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SURFACE TRANSPORTATION BOARD

HEARING ON RECIPROCAL SWITCHING

Docket No. EP 711 (Sub-No. 1)

PUBLIC HEARING

Wednesday, March 16, 2022 -- Day Two

9:30 a.m.

Via Zoom

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

P R O C E E D I N G S

CHAIRMAN OBERMAN: Good morning, everyone. And welcome back to the continuation of our hearings on EP 711 Sub 1. I'm just going to, for the sake of folks who may not have been on yesterday, just repeat the sort of initial instructions and we will get started.

Everyone please silence your cell phones, turn off your cameras and mute yourselves in Zoom. When your panel is up, please turn your camera on and keep it on for the duration of the panel.

When you're presenting, a timer will appear counting down your allotted time. When that timer reaches zero, your time will have expired and we ask you to conclude your remarks.

If the board members have questions while you're presenting, be aware they may ask those questions before your presentation is over.

Panelists, you have access to the chat function in Zoom, but please only use this for technical questions. If you become disconnected from the hearing and are not able to reconnect on

Zoom, there is a phone number you may use to call in included in the hearing information you were provided.

If you do need to call in via phone, please e-mail us at hearings@stb.gov with the phone number you're calling from so we can identify you and let you speak when it's your turn.

You can also refer to the frequently asked questions on the Board's website for any further troubleshooting or contact information.

The hearing is also being streamed on YouTube and the link is available on the Board's website. The transcript of the entire hearing will be placed on the Board's website after the close of the hearing, and a recording will be available as well.

For the benefit of our court reporters, please speak clearly into your microphone and minimize background noise. They are welcome to interject if they can't hear.

As noted in the decisions we issued two weeks ago, we will hear from panels 4 through the end of the speakers list today. We will take a 30-minute break for lunch. We aim to do that around 12:30 Eastern, but will not necessarily be exactly at that time. And of course there will be time for several short breaks during the day.

With that, we will turn to our first panel for today's session, panel 4. I'm going to read off everyone and then let's make sure everybody is here. The Private Railcar Food and Beverage Association, Herman Hacksteen, and one of my esteemed predecessors, Daniel Elliot. U.S. Wheat Associates, Dalton Henry. Glass Packaging Institute, Scott DeFife. The Industrial Minerals Association, Chris Greissing, and the Institute of Scrap Recycling Industries, Bobby Triesch and Karyn Booth.

Is everybody here? All righty, very good.

Herman, you're up.

MR. HAKSTEEN: Actually, Dan is up.

CHAIRMAN OBERMAN: Okay.

MR. ELLIOTT: Thank you.

CHAIRMAN OBERMAN: Good morning.

MR. ELLIOTT: Good morning. Nice to be

here. May it please the Board, my name is Daniel Elliott, and I am here testifying on behalf of the Private Railcar Food and Beverage Association, also known as PRFBA. You have also addressed the elephant in the room, but I am Dan Elliott, the prior chairman of the STB. I have not spoken at a hearing since I left the Agency, but thought this proceeding was so important that I wanted to testify here today.

I am accompanied by, as you just mentioned, Herman Haksteen, who is the president of PRFBA and who also has a vast amount of experience in rail logistics.

We thank the Board -- to its member companies. Its member companies have never brought a reciprocal switching case to the Board because the present standard to obtain this relief is unachievable.

They all believe the time has come to make this relief available for these proposed rules. PRFBA is comprised of 18 global food and beverage companies and manufacturers headquartered in North

America. These members include PepsiCo, Molson Coors, Kraft Heinz, General Mills, McCain Foods, Sysco, Bonduelle America, Boardman Foods, G3 Enterprises, JD Irving/Cavendish Farms, The Martin-Brower Corporation, Univar Solutions, Darigold, Kellogg, Land O' Lakes, National Sugar and Leprino Foods.

They are all major rail shippers that rely on the railroads to produce and distribute their food and beverage products that are vital to the health and welfare of our nation. Without adequate rail service, their food and beverages will not be on store shelves in the U.S.

Because this issue is so important to PRFBA, these member companies are all here with me today virtually listening to our testimony to show their support for these proposed rules.

The Board has asked for additional views on the need for the proposed regulations, in the light of the significant operational changes in and affecting the freight rail industry in the time since the issuance of the NPRM herein.

PRFBA strongly believes the operational changes to the freight rail industry in the form of precision schedule railroading, essentially across the entire U.S. rail network over the last five years makes the need for the proposed regulations more compelling now than ever.

This rail operating model has resulted in massive job cuts across the U.S. rail system, eliminating large parts of the railroad's institutional knowledge and experience needed to run one of these complex networks.

They also left the railroads woefully unprepared for upticks in traffic and other changes to the market.

These PSR changes and the resulting service problems have caused concern by the Board as has been expressed in numerous letters to the railroads and informal proceedings since the NPRM. PRFBA does not want to rehash what the Board already knows but would like to share several personal examples of how PSR has recently impacted its member companies and how these new reciprocal switching rules could have helped.

For example, Kraft Heinz has a facility in north Florida that is single served by a Class I railroad. The railroad was unable to serve this facility adequately, causing it to shut down production on at least one occasion for an entire week. To add insult to injury, the railcar that could have kept this plant operating sat idle for a full week in the eyesight of the Kraft Heinz facility.

Despite numerous pleas to the railroad, nothing was done to remedy the situation despite these dire consequences. If reciprocal switching had been a possibility, it likely would have been able to prevent the Kraft Heinz plant from being shut down by using another nearby Class I railroad.

Moreover, Molson Coors has recently been given a proposal by its Class I railroad to increase one of its rates by 8 percent. This increase would have resulted in RVC ratio of 640 percent for this captive location.

When asked what the reason for the rate

increase was, this railroad told Molson Coors that it was because a competing railroad had won Molson Coors rail business for certain unrelated competitive traffic in a bidding contest with this railroad.

This tactic is obviously unreasonable and has no basis in the actual cost of doing business for the railroad. If these proposed rules were in place, Molson Coors might be able to defend itself from these unfair tactics.

Another PRFBA member has a plant in Ohio that is served by a Class I railroad and another plant in Georgia served by another Class I railroad. 100 percent of their rail service is inbound ingredients amounting to approximately 2700 cars per year in total.

The plants have capacity for eight to nine and 16 railcars, respectively. The plants operate 24/7. Missed and erratic switches at these plants have become more prevalent in comparison to the public switch schedule at the plants.

The railroads have stated that this poor performance has occurred because of crew shortages. This unreliable switching service has led to production interruptions at both plants.

This company calculates that it loses at least $200,000 per day conservatively at each plant when it cannot operate due to railroad's failures to deliver its railcars.

To resolve these problems, this company has demanded that the railroads meet with it on a weekly or monthly basis. Service usually improves for a short time before reverting to a state where this company is not getting the cars it requested on scheduled switch days.

This company believes that PSR has created this problem because of all the railroads layoffs resulting in these crew shortages.

As is evident from these various examples, PSR has resulted in poor service and unfair rate increases by PSR railroads. The use of reciprocal switching through the proposed rules could help to avoid these unnecessary plant shutdowns and unreasonable pricing tactics by introducing competition.

Competition inherently creates the incentive for an incumbent railroad to provide better service than the competing railroad. It also checks the railroad from behaving in such an unreasonable manner when negotiating rates.

PRFBA also has serious concerns about the further consolidation of the rail industry from 7 Class I railroads to 6, which is a possibility over the next year. This additional consolidation will only make the situation worse by lessening overall competition in this already overly consolidated industry.

While PSR and further consolidation of the rail industry demonstrate there is even more need for reciprocal switching now than in 2016, there's another reason why reciprocal switching should be encouraged by all involved.

That is the opportunity for growth of the rail industry. Reciprocal switching can provide some rail shippers with the better service and competitive rates they may require to move their transportation business from truck to rail.

The rail industry has lost large amounts of revenue because of the decrease in the use of coal. The increased use of reciprocal switching will be able to bring back some of that revenue through new carload traffic.

I will now turn the mic over to PRFBA president Herman Haksteen, who has a few remarks that he would like to make regarding this matter before I conclude.

MR. HAKSTEEN: Thanks, Dan.

Thanks to the Board. Mr. Oberman, nice to see you again, Mr. Fuchs, I've seen you a few times. Apologize -- to get down there and spend a little time face to face in getting to know you.

I just wanted to take a little bit of a different approach today, and I wanted -- first of all I want to talk a little bit about the hearing last week at the subcommittee. Some folks kind of hijacked that meeting and turned it into a reciprocal switching hearing, and I just wanted to make sure I hope that the important part of that hearing got done. That was our support, the shippers community support for the STB and to hope that you'll be around and in a healthy state, funded well to continue to do your good work. In speaking on behalf of the shippers community with the railroads.

Today obviously is the day for reciprocal switching, and we thank the Board very much for moving forward on this subject. It's only been kicking around for 11 years, so maybe it's time to get it across the finish line.

We all know that the Staggers Act asked the STB to ensure financial health of the railroad and to manage a competitive environment. Apparently, however, the Staggers Act fell a little short. Perhaps it should have defined what competition was. Because my friends at AAR and some of the railroads just don't understand the concept, I don't think.

So last week, I believe it was AAR made a reference between Coke bottling at a Pepsi plant and last night one of the railroads suggested that

Burger King was going to start cooking on McDonald's grills.

I think that might be a little dramatic, but, you know, I appreciate that they're sort of looking at what competition might actually look like.

You know, it's difficult to compare railroading today with, say, Pepsi and Coke. We go to a grocery store, we pull out our left hand, we can get a Pepsi, our right hand we can get a Coke. Same product, same look, similar price.

But the difference is that Pepsi and Coke are there to earn our business, and they're not -- we are not as a consumer legislated as to what choice we might want to make.

So we're not suggesting that the railroads need to go that far, but we are certainly suggesting that the railroads need to understand that that's what competition looks like.

So let's talk about customers. So AAR last night in their testimony and at last week's hearing, they listed all of the people that were opposed to reciprocal switching. Interesting enough, and I listened to the tape a couple of times, there's no shipper groups there. There's no shippers.

So -- and again, apparently they don't grasp the concept. It's the people that provide revenue, those are the people that you need to reach out and work with.

So all of those people that are opposing reciprocal switching don't provide the railroad with revenue.

Difficult to understand why we should put too much weight in all of the opposition that they have provided, considering it's not from the actual users.

So I think I'm just going to -- we're running low on time and I want to make sure that I can hand the mic back to Dan.

So I just want to go back to simple facts. You guys are getting bombarded with all kinds of testimony, last night's AAR presented more reports, my head was spinning by the time that presentation was over. And I appreciate all the hard work they did.

Bottom line, as Mr. Elliott referred to, and as many other folks have referred to, railroad volume is down. It's hemorrhaging. And if you compare 2017, and I picked 2017 versus 2021, because that was the start of PSR, carloads are down 11 percent and total volume, total volume down 12 percent.

Fact, all other modes of transport are up. We hear about it every day. There's not enough capacity in our supply chains. Trucks up, I mean air freight is up double digits. But the railroad carloads are down double digits.

There has to be a logic behind that, but I'll let others make that conclusion.

Customers are stating in a recent survey, Morgan Stanley survey, that they are moving rail volume to truck. So if we take the numbers that are presented by the American Trucking Association and the AAR, it would suggest that there's about 4-1/2 million truckloads a year additionally between 2017 and 2021 because of the amount of business that's left rail and gone to truck.

Just to put that in perspective again, that's 12,000 truckloads a day. More trucks on the highway, more congestion, more wear and tear on the infrastructure, more greenhouse gases, more inflation for the point of the railroads making more money.

Last night the AAR presented a study, many of them, and I do appreciate, Mr. Oberman, you caught on to this very quickly, but I think the thought, it kind of shot over their head. The single-served rail facilities, their volume was actually down, and that was the AAR saying see, competition and mergers haven't hurt at all.

Wake up. The volume is gone because the customer left you. Single-served captive shippers. Their study even said that their dual-served locations were up and their single-served locations were down. Customers are making a choice.

Anyway, I just want to conclude by saying railroad volumes are down, we need railroad volumes to be up. Our supply chains need to be diverse, not less diverse. We need the choice of rail, and we need it to be healthy.

So I'm asking the STB today, please, please help save our railroad network. We really need it. Provide guidance and good rulemaking to help the railroads understand.

And to the railroad industry, I'll just simply say stop looking for ways to force customers to do railroad business with you, invest in your infrastructure, invest in your people, invest in your processes and earn our customers' business because that's how competition really works.

I'll hand it back to Dan.

MR. ELLIOTT: I'd just like to make one last point before I conclude.

Representative Tom Malinowski asked the AAR in the recent rail subcommittee hearing regarding the STB last week about the large employment cuts by the railroads prior to the pandemic.

The AAR responded that railroads are

hiring across all crafts over the last 12 months, while admitting employee numbers were down going into the pandemic.

I looked at the most recent STB Form C numbers for CSX, NS and Union Pacific, the three most recent large railroads to convert to PSR.

CSX numbers for train and engine service went from 6795 in December of 2021 to 6739 in January of 2022. And from 7250 to 7158 total employees during this same time period.

NS went from 7521 to 7372, train and engine service employees, and from 18,011 to 17,572 total employees during this period.

UP went from 14,079 to 13,460 train and engine service employees and from 32,494 to 31,800 total employees during this time frame.

In other words, from December to January of this year, all of them went down in those crucial numbers.

These numbers do not demonstrate an industry that is concerned about hiring and making sure it is properly staffed to provide adequate service to its customers.

It does demonstrate that the railroads are not taking seriously the concerns it has heard from the STB, shippers and labor about their massive job cuts and their impact on service and safety.

In other words, without more competition in the rail industry, it does not appear that railroads will change their ways, as these numbers demonstrate.

The only thing that will change their ways is the market.

In conclusion, the need for these proposed rules has only become more necessary over the past five years. PSR has left rail shippers with poorer service and higher rates, which can only be remedied by competition.

The introduction of more competition into the rail industry was one of the main purposes of Staggers. However, competition has only decreased since that time.

Now is the time to bring this purpose to fruition, or rail shippers will continue to endure poor service and higher rates, as these stories from PRFBA member companies demonstrate so clearly. Thank you very much.

CHAIRMAN OBERMAN: Thank you both.

Dan, I think I should say at the outset that I might want to bring you in as a consultant expert on the issue of the railroads not taking the Board seriously enough. I think we share in some of that history now.

But no, I do think, you know, when you were chairman and I think as we move ahead, they will take us seriously if we act efficiently and responsibly. And I think we have been and will continue to do so.

I have a couple questions, Herman. You were reciting the move from rail to truck, and you had some statistics. I'm not sure if you said or if you did, I didn't catch it, where those numbers came from.

MR. HAKSTEEN: Yes, there was a Morgan Stanley report that was published in January, see if I can find the exact reference for you, sir.

CHAIRMAN OBERMAN: You don't have to do it now.

MR. ELLIOTT: We can get that to you.

MR. HAKSTEEN: Yeah, we can get that to you.

CHAIRMAN OBERMAN: I'd like to see that because I think I missed it. And there's little doubt in my mind from what we can observe anecdotally and from some reports I've seen that traffic is moving to truck. The railroads themselves tell us. But any data on that would be helpful.

MR. HAKSTEEN: The specific data was depending on which quarter you looked at last year, it was between 30 to 40 percent of shippers surveyed were moving some or a significant portion of their freight.

CHAIRMAN OBERMAN: If you would send us that report, that would be great.

MR. HAKSTEEN: I will get that to you, thank you, sir.

CHAIRMAN OBERMAN: The other question I

had, Herman, are there any members of your own company that you know of who actually have reciprocal switching availability at any of their locations?

MR. HAKSTEEN: We do have several members that are either served by a short line at some of their locations or they have dual service at a location, yes, sir.

CHAIRMAN OBERMAN: Well, when you say dual service, is it through reciprocal switching?

The reason I ask is that I wondered if you have any concrete experience on the issue of what's involved from the shippers point of view when they take advantage of a reciprocal switch.

We heard a lot of testimony yesterday about how either complicated or not complicated it is in the switching yard from the shippers point of view, there was a contention that it added a great deal of delay and that it wasn't good for shippers.

And I just wondered if you have any concrete experience. There are other shippers coming on today that I could ask this question of who could enlighten us on the way they see it when they actually use it, how well or how not well it's working.

MR. HAKSTEEN: I thank you for the question. We didn't come prepared today to talk about that, but we'll dig into it, talk to some of our members and see if there's -- I would like to give you actual facts rather than make up some words on the call today. So we'll get back to you on that, sir.

CHAIRMAN OBERMAN: You know, there's going to be an opportunity for ex parte meetings, not that we need more. But I think that this would be enlightening from people. You know, I put a lot more weight on the people who are actually out there doing this work.

The question was raised, I think it was by UP, that if you are a shipper who has a reciprocal switch, it adds between 24 and 98 hours to your travel time. And I don't know if that's true from the shippers point of view, and I don't know how the shippers feel about it. Maybe they think it's worth the extra time because they're ultimately getting better service, or maybe it doesn't take that much time.

But it would be great to get some concrete input from people who actually live with reciprocal switching.

And as I have discovered in preparing for this hearing, each of at least the four major U.S. railroads have hundreds of locations across the country where they have existing reciprocal switching tariffs.

So there are many shippers who they are willing to provide reciprocal switching to. So it would be good to know how it works.

Just a little more homework for you, Herman.

MR. HAKSTEEN: Thank you.

CHAIRMAN OBERMAN: Karen Hedlund has a question.

BOARD MEMBER HEDLUND: Thank you.

Mr. Haksteen and former chairman Elliott, it is very good to see you today.

I want to go back to something that Dan Elliott said that I hope is not lost. One could ask why would a shipper want to switch to another Class I railroad if the first Class I railroad is providing poor service and the other Class I railroad is also known to be providing poor service.

The service issues obviously are not exclusive to any one railroad.

And I think what you said was that if reciprocal switching is enabled, that it will encourage the railroads to compete on service, they will have an incentive to increase their service.

Could you talk about that a little bit more?

MR. ELLIOTT: That was -- thank you very much for the question. That was exactly my point, that -- I admit I'm not a PhD economist, but I did get to meet quite a few when I was at the STB, and they did describe the effects of competition. And one of the effects obviously would be creating the competition to better serve customers.

And I think if you do talk to the shippers on this panel, that when there is competition, generally speaking, and obviously there's blips in service that are not necessarily controlled just by competition, there's other factors involved.

But generally speaking, the railroads will work harder to get your business and as a result provide better service when they know that they don't have you captive and there's really nothing -- no one to answer to in the end.

BOARD MEMBER HEDLUND: Thank you. And I want to thank you for the specific examples. I think the Board needs to hear more of that.

CHAIRMAN OBERMAN: Patrick?

BOARD MEMBER FUCHS: A great segue. Herman, in your experience, thinking about PRFBA members, are facilities that are dual served or potentially served by a short line that connects to multiple railroads, do those facilities get markedly better service than those that are single served?

MR. HAKSTEEN: That's a loaded question, sir.

So I would like to be absolutely 100

percent clear, unlike some of the other folks that come before you, and say in my opinion, that is correct. I believe that rates are better, certainly origin -- if it's an origin-served, dual-served facility, origin service is better.

So yes, sir, my opinion. I do not have any facts to support that from a backup perspective today, sir.

BOARD MEMBER FUCHS: That's sort of what I want to move towards, is if the Board were to want to substantiate -- and your opinion I hear from shippers a lot, you know, that -- the dynamic that you're describing.

But if we want to move to acquire facts, how would you recommend that we verify that service is better for dual served or single served.

And I think about it in particular about what it means for a shipper to come in here and say hey listen, if I had dual service, my actually -- my service problems identified here would improve.

So what facts do you think we should be collecting to substantiate that point?

MR. HAKSTEEN: So thank you for the segue, sir, because -- I'm not sure if you're setting me up, but thank you very much if you did.

First mile/last mile data, sir. I would say if we could collect first mile and last mile data, and as you know we've talked to the Board about this before, we could compare first and last mile data on dual-served locations versus single-served locations. It would be data, in your system, readily available.

I think today I would suggest you could pick up the phone and call some of our members who have -- I know a couple off the top of my head that have dual-served locations as well as single-served locations.

But I'm not sure how many of them record accurately on time switches.

We have a couple of members who go through quite an effort to record first mile/last mile data for their own. But, you know -- I hate to say it, but not a lot of them do, because when they sit down with the railroads and say you're 22 percent on time, the railroads say yeah, okay. Like there's no effort, there's no reason to try.

BOARD MEMBER FUCHS: It's interesting because we were talking a lot yesterday about the practical realities about what it means for a shipper to mount the evidence that some people are saying is necessary.

Imagine a world in which the railroads -- they're already collecting some form of first/last mile data but they collected it and they provided it to the shipper, so the shipper had all the first/last mile data for all facilities, dual served and single served, and that data was available if someone needed to mount a case to show differences in service.

MR. HAKSTEEN: Right.

BOARD MEMBER FUCHS: That type of framework in your view would start to cut down to the burden of trying to show that the railroad is differentially serving people in different circumstances.

MR. HAKSTEEN: Absolutely, sir.

BOARD MEMBER FUCHS: I think this might call for your opinion again.

When you see service failures, let's call them broader service failures when the railroad network is quite challenged, do you notice railroads getting out of the jam differently between single-served and competitive facilities?

A little bit of a different question, very similar, but I'm talking about particularly the times of great challenge. Or is it more the steady state there's always a difference, but when the network is really jammed up, everybody kind of suffers?

Is there a difference between a steady state differential and crisis differential or are the differences kind of constant no matter what's going on more broadly?

MR. HAKSTEEN: I think in my opinion, and thanks for introducing it that way, I think that customers at dual-served facilities are always responded to quicker, and I think they're cared for differently. I think their rates show that. I think their service shows that.

I think -- again, without having the data to back it up, it's difficult to say.

But I do want to clarify, you know, a lot of people talk about service and service failures. I want to go the extra step, though, and talk about service levels, right. We don't talk about that very much.

But a lot of our customers have received reduced service levels where they're single served. By that I mean they used to have five days a week switches or six days a week switches. And because of reduced labor that they are supposedly trying so hard to replace but are proud to Wall Street that they haven't, that reduced labor force has not allowed them to give that customer five or six days a week anymore, and they have arbitrarily cut it back to two or three.

BOARD MEMBER FUCHS: What I'm hearing from you, Herman, is if the board were to start looking at first/last mile service as an indicator of inadequate service, we would be advised not only to look at let's call it switching success percentage but also switch frequency?

MR. HAKSTEEN: Yes, sir.

BOARD MEMBER FUCHS: Adjusted for business levels or demand.

MR. HAKSTEEN: I'll go a step further, Patrick, and say if they used to have a Tuesday and Thursday switch and they pull that, they get a zero for that day.

Because if they did it against the customer's desire, like if the customer had the volume and they had the freight and the customer therefore had to push volume onto truck, right, they needed that extra switch, then those days become zero percent on time.

BOARD MEMBER FUCHS: That's one way to think about it. Another way to think about it is again if you're trying -- if you're thinking that the basis for ordering a switch is, you know, somebody in a worse competitive situation getting treated worse, right, because they're trying to tease out -- it's because they're not in as good a competitive situation. You might also take a look at well, hey, when the railroad reduced switches, they seemed to reduce the switches to people that weren't as competitively served and not.

That's another way of approaching the issue from what you are as opposed to marking it as a zero. Because there are legitimate reasons why a railroad would decrease its switch, right. Business volumes could change. If you saw a railroad decreasing switches for competitive traffic too, it could be network organization. There's a number of legitimate business reasons why that could happen.

There might be a way though to capture that idea about switch frequency being differentially applied, you know, based on your -- and I'm just trying to get at something we hear over and over again, which is single-served customers are treated worse from a service perspective and I'm trying to move it into the realm of how the Board can capture that. So your remarks are very valuable, thank you.

MR. HAKSTEEN: Thank you, sir. Nice to

see you again.

CHAIRMAN OBERMAN: I have another question, but I want to see if any other board members have questions.

VICE CHAIR SCHULTZ: I do. This just kind of drills down a little bit further in the question that you had asked. Based upon what we heard from UP yesterday, which is that switching, you know, could potentially add up to 98 hours of delay.

So I guess I would ask as follow-up information from your members at some point as to whether or not in locations where they might currently have the opportunity to switch, is delay actually occurring? And if so, to what extent?

And likewise, I guess what I would also like to know is if that delay is in fact occurring, how does the pricing structure of the shipping rates on rail compare to truck, and what is the true cost of that delay?

I guess stated differently would be at what point does the delay so frustrate the shipment that your shippers in fact then choose to ship their goods by truck?

And I certainly of course don't expect for you to answer that at this time, but I think for me, that information would be incredibly helpful. And appreciate both of your testimonies today.

MR. HAKSTEEN: Thank you. I do want to add one other piece, though, to that. So our members might be different than some of the other shippers you pull. So the difference between PRFBA, you can't be a member in our organization unless you own your own assets.

So if the -- all of our members have assets. If their transit time was actually increasing by 96 hours, they would have to seriously consider the cost of their equipment. And a fully loaded refrigerated car is about $150 a day. If you have 1-, 2-, 300 of these in your fleet and you're going to get a delay of 96 hours, that's a significant financial burden.

So I would suspect that our PRFBA members would not make that decision. Just like our PRFBA members find a lot of difficulty in switching to truck because they have now invested millions and millions of dollars in these huge lease fleets. It's pretty difficult to go up to the C level office and say by the way, I parked that $12 million worth of railcars we bought last year. It's a very, very difficult thing to do.

So again, because our members have put skin in the game, their decisions are a little bit more -- have to be a little bit more, I'll use AAR's favorite word, forced. But their hands have been kind of played because they have supported rail. Thank you.

CHAIRMAN OBERMAN: Herman, let me just follow up on that. From the shippers point of view, is the concern about service difficulties as much unpredictability and inconsistency as it is total time of transit? Which is more important?

MR. HAKSTEEN: It's absolutely hands down consistency reliability. Slower transit isn't great because it costs more in inventory and it costs more on your cars. But cost is one factor.

The other factor is filling the pipeline.

All of our shippers are measured by their major customers. For instance, Walmart has a scorecard. And if you fall below, say, 95 percent, you know, in delivering, Walmart starts to fine you, right.

So these guys have to know when their shipments are coming in. They have to have the staff there to unload those cars and get that product over to their customers in a timely manner. Otherwise, it's going to hurt that customer relationship or in some cases it's going to cost them financial because they get fined.

So on time reliability, sir, hands down.

CHAIRMAN OBERMAN: So even if we discovered that if a reciprocal switch was going to cause a 24-hour delay, if the shipper knew that it was reliably a 24-hour delay, they could plan their pipeline accordingly?

MR. HAKSTEEN: Absolutely, sir, hands down.

CHAIRMAN OBERMAN: So that's not -- on your particular group's basis, that may still be a factor because of the unusual cost of refrigerated cars. But if by getting a switch you've greatly improved your consistency and reliability, that trade-off might be worth it, it sounds like, to the shipper.

MR. HAKSTEEN: And it's a budgetable expense; right? We know what one car per day costs, right. So it's budgetable. You can either build that into your pricing or whatever.

When it's an unexpected interruption in your service, you're getting people to work overtime, you're scrambling to find a different way to unload that truck or you're trucking product across the country with double teams.

I mean, the cost of that, it's not budgetable and it's unpredictable.

So absolutely, sir, anything that can be budgeted and planned around is a shipper's choice.

CHAIRMAN OBERMAN: I guess I shouldn't have used the word "delay" in this context. It's just part of the schedule if it takes an extra day.

MR. HAKSTEEN: Yes, sir.

CHAIRMAN OBERMAN: If you know it, it's not really a delay.

MR. HAKSTEEN: It's not a delay, you're right, it's a new service schedule.

When we track first and last mile, we would like to track it based on the railroad's published service schedule. We're not asking for it against some fictitious number. We're asking it against their published schedule.

CHAIRMAN OBERMAN: Well, you know, we are interested in the first and last mile data issue, and we are trying to grapple with it, it's complex. But your concerns on that issue as well as others in the industry have been heard, at least in terms of our being intent on making a stab at coming up with the right metrics. So point well taken.

MR. HAKSTEEN: Thank you.

CHAIRMAN OBERMAN: Any other questions?

BOARD MEMBER PRIMUS: Just real quick, Marty. Thank you.

And thanks to both of you for sharing this morning.

Dan, I think you touched on something that I've been talking about for some time, and that is the economic and operational fallout for the customer, for the shipper, as a result of these service issues that I see has only exacerbated since PSR has taken place.

I have one request, and I appreciate the examples that you gave. Do either of you have -- is there any sort of data that shows the financial fallout from that? I mean, every time we hear from the railroad side, they talk about, you know, this is how much we can lose in our operational or infrastructure costs or it's going to cost X amount to do this time.

And I don't want to seem like it's one-sided, that it's like okay, well, they're the only one losing. I think what you're saying is your membership within this group is already losing and you're shutting down facilities, that's labor issues, that's again operational and even your relationship with your customers.

So, you know, have you guys sort of put

any sort of scale on that or any report on that that sort of quantifies just how much you're losing or what's at stake?

MR. ELLIOTT: I think at least with one of the member companies, the one that was unnamed, they did estimate their losses per day when there were shut downs to be around $200,000 per day.

I'm not familiar with the impact that Kraft Heinz had, and I think we can find that out for you and engage in an ex parte meeting or something of that nature.

But, you know, with respect to that, it's also worrisome that these shippers really don't have any avenue to recover those losses because, generally speaking, they can't recover consequential damages as a result of rail service.

So it's a very difficult situation to be put in when you're relying on the rail service and it's crucial to your commodity being produced and then you're single served and you're pretty much at the mercy of the railroads, and then all of a sudden, your plant shuts down.

I'm sorry to go on here, but I was obviously at the Board during 2013 and '14, and that was a very difficult time as far as the rail network for numerous reasons.

And I do not recall the number of plant shutdowns occurring that are occurring now. It just seems like they are quite common now.

And I only remember maybe one occurring or getting close to occurring, and that was resolved, and maybe one other utility writing in and that was resolved.

But now it doesn't seem like they're being resolved. So it seems like the situation has become much more dire. I don't have any facts on that, but I will talk to the PRFBA members and some of the other people that I work with and see what that impact is for you.

BOARD MEMBER PRIMUS: If I could -- thank you for that, Dan. The next question is, you know, you talked about the supply chain and you want it strengthened. The supply chain also goes beyond the railroad, it goes to your customers.

And so the result in missed switches and the days being cut, what impact would you say it has on the ultimate consumer? I mean, is that -- is part of that a reason why we're seeing an increase in food prices and the like, because there's been delays and because of that -- the service problems within the network?

MR. ELLIOTT: Yeah, I think there's no doubt that there's a connection. I mean, as Herman mentioned, it's sometimes difficult to quantify when the service is unreliable.

But over time, they're going to start doing that. And when your numbers start changing because you have to shut down a plant, that's going to impact the price.

But Herman, if you had any --

BOARD MEMBER PRIMUS: Your opinion. I mean, again, I'll use Patrick's term. Your opinion is not saying the facts. We can go back and look at what people are saying, but in your opinion.

MR. HAKSTEEN: If I can just add to Dan's comments, I mean, you know, at a macro level, right, so it's really difficult to dig into the kind of numbers in the research.

But in a macro level, in 2017, CSX started PTR -- or PSR, sorry. Wow. And in the second half of 2017, for the first time in a decade, there was a huge spike in truck demand, and truck pricing went through the roof.

Now, some people -- everybody was chasing around trying to figure out what happened, where did that truck spike come from? Demand wasn't any different, volume wasn't any different. This was way before COVID, way before. But there was this huge spike.

The railroad has no idea how it does, to your point, sir, impact the other folks' supply chains, right.

So CSX was in gridlock, people were going to truck at a huge level just to move their goods, and they're taking trucks away from other people that normally use trucks because it became a bidding war for trucks.

If you look at what's happening today,

after five years of PSR, there's 4-1/2 million more trucks being used on an annual basis, and I can assure you there hasn't been 4-1/2 million new trucks and new drivers added to the road.

So there's a direct correlation, sir, in inflation today and a direct correlation in our truck driver demand and direct correlation to railroads reducing their volume to increase their profits.

BOARD MEMBER PRIMUS: Just two more questions. What percentage of your membership is single served? Do you guys have a number on that?

MR. ELLIOTT: We do not, but we can look into that.

MR. HAKSTEEN: I'm going to say if I may, though, clarifying, most of our members have many, many rail locations, so I would suggest that probably none of them are single served across their entire network, but we'll double-check that, sir.

BOARD MEMBER PRIMUS: If you could find out what percentage of each one of their networks is single served, that would be helpful.

Last question is on that same subject, do you have any numbers on your membership, how many times they have actually gone to trucking as a result of rail service issues?

MR. HAKSTEEN: We can ask the question. I am aware of one member that got reduced from five days a week switching to three days a week switching, and I know that on a regular basis, 100 percent of that inbound ingredient came by rail, and today only 89 percent of that is coming by rail and the balance is coming by truck to make up for that extra switch.

But we'll look across our entire network, and we'll talk to our customers and try to get you some other facts on that.

BOARD MEMBER PRIMUS: Thank you.

CHAIRMAN OBERMAN: Before I go -- Michelle, you had another question.

VICE CHAIR SCHULTZ: Just one follow-up question. You spoke about what I would characterize as an egregious situation with Kraft Heinz.

If this rule were implemented and

Kraft Heinz would have had access to another carrier, would they have been in a position to actually call up a second carrier and have that car scheduled?

MR. HAKSTEEN: I guess it depends on how you guys rule on reciprocal switching. You know, during the UP testimony last night, they were very, very concerned about whether it was blanket approval or preapproval or if we had to run to the Board every time we needed, you know, relief that way.

What's known is that Kraft Heinz location, there are two Class Is and the Florida East Coast railroad, which is a major, all within 50 miles of that location.

So there were certainly lots of engines and lots of capable people from doing it. It depends on how rulemaking will allow them to pick up the phone and call.

VICE CHAIR SCHULTZ: Thank you.

CHAIRMAN OBERMAN: Herman, just a follow-up on that. Is it the case, as you understand it, where a shipper has a reciprocal switching tariff by whatever means of a merger condition or the railroad just entered into it with them, that's a tariff they can call on to use when they need it, either for establishing a long-term regular service or on an as-needed basis? Is that the way it works?

MR. HAKSTEEN: I would agree.

MR. ELLIOTT: That sounds correct.

CHAIRMAN OBERMAN: So if we had a rule which had the effect of putting Board ordered reciprocal switching on a par with the reciprocal switching that already is utilized everywhere around the country, then I think the answer to Michelle's question would be that Kraft Heinz could have called on somebody.

MR. HAKSTEEN: Yes, sir.

CHAIRMAN OBERMAN: I think you -- just wanted to make a comment. You added a perspective. We heard a lot yesterday from the railroad side that if a shipper gets reciprocal switching, the Board before proceeding down that path has to be mindful of the downstream effects on the supply chain.

Your point is when a railroad provides bad service, they ought to be mindful of the downstream effects on the supply chain.

MR. HAKSTEEN: Yes, sir.

CHAIRMAN OBERMAN: Fair enough.

MR. HAKSTEEN: Thank you very much, sir.

CHAIRMAN OBERMAN: If we treat a concern of downstream effects on the supply chain with equal seriousness, would that be fair in your mind?

MR. HAKSTEEN: Yes, sir.

CHAIRMAN OBERMAN: Okay. All right. Thank you both.

Any other questions?

Herman, we look forward to getting back together in person, I say that to all stakeholders, rail and shipper alike. One of these days we will.

MR. HAKSTEEN: Thank you, sir.

CHAIRMAN OBERMAN: Next up, U.S. Wheat, Dalton Henry.

MR. HENRY: Thank you. And good morning, Chairman Oberman and fellow board members. My name is Dalton Henry, vice president of policy for U.S. Wheat Associates. And I would also like to thank you for the leadership and time you have put into this subject already and secondly for the opportunity to speak fairly specifically today to the current lack of competition between U.S. railroads and those specific impacts on U.S. wheat farmers.

So our organization is an export and market development organization for the U.S. wheat industry. Essentially, we work with wheat buyers, millers, bakers, food processors and government officials around the world.

We're relatively new to the topic of reciprocal switching compared to many of the groups and certainly the previous speakers on this panel.

Our work on rail transportation policy really didn't get underway until 2018, when we realized the impact that ever-increasing rail rates and decreasing service quality were having really specifically on our export competitiveness.

Previously we had long parroted the message that U.S. agriculture benefits from a world class transportation infrastructure. But one thing that has become clear over the last decade is that we've repeatedly seen global competitors increasing their competitiveness and, frankly, their market share in export markets that geographically and logistically the U.S. should dominate.

At the same time here in the United States, we've seen other commodities, primarily field crops, that are less export dependent, routinely and continuously take acres away from wheat.

While there are a lot of factors at play in that, certainly a piece of the puzzle as to why we have both wheat acres and exports near 50-year lows, the transportation cost has to be considered to be a part of that equation.

Wheat is specifically heavily reliant first on exports. On average we export half of all U.S. production, and second on rail transportation to make those exports happen.

Those two factors have made rail rate increases have a disparate impact on wheat shippers vis-a-vis other bulk U.S. commodities.

And the fact that our major growing regions are generally not adjacent to waterways has increased our captiveness to railroads.

Distances from wheat producing areas are far too great to truck wheat to export facilities, and that makes railroads a crucial and irreplaceable link in the wheat export supply chain.

And that really at the end of the day increases the importance of policies that are designed to interject competition into those rail markets.

As we mentioned in our written submission, the results of this increased dependence on rail for the movement of wheat exports has been clear. Over the last decade, rail rates have increased nearly exponentially and wheat continues to be charged higher rates than other commodities with similar handling characteristics, even for identical hauls.

And that's a point that oftentimes folks kind of wonder a little bit about, and essentially what our transportation working group did back in 2020, is that we collected quotes for rail service from grain shippers in several growing regions for major U.S. grain crops.

Those price indications were for the same origin and destination pairings and for the same dates of service. That work documented a premium of between 22 percent and 39 percent for wheat movements compared to corn, commodity with near identical handling characteristics, in four major growing regions.

That less than favorable treatment of wheat by railroads can also be seen in competition with one of our primary export competitors, Canada. Multiple panelists in this week's hearing have referred to Canadian regulations on interswitching that are more favorable to shippers.

For wheat producers in the U.S., the Canadian comparison is particularly telling as the two spring wheat and durum wheat growing regions are both positioned in the interior of each country.

Actually located essentially directly across the border from each other, across Minnesota and North Dakota and portions of Montana.

They have near identical distance to traverse to export facilities in either the USPNW or Canadian west coast ports. But work at the same time collected by one of our member states showed similar wheat origin to export point rail moves in Canada routinely cost 30 percent below U.S. moves at the same time.

That incentivizes Canadian wheat exports over those of similar classes from the U.S. This point becomes particularly acute as you all consider other matters before you, but especially the creation of the first trinational railroad where U.S. producers will compete directly head to head in identical markets on the same rail line.

The unchecked market power railroads have over wheat shippers has had serious implications for our competitive position in the world and is why today we're asking you to move forward with the rule on reciprocal switching. Under the current process for switching remedy, wheat shippers do not bring forward cases and are often forced to modify operations or commodity pricing to their and their customers's detriment because no other viable options are present to increase competition or provide service options.

This results in negative impacts throughout the supply chain, ultimately impacting not only shippers but their customers and consumers. The U.S. wheat industry is particularly well positioned to benefit from policies that better enable competitive switching, as our largest growing regions have extensive coverage by multiple Class I railroads who ship to a relatively limited number of export facilities, just those that are essentially capable of handling bulk grain exports.

So we appreciate that the STB has an important oversight role in looking at the impact of freight rail policies on rail shippers and we're encouraged that you all are seeking ways to improve the reciprocal switching remedy in line with the intent of Congress. We urge you to breathe life into this remedy that has essentially been dormant for decades and to provide a method to counter Class I railroads's unabated market power over wheat shippers.

With that, glad to take questions or wait until after speakers.

CHAIRMAN OBERMAN: Thank you much, Dalton.

I have sort of a fundamental question, logistical question. In your understanding of where you're -- could you give us a little more concrete description of the logistics of shipping wheat, in other words, farmers are delivering their wheat mostly to a central collection place, an elevator I assume, and it's the elevator that's served by the Class I?

MR. HENRY: It is. That would be a very accurate description.

What you've really seen a trend of especially in that first link is as farms have gotten larger and production has gotten larger, the facilities that serve them have gotten larger and fewer, and we've seen a big shift especially over the last two decades from having many locations out there that only handle loading a few cars at a time to primarily moving wheat exports via shuttle trains now, you know, 110 cars that are dedicated to that shipment and can load and unload in specified times.

CHAIRMAN OBERMAN: And the first movement is by truck, I assume?

MR. HENRY: Yep.

CHAIRMAN OBERMAN: The question arises, where in the vast expanses of where wheat is grown, where is the next railroad?

You know, it's much easier for us to contemplate how reciprocal switching might function in an urban area. I'm at a loss to understand how it could practically function if you're 300 miles away from the nearest railroad.

So what is your notion of how a reciprocal switching rule would have to be framed to actually do anything for the wheat growers?

MR. HENRY: So I think you asked an excellent question of Max Fisher with NGFA yesterday in terms of clarifying the number of their facilities, because it would be their members' facilities that our members are shipping wheat through.

And the number of their facilities that are within 50 or 100 miles of another rail line. And I know that he had indicated that they had done some survey work that showed a large percentage would be located within 100 miles.

So there will certainly be wheat states where reciprocal switching would be more beneficial than others. But when we think about our two largest states, Kansas and North Dakota, are both extensively served by a large number of short lines as well as multiple Class I railroads. I would expect that in the case 300 miles would be on the extreme end for those and that under that 100 mile mark would encompass quite a few shippers.

CHAIRMAN OBERMAN: You could see if the Board were to have a rule that applied across the board to any shipper within 100 or 300 miles of an interchange, that other than in the vast expanses of Kansas, that this could really cause problems, you know, someplace in the crowded East Coast.

So have you given any thought to how -- whether we ought to and whether we legally can have a different approach for a commodity like wheat than from, say, chemicals or plastics or scrap or some of the other commodities that are closer in areas?

MR. HENRY: We certainly are in a different situation than many of the other panelists that you've heard from, especially many of the other commodities or products. And that may be one that we have to give a little bit more thought to in terms of exactly what the -- what those impacts on the broader supply chain could be.

Because we are dealing with vastly different rail networks in those areas. And fortunately for us, in many instances, we are able to avoid the most congested portions of the U.S. rail network, when we think about shipping from, you know, essentially the great plains through the central U.S. straight to the Texas Gulf or into the Portland and Pacific Northwest ports. Those are relatively open areas.

CHAIRMAN OBERMAN: You know, I asked questions yesterday of the railroads about the practicality of limiting the location or who was eligible for a switch to shippers whose traffic was already taken to a yard where other people are already getting reciprocal switching. If that kind of limitation were applied to wheat growers or, you know, wheat elevators -- actually, are they elevators for wheat, the same --

MR. HENRY: Uh-huh, yep.

CHAIRMAN OBERMAN: Would that work, from your -- in other words, if you could only interchange with the competing railroad in a yard where there was already reciprocal switching, have you had a chance to take a look at what that would do?

MR. HENRY: I would expect there would still be situations where that would work, but it would certainly be limiting -- would limit the number of instances where it would.

CHAIRMAN OBERMAN: Is the need, in your view, for competition at the origin end more than the destination end?

MR. HENRY: In my view, the need would be more at the origin end, but there would also certainly be instances where we could benefit from both.

CHAIRMAN OBERMAN: Let me encourage you and your association, because, you know, I assume you've been watching. And we really have to take into account the congested parts of the country as well as your parts of the country if we're going to come up with any kind of a workable approach.

As the hearing is unfolding and as my delving into the whole issue has expanded, I've wondered whether examining either the use of the through route statute or taking a harder look at the bottleneck rule might not be the appropriate way -- place to be looking for providing relief, assuming that relief is warranted and that we think it should be given, in the area of competition to your constituents as compared to other kinds of shippers.

So I wonder if different approaches for different parts of the country, because the facts are different, are warranted.

I think we could use some education on that area, so let me encourage you to ask your folks to take a hard look at whether there's a better approach for your folks than just trying to fit a square peg into the round hole of reciprocal switching or vice versa for wheat growers.

MR. HENRY: We will certainly do that and look forward to the opportunity to follow up.

CHAIRMAN OBERMAN: And I'm not suggesting I've reached a conclusion on it, but it's obvious to anybody who studies the situation that your folks are just in a very different logistical setting than the Chemical Coast people or people like that, that's all I mean.

I think Karen has her hand up.

BOARD MEMBER HEDLUND: Thank you.

You may have mentioned this, but what percentage of U.S. wheat production goes to the export markets?

MR. HENRY: Just right at about 50 percent.

BOARD MEMBER HEDLUND: 50 percent. And so American wheat production, given what has happened to Ukraine and Russia and restrictions that the West is putting on Russia in particular, I understand that Russia and Ukraine together, what I've heard on television, account for 30 percent of world wheat production, that this puts real importance on encouraging wheat production and export of U.S. wheat and makes it that much more important to the whole world and world health.

So that's what I wanted to get a better understanding of and for us to think about the importance of wheat exports in the United States over the next couple of years, quite critical.

MR. HENRY: I certainly -- I'm probably not in -- my crystal ball is probably just a little too blurry to really try to estimate impacts from the war that is underway.

You are certainly spot on that both Russia and Ukraine are large wheat producers, together it's 30 percent of global exports that they make up. And those -- you know, the trend that we have seen, it was Russian wheat exports flowing into North America, frankly, that triggered us in 2018 to say how is it that we are so uncompetitive in a transportation sense that exports from the Black Sea are competitive in our hemisphere on a price basis.

And that was the real genesis of the creation of our transportation working group and the subsequent work that we've been doing to document rates and service issues.

So that has been an emerging trend and is something that will bear watching here in the coming years.

BOARD MEMBER HEDLUND: I've also heard the yellow in the Ukrainian flag, it's blue and yellow. Blue stands for the blue skies and yellow stands for their rolling fields of wheat.

Thank you.

MR. HENRY: Thank you.

CHAIRMAN OBERMAN: Patrick?

BOARD MEMBER FUCHS: I'm good, Marty. Thank you so much.

