ago when we were before you we
2 were approximately six to eight weeks behind in our
3 ability to fill those car orders. Today, we are
4 currently about four to five weeks behind, so we are
5 starting to see some significant improvement.

6 In terms of a couple of other stats that
7 will give you an idea of how we're doing in order of
8 trains holding for -- grain trains holding for power
9 -- 30 days ago we would be in the 30 to 35 to 40
10 trains per day. As of this morning I'm pleased to
11 tell you that we have four grain trains holding for
12 power.

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

18 Within the next 45 to 60 days we feel
19 confident that we will have this situation cleared up.
20 I'd like to address why we think that we're going to
21 be in that position and going on the trim line that
22 we've seen so far.

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1 We've taken a couple of actions that have
2 significantly improved our ability to service these
3 customers. The first is that we put a partial embargo
4 of grain to the Gulf region, into Mexico, and while we
5 did not totally embargo the region what we did, we
6 began an advanced order system that essentially
7 regulated the flow of cars and trains that would go
8 down there.

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

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

22 The second issue that has allowed us to

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1 improve our situation since we last talked to you, is
2 the receipt of approximately 55 new locomotives that
3 we had in our plan and have now been delivered and
4 will be delivered by the end of this December.

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

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

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

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1 was very unusual for us.

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

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

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

20 And as we see more of a market to the
21 Pacific Northwest, we think that these shuttle trains
22 will really work off an awful lot of backlog as well.

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1 And so in summary again, while we know
2 that we have not met our customer's expectations in
3 regard to supply, we do believe that we will have this
4 taken care of in the next 45 to 60 days. We don't
5 think that this issue is -- we think this issue is an
6 episodic issue not a system issue in terms of our
7 inability to meet the short-term demand.

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

15 Moving on to the Burlington Northern
16 update on the service order, I'd like to briefly touch
17 on the seven points that I submitted in my testimony.
18 The first two have to do with joint dispatching of the
19 lines that we operate over the UP/SP. The request
20 that we have made is fairly self-explanatory and we
21 believe that it would be helpful to have joint
22 dispatching of those lines.

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1 The second point that we listed in that
2 testimony was an interchange of traffic at Strang
3 instead of Englewood Yard, simply to avoid the
4 congestion that we see at Englewood Yard and to be
5 able to allow a more fluid movement out of Strang into
6 our yard to allow an earlier departure of cars out of
7 Houston.

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

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

20 The fourth issue, the fifth issue in my
21 testimony, was the interchange with the ALM at Fortise
22 as well as the Western Rail at New Bronfills, and four

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1 individual customers: Dow, Amoco, Entergy, and
2 Formosa. We have worked with these four customers as
3 well as these two railroads; worked through various
4 operating plans, and are willing to support their
5 ability for access to BNSF.

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

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

18 In summary, we feel very good about the
19 progress that our railroad's made over the last 30
20 days. We've gone from a high of in the 75-type number
21 of holding trains for power, down to a low of two, and
22 23 are starting to see tremendous validity come back

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1 to our system. This was much different than 30/40
2 days ago when Rob Krebs stood before you and basically
3 said that we were not in a position to help out.

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

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

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

21 Finally, this is a zero sum game in
22 regards to physical plant yards. One of the requests

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1 was for the TexMex to take over a yard on the
2 Burlington Northern Sante Fe, the old South Yard, and
3 we would just tell you that we feel that we would
4 suffer great harm in our ability to keep fluid in the
5 city and in the area of the Gulf Coast if that were to
6 happen.

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

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

22 We come with solutions to be able to

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

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

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

20 VICE CHAIRMAN OWEN: You've also stated in
21 your statement here that you have not seen any
22 improvements in the UP situation -- UP/SP situation.

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1 MR. ROSE: I would not say that we haven't
2 seen any improvement. We have seen improvements,
3 specifically over the last ten days. And part of the
4 issue here that I think you'll see all day long, is
5 it's different when what day of the week this was
6 written and when the holiday came -- when we came out
7 of the holiday and the basis of time.

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

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

21 CHAIRMAN MORGAN: Getting back to grain
22 transportation for a minute, you have laid out some

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1 plans for how you're trying to catch up and handle the
2 grain movements, and that's certainly good. But we
3 continue to hear from agricultural shippers who can't
4 really make up the 100-car train. And obviously their
5 needs need to be attended to as well as other
6 shipper's needs.

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

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

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

22 As well, about as I've mentioned that

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

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

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

20 It is just not -- it just doesn't lend
21 itself to throwing another railroad into someone
22 else's terminal yard -- into that facility. But I

1 would like to get back to you on that.

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

8 How do you respond to that criticism?

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

18 That again, is why we're not saying --
19 that is why we are very specific in the four shippers
20 and the two short lines that have come to us and asked
21 us to support them in this effort. And that's truly
22 for somebody else to decide. What we are here saying

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1 is that we've developed operating plans to be able to
2 handle those shippers and we believe that we have the
3 resources to be able to do that.

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

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

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

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

21 VICE CHAIRMAN OWEN: Then the particular
22 diamond there at the Colten area is such that you will

1 work with your people there to ensure that they
2 facilitate the movement of all trains?

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

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

18 MR. ROSE: Good.

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

21 CHAIRMAN MORGAN: Just one last question.
22 At the last hearing we did hear concerns from shippers

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1 on your lines about not unduly taxing your resources
2 to solve an issue on another system. You have
3 obviously offered yourself up here to serve shippers
4 in the Houston area.

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

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

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

18 MR. CANTU: Well, I can.

19 CHAIRMAN MORGAN: And you do have five
20 minutes and let me just say that one of the reasons
21 that I'm glad that you are here is because there has
22 been a lot of paper back and forth regarding your

1 particular issue, and I would like for us to make sure
2 we understand one another on exactly what it is that
3 you are seeking and what your problem is, particularly
4 relative to the emergency that we have in front of us.

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

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

17 As you mentioned, you are aware of the
18 railroad's concerns because we have filed numerous
19 pleadings with the Board during the past several
20 weeks. The problems we have outlined in those
21 documents continue to plague our operation. We are
22 working very hard to develop rail service solutions

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1 that are mutually beneficial to our shippers, to our
2 connecting rail carriers, and of course to us.

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

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

16 As I endeavored to persuade to you in
17 October, BRG has a proposal which would eliminate the
18 need to utilize any interchange tracks at UP's
19 Brownsville Yard. In fact, BNSF's proposal to have us
20 serve as their agent for service south of Harlingen,
21 Texas, would ensure far smoother operations in this
22 gateway than UP may realize.

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1 I note that Mr. Gary Normal of Union
2 Pacific offered to you on November the 14th, a
3 verified statement explaining part of the reason for
4 the congestion of UP's line to and from Mexico, a
5 particular line known as the River Lead. Mr. Norman
6 points out that UP must park their trains on this
7 River Lead for extended period of time for U.S.
8 Customs and USDA inspection.

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

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

22 As BNSF's agents south of Harlingen, we

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1 could route BNSF through our port facilities just as
2 would be done with our own port traffic. When you
3 consider that BNSF, at such time as it initiates its
4 own service to and from PFM, would have to park its
5 trains on the River Lead just like UP does.

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

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

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

21 MR. CANTU: Right. I think --

22 CHAIRMAN MORGAN: You were somewhere

1 earlier and now you've decided that a different
2 approach --

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

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

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

17 Of course, prior to the UP/SP merger SP
18 had trackage rights from Victoria down to Harlingen.
19 What we propose to do is to take BSNF traffic from
20 Harlingen over the former SP main line down into
21 Brownsville, directly into Mexico, interchange with
22 PFM, and bring that traffic back over to the port of

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1 Brownsville where USDA and U.S. Customs can perform
2 their inspections there. And then run that traffic up
3 north.

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

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

18 CHAIRMAN MORGAN: Thank you. I have no
19 questions.

20 VICE CHAIRMAN OWEN: What would be the
21 negative for UP on this, and what would be the loss of
22 income for UP by you doing this?

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1 MR. CANTU: As a negative, I don't see a
2 negative. As a loss of income, the only thing I see
3 is they're performing a bridge service from their
4 downtown yard across the B&M Bridge over to PFM,
5 perhaps losing that. That's a \$68 bridge service per
6 car, and that's only the traffic moving to and from
7 the port of Brownsville.

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

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

13 VICE CHAIRMAN OWEN: Pardon?

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

17 VICE CHAIRMAN OWEN: I have no other
18 questions.

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

21 MR. CANTU: All right. Thank you.

22 CHAIRMAN MORGAN: I appreciate your

1 clarifying where you were and where you are now.

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

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

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

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

19 The common interest TexMex was wallowing
20 around on the Union Pacific and being a rogue carrier,
21 that I totally and completely disagree with. TexMex
22 has been out on the circuit of Houston for a year and

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1 two months, this Board is aware of. TexMex has
2 tripled its UP new membership in a year for a safe
3 railroad. We try to take care of our customers and
4 once upon a time we were an efficient railroad.

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

13 But so far at Flatonia we've entertained
14 1500 loads; that's 1500 loads did not have to go into
15 the Houston mix master. They don't have to get in
16 there and delay other railroads and other carriers and
17 things.

18 The comments that TexMex is refusing to
19 operate directional, that is not exactly true. I
20 personally made that decision; no one else. The STB
21 gave the TexMex the right on October 31 to operate
22 over the Algoa route. A few days later Union Pacific

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1 came and said we want to run directional.

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

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

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

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1 crew members.

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

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

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

22 Did the TexMex communicate every time with

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

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

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

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

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1 directional, so is the TexMex.

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

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

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

22 But a year ago TexMex wasn't handling very

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

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

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

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

22 Of course, we have had a Thanksgiving

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

7 CHAIRMAN MORGAN: Mr. Haverty.

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

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

21 We have rerouted five, loaded grain trains
22 over the Kansas City Southern; eight empty grain

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1 trains; total of 13 trains, 1039 cars. We have also
2 rerouted over the Kansas City Southern, between
3 Meridian, Dallas, and Houston, 83 intermodal trains
4 for United Pacific that came from Norfolk Southern or
5 are going to Norfolk Southern, for a total of 2,499
6 cars.

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

12 In addition to that, Kansas City Southern
13 handled 10,260 more cars in November of 1997 than in
14 1996. That represents a 15 percent increase exclusive
15 of the UP reroutes. This does not include the UP
16 reroutes.

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

22 So in fact, we did have capacity, we did

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1 handle additional cars, we did handle reroute trains
2 for the Union Pacific. In addition to that, the
3 Kansas City Southern delivered to the TexMex, 2000
4 loaded cars for subsequent movement to Mexico. And
5 you must remember that that came about as a result of
6 the Board's order that TexMex be given the right to
7 connect with the Kansas City Southern at Beaumont.

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

13 And there were 23 working days in
14 November; there were only 18 and our revenues were
15 nearly as big in November as they were in October, so
16 on a working day basis we actually handled more
17 traffic in November than in October. And incidently,
18 in October we did handle 14 loaded UP grain trains,
19 rerouted grain trains, and ten empties, for a total of
20 2,196 cars.

21 Did we experience any congestion? Yes, in
22 the second week of November. We did in fact, have

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1 congestion. I'm not here to argue block -- what
2 siding or whatever -- but I do think that you heard
3 from Larry, there was severe congestion, and I think
4 you've also heard from the BNSF that there is
5 congestion in Houston and it did back the trains up.

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

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

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

21 The second question, should the Board's
22 activities be extended? We believe so. We don't

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1 think that it is as fluid as we may believe that it
2 is, or may be led to believe that it is. I think
3 you'll hear a lot of testimony to that effect; that
4 it's not as fluid. And I can tell you that I
5 participate in almost every morning meeting, and I
6 listen to these stories about the trains trying to get
7 through Houston and taking 24 hours to move 90 miles.

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

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

19 We really believe that it is intolerable
20 to leave trains on the main line. To give you an
21 analogy, that's almost like leaving an airplane out on
22 a landing strip. It just virtually shuts down

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1 everything. In all the years I've been in this
2 business you just don't leave trains dead on the law
3 on a main line.

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

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

15 MR. HAVERTY: Let me show you --

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

18 MR. HAVERTY: Let me show you that we're
19 willing to do that, and I've known Dick Davidson for
20 30 years and I've known Rob Krebs nearly as long.
21 We'd be glad to sit down and do that.

22 I think that there is some natural

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

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

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

21 And I think that's been a problem within
22 the industry for a long time, and again, I think that

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1 there's plenty of business out there for everyone.
2 And I know that sometimes the other railroads would
3 just as soon see competition eliminated, just as I'm
4 sure that United and American would like to see
5 Southwest Airlines go away. But the fact is all of
6 the planes are full, and I agree with you; I think all
7 of the trains could be full.

8 VICE CHAIRMAN OWENS: Thank you.

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

12 MR. HAVERTY: Thank you.

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

21 I have practiced the names so I think I
22 got them all right this time. Mr. Evans, if you'd

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1 like to begin?

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

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

18 In any event, the return to normal
19 operations was much too slow. Mr. Davidson of the
20 Union Pacific testified that the situation was already
21 much better; he indicated that the northern tier was
22 totally fluid except for Pocatello and the L.A. Basin.

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1 The Louisiana backlog and the Fort Worth backlog were
2 almost gone; Houston to New Orleans was almost clear.
3 He said he would be disappointed if the solution was
4 not pretty much cleared up by Thanksgiving.

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

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

20 Based on the comments of our members at
21 our annual meeting in Anaheim, California on November
22 the 19th, Mr. Davidson gave a slide presentation,

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1 again showing optimism of clearing up the system. The
2 UP weekly reports of November the 24th and December
3 the 1st, and results of our survey, we have little
4 reason to share the optimism.

5 Again, as in October, the league sent out
6 175 questionnaires, this time an abbreviated version
7 centering mainly on the extent of which service has
8 improved since the last hearing and whether shippers
9 have used the service orders.

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

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

21 Compared to the results we reported at the
22 October 27th hearing, slightly more reported about the

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1 same. The bad news is that the higher proportion
2 reported a little worse. However, the good news is
3 that the slightly higher portion reported a little
4 better. Only two respondents in the survey reported
5 the situation a lot worse, and three reported a lot
6 better. As you can see, from the shipper's
7 standpoint, it was all over the board.

8 For purposes of rating current UP service
9 on a scale of one to ten, 40 respondents rated it as
10 a four or lower. Shippers are still reporting since
11 November 1st, delayed shipments -- by 46 of those 49;
12 spoiled or lost products reported by nine; increased
13 cost of transportation such as using other modes, 39;
14 using other rail carriers, 10; and leasing additional
15 railcars 26; and curtailed production and shutdown,
16 18.

17 The UP Report does show some improvements
18 in sidings blocked, and trains held for power and
19 crews, for example; however these measures are still
20 sufficiently higher than the baseline of January 1997.
21 Car inventory has continued to fall, but still at a
22 rate of about 2000 to 2500 car loads per week.

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1 However, average train speeds which has
2 shown an increase at the time of the October 27th
3 hearing, seems now to have simply gone into a cycle of
4 small increases followed by similar-sized decreases
5 with no sustainable trend toward improvements.

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

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

17 We had been told that the Board's service
18 orders would affect few of our members directly
19 because most do not enjoy connections with the HBT and
20 the PTRR, but we had high hopes that they would at
21 least feel the efforts of the orders indirectly as
22 TexMex helped to clear up the system.

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1 In fact, only two respondents reported
2 using transportation under the Board's service orders
3 tendering a few car loads. We believe the Board
4 should get to the bottom of the situation and find out
5 from the rail witnesses exactly why the orders have
6 not resulted in traffic for the TexMex and the
7 intended help in decongesting the Houston area.

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

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

20 The petition that NIT League filed jointly
21 with the CMA and the SDI called for service orders
22 that would extend for a maximum for 270 days -- the

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1 maximum allowed by law -- with the stipulation that
2 the UP could request their termination at an earlier
3 date should conditions permit.

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

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

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

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

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

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

20 And I thank you for this opportunity.

21 CHAIRMAN MORGAN: Thank you. Mr.
22 Petrucelli.

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

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

13 In 1996, the chemical industry paid almost
14 \$5 billion in freight charges to the railroads.
15 Chemical manufacturers rely heavily on the U.S. rail
16 system to provide safe and efficient transportation
17 service. Railroads bring critical raw materials into
18 chemical production facilities. Railroads also
19 deliver a wide array of chemical products to customers
20 in diverse industries at points throughout the
21 country.

22 Underscoring the dependence of chemical

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1 shippers on rail service is the fact that many CMA
2 member companies purchase or lease private tank car
3 fleets and other specialized equipment to facilitate
4 transportation for themselves and their customers.

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

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

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

20 Number one, parties should address whether
21 the actions of the Board have helped to alleviate rail
22 service problems in the West, whether these actions

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1 should be extended, and whether more has to be done.

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

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

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

19 CMA calls the Board's attention to data
20 for the January 1997 baseline period as shown in
21 UP/SP's seventh weekly reported dated December 1,
22 1997. That data showed that UP/SP is far from

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1 returning to pre-crises service levels.

2 For example, farm inventory remains almost
3 26,000 -- or eight percent above the baseline figure.
4 System train speed, another key indicator according to
5 UP/SP, was at 13.6 miles per hour for week ending
6 November 30th. Although this represents some
7 improvement over October velocities, it is still well
8 below the baseline figure of 17.9 miles-per-hour.

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

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

22 One, that the Board find that Western

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1 railroad service emergency has continued since order
2 1518 was issued. As discussed above, CMA believes
3 that the record in these proceedings clearly
4 establishes service has not been restored to an
5 acceptable level.

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

11 Number two, that order 1518 now be
12 extended beyond its original 30-day period. CMA
13 supports a 240-day extension pursuant to 49 USC
14 111.123 with the provision that UP/SP may petition at
15 any time during that period of it seeks to demonstrate
16 to the Board that the emergency no longer exists and
17 order 1518 should be lifted.

18 Shippers and other interested parties of
19 course, should be allowed to respond to such a
20 petition. The Board should be aware that many CMA
21 member companies report difficulties obtaining
22 alternate rail service under order 1518. A principal

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1 factor appears to be the reluctance upon non-UP/SP
2 carriers to make new service arrangements or
3 commitments under circumstances that would be in place
4 for only 30 days.

5 CMA therefore believes that a 240-day
6 extension will give the greatest opportunity for order
7 1518 to have a beneficial effect.

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

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

17 Number four, that the Board revise order
18 1518 with regard to remedy number one. Order 1518
19 requires that the UP/SP suspend the transportation of
20 service contract obligation of all shippers at Houston
21 that wish to route shipments over the TexMex instead.

22 However, most chemical shippers have not

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1 been able to take advantage of remedy number one.
2 While part of the reason is the short duration of a
3 30-day order, another factor must be addressed.
4 Unless rates and routes are in place, it is difficult
5 if not impossible, for another Western railroad to
6 arrange transportation with shippers and connecting
7 carriers.

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

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

20 The chemical industry is still hurting,
21 its customer's industries are hurting, the U.S.
22 economy is still feeling the effects of the emergency

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1 that led the Board to adopt order 1518.

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

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

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

11 Mr. Thomas.

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

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

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1 businesses across the United States.

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

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

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

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

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1 they now appear to be somewhat pleased rather than
2 disappointed.

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

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

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

21 Now, we surveyed industry members prior to
22 today's hearing to see if service is improving, and

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1 the message came across loud and clear. And let me
2 read to you some excerpts from letters I received
3 within the last week.

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

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

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

22 Now, this could be analogous to owning a

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

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

15 This has created an intolerable situation
16 for Texas and for Gulf Coast shippers. The emergency
17 service order of 30 days issued by the agency simply
18 does not provide enough time to remedy the problem.
19 The time has come in our opinion, for more decisive
20 action to cure this paralysis, and we're going to
21 offer the following observations and recommendations
22 which, Madam Chairman, you requested.

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1 As we've indicated, service on the UP is
2 not at a point we were led to believe it would be by
3 the Thanksgiving timeframe; far from it. The service
4 order must be extended to augment an effective relief
5 program. Thirty days is simply not enough time to
6 turn around a serious problem, nor to establish rates,
7 routes, and service conditions or engage in any
8 meaningful, contractual discussions.

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

16 The service order needs to be expanded and
17 several options exist such as the Texas Rail
18 Commission proposal. It seems to me that ought to be
19 very carefully studied by this Board, as well as
20 weighing the options that have been mentioned this
21 morning by other railroads to execute the best remedy;
22 the best remedy that serves the public interest.

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1 Contractual relief must be given to
2 customers. Flexibility must be provided for UP
3 customers to seek other options for shipping resins,
4 not just in the short term -- not just in the short
5 term -- but until the UP is able to effectively serve
6 its universe of customers.

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

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

21 Now, let me conclude by taking you back to
22 1996 and reminding all of us just why SPI objected so

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1 forcefully to the UP takeover of Southern Pacific
2 Railroad.

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

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

17 You can understand then, why we have
18 reacted so vocally when this imposed rail monopoly was
19 forced upon us. Monopolies, as you well know, are
20 counter to everything the free market system stands
21 for, and it is counter to what our industry stands
22 for.

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1 You know that what you're seeing today is
2 the hand of government being used to break up
3 monopolies in many key industries -- I'm talking about
4 communications, telecommunications, the airline
5 industry, and very soon, the electric utility
6 industry.

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

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

18 We were told a month ago that we could
19 expect to see some progress, and untangling this mess
20 and having it back to normal by Thanksgiving. We said
21 we didn't believe the UP could deliver on that promise
22 and we were right. We're now being told that progress

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1 will be visible by the end of the year. We don't
2 happen to believe that either, unless some bold
3 actions are taken by this Board.

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

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

16 CHAIRMAN MORGAN: Thank you. Mr.
17 Robitaille.

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

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1 Incorporated.

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

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

17 Virtually all of Accu Chem's loaded cars
18 must pass through the Union Pacific classification
19 yard at West Colten, California, for detrainment and
20 reassignment to local trains that supply our local
21 service yards at the City of Industry, Union Pacific
22 location 24,000, or El Centro, Union Pacific location

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1 26,200.

2 Accu Chem is solely served by the Union
3 Pacific at both our locations and we traditionally
4 receive daily service at both facilities.

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

14 Prior to the UP/SP merger products
15 destined for either of Accu Chem's facilities were
16 arriving in transportation times measured in days,
17 regardless of the origination point. Beginning in the
18 second quarter of 1997, we saw these transportation
19 times begin to dramatically increase -- especially in
20 shipments originating from the Central United States
21 or the Gulf Coast -- to transportation times averaging
22 30 days.

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1 Beginning in the third quarter of 1997 we
2 began to experience shipment times of 60 days from
3 these same regions as well as 21 to 30 days transit
4 times from the Pacific Northwest. During the third
5 quarter of 1997 when these long transit times were
6 being encountered, Accu Chem and our customers
7 experienced great financial hardship and logistic
8 nightmares due to product outages.

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

19 At the time that the Union Pacific service
20 recovery plan was announced and implemented in the
21 last 60 days, we have seen some modest improvement in
22 the hub-to-hub movements East of Yuma, Arizona, but at

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1 this time Accu Chem still remains completely out of
2 several products that originate from the Gulf Coast,
3 Central United States, and the Pacific Northwest.

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

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

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

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

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

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

22 These same field personnel are to be

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1 commended for their individual dedication and hard
2 work, but they have not been provided the resources
3 they need to complete the task at hand.

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

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

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

19 CHAIRMAN MORGAN: Thank you. Let me just
20 ask all of the panelists one question. Earlier we
21 heard that there are shippers out there who have seen
22 improvements. Each of your organizations, and you as

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1 an individual shipper, obviously, have done some
2 surveys and have talked to your membership.

