STB Chairman Martin J. Oberman
NARS speech
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Good afternoon. As always, I'm honored to be asked to be part of the program at NARS and to share with you my views of the state of affairs in our industry.

As I started to prepare my remarks for today and looked at my last speech to NARS and other talks I gave recently, I realized that in those speeches I violated my dear Mother's rule that if you couldn't say something nice about a person, don't say anything at all.

And based on much of what has happened during the past year, I had an urge to stand up here today and mend my ways by following that rule and just say "thanks for having me and goodbye." But on further thought, there are some significant positive developments in the rail industry—by sharp contrast to where we were a year ago—which the imperative requires me to not only acknowledge but to applaud. And if you will bear with me for a few minutes, I will get to the positive shortly.

But first, while time does not permit me to cover all of the issues on the Board's agenda, I want to discuss what, in my view, is of uppermost concern to the Board: the dramatic service problems which prevailed during 2022 and which dominate much of the STB's work.

You may remember that rail service by the four U.S. Class Is—UP, BNSF, CSX, and NS—had so deteriorated in the several preceding years—even before the onset of the pandemic—that the Board initiated urgent hearings into the crisis a year ago in April. Not to recap everything we learned at those hearings but suffice it to say that every stakeholder–not just shippers and rail labor but the Class I executives who testified in person as well—attributed the service meltdowns to a significant shortage of crews. And of course, that crew shortage was entirely self-inflicted by the Class Is' choices to slash their work force by approximately 30% over the previous 6-8 years.

As a result of those April hearings, the Board ordered the four Class Is to submit detailed service recovery plans with targets for their improvement at six-month and one-year intervals. To be clear, those targets were never to be the end game but were only to be interim goals achievable in the short term.

Because circumstances were so dire, waiting to measure progress for six months was not advisable. So, the Board also instituted unprecedented reporting requirements for these four railroads, mandating weekly reports of detailed service performance metrics and monthly reports on hiring progress.

Before discussing the current status of that reporting, it's important to note other major service crisis events which faced the country last year. A key example was the predicament of Foster

Farms, one of the major poultry producers supplying the western half of the country. Foster Farms was forced—not once but twice—to bring an emergency service case against UP for failure to deliver desperately needed feed trains from the Midwest in order to avoid euthanizing one million chickens per day. And the Board ordered the requested service, the first in May and the second in December—the first such orders in more than ten years.

Then we learned that BNSF had determined to embargo a vast portion of its southern Trans Con to cope with its inability to remove congestion from its network, an embargo initially supposed to last only six weeks but eventually extending for most of the summer.

At the same time, UP was instituting a massive number of its own so-called "congestion embargoes"—more than 1100 during the year—more than 10 times as many as any other railroad—as part of what UP had decided would be a regular facet of its ongoing operating plans. An approach, in my view, of questionable legality as a potential violation of the fundamentals of the common carrier obligation. And that concern caused the Board to conduct two days of hearings last December for the sole reason of requiring UP's top management to appear and enable the Board to get to the underlying causes of the embargos.

On further exploration, there is no doubt that the UP embargoes, and to some meaningful extent the BNSF southern Trans Con embargo, were directly caused by crew shortages—again, the consequences of the disastrous employee policies of previous years.

So what does all the new reporting tell us about how robust the railroads are currently? And did the STB's efforts have any impact on the service crisis?

Let's put this in perspective. From the high point of their employment in the years leading up to the pandemic, the four large U.S. Class Is employed a total of 141,354. At present, the number is 107,501, a drop of nearly 34,000 employees, or 25%.

In the year leading up to our April 2022 hearings, the railroads continued to shed their workforce, with employment levels decreasing in six of the previous 12 months and an over-all employment loss during the prior year of 500 positions, on top of the thousands of previous reductions.

By contrast, in the year since our hearings, there has been some progress. Across all Class Is, the total number of employees stopped going down and went up but only by a total of just under 6,000. That's progress but it still leaves us 34,000 fewer than the highest-level pre-pandemic. But at least the trend—for at least some of the railroads—is moving in the right direction.

And earlier this year, shortly after the Board's December hearings on the UP embargoes, UP announced that it is reversing course and has greatly reduced the number and rate of instituting embargoes with a goal of phasing them out entirely. Another positive move.

But let's drill down for a moment on the data we are now seeing. On the crucial category of T&E, train and engine employees, the people who actually drive the trains and are at the heart of providing service:

In the year since our hearings, the four U.S. Class Is have added a total of only 1,439 T&E employees in active service. That is on top of a base of 41,000, an increase of about 3.5%. Breaking that down among the carriers, CSX and NS have actually done much better, increasing their active T&E work forces by 607 and 662, respectively, or 9% and 9.5%.

