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Case: Hearing on Reciprocal Switching



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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.

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

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

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

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

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

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

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

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

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

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

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

21 As noted in the decisions we issued two
22 weeks ago, we will hear from panels 4 through the

1 end of the speakers list today. We will take a
2 30-minute break for lunch. We aim to do that around
3 12:30 Eastern, but will not necessarily be exactly
4 at that time. And of course there will be time for
5 several short breaks during the day.

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

16 Is everybody here? All righty, very good.

17 Herman, you're up.

18 MR. HAKSTEEN: Actually, Dan is up.

19 CHAIRMAN OBERMAN: Okay.

20 MR. ELLIOTT: Thank you.

21 CHAIRMAN OBERMAN: Good morning.

22 MR. ELLIOTT: Good morning. Nice to be

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

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

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

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

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

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

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

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

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

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

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

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

1 rules could have helped.

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

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

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

22 When asked what the reason for the rate

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

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

11 Another PRFBA member has a plant in Ohio
12 that is served by a Class I railroad and another
13 plant in Georgia served by another Class I railroad.
14 100 percent of their rail service is inbound
15 ingredients amounting to approximately 2700 cars per
16 year in total.

17 The plants have capacity for eight to nine
18 and 16 railcars, respectively. The plants operate
19 24/7. Missed and erratic switches at these plants
20 have become more prevalent in comparison to the
21 public switch schedule at the plants.

22 The railroads have stated that this poor

1 performance has occurred because of crew shortages.
2 This unreliable switching service has led to
3 production interruptions at both plants.

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

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

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

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

1 competition.

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

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

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

19 That is the opportunity for growth of the
20 rail industry. Reciprocal switching can provide
21 some rail shippers with the better service and
22 competitive rates they may require to move their

1 transportation business from truck to rail.

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

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

11 MR. HAKSTEEN: Thanks, Dan.

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

16 I just wanted to take a little bit of a
17 different approach today, and I wanted -- first of
18 all I want to talk a little bit about the hearing
19 last week at the subcommittee. Some folks kind of
20 hijacked that meeting and turned it into a
21 reciprocal switching hearing, and I just wanted to
22 make sure I hope that the important part of that

1 hearing got done. That was our support, the
2 shippers community support for the STB and to hope
3 that you'll be around and in a healthy state, funded
4 well to continue to do your good work. In speaking
5 on behalf of the shippers community with the
6 railroads.

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

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

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

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

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

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

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

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

20 So let's talk about customers. So AAR
21 last night in their testimony and at last week's
22 hearing, they listed all of the people that were

1 opposed to reciprocal switching. Interesting
2 enough, and I listened to the tape a couple of
3 times, there's no shipper groups there. There's no
4 shippers.

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

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

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

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

19 So I just want to go back to simple facts.
20 You guys are getting bombarded with all kinds of
21 testimony, last night's AAR presented more reports,
22 my head was spinning by the time that presentation

1 was over. And I appreciate all the hard work they
2 did.

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

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

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

17 Customers are stating in a recent survey,
18 Morgan Stanley survey, that they are moving rail
19 volume to truck. So if we take the numbers that are
20 presented by the American Trucking Association and
21 the AAR, it would suggest that there's about 4-1/2
22 million truckloads a year additionally between 2017

1 and 2021 because of the amount of business that's
2 left rail and gone to truck.

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

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

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

21 Anyway, I just want to conclude by saying
22 railroad volumes are down, we need railroad volumes

1 to be up. Our supply chains need to be diverse, not
2 less diverse. We need the choice of rail, and we
3 need it to be healthy.

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

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

14 I'll hand it back to Dan.

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

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

22 The AAR responded that railroads are

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

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

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

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

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

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

20 These numbers do not demonstrate an
21 industry that is concerned about hiring and making
22 sure it is properly staffed to provide adequate

1 service to its customers.

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

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

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

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

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

21 Now is the time to bring this purpose to
22 fruition, or rail shippers will continue to endure

1 poor service and higher rates, as these stories from
2 PRFBA member companies demonstrate so clearly.

3 Thank you very much.

4 CHAIRMAN OBERMAN: Thank you both.

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

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

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

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

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

3 MR. ELLIOTT: We can get that to you.

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

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

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

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

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

22 CHAIRMAN OBERMAN: The other question I

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

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

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

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

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

20 And I just wondered if you have any
21 concrete experience. There are other shippers
22 coming on today that I could ask this question of

1 who could enlighten us on the way they see it when
2 they actually use it, how well or how not well it's
3 working.

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

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

17 The question was raised, I think it was by
18 UP, that if you are a shipper who has a reciprocal
19 switch, it adds between 24 and 98 hours to your
20 travel time. And I don't know if that's true from
21 the shippers point of view, and I don't know how the
22 shippers feel about it. Maybe they think it's worth

1 the extra time because they're ultimately getting
2 better service, or maybe it doesn't take that much
3 time.

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

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

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

15 Just a little more homework for you,
16 Herman.

17 MR. HAKSTEEN: Thank you.

18 CHAIRMAN OBERMAN: Karen Hedlund has a
19 question.

20 BOARD MEMBER HEDLUND: Thank you.

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

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

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

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

13 Could you talk about that a little bit
14 more?

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

22 And I think if you do talk to the shippers

1 on this panel, that when there is competition,
2 generally speaking, and obviously there's blips in
3 service that are not necessarily controlled just by
4 competition, there's other factors involved.

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

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

13 CHAIRMAN OBERMAN: Patrick?

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

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

22 So I would like to be absolutely 100

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

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

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

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

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

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

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

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

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

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

18 We have a couple of members who go through
19 quite an effort to record first mile/last mile data
20 for their own. But, you know -- I hate to say it,
21 but not a lot of them do, because when they sit down
22 with the railroads and say you're 22 percent on time,

1 the railroads say yeah, okay. Like there's no
2 effort, there's no reason to try.

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

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

16 MR. HAKSTEEN: Right.

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

22 MR. HAKSTEEN: Absolutely, sir.

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

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

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

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

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

1 think their service shows that.

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

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

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

19 BOARD MEMBER FUCHS: What I'm hearing from
20 you, Herman, is if the board were to start looking
21 at first/last mile service as an indicator of
22 inadequate service, we would be advised not only to

1 look at let's call it switching success percentage
2 but also switch frequency?

3 MR. HAKSTEEN: Yes, sir.

4 BOARD MEMBER FUCHS: Adjusted for business
5 levels or demand.

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

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

16 BOARD MEMBER FUCHS: That's one way to
17 think about it. Another way to think about it is
18 again if you're trying -- if you're thinking that
19 the basis for ordering a switch is, you know,
20 somebody in a worse competitive situation getting
21 treated worse, right, because they're trying to
22 tease out -- it's because they're not in as good a

1 competitive situation. You might also take a look
2 at well, hey, when the railroad reduced switches,
3 they seemed to reduce the switches to people that
4 weren't as competitively served and not.

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

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

22 MR. HAKSTEEN: Thank you, sir. Nice to

1 see you again.

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

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

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

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

20 I guess stated differently would be at
21 what point does the delay so frustrate the shipment
22 that your shippers in fact then choose to ship their

1 goods by truck?

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

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

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

20 So I would suspect that our PRFBA members
21 would not make that decision. Just like our PRFBA
22 members find a lot of difficulty in switching to

1 truck because they have now invested millions and
2 millions of dollars in these huge lease fleets.
3 It's pretty difficult to go up to the C level office
4 and say by the way, I parked that \$12 million worth
5 of railcars we bought last year. It's a very, very
6 difficult thing to do.

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

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

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

22 The other factor is filling the pipeline.

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

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

13 So on time reliability, sir, hands down.

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

19 MR. HAKSTEEN: Absolutely, sir, hands
20 down.

21 CHAIRMAN OBERMAN: So that's not -- on
22 your particular group's basis, that may still be a

1 factor because of the unusual cost of refrigerated
2 cars. But if by getting a switch you've greatly
3 improved your consistency and reliability, that
4 trade-off might be worth it, it sounds like, to the
5 shipper.

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

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

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

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

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

22 MR. HAKSTEEN: Yes, sir.

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

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

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

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

17 MR. HAKSTEEN: Thank you.

18 CHAIRMAN OBERMAN: Any other questions?

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

21 And thanks to both of you for sharing this
22 morning.

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

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

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

22 So, you know, have you guys sort of put

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

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

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

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

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

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

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

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

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

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

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

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

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

16 But Herman, if you had any --

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

21 MR. HAKSTEEN: If I can just add to Dan's
22 comments, I mean, you know, at a macro level, right,

1 so it's really difficult to dig into the kind of
2 numbers in the research.

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

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

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

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

22 If you look at what's happening today,

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

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

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

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

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

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

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

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

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

16 BOARD MEMBER PRIMUS: Thank you.

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

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

22 If this rule were implemented and

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

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

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

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

18 VICE CHAIR SCHULTZ: Thank you.

19 CHAIRMAN OBERMAN: Herman, just a
20 follow-up on that. Is it the case, as you
21 understand it, where a shipper has a reciprocal
22 switching tariff by whatever means of a merger

1 condition or the railroad just entered into it with
2 them, that's a tariff they can call on to use when
3 they need it, either for establishing a long-term
4 regular service or on an as-needed basis? Is that
5 the way it works?

6 MR. HAKSTEEN: I would agree.

7 MR. ELLIOTT: That sounds correct.

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

15 MR. HAKSTEEN: Yes, sir.

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

22 Your point is when a railroad provides bad

1 service, they ought to be mindful of the downstream
2 effects on the supply chain.

3 MR. HAKSTEEN: Yes, sir.

4 CHAIRMAN OBERMAN: Fair enough.

5 MR. HAKSTEEN: Thank you very much, sir.

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

9 MR. HAKSTEEN: Yes, sir.

10 CHAIRMAN OBERMAN: Okay. All right.

11 Thank you both.

12 Any other questions?

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

16 MR. HAKSTEEN: Thank you, sir.

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

19 MR. HENRY: Thank you. And good morning,
20 Chairman Oberman and fellow board members. My name
21 is Dalton Henry, vice president of policy for U.S.
22 Wheat Associates. And I would also like to thank

1 you for the leadership and time you have put into
2 this subject already and secondly for the
3 opportunity to speak fairly specifically today to
4 the current lack of competition between U.S.
5 railroads and those specific impacts on U.S. wheat
6 farmers.

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

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

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

20 Previously we had long parroted the
21 message that U.S. agriculture benefits from a world
22 class transportation infrastructure. But one thing

1 that has become clear over the last decade is that
2 we've repeatedly seen global competitors increasing
3 their competitiveness and, frankly, their market
4 share in export markets that geographically and
5 logistically the U.S. should dominate.

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

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

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

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

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

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

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

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

19 And that's a point that oftentimes folks
20 kind of wonder a little bit about, and essentially
21 what our transportation working group did back in
22 2020, is that we collected quotes for rail service

1 from grain shippers in several growing regions for
2 major U.S. grain crops.

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

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

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

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

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

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

15 The unchecked market power railroads have
16 over wheat shippers has had serious implications for
17 our competitive position in the world and is why
18 today we're asking you to move forward with the rule
19 on reciprocal switching. Under the current process
20 for switching remedy, wheat shippers do not bring
21 forward cases and are often forced to modify
22 operations or commodity pricing to their and their

1 customers's detriment because no other viable
2 options are present to increase competition or
3 provide service options.

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

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

1 shippers.

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

4 CHAIRMAN OBERMAN: Thank you much, Dalton.

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

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

15 What you've really seen a trend of
16 especially in that first link is as farms have
17 gotten larger and production has gotten larger, the
18 facilities that serve them have gotten larger and
19 fewer, and we've seen a big shift especially over
20 the last two decades from having many locations out
21 there that only handle loading a few cars at a time
22 to primarily moving wheat exports via shuttle trains

1 now, you know, 110 cars that are dedicated to that
2 shipment and can load and unload in specified times.

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

5 MR. HENRY: Yep.

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

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

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

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

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

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

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

21 So have you given any thought to how --
22 whether we ought to and whether we legally can have

1 a different approach for a commodity like wheat than
2 from, say, chemicals or plastics or scrap or some of
3 the other commodities that are closer in areas?

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

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

20 CHAIRMAN OBERMAN: You know, I asked
21 questions yesterday of the railroads about the
22 practicality of limiting the location or who was

1 eligible for a switch to shippers whose traffic was
2 already taken to a yard where other people are
3 already getting reciprocal switching. If that kind
4 of limitation were applied to wheat growers or, you
5 know, wheat elevators -- actually, are they
6 elevators for wheat, the same --

7 MR. HENRY: Uh-huh, yep.

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

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

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

21 MR. HENRY: In my view, the need would be
22 more at the origin end, but there would also

1 certainly be instances where we could benefit from
2 both.

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

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

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

21 I think we could use some education on
22 that area, so let me encourage you to ask your folks

1 to take a hard look at whether there's a better
2 approach for your folks than just trying to fit a
3 square peg into the round hole of reciprocal
4 switching or vice versa for wheat growers.

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

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

13 I think Karen has her hand up.

14 BOARD MEMBER HEDLUND: Thank you.

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

18 MR. HENRY: Just right at about 50
19 percent.

20 BOARD MEMBER HEDLUND: 50 percent. And so
21 American wheat production, given what has happened
22 to Ukraine and Russia and restrictions that the West

1 is putting on Russia in particular, I understand
2 that Russia and Ukraine together, what I've heard on
3 television, account for 30 percent of world wheat
4 production, that this puts real importance on
5 encouraging wheat production and export of U.S.
6 wheat and makes it that much more important to the
7 whole world and world health.

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

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

16 You are certainly spot on that both Russia
17 and Ukraine are large wheat producers, together it's
18 30 percent of global exports that they make up. And
19 those -- you know, the trend that we have seen, it
20 was Russian wheat exports flowing into North
21 America, frankly, that triggered us in 2018 to say
22 how is it that we are so uncompetitive in a

1 transportation sense that exports from the Black Sea
2 are competitive in our hemisphere on a price basis.

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

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

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

14 Thank you.

15 MR. HENRY: Thank you.

16 CHAIRMAN OBERMAN: Patrick?

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

19 CHAIRMAN OBERMAN: Okay. Any other
20 questions for Dalton?

21 BOARD MEMBER PRIMUS: I have just real
22 quick.

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

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

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

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

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

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

21 MR. HENRY: Yes, they continue to go up.
22 Posted rate tariffs are -- it's a pretty steady

1 increase and has continued to be so since then. You
2 know, a couple of times a year, we always are given
3 the argument that very little wheat moves at a
4 post-the-tariff rate, which is interesting to us
5 because it always leads us to ask the question of
6 why those posted rates exist, and we don't have
7 access to the underlying rate.

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

14 BOARD MEMBER PRIMUS: Has the service
15 matched the rates?

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

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

22 You know, I also wanted to get to the

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

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

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

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

1 And so to the extent that there's going to
2 be a tipping point, you know, I don't think we're
3 going to quit growing wheat in the U.S., but we
4 certainly grow dramatically less today than we did
5 50 years ago or even just 10 or 20 years ago. And I
6 think that's not a trend that we see reversing.

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

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

22 But when we think -- and I think what

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

9 BOARD MEMBER PRIMUS: Thank you.

10 CHAIRMAN OBERMAN: Michelle?

11 VICE CHAIR SCHULTZ: Thanks, Marty.

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

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

22 MR. HENRY: That's a good question, and I

1 think that as we have looked at labor shortages and
2 as we have been in discussions with railroads here
3 over, you know, the previous 12 months or 18 months,
4 those have tended to occur in -- probably two issues
5 at play, right, a longer-term trend towards fewer
6 staff, which exacerbates when you have the second
7 issue at play, which is a short-term challenge of
8 getting crews into the right places and able to
9 provide service in a timely manner.

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

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

22 VICE CHAIR SCHULTZ: Thank you.

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

5 MR. HENRY: Yes.

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

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

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

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

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

9 BOARD MEMBER FUCHS: Thank you so much.

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

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

14 Glass Packaging, Scott DeFife.

15 MR. DEFIFE: Thank you, Mr. Chairman and
16 members of the Commission. I am Scott DeFife, I am
17 the president of the Glass Packaging Institute, very
18 happy to be here today to give you some examples of
19 another industry that is in the similar situation to
20 all of my fellow panelists today. If we were
21 sitting in person, I'd be motioning to the left and
22 the right because the glass packaging industry, our

1 trade association represents the glass container
2 manufacturers, but also the raw material suppliers
3 that supply the raw materials into the glass
4 factory, but also and then packaging to food and
5 beverage manufacturers, because 95 percent or plus
6 of all glass packages made in the United States is
7 for food and beverage consumption, food and beverage
8 packaging largely.

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

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

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

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

9 80 percent of our member plants would be
10 defined as captive, and because of the challenges
11 with service and supply chain issues right now, our
12 members are seeking virtually any and all remedies
13 that they can to increase the flexibility and the
14 nimbleness of the supply chain.

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

21 The adoption of the proposed rule on
22 reciprocal switching would assist our members in

1 their efforts to increase efficiencies and
2 deliveries to plants and supply chain partners to
3 ensure efficient and reliable operations can be
4 maintained.

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

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

20 I can tell you that with my -- I only have
21 a short time today, in the three years that I've
22 been here at the Glass Packaging Institute, we've

1 been -- almost all of it has been under COVID supply
2 chain challenges, and because the industry wants to
3 use -- the demand is very high, and supply chains
4 have been challenged. And because the industry
5 seeks to use, in fact is necessarily using, wants to
6 use more recycled glass as well, it has
7 environmental benefits to use more recycled glass.
8 And we have been studying various ways of trying to
9 get really innovative and creative about securing
10 the supply of recycled material and getting that to
11 our plants.

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

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

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

22 CHAIRMAN OBERMAN: Thank you, Scott.

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

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

18 On the other end, though, where your
19 members are located in more urban areas, do you have
20 any reaction to the inquiry I've been asking people
21 about the idea at least as a starting point on an
22 incremental approach to only permit reciprocal

1 switching -- only permit shippers eligible for
2 reciprocal switching who are using yards where
3 reciprocal switching is already taking place for
4 other shippers, as a way of both limiting the
5 availability but perhaps ensuring and minimizing
6 logistical difficulties if it's already being done?
7 What's your thought about that?

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

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

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

22 CHAIRMAN OBERMAN: All right. Thank you.

1 Any other questions?

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

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

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

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

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

20 MR. DEFIFE: We certainly don't at the
21 trade association level. I mean, there's a limit to
22 the kinds of data that we can have. But we do have

1 many anecdotal examples with our members and
2 specific plants that tend to stay -- that we could
3 probably discuss more in the ex parte dialogue
4 afterwards where we could assemble some examples for
5 you.

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

10 So if you're typically expecting and using
11 18 to 20 cars or more of sand, it's silica,
12 limestone, soda ash, these are very basic mineral
13 commodities to make the glass in the first place.
14 And if you're typically using 20 and one week you
15 only get two or five or something such as that,
16 you're scrambling to get that material from other
17 places.

18 I would say that there was a really
19 critical discussion with Dan and Herman that I think
20 relates to us as well, that a delay of 24 hours if
21 it's known can be planned around, it's not
22 necessarily a delay. It's all about reliability and

1 knowing when that supply is coming in and being able
2 to plan for it.

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

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

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

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

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

19 I think one of the key points that I may
20 have put in our written testimony, but I'd like --
21 glass plants are tailor-made for rail service. We
22 should be using more. We want to use more. The

1 efficiencies of rail service, the environmental
2 benefits of rail service to move material over, you
3 know, hundreds of miles is considerable over truck
4 traffic.

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

8 BOARD MEMBER PRIMUS: Thank you.

9 CHAIRMAN OBERMAN: Scott, I had one other
10 question.

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

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

22 So they will scramble to get the supply

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

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

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

21 MR. DEFIFE: Absolutely, Mr. Chairman.

22 CHAIRMAN OBERMAN: Thank you.

1 Any other questions for Scott?

2 Thank you very much, Scott.

3 Our next witness is Chris Greissing from
4 Industrial Minerals Association.

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

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

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

19 The demand for these minerals from
20 manufacturers is global and the continued pressure
21 our companies are feeling from the railroads in
22 terms of unreliable service and unreasonably high

1 rates is making it more difficult to compete in that
2 global market.

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

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

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

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

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

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

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

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

20 This simply should not be the case. For
21 too long, railroads have put shareholders interest
22 above those of shippers and the general public by

1 continuously raising rates and providing unreliable
2 service.

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

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

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

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

21 In order to level the playing field
22 amongst shippers and prevent captive shippers from

1 paying exorbitantly high fees, we are very
2 supportive of the STB moving forward with allowing
3 reciprocal switching in the U.S. Reciprocal
4 switching provides a common sense solution to the
5 issue of competitive rates. It is needed now more
6 than ever before giving the rate increases we are
7 seeing and the potential merger of CP and KCS, which
8 will only serve to diminish shippers's options both in
9 terms of reasonable rates and reliable service.

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

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

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

22 With the advent of PSR, there was simply

1 nothing left for shippers to lose by becoming more
2 vocal in their extreme frustration with how they
3 have been treated by the railroads.

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

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

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

21 One of the requirements in the proposed
22 rule is that the other Class I rail carrier must be

1 within a reasonable distance of the facilities of
2 the party seeking switching. My members and I are
3 concerned with the ambiguity around the term
4 "reasonable distance," as it is unclear how the
5 Board may interpret that in future decisions.

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

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

19 We believe that at a minimum, the STB
20 should specify that the reasonable distance is no
21 less than 300 miles and allow for the consideration
22 of longer distances on a case-by-case basis. This

1 will allow for real change to occur in the out of
2 control rate situation we are currently witnessing
3 for captive shippers.

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

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

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

20 CHAIRMAN OBERMAN: Thank you.

21 Chris, could you give me a little better
22 idea of where your members are shipping, in what

1 kind of geographies are they located?

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

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

14 Do you agree if we applied a countrywide
15 300-mile range for where you could obtain reciprocal
16 switch it could exacerbate or cause congestion problems
17 in the congested parts of the country even though it
18 might be needed to serve your members?

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

22 I will say that there is a significant

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

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

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

18 CHAIRMAN OBERMAN: Well, you know, we have
19 under consideration two rate relief proposals, the
20 voluntary arbitration idea, the railroads have come
21 up with, and the final offer NPRM which is still
22 pending. If the Board were to enact one or both of

1 those measures, would that not provide the kind of
2 relief you're talking about?

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

5 CHAIRMAN OBERMAN: So will we.

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

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

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

22 MR. GREISSING: Service has been terrible,

1 so I hope to not give off that impression.

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

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

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

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

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

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

7 (Laughter.)

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

11 (Laughter.)

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

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

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

20 Chris, you spoke to communication between
21 your members and the railroads, and that issue comes
22 up in just about every meeting that I have with

1 shippers in other industries.

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

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

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

21 But we're just not seeing that right now,
22 and a lot of that has to do, we believe, with the

1 downturn in employment on the railroad side.

2 VICE CHAIR SCHULTZ: Thank you.

3 MR. GREISSING: Thank you.

4 CHAIRMAN OBERMAN: Any other questions for
5 Chris?

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

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

16 CHAIRMAN OBERMAN: Thank you.

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

21 MR. TRIESCH: Good morning.

22 MS. BOOTH: Good afternoon. And

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

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

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

9 CHAIRMAN OBERMAN: You're as welcome --

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

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

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

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

18 Bobby, you're up.

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

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

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

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

21 In my role I oversee the operations of the
22 Georgia region, which has 21 facilities. 20 of them

1 are in Georgia, one is in Alabama right on the
2 border with Alabama and Georgia.

3 10 of my facilities are rail served, seven
4 on the NS, two on the CSX and one on the short line.

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

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

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

21 Expanding reciprocal switching would allow
22 competition to play a greater role in addressing

1 these challenges by providing a captive rail
2 customer the opportunity to access a second railroad
3 at nearby interchanges in certain situations.

4 Starting in 2017, the U.S. Class I
5 railroads began PSR as their operating model.

6 Although PSR was marketed as a mechanism to improve
7 rail service, the expansive cost cutting and labor
8 and equipment as part of PSR has generally caused
9 less efficient and less reliable service for SA
10 Recycling. Our company and many other industry
11 members have experienced significant service
12 disruption, including congestion, missed switches,
13 bunched railcars and inadequate railcar supply.
14 Despite these service issues, which have only been
15 exacerbated by recent supply chain challenges,
16 freight rates have continued to increase year over
17 year at our captive locations.

18 In a competitive industry, service
19 providers who underperform are not usually able to
20 reward themselves with rate increases from the
21 customers. We have experienced these effects first
22 hand. We have recently completed our annual

1 contract negotiations with one of the eastern
2 railroads that is the only provider of rail services
3 at the -- at our southeast facilities, in Georgia.
4 This past year the carrier experienced significant
5 service disruptions, which really got horrible in
6 the fall, which greatly impacted our ability to
7 reliably service our steel mill customers.

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

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

21 While it is expected that some service
22 disruptions will occur in rail service, the

1 frequency of problems and willingness of the carrier
2 to resolve the problems differ between captive and
3 noncaptive facilities. Reciprocal switching could
4 help to mitigate service disruptions by providing an
5 alternative to shippers when disruption occurs on
6 the bottleneck carrier's network.

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

21 NS, however, selects an interchange
22 location that's closer to the destination,

1 preserving its long haul instead of switching the
2 traffic to CSX at a nearby interchange in Atlanta,
3 which would allow a competitive alternative.

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

17 With the ramp in inflation going on
18 throughout the country, competition would help to
19 bring that inflation down. In the real world, the
20 only competition our rail carriers have now is
21 trucks and that is only to mills within about 150
22 miles of our facilities. And we're using that as

1 much as we possibly can especially since 2017.

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

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

19 CHAIRMAN OBERMAN: Thank you, Bobby.

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

1 does that work?

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

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

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

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

1 MR. TRIESCH: Yes, sir.

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

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

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

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

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

1 local?

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

4 CHAIRMAN OBERMAN: On the NS, I see.

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

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

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

21 MR. TRIESCH: Yes, sir.

22 CHAIRMAN OBERMAN: As an option?

1 MR. TRIESCH: Yes, sir.

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

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

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

19 CHAIRMAN OBERMAN: That's understandable.

20 If you were provided reciprocal switching,
21 and let's just take up UP at their description, that
22 it would add a day to the delivery, but it was a

1 consistent day that you and the steel mills could
2 plan on, would that be an improvement, in your view,
3 or would you rather not lose the day?

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

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

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

18 When we met with you a couple years ago,
19 you know, bunching was certainly a big issue. I
20 think railroads have gotten better in that regard.
21 But still the reliability is hit or miss. And it's
22 gotten better since this last batch of COVID

1 really -- they really suffered in really
2 December/January was lots and lots of missed
3 switches.

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

7 MR. TRIESCH: Yes.

8 CHAIRMAN OBERMAN: Is that fair to say?

9 MR. TRIESCH: Yes, yes.

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

14 BOARD MEMBER HEDLUND: It's not a
15 question. Bobby, you're in Atlanta, and I just
16 wanted to point out, we have been talking for the
17 last two days about the meaning of terminal area,
18 what is a terminal. And it reminded me that the
19 original name of Atlanta, Atlanta was founded in
20 1837 as the terminus of the -- something in Atlantic
21 Rail -- Great Western and Atlantic Railroad.

22 And so the original name of the city was

1 Terminus.

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

5 BOARD MEMBER HEDLUND: Terminus.

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

8 BOARD MEMBER FUCHS: Marty, thank you.

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

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

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

22 BOARD MEMBER FUCHS: Now, of your 31 that

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

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

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

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

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

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

19 BOARD MEMBER FUCHS: Suffice it to say,
20 looking at your facilities, you have some with
21 competition, some with a lower degree of
22 competition. Where I'm headed with this is I'm

1 wondering, similar to a question I asked PRFBA
2 earlier, which is can you readily distinguish or
3 discern that your facilities have better competitive
4 options, either you know dual served, short line,
5 barge, truck? The facilities with better
6 competitive options, do you discern a marked
7 difference in their rates and service product
8 compared to the ones that have worse competitive
9 options?

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

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

21 But those facilities, or excuse me, those
22 destinations that are closer, that have competition

1 by truck, those rates are much more competitive. So
2 example, Atlanta to Birmingham where I can run a
3 truck over and pick up a backload and bring
4 something back, those rates by rail are actually
5 quite good rates. But if you go a little bit
6 further and go Atlanta to Tuscaloosa, Atlanta to
7 Decatur, where it's too far for a truck to make a
8 round trip, prices go up.

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

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

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

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

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

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

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

12 MR. TRIESCH: Oh.

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

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

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

1 that.

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

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

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

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

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

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

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

15 BOARD MEMBER FUCHS: Right.

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

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

21 MS. BOOTH: It did not.

22 BOARD MEMBER FUCHS: So if you're going to

1 add those things in and keep the conduct standard,
2 that's additive; right? It's more -- something
3 beyond.

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

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

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

20 But I do think that you also touched on
21 yesterday an important point of burden of proof,
22 because you can kind of start thinking about, well,

1 okay, if you're going to be comparing captive and
2 uncaptive, well, is it the same company, which we're
3 talking about to a lot of witnesses, is it the same
4 industry, is it the same commodity, you know.

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

10 Rural versus urban. You know, volumes.

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

22 And then we've heard about downstream

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

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

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

22 So even though I think people have taken

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

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

16 And you can imagine complexity starting to
17 pile up. So we've got a lot of smart people
18 testifying today, we had a lot of smart people
19 testifying yesterday, a lot of expert people who are
20 well positioned to think about what truly matters
21 for different service products, and I would just
22 encourage everybody to continue to think about that,

1 is there a way we can build in conduct and build in
2 competitive circumstance in a way that we can
3 actually adjudicate cases in an expeditious manner.

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

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

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

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

19 I have been focused and I'm going to
20 continue to focus on the physical logistics of
21 accomplishing these goals. And the statute is
22 debatable. It's like almost all the statutes we

1 deal with, leaves something to be desired.

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

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

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

15 CHAIRMAN OBERMAN: Yeah.

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

22 I'd love to hear more railroad input

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

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

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

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

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

1 complex problem.

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

4 VICE CHAIR SCHULTZ: Thanks, Marty.

5 And Bobby, thanks for your testimony this
6 morning.

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

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

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

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

4 VICE CHAIR SCHULTZ: Thank you.

5 CHAIRMAN OBERMAN: Robert?

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

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

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

17 And some of these service issues
18 historically used to be able to be addressed in
19 contracts, when there's a little bit more equal
20 bargaining power, you can have service terms in your
21 contracts. You don't have to go running to the
22 Board because you've negotiated cycle times,

1 you've -- I mean, the shipper today may have to give
2 a minimum volume commitment, which the railroad
3 demands. They want that certainty understandably.
4 But the shipper doesn't get anything in return in
5 most cases, maybe where you have competition you can
6 get it.

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

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

18 So I just wanted to get that point out.

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

21 CHAIRMAN OBERMAN: Thanks, Karyn.

22 Robert?

1 BOARD MEMBER PRIMUS: I appreciate that,
2 Marty.

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

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

10 MR. TRIESCH: Yes, sir.

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

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

20 Really the thing we used in fighting back
21 or pushing back on that 10 percent increase was a
22 little bit playing with their emotions and

1 understanding that we miss switches all the time, we
2 miss service all the time, we have to continue
3 buying more railcars, so we have to buy the railcars
4 in which we're going to move our product, so there's
5 the CapEx requirement.

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

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

13 BOARD MEMBER PRIMUS: Thank you.

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

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

20 MR. TRIESCH: Yes, sir.

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

1 MR. TRIESCH: That's correct.

2 CHAIRMAN OBERMAN: Can you quantify that?

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

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

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

21 And then in meetings we'd have with the
22 railroad and say, well, what opportunities do you

1 have, say well, we are running a heck of a lot of
2 trucks every day down the road between Savannah and
3 Berkeley. If you would give us a rate, we'd love to
4 go to rail. Rail is easier for us, loading, you
5 know, it's equivalent of four truckloads and we can
6 load it right in our -- we love rail.

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

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

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

20 MR. TRIESCH: I would say if the -- it's
21 much easier loading a railcar than a truck, and so I
22 don't have any mills. The closest one -- the only

1 one in Georgia is the Gerdau mill in Cartersville,
2 and it's CSX. So we don't ship there because like I
3 told you, if we had -- if we had interchange, we
4 would ship to Cartersville by rail.

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

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

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

15 CHAIRMAN OBERMAN: So even a short
16 distance like that?

17 MR. TRIESCH: Yes.

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

22 MR. TRIESCH: We can. But with both of

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

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

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

19 And because it's not -- because they can't
20 be -- because there's two people involved in that
21 negotiation or three people involved in that
22 negotiation, they're not going to put the effort in

1 to working on saying, hey, CSX, lower your rate to,
2 you know, 300 bucks, we'll lower our rate to 300
3 bucks so that we can get SA's business and we can do
4 that.

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

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

11 MR. TRIESCH: Yes.

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

16 MR. TRIESCH: Yes, sir.

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

20 MR. TRIESCH: Well, before 2017, we didn't
21 use many trucks at all to go to steel mills. And so
22 I bet -- I don't know -- I believe it's probably 20

1 percent of our volume right now is going by truck,
2 and I would love 100 percent of it to go by rail.

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

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

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

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

20 CHAIRMAN OBERMAN: And what -- can you
21 approximate what number of trucks is that that are
22 on the highway that ought to be on the railroad, on

1 a yearly basis, for example?

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

7 CHAIRMAN OBERMAN: So you're talking about
8 25,000 a year? Do I have a decimal in the wrong
9 place?

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

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

19 MR. TRIESCH: Yes, sir.

20 CHAIRMAN OBERMAN: And it's kind of a
21 dilemma, it seems to me, from the way the legal
22 system is set up, whether it's particularly in the

1 rate area, because, you know, we're mandated to look
2 at the market dominance standard, which as I
3 understand it means an area where there isn't enough
4 competition to control freight rates. Now, maybe
5 you're in a market dominant if the trucking option
6 isn't enough to control freight rates, but you do
7 have truck as an option, and that usually undermines
8 your ability perhaps to get some kind of relief, at
9 least many shippers would view it that way.

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

14 BOARD MEMBER FUCHS: Well, Marty --

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

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

20 MR. TRIESCH: Yes, sir, absolutely. Steel
21 mills, they don't want trucks, they have only added
22 more ability to receive by truck because of the

1 congestion and service problems they have had with
2 railroads.

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

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

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

19 Patrick, you had a question?

20 BOARD MEMBER FUCHS: Marty, if I could
21 make a remark, because this is a topic you and I
22 talk about a lot and I think we share the general

1 perspective of moving things to rail can do good
2 things for congestion, environment, infrastructure
3 wear and tear, et cetera.

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

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

1 CHAIRMAN OBERMAN: I don't either.

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

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

22 BOARD MEMBER FUCHS: It is. And I might

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

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

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

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

22 MR. TRIESCH: No, I'm not.

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

7 MR. TRIESCH: Yes, sir.

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

17 Are there any other questions for Bobby?

18 Well, this has been extraordinarily
19 productive, Bobby, thank you very much. And full
20 disclosure, I think everybody knows it now, and I
21 grew up related to the scrap business, my father was
22 the publisher of the trade magazine for the scrap

1 industry, which was actually bought by the
2 predecessor when my father passed away. I have
3 never been in the scrap business, and I was never in
4 the publishing business. I fled to go into the law.

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

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

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

21 CHAIRMAN OBERMAN: You know what, I'm
22 cognizant of people of my age group needing to get

1 up and walk around more often. So let's take a
2 10-minute break now, come back at 12:20.

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

7 See you all at 12:20.

8 (Recess.)

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

13 Chuck, are you ready?

14 MR. BAKER: Yes, sir.

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

17 MR. BAKER: Well, I would actually say
18 that the short lines are on a panel by ourselves. I
19 have do have two folks with me, Chairman Claussen
20 from the association and Dr. David Clark from
21 University of Tennessee, so hopefully you will have
22 room for all three of us before lunch, but if not,

1 we're happy to wait until after lunch also to
2 finish.

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

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

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

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

1 America, in getting our customers' goods to market.

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

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

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

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

18 Short lines are small businesses with
19 limited resources but with relatively large private
20 investment needs. We typically invest about 25 to
21 33 percent of our revenues each year back into our
22 infrastructure and have spent decades rehabbing

1 light density lines that were generally neglected
2 and frequently headed for abandonment under past
3 ownership.

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

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

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

21 While short lines often consider
22 themselves shipper representatives, and we certainly

1 have our share of frustrations with our Class I
2 railroad partners and we can even see where the
3 desire for this rule came from, we do see this rule
4 as counterproductive and likely to cause more harm
5 than good.

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

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

17 In particular, we showed that short line
18 railroads already face extensive competition, we
19 already go above and beyond to do right by our
20 customers, we have unique and fragile economics that
21 would be put at risk if they were subject to a
22 forced reciprocal switching rule, and that forced

1 reciprocal switching that would apply to short line
2 traffic is unnecessary and unwarranted.

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

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

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

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

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

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

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

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

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

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

12 Compared to larger railroad carriers,
13 short lines have shorter lengths of haul, higher
14 fixed costs and larger capital needs for
15 infrastructure investment, including the task of
16 upgrading bridges and track to handle modern heavier
17 286,000 pound railcars.

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

1 haul.

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

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

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

21 Even worse, if the line had to be closed
22 and the shipper was forced to find alternate

1 transportation or relocate.

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

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

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

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

1 success.

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

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

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

22 As I mentioned, and as shown in our

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

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

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

20 For example, in many cases, short lines
21 provide the first or last miles of service but do
22 not appear on the waybill and may not be the entity

1 sending the invoice to the customer. So upon
2 examination of the waybill and the invoice, it could
3 appear that a customer facility is served by a Class
4 I, even though it's actually served by a short line.

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

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

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

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

20 MR. BAKER: Great. Dr. Clarke.

21 MR. CLARKE: I'm here. Thank you,
22 Chairman Oberman and other members of the Board for

1 this opportunity to speak before you. I'm going to
2 give you the Cliff Notes version of my written
3 testimony, which covers this in more detail. And
4 I'm going to try not to overlap too much with what
5 Chuck just said. He covered a number of points that
6 I would also raise, and I don't want to waste
7 everybody's time, it's bad to stand between you and
8 lunch.

9 Just as an introduction, my name is David
10 Clarke, and I've been active in rail research
11 education engineering now for over 40 years. I
12 retired from full-time employment at University of
13 Tennessee Knoxville at the end of 2020, and from
14 2008 until 2020, I was director of the Center for
15 Transportation Research at the university, which is
16 one of the nation's oldest academic research centers
17 focusing on transportation.

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

1 adversely affect small railroads?

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

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

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

19 Sorry.

20 The Class I railroads provide a long
21 distance movement for most traffic handled by small
22 railroads, and so small railroads are very dependent

1 on that service. The national rail carload length
2 of haul is 1,021 miles in 2016, and small railroads
3 had an average in median haul lengths of just 38 and
4 24 miles respectively.

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

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

13 So that makes the small railroads heavily
14 oriented towards last mile pickup and delivery. And
15 81 percent of carloads actually handled by small
16 railroads are originated or terminated. So this is
17 obviously the majority of their traffic.

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

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

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

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

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

1 of the carloads.

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

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

13 So 35 percent of small railroad carloads
14 are products of manufacturing processes, which are
15 highly susceptible to competition, particularly from
16 trucks. And that could be either for the entire
17 rail movement, cutting out the Class I's as well as
18 the small railroads, or it could be for the small
19 railroad portion of the move.

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

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

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

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

21 That's in addition to maintenance, crew,
22 labor and other administrative costs that are also

1 relatively fixed for a given range of traffic.

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

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

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

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

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

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

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

21 And if the status quo is upset by
22 reciprocal switching, the small railroad faces a

1 severe pressure to reduce its revenue share, and
2 that risks the economics of the small railroad.

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

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

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

20 And, you know, ultimately, if revenue is
21 lost to a small railroad through this reciprocal
22 switching arrangement, there is a much greater

1 potential financial impact on the small railroad
2 than would be the case for a larger Class I.

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

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

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

18 MR. CLAUSSEN: Should I begin?

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

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

4 MR. BAKER: Okay. Very good.

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

20 The G&O was established by my father in
21 1985 and as a holding company for five short line
22 railroads in the Three Rivers Rambler Excursion

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

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

10 Currently, I am also serving as Chairman
11 of the Board of the American Short Line and Regional
12 Railroad Association, guiding the organization along
13 500 other railroad members and nearly as many
14 associate members who provide services to the short
15 line industry.

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

22 My hope is the testimony I provide today

1 will further illuminate the potential impact of
2 short line railroads and, in turn, our shippers,
3 thousands of local economies and overall U.S.
4 freight rail systems, should the short lines be
5 subject in any way to this regulation.

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

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

21 The hallmarks of our short line industry
22 are well known and a source of great focus and pride

1 for us. The constant customer focus and
2 entrepreneurial spirit, adaptability, resiliency and
3 an obsession with connecting our customers and
4 communities to markets around the country and the
5 world.

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

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

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

1 Santa Teresa railroad stepped up with investment
2 dollars, partnering with GE to build out a dedicated
3 train loading facility for GE, including 10,000 feet
4 of track, a 10-acre staging and loading area and a
5 4,000-foot roadway connected to a major county road.

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

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

17 The impact of short lines on our local
18 communities cannot be undervalued. Our role in
19 connecting customers to markets drives the local
20 economies, providing family supporting jobs beyond
21 the railroads themselves. The presence of rail in
22 community as an alternative transportation option

1 and an environmentally friendly one at that drives
2 growth within the companies willing to locate on
3 rail served property.

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

15 Lake State Railway Company overcame the
16 potential shutdown of several customer facilities in
17 2020, and pivoted attention to its transload
18 business, bringing in nine new customers and growing
19 car load volumes in the last two quarters of 2020.

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

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

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

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

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

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

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

20 I could, but won't, spend literally all
21 day sharing these facts and examples across the
22 nation's 600 short line railroads. Our shippers

1 have also weighed in. As part of its written
2 testimony today, ASLRRA has submitted verified
3 statements from several short line customers. They
4 too understand the criticality of short line service
5 to their success.

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

21 In final, to wrap it up, in my humble
22 opinion, forced switching will not serve the public

1 good. As illustrated by the testimony provided by
2 Mr. Baker and Mr. Clarke, draft congestion of the
3 delicately balanced rail network, create additional
4 complexity, reduce the incentive to invest and
5 increase costs for everyone involved. The industry
6 can address customer service issues successfully
7 through other available avenues, through both purely
8 private solutions and through existing STB
9 mechanisms.

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

20 If a forced reciprocal switching rule is
21 adopted, I urge the Board to adopt the clarifying
22 text changes submitted by ASLRRRA, making the rule

1 applicable only in such instances where customers
2 serve directly, physically and exclusively by Class
3 I railroads.

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

6 CHAIRMAN OBERMAN: Thank you much, Doc
7 Claussen.

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

10 MR. BAKER: Yes, sir.

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

18 I want to start out hearing your concerns.

19 So as I understand it, if we take a short
20 line that has three or four shippers on it, typical
21 small short line, you have several concerns. One
22 concern is you don't want a Class I to be able

1 through reciprocal switching to take that customer
2 away and serve them directly. That's one of your
3 concerns; right?

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

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

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

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

21 Secondly, what I'm a little confused about
22 is that are there not situations where if there is a

1 reciprocal switch, the short line is just moving the
2 cars between the two Class I railroads, it's not
3 affecting the short line's own customers; is that
4 right?

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

10 CHAIRMAN OBERMAN: I'll defend you.

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

22 But if the move is now cheaper, that NS,

1 or any Class I in that situation, would come to us
2 and say, hey, short line, we're now doing this move
3 for 1,500 instead of 2,000, so you're going to need
4 to give up a portion of your 200 because that's no
5 longer feasible. So you need to do it for 150 or
6 125.

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

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

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

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

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

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

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

1 MR. BAKER: Correct.

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

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

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

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

14 CHAIRMAN OBERMAN: Well, okay. Yes --

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

17 CHAIRMAN OBERMAN: At either end, yeah.

18 Let me ask you this, Chuck. Do you need a
19 blanket exclusion to be protected? Is it not
20 possible that the economics of some reciprocal
21 switching situations wouldn't put pressure on the
22 short line to lower its rate for its share of the

1 movement? Or do you think that's 100 percent going
2 to happen every time?

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

11 So we do think that a full exclusion is
12 warranted.

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

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

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

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

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

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

18 CHAIRMAN OBERMAN: No, of overall --

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

21 CHAIRMAN OBERMAN: Yeah.

22 MR. BAKER: Yeah. In total, short lines

1 are about one in every five cars on the network.

2 It's a higher percentage of that for, you know, car
3 load business and a lower percentage of that for
4 intermodal, but overall, we're about 20 percent of
5 the cars.

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

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

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

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

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

19 I think maybe the way to think about the
20 percentage of traffic that would be excluded is if
21 we consider that some portion of short line traffic,
22 you know, is already connecting to multiple

1 carriers, whereas a lot of the Class I traffic
2 that's served, they're going to want to protect
3 their line haul.

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

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

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

21 MR. BAKER: That's right, there are a fair
22 number of short lines, you know, probably a little

1 bit less than half, that are dual served, where they
2 already can -- it can go to either CSX, NS or BN or
3 UP or whatever. And those customers obviously the
4 reciprocal switching would have never been relevant
5 for them anyway.

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

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

19 MR. BAKER: We can do that.

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

22 I take it that aside from protecting the

1 interests directly of short lines, which is what
2 we've been talking about, you are echoing the
3 overall objections of the Class I world by saying
4 you don't think it's good for the network, and if
5 it's not good for the network, it's not good for the
6 short line industry.

7 Is that a fair summary?

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

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

1 the host railroad.

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

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

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

19 And I do think the -- I know you didn't
20 love the presentation yesterday, but I thought the
21 idea of the runners handing batons to each other
22 made sense to me, and every time you introduce an

1 extra touch or an extra switch or an extra handoff,
2 there is additional kind of choke points.

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

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

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

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

22 Doc, I just want to say you're an example

1 of a pre-COVID shift in career choice, you presaged
2 a huge movement that the rest of the country is now
3 doing. Very impressive.

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

6 CHAIRMAN OBERMAN: Other Board members?
7 Karen, you have your hand up.

8 BOARD MEMBER HEDLUND: Yes. We've heard
9 from the Class I's that a switch can take, you know,
10 24, 48, 96 hours. When your members hand off trains
11 to a Class I railroad, typically how long does that
12 take?

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

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

19 So I would be inclined to again, just
20 trying to be honest here, we have plenty of
21 frustrations with our Class I friends, but I would
22 be inclined to take them at their word that if they

1 do -- they do an awful lot of switches, and if they
2 say that it takes an average of 24 to 48 hours, I
3 really don't think that they came in front of the
4 Board and lied on that stat.

5 BOARD MEMBER HEDLUND: Thank you.

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

8 MR. BAKER: Yes, sir.

9 CHAIRMAN OBERMAN: Robert, go ahead.

10 BOARD MEMBER PRIMUS: And I'll be brief.

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

21 And so, you know, the question I'm asking
22 is would it be -- the idea Marty is broaching

1 reciprocal switching, even at the
2 locations where it does occur, wouldn't that stand
3 to make even some of your members create a little
4 better relationship between the customer and your
5 members?

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

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

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

1 I's.

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

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

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

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

22 BOARD MEMBER PRIMUS: And I would just say

1 this, that it has been going on for a while. I know
2 that you had probably -- and you may not, but, you
3 know, in the last several years, five or six years,
4 you have probably seen senior membership an
5 increase, PSR and other factors included.

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

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

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

22 BOARD MEMBER PRIMUS: Appreciate that.

1 Thanks, Chuck.

2 MR. BAKER: Yes, sir.

3 CHAIRMAN OBERMAN: Patrick?

4 BOARD MEMBER FUCHS: Marty, I'm good.

5 Thank you so much.

6 CHAIRMAN OBERMAN: Okay. Any other
7 questions for the short lines?

8 VICE CHAIR SCHULTZ: I had one. First,
9 thank you for your testimony today. Chuck, you
10 actually spoke to safety concerns that this rule
11 might actually increase accidents. And
12 Administrator Bose spoke in his testimony about this
13 concern as well.

14 I was wondering if, you know, short of
15 eliminating switches, if there's anything that we
16 could include in our language to address safety
17 concerns or anything that this Board could actually
18 do to consider safety concerns.

19 MR. BAKER: It's a great question, I
20 appreciate it.

21 You know, by their nature, switch points
22 and handling cars is essentially the most dangerous

1 thing railroads do, so -- and I think you're going
2 to hear testimony or at least it's in the written
3 record later today from a gentleman at George Mason
4 who used to work at the FRA who has got some
5 compelling data on that.

6 If the rule creates more switch points, I
7 do think it's pretty realistic to expect there to be
8 some more accidents coming from that. You know,
9 Administrator Bose made the point that these can be
10 done safely and must be done safely, and that's --
11 it's a fair point, but on the other hand, all
12 existing switches can be done safely and, you know,
13 99.9 percent of the time they are, but occasionally
14 they're not.

15 So I guess it would come back to the
16 fewer -- the more you limit the rule, the fewer
17 extra switches and handling and touch points you
18 would have and the lower the risk of accidents would
19 be.

20 But I wouldn't know of a way that you
21 could write to just insist that a switch be done
22 safely, I mean, you could write it, but --

1 VICE CHAIR SCHULTZ: Thanks, Chuck.

2 CHAIRMAN OBERMAN: Don't have any slippery
3 batons.

4 MR. BAKER: Right.

5 CHAIRMAN OBERMAN: Well, if you take the
6 example we were dealing with yesterday of a shipper
7 whose car is being taken to a switching yard, it's
8 either put on the host railroad's track or the other
9 railroad's track, it's the same switch. That
10 doesn't add to the chances of an injury; right?

11 MR. BAKER: I would agree with that, that
12 if it really is just replacing one with the other,
13 then you're not increasing the moves.

14 CHAIRMAN OBERMAN: This is an idea which
15 is gaining traction here. You know, we ought to --
16 I realize that the way the current rule is drafted
17 would give the impression that switching might take
18 place everywhere under the Sun, but there does seem
19 to be some merit to thinking about making it take
20 place at least as a starting point where we already
21 know it works, just sort of common sense.

22 You know, I don't know if that's going to

1 be our view or even my own view, but it just seems
2 to be an idea that ought to be thoroughly explored.

3 All right. As usual, Chuck, right on
4 target. Anything else?

5 MR. BAKER: Thank you.

6 CHAIRMAN OBERMAN: Anything else for Chuck
7 and his crew? Thank you much. See you in
8 Washington.

9 MR. BAKER: Yes, sir. Have a great lunch.

10 CHAIRMAN OBERMAN: All right. Thank you.
11 It is 1:19. Half hour, 1:50 we will return.
12 Everybody agree? All right, folks. We will recess
13 until 1:50 Eastern. See you then.

14 (Whereupon, at 1:19 p.m., the hearing was
15 recessed, to be reconvened at 1:50 p.m. this same
16 day.)

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1 AFTERNOON SESSION (1:52 p.m.)

2 CHAIRMAN OBERMAN: All right, everybody.
3 We are back in session. We will move ahead to Panel
4 VI which are the following folks. Dr. James Nolan
5 from the University of Saskatchewan, Diversified CPC
6 International, Sandra Dearden, Indorama Ventures,
7 which has three representatives, Hussam Awad,
8 Barbara Hagler and H. Baker Lane, and the Reason
9 Foundation, Mark Scribner.

10 So let us proceed, Dr. Nolan, you are --

11 DR. NOLAN: Chairman Oberman, can I share
12 my slides? Is that okay?

13 CHAIRMAN OBERMAN: Surely.

14 DR. NOLAN: I think I can do that now.
15 Let's just make sure this works. There we go.
16 Okay. I'll put this on a slide show. There we go.

17 Okay. And again, I want to thank the
18 Board for allowing me at the last minute to slip in
19 and disturb the network, it's a bad joke, but I
20 really, really appreciate that at the last minute
21 here. I'm probably --

22 CHAIRMAN OBERMAN: Dr. Nolan, it was only

1 one switch, so we could handle it.

2 DR. NOLAN: It wasn't 24 hours. Well, it
3 was a couple days before I heard of it.

4 As one of the few academics who has
5 actually published in journals research on this to
6 some people obscure topic, I'm really, really glad
7 to be able to come here and talk about a couple
8 things.

9 Any of you who want, I am currently the
10 journal editor of the Journal of Transportation
11 Research Forum, I've been president of the TRF and
12 Patrick has very kindly spoken to us at TRF
13 meetings, thank you very much, Patrick.

14 So I have a lot of experience in sort of
15 broad transportation research and have been also
16 journal editor of the Canadian Journal of Ag Econ.

17 I just want to mention upfront part of
18 this particular research I'm going to show is
19 actually funded by the USDA, although it doesn't
20 show up in any report that I've written for them,
21 they helped fund a grad student, so you will see
22 some of that, the material coming up here.

1 What I'm going to focus on, rather than a
2 lot of my prior research, which we can certainly
3 talk about, about the Canadian kind of previous
4 interswitching experience, one thing I wanted to
5 kind of bring up here that I didn't think anybody
6 else was going to do and that was the recent
7 Canadian experience.

8 So what you can think of is that basically
9 from 2014, 2017, we had a national experiment in
10 Canada, and that was where we took the standard
11 interswitching rule, which is dominated by a
12 30-kilometer or about an 18-mile radius, and it got
13 changed to 160 kilometers, which is about 100 miles.
14 And the reason it got changed, and I'll back -- the
15 reason it got changed was based partially on
16 research I had done previously, which was published
17 in 2008, where we basically tried to map out in the
18 grain handling system or the grain delivery systems,
19 essentially, the different types of grains that we
20 do.

21 We don't export much corn here, it's
22 mostly different types of wheat. We took that

1 market and said can we plot how much of grain
2 capacity, so we measured volume by capacity, how
3 much can we pick up with these interswitching limits
4 if we change them.

5 And I had noticed that out here in western
6 Canada, a bit like western U.S., the distance to
7 interswitching points or distance between the two
8 railways is often quite long and the 30-kilometer
9 limit, 18-mile limit seemed quite limited.

10 And so we played around vis-à-vis a little
11 GIS simulation, you know, what level would we need
12 to kind of pick up a certain level of capacity. And
13 that's one thing that I think the Board is going to
14 have to think about in terms of other major
15 industries that are captive.

16 This rule could be designed to pick up a
17 certain amount of capacity in the industry.

18 Now, you won't pick it all up. We found
19 out for example just sidebarring a second, 160
20 kilometers was about our median point, which is why
21 I think the government chose it.

22 When we went out to 300, 320 kilometers,

1 which is more like a couple hundred miles, we were
2 picking up even then only about 90 percent of the
3 grain capacity or grain output.

4 So to get to that 100 percent every
5 captive shipper being affected or being positively
6 affected by interswitching, extended interswitching,
7 would have been 300 miles plus.

8 So I urge the Board to be very careful how
9 they set that distance.

10 But anyway, what happened in 2013-14,
11 there was a grain handling crisis here. This
12 happens every so often in Canada. We had a record
13 grain crop, and again exceptionally cold winters,
14 surprise, surprise, it's Canada -- it affected western rail
15 operations and delayed shipping in Thunder Bay.

16 CP at that time, this is just post-Hunter
17 Harrison, I'll talk about him in a second, tried to
18 streamline their operations, kind of an early PSR
19 kind of thing here where CP was basically
20 streamlining a whole bunch of their operations. And
21 obviously with CN they are our two major carriers.

22 Some stakeholders would blame the railways

1 for finding themselves unequipped to deal with the
2 increased demand for rail due to the harvest, and by
3 the way, this isn't the first time this happened in
4 the time I've been here in Saskatchewan. '96-'97
5 there was another grain crisis, which led to a
6 previous set of regulatory decisions we can talk
7 about later, but I'll get to that. So this is sort
8 of cyclical, the railways tend to get to a point
9 where they can't deliver and the shippers get upset
10 about it.

11 And grain is treated differently in Canada
12 than most other commodities and there's a reason for
13 that. It still comprises about 20 percent of the
14 railways' revenue, so grain is a really, really
15 important commodity moving out of western Canada, is
16 less -- less importance in the U.S., but it is very
17 important in Canada, which is why it historically
18 has been treated a little bit differently.

19 Anyway, so just going on a little bit
20 here, so and this was a conservative government
21 which set this order. This is very interesting.
22 This wasn't the liberals who are sort of left of

1 center in Canada. This was the Progressive
2 Conservatives who were -- seem to be more right of
3 center, which in Canada has a little less meaning
4 than in the U.S. but they are a little bit more
5 market-oriented than are the liberals. March 7,
6 2014, order in council by the PC government, setting
7 a minimum movement threshold to 5,500 cars per
8 railway, so this is kind of a two prong change in
9 regulation in response to the grain crisis.

10 The railways had to move a certain number
11 of cars per railway. But then on May 29, they
12 passed the Fair Rail for Grain Farmers Act, among
13 other provisions, it extended the order in council
14 to August of 2014, seeing how many months this would
15 take. It demanded more stringent reporting of data
16 by the railways and extended the historical extended
17 interswitching limit, which is reciprocal switching,
18 from 30 kilometers, which has been historically
19 since time immemorial in Canada, to 160 kilometers
20 for a period of two years.

21 In June 8, 2016, those provisions were
22 extended for one more year to August of 2017.

1 So what we have here is basically a
2 natural experiment in taking a very, very short
3 radius, 18 miles or 30 kilometers, and stretching it
4 out based on some of the work that I had done
5 previously, but I believe I am the only person who
6 ever did work on this, to 160 kilometers, about 100
7 miles, and see how that would work. You certainly
8 ask questions later.

9 So just having a look at it, you think of
10 interswitching being shipper B right now has access
11 to sort of the single railway, but might want access
12 to the second railway by railway B, and of course
13 under the 30-kilometer limit shipper A doesn't have
14 the same dual access, but if you extend it to 160
15 kilometers, both shippers have access to that.

16 That's just a little simple visualization of how
17 this thing sort of worked. Picking up the shippers.

18 So we got some data, the grad student
19 actually got some data, this is kind of a collection
20 of data that came from a variety of sources, mostly
21 I believe it was from Corn Corporation, but also I
22 believe some rail shippers put this together.

1 They got basically data on car cycle times
2 and a few other things we'll see in a second here.
3 And we wanted to see the design of this, when you
4 think of the policy, the government said okay,
5 railways, you've got to move 5,500 cars, that's
6 important to clear out the backlog, but they also
7 include these interswitching rules, these new rules
8 that extended the radius, and they did that because
9 they thought that would help the backlog.

10 So we took a look and said did it actually
11 do anything with the backlog.

12 The data are a little bit sporadic, and I
13 can probably talk to that a little bit later, but
14 again we have some data, but basically we've got
15 data from July 2015, so not from the start of the
16 interswitching change, but somewhere, you know,
17 after it began, up to September 2018. So we include
18 about a year or so after the interswitching rule
19 changed back to 30 kilometers, and we'll talk a bit
20 more about that.

21 So the first 26 months of data covers a
22 time when the new extended interswitching rules were in

1 place and the last 14-month spans a period in which
2 standard interswitching provisions were reinstated.

3 So I had my student run a simple linear
4 regression with variables covering things like
5 weather, you know, how much shipments went where.
6 We just wanted to know did this actually affect car
7 cycle times.

8 Then I guess what I want everyone to take
9 from this is because the data mixes both the 160
10 kilometer limit and the 30 kilometer limit, although
11 more of it is in the 160 range, take these with a
12 little bit of a grain of salt. But I guess what we
13 want to show here is that interswitching at the 160
14 kilometer level, if anything, improved car cycle
15 times and certainly did not worsen them, right. So
16 getting back to that issue around how much this
17 interswitching rule, whatever the Board decides
18 upon, if they decide upon it, that rule didn't
19 really seem to affect the railways too much in terms
20 of car cycle times, okay.

21 So here's car cycle times to the west
22 coast, this would be Vancouver in Canada, and the

1 key variable here is this thing here, what's this
2 interswitching variable which basically says given
3 all else equal, ceteris parabus, there were 1.5 days
4 saved on the average cycle time with interswitching
5 in that particular data set.

6 And then from total grain time, total time
7 that grain sat in the grain handling system, it was
8 5.2 days less under interswitching and I'll explain
9 a little bit how that occurred.

10 This will bear, I think, upon the kind of
11 policies you folks are going to have to think about
12 moving forward. Okay. All right.

13 So do the new interswitching rules help to
14 reduce system congestion. Again, grain of salt. In
15 Canada, the reduction of about a day and a half to
16 get to Vancouver, the access overall, grain stayed
17 in the system about 5.2 days less. Car cycle times,
18 eastern destination and U.S. destinations does not
19 seem to be significantly affected. So there was
20 mostly the west coast but that was what it was
21 directed for anyway.

22 But here's the more important part

1 observations here. The grain shippers were able to
2 estimate how much they saved not only from an actual
3 interswitch, how much they saved by negotiating with
4 a different railway and getting a cheaper rate, but
5 how much they saved when that didn't happen but they
6 negotiated the rate.

7 So the estimates that they got over the
8 last two years of the policy, when everyone got used
9 to it, was about \$15 million over the two years and
10 that's not significant.

11 So these were actual interswitches with
12 ones that never actually occurred but kind of like
13 contestability theory, there was this threat that
14 another operator would get in and take the traffic,
15 so the railway had to lower the rate to the shipper
16 to get that rate to move.

17 What typically happened from my
18 understanding, and again the Canadian Transportation
19 Agency and a lot of people are pretty mum about
20 this, but my understanding from talking to shippers
21 about this was that it wasn't so much CN and CP
22 competing with each other, although that did occur,

1 it was Burlington Northern coming up through the
2 West Coast of Canada through some of the track they
3 have into Canada and exploiting that 160-kilometer
4 limit and taking some of that traffic, or offering a
5 rate to destination, probably Portland on the
6 Columbia, but offering a rate that the shipper was
7 able to negotiate to get their rate down with CN and
8 CP basically.

9 So that's kind of how that experiment
10 worked, and it was really that third competitor,
11 which is really important, I'm running out of time
12 here, let me go quickly.

13 My observation, the policy was so
14 successful it overturned -- was overturned on the
15 influence of the Canadian railways. Now, I know
16 enough people in the Agency to know the railways
17 worked very, very hard to get the interswitching
18 provision changed back from 160 back to 30. And
19 there is a policy now in Canada called LHI, and we
20 probably talk about this, this is long haul
21 interswitching. It's interesting in that it sets a
22 really long radius, it's about 745 miles of radius.

1 It's never been used. And the reason is, from my
2 understanding, the shipper has to go to the Agency
3 and tell the Agency, well, I tried to negotiate with
4 the other railway, but they wouldn't negotiate, so I
5 want to call this LHI.

6 And it seems like no shipper is willing to
7 do that, or there are other things going on in
8 Canada right now as well. We're switching now from
9 a tariff -- public tariff based system in grain
10 transportation to a contract system. So the
11 railways are trying to avoid interswitching
12 completely by writing these contracts differently.

13 So anyway, LHI has proven to be pretty
14 clumsy. In fact, the Agency has told me they would
15 love to have someone try to call a case because
16 they're not sure how it's going to work either, but
17 they haven't, haven't actually called a case and
18 that was instituted basically 2018, so we're looking
19 at four years of LHI never being called.

20 Anyway, so what I'm going to suggest
21 quickly here, my prior research that showed up in
22 choices back in 2015 on the U.S. network in Montana

1 and the Dakotas, we mapped out a 50-mile radius, but
2 we're not really sure what that radius should be.
3 And that is a really interesting question that's
4 kind of up to the Board to think about what they're
5 going to do with that.

6 We truly do need flexible regulation, a
7 flexible regulator. And I think listening to
8 Chairman Oberman, I think there is a lot of push to
9 do that now.

10 And by that I mean if you set a radius and
11 you set a way to do interswitching, or sorry,
12 reciprocal switching, you've got to be flexible. If
13 it's not working for shippers and carriers, then
14 there has to be some way to change out of the radius
15 or the onus and this sort of thing.

16 And one thing I'm going to suggest as
17 well, and we haven't talked much about this at all,
18 is that regulated rate that's going to have to go to
19 the railway, the home -- or the landlord railway to
20 take the shipment to the interswitch point, we need
21 to think about using Ramsey pricing, which is of
22 course a zero profit compensatory pricing on these

1 regulated reciprocal switches and that's one thing
2 that the Board has to think about as well.

3 Again, I don't think this is going to
4 solve all captive shipper issues. I know in all
5 deference to my wheat colleague Mr. Henry, I don't
6 think that a 300-mile radius is really going to work
7 for anybody. I think it's going to cause
8 operational issues.

9 But again, if the regulator is flexible
10 about this and it works, then it works. And if it
11 doesn't, come back and change it.

12 And I realize that may not be an easy
13 thing to recommend. It's an academic thing to
14 recommend. Maybe I'm not living in the real world.
15 But flexibility is important.

16 And one other thing I'm going to say too
17 is you can't let this whole process get bogged down
18 by case-by-case allowances, save possibly for
19 computing the regulated switching charge, which is
20 obviously dependent on demand.

21 The LHI variant in Canada not being used
22 is proof that reciprocal switching needs to be

1 something like a bright line policy. And from what
2 I'm hearing from Chairman Oberman and the rest of
3 you, I think there is a notion of having a bright
4 line, an RVC test or something which would enact
5 this sort of thing, but the radius is going to be a
6 really important consideration as well.

7 All right. I'm over time. Thank you for
8 being patient with me. I much appreciate that.

9 CHAIRMAN OBERMAN: Thank you, Dr. Nolan.
10 Very helpful. Let me just ask you, I want to --

11 DR. NOLAN: May I stop sharing, Chairman
12 Oberman, is that okay?

13 CHAIRMAN OBERMAN: Yeah, sure.

14 DR. NOLAN: Okay. Yeah. These are
15 variable of course for whoever wants them.

16 CHAIRMAN OBERMAN: We should put them in
17 our record, I think. Somebody else may ask you to
18 put them back up.

19 Do these rules only apply for grain, as I
20 understand it?

21 DR. NOLAN: Excellent question. Yes.

22 So the extended 160-kilometer -- the 30

1 was everything, the 160 that was put in 2014 was for
2 grain only.

3 What happened as part of the negotiation
4 process was a lot of shippers who weren't grain
5 said, wow, can we have that 160, can we have that as
6 well. And that's part of the reason I think it was
7 basically turned over, and that's just my opinion.

8 I think the government realized that there
9 were probably some difficulties in extending that to
10 forestry, to coal, these sorts of things, right, so
11 they didn't want to go that route.

12 The LHI that they came up with, in
13 consultation with the railways, does apply to all
14 commodities. There are restrictions in corridors,
15 there's restriction on toxic -- any kind of toxic
16 commodity moving in there. But there are some
17 restrictions put in there which essentially were put
18 in to prevent American, essentially as far as I can
19 tell, prevent American Class I's from stealing
20 traffic from Canadian Class I's.

21 CHAIRMAN OBERMAN: Have you thought about
22 the idea that I have queried some of the witnesses

1 about having a different mileage in the United
2 States to apply to grain shippers who, as in Canada,
3 are much more spread out?

4 DR. NOLAN: One of the things I would
5 suggest you look at is having two tiers potentially
6 of this policy. And again, you know, as a
7 regulatory economist and understanding some of your
8 decisions you have to make, and you're a five-member
9 board and you have employees.

10 But, you know, I don't want to impose more
11 regulatory decisions on you folks. But having a
12 double-tiered or multitiered reciprocal switching
13 radius might be the way to go.

14 So for example, in urban areas, you might
15 have let's say a 15-mile radius, whereas in rural
16 areas you might have more like 100-, 150-mile
17 radius, something like that.

18 CHAIRMAN OBERMAN: Yeah. Okay. Thank
19 you.

20 Patrick, do you have a question?

21 BOARD MEMBER FUCHS: Yes. Thanks very
22 much, Dr. Nolan for the presentation and good to see

1 you.

2 For folks that may be concerned about the
3 impacts of any rule that is issued by the Board,
4 would you think we would be well advised to build in
5 the types of metrics that you identified to judge
6 the impact of our rule if one is issued after the
7 date of issuance?

8 In other words, to more intensively, you
9 know, develop a plan to provide kind of
10 retrospective review of the effect on the rule on
11 things like cycle times and rates and other metrics?

12 So would we be well advised to do that?
13 And do you have any further thoughts about the best
14 way the Board might go about doing that?

15 DR. NOLAN: Well, the latter question is
16 tough. But the first question you asked, Patrick, I
17 definitely think what you're suggesting, and I know
18 you've been talking a lot personally about first
19 mile last mile data, that sort of thing. I think
20 that's a really, really excellent idea in terms of
21 picking up, you know, your monitoring of the system
22 basically.

1 I think when you institute a rule that's
2 this -- reciprocal switching is going to change the
3 industry. And I think everyone agrees on that
4 point, right. And as much as it does that, the
5 regulatory body, you guys, have to be cognizant that
6 it may or -- it may work.

7 One of the things about contestability
8 theory says one of the ways it may work is you may
9 not see it working, you may hear from shippers
10 saying holy crap, I got a great rate on this because
11 the threat existed, and thank you for that threat,
12 thank you for that competitive threat, right.

13 So you have got to be careful to try to
14 follow that kind of data as well and talk to the
15 shippers and say, did this benefit you in any way,
16 which won't show up in like, for example, the kind
17 of data that you would post on the waybill, that
18 sort of thing, right.

19 BOARD MEMBER FUCHS: Right, right. You
20 know, and the waybill oftentimes doesn't capture
21 that first/last mile, and some of the time stamps
22 might not tell you everything about what was

1 expected, for example.

2 DR. NOLAN: Exactly, exactly.

3 BOARD MEMBER FUCHS: Things like car trip
4 plan compliance. And so I'm sort of wondering if the
5 Board wanted to be especially cautious, whether or
6 not it could design kind of a preassembled basket of
7 comparative -- you know, some that are subject to
8 the rule and some that aren't -- kind of a basket of
9 different movements and to compare what actually
10 happens on things like car trip plan compliance, cycle time, et cetera.

11 DR. NOLAN: Yeah.

12 BOARD MEMBER FUCHS: And if we start to
13 see really negative effects to the traffic that is
14 subject to the rule or that gets a switch, we might,
15 you know, have some sort of out switch, you know
16 what I mean, something --

17 DR. NOLAN: Right, right. Let me -- could
18 I ask add, Patrick? On that point, I think it's a
19 great idea.

20 In Canada, when the 160 existed, it is my
21 understanding that the rule was automatic, so -- but
22 what it meant was me as a grain shipper, I had to go

1 to a competing railway, not my host railway, I had
2 to go negotiate a rate to destination with them.
3 Then I could go back to the Agency and say, give me
4 the interswitch, or I go back to the host railway
5 and say, hey, look at the rate I got if I
6 interswitch. Can you match it; right? That's what
7 happened.

8 I think in your case, it sounds like
9 you're thinking of making this thing dependent on
10 some kind of RVC, we'll call it, test, some kind of
11 test; right?

12 You know, and that's where I'm -- even
13 though I have researched this quite a lot, I'm a
14 little torn as to which one is better, because there
15 are instances where just the threat, right, just the
16 idea saying if you can access a second shipper
17 within, let's say, 60, 70, 100 miles, just the
18 threat of accessing that second shipper, going to
19 the Board, the Board says yep, here's the rate we're
20 going to -- here's the regulated rate to get your
21 shipment to that interswitch point or that
22 reciprocal switching point, here's the rate, and

1 that gives the shipper leverage to come back and
2 negotiate, right.

3 I don't know, given the structure -- we'd
4 have to look at the topography of the U.S.
5 network -- are there enough -- two competitors seems
6 like not enough. And I hate to use the word
7 "collusion," but it sounds like the two Canadian
8 railways, they definitely talk to each other, I'm
9 probably not supposed to say that. But they do,
10 they talk to each other. They know what they're
11 doing. They often switch traffic very freely, they
12 said that earlier in the last deposition from CP
13 yesterday; right? They know what they're doing.

14 I don't know in the U.S. if there are
15 enough -- it's that two-competitor to
16 three-competitor problem, which is really an issue
17 here, right. And whether or not reciprocal
18 switching would solve that is a good question
19 actually.

20 BOARD MEMBER FUCHS: Well, and I think
21 also factoring in the points that were made about
22 potential efficiencies from single service markets,

1 and also factoring in some of the differences
2 between the Canadian network and the U.S. network, I
3 actually think some of Marty's points on designs of
4 terminals and other locations, I think those two
5 reasons are sort of why we're also talking about a
6 conduct element, which is the railroad showing
7 something beyond just circumstances.

8 DR. NOLAN: Yep.

9 BOARD MEMBER FUCHS: Because of those
10 circumstantial differences between Canada and the
11 U.S.

12 DR. NOLAN: Yes, exactly.

13 BOARD MEMBER FUCHS: Kind of thinking
14 about that also adds sort of a layer of complexity.

15 I have one more thing. I took note of
16 your sort of view that Ramsey pricing principles
17 should be factored into compensation.

18 But would it be accurate to say that the
19 Canadian interswitching pricing is not really a
20 Ramsey price?

21 DR. NOLAN: That's an excellent question.
22 It tries to be. I've actually worked with a couple

1 of folks at the Agency to examine, in fact, at TRF
2 coming up in April, which I won't be at, there's a
3 paper where we try to compare the current rate base,
4 the rates set, to what we think is the equivalent
5 Ramsey price, given assumptions about demand,
6 et cetera, et cetera.

7 And they're not that far off actually,
8 believe it or not.

9 So the rates came from costing, they came
10 from the Canadian costing model, which said okay, if
11 you're going to move a typical car shipment over a
12 certain typical distance, here's the money you would
13 get per car to do this.

14 But it turns out those rates aren't that
15 far from Ramsey pricing, so I don't know whether you
16 guys want to follow that -- sorry, go ahead.

17 BOARD MEMBER FUCHS: Sorry to interrupt,
18 but just to make sure, you are talking about the
19 average price of a costing base system versus the
20 average price from a Ramsey system; right?

21 DR. NOLAN: Yeah.

22 BOARD MEMBER FUCHS: Isn't the whole point

1 of Ramsey pricing that you have -- you know, you're
2 not looking at the average price across shippers.
3 The whole point is that you differentially price two
4 different shippers based on the inverse of their
5 elasticity of demand; right?

6 DR. NOLAN: Yes.

7 BOARD MEMBER FUCHS: I don't know if that
8 average price comparison is going to do that. I
9 don't know. What do you think about that?

10 DR. NOLAN: No -- that's a really good
11 point. I would tend to think -- so when I did this
12 with a colleague, we were just averaging out to make
13 the paper simpler, but you're absolutely right, you
14 would have to do it probably on a case-by-case
15 basis. And it could be done, once you've got a
16 formula, once you've got it set up and you ask for
17 example the railway, say what do you think the
18 demand is for this rail transportation on your
19 network, and they give you an estimate, put that
20 into your Ramsey model. It's doable. This is all
21 with data; right? And you sit there and say, okay,
22 here's the equivalent Ramsey price that gives you

1 zero profit but compensates you, and we're off to
2 the races.

3 If that's too much work, then yeah, maybe
4 you have to think about a different way of doing it.

5 BOARD MEMBER FUCHS: And you're talking
6 about line haul profit; right?

7 DR. NOLAN: Yes.

8 BOARD MEMBER FUCHS: You're factoring that
9 in. I would say is it too much work -- it's been my
10 observation, and you know, listen, you know, if the
11 state of the economic art is different than that,
12 it's been my observation that accurately estimating
13 elasticity of demand on a individual shipper basis is
14 very difficult.

15 DR. NOLAN: Yeah, it is.

16 BOARD MEMBER FUCHS: Objective individual
17 cases.

18 DR. NOLAN: No question.

19 BOARD MEMBER FUCHS: I think one of the
20 themes you're hearing is can we protect core
21 important economic principles but also eliminate or
22 minimize undue administrative complexity.

1 DR. NOLAN: Right, right.

2 BOARD MEMBER FUCHS: And that's why we
3 don't have a Ramsey price -- we have Ramsey pricing
4 informs our rate review, but our rate review is not
5 Ramsey pricing, for example.

6 So I just put that out there to think
7 about, you know, the practicality of really
8 estimating elasticity of demand as it pertains to
9 compensation.

10 DR. NOLAN: But Patrick, this has got to
11 be easier than an SAC test; right? I mean, ideally
12 the SAC gets you to a Ramsey; right? But it's got
13 to be easier to do it on a case-by-case.

14 BOARD MEMBER FUCHS: Well, yeah. I mean,
15 listen, that's what they say. But elasticity demand
16 is nowhere to be found in a SAC case.

17 DR. NOLAN: Yeah, that's true. That's a
18 good point.

19 BOARD MEMBER FUCHS: Yes, CMP I guess is
20 informed by Ramsey pricing, but it is not Ramsey
21 pricing.

22 DR. NOLAN: No.

1 BOARD MEMBER FUCHS: And I would argue
2 that's because Ramsey pricing is potentially even
3 more complex because of the elasticity of demand
4 problem.

5 DR. NOLAN: Right, right.

6 BOARD MEMBER FUCHS: I very much take your
7 important on the economics principles. I just worry
8 about the complexity.

9 DR. NOLAN: No, it is. And I think
10 Patrick the way you might do that, too, is to say
11 we're going to assume for grain here's the
12 elasticity of demand, for glass materials here's the
13 elasticity of demand, coal here -- and if you make
14 that transparent to the railway and say okay, here's
15 your compensation based on that, then you can have
16 that argument outside of that system probably. It
17 is complicated.

18 BOARD MEMBER FUCHS: I know. And I don't
19 want to belabor the point because I know my
20 colleagues I'm sure have questions.

21 But you know that's just a commodity-based
22 elasticity demand where true Ramsey pricing would be

1 the totality of the circumstances, including
2 geography and other things. But listen, you are
3 putting forward something that could reduce the
4 complexity and I appreciate that.

5 DR. NOLAN: Thank you. Thank you,
6 Patrick. No, great questions.

7 CHAIRMAN OBERMAN: Other Board members who
8 want to take a stab at trying to understand what
9 Patrick and Dr. Nolan were talking about?

10 (Laughter.)

11 BOARD MEMBER PRIMUS: I don't think I can
12 do any better than that.

13 DR. NOLAN: I'm sorry, folks.

14 CHAIRMAN OBERMAN: It's okay. It's where
15 I turn over the hearing to the economists, that's
16 all.

17 DR. NOLAN: Yeah, I was going to say
18 another dirty economist coming in here for you.
19 Sorry about that, but --

20 CHAIRMAN OBERMAN: All right.

21 Michelle?

22 VICE CHAIR SCHULTZ: Yes. I think mine is

1 going to be a bit easier.

2 CHAIRMAN OBERMAN: Good.

3 (Laughter.)

4 VICE CHAIR SCHULTZ: Just to clarify, I
5 think you said that grain shippers, once they were
6 granted I believe was it 160 miles or --

7 DR. NOLAN: 160 kilometers. 100 miles
8 basically.

9 VICE CHAIR SCHULTZ: 100 miles. That
10 having that access was associated with 5.2 days less
11 in travel time, if I heard you correctly?

12 DR. NOLAN: Yes. But that data covers not
13 only the 160 limit, but also includes a year of back
14 to normal, back to the 30-kilometer limit. So it's
15 a little bit -- it's a little bit -- that's what the
16 student did. It's a little bit skewed. I probably
17 should have taken just the interswitching 100 mile
18 data and done that, but I didn't.

19 But even so -- even incorporating all
20 that, it looked like it wasn't hindering the time
21 the grain sat in the system basically.

22 VICE CHAIR SCHULTZ: No, in fact, I'm

1 trying to make sure I'm understanding this
2 correctly. The 5.2 days less actually improved the
3 travel time, if I'm understanding that correctly?

4 DR. NOLAN: Yep, yep. Yeah, it did, yeah.

5 VICE CHAIR SCHULTZ: And I don't know if
6 you could speak to this, but what was the reason
7 behind that improvement, from your perspective?

8 DR. NOLAN: I think if rather than sitting
9 on a track, the shipper, the grain shipper, was able
10 to negotiate with another railway, so let's say
11 they're on CP track and their grain is sitting in an
12 elevator or sitting loaded and not moving, then you
13 go to Burlington Northern and say hey, guys, can you
14 move this out for me, Burlington Northern comes back
15 and says in a day or so and says yeah.

16 And then they go back to CP and say hey,
17 Burlington Northern is going to come up tomorrow,
18 they're going to get the -- or day after because the
19 CTA will automatically enact the interswitch. What
20 can you do? And then CP probably says oh, crap, we
21 better move that; right?

22 So there was that negotiative suasion

1 which must have surely occurred between grain
2 shippers, grain companies and railways to move any
3 kind of grain that was just sitting on a track, for
4 example. So that's why I think there was -- sorry,
5 go ahead.

6 Go ahead, Michelle.

7 VICE CHAIR SCHULTZ: I guess as a
8 follow-up question to that then as well, and I don't
9 know if this is something that you looked into, but
10 whether or not there were any other operational
11 challenges, you know, in perhaps -- related to
12 either other commodities or more dense areas
13 associated with that 100-mile radius.

14 DR. NOLAN: That's an excellent question.
15 I don't know the answer to that. I think CN is
16 coming up later today, they will probably have --
17 maybe they will address that. I don't know.

18 It did clear out the backlog as far as I
19 know, because it took about a year -- well, maybe a
20 little less than that. It took some time to clear
21 the backlog out. But I didn't hear anecdotally
22 about any backlog as of -- in the next delivery

1 season.

2 The other thing I wanted to mention to you
3 folks quickly, I believe it was Mr. Henry who said
4 or someone else said, and I don't want to blame him,
5 it's not a bad thing, but he said oh, well,
6 interswitching really helps Canadian grain move the
7 way it does. You know, there's much more grain
8 moving in Canada at lower rates than it is in the --
9 or let's say equivalent amounts at lower rates.

10 It turns out that the reason for that is
11 there's an extra piece of regulation which came out
12 of that 1996-97 kerfuffle with grain transportation
13 called the maximum revenue entitlement, or the MRE.

14 And what it is is kind of like an average
15 revenue regulation, revenue cap which was put again
16 on grain movement.

17 So if you want to think about it this way,
18 between 2014 and 2017, the Canadian railways had a
19 double regulatory structure imposed on them. They
20 had the MRE, which limited how much money they could
21 make on moving grain, and they had the
22 interswitching which they had to address basically.

1 The MRE, which I'm not asking you guys to
2 consider whatsoever obviously, it really does -- it
3 is funny because I've seen studies from the
4 late '90s where U.S. rates from North Dakota down
5 wherever they -- wherever it got delivered to,
6 Portland, whatever at that time, they were far lower
7 than Canadian rates at that time, but because of
8 this MRE, it looks like that situation that flipped
9 over actually. I just wanted to get that in,
10 because it does relate to what you're talking about.
11 Sorry about that, Michelle. Thank you for that.

12 VICE CHAIR SCHULTZ: Thank you.

13 CHAIRMAN OBERMAN: All right. Any other
14 questions?

15 DR. NOLAN: Thank you, Chairman Oberman,
16 for letting me get in this and I really, really
17 appreciate it.

18 CHAIRMAN OBERMAN: No, Dr. Nolan, I'm glad
19 you signed up. Your research is very enlightening
20 and adds to the mix of our knowledge. We may get
21 back to you.

22 DR. NOLAN: Thank you very much.

1 CHAIRMAN OBERMAN: All right. I
2 understand that Sandra Dearden has solved her high
3 tech problems and is with us from Diversified CPC?

4 MS. DEARDEN: Yes. I apologize for being
5 late.

6 CHAIRMAN OBERMAN: You're not late.
7 You're right on time. Go for it.

8 MS. DEARDEN: Okay. Good. Good
9 afternoon. My name is Sandra Dearden, and I am
10 speaking on behalf of Diversified CPC International.
11 Diversified CPC manufactures propellants for
12 aerosols, high purity hydrocarbon refrigerants and
13 specialty applications, including biomass solvent
14 extraction products, headquarters in Channahon,
15 Illinois, Diversified CPC has six manufacturing
16 plants, and they are all rail served.

17 There has never been a time when
18 reciprocal switching was needed more. In their
19 numerous filings, it became apparent that the
20 railroads seem to think this proceeding is all about
21 rates.

22 However, we view increased competition as

1 an opportunity to derive improved service while
2 confirming competitive rates.

3 Obviously, rates are a serious concern.
4 But if shippers cannot rely on carriers to deliver
5 their products efficiently and in a timely manner,
6 plant shutdowns can occur, in which case, rates can
7 become secondary.

8 Supply chain disruptions and
9 transportation capacity are a national issue, and
10 this is not a short-term problem.

11 In 2021, the American Trucking Association
12 reported the industry was short 80,000 drivers, and
13 that number will grow to 160,000 drivers by the year
14 2030.

15 The impact on manufacturers has been
16 profound. Shippers are challenged on a daily basis
17 simply trying to get equipment to load and at a time
18 when service has declined, freight costs continue to
19 increase.

20 This is a problem that has been developing
21 for more than a decade. Precision railroading has
22 devastated the rail workforce, shrinking capacity

1 while freight volumes and rates continue to
2 increase.

3 Union Pacific's Ms. Hamann, in her opening
4 statement yesterday, cited UP's need to compensate
5 its shareholders for their investments. Her comment
6 underscores the real problem here, that the
7 railroads prioritize shareholder value over customer
8 needs.

9 I do not believe that access to new
10 reciprocal switching rules will open a floodgate.
11 However, increased competition should establish the
12 discipline needed to turn this around so the
13 carrier's primary focus is on serving their
14 customers.

15 I could cite numerous examples when
16 Diversified CPC experienced missed switches and
17 delayed cars. The link in the supply chain is
18 broken, and the need for significant change is now.

19 A clear example is the incident I cited in
20 my filing, where it was obvious that the railroad
21 managers were de-marketing customers due to shortage
22 of capacity in one lane. De-marketing due to lack

1 of capacity benefits no one.

2 If the railroads will put emotions aside,
3 they might recognize the benefits of reciprocal
4 switching for shippers and for the railroads.

5 For example, sometimes a route by an
6 incumbent carrier is not the most efficient route.
7 This presents a reliability risk for shippers like
8 Diversified CPC that ship rail in private cars.