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

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

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

21 I'd put more effort into looking at the
22 trend line. I have looked at it back to September the

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1 19th, which I believe is the first on your fax that
2 you sent to us. And just looking at total cars -- and
3 we heard today that the total car count was down to
4 331,000 -- that's like 57 percent of the way to their
5 goal after 12 weeks.

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

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

14 MR. EVANS: Right, and --

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

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

1 and back.

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

8 CHAIRMAN MORGAN: Mr. Thomas?

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

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

21 I'd like for you to look at this data
22 having to do with loaded and empty transit times.

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1 Notice the top line, the trend line is for empties.
2 If you'll look at that graph you will see, from
3 September, October, and November that line is going
4 up, not down, in terms of the number of days it takes
5 for those cars to be returned -- those empties.

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

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

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

21 MR. THOMAS: That's correct.

22 CHAIRMAN MORGAN: -- which I heard the

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1 Union Pacific representatives --

2 MR. THOMAS: That is what --

3 CHAIRMAN MORGAN: -- discussing.

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

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

9 MR. THOMAS: Unacceptable.

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

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

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1 improvement.

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

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

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

18 MR. ROBITAILLE: I'd like to answer that
19 two ways. Prior to the merger I had had no experience
20 with Union Pacific Railroad, being solely served by
21 just Southern Pacific over my entire career. And I
22 can tell you from 12 years being on Southern Pacific,

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1 the type of delays and the type of timeframes we were
2 incurring going through West Colten or going through
3 different classification yards in the area.

4 And I can say right now that we are still
5 nowhere near those timeframes that we were
6 experiencing. A typical interchange through West
7 Colten prior to the UP/SP merger was perhaps -- 24 to
8 72 hours would be considered normal.

9 We are not at a point here we're seeing
10 really, any cars go through in 24 to 72 hours, but I
11 can also say that we're not at a point where we're
12 seeing seven days, which is what we were seeing 30 to
13 45 days ago.

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

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

22 In regards to, are things getting better

1 systemically, our facility happens to be impacted by
2 -- Vice Chairman Owen, you mentioned Metrolink. And
3 we are impacted by Metrolink and its window to service
4 our facility as well as Amtrak.

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

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

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

19 CHAIRMAN MORGAN: Sure.

20 MR. THOMAS: I call your attention to the
21 Dow Chemical Company's statements. Since the October
22 27 hearing, Dow and UP have continued their weekly

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1 service conference calls. Unfortunately, all this
2 attention has not led to any measurable improvement in
3 service on Dow traffic.

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

10 Now, that's the kind of measurement that
11 is extremely relevant to a shipper.

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

20 Hopefully, if the system gets better the
21 individual performance will get better, but maybe
22 there's a discrepancy on the perception of where they

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1 are, because I'm still looking at one customer for one
2 car and he doesn't really care if the yard is flowing
3 better or not.

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

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

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

19 One of the reasons I bring it up, it
20 always comes home to me that it's Christmastime and a
21 lot of people working in these plants are a little bit
22 above minimum wage. And a week or two weeks out of

1 their paycheck means lack of Christmas, lack of paying
2 the rent or house payment. And I was just wondering
3 what type of an economic impact it's had in those
4 particular areas there when --

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

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

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

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1 what kind of numbers they are.

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

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

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

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

22 MR. ROBITAILLE: The personnel that I deal

1 with are essentially train masters, yard masters, and
2 switch masters, and their greatest challenge was
3 always power or crews. They always felt that if they
4 had the power or crews to be able to do the work that
5 was at hand, they would be able to service all the
6 customers on a given branch line.

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

10 MR. ROBITAILLE: Yes.

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

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

21 We have to go to UP City of Industry yard
22 which is about four miles away from our yard, and it

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1 will require special logistics to move the cars from
2 the UP City of Industry yard to the old SP City of
3 Industry yard. And those were all power and crew
4 issues that -- we had a batch of cars that got delayed
5 -- it took five days to move them from one City of
6 Industry yard to the next City of Industry yard.

7 VICE CHAIRMAN OWENS: Thank you.

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

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

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1 people -- almost 100,500.

2 VICE CHAIRMAN OWENS: Thank you.

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

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

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

21 And we talked with the KCS people and we
22 tried to get down the transit times because without

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1 their yard in Houston they had to move over to
2 Beaumont before they do their blocking and switching.
3 So we're interested in rate as well as transit.
4 There's no reason for us to put it over there and take
5 longer to get to our end product.

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

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

16 CHAIRMAN MORGAN: Any other comments on
17 that question?

18 MS. HEALEY: Just to add to that, Madam
19 Chair, I think in establishing the routes, trying to
20 find out the number of cars that will be needed to
21 haul the commodity, and then also I think the
22 railroads sometimes are, rightfully so, reluctant to

1 pick up traffic for such a short time once the routes
2 are established. You have virtually just days left,
3 say in a 30-day emergency service order. So there's
4 some reluctance and as our colleagues have said, the
5 time does go by very, very quickly.

6 CHAIRMAN MORGAN: Anyone else on that?

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

15 And then the third element is that they're
16 not always rates and routes that the other associated
17 people can place. For example, if the new originating
18 carrier doesn't have interchange at the same point
19 with the Eastern carrier that's terminating traffic,
20 say under carat one of the contract, or if there need
21 to be negotiations between the Western carrier and the
22 Eastern carrier over transit times or over rates or

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1 over divisions, that adds a whole other complexity.

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

12 CHAIRMAN MORGAN: Thank you all very much.
13 I think what we're going to do -- I was just going to
14 keep going here but I think we'll take a 10-minute
15 break and then we'll come back with the next panel of
16 shippers so that we can keep moving.

17 (Whereupon, the foregoing matter went off
18 the record at 1:26 p.m. and went back on the record at
19 1:36 p.m.)

20 CHAIRMAN MORGAN: Okay. Let's begin with
21 the next panel. We have Joe Lema from the National
22 Mining Association; we have Dan Kuehn with Western

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1 Coal Traffic League -- I got it right this time;
2 Michael McBride, Edison Electric Institute; and then
3 we have William Hudson with the International
4 Association of Refrigerated Warehouses.

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

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

18 In particular, massive tonnages of coal
19 produced in the Western United States must rely on
20 timely, coal unit train movements to power plants in
21 the United States and Mexico, and support terminals
22 from which coal is trans-shipped to other countries.

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1 In our nation today we produce annually,
2 1,030,000,000 tons of coal; 47 percent of that
3 production occurs in the Western states, amounting to
4 some 484 million tons per year, and more than two-
5 thirds of that Western coal production is originated
6 on Burlington Northern Santa Fe and Union
7 Pacific/Southern Pacific.

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

19 In fact, overall in regard to coal
20 shipments, coal unit train service has deteriorated in
21 the month of November of 1997, placing stockpiles at
22 utility power plants in a precarious position with

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1 respect to meeting consumer requirements for
2 electricity in retail, commercial, and industrial
3 sectors of the economy in many states.

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

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

20 Coal unit train service deficiencies are
21 onerous in regard to the vast tonnages of coal
22 produced for shipments out of the Powder River Basin

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1 of Wyoming, where a single mine, for instance -- one
2 mine out of a large number of mines in operation --
3 may require 40 or more trains per week, with each
4 train carrying 12- to 14,000 tons of coal.

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

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

18 Looking at coal unit train cycle times in
19 days, reported by the Union Pacific/Southern Pacific
20 in their weekly reports, looking at a baseline of
21 January 1997, the report was 6.1 days. Looking at the
22 week ending October 24 of this year, or the vicinity

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1 of the previous hearing on this matter, the cycle time
2 was 6.5 days. And yet the week ending November 21st,
3 the cycle time was 7.6 days. That's a tremendous
4 expansion in cycle time which means there's a lot more
5 coal on the rails and not in the stockpiles and the
6 utility plants.

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

14 Looking now at the percent of coal unit
15 trains -- furnished Powder River Basin coal producers
16 against commitments for train service -- how many
17 trains were provided against the commitment for
18 providing train service -- the week ending October
19 24th, 80 percent of the commitments were actually
20 responded to or met, and the week ending November
21 21st, a recent week one month prior to the earlier
22 time, it was 70 to 85 percent.

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1 So the provision of unit trains against
2 the commitment is not good. That's Powder River
3 Basin. Let's turn to other Western States. The
4 percentage of coal unit trains furnished Western coal
5 producers outside of Wyoming's Powder River Basin --
6 for example Colorado, Utah, New Mexico -- against
7 commitments for service, in the week ending October
8 24th only 40 to 70 percent of the commitments were
9 met, and the week ending November 21, only 40 to 60
10 percent of those commitments were met.

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

19 The key statistics gleaned from reports
20 received from coal producers the Western United
21 States present a gloomy venue in regard to our
22 capacity for delivering enough coal from the nation's

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1 abundant reserves of efficiently mined Western coal to
2 satisfy existing coal supply contracts with power
3 producers and with buyers of U.S. export coal, due
4 entirely to an inability of Western line hold railroad
5 systems to provide sufficient coal unit trains at this
6 time, measured against existing commitments.

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

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

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

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1 their merger.

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

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

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

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1 California.

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

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

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

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1 service.

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

8 I'll summarize by saying, in closing, NMA
9 supports a proposal made by the Edison Electric
10 Institute filed by EEI in this proceeding on December
11 1st. The proposal would request the secretary of
12 transportation, in collaboration with the chairman of
13 the STB, to convene a meeting of BNSF and UP/SP
14 officials and officials of other railroad which may be
15 in a position to provide assistance in eliminating the
16 deficit rail service incurred in the Western U.S.
17 That authority is provided in 49 USC 333.

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

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1 service at a point in time.

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

6 CHAIRMAN MORGAN: Thank you. Mr. Kuehn.

7 MR. KUEHN: Chair Morgan, Vice Chair Owen.

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

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

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

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

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

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

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1 November, but the UP report exaggerates the extent of
2 that improvement.

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

8 To put the current performance in context,
9 our total deliveries in November were 32 train loads
10 of coal. Compliance with our service commitments in
11 our contract would require delivery of between 44 and
12 48 trans per month. At the rate of this recent
13 improvement it will take four to six months for our
14 deliveries to return to normal. And this projection
15 does not include any consideration for deficit tonnage
16 makeup.

17 UP's 3,000 mile round-trip from Wyoming's
18 Powder River Basin to our plant normally takes about
19 one week; transit times at the time of the Board's
20 October 27th hearing wee approximately two weeks, or
21 14 days. For the month of November they were at
22 approximately 11 days. However, that's still more

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1 than 50 percent over our contractual cycle time
2 commitments.

3 As I reported at the last hearing, our
4 coal transportation deficit was in excess of 750,000
5 tons; today that deficit volume has ballooned to over
6 one million tons. The Fayette Power Project normally
7 maintains a 50- to 60-day supply of coal. At the time
8 of the Board's last hearing our stockpile contained a
9 2-week supply of coal.

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

18 At the time of the Board's last hearing,
19 LCRA and the city of Austin reported that we had
20 incurred \$8 million in additional expenses as a result
21 of UP's service failures. Today, that amount has over
22 tripled in size to approximately \$27 million. That

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1 total continues to increase on a daily basis.

2 Each train load of coal that we must
3 offset with non-coal fired generation or power of
4 purchases, increases our cost by approximately
5 \$400,000. Besides LCRA, several other Coal League
6 members have reported that Union Pacific's performance
7 continued to lag: cycle times are too high, the
8 number of trains delivered per day remain too low, and
9 coal deliveries too infrequent.

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

18 UP has "declared victory", and in
19 particular, has described its coal service as
20 virtually back to normal. UP described its remaining
21 service difficulties as no worse than what is
22 experienced by railroad "year after year in the

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1 ordinary, not always smooth course of railroading".

2 Furthermore, because of these self-
3 proclaimed improvements, UP requested that the Board
4 lift its emergency service order. UP's glorified
5 statement grossly exaggerates the reality being
6 experienced by LCRA and other Coal League members.

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

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

20 First, the Board should take action to
21 ensure that UP responds favorably to alternate routing
22 arrangements sought by other carriers and by its

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1 customers that would improve service and not interfere
2 with UP's recovery efforts.

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

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

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

19 Second, the Board should require UP to
20 bolster its weekly reporting on unit train coal
21 movements as requested by the Western Coal Traffic
22 League in its October 7th letter to the Board. UP's

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1 statement submitted to the Board in this proceeding on
2 Monday of this week criticizes the negative
3 performance status submitted by others to the Board,
4 as lacking on concreteness.

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

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

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

21 CHAIRMAN MORGAN: Mr. McBride.

22 MR. McBRIDE: Madam Chairman, Mr. Vice

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1 Chairman, thank you very much for the opportunity.
2 I'm going to try not to be redundant and I'm going to
3 be positive, as I was when I was here five weeks ago.

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

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

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

18 Number one, we had understood that Union
19 Pacific had taken some locomotives and crews out of
20 Powder River Basin coal service. I heard a suggestion
21 this morning from Mr. King that perhaps they've
22 restored that.

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1 If so, great; but I understood just
2 yesterday from the Tennessee Valley Authority that
3 it's now experiencing a shortage of power and crews on
4 the Colorado coal service that it's getting. We need
5 the normal complement of locomotives and crews on
6 Western coal service. That's number one.

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

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

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

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

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

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

19 Thank you.

20 CHAIRMAN MORGAN: Thank you. Mr. Hudson.

21 MR. HUDSON: Yes, Chairman Morgan, Vice
22 Chairman Owen, my name is Bill Hudson and I'm

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1 president of the International Association of
2 Refrigerated Warehouses, the principal trade
3 association for the refrigerated warehousing,
4 logistics and distribution industry to the food
5 industry.

6 I'm here today representing approximately
7 250 U.S. companies which own and operate almost 500
8 large, refrigerator warehouse and distribution
9 facilities in the United States. During my time I
10 wish to call the attention to the alarming difficulty
11 faced by the refrigerated food distribution industry
12 as they endeavor to obtain refrigerated rail cars that
13 are necessary to move product safely to the customer.

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

20 One refrigerated food distributor in the
21 West recently monitored refrigerated rail car status
22 for a 30-day period and reported receiving 16 cars

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1 within that period with insufficient fuel or
2 insufficient refrigeration.

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

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

17 This is not uncommon. There are fewer and
18 fewer occasions when the railroad is able to deliver
19 equipment as agreed. Compounding this, once the
20 equipment has been delivered and loaded, the rail cars
21 are rarely able to pick up the loaded rail car on a
22 timely basis.

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1 In an all-too-typical situation
2 experienced by one food distributor for example, the
3 company reported that a refrigerated boxcar is
4 delivered seven days after the date agreed, and then
5 has to load the boxcar immediately so that it could be
6 picked up that same day.

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

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

17 Let me close by saying that we deeply
18 appreciate the Board's active effort to resolve the
19 gridlock issue facing so many shippers in the Western
20 United States, and we hope that in the course of your
21 deliberations you will not overlook the refrigerated
22 rail car problem which affects the food distribution

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1 chain in the Western United States, many other parts
2 of the country, and our exports and imports as well.

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

9 Thank you.

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

16 MR. LEMA: Madam Chairman, that's exactly
17 right.

18 CHAIRMAN MORGAN: And are you seeing, with
19 respect to BN Santa Fe service, are you seeing
20 improvements in that area? We've heard from Union
21 Pacific earlier that they have focused their attention
22 on that matter and hopefully the shippers will begin

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1 to see some relief. I was wondering if you had some
2 information with respect to the BN Sante Fe.

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

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

15 MR. KUEHN: I think the issue is really
16 that you should have that more detailed information to
17 have a better measure for what is really going on.
18 Two things -- I mean, I've heard claims of
19 confidentiality concern about competitive nature.
20 Well, these cycle times, I don't think they're very
21 competitive with the antiquated modes of
22 transportation, so I don't think that's an issue.

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1 I think it's really embarrassing is what
2 it is, you know, that they would have to present this
3 detailed information that shows that they're well off
4 their service marks and contractual commitments.

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

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

19 MR. McBRIDE: We need the number of trains
20 moving, which is a survey of tonnage. And I think you
21 heard Mr. King this morning report to you on their
22 improvement in that number of trains, so I don't think

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1 that data could be a competitive issue since they
2 willingly produced that data to you this morning.

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

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

12 CHAIRMAN MORGAN: So you want more
13 regionalized --

14 MR. McBRIDE: We want regions --

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

18 MR. McBRIDE: That's correct. And may I
19 also supplement the answer Mr. Lema gave to your
20 question to him. I did inquire as late as yesterday,
21 of two major coal burning utilities, what the service
22 was on each of those two carriers. This is not to

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1 point fingers; just to report facts as to where we
2 were as of yesterday.

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

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

17 So what they've done is curtail off-system
18 sales at some of the plants using Western coal.
19 Another major utility, they reported on a one to ten
20 scale that service from BN was at four-and-a-half or
21 five, and from UP at about a three. They're way down
22 on the coal from UP; somewhat less down from BN.

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1 This is not to denigrate either carrier.
2 My understanding is both carriers are trying very hard
3 and in fact, the cycle times have improved on UP since
4 we were last before you. But you can't sell cycle
5 times; you've got to sell power generated from fuel on
6 the ground. And their stockpiles are still going down
7 since we were last before you, because we're not back
8 to normal.

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

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

22 "The STB needs to understand that this

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1 problem is putting at risk the reliability of the
2 nation's electric system should we get severe weather
3 or experience continued logistical problems." That's
4 a quote.

5 CHAIRMAN MORGAN: Just one question for
6 you, Mr. Hudson. The problem that you have
7 highlighted in your testimony, is this a new issue, an
8 ongoing issue? It seems to me refrigerated cars --
9 new cars have not been made in a couple of years, am
10 I right about that from your testimony?

11 MR. HUDSON: That's right. That's right,
12 they haven't.

13 CHAIRMAN MORGAN: So is this a new issue
14 that you're dealing with or an ongoing --

15 MR. HUDSON: No, it's an issue that's been
16 with us for a number of years. We had to get 3,000
17 rail cars in 1982, mechanically refrigerated rail cars
18 and now we have 7500 mechanically refrigerated rail
19 cars, and there's certainly more product being
20 shipped.

21 And most of our warehouses actually have
22 the sidings at their facility and they're relying on

1 this service. And they're losing it; they're losing
2 the rail cars.

3 CHAIRMAN MORGAN: Thank you. Vice
4 Chairman.

5 VICE CHAIRMAN OWEN: Back to Mr. Lema over
6 here. On the coal movement to the ports, how many
7 trains do you think are going to Long Beach/Los
8 Angeles port now?

9 MR. LEMA: My understanding, there is one.

10 VICE CHAIRMAN OWEN: One per week?

11 MR. LEMA: And I do believe that the total
12 requirement was significantly higher. I can get you
13 the commitment --

14 VICE CHAIRMAN OWEN: No, that confirms
15 what they told me there. They were expecting four to
16 five and the ships -- they diverted the ships to other
17 ports --

18 MR. LEMA: Absolutely.

19 VICE CHAIRMAN OWEN: -- due to the fact
20 that coal wasn't there, until such --

21 MR. LEMA: They've lost --

22 VICE CHAIRMAN OWEN: And they anticipate,

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1 yes, that that market will pick up when the rails can
2 move the coal there, probably in February/March.

3 MR. LEMA: Well, we certainly anticipate
4 that, but the longer the delay the less we're able to
5 penetrate those overseas markets.

6 VICE CHAIRMAN OWEN: So you currently lost
7 that because Australian coal is going to those markets
8 now?

9 MR. LEMA: Quite likely.

10 VICE CHAIRMAN OWEN: That's what I
11 understand. What is the typical rate increase of
12 electricity when you opt to use natural gas or bring
13 it in from the grid system or some other source? What
14 type of an increase do you --

15 MR. KUEHN: Well, that's dependent on the
16 price of natural gas --

17 (Noise interruption.)

18 CHAIRMAN MORGAN: This is definitely a
19 rough day.

20 VICE CHAIRMAN OWEN: We're going to have
21 another test run.

22 MR. LEMA: I think that occurred when you

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1 mentioned natural gas.

2 CHAIRMAN MORGAN: Well, obviously we're
3 saying things here today that are setting certain
4 bells and whistles off. Excuse us.

5 MR. KUEHN: That's really a function on
6 the price of the substitute fuel -- natural gas in
7 this case -- and that's very volatile. As recent as
8 two weeks ago it was around \$3.50.

9 VICE CHAIRMAN OWEN: I just heard maybe 17
10 percent increase -- a little over a kilowatt per hour,
11 something like that.

12 MR. KUEHN: It's roughly about three
13 times, at current price levels, the cost to generate
14 electricity with coal -- the incremental cost.

15 VICE CHAIRMAN OWEN: The impact of cycle
16 time here has quite a significant impact upon you,
17 does it not, then?

18 MR. KUEHN: Certainly.

19 VICE CHAIRMAN OWEN: And then when
20 commitments are not kept -- and you showed the
21 percentages of commitments not kept -- where those
22 commitments are not kept you run down to a 2-week or

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1 3-week supply, and then do you start bringing in other
2 power?

3 MR. KUEHN: Yes, and that's essentially
4 what we did this entire month of November where we
5 shut down two of our three generating units at the
6 Fayette Power Project because we didn't feel we were
7 going to have adequate coal to make it through the
8 winter season, and we basically had a manufacturer
9 increase our inventory level by curtailing our
10 consumption.

11 VICE CHAIRMAN OWEN: So right now if we
12 had bad weather over the next two or three weeks, some
13 major snowstorms and the El Nino hits Northern
14 California and we have some flooding or wherever the
15 reach might be, then that could impact the rail
16 traffic there. So you might be in dire straights
17 then?

18 MR. KUEHN: Very possibly, yes. We built
19 this up -- our inventory specifically, up to 25 days.
20 We're only getting a train a day; we need just under
21 two trains a day. So you can see you've got a deficit
22 situation and you're just eroding what inventory we

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1 have, until things get back to normal.

2 MR. LEMA: Vice Chairman, may I just
3 supplement that by telling you that what you need to
4 understand -- you probably do already, but just for
5 the record -- the utilities are oftentimes among the
6 first, if not the first customers of the gas company
7 to be cut off during a severe cold snap when the gas
8 may have to be conserved.

9 And that's why they may shut down coal for
10 our plant now even though they haven't gotten to the
11 bottom of the stockpile, because they're going to need
12 that coal when that severe weather comes and they
13 don't have gas to generate the electricity.

14 So the MEA station -- the Mid-American
15 Energy which I referred to in my comments -- was shut
16 down. They weren't down to the bottom -- they were
17 down to a few days, perhaps 12 days -- I've heard
18 various reports -- but they shut it down so they'd
19 have that plant to operate, hopefully, as the weather
20 gets worse.

21 MR. McBRIDE: Mr. Vice Chairman, may I
22 just add one thing? You used the word commitment and

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1 that's a word I also use and I'm glad you're using it,
2 because I think the true measure of performance is the
3 actual performance against the committed performance.
4 And right now they're not meeting commitments, and
5 that's a very bad situation for the coal miners.

6 VICE CHAIRMAN OWEN: I have no other
7 questions.

8 CHAIRMAN MORGAN: Thank you all very much.
9 Our next panel will consist of agricultural
10 representatives. We will first hear from the National
11 Corn Growers Association, Ryland Utlaut; North Dakota
12 Grain Dealers Association, Jarvis Haugeberg; Nebraska
13 Grain and Feed Association, Patrick J. Ptacek; and
14 then finally, Robert Zalanka with the Farmer Elevator
15 Association of Minnesota.

16 MR. UTLAUT: Thank you, Chairman Morgan
17 and Vice Chairman Owen. My name is Ryland Utlaut and
18 I'm a farmer in Grand Pass, Missouri and currently
19 serve as president of the National Corn Growers; we're
20 an association of 30,000 members.