Unfortunately, the western railroads which are twice the size of CSX and NS, have barely moved the needle. Despite the fact that at the April hearings, BNSF and UP executives in unison with virtually every other witness, agreed that the serious service problems—crisis levels for many—were caused by crew shortages, in the last year, Union Pacific has managed to add only 142 actively working T&E employees—an increase of only 1**%.** And BNSF managed to eke out a third-place finish just ahead of UP by adding 287 T&E employees, or an increase of 2%. This leaves no mystery as to why service by UP and BNSF continues to cause major problems for its customers. And yet, while I should not really be surprised based on past conduct, I am, in fact, astounded that, despite all of the difficulties the Board has dealt with in terms of UP's performance, UP announced at its last earnings call only a month ago that it is seriously considering reducing its hiring plans. When will the lessons of the last few years be learned?

By focusing on the shortage of T&E workers, I don't mean to overlook the problems caused by shortages in all other categories. Shippers regularly complain to the Board that they often cannot find a salesperson or customer representative when they need more or better service. And we have all heard about the shortage of carmen to perform safety inspections in yards. And now because it had a severe shortage of mechanics to keep its locomotives in working order, BNSF decided to contract out locomotive maintenance work—landing it in a lawsuit with its unionized mechanics. And to date, BNSF has still not hired more mechanics to cure the shortage.

I hear repeatedly from rail executives that they're having a difficult time hiring workers because it's a very tight labor market and rail life involves difficult working hours, time away from home and the need to be on call at unexpected times. This is nonsense.

Check the airline industry which also made the shortsighted move of laying off thousands of workers when the pandemic hit. Similar to rail workers, airline workers have odd hours and time away from home and being on call when needed. Yet, since late 2020, the airlines have hired more than 117,000 workers and in just the last year, have a net gain in employment of 46,000. 46,000 in the last year is nearly 800% more additional workers than the railroads have been able to find.

Even accepting that airline work may be somewhat more desirable than railroad work—and that's just an assumption—the idea that there is a shortage of workers for rail, in my view, is made up. If the price was right, railroads could find more workers. So the rail employment situation remains seriously problematic.

As a result, three weeks ago the Board renewed the reporting requirements for the four U.S. railroads for another six months. Although recognizing the improvements achieved by CSX, the Board relieved CSX from some of those mandates.

Why all this continuing focus on rail employment? Because as we all know–and as the railroads remind us—and as I have reminded the railroads—nearly 40% of the US economy depends on a robust rail network. We cannot have a thriving economy and we cannot compete effectively in the world market unless the railroads live up to their responsibility to provide—as the Congress has defined it–service on reasonable request.

But not only recently, and for too many years, the railroads are failing the U.S., our citizens, and our businesses. Just 10 days ago, Bill Stephens in Trains magazine documented the failure of the four U.S. railroads to handle their share of economic growth. I could not say it better than he did. Bill points out that in the last ten years while overall economic output grew 57%, tonnage moved on trucks grew by 26%, while the four U.S. railroads grew their tonnage by only 2%. These numbers should be an embarrassment to the entire industry.

There are at least 3 reasons why the Class I railroads need to grow their businesses:

First, in an industry dominated by monopolies and duopolies, the railroads need to increase capacity just to compete with other railroads for the level of freight that exists today in order to provide their customers with competitive options.

Second, the railroads are uniquely situated to remediate global warming by removing truck traffic from the highways. We know that for every 1% of freight lost by the railroads to trucks, an extra 5 million tons of CO_2 is dumped into the atmosphere. If railroads had just managed to keep the same share of the market they had in 2002, there would be nearly one million fewer trucks on the highways each year in just the lost growth. That means an extra 8.2 million tons of CO_2 pumped into the atmosphere annually because the railroads chose not to maintain their market share as compared to trucks.

But it could not be more clear—mostly by their own admissions—that the railroads cannot attract freight from trucks unless they provide reliable service—which they cannot do without adding more workers to move trains, fix trains, keep trains safe, and provide customer service.

And third and of great importance—<u>as an industry which Congress has regulated in order to protect the public interest</u>—the railroads need to grow their capacities so that the economy can grow at an optimum pace.

Last fall at Rail Trends, I documented the overall loss to our gross national product by inadequate rail service over the years. I will not repeat that analysis today, but a few recent examples brought to the Board's attention will suffice to demonstrate the negative effect that poor railroad service and capacity is having on our economy.

First, three weeks ago, the entire STB and several senior staff members spent two days touring the four soda ash mines in the Green River region of Wyoming. Soda ash is an essential component for major segments of American industry—the manufacture of all glass products, detergents, and most importantly now, lithium batteries. And I might add, bicarbonate of soda—which given the difficulties I have to deal with in the industry, I have been taking in increasing amounts.

Currently these four mines annually generate 11 million tons of soda ash—about 110,000 carloads. And are solely served by UP. But for many months UP has been providing unreliable and inadequate service. During the first quarter of this year, UP's service was so poor that it prevented these mines from shipping 200,000 tons of soda ash—about 8% of the quarterly production—causing an industry loss of profits of $20 million in just that quarter.

But this loss did not affect only the mines. The lost shipments also hamper other major industries—particularly glass producers—in their manufacturing output. More importantly, because of the mushrooming world market demand for soda ash, these mines are committed to investing billions of dollars in expanding their mining operations, which they expect to increase by 60-65% over the next five years. That's an additional 65,000 carloads for UP to haul to market.