CHAIRMAN OBERMAN: Okay. Any other questions for Dalton?

BOARD MEMBER PRIMUS: I have just real quick.

Dalton, thanks again for taking the time this morning to come before us. Short and sweet, but very enlightening nonetheless.

Let me ask you a couple questions. You particularly pointed out 2018 and the rates then. I mean, were you ever given an explanation for those rates, that increase in rates?

MR. HENRY: Not one that really corresponds to anything else that we'd seen going on in the world.

The USDA amassed an interesting report that we could follow up with as well that essentially attempted to explain why wheat rates specifically had increased so much despite other trends in the wheat industry and pricing, not suggesting that that would make sense.

It's a trend that has accelerated quite a bit over the last decade and --

BOARD MEMBER PRIMUS: Have the railways gone up since 2018?

MR. HENRY: Yes, they continue to go up. Posted rate tariffs are -- it's a pretty steady increase and has continued to be so since then. You know, a couple of times a year, we always are given the argument that very little wheat moves at a post-the-tariff rate, which is interesting to us because it always leads us to ask the question of why those posted rates exist, and we don't have access to the underlying rate.

So what we really rely on is our elevator partners who are willing to share quotes and bids that they are receiving or the work that the group at USDA who does have access to the STB waybill data to document those. But both of those continue to show an increase since 2018.

BOARD MEMBER PRIMUS: Has the service matched the rates?

MR. HENRY: I'll probably defer to NGFA's testimony yesterday on service issues and whether or not more money in rates has led to better service.

BOARD MEMBER PRIMUS: I mean, and I know it's a loaded question, so I'm sorry. I know it's early.

You know, I also wanted to get to the

point that you were making in terms of comparing other commodities. You know, I was particularly interested in that comparison you did with corn and the difference especially when you're talking origination and destination and all the other points.

You know, what do you see sort of going forward? I mean, is that sustainable for the wheat growers? You know, is there going to be a tipping point at some point?

MR. HENRY: So there's a number of factors at play in that. But there's no question that when we look at export bids, and those are relatively publicly -- relatively available that you can look at what bids have been from multiple countries and multiple origination points for all the export destinations.

When we look at that and we say well, but if we could take our wheat transportation rates or essentially our rail rates down to what corn was, we become dramatically more competitive in a number of markets that today we're simply priced out of.

And so to the extent that there's going to be a tipping point, you know, I don't think we're going to quit growing wheat in the U.S., but we certainly grow dramatically less today than we did 50 years ago or even just 10 or 20 years ago. And I think that's not a trend that we see reversing.

BOARD MEMBER PRIMUS: Right. I guess I was also alluding to market share as well, as I have sort of been talking about to other folks during this hearing that the consequence on the other side of not having access to more than one transportation, more than one railroad, you know, what that does to ultimately your ability to compete.

MR. HENRY: And that has been a challenge. And as we've seen other countries being major global exporters, you know, our market share in several markets has gone down. You know, many of those are in markets that make more geographic and logistical sense, where we have longer ocean-going distances compared to Black Sea suppliers.

But when we think -- and I think what

really piques our interest is when we see that wheat coming from Black Sea region into the western hemisphere on a much, much longer ocean voyage and it's able to arrive landed cheaper than we can rail wheat to certain destinations in direct rail shipments, that that's a real challenge and that that does have the potential to cost market share over the long term.

BOARD MEMBER PRIMUS: Thank you.

CHAIRMAN OBERMAN: Michelle?

VICE CHAIR SCHULTZ: Thanks, Marty.

Your written comments discuss how reciprocal switching can be used to address rail labor shortages. In my meetings with other shippers, they have raised the issue of how rail labor shortages impact first mile/last mile issues.

I was wondering if you could speak to how this proposal could help a shipper in the event of a labor shortage affecting first mile/last mile, when the shippers still will continue to be served by the same Class I carrier.

MR. HENRY: That's a good question, and I think that as we have looked at labor shortages and as we have been in discussions with railroads here over, you know, the previous 12 months or 18 months, those have tended to occur in -- probably two issues at play, right, a longer-term trend towards fewer staff, which exacerbates when you have the second issue at play, which is a short-term challenge of getting crews into the right places and able to provide service in a timely manner.

So I think that's where our desire and line of thinking is, is that reciprocal switching would put an impetus behind increasing service overall, which a key part of that is the availability of staffing, and that that's a long-term solution, in our mind, that a railroad knows that they have to compete on a service basis, providing quality service, or else elevators will seek alternative options or alternative carriers.

So I don't know that we see it quite as much in the immediate term as maybe you heard the earlier folks on the panel discuss.

VICE CHAIR SCHULTZ: Thank you.

BOARD MEMBER FUCHS: Are you basically saying if the carrier thought they were at risk of losing the line haul, they would be less likely to get themselves in the circumstance to begin with?

MR. HENRY: Yes.

BOARD MEMBER FUCHS: Now, I just want to kind of pick up on something that Marty said, which is you saw the questioning yesterday that the chairman engaged in with respect to tariffs and tariff locations and drawing upon that to potentially limit the scope of what we consider a reciprocal switch, at least at the outset.

I would encourage you, and I know you've already committed to that, but to either take advantage of the ex parte or supplemental comment period to think about that framework specifically, and as it pertains to ag shippers at origin but also at destination, you know.

So it may be the case that a particular origination point may not benefit, but if there are other facilities that may within the ag supply chain, that would also be interesting to know.

But I would just request that you, as you're exploring different differentiating frameworks based on either commodity or geography or what have you, to do it through the lens of I think the chairman's questions yesterday will be particularly useful.

MR. HENRY: We will certainly do that. I appreciate that.

BOARD MEMBER FUCHS: Thank you so much.

CHAIRMAN OBERMAN: All right. Any further questions for Dalton?

Dalton, thank you very much. Very, very helpful.

Glass Packaging, Scott DeFife.

MR. DEFIFE: Thank you, Mr. Chairman and members of the Commission. I am Scott DeFife, I am the president of the Glass Packaging Institute, very happy to be here today to give you some examples of another industry that is in the similar situation to all of my fellow panelists today. If we were sitting in person, I'd be motioning to the left and the right because the glass packaging industry, our trade association represents the glass container manufacturers, but also the raw material suppliers that supply the raw materials into the glass factory, but also and then packaging to food and beverage manufacturers, because 95 percent or plus of all glass packages made in the United States is for food and beverage consumption, food and beverage packaging largely.

So we sit in the middle of the supply chain that you see from the raw material folks who our friends at Industrial Minerals that are going to come next and also the scrap recycling, because we use recycled glass to make new glass containers.

So I would affiliate myself with all of the comments from Dan and Herman before and with some of the other comments that I'm sure are to come from my fellow panelists.

The glass industry operates 46 glass container plants in the United States. These plants run 24 hours a day, seven days a week. They have to be running 24 hours, seven days a week. You cannot shut down a glass furnace for a shortage of supply.

They pay for and rely on rail service. Many of these facilities were built decades ago on Class I or other rail lines. They are -- glass manufacturing is -- has been and is inherently linked with rail service for decades because of the efficiencies of moving the heavier weight material both from the raw material suppliers but also then once the glass is produced.

80 percent of our member plants would be defined as captive, and because of the challenges with service and supply chain issues right now, our members are seeking virtually any and all remedies that they can to increase the flexibility and the nimbleness of the supply chain.

Even before COVID with PSR there have been challenges to scheduling deliveries, but even after the supply chain challenges of the past couple years have increased, we're seeing even higher costs for both raw materials and for shipping product to our members and market customers.

The adoption of the proposed rule on reciprocal switching would assist our members in their efforts to increase efficiencies and deliveries to plants and supply chain partners to ensure efficient and reliable operations can be maintained.

Our support is not based on the premise that shipping costs would be automatically lowered but that the ability to secure more than one rail option would naturally make costs more competitive and also drive better service, as has been discussed previously this morning. Service issues are important, and some competition for service issues is critical.

GPI also supports extending the reasonable distance consideration from 30 miles up to 300 miles in support of rural captive shippers. Many of our raw material suppliers are going to fall into this category of getting the material to us. And there are several remedies that we would ask for if that cannot be done.

I can tell you that with my -- I only have a short time today, in the three years that I've been here at the Glass Packaging Institute, we've been -- almost all of it has been under COVID supply chain challenges, and because the industry wants to use -- the demand is very high, and supply chains have been challenged. And because the industry seeks to use, in fact is necessarily using, wants to use more recycled glass as well, it has environmental benefits to use more recycled glass. And we have been studying various ways of trying to get really innovative and creative about securing the supply of recycled material and getting that to our plants.

Virtually every one of our conversations comes to a grinding halt when you have to end up thinking about putting, you know, something on a Class I rail.

So the challenges from that standpoint are impacting creativity and innovation as well.

I think I'll wrap up because I've -- I'm under a minute, so I will save some time for questions, but certainly happy to answer any questions about the glass industry.

CHAIRMAN OBERMAN: Thank you, Scott.

You know, you mentioned that some of your rural suppliers, you know, would need a much longer distance to benefit from the rule. But I assume you can recognize the issue I raised, you know, with the previous witness about one rule for the whole country that allowed switching within 100 or 300 miles could have some really bad impacts on congested areas of the country. You wouldn't know where to go. There would be 100 yards within 300 miles of your site, which I don't think is what reciprocal switching was conceived to deal with, however it's drafted.

I might encourage you, as I did Dalton, to think about other concepts in the railroad world, such as bottleneck and through routing and so forth, as a way to pinpoint relief if it's warranted for other kinds of shippers.

On the other end, though, where your members are located in more urban areas, do you have any reaction to the inquiry I've been asking people about the idea at least as a starting point on an incremental approach to only permit reciprocal switching -- only permit shippers eligible for reciprocal switching who are using yards where reciprocal switching is already taking place for other shippers, as a way of both limiting the availability but perhaps ensuring and minimizing logistical difficulties if it's already being done? What's your thought about that?

MR. DEFIFE: Certainly, Mr. Chairman. And I do recognize some of the challenges with the more rural versus the other areas. We think that there probably are some options and some solutions and would be happy to discuss those going forward.

As to the suggestion about any increase in the availability of reciprocal switching, I would say, again without necessarily going back to -- I need to go back to all my members and really get a census of where they think some of the key areas are that need to be focused on.

But as a baseline, I would tell you that almost any help in this area is going to be beneficial.

CHAIRMAN OBERMAN: All right. Thank you.

Any other questions?

BOARD MEMBER PRIMUS: I had a quick one, Marty, if you don't mind.

Just real quick, Scott, thanks again for being here.

So 80 percent of your -- you said of your membership is captive?

MR. DE FIFE: The plants, the manufacturing plants, which is the core of our membership are the glass container manufacturing plants.

BOARD MEMBER PRIMUS: Okay. And as I've asked other participants before, do you guys measure the economic impact of service-related issues on your plants, so in terms of have you had -- in terms of the amount of times that you may have found plants to have shut down or slowed production? Do you guys keep sort of measurements or any records to that?

MR. DEFIFE: We certainly don't at the trade association level. I mean, there's a limit to the kinds of data that we can have. But we do have many anecdotal examples with our members and specific plants that tend to stay -- that we could probably discuss more in the ex parte dialogue afterwards where we could assemble some examples for you.

Like I said before, our members -- shutting down a glass plant is catastrophic. If you are short supply on the raw materials, you are scrambling to get them in from any other place.

So if you're typically expecting and using 18 to 20 cars or more of sand, it's silica, limestone, soda ash, these are very basic mineral commodities to make the glass in the first place. And if you're typically using 20 and one week you only get two or five or something such as that, you're scrambling to get that material from other places.

I would say that there was a really critical discussion with Dan and Herman that I think relates to us as well, that a delay of 24 hours if it's known can be planned around, it's not necessarily a delay. It's all about reliability and knowing when that supply is coming in and being able to plan for it.

You know, they will do virtually everything they can to keep from shutting things down.

However, I would say it is -- I mean, we've definitely -- the entire industry, anybody who is experiencing issues in the supply chain has definitely been experiencing some price increases that are definitely related to the issues of constrained supply and transportation right now.

BOARD MEMBER PRIMUS: Appreciate that. And one last question.

Have you seen any increase in any of your membership in moving to trucks to get more resources to those plants?

MR. DEFIFE: I would say absolutely, and it would probably be by necessity.

I think one of the key points that I may have put in our written testimony, but I'd like -- glass plants are tailor-made for rail service. We should be using more. We want to use more. The efficiencies of rail service, the environmental benefits of rail service to move material over, you know, hundreds of miles is considerable over truck traffic.

The fact that we cannot is limiting the efficiencies of the rail system and for the supply chain itself.

BOARD MEMBER PRIMUS: Thank you.

CHAIRMAN OBERMAN: Scott, I had one other question.

Have you had members who have actually had to -- you say shutting down a glass plant is a disaster. Has it happened because of rail failure, service failure?

MR. DEFIFE: No. I mean, when I say catastrophic, you're going to have to almost rebuild -- think about molten glass getting stuck in the furnace. This is not a good situation at all. When I say that, I'm under -- I'm dramatically under -- I'm really not giving its full implications.

So they will scramble to get the supply

from various other sources. No, no one has been close to having to shut down. You can turn -- this has not happened in North America, but during COVID, we do have examples from overseas where people had to turn their plants down to just kind of an operational simmer, keep the furnace going but not necessarily producing. There's some examples in Europe and South America of that. That did not occur in North America.

We have been essential manufacturing parts of the food and beverage supply chain during COVID completely and have been operating at capacity the entire time.

CHAIRMAN OBERMAN: So it sounds like what you were saying, then, as I was discussing with others on the panel, the key for your folks is predictability and consistency so they can plan around it. And not so much how many actual days stuff takes to get there, but whether it always gets there when it's ordered.

MR. DEFIFE: Absolutely, Mr. Chairman.

CHAIRMAN OBERMAN: Thank you.

Any other questions for Scott?

Thank you very much, Scott.

Our next witness is Chris Greissing from Industrial Minerals Association.

MR. GREISSING: Thank you very much, Chairman Oberman and the rest of the board members, for holding this very important hearing. My name is Chris Greissing, president of the Industrial Minerals Association North America.

The IMA represents a diverse set of companies engaged in the mining and processing of about 20-or-so essential minerals to the U.S. economy. These companies mine these materials at over 300 sites throughout the U.S., with additional facilities in Canada and Mexico.

These minerals are the raw material feedstock that are vital for almost all of the U.S.'s manufacturing agricultural needs.

The demand for these minerals from manufacturers is global and the continued pressure our companies are feeling from the railroads in terms of unreliable service and unreasonably high rates is making it more difficult to compete in that global market.

The products our companies produce are low-margin, high-volume products that are shipped in bulk. Many of our companies are also located in rural areas of the country and had typically captive shippers.

In the discussions you may have heard around critical minerals, the U.S. is becoming increasingly reliant on minerals from other nations. This is only partially due to availability.

A large reason for this is instead because the inability to compete in the global market between the regulations and other negative headwinds we are seeing in the U.S. making it uneconomical to operate here.

As I mentioned, we are very low-margin industry and the pricing practices we are seeing from the railroads, especially towards our captive shipping members, is truly unconscionable.

Here are just two examples, general examples, that have been shared with me recently.

From our sodium-based minerals in the west, it is cheaper for manufacturers located in parts of the eastern U.S. to import those minerals from Europe and Turkey via ocean freight that takes considerably longer than it is for the producers who are captive in the west to ship via the rails to the East Coast, and our members are losing out on sales on the East Coast of the U.S. to Europe and Turkey as a result.

Even more troubling are the conditions for our clay producers where, similar to wheat, it is cheaper for their competitors in Europe via ocean freight to manufacture along the northern parts of the Mississippi River than it is for our members who are captive in the Tennessee/Kentucky region to ship via rail.

Again, we are losing customers because of the practices of the rails just hitting us very hard on pricing.

This simply should not be the case. For too long, railroads have put shareholders interest above those of shippers and the general public by continuously raising rates and providing unreliable service.

This past fall, Escalation Consultants presented at our conference in Utah. In their presentation, they showed how competitive rail revenue was up about 24 percent in the 15-year period up to 2019, meanwhile noncompetitive rates skyrocketed by over 230 percent.

This is consistent with the AAR's testimony yesterday evening that some shippers pay more than others.

The truth is captive shippers are being hammered both via pricing and in service because they have nowhere else to turn. They are at the mercy of the railroad.

And now that we are in a state of rapid rise of inflation, we are seeing rates go up even further and faster than before. On top of that PSR and supply chain issues are further impacting service.

In order to level the playing field amongst shippers and prevent captive shippers from paying exorbitantly high fees, we are very supportive of the STB moving forward with allowing reciprocal switching in the U.S. Reciprocal switching provides a common sense solution to the issue of competitive rates. It is needed now more than ever before giving the rate increases we are seeing and the potential merger of CP and KCS, which will only serve to diminish shippers's options both in terms of reasonable rates and reliable service.

One statement from yesterday's testimony that particularly struck me was the claim that service had not been raised as an issue until recently. This is not because service has been strong by any means.

A common theme in my 16 or 17 years working for this industry has been the unreliability of the rail service.

The reason why this hasn't been raised is due to the very real fear of retribution if they were to speak out, especially those that are captive.

With the advent of PSR, there was simply nothing left for shippers to lose by becoming more vocal in their extreme frustration with how they have been treated by the railroads.

It's very ironic that the same industry that introduced the concept of PSR is now saying a new policy will negatively impact service as a reason for opposing that policy.

Reciprocal switching will allow shippers who are in a captive situation to be on a more even playing field with competitors who have access to more than one option. If the service continues to be subpar, they have the option to go to a different railroad and hopefully at a fairer rate as well.

We believe that this would be the first step in the right direction towards leveling the playing field, but it is important that when implementing this, we ensure this provides protections to all shippers and does not increase pressures and force even higher rates on those that are real captive shippers.

One of the requirements in the proposed rule is that the other Class I rail carrier must be within a reasonable distance of the facilities of the party seeking switching. My members and I are concerned with the ambiguity around the term "reasonable distance," as it is unclear how the Board may interpret that in future decisions.

We believe that the Board must interpret this term liberally. If they do not, the impact of the rule especially for those in my sector will be more towards the minimal side, as we do not believe that 30 miles being suggested by some is nearly adequate enough.

Not only will many of our members not be able to participate, but I fear those that are rural captive shippers and not near that 30-mile range would be unduly harmed by the rule, as you will only see the noncompetitive rates skyrocket as the railroads attempt to offset any lost revenue that results from having to offer fair rates to some.

We believe that at a minimum, the STB should specify that the reasonable distance is no less than 300 miles and allow for the consideration of longer distances on a case-by-case basis. This will allow for real change to occur in the out of control rate situation we are currently witnessing for captive shippers.

With inflation, supply chain issues and continuing impact costs of consumer goods, it is clear that this would be in the public's interest as well to rein in the railroad's historic practices of overcharging captive customers.

The IMA is very supportive of the Board's effort on reciprocal switching. We strongly encourage you to adopt the proposed rules, but do request that you modify the proposal with regards to reasonable distance to allow for a distance of at least 300 miles and ensure that more shippers and the American public are able to benefit from the resulting lower rates and better service.

Again, I would like to thank the Board for this opportunity to testify and welcome any opportunity to answer any questions you may have.

CHAIRMAN OBERMAN: Thank you.

Chris, could you give me a little better idea of where your members are shipping, in what kind of geographies are they located?

MR. GREISSING: We're located all over the country. The mining sites are where the minerals are in the ground. You have folks in rural areas in Wisconsin, some that are closer to major cities in the central part of the U.S. Up in the northeast we have operations in Massachusetts, Vermont. It's probably about 40 of the 50 states altogether.

CHAIRMAN OBERMAN: The -- you know, I raised the concern with other witnesses about these long mileage requests in order to encompass rurally located customers who are spread out as opposed to those in congested areas.

Do you agree if we applied a countrywide 300-mile range for where you could obtain reciprocal switch it could exacerbate or cause congestion problems in the congested parts of the country even though it might be needed to serve your members?

MR. GREISSING: I certainly understand the reasoning behind that, and I have appreciated those comments that have been made throughout the hearing.

I will say that there is a significant

fear that if it is more limited in scope, that we stand the very, very real threat of having those individual shippers be charged a much higher rate as compared to others, as we've seen the practice all along.

CHAIRMAN OBERMAN: Do you have any thoughts about how the Board might go about adjusting the rule so that it accomplishes both ends, if that's possible?

MR. GREISSING: I can definitely get back to you with some suggestions. One thought off the top of my head is, you know, limiting the allowable rate increases that a railroad might be able to put on a captive shipper over a several-year period. Just to make sure that they're not getting hit any harder than those that are in a competitive situation.

CHAIRMAN OBERMAN: Well, you know, we have under consideration two rate relief proposals, the voluntary arbitration idea, the railroads have come up with, and the final offer NPRM which is still pending. If the Board were to enact one or both of those measures, would that not provide the kind of relief you're talking about?

MR. GREISSING: Potentially. Potentially. We'll see how the final rules play out.

CHAIRMAN OBERMAN: So will we.

MR. GREISSING: Right? So, you know, I'm skeptical about the one but hopeful about the other. And you know, if we can come up with the sort of protections that our folks need to ship in a fair and reasonable way, I think that would be of significant benefit for all, because we are the raw material feedstock that goes into making the glass bottles, the paints, the coatings, basically everything you use every day, our minerals are in.

And as we are paying higher and higher costs, the public is going to then have to pay higher and higher costs as well for the end product.

CHAIRMAN OBERMAN: It does sound like the biggest concern you have from your sole-served folks are rates more than service. Is that a fair statement?

MR. GREISSING: Service has been terrible, so I hope to not give off that impression.

The servicing issues that our members are facing, especially the captive shippers, has not been ideal over the years. It's been something that they have constantly complained about in my 16 or 17 years at this association and is something that has only been exacerbated over the last four or five years, since PSR has been implemented.

CHAIRMAN OBERMAN: Is the issue they complain about consistency, lack of predictability, or is it something else?

MR. GREISSING: Yeah, and that communication. Communication has been horrific. There's some of our folks that didn't even know that this switch to PSR was happening until cars weren't showing up when they were scheduled, and then they had to call and contact folks within the railroads to try to figure out what that -- what in the world was going on. Which is not an easy process either.

So yeah, communication, reliability, consistency are all the major issues, and you've been hearing that from most of the shippers so far.

CHAIRMAN OBERMAN: Okay. I only have one other question. Are you a world wrestling champ? What is that belt on the wall?

MR. GREISSING: Yeah, no, it's WWE autographed championship belt, yes. For charity. Got it for charity.

(Laughter.)

CHAIRMAN OBERMAN: Maybe your members ought to just send you out to the offending rail yard.

(Laughter.)

MR. GREISSING: That could be the case, you know.

CHAIRMAN OBERMAN: All right. Are there any questions for Chris?

VICE CHAIR SCHULTZ: I have one final question, Marty. Thank you so much for raising the belt. That was something that was in my mind as well.

Chris, you spoke to communication between your members and the railroads, and that issue comes up in just about every meeting that I have with shippers in other industries.

I wondered if you could just take a brief moment to speak, you know, specifically to what, in fact, would improve communication and what level of communication do you think would benefit your members?

MR. GREISSING: Well, I think one of the biggest issues that we've heard is, you know, with PSR, with the railroads cutting the number of employees that they cut, being able to have those sort of historic long-term relationships with the railroad are a bit more difficult, as you just don't know who your primary contact is anymore.

You know, I think there has to be an effort made by the railroads to be a little bit more, you know, active in their outreach to their customers and to be a little bit more transparent in what they're doing in terms of servicing. And, you know, perhaps that would help the overall relationship between shippers and railroads.

But we're just not seeing that right now, and a lot of that has to do, we believe, with the downturn in employment on the railroad side.

VICE CHAIR SCHULTZ: Thank you.

MR. GREISSING: Thank you.

CHAIRMAN OBERMAN: Any other questions for Chris?

All right, Chris, thank you very much. And do give some thought along the lines that we've talked about with other witnesses this morning about other mechanisms for approaches that could provide the kind of relief that your folks are in need of, other than through the reciprocal switching concept. Seems to me we have to be nimble here and not have one size fits all.

MR. GREISSING: Certainly understand. Thank you very much.

CHAIRMAN OBERMAN: Thank you.

Our next and final witnesses on this panel are from the Institute of Scrap Recycling Industries, near and dear to my family, Bobby Triesch and Karyn Booth.

MR. TRIESCH: Good morning.

MS. BOOTH: Good afternoon. And

Mr. Chairman, I won't be testifying. I'm here for questions if needed, but Bobby is the star of the show here for ISRI, and I'll come back on after he's finished.

CHAIRMAN OBERMAN: You mean you think we've had enough?

MS. BOOTH: Well, I didn't want to say, but you know, it's possible.

CHAIRMAN OBERMAN: You're as welcome --

BOARD MEMBER FUCHS: Did you ever consider she might have had enough of us?

CHAIRMAN OBERMAN: Always possible. But just from our end, Karyn, you're always welcome.

MS. BOOTH: Thank you very much. I appreciate it.

CHAIRMAN OBERMAN: As I would say to all of our stakeholders that we've been hearing from.

Bobby, you're up.

MR. TRIESCH: Good morning. My name is Bobby Triesch, and I am vice president and regional general manager of the Georgia region of SA Recycling. SA Recycling is a member of the

Institute of Scrap Recycling Industries, commonly known as ISRI, and we're actively involved in the ISRI's ferrous division. First of all, we commend the board for holding this hearing and allowing us to explain our concerns with a lack of adequate rail competition and why we support expanding reciprocal switching between the carriers.

SA Recycling is a full service ferrous and nonferrous metal recycler and processer. Our recycling operations include manufacturing scrap, appliance recycling, automobile recycling, demolition scrap, green waste, oil filter recycling and basically many other types of recyclables.

We operate over 120 facilities throughout the Western, Midwest and Southeast regions of the country. And in those facilities, we have 35 facilities that are rail served. 31 of those are captive to a single railroad, three are served by a short line and only one is truly dual served and that's in Chattanooga.

In my role I oversee the operations of the Georgia region, which has 21 facilities. 20 of them are in Georgia, one is in Alabama right on the border with Alabama and Georgia.

10 of my facilities are rail served, seven on the NS, two on the CSX and one on the short line.

Rail transportation is critical for shipments of ferrous and nonferrous scrap especially at distances longer than 200 miles. Ferrous scrap is essential to over 70 percent of U.S. steel production needed to implement the bipartisan infrastructure law.

Steel made from recycled steel also saves energy and reduces greenhouse gases.

Due to the unique characteristics of bulk scrap metal, including its heavy weight, there are many situations where rail is only feasible for the shipment of this material. The lack of competition at many scrap yards that are served by only one rail provider adversely affect rates and service because the monopoly carrier lacks the incentive to negotiate and/or improve its service reliability.

Expanding reciprocal switching would allow competition to play a greater role in addressing these challenges by providing a captive rail customer the opportunity to access a second railroad at nearby interchanges in certain situations.

Starting in 2017, the U.S. Class I railroads began PSR as their operating model. Although PSR was marketed as a mechanism to improve rail service, the expansive cost cutting and labor and equipment as part of PSR has generally caused less efficient and less reliable service for SA Recycling. Our company and many other industry members have experienced significant service disruption, including congestion, missed switches, bunched railcars and inadequate railcar supply. Despite these service issues, which have only been exacerbated by recent supply chain challenges, freight rates have continued to increase year over year at our captive locations.

In a competitive industry, service providers who underperform are not usually able to reward themselves with rate increases from the customers. We have experienced these effects first hand. We have recently completed our annual contract negotiations with one of the eastern railroads that is the only provider of rail services at the -- at our southeast facilities, in Georgia. This past year the carrier experienced significant service disruptions, which really got horrible in the fall, which greatly impacted our ability to reliably service our steel mill customers.

Despite this below par service, our rail service carriers still offered a rate increase for the new year of nearly 10 percent. Although we were able to reduce that final level of the rate increase in a competitive market, one would expect a poorly performing service provider to keep its rail rates flat or even reduce its rates to ensure that its customers do not switch to another provider.

At one location in other regions where SA Recycling has competitive rail access at our facilities, that location does receive better service and rates compared to our captive facilities. Competition works.

While it is expected that some service disruptions will occur in rail service, the frequency of problems and willingness of the carrier to resolve the problems differ between captive and noncaptive facilities. Reciprocal switching could help to mitigate service disruptions by providing an alternative to shippers when disruption occurs on the bottleneck carrier's network.

On the flip side, reciprocal switching could also incentivize bottleneck carriers to work with shippers to resolve service disruptions to avoid losing traffic to a competing carrier. One example where reciprocal switching could benefit our company is one of our main yards in Atlanta, called East Point, where my office is. We are served only by the NS, but the NS and the CSX interchange traffic right downtown less than 10 miles away, Inman Yard. We supply scrap to steel mills that have access to both the NS and the CSX. Those two specifically are U.S. Pipe and Commercial Metals in Birmingham. Two steel mills that are served by both.

NS, however, selects an interchange location that's closer to the destination, preserving its long haul instead of switching the traffic to CSX at a nearby interchange in Atlanta, which would allow a competitive alternative.

I understand that the railroads oppose reciprocal switching because they believe it will cause more interchanges and inefficiencies. It is not in our interests to decrease the efficiency of the rail shipments by adding multiple interchanges. If reciprocal switching is expanded and if the bottleneck carriers best position to provide reliable and faster transit, then it would likely keep the traffic. But at least shippers would have an option to switch their traffic to a competing carrier at a nearby interchange, assuming that switching would lead to improved service or more competitive rates.

With the ramp in inflation going on throughout the country, competition would help to bring that inflation down. In the real world, the only competition our rail carriers have now is trucks and that is only to mills within about 150 miles of our facilities. And we're using that as much as we possibly can especially since 2017.

Finally, why SA Recycling and ISRI urge the Board to promptly adopt its reciprocal switching rules. As the Board well knows, the existing commodity exemption for ferrous scrap shipments creates an additional hurdle for our shipments. As explained in my testimony, ISRI members who operate captive rail facilities experience the same challenges as nonexempt rail traffic. The iron and steel scrap commodity exemption is outdated and no longer reasonable based on the highly concentrated rail industry and it should be revoked by the Board, respectfully.

Ferrous scrap shippers should have equal access to expanded reciprocal switching and the benefits of rail competition. Thank you again for holding this hearing, and I'd be glad to answer any questions you may have.

CHAIRMAN OBERMAN: Thank you, Bobby.

So do you have -- when you said one of your facilities is dual served, is it through reciprocal switching that it's dual served or how does that work?

MR. TRIESCH: It's our facility in Chattanooga that we just recently picked up by buying PSC, and it's a facility that used to be a foundry decades and decades ago, and it's down in Chattanooga, and it's also on the river. It's got NS, CSX and barge. And because of the efficiencies of barge transportation, I think they ship most of their scrap out by barge on the Tennessee River.

But it is actually served by both because it's a big facility that has rail coming in from different places.

CHAIRMAN OBERMAN: So to use railroad doesn't require a reciprocal switch in that.

If you have any experience, you know we had a lot of questions yesterday about how does a reciprocal switch actually physically take place as compared to one that's not reciprocal. And I wonder if -- well, let me ask you this. The yards that are served, sole served, are your cars picked up by a local train and taken to a servicing yard, switching yard?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: In that yard they are then classified and put on some track where they are connected to a train that's going to a steel mill; is that right?

MR. TRIESCH: Yes, sir, yes, sir.

CHAIRMAN OBERMAN: Do you know whether any of those yards that service your locations also provide reciprocal switching services for other shippers other than yourself?

MR. TRIESCH: I do not know the answer to that question. But I know that if we are going to a destination that's, let's say, on the CSX, either through Rule 11 moves, they would go to the Inman Yard, which is in downtown Atlanta, and they would hand off those cars to the CSX. And I think that happens on a daily basis, because they have two yards right next to each other, the NS and the CSX have yards right next to each other downtown, or west --

CHAIRMAN OBERMAN: Whose line serves you, what local, is that a short line or is that a CSX local?

MR. TRIESCH: No, our facility is on NS, so the NS --

CHAIRMAN OBERMAN: On the NS, I see.

MR. TRIESCH: Yes. For selecting East Point, where we're talking about, East Point, the NS has a small yard here in East Point where they -- because East Point is a historically industrial area. So they have a yard there.

Now, they don't always take them to the Inman Yard. I think they take them to the -- I don't know exactly how the NS does everything, but they take them to the East Point yard and then they probably build a train and they may send it on to another yard for more cars, I'm not exactly sure how they build trains.

CHAIRMAN OBERMAN: In that situation, I take it if you're -- what you would like to have is the ability for that local NS train to deliver your cars to the CSX yard as well?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: As an option?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: Would that involve one extra move, no extra moves? Maybe it's an unfair question, you're not in a rail yard business.

MR. TRIESCH: I don't know. I know in our Decatur yard, and I'm not sure, so Decatur, Alabama, we have -- which used to be the Denbo scrap, it's been there a long, long time. And they don't do that much rail business because they have Nucor Decatur right down the road just a few miles so they truck a lot of it.

But I do know by talking to Joel Denbo, they are served by NS but they have some mechanism that allows them to get rates and bill directly out on CSX. So I can't quantify how much better that is because of their proximity to Nucor Decatur, which is 4 miles down the road. It's hard to ship scrap on rail away from a steel mill that's 4 miles away.

CHAIRMAN OBERMAN: That's understandable.

If you were provided reciprocal switching, and let's just take up UP at their description, that it would add a day to the delivery, but it was a consistent day that you and the steel mills could plan on, would that be an improvement, in your view, or would you rather not lose the day?

MR. TRIESCH: It would absolutely be an improvement, because we, I believe, routinely lose days here and days there all the time for different things. So having that option of talking to and getting rights from a competitive source, I would take that in a second.

CHAIRMAN OBERMAN: Is it the reliability and consistency that's as important as just how long a trip takes? Maybe more important?

MR. TRIESCH: We -- reliability is -- it is very sketchy at best, so it's not very dependable. So having the ability to get better pricing would be worth more than reliability and dependability.

When we met with you a couple years ago, you know, bunching was certainly a big issue. I think railroads have gotten better in that regard. But still the reliability is hit or miss. And it's gotten better since this last batch of COVID really -- they really suffered in really December/January was lots and lots of missed switches.

CHAIRMAN OBERMAN: Well, you're not saying reliability is unimportant. You're just saying you're pessimistic that you'll ever get it?

MR. TRIESCH: Yes.

CHAIRMAN OBERMAN: Is that fair to say?

MR. TRIESCH: Yes, yes.

CHAIRMAN OBERMAN: Okay. I had another question for you, but let me -- it has escaped me for the moment. Let me see, Karen Hedlund has a question so let me hand it off.

BOARD MEMBER HEDLUND: It's not a question. Bobby, you're in Atlanta, and I just wanted to point out, we have been talking for the last two days about the meaning of terminal area, what is a terminal. And it reminded me that the original name of Atlanta, Atlanta was founded in 1837 as the terminus of the -- something in Atlantic Rail -- Great Western and Atlantic Railroad.

And so the original name of the city was

Terminus.

MR. TRIESCH: You're exactly right. And I didn't always know that, but I do -- for the last 20 years, but you're right, Terminus.

BOARD MEMBER HEDLUND: Terminus.

CHAIRMAN OBERMAN: All right. Are there any other questions for Bobby?

BOARD MEMBER FUCHS: Marty, thank you.

Bobby, good to see you. You mentioned your 35 facilities, one truly dual served, three short line. The three short line, do they have access to more than one railroad?

MR. TRIESCH: Yes. The three short lines, only -- one is in my region, it's Phoenix City, Alabama, it's on the CCH, and we have access to at least -- almost all of it goes NS because of where we go from there, but it may have access to CSX as well.

And then on the West Coast, our facility at Terminal Island, California and Bakersfield, California are both served by short lines as well.

BOARD MEMBER FUCHS: Now, of your 31 that are served by one railroad, how many of those, and I don't mean to put you on the spot, but a ballpark is totally fine, but, you know, how many of those would you classify as rail dependent versus the 31 that might be sole served but, you know, you feel that, for a variety of reasons, I think you've already given an example of one, that for truck or maybe even barge, is a possible option for the 31? A good option, I should say, effective option may be the more precise term.

MR. TRIESCH: So the facilities that we acquired from PSC last fall, they have barge service in Chattanooga and Nashville. Oh, my gosh, you're putting me on the spot. St. Louis, I think they don't have barge access right there, but they're a mile from the dock, so they put a lot of things on the water.

Up in Ohio, they're just rail, but they're more -- there's closer proximity to steel mills up there. You know, there's still a lot of steel mills up there. So truck is a more viable option for them.

Where I work every day in Georgia, you know, before 2017, we shipped almost exclusively by rail because most of the scrap steel we produce here goes to Alabama, Alabama being the biggest steel-producing state in the nation, 10 steel mills I think, off the top of my head.

So there's a giant sucking sound of scrap going into Alabama every month. And we have one steel mill here in Georgia, in Cartersville, it's a Gerdau mill, and we truck there because it's on CSX.

So we -- and finding truck drivers is very difficult right now with the manpower shortage and I don't know if younger people entering the workforce just are like, I don't want to be a truck driver, that's passe, I don't know. But we certainly could use a lot more truck drivers and it's been exacerbated by the railcar or the rail service infrastructure.

BOARD MEMBER FUCHS: Suffice it to say, looking at your facilities, you have some with competition, some with a lower degree of competition. Where I'm headed with this is I'm wondering, similar to a question I asked PRFBA earlier, which is can you readily distinguish or discern that your facilities have better competitive options, either you know dual served, short line, barge, truck? The facilities with better competitive options, do you discern a marked difference in their rates and service product compared to the ones that have worse competitive options?

MR. TRIESCH: Yes. And the classic point is when we talk to our friends at the railroad, and once again as I told you all a couple years ago, I generally like the people I deal with at the railroads, they're nice people, so I have nothing against them personally. We get along well.

But, you know, it's frustrating to say -- to sit down and say hey, your rates are going up 10 percent. It's like really? After you apologized last week for missing all of my rail switches, you're going to raise my rates 10 percent?

But those facilities, or excuse me, those destinations that are closer, that have competition by truck, those rates are much more competitive. So example, Atlanta to Birmingham where I can run a truck over and pick up a backload and bring something back, those rates by rail are actually quite good rates. But if you go a little bit further and go Atlanta to Tuscaloosa, Atlanta to Decatur, where it's too far for a truck to make a round trip, prices go up.

BOARD MEMBER FUCHS: Now, what about -- you provided important testimony in the demurrage context and obviously engaging on 704 about issues with bunching which you said has gotten better, which is good to hear.

But do you see the same differential service performance as well like you do for rates between the not as competitive versus more competitive?

MR. TRIESCH: So I can't tell you -- when they come in to service us, they don't differentiate their service based on whether it's going shorter or further. So it's -- I don't know that I can make that statement.

BOARD MEMBER FUCHS: You don't think on the first/last mile, there's much of a difference between competitive and not?

MR. TRIESCH: I don't know -- so every day we ship out, let's say, 12 cars, four of them may be going to Birmingham, six of them may be going to Decatur and two of them may be going to Mississippi.

So I don't think there's a differentiation on the service --

BOARD MEMBER FUCHS: I'm more comparing the facilities, the origination points, comparing --

MR. TRIESCH: Oh.

BOARD MEMBER FUCHS: So if you're comparing, let's take your Chattanooga or short line served facilities, you know, where you've got intramodal competition, and let's take your most rail captive facility with one -- with one railroad.

Would you generally expect to see different rail service performance, not within cars based on destination but within the origination points that are definitely situated?

MR. TRIESCH: I don't know that I can say

that.

So I know that -- I think the CCH, the short line in Phoenix City does a really good job. I think they're very attentive to service.

And I think it's because being in Phoenix City, we can use trucks easier there to go to those mills in Alabama. And I think logically that your statement is correct, that the more competition, the more people know that they have got to perform, the better their performance is going to be.

BOARD MEMBER FUCHS: Got it. And I actually -- Karyn, I have one question for you, take advantage of your expertise on the line.

You know, yesterday it was mentioned by a railroad witness about adding things like product competition and increasing the RVC threshold beyond what we do and, you know, beyond what was included in the proposed rule.

And, you know, I'm sort of, you know, wondering, is it your assessment that that would take the framework, as well as maintaining a conduct standard of some type, is it your assessment that

that would take the framework both beyond what the Board rejected in Midtec itself as well as to something that's more complicated than even a rate case?

MS. BOOTH: Well, I guess, Patrick, just kind of thinking about that, I mean, of course the NIT League proposal going back in time, right, had created these conclusive presumptions with the intent of sort of creating what we called at the time sort of a fast pass to relief. If you could meet certain criteria that we explained in the original petition, that would be kind of prima facie, if you want to call it, evidence of a competitive problem.

BOARD MEMBER FUCHS: Right.

MS. BOOTH: You used to have a faster option to get this relief, 240 percent RVC was one of those factors that NIT League had put forth.

BOARD MEMBER FUCHS: But importantly, NIT League did not have a conduct standard; right?

MS. BOOTH: It did not.

BOARD MEMBER FUCHS: So if you're going to add those things in and keep the conduct standard, that's additive; right? It's more -- something beyond.

MS. BOOTH: But I think the conduct standard is important too. And I mean, that you're sort of probing. And we've had interesting dialogue yesterday and already this morning and, you know, that's something we're obviously going to need to think through as we evaluate this.

But I think, you know, going down the path of comparing what's service like at a captive facility versus at a competitive facility, is that the right way to produce evidence, so to speak, of a problem.

You know, it might be. We heard Herman touch on first mile/last mile data, what have you. You could think about number of switches, consistency, reliability, car supply, cycle times. There's lots of things that could be looked at.

But I do think that you also touched on yesterday an important point of burden of proof, because you can kind of start thinking about, well, okay, if you're going to be comparing captive and uncaptive, well, is it the same company, which we're talking about to a lot of witnesses, is it the same industry, is it the same commodity, you know.

And there might be situations where you might be captive or competitive for some commodities and maybe the railroads don't like your commodity, like a TIH, and you may not have a way to establish, you know, any difference.

Rural versus urban. You know, volumes.

So I could see where burden of proof starts to still get quite complicated potentially, and going down this path, and we're not going to solve that right here right now. But I do have some concerns that that would not be, in my view, a proper stall criterion. Maybe that's one, but we also heard Board Member Primus kind of continue to talk about impact on shippers business and economic, which, you know, may be other ways to look at what are the impacts of poor service that may not require that type of comparison.

And then we've heard about downstream

impacts on supply chain. So I think there's a lot of interesting ideas kind of coming out through this idea that we could think about. I'm not here today, not talking to my clients about what they agree to, what have you.

BOARD MEMBER FUCHS: I'm really glad to hear you say that. I'm tremendously glad to hear you say that.

I'm also -- it caught my attention as well, I was also heartened to hear from AAR, I think Mr. Horwich at the end of his presentation talked about shifting burden; right? And the stuff that the railroads are better positioned to provide and to offer and whether or not that could reduce complexity for shippers. I think in the PRFBA dialogue, we had -- Herman had I think the really good idea about whether or not there would be extant data that could also reduce the burden for shippers. And I heard I guess from both BN and UP about trying to think about complexity and ways to find solutions for that.

So even though I think people have taken tough positions at times, I actually do think that we are circling around some ideas. And so the fact that there may be some openness among the shipper community and taking a look at conduct and not just circumstances, you know, and then can we capture conduct in a less administratively complex way, you know, and just working through that a little bit, I agree with you, that is a tough issue to tackle.

Because, you know, do you compare just -- all the reasons you mentioned, do you compare just with yourself? What about degradation in service? You know, does it have to be controlled for commodity? You know, I think there was an idea yesterday about well, you have to do rate-adjusted service, right.

And you can imagine complexity starting to pile up. So we've got a lot of smart people testifying today, we had a lot of smart people testifying yesterday, a lot of expert people who are well positioned to think about what truly matters for different service products, and I would just encourage everybody to continue to think about that, is there a way we can build in conduct and build in competitive circumstance in a way that we can actually adjudicate cases in an expeditious manner.

MS. BOOTH: Absolutely. And I'm here reacting to the dialogue and your questions, and I am not here to say obviously that our clients agree to that, that the statute requires that or anything like that.

But obviously, we are listening to the dialogue, we are thinking about these issues, which everybody should be doing as they're being discussed. And that's, you know, sort of what I'm giving you here, which is an off-the-cuff reaction.

BOARD MEMBER FUCHS: Totally, I hear you and greatly appreciate the engagement.

CHAIRMAN OBERMAN: And I just want to add a brief comment before we go to the next question on what Karyn said.

I have been focused and I'm going to continue to focus on the physical logistics of accomplishing these goals. And the statute is debatable. It's like almost all the statutes we deal with, leaves something to be desired.

I think it would be most productive, I'm trying to figure out, what is the best physical solution, if I could just use too simplistic of a word, to provide competition, to minimize any impact on the network, if there is any negative impact.

And once if we can come up with physical ideas that work, or tests, what you and Patrick were discussing, which make good sense, then the lawyers could put their books to work and see if we can figure out is this something that is allowed and permitted and authorized by the statute.

MS. BOOTH: And I think you're very much touching on feasibility.

CHAIRMAN OBERMAN: Yeah.

MS. BOOTH: And I think Jeff Moreno probably described best in terms of what we still continue to believe is an operational solution, you know. He talked about the local trains and the road trains and whatnot, and more thought should be given to that.

I'd love to hear more railroad input

around that. We think, you know, those trains are already operating and running, those yards are there, you know. There may be these small delays that some shippers clearly are willing to accept.

But I mean, again, our view is that the impacts are a bit overblown, but that would also be able to be fleshed out in the context of a case, if some area, some particular request had more complexity than others.

CHAIRMAN OBERMAN: All I meant to suggest was that if you start the discussion with the lawyers, you will end up with a more limited amount of creativity.

BOARD MEMBER FUCHS: And I would also add, Marty, if we leave too much to a particular case, we find ourselves sort of somewhat in a straitjacket to the facts in that circumstance as well, which I think you actually see evidence of in the Midtec decision.

CHAIRMAN OBERMAN: I agree with both points. My goal for the moment is to have the most creative thinking brought to bear to the problem because, as we are learning and have learned, it's a complex problem.

I think Michelle has been patiently waiting to get a question.

VICE CHAIR SCHULTZ: Thanks, Marty.