21 We commend the STB in providing service
22 orders and trying to alleviate the problems that we're

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1 facing in transportation. We would encourage you to
2 stay involved. We regret that government action may
3 be necessary, but the lack of service deems it
4 probably is necessary.

5 We feel that the STB decision did not
6 adequately address the implication of severely
7 strained rail service on agriculture. The various
8 states across the Western corn belt have seen recent
9 movement of trains; however both the UP/SP and
10 Burlington Northern and Sante Fe are still behind in
11 providing trains to elevators.

12 We would encourage the STB as I said, to
13 stay actively involved in the resolution of the rail
14 crises facing the Midwest. And we would urge the STB
15 to require the UP/SP and Burlington Northern and Sante
16 Fe to prioritize agriculture shipments due to
17 potential spoilage of these commodities.

18 We also believe the economic strain on
19 farmers due to the rail situation warrants further
20 involvement by the STB.

21 Specifically relating to the UP/SP's
22 recovery plan dated October 1, we are concerned about

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1 the approach that UP has been taking on achieving a
2 functioning rail system. Now is not the time to
3 reduce rail service to agriculture. We need plans or
4 assurances that guarantee agriculture shipments are
5 not delayed for the movement of other freight.

6 Agriculture cannot withstand economic
7 disparity; U.S. agriculture is a vital part of our
8 economy. And to maintain production capacity and the
9 viability of U.S. farmers, we must have viable
10 transportation.

11 The experience of shipping grain by rail
12 is very much the same each year. Fall harvests result
13 in reduced availability of grain cars and strained
14 rail service. This year the rail service problems
15 have intensified. Corn has piled up on the ground in
16 several states and storing corn on the ground
17 increases costs because additional labor is required
18 to move the corn, and there are drying costs.

19 I visited with a farmer friend of mine
20 yesterday from Nebraska and he told me, within a 10-
21 mile area of his farm, four million bushels of corn
22 are piled on the ground. And I asked him of the

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1 condition of the crop and he said, well it's going
2 south.

3 And I thought, well does that mean we're
4 moving the corn out? He says no, we're talking about
5 the condition of the crop. It's not improving, it is
6 going south; it is going out of condition quickly.

7 Many elevators do rely on temporary ground
8 storage; however, this method of storage is by no
9 means long-term, and the grain must be moved off the
10 ground in a timely manner. Snow, rain, and the cold
11 weather in the Northern corn belt are causing spoilage
12 of the corn, or freeze the piles and make them
13 impossible to move.

14 The quality of the corn diminishes during
15 this time and no longer meets the quality level at
16 which it is sold.

17 In South Dakota rail shipments are running
18 two to four weeks behind schedule. Last month, at the
19 National Corn Growers' testimony before the House
20 Agriculture Committee, a fellow farmer of mine who co-
21 chairs the NCGA Transportation Task Force, detailed
22 the situation near his farm in Dell Rapids, South

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1 Dakota.

2 His local elevator can load 54 car trains
3 and last month the elevator was five trains behind,
4 one had been cancelled, and four were late. Since
5 that time, one train has been loaded, but the elevator
6 is now four trains behind -- and that is for the month
7 of October -- and has ordered four trains for the
8 month of November.

9 Every day of delay in transporting these
10 commodities to market, or storing corn on the ground,
11 has a direct economic effect on the farmer. These are
12 also negative economic effects on the rural
13 communities -- on jobs and the overall livelihood of
14 U.S. farmers. When transportation problems arise
15 farmers must pay the price to increase transportation
16 costs or decrease value for a product of lesser
17 quality.

18 Rural communities will see less growth,
19 less spending, and a loss of jobs. These negative
20 economic effects continued over several seasons, do
21 not allow for a viable livelihood in farming and
22 result in decreased production figures.

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1 In some rural areas the communities and
2 the small elevators are no longer allowed to pool
3 shipments. Pooling means allowing several elevators
4 off the mainlines to separate unit cars, load them,
5 and then reconnect them into a unit train. These
6 requirements will force elevators to consolidate along
7 rail lines to enable them to load 100 car units.

8 The elevator I mentioned in South Dakota
9 is equipped to handle only 54 car unit trains. It
10 would cost them between a million-and-a-quarter and a
11 million-and-a-half to be able to handle 108 car
12 trains. The lack of rail service to elevators, the
13 consolidation of elevators, and the closing of
14 elevators, has a significant ripple effect on local
15 commodities.

16 While today we are unable to offer a
17 logistic solution to our specific rail lines that
18 should be handled to other carriers to alleviate the
19 stress on the UP/SP system, we can make the
20 recommendations.

21 NCGA will accommodate any request for
22 information from the STB. We are more than willing as

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1 farmers to provide any information that we can. In
2 the November 14th filing with the STB regarding grain
3 shipments, the UP/SP indicated that improvement in
4 velocity and car utilization would improve grain
5 shipments. The BNSF also indicated use of 110 car
6 shuttle trains in its November filing.

7 In regard to the utilization of cars and
8 the need for unit grain trains, many elevators do not
9 have the capacity to load 100 cars. Improvements for
10 these elevators come at a great cost, as I mentioned.
11 All of these changes, compiled with unreliable rail
12 service, make the elevator improvements even more
13 costly. It is the farmers and the elevators that feel
14 the financial strain of rail service during harvest.

15 The liability that an elevator carries
16 because its grain is on the ground, is much greater
17 than a penalty the railroad pays for not delivering
18 cars to the elevator. The inability to pool cars also
19 has significant economic impact, and on being able to
20 increase the movement of grain. This solution to use
21 grain trains to service agriculture shipments is not
22 always the viable option.

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1 We believe that a successful relationship
2 between the growers and the railroads is based on
3 accountability, availability, and reliability.
4 Farmers and elevators can predict when cars and
5 service will be needed. However, if trains are
6 cancelled without notice -- which has been done -- or
7 if the service is several weeks late -- which it
8 currently is -- the resulting effects on farmers can
9 be costly.

10 We understand that the operation of the
11 railroads is a business that should be allowed to
12 operate as a business, but with that comes the
13 responsibility to their customers. In addition,
14 railroads do have a monopoly on service in certain
15 areas and therefore have a responsibility to not only
16 provide service but be accountable for the
17 availability of their service to encourage the open
18 communication between the growers, the elevators, and
19 the railroads.

20 Other understanding of railroad problems -
21 - the logistics and fluctuations -- can assist
22 elevators in planning their transportation needs.

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1 Corn growers support a competitive, infrastructure of
2 rail, waterways, and trucks that provide service to
3 shippers. Investments need to be made in facilitating
4 the competitive growth of our nation's infrastructure.

5 A viable, competitive river system must be
6 available to carry grain shipments on a regular basis
7 and during peak times when other transportation modes
8 are unable to fill their transportation obligations.
9 Investments in waterway infrastructure must continue
10 to ensure that water-borne transportation remains a
11 viable option for agriculture.

12 Chairman Morgan and Vice Chairman Owen,
13 thank you for the opportunity to testify. Our highest
14 concern is that, as railroads set priorities for the
15 next several months, we ensure that service to
16 agriculture is one of those priorities.

17 We believe that the Surface Transportation
18 Board should require the UP/SP and the Burlington
19 Northern and Sante Fe to prioritize these shipments,
20 these vital, perishable, agricultural shipments.
21 Thank you.

22 CHAIRMAN MORGAN: Thank you. Mr.

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1 Haugeberg, do you want to go next? And welcome.

2 MR. HAUGEBERG: Okay. My name is Jarvis
3 Haugeberg. I'm the general manager of the PTR Farmers
4 Co-op in Churchs Ferry, North Dakota. I also
5 currently am president of the North Dakota Grain
6 Dealers Association and will be speaking on its behalf
7 today.

8 The North Dakota Grain Dealers is an 86-
9 year-old organization, which almost all the elevators
10 in our state do hold membership. We appreciate the
11 Surface Transportation Board holding this follow-up
12 hearing today to monitor the rail situation in the
13 West.

14 Most of our members, including the
15 business I manage, are extremely dependent on rail
16 transportation in our business. Steve Stragy, our
17 executive vice president, delivered a message here on
18 your hearing on the 27th, and a lot of what I'm saying
19 today will ride upon that statement.

20 The questions being asked today are to
21 determine whether service conditions have improved,
22 and what further actions if any, are needed. The

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1 answer to the first question is about service, and in
2 our state I don't believe it has improved on the BNSF.
3 I'll be talking primarily about the BN because that's
4 the railroad that does serve North Dakota.

5 The BNSF scorecard which shows up on a Web
6 site, indicates from October 21, 1997, they had 47,864
7 outstanding grain car orders; roughly one month later,
8 the November 25th scorecard showed that through
9 November 30th, they have 48,085 outstanding grain cars
10 on order, indicating not very much improvement.

11 There are times when we in the real world,
12 question the numbers on the scorecard, but in this
13 case I see nothing that would challenge it. I have
14 not experienced any increase in service nor have any
15 of our other members.

16 As we pointed out, on the 27th, the BNSF
17 does use three different car ordering systems. Tariff
18 car orders are still not being filled. In the
19 operation that I manage we did receive a unit train
20 order on their lottery system. In fact, it was the
21 first one they held for the season.

22 At the time we got our order confirmed we

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1 had very little hope that we'd ever actually see the
2 train. Since that time we cancelled the train because
3 we saw the order as having no value and no credibility
4 at all as to when we were going to get it. We were
5 disappointed by that because it forced us to use other
6 car ordering systems by which we have to pay a
7 premium.

8 The idea originally of the lottery was
9 that they would only allow so many orders to be
10 placed, so being that it was a limited number, the
11 lottery system was drummed up that those orders would
12 have credibility. Unfortunately, there's very little
13 credibility in that system.

14 Then there's the guaranteed grade system,
15 for leased cars and swap cars as they sometimes
16 called. This system also has lost its credibility
17 with the BN paying penalties for cancelled trains
18 routinely. If you look at what's happened to the
19 value of guaranteed freight cars, on October 13th this
20 same train was selling for about \$200 over tariff.

21 By the time of the last hearing the value
22 of those trains had fallen to \$75 to \$100 and

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1 recording on Friday, November 26th, of \$35 to \$50 for
2 a car over tariff.

3 We're not advocating high premiums over
4 tariff rates. We only call attention to this decline
5 because the decline in value is the result of
6 unreliable service on this program.

7 On the cost program, which is the most
8 reliable service, the BNSF has also paid penalties for
9 late placement of cost. Now on November 17th, the
10 BNSF announced it would not be offering costs for the
11 month of January and February.

12 Though we do understand this may help them
13 catch up and give their existing orders some
14 credibility overall, non-operating contracts have been
15 the only credible order system, leaving shippers
16 wondering what to do next. It's very difficult to
17 manage your business when the rules continue to change
18 in the middle of the stream.

19 We suggested in our last statement the STB
20 look into whether this allocation of rail resources
21 serves the common carrier obligation which still
22 exists as confirmed by the 8th Circuit Court of

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1 Appeals decision in the Cobb case. We would ask that
2 question again now.

3 In our statement on the 27th, Mr. Stragy
4 talked about communication with shippers. I would
5 note that the communication has improved slightly.
6 That if BNSF sends out a fax prior to the cars being
7 placed -- and those are coming more timely and giving
8 us some good information -- however, the fax does not
9 include ETA information.

10 For shippers that have access to the
11 Internet, the BNSF Web site can be used to get an
12 indication of when the cars are coming; however, not
13 all country elevators have access to the Internet. If
14 you don't have access to the Internet that leaves you
15 leaving messages on voice mail and oftentimes not
16 getting return phone calls.

17 At least the fax notification part of the
18 process seems to be improving. Hopefully they will
19 continue to work to improve in this area of
20 communication.

21 Our association is concerned that the BNSF
22 is using some of its resources to help unclog the

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1 UP/SP. UP/SP has reported to the STB that the BNSF is
2 operating nine coal trains on the UP/SP. While we do
3 not want to appear unsympathetic to the situation on
4 the UP/SP, we do feel the situation on the BNSF is
5 serious enough that it should be allocating its
6 resources to its own customers.

7 I'd really like to speak directly to
8 footnote number 5 found on page 5 of the decision and
9 I'll quote: "Like the UP/SP, BNSF suggests that it
10 too, can better serve the agricultural community
11 through unit train or shuttle train service, which
12 would maximize equipment utilization, improve cycle
13 times at this critical period. BNSF notes that it is
14 presently about four weeks behind in filling its car
15 orders".

16 We would point out that only a minority of
17 agriculture feels that large trains and shuttle train
18 service are the best way for us to be served. After
19 all, if you want to know if the food is any good in
20 the restaurant, you don't go ask the cook.

21 This may be the most efficient way for the
22 railroad to haul agricultural commodities, but it may

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1 not be the practical or the preferred method for
2 elevator operators or producers.

3 Recently, USDA has held listening sessions
4 in Kansas, Minnesota, North Dakota, Montana, and Iowa.
5 At these sessions they heard from elevator operators,
6 farmers, and other local leaders -- none of them
7 begging for better service derived from shuttle
8 trains.

9 To provide service to only those who have
10 capacity to load large trains and shuttle trains is to
11 exclude most of the shipping public, and is the most
12 blatant departure from the common carrier obligation
13 we have seen.

14 We would also like to respond specifically
15 to the last sentence of page 9 of the decision. I
16 quote: "Shippers for the most part should address how
17 service to grain shippers, particularly those who do
18 not use contracts, guaranteed car delivery programs,
19 or certificate of transportation certificates, can be
20 improved without slowing the overall recovery".

21 Well frankly, shippers not using these
22 programs are not receiving any service at all right

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1 now. So I suppose to that extent, any capacity that
2 went to serve them would take capacity away from some
3 other place on the railroad.

4 This thought also begs once again to ask
5 the STB to look into whether the railroads are
6 delivering any common carrier cars at all. One option
7 to solve these problems is the railroad should go into
8 the market and buy back enough of its already sold
9 capacity to provide reliable service to their
10 customers.

11 If there were enough incentive offered,
12 shippers would either delay shipments, or perhaps use
13 the money to ship the commodity by a more costly means
14 if possible. The railroad should look at their
15 situation, see that they're not going to be able to
16 fill their demand, and simply offer to buy out of some
17 business by a system of bids. They could continue to
18 buy back orders until they reached the point of being
19 current.

20 We thank you for the opportunity to
21 participate in this proceeding.

22 CHAIRMAN MORGAN: Thank you. Mr. Ptacek.

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1 MR. PTACEK: Yes, that's fine.

2 CHAIRMAN MORGAN: I get determined, you
3 know, on these names.

4 MR. PTACEK: Chairman Morgan, Vice
5 Chairman Owen, my name is Patrick Ptacek. I'm the
6 executive vice president of the Nebraska Grain and
7 Feed Association. It's a trade association
8 representing private and co-operatively owned grain
9 elevators, feed mills, and grain processors in the
10 state of Nebraska, and we appreciate the opportunity
11 to express our views as the current rail
12 transportation crisis continues to impact our members
13 and both directly and indirectly impacts traffic flows
14 of all kinds across our state.

15 As we stated in our written remarks
16 covered before this board on October 27th, our members
17 have been experiencing a definite reduction in the
18 dependability, reliability, and overall performance of
19 the Union Pacific and Burlington Northern Sante Fe
20 Railroads for some years now.

21 Please believe me when I say that nothing
22 would give our association greater satisfaction than

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1 to be able to appear today and commend the railroads
2 for vastly improved performance. However, as the
3 recently NEGFA survey will point out, with the
4 exception of one area, rail service problems increased
5 over the last several weeks.

6 This decline in rail service is due to
7 many reasons, including an increase in the overall
8 tonnage hold by the railroads, more competition from
9 freight transported by the railroads, the difficulty
10 of merging smaller carriers with major carriers, and
11 the lack of locomotive power to move trains, and the
12 declining political clout of farm state industries.

13 We sympathize with the railroad's
14 difficulties as they attempt to meet the needs of all
15 of their customers; however, the Nebraska grain
16 industry has been very cooperative and responsive in
17 restructuring the way we do business to accommodate
18 the railroad's request for additional efficiency.

19 Examples include spending huge amounts of
20 money on higher capacity track sidings including
21 larger, newer facilities with faster loading and
22 unloading equipment. We've reorganized our work load,

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1 often calling employees to work on the spur of the
2 moment to load a train to reduce the merge costs.

3 Unfortunately, lack of railroad
4 performance and continuing unilateral changes in
5 railroad policy stunt our progress and limit our
6 return on investment. Major rail transportation
7 issues facing the Nebraska grain industry include the
8 long-term future of facilities that are not in a
9 strategic position to justify the kinds of capital
10 improvements mentioned above.

11 Mergers and consolidations of the grain
12 industry continue to take place and economical
13 transportation alternatives have been a major player
14 in these situations. Number two, the lack of power,
15 authority anyone has over the control of their own
16 destinies when it comes to dealing with the railroads.

17 Number three, the UP and BNSF's lack of
18 consistent, good quality service to grain, feed, and
19 other industry shippers and receivers captive to the
20 railroad, and for Burlington Northern Santa Fe's
21 recent demurrage policy.

22 These issues have collided at a time when

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1 three large crops of corn, grain sorghum and soybeans
2 were harvested, and following a large wheat harvest.
3 When rail service slips it has a ripple effect
4 throughout our industry, all the way back to the
5 producer.

6 Already tens of millions of bushels are
7 sitting on the ground in Nebraska exposed to the
8 elements. This in turn, obviously affects prices paid
9 to the producers.

10 In an effort to gain a better perspective
11 on the current state of rail service from our members
12 that ship by rail, our association conducted an
13 informal survey over the last ten days. Twenty-one
14 percent of the Nebraska rail shippers responded and
15 the shippers responding to the survey offer a
16 representative mix of small, medium, and large
17 facilities.

18 The following results are offered now for
19 the Surface Transportation Board's consideration.
20 When asked if the shipper had been unable to order
21 rail cars from either class 1 carrier for any time
22 periods during the past year, 30 percent said yes and

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1 70 percent said no.

2 When asked if they were now experiencing
3 grain car delivery delays, 67 percent responded yes
4 and 31 percent responded no. The average grain car
5 delivery delay among all shippers averaged five weeks.

6 Asked if they were now experiencing loaded
7 grain car removal delays, 45 percent responded yes and
8 55 percent responded no. The average delay of a pick-
9 up of loaded cars awaiting locomotive power among all
10 shippers was just over two weeks.

11 And I have to put a little asterisk in
12 there and say that as we went back through the surveys
13 that we had received back, this is a slight
14 improvement in the pick-up time. We were hearing a
15 couple of months ago that that delay was up to two to
16 four weeks in some cases, of getting the unit train
17 picked up and hauled out from the track siding -- a
18 loaded unit train.

19 A lot of the folks in our survey indicated
20 that they did not have any delays with loaded rail
21 cars because they cancelled the cars because they were
22 tired of waiting five and six weeks at a time to get

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1 those cars delivered in the first place.

2 When asked if rail or other transportation
3 problems caused them to temporarily pile grain on the
4 ground, 55 percent said yes and 45 percent said no.
5 The average date for utilizing outside storage was
6 October 15th.

7 Total bushels of grain respondents are
8 currently storing outside was 28,020,000 bushels.
9 Now, this is with only 21 percent of our shippers
10 responding. The average estimate in additional
11 handling expenses was nine cents a bushel. Total
12 estimate, additional handling costs were \$2,521,800.

13 And 79 percent of the respondents
14 identified other negative price effects due to rail
15 problems such as missed sales and demurrage. Eleven
16 respondents identified specific, negative price
17 effects totaling \$882,600.

18 When asked if their rail service had
19 improved, declined, or remained the same compared to
20 a month ago, two months ago, six percent said it
21 improved, 59 percent it declined, and 35 percent said
22 it remained the same.

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1 Shippers and receivers are charged
2 demurrage if the cars are not loaded or unloaded
3 within an allotted time, but the railroad is not
4 penalized if these cars sit for days or weeks before
5 being moved. The same applies to a unit train loader
6 who does not complete loading or unloading within the
7 allotted time. They lose their per car incentive on
8 that unit train.

9 The penalties, I might ask, need to be a
10 2-way street. For instance, the Burlington Northern
11 Sante Fe's recent demurrage announcement included the
12 tightening up of loading and unloading times and the
13 elimination of weekends is non-chargeable base for
14 purposes of demurrage. Again, there are no premiums
15 for complying with the new policies; only penalties
16 for non-compliance.

17 Examples of poor service by the railroads
18 abound. Lack of locomotion needed to move and deliver
19 unit trains destined for export markets not only
20 question our reliability as a quality provider, it
21 also carries the price of demurrage, often charged to
22 the elevator on the ship detained in port because the

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1 train is late.

2 Our association realizes that recent
3 sluggish export demand for U.S. commodities in the
4 Pacific Rim has had an effect on recent grain
5 movement. However, we should also not forget that the
6 current rail prices start at well before harvest,
7 while world markets were still fairly robust.

8 Pacific Northwest discharging facilities
9 have been widely critical of the railroad service with
10 particular emphasis being directed at the carrier's
11 less than timely delivery of grain shipment when and
12 where they are needed.

13 Port terminals can quickly become
14 congested when inbound train rail shipments do not
15 match up with the outbound requirements of ocean-going
16 vessels. The association also reported that several
17 major Northwest grain exporting companies have
18 protested the new Burlington Northern unloading
19 requirements which slashes in half the time that these
20 facilities are allowed to unload trains, by leveling
21 market discounts on BNSF origin rail shipments; i.e.,
22 the elevator.

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1 The exporters say these discounts are
2 needed to offset the inevitable demurrage charges
3 which will be assessed once the cars reach the coast.
4 Once again, elevators and producers are paying for the
5 railroad's own inefficiencies.

6 When discussing rail issues there have
7 been at least three issues that we do not believe have
8 been getting enough attention. First, the issue of
9 safety needs to be addressed. Most grain handling
10 facilities are not able to support more than one shift
11 of workers.

12 When the railroads either have not
13 notified the loading facilities when to expect a train
14 or worse yet, notified the facility and not provided
15 cars as expected, elevator crews are quite often
16 expected to load trains after already working a full
17 day. Loading rail cars obviously carries with it a
18 certain degree of risk. Let's not wait until the
19 grain handling industry experiences a rash of serious
20 or fatal accidents before we solve this dilemma.

21 Second, some facilities are spending huge
22 amounts of money to accommodate the latest policy

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1 changes from the railroads. Most of these changes are
2 dictated by the railroad with little or no input by
3 the shipper.

4 We all know who writes the check: the
5 shipper. However, we also know who really pays: the
6 producer. And we must ask how much more we can expect
7 our nation's farmers and ranchers to pay to get a fair
8 price for their products.

9 Third, it's no secret that only those
10 facilities strategically located with good financial
11 resources will have the ability to upgrade to remain
12 competitive. We understand that not all facilities
13 are able to justify the financial resources necessary
14 to upgrade the unit trains.

15 What is alarming however, is when less
16 than state-of-the-art facilities willing to pay the
17 going freight rate are pushed down the priority list
18 and receive inferior service. This also means that
19 many elevators will have to rely on more extensive
20 truck transportation of grain to get their inventory
21 shipped.

22 As taxpayers, our members are also

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1 concerned about the cost the state will bear in
2 soaring highway maintenance expenses, including the
3 cost of closing additional rail crossings. It also
4 intensifies public safety concerns that road officials
5 recognize will inevitably increase with more grain
6 truck traffic.

7 Solutions to these problems are complex,
8 and for the grain shippers, few short-term solutions
9 currently exist. There are no easy answers but we do
10 feel that open dialogue between the carriers,
11 shippers, and producers is a must in order to preserve
12 our state's rural economy.

13 An earlier comment made by one of UP's
14 representatives in answering a question on
15 prioritizing grain shipments, stated that UP personnel
16 had contacted shipper associations seeking input on
17 prioritizing grain.