The mine owners asked the Board to visit so that we could see firsthand their need for improved rail service and to impress upon us that they have not been able to obtain from UP a concrete plan to increase rail capacity to handle the huge growth. Only after I personally intervened in the last few days with UP has UP even been willing to provide a written description of its plans for the line which moves the Green River soda ash to market. But that response was labeled confidential and sent only to me—not the mine operators who are the ones who need the information. And unfortunately, while referring to UP's capacity strategy, UP's letter was silent as to whether that strategy will enable it to actually move all of the additional 65,000 rail cars each year from the mines.

While the mines told us they are committed to increasing their output, they are pushed to the edge of ordinary corporate planning by being unable to get specific and measurable assurances from their essential partner—UP—that they will be able to transport their increased output to their customers, thus accommodating a huge potential increase to the nation's economy.

What kind of business needs a government official to lean on it in order to connect with its own customers to increase its own sales and make more money? Apparently, only a railroad.

Even more disturbing is what is happening in the automobile industry. In recent months under investment in equipment and labor by BNSF has resulted in a severe shortage of the railroads' ability to move railcars to major auto manufacturers—auto racks in particular—to take finished vehicles to market.

As a direct result, there are at least seventy thousand new vehicles stranded across the industry, unable to move to dealers to be sold.

- Because they can't move these already finished vehicles, auto manufacturers have already reduced production schedules by at least 50,000 vehicles.

- These failures of rail service have hit the automotive industry especially hard at a time when they are recovering from the global pandemic and the related supply shortages.

- The trickle-down effect of this reduced production on suppliers and employees is significant. The direct impact to U.S.-based suppliers exceeds $350,000,000. If the direct impact is $350,000,000 to these suppliers, then given the typical multiplier of 11 to 1, the impact on the U.S. economy could easily exceed $3.75 billion.

These are just two examples of how the short-sighted strategies of the Class Is over recent years are hurting not only their own customers, but every U.S. citizen by depressing the nation's economy.

There are many others, too many to recount here. I will say only that I have yet to meet a shipper who tells me, "Don't send me any more, railroads. I'm selling all that I can sell."

So are there any positive signs? The answer is yes, at least in some circles. Several of the new Class I CEOs are taking meaningful steps to turn their railroads toward better service and growth. Some examples:

At CSX, from the depths of the service crisis a year ago, Joe Hinrichs has brought his railroad to the best current service performance of the four US Class Is. He has added meaningful numbers of employees and has been a leader in establishing a positive relationship with CSX's workforce—particularly, so far in entering into paid sick leave agreements with the rail unions, a crucial move since the failure of the railroads to provide such benefits nearly led to a nationwide rail shutdown last year. And I'm confident that an improved relationship with his employees has contributed to the railroads ability to finally begin to improve service.

Likewise, Alan Shaw at NS has taken positive steps by announcing that NS will not furlough workers even if the long-predicted recession reduces rail traffic—a stark turnaround from prior Class I behavior.

And NS too has been a leader in the move to provide its workers with paid sick leave, an important beginning in the effort to improve quality of life for rail workers and to attract the new employees so desperately needed. Perhaps this is why, in contrast to the western railroads, NS has seen a 9% increase in T&E levels in the last year.

And Tracy Robinson has likewise disavowed employment reductions when business slows down and is taking important steps at CN of working with shorter trains which appears to be improving service and on time performance.

And just yesterday, UP announced a new scheduling agreement reached with BLET.

In sum, where are we now? While there has been some positive movement as I've outlined, the rail industry still has 34,000 fewer workers than it had just a few years ago when the volume of rail service was roughly equal to what it is today.

I have never suggested that the railroads should hire another 34,000 workers; but at the same time, the current hiring targets are only interim and, as UP has announced, are not even firm. Knowing how long it takes railroads to hire and train new engineers and conductors and other highly skilled workers, those targets were set to determine what could be accomplished in six months.

And most of those targets have not been met. Because we cannot have a truly successful economy without a robust and fully adequate freight rail network, the real goal must be for the railroads to obtain and, most importantly, maintain through good times and bad a sufficient workforce to meet not only current needs but the growth that is out there and ready to be developed but for inadequate transportation.

If the railroad industry has learned nothing else from the past three years, it is that railroad employee levels must be set for the long term. They cannot be allowed to fluctuate up and down whenever there is a temporary downturn in the economy or a spate of severe weather patterns. Now is the time to continue the urgent need for the railroads to staff up and not, as some are doing, slack off.

Recognizing the meaningful change of corporate strategy instigated by the new CEOs at CSX, NS, and CN, and the ambitious goals exhibited by CPKC both before and after the merger, I ask whether the American public should be required to depend on a freight rail industry which only does its duty to meet the public interest depending on the personality of who happens to be in the C-suite at any given moment. Or does the evidence of recent years call out for structural change in the laws regulating the rail industry?

And that, my friends, is the news from Lake Wobegon, where all the railroads are still below average.