And Bobby, thanks for your testimony this morning.

I think you mentioned that the majority of your members are actually captive shippers. So I wanted to ask you to what extent are you in favor of reciprocal switching because it would lead to lower rates, or are you in favor of reciprocal switching because it would lead to better service or perhaps is it for both reasons?

MR. TRIESCH: I would say for both reasons. I think competition naturally brings out the best amongst us all, and providing better service and better pricing.

The example I shared with our rate renewal process this year, to get a 10 percent proposed rate increase across all your destinations, it was -- it was really -- it's not logical to think about how that's justified except without competition.

So we would hope to get better service as well as better rates, which happens in all those industries where there's competition.

VICE CHAIR SCHULTZ: Thank you.

CHAIRMAN OBERMAN: Robert?

MS. BOOTH: Michelle, can I make one quick point to Michelle's question? Because I think we have heard a lot that it's both.

But I think one of the other really important elements around competition that I know our clients talk about is getting better leverage in contract negotiations, right.

The contracts today are so one-sided, you're hearing an example here of that's just the rate level. But there's more to contracts than just the rate.

And some of these service issues historically used to be able to be addressed in contracts, when there's a little bit more equal bargaining power, you can have service terms in your contracts. You don't have to go running to the Board because you've negotiated cycle times, you've -- I mean, the shipper today may have to give a minimum volume commitment, which the railroad demands. They want that certainty understandably. But the shipper doesn't get anything in return in most cases, maybe where you have competition you can get it.

But you're not getting any reciprocal commitment in service for the volumes you're committing.

So some of this is also about, again, broader benefits beyond, you know, just the rate, just the service at this one location, but doesn't competition bring benefits to the commercial relationship that limits the need to run to the Board for regulatory assistance because you actually have competition that leads to more reasonable contract terms.

So I just wanted to get that point out.

VICE CHAIR SCHULTZ: That was very helpful, Karyn. Thanks. Thanks so much.

CHAIRMAN OBERMAN: Thanks, Karyn.

Robert?

BOARD MEMBER PRIMUS: I appreciate that, Marty.

And Bobby, thanks again for hanging on for us. I think everybody probably needs a break so I'll be very brief.

You mentioned that you just saw a rate increase at one of your facilities that was having a lot of service problems, 10 percent increase. Was that at a captive location?

MR. TRIESCH: Yes, sir.

BOARD MEMBER PRIMUS: Did you see any other rate increases to that level at any of your other plants that are dual served or --

MR. TRIESCH: So the problem there is I only have one that's dual served, and that one that's dual served really doesn't use rail that much because they're on -- that's the Chattanooga facility that's on the water, and water, rail, barge is just more competitive. So I can't say that.

Really the thing we used in fighting back or pushing back on that 10 percent increase was a little bit playing with their emotions and understanding that we miss switches all the time, we miss service all the time, we have to continue buying more railcars, so we have to buy the railcars in which we're going to move our product, so there's the CapEx requirement.

And like I said, where we can, we say fine, we're adding more trucks because we -- because that is the competition.

But it's -- so I try to use all the different tools in negotiating and do the best we can, but, you know, the result was still a big increase, and it's a big increase every year.

BOARD MEMBER PRIMUS: Thank you.

CHAIRMAN OBERMAN: Bobby, I wanted to get back to this question of trucks, which you mentioned at the outset.

I take it that in some of your areas, your locations, you are using truck where you would prefer to use rail?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: Not getting the right price at the right service?

MR. TRIESCH: That's correct.

CHAIRMAN OBERMAN: Can you quantify that?

MR. TRIESCH: That argument really only works where a truck can go out and come back that same day. These truck drivers are locally based, they will go to Birmingham, come back. They can't really drive all the way to Tuscaloosa and back to Atlanta because of traffic and wait times at steel mills.

So if it's within that 150 miles of -- from our location to the mill destination, it works.

So our rates are best from Atlanta to Birmingham versus how they are to further out steel mills. The same thing, our Savannah facility, the Nucor mill in Nucor Berkeley, which is just north of Charleston, that is about 120 miles from Savannah. So in that instance, the first rates we got from the railroad when we started that facility were sky-high, and we used trucks, and we used trucks for years.

And then in meetings we'd have with the railroad and say, well, what opportunities do you have, say well, we are running a heck of a lot of trucks every day down the road between Savannah and Berkeley. If you would give us a rate, we'd love to go to rail. Rail is easier for us, loading, you know, it's equivalent of four truckloads and we can load it right in our -- we love rail.

And so they would probably go back and think about it, and they would come back and, you know -- but eventually, because they knew they weren't getting that business, they would lower that rate. But that's the only time we get that sort of --

CHAIRMAN OBERMAN: Well, I'd like to sort of sort this out for a moment.

You indicate it makes sense that if you only got 4 miles between your yard and a mill, you're not going to use train. But what is the distance where it makes more sense to use train than truck? Is it 120 or something less than that?

MR. TRIESCH: I would say if the -- it's much easier loading a railcar than a truck, and so I don't have any mills. The closest one -- the only one in Georgia is the Gerdau mill in Cartersville, and it's CSX. So we don't ship there because like I told you, if we had -- if we had interchange, we would ship to Cartersville by rail.

But they're CSX served, and most of -- all my shredders are all on NS. So the only yards I have on CSX are two really small yards, they really don't do much business.

So the bulk of our -- I would say 98 percent of our rail costs, the money we spend on rail, is NS here in Georgia.

So to answer your question, if there was a steel mill 30 miles away, I would rather ship by rail.

CHAIRMAN OBERMAN: So even a short distance like that?

MR. TRIESCH: Yes.

CHAIRMAN OBERMAN: The one you just mentioned, if you're on NS but the mill is served by CSX, you can't get an interchange rate or whatever they call that?

MR. TRIESCH: We can. But with both of

those -- both of those hands, in other words, NS and CSX both want to make something, it's cheaper to go by truck. If it was NS direct, I believe that they would -- or if I had the ability to go to CSX and say, give me a rate picked up in East Point to go to Cartersville, I believe they would sharpen their pencils and say what's the competition? The competition is truck. And we could get many four more trucks off the road.

CHAIRMAN OBERMAN: But right now, you still have situations where you could go by rail but truck is cheaper. So rail is not meeting the market. Is that right, in some locations?

MR. TRIESCH: In the instance, what we were talking about, like to go to Cartersville, the rail rate is high because you have both railroads want to make some minimum amount of money or they're not willing to entertain it.

And because it's not -- because they can't be -- because there's two people involved in that negotiation or three people involved in that negotiation, they're not going to put the effort in to working on saying, hey, CSX, lower your rate to, you know, 300 bucks, we'll lower our rate to 300 bucks so that we can get SA's business and we can do that.

So they -- there's not enough incentive there, I don't believe, for them to get together.

CHAIRMAN OBERMAN: What I'm trying to understand, though, Bobby, currently are you shipping scrap by truck that you would prefer and is feasible to ship by rail?

MR. TRIESCH: Yes.

CHAIRMAN OBERMAN: And what's -- so in those situations, the railroads are not meeting the competition, they're saying go ahead and use truck, I take it?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: Can you quantify how much of your business is on truck that you would prefer to be on rail?

MR. TRIESCH: Well, before 2017, we didn't use many trucks at all to go to steel mills. And so I bet -- I don't know -- I believe it's probably 20 percent of our volume right now is going by truck, and I would love 100 percent of it to go by rail.

CHAIRMAN OBERMAN: You can't do 100 percent because you've got one mill that's 4 miles away.

MR. TRIESCH: I'm sorry. When I answered your question, I was talking about my Georgia region and that yard in Decatur was in the Alabama region. So I was really answering you for my Georgia based.

CHAIRMAN OBERMAN: Can you give me the numbers for your entire company? You said 20 percent in Georgia is on truck that ought to be on rail in your view. What is it companywide, would you say?

MR. TRIESCH: I have less visibility as to what goes on on the West Coast, so I think I could answer you more east of the Mississippi. And I think it's probably about that same percentage. It's probably -- it's probably about 20 percent.

CHAIRMAN OBERMAN: And what -- can you approximate what number of trucks is that that are on the highway that ought to be on the railroad, on a yearly basis, for example?

MR. TRIESCH: I think we have just in Georgia probably 30 trucks a day, and I think Alabama has probably a similar amount. You know, it's probably 75, 80 trucks a day, every single day, or 23 days a month.

CHAIRMAN OBERMAN: So you're talking about 25,000 a year? Do I have a decimal in the wrong place?

MR. TRIESCH: 23 times -- yeah, 22,000-ish a year truckloads.

CHAIRMAN OBERMAN: So, you know, we keep hearing from the railroads that their goal is the same as my stated goal, I think the Board's stated goal, and that is to get as much freight off the highways and on the rail. At least for those 20,000 truckloads, you're not seeing the effort. Is that a fair statement?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: And it's kind of a dilemma, it seems to me, from the way the legal system is set up, whether it's particularly in the rate area, because, you know, we're mandated to look at the market dominance standard, which as I understand it means an area where there isn't enough competition to control freight rates. Now, maybe you're in a market dominant if the trucking option isn't enough to control freight rates, but you do have truck as an option, and that usually undermines your ability perhaps to get some kind of relief, at least many shippers would view it that way.

But yet as a matter of public policy, it puts more -- the fact that you have trucks as an option puts more trucks on the highway, which is, seems to me, counter to good public policy.

BOARD MEMBER FUCHS: Well, Marty --

CHAIRMAN OBERMAN: Just one more question I had, Patrick.

In your particular commodity, Bobby, isn't it also the case that your customers would much prefer to get the scrap on a train than on trucks?

MR. TRIESCH: Yes, sir, absolutely. Steel mills, they don't want trucks, they have only added more ability to receive by truck because of the congestion and service problems they have had with railroads.

So they would prefer to have scrap come in on a railcar. A lot of times they can use those railcars to bring that scrap right up towards the melt shop, where they can unload and put into the charging buckets.

So there's -- and in many yards, they end up taking that which comes in by truck and then reloading it in a railcar to get it up closer to where the melt shop is. Vast -- vast majority of steel mills would rather have it in a railcar.

CHAIRMAN OBERMAN: Well, you know, the railroads have tried to school us in the world of efficiency, and I guess they have a different definition of efficiency than I learned in my English class. But we'll deal with that when we talk to the railroads.

Patrick, you had a question?

BOARD MEMBER FUCHS: Marty, if I could make a remark, because this is a topic you and I talk about a lot and I think we share the general perspective of moving things to rail can do good things for congestion, environment, infrastructure wear and tear, et cetera.

I do have to note that while that's an important public policy consideration generally, you know, it is not the only public policy consideration, particularly not in the things that we regulate, you know. In my view, our regulations are mostly designed to address competitive problems, as opposed to modal shifts.

You know, for example, you know, we don't have a rate case system that just brings anybody who has market dominance down to a 180 RVC. We are not discussing a switch fee that would be $1, you know, which would surely -- and so, you know, to the extent that we want things to move by rail, there's a difference between addressing competitive situations that stop things from going on rail versus sort of artificially subsidizing rail transportation, which I don't understand -- which I don't understand, by the way, Bobby to be advocating in the slightest.

CHAIRMAN OBERMAN: I don't either.

BOARD MEMBER FUCHS: I hear Bobby's advocacy about where competitive circumstances might not be as good as they could be. That's the only thing I want to mention, is I think if we're just focused on moving things from the highway to the rail, I think we would lose other important policy considerations. And I don't mean to suggest, Marty, that you disagree with that notion. I just thought it was important to preserve for the record.

CHAIRMAN OBERMAN: No, I don't, but I think I'm making an observation that perhaps is above the pay grade of the STB board members, and that is that when the laws involving rate regulation and market dominance and so forth were written decades ago, the world wasn't on the edge of a climate disaster. And so certain public policies perhaps should be elevated to a higher level of precedence than they might have been when we were just looking at economics. But that is a discussion for another day.

BOARD MEMBER FUCHS: It is. And I might

say that that's -- the infrastructure projects for on dock rail and other things that might be coming in the future that would advance that goal.

CHAIRMAN OBERMAN: I think as you know and perhaps other observers know, I have chosen to exercise my discretion as a board member to push the envelope on supporting climate change issues, and as it's arisen in other cases, and that's really all I'm raising.

But it is frustrating in this proceeding and in our rate proceedings to hear of a shipper like SA Recycling that's got a commodity that he would prefer to put on a railcar, that his customer would prefer to get in a railcar, that there's a train that goes from here to there, and the railroad says, you know, I don't think -- Bobby, let me just ask this question, and you may not know the answer.

But you're not asking the railroads to give you a rate to match the trucks that would cause them to operate your traffic at a loss, are you, as you understand it?

MR. TRIESCH: No, I'm not.

CHAIRMAN OBERMAN: So it's just a question of how much profit? Doesn't it boil down to the rate that you could pay provides them with the same OR that Wall Street is demanding as compared to some other commodity? Isn't that really what this boils down to?

MR. TRIESCH: Yes, sir.

CHAIRMAN OBERMAN: So that to me is an area that we can perhaps appropriately address in another forum with a different rulemaking, but it is a frustration of mine, I've expressed it frequently. And I think there are some Wall Street observers listening to these hearings, and I hope when they write about the issues that have come out, they will include that one. And I think the listener who I'm talking to knows who I'm talking to.

Are there any other questions for Bobby?

Well, this has been extraordinarily productive, Bobby, thank you very much. And full disclosure, I think everybody knows it now, and I grew up related to the scrap business, my father was the publisher of the trade magazine for the scrap industry, which was actually bought by the predecessor when my father passed away. I have never been in the scrap business, and I was never in the publishing business. I fled to go into the law.

But I grew up knowing a lot of scrap dealers. But it has not affected my votes on this Board, but it is fair disclosure to make.

If there are no more questions, we have been going quite a long time. I think we need to take a break. I don't know if -- it's 12:10, should we make this a lunch break or should we take just a short break, we'll hear Chuck Baker and then take a lunch break? Does that make sense to the board members? Or what's your preference?

BOARD MEMBER FUCHS: Marty, cognizant that we have three panels left, if we took the lunch break now and maybe worked through the next two panels, that might save the most time. But I don't want to -- listen, there are people that are doing more rigorous work than me here, so --

CHAIRMAN OBERMAN: You know what, I'm cognizant of people of my age group needing to get up and walk around more often. So let's take a 10-minute break now, come back at 12:20.

We'll hear from Chuck, Chuck, you'll be incentivized not to make board members hungry by not talking too long, and when you're done, we'll take a lunch break.

See you all at 12:20.

(Recess.)

CHAIRMAN OBERMAN: Welcome back, everybody. I apologize, I'm two minutes late. Chairman's prerogative within the Metra on time standards.

Chuck, are you ready?

MR. BAKER: Yes, sir.

CHAIRMAN OBERMAN: You are on. You are so important that you are on a panel unto yourself.

MR. BAKER: Well, I would actually say that the short lines are on a panel by ourselves. I have do have two folks with me, Chairman Claussen from the association and Dr. David Clark from University of Tennessee, so hopefully you will have room for all three of us before lunch, but if not, we're happy to wait until after lunch also to finish.

CHAIRMAN OBERMAN: I do see those people on the list. I didn't mean to shortchange them. But certainly the short lines deserve their own day in the sun. So proceed.

MR. BAKER: We are flattered. Good morning, Chairman Oberman, I should say good afternoon here, but still good morning to you, Vice Chair Schultz, and Members Fuchs, Hedlund and Primus. My name is Chuck Baker, and I am the president of the American Short Line and Regional Railroad Association.

Short Line Association represents almost all of the 600 Class II and III railroads in the United States.

We like to say that, as an industry, short lines punch above their weight. Although the typical short line employs only about 30 people, serves about 18 shippers and hauls freight about 50 miles for those shippers, we have an outsized impact, particularly in small town and rural

America, in getting our customers' goods to market.

In total, we operate nearly 30 percent of the nation's route miles in 49 states, touch one in five cars on the network and in several states operate the entire freight rail network.

In the communities where we do business, we are job creators and economic drivers. For each job on a short line, 2.6 jobs are indirectly supported.

Nationally, just north of one half of 1 percent of all business inputs rely on transportation services provided by the short line industry, amounting to 478,000 jobs, $26 billion in labor income and $56 billion in economic value added.

We take that responsibility seriously and do not take our critical role for granted.

Short lines are small businesses with limited resources but with relatively large private investment needs. We typically invest about 25 to 33 percent of our revenues each year back into our infrastructure and have spent decades rehabbing light density lines that were generally neglected and frequently headed for abandonment under past ownership.

We are the critical first and last mile for more than 10,000 customers, and those customers know us as partners who will fight for each and every carload or even scrap and claw for each and every carload as Al Pacino would say, Member Fuchs, creating opportunity where there was none before for any customer or potential customer on the line.

Today I'm appearing before you to reiterate our opposition to regulations that we feel would make freight railroading less efficient, routing more complex and decrease infrastructure investment into the rail network.

At a time when the public has seen the need for supply chain that is more sustainable, more resilient and more fluid, we question whether forced reciprocal switching will help railroads meet those challenges.

While short lines often consider themselves shipper representatives, and we certainly have our share of frustrations with our Class I railroad partners and we can even see where the desire for this rule came from, we do see this rule as counterproductive and likely to cause more harm than good.

We believe that the existing suite of STB remedies is sufficient to handle problematic cases and that the current balanced regulatory structure has resulted in the world's premier freight rail network.

Over the years the Short Line Association has provided comments in Dockets EP 705, 711 and 711 Sub 1. We have submitted extensive written comments, testimony and evidence demonstrating why forced reciprocal switching and other similar proposals were contrary to the public interests.

In particular, we showed that short line railroads already face extensive competition, we already go above and beyond to do right by our customers, we have unique and fragile economics that would be put at risk if they were subject to a forced reciprocal switching rule, and that forced reciprocal switching that would apply to short line traffic is unnecessary and unwarranted.

The STB's proposed rule unnecessarily puts the nation's efficient rail network at risk and threatens to cause further supply chain disruptions. An inefficient route due to an extra switch would not just impact the shipper who has requested that switch. It would impact all other shippers using the line.

It may reduce throughput on a line, unnecessarily tie up inventory already in short supply, such as boxcars and locomotives, and increase the potential for incidents and injuries with the addition of more switches and car handling, which are two of the industry's most common areas of accident and incident risk.

This significant change in regulatory policy could drive deteriorating service for customers, force freight off the rail network and onto the highways and result in negative public impacts in the form of increased road congestion, decreased safety and harm to the environment.

All of these unintended adverse effects could lead to diminished capital investments in the freight rail network and risk progress towards an integrated resilient, safe and ever more environmentally friendly freight rail network ready to handle the ever increasing demands of our growing country.

In short, it seems a lot to risk for the near-term benefit of a small number of specific shippers in particular cases.

However, should the STB move forward with the reciprocal switching rule, we ask that you continue to exclude short lines expressly and specifically from the regulations.

We recognize that the existing NPRM intends to exclude short lines, as did the original NIT League petition the rule was based on, but we do have three small wording suggestions to help the rule fully meet its intent.

I'll speak to those changes in just a moment, and they are also included, of course, in our written comments.

Before I note those small wording changes, I'd like to speak to the basic economics of short lines for a brief moment. And Dr. Clarke, who will be speaking right after me, will cover this in greater detail too, although also briefly due to lunch, of course.

Given the economics of a typical short line, that short line status as a viable entity would be put at risk if a forced reciprocal switch were to significantly impact its revenue from a major customer.

Compared to larger railroad carriers, short lines have shorter lengths of haul, higher fixed costs and larger capital needs for infrastructure investment, including the task of upgrading bridges and track to handle modern heavier 286,000 pound railcars.

Short lines provide high touch customized service to a comparatively small number of customers while facing pervasive competition from trucks, barges and transloading operations for their freight traffic due to their typically short lengths of haul.

While a large carrier could at least potentially absorb a small reduction or relatively small reduction in overall revenues due to mandated reciprocal switching, it would be a far different matter for short line.

On an average short line, just three customers account for two-thirds of the rail traffic shipped. Thus, the loss of a significant portion of the revenues from even a single shipper could have a meaningfully adverse effect on the financial viability of a short line, given the high infrastructure and fixed costs that must be supported by those revenues.

And a decrease in revenue from a key customer on a short line would have a multiplier effect. The other small shippers utilizing the line would be negatively impacted if the short line were no longer able to provide service to them at rates that make the shipper competitive.

Even worse, if the line had to be closed and the shipper was forced to find alternate transportation or relocate.

For the short line industry in total, that number of shippers is in the thousands. The stated purpose of this rule is to help shippers, but including short lines in the regulations would put those shippers, those thousands of shippers, in harm's way.

Short lines are particularly important in rural and small town America as job creators and economic drivers. As I noted at the beginning, one short line job supports 2.6 other jobs in the community and companies locate where rail exists as a transportation option.

So if a short line were to fail, it would have far-reaching, adverse effects on the vulnerable communities they serve and those 478,000 jobs in industries that are dependent on short line service.

Short lines are known for their responsive and customer-focused service. They fight to win every customer and work even harder to keep the ones they already have by ensuring that they are providing service that will enable their customers' success.

Short lines grow their business painstakingly over decades, one customer and one carload at a time. If they need to provide an extra switch on a Sunday morning, they will do it. They will provide industry track maintenance, they are constantly on hand to resolve issues for their customers. They partner with their customers on state and federal infrastructure grants. They get creative on car supply. They will find an extra place on the system for storage.

Whatever it takes to get their customers -- whatever it takes to serve their customers and get the yes, we'll do it.

Short line customers tell me regularly that they could not be successful without their short line connections. In our written comments, you will see multiple verified statements from shippers underscoring and confirming their partnership and backing up the Short Line Association position.

As I mentioned, and as shown in our

written comments, if the STB does proceed with this rule, we are proposing to add three words to the text that would clarify the exclusion of short lines in the current NPRM, which we believe would be consistent with the STB's intent and also with the intent of the NIT League petition.

When language is used that references customer facilities that are served by Class Is, it should say that the facilities are served directly, physically and exclusively by Class Is.

As the proposed rule is currently written, while the plain English language would seem to me that the facility of the shippers or receiver in question must be served by a Class I rail carrier that access this proposed rule, the rule is not necessarily sensitive to the nuances in the accounting and billing practices in use between short lines and Class Is and could leave some room for doubt.

For example, in many cases, short lines provide the first or last miles of service but do not appear on the waybill and may not be the entity sending the invoice to the customer. So upon examination of the waybill and the invoice, it could appear that a customer facility is served by a Class I, even though it's actually served by a short line.

And in addition, there are some circumstances where one facility is served by both a Class I and a short line, and even though that's obviously a facility that is served by a Class I, it doesn't seem to be a facility that the rule would intend to put within this reciprocal switching regime.

So adding the words "directly, physically and exclusively" would clarify those situations and keep with the STB's intent.

I thank you for your time, and I'm happy to answer any questions either before or after Dr. Clarke and Chairman Claussen testify.

BOARD MEMBER FUCHS: Thanks, Chuck. Let's keep rolling.

MR. BAKER: Great. Dr. Clarke.

MR. CLARKE: I'm here. Thank you, Chairman Oberman and other members of the Board for this opportunity to speak before you. I'm going to give you the Cliff Notes version of my written testimony, which covers this in more detail. And I'm going to try not to overlap too much with what Chuck just said. He covered a number of points that I would also raise, and I don't want to waste everybody's time, it's bad to stand between you and lunch.

Just as an introduction, my name is David Clarke, and I've been active in rail research education engineering now for over 40 years. I retired from full-time employment at University of Tennessee Knoxville at the end of 2020, and from 2008 until 2020, I was director of the Center for Transportation Research at the university, which is one of the nation's oldest academic research centers focusing on transportation.

In preparing my testimony, I was asked to address the following questions. How do Class II and Class III railroads, which I'll term small railroads, differ from Class I railroads, and how might the mandated reciprocal switching regulations adversely affect small railroads?

So we have seven large Class I freight railroads, and there's more than 600 smaller Class II and Class III railroads, as Chuck indicated. And we've used the term "railroad" fairly loosely this morning in the testimony I've heard, as if all railroads were equal or the same, and they're certainly not.

Class I railroads operate complex networks that cover large geographic areas, and they serve thousands of shipping points. They provide line haul services covering hundreds and even thousands of miles.

Small railroads, in comparison, are very limited in geographic scope. On average, they operate 108 route miles, but the median of 47 route miles better characterizes a representative property.

Sorry.

The Class I railroads provide a long distance movement for most traffic handled by small railroads, and so small railroads are very dependent on that service. The national rail carload length of haul is 1,021 miles in 2016, and small railroads had an average in median haul lengths of just 38 and 24 miles respectively.

So even a small railroad handles a shipment at most -- turned off my cell phone but not the main phone.

So small railroads depend on the Class Is for the majority of the length of haul. Even if a small railroad handles its shipment at both origin and destination, you're still relying on the Class I railroad for most of movement.

So that makes the small railroads heavily oriented towards last mile pickup and delivery. And 81 percent of carloads actually handled by small railroads are originated or terminated. So this is obviously the majority of their traffic.

And whether it's a Class I railroad or a small railroad that performs these pickup and delivery functions, they have very high unit costs associated with them in comparison to the line haul portion of the move.

The long haul that the Class I railroads enjoy helps them greatly to offset these costs, but small railroads don't have that luxury.

So on the whole, small railroads have low traffic densities in comparison to Class I railroads. The Class Is average nearly 17 million revenue tons per route mile. By comparison, small railroads average about 620,000 revenue tons per route mile. And that's only just a little only 4 percent of the Class I statistic.

So this has important implications for small railroad economics. In 2016, the median average revenue per route mile for small railroads was $97,000 versus $508,000 per route mile for the Class Is.

And, you know, as Chuck mentioned, the small railroads typically have, you know, very small traffic base, with a limited geographic area, it can't be very diversified. And you typically have an average of about 18 customers and a median of about 11 customers per railroad, with three customers typically accounting for over two-thirds of the carloads.

So loss of revenue from even a single major customer can severely affect the financial condition of a small railroad.

Now, again, we talked about the limited commodity mix. A single commodity is usually about half of typical small railroad's revenue carloads. So because of the commodities moved and the limited quantities handled and the short mileage, small railroads compete vigorously with other modes, particularly motor carriers and barge and transload are also in the mix.

So 35 percent of small railroad carloads are products of manufacturing processes, which are highly susceptible to competition, particularly from trucks. And that could be either for the entire rail movement, cutting out the Class Is as well as the small railroads, or it could be for the small railroad portion of the move.

Bulk traffic handled by some small railroads are also susceptible to truck diversion, especially to a transload facility.

So with all of these factors, limited territories, low traffic densities, very switching-intensive operations, small railroads don't have the economies of scale that characterize Class I operations, and they have very high portion of fixed costs on each shipment.

Chuck mentioned about the creation of many small railroads post Staggers from rail lines that the Class Is no longer were interested in operating, and so, you know, these railroads face the burden of dealing with degraded and obsolete infrastructure and a very eroded traffic base.

Over one-third of small railroad route miles still can't handle the 286,000 pound railcar that typifies what shippers want today. And small railroads have to generate capital to obtain their property, address deferred maintenance, modernize infrastructure, and those high fixed costs from those activities have to be spread across the units the track can handle.

That's in addition to maintenance, crew, labor and other administrative costs that are also relatively fixed for a given range of traffic.

So a small railroad really faces a threat when they lose a portion of the revenue that they are currently earning, and, you know, they face the risk they're not going to be able to cover either their fixed or their variable costs to the degree necessary to sustain the operation in the long term.

So in my written testimony, there are numerous examples of the differences between the economics of the Class I railroads and small railroads, and it's just important to recognize that given competitive pressures, raising prices to provide or make up lost revenue is a very risky strategy for a small railroad company.

So in looking at reciprocal switching, and I know that the rule doesn't, as it's written, apply to small railroads, and while I question whether it's even, you know, necessary for Class Is, I agree with Chuck that small railroads should certainly be excluded.

They're really incumbent carriers only in hauling traffic a relatively short distance to a

Class I interchange, and so your effective competition has to be between the Class I railroads that provide the majority of the line haul.

Looking at 692 small railroad operations, and operations here are more than the number of companies because some companies have disconnected segments, 47 percent connect only to a single Class I railroad, so they have no ability to influence competition at all. And 53 percent have access to multiple Class I railroads, which small railroads consider to be highly desirable, you know, as it benefits their customers.

So, you know, mandatory reciprocal switching really doesn't make a whole lot of sense when you're dealing with this segment of the railroad industry. Competition is intended to lower shipper charges, that's a good -- obviously a good benefit. But with shipment revenue arrangements for small railroads, many receive either a flat fee or a portion of the Class I revenues.

And if the status quo is upset by reciprocal switching, the small railroad faces a severe pressure to reduce its revenue share, and that risks the economics of the small railroad.

Furthermore, the larger customers of the small railroad will be the ones that most attract a larger railroad's interest, if there is some sort of reciprocal switching arrangement. And given the dependence on major customers, a small loss of revenue can cause significant financial stress or a loss of revenue from one large customer.

So what we ultimately don't want to see, given that many of these companies lack the capital reserves, is for them to suffer financial stress that would affect their capital investment and their expenditures for maintenance and operations.

So I agree that any revision to these rules, if they are put forth, should exclude Class II and Class III railroads, because they operate in a completely different economic realm than the Class I railroads that the rulemaking addresses.

And, you know, ultimately, if revenue is lost to a small railroad through this reciprocal switching arrangement, there is a much greater potential financial impact on the small railroad than would be the case for a larger Class I.

Ultimately, it could even make some railroads become financially nonsustainable, and that would result in a loss of rail service to all the customers on those railroads.

And to conclude here, on the small railroads, they have to be highly sensitive to the needs of their customers. They operate in a completely different universe than the Class I railroads. They are highly incentivized to route traffic as their customers wish, and there's really no compelling reasons to include them in the proposed rules, only really downsides to that segment of the industry.

Thank you for the opportunity to speak, and I'll go ahead and yield my floor.

MR. CLAUSSEN: Should I begin?

MR. BAKER: Chairman Oberman and fellow board members, do you want to ask questions of either me or Dr. Clarke or just move straight to Chairman Doc here?

CHAIRMAN OBERMAN: Why don't you go ahead with your next witness, Chuck, and then we'll have some questions.

MR. BAKER: Okay. Very good.

MR. CLAUSSEN: Good afternoon, Mr. Chairman, members of the Board, I greatly appreciate the opportunity to address the group. My name is Doc Claussen, I am Vice President of Gulf and Ohio Railways and Chairman of the Board of the American Short Line and Regional Railroad Association. I've had the great fortune to be a second generation executive officer of a family-run business that creates value every day for customers across the states of North Carolina, South Carolina and Tennessee. Following a 10-year career as a diagnostic and interventional radiologist, I heeded the call or the horn of the railroad in 2006 and have been pleased to participate in an industry that is so vital to America's success.

The G&O was established by my father in 1985 and as a holding company for five short line railroads in the Three Rivers Rambler Excursion

Train. Our railroads operate on 230 miles of track using approximately 30 locomotives to haul freight for 64 industrial customers. With over 50 full and part-time employees, G&O plays an important role in the local economies where we operate.

The railroads handle over 30,000 freight cars annually hauling freight that ranges from ethanol to wood products to steel to chemicals and we interchange with both NS and CSX.

Currently, I am also serving as Chairman of the Board of the American Short Line and Regional Railroad Association, guiding the organization along 500 other railroad members and nearly as many associate members who provide services to the short line industry.

You've heard from my esteemed colleague Chuck Baker about the short line position on the proposed forced reciprocal switching regulation under consideration today, and you've been briefed on the unique economics of short lines by Dr. David Clarke.

My hope is the testimony I provide today will further illuminate the potential impact of short line railroads and, in turn, our shippers, thousands of local economies and overall U.S. freight rail systems, should the short lines be subject in any way to this regulation.

Although the short lines were in business as early as the mid-1800s, the Staggers Act passed in 1980 is considered the genesis of the modern short line industry. The economic freedoms and regulatory flexibility embodied in that Act allowed entrepreneurs to save light density branch lines rather than abandon them. The results were quite remarkable. From 8,000 miles of track in 1980, the short line industry today operates nearly 50,000 miles, or about 30 percent of the national network, in 49 states and in several cases short lines operate the entirety of a state's rail network.

Moreover, the inflation adjusting cost to move by rail has declined 27 percent from pre-Staggers rates.

The hallmarks of our short line industry are well known and a source of great focus and pride for us. The constant customer focus and entrepreneurial spirit, adaptability, resiliency and an obsession with connecting our customers and communities to markets around the country and the world.

As the first and last mile of the shipment, short lines provide flexibility and responsiveness to the unique needs of each customer, sometimes with significant private investment. Each customer is critical -- is a critical partner to a short line, and the customer's successes drive ours. One customer and one car load at a time.

By way of example, the Santa Teresa Southern Railroad in New Mexico has steadily built expertise in moving some unusual and complex loads, namely windmill blades for wind farms. One of their key customers, GE Renewables, had the opportunity to nearly double its production but would need the capability of loading two full train loads at a time.

Rather than risking production moving to another plant or blades moving via road, the

Santa Teresa railroad stepped up with investment dollars, partnering with GE to build out a dedicated train loading facility for GE, including 10,000 feet of track, a 10-acre staging and loading area and a 4,000-foot roadway connected to a major county road.

As a result, GE reduced its train loading time from three days to one and expects to ship a significant volume of wind turbine blades via rail in 2021. Total win for the railroad, the customer and the county, all due to a strong partnership, shared investment and the long view.

Short line success is driven by our size. Short line's relatively small size and entrepreneurial leadership allow us to quickly pivot to serve customers. Examples abound in our industry.

The impact of short lines on our local communities cannot be undervalued. Our role in connecting customers to markets drives the local economies, providing family supporting jobs beyond the railroads themselves. The presence of rail in community as an alternative transportation option and an environmentally friendly one at that drives growth within the companies willing to locate on rail served property.

Paying close attention to the auto industry sales and production trends allowed the Ann Arbor Railroad of Michigan to entice Fiat Chrysler automobiles to locate a new distribution center for finished automobiles at an underutilized facility in Toledo, Ohio. Breaking ground in 2018 and beginning operations in time for the Jeep Gladiator launch in July of 2019, the facility supports Fiat's Toledo and Detroit assembly production with an 1,800-car throughput capacity per day, it's created 102 new jobs and helped stabilize the local economy.

Lake State Railway Company overcame the potential shutdown of several customer facilities in 2020, and pivoted attention to its transload business, bringing in nine new customers and growing car load volumes in the last two quarters of 2020.

One of the projects was restoration of an auto loading facility in Flint, Michigan, constructing a 44-car spot facility at a former

Buick loading site and rehabilitating two miles of an out-of-service former mainline, eliminating the need to move finished vehicles on the highway. The project brought approximately 20 new jobs to the area, not including jobs added by LRCs, subcontractors, and invested several million dollars in the area surrounding the facility, helping to bring back an area of town that had been vacated for decades.

For large parts of rural and small town America, short line and regional railroads are the only direct connection to the national rail network. In my personal experience as short line railroad operator, there are many ways we work with customers to capture long-term viability for moving products to market in a price-competitive manner.

By way of example, the Yadkin Valley River is located in western North Carolina where flat land is certainly at a premium. The YVRR has three feed mills it serves all of which were built on the available or relatively easily adaptable flat land in the area.

As unit trains of grain increased in lengths, a point was reached wherein none of the three mills could handle a unit train of grain individually. Losing the economic benefits of unit train shipments would have put all three of the feed mills at a significant pricing disadvantage due to the increased shipping costs or any alternative method.

Led by the Yadkin Valley Railroad, the three mills, the Class I that serves the Yadkin Valley Railroad and the Yadkin Valley Railroad, a deal was constructed wherein the YVRR would manage the car supply and provide the service needed for the three mills to effectively share unit trains and maintain the value of that pricing.

This arrangement has been working well for at least eight years and has ensured that the grain produced in the heartland can reach the U.S. customer and beyond at a competitive price.

I could, but won't, spend literally all day sharing these facts and examples across the nation's 600 short line railroads. Our shippers have also weighed in. As part of its written testimony today, ASLRRA has submitted verified statements from several short line customers. They too understand the criticality of short line service to their success.

Doug Flint, manager of the Sturgis, Michigan, facility, Atlantic Packaging Corporation, shared his perspective on the short line serving his plant of Michigan Southern Railroad. Michigan Southern worked every day to ensure great service to us and to resolve any problems that may arise. In fact, I look at them as an extension of my workforce. Flint supports the ASLRRA position on reciprocal switching stating we urge the board to consider the interests of small railroads in this proceeding and at least exclude short line railroads from the proposed rule to assure that the critical railroad -- the critical role played by small railroads like Michigan Southern in the transportation system is not harmed.

In final, to wrap it up, in my humble opinion, forced switching will not serve the public good. As illustrated by the testimony provided by Mr. Baker and Mr. Clarke, draft congestion of the delicately balanced rail network, create additional complexity, reduce the incentive to invest and increase costs for everyone involved. The industry can address customer service issues successfully through other available avenues, through both purely private solutions and through existing STB mechanisms.

If the Board moves forward with this rulemaking, I hope I have shown today that applying forced reciprocal switching arrangements in any way to short lines, which is a segment of the industry that is already subject to unrelenting competitive forces, demonstrably focused on above and beyond customer service and at significant financial risk if the customer is lost in the forced switch due to the simple economics or operations, would have significant negative consequences.

If a forced reciprocal switching rule is adopted, I urge the Board to adopt the clarifying text changes submitted by ASLRRA, making the rule applicable only in such instances where customers serve directly, physically and exclusively by Class I railroads.

I appreciate the opportunity to address this Board, and I'll yield my time for questions.

CHAIRMAN OBERMAN: Thank you much, Doc Claussen.

So, Chuck, was that -- that's your presentation. Are you open for questions now?

MR. BAKER: Yes, sir.

CHAIRMAN OBERMAN: All right. So I have a few that I would just like to clarify. I should start at the outset, by the way, that I always enjoy hearing about the entrepreneurial ethic of the short line industry, and I wish you could somehow sell some of that entrepreneurial enthusiasm to the Class Is, but you don't have to respond to that point.

I want to start out hearing your concerns.

So as I understand it, if we take a short line that has three or four shippers on it, typical small short line, you have several concerns. One concern is you don't want a Class I to be able through reciprocal switching to take that customer away and serve them directly. That's one of your concerns; right?

I don't want to separate them out. I think you have several levels of concern. I want to make sure I understand each level, so let's just talk about that concern.

MR. BAKER: Right. On that first one, I would say in theory, if that could happen, that would obviously be like an existential threat type concern.

The way I understand the reciprocal switch rules is that wouldn't be really a likely outcome. That would be more if you were considering the broader suite of access provisions like through routing and trackage rights.

CHAIRMAN OBERMAN: All right. And I don't think anyone is suggesting that there is -- that that kind of approach was ever contemplated in this rule or that anybody is pushing for it.

Secondly, what I'm a little confused about is that are there not situations where if there is a reciprocal switch, the short line is just moving the cars between the two Class I railroads, it's not affecting the short line's own customers; is that right?

MR. BAKER: Well, the concern we have is if you imagine a scenario, and I'll name a couple Class I's here, but I hope they don't think I'm picking on them. But just so I'm not referring to generic railroad A and railroad B.

CHAIRMAN OBERMAN: I'll defend you.

MR. BAKER: For instance, if we move -- if we move a train of steel coils 50 miles from the customer and hand it to CSX and then CSX currently takes it another thousand miles to its final destination, and that whole route is $2,000, we are concerned that if that customer were able to say we want CSX to stop 100 miles after they get it from the short line and hand it off to NS, who will take it to the final customer instead, because NS will do it for $1,500 instead of 2,000, we're concerned that right now we get, say, $200 out of the $2,000 move.

But if the move is now cheaper, that NS, or any Class I in that situation, would come to us and say, hey, short line, we're now doing this move for 1,500 instead of 2,000, so you're going to need to give up a portion of your 200 because that's no longer feasible. So you need to do it for 150 or 125.

And our contention is that short line economics are so fragile and so dependent on just a few customers that just that right there puts their viability at risk.

CHAIRMAN OBERMAN: Well, so let me ask you about that. Since you're the only railroad to be able to get those steel coils out of the customer's yard, why would you have to agree?

MR. BAKER: Well, that's a great question. So we would have two challenges, right. If NS or any railroad, and again I'm not picking on them, came to us and said we need you to reduce the rate, and we just said no, that's not being very cooperative with people who we like to cooperate with and work with, and that's not being helpful to the customer or our Class I partners.

So if we said no, you know, one of the risks is, well now people can't agree on the rate, they can't agree on the switch fee and they come to the STB, they come to you, and negotiate it and now we're spending time, resources and effort in a never ending series of legal proceedings that we don't -- that we're not staffed to do.

CHAIRMAN OBERMAN: All right. So in the scenario you've just outlined, how does the rule language you want to add to the rule protect you from that situation?

MR. BAKER: Well, we're suggesting, and we think it's just clarifying language that sort of clarifies the rule, we're suggesting that if traffic was served by a short line, that that traffic and that facility is just not part of this regime, is excluded from the rule, that this rule should only affect facilities --

CHAIRMAN OBERMAN: In other words, what you want the language to be clear is is that the customer has to be directly served by a Class I local?

MR. BAKER: Correct.

CHAIRMAN OBERMAN: In order to be eligible. At both ends, I assume.

MR. BAKER: That's right, that's right. That we just, you know, and again, we still don't think the overall rule is great, but my job is to represent short lines.

CHAIRMAN OBERMAN: Well, I want to get to that level --

BOARD MEMBER FUCHS: To be clear, Marty, when you say at both ends, Chuck please correct me if I'm wrong, I understand your point to be at the relevant end for a switching case.

CHAIRMAN OBERMAN: Well, okay. Yes --

MR. BAKER: That's the better way to put it. I would say at either end.

CHAIRMAN OBERMAN: At either end, yeah.

Let me ask you this, Chuck. Do you need a blanket exclusion to be protected? Is it not possible that the economics of some reciprocal switching situations wouldn't put pressure on the short line to lower its rate for its share of the movement? Or do you think that's 100 percent going to happen every time?

MR. BAKER: Well, I mean, I want to be honest and say obviously there could be exceptions, but we would think in general, it would put untenable pressure on short lines, and we think given the service level we provide to our customers and the economics, that it's a solution where the costs or the risks outweigh the benefits for anything touching short line.

So we do think that a full exclusion is warranted.

CHAIRMAN OBERMAN: Do you understand the shipping organizations who advocate for this rule agree with your position on that or do they --

MR. BAKER: Well, you know, obviously I don't get to speak from them. They generally just completely don't reference short lines at all. You know, obviously your previous speaker, Bobby, I'm blanking on his last name now, he talked about the short line -- his short line service not being a problematic area for them.

I would say, you know, examine again at the risk of speaking for people who can very much speak for themselves, it's fair to say that their concern is not with us. I can't say that they would be totally fine with a blanket short line exclusion or not.

CHAIRMAN OBERMAN: Do you have any -- have you been able to compile any data that would tell us it's a subset of short line traffic and that is traffic that gets delivered to Class I's that could be eligible for a reciprocal switch?

Do you have any idea the volume of such traffic that would be excluded?

MR. BAKER: Well, I mean, we're suggesting that 100 percent of traffic delivered from short lines be excluded. Are you asking what percentage of overall short line traffic that is?

CHAIRMAN OBERMAN: No, of overall --

MR. BAKER: I mean of overall Class I railroad traffic?

CHAIRMAN OBERMAN: Yeah.

MR. BAKER: Yeah. In total, short lines

are about one in every five cars on the network. It's a higher percentage of that for, you know, car load business and a lower percentage of that for intermodal, but overall, we're about 20 percent of the cars.

BOARD MEMBER FUCHS: And some percentage -- I'm sorry.

CHAIRMAN OBERMAN: So 20 percent of the traffic, if we accepted your approach, would before you even analyzed whether there's -- meets any other hurdles, would not be eligible for reciprocal switching? Roughly.

MR. BAKER: That's right. That's exactly correct.

CHAIRMAN OBERMAN: I had -- Patrick, did you want --

BOARD MEMBER FUCHS: It was just on that point, Marty, so I wanted to jump in.

I think maybe the way to think about the percentage of traffic that would be excluded is if we consider that some portion of short line traffic, you know, is already connecting to multiple carriers, whereas a lot of the Class I traffic that's served, they're going to want to protect their line haul.

So I think even just taking the percentage of traffic that is served by short lines perhaps overstates the exclusion. And when you actually look at the -- I think we just heard from Mr. Triesch about his three short line railroads, I think all three of them connected competitively, I think he indicated that.

So I just only point that out, that the exclusion is probably in practice, in practical terms, smaller than that.

CHAIRMAN OBERMAN: Well, are you saying -- I think that's a good point. You're saying, Chuck, that of that 20 percent, I guess, following up on Patrick's point, some of that 20 percent, the short lines actually can deliver it to more than one Class I already, so the customer has some competitive options?

MR. BAKER: That's right, there are a fair number of short lines, you know, probably a little bit less than half, that are dual served, where they already can -- it can go to either CSX, NS or BN or UP or whatever. And those customers obviously the reciprocal switching would have never been relevant for them anyway.

CHAIRMAN OBERMAN: I don't want to put you to a lot of extra work and I appreciate your experts, I don't want to deprive them of a living either. But it would be interesting to get a little bit of a breakdown on the data, if you -- if we're looking at how many car loads or how much volume of freight would not be eligible for any reciprocal switching, if we accept your language, it really is less in the sense that not all 20 percent is going to a sole served Class I.

So it would be interesting to get even an approximation of a breakdown for our record. I think it would be helpful.

MR. BAKER: We can do that.

CHAIRMAN OBERMAN: Let me just ask you, then, the broader question.

I take it that aside from protecting the interests directly of short lines, which is what we've been talking about, you are echoing the overall objections of the Class I world by saying you don't think it's good for the network, and if it's not good for the network, it's not good for the short line industry.

Is that a fair summary?

MR. BAKER: That is a very fair summary, yes.

CHAIRMAN OBERMAN: All right. So and your concern is it's -- you know, you were listening yesterday, I'm still struggling with the arguments that the short lines make about how complex these switches are. We've all seen the -- I'm surprised we haven't seen it in this hearing. I was thinking of showing it myself. There's an animated video -- the AAR's animated video of 67 moves. You know, yesterday I got the distinct impression from UP that for most of these switches, it would be one different move, it would just be putting it on a sorting track that's going to the other railroad rather than on the sorting track that's staying with the host railroad.