9 Also, in situations where a railroad is
10 short of capacity, like the example previously
11 mentioned, adding a second carrier will add
12 capacity.

13 There is a working interchange with the
14 second carrier within 10 miles of the plant
15 receiving product in the lane I mentioned that was
16 being de-marketed. If that second carrier had
17 access to the Diversified CPC's plant, there would
18 not be a need for the incumbent carrier to alienate
19 customers by auctioning off capacity in their lane.

20 Reciprocal switching can establish a
21 better option for carriers and their customers to
22 plan and manage capacity, and it can also open up

1 new markets to shippers and to the rail carriers
2 where the only current applicable -- practical
3 option is competition from other origins and/or
4 other modes.

5 The operational impact cited by the
6 railroads are greatly exaggerated. Reciprocal
7 switching is a common operation performed by the
8 railroads on a daily basis, and any concerns about
9 the need for greater investments do not appear to be
10 relevant, since applications will be considered on a
11 case-by-case basis.

12 The railroads have the technology and
13 operating personnel who work collaboratively with
14 other carriers to provide service and sometimes to
15 conceive ways to streamline operations.

16 Railroad executives know this, and they
17 take pride in the quality of their personnel. So
18 raising operational impacts and greater investments
19 as concerns, along with labeling this proceeding as
20 forced switching, are nothing more than emotional
21 responses on their part.

22 AAR has submitted that the Board's

1 proposal is unsound because it extends reciprocal
2 switching beyond terminal areas. Again, the
3 practicality of a proposed reciprocal switching
4 arrangement will be reviewed on a case-by-case
5 basis.

6 But there's no good reason to limit
7 reciprocal switching to terminal areas.

8 Consider, for example, the working
9 interchange mentioned previously, which would be
10 considered to be in a remote area, is less than 10
11 miles from Diversified CFC's plant, versus the
12 Chicago Terminal, which is 234 square miles.

13 While the definition of terminal has not
14 been confirmed, limiting the new process to terminal
15 areas will probably preclude many rail customers'
16 ability to use the new reciprocal switching rules.

17 The new rules proposed by the Board
18 comprise more than just a proposal. Shippers large
19 and small need a practical way to access reciprocal
20 switching. BNSF in their filing acknowledged market
21 failures in the form of unreasonable high rates and
22 the American Antitrust Institute confirmed, when

1 competition is eliminated, that duopolies practice.

2 That brings us to today.

3 I respectfully request that the Board
4 reconsider the inclusion of testing for market
5 dominance in prong 2. It is a lengthy and costly
6 process that few shippers would use if it was even
7 appropriate.

8 However, testing for market dominance in
9 reciprocal switching procedures is not practical,
10 nor is it appropriate.

11 Consider shipments to and from a single
12 plant, some commodities and lanes could pass a
13 market dominance test while others would not. If
14 that were the case, would that industry be open or
15 closed to reciprocal switching?

16 It would not be manageable to have some
17 lanes open and others closed. And even if that were
18 the case, would the industry be required to refile
19 whenever new business opportunities and new lines
20 developed?

21 Prong 1, which is if practicable and in
22 the public interests, is a common sense,

1 case-by-case approach to confirm that a shipper's
2 facility meets certain stated criteria, which makes
3 one wonder if prong 2 is even needed.

4 It is an accepted fact that
5 rationalization of the rail network has gone too far
6 and competition has been eliminated. So just what
7 are we trying to prove? Whether one prong or two,
8 testing of market dominance to confirm competition
9 is not relevant, nor appropriate here and should be
10 eliminated from the new rules.

11 I will not reiterate some of the other
12 points made in my original filings, such as the
13 relevance of Canadian interswitching and our
14 objection to ECP when setting reciprocal switching
15 fees. Of course, fees should be decided in
16 reciprocal switching proceedings on a case-by-case
17 basis.

18 A simple method might be to develop fees
19 based on benchmarking against existing reciprocal
20 switch rates that apply in the terminal and/or the
21 region.

22 My only closing comment concerns a need

1 for a separate rulemaking proceeding to develop
2 standards of procedures for railroads that that
3 arbitrarily decide to terminate existing reciprocal
4 switching arrangements.

5 Within that proceeding, the Board could
6 have the opportunity to establish standards and
7 rules for shippers to challenge charges for
8 reciprocal switching.

9 Certainly, we do not want to delay this
10 proceeding further, which is why I'm suggesting a
11 separate rulemaking proceeding. The need to protect
12 shippers from the loss of competition when railroads
13 terminate reciprocal switching arrangements without
14 notice or justification is an important issue that
15 should be addressed.

16 While we all agree that we need to find
17 ways to drive competition, it is equally important
18 to protect competition that we already have.

19 In the interim, I submit that any new
20 reciprocal switching arrangements established under
21 these new rules should be infinite until those
22 standards and procedures are in effect.

1 Thank you for allowing me to present my
2 views. We appreciate the Board's interest in this
3 very important issue, and I encourage the Board to
4 proceed in an expeditious manner.

5 CHAIRMAN OBERMAN: Thank you very much,
6 Sandra.

7 I have a few questions. How many
8 different plant locations does Diversified have that
9 are rail served?

10 MS. DEARDEN: Six.

11 CHAIRMAN OBERMAN: And where are they?

12 MS. DEARDEN: Okay. The headquarter plant
13 at Channahon, Illinois. The rail station is
14 Lorenzo, and that's located on Burlington Northern's
15 Santa Fe, single served.

16 They have a plant in Sparta, New Jersey,
17 which is on the New York -- well, it's the NYSW, and
18 the NYSW connects with CSX and Norfolk Southern.

19 We have a plant in Sebring, Florida, which
20 is local on CSX. They have a plant in Petal,
21 Mississippi, Royal Station Dragon, Mississippi,
22 which is served by Norfolk Southern. And they have

1 a plant in Anaheim, California, which is local on
2 Union Pacific. And their newest plant, which we
3 just started last year, is at Beaumont, which the
4 rail station is Amelia. And it's at the Iron Horse
5 Terminal, which is served directly by both Union
6 Pacific and BNSF.

7 CHAIRMAN OBERMAN: You have the pleasure
8 of dealing with everybody.

9 MS. DEARDEN: Uh-huh.

10 CHAIRMAN OBERMAN: So you've got two
11 locations that are dual served. Is your experience
12 in the dual served locations different from the ones
13 that are sole served?

14 MS. DEARDEN: Well, yes. I think -- one
15 of the benefits of having dual served is it's kind
16 of part of our whole network.

17 Because we have a lot of options not only
18 for shipping in and out of our facilities but also
19 where we source our raw materials.

20 And so what we do is we apply leverage
21 from the standpoint that we have options to source
22 product from different locations. And then also,

1 obviously, for example, when you go into Sparta,
2 there's direct rail to rail competition between CSX
3 and Norfolk Southern.

4 And one of the carriers does a better job
5 at that than the other one. We have basically taken
6 all of the competitive business away from Norfolk
7 Southern. CSX has done -- CSX has been very good to
8 work with, and based on what I've been hearing from
9 these hearings, I think the reason they work with us
10 the way we do is we educate them on our business and
11 what our options are, and they respond to that
12 competition.

13 If we did not have that competition, I
14 don't think it would be as good. By the way, they
15 have benefited too. They have increased the
16 business they do with Diversified by a multiple of
17 five.

18 CHAIRMAN OBERMAN: So could you -- and I'm
19 sorry, I just don't recall from the written
20 comments. Could you give us more detail on the
21 demarketing episode you referred to? Where did that
22 happen, and what did the demarketing consist of?

1 MS. DEARDEN: Yeah, I'd be happy to.

2 What happened is all the railroads except
3 one holds our rates for the contract year end. In
4 the propane industry contract year is April 1 to
5 March 31. The only exception is Norfolk Southern,
6 and they reserve the right to increase the rates
7 quarterly, which they have not done in recent years.

8 But they did come out with a proposed
9 increase for January 1 for one lane, and that was
10 Birmingham to our plant in Mississippi, and that
11 proposed increase was 24 and a half percent.

12 So whenever possible, our approach to the
13 carriers is not to be adversarial but instead to try
14 to understand their position so that we can work
15 with them. And so my comment was in the initial
16 meeting, help me to understand what's behind the 24
17 and a half percent.

18 And what they said was they lack capacity
19 in that lane and so they're just trying to figure
20 out which customers really want capacity in that
21 lane from Birmingham.

22 CHAIRMAN OBERMAN: How far is that

1 location from Birmingham?

2 MS. DEARDEN: Hmm. Oh, I've got it. Here
3 it is. 235 miles.

4 CHAIRMAN OBERMAN: So -- and this happened
5 in January of this year?

6 MS. DEARDEN: Yes. Well, they came to us
7 in December.

8 CHAIRMAN OBERMAN: And was the capacity a
9 crew shortage problem because we've been hearing a
10 lot of Norfolk Southern crew shortage problem.

11 MS. DEARDEN: Birmingham in general has
12 been a choke point for quite some time and I think
13 there's congestion there.

14 CHAIRMAN OBERMAN: And is Birmingham the
15 nearest terminal to your plant?

16 MS. DEARDEN: No. Actually there is an
17 interchange available 10 miles from the plant at
18 hunts -- at -- my brain just fled.

19 Anyway, there's another -- a working
20 interchange 10 miles from the plant.

21 CHAIRMAN OBERMAN: Well, I'd be interested
22 to know what that is, because I'm looking at NS's

1 reciprocal switching tariff, and I'm wondering if
2 that's an interchange where they do any reciprocal
3 switching. Do you know?

4 MS. DEARDEN: No, I don't know.

5 CHAIRMAN OBERMAN: Well, it would be
6 interesting if you can while you finish, if you
7 could figure out what's the name of that
8 interchange, I'll see a particular tariff.

9 MS. DEARDEN: Yes. Okay.

10 CHAIRMAN OBERMAN: Because I don't know if
11 you were listening yesterday --

12 MS. DEARDEN: Excuse me, sir. It's
13 Hattiesburg. Hattiesburg.

14 CHAIRMAN OBERMAN: Hattiesburg,
15 Mississippi? Let's see if they're in there. And
16 who does that interchange with, CSX?

17 MS. DEARDEN: Canadian National.

18 CHAIRMAN OBERMAN: Well, NS has a
19 reciprocal switching tariff in Hattiesburg with CN,
20 yes. That's what you're talking about. And they
21 apply it to one customer, Hub City Grist and Feed
22 Mill.

1 So if we -- you had concern about limiting
2 reciprocal switching to terminals. I have been
3 raising a query with people, what if we limited it
4 to any place where railroad currently performs
5 reciprocal switching and has a tariff so we didn't
6 have to debate, I don't know if Hattiesburg is
7 considered a terminal.

8 Do you consider it a terminal? Because
9 nobody seems to know the definition of terminal.

10 MS. DEARDEN: No. I let the more --

11 CHAIRMAN OBERMAN: Except I would say
12 this, if this hearing comes on much longer, we all
13 may all end up being terminal, but that's a
14 different meaning.

15 But in that case, if there was a
16 reciprocal switching rule which made you eligible if
17 you could switch at any place where there was an
18 existing tariff, you could have interswitched with
19 CN at Hattiesburg, would that have solved your
20 problem for that plant?

21 MS. DEARDEN: That would add capacity.
22 And the point I was trying to make is, you know,

1 this isn't all bad for the railroads, because if
2 they have a capacity problem in that lane from
3 Birmingham and they have congestion at Birmingham
4 and there's been times when they have had congestion
5 trying to get cars into our plant, by adding a
6 second carrier, you will be actually adding
7 capacity, which will relieve that capacity shortage.

8 CHAIRMAN OBERMAN: Did you pay the 24 and
9 a half percent?

10 MS. DEARDEN: We spent four meetings,
11 totaled about four and a half hours, and succeeded
12 at getting a progressive increase, but they stuck by
13 their 24 and a half percent.

14 I did point out to them that this
15 increase -- this is raw materials coming in from a
16 major supplier and that it increases the production
17 costs at the plant and that they are actually
18 jeopardizing the future of that plant.

19 CHAIRMAN OBERMAN: So when you use the --
20 you know, I've heard the term "demarketing" since I
21 got to the Board in different contexts. You may be
22 the first person to put it in a concrete setting.

1 Would it be fair to understand when you
2 said that that NS came in and said, if we raise your
3 rates 24 and a half percent, will you stop using us,
4 because we don't have enough capacity. That's
5 essentially the message you were given; right?

6 MS. DEARDEN: Yes.

7 CHAIRMAN OBERMAN: That's what you meant by
8 demarketing?

9 MS. DEARDEN: Yes.

10 CHAIRMAN OBERMAN: And it sounds like you
11 responded by saying you're not going to get rid of
12 me because we need the service.

13 MS. DEARDEN: Right.

14 CHAIRMAN OBERMAN: I take it trucks would
15 not be an option -- what raw material is that that
16 you get there?

17 MS. DEARDEN: It's propane.

18 CHAIRMAN OBERMAN: So you don't want -- I
19 assume that's not really practical for trucks.

20 MS. DEARDEN: Well, it's coming from West
21 Virginia, it's originating in West Virginia, and
22 it's Rule 11 rate from West Virginia on CSX to NS at

1 Birmingham.

2 CHAIRMAN OBERMAN: I imagine there are
3 quite a few drivers in that part of the country who
4 wouldn't like to be speeding down the highway at 70
5 miles an hour next to a propane truck if they didn't
6 have to.

7 MS. DEARDEN: Right. The other thing,
8 Mr. Chairman, that's important is Diversified's
9 products cannot just go on any truck. It has to be
10 dedicated trucks. And they're experiencing a great
11 deal of difficulty in having enough drivers and
12 equipment for their products.

13 And so switching to truck is not an easy
14 transferrable thing to do. It's something that
15 requires a lot of thought.

16 I mean, it doesn't mean we won't, but it's
17 not an easy thing to do.

18 CHAIRMAN OBERMAN: So let me ask this
19 question. Did you ask NS if they would just give
20 you a reciprocal switching rate for Hattiesburg when
21 you were negotiating with them?

22 MS. DEARDEN: No. But that would be a

1 good approach.

2 CHAIRMAN OBERMAN: Well there. At no
3 extra charge. You can ask them next time you talk
4 to them.

5 Are there any of your locations where you
6 do have an existing reciprocal switching tariff with
7 any Class I?

8 MS. DEARDEN: Not for Diversified CPC, no.

9 CHAIRMAN OBERMAN: Okay.

10 MS. DEARDEN: Now, I mean there are some
11 where they have a second carrier that directly
12 serves, but -- and then NYSW connects with two
13 carriers. But --

14 CHAIRMAN OBERMAN: I have a suspicion you
15 know enough about the rail industry, you could
16 answer this question, but if you can't, that's fine.

17 Do you have any idea if you were allowed a
18 reciprocal switch at Hattiesburg, how many movements
19 that would be? How complicated would the move be?

20 MS. DEARDEN: Well, I think if you count
21 the inbound and the outbound, it's probably a
22 potential of 80 to 100 car loads.

1 CHAIRMAN OBERMAN: No, no, but how many
2 moves would -- in other words, where does the NS
3 traffic go now or where does it come from? Comes
4 all the way directly from West Virginia?

5 MS. DEARDEN: West Virginia is one move.
6 There's another one that comes out of Ohio. And
7 then we also ship out of our headquarter plant in
8 Illinois down too.

9 So that Rule 11 rate would be Chicago to
10 destination.

11 CHAIRMAN OBERMAN: What I'm really after,
12 though, is each time there would be a reciprocal
13 switch in Hattiesburg, is it more complicated than
14 just dropping your cars off and having CN pick them
15 up or vice versa?

16 MS. DEARDEN: Well, I think the answer
17 today to that kind of question would be different
18 than it would have been, say, a year ago.

19 Because none of the railroads are very
20 efficient right now. So logic would tell you that
21 if you have a carrier that directly serves the
22 customer, their route should be more efficient, but

1 that's not always the case, because there's
2 instances -- for example, we're getting product up
3 to Sparta from Texas, and some of those cars I just
4 learned a couple weeks ago, some of those cars sat
5 at Decatur, Illinois for 10 days without moving on
6 NS.

7 So in that case, those were vendor cars by
8 the way, they were not Diversified cars. In that
9 case, it would be nice to be able to switch that
10 business over to CSX, but it's vendor control, not
11 our control. But all we can do is try to trace the
12 shipments and make sure they move.

13 CHAIRMAN OBERMAN: All I was trying to get
14 at, maybe I didn't ask the question clearly, the NS
15 move of the propane is a single line, it sounds
16 like, from West Virginia to your plant?

17 MS. DEARDEN: Uh-huh -- no, no.

18 CHAIRMAN OBERMAN: No?

19 MS. DEARDEN: No. It's CSX, Birmingham
20 NS.

21 CHAIRMAN OBERMAN: Oh, I see. Then NS
22 from Birmingham to your plant.

1 MS. DEARDEN: Uh-huh.

2 CHAIRMAN OBERMAN: If you were going to
3 respond to NS's demarketing by saying well, give me
4 a switch at Hattiesburg to CN, then what would the
5 move have been made? How would the stuff get to
6 your plant on CN?

7 MS. DEARDEN: It would probably be over a
8 different interchange, but it would be CSX-CN.

9 CHAIRMAN OBERMAN: I see. Okay. Well,
10 that's very helpful. I'm trying to -- I think your
11 experience helps put some of these issues into the
12 real world situation.

13 So for the moment, you're suffering
14 silently with whatever deal you made with NS, it
15 sounds like.

16 MS. DEARDEN: Right. And trying to
17 decide -- trying to decide what to do about the
18 plant.

19 CHAIRMAN OBERMAN: Yeah. Not so silently.
20 Okay. Thank you very much.

21 Other Board members? Anyone have any
22 questions?

1 BOARD MEMBER PRIMUS: I do.

2 CHAIRMAN OBERMAN: Robert, go ahead.

3 BOARD MEMBER PRIMUS: Sandra, thank you
4 very much for being here today, for your testimony.

5 I want to stay on that -- this point about
6 your plant and the 24 percent. Have you ever
7 received an increase to that extent before?

8 MS. DEARDEN: No.

9 BOARD MEMBER PRIMUS: You know, and again,
10 as I've talked to -- if you were on during the day,
11 I'm trying to focus on the economic implications of
12 the shippers and what they're going through, because
13 of course we hear the railroad saying how much they
14 stand to lose due to reciprocal switching, but not
15 how much their customers are losing right now
16 without it.

17 Can you talk about the implications if you
18 had to shut down that plant?

19 MS. DEARDEN: Well, what would happen is
20 we would shift -- we wouldn't lose -- we would shift
21 production, the western part of the country, to the
22 Beaumont plant, and we would shift production for

1 the eastern part to our Florida plant. But there
2 would be people there who, you know, obviously would
3 lose their jobs.

4 BOARD MEMBER PRIMUS: Even though you
5 shift it to other plants, you're still looking at
6 substantial loss overall. Would that be fair to
7 say?

8 MS. DEARDEN: Yes. Well, I mean, you've
9 got infrastructure. We have to move, we have to
10 get -- we have to move not only production
11 facilities but storage tanks and so forth.

12 So I mean, it's quite an expense to doing
13 that, right. It's a major undertaking.

14 BOARD MEMBER PRIMUS: And one of the
15 reasons I'm asking also is because we've heard time
16 and again from folks, AAR and other railroads, that
17 their number one focus is growth. They want to grow
18 their business. They want to, you know, compete for
19 new business and, you know, treat their customers.

20 Do you see what's happening now as an
21 indication of that?

22 MS. DEARDEN: Well, it depends on which

1 railroad you're dealing with.

2 I think there's some railroads like CSX
3 that are aggressively trying to grow their business.
4 Some are treading water because they're just trying
5 to keep up with status quo right now. That doesn't
6 mean that they don't want new opportunities, but
7 they're so focused on just trying to deal with the
8 day-to-day issues that they aren't looking ahead.

9 And then there's other companies that are
10 saying you know what, we've got too much business
11 and we just can't handle what we have.

12 I don't see -- they don't mention what
13 they're doing to address that.

14 What concerns me is if you look at the DOT
15 projections for freight growth in freight volumes,
16 this is not a temporary issue. It's like freight
17 volumes are going to continue to increase, driver
18 shortage is going to continue to increase, and so
19 there's going to be a disconnect there.

20 And it would be nice to know that the
21 railroad planners are planning not only on how to do
22 the business today but what's it going to look like

1 five years from now or 10 years from now.

2 BOARD MEMBER PRIMUS: In the picture --

3 MS. DEARDEN: Yes.

4 BOARD MEMBER FUCHS: Not in your mind
5 being demarketed out of a region because of
6 capacity.

7 MS. DEARDEN: Uh-huh. Well, I did remind
8 them that I do have capacity in a lane, and it's
9 called common carrier obligation. They didn't
10 seem -- the managers I was talking to didn't seem to
11 understand what that was, but they did tell me that
12 Diversified CPC wasn't the only customer they were
13 talking to, that they listed a long list of shippers
14 they had to give similar messages to.

15 So it's not isolated. It's not -- I
16 didn't feel like we were being picked on. I think
17 it's just they have a capacity issue.

18 BOARD MEMBER PRIMUS: Understood. Thank
19 you very much.

20 CHAIRMAN OBERMAN: All right. Thank you,
21 Robert. Other Board members?

22 Sandra, you were so precise and explicit

1 in your discussion, there's no further questions for
2 you. Really, every person who has addressed us has
3 enlightened us to a different kind of situation that
4 needs to be taken into account as we think this
5 through. And I hadn't heard about your specific
6 problem.

7 We have been hearing repeatedly from NS
8 about crew shortages, and to a lesser extent it's
9 been -- but still there from CSX. So I'm not
10 shocked to hear how NS is handling it.

11 And it is interesting because your
12 impression is that CN could handle your traffic if
13 you could have gotten a switch.

14 MS. DEARDEN: Yes.

15 CHAIRMAN OBERMAN: By the way, did you
16 talk to CN and ask them if there was some way that
17 they could help you negotiate a deal with NS?

18 MS. DEARDEN: No, but you know what I'm
19 going to do tomorrow?

20 (Laughter.)

21 MS. DEARDEN: I'll be on the phone.

22 CHAIRMAN OBERMAN: By law, I cannot accept

1 a commission. But I would say this. I would be
2 very interested to hear if you're able to negotiate
3 any solution for this involving -- well, any
4 solution.

5 You know, our RCPA stands ready at the
6 Board, I'm sure you've dealt with them, to try to
7 help. As good as they are, they can't manufacture
8 crews for a railroad that has a shortage, but they
9 might be able to provide you some assistance. So I
10 would invite you to call on them.

11 But let us know what happens. It would be
12 very enlightening, particularly as this proceeding
13 continues.

14 MS. DEARDEN: All right. Thank you.

15 CHAIRMAN OBERMAN: Thank you, Sandra.
16 Much appreciated.

17 All right. Next up is Indorama, which has
18 three representatives. Is everybody there? Hussam
19 Awad, Barbara Hagler and H. Baker Lane?

20 MS. HAGLER: I believe we are all here.

21 CHAIRMAN OBERMAN: All right. You are
22 Barbara, I'm guessing?

1 MS. HAGLER: Yes, I am Barbara. I'm the
2 easier one to pick out, I think.

3 CHAIRMAN OBERMAN: Sometimes I'm just
4 really insightful. Why don't you go ahead, the
5 floor is yours.

6 MS. HAGLER: I sure will, I sure will.

7 As you said, I'm Barbara Hagler. I am
8 here representing Indorama. All the sites we have
9 in North America. I am here with Hussam Awad, who
10 is our Senior VP, Procurement and Supply Chain for
11 the Americas region, as well as Lane Baker, also
12 North America Logistics Manager. We all belong to
13 the part of Indorama that is combined PET segment.
14 We're responsible for the commercial and operations
15 of logistics functions for the majority of the sites
16 within the Americas for Indorama, which includes all
17 rail-related activities.

18 We are the three who have personal
19 firsthand experience with being captive shippers
20 with the railroads, working with the railroads on
21 service issues and the rate negotiations since about
22 the early 2000s.

1 Before we get started, I'd like to take a
2 minute and just thank the Board for having this
3 hearing. It's a matter that's extremely important
4 to us, as well as clearly many other shippers. A
5 lot of us are captive and access to competition has
6 been reduced or completely eliminated altogether.

7 We intend to show that reciprocal
8 switching is advisable. It meets a need and can be
9 accomplished with minimal adverse effects. We
10 commend the Board for bringing reciprocal switching
11 back to the forefront of discussion and holding this
12 hearing to provide an avenue for us and other
13 shippers and receivers to share our experiences,
14 concerns and strong support of this proposal.

15 Hussam is going to go now and tell you a
16 little bit about Indorama, who we are, where we are
17 and our interests.

18 MR. AWAD: Yes. Thank you, Barbara.

19 My name is Hussam Awad, I am the Senior VP
20 for Indorama for the Americas for Procurement and
21 Logistics. I echo Barbara's comments, and I thank
22 the Board for having the meeting. This is not my

1 first time coming in front of the Board. It is my
2 first time virtually, but I've been in Washington a
3 couple of times, given some presentations.

4 So I'm going to go through briefly about
5 Indorama. Indorama is headquartered in Bangkok,
6 Thailand, with a global operating sites of about 33
7 countries with 123 different operating locations.

8 Indorama Ventures is listed in Thailand
9 Stock Exchange with a global manufacturing footprint
10 across Africa, Asia, Europe and the Americas.

11 The company profile is comprised of
12 integrated PET, fibers, packaging, specialty
13 chemicals and olefins. We produce and serve major
14 fast moving consumer goods, automotive sector,
15 beverage, hygiene and personal care, along with
16 tires and safety segments.

17 Indorama has approximately 24,000
18 employees worldwide and consolidated revenue of
19 approximately \$11 billion in 2020.

20 The company is also listed in the Dow
21 Jones Sustainability Index.

22 Specifically to the region, to North

1 America, Indorama has 21 manufacturing facilities
2 located in the U.S., Canada, Mexico, serving over
3 200 customers and over 300 -- we use over 300
4 transloading sites.

5 Over the past decades, Indorama has
6 invested in greenfields, brownfields and
7 acquisitions in the Americas, with the most recent
8 being the pending acquisition of Oxiteno, with
9 presence in Americas, the U.S., Mexico, Uruguay and
10 Brazil.

11 I'm not going to go over where the
12 facilities are in the U.S., but I can mention that
13 we are in North Carolina, South Carolina, Texas,
14 Alabama, Louisiana, we have multiple sites in those
15 states, along with Mexico and Montreal, Canada.

16 All but one of Indorama's sites and most
17 of our suppliers and customers are captive to one
18 Class I railroad. This is little to no competition,
19 and we find that railroads are less willing to
20 negotiate rates and act quickly to remedy service
21 issues when our only option is the railroad being
22 captive to them and maybe will have some destination

1 that we might be able to serve by trucks.

2 Many sites are only set up to ship and
3 receive products by rail, so there are times when we
4 truly have no other option than rail.

5 We believe that increased competition
6 encourages fair pricing and efficient service, where
7 the lack of rail competition allows the railroads to
8 focus less on their customers and service and more
9 on their own shareholders' value.

10 Indorama operate extensively in both the
11 U.S. and Canada. In our experience and observation,
12 the Canadian competitive switching process or the
13 interswitching as we heard earlier operates
14 effectively, while CN physically service our plants
15 in Montreal, we have used Canadian Pacific in the
16 past under reciprocal switching process.

17 We first exercised this option in 2018 and
18 were able to obtain a more reasonable rate. We also
19 found service that was not significantly affected.
20 In some cases, we found it to actually improve. And
21 in one of the cases, the railroad was willing to
22 adjust service to accommodate our needs.

1 In this instance, we were able to add a
2 service day to a highly congested junction to keep
3 the supply chain flowing smoothly and decrease the
4 bunching of railcars that we were experiencing at
5 the time.

6 Without this competition from other
7 railroads, we do not believe we will have success in
8 promoting this crucial change in our service.

9 The reciprocal switching right in Canada
10 helps to keep rail freights reasonable and railroads
11 quickly reacting to service issues. It provides
12 major benefits to shippers and receivers and has not
13 resulted in significant adverse effects to the
14 railroads by causing service problems.

15 If anything, reciprocal switching has
16 improved service overall for Indorama.

17 In the U.S. railroads sometimes have shown
18 tendencies to serve their own interests to the
19 detriment of captive shippers' interests and the
20 public interests. Most recently, this has been
21 evidenced through the service issue that have been
22 developed after Class I railroad with the exception

1 of BN began implementing precision schedule railroading
2 in 2017.

3 Through the implementation of the PSR in
4 the U.S., Class I railroad over the past five years
5 have closed hump yards, cut thousands of employees
6 and reduced service and change overall operating
7 guidelines to improve their operating ratios. This
8 was done at the expense of their customers and
9 employees, based on numbers from STB, Form C on the
10 STB website, since 2017, CSX has cut approximately
11 28 percent of its employees. UP has cut 26 percent
12 since 2018, and NS has cut 27 percent since 2019.

13 Since 2017, Indorama sites have
14 experienced missed switches at plants and customer
15 sites, bunching of course in transit leading to a
16 feast or famine scenario at the delivery sites, slow
17 return of empty cars back to the operating sites and
18 longer, much longer transit times.

19 The railroads have pushed our sites to
20 take on more expense and change operations to match
21 the new process and operating strategies. We have
22 had to increase our railcar fleet by over 10 percent

1 in the past couple of years solely due to
2 inconsistency in the rail service and increased
3 transit time. And we're about to increase our fleet
4 again in the next six months by approximately seven
5 to eight percent. This is again due to the
6 inconsistency in the service and transit time.

7 We have brought on additional storage
8 yards in addition to increase the fleet service at
9 our expense to accommodate the changes in the free
10 time and the last mile operations and schedules.

11 Service issues related to PSR
12 implementation has not gone unnoticed by the Board,
13 and Indorama again commends the Board for holding
14 the railroads accountable for such bad services,
15 beginning in the listening session in 2017 when CSX
16 railroad executives to requesting service
17 performance information toward the end of 2021 due
18 to a steady stream of complaints about the standard
19 performance, the Board had tried to hold the
20 railroad accountable for the problems caused by PSR.

21 We understand that Indorama is not alone
22 in having service issues with the railroads and

1 changes must be made.

2 Now, I'll turn it to Lane to give more
3 examples of the experience that we faced with the
4 railroads on our operation.

5 MR. BAKER: Thank you, Sam. Thank you,
6 Mr. Chairman and Board members for allowing us to
7 speak today. I'm Lane Baker, one of the North
8 American logistics managers for Indorama. To make
9 matters worse, just as the railroads were smoothing
10 out some of the problems caused by the
11 implementation of PSR and service was beginning to
12 improve in most locations, COVID-19 hit. The
13 railroads had cut so many employees of PSR that they
14 have been unable to recover as employees called out
15 sick and left the railroad for other industries.

16 Any small uptick in volume caused
17 significant issues with the railroads. We have had
18 multiple incidents of not receiving service needed
19 by the Class I railroads and having to slow or stop
20 production lines at our plants as a result of lack
21 of raw material railcars being delivered to our
22 plants. This is devastating to our business.

1 In the plants in the Southeast, we've lost
2 almost 110 million pounds of production in the last
3 14 months at one plant. Another plant in the
4 Southeast lost production of over 5.5 million pounds
5 over a six-month period. Both sites are captive
6 with competing railroads nearby.

7 Our plant in the Northeast lost production
8 of over 57 million pounds during the first two
9 months of 2022 mostly due to increased transit time
10 and railroad delays resulting from crew shortages.

11 The results in lost sales for our sites
12 and the lost revenue by the railroads because we
13 cannot ship what we cannot make.

14 In addition, even though this inadequate
15 rail service has resulted many millions of dollars
16 of damages to our company, we have no recourse to
17 the serving railroads who will not provide any
18 service type of guarantee and will not share any
19 responsibilities for the damages it causes to our
20 business.

21 With reciprocal switching, we could keep
22 our supply chain moving by engaging another Class I

1 railroad to help accommodate these huge gaps in the
2 rail service by the serving railroad.

3 We have had to ship trucks in many cases
4 when we've not been able to get our empty railcars
5 back to the plant in time to load and ship back to
6 customers. In the past year, we have used multiple
7 special train requests which we pay significantly
8 more for due to the lack of service by the railroads
9 ironically. But at least they kept our plants
10 running.

11 We were granted these special trains only
12 on two occasions out of more than a dozen requests
13 to the railroad, stating they did not have crews or
14 power to make the special moves.

15 During a 10-month duration in 2021, one of
16 our plants had to ship approximately 280 trucks to
17 cover customer shipments primarily due to rail
18 service issues. With today's supply chain issues,
19 trucks come at a very high cost, and even when we
20 were willing to pay the higher rate, we cannot
21 always find available equipment, especially if it's
22 on a short-term notice. Again, lost revenue for the

1 railroads and much higher costs for Indorama.

2 Indorama fully believes that if reciprocal
3 switching was in place providing competition where
4 currently we are only served by one Class I
5 railroad, the railroads would be forced to focus
6 more on servicing our plants needs as required by
7 the common carrier obligation. If Indorama had
8 another rail option at captured operating sites and
9 customer sites, we would be able to switch to a
10 railroad that provided the best service, not just
11 the only one that's available.

12 Examples of favoring railroad interests
13 over captive shippers' interests and public interest
14 also historically includes excessive rates and
15 charges, paper barriers, overrecovery fuel
16 surcharges, restricted routing and other techniques
17 that impede access to more reasonable rates.

18 Reciprocal switching will allow for the
19 use of most effective routes and therefore provide
20 improved service.

21 When moving raw material from Wilmington,
22 North Carolina to our Asheboro, North Carolina,

1 site, each captive to a different railroad, we must
2 travel significant outer route miles for the two to
3 connect. If reciprocal switching was in place, we
4 could ship direct with just one Class I and travel
5 more effectively.

6 Also, shipping out of one of our Decatur,
7 Alabama sites to a customer in the Northeast, one
8 Class I railroad must go through a short line, which
9 is over-congested and serve the customer. But the
10 competing railroad has the ability to bypass the
11 short line and shave days if not even a week off of
12 the current transit.

13 With the global supply chain disruption due
14 to the pandemic over the past two years, the
15 railroads could have capitalized on additional
16 volume by putting more -- by pulling more product
17 from the highways and inland waterways. An effective
18 and consistent rail system is critical in North
19 America and Indorama's supply chain.

20 Now, more than ever, Indorama values our
21 relationships with the railroads and strives to open
22 and honest communication hoping to combine effort

1 that results in pathways to improve service issues.
2 We currently have sites that when we contact the
3 local serving railroad representative, they cannot
4 be reached live or anyone will return phone calls.
5 They have even attempted meetings, but the response
6 time is not improved.

7 We must resort to contact corporate to get
8 any kind of service response or actions from the
9 local team. Reciprocal switching can help improve
10 service by allowing more than one railroad to serve
11 captive shippers and receivers and provide more
12 options to move additional volume.

13 And now I will turn it over to Barbara.

14 MS. HAGLER: So I know we're out of time,
15 so I'm going to extremely abridge my version of
16 talking of how it benefits rates. I think we've
17 heard multiple times that competition does, in fact,
18 bring lower rates. We've seen service issues on the
19 rise, our rates are on the rise. And we're finding
20 that railroads are no longer using cost-based
21 methods or distance or other historical type of
22 costing methods to come up with their rates. Now

1 it's just basically based on well, this is what the
2 market is or what they perceive the market to be.
3 When there's no competition, the market is kind of
4 what they want to make it.

5 We're seeing their operating ratios
6 increase significantly. I believe one Class I in an
7 article from their fourth quarter full year '21
8 financials showed that their operating ratio
9 increased by over 11 percent while during the same
10 period, it was a 15 percent increase in revenue but
11 a four percent decrease in volume.

12 So clearly, it's just by the rates that
13 they are charging.

14 We are absolutely observing that when we
15 have a dual served customer where there is more
16 competition, we get much better rates. We're able
17 to actually negotiate. And we've had success with
18 our Montreal plant as well using the interswitching
19 that they have in Canada, keeping those rates more
20 reasonable as well.

21 So in conclusion, we just again thank the
22 Board for allowing us to speak, and we respectfully

1 urge the STB to adopt the reciprocal switching rules
2 proposed in the proceeding. The argument is
3 stronger now than ever because of the implementation
4 of PSR.

5 We believe that the implementation of the
6 rules in this proposal will improve the service of
7 our railroads and make their networks more efficient
8 and effective.

9 Thank you for your time and we'll open it
10 up to questions.

11 CHAIRMAN OBERMAN: All right. Thank you
12 very much, Barbara. I'd like to just drill down and
13 get a little more specific information.

14 I saw that you have 21 plants in North
15 America. How many locations are in the U.S.?

16 MS. HAGLER: So we have -- the only plants
17 that we actually have in the Americas outside of the
18 U.S., we have one in Canada and one in Mexico.

19 CHAIRMAN OBERMAN: So the other 19 are in
20 the U.S.?

21 MS. HAGLER: Yes. And we are continuing
22 to grow.

1 CHAIRMAN OBERMAN: And it sounds like
2 you're generally scattered around the country. So
3 are you -- when you say -- are all the plants rail
4 served plants?

5 MS. HAGLER: Yes.

6 MR. AWAD: Yes.

7 CHAIRMAN OBERMAN: Would it be fair to say
8 that everyone -- do you deal with every one of the
9 Class I's?

10 MR. AWAD: Yeah, we deal with NS, CSX, CN,
11 CP, UP, KCS and BN.

12 CHAIRMAN OBERMAN: So I'm a little
13 confused by one of the things that Mr. Lane said.

14 You have two locations in North Carolina,
15 I think, and you said that they were served by
16 different Class I's at each end. So if you could
17 have had a switch, you could have had one single
18 line connection between the two -- I couldn't follow
19 the way you were explaining that.

20 MR. LANE: Yes.

21 Go ahead, Barb.

22 MS. HAGLER: I was going to say, I can

1 speak to that because it's somewhat of a commercial
2 as well as an operations issue. It's actually one
3 of our suppliers is on the coast of North Carolina.
4 Our plant is in Asheboro.

5 And the supplier is served by one eastern
6 railroad, the plant is served by another.

7 Because there is, for lack of a better way
8 to say it, no way to get there -- from one place to
9 the next without kind of going around your elbow,
10 we're adding a lot of miles and a lot of transit to
11 the route because the two have to connect.

12 However, the railroad, the CSX, which
13 serves the coast, the supplier, can get within 30
14 miles of our plant. But because it's not a standard
15 interchange point, they won't use that, and they
16 have to come through Charlotte.

17 So they are going way out of route to go
18 back up north to connect in Charlotte with the
19 Norfolk Southern rather than connecting with them in
20 High Point.

21 And we feel if reciprocal switching was in
22 place, that High Point location would be more of a

1 feasible location, because they are -- they do
2 connect there, and they do handcars off there from
3 time to time. It's just not a standard junction.

4 Does that make more sense?

5 CHAIRMAN OBERMAN: Yes. How much extra
6 mileage is it to go to Charlotte?

7 MR. AWAD: We looked at that, Barbara.

8 MS. HAGLER: Yeah, I was going to say I
9 believe it was 150 extra miles.

10 CHAIRMAN OBERMAN: What is the name of the
11 interchange point you would like to use, High Point?

12 MS. HAGLER: High Point. One of them
13 calls it High Point and one of them calls it High
14 Rock. But it's the same location.

15 CHAIRMAN OBERMAN: Is there any reciprocal
16 switching going on there now with other shippers, to
17 your knowledge?

18 MS. HAGLER: Not that I'm aware of. We
19 have a storage facility there, the HP, High Point in
20 Denton on a short line. And they both can reach
21 that facility, but it's --

22 CHAIRMAN OBERMAN: Well, and I've looked

1 at their tariffs, I don't see a location there. But
2 let me ask, you've heard me ask these questions of
3 both the railroads and other shippers about trying
4 to proceed on an incremental basis by perhaps
5 focusing on allowing switching where it's already
6 taking place by the railroads, reciprocal switching.

7 Do you have any sense of where your plants
8 are located? Are they close enough to either
9 terminals or yards where switching goes on now that
10 that would still benefit some of these 19 locations?

11 MR. AWAD: It depends on what's the
12 radius. If it's going to be 30 miles or maybe 35,
13 40 miles I think we'll have some location that will
14 benefit from that.

15 CHAIRMAN OBERMAN: Well, it may be that
16 the way to define it is not by the mileage but by
17 where your cars are normally switched.

18 Would it be fair to say, I'm trying to
19 understand how this system works, and we've had
20 others explain that for the most part, a local train
21 from the Class I services your location. Is that a
22 way to understand the way you work with your Class

1 I's, or is it with the short lines?

2 MR. AWAD: Yes. Go ahead, Lane.

3 MR. LANE: No, it's the Class I's.

4 CHAIRMAN OBERMAN: So in each case, is it
5 a local train? It's not a long haul train that's
6 picking up your cars and going directly to the
7 destination; right? You're going to a yard
8 someplace.

9 MR. LANE: There's a local train that
10 picks up at the facilities.

11 CHAIRMAN OBERMAN: And typically, how far
12 is it from your plant to the yard that the local
13 train operates out of?

14 MR. LANE: Well, in the case of Asheboro,
15 it's less than 30 miles.

16 CHAIRMAN OBERMAN: And do you know if any
17 of those yards are yards that the Class I is using
18 for any reciprocal switching for any customers?

19 MR. LANE: Yeah, I don't know if they're
20 using those yards for reciprocal switching myself.
21 We'd have to research that.

22 MR. AWAD: But the other railroads, there

1 is another railroad that also uses that yard;
2 correct? Yes.

3 CHAIRMAN OBERMAN: Okay. Because I have
4 a -- you know, I've been looking at these tariffs,
5 and I see that Indorama is listed in the reciprocal
6 switching tariff that CSX has for Decatur, Alabama.

7 MR. AWAD: Decatur, yes. Decatur, there
8 is a special arrangement between NS and CSX.

9 CHAIRMAN OBERMAN: And you are allowed
10 reciprocal switching there?

11 MR. AWAD: Yes. When the destination is
12 located on CSX, then we take it to the interchange,
13 NS picks it up and take it to the interchange and
14 then CSX takes it to the destination.

15 CHAIRMAN OBERMAN: Say that for me again.
16 Who picks it up?

17 MR. AWAD: NS.

18 MR. LANE: So NS serves the plant in
19 Decatur. I think the piece that Hussam -- if the
20 destination is served directly by the NS, we have to
21 give that destination to the NS.

22 MR. AWAD: Correct.

1 CHAIRMAN OBERMAN: But the tariff is
2 listed in CSX's reciprocal switching tariff. So how
3 does that work?

4 I'm sorry, I misspoke. I am looking at
5 the Norfolk Southern reciprocal switching. I got
6 it. I got too much paper in front of me. Sorry
7 about that.

8 So you do have a reciprocal switching
9 tariff with NS at Decatur. Is that the only place
10 in --

11 MR. AWAD: Yes. But again, it's not
12 really -- it depends on the destination. If the
13 destination is CSX, then CSX takes the cars and take
14 it there. So it's still one railroad.

15 MS. HAGLER: So there's no true
16 competition that is encouraged by this, because the
17 only thing the CSX can quote on is something that
18 they deliver to.

19 If NS is taking it to a West Coast carrier
20 Class I or to a short line, if the NS can get there
21 in any way, then we have to negotiate with the NS.

22 MR. AWAD: Correct.

1 MS. HAGLER: We don't have the option of
2 using the CSX. It's only when the CSX is the
3 delivering railroad or a short line that the CSX
4 only connects with.

5 CHAIRMAN OBERMAN: You're saying that
6 that's the only tariff NS would give you for that
7 location?

8 MS. HAGLER: Yes.

9 MR. AWAD: Yes.

10 CHAIRMAN OBERMAN: Could you physically
11 get to where you want to go through CSX if they
12 would allow you?

13 MS. HAGLER: Yes.

14 MR. LANE: Yes.

15 MR. AWAD: Yes.

16 CHAIRMAN OBERMAN: I got it. And do you
17 have any idea what kind of -- you know, we've heard
18 a lot about the complexity of doing these reciprocal
19 switches. Do you have any idea what kind of a move
20 is made when you leave your plant on NS and switch
21 to CSX? Is it just dropping it off at the yard and
22 picking it up -- and a CSX train picking it up?

1 MR. LANE: Well, in Decatur, the local
2 would pick it up and take it back to the NS yard and
3 they would move it from the NS yard to the CSX
4 interchange.

5 CHAIRMAN OBERMAN: Who moves it?

6 MR. LANE: NS.

7 MR. AWAD: NS.

8 CHAIRMAN OBERMAN: Well, either way it's
9 got to be switched to the NS yard. If it's staying
10 on NS, it's got to get off the local and onto
11 another train.

12 MR. LANE: Right.

13 CHAIRMAN OBERMAN: In the NS yard, there's
14 only one move, either to NS or the CSX.

15 MR. LANE: Right.

16 CHAIRMAN OBERMAN: And when it gets to the
17 CSX yard, it just goes to a classification track for
18 where it's going on CSX. So it's one more move; is
19 that right?

20 MR. LANE: That's correct.

21 MR. AWAD: Yes.

22 CHAIRMAN OBERMAN: Okay. It would be

1 interesting -- I would be interested to ask you to
2 explore, if you wouldn't mind, whether any of your
3 other servicing yards or classification yards are
4 yards where -- you've got so many plants, I don't
5 want you to take up time to name them all here
6 today. And tell us whether those are yards that any
7 of your sole served railroads currently having
8 reciprocal switching tariffs in place for any
9 shippers. That's a concept I'm trying to get
10 enlightened on here as to how much of a relief it
11 would be for the kind of circumstances you're
12 talking about if that is the way we limit it,
13 decided to limit it in the rule.

14 You know, the railroads raise the concern
15 about opening up all kinds of interchanges now,
16 where they aren't doing that kind of switching.
17 Maybe they're right, maybe they're not. But if we
18 go to places where they're already doing reciprocal
19 switching, it seems to me it lessens, as some of the
20 railroads have acknowledged, it lessens any concern
21 about congestion, at least as I understand it.

22 So I'd be interested in hearing about

1 that.

2 You know, you've got a lot of experiences
3 that are difficult. Have you -- let me ask you
4 this. Have you tried to use our good offices at
5 RCPA for any of these problems you've detailed to us
6 here over the last year or two?

7 MR. AWAD: You mean service issues?

8 CHAIRMAN OBERMAN: Yes.

9 MR. AWAD: Yeah, we have actually. We
10 actually met with the former chairman in Washington,
11 D.C., we had some issues with NS. And there was
12 advice, how to approach NS, which we of course --
13 you know, of course we adopted.

14 But it took a long time back and forth
15 between us and NS to come to a resolution about some
16 of the issues that were happening at that time.

17 CHAIRMAN OBERMAN: All right. Well, thank
18 you. It's very enlightening. I would like to get
19 your follow-up if you have time to do it on some of
20 these questions.

21 Let me see if any other Board members have
22 any questions for you.

1 Patrick?

2 BOARD MEMBER FUCHS: It's Karen.

3 CHAIRMAN OBERMAN: Oh, I'm sorry. Karen.

4 BOARD MEMBER HEDLUND: I think it's
5 Michelle, not me.

6 CHAIRMAN OBERMAN: You know what happens,
7 just so the rest of the world doesn't think I'm
8 losing my mind, all of these little messages to me
9 come up under Patrick's name because he started the
10 chain yesterday.

11 BOARD MEMBER PRIMUS: I have one but I'll
12 let Michelle go first.

13 CHAIRMAN OBERMAN: All right. Michelle,
14 you're up.

15 MR. LANE: You're on mute, Michelle.

16 CHAIRMAN OBERMAN: There you are.

17 VICE CHAIR SCHULTZ: Well, the lateness of
18 the day is getting to me here, apologies.

19 Just you may have covered this already,
20 but in the area that you actually have the switch in
21 place, are you able to speak to how that occurred?
22 Was it something that was requested and negotiated?

1 How did that come into play?

2 MR. AWAD: You mean the Decatur that we
3 just talked about?

4 VICE CHAIR SCHULTZ: Yes.

5 MR. AWAD: Okay. So from my
6 understanding, I mean, that site we acquired in
7 2016, it's a BP site. So we were not there more
8 than that.

9 But from what I understand from the road,
10 there is an agreement between NS and CSX about this
11 yard, switch yard, to do the reciprocal switching in
12 Decatur, in exchange to do another reciprocal
13 switching in the yard in Tennessee.

14 So there was something between the two
15 railroads that benefited both of them, not for the
16 shippers.

17 VICE CHAIR SCHULTZ: Thank you.

18 BOARD MEMBER PRIMUS: You good, Michelle?
19 Okay.

20 Again, thanks for taking time to come
21 before us. If I could, I want to -- Lane, I want to
22 ask you again, you talked about the losses that

1 you've been sustaining since, you know, with all the
2 service related issues. And you said it's in
3 millions of dollars of damage.

4 Do you guys have a ballpark figure how
5 much you guys are losing or have lost because of
6 service issues?

7 MR. LANE: Hussam, you probably have a
8 better number on the millions of dollars that --
9 from the true rackup.

10 MR. AWAD: Yeah, I mean, we can get you
11 that, Robert. I think we have the volumes of
12 production loss, but we can easily get you those
13 numbers.

14 BOARD MEMBER PRIMUS: And I appreciate
15 that, thank you.

16 You also said I think there was somewhere
17 like 280 trucks that you had been using. If service
18 had been provided in a way that you guys expected
19 how much -- how many of those trucks would you not
20 have used?

21 MR. LANE: If the service had been there,
22 we wouldn't have used any of them.

1 BOARD MEMBER PRIMUS: Okay.

2 MR. AWAD: The only reason we used trucks
3 is because of the poor service.

4 BOARD MEMBER PRIMUS: And you've been
5 using trucks at that rate for how long? Or has that
6 been going on for months, for years, since PSR? You
7 alluded to earlier, is this continual?

8 MR. LANE: It's been continuing. I don't
9 know that it would go back two years, but I know in
10 the last year and a half, we've been extremely heavy
11 on trying to get trucks.

12 And as I indicated with the market being
13 tight on trucks, I mean, it's almost impossible to
14 get some trucks.

15 BOARD MEMBER PRIMUS: So how does this
16 sort of play out? And again, you know, I sound like
17 a broken record, but I think -- I want to sort of
18 make the case because of folks coming forward.

19 You know, we hear from the rail side of
20 the economic implications of reciprocal switching.
21 You know, what are the implications on your business
22 if we weren't to do it and when we continue status

1 quo? Could you -- how much of a hit would it be on
2 your business if you continue this model?

3 MR. LANE: Well, I think if we continue at
4 the rate we're going, obviously it's costing us
5 millions of dollars extra in freight just because of
6 all the trucking we're doing and the poor service
7 we're getting from the railroad.

8 MR. AWAD: So that loss of revenue.

9 MR. LANE: Loss of revenue again.

10 BOARD MEMBER PRIMUS: So is that passed
11 along to your customers?

12 MR. LANE: We have not passed the loss
13 along to the customers, but obviously, you know,
14 some of the higher freight charges that we're seeing
15 in trucks, I mean, we can't deliver at the same
16 price on trucks as we do with rail.

17 BOARD MEMBER PRIMUS: And I'm not saying
18 you throw it out. But I'm saying at some point,
19 your ability to sort of bear the burden is not going
20 to be there. Would that be fair to say?

21 MR. LANE: Right.

22 MR. AWAD: Yeah. I mean, when we have

1 supply agreements with our customers, we have
2 arrangement to, you know, arrange for the railcars
3 to get to them. So we negotiate with the railroad.
4 And then we agree on a supply agreement with pricing
5 economics.

6 So if the cars are not there, we have to
7 carry the burden to get the product up to them, even
8 though we're paying more in using trucks.

9 Does that answer your question?

10 BOARD MEMBER PRIMUS: It does. And that
11 was the last one. So thank you.

12 CHAIRMAN OBERMAN: Any other questions
13 from the Board?

14 Let me just ask one sort of broad
15 question.

16 If you -- looking back over the last
17 couple of years when you say you've really been
18 suffering from these service problems, are they
19 focused primarily on one or two of the railroads, or
20 are they equal across all the Class I's, as far as
21 your plants are concerned?

22 MR. AWAD: They're equal, yeah. The one

1 that adopted PSR at least, except BN. But BN had
2 their own -- they also had some issues but not to
3 the same extent.

4 CHAIRMAN OBERMAN: So it's CSX, NS and UP
5 your principal -- CN, would you include them as
6 problematic as well?

7 MR. AWAD: Yes.

8 CHAIRMAN OBERMAN: Okay.

9 BOARD MEMBER PRIMUS: Marty, I've got one
10 more question.

11 CHAIRMAN OBERMAN: Go ahead.

12 BOARD MEMBER PRIMUS: In that line of
13 thinking, you know, again we've been talking about
14 growth and railroads have been talking about growth.

15 Have you seen considerable increase in
16 your rates during this period also?

17 MR. AWAD: Correct. I mean, once you're
18 captive, right, there is very little room to
19 negotiate because you don't have much options.

20 Like we talked one of the I think it was
21 yesterday, you know, in some cases, depending on how
22 far the customer is away from the origin, you know,

1 trucks are competitive. But once you reach a
2 certain distance, it becomes more expensive.

3 BOARD MEMBER PRIMUS: Thank you.

4 Sorry, Marty.

5 CHAIRMAN OBERMAN: No, it's all right.

6 Okay. If there are no further questions, Indorama,
7 thank you. I know you have participated in other
8 Board hearings since I've been on the Board, and I
9 really appreciate your stepping up to the plate
10 repeatedly and taking time to talk to us. It's
11 really quite important, and if you do have time to
12 give us any of this follow-up material, I'd love to
13 see it.

14 MR. AWAD: Will do. Thank you.

15 MS. HAGLER: Thank you.

16 CHAIRMAN OBERMAN: All right. We have one
17 final witness on this panel, Mark Scribner from the
18 Reason Foundation.

19 MR. SCRIBNER: Hi, Chairman Oberman and
20 members of the Board. Thank you for holding today's
21 hearing and providing me an opportunity to present.
22 I promise to do it quickly because I know you have

1 another panel following me.

2 My name is Mark Scribner, and I'm a Senior
3 Transportation Policy Analyst at Reason Foundation,
4 a national nonprofit public policy research and
5 education organization with expertise across a range
6 of policy areas, including transportation.

7 At Reason, I focus on matters related to
8 transportation technology such as vehicle automation
9 and I'm also a member of the Transportation Research
10 Board Standing Committee on Emerging Technology Law.

11 Others in this proceeding have expressed
12 concern about the additional operational complexity
13 and negative impact on fluidity that the Board's
14 proposal may unnecessarily introduce into America's
15 rail networks. We share those concerns about
16 possible short run operational impacts, but I would
17 like to focus my remarks today on what we view as an
18 underdiscussed topic at the Board, and that is the
19 potential impact of the proposed reciprocal
20 switching rule on investments in automation that we
21 believe are critical to ensuring rail's long-term
22 viability and competitiveness as a freight

1 transportation mode in the United States.

2 During the last decade, automated road
3 vehicles have captivated the public with the
4 prospect of self-driving taxis and last mile
5 delivery robots, improving safety and convenience in
6 urban areas.

7 Much of the popular coverage is focused on
8 these passenger and small cargo use cases, but
9 development has also been ongoing in the heavy duty
10 truck market segment. Waymo, formerly the Google
11 self-driving car project, is developing fully
12 automated long haul trucks under its Waymo Via brand
13 that are currently being tested on highways in the
14 southwestern U.S.

15 Other companies, such as Locomotion, are
16 developing cooperative automated systems that would
17 allow trucks to automatically follow the direction
18 of leading truck, saving fuel through reduced
19 aerodynamic drag, which was the initial impetus for
20 that research and development of deployment but
21 potentially labor costs if drivers in following
22 trucks and potentially eventually lead trucks can be

1 relieved of their duties.

2 This technology has the potential to cut
3 truck operating costs by nearly half and lead to the
4 development of so-called road trains. Most
5 significantly, these coordinated convoys of
6 driverless trucks could greatly reduce rail's
7 traditional advantage over trucks for numerous
8 commodity groups.

9 U.S. freight railroads are now
10 experiencing truck automation firsthand. In early
11 February of this year, Union Pacific and automated
12 truck developer TuSimple announced a partnership to
13 launch a fully automated 80-mile truck route from a
14 Tucson railyard to a Phoenix area distribution
15 center. These technologies remain under development
16 and wide-scale deployment is likely some years away.

17 However, the eventual deployment of highly
18 or fully automated heavy duty trucks coupled with
19 leader follower coordination capabilities is
20 expected to significantly reduce road freight
21 transportation costs and impact competition between
22 trucks and rail.

1 Unsurprisingly, railroads are interested
2 in a variety of automation technologies to improve
3 safety, productivity and their competitive standing
4 with other modes that are anticipated to become
5 increasingly automated.

6 Train automation is likely to be
7 incremental as functions are gradually automated and
8 personnel are relieved from certain tasks as safety
9 is assured.

10 For instance, an incremental automation
11 phase-in would allow for reducing train crew sizes
12 from two to one, which Oliver Wyman in 2015
13 estimated could save U.S. railroads up to \$2.5
14 billion per year by 2030.

15 Certain lower risk operations, such as
16 those in rail yards or those involving shorter
17 trains, are likely to see automation technology
18 deployed sooner. But long distance automated train
19 operations may be on the horizon, as mining giant
20 Rio Tinto Group successfully demonstrated three
21 years ago with its deployment of auto haul iron ore
22 unit trains in western Australia.

1 We are concerned that the Board's proposed
2 rule would negatively impact railroad's returns on
3 investment, thereby reducing their incentive to
4 invest in train automation, research, development
5 and deployment.

6 It is generally research and development
7 of unproven technologies that get cut first when
8 shareholders throttle capital expenditures in order
9 to maintain their desired returns on investment
10 through proven business lines.

11 The Board should avoid disadvantaging
12 freight rail relative to its modal competitors,
13 which would likely incentivize customers to shift
14 traffic from rail to trucks.

15 This would have private as well as social
16 costs, when compared to freight rail, the EPA
17 estimates that trucks emit 10 times as much carbon
18 dioxide per ton mile and more than three times as
19 much particulate matter.

20 Thus even a small degree of modal
21 substitution would increase the transportation
22 sector's emissions intensity. We urge the Board to

1 proceed with caution to ensure the public interest
2 is protected, and with that, thank you again for the
3 opportunity to present Reason Foundation's views to
4 the Board, and I welcome any questions or comments.

5 CHAIRMAN OBERMAN: Thank you,
6 Mr. Scribner. I have a couple of questions.

7 In your prepared remarks, you cited as
8 authority for your position the AAR, I guess, it's
9 the animated video I've seen that shows 68
10 locomotive operations to make a switch.

11 MR. SCRIBNER: That was the thing --
12 Railway Age featured it.

13 CHAIRMAN OBERMAN: Yes. And you just took
14 that at face value that the switches would require
15 68 moves?

16 MR. SCRIBNER: I say in there, it may not
17 be the tip -- the typical switch may not be that
18 complex, but I did highlight -- I highlighted the
19 video.

20 CHAIRMAN OBERMAN: Why cite it to us?

21 MR. SCRIBNER: Oh, I included that as the
22 citation, as something -- you know, now that I think

1 about it, you probably had already seen that.

2 CHAIRMAN OBERMAN: Well, I hadn't seen it.
3 That's why I asked you why you cited it. I haven't
4 seen anybody who actually runs a railyard show us
5 how 68 moves are needed. Yesterday, UP showed us
6 that it took one extra move. Did you watch that
7 testimony yesterday?

8 MR. SCRIBNER: I didn't see the UP
9 testimony yesterday. But there is that video, and
10 it's several minutes.

11 CHAIRMAN OBERMAN: It's 14 minutes.

12 MR. SCRIBNER: It goes through all that.
13 And I took it at face value.

14 CHAIRMAN OBERMAN: Yeah, it's 14 minutes.

15 MR. SCRIBNER: Yeah.

16 CHAIRMAN OBERMAN: I took it at face value
17 too, but I took it differently.

18 You know, you said that a reciprocal
19 switching rule is going to force more traffic onto
20 trucks. Did you hear the testimony today about the
21 poor railroad service forcing more traffic onto
22 trucks from the scrap dealers and from Indorama?

1 MR. SCRIBNER: I did. And this case, what
2 I'm -- the hypothetical here or the potential impact
3 here is a second order of fact.

4 What I'm talking about. And I brought
5 this to the Board's attention because I don't think
6 it's been discussed. And, you know, in the research
7 setting, the train automation very, very early on, I
8 mean most automation in the railroad industry right
9 now has been focused on things like automated track
10 inspection, automated train operations, particularly
11 in the freight context and especially in the United
12 States, not really happening right now.

13 But because of what is going on in the
14 trucking market, where there is intense interest, I
15 mean automotive totaled tens of billions of dollars
16 in recent years invested in automation research
17 endeavors there.

18 So that is why we are highlighting that as
19 a potential second order effect of a proposed rule
20 if it causes shareholders to throttle capital
21 expenditures in order to maintain their returns.

22 CHAIRMAN OBERMAN: Okay. Anybody else

1 have questions for Mr. Scribner?

2 Karen, I thought you --

3 BOARD MEMBER HEDLUND: Mr. Chairman, I do.

4 CHAIRMAN OBERMAN: Yes, go ahead.

5 BOARD MEMBER HEDLUND: Mr. Scribner, it's
6 great to see you here today. I'm very familiar with
7 Reason Foundation and worked very closely with
8 Robert Poole for a number of years getting the whole
9 concept of privately developed toll roads and
10 privately operated and developed airports in the
11 United States off the ground.

12 But I have to say that for an organization
13 that touts itself as free minds for free markets,
14 I'm a little surprised that Reason would come here
15 and advocate against more competition in the
16 railroad industry.

17 I realize that's not quite the thrust of
18 your testimony, you're really talking about what the
19 potential is for automation.

20 But I wanted to make that point.

21 Secondly, your written remarks seem to
22 suggest that automation -- automated trucks could

1 provide a good alternative to railroads. But again
2 I wonder why Reason is suggesting that when
3 automated trucks have to run on highly subsidized
4 highways as opposed to trains, which our freight
5 rail system is not subsidized to any extent at all.

6 And then thirdly, I do not share your
7 concern that any increased costs on the railroads
8 from this proposed rule would crimp investment in
9 automation. It's obvious that the railroads today
10 are highly profitable and have plenty of money to
11 put into looking at -- looking at alternative
12 technologies.

13 And I think I share with you the
14 expectation that automated locomotives could be very
15 beneficial in the operation of railroads, in
16 particular in movements within yards, maybe for
17 switching and also perhaps at our ports to help
18 clear them out faster.

19 So I just wanted to make those three
20 points. And the next time you see Bob Poole, tell
21 him hello for me.

22 MR. SCRIBNER: Well, thank you very much

1 for those questions. So I guess where we're coming
2 from on where sort of truck automation fits into
3 this, and you're absolutely right, we are strong
4 supporters of road pricing and self-supporting road
5 infrastructure and have been for many years.

6 But what we're really talking about here
7 is sort of where the technology for -- the vehicle
8 technology seems to be going, which is a separate
9 question, largely a separate question, from those
10 infrastructure questions.

11 Now, there are some interactions
12 potentially, especially at the cooperative
13 automation levels, where you're going to probably
14 need some additional infrastructure treatments in
15 order to facilitate those kinds of operations. Same
16 thing is true of -- you know, the rail automation is
17 likely going to have some significant infrastructure
18 components. It's not just going to be sensors on
19 the locomotive, for instance.

20 But we see this as just the direction of
21 where vehicle technology is going. And if you
22 listen to these companies, these developers, they

1 say -- they specifically say at least right now by
2 and large, they do not want any infrastructure
3 changes. They are designing their technologies,
4 their automated driving systems, to operate on the
5 roads of today. So I'm taking them at face value
6 there as well.

7 And we are trying to figure out, you know,
8 what does this mean for the overall competitive
9 landscape of freight transportation in America.

10 And you're absolutely right, I mean, this
11 has much less to do with rail to rail competition,
12 which has been the major focus of this hearing, and
13 much more to do with rail to truck competition. And
14 that is -- you know, I think that's where we're
15 going.

16 I think in this automated future, we're
17 probably going to see a lot more integration of the
18 modes than we have today, and that is sort of --
19 that's our general approach in how we're trying to
20 think through these issues.

21 BOARD MEMBER HEDLUND: Yeah, I see that.
22 Getting the trucking companies to agree to support

1 tolled truck lanes, that would be great. That's
2 something Bob has tried to get for like for 10 or 15
3 years.

4 MR. SCRIBNER: Many years.

5 BOARD MEMBER HEDLUND: The trucking
6 industry has not been receptive to that whatsoever.
7 So these automated trucks are still going to be
8 running on highways that are subsidized by billions
9 of dollars. It's the highest of all the modes, it
10 is certainly the highest subsidized mode in the
11 country and will be for the future.

12 MR. SCRIBNER: Agreed.

13 BOARD MEMBER HEDLUND: That's all I have.
14 Thank you.

15 CHAIRMAN OBERMAN: Thank you, Karen.
16 Patrick?

17 BOARD MEMBER FUCHS: Thank you.

18 Mr. Scribner, I'm wondering, you had
19 mentioned actually in your testimony, that the
20 trucking industry is spending billions of dollars
21 pushing towards automation. I'm wondering if you
22 have conducted an assessment upon how much the rail

1 industry is spending currently.

2 MR. SCRIBNER: I haven't done an
3 assessment of rail industry spending. And like I
4 said to Ms. Hedlund, I think the vast majority of
5 that, if you were to do that assessment, would show
6 up in automated track inspection, at least
7 domestically in the United States.

8 Globally in, like I said, Australia, that
9 was the example with Rio Tinto. There's some
10 Japanese involvement there with that technology,
11 ATO, some in Europe as well.

12 But ATO, I mean keep in mind, is
13 traditionally thought of in the passenger context --
14 passenger rail context. So it's fairly new just to
15 see it in freight rail at all.

16 And that's why I don't think any of this
17 is going to -- we're not going to flip a switch and
18 suddenly have this available. There is a lot of
19 research and development to do.

20 But yeah, like I said, I think the
21 majority of what you're seeing is in the track
22 inspection.

1 BOARD MEMBER FUCHS: Yes. Now, which of
2 course is a little bit different than I think what
3 you were describing in terms of automation overall,
4 you know, in terms of the operations as opposed to
5 the inspection.

6 I'm sort of wondering, considering that
7 railroads control their right-of-way, right, and
8 have integration between their infrastructure and
9 their operating vehicles and their trains, I'm sort
10 of wondering whether or not you think that that
11 level of investment in operating automation makes
12 sense to you from a market perspective or whether or
13 not there's any insight to be gleaned about what I
14 think you describe as a lot more investment in
15 automation going in truck versus rail.

16 MR. SCRIBNER: Yeah, that's a great point.
17 And, you know, where you're going to -- you know, I
18 mentioned some of the infrastructure treatments that
19 you're likely to see.

20 You know, western Australia, very, very
21 rural. You know, you're not dealing with the kind
22 of urban context.

1 BOARD MEMBER FUCHS: Right. And as you
2 know, I'm sure you've studied the Rio Tinto model, I
3 have too. It's pretty much a direct shot, loop
4 track, no interchange, not a mixed manifest. I
5 mean, you described it as a unicorn, as I understand
6 it. It is mine to destination; right?

7 MR. SCRIBNER: Well, it is on the
8 mainline, yeah. And that is where it's operating.
9 As it approaches the ports, that's where you get it
10 does become crude. And during that period, this
11 isn't, you know, you're not letting it out in the
12 wild without any kind of supervision. There is
13 supervision at the rail control center where they
14 can check in.

15 And that's -- you know, what I was about
16 to say was at grade crossings, that's probably where
17 you're going to put in the kind of the both CCTV,
18 which they did in Australia, but experimenting with
19 various types of sensors.

20 Because, you know, in the truck -- in the
21 automotive automation context, one of the major
22 sensors that they are deploying is LIDAR. Well,

1 LIDAR has -- that's perfect in a road context, but
2 it has a range of you max out at a couple hundred
3 meters, which isn't going to do -- if you've got the
4 stopping distance of a one and a half mile train,
5 that's not going to do you much good.

6 BOARD MEMBER FUCHS: I totally hear you.
7 And -- I totally hear you, and that's a problem that
8 exists today, it's something to be thought about
9 with automation. And as I understand the Rio Tinto
10 route has many fuel grade crossings than we
11 typically see in American railroads as well.

12 MR. SCRIBNER: Correct. That would impact
13 the cost, you are absolutely right, the cost.

14 BOARD MEMBER FUCHS: Now, switching back
15 to bring us back to the rule. You know, suppose
16 we -- there's one theory that you know increasing
17 competition really is what drives innovation. When
18 I talk to railroads and what's motivating them to
19 think about things like dynamic block and, you know,
20 better supply chain visibility with items like rail
21 pulse and other things, it's truck competition
22 that's driving them to innovate.

1 And their competition, obviously having
2 sufficient profit allows you to make those
3 investments as well.

4 And I'm sort of wondering, is there
5 something that you would suggest that the Board take
6 a look at, if it were to promulgate a rule, to know
7 whether or not it is compromising some of those --
8 you know, some of what you're describing in terms of
9 the impact on the railroad's ability to invest in
10 automation or new technologies, let's say generally?

11 Is there something that you would suggest
12 if the Board were to engage in intensive oversight,
13 I think you heard Dr. Nolan talk about service and
14 other things. There's something you would suggest
15 we look at to know whether or not the rule is
16 compromising that?

17 MR. SCRIBNER: I would have to think about
18 that some more to give you a specific recommendation
19 there. I'm happy to do that.

20 And I think, you know, just -- I think
21 Professor Nolan made some great points.

22 But, you know, this is -- like I said,

1 this is because -- we don't have -- I mean, we have
2 you can call them somewhat commercial,
3 quasi-commercial operating contexts with automated
4 trucks today, very, very little. You have got some
5 partnerships. I mentioned one but you've got one --
6 you've got middle mile service with Gatik and
7 Wal-Mart and things like that, very, very kind of
8 small potatoes.

9 So we're not at the point where I think
10 we're even -- we can really even see how this would
11 impact the trucking market, let alone impact the
12 rail market. But I will give that some thought.

13 BOARD MEMBER FUCHS: I appreciate that. I
14 think all of us are cognizant and attentive to any
15 unintended consequence of the rule. So if you do
16 have suggestions for ways for the Board to think
17 about that, beyond just looking at regular items, we
18 would appreciate that, thank you.

19 CHAIRMAN OBERMAN: All right. Thank you.
20 Any further questions for Mr. Scribner?

21 Mr. Scribner, thank you for taking the
22 time to come talk to us, much appreciate it.

1 And it is exactly 4:00. We have one more
2 panel to go, so we will take a 10-minute recess and
3 we will reconvene at 4:10 Eastern.

4 (Recess.)

5 CHAIRMAN OBERMAN: All right, everybody,
6 welcome back to reciprocal switching hearing, and
7 this is our final panel. So I will call up Norfolk
8 Southern, Canadian National, CSX. Cindy Sanborn,
9 David Sappington, Dr. Mark Israel and Ray Atkins.
10 And Ray, I see you're appearing for both CSX and NS.

11 For CN, we have Rob Reilly, Bernd Beyer,
12 Andreas Aeppli, Kathryn Gainey and Matthew Warren.
13 And for CSX we also have Sean Pelkey.

14 So with that, Norfolk Southern, you want
15 to begin?

16 MR. ATKINS: Thank you, Chairman. Good
17 afternoon, Ray Atkins on behalf of Norfolk Southern.

18 Let me apologize right in advance for my
19 voice. I can happily report I have a very normal
20 cold, but it's wreaking havoc on my voice today.

21 Norfolk Southern objects to the 2016
22 forced access proposal. The 2016 proposal was an

1 assault on demand-based differential pricing, by
2 which some customers pay higher rates than others.

3 The desire for lower rates is natural, but
4 here are the twin problems with the 2016 proposal.

5 First, rate regulation is about striking
6 right balance between protecting a shipper from high
7 rates and permitting the railroad to engage in
8 differential pricing so they can earn a reasonable
9 return and profit on its investments.

10 This backdoor attempt at rate regulation
11 elevates the first goal and disregards the second.

12 Second, this proposal comes at a large and
13 unnecessary cost. Injecting inefficiency into the
14 network to drive down rates for a subset of shippers
15 is a tax on the entire network. Direct regulation
16 of rates avoids that tax entirely.

17 So Norfolk Southern believes that if the
18 concern is about rates, then the Board should and
19 must regulate rates directly. And you have a
20 voluntary arbitration proposal before you to do just
21 that.

22 And if your concern is about service,

1 well, this 2016 proposal is unlikely to help. It is
2 more likely to make matters worse. And again, you
3 already have a number of superior tools available,
4 specifically your regulations at 49 CFR 1147.

5 So today Norfolk Southern's Chief
6 Operating Officer, Cindy Sanborn, will explain how
7 the 2016 proposal would inject operating
8 inefficiency into the network and will exacerbate
9 the challenges inherent with network planning.

10 She will be followed by Dr. Mark Israel of
11 Compass Lexecon, who will touch briefly on the
12 importance of demand-based differential pricing,
13 explain the extraordinarily breadth of the 2016
14 proposal and describe the lack of any real empirical
15 reasons for such a sea change.

16 And then finally Professor David
17 Sappington from the University of Florida will
18 explain how economists approach access pricing if
19 the STB were to proceed either with the 2016
20 proposal or perhaps a more incremental approach as
21 Chairman Oberman has been exploring over the past
22 two days.

1 So with that, I will turn the mike over to
2 Cindy Sanborn.

3 MS. SANBORN: Thank you.

4 Mr. Chairman, I'm Cindy Sanborn, Executive
5 Vice President and Chief Operating Officer for
6 Norfolk Southern. And I appreciate the opportunity
7 to speak today at this very important proceeding.

8 Network planning is inherently complex.
9 When you operate a network, you must worry about
10 network impacts. Every user within the network
11 wants to optimize their piece of what they see.

12 But as a network operator, you must be
13 mindful of optimizing the whole.

14 To open a location to reciprocal switching
15 impacts not just the customers that decide to use
16 the switch but also the customers already in that
17 area. In effect, optimizing one piece can lead to
18 suboptimizing the whole.

19 And listening to testimony at this hearing
20 from shippers who are projecting how they would be
21 utilizing reciprocal switching option, I hear the
22 notion that a shipper would potentially use the open

1 switching option if they had severe service issues
2 with the original carrying railroad. And the
3 shipper would have every incentive to move traffic
4 to another railroad only where it would not impair
5 their service. And I believe them.

6 But how could an individual shipper
7 understand the impact to other shippers at that
8 location?

9 Managing the network by definition
10 requires the duty to manage all shippers that desire
11 to use rail and find the best outcome for all
12 shippers, not just one.

13 Creating uncertainty of how to go about
14 this is due to unpredictable use of reciprocal
15 switching, creates extreme concern especially
16 considering the number of locations on our network
17 that would potentially be open to switching.

18 We've prepared a map that is in our
19 written materials that Ray will now project, and
20 when you look at these multiplicity of locations,
21 the multiplicity of locations covering all areas of
22 our network, providing resources, additional

1 switching required and managing unexpected volume
2 with existing infrastructure will have negative,
3 unanticipated consequences.

4 Managing the network is hard enough to do
5 when we have real-time visibility on how our network
6 is operating, how it is constrained by factors both
7 within and beyond our control and how those factors
8 are changing every day.

9 Once you force open a switch, you will
10 have added a constraint to our network that will
11 remain with us indefinitely, even if it no longer
12 makes sense, if it ever made sense.

13 What I heard from the shipper panels
14 yesterday is that this constraint will appear very
15 quickly if the STB were to implement the proposed
16 rule. What I heard is they plan to bring cases to
17 open switches as part of their contingency planning
18 to address the possibility of future service issues.
19 Bringing those cases will cost shippers very little,
20 maybe some legal fees.

21 But once those switches are open, we will
22 begin incurring costs immediately because we will

1 need to plan for a shipper with an open switch
2 suddenly deciding that it wants us to interchange
3 with a competing carrier and vice versa.

4 We will need to divert additional
5 resources to that location to plan for this change
6 in our operations, and that diversion will most
7 certainly have collateral impacts elsewhere in the
8 network.

9 Impacts would likely be felt in several
10 areas. Four examples come to mind. One, how should
11 we plan for locomotives? Will the additional
12 traffic require more locomotives for a local or any
13 road train carrying this volume away from the
14 serving yard?

15 Number two, even if NS is a receiver of
16 the traffic that would be handled with an existing
17 local, we would add workload to that existing local.
18 The additional switching would most likely take more
19 time and put at risk other shippers on the local's
20 route being switched within the federally mandated
21 hours of service.

22 And even if the interchange occurred in an

1 existing location, there is no certainty that the
2 existing infrastructure would be sufficient to
3 support the additional volume.

4 What happens to cars if a customer has
5 more cars than they can handle at the facility? Who
6 will hold them between the delivering railroad and
7 the switching railroad?

8 As I look at the map with all the
9 potential locations subject to forced switching, I
10 feel great discomfort. How can we plan the network
11 today for the possibility that any one of these
12 locations can be opened and traffic shift as a
13 result of its opening? This creates a network
14 constraint in my mind.

15 Forced switching is no way to improve
16 service. Even if it improves service for customers
17 requesting it, and I doubt that it will, it most
18 certainly creates collateral impacts that will
19 complicate the operation of the network and make it
20 much harder to serve other customers.

21 Mr. Chairman, you've given us a lot to
22 think about with your questions during this

1 proceeding, relating to the examination of existing
2 reciprocal switching locations already in our
3 tariffs. In NS's case, they are listed in the
4 NS8001A, where we have approximately 100 existing
5 reciprocal switching locations.

6 We appreciate that you've given thought to
7 such an idea, and with a few hours to think about
8 it, since yesterday, I can provide an example of a
9 location where an existing reciprocal switching
10 arrangement exists that would be problematic if all
11 customers in that area had access to the same
12 arrangement.

13 It's ironic that that location is a
14 location we've heard mentioned already today,
15 Decatur, Alabama. And having had a career on
16 both -- having had time on CSX as well as my time
17 here on NS, I've kind of seen both sides of this
18 location and some of the challenges that are
19 presented there.

20 And I'll just briefly walk through how
21 interchange is affected in the reciprocal switching
22 executed. Essentially, CSX's yard in Decatur is on

1 the east side of a mainline. In order to get to
2 interchange to NS, they have to operate out of their
3 yard north on double track, which then operates into
4 single track before it comes to a bridge over the
5 Tennessee River that both NS and CSX use.

6 From that point, it backs down off into
7 what we call the new yard -- or the old yard, and
8 there are four tracks in that old yard to effect
9 interchange. CSX delivers cars into that yard, each
10 of the tracks holds about 22 cars. So when you get
11 more than 22 cars, then you have to start filling up
12 the next track.

13 NS then goes and delivers in tracks that
14 are left and pulls what CSX delivered and then takes
15 it to the new yard on NS and switches it again into
16 the actual locals that will deliver to the customer.

17 And then the cycle repeats.

18 When you think about the number of
19 customers that NS has in Decatur, which is almost
20 30, if every customer were open to reciprocal
21 switching coming over CSX, once we filled up the old
22 yard with interchange, and it had too much for the

1 old yard to hold at interchange, cars would begin to
2 back up.

3 And there are times already today where
4 that occurs. And, in fact, in 2014, when I was at
5 CSX, we were trying to figure out how to get more
6 throughput through the old yard in Decatur.

7 As far as investing in it, what we
8 determined and what we looked at was the fact that
9 we had crossings that were going to be blocked,
10 actually the yard is at the very east end actually
11 has a crossing going over all four tracks. We are
12 in the middle of town with roads right beside us.
13 And we are constrained by the CSX mainline that's on
14 the east side.

15 So if you think about the actual effort to
16 get -- for CSX to get to the old yard, they have got
17 to come out, hold a mainline that already operates a
18 number of trains on it, both NS's and CSX's, and
19 then shove off, pick up and come back out and go
20 back to their facility at Oakworth.

21 And on the NS side, we have got to go over
22 to get the cars from the old yard, take them to our

1 yard and then switch them one more time.

2 So it is a fairly complex operation. It
3 is a location that is very difficult to be able to
4 take on any kind of additional work with the
5 complexities that exist in that particular case.

6 So with that, I'm happy to turn it over to
7 Dr. Israel.

8 CHAIRMAN OBERMAN: You know what, Cindy,
9 while we're talking about that, while it's fresh,
10 I'd like to ask you some questions about this
11 precise point.

12 MS. SANBORN: Sure.

13 CHAIRMAN OBERMAN: I appreciate your
14 listening to my I wouldn't call them suggestions,
15 they're queries. I'm really trying to explore how
16 to tackle this situation.

17 According to my count, you actually have
18 105 locations.

19 MS. SANBORN: For reciprocal switching,
20 correct.

21 CHAIRMAN OBERMAN: Where you allow
22 reciprocal switching. And I have the tariff in

1 front of me. And you have 16 customers in Decatur
2 who you already permit reciprocal switching.

3 MS. SANBORN: And we have about --

4 CHAIRMAN OBERMAN: You said you had 30.
5 So I guess my first question is how did you decide
6 which of the 30 you were going to give a tariff to?

7 MS. SANBORN: I've not been able to
8 research all the way back, but what my
9 expectation -- what I believe is this was an
10 agreement many years ago associated with a merger
11 and more than likely there was a line that was drawn
12 that customers on this side of the line were open
13 reciprocal switch and on the other side were not,
14 for economic reasons at the time.

15 But I can't really explain it exactly. I
16 do know that there were an additional -- CSX also
17 opened up switching in Tennessee as quid pro quo for
18 this arrangement.

19 CHAIRMAN OBERMAN: Well, I have a few
20 questions about it. I actually -- it's interesting,
21 I hadn't expected all this focus on Decatur as much.
22 But we did actually pick Decatur as one of our

1 random examples.

2 So I would like to ask Ian to put the
3 Google Earth photograph up of what we've shown as
4 the Decatur or at least part of the Decatur area, if
5 you can scroll through that, Ian. There we are.

6 So interestingly, we showed the site of
7 Indorama because they're listed on your tariff as
8 being open but restricted. And I think the Indorama
9 witness, Mr. Awad, explained to us what that meant.

10 And then we just picked one of the other
11 shippers there that's Nucor Steel. That is not
12 open.

13 So I'm wondering -- and then the railroad
14 tracks, and I'm not sure if they're yours or CSX's.
15 So it would be helpful to me, because as I've often
16 said, I'm not good at abstract thinking.

17 Could you, looking at this picture, go
18 through again the moves that are involved with a
19 reciprocal switch?

20 MS. SANBORN: I don't actually see the new
21 yard or the old yard, and I don't see the CSX
22 mainline and the bridge. So I think what we're

1 looking at is --

2 CHAIRMAN OBERMAN: These are all NS tracks
3 I guess; right?

4 MS. SANBORN: So this would all be the
5 industrial complex. So what this would show you is
6 when we build our local out of the new yard, it
7 would then come out and serve these different
8 locations with an NS local only. And then the cars
9 that we pull from these facilities that had a
10 reciprocal switch -- were going back to CSX would go
11 backwards just the way I described, back into the
12 new yard, switched into the tracks that would go to
13 CSX, taken to the old yard, left there for CSX to
14 then come out of their yard and pull them.

15 So this is the industrial complex that
16 you're looking at here.

17 CHAIRMAN OBERMAN: All right. So let me
18 get the terminology correct.

19 Let's just take Indorama. You pull cars
20 from Indorama and other shippers in this area,
21 right, all with the same local?

22 MS. SANBORN: I would say that more than

1 one would serve this complex, but yes, there would
2 be one assigned for each or a time period where they
3 would operate through here.

4 CHAIRMAN OBERMAN: Right. So typically,
5 is the local picking up cars from more than one
6 customer?

7 MS. SANBORN: Yes, sure.

8 CHAIRMAN OBERMAN: All right. So let's
9 assume there's no reciprocal switching.

10 MS. SANBORN: Okay.

11 CHAIRMAN OBERMAN: Where does that local
12 take those cars?

13 MS. SANBORN: To the new yard.

14 CHAIRMAN OBERMAN: The new NS yard?

15 MS. SANBORN: Yep.

16 CHAIRMAN OBERMAN: And then those cars get
17 sorted out on different tracks and they're going to
18 leave that yard on an NS train going to the ultimate
19 destination?

20 MS. SANBORN: So more than likely, yeah,
21 this is between Sheffield and Birmingham, so we
22 would switch those cars either to go east or to go

1 west.

2 CHAIRMAN OBERMAN: So there's just two
3 directions out of this yard. Is that what you're
4 saying?

5 MS. SANBORN: On NS.

6 CHAIRMAN OBERMAN: On NS.

7 Now, if -- are there cases where the local
8 is picking up cars from customers, more than one
9 customer, and on that same local, some of them are
10 staying with NS and some of them are going to CSX?

11 MS. SANBORN: Yep.

12 CHAIRMAN OBERMAN: All right. So tell me,
13 then, walk me through that again. That train still
14 goes to your new yard.

15 MS. SANBORN: And the cars are switched
16 into a track going east on NS, west on NS, CSX and,
17 you know, there may be a couple others, but those
18 are the main ones.

19 CHAIRMAN OBERMAN: All right. You're
20 going too fast for me.

21 The local pulls into the yard. Some of
22 the cars are then shifted onto a track that's going

1 east on NS, some are going on another track that's
2 going west and some are going to be put on a third
3 track, which is going to go to the so-called old
4 yard?

5 MS. SANBORN: Correct.

6 CHAIRMAN OBERMAN: Which is an NS yard?

7 MS. SANBORN: Yes.

8 CHAIRMAN OBERMAN: All right. So at that
9 point in time, there's no extra switches, the cars
10 have to go on one of three tracks; right?

11 MS. SANBORN: Right. Right.

12 CHAIRMAN OBERMAN: So now another -- does
13 a CSX locomotive pick them up at the new yard or is
14 it an NS locomotive?

15 MS. SANBORN: An NS locomotive takes them
16 to the old yard.

17 CHAIRMAN OBERMAN: All right. And puts
18 them on one track, which is going to be picked up by
19 CSX?

20 MS. SANBORN: Depends on how many cars
21 there are. The longest track, there are four tracks
22 and they hold 22 cars. So if one track doesn't hold

1 it, then you put cars in the adjacent track.