18 As one of the more vocal grain
19 associations in our state, I can tell you that no one
20 from either railroad has contacted our office. If
21 they had, I would have guaranteed a roomful of
22 shippers offering many suggestive solutions.

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1 We offer a few positive suggestions today
2 in developing long-term strategies that we hope take
3 all viewpoints and issues into consideration. First,
4 return on investment incentives should be available to
5 facilities who upgrade but not at the expense of
6 service to everyone else in the trade.

7 It makes sense that facilities that can
8 load 100 cars deserve a better freight rate than
9 facilities that can load 25 or 50 cars. But let's not
10 slam the door on those facilities that cannot afford
11 to upgrade. All facilities, regardless of size,
12 deserve reliable rail service.

13 Develop an advance notice policy in rail
14 car delivery times such as the one suggested by the
15 National Grain and Feed Association. Carriers need to
16 be reasonable in their expectations, and if shippers
17 do not have a system on which they can rely and depend
18 upon with a great deal of certainty, it isn't fair to
19 present demurrage proposals that are solely in the
20 best interest of the carrier.

21 The concerns of shippers and producers
22 must be considered before potentially devastating

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1 policies are adopted by the railroads. This should
2 not imply that our association is in any way calling
3 for re-regulating the rail industry. However, with
4 deregulation comes a certain degree of public trust
5 and responsibility that essential transportation
6 services' needs will be met.

7 The industries and communities that are
8 dependent upon the railroads want to be a part of a
9 process. Although we sincerely appreciate this
10 opportunity to provide comment before you, shippers
11 and producers are not being heard. The STB needs to
12 develop an outreach program, perhaps a Board of
13 Mediation, a referee if you will, making public
14 hearings common, available, and accessible to the
15 general public.

16 Railroads right now, before they implement
17 new demurrage or penalty changes, do not and don't
18 have, to consult with grain shippers. Critical
19 shipping periods of the grain industry must be
20 addressed and an adequate supply of cars and
21 locomotives must be allocated to the grain industry in
22 peak times. Just expanding to load 100 cars at a time

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1 will not alleviate carrier delays. No one likes to
2 pile grain on the ground. It obviously cannot be good
3 for international trade.

4 Thank you very much for allowing me to
5 present testimony before you today.

6 CHAIRMAN MORGAN: Thank you. Mr. Zalanka.

7 MR. ZALANKA: I agree. I'll try not to be
8 too redundant. My name is Bob Zalanka, executive
9 director of the Farmers Elevator Association of
10 Minnesota. Thank you for the invitation to return
11 after the October 27th hearing. We're a voluntary,
12 non-profit trade association representing grain
13 elevators in the state of Minnesota.

14 We also did a survey of both our Union
15 Pacific/Southern Pacific members and BNSF shippers on
16 Tuesday this last week to determine the current impact
17 of adequate service. In Minnesota we are dealing with
18 just an above-average crop, not a tremendous crop, and
19 a below-average crop in our wheat producing area,
20 which is the Northwestern part of the state.

21 On the BNSF which is over 1500 miles of
22 trackage in Minnesota, we contacted 20 elevators,

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1 which together generally ship about 20,000 cars per
2 year. We found that close to 2,000 cars ordered or
3 ten percent of the annual usage, has already been
4 cancelled.

5 Actual losses -- that's so far, and a lot
6 of losses are yet to be determined based on the number
7 of bushels that we also have on the ground -- has
8 been, just for those 20 facilities, over \$2 million --
9 again, with only those 20 facilities with close to
10 five million bushels of grain still on the ground.

11 The UP/SP shippers surveyed are over 30
12 days behind in receiving their cars, and they have
13 over two million bushels in those facilities still on
14 the ground.

15 Our survey respondents also indicated that
16 it takes an average of three to five days for both
17 railroads to pick up loaded trains, which is an
18 improvement over what it was a month ago, and rate of
19 communication responsiveness by both as poor.

20 Again, we would also like to see
21 priorities established for grain. No, we weren't
22 contacted by the UP/SP either, about establishing

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1 priorities. I would like to know also, where those
2 100 locomotives are. Obviously they haven't made
3 their way North.

4 UP/SP operates about 500 miles of track in
5 Minnesota and we have witnessed a significant decline
6 in service provided to our shippers on those lines.
7 Unfortunately, 1997 saw a return to the horrendous
8 service problems that we experienced in 1995 when they
9 picked up the Chicago Northwestern -- or as Yogi Berra
10 would say, it's deja vu all over again.

11 Has service improved on the UP/SP in the
12 last month? At best, we have seen no change to a
13 significant decline. Ag shippers seem to be bearing
14 the brunt of this whole recovery process. From the
15 USDA -- which is information from the American
16 Association of American Railroads -- for the month
17 ending November 15, UP/SP grain shipments were down 38
18 percent while other car load shipment was down only 16
19 percent.

20 In fact, intermodal traffic on the Western
21 railroads was up, while shipments of grain declined 26
22 percent. Millions of bushels of grain remain in non-

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1 desirable ground storage as our financial losses
2 continue to mount.

3 I'd like to challenge UP/SP's assertion,
4 both in the November 14th filing to you, as well as in
5 some public information going out through the media,
6 that ground storage is a viable, long-term storage
7 option if the ground piles are properly prepared.

8 No one likes to put grain on the ground,
9 whether it's temporary storage or emergency storage.
10 Emergency storage, that's right on the ground-ground;
11 temporary storage, you're at least on the hard surface
12 but neither of those are acceptable.

13 You've got double-graining problem,
14 interest on the grain that you sold that you haven't
15 been able to move and thus you are incurring interest
16 costs on that grain, as well as in some cases we are
17 paying farmers to store grain on their own farm site
18 until we can actually get transportation to move that
19 grain.

20 Even elevators that have gone along with
21 the railroads big push to load 100 plus cars in one
22 spot in a short period of time, and which have the

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1 most to lose by not moving grain, have seen no change
2 recently in the level of service.

3 The return on investment for a grain
4 elevator in this highly questionable push to get 100
5 plus car shipping, could take 10 to 15 years in some
6 cases. Hanging in the balance, are the elevator
7 manager and employees jobs and the livelihood of
8 hundreds of rural businesses and communities. All the
9 risk, the entire risk of those investments, \$2 to \$3
10 million investments are on the side of the elevator.

11 The BNSF seem to blame the elevator
12 shippers recently for the delays and trying to impose
13 a new demurrage policy which was mentioned earlier,
14 met with vehement opposition from our industry. BNSF
15 eventually relented on part of the demurrage proposal
16 by returning to 48 hours to load a train, but stayed
17 with their reduction to demurrage three days in the
18 contrary position of 48 hours of some key onload
19 destination.

20 BNSF should consider positive incentives
21 to load trains more efficiently instead of the
22 negative penalty assessment approach that they have

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1 always taken.

2 And, I won't get into safety and fatigue,
3 but it certainly is a real issue. Pat touched on it.
4 We have one crew, a crew, we don't have crews. So
5 when you are talking about taking away time demurrage
6 free time, we are talking about crews working days,
7 some nights and we only have three weekends that are
8 allowed to demurrage free now. Sundays are also not
9 demurrage free anymore.

10 In the hearing notice, you wanted to
11 determine if service conditions have improved which
12 they have not. But you questioned what further
13 actions, if any, are needed. I'd like to offer you
14 just a few suggestions.

15 We'd like to ask the STB to suspend the
16 right to service in which the BNSF power is being
17 diverted from meeting needs in the upper midwest. The
18 BNSF has picked up a lot of the intermodal traffic
19 formerly held by UPSP. Again, according to USDA and
20 AAR information grain shipments have fallen
21 substantially. BNSF intermodal traffic is up 16
22 percent over the last month, while its grain movements

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1 have declined by 17 percent.

2 The, again, going to USDA information, I
3 think again one of the things we'd like to, I guess,
4 look at is encourage you to think about the BNSF
5 requirement to have a BNSF -- I'm getting tongue tied
6 here -- provide comparable regional weekly data on its
7 movement of grain, just like the UPSP is required to
8 do. And we'd like to see that done regionally so we
9 can get an idea of where the power and where the cars
10 actually are located.

11 U.S.P. and the BNSF appear to have poor
12 internal management structure. I'm sure there is
13 nothing the STB can do, but certainly something needs
14 to be done. The two railroads grossly oversold their
15 car supply and over committed their ability to place
16 these cars. And as was mentioned earlier, we also
17 have members that routinely have inquiries that go
18 into voice mail and are never returned.

19 Communication, I won't go into any more on
20 that. We need better communication between rail crews
21 so we can anticipate when we can schedule our crews
22 for loading trains.

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1 STB inquired about service to grain
2 shippers who don't use contract programs? An idea
3 would be for the STB to re-examine the BNSF COT
4 program as one thing. The COT program currently takes
5 cars out of the 60 percent that are supposedly set
6 aside for general tariff trains. Common carrier
7 obligation question does come in here.

8 It seems to us that the COT program does
9 quack like a duck or quacks like a contract program,
10 yet is not used as a contract program. We'd like that
11 to be reconsidered.

12 We'd like to encourage better cycle times
13 as was mentioned earlier. Perhaps there should be
14 some financial liability for nonperformance to pick up
15 loaded trains.

16 One thing that has gotten worse and that
17 will continue to get worse is grain elevators who are
18 located on leased property. You could call them
19 captive lessees and can't just pick up an elevator and
20 move. I think the robber baron, the railroad robber
21 barons of the 20th century is called the real estate
22 department. We think that lease increases need to be

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1 controlled in some way and a process to establish fair
2 market value of the property needs to be established
3 and implemented. Not fair market value established by
4 the real estate department which has turned out to be
5 sometimes ten to twelve percent the value of that real
6 property.

7 Intimidation is something I'd just like to
8 touch on. As we brought it up at the last hearing, we
9 will continue to bring it up. Intimidation, whether
10 real or perceived is a practical, is something that
11 exists out there. Shippers who have concerns are
12 afraid to come forward and speak their mind. They are
13 still unwilling to. Fortunately, they are working
14 through associations like ours. But there shouldn't
15 be that fear of retaliation.

16 STB does have jurisdiction over practices
17 related to service, so this is one I think you'd want
18 to keep an eye on. I did see a response to
19 Congressman Mengi by Jerry Davis from the UPSP is
20 going down is similar to their employees. It says in
21 recent weeks in a number of different public forums it
22 has been reported the customers fear retaliation if

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1 they voice their concerns about Union Pacific's
2 service. Then it goes on to say I know these concerns
3 are completely unfounded since the conduct of this
4 company and its employees is always professional
5 serving each and every customer to the best of our
6 ability.

7 I look and read this and it tells me that
8 Mr. Davis doesn't feel that strongly that that even
9 exists and is just doing it because somebody told him
10 to do so. I may be reading that wrong, but that's my
11 impression.

12 I also go along with the suggestion by the
13 other people who testified at this panel about an
14 indepth independent cost benefit analysis that needs
15 to be conducted on this push to load 108 plus cars, or
16 100 cars, or 108 cars, 104 cars if its wheat. Pooling
17 is something that used to be done. There is no reason
18 why it still can't be done. I haven't been convinced
19 that the move to 100 plus cars is saving that much in
20 terms of efficiency.

21 I have noted that UPSP in their response,
22 again to Congressman Mengi, said they issued a white

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1 paper this year that contained their commitments to
2 policies that fully justify the \$2-4 million
3 investment the elevators are forced to make to go into
4 100 car loading. I'd like to encourage the STB to
5 maybe take a look at that white paper. We have not
6 seen the white paper. I'd be surprised if any grain
7 elevators were involved in the development of that
8 white paper and I question whether they even
9 considered things -- in Minnesota, for example, we
10 have 11 methanol plants that are currently on line in
11 Minnesota taking millions of bushels of corn away from
12 elevators that normally handle that corn. Maybe
13 that's reflected in that white paper.

14 Does the BNSF have a white paper or a
15 brown paper or any kind of paper where they have
16 looked at this issue? I think it needs to be looked
17 at.

18 Last but not least, I think an integrated
19 multimodal national transportation plan needs to be
20 developed to address the multimodal needs related
21 specifically to agri-business. We would hope that the
22 STB, maybe working with the USDA could look at

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1 facilitating development of that plan.

2 Thank you very much for your time.

3 CHAIRMAN MORGAN: All of you certainly
4 have raised serious concerns about the ongoing service
5 problems that your community seems to be experiencing.
6 And I have -- for myself am sensitive to your
7 concerns, recently having testified before the House
8 Agricultural Committee. I would likely be testifying
9 before Senate Commerce Committee today in Montana and
10 tomorrow in North Dakota but for the fact that I am
11 here at this hearing.

12 But lets talk a little bit about how we
13 can address some of the specific issues that you have
14 raised. Some of you have suggested that we establish
15 some sort of prioritization whereby the agricultural
16 movements would be given some first preference. I
17 presume we would have to base that on some sort of
18 emergency determination. Your commodity must move
19 now, it is an emergency situation.

20 If we were to do something like that, how
21 would you suggest that we enforce that type of system?
22 It's one thing to establish a priority and to indicate

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1 that the priority should be there, how would you
2 suggest it be implemented and enforced? Anybody want
3 to take that on?

4 MR. ZALANKA: Does the STB, do you have
5 the ability to track the distribution of power and
6 cars or cars are taken out of service? I guess maybe
7 tracking of where that, the rolling stock is located
8 is -- I'm talking about how fluid it is in the
9 southern tier. I guess there isn't anything fluid in
10 the northern tier. I guess maybe a distribution of
11 rolling stock would help explain why that is. Or more
12 regional -- those weekly reports you are getting,
13 maybe a more regional breakdown, more detail would
14 help to see if they are meeting the needs in relation
15 to the number of millions of bushels.

16 I know we have on the ground in Minnesota,
17 I suspect in Kansas, Nebraska and North Dakota is
18 seeing the same problem.

19 CHAIRMAN MORGAN: What would the timing be
20 associated with this type of prioritization program?
21 Are we talking from your perspective a month? I'm
22 trying to get a handle on the emergency nature of what

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1 you are talking about here.

2 MR. PTACEK: Well I think that you are
3 dealing with the current piles of corn on the ground
4 and I know that this is -- there has been exemptions
5 or temporary storage permits issued in Nebraska for up
6 to 73 million bushels to be piled on the ground. Now,
7 I am certain that we don't have 73 million bushels on
8 the ground. It's closer to 45 million mark, I assume.

9 But I think to take care of some of those
10 situations where we are having a perishable commodity,
11 and just this last week in Nebraska, in all eastern
12 parts of Nebraska there was a very soaking two inch
13 rain coming on the heels of a very pleasant, warm
14 Thanksgiving holiday. That is going to make those
15 piles extremely susceptible to decay, to fermentation
16 and to quality problems where the elevators are going
17 to have to deal with that one way or the other.

18 The quicker that we can get those piles
19 taken care of and moved to permanent or at least
20 storage, covered storage would be a tremendous asset
21 for those folks, especially some of the smaller
22 elevators that are unable to get cars or unable to

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1 load out units at this point in time.

2 So perhaps maybe a freight premium might
3 want to be considered by the railroad to bring that
4 grain from the smaller elevators into the larger
5 elevators that do have unit loading capability and to
6 try to get at least that bottleneck taken care of a
7 little bit. It's just something that maybe the
8 railroads would like to engage in some conversation
9 on.

10 MR. UTLAUT: Just to re-emphasize their
11 short term answer quicker without -- as I visited with
12 a farmer yesterday, he talked about the four million
13 bushels of corn that he had within ten miles of his
14 home. He said this has got to the state now that he
15 can smell the deterioration of corn. It's souring,
16 fermenting, the mold will set in.

17 It's hard to say, how soon does it have to
18 happen? The weather is a variability and we as
19 farmers we face that on the production end when we are
20 producing our crops. And here we are being held
21 hostage to weather concerns again just because this
22 train is not moving.

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1 Quick answer is the quicker the better and
2 as to what procedure you can use to do that, maybe
3 that premium is something that needs to be considered.
4 But the longer it stays out there, the less value we
5 have.

6 MR. HAUGEBERG: I would just say that I'm
7 not sure any of us answered your question very
8 specifically. The question was what do you do? How
9 do you enforce it? Where do we go from here? And I
10 don't have that answer either. Because, well I don't
11 have a terrific amount of legal or transportation
12 expertise.

13 I would just point out though that that's
14 where the frustration comes from. There doesn't seem
15 to be any regulatory mechanism. I mean, the two of
16 you could write a letter to the respective railroads
17 and say now get cars over there and get that grain off
18 the ground. But I don't know where the enforcement
19 would be. I don't know where the legal push would be.

20 You can encourage, you can design certain
21 things that you have some authority for. At the same
22 time, there is no other competitor in the market place

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1 that's challenging the railroad that they will provide
2 transportation to get that grain up off the ground
3 before they do. Like there is any urgency where they
4 have to be there, or they are going to miss the
5 business.

6 I don't have the answer. But I would
7 point out that when you are in the country feeling the
8 frustration of a huge risk on the ground and the
9 neighbors are starting to talk about its aroma and
10 there is no sensation that there is anyway that there
11 is going to be an immediate short-term regulatory
12 relief. There is no competitive relief. The
13 frustration is enormous.

14 Perhaps there isn't a -- and maybe
15 somebody will come up with one. But if there is no
16 short-term answer to take care of us in the next say
17 90 days until this grain all gets off the ground, we
18 need to perhaps come up with some sort of system in
19 the future that there is either regulatory or
20 competitive relief to avoid this from being an annual
21 phenomenon.

22 VICE CHAIRMAN OWEN: Excuse me, but the

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1 reason the Grain Car Council was founded a few years
2 ago and Commissioner Simmons was the principal in that
3 in setting it up, and we had a meeting not too long
4 ago in Kansas City, if I'm not mistaken. And I raised
5 the questions there and a number of the people in the
6 room from the grain associations never said a thing.
7 There was one person that spoke out about the problem.
8 And that is the forum that I really think that for
9 long range solution to the problem.

10 The other one would be I would recommend
11 to you that some of you leaders of these associations
12 meet with the leadership of the AAR and talk about
13 tracking cars and so forth. Those people have the
14 capability of doing that and the locomotives and
15 power. But see if we can come to a market solution.

16 On the short term, I do not know if we as
17 a governmental agency, I'd have to defer to the
18 Chairman here. She has written most of the laws
19 pertaining to all of these things, in spite of it all

20 --

21 CHAIRMAN MORGAN: That's why we are in the
22 mess we are in.

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1 VICE CHAIRMAN OWEN: But I do not know if
2 an agency like ours really has the power to order
3 trains up there. Conceivably maybe we could, but I'm
4 not an engineer and I don't see me jumping in one of
5 Dick Davidson's locomotives and grabbing 100 grain car
6 hoppers, if I could find them, and running up there.

7 I don't know what the short term solution
8 is. It's an ongoing problem. I come from a farming
9 background. I talked to my sister and brother-in-law
10 back in Oklahoma and they raise cain with me all the
11 time about we are always taking it on the chin, you
12 know? And yet you come into those bumper crops every
13 year and this time we have a rail problem that was
14 brought about through a different set of circumstances
15 and I just don't know what your solution is to it
16 right now. I wish I had a ready made solution to it.
17 If Dick Davidson and Rob Crebs and Haverty and some of
18 the other guys and Hunter Harris and all of them could
19 run some locomotives up there and follow it out I'd be
20 eternally grateful. But I don't know.

21 MR. ZALANKA: I'd just like to mention the
22 licensing authorities give you until the end of

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1 January to pick up emergency storage. You've got
2 until May 15th to pick up grain out of temporary
3 storage. That's USDA as well as state licensing
4 authority.

5 There might be some way to work through
6 USDA to track and maybe try to encourage the railroads
7 as best you can to at least deal with the needs the
8 elevators that have emergency storage. Because that's
9 the first thing that has to get picked up. That's
10 also the stuff that is starting to smell because it's
11 right on the ground. And that bottom layer of that
12 grain is damaged. Once you get to that, you just take
13 a front end loader and take it to the landfill, it's
14 all right to take it there. There might be some
15 coordination between agencies that could be done.

16 VICE CHAIRMAN OWEN: I think that was
17 something that I would like to see us try to do a
18 little bit more of, coordination between the
19 governmental agencies, and see if there is a solution
20 to some of these problems.

21 MR. HAUGEBERG: Perhaps one of the things,
22 just one more point if I could. In the end of my

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1 remarks I talked about a system where the railroad
2 would perhaps pay or offer to buy back some of their
3 already sold service. Now, there are some folks who
4 have grain on the ground that would probably, if there
5 was an open set of bids as opposed to just well, we
6 are not going to deliver the trains so we are going to
7 give you a penalty and cancel, which is currently in
8 existence on the BN on the guaranteed freight. Or pay
9 a penalty in the case of COTS and get a train as soon
10 as we can get it to you.

11 If it was a system of open bids whereby
12 shippers decided at what level they were willing to
13 give that order back, the shippers who have grain on
14 the ground and are watching their grain deteriorate,
15 they wouldn't be very likely to sell that order back
16 unless it was quite a large amount of money.

17 An elevator who does want cars, but has
18 his grain under roof and proper storage may be willing
19 to sell that train back to the railroad at a more
20 reasonable number.

21 Therefore in a secondary way, allocating
22 what resources are moving to the place that needs it

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1 the most. A system of cancellations like the BN uses
2 doesn't do that. They may cancel a train with
3 somebody who has a large amount of grain on the
4 ground, a guaranteed train, and he really wants the
5 freight, well there is somebody else who has all his
6 grain in the elevator and maybe in a position in the
7 market -- because again, you know we have to make
8 commitments on when we are going to take -- buy these
9 trains significantly in advance before oftentimes we
10 know what the size of the crop is going to be, and
11 certainly what the market is going to be.

12 So there may be others out there who are
13 willing to give up the use of that train, perhaps even
14 for less than the railroad is currently offering in
15 the form of a self-imposed penalty for nonperformance.

16 Perhaps that idea is something that they
17 could get some encouragement from you folks to
18 implement and reallocate their allocated resources
19 maybe a way to put it.

20 CHAIRMAN MORGAN: Well, in following up on
21 that, we heard from BN Santa Fe earlier that they have
22 suspended their COT program so as to serve some of the

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1 shippers that need service now. I presume that that
2 is particularly to assist smaller shippers who have
3 not been in these programs to date. Do you think that
4 that is going to alleviate some of the issues that you
5 have raised in your testimony?

6 MR. HAUGEBERG: Well, as they don't offer
7 the COTs for that period, certainly that's going to
8 free up some capacity because COTs do have the highest
9 priority in their system. In the meantime, the people
10 who have purchased COT cars are still going to have
11 the highest priority.

12 The BN has an incentive to provide them
13 the cars first because under their own program if they
14 do not supply with the cars within an allotted time,
15 they pay a penalty and they still have to deliver the
16 cars. So the people who are holding COT certificates
17 are still going to get the service first. The
18 guarantees will be second because there is also a
19 penalty involved there.

20 The people who just have a tariff order
21 are still going to be at the bottom of the list. And
22 if I was in that position and truly very few are any

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1 more, if they really plan on using rail history has
2 taught them not to rely on tariff cars during this
3 time slot. They are buying COTS and guarantees.

4 But if somebody is in a position where
5 they didn't buy the use of freight and depending on
6 tariff cars, whether they offer COTs for Jan/Feb or
7 not, I wouldn't be holding my breath to get cars
8 anytime soon. It's going to be a while in my
9 judgement.

10 But by canceling the COTs, as I pointed
11 out in my statement, creates other problems. That's
12 the only system that's really had credibility. Now
13 for shipments that we want to plan on making for
14 January and February, I'm not quite sure what we ought
15 to do. The rules have changed in the middle of the
16 stream. I'm not going to order tariff cars for that
17 time period to move grain because I have no confidence
18 whatsoever I'll get tariff cars in January and
19 February, unless of course it was something I'd
20 ordered in October, or perhaps September.