Why is that going to congest the system, as you understand it?

MR. BAKER: Well, I do think that the idea that you have floated a few times, where if it were limited to just bringing a car to a yard where reciprocal switching to the other railroad in question is happening anyway, I do think that that would be more limited, you know, and be more along the lines of the way you're describing it, where it's just hey, you got to put it in this yard anyway and it's one track instead of the other.

But overall, the current rule as drafted is not limited in that way, and to me it reads that there would be quite a few places where the railroad that has the line haul would otherwise be going point A to point B and now has to stop at some intermediate point and hand it off.

And I do think the -- I know you didn't love the presentation yesterday, but I thought the idea of the runners handing batons to each other made sense to me, and every time you introduce an extra touch or an extra switch or an extra handoff, there is additional kind of choke points.

CHAIRMAN OBERMAN: I would say this, Chuck. If railroads were dropping batons the way they tried to sell it in that, Amit Bose would have a lot more work on his hands even than he does.

But let me just follow up here and then I'll hand it off. Would it be fair to say if the approach the Board chose to take was to limit the geography to shippers, you know, whose traffic is already taken to yards where existing reciprocal switching tariffs are in place, your overall objections would be if not removed, lessened?

MR. BAKER: It's fair to say they would be lessened. I'd be hesitant to speak for the Class I kind of operational people who, frankly, know more about moving the cars than I do. But they would be lessened, that's fair.

CHAIRMAN OBERMAN: Yeah, okay. That's a fair statement. That was really all I had. I appreciate it.

Doc, I just want to say you're an example of a pre-COVID shift in career choice, you presaged a huge movement that the rest of the country is now doing. Very impressive.

MR. CLAUSSEN: I wish I could claim that degree of omniscience.

CHAIRMAN OBERMAN: Other Board members?

Karen, you have your hand up.

BOARD MEMBER HEDLUND: Yes. We've heard from the Class I's that a switch can take, you know, 24, 48, 96 hours. When your members hand off trains to a Class I railroad, typically how long does that take?

MR. BAKER: Well, that's a fair question. There's 600 short lines, and I struggle to give you a typical.

There's times where it's seamless and, you know, like almost instantaneous, like a live handoff, and there's times where it sits for a week.

So I would be inclined to again, just trying to be honest here, we have plenty of frustrations with our Class I friends, but I would be inclined to take them at their word that if they do -- they do an awful lot of switches, and if they say that it takes an average of 24 to 48 hours, I really don't think that they came in front of the Board and lied on that stat.

BOARD MEMBER HEDLUND: Thank you.

BOARD MEMBER PRIMUS: I've got a quick question, Chuck.

MR. BAKER: Yes, sir.

CHAIRMAN OBERMAN: Robert, go ahead.

BOARD MEMBER PRIMUS: And I'll be brief.

In the year plus that I've been here, I've had an opportunity to talk to a number of your membership. And, you know, there's been a number, and I'm sure you're quite aware of this, of frustration at your membership at the fact that, you know, being left at interchanges waiting for switches, sometimes so long that they have even got to replace crews, and that has -- that has played itself out again and again and again in terms of my conversations with some of your members.

And so, you know, the question I'm asking is would it be -- the idea Marty is broaching reciprocal switching, even at the locations where it does occur, wouldn't that stand to make even some of your members create a little better relationship between the customer and your members?

Because I know that the frustration is there within your membership that it's hard to go back and tell the customers that they have been waiting for four hours or six hours or even a day and, you know, they haven't gotten that service handoff.

So in looking at it, the totality of it, I mean, doesn't -- wouldn't this actually create -- if there was more competition out there and greater ability to have better service and more reliability, doesn't that bode well for you as well?

MR. BAKER: Well, it's a fair question, and obviously, I have my fair share of those same conversations that you have. And I hear plenty about it. And I tried to be honest in the testimony that, you know, we do hear that. There's plenty of frustrations out there between short lines and Class

I's.

I would posit that that's probably always been the case, and it's sort of a natural friction in business, just like there's tension between kind of name a customer and name the supplier or name you and your local restaurant.

But to answer your question, we don't -- we don't think that the reciprocal switching proposal in particular would help.

There are frustrations and, you know, I would suggest that there are existing remedies at the STB that people can consider. There's common carrier obligations, there's rate relief cases, there's the existing reciprocal switching rule. And then there's lots of private conversations. And that's what most of our short lines do every day to try to work it out.

It frankly doesn't always work, but at the end of the day, we come back to we think the reciprocal switching rule has more downside than upside for us.

BOARD MEMBER PRIMUS: And I would just say this, that it has been going on for a while. I know that you had probably -- and you may not, but, you know, in the last several years, five or six years, you have probably seen senior membership an increase, PSR and other factors included.

And I guess all I'm saying is I understand, and I do, you know, agree that we have remedies at our power right now to use. But I think even, you know, a portion of your membership as well has said that even that has not worked and it's time to start looking at others.

And all I'm saying is I hope that moving forward, we can continue to work with you and you'll be open minded and your group will be open minded to the suggestions that we have to try to fix some of these problems that even your membership has brought to our attention in the time that I've been on the Board.

MR. BAKER: Well, I can at least 100 percent promise to be open minded and continue to work with you.

BOARD MEMBER PRIMUS: Appreciate that.

Thanks, Chuck.

MR. BAKER: Yes, sir.

CHAIRMAN OBERMAN: Patrick?

BOARD MEMBER FUCHS: Marty, I'm good. Thank you so much.

CHAIRMAN OBERMAN: Okay. Any other questions for the short lines?

VICE CHAIR SCHULTZ: I had one. First, thank you for your testimony today. Chuck, you actually spoke to safety concerns that this rule might actually increase accidents. And Administrator Bose spoke in his testimony about this concern as well.

I was wondering if, you know, short of eliminating switches, if there's anything that we could include in our language to address safety concerns or anything that this Board could actually do to consider safety concerns.

MR. BAKER: It's a great question, I appreciate it.

You know, by their nature, switch points and handling cars is essentially the most dangerous thing railroads do, so -- and I think you're going to hear testimony or at least it's in the written record later today from a gentleman at George Mason who used to work at the FRA who has got some compelling data on that.

If the rule creates more switch points, I do think it's pretty realistic to expect there to be some more accidents coming from that. You know, Administrator Bose made the point that these can be done safely and must be done safely, and that's -- it's a fair point, but on the other hand, all existing switches can be done safely and, you know, 99.9 percent of the time they are, but occasionally they're not.

So I guess it would come back to the fewer -- the more you limit the rule, the fewer extra switches and handling and touch points you would have and the lower the risk of accidents would be.

But I wouldn't know of a way that you could write to just insist that a switch be done safely, I mean, you could write it, but --

VICE CHAIR SCHULTZ: Thanks, Chuck.

CHAIRMAN OBERMAN: Don't have any slippery batons.

MR. BAKER: Right.

CHAIRMAN OBERMAN: Well, if you take the example we were dealing with yesterday of a shipper whose car is being taken to a switching yard, it's either put on the host railroad's track or the other railroad's track, it's the same switch. That doesn't add to the chances of an injury; right?

MR. BAKER: I would agree with that, that if it really is just replacing one with the other, then you're not increasing the moves.

CHAIRMAN OBERMAN: This is an idea which is gaining traction here. You know, we ought to -- I realize that the way the current rule is drafted would give the impression that switching might take place everywhere under the Sun, but there does seem to be some merit to thinking about making it take place at least as a starting point where we already know it works, just sort of common sense.

You know, I don't know if that's going to be our view or even my own view, but it just seems to be an idea that ought to be thoroughly explored.

All right. As usual, Chuck, right on target. Anything else?

MR. BAKER: Thank you.

CHAIRMAN OBERMAN: Anything else for Chuck and his crew? Thank you much. See you in Washington.

MR. BAKER: Yes, sir. Have a great lunch.

CHAIRMAN OBERMAN: All right. Thank you. It is 1:19. Half hour, 1:50 we will return. Everybody agree? All right, folks. We will recess until 1:50 Eastern. See you then.

(Whereupon, at 1:19 p.m., the hearing was recessed, to be reconvened at 1:50 p.m. this same day.)

AFTERNOON SESSION (1:52 p.m.)

CHAIRMAN OBERMAN: All right, everybody. We are back in session. We will move ahead to Panel VI which are the following folks. Dr. James Nolan from the University of Saskatchewan, Diversified CPC International, Sandra Dearden, Indorama Ventures, which has three representatives, Hussam Awad, Barbara Hagler and H. Baker Lane, and the Reason Foundation, Mark Scribner.

So let us proceed, Dr. Nolan, you are --

DR. NOLAN: Chairman Oberman, can I share my slides? Is that okay?

CHAIRMAN OBERMAN: Surely.

DR. NOLAN: I think I can do that now. Let's just make sure this works. There we go. Okay. I'll put this on a slide show. There we go.

Okay. And again, I want to thank the Board for allowing me at the last minute to slip in and disturb the network, it's a bad joke, but I really, really appreciate that at the last minute here. I'm probably --

CHAIRMAN OBERMAN: Dr. Nolan, it was only one switch, so we could handle it.

DR. NOLAN: It wasn't 24 hours. Well, it was a couple days before I heard of it.

As one of the few academics who has actually published in journals research on this to some people obscure topic, I'm really, really glad to be able to come here and talk about a couple things.

Any of you who want, I am currently the journal editor of the Journal of Transportation Research Forum, I've been president of the TRF and Patrick has very kindly spoken to us at TRF meetings, thank you very much, Patrick.

So I have a lot of experience in sort of broad transportation research and have been also journal editor of the Canadian Journal of Ag Econ.

I just want to mention upfront part of this particular research I'm going to show is actually funded by the USDA, although it doesn't show up in any report that I've written for them, they helped fund a grad student, so you will see some of that, the material coming up here.

What I'm going to focus on, rather than a lot of my prior research, which we can certainly talk about, about the Canadian kind of previous interswitching experience, one thing I wanted to kind of bring up here that I didn't think anybody else was going to do and that was the recent Canadian experience.

So what you can think of is that basically from 2014, 2017, we had a national experiment in Canada, and that was where we took the standard interswitching rule, which is dominated by a 30-kilometer or about an 18-mile radius, and it got changed to 160 kilometers, which is about 100 miles. And the reason it got changed, and I'll back -- the reason it got changed was based partially on research I had done previously, which was published in 2008, where we basically tried to map out in the grain handling system or the grain delivery systems, essentially, the different types of grains that we do.

We don't export much corn here, it's mostly different types of wheat. We took that market and said can we plot how much of grain capacity, so we measured volume by capacity, how much can we pick up with these interswitching limits if we change them.

And I had noticed that out here in western Canada, a bit like western U.S., the distance to interswitching points or distance between the two railways is often quite long and the 30-kilometer limit, 18-mile limit seemed quite limited.

And so we played around vis-à-vis a little GIS simulation, you know, what level would we need to kind of pick up a certain level of capacity. And that's one thing that I think the Board is going to have to think about in terms of other major industries that are captive.

This rule could be designed to pick up a certain amount of capacity in the industry.

Now, you won't pick it all up. We found out for example just sidebarring a second, 160 kilometers was about our median point, which is why I think the government chose it.

When we went out to 300, 320 kilometers, which is more like a couple hundred miles, we were picking up even then only about 90 percent of the grain capacity or grain output.

So to get to that 100 percent every captive shipper being affected or being positively affected by interswitching, extended interswitching, would have been 300 miles plus.

So I urge the Board to be very careful how they set that distance.

But anyway, what happened in 2013-14, there was a grain handling crisis here. This happens every so often in Canada. We had a record grain crop, and again exceptionally cold winters, surprise, surprise, it's Canada -- it affected western rail operations and delayed shipping in Thunder Bay.

CP at that time, this is just post-Hunter Harrison, I'll talk about him in a second, tried to streamline their operations, kind of an early PSR kind of thing here where CP was basically streamlining a whole bunch of their operations. And obviously with CN they are our two major carriers.

Some stakeholders would blame the railways for finding themselves unequipped to deal with the increased demand for rail due to the harvest, and by the way, this isn't the first time this happened in the time I've been here in Saskatchewan. '96-'97 there was another grain crisis, which led to a previous set of regulatory decisions we can talk about later, but I'll get to that. So this is sort of cyclical, the railways tend to get to a point where they can't deliver and the shippers get upset about it.

And grain is treated differently in Canada than most other commodities and there's a reason for that. It still comprises about 20 percent of the railways' revenue, so grain is a really, really important commodity moving out of western Canada, is less -- less importance in the U.S., but it is very important in Canada, which is why it historically has been treated a little bit differently.

Anyway, so just going on a little bit here, so and this was a conservative government which set this order. This is very interesting. This wasn't the liberals who are sort of left of center in Canada. This was the Progressive Conservatives who were -- seem to be more right of center, which in Canada has a little less meaning than in the U.S. but they are a little bit more market-oriented than are the liberals. March 7, 2014, order in council by the PC government, setting a minimum movement threshold to 5,500 cars per railway, so this is kind of a two prong change in regulation in response to the grain crisis.

The railways had to move a certain number of cars per railway. But then on May 29, they passed the Fair Rail for Grain Farmers Act, among other provisions, it extended the order in council to August of 2014, seeing how many months this would take. It demanded more stringent reporting of data by the railways and extended the historical extended interswitching limit, which is reciprocal switching, from 30 kilometers, which has been historically since time immemorial in Canada, to 160 kilometers for a period of two years.

In June 8, 2016, those provisions were extended for one more year to August of 2017.

So what we have here is basically a natural experiment in taking a very, very short radius, 18 miles or 30 kilometers, and stretching it out based on some of the work that I had done previously, but I believe I am the only person who ever did work on this, to 160 kilometers, about 100 miles, and see how that would work. You certainly ask questions later.

So just having a look at it, you think of interswitching being shipper B right now has access to sort of the single railway, but might want access to the second railway by railway B, and of course under the 30-kilometer limit shipper A doesn't have the same dual access, but if you extend it to 160 kilometers, both shippers have access to that. That's just a little simple visualization of how this thing sort of worked. Picking up the shippers.

So we got some data, the grad student actually got some data, this is kind of a collection of data that came from a variety of sources, mostly I believe it was from Corn Corporation, but also I believe some rail shippers put this together.

They got basically data on car cycle times and a few other things we'll see in a second here. And we wanted to see the design of this, when you think of the policy, the government said okay, railways, you've got to move 5,500 cars, that's important to clear out the backlog, but they also include these interswitching rules, these new rules that extended the radius, and they did that because they thought that would help the backlog.

So we took a look and said did it actually do anything with the backlog.

The data are a little bit sporadic, and I can probably talk to that a little bit later, but again we have some data, but basically we've got data from July 2015, so not from the start of the interswitching change, but somewhere, you know, after it began, up to September 2018. So we include about a year or so after the interswitching rule changed back to 30 kilometers, and we'll talk a bit more about that.

So the first 26 months of data covers a time when the new extended interswitching rules were in place and the last 14-month spans a period in which standard interswitching provisions were reinstated.

So I had my student run a simple linear regression with variables covering things like weather, you know, how much shipments went where. We just wanted to know did this actually affect car cycle times.

Then I guess what I want everyone to take from this is because the data mixes both the 160 kilometer limit and the 30 kilometer limit, although more of it is in the 160 range, take these with a little bit of a grain of salt. But I guess what we want to show here is that interswitching at the 160 kilometer level, if anything, improved car cycle times and certainly did not worsen them, right. So getting back to that issue around how much this interswitching rule, whatever the Board decides upon, if they decide upon it, that rule didn't really seem to affect the railways too much in terms of car cycle times, okay.

So here's car cycle times to the west coast, this would be Vancouver in Canada, and the key variable here is this thing here, what's this interswitching variable which basically says given all else equal, ceteris parabus, there were 1.5 days saved on the average cycle time with interswitching in that particular data set.

And then from total grain time, total time that grain sat in the grain handling system, it was 5.2 days less under interswitching and I'll explain a little bit how that occurred.

This will bear, I think, upon the kind of policies you folks are going to have to think about moving forward. Okay. All right.

So do the new interswitching rules help to reduce system congestion. Again, grain of salt. In Canada, the reduction of about a day and a half to get to Vancouver, the access overall, grain stayed in the system about 5.2 days less. Car cycle times, eastern destination and U.S. destinations does not seem to be significantly affected. So there was mostly the west coast but that was what it was directed for anyway.

But here's the more important part

observations here. The grain shippers were able to estimate how much they saved not only from an actual interswitch, how much they saved by negotiating with a different railway and getting a cheaper rate, but how much they saved when that didn't happen but they negotiated the rate.

So the estimates that they got over the last two years of the policy, when everyone got used to it, was about $15 million over the two years and that's not significant.

So these were actual interswitches with ones that never actually occurred but kind of like contestability theory, there was this threat that another operator would get in and take the traffic, so the railway had to lower the rate to the shipper to get that rate to move.

What typically happened from my understanding, and again the Canadian Transportation Agency and a lot of people are pretty mum about this, but my understanding from talking to shippers about this was that it wasn't so much CN and CP competing with each other, although that did occur, it was Burlington Northern coming up through the West Coast of Canada through some of the track they have into Canada and exploiting that 160-kilometer limit and taking some of that traffic, or offering a rate to destination, probably Portland on the Columbia, but offering a rate that the shipper was able to negotiate to get their rate down with CN and CP basically.

So that's kind of how that experiment worked, and it was really that third competitor, which is really important, I'm running out of time here, let me go quickly.

My observation, the policy was so successful it overturned -- was overturned on the influence of the Canadian railways. Now, I know enough people in the Agency to know the railways worked very, very hard to get the interswitching provision changed back from 160 back to 30. And there is a policy now in Canada called LHI, and we probably talk about this, this is long haul interswitching. It's interesting in that it sets a really long radius, it's about 745 miles of radius.

It's never been used. And the reason is, from my understanding, the shipper has to go to the Agency and tell the Agency, well, I tried to negotiate with the other railway, but they wouldn't negotiate, so I want to call this LHI.

And it seems like no shipper is willing to do that, or there are other things going on in Canada right now as well. We're switching now from a tariff -- public tariff based system in grain transportation to a contract system. So the railways are trying to avoid interswitching completely by writing these contracts differently.

So anyway, LHI has proven to be pretty clumsy. In fact, the Agency has told me they would love to have someone try to call a case because they're not sure how it's going to work either, but they haven't, haven't actually called a case and that was instituted basically 2018, so we're looking at four years of LHI never being called.

Anyway, so what I'm going to suggest quickly here, my prior research that showed up in choices back in 2015 on the U.S. network in Montana and the Dakotas, we mapped out a 50-mile radius, but we're not really sure what that radius should be. And that is a really interesting question that's kind of up to the Board to think about what they're going to do with that.

We truly do need flexible regulation, a flexible regulator. And I think listening to Chairman Oberman, I think there is a lot of push to do that now.

And by that I mean if you set a radius and you set a way to do interswitching, or sorry, reciprocal switching, you've got to be flexible. If it's not working for shippers and carriers, then there has to be some way to change out of the radius or the onus and this sort of thing.

And one thing I'm going to suggest as well, and we haven't talked much about this at all, is that regulated rate that's going to have to go to the railway, the home -- or the landlord railway to take the shipment to the interswitch point, we need to think about using Ramsey pricing, which is of course a zero profit compensatory pricing on these regulated reciprocal switches and that's one thing that the Board has to think about as well.

Again, I don't think this is going to solve all captive shipper issues. I know in all deference to my wheat colleague Mr. Henry, I don't think that a 300-mile radius is really going to work for anybody. I think it's going to cause operational issues.

But again, if the regulator is flexible about this and it works, then it works. And if it doesn't, come back and change it.

And I realize that may not be an easy thing to recommend. It's an academic thing to recommend. Maybe I'm not living in the real world. But flexibility is important.

And one other thing I'm going to say too is you can't let this whole process get bogged down by case-by-case allowances, save possibly for computing the regulated switching charge, which is obviously dependent on demand.

The LHI variant in Canada not being used is proof that reciprocal switching needs to be something like a bright line policy. And from what I'm hearing from Chairman Oberman and the rest of you, I think there is a notion of having a bright line, an RVC test or something which would enact this sort of thing, but the radius is going to be a really important consideration as well.

All right. I'm over time. Thank you for being patient with me. I much appreciate that.

CHAIRMAN OBERMAN: Thank you, Dr. Nolan. Very helpful. Let me just ask you, I want to --

DR. NOLAN: May I stop sharing, Chairman Oberman, is that okay?

CHAIRMAN OBERMAN: Yeah, sure.

DR. NOLAN: Okay. Yeah. These are variable of course for whoever wants them.

CHAIRMAN OBERMAN: We should put them in our record, I think. Somebody else may ask you to put them back up.

Do these rules only apply for grain, as I understand it?

DR. NOLAN: Excellent question. Yes.

So the extended 160-kilometer -- the 30

was everything, the 160 that was put in 2014 was for grain only.

What happened as part of the negotiation process was a lot of shippers who weren't grain said, wow, can we have that 160, can we have that as well. And that's part of the reason I think it was basically turned over, and that's just my opinion.

I think the government realized that there were probably some difficulties in extending that to forestry, to coal, these sorts of things, right, so they didn't want to go that route.

The LHI that they came up with, in consultation with the railways, does apply to all commodities. There are restrictions in corridors, there's restriction on toxic -- any kind of toxic commodity moving in there. But there are some restrictions put in there which essentially were put in to prevent American, essentially as far as I can tell, prevent American Class I's from stealing traffic from Canadian Class I's.

CHAIRMAN OBERMAN: Have you thought about the idea that I have queried some of the witnesses about having a different mileage in the United States to apply to grain shippers who, as in Canada, are much more spread out?

DR. NOLAN: One of the things I would suggest you look at is having two tiers potentially of this policy. And again, you know, as a regulatory economist and understanding some of your decisions you have to make, and you're a five-member board and you have employees.

But, you know, I don't want to impose more regulatory decisions on you folks. But having a double-tiered or multitiered reciprocal switching radius might be the way to go.

So for example, in urban areas, you might have let's say a 15-mile radius, whereas in rural areas you might have more like 100-, 150-mile radius, something like that.

CHAIRMAN OBERMAN: Yeah. Okay. Thank you.

Patrick, do you have a question?

BOARD MEMBER FUCHS: Yes. Thanks very much, Dr. Nolan for the presentation and good to see you.

For folks that may be concerned about the impacts of any rule that is issued by the Board, would you think we would be well advised to build in the types of metrics that you identified to judge the impact of our rule if one is issued after the date of issuance?

In other words, to more intensively, you know, develop a plan to provide kind of retrospective review of the effect on the rule on things like cycle times and rates and other metrics?

So would we be well advised to do that? And do you have any further thoughts about the best way the Board might go about doing that?

DR. NOLAN: Well, the latter question is tough. But the first question you asked, Patrick, I definitely think what you're suggesting, and I know you've been talking a lot personally about first mile last mile data, that sort of thing. I think that's a really, really excellent idea in terms of picking up, you know, your monitoring of the system basically.

I think when you institute a rule that's this -- reciprocal switching is going to change the industry. And I think everyone agrees on that point, right. And as much as it does that, the regulatory body, you guys, have to be cognizant that it may or -- it may work.

One of the things about contestability theory says one of the ways it may work is you may not see it working, you may hear from shippers saying holy crap, I got a great rate on this because the threat existed, and thank you for that threat, thank you for that competitive threat, right.

So you have got to be careful to try to follow that kind of data as well and talk to the shippers and say, did this benefit you in any way, which won't show up in like, for example, the kind of data that you would post on the waybill, that sort of thing, right.

BOARD MEMBER FUCHS: Right, right. You know, and the waybill oftentimes doesn't capture that first/last mile, and some of the time stamps might not tell you everything about what was expected, for example.

DR. NOLAN: Exactly, exactly.

BOARD MEMBER FUCHS: Things like car trip plan compliance. And so I'm sort of wondering if the Board wanted to be especially cautious, whether or not it could design kind of a preassembled basket of comparative -- you know, some that are subject to the rule and some that aren't -- kind of a basket of different movements and to compare what actually happens on things like car trip plan compliance, cycle time, et cetera.

DR. NOLAN: Yeah.

BOARD MEMBER FUCHS: And if we start to see really negative effects to the traffic that is subject to the rule or that gets a switch, we might, you know, have some sort of out switch, you know what I mean, something --

DR. NOLAN: Right, right. Let me -- could I ask add, Patrick? On that point, I think it's a great idea.

In Canada, when the 160 existed, it is my understanding that the rule was automatic, so -- but what it meant was me as a grain shipper, I had to go to a competing railway, not my host railway, I had to go negotiate a rate to destination with them. Then I could go back to the Agency and say, give me the interswitch, or I go back to the host railway and say, hey, look at the rate I got if I interswitch. Can you match it; right? That's what happened.

I think in your case, it sounds like you're thinking of making this thing dependent on some kind of RVC, we'll call it, test, some kind of test; right?

You know, and that's where I'm -- even though I have researched this quite a lot, I'm a little torn as to which one is better, because there are instances where just the threat, right, just the idea saying if you can access a second shipper within, let's say, 60, 70, 100 miles, just the threat of accessing that second shipper, going to the Board, the Board says yep, here's the rate we're going to -- here's the regulated rate to get your shipment to that interswitch point or that reciprocal switching point, here's the rate, and that gives the shipper leverage to come back and negotiate, right.

I don't know, given the structure -- we'd have to look at the topography of the U.S. network -- are there enough -- two competitors seems like not enough. And I hate to use the word "collusion," but it sounds like the two Canadian railways, they definitely talk to each other, I'm probably not supposed to say that. But they do, they talk to each other. They know what they're doing. They often switch traffic very freely, they said that earlier in the last deposition from CP yesterday; right? They know what they're doing.

I don't know in the U.S. if there are enough -- it's that two-competitor to three-competitor problem, which is really an issue here, right. And whether or not reciprocal switching would solve that is a good question actually.

BOARD MEMBER FUCHS: Well, and I think also factoring in the points that were made about potential efficiencies from single service markets, and also factoring in some of the differences between the Canadian network and the U.S. network, I actually think some of Marty's points on designs of terminals and other locations, I think those two reasons are sort of why we're also talking about a conduct element, which is the railroad showing something beyond just circumstances.

DR. NOLAN: Yep.

BOARD MEMBER FUCHS: Because of those circumstantial differences between Canada and the U.S.

DR. NOLAN: Yes, exactly.

BOARD MEMBER FUCHS: Kind of thinking about that also adds sort of a layer of complexity.

I have one more thing. I took note of your sort of view that Ramsey pricing principles should be factored into compensation.

But would it be accurate to say that the Canadian interswitching pricing is not really a Ramsey price?

DR. NOLAN: That's an excellent question. It tries to be. I've actually worked with a couple of folks at the Agency to examine, in fact, at TRF coming up in April, which I won't be at, there's a paper where we try to compare the current rate base, the rates set, to what we think is the equivalent Ramsey price, given assumptions about demand, et cetera, et cetera.

And they're not that far off actually, believe it or not.

So the rates came from costing, they came from the Canadian costing model, which said okay, if you're going to move a typical car shipment over a certain typical distance, here's the money you would get per car to do this.

But it turns out those rates aren't that far from Ramsey pricing, so I don't know whether you guys want to follow that -- sorry, go ahead.

BOARD MEMBER FUCHS: Sorry to interrupt, but just to make sure, you are talking about the average price of a costing base system versus the average price from a Ramsey system; right?

DR. NOLAN: Yeah.

BOARD MEMBER FUCHS: Isn't the whole point of Ramsey pricing that you have -- you know, you're not looking at the average price across shippers. The whole point is that you differentially price two different shippers based on the inverse of their elasticity of demand; right?

DR. NOLAN: Yes.

BOARD MEMBER FUCHS: I don't know if that average price comparison is going to do that. I don't know. What do you think about that?

DR. NOLAN: No -- that's a really good point. I would tend to think -- so when I did this with a colleague, we were just averaging out to make the paper simpler, but you're absolutely right, you would have to do it probably on a case-by-case basis. And it could be done, once you've got a formula, once you've got it set up and you ask for example the railway, say what do you think the demand is for this rail transportation on your network, and they give you an estimate, put that into your Ramsey model. It's doable. This is all with data; right? And you sit there and say, okay, here's the equivalent Ramsey price that gives you zero profit but compensates you, and we're off to the races.

If that's too much work, then yeah, maybe you have to think about a different way of doing it.

BOARD MEMBER FUCHS: And you're talking about line haul profit; right?

DR. NOLAN: Yes.

BOARD MEMBER FUCHS: You're factoring that in. I would say is it too much work -- it's been my observation, and you know, listen, you know, if the state of the economic art is different than that, it's been my observation that accurately estimating elasticity of demand on a individual shipper basis is very difficult.

DR. NOLAN: Yeah, it is.

BOARD MEMBER FUCHS: Objective individual cases.

DR. NOLAN: No question.

BOARD MEMBER FUCHS: I think one of the themes you're hearing is can we protect core important economic principles but also eliminate or minimize undue administrative complexity.

DR. NOLAN: Right, right.

BOARD MEMBER FUCHS: And that's why we don't have a Ramsey price -- we have Ramsey pricing informs our rate review, but our rate review is not Ramsey pricing, for example.

So I just put that out there to think about, you know, the practicality of really estimating elasticity of demand as it pertains to compensation.

DR. NOLAN: But Patrick, this has got to be easier than an SAC test; right? I mean, ideally the SAC gets you to a Ramsey; right? But it's got to be easier to do it on a case-by-case.

BOARD MEMBER FUCHS: Well, yeah. I mean, listen, that's what they say. But elasticity demand is nowhere to be found in a SAC case.

DR. NOLAN: Yeah, that's true. That's a good point.

BOARD MEMBER FUCHS: Yes, CMP I guess is informed by Ramsey pricing, but it is not Ramsey pricing.

DR. NOLAN: No.

BOARD MEMBER FUCHS: And I would argue that's because Ramsey pricing is potentially even more complex because of the elasticity of demand problem.

DR. NOLAN: Right, right.

BOARD MEMBER FUCHS: I very much take your important on the economics principles. I just worry about the complexity.

DR. NOLAN: No, it is. And I think Patrick the way you might do that, too, is to say we're going to assume for grain here's the elasticity of demand, for glass materials here's the elasticity of demand, coal here -- and if you make that transparent to the railway and say okay, here's your compensation based on that, then you can have that argument outside of that system probably. It is complicated.

BOARD MEMBER FUCHS: I know. And I don't want to belabor the point because I know my colleagues I'm sure have questions.

But you know that's just a commodity-based elasticity demand where true Ramsey pricing would be the totality of the circumstances, including geography and other things. But listen, you are putting forward something that could reduce the complexity and I appreciate that.

DR. NOLAN: Thank you. Thank you, Patrick. No, great questions.

CHAIRMAN OBERMAN: Other Board members who want to take a stab at trying to understand what Patrick and Dr. Nolan were talking about?

(Laughter.)

BOARD MEMBER PRIMUS: I don't think I can do any better than that.

DR. NOLAN: I'm sorry, folks.

CHAIRMAN OBERMAN: It's okay. It's where I turn over the hearing to the economists, that's all.

DR. NOLAN: Yeah, I was going to say another dirty economist coming in here for you. Sorry about that, but --

CHAIRMAN OBERMAN: All right.

Michelle?

VICE CHAIR SCHULTZ: Yes. I think mine is going to be a bit easier.

CHAIRMAN OBERMAN: Good.

(Laughter.)

VICE CHAIR SCHULTZ: Just to clarify, I think you said that grain shippers, once they were granted I believe was it 160 miles or --

DR. NOLAN: 160 kilometers. 100 miles basically.

VICE CHAIR SCHULTZ: 100 miles. That having that access was associated with 5.2 days less in travel time, if I heard you correctly?

DR. NOLAN: Yes. But that data covers not only the 160 limit, but also includes a year of back to normal, back to the 30-kilometer limit. So it's a little bit -- it's a little bit -- that's what the student did. It's a little bit skewed. I probably should have taken just the interswitching 100 mile data and done that, but I didn't.

But even so -- even incorporating all that, it looked like it wasn't hindering the time the grain sat in the system basically.

VICE CHAIR SCHULTZ: No, in fact, I'm

trying to make sure I'm understanding this correctly. The 5.2 days less actually improved the travel time, if I'm understanding that correctly?

DR. NOLAN: Yep, yep. Yeah, it did, yeah.

VICE CHAIR SCHULTZ: And I don't know if you could speak to this, but what was the reason behind that improvement, from your perspective?

DR. NOLAN: I think if rather than sitting on a track, the shipper, the grain shipper, was able to negotiate with another railway, so let's say they're on CP track and their grain is sitting in an elevator or sitting loaded and not moving, then you go to Burlington Northern and say hey, guys, can you move this out for me, Burlington Northern comes back and says in a day or so and says yeah.

And then they go back to CP and say hey, Burlington Northern is going to come up tomorrow, they're going to get the -- or day after because the CTA will automatically enact the interswitch. What can you do? And then CP probably says oh, crap, we better move that; right?

So there was that negotiative suasion

which must have surely occurred between grain shippers, grain companies and railways to move any kind of grain that was just sitting on a track, for example. So that's why I think there was -- sorry, go ahead.

Go ahead, Michelle.

VICE CHAIR SCHULTZ: I guess as a follow-up question to that then as well, and I don't know if this is something that you looked into, but whether or not there were any other operational challenges, you know, in perhaps -- related to either other commodities or more dense areas associated with that 100-mile radius.

DR. NOLAN: That's an excellent question. I don't know the answer to that. I think CN is coming up later today, they will probably have -- maybe they will address that. I don't know.

It did clear out the backlog as far as I know, because it took about a year -- well, maybe a little less than that. It took some time to clear the backlog out. But I didn't hear anecdotally about any backlog as of -- in the next delivery season.

The other thing I wanted to mention to you folks quickly, I believe it was Mr. Henry who said or someone else said, and I don't want to blame him, it's not a bad thing, but he said oh, well, interswitching really helps Canadian grain move the way it does. You know, there's much more grain moving in Canada at lower rates than it is in the -- or let's say equivalent amounts at lower rates.

It turns out that the reason for that is there's an extra piece of regulation which came out of that 1996-97 kerfuffle with grain transportation called the maximum revenue entitlement, or the MRE.

And what it is is kind of like an average revenue regulation, revenue cap which was put again on grain movement.

So if you want to think about it this way, between 2014 and 2017, the Canadian railways had a double regulatory structure imposed on them. They had the MRE, which limited how much money they could make on moving grain, and they had the interswitching which they had to address basically.

The MRE, which I'm not asking you guys to consider whatsoever obviously, it really does -- it is funny because I've seen studies from the late '90s where U.S. rates from North Dakota down wherever they -- wherever it got delivered to, Portland, whatever at that time, they were far lower than Canadian rates at that time, but because of this MRE, it looks like that situation that flipped over actually. I just wanted to get that in, because it does relate to what you're talking about. Sorry about that, Michelle. Thank you for that.

VICE CHAIR SCHULTZ: Thank you.

CHAIRMAN OBERMAN: All right. Any other questions?

DR. NOLAN: Thank you, Chairman Oberman, for letting me get in this and I really, really appreciate it.

CHAIRMAN OBERMAN: No, Dr. Nolan, I'm glad you signed up. Your research is very enlightening and adds to the mix of our knowledge. We may get back to you.

DR. NOLAN: Thank you very much.

CHAIRMAN OBERMAN: All right. I understand that Sandra Dearden has solved her high tech problems and is with us from Diversified CPC?

MS. DEARDEN: Yes. I apologize for being late.

CHAIRMAN OBERMAN: You're not late. You're right on time. Go for it.

MS. DEARDEN: Okay. Good. Good afternoon. My name is Sandra Dearden, and I am speaking on behalf of Diversified CPC International. Diversified CPC manufactures propellants for aerosols, high purity hydrocarbon refrigerants and specialty applications, including biomass solvent extraction products, headquarters in Channahon, Illinois, Diversified CPC has six manufacturing plants, and they are all rail served.

There has never been a time when reciprocal switching was needed more. In their numerous filings, it became apparent that the railroads seem to think this proceeding is all about rates.

However, we view increased competition as an opportunity to derive improved service while confirming competitive rates.

Obviously, rates are a serious concern. But if shippers cannot rely on carriers to deliver their products efficiently and in a timely manner, plant shutdowns can occur, in which case, rates can become secondary.

Supply chain disruptions and transportation capacity are a national issue, and this is not a short-term problem.

In 2021, the American Trucking Association reported the industry was short 80,000 drivers, and that number will grow to 160,000 drivers by the year 2030.

The impact on manufacturers has been profound. Shippers are challenged on a daily basis simply trying to get equipment to load and at a time when service has declined, freight costs continue to increase.

This is a problem that has been developing for more than a decade. Precision railroading has devastated the rail workforce, shrinking capacity while freight volumes and rates continue to increase.

Union Pacific's Ms. Hamann, in her opening statement yesterday, cited UP's need to compensate its shareholders for their investments. Her comment underscores the real problem here, that the railroads prioritize shareholder value over customer needs.

I do not believe that access to new reciprocal switching rules will open a floodgate. However, increased competition should establish the discipline needed to turn this around so the carrier's primary focus is on serving their customers.

I could cite numerous examples when Diversified CPC experienced missed switches and delayed cars. The link in the supply chain is broken, and the need for significant change is now.

A clear example is the incident I cited in my filing, where it was obvious that the railroad managers were de-marketing customers due to shortage of capacity in one lane. De-marketing due to lack of capacity benefits no one.

If the railroads will put emotions aside, they might recognize the benefits of reciprocal switching for shippers and for the railroads.

For example, sometimes a route by an incumbent carrier is not the most efficient route. This presents a reliability risk for shippers like Diversified CPC that ship rail in private cars.

Also, in situations where a railroad is short of capacity, like the example previously mentioned, adding a second carrier will add capacity.

There is a working interchange with the second carrier within 10 miles of the plant receiving product in the lane I mentioned that was being de-marketed. If that second carrier had access to the Diversified CPC's plant, there would not be a need for the incumbent carrier to alienate customers by auctioning off capacity in their lane.

Reciprocal switching can establish a better option for carriers and their customers to plan and manage capacity, and it can also open up new markets to shippers and to the rail carriers where the only current applicable -- practical option is competition from other origins and/or other modes.

The operational impact cited by the railroads are greatly exaggerated. Reciprocal switching is a common operation performed by the railroads on a daily basis, and any concerns about the need for greater investments do not appear to be relevant, since applications will be considered on a case-by-case basis.

The railroads have the technology and operating personnel who work collaboratively with other carriers to provide service and sometimes to conceive ways to streamline operations.

Railroad executives know this, and they take pride in the quality of their personnel. So raising operational impacts and greater investments as concerns, along with labeling this proceeding as forced switching, are nothing more than emotional responses on their part.

AAR has submitted that the Board's

proposal is unsound because it extends reciprocal switching beyond terminal areas. Again, the practicality of a proposed reciprocal switching arrangement will be reviewed on a case-by-case basis.

But there's no good reason to limit reciprocal switching to terminal areas.

Consider, for example, the working interchange mentioned previously, which would be considered to be in a remote area, is less than 10 miles from Diversified CFC's plant, versus the Chicago Terminal, which is 234 square miles.

While the definition of terminal has not been confirmed, limiting the new process to terminal areas will probably preclude many rail customers' ability to use the new reciprocal switching rules.

The new rules proposed by the Board comprise more than just a proposal. Shippers large and small need a practical way to access reciprocal switching. BNSF in their filing acknowledged market failures in the form of unreasonable high rates and the American Antitrust Institute confirmed, when competition is eliminated, that duopolies practice. That brings us to today.

I respectfully request that the Board reconsider the inclusion of testing for market dominance in prong 2. It is a lengthy and costly process that few shippers would use if it was even appropriate.

However, testing for market dominance in reciprocal switching procedures is not practical, nor is it appropriate.

Consider shipments to and from a single plant, some commodities and lanes could pass a market dominance test while others would not. If that were the case, would that industry be open or closed to reciprocal switching?

It would not be manageable to have some lanes open and others closed. And even if that were the case, would the industry be required to refile whenever new business opportunities and new lines developed?

Prong 1, which is if practicable and in the public interests, is a common sense, case-by-case approach to confirm that a shipper's facility meets certain stated criteria, which makes one wonder if prong 2 is even needed.

It is an accepted fact that rationalization of the rail network has gone too far and competition has been eliminated. So just what are we trying to prove? Whether one prong or two, testing of market dominance to confirm competition is not relevant, nor appropriate here and should be eliminated from the new rules.

I will not reiterate some of the other points made in my original filings, such as the relevance of Canadian interswitching and our objection to ECP when setting reciprocal switching fees. Of course, fees should be decided in reciprocal switching proceedings on a case-by-case basis.

A simple method might be to develop fees based on benchmarking against existing reciprocal switch rates that apply in the terminal and/or the region.

My only closing comment concerns a need

for a separate rulemaking proceeding to develop standards of procedures for railroads that that arbitrarily decide to terminate existing reciprocal switching arrangements.

Within that proceeding, the Board could have the opportunity to establish standards and rules for shippers to challenge charges for reciprocal switching.

Certainly, we do not want to delay this proceeding further, which is why I'm suggesting a separate rulemaking proceeding. The need to protect shippers from the loss of competition when railroads terminate reciprocal switching arrangements without notice or justification is an important issue that should be addressed.

While we all agree that we need to find ways to drive competition, it is equally important to protect competition that we already have.

In the interim, I submit that any new reciprocal switching arrangements established under these new rules should be infinite until those standards and procedures are in effect.

Thank you for allowing me to present my views. We appreciate the Board's interest in this very important issue, and I encourage the Board to proceed in an expeditious manner.

CHAIRMAN OBERMAN: Thank you very much, Sandra.

I have a few questions. How many different plant locations does Diversified have that are rail served?

MS. DEARDEN: Six.

CHAIRMAN OBERMAN: And where are they?

MS. DEARDEN: Okay. The headquarter plant at Channahon, Illinois. The rail station is Lorenzo, and that's located on Burlington Northern's Santa Fe, single served.

They have a plant in Sparta, New Jersey, which is on the New York -- well, it's the NYSW, and the NYSW connects with CSX and Norfolk Southern.

We have a plant in Sebring, Florida, which is local on CSX. They have a plant in Petal, Mississippi, Royal Station Dragon, Mississippi, which is served by Norfolk Southern. And they have a plant in Anaheim, California, which is local on Union Pacific. And their newest plant, which we just started last year, is at Beaumont, which the rail station is Amelia. And it's at the Iron Horse Terminal, which is served directly by both Union Pacific and BNSF.

CHAIRMAN OBERMAN: You have the pleasure of dealing with everybody.

MS. DEARDEN: Uh-huh.

CHAIRMAN OBERMAN: So you've got two locations that are dual served. Is your experience in the dual served locations different from the ones that are sole served?

MS. DEARDEN: Well, yes. I think -- one of the benefits of having dual served is it's kind of part of our whole network.

Because we have a lot of options not only for shipping in and out of our facilities but also where we source our raw materials.

And so what we do is we apply leverage from the standpoint that we have options to source product from different locations. And then also, obviously, for example, when you go into Sparta, there's direct rail to rail competition between CSX and Norfolk Southern.

And one of the carriers does a better job at that than the other one. We have basically taken all of the competitive business away from Norfolk Southern. CSX has done -- CSX has been very good to work with, and based on what I've been hearing from these hearings, I think the reason they work with us the way we do is we educate them on our business and what our options are, and they respond to that competition.

If we did not have that competition, I don't think it would be as good. By the way, they have benefited too. They have increased the business they do with Diversified by a multiple of five.

CHAIRMAN OBERMAN: So could you -- and I'm sorry, I just don't recall from the written comments. Could you give us more detail on the demarketing episode you referred to? Where did that happen, and what did the demarketing consist of?

MS. DEARDEN: Yeah, I'd be happy to.

What happened is all the railroads except one holds our rates for the contract year end. In the propane industry contract year is April 1 to March 31. The only exception is Norfolk Southern, and they reserve the right to increase the rates quarterly, which they have not done in recent years.

But they did come out with a proposed increase for January 1 for one lane, and that was Birmingham to our plant in Mississippi, and that proposed increase was 24 and a half percent.

So whenever possible, our approach to the carriers is not to be adversarial but instead to try to understand their position so that we can work with them. And so my comment was in the initial meeting, help me to understand what's behind the 24 and a half percent.

And what they said was they lack capacity in that lane and so they're just trying to figure out which customers really want capacity in that lane from Birmingham.

CHAIRMAN OBERMAN: How far is that

location from Birmingham?

MS. DEARDEN: Hmm. Oh, I've got it. Here it is. 235 miles.

CHAIRMAN OBERMAN: So -- and this happened in January of this year?

MS. DEARDEN: Yes. Well, they came to us in December.

CHAIRMAN OBERMAN: And was the capacity a crew shortage problem because we've been hearing a lot of Norfolk Southern crew shortage problem.

MS. DEARDEN: Birmingham in general has been a choke point for quite some time and I think there's congestion there.

CHAIRMAN OBERMAN: And is Birmingham the nearest terminal to your plant?

MS. DEARDEN: No. Actually there is an interchange available 10 miles from the plant at hunts -- at -- my brain just fled.

Anyway, there's another -- a working interchange 10 miles from the plant.

CHAIRMAN OBERMAN: Well, I'd be interested to know what that is, because I'm looking at NS's reciprocal switching tariff, and I'm wondering if that's an interchange where they do any reciprocal switching. Do you know?

MS. DEARDEN: No, I don't know.

CHAIRMAN OBERMAN: Well, it would be interesting if you can while you finish, if you could figure out what's the name of that interchange, I'll see a particular tariff.

MS. DEARDEN: Yes. Okay.

CHAIRMAN OBERMAN: Because I don't know if you were listening yesterday --

MS. DEARDEN: Excuse me, sir. It's Hattiesburg. Hattiesburg.

CHAIRMAN OBERMAN: Hattiesburg, Mississippi? Let's see if they're in there. And who does that interchange with, CSX?

MS. DEARDEN: Canadian National.

CHAIRMAN OBERMAN: Well, NS has a reciprocal switching tariff in Hattiesburg with CN, yes. That's what you're talking about. And they apply it to one customer, Hub City Grist and Feed Mill.