2 CHAIRMAN OBERMAN: Got it. But they're
3 only going to one destination, and that is to the
4 CSX yard?

5 MS. SANBORN: As far as NS is concerned,
6 that's correct.

7 CHAIRMAN OBERMAN: And is that the only
8 purpose that the old yard is used for?

9 MS. SANBORN: Yes.

10 CHAIRMAN OBERMAN: So it's not -- whatever
11 is going on in that old yard is not otherwise
12 interfering with any NS movements. You're just
13 dropping cars off there for CSX to pick up?

14 MS. SANBORN: Well, let me make sure. The
15 opposite move also takes place. So CSX might have
16 cars in those tracks for Norfolk Southern to pull.

17 CHAIRMAN OBERMAN: Right. Okay.

18 MS. SANBORN: So that is the purpose of
19 those four tracks.

20 CHAIRMAN OBERMAN: Right. So -- so far if
21 a car is being reciprocally switched at CSX, before
22 it gets to the CSX yard, there is one additional

1 move for those cars; right? Instead of going on an
2 NS train, they're going to the NS old yard and being
3 picked up by CSX?

4 MS. SANBORN: Yep.

5 CHAIRMAN OBERMAN: And would it be fair to
6 say that once it gets to the CSX yard, whatever is
7 going on there is not a problem for the NS network
8 because it's out of the network?

9 MS. SANBORN: Yeah, what I -- when it gets
10 to CSX yard, it would be switched again to whichever
11 destination CSX needed to forward it to.

12 CHAIRMAN OBERMAN: Right. But it's not an
13 issue for the NS network, it's not slowing you up or
14 getting in the way of any NS train. It's out of
15 your tracks; right?

16 MS. SANBORN: Correct.

17 CHAIRMAN OBERMAN: Okay. So just to
18 follow up on the last witness, it doesn't take 64
19 moves to get it there. Fair enough?

20 MS. SANBORN: I'm not sure where the 64
21 moves came from, but I would say it does take an
22 intermediate handling between the two of us, because

1 there's an intermediate point where the cars come to
2 rest in between our new yard and CSX's yard.

3 CHAIRMAN OBERMAN: So how much extra time
4 does that take to move the CSX-bound cars from your
5 yard to that yard, to the old yard?

6 MS. SANBORN: So we would use, it's very
7 close in distance. We would use an existing
8 assignment that that would be part of their work is
9 to go and deliver cars to the old yard and then come
10 back and then do other work. It would not be all
11 that they do. They would do other things.

12 CHAIRMAN OBERMAN: So that crew is
13 doing -- is moving anyway is what you're saying?

14 MS. SANBORN: I'm saying that that crew
15 would come probably serve some customers and then go
16 deliver cars would be part of its day is what it
17 would do.

18 CHAIRMAN OBERMAN: Got it.

19 So what -- so delivering the cars to the
20 old yard does not require an extra NS crew because
21 that's a local that's doing -- out there doing other
22 work anyway, it's just one of their stops; right?

1 MS. SANBORN: It's incorporated in the
2 work that they do; correct.

3 CHAIRMAN OBERMAN: All right. Now, what
4 is the reason from a network point of view according
5 to Indorama that you will only interchange with CSX
6 if the cars are going someplace that NS doesn't go?
7 Does that have anything to do with the network?

8 MS. SANBORN: Well, as I mentioned, when
9 you look at the four tracks that we're talking about
10 in the old yard, there are times when there are more
11 cars than those tracks will hold.

12 CHAIRMAN OBERMAN: Is that the reason that
13 you won't allow the shipper to direct --

14 MS. SANBORN: Those are commercial terms
15 that we worked out a deal between us and CSX years
16 and years ago, probably predecessor railroads, and I
17 can't really comment on the origins and the thought
18 behind those rules. But that --

19 CHAIRMAN OBERMAN: But right now, we've
20 heard a lot of discussion about jamming up the
21 network. Once you've delivered the cars to CSX, it
22 doesn't really jam up your network if CSX is taking

1 those cars to a place that NS also goes to, in fact,
2 arguably, it takes some pressure off the NS network,
3 doesn't it?

4 MS. SANBORN: The challenge would be
5 again, as I said, is overrunning the size of the
6 handoff between us. That would be the concern,
7 where we would have cars for CSX still sitting in
8 the new yard that could not go to the old yard
9 because there was not room.

10 CHAIRMAN OBERMAN: All right. But aside
11 from that point, once the cars get to the CSX yard,
12 there is no negative impact on the NS network if you
13 permitted the destination of those cars on CSX to be
14 a destination that you also serve; right? I mean,
15 that just seems like an obvious fact.

16 MS. SANBORN: Yep, I wouldn't disagree
17 with that.

18 CHAIRMAN OBERMAN: All right. And indeed,
19 and we heard from a prior witness today,
20 Diversified, that you had some capacity problems in
21 the south. If you allowed CSX to deliver some of
22 those cars, it would relieve your tracks that were

1 going to that same destination from having to take
2 those cars there, would it not?

3 MS. SANBORN: What I heard was a different
4 location completely separate from Decatur in that
5 particular discussion.

6 CHAIRMAN OBERMAN: Yes, that's true. But
7 conceptually is all I'm saying. If CSX is going to
8 deliver one of your customer's cars to a location
9 from this area, from Decatur, that you also serve,
10 one of the pluses would be that it relieves some of
11 the capacity on your lines that are going to that
12 location, because CSX is taking theirs on their
13 tracks. That just stands to reason, doesn't it?

14 MS. SANBORN: That's correct. But just as
15 we talked about, we were talking about the old yard.
16 There's also the possibility that customers move
17 cars to us that we don't expect.

18 I think it would impact the direction that
19 you're describing, you'd have to ask CSX if it felt
20 like it would impact them. But I would expect that
21 if I didn't -- I didn't have a plan for cars to come
22 to me, that -- at NS, but because it was something

1 that a customer wanted to do through CSX reciprocal
2 switching, I would have to plan for that.

3 And that is the challenge. So the
4 direction you're describing, I agree with. But it
5 has another side to it.

6 CHAIRMAN OBERMAN: I understand that. You
7 just told us that one of the reasons that the
8 railroads, Class I's, need to stay in control of
9 this situation is because you plan for the whole
10 network. It seems to me that you and CSX interact
11 all day every day. You can do some planning to
12 account for cars that are also coming into the old
13 yard so that you don't get overburdened there?

14 MS. SANBORN: When CSX and NS can have the
15 conversation without it being something surprising
16 us, it's much easier to manage.

17 Because I have to say, and I really need
18 to say this, as we sit here and work through this on
19 a very, very, you know, specific scale and specific
20 locations, we're holding everything else constant
21 around it.

22 Very seldom are things constant. Whether

1 it's, as I said in my comments, sometimes it's
2 within our control, a derailment or something like
3 that, sometimes it's outside of our control, which
4 is weather.

5 So when you get -- an example would be
6 weather.

7 So when you get into the level of detail
8 of this move, that move and that move, sometimes you
9 have externalities that absolutely affect the
10 network as well and create some challenges with even
11 this internal very small scenario that we're
12 describing here.

13 CHAIRMAN OBERMAN: Yes. But that's
14 inherent in the railroad business. You have --

15 MS. SANBORN: Right.

16 CHAIRMAN OBERMAN: You have, I wrote down
17 a number, 750 interchanges, you've got to deal with
18 those all day every day. So there's nothing unique
19 about this kind of interaction. It's just another
20 interaction.

21 Let me ask this question. If the Board
22 were to proceed along this line of limiting

1 reciprocal switching eligibility to places where
2 that shipper is already having their cars taken to a
3 yard, where you already permit reciprocal switching,
4 and we also proceeded on the so-called case-by-case
5 basis, if you got to a point where you had enough
6 shippers in Decatur asking for reciprocal switching
7 that it threatened the capacity of this old yard
8 which only has four tracks in it, wouldn't that be
9 something to take into account, for the Board to
10 take into account in deciding whether there is too
11 much of a negative impact for that next reciprocal
12 switching request?

13 MS. SANBORN: You know, I know we're
14 working with a hypothetical concept of allowing
15 this, which was, you know, something that you had
16 talked about with other panelists last -- yesterday.

17 You know, I don't know what you would take
18 into account. Maybe you would. You might could
19 answer that better than me.

20 MR. ATKINS: Chairman Oberman, if I could
21 just add in, you did hear something concerning
22 yesterday, which is that shippers would like to put

1 these in place proactively so that they actually may
2 not be shipping anything for a period of time until
3 everybody here has secured the right.

4 And then how are you going to control on a
5 case-by-case basis the implications when all 30 of
6 them decide that they're going to engage in
7 reciprocal switching?

8 So the feature of the proposal doesn't
9 include any requirement that you commit to shipping
10 a significant amount or even any amount.

11 So it seems challenging to just assume
12 that you're going to be able to fix things either
13 prospectively or retroactively on a case-by-case
14 basis.

15 CHAIRMAN OBERMAN: Listen, I'm not making
16 any assumptions, Ray. I'm trying to figure this
17 out.

18 Would it be fair to say, Cindy, that all
19 16 people who have reciprocal switching tariff in
20 Decatur, they're not using those switches every day,
21 all day, are they?

22 MS. SANBORN: I can't -- I don't know. I

1 can't answer that question.

2 CHAIRMAN OBERMAN: You have -- I mean,
3 I've read your tariff, I haven't read every line but
4 I've looked at it.

5 There are hundreds and hundreds of
6 customers who have reciprocal switching tariffs
7 throughout your network. Can't you say, based on
8 your experience, that not all of them are using them
9 every day but they are holding them in reserve
10 whether they need them?

11 MS. SANBORN: I haven't looked at it,
12 Mr. Chairman. I'd be guessing to answer it, answer
13 that question with facts. And I really don't want
14 to give you opinion.

15 If you're asking me a direct question, I
16 don't know.

17 CHAIRMAN OBERMAN: Right. And in response
18 to Ray's concern, if we're trying to formulate an
19 approach here that takes into account the capacity
20 of the switching yards, I would assume that all of
21 the legal geniuses involved in this effort on the
22 Board's side and on the stakeholders side could

1 figure out how to accomplish that, once we can
2 figure out the logistics that might make the system
3 work, which is what I'm trying to explore here.

4 Would it be also fair, Cindy, to say that
5 of the 105 places where you now have reciprocal
6 switching, you don't have every place having only
7 four tracks to handle cars that are going back and
8 forth?

9 MS. SANBORN: Yeah, that would be fair to
10 say. There may be some places where there's less,
11 to be honest with you, but that's true.

12 CHAIRMAN OBERMAN: Some more, some less.

13 But you do have throughout your network,
14 particularly on the eastern half of the country,
15 although I think it's nationwide, that you have
16 trains interacting with each other, with the other
17 railroads, all over the place.

18 So the idea of coordinating and handing
19 off traffic is not unique to reciprocal switching.
20 It's a constant in your business, is it not?

21 MS. SANBORN: Well, I would tell you that
22 that planning, the annual planning and even in the

1 more closer to what you see when the annual plan
2 changes, because it always does change in terms of
3 volume, there's a tremendous amount of work that
4 goes into figuring out and talking to our customers
5 is where the basis of that conversation occurs, what
6 should we expect in the next year.

7 And we allocate, you know, people,
8 locomotives and any number of actions that we take
9 to be able to move that.

10 And so we try to create our annual plan.
11 We have an idea where things are going and what we
12 should expect. And the unexpected types of shifts
13 are things that are very troubling.

14 And when I say that on a network level, do
15 we interact with each other? Yes. But we have a
16 plan as to how we're going to interact with each
17 other. We know what kind of locomotive we need to
18 have available. That's one of the points I made.

19 You get enough volume coming through a
20 location that you're not really expecting, you're
21 going to need to allocate resources to that to
22 actually pull that volume.

1 So it's very structured in how we go about
2 it, again trying to make sure that we optimize the
3 haul to the very, very best we can.

4 CHAIRMAN OBERMAN: I understand that. But
5 the notion that somehow has been assumed by people
6 who have talked to us over the last two days that
7 these reciprocal switching orders are going to drop
8 out of the sky without any notice, that's not how
9 any system is going to work.

10 A customer who wants reciprocal switching
11 is going to have to file an application under
12 whatever standards we would set if we adopt a rule,
13 you're going to have a chance to respond, there's
14 likely to be litigation over it, and there is ample
15 time for the railroad that's involved, both
16 railroads, to figure out how this will or will not
17 be integrated into the system. And it could be part
18 of your planning. The notion that it's all going to
19 be surprise activity, I don't know where that came
20 from.

21 MS. SANBORN: I think it's some of what
22 Ray just said. And in my testimony that I started

1 with. Once it's open, to your point, it may not be
2 used, and then all of a sudden it may be. So once
3 you --

4 MR. ATKINS: Chairman -- Chairman Oberman?

5 CHAIRMAN OBERMAN: We've dealt with a lot
6 of straw men in this hearing. I didn't hear any
7 shippers say here's my plan, I want to hold it in my
8 back pocket and then spring it at the last moment.
9 I didn't say anybody hear that.

10 MR. ATKINS: So Chairman, just real quick,
11 ACC did make that point, but let me make a different
12 point about the cases that you're going to get.

13 This actually is our agreement with you,
14 which you said earlier, which you actually think
15 once you set the standards and there's a couple
16 cases, that will be it.

17 So what will unequivocally happen if you
18 change the rule and create a new non-fault-based
19 system is there may be a few cases that come in that
20 flesh out the details around it. But after three or
21 four cases, five cases at the most, you're going to
22 have created a body of precedent that the railroads

1 are going to have to comply with. And from your
2 perspective, I think it's actually your goal, is for
3 the cases to disappear and the railroads to actually
4 voluntarily comply with the standards that you've
5 announced.

6 And so the idea that you will still be
7 there preventing harms either from an individual
8 case or the cumulation of dozens of cases is just --
9 we're concerned that that cannot happen.

10 I appreciate that some may think you can
11 do that, but we have concerns that once a few cases
12 have rolled through the pike, you'll have a new set
13 of standards the railroads will have to comply with.

14 CHAIRMAN OBERMAN: Ray, you actually
15 overstated and vastly misquoted what I and others
16 have said.

17 What I said is that I would hope that
18 cases don't need to be brought because the balance
19 of bargaining will have been modified, and so that
20 railroads and shippers will work things out
21 themselves.

22 And what I actually think should happen,

1 and, you know, I don't usually quote them, but I
2 quoted Hunter Harrison in my talk last fall, is that
3 the railroads who are being requested to provide
4 reciprocal switching will up their game so we won't
5 have these interchanges and movements, and we'll
6 just get where service problems exist, it will help
7 get them resolved.

8 So I don't anticipate, and I never urged,
9 and I'm not sure what I'm urging, because this is
10 all still in the formulation notion, somehow if we
11 adopt a rule and there are three or four cases as
12 you say, then thousands of shippers overnight will
13 get reciprocal switching tariffs because the
14 railroads will turn them down. No one has ever
15 suggested any scenario like that.

16 So I just think we should stick with the
17 problem that's facing us and not spend too much of
18 our time shooting down straw men.

19 Cindy, were you aware -- you must have
20 been aware since it seemed like it was more systemic
21 than just one shipper -- of the scenario that was
22 described by the -- by Sandra Dearden from

1 Diversified?

2 MS. SANBORN: I was not aware of what she
3 described until I heard her say it.

4 CHAIRMAN OBERMAN: Do you see any opening
5 there when your people come to a shipper and
6 basically say to them, we don't have capacity to
7 serve you anymore, so we're going to raise your
8 rates, to at least give that shipper the option of a
9 switch, which in her case was CN, 10 miles away?

10 MS. SANBORN: Well, Mr. Chairman I've
11 looked into it from an operating side since her
12 testimony, I listened very intensely to her, to
13 understand what was happening on the operating side.

14 So as I understood it, she described a
15 movement from West Virginia to Birmingham on CSX
16 interchange to NS at Birmingham, and then traffic
17 going to Hattiesburg, which then was switched at
18 Hattiesburg to a jointly served location 10 miles
19 outside of Hattiesburg.

20 In talking to the operating team, I can't
21 find that scenario with propane moving down to that
22 location. Closest thing I can find is some ethanol

1 moving to Nicholson, Mississippi, which would go to
2 Meridian, be switched at Meridian, and moved on a
3 local that goes between Meridian and Hattiesburg.

4 So I'm still researching that as to where
5 the issues are with capacity. But talking to the
6 team, we have had challenges in the Birmingham
7 terminal. As I told you when we were talking about
8 what our service recovery plans were, we were seeing
9 a lot of improvement in Birmingham. And that whole
10 side of our network is much more fluid.

11 And really, I'm not aware and my local
12 team is not aware of any customer concerns down
13 there. So I'm still researching that. And as far
14 as the commercial impact, I obviously have had no
15 time to dive into that.

16 But I've heard everything she said and
17 very, very, very much want to understand what's
18 taken place.

19 CHAIRMAN OBERMAN: Well, I would say this
20 is a good example of an issue that really is best
21 resolved between the customer and you and not at a
22 public hearing. She just raised it as an issue, and

1 I actually may ask one of your other witnesses about
2 it.

3 But it seems to -- you know, Sandra
4 Dearden is not some new person. She's very
5 experienced logistics manager, and I have no reason
6 to doubt the scenario she suggested to us.

7 So I think it would be a good idea for
8 your team to research the question and get back to
9 her and see if you can't solve that problem.

10 MS. SANBORN: Yes, I agree with you.

11 CHAIRMAN OBERMAN: I may well have some
12 other questions on this.

13 Just before we remove this map from the
14 screen, other than whether you have enough space on
15 your four tracks in your old yard here, is there
16 any -- there's no operating reason that you couldn't
17 provide reciprocal switching to Nucor steel, which
18 is just one of the shippers that we've picked at
19 random here, is there? Same local, it looks like
20 it's going to go right past there, and probably
21 serves them now.

22 MS. SANBORN: Well, I think that you

1 mentioned the old yard being a constraint. And I
2 think that, you know, the fluidity of our new yard
3 is much more complete when we're able to manage our
4 own trains and cars off our own trains to serve
5 customers.

6 You know, nothing against CSX, but any
7 time there's a physical infrastructure challenge
8 that they have to get to us, you know, sometimes
9 that's not -- interchange doesn't always occur on
10 time, or us to them.

11 So it's an additional handling and an
12 additional step. And I think any time you have
13 that, you introduce uncertainty or, you know,
14 challenges in the network for one of those steps not
15 to take place. So --

16 CHAIRMAN OBERMAN: Isn't it the case that
17 you're picking up Nucor cars now and taking them to
18 your yard? As you said, they go on one of three
19 tracks, east, west or CSX.

20 MS. SANBORN: But on the inbound side when
21 they come on in S trains, they come on in S trains,
22 get incorporated based on our schedules and there is

1 a compressed time frame, I think UP talked a little
2 bit about this, try to make sure that we have the
3 trains arrive in a way that they connect quickly to
4 the locals. And it's a little bit more
5 time-consuming when they're not integrated into that
6 type of planning.

7 So yeah, the challenge is any kind of
8 congestion when you get a day behind with
9 interchange.

10 CHAIRMAN OBERMAN: Well, yeah, I'm not
11 assuming you're going to get a day -- why do we
12 assume you're going to get a day behind if you serve
13 this other customer?

14 MS. SANBORN: The idea of having
15 interchange and being able to pull it and
16 incorporate it into the existing local that's going
17 to serve the customer. Because a local serves each
18 individual customer. That's the difference.

19 CHAIRMAN OBERMAN: Well, I only wish,
20 Cindy, that NS was operating now as you have
21 acknowledged it is not, on a basis where that kind
22 of delay would be a departure.

1 Anyway, let's move on. I didn't mean to
2 dominate the whole afternoon here. I don't know if
3 other Board members have questions on this issue or
4 whether they want us to move on with your other
5 witnesses.

6 What's the pleasure of the Board?

7 BOARD MEMBER FUCHS: I do have questions,
8 but Ray, is it your expectation -- first of all,
9 sorry about your cold and I hope you get well.

10 Is it your expectation that the best time
11 to discuss the fault versus no-fault concept would
12 be after the economist presentation?

13 MR. ATKINS: Yes, I would recommend that.

14 CHAIRMAN OBERMAN: I'm sorry, could you
15 say that again?

16 BOARD MEMBER FUCHS: I want to get into
17 the fault versus no-fault concept.

18 CHAIRMAN OBERMAN: Okay.

19 I'm sorry, go ahead.

20 BOARD MEMBER PRIMUS: I have a quick
21 question.

22 Cindy, how -- you say on those four

1 tracks, how many cars do you switch now?

2 MS. SANBORN: I have not checked on how
3 many go in or out presently. I have experienced, as
4 I described, oversubscription to those tracks in my
5 past. Generally there's all kinds of inputs,
6 commodity inputs, whether these customers are
7 able -- or needed to move traffic, you know,
8 change -- some cases even exchange rate, some cases
9 it's pricing for grain or pricing for scrap.

10 So it can be very seasonal, and it can
11 change fairly rapidly.

12 But right now this minute, Member Primus,
13 I don't have those numbers.

14 BOARD MEMBER PRIMUS: But you say at some
15 point that you get full --

16 MS. SANBORN: Yes.

17 BOARD MEMBER PRIMUS: -- capacity?

18 MS. SANBORN: There's more cars that want
19 to swap between us than we really have room for.

20 BOARD MEMBER PRIMUS: But you guys plan
21 that operationally, that even though you don't know
22 -- or it can be seasonal or cyclical, it's not every

1 other week or every first, you know, week of the
2 month. So you do have to plan operationally for
3 those variables?

4 MS. SANBORN: There's some that you can
5 plan for and some you can't plan for.

6 BOARD MEMBER PRIMUS: Okay. And the ones
7 that you can't plan for, you're still able to carry
8 those out though?

9 MS. SANBORN: It depends. And as I
10 described in my testimony earlier, sometimes that
11 comes with effects of other customers.

12 As I mentioned, our assignment that goes
13 and pulls -- delivers and pulls also works other
14 customers. If for some reason there's more work to
15 do to make that -- effect that interchange, we get
16 delayed or late going to other customers that that
17 local is meant to serve, and that can impact others
18 beyond just the ones that are engaged in the
19 reciprocal switching through the old yard.

20 So we constantly have to adjust when the
21 time comes, and sometimes it's easy to do and
22 sometimes it's not. And it takes us a few days to

1 work out of.

2 BOARD MEMBER PRIMUS: Real quick, so one
3 of the things that I think gets -- I think is lost
4 is that, you know, when -- the idea -- I guess the
5 idea that Marty is talking about, that, I think some
6 of us who think about reciprocal switching, is not
7 so much if the shipper has the right to do the
8 switch. I mean, it's not like again they can call
9 CSX tomorrow and say hey, I want you to switch my
10 cars. They have to go into negotiations as to
11 whether or not CSX is going to do that.

12 And if they do that, if there is an
13 agreement, then they have to come back to you and
14 work out that.

15 So I kind of take issue when everyone sort
16 of says that all of a sudden, you know, everyone is
17 going to rush to the door and say hey, I want to
18 switch, and we're going to grant it, and all of a
19 sudden it has to happen.

20 I think everyone has to understand just
21 like you said, there are operational issues that
22 every shipper has to consider when making a switch,

1 same way that you do. It's not something where they
2 can just turn around and say okay, we're going to
3 move this car on a different line, and all of a
4 sudden snap their fingers and it's so.

5 One of the things I said yesterday, and it
6 was a frustrating thing, is that for us it's going
7 to be helpful moving forward to sort of talk about
8 these things in a way that -- you know, how we solve
9 them moving forward.

10 I mean, the system is such right now,
11 again, that we're in this position and having these
12 conversations because it's not operating the way it
13 should, and it has been that way for a long time.
14 Again, 11 years this has been on the books, so this
15 is not new. And so these operational challenges
16 aren't new.

17 For us it's going to take everybody to
18 come together to figure this out.

19 Again, I know that you're resistant to it
20 and to the ideas, but at some point we have to have
21 that conversation as to how we're going to get
22 beyond the service challenges that we're in, and

1 utilizing your assistance and the others to get it
2 done.

3 I mean, the big thing we heard earlier
4 with the organization that we were talking about,
5 the 25 percent or 24 percent tariff, you know, she's
6 saying that it's all due to capacity. And so the
7 question is, you know, you guys keep telling us over
8 and over again, I want to grow, we want to grow, we
9 want to grow. But how do you do that? How do you
10 do that when you're getting ready to tax somebody an
11 additional 25 percent for them not to grow, for them
12 not to move their stuff?

13 And so it seems hypocritical at some point
14 to say okay, we don't want you guys on our network
15 because we're at capacity, but you're telling us
16 hey, you know, we're going to be growing.

17 So, you know, we've got to have that -- I
18 just think that we're talking -- sometimes it seems
19 like we're talking around each other, and we've got
20 to sort of get to that point where we have this
21 understanding of how we're going to fix this.

22 And I'll stop until we finish the rest of

1 the presentation.

2 BOARD MEMBER HEDLUND: I want to pick up
3 on something.

4 Cindy, thank you very much for your
5 comments.

6 I think what you've brought out is the
7 fact that just because a switch is theoretically
8 possible doesn't mean that in the real world it can
9 necessarily be done in real time, that you need to
10 know when trains are coming, you need to know how
11 many trains might come in a week or a month, so that
12 they can -- you can work that into the operations of
13 your switching yard.

14 And so when the Board is asked to
15 determine whether a switch is possible, is feasible,
16 we should take into account not only whether it is
17 physically feasible but what the capacity of that
18 switching facility is to handle the number of cars
19 and volume and timing that the company wants, that
20 wants the switch.

21 MS. SANBORN: I would agree with that.

22 And, you know, you have to add some

1 contingency into that as well, because things are
2 not always perfect. Member Primus is talking about
3 our service levels, and he's exactly right.

4 And as we recover, and that is our -- my
5 number one focus, you know, we do need to have slack
6 in any system that we have in order to be able to be
7 consistently serving our customers.

8 And some of the complexity with this is
9 that there is a lot of unknown. There's a lot of
10 variability. Even the Canadians that you heard talk
11 about visibility and being able to see what's coming
12 in the interswitching locations, it's not that
13 clear.

14 So that is a big part of my concern and
15 the consideration that I hope the Board will take.

16 BOARD MEMBER HEDLUND: Well, thank you.
17 And we appreciate your frankness about the
18 challenges that your railroad is currently working
19 hard to overcome.

20 MR. ATKINS: With that, Chairman, can
21 we -- okay to move it to --

22 VICE CHAIR SCHULTZ: Question. Just one

1 question.

2 Thank you, Cindy, for being here today and
3 for your insight into this important issue.

4 With regard to shippers who may seek a
5 switch where there is no-fault situation with the
6 host railroad, how would you describe the competing
7 railroad would handle that switching request,
8 especially if it's made without advance notice?

9 MS. SANBORN: Well, I think it would
10 depend. Again, there's some physical constraints,
11 there's some resource constraints, that would have
12 to be taken into consideration.

13 And then, you know, how consistent is the
14 move going to be? I mean, you know, we heard and
15 talked about it in my prepared remarks, around we
16 want this just in case we have a service issue so we
17 can quickly flip to somebody else, the competing
18 railroad.

19 If you're the competing railroad, you
20 know, what you don't want is to be tipped over into
21 a similar problem from a service perspective on your
22 line because somebody is shifting stuff unexpectedly

1 to you.

2 So I think visibility is probably the
3 biggest issue and concern, along with the ones that
4 I previously mentioned.

5 VICE CHAIR SCHULTZ: Thank you.

6 BOARD MEMBER PRIMUS: I just want to say
7 one thing, Cindy. I don't think -- you say that
8 it's unexpected, but a switch is not to me, unless
9 you're going to explain how it's unexpected, that
10 they can just pull it out of a hat without anybody
11 knowing. You know, in order for someone to get a
12 switch, you have to -- another carrier has to agree
13 to take that. They can't just say, okay NS, come
14 take my stuff off of CSX's line, and you have to say
15 okay. You have to go in and agree to that and say
16 we're willing to serve you. So it's not necessarily
17 like oh, this is out of thin air.

18 Again, you also don't have to take it.
19 You don't have to -- you don't have to take that,
20 you know, that -- that product, that service. You
21 can say well, hey, we're full.

22 But -- so it's not a matter of saying

1 you're getting slammed and saying all of a sudden
2 somebody said I call reciprocal switch and you have
3 to take my freight, you have to take my service.

4 I have not seen that, and if it is in any
5 place, please remind me and please show me where
6 that is.

7 But I think there's enough there that's
8 not like we're just throwing it on people, or this
9 concept, just throwing it at people. It's offering
10 the opportunity to have competition, and that people
11 can respond to that option for competition, not a
12 demand or even a referendum or even a requirement
13 that you have to take someone's goods just because
14 they're awarded -- you said it yourself that you
15 don't know how many people are actually taking
16 advantage of it or if they're taking advantage of it
17 at all.

18 So people have that right now, the tariff
19 right now under you, but they're not exercising it.
20 In your mind and in your world, just because they
21 had it, they would be exercising it every day, all
22 the time. And without you guys knowing or just, you

1 know, just coming forward and saying it.

2 And I just want to make sure that we
3 understand -- I mean, again, if I'm speaking wrong,
4 you let me know that, that I don't see anyplace else
5 where they say as soon as reciprocal switching, if
6 it were to happen, that all of a sudden everybody
7 can just sign up and make you take their freight.

8 Is that what you're reading?

9 MS. SANBORN: If a facility is open to
10 reciprocal switching, the decision by the customer
11 to use carrier A or carrier B is completely up to
12 them.

13 BOARD MEMBER PRIMUS: If there's a carrier
14 B. I mean, they have to go and seek if there is
15 competition. If a carrier B does come on the scene.
16 There's no guarantee that there's going to be a
17 carrier B, unless you're telling me that there has
18 to be, we have to name a carrier B.

19 Are you saying that?

20 MS. SANBORN: What I'm saying is of the
21 105 locations that Chairman Oberman laid out,
22 there's 105 locations, and you've asked how many

1 customers use that opportunity for reciprocal
2 switching. I don't have the answer.

3 But let's say it's 5 percent. What if 20
4 percent decided to use it tomorrow? They have it
5 there, it's available, it's already open, it's
6 already agreed to, it's there.

7 BOARD MEMBER PRIMUS: They don't have
8 agreement, they don't have agreement with any other
9 shipper yet, even if it's open tomorrow. There's no
10 agreement to ship that -- or another carrier. It's
11 open, yeah. There may be -- you may be sitting
12 there and being in that receiving end of reciprocal
13 switching from CSX.

14 But if they open up 20, you've got to go
15 into negotiations with those 20 and say yes, we'll
16 do that.

17 It's not like all of a sudden you're
18 mandated to take all 20. And if it is, like I said,
19 show me where it says that.

20 MR. ATKINS: So Member Primus, if I could
21 just inject, and I think I understand your point.
22 But just -- I don't think that's an accurate

1 description of the law --

2 BOARD MEMBER PRIMUS: Ray, tell me where
3 it says in -- or now that says on day that you have
4 to --

5 MR. ATKINS: So let me try, okay? So the
6 railroads are obligated to comply with their
7 tariffs, period. That's an obligation, so long as
8 that tariff is out there, they have to comply.

9 So if Norfolk Southern has a tariff in
10 place, it offers a customer the right to switch --
11 and you will see every tariff is specific to the
12 customer and the interchange partner.

13 If they have -- they have held out a right
14 to the customer to do that switch, they are
15 obligated by federal law to comply with that unless
16 they change the tariff. And --

17 BOARD MEMBER PRIMUS: CSX is not
18 obligated --

19 MR. ATKINS: Yes, CSX, absolutely they
20 are, they have a -- yes, they are. They have a
21 common carrier obligation to accept interchange and
22 deliver it to the destination. It is not -- it

1 cannot just refuse.

2 BOARD MEMBER PRIMUS: You and I see that
3 differently. I don't see --

4 CHAIRMAN OBERMAN: Let me see if I can cut
5 through some of this quickly so we can move on.

6 Your relationships at any railroad, so
7 Cindy, your relationships with your NS customers,
8 you have existing relationships, volumes that you
9 agree to pick up from any particular plant, two cars
10 a day, 20 cars a day, service Monday, Wednesday and
11 Friday.

12 So your local trains are servicing
13 whatever that traffic is now. So the only question
14 is if on a given day, a shipper decides -- and you
15 seem to assume they're going to decide without
16 discussing it with you in the first place -- you
17 know what, tomorrow we're going to tell NS to take
18 the 20 cars they usually pick up from us, and send
19 them over to CSX instead of sending them out on
20 their own line.

21 I mean, does any manufacturer work that
22 way? And do we expect people to try to play games

1 with this?

2 The only reason, I hear from the shipper
3 world, that they may utilize a reciprocal switching
4 tariff, is that if your service has fallen down.
5 And it's hard to imagine most of your customers not
6 talking to you about it in advance.

7 So there would be plenty of advance
8 discussion about whether the customer may have to
9 utilize its right to reciprocal switch once they had
10 a tariff. This isn't going to be sprung on anybody
11 by surprise. I don't hear any company who operates
12 that way. Everybody has to plan in advance.

13 Plus the fact whatever the rights are,
14 Ray, and I think you're right to some degree, under
15 the common carrier obligation, in the real world,
16 the customer is not going to spring a shipment over
17 to the Decatur old yard until it has talked to CSX
18 to make sure it's going to get decent service from
19 CSX. Otherwise, it will stick with NS.

20 So none of this is going to happen as a
21 mystery. This is why I say I think we're shooting
22 down straw men. The system hasn't operated that

1 way, to my knowledge, ever. Where the problem is
2 where the Class I's have fallen down, not where
3 shippers have decided to surprise people just for
4 the hell of a surprise.

5 Let's move on, we have a lot more
6 witnesses this afternoon, Robert, unless you want to
7 follow that up with something else.

8 Ray, why don't you get back to your
9 presentation, and Ian, if you want to, you can take
10 the map down. We may have to put it back up.

11 But let's stay in the real world, folks.

12 MR. ATKINS: Pleasure. So if I could turn
13 it over to Dr. Mark Israel of Compass Lexecon.

14 DR. ISRAEL: Thanks, Ray.

15 Can everybody hear me okay? All right,
16 great.

17 Well, Ray said we're going to go to the
18 real world. I'm an economist so I'll do my best to
19 stay in the real world.

20 There's a danger I have learned when I
21 testify of being an economist at 5:00 in the
22 afternoon, so I will do my very best to overcome

1 that.

2 So thanks to the Chairman and to the Board
3 for having me and hearing me. There's a fair amount
4 that I want to cover and I'm going to try to do it
5 in 10 minutes, so I'm going to go fast. I will say
6 most of the concepts that I'll talk about, the
7 concepts have been discussed, so I'll focus on what
8 I know, which is how I think about the economics
9 behind those concepts and some points from the data.

10 I'll do my best to stay substantive, to
11 give you as much information as I can moving
12 quickly.

13 So I'm going to focus on three main points
14 today. Focused on the proposal for the expanded use
15 of reciprocal switching. First one is that the
16 proposal could implicate a very large amount of
17 traffic. I know we have heard a fair bit about
18 that, and I know there is discussions about how to
19 limit it. So I will move through that quickly.

20 But I think it's worth, from NS's point of
21 view, which is where I've done the calculations,
22 seeing just how much traffic we're talking about if

1 it was not substantially limited.

2 Second is that subjecting any large amount
3 of traffic to a mandated reciprocal switching system
4 creates at least two major harms that I want to talk
5 about.

6 And what's important to me is those are
7 really harm -- I think of those and I think they are
8 harms to competition. So I know that there is
9 this -- we think of reciprocal switching as
10 injecting competition, and sort of inject synthetic
11 competition as we've called it in a microsense on a
12 given movement or for a given shipper. But I think
13 the harms I want to talk about are harms to the
14 overall competitive railroad system.

15 And then my third point will be that you
16 could imagine potentially thinking about whether we
17 have to bear those harms if there was some wide
18 industry competitive problem that needed solving.
19 But to me the data just doesn't support this as an
20 industry in which competition at the broad level is
21 not functioning.

22 Let me say that I recognize that there may

1 be specific cases, we've talked about specific
2 examples here, service situations, examples of
3 problems. And there's STB policies that others know
4 better than I do to deal with those. I want to
5 focus on whether there appears to be a broad
6 competitive problem that warrants a broad new
7 regulatory policy.

8 So first, following up on what Cindy
9 presented, Cindy presented the map from NS's point
10 of view about the new junctions that could be
11 affected. I just want to give -- and that was based
12 on work that I and my team did, looking at NS
13 stations, sole-served stations, that are within 30
14 miles of a junction with another Class I railroad.
15 So this was the 30-mile rule.

16 But just to give you an idea how big that
17 30-mile rule could be, how much traffic, those
18 stations -- the full set of stations that would be
19 affected by that would be 54 percent of the stations
20 at which NS originated or terminated a carload
21 traffic in 2019, so it's over 900 stations.

22 That accounts for over -- roughly 54

1 percent of NS's originating or terminating carload
2 traffic. It's 40 percent of NS's total railway
3 operating revenue in 2019.

4 If you just restrict that to regulated
5 commodities, that would be just over a third of NS's
6 originating or terminating carload traffic and 26
7 percent of NS's total operating revenue.

8 The first takeaway is it could be an
9 enormous amount of traffic. If you take 30 miles
10 down to 25 or 20, it's still an awful lot of
11 traffic.

12 Now, I know there's been discussions
13 today, or today and yesterday, about restricting it
14 just to places where there's currently reciprocal
15 switching. I have not had time to rerun numbers
16 that way. That's something we could do.

17 I guess I would just make two points. One
18 is that limits like that certainly will help with
19 the harms that I'm talking about, if it's going to
20 be implemented, you know, limiting it will help both
21 with my economic points about harms, and I assume NS
22 and the railroads would say with the operational

1 issues.

2 The one thing I worry about as an
3 economist in any regulatory case is that if you're
4 going to limit it, I think it's important to be
5 clear about the limits. The issue you run into in a
6 lot of industries is there's limits at first but
7 then it grows and grows and grows and that creates
8 kind of regulatory creep, which can be worse for
9 investment incentives and so on, because people
10 don't know where the rule will stop.

11 But in general, you know, limits obviously
12 affect those numbers I just gave you and would help.

13 Second -- my second main point is that
14 subjecting substantial traffic to reciprocal
15 switching creates two harms, at least two harms to
16 me, to a well-functioning competitive market as I
17 said.

18 So the first one is it affects -- greatly
19 affects the ability to earn a competitive return and
20 thus to raise capital. And I want to spend a minute
21 on that, because I think it's important to go
22 through the economics of why that happens. And it's

1 not just complaints from railroads that we aren't
2 making enough money. It's a real economic issue.

3 So I think about it as there's a delicate
4 balance, there's kind of a scale as I think about in
5 a regulated industry, between maintaining
6 competition so that it works, and maintaining a
7 competitive return on capital so that you can raise
8 investment money.

9 And as I'll show below, that balance in
10 the railroad industry today, the scale is very much
11 in balance. The railroad industry is earning its
12 cost of capital basically and not much more. The
13 language of economists, it's earning zero economic
14 profit, just enough to cover its cost of capital.

15 And that maintaining the ability to price
16 differentially, maintaining the range of rates that
17 we see in the marketplace today, that's critical to
18 maintaining that balance, right.

19 So the whole distribution matters for
20 whether the industry is earning its competitive
21 return on capital. We have proposals that say, you
22 know, we're fine with the cheaper rates but we're

1 just going to chop off the top, you're going to chop
2 off that return on capital and push the industry
3 below a competitive return.

4 So that's -- when we talk about
5 differential pricing, it sounds very abstract, but
6 you just mean the distribution of prices matter, and
7 you can't just chop off the top and maintain a
8 competitive return on capital that we see today.

9 Or said differently, the way I think about
10 it, given that we are in balance today, that we're
11 right at their cost of capital, and I will show
12 numbers, if we just drop another regulatory tool,
13 that has, you guys have said, has the effect of
14 shifting some bargaining power to shippers and
15 imposing new regulations, those scales are going to
16 be out of balance. They have to be, if they're in
17 balance today.

18 That pushes the rate of return below the
19 cost of capital, right. And the effect of that is
20 not just that the railroads complain about it or
21 that Goldman Sachs doesn't like it.

22 The effect of that is that regular

1 investors, like you and me and pension funds, say I
2 can earn more money investing my money somewhere
3 else besides rail, and so money will stop flowing
4 into the industry.

5 So it's a question of whether investors
6 are incentivized to put money into the industry. If
7 they're not, that's harmful to everyone in the
8 industry, railroads and shippers alike.

9 The second main point that I would make is
10 that -- and this whole discussion that we just were
11 having, and I'll do it quickly, because you heard
12 all the operational issues, and I'm not going to
13 tell you I know about the operational issues.

14 I'm just going to say that the reason
15 these operational issues from this policy bother me
16 as an economist is because they impose economic
17 externalities on the system.

18 The problem is that under mandated
19 switching, you're letting a shipper, or a shipper
20 and another railroad that it reaches a deal with,
21 decide what to do to the NS network.

22 So a shipper could reach a deal with CSX,

1 but now NS has to switch with CSX. That imposes
2 obligations, and, you know, the railroads and you
3 guys can decide how big they are in different cases,
4 but it affects the overall network.

5 And the problem is that that shipper and
6 CSX don't care, by their natural interests, about
7 the broader NS network. I totally agree with you
8 that they're not going to do it if it hurts their
9 own service, but they're not internalizing the
10 effects on the broader NS network.

11 So I get worried -- probably the most
12 fundamental threat to well-functioning economic
13 markets is externalities where people are not
14 internalizing things. I worry a lot about a policy
15 that introduces externalities by allowing shippers
16 and other railroads to reach deals that affect the
17 NS network.

18 All right. So finally, a few minutes to
19 run through some numbers and a chart. I don't see
20 any reason to suffer those two costs, the
21 externalities and the reduced return on capital.
22 And I say that for several reasons.

1 One is, as I mentioned, the data you guys
2 have seen, so I'll go through it quickly, points to
3 an industry that currently is not earning excessive
4 returns on capital. There is the paper that's been
5 put in by Professors Murphy and Zmijewski, who I
6 know well and who have reviewed that closely, says
7 using the STB's revenue adequacy methods, the
8 financial performance of the railroad industry is in
9 the bottom quartile if you looked at it in the
10 S&P 500.

11 There's the Board's own revenue adequacy
12 numbers that you guys know better than I do. I
13 think the right way to summarize them is to say the
14 railroad industry as a whole bounces above and below
15 its cost of capital. That cost of capital tends to
16 be 9, 10, percent, and the railroad industry is kind
17 of right there. And as some particulars, below in
18 2020, was slightly above in 2019, was below in 2018.

19 This is really an industry that is right
20 at its cost of capital. It's in balance right now.
21 That's good, but if you push it down, that means
22 capital will not flow into the industry, and that's

1 a problem.

2 You know, I think this all happens, it's
3 not surprising that, even though they have isolated
4 problems that surely could be addressed, that we see
5 pretty good competitive outcomes. Because
6 industrywide, unlike other industries that I look
7 at, as an antitrust expert, there really are a lot
8 of options for a lot of shippers. There's sometimes
9 rail-on-rail competition, there's modal competition,
10 product and geographic competition, frankly the
11 constraints placed on it by the STB in rate cases.

12 Different movements have differing ability
13 to take advantage of competition for sure but that's
14 the overall distribution that I said needs to be
15 maintained. Overall it's an industry where
16 competition is functioning pretty well.

17 If you look at your own annual rail rate
18 study, in real terms, done well, we have prices that
19 have basically been flat since 2012 in real terms.
20 So again prices for the last 10 years or so not
21 growing faster than inflation, if anything have
22 fallen some.

1 I'd like to take a final minute and a half
2 to talk to one study that's been talked about that
3 claims to come to a different point of view, which
4 is cited by the DOT and their supply chain
5 assessment in February, its Escalation Consultants
6 study, that says that it finds something different,
7 it finds rail rates going up dramatically and much
8 faster than trucking.

9 So I want to make a few comments on that
10 study because I know shippers referred to that study
11 yesterday as well.

12 One thing to note is even that study
13 agrees that in real terms, inflation-adjusted terms,
14 rail rates have not gone up since 2012. So what
15 we're talking about is rate increases that happen
16 between 2002 and 2012.

17 On those, there's been lots and lots and
18 lots of attention. The place I would point for what
19 caused those would be the STB-sponsored Christianson
20 study, which focused -- was sort of commissioned
21 exactly to think about what happened in the first 10
22 years of the 2000s, or first several years of the

1 2000s.

2 The key takeaway from the Christianson
3 study to me of all the things that it said is that
4 those price increases were not market power.

5 Christianson was very rigorous to measure what's
6 called the Warner index, the economic index of
7 market power, and found that went down, not up.
8 Prices increased, but not as fast as properly
9 measured economic marginal costs.

10 So the price increases have been studied
11 and found not to be an exercise of market power.

12 And the final point I'll make -- and Ray,
13 maybe you can put up the slide I have. That
14 Escalation Consultants study, what it did, it claimed
15 to show that rail rates went up much faster than
16 trucking rates.

17 But the problem and the last point that I
18 will make is that it didn't compare apples to
19 apples. It compared revenue per ton-mile for
20 railroads with a BLS producer price index for truck.
21 Those are measured in very different ways.

22 If you just use the data that's in the BTS

1 data that study used and you do apples to apples,
2 you get this picture, which is that 2002 rail and
3 truck are right on top of each other in a
4 revenue-per-ton-mile sense.

5 So trucking we all think is competitive.
6 When you do an apples-to-apples comparison, you do
7 not see rail growing faster than truck.

8 So that's really the end of my substantive
9 comments. Just to conclude, I don't see a reason to
10 adopt this policy, given the balance that the
11 industry is in and the harms that it would create in
12 terms of harm to cost -- returns on capital and
13 externalities.

14 I would say that if it was going to be
15 adopted, I would encourage what you're talking
16 about, which is to do it judiciously, just in places
17 where there's really no competition, where I would
18 include product and geographic competition, in
19 places where performance, you know, rates of return
20 are far above what you see in competitive settings.
21 I would definitely look for ways to minimize costs
22 and externalities, some of which you're talking

1 about.

2 And I would encourage -- strongly
3 encourage the use of something like ECPR, and David
4 is going to talk more about that. But its purpose
5 is to let railroads compete so one that can do a
6 better job will carry the business but price things
7 in a way that doesn't destroy the return on capital.
8 But I won't say much more about that because I know
9 Dr. Sappington will.

10 MR. ATKINS: Thank you, Mark.

11 Chairman, would you like David to finish
12 and then ask the two economists questions or go
13 ahead and ask questions of Mark?

14 CHAIRMAN OBERMAN: I have a couple of
15 questions while the testimony is fresh for
16 Dr. Israel, and the others may too.

17 I want to make sure I understand your
18 reasoning, Dr. Israel.

19 When you say the system is in balance, I
20 thought I heard you say earlier that the relative --
21 in terms of competition, and the relative bargaining
22 power between the stakeholders is in balance. Is

1 that what you're saying?

2 DR. ISRAEL: I'm saying that the industry
3 is just almost exactly earning a competitive rate of
4 return on capital. So there are lots of forces --
5 but that's what I mean by in balance. So that would
6 include relative bargaining power, the effects of
7 regulation.

8 When I evaluate whether an industry and a
9 market is functioning well competitively, what that
10 means to me is is it earning a competitive return on
11 capital, not substantially more.

12 CHAIRMAN OBERMAN: So -- all right. So
13 that's what I wanted to understand, because, you
14 know, we hear from shippers all the time that they
15 do not have bargaining power with railroads where
16 they're sole-served. And you're saying that your
17 measure of saying they do have competitive
18 bargaining power is based on an industrywide
19 calculation that the railroads are just earning the
20 cost of capital?

21 DR. ISRAEL: I would say it slightly
22 differently, although that's the bottom line.

1 Different shippers have different amounts of
2 bargaining power. And therefore, that's what we
3 mean when we say differential pricing.

4 There are different shippers who need rail
5 more or less, rail needs different shippers more or
6 less. So there are certainly differential prices
7 across the distribution.

8 The only way I know to evaluate whether
9 that is leading to systematic market power or not,
10 especially when you also think about the existing
11 regulations that deal with a lot of that, when you
12 think about that full set of forces, the only way I
13 know to ask is this market functioning well or not
14 is to ask is it able to earn excess return on
15 capital.

16 CHAIRMAN OBERMAN: So -- all right.
17 That's what I wanted to get at. That is your
18 measure for the competition aspect of the industry
19 being in balance, that they're earning just at the
20 level of what you say is their cost of capital? I
21 just want to make sure I understand your reasoning.

22 DR. ISRAEL: It's what the STB says their

1 cost of capital is. But yeah, I think if you were
2 to ask economists what's the definition of an
3 industry that exercises market power or industry
4 that is competitive, is are the participants in the
5 industry earning more than -- greater than
6 competitive returns. If we push those down, they
7 will not be able to attract capital from investors.

8 CHAIRMAN OBERMAN: I understand. I'm
9 really just trying to make sure I understand your
10 point.

11 And that point rests on the accuracy of
12 both how we determine revenue adequacy and whether
13 we got the cost of capital right based on our
14 determinations; correct?

15 DR. ISRAEL: I mean, the specific
16 calculation, the best we can do is use the data.
17 Murphy and Zmijewski do it two different ways, you
18 guys do it one way, three different ways I've looked
19 at across a variety of railroads, across those data
20 sources would say it's around 9, 10, percent, which
21 is around the cost of capital.

22 CHAIRMAN OBERMAN: Well, you're assuming

1 that, first of all, that our revenue adequacy
2 determinations are based on accurate costing and so
3 forth. You're relying on how we've determined
4 whether they're revenue-adequate.

5 DR. ISRAEL: That certainly is a starting
6 point. That and the Murphy and Zmijewski which do
7 some adjustments to see how those matter, and do it
8 for each railroad.

9 But yes, they're the basic methods for the
10 cost of capital calculation.

11 CHAIRMAN OBERMAN: And you also know that
12 there's debate about whether the cost of capital
13 really is 9 or 10 percent, even though that's what
14 we've been using?

15 DR. ISRAEL: I mean, it's not dramatically
16 off of that, I would think, because --

17 CHAIRMAN OBERMAN: Someone said last year
18 it was 7 percent, as I recall.

19 DR. ISRAEL: 7 percent would be quite low
20 among industry. 7 percent would also be a number NS
21 has hit in recent years, including 2020.

22 Just to be clear, though, if you were to

1 make it 7 instead of 8, 9 or 10, then what Murphy
2 and Zmijewski would find would be maybe the
3 railroads would move up the second quartile instead
4 of the first. It still wouldn't be an industry
5 earning unusual profits.

6 CHAIRMAN OBERMAN: All I'm trying to get
7 at -- I don't know what the cost of capital is to be
8 honest with you. I know what we've determined in
9 our decisions based on our approach. But I also
10 recognize that there's debate, and that a lot of the
11 numbers that are used in all these calculations,
12 particularly the ones that rest on URCs, have a lot
13 of arbitrariness to them. I just want to understand
14 the basis of your testimony. I'm not trying to
15 quarrel with it. I'm not telling you I know the
16 cost of capital. I just want to know what
17 assumptions you're relying on.

18 DR. ISRAEL: I get that. I just think
19 it's important to note across industries like this,
20 you see numbers like 7, 8, 9, 10, so we're not going
21 to be drastically far off.

22 CHAIRMAN OBERMAN: You say now 7, 8, 9,

1 10. But in your testimony, you said 8, 9 or 10.

2 DR. ISRAEL: That's what's reported. I
3 agree that's the number that I would use. But if
4 it's a point or two lower, it's not going to
5 change -- it's going to move you closer to the
6 median than what Murphy and Zmijewski found, not
7 more than that.

8 CHAIRMAN OBERMAN: When you say a case has
9 not been made that there's a problem to be solved
10 here, if you accept -- I'm only asking you to accept
11 hypothetically, I'm not asking you to judge whether
12 anything we have heard today was accurate. But if
13 you accept the reports we heard today from just
14 Indorama and Diversified, would that strike you as a
15 qualitative basis for thinking that some action is
16 needed here to authorize some kind of reciprocal
17 switching?

18 DR. ISRAEL: I don't see it as a basis to
19 authorize reciprocal switching, because reciprocal
20 switching -- my concern from what I've heard
21 listening in two days even more is that reciprocal
22 switching adds externalities and complications and

1 threatens the return on capital.

2 So it strikes me as probably a bad way to
3 deal with quality issues overall.

4 CHAIRMAN OBERMAN: Do you --

5 DR. ISRAEL: I very much believe their
6 testimony and think that there very well could be a
7 need for in some cases, I'm not an expert on any of
8 those cases, but a need to dig into them and think
9 about whether some action is required in any of
10 them.

11 But my sense from my time on this is that
12 reciprocal switching is probably a bad way to solve
13 a quality problem.

14 CHAIRMAN OBERMAN: Well, you know, we have
15 other rules that provide for service relief and
16 orders for one railroad to deliver cars to another
17 railroad. That would also be an externality,
18 wouldn't it?

19 DR. ISRAEL: Yeah, I mean, it imposes an
20 externality, I agree with that, and therefore, I
21 think it's important to limit that.

22 CHAIRMAN OBERMAN: Well, if we were

1 considering, for example, a reciprocal switching
2 rule that was put in place to allow shippers who
3 have legitimate service difficulties like the ones
4 that were discussed today, whether we'd do it under
5 rule A or rule B, either way it's the same kind of
6 externality if it shifts traffic from one railroad
7 to the other. Right? Or it gives the shipper the
8 option to do that.

9 DR. ISRAEL: I agree that giving a shipper
10 an option to choose reciprocal switching creates an
11 externality problem. So therefore, my takeaway from
12 that would be limited in the use of that solution.

13 Now, it may be that there is clear harm to
14 competition, where -- and what I would define that
15 as is a railroad is in some way undermining the
16 ability of a shipper to use the options that it does
17 have. Maybe you feel like you need to step in and
18 give that shipper more options. I understand that.
19 I'm not saying it could never be a good solution.

20 It has costs, and so I would be quite
21 judicious in its use and I wouldn't want to
22 implement is a broad reg -- new regulation to an

1 industry that seems to me to be performing well.

2 CHAIRMAN OBERMAN: Well, if you sat in our
3 chair, I'm not sure you'd have the same -- it would
4 seem the same way.

5 DR. ISRAEL: I can say to that that I
6 study lots and lots and lots of industries. I mean,
7 I understand there are customer complaints. Some of
8 them in industries that are extremely competitive.
9 I very much as an economist think those should be
10 taken seriously totally. I just don't think a broad
11 new regulatory policy is the right way to solve
12 service problems.

13 CHAIRMAN OBERMAN: The only other thing
14 that struck me as I was listening to you about
15 regulations and externalities upsetting the balance
16 that you say is there, if taken to a logical
17 extreme, we would eliminate virtually all of our
18 regulatory activity over the last 40 years, would we
19 not?

20 DR. ISRAEL: No, I disagree with that.
21 Because as I said, the regulation is a part of
22 what's in balance now.

1 My point would be the railroads under the
2 oversight of the STB, with certainly the current
3 existing oversight of the STB being one of the
4 things that causes the industry to perform the way
5 it does, that that current setup has, in tribute to
6 the participants, led to rates of return that are
7 right where I would want them to be, as well as I
8 can tell.

9 So I wouldn't get rid of what you've done.
10 I certainly wouldn't get rid of deregulation or what
11 the STB has done since.

12 I'm just saying a costly new policy at a
13 broad scale like this doesn't appear justified to
14 me.

15 CHAIRMAN OBERMAN: Do I take that as an
16 endorsement that everything we've done up to today
17 is fine? You don't --

18 DR. ISRAEL: You can take it as an
19 endorsement that the overall system appears to be
20 working. Obviously we could quibble about
21 individual cases.

22 CHAIRMAN OBERMAN: Thank you. Very

1 helpful, Dr. Israel, I much appreciate it.

2 Does anybody else want to ask questions
3 now or wait for Mr. Sappington?

4 BOARD MEMBER FUCHS: I'll wait for
5 Sappington.

6 CHAIRMAN OBERMAN: Ray, do you want to ask
7 him to continue?

8 MR. ATKINS: Thank you, Mark.

9 Professor Sappington, the mike is yours.

10 MR. SAPPINGTON: Thank you, Ray.

11 And good afternoon, everyone. My name is
12 David Sappington, and I am the director of the
13 Public Policy Research Center at the University of
14 Florida. And I appreciate the privilege of
15 addressing the Board this afternoon on behalf of
16 Norfolk Southern railroad.

17 At the outset I provided the Board with
18 some slides for reference. And for the reasons
19 identified by my colleagues and others, I have
20 strong reservations about implementing forced
21 switching in the absence of anticompetitive
22 behavior.

1 However, I will not discuss the drawbacks
2 to forced switching this afternoon. Instead, I have
3 been asked to identify the access prices that should
4 be implemented for switching, if imposed, despite
5 its drawbacks.

6 I believe these access prices should
7 reflect the principles that have been established in
8 the extensive economic literature on this subject,
9 which dates back to at least the 1970s. And the
10 slides I have provided for reference identify a few
11 of the more widely cited studies in this extensive
12 literature.

13 These studies conclude that there is no
14 simple access pricing rule that is ideal in all
15 settings. Instead, the optimal access pricing rule
16 varies with prevailing industry conditions. And
17 these conditions include such things as the
18 regulators' goals, the instruments available to
19 achieve these goals and the cost of implementing
20 each instrument, the information available to
21 regulators, the industry cost structure, including
22 the magnitude of infrastructure costs, industry

1 investment needs, the nature and extent of actual
2 and potential industry competition and the
3 prevailing retail rate structure.

4 An important additional finding in this
5 literature is that when the retail price structure
6 does not embody monopoly rents, access prices that
7 reflect what's called the efficient component
8 pricing rule, or ECPR, have considerable merit.

9 In addition to having three key attributes
10 that I will review momentarily, ECPR is relatively
11 simple and intuitive. ECPR states that access
12 prices should reflect a railroad's full cost of
13 supplying access. And this full cost is the sum of
14 its physical cost of supplying the access and the
15 opportunity cost of supplying the access.

16 The opportunity cost is the contribution
17 to infrastructure costs a railroad forfeits to
18 forced switching.

19 As I mentioned, access prices that reflect
20 the ECPR have three primary attributes. First, they
21 promote revenue adequacy. Second, they encourage
22 the supply of high-quality switching servicers, and

1 third, they ensure what's called competitive
2 neutrality, which in turn ensures industry cost
3 minimization.

4 I will now briefly explain each of these
5 three attributes before concluding.

6 Access prices that reflect the ECPR
7 promote revenue adequacy by ensuring that the
8 contribution formerly derived from a shipper in the
9 form of revenue is replaced by access revenue from
10 the railroad that now serves the shipper because of
11 forced switching.

12 Access prices that reflect the ECPR also
13 encourage the provision of high-quality switching
14 services, and they do so by limiting the financial
15 loss a railroad incurs when forced switching permits
16 a competitor to secure the patronage of a former
17 shipper.

18 The diminished financial loss encourages
19 the railroad to facilitate switching by providing
20 high-quality switching services.

21 Finally, access prices that reflect the
22 ECPR also ensure competitive neutrality by

1 effectively leveling the playing field, and they do
2 so by requiring that the railroad that secures a
3 shipper's patronage must deliver the prevailing
4 contribution to overhead.

5 This is the case whether the winning
6 railroad, the one that secures the shipper's
7 patronage, whether the winning railroad is the
8 incumbent railroad or the competing railroad. And
9 by leveling the playing field in this manner, the
10 ECPR ensures that a competing railroad can
11 profitably secure a shipper's patronage if and only
12 if it can serve the shipper at lower cost than the
13 incumbent railroad.

14 And the ECPR thereby ensures that industry
15 transport costs are minimized.

16 So these three attributes of ECPR, its
17 relative simplicity and prevailing industry
18 conditions underlie my conclusion that if forced
19 switching is imposed in the railroad industry
20 despite its drawbacks, the access prices that are
21 established should reflect the ECPR.

22 This conclusion implies that access prices

1 should reflect the full cost of supplying access,
2 both the physical costs and the opportunity costs,
3 and consequently simple cost-based access prices
4 that do not include any contribution to overhead are
5 insufficient.

6 Thank you, and I'll turn things back to
7 Dr. Atkins now.

8 CHAIRMAN OBERMAN: Thank you.

9 MR. ATKINS: Chairman Oberman, that concludes
10 our remarks. We'd be pleased to answer any
11 questions that you have about our presentation or
12 Norfolk Southern's prior comments in this
13 proceeding.

14 CHAIRMAN OBERMAN: I have a couple, and
15 I'm sure other Board members will.

16 Professor Sappington, I have been studying
17 these reciprocal switching tariffs that the
18 railroads have now, and I'm really scratching my
19 head about how they arrive at their switching fees.
20 I wonder if you have looked at the current switching
21 fees that railroads are actually using when -- you
22 know, when the shippers decided to use a competing

1 railroad.

2 MR. SAPPINGTON: I'm sorry, I cannot be of
3 any help on that issue. I don't know how they set
4 their tariffs.

5 CHAIRMAN OBERMAN: Would you assume that
6 they set their tariffs in order to accomplish
7 sufficient component pricing, for the very reasons
8 you've said, otherwise they're going to -- you know,
9 their cost shifting is going to be damaging to their
10 overall financial picture of revenue adequacy?

11 MR. SAPPINGTON: Certainly both the terms
12 of the access prices that they pay one another for
13 transferring the traffic as well as the associated
14 prices charged to the shippers will affect revenue
15 adequacy.

16 But how much they're getting, of the
17 revenues needed to ensure revenue adequacy, are
18 coming from access revenues and how much are coming
19 from shipper charges, I don't have that information
20 for you.

21 CHAIRMAN OBERMAN: Well, if we are trying
22 to figure out what the pricing should be, would it

1 be useful for us to be looking at what they actually
2 do in the real world among themselves?

3 MR. SAPPINGTON: Certainly, that
4 information could be useful to see. But again it
5 needs to be looked at in the context of what revenue
6 is coming from access revenue and what revenue is
7 coming from charges to the shippers.

8 Because again, I'm not an expert on these
9 negotiations, but my guess is what happens is the
10 two railroads get together and allocate the traffic
11 to the railroad that can perform the service most
12 efficiently at lowest cost. That will achieve some
13 cost savings by making sure that least-cost supplier
14 supplies the service, and they somehow negotiate a
15 division of those gains.

16 Then how that feeds into the tariffs to
17 the shippers will depend upon the things you were
18 talking about with Dr. Israel and concerning things
19 like bargaining power.

20 CHAIRMAN OBERMAN: Well, can we assume
21 that -- you know, I'm looking at NS, it has 105
22 locations on its network, where it permits hundreds

1 and hundreds of shippers to switch to a competing
2 railroad, that they set these fees so that they will
3 contribute to their revenue adequacy. Would that be
4 a fair assumption on our part?

5 MR. SAPPINGTON: I don't think they would
6 enter into a negotiation which deliberately reduces
7 their profit, yes. So I think your overall
8 assessment is correct.

9 MR. ATKINS: Chairman Oberman, I would
10 have to add that you can't just assume if you took
11 that fee and applied it to all the rest of their
12 traffic, that they -- that that would even come
13 close to replicating ECPR, because ECPR is a
14 function of the loss contribution for each movement,
15 from each origin to each destination, it will be
16 tailored to the specific customer in question.

17 I would also remind you that these are
18 reciprocal arrangements, so that -- oftentimes you
19 see this in trackage arrangements as well where the
20 parties will agree to a low rate because it doesn't
21 matter, they are sort of exchanging traffic between
22 themselves, which is not a feature of your proposal.

1 And I believe there's well-established ICC
2 precedent that says you need to be very careful
3 about using these reciprocal switch fees to set a
4 fee in a particular occasion where you're compelling
5 switches, switching.

6 CHAIRMAN OBERMAN: All I can tell you,
7 Ray, is I'm making no assumption at all, I'm just
8 looking for help.

9 MR. ATKINS: I would ask if Mark Israel
10 had anything else to add there too. Because I
11 believe I correctly stated the ECPR, but you've got
12 two more genuine experts in front of you than I am.

13 DR. ISRAEL: No, I agree on ECPR. The
14 point I was going to make is the reciprocal point,
15 where not to take us too much back to telecom, but
16 there is a good example where you have a lot of big
17 telecom providers who exchange traffic with each
18 other like when you're roaming on your phone. When
19 that's voluntary, and because they exchange
20 voluntarily, those fees will be quite low because
21 it's fully reciprocal. Whereas, when regulators --
22 Canada gives us an example here -- step in and

1 require that, those fees become -- they get charged
2 at a level that is designed to recover the full cost
3 of capital.

4 CHAIRMAN OBERMAN: I can tell you,
5 Dr. Israel, that I have looked at these tariffs, and
6 just based on the customers listed there, they
7 aren't fully reciprocal. Some of them have far more
8 customers that they allow to switch than the ones
9 they receive.

10 So I don't know what to make of it. I'm
11 just trying to understand, and actually, I was going
12 to direct if Cindy -- and Cindy may not be the
13 person, to Cindy the question of if she knows how
14 these reciprocal switching fees were set by NS to
15 accomplish the goals that Professor Sappington and
16 Dr. Israel are telling us.

17 I don't know, Cindy, do you have any
18 insight into how those fees are set?

19 MS. SANBORN: I am not familiar with that,
20 Chairman Oberman.

21 CHAIRMAN OBERMAN: Must be somebody else
22 at NS.

1 And one of the things that puzzles me
2 greatly is that within the same yard, the fees vary
3 widely, roughly between 250 and \$500. That's pretty
4 typical around the network. Not entirely, some are
5 higher, 800, a few places they're over a thousand.

6 But it's very common if you go through all
7 the railroads' reciprocal switching tariffs that the
8 fees vary between 200 and \$500. And I just wondered
9 if that is a range that we could look to for some
10 guidance, not talking about automatically imposing
11 it --

12 MR. ATKINS: Again, Chairman, it shouldn't
13 be terribly surprising because the opportunity cost
14 of providing access is going to differ based on the
15 movement in question.

16 But the ECP is designed to -- it's very
17 simple, is you get the lost contribution from the
18 movement where you're doing the forced switch. So
19 it's not that you try to figure out what the average
20 opportunity cost is by looking at all other parts of
21 the network.

22 It would be specific customer to a

1 specific destination, the new entrant has to
2 compensate the incumbent for the full opportunity
3 cost of the switch.

4 So that's kind of the core of ECPR, and it
5 has the benefit of making sure that you don't
6 undermine differential pricing and the ability to
7 earn a reasonable -- a competitive return on the
8 investment for the entire network.

9 And that's -- I appreciate that ECPR is
10 not well liked by the shipper community because they
11 view it as kind of defeating the purpose, they would
12 like a simple cost-based solution. But that doesn't
13 protect the ability to earn a competitive return.
14 Not only has Mark Israel mentioned that point, but
15 the AAR's economist really hammered that home with
16 what we sometimes call the rattail map, which shows
17 that you can't set the price just to recover the
18 full cost of the bottleneck portion, you have to be
19 cognizant of the full opportunity cost of the
20 switch.

21 CHAIRMAN OBERMAN: Let me ask this
22 question, and maybe, Ray, you can answer it. And

1 then I'll stop and turn this over to other Board
2 members.

3 Some of these reciprocal switching
4 arrangements are the result of conditions imposed in
5 merger decisions, as you well know. Are those fees
6 set by ECP?

7 MR. ATKINS: That's a great question,
8 Chairman.

9 So in a merger context, the fees that the
10 STB or ICC will impose is designed to treat an
11 entirely different problem. So whether it's a
12 trackage rights fee or reciprocal switch, it's all
13 about maintaining the status quo. It is not about
14 providing the full opportunity cost. In the
15 trackage rights context, it is not about providing a
16 market-based return on trackage rights. There's an
17 entirely different purpose.

18 So if you had -- if 100 of those switch
19 fees were set through mergers, that's because they
20 were there to maintain some sort of competitive
21 environment, maybe it was a hypercompetitive
22 environment, so the fees had to be really low in

1 order to maintain the status quo. Mergers has a
2 different purpose.

3 But if you move from that purpose to
4 imposing a regime where, as we've talked about,
5 there's been, under a different standard with very
6 little fault on the part of the customer -- of the
7 railroad, now both -- I think legal policy, I think
8 public policy and economic policy says you need to
9 be thinking about the full opportunity cost to the
10 incumbent from providing that switch.

11 CHAIRMAN OBERMAN: All I would say is
12 you're making a very broad assumption when you say
13 very little thought. I don't -- I don't know how
14 much fault is going to play a role here. I'm not
15 even sure how we would define fault.

16 But the thinking and the request that we
17 have gotten from shippers are to remedy problems.
18 And the conditions imposed in mergers are to prevent
19 problems.

20 So they have a certain similarity
21 conceptually to me. Nobody is suggesting, I don't
22 think, that we just throw the system open to be wide

1 open. In which case you might have to have a system
2 that makes sure that people get their return on
3 investment.

4 One way or another, it seems to me that
5 the reason we're even here is because the shippers
6 have been suffering from what they regard as lack of
7 balance, which is causing them problems largely in
8 recent years in service, somewhat in price.

9 But let me hand it off to, unless you
10 wanted to respond to that, I was going to --

11 MR. ATKINS: No, actually I think it feeds
12 well into a line of questions that Patrick was going
13 to ask that I deferred. So why don't I -- I think
14 he wants to ask questions around this nomenclature
15 we've been using about fault-based versus
16 non-fault-based. I'll defer to Patrick.

17 CHAIRMAN OBERMAN: He is both our resident
18 economist and best lawyer, so I'm going to turn it
19 over to Patrick.

20 Go ahead, Patrick. You are muted.

21 BOARD MEMBER FUCHS: And neither is true.

22 So I want to -- Ray, did I hear you

1 correctly at the outset of your presentation that
2 you viewed 1147 as superior to the proposal?

3 MR. ATKINS: Yes.

4 BOARD MEMBER FUCHS: And do you think that
5 1147 generally is a workable framework for the
6 Board?

7 MR. ATKINS: So I'm pulling it up. Yes.
8 And so let me -- if I might, Patrick, because not
9 everybody might be familiar with the history that
10 led to 1147. So if I could just take a second to --
11 I know you are, but just for everyone's benefit.

12 So in the late 1990s, after the Board was
13 experiencing some very serious service problems
14 associated with, you know, implementation of various
15 mergers, Linda Morgan held hearings to ask the
16 question of how they might be able to use some of
17 the tools that the Board has available to it to
18 better address service problems.

19 And one of the primary inquiries from
20 Linda Morgan was is this Midtec standard and the
21 requirement of showing competitive abuses really
22 appropriate when there's a demonstrated inadequacy

1 of rail service.

2 And what I think is lost or forgotten in
3 history is the entire industry coalesced around
4 agreement that this standard was in fact
5 inappropriate in those circumstances.

6 And so Linda Morgan proposed and adopted,
7 or it wasn't her, it was the Board, proposed and
8 adopted a rule that's set forth in your regulations
9 at 49 CFR 1147.1. Let me just read it for you, which
10 is why I think it's pretty powerful.

11 The STB will prescribe alternative rail
12 service, which includes a reciprocal switch, under
13 11102(c) if it concludes that there's been a
14 substantial material deterioration or other
15 demonstrated inadequacy of rail service, period,
16 full stop.

17 So it's not about Midtec. You can get --
18 it's temporary, it only stays in place for as long
19 as you need it. But if there are serious
20 demonstrated inadequacies of rail service, the STB
21 has provided a regulation to address it.

22 BOARD MEMBER FUCHS: I want to explore

1 this more, because I think it's a very interesting
2 idea. You know, a couple elements of it. Picking
3 up on where Professor Sappington left off, you agree
4 that under 1147, the Board does not consider lost
5 profits?

6 MR. ATKINS: Right. And that's where it
7 comes into the fault- versus not-fault-based system
8 of this.

9 So we concede if -- under the current
10 system, if you engaged in anticompetitive conduct,
11 which is pretty egregious, the Board is going to
12 step in and force a switch. And in those
13 circumstances, it really isn't appropriate to be
14 asking for the full loss contribution of the switch.
15 And the Board has said we won't do it.

16 The same would apply in the circumstances
17 here where you've got some sort of demonstrated
18 deterioration in service. I don't think Norfolk
19 Southern is advocating that they get to keep the
20 full loss contribution in those circumstances,
21 because you have a fault-based system that limits
22 its application.

1 Now, if you flip that to what we view -- I
2 know it's nomenclature, and Marty, I appreciate that
3 you haven't decided what you're going to do.

4 But if you look at the proposal from six
5 years ago, it looks like a no-fault basis, prong 2.
6 You just get it. If there's -- no market dominance,
7 prong 1, benefits exceed cost, there's no showing --
8 you can provide reasonable rates and service, and
9 you might still be stuck with a forced switch. In
10 those circumstances, Patrick, I think the lost
11 opportunity cost is appropriate.

12 BOARD MEMBER FUCHS: Here's what's
13 appropriate, and I think about the 1147 idea. Based
14 on the exact same statutory subsection that we're
15 discussing here, first, Ray, as you just
16 articulated, shippers don't like the railroads' ideas
17 for compensation because they include lost profits.
18 This system doesn't include lost profits.

19 Second is I think we've heard a lot about
20 the complexity of having to compare to
21 noncompetitive shippers versus competitive shippers,
22 and having to identify that, and having to identify

1 specific groups, and then we heard the additional
2 layer of complexity in terms of rate-adjusted
3 service levels.

4 Would it be fair to say, Ray, that under
5 1147, you don't need to establish those comparison
6 groups, you just need to establish comparison to
7 what you had before?

8 So, you know, Pyco case, I don't want to
9 call it the seminal case, it might be one of two
10 cases where this was actually kind of brought to
11 fruition, they just talked about how many boxcars
12 they were getting, if I recall correctly, and the
13 1147 case.

14 So wouldn't you agree that that greatly
15 simplifies the service showing if you don't have to
16 establish anything that is because of the carrier's
17 monopoly position?

18 MR. ATKINS: That's right. And that's
19 what the STB contemplated 20 years ago when they put
20 this in place.

21 Patrick, as you talked about with Mike
22 Rosenthal and the AAR, if you want something more

1 permanent, like an Entergy type, so now you have to
2 actually proceed through the competitive access
3 rules, which requires more than a generalized
4 service problem.

5 Because if you have a generalized problem
6 like Snowmageddon in 2014 or something else, the
7 last thing you want to do is open up the whole
8 network to reciprocal switching.

9 So what it requires there is more of a
10 tailored showing that combines the lack of service
11 to an exercise of market power. So that's like a
12 whole another avenue.

13 (6:00 p.m.)

14 But it feels like 1147 is being overlooked
15 when people say that they --

16 BOARD MEMBER FUCHS: No, I appreciate
17 that. I didn't mean to truncate your point. But I
18 wanted to --

19 MR. ATKINS: No, absolutely.

20 BOARD MEMBER FUCHS: There's also no
21 consideration of product or geographic competition
22 under 1147 as well, which is another thing that

1 shippers object to.

2 MR. ATKINS: Right. It's a temporary
3 solution for a temporary problem. If a customer is
4 really suffering, demonstrating inadequacy of rail
5 service, the idea is they can come and get this
6 temporary relief.

7 And of course, you know, if they come to
8 the Board and ask for it and the other carrier is
9 suffering some sort of similar circumstances, the
10 Board might well say it's not appropriate in those
11 circumstances.

12 And it's also lightning-quick. It's 45
13 days --

14 BOARD MEMBER FUCHS: I want to touch on
15 that, and I know Karen you have another line of
16 inquiry.

17 But it's my understanding that the Board
18 can order service under 1147 without having to spend
19 the time to develop compensation. By that I mean I
20 think under the Pyco --

21 MR. ATKINS: Yes.

22 BOARD MEMBER FUCHS: Service can start and

1 the shipper can -- as I think we all know,
2 compensation issues can take a lot of time, first of
3 all, there's the time of railroad negotiation, which
4 can take months, and if the railroads negotiate,
5 then we have all the evidence we need to consider,
6 which I think under precedent would be what's called
7 the Dardanelle standard in this realm, which is a
8 cost-based, which variable cost, O&M and some
9 portion of the capital cost.

10 And but we don't have to decide all that.
11 The shipper can get service immediately upon an
12 order and we can take those months to decide
13 compensation.

14 Do you agree with that kind of framework
15 for --

16 MR. ATKINS: Yes, yeah. I mean, we would
17 obviously love compensation to be decided, you know,
18 up front. But it does not contemplate that. It's
19 a -- it's about speed. It's understanding. But
20 it's also about, you know, a demonstrated inadequacy
21 of rail service too.

22 So it's not -- and it needs to be

1 substantial, it needs to be measurable, it can't
2 just be a one-time off. It has to have been over an
3 identified period of time so it's not just I miss a
4 switch. But yeah, I think you see where I'm going.

5 BOARD MEMBER FUCHS: It just doesn't have
6 to be substantial and measurable actually. There
7 could actually be another demonstrated inadequacy;
8 right?

9 MR. ATKINS: Yes.

10 BOARD MEMBER FUCHS: So if the shipper was
11 always getting bad service, they could also win;
12 right? If they said, hey, listen, I've been getting
13 one day a week, but -- switch, and it's missed 80
14 percent of the time, I can't grow my business, they
15 could also win even though they have always been
16 getting that?

17 MR. ATKINS: Yes. And Patrick, I would
18 say that I know this line is not landing well and
19 not being -- this is why the railroads view this is
20 just about rates, because when this proposal was put
21 in place six years ago nobody was talking about
22 service. If you look at the rulemaking in this

1 case, everyone is talking about compressing rates.

2 Now, I appreciate the concerns have
3 changed a little bit. Marty has been very
4 articulate, so has Member Primus and Member Hedlund
5 and everybody, about being really concerned about
6 service.

7 But there are tools that the Board put in
8 place exactly to address those concerns.

9 BOARD MEMBER FUCHS: I'll conclude by
10 saying you've heard me the last couple days talk
11 about administrative complexity, and any time there
12 are these principles in place, you know, I do wonder
13 whether or not shippers -- you know, it's tough to
14 bring a case no matter what.

15 And I do -- there are a few elements of
16 the 1147 rules that I think if you take a look at
17 them, I wonder whether or not the Board could do
18 better in fleshing them out. You know, I've looked
19 at the 628 rules, they're quite short, and listen,
20 there's merit to -- there are arguments in favor of
21 providing certainty and there's argument in favor of
22 doing a case by case.

1 I wonder whether or not there can be
2 creative ideas around three elements. First is what
3 are some categories of actions that could be
4 substantial measurable deterioration or other
5 demonstrated inadequacies? So that -- that's one.

6 Second is there's this whole notion of
7 well, how long is it; right? Someone to come in,
8 especially if they're not in a good competitive
9 situation, to bring a case against a railroad. I
10 hear from shippers that they're not really eager to
11 do that.

12 And so I wonder whether or not we could
13 provide a little bit more certainty to people about
14 how long it could go. Because right now as I
15 understand 1147, it sort of implies it's longer than
16 the emergency rules, which is 270-ish I think, but
17 it's until the railroad is ready.

18 What does it mean for the railroad to be
19 ready; right? So I wonder if we could do something
20 better on that to provide more certainty. And
21 then -- you know, I think that those would go a long
22 way.

1 And the third is I think that the shipper
2 has to come with an alternative carrier in hand.
3 And, you know, this is -- I've heard that this sort
4 of gets in a weird thing, where the alternative
5 carrier doesn't know, you know, what the fee is
6 going to be, right, for all the reasons we've
7 mentioned. And all these types of things. And
8 doesn't know whether or not a shipper is going to
9 prevail, and then the alternative carrier doesn't
10 know whether or not there's going to be another
11 effort by the railroad. You know what I mean?
12 There are all sorts of reasons why shippers might
13 identify that they can't get the alternative carrier
14 at the front end. I do wonder whether or not we can
15 think about that or any other way to speed the
16 proceeding because of the timing issue that I think
17 Mr. Moreno articulated about, you know, hey, if
18 someone is coming in with a service inadequacy or
19 demonstrable deterioration, people can't wait months
20 when their plants are about to shut down or, you
21 know, their business is falling apart.

22 So I really think that we need to think

1 about -- if it's the alternative carrier problem,
2 that's something. But if there are other ways
3 besides definitional on -- definitional and time,
4 you could get it for, there are other ways to speed
5 it, creative ideas are very much welcome.

6 MR. ATKINS: So Patrick, I will tell you
7 we'll take those all to heart. I can represent on
8 behalf of Norfolk Southern that they're always
9 looking for ways to improve the tools that the Board
10 has, so long as it's a balanced approach.

11 I think the things you've articulated are
12 certainly worthy of consideration. This provision
13 hasn't been reexamined in 20 years.

14 My impression, I wasn't there at the time,
15 I think I was actually in law school, but my
16 impression is that there was a remarkable degree of
17 collaboration and agreement that led to this set of
18 rules. So I think you could probably see that
19 happen again.

20 I will just make one last point, is the
21 Board has been very effective recently in using
22 policy statements as is necessary to help guide the

1 parties. So it might not even be necessary for you
2 to do a big formal rulemaking. You could instead
3 work with the stakeholders and develop a nonbinding
4 statement of how long might it be. You may not want
5 a firm rule, but you may give additional guidance,
6 what categories of action. That might be even more
7 effective the way you're proposing.

8 BOARD MEMBER FUCHS: And I don't want to
9 take any more of Karen's time. But I know that the
10 railroads didn't love everything about the demurrage
11 policy statement, but I think under Chairman
12 Begeman's leadership, we demonstrated that we can
13 get that done in a year's time or so.

14 MR. ATKINS: And you haven't seen people
15 come back to get litigated -- go ahead, Mark.

16 DR. ISRAEL: Just to support this, my
17 focus really is on investment incentives, and one
18 thing I like about what you guys are saying is it's
19 a very different story for investment incentives
20 because it says if you fix it, it's temporary, you
21 get the business back. So you have an incentive to
22 invest to solve a problem, as opposed to a permanent

1 solution or kind of a solution where if we invest in
2 more capacity, somebody else could end up using it.
3 So I like the story for the investment incentives
4 that it creates.

5 BOARD MEMBER FUCHS: I appreciate it.
6 Thank you guys both.

7 CHAIRMAN OBERMAN: Patrick, were you done?

8 BOARD MEMBER FUCHS: I'm good for now.

9 CHAIRMAN OBERMAN: Karen?

10 BOARD MEMBER HEDLUND: Actually, Patrick's
11 dialogue answered my question.

12 CHAIRMAN OBERMAN: I wanted to -- I had a
13 follow-up to the discussion you were having, Ray,
14 with Patrick.

15 I am concerned about this idea that this
16 whole area of reciprocal switching can have nothing
17 to do with rates. The statute talks about
18 competition, and I don't know how you can separate
19 cost from the product if you're talking about
20 competition.

21 So it may be that it isn't the wisest
22 policy, I'm not agreeing or disagreeing, to suggest

1 that the rule should be used solely for rates.

2 But to suggest that rates and product are
3 not inherently interrelated when you're talking
4 about the concept of competition, I don't know how
5 you can get there.

6 And it leads me to want to ask you to go
7 back to the example from Diversified that we heard
8 earlier today.

9 How would you characterize that under 1147
10 if the railroad, as it did, comes to the shipper and
11 says we don't have the capacity to provide service
12 for all of our customers on this line, so we're
13 going to raise the rates high enough to deter some
14 customers from using us at all?

15 Is that a service problem or rate problem?

16 MR. ATKINS: I'm not sure I view it as a
17 problem, but I appreciate it would be something you
18 want to look into it. But it's definitely
19 rate-related, it's not service in terms of they're
20 getting poor service. It's a -- you have
21 constrained capacity, supply and demand in any
22 market will try to adjust to send signals to people

1 to make responsible decisions about how much they
2 use that particular resource, whether it's rail or,
3 you know, gas prices or whatever. You try to send
4 signals into the market so that the users of that
5 scarce commodity appropriately -- make appropriate
6 decisions about how much they're going to use it.

7 That's to me -- I mean -- this is just
8 terminology, Chairman, that's not demarketing.
9 That's what markets do.

10 And the alternative would be permits. So
11 if it could not handle so much traffic, do you
12 really want the railroad picking winners and losers
13 and saying we're going to put permits in place that
14 says you can ship for 20 and you can ship less?

15 So I think the idea of letting prices
16 adjust based on capacity is something you should
17 actually be promoting, not discouraging.

18 But however, you made a different point
19 earlier too, which is, well, what if they could get
20 a switch to another carrier and get through the
21 congestion in an alternative way; right? I think
22 that was a point that you were emphasizing.

1 I want to come back to the existing set of
2 rules. If you look at the Entergy case, if a
3 railroad is abusing its market power to deprive a
4 customer of a more efficient alternative route, that
5 can be grounds for a reciprocal switch under your
6 current Midtec standards.

7 So I don't think you need to change the
8 standards, and I think the railroads likely know
9 that if they have got a concession problem, what
10 they're looking to do is get some of it off, that
11 congestion, they will switch it off with another
12 railroad. They have every incentive to do that.

13 CHAIRMAN OBERMAN: The problem with their
14 response, Ray, is that you're talking about a
15 situation which is not the one that was presented to
16 us, as I understand it.

17 The Norfolk Southern route didn't suddenly
18 become subject to an increase in demand, nor did the
19 route itself lose capacity. Norfolk Southern, as
20 well as most of the other Class I's employment
21 practices, rendered it unable to have enough crews
22 to provide the service it had been providing.

1 That seems to me to have little to do with
2 competition and more to do with, we don't have to
3 get off on it in this hearing, the impact of Wall
4 Street.

5 So, you know, it's not a congestion
6 problem. And whether it's -- I don't know that it's
7 an anticompetitive problem.

8 But -- and I would say it's a -- you said
9 you don't want to concede it's a problem, and you've
10 got a client so I'm not asking you to concede it,
11 but I heard it as a problem of a shipper, longtime
12 shipper, who all of a sudden had a 24-1/2 percent
13 rate increase, and candidly, to Norfolk Southern's
14 credit, they said, you know, we don't have enough
15 crews to serve everybody, so we have to price some
16 people out of the market. That's what we heard.

17 Now, is that a -- my question to you is
18 under 1147 -- let's assume those are the facts, that
19 they are proven. Proven hypothetically. Is that an
20 1147 problem or is that just a rate problem?