21 So it leaves us with a guarantee system
22 and the credibility of that program, as I pointed out

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1 in my statement, has been greatly diminished lately.
2 From -- I think a lot of folks are -- now I guess I'm
3 speaking from the perspective of the local elevator
4 manager, but a lot of folks such as myself are really
5 frustrated, not quite sure what to do during that time
6 period.

7 CHAIRMAN MORGAN: But following up on that
8 as well, to the extent that we -- the Board takes any
9 further action relative to the service problems in the
10 West, you all - I continue to hear you all saying do
11 not tax BN Santa Fe such that they might serve other
12 customers and not serve the agriculture community that
13 you would like them to. Is that -- does that continue
14 to be your position?

15 MR. HAUGEBERG: That's definitely not
16 going to be our position. We feel that the situation
17 is serious enough on the BN itself that they should be
18 taking care of their own, as opposed to somebody
19 else's customers.

20 CHAIRMAN MORGAN: Thank you.

21 VICE CHAIRMAN OWEN: No more questions.
22 Thank you very much.

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1 CHAIRMAN MORGAN: Thank you all very much.

2 MR. HAUGEBERG: Thank you.

3 CHAIRMAN MORGAN: You are welcome. Next
4 we will hear from a panel of labor representatives,
5 James Brunkenhoefer with the United Transportation
6 Union, Leroy Jones with the Brotherhood of Locomotive
7 Engineers, and Bartlett Naylor with the International
8 Brotherhood of Teamsters. So who will yield to whom?
9 Everyone is yielding to Mr. Naylor.

10 MR. NAYLOR: Oh no I --

11 CHAIRMAN MORGAN: Do you yield?

12 MR. NAYLOR: I'm counting on it. I've got
13 to prepare my testimony.

14 CHAIRMAN MORGAN: All right. Well, who is
15 next? See, I've experienced this once before. You
16 are it.

17 MR. JONES: Good afternoon, Madam Chairman
18 and Vice Chairman. It's a pleasure to be here. It
19 seems like I've been before committees on the Hill
20 with Madam Chairman when she was on the Hill and we
21 always found good dialogue there and we appreciate to
22 have this opportunity.

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1 I am Leroy Jones. I'm the International
2 Vice President of the National Legislative
3 Representative to the Brotherhood of Locomotive
4 Engineers. And we are here today to support the UP
5 service recovery efforts. My International President
6 Clarence Monin thought enough of this program to
7 assign two international vice presidents to what is
8 known as the Safety Assurance Compliance Program, or
9 in the industry it's called SACP. It's where labor
10 and management gets together with the Federal Railroad
11 Administration to iron out any problems we have. And
12 it has turned out to be a very good process.

13 Also I wish to thank Jolene Molitoris, the
14 FRA Administrator for her activity in this process.
15 It has enabled us to sit down and look at fundamental
16 issues that are out there.

17 Now, you've got realize the Brotherhood of
18 Locomotive Engineers took action and called a strike,
19 a safety strike last June on Union Pacific. So for us
20 to come here and testify today about the partnership
21 is doing about a 180 from where we were last summer.

22 We are not sitting down in groups and

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1 teams to work through the process. Whatever affects
2 us on a line of road getting trains over the road,
3 also affects shippers. And that's where we are
4 starting to see some improvement in this area.

5 As I stated to your staff earlier last
6 week and the week before last, I have made some visits
7 on the property actually, like the Vice Chairman does.
8 When I go home, go out in the field, I always go out
9 to the rail yards and talk to the folks and also I
10 took the opportunity to take some vacation time to
11 drive down to Fort Worth to talk to some folks. And
12 I talked with Dave's engineer that testified earlier.
13 As a matter of fact I met with a lot of his people and
14 some of Brunkenhoefer's people to hear what was going
15 on in that area.

16 We do have some problem areas still out
17 there. But by and large, our people are getting move
18 on the road much better.

19 I met with the local chairman on the
20 Houston/Lafayette run which was a terrible run.
21 Brukenrail used to run there so he knows how bad it
22 is. Monday, actually, I talked to him and they

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1 cutting over some new service there. And he was very
2 supportive of what was happening. To the point that
3 one of the things we are doing, we are learning here
4 how to deal with these large rail mergers. We are
5 now, because I guess sometimes bad things happen and
6 good things come out of, some good things have come
7 out of this partnership we are having with the
8 government and with the railroads. We are actually
9 having our people go into Omaha and help with the
10 dispatching, help with these cut overs, help with the
11 Crew Management Systems.

12 We also have the major problem we had out
13 there with the vans not getting out to pick up dead
14 crews. Any of you have that, keep continuing. We had
15 crews out there that was out there five or six hours
16 after the hours of service. That means they were 17,
17 18 hours out there which is atrocious. It should
18 never happen.

19 But what we are doing now, we have a team
20 in there where we are trying to get them off the
21 trains. That means that's time that they are waiting
22 there to get home to get the rest, which means they

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1 could have already been home getting rest and getting
2 back out and we wouldn't have the demand for manpower
3 that shortage that we are having right now.

4 Along that line, we are -- I just -- I
5 meet with the SACP team. I just came back from Omaha.
6 We have a couple of groups on fatigue maintenance
7 problems so we can have things maintained prior to
8 getting out on the road before they break down. Those
9 are positive kind of things.

10 Now, I was one of those engineers that ran
11 those grain trains on the old Missouri Pacific,
12 brought a Union Pacific down to South Koffeeville,
13 which is in Oklahoma. And we found out that when we
14 got a great amount of business, especially during the
15 harvest time, that we ran into some real problems
16 because we had a single track railroad with signs.

17 Then when the Katey merger came along, we
18 found out we could have a directional flow of traffic
19 and it turned a nightmare of a situation -- we were
20 very clogged going into Kansas City. All the stories
21 you hear about now is what happened to us a number of
22 years ago. I worked on a short tool turn and anybody

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1 that was ever up through the Missouri Pacific or
2 through the system that's high up now, even Dick Davis
3 and those people who were in charge of that area know
4 the problems we had back then. By getting this double
5 track or directional flow of traffic, which I
6 understand UP is going to cut in in certain areas,
7 this is really done away with congestion on the
8 traffic. I mean, it's night and day.

9 It made a lot of difference. We had train
10 crews take three crews go 56 miles. We heard these
11 horror stories before. Now you don't have that
12 because we are running in traffic flows. So that's a
13 very positive thing UP is going to have with this.

14 That's why we are concerned about right
15 now going in and changing a bunch of things. Our
16 employees, our members -- their employees, our
17 members, have been through a lot before these mergers.
18 I don't care which merger it is, our families are
19 disrupted and everything else.

20 It appears to us that these major mergers,
21 whether it is east coast/west coast, sometimes when
22 they go in it's like a big aircraft carrier. You

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1 start going in this direction, you go -- you get to go
2 in another direction, you have to take time to get --
3 it starts very slow turning around. But once it
4 starts to turn around things really start to happen
5 and things start happening good.

6 So I view the Union Pacific like this
7 aircraft carrier. It's had really a tremendously slow
8 time getting turned around, but it is now starting to
9 turn the corner.

10 Now, right before I came up I was able to
11 talk a little bit with Jolene Molitoris, the RFA
12 Administrator. She has done a very good job in
13 getting some very key people in key locations with
14 Union Pacific to help foster labor and management. I
15 mean, here is an organization, both broken rails and
16 my organization, have fights over the years with Union
17 Pacific. That's why I said we have now started to
18 turn that corner, because we all know there is trouble
19 out there. And by all working together and quit, as
20 you said earlier, pointing fingers at everybody, we
21 are trying to get these things done. So it does take
22 time.

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1 I me. with the manpower people up there.
2 They are in the process of training 400-450 engineers
3 this next year. The training is sometimes -- it's
4 like that aircraft carrier. It takes a little while.
5 In order to get engineers to be trained and you come
6 from the ranks and train them, you have to go out and
7 train -- hire trainmen off the street, get to train
8 them and when they get qualified, then you have to
9 take the trainmen and put them in the engineer
10 training. And it takes an additional period of time
11 until you get through the process. And we want to
12 make sure everybody is trained properly.

13 That's one of the problems we are having
14 in our industry is that the proper safety training.
15 And we don't want to put these people out in these
16 safety sensitive positions until they are properly
17 trained. So we are urging the FRA and UP not to hurry
18 up in this instance where you can have these wrecks or
19 derailments or people hurt by not being competent in
20 what they are doing until they are properly trained.

21 I think we are understanding each other.
22 I think that's occurring. They are listening to us.

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1 I want to paint a rosy picture here, but
2 like I said, we still have problems and we know that.
3 But we are working on them. That's something we
4 haven't done as an industry for a long time. It's
5 like a military, they were in charge and we were foot
6 soldiers and by the way, we were the ones getting
7 killed out there.

8 Like I said, last June we tried to have a
9 strike and we got an injunction against it. So, we in
10 hopes that this will set a pattern for the industry to
11 get these things going in the right direction. As I
12 said, our trains start moving, our people work less
13 hours, that means the trains themselves will be out
14 there for the shippers and get to their destinations
15 that much faster.

16 As I've gone through the system, there are
17 still some pockets of problems and manpower problems,
18 as Senator or Congressman DeFazio said, there are
19 problems with manpower up in the northwest and there
20 are some pockets where people are having a hard time
21 getting picked up by carry alls or vans or whatever to
22 get them off the trains. So we have pockets of that.

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1 But we are working on it.

2 And as long as the railroad is willing to
3 let labor work with them to solve this problem which
4 has always been successful. We even went on Capital
5 Hill and worked on legislation. Once we worked on
6 something together, it worked very well. And that
7 should be a -- that track record there -- these things
8 do happen properly.

9 But if for instance that for some reason,
10 I don't think this is going to happen with the Union
11 Pacific, but if they, for some reason, would not
12 listen to labor any longer or quit listening to us,
13 then we are going to be back here talking with you.
14 And we will be talking with the FRA. But I don't
15 think that's going to happen.

16 But we had enough deaths out there, we had
17 one up in my areas in Kansas City, we had one out
18 west, we've had some in Texas, and there has been a
19 number of problems. Like I said, we worked through
20 some of the mechanical problems, we talked Monday
21 about engine inspections, two-way into train devices,
22 a number of things that need to be working properly so

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1 when they get on the road they won't stall the train.
2 You get those all fixed before you leave, and then the
3 track will flow better.

4 So those are the kind of things we are
5 doing. I appreciate your time. I'll stand for any
6 questions. Once again, my President, Clarence Monin,
7 is very supportive of this and we can't stand any more
8 accidents. And we are happy with the process we see
9 so far. Thank you.

10 CHAIRMAN MORGAN: Thank you.

11 MR. BRUNKENHOEFER: Mr. Jones' member that
12 was here, Ken Marcanes, I think may have not been
13 understood. He was going to be paid that day for 12
14 hours work. He was only going to have to work five
15 hours to collect it, but he stayed the full 12 hours
16 in order to give the customer service. And that's the
17 type of dedication that you find.

18 Leroy is correct, I'm from the Houston
19 area. I've seen this happen before. It happened in
20 1979. And I could tell you what is needed here. I
21 have the answer. But unfortunately it's not in this
22 room.

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1 I did not see anybody carrying in their
2 briefcases trainloads of welded ribbon rail, cross
3 ties, cooper slag, so we could start building the
4 capacity in Houston we need. It is just like an
5 airport. You can do a few -- tweak a few things
6 around the edges, but if you don't build some runways
7 and don't add some gates, you can't put any more
8 passengers through there. Changing the amount of
9 airlines that fly in and out of the airport is not
10 going to deliver you the capacity -- relieve the
11 capacity constraints of West Felton or Houston.

12 What is needed is an airport expansion and
13 what we have here is we have some people coming in
14 saying, oh, if you will just let my airline in and out
15 of a slotted airport of where traffic is in the
16 Houston area is a train every 12 minutes. When the
17 nice people from Kansas City or the nice people from
18 Fort Worth, BN or RKCS, say I need to get over there
19 to be able to make -- to provide service. If there is
20 an extra train that stops, that train stops is there
21 longer than 12 minutes, then the train behind it stops
22 and the train behind that stops and the train behind

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1 that stops and you add to the congestion.

2 Although the first train who gets there
3 has been given priority possibly by your service
4 order, get through there and he is able to tell the
5 customer, see how good my service is. When actually
6 all he has done is by imposing himself in an already
7 congested airport, is delay every flight behind it and
8 every other person waiting at the gate is mad, but the
9 airline given the preference, all their customers are
10 smiling and happy and their numbers will go up and
11 they will be able to come and testify how wonderful
12 the service is of the new airline.

13 This is exactly the same problem we have
14 a LaGuardia/National/O'Hare situation where we have a
15 slotted terminals. And until someone goes down and
16 adds capital and capacity to that -- particularly West
17 Felton and the Houston areas.

18 But there is another area of solution.
19 These people are going to coordinate their airports.
20 They are not yet coordinating Setigus and Englewood
21 Yards because of the merger. They are now suffering
22 the problem of being on capacity beyond -- for all.

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1 Just as we have in the Washington market, our
2 international flights in and out of Dulles, our local
3 flights fly in and out of National. In New York it's
4 Kennedy and LaGuardia. We have a coordination.

5 Unfortunately what we have is that all the
6 flights are having to take on and off Setigus and
7 Englewood, National and Dulles. We will be able to
8 after the merger takes place the amount of flights
9 having to stop at both airports will be reduced. The
10 type of service will change.

11 By changing that service you are not going
12 to have essentially planes going to National,
13 stopping, taking off, stopping at Dulles and vice
14 versa. We have got the same thing in L.A. between
15 Ontario, John Wayne and LAX. I went to New Zealand
16 went to LAX. I want to fly to Las Vegas, I got out to
17 John Wayne. I can't get a New Zealand flight at John
18 Wayne.

19 And so what we don't have yet in the
20 Houston area, in the Texas Gulf Coast, is we have not
21 yet sorted out completely the operation of how we are
22 going to make the system work better. Once the system

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1 is on line, once the merger takes place, we will see,
2 I believe, some significant improvements in the
3 capacities of both Setigus yards and Englewood yards.
4 Also as we start the directional service. A railroad
5 is a single track. It is a one way street between
6 sides. Then we reverse the street. And we can't
7 reverse the street as long as there is any cars on it
8 coming at you.

9 But by having the parallel tracks or the
10 tracks that they have where you are doing to be able
11 to have directional service, the capacity of the
12 system is not double. The capacity of the system is
13 almost squared.

14 Now, those wonderful people that came down
15 that came down, the farmers from grain, the grain
16 people, I served on a task force in Houston where we
17 had a good Republican Senator by the name of Robert
18 Jefferson from Iowa who got together all of the people
19 who were involved in the problem. Here is what I
20 learned on this issue --

21 VICE CHAIRMAN OWEN: This is a nonpartisan
22 Board.

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1 MR. BRUNKENHOEFER: I understand that --

2 VICE CHAIRMAN OWEN: I just like you do
3 that --

4 MR. BRUNKENHOEFER: What we found -- what
5 we found out is that maybe, and I'm being an apologist
6 here for my employer, is that rushing grain off of the
7 ground into the Port of Houston, what I heard here
8 today is they would love to have the business. But if
9 you put 20, 30, 40, 50,000 more cars into the Port of
10 Houston, Beaumont, Lake Charles, Corpus Christie, what
11 are they going to do with it? They are completely
12 flooded now. They have no holding capacity. They
13 have no sorting capacity. They have no room.

14 Putting more planes in the air headed for
15 the airport that is already congested, what do you do
16 with it? Possibly the railroad may have made a
17 decision that using their car supply moving grain to
18 an unclogged port, allowing those cars to flow to that
19 port then flow back from that port, moving grain to an
20 area where it's not going to be congested. Getting
21 the grain off the ground and getting it to a rail car
22 and having it sit in the siding someplace outside of

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1 Houston or Pacadul or Corpus Christie, it helps the
2 farmer get his grain off the ground, but it helps
3 zero, it is a negative on the congestion problem.

4 And so until we can solve the congestion
5 problem at the port end, putting more into that
6 congestion is not going to help any. Putting more
7 cars in there or putting more railroads into there is
8 only going to add to the congestion until we can get
9 that relief.

10 The issue here of how many railroads come
11 in and out of Houston, they are all my children.
12 Leroy and I, we represent all the unions and all the
13 railroads. I don't want to see five percent of the UP
14 employees get laid off so that five percent of the
15 Burlington Northern people can get hired. That's
16 vacating one apartment complex to fill up another. It
17 doesn't work very well. You want them both full.

18 So, we want an even handed operation here
19 about how this is administered. Bringing other
20 railroads in and requiring other trains, additional
21 trains to be stopped in the congestion area only adds
22 to the congestion. Yes, that one train and that one

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1 set of customers may be happy, but it's not going to
2 help the overall congestion problem.

3 What is being proposed here also today,
4 I'm a little bit mystified because of my political
5 nature. I thought I would see a state agency, the
6 Texas Railroad Commission, who is populated by three
7 Republicans, suggesting that the federal government
8 exercise its Constitutional right and seize the assets
9 of an owner and to give them to someone else. I
10 thought that was called socialism. And if we are
11 going to get into that, I've got a whole long list of
12 things I'd like to talk about here today.

13 But I am completely mystified that the
14 Republican Railroad Commission of Texas. And I'm a
15 little disappointed in some of the other railroads
16 that also want to appeal to the federal government and
17 say I want you to seize someone's assets, take it away
18 from them and give it to me because I have a customer
19 that says he likes it better that way. If what we get
20 into that game, it ain't going to stop on the UPSP and
21 BN/Santa Fe. You are going to have a lot of problems.
22 If I've got an agency I can go and apply to seize

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1 somebody else's problems. Look, I don't like it when
2 you stop on my labor agreements, but I don't want you
3 stepping on anybody else's contracts either.

4 Now, this nice guy down here at
5 Brownsville, he is another one. He always wants to be
6 the ambulance. You let me get through, I'll get there
7 faster and everything will be okay. And if the other
8 guy has to sit at the gate and I miss my plane, that's
9 his problem, it's not mine. Well if you give Mr.
10 Cantu what he wants, you are going to take away the
11 work of one of our employees on the Union Pacific. He
12 is going to get laid off. He is going to miss his
13 house and his kids are not going to have any benefits.
14 But guess what, Mr. Cantu and his railroad is going to
15 be a better operation and his customers are going to
16 be happy.

17 So you are going to take away from this
18 guy and give to that guy and he is going to be happy.
19 But I'm going to be real unhappy and some of the
20 engineers that work in the Rio Grande Valley are not
21 going to be very happy and the conductors, etc.,
22 because they are going to lose jobs. So when we get

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1 to this division of do we help the farmers? Well you
2 may help the farmer and add to the congestion. You
3 may help a select group of customers at the expense of
4 all other customers.

5 I would suggest that you be most cautious
6 and most careful before you move into some of the
7 suggested fixes here. I think as someone told me, we
8 are kind of like describing an elephant. Everybody
9 has seen a little piece of it, recognizes and can
10 describe just exactly what they see or what they feel.
11 But they have not looked at the whole picture.

12 If we start taking this thing apart and
13 try to rebalance and readjust it, if it's so simple we
14 ought to take a look at who is on the other side and
15 who it takes away from and who it hurts. And I'll
16 answer any questions. And one of the things Mr.
17 Naylor has in his testimony about divestiture, with
18 all due respect to the International Brotherhood of
19 Teamsters, that causes me some pain too. And we will
20 talk about that later.

21 MR. NAYLOR: I think we will probably talk
22 about that outside.

1 It seems to me the STB has two tests to
2 consider. When you approved the merger, you had to
3 weigh would this be good for shippers? Would it be
4 good for the rail industry? I think the result so far
5 is that it has not been good for shippers, it's not
6 been good for the rail industry. Union Pacific stock
7 has declined roughly 20 percent since the problems
8 from the merger have become manifest.

9 And then you've had a short term test, one
10 that Chairman Davidson himself laid down and he said
11 a month ago that things would be better. And if you
12 read his testimony, you might think that and you have
13 to weigh what other people are saying. When half the
14 nation's crops, 100 million bushels continue to rot on
15 the ground, product continues to pile up on the docks
16 at Los Angeles, San Antonio has found it more
17 efficient to ship coal from Columbia than the United
18 States.

19 Stockholders are not particularly happy.
20 Milbrook Weiss has sued for deceit in misrepresenting
21 material information. Some people are even claiming
22 retaliation. We've heard some of this testimony.

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1 So in the last month, has the problem been
2 solved? Nobody says it has. The most you are hearing
3 is that perhaps things have gotten a little less
4 worse, which I don't think is a standard that the STB
5 wants to hold. So the two basic tests that I assume
6 you are weighing, I think they fail on both of them.

7 This is the corporate merger from hell and
8 it must be a terrible embarrassment for you as the
9 agency that basically certified it. These times
10 require a strong medicine. While I appreciate that
11 this is extraordinary, because this merger has not
12 served either the industry or shippers, I think it's
13 time for you to consider the most extraordinary
14 measures possible. Unwinding the merger in any
15 reasonable way.

16 I think Mr. Brunkenhoefer and my other
17 labor colleague's comments should be taken obviously
18 very seriously as people on the front lines. I think
19 there is a management culture problem that has been
20 pointed out not only by us but by the California
21 Public Utilities Commission and you have a really
22 serious problem here because UP is telling you things

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1 are fine and everyone else basically is telling you
2 things are not fine. Somebody is in error here and
3 you've got to sort through that.

4 So I think that if we are to look back a
5 year from now and see what should be done and we have
6 not taken the most extraordinary steps, the steps that
7 will solve it, and we will have failed farmers,
8 shippers, labor and basically the nation's
9 transportation sector generally. Thank you.

10 CHAIRMAN MORGAN: Thank you. First of
11 all, let me say to you, Mr. Brunkenhoefer and you, Mr.
12 Jones, that clearly the efforts of the employees
13 associated with your organizations on UP have done a
14 great deal to move this process along. And I think,
15 as I indicated earlier to Mr. Martinez, I think we all
16 --

17 MR. BRUNKENHOEFER: -- Ms. Molitoris is
18 part also troublemaker.

19 CHAIRMAN MORGAN: Okay, well, she is back
20 there so I'll get to her in a minute. But I do think,
21 you know, I do want to recognize the spirit of
22 cooperation and assistance from your organizations and

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1 the employees of those organizations in working with
2 the Board and the railroads in working through this
3 issue.

4 As I indicated in my opening statement,
5 this is the kind of situation that requires
6 cooperation and assistance from all parties, and
7 certainly your employees are right there on the line
8 and I just wanted to express my appreciation for that
9 spirit of cooperation.

10 I take it that listening to both of you
11 that neither of you supports some of the proposals
12 that have been made here today or will be made later
13 on with respect to additional service options as a
14 response to the rail service problems that we have
15 seen. Is that --

16 MR. BRUNKENHOEFER: Based on my
17 experience, they may be will intentioned, maybe I was
18 a little too light with them. But, based on my
19 experience it could very easily make things not
20 resource but my force.

21 CHAIRMAN MORGAN: Is that your --

22 MR. BRUNKENHOEFER: I only supported it --

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1 I think it would be poor, it would not be just
2 neutral, it would be --

3 MR. JONES: I agree with my colleague --
4 As I said before, use of the aircraft carrier
5 scenario, things such as the flow of traffic plans
6 that are being put it, the maintenance problem that
7 every railroad has now that we are looking at it if
8 you get those things prepared before they go on the
9 road, the coordination of activities are just starting
10 to turn around the corner.