So if we -- you had concern about limiting reciprocal switching to terminals. I have been raising a query with people, what if we limited it to any place where railroad currently performs reciprocal switching and has a tariff so we didn't have to debate, I don't know if Hattiesburg is considered a terminal.

Do you consider it a terminal? Because nobody seems to know the definition of terminal.

MS. DEARDEN: No. I let the more --

CHAIRMAN OBERMAN: Except I would say this, if this hearing comes on much longer, we all may all end up being terminal, but that's a different meaning.

But in that case, if there was a reciprocal switching rule which made you eligible if you could switch at any place where there was an existing tariff, you could have interswitched with CN at Hattiesburg, would that have solved your problem for that plant?

MS. DEARDEN: That would add capacity. And the point I was trying to make is, you know, this isn't all bad for the railroads, because if they have a capacity problem in that lane from Birmingham and they have congestion at Birmingham and there's been times when they have had congestion trying to get cars into our plant, by adding a second carrier, you will be actually adding capacity, which will relieve that capacity shortage.

CHAIRMAN OBERMAN: Did you pay the 24 and a half percent?

MS. DEARDEN: We spent four meetings, totaled about four and a half hours, and succeeded at getting a progressive increase, but they stuck by their 24 and a half percent.

I did point out to them that this increase -- this is raw materials coming in from a major supplier and that it increases the production costs at the plant and that they are actually jeopardizing the future of that plant.

CHAIRMAN OBERMAN: So when you use the -- you know, I've heard the term "demarketing" since I got to the Board in different contexts. You may be the first person to put it in a concrete setting.

Would it be fair to understand when you said that that NS came in and said, if we raise your rates 24 and a half percent, will you stop using us, because we don't have enough capacity. That's essentially the message you were given; right?

MS. DEARDEN: Yes.

CHAIRMAN OBERMAN: That's what you meant by demarketing?

MS. DEARDEN: Yes.

CHAIRMAN OBERMAN: And it sounds like you responded by saying you're not going to get rid of me because we need the service.

MS. DEARDEN: Right.

CHAIRMAN OBERMAN: I take it trucks would not be an option -- what raw material is that that you get there?

MS. DEARDEN: It's propane.

CHAIRMAN OBERMAN: So you don't want -- I assume that's not really practical for trucks.

MS. DEARDEN: Well, it's coming from West Virginia, it's originating in West Virginia, and it's Rule 11 rate from West Virginia on CSX to NS at

Birmingham.

CHAIRMAN OBERMAN: I imagine there are quite a few drivers in that part of the country who wouldn't like to be speeding down the highway at 70 miles an hour next to a propane truck if they didn't have to.

MS. DEARDEN: Right. The other thing, Mr. Chairman, that's important is Diversified's products cannot just go on any truck. It has to be dedicated trucks. And they're experiencing a great deal of difficulty in having enough drivers and equipment for their products.

And so switching to truck is not an easy transferrable thing to do. It's something that requires a lot of thought.

I mean, it doesn't mean we won't, but it's not an easy thing to do.

CHAIRMAN OBERMAN: So let me ask this question. Did you ask NS if they would just give you a reciprocal switching rate for Hattiesburg when you were negotiating with them?

MS. DEARDEN: No. But that would be a

good approach.

CHAIRMAN OBERMAN: Well there. At no extra charge. You can ask them next time you talk to them.

Are there any of your locations where you do have an existing reciprocal switching tariff with any Class I?

MS. DEARDEN: Not for Diversified CPC, no.

CHAIRMAN OBERMAN: Okay.

MS. DEARDEN: Now, I mean there are some where they have a second carrier that directly serves, but -- and then NYSW connects with two carriers. But --

CHAIRMAN OBERMAN: I have a suspicion you know enough about the rail industry, you could answer this question, but if you can't, that's fine.

Do you have any idea if you were allowed a reciprocal switch at Hattiesburg, how many movements that would be? How complicated would the move be?

MS. DEARDEN: Well, I think if you count the inbound and the outbound, it's probably a potential of 80 to 100 car loads.

CHAIRMAN OBERMAN: No, no, but how many moves would -- in other words, where does the NS traffic go now or where does it come from? Comes all the way directly from West Virginia?

MS. DEARDEN: West Virginia is one move. There's another one that comes out of Ohio. And then we also ship out of our headquarter plant in Illinois down too.

So that Rule 11 rate would be Chicago to destination.

CHAIRMAN OBERMAN: What I'm really after, though, is each time there would be a reciprocal switch in Hattiesburg, is it more complicated than just dropping your cars off and having CN pick them up or vice versa?

MS. DEARDEN: Well, I think the answer today to that kind of question would be different than it would have been, say, a year ago.

Because none of the railroads are very efficient right now. So logic would tell you that if you have a carrier that directly serves the customer, their route should be more efficient, but that's not always the case, because there's instances -- for example, we're getting product up to Sparta from Texas, and some of those cars I just learned a couple weeks ago, some of those cars sat at Decatur, Illinois for 10 days without moving on NS.

So in that case, those were vendor cars by the way, they were not Diversified cars. In that case, it would be nice to be able to switch that business over to CSX, but it's vendor control, not our control. But all we can do is try to trace the shipments and make sure they move.

CHAIRMAN OBERMAN: All I was trying to get at, maybe I didn't ask the question clearly, the NS move of the propane is a single line, it sounds like, from West Virginia to your plant?

MS. DEARDEN: Uh-huh -- no, no.

CHAIRMAN OBERMAN: No?

MS. DEARDEN: No. It's CSX, Birmingham NS.

CHAIRMAN OBERMAN: Oh, I see. Then NS from Birmingham to your plant.

MS. DEARDEN: Uh-huh.

CHAIRMAN OBERMAN: If you were going to respond to NS's demarketing by saying well, give me a switch at Hattiesburg to CN, then what would the move have been made? How would the stuff get to your plant on CN?

MS. DEARDEN: It would probably be over a different interchange, but it would be CSX-CN.

CHAIRMAN OBERMAN: I see. Okay. Well, that's very helpful. I'm trying to -- I think your experience helps put some of these issues into the real world situation.

So for the moment, you're suffering silently with whatever deal you made with NS, it sounds like.

MS. DEARDEN: Right. And trying to decide -- trying to decide what to do about the plant.

CHAIRMAN OBERMAN: Yeah. Not so silently. Okay. Thank you very much.

Other Board members? Anyone have any questions?

BOARD MEMBER PRIMUS: I do.

CHAIRMAN OBERMAN: Robert, go ahead.

BOARD MEMBER PRIMUS: Sandra, thank you very much for being here today, for your testimony.

I want to stay on that -- this point about your plant and the 24 percent. Have you ever received an increase to that extent before?

MS. DEARDEN: No.

BOARD MEMBER PRIMUS: You know, and again, as I've talked to -- if you were on during the day, I'm trying to focus on the economic implications of the shippers and what they're going through, because of course we hear the railroad saying how much they stand to lose due to reciprocal switching, but not how much their customers are losing right now without it.

Can you talk about the implications if you had to shut down that plant?

MS. DEARDEN: Well, what would happen is we would shift -- we wouldn't lose -- we would shift production, the western part of the country, to the Beaumont plant, and we would shift production for the eastern part to our Florida plant. But there would be people there who, you know, obviously would lose their jobs.

BOARD MEMBER PRIMUS: Even though you shift it to other plants, you're still looking at substantial loss overall. Would that be fair to say?

MS. DEARDEN: Yes. Well, I mean, you've got infrastructure. We have to move, we have to get -- we have to move not only production facilities but storage tanks and so forth.

So I mean, it's quite an expense to doing that, right. It's a major undertaking.

BOARD MEMBER PRIMUS: And one of the reasons I'm asking also is because we've heard time and again from folks, AAR and other railroads, that their number one focus is growth. They want to grow their business. They want to, you know, compete for new business and, you know, treat their customers.

Do you see what's happening now as an indication of that?

MS. DEARDEN: Well, it depends on which

railroad you're dealing with.

I think there's some railroads like CSX that are aggressively trying to grow their business. Some are treading water because they're just trying to keep up with status quo right now. That doesn't mean that they don't want new opportunities, but they're so focused on just trying to deal with the day-to-day issues that they aren't looking ahead.

And then there's other companies that are saying you know what, we've got too much business and we just can't handle what we have.

I don't see -- they don't mention what they're doing to address that.

What concerns me is if you look at the DOT projections for freight growth in freight volumes, this is not a temporary issue. It's like freight volumes are going to continue to increase, driver shortage is going to continue to increase, and so there's going to be a disconnect there.

And it would be nice to know that the railroad planners are planning not only on how to do the business today but what's it going to look like five years from now or 10 years from now.

BOARD MEMBER PRIMUS: In the picture --

MS. DEARDEN: Yes.

BOARD MEMBER FUCHS: Not in your mind being demarketed out of a region because of capacity.

MS. DEARDEN: Uh-huh. Well, I did remind them that I do have capacity in a lane, and it's called common carrier obligation. They didn't seem -- the managers I was talking to didn't seem to understand what that was, but they did tell me that Diversified CPC wasn't the only customer they were talking to, that they listed a long list of shippers they had to give similar messages to.

So it's not isolated. It's not -- I didn't feel like we were being picked on. I think it's just they have a capacity issue.

BOARD MEMBER PRIMUS: Understood. Thank you very much.

CHAIRMAN OBERMAN: All right. Thank you, Robert. Other Board members?

Sandra, you were so precise and explicit in your discussion, there's no further questions for you. Really, every person who has addressed us has enlightened us to a different kind of situation that needs to be taken into account as we think this through. And I hadn't heard about your specific problem.

We have been hearing repeatedly from NS about crew shortages, and to a lesser extent it's been -- but still there from CSX. So I'm not shocked to hear how NS is handling it.

And it is interesting because your impression is that CN could handle your traffic if you could have gotten a switch.

MS. DEARDEN: Yes.

CHAIRMAN OBERMAN: By the way, did you talk to CN and ask them if there was some way that they could help you negotiate a deal with NS?

MS. DEARDEN: No, but you know what I'm going to do tomorrow?

(Laughter.)

MS. DEARDEN: I'll be on the phone.

CHAIRMAN OBERMAN: By law, I cannot accept a commission. But I would say this. I would be very interested to hear if you're able to negotiate any solution for this involving -- well, any solution.

You know, our RCPA stands ready at the Board, I'm sure you've dealt with them, to try to help. As good as they are, they can't manufacture crews for a railroad that has a shortage, but they might be able to provide you some assistance. So I would invite you to call on them.

But let us know what happens. It would be very enlightening, particularly as this proceeding continues.

MS. DEARDEN: All right. Thank you.

CHAIRMAN OBERMAN: Thank you, Sandra. Much appreciated.

All right. Next up is Indorama, which has three representatives. Is everybody there? Hussam Awad, Barbara Hagler and H. Baker Lane?

MS. HAGLER: I believe we are all here.

CHAIRMAN OBERMAN: All right. You are Barbara, I'm guessing?

MS. HAGLER: Yes, I am Barbara. I'm the easier one to pick out, I think.

CHAIRMAN OBERMAN: Sometimes I'm just really insightful. Why don't you go ahead, the floor is yours.

MS. HAGLER: I sure will, I sure will.

As you said, I'm Barbara Hagler. I am here representing Indorama. All the sites we have in North America. I am here with Hussam Awad, who is our Senior VP, Procurement and Supply Chain for the Americas region, as well as Lane Baker, also North America Logistics Manager. We all belong to the part of Indorama that is combined PET segment. We're responsible for the commercial and operations of logistics functions for the majority of the sites within the Americas for Indorama, which includes all rail-related activities.

We are the three who have personal firsthand experience with being captive shippers with the railroads, working with the railroads on service issues and the rate negotiations since about the early 2000s.

Before we get started, I'd like to take a minute and just thank the Board for having this hearing. It's a matter that's extremely important to us, as well as clearly many other shippers. A lot of us are captive and access to competition has been reduced or completely eliminated altogether.

We intend to show that reciprocal switching is advisable. It meets a need and can be accomplished with minimal adverse effects. We commend the Board for bringing reciprocal switching back to the forefront of discussion and holding this hearing to provide an avenue for us and other shippers and receivers to share our experiences, concerns and strong support of this proposal.

Hussam is going to go now and tell you a little bit about Indorama, who we are, where we are and our interests.

MR. AWAD: Yes. Thank you, Barbara.

My name is Hussam Awad, I am the Senior VP for Indorama for the Americas for Procurement and Logistics. I echo Barbara's comments, and I thank the Board for having the meeting. This is not my first time coming in front of the Board. It is my first time virtually, but I've been in Washington a couple of times, given some presentations.

So I'm going to go through briefly about Indorama. Indorama is headquartered in Bangkok, Thailand, with a global operating sites of about 33 countries with 123 different operating locations.

Indorama Ventures is listed in Thailand Stock Exchange with a global manufacturing footprint across Africa, Asia, Europe and the Americas.

The company profile is comprised of integrated PET, fibers, packaging, specialty chemicals and olefins. We produce and serve major fast moving consumer goods, automotive sector, beverage, hygiene and personal care, along with tires and safety segments.

Indorama has approximately 24,000 employees worldwide and consolidated revenue of approximately $11 billion in 2020.

The company is also listed in the Dow Jones Sustainability Index.

Specifically to the region, to North

America, Indorama has 21 manufacturing facilities located in the U.S., Canada, Mexico, serving over 200 customers and over 300 -- we use over 300 transloading sites.

Over the past decades, Indorama has invested in greenfields, brownfields and acquisitions in the Americas, with the most recent being the pending acquisition of Oxiteno, with presence in Americas, the U.S., Mexico, Uruguay and Brazil.

I'm not going to go over where the facilities are in the U.S., but I can mention that we are in North Carolina, South Carolina, Texas, Alabama, Louisiana, we have multiple sites in those states, along with Mexico and Montreal, Canada.

All but one of Indorama's sites and most of our suppliers and customers are captive to one Class I railroad. This is little to no competition, and we find that railroads are less willing to negotiate rates and act quickly to remedy service issues when our only option is the railroad being captive to them and maybe will have some destination that we might be able to serve by trucks.

Many sites are only set up to ship and receive products by rail, so there are times when we truly have no other option than rail.

We believe that increased competition encourages fair pricing and efficient service, where the lack of rail competition allows the railroads to focus less on their customers and service and more on their own shareholders' value.

Indorama operate extensively in both the U.S. and Canada. In our experience and observation, the Canadian competitive switching process or the interswitching as we heard earlier operates effectively, while CN physically service our plants in Montreal, we have used Canadian Pacific in the past under reciprocal switching process.

We first exercised this option in 2018 and were able to obtain a more reasonable rate. We also found service that was not significantly affected. In some cases, we found it to actually improve. And in one of the cases, the railroad was willing to adjust service to accommodate our needs.

In this instance, we were able to add a service day to a highly congested junction to keep the supply chain flowing smoothly and decrease the bunching of railcars that we were experiencing at the time.

Without this competition from other railroads, we do not believe we will have success in promoting this crucial change in our service.

The reciprocal switching right in Canada helps to keep rail freights reasonable and railroads quickly reacting to service issues. It provides major benefits to shippers and receivers and has not resulted in significant adverse effects to the railroads by causing service problems.

If anything, reciprocal switching has improved service overall for Indorama.

In the U.S. railroads sometimes have shown tendencies to serve their own interests to the detriment of captive shippers' interests and the public interests. Most recently, this has been evidenced through the service issue that have been developed after Class I railroad with the exception of BN began implementing precision schedule railroading in 2017.

Through the implementation of the PSR in the U.S., Class I railroad over the past five years have closed hump yards, cut thousands of employees and reduced service and change overall operating guidelines to improve their operating ratios. This was done at the expense of their customers and employees, based on numbers from STB, Form C on the STB website, since 2017, CSX has cut approximately 28 percent of its employees. UP has cut 26 percent since 2018, and NS has cut 27 percent since 2019.

Since 2017, Indorama sites have experienced missed switches at plants and customer sites, bunching of course in transit leading to a feast or famine scenario at the delivery sites, slow return of empty cars back to the operating sites and longer, much longer transit times.

The railroads have pushed our sites to take on more expense and change operations to match the new process and operating strategies. We have had to increase our railcar fleet by over 10 percent in the past couple of years solely due to inconsistency in the rail service and increased transit time. And we're about to increase our fleet again in the next six months by approximately seven to eight percent. This is again due to the inconsistency in the service and transit time.

We have brought on additional storage yards in addition to increase the fleet service at our expense to accommodate the changes in the free time and the last mile operations and schedules.

Service issues related to PSR implementation has not gone unnoticed by the Board, and Indorama again commends the Board for holding the railroads accountable for such bad services, beginning in the listening session in 2017 when CSX railroad executives to requesting service performance information toward the end of 2021 due to a steady stream of complaints about the standard performance, the Board had tried to hold the railroad accountable for the problems caused by PSR.

We understand that Indorama is not alone in having service issues with the railroads and changes must be made.

Now, I'll turn it to Lane to give more examples of the experience that we faced with the railroads on our operation.

MR. BAKER: Thank you, Sam. Thank you, Mr. Chairman and Board members for allowing us to speak today. I'm Lane Baker, one of the North American logistics managers for Indorama. To make matters worse, just as the railroads were smoothing out some of the problems caused by the implementation of PSR and service was beginning to improve in most locations, COVID-19 hit. The railroads had cut so many employees of PSR that they have been unable to recover as employees called out sick and left the railroad for other industries.

Any small uptick in volume caused significant issues with the railroads. We have had multiple incidents of not receiving service needed by the Class I railroads and having to slow or stop production lines at our plants as a result of lack of raw material railcars being delivered to our plants. This is devastating to our business.

In the plants in the Southeast, we've lost almost 110 million pounds of production in the last 14 months at one plant. Another plant in the Southeast lost production of over 5.5 million pounds over a six-month period. Both sites are captive with competing railroads nearby.

Our plant in the Northeast lost production of over 57 million pounds during the first two months of 2022 mostly due to increased transit time and railroad delays resulting from crew shortages.

The results in lost sales for our sites and the lost revenue by the railroads because we cannot ship what we cannot make.

In addition, even though this inadequate rail service has resulted many millions of dollars of damages to our company, we have no recourse to the serving railroads who will not provide any service type of guarantee and will not share any responsibilities for the damages it causes to our business.

With reciprocal switching, we could keep our supply chain moving by engaging another Class I railroad to help accommodate these huge gaps in the rail service by the serving railroad.

We have had to ship trucks in many cases when we've not been able to get our empty railcars back to the plant in time to load and ship back to customers. In the past year, we have used multiple special train requests which we pay significantly more for due to the lack of service by the railroads ironically. But at least they kept our plants running.

We were granted these special trains only on two occasions out of more than a dozen requests to the railroad, stating they did not have crews or power to make the special moves.

During a 10-month duration in 2021, one of our plants had to ship approximately 280 trucks to cover customer shipments primarily due to rail service issues. With today's supply chain issues, trucks come at a very high cost, and even when we were willing to pay the higher rate, we cannot always find available equipment, especially if it's on a short-term notice. Again, lost revenue for the railroads and much higher costs for Indorama.

Indorama fully believes that if reciprocal switching was in place providing competition where currently we are only served by one Class I railroad, the railroads would be forced to focus more on servicing our plants needs as required by the common carrier obligation. If Indorama had another rail option at captured operating sites and customer sites, we would be able to switch to a railroad that provided the best service, not just the only one that's available.

Examples of favoring railroad interests over captive shippers' interests and public interest also historically includes excessive rates and charges, paper barriers, overrecovery fuel surcharges, restricted routing and other techniques that impede access to more reasonable rates.

Reciprocal switching will allow for the use of most effective routes and therefore provide improved service.

When moving raw material from Wilmington, North Carolina to our Asheboro, North Carolina, site, each captive to a different railroad, we must travel significant outer route miles for the two to connect. If reciprocal switching was in place, we could ship direct with just one Class I and travel more effectively.

Also, shipping out of one of our Decatur, Alabama sites to a customer in the Northeast, one Class I railroad must go through a short line, which is over-congested and serve the customer. But the competing railroad has the ability to bypass the short line and shave days if not even a week off of the current transit.

With the global supply chain disruption due to the pandemic over the past two years, the railroads could have capitalized on additional volume by putting more -- by pulling more product from the highways and inland waterways. An effective and consistent rail system is critical in North America and Indorama's supply chain.

Now, more than ever, Indorama values our relationships with the railroads and strives to open and honest communication hoping to combine effort that results in pathways to improve service issues. We currently have sites that when we contact the local serving railroad representative, they cannot be reached live or anyone will return phone calls. They have even attempted meetings, but the response time is not improved.

We must resort to contact corporate to get any kind of service response or actions from the local team. Reciprocal switching can help improve service by allowing more than one railroad to serve captive shippers and receivers and provide more options to move additional volume.

And now I will turn it over to Barbara.

MS. HAGLER: So I know we're out of time, so I'm going to extremely abridge my version of talking of how it benefits rates. I think we've heard multiple times that competition does, in fact, bring lower rates. We've seen service issues on the rise, our rates are on the rise. And we're finding that railroads are no longer using cost-based methods or distance or other historical type of costing methods to come up with their rates. Now it's just basically based on well, this is what the market is or what they perceive the market to be. When there's no competition, the market is kind of what they want to make it.

We're seeing their operating ratios increase significantly. I believe one Class I in an article from their fourth quarter full year '21 financials showed that their operating ratio increased by over 11 percent while during the same period, it was a 15 percent increase in revenue but a four percent decrease in volume.

So clearly, it's just by the rates that they are charging.

We are absolutely observing that when we have a dual served customer where there is more competition, we get much better rates. We're able to actually negotiate. And we've had success with our Montreal plant as well using the interswitching that they have in Canada, keeping those rates more reasonable as well.

So in conclusion, we just again thank the Board for allowing us to speak, and we respectfully urge the STB to adopt the reciprocal switching rules proposed in the proceeding. The argument is stronger now than ever because of the implementation of PSR.

We believe that the implementation of the rules in this proposal will improve the service of our railroads and make their networks more efficient and effective.

Thank you for your time and we'll open it up to questions.

CHAIRMAN OBERMAN: All right. Thank you very much, Barbara. I'd like to just drill down and get a little more specific information.

I saw that you have 21 plants in North America. How many locations are in the U.S.?

MS. HAGLER: So we have -- the only plants that we actually have in the Americas outside of the U.S., we have one in Canada and one in Mexico.

CHAIRMAN OBERMAN: So the other 19 are in the U.S.?

MS. HAGLER: Yes. And we are continuing to grow.

CHAIRMAN OBERMAN: And it sounds like you're generally scattered around the country. So are you -- when you say -- are all the plants rail served plants?

MS. HAGLER: Yes.

MR. AWAD: Yes.

CHAIRMAN OBERMAN: Would it be fair to say that everyone -- do you deal with every one of the Class I's?

MR. AWAD: Yeah, we deal with NS, CSX, CN, CP, UP, KCS and BN.

CHAIRMAN OBERMAN: So I'm a little confused by one of the things that Mr. Lane said.

You have two locations in North Carolina, I think, and you said that they were served by different Class I's at each end. So if you could have had a switch, you could have had one single line connection between the two -- I couldn't follow the way you were explaining that.

MR. LANE: Yes.

Go ahead, Barb.

MS. HAGLER: I was going to say, I can

speak to that because it's somewhat of a commercial as well as an operations issue. It's actually one of our suppliers is on the coast of North Carolina. Our plant is in Asheboro.

And the supplier is served by one eastern railroad, the plant is served by another.

Because there is, for lack of a better way to say it, no way to get there -- from one place to the next without kind of going around your elbow, we're adding a lot of miles and a lot of transit to the route because the two have to connect.

However, the railroad, the CSX, which serves the coast, the supplier, can get within 30 miles of our plant. But because it's not a standard interchange point, they won't use that, and they have to come through Charlotte.

So they are going way out of route to go back up north to connect in Charlotte with the Norfolk Southern rather than connecting with them in High Point.

And we feel if reciprocal switching was in place, that High Point location would be more of a feasible location, because they are -- they do connect there, and they do handcars off there from time to time. It's just not a standard junction.

Does that make more sense?

CHAIRMAN OBERMAN: Yes. How much extra mileage is it to go to Charlotte?

MR. AWAD: We looked at that, Barbara.

MS. HAGLER: Yeah, I was going to say I believe it was 150 extra miles.

CHAIRMAN OBERMAN: What is the name of the interchange point you would like to use, High Point?

MS. HAGLER: High Point. One of them calls it High Point and one of them calls it High Rock. But it's the same location.

CHAIRMAN OBERMAN: Is there any reciprocal switching going on there now with other shippers, to your knowledge?

MS. HAGLER: Not that I'm aware of. We have a storage facility there, the HP, High Point in Denton on a short line. And they both can reach that facility, but it's --

CHAIRMAN OBERMAN: Well, and I've looked

at their tariffs, I don't see a location there. But let me ask, you've heard me ask these questions of both the railroads and other shippers about trying to proceed on an incremental basis by perhaps focusing on allowing switching where it's already taking place by the railroads, reciprocal switching.

Do you have any sense of where your plants are located? Are they close enough to either terminals or yards where switching goes on now that that would still benefit some of these 19 locations?

MR. AWAD: It depends on what's the radius. If it's going to be 30 miles or maybe 35, 40 miles I think we'll have some location that will benefit from that.

CHAIRMAN OBERMAN: Well, it may be that the way to define it is not by the mileage but by where your cars are normally switched.

Would it be fair to say, I'm trying to understand how this system works, and we've had others explain that for the most part, a local train from the Class I services your location. Is that a way to understand the way you work with your Class

I's, or is it with the short lines?

MR. AWAD: Yes. Go ahead, Lane.

MR. LANE: No, it's the Class I's.

CHAIRMAN OBERMAN: So in each case, is it a local train? It's not a long haul train that's picking up your cars and going directly to the destination; right? You're going to a yard someplace.

MR. LANE: There's a local train that picks up at the facilities.

CHAIRMAN OBERMAN: And typically, how far is it from your plant to the yard that the local train operates out of?

MR. LANE: Well, in the case of Asheboro, it's less than 30 miles.

CHAIRMAN OBERMAN: And do you know if any of those yards are yards that the Class I is using for any reciprocal switching for any customers?

MR. LANE: Yeah, I don't know if they're using those yards for reciprocal switching myself. We'd have to research that.

MR. AWAD: But the other railroads, there is another railroad that also uses that yard; correct? Yes.

CHAIRMAN OBERMAN: Okay. Because I have a -- you know, I've been looking at these tariffs, and I see that Indorama is listed in the reciprocal switching tariff that CSX has for Decatur, Alabama.

MR. AWAD: Decatur, yes. Decatur, there is a special arrangement between NS and CSX.

CHAIRMAN OBERMAN: And you are allowed reciprocal switching there?

MR. AWAD: Yes. When the destination is located on CSX, then we take it to the interchange, NS picks it up and take it to the interchange and then CSX takes it to the destination.

CHAIRMAN OBERMAN: Say that for me again. Who picks it up?

MR. AWAD: NS.

MR. LANE: So NS serves the plant in Decatur. I think the piece that Hussam -- if the destination is served directly by the NS, we have to give that destination to the NS.

MR. AWAD: Correct.

CHAIRMAN OBERMAN: But the tariff is listed in CSX's reciprocal switching tariff. So how does that work?

I'm sorry, I misspoke. I am looking at the Norfolk Southern reciprocal switching. I got it. I got too much paper in front of me. Sorry about that.

So you do have a reciprocal switching tariff with NS at Decatur. Is that the only place in --

MR. AWAD: Yes. But again, it's not really -- it depends on the destination. If the destination is CSX, then CSX takes the cars and take it there. So it's still one railroad.

MS. HAGLER: So there's no true competition that is encouraged by this, because the only thing the CSX can quote on is something that they deliver to.

If NS is taking it to a West Coast carrier Class I or to a short line, if the NS can get there in any way, then we have to negotiate with the NS.

MR. AWAD: Correct.

MS. HAGLER: We don't have the option of using the CSX. It's only when the CSX is the delivering railroad or a short line that the CSX only connects with.

CHAIRMAN OBERMAN: You're saying that that's the only tariff NS would give you for that location?

MS. HAGLER: Yes.

MR. AWAD: Yes.

CHAIRMAN OBERMAN: Could you physically get to where you want to go through CSX if they would allow you?

MS. HAGLER: Yes.

MR. LANE: Yes.

MR. AWAD: Yes.

CHAIRMAN OBERMAN: I got it. And do you have any idea what kind of -- you know, we've heard a lot about the complexity of doing these reciprocal switches. Do you have any idea what kind of a move is made when you leave your plant on NS and switch to CSX? Is it just dropping it off at the yard and picking it up -- and a CSX train picking it up?

MR. LANE: Well, in Decatur, the local would pick it up and take it back to the NS yard and they would move it from the NS yard to the CSX interchange.

CHAIRMAN OBERMAN: Who moves it?

MR. LANE: NS.

MR. AWAD: NS.

CHAIRMAN OBERMAN: Well, either way it's got to be switched to the NS yard. If it's staying on NS, it's got to get off the local and onto another train.

MR. LANE: Right.

CHAIRMAN OBERMAN: In the NS yard, there's only one move, either to NS or the CSX.

MR. LANE: Right.

CHAIRMAN OBERMAN: And when it gets to the CSX yard, it just goes to a classification track for where it's going on CSX. So it's one more move; is that right?

MR. LANE: That's correct.

MR. AWAD: Yes.

CHAIRMAN OBERMAN: Okay. It would be

interesting -- I would be interested to ask you to explore, if you wouldn't mind, whether any of your other servicing yards or classification yards are yards where -- you've got so many plants, I don't want you to take up time to name them all here today. And tell us whether those are yards that any of your sole served railroads currently having reciprocal switching tariffs in place for any shippers. That's a concept I'm trying to get enlightened on here as to how much of a relief it would be for the kind of circumstances you're talking about if that is the way we limit it, decided to limit it in the rule.

You know, the railroads raise the concern about opening up all kinds of interchanges now, where they aren't doing that kind of switching. Maybe they're right, maybe they're not. But if we go to places where they're already doing reciprocal switching, it seems to me it lessens, as some of the railroads have acknowledged, it lessens any concern about congestion, at least as I understand it.

So I'd be interested in hearing about

that.

You know, you've got a lot of experiences that are difficult. Have you -- let me ask you this. Have you tried to use our good offices at RCPA for any of these problems you've detailed to us here over the last year or two?

MR. AWAD: You mean service issues?

CHAIRMAN OBERMAN: Yes.

MR. AWAD: Yeah, we have actually. We actually met with the former chairman in Washington, D.C., we had some issues with NS. And there was advice, how to approach NS, which we of course -- you know, of course we adopted.

But it took a long time back and forth between us and NS to come to a resolution about some of the issues that were happening at that time.

CHAIRMAN OBERMAN: All right. Well, thank you. It's very enlightening. I would like to get your follow-up if you have time to do it on some of these questions.

Let me see if any other Board members have any questions for you.

Patrick?

BOARD MEMBER FUCHS: It's Karen.

CHAIRMAN OBERMAN: Oh, I'm sorry. Karen.

BOARD MEMBER HEDLUND: I think it's Michelle, not me.

CHAIRMAN OBERMAN: You know what happens, just so the rest of the world doesn't think I'm losing my mind, all of these little messages to me come up under Patrick's name because he started the chain yesterday.

BOARD MEMBER PRIMUS: I have one but I'll let Michelle go first.

CHAIRMAN OBERMAN: All right. Michelle, you're up.

MR. LANE: You're on mute, Michelle.

CHAIRMAN OBERMAN: There you are.

VICE CHAIR SCHULTZ: Well, the lateness of the day is getting to me here, apologies.

Just you may have covered this already, but in the area that you actually have the switch in place, are you able to speak to how that occurred? Was it something that was requested and negotiated?

How did that come into play?

MR. AWAD: You mean the Decatur that we just talked about?

VICE CHAIR SCHULTZ: Yes.

MR. AWAD: Okay. So from my understanding, I mean, that site we acquired in 2016, it's a BP site. So we were not there more than that.

But from what I understand from the road, there is an agreement between NS and CSX about this yard, switch yard, to do the reciprocal switching in Decatur, in exchange to do another reciprocal switching in the yard in Tennessee.

So there was something between the two railroads that benefited both of them, not for the shippers.

VICE CHAIR SCHULTZ: Thank you.

BOARD MEMBER PRIMUS: You good, Michelle? Okay.

Again, thanks for taking time to come before us. If I could, I want to -- Lane, I want to ask you again, you talked about the losses that you've been sustaining since, you know, with all the service related issues. And you said it's in millions of dollars of damage.

Do you guys have a ballpark figure how much you guys are losing or have lost because of service issues?

MR. LANE: Hussam, you probably have a better number on the millions of dollars that -- from the true rackup.

MR. AWAD: Yeah, I mean, we can get you that, Robert. I think we have the volumes of production loss, but we can easily get you those numbers.

BOARD MEMBER PRIMUS: And I appreciate that, thank you.

You also said I think there was somewhere like 280 trucks that you had been using. If service had been provided in a way that you guys expected how much -- how many of those trucks would you not have used?

MR. LANE: If the service had been there, we wouldn't have used any of them.

BOARD MEMBER PRIMUS: Okay.

MR. AWAD: The only reason we used trucks is because of the poor service.

BOARD MEMBER PRIMUS: And you've been using trucks at that rate for how long? Or has that been going on for months, for years, since PSR? You alluded to earlier, is this continual?

MR. LANE: It's been continuing. I don't know that it would go back two years, but I know in the last year and a half, we've been extremely heavy on trying to get trucks.

And as I indicated with the market being tight on trucks, I mean, it's almost impossible to get some trucks.

BOARD MEMBER PRIMUS: So how does this sort of play out? And again, you know, I sound like a broken record, but I think -- I want to sort of make the case because of folks coming forward.

You know, we hear from the rail side of the economic implications of reciprocal switching. You know, what are the implications on your business if we weren't to do it and when we continue status quo? Could you -- how much of a hit would it be on your business if you continue this model?

MR. LANE: Well, I think if we continue at the rate we're going, obviously it's costing us millions of dollars extra in freight just because of all the trucking we're doing and the poor service we're getting from the railroad.

MR. AWAD: So that loss of revenue.

MR. LANE: Loss of revenue again.

BOARD MEMBER PRIMUS: So is that passed along to your customers?

MR. LANE: We have not passed the loss along to the customers, but obviously, you know, some of the higher freight charges that we're seeing in trucks, I mean, we can't deliver at the same price on trucks as we do with rail.

BOARD MEMBER PRIMUS: And I'm not saying you throw it out. But I'm saying at some point, your ability to sort of bear the burden is not going to be there. Would that be fair to say?

MR. LANE: Right.

MR. AWAD: Yeah. I mean, when we have

supply agreements with our customers, we have arrangement to, you know, arrange for the railcars to get to them. So we negotiate with the railroad. And then we agree on a supply agreement with pricing economics.

So if the cars are not there, we have to carry the burden to get the product up to them, even though we're paying more in using trucks.

Does that answer your question?

BOARD MEMBER PRIMUS: It does. And that was the last one. So thank you.

CHAIRMAN OBERMAN: Any other questions from the Board?

Let me just ask one sort of broad question.

If you -- looking back over the last couple of years when you say you've really been suffering from these service problems, are they focused primarily on one or two of the railroads, or are they equal across all the Class I's, as far as your plants are concerned?

MR. AWAD: They're equal, yeah. The one

that adopted PSR at least, except BN. But BN had their own -- they also had some issues but not to the same extent.

CHAIRMAN OBERMAN: So it's CSX, NS and UP your principal -- CN, would you include them as problematic as well?

MR. AWAD: Yes.

CHAIRMAN OBERMAN: Okay.

BOARD MEMBER PRIMUS: Marty, I've got one more question.

CHAIRMAN OBERMAN: Go ahead.

BOARD MEMBER PRIMUS: In that line of thinking, you know, again we've been talking about growth and railroads have been talking about growth.

Have you seen considerable increase in your rates during this period also?

MR. AWAD: Correct. I mean, once you're captive, right, there is very little room to negotiate because you don't have much options.

Like we talked one of the I think it was yesterday, you know, in some cases, depending on how far the customer is away from the origin, you know, trucks are competitive. But once you reach a certain distance, it becomes more expensive.

BOARD MEMBER PRIMUS: Thank you.

Sorry, Marty.

CHAIRMAN OBERMAN: No, it's all right. Okay. If there are no further questions, Indorama, thank you. I know you have participated in other Board hearings since I've been on the Board, and I really appreciate your stepping up to the plate repeatedly and taking time to talk to us. It's really quite important, and if you do have time to give us any of this follow-up material, I'd love to see it.

MR. AWAD: Will do. Thank you.

MS. HAGLER: Thank you.

CHAIRMAN OBERMAN: All right. We have one final witness on this panel, Mark Scribner from the Reason Foundation.

MR. SCRIBNER: Hi, Chairman Oberman and members of the Board. Thank you for holding today's hearing and providing me an opportunity to present. I promise to do it quickly because I know you have another panel following me.

My name is Mark Scribner, and I'm a Senior Transportation Policy Analyst at Reason Foundation, a national nonprofit public policy research and education organization with expertise across a range of policy areas, including transportation.

At Reason, I focus on matters related to transportation technology such as vehicle automation and I'm also a member of the Transportation Research Board Standing Committee on Emerging Technology Law.

Others in this proceeding have expressed concern about the additional operational complexity and negative impact on fluidity that the Board's proposal may unnecessarily introduce into America's rail networks. We share those concerns about possible short run operational impacts, but I would like to focus my remarks today on what we view as an underdiscussed topic at the Board, and that is the potential impact of the proposed reciprocal switching rule on investments in automation that we believe are critical to ensuring rail's long-term viability and competitiveness as a freight transportation mode in the United States.

During the last decade, automated road vehicles have captivated the public with the prospect of self-driving taxis and last mile delivery robots, improving safety and convenience in urban areas.

Much of the popular coverage is focused on these passenger and small cargo use cases, but development has also been ongoing in the heavy duty truck market segment. Waymo, formerly the Google self-driving car project, is developing fully automated long haul trucks under its Waymo Via brand that are currently being tested on highways in the southwestern U.S.

Other companies, such as Locomation, are developing cooperative automated systems that would allow trucks to automatically follow the direction of leading truck, saving fuel through reduced aerodynamic drag, which was the initial impetus for that research and development of deployment but potentially labor costs if drivers in following trucks and potentially eventually lead trucks can be relieved of their duties.

This technology has the potential to cut truck operating costs by nearly half and lead to the development of so-called road trains. Most significantly, these coordinated convoys of driverless trucks could greatly reduce rail's traditional advantage over trucks for numerous commodity groups.

U.S. freight railroads are now experiencing truck automation firsthand. In early February of this year, Union Pacific and automated truck developer TuSimple announced a partnership to launch a fully automated 80-mile truck route from a Tucson railyard to a Phoenix area distribution center. These technologies remain under development and wide-scale deployment is likely some years away.

However, the eventual deployment of highly or fully automated heavy duty trucks coupled with leader follower coordination capabilities is expected to significantly reduce road freight transportation costs and impact competition between trucks and rail.

Unsurprisingly, railroads are interested in a variety of automation technologies to improve safety, productivity and their competitive standing with other modes that are anticipated to become increasingly automated.

Train automation is likely to be incremental as functions are gradually automated and personnel are relieved from certain tasks as safety is assured.

For instance, an incremental automation phase-in would allow for reducing train crew sizes from two to one, which Oliver Wyman in 2015 estimated could save U.S. railroads up to $2.5 billion per year by 2030.

Certain lower risk operations, such as those in rail yards or those involving shorter trains, are likely to see automation technology deployed sooner. But long distance automated train operations may be on the horizon, as mining giant Rio Tinto Group successfully demonstrated three years ago with its deployment of auto haul iron ore unit trains in western Australia.

We are concerned that the Board's proposed rule would negatively impact railroad's returns on investment, thereby reducing their incentive to invest in train automation, research, development and deployment.

It is generally research and development of unproven technologies that get cut first when shareholders throttle capital expenditures in order to maintain their desired returns on investment through proven business lines.

The Board should avoid disadvantaging freight rail relative to its modal competitors, which would likely incentivize customers to shift traffic from rail to trucks.

This would have private as well as social costs, when compared to freight rail, the EPA estimates that trucks emit 10 times as much carbon dioxide per ton mile and more than three times as much particulate matter.

Thus even a small degree of modal substitution would increase the transportation sector's emissions intensity. We urge the Board to proceed with caution to ensure the public interest is protected, and with that, thank you again for the opportunity to present Reason Foundation's views to the Board, and I welcome any questions or comments.

CHAIRMAN OBERMAN: Thank you, Mr. Scribner. I have a couple of questions.

In your prepared remarks, you cited as authority for your position the AAR, I guess, it's the animated video I've seen that shows 68 locomotive operations to make a switch.

MR. SCRIBNER: That was the thing -- Railway Age featured it.

CHAIRMAN OBERMAN: Yes. And you just took that at face value that the switches would require 68 moves?

MR. SCRIBNER: I say in there, it may not be the tip -- the typical switch may not be that complex, but I did highlight -- I highlighted the video.

CHAIRMAN OBERMAN: Why cite it to us?

MR. SCRIBNER: Oh, I included that as the citation, as something -- you know, now that I think about it, you probably had already seen that.

CHAIRMAN OBERMAN: Well, I hadn't seen it. That's why I asked you why you cited it. I haven't seen anybody who actually runs a railyard show us how 68 moves are needed. Yesterday, UP showed us that it took one extra move. Did you watch that testimony yesterday?

MR. SCRIBNER: I didn't see the UP testimony yesterday. But there is that video, and it's several minutes.

CHAIRMAN OBERMAN: It's 14 minutes.

MR. SCRIBNER: It goes through all that. And I took it at face value.

CHAIRMAN OBERMAN: Yeah, it's 14 minutes.

MR. SCRIBNER: Yeah.

CHAIRMAN OBERMAN: I took it at face value too, but I took it differently.

You know, you said that a reciprocal switching rule is going to force more traffic onto trucks. Did you hear the testimony today about the poor railroad service forcing more traffic onto trucks from the scrap dealers and from Indorama?

MR. SCRIBNER: I did. And this case, what I'm -- the hypothetical here or the potential impact here is a second order of fact.

What I'm talking about. And I brought this to the Board's attention because I don't think it's been discussed. And, you know, in the research setting, the train automation very, very early on, I mean most automation in the railroad industry right now has been focused on things like automated track inspection, automated train operations, particularly in the freight context and especially in the United States, not really happening right now.

But because of what is going on in the trucking market, where there is intense interest, I mean automotive totaled tens of billions of dollars in recent years invested in automation research endeavors there.

So that is why we are highlighting that as a potential second order effect of a proposed rule if it causes shareholders to throttle capital expenditures in order to maintain their returns.

CHAIRMAN OBERMAN: Okay. Anybody else

have questions for Mr. Scribner?

Karen, I thought you --

BOARD MEMBER HEDLUND: Mr. Chairman, I do.

CHAIRMAN OBERMAN: Yes, go ahead.

BOARD MEMBER HEDLUND: Mr. Scribner, it's great to see you here today. I'm very familiar with Reason Foundation and worked very closely with Robert Poole for a number of years getting the whole concept of privately developed toll roads and privately operated and developed airports in the United States off the ground.

But I have to say that for an organization that touts itself as free minds for free markets, I'm a little surprised that Reason would come here and advocate against more competition in the railroad industry.

I realize that's not quite the thrust of your testimony, you're really talking about what the potential is for automation.

But I wanted to make that point.

Secondly, your written remarks seem to suggest that automation -- automated trucks could provide a good alternative to railroads. But again I wonder why Reason is suggesting that when automated trucks have to run on highly subsidized highways as opposed to trains, which our freight rail system is not subsidized to any extent at all.

And then thirdly, I do not share your concern that any increased costs on the railroads from this proposed rule would crimp investment in automation. It's obvious that the railroads today are highly profitable and have plenty of money to put into looking at -- looking at alternative technologies.

And I think I share with you the expectation that automated locomotives could be very beneficial in the operation of railroads, in particular in movements within yards, maybe for switching and also perhaps at our ports to help clear them out faster.

So I just wanted to make those three points. And the next time you see Bob Poole, tell him hello for me.

MR. SCRIBNER: Well, thank you very much

for those questions. So I guess where we're coming from on where sort of truck automation fits into this, and you're absolutely right, we are strong supporters of road pricing and self-supporting road infrastructure and have been for many years.

But what we're really talking about here is sort of where the technology for -- the vehicle technology seems to be going, which is a separate question, largely a separate question, from those infrastructure questions.

Now, there are some interactions potentially, especially at the cooperative automation levels, where you're going to probably need some additional infrastructure treatments in order to facilitate those kinds of operations. Same thing is true of -- you know, the rail automation is likely going to have some significant infrastructure components. It's not just going to be sensors on the locomotive, for instance.

But we see this as just the direction of where vehicle technology is going. And if you listen to these companies, these developers, they say -- they specifically say at least right now by and large, they do not want any infrastructure changes. They are designing their technologies, their automated driving systems, to operate on the roads of today. So I'm taking them at face value there as well.

And we are trying to figure out, you know, what does this mean for the overall competitive landscape of freight transportation in America.

And you're absolutely right, I mean, this has much less to do with rail to rail competition, which has been the major focus of this hearing, and much more to do with rail to truck competition. And that is -- you know, I think that's where we're going.

I think in this automated future, we're probably going to see a lot more integration of the modes than we have today, and that is sort of -- that's our general approach in how we're trying to think through these issues.

BOARD MEMBER HEDLUND: Yeah, I see that. Getting the trucking companies to agree to support tolled truck lanes, that would be great. That's something Bob has tried to get for like for 10 or 15 years.

MR. SCRIBNER: Many years.

BOARD MEMBER HEDLUND: The trucking industry has not been receptive to that whatsoever. So these automated trucks are still going to be running on highways that are subsidized by billions of dollars. It's the highest of all the modes, it is certainly the highest subsidized mode in the country and will be for the future.

MR. SCRIBNER: Agreed.

BOARD MEMBER HEDLUND: That's all I have. Thank you.

CHAIRMAN OBERMAN: Thank you, Karen.

Patrick?

BOARD MEMBER FUCHS: Thank you.

Mr. Scribner, I'm wondering, you had mentioned actually in your testimony, that the trucking industry is spending billions of dollars pushing towards automation. I'm wondering if you have conducted an assessment upon how much the rail industry is spending currently.