21 MR. ATKINS: No. If you believe that rate
22 is unreasonably high, you bring a rate case and get

1 it suppressed back down. Or if you think that rate
2 has not been -- I'm sorry, I was going to say --

3 CHAIRMAN OBERMAN: Even if the railroad --
4 even if the railroad admits that the reason for the
5 rate is because it's unable to provide the service?
6 That's the problem I'm having with this discussion.

7 MR. ATKINS: So if they actually refuse to
8 provide the service, then that would be grounds for
9 a switch. So if somebody said, you know, we still
10 want service, and nobody took up the offer and
11 everyone stayed on the traffic, that might be -- if
12 they can show a demonstrated inadequacy of service,
13 yes. But it's not a rate remedy.

14 If they are disappointed with the rates,
15 they have to bring a rate case and show market
16 dominance, show it's in excess of 180 percent, all
17 the safeguards Congress has put in place have to be
18 reviewed to make sure that they are entitled to
19 relief from the rate.

20 CHAIRMAN OBERMAN: Well, you know, I think
21 we're going around in circles here. You're
22 presenting a hypothetical that isn't going to

1 happen. Presumably Norfolk Southern is going to
2 continue raising their prices until it pushes enough
3 people off of the system that its limited crews can
4 provide service. They're not foolish enough to come
5 in and say we're going to stop serving you
6 altogether. But that seems to me a distortion in
7 the system. And it may, I suppose, become
8 anticompetitive if, in fact, they are sole-served
9 and they won't give them a switch, then the tactic
10 becomes abusive.

11 And it seems to me if we accept at face
12 value what this witness said, it becomes abusive,
13 without that rate exceeding what a person might win
14 in a rate case. Arguably could become an
15 unreasonable practice, I suppose, under 10702 I
16 think it is. Although you would probably be the
17 first to come in and argue that you can't challenge
18 a rate as an unreasonable practice.

19 MR. ATKINS: I probably would be, yes.

20 CHAIRMAN OBERMAN: I think this is not so
21 simply analyzed, is all I'm suggesting, based on
22 what we hear is going on.

1 And I don't mean to single out Norfolk
2 Southern. There are crew shortages greatly
3 undermining service and carloads and so forth all
4 over the network, as far as I can tell, and we hear
5 a lot about it.

6 Karen has her hand up.

7 BOARD MEMBER HEDLUND: I want to go back
8 to the discussion that Dr. Israel had about access
9 fees, and the thing that is bothering me is that in
10 the context of the service deficiencies, networkwide
11 and affecting all railroads, that seems to be
12 motivating the shippers to ask for this rule. Why
13 should, under those circumstances, the railroad
14 seeking the switch be required to pay opportunity
15 costs, and particularly in a situation where the
16 railroad is trying to ration customers by raising
17 its rates? That just sounds -- maybe I'm just
18 describing, you know, market abuse.

19 But I -- you know, this is where -- where
20 they're seeking a switch because of service, or
21 because they don't want to pay for the service at
22 outrageous rates, I don't understand why the access

1 fee should include compensation for opportunity
2 costs.

3 DR. ISRAEL: I think that was directed at
4 me although others may want to weigh in. The
5 fundamental reason that I think it needs to include
6 opportunity costs is because we need to preserve the
7 ability to earn on return, which is --

8 BOARD MEMBER FUCHS: Dr. Israel, if I
9 could jump in. I apologize for interrupting you.
10 But I think the scenario that Karen is describing is
11 if there was fault. And so under like say 1147, and
12 I'm not sure the position is if there's fault there
13 should be opportunity costs. I think --

14 DR. ISRAEL: I agree with that.

15 BOARD MEMBER FUCHS: You were probably
16 getting there, and if I cut you off --

17 DR. ISRAEL: I agree with that. If
18 there's a fault, harm to competition, clear fault,
19 then somebody subverted competition, they shouldn't.
20 They have now harmed competition, they shouldn't get
21 an opportunity cost-benefit for that. We want to
22 restore competition, so the synthetic competition

1 other economist talks about makes sense because
2 that's the only option we have to try to restore
3 competition.

4 If we're not in that world, though, what
5 Ray said, we have rate cases, a set of rate laws, to
6 control unreasonable rates. And as I said, those
7 have led us to a position where the return on
8 capital seems reasonable.

9 What I have heard in this that was
10 informative to me, because I hadn't thought about it
11 much, was let's suppose that we want to -- now we're
12 saying there is fault law, there is rate cases, but
13 now we have a service problem, it's not a fault
14 service problem, it's just a service problem, and we
15 want to deal with it in some other way. My view is
16 reciprocal switching is a bad way because it imposes
17 service issues of its own.

18 But if you implement it, ECPR works in
19 that case because you're not trying to suppress the
20 rate with ECPR, you're trying to make sure you
21 preserve the return on capital, but the two
22 railroads are free to go compete on service quality.

1 And if one of them can provide better service
2 quality, they can win that business even though they
3 have to pay an ECPR price.

4 BOARD MEMBER FUCHS: I just want to make
5 another observation on this, though, which is why I
6 think the 1147 framework merits consideration by
7 shippers. I heard, Dr. Israel, you describe if
8 there's fault, a harm to competition. On 1147 you
9 don't have to compare competitively situated
10 shippers versus noncompetitively.

11 Remember we were hearing from the
12 railroads yesterday about how well, you know, even
13 if a shipper is getting bad service, you have to
14 prove that that service is somehow worse than the
15 competitively situated shippers. And that's
16 evidence of anticompetitive conduct.

17 Under 1147, that shipper doesn't have to
18 prove that. They just have to prove that it's worse
19 than they had, substantially, measurably, or it's
20 inadequate for some other reason, which could
21 include comparison of competitive shippers, but it
22 doesn't necessarily have to. And there's nothing in

1 the text of the preamble, or certainly obviously not
2 nothing in the text of the regulation, that would
3 suggest that.

4 So even though -- what Dr. Israel is
5 describing about fault-based harm to competition, I
6 would actually say 1147 sort of straddles somewhere
7 in the middle, and maybe actually closer to
8 something that's more favorable to shippers, not to
9 say that shipper would agree that it's better than
10 the proposal for them. I'm just saying why I think
11 it perhaps merits consideration, because the
12 compensation issue has already been worked out
13 seemingly in their favor, which is not to include
14 opportunity costs.

15 DR. ISRAEL: It seems to me the statute
16 there that I don't -- but it's saying if this
17 inadequate service is being provided and proven,
18 that doesn't sort of meet the standards of real
19 service, that's -- the competitive system to me as
20 an economist has failed there.

21 And the other thing that I think I liked
22 about what Ray said is if it's a systemwide problem,

1 so everybody is suffering, then this obviously
2 wouldn't be a solution; right? So it deals with the
3 idea that if there is a systemwide problem, that
4 shouldn't lead to punishment or whatever on one
5 carrier.

6 CHAIRMAN OBERMAN: Go ahead, Ray.

7 MR. ATKINS: One last thing. So I just
8 want to emphasize too that a particular example
9 where you think the rate might be too high, there
10 should be a forum for the customer to bring that
11 kind of dispute to a quick resolution.

12 And I just would encourage -- I know you
13 weren't there when we submitted the proposal, we
14 would love a chance to come in and talk about it on
15 an ex parte basis if that's appropriate.

16 But there's this voluntary arbitration
17 proposal that has been submitted, and it's designed
18 exactly to quickly resolve that type of commercial
19 dispute, and it's in front of a neutral arbitrator.
20 So if the railroads can't convince the arbitrator
21 that that's a reasonable rate that they have just
22 imposed, the arbitrator will put an alternative in

1 place, the railroad and the customer will be able to
2 return doing what they should be doing, right, which
3 is working collaboratively to build business.

4 I really feel like that arbitrary --
5 voluntary arbitration process has a lot of merit
6 that might -- it might address -- might prevent that
7 type of activity from happening if you thought it
8 was inappropriate, but more importantly gives a
9 quick forum for somebody to resolve that dispute.

10 BOARD MEMBER FUCHS: One more question. I
11 have been thinking quite a bit about the Coalition
12 Associations's comment about timing. We want a
13 workable system.

14 And one of the things that occurs to me in
15 the design of 1147, Ray, I think as you know, it was
16 issued with 1146 I believe. And 1146 is a process.
17 But you look at that process, and the minimum amount
18 of time is, you know, weeks, a month or so, right.

19 So I don't really regard a process that
20 takes that long, especially when you only get 270
21 days, as really suitable for an emergency. And I
22 think out of Chair Begeman's Regulatory Reform Task

1 Force there were ideas that shippers brought to bear
2 about reforming emergency service rules. And that
3 standard is very, very similar, if not the
4 identical -- as the 1147 standard.

5 But it's truncated in time.

6 So my question to you in raising the 1147
7 idea is whether or not NS would also see merit to
8 reforming, simultaneously reforming, the emergency
9 service rules to provide an even quicker, much more
10 temporary avenue of relief, to mitigate Mr. Moreno's
11 I think interesting point about timing.

12 MR. ATKINS: Sure. So I will start by
13 saying, I mean, there's only so fast an agency can
14 be expected to deliver relief to anybody. There
15 just is delay. There are certain due process rights
16 that you have to respect for the railroads.

17 And I just would make this point, Patrick,
18 is you can't sacrifice speed or sacrifice like
19 accuracy in making sure you don't cause problems in
20 favor of speed.

21 So I am sure Norfolk Southern would be
22 happy to sit down and collaborate on other reforms,

1 but these emergency service orders, they can cause
2 more harm than they do good. So it's important that
3 you at least have enough time to understand what it
4 is you're being asked to do.

5 And so like, you know, doing things too
6 quickly, I would be worried. I know it's a balance,
7 and I know everyone wants relief instantaneously. I
8 would just ask you to think about the fact that you
9 have to have enough information, enough time to
10 think about it, enough time for the railroads to
11 present it. But it still can be done quickly. As I
12 said, 45 days is blistering fast for a relief, which
13 as you mentioned is not limited to that time frame.
14 It's limited until the railroad can demonstrate that
15 they have got their act together and they can --
16 they have solved the service problem.

17 BOARD MEMBER FUCHS: To be fair, when I
18 talk about 1146, I'm also building in time -- I
19 think in my head I'm building in time to draft the
20 actual complaint and then also for the Board to
21 issue a decision, and that's how you get the time.
22 And it's very difficult --

1 MR. ATKINS: Yes, I get it.

2 BOARD MEMBER FUCHS: -- emergency when you
3 build in those things, plus reply and rebuttal and
4 that sort of thing. I hear you on 1147, it is
5 pretty quick for something that doesn't have -- it
6 can be seen as pretty quick for something that
7 doesn't have an end date; right?

8 You know, if a railroad just hasn't shown
9 the Board that it's capable of providing good
10 service, it could go on indefinitely really, at
11 least under the regs.

12 But I would still note I mentioned the
13 alternative carrier. I would still note any other
14 barriers in that CFR, if there are creative ideas
15 along with defining the service degradation
16 component as well as what a railroad needs to show,
17 I think all three of those are worthy of
18 exploration.

19 MR. ATKINS: Understood.

20 Chairman Oberman?

21 CHAIRMAN OBERMAN: You know what, the hour
22 is late and I think we've pursued this pretty

1 thoroughly, this aspect of it. Very interesting
2 discussion.

3 So are you -- is your team done on behalf
4 of Norfolk Southern?

5 MR. ATKINS: We are done. Thank you,
6 Chairman, we appreciate the opportunity to present
7 our views.

8 CHAIRMAN OBERMAN: It is now 6:25. We've
9 got a lot of people to cover. Do we think we can do
10 this rapidly?

11 Does anybody on the Board need a break?

12 COURT REPORTER: The court reporter needs
13 a break.

14 CHAIRMAN OBERMAN: Good idea. Why don't
15 we take a 10-minute break, while we're out there,
16 we'll try to figure out how we're going to finish
17 this off. So it is -- we will reconvene at 6:35.

18 (Recess.)

19 CHAIRMAN OBERMAN: All right. Good
20 evening. We are back in session, and can everybody
21 hear me?

22 So I want to make just a brief

1 announcement about how we're going to proceed here.
2 We are going to have a hard stop at 7:30 Eastern,
3 which, if the Board members don't ask any questions,
4 will allow both CN and CSX just about their allotted
5 time.

6 I am going to encourage all the witnesses
7 to, A, not repeat things that are in your written
8 submissions, and B, if there are subjects which have
9 already been pretty thoroughly covered by the other
10 railroads, perhaps limit yourselves. I do not want
11 to cut anybody off but I'm giving you sort of a
12 suggestion.

13 If we really can't finish, if we can and
14 the Zoom operator is available, we'll reconvene
15 tomorrow morning briefly. But nobody really wants
16 to do that, so we're going to try to make this
17 happen by 7:30.

18 Without any further delay, then, Canadian
19 National, you are up. There are five witnesses.

20 Matt? You're the person.

21 MR. WARREN: Thank you, Mr. Chairman.

22 I just need a couple of seconds. I

1 appreciate that you just said. We will keep to that
2 schedule. One thing I will say up front is that CN
3 is committed to doing ex parte meetings with the
4 Board about this so that hopefully the Board won't
5 lose the opportunity to ask any questions it has.

6 With that, I will hand things over to
7 Mr. Reilly.

8 CHAIRMAN OBERMAN: Thank you.

9 MR. REILLY: All right. Good evening now.
10 I was going to say good afternoon, but I'll say good
11 evening.

12 Good evening, Chairman Oberman and Board
13 members. Thank you for the opportunity to speak to
14 you today. My name is Rob Reilly, and I have held
15 the position of executive vice president and chief
16 operating officer at CN since June of 2019. In that
17 role I am responsible for CN's operations in Canada
18 and the U.S. With responsibility for the company's
19 preparation, engineering, mechanical, network
20 operations and safety functions.

21 I previously served for 30 years in a
22 variety of roles with the Atchison, Topeka and Santa

1 Fe and BNSF Railways, including vice president in
2 operations, and began my railroading career in 1989.

3 Here to explain why CN is concerned about
4 the potential impact of 2016 forced access proposal
5 on CN's operations in the U.S. In addition, some
6 commenters have asserted that such forced access
7 could be implemented without negative consequences
8 for operations and network fluidity in the U.S.
9 because Canada has regulated interswitching. I
10 would like to address that misperception as well.

11 First, let start with the many ways we
12 foster resilient railroad network and support the
13 overall supply chain. CN railroaders work each and
14 every day to provide safe and reliable service for
15 our customers. A critical part of my job at CN is
16 managing our daily operations, including recovery
17 efforts from unexpected disasters that strike our
18 network and disrupt our operations.

19 When disaster strikes, our employees work
20 tirelessly to limit effects of those disruptions
21 when they occur and restore rail transportation for
22 our customers.

1 Most recently in November and December of
2 2021, CN railroaders showed resilience to recover
3 from catastrophic rains in British Columbia. The
4 torrential storms caused significant highway, track
5 and bridge washouts from the combined impact of
6 snowmelt and precipitation runoff. CN worked around
7 the clock to return our tracks to service, restoring
8 more than 50 outages that had portions of our
9 mainline out of service for approximately three
10 weeks between November 13 and December 4, and we
11 added a permanent bridge on January 12.

12 This was followed by extreme cold
13 temperatures in western Canada for more than 80
14 percent of the days from the end of December to
15 February 25. Such temperatures triggered what we
16 call tier 2 operating freight rail operating
17 restrictions, which apply when the temperature drops
18 to minus 24 and colder, oftentimes dealing with
19 temperatures that reach the minus-40-degree range.

20 Our recovery from these incidents is a
21 testament to the grit of CN railroaders, and over
22 the past two years during the pandemic, while others

1 worked remotely, our railroaders showed up each and
2 every day to keep the supply chains moving in North
3 America.

4 CN makes significant investments to meet
5 customer demand and for growth. Bernd will discuss
6 some of those investments in more detail and discuss
7 the 2016 forced access proposal, how it could
8 disincentivize future investments.

9 Those investments are in addition to CN's
10 hiring new employees in the U.S. This year alone
11 we'll hire a couple hundred conductors, mechanical
12 and engineering employees to help support our
13 operation.

14 I particularly wanted to share some of the
15 investments CN has made to grow our intermodal
16 service offerings. CN moves both international
17 containers, moving through the ports in the U.S., at
18 New Orleans and Mobile, Alabama, and in Canada, as
19 well as domestic containers, that take long-haul
20 trucks off the highways.

21 Intermodal traffic is time-sensitive, and
22 our intermodal customers in particular are looking

1 for fast, reliable, efficient transit times and
2 cycles to return containers. It is understandable
3 why intermodal customers including UPS and Hub Group
4 have opposed the 2016 forced access proposal.

5 CN has invested to support our intermodal
6 customers, and our customers have responded. From
7 2010 to 2020, CN developed the fastest growing
8 intermodal network in North America. CN added
9 intermodal capacity in Chicago, Detroit and Memphis
10 to accommodate growing customer demand.

11 We have invested approximately \$60 million
12 in facility upgrades, and equipment, over the past
13 couple years at Detroit, Chicago and Memphis alone.

14 CN's effort to grow intermodal traffic has
15 prepared CN to help alleviate supply chain
16 congestion. This is especially important during the
17 supply chain crisis over the last two years, as
18 ocean shipping and port congestion has reduced
19 shipping capacity as vessels have been waiting to
20 dock and unload.

21 CN has added intermodal offerings designed
22 to help our customers during the current supply

1 chain disruption of the last two years. And as an
2 example, CN started a new priority intermodal train
3 service between the Port of Prince Rupert and
4 Chicago. This is a weekly service, and it has
5 reduced average transit time from Shanghai to
6 Chicago from approximately 13 days to 17 days.

7 Another supply chain disruption is the
8 increased amount of time containers have awaited
9 pickup by beneficial cargo owners at inland
10 terminals. The numbers tell a story.

11 In 2020, 4 percent of containers in CN
12 terminal in Chicago sat for seven-plus days awaiting
13 pickup, while 20 percent of the containers sat for
14 more than seven days awaiting pickup in 2021.

15 CN is also taking concrete steps to help
16 alleviate supply chain congestion, CN moved to fully
17 grounded international container operation to
18 increase terminal capacity in Chicago and Memphis,
19 CN offered the use of CNTL-owned chassis to provide
20 additional capacity for last mile delivery if
21 available, and customers had constrained truck
22 capacity.

1 CN leased additional offset storage
2 locations in Chicago in addition to its existing
3 off-site storage locations in Chicago and Memphis.

4 CN has incentivized beneficial cargo
5 owners to pick up their containers. We introduced
6 over the past couple years for international
7 containers to be picked up during off-peak hours in
8 Chicago, Detroit and Memphis.

9 CN has also incentivized customers to pick
10 up containers during long weekends.

11 CN's efforts have helped reduce congestion
12 in the supply chain as well as take trucks off the
13 highway. For example, both CN and CSX work together
14 to take thousands of trucks off the highway in moves
15 between the ports of New York, New Jersey and
16 Philadelphia and eastern Canada.

17 Now a few comments on the 2016 forced
18 switching proposal. I understand that under the
19 2016 forced switching proposal new switches of
20 traffic, which currently move in single-line
21 service, could be required between railroads in
22 response to complaints filed with the STB, and that

1 the shipper would no longer have to show an abuse of
2 market power.

3 From an operating perspective, requiring a
4 railroad to perform a new forced switch with another
5 railroad raises numerous potential adverse effects.

6 Adding an interchange would typically add
7 between one to two days of transit time as compared
8 to single-line service where the current -- where
9 there is currently not an interchange.

10 More problematic, however, those forced
11 switch locations could be inconsistent with CN's
12 service design. Our service design department
13 carefully plans our operations and takes account of
14 numerous factors, including train schedules, whether
15 manifest unit intermodal or automotive, crew change
16 locations, locomotive power plants, car fleet, cycle
17 times, balancing car fleet and locomotives, sighting
18 locations for train meets on our mostly single-track
19 network in the United States, and yard facilities
20 with available capacity to process the cars.

21 Given these realities, adding new forced
22 switches will tend to increase transit time and

1 dwell in the handoff between the railroads. This
2 will tend to increase cycle times for equipment as
3 cars go off-line, and we would have little
4 visibility into the return of those cars from
5 off-line. This in turn will require more cars and
6 locomotives to move product, which could increase
7 congestion on the freight rail network, and further
8 deteriorate fluidity.

9 Additionally, forced switching would
10 reduce our ability to anticipate traffic flows,
11 which is particularly challenging when considering
12 network planning. Effective planning is key to our
13 ability to provide a reliable service product to our
14 customers, and forecasts of anticipated demand are
15 key to planning.

16 Forced switching reduces visibility of
17 what is coming onto our system, or leaving our
18 system, and the locations where that may occur as
19 shippers seek Board-ordered forced access.

20 Forced switching could require CN to hand
21 over traffic at locations that are not designed for
22 such operations and that are not the most efficient

1 location for a handoff to occur.

2 And the forced switch traffic could appear
3 on CN's network without visibility, that would
4 hinder the ability for advanced planning and
5 dedication of appropriate resources. While the
6 shipper who is seeking the forced switch from the
7 Board may believe it is benefited by the forced
8 switch, that forced switch could harm the rail
9 network as a whole and all customers that depend on
10 the network.

11 The 2016 forced switch proposal could have
12 a significant impact on CN's network in the United
13 States. AAR estimated in 2013 that there are as
14 many as 1500 interchange locations in the U.S.
15 potentially impacted by the 2016 proposal.

16 AAR's map yesterday showed U.S. junctions
17 potentially affected under the 2016 proposal
18 assuming a 30-mile distance threshold. CN's network
19 could experience adverse operating impact of forced
20 switching across our entire network if the Board
21 adopts the 2016 proposal.

22 This is why CN is concerned about the

1 proposal. The proposal could create new forced
2 access, and the accompanying operational challenges
3 associated with it. Increased switching will lead
4 to reduced efficiency overall and will hinder our
5 ability to plan and execute on our plans.

6 That has impacts on the network
7 operations, and as Bernd will discuss, this
8 discourages the incentive for CN to invest in the
9 parts of our U.S. network that could be implicated
10 by forced switching proposal.

11 Finally, on the Canadian regulated
12 interswitching. Matt Warren will describe Canadian
13 regulated interswitching, and I will offer an
14 operational perspective. I'm only addressing
15 regulated interswitching, not long-haul
16 interswitching, which has not been used since it was
17 added in 2019.

18 First, there are differences in the size
19 and scope of the networks in Canada and the United
20 States. The U.S. rail system connects and crosses
21 in large urban areas and secondary locations with
22 many interchange points, and as many as 15

1 interchange locations, according to AAR, that could
2 be potentially impacted by the 2016 proposal.

3 By contrast, the Canadian rail system is
4 much more linear. Because interswitching has been
5 part of the Canadian statute for more than a
6 century, the Canadian rail networks and shippers
7 have developed over decades against the backdrop of
8 where regulated interswitching could occur.

9 This is in addition to the differences in
10 geography, population density, rail infrastructure,
11 traffic mix and makeup.

12 Second, interswitching in Canada can lead
13 to or exacerbate operating issues. And those
14 operating issues have required CN to impose
15 embargoes at interchanges in Canada for congestion.
16 Both CN and CP referred in their comments to the
17 winter of 2018 when Vancouver experienced
18 significant congestion-related challenges.

19 CN experienced an increase in railcars on
20 line during a time in winter when capacity was
21 reduced for safe operations due to cold
22 temperatures.

1 At our Thornton Yard near Vancouver, CN
2 experienced an 18 percent increase in the number of
3 cars carried by CN for interswitching with BNSF. To
4 manage the congestion and operational challenges
5 with the cars coming online suddenly, CN deployed 18
6 percent more locomotives and 16 percent more crew as
7 compared to the prior year.

8 Even with these measures in place, CN had
9 to embargo traffic due to the congestion. Based on
10 our experience in Canada, it is impossible to
11 predict the type of operational challenges that
12 could result from new regulated forced switching
13 under the 2016 proposal.

14 In conclusion, our ability to plan and
15 manage depends on having information about expected
16 traffic flows, but as I have discussed, that is a
17 real problem when it comes to the 2016 proposal.

18 Forced switching would add complexity and
19 slower transit times, which will ultimately make it
20 harder to offer competitive service compared to
21 truck.

22 And with that, I will pass it on to Bernd.

1 Bernd.

2 MR. BEYER: Thank you very much, Rob.

3 Good evening. My name is Bernd Beyer. I
4 am the treasurer at CN Rail. And I am pleased to
5 have the opportunity to address the Board today.

6 An area of debate within this proceeding
7 is the potential impact of the 2016 forced switching
8 proposal on railroad's investment incentives. I am
9 here to explain the importance of CN investments to
10 drive service and growth, and my perspective that
11 the 2016 proposal would tend to decrease incentives
12 to invest in CN's network, in the areas that could
13 be exposed to forced access.

14 I will also share my perspective on the
15 importance of market-based excess rates if the Board
16 changes its regulation to remove the requirement for
17 a shipper seeking forced access to show a railroad's
18 abuse of market power.

19 CN's recent experience underscores the
20 importance of continuous investment. I was last in
21 Washington when I testified in person before the
22 Board on December 12, 2019 at the revenue adequacy

1 hearing, and a lot has changed in our lives and at
2 the railroad since that time. Unprecedented
3 uncertainty occurred from the COVID-19 pandemic,
4 which was just in its beginning at the time. Little
5 did we know that volumes would drop precipitously in
6 2020 in a matter of weeks, as customer closed their
7 facilities and went into lockdown in the USA, Canada
8 and around the globe.

9 Rob Reilly gave examples of other changes,
10 challenges in the last year that have confronted CN
11 in recovering from wildfires, hurricanes and floods.

12 In addition to persevering through these
13 shocks, Rob also shared some of the ways in which CN
14 helped our customers through pandemic disruptions,
15 because CN is a supply chain enabler.

16 The past two years illustrate the need to
17 encourage continued private investment in the
18 network for growth.

19 As the Board knows, unlike many other
20 transportation modes, a freight railroad in the
21 United States, like CN, builds, maintains and
22 expands its private network at its own cost.

1 Because of the capital-intensive nature of the
2 freight railroad industry, it is especially
3 important that investments are expected to derive a
4 proper return. Building and maintaining such a
5 private network is expensive and requires continuous
6 capital investment to sustain service to rail
7 customers and compete with alternative
8 transportation modes, such as trucking companies,
9 that utilize the federally funded highway system as
10 their network.

11 CN invests significantly in maintaining
12 and growing our approximately 18-point, 9000-mile
13 network in the United States and Canada, our ability
14 to make smart long-term investments in our network
15 to help our customers grow is vital to our ability
16 to provide good service to our customers.

17 CN invests substantial amounts in its
18 network each year, and needs to be able to earn a
19 reasonable return on that investment.

20 CN had record investment levels in recent
21 years in its network. In 2022, CN plans to invest
22 approximately 17 percent of its revenues in its

1 capital programs. Even though we forecast a 35
2 percent reduction in the grain crop in Canada this
3 year.

4 CN's plant investments in 2022 follows
5 multiple years of record investments in our network.
6 CN invested approximately 2.9 billion, and that's
7 Canadian, in our capital program in 2021, 2.9
8 billion in 2020, 3.9 billion in 2019, with more than
9 40 percent of that in the United States, 3.5 billion
10 in 2018 and 2.7 billion in 2017.

11 CN's investments maintain and rebuild our
12 existing network, increase capacity, improve
13 fluidity, increase asset utilization, reduce car
14 cycles and build resiliency. CN's investments are
15 good for safety and good for rail customers.

16 CN's concern about the 2016 proposal stems
17 from its potential for adverse impact on strategic
18 gross investments. Forced switches in the United
19 States would increase uncertainty about future
20 returns from investments in areas potentially
21 subject to forced switching.

22 AAR's witnesses yesterday showed a map of

1 the junction points that may be used by potentially
2 affected traffic within a 30-mile radius of an
3 interchange. That map includes thousands of
4 locations on our network, including in Illinois,
5 Wisconsin, Michigan, Minnesota, Iowa, Tennessee,
6 Louisiana, Mississippi and Alabama.

7 Such proposal will make it more difficult
8 for particular proposed projects to meet CN's
9 criteria for future investment.

10 This is especially true for project that
11 benefit a particular region, a specific commodity or
12 customer facility. If CN could be ordered to hand
13 traffic to a competing railroad without any showing
14 of anticompetitive conduct, CN's investment in our
15 infrastructure could be used for the benefit of a
16 competing railroad who would reap the benefit of
17 CN's investment without having to risk its own
18 capital.

19 A look at an example of CN's investment in
20 our United States network illustrates the challenge.
21 CN is the sole direct railroad provider for frack
22 sand mines on its rail lines in Wisconsin, and CN

1 heavily invested in this network to provide rail
2 service to those mines. CN reconstructed long
3 inactive track at its Baron subdivision, and
4 rehabilitated other track on its Whitehall
5 subdivision, to accommodate CN rail service from
6 Wisconsin to western Canada for frack sand producers
7 to meet projected customer demand.

8 The frack sand market, however, has
9 encountered structural challenges from shale oil
10 volatility and decisions by frack sand users to
11 source sand locally, contributing to unforeseen
12 risks and lessened the value of CN's previous
13 investment.

14 Turning to how CN makes its investment
15 decision, first let me remind the Board that CN has
16 a duty to its owners, and we must keep the duty in
17 mind when making decisions about capital. It's
18 important that we allocate wisely and fund projects
19 that we expect to create value.

20 Shareholders will not accept a company
21 that invests in projects that don't meet their
22 minimum risk-adjusted return requirements.

1 In other words, our expected return needs
2 to be greater than the cost of capital.

3 In considering specific projects, we very
4 carefully assess expected returns, so the most
5 likely outcome, as well as the risk of achieving
6 that outcome. In assessing expected returns, we
7 have to consider traffic forecasts, and it can be
8 difficult to predict future resulting traffic flows,
9 especially given the operating challenges Rob
10 described. And we consider factors that can lead to
11 uncertainty regarding expected returns, including
12 the availability of regulated interswitching in
13 Canada. And conversely, we would look at factors
14 that could mitigate uncertainty, such as contractual
15 provisions stipulating minimum volume commitments
16 from our customers.

17 All else being equal, an investment with
18 higher risk needs to generate a higher return.

19 For example, the frack sand investment in
20 Wisconsin I mentioned involved a branch line
21 transporting only a single commodity. That
22 investment required a higher return compared to an

1 investment in a high-density mainline which carries
2 a variety of commodities and thereby diversifies
3 risk.

4 And the 2016 forced access proposal would
5 inject new risk into these decisions. It will
6 increase the risks that we will lose the long-haul
7 movement as a result of regulatory intervention,
8 which will raise the bar in terms of required
9 returns. It will also introduce more variability
10 around expected returns, which could also lead to
11 particular projects not meeting hurdle rates.

12 Ultimately, it will make it harder for
13 certain investments to be justifiable.

14 Some suggested that forced switching will
15 necessarily increase investment because competition
16 always spurs investment. Frankly, this proposition
17 doesn't account for the realities that CN faces when
18 making decisions, and is counterintuitive to the
19 investment decisions made in the industry. Whether
20 in the U.S. or Canada, we would not make an
21 investment if there is a significant risk that the
22 additional traffic we would expect to move as a

1 result of the investment would benefit a competing
2 railroad.

3 Let me conclude with a comment on the
4 cost-based compensation proposals, which we believe
5 are not appropriate for forced switching.

6 As previously mentioned, in CN's
7 experience in Canada, when a railroad knows that a
8 customer can seek to force a cost-based regulated
9 interswitch, it is more difficult to justify
10 infrastructure investment in the network within the
11 regulated interswitching zone. Rob Reilly described
12 the adverse impacts to transit time and network
13 fluidity of such forced switching, that harms the
14 broader rail network and customers that rely on it,
15 which would tend to make rail less competitive
16 vis-à-vis truck, especially for time-sensitive
17 shipments, such as those by intermodal customers.

18 This is why from CN's perspective, should
19 the Board decide to proceed here, the market-based
20 rate must be a critical feature of any compensation
21 for forced switching that is not premised on an
22 abuse of market power by a railroad.

1 Thank you. And with that I will turn it
2 over to Andreas.

3 CHAIRMAN OBERMAN: Let me just interject
4 here in the interests of watching the clock.

5 There's only two minutes left on CN's time that was
6 asked for. I see that CSX only has one witness.

7 We are 30 minutes away from our hard stop.

8 So Ray and Matt, I don't know if you
9 are -- want to work this out and let CN use up some
10 of CSX's time. We really would like to avoid coming
11 back tomorrow, but I don't want to take up anymore
12 time saying that. Perhaps you two guys can talk
13 about it.

14 MR. WARREN: We have been texting back and
15 forth, Mr. Chairman. I think CN can wrap up very
16 quickly in five minutes.

17 CHAIRMAN OBERMAN: Very good, thank you.

18 MR. AEPPLI: Thank you.

19 In the interest of time, I will defer to
20 Kathryn and Matt. However, we did submit written
21 material and a presentation that provides an
22 overview of what's happened with global competition,

1 and the state of freight transportation in the U.S.
2 that kind of indicates the degree to which there is
3 a lot of competition going on, pretty much across
4 the board, and is definitely part -- should be part
5 of the consideration when you're looking at the
6 reciprocal switching.

7 MR. WARREN: Mr. Chairman, we did submit
8 these exhibits in the record and it might be most
9 efficient if we could just simply enter that into
10 the record and obviously make Mr. Aeppli available
11 for an ex parte meeting if the Board has questions
12 about his analysis.

13 CHAIRMAN OBERMAN: I think that's fine and
14 we have it in writing and Staff and the Board
15 members can review it in a timely fashion. Thank
16 you.

17 MR. WARREN: And I am going to apologize
18 in advance for speaking quickly in light of the late
19 hour.

20 Just three points that I wanted to make in
21 response to what we've heard over the last couple of
22 days.

1 First, it has been somewhat surprising to
2 me as somebody who has been involved with this
3 proceeding from the beginning over the last 11 years
4 to hear so much emphasis in the last couple days on
5 the idea that the forced switching proposal might be
6 a really good way to deal with recent service
7 problems on certain Class I railroads.

8 I don't think there's anything in the
9 record that supports the idea that forced switching
10 could make service better on a network-wide basis.
11 That was not a purpose of the rule that was listed
12 in the 2016 NPRM. There's obviously been a lot in
13 the record about service. But it's been largely
14 from railroads and others who are concerned about
15 the rule, saying that we think that doing things
16 that add additional -- add additional action in the
17 system, switches in the system, are going to have
18 service effects, and responses from proponents of
19 the rule saying it's not going to be that bad.

20 You know, as Mr. Moreno put yesterday, the
21 railroads are being apocalyptic about this. You
22 don't have any reliable evidence out there that a

1 forced switching regime in which essentially
2 shippers are going to have the ability in many
3 instances to second-guess a railroad's operating
4 decisions is something that could make service
5 better for everybody.

6 It is certainly true, and I'm not going to
7 repeat I think what was a very useful colloquy
8 between Member Fuchs and Mr. Atkins about 1147, and
9 the Board already has developed regulations that are
10 specifically targeted to situations where a shipper
11 has specific service problems and believes that, you
12 know, reciprocal switching would be a good
13 alternative to fix those service problems.

14 So I think that that's something the Board
15 really needs to look at. And it's not really been
16 something that's been discussed in this 711 record
17 because, I think until very recently, this has not
18 been a proceeding that's been focused on ways to
19 improve rail service.

20 The second thing that I would like to
21 point out, one quick correction, Indorama testified
22 earlier, they are a valued CN customer. However,

1 they are a CN customer only in Montreal, so I think
2 the record indicated that they might be a Class I
3 railroad that Indorama was having issues with, but
4 CN doesn't serve them in the United States.

5 I would also like to just quickly respond
6 to the presentation that Professor Nolan made.

7 As I understand it, Professor Nolan
8 presented -- he presented a regression analysis
9 based on data that I think he indicated was actually
10 done by one of his students, and the idea was to
11 show that extended interswitching had a beneficial
12 effect on grain car cycle times. And the way this
13 was done was to take a period of time when extended
14 interswitching was in effect and then compare to the
15 period of time after extended interswitching
16 expired.

17 The one thing I would like to point out is
18 that the only way such a comparison works is if the
19 two time periods you are comparing are actually
20 comparable. And here we know that's not the case,
21 because the cutoff point was September 2017, and if
22 you go back and look at the record and if you listen

1 to CN's podcast, CN has a grain insight podcast that
2 it communicates to its grain customers, and if you
3 listen to those podcasts from late 2017, it will
4 tell you that there were actually a number of
5 service challenges that CN experienced at that time.

6 There were multiple derailments on one day
7 in Alberta due to high winds knocking trains off the
8 tracks. There were mudslides in October. And at
9 the same time, there was a 20 percent year-over-year
10 increase in freight demand.

11 So if you're not comparing apples to
12 apples, the comparison is not going to be very
13 meaningful. I know I'm very going quickly.

14 I think the last thing I would say is that
15 I do think a lot of the policy goals that the Board
16 has expressed in this hearing, expressed recently,
17 are really good and valuable. Encouraging railroads
18 to compete better with trucks and get trucks off the
19 road is good and valuable. But that's not something
20 that is going to be served well by this forced
21 switching proposal.

22 And, you know, it's not really anything

1 that was from the beginning, you know, a purpose of
2 this rule.

3 So I think as the Board is looking for
4 ways to encourage railroads to be able to compete
5 better for business that's currently moving by
6 trucks, the way to do that is to encourage railroads
7 to make the network more efficient, not less
8 efficient.

9 With that, I will turn it over to Kathy
10 for some final remarks.

11 MS. GAINNEY: Thank you so much, Matt.

12 Good evening and thank you so much to the
13 Board. I'm Kathy Gainney, CN's deputy general
14 counsel. I've been with CN for five years. Thank
15 you to you and your staff for your time this week at
16 the hearing, and for bringing stakeholders together
17 to engage on these important questions.

18 CN is pleased to participate and offer our
19 perspective, and I had just a few things that I
20 wanted to mention before we close out.

21 First, in light of the discussion over the
22 last two days regarding the extent of competition in

1 the rail industry, CN recommends that the Board
2 would update its competition study. During the
3 hearing, we've heard questions regarding the extent
4 of competition in the rail industry, including the
5 extent to which the number of sole-served rail
6 customers in the United States has changed over
7 time.

8 I can tell you that CN competes vigorously
9 for customers against rail, truck and water
10 alternatives on our network.

11 But we understand the importance of
12 empirical evidence. A little over a decade ago, the
13 Board commissioned an independent study to look at
14 the state of competition in the rail industry, and
15 in both the initial report in 2008 and its update in
16 2010, the study did not find any evidence of
17 widespread abuse of market power by the railroads.

18 It appears that there may be questions
19 about whether things have changed since 2010. To
20 the extent there are such questions, CN encourages
21 the Board to seek the answer through updated
22 analysis and not anecdotal evidence.

1 CN respectfully suggests that the Board
2 update its competition studies.

3 Second, CN encourages the Board to
4 finalize the voluntary alternative dispute
5 resolution proposal. CN is a strong proponent of
6 alternative methods of dispute resolution. The
7 level of freight rates and whether they are too high
8 is another reason that has been given to encourage
9 the Board to expand the availability of forced
10 reciprocal switching under the 2016 proposal.

11 Finalizing the voluntary ADR proposal
12 would address any concerns about rates directly
13 rather than indirectly through a forced access
14 regime that could lead to unintended consequences,
15 such as network -- deteriorating network fluidity
16 and decreasing incentives to invest.

17 Finally, in light of the testimony over
18 the last two days, CN agrees with the suggestion
19 that stakeholders should explore whether there is an
20 alternative to the 2016 proposal that could avoid
21 the adverse consequences of that proposal.

22 CN appreciates Union Pacific's invitation

1 for a conversation, and the suggestion from others
2 at the hearing regarding topics for additional
3 dialogue. CN today shared examples of the potential
4 harms to the rail network and its customers who rely
5 on it, that could result from the adoption of the
6 2016 rule as proposed.

7 CN was proud to work with stakeholders in
8 the voluntary alternative dispute resolution process
9 and CN would be interested in participating in such
10 stakeholder conversations that could include larger
11 and smaller railroads, shippers and shipper
12 associations.

13 From CN's perspective, the goal of such a
14 conversation would be to collaborate to address the
15 concerns that prompted the 2016 proposal, while
16 avoiding its negative consequences for network
17 operations and investment incentives.

18 We support the proposal that stakeholder
19 groups could collaborate to try to find common
20 ground. We welcome your questions in this
21 abbreviated time period, and I wanted to just
22 mention as well in light of the conversation that

1 Member Fuchs and Ray Atkins had earlier, that CN of
2 course would be happy to engage in any efforts to
3 flesh out examples of service challenges under 49
4 CFR 1147.

5 With that, CN panel is concluded.

6 CHAIRMAN OBERMAN: Thank you, Kathy. Very
7 concise.

8 I am going to assume that members have no
9 questions, but maybe we should check.

10 Does anybody have a question?

11 All right. Why don't we move on to CSX,
12 and then Ray, if you and Sean finish before 7:30,
13 there might be time for a few questions. But if
14 not, we'll proceed.

15 MR. ATKINS: We'll do our best.

16 CHAIRMAN OBERMAN: All right. You're on.

17 MR. ATKINS: Sean, you have the floor.

18 MR. PELKEY: Thank you. It's a pleasure
19 to be here with you today. My name is Sean Pelkey,
20 and I am CSX's CFO. I've been here in the finance
21 department since 2005, and what I want to do today
22 is take you inside the business to help you better

1 understand the motivations behind our financial
2 decisions, and underscore how reciprocal switching
3 could dramatically impact the incentives that are
4 currently working to help drive our commitment to
5 growth.

6 CSX has previously explained to the Board
7 why it believes that STB's proposal would reduce
8 incentives for future capital investments, but
9 shipper interests are arguing just the opposite.

10 Let me assure you that regardless of the
11 outcome, CSX will continue to invest appropriately
12 to maintain the safety and reliability of our
13 network. However, using practical examples, I want
14 to make sure you fully understand CSX's commitment
15 to growth, and how the proposed regulatory changes
16 would work against that goal by creating
17 disincentives to invest and grow the business.

18 I want to start first by focusing on the
19 opportunities to grow the freight rail business.

20 The dashed gray line here represents
21 growth in the U.S. economy since 1990, and as you
22 can see by the blue line, the solid blue line, rail

1 merchandise volumes have been relatively flat over
2 that time period, heavily impacted by the great
3 recession in '08 and '09.

4 During that time, CSX has been competing
5 with Norfolk Southern and other railroads in the
6 East fiercely, trading share back and forth, as
7 market forces work to encourage competition.

8 Meanwhile, as the gold line illustrates,
9 the industry has successfully converted a
10 significant amount of freight from truck to
11 intermodal, far outpacing GDP.

12 Despite this growth of intermodal business
13 in the rail industry in aggregate, trucks continue
14 to move far more freight than the railroads. While
15 we greatly appreciate our truck partners and we work
16 with them daily, I think all of us can agree that
17 the public would be better served with fewer, not
18 more, trucks on our highways.

19 As you may know, rail is three to four
20 times more fuel-efficient than truck, and CSX has
21 been an industry leader, helping our customers avoid
22 11 million tons of CO2 emissions just last year.

1 That's a great stat but we need to step back and
2 think about what's possible.

3 The table on the left shows that trucks
4 haul over 1 trillion ton-miles of freight for
5 shipments over 500 miles. Imagine all of that moved
6 via rail. It would result in tens of millions of
7 truckloads off the highway each year. It would
8 result in a savings of 5.6 billion gallons of fuel,
9 or 62 million tons of CO2 emissions. That's a
10 billion trees.

11 The Board's reciprocal switching proposal
12 will distract us from our ultimate goal, a goal it
13 seems the Board shares, which is to expand rail's
14 share of the freight transportation pie.

15 So why haven't we been able to close the
16 gap and already win more share from truck? If we go
17 back to 2005 when I joined CSX, we've made
18 incredible improvements in safety, service and
19 efficiency. We're more reliable, and we've been
20 able to invest more in the business.

21 You may not know that has not always been
22 the case, in fact, we had no free cash flow when I

1 joined the company. We could barely cover the cost
2 of much lower capital investment.

3 CSX is in a much different place today.
4 While we're a regulated industry, we're also a
5 public company. Our investors measure our
6 performance versus the cost of capital, as you know.
7 For most of the last hundred years, railroad returns
8 on capital were far below the cost of capital. And
9 the only way to fix that is to grow profitably or to
10 drive efficiency gains.

11 Generally speaking, companies don't pour
12 more growth capital on when their returns are low.
13 They begin by getting rid of lower-return segments
14 and driving efficiency gains across the rest.

15 In our industry, safety and service are
16 prerequisites for growth. So for most of the last
17 few decades, CSX focused on reducing excess
18 capacity, rationalizing underutilized track and
19 driving efficiency gains.

20 During this time, our combined merchandise
21 and intermodal volumes were largely flat, but we
22 have now set the stage and are fully focused on

1 growing the business.

2 We're changing the narrative. In the face
3 of supply chain challenges that emerged in the
4 second half of last year, CSX responded. We
5 accelerated investments, added overflow container
6 yards, transloading sites, and we worked with
7 eastern ports to utilize inland rail yards and
8 reduce congestion.

9 We're also winning new business
10 development projects. The green dots, if we can
11 advance the slide, the green dots here represent 92
12 projects put in service in 2021 and over \$100
13 million of annual revenue opportunity.

14 There's five locations on the map you see
15 there where we have announced large industrial
16 development projects recently that will drive future
17 growth to rail. These will create nearly 20,000
18 jobs, and a common theme across many of these
19 opportunities is sustainability.

20 These locations are prime examples of
21 customers working with us and making long-term
22 investments to locate on rail. They are evidence

1 our strategy is to capitalize on the efficiency and
2 reliability of our service to move more freight.

3 And while actions are clearly more
4 important than words, the narrative I'm outlining is
5 one we're also emphasizing over and over with our
6 investors. All these quotes are from our CEO, Jim
7 Foote. As you can see, he has made it clear that
8 our goal is to move more freight.

9 The railroads have been criticized over
10 the last few years for an overemphasis on lowering
11 the operating ratio. And while the OR is a good
12 proxy to measure efficiency, it should be abundantly
13 clear that we're not interested in shrinking the
14 business just to minimize our operating ratio.

15 There's one central message I'd like the
16 members to take away today, it's that CSX is focused
17 on growth.

18 And we're putting our money where our
19 mouth is. When we began to implement scheduled
20 railroading, our long-term bonus was based on
21 operating ratio and return on assets. Strategy was
22 control costs, take waste out and improve asset

1 utilization.

2 But as we have evolved, CSX, and this with
3 the support of the board of directors, has helped
4 sharpen our focus to growth. Our executive
5 compensation has changed, removing OR from the
6 equation, and instead rewarding growth both in
7 operating income and cash earnings.

8 These measures incentivize profitable
9 top-line gains and investments that exceed the cost
10 of capital. This signals a dramatic change from the
11 company, that CSX has entered into a pro-growth
12 phase. And as a company, we're all aligned.

13 Last year we acquired Quality Carriers,
14 the country's leading liquid chemical bulk trucking
15 company. We're working to convert over the road
16 chemicals freight to rail, driving environmental
17 benefits, taking trucks off the highway, and
18 allowing drivers to get home to their families.

19 We're also seeking Board approval to
20 acquire Pan Am railroad, which is a dramatic shift
21 from the decades of rail line rationalization.

22 As you've already heard, that acquisition

1 is fundamentally all about investment and growth.
2 We're also adding resources, having hired 1500
3 conductors in the last 14 months. In addition to
4 about 1000 hires across maintenance of way,
5 intermodal, customer service, mechanical and other
6 functions.

7 We're investing more in growth capital and
8 a total of \$2 billion of capital spending this year,
9 including sighting extensions, cutting edge Howard
10 Street Tunnel renovation in Baltimore, investments
11 in advanced technology and capital for industrial
12 and customer development projects.

13 As you've just heard, we've aligned our
14 pay incentives to this strategy.

15 Turning to the reciprocal switch proposal,
16 I'm very concerned that despite the best of
17 intentions, it would force us to turn in a
18 completely different direction. There's a second
19 takeaway, it's the risk that this proposal would
20 discourage precisely the kind of growth investments
21 that benefit all stakeholders, including shippers
22 and carriers.

1 And so to dive further into this question
2 of incentives, I want to use a simple example that's
3 quite common for us in our quest to win share.

4 As you know, we evaluate projects looking
5 at their rate of return versus the cost of capital,
6 and if the return is attractive, we invest.

7 I'm going to illustrate a hypothetical
8 industrial development initiative that's typical of
9 those we evaluate regularly. In this example you
10 will see not only how CSX has significantly improved
11 profitability levels, support and encourage future
12 investment, but also how the Board proposal on
13 reciprocal switching, if adopted, would disrupt
14 those incentives.

15 So the premise is this: A shipper is
16 interested in service from CSX and would like to
17 convert its business to rail. The shipper is
18 willing to make some investments, but has asked CSX
19 to commit \$10 million towards upgrades that will
20 enable us to serve their location. In exchange, the
21 customer is willing to commit to 3000 carloads per
22 year at a rate of 2500 per carload.

1 The business is guaranteed for the three
2 years, and let's assume the customer is willing to
3 pay the shortfall if for some reason they fall below
4 3000 carloads.

5 Did we lose the slides? Apologies.

6 So I'll keep going. Basically, what it's
7 going to result in is 7-1/2 million of revenue
8 across the first three years.

9 If this proposal came to us in 2016 when
10 our transit times were slower, we would assume that
11 a typical operating ratio on the move would be about
12 75 percent. That's \$2 million of operating income
13 and a little over a million dollars in cash flow.

14 Three years times 1.4 million isn't enough
15 to recover a \$10 million investment. So -- but
16 we're building this new infrastructure and making
17 the investment with the expectation that we should
18 be able to retain the business.

19 Since we'll have exclusive rail access and
20 the customer will also have made investments, we
21 would anticipate a strong chance of renewing the
22 contract.

1 Let's assume a 75 percent probability. In
2 the right-hand column you can see that using the
3 same revenue and operating ratio, but
4 probability-weighting the cash flow, the expected
5 value is about a million dollars per year, in after
6 tax-cash flows.

7 That results in a 3 percent rate of
8 return, and there's no way we'd be able to make this
9 investment. But if we change just one variable in
10 this scenario, the outcome is quite different.

11 Our operations today are significantly
12 more efficient. We have reduced handlings, which
13 results in less dwell and faster transit times.
14 We've also improved reliability and efficiency
15 gains, and so the rate we charge the customer
16 doesn't change, the volume doesn't change, the
17 probability we renew the contract doesn't change.

18 The only difference is that our cost
19 structure is lower and the operating ratio is now 60
20 percent. This results in more operating income and
21 cash flow and a 14 percent expected return.

22 CSX can now make the investment with the

1 customer to drive growth to the railroad and away
2 from the highways.

3 Let me go to the next slide and use the
4 exact same example. The fundamental parameters of
5 the investment decision are the same, customers
6 asking for \$10 million, and it's generating \$7-1/2
7 million a year in revenue. The operating ratio is
8 still 60 percent in the first three years, and the
9 resulting financials are the same.

10 But let's assume this location now meets
11 the criteria for reciprocal switch. The assumptions
12 we make beyond the initial three-year contract would
13 change significantly.

14 As you've heard over the course of the
15 last few days, we all agree that mandated reciprocal
16 switching is likely to result in lower rates. For
17 some it may be the primary focus.

18 And as a result, it could also result in
19 CSX becoming the short-haul switch carrier starting
20 in year 4.

21 As we approach the analysis, rather than
22 assuming a 75 percent probability, we retain the

1 business with the same level of profitability, we
2 would now have to take into account the probability
3 that rates would go down or that we'd be relegated
4 to the short haul. We would still assume a 75
5 percent chance this business stays on rail rather
6 than truck, and since we have confidence in our
7 ability to serve the customer, let's assume we would
8 put a 50 percent probability on retaining the
9 business at lower rates, and just a 25 percent
10 probability that we would lose the business to
11 another carrier through reciprocal switching.

12 Lower rates mean less profit. Ignoring
13 the negative impacts of inefficient movements on our
14 business, let's assume for simplicity that the costs
15 don't change.

16 Since the rate is reduced, the operating
17 ratio goes up and the operating income goes down.
18 If we end up being the switch carrier, the rate is
19 much lower, and we have fewer miles to spread our
20 fixed costs, resulting in an even higher operating
21 ratio and much lower operating income. We
22 probability-weight these outcomes. The return is

1 only 5 percent, which is below the cost of capital.

2 And even with our improved efficiency and
3 profitability, we would not be able to make this
4 investment.

5 There's been a lot of rhetoric over the
6 last two days, but what I just walked through is how
7 we at the railroad actually make capital budgeting
8 decisions.

9 Leaving the rhetoric aside, I can tell you
10 very simply that the Board's proposal, if adopted,
11 will impact the math we do when exploring investment
12 opportunities that support growth.

13 The more uncertainty there is, the more
14 difficult it is to justify growth investments.

15 The Board has a choice. It can have a
16 broad vision promoting genuine competition,
17 particularly allowing us to take trucks off the
18 nation's highways with all the public benefits that
19 follow. It can do this by creating a regulatory
20 environment that protects the right to the long
21 haul, and a lawful amount of differential pricing,
22 while encouraging growth investments.

1 Or the Board can have a narrow view of
2 competition, forcing synthetic competition through
3 reciprocal switching, compressing railroad rates and
4 returns, meaning it would be more difficult to
5 increase overall market share and we'd expect the
6 current rail piece of the pie to keep shrinking.

7 Attempting to solve the current service
8 issues at the railroads through a permanent
9 reciprocal switching proposal is a dangerous
10 solution to a temporary problem we're working
11 vigorously to solve.

12 The proposal injects uncertainty and
13 operational complexity, and it's going to cause us
14 to be very hesitant to invest for growth across the
15 network. Market-based incentives driving investment
16 decisions are in place and they're working, we're
17 adding new customer locations, expanding our
18 network, investing in advanced technology and
19 thinking innovatively.

20 We're excited for what the future holds,
21 and I want to express my appreciation for the
22 opportunity to appear today and tell our story.

1 CHAIRMAN OBERMAN: Sean, I congratulate
2 you on your conciseness.

3 MR. PELKEY: I tried.

4 MR. ATKINS: Chairman Oberman, I think two
5 minutes, I think I can be done by 7:30.

6 CHAIRMAN OBERMAN: Go for it.

7 MR. ATKINS: It's been a long day and my
8 voice is not holding up well, so I'm going to hit
9 the highlights and call it a day.

10 CSX is respectfully asking the Board to
11 abandon this six-year-old proposal and instead focus
12 on two other alternatives that have a much higher
13 prospect of delivering meaningful relief.

14 And the reasons are pretty succinct. The
15 first is this proposal would restructure the freight
16 rail industry and it could have serious economic
17 consequences. I appreciate the whether it would or
18 not is an area of debate, but you certainly heard a
19 lot of testimony to that point.

20 Second, respectfully, we have concerns
21 about your ability to control the potential impacts
22 of that proposal through a case-by-case

1 adjudication.

2 The third reason is the proposal is fairly
3 incomplete. And it's not just minor details, but
4 rather really massive, major issues, such as the
5 lack of any serious access pricing proposal, that
6 makes it virtually impossible to assess the impact
7 on the industry.

8 And there's another example too I would
9 like to mention because nobody has in two days,
10 which is amazing, the statute actually contemplates
11 labor protection for employees who lose their jobs
12 as a result of a forced switch. But there's no
13 indication of how that will be done. Is it the New
14 York dock-type protections? Does it happen only
15 when the STB orders relief? Or what if a carrier
16 voluntarily agrees to force switch because they
17 believe they are required to by law? None of those
18 issues are being addressed in the 2016 proposal.

19 The fourth reason, and this one I really
20 just defer to our papers, but we obviously have
21 raised some questions regarding the legality and
22 your legal authority. I would just emphasize that

1 federal courts have become increasingly skeptical of
2 attempts by regulators to take obscure provisions of
3 law and radically transform their industry. Whether
4 it's EPA's failed effort to regulate greenhouse gas
5 or FDA's failed effort to regulate cigarettes, the
6 courts demand more evidence the more profound the
7 change.

8 But let me turn to the last reason, which
9 is really it gets to the heart of CSX's concern,
10 which is we really feel there are better ways to
11 address rates and service. For rates you've got a
12 voluntary arbitration process that is innovative,
13 and we think offers an opportunity for customers and
14 railroads to resolve their disputes quickly,
15 confidentially and succinctly.

16 And then of course we've talked about
17 section 1147 as an alternative path to resolving
18 service issues, and I actually think it's
19 encouraging, Patrick and I were talking about some
20 issues previously, but I just remind the Board that
21 four years ago in 2017, you actually -- you asked
22 stakeholders to get together and talk to your staff

1 about how those could be improved. I know CSX
2 participated in that, in the docket you have
3 favorable letters from people like ACC and the
4 Fertilizer Institute saying that this was a really
5 useful path for you to pursue. And I think there's
6 a lot of material that your staff gathered that you
7 could mine to improve that process.

8 But in the very end of the day, we really
9 don't think you should gamble with the American
10 freight rail network with such a flawed 2006
11 proposal that offers no analysis of how this change
12 will impact investment decisions, operating fluidity
13 and differential pricing.

14 You have all shared your vision and desire
15 to encourage growth, to encourage capital
16 investments, to encourage more jobs and to encourage
17 trucks being taken off the highways.

18 Those are outstanding goals for this
19 agency, but we are concerned the 2016 proposal would
20 drive the industry in the opposite direction, and we
21 think this is why a broad coalition of stakeholders
22 have urged caution, from over-120 members of

1 Congress, to important intermodal customers, to
2 regional passenger companies, and to railroad labor.

3 So again, on behalf of CSX, we are pleased
4 to be the last speakers, we appreciate the time, and
5 your patience and your willingness to go until 7:30.
6 And we would answer any questions in the 10 seconds
7 we have allotted left.

8 Thank you very much, Chairman Oberman.

9 CHAIRMAN OBERMAN: Ray, thank you. Very
10 excellent presentation.

11 Is it the pleasure of the Board that we
12 should adjourn this hearing, or does anybody think
13 we need to come back tomorrow for questions?
14 Because we are at the 7:31 actually.

15 I don't hear any Board member disagreeing
16 with the idea that we should declare the public
17 hearing aspect of this procedure concluded.

18 Obviously, there is going to be an opportunity for
19 ex parte communications. It won't be unlimited, as
20 I said at the beginning. It is my intent to move
21 forward on this proposal one way or the other, or
22 some modification thereof, and act on it.

1 So without any indication of what that
2 will be, because I have no idea, this public hearing
3 aspect is adjourned.

4 And I do want to, by the way, thank
5 everybody for their participation and the hard work
6 they have put into address us. I don't want to
7 overlook that. And of course staff, IT people, have
8 done a fantastic job.

9 So thank you all.

10 BOARD MEMBER FUCHS: And Marty, Carmen
11 Smith, our fabulous court reporter, and thanks to
12 CSX for testifying at the end of the night.

13 CHAIRMAN OBERMAN: All right, everybody.
14 Be well. Take care.

15 Ray, take a lozenge.

16 And we'll see you all soon.

17 (Whereupon, at 7:32 p.m., the hearing was
18 concluded.)

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a.m 518:13,19	984:18 992:22 1000:17	accounts 899:22
AAR 530:17,20 531:20	abuses 938:21	accuracy 914:11 966:19
532:21 533:21 534:9,14	abusing 955:3	accurate 574:14 745:18
535:18,22 641:10	abusive 958:10,12	892:22 915:2 917:12
761:22 781:16 826:8	academic 678:16 736:13	accurately 546:17 748:12
942:22 980:13 982:1	academics 722:4	achieve 923:19 929:12
AAR's 554:9 605:9	ACC 872:11 1022:3	achieving 990:5
709:17 934:15 980:16	accelerated 583:17	acknowledged 762:20
987:22	1008:5	811:20 879:21
abandon 690:12 1019:11	accept 645:4 708:13	acquire 545:14 1010:20
abandonment 668:2	784:22 893:21 917:10	acquired 632:12 814:6
abbreviated 1002:21	917:10,13 958:11	1010:13
ability 586:13 593:7	989:20	acquisition 789:8
621:6 627:19 629:15	accepted 706:9 764:4	1010:22
654:4 658:8,22 685:8	access 519:19 565:1	acquisitions 789:7
714:15 762:16 798:10	584:7,11 586:11 607:10	acres 569:9,13
817:19 838:9 901:19	620:2 621:17 622:17	act 530:12,15 538:12
902:15 907:12 919:16	624:15 631:12,15,17	690:7,10 727:12 789:20
934:6,13 960:7 979:10	632:15 676:15 685:9	967:15 1023:22
979:13 980:4 981:5	699:15 728:10,11,14,15	action 917:15 918:9
983:14 986:13,15 996:2	731:16 743:16 752:10	951:6 995:16
1016:7 1019:21	759:9 760:17 762:19	actions 799:8 870:8 948:3
able 519:22 525:15 526:9	787:5 797:17 840:22	1009:3
529:5 577:13 587:4	842:18 848:11 923:3,6	active 615:16 678:10
588:8 599:1 608:13	923:14,15 924:6,11,13	actively 618:2
609:15 611:13 615:10	924:14,15,19 925:6,9	activities 683:19 786:17
620:19 621:11 645:7	925:12,21 926:20,22	activity 871:19 920:18
647:18 673:19 684:5	927:1,3 928:12,18	965:7
698:22 700:16 701:13	929:6 933:14 943:2	actual 526:7 532:14
705:8 722:7 732:1	959:8,22 972:4,6 974:7	541:8 601:18 732:2,11
733:7 753:9 778:9	975:4 979:19 981:2	849:16 850:15 924:1
785:2,9 790:1,18 791:1	984:13,17 991:4	967:20
796:4 797:9 800:16	1001:13 1013:19	acute 572:10
813:21 851:3 852:7	1020:5	adaptability 691:2
867:12 870:9 878:3	accessing 743:18	adaptable 694:21
879:15 881:7 882:7	accident 670:16	add 525:7 552:9 553:7
887:6,11 913:14 914:7	accidents 717:11 718:8	561:21 628:22 639:1
938:16 965:1 986:18	718:18	643:16 645:14 676:2
999:4 1006:15,20	accommodate 790:22	702:10 719:10 742:18
1013:18 1014:8 1017:3	793:9 796:1 975:10	760:11 772:21 791:1
abound 692:15	989:5	846:17 866:21 886:22
above-entitled 518:18	accompanied 522:10	930:10 931:10 978:6
abridge 799:15	accompanying 981:2	983:18 995:16,16
absence 922:21	accomplish 869:1 928:6	added 540:18 563:4
absolutely 544:22 547:22	932:15	566:17 658:21 667:15
554:18 555:19 556:17	accomplished 787:9	694:5 845:10 973:11
599:17 601:21 629:4	accomplishes 611:8	975:8,21 981:17 1008:5
643:4 658:20 747:13	accomplishing 643:21	adding 623:8 637:15
800:14 831:3 832:10	account 579:6 581:3	650:7 677:12 760:11
837:13 865:9 893:19	673:8 784:4 864:12	773:5,6 803:10 978:6
943:19	866:9,10,18 868:19	978:21 1011:2 1018:17
absorb 673:3	886:16 978:13 991:17	addition 670:14 677:5
abstract 853:16 903:5	1016:2	683:21 793:8 795:14
abundantly 1009:12	accountable 793:14,20	924:9 972:5 974:9
abuse 959:18 978:1	accounting 676:17	977:2 982:9 985:12
	681:22	1011:3

<p>adopt 609:11 624:3 697:21 801:1 871:12 874:11 910:10 adopted 697:21 812:13 819:1 910:15 939:6,8 1012:13 1017:10 adoption 592:21 1002:5 adopts 980:21 ADR 1001:11 advance 662:3 840:18 888:8 895:6,7,12 994:18 1008:11 advanced 980:4 1011:11 1018:18 advantage 540:14 589:15 637:13 823:7 890:16,16 907:13 advent 606:22 adversarial 769:13 adverse 671:1 673:11 674:15 787:9 791:13 978:5 980:19 987:17 992:12 1001:21 adversely 619:18 679:1 advice 812:12 advisable 787:8 advised 549:22 740:4,12 advocacy 661:3 advocate 704:14 829:15 advocating 660:21 940:19 Aeppli 840:12 993:18 994:10 aerodynamic 822:19 aerosols 757:12 affect 619:18 679:1 682:3 686:13 702:18 730:6,19 865:9 901:12 905:16 928:14 affiliate 591:14 Africa 788:10 afternoon 616:22 666:9 688:5 721:1 757:9 840:17 880:2 896:6,22 922:11,15 923:2 971:10 ag 589:17,21 722:16 age 664:22 826:12 agency 522:7 732:19 733:16 734:2,3,14 743:3 746:1 966:13 1022:19 aggregate 1005:13 aggressively 782:3 ago 520:22 586:5,5 592:2 625:5 629:18 634:12 661:16 777:18 778:4</p>	<p>824:21 852:10 861:16 941:5 942:19 946:21 1000:12 1021:21 agree 566:6 610:14 641:4 642:8 643:6 645:19 684:18 686:15 701:14 702:2,3 704:15 716:7 719:11 720:12 765:16 818:4 832:22 864:4 877:10 886:21 889:12 889:15 894:9 905:7 917:3 918:20 919:9 930:20 931:13 940:3 942:14 945:14 960:14 960:17 963:9 1005:16 1015:15 agreed 833:12 892:6 agreeing 952:22 agreement 814:10 818:4 852:10 872:13 883:13 892:8,8,10 939:4 950:17 agreements 818:1 agrees 741:3 908:13 1001:18 1020:16 agricultural 602:18 agriculture 568:21 ahead 538:11 655:14 687:17 688:1 713:9 721:3 746:16 754:5,6 780:2 782:8 786:4 802:21 806:2 819:11 829:4 880:19 911:13 937:20 951:15 964:6 aim 521:2 air 533:13 889:17 airports 829:10 Al 668:8 Alabama 619:1,2 628:6 631:15 633:4,4,8 637:7 656:8 657:4 789:14 798:7 807:6 848:15 974:18 988:6 Alberta 998:7 alienate 760:18 aligned 1010:12 1011:13 alike 567:15 904:8 alleviate 975:15 976:16 allocate 870:7,21 929:10 989:18 allotted 519:13 970:4 1023:7 allow 565:16 607:8 608:21 609:1,13 619:21 623:3 692:14 797:18 809:12 822:17 824:11</p>	<p>851:21 861:13 919:2 932:8 970:4 allowable 611:12 allowances 736:18 allowed 549:16 595:6 644:11 690:10 693:5 776:17 807:9 862:21 allowing 606:2 618:4 721:18 766:1 794:6 799:10 800:22 805:5 866:14 905:15 1010:18 1017:17 allows 628:14 790:7 838:2 alluded 816:7 alluding 586:8 alternate 673:22 alternative 588:18,18 622:5 623:3 692:22 695:7 830:1,11 939:11 949:2,4,9,13 950:1 954:10,21 955:4 964:22 968:13 986:7 996:13 1001:4,6,20 1002:8 1021:17 alternatives 1000:10 1019:12 altogether 610:8 787:6 958:6 amassed 583:11 amazing 1020:10 ambiguity 608:3 Amelia 767:4 America 523:1,3 581:21 601:3,8,9 602:9 667:1 674:9 694:11 786:9,12 789:1 798:19 801:15 832:9 974:3 975:8 America's 688:19 821:14 American 533:20 580:21 609:15 666:12 688:10 689:11 738:18,19 758:11 762:22 794:8 837:11 1022:9 Americas 786:11,16 787:20 788:10 789:7,9 801:17 Amit 711:5 amount 522:12 534:1 558:13 597:16 645:12 654:17 657:4 724:17 867:10,10 870:3 897:3 897:16 898:2 900:9 965:17 976:8 1005:10 1017:21 amounting 526:15</p>	<p>667:13 amounts 529:2 755:9 913:1 986:17 ample 871:14 Anaheim 767:1 analysis 994:12 997:8 1000:22 1015:21 1022:11 Analyst 821:3 analyzed 706:10 958:21 and/or 619:20 761:3 764:20 Andreas 840:12 993:2 anecdotal 598:1 1000:22 anecdotally 539:9 754:21 animated 709:16,17 826:9 Ann 693:5 announced 823:12 873:5 1008:15 announcement 970:1 annual 563:2 620:22 869:22 870:1,10 907:17 1008:13 annually 689:7 answer 544:9 553:3 566:12 594:20 609:19 624:17 626:11 653:12 656:17 662:17 677:16 715:7 754:15 776:16 777:16 818:9 866:19 868:1,12,12 892:2 927:10 934:22 1000:21 1023:6 answered 656:6 952:11 answering 656:9 anticipate 874:8 979:10 1013:21 anticipated 824:4 979:14 anticompetitive 922:21 940:10 956:7 958:8 962:16 988:14 antitrust 762:22 907:7 anybody 580:9 599:7 660:12 699:20 723:5 736:7 827:4 828:22 872:9 889:10 895:10 922:2 966:14 969:11 970:11 1003:10 1023:12 anymore 549:17 615:13 875:7 993:11 anyplace 891:4 anyway 534:21 708:5 710:8,11 725:10 726:19 731:21 734:13,20</p>
---	---	--	---

<p>770:19 860:13,22 880:1 apart 949:21 apocalyptic 995:21 apologies 813:18 1013:5 apologize 529:14 665:10 757:4 840:18 960:9 994:17 apologized 634:18 apparent 757:19 apparently 530:15 532:5 appear 519:13 537:7 676:22 677:3 761:9 845:14 921:13 980:2 1018:22 appearing 668:11 840:10 appears 899:5 921:19 1000:18 apples 909:18,19 910:1,1 998:11,12 apples-to-apples 910:6 appliance 618:11 applicable 698:1 761:2 application 871:11 940:22 applications 757:13 761:10 applied 551:15 576:16 578:4 610:14 930:11 apply 670:1 684:16 737:19 738:13 739:2 764:20 767:20 771:21 940:16 973:17 applying 697:11 appreciate 531:4 533:1 534:10 553:5 558:7 573:14 590:8 599:12 617:15 643:15 649:1 688:7 698:4 708:7 711:21 716:22 717:20 721:20 737:8 751:4 756:17 766:2 815:14 820:9 839:13,18,22 843:6 848:6 851:13 873:10 887:17 922:1,14 934:9 941:2 943:16 947:2 952:5 953:17 969:6 971:1 1005:15 1019:17 1023:4 appreciated 610:20 785:16 appreciates 1001:22 appreciation 1018:21 approach 529:17 577:1 579:8 580:2 595:22 699:19 706:9 711:9 764:1 769:12 776:1</p>	<p>812:12 832:19 842:18 842:20 868:19 916:9 950:10 1015:21 approaches 579:18 616:9 836:9 approaching 551:5 appropriate 579:13 763:7,10 764:9 938:22 940:13 941:11,13 944:10 954:5 964:15 980:5 992:5 appropriately 663:9 954:5 1004:11 approval 565:7 1010:19 approximate 656:21 approximately 526:15 689:2 694:4 788:17,19 792:10 793:4 796:16 848:4 973:9 975:11 976:6 986:12,22 987:6 approximation 708:17 April 746:2 769:4 arbitrarily 549:17 765:3 arbitrariness 916:13 arbitrary 965:4 arbitration 611:20 841:20 964:16 965:5 1021:12 arbitrator 964:19,20,22 Arbor 693:6 area 575:11 579:16,22 596:20 627:9 630:17 645:8 658:1,3 663:9 681:18 692:4 694:5,7,8 694:22 704:22 762:10 813:20 823:14 843:17 848:11 853:4 854:20 863:9 952:16 984:6 1019:18 areas 570:4 577:3,12,19 595:8,19 596:10,17 603:6 610:4,13 650:17 670:15 679:10 739:14 739:16 754:12 762:2,7 762:15 821:6 822:6 844:21 846:10 981:21 984:12 987:20 arguably 862:2 958:14 argue 750:1 958:17 arguing 1004:9 argument 584:3 651:3 750:16 801:2 947:21 arguments 709:12 947:20 arisen 662:8 arises 575:6 arrange 818:2</p>	<p>arrangement 686:6,22 695:16 762:4 807:8 818:2 848:10,12 852:18 arrangements 685:18 697:12 765:4,13,20 930:18,19 935:4 arrive 587:4 879:3 927:19 art 748:11 article 800:7 articulate 947:4 articulated 941:16 949:17 950:11 artificially 660:19 as-needed 566:4 ash 598:12 Asheboro 797:22 803:4 806:14 Asia 788:10 aside 708:22 760:2 862:10 1017:9 asked 520:8 523:18 525:22 530:12 535:17 552:7 575:17 577:20 597:13 634:1 678:18 740:16 827:3 886:14 891:22 923:3 967:4 993:6 1012:18 1021:21 asking 535:4 557:7,8 572:18 595:20 662:18 705:16 713:21 756:1 781:15 866:6 868:15 917:10,11 940:14 956:10 1015:6 1019:10 ASLRRRA 696:2,13 697:22 aspect 913:18 969:1 1023:17 1024:3 assault 841:1 assemble 598:4 assembly 693:12 asserted 972:6 assess 990:4 1020:6 assessing 990:6 assessment 637:20,22 833:22 834:3,5 908:5 930:8 asset 987:13 1009:22 assets 553:11,13 1009:21 assigned 855:2 assignment 860:8 882:12 assist 592:22 assistance 648:15 785:9 885:1 associate 689:14 associated 680:21 752:10</p>	<p>754:13 852:10 928:13 938:14 981:3 Associates 521:11 567:22 association 521:9,13 522:3 533:20 579:4 591:1 597:21 602:4,9 613:6 665:20 666:13,14 669:11 675:21 688:11 689:12 758:11 associations 1002:12 Associations's 965:12 assume 574:11 575:4 579:4 595:3 703:3 750:11 774:19 855:9 867:11 868:20 879:12 894:15 900:21 928:5 929:20 930:10 956:18 1003:8 1013:2,10 1014:1 1015:10 1016:4 1016:7,14 assumed 871:5 assuming 579:14 623:14 879:11 914:22 980:18 1015:22 assumption 930:4 931:7 936:12 assumptions 746:5 867:16 916:17 1015:11 assure 563:3 696:17 1004:10 assured 824:9 Atchison 971:22 Atkins 840:9,16,17 866:20 872:4,10 880:13 887:20 892:20 893:5,19 896:12 911:10 922:8 927:7,9 930:9 931:9 933:12 935:7 937:11 938:3,7 940:6 942:18 943:19 944:2,21 945:16 946:9,17 950:6 951:14 953:16 956:21 957:7 958:19 964:7 966:12 968:1,19 969:5 996:8 1003:1,15,17 1019:4,7 Atlanta 622:12 623:2 626:15 630:15,19,19 635:2,6,6 651:8,12 Atlantic 630:20,21 696:7 ATO 834:11,12 attempt 608:17 841:10 attempted 583:13 799:5 Attempting 1018:7 attempts 1021:2 attention 641:9 693:4,17 716:17 828:5 908:18</p>
--	--	--	--

<p>attentive 637:4 839:14 attract 686:4 914:7 attractive 1012:6 attributes 924:9,20 925:5 926:16 auctioning 760:19 August 727:14,22 Australia 824:22 834:8 835:20 836:18 authority 826:8 1020:22 authorize 917:16,19 authorized 644:12 auto 693:4,21 824:21 autographed 614:5 automated 822:2,12,16 823:11,13,18 824:5,7 824:18 828:9,10 829:22 830:3,14 832:4,16 833:7 834:6 839:3 automatic 742:21 automatically 593:6 753:19 822:17 933:10 automation 821:8,20 823:10 824:2,6,10,17 825:4 828:7,8,16 829:19,22 830:9 831:2 831:13,16 833:21 835:3 835:11,15 836:21 837:9 838:10 automobile 618:11 automobiles 693:7,8 automotive 788:14 828:15 836:21 978:15 availability 540:3 588:14 596:5,14 603:11 990:12 1001:9 available 520:12,15 522:20 546:10 547:13 585:14 694:21 697:7 770:17 796:21 797:11 834:18 842:3 870:18 892:5 923:18,20 938:17 970:14 976:21 978:20 994:10 avenue 559:14 787:12 943:12 966:10 avenues 697:7 average 569:17 673:7 679:15 680:3 681:6,8 681:13,20 713:2 731:4 746:19,20 747:2,8 755:14 933:19 976:5 averaging 747:12 avoid 527:21 577:14 622:10 734:11 825:11 993:10 1001:20</p>	<p>1005:21 avoiding 1002:16 avoids 841:16 Awad 721:7 785:19 786:9 787:18,19 802:6,10 804:7 805:11 806:2,22 807:7,11,17,22 808:11 808:22 809:9,15 810:7 810:21 812:7,9 814:2,5 815:10 816:2 817:8,22 818:22 819:7,17 820:14 853:9 awaited 976:8 awaiting 976:12,14 awarded 890:14 aware 519:17 564:6 713:14 804:18 874:19 874:20 875:2 876:11,12 awful 713:1 900:10</p> <hr/> <p style="text-align: center;">B</p> <p>B 700:9 710:17 728:10,12 891:11,14,15,17,18 919:5 970:8 back 519:3 529:5 532:18 532:19 535:14 541:9 543:1 549:3,18 561:19 567:13 570:21 596:15 596:16 611:10 617:3 635:4 638:7 649:20,21 650:15 651:4,6,7 652:7 652:8 665:2,9 667:21 694:8 714:8 715:19 718:15 721:3 723:14 729:19 730:16 733:18 733:18 734:22 736:11 737:18 743:3,4 744:1 752:13,14 753:14,16 756:21 787:11 792:17 796:5,5 803:18 810:2 812:14 816:9 818:16 837:14,15 840:6 850:2 850:19,20 852:8 854:10 854:11 860:10 869:7 872:8 877:8 883:13 896:8,10 923:9 927:6 931:15 951:15,21 953:7 955:1 957:1 959:7 969:20 993:11,14 997:22 1005:6 1006:1 1006:17 1023:13 backdoor 841:10 backdrop 982:7 background 520:19 backing 675:20 backload 635:3</p>	<p>backlog 729:6,9,11 754:18,21,22 backs 849:6 backup 545:7 backwards 854:11 bad 566:22 595:7 678:7 721:19 755:5 773:1 793:14 918:2,12 946:11 961:16 962:13 995:19 Baker 664:12 665:14,17 666:7,11 677:20 687:19 688:4 689:17 697:2 698:10 699:8 700:5,11 701:15 702:12 703:1,4 703:15 704:3,16 705:14 705:19,22 706:13 707:21 708:19 709:8 710:4 711:14 712:13 713:8 714:17 716:19 717:2,19 719:4,11 720:5,9 721:8 785:19 786:11 794:5,7 bakers 568:10 Bakersfield 631:20 balance 564:11 841:6 873:18 902:4,9,11,18 903:10,16,17 906:20 910:10 911:19,22 912:5 913:19 920:15,22 937:7 967:6 balanced 669:8 697:3 950:10 balancing 978:17 ball 581:13 ballpark 632:2 815:4 Baltimore 1011:10 Bangkok 788:5 bar 991:8 Barb 802:21 Barbara 721:8 785:19,22 786:1,7 787:18 799:13 801:12 804:7 Barbara's 787:21 barely 1007:1 bargaining 647:20 873:19 903:14 911:21 912:6,15,18 913:2 929:19 barge 625:7,8,9 632:8,12 632:15 634:5 649:18 682:11 barges 672:21 Baron 989:3 barriers 797:15 968:14 base 681:18 683:12 746:3 746:19</p>	<p>based 551:15 552:7 557:6 590:3 593:5 624:11 635:20 636:20 651:5 656:9 671:17 723:15 728:4 734:9 747:4 750:15 764:19 768:8 792:9 800:1 868:7 878:22 899:11 912:18 914:13 915:2 916:9 932:6 933:14 941:13 954:16 958:21 983:9 997:9 1009:20 baseline 596:19 basic 598:12 672:2 915:9 basically 589:1 612:13 618:13 723:8,17 725:19 728:1 729:1,14 731:2 733:8 734:18 738:7 740:22 752:8,21 755:22 768:5 800:1 875:6 902:12 907:19 1013:6 basis 526:7 527:10 550:19 555:22 563:2 564:8 566:4 582:2 588:16 608:22 626:17 657:1 747:15 748:13 758:16 761:8,11 762:5 764:17 805:4 866:5 867:5,14 870:5 879:21 916:14 917:15,18 941:5 964:15 995:10 basket 742:6,8 batch 629:22 batons 710:21 711:4 719:3 Bay 725:15 bear 582:8 645:21 731:10 817:19 898:17 966:1 Beaumont 767:3 780:22 becoming 603:9 607:1 1015:19 began 620:5 729:17 792:1 972:2 1009:19 Begeman's 951:12 965:22 beginning 674:10 693:9 793:15 794:11 985:4 995:3 999:1 1023:20 behalf 522:2 530:5 757:10 840:17 922:15 950:8 969:3 1023:3 behaving 528:5 behavior 922:22 belabor 750:19 believe 522:19 530:20 545:3 607:14 608:6,9</p>
--	--	---	--

608:19 615:22 623:5 629:5 644:18 654:3,6 655:6,22 669:6 676:4 728:5,21,22 746:8 752:6 755:3 759:9 785:20 790:5 791:7 800:6 801:5 804:9 821:21 844:5 852:9 918:5 923:6 931:1,11 956:21 965:16 980:7 992:4 1020:17 believes 524:1 527:14 797:2 841:17 996:11 1004:7 belong 786:12 belt 614:3,5,18 benchmarking 764:19 beneficial 576:7 596:21 830:15 976:9 977:4 997:11 benefit 520:17 573:8 579:1 589:20 595:3 609:15 612:11 615:5 622:11 671:9 685:18 741:15 805:10,14 934:5 938:11 988:11,15,16 992:1 1011:21 benefited 768:15 814:15 980:7 benefits 568:21 594:7 600:2 624:16 648:11,13 685:12 695:4 704:9 760:1,3 767:15 791:12 799:16 941:7 1010:17 1017:18 Berkeley 651:15 652:3 Bernd 840:11 974:5 981:7 983:22 984:1,3 best 623:10 629:14 644:3 644:17 646:16 650:10 651:12 740:13 797:10 844:11 871:3 876:20 880:10 896:18,22 897:10 914:16 937:18 1003:15 1011:16 bet 655:22 better 528:4,21 542:2 543:21 544:7,19 545:3 545:5,16 573:8 580:1 581:8 584:18 593:9 609:16,21 621:18 628:15 629:15,20,22 634:3,5 635:12 637:10 641:13 646:12,16,17 647:1,2,11 679:17 703:15 714:4,15 743:14	751:12 753:21 760:21 768:4 800:16 803:7 815:8 837:20 866:19 899:4 906:12 911:6 938:18 947:18 948:20 962:1 963:9 995:10 996:5 998:18 999:5 1003:22 1005:17 1021:10 beverage 521:9 522:3,21 523:10 591:5,7,7 601:11 788:15 beverages 523:12 Beyer 840:11 984:2,3 beyond 560:21 637:16,17 638:1 639:3 648:11 669:19 692:20 695:19 697:15 745:7 762:2 839:17 845:7 882:18 884:22 1015:12 bidding 526:4 562:20 bids 584:9 585:13,15 big 574:19 625:11 629:19 650:11,12 885:3 887:14 899:16 905:3 931:16 951:2 biggest 612:19 615:8 633:4 889:3 bill 628:14 billing 676:17 billion 667:13,14 788:19 824:14 987:6,8,8,9,10 1006:8,10 1011:8 billions 828:15 833:8,20 biomass 757:13 bipartisan 619:9 Birmingham 622:19 635:2 636:6 651:6,13 769:10,21 770:1,11,14 773:3,3 775:1 778:19 778:22 855:21 875:15 875:16 876:6,9 bit 529:16,18 543:13 548:8 552:6 554:8,9 570:20 577:8 583:18 615:12,15,17 635:5 642:7 645:6 647:19 649:22 708:1,10 724:6 726:18,19 727:4 729:12 729:13,19 730:12 731:9 752:1,15,15,16 787:16 835:2 879:2,4 897:17 947:3 948:13 965:11 Black 582:1 586:21 587:2 blades 691:16,22 692:8 blame 725:22 755:4	blanket 565:7 703:19 705:5 blanking 704:20 blips 544:2 blistering 967:12 block 837:19 blocked 850:9 BLS 909:20 blue 582:11,12,12 1004:22,22 blurry 581:14 BN 641:19 708:2 792:1 802:11 819:1,1 BNSF 762:20 767:6 972:1 983:3 board 518:1 519:16 522:1,14,16 523:18 524:16,19 529:12 530:8 538:8 542:20 544:10,12 544:14 545:9,10 546:6 547:3,17 548:1 549:19 549:20 550:4,16 551:19 552:3 557:19 560:2,18 561:17 563:10,20 564:16 565:8 566:9,19 567:20 576:16,17 580:14,20 582:10,17,21 583:19 584:14,19 586:7 587:9 589:1,6 590:9 597:2,12 599:12 600:8 602:6 608:5,6 609:17 611:7,22 617:10 618:4 624:3,4,12 630:14 631:5,8,22 633:19 635:9 636:1,10,13 637:11 638:2,15,19,22 640:17 641:6 643:14 645:14 647:22 648:15 649:1,11 650:13 658:14 659:20 661:2,13,22 662:6 664:7,13,15 665:4 677:18,22 687:20 688:6,9 689:11 696:14 697:10,21 698:5 703:10 706:6,17 711:9 712:6,8 713:4,5,6,10 715:22 716:18,22 717:4,17 721:18 724:13 725:8 730:17 735:4 736:2 739:9,21 740:3,14 741:19 742:3,5,12 743:19,19 744:20 745:9 745:13 746:17,22 747:7 748:5,8,16,19 749:2,14 749:19 750:1,6,18 751:7,11 762:17 763:3	765:5 766:3 773:21 779:21 780:1,3,9 781:4 781:14 783:2,4,18,21 785:6 787:2,10,22 788:1 793:12,13,19 794:6 800:22 812:21 813:2,4,11 814:18 815:14 816:1,4,15 817:10,17 818:10,13 819:9,12 820:3,8,8,20 821:10,18 825:11,22 826:4 829:3,5 832:21 833:5,13,17 835:1 836:1 837:6,14 838:5 838:12 839:13,16 841:18 865:21 866:9 880:3,6,7,16,20 881:14 881:17,20 882:6 883:2 886:2,14 887:15,16 889:6 891:13 892:7 893:2,17 894:2 897:2 922:4,15,17 927:15 935:1 937:21 938:4,6 938:12,17 939:7,22 940:4,11,15 941:12 943:16,20 944:8,10,14 944:17,22 946:5,10 947:7,9,17 950:9,21 951:8 952:5,8,10 959:7 960:8,15 962:4 965:10 967:17,20 968:2,9 969:11 970:3 971:4,4 971:12 980:7,20 984:5 984:15,22 985:19 989:15 992:19 994:4,11 994:14 996:9,14 998:15 999:3,13 1000:1,13,21 1001:1,3,9 1004:6 1006:13 1010:3,19 1012:12 1017:15 1018:1 1019:10 1021:20 1023:11,15 1024:10 Board's 520:9,12,14 609:9 657:14 761:22 766:2 821:13 825:1 828:5 868:22 906:11 1006:11 1017:10 Board-ordered 979:19 Boardman 523:3 Bob 830:20 833:2 Bobby 521:15 616:19 617:2,18,20 624:19 630:15 631:7,9 646:5 649:3 650:14 655:8 658:17 660:21 662:16
---	--	--	--