11 If you happen to now make a ruling and
12 start biting off the trunk of the elephant or the foot
13 of the elephant or whatever it is, that it is going to
14 all start to fall apart and nobody is going to be
15 happy.

16 We've certainly not been happy about the
17 way the employees have been left on the trains,
18 although we see we have a process set up now to get
19 employees off the train or out in the process of
20 finishing some of those things, and some of the other
21 problems we've had with the railroad. And I said it's
22 not all been bad. Sometimes when you get lemons you

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1 make lemonade, you look at the best things that come
2 out of bad problems, things you learn from your past
3 history.

4 I totally agree that we don't want to see
5 any changes right now. I think we have to give the
6 railroads the opportunity to turn the corner the rest
7 of the way and make their plan go into effect. If
8 this does not happen, I'm sure my colleague will be
9 back here with me saying that we've got to have some
10 relief.

11 Right now, we don't want any changes.

12 CHAIRMAN MORGAN: And I presume that if the
13 Board were to take additional action, felt it
14 necessary to take additional action, the more modest
15 the better from what I hear you saying. Is that
16 right?

17 MR. BRUNKENHOEFER: Yes ma'am. And we would be
18 happy with that. I would call myself and Mr. Jones
19 honest brokers because we represent the employees of
20 almost all the railroads. We would be happy to play
21 the role of honest broker. Maybe management may not
22 believe we are that honest of a broker, but I believe

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1 that because we have an equal interest, we don't want
2 to see the people moved off of one to move -- one move
3 down and the other move up at each other's expense.

4 We do want to see the problem go away. We
5 do offer experience in the industry. One of the
6 exciting things that came out of the task force I
7 served on is we got everybody in the room together.
8 We got the Iowa farmers, we got the grain export
9 elevator operators, we got the railroad folks, we got
10 car people and we got out and amazing, when we all got
11 in the same room and then we had the senator and
12 people from various governments in the room and said
13 okay, we listen, you talk. And it was exciting to
14 watch just how cooperative we could all be with each
15 other because we were looking at the person who had
16 the club.

17 And it's like you all work it out and if
18 you don't come across as being sincere, and that's one
19 of the things that I'm proud of both Leroy's union and
20 mine is that we recognize there is a problem out there
21 and we have -- maybe Mr. Davidson and Mr. Krebs and
22 other wouldn't agree, but we feel like we bent over

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1 backwards. We've tried to make agreements. We've
2 tried to work the problem and we've got a constituency
3 out there that's got lynch ropes out for the officers
4 and union. They don't want to hear cooperation. They
5 want to hear being combative. They feel like they
6 have been abused and want us to join the attack mob.

7 What we are saying is is that we need to
8 slow down here and we need to preserve these carriers
9 and we need to keep them viable and strong and
10 attacking them now under these conditions could result
11 in our own losses. We have -- many of the people in
12 the room have stocks that is diversified, Mr. Jones'
13 members. Now we are 100 percent invested in this
14 program and we want to see that these railroads are
15 very successful and make lots of money. So I can take
16 a lot of it away from them.

17 CHAIRMAN MORGAN: So I guess that
18 following up on that, you all are out there on the
19 system, you are seeing improvements. Obviously we
20 have heard from shippers today who do not feel that
21 there have been improvements out there. But you are
22 out on the system and you do see improvements. There

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1 is room for more improvement, I presume, as well.

2 MR. JONES: I think that actually the
3 railroad itself should take this very serious, about
4 this situation. They understand without our help we
5 can't get through this problem.

6 We had a problem in Cheyenne, Wyoming and
7 Jerry Davis got on a plane and went out there on the
8 Wednesday before Thanksgiving and walked around and
9 talked to the people. Not having a Town Hall meeting,
10 but just talked to the people on the ground to see
11 what's going on there.

12 We had some problems. They brought some
13 problems to his attention. I think that Dick Davidson
14 and Mike Wise has been in San Antonio and some other
15 places there.

16 The communication is much better. We have
17 a cultural problem in our entire industry that Jolene
18 Molitoris has really been trying to change by getting
19 to set these roundtables and people on both sides been
20 kicking and screaming and hopefully by, like I said,
21 we can learn from what we are doing here and the
22 problems, so we won't have problems because I'm sure

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1 there are some other ones coming up here in the future
2 in some of these mega-mergers.

3 We have to deal with these problems and
4 the employees are the ones who can tell them what's
5 going on. Also, the employees are the ones that, you
6 know, these people have shipments to make, but the
7 most important cargo out there on those trains as far
8 as we are concerned on those freight trains are the
9 employees. We are the ones, because of fatigue and
10 everything else and traffic flows and everything, have
11 been getting killed out there and we now feel like we
12 have a partnership.

13 There is a lot of mistrust on our side,
14 though. We are kind of out on a limb, like
15 Brunkenhoefer already said a lot of people want to
16 hang us for coming here and trying to do something
17 like this. But we think it's the only reasonable
18 thing to do with the situation to give them
19 opportunity. I live next door to, when I grew up,
20 next to the Missouri Show Me State. And I wanted to
21 Show Me that they are going to make this advancement.

22 MR. BRUNKENHOEFER: We haven't seen any

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1 improvements we'd like to. We are just like the
2 customers. There are a lot of areas that we are
3 expecting improvement in. But based on the
4 experience, just as Leroy related about what happened
5 after the merger between the Katey and the Missouri
6 Pacific where you could run directional, the positive
7 impact that had on that yard in Kansas City.

8 We are expecting those same type of
9 service improvements. If we expect that gee, this is
10 all it is, I would be out there on the shipper's side
11 saying we've got to do something. But I think left
12 alone that the pieces are in place. It's like before
13 the guy scores the touchdown you have to put the
14 blocks in place so the person could run through the
15 hole to score the touchdown. The touchdown actually
16 starts in the backfield. It doesn't start when the
17 guy crosses the goal line.

18 Well in this case this is what we have
19 seen in our experience, both Leroy and I, is the
20 blocks are now being put in place. No, the points are
21 not on the board yet. We see that there is probably
22 going to be a break through here. And they are going

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1 to have to score lots of touchdowns to get caught up.
2 They are a number of points behind.

3 MR. NAYLOR: Madam chair, let me offer an
4 opposing or differing viewpoint, if I may. You have
5 said repeatedly that you want to avoid inferior
6 government interference with free market solutions
7 that have served our nation so well should apply.

8 Well, there is no free market here. UP
9 enjoys monopoly and as such doesn't have to employ
10 sales people and doesn't have to employ competitive
11 efforts. And that's I think why we see DeBruce Grain
12 raising a problem and then alleging they have been
13 retaliated against for raising that problem. That's
14 why we see, I think, in UP's testimony today a rather
15 emphatic disregard for the Texas Railroad Commission.
16 That's why I think when the citizens of Reno raise
17 questions, UP's response is well move your city, we
18 were here -- we, the railroad, was here first.

19 These are the, these are the expressions
20 of the company for which its customers and other
21 constituents have no other place to go. That's why I
22 think shippers and others need you as the regulator to

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1 go in and apply as much a cure as you can.

2 I appreciate the comments of my labor
3 brothers and I know we have a serious disagreement.
4 We don't enjoy such a partnership. We suffer the
5 types of problems that Debruce Grain does in our labor
6 relationship with UP. As a stockholder, we've
7 suffered other types of problems. Thank you.

8 MR. BRUNKENHOEFER: I have some comments
9 to you, but I'll make them outside.

10 CHAIRMAN MORGAN: Take it outside.

11 MR. NAYLOR: We will take it in the
12 parking lot and settle it like children.

13 VICE CHAIRMAN OWEN: I appreciate the
14 comments from Mr. Jones and Mr. Brunkenhoefer there
15 and also Mr. Naylor, on behalf of the first two
16 gentlemen though, I have been out and met a lot of
17 your people, made the mistake, I thought all engineers
18 were UTU and they jumped all over me --

19 MR. JONES: Actually, you may want to know
20 about that.

21 VICE CHAIRMAN OWEN: I was up in
22 Washington on that trip and I tell you. But I try to

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1 get out and I try to meet with working people on the
2 railroads as such, and we do have some serious
3 problems. But your people are very supportive of you
4 out there and I think that you've got to communicate
5 more with the working men and women and try to get
6 them to bring them together and make them understand
7 that the transportation issue is their problem as much
8 as it is ours. I know they understand that, but they
9 don't understand it how important it is to the country
10 as a whole that we move the grain, we move the
11 automobiles, we move the chemicals. We move all those
12 things. But we have to do it in a safe and orderly
13 fashion. They have to be compensated properly and be
14 able to get home to see their families.

15 That's what I think that's what we are all
16 about here and I'm not saying what we are going to do
17 or not going to do. We've had an awful lot of
18 suggestions today. But I really appreciate your
19 testimony today and I know you are stepping out there
20 a little ways to do what you are doing. Thank you.
21 Thank you, Mr. Naylor.

22 CHAIRMAN MORGAN: Thank you all. Next we

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1 will hear from a group of government entities. Jolene
2 Molitoris, Administrator, Federal Railroad
3 Administration; Michael Dunn, United States Department
4 of Agriculture; Charles Matthew, Chairman of the
5 Railroad Commission of Texas; and Kenneth Koss, the
6 California Public Utilities Commission. If we just
7 suspend for one minute, I think we need to change the
8 tape.

9 VICE CHAIRMAN OWEN: Off the record, this
10 has been one of those nice short meetings that was
11 going to last three to four hours. So that can be off
12 the tape.

13 CHAIRMAN MORGAN: Well it's not going to
14 be 12. I said it wouldn't be 12. I kept my promise.

15 Are we ready? Madam Administrator, would
16 you like to go first?

17 MS. MOLITORIS: Thank you, Madam
18 Chairwoman and Vice Chair -- Mr. Vice Chair. It's a
19 woman's world, what can I say?

20 I am pleased to be here to represent the
21 Department of Transportation and present their
22 comments, and I want to commend the Board for having

1 this second hearing and really providing an important
2 forum to discuss a very serious transportation issue.

3 I was here at the last hearing and talked
4 to you with the theme of the clear and direct link
5 between safety and service. And I think that the
6 indicators since the last hearing underscore the
7 validity of that statement.

8 The indicators since the last hearing are
9 encouraging. On the safety side, Union Pacific has
10 not had a collision or a serious train incident since
11 October 29th. That is something we think is extremely
12 important. I know it's important to them and I must
13 say that I was heartened by the comments of Mr. Jones
14 and Mr. Brunkenhoefer because they gave testimony
15 about the kind of work that is going on at the Union
16 Pacific.

17 Safety doesn't happen by chance. Safety
18 happens because people focus on it, make a commitment
19 to it. And I believe that what you heard from those
20 two gentlemen really was a clear statement of the kind
21 of dialogue and commitment that is being invested in
22 safety development, both by management and by labor.

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1 Mr. Jones mentioned the SACP which is the
2 common term for the Safety Assurance and Compliance
3 Program which is the Program that FRA instituted a
4 little over two years ago to begin to address the
5 safety culture issues which affect both safety and
6 service.

7 Our people are very involved with both
8 management and labor, and management has made a
9 commitment to fundamentally revamp their entire safety
10 program to enhance the kind of working partnership
11 that you heard from Mr. Jones and Mr. Brunkenhoefer.
12 I believe that the long term investment, and I must
13 say that it demands a long term investment of
14 resources to really get the change in culture that
15 will get us to zero safety hazards and will
16 consistently address service issues.

17 I also want to commend this Board for your
18 response to our recommendation that a safety
19 integration plan be made part of the Conrail situation
20 that you are evaluating now. I believe that if we had
21 made that recommendation before this merger, there
22 would be a different story today.

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1 We have learned a lot. They have been
2 very, very painful lessons. But I do think the corner
3 is being turned. There are some indicators that you
4 know yourself, 28 percent improvement in the block
5 sitings. Many things that we had in our report on the
6 Union Pacific from two very comprehensive and intense
7 audits. They are addressing with their labor partners
8 and with us supervision needed upgrading. They have
9 hired 134 additional supervisors and have identified
10 more hires. With regard to training engine crews,
11 they have hired 500 and commit to 500 more before the
12 end of the year.

13 I am not ready to say that's exactly the
14 right number. I think the results will tell us that.
15 And the process of working together on all the crucial
16 issues, like fatigue which is a tremendously impactful
17 issue on every part of Union Pacific, the results will
18 tell what are the right numbers.

19 I must comment on the fatigue issue. I
20 think Union Pacific has stepped out with their
21 employees. They have made a commitment to Alertness
22 Solutions who have been the advisors to NASA. They

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1 are going for expertise to really help them address
2 this issue.

3 I have much empathy for the small shipper.
4 I want to mention that. I know that in terms of
5 utilization of unit trains, there have been in the
6 agricultural area improvements and the major grain
7 shippers are less negatively impacted than they were
8 before.

9 I would hope that Union Pacific continues
10 to focus on the small shipper and works diligently to
11 improve the use of the voucher system in a way that
12 really works.

13 Mr. Jones and Mr. Brunkenhoefer talked a
14 lot about communication. I believe that that process
15 which is much more complex than most people give it
16 credit for being, is crucial to improvement in the
17 service in reducing the blockages and the congestion
18 and I would encourage the Union Pacific to use every
19 tool at their discretion to assure small shippers that
20 they do get service that meets their needs.

21 The voucher system, of course, is slower
22 than the unit train concept, but I think that with

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1 more attention and with more focus that Union Pacific
2 can increase the service to small shippers. I think
3 in this country the small shipper is a very, very
4 important part of our economy. Coming from the State
5 of Ohio before coming here to Washington, I'm very
6 sensitive to the importance of the small shipper in
7 the whole aggregate economic vitality of our country.

8 I want to just mention a couple of other
9 indicators that appear positive to us. Our regional
10 staff, for example, mentioned the Green River
11 Subdivision. That's a heavily traveled coal route
12 from Green River, Wyoming to Kansas City, through
13 Omaha. And they indicate, and their assessment is
14 based on the daily updates of status of power
15 utilization trains held and crew availability, that it
16 probably is in the best shape than it's been all year.
17 There was congestion there, this is one point that on
18 the system that is being improved.

19 Congestion overall is not fixed. There
20 have been improvements. We would like to see much
21 more, as the shippers do. And we think that the
22 indicators are such that through the rest of this

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1 year, especially since some of the demand will be
2 reduced over the next couple of months, that we will
3 see opportunities for Union Pacific to work out the
4 final elements of their plan to get to a fluid system
5 which is crucial for everyone. And not only fluid,
6 but safe.

7 I do hope that you have another hearing,
8 Madam Chairwoman and Vice Chair.

9 CHAIRMAN MORGAN: We are getting very good
10 at it.

11 MS. MOLITORIS: Very good. In addition,
12 I think the opportunity to present weekly reports to
13 you is a good thing. I'm sure that paperwork to some
14 extent is not something that any company likes. But
15 I think the awareness of this Board, and of us, and we
16 have been also using the reports that the company
17 sends to you, is a way of keeping our focus, keeping
18 our intensity until this issue is resolved.

19 And I would say to you that the
20 Department, and I'm certain this Board, never wants to
21 see this situation happen again. And, from all of
22 this pain and difficulty and problems that have

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1 occurred, I would like to commit our work with you to
2 assure that we identify every opportunity to avoid any
3 repetition of this in the future.

4 We think that the safety integration plans
5 on any merger are really crucial. As I said I think
6 it would have made a difference here. Because I think
7 just culturally speaking there is always a sense that
8 with the sort of gutsy character of the railroad
9 industry anything can be handled. We have found out
10 painfully that anything cannot be handled if you are
11 not aware of what all the issues are.

12 Finally, I believe this new commitment of
13 management and labor to work together and to work with
14 us and to work with you bodes well for our opportunity
15 for the future. Because as we are 760 days from the
16 year 2000, we have an opportunity to create a future
17 in which our rail transportation is second to none.

18 So, in terms of recommendations, I hope
19 that you will have another hearing and I hope that the
20 indicators will be stellar at that point and that all
21 the customers and all the testimony will be about
22 resolution of problems.

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1 I would also encourage the continuation of
2 the weekly reports and we are prepared to work with
3 you in any other way that you deem helpful to you and
4 to this problem to help resolution. Thank you very
5 much.

6 CHAIRMAN MORGAN: Well I certainly
7 appreciate your willingness to cooperate and be of
8 assistance. As I said a lot today, that is critical
9 to getting a handle on the situation that faces us.

10 In terms of your recommendations, are you
11 suggesting that we terminate the order that is in
12 place, that part of your recommendation? In other
13 words, we have this order in place which expires
14 Midnight tomorrow night and our challenge, of course,
15 is to determine how we will act with respect to that
16 order. Is part of your recommendation that we
17 discontinue that order?

18 MS. MOLITORIS: Madam Chairwoman, I
19 believe that the order was a factor in helping focus
20 everybody on a real intense effort. And I think it
21 also gave some shippers some confidence in a difficult
22 time.

1 I would recommend that you keep the status
2 quo for another 45 to 60 days, give an opportunity for
3 Union Pacific to continue its improvement. I think
4 that although the movement of trains by the other
5 carriers has really been small, as far as I can tell,
6 at least directly on the properties that you
7 identified there has been some positive changes with
8 other carriers. And I think all of that together has
9 had some elements of improvement. I'm not sure how
10 much, how many trains you thought would have moved by
11 these other carriers. I think the number directly
12 moved on that property has been quite small.

13 But I believe we are heading in the right
14 direction and I think when something is working we
15 ought to continue to support that. I do believe that
16 by the end of the year with the continued pressure of
17 the company and the employees committed together to
18 solve all of the issues they can solve, that we will
19 see many more positive indicators at the next hearing.

20 CHAIRMAN MORGAN: And also you did submit,
21 I appreciate, answers to three questions I asked with
22 us last time relating to fatigue and the UPSP merger

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1 and safety and the status of the UP safety report. So
2 that will be included in the record of these hearings.
3 Thank you. Questions?

4 VICE CHAIRMAN OWEN: I would just like to
5 compliment you on all the work you have done with the
6 railroad and with the unions in implementing the
7 safety program. I think it's been very helpful and
8 very beneficial for the nation as a whole.

9 MS. MOLITORIS: Thank you very much.

10 VICE CHAIRMAN OWEN: And one of the other
11 things, I might sign up for your Alertness program and
12 your alertness management.

13 CHAIRMAN MORGAN: Needing it about now,
14 right?

15 VICE CHAIRMAN OWEN: Thank you very much.

16 CHAIRMAN MORGAN: Mr. Dunn, would you like
17 to proceed?

18 MR. DUNN: Thank you Madam Chair,
19 Commissioner Owen. I'll try not to put you to sleep.
20 I want to thank you for the opportunity to participate
21 in this forum, to examine the rail service problems in
22 the western part of the United States.

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1 Secretary Glickman supported the STB's use
2 of emergency power on October 31st service order, and
3 we believe it should stay in effect. We are gratified
4 that the Surface Transportation Board accepted our
5 recommendations to require that UPSP submit data that
6 would indicate whether service to agricultural
7 shippers was actually improving.

8 We have been busy analyzing the data
9 submitted by the UPSP in its weekly reports, as well
10 as other sources of information. And while there has
11 been improvement in some measure of the UP's
12 operations, this has yet to be translated to
13 meaningful service improvements for grain shippers and
14 receivers.

15 When comparing the average grain car
16 velocity of the five weeks ending October 17th with
17 the five weeks in the November 21st, the Nebraska
18 Pacific Northwest movement slowed from 13.1 to 14.6
19 days. Last week things got even worse. Pacific
20 Northwest moved slow from 12.5 days to 21.0 days. The
21 normal time for this movement is reported to be about
22 10.1 days.

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1 By contrast, the Kansas to Gulf time has
2 improved from 15.8 days down to 13.8 days and data
3 released on Monday indicated even more improvement
4 down that week to 10.7 days. Of course, this is still
5 more than double the typical 5.1 days that this trip
6 normally takes.

7 In terms of velocity of grain cars, the
8 picture is mixed with no clear sign of improvement.
9 And this is discounting when the trains were ordered
10 and when they were actually spotted.

11 By other measures, service to agriculture
12 shippers have worsened in recent weeks, and not just
13 on the UPSP but on the BNSF as well. Take a look at
14 this chart on the right hand side. For the five weeks
15 ending November 15, 1997, weekly car load data from
16 the Association of American Railroads showed UPSP's
17 intermodal traffic and non-grain car load traffics
18 down 16 percent. But USPS's grain shipments were down
19 a whopping 38 percent.

20 Now look at the BNSF's on the left side.
21 They have picked up nearly all of UP's loss and
22 intermodal traffic. They are up 16 percent. Their

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1 non-grain car load traffic is up six percent. But
2 their grain car loads were down 17 percent. We heard
3 from shippers and railroad representatives that the
4 BNSF is taking locomotives out of agricultural service
5 and shifting them to intermodal.

6 It would seem that both major railroads
7 are letting agriculture shippers bear the brunt of
8 service recovery. The Secretary of Agriculture finds
9 this unacceptable.

10 There has been a great deal of attention
11 placed on the problems of grain storage. There is a
12 substantial amount of grain on the ground that should
13 have been handled and taken to the market long ago.
14 According to the UPSP's information, there are more
15 than 12,000 unfilled car orders from grain customers
16 asking for more equipment to move newly harvested
17 crops.

18 In their latest submission, UPSP has
19 backed off from its assertions that ground storage is
20 a viable long-term storage option if the ground piles
21 are properly prepared. In fact, USDA categorizes non-
22 permanent storage as either temporary or emergency

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1 storage. UPSP's statement on the viability of long-
2 term storage can refer only to temporary storage which
3 must meet strict requirements for the way the grains
4 are piled and prepared.

5 It is the problem of emergency storage
6 that concerns USDA. Emergency storage is not a viable
7 long-term storage option. As of November 26th,
8 federally-licensed warehouseman have requested permits
9 for emergency storage totalling 93,000,681 bushels of
10 grain, 92 percent of which are located in states
11 served by the UPSP.

12 In the latest period of widespread car
13 shortage, the 1995-96 crop year, USDA approved only 12
14 million bushels of emergency storage requests. We can
15 see from the second chart that had the UPSP simply
16 moved as many carloads in the same five week period
17 ending November 1997 as they have in 1996, an
18 additional 64 million bushels of grain would have been
19 moved.

20 BNSF's shortfall during that period
21 amounts to another 30 million bushels of grain that
22 should have been moved. The storage problem that

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1 exists is almost entirely relayed into the inability
2 of the western roads to provide an adequate level of
3 service to the agriculture producers. The total
4 amount stored on the ground is doubtless higher than
5 the emergency storage request indicated, because those
6 figures do not include state inspected warehouses.

7 It is estimated that it costs an extra
8 five to 20 cents a bushel to store on the ground.
9 Grain piled on the ground in that many county
10 elevators, local cash prices to farmers has fallen
11 significantly.

12 We wish that all shippers were beginning
13 to see improvements to quality of service as I think
14 provided by the UPSP. But by any standards, service
15 to the agriculture producer is still inadequate. We
16 have made a number of suggestions which include asking
17 the STB should extend the current directed service
18 order, asking the STB should consider granting access
19 from the Kansas City, Missouri through Harrington,
20 Kansas to Scott City, Kansas and also to Salina,
21 Kansas to railroad capable of interchanging with a
22 grain gathering network on short lines in Kansas.

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1 The STB should ensure that any railroad
2 that holds trackage rights on the UPSP should also
3 have the right to accept interchange traffic from
4 third parties so long as the current service crises
5 continues.

6 The STB should direct that all trains
7 located in loading facilities served by two or more
8 railers should be moved immediately enabling other
9 carriers to provide services.

10 Many agriculture shippers located on
11 UPSP branch lines. We ask that the STB direct service
12 along these branch lines wherever shippers have
13 identified rail service providers who are able to
14 serve them and need not traffic upon UPSP mainlines in
15 order to do so.