MR. SCRIBNER: I haven't done an assessment of rail industry spending. And like I said to Ms. Hedlund, I think the vast majority of that, if you were to do that assessment, would show up in automated track inspection, at least domestically in the United States.

Globally in, like I said, Australia, that was the example with Rio Tinto. There's some Japanese involvement there with that technology, ATO, some in Europe as well.

But ATO, I mean keep in mind, is traditionally thought of in the passenger context -- passenger rail context. So it's fairly new just to see it in freight rail at all.

And that's why I don't think any of this is going to -- we're not going to flip a switch and suddenly have this available. There is a lot of research and development to do.

But yeah, like I said, I think the majority of what you're seeing is in the track inspection.

BOARD MEMBER FUCHS: Yes. Now, which of course is a little bit different than I think what you were describing in terms of automation overall, you know, in terms of the operations as opposed to the inspection.

I'm sort of wondering, considering that railroads control their right-of-way, right, and have integration between their infrastructure and their operating vehicles and their trains, I'm sort of wondering whether or not you think that that level of investment in operating automation makes sense to you from a market perspective or whether or not there's any insight to be gleaned about what I think you describe as a lot more investment in automation going in truck versus rail.

MR. SCRIBNER: Yeah, that's a great point. And, you know, where you're going to -- you know, I mentioned some of the infrastructure treatments that you're likely to see.

You know, western Australia, very, very rural. You know, you're not dealing with the kind of urban context.

BOARD MEMBER FUCHS: Right. And as you know, I'm sure you've studied the Rio Tinto model, I have too. It's pretty much a direct shot, loop track, no interchange, not a mixed manifest. I mean, you described it as a unicorn, as I understand it. It is mine to destination; right?

MR. SCRIBNER: Well, it is on the mainline, yeah. And that is where it's operating. As it approaches the ports, that's where you get it does become crude. And during that period, this isn't, you know, you're not letting it out in the wild without any kind of supervision. There is supervision at the rail control center where they can check in.

And that's -- you know, what I was about to say was at grade crossings, that's probably where you're going to put in the kind of the both CCTV, which they did in Australia, but experimenting with various types of sensors.

Because, you know, in the truck -- in the automotive automation context, one of the major sensors that they are deploying is LIDAR. Well, LIDAR has -- that's perfect in a road context, but it has a range of you max out at a couple hundred meters, which isn't going to do -- if you've got the stopping distance of a one and a half mile train, that's not going to do you much good.

BOARD MEMBER FUCHS: I totally hear you. And -- I totally hear you, and that's a problem that exists today, it's something to be thought about with automation. And as I understand the Rio Tinto route has many fuel grade crossings than we typically see in American railroads as well.

MR. SCRIBNER: Correct. That would impact the cost, you are absolutely right, the cost.

BOARD MEMBER FUCHS: Now, switching back to bring us back to the rule. You know, suppose we -- there's one theory that you know increasing competition really is what drives innovation. When I talk to railroads and what's motivating them to think about things like dynamic block and, you know, better supply chain visibility with items like rail pulse and other things, it's truck competition that's driving them to innovate.

And their competition, obviously having sufficient profit allows you to make those investments as well.

And I'm sort of wondering, is there something that you would suggest that the Board take a look at, if it were to promulgate a rule, to know whether or not it is compromising some of those -- you know, some of what you're describing in terms of the impact on the railroad's ability to invest in automation or new technologies, let's say generally?

Is there something that you would suggest if the Board were to engage in intensive oversight, I think you heard Dr. Nolan talk about service and other things. There's something you would suggest we look at to know whether or not the rule is compromising that?

MR. SCRIBNER: I would have to think about that some more to give you a specific recommendation there. I'm happy to do that.

And I think, you know, just -- I think Professor Nolan made some great points.

But, you know, this is -- like I said,

this is because -- we don't have -- I mean, we have you can call them somewhat commercial, quasi-commercial operating contexts with automated trucks today, very, very little. You have got some partnerships. I mentioned one but you've got one -- you've got middle mile service with Gatik and Wal-Mart and things like that, very, very kind of small potatoes.

So we're not at the point where I think we're even -- we can really even see how this would impact the trucking market, let alone impact the rail market. But I will give that some thought.

BOARD MEMBER FUCHS: I appreciate that. I think all of us are cognizant and attentive to any unintended consequence of the rule. So if you do have suggestions for ways for the Board to think about that, beyond just looking at regular items, we would appreciate that, thank you.

CHAIRMAN OBERMAN: All right. Thank you. Any further questions for Mr. Scribner?

Mr. Scribner, thank you for taking the time to come talk to us, much appreciate it.

And it is exactly 4:00. We have one more panel to go, so we will take a 10-minute recess and we will reconvene at 4:10 Eastern.

(Recess.)

CHAIRMAN OBERMAN: All right, everybody, welcome back to reciprocal switching hearing, and this is our final panel. So I will call up Norfolk Southern, Canadian National, CSX. Cindy Sanborn, David Sappington, Dr. Mark Israel and Ray Atkins. And Ray, I see you're appearing for both CSX and NS.

For CN, we have Rob Reilly, Bernd Beyer, Andreas Aeppli, Kathryn Gainey and Matthew Warren. And for CSX we also have Sean Pelkey.

So with that, Norfolk Southern, you want to begin?

MR. ATKINS: Thank you, Chairman. Good afternoon, Ray Atkins on behalf of Norfolk Southern.

Let me apologize right in advance for my voice. I can happily report I have a very normal cold, but it's wreaking havoc on my voice today.

Norfolk Southern objects to the 2016 forced access proposal. The 2016 proposal was an assault on demand-based differential pricing, by which some customers pay higher rates than others.

The desire for lower rates is natural, but here are the twin problems with the 2016 proposal.

First, rate regulation is about striking right balance between protecting a shipper from high rates and permitting the railroad to engage in differential pricing so they can earn a reasonable return and profit on its investments.

This backdoor attempt at rate regulation elevates the first goal and disregards the second.

Second, this proposal comes at a large and unnecessary cost. Injecting inefficiency into the network to drive down rates for a subset of shippers is a tax on the entire network. Direct regulation of rates avoids that tax entirely.

So Norfolk Southern believes that if the concern is about rates, then the Board should and must regulate rates directly. And you have a voluntary arbitration proposal before you to do just that.

And if your concern is about service,

well, this 2016 proposal is unlikely to help. It is more likely to make matters worse. And again, you already have a number of superior tools available, specifically your regulations at 49 CFR 1147.

So today Norfolk Southern's Chief Operating Officer, Cindy Sanborn, will explain how the 2016 proposal would inject operating inefficiency into the network and will exacerbate the challenges inherent with network planning.

She will be followed by Dr. Mark Israel of Compass Lexecon, who will touch briefly on the importance of demand-based differential pricing, explain the extraordinarily breadth of the 2016 proposal and describe the lack of any real empirical reasons for such a sea change.

And then finally Professor David Sappington from the University of Florida will explain how economists approach access pricing if the STB were to proceed either with the 2016 proposal or perhaps a more incremental approach as Chairman Oberman has been exploring over the past two days.

So with that, I will turn the mike over to Cindy Sanborn.

MS. SANBORN: Thank you.

Mr. Chairman, I'm Cindy Sanborn, Executive Vice President and Chief Operating Officer for Norfolk Southern. And I appreciate the opportunity to speak today at this very important proceeding.

Network planning is inherently complex. When you operate a network, you must worry about network impacts. Every user within the network wants to optimize their piece of what they see.

But as a network operator, you must be mindful of optimizing the whole.

To open a location to reciprocal switching impacts not just the customers that decide to use the switch but also the customers already in that area. In effect, optimizing one piece can lead to suboptimizing the whole.

And listening to testimony at this hearing from shippers who are projecting how they would be utilizing reciprocal switching option, I hear the notion that a shipper would potentially use the open switching option if they had severe service issues with the original carrying railroad. And the shipper would have every incentive to move traffic to another railroad only where it would not impair their service. And I believe them.

But how could an individual shipper understand the impact to other shippers at that location?

Managing the network by definition requires the duty to manage all shippers that desire to use rail and find the best outcome for all shippers, not just one.

Creating uncertainty of how to go about this is due to unpredictable use of reciprocal switching, creates extreme concern especially considering the number of locations on our network that would potentially be open to switching.

We've prepared a map that is in our written materials that Ray will now project, and when you look at these multiplicity of locations, the multiplicity of locations covering all areas of our network, providing resources, additional switching required and managing unexpected volume with existing infrastructure will have negative, unanticipated consequences.

Managing the network is hard enough to do when we have real-time visibility on how our network is operating, how it is constrained by factors both within and beyond our control and how those factors are changing every day.

Once you force open a switch, you will have added a constraint to our network that will remain with us indefinitely, even if it no longer makes sense, if it ever made sense.

What I heard from the shipper panels yesterday is that this constraint will appear very quickly if the STB were to implement the proposed rule. What I heard is they plan to bring cases to open switches as part of their contingency planning to address the possibility of future service issues. Bringing those cases will cost shippers very little, maybe some legal fees.

But once those switches are open, we will begin incurring costs immediately because we will need to plan for a shipper with an open switch suddenly deciding that it wants us to interchange with a competing carrier and vice versa.

We will need to divert additional resources to that location to plan for this change in our operations, and that diversion will most certainly have collateral impacts elsewhere in the network.

Impacts would likely be felt in several areas. Four examples come to mind. One, how should we plan for locomotives? Will the additional traffic require more locomotives for a local or any road train carrying this volume away from the serving yard?

Number two, even if NS is a receiver of the traffic that would be handled with an existing local, we would add workload to that existing local. The additional switching would most likely take more time and put at risk other shippers on the local's route being switched within the federally mandated hours of service.

And even if the interchange occurred in an existing location, there is no certainty that the existing infrastructure would be sufficient to support the additional volume.

What happens to cars if a customer has more cars than they can handle at the facility? Who will hold them between the delivering railroad and the switching railroad?

As I look at the map with all the potential locations subject to forced switching, I feel great discomfort. How can we plan the network today for the possibility that any one of these locations can be opened and traffic shift as a result of its opening? This creates a network constraint in my mind.

Forced switching is no way to improve service. Even if it improves service for customers requesting it, and I doubt that it will, it most certainly creates collateral impacts that will complicate the operation of the network and make it much harder to serve other customers.

Mr. Chairman, you've given us a lot to think about with your questions during this proceeding, relating to the examination of existing reciprocal switching locations already in our tariffs. In NS's case, they are listed in the NS8001A, where we have approximately 100 existing reciprocal switching locations.

We appreciate that you've given thought to such an idea, and with a few hours to think about it, since yesterday, I can provide an example of a location where an existing reciprocal switching arrangement exists that would be problematic if all customers in that area had access to the same arrangement.

It's ironic that that location is a location we've heard mentioned already today, Decatur, Alabama. And having had a career on both -- having had time on CSX as well as my time here on NS, I've kind of seen both sides of this location and some of the challenges that are presented there.

And I'll just briefly walk through how interchange is affected in the reciprocal switching executed. Essentially, CSX's yard in Decatur is on the east side of a mainline. In order to get to interchange to NS, they have to operate out of their yard north on double track, which then operates into single track before it comes to a bridge over the Tennessee River that both NS and CSX use.

From that point, it backs down off into what we call the new yard -- or the old yard, and there are four tracks in that old yard to effect interchange. CSX delivers cars into that yard, each of the tracks holds about 22 cars. So when you get more than 22 cars, then you have to start filling up the next track.

NS then goes and delivers in tracks that are left and pulls what CSX delivered and then takes it to the new yard on NS and switches it again into the actual locals that will deliver to the customer.

And then the cycle repeats.

When you think about the number of customers that NS has in Decatur, which is almost 30, if every customer were open to reciprocal switching coming over CSX, once we filled up the old yard with interchange, and it had too much for the old yard to hold at interchange, cars would begin to back up.

And there are times already today where that occurs. And, in fact, in 2014, when I was at CSX, we were trying to figure out how to get more throughput through the old yard in Decatur.

As far as investing in it, what we determined and what we looked at was the fact that we had crossings that were going to be blocked, actually the yard is at the very east end actually has a crossing going over all four tracks. We are in the middle of town with roads right beside us. And we are constrained by the CSX mainline that's on the east side.

So if you think about the actual effort to get -- for CSX to get to the old yard, they have got to come out, hold a mainline that already operates a number of trains on it, both NS's and CSX's, and then shove off, pick up and come back out and go back to their facility at Oakworth.

And on the NS side, we have got to go over to get the cars from the old yard, take them to our yard and then switch them one more time.

So it is a fairly complex operation. It is a location that is very difficult to be able to take on any kind of additional work with the complexities that exist in that particular case.

So with that, I'm happy to turn it over to Dr. Israel.

CHAIRMAN OBERMAN: You know what, Cindy, while we're talking about that, while it's fresh, I'd like to ask you some questions about this precise point.

MS. SANBORN: Sure.

CHAIRMAN OBERMAN: I appreciate your listening to my I wouldn't call them suggestions, they're queries. I'm really trying to explore how to tackle this situation.

According to my count, you actually have 105 locations.

MS. SANBORN: For reciprocal switching, correct.

CHAIRMAN OBERMAN: Where you allow reciprocal switching. And I have the tariff in front of me. And you have 16 customers in Decatur who you already permit reciprocal switching.

MS. SANBORN: And we have about --

CHAIRMAN OBERMAN: You said you had 30. So I guess my first question is how did you decide which of the 30 you were going to give a tariff to?

MS. SANBORN: I've not been able to research all the way back, but what my expectation -- what I believe is this was an agreement many years ago associated with a merger and more than likely there was a line that was drawn that customers on this side of the line were open reciprocal switch and on the other side were not, for economic reasons at the time.

But I can't really explain it exactly. I do know that there were an additional -- CSX also opened up switching in Tennessee as quid pro quo for this arrangement.

CHAIRMAN OBERMAN: Well, I have a few questions about it. I actually -- it's interesting, I hadn't expected all this focus on Decatur as much. But we did actually pick Decatur as one of our random examples.

So I would like to ask Ian to put the Google Earth photograph up of what we've shown as the Decatur or at least part of the Decatur area, if you can scroll through that, Ian. There we are.

So interestingly, we showed the site of Indorama because they're listed on your tariff as being open but restricted. And I think the Indorama witness, Mr. Awad, explained to us what that meant.

And then we just picked one of the other shippers there that's Nucor Steel. That is not open.

So I'm wondering -- and then the railroad tracks, and I'm not sure if they're yours or CSX's. So it would be helpful to me, because as I've often said, I'm not good at abstract thinking.

Could you, looking at this picture, go through again the moves that are involved with a reciprocal switch?

MS. SANBORN: I don't actually see the new yard or the old yard, and I don't see the CSX mainline and the bridge. So I think what we're looking at is --

CHAIRMAN OBERMAN: These are all NS tracks I guess; right?

MS. SANBORN: So this would all be the industrial complex. So what this would show you is when we build our local out of the new yard, it would then come out and serve these different locations with an NS local only. And then the cars that we pull from these facilities that had a reciprocal switch -- were going back to CSX would go backwards just the way I described, back into the new yard, switched into the tracks that would go to CSX, taken to the old yard, left there for CSX to then come out of their yard and pull them.

So this is the industrial complex that you're looking at here.

CHAIRMAN OBERMAN: All right. So let me get the terminology correct.

Let's just take Indorama. You pull cars from Indorama and other shippers in this area, right, all with the same local?

MS. SANBORN: I would say that more than

one would serve this complex, but yes, there would be one assigned for each or a time period where they would operate through here.

CHAIRMAN OBERMAN: Right. So typically, is the local picking up cars from more than one customer?

MS. SANBORN: Yes, sure.

CHAIRMAN OBERMAN: All right. So let's assume there's no reciprocal switching.

MS. SANBORN: Okay.

CHAIRMAN OBERMAN: Where does that local take those cars?

MS. SANBORN: To the new yard.

CHAIRMAN OBERMAN: The new NS yard?

MS. SANBORN: Yep.

CHAIRMAN OBERMAN: And then those cars get sorted out on different tracks and they're going to leave that yard on an NS train going to the ultimate destination?

MS. SANBORN: So more than likely, yeah, this is between Sheffield and Birmingham, so we would switch those cars either to go east or to go west.

CHAIRMAN OBERMAN: So there's just two directions out of this yard. Is that what you're saying?

MS. SANBORN: On NS.

CHAIRMAN OBERMAN: On NS.

Now, if -- are there cases where the local is picking up cars from customers, more than one customer, and on that same local, some of them are staying with NS and some of them are going to CSX?

MS. SANBORN: Yep.

CHAIRMAN OBERMAN: All right. So tell me, then, walk me through that again. That train still goes to your new yard.

MS. SANBORN: And the cars are switched into a track going east on NS, west on NS, CSX and, you know, there may be a couple others, but those are the main ones.

CHAIRMAN OBERMAN: All right. You're going too fast for me.

The local pulls into the yard. Some of the cars are then shifted onto a track that's going east on NS, some are going on another track that's going west and some are going to be put on a third track, which is going to go to the so-called old yard?

MS. SANBORN: Correct.

CHAIRMAN OBERMAN: Which is an NS yard?

MS. SANBORN: Yes.

CHAIRMAN OBERMAN: All right. So at that point in time, there's no extra switches, the cars have to go on one of three tracks; right?

MS. SANBORN: Right. Right.

CHAIRMAN OBERMAN: So now another -- does a CSX locomotive pick them up at the new yard or is it an NS locomotive?

MS. SANBORN: An NS locomotive takes them to the old yard.

CHAIRMAN OBERMAN: All right. And puts them on one track, which is going to be picked up by CSX?

MS. SANBORN: Depends on how many cars there are. The longest track, there are four tracks and they hold 22 cars. So if one track doesn't hold it, then you put cars in the adjacent track.

CHAIRMAN OBERMAN: Got it. But they're only going to one destination, and that is to the CSX yard?

MS. SANBORN: As far as NS is concerned, that's correct.

CHAIRMAN OBERMAN: And is that the only purpose that the old yard is used for?

MS. SANBORN: Yes.

CHAIRMAN OBERMAN: So it's not -- whatever is going on in that old yard is not otherwise interfering with any NS movements. You're just dropping cars off there for CSX to pick up?

MS. SANBORN: Well, let me make sure. The opposite move also takes place. So CSX might have cars in those tracks for Norfolk Southern to pull.

CHAIRMAN OBERMAN: Right. Okay.

MS. SANBORN: So that is the purpose of those four tracks.

CHAIRMAN OBERMAN: Right. So -- so far if a car is being reciprocally switched at CSX, before it gets to the CSX yard, there is one additional move for those cars; right? Instead of going on an NS train, they're going to the NS old yard and being picked up by CSX?

MS. SANBORN: Yep.

CHAIRMAN OBERMAN: And would it be fair to say that once it gets to the CSX yard, whatever is going on there is not a problem for the NS network because it's out of the network?

MS. SANBORN: Yeah, what I -- when it gets to CSX yard, it would be switched again to whichever destination CSX needed to forward it to.

CHAIRMAN OBERMAN: Right. But it's not an issue for the NS network, it's not slowing you up or getting in the way of any NS train. It's out of your tracks; right?

MS. SANBORN: Correct.

CHAIRMAN OBERMAN: Okay. So just to follow up on the last witness, it doesn't take 64 moves to get it there. Fair enough?

MS. SANBORN: I'm not sure where the 64 moves came from, but I would say it does take an intermediate handling between the two of us, because there's an intermediate point where the cars come to rest in between our new yard and CSX's yard.

CHAIRMAN OBERMAN: So how much extra time does that take to move the CSX-bound cars from your yard to that yard, to the old yard?

MS. SANBORN: So we would use, it's very close in distance. We would use an existing assignment that that would be part of their work is to go and deliver cars to the old yard and then come back and then do other work. It would not be all that they do. They would do other things.

CHAIRMAN OBERMAN: So that crew is doing -- is moving anyway is what you're saying?

MS. SANBORN: I'm saying that that crew would come probably serve some customers and then go deliver cars would be part of its day is what it would do.

CHAIRMAN OBERMAN: Got it.

So what -- so delivering the cars to the old yard does not require an extra NS crew because that's a local that's doing -- out there doing other work anyway, it's just one of their stops; right?

MS. SANBORN: It's incorporated in the work that they do; correct.

CHAIRMAN OBERMAN: All right. Now, what is the reason from a network point of view according to Indorama that you will only interchange with CSX if the cars are going someplace that NS doesn't go? Does that have anything to do with the network?

MS. SANBORN: Well, as I mentioned, when you look at the four tracks that we're talking about in the old yard, there are times when there are more cars than those tracks will hold.

CHAIRMAN OBERMAN: Is that the reason that you won't allow the shipper to direct --

MS. SANBORN: Those are commercial terms that we worked out a deal between us and CSX years and years ago, probably predecessor railroads, and I can't really comment on the origins and the thought behind those rules. But that --

CHAIRMAN OBERMAN: But right now, we've heard a lot of discussion about jamming up the network. Once you've delivered the cars to CSX, it doesn't really jam up your network if CSX is taking those cars to a place that NS also goes to, in fact, arguably, it takes some pressure off the NS network, doesn't it?

MS. SANBORN: The challenge would be again, as I said, is overrunning the size of the handoff between us. That would be the concern, where we would have cars for CSX still sitting in the new yard that could not go to the old yard because there was not room.

CHAIRMAN OBERMAN: All right. But aside from that point, once the cars get to the CSX yard, there is no negative impact on the NS network if you permitted the destination of those cars on CSX to be a destination that you also serve; right? I mean, that just seems like an obvious fact.

MS. SANBORN: Yep, I wouldn't disagree with that.

CHAIRMAN OBERMAN: All right. And indeed, and we heard from a prior witness today, Diversified, that you had some capacity problems in the south. If you allowed CSX to deliver some of those cars, it would relieve your tracks that were going to that same destination from having to take those cars there, would it not?

MS. SANBORN: What I heard was a different location completely separate from Decatur in that particular discussion.

CHAIRMAN OBERMAN: Yes, that's true. But conceptually is all I'm saying. If CSX is going to deliver one of your customer's cars to a location from this area, from Decatur, that you also serve, one of the pluses would be that it relieves some of the capacity on your lines that are going to that location, because CSX is taking theirs on their tracks. That just stands to reason, doesn't it?

MS. SANBORN: That's correct. But just as we talked about, we were talking about the old yard. There's also the possibility that customers move cars to us that we don't expect.

I think it would impact the direction that you're describing, you'd have to ask CSX if it felt like it would impact them. But I would expect that if I didn't -- I didn't have a plan for cars to come to me, that -- at NS, but because it was something that a customer wanted to do through CSX reciprocal switching, I would have to plan for that.

And that is the challenge. So the direction you're describing, I agree with. But it has another side to it.

CHAIRMAN OBERMAN: I understand that. You just told us that one of the reasons that the railroads, Class I's, need to stay in control of this situation is because you plan for the whole network. It seems to me that you and CSX interact all day every day. You can do some planning to account for cars that are also coming into the old yard so that you don't get overburdened there?

MS. SANBORN: When CSX and NS can have the conversation without it being something surprising us, it's much easier to manage.

Because I have to say, and I really need to say this, as we sit here and work through this on a very, very, you know, specific scale and specific locations, we're holding everything else constant around it.

Very seldom are things constant. Whether it's, as I said in my comments, sometimes it's within our control, a derailment or something like that, sometimes it's outside of our control, which is weather.

So when you get -- an example would be weather.

So when you get into the level of detail of this move, that move and that move, sometimes you have externalities that absolutely affect the network as well and create some challenges with even this internal very small scenario that we're describing here.

CHAIRMAN OBERMAN: Yes. But that's inherent in the railroad business. You have --

MS. SANBORN: Right.

CHAIRMAN OBERMAN: You have, I wrote down a number, 750 interchanges, you've got to deal with those all day every day. So there's nothing unique about this kind of interaction. It's just another interaction.

Let me ask this question. If the Board were to proceed along this line of limiting reciprocal switching eligibility to places where that shipper is already having their cars taken to a yard, where you already permit reciprocal switching, and we also proceeded on the so-called case-by-case basis, if you got to a point where you had enough shippers in Decatur asking for reciprocal switching that it threatened the capacity of this old yard which only has four tracks in it, wouldn't that be something to take into account, for the Board to take into account in deciding whether there is too much of a negative impact for that next reciprocal switching request?

MS. SANBORN: You know, I know we're working with a hypothetical concept of allowing this, which was, you know, something that you had talked about with other panelists last -- yesterday.

You know, I don't know what you would take into account. Maybe you would. You might could answer that better than me.

MR. ATKINS: Chairman Oberman, if I could just add in, you did hear something concerning yesterday, which is that shippers would like to put these in place proactively so that they actually may not be shipping anything for a period of time until everybody here has secured the right.

And then how are you going to control on a case-by-case basis the implications when all 30 of them decide that they're going to engage in reciprocal switching?

So the feature of the proposal doesn't include any requirement that you commit to shipping a significant amount or even any amount.

So it seems challenging to just assume that you're going to be able to fix things either prospectively or retroactively on a case-by-case basis.

CHAIRMAN OBERMAN: Listen, I'm not making any assumptions, Ray. I'm trying to figure this out.

Would it be fair to say, Cindy, that all 16 people who have reciprocal switching tariff in Decatur, they're not using those switches every day, all day, are they?

MS. SANBORN: I can't -- I don't know. I

can't answer that question.

CHAIRMAN OBERMAN: You have -- I mean, I've read your tariff, I haven't read every line but I've looked at it.

There are hundreds and hundreds of customers who have reciprocal switching tariffs throughout your network. Can't you say, based on your experience, that not all of them are using them every day but they are holding them in reserve whether they need them?

MS. SANBORN: I haven't looked at it, Mr. Chairman. I'd be guessing to answer it, answer that question with facts. And I really don't want to give you opinion.

If you're asking me a direct question, I don't know.

CHAIRMAN OBERMAN: Right. And in response to Ray's concern, if we're trying to formulate an approach here that takes into account the capacity of the switching yards, I would assume that all of the legal geniuses involved in this effort on the Board's side and on the stakeholders side could figure out how to accomplish that, once we can figure out the logistics that might make the system work, which is what I'm trying to explore here.

Would it be also fair, Cindy, to say that of the 105 places where you now have reciprocal switching, you don't have every place having only four tracks to handle cars that are going back and forth?

MS. SANBORN: Yeah, that would be fair to say. There may be some places where there's less, to be honest with you, but that's true.

CHAIRMAN OBERMAN: Some more, some less.

But you do have throughout your network, particularly on the eastern half of the country, although I think it's nationwide, that you have trains interacting with each other, with the other railroads, all over the place.

So the idea of coordinating and handing off traffic is not unique to reciprocal switching. It's a constant in your business, is it not?

MS. SANBORN: Well, I would tell you that that planning, the annual planning and even in the more closer to what you see when the annual plan changes, because it always does change in terms of volume, there's a tremendous amount of work that goes into figuring out and talking to our customers is where the basis of that conversation occurs, what should we expect in the next year.

And we allocate, you know, people, locomotives and any number of actions that we take to be able to move that.

And so we try to create our annual plan. We have an idea where things are going and what we should expect. And the unexpected types of shifts are things that are very troubling.

And when I say that on a network level, do we interact with each other? Yes. But we have a plan as to how we're going to interact with each other. We know what kind of locomotive we need to have available. That's one of the points I made.

You get enough volume coming through a location that you're not really expecting, you're going to need to allocate resources to that to actually pull that volume.

So it's very structured in how we go about it, again trying to make sure that we optimize the haul to the very, very best we can.

CHAIRMAN OBERMAN: I understand that. But the notion that somehow has been assumed by people who have talked to us over the last two days that these reciprocal switching orders are going to drop out of the sky without any notice, that's not how any system is going to work.

A customer who wants reciprocal switching is going to have to file an application under whatever standards we would set if we adopt a rule, you're going to have a chance to respond, there's likely to be litigation over it, and there is ample time for the railroad that's involved, both railroads, to figure out how this will or will not be integrated into the system. And it could be part of your planning. The notion that it's all going to be surprise activity, I don't know where that came from.

MS. SANBORN: I think it's some of what Ray just said. And in my testimony that I started with. Once it's open, to your point, it may not be used, and then all of a sudden it may be. So once you --

MR. ATKINS: Chairman -- Chairman Oberman?

CHAIRMAN OBERMAN: We've dealt with a lot of straw men in this hearing. I didn't hear any shippers say here's my plan, I want to hold it in my back pocket and then spring it at the last moment. I didn't say anybody hear that.

MR. ATKINS: So Chairman, just real quick, ACC did make that point, but let me make a different point about the cases that you're going to get.

This actually is our agreement with you, which you said earlier, which you actually think once you set the standards and there's a couple cases, that will be it.

So what will unequivocally happen if you change the rule and create a new non-fault-based system is there may be a few cases that come in that flesh out the details around it. But after three or four cases, five cases at the most, you're going to have created a body of precedent that the railroads are going to have to comply with. And from your perspective, I think it's actually your goal, is for the cases to disappear and the railroads to actually voluntarily comply with the standards that you've announced.

And so the idea that you will still be there preventing harms either from an individual case or the cumulation of dozens of cases is just -- we're concerned that that cannot happen.

I appreciate that some may think you can do that, but we have concerns that once a few cases have rolled through the pike, you'll have a new set of standards the railroads will have to comply with.

CHAIRMAN OBERMAN: Ray, you actually overstated and vastly misquoted what I and others have said.

What I said is that I would hope that cases don't need to be brought because the balance of bargaining will have been modified, and so that railroads and shippers will work things out themselves.

And what I actually think should happen, and, you know, I don't usually quote them, but I quoted Hunter Harrison in my talk last fall, is that the railroads who are being requested to provide reciprocal switching will up their game so we won't have these interchanges and movements, and we'll just get where service problems exist, it will help get them resolved.

So I don't anticipate, and I never urged, and I'm not sure what I'm urging, because this is all still in the formulation notion, somehow if we adopt a rule and there are three or four cases as you say, then thousands of shippers overnight will get reciprocal switching tariffs because the railroads will turn them down. No one has ever suggested any scenario like that.

So I just think we should stick with the problem that's facing us and not spend too much of our time shooting down straw men.

Cindy, were you aware -- you must have been aware since it seemed like it was more systemic than just one shipper -- of the scenario that was described by the -- by Sandra Dearden from

Diversified?

MS. SANBORN: I was not aware of what she described until I heard her say it.

CHAIRMAN OBERMAN: Do you see any opening there when your people come to a shipper and basically say to them, we don't have capacity to serve you anymore, so we're going to raise your rates, to at least give that shipper the option of a switch, which in her case was CN, 10 miles away?

MS. SANBORN: Well, Mr. Chairman I've looked into it from an operating side since her testimony, I listened very intensely to her, to understand what was happening on the operating side.

So as I understood it, she described a movement from West Virginia to Birmingham on CSX interchange to NS at Birmingham, and then traffic going to Hattiesburg, which then was switched at Hattiesburg to a jointly served location 10 miles outside of Hattiesburg.

In talking to the operating team, I can't find that scenario with propane moving down to that location. Closest thing I can find is some ethanol moving to Nicholson, Mississippi, which would go to Meridian, be switched at Meridian, and moved on a local that goes between Meridian and Hattiesburg.

So I'm still researching that as to where the issues are with capacity. But talking to the team, we have had challenges in the Birmingham terminal. As I told you when we were talking about what our service recovery plans were, we were seeing a lot of improvement in Birmingham. And that whole side of our network is much more fluid.

And really, I'm not aware and my local team is not aware of any customer concerns down there. So I'm still researching that. And as far as the commercial impact, I obviously have had no time to dive into that.

But I've heard everything she said and very, very, very much want to understand what's taken place.

CHAIRMAN OBERMAN: Well, I would say this is a good example of an issue that really is best resolved between the customer and you and not at a public hearing. She just raised it as an issue, and

I actually may ask one of your other witnesses about it.

But it seems to -- you know, Sandra Dearden is not some new person. She's very experienced logistics manager, and I have no reason to doubt the scenario she suggested to us.

So I think it would be a good idea for your team to research the question and get back to her and see if you can't solve that problem.

MS. SANBORN: Yes, I agree with you.

CHAIRMAN OBERMAN: I may well have some other questions on this.

Just before we remove this map from the screen, other than whether you have enough space on your four tracks in your old yard here, is there any -- there's no operating reason that you couldn't provide reciprocal switching to Nucor steel, which is just one of the shippers that we've picked at random here, is there? Same local, it looks like it's going to go right past there, and probably serves them now.

MS. SANBORN: Well, I think that you

mentioned the old yard being a constraint. And I think that, you know, the fluidity of our new yard is much more complete when we're able to manage our own trains and cars off our own trains to serve customers.

You know, nothing against CSX, but any time there's a physical infrastructure challenge that they have to get to us, you know, sometimes that's not -- interchange doesn't always occur on time, or us to them.

So it's an additional handling and an additional step. And I think any time you have that, you introduce uncertainty or, you know, challenges in the network for one of those steps not to take place. So --

CHAIRMAN OBERMAN: Isn't it the case that you're picking up Nucor cars now and taking them to your yard? As you said, they go on one of three tracks, east, west or CSX.

MS. SANBORN: But on the inbound side when they come on in S trains, they come on in S trains, get incorporated based on our schedules and there is a compressed time frame, I think UP talked a little bit about this, try to make sure that we have the trains arrive in a way that they connect quickly to the locals. And it's a little bit more time-consuming when they're not integrated into that type of planning.

So yeah, the challenge is any kind of congestion when you get a day behind with interchange.

CHAIRMAN OBERMAN: Well, yeah, I'm not assuming you're going to get a day -- why do we assume you're going to get a day behind if you serve this other customer?

MS. SANBORN: The idea of having interchange and being able to pull it and incorporate it into the existing local that's going to serve the customer. Because a local serves each individual customer. That's the difference.

CHAIRMAN OBERMAN: Well, I only wish, Cindy, that NS was operating now as you have acknowledged it is not, on a basis where that kind of delay would be a departure.

Anyway, let's move on. I didn't mean to dominate the whole afternoon here. I don't know if other Board members have questions on this issue or whether they want us to move on with your other witnesses.

What's the pleasure of the Board?

BOARD MEMBER FUCHS: I do have questions, but Ray, is it your expectation -- first of all, sorry about your cold and I hope you get well.

Is it your expectation that the best time to discuss the fault versus no-fault concept would be after the economist presentation?

MR. ATKINS: Yes, I would recommend that.

CHAIRMAN OBERMAN: I'm sorry, could you say that again?

BOARD MEMBER FUCHS: I want to get into the fault versus no-fault concept.

CHAIRMAN OBERMAN: Okay.

I'm sorry, go ahead.

BOARD MEMBER PRIMUS: I have a quick question.

Cindy, how -- you say on those four

tracks, how many cars do you switch now?

MS. SANBORN: I have not checked on how many go in or out presently. I have experienced, as I described, oversubscription to those tracks in my past. Generally there's all kinds of inputs, commodity inputs, whether these customers are able -- or needed to move traffic, you know, change -- some cases even exchange rate, some cases it's pricing for grain or pricing for scrap.

So it can be very seasonal, and it can change fairly rapidly.

But right now this minute, Member Primus, I don't have those numbers.

BOARD MEMBER PRIMUS: But you say at some point that you get full --

MS. SANBORN: Yes.

BOARD MEMBER PRIMUS: -- capacity?

MS. SANBORN: There's more cars that want to swap between us than we really have room for.

BOARD MEMBER PRIMUS: But you guys plan that operationally, that even though you don't know -- or it can be seasonal or cyclical, it's not every other week or every first, you know, week of the month. So you do have to plan operationally for those variables?

MS. SANBORN: There's some that you can plan for and some you can't plan for.

BOARD MEMBER PRIMUS: Okay. And the ones that you can't plan for, you're still able to carry those out though?

MS. SANBORN: It depends. And as I described in my testimony earlier, sometimes that comes with effects of other customers.

As I mentioned, our assignment that goes and pulls -- delivers and pulls also works other customers. If for some reason there's more work to do to make that -- effect that interchange, we get delayed or late going to other customers that that local is meant to serve, and that can impact others beyond just the ones that are engaged in the reciprocal switching through the old yard.

So we constantly have to adjust when the time comes, and sometimes it's easy to do and sometimes it's not. And it takes us a few days to work out of.

BOARD MEMBER PRIMUS: Real quick, so one of the things that I think gets -- I think is lost is that, you know, when -- the idea -- I guess the idea that Marty is talking about, that, I think some of us who think about reciprocal switching, is not so much if the shipper has the right to do the switch. I mean, it's not like again they can call CSX tomorrow and say hey, I want you to switch my cars. They have to go into negotiations as to whether or not CSX is going to do that.

And if they do that, if there is an agreement, then they have to come back to you and work out that.

So I kind of take issue when everyone sort of says that all of a sudden, you know, everyone is going to rush to the door and say hey, I want to switch, and we're going to grant it, and all of a sudden it has to happen.

I think everyone has to understand just like you said, there are operational issues that every shipper has to consider when making a switch, same way that you do. It's not something where they can just turn around and say okay, we're going to move this car on a different line, and all of a sudden snap their fingers and it's so.

One of the things I said yesterday, and it was a frustrating thing, is that for us it's going to be helpful moving forward to sort of talk about these things in a way that -- you know, how we solve them moving forward.

I mean, the system is such right now, again, that we're in this position and having these conversations because it's not operating the way it should, and it has been that way for a long time. Again, 11 years this has been on the books, so this is not new. And so these operational challenges aren't new.

For us it's going to take everybody to come together to figure this out.

Again, I know that you're resistant to it and to the ideas, but at some point we have to have that conversation as to how we're going to get beyond the service challenges that we're in, and utilizing your assistance and the others to get it done.

I mean, the big thing we heard earlier with the organization that we were talking about, the 25 percent or 24 percent tariff, you know, she's saying that it's all due to capacity. And so the question is, you know, you guys keep telling us over and over again, I want to grow, we want to grow, we want to grow. But how do you do that? How do you do that when you're getting ready to tax somebody an additional 25 percent for them not to grow, for them not to move their stuff?

And so it seems hypocritical at some point to say okay, we don't want you guys on our network because we're at capacity, but you're telling us hey, you know, we're going to be growing.

So, you know, we've got to have that -- I just think that we're talking -- sometimes it seems like we're talking around each other, and we've got to sort of get to that point where we have this understanding of how we're going to fix this.

And I'll stop until we finish the rest of the presentation.

BOARD MEMBER HEDLUND: I want to pick up on something.

Cindy, thank you very much for your comments.

I think what you've brought out is the fact that just because a switch is theoretically possible doesn't mean that in the real world it can necessarily be done in real time, that you need to know when trains are coming, you need to know how many trains might come in a week or a month, so that they can -- you can work that into the operations of your switching yard.

And so when the Board is asked to determine whether a switch is possible, is feasible, we should take into account not only whether it is physically feasible but what the capacity of that switching facility is to handle the number of cars and volume and timing that the company wants, that wants the switch.

MS. SANBORN: I would agree with that.

And, you know, you have to add some

contingency into that as well, because things are not always perfect. Member Primus is talking about our service levels, and he's exactly right.

And as we recover, and that is our -- my number one focus, you know, we do need to have slack in any system that we have in order to be able to be consistently serving our customers.

And some of the complexity with this is that there is a lot of unknown. There's a lot of variability. Even the Canadians that you heard talk about visibility and being able to see what's coming in the interswitching locations, it's not that clear.

So that is a big part of my concern and the consideration that I hope the Board will take.

BOARD MEMBER HEDLUND: Well, thank you. And we appreciate your frankness about the challenges that your railroad is currently working hard to overcome.

MR. ATKINS: With that, Chairman, can we -- okay to move it to --

VICE CHAIR SCHULTZ: Question. Just one

question.

Thank you, Cindy, for being here today and for your insight into this important issue.

With regard to shippers who may seek a switch where there is no-fault situation with the host railroad, how would you describe the competing railroad would handle that switching request, especially if it's made without advance notice?

MS. SANBORN: Well, I think it would depend. Again, there's some physical constraints, there's some resource constraints, that would have to be taken into consideration.

And then, you know, how consistent is the move going to be? I mean, you know, we heard and talked about it in my prepared remarks, around we want this just in case we have a service issue so we can quickly flip to somebody else, the competing railroad.

If you're the competing railroad, you know, what you don't want is to be tipped over into a similar problem from a service perspective on your line because somebody is shifting stuff unexpectedly to you.

So I think visibility is probably the biggest issue and concern, along with the ones that I previously mentioned.

VICE CHAIR SCHULTZ: Thank you.

BOARD MEMBER PRIMUS: I just want to say one thing, Cindy. I don't think -- you say that it's unexpected, but a switch is not to me, unless you're going to explain how it's unexpected, that they can just pull it out of a hat without anybody knowing. You know, in order for someone to get a switch, you have to -- another carrier has to agree to take that. They can't just say, okay NS, come take my stuff off of CSX's line, and you have to say okay. You have to go in and agree to that and say we're willing to serve you. So it's not necessarily like oh, this is out of thin air.

Again, you also don't have to take it. You don't have to -- you don't have to take that, you know, that -- that product, that service. You can say well, hey, we're full.

But -- so it's not a matter of saying

you're getting slammed and saying all of a sudden somebody said I call reciprocal switch and you have to take my freight, you have to take my service.

I have not seen that, and if it is in any place, please remind me and please show me where that is.

But I think there's enough there that's not like we're just throwing it on people, or this concept, just throwing it at people. It's offering the opportunity to have competition, and that people can respond to that option for competition, not a demand or even a referendum or even a requirement that you have to take someone's goods just because they're awarded -- you said it yourself that you don't know how many people are actually taking advantage of it or if they're taking advantage of it at all.

So people have that right now, the tariff right now under you, but they're not exercising it. In your mind and in your world, just because they had it, they would be exercising it every day, all the time. And without you guys knowing or just, you know, just coming forward and saying it.

And I just want to make sure that we understand -- I mean, again, if I'm speaking wrong, you let me know that, that I don't see anyplace else where they say as soon as reciprocal switching, if it were to happen, that all of a sudden everybody can just sign up and make you take their freight.

Is that what you're reading?

MS. SANBORN: If a facility is open to reciprocal switching, the decision by the customer to use carrier A or carrier B is completely up to them.

BOARD MEMBER PRIMUS: If there's a carrier B. I mean, they have to go and seek if there is competition. If a carrier B does come on the scene. There's no guarantee that there's going to be a carrier B, unless you're telling me that there has to be, we have to name a carrier B.

Are you saying that?

MS. SANBORN: What I'm saying is of the 105 locations that Chairman Oberman laid out, there's 105 locations, and you've asked how many customers use that opportunity for reciprocal switching. I don't have the answer.

But let's say it's 5 percent. What if 20 percent decided to use it tomorrow? They have it there, it's available, it's already open, it's already agreed to, it's there.

BOARD MEMBER PRIMUS: They don't have agreement, they don't have agreement with any other shipper yet, even if it's open tomorrow. There's no agreement to ship that -- or another carrier. It's open, yeah. There may be -- you may be sitting there and being in that receiving end of reciprocal switching from CSX.

But if they open up 20, you've got to go into negotiations with those 20 and say yes, we'll do that.

It's not like all of a sudden you're mandated to take all 20. And if it is, like I said, show me where it says that.

MR. ATKINS: So Member Primus, if I could just inject, and I think I understand your point. But just -- I don't think that's an accurate description of the law --

BOARD MEMBER PRIMUS: Ray, tell me where it says in -- or now that says on day that you have to --

MR. ATKINS: So let me try, okay? So the railroads are obligated to comply with their tariffs, period. That's an obligation, so long as that tariff is out there, they have to comply.

So if Norfolk Southern has a tariff in place, it offers a customer the right to switch -- and you will see every tariff is specific to the customer and the interchange partner.

If they have -- they have held out a right to the customer to do that switch, they are obligated by federal law to comply with that unless they change the tariff. And --

BOARD MEMBER PRIMUS: CSX is not obligated --

MR. ATKINS: Yes, CSX, absolutely they are, they have a -- yes, they are. They have a common carrier obligation to accept interchange and deliver it to the destination. It is not -- it cannot just refuse.

BOARD MEMBER PRIMUS: You and I see that differently. I don't see --

CHAIRMAN OBERMAN: Let me see if I can cut through some of this quickly so we can move on.

Your relationships at any railroad, so Cindy, your relationships with your NS customers, you have existing relationships, volumes that you agree to pick up from any particular plant, two cars a day, 20 cars a day, service Monday, Wednesday and Friday.

So your local trains are servicing whatever that traffic is now. So the only question is if on a given day, a shipper decides -- and you seem to assume they're going to decide without discussing it with you in the first place -- you know what, tomorrow we're going to tell NS to take the 20 cars they usually pick up from us, and send them over to CSX instead of sending them out on their own line.

I mean, does any manufacturer work that way? And do we expect people to try to play games with this?

The only reason, I hear from the shipper world, that they may utilize a reciprocal switching tariff, is that if your service has fallen down. And it's hard to imagine most of your customers not talking to you about it in advance.

So there would be plenty of advance discussion about whether the customer may have to utilize its right to reciprocal switch once they had a tariff. This isn't going to be sprung on anybody by surprise. I don't hear any company who operates that way. Everybody has to plan in advance.

Plus the fact whatever the rights are, Ray, and I think you're right to some degree, under the common carrier obligation, in the real world, the customer is not going to spring a shipment over to the Decatur old yard until it has talked to CSX to make sure it's going to get decent service from CSX. Otherwise, it will stick with NS.

So none of this is going to happen as a mystery. This is why I say I think we're shooting down straw men. The system hasn't operated that way, to my knowledge, ever. Where the problem is where the Class I's have fallen down, not where shippers have decided to surprise people just for the hell of a surprise.

Let's move on, we have a lot more witnesses this afternoon, Robert, unless you want to follow that up with something else.

Ray, why don't you get back to your presentation, and Ian, if you want to, you can take the map down. We may have to put it back up.

But let's stay in the real world, folks.

MR. ATKINS: Pleasure. So if I could turn it over to Dr. Mark Israel of Compass Lexecon.

DR. ISRAEL: Thanks, Ray.

Can everybody hear me okay? All right, great.

Well, Ray said we're going to go to the real world. I'm an economist so I'll do my best to stay in the real world.

There's a danger I have learned when I testify of being an economist at 5:00 in the afternoon, so I will do my very best to overcome

that.