663:17,19 704:19	956:22 957:15 964:10	688:13 690:6 693:18	971:17 972:9 973:13
Bobby's 661:2	bringing 693:18 710:6	706:3 715:4 763:19	974:18 977:16 981:19
bode 714:16	787:10 845:19 999:16	768:6,10,16 778:10	982:12,15 983:10 985:7
body 741:5 872:22	brings 646:15 660:12	781:18,19 782:3,10,22	986:13 987:2 989:6
bogged 736:17	763:2	794:22 795:20 816:21	990:13 991:20 992:7
boil 663:2	British 973:3	817:2 825:10 865:14	Canadian 571:14,17
boils 663:5	broaching 713:22	869:20 911:6 946:14	572:3,8 722:16 723:3,7
bombarded 532:20	broad 722:15 818:14	949:21 951:21 962:2	732:18 733:15 738:20
Bonduelle 523:3	898:20 899:5,6 919:22	965:3 999:5 1003:22	744:7 745:2,19 746:10
bonus 1009:20	920:10 921:13 936:12	1004:17,19 1005:12	755:6,18 756:7 764:13
books 644:10 884:14	1017:16 1022:21	1006:20 1008:1,9	771:17 790:12,15 840:8
Booth 521:15 616:20,22	broader 548:4 577:10	1009:14 1012:17	970:18 981:11,12 982:3
617:7,14 638:5,16,21	648:11 699:15 708:21	1013:1,18 1016:1,5,9	982:5,6 987:7
639:4 643:4 644:13,16	905:7,10 992:14	1016:10,14	Canadians 887:10
647:6	broadly 548:17	businesses 667:18	candidly 956:13
border 571:21 619:2	broken 759:18 816:17	buy 650:3	cap 755:15
Bose 711:5 717:12 718:9	brought 522:15 645:21	buyers 568:9	capabilities 823:19
bother 904:15	694:4 716:16 793:7	buying 625:4 650:3	capability 691:19
bothering 959:9	828:4 873:18 886:6	bypass 798:10	capable 565:15 573:13
bottleneck 579:13 595:15	942:10 966:1		968:9
622:6,8 623:10 934:18	brownfields 789:6	C	capacity 526:17 533:12
bottles 612:13	BTS 909:22	C 519:1 536:4 554:3	601:12 693:13 724:2,2
bottling 530:21	buckets 659:7	792:9	724:12,17 725:3 758:9
bottom 533:3 906:9	bucks 655:2,3	calculates 527:4	758:22 759:22 760:1,10
912:22	budgetable 556:6,8,16	calculation 912:19	760:12,19,22 769:18,20
bought 554:5 664:1	budgeted 556:18	914:16 915:10	770:8 772:21 773:2,7,7
bounces 906:14	budgeting 1017:7	calculations 897:21	774:4 783:6,8,17
boxcars 670:12 942:11	Buick 694:1	916:11	862:20 863:11 866:7
BP 814:7	build 556:8 627:14,16	California 631:20,21	868:19 875:6 876:5
brain 770:18	643:1,1 692:2 740:4	767:1	881:17 885:6,15 886:17
branch 690:11 990:20	854:6 965:3 968:3	call 520:1,4 541:9 546:12	952:2 953:11,21 954:16
brand 822:12	987:14	548:2,3 550:1 565:2,17	955:19 975:9,19 976:18
Brazil 789:10	building 967:18,19 986:4	566:2 613:17 638:13	976:20,22 978:20
breadth 842:13	1013:16	653:21 688:17 734:5,15	982:20 987:12 1007:18
break 521:2 649:4 664:10	builds 985:21	743:10 785:10 839:2	CapEx 650:5
664:11,12,13,17 665:2	built 592:2 691:14 694:20	840:7 849:7 851:14	capital 671:2 672:14
665:6 969:11,13,15	bulk 569:22 573:13 603:5	883:8 890:2 934:16	683:16 686:11,13 825:8
breakdown 708:10,17	619:13 653:9 682:20	942:9 973:16 1019:9	828:20 901:20 902:7,12
Breaking 693:9	1010:14	called 566:13 622:12	902:14,21 903:2,8,11
breaks 521:5	bunch 725:20	638:9 733:19 734:17,19	903:19 905:21 906:4,15
breathe 573:19	bunched 620:13	755:13 783:9 794:14	906:15,20,22 910:12
bridge 849:4 853:22	bunching 629:19 635:12	898:11 909:6 924:7	911:7 912:4,11,20
973:5,11	791:4 792:15	925:1 945:6	913:15,20 914:1,7,13
bridges 672:16	burden 547:19 553:19	calling 520:6	914:21 915:10,12 916:7
brief 615:2 643:17 649:5	639:21 640:11 641:12	calls 799:4 804:13,13	916:16 918:1 932:3
672:3 713:10 969:22	641:18 683:10 817:19	camera 519:10	945:9 961:8,21 986:6
briefed 689:19	818:7	cameras 519:9	987:1,7 988:18 989:17
briefly 672:5 788:4	Burger 531:1	Canada 571:12 572:6	990:2 1004:8 1007:2,6
842:11 848:20 925:4	Burlington 733:1 753:13	602:15 723:10 724:6	1007:8,8,12 1010:10
970:15	753:14,17 766:14	725:12,14 726:11,15,17	1011:7,8,11 1012:5
bright 737:1,3	business 526:3,7 529:1	727:1,3,19 730:22	1017:1,7 1022:15
bring 529:5 537:21 538:6	531:13 534:1 535:10,12	731:15 733:2,3,19	capital-intensive 986:1
572:20 623:19 635:3	544:6 550:4 551:8,12	734:8 736:21 739:2	capitalize 1009:1
648:13 659:5 694:8	628:4,9 640:18 652:10	742:20 745:10 755:8	capitalized 798:15
723:5 799:18 837:15	653:8 655:3,18 663:21	789:2,15 790:11 791:9	captivated 822:3
845:16 947:14 948:9	664:3,4 667:6,11 675:2	800:19 801:18 931:22	captive 525:21 534:17

544:8 592:10 593:15 597:7 603:6,19 604:6 604:15 605:12,22 606:21 607:9,20 608:14 609:3,8 611:14 613:3 618:18 620:1,17 621:19 622:2 624:8 636:17 639:11 640:1,6 646:8 649:9 724:15 725:5 736:4 786:19 787:5 789:17,22 791:19 795:5 797:13 798:1 799:11 819:18 captiveness 570:3 capture 551:13,20 642:5 694:15 741:20 captured 797:8 car 553:16 556:7 565:3 639:18 670:14 675:10 691:12 693:19 695:13 706:2 708:11 710:6 719:7 729:1 730:6,14 730:20,21 731:17 742:3 742:10 746:11,13 776:22 822:11 858:21 884:3 978:16,17 987:13 997:12 carbon 825:17 care 788:15 905:6 1024:14 cared 548:21 career 688:15 712:1 848:15 972:2 careful 725:8 741:13 931:2 carefully 978:13 990:4 cargo 822:8 976:9 977:4 carload 529:6 668:7,8 675:4 680:1 899:20 900:1,6 1012:22 carloads 533:7,14 680:15 682:1,7,13 959:3 1012:21 1013:4 Carmen 1024:10 Carolina 688:14,14 694:18 789:13,13 797:22,22 802:14 803:3 carried 983:3 carrier 565:1,3 587:21 589:2 607:22 619:19 621:4 622:1,10 623:14 673:2 676:14 715:13 760:6,11,14,16,18 773:6 776:11 777:21 783:9 797:7 808:19 846:3 889:12 891:11,11	891:13,15,17,18 892:10 893:21 895:15 944:8 949:2,5,9,13 950:1 954:20 964:5 968:13 1015:19 1016:11,18 1020:15 carrier's 622:6 759:13 942:16 carriers 588:18 618:7 621:9 622:8 623:10,20 672:12 682:11 684:21 707:1 725:21 735:13 758:4 760:21 761:1,14 768:4 769:13 776:13 1010:13 1011:22 carries 991:1 carry 818:7 882:7 911:6 carrying 844:2 846:13 cars 526:15 527:12 554:21 555:8 556:2 574:21 575:1 598:11 613:15 625:20 626:16 627:15,20 636:5,19 667:4 689:7 700:2 706:1,5 711:17 717:22 727:7,11 729:5 759:17 760:8 773:5 777:14 778:3,4,7,8 792:17 805:17 806:6 808:13 818:6 847:4,5 849:9,10 849:11 850:1,22 854:8 854:19 855:5,12,16,22 856:8,15,22 857:9,20 857:22 858:1,13,16 859:1 860:1,4,9,16,19 861:6,11,21 862:1,7,11 862:13,22 863:2,8,17 863:21 864:12 866:2 869:7 878:4,17 881:1 881:18 883:10 886:18 894:9,10,18 918:16 978:20 979:3,4,5 983:3 983:5 Cartersville 633:9 653:1 653:4 654:6,15 case 522:16 547:14 565:20 576:12 589:19 604:20 614:12 638:4 645:7,15 658:18 660:12 687:2 703:13 715:3 734:15,17 743:8 749:16 758:6 763:14,18 772:15 778:1,7,9 806:4,14 816:18 828:1 848:3 851:5 873:8 875:9 878:16 888:16 901:3	917:8 926:5 937:1 942:8,9,13 947:1,14,22 947:22 948:9 955:2 956:22 957:15 958:14 961:19 997:20 1006:22 case-by-case 608:22 736:18 747:14 749:13 761:11 762:4 764:1,16 866:4 867:5,13 1019:22 cases 555:11 572:21 643:3 648:5 662:8 669:7 671:10 676:20 690:16 715:13 748:17 790:20,21 796:3 819:21 822:8 845:16,19 856:7 872:12,16,19,21,21 873:3,8,11,18 874:11 881:8,8 899:1 905:3 907:11 918:7,8 921:21 942:10 961:5,12 cash 1006:22 1010:7 1013:13 1014:4,21 catastrophic 598:7 600:16 973:3 catch 538:18 categories 948:3 951:6 category 593:17 caught 534:11 641:9 cause 555:16 576:19 610:16 623:6 662:19 669:4 670:5 686:8 736:7 966:19 967:1 1018:13 caused 524:16 620:8 793:20 794:10,16 908:19 973:4 causes 795:19 828:20 921:4 causing 525:5 791:14 937:7 caution 826:1 1022:22 cautious 742:5 CCH 631:15 637:2 CCTV 836:17 cell 519:8 680:6 census 596:17 center 678:14 693:7 727:1,3 823:15 836:13 922:13 centers 678:16 central 574:10 577:17 610:6 1009:15 century 982:6 CEO 1009:6 certain 526:3 587:5 620:3 638:11 661:17 724:12	724:17 727:10 746:12 764:2 820:2 824:8,15 936:20 966:15 991:13 995:7 certainly 531:17 545:3 553:2 565:14 568:14 569:12 576:6 577:4 578:16 579:1 580:5 581:12,16 586:4 590:7 594:20 596:8 597:20 610:19 616:14 629:19 633:15 666:5 668:22 679:8 684:19 694:19 723:2 728:7 730:15 765:9 833:10 846:7 847:18 900:18 913:6 915:5 921:2,10 928:11 929:3 950:12 963:1 996:6 1019:18 certainty 648:3 847:1 947:21 948:13,20 cetera 660:3 742:10 746:6,6 ceteris 731:3 CFC's 762:11 CFO 1003:20 CFR 842:4 939:9 968:14 1003:4 chain 560:20,21 566:21 567:2,7 570:7 573:5 577:10 589:22 591:10 592:11,14,17 593:2 594:2 599:8 600:7 601:11 605:19 609:4 620:15 641:1 668:17 670:5 758:8 759:17 786:10 791:3 795:22 796:18 798:13,19 813:10 837:20 908:4 972:13 975:15,17 976:1 976:7,16 977:12 985:15 1008:3 chains 533:12 535:1 562:16 594:3 974:2 chair 552:5 564:19 565:18 587:11 588:22 614:16 616:2 646:4 647:4 648:19 666:10 717:8 719:1 751:22 752:4,9,22 753:5 754:7 756:12 813:17 814:4,17 887:22 889:5 920:3 965:22 chairman 518:19 519:2 521:19,21 522:6 538:4 538:11 539:1,6,18,22
--	---	---	---

540:9 541:11 542:18,21 544:13 552:2 554:13 555:14,21 556:19 557:1 557:10,18 564:17 565:19 566:8,16 567:4 567:6,10,17,20 574:4 575:3,6 576:15 577:20 578:8,18 579:3 580:7 582:16,19 587:10 589:9 590:10,15 594:22 596:8 596:22 600:9 601:14,21 601:22 602:6 609:20 610:9 611:6,18 612:5 612:18 613:9 614:1,8 614:14 616:4,16 617:1 617:5,9,12,16 624:19 625:13 626:2,7,21 627:4,17,22 628:2,19 629:10 630:4,8,10 631:6 643:16 644:15 645:10,19 647:5 648:21 650:14,21 651:2 652:13 653:15,18 654:10 655:7 655:12,17 656:3,10,20 657:7,12,20 658:15 659:13 661:1,11 662:4 663:1,8 664:21 665:9 665:15,19 666:3,8 677:17,22 687:19,22 688:1,6,9 689:10 698:6 698:11 699:17 700:10 701:11 702:8,19 703:2 703:8,14,17 704:13 705:7,18,21 706:8,15 707:14 708:6,20 709:10 711:3,19 712:6 713:9 717:3,6 719:2,5,14 720:6,10 721:2,11,13 721:22 735:8 737:2,9 737:11,13,16 738:21 739:18 751:7,14,20 752:2 756:13,15,18 757:1,6 766:5,11 767:7 767:10 768:18 769:22 770:4,8,14,21 771:5,10 771:14,18 772:11 773:8 773:19 774:7,10,14,18 775:2,8,18 776:2,9,14 777:1,11 778:13,18,21 779:2,9,19 780:2 783:20 784:15,22 785:15,21 786:3 794:6 801:11,19 802:1,7,12 804:5,10,15,22 805:15 806:4,11,16 807:3,9,15 808:1 809:5,10,16	810:5,8,13,16,22 812:8 812:10,17 813:3,6,13 813:16 818:12 819:4,8 819:11 820:5,16,19 826:5,13,20 827:2,11 827:14,16 828:22 829:3 829:4 833:15 839:19 840:5,16 842:21 843:4 847:21 851:8,13,21 852:4,19 854:2,17 855:4,8,11,14,16 856:2 856:6,12,19 857:6,8,12 857:17 858:2,7,10,17 858:20 859:5,12,17 860:3,12,18 861:3,12 861:19 862:10,18 863:6 864:6 865:13,16 866:20 867:15 868:2,12,17 869:12 871:4 872:4,4,5 872:10 873:14 875:4,10 876:19 877:11 878:16 879:10,19 880:14,18 887:20 891:21 894:4 897:2 911:11,14 912:12 913:16 914:8,22 915:11 915:17 916:6,22 917:8 918:4,14,22 920:2,13 921:15,22 922:6 927:8 927:9,14 928:5,21 929:20 930:9 931:6 932:4,20,21 933:12 934:21 935:8 936:11 937:17 951:11 952:7,9 952:12 954:8 955:13 957:3,20 958:20 964:6 968:20,21 969:6,8,14 969:19 970:21 971:8,12 993:3,15,17 994:7,13 1003:6,16 1019:1,4,6 1023:8,9 1024:13 chairman's 590:5 665:11 challenge 548:10 586:15 587:6 588:7 765:7 862:4 864:3 878:7 879:7 958:17 988:20 challenged 548:5 594:4 758:16 challenges 592:10,16,17 594:2,16 596:9 620:1 620:15 624:9 668:20 701:16 754:11 842:9 848:18 865:10 876:6 878:14 884:15,22 887:18 981:2 982:18 983:4,11 985:10 989:9 990:9 998:5 1003:3	1008:3 challenging 867:11 979:11 champ 614:2 championship 614:5 chance 578:12 871:13 964:14 1013:21 1016:5 chances 719:10 change 537:8,10 551:9 609:1 662:7 670:17 724:4 727:8 729:16 735:14 736:11 741:2 759:18 791:8 792:6,20 842:15 846:5 870:2 872:18 881:8,11 893:16 917:5 955:7 978:15 1010:10 1014:9,16,16 1014:17 1015:13 1016:15 1021:7 1022:11 changed 723:13,14,15 729:19 733:18 947:3 985:1 1000:6,19 1010:5 changes 523:20 524:2,13 524:15 671:20 672:1 697:22 793:9 794:1 832:3 870:2 984:16 985:9 1004:15 changing 561:13 845:8 1008:2 Channahon 757:14 766:13 characteristics 570:18 571:8 619:13 characterize 564:20 683:4 953:9 characterizes 679:17 charge 736:19 776:3 1014:15 charged 570:16 611:3 928:14 932:1 charges 685:17 765:7 797:15 817:14 928:19 929:7 charging 659:7 800:13 charity 614:5,6 Charleston 651:16 Charlotte 803:16,18 804:6 chart 905:19 chasing 562:8 chassis 976:19 chat 519:19 Chattanooga 618:20 625:3,6 632:13 636:14 649:17	cheaper 587:4 604:2,12 654:2,12 700:22 732:4 902:22 check 836:14 1003:9 checked 881:2 checks 528:5 chemical 580:11 1010:14 chemicals 577:2 689:8 788:13 1010:16 Chicago 762:12 777:9 975:9,13 976:4,6,12,18 977:2,3,8 chief 842:5 843:5 971:15 choice 531:15 534:20 535:2 556:18 712:1 1017:15 choices 734:22 choke 711:2 770:12 choose 552:22 919:10 chop 903:1,1,7 chose 711:9 724:21 chosen 662:5 Chris 521:13 602:3,8 609:21 614:15,20 616:5 616:6 Christianson 908:19 909:2,5 Chrysler 693:6 Chuck 664:12 665:3,3,13 666:11 677:18 678:5 679:4 681:16 683:7 684:19 688:2 689:17 698:8 703:11,18 707:15 711:4 713:7 717:1,9 719:1 720:3,6 cigarettes 1021:5 Cindy 840:8 842:6 843:2 843:4 851:8 867:18 869:4 874:19 879:20 880:22 886:4 888:2 889:7 894:7 899:8,9 932:12,12,13,17 circles 957:21 circling 642:2 circumstance 589:4 643:2 645:17 circumstances 547:21 642:5 661:3 677:6 745:7 751:1 811:11 939:5 940:13,16,20 941:10 944:9,11 959:13 circumstantial 745:10 citation 826:22 cite 759:15 826:20 cited 759:4,19 761:5 826:7 827:3 908:4
--	--	--	---

923:11 cities 610:5 city 630:22 631:14 637:3 637:6 771:21 claim 606:11 712:4 claimed 909:14 claims 908:3 clarifies 702:14 clarify 549:4 676:3 677:13 698:12 752:4 clarifying 563:16 575:19 697:21 702:13 Clark 665:20 Clarke 672:3 677:17,20 677:21 678:10 687:21 689:21 697:2 class 525:3,16,18 526:12 526:13 528:9 543:3,4,5 565:11 568:22 573:10 573:21 574:12 576:11 587:21 592:3 594:15 607:22 620:4 659:17 666:15 669:1 676:8,10 676:14,18 677:3,7,8 678:19,20,21 679:2,3,4 679:9,20 680:8,11,18 681:1,5,6,10,15 682:17 683:5,9 684:10,18 685:1,2,7,10,20 686:16 686:17,18 687:2,10 695:10 698:2,16,22 700:2,7 701:1,22 702:21 705:10,19 707:1 707:18 708:15 709:3 711:15 712:9,11,21 714:22 738:19,20 776:7 789:18 791:22 792:4 794:19 795:22 797:4 798:4,8 800:6 802:9,16 805:21,22 806:3,17 808:20 818:20 864:8 896:2 899:14 955:20 995:7 997:2 classes 572:9 classic 634:10 classification 810:17 811:3 classified 626:3 classify 632:4 Claussen 665:19 677:17 687:18 688:5,8 698:7 712:4 claw 668:7 clay 604:11 clear 545:1 569:1 570:14 609:6 702:20 703:10	729:6 754:18,20 759:19 830:18 887:13 901:5 915:22 919:13 960:18 1009:7,13 clearly 520:18 538:2 645:4 778:14 787:4 800:12 1009:3 client 956:10 clients 641:4 643:6 647:11 Cliff 678:2 climate 661:17 662:7 clock 973:7 993:4 close 520:14 560:9 601:2 693:4 805:8 860:7 930:13 999:20 1006:15 closed 673:21 763:15,17 792:5 985:6 closely 829:7 906:6 closer 577:3 610:5 622:22 632:19 634:22 659:10 870:1 917:5 963:7 closest 652:22 875:22 closing 764:22 clumsy 734:14 CMP 749:19 CN 725:21 732:21 733:7 754:15 771:19 772:19 777:14 779:4,6 784:12 784:16 790:14 802:10 819:5 840:11 875:9 970:4 971:2,16 972:3 972:13,15 973:2,6,21 974:4,15,16 975:5,7,8 975:15,21 976:2,11,15 976:16,19 977:1,4,9,13 979:20 980:22 981:8 982:14,16,19 983:1,3,5 983:8 984:4,9 985:10 985:13,15,21 986:11,17 986:20,21 987:6 988:12 988:21,22 989:2,5,14 989:15 991:17 993:9,15 996:22 997:1,4 998:1,5 999:14,18 1000:1,8,20 1001:1,3,5,18,22 1002:3,7,9 1003:1,5 CN's 971:17 972:5 974:9 975:14 977:11 978:11 980:3,12,18 984:12,19 987:4,11,14,16 988:8 988:14,17,19 989:12 992:6,18 993:5 998:1 999:13 1002:13 CNTL-owned 976:19 CO2 1005:22 1006:9	coal 529:4 738:10 750:13 coalesced 939:3 coalition 965:11 1022:21 coast 565:11 572:3 576:20 580:11 604:7,8 631:19 656:16 730:22 731:20 733:2 803:3,13 808:19 coatings 612:13 cognizant 664:15,22 741:5 839:14 934:19 coils 700:12 701:13 Coke 530:21 531:8,10,12 cold 725:13 840:20 880:9 973:12 982:21 colder 973:18 collaborate 966:22 1002:14,19 collaboration 950:17 collaboratively 761:13 965:3 collateral 846:7 847:18 colleague 689:16 736:5 747:12 colleagues 750:20 922:19 collect 546:5 collected 547:10 570:22 572:4 collecting 545:22 547:9 collection 574:10 728:19 colloquy 996:7 collusion 744:7 Columbia 733:6 973:3 column 1014:2 combine 798:22 combined 786:13 973:5 1007:20 combines 943:10 come 522:19 541:5 545:2 545:18 562:10 579:8 583:2 591:12,16 611:20 612:8 617:3 635:19 644:7 651:4,6 652:8 659:3 663:14 665:2 701:1 702:3,4 715:19 718:15 722:7 736:11 744:1 753:17 769:8 777:3 796:19 799:22 803:16 812:15 813:9 814:1,20 829:14 839:22 846:10 850:17,19 854:7 854:14 860:1,9,15 863:21 872:19 875:5 878:21,21 883:13 884:18 886:11 889:13 891:15 908:3 930:12	944:5,7 948:7 949:2 951:15 955:1 958:4,17 964:14 1023:13 comes 594:13 614:21 659:9 753:14 772:12 777:3,6 841:12 849:4 882:11,21 940:7 953:10 983:17 coming 540:22 555:7 557:15 564:10,11 582:8 587:2 599:1 625:11 641:2 662:2 718:8 722:22 733:1 746:2 751:18 754:16 773:15 774:20 788:1 816:18 831:1 849:21 864:12 870:19 886:10 887:11 891:1 928:18,18 929:6 929:7 949:18 979:17 983:5 993:10 commend 618:3 787:10 commends 793:13 comment 566:17 589:15 643:17 759:5 764:22 769:15 861:17 965:12 992:3 commenters 972:6 comments 561:22 587:12 591:15,16 610:21 669:12,14 671:22 675:17 676:1 768:20 787:21 826:4 865:1 886:5 908:9 910:9 927:12 977:17 982:16 commercial 622:18 648:13 786:14 803:1 839:2 861:14 876:14 964:18 commission 590:16 785:1 commissioned 908:20 1000:13 commit 867:9 1012:19,21 commitment 648:2,8 1004:4,14 commitments 990:15 committed 589:14 971:3 Committee 821:10 committing 648:9 commodities 569:7,22 570:17 577:3,7 585:2 598:13 640:6 682:8 726:12 738:14 754:12 763:12 900:5 991:2 commodity 559:19 571:7 572:22 577:1 590:3 624:5,10 640:4,7
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642:13 658:17 662:12 663:5 682:6,6 726:15 738:16 823:8 881:6 954:5 988:11 990:21 commodity-based 750:21 common 560:7 606:4,15 670:15 715:12 719:21 761:7 763:22 783:9 797:7 893:21 895:15 933:6 1002:19 1008:18 1012:3 commonly 618:1 communicates 998:2 communication 613:13 613:13,20 614:20 615:4 615:5 798:22 communications 1023:19 communities 667:6 674:16 691:4 692:18 community 530:2,5 642:4 674:12 692:22 934:10 companies 522:15,15,22 523:15 524:22 538:2 559:5 602:11,13,21 603:3,5 674:12 685:6,6 686:11 693:2 754:2 782:9 822:15 831:22 832:22 986:8 1007:11 1023:2 company 527:4,8,12,14 540:2 620:10 622:12 640:2 656:11 684:14 688:21 693:15 788:11 788:20 795:16 886:19 895:11 989:20 1007:1,5 1010:11,12,15 company's 971:18 companywide 656:13 comparable 997:20 comparative 742:7 comparatively 672:19 compare 531:7 533:6 546:7 552:18 642:9,10 742:9 746:3 909:18 941:20 962:9 997:14 compared 568:13 571:7 579:17 586:21 611:4 621:19 625:18 634:8 663:4 672:12 825:16 909:19 978:7 983:7,20 990:22 comparing 585:1 636:10 636:11,14 639:11 640:1 997:19 998:11 comparison 526:20 571:17 585:3 640:21	679:14 680:21 681:5,7 747:8 910:6 942:5,6 962:21 997:18 998:12 Compass 842:11 896:13 compelling 524:6 687:13 718:5 931:4 compensate 759:4 934:2 compensates 748:1 compensation 745:17 749:9 750:15 941:17 944:19 945:2,13,17 960:1 963:12 992:4,20 1010:5 compensatory 735:22 compete 543:11 572:13 586:14 588:16 603:1,13 682:10 781:18 911:5 961:22 986:7 998:18 999:4 competes 1000:8 competing 526:2 528:4 578:10 622:10 623:13 732:22 743:1 795:6 798:10 846:3 888:6,17 888:19 926:8,10 927:22 930:1 988:13,16 992:1 1005:4 competition 528:1,2,12 530:17 531:5,19 534:15 535:13 537:6,16,17,19 543:19,21 544:1,4 568:4 570:10 571:11 573:2 578:19 579:16 593:11 618:6 619:16,22 621:20 623:18,20 624:16 633:21,22 634:22 636:16 637:8,16 644:5 646:15,22 647:3 647:10 648:5,13,16 650:8 654:7,8 655:14 658:4 669:18 672:20 682:15 685:2,9,16 714:14 757:22 759:11 761:3 763:1 764:6,8 765:12,17,18 768:2,12 768:13 787:5 789:18 790:5,7 791:6 797:3 799:17 800:3,16 808:16 823:21 829:15 832:11 832:13 837:17,21 838:1 890:10,11 891:15 898:8 898:10,11,20 902:6 907:9,9,10,13,16 910:17,18 911:21 913:18 919:14 924:2 943:21 952:18,20 953:4	956:2 960:18,19,20,22 960:22 961:3 962:8 963:5 991:15 993:22 994:3 999:22 1000:2,4 1000:14 1001:2 1005:7 1017:16 1018:2,2 competitive 526:4 528:22 530:14 548:7 550:20 551:1,10 572:17 573:9 582:2 585:21 593:8 605:5 606:5 611:16 620:18 621:12,17 623:3 623:16 629:8 634:3,6,8 635:1,16,17 636:3 638:14 639:12 640:6 643:2 649:19 660:9,17 661:3 673:20 684:12 695:19 697:14 707:19 741:12 758:2 768:6 790:12 820:1 824:3 832:8 898:14,18 899:6 901:16,19 902:7,20 903:3,8 907:5 910:5,20 912:3,10,17 914:4,6 920:8 925:1,22 934:7 934:13 935:20 938:21 941:21 943:2 948:8 962:21 963:19 983:20 992:15 competitively 551:4 707:9 912:9 962:9,15 competitiveness 568:19 569:3 821:22 competitor 733:10 925:16 competitors 569:2 571:12 604:12 607:10 744:5 825:12 compile 705:8 complain 613:10 903:20 complained 613:5 complaint 967:20 complaints 793:18 902:1 920:7 977:22 complete 878:3 completed 620:22 completely 601:12 686:18 687:10 704:18 734:12 787:6 863:4 891:11 1011:18 complex 524:11 557:12 642:6 646:1 668:14 679:9 691:15 709:13 750:3 826:18 843:8 851:2 854:5,15 855:1 complexities 851:5	complexity 641:15,20 642:16 645:9 697:4 745:14 748:22 750:8 751:4 809:18 821:12 887:8 941:20 942:2 947:11 983:18 1018:13 compliance 742:4,10 complicate 847:19 complicated 540:16,16 638:3 640:12 750:17 776:19 777:13 complications 917:22 comply 873:1,4,13 893:6 893:8,15 component 924:7 928:7 968:16 components 831:18 compressed 879:1 compressing 947:1 1018:3 comprise 762:18 comprised 522:21 788:11 comprises 726:13 compromising 838:7,16 computing 736:19 concede 940:9 956:9,10 conceive 761:15 conceived 595:11 concentrated 624:11 concept 530:18 532:6 607:5 616:11 811:9 829:9 866:14 880:11,17 890:9 953:4 concepts 595:14 897:6,7 897:9 conceptually 863:7 936:21 concern 524:16 554:15 567:6 610:10 612:19 698:22 699:5,7,11 700:5 705:4 709:11 717:13 758:3 772:1 811:14,20 821:12 830:7 841:18,22 844:15 862:6 868:18 887:14 889:3 917:20 987:16 1021:9 concerned 536:21 565:7 608:3 700:16,20 740:2 818:21 825:1 858:5 873:9 947:5 952:15 972:3 980:22 995:14 1011:16 1022:19 concerning 866:21 929:18 concerns 528:7 537:3 557:13 618:5 640:15
---	--	---	---

698:18,21 699:3 717:10 717:17,18 761:8,19 764:22 782:14 787:14 821:15 873:11 876:12 947:2,8 1001:12 1002:15 1019:20 concession 955:9 concise 1003:7 conciseness 1019:2 conclude 519:15 529:10 534:21 535:16 687:7 910:9 923:13 947:9 992:3 concluded 1003:5 1023:17 1024:18 concludes 927:9 939:13 concluding 925:5 conclusion 533:16 537:12 580:8 800:21 926:18,22 983:14 conclusive 638:8 concrete 540:12,21 542:4 574:7 773:22 976:15 condition 566:1 682:4 conditions 604:10 923:16 923:17 926:18 935:4 936:18 conduct 637:21 638:20 639:1,4 642:4,6 643:1 745:6 940:10 962:16 988:14 conducted 833:22 conductors 974:11 1011:3 conference 605:4 confidence 1016:6 confidentially 1021:15 confirm 764:1,8 confirmed 762:14,22 confirming 675:19 758:2 confronted 985:10 confused 699:21 802:13 congest 710:2 congested 577:14 579:6 595:8 610:13,17 791:2 congestion 534:5 610:16 620:12 659:1 660:2 670:21 697:2 731:14 770:13 773:3,4 811:21 879:8 954:21 955:11 956:5 975:16,18 976:16 977:11 979:7 982:15 983:4,9 1008:8 congestion-related 982:18 congratulate 1019:1	Congress 573:19 957:17 1023:1 connect 685:7 798:3 803:11,18 804:2 879:3 connected 626:4 692:5 707:9 connecting 691:3 692:19 706:22 803:19 connection 561:9 694:12 802:18 connections 675:17 connects 544:17 766:18 776:12 809:4 981:20 consequence 586:10 839:15 consequences 525:13 697:19 845:3 972:7 1001:14,21 1002:16 1019:17 consequential 559:15 consequently 927:3 conservative 726:20 conservatively 527:5 Conservatives 727:2 consider 553:15 572:10 589:11 617:10 668:21 685:11 696:15 706:21 715:12 717:18 756:2 762:8 763:11 772:8 883:22 940:4 945:5 990:7,10 considerable 600:3 819:15 924:8 considerably 604:5 consideration 593:14 608:21 611:19 660:5,7 689:19 737:6 887:15 888:12 943:21 950:12 962:6 963:11 994:5 considerations 661:8 considered 569:14 690:8 761:10 762:10 772:7 considering 532:14 699:14 835:6 844:16 919:1 979:11 990:3 consist 768:22 consistency 554:19 556:3 601:17 613:10,21 629:11 639:18 consistent 605:9 629:1 676:5 798:18 888:13 consistently 887:7 consolidated 528:12 788:18 consolidation 528:8,10 528:14	constant 548:16 691:1 864:20,22 869:20 constantly 613:5 675:7 882:20 constituents 579:17 constrained 599:11 845:6 850:13 953:21 976:21 constraint 845:10,14 847:14 878:1 constraints 888:10,11 907:11 constructed 695:12 constructing 693:22 consultant 538:6 Consultants 605:3 908:5 909:14 consultation 738:13 consumer 531:14 561:3 609:5 788:14 consumers 573:6 consumption 591:7 contact 520:10 613:17 615:13 799:2,7 container 591:1,19 597:10 976:17 1008:5 containers 591:13 974:17 974:19 975:2 976:8,11 976:13 977:5,7,10 contemplate 575:10 945:18 contemplated 699:19 942:19 contemplates 1020:10 contention 540:18 701:7 contest 526:4 contestability 732:13 741:7 context 556:20 635:11 645:7 828:11 834:13,14 835:22 836:21 837:1 929:5 935:9,15 959:10 contexts 773:21 839:3 contingency 845:17 887:1 continual 816:7 continuation 519:3 continue 530:4 537:22 538:14 583:21 584:12 587:20 640:17 642:22 643:20 644:18 650:2 671:13 716:13,20 758:18 759:1 782:17,18 816:22 817:2,3 922:7 958:2 1004:11 1005:13 continued 584:1 602:20 620:16 985:17	continues 570:16 607:11 785:13 continuing 609:5 801:21 816:8 continuous 984:20 986:5 continuously 569:9 605:1 contract 621:1 647:12 648:17 734:10 769:3,4 1013:22 1014:17 1015:12 contracts 647:13,15,19 647:21 734:12 contractual 990:14 contrary 669:16 contrast 982:3 contribute 930:3 contributing 989:11 contribution 924:16 925:8 926:4 927:4 930:14 933:17 940:14 940:20 control 609:2 658:4,6 778:10,11 835:7 836:13 845:7 864:8 865:2,3 867:4 961:6 1009:22 1019:21 controlled 544:3 642:12 convenience 822:5 conversation 864:15 870:5 884:21 1002:1,14 1002:22 conversations 594:12 713:20 714:19 715:15 884:12 1002:10 conversely 990:13 convert 536:6 1010:15 1012:17 converted 1005:9 convince 964:20 convoys 823:5 cooking 531:1 cooperate 701:20 cooperative 701:20 822:16 831:12 coordinated 823:5 coordinating 869:18 coordination 823:19 Coors 523:2 525:17 526:1,3,9 core 597:9 748:20 934:4 corn 571:7 585:3,20 723:21 728:21 corporate 799:7 Corporation 523:5 696:7 728:21 correct 545:3 566:7
---	--	---	--

637:8 651:1 703:1,11 706:14 807:2,22 808:22 810:20 819:17 837:12 851:20 854:18 857:5 858:6 859:16 861:2 863:14 914:14 930:8 correction 996:21 correctly 752:11 753:2,3 931:11 938:1 942:12 correlation 563:5,6,7 corresponds 583:9 corridors 738:14 cost 526:7 552:18 553:15 554:21 555:11 556:1,15 558:13 569:14 572:6 587:7 620:7 690:18 796:19 837:13,13 841:13 845:19 902:12 902:14 903:11,19 906:15,15,20 910:12 912:20 913:20 914:1,13 914:21 915:10,12 916:7 916:16 923:19,21 924:12,13,14,15,16 925:2 926:12 927:1 928:9 929:12,13 932:2 933:13,20 934:3,18,19 935:14 936:9 941:7,11 945:8,9 952:19 985:22 990:2 1007:1,6,8 1010:9 1012:5 1014:18 1017:1 cost-based 799:20 927:3 934:12 945:8 992:4,8 cost-benefit 960:21 costing 746:9,10,19 799:22 817:4 915:2 costly 763:5 921:12 costs 554:20,20 556:7 558:13 592:18 593:6,8 609:5 612:16,17 653:10 672:14 673:13 680:20 681:2 683:6,18,22 684:6 695:7 697:5 704:9 758:18 773:17 797:1 822:21 823:3,21 825:16 830:7 845:22 905:20 909:9 910:21 919:20 923:22 924:17 926:15 927:2,2 959:15 960:2,6,13 963:14 1009:22 1016:14,20 council 727:6,13 counsel 999:14 count 776:20 851:17 counter 573:21 658:13	counterintuitive 991:18 counterproductive 669:4 counting 519:13 countries 585:15 586:16 788:7 country 542:10 556:14 566:12 571:19 579:6,7 579:19 595:6,8 603:6 610:3,17 618:16 623:18 671:7 691:4 712:2 775:3 780:21 802:2 833:11 869:14 country's 1010:14 countrywide 610:14 county 692:5,10 couple 532:2 538:15 546:13,18 581:11 583:4 584:2 592:17 629:18 634:12 700:6 722:3,7 725:1 745:22 778:4 788:3 793:1 818:17 826:6 837:2 856:17 872:15 911:14 927:14 940:2 947:10 970:22 974:11 975:13 977:6 994:21 995:4 coupled 823:18 course 521:4 553:2 638:6 671:21 672:6 728:12 735:22 737:15 764:15 780:13 792:15 812:12 812:13 835:2 944:7 1003:2 1015:14 1021:16 1024:7 court 520:17 969:12,12 1024:11 courts 1021:1,6 cover 672:4 679:10 684:5 796:17 897:4 902:14 969:9 1007:1 coverage 573:10 822:7 covered 678:5 813:19 970:9 covering 679:12 730:4 844:21 covers 678:3 729:21 752:12 COVID 562:12 592:15 594:1 601:3,11 629:22 COVID-19 794:12 985:3 CP 606:7 725:16,19 732:21 733:8 744:12 753:11,16,20 802:11 982:16 CPC 721:5 757:3,10,11 757:15 759:16 760:8	776:8 783:12 CPC's 760:17 crafts 536:1 crap 741:10 753:20 create 697:3 714:3,13 865:10 870:10 872:18 910:11 981:1 989:19 1008:17 created 527:14 638:8 693:13 872:22 creates 528:2 624:6 688:13 718:6 844:15 847:13,18 898:4 901:7 901:15 919:10 952:4 creating 543:20 638:9 668:9 844:13 1004:16 1017:19 creation 572:12 582:4 683:7 creative 594:9 645:21 675:10 948:2 950:5 968:14 creativity 594:17 645:13 creators 667:7 674:9 credit 956:14 creep 901:8 crew 527:1,16 683:21 720:7 770:9,10 784:8 795:10 824:11 860:12 860:14,20 959:2 978:15 983:6 crews 588:8 713:18 785:8 796:13 955:21 956:15 958:3 crimp 830:8 crisis 548:15 725:11 726:5 727:9 975:17 criteria 638:11 764:2 988:9 1015:11 criterion 640:16 critical 581:11 593:12 598:19 603:9 619:5 667:17 668:4 691:10,10 696:17,18 798:18 821:21 902:17 972:15 992:20 criticality 696:4 criticized 1009:9 crop 725:13 987:2 crops 569:8 571:2 crosses 981:20 crossing 850:11 crossings 836:16 837:10 850:9 crowded 576:20 crucial 536:18 559:19	570:6 791:8 crude 836:10 crystal 581:13 CSX 536:5,7 562:3,17 619:4 622:14,17 623:2 625:7 626:13,16,18,22 627:20 628:15 631:17 633:10 653:2,5,7,20 654:2,4 655:1 689:9 700:13,13,17 708:2 766:18,20 768:2,7,7 771:16 774:22 778:10 778:19 782:2 784:9 792:10 793:15 802:10 803:12 807:6,8,12,14 808:13,13,17 809:2,2,3 809:11,21,22 810:3,14 810:17,18 814:10 819:4 840:8,10,13 848:16 849:5,9,14,21 850:5,13 850:16 852:16 853:21 854:10,13,13 856:10,16 857:13,19 858:4,13,15 858:21,22 859:3,6,10 859:11 861:5,15,21,22 862:7,11,13,21 863:7 863:12,19 864:1,10,14 875:15 878:6,19 883:9 883:11 892:13 893:17 893:19 894:19 895:17 895:19 904:22 905:1,6 970:4 977:13 993:6 1003:11 1004:6,11 1005:4,20 1006:17 1007:3,17 1008:4 1009:16 1010:2,11 1012:10,16,18 1014:22 1015:19 1019:10 1022:1 1023:3 1024:12 CSX's 808:2 848:22 850:18 853:14 860:2 889:14 993:10 1003:20 1004:14 1021:9 CSX-bound 860:4 CSX-CN 779:8 CTA 753:19 cumulation 873:8 current 568:4 572:19 669:8 676:4 710:13 719:16 746:3 761:2 798:12 921:2,5 927:20 940:9 955:6 975:22 978:8 1018:6,7 currently 552:13 609:2 655:8 676:11 684:4 689:10 700:13 722:9
--	--	---	---

772:4 797:4 799:2 811:7 822:13 834:1 887:18 900:14 906:3 977:20 978:9 999:5 1004:4 customer 534:17 549:16 550:11,12 555:10 558:4 620:2 662:13 668:10,10 672:11 673:16 674:20 675:3 676:8 677:1,3 682:3 686:9 691:1,8,10 691:12 692:9 693:16 695:19 697:6,16,17 699:1 700:13,16,19 701:22 702:21 707:19 714:4 715:5 759:7 771:21 777:22 783:12 792:14 796:17 797:9 798:7,9 800:15 819:22 847:4 849:16,20 855:6 856:9 864:1 871:10 876:12,21 879:13,17,18 891:10 893:10,12,14 895:8,16 920:7 930:16 933:22 936:6 944:3 955:4 964:10 965:1 974:5 975:10 985:6 988:12 989:7 992:8 996:22 997:1 1011:5,12 1012:21 1013:2,20 1014:15 1015:1 1016:7 1018:17 customer's 550:11 691:11 701:13 863:8 customer-focused 674:19 customers 531:20 533:17 534:20 535:9 537:1 543:21 548:20 549:9 551:17 555:2,9 558:21 560:22 564:14 573:6 592:20 604:17 609:8 610:12 615:17 620:21 621:7,15 658:18 668:5 668:5 669:20 670:19 672:19 673:8 675:8,8 675:13,14,15 681:20,21 681:22 685:12 686:3,7 687:6,9,12 688:13 689:3 691:3,17 692:15 692:19 693:18 694:14 696:3 698:1 700:3 701:9 704:7 708:3 714:8 759:14,21 760:19 760:21 769:20 780:15 781:19 789:3,17 790:8 792:8 796:6 806:18	817:11,13 818:1 825:13 841:2 843:15,16 847:16 847:20 848:11 849:19 852:1,12 856:8 860:15 863:16 868:6 870:4 878:5 881:6 882:11,14 882:16 887:7 892:1 894:7 895:5 932:6,8 953:12,14 959:16 972:15,22 974:22 975:3 975:6,6,22 976:21 977:9 979:14 980:9 985:14 986:7,15,16 987:15 990:16 992:14 992:17 998:2 1000:6,9 1002:4 1005:21 1008:21 1015:5 1021:13 1023:1 customers' 535:12 667:1 674:22 762:15 customers's 573:1 customized 672:18 cut 547:18 549:17 561:2 615:10 792:5,10,11,12 794:13 823:2 825:7 894:4 960:16 970:11 cutoff 997:21 cuts 524:8 535:20 537:5 cutting 615:9 620:7 682:17 1011:9 cycle 639:18 647:22 729:1 730:7,14,20,21 731:4,17 740:11 742:10 849:17 978:16 979:2 997:12 cycles 975:2 987:14 cyclical 726:8 881:22	591:15 598:19 Dan's 561:21 danger 896:20 dangerous 717:22 1018:9 Daniel 521:11 522:1 Dardanelle 945:7 Darigold 523:6 dashed 1004:20 data 539:11,13 546:4,6,8 546:9,19 547:10,12,13 549:2 557:11 558:9 584:11 597:22 639:16 641:18 705:8 708:10 718:5 727:15 728:18,19 728:20 729:1,12,14,15 729:21 730:9 731:5 740:19 741:14,17 747:21 752:12,18 897:9 898:19 906:1 909:22 910:1 914:16,19 997:9 date 740:7 968:7 dates 571:5 923:9 David 665:20 678:9 689:20 840:9 842:16 911:3,11 922:12 day 518:12 521:5 527:5 530:7 533:11 534:4 550:9 553:16 556:7,21 559:6,7 570:8 591:20 612:14 628:22 629:1,3 633:1 636:4 651:5 652:2 657:3,5,5 661:21 666:5 688:13 693:13 695:21 696:10 714:9 715:16,19 720:16 731:15 753:15,18 780:10 791:2 813:18 845:8 860:16 864:11,11 865:18,18 867:20,21 868:9 879:8,11,12 890:21 893:3 894:10,10 894:14 946:13 972:14 974:2 998:6 1019:7,9 1022:8 day-to-day 782:8 days 527:13 549:11,12,16 550:14 561:2 564:7,7 567:15 591:20,21 601:18 629:6,6 630:17 657:6 692:7 722:3 731:3,8,17 752:10 753:2 778:5 798:11 842:22 871:6 882:22 917:21 944:13 947:10 965:21 967:12 973:14 976:6,6,12,14 978:7	994:22 995:4 999:22 1001:18 1015:15 1017:6 1020:9 DE 597:8 de-marketed 760:16 de-marketing 759:21,22 deal 540:19 595:11 634:13 644:1 659:17 695:12 726:1 775:11 779:14 782:7 784:17 802:8,10 861:15 865:17 899:4 904:20,22 913:11 918:3 961:15 995:6 dealers 664:6 827:22 dealing 577:11 683:11 685:15 719:6 767:8 782:1 835:21 973:18 deals 905:16 964:2 dealt 785:6 872:5 dear 616:19 Dearden 721:6 757:2,4,8 757:9 766:10,12 767:9 767:14 769:1 770:2,6 770:11,16 771:4,9,12 771:17 772:10,21 773:10 774:6,9,13,17 774:20 775:7,22 776:8 776:10,20 777:5,16 778:17,19 779:1,7,16 780:8,19 781:8,22 783:3,7 784:14,18,21 785:14 874:22 877:4 debatable 643:22 debate 772:6 915:12 916:10 984:6 1019:18 decade 562:5 569:1 570:15 583:18 758:21 822:2 1000:12 decades 573:21 574:20 592:2,5 625:5,5 661:16 667:22 675:3 694:9 789:5 982:7 1007:17 1010:21 Decatur 628:6,6,10,16 635:7 636:7 656:8 778:5 798:6 807:6,7,7 807:19 808:9 810:1 814:2,12 848:15,22 849:19 850:6 852:1,21 852:22 853:4,4 863:4,9 866:6 867:20 895:17 December 536:8,17 770:7 973:1,10,14 984:22 December/January 630:2 decent 895:18
---	--	---	--

<p>decide 730:18 765:3 779:17,17 843:15 852:5 867:6 894:15 904:21 905:3 945:10,12 992:19</p> <p>decided 764:15 811:13 892:4 896:3 927:22 941:3 945:17</p> <p>decides 730:17 894:14</p> <p>deciding 846:2 866:10</p> <p>decimal 657:8</p> <p>decision 553:21 645:18 891:10 967:21 989:15 1015:5</p> <p>decisions 520:21 554:8 608:5 726:6 739:8,11 916:9 935:5 954:1,6 989:10,17 991:5,18,19 996:4 1004:2 1017:8 1018:16 1022:12</p> <p>declare 1023:16</p> <p>declined 690:19 758:18</p> <p>decrease 529:3 551:8 623:7 668:14 673:15 791:3 800:11 984:11</p> <p>decreased 537:19 670:22</p> <p>decreasing 551:9 568:18 1001:16</p> <p>dedicated 575:1 692:2 775:10</p> <p>dedication 980:5</p> <p>defeating 934:11</p> <p>defend 526:9 700:10</p> <p>defer 584:16 937:16 993:19 1020:20</p> <p>deference 736:5</p> <p>deferred 683:17 937:13</p> <p>deficiencies 959:10</p> <p>DeFife 521:13 590:14,15 590:16 596:8 597:20 599:17 600:15 601:21</p> <p>define 805:16 919:14 936:15</p> <p>defined 530:16 592:10</p> <p>defining 968:15</p> <p>definitely 599:7,9,10 611:10 636:21 740:17 744:8 910:21 953:18 994:4</p> <p>definition 659:16 762:13 772:9 844:9 914:2</p> <p>definitional 950:3,3</p> <p>degradation 642:11 968:15</p> <p>degraded 683:11</p> <p>degree 633:21 684:6 712:5 825:20 895:14</p>	<p>950:16 994:2</p> <p>delay 540:19 552:9,13,16 552:19,21 553:18 555:16,17 556:20 557:2 557:3 598:20,22 765:9 879:22 966:15 970:18</p> <p>delayed 725:15 759:17 882:16</p> <p>delays 561:6 645:3 795:10</p> <p>deliberately 930:6</p> <p>delicate 902:3</p> <p>delicately 697:3</p> <p>deliver 527:7 627:19 707:18 726:9 758:4 808:18 817:15 849:16 860:9,16 862:21 863:8 893:22 918:16 926:3 966:14</p> <p>delivered 705:10,15 756:5 794:21 849:14 861:21</p> <p>deliveries 592:16 593:2</p> <p>delivering 555:4 574:9 809:3 847:6 860:19 1019:13</p> <p>delivers 849:9,13 882:13</p> <p>delivery 628:22 680:14 680:20 723:18 754:22 792:16 822:5 976:20</p> <p>delving 579:10</p> <p>demand 550:5 562:6,10 563:7 594:3 602:19 726:2 736:20 746:5 747:5,18 748:13 749:8 749:15 750:3,12,13,22 890:12 953:21 955:18 974:5 975:10 979:14 989:7 998:10 1021:6</p> <p>demand-based 841:1 842:12</p> <p>demanded 527:9 727:15</p> <p>demanding 663:4</p> <p>demands 648:3 671:6</p> <p>demarketed 783:5</p> <p>demarketing 768:21,22 773:20 774:8 779:3 954:8</p> <p>demolition 618:12</p> <p>demonstrable 949:19</p> <p>demonstrably 697:15</p> <p>demonstrate 528:15 536:20 537:2,9 538:2 967:14</p> <p>demonstrated 824:20 938:22 939:15,20</p>	<p>940:17 945:20 946:7 948:5 951:12 957:12</p> <p>demonstrating 669:14 944:4</p> <p>demurrage 635:10 951:10</p> <p>Denbo 628:7,12</p> <p>dense 754:12</p> <p>densities 681:5 683:2</p> <p>density 668:1 690:11 982:10</p> <p>Denton 804:20</p> <p>department 978:12 1003:21</p> <p>departure 879:22</p> <p>depend 680:8 888:10 929:17 980:9</p> <p>dependability 629:17</p> <p>dependable 629:15</p> <p>dependence 570:13 686:7</p> <p>dependent 569:8 632:4 674:17 679:22 701:8 736:20 743:9</p> <p>depending 539:14 819:21</p> <p>depends 565:4,16 781:22 805:11 808:12 857:20 882:9 983:15</p> <p>deployed 824:18 983:5</p> <p>deploying 836:22</p> <p>deployment 822:20 823:16,17 824:21 825:5</p> <p>deposition 744:12</p> <p>deprive 708:8 955:3</p> <p>deputy 999:13</p> <p>derailment 865:2</p> <p>derailments 998:6</p> <p>deregulation 921:10</p> <p>derive 758:1 986:3</p> <p>derived 925:8</p> <p>describe 543:19 835:14 842:14 888:6 962:7 981:12</p> <p>described 644:17 836:5 854:11 874:22 875:3,14 881:4 882:10 990:10 992:11</p> <p>describing 545:13 710:10 835:3 838:8 863:19 864:4 865:12 959:18 960:10 963:5</p> <p>description 574:8,14 628:21 893:1</p> <p>deserve 666:5</p> <p>design 729:3 742:6 965:15 978:12,12</p> <p>designed 570:10 660:9</p>	<p>724:16 932:2 933:16 935:10 964:17 975:21 979:21</p> <p>designing 832:3</p> <p>designs 745:3</p> <p>desirable 685:11</p> <p>desire 550:11 588:10 669:3 841:3 844:10 1022:14</p> <p>desired 644:1 825:9</p> <p>despite 525:11,12 583:14 620:14 621:8 923:4 926:20 1005:12 1011:16</p> <p>destination 571:4 578:20 585:5 589:18 622:22 626:13 636:20 651:11 680:11 700:15 731:18 733:5 743:2 777:10 789:22 806:7 807:11,14 807:20,21 808:12,13 836:6 855:19 858:3 859:11 862:13,14 863:1 893:22 930:15 934:1</p> <p>destinations 585:17 587:5 634:22 646:20 731:18</p> <p>destroy 911:7</p> <p>detail 672:5 678:3 768:20 865:7 974:6</p> <p>detailed 812:5</p> <p>details 872:20 1020:3</p> <p>deter 953:13</p> <p>deteriorate 979:8</p> <p>deteriorating 670:18 1001:15</p> <p>deterioration 939:14 940:18 948:4 949:19</p> <p>determinations 914:14 915:2</p> <p>determine 886:15 914:12</p> <p>determined 850:8 915:3 916:8</p> <p>detriment 573:1 791:19</p> <p>Detroit 693:12 975:9,13 977:8</p> <p>devastated 758:22</p> <p>devastating 794:22</p> <p>develop 740:9 764:18 765:1 944:19 951:3</p> <p>developed 763:20 791:22 829:9,10 975:7 982:7 996:9</p> <p>developer 823:12</p> <p>developers 831:22</p> <p>developing 758:20</p>
---	---	--	---

822:11,16 development 568:8 822:9 822:20 823:4,15 825:4 825:6 834:19 1008:10 1008:16 1011:12 1012:8 diagnostic 688:16 dialogue 598:3 639:6 641:16 643:5,10 952:11 1002:3 differ 622:2 678:21 933:14 difference 531:12 548:11 548:14 553:9 585:4 634:7 636:2 640:9 660:17 879:18 1014:18 differences 547:14 548:16 684:9 745:1,10 981:18 982:9 different 529:17 547:20 548:8 553:8 556:12 562:11,11 577:1,5,12 579:18,19,20 580:10 590:2 607:12 625:12 629:6 636:19 642:21 650:10 659:15 663:10 673:5 686:18 687:10 709:20 723:19,22 732:4 739:1 742:9 747:4 748:4,11 766:8 767:12 767:22 772:14 773:21 777:17 779:8 784:3 788:7 798:1 802:16 835:2 854:7 855:17 863:3 872:11 884:3 905:3 907:12 908:3,6 909:21 913:1,1,4,5 914:17,18 935:11,17 936:2,5 951:19 954:18 1007:3 1011:18 1014:10 differential 548:15,15 635:14 841:1,8 842:12 903:5 913:3,6 934:6 1017:21 1022:13 differentially 547:20 551:15 747:3 902:16 differentiate 635:19 differentiating 590:2 differentiation 636:8 differently 548:6,22 552:20 726:11,18 734:12 827:17 894:3 903:9 912:22 differing 907:12 difficult 531:7 532:12	549:3 554:3,6 559:17 560:3 561:10 562:1 603:1 615:12 633:12 748:14 812:3 851:3 967:22 988:7 990:8 992:9 1017:14 1018:4 difficulties 554:15 596:6 738:9 919:3 difficulty 553:22 775:11 dig 541:6 562:1 918:8 digits 533:13,14 dilemma 657:21 diminish 606:8 diminished 671:2 925:18 dioxide 825:18 dire 525:13 560:14 direct 563:5,6,7 587:5 654:3 694:12 768:2 798:4 836:3 841:15 861:13 868:15 932:12 988:21 directed 731:21 960:3 direction 607:15 822:17 831:20 863:18 864:4 1011:18 1022:20 directions 856:3 directly 571:20 572:13 628:14 676:9 677:12 698:2 699:2 702:21 709:1 767:5 776:11 777:4,21 806:6 807:20 841:19 1001:12 director 678:14 922:12 directors 1010:3 dirty 751:18 disadvantage 695:6 disadvantaging 825:11 disagree 661:9 862:16 920:20 disagreeing 952:22 1023:15 disappear 873:3 disappointed 957:14 disaster 600:13 661:17 972:19 disasters 972:17 discern 634:3,6 discipline 759:12 disclosure 663:20 664:7 discomfort 847:10 disconnect 782:19 disconnected 519:21 685:6 discourage 1011:20 discourages 981:8 discouraging 954:17	discovered 542:7 555:15 discretion 662:6 discuss 587:12 588:21 596:12 598:3 880:11 923:1 974:5,6 981:7 discussed 593:9 643:12 828:6 897:7 919:4 983:16 996:16 discussing 601:15 644:9 660:14 894:16 941:15 discussion 598:19 645:11 661:20 784:1 787:11 861:20 863:5 895:8 904:10 952:13 957:6 959:8 969:2 999:21 discussions 588:2 603:8 897:18 900:12 disincentives 1004:17 disincentivize 974:8 disparate 569:21 dispute 964:11,19 965:9 1001:4,6 1002:8 disputes 1021:14 disregards 841:11 disrupt 972:18 1012:13 disruption 620:12 622:5 798:13 976:1,7 disruptions 621:5,22 622:4,9 670:5 758:8 972:20 985:14 distance 572:1 593:14 595:3 608:1,4,20 609:13,13 652:18 653:16 679:21 684:22 724:6,7 725:9 746:12 799:21 820:2 824:18 837:4 860:7 980:18 distances 570:4 586:20 608:22 619:7 distinct 709:18 distinguish 634:2 distortion 958:6 distract 1006:12 distribute 523:9 distribution 693:7 823:14 902:19 903:6 907:14 913:7 disturb 721:19 dive 876:15 1012:1 diverse 535:1,2 602:10 diversified 681:19 721:5 757:3,10,11,15 759:16 760:8,17 762:11 766:8 768:16 776:8 778:8 783:12 862:20 875:1 917:14 953:7	Diversified's 775:8 diversifies 991:2 diversion 682:21 846:6 divert 846:4 division 618:3 929:15 doable 747:20 Doc 687:22 688:8 698:6 711:22 dock 632:16 662:2 975:20 dock-type 1020:14 docket 518:6 1022:2 Dockets 669:12 document 582:5 584:12 documented 571:5 doing 526:7 541:16 561:13 565:15 582:5 615:18 643:11 664:19 701:2 712:3 740:14 744:11,13 748:4 781:12 782:13 809:18 811:16 811:18 817:6 860:13,21 860:21 933:18 947:22 965:2,2 967:5 971:3 995:15 dollars 554:2 692:2 694:6 795:15 815:3,8 817:5 828:15 833:9,20 1013:13 1014:5 domestic 974:19 domestically 834:7 dominance 658:2 660:13 661:15 763:5,8,13 764:8 941:6 957:16 dominant 658:5 dominate 569:5 880:2 dominated 723:11 door 883:17 dormant 573:20 DOT 782:14 908:4 dots 1008:10,11 double 533:13,14 556:14 691:18 755:19 849:3 double-check 563:19 double-tiered 739:12 doubt 539:8 561:9 676:19 847:17 877:6 Doug 696:6 Dow 788:20 downs 559:7 downside 715:20 downsides 687:14 downstream 566:21 567:1,7 640:22 downtown 622:15 626:15 626:19
--	---	--	--

<p>downturn 616:1 dozen 796:12 dozens 873:8 Dr 665:20 672:3 677:16 677:20 687:21 689:20 721:4,10,11,14,22 722:2 737:9,11,14,21 739:4,22 740:15 742:2 742:11,17 745:8,12,21 746:21 747:6,10 748:7 748:15,18 749:1,10,17 749:22 750:5,9 751:5,9 751:13,17 752:7,12 753:4,8 754:14 756:15 756:18,22 838:13 840:9 842:10 851:7 896:13,14 911:9,16,18 912:2,21 913:22 914:15 915:5,15 915:19 916:18 917:2,18 918:5,19 919:9 920:5 920:20 921:18 922:1 927:7 929:18 931:13 932:5,16 951:16 959:8 960:3,8,14,17 962:7 963:4,15 draft 697:2 967:19 drafted 595:12 710:13 719:16 drag 822:19 Dragon 766:21 dramatic 531:3 1010:10 1010:20 dramatically 585:21 586:4 600:19 908:7 915:15 1004:3 drastically 916:21 drawbacks 923:1,5 926:20 drawing 589:10 drawn 852:11 drill 801:12 drills 552:6 drive 593:9 651:7 670:18 691:11 765:17 841:14 984:10 1004:4 1007:10 1008:16 1015:1 1022:20 driven 692:12 driver 563:7 633:14 782:17 driverless 823:6 drivers 563:4 633:11,16 651:5 667:7 674:10 758:12,13 775:3,11 822:21 1010:18 drives 692:19 693:1</p>	<p>837:17 driving 832:4 837:22 1007:14,19 1010:16 1018:15 drop 871:7 903:12 985:5 dropping 711:4 777:14 809:21 858:13 drops 973:17 dual 540:7,9 544:16 545:16,19 547:12 618:19 624:21,22 631:10 634:4 649:13,15 649:16 708:1 728:14 767:11,12,15 800:15 dual-served 534:18 545:4 546:8,14 548:20 due 527:6 603:11 606:19 619:13 670:6 672:5,22 673:4 692:10 695:6 697:17 726:2 759:21,22 780:14 793:1,5,17 795:9 796:8,17 798:13 844:14 885:6 966:15 982:21 983:9 998:7 duopolies 763:1 duration 519:11 796:15 durum 571:18 duties 823:1 duty 822:9 823:18 844:10 989:16,16 dwell 979:1 1014:13 dynamic 545:12 837:19</p> <hr/> <p style="text-align: center;">E</p> <p>E 519:1,1 e-mail 520:5 eager 948:10 earlier 588:21 634:2 744:12 790:13 816:7 872:14 882:10 885:3 911:20 953:8 954:19 996:22 1003:1 early 584:21 690:7 725:18 786:22 823:10 828:7 earn 531:13 535:12 841:8 901:19 904:2 913:14 934:7,13 960:7 986:18 earning 684:4 902:11,13 902:20 906:3 912:3,10 912:19 913:19 914:5 916:5 earnings 1010:7 Earth 853:3 easier 575:9 637:6 652:4 652:21 749:11,13 752:1</p>	<p>786:2 864:16 easily 694:21 815:12 east 565:11 576:20 604:7 604:8 622:13 627:5,6,7 627:8,13 654:5 656:17 849:1 850:10,14 855:22 856:16 857:1 878:19 1005:6 eastern 521:3 604:3 621:1 720:13 731:18 781:1 803:5 840:3 869:14 970:2 977:16 1008:7 easy 613:19 736:12 775:13,17 882:21 echo 787:21 echoing 709:2 Econ 722:16 economic 558:3 597:14 640:18 667:7,14 674:10 686:18 690:9 695:4 748:11,21 780:11 816:20 852:14 900:21 902:2,13 904:16 905:12 909:6,9 923:8 936:8 1019:16 economics 661:20 669:20 672:2,7 681:12 684:10 686:2 689:20 697:18 701:8 703:20 704:8 750:7 818:5 897:8 901:22 economies 683:4 689:5 690:3 692:20 economist 543:17 739:7 751:18 880:12 896:18 896:21 901:3 904:16 920:9 934:15 937:18 961:1 963:20 economists 751:15 842:18 902:13 911:12 914:2 economy 602:13 693:14 1004:21 ECP 764:14 933:16 935:6 ECPR 911:3 924:8,10,11 924:20 925:6,12,22 926:10,14,16,21 930:13 930:13 931:11,13 934:4 934:9 961:18,20 962:3 edge 661:16 1011:9 editor 722:10,16 educate 768:10 education 579:21 678:11 821:5 effect 566:9 673:11,17</p>	<p>740:10 765:22 828:19 843:17 849:8 882:15 903:13,19,22 997:12,14 effective 632:9 685:1 797:19 798:17 801:8 950:21 951:7 979:12 effectively 695:14 790:14 798:5 926:1 effects 543:19,20 566:21 567:2,7 620:21 671:1 674:15 742:13 787:9 791:13 882:11 905:10 912:6 972:20 978:5 995:18 efficiencies 592:6 593:1 600:1,6 625:7 744:22 efficiency 623:7 659:15 659:16 981:4 1006:19 1007:10,14,19 1009:1 1009:12 1014:14 1017:2 efficient 593:3 620:9 668:13 670:4 760:6 777:20,22 790:6 801:7 924:7 955:4 975:1 979:22 994:9 999:7,8 1014:12 efficiently 538:12 758:5 929:12 effort 546:19 547:2 609:10 615:15 654:22 657:17 702:5 798:22 850:15 868:21 949:11 975:14 1021:4,5 efforts 593:1 972:17 977:11 1003:2 egregious 564:21 940:11 eight 526:17 695:17 793:5 either 540:6,16 556:8 558:8 566:3 572:2 579:11 589:14 590:3 613:19 626:13 634:4 661:1 677:16 682:16 684:5 685:19 687:21 703:16,17 708:2,9 719:8 734:16 754:12 805:8 810:8,14 842:19 855:22 867:12 873:7 919:5 elasticity 747:5 748:13 749:8,15 750:3,12,13 750:22 elbow 803:9 element 745:6 elements 647:10 940:2</p>
---	--	---	---

<p>947:15 948:2 elephant 522:5 elevated 661:18 elevates 841:11 elevator 574:10,11 584:8 753:12 elevators 578:5,6 588:17 eligibility 866:1 eligible 578:1 596:1 703:3 705:11 706:11 708:12 772:16 eliminate 748:21 920:17 eliminated 763:1 764:6 764:10 787:6 eliminating 524:9 694:2 717:15 Elliot 521:11 Elliot 521:20,22 522:2,5 533:3 535:15 539:3 542:21 543:2,15 559:4 561:8 563:13 566:7 embargo 983:9 embargoes 982:15 embodied 690:10 embody 924:6 emerged 1008:3 emergency 948:16 965:21 966:2,8 967:1 968:2 emerging 582:7 821:10 emissions 825:22 1005:22 1006:9 emit 825:17 emotional 761:20 emotions 649:22 760:2 emphasis 995:4 emphasize 964:8 1020:22 emphasizing 954:22 1009:5 empirical 842:14 1000:12 employee 536:2 employees 536:10,12,13 536:15,16 615:10 689:4 739:9 788:18 792:5,9 792:11 794:13,14 972:19 974:10,12 1020:11 employment 535:20 616:1 678:12 955:20 employs 666:19 empty 792:17 796:4 enable 573:9 674:22 1012:20 enabled 543:10 enabler 985:15 enact 611:22 737:4</p>	<p>753:19 encompass 576:14 610:11 encountered 989:9 encourage 543:11 579:3 579:22 589:13 595:13 609:11 642:22 766:3 910:15 911:2,3 924:21 925:13 964:12 970:6 985:17 999:4,6 1001:8 1005:7 1012:11 1022:15,15,16,16 encouraged 528:18 573:17 808:16 encourages 790:6 925:18 1000:20 1001:3 encouraging 581:5 998:17 1017:22 1021:19 endeavors 828:17 endorsement 921:16,19 ends 611:9 703:3,11 endure 537:22 energy 619:12 engage 559:10 838:12 841:7 867:6 999:17 1003:2 engaged 589:9 602:11 882:18 940:10 engagement 643:15 engaging 635:11 795:22 engine 536:7,12,15 engineering 678:11 971:19 974:12 engines 565:14 English 659:17 676:12 enjoy 681:2 698:13 enlighten 541:1 enlightened 784:3 811:10 enlightening 541:14 583:3 756:19 785:12 812:18 enormous 900:9 ensure 530:13 593:3 607:17 609:14 621:14 696:10 826:1 925:1,22 928:17 ensured 695:17 ensures 925:2 926:10,14 ensuring 596:5 674:21 821:21 925:7 enter 930:6 994:9 entered 566:1 1010:11 Entergy 943:1 955:2 entering 633:13 Enterprises 523:4</p>	<p>entertain 654:18 enthusiasm 698:16 entice 693:6 entire 520:13 524:4 525:6 563:19 564:13 599:7 601:13 656:11 667:5 682:16 841:15 934:8 939:3 980:20 entirely 841:16 933:4 935:11,17 entirety 690:17 entitled 957:18 entitlement 755:13 entity 672:8 676:22 entrant 934:1 entrepreneurial 691:2 692:14 698:14,16 entrepreneurs 690:11 envelope 662:7 environment 530:14 660:2 670:22 935:21,22 1017:20 environmental 594:7 600:1 1010:16 environmentally 671:5 693:1 EP 518:6 519:4 669:12 EPA 825:16 EPA's 1021:4 episode 768:21 equal 567:7 624:14 647:19 679:7 731:3 818:20,22 990:17 equally 765:17 equation 569:15 1010:6 equipment 553:15 620:8 758:17 775:12 796:21 975:12 979:2 equivalent 652:5 746:4 747:22 755:9 eroded 683:12 erratic 526:19 Escalation 605:3 908:5 909:14 escaped 630:11 especially 572:11 574:16 574:19 577:6 585:4 603:19 606:20 608:8 613:3 619:6 624:1 682:22 742:5 796:21 828:11 831:12 844:15 888:8 913:10 948:8 965:20 975:16 986:2 988:10 990:9 992:16 essential 601:10 602:12 619:8</p>	<p>essentially 524:3 568:9 570:20 571:20 573:12 573:20 577:16 583:13 585:20 717:22 723:19 738:17,18 774:5 848:22 996:1 establish 640:8 759:11 760:20 765:6 942:5,6 942:16 established 688:20 765:20 923:7 926:21 establishing 566:3 esteemed 521:10 689:16 estimate 559:6 581:14 732:2 747:19 estimated 824:13 980:13 estimates 732:7 825:17 estimating 748:12 749:8 et 660:3 742:10 746:6,6 ethanol 689:8 875:22 ethic 698:14 Europe 601:8 604:4,8,12 788:10 834:11 evaluate 639:9 912:8 913:8 1012:4,9 evening 605:10 969:20 971:9,11,12 984:3 999:12 event 587:18 eventual 823:17 eventually 652:9 822:22 ever-increasing 568:17 everybody 521:8,16 548:12 562:8 642:22 643:11 649:4 663:20 665:10 720:12 721:2 767:8 785:18 840:5 867:3 884:17 891:6 895:12 896:15 938:9 947:5 956:15 964:1 969:20 996:5 1024:5,13 everybody's 678:7 everyone's 938:11 evidence 547:6 638:13 639:13 645:18 669:14 945:5 962:16 995:22 1000:12,16,22 1008:22 1021:6 evidenced 791:21 evident 527:17 evolved 1010:2 ex 541:12 559:10 589:15 598:3 964:15 971:3 994:11 1023:19 exacerbate 610:16 842:8 982:13</p>
---	---	---	--

<p>exacerbated 558:5 613:7 620:15 633:17 exacerbates 588:6 exact 538:22 941:14 1015:4 exactly 521:3 543:16 577:9 627:12,15 631:2 706:13 742:2,2 745:12 840:1 852:15 887:3 908:21 912:3 947:8 964:18 exaggerated 761:6 examination 677:2 848:1 examine 705:1 746:1 examining 579:11 example 525:2 622:11 632:7 635:2 646:18 647:14 657:1 660:11 676:20 691:13 694:17 711:22 719:6 724:19 739:14 741:16 742:1 747:17 749:5 754:4 759:19 760:5,10 762:8 768:1 778:2 834:9 848:8 865:5 876:20 919:1 931:16,22 953:7 964:8 976:2 977:13 988:19 990:19 1012:2,9 1015:4 1020:8 examples 524:21 527:17 544:11 558:8 590:18 598:1,4 601:4,7 603:21 603:22 684:9 692:15 695:21 759:15 794:3 797:12 846:10 853:1 899:2,2 985:9 1002:3 1003:3 1004:13 1008:20 exceed 941:7 1010:9 exceeding 958:13 excellent 575:18 737:21 740:20 745:21 754:14 1023:10 exception 769:5 791:22 exceptionally 725:13 exceptions 704:4 excess 913:14 957:16 984:15 1007:17 excessive 797:14 906:3 exchange 788:9 814:12 881:8 931:17,19 1012:20 exchanging 930:21 excited 1018:20 exclude 671:13,16 686:16 696:16</p>	<p>excluded 684:20 702:17 705:13,16 706:20 exclusion 676:3 703:19 704:11 705:5 707:6,12 exclusive 543:8 1013:19 exclusively 633:2 676:10 677:13 698:2 Excursion 688:22 excuse 634:21 771:12 execute 981:5 executed 848:22 executive 688:12 843:4 971:15 1010:4 executives 761:16 793:16 exemption 624:5,10 exercise 662:6 909:11 943:11 exercised 790:17 exercises 914:3 exercising 890:19,21 exhibits 994:8 exist 584:6 851:5 874:6 existed 741:11 742:20 existential 699:10 existing 542:10 624:4 669:6 671:15 697:8 711:11 715:11,14 718:12 764:19 765:3 772:18 776:6 845:2 846:16,17 847:1,2 848:1,4,9 860:7 879:16 894:8 913:10 921:3 955:1 977:2 987:12 exists 674:12 837:8 848:10 exorbitantly 606:1 expand 1001:9 1006:13 expanded 579:10 623:9 624:15 897:14 expanding 618:6 619:21 1018:17 expands 985:22 expanses 575:7 576:18 expansive 620:7 expect 553:2 576:12 578:14 621:12 636:18 718:7 863:17,20 870:6 870:12 894:22 989:19 991:22 1018:5 expectation 830:14 852:9 880:8,10 1013:17 expected 621:21 742:1 815:18 823:20 852:21 966:14 983:15 986:3 990:1,4,6,11 991:10 1014:4,21</p>	<p>expecting 598:10 870:20 expects 692:7 expeditious 643:3 766:4 expenditures 686:14 825:8 828:21 expense 556:7 781:12 792:8,20 793:9 expensive 820:2 986:5 experience 522:12 524:10 540:12,21 544:15 624:8 625:15 694:13 722:14 723:4,7 767:11 779:11 786:19 790:11 794:3 868:8 980:19 983:10 984:19 992:7 experienced 620:11,21 621:4 759:16 792:14 877:5 881:3 982:17,19 983:2 998:5 experiences 787:13 812:2 experiencing 599:8,9 775:10 791:4 823:10 938:13 experiment 723:9 728:2 733:9 experimenting 836:18 expert 538:7 642:19 907:7 918:7 929:8 expertise 637:13 691:15 821:5 experts 708:8 931:12 expired 519:14 997:16 explain 583:13 618:5 731:8 805:20 842:6,13 842:18 852:15 889:9 925:4 972:3 984:9 explained 624:7 638:11 853:9 1004:6 explaining 802:19 explanation 583:6 explicit 783:22 exploiting 733:3 exploration 968:18 explore 811:2 851:15 869:3 939:22 1001:19 explored 720:2 exploring 590:2 842:21 1017:11 exponentially 570:16 export 568:7,19 569:4,8 569:17 570:5,7 571:12 572:2,5 573:12 580:17 581:5 585:13,16 723:21 exporters 586:17 exports 569:13,17,19 570:14 572:8 573:13</p>	<p>574:22 581:10,18,20 582:1 exposed 984:13 express 1018:21 expressed 524:17 663:11 821:11 998:16,16 expressly 671:13 extant 641:17 extend 728:14 extended 725:6 727:13 727:16,16,22 729:8,22 737:22 997:11,13,15 extending 593:13 738:9 extends 762:1 extension 696:12 extensions 1011:9 extensive 573:10 669:13 669:18 923:8,11 extensively 576:10 790:10 extent 552:14 586:1 646:9 660:16 780:7 784:8 819:3 830:5 924:1 999:22 1000:3,5 1000:20 externalities 865:9 904:17 905:13,15,21 910:13,22 917:22 920:15 externality 918:17,20 919:6,11 extra 542:1 549:6 550:14 556:21 564:12 628:3,3 670:6 675:4,10 708:7 711:1,1,1 718:17 755:11 776:3 804:5,9 817:5 827:6 857:9 860:3,20 extraction 757:14 extraordinarily 663:18 842:13 extreme 576:13 607:2 844:15 920:17 973:12 extremely 787:3 799:15 816:10 920:8 eyesight 525:9</p> <hr/> <p style="text-align: center;">F</p> <hr/> <p>fabulous 1024:11 face 529:15,15 669:18 683:10 684:4 826:14 827:13,16 832:5 958:11 1008:2 faced 794:3 faces 684:2 685:22 991:17</p>
--	--	---	---

<p>facie 638:13 facilitate 831:15 925:19 facilities 534:13 544:16 544:18 547:12 548:7,20 558:19 570:5 572:2 573:12 574:18 575:20 575:21 576:1 589:21 592:2 602:15 608:1 618:14,16,17,22 619:3 621:3,18,20 622:3 623:22 624:8,21 631:10 632:11 633:20 634:3,5 634:21 636:11,15 649:7 676:8,9 693:16 702:18 767:18 781:11 789:1,12 806:10 854:9 978:19 985:7 facility 525:2,5,10 545:5 625:2,4,11 627:2 631:19 636:17 639:12 639:12 649:18 651:14 651:18 676:13 677:3,6 677:8,9 682:22 692:3 693:8,11,21,22 694:7 696:7 702:16 764:2 804:19,21 847:5 850:20 886:18 891:9 975:12 988:12 facing 613:3 672:20 874:17 fact 533:10 552:16,22 570:1 594:5 600:5 615:4 642:2 658:11 696:12 713:15 734:14 746:1 752:22 764:4 799:17 828:3 850:4,8 862:1,15 886:7 895:13 939:4 958:8 967:8 1006:22 factor 554:21,22 556:1 factored 745:17 factoring 744:21 745:1 748:8 factors 544:4 569:11,20 585:11 638:18 683:1 716:5 845:6,7 978:14 990:10,13 factory 591:4 facts 532:19 541:8 545:7 545:14,21 560:14 561:19 564:15 579:19 645:17 695:21 868:13 956:18 fail 674:14 failed 963:20 1021:4,5 failure 600:13,14</p>	<p>failures 527:6 548:3,4 549:5 762:21 fair 567:4,8 608:18 612:9 612:20 630:8 657:18 664:7 705:3 707:21 709:7,8 711:8,14,18,20 712:13 714:17,18 718:11 727:12 774:1 781:6 790:6 802:7 805:18 817:20 859:5,19 867:18 869:4,9 897:3 897:17 930:4 942:4 967:17 fairer 607:13 fairly 568:3 679:5 834:14 851:2 881:11 1020:2 fall 555:3 593:16 605:3 621:6 632:12 874:2 1013:3 fallen 895:4 896:2 907:22 falling 949:21 fallout 558:3,10 familiar 559:8 829:6 932:19 938:9 families 1010:18 family 616:19 692:20 family-run 688:12 famine 792:16 fantastic 1024:8 far 531:17 560:3 570:5 613:22 635:7 673:5 738:18 746:7,15 754:18 756:6 764:5 769:22 806:11 818:20 819:22 850:7 858:5,20 876:13 910:20 916:21 932:7 959:4 1005:11,14 1007:8 far-reaching 674:15 farmers 568:6 574:9 727:12 farms 523:4 574:16 691:16 fashion 994:15 fast 638:10 788:14 856:20 897:5 909:8 966:13 967:12 975:1 faster 605:18 623:11 638:16 830:18 907:21 908:8 909:15 910:7 1014:13 fastest 975:7 father 663:21 664:2 688:20 fault 880:11,17 936:6,14 936:15 960:11,12,18,18</p>	<p>961:12,13 962:8 fault- 940:7 fault-based 937:15 940:21 963:5 favor 646:9,11 947:20,21 963:13 966:20 favorable 571:10,15 963:8 1022:3 favoring 797:12 favorite 554:10 FDA's 1021:5 Fe 766:15 972:1 fear 606:19 608:13 611:1 feasibility 644:14 feasible 619:15 655:10 701:5 804:1 886:15,17 feast 792:16 feature 867:8 930:22 992:20 featured 826:12 February 823:11 908:5 973:15 federal 675:9 893:15 1021:1 federally 846:20 986:9 fee 660:14 685:19 702:3 930:11 931:4 935:12 949:5 960:1 feed 694:19 695:5 771:21 feeds 929:16 937:11 feedstock 602:17 612:12 feel 541:22 632:5 668:12 783:16 803:21 847:10 919:17 965:4 1021:10 feeling 602:21 feels 943:14 fees 606:1 764:15,15,18 845:20 927:19,21 930:2 931:3,20 932:1,14,18 933:2,8 935:5,9,19,22 959:9 feet 692:3 fell 530:15 fellow 567:20 590:20 591:17 687:19 felt 846:9 863:19 ferrous 618:3,8 619:6,7 624:5,14 Fertilizer 1022:4 fewer 574:19 588:5 718:16,16 1005:17 1016:19 Fiat 693:6 Fiat's 693:11 fibers 788:12 fictitious 557:8</p>	<p>field 569:8 605:21 607:10 607:16 926:1,9 fields 582:13 fiercely 1005:6 FIFE 597:8 fight 668:6 674:19 fighting 649:20 figure 562:9 613:18 644:3,11 769:19 771:7 815:4 832:7 850:5 867:16 869:1,2 871:16 884:18 928:22 933:19 969:16 figuring 870:4 file 871:11 filed 977:22 filing 759:20 762:20 filings 757:19 764:12 filled 849:21 filling 554:22 849:11 filter 618:12 final 611:21 612:4 614:16 616:17 621:11 696:21 700:14,19 820:17 840:7 908:1 909:12 999:10 finalize 1001:4 Finalizing 1001:11 finally 624:2 842:16 905:18 925:21 981:11 1001:17 finance 1003:20 financial 530:13 553:19 555:12 558:9 673:11 682:3 686:8,12 687:1 697:16 906:8 925:14,18 928:10 1004:1 financially 687:4 financials 800:8 1015:9 find 538:22 553:22 556:12 559:9 563:20 641:20 645:16 673:22 675:10 765:16 789:19 796:21 844:11 875:21 875:22 916:2 1000:16 1002:19 finding 633:11 726:1 799:19 924:4 finds 908:6,7 fine 555:4 632:3 650:7 705:5 776:16 902:22 921:17 994:13 fined 555:12 fingers 884:4 finish 530:11 666:2 771:6 885:22 911:11 969:16 970:13 1003:12</p>
--	--	---	---