16 That on grain car loading the UPSP
17 provides its weekly status report should include
18 similar information from the previous two years so
19 that we have a benchmark to go from. We would also
20 ask the BNSF should be required to provide compatible
21 weekly data on its movement of grains so we can have
22 similar baselines of comparison.

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1 I want to say that I truly appreciate the
2 difficult tasks that confronts this particular Board.
3 In the past the staff of USDA has worked very, very
4 closely with the Surface Transportation Board staff.
5 I would offer you all the assistance that we have at
6 USDA to help you analyze the data of the agricultural
7 sector for meaningful information. Thank you very
8 much.

9 CHAIRMAN MORGAN: Well first of all, I
10 certainly again appreciate the assistance and
11 cooperation. Obviously I think we all need to work
12 together on this matter. So I appreciate that.

13 Let me just ask you two questions. One
14 more of a philosophical question and the other more
15 specifically addressing the proposals that you put
16 forth.

17 The first is we now have the Freedom to
18 Farm Act which is in place and, of course, your
19 Department is I'm sure very active in implementing
20 that and working with constituencies. Is there
21 anything in that Act which would suggest that the
22 terms of grain transportation in general that the

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1 entire community needs to start focusing on planning
2 more as a result of the changes that that Act
3 certainly has brought about in the agricultural
4 community?

5 MR. DUNN: I think the Chair has
6 identified a problem that concerns a great deal at
7 USDA. The 1996 Farm Bill was a major watershed and
8 agriculture producers in the future will not have
9 grain support programs. Freedom to farm means that
10 people are free to plant different variety of crops in
11 different areas.

12 Whether or not we have the infrastructure
13 to provide the overall movement of transportation of
14 those crops is really a moot point. As the Chair
15 remembers, you were on the other side of the dias as
16 we testified in front of the House Ag Committee. At
17 that time I indicated that the Secretary of
18 Agriculture has asked that we begin preparing for a
19 comprehensive plan for the shipment of agriculture in
20 the next year for the next century.

21 CHAIRMAN MORGAN: Because certainly we are
22 faced right now with an emergency, that we have

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1 determined emergency in terms of rail service in the
2 West. It obviously affects agriculture, but going
3 into next year, obviously the more planning,
4 particularly with respect to changes that are going on
5 in the agriculture sector are very important right
6 now.

7 MR. DUNN: Absolutely.

8 CHAIRMAN MORGAN: The other question is
9 more specifically related to the suggestions that you
10 have made for providing options to shippers during
11 this period. And at the beginning of your statement
12 you indicated that you felt that agriculture was
13 bearing the uneven brunt of the service problems in
14 the West. You have suggested what some might term an
15 open access type proposal to bring other carriers in
16 to provide options to shippers. And of course, we
17 heard earlier from the agricultural community their
18 concern that anything that we would do would not in
19 some way unduly tax Burlington Northern Santa Fe's
20 ability to serve the agricultural community.

21 So how would you suggest the Board view
22 your proposal in that context?

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1 MR. DUNN: In that context what I would
2 ask for agriculture is simply parity. If you will
3 remember the charts that I had put on the board which
4 indicated that the Burlington Northern, while it had
5 gone up six percent on non-grain and 16 percent on
6 intermodal, that's in the plus category, they were at
7 a negative 17 percent for grain.

8 Certainly if there could be some parity
9 there, at least keep grain even. That would be a
10 tremendous help to us.

11 VICE CHAIRMAN OWEN: Yes. I've always
12 questioned, and that bothers me about the agricultural
13 end of it is just to the extent that all the crops
14 come into at the right time, three weeks, six weeks,
15 something like that. Wouldn't it be feasible for the
16 associations or the Department of Agriculture to build
17 more storage facilities to hold the grain for a longer
18 period of time then possibly the rails then could haul
19 it to the ports?

20 As was pointed out earlier by one of the
21 union representatives here and this is probably true,
22 that the ports may already be clogged with too much

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1 grain and a number of the people like to hold it back
2 because the price is not right. Then when the price
3 is right, they want a 100 car train there tomorrow.

4 I think storage capacity for the farm belt
5 states is something that maybe we should be discussing
6 as we go along. That's not my territory. But I'm
7 trying to think of how we avoid this problem of
8 continuing to dump crops on the ground every year and
9 then we hear the story about the spoilage and
10 everything and sympathize with the farming community.
11 But at the same time, you know, I just don't know if
12 we can provide all of the power and the hoppers up
13 there. Maybe they should increase the number of
14 trains up there.

15 But even if they increased it to the
16 amount that you talked about, would that be
17 sufficient, and I doubt it, to haul an extra 100
18 million bushels of corn at the appropriate time?

19 MR. DUNN: Honestly in the long term, that
20 would be something that we would like to look at in a
21 comprehensive plan. But at the present time, we know
22 that we have port facilities that cannot get grain to

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1 load for export. So that very clearly, an immediate
2 problem of transportation.

3 In addition to that, the same watershed
4 Farm Bill 1996 that the Chair talked about, has done
5 away with a lot of the farmer's own reserve and those
6 type of programs which provided personal storage on
7 the farm in the past. The Congress has said that it
8 does not see the storage of grain to be something that
9 the government ought to be doing. If you are going
10 into a free market system, then that should be
11 developed.

12 VICE CHAIRMAN OWEN: Sure, I'm just
13 wondering, where do you get the locomotives and the
14 grain car hoppers when it seems as though right now
15 all the railroads are at maximum capacity?

16 MS. MOLITORIS: Just one comment. I did
17 not in my testimony offer one of the recommendations
18 that I think is in my written testimony, and that is
19 a suggestion that this Board might convene the Grain
20 Car Council because it would be a forum where everyone
21 would get around the table and address suggestions not
22 only for the immediate issues that are being suffered

1 right now, but also for the kinds of changes that may
2 come out of the --

3 CHAIRMAN MORGAN: Thank you.

4 VICE CHAIRMAN OWEN: That's a good
5 suggestion. Thank you. I have no other questions.

6 CHAIRMAN MORGAN: Chairman Matthew?

7 MR. DUNN: Madam Chair, I have to excuse
8 myself. I have to catch an airplane. I commend you
9 for staying as close to schedule as you did and not
10 going into that 12 hour session that you had the last
11 time.

12 CHAIRMAN MORGAN: I made a commitment, I
13 stick by it. It will not be 12 hours.

14 MR. DUNN: If you will excuse me, please.

15 CHAIRMAN MORGAN: Sure.

16 MR. MATTHEW: Thank you for the
17 opportunity to again discuss with you ways to bring
18 about a satisfactory end to the service transportation
19 crises in the western United States.

20 The Board's November 20th order requested
21 the parties address three questions. The first was if
22 the actions of the Board under Service Order 1518 had

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1 helped to alleviate rail service problems in the West.
2 Two, whether these actions should be extended. And
3 three, whether more needs to be done.

4 My short answer to these questions is that
5 while the Board may start with its October 31st order,
6 much bolder steps are needed to resolve this crisis
7 and to prevent its reoccurrence.

8 It is critical that this rail crisis end
9 quickly and not be repeated. The November 24th, 1997
10 study prepared by Dr. Bernard Weinstein at the Center
11 of Economic Development and Research, University of
12 North Texas, conservatively estimates the costs to
13 date for Texas business, measured by lost sales,
14 reduced output and higher shipping charges, is \$762
15 million. And that business, consumers and taxpayers
16 in Texas will incur \$623 million, an additional cost
17 over the next several months, unless the service
18 problems are quickly resolved.

19 The answer to question number one, the
20 Railroad Commission's position is that the Board's
21 actions to date have been too little and too late. In
22 Texas the crisis is still with us. The congestion

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1 morass crippling UP is affecting all of our carriers
2 and making it impossible for them to provide a
3 satisfactory level of service.

4 The Railroad Commission held hearings in
5 five separate locales around the state and we do not
6 see any appreciable improvement in service. Indeed,
7 the rail service emergency continues in Texas without
8 any significant abatement according to the
9 overwhelming weight of the comments we received, and
10 we continue to receive reports of substantial delays
11 on both TexMex and BNSF trains.

12 For example, last week employees of both
13 TexMex and Burlington Northern called to tell our
14 staff that it took nearly 24 hours for TexMex and
15 Burlington Northern trains to transverse the Houston
16 area on UP controlled trackage. Instead of a normal
17 two to three hours, which is the historical time. As
18 an alternative, Burlington Northern/Santa Fe is being
19 forced to use a circuitous route south to Albar and
20 north to Temple for most of its trains. The TexMex,
21 however, has no alternative route.

22 In short, to date the Railroad Commission

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1 has not received any convincing indication that either
2 UP's service recovery plan or the Surface
3 Transportation Board's Order No. 1518 has produced
4 results and improvement in Texas.

5 I would note that the Port of Houston
6 Authority filed statements reaching the same
7 conclusion. Clearly we agree with the Port of Houston
8 Authority that service crisis in Houston has not been
9 resolved by the measures taken thus far.

10 To the second question, should the Board's
11 order declaring an emergency and directed limiting
12 action be extended? I believe the answer is yes. The
13 emergency is far from being over and will continue to
14 be repeated until the Board's order is extended and
15 bolder and more substantial steps are taken.

16 Question number three, what further
17 actions should the Board take? The Board, I believe,
18 needs to take bold and decisive action along the lines
19 of the Commission's proposal. In short, on an
20 emergency basis, the Railroad Commission urges the
21 Board to broaden its current emergency measures by
22 mandating an expansion of neutral switching in the

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1 Houston terminal area and establishing a through route
2 to be controlled by TexMex through Houston and on to
3 Beaumont.

4 On a permanent basis, the Board should
5 order divestiture of Pacific UP trackage necessary to
6 fully implement this proposal.

7 Before describing our proposal in greater
8 detail, I believe it is valuable to first discuss what
9 the problem is we are trying to solve. The problem we
10 have today is traceable to the merger, which in Texas
11 involve a number of parallel lines.

12 UP proposed and this Board concurred that
13 in Texas all of our eggs should be placed in one
14 basket. That is particularly the case for Houston and
15 the Gulf Coast. Let me stop and emphasize this point,
16 probably the most important thing I am going to say
17 all day. Houston and the Gulf Coast in essence has
18 one carrier serving it.

19 If you look at the map number one that we
20 provided in our filing, it shows that UP has nine
21 lines and Burlington/Santa Fe with two that do not
22 connect. UP now controls or has a virtual monopoly on

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1 the rail infrastructure in the Houston/Gulf Coast
2 area. And UP's stranglehold on and their paralysis of
3 rail operations in the Houston/Gulf Coast area has
4 been very costly to Texas.

5 As the Weinstein report indicates, at the
6 time of the merger the Railroad Commission urged that
7 the Board impose sufficient conditions on UP to make
8 some sort of competitive situation in Texas. At the
9 time two questions, key questions existed and the
10 answers to them were contested.

11 We now have a lot of experience with which
12 to judge those questions, so let's ask them again.
13 The first question was could the service be any worse
14 than SP's? The second question was whether grants of
15 trackage rights on an unprecedented scale would serve
16 to effectively correct the anti-competitive aspects of
17 the UP/SP merger or should divestiture be required?

18 The quality of UP's service for the last
19 several months answers the first question. From all
20 the complaints we have received, the answer is clear.
21 The yes, things could get worse than SP and they did.

22 Equally clear, the answer to the question

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1 of whether trackage rights granted on the scale used
2 for this merger can be effective is a resounding no.
3 At least in this case, the trackage rights have not
4 been effective to ensure competition.

5 The Board should require divestiture. You
6 have the authority under Section 11327 of your statute
7 to issue supplemental orders. And we believe you
8 should use that order to request UP to divest certain
9 lines.

10 This rail service crisis has taught us a
11 lot. But the most important thing it has taught us is
12 that shippers need alternatives or else you end up
13 with a congestion morass like the one that now exists
14 in the Houston and the Gulf Coast area.

15 The crisis on UP's system has clearly
16 shown the value of alternatives. If there had been a
17 third railroad, such as TexMex serving Houston in June
18 of 1997 and that railroad had operated over its own
19 trackage and has its own switching yard in Houston,
20 there would have been an alternative to UP and its co-
21 dependent Burlington Northern/Santa Fe.

22 Rather than seeing their freight bogged

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1 down, shippers on trackage owned by the Port of
2 Houston Authority and the Houston Belt Terminal would
3 have seen it moved into commerce in a reasonable
4 manner.

5 Tex Mex is a fully fledged carrier in this
6 area for the Commission's proposal, but also provide
7 an alternative for any more shippers who's trackage
8 can be picked up and delivered over the road.
9 Similarly, an enhanced neutral switching capability in
10 the Houston area providing services to scores of large
11 captive petro-chemical shippers located on the UPSP
12 Baytown and Bayport Branch would assure that an
13 alternative existed for hundreds of shippers located
14 in the complex and normally very busy Houston Terminal
15 area.

16 The ability of shippers to divert traffic
17 to another carrier that can handle it, would have
18 prevented the congestion pressures approaching the
19 dangerous levels on the UP, or such pressures would
20 have been released. In sum, I believe the Board needs
21 to revisit the issue of control over the Houston rail
22 structure which was seated to UP.

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1 The Railroad Commission urges that you
2 provide shippers with competitive alternatives as
3 contemplated by the National Transportation Policy.
4 Our proposal does exactly that. It provides shippers
5 with alternatives. The early Commission's plan for
6 three, has three essential parts.

7 One, an extended port terminal railroad,
8 a clear path for Tex Mex through Houston, and an
9 independent Houston/Beaumont route for Tex Mex. Let
10 me briefly summarize and you've got maps in there and
11 I'll try to do this quickly because I know I'm running
12 out of time.

13 The first is the extended port terminal
14 railroad. The first important step to alleviating the
15 UP crisis is the transfer of the UP port area
16 industrial trackage to a new port terminal railroad.
17 It would provide new neutral switching for the port
18 area industries. I personally favor just expanding
19 the current set up in Houston for the Port of Houston
20 Authority and the Port Terminal Railroad.

21 In this regard, a very important change
22 has occurred. And that is the position of the Port of

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1 Houston Authority. In its filing with the Board
2 November 26, 1997, the Houston Authority stated, the
3 Board should require coordinating and dispatching of
4 all railroad lines in the Houston area, assigning the
5 dispatching responsibilities to a neutral entity such
6 as the Port Terminal Railroad Association.

7 Coordinated operation of those tracks
8 would increase the efficiency and through put of the
9 Houston Terminal. Second, a clear path through
10 Houston for Tex Mex. The second important step in
11 alleviating the UP service crisis is to provide a
12 clear path through the complex and congested Houston
13 rail network for Tex Mex. The path we propose is
14 depicted on Map No. 3.

15 Again, we ask for divestiture of UP
16 trackage, as described, to fully implement this
17 proposal. This proposal is to create an independent
18 route for Tex Mex through Houston. It should have
19 minimum negative impact on UP's operations, because
20 the line segments that would compromise the new Tex
21 Mex route are of marginal value to UP.

22 To the extent that UP has the need to

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1 operate over these line segments, it could have
2 trackage rights. Three, the transfer of the former MP
3 Houston/Beaumont line to Tex Mex. For six months, Tex
4 Mex trains have experienced huge delays operating over
5 UP's two lines between Houston and Beaumont. These
6 two lines are the former SP lines through Dayton and
7 the former Missouri Pacific line.

8 The delays substantially increased
9 operating costs for Tex Mex, while significantly
10 delaying shipments. Worse yet, the delays have
11 prevented Tex Mex from providing shippers with
12 alternatives to congestion and delayed services. The
13 -- I'm going to stop there because I know I've run out
14 of time. But I believe if the Board will take time to
15 look at this, what I believe is a very modest
16 proposal.

17 We have reduced its size and scope from
18 what we said last year. We've tried to build on your
19 Order 1518 and if you look at what we're doing, they
20 are merely building blocks on what you've suggested.
21 The Port Terminal in Houston has been very successful
22 for many, many years. I'm told it has the most

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1 modern, up-to-date switching facilities and switching
2 engines in the country.

3 We have never received a complaint on that
4 switching system in Houston. And we're hopeful that
5 you'll take time to look at it and I appreciate you
6 listening.

7 CHAIRMAN MORGAN: Well first of all, we
8 have looked at it already. So I can assure you that
9 we have studied it. Let me just ask a couple of
10 questions?

11 MR. MATTHEW: Sure.

12 CHAIRMAN MORGAN: First of all, I presume
13 that the proposal that is before us from the
14 Commission is a unanimous proposal of the three
15 members -- you have three members that you're --

16 MR. MATTHEW: Yes ma'am, I have three
17 members. I had one person who had a little boy
18 operated on that morning, got there late, expressed to
19 Commissioner Rylander and I his support.

20 CHAIRMAN MORGAN: Now in your proposal you
21 essentially have a short proposal and a long term
22 proposal.

1 MR. MATTHEW: Yes ma'am.

2 CHAIRMAN MORGAN: And both of them involve
3 divestiture of some sort or another.

4 MR. MATTHEW: Right, exactly.

5 CHAIRMAN MORGAN: Now the short term
6 proposal that involves divestiture, some might say,
7 how does that really resolve the short term issue?
8 Divestiture obviously is a complicated type of
9 transaction revealing with a short term, presumably a
10 short term solution, looking for a short term solution
11 to the emergency. How do you see your short term
12 divestiture proposal fitting into that?

13 MR. MATTHEW: Well there's two questions
14 there. First we are trying to operate under the specs
15 that you operate under when we filed this report.
16 Secondly, my view on this is different. It is not a
17 short range problem. You know we've gotten control
18 back on the logistics a little bit. We believe that
19 you people eventually cleaned us up.

20 I mean for one thing, shippers are trying
21 to find other alternatives. Two, in January it
22 normally slows down. So we know that eventually it's

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1 going to be corrected. But what we're worrying about
2 is the long term implications to the Texas economy.
3 You know, I'm here telling you that I believe that
4 what we need to have is competition. It is a basic
5 personal philosophy.

6 And what we have here is a total monopoly.
7 When you look at the total control of the 11 rail
8 lines in Houston. You look at the total control of
9 the switching yards there. You realize that we've
10 seated, and this is what we said in March of last
11 year, we've seated too much power in an area that, you
12 know we're talking about an area that represents about
13 20 percent of the Texas economy, over 100 billion
14 dollars a year of a 500 billion dollar economy.

15 And you know these numbers of losses are
16 staggering. You know Texas feels a little bit, and
17 I'm giving you this not as my personal opinion but
18 things that were said to us in our hearings. You know
19 Texas, this was a little bit of an experiment. When
20 UP proposed this it was not the normal kind of merger.

21 The trackage rights, the massive amount of
22 trackage rights, we've had lots of discussion with

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1 Dick Relander about these trackage rights and whether
2 or not they would work or not. Texas feels like it's
3 kind of been a guinea pig. And we've tried an
4 experiment and it didn't work. There is not any doubt
5 that it didn't work.

6 I mean the numbers are there, the
7 congestion is there and we, you know, we plead with
8 you to please take a look at this and to put in place
9 something that will make sure this does not happen
10 again. There's just an awful lot at stake here.

11 CHAIRMAN MORGAN: Now taking obviously,
12 and I understand your view that really this is a long
13 term problem --

14 MR. MATTHEW: Yes ma'am.

15 CHAIRMAN MORGAN: -- that you want to
16 solve with a long term solution --

17 MR. MATTHEW: That's right.

18 CHAIRMAN MORGAN: -- of divestiture. But
19 some would characterize that proposal as intrusive and
20 perhaps --

21 MR. MATTHEW: I've heard UP, I've heard
22 only UP say that.

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1 CHAIRMAN MORGAN: Well, we had a witness
2 earlier --

3 MR. MATTHEW: I've said I've only heard
4 UP.

5 CHAIRMAN MORGAN: But it is intrusive and
6 that perhaps it creates more congestion problem
7 than --

8 MR. MATTHEW: I don't think, I don't think
9 that's right. Because the way this thing has been
10 designed, if you take time to look at the maps and you
11 obviously have, it in no way impairs UP's ability to
12 provide service to its customers. It does put them in
13 a competitive risk in those areas where they now have
14 captive shippers.

15 If they provide excellent service at a
16 good rate, they won't lose a single car load. But if
17 they provide service like they've provided in Texas in
18 the last six months, they are going to lose some
19 business. To me, that's the American way.

20 MR. OWEN: We've heard quite a bit of
21 testimony today and some of the written documents have
22 come in about the capacity of Houston and the lack of

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1 capacity. And so if there is a lack of capacity, even
2 if you transfer the ownership to someone else, you
3 still have a problem with capacity.

4 So would it not be better to try to find
5 some way to facilitate the building of putting
6 parallel tracks or doing something else --

7 MR. MATTHEW: Sir --

8 MR. OWEN: -- if Tex Mex is in the yards
9 there, evidently they are maxed right now? Is that
10 right?

11 MR. MATTHEW: Well I mean they're maxed
12 out because they can't the trains out of there. And
13 I will suggest to you, as I have tried to suggest in
14 my testimony, that if the Port Authority -- you know,
15 the Port Authority in their area has no problems. I
16 mean they are able to move their cars.

17 What we are asking for is an expansion of
18 the Port Terminal Railway Association's, the trackage
19 that they control. Now you understand how that's set
20 up? Burlington Northern Santa Fe is on that Board
21 along with UP. We're suggesting that you would add
22 Tex Mex to that and that you would add the Port. And

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1 those four folks would sit down and control that
2 neutral switch in that area.

3 The Port tells me that they are perfectly
4 capable of dealing with that. And the Port, in their
5 area, I mean the Houston Port is the Number One Port
6 in the United States. I mean it is a very popular
7 operation.

8 MR. OWEN: It is? I thought that Long
9 Beach and Los Angeles --

10 MR. MATTHEW: Well, according to Houston
11 Chamber of Commerce --

12 (Laughter.)

13 MR. MATTHEW: -- in Texas where I've run
14 for office. They, we believe that the Port Authority
15 is quite capable of dealing with that. They have had
16 a long history of dealing with it. They believe they
17 can deal with it, more importantly, regardless of what
18 I think. And we think it is a great fix and we think
19 it's a long term fix. And it's an easy fix. It's
20 building on -- it's not something radical, it's not
21 something that hasn't been tried.

22 I mean these neutral terminals, there's

1 three of them in the country that work very well. The
2 one in Houston, we think that works better than any
3 one, one St. Louis and one in Chicago. They are all,
4 it's a long term, I mean it's something that's been
5 around for decades. So we're just talking about
6 expanding that in an area where there's obviously a
7 lot of shipping going on. I mean it is a highly
8 intense area.

9 MR. OWEN: I have no other questions other
10 than if you'll permit me to read through it again. I
11 went through your testimony a couple of times and I
12 have to get the map out.

13 MR. MATTHEW: Well, I'll tell you the map
14 is really interesting. When you look at it and you
15 see that those two Burlington Northern lines don't
16 connect, you begin to understand some of the problems
17 that Burlington Northern is having in the Fort Worth
18 area and in some of the western parts of our state.
19 They are having great difficulty getting across there.

20 MR. OWEN: I appreciate the problem you
21 are having there and I understand it has been going on
22 for a while and I was hoping it would be alleviated by

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1 now.

2 MR. MATTHEW: Well the pressure on us at
3 the Railroad Commission is intense. I can tell you
4 the shippers are hot and they are expecting us to try
5 to help. And as you know, we have really no standing
6 here. You have been very kind to allow us to come and
7 talk and we're trying to represent the concerns of
8 those shippers and trying to amplify their concerns.