So thanks to the Chairman and to the Board for having me and hearing me. There's a fair amount that I want to cover and I'm going to try to do it in 10 minutes, so I'm going to go fast. I will say most of the concepts that I'll talk about, the concepts have been discussed, so I'll focus on what I know, which is how I think about the economics behind those concepts and some points from the data.

I'll do my best to stay substantive, to give you as much information as I can moving quickly.

So I'm going to focus on three main points today. Focused on the proposal for the expanded use of reciprocal switching. First one is that the proposal could implicate a very large amount of traffic. I know we have heard a fair bit about that, and I know there is discussions about how to limit it. So I will move through that quickly.

But I think it's worth, from NS's point of view, which is where I've done the calculations, seeing just how much traffic we're talking about if it was not substantially limited.

Second is that subjecting any large amount of traffic to a mandated reciprocal switching system creates at least two major harms that I want to talk about.

And what's important to me is those are really harm -- I think of those and I think they are harms to competition. So I know that there is this -- we think of reciprocal switching as injecting competition, and sort of inject synthetic competition as we've called it in a microsense on a given movement or for a given shipper. But I think the harms I want to talk about are harms to the overall competitive railroad system.

And then my third point will be that you could imagine potentially thinking about whether we have to bear those harms if there was some wide industry competitive problem that needed solving. But to me the data just doesn't support this as an industry in which competition at the broad level is not functioning.

Let me say that I recognize that there may be specific cases, we've talked about specific examples here, service situations, examples of problems. And there's STB policies that others know better than I do to deal with those. I want to focus on whether there appears to be a broad competitive problem that warrants a broad new regulatory policy.

So first, following up on what Cindy presented, Cindy presented the map from NS's point of view about the new junctions that could be affected. I just want to give -- and that was based on work that I and my team did, looking at NS stations, sole-served stations, that are within 30 miles of a junction with another Class I railroad. So this was the 30-mile rule.

But just to give you an idea how big that 30-mile rule could be, how much traffic, those stations -- the full set of stations that would be affected by that would be 54 percent of the stations at which NS originated or terminated a carload traffic in 2019, so it's over 900 stations.

That accounts for over -- roughly 54

percent of NS's originating or terminating carload traffic. It's 40 percent of NS's total railway operating revenue.

If you just restrict that to regulated commodities, that would be just over a third of NS's originating or terminating carload traffic and 26 percent of NS's total operating revenue.

The first takeaway is it could be an enormous amount of traffic. If you take 30 miles down to 25 or 20, it's still an awful lot of traffic.

Now, I know there's been discussions today, or today and yesterday, about restricting it just to places where there's currently reciprocal switching. I have not had time to rerun numbers that way. That's something we could do.

I guess I would just make two points. One is that limits like that certainly will help with the harms that I'm talking about, if it's going to be implemented, you know, limiting it will help both with my economic points about harms, and I assume NS and the railroads would say with the operational issues.

The one thing I worry about as an economist in any regulatory case is that if you're going to limit it, I think it's important to be clear about the limits. The issue you run into in a lot of industries is there's limits at first but then it grows and grows and grows and that creates kind of regulatory creep, which can be worse for investment incentives and so on, because people don't know where the rule will stop.

But in general, you know, limits obviously affect those numbers I just gave you and would help.

Second -- my second main point is that subjecting substantial traffic to reciprocal switching creates two harms, at least two harms to me, to a well-functioning competitive market as I said.

So the first one is it affects -- greatly affects the ability to earn a competitive return and thus to raise capital. And I want to spend a minute on that, because I think it's important to go through the economics of why that happens. And it's not just complaints from railroads that we aren't making enough money. It's a real economic issue.

So I think about it as there's a delicate balance, there's kind of a scale as I think about in a regulated industry, between maintaining competition so that it works, and maintaining a competitive return on capital so that you can raise investment money.

And as I'll show below, that balance in the railroad industry today, the scale is very much in balance. The railroad industry is earning its cost of capital basically and not much more. The language of economists, it's earning zero economic profit, just enough to cover its cost of capital.

And that maintaining the ability to price differentially, maintaining the range of rates that we see in the marketplace today, that's critical to maintaining that balance, right.

So the whole distribution matters for whether the industry is earning its competitive return on capital. We have proposals that say, you know, we're fine with the cheaper rates but we're just going to chop off the top, you're going to chop off that return on capital and push the industry below a competitive return.

So that's -- when we talk about differential pricing, it sounds very abstract, but you just mean the distribution of prices matter, and you can't just chop off the top and maintain a competitive return on capital that we see today.

Or said differently, the way I think about it, given that we are in balance today, that we're right at their cost of capital, and I will show numbers, if we just drop another regulatory tool, that has, you guys have said, has the effect of shifting some bargaining power to shippers and imposing new regulations, those scales are going to be out of balance. They have to be, if they're in balance today.

That pushes the rate of return below the cost of capital, right. And the effect of that is not just that the railroads complain about it or that Goldman Sachs doesn't like it.

The effect of that is that regular

investors, like you and me and pension funds, say I can earn more money investing my money somewhere else besides rail, and so money will stop flowing into the industry.

So it's a question of whether investors are incentivized to put money into the industry. If they're not, that's harmful to everyone in the industry, railroads and shippers alike.

The second main point that I would make is that -- and this whole discussion that we just were having, and I'll do it quickly, because you heard all the operational issues, and I'm not going to tell you I know about the operational issues.

I'm just going to say that the reason these operational issues from this policy bother me as an economist is because they impose economic externalities on the system.

The problem is that under mandated switching, you're letting a shipper, or a shipper and another railroad that it reaches a deal with, decide what to do to the NS network.

So a shipper could reach a deal with CSX, but now NS has to switch with CSX. That imposes obligations, and, you know, the railroads and you guys can decide how big they are in different cases, but it affects the overall network.

And the problem is that that shipper and CSX don't care, by their natural interests, about the broader NS network. I totally agree with you that they're not going to do it if it hurts their own service, but they're not internalizing the effects on the broader NS network.

So I get worried -- probably the most fundamental threat to well-functioning economic markets is externalities where people are not internalizing things. I worry a lot about a policy that introduces externalities by allowing shippers and other railroads to reach deals that affect the NS network.

All right. So finally, a few minutes to run through some numbers and a chart. I don't see any reason to suffer those two costs, the externalities and the reduced return on capital. And I say that for several reasons.

One is, as I mentioned, the data you guys have seen, so I'll go through it quickly, points to an industry that currently is not earning excessive returns on capital. There is the paper that's been put in by Professors Murphy and Zmijewski, who I know well and who have reviewed that closely, says using the STB's revenue adequacy methods, the financial performance of the railroad industry is in the bottom quartile if you looked at it in the S&P 500.

There's the Board's own revenue adequacy numbers that you guys know better than I do. I think the right way to summarize them is to say the railroad industry as a whole bounces above and below its cost of capital. That cost of capital tends to be 9, 10, percent, and the railroad industry is kind of right there. And as some particulars, below in 2020, was slightly above in 2019, was below in 2018.

This is really an industry that is right at its cost of capital. It's in balance right now. That's good, but if you push it down, that means capital will not flow into the industry, and that's a problem.

You know, I think this all happens, it's not surprising that, even though they have isolated problems that surely could be addressed, that we see pretty good competitive outcomes. Because industrywide, unlike other industries that I look at, as an antitrust expert, there really are a lot of options for a lot of shippers. There's sometimes rail-on-rail competition, there's modal competition, product and geographic competition, frankly the constraints placed on it by the STB in rate cases.

Different movements have differing ability to take advantage of competition for sure but that's the overall distribution that I said needs to be maintained. Overall it's an industry where competition is functioning pretty well.

If you look at your own annual rail rate study, in real terms, done well, we have prices that have basically been flat since 2012 in real terms. So again prices for the last 10 years or so not growing faster than inflation, if anything have fallen some.

I'd like to take a final minute and a half to talk to one study that's been talked about that claims to come to a different point of view, which is cited by the DOT and their supply chain assessment in February, its Escalation Consultants study, that says that it finds something different, it finds rail rates going up dramatically and much faster than trucking.

So I want to make a few comments on that study because I know shippers referred to that study yesterday as well.

One thing to note is even that study agrees that in real terms, inflation-adjusted terms, rail rates have not gone up since 2012. So what we're talking about is rate increases that happen between 2002 and 2012.

On those, there's been lots and lots and lots of attention. The place I would point for what caused those would be the STB-sponsored Christianson study, which focused -- was sort of commissioned exactly to think about what happened in the first 10 years of the 2000s, or first several years of the

2000s.

The key takeaway from the Christianson study to me of all the things that it said is that those price increases were not market power. Christianson was very rigorous to measure what's called the Warner index, the economic index of market power, and found that went down, not up. Prices increased, but not as fast as properly measured economic marginal costs.

So the price increases have been studied and found not to be an exercise of market power.

And the final point I'll make -- and Ray, maybe you can put up the slide I have. That Escalation Consultants study, what it did, it claimed to show that rail rates went up much faster than trucking rates.

But the problem and the last point that I will make is that it didn't compare apples to apples. It compared revenue per ton-mile for railroads with a BLS producer price index for truck. Those are measured in very different ways.

If you just use the data that's in the BTS data that study used and you do apples to apples, you get this picture, which is that 2002 rail and truck are right on top of each other in a revenue-per-ton-mile sense.

So trucking we all think is competitive. When you do an apples-to-apples comparison, you do not see rail growing faster than truck.

So that's really the end of my substantive comments. Just to conclude, I don't see a reason to adopt this policy, given the balance that the industry is in and the harms that it would create in terms of harm to cost -- returns on capital and externalities.

I would say that if it was going to be adopted, I would encourage what you're talking about, which is to do it judiciously, just in places where there's really no competition, where I would include product and geographic competition, in places where performance, you know, rates of return are far above what you see in competitive settings. I would definitely look for ways to minimize costs and externalities, some of which you're talking about.

And I would encourage -- strongly encourage the use of something like ECPR, and David is going to talk more about that. But its purpose is to let railroads compete so one that can do a better job will carry the business but price things in a way that doesn't destroy the return on capital. But I won't say much more about that because I know Dr. Sappington will.

MR. ATKINS: Thank you, Mark.

Chairman, would you like David to finish and then ask the two economists questions or go ahead and ask questions of Mark?

CHAIRMAN OBERMAN: I have a couple of questions while the testimony is fresh for Dr. Israel, and the others may too.

I want to make sure I understand your reasoning, Dr. Israel.

When you say the system is in balance, I thought I heard you say earlier that the relative -- in terms of competition, and the relative bargaining power between the stakeholders is in balance. Is that what you're saying?

DR. ISRAEL: I'm saying that the industry is just almost exactly earning a competitive rate of return on capital. So there are lots of forces -- but that's what I mean by in balance. So that would include relative bargaining power, the effects of regulation.

When I evaluate whether an industry and a market is functioning well competitively, what that means to me is is it earning a competitive return on capital, not substantially more.

CHAIRMAN OBERMAN: So -- all right. So that's what I wanted to understand, because, you know, we hear from shippers all the time that they do not have bargaining power with railroads where they're sole-served. And you're saying that your measure of saying they do have competitive bargaining power is based on an industrywide calculation that the railroads are just earning the cost of capital?

DR. ISRAEL: I would say it slightly differently, although that's the bottom line.

Different shippers have different amounts of bargaining power. And therefore, that's what we mean when we say differential pricing.

There are different shippers who need rail more or less, rail needs different shippers more or less. So there are certainly differential prices across the distribution.

The only way I know to evaluate whether that is leading to systematic market power or not, especially when you also think about the existing regulations that deal with a lot of that, when you think about that full set of forces, the only way I know to ask is this market functioning well or not is to ask is it able to earn excess return on capital.

CHAIRMAN OBERMAN: So -- all right. That's what I wanted to get at. That is your measure for the competition aspect of the industry being in balance, that they're earning just at the level of what you say is their cost of capital? I just want to make sure I understand your reasoning.

DR. ISRAEL: It's what the STB says their cost of capital is. But yeah, I think if you were to ask economists what's the definition of an industry that exercises market power or industry that is competitive, is are the participants in the industry earning more than -- greater than competitive returns. If we push those down, they will not be able to attract capital from investors.

CHAIRMAN OBERMAN: I understand. I'm really just trying to make sure I understand your point.

And that point rests on the accuracy of both how we determine revenue adequacy and whether we got the cost of capital right based on our determinations; correct?

DR. ISRAEL: I mean, the specific calculation, the best we can do is use the data. Murphy and Zmijewski do it two different ways, you guys do it one way, three different ways I've looked at across a variety of railroads, across those data sources would say it's around 9, 10, percent, which is around the cost of capital.

CHAIRMAN OBERMAN: Well, you're assuming

that, first of all, that our revenue adequacy determinations are based on accurate costing and so forth. You're relying on how we've determined whether they're revenue-adequate.

DR. ISRAEL: That certainly is a starting point. That and the Murphy and Zmijewski which do some adjustments to see how those matter, and do it for each railroad.

But yes, they're the basic methods for the cost of capital calculation.

CHAIRMAN OBERMAN: And you also know that there's debate about whether the cost of capital really is 9 or 10 percent, even though that's what we've been using?

DR. ISRAEL: I mean, it's not dramatically off of that, I would think, because --

CHAIRMAN OBERMAN: Someone said last year it was 7 percent, as I recall.

DR. ISRAEL: 7 percent would be quite low among industry. 7 percent would also be a number NS has hit in recent years, including 2020.

Just to be clear, though, if you were to make it 7 instead of 8, 9 or 10, then what Murphy and Zmijewski would find would be maybe the railroads would move up the second quartile instead of the first. It still wouldn't be an industry earning unusual profits.

CHAIRMAN OBERMAN: All I'm trying to get at -- I don't know what the cost of capital is to be honest with you. I know what we've determined in our decisions based on our approach. But I also recognize that there's debate, and that a lot of the numbers that are used in all these calculations, particularly the ones that rest on URCs, have a lot of arbitrariness to them. I just want to understand the basis of your testimony. I'm not trying to quarrel with it. I'm not telling you I know the cost of capital. I just want to know what assumptions you're relying on.

DR. ISRAEL: I get that. I just think it's important to note across industries like this, you see numbers like 7, 8, 9, 10, so we're not going to be drastically far off.

CHAIRMAN OBERMAN: You say now 7, 8, 9,

10. But in your testimony, you said 8, 9 or 10.

DR. ISRAEL: That's what's reported. I agree that's the number that I would use. But if it's a point or two lower, it's not going to change -- it's going to move you closer to the median than what Murphy and Zmijewski found, not more than that.

CHAIRMAN OBERMAN: When you say a case has not been made that there's a problem to be solved here, if you accept -- I'm only asking you to accept hypothetically, I'm not asking you to judge whether anything we have heard today was accurate. But if you accept the reports we heard today from just Indorama and Diversified, would that strike you as a qualitative basis for thinking that some action is needed here to authorize some kind of reciprocal switching?

DR. ISRAEL: I don't see it as a basis to authorize reciprocal switching, because reciprocal switching -- my concern from what I've heard listening in two days even more is that reciprocal switching adds externalities and complications and threatens the return on capital.

So it strikes me as probably a bad way to deal with quality issues overall.

CHAIRMAN OBERMAN: Do you --

DR. ISRAEL: I very much believe their testimony and think that there very well could be a need for in some cases, I'm not an expert on any of those cases, but a need to dig into them and think about whether some action is required in any of them.

But my sense from my time on this is that reciprocal switching is probably a bad way to solve a quality problem.

CHAIRMAN OBERMAN: Well, you know, we have other rules that provide for service relief and orders for one railroad to deliver cars to another railroad. That would also be an externality, wouldn't it?

DR. ISRAEL: Yeah, I mean, it imposes an externality, I agree with that, and therefore, I think it's important to limit that.

CHAIRMAN OBERMAN: Well, if we were

considering, for example, a reciprocal switching rule that was put in place to allow shippers who have legitimate service difficulties like the ones that were discussed today, whether we'd do it under rule A or rule B, either way it's the same kind of externality if it shifts traffic from one railroad to the other. Right? Or it gives the shipper the option to do that.

DR. ISRAEL: I agree that giving a shipper an option to choose reciprocal switching creates an externality problem. So therefore, my takeaway from that would be limited in the use of that solution.

Now, it may be that there is clear harm to competition, where -- and what I would define that as is a railroad is in some way undermining the ability of a shipper to use the options that it does have. Maybe you feel like you need to step in and give that shipper more options. I understand that. I'm not saying it could never be a good solution.

It has costs, and so I would be quite judicious in its use and I wouldn't want to implement is a broad reg -- new regulation to an industry that seems to me to be performing well.

CHAIRMAN OBERMAN: Well, if you sat in our chair, I'm not sure you'd have the same -- it would seem the same way.

DR. ISRAEL: I can say to that that I study lots and lots and lots of industries. I mean, I understand there are customer complaints. Some of them in industries that are extremely competitive. I very much as an economist think those should be taken seriously totally. I just don't think a broad new regulatory policy is the right way to solve service problems.

CHAIRMAN OBERMAN: The only other thing that struck me as I was listening to you about regulations and externalities upsetting the balance that you say is there, if taken to a logical extreme, we would eliminate virtually all of our regulatory activity over the last 40 years, would we not?

DR. ISRAEL: No, I disagree with that. Because as I said, the regulation is a part of what's in balance now.

My point would be the railroads under the oversight of the STB, with certainly the current existing oversight of the STB being one of the things that causes the industry to perform the way it does, that that current setup has, in tribute to the participants, led to rates of return that are right where I would want them to be, as well as I can tell.

So I wouldn't get rid of what you've done. I certainly wouldn't get rid of deregulation or what the STB has done since.

I'm just saying a costly new policy at a broad scale like this doesn't appear justified to me.

CHAIRMAN OBERMAN: Do I take that as an endorsement that everything we've done up to today is fine? You don't --

DR. ISRAEL: You can take it as an endorsement that the overall system appears to be working. Obviously we could quibble about individual cases.

CHAIRMAN OBERMAN: Thank you. Very

helpful, Dr. Israel, I much appreciate it.

Does anybody else want to ask questions now or wait for Mr. Sappington?

BOARD MEMBER FUCHS: I'll wait for Sappington.

CHAIRMAN OBERMAN: Ray, do you want to ask him to continue?

MR. ATKINS: Thank you, Mark.

Professor Sappington, the mike is yours.

MR. SAPPINGTON: Thank you, Ray.

And good afternoon, everyone. My name is David Sappington, and I am the director of the Public Policy Research Center at the University of Florida. And I appreciate the privilege of addressing the Board this afternoon on behalf of Norfolk Southern railroad.

At the outset I provided the Board with some slides for reference. And for the reasons identified by my colleagues and others, I have strong reservations about implementing forced switching in the absence of anticompetitive behavior.

However, I will not discuss the drawbacks to forced switching this afternoon. Instead, I have been asked to identify the access prices that should be implemented for switching, if imposed, despite its drawbacks.

I believe these access prices should reflect the principles that have been established in the extensive economic literature on this subject, which dates back to at least the 1970s. And the slides I have provided for reference identify a few of the more widely cited studies in this extensive literature.

These studies conclude that there is no simple access pricing rule that is ideal in all settings. Instead, the optimal access pricing rule varies with prevailing industry conditions. And these conditions include such things as the regulators' goals, the instruments available to achieve these goals and the cost of implementing each instrument, the information available to regulators, the industry cost structure, including the magnitude of infrastructure costs, industry investment needs, the nature and extent of actual and potential industry competition and the prevailing retail rate structure.

An important additional finding in this literature is that when the retail price structure does not embody monopoly rents, access prices that reflect what's called the efficient component pricing rule, or ECPR, have considerable merit.

In addition to having three key attributes that I will review momentarily, ECPR is relatively simple and intuitive. ECPR states that access prices should reflect a railroad's full cost of supplying access. And this full cost is the sum of its physical cost of supplying the access and the opportunity cost of supplying the access.

The opportunity cost is the contribution to infrastructure costs a railroad forfeits to forced switching.

As I mentioned, access prices that reflect the ECPR have three primary attributes. First, they promote revenue adequacy. Second, they encourage the supply of high-quality switching servicers, and third, they ensure what's called competitive neutrality, which in turn ensures industry cost minimization.

I will now briefly explain each of these three attributes before concluding.

Access prices that reflect the ECPR promote revenue adequacy by ensuring that the contribution formerly derived from a shipper in the form of revenue is replaced by access revenue from the railroad that now serves the shipper because of forced switching.

Access prices that reflect the ECPR also encourage the provision of high-quality switching services, and they do so by limiting the financial loss a railroad incurs when forced switching permits a competitor to secure the patronage of a former shipper.

The diminished financial loss encourages the railroad to facilitate switching by providing high-quality switching services.

Finally, access prices that reflect the ECPR also ensure competitive neutrality by effectively leveling the playing field, and they do so by requiring that the railroad that secures a shipper's patronage must deliver the prevailing contribution to overhead.

This is the case whether the winning railroad, the one that secures the shipper's patronage, whether the winning railroad is the incumbent railroad or the competing railroad. And by leveling the playing field in this manner, the ECPR ensures that a competing railroad can profitably secure a shipper's patronage if and only if it can serve the shipper at lower cost than the incumbent railroad.

And the ECPR thereby ensures that industry transport costs are minimized.

So these three attributes of ECPR, its relative simplicity and prevailing industry conditions underlie my conclusion that if forced switching is imposed in the railroad industry despite its drawbacks, the access prices that are established should reflect the ECPR.

This conclusion implies that access prices should reflect the full cost of supplying access, both the physical costs and the opportunity costs, and consequently simple cost-based access prices that do not include any contribution to overhead are insufficient.

Thank you, and I'll turn things back to Dr. Atkins now.

CHAIRMAN OBERMAN: Thank you.

MR. ATKINS: Chairman Oberman, that concludes our remarks. We'd be pleased to answer any questions that you have about our presentation or Norfolk Southern's prior comments in this proceeding.

CHAIRMAN OBERMAN: I have a couple, and I'm sure other Board members will.

Professor Sappington, I have been studying these reciprocal switching tariffs that the railroads have now, and I'm really scratching my head about how they arrive at their switching fees. I wonder if you have looked at the current switching fees that railroads are actually using when -- you know, when the shippers decided to use a competing railroad.

MR. SAPPINGTON: I'm sorry, I cannot be of any help on that issue. I don't know how they set their tariffs.

CHAIRMAN OBERMAN: Would you assume that they set their tariffs in order to accomplish sufficient component pricing, for the very reasons you've said, otherwise they're going to -- you know, their cost shifting is going to be damaging to their overall financial picture of revenue adequacy?

MR. SAPPINGTON: Certainly both the terms of the access prices that they pay one another for transferring the traffic as well as the associated prices charged to the shippers will affect revenue adequacy.

But how much they're getting, of the revenues needed to ensure revenue adequacy, are coming from access revenues and how much are coming from shipper charges, I don't have that information for you.

CHAIRMAN OBERMAN: Well, if we are trying to figure out what the pricing should be, would it be useful for us to be looking at what they actually do in the real world among themselves?

MR. SAPPINGTON: Certainly, that information could be useful to see. But again it needs to be looked at in the context of what revenue is coming from access revenue and what revenue is coming from charges to the shippers.

Because again, I'm not an expert on these negotiations, but my guess is what happens is the two railroads get together and allocate the traffic to the railroad that can perform the service most efficiently at lowest cost. That will achieve some cost savings by making sure that least-cost supplier supplies the service, and they somehow negotiate a division of those gains.

Then how that feeds into the tariffs to the shippers will depend upon the things you were talking about with Dr. Israel and concerning things like bargaining power.

CHAIRMAN OBERMAN: Well, can we assume that -- you know, I'm looking at NS, it has 105 locations on its network, where it permits hundreds and hundreds of shippers to switch to a competing railroad, that they set these fees so that they will contribute to their revenue adequacy. Would that be a fair assumption on our part?

MR. SAPPINGTON: I don't think they would enter into a negotiation which deliberately reduces their profit, yes. So I think your overall assessment is correct.

MR. ATKINS: Chairman Oberman, I would have to add that you can't just assume if you took that fee and applied it to all the rest of their traffic, that they -- that that would even come close to replicating ECPR, because ECPR is a function of the loss contribution for each movement, from each origin to each destination, it will be tailored to the specific customer in question.

I would also remind you that these are reciprocal arrangements, so that -- oftentimes you see this in trackage arrangements as well where the parties will agree to a low rate because it doesn't matter, they are sort of exchanging traffic between themselves, which is not a feature of your proposal.

And I believe there's well-established ICC precedent that says you need to be very careful about using these reciprocal switch fees to set a fee in a particular occasion where you're compelling switches, switching.

CHAIRMAN OBERMAN: All I can tell you, Ray, is I'm making no assumption at all, I'm just looking for help.

MR. ATKINS: I would ask if Mark Israel had anything else to add there too. Because I believe I correctly stated the ECPR, but you've got two more genuine experts in front of you than I am.

DR. ISRAEL: No, I agree on ECPR. The point I was going to make is the reciprocal point, where not to take us too much back to telecom, but there is a good example where you have a lot of big telecom providers who exchange traffic with each other like when you're roaming on your phone. When that's voluntary, and because they exchange voluntarily, those fees will be quite low because it's fully reciprocal. Whereas, when regulators -- Canada gives us an example here -- step in and require that, those fees become -- they get charged at a level that is designed to recover the full cost of capital.

CHAIRMAN OBERMAN: I can tell you, Dr. Israel, that I have looked at these tariffs, and just based on the customers listed there, they aren't fully reciprocal. Some of them have far more customers that they allow to switch than the ones they receive.

So I don't know what to make of it. I'm just trying to understand, and actually, I was going to direct if Cindy -- and Cindy may not be the person, to Cindy the question of if she knows how these reciprocal switching fees were set by NS to accomplish the goals that Professor Sappington and Dr. Israel are telling us.

I don't know, Cindy, do you have any insight into how those fees are set?

MS. SANBORN: I am not familiar with that, Chairman Oberman.

CHAIRMAN OBERMAN: Must be somebody else at NS.

And one of the things that puzzles me greatly is that within the same yard, the fees vary widely, roughly between 250 and $500. That's pretty typical around the network. Not entirely, some are higher, 800, a few places they're over a thousand.

But it's very common if you go through all the railroads' reciprocal switching tariffs that the fees vary between 200 and $500. And I just wondered if that is a range that we could look to for some guidance, not talking about automatically imposing it --

MR. ATKINS: Again, Chairman, it shouldn't be terribly surprising because the opportunity cost of providing access is going to differ based on the movement in question.

But the ECP is designed to -- it's very simple, is you get the lost contribution from the movement where you're doing the forced switch. So it's not that you try to figure out what the average opportunity cost is by looking at all other parts of the network.

It would be specific customer to a

specific destination, the new entrant has to compensate the incumbent for the full opportunity cost of the switch.

So that's kind of the core of ECPR, and it has the benefit of making sure that you don't undermine differential pricing and the ability to earn a reasonable -- a competitive return on the investment for the entire network.

And that's -- I appreciate that ECPR is not well liked by the shipper community because they view it as kind of defeating the purpose, they would like a simple cost-based solution. But that doesn't protect the ability to earn a competitive return. Not only has Mark Israel mentioned that point, but the AAR's economist really hammered that home with what we sometimes call the rattail map, which shows that you can't set the price just to recover the full cost of the bottleneck portion, you have to be cognizant of the full opportunity cost of the switch.

CHAIRMAN OBERMAN: Let me ask this question, and maybe, Ray, you can answer it. And then I'll stop and turn this over to other Board members.

Some of these reciprocal switching arrangements are the result of conditions imposed in merger decisions, as you well know. Are those fees set by ECP?

MR. ATKINS: That's a great question, Chairman.

So in a merger context, the fees that the STB or ICC will impose is designed to treat an entirely different problem. So whether it's a trackage rights fee or reciprocal switch, it's all about maintaining the status quo. It is not about providing the full opportunity cost. In the trackage rights context, it is not about providing a market-based return on trackage rights. There's an entirely different purpose.

So if you had -- if 100 of those switch fees were set through mergers, that's because they were there to maintain some sort of competitive environment, maybe it was a hypercompetitive environment, so the fees had to be really low in order to maintain the status quo. Mergers has a different purpose.

But if you move from that purpose to imposing a regime where, as we've talked about, there's been, under a different standard with very little fault on the part of the customer -- of the railroad, now both -- I think legal policy, I think public policy and economic policy says you need to be thinking about the full opportunity cost to the incumbent from providing that switch.

CHAIRMAN OBERMAN: All I would say is you're making a very broad assumption when you say very little thought. I don't -- I don't know how much fault is going to play a role here. I'm not even sure how we would define fault.

But the thinking and the request that we have gotten from shippers are to remedy problems. And the conditions imposed in mergers are to prevent problems.

So they have a certain similarity conceptually to me. Nobody is suggesting, I don't think, that we just throw the system open to be wide open. In which case you might have to have a system that makes sure that people get their return on investment.

One way or another, it seems to me that the reason we're even here is because the shippers have been suffering from what they regard as lack of balance, which is causing them problems largely in recent years in service, somewhat in price.

But let me hand it off to, unless you wanted to respond to that, I was going to --

MR. ATKINS: No, actually I think it feeds well into a line of questions that Patrick was going to ask that I deferred. So why don't I -- I think he wants to ask questions around this nomenclature we've been using about fault-based versus non-fault-based. I'll defer to Patrick.

CHAIRMAN OBERMAN: He is both our resident economist and best lawyer, so I'm going to turn it over to Patrick.

Go ahead, Patrick. You are muted.

BOARD MEMBER FUCHS: And neither is true.

So I want to -- Ray, did I hear you

correctly at the outset of your presentation that you viewed 1147 as superior to the proposal?

MR. ATKINS: Yes.

BOARD MEMBER FUCHS: And do you think that 1147 generally is a workable framework for the Board?

MR. ATKINS: So I'm pulling it up. Yes. And so let me -- if I might, Patrick, because not everybody might be familiar with the history that led to 1147. So if I could just take a second to -- I know you are, but just for everyone's benefit.

So in the late 1990s, after the Board was experiencing some very serious service problems associated with, you know, implementation of various mergers, Linda Morgan held hearings to ask the question of how they might be able to use some of the tools that the Board has available to it to better address service problems.

And one of the primary inquiries from Linda Morgan was is this Midtec standard and the requirement of showing competitive abuses really appropriate when there's a demonstrated inadequacy of rail service.

And what I think is lost or forgotten in history is the entire industry coalesced around agreement that this standard was in fact inappropriate in those circumstances.

And so Linda Morgan proposed and adopted, or it wasn't her, it was the Board, proposed and adopted a rule that's set forth in your regulations at 49 CFR 1147.1. Let me just read it for you, which is why I think it's pretty powerful.

The STB will prescribe alternative rail service, which includes a reciprocal switch, under 11102(c) if it concludes that there's been a substantial material deterioration or other demonstrated inadequacy of rail service, period, full stop.

So it's not about Midtec. You can get -- it's temporary, it only stays in place for as long as you need it. But if there are serious demonstrated inadequacies of rail service, the STB has provided a regulation to address it.

BOARD MEMBER FUCHS: I want to explore

this more, because I think it's a very interesting idea. You know, a couple elements of it. Picking up on where Professor Sappington left off, you agree that under 1147, the Board does not consider lost profits?

MR. ATKINS: Right. And that's where it comes into the fault- versus not-fault-based system of this.

So we concede if -- under the current system, if you engaged in anticompetitive conduct, which is pretty egregious, the Board is going to step in and force a switch. And in those circumstances, it really isn't appropriate to be asking for the full loss contribution of the switch. And the Board has said we won't do it.

The same would apply in the circumstances here where you've got some sort of demonstrated deterioration in service. I don't think Norfolk Southern is advocating that they get to keep the full loss contribution in those circumstances, because you have a fault-based system that limits its application.

Now, if you flip that to what we view -- I know it's nomenclature, and Marty, I appreciate that you haven't decided what you're going to do.

But if you look at the proposal from six years ago, it looks like a no-fault basis, prong 2. You just get it. If there's -- no market dominance, prong 1, benefits exceed cost, there's no showing -- you can provide reasonable rates and service, and you might still be stuck with a forced switch. In those circumstances, Patrick, I think the lost opportunity cost is appropriate.

BOARD MEMBER FUCHS: Here's what's appropriate, and I think about the 1147 idea. Based on the exact same statutory subsection that we're discussing here, first, Ray, as you just articulated, shippers don't like the railroads' ideas for compensation because they include lost profits. This system doesn't include lost profits.

Second is I think we've heard a lot about the complexity of having to compare to noncompetitive shippers versus competitive shippers, and having to identify that, and having to identify specific groups, and then we heard the additional layer of complexity in terms of rate-adjusted service levels.

Would it be fair to say, Ray, that under 1147, you don't need to establish those comparison groups, you just need to establish comparison to what you had before?

So, you know, Pyco case, I don't want to call it the seminal case, it might be one of two cases where this was actually kind of brought to fruition, they just talked about how many boxcars they were getting, if I recall correctly, and the 1147 case.

So wouldn't you agree that that greatly simplifies the service showing if you don't have to establish anything that is because of the carrier's monopoly position?

MR. ATKINS: That's right. And that's what the STB contemplated 20 years ago when they put this in place.

Patrick, as you talked about with Mike Rosenthal and the AAR, if you want something more permanent, like an Entergy type, so now you have to actually proceed through the competitive access rules, which requires more than a generalized service problem.

Because if you have a generalized problem like Snowmageddon in 2014 or something else, the last thing you want to do is open up the whole network to reciprocal switching.

So what it requires there is more of a tailored showing that combines the lack of service to an exercise of market power. So that's like a whole another avenue.

(6:00 p.m.)

But it feels like 1147 is being overlooked when people say that they --

BOARD MEMBER FUCHS: No, I appreciate that. I didn't mean to truncate your point. But I wanted to --

MR. ATKINS: No, absolutely.

BOARD MEMBER FUCHS: There's also no consideration of product or geographic competition under 1147 as well, which is another thing that shippers object to.

MR. ATKINS: Right. It's a temporary solution for a temporary problem. If a customer is really suffering, demonstrating inadequacy of rail service, the idea is they can come and get this temporary relief.

And of course, you know, if they come to the Board and ask for it and the other carrier is suffering some sort of similar circumstances, the Board might well say it's not appropriate in those circumstances.

And it's also lightning-quick. It's 45 days --

BOARD MEMBER FUCHS: I want to touch on that, and I know Karen you have another line of inquiry.

But it's my understanding that the Board can order service under 1147 without having to spend the time to develop compensation. By that I mean I think under the Pyco --

MR. ATKINS: Yes.

BOARD MEMBER FUCHS: Service can start and the shipper can -- as I think we all know, compensation issues can take a lot of time, first of all, there's the time of railroad negotiation, which can take months, and if the railroads negotiate, then we have all the evidence we need to consider, which I think under precedent would be what's called the Dardanelle standard in this realm, which is a cost-based, which variable cost, O&M and some portion of the capital cost.

And but we don't have to decide all that. The shipper can get service immediately upon an order and we can take those months to decide compensation.

Do you agree with that kind of framework for --

MR. ATKINS: Yes, yeah. I mean, we would obviously love compensation to be decided, you know, up front. But it does not contemplate that. It's a -- it's about speed. It's understanding. But it's also about, you know, a demonstrated inadequacy of rail service too.

So it's not -- and it needs to be

substantial, it needs to be measurable, it can't just be a one-time off. It has to have been over an identified period of time so it's not just I miss a switch. But yeah, I think you see where I'm going.

BOARD MEMBER FUCHS: It just doesn't have to be substantial and measurable actually. There could actually be another demonstrated inadequacy; right?

MR. ATKINS: Yes.

BOARD MEMBER FUCHS: So if the shipper was always getting bad service, they could also win; right? If they said, hey, listen, I've been getting one day a week, but -- switch, and it's missed 80 percent of the time, I can't grow my business, they could also win even though they have always been getting that?

MR. ATKINS: Yes. And Patrick, I would say that I know this line is not landing well and not being -- this is why the railroads view this is just about rates, because when this proposal was put in place six years ago nobody was talking about service. If you look at the rulemaking in this case, everyone is talking about compressing rates.

Now, I appreciate the concerns have changed a little bit. Marty has been very articulate, so has Member Primus and Member Hedlund and everybody, about being really concerned about service.

But there are tools that the Board put in place exactly to address those concerns.

BOARD MEMBER FUCHS: I'll conclude by saying you've heard me the last couple days talk about administrative complexity, and any time there are these principles in place, you know, I do wonder whether or not shippers -- you know, it's tough to bring a case no matter what.

And I do -- there are a few elements of the 1147 rules that I think if you take a look at them, I wonder whether or not the Board could do better in fleshing them out. You know, I've looked at the 628 rules, they're quite short, and listen, there's merit to -- there are arguments in favor of providing certainty and there's argument in favor of doing a case by case.

I wonder whether or not there can be creative ideas around three elements. First is what are some categories of actions that could be substantial measurable deterioration or other demonstrated inadequacies? So that -- that's one.

Second is there's this whole notion of well, how long is it; right? Someone to come in, especially if they're not in a good competitive situation, to bring a case against a railroad. I hear from shippers that they're not really eager to do that.

And so I wonder whether or not we could provide a little bit more certainty to people about how long it could go. Because right now as I understand 1147, it sort of implies it's longer than the emergency rules, which is 270-ish I think, but it's until the railroad is ready.

What does it mean for the railroad to be ready; right? So I wonder if we could do something better on that to provide more certainty. And then -- you know, I think that those would go a long way.

And the third is I think that the shipper has to come with an alternative carrier in hand. And, you know, this is -- I've heard that this sort of gets in a weird thing, where the alternative carrier doesn't know, you know, what the fee is going to be, right, for all the reasons we've mentioned. And all these types of things. And doesn't know whether or not a shipper is going to prevail, and then the alternative carrier doesn't know whether or not there's going to be another effort by the railroad. You know what I mean? There are all sorts of reasons why shippers might identify that they can't get the alternative carrier at the front end. I do wonder whether or not we can think about that or any other way to speed the proceeding because of the timing issue that I think Mr. Moreno articulated about, you know, hey, if someone is coming in with a service inadequacy or demonstrable deterioration, people can't wait months when their plants are about to shut down or, you know, their business is falling apart.

So I really think that we need to think

about -- if it's the alternative carrier problem, that's something. But if there are other ways besides definitional on -- definitional and time, you could get it for, there are other ways to speed it, creative ideas are very much welcome.

MR. ATKINS: So Patrick, I will tell you we'll take those all to heart. I can represent on behalf of Norfolk Southern that they're always looking for ways to improve the tools that the Board has, so long as it's a balanced approach.

I think the things you've articulated are certainly worthy of consideration. This provision hasn't been reexamined in 20 years.

My impression, I wasn't there at the time, I think I was actually in law school, but my impression is that there was a remarkable degree of collaboration and agreement that led to this set of rules. So I think you could probably see that happen again.

I will just make one last point, is the Board has been very effective recently in using policy statements as is necessary to help guide the parties. So it might not even be necessary for you to do a big formal rulemaking. You could instead work with the stakeholders and develop a nonbinding statement of how long might it be. You may not want a firm rule, but you may give additional guidance, what categories of action. That might be even more effective the way you're proposing.

BOARD MEMBER FUCHS: And I don't want to take any more of Karen's time. But I know that the railroads didn't love everything about the demurrage policy statement, but I think under Chairman Begeman's leadership, we demonstrated that we can get that done in a year's time or so.

MR. ATKINS: And you haven't seen people come back to get litigated -- go ahead, Mark.

DR. ISRAEL: Just to support this, my focus really is on investment incentives, and one thing I like about what you guys are saying is it's a very different story for investment incentives because it says if you fix it, it's temporary, you get the business back. So you have an incentive to invest to solve a problem, as opposed to a permanent solution or kind of a solution where if we invest in more capacity, somebody else could end up using it. So I like the story for the investment incentives that it creates.

BOARD MEMBER FUCHS: I appreciate it. Thank you guys both.

CHAIRMAN OBERMAN: Patrick, were you done?

BOARD MEMBER FUCHS: I'm good for now.

CHAIRMAN OBERMAN: Karen?

BOARD MEMBER HEDLUND: Actually, Patrick's dialogue answered my question.

CHAIRMAN OBERMAN: I wanted to -- I had a follow-up to the discussion you were having, Ray, with Patrick.

I am concerned about this idea that this whole area of reciprocal switching can have nothing to do with rates. The statute talks about competition, and I don't know how you can separate cost from the product if you're talking about competition.

So it may be that it isn't the wisest policy, I'm not agreeing or disagreeing, to suggest that the rule should be used solely for rates.

But to suggest that rates and product are not inherently interrelated when you're talking about the concept of competition, I don't know how you can get there.

And it leads me to want to ask you to go back to the example from Diversified that we heard earlier today.

How would you characterize that under 1147 if the railroad, as it did, comes to the shipper and says we don't have the capacity to provide service for all of our customers on this line, so we're going to raise the rates high enough to deter some customers from using us at all?

Is that a service problem or rate problem?

MR. ATKINS: I'm not sure I view it as a problem, but I appreciate it would be something you want to look into it. But it's definitely rate-related, it's not service in terms of they're getting poor service. It's a -- you have constrained capacity, supply and demand in any market will try to adjust to send signals to people to make responsible decisions about how much they use that particular resource, whether it's rail or, you know, gas prices or whatever. You try to send signals into the market so that the users of that scarce commodity appropriately -- make appropriate decisions about how much they're going to use it.

That's to me -- I mean -- this is just terminology, Chairman, that's not demarketing. That's what markets do.

And the alternative would be permits. So if it could not handle so much traffic, do you really want the railroad picking winners and losers and saying we're going to put permits in place that says you can ship for 20 and you can ship less?

So I think the idea of letting prices adjust based on capacity is something you should actually be promoting, not discouraging.

But however, you made a different point earlier too, which is, well, what if they could get a switch to another carrier and get through the congestion in an alternative way; right? I think that was a point that you were emphasizing.

I want to come back to the existing set of rules. If you look at the Entergy case, if a railroad is abusing its market power to deprive a customer of a more efficient alternative route, that can be grounds for a reciprocal switch under your current Midtec standards.

So I don't think you need to change the standards, and I think the railroads likely know that if they have got a concession problem, what they're looking to do is get some of it off, that congestion, they will switch it off with another railroad. They have every incentive to do that.

CHAIRMAN OBERMAN: The problem with their response, Ray, is that you're talking about a situation which is not the one that was presented to us, as I understand it.

The Norfolk Southern route didn't suddenly become subject to an increase in demand, nor did the route itself lose capacity. Norfolk Southern, as well as most of the other Class I's employment practices, rendered it unable to have enough crews to provide the service it had been providing.

That seems to me to have little to do with competition and more to do with, we don't have to get off on it in this hearing, the impact of Wall Street.

So, you know, it's not a congestion problem. And whether it's -- I don't know that it's an anticompetitive problem.

But -- and I would say it's a -- you said you don't want to concede it's a problem, and you've got a client so I'm not asking you to concede it, but I heard it as a problem of a shipper, longtime shipper, who all of a sudden had a 24-1/2 percent rate increase, and candidly, to Norfolk Southern's credit, they said, you know, we don't have enough crews to serve everybody, so we have to price some people out of the market. That's what we heard.

Now, is that a -- my question to you is under 1147 -- let's assume those are the facts, that they are proven. Proven hypothetically. Is that an 1147 problem or is that just a rate problem?

MR. ATKINS: No. If you believe that rate is unreasonably high, you bring a rate case and get it suppressed back down. Or if you think that rate has not been -- I'm sorry, I was going to say --

CHAIRMAN OBERMAN: Even if the railroad -- even if the railroad admits that the reason for the rate is because it's unable to provide the service? That's the problem I'm having with this discussion.

MR. ATKINS: So if they actually refuse to provide the service, then that would be grounds for a switch. So if somebody said, you know, we still want service, and nobody took up the offer and everyone stayed on the traffic, that might be -- if they can show a demonstrated inadequacy of service, yes. But it's not a rate remedy.

If they are disappointed with the rates, they have to bring a rate case and show market dominance, show it's in excess of 180 percent, all the safeguards Congress has put in place have to be reviewed to make sure that they are entitled to relief from the rate.

CHAIRMAN OBERMAN: Well, you know, I think we're going around in circles here. You're presenting a hypothetical that isn't going to happen. Presumably Norfolk Southern is going to continue raising their prices until it pushes enough people off of the system that its limited crews can provide service. They're not foolish enough to come in and say we're going to stop serving you altogether. But that seems to me a distortion in the system. And it may, I suppose, become anticompetitive if, in fact, they are sole-served and they won't give them a switch, then the tactic becomes abusive.

And it seems to me if we accept at face value what this witness said, it becomes abusive, without that rate exceeding what a person might win in a rate case. Arguably could become an unreasonable practice, I suppose, under 10702 I think it is. Although you would probably be the first to come in and argue that you can't challenge a rate as an unreasonable practice.

MR. ATKINS: I probably would be, yes.

CHAIRMAN OBERMAN: I think this is not so simply analyzed, is all I'm suggesting, based on what we hear is going on.

And I don't mean to single out Norfolk Southern. There are crew shortages greatly undermining service and carloads and so forth all over the network, as far as I can tell, and we hear a lot about it.

Karen has her hand up.

BOARD MEMBER HEDLUND: I want to go back to the discussion that Dr. Israel had about access fees, and the thing that is bothering me is that in the context of the service deficiencies, networkwide and affecting all railroads, that seems to be motivating the shippers to ask for this rule. Why should, under those circumstances, the railroad seeking the switch be required to pay opportunity costs, and particularly in a situation where the railroad is trying to ration customers by raising its rates? That just sounds -- maybe I'm just describing, you know, market abuse.

But I -- you know, this is where -- where they're seeking a switch because of service, or because they don't want to pay for the service at outrageous rates, I don't understand why the access fee should include compensation for opportunity costs.

DR. ISRAEL: I think that was directed at me although others may want to weigh in. The fundamental reason that I think it needs to include opportunity costs is because we need to preserve the ability to earn on return, which is --

BOARD MEMBER FUCHS: Dr. Israel, if I could jump in. I apologize for interrupting you. But I think the scenario that Karen is describing is if there was fault. And so under like say 1147, and I'm not sure the position is if there's fault there should be opportunity costs. I think --

DR. ISRAEL: I agree with that.