<p>finished 617:4 693:8 694:3 firm 951:5 first 521:6 529:17 543:4 546:4,5,7,19 557:5,11 562:5 569:17 572:12 574:16 575:3 587:16,19 598:13 607:14 618:3 620:21 639:16 651:17 668:4 676:21 691:6 699:8 717:8 726:3 729:21 740:16,18 773:22 788:1,2 790:17 795:8 813:12 825:7 841:5,11 852:5 880:8 882:1 894:16 897:15 899:8 900:8 901:6,18 908:21,22 915:1 916:4 924:20 941:15 945:2 948:2 958:17 972:11 981:18 989:15 995:1 999:21 1004:18 1013:8 1015:8 1019:15 first/last 547:9,12 549:21 636:2 741:21 firsthand 786:19 823:10 Fisher 575:18 fit 580:2 fits 616:13 831:2 five 524:5 537:14 549:11 549:16 563:1 564:6 598:15 613:7 667:4 688:21 706:1 716:3 768:17 783:1 792:4 872:21 970:19 993:16 999:14 1008:14 five-member 739:8 fix 716:15 867:12 885:21 951:20 996:13 1007:9 fixed 672:14 673:13 683:6,18 684:1,6 1016:20 flag 582:11 flat 621:14 685:19 694:18 694:21 907:19 1005:1 1007:21 flattered 666:7 flawed 1022:10 fled 664:4 770:18 fleet 553:17 792:22 793:3 793:8 978:16,17 fleets 554:2 flesh 872:20 1003:3 fleshed 645:7 fleshing 947:18 flexibility 592:13 690:10</p>	<p>691:7 736:15 flexible 735:6,7,12 736:9 Flint 693:21 696:6,13 flip 622:7 834:17 888:17 941:1 flipped 756:8 floated 710:5 floodgate 759:10 floods 985:11 floor 687:17 786:5 1003:17 Florida 525:3 565:11 766:19 781:1 842:17 922:14 flow 906:22 1006:22 1013:13 1014:4,21 flowing 581:20 791:3 904:3 flows 979:10 983:16 990:8 1014:6 fluid 668:18 876:10 fluidity 821:13 878:2 972:8 979:8 987:13 992:13 1001:15 1022:12 focus 643:20 690:22 691:1 723:1 759:13 780:11 781:17 790:8 797:5 821:7,17 832:12 852:21 887:5 897:7,13 899:5 951:17 1010:4 1015:17 1019:11 focused 596:18 643:19 661:6 697:15 782:7 818:19 822:7 828:9 897:14 908:20 996:18 1007:17,22 1009:16 focusing 678:17 805:5 1004:18 folks 519:5 529:19 533:4 545:1 570:19 579:22 580:2,9 586:9 588:21 591:10 601:16 610:4 612:9,19 613:14,17 616:10 665:19 720:12 721:4 731:11 739:11 740:2 746:1 751:13 755:3 781:16 816:18 896:11 folks' 562:15 follow 554:14 580:6 583:12 711:7 741:14 746:16 802:18 822:17 859:18 896:7 1017:19 follow-up 552:10 564:19 565:20 754:8 812:19</p>	<p>820:12 952:13 followed 842:10 973:12 follower 823:19 following 678:19 688:15 707:16 721:4 821:1 822:21 899:8 follows 987:4 food 521:9 522:3,21 523:10,12 561:5 568:10 591:4,7,7 601:11 Foods 523:2,3,7 foolish 958:4 Footie 1009:7 footprint 788:9 force 535:9 549:15 607:19 670:19 827:19 845:9 940:12 966:1 992:8 1011:17 1020:16 forced 554:10 572:21 668:18 669:15,22,22 672:9 673:22 689:18 696:22 697:12,17,20 761:20 797:5 840:22 847:9,15 922:20 923:2 924:18 925:11,15 926:18 933:18 941:9 972:4,6 974:7 975:4 977:17,19 978:4,10,21 979:9,16,19,20 980:2,6 980:7,8,11,19 981:1,10 983:12,18 984:7,13,17 987:18,21 991:4,14 992:5,13,21 995:5,9 996:1 998:20 1001:9,13 1020:12 forces 697:15 912:4 913:12 1005:7 forcing 827:21 1018:2 forecast 987:1 forecasts 979:14 990:7 forefront 787:11 forestry 738:10 forfeits 924:17 forgotten 939:2 form 524:2 536:4 547:9 670:21 762:21 792:9 925:9 formal 951:2 former 542:21 693:22 694:2 812:10 925:16 formerly 822:10 925:8 formula 747:16 formulate 868:18 formulation 874:10 forth 595:15 638:18 661:15 686:16 781:11</p>	<p>812:14 869:8 915:3 939:8 959:3 993:15 1005:6 fortunately 577:13 fortune 688:11 forum 663:10 722:11 964:10 965:9 forward 530:9 567:13 572:18,21 580:6 585:8 596:12 606:2 671:11 697:10 716:13 731:12 751:3 816:18 859:11 884:7,9 891:1 1023:21 foster 972:12 found 597:16 724:18 749:16 790:19,20 909:7 909:11 917:6 Foundation 721:9 820:18 821:3 829:7 Foundation's 826:3 founded 630:19 foundry 625:5 four 542:8 571:8 613:7 636:5 652:5 654:8 698:20 714:9 734:19 773:10,11 800:11 846:10 849:8 850:11 857:21 858:19 861:9 866:8 869:7 872:21 874:11 877:15 880:22 1005:19 1021:21 fourth 800:7 1020:19 FRA 718:4 frack 988:21 989:6,8,10 990:19 fragile 669:20 701:8 frame 536:16 879:1 967:13 framed 575:15 framework 547:18 589:16 637:21 638:1 938:5 945:14 962:6 frameworks 590:3 frankly 569:3 581:21 711:16 715:18 907:10 991:16 frankness 887:17 free 793:9 829:13,13 961:22 1006:22 freedoms 690:9 freely 744:11 freight 523:21 524:2 533:13 539:17 550:12 573:16 604:4,13 620:16 657:15 658:4,6 666:20 667:5 668:13 669:9</p>
---	--	---	--

<p>670:19 671:3,5 672:21 679:2 689:2,6,7 690:4 708:12 758:18 759:1 782:15,15,16 817:5,14 821:22 823:9,20 825:12 825:16 828:11 830:4 832:9 834:15 890:3 891:7 973:16 979:7 985:20 986:2 994:1 998:10 1001:7 1004:19 1005:10,14 1006:4,14 1009:2,8 1010:16 1019:15 1022:10 freights 791:10 frequency 550:2 551:14 622:1 frequently 520:8 663:11 668:2 fresh 851:9 911:15 friction 715:3 Friday 894:11 friendly 671:5 693:1 friends 530:17 591:11 634:11 712:21 front 713:3 788:1 808:6 852:1 931:12 945:18 949:14 964:19 971:2 fruition 537:22 942:11 frustrate 552:21 frustrating 634:16 662:10 884:6 frustration 607:2 663:11 713:15 714:6 frustrations 669:1 712:21 714:22 715:10 Fuchs 529:13 544:14 545:9 547:3,17 548:1 549:19 550:4,16 582:17 589:1,6 590:9 617:10 631:8,22 633:19 635:9 636:1,10,13 637:11 638:15,19,22 641:6 643:14 645:14 658:14 659:20 661:2,22 664:15 666:10 668:8 677:18 703:10 706:6,17 717:4 739:21 741:19 742:3,12 744:20 745:9,13 746:17 746:22 747:7 748:5,8 748:16,19 749:2,14,19 750:1,6,18 783:4 813:2 833:17 835:1 836:1 837:6,14 839:13 880:7 880:16 922:4 937:21 938:4 939:22 941:12 943:16,20 944:14,22</p>	<p>946:5,10 947:9 951:8 952:5,8 960:8,15 962:4 965:10 967:17 968:2 996:8 1003:1 1024:10 fuel 797:15 822:18 837:10 1006:8 fuel-efficient 1005:20 full 525:9 600:20 618:8 663:19 689:3 691:19 704:11 800:7 881:15 889:21 899:18 913:12 924:12,13 927:1 932:2 934:2,18,19 935:14 936:9 939:16 940:14,20 full-time 678:12 fully 553:15 671:19 797:2 822:11 823:13,18 931:21 932:7 976:16 1004:14 1007:22 function 519:20 575:10 575:12 930:14 functioning 898:21 907:16 912:9 913:13 functions 680:20 786:15 824:7 971:20 1011:6 fund 722:21 989:18 fundamental 574:5 905:12 960:5 1015:4 fundamentally 1011:1 funded 530:3 722:19 986:9 funds 904:1 funny 756:3 furnace 591:22 600:18 601:6 further 520:9 528:8,14 550:6 552:6 590:10 605:18,19 635:6,21 651:13 670:5 690:1 740:13 765:10 784:1 820:6 839:20 970:18 979:7 1012:1 Furthermore 686:3 future 608:5 662:3 773:18 832:16 833:11 845:18 974:8 987:19 988:9 990:8 1004:8 1008:16 1012:11 1018:20</p>	<p>gains 929:15 1007:10,14 1007:19 1010:9 1014:15 gallons 1006:8 gamble 1022:9 game 554:8 874:4 games 894:22 gap 1006:16 gaps 796:1 gas 954:3 1021:4 gases 534:6 619:12 gathered 1022:6 Gatik 839:6 GDP 1005:11 GE 691:17 692:2,3,6 general 523:2 603:21 604:22 617:21 659:22 704:5 770:11 832:19 901:11 999:13 generalized 943:3,5 generally 544:2,5 559:15 570:2 620:8 634:13 636:18 660:5 668:1 704:17 802:2 825:6 838:10 881:5 938:5 1007:11 generate 683:16 990:18 generating 1015:6 generation 688:12 generic 700:9 genesis 582:3 690:8 geniuses 868:21 gentleman 718:3 genuine 931:12 1017:16 geographic 586:19 679:10,15 681:18 907:10 910:18 943:21 geographically 569:4 geographies 610:1 geography 590:3 711:10 751:2 982:10 George 718:3 Georgia 526:13 617:21 618:22 619:1,2 621:3 633:1,9 653:1,11 656:7 656:9,12 657:3 Gerdau 633:10 653:1 getting 527:12 529:15 532:20 542:1 548:6 550:20 556:2,11 560:9 567:13 578:3 588:8 593:17 594:10 600:17 611:15 629:8 647:11 648:7 650:21 652:10 667:1 730:16 732:4 773:12 778:2 813:18</p>	<p>817:7 829:8 832:22 859:14 885:10 890:1 928:16 942:12 946:11 946:12,16 953:20 960:16 962:13 1007:13 giant 633:7 824:19 GIS 724:11 give 541:8 549:16 574:7 577:8 590:18 609:21 613:1 616:7 648:1 652:3 654:5 656:10 662:19 678:2 701:4 712:14 719:17 743:3 747:19 768:20 775:19 779:3 783:14 794:2 807:21 809:6 820:12 838:18 839:12 852:6 868:14 875:8 897:11 899:11,16 919:18 951:5 958:9 given 525:18 576:21 579:16 580:21 583:6 584:2 632:7 644:20 672:7 673:12 684:1,12 686:6,11 704:7 731:2 744:3 746:5 774:5 788:3 847:21 848:6 894:14 898:12,12 903:10 910:10 978:21 990:9 1001:8 gives 744:1 747:22 919:7 931:22 965:8 giving 600:20 606:6 643:13 919:9 970:11 glad 574:2 624:17 641:6 641:7 722:6 756:18 Gladiator 693:10 glass 521:12 590:14,17 590:22 591:1,3,6,13,13 591:18,18,22 592:3,8 593:22 594:6,7,21 597:10 598:7,13 599:21 600:12,17 612:12 750:12 gleaned 835:13 global 522:21 569:2 581:18 586:16 602:20 603:2,13 788:6,9 798:13 993:22 Globally 834:8 globe 985:8 go 531:8,17 532:19 543:1 546:18 549:6 550:6 554:3 560:1 561:19 564:17 583:21 595:9 596:16 605:17 607:12</p>
G			
<p>G 519:1 G&O 688:20 689:4 G3 523:3 Gainey 840:12 999:11,13 gaining 719:15</p>			

611:7 626:14 631:17 635:5,6,8 637:6 643:17 647:21 651:4,6 652:4,7 654:2,4,5,11,15 655:14 655:21 656:2 664:4 669:19 687:17 688:1 708:2 713:9 714:7 721:15,16 733:12 734:2 735:18 738:11 739:13 740:14 742:22 743:2,3 743:4 746:16 753:13,16 754:5,6 757:7 768:1 775:9 777:3 780:2 786:4 787:15 788:4 789:11 798:8 802:21 803:17 804:6 806:2 809:11 811:18 813:12 816:9 819:11 829:4 840:2 844:13 850:19,21 853:17 854:10,12 855:22,22 857:3,10 860:9,15 861:6 862:8 871:1 876:1 877:20 878:18 880:19 881:3 883:10 889:15 891:14 892:14 896:17 897:5 901:21 906:2 911:12 933:6 937:20 948:14,21 951:15 953:6 959:7 961:22 964:6 968:10 979:3 997:22 1006:16 1015:3 1016:3 1019:6 1023:5 goal 645:20 657:13,14,15 662:3 841:11 873:2 1002:13 1004:16 1006:12,12 1009:8 goals 643:21 923:18,19 932:15 998:15 1022:18 goes 560:21,22 580:16 612:12 631:16 633:4 656:16 662:15 805:9 810:17 827:12 849:13 856:14 862:1 870:4 876:3 882:12 1016:17 1016:17 going 519:4 521:7 531:1 532:16 536:2 541:11 548:17 553:18 555:10 555:11,15 558:13 561:12,14 562:17 563:15 579:7 583:9 585:7,9 586:1,3 591:11 593:16 596:12,15,20 600:16 601:6 612:16 613:19 623:17 626:4,12	633:8 634:17,20 635:20 636:6,6,7 637:10 638:7 638:22 639:8,10 640:1 640:13,13 643:19 650:4 652:17 654:22 656:1 660:18 664:9 678:1,4 684:5 701:3 704:1 707:2 708:14 709:21 710:2,16 716:1 718:1 719:22 722:18 723:1,6 724:13 726:19 731:11 734:7,16,20 735:5,16 735:18 736:3,6,7,16 737:5 741:2 743:18,20 746:11 747:8 750:11 751:17 752:1 753:17,18 774:11 779:2 780:12 782:17,18,19,22 784:19 787:15 788:4 789:11 799:15 802:22 803:9,17 804:8,16 805:12 806:6 806:7 810:18 816:6 817:4,19 827:19 828:13 831:8,13,17,18,21 832:15,17 833:7 834:17 834:17 835:15,17 836:17 837:3,5 850:9 850:11 852:6 854:10 855:17,18 856:10,16,20 856:22 857:1,2,2,3,18 858:3,11 859:1,2,7 861:6 863:1,7,11 867:4 867:6,12 869:7 870:11 870:16,21 871:7,9,11 871:13,18 872:12,21 873:1 875:7,17 877:20 879:11,12,16 882:16 883:11,17,18 884:2,6 884:17,21 885:16,21 888:14 889:9 891:16 894:15,17 895:10,16,18 895:20 896:17 897:4,5 897:13 900:19 901:4 903:1,1,15 904:12,14 905:8 908:7 910:14 911:4 916:20 917:4,5 928:8,9 931:14 932:11 933:14 936:14 937:10 937:12,18 940:11 941:3 946:4 949:6,8,10 953:13 954:6,13 957:2 957:21,22 958:1,5,22 969:16 970:1,2,6,16 971:10 994:3,17 995:17 995:19 996:2,6 998:12 998:13,20 1003:8	1012:7 1013:6,7 1018:13 1019:8 1023:18 gold 1005:8 Goldman 903:21 good 519:2 521:16,21,22 530:4 535:6 540:19 542:14,22 550:22 567:19 582:17 587:22 600:18 616:21,22 617:19 631:9 632:8 635:5,13 637:3 641:17 644:9 658:13 660:1 661:4 666:7,8,9 669:5 685:17,17 688:4,5 697:1 707:15 709:4,5,5 717:4 739:22 744:18 747:10 749:18 752:2 757:8,8 762:6 768:7,14 776:1 785:7 812:4 814:18 830:1 837:5 840:16 853:16 876:20 877:7 906:21 907:5 919:19 922:11 931:16 948:8 952:8 967:2 968:9 969:14,19 971:9 971:10,10,12 984:3 986:16 987:15,15 993:17 995:6 996:12 998:17,19 999:12 1009:11 goods 553:1 562:18 609:5 667:1 788:14 890:13 Google 822:10 853:3 gosh 632:13 gotten 574:17,17,18 629:20,22 635:12 714:10 784:13 936:17 government 568:10 724:21 726:20 727:6 729:4 738:8 GPI 593:13 grad 722:21 728:18 grade 661:13 836:16 837:10 gradually 824:7 grain 571:1,2 573:13 695:1,3,17 723:18,18 724:1 725:3,3,11,13 726:5,11,14 727:9,12 730:12 731:6,7,7,14,16 732:1 734:9 737:19 738:2,4 739:2 742:22 750:11 752:5,21 753:9 753:11 754:1,2,3 755:6 755:7,12,16,21 881:9	987:2 997:12 998:1,2 grains 723:19 grant 883:18 granted 667:17 752:6 796:11 grants 675:9 grapple 557:12 grasp 532:6 gray 1004:20 great 539:19 540:18 542:4 544:14 548:10 554:19 570:5 577:16 630:21 677:20 688:11 690:22 696:10 701:15 703:6 717:19 720:9 741:10 742:19 751:6 775:10 829:6 833:1 835:16 838:21 847:10 896:16 935:7 1005:2 1006:1 greater 619:22 672:5 686:22 714:14 761:9,18 914:5 990:2 greatly 556:2 621:6 643:15 681:2 688:6 761:6 823:6 901:18 933:2 942:14 959:2 1005:15 green 618:12 1008:10,11 greenfields 789:6 greenhouse 534:6 619:12 1021:4 Greissing 521:14 602:3,5 602:8 610:2,19 611:10 612:3,6,22 613:12 614:4,12 615:7 616:3 616:14 grew 663:21 664:5 gridlock 562:17 grills 531:2 grinding 594:13 Grist 771:21 grit 973:21 grocery 531:9 gross 987:18 ground 610:4 693:9 829:11 1002:20 grounded 976:17 grounds 955:5 957:8 group 558:18 570:21 582:4 584:10 664:22 688:7 716:14 824:20 975:3 group's 555:22 groups 532:3 568:13 823:8 942:1,6 1002:19
--	--	--	--

<p>grow 586:4 675:2 758:13 781:17 782:3 801:22 885:8,8,9,11 946:14 974:15 975:14 986:15 1004:17,19 1007:9 growers 575:16 578:4 580:4 585:9 growing 570:1 571:1,9,18 573:9 586:3 671:6 693:18 885:16 907:21 910:7 975:7,10 986:12 1008:1 grown 575:7 grows 901:7,7,7 growth 528:19 693:2 781:17 782:15 819:14 819:14 974:5 984:10 985:18 1004:5,15,21 1005:12 1007:12,16 1008:17 1009:17 1010:4,6 1011:1,7,20 1015:1 1017:12,14,22 1018:14 1022:15 guarantee 795:18 891:16 guaranteed 1013:1 guess 552:10,15,20 556:19 565:4 586:7 638:5 641:19 659:15 707:16 716:6 718:15 730:8,12 749:19 754:7 826:8 831:1 852:5 854:3 883:4 900:17 929:9 guessing 785:22 868:12 guidance 535:6 933:10 951:5 guide 950:22 guidelines 792:7 guiding 689:12 Gulf 577:17 688:8 guys 532:20 555:6 558:22 563:12 565:5 597:13,18 741:5 746:16 753:13 756:1 815:4,5,18 881:20 885:7,14 890:22 903:13 905:3 906:1,12 914:18 951:18 952:6 993:12</p>	<p>809:1,8,13 820:15 Haksteen 521:18 522:11 529:8,11 538:20 539:4 539:13,20 540:5 541:4 542:17,21 544:20 546:1 547:16,22 548:18 550:3 550:6 551:22 553:6 554:18 555:19 556:6,22 557:3,17 561:21 563:15 564:5 565:4 566:6,15 567:3,5,9,16 half 562:4 569:17 667:10 682:7 708:1 720:11 731:15 769:11,17 773:9 773:11,13 774:3 816:10 823:3 837:4 869:14 908:1 1008:4 hallmarks 690:21 halt 594:13 Hamann 759:3 hammered 605:13 934:15 hand 531:9,10 532:18 535:14 580:13 620:22 626:16 630:13 675:7 700:13,18 710:18 711:8 712:7,10 718:11 937:9 949:2 959:6 971:6 979:20 988:12 handcars 804:2 handing 710:21 869:18 handle 574:21 669:7 671:6 672:16 683:14,20 689:6 695:3 722:1 782:11 784:12 847:5 869:7 886:18 888:7 954:11 handled 679:21 680:15 682:9,20 846:16 handles 680:5,10 handling 570:18 571:8 573:13 670:14 717:22 718:17 723:18 725:11 731:7 784:10 859:22 878:11 handlings 1014:12 handoff 711:1 712:18 714:11 862:6 979:1 980:1 hands 554:10,18 555:13 555:19 654:1 711:6 hanging 649:3 happen 551:12 569:19 699:9 704:2 732:5 768:22 780:19 872:17 873:9,22 883:19 891:6 895:20 908:15 950:19</p>	<p>958:1 970:17 1020:14 happened 562:9 580:21 600:13 601:3 725:10 726:3 732:17 738:3 743:7 769:2 770:4 908:21 993:22 happening 562:22 613:15 710:8 781:20 812:16 828:12 875:13 965:7 happens 626:17 647:2 725:12 742:10 785:11 813:6 847:4 901:22 907:2 929:9 happily 840:19 happy 590:18 594:20 596:12 666:1 677:15 769:1 838:19 851:6 966:22 1003:2 hard 533:1 549:14 580:1 604:18 628:17 714:7 733:17 845:4 887:19 895:5 970:2 993:7 1024:5 harder 544:6 579:12 611:16 674:20 847:20 983:20 991:12 harm 669:4 670:22 898:7 910:12 919:13 960:18 962:8 963:5 967:2 980:8 harm's 674:7 harmed 608:15 696:20 960:20 harmful 904:7 harms 873:7 898:4,8,13 898:13,17 900:19,21 901:15,15 910:11 992:13 1002:4 Harrison 725:17 874:2 harvest 726:2 hat 889:10 hate 546:20 744:6 Hattiesburg 771:13,13 771:14,19 772:6,19 775:20 776:18 777:13 779:4 875:17,18,19 876:3 haul 589:3 623:1 672:13 673:1 679:12 680:2,3,9 680:21 681:1 685:3 689:2 707:3 710:16 733:20 748:6 806:5 822:12 824:21 871:3 1006:4 1016:4 1017:21 hauling 684:22 689:7 hauls 570:18 666:20</p>	<p>havoc 840:20 head 532:22 534:12 546:13 572:13,13 611:12 633:6 927:19 967:19 headed 633:22 668:2 headquarter 766:12 777:7 headquartered 522:22 788:5 headquarters 757:14 headwinds 603:14 health 523:11 530:13 581:7 healthy 530:3 535:3 hear 520:20,22 533:11 544:12 545:11 551:16 558:10 635:13 641:7,7 641:10 643:14 644:22 661:2 662:11 664:12 665:3 714:19,21 718:2 741:9 754:21 780:13 784:10 785:2 816:19 827:20 837:6,7 843:21 866:21 872:6,9 895:2 895:11 896:15 912:14 937:22 948:10 958:22 959:4 968:4 969:21 995:4 1023:15 heard 537:3 540:15 552:7 557:14 566:18 577:6 581:2 582:10 588:20 603:8 615:8 639:15 640:17,22 641:19 647:8 679:6 689:16 707:7 712:8 722:3 752:11 773:20 781:15 784:5 790:13 799:17 805:2 809:17 838:13 845:13 845:16 848:14 861:20 862:19 863:3 875:3 876:16 885:3 887:10 888:14 897:17 904:11 911:20 917:12,13,20 941:19 942:1 947:10 949:3 953:7 956:11,16 961:9 962:7 994:21 1000:3 1010:22 1011:13 1015:14 1019:18 hearing 518:5,7 519:22 520:2,11,13,15 522:7 529:18,21 530:1 531:22 535:18 542:8 549:19 571:13 579:9 586:10 602:7 610:21 613:22</p>
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H

617:17 618:4 624:17 647:14 657:13 698:14 698:18 709:15 720:14 737:2 748:20 751:15 768:8 770:9 772:12 784:7 787:3,12 811:22 820:21 832:12 840:6 843:19 872:6 876:22 897:3 956:3 962:11 985:1 998:16 999:16 1000:3 1002:2 1023:12 1023:17 1024:2,17 hearings 519:3 663:13 768:9 820:8 938:15 hearings@stb.gov 520:5 heart 950:7 1021:9 heartened 641:10 heartland 695:18 heavily 592:6 672:16 heavily 569:16 680:13 989:1 1005:2 heavy 619:14 816:10 822:9 823:18 heck 652:1 Hedlund 542:18,20 544:10 580:14,20 582:10 630:12,14 631:5 666:10 712:8 713:5 813:4 829:3,5 832:21 833:5,13 834:4 886:2 887:16 947:4 952:10 959:7 heeded 688:16 Heinz 523:2 525:2,9,15 559:9 564:21 565:1,10 566:13 held 893:13 938:15 971:14 hell 896:4 hello 830:21 help 527:20 535:5,7 587:18 596:20 615:19 622:4 623:18 668:19 671:18 674:4 715:9 729:9 731:13 769:16 784:17 785:7 796:1 799:9 830:17 842:1 874:6 900:18,20 901:12 928:3 931:8 950:22 974:12 975:15,22 976:15 986:15 1003:22 1004:4 helped 525:1 693:14 722:21 977:11 985:14 1010:3 helpful 539:12 553:4	563:22 590:13 648:20 701:21 708:18 737:10 779:10 853:15 884:7 922:1 helping 694:7 1005:21 helps 681:2 755:6 779:11 791:10 hemisphere 582:2 587:3 hemorrhaging 533:5 Henry 521:12 567:18,19 567:21 574:13 575:5,17 577:4 578:7,14,21 580:5,18 581:12 582:15 583:8,21 584:16 585:11 586:15 587:22 589:5 590:7 736:5 755:3 Herman 521:10,17 522:11 529:8 538:15 540:1 542:16 544:15 549:20 554:13 561:9,16 565:19 567:13 591:15 598:19 639:15 641:16 hesitant 711:15 1018:14 hey 545:19 551:2 634:17 655:1 701:2 710:11 743:5 753:13,16 883:9 883:17 885:16 889:21 946:12 949:17 Hi 820:19 high 594:3 602:22 606:1 654:16 672:18 673:12 680:20 683:5,18 757:2 757:12 762:21 796:19 803:20,22 804:11,12,13 804:13,19 841:6 953:13 956:22 964:9 998:7 1001:7 high-density 991:1 high-quality 924:22 925:13,20 high-volume 603:4 higher 537:15 538:1 570:17 592:18 607:19 611:3 612:15,15,17,17 661:18 672:13 706:2 796:20 797:1 817:14 841:2 933:5 990:18,18 990:22 1016:20 1019:12 highest 833:9,10 highlight 826:18 highlighted 826:18 highlighting 828:18 highlights 1019:9 highly 624:11 682:15 685:11 687:8,11 791:2	823:17 830:3,10 highway 534:5 656:22 658:12 661:6 694:3 775:4 973:4 977:13,14 986:9 1006:7 1010:17 highways 657:16 670:20 798:17 822:13 830:4 833:8 974:20 1005:18 1015:2 1017:18 1022:17 hijacked 529:20 hinder 980:4 981:4 hindering 752:20 hire 974:11 hired 1011:2 hires 1011:4 hiring 536:1,21 974:10 historic 609:7 615:11 historical 727:16 799:21 historically 627:8 647:18 726:17 727:18 797:14 history 538:9 938:9 939:3 hit 611:15 629:21 794:12 817:1 915:21 1019:8 hitting 604:18 Hmm 770:2 hold 793:19 847:6 850:1 850:17 857:22,22 861:11 872:7 holding 602:7 618:4 624:17 688:21 787:11 793:13 820:20 864:20 868:9 1019:8 holds 769:3 849:10 1018:20 hole 580:3 holy 741:10 home 735:19 934:15 1010:18 homework 542:15 honest 704:4 712:20 714:20 798:22 869:11 916:8 hope 529:22 530:2 543:2 613:1 647:1 663:13 689:22 697:11 700:7 716:12 873:17 880:9 887:15 hopeful 612:7 hopefully 607:13 665:21 971:4 hoping 798:22 horizon 824:19 horn 688:17 horrible 621:5 horrific 613:13	Horse 767:4 Horwich 641:11 host 710:1 719:8 743:1,4 888:6 hour 720:11 775:5 968:21 994:19 hours 541:19 552:9 553:14,18 591:20,21 598:20 712:10 713:2 714:9,9 722:2 773:11 846:21 848:7 977:7 Howard 1011:9 HP 804:19 Hub 771:21 975:3 huge 554:2 562:6,13,18 712:2 796:1 humble 696:21 hump 792:5 hundred 725:1 837:2 974:11 1007:7 hundreds 542:9 600:3 679:12 868:5,5 929:22 930:1 hungry 665:4 Hunter 874:2 hunts 770:18 hurdle 624:6 991:11 hurdles 706:11 hurricanes 985:11 hurt 534:15 555:10 hurts 905:8 Hussam 721:7 785:18 786:9 787:15,19 807:19 815:7 hydrocarbon 757:12 hygiene 788:15 hypercompetitive 935:21 hypocritical 885:13 hypothetical 828:2 866:14 957:22 1012:7 hypothetically 917:11 956:19
<hr/> I <hr/>			
I's 700:7 705:10 712:9 715:1 738:19,20 802:9 802:16 806:1,3 818:20 864:8 896:2 955:20 Ian 853:2,5 896:9 ICC 931:1 935:10 idea 551:14 562:14 595:21 609:22 611:20 641:3,17 642:13 705:12 710:4,21 713:22 719:14 720:2 738:22 740:20 742:19 743:16 776:17			

809:17,19 848:7 869:18 870:11 873:6 877:7 879:14 883:4,5 899:16 940:2 941:13 944:5 952:15 954:15 964:3 966:7 969:14 995:5,9 997:10 1023:16 1024:2 ideal 613:4 923:14 ideally 749:11 ideas 641:2 642:2 644:8 884:20 941:16 948:2 950:5 966:1 968:14 identical 570:18 571:8 572:1,14 966:4 identified 545:20 740:5 922:19 946:3 identify 520:6 923:3,10 941:22,22 949:13 idle 525:8 Ignoring 1016:12 II 666:15 678:19 679:4 686:17 III 666:15 678:20 679:4 686:17 Illinois 757:15 766:13 777:8 778:5 988:4 illuminate 690:1 illustrate 985:16 1012:7 illustrated 697:1 illustrates 988:20 1005:8 IMA 602:10 609:9 imagine 547:8 642:16 700:6 775:2 895:5 898:16 1006:5 immediate 588:20 immediately 845:22 945:11 immemorial 727:19 impact 537:5 559:8 560:17 561:2,15 562:15 568:17 569:21 573:15 587:16 597:14 607:6 608:7 609:5 640:18 644:5,6 666:22 670:7,8 672:10 687:1 690:1 692:17 740:6 758:15 761:5 821:13,19 823:21 825:2 828:2 837:12 838:9 839:11,11 844:7 862:12 863:18,20 866:11 876:14 882:17 956:3 972:4 973:5 980:12,19 984:7 987:17 1004:3 1017:11 1020:6 1022:12 impacted 524:21 621:6	673:18 980:15 982:2 1005:2 impacting 573:5 594:17 605:19 impacts 568:5 573:4 577:9 581:14 595:7 640:20 641:1 645:6 670:21 740:3 761:18 821:16 843:10,15 846:7 846:9 847:18 981:6 992:12 1016:13 1019:21 impair 844:4 impede 797:17 impetus 588:12 822:19 implement 619:9 845:15 919:22 961:18 1009:19 implementation 792:3 793:12 794:11 801:3,5 938:14 implemented 564:22 613:8 900:20 923:4 972:7 implementing 607:17 792:1 922:20 923:19 implicate 897:16 implicated 981:9 implications 572:16 600:21 681:11 780:11 780:17 816:20,21 867:5 implies 926:22 948:15 import 604:3 importance 570:9 581:4 581:10 726:16 842:12 984:9,15,20 1000:11 important 522:8 523:14 529:22 554:17 573:15 581:6 593:11 602:7 607:16 629:11,12 635:10 639:5,21 647:10 660:5 661:7,10 665:16 674:8 681:11 684:11 689:4 726:15,17 729:6 731:22 733:11 736:15 737:6 748:21 750:7 765:14,17 766:3 775:8 787:3 820:11 843:7 888:3 898:6 901:4,21 916:19 918:21 924:4 967:2 975:16 986:3 989:18 999:17 1009:4 1023:1 importantly 638:19 965:8 impose 739:10 904:16 935:10 982:14	imposed 755:19 923:4 926:19 935:4 936:18 964:22 imposes 905:1 918:19 961:16 imposing 903:15 933:10 936:4 impossible 816:13 983:10 1020:6 impression 613:1 709:18 719:17 784:12 950:14 950:16 impressive 712:3 improve 545:20 573:17 615:4 619:20 620:6 790:20 792:7 794:12 799:1,9 801:6 824:2 847:15 950:9 987:12 996:19 1009:22 1022:7 improved 556:3 623:15 730:14 753:2 758:1 791:16 797:20 799:6 1012:10 1014:14 1017:2 1022:1 improvement 629:2,5 753:7 876:9 improvements 1006:18 improves 527:10 847:16 improving 822:5 inability 603:13 inactive 989:3 inadequacies 939:20 948:5 inadequacy 938:22 939:15 944:4 945:20 946:7 949:18 957:12 inadequate 549:22 620:13 795:14 962:20 963:17 inappropriate 939:5 965:8 inbound 526:14 564:9 776:21 878:20 incentive 528:3 543:12 619:19 655:5 697:4 825:3 844:3 951:21 955:12 981:8 incentives 901:9 951:17 951:19 952:3 984:8,11 1001:16 1002:17 1004:3,8 1011:14 1012:2,14 1018:15 incentivize 622:8 825:13 1010:8 incentivized 665:4 687:11 904:6 977:4,9	incentivizes 572:8 incident 670:16 759:19 incidents 670:13 794:18 973:20 inclined 712:19,22 include 523:1 618:10 663:15 687:13 717:16 729:7,17 819:5 867:9 910:18 912:6 923:17 927:4 941:17,18 960:1 960:5 962:21 963:13 1002:10 included 520:2 637:17 671:21 716:5 826:21 includes 752:13 786:16 797:14 939:12 988:3 including 619:14 620:12 672:15 674:5 692:3 694:5 751:1 757:13 821:6 915:21 923:21 972:1,16 975:3 978:14 988:4 990:11 1000:4 1011:9,21 inclusion 763:4 income 667:14 1010:7 1013:12 1014:20 1016:17,21 incomplete 1020:3 inconsistency 554:16 793:2,6 inconsistent 978:11 incorporate 879:16 incorporated 861:1 878:22 incorporating 752:19 increase 525:18,19 526:1 543:12 561:4 563:8 573:2 583:7 584:1,13 592:13 593:1 596:13 599:14 607:18 620:16 621:9,11 646:20 649:7 649:8,21 650:12,12 670:13 697:5 716:5 717:11 758:19 759:2 769:6,9,11 773:12,15 780:7 782:17,18 792:22 793:3,8 800:6,10 819:15 825:21 955:18 956:13 976:18 978:22 979:2,6 982:19 983:2 987:12,13,19 991:6,15 998:10 1018:5 increased 529:4 570:3,13 570:15 583:14 592:18 670:21 695:1,7 726:2 757:22 759:11 768:15
---	---	---	---

790:5 793:2 795:9 800:9 830:7 909:8 976:8 981:3 increases 527:19 569:21 570:9 599:9 606:6 611:13 620:20 649:12 773:16 908:15 909:4,10 increasing 553:14 569:2 588:12 637:16 671:6 719:13 837:16 increasingly 603:10 824:5 1021:1 incredible 1006:18 incredibly 553:4 incremental 595:22 805:4 824:7,10 842:20 incumbent 528:3 684:21 760:6,18 926:8,13 934:2 936:10 incurring 845:22 incurs 925:15 indefinitely 845:11 968:10 independent 1000:13 index 788:21 909:6,6,20 indicate 652:15 indicated 576:3 679:4 707:10 816:12 997:2,9 indicates 994:2 indication 781:21 1020:13 1024:1 indications 571:3 indicator 549:21 indirectly 667:8 1001:13 individual 611:3 748:13 748:16 844:6 873:7 879:18 921:21 individually 695:4 Indorama 721:6 785:17 786:8,13,16 787:16,20 788:5,5,8,17 789:1,5 790:10 791:16 792:13 793:13,21 794:8 797:1 797:2,7 798:20 807:5 820:6 827:22 853:7,8 854:19,20 861:5 917:14 996:21 997:3 Indorama's 789:16 798:19 industrial 521:13 591:11 602:4,8 627:8 689:3 854:5,15 1008:15 1011:11 1012:8 industries 521:15 615:1 616:19 618:1 647:3 674:17 724:15 794:15	901:6 907:6 916:19 920:6,8 industry 523:21 524:2 528:8,13,15,20 529:2 535:8 536:21 537:7,18 557:14 568:9 573:7 583:15 590:19,22 591:18 594:2,4,21 599:7 603:18 606:16 607:4 620:10,18 624:12 640:4 664:1 666:17 667:13 674:2 675:6 685:16 687:15 688:18 689:15 690:9,14,21 692:16 693:5 697:5,13 698:15 709:6 724:17 741:3 758:12 763:14,18 769:4 776:15 828:8 829:16 833:6,20 834:1 834:3 898:18,20 902:5 902:10,11,20 903:2 904:4,6,8 906:3,8,14,16 906:19,22 907:15 910:11 912:2,8 913:18 914:3,3,5 915:20 916:4 920:1 921:4 923:16,21 923:22 924:2 925:2 926:14,17,19 939:3 986:2 991:19 1000:1,4 1000:14 1005:9,13,21 1007:4,15 1019:16 1020:7 1021:3 1022:20 industry's 670:15 industrywide 907:6 912:18 inefficiencies 623:6 inefficiency 841:13 842:8 inefficient 670:6 1016:13 infinite 765:21 inflation 534:7 563:6 605:17 609:4 623:17,19 690:18 907:21 inflation-adjusted 908:13 influence 685:8 733:15 informal 524:18 information 520:2,10 552:11 553:4 793:17 801:13 897:11 923:20 928:19 929:4 967:9 983:15 informative 961:10 informed 749:20 informs 749:4 infrastructure 534:6 535:11 558:13 568:22	619:10 633:18 660:2 662:1 667:22 668:14 672:15 673:13 675:9 683:11,18 781:9 831:5 831:10,14,17 832:2 835:8,18 845:2 847:2 878:7 923:22 924:17 982:10 988:15 992:10 1013:16 ingredient 564:9 ingredients 526:15 inherent 842:9 865:14 inherently 528:2 592:4 843:8 953:3 initial 519:6 769:15 822:19 1000:15 1015:12 initiative 1012:8 inject 842:7 892:21 898:10 991:5 injecting 841:13 898:10 injects 1018:12 injuries 670:13 injury 525:7 719:10 inland 798:17 976:9 1008:7 Inman 622:16 626:14 627:11 innovate 837:22 innovation 594:17 837:17 innovative 594:9 1021:12 innovatively 1018:19 input 542:5 644:22 inputs 667:11 881:5,6 inquiries 938:19 inquiry 595:20 944:16 inside 1003:22 insight 835:13 888:3 932:18 998:1 insightful 786:4 insist 718:21 inspection 828:10 834:6 834:22 835:5 instance 555:2 651:17 654:14 700:11 791:1 824:10 831:19 instances 577:13 578:17 579:1 698:1 743:15 778:2 996:3 instantaneous 712:17 instantaneously 967:7 institute 521:12,14 590:17 593:22 616:18 618:1 741:1 762:22 1022:4	instituted 734:18 institutional 524:10 instructions 519:6 instrument 923:20 instruments 923:18 insufficient 927:5 insult 525:7 integrated 671:4 788:12 871:17 879:5 integration 832:17 835:8 intend 677:10 787:7 intended 685:16 intends 671:16 intense 828:14 intensely 875:12 intensity 825:22 intensive 838:12 intensively 740:8 intent 557:15 573:19 638:9 671:19 676:5,6 677:14 1023:20 intentions 1011:17 interact 864:10 870:15 870:16 interacting 869:16 interaction 865:19,20 interactions 831:11 interchange 576:18 578:10 622:14,21 623:2 623:14 653:3,20 685:1 689:9 760:13 762:9 770:17,20 771:2,8,16 779:8 803:15 804:11 807:12,13 810:4 836:4 846:2,22 848:21 849:2 849:9,22 850:1 861:5 875:16 878:9 879:9,15 882:15 893:12,21 978:6 978:9 980:14 981:22 982:1 988:3 interchanges 620:3 623:6 623:8 713:16 811:15 865:17 874:5 982:15 interest 587:1 604:21 609:6 686:5 766:2 797:13 826:1 828:14 993:19 interested 557:11 585:3 683:9 770:21 785:2 811:1,22 824:1 1002:9 1009:13 1012:16 interesting 532:1 547:3 583:11 584:4 589:22 639:6 641:2 708:9,16 726:21 733:21 735:3 771:6 784:11 811:1
--	---	---	--

852:20 940:1 966:11 969:1 interestingly 853:6 interests 623:7 669:16 696:15 709:1 763:22 787:17 791:18,19,20 797:12,13 905:6 993:4 1004:9 interfering 858:12 interim 765:19 interior 571:19 interject 520:20 570:10 993:3 intermediate 710:18 859:22 860:1 intermodal 706:4 974:15 974:21,22 975:3,5,8,9 975:14,21 976:2 978:15 992:17 1005:11,12 1007:21 1011:5 1023:1 internal 865:11 internalizing 905:9,14 international 721:6 757:10 974:16 976:17 977:6 interpret 608:5,6 interrelated 953:3 interrupt 746:17 interrupting 960:9 interruption 556:10 interruptions 527:3 interswitch 732:3 735:20 743:4,6,21 753:19 992:9 interswitched 772:18 interswitches 732:11 interswitching 571:14 723:4,11 724:3,7 725:6 725:6 727:17 728:10 729:7,16,18,22 730:2 730:13,17 731:2,4,8,13 733:17,21 734:11 735:11 745:19 752:17 755:6,22 764:13 790:13 800:18 887:12 972:9 981:12,13,15,16 982:4 982:8,12 983:3 990:12 992:11 997:11,14,15 intervention 991:7 interventional 688:16 intramodal 636:16 introduce 710:22 821:14 878:13 991:9 introduced 607:5 977:5 introduces 905:15 introducing 527:22	548:19 introduction 537:17 678:9 intuitive 924:11 inventory 554:20 670:11 inverse 747:4 invest 535:10,11,11 667:20 697:4 825:4 838:9 951:22 952:1 981:8 984:12 986:21 1001:16 1004:11,17 1006:20 1012:6 1018:14 invested 554:1 694:6 789:6 828:16 975:5,11 987:6 989:1 investing 850:7 904:2 1011:7 1018:18 investment 667:20 668:15 672:15 686:13 691:9 692:1,11 825:3,9 830:8 835:11,14 901:9 902:8 924:1 934:8 937:3 951:17,19 952:3 984:8,20 985:17 986:6 986:19,20 988:9,14,17 988:19 989:13,14 990:17,19,22 991:1,15 991:16,19,21 992:1,10 1002:17 1007:2 1011:1 1012:12 1013:15,17 1014:9,22 1015:5 1017:4,11 1018:15 1022:12 investments 671:2 759:5 761:9,18 821:20 838:3 841:9 974:4,6,8,9,15 984:9 986:3,14 987:4,5 987:11,14,18,20 991:13 1004:8 1008:5,22 1010:9 1011:10,20 1012:18 1013:20 1017:14,22 1022:16 investors 904:1,5 914:7 1007:5 1009:6 invests 986:11,17 989:21 invitation 1001:22 invite 785:10 invoice 677:1,2 involve 628:2 involved 528:18 540:13 544:4 618:2 654:20,21 697:5 853:18 868:21 871:15 990:20 995:2 involvement 834:10 involving 661:14 785:3	824:16 Iowa 988:5 iron 624:9 767:4 824:21 ironic 607:4 848:13 ironically 796:9 irreplaceable 570:6 Irving/Cavendish 523:4 Island 631:20 isolated 783:15 907:3 Israel 840:9 842:10 851:7 896:13,14 911:16,18 912:2,21 913:22 914:15 915:5,15,19 916:18 917:2,18 918:5,19 919:9 920:5,20 921:18 922:1 929:18 931:9,13 932:5,16 934:14 951:16 959:8 960:3,8,14,17 962:7 963:4,15 ISRI 617:3 618:2 624:2,7 ISRI's 618:3 issuance 523:22 740:7 issue 523:14 538:7 540:12 551:6 557:11,13 579:10 587:15 588:7 595:4 606:5,12 613:9 614:21 629:19 642:8 730:16 744:16 758:9 765:14 766:3 782:16 783:17 791:21 803:2 859:13 876:20,22 880:3 883:15 888:3,16 889:3 901:5 902:2 928:3 949:16 963:12 967:21 issued 520:21 740:3,6 965:16 issues 543:7 558:5,20 564:4 582:6 584:17 587:16 588:4 592:11 593:10,11 597:14 599:8 599:10 605:19 609:4 613:2,21 615:8 620:14 635:11 643:10 647:17 662:7 663:14 675:7 697:6 736:4,8 779:11 782:8 786:21 789:21 791:11 793:11,22 794:17 796:18,18 799:1 799:18 812:7,11,16 815:2,6 819:2 832:20 844:1 845:18 876:5 883:21 901:1 904:12,13 904:15 918:3 945:2 961:17 982:13,14 997:3 1018:8 1020:4,18 1021:18,20	items 837:20 839:17 <hr/> J <hr/> jam 548:6 861:22 James 721:4 jammed 548:12 jamming 861:20 January 536:9,17 538:21 769:9 770:5 973:11 Japanese 834:10 JD 523:4 Jeep 693:10 Jeff 644:16 jeopardizing 773:18 Jersey 766:16 977:15 Jim 1009:6 job 524:8 537:4 637:3 667:7,8 674:9,11 703:8 768:4 911:6 972:15 1024:8 jobs 667:8,13 674:11,16 692:20 693:14 694:4,5 781:3 1008:18 1020:11 1022:16 Joel 628:12 joined 1006:17 1007:1 jointly 875:18 joke 721:19 Jones 788:21 journal 722:10,10,16,16 journals 722:5 judge 740:5 917:11 judicious 919:21 judiciously 910:16 July 693:11 729:15 jump 706:18 960:9 junction 791:2 804:3 899:14 988:1 junctions 899:10 980:16 June 727:21 971:16 justifiable 991:13 justification 765:14 justified 646:22 921:13 justify 992:9 1017:14 <hr/> K <hr/> Kansas 576:9,19 Karen 542:18 580:13 630:12 712:7 813:2,3 829:2 833:15 944:15 952:9 959:6 960:10 Karen's 951:9 Karyn 521:15 616:20 617:13 637:12 643:18 648:20,21 Kathryn 840:12 993:20
--	---	--	---

<p>Kathy 999:9,13 1003:6 KCS 606:7 802:11 keep 519:11 597:18 599:4 601:6 621:13 623:12 639:1 657:12 674:20 677:14,19 782:5 791:2 791:10 795:21 834:12 885:7 940:19 971:1 974:2 989:16 1013:6 1018:6 keeping 800:19 Kellogg 523:6 kept 525:8 796:9 kerfuffle 755:12 key 588:13 596:17 599:19 601:16 673:15 691:17 731:1 909:2 924:9 979:12,15 kicking 530:10 kilometer 730:10,10,14 kilometers 723:13 724:20 724:22 727:18,19 728:3 728:6,15 729:19 752:7 kind 529:19 534:12 548:12,16 552:5 554:11 562:1 570:20 578:3 579:8 589:7 601:5 610:1 612:1 616:10 638:6,12 639:22 640:17 641:2 657:20 658:8 699:19 711:2,16 715:4 723:3,5 724:12 725:18 725:19 727:8 728:19 731:10 732:12 733:9 735:4 738:15 740:9 741:14,16 742:6,8 743:10,10 745:13 754:3 755:14 767:15 777:17 784:3 799:8 800:3 803:9 809:17,19 811:11 811:16 835:21 836:12 836:17 839:7 848:17 851:4 865:19 870:17 879:7,21 883:15 901:8 902:4 906:16 917:16 919:5 934:4,11 942:10 945:14 952:1 964:11 994:2 1011:20 kindly 722:12 kinds 532:20 579:17 595:17 597:22 811:15 831:15 881:5 King 531:1 knew 555:16 652:9 knocking 998:7 know 529:15 530:12</p>	<p>531:4,7 538:10 540:2 541:11,14,20,21 542:14 544:7 545:12 546:6,13 546:20 549:4 550:19 551:15 552:8,16 555:4 555:6 556:7 557:1,10 558:11,22 559:12 560:19 561:22 564:8 565:5,9 575:1,9 576:3 576:20 577:16,20 578:5 579:4 581:19 584:2,19 584:20,22 585:2,7,9 586:2,12,17,18 588:3 588:19 589:13,18,22 594:14 595:1,2,4,8 599:3 600:3 610:9 611:12,18 612:6,8 613:14 614:13 615:3,8 615:13,14,16,19 617:8 625:15 626:7,11,12 627:12 628:5,5,12 629:19 631:3 632:3,5 632:20 633:2,13,15 634:4,16 635:21 636:4 636:15,22 637:2,9,14 637:17,19,19 639:7,10 639:15 640:4,9,10,19 642:5,7,9,12,13 643:12 644:19 645:1,3 647:10 648:11 650:11 652:5,9 655:2,22 657:4,12 658:1 659:13 660:6,8 660:11,11,14,15 662:4 662:5,16,17 664:10,21 668:6 681:16,17 683:10 684:4,16,18 685:11,13 686:20 702:1 703:5 704:16,19 705:1 706:2 706:22 707:22 709:11 709:17 710:9,19 711:10 711:16 712:9,17 713:13 713:16,21 714:6,10,21 715:10 716:1,3,7,9 717:14,21 718:8,12,20 719:15,21,22,22 724:11 729:16 730:5,6 733:15 733:16 736:4 739:6,10 740:9,17,21 741:20 742:7,15,15 743:12 744:3,10,13,14 746:15 747:1,7,9 748:10,10 749:7 750:18,19,21 753:5 754:9,11,15,17 754:19 755:7 761:16 770:22 771:3,4,10 772:6,9,22 773:20</p>	<p>776:15 780:9 781:2,18 781:19 782:10,20 784:18 785:5,11 799:14 806:16,19 807:4 809:17 811:14 812:2,13 813:6 815:1 816:9,9,16,19,21 817:13 818:2 819:13,21 819:22 820:7,22 826:22 827:18 828:6 831:16 832:7,14 835:4,17,17 835:20,21 836:2,11,15 836:20 837:15,16,19 838:6,8,15,20,22 851:8 852:16 856:17 864:19 866:13,13,15,17,17 867:22 868:16 870:7,17 871:19 874:1 877:3 878:2,6,8,13 880:2 881:7,21 882:1 883:4 883:16 884:8,19 885:5 885:7,16,17 886:10,10 886:22 887:5 888:13,14 888:20 889:11,20 890:15 891:1,4 894:17 897:8,17,18 898:8 899:3 900:12,20 901:10 901:11 902:22 904:13 905:2 906:6,12 907:2 908:10 910:19 911:8 912:14 913:8,13 915:11 916:7,8,15,16 918:14 927:22 928:3,8 929:21 932:10,17 935:5 936:13 938:11,14 940:2 941:2 942:8 944:7,15 945:1 945:17,20 946:18 947:12,13,18 948:21 949:3,5,5,8,10,11,17,21 951:9 952:18 953:4 954:3 955:8 956:5,6,14 957:9,20 959:18,19 962:12 964:12 965:15 965:18 967:5,6,7 968:8 968:21 985:5 993:8 995:20 996:12 997:20 998:13,22 999:1 1005:19 1006:21 1007:6 1012:4 1022:1 knowing 599:1 664:5 889:11 890:22 knowledge 524:10 756:20 804:17 896:1 known 522:4 543:6 565:10 598:21 618:2 674:18 690:22 knows 524:20 588:16</p>	<p>624:4 663:16,20 932:13 985:19 992:7 Knoxville 678:13 Kraft 523:2 525:2,9,15 559:9 564:21 565:1,10 566:13 <hr/><p style="text-align: center;">L</p><hr/><p>labeling 761:19 labor 537:4 549:13,15 558:19 587:14,16,19 588:1 620:7 667:14 683:22 822:21 1020:11 1023:2 lack 568:4 613:10 618:5 619:16 686:11 759:22 769:18 790:7 794:20 796:8 803:7 842:14 937:6 943:10 1020:5 lacks 619:19 laid 891:21 Lake 693:15 Lakes 523:6 land 523:6 694:18,21 landed 587:4 landing 946:18 landlord 735:19 landscape 832:9 lane 721:8 759:22 760:15 760:19 769:9,19,21 773:2 783:8 785:19 786:11 794:2,7 802:13 802:20 806:2,3,9,14,19 807:18 809:14 810:1,6 810:12,15,20 813:15 814:21 815:7,21 816:8 817:3,9,12,21 lanes 763:12,17 833:1 language 676:7,12 702:10,13,20 708:13 717:16 902:13 large 524:9 529:2 535:19 536:6 576:4,10 581:17 603:12 667:19 673:2 679:2,10 686:9 694:10 762:18 832:2 841:12 897:16 898:2 981:21 1008:15 largely 591:8 831:9 937:7 995:13 1007:21 larger 574:17,17,18 672:12,14 686:3,5 687:2 1002:10 largest 573:9 576:9 late 665:10 756:4 757:5,6 882:16 938:12 968:22</p></p>
--	---	---	--

<p>994:18 998:3 lateness 813:17 Laughter 614:7,11 751:10 752:3 784:20 launch 693:10 823:13 law 619:10 664:4 784:22 821:10 893:1,15 950:15 961:12 1020:17 1021:3 lawful 1017:21 laws 661:14 961:5 lawyer 937:18 lawyers 644:9 645:12 layer 745:14 942:2 layoffs 527:15 lead 623:15 646:10,12 671:2 822:22 823:3 843:17 964:4 981:3 982:12 990:10 991:10 1001:14 leader 823:19 1005:21 leadership 568:1 692:14 951:12 leading 792:15 822:18 913:9 1010:14 leads 584:5 648:16 953:6 League 638:7,18,20 671:17 676:6 learned 645:22 659:16 778:4 896:20 learning 645:22 lease 554:2 leased 977:1 least-cost 929:13 leave 645:15 676:18 809:20 855:18 leaves 644:1 leaving 979:17 1017:9 led 527:2 584:18 695:9 726:5 921:6 938:10 950:17 961:7 left 522:7 524:12 531:9 534:2,17 537:14 590:21 607:1 664:16 713:16 726:22 794:15 849:14 854:13 940:3 993:5 1006:3 1023:7 legal 657:21 702:6 845:20 868:21 936:7 1020:22 legality 1020:21 legally 576:22 legislated 531:14 legitimate 551:7,12 919:3 length 680:1,9 lengths 672:13,22 680:3 695:2 lengthy 763:5</p>	<p>lens 590:4 Leprino 523:7 lessened 711:13,15,18 989:12 lessening 528:11 lessens 811:19,20 lesser 784:8 let's 521:8 531:20 548:3 550:1 626:13 628:21 636:5,14,16 665:1 677:18 699:6 721:15 739:15 743:17 753:10 755:9 771:15 838:10 854:19 855:8 880:1 892:3 896:5,11 956:18 961:11 1013:2 1014:1 1015:10 1016:7,14 letters 524:17 1022:3 letting 756:16 836:11 904:19 954:15 level 554:3 561:22 562:3 562:18 597:21 605:21 615:4 621:11 647:15 649:12 661:18 699:6 703:9 704:7 724:11,12 730:14 835:11 865:7 870:14 898:20 913:20 932:2 1001:7 1016:1 leveling 607:15 926:1,9 levels 549:7,10 550:5 699:5 831:13 887:3 942:3 986:20 1012:11 leverage 647:11 744:1 767:20 Lexecon 842:11 896:13 LHI 733:19 734:5,13,19 736:21 738:12 liberally 608:7 liberals 726:22 727:5 LIDAR 836:22 837:1 lied 713:4 life 573:19 light 523:20 668:1 690:11 994:18 999:21 1001:17 1002:22 lightning-quick 944:12 liked 934:10 963:21 likewise 552:15 limestone 598:12 limit 578:16 589:11 597:21 711:9 718:16 724:9,9 727:17 728:13 730:10,10 733:4 752:13 752:14 762:6 811:12,13 897:19 901:4 918:21 970:10 972:20</p>	<p>limitation 578:4 limited 573:11 611:1 645:12 667:19 679:15 681:18 682:5,8 683:1 710:6,9,14 724:9 755:20 772:3 898:1 919:12 958:3 967:13,14 limiting 577:22 578:16 596:4 600:5 611:12 762:14 772:1 865:22 900:20 925:14 limits 648:14 724:3 900:18 901:5,6,11 940:21 Linda 938:15,20 939:6 line 530:11 533:3 540:6 544:17 572:14 573:18 576:2 588:11 589:3 618:19 619:4 626:21,22 631:11,11 634:4 636:14 637:3,13 666:12,14,19 667:8,12 668:10 669:11 669:17 670:1,9,10 672:8,8 673:6,7,12,16 673:17,18,21 674:2,11 674:14,17 675:15,17,20 677:4,7 679:11 680:21 685:3 688:10,21 689:11 689:15,17 690:2,9,14 690:21 691:11 692:12 694:11,13 695:22 696:3 696:4,8,16 698:15,20 698:21 700:1,18 701:2 701:7 702:15 703:22 704:10,21,21 705:5,9 705:17 706:21 707:3,8 709:6 710:16 737:1,4 748:6 778:15 798:8,11 802:18 804:20 808:20 809:3 819:12 852:11,12 865:22 868:3 884:3 888:22 889:14 894:20 912:22 937:12 944:15 946:18 953:12 982:20 990:20 1004:20,22,22 1005:8 1010:21 line's 692:13 700:3 linear 730:3 982:4 lines 576:10 592:3 616:7 631:13,21 665:18 666:5 666:18 667:18 668:1,21 671:13,16 672:3,13,18 674:5,8,18 675:2 676:3 676:18,20 683:8 689:20 690:4,6,11,16 691:7 692:17 697:13 703:7</p>	<p>704:6,18 705:16,22 707:5,18,22 709:1,13 710:10 712:14 714:22 715:16 717:7 763:19 794:20 806:1 825:10 863:11 988:22 link 520:12 570:7 574:16 759:17 linked 592:5 liquid 1010:14 list 521:1 666:4 783:13 listed 531:22 783:13 788:8,20 807:5 808:2 848:3 853:7 932:6 995:11 listen 545:19 664:19 748:10 749:15 751:2 831:22 867:15 946:12 947:19 997:22 998:3 listened 532:2 875:12 listener 663:15 listening 523:16 643:9 663:13 709:11 735:7 771:11 793:15 843:19 851:14 917:21 920:14 literally 695:20 literature 923:8,12 924:5 litigated 951:15 litigation 871:14 little 529:14,16,18 530:15 531:3 539:7 542:15 543:13 548:8 552:6 554:8,9 570:20 574:7 577:8 581:13 584:3 609:21 615:15,17 635:5 642:7 647:19 649:22 681:9 699:21 707:22 708:9 714:3 724:10 726:18,19 727:3,4 728:16 729:12,13 730:12 731:9 743:14 752:15,15,16 754:20 787:16 789:18 801:13 802:12 813:8 819:18 829:14 835:2 839:4 845:19 879:1,4 936:6 936:13 947:3 948:13 956:1 979:3 985:4 1000:12 1013:13 live 542:5 712:17 799:4 lives 985:1 living 708:8 736:14 load 575:2 652:6 691:12 693:19 706:3 758:17 796:5 loaded 544:20 553:16</p>
---	---	--	--

584:20 753:12 loading 574:21 652:4,21 691:19 692:3,4,6 693:21 694:1 loads 691:15,19 708:11 776:22 local 625:21 626:22 627:1 627:19 644:19 689:5 690:3 692:17,19 693:14 702:22 715:6 766:20 767:1 799:3,9 805:20 806:5,9,12 810:1,10 846:12,17,17 854:6,8 854:21 855:5,11 856:7 856:9,21 860:21 876:3 876:11 877:19 879:16 879:17 882:17 894:12 local's 846:19 locally 651:5 989:11 locals 849:16 879:4 locate 674:12 693:2,7 1008:22 located 571:20 576:5 595:19 603:5 604:2 610:1,2,12 694:18 766:14 789:2 805:8 807:12 location 525:21 540:8 565:10,13 577:22 621:16,18 622:22 648:12 649:9 651:11 770:1 803:22 804:1,14 805:1,13,21 809:7 843:14 844:8 846:5 847:1 848:9,13,14,18 851:3 863:4,8,12 870:20 875:18,22 980:1 1012:20 1015:10 locations 534:19,19 540:4 540:7 542:9 546:8,9,14 546:15 552:12 563:17 574:20 589:10 620:17 626:8 650:18 654:13 714:2 745:4 766:8 767:11,12,22 776:5 788:7 794:12 801:15 802:14 805:10 844:16 844:20,21 847:9,12 848:2,5 851:18 854:8 864:20 887:12 891:21 891:22 929:22 977:2,3 978:11,16,18 979:18,21 980:14 981:21 982:1 988:4 1008:14,20 1018:17 lockdown 985:7	Locomation 822:15 locomotive 826:10 831:19 857:13,14,15 870:17 978:16 locomotives 670:12 689:2 830:14 846:11,12 870:8 978:17 979:6 983:6 logic 533:15 777:20 logical 646:21 920:16 logically 637:7 logistical 574:6 580:10 586:19 596:6 logistically 569:5 logistics 522:13 574:8 643:20 786:12,15 787:21 794:8 869:2 877:5 long 568:20 587:8 604:21 610:11 623:1 628:8,8 629:11 664:9 665:5 679:20 681:1 684:7 692:11 712:11 713:17 724:8 733:20,22 783:13 806:5 812:14 816:5 822:12 824:18 884:13 893:7 939:18 948:7,14 948:21 950:10 951:4 965:20 977:10 989:2 1017:20 1019:7 long-haul 974:19 981:15 991:6 long-term 566:3 588:15 615:11 694:15 821:21 986:14 1008:21 1009:20 longer 586:20 587:3 595:2 604:5 608:22 619:7 624:11 673:19 683:9 701:5 772:12 792:18,18 799:20 845:11 948:15 978:1 longer-term 588:5 longest 857:21 longtime 956:11 look 531:5,11 550:1 551:1 561:19 562:22 563:13 564:13 567:13 578:12 579:12 580:1,6 585:13,14,18 640:19 642:4 658:1 696:12 707:7 728:9 729:10 739:5 743:5 744:4 782:14,22 838:6,15 844:20 847:8 861:9 907:6,17 910:21 933:9 941:4 946:22 947:16	953:18 955:2 965:17 988:19 990:13 996:15 997:22 1000:13 looked 536:4 539:14 588:1 639:19 752:20 754:9 804:7,22 850:8 868:4,11 875:11 906:9 914:18 927:20 929:5 932:5 947:18 looking 531:5 535:9 549:20 573:15 579:14 633:20 661:20 684:15 685:4 708:11 714:12 716:11 734:18 747:2 770:22 781:5 782:8 807:4 808:4 818:16 830:11,11 839:17 853:17 854:1,16 899:12 929:1,21 931:8 933:20 950:9 955:10 974:22 994:5 999:3 1012:4 looks 531:19 756:8 877:19 941:5 loop 836:3 loosely 679:5 Lorenzo 766:14 lose 558:12 607:1 629:3,5 661:7 684:3 780:14,20 781:3 955:19 971:5 991:6 1013:5 1016:10 1020:11 losers 954:12 loses 527:4 losing 558:17,18 559:2 589:3 604:7,17 622:10 695:4 780:15 813:8 815:5 loss 575:11 662:20 673:9 682:2 686:7,9 687:5 765:12 781:6 815:12 817:8,9,12 925:15,18 930:14 940:14,20 losses 559:6,14 814:22 lost 529:2 543:2 608:17 684:13 686:21 697:17 795:1,4,7,11,12 796:22 815:5 883:3 933:17 939:2 940:4 941:10,17 941:18 lot 540:15 541:14 545:12 546:21 547:4 549:4,9 553:22 566:18 569:11 615:22 625:16 628:11 632:16,20 633:16 640:3 641:1 642:17,18,19 647:8 649:8 652:1	659:4,22 664:5 671:8 685:14 707:1 708:7 711:6 713:1 722:14 723:2 732:19 735:8 738:4 740:18 743:13 767:17 770:10 775:15 787:5 803:10,10 809:18 812:2 832:17 834:18 835:14 847:21 861:20 872:5 876:9 887:9,9 896:5 900:10 901:6 905:14 907:7,8 913:11 916:10,12 931:16 941:19 945:2 959:5 965:5 969:9 985:1 994:3 995:12 998:15 1017:5 1019:19 1022:6 lots 565:14,15 630:2,2 639:19 715:15 908:17 908:17,18 912:4 920:6 920:6,6 Louis 632:14 Louisiana 789:14 988:6 love 644:22 652:3,6 656:2 710:20 734:15 820:12 945:17 951:10 964:14 low 532:17 681:4 683:2 915:19 930:20 931:20 935:22 1007:12 low-margin 603:4,17 lower 609:16 633:21 646:10 652:10 655:1,2 685:16 703:22 706:3 718:18 732:15 755:8,9 756:6 799:18 824:15 841:3 917:4 926:12 1007:2 1014:19 1015:16 1016:9,12,19 1016:21 lower-return 1007:13 lowered 593:6 lowering 1009:10 lowest 929:12 lows 569:14 lozenge 1024:15 LRCs 694:5 lunch 521:2 664:11,13,16 665:6,22 666:1 672:6 678:8 720:9 luxury 681:3
---	--	---	--

680:7 856:18 897:13 901:13 904:9 mainline 694:2 836:8 849:1 850:13,17 853:22 973:9 991:1 maintain 695:15 825:9 828:21 903:7 935:20 936:1 987:11 1004:12 maintained 593:4 907:15 maintaining 637:21 902:5,6,15,16,18 935:13 986:4,11 maintains 985:21 maintenance 675:6 683:17,21 686:14 1011:4 major 523:8 542:8 555:2 565:12 570:1 571:2,8 586:16 610:5 613:21 672:11 682:3 686:7 692:5 724:14 725:21 773:16 781:13 788:13 791:12 832:12 836:21 898:4 1020:4 majority 646:7 659:11 680:9,17 685:3 786:15 834:4,21 makeup 982:11 making 534:7,20 536:21 557:15 585:1 603:1,15 612:12 661:12 697:22 719:19 743:9 867:15 883:22 902:2 929:13 931:7 934:5 936:12 966:19 989:17 991:18 1008:21 1013:16 Malinowski 535:17 manage 530:14 695:12 760:22 844:10 864:16 878:3 983:4,15 manageable 763:16 manager 617:21 696:6 786:12 877:5 managers 759:21 783:10 794:8 managing 844:9 845:1,4 972:16 mandated 658:1 673:4 678:22 846:20 892:18 898:3 904:18 1015:15 mandatory 685:13 manifest 836:4 978:15 manner 528:6 555:9 588:9 643:3 694:16 758:5 766:4 926:9 manpower 633:12	manufacture 604:13 785:7 manufacturer 894:21 manufacturers 522:22 591:2,5 602:20 604:2 758:15 manufactures 757:11 manufacturing 592:4 597:9,10 601:10 602:18 618:10 682:14 757:15 788:9 789:1 map 723:17 844:18 847:8 877:13 896:10 899:9 934:16 980:16 987:22 988:3 1008:14 mapped 735:1 March 518:12 727:5 769:5 marginal 909:9 mark 576:14 721:9 820:17 821:2 840:9 842:10 896:13 911:10 911:13 922:8 931:9 934:14 951:15 marked 634:6 markedly 544:18 market 524:14 537:11 568:8 569:3 572:15 573:22 586:8,17 587:7 592:20 603:2,13 621:12 654:13 658:2,5 660:13 661:15 667:1 694:16 724:1 762:20 763:4,8 763:13 764:8 800:2,2,3 816:12 822:10 828:14 835:12 839:11,12 901:16 909:4,7,11 912:9 913:9,13 914:3 941:6 943:11 953:22 954:4 955:3 956:16 957:15 959:18 978:2 984:18 989:8 992:22 1000:17 1005:7 1018:5 market-based 935:16 984:15 992:19 1018:15 market-oriented 727:5 marketed 620:6 marketplace 902:17 markets 569:4 570:11 572:14 580:17 585:22 586:18,19 691:4 692:19 744:22 761:1 829:13 905:13 954:9 marking 551:6 Martin 518:19 Martin-Brower 523:5	Marty 557:20 582:17 587:11 589:7 597:3 614:17 631:8 645:15 646:4 649:2 658:14 659:20 661:8 664:15 703:10 706:18 713:22 717:4 819:9 820:4 883:5 941:2 947:3 1024:10 Marty's 745:3 Mason 718:3 Massachusetts 610:7 massive 524:8 537:4 1020:4 match 662:19 743:6 792:20 matched 584:15 material 591:2,10 592:6 592:7 593:16,17 594:10 598:16 600:2 602:16 612:12 619:16 722:22 774:15 794:21 797:21 820:12 939:14 993:21 1022:6 materials 591:3 592:19 598:8 602:13 750:12 767:19 773:15 844:19 math 1017:11 Matt 970:20 981:12 993:8,20 999:11 matter 518:18 529:9 548:16 658:10 673:6 787:3 825:19 889:22 903:6 915:7 930:21 947:14 985:6 matters 572:11 642:20 794:9 821:7 842:2 902:19 Matthew 840:12 max 575:18 837:2 maximum 755:13 McCain 523:2 McDonald's 531:1 mean 533:12 549:11 556:15 558:10 561:3,9 561:18,22 580:12 583:6 584:19 585:8 597:21 599:6 600:15 617:5 632:2 638:6 639:5 645:5 648:1 661:8 666:4 704:3 705:14,19 714:13 718:22 735:10 742:16 749:11,14 775:16,16 776:10 781:8 781:12 782:6 812:7 814:2,6 815:10 816:13	817:15,22 819:17 828:8 828:15 832:8,10 834:12 836:5 839:1 862:14 868:2 880:1 883:8 884:10 885:3 886:8 888:14 891:3,14 894:21 903:6 912:5 913:3 914:15 915:15 918:19 920:6 943:17 944:19 945:16 948:18 949:11 954:7 959:1 966:13 1016:12 meaning 630:17 727:3 772:14 1018:4 meaningful 998:13 1019:13 meaningfully 673:11 means 545:18 547:5 565:22 606:14 658:3 906:21 912:10 meant 645:10 742:22 774:7 853:9 882:17 measurable 946:1,6 948:4 measurably 962:19 measure 597:13 909:5 912:17 913:18 1007:5 1009:12 measured 555:1 724:2 909:9,21 measurements 597:18 measures 612:1 983:8 1010:8 mechanical 971:19 974:11 1011:5 mechanism 620:6 628:13 mechanisms 616:9 697:9 median 679:16 680:3 681:12,20 724:20 917:6 meet 527:9 543:18 638:11 668:19 671:19 963:18 974:4 988:8 989:7,21 meeting 529:20 559:10 614:22 654:12 655:13 769:16 787:22 991:11 994:11 meetings 541:12 587:14 651:21 722:13 773:10 799:5 971:3 meets 706:10 764:2 787:8 978:18 1015:10 melt 659:6,11 member 522:14,15 523:15 524:21 526:11 538:2 542:20 544:10,14
--	--	--	---

545:9 547:3,17 548:1 549:19 550:4,16 553:10 557:19 559:5 560:18 561:17 563:10,20 564:6 564:16 572:4 580:14,20 582:10,17,21 583:19 584:14,19 586:7 587:9 589:1,6 590:9 592:9 597:2,12 599:12 600:8 617:10,22 630:14 631:5 631:8,22 633:19 635:9 636:1,10,13 637:11 638:15,19,22 640:17 641:6 643:14 645:14 649:1,11 650:13 658:14 659:20 661:2,22 662:6 664:15 668:8 677:18 703:10 706:6,17 712:8 713:5,6,10 715:22 716:22 717:4 739:21 741:19 742:3,12 744:20 745:9,13 746:17,22 747:7 748:5,8,16,19 749:2,14,19 750:1,6,18 751:11 780:1,3,9 781:4 781:14 783:2,4,18 813:2,4,11 814:18 815:14 816:1,4,15 817:10,17 818:10 819:9 819:12 820:3 821:9 829:3,5 832:21 833:5 833:13,17 835:1 836:1 837:6,14 839:13 880:7 880:16,20 881:12,14,17 881:20 882:6 883:2 886:2 887:2,16 889:6 891:13 892:7,20 893:2 893:17 894:2 922:4 937:21 938:4 939:22 941:12 943:16,20 944:14,22 946:5,10 947:4,4,9 951:8 952:5,8 952:10 959:7 960:8,15 962:4 965:10 967:17 968:2 996:8 1003:1 1023:15 1024:10 members 519:16 523:1 540:1,5 541:7 544:16 546:12,18 552:4,11 553:8,12,20,22 554:7 560:15 563:16 567:20 575:21 590:16 592:12 592:20,22 595:19 596:16 598:1,6 600:11 602:6 603:20 604:7,14 608:2,12 609:22 610:18	613:2 614:8,21 615:6 620:11 624:7 646:8 661:13 664:14 665:4 666:10 677:22 687:20 688:6 689:13,14 712:6 712:10 713:20 714:3,5 751:7 779:21 783:21 794:6 812:21 820:20 880:3 927:15 935:2 970:3 971:13 994:15 1003:8 1009:16 1022:22 members' 575:20 membership 558:18 563:11 564:2 597:7,10 599:15 713:13,15 714:7 716:4,9,16 Memphis 975:9,13 976:18 977:3,8 men 872:6 874:18 895:22 mention 661:5 722:17 755:2 782:12 789:12 999:20 1002:22 1020:9 mentioned 522:11 561:10 570:12 580:15 595:1 603:17 631:9 637:14 642:10 646:7 649:6 650:15 653:19 675:22 681:16 683:7 760:11,15 762:9 833:19 835:18 839:5 848:14 861:8 878:1 882:12 889:4 906:1 924:19 934:14 949:7 967:13 968:12 990:20 992:6 merchandise 1005:1 1007:20 mercy 559:21 605:15 merger 565:22 606:7 852:10 935:5,9 mergers 534:15 935:19 936:1,18 938:15 Meridian 876:2,2,3 merit 719:19 924:8 947:20 965:5 966:7 merits 962:6 963:11 message 568:21 774:5 1009:15 messages 783:14 813:8 met 629:18 812:10 metal 618:9 619:14 Metals 622:18 meters 837:3 method 573:21 695:8 764:18 methods 799:21,22 906:7	915:9 1001:6 Metra 665:11 metrics 557:16 740:5,11 Mexico 602:15 691:14 789:2,9,15 801:18 mic 529:7 532:18 Michelle 564:18 587:10 646:2 647:6 751:21 754:6 756:11 813:5,12 813:13,15 814:18 Michelle's 566:12 647:7 Michigan 693:6,21 696:7 696:9,9,19 988:5 microphone 520:18 microsense 898:11 mid-1800s 690:7 middle 591:9 839:6 850:12 963:7 Midtec 638:2 645:18 938:20 939:17 955:6 Midwest 618:15 mike 843:1 922:9 942:21 mile 546:4,5,5,8,19 547:10,12 549:21 557:5 557:11 576:13 587:16 587:19 632:16 636:2 639:16 668:4 680:14 681:7,9,13,14 691:6 740:19,19 741:21 752:17 793:10 822:4 825:18 837:4 839:6 976:20 mile/last 546:4,19 587:16 587:19 639:16 mileage 610:11 682:9 739:1 804:6 805:16 miles 565:12 575:12 576:2,5,12,17 593:14 593:14 595:7,10 600:3 608:10,21 609:14 619:7 622:15 623:22 628:10 628:17,18 651:10,16 652:16 653:13 656:4 666:21 667:3 676:21 679:13,16,17 680:2,4 683:14 689:1 690:13,15 694:1 700:12,14,17 723:13 725:1,7 728:3,7 733:22 743:17 752:6,7 752:9 760:14 762:11,12 770:3,17,20 775:5 798:2 803:10,14 804:9 805:12,13 806:15 875:9 875:18 899:14 900:9 1006:5 1016:19 mill 621:7 626:4 628:18	633:9,10 651:11,15 652:16 653:1,13,19 656:4 771:22 millers 568:10 million 533:22 554:4 563:1,3 681:6 694:6 732:9 795:2,4,8 975:11 1005:22 1006:9 1008:13 1012:19 1013:7,12,13,14,15 1014:5 1015:6,7 millions 554:1,2 795:15 815:3,8 817:5 1006:6 mills 523:2 622:16,19 623:21 629:1 632:19,20 633:5 637:7 651:9,14 652:22 655:21 658:21 659:12 694:20 695:3,6 695:10,14 mind 539:8 567:8 588:15 597:3 614:18 783:4 811:2 813:8 834:12 846:10 847:14 890:20 989:17 minded 716:14,14,20 mindful 566:20 567:1 843:13 minds 829:13 mine 602:13 663:11 751:22 836:6 1022:7 mineral 598:12 minerals 521:13 591:11 602:4,9,12,16,19 603:9 603:10 604:1,3 610:3 612:14 mines 988:22 989:2 minimal 608:9 787:9 minimization 925:3 minimize 520:19 644:5 748:22 910:21 1009:14 minimized 926:15 minimizing 596:5 minimum 608:19 648:2 654:17 727:7 965:17 989:22 990:15 mining 602:11 610:3 824:19 Minnesota 571:21 988:5 minor 1020:3 minus 973:18 minus-40-degree 973:19 minute 594:19 721:18,20 787:2 881:12 901:20 908:1 minutes 665:10 827:10 827:11,14 897:5 905:18
--	--	---	---

<p>993:5,7,16 1019:5 misperception 972:10 misquoted 873:15 missed 526:19 539:7 561:1 620:12 630:2 759:16 792:14 946:13 missing 634:19 Mississippi 604:14 636:7 656:17 766:21,21 769:10 771:15 876:1 988:6 misspoke 808:4 mitigate 622:4 966:10 990:14 mix 682:6,12 756:20 982:11 mixed 836:4 mixes 730:9 Mobile 974:18 modal 660:10 825:12,20 907:9 mode 822:1 833:10 model 524:7 620:5 746:10 747:20 817:2 836:2 modern 672:16 690:8 modernize 683:17 modes 533:10 682:10 761:4 824:4 832:18 833:9 985:20 986:8 modification 1023:22 modified 873:19 modify 572:21 609:12 Molson 523:1 525:17 526:1,2,9 molten 600:17 moment 615:3 630:12 645:20 652:14 671:21 672:3 779:13 872:8 momentarily 924:10 Monday 894:10 money 534:8 584:18 653:10 654:17 746:12 755:20 830:10 902:2,8 904:2,2,3,6 1009:18 monitoring 740:21 monopoly 619:19 924:6 942:17 Montana 571:22 734:22 month 633:8 657:6 882:2 886:11 965:18 monthly 527:10 months 536:1 588:3,3 727:14 729:21 793:4 795:3,9 816:6 945:4,12 949:19 1011:3</p>	<p>Montreal 789:15 790:15 800:18 997:1 Moreno 644:16 949:17 995:20 Moreno's 966:10 Morgan 533:18 538:20 938:15,20 939:6 morning 519:2 521:21,22 557:22 567:19 583:2 593:10 616:8,21 617:19 639:7 646:6 666:8,9 675:5 679:6 970:15 motioning 590:21 motivating 837:18 959:12 motivations 1004:1 motor 682:11 mount 547:6,14 mouth 1009:19 move 528:22 538:11,16 545:10,14 551:19 562:18 572:18 600:2 628:3 650:4 660:16 671:11 680:22 682:19 687:21 690:19 694:3 700:11,12,21,22 701:2 709:20 721:3 727:10 729:5 732:16 746:11 753:14,21 754:2 755:6 776:19 777:5 778:12,15 779:5 781:9,10 799:12 809:19 810:3,14,18 827:6 844:3 858:15 859:1 860:4 863:16 865:8,8,8 870:9 880:1,4 881:7 884:3 885:12 887:21 888:14 894:5 896:5 897:19 916:3 917:5 936:3 977:20 979:6 991:22 1003:11 1005:14 1009:2,8 1013:11 1023:20 moved 682:8 876:2 976:16 1006:5 movement 570:14 575:3 679:21 680:12 682:17 704:1 712:2 727:7 755:16 875:15 898:12 930:14 933:15,18 991:7 movements 571:7 742:9 776:18 830:16 858:12 874:5 907:12 1016:13 moves 572:5,6 584:3 626:14 628:3 697:10 709:17 719:13 777:2 796:14 810:5 826:15</p>	<p>827:5 853:18 859:19,21 974:16 977:14 moving 530:9 533:18 539:10,16 574:22 592:6 599:15 606:2 660:1 661:6 691:15,21,22 694:15 700:1 711:17 716:12 726:15 731:12 738:16 753:12 755:8,21 778:5 788:14 795:22 797:21 860:13 875:21 876:1 884:7,9 897:11 974:2,17 999:5 MRE 755:13,20 756:1,8 mudslides 998:8 multiple 544:18 571:13 573:10 576:11 585:15 585:16 623:8 675:18 685:10 706:22 768:16 789:14 794:18 796:6 799:17 987:5 998:6 multiplicity 844:20,21 multiplier 673:16 multitiered 739:12 mum 732:19 Murphy 906:5 914:17 915:6 916:1 917:6 mute 519:9 813:15 muted 937:20 mystery 895:21</p> <hr/> <p style="text-align: center;">N</p> <hr/> <p>N 519:1 name 522:1 567:20 602:7 617:19 630:19,22 666:11 678:9 688:8 700:6 704:20 715:5,5,5 757:9 771:7 787:19 804:10 811:5 813:9 821:2 891:18 922:11 971:14 984:3 1003:19 narrative 1008:2 1009:4 narrow 1018:1 Nashville 632:13 nation 523:11 633:5 nation's 667:3 670:4 678:16 695:22 1017:18 national 523:6 680:1 690:15 694:12 723:9 758:9 771:17 821:4 840:8 970:19 Nationally 667:10 nations 603:10 nationwide 869:15 natural 715:3 728:2 841:3 905:6</p>	<p>naturally 593:8 646:15 nature 559:11 717:21 924:1 986:1 near 569:13 571:7 572:1 608:14 616:19 983:1 near-term 671:9 nearby 525:16 620:3 623:2,14 795:6 nearest 575:13 770:15 nearly 570:15 608:10 621:10 667:2 681:6 689:13 690:14 691:18 823:3 1008:17 necessarily 521:3 544:3 594:5 596:15 598:22 601:7 676:16 886:9 889:16 962:22 991:15 necessary 537:13 547:7 684:7,18 950:22 951:1 necessity 599:18 need 520:4 523:19 524:5 528:15 531:17,18 532:7 534:22 535:1,2,3,6 537:12 541:13 566:3 578:18,21 595:2 596:16 596:18 612:9 616:10 639:8 648:14 664:9 668:17 675:4 691:18 694:3 701:3,5,18 703:18 724:11 735:6,20 759:4,18 760:18 761:9 762:19 764:22 765:11 765:16 774:12 787:8 831:14 846:1,4 864:8 864:17 868:10 870:17 870:21 873:18 886:9,10 887:5 913:4 918:7,8 919:17 931:2 936:8 939:19 942:5,6 945:5 949:22 955:7 960:6 969:11 970:22 985:16 1006:1 1023:13 needed 524:10 547:14 550:14 565:9 606:5 610:18 617:2 619:9 695:13 757:18 759:12 764:3 794:18 827:5 859:11 881:7 898:18 917:16 928:17 needing 664:22 needs 544:12 602:18 649:4 667:20 672:14 687:9 691:8 736:22 759:8 784:4 790:22 797:6 907:14 913:5 924:1 929:5 945:22</p>
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946:1 960:5 968:16 969:12 986:18 990:1,18 996:15 negative 573:4 603:14 644:6 670:20 697:19 742:13 821:13 845:2 862:12 866:11 972:7 1002:16 1016:13 negatively 607:6 673:18 825:2 neglected 668:1 negotiate 619:20 702:4 733:7 734:3,4 743:2 744:2 753:10 784:17 785:2 789:20 800:17 808:21 818:3 819:19 929:14 945:4 negotiated 647:22 732:6 813:22 negotiating 528:6 650:10 732:3 775:21 negotiation 654:21,22 738:3 930:6 945:3 negotiations 621:1 647:12 786:21 883:10 892:15 929:9 negotiative 753:22 neither 937:21 network 524:4 535:5 548:5,12 551:11 560:3 561:7 563:19 564:13 577:15 622:6 644:6 667:4,5 668:15 669:10 670:4,19 671:3,5 690:15,17 694:12 697:3 706:1 709:4,5 721:19 734:22 744:5 745:2,2 747:19 764:5 767:16 841:14,15 842:8,9 843:8,9,10,10,12 844:9 844:16,22 845:4,5,10 846:8 847:10,13,19 859:7,8,13 861:4,7,21 861:22 862:2,12 864:10 865:10 868:7 869:13 870:14 876:10 878:14 885:14 904:21 905:4,7 905:10,17 929:22 933:4 933:21 934:8 943:8 959:4 971:19 972:8,12 972:18 975:8 978:19 979:7,12 980:3,9,10,12 980:18,20 981:6,9 984:12 985:18,22 986:5 986:10,13,14,18,21 987:5,12 988:4,20	989:1 992:10,12,14 999:7 1000:10 1001:15 1001:15 1002:4,16 1004:13 1018:15,18 1022:10 network-wide 995:10 networks 524:11 563:21 577:12 679:9 801:7 821:15 981:19 982:6 networkwide 959:10 neutral 964:19 neutrality 925:2,22 never 522:15 664:3,3 702:5 708:4 732:12 734:1,19 757:17 874:8 919:19 new 524:22 529:6 557:4 563:3,4 568:12 591:13 607:5 621:10 691:14 693:7,13,18 694:4 729:7,22 731:13 759:9 761:1 762:14,16,17 763:19,19 764:10 765:19,21 766:16,17 781:19 782:6 792:21 834:14 838:10 849:7,15 853:20 854:6,12 855:13 855:14 856:14 857:13 860:2 862:8 872:18 873:12 877:4 878:2 884:15,16 899:6,10 903:15 919:22 920:11 921:12 934:1 974:10,18 976:2 977:15,15,19 978:4,21 981:1 983:12 991:5 1008:9 1013:16 1018:17 1020:13 newest 767:2 NGFA 575:18 NGFA's 584:16 nice 521:22 529:12 551:22 634:14 778:9 782:20 Nicholson 876:1 night 530:22 531:21 534:9 565:6 1024:12 night's 532:21 nimble 616:12 nimbleness 592:14 nine 526:17 693:18 NIT 638:7,18,19 671:17 676:6 no-fault 880:11,17 888:5 941:5 noise 520:19 Nolan 721:4,10,11,14,22	722:2 737:9,11,14,21 739:4,22 740:15 742:2 742:11,17 745:8,12,21 746:21 747:6,10 748:7 748:15,18 749:1,10,17 749:22 750:5,9 751:5,9 751:13,17 752:7,12 753:4,8 754:14 756:15 756:18,22 838:13,21 997:6,7 nomenclature 937:14 941:2 non-fault-based 872:18 937:16 nonbinding 951:3 noncaptive 622:3 noncompetitive 605:7 608:16 941:21 noncompetitively 962:10 nonexempt 624:9 nonferrous 618:9 619:6 nonprofit 821:4 nonsustainable 687:4 Norfolk 766:18,22 768:3 768:6 769:5 770:10 803:19 808:5 840:7,14 840:17,21 841:17 842:5 843:6 858:16 893:9 922:16 927:12 940:18 950:8 955:17,19 956:13 958:1 959:1 966:21 969:4 1005:5 normal 752:14 840:19 normally 562:20 805:17 north 522:22 525:3 571:22 576:9 581:20 601:3,9 602:9 651:15 667:10 688:14 694:18 756:4 786:9,12 788:22 789:13 794:7 797:22,22 798:18 801:14 802:14 803:3,18 849:3 974:2 975:8 northeast 610:6 795:7 798:7 northern 604:13 733:1 753:13,14,17 Northern's 766:14 Northwest 577:18 not-fault-based 940:7 note 660:4 672:1 745:15 908:12 916:19 968:12 968:13 noted 520:21 674:10 Notes 678:2 notice 518:19 548:5	765:14 796:22 871:8 888:8 noticed 724:5 notion 575:14 661:9 737:3 843:22 871:5,18 874:10 948:6 November 973:1,10 NPRM 523:22 524:18 611:21 671:15 676:4 995:12 NS 536:5,11 619:4 622:14,14,17,21 625:7 626:18 627:2,3,4,6,12 627:19 628:13 631:16 653:6,11,19 654:1,3 689:9 700:18,19,22 701:16 708:2 771:18 774:2,22 775:19 777:2 778:6,14,20,21 779:14 784:7,10,17 792:12 802:10 807:8,13,17,18 807:20,21 808:9,19,20 808:21 809:6,20 810:2 810:3,6,7,9,10,13,14 812:11,12,15 814:10 819:4 840:10 846:15 848:17 849:2,5,13,15 849:19 850:21 854:2,8 855:14,18 856:5,6,10 856:16,16 857:1,6,14 857:15 858:5,12 859:2 859:2,7,13,14 860:20 861:6 862:1,2,12 863:22 864:14 875:16 879:20 889:13 894:7,17 895:19 899:12,20 900:21 904:21 905:1,7 905:10,17 915:20 929:21 932:14,22 966:7 NS's 770:22 779:3 848:3 850:18 897:20 899:9 900:1,2,5,7 NS8001A 848:4 nuances 676:16 Nucor 628:9,16 651:15 651:15 853:11 877:17 878:17 number 520:1,6 551:11 557:8 560:5 563:12 573:11 575:19 576:1,10 578:17 585:11,21 615:9 639:17 656:21 671:9 672:19 674:3 678:5 685:5 707:22 713:12,13 727:10 758:13 781:17 815:8 829:8 842:3
---	---	--	--