9 MR. OWEN: We've certainly heard you speak
10 today.

11 MR. MATTHEW: Yes sir.

12 MR. OWEN: Thank you very much.

13 CHAIRMAN MORGAN: We feel the pressure
14 too, on our end.

15 Mr. Koss.

16 MR. KOSS: Here. I have to excuse myself,
17 I have airplane throat. I am from San Francisco where
18 the Commission is headquartered. I'm here on behalf
19 of our Commission President, who testified before you
20 in October and also testified before you in a merger
21 proceeding last year. And California Governor Wilson
22 appointed the Public Utilities Commission as Agency to

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1 represent the state in the merge proceeding and
2 continue on in this proceeding as well.

3 One important point is that our Commission
4 still supports the merger. We don't think the merger
5 itself should be linked to the service problems that
6 Northwestern has had. Our five member Commission
7 appointed a two member Subcommittee to oversee this
8 whole process the service issues.

9 We, like everybody else that reviewed the
10 UP weekly updates, recognize the tremendous efforts
11 that the UP has taken upon so far. We also realize
12 they are doing everything measure they can think of to
13 ensure good service. However, California is still
14 lagging in service recovery. Not just per us and not
15 just per the shippers, but also per UP.

16 We held a hearing in Long Beach,
17 California on November 20th, I'd like to relate to you
18 some of the issues we learned in that hearing and
19 after that discuss some recommendations we came up
20 with after the hearing. During the hearing we heard
21 from the Board's agricultural groups, lumber groups,
22 labor and also had some discussions from UP about

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1 their computer system or electronic data transfer of
2 information.

3 All these issues led us to our conclusions
4 and recommendations. There were then reports that
5 could be termed anecdotal, but we also heard some
6 things that we think were systematic underlying
7 problems that exist today. I'll address those as we
8 complete this. As far as the Ports are concerned,
9 they differ, but Long Beach is the largest by far in
10 the United States.

11 (Laughter.)

12 CHAIRMAN MORGAN: You're sitting at
13 opposite sides of the table.

14 MR. KOSS: I believe Los Angeles, and Los
15 Angeles, I believe, is second place. So the two Ports
16 combined, which comprise San Pedro Bay are almost
17 double any other single Port.

18 MR. MATTHEW: Would you let us have third?

19 (Laughter.)

20 MR. KOSS: I believe Houston is third.
21 Houston is the largest in Texas.

22 MR. MATTHEW: Yeah.

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1 (Laughter.)

2 MR. KOSS: The Port complex has 30
3 shipping companies with 13 terminals. They testified
4 that this is the worst situation they've seen in 35
5 years as far as getting stuff out of the ports.
6 During the crunch time of September, 16 ships were
7 diverted to other places, mostly Oakland. They lost
8 turnaround time, they've lost capacity on steam ships.
9 The average capacity loss is about 20 percent
10 reduction per ship and that was due partly to labor
11 but also to terminal congestion.

12 They were close to losing a voyage, and
13 that means a whole round trip of the Pacific which is
14 usually a five week trip by one ship. They'd waste
15 about 14 million in revenue. So losing a voyage was
16 something of concern that didn't happen, but capacity
17 was down.

18 As of November 20th, I wanted to read you
19 a short portion of the testimony from our hearing from
20 the Terminal Manager of the Long Beach Container
21 Terminal. As of November 20th, he was saying, that we
22 still plan to take three to four more ships north to

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1 Oakland in the near future.

2 If we, at this moment, were to turn those
3 ships back into Los Angeles, re-divert them to LA,
4 that amount of cargo through the San Pedro Port, we
5 would almost instantly bury ourselves and the
6 railroads because, as far as we can see, they are
7 getting back to where they can handle the normal
8 volume of traffic in the sight of digging themselves
9 out. But there is still such a back log of cargo that
10 we could bury them like that again.

11 So it's a very fragile balance now at the
12 Port. And I was listening to what the Railroads said
13 earlier, it has most likely gotten better since
14 November 20th, but there is still containers there and
15 there's still shipments both eastbound and westbound
16 that aren't going to the Ports.

17 We heard from the lumber industry. I
18 think that industry, those people who testified were
19 the most upset. They said it was bad six months ago
20 and it's getting worse. One Lumber Association had 50
21 complaints from members about service. And they're
22 saying shipments from Oregon and southern California

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1 are now six to eight weeks a trip that is normally one
2 week.

3 Cars delivered from the midwest back to
4 California used to be one week, it is now eight weeks.
5 It's impacting construction costs, jobs and the whole
6 economy of southern California. They also testified
7 that there is a real problem with customer relations.
8 And I think anytime you have a crisis is when your
9 customer relations function is tested. A lot of
10 explanations came back as, well, it was just a bad
11 load, no return calls and it gets to be a lot of
12 excuses.

13 UP stated and we certainly recognize that
14 a lot of their people work very, very hard when it's
15 crunch time and some of these folks were working 12
16 hours a day. But your customer relations function is
17 tested during a crisis. In fact the lumber industry
18 now calls the West Colten Yard the black hole, for
19 obvious reasons.

20 One other entity in the lumber business
21 was the North Post Railroad which is a publicly-owned
22 300 mile short line from Eureka down to the San

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1 Francisco Bay area and their primary commodity is
2 lumber. They are having a hard time moving lumber
3 because of a car supply shortage.

4 In the agriculture area, we heard from a
5 fertilizer group and a couple of other folks. As you
6 know, California is the largest fruit producer in the
7 country, it's a 24 billion dollar a year industry in
8 the state. So a lot of the good are transportation
9 intensive and they are also time-sensitive. They're
10 feeling was that the merger resulted in inferior
11 service to agriculture. This is what I'm reporting
12 from the testimony.

13 Delivery times have doubled and
14 transportation costs tripled. However, they still
15 think the UP plan is working, but it is a little late.
16 To give an example, production of phosphate and potash
17 was cut 50 percent in some cases. That creates job
18 losses and layoffs and production cuts. California
19 isn't so much looking at shipping goods out but also
20 shipping in, particularly animal feed and fertilizer
21 products.

22 In fact, the California Legislature, 120

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1 members, have all been concerned about the service
2 issue. The Agriculture Committee Chairman Cardoza
3 held his own hearing on the matter. Transportation
4 Committee Chair Murray will hold his own hearings on
5 December 12th, in Long Beach. Some others have been
6 interested and asked for briefings from us and
7 briefings from their constituents.

8 California has 52 members in Congress and
9 14 of them are from LA County. These folks are all
10 interested in this issue. The Ports of Long Beach and
11 LA are both in LA County. We looked a lot though at
12 systemic issues. These were anecdotal and I think I
13 can share with you. Three of these systemic issues
14 were labor, geographic problem areas and computer
15 integration.

16 As far as labor, right now UP and SP crews
17 are still working separately. There are no labor
18 agreements in California. The work force is not
19 integrated. The bulk of the work force is still under
20 SP contract and SP territory and they don't
21 intermingle. UP is not interchanged with SP work
22 crews. In some cases you have equipment without

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1 workers or staff in place to do it and other times it
2 is the opposite, but they can't intermingle because of
3 lack of labor agreement.

4 UP told us to expect that to happen in the
5 first part of '98, but there is not guarantees right
6 now. Nationwide agreements have been negotiated in
7 seriatim, meaning one after the other. The ones in
8 the east have been done or been working on and
9 California seems to be last, because ours isn't
10 expected to be done until, as I said, the end of the
11 first quarter.

12 In the old days of SP, as well, they
13 delayed hiring. I know when UP testified in our
14 hearings they talked about hiring delays the SP
15 experienced which also caused the current labor
16 shortages as well. As far as geographic problem
17 areas, the two big areas are the Harbor and the West
18 Colten Yard. They are only about 70 rail miles apart,
19 so they are linked.

20 Most of the Harbor traffic that leaves the
21 state goes out through West Colten Yard, at least on
22 UP. So they are obviously linked and they are the two

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1 big problem areas of the state. And the northern part
2 of the state hasn't experienced as much serious
3 problems as those two areas.

4 The last systemic area we think is the
5 computer system. Like labor, there's two different
6 systems. They are not integrated today. The UP told
7 us they expect them to be integrated sometime around
8 March 1st. To their testimony it says the huge
9 problem, cars are shuffled throughout the system, some
10 drop off the system.

11 In West Colten as of November 20th, there
12 were 3,100 cars and there are supposed to be 1,800
13 normal. The UP Representative testified that 25 cars
14 are continually looping between West Colten and Yermo,
15 which is near Barstow. It is the inability of these
16 two systems to recognize a particular car and tell it
17 where to go when it goes to its system.

18 We did learn the integration in the Gulf
19 Coast system was accelerated and apparently then now,
20 December 1st was the cutoff date. But again,
21 California still waits. And I'm last on the list too,
22 of speakers. As far as the recommendations, we looked

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1 at four different areas. One is computer systems, two
2 the labor agreements, three is customer relations,
3 four is personnel and equipment to run the railroad.

4 It's true that this problem won't go away
5 soon and at least until the end of the first quarter.
6 So we're still looking at a couple of months. The
7 people testified in the area on grain, the grain can't
8 wait three or four months to be moved. Something
9 probably needs to be done earlier than that, but it
10 looks like the general problem, if it goes away at
11 all, won't go away until the end of the first quarter.

12 So our recommendations, we have four of
13 them. The first is that STB should continue its
14 oversight, but with some teeth. And that would be to
15 set performance goals, set milestones to reach those
16 goals. Include such things as labor agreements,
17 computer integration and hiring and training of
18 employees and delivery of new locomotives.

19 If no compliance to these milestones and
20 performance goals, then the STB should consider posing
21 some sanctions. The second recommendation is that we
22 believe more California data should be included in the

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1 weekly updates. Things like the number of cars at
2 West Colten, the system velocity and number of
3 stranded trains. The number of cars in the LA Basin,
4 the number of cars requested and furnished to the
5 North Coast Railroad, which is the publicly-owned
6 short line in the northwest corner of the state.

7 And lastly, the number of containers at
8 the major Ports, particularly LA and Long Beach. The
9 third recommendation, and this is probably I think to
10 me the most systemic one -- I'm almost finished -- is
11 a management audit. We believe that the Union Pacific
12 should submit to an independent management audit by an
13 independent auditing firm to look at things like long
14 term planning.

15 Looking at demand and needs,
16 organizational culture, this is an important one. The
17 organizational culture reflects in such things as
18 customer service, employee relations and labor
19 agreements. If the culture of the organization isn't
20 sound, customer service isn't going to be sound. And
21 it would also look at things like the computer system,
22 car supply and the ability to provide a safe and

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1 reliable system.

2 Our last recommendation, it relates to
3 open access. We are not recommending that now, we are
4 just saying that the STB should consider the open
5 access or further open access for an interim period if
6 the situation does not improve in the short term. Our
7 short term would be year end, you may think it should
8 be longer than that.

9 But we realize open access involves things
10 like safety and planning and it can't happen
11 overnight, but this issue is in fact a long term issue
12 that we are asking you to consider more open access.
13 Now though, with the progress that UP is making, this
14 problem might solve itself. We do believe, though,
15 that the management audit should be done regardless of
16 any other recommendation.

17 Overall this is a serious problem, it's
18 still a serious problem. UP is making tremendous
19 effort. It is starting to work, but California is
20 being short changed, particularly at the Ports and at
21 West Colten. The merger is not the problem. We do
22 think, though, that this won't fix itself unless

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1 everybody, not just the railroad, but everybody
2 cooperates and works together. Thank you.

3 CHAIRMAN MORGAN: Thank you. What I hear
4 from your testimony is that you see improvement out
5 there. It's not, definitely not enough. And that
6 possibly by the end of the first quarter of next year,
7 things might be coming together. Is that a fair
8 assumption of what you've said?

9 MR. KOSS: Pretty much. And the two
10 issues of the integrated computer system and the
11 integrated or finished labor agreement are very key.
12 And both of those now seem to have a finish date,
13 hopefully in March or so of next year. Will those
14 things fix the situation overnight? No, but it will
15 go a long way toward getting there.

16 CHAIRMAN MORGAN: And are you suggesting
17 that we extend the service order in some way, that we
18 have in place?

19 MR. KOSS: The current service order
20 primarily is in the state of Texas. It generally has,
21 we really have no comment on whether or not it fixed
22 things in Texas or not. We realize that the track

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1 reaches from Houston all the way to the Port of LA and
2 Long Beach. We've been impacted and we haven't seen
3 anything -- but what we are suggesting we do though,
4 is to consider your oversight asking for the weekly
5 reports and scan the weekly reports and don't just
6 dismiss the thing, you know,

7 CHAIRMAN MORGAN: Stay on it?

8 MR. KOSS: Stay on it.

9 MR. OWEN: I was interested in your report
10 and talking to your Chairman out there, I was grateful
11 that he had the hearing that he did and you learned an
12 awful lot in that particular hearing. One point, when
13 you mentioned California occasionally it would be nice
14 to toss in for those people from Texas that one out of
15 every nine people in the nation live in California.

16 (Laughter.)

17 CHAIRMAN MORGAN: How about Texas? You've
18 got a give Texas --

19 MR. OWEN: So I should get a little
20 priority.

21 MR. MATTHEW: The highways are congested
22 coming from --

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1 (Laughter.)

2 MR. KOSS: I was going to say it was the
3 most popular state, but I didn't say that. But it is
4 the largest business industry, 24 billion dollar a
5 year industry.

6 MR. OWEN: I know that. I was just
7 wondering how that was shaping up. I didn't hear you
8 touch upon that too much. I know you just touched --

9 MR. KOSS: One of the agricultural
10 concerns were goods moving into the state from the
11 east, fertilizers and animal feeds, because there is
12 a lot of poultry and meat industries in the state. As
13 far as moving goods out of the state, there hasn't
14 been than much heat that we've heard. Some of the
15 goods stay, some go directly to Ports, mostly by
16 truck.

17 Most of the rail shipments that involve
18 California go into or out of the state, mostly to the
19 east and right now most of the problem areas, problems
20 we've heard about are in the two ports, which is to
21 and from the port. We recognize the merger too is a
22 long term thing, particularly with the infrastructure

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1 improvements. We are watching UP right now build a
2 huge yard near Roseville and they are planning to
3 extend the Colten Yard.

4 I think they are going to double track the
5 Colten line out to Yuma. They are going to improve
6 the line -- which are big infrastructure projects that
7 don't happen overnight. But they're not there yet.

8 CHAIRMAN MORGAN: I sense you would expect
9 those project to help --

10 MR. KOSS: Certainly.

11 CHAIRMAN MORGAN: -- prevent the kind of
12 situation we see.

13 MR. OWEN: The Union Representative just
14 walked back in the room. We might ask him the
15 question, Leroy, when do you think the implementing
16 agreement will finalized for California? The
17 California PUC is --

18 MR. JONES: Do you want me to come up?

19 CHAIRMAN MORGAN: Yes, please come up.

20 MR. OWEN: That's just -- sorry about
21 that.

22 CHAIRMAN MORGAN: Broken rail, would you

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1 put your coat on so you can -- no.

2 (Laughter.)

3 MR. JONES: Where do you want me to talk?

4 CHAIRMAN MORGAN: That's fine.

5 MR. OWEN: The California Public Utility
6 Commission was just wondering when the labor
7 agreements would be finalized for California?

8 MR. JONES: Well, I just told Dick
9 Relander, I was in a while yesterday and this is one
10 of the issues that we talked about is that West Colten
11 is a big problem. And that the labor relations was
12 contacting our General Chairman and the Vice General
13 Chairman which happens to be out of West Colten,
14 yesterday afternoon to immediately sit down and see
15 what they can start working out right now.

16 I don't know how long it will take, but
17 the UP has taken initiative to make that call
18 yesterday.

19 MR. OWEN: Thank you.

20 CHAIRMAN MORGAN: Thank you all very much.
21 Our last speaker will be Mr. Relander for some clean
22 up.

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1 MR. RELAUUNDER: Well Madame Chairman, once
2 again I'm going to help you achieve your pledge to
3 come in well under the 12 hours.

4 CHAIRMAN MORGAN: We're doing pretty well.

5 MR. RELAUUNDER: And I think I said I only
6 needed five minutes maybe to wrap up and I can
7 probably do it in less than that, depending on the
8 questions that you and the Vice Chairman might like to
9 ask. First off, I don't want to leave the impression
10 that we're finger pointing or being argumentative
11 about "who shot John" here.

12 We are not trying to be defensive.
13 There's enough problems on our side to last us
14 forever. And I must tell you though that sometimes
15 you feel like you are in the siege of London and when
16 somebody does accuse you inappropriately, it is easy
17 to stand back. So if I came across as defensive this
18 morning, I apologize for that. I would further tell
19 you that we have done our utmost to work with the
20 other railroads to get on top of the situation as
21 rapidly as we could.

22 We heeded what you said when we were hear

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1 on October the 27th. And early November we convened
2 an all day meeting in Omaha comprised of the senior
3 operating forces of the railroad and our marketing
4 people and put everything out on the table once again
5 and said, where could we reach out and ask for help of
6 all the railroads in the country, big, small or
7 whatever?

8 And out of that came a series of letters
9 between Brad and his counterparts on the railroads, I
10 think comprising some 20 in number, if I remember
11 right, suggesting where help could be beneficial for
12 us. And some good things came out of that and some
13 things that we would have liked to happen didn't
14 happen, but I don't think it was vindictiveness on
15 anybody's part.

16 I think the transportation system in the
17 western part of the United States is strained and
18 people helped to the extent they could. And for that,
19 we're thankful and glad. We will continue to look at
20 opportunities out there. And if some thing does appear
21 as those it would be helpful, I would assure you we
22 will avail ourselves of it. The next point I'd like

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1 to make hear is to discuss just a little bit the idea
2 of joint control or joint dispatching.

3 With all due respect, you cannot dispatch
4 trains by committee. You can't vote on it and see is
5 it going to be three to two that we run Tex Mex or two
6 to one we run BNSF or should we not run UP today.
7 Somebody has to be in charge. And what we've tried to
8 do is account for expeditious handling of freight
9 trains by dispatching conventions that we've agreed to
10 would be in Santa Fe.

11 In fact, we went to the extent of agreeing
12 to have a BN Santa Fe employee in our dispatching
13 office in Omaha. We have an employee in every
14 dispatching office in Fort Worth and additionally, the
15 new dispatching center, and I don't think I got into
16 this sufficiently this morning, but we've set up to
17 control the Houston area because it's so big and
18 complex. We've invited the BN Santa Fe to spend as
19 much time there as they would like and keep an
20 employee there if they would like.

21 And Mr. Buck Porter, who you met here on
22 October 28th, has in deed spent time there and I think

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1 it's been educational for everybody. And when I said
2 that we have had this preliminary discussion with
3 Ralph Krebs about some sort of a joint operation, it
4 might be on this control center and we would look at
5 all rail line entering Houston, that's kind of a
6 circle around Houston where it would have been BN
7 Santa Fe rail lines or UP rail lines, everybody's rail
8 lines.

9 So there could be potential for better
10 coordination and better oversight. But that's still
11 very preliminary and we're looking. We have the
12 potential, at least, to pursue that perhaps. We also
13 have --

14 MR. OWEN: If I can interrupt for one
15 point. I think what I feared was you don't put an
16 under-powered train out in front of two other trains
17 that are coming along and all of a sudden you have an
18 under-powered train out there blocking traffic for a
19 couple of others. That was the only reason that I
20 thought that maybe, some way just to keep everybody
21 honest and from time to time we might get the diamond.

22 What I was talking about out there at West

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1 Colten Yard where it is controlled by somebody else,
2 will they hold up your train when it could easily have
3 gone on through and holding it up because their's is
4 an hour or an hour and a half away. I think that's
5 the type of thing that --

6 MR. RELAUENDER: Vice Chairman Owen, I
7 would submit to you that that rarely ever happens. I
8 wouldn't say never, we might get an older, yellow
9 dispatcher sometimes that would make a bad decision,
10 but I think it is infrequent and I think with the
11 balance of operations between Union Pacific and BN
12 Santa Fe will be operating over each other so much you
13 almost have to treat their trains like yours to get
14 the maximum fluidity out of the railroad and to handle
15 your operations efficiently.

16 MR. OWEN: I agree it probably never
17 happens, but the problem is an awful lot of employees
18 out on the rail line tell me that it happens.

19 MR. RELAUENDER: They think it happens, I
20 know.

21 MR. OWEN: No, I know, maybe they're
22 thinking --

1 MR. RELAUUNDER: If a UP train never has to
2 take the siding for a BN Santa Fe train, clearly our
3 employees think they are being discriminated against.
4 But we do have this matching convention that the
5 parties have agreed to and we do have management
6 people from BN Santa Fe in our office and vice versa
7 in Fort Worth. And we will be extending
8 communications which the top guy down there have
9 availed himself on one occasion and we think that will
10 help a lot.

11 I'd like to touch on the directional
12 running south of Houston. It sounded from the lack of
13 the conversation today that you are going to be able
14 to work that out after the comments of Larry Fields,
15 and we're thankful for that. The only non-directional
16 move in the Pacific we make under that convention
17 would be to serve our local customers along the line.
18 Otherwise everything else will run directionally as
19 well.

20 We would also certainly be willing to
21 extend the BN Santa Fe access from Caldwell to
22 Franconia. There will need to be some additional

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1 facilities built for interchange of the cars in the
2 Franconia area and that will be something that we will
3 work out with BN Santa Fe under the work facility
4 arrangement.

5 I would say though that the proposals of
6 BN Santa Fe to serve the Port customers they
7 enumerated there and also the proposals of the --would
8 be counterproductive and would result in congestion
9 that would be unwanted and would make things worse
10 instead of better. The same thing would hold true in
11 Brownsville, where the BRGI is asked to go directly
12 into the TFM facility to interchange cars.

13 TFM is now blocking, as I understand it,
14 for the BRGI and we're handling those interchange
15 movements directly to them. If they were to try to
16 make an interchange move on their own, once again it
17 would just add additional congestion that we don't
18 need at this point in time. However, the proposal
19 about working something out with BNSF about using an
20 alternate track or BNSF maybe using the former SP and
21 Union Pacific, we are certainly willing to discuss
22 that issue and see if we can work out something there

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1 that would be a benefit to either party.

2 So you need to fold that open and look and
3 see that. Unless you have other questions, that would
4 conclude our comments here and otherwise we would be
5 glad to answer any questions you might have.

6 CHAIRMAN MORGAN: Do you have any further
7 questions?

8 MR. OWEN: No.

9 CHAIRMAN MORGAN: Well, I don't have any
10 further questions either. Let me just close by saying
11 that, first of all, I hope Mr. Martinez is enjoying
12 his long day in Washington. Every time we come to
13 Washington I always worry about what they walk away
14 with. But I'm glad to have had you here all day and
15 I also, as I've said before and I'll say it again
16 because I think it's important to keep repeating, that
17 we have all been dealing with a difficult situation.
18 The Board has, the railroad has, the employees of the
19 railroad has, the shippers have, the local communities
20 have.

21 And I think you all have remained
22 committed to getting the situation under control. The

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1 employees have admitted to doing that. And you know
2 the Board remains committed to doing that. And I know
3 all the other sectors of the transportation community
4 also are committed to doing that. And I want to thank
5 you all for that continued commitment.

6 I want to thank all of the participants
7 who are left in the room. I think we've gathered
8 again a good deal of information about rail service
9 situation in the west and I think we've even tackled
10 a few interesting tough issues with some of the
11 witnesses. Also, I want to thank all the Board staff.
12 And I won't go into all of them because I thanked them
13 before and they're all around and they are constantly
14 working.

15 The Vice Chairman and I couldn't be
16 without them, so thank you all very much. And then
17 lastly, as you know, the Board Order, Service Order,
18 expires midnight tomorrow. So you all will hear from
19 the Board one way or the other in accordance with that
20 deadline. With that, the hearing is adjourned.

21 (Whereupon, the Hearing in the foregoing
22 matter went off the record at 5:15 p.m.)

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