BOARD MEMBER FUCHS: You were probably getting there, and if I cut you off --

DR. ISRAEL: I agree with that. If there's a fault, harm to competition, clear fault, then somebody subverted competition, they shouldn't. They have now harmed competition, they shouldn't get an opportunity cost-benefit for that. We want to restore competition, so the synthetic competition other economist talks about makes sense because that's the only option we have to try to restore competition.

If we're not in that world, though, what Ray said, we have rate cases, a set of rate laws, to control unreasonable rates. And as I said, those have led us to a position where the return on capital seems reasonable.

What I have heard in this that was informative to me, because I hadn't thought about it much, was let's suppose that we want to -- now we're saying there is fault law, there is rate cases, but now we have a service problem, it's not a fault service problem, it's just a service problem, and we want to deal with it in some other way. My view is reciprocal switching is a bad way because it imposes service issues of its own.

But if you implement it, ECPR works in that case because you're not trying to suppress the rate with ECPR, you're trying to make sure you preserve the return on capital, but the two railroads are free to go compete on service quality.

And if one of them can provide better service quality, they can win that business even though they have to pay an ECPR price.

BOARD MEMBER FUCHS: I just want to make another observation on this, though, which is why I think the 1147 framework merits consideration by shippers. I heard, Dr. Israel, you describe if there's fault, a harm to competition. On 1147 you don't have to compare competitively situated shippers versus noncompetitively.

Remember we were hearing from the railroads yesterday about how well, you know, even if a shipper is getting bad service, you have to prove that that service is somehow worse than the competitively situated shippers. And that's evidence of anticompetitive conduct.

Under 1147, that shipper doesn't have to prove that. They just have to prove that it's worse than they had, substantially, measurably, or it's inadequate for some other reason, which could include comparison of competitive shippers, but it doesn't necessarily have to. And there's nothing in the text of the preamble, or certainly obviously not nothing in the text of the regulation, that would suggest that.

So even though -- what Dr. Israel is describing about fault-based harm to competition, I would actually say 1147 sort of straddles somewhere in the middle, and maybe actually closer to something that's more favorable to shippers, not to say that shipper would agree that it's better than the proposal for them. I'm just saying why I think it perhaps merits consideration, because the compensation issue has already been worked out seemingly in their favor, which is not to include opportunity costs.

DR. ISRAEL: It seems to me the statute there that I don't -- but it's saying if this inadequate service is being provided and proven, that doesn't sort of meet the standards of real service, that's -- the competitive system to me as an economist has failed there.

And the other thing that I think I liked about what Ray said is if it's a systemwide problem, so everybody is suffering, then this obviously wouldn't be a solution; right? So it deals with the idea that if there is a systemwide problem, that shouldn't lead to punishment or whatever on one carrier.

CHAIRMAN OBERMAN: Go ahead, Ray.

MR. ATKINS: One last thing. So I just want to emphasize too that a particular example where you think the rate might be too high, there should be a forum for the customer to bring that kind of dispute to a quick resolution.

And I just would encourage -- I know you weren't there when we submitted the proposal, we would love a chance to come in and talk about it on an ex parte basis if that's appropriate.

But there's this voluntary arbitration proposal that has been submitted, and it's designed exactly to quickly resolve that type of commercial dispute, and it's in front of a neutral arbitrator. So if the railroads can't convince the arbitrator that that's a reasonable rate that they have just imposed, the arbitrator will put an alternative in place, the railroad and the customer will be able to return doing what they should be doing, right, which is working collaboratively to build business.

I really feel like that arbitrary -- voluntary arbitration process has a lot of merit that might -- it might address -- might prevent that type of activity from happening if you thought it was inappropriate, but more importantly gives a quick forum for somebody to resolve that dispute.

BOARD MEMBER FUCHS: One more question. I have been thinking quite a bit about the Coalition Associations's comment about timing. We want a workable system.

And one of the things that occurs to me in the design of 1147, Ray, I think as you know, it was issued with 1146 I believe. And 1146 is a process. But you look at that process, and the minimum amount of time is, you know, weeks, a month or so, right.

So I don't really regard a process that takes that long, especially when you only get 270 days, as really suitable for an emergency. And I think out of Chair Begeman's Regulatory Reform Task

Force there were ideas that shippers brought to bear about reforming emergency service rules. And that standard is very, very similar, if not the identical -- as the 1147 standard.

But it's truncated in time.

So my question to you in raising the 1147 idea is whether or not NS would also see merit to reforming, simultaneously reforming, the emergency service rules to provide an even quicker, much more temporary avenue of relief, to mitigate Mr. Moreno's I think interesting point about timing.

MR. ATKINS: Sure. So I will start by saying, I mean, there's only so fast an agency can be expected to deliver relief to anybody. There just is delay. There are certain due process rights that you have to respect for the railroads.

And I just would make this point, Patrick, is you can't sacrifice speed or sacrifice like accuracy in making sure you don't cause problems in favor of speed.

So I am sure Norfolk Southern would be happy to sit down and collaborate on other reforms, but these emergency service orders, they can cause more harm than they do good. So it's important that you at least have enough time to understand what it is you're being asked to do.

And so like, you know, doing things too quickly, I would be worried. I know it's a balance, and I know everyone wants relief instantaneously. I would just ask you to think about the fact that you have to have enough information, enough time to think about it, enough time for the railroads to present it. But it still can be done quickly. As I said, 45 days is blistering fast for a relief, which as you mentioned is not limited to that time frame. It's limited until the railroad can demonstrate that they have got their act together and they can -- they have solved the service problem.

BOARD MEMBER FUCHS: To be fair, when I talk about 1146, I'm also building in time -- I think in my head I'm building in time to draft the actual complaint and then also for the Board to issue a decision, and that's how you get the time. And it's very difficult --

MR. ATKINS: Yes, I get it.

BOARD MEMBER FUCHS: -- emergency when you build in those things, plus reply and rebuttal and that sort of thing. I hear you on 1147, it is pretty quick for something that doesn't have -- it can be seen as pretty quick for something that doesn't have an end date; right?

You know, if a railroad just hasn't shown the Board that it's capable of providing good service, it could go on indefinitely really, at least under the regs.

But I would still note I mentioned the alternative carrier. I would still note any other barriers in that CFR, if there are creative ideas along with defining the service degradation component as well as what a railroad needs to show, I think all three of those are worthy of exploration.

MR. ATKINS: Understood.

Chairman Oberman?

CHAIRMAN OBERMAN: You know what, the hour is late and I think we've pursued this pretty thoroughly, this aspect of it. Very interesting discussion.

So are you -- is your team done on behalf of Norfolk Southern?

MR. ATKINS: We are done. Thank you, Chairman, we appreciate the opportunity to present our views.

CHAIRMAN OBERMAN: It is now 6:25. We've got a lot of people to cover. Do we think we can do this rapidly?

Does anybody on the Board need a break?

COURT REPORTER: The court reporter needs a break.

CHAIRMAN OBERMAN: Good idea. Why don't we take a 10-minute break, while we're out there, we'll try to figure out how we're going to finish this off. So it is -- we will reconvene at 6:35.

(Recess.)

CHAIRMAN OBERMAN: All right. Good evening. We are back in session, and can everybody hear me?

So I want to make just a brief

announcement about how we're going to proceed here. We are going to have a hard stop at 7:30 Eastern, which, if the Board members don't ask any questions, will allow both CN and CSX just about their allotted time.

I am going to encourage all the witnesses to, A, not repeat things that are in your written submissions, and B, if there are subjects which have already been pretty thoroughly covered by the other railroads, perhaps limit yourselves. I do not want to cut anybody off but I'm giving you sort of a suggestion.

If we really can't finish, if we can and the Zoom operator is available, we'll reconvene tomorrow morning briefly. But nobody really wants to do that, so we're going to try to make this happen by 7:30.

Without any further delay, then, Canadian National, you are up. There are five witnesses.

Matt? You're the person.

MR. WARREN: Thank you, Mr. Chairman.

I just need a couple of seconds. I

appreciate that you just said. We will keep to that schedule. One thing I will say up front is that CN is committed to doing ex parte meetings with the Board about this so that hopefully the Board won't lose the opportunity to ask any questions it has.

With that, I will hand things over to Mr. Reilly.

CHAIRMAN OBERMAN: Thank you.

MR. REILLY: All right. Good evening now. I was going to say good afternoon, but I'll say good evening.

Good evening, Chairman Oberman and Board members. Thank you for the opportunity to speak to you today. My name is Rob Reilly, and I have held the position of executive vice president and chief operating officer at CN since June of 2019. In that role I am responsible for CN's operations in Canada and the U.S. With responsibility for the company's preparation, engineering, mechanical, network operations and safety functions.

I previously served for 30 years in a variety of roles with the Atchison, Topeka and Santa

Fe and BNSF Railways, including vice president in operations, and began my railroading career in 1989.

Here to explain why CN is concerned about the potential impact of 2016 forced access proposal on CN's operations in the U.S. In addition, some commenters have asserted that such forced access could be implemented without negative consequences for operations and network fluidity in the U.S. because Canada has regulated interswitching. I would like to address that misperception as well.

First, let start with the many ways we foster resilient railroad network and support the overall supply chain. CN railroaders work each and every day to provide safe and reliable service for our customers. A critical part of my job at CN is managing our daily operations, including recovery efforts from unexpected disasters that strike our network and disrupt our operations.

When disaster strikes, our employees work tirelessly to limit effects of those disruptions when they occur and restore rail transportation for our customers.

Most recently in November and December of 2021, CN railroaders showed resilience to recover from catastrophic rains in British Columbia. The torrential storms caused significant highway, track and bridge washouts from the combined impact of snowmelt and precipitation runoff. CN worked around the clock to return our tracks to service, restoring more than 50 outages that had portions of our mainline out of service for approximately three weeks between November 13 and December 4, and we added a permanent bridge on January 12.

This was followed by extreme cold temperatures in western Canada for more than 80 percent of the days from the end of December to February 25. Such temperatures triggered what we call tier 2 operating freight rail operating restrictions, which apply when the temperature drops to minus 24 and colder, oftentimes dealing with temperatures that reach the minus-40-degree range.

Our recovery from these incidents is a testament to the grit of CN railroaders, and over the past two years during the pandemic, while others worked remotely, our railroaders showed up each and every day to keep the supply chains moving in North America.

CN makes significant investments to meet customer demand and for growth. Bernd will discuss some of those investments in more detail and discuss the 2016 forced access proposal, how it could disincentivize future investments.

Those investments are in addition to CN's hiring new employees in the U.S. This year alone we'll hire a couple hundred conductors, mechanical and engineering employees to help support our operation.

I particularly wanted to share some of the investments CN has made to grow our intermodal service offerings. CN moves both international containers, moving through the ports in the U.S., at New Orleans and Mobile, Alabama, and in Canada, as well as domestic containers, that take long-haul trucks off the highways.

Intermodal traffic is time-sensitive, and our intermodal customers in particular are looking for fast, reliable, efficient transit times and cycles to return containers. It is understandable why intermodal customers including UPS and Hub Group have opposed the 2016 forced access proposal.

CN has invested to support our intermodal customers, and our customers have responded. From 2010 to 2020, CN developed the fastest growing intermodal network in North America. CN added intermodal capacity in Chicago, Detroit and Memphis to accommodate growing customer demand.

We have invested approximately $60 million in facility upgrades, and equipment, over the past couple years at Detroit, Chicago and Memphis alone.

CN's effort to grow intermodal traffic has prepared CN to help alleviate supply chain congestion. This is especially important during the supply chain crisis over the last two years, as ocean shipping and port congestion has reduced shipping capacity as vessels have been waiting to dock and unload.

CN has added intermodal offerings designed to help our customers during the current supply chain disruption of the last two years. And as an example, CN started a new priority intermodal train service between the Port of Prince Rupert and Chicago. This is a weekly service, and it has reduced average transit time from Shanghai to Chicago from approximately 13 days to 17 days.

Another supply chain disruption is the increased amount of time containers have awaited pickup by beneficial cargo owners at inland terminals. The numbers tell a story.

In 2020, 4 percent of containers in CN terminal in Chicago sat for seven-plus days awaiting pickup, while 20 percent of the containers sat for more than seven days awaiting pickup in 2021.

CN is also taking concrete steps to help alleviate supply chain congestion, CN moved to fully grounded international container operation to increase terminal capacity in Chicago and Memphis, CN offered the use of CNTL-owned chassis to provide additional capacity for last mile delivery if available, and customers had constrained truck capacity.

CN leased additional offset storage locations in Chicago in addition to its existing off-site storage locations in Chicago and Memphis.

CN has incentivized beneficial cargo owners to pick up their containers. We introduced over the past couple years for international containers to be picked up during off-peak hours in Chicago, Detroit and Memphis.

CN has also incentivized customers to pick up containers during long weekends.

CN's efforts have helped reduce congestion in the supply chain as well as take trucks off the highway. For example, both CN and CSX work together to take thousands of trucks off the highway in moves between the ports of New York, New Jersey and Philadelphia and eastern Canada.

Now a few comments on the 2016 forced switching proposal. I understand that under the 2016 forced switching proposal new switches of traffic, which currently move in single-line service, could be required between railroads in response to complaints filed with the STB, and that the shipper would no longer have to show an abuse of market power.

From an operating perspective, requiring a railroad to perform a new forced switch with another railroad raises numerous potential adverse effects.

Adding an interchange would typically add between one to two days of transit time as compared to single-line service where the current -- where there is currently not an interchange.

More problematic, however, those forced switch locations could be inconsistent with CN's service design. Our service design department carefully plans our operations and takes account of numerous factors, including train schedules, whether manifest unit intermodal or automotive, crew change locations, locomotive power plants, car fleet, cycle times, balancing car fleet and locomotives, sighting locations for train meets on our mostly single-track network in the United States, and yard facilities with available capacity to process the cars.

Given these realities, adding new forced switches will tend to increase transit time and dwell in the handoff between the railroads. This will tend to increase cycle times for equipment as cars go off-line, and we would have little visibility into the return of those cars from off-line. This in turn will require more cars and locomotives to move product, which could increase congestion on the freight rail network, and further deteriorate fluidity.

Additionally, forced switching would reduce our ability to anticipate traffic flows, which is particularly challenging when considering network planning. Effective planning is key to our ability to provide a reliable service product to our customers, and forecasts of anticipated demand are key to planning.

Forced switching reduces visibility of what is coming onto our system, or leaving our system, and the locations where that may occur as shippers seek Board-ordered forced access.

Forced switching could require CN to hand over traffic at locations that are not designed for such operations and that are not the most efficient location for a handoff to occur.

And the forced switch traffic could appear on CN's network without visibility, that would hinder the ability for advanced planning and dedication of appropriate resources. While the shipper who is seeking the forced switch from the Board may believe it is benefited by the forced switch, that forced switch could harm the rail network as a whole and all customers that depend on the network.

The 2016 forced switch proposal could have a significant impact on CN's network in the United States. AAR estimated in 2013 that there are as many as 1500 interchange locations in the U.S. potentially impacted by the 2016 proposal.

AAR's map yesterday showed U.S. junctions potentially affected under the 2016 proposal assuming a 30-mile distance threshold. CN's network could experience adverse operating impact of forced switching across our entire network if the Board adopts the 2016 proposal.

This is why CN is concerned about the

proposal. The proposal could create new forced access, and the accompanying operational challenges associated with it. Increased switching will lead to reduced efficiency overall and will hinder our ability to plan and execute on our plans.

That has impacts on the network operations, and as Bernd will discuss, this discourages the incentive for CN to invest in the parts of our U.S. network that could be implicated by forced switching proposal.

Finally, on the Canadian regulated interswitching. Matt Warren will describe Canadian regulated interswitching, and I will offer an operational perspective. I'm only addressing regulated interswitching, not long-haul interswitching, which has not been used since it was added in 2019.

First, there are differences in the size and scope of the networks in Canada and the United States. The U.S. rail system connects and crosses in large urban areas and secondary locations with many interchange points, and as many as 15 interchange locations, according to AAR, that could be potentially impacted by the 2016 proposal.

By contrast, the Canadian rail system is much more linear. Because interswitching has been part of the Canadian statute for more than a century, the Canadian rail networks and shippers have developed over decades against the backdrop of where regulated interswitching could occur.

This is in addition to the differences in geography, population density, rail infrastructure, traffic mix and makeup.

Second, interswitching in Canada can lead to or exacerbate operating issues. And those operating issues have required CN to impose embargoes at interchanges in Canada for congestion. Both CN and CP referred in their comments to the winter of 2018 when Vancouver experienced significant congestion-related challenges.

CN experienced an increase in railcars on line during a time in winter when capacity was reduced for safe operations due to cold temperatures.

At our Thornton Yard near Vancouver, CN experienced an 18 percent increase in the number of cars carried by CN for interswitching with BNSF. To manage the congestion and operational challenges with the cars coming online suddenly, CN deployed 18 percent more locomotives and 16 percent more crew as compared to the prior year.

Even with these measures in place, CN had to embargo traffic due to the congestion. Based on our experience in Canada, it is impossible to predict the type of operational challenges that could result from new regulated forced switching under the 2016 proposal.

In conclusion, our ability to plan and manage depends on having information about expected traffic flows, but as I have discussed, that is a real problem when it comes to the 2016 proposal.

Forced switching would add complexity and slower transit times, which will ultimately make it harder to offer competitive service compared to truck.

And with that, I will pass it on to Bernd.

Bernd.

MR. BEYER: Thank you very much, Rob.

Good evening. My name is Bernd Beyer. I am the treasurer at CN Rail. And I am pleased to have the opportunity to address the Board today.

An area of debate within this proceeding is the potential impact of the 2016 forced switching proposal on railroad's investment incentives. I am here to explain the importance of CN investments to drive service and growth, and my perspective that the 2016 proposal would tend to decrease incentives to invest in CN's network, in the areas that could be exposed to forced access.

I will also share my perspective on the importance of market-based excess rates if the Board changes its regulation to remove the requirement for a shipper seeking forced access to show a railroad's abuse of market power.

CN's recent experience underscores the importance of continuous investment. I was last in Washington when I testified in person before the Board on December 12, 2019 at the revenue adequacy hearing, and a lot has changed in our lives and at the railroad since that time. Unprecedented uncertainty occurred from the COVID-19 pandemic, which was just in its beginning at the time. Little did we know that volumes would drop precipitously in 2020 in a matter of weeks, as customer closed their facilities and went into lockdown in the USA, Canada and around the globe.

Rob Reilly gave examples of other changes, challenges in the last year that have confronted CN in recovering from wildfires, hurricanes and floods.

In addition to persevering through these shocks, Rob also shared some of the ways in which CN helped our customers through pandemic disruptions, because CN is a supply chain enabler.

The past two years illustrate the need to encourage continued private investment in the network for growth.

As the Board knows, unlike many other transportation modes, a freight railroad in the United States, like CN, builds, maintains and expands its private network at its own cost.

Because of the capital-intensive nature of the freight railroad industry, it is especially important that investments are expected to derive a proper return. Building and maintaining such a private network is expensive and requires continuous capital investment to sustain service to rail customers and compete with alternative transportation modes, such as trucking companies, that utilize the federally funded highway system as their network.

CN invests significantly in maintaining and growing our approximately 18-point, 9000-mile network in the United States and Canada, our ability to make smart long-term investments in our network to help our customers grow is vital to our ability to provide good service to our customers.

CN invests substantial amounts in its network each year, and needs to be able to earn a reasonable return on that investment.

CN had record investment levels in recent years in its network. In 2022, CN plans to invest approximately 17 percent of its revenues in its capital programs. Even though we forecast a 35 percent reduction in the grain crop in Canada this year.

CN's plant investments in 2022 follows multiple years of record investments in our network. CN invested approximately 2.9 billion, and that's Canadian, in our capital program in 2021, 2.9 billion in 2020, 3.9 billion in 2019, with more than 40 percent of that in the United States, 3.5 billion in 2018 and 2.7 billion in 2017.

CN's investments maintain and rebuild our existing network, increase capacity, improve fluidity, increase asset utilization, reduce car cycles and build resiliency. CN's investments are good for safety and good for rail customers.

CN's concern about the 2016 proposal stems from its potential for adverse impact on strategic gross investments. Forced switches in the United States would increase uncertainty about future returns from investments in areas potentially subject to forced switching.

AAR's witnesses yesterday showed a map of the junction points that may be used by potentially affected traffic within a 30-mile radius of an interchange. That map includes thousands of locations on our network, including in Illinois, Wisconsin, Michigan, Minnesota, Iowa, Tennessee, Louisiana, Mississippi and Alabama.

Such proposal will make it more difficult for particular proposed projects to meet CN's criteria for future investment.

This is especially true for project that benefit a particular region, a specific commodity or customer facility. If CN could be ordered to hand traffic to a competing railroad without any showing of anticompetitive conduct, CN's investment in our infrastructure could be used for the benefit of a competing railroad who would reap the benefit of CN's investment without having to risk its own capital.

A look at an example of CN's investment in our United States network illustrates the challenge. CN is the sole direct railroad provider for frack sand mines on its rail lines in Wisconsin, and CN heavily invested in this network to provide rail service to those mines. CN reconstructed long inactive track at its Baron subdivision, and rehabilitated other track on its Whitehall subdivision, to accommodate CN rail service from Wisconsin to western Canada for frack sand producers to meet projected customer demand.

The frack sand market, however, has encountered structural challenges from shale oil volatility and decisions by frack sand users to source sand locally, contributing to unforeseen risks and lessened the value of CN's previous investment.

Turning to how CN makes its investment decision, first let me remind the Board that CN has a duty to its owners, and we must keep the duty in mind when making decisions about capital. It's important that we allocate wisely and fund projects that we expect to create value.

Shareholders will not accept a company that invests in projects that don't meet their minimum risk-adjusted return requirements.

In other words, our expected return needs to be greater than the cost of capital.

In considering specific projects, we very carefully assess expected returns, so the most likely outcome, as well as the risk of achieving that outcome. In assessing expected returns, we have to consider traffic forecasts, and it can be difficult to predict future resulting traffic flows, especially given the operating challenges Rob described. And we consider factors that can lead to uncertainty regarding expected returns, including the availability of regulated interswitching in Canada. And conversely, we would look at factors that could mitigate uncertainty, such as contractual provisions stipulating minimum volume commitments from our customers.

All else being equal, an investment with higher risk needs to generate a higher return.

For example, the frack sand investment in Wisconsin I mentioned involved a branch line transporting only a single commodity. That investment required a higher return compared to an investment in a high-density mainline which carries a variety of commodities and thereby diversifies risk.

And the 2016 forced access proposal would inject new risk into these decisions. It will increase the risks that we will lose the long-haul movement as a result of regulatory intervention, which will raise te bar in terms of required returns. It will also introduce more variability around expected returns, which could also lead to particular projects not meeting hurdle rates.

Ultimately, it will make it harder for certain investments to be justifiable.

Some suggested that forced switching will necessarily increase investment because competition always spurs investment. Frankly, this proposition doesn't account for the realities that CN faces when making decisions, and is counterintuitive to the investment decisions made in the industry. Whether in the U.S. or Canada, we would not make an investment if there is a significant risk that the additional traffic we would expect to move as a result of the investment would benefit a competing railroad.

Let me conclude with a comment on the cost-based compensation proposals, which we believe are not appropriate for forced switching.

As previously mentioned, in CN's experience in Canada, when a railroad knows that a customer can seek to force a cost-based regulated interswitch, it is more difficult to justify infrastructure investment in the network within the regulated interswitching zone. Rob Reilly described the adverse impacts to transit time and network fluidity of such forced switching, that harms the broader rail network and customers that rely on it, which would tend to make rail less competitive vis-à-vis truck, especially for time-sensitive shipments, such as those by intermodal customers.

This is why from CN's perspective, should the Board decide to proceed here, the market-based rate must be a critical feature of any compensation for forced switching that is not premised on an abuse of market power by a railroad.

Thank you. And with that I will turn it over to Andreas.

CHAIRMAN OBERMAN: Let me just interject here in the interests of watching the clock. There's only two minutes left on CN's time that was asked for. I see that CSX only has one witness.

We are 30 minutes away from our hard stop.

So Ray and Matt, I don't know if you are -- want to work this out and let CN use up some of CSX's time. We really would like to avoid coming back tomorrow, but I don't want to take up anymore time saying that. Perhaps you two guys can talk about it.

MR. WARREN: We have been texting back and forth, Mr. Chairman. I think CN can wrap up very quickly in five minutes.

CHAIRMAN OBERMAN: Very good, thank you.

MR. AEPPLI: Thank you.

In the interest of time, I will defer to Kathryn and Matt. However, we did submit written material and a presentation that provides an overview of what's happened with global competition, and the state of freight transportation in the U.S. that kind of indicates the degree to which there is a lot of competition going on, pretty much across the board, and is definitely part -- should be part of the consideration when you're looking at the reciprocal switching.

MR. WARREN: Mr. Chairman, we did submit these exhibits in the record and it might be most efficient if we could just simply enter that into the record and obviously make Mr. Aeppli available for an ex parte meeting if the Board has questions about his analysis.

CHAIRMAN OBERMAN: I think that's fine and we have it in writing and Staff and the Board members can review it in a timely fashion. Thank you.

MR. WARREN: And I am going to apologize in advance for speaking quickly in light of the late hour.

Just three points that I wanted to make in response to what we've heard over the last couple of days.

First, it has been somewhat surprising to me as somebody who has been involved with this proceeding from the beginning over the last 11 years to hear so much emphasis in the last couple days on the idea that the forced switching proposal might be a really good way to deal with recent service problems on certain Class I railroads.

I don't think there's anything in the record that supports the idea that forced switching could make service better on a network-wide basis. That was not a purpose of the rule that was listed in the 2016 NPRM. There's obviously been a lot in the record about service. But it's been largely from railroads and others who are concerned about the rule, saying that we think that doing things that add additional -- add additional action in the system, switches in the system, are going to have service effects, and responses from proponents of the rule saying it's not going to be that bad.

You know, as Mr. Moreno put yesterday, the railroads are being apocalyptic about this. You don't have any reliable evidence out there that a forced switching regime in which essentially shippers are going to have the ability in many instances to second-guess a railroad's operating decisions is something that could make service better for everybody.

It is certainly true, and I'm not going to repeat I think what was a very useful colloquy between Member Fuchs and Mr. Atkins about 1147, and the Board already has developed regulations that are specifically targeted to situations where a shipper has specific service problems and believes that, you know, reciprocal switching would be a good alternative to fix those service problems.

So I think that that's something the Board really needs to look at. And it's not really been something that's been discussed in this 711 record because, I think until very recently, this has not been a proceeding that's been focused on ways to improve rail service.

The second thing that I would like to point out, one quick correction, Indorama testified earlier, they are a valued CN customer. However, they are a CN customer only in Montreal, so I think the record indicated that they might be a Class I railroad that Indorama was having issues with, but CN doesn't serve them in the United States.

I would also like to just quickly respond to the presentation that Professor Nolan made.

As I understand it, Professor Nolan presented -- he presented a regression analysis based on data that I think he indicated was actually done by one of his students, and the idea was to show that extended interswitching had a beneficial effect on grain car cycle times. And the way this was done was to take a period of time when extended interswitching was in effect and then compare to the period of time after extended interswitching expired.

The one thing I would like to point out is that the only way such a comparison works is if the two time periods you are comparing are actually comparable. And here we know that's not the case, because the cutoff point was September 2017, and if you go back and look at the record and if you listen to CN's podcast, CN has a grain insight podcast that it communicates to its grain customers, and if you listen to those podcasts from late 2017, it will tell you that there were actually a number of service challenges that CN experienced at that time.

There were multiple derailments on one day in Alberta due to high winds knocking trains off the tracks. There were mudslides in October. And at the same time, there was a 20 percent year-over-year increase in freight demand.

So if you're not comparing apples to apples, the comparison is not going to be very meaningful. I know I'm very going quickly.

I think the last thing I would say is that I do think a lot of the policy goals that the Board has expressed in this hearing, expressed recently, are really good and valuable. Encouraging railroads to compete better with trucks and get trucks off the road is good and valuable. But that's not something that is going to be served well by this forced switching proposal.

And, you know, it's not really anything

that was from the beginning, you know, a purpose of this rule.

So I think as the Board is looking for ways to encourage railroads to be able to compete better for business that's currently moving by trucks, the way to do that is to encourage railroads to make the network more efficient, not less efficient.

With that, I will turn it over to Kathy for some final remarks.

MS. GAINEY: Thank you so much, Matt.

Good evening and thank you so much to the Board. I'm Kathy Gainey, CN's deputy general counsel. I've been with CN for five years. Thank you to you and your staff for your time this week at the hearing, and for bringing stakeholders together to engage on these important questions.

CN is pleased to participate and offer our perspective, and I had just a few things that I wanted to mention before we close out.

First, in light of the discussion over the last two days regarding the extent of competition in the rail industry, CN recommends that the Board would update its competition study. During the hearing, we've heard questions regarding the extent of competition in the rail industry, including the extent to which the number of sole-served rail customers in the United States has changed over time.

I can tell you that CN competes vigorously for customers against rail, truck and water alternatives on our network.

But we understand the importance of empirical evidence. A little over a decade ago, the Board commissioned an independent study to look at the state of competition in the rail industry, and in both the initial report in 2008 and its update in 2010, the study did not find any evidence of widespread abuse of market power by the railroads.

It appears that there may be questions about whether things have changed since 2010. To the extent there are such questions, CN encourages the Board to seek the answer through updated analysis and not anecdotal evidence.

CN respectfully suggests that the Board update its competition studies.

Second, CN encourages the Board to finalize the voluntary alternative dispute resolution proposal. CN is a strong proponent of alternative methods of dispute resolution. The level of freight rates and whether they are too high is another reason that has been given to encourage the Board to expand the availability of forced reciprocal switching under the 2016 proposal.

Finalizing the voluntary ADR proposal would address any concerns about rates directly rather than indirectly through a forced access regime that could lead to unintended consequences, such as network -- deteriorating network fluidity and decreasing incentives to invest.

Finally, in light of the testimony over the last two days, CN agrees with the suggestion that stakeholders should explore whether there is an alternative to the 2016 proposal that could avoid the adverse consequences of that proposal.

CN appreciates Union Pacific's invitation for a conversation, and the suggestion from others at the hearing regarding topics for additional dialogue. CN today shared examples of the potential harms to the rail network and its customers who rely on it, that could result from the adoption of the 2016 rule as proposed.

CN was proud to work with stakeholders in the voluntary alternative dispute resolution process and CN would be interested in participating in such stakeholder conversations that could include larger and smaller railroads, shippers and shipper associations.

From CN's perspective, the goal of such a conversation would be to collaborate to address the concerns that prompted the 2016 proposal, while avoiding its negative consequences for network operations and investment incentives.

We support the proposal that stakeholder groups could collaborate to try to find common ground. We welcome your questions in this abbreviated time period, and I wanted to just mention as well in light of the conversation that

Member Fuchs and Ray Atkins had earlier, that CN of course would be happy to engage in any efforts to flesh out examples of service challenges under 49 CFR 1147.

With that, CN panel is concluded.

CHAIRMAN OBERMAN: Thank you, Kathy. Very concise.

I am going to assume that members have no questions, but maybe we should check.

Does anybody have a question?

All right. Why don't we move on to CSX, and then Ray, if you and Sean finish before 7:30, there might be time for a few questions. But if not, we'll proceed.

MR. ATKINS: We'll do our best.

CHAIRMAN OBERMAN: All right. You're on.

MR. ATKINS: Sean, you have the floor.

MR. PELKEY: Thank you. It's a pleasure to be here with you today. My name is Sean Pelkey, and I am CSX's CFO. I've been here in the finance department since 2005, and what I want to do today is take you inside the business to help you better understand the motivations behind our financial decisions, and underscore how reciprocal switching could dramatically impact the incentives that are currently working to help drive our commitment to growth.

CSX has previously explained to the Board why it believes that STB's proposal would reduce incentives for future capital investments, but shipper interests are arguing just the opposite.

Let me assure you that regardless of the outcome, CSX will continue to invest appropriately to maintain the safety and reliability of our network. However, using practical examples, I want to make sure you fully understand CSX's commitment to growth, and how the proposed regulatory changes would work against that goal by creating disincentives to invest and grow the business.

I want to start first by focusing on the opportunities to grow the freight rail business.

The dashed gray line here represents growth in the U.S. economy since 1990, and as you can see by the blue line, the solid blue line, rail merchandise volumes have been relatively flat over that time period, heavily impacted by the great recession in '08 and '09.

During that time, CSX has been competing with Norfolk Southern and other railroads in the East fiercely, trading share back and forth, as market forces work to encourage competition.

Meanwhile, as the gold line illustrates, the industry has successfully converted a significant amount of freight from truck to intermodal, far outpacing GDP.

Despite this growth of intermodal business in the rail industry in aggregate, trucks continue to move far more freight than the railroads. While we greatly appreciate our truck partners and we work with them daily, I think all of us can agree that the public would be better served with fewer, not more, trucks on our highways.

As you may know, rail is three to four times more fuel-efficient than truck, and CSX has been an industry leader, helping our customers avoid 11 million tons of CO_2 emissions just last year.

That's a great stat but we need to step back and think about what's possible.

The table on the left shows that trucks haul over 1 trillion ton-miles of freight for shipments over 500 miles. Imagine all of that moved via rail. It would result in tens of millions of truckloads off the highway each year. It would result in a savings of 5.6 billion gallons of fuel, or 62 million tons of CO_2 emissions. That's a billion trees.

The Board's reciprocal switching proposal will distract us from our ultimate goal, a goal it seems the Board shares, which is to expand rail's share of the freight transportation pie.

So why haven't we been able to close the gap and already win more share from truck? If we go back to 2005 when I joined CSX, we've made incredible improvements in safety, service and efficiency. We're more reliable, and we've been able to invest more in the business.

You may not know that has not always been the case, in fact, we had no free cash flow when I joined the company. We could barely cover the cost of much lower capital investment.

CSX is in a much different place today. While we're a regulated industry, we're also a public company. Our investors measure our performance versus the cost of capital, as you know. For most of the last hundred years, railroad returns on capital were far below the cost of capital. And the only way to fix that is to grow profitably or to drive efficiency gains.

Generally speaking, companies don't pour more growth capital on when their returns are low. They begin by getting rid of lower-return segments and driving efficiency gains across the rest.

In our industry, safety and service are prerequisites for growth. So for most of the last few decades, CSX focused on reducing excess capacity, rationalizing underutilized track and driving efficiency gains.

During this time, our combined merchandise and intermodal volumes were largely flat, but we have now set the stage and are fully focused on growing the business.

We're changing the narrative. In the face of supply chain challenges that emerged in the second half of last year, CSX responded. We accelerated investments, added overflow container yards, transloading sites, and we worked with eastern ports to utilize inland rail yards and reduce congestion.

We're also winning new business development projects. The green dots, if we can advance the slide, the green dots here represent 92 projects put in service in 2021 and over $100 million of annual revenue opportunity.

There's five locations on the map you see there where we have announced large industrial development projects recently that will drive future growth to rail. These will create nearly 20,000 jobs, and a common theme across many of these opportunities is sustainability.

These locations are prime examples of customers working with us and making long-term investments to locate on rail. They are evidence our strategy is to capitalize on the efficiency and reliability of our service to move more freight.

And while actions are clearly more important than words, the narrative I'm outlining is one we're also emphasizing over and over with our investors. All these quotes are from our CEO, Jim Foote. As you can see, he has made it clear that our goal is to move more freight.

The railroads have been criticized over the last few years for an overemphasis on lowering the operating ratio. And while the OR is a good proxy to measure efficiency, it should be abundantly clear that we're not interested in shrinking the business just to minimize our operating ratio.

There's one central message I'd like the members to take away today, it's that CSX is focused on growth.

And we're putting our money where our mouth is. When we began to implement scheduled railroading, our long-term bonus was based on operating ratio and return on assets. Strategy was control costs, take waste out and improve asset utilization.

But as we have evolved, CSX, and this with the support of the board of directors, has helped sharpen our focus to growth. Our executive compensation has changed, removing OR from the equation, and instead rewarding growth both in operating income and cash earnings.

These measures incentivize profitable top-line gains and investments that exceed the cost of capital. This signals a dramatic change from the company, that CSX has entered into a pro-growth phase. And as a company, we're all aligned.

Last year we acquired Quality Carriers, the country's leading liquid chemical bulk trucking company. We're working to convert over the road chemicals freight to rail, driving environmental benefits, taking trucks off the highway, and allowing drivers to get home to their families.

We're also seeking Board approval to acquire Pan Am railroad, which is a dramatic shift from the decades of rail line rationalization.

As you've already heard, that acquisition is fundamentally all about investment and growth. We're also adding resources, having hired 1500 conductors in the last 14 months. In addition to about 1000 hires across maintenance of way, intermodal, customer service, mechanical and other functions.

We're investing more in growth capital and a total of $2 billion of capital spending this year, including sighting extensions, cutting edge Howard Street Tunnel renovation in Baltimore, investments in advanced technology and capital for industrial and customer development projects.

As you've just heard, we've aligned our pay incentives to this strategy.

Turning to the reciprocal switch proposal, I'm very concerned that despite the best of intentions, it would force us to turn in a completely different direction. There's a second takeaway, it's the risk that this proposal would discourage precisely the kind of growth investments that benefit all stakeholders, including shippers and carriers.

And so to dive further into this question of incentives, I want to use a simple example that's quite common for us in our quest to win share.

As you know, we evaluate projects looking at their rate of return versus the cost of capital, and if the return is attractive, we invest.

I'm going to illustrate a hypothetical industrial development initiative that's typical of those we evaluate regularly. In this example you will see not only how CSX has significantly improved profitability levels, support and encourage future investment, but also how the Board proposal on reciprocal switching, if adopted, would disrupt those incentives.

So the premise is this: A shipper is interested in service from CSX and would like to convert its business to rail. The shipper is willing to make some investments, but has asked CSX to commit $10 million towards upgrades that will enable us to serve their location. In exchange, the customer is willing to commit to 3000 carloads per year at a rate of 2500 per carload.

The business is guaranteed for the three years, and let's assume the customer is willing to pay the shortfall if for some reason they fall below 3000 carloads.

Did we lose the slides? Apologies.

So I'll keep going. Basically, what it's going to result in is 7-1/2 million of revenue across the first three years.

If this proposal came to us in 2016 when our transit times were slower, we would assume that a typical operating ratio on the move would be about 75 percent. That's $2 million of operating income and a little over a million dollars in cash flow.

Three years times 1.4 million isn't enough to recover a $10 million investment. So -- but we're building this new infrastructure and making the investment with the expectation that we should be able to retain the business.

Since we'll have exclusive rail access and the customer will also have made investments, we would anticipate a strong chance of renewing the contract.

Let's assume a 75 percent probability. In the right-hand column you can see that using the same revenue and operating ratio, but probability-weighting the cash flow, the expected value is about a million dollars per year, in after tax-cash flows.

That results in a 3 percent rate of return, and there's no way we'd be able to make this investment. But if we change just one variable in this scenario, the outcome is quite different.

Our operations today are significantly more efficient. We have reduced handlings, which results in less dwell and faster transit times. We've also improved reliability and efficiency gains, and so the rate we charge the customer doesn't change, the volume doesn't change, the probability we renew the contract doesn't change.

The only difference is that our cost structure is lower and the operating ratio is now 60 percent. This results in more operating income and cash flow and a 14 percent expected return.

CSX can now make the investment with the customer to drive growth to the railroad and away from the highways.

Let me go to the next slide and use the exact same example. The fundamental parameters of the investment decision are the same, customers asking for $10 million, and it's generating $7-1/2 million a year in revenue. The operating ratio is still 60 percent in the first three years, and the resulting financials are the same.

But let's assume this location now meets the criteria for reciprocal switch. The assumptions we make beyond the initial three-year contract would change significantly.

As you've heard over the course of the last few days, we all agree that mandated reciprocal switching is likely to result in lower rates. For some it may be the primary focus.

And as a result, it could also result in CSX becoming the short-haul switch carrier starting in year 4.

As we approach the analysis, rather than assuming a 75 percent probability, we retain the business with the same level of profitability, we would now have to take into account the probability that rates would go down or that we'd be relegated to the short haul. We would still assume a 75 percent chance this business stays on rail rather than truck, and since we have confidence in our ability to serve the customer, let's assume we would put a 50 percent probability on retaining the business at lower rates, and just a 25 percent probability that we would lose the business to another carrier through reciprocal switching.

Lower rates mean less profit. Ignoring the negative impacts of inefficient movements on our business, let's assume for simplicity that the costs don't change.

Since the rate is reduced, the operating ratio goes up and the operating income goes down. If we end up being the switch carrier, the rate is much lower, and we have fewer miles to spread our fixed costs, resulting in an even higher operating ratio and much lower operating income. We probability-weight these outcomes. The return is only 5 percent, which is below the cost of capital.

And even with our improved efficiency and profitability, we would not be able to make this investment.

There's been a lot of rhetoric over the last two days, but what I just walked through is how we at the railroad actually make capital budgeting decisions.

Leaving the rhetoric aside, I can tell you very simply that the Board's proposal, if adopted, will impact the math we do when exploring investment opportunities that support growth.

The more uncertainty there is, the more difficult it is to justify growth investments.

The Board has a choice. It can have a broad vision promoting genuine competition, particularly allowing us to take trucks off the nation's highways with all the public benefits that follow. It can do this by creating a regulatory environment that protects the right to the long haul, and a lawful amount of differential pricing, while encouraging growth investments.

Or the Board can have a narrow view of competition, forcing synthetic competition through reciprocal switching, compressing railroad rates and returns, meaning it would be more difficult to increase overall market share and we'd expect the current rail piece of the pie to keep shrinking.

Attempting to solve the current service issues at the railroads through a permanent reciprocal switching proposal is a dangerous solution to a temporary problem we're working vigorously to solve.

The proposal injects uncertainty and operational complexity, and it's going to cause us to be very hesitant to invest for growth across the network. Market-based incentives driving investment decisions are in place and they're working, we're adding new customer locations, expanding our network, investing in advanced technology and thinking innovatively.

We're excited for what the future holds, and I want to express my appreciation for the opportunity to appear today and tell our story.

CHAIRMAN OBERMAN: Sean, I congratulate you on your conciseness.

MR. PELKEY: I tried.

MR. ATKINS: Chairman Oberman, I think two minutes, I think I can be done by 7:30.

CHAIRMAN OBERMAN: Go for it.

MR. ATKINS: It's been a long day and my voice is not holding up well, so I'm going to hit the highlights and call it a day.

CSX is respectfully asking the Board to abandon this six-year-old proposal and instead focus on two other alternatives that have a much higher prospect of delivering meaningful relief.

And the reasons are pretty succinct. The first is this proposal would restructure the freight rail industry and it could have serious economic consequences. I appreciate the whether it would or not is an area of debate, but you certainly heard a lot of testimony to that point.

Second, respectfully, we have concerns about your ability to control the potential impacts of that proposal through a case-by-case adjudication.

The third reason is the proposal is fairly incomplete. And it's not just minor details, but rather really massive, major issues, such as the lack of any serious access pricing proposal, that makes it virtually impossible to assess the impact on the industry.

And there's another example too I would like to mention because nobody has in two days, which is amazing, the statute actually contemplates labor protection for employees who lose their jobs as a result of a forced switch. But there's no indication of how that will be done. Is it the New York dock-type protections? Does it happen only when the STB orders relief? Or what if a carrier voluntarily agrees to force switch because they believe they are required to by law? None of those issues are being addressed in the 2016 proposal.

The fourth reason, and this one I really just defer to our papers, but we obviously have raised some questions regarding the legality and your legal authority. I would just emphasize that federal courts have become increasingly skeptical of attempts by regulators to take obscure provisions of law and radically transform their industry. Whether it's EPA's failed effort to regulate greenhouse gas or FDA's failed effort to regulate cigarettes, the courts demand more evidence the more profound the change.

But let me turn to the last reason, which is really it gets to the heart of CSX's concern, which is we really feel there are better ways to address rates and service. For rates you've got a voluntary arbitration process that is innovative, and we think offers an opportunity for customers and railroads to resolve their disputes quickly, confidentially and succinctly.

And then of course we've talked about section 1147 as an alternative path to resolving service issues, and I actually think it's encouraging, Patrick and I were talking about some issues previously, but I just remind the Board that four years ago in 2017, you actually -- you asked stakeholders to get together and talk to your staff about how those could be improved. I know CSX participated in that, in the docket you have favorable letters from people like ACC and the Fertilizer Institute saying that this was a really useful path for you to pursue. And I think there's a lot of material that your staff gathered that you could mine to improve that process.

But in the very end of the day, we really don't think you should gamble with the American freight rail network with such a flawed 2006 proposal that offers no analysis of how this change will impact investment decisions, operating fluidity and differential pricing.

You have all shared your vision and desire to encourage growth, to encourage capital investments, to encourage more jobs and to encourage trucks being taken off the highways.

Those are outstanding goals for this agency, but we are concerned the 2016 proposal would drive the industry in the opposite direction, and we think this is why a broad coalition of stakeholders have urged caution, from over-120 members of

Congress, to important intermodal customers, to regional passenger companies, and to railroad labor.

So again, on behalf of CSX, we are pleased to be the last speakers, we appreciate the time, and your patience and your willingness to go until 7:30. And we would answer any questions in the 10 seconds we have allotted left.

Thank you very much, Chairman Oberman.

CHAIRMAN OBERMAN: Ray, thank you. Very excellent presentation.

Is it the pleasure of the Board that we should adjourn this hearing, or does anybody think we need to come back tomorrow for questions? Because we are at the 7:31 actually.

I don't hear any Board member disagreeing with the idea that we should declare the public hearing aspect of this procedure concluded. Obviously, there is going to be an opportunity for ex parte communications. It won't be unlimited, as I said at the beginning. It is my intent to move forward on this proposal one way or the other, or some modification thereof, and act on it.

So without any indication of what that will be, because I have no idea, this public hearing aspect is adjourned.

And I do want to, by the way, thank everybody for their participation and the hard work they have put into address us. I don't want to overlook that. And of course staff, IT people, have done a fantastic job.

So thank you all.

BOARD MEMBER FUCHS: And Marty, Carmen Smith, our fabulous court reporter, and thanks to CSX for testifying at the end of the night.

CHAIRMAN OBERMAN: All right, everybody. Be well. Take care.

Ray, take a lozenge.

And we'll see you all soon.

(Whereupon, at 7:32 p.m., the hearing was concluded.)

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