844:16 846:15 849:18 850:18 865:17 870:8 886:18 887:5 915:20 917:3 983:2 998:4 1000:5 numbers 533:19 536:2,5 536:7,19,20 537:8 538:18 561:13 562:2 564:2 656:11 792:9 815:13 881:13 900:15 901:12 903:12 905:19 906:12 916:11,20 976:10 numerous 524:17 525:11 560:4 684:9 757:19 759:15 823:7 978:5,14 NYSW 766:17,18 776:12	704:13 705:7,18,21 706:8,15 707:14 708:6 708:20 709:10 711:3,19 712:6 713:9 717:3,6 719:2,5,14 720:6,10 721:2,11,13,22 735:8 737:2,9,12,13,16 738:21 739:18 751:7,14 751:20 752:2 756:13,15 756:18 757:1,6 766:5 766:11 767:7,10 768:18 769:22 770:4,8,14,21 771:5,10,14,18 772:11 773:8,19 774:7,10,14 774:18 775:2,18 776:2 776:9,14 777:1,11 778:13,18,21 779:2,9 779:19 780:2 783:20 784:15,22 785:15,21 786:3 801:11,19 802:1 802:7,12 804:5,10,15 804:22 805:15 806:4,11 806:16 807:3,9,15 808:1 809:5,10,16 810:5,8,13,16,22 812:8 812:17 813:3,6,13,16 818:12 819:4,8,11 820:5,16,19 826:5,13 826:20 827:2,11,14,16 828:22 829:4 833:15 839:19 840:5 842:21 851:8,13,21 852:4,19 854:2,17 855:4,8,11,14 855:16 856:2,6,12,19 857:6,8,12,17 858:2,7 858:10,17,20 859:5,12 859:17 860:3,12,18 861:3,12,19 862:10,18 863:6 864:6 865:13,16 866:20 867:15 868:2,17 869:12 871:4 872:4,5 873:14 875:4 876:19 877:11 878:16 879:10 879:19 880:14,18 891:21 894:4 911:14 912:12 913:16 914:8,22 915:11,17 916:6,22 917:8 918:4,14,22 920:2,13 921:15,22 922:6 927:8,9,14 928:5 928:21 929:20 930:9 931:6 932:4,20,21 934:21 936:11 937:17 952:7,9,12 955:13 957:3,20 958:20 964:6 968:20,21 969:8,14,19	971:8,12 993:3,17 994:13 1003:6,16 1019:1,4,6 1023:8,9 1024:13 object 944:1 objection 764:14 objections 709:3 711:13 Objective 748:16 objects 840:21 obligated 893:6,15,18 obligation 783:9 797:7 893:7,21 895:15 obligations 715:13 905:2 obscure 722:6 1021:2 observation 661:12 733:13 748:10,12 790:11 962:5 observations 732:1 observe 539:8 observers 662:5 663:12 observing 800:14 obsession 691:3 obsolete 683:11 obtain 522:17 610:15 683:16 790:18 obvious 580:8 759:20 830:9 862:15 obviously 526:6 530:7 543:7,20 544:2 560:2 635:11 639:8 643:6,9 677:8 680:17 685:17 699:10 704:4,16,19 708:3 714:18 725:21 736:20 756:2 758:3 768:1 781:2 817:4,13 838:1 876:14 901:11 921:20 945:17 963:1 964:1 994:10 995:12 1020:20 1023:18 occasion 525:6 931:4 occasionally 718:13 occasions 796:12 occur 588:4 601:9 609:1 621:22 714:2 732:22 758:6 878:9 972:21 979:18 980:1 982:8 occurred 527:1 731:9 732:12 754:1 813:21 846:22 985:3 occurring 552:14,16 560:6,6,8,9 occurs 622:5 850:4 870:5 965:14 ocean 587:3 604:4,12 975:18 ocean-going 586:20	October 998:8 off-line 979:3,5 off-peak 977:7 off-site 977:3 off-the-cuff 643:13 offending 614:9 offer 608:18 611:21 641:14 957:10 981:13 983:20 999:18 offered 621:9 976:19 offering 733:4,6 890:9 offerings 974:16 975:21 offers 893:10 1021:13 1022:11 office 554:3 622:13 officer 688:12 842:6 843:5 971:16 offices 812:4 officials 568:11 offset 608:17 681:2 977:1 oftentimes 570:19 741:20 930:18 973:18 oh 632:13 636:12 753:20 755:5 770:2 778:21 813:3 826:21 889:17 Ohio 526:11 632:18 688:9 693:9 777:6 oil 618:12 989:9 okay 521:19 547:1 558:16 567:10 582:19 597:12 614:1 630:10 640:1 688:4 703:14 711:19 717:6 721:12,16 721:17 729:4 730:20 731:12 737:12,14 739:18 746:10 747:21 750:14 751:14 757:8 766:12 771:9 776:9 779:9,20 807:3 810:22 814:5,19 816:1 819:8 820:6 828:22 855:10 858:17 859:17 880:18 882:6 884:2 885:14 887:21 889:13,15 893:5 896:15 old 849:7,8,21 850:1,6,16 850:22 853:21 854:13 857:3,16 858:8,11 859:2 860:5,9,20 861:10 862:8 863:15 864:12 866:7 877:15 878:1 882:19 895:17 oldest 678:16 olefins 788:13 Oliver 824:12 omniscience 712:5
--	---	---	---

<p>once 592:8 634:12 644:7 747:15,16 752:5 819:17 820:1 845:9,21 849:21 859:6 861:21 862:11 869:1 872:1,2,15 873:11 895:9 one-sided 558:16 647:13 one-third 683:13 one-time 946:2 ones 634:8 674:20 686:4 732:12 767:12 856:18 882:6,18 889:3 916:12 919:3 932:8 ongoing 822:9 online 983:5 onus 735:15 open 577:19 698:9 716:14,14,20 759:10 760:22 763:14,17 798:21 801:9 843:14,22 844:17 845:9,17,21 846:1 849:20 852:12 853:8,12 872:1 891:9 892:5,9,11,14 936:22 937:1 943:7 opened 847:12 852:17 opening 759:3 811:15 847:13 875:4 openness 642:3 operate 526:18 527:6 603:16 618:14 624:7 662:20 667:2,5 679:9 679:16 686:17 687:9 689:1,5 690:17 790:10 832:4 843:9 849:2 855:3 operated 829:10 895:22 operates 591:18 690:14 790:13 806:13 849:3 850:17 895:11 operating 524:7 525:8 601:12 620:5 645:2 683:9 761:13 788:6,7 792:6,7,17,21 797:8 800:5,8 823:3 835:9,11 836:8 839:3 842:6,7 843:5 845:6 875:11,13 875:20 877:16 879:20 884:12 900:3,7 971:16 973:16,16 978:3 980:19 982:13,14 990:9 996:3 1009:11,14,21 1010:7 1013:11,12 1014:3,19 1014:20 1015:7 1016:16,17,20,21 1022:12</p>	<p>operation 684:7 761:7 794:4 830:15 847:19 851:2 974:13 976:17 operational 523:20 524:1 558:3,12,20 601:6 644:18 711:16 736:8 754:10 761:5,18 821:12 821:16 883:21 884:15 900:22 904:12,13,15 981:2,14 983:4,11 1018:13 operationally 881:21 882:2 operations 572:22 593:3 610:7 618:10,21 672:21 683:3,5 685:4,5 686:14 693:10 697:18 725:15 725:18,20 761:15 786:14 792:20 793:10 803:2 824:15,19 826:10 828:10 831:15 835:4 846:6 886:12 971:17,20 972:2,5,8,16,18 978:13 979:22 981:7 982:21 1002:17 1014:11 operator 694:14 732:14 843:12 970:14 opinion 545:2,6,11 548:2 548:18 561:17,18,20 696:22 738:7 868:14 opportunities 651:22 763:19 782:6 1004:19 1008:19 1017:12 opportunity 528:19 541:12 552:13 568:3 580:6 609:18,19 620:2 668:9 678:1 687:16 688:7 691:17 698:4 713:12 758:1 765:6 820:21 826:3 843:6 890:10 892:1 924:15,16 927:2 933:13,20 934:2 934:19 935:14 936:9 941:11 959:14 960:1,6 960:13,21 963:14 969:6 971:5,13 984:5 1008:13 1018:22 1021:13 1023:18 oppose 623:4 opposed 532:1 551:6 610:12 660:10 830:4 835:4 951:22 975:4 opposing 532:9 607:7 opposite 858:15 1004:9 1022:20 opposition 532:13 668:12</p>	<p>optimal 923:15 optimize 843:11 871:2 optimizing 843:13,17 option 593:8 607:11,12 623:13 627:22 629:7 632:8,9,9,21 638:17 658:5,7,12 674:13 692:22 760:21 761:3 774:15 789:21 790:4,17 797:8 809:1 843:21 844:1 875:8 890:11 919:8,10 961:2 options 573:2,3 588:18 596:11 606:8 634:4,6,9 707:20 767:17,21 768:11 799:12 819:19 907:8 919:16,18 order 605:21 610:11 703:2 726:21 727:6,13 825:8 828:3,19,21 831:15 849:1 887:6 889:11 928:6 936:1 944:18 945:12 ordered 566:9 601:20 988:12 ordering 550:19 orders 871:7 918:16 967:1 1020:15 ore 824:21 organization 551:11 553:10 568:7,8 689:12 821:5 829:12 885:4 organizations 704:14 oriented 680:14 origin 545:4,5 571:4 572:5 578:19,22 589:17 680:10 819:22 930:15 origin-served 545:4 original 630:19,22 638:12 671:16 764:12 844:2 originated 680:16 899:20 originating 774:21 900:1 900:6 origination 585:5,16 589:20 636:11,20 origins 761:3 861:17 Orleans 974:18 ought 567:1 576:22 614:9 656:12,22 719:15 720:2 out-of-service 694:2 outages 973:8 outbound 776:21 outcome 699:13 844:11 990:5,6 1004:11 1014:10</p>	<p>outcomes 907:5 1016:22 outdated 624:10 outer 798:2 outlined 702:9 outlining 1009:4 outpacing 1005:11 output 725:3 outrageous 959:22 outreach 615:16 outset 538:5 589:12 650:16 698:13 922:17 938:1 outside 750:16 801:17 865:3 875:19 outsized 666:21 outstanding 1022:18 outweigh 704:9 over-120 1022:22 over-congested 798:9 overall 528:11 588:13 615:19 673:4 690:3 703:6 705:17,18,19 706:4 709:3 710:13 711:12 731:16 781:6 791:16 792:6 832:8 835:3 898:14 905:4 907:14,15 918:3 921:19 928:10 930:7 972:13 981:4 1018:5 overblown 645:6 overburdened 864:13 overcame 693:15 overcharging 609:8 overcome 887:19 896:22 overemphasis 1009:10 overflow 1008:5 overhead 926:4 927:4 overlap 678:4 overlook 1024:7 overlooked 943:14 overly 528:12 overnight 874:12 overrecovery 797:15 overrunning 862:5 overseas 601:4 oversee 618:21 oversight 573:15 838:12 921:2,3 overstated 873:15 overstates 707:6 oversubscription 881:4 overtime 556:12 overturned 733:14,14 overview 993:22 owners 976:9 977:5 989:16</p>
---	--	--	--

<p>ownership 668:3 Oxiteno 789:8</p> <hr/> <p style="text-align: center;">P</p> <p>P 519:1 p.m 720:14,15 721:1 943:13 1024:17 Pacific 536:5 577:18 767:2,6 790:15 823:11 Pacific's 759:3 1001:22 Pacino 668:8 packages 591:6 packaging 521:12 590:14 590:17,22 591:4,8 593:22 696:7 788:12 painstakingly 675:3 paints 612:13 pairings 571:4 Pan 1010:20 pandemic 535:21 536:3 798:14 973:22 985:3,14 panel 519:10,11 521:6,7 544:1 568:14 588:21 601:16 616:17 665:16 665:18 721:3 820:17 821:1 840:2,7 1003:5 panelists 519:19 571:13 577:5 590:20 591:17 866:16 panels 520:22 664:16,18 845:13 paper 746:3 747:13 797:15 808:6 906:4 papers 1020:20 par 566:10 621:8 parabus 731:3 parameters 1015:4 parked 554:4 parroted 568:20 part 529:22 556:21 561:4 569:15 588:13 610:6 620:8 696:1 702:16 722:17 731:22 738:3,6 761:21 767:16 775:3 780:21 781:1 786:13 805:20 845:17 853:4 860:8,16 871:17 887:14 920:21 930:4 936:6 972:15 982:5 994:4,4 part-time 689:4 parte 541:12 559:10 589:15 598:3 964:15 971:3 994:11 1023:19 partially 603:11 723:15 participants 597:13 914:4 921:6</p>	<p>participate 608:13 688:18 999:18 participated 820:7 1022:2 participating 1002:9 participation 1024:5 particular 545:17 555:22 581:1 589:19 645:8,15 658:17 669:17 671:10 715:9 722:18 731:5 771:8 830:16 851:5 863:5 894:9 931:4 954:2 964:8 974:22 988:8,11 991:11 particularly 548:9 571:17 572:10 573:7 583:5 585:2 590:6 606:11 657:22 660:7 666:22 674:8 682:11,15 785:12 828:10 869:14 916:12 959:15 974:14 979:11 1017:17 particulars 906:17 particulate 825:19 parties 930:20 951:1 partner 675:8 691:10 893:12 partnering 692:2 partners 584:9 593:2 668:6 669:2 701:22 1005:15 partnership 675:20 692:10 823:12 partnerships 839:5 parts 524:9 579:6,7,19 601:10 604:3,13 610:17 694:10 933:20 981:9 party 608:2 pass 638:10 763:12 983:22 passee 633:15 passed 664:2 690:7 727:12 817:10,12 passenger 822:8 834:13 834:14 1023:2 path 566:20 639:10 640:13 1021:17 1022:5 pathways 799:1 patience 1023:5 patient 737:8 patiently 646:2 Patrick 544:13 550:7 582:16 638:5 644:8 658:16 659:19 706:15 717:3 722:12,13 739:20 740:16 742:18 749:10</p>	<p>750:10 751:6,9 813:1 833:16 937:12,16,19,20 938:8 941:10 942:21 946:17 950:6 952:7,14 966:17 1021:19 Patrick's 561:18 707:17 813:9 952:10 patronage 925:16 926:3 926:7,11 pay 592:1 605:10 612:16 661:13 663:3 773:8 796:7,20 841:2 928:12 959:14,21 962:3 1011:14 1013:3 paying 606:1 612:15 693:4 818:8 PC 727:6 peg 580:3 Pelkey 840:13 1003:18 1003:19 1019:3 pencils 654:7 pending 611:22 789:8 pension 904:1 people 531:22 532:6,7,9 535:11 541:14,15 542:5 547:6,20 549:5 551:3 556:11 560:16 561:20 562:8,17,19 565:15 578:2 580:11,11 595:20 601:4 633:13 634:13,14 637:9 641:22 642:17,18 642:19 654:20,21 664:19,22 666:3,19 701:20 702:2 705:2 711:16 715:12 722:6 732:19 733:16 772:3 781:2 867:19 870:7 871:5 875:5 890:8,9,10 890:15,18 894:22 896:3 901:9 905:13 937:2 943:15 948:13 949:19 951:14 953:22 956:16 958:3 969:9 1022:3 1024:7 Pepsi 530:21 531:8,10,12 PepsiCo 523:1 perceive 800:2 percent 525:19,20 526:14 533:8,9 539:15 545:1 546:22 550:15 555:3 564:9,10 571:6,6 572:6 580:19,20 581:3,18 591:5 592:9 597:6 605:6,8 619:8 621:10 634:18,20 638:17 646:19 649:8,21 653:10</p>	<p>656:1,2,4,12,19 667:2 667:11,21 680:15 681:10 682:13 685:7,9 690:15,19 704:1 705:15 706:4,8 707:16,17 708:14 716:20 718:13 725:2,4 726:13 769:11 769:17 773:9,13 774:3 780:6 792:11,11,12,22 793:5 800:9,10,11 885:5,5,11 892:3,4 899:19 900:1,2,7 906:16 914:20 915:13 915:18,19,20 946:14 956:12 957:16 973:14 976:11,13 983:2,6,6 986:22 987:2,9 998:9 1013:12 1014:1,7,20,21 1015:8,22 1016:5,8,9 1017:1 percentage 550:1 563:11 563:21 576:4 580:16 656:18 705:16 706:2,3 706:7,20 707:4 perfect 837:1 887:2 perform 637:9 921:4 929:11 978:4 performance 527:1 635:15 636:19 637:10 793:17,19 906:8 910:19 1007:6 performed 761:7 performing 621:13 920:1 performs 680:19 772:4 period 536:10,13 589:16 605:7 611:14 727:20 730:1 795:5 800:10 819:16 836:10 855:2 867:2 893:7 939:15 946:3 997:13,15 1002:21 1005:2 periods 997:19 permanent 943:1 951:22 973:11 1018:8 permit 595:22 596:1 852:2 866:3 permits 925:15 929:22 954:10,13 permitted 644:12 862:13 permitting 841:7 persevering 985:12 person 567:14 590:21 728:5 773:22 784:2 877:4 932:13 958:13 970:20 984:21 personal 524:20 694:13</p>
---	---	---	---

786:18 788:15 personally 634:15 740:18 personnel 761:13,17 824:8 perspective 534:3 545:7 551:18 566:17 660:1 696:8 753:7 835:12 873:2 888:21 978:3 981:14 984:10,14 992:18 999:19 1002:13 pertains 589:17 749:8 pervasive 672:20 pessimistic 630:6 PET 786:13 788:12 Petal 766:20 petition 638:12 671:17 676:6 phase 1010:12 phase-in 824:11 PhD 543:17 Philadelphia 977:16 Phoenix 631:14 637:3,5 823:14 phone 520:1,4,5 546:12 565:17 680:6,7 784:21 799:4 931:18 phones 519:8 photograph 853:3 physical 643:20 644:3,7 878:7 888:10 924:14 927:2 physically 625:17 676:10 677:12 698:2 790:14 809:10 886:17 pick 546:12 565:16 589:7 635:3 724:3,12,16,18 777:14 786:2 810:2 850:19 852:22 857:13 858:13 886:2 894:9,18 977:5,9 picked 533:6 625:3,20 654:5 783:16 853:10 857:18 859:3 877:18 977:7 picking 700:8 701:17 725:2 728:17 740:21 806:6 809:22,22 855:5 856:8 878:17 940:2 954:12 picks 806:10 807:13,16 pickup 680:14,19 976:9 976:13,14 picture 783:2 853:17 910:2 928:10 pie 1006:14 1018:6 piece 553:7 569:12	755:11 807:19 843:11 843:17 1018:6 pike 873:12 pile 642:17 pinpoint 595:16 Pipe 622:18 pipeline 554:22 555:18 piques 587:1 pivot 692:14 pivoted 693:17 place 526:9 558:6 574:10 579:14 596:3 598:9,13 625:17 657:9 675:11 711:12 719:18,20 730:1 772:4,17 797:3 798:3 803:8,22 805:6 808:9 811:8 813:21 858:15 862:1 867:1 869:6,17 876:18 878:15 890:5 893:10 894:16 908:18 919:2 939:18 942:20 946:21 947:8,12 954:13 957:17 965:1 983:8 1007:3 1018:16 placed 520:14 907:11 places 588:8 598:17 625:12 710:15 811:18 866:1 869:5,10 900:14 910:16,19 933:5 plain 676:12 plains 577:16 plan 555:17 599:2 601:17 629:2 740:9 742:4,10 760:22 845:16 846:1,5 846:11 847:10 863:21 864:2,9 870:1,10,16 872:7 881:20 882:2,5,5 882:7 895:12 981:5 983:14 planned 556:18 598:21 planners 782:21 planning 782:21 842:9 843:8 845:17 864:11 869:22,22 871:18 879:6 979:12,12,15 980:4 plans 876:8 978:13 981:5 986:21 plant 525:8,15 526:11,13 527:5,21 530:21 559:22 560:5 561:14 598:7 600:12 691:22 696:9 758:6 760:14,17 762:11 763:12 766:8,12,16,19 766:20 767:1,2 769:10 770:15,17,20 772:20 773:5,17,18 777:7	778:16,22 779:6,18 780:6,18,22 781:1 795:3,3,7 796:5 800:18 803:4,6,14 806:12 807:18 809:20 894:9 987:4 plants 526:17,18,19,21 527:3 591:19,19 592:9 593:2 594:11 597:8,9 597:11,15,17 598:2 599:16,21 601:5 649:13 757:16 781:5 790:14 792:14 794:20,22 795:1 796:9,16 797:6 801:14 801:16 802:3,4 805:7 811:4 818:21 949:20 978:16 plastics 577:2 plate 820:9 play 569:11 585:12 588:5 588:7 612:4 619:22 814:1 816:16 894:22 936:14 played 554:11 696:18 713:18 724:10 playing 605:21 607:10,16 649:22 926:1,9 plays 689:4 pleas 525:11 please 519:8,10,20 520:5 520:18 522:1 535:4,5 703:11 890:5,5 pleased 688:18 927:10 984:4 999:18 1023:3 pleasure 767:7 880:6 896:12 1003:18 1023:11 plenty 712:20 714:19,21 830:10 895:7 plot 724:1 plus 591:5 713:11 725:7 895:13 968:3 pluses 863:10 pocket 872:8 podcast 998:1,1 podcasts 998:3 point 534:7 535:16 540:13,17 541:21 543:16 545:22 552:11 552:21 554:14 557:16 562:15 566:22 570:19 572:5,10 585:1,10,10 586:2 589:20 595:21 622:13 627:6,6,7,8,13 630:16 634:10 639:21 647:7 648:18 654:5	695:2 698:17 703:12 706:18 707:11,15,17 710:17,17,18 718:9,11 719:20 724:20 726:8 735:20 741:4 742:18 743:21,22 746:22 747:3 747:11 749:18 750:19 770:12 772:22 773:14 780:5 803:15,20,22 804:11,11,12,13,19 817:18 829:20 835:16 839:9 849:6 851:11 857:9 860:1 861:4 862:11 866:5 872:1,11 872:12 881:15 884:20 885:13,20 892:21 897:20 898:15 899:9 901:13 904:9 908:3,18 909:12,17 914:10,11 915:6 917:4 921:1 931:14,14 934:14 943:17 950:20 954:18 954:22 966:11,17 996:21 997:17,21 1019:19 pointed 583:5 points 585:6,16 599:19 636:11,21 645:20 678:5 679:11 711:2 717:21 718:6,17 724:7 744:21 745:3 764:12 830:20 838:21 870:18 897:9,13 900:17,21 906:2 981:22 988:1 994:20 policies 570:9 573:8,16 661:17 731:11 899:3 policy 567:21 568:15 607:6,7 658:10,13 660:5,6 661:7 670:18 729:4 732:8 733:13,19 737:1 739:6 821:3,4,6 899:7 904:15 905:14 910:10 920:11 921:12 922:13 936:7,8,8 950:22 951:11 952:22 998:15 Poole 829:8 830:20 poor 526:22 527:18 538:1 543:5,6 640:20 816:3 817:6 827:21 953:20 poorer 537:14 poorly 621:12 popular 822:7 population 982:10 port 975:18 976:3 portion 539:16 673:9
---	--	--	--

680:22 682:19 683:5 684:3 685:20 701:4 706:21 716:9 934:18 945:9 portions 571:22 577:14 973:8 Portland 577:18 733:5 756:6 ports 572:3 577:18 830:17 836:9 974:17 977:15 1008:7 posit 715:2 position 565:2 572:17 623:10 675:21 689:17 696:13 704:15 769:14 826:8 884:11 942:17 960:12 961:7 971:15 positioned 571:19 573:8 641:13 642:20 positions 642:1 positively 725:5 possibility 525:14 528:9 845:18 847:11 863:16 possible 611:9 617:8,12 632:8 703:20 769:12 821:16 886:8,15 1006:2 possibly 624:1 736:18 post 683:8 741:17 post-Hunter 725:16 post-the-tariff 584:4 posted 583:22 584:6 potatoes 839:8 potential 587:7 606:7 668:10 670:13 687:1 690:1 693:16 744:22 776:22 821:19 823:2 828:2,19 829:19 847:9 924:2 972:4 978:5 984:7 987:17 1002:3 1019:21 potentially 544:17 552:9 589:11 612:3,3 640:12 673:3 739:5 750:2 822:21,22 831:12 843:22 844:17 898:16 980:15,17 982:2 987:20 988:1 pound 672:17 683:14 pounds 795:2,4,8 pour 1007:11 power 572:15 573:22 647:20 716:8 796:14 903:14 909:4,7,11 911:22 912:6,15,18 913:2,9 914:3 929:19 943:11 955:3 978:2,16	984:18 992:22 1000:17 powerful 939:10 practicable 763:21 practical 547:5 707:12 761:2 762:19 763:9 774:19 1004:13 practicality 577:22 749:7 762:3 practically 575:12 practice 611:4 707:12 763:1 958:15,18 practices 603:18 604:18 609:7 676:17 955:21 pre-COVID 712:1 pre-Staggers 690:20 preamble 963:1 preapproval 565:8 preassembled 742:6 precedence 661:19 precedent 872:22 931:2 945:6 precipitation 973:6 precipitously 985:5 precise 632:10 783:22 851:11 precisely 1011:20 precision 524:3 758:21 792:1 preclude 762:15 predecessor 664:2 861:16 predecessors 521:11 predict 983:11 990:8 predictability 601:17 613:10 prefer 650:19 655:9,19 658:19 659:3 662:13,14 preference 664:14 premier 669:9 premise 593:5 1012:15 premised 992:21 premium 571:5 694:19 preparation 971:19 prepared 541:5 826:7 844:18 888:15 975:15 preparing 542:7 678:18 prerequisites 1007:16 prerogative 665:11 presaged 712:1 prescribe 939:11 presence 692:21 789:9 present 522:17 573:2 766:1 820:21 826:3 967:11 969:6 presentation 519:18 532:22 605:5 641:11 698:9 710:20 739:22	880:12 886:1 896:9 927:11 938:1 993:21 997:6 1023:10 presentations 788:3 presented 532:21 533:20 534:9 605:4 848:19 899:9,9 955:15 997:8,8 presenting 519:12,17 957:22 presently 881:3 presents 760:7 preserve 661:10 960:6 961:21 preserving 623:1 president 522:11 529:8 567:21 590:17 602:8 617:20 666:12 688:8 722:11 843:5 971:15 972:1 presiding 518:20 pressure 602:20 686:1 703:21 704:6 862:2 pressures 607:19 684:12 Presumably 958:1 presumptions 638:8 pretty 554:3 559:20 583:22 718:7 732:19 734:13 836:3 907:5,16 933:3 939:10 940:11 968:5,6,22 970:9 994:3 1019:14 prevail 949:9 prevailing 923:16 924:3 926:3,17 prevalent 526:20 prevent 525:15 605:22 738:18,19 936:18 965:6 preventing 873:7 previous 568:14 588:3 595:5 704:19 723:3 726:6 989:12 previously 568:20 593:10 723:16 728:5 760:10 762:9 889:4 971:21 992:6 1004:6 1021:20 PRFBA 522:4,12,21 523:15 524:1,19 526:11 528:7 529:7 538:2 544:15 553:9,20,21 560:15 634:1 641:15 price 531:11 561:15 571:3 582:2 599:9 650:22 695:19 745:20 746:5,19,20 747:2,3,8 747:22 749:3 817:16 902:15 909:4,10,20	911:6 924:5 934:17 937:8 956:15 962:3 price-competitive 694:16 priced 585:22 prices 561:5 635:8 684:12 903:6 907:18,20 909:8 913:6 923:3,6 924:6,12,19 925:6,12 925:21 926:20,22 927:3 928:12,14 954:3,15 958:2 pricing 527:22 552:17 556:9 562:6 572:22 583:15 603:18 604:19 605:13 629:16 646:17 695:6,15 735:21,22 745:16,19 746:15 747:1 749:3,5,20,21 750:2,22 790:6 818:4 831:4 841:1,8 842:12,18 881:9,9 903:5 913:3 923:14,15 924:8 928:7 928:22 934:6 1017:21 1020:5 1022:13 pride 690:22 761:17 prima 638:12 primarily 569:7 574:22 796:17 818:19 primary 571:12 615:13 759:13 924:20 938:19 1015:17 prime 1008:20 Primus 557:19 560:18 561:17 563:10,20 564:16 582:21 583:19 584:14,19 586:7 587:9 597:2,12 599:12 600:8 640:17 649:1,11 650:13 666:11 713:6,10 715:22 716:22 751:11 780:1,3 780:9 781:4,14 783:2 783:18 813:11 814:18 815:14 816:1,4,15 817:10,17 818:10 819:9 819:12 820:3 880:20 881:12,14,17,20 882:6 883:2 887:2 889:6 891:13 892:7,20 893:2 893:17 894:2 947:4 Prince 976:3 principal 819:5 principles 745:16 748:21 750:7 923:7 947:12 prior 522:6 535:20 723:2 734:21 862:19 927:12 983:7
---	--	--	---

<p>prioritize 759:7 priority 976:2 private 521:9 522:3 667:19 691:9 697:8 715:15 760:8 825:15 985:17,22 986:5 privately 829:9,10 privilege 922:14 pro 852:17 pro-growth 1010:11 proactively 867:1 probability 1014:1,17 1015:22 1016:2,8,10 probability-weight 1016:22 probability-weighting 1014:4 probably 563:18 581:12 581:13 584:16 588:4 596:11 598:3 599:18 610:8 627:14 644:17 649:4 652:7 655:22 656:18,19,19 657:3,4,5 707:12,22 715:2 716:2 716:4 721:21 729:13 733:5,20 738:9 744:9 747:14 750:16 752:16 753:20 754:16 762:15 776:21 779:7 815:7 827:1 831:13 832:17 836:16 860:15 861:16 877:20 889:2 905:11 918:2,12 950:18 958:16 958:19 960:15 probing 639:6 problem 527:15 638:14 639:14 645:21 646:1 649:14 744:16 750:4 758:10,20 759:6 770:9 770:10 772:20 773:2 784:6 837:7 859:7 874:17 877:9 888:21 896:1 898:18 899:6 904:18 905:5 907:1 909:17 917:9 918:13 919:11 935:11 943:4,5 944:3 950:1 951:22 953:15,15,17 955:9,13 956:6,7,9,11,20,20 957:6 961:13,14,14 963:22 964:3 967:16 983:17 1018:10 probematic 669:7 704:22 819:6 848:10 978:10 problems 524:16 527:8</p>	<p>545:20 561:6 576:19 610:16 622:1,2 649:8 659:1 660:9 696:11 716:16 757:3 791:14 793:20 794:10 812:5 818:18 841:4 862:20 874:6 899:3 907:4 920:12 936:17,19 937:7 938:13,18 966:19 995:7 996:11,13 procedure 1023:17 procedures 763:9 765:2 765:22 proceed 666:6 676:1 721:10 766:4 805:4 826:1 842:19 865:22 943:2 970:1 992:19 1003:14 proceeded 866:4 proceeding 522:8 566:20 662:10 696:16 757:20 761:19 765:1,5,10,11 785:12 801:2 821:11 843:7 848:1 927:13 949:16 984:6 995:3 996:18 proceedings 524:18 662:11 702:6 764:16 process 572:19 613:19 646:19 736:17 738:4 762:14 763:6 790:12,16 792:21 965:5,16,17,19 966:15 978:20 1002:8 1021:12 1022:7 processer 618:9 processes 535:12 682:14 processing 602:11 processors 568:10 Procurement 786:10 787:20 produce 523:9 603:3 633:3 639:13 788:13 produced 559:19 592:8 695:18 producer 909:20 producers 571:16 572:13 581:17 604:5,11 989:6 producing 570:4 601:7 product 531:11 555:9 556:13 592:19 612:17 634:7 637:15 650:4 760:15 767:22 778:2 798:16 818:7 889:20 907:10 910:18 943:21 952:19 953:2 979:6,13 production 525:6 527:3</p>	<p>569:18 574:17 580:16 580:21 581:4,5 597:17 619:9 691:18,21 693:5 693:12 773:16 780:21 780:22 781:10 794:20 795:2,4,7 815:12 productive 644:2 663:19 productivity 824:3 products 523:10 577:7 603:3,4 642:21 682:14 689:8 694:15 757:14 758:5 775:9,12 790:3 Professor 838:21 842:16 922:9 927:16 932:15 940:3 997:6,7 Professors 906:5 profile 788:11 profit 663:2 735:22 748:1 748:6 838:2 841:9 902:14 930:7 1016:12 profitability 1012:11 1016:1 1017:3 profitable 830:10 1010:8 profitably 926:11 1007:9 profits 563:9 916:5 940:5 941:17,18 profound 758:16 1021:6 program 987:7 programs 987:1 progress 671:3 progressive 727:1 773:12 project 694:4 822:11 844:19 988:10 projected 989:7 projecting 843:20 projections 782:15 projects 662:1 693:20 988:8 989:18,21 990:3 991:11 1008:10,12,16 1011:12 1012:4 promise 716:20 820:22 promote 924:21 925:7 promoting 791:8 954:17 1017:16 prompted 1002:15 promptly 624:3 promulgate 838:6 prong 727:8 763:5,21 764:3,7 941:5,7 proof 639:21 640:11 736:22 propane 769:4 774:17 775:5 778:15 875:21 propellants 757:11 proper 640:16 986:4 properly 536:22 909:8</p>	<p>property 679:18 683:17 693:3 proponent 1001:5 proponents 995:18 proposal 525:18 587:18 609:12 638:7 715:9 762:1,18 787:14 801:6 821:14 840:22,22 841:4 841:12,20 842:1,7,14 842:20 867:8 897:14,16 930:22 938:2 941:4 946:20 963:10 964:13 964:17 972:4 974:7 975:4 977:18,19 980:11 980:15,17,21 981:1,1 981:10 982:2 983:13,17 984:8,11 987:16 988:7 991:4 995:5 998:21 1001:5,10,11,20,21 1002:15,18 1004:7 1006:11 1011:15,19 1012:12 1013:9 1017:10 1018:9,12 1019:11,15,22 1020:2,5 1020:18 1022:11,19 1023:21 proposals 611:19 669:16 902:21 992:4 proposed 522:20 523:17 523:19 524:5 526:8 527:20 537:12 592:21 607:21 609:11 637:18 646:19 670:3 676:11,15 687:14 689:18 696:17 762:3,17 769:8,11 801:2 821:19 825:1 828:19 830:8 845:15 939:6,7 988:8 1002:6 1004:15 proposing 676:2 951:7 proposition 991:16 prospect 822:4 1019:13 prospectively 867:13 protect 702:10 707:2 748:20 765:11,18 934:13 protected 703:19 826:2 protecting 708:22 841:6 protection 1020:11 protections 607:18 612:9 1020:14 protects 1017:20 proud 549:14 1002:7 prove 764:7 962:14,18,18 proven 734:13 825:10 956:19,19 963:17</p>
--	--	---	--

<p>provide 528:3,20 532:6 532:10 535:6 536:22 542:13 544:7 573:3,21 588:9 612:1 616:9 623:10 626:9 641:13 644:5 672:18 673:19 675:4,6 676:21 679:11 679:20 684:13 685:3 689:14,22 691:7 695:13 704:7 740:9 761:14 785:9 787:12 795:17 797:19 799:11 830:1 848:8 874:3 877:17 918:15 941:8 948:13,20 953:11 955:22 957:5,8 958:4 962:1 966:9 972:14 976:19 979:13 986:16 989:1 provided 520:3 532:14 547:10 628:20 635:10 667:12 669:12 697:1 797:10 815:18 922:17 923:10 939:21 963:17 provider 619:18 621:2,13 621:15 988:21 providers 620:19 931:17 provides 566:22 606:4 607:17 663:3 791:11 993:21 providing 543:5,6 579:14 588:17 605:1 620:1 622:4 646:16 674:22 692:20 797:3 820:21 844:22 925:19 933:14 935:14,15 936:10 947:21 955:22 968:9 provision 733:18 925:13 950:12 provisions 699:15 727:13 727:21 730:2 990:15 1021:2 proximity 628:16 632:19 proxy 1009:12 PSC 625:4 632:12 PSR 524:15,21 527:14,18 527:19 528:14 533:7 536:6 537:14 558:6 562:4 563:1 592:15 605:18 606:22 607:5 613:8,15 615:9 620:5,6 620:8 716:5 725:18 792:3 793:11,20 794:11 794:13 801:4 816:6 819:1 PTR 562:4 public 518:7 526:21</p>	<p>604:22 609:15 612:16 658:10,13 660:5,6 661:17 668:16 669:16 670:20 696:22 734:9 763:22 791:20 797:13 821:4 822:3 826:1 876:22 922:13 936:8 1005:17 1007:5 1017:18 1023:16 1024:2 public's 609:6 publicly 585:14 published 538:21 557:7,9 722:5 723:16 publisher 663:22 publishing 664:4 pull 531:9 550:8 553:9 854:9,14,19 858:16 870:22 879:15 889:10 pulling 798:16 938:7 pulls 849:14 856:21 882:13,13 pulse 837:21 punch 666:18 punishment 964:4 purely 697:7 purity 757:12 purpose 537:21 674:4 858:8,18 911:4 934:11 935:17 936:2,3 995:11 999:1 purposes 537:18 pursuant 518:18 pursue 1022:5 pursued 968:22 push 550:13 662:6 735:8 903:2 906:21 914:6 pushed 792:19 pushes 903:18 958:2 pushing 649:21 699:20 833:21 put 532:12 534:3 541:14 554:7 558:22 559:18 568:1 588:12 599:20 604:21 611:13 626:3 632:2,16 638:18 644:10 654:22 659:6 662:13 669:21 672:9 674:5 677:10 686:16 695:5 703:15,21 704:5 708:6 710:11 719:8 721:16 728:22 737:16,18 738:1 738:17,17 747:19 749:6 755:15 760:2 773:22 779:11 830:11 836:17 846:19 853:2 857:2</p>	<p>858:1 866:22 896:10 904:6 906:5 909:13 919:2 942:19 946:20 947:7 954:13 957:17 964:22 995:20 1008:12 1016:8 1024:6 puts 581:4 658:11,12 670:3 701:9 857:17 putting 566:9 581:1 594:14 632:14 709:20 751:3 798:16 1009:18 puzzle 569:12 puzzles 933:1 Pyco 942:8 944:20</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>qualitative 917:15 quality 568:18 588:17 761:17 918:3,13 961:22 962:2 1010:13 quantifies 559:2 quantify 561:10 628:15 651:2 655:17 quantities 682:9 quarrel 916:15 quarter 539:14 800:7 quarterly 769:7 quarters 693:19 quartile 906:9 916:3 quasi-commercial 839:3 queried 738:22 queries 851:15 query 772:3 quest 1012:3 question 539:22 540:22 541:5,17 542:19 543:16 544:20 548:8 552:3,6 560:19 564:1,5,18,20 566:13 574:5,6 575:6 575:18 584:5,20 585:12 587:22 599:13 600:10 614:2,17 626:12 628:4 630:11,13,15 634:1 637:12 643:17 646:3 647:7 650:15 653:12 656:7 658:15 659:19 662:17 663:1 668:18 676:14 684:17 701:15 708:21 710:8 712:13 713:7,21 714:17 715:7 717:19 735:3 737:21 739:20 740:15,16 744:18 745:21 748:18 754:8,14 775:19 776:16 777:17 778:14 818:9,15 819:10 831:9,9 852:5</p>	<p>865:21 868:1,13,15 877:8 880:21 885:7 887:22 888:1 894:13 904:5 930:16 932:13 933:15 934:22 935:7 938:16 952:11 956:17 965:10 966:6 1003:10 1012:1 questioning 589:8 questions 519:16,18,21 520:9 538:15 552:4 557:18 563:11 567:12 574:2 577:21 582:20 583:4 590:5,11 594:20 594:21 597:1 602:1 609:19 614:15 616:4 617:2 624:18 625:16 631:7 643:5 663:17 664:8 677:16 678:19 687:20 688:3 698:5,9 717:7 728:8 750:20 751:6 756:14 766:7 779:22 784:1 801:10 805:2 812:20,22 818:12 820:6 826:4,6 829:1 831:1,10 839:20 847:22 851:10 852:20 877:12 880:3,7 911:12,13,15 922:2 927:11 937:12,14 970:3 971:5 994:11 999:17 1000:3,18,20 1002:20 1003:9,13 1020:21 1023:6,13 quibble 921:20 quick 557:19 582:22 597:2,4 647:6 713:6 872:10 880:20 883:2 964:11 965:9 968:5,6 996:21 quicker 548:21 966:9 quickly 534:11 692:14 733:12 734:21 755:3 789:20 791:11 820:22 845:15 879:3 888:17 894:5 897:12,19 904:11 906:2 964:18 967:6,11 993:16 994:18 997:5 998:13 1021:14 quid 852:17 quit 586:3 quite 543:18 546:19 548:5 560:7 576:14 581:11 583:17 588:19 635:5 640:12 664:9 690:12 710:15 713:14 724:8,9 743:13 770:12</p>
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775:3 781:12 820:11 829:17 915:19 919:20 931:20 947:19 965:11 1012:3 1014:10 quo 685:21 782:5 817:1 852:17 935:13 936:1 quote 808:17 874:1 quoted 874:2 quotes 570:22 584:9 1009:6	692:8,21 693:3 694:12 697:3 725:14 726:2 727:12 728:22 747:18 757:16 758:22 760:8 761:1 762:15 764:5 766:9,13 767:4 768:2,2 776:15 790:3,4,7 791:10 793:2 795:15 796:2,17 797:8 798:18 802:3 816:19 817:16 821:15 823:22 824:16 825:12,14,16 830:5 831:16 832:11,11,13 833:22 834:3,14,15 835:15 836:13 837:20 839:12 844:11 904:3 907:17 908:7,14 909:15 910:2,7 913:4,5 939:1 939:11,15,20 944:4 945:21 954:2 972:21 973:16 979:7 980:8 981:20 982:3,6,10 984:4 986:6 987:15 988:22 989:1,5 992:14 992:15 996:19 1000:1,4 1000:5,9,14 1002:4 1004:19,22 1005:13,19 1006:6 1008:7,17,22 1010:16,21 1012:17 1013:19 1016:5 1018:6 1019:16 1022:10 rail's 821:21 823:6 1006:13 rail-on-rail 907:9 rail-related 786:17 railcar 521:9 522:3 525:7 620:13 633:17 652:21 659:4,10,12 662:13,14 683:14 792:22 railcars 526:18 527:7 554:5 620:13 650:3,3 659:5 672:17 791:4 794:21 796:4 818:2 982:19 railroad 525:4,4,11,16,18 526:1,2,5,8,12,13 528:3 528:4,5 530:13 532:10 533:4,13 534:22,22 535:5,8,10 543:4,4,6,8 547:19 548:4 551:2,7,9 558:11 560:22 562:14 565:12 566:1,18,22 572:12 575:8,13 578:10 586:12 588:15 595:14 605:15 607:13 611:13 615:12 616:1 618:18	620:2 625:13 630:21 631:12 632:1 634:11 636:17 637:15 644:22 648:2 651:18,22 656:22 662:15 666:13 669:2 672:12 679:5 680:5,10 680:12,18,19 681:12,21 682:4,13,19 683:13 684:2,14 685:4,8,16,22 686:2,4,21 687:1 688:10,17 689:12,13 691:14 692:1,9 693:6 694:13 695:9,11,11 696:9,18 700:9,9 701:12,17 705:20 709:21 710:1,7,15 712:11 745:6 759:20 760:9 761:16 772:4 780:13 782:1,21 785:8 789:18,21 790:21 791:22 792:4 793:16,20 794:15 795:10 796:1,2 796:13 797:5,10,12 798:1,8,10 799:3,10 803:6,12 807:1 808:14 809:3 817:7 818:3 827:21 828:8 829:16 841:7 844:2,4 847:6,7 853:13 865:14 871:15 887:18 888:6,7,18,19 894:6 898:14 899:14 902:10,11 904:20 906:8 906:14,16 915:8 918:16 918:17 919:6,15 922:16 924:17 925:10,15,19 926:2,6,7,8,8,10,13,19 928:1 929:11 930:2 936:7 945:3 948:9,17 948:18 949:11 953:10 954:12 955:3,12 957:3 957:4 959:13,16 965:1 967:14 968:8,16 972:12 978:4,5 985:2,20 986:2 988:13,16,21 992:2,7 992:22 997:3 1007:7 1010:20 1015:1 1017:7 1018:3 1023:2 railroad's 524:9 527:6 557:6 609:7 682:7 686:5 719:8,9 825:2 838:9 924:12 984:8,17 996:3 railroaders 972:13 973:2 973:21 974:1 railroading 524:3 531:8 668:13 758:21 792:1	972:2 1009:20 railroads 523:9 524:12 524:18 526:22 527:9,15 527:19 528:9 530:6,18 530:22 531:16,18 534:7 535:7,20,22 536:6 537:2,8 538:7 539:10 542:9 543:11 544:5,18 546:22 547:1,8 548:5 559:21 563:8 568:5 570:3,6 571:11 572:15 573:11 576:11 577:21 588:2 602:21 603:19 604:21 607:3 608:17 611:20 613:17 614:21 615:9,15,20 620:5 621:2 623:4 629:20 634:14 640:7 641:13 654:16 655:13 657:13 659:2,14,18 662:18 666:15 668:19 669:18 678:20,21,21 679:1,3,4 679:7,9,14,20,22,22 680:2,8,13,16 681:1,3,4 681:6,8,13,17 682:10 682:18,21 683:3,8,10 683:16 684:10,11,17,19 685:2,10,10,19 686:17 686:19 687:4,6,8,11 688:22 689:1,6 690:2 692:21 694:11 695:22 696:15,16,19 698:3 700:2 707:8 711:4 718:1 757:20 759:7 760:2,4 761:6,8,12 765:2,12 769:2 773:1 777:19 781:16 782:2 786:20,20 789:19 790:7 791:7,10,14,17 792:19 793:14,22 794:4,9,13 794:17,19 795:6,12,17 796:8 797:1,5 798:15 798:21 799:20 801:7 805:3,6 806:22 811:7 811:14,20 814:15 818:19 819:14 823:9 824:1,13 830:1,7,9,15 835:7 837:11,18 861:16 864:8 869:17 871:16 872:22 873:3,13,20 874:3,14 893:6 900:22 902:1 903:20 904:8 905:2,16 909:20 911:5 912:15,19 914:19 916:3 921:1 927:18,21 929:10 945:4 946:19 951:10
---	--	--	---

955:8 959:11 961:22 962:12 964:20 966:16 967:10 970:10 977:21 979:1 995:7,14,21 998:17 999:4,6 1000:17 1002:11 1005:5,14 1009:9 1018:8 1021:14 railroads' 933:7 941:16 railroads's 573:22 rails 604:6,18 railway 693:15 727:8,11 728:11,12,12 732:4,15 734:4 735:19,19 743:1 743:1,4 747:17 750:14 753:10 826:12 900:2 railways 583:19 688:9 724:8 725:22 726:8 727:10,16 729:5 730:19 733:15,16 734:11 738:13 744:8 754:2 755:18 972:1 railways' 726:14 railyard 823:14 827:4 rains 973:3 raise 634:20 678:6 774:2 811:14 875:7 901:20 902:7 953:13 991:8 raised 541:17 587:15 595:4 606:12,18 610:10 876:22 1020:21 raises 978:5 raising 605:1 614:17 662:9 684:12 761:18 772:3 958:2 959:16 966:6 Rambler 688:22 ramp 623:17 Ramsey 735:21 745:16 745:20 746:5,15,20 747:1,20,22 749:3,3,5 749:12,20,20 750:2,22 random 853:1 877:19 range 608:14 610:15 684:1 730:11 821:5 837:2 902:16 933:9 973:19 ranges 689:7 rapid 605:16 rapidly 881:11 969:10 rate 525:22 527:18 569:20 583:22 584:4,7 606:6 607:13 609:2 611:3,13,19 620:20 621:9,11 638:3 646:18 646:19 647:15,16 648:11 649:6,12 652:3	652:11 653:20 654:5,16 655:1,2 658:1 660:12 661:14 662:11,19 663:3 701:18 702:2 703:22 715:13 732:4,6,15,16 733:5,6,7 735:18 741:10 743:2,5,19,20 743:22 746:3 749:4,4 774:22 775:20 777:9 786:21 790:18 796:20 816:5 817:4 841:5,10 881:8 903:18 907:11,17 908:15 912:3 924:3 930:20 953:15 956:13 956:20,21,22 957:1,5 957:13,15,19 958:13,14 958:18 961:5,5,12,20 964:9,21 992:20 1012:5 1012:22 1014:7,15 1016:16,18 rate-adjusted 642:14 942:2 rate-related 953:19 rates 525:19 528:6,22 537:15 538:1 545:3 548:22 552:17 568:17 570:15,17 582:6 583:5 583:7,7,13 584:6,15,18 585:19,20 603:1 605:1 605:7,17 606:5,9 607:19 608:16,18 609:16 612:20 619:18 620:16 621:13,14,19 623:16 628:14 634:7,17 634:20 635:1,4,5,15 646:11 647:2 651:12,17 658:4,6 673:19 690:20 740:11 746:4,9,14 755:8,9 756:4,7 757:21 758:2,3,6 759:1 762:21 764:20 769:3,6 774:3 789:20 797:14,17 799:16,18,19,22 800:12 800:16,19 819:16 841:2 841:3,7,14,16,18,19 875:8 902:16,22 908:7 908:14 909:15,16 910:19 921:6 941:8 946:20 947:1 952:17 953:1,2,13 957:14 959:17,22 961:6 984:15 991:11 1001:7,12 1015:16 1016:3,9,12 1018:3 1021:11,11 ratio 525:20 800:8 1009:11,14,21 1013:11	1014:3,19 1015:7 1016:17,21 ration 959:16 rationalization 764:5 1010:21 rationalizing 1007:18 ratios 792:7 800:5 rattail 934:16 raw 591:2,3,10 592:7,19 593:16 598:8 602:16 612:11 767:19 773:15 774:15 794:21 797:21 Ray 840:9,10,17 844:19 867:16 871:22 873:14 880:8 893:2 895:14 896:8,14,17 909:12 922:6,10 931:7 934:22 937:22 941:15 942:4 952:13 955:14 961:5 963:22 964:6 965:15 993:8 1003:1,12 1023:9 1024:15 Ray's 868:18 RCPA 785:5 812:5 reach 532:7 695:18 804:20 820:1 904:22 905:16 973:19 reached 580:8 695:2 799:4 reaches 519:14 904:20 reacting 643:5 791:11 reaction 595:20 643:13 read 521:7 868:3,3 939:9 readily 546:10 634:2 reading 891:8 reads 710:14 ready 665:13 671:5 785:5 885:10 948:17,19 real 557:19 581:4 582:3 582:21 587:6 597:4 606:19 607:20 609:1 611:2 623:19 736:14 759:6 779:12 842:14 872:10 883:2 886:8,9 895:15 896:11,18,19 902:2 907:18,19 908:13 929:2 963:18 983:17 real-time 845:5 realistic 718:7 realities 547:5 978:21 991:17 realize 719:16 736:12 829:17 realized 568:17 738:8 really 535:5,13 544:8 548:12 557:2 559:13	562:1 568:16,18 570:8 574:15 576:19 579:5 581:14 583:8 584:8 587:1 594:9 595:7 596:16 598:18 600:20 621:5 630:1,1,1 634:18 637:3 641:6,16 646:21 647:9 649:16,20 651:3 651:7 653:7,7 656:9 662:8 663:5 684:2,21 685:14 687:12,14 699:13 708:13 711:20 713:3 719:12 721:20,20 722:6,6 726:14,14 730:19 733:10,11,22 735:2,3 736:6 737:6 740:20,20 742:13 744:16 745:19 747:10 749:7 755:6 756:2,16 756:16 769:20 774:19 777:11 784:2 786:4 808:12 818:17 820:9,11 828:12 829:18 831:6 837:17 839:10 851:15 852:15 861:17,22 864:17 868:13 870:20 876:11,20 881:19 898:7 906:19 907:7 910:8,17 914:9 915:13 927:18 934:15 935:22 938:21 940:13 944:4 947:5 948:10 949:22 951:17 954:12 965:4,19,21 968:10 970:13,15 993:10 995:6 996:15,15 998:17,22 1020:4,19 1021:9,10 1022:4,8 realm 551:19 686:18 945:7 reap 988:16 reason 525:22 528:17 540:11 547:2 561:4 603:12 606:18 607:6 721:8 723:14,15 726:12 734:1 738:6 753:6 755:10 762:6 768:9 816:2 820:18 821:3,7 826:3 829:7,14 830:2 861:4,12 863:13 877:5 877:16 882:14 895:2 904:14 905:20 910:9 937:5 957:4 960:5 962:20 1001:8 1013:3 1020:2,19 1021:8 reasonable 593:13 606:9 608:1,4,20 609:13
--	---	--	--

612:10 624:11 648:16 790:18 791:10 797:17 800:20 841:8 934:7 941:8 961:8 964:21 986:19 reasoning 610:20 911:18 913:21 reasons 551:7,12 560:4 632:6 642:10 646:13,15 687:13 745:5 781:15 842:15 852:14 864:7 905:22 922:18 928:7 949:6,12 1019:14 rebuild 600:17 987:11 rebuttal 968:3 recall 560:5 768:19 915:18 942:12 receive 621:18 658:22 685:19 790:3 932:9 received 549:9 780:7 receiver 676:13 846:15 receivers 787:13 791:12 799:11 receiving 584:10 760:15 794:18 892:12 receptive 833:6 recess 665:8 720:12 840:2,4 969:18 recessed 720:15 recession 1005:3 reciprocal 518:5 522:16 524:22 525:13 527:19 528:16,17,20 529:4,21 530:7 532:1,10 540:3 540:10,14 541:18 542:5 542:10,13 543:10 555:15 565:5,21 566:10 566:10,19 568:13 572:19 573:18 575:10 575:14 576:7 578:3,11 580:3 587:13 588:11 589:12 592:22 595:11 595:22 596:2,3,14 606:3,3 607:8 609:10 610:15 616:11 618:6 619:21 622:3,7,11 623:5,9 624:3,15,22 625:14,17,18 626:9 628:20 646:10,11 648:7 668:19 669:15,22 670:1 671:12 672:9 673:5 677:10 678:22 684:15 685:13,22 686:6,21 689:18 696:14 697:12 697:20 699:1,12 700:1 703:20 705:11 706:11	708:4,12 710:7 711:11 714:1 715:8,14,20 727:17 735:12 736:1,22 739:12 741:2 743:22 744:17 757:18 759:10 760:3,20 761:6 762:1,3 762:7,16,19 763:9,15 764:14,16,19 765:3,8 765:13,20 771:1,2,19 772:2,5,16 775:20 776:6,18 777:12 780:14 787:7,10 790:16 791:9 791:15 795:21 797:2,18 798:3 799:9 801:1 803:21 804:15 805:6 806:18,20 807:5,10 808:2,5,8 809:18 811:8 811:18 814:11,12 816:20 821:19 827:18 840:6 843:14,21 844:14 848:2,5,9,21 849:20 851:19,22 852:2,13 853:19 854:10 855:9 864:1 866:1,3,6,11 867:7,19 868:6 869:5 869:19 871:7,10 874:4 874:13 877:17 882:19 883:6 890:2 891:5,10 892:1,12 895:3,9 897:15 898:3,9 900:14 901:14 917:16,19,19,21 918:12 919:1,10 927:17 930:18 931:3,14,21 932:7,14 933:7 935:3 935:12 939:12 943:8 952:16 955:5 961:16 994:6 996:12 1001:10 1004:2 1006:11 1011:15 1012:13 1015:11,15 1016:11 1018:3,9 reciprocally 858:21 reciting 538:16 recognize 595:4 596:9 671:15 684:11 760:3 898:22 916:10 recommend 545:15 736:13,14 880:13 recommendation 838:18 recommends 1000:1 reconnect 519:22 reconsider 763:4 reconstructed 989:2 reconvene 840:3 969:17 970:14 reconvened 720:15	record 546:16,19 661:10 708:17 718:3 725:12 737:17 816:17 986:20 987:5 994:8,10 995:9 995:13 996:16 997:2,22 recording 520:15 records 597:18 recourse 795:16 recover 559:14,15 794:14 887:4 932:2 934:17 973:2 1013:15 recovering 985:11 recovery 876:8 972:16 973:20 recyclables 618:13 recycled 591:13 594:6,7 594:10 619:11 recycler 618:9 recycling 521:14 591:12 616:18 617:22,22 618:1 618:8,10,11,11,12 620:10 621:17 624:2 662:12 reduce 551:3 621:11,14 641:14,18 670:10 686:1 697:4 701:18 731:14 751:3 823:6,20 977:11 979:10 987:13 1004:7 1008:8 reduced 549:10,13,15 551:2 564:6 692:6 787:6 792:6 822:18 905:21 975:18 976:5 981:4 982:21 1014:12 1016:16 reduces 619:12 930:6 979:16 reducing 563:8 824:11 825:3 1007:17 reduction 673:3,4 731:15 987:2 reexamined 950:13 refer 520:8 reference 530:21 538:22 704:18 922:18 923:10 references 676:7 referendum 890:12 referred 533:3,4 571:14 768:21 908:10 982:16 referring 700:8 refile 763:18 reflect 923:7 924:7,12,19 925:6,12,21 926:21 927:1 Reform 965:22 reforming 966:2,8,8	reforms 966:22 refrigerants 757:12 refrigerated 553:16 556:1 refuse 894:1 957:7 reg 919:22 regard 629:20 888:4 937:6 965:19 regarding 529:9 535:19 990:11 999:22 1000:3 1002:2 1020:21 regardless 1004:10 regards 609:12 regime 677:11 702:16 936:4 996:1 1001:14 region 587:2 604:15 617:21 618:22 631:14 656:7,8 764:21 783:5 786:11 788:22 988:11 regional 617:20 666:12 688:10 689:11 694:11 1023:2 regions 570:2 571:1,9,18 573:10 618:15 621:16 regression 730:4 997:8 regs 968:11 regular 564:8 566:4 839:17 903:22 regularly 675:15 1012:9 regulate 660:8 841:19 1021:4,5 regulated 735:18 736:1 736:19 743:20 900:4 902:5 972:9 981:11,13 981:15 982:8 983:12 990:12 992:8,11 1007:4 regulation 661:14 689:18 690:5 727:9 735:6 755:11,15 841:5,10,15 912:7 919:22 920:21 939:21 963:2 984:16 regulations 523:19 524:6 571:14 603:14 660:8 668:12 671:14 674:5 678:22 842:4 903:15 913:11 920:15 939:8 996:9 regulator 735:7 736:9 regulators 923:21 931:21 1021:2 regulators' 923:18 regulatory 648:15 669:8 670:17 690:10 726:6 739:7,11 741:5 755:19 899:7 901:3,8 903:12 920:11,18 965:22 991:7
--	--	---	--

<p>1004:15 1017:19 rehabbing 667:22 rehabilitated 989:4 rehabilitating 694:1 rehash 524:19 Reilly 840:11 971:7,9,14 985:9 992:11 rein 609:7 reinstated 730:2 reiterate 668:12 764:11 rejected 638:2 relate 756:10 related 599:10 663:21 754:11 793:11 815:2 821:7 relates 598:20 relating 848:1 relationship 555:11 558:21 615:20 648:14 714:4 relationships 615:11 798:21 894:6,7,8 relative 825:12 911:20,21 912:6 926:17 relatively 568:12 573:11 577:19 585:13,14 667:19 673:3 684:1,22 692:13 694:21 924:10 1005:1 relegated 1016:3 relevance 764:13 relevant 703:13 708:4 761:10 764:9 reliability 554:19 555:13 556:3 598:22 613:20 619:20 629:10,13,16,21 630:5 639:18 714:15 760:7 1004:12 1009:2 1014:14 reliable 593:3 606:9 620:9 623:11 972:14 975:1 979:13 995:22 1006:19 reliably 555:17 621:7 reliant 569:16 603:10 relief 522:17,20 565:9 579:14,15 595:16 611:19 612:2 616:10 638:10,17 658:8 715:13 811:10 918:15 944:6 957:19 966:10,14 967:7 967:12 1019:13 1020:15 relieve 773:7 862:22 relieved 823:1 824:8 relieves 863:10</p>	<p>reloading 659:10 relocate 674:1 rely 523:8 584:8 592:1 667:11 758:4 992:14 1002:4 relying 559:18 680:11 915:3 916:17 remain 823:15 845:11 remark 659:21 remarkable 690:13 950:16 remarks 519:15 529:8 551:20 821:17 826:7 829:21 888:15 927:10 999:10 remedied 537:15 remedies 592:12 593:18 669:7 715:11 716:8 remedy 525:12 572:20 573:18,20 789:20 936:17 957:13 remember 560:8 962:11 remind 783:7 890:5 930:17 989:15 1021:20 reminded 630:18 remote 762:10 remotely 974:1 remove 877:13 984:16 removed 711:13 removing 1010:5 rendered 955:21 renew 1014:17 Renewables 691:17 renewal 646:18 renewing 1013:21 renovation 1011:10 rents 924:6 repeat 519:6 970:7 996:7 repeatedly 569:2 784:7 820:10 repeats 849:17 replace 549:14 713:18 replaced 925:9 replacing 719:12 replicating 930:13 reply 968:3 report 538:21 539:19 559:1 583:11 722:20 840:19 1000:15 reported 758:12 917:2 reporter 969:12,12 1024:11 reporters 520:17 reporting 727:15 reports 532:21 539:9 917:13</p>	<p>represent 703:7 950:7 1008:11 representative 535:17 679:17 799:3 representatives 668:22 721:7 785:18 representing 786:8 represents 591:1 602:10 666:14 1004:20 request 558:7 590:1 609:12 645:8 763:3 866:12 888:7 936:16 requested 527:12 670:7 813:22 874:3 requesting 793:16 847:17 requests 610:11 796:7,12 require 528:22 625:14 640:20 826:14 846:12 860:20 932:1 979:5,20 required 763:18 797:6 845:1 918:9 959:14 977:21 982:14 990:22 991:8 1020:17 requirement 650:5 867:9 890:12 938:21 984:16 requirements 607:21 989:22 requires 643:7 775:15 844:10 943:3,9 986:5 requiring 926:2 978:3 rerun 900:15 research 562:2 678:10,15 678:16 722:5,11,15,18 723:2,16 734:21 756:19 806:21 821:4,9 822:20 825:4,6 828:6,16 834:19 852:8 877:8 922:13 researched 743:13 researching 876:4,13 reservations 922:20 reserve 769:6 868:9 reserves 686:12 resident 937:17 resilience 973:2 resiliency 691:2 987:14 resilient 668:18 671:4 972:12 resistant 884:19 resolution 812:15 964:11 1001:5,6 1002:8 resolve 527:8 622:2,9 675:7 696:11 964:18 965:9 1021:14 resolved 560:9,11,13 874:7 876:21</p>	<p>resolving 1021:17 resort 799:7 resource 888:11 954:2 resources 599:15 667:19 702:5 844:22 846:5 870:21 980:5 1011:2 respect 559:12 589:9 966:16 respectfully 624:13 763:3 800:22 1001:1 1019:10 1019:20 respectively 526:18 680:4 respond 698:17 768:11 779:3 871:13 890:11 937:10 997:5 responded 535:22 548:21 774:11 975:6 1008:4 response 727:9 799:5,8 868:17 955:14 977:22 994:21 responses 761:21 995:18 responsibilities 795:19 responsibility 667:16 971:18 responsible 786:14 954:1 971:17 responsibly 538:13 responsive 674:18 responsiveness 691:8 rest 602:6 712:2 737:2 813:7 860:2 885:22 916:12 930:11 1007:14 restaurant 715:6 restoration 693:20 restore 960:22 961:2 972:21 restoring 973:7 restrict 900:4 restricted 797:16 853:8 restricting 900:13 restriction 738:15 restrictions 580:22 738:14,17 973:17 restructure 1019:15 rests 914:11 result 544:6 558:4 559:16 561:1 564:4 604:9 650:11 670:20 687:5 692:6 794:20 847:13 935:4 983:12 991:7 992:1 1002:5 1006:6,8 1013:7 1015:16,18,18 1020:12 resulted 524:7 525:20 527:18 669:9 791:13 795:15</p>
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<p>resulting 524:15 527:16 609:16 795:10 990:8 1015:9 1016:20 results 570:13 573:4 608:18 690:12 795:11 799:1 1014:7,13,20 retail 924:3,5 retain 1013:18 1015:22 retaining 1016:8 retired 678:12 retribution 606:19 retroactively 867:13 retrospective 740:10 return 648:4 720:11 792:17 799:4 841:9 901:19 902:7,21 903:2 903:3,8,18 905:21 910:19 911:7 912:4,10 913:14 918:1 921:6 934:7,13 935:16 937:2 960:7 961:7,21 965:2 973:7 975:2 979:4 986:4,19 989:22 990:1 990:18,22 1009:21 1012:5,6 1014:8,21 1016:22 returns 825:2,9 828:21 906:4 910:12 914:6 987:20 990:4,6,11 991:9,10 1007:7,12 1018:4 revenue 529:3,5 532:7,11 605:6 608:17 672:10 673:15 681:7,8,13 682:2,7 684:3,13 685:18 686:1,8,9,20 726:14 755:13,15,15 788:18 795:12 796:22 800:10 817:8,9 900:3,7 906:7,11 909:19 914:12 915:1 924:21 925:7,9,9 928:10,14,17 929:5,6,6 930:3 984:22 1008:13 1013:7 1014:3 1015:7 revenue-adequate 915:4 revenue-per-ton-mile 910:4 revenues 667:21 673:4,10 673:14 685:20 928:17 928:18 986:22 reversing 586:6 reverting 527:11 review 740:10 749:4,4 924:10 994:15 reviewed 762:4 906:6 957:18</p>	<p>revision 686:15 revoked 624:12 reward 620:20 rewarding 1010:6 rhetoric 1017:5,9 rid 774:11 921:9,10 1007:13 right 531:10 547:16 549:7 550:13,21 551:8 555:5 556:7,8 557:4,16 561:22 562:16 567:10 580:18 586:7 588:5,8 590:10,22 592:11 596:22 599:11 607:15 612:6 614:14 615:21 616:6 619:1 622:15 626:5,18,19 628:10 631:2,4,6 632:15 633:12 638:7,15,20 639:2,13 640:14,14 641:12 642:15 647:12 650:21,22 652:6 654:10 654:13 656:1 659:5 669:19 672:4 698:11 699:3,8,17 700:4,21 701:9,16 702:8 703:4,4 706:13 707:21 709:10 716:8 719:4,10 720:3,3 720:10,12 721:2 727:2 728:10 730:15 731:12 734:8 737:7 738:10 741:4,12,18,19,19 742:17,17 743:6,11,15 744:2,13,17 746:20 747:5,13,21 748:6 749:1,1,11,12 750:5,5 751:20 753:21 756:13 757:1,7 769:6 774:5,13 775:7 777:20 779:16 780:15 781:13 782:5 783:20 785:14,17,21 791:9 801:11 806:7 810:12,15,19 811:17 812:17 813:13 817:21 819:18 820:5,16 828:8 828:12 831:3 832:1,10 835:7 836:1,6 837:13 839:19 840:5,18 841:6 850:12 854:3,17,21 855:4,8 856:12,19 857:8,10,11,11,17 858:17,20 859:1,12,15 860:22 861:3,19 862:10 862:14,18 865:15 867:3 868:17 877:20 881:12 883:7 884:10 887:3</p>	<p>890:18,19 893:10,13 895:9,14 896:15 902:18 903:11,19 905:18 906:13,17,19,20 910:3 912:12 913:16 914:13 919:7 920:11 921:7 940:6 942:18 944:2 946:8,12 948:7,14,19 949:6 954:21 964:2 965:2,18 968:7 969:19 971:9 1003:11,16 1017:20 1024:13 right-hand 1014:2 right-of-way 835:7 rights 629:8 699:16 895:13 935:12,15,16 966:15 righty 521:16 rigorous 664:20 909:5 Rio 824:20 834:9 836:2 837:9 rise 605:17 799:19,19 risk 589:2 669:21 670:4 670:16 671:3,8 672:9 684:5 697:16 701:10 705:2 718:18 760:7 824:15 846:19 988:17 990:5,18 991:3,5,21 1011:19 risk-adjusted 989:22 risking 691:21 risks 686:2 702:2 704:9 989:12 991:6 risky 684:13 river 604:14 625:6,9 694:17 849:5 Rivers 688:22 road 563:4 628:10,17 644:19 652:2 654:9 670:21 691:22 692:5 814:9 822:2 823:4,20 831:4,4 837:1 846:13 998:19 1010:15 roads 829:9 832:5 850:12 roadway 692:5 roaming 931:18 Rob 840:11 971:14 984:2 985:9,13 990:9 992:11 Robert 647:5 648:22 713:9 780:2 783:21 815:11 829:8 896:6 robots 822:5 Rock 804:14 role 573:15 618:21 619:22 667:17 689:4 692:18 696:18 936:14</p>	<p>971:17 roles 971:22 rolled 873:12 rolling 582:13 677:19 roof 562:7 room 522:5 665:22 676:18 819:18 862:9 881:19 Rosenthal 942:22 roughly 706:12 899:22 933:3 round 580:3 635:8 route 579:12 667:3 670:6 679:16,16 681:7,9,13 681:14 683:13 687:11 700:15 738:11 760:5,6 777:22 798:2 803:11,17 823:13 837:10 846:20 955:4,17,19 routes 797:19 routinely 569:9 572:6 629:5 routing 595:15 668:14 699:16 797:16 Royal 766:21 rule 564:22 565:5 566:8 572:18 575:15 576:16 579:13 592:21 595:3,5 607:22 608:8,15 611:8 626:14 637:18 669:3,3 669:22 670:3 671:12,17 671:19 674:4 676:2,11 676:15,15 677:9 684:16 696:17 697:20,22 699:20 702:9,10,14,17 702:17 703:6 704:14 710:13 715:14,20 717:10 718:6,16 719:16 723:11 724:16 729:18 730:17,18 740:3,6,10 741:1 742:8,14,21 772:16 774:22 777:9 811:13 821:20 825:2 827:19 828:19 830:8 837:15 838:6,15 839:15 845:16 871:12 872:18 874:11 899:15,17 901:10 919:2,5,5 923:14,15 924:8 939:8 951:5 953:1 959:12 995:11,15,19 999:2 1002:6 rulemaking 535:6 565:16 663:10 686:19 697:11 765:1,11 946:22 951:2 rules 522:20 523:17</p>
--	--	---	---

525:1 526:8 527:20 537:13 609:11 612:4 624:4 686:16 687:14 699:13 729:7,7,22 731:13 737:19 759:10 762:16,17 764:10 765:7 765:21 801:1,6 861:18 918:15 943:3 947:16,19 948:16 950:18 955:2 966:2,9 run 524:10 565:8 591:20 635:2 648:14 730:3 821:16 830:3 901:5 905:19 runners 710:21 running 532:17 591:21 645:2 647:21 652:1 733:11 796:10 833:8 runoff 973:6 runs 827:4 Rupert 976:3 rural 593:15 595:2 596:10 603:6 608:13 610:4 640:10 666:22 674:9 694:10 739:15 835:21 rurally 610:11 rush 883:17 Russia 580:22 581:1,2,16 Russian 581:20 RVC 525:20 637:16 638:17 660:13 737:4 743:10	Sanborn 840:8 842:6 843:2,3,4 851:12,19 852:3,7 853:20 854:4 854:22 855:7,10,13,15 855:20 856:5,11,15 857:5,7,11,15,20 858:5 858:9,14,18 859:4,9,16 859:20 860:6,14 861:1 861:8,14 862:4,16 863:3,14 864:14 865:15 866:13 867:22 868:11 869:9,21 871:21 875:2 875:10 877:10,22 878:20 879:14 881:2,16 881:18 882:4,9 886:21 888:9 891:9,20 932:19 sand 598:11 988:22 989:6 989:8,10,11 990:19 Sandra 721:6 757:2,9 766:6 780:3 783:22 785:15 874:22 877:3 Santa 691:13 692:1 766:15 971:22 Sappington 840:9 842:17 911:9 922:3,5,9,10,12 927:16 928:2,11 929:3 930:5 932:15 940:3 Saskatchewan 721:5 726:4 sat 525:8 731:7 752:21 778:4 920:2 976:12,13 Savannah 651:14,16 652:2 save 535:5 594:19 664:18 690:11 736:18 824:13 saved 731:4 732:2,3,5 saves 619:11 saving 822:18 savings 929:13 1006:8 saw 551:9 589:8 649:6 801:14 saying 534:14,21 547:7 558:17 561:19,20 589:2 601:15 607:5 630:4,5 655:1,14 707:14,15 709:3 716:6,12 741:10 743:16 774:11 779:3 780:13 782:10 809:5 817:17,18 856:4 860:13 860:14 863:7 885:6 889:22 890:1 891:1,19 891:20 912:1,2,16,17 919:19 921:12 947:10 951:18 954:13 961:12 963:10,16 966:13 993:12 995:15,19	1022:4 says 662:16 731:2 741:8 743:19 753:15,15,20 883:16 892:19 893:3,3 906:6 908:6 913:22 931:2 936:8 951:20 953:11 954:14 scale 559:1 683:4 864:19 902:4,10 921:13 scales 903:15 scarce 954:5 scattered 802:2 scenario 700:6 702:9 792:16 865:11 874:15 874:21 875:21 877:6 960:10 1014:10 scene 891:15 schedule 524:3 526:21 556:21 557:4,7,9 792:1 971:2 scheduled 527:13 565:3 613:16 1009:19 schedules 793:10 878:22 978:14 scheduling 592:16 school 659:14 950:15 Schultz 552:5 564:19 565:18 587:11 588:22 614:16 616:2 646:4 647:4 648:19 666:10 717:8 719:1 751:22 752:4,9,22 753:5 754:7 756:12 813:17 814:4,17 887:22 889:5 scope 589:11 611:1 679:15 981:19 scorecard 555:3 Scott 521:12 590:14,16 594:22 597:4 600:9 602:1,2 scramble 600:22 scrambling 556:12 598:9 598:16 scrap 521:14 577:2 591:12 616:18 618:1,10 618:12 619:6,7,14,17 622:16 624:5,10,14 625:9 628:7,17 633:3,7 655:9 658:19 659:3,5 663:21,22 664:3,5 668:7 827:22 881:9 scratching 927:18 screen 877:14 Scribner 721:9 820:17,19 821:2 826:6,11,16,21 827:8,12,15 828:1	829:1,5 830:22 833:4 833:12,18 834:2 835:16 836:7 837:12 838:17 839:20,21 scroll 853:5 sea 582:1 586:21 587:2 842:15 seamless 712:16 Sean 840:13 1003:12,17 1003:19 1019:1 season 755:1 seasonal 881:10,22 Sebring 766:19 second 562:4 565:3 569:18 588:6 620:2 629:9 688:12 724:19 725:17 728:12 729:2 743:16,18 760:11,14,16 773:6 776:11 828:3,19 841:11,12 898:2 901:13 901:13 904:9 916:3 924:21 938:10 941:19 948:6 982:12 996:20 1001:3 1008:4 1011:18 1019:20 second-guess 996:3 secondary 758:7 981:21 secondly 568:2 699:21 829:21 seconds 970:22 1023:6 section 1021:17 sector 608:8 788:14 sector's 825:22 secure 593:7 925:16 926:11 secured 867:3 secures 926:2,6 securing 594:9 see 529:13 534:14 538:21 539:6 541:1,7 542:22 548:3 552:1,3 558:5 560:16 576:15 585:7 586:6 587:1 588:19 591:10 608:16 612:4 627:4 630:12 631:9 635:14 636:18 640:11 644:10 645:18 649:11 665:7 666:3 669:2,3 675:18 686:10 720:7,13 722:21 728:7 729:2,3 739:22 741:9 742:13 771:8,15 778:21 779:9 781:20 782:12 805:1 807:5 812:21 820:13 824:17 827:8 829:6 830:20 831:20 832:17
S			
S 519:1 878:21,21 S&P 906:10 SA 617:21,22 618:8 620:9 621:16 624:2 662:12 SA's 655:3 SAC 749:11,12,16 Sachs 903:21 sacrifice 966:18,18 safe 671:4 972:14 982:21 safeguards 957:17 safely 718:10,10,12,22 safety 537:5 670:22 717:10,16,18 788:16 822:5 824:3,8 971:20 987:15 1004:12 1006:18 1007:15 sake 519:4 sales 604:7 693:5 795:11 salt 730:12 731:14 Sam 794:5			

832:21 834:15 835:19 837:11 839:10 840:10 843:11 853:20,21 870:1 875:4 877:9 887:11 891:4 893:11 894:2,3,4 902:17 903:8 905:19 907:4 910:7,9,20 915:7 916:20 917:18 929:4 930:19 946:4 950:18 966:7 993:6 1004:22 1008:14 1009:7 1012:10 1014:2 1024:16 seeing 561:4 592:18 603:15,18 605:17 606:7 615:21 657:17 727:14 800:5 817:14 834:21 876:8 897:22 seek 588:18 888:4 891:14 979:19 992:8 1000:21 seeking 573:17 592:12 608:2 959:14,20 980:6 984:17 1010:19 seeks 594:5 seemingly 963:13 seen 529:13 539:9 569:2 569:7 571:11 574:15,19 581:19 583:9 586:16 599:14 611:4 668:16 709:14,15 716:4 756:3 799:18 819:15 826:9 827:1,2,4 848:17 890:4 906:2 951:14 968:6 segment 685:15 687:15 697:13 786:13 822:10 segments 685:7 788:16 1007:13 segue 544:14 546:1 seldom 864:22 selecting 627:5 selects 622:21 self-driving 822:4,11 self-supporting 831:4 sell 698:15 711:5 seminal 942:9 send 539:18 614:9 627:14 894:18 953:22 954:3 sending 677:1 894:19 senior 716:4 786:10 787:19 821:2 sense 582:1 583:16 586:20 606:4 644:9 652:15,18 664:13 685:14 708:14 710:22 719:21 763:22 804:4 805:7 835:12 845:12,12	910:4 918:11 961:1 sensitive 676:16 687:8 sensors 831:18 836:19,22 separate 699:4 765:1,11 831:8,9 863:4 952:18 September 729:17 997:21 series 702:6 serious 528:7 572:16 758:3 938:13 939:19 1019:16 1020:5 seriously 537:3 538:8,12 553:14 667:16 920:10 seriousness 567:8 serve 525:4 543:21 574:18 606:8 610:18 674:16 675:13 679:10 692:15 696:22 698:2 699:2 788:13 790:1 791:18 798:9 799:10 847:20 854:7 855:1 860:15 862:14 863:9 875:7 878:4 879:12,17 882:17 889:16 926:12 956:15 997:4 1012:20 1016:7 served 525:3 526:12,13 540:6 544:16,17,19 545:16,16 547:12,13 549:10 551:4 559:20 563:12,18,22 574:11 576:10 587:20 618:17 618:18,19 619:3,17 622:13,19 624:21,22 625:10,20,20 628:13 631:10,21 632:1,5 634:4 636:15 649:13,15 649:16 653:5,19 676:8 676:9,14 677:3,4,6,8 693:3 702:15,21 707:2 707:5 708:1,15 757:16 766:9,15,22 767:5,11 767:12,13,15 797:4 800:15 802:4,15 803:5 803:6 807:20 811:7 875:18 971:21 998:20 1005:17 serves 626:21 666:20 694:20 695:10 776:12 777:21 803:13 807:18 877:21 879:17 925:10 service 523:12 524:16 526:14 527:2,10,18 528:4,21 536:7,12,15 537:1,5,15 538:1 540:7 540:10 542:2 543:5,6,7	543:11,12 544:3,7,19 545:5,15,19,20 547:15 548:3,4 549:1,5,5,7,10 549:21,22 551:18 554:15 556:11 557:4,7 558:5 559:16,18 561:6 561:11 564:4 566:4 567:1 568:18 570:22 571:5 573:3 582:6 584:14,17,18 588:9,12 588:16,17 592:1,5,11 593:9,10,11 599:21 600:1,2,14 602:22 605:2,13,20 606:9,12 606:13,17 607:6,11 609:16 612:20,22 618:8 619:18,20 620:7,9,11 620:14,18 621:5,7,8,9 621:13,19,21,22 622:4 622:9 623:15 626:8 632:12 633:17 634:7 635:15,19,20 636:9,19 637:4 639:11 640:20 642:11,15,21 646:12,17 647:1,17,20 648:8,12 649:8 650:2,22 659:1 670:18 672:19 673:19 674:17,19,22 676:21 680:1 687:5 695:13 696:4,10 697:6,16 704:7,21 714:10,15 744:22 758:1,18 761:14 774:12 786:21 789:20 790:6,8,14,19,22 791:2 791:8,11,14,16,21 792:6 793:2,6,8,11,16 793:22 794:11,18 795:15,18 796:2,8,18 797:10,20 799:1,8,10 799:18 801:6 812:7 815:2,6,17,21 816:3 817:6 818:18 827:21 838:13 839:6 841:22 844:1,5 845:18 846:21 847:16,16 874:6 876:8 884:22 887:3 888:16,21 889:20 890:3 894:10 895:4,18 899:2 905:9 918:15 919:3 920:12 929:11,14 937:8 938:13 938:18 939:1,12,15,20 940:18 941:8 942:3,15 943:4,10 944:5,18,22 945:11,21 946:11,22 947:6 949:18 953:11,15 953:19,20 955:22 957:5	957:8,10,12 958:4 959:3,10,20,21 961:13 961:14,14,17,22 962:1 962:13,14 963:17,19 966:2,9 967:1,16 968:10,15 972:14 973:7 973:9 974:16 976:3,4 977:21 978:8,12,12 979:13 983:20 984:10 986:6,16 989:2,5 995:6 995:10,13,18 996:4,11 996:13,19 998:5 1003:3 1006:18 1007:15 1008:12 1009:2 1011:5 1012:16 1018:7 1021:11,18 service-related 597:14 servicers 924:22 services 621:2 626:9 667:12 679:12 689:14 793:14 805:21 925:14 925:20 servicing 613:2 615:18 625:21 797:6 811:3 894:12 serving 547:20 689:10 696:8 759:13 789:2 795:17 796:2 799:3 846:14 887:7 958:5 session 521:7 721:1,3 793:15 969:20 set 602:10 657:22 725:9 726:6,21 731:5 735:10 735:11 746:4 747:16 790:2 871:12 872:15 873:12 899:18 913:12 928:3,6 930:2 931:3 932:14,18 934:17 935:6 935:19 939:8 950:17 955:1 961:5 1007:22 sets 733:21 setting 546:2 580:10 727:6 764:14 773:22 828:7 settings 910:20 923:15 setup 921:5 seven 591:20,21 619:3 679:2 793:4 976:14 seven-plus 976:12 several-year 611:14 severe 686:1 844:1 severely 682:3 shale 989:9 Shanghai 976:5 share 524:20 538:8 569:4 584:9 586:8,17 587:7
---	--	--	--

659:22 669:1 686:1 695:14 703:22 714:18 721:11 787:13 795:18 821:15 830:6,13 974:14 984:14 1005:6 1006:14 1006:16 1012:3 1018:5 shared 603:22 646:18 692:11 696:8 985:13 1002:3 1022:14 shareholder 759:7 shareholders 604:21 759:5 825:8 828:20 989:20 shareholders' 790:9 shares 1006:13 sharing 557:21 695:21 737:11 sharpen 654:6 1010:4 shave 798:11 Sheffield 855:21 shelves 523:13 shift 574:19 712:1 780:20 780:20,22 781:5 825:13 847:12 1010:20 shifted 856:22 shifting 641:12 888:22 903:14 928:9 shifts 660:10 870:12 919:6 ship 552:22 573:11 604:6 604:15 612:9 625:8 628:17 636:5 653:2,4 653:13 655:10 692:7 760:8 777:7 790:2 795:13 796:3,5,16 798:4 892:10 954:14,14 shipment 552:21 575:2 619:16 680:6,10 683:6 685:18 691:7 735:20 743:21 746:11 895:16 shipments 555:7 587:6 619:6 623:8 624:5,6 695:5 730:5 763:11 778:12 796:17 992:17 1006:5 shipped 603:4 633:2 673:9 shipper 532:3 541:18 543:3 545:18 547:6,11 547:11 555:16 556:5 558:4 565:21 566:19 567:15 576:17 587:18 611:14 642:3 648:1,4 662:11 668:22 670:7 673:10,20,22 685:17 719:6 725:5 728:10,13	732:15 733:6 734:2,6 736:4 742:22 743:16,18 744:1 748:13 753:9,9 841:6 843:22 844:3,6 845:13 846:1 861:13 866:2 874:21 875:5,8 883:7,22 892:9 894:14 895:2 898:12 904:19,19 904:22 905:5 919:7,9 919:16,18 925:8,10,17 926:12 928:19 934:10 945:1,11 946:10 949:1 949:8 953:10 956:11,12 962:13,17 963:9 978:1 980:6 984:17 996:10 1002:11 1004:9 1012:15,17 shipper's 556:18 764:1 926:3,6,11 shippers 523:8 528:21 530:2,5 532:4 534:17 537:4,14,22 539:15 540:13,17,19,21 541:21 541:22 542:12 543:22 545:12 552:22 553:9 554:14 555:1 559:13 569:21 571:1,15 572:16 572:20 573:6,16 574:1 576:14 578:1 579:17 587:15,20 589:17 593:15 595:17 596:1,4 603:7 604:22 605:10,12 605:22,22 607:1,8,18 607:20 608:14 609:3,14 611:3 613:3,22 615:1 615:20 622:5,9 623:12 624:14 626:10 640:18 641:15,18 645:4 646:8 658:9 666:20,21 670:8 671:10 673:17 674:3,4 674:6,6 675:19 676:13 683:15 690:2 695:22 698:20 711:10 726:9 728:15,17,22 732:1,20 735:13 738:4 739:2 741:9,15 747:2,4 752:5 754:2 758:4,16 760:4,7 761:1 762:18 763:6 765:7,12 780:12 783:13 786:19 787:4,13 791:12 799:11 804:16 805:3 811:9 814:16 841:14 843:20 844:7,10,12 845:19 846:19 853:11 854:20 866:6,22 872:7 873:20 874:12 877:18	888:4 896:3 903:14 904:8 905:15 907:8 908:10 912:14 913:1,4 913:5 919:2 927:22 928:14 929:7,17 930:1 936:17 937:5 941:16,21 941:21 944:1 947:13 948:10 949:12 959:12 962:7,10,15,21 963:8 966:1 979:19 982:6 996:2 1002:11 1011:21 shippers' 791:19 797:13 shippers's 606:8 shipping 552:17 574:8 575:21 577:15 592:19 593:6 603:20 609:22 655:9 679:11 695:7 704:14 725:15 767:18 798:6 867:2,9 975:18 975:19 shocked 784:10 shocks 985:13 shooting 874:18 895:21 shop 659:6,11 short 521:5 527:11 530:16 540:6 544:17 576:10 583:2 593:21 598:8 618:19 619:4 626:22 631:11,11,13,21 634:4 636:14 637:3 653:15 664:12 665:18 666:5,12,14,17,19 667:8,12,18 668:21 669:11,17 670:1,11 671:8,13,16 672:2,7,8 672:13,18,22 673:6,7 673:12,16,18 674:2,5,8 674:11,14,17,18 675:2 675:15,17,20 676:3,18 676:20 677:4,7 682:9 684:22 688:10,21 689:11,14,17,20 690:2 690:4,6,9,14,16,21 691:7,11 692:12,13,17 694:11,13 695:22 696:3 696:4,8,16 697:13 698:14,19,21 700:1,3 700:18 701:2,7 702:15 703:7,22 704:6,10,18 704:21,21 705:5,9,15 705:17,22 706:21 707:5 707:8,17,22 709:1,6,13 712:14 714:22 715:16 717:7,14 728:2 758:12 760:10 798:8,11 804:20 806:1 808:20 809:3	821:16 947:19 1016:4 short-haul 1015:19 short-term 588:7 758:10 796:22 shortage 587:19 591:22 633:12 759:21 770:9,10 773:7 782:18 785:8 shortages 527:1,16 587:14,16 588:1 784:8 795:10 959:2 shortchange 666:4 shorter 635:20 672:13 824:16 shortfall 1013:3 shot 534:12 836:3 shove 850:19 show 523:16 547:14,19 548:22 584:13 617:3 721:16 722:18,20 730:13 741:16 787:7 827:4 834:5 854:5 890:5 892:19 902:9 903:11 909:15 957:12 957:15,16 968:16 978:1 984:17 997:11 showed 572:4 576:4 605:5 669:17 734:21 800:8 827:5 853:6 973:2 974:1 980:16 987:22 showing 613:16 709:16 745:6 938:21 941:7 942:15 943:10 988:13 shown 675:22 697:11 791:17 853:3 968:8 shows 549:1 558:9 826:9 934:16 1006:3 shredders 653:6 shrinking 758:22 1009:13 1018:6 shut 525:5,15 559:7 561:14 591:22 597:17 601:2 780:18 949:20 shutdown 693:16 shutdowns 527:21 560:6 758:6 shuts 559:22 shutting 558:19 598:7 599:4 600:12 shuttle 574:22 sick 794:15 side 558:11 566:18 586:10 608:9 616:1 622:7 816:19 849:1 850:14,21 852:12,13 864:5 868:22,22 875:11
--	---	--	--

<p>875:13 876:10 878:20 sidebarring 724:19 sides 848:17 sighting 978:17 1011:9 sign 891:7 signals 953:22 954:4 1010:10 signed 756:19 significant 523:20 539:16 553:19 610:22 612:11 620:11 621:4 670:17 673:9 686:8 691:9 692:8 695:6 697:16,19 732:10 759:18 791:13 794:17 798:2 831:17 867:10 973:4 974:4 980:12 982:18 991:21 1005:10 significantly 672:10 731:19 790:19 796:7 800:6 823:5,20 986:11 1012:10 1014:11 1015:13 silence 519:8 silently 779:14,19 silica 598:11 similar 531:11 548:9 570:17 572:5,9 590:19 604:11 634:1 657:4 669:15 783:14 888:21 944:9 966:3 similarity 936:20 simmer 601:6 simple 532:19 697:18 728:16 730:3 764:18 923:14 924:11 927:3 933:17 934:12 1012:2 simpler 747:13 simplicity 926:17 1016:14 simplifies 942:15 simplistic 644:4 simply 535:9 585:22 604:20 606:22 758:17 958:21 994:9 1017:10 simulation 724:11 simultaneously 966:8 single 525:3 544:19 545:16 547:13 549:10 559:20 563:12,18,22 618:18 657:5 673:10 682:2,6 685:7 728:11 744:22 763:11 766:15 778:15 802:17 849:4 959:1 990:21 single-line 977:20 978:8</p>	<p>single-served 534:13,17 534:19 546:9,14 548:7 551:17 single-track 978:18 sir 538:22 539:21 540:8 541:10 544:21 545:6,8 546:2,4 547:22 550:3 551:22 555:13,19 556:17,22 562:15 563:5 563:19 566:15 567:3,5 567:9,16 626:1,6,6 627:21 628:1 649:10 650:20 655:16 657:19 658:20 663:7 665:14 698:10 713:8 717:2 720:9 771:12 sit 546:21 591:9 634:17 747:21 864:18 966:22 site 595:10 694:1 798:1 814:6,7 853:6 sites 602:14 610:3 786:8 786:15 788:6 789:4,14 789:16 790:2 792:13,15 792:16,17,19 795:5,11 797:8,9 798:7 799:2 1008:6 sits 712:18 sitting 590:21 753:8,11 753:12 754:3 862:7 892:11 situated 636:21 962:9,15 situation 525:12 528:11 550:20 551:1 559:17 560:13 564:21 577:5 580:9 590:19 600:18 607:9 609:2 611:17 627:17 701:1 702:11 756:8 779:12 784:3 851:16 864:9 888:5 948:9 955:15 959:15 situations 578:15 619:15 620:3 640:5 654:11 655:13 660:18 677:13 699:22 703:21 760:9 899:2 996:10 six 549:12,16 636:6 714:9 716:3 757:15 766:10 793:4 941:4 946:21 six-month 795:5 six-year-old 1019:11 size 616:13 692:12,13 862:5 981:18 sizes 824:11 skeptical 612:7 1021:1 sketchy 629:14 skewed 752:16</p>	<p>skies 582:12 skin 554:8 sky 871:8 sky-high 651:19 skyrocket 608:16 skyrocketed 605:8 slack 887:5 slammed 890:1 slide 721:16 909:13 1008:11 1015:3 slides 721:12 922:18 923:10 1013:5 slightest 660:22 slightly 906:18 912:21 slip 721:18 slippery 719:2 slow 792:16 794:19 slowed 597:17 slower 554:19 983:19 1013:10 slowing 859:13 small 627:7 645:3 653:7 666:22 667:18 671:9,18 672:1,19 673:3,4,17 674:9 678:20 679:1,14 679:21,22 680:2,5,8,10 680:13,15,19 681:3,4,7 681:12,13,17,17 682:4 682:7,9,13,18,18,20 683:3,8,13,15 684:2,10 684:14,17,19 685:4,10 685:19,22 686:2,4,7,21 687:1,7 692:13 694:10 696:15,18 698:21 762:19 794:16 822:8 825:20 839:8 865:11 smaller 679:3 707:13 1002:11 smart 642:17,18 986:14 Smith 1024:11 smoothing 794:9 smoothly 791:3 snap 884:4 Snowmageddon 943:6 snowmelt 973:6 so-called 823:4 857:3 866:4 social 825:15 soda 598:12 sodium-based 604:1 sole 625:20 632:5 708:15 767:13 811:7 988:21 sole-served 612:19 899:13 912:16 958:8 1000:5 solely 793:1 953:1</p>	<p>solid 1004:22 solution 588:15 606:4 644:4,18 704:8 785:3,4 919:12,19 934:12 944:3 952:1,1 964:2 1018:10 solutions 523:5 596:11 641:20 697:8 solve 640:14 736:4 744:18 877:9 884:8 918:12 920:11 951:22 1018:7,11 solved 757:2 772:19 917:9 967:16 solvent 757:13 solving 898:18 somebody 550:20 566:14 737:17 885:10 888:17 888:22 890:2 932:21 952:2 957:9 960:19 965:9 995:2 someone's 890:13 someplace 576:20 806:8 861:6 somewhat 645:16 803:1 839:2 937:8 995:1 soon 891:5 1024:16 sooner 824:18 sorry 560:1 562:4 584:20 656:6 679:19 706:7 735:11 746:16,17 751:13,19 754:4 756:11 768:19 808:4,6 813:3 820:4 880:9,14,19 928:2 957:2 sort 519:6 531:4 545:9 558:9,22 559:1,2 574:5 585:7 586:9 597:18 612:8 615:11 637:19 638:9,10 639:6 643:12 645:16 652:11,13,14 660:19 686:5 702:13 715:3 719:21 722:14 726:7,22 728:11,17 735:15 737:5 740:19 741:18 742:4,15 745:5 745:14,16 816:16,17 817:19 818:14 831:2,7 832:18 835:6,9 838:4 883:15 884:7 885:20 898:10 908:20 930:21 935:20 940:17 944:9 948:15 949:3 963:6,18 968:4 970:11 sorted 855:17 sorting 709:21,22 sorts 738:10 949:12</p>
--	---	--	--

<p>sound 612:18 633:7 816:16 sounds 556:4 566:7 601:14 743:8 744:7 774:10 778:15 779:15 802:1 903:5 959:17 source 629:8 690:22 767:19,21 989:11 sources 601:1 728:20 914:20 south 601:8 688:14 789:13 862:21 southeast 618:15 621:3 795:1,4 Southern 691:14 696:9 696:10,19 766:18,22 768:3,7 769:5 770:10 803:19 808:5 840:8,14 840:17,21 841:17 843:6 858:16 893:9 922:16 940:19 950:8 955:17,19 958:1 959:2 966:21 969:4 1005:5 Southern's 842:5 927:12 956:13 southwestern 822:14 space 877:14 spans 730:1 Sparta 766:16 768:1 778:3 speak 520:7,18 568:3 587:17 606:20 615:3 639:13 671:20 672:2 678:1 687:16 704:17 705:3 711:15 753:6 794:7 800:22 803:1 813:21 843:7 971:13 speaker 704:19 speakers 521:1 568:14 574:3 1023:4 speaking 530:4 544:2,5 559:15 672:4 705:2 757:10 891:3 994:18 1007:11 special 796:7,11,14 807:8 specialty 757:13 788:12 specific 539:13 544:11 568:5 598:2 671:9 784:5 801:13 838:18 864:19,19 893:11 899:1 899:1 914:15 930:16 933:22 934:1 942:1 988:11 990:3 996:11 specifically 568:3,19 569:16 583:14 589:16 615:3 622:18 671:14</p>	<p>788:22 832:1 842:4 996:10 specified 575:2 specify 608:20 speed 945:19 949:15 950:4 966:18,20 speeding 775:4 spend 529:14 653:10 695:20 874:17 901:20 944:18 spending 702:5 833:20 834:1,3 1011:8 spent 667:22 773:10 spike 562:6,10,13 spinning 532:22 spirit 691:2 spoke 564:20 614:20 717:10,12 spoken 522:6 722:12 sporadic 729:12 spot 581:16 632:2,14 693:22 spread 610:12 683:19 739:3 1016:19 spring 571:18 872:8 895:16 sprung 895:10 spurs 991:16 square 580:3 762:12 St 632:14 stab 557:15 751:8 stabilize 693:14 staff 555:8 588:6 994:14 999:15 1021:22 1022:6 1024:7 staffed 536:22 702:7 staffing 588:14 stage 1007:22 Staggers 530:12,15 537:19 683:8 690:7 staging 692:4 stake 559:3 stakeholder 1002:10,18 stakeholders 567:14 617:17 725:22 868:22 911:22 951:3 999:16 1001:19 1002:7 1011:21 1021:22 1022:21 stall 640:16 stamps 741:21 stand 611:2 678:7 714:2 780:14 standard 522:17 637:22 638:20 639:1,5 658:2 723:10 730:2 793:18</p>	<p>803:14 804:3 936:5 938:20 939:4 945:7 966:3,4 standards 665:12 765:2,6 765:22 871:12 872:15 873:4,13 955:6,8 963:18 standing 821:10 824:3 standpoint 594:16 767:21 stands 582:12,12 785:5 863:13 Stanley 533:18 538:21 star 617:2 start 531:1 533:7 547:18 549:20 561:12,13 639:22 645:11 698:13 698:18 716:11 729:15 742:12 849:11 944:22 966:12 972:11 1004:18 started 519:7 562:3 651:18 767:3 787:1 813:9 871:22 976:2 starting 595:21 620:4 642:16 719:20 915:5 1015:19 starts 555:4 640:12 stat 713:4 1006:1 state 527:11 530:3 548:11 548:15 605:16 633:5 675:9 693:15 748:11 994:1 1000:14 state's 690:17 stated 526:22 552:20 657:14,14 674:3 764:2 931:11 statement 606:10 612:21 635:22 637:8 657:18 711:20 759:4 951:4,11 statements 675:18 696:3 950:22 states 569:7 572:4 576:6 576:9 581:10 591:6,19 610:8 666:16 667:3,4 688:14 690:16 739:2 789:15 822:1 828:12 829:11 834:7 924:11 978:19 980:13 981:20 985:21 986:13 987:9,19 988:20 997:4 1000:6 stating 533:17 696:14 796:13 station 766:13,21 767:4 stations 899:13,13,18,18 899:19,21 statistic 681:10 statistics 538:17</p>	<p>status 672:8 685:21 782:5 816:22 935:13 936:1 statute 579:12 643:7,21 644:12 952:17 963:15 982:5 1020:10 statutes 643:22 statutory 941:14 stay 598:2 780:5 864:8 896:11,19 897:10 stayed 731:16 957:11 staying 709:22 810:9 856:10 stays 939:18 1016:5 STB 522:6 530:2,13 535:4,19 536:4 537:4 543:18 573:14 584:11 606:2 608:19 661:13 669:6 671:11 676:1 697:8 702:4 715:12 792:9,10 801:1 842:19 845:15 899:3 907:11 913:22 921:2,3,11 935:10 939:11,20 942:19 977:22 1020:15 STB's 670:3 676:5 677:14 906:7 1004:7 STB-sponsored 908:19 steadily 691:14 steady 548:10,14 583:22 793:18 stealing 738:19 steel 619:8,11,11 621:7 622:16,19 624:10 626:4 628:18 629:1 632:19,20 633:3,5,9 651:8,13 653:13 655:21 658:20 659:12 689:8 700:12 701:13 853:11 877:17 steel-producing 633:5 stems 987:16 step 549:6 550:6 607:15 878:12 919:17 931:22 940:12 1006:1 stepped 692:1 stepping 820:9 steps 878:14 976:15 stick 874:16 895:19 stipulating 990:15 Stock 788:9 stop 535:9 660:18 700:17 710:17 737:11 774:3 794:19 885:22 901:10 904:3 935:1 939:16 958:5 970:2 993:7 stopping 837:4 stops 860:22</p>
---	---	--	--

<p>storage 675:11 781:11 793:7 804:19 977:1,3 store 523:13 531:9 stories 538:1 storms 973:4 story 951:19 952:3 976:10 1018:22 straddles 963:6 straight 577:17 687:21 straitjacket 645:16 strategic 987:17 strategies 792:21 strategy 684:14 1009:1 1009:21 1011:14 straw 872:6 874:18 895:22 stream 793:18 streamed 520:11 streamline 725:18 761:15 streamlining 725:20 Street 549:14 663:4,12 956:4 1011:10 strengthened 560:21 stress 686:8,12 stretching 728:3 strike 917:14 972:17 strikes 918:2 972:19 striking 841:5 stringent 727:15 strives 798:21 strong 606:14 692:10 787:14 831:3 922:20 1001:5 1013:21 stronger 801:3 strongly 524:1 609:10 911:2 struck 606:11 920:14 structural 989:9 structure 552:17 669:8 744:3 755:19 923:21 924:3,5 1014:19 structured 871:1 struggle 712:14 struggling 709:12 stuck 600:17 773:12 941:9 student 722:21 728:18 730:3 752:16 students 997:10 studied 836:2 909:10 studies 580:9 756:3 923:11,13 1001:2 sudy 534:9,18 907:18 908:2,6,10,10,12,20 909:3,14 910:1 920:6 1000:2,13,16</p>	<p>studying 594:8 927:16 stuff 601:19 641:12 779:5 885:12 888:22 889:14 Sturgis 696:6 suasion 753:22 Sub 519:4 669:13 Sub-No 518:6 subcommittee 529:19 535:18 subcontractors 694:6 subdivision 989:3,5 subject 530:9 564:1 568:2 669:21 690:5 697:14 742:7,14 847:9 923:8 955:18 987:21 subjecting 898:2 901:14 subjects 970:8 submission 570:12 submissions 970:8 submit 765:19 993:20 994:7 submitted 669:13 696:2 697:22 761:22 964:13 964:17 suboptimizing 843:18 subpar 607:12 subsection 941:14 subsequent 582:5 subset 705:9 841:14 subsidized 830:3,5 833:8 833:10 subsidizing 660:19 substantial 781:6 901:14 939:14 946:1,6 948:4 986:17 substantially 898:1 912:11 962:19 substantiate 545:11,22 substantive 897:10 910:8 substitution 825:21 subverted 960:19 succeeded 773:11 success 550:1 675:1 688:19 692:12 696:5 791:7 800:17 successes 691:11 successful 675:16 733:14 successfully 697:6 824:20 1005:9 succinct 1019:14 succinctly 1021:15 sucking 633:7 sudden 559:22 872:2 883:16,19 884:4 890:1 891:6 892:17 956:12 suddenly 834:18 846:2</p>	<p>955:17 983:5 suffer 686:12 905:20 suffered 630:1 suffering 779:13 818:18 937:6 944:4,9 964:1 suffers 548:13 Suffice 633:19 sufficient 669:7 838:2 847:2 928:7 Sugar 523:6 suggest 533:21 546:11 563:17 645:10 661:8 715:11 734:20 735:16 739:5 829:22 838:5,11 838:14 952:22 953:2 963:3 suggested 530:22 608:10 874:15 877:6 991:14 suggesting 531:16,17 580:7 583:16 699:18 702:12,14 705:14 740:17 765:10 830:2 936:21 958:21 suggestion 596:13 970:12 1001:18 1002:1 suggestions 611:11 671:18 716:15 839:16 851:14 suggests 1001:1 suitable 965:21 suite 669:6 699:15 sum 924:13 summarize 906:13 summary 709:7,8 sun 666:6 719:18 Sunday 675:5 superior 842:3 938:2 supervision 836:12,13 supplemental 589:15 supplier 715:5 773:16 803:5,13 929:13 suppliers 586:21 591:2 592:7 593:16 595:2 789:17 803:3 supplies 929:14 supply 533:12 535:1 560:20,21 562:15 566:21 567:2,7 570:7 573:5 577:10 589:21 591:3,9,22 592:11,14 592:17 593:2 594:1,3 594:10 598:8 599:1,8 599:11 600:6,22 601:11 605:19 609:4 620:13,15 622:16 639:18 641:1 668:17 670:5,12 675:10</p>	<p>695:13 758:8 759:17 786:10 791:3 795:22 796:18 798:13,19 818:1 818:4 837:20 908:4 924:22 953:21 972:13 974:2 975:15,17,22 976:7,16 977:12 985:15 1008:3 supplying 924:13,14,15 927:1 support 523:17 530:1,2 545:7 593:5,15 618:6 787:14 832:22 847:3 898:19 951:16 972:12 974:12 975:5 1002:18 1010:3 1012:11 1017:12 supported 554:11 667:9 673:14 supporters 831:4 supporting 662:7 692:20 supportive 606:2 609:9 supports 593:13 674:11 693:11 696:13 995:9 suppose 837:15 958:7,15 961:11 supposed 744:9 supposedly 549:13 suppress 961:19 suppressed 957:1 surcharges 797:16 sure 521:8 529:22 532:17 536:22 538:17 546:2,16 591:16 611:15 627:15 628:6 699:6 713:14 721:15 734:16 735:2 737:13 746:18 750:20 753:1 778:12 785:6 786:6,6 836:2 851:12 853:14 855:7 858:14 859:20 871:2 874:9 879:2 891:2 895:18 907:13 911:17 913:21 914:9 920:3 927:15 929:13 934:5 936:15 937:2 953:16 957:18 960:12 961:20 966:12 966:19,21 1004:14 surely 660:15 721:13 754:1 907:4 SURFACE 518:1 surprise 725:14,14 871:19 895:11 896:3,4 surprised 709:14 829:14 surprising 864:15 907:3 933:13 995:1</p>
---	---	--	--

<p>surrounding 694:7 survey 533:17,18 576:4 surveyed 539:15 susceptible 682:15,21 suspect 553:20 suspicion 776:14 sustain 684:7 986:6 sustainability 788:21 1008:19 sustainable 585:8 668:17 sustaining 815:1 swap 881:19 sweet 583:2 switch 526:21 527:13 540:14 541:19 543:3 550:2,8,14,19 551:8,14 552:13 555:15 556:2 564:12 578:1 589:12 610:16 613:15 621:15 623:13 625:14,17 660:14 670:6,8 672:9 675:5 697:17 699:12 700:1 702:3 705:11 711:1 712:9 717:21 718:6,21 719:9 722:1 742:14,15 744:11 764:20 772:17 776:18 777:13 778:9 779:4 784:13 797:9 802:17 809:20 813:20 814:11 826:10,17 834:17 843:16 845:9 846:1 851:1 852:13 853:19 854:10 855:22 875:9 881:1 883:8,9,18,22 886:7,15,20 888:5 889:8,12 890:2 893:10 893:14 895:9 905:1 930:1 931:3 932:8 933:18 934:3,20 935:12 935:18 936:10 939:12 940:12,14 941:9 946:4 946:13 954:20 955:5,11 957:9 958:9 959:14,20 978:4,11 980:2,6,8,8,11 1011:15 1015:11,19 1016:18 1020:12,16 switched 805:17 810:9 846:20 854:12 856:15 858:21 859:10 875:17 876:2 switches 526:19 546:17 549:12,12 551:2,3,10 561:1 620:12 630:3 634:19 639:17 650:1 670:14 709:14,19 713:1</p>	<p>713:17 717:15 718:12 718:17 736:1 759:16 792:14 809:19 826:14 845:17,21 849:15 857:9 867:20 931:5 977:19 978:22 987:18 995:17 switching 518:5 522:16 524:22 525:13 527:2,20 528:16,17,20 529:4,21 530:8 532:1,10 540:3 540:10,17 542:6,11,13 543:10 550:1 552:8 553:22 564:7,8 565:5 565:22 566:10,11,19 568:13 572:19,20 573:9 573:18 575:10,15 576:7 578:3,11 580:4 587:13 588:11 592:22 595:6,11 596:1,2,3,14 606:3,4 607:8 608:2 609:10 616:11 618:7 619:21 622:3,7,11 623:1,5,9,15 624:3,15,22 625:21 626:9 628:20 646:10,11 668:19 669:15,22 670:1 671:12 673:5 677:10 678:22 684:15 685:14 685:22 686:6,22 689:18 696:14,22 697:12,20 699:1 703:13,21 706:12 708:4,13 710:7 711:12 714:1 715:8,14,20 719:7,17 727:17 734:8 735:12 736:19,22 739:12 741:2 743:22 744:18 757:18 759:10 760:4,20 761:7,20 762:2,3,7,16,20 763:9 763:15 764:14,16 765:4 765:8,13,20 771:1,3,19 772:2,5,16 775:13,20 776:6 780:14 787:8,10 790:12,16 791:9,15 795:21 797:3,18 798:3 799:9 801:1 803:21 804:16 805:5,6,9 806:18,20 807:6,10 808:2,5,8 811:8,16,19 814:11,13 816:20 821:20 827:19 830:17 837:14 840:6 843:14,21 844:1,15,17 845:1 846:18 847:7,9,15 848:2,5,9,21 849:21 851:19,22 852:2,17 855:9 864:2 866:1,3,6</p>	<p>866:12 867:7,19 868:6 868:20 869:6,19 871:7 871:10 874:4,13 877:17 882:19 883:6 886:13,18 888:7 891:5,10 892:2 892:13 895:3 897:15 898:3,9 900:15 901:15 904:19 917:17,19,20,22 918:12 919:1,10 922:21 923:2,4 924:18,22 925:11,13,15,19,20 926:19 927:17,19,20 931:5 932:14 933:7 935:3 943:8 952:16 961:16 977:18,19 979:9 979:16,20 980:20 981:3 981:10 983:12,18 984:7 987:21 991:14 992:5,13 992:21 994:6 995:5,9 996:1,12 998:21 1001:10 1004:2 1006:11 1012:13 1015:16 1016:11 1018:3,9 switching-intensive 683:3 synthetic 898:10 960:22 1018:2 Sysco 523:3 system 524:8 546:10 600:6 657:22 660:12 675:11 696:20 710:2 723:18 731:7,14,17 734:9,10 740:21 746:19 746:20 750:16 752:21 798:18 805:19 830:5 869:2 871:9,17 872:19 884:10 887:6 895:22 898:3,14 904:17 911:19 921:19 936:22 937:1 940:7,10,21 941:18 958:3,7 963:19 965:13 979:17,18 981:20 982:3 986:9 995:17,17 systematic 913:9 systemic 874:20 systems 690:4 723:18 822:16 832:4 systemwide 963:22 964:3</p> <hr/> <p style="text-align: center;">T</p> <hr/> <p>table 1006:3 tackle 642:8 851:16 tactic 526:6 958:9 tactics 526:10 527:22 tailor-made 599:21</p>	<p>tailored 930:16 943:10 take 521:1 529:16 533:19 538:12 540:14 542:2 551:1 569:9 574:2 578:12 579:5 580:1 585:19 589:14 615:2 625:17 627:10,11,13,18 628:21 629:9 636:14,16 637:12,21 638:1 650:17 655:15 664:10,11,12 665:1,5 667:16,17 698:19 699:1 700:18 708:22 711:9 712:9,12 712:22 719:5,17,19 727:15 730:8,11 732:14 735:20 750:6 751:8 761:17 774:14 787:1 792:20 807:12,13 808:13 810:2 811:5 838:5 840:2 846:18 850:22 851:4 854:19 855:12 859:18,21 860:4 863:1 866:9,10,17 870:8 878:15 883:15 884:17 886:16 887:15 889:13,14,18,19 890:3 890:3,13 891:7 892:18 894:17 896:9 900:9 907:13 908:1 921:15,18 931:15 938:10 945:2,4 945:12 947:16 950:7 951:9 969:15 974:19 977:12,14 993:11 997:13 1003:22 1009:16,22 1016:2 1017:17 1021:2 1024:14,15 takeaway 900:8 909:2 919:11 1011:19 taken 557:16 558:6 578:2 625:21 641:22 711:11 719:7 752:17 768:5 784:4 854:13 866:2 876:18 888:12 920:10 920:16 1022:17 takes 556:21 601:19 604:4 629:12 675:12,13 700:14 713:2 807:14 808:13 849:14 857:15 858:15 862:2 868:19 882:22 965:20 978:13 talk 529:18 531:20 541:5 541:6 543:13,22 549:5 549:6,7 558:11 560:15 564:14 634:11 640:18 647:11 659:18,22 699:7</p>
--	--	--	--

713:12 722:7 723:3 725:17 726:6 729:13,19 733:20 741:14 744:8,10 776:3 780:17 784:16 820:10 837:18 838:13 839:22 874:2 884:7 887:10 897:6 898:4,13 903:4 908:2 911:4 947:10 964:14 967:18 993:12 1021:22 talked 546:6 560:20 616:8 641:11 644:19 682:5 704:20 735:17 780:10 814:3,22 819:20 863:15 866:16 871:6 879:1 888:15 895:17 899:1 908:2 936:4 942:11,21 1021:16 talking 547:4 548:9 558:2 585:4 586:9 612:2 627:6 628:12 629:7 630:16 640:3 641:4 654:15 656:7 657:7 663:16,16 665:5 709:2 732:20 740:18 745:5 746:18 748:5 751:9 756:10 771:20 783:10 783:13 799:16 811:12 819:13,14 828:4 829:18 831:6 851:9 861:9 863:15 870:4 875:20 876:5,7 883:5 885:4,18 885:19 887:2 895:6 897:22 900:19 908:15 910:15,22 929:18 933:10 946:21 947:1 952:19 953:3 955:14 1021:19 talks 952:17 961:1 tanks 781:11 tape 532:2 target 720:4 targeted 996:10 tariff 565:22 566:2 589:10 734:9,9 771:1,8 771:19 772:5,18 776:6 807:6 808:1,2,9 809:6 851:22 852:6 853:7 867:19 868:3 885:5 890:18 893:8,9,11,16 895:4,10 tariffs 542:11 583:22 589:9 711:12 805:1 807:4 811:8 848:3 868:6 874:13 893:7 927:17 928:4,6 929:16	932:5 933:7 task 672:15 965:22 tasks 824:8 tax 841:15,16 885:10 tax-cash 1014:6 taxis 822:4 te 991:8 team 799:9 875:20 876:6 876:12 877:8 899:12 969:3 teams 556:14 tear 534:5 660:3 tease 550:22 tech 757:3 technical 519:21 techniques 797:16 technologies 823:15 824:2 825:7 830:12 832:3 838:10 technology 761:12 821:8 821:10 823:2 824:17 831:7,8,21 834:10 1011:11 1018:18 telecom 931:15,17 television 581:3 tell 539:11 593:20 596:19 635:18 675:15 705:8 714:8 734:3 738:19 741:22 777:20 783:11 787:15 811:6 830:20 856:12 869:21 893:2 894:17 904:13 921:8 931:6 932:4 950:6 959:4 976:10 998:4 1000:8 1017:9 1018:22 telling 571:17 885:7,15 891:17 916:15 932:16 temperature 973:17 temperatures 973:13,15 973:19 982:22 temporary 782:16 939:18 944:2,3,6 951:20 966:10 1018:10 tend 598:2 726:8 747:11 978:22 979:2 984:11 992:15 tended 588:4 tendencies 791:18 tends 906:15 Tennessee 625:9 665:21 678:13 688:15 814:13 849:5 852:17 988:5 Tennessee/Kentucky 604:15 tens 828:15 1006:6 tension 715:4	Teresa 691:13 692:1 term 561:18 587:8 588:20 608:3,7 632:10 678:20 679:5 684:7 773:20 terminal 630:17,18 631:20 762:2,7,12,13 762:14 764:20 767:5 770:15 772:7,8,9,13 876:7 976:12,18 terminals 745:4 772:2 805:9 976:10 terminate 765:3,13 terminated 680:16 899:20 terminating 900:1,6 terminology 854:18 954:8 terminus 630:20 631:1,4 631:5 terms 557:14 575:19 577:9 585:1 597:15,15 602:22 606:9 615:18 644:17 647:20 648:17 707:13 713:19 724:14 730:19 740:20 835:3,4 838:8 861:14 870:2 907:18,19 908:13,13 910:12 911:21 928:11 942:2 953:19 991:8 terrible 612:22 terribly 933:13 territories 683:2 test 737:4 743:10,11 749:11 763:13 testament 973:21 tested 822:13 testified 984:21 996:21 testify 522:8 609:18 677:17 896:21 testifying 522:2 617:1 642:18,19 1024:12 testimonies 553:5 testimony 523:16 531:21 532:21 540:15 565:6 584:17 599:20 605:10 606:10 624:7 635:10 646:5 669:14 678:3,18 679:6 684:8 689:22 696:2 697:1 714:20 717:9,12 718:2 780:4 827:7,9,20 829:18 833:19 843:19 871:22 875:12 882:10 911:15 916:14 917:1 918:6 1001:17 1019:19	testing 763:4,8 764:8 tests 644:8 Texas 577:17 778:3 789:13 text 676:3 697:22 963:1,2 texting 993:14 Thailand 788:6,8 thank 521:20 522:14 530:8 538:3,4 539:21 541:4 542:17,20 543:15 544:10,11 546:1,3 551:21,22 553:6 554:12 557:17,20 560:18 564:16 565:18 567:5,11 567:16,19,22 574:4 580:14 582:14,15,18 587:9 588:22 590:9,12 590:15 594:22 596:22 600:8 601:22 602:2,5 609:17,20 614:17 616:2 616:3,6,15,16 617:14 624:16,19 631:8 647:4 650:13 663:19 677:15 677:21 687:16 698:6 713:5 717:5,9 720:5,7 720:10 721:17 722:13 737:7,9 739:18 741:11 741:12 751:5,5 756:11 756:12,15,22 766:1,5 779:20 780:3 783:18,20 785:14,15 787:2,18,21 794:5,5 800:21 801:9 801:11 812:17 814:17 815:15 818:11 820:3,7 820:14,15,20 826:2,5 830:22 833:14,15,17 839:18,19,21 840:16 843:3 886:4 887:16 888:2 889:5 911:10 921:22 922:8,10 927:6 927:8 952:6 969:5 970:21 971:8,13 984:2 993:1,17,18 994:15 999:11,12,14 1003:6,18 1023:8,9 1024:4,9 thanks 529:11,12 548:19 557:21 583:1 587:11 597:4 646:4,5 648:20 648:20,21 649:3 677:18 717:1 719:1 739:21 814:20 896:14 897:2 1024:11 theirs 863:12 theme 606:15 1008:18 themes 748:20 theoretically 886:7
---	--	---	---

<p>theory 699:9 732:13 741:8 837:16 thereof 1023:22 thin 889:17 thing 537:10 554:6 568:22 649:20 651:14 661:5 718:1 723:4 724:13 725:19 728:17 731:1 735:15,16 736:1 736:13,13,16 737:5 740:19 741:18 743:9 745:15 755:2,5 775:7 775:14,17 808:17 826:11 831:16 875:22 884:6 885:3 889:7 901:2 908:12 920:13 943:7,22 949:4 951:18 959:9 963:21 964:7 968:4 971:2 996:20 997:17 998:14 things 599:4 629:7 632:16 637:15 639:1,19 660:1,2,7,16,18 661:6 662:2 722:8 729:2 730:4 734:7 738:10 739:4 740:11 741:7 742:3,10 751:2 802:13 828:9 837:19,21 838:14 839:7 860:11 864:22 867:12 870:11,13 873:20 883:3 884:5,8 887:1 905:14 909:3 911:6 921:4 923:17 927:6 929:17,18 933:1 949:7 950:11 965:14 967:5 968:3 970:7 971:6 995:15 999:19 1000:19 think 530:19 531:3 532:16 534:11 538:5,8 538:10,11,13 539:7 541:13,17,22 543:9,22 544:12 545:17,21 546:11 548:1,18,19,21 548:22 549:1,2 550:17 550:17 553:3 558:1,17 559:4,9 561:8 566:12 566:16 575:17 576:8 577:15 579:15,21 580:13 581:9 586:2,6 586:22,22 588:1,10 589:16 590:4 594:18 595:10,14 596:10,17 598:19 599:19 600:17 612:10 615:5,7,14 617:5 625:8 626:16</p>	<p>627:11 629:20 632:6,14 633:6 636:1,8 637:2,4,5 637:7 639:4,9,10,17,20 641:1,3,10,15,16,20,22 642:1,13,20,22 644:2 644:13,16 645:1,17 646:2,7,15,21 647:7,9 649:4 652:8 656:16,18 657:2,3,14 659:22 661:5,7,12 662:4,16 663:12,15,20 664:9 699:5,18 700:7 702:13 703:6 704:1,5,6,11 706:19,19 707:4,7,9,10 707:15 708:18 709:4 710:4,8,19 713:3 715:8 715:19 716:8 718:1,7 721:14 723:5,8 724:13 724:14,21 728:9 729:4 731:10,11 735:4,7,8,21 736:2,3,6,7 737:3,17 738:6,8 740:4,17,19 741:1,3 742:18 743:8 744:20 745:3,4 746:4 747:9,11,17 748:4,19 749:6 750:9 751:11,22 752:5 753:8 754:4,15 755:17 757:20 767:14 768:9,14 770:12 776:20 777:16 779:10 782:2 783:16 784:4 786:2 799:16 802:15 805:13 807:19 813:4,7 815:11 815:16 816:17 817:3 819:20 826:22 828:5 830:13 832:14,16,20 834:4,16,20 835:2,10 835:14 837:19 838:13 838:17,20,20 839:9,14 839:16 847:22 848:7 849:18 850:15 853:8,22 863:18 869:15 871:21 872:14 873:2,10,22 874:16 877:7,22 878:2 878:12 879:1 883:3,3,5 883:6,20 885:18 886:6 888:9 889:2,7 890:7 892:21,22 895:14,21 897:8,20 898:7,7,9,12 901:4,21 902:3,4 903:9 906:13 907:2 908:21 910:5 913:10,12 914:1 915:16 916:18 918:6,8 918:21 920:9,10 930:5 930:7 936:7,7,22 937:11,13 938:4 939:2</p>	<p>939:10 940:1,18 941:10 941:13,19 944:20 945:1 945:6 946:4 947:16 948:16,21 949:1,15,16 949:22,22 950:11,15,18 951:11 954:15,21 955:7 955:8 957:1,20 958:16 958:20 960:3,5,10,13 962:6 963:10,21 964:9 965:15,22 966:11 967:8 967:10,19 968:17,22 969:9 993:15 994:13 995:8,15 996:7,14,17 997:1,9 998:14,15 999:3 1005:16 1006:2 1019:4,5 1021:13,18 1022:5,9,21 1023:12 thinking 544:15 550:18 588:11 594:14 638:6 639:22 643:10 645:21 709:15 719:19 743:9 745:13 819:13 853:16 898:16 917:15 936:9,16 965:11 1018:19 third 733:10 857:2 898:15 900:5 925:1 949:1 1020:2 thirdly 830:6 Thornton 983:1 thoroughly 720:2 969:1 970:9 thought 522:7 534:12 576:21 577:8 589:2 596:7 611:11 616:7 644:20 661:9 710:20 729:9 738:21 775:15 829:2 834:13 837:8 839:12 848:6 861:17 911:20 936:13 961:10 965:7 thoughts 611:7 740:13 thousand 700:14 933:5 thousands 674:3,6 679:11,12 690:3 792:5 874:12 977:14 988:3 threat 611:2 684:2 699:10 732:13 741:11 741:11,12 743:15,18 905:12 threatened 866:7 threatens 670:5 918:1 three 536:5 549:18 564:7 593:21 618:18 631:10 631:11,13 654:21 664:16 665:22 671:18 673:7 676:2 681:21</p>	<p>688:22 692:7 694:19 695:3,5,10,14 698:20 707:8,9 721:7 785:18 786:18 824:20 825:18 830:19 857:10 872:20 874:11 878:18 897:13 914:18 924:9,20 925:5 926:16 948:2 968:17 973:9 994:20 1005:19 1013:1,8,14 1015:8 three-competitor 744:16 three-year 1015:12 threshold 637:16 727:7 980:18 throttle 825:8 828:20 throughput 670:10 693:13 850:6 throw 817:18 936:22 throwing 890:8,9 thrust 829:17 Thunder 725:15 Thursday 550:8 tie 670:11 tier 973:16 tiers 739:5 tight 816:13 TIH 640:8 time 519:13,14 521:4,4 522:19 523:21 527:11 529:15 530:10 532:17 532:22 536:10,16 537:20,21 541:20 542:1 542:3 546:17,22 550:15 553:3,13 554:17 555:13 558:2,10,14 560:3 561:12 562:5 565:9 568:1 569:6 572:4,7 574:21 583:1 593:21 594:19 601:13 628:8 629:6 638:7,10 650:1,2 652:11 664:9,18 665:11 668:16 675:4 677:15 678:7 691:12,20 692:7 693:10 698:5 702:5 704:2 710:22 716:10,17 718:13 725:16 726:3,4 727:19 729:22 731:4,6 731:6 733:11 737:7 741:21 742:10 752:11 752:20 753:3 754:20 756:6,7 757:7,17 758:17 770:12 776:3 777:12 781:15 788:1,2 791:5 793:3,6,10 795:9 796:5 799:6,14 801:9 804:3,3 811:5 812:14</p>
--	--	--	--

812:16,19 814:20 820:10,11 830:20 839:22 846:19 848:16 848:16 851:1 852:14 855:2 857:9 860:3 867:2 871:15 874:18 876:15 878:7,10,12 879:1 880:10 882:21 884:13 886:9 890:22 900:15 912:14 918:11 944:19 945:2,3 946:3 946:14 947:11 950:3,14 951:9,13 965:18 966:5 967:3,9,10,13,18,19,21 970:5 976:5,8 978:7,22 982:20 985:2,4 992:12 993:5,10,12,19 997:13 997:15,19 998:5,9 999:15 1000:7 1002:21 1003:13 1005:2,4 1007:20 1023:4 time-consuming 879:5 time-sensitive 974:21 992:16 timely 555:9 588:9 758:5 994:15 timer 519:12,14 times 529:13 532:3 548:10 564:3 575:2 584:2 597:16 639:18 642:1 647:22 651:8 657:10 659:4 710:5 712:16,18 729:1 730:7 730:15,20,21 731:17 740:11 773:4 788:3 790:3 792:18 799:17 825:17,18 850:3 861:10 975:1 978:17 979:2 983:19 997:12 1005:20 1013:10,14 1014:13 timing 886:19 949:16 965:12 966:11 Tinto 824:20 834:9 836:2 837:9 tip 826:17 tipped 888:20 tipping 585:9 586:2 tirelessly 972:20 tires 788:16 today 521:1 522:9 523:16 529:17 530:7 531:8 535:4 540:22 541:5,9 542:22 545:8 546:11 553:5 562:22 563:6 564:10 568:3 572:18 585:22 586:4 590:18,20	593:21 641:3 642:18 647:13 648:1 668:11 683:15 689:19,22 690:14 696:2 697:11 717:9 718:3 754:16 763:2 777:17 780:4 782:22 794:7 811:6 821:17 827:20 829:6 830:9 832:5,18 837:8 839:4 840:20 842:5 843:7 847:11 848:14 850:3 862:19 888:2 897:14 900:13,13 902:10,17 903:8,10,17 917:12,13 919:4 921:16 953:8 971:14 984:5 1002:3 1003:19,21 1007:3 1009:16 1014:11 1018:22 today's 521:7 796:18 820:20 told 526:1 634:12 653:3 734:14 864:7 876:7 Toledo 693:9,11 toll 829:9 tolled 833:1 Tom 535:17 tomorrow 753:17 784:19 883:9 892:4,9 894:17 970:15 993:11 1023:13 ton 825:18 ton-mile 909:19 ton-miles 1006:4 tons 681:7,8 1005:22 1006:9 tool 903:12 tools 650:10 842:3 938:17 947:7 950:9 top 546:13 605:18 611:12 633:6 903:1,7 910:3 top-line 1010:9 Topeka 971:22 topic 568:12 659:21 722:6 821:18 topics 1002:2 topography 744:4 torn 743:14 torrential 973:4 total 526:16 533:8,8 536:9,13,16 554:16 667:2 674:2 692:9 705:22 731:6,6 900:2,7 1011:8 totalled 773:11 828:15 totality 714:12 751:1 totally 632:3 643:14	705:5 837:6,7 905:7 920:10 touch 639:16 667:3 672:18 711:1 718:17 842:11 944:14 touched 558:1 639:20 touching 644:14 704:10 tough 642:1,8 740:16 947:13 touts 829:13 town 666:22 674:9 694:8 694:10 850:12 toxic 738:15,15 trace 778:11 track 557:5,6 626:3 672:16 675:6 683:20 689:1 690:13 692:4 709:21,22 710:12 719:8 719:9 733:2 753:9,11 754:3 810:17 828:9 834:6,21 836:4 849:3,4 849:12 856:16,22 857:1 857:3,18,21,22 858:1 973:4 989:3,4 1007:18 trackage 699:16 930:19 935:12,15,16 tracks 849:8,10,13 850:11 853:14 854:2,12 855:17 857:10,21 858:16,19 859:15 861:9 861:11 862:22 863:13 866:8 869:7 877:15 878:19 881:1,4 973:7 998:8 traction 719:15 trade 591:1 597:21 663:22 trade-off 556:4 trading 1005:6 traditional 823:7 traditionally 834:13 traffic 524:13 526:4 529:6 539:10 551:10 578:1 600:4 622:10,15 623:2,12,13 624:9 651:8 662:20 670:2 672:22 673:8 679:21 680:17 681:5,18 682:20 683:2,12 684:1,22 687:12 702:14,15 705:9 705:10,13,15,17,20 706:9,20,21 707:1,5 711:10 732:14 733:4 738:20 742:13 744:11 777:3 784:12 825:14 827:19,21 844:3 846:12	846:16 847:12 869:19 875:16 881:7 894:13 897:17,22 898:3 899:17 899:21 900:2,6,9,11 901:14 919:6 928:13 929:10 930:12,21 931:17 954:11 957:11 974:21 975:14 977:20 979:10,21 980:2 982:11 983:9,16 988:2,13 990:7,8 991:22 train 536:7,11,14 625:21 626:4 627:14,19 652:17 652:18 658:19 662:15 689:1 691:19 692:3,6 695:3,5 700:12 796:7 805:20 806:5,5,9,13 809:22 810:11 824:6,11 824:18 825:4 828:7,10 837:4 846:13 855:18 856:13 859:2,14 976:2 978:14,18 trains 574:22 627:16 644:19,20 645:1 695:1 695:14 712:10 796:11 823:4 824:17,22 830:4 835:9 850:18 869:16 878:4,4,21,21 879:3 886:10,11 894:12 998:7 transcript 520:13 transferrable 775:14 transferring 928:13 transform 1021:3 transit 553:13 554:17,19 623:11 792:15,18 793:3 793:6 795:9 798:12 803:10 975:1 976:5 978:7,22 983:19 992:12 1013:10 1014:13 transload 682:11,22 693:17 transloading 672:21 789:4 1008:6 transparent 615:17 750:14 transport 533:10 926:15 transportation 518:1 529:1 568:15,22 569:14 569:18 570:21 582:1,4 585:19 586:12 599:11 619:5 625:8 660:20 667:12 674:1,13 678:15 678:17 692:22 696:20 722:10,15 732:18 734:10 747:18 755:12 758:9 821:3,6,8,9 822:1
---	--	---	---

823:21 825:21 832:9 972:21 985:20 986:8 994:1 1006:14 transporting 990:21 travel 541:20 752:11 753:3 798:2,4 traverse 572:2 treading 782:4 treasurer 984:4 treat 567:6 781:19 935:10 treated 550:21 551:18 607:3 726:11,18 treatment 571:10 treatments 831:14 835:18 trees 1006:10 tremendous 870:3 tremendously 641:7 trend 574:15 581:19 582:7 583:17 586:6 588:5 trends 583:15 693:5 TRF 722:11,12 746:1 tribute 921:5 tried 659:14 711:5 714:20 723:17 725:17 734:3 793:19 812:4 833:2 1019:3 tries 745:22 Triesch 521:15 616:20,21 617:19,20 625:2 626:1 626:6,11 627:2,5,21 628:1,5 629:4,13 630:7 630:9 631:2,13 632:11 634:10 635:18 636:4,12 636:22 646:14 649:10 649:14 650:20 651:1,3 652:20 653:17,22 654:14 655:11,16,20 656:6,15 657:2,10,19 658:20 662:22 663:7 707:8 triggered 581:21 973:15 trillion 1006:4 trinational 572:12 trip 629:12 635:8 742:3 742:10 troubleshooting 520:10 troubling 604:10 870:13 truck 529:1 533:19 534:2 538:16 539:10 550:13 552:18 553:1 554:1 556:13 562:6,6,10,18 563:7 564:11 570:5 575:4 600:3 628:11	632:7,21 633:10,11,14 633:16 634:5 635:1,3,7 650:18 651:4,5 652:19 652:21 654:3,8,12 655:9,14,18 656:1,12 658:7,22 659:9 682:21 775:5,9,13 822:10,18 823:3,10,12,13 831:2 832:13 833:1 835:15 836:20 837:21 909:20 910:3,7 976:21 983:21 992:16 1000:9 1005:10 1005:15,20 1006:16 1016:6 trucking 533:20 556:13 564:3 658:5 758:11 817:6 828:14 832:22 833:5,20 839:11 908:8 909:16 910:5 986:8 1010:14 truckloads 533:22 534:4 652:5 657:11,17 1006:7 trucks 533:12 534:4 562:19,20,21 563:2,4 599:15 623:21 637:6 650:7,15 651:19,19 652:2 654:9 655:21 656:21 657:3,5 658:11 658:12,19,21 662:19 672:20 682:16 774:14 774:19 775:10 790:1 796:3,16,19 815:17,19 816:2,5,11,13,14 817:15,16 818:8 820:1 822:12,17,22,22 823:6 823:7,18,22 825:14,17 827:20,22 829:22 830:3 833:7 839:4 974:20 977:12,14 998:18,18 999:6 1005:13,18 1006:3 1010:17 1017:17 1022:17 true 541:20 552:18 749:17 750:22 808:15 815:9 831:16 863:6 869:11 937:21 988:10 996:6 truly 603:20 618:19 631:10 642:20 735:6 790:4 truncate 943:17 truncated 966:5 truth 605:12 try 547:2 564:14 581:14 613:18 650:9 678:4 715:17 716:15 734:15	741:13 746:3 769:13 778:11 785:6 870:10 879:2 893:5 894:22 897:4 933:19 953:22 954:3 961:2 969:16 970:16 1002:19 trying 547:19 549:13 550:18,21 551:16,19 557:12 562:9 580:2 594:8 641:19 644:3 655:7 712:20 734:11 751:8 753:1 758:17 764:7 769:19 772:22 773:5 778:13 779:10,16 779:17 780:11 782:3,4 782:7 805:3,18 811:9 816:11 832:7,19 850:5 851:15 867:16 868:18 869:3 871:2 914:9 916:6,14 928:21 932:11 959:16 961:19,20 Tucson 823:14 Tuesday 550:7 Tunnel 1011:10 turbine 692:8 Turkey 604:4,8 turn 519:9,10 520:7 521:6 529:7 601:2,5 605:14 690:2 751:15 759:12 794:2 799:13 843:1 851:6 874:14 884:2 896:12 925:2 927:6 935:1 937:18 979:5 993:1 999:9 1011:17 1021:8 turned 529:20 680:6 738:7 Turning 989:14 1011:15 turns 746:14 755:10 Tuscaloosa 635:6 651:7 TuSimple 823:12 twin 841:4 two 518:12 520:21 549:18 563:10 565:11 569:20 571:18 574:20 576:8 588:4 598:15 603:21 611:19 619:4 622:17,19 626:17 630:17 636:7 653:7 654:20 664:17 665:10 665:19 670:15 691:19 693:19 694:1 700:2 701:16 724:7 725:21 727:8,20 732:8,9 739:5 744:5,7 745:4 747:3 764:7 767:10 776:12	795:8 796:12 798:2,14 802:14,18 803:11 812:6 814:14 816:9 818:19 824:12 842:22 846:15 856:2 859:22 871:6 894:9 898:4 900:17 901:15,15 905:20 911:12 914:17 917:4,21 929:10 931:12 942:9 961:21 973:22 975:17 976:1 978:7 985:16 993:5,12 997:19 999:22 1001:18 1017:6 1019:4 1019:12 1020:9 two-competitor 744:15 two-thirds 673:8 681:22 type 547:17 637:22 640:21 699:10 795:18 799:21 879:6 943:1 964:18 965:7 983:11 types 618:13 723:19,22 740:5 836:19 870:12 949:7 typical 666:19 672:7 682:7 698:20 712:15 746:11,12 826:17 933:4 1012:8 1013:11 typically 598:10,14 603:6 667:20 672:22 681:17 681:19,22 712:11 732:17 806:11 837:11 855:4 978:6 typifies 683:15
U			
			U.S. 521:11 523:13 524:4 524:8 542:8 567:17,21 568:4,5,8,21 569:5,18 569:22 571:2,16 572:6 572:9,13 573:7 577:14 577:17 580:16 581:5 586:3 602:12,14 603:9 603:15 604:3,8 606:3 610:6 619:8 620:4 622:18 690:3 695:18 724:6 726:16 727:4 731:18 734:22 744:4,14 745:2,11 756:4 789:2,9 789:12 790:11 791:17 792:4 801:15,18,20 822:14 823:9 824:13 971:18 972:5,8 974:10 974:17 980:14,16 981:9 981:20 991:20 994:1 1004:21 U.S.'s 602:18

<p>Uh-huh 578:7 767:9 778:17 779:1 783:7 Ukraine 580:22 581:2,17 Ukrainian 582:11 ultimate 561:3 855:18 1006:12 ultimately 542:1 573:5 586:13 686:10,20 687:3 983:19 991:12 unabated 573:22 unable 525:4 794:14 955:21 957:5 unachievable 522:18 unanticipated 845:3 uncaptive 640:2 uncertainty 844:13 878:13 985:3 987:19 990:11,14 1017:13 1018:12 unchecked 572:15 unclear 608:4 uncompetitive 581:22 unconscionable 603:20 underdiscussed 821:18 underlie 926:18 underlying 584:7 undermine 934:6 undermines 658:7 undermining 919:15 959:3 underperform 620:19 underscore 1004:2 underscores 759:6 984:19 understanding 675:19 understand 530:18 531:18 532:12 535:7 565:21 575:11 581:1 610:19 616:14 623:4 655:8 658:3 660:20,21 662:21 696:4 698:19 699:6,12 703:12 704:13 710:3 716:7 737:20 751:8 757:2 769:14,16 774:1 783:11 793:21 805:19,22 811:21 814:9 836:5 837:9 844:7 864:6 871:4 875:13 876:17 883:20 891:3 892:21 911:17 912:13 913:21 914:8,9 916:13 919:18 920:7 932:11 948:15 955:16 959:22 967:3 977:18 997:7 1000:11 1004:1,14 understandable 628:19</p>	<p>975:2 understandably 648:3 understanding 574:6 581:9 650:1 732:18,20 734:2 739:7 742:21 753:1,3 814:6 885:21 944:17 945:19 understood 783:18 875:14 968:19 undertaking 781:13 underutilized 693:8 1007:18 undervalued 692:18 underway 568:16 581:15 undue 748:22 unduly 608:15 uneconomical 603:15 unequipped 726:1 unequivocally 872:17 unexpected 556:10 845:1 870:12 889:8,9 972:17 unexpectedly 888:22 unfair 526:10 527:18 628:3 unfolding 579:9 unforeseen 989:11 unicorn 836:5 unimportant 630:5 unintended 671:1 839:15 1001:14 Union 536:5 759:3 767:2 767:5 823:11 1001:22 unique 619:13 669:20 689:20 691:8 865:18 869:19 unit 680:20 695:1,3,4,14 824:22 978:15 United 569:6 581:10 591:6,19 666:16 739:1 822:1 828:11 829:11 834:7 978:19 980:12 981:19 985:21 986:13 987:9,18 988:20 997:4 1000:6 units 683:19 Univar 523:5 universe 687:10 university 665:21 678:12 678:15 721:5 842:17 922:13 unknown 887:9 unlimited 1023:19 unload 555:8 556:13 575:2 659:6 975:20 unnamed 559:5 unnecessarily 670:3,11</p>	<p>821:14 unnecessary 527:21 670:2 841:13 unnoticed 793:12 Unprecedented 985:2 unpredictability 554:16 unpredictable 556:16 844:14 unprepared 524:13 unproven 825:7 unreasonable 526:6 527:22 528:6 762:21 958:15,18 961:6 unreasonably 602:22 956:22 unrelated 526:3 unrelenting 697:14 unreliability 606:16 unreliable 527:2 561:11 602:22 605:1 unsound 762:1 Unsurprisingly 824:1 untenable 704:6 unusual 556:1 691:15 916:5 unwarranted 670:2 UP's 759:4 update 1000:2,15 1001:2 updated 1000:21 upfront 722:17 upgrades 975:12 1012:19 upgrading 672:16 UPS 975:3 upset 685:21 726:9 upsetting 920:15 upside 715:21 uptick 794:16 upticks 524:13 urban 575:11 595:19 640:10 739:14 822:6 835:22 981:21 URCs 916:12 urge 573:19 624:2 696:14 697:21 725:8 801:1 825:22 urged 874:8 1022:22 urging 874:9 Uruguay 789:9 USA 985:7 USDA 583:11 584:11 722:19 use 519:20 520:1 527:19 529:3,4 541:2 554:9 561:18 562:20 566:2 579:11,21 591:13 594:3 594:5,6,7 599:22</p>	<p>612:14 625:13 633:16 637:6 644:4 649:16 650:9,19 652:17,18 655:14,21 659:4 676:17 716:8 744:6 762:16 763:6 773:19 789:3 797:19 803:15 804:11 812:4 822:8 843:15,22 844:11,14 849:5 860:6 860:7 891:11 892:1,4 897:14 909:22 911:3 914:16 917:3 919:12,16 919:21 927:22 938:16 954:2,6 976:19 993:9 1012:2 1015:3 useful 590:6 929:1,4 996:7 1022:5 user 843:10 users 532:15 954:4 989:10 uses 807:1 USPNW 572:2 usual 720:3 usually 527:10 620:19 658:7 682:6 874:1 894:18 Utah 605:4 utility 560:10 utilization 987:13 1010:1 utilize 895:3,9 986:9 1008:7 utilized 566:11 utilizing 673:17 843:21 885:1</p> <hr/> <p style="text-align: center;">V</p> <hr/> <p>vacated 694:8 Valley 694:17 695:9,11 695:11 valuable 551:21 998:17 998:19 value 667:14 688:13 695:15 759:7 790:9 826:14 827:13,16 832:5 958:12 989:12,19 1014:5 valued 996:22 values 798:20 Vancouver 730:22 731:16 982:17 983:1 variability 887:10 991:9 variable 684:6 731:1,2 737:15 945:8 1014:9 variables 730:4 882:3 variant 736:21 varies 923:16</p>
--	---	---	--

<p>variety 632:6 728:20 824:2 914:19 971:22 991:2 various 527:17 594:8 601:1 836:19 938:14 vary 933:2,8 vast 522:12 575:7 576:18 659:11,11 834:4 vastly 577:11 873:15 vehicle 821:8 831:7,21 vehicles 694:3 822:3 835:9 vendor 778:7,10 Ventures 721:6 788:8 verified 675:18 696:2 verify 545:15 Vermont 610:7 versa 580:4 777:15 846:3 version 678:2 799:15 versus 533:6 546:8 596:10 632:4 635:16 639:12 640:10 651:13 660:19 681:14 746:19 762:11 835:15 880:11 880:17 937:15 940:7 941:21 962:10 1007:6 1012:5 vessels 975:19 VI 721:4 viability 673:12 694:15 701:10 821:22 viable 573:1 632:21 672:8 vice 552:5 564:19 565:18 567:21 580:4 587:11 588:22 614:16 616:2 617:20 646:4 647:4 648:19 666:9 688:8 717:8 719:1 751:22 752:4,9,22 753:5 754:7 756:12 777:15 813:17 814:4,17 843:5 846:3 887:22 889:5 971:15 972:1 video 709:16,17 826:9,19 827:9 view 540:13,18 541:21 547:18 554:14 578:19 578:21 629:2 640:15 645:5 656:13 658:9 660:8 692:11 720:1,1 745:16 757:22 821:17 861:4 897:21 899:10 908:3 934:11 941:1 946:19 953:16 961:15 1018:1</p>	<p>viewed 938:2 views 523:18 766:2 826:3 969:7 vigorously 682:10 1000:8 1018:11 Virginia 774:21,21,22 777:4,5 778:16 875:15 virtually 523:16 592:12 594:12 599:3 788:2 920:17 1020:6 vis-a-vis 569:22 vis-à-vis 724:10 992:16 visibility 656:15 837:20 845:5 887:11 889:2 979:4,16 980:3 vision 1017:16 1022:14 visualization 728:16 vital 523:10 602:17 688:19 986:15 vocal 607:2 voice 840:19,20 1019:8 volatility 989:10 volume 533:5,8,8,19 534:13,16 550:12,13 562:11 563:8 648:2 656:1 692:8 705:12 708:11 724:2 794:16 798:16 799:12 800:11 845:1 846:13 847:3 870:3,19,22 886:19 990:15 1014:16 volumes 534:22,22 551:8 640:10 648:8 693:19 759:1 782:15,17 815:11 894:8 985:5 1005:1 1007:21 voluntarily 873:4 931:20 1020:16 voluntary 611:20 841:20 931:19 964:16 965:5 1001:4,11 1002:8 1021:12 votes 664:6 voyage 587:3 VP 786:10 787:19 vulnerable 674:15</p> <hr/> <p style="text-align: center;">W</p> <p>wait 574:2 651:8 666:1 922:3,4 949:19 waiting 646:3 713:16 714:9 975:19 Wake 534:16 Wal-Mart 839:7 walk 665:1 848:20 856:13</p>	<p>walked 1017:6 wall 549:14 614:3 663:4 663:12 956:3 Walmart 555:2,4 want 524:19 529:18 531:15 532:17,19 534:21 538:6 543:1,3 544:11 545:10,10,14 549:4,6 552:3 553:6 558:15 560:20 589:6 599:22 617:7 633:14 638:13 643:16 648:3 654:2,17 658:21 660:16 661:5 664:19 678:6 683:15 686:10 687:20 698:18,22 699:4,5 700:17 702:10,20 703:8 704:3 706:16 707:2 708:6,8 711:22 721:17 722:9,17 728:11 730:8 730:13 734:5 737:10 738:11 739:10 746:16 750:19 751:8 755:4,17 765:9 769:20 774:18 780:5 781:17,18 782:6 800:4 809:11 811:5 814:21,21 816:17 832:2 840:14 868:13 872:7 876:17 880:4,16 881:18 883:9,17 885:8,8,9,14 886:2 888:16,20 889:6 891:2 896:6,9 897:4 898:4,13 899:4,11 901:20 908:9 911:17 913:21 916:13,16 919:21 921:7 922:2,6 937:22 939:22 942:8,22 943:7 944:14 951:4,8 953:6,18 954:12 955:1 956:9 957:10 959:7,21 960:4,21 961:11,15 962:4 964:8 965:12 969:22 970:10 993:9,11 1003:21 1004:13,18 1012:2 1018:21 1024:4 1024:6 wanted 522:8 529:16,17 529:21 566:17 581:8 584:22 630:16 646:9 648:18 650:14 706:18 723:4 729:3 730:6 742:5 755:2 756:9 829:20 830:19 864:1 912:13 913:17 937:10 943:18 952:12 974:14 994:20 999:20 1002:21</p>	<p>wants 594:2,5 737:15 843:11 846:2 871:10 886:19,20 937:14 967:7 970:15 war 562:21 581:15 Warner 909:6 warranted 579:15,20 595:16 704:12 warrants 899:6 Warren 840:12 970:21 981:12 993:14 994:7,17 Washington 720:8 788:2 812:10 984:21 washouts 973:5 wasn't 540:19 562:10,11 661:16 722:2 726:22 732:21 752:20 783:12 939:7 950:14 waste 618:12 678:6 1009:22 watch 827:6 watching 579:5 582:8 993:4 water 632:17 649:18,18 782:4 1000:9 waterways 570:2 798:17 way 541:1 548:19 550:16 550:17 551:5,13 554:4 556:12 562:12,12 565:9 566:5 579:13 595:16 596:4 612:10 639:13 640:8 642:6 643:1,2 651:7 657:21 658:9 660:21 674:7 690:5 691:13 694:17 697:12 698:13 699:12 703:15 706:19 710:10,14 711:4 718:20 719:16 726:3 735:11,14 739:13 740:14 741:15 748:4 750:10 755:7,17 762:19 768:10,14 777:4 778:8 784:15,16 802:19 803:7 803:8,17 805:16,22,22 808:21 810:8 811:12 815:18 847:15 852:8 854:11 859:14 879:3 884:1,8,12,13 894:22 895:12 896:1 900:16 903:9 906:13 911:7 913:8,12 914:18 918:2 918:12 919:5,15 920:4 920:11 921:4 937:4 948:22 949:15 951:7 954:21 961:15,16 995:6 997:12,18 999:6 1007:9</p>
---	---	---	---

1011:4 1014:8 1023:21 1024:4 waybill 584:11 676:22 677:2 741:17,20 Waymo 822:10,12 ways 535:9 537:8,10 573:17 594:8 640:19 641:20 694:14 741:8 761:15 765:17 839:16 909:21 910:21 914:17 914:18 950:2,4,9 972:11 985:13 996:18 999:4 1021:10 we'll 541:6,9 563:19 564:13,14 612:4 655:2 659:17 664:12 665:3,5 675:14 688:2 729:2,19 743:10 801:9 805:13 874:5 892:15 950:7 969:16 970:14 974:11 1003:14,15 1013:19 1024:16 we're 531:16 532:16 557:7,8 561:4 568:12 572:18 573:16 579:7 585:22 586:2 592:18 610:2 615:21 618:2 623:22 627:6 639:8 640:2,13 650:4,7 658:1 661:5 666:1 700:20 701:2 702:5,7,12,14 705:14 706:4 708:10 734:8,18 735:2 743:19 745:5 748:1 750:11 778:2 786:14 793:3 799:14,19 800:5,16 803:10 817:4,6,7,14 818:8 831:1,6 832:14 832:16,19 834:17 839:9 839:10 851:9 853:22 861:9 864:20 865:11 866:13 868:18 870:16 873:9 875:7 878:3 883:18 884:2,11,21,22 885:15,16,18,19,21 889:16,21 890:8 894:17 895:21 896:17 897:22 902:22,22 903:10 908:15 916:20 937:5 941:14 953:12 954:13 957:21 958:5 961:4,11 969:15,16 970:1,16 1006:19 1007:4,4 1008:2,9 1009:5,13,18 1010:12,15,19 1011:2,7 1013:16 1018:10,16,20	we've 546:6 569:2,7 574:19 582:5 586:16 593:22 599:7 611:4 615:8 616:7 617:6,17 639:6 640:22 642:17 679:5 709:2,14 712:8 729:14 770:9 781:15 782:10 795:1 796:4 799:16,18 800:17 805:19 809:17 816:10 819:13 844:18 848:14 853:3 861:19 872:5 877:18 885:17,19 898:11 899:1 915:3,14 916:8 921:16 936:4 937:15 941:19 949:6 968:22 969:8 994:21 1000:3 1006:17,19 1011:13 1014:14 1021:16 wear 534:5 660:3 weather 730:5 865:4,6 website 520:9,12,14 792:10 Wednesday 518:12 894:10 week 525:7,9 529:19 530:20 535:19 549:11 549:12,17 564:7,7 591:20,21 598:14 634:19 712:18 798:11 882:1,1 886:11 946:13 999:15 week's 531:21 571:13 weekends 977:10 weekly 527:10 976:4 weeks 520:22 778:4 965:18 973:10 985:6 weigh 960:4 weighed 696:1 weight 532:13 541:15 592:6 619:14 666:18 weird 949:4 welcome 519:3 520:19 609:18 617:9,13 665:9 826:4 840:6 950:5 1002:20 welfare 523:11 well-established 931:1 well-functioning 901:16 905:12 went 536:8,11,14,18 562:6 724:22 730:5 909:7,15 985:7 weren't 551:4 613:15 652:10 738:4 816:22	964:13 west 572:3 580:22 604:2 604:6 626:20 631:19 656:16 730:21 731:20 733:2 774:20,21,22 777:4,5 778:16 808:19 856:1,16 857:2 875:15 878:19 western 587:2 618:15 630:21 694:18 724:5,6 725:14 726:15 780:21 824:22 835:20 973:13 989:6 whatnot 644:20 whatsoever 756:2 833:6 wheat 521:11 567:17,22 568:5,8,9 569:10,13,16 569:21 570:4,5,7,14,16 571:6,11,16,18,18 572:5,8,16,20 573:7,22 574:8,9,22 575:7,16,21 576:6 577:1 578:4,5,6 580:4,16,21 581:3,5,6 581:10,17,20 582:13 583:13,15 584:3 585:8 585:19 586:3 587:1,5 604:11 723:22 736:5 whichever 859:10 Whitehall 989:4 wide 898:17 936:22 wide-scale 823:16 widely 923:11 933:3 widespread 1000:17 wild 836:12 wildfires 985:11 will 542:13 584:9 645:4 654:18 693:2 734:6 789:19 790:21 796:20 889:16 1012:18 1012:21 1013:2 willingness 622:1 1023:5 Wilmington 797:21 win 674:19 692:9 946:11 946:15 958:13 962:2 1006:16 1012:3 wind 691:16 692:8 windmill 691:16 winds 998:7 winner 954:12 winning 926:5,7 1008:9 winter 982:17,20 winters 725:13 Wisconsin 610:5 988:5 988:22 989:6 990:20 wisely 989:18 wisest 952:21	wish 687:12 698:15 712:4 879:19 witness 595:5 602:3 637:15 688:2 820:17 853:9 859:18 862:19 958:12 993:6 witnesses 610:10 616:8 616:17 640:3 738:22 877:1 880:5 896:6 970:6,19 987:22 witnessing 609:2 woefully 524:12 won 526:2 wonder 570:20 579:18 625:18 764:3 830:2 927:20 947:12,17 948:1 948:12,19 949:14 wondered 540:11,20 579:11 615:2 933:8 wondering 587:17 634:1 637:20 717:14 742:4 771:1 833:18,21 835:6 835:10 838:4 853:13 wood 689:8 word 554:10 556:20 644:5 712:22 744:6 wording 671:18 672:1 words 536:17 537:6 541:8 574:9 578:9 654:1 676:2 677:12 702:19 740:8 777:2 990:1 1009:4 work 530:4 532:8 533:1 541:16 544:6 556:11 560:16 568:9,15 571:5 572:3 574:4 578:8,15 582:5 584:10 622:8 625:1 633:1 644:8,10 664:20 674:20 694:14 701:21 708:7 711:6 715:17,18 716:13,21 718:4 728:4,6,7 734:16 736:6 741:6,8 748:3,9 761:13 768:8,9 769:14 805:22 808:3 851:4 860:8,10,22 861:2 864:18 869:3 870:3 871:9 873:20 882:14 883:1,14 886:12 894:21 899:12 951:3 972:13,19 977:13 993:9 1002:7 1004:16 1005:7,15 1024:5 workable 579:8 938:5 965:13 worked 664:17 696:10
---	--	---	---

716:10 728:17 733:10 733:17 745:22 829:7 861:15 963:12 973:6 974:1 1008:6 workforce 633:13 696:13 758:22 working 541:3 570:21 582:4 606:16 642:7 655:1 695:16 735:13 741:9 760:13 762:8 770:19 786:20 866:14 887:18 921:20 965:3 1004:4 1008:21 1010:15 1018:10,16 workload 846:17 works 535:13 542:14 566:5 621:20 651:4,11 719:21 721:15 736:10 736:10 805:19 882:13 902:6 961:18 997:18 world 547:8 568:11,21 572:17 581:3,7,7 583:10 595:14 613:18 614:2 623:19 659:14 661:16 691:5 709:3 736:14 779:12 813:7 886:8 890:20 895:3,15 896:11,18,19 929:2 961:4 world's 669:9 worldwide 788:18 worried 905:11 967:6 worrisome 559:13 worry 750:7 843:9 901:2 905:14 worthy 528:11 550:20,21 551:18 634:8 673:21 794:9 842:2 901:8 962:14,18 worsen 730:15 worth 541:22 554:4 556:4 629:16 897:20 worthy 950:12 968:17 wouldn't 595:8 699:13 703:21 714:2,13 718:20 734:4 775:4 780:20 811:2 815:22 851:14 862:16 866:8 916:4 918:18 919:21 921:9,10 942:14 964:2 wow 562:4 738:5 wrap 594:18 696:21 993:15 wreaking 840:20 wrestling 614:2 write 663:14 718:21,22	writing 560:10 734:12 994:14 written 570:12 587:12 599:20 661:15 669:13 671:22 675:17 676:1,11 678:2 684:8,16 696:1 718:2 722:20 768:19 829:21 844:19 970:7 993:20 wrong 657:8 703:12 891:3 wrote 865:16 WWE 614:4 Wyman 824:12 <hr/> X <hr/> X 558:13 <hr/> Y <hr/> Yadkin 694:17 695:9,10 695:11 yard 540:17 578:2,10 614:10 622:16 625:21 625:22 626:2,15 627:7 627:9,11,13,15,20 628:4,6 652:16 656:8 701:14 710:6,11 719:7 806:7,12 807:1 809:21 810:2,3,9,13,17 814:11 814:11,13 846:14 848:22 849:3,7,7,8,9,15 849:22 850:1,6,10,16 850:22 851:1 853:21,21 854:6,12,13,14 855:13 855:14,18 856:3,14,21 857:4,6,13,16 858:4,8 858:11,22 859:2,6,10 860:2,2,5,5,5,9,20 861:10 862:8,8,11 863:15 864:13 866:3,7 877:15 878:1,2,18 882:19 886:13 895:17 933:2 978:19 983:1 yards 595:9 596:2 619:17 622:12 625:19 626:8,18 626:19 645:2 653:6,7 659:8 711:11 792:5 793:8 805:9 806:17,17 806:20 811:3,3,4,6 824:16 830:16 868:20 1008:6,7 yeah 539:4 547:1 561:8 613:12,20 614:4 644:15 657:10 703:17 705:21 705:22 711:19 737:13 737:14 739:18 742:11	746:21 748:3,15 749:14 749:17 751:17 753:4,4 753:15 769:1 779:19 802:10 804:8 806:19 812:9 815:10 817:22 818:22 827:14,15 832:21 834:20 835:16 836:8 855:20 859:9 869:9 879:7,10 892:11 914:1 918:19 945:16 946:4 year 526:16 528:10 533:22 536:18 539:14 554:5 584:2 620:16,17 621:4,10 646:19 650:12 657:8,11 667:21 713:11 727:22 729:18 752:13 754:19 758:13 767:3 769:3,4 770:5 777:18 796:6 800:7 812:6 816:10 823:11 824:14 870:6 915:17 974:10 983:7 985:10 986:18 987:3 1005:22 1006:7 1008:4 1010:13 1011:8 1012:22 1014:5 1015:7 1015:20 year's 951:13 year-over-year 998:9 yearly 657:1 years 524:5 530:10 537:14 563:1 581:11 582:9 586:5,5 592:17 593:21 606:15 613:4,6 613:8 629:18 631:4 634:12 651:20 669:11 678:11 695:17 716:3,3 727:20 732:8,9 734:19 769:7 783:1,1 792:4 793:1 798:14 816:6,9 818:17 823:16 824:21 828:16 829:8 831:5 833:3,4 852:10 861:15 861:16 884:14 907:20 908:22,22 915:21 920:18 937:8 941:5 942:19 946:21 950:13 971:21 973:22 975:13 975:17 976:1 977:6 985:16 986:21 987:5 995:3 999:14 1007:7 1009:10 1013:2,8,14 1015:8 1021:21 yellow 582:11,11,12 yep 575:5 578:7 743:19 745:8 753:4,4 855:15	856:11 859:4 862:16 yesterday 519:5 540:15 547:4 552:8 566:18 575:18 577:21 584:17 589:8 590:5 605:10 625:16 637:14 639:7,21 642:14,19 709:12,18 710:20 719:6 744:13 759:4 771:11 813:10 819:21 827:5,7,9 845:14 848:8 866:16,22 884:5 900:13 908:11 962:12 980:16 987:22 995:20 yesterday's 606:10 yield 687:17 698:5 York 766:17 977:15 1020:14 younger 633:13 YouTube 520:12 YVRR 694:19 695:12 <hr/> Z <hr/> zero 519:14 550:8,15 551:6 735:22 748:1 902:13 Zmijewski 906:5 914:17 915:6 916:2 917:6 zone 992:11 Zoom 518:14 519:9,20 520:1 970:14 <hr/> 0 <hr/> 08 1005:3 09 1005:3 <hr/> 1 <hr/> 1 518:6 519:4 660:14 667:10 669:13 763:21 769:4,9 941:7 1006:4 1- 553:17 1,021 680:2 1,500 700:20 701:3 1,800-car 693:12 1.4 1013:14 1.5 731:3 1:19 720:11,14 1:50 720:11,13,15 1:52 721:1 10 586:5 619:3 621:10 622:15 633:5 634:17,20 646:19 649:8,21 760:14 762:10 770:17,20 778:5 783:1 792:22 825:17 833:2 875:9,18 897:5 906:16 907:20 908:21
---	---	---	---

914:20 915:13 916:1,20 917:1,1 1012:19 1013:15 1015:6 1023:6 10-acre 692:4 10-minute 665:2 840:2 969:15 10-month 796:15 10-year 688:15 10,000 668:5 692:3 100 526:14 544:22 564:8 576:2,5,13,17 595:6,9 656:2,3 700:17 704:1 705:15 716:19 723:13 725:4 728:6 743:17 752:7,9,17 776:22 848:4 935:18 1008:12 100- 739:16 100-mile 754:13 1000 1011:4 102 693:13 105 851:18 869:5 891:21 891:22 929:21 10702 958:15 108 679:16 11 530:10 533:7 626:14 681:21 774:22 777:9 788:19 800:9 884:14 995:3 1005:22 110 575:1 795:2 11102(c) 939:13 1146 965:16,16 967:18 1147 842:4 938:2,5,10 940:4 941:13 942:5,13 943:14,22 944:18 947:16 948:15 953:9 956:18,20 960:11 962:6 962:8,17 963:6 965:15 966:4,6 968:4 996:8 1003:4 1021:17 1147.1 939:9 12 533:8 536:1 554:4 588:3 636:5 973:11 984:22 12,000 534:4 12:10 664:10 12:20 665:2,7 12:30 521:3 120 618:14 651:16 652:19 123 788:7 125 701:6 13 973:10 976:6 13,460 536:14 14 560:2 795:3 827:11,14 1011:3 1014:21 14-month 730:1	14,079 536:14 15 732:9 800:10 833:2 981:22 15-mile 739:15 15-year 605:6 150 553:16 623:21 651:10 701:5 804:9 150-mile 739:16 1500 980:14 1011:2 16 518:12 526:18 606:15 613:5 852:1 867:19 983:6 160 723:13 724:19 727:19 728:6,14 730:9 730:11,13 733:18 738:1 738:5 742:20 752:6,7 752:13 160-kilometer 733:3 737:22 160,000 758:13 17 606:15 613:5 681:6 976:6 986:22 17,572 536:12 18 522:21 588:3 598:11 666:20 681:20 728:3 983:2,5 18-mile 723:12 724:9 18-point 986:12 18,011 536:12 180 660:13 957:16 1837 630:20 19 801:19 805:10 1970s 923:9 1980 690:8,13 1985 688:21 1989 972:2 1990 1004:21 1990s 938:12 1996-97 755:12	976:13 998:9 20-or-so 602:12 20,000 657:16 1008:17 200 619:7 700:21 701:4 789:3 933:8 200,000 527:5 559:7 2000s 786:22 908:22 909:1 2002 908:16 910:2 2005 1003:21 1006:17 2006 688:17 1022:10 2008 678:14 723:17 1000:15 2010 975:7 1000:16,19 2012 907:19 908:14,16 2013 560:2 980:13 2013-14 725:10 2014 723:9 727:6,14 738:1 755:18 850:4 943:6 2015 729:15 734:22 824:12 2016 528:16 680:2 681:12 727:21 814:7 840:21,22 841:4 842:1 842:7,13,19 972:4 974:7 975:4 977:17,19 980:11,15,17,21 982:2 983:13,17 984:7,11 987:16 991:4 995:12 1001:10,20 1002:6,15 1013:9 1020:18 1022:19 2017 533:6,6,22 562:3,5 620:4 624:1 633:2 655:20 723:9 727:22 755:18 792:2,10,13 793:15 987:10 997:21 998:3 1021:21 2018 568:16 581:21 583:5,20 584:13 693:9 729:17 734:18 790:17 792:12 906:18 982:17 987:10 2019 605:7 693:11 792:12 899:21 900:3 906:18 971:16 981:17 984:22 987:8 2020 570:22 678:13,14 693:17,19 788:19 906:18 915:21 975:7 976:11 985:6 987:8 2021 533:6 534:1 536:8 692:9 758:11 793:17 796:15 973:2 976:14 987:7 1008:12	2022 518:12 536:9 795:9 986:21 987:4 2030 758:14 824:14 21 618:22 789:1 800:7 801:14 22 546:22 571:6 849:10 849:11 857:22 22,000-ish 657:10 23 657:6,10 230 605:8 689:1 234 762:12 235 770:3 24 541:19 591:20,21 598:20 605:6 680:4 712:10 713:2 722:2 769:11,16 773:8,13 774:3 780:6 885:5 973:18 24-1/2 956:12 24-hour 555:16,17 24,000 788:17 24/7 526:19 240 638:17 25 667:20 885:5,11 900:10 973:15 1016:9 25,000 657:8 250 933:3 2500 1012:22 26 667:13 729:21 792:11 900:6 27 690:19 792:12 270 965:20 270-ish 948:16 2700 526:15 28 792:11 280 796:16 815:17 286,000 672:17 683:14 29 727:11
	<hr/> 2 <hr/>		<hr/> 3 <hr/>

30-minute 521:2 30,000 689:6 300 553:17 575:12 576:12,17 593:14 595:6 595:9 602:14 608:21 609:14 655:2,2 724:22 725:7 789:3,3 300-mile 610:15 736:6 3000 1012:21 1013:4 31 618:17 631:22 632:4,8 769:5 31,800 536:15 32,494 536:15 320 724:22 33 667:21 788:6 35 618:16 631:10 682:13 805:12 987:1 38 680:3 39 571:6	933:8 1006:5 508,000 681:14 53 685:9 54 899:19,22 56 667:14 57 795:8	80,000 758:12 800 933:5 81 680:15 89 564:10
<hr/> 4 <hr/> 4 520:22 521:7 628:17,18 652:16 656:4 681:9 973:10 976:11 1015:20 4-1/2 533:21 563:1,3 4,000-foot 692:5 4:00 840:1 4:10 840:3 40 539:15 610:8 678:11 805:13 900:2 920:18 987:9 44-car 693:22 45 944:12 967:12 46 591:18 47 679:16 685:7 478,000 667:13 674:16 48 712:10 713:2 49 667:3 690:16 842:4 939:9 1003:3	<hr/> 6 <hr/> 6 528:9 6:00 943:13 6:25 969:8 6:35 969:17 60 743:17 975:11 1014:19 1015:8 600 666:15 679:3 695:22 712:14 62 1006:9 620,000 681:8 628 947:19 64 689:3 859:18,20 640 525:20 67 709:17 6739 536:8 6795 536:8 68 826:9,15 827:5 692 685:4	<hr/> 9 <hr/> 9 906:16 914:20 915:13 916:1,20,22 917:1 9:30 518:13,19 90 725:2 900 899:21 9000-mile 986:12 90s 756:4 92 1008:11 95 555:3 591:5 96 553:14,18 712:10 96-'97 726:4 97,000 681:14 98 541:19 552:9 653:9 99.9 718:13
<hr/> 5 <hr/> 5 892:3 1017:1 5,500 727:7 729:5 5.2 731:8,17 752:10 753:2 5.5 795:4 5.6 1006:8 5:00 896:21 50 565:12 576:2 580:18 580:20 586:5 610:8 666:20 689:3 700:12 973:8 1016:8 50-mile 735:1 50-year 569:13 50,000 690:14 500 689:13 906:10 933:3	<hr/> 7 <hr/> 7 528:8 727:5 915:18,19 915:20 916:1,20,22 7-1/2 1013:7 1015:6 7:30 970:2,17 1003:12 1019:5 1023:5 7:31 1023:14 7:32 1024:17 70 619:8 743:17 775:4 704 635:11 705 669:12 711 518:6 519:4 669:12 669:12 996:16 7158 536:9 7250 536:9 7372 536:11 745 733:22 75 657:5 1013:12 1014:1 1015:22 1016:4 750 865:17 7521 536:11	
	<hr/> 8 <hr/> 8 525:19 727:21 916:1,20 916:22 917:1 8,000 690:13 80 592:9 597:6 657:5 776:22 946:13 973:13 80-mile 823:13	