

7 MR. ELLIOT: Chairman Nober, Vice Chairman
8 Mulvey, thank you for the opportunity to appear today
9 before the Board and express the views of the United
10 Transportation Union. I will be -- I also will not be
11 using the full amount of allotted time and I've also
12 discussed the testimony with Mr. Kraus and as a
13 result, we've tried to minimize any type of overlap
14 that was presented in our written testimony.

15 First of all, with respect to the United
16 Transportation Union and labor, one of the major
17 concerns that labor has is with respect to the
18 possibility of I guess what it was called a sham
19 transaction taking place in this instance where Class
20 I's would take marginal lines and sell them to some of
21 the Class II's or III's who would then with the less
22 restrictive abandonment exemption, proposed

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1 abandonment exemption in place, could then turn around
2 without any restrictions and immediately abandon the
3 property and thereby skipping any type of Oregon Short
4 Line labor protection that would be imposed if the
5 carriers, the Class I carriers just simply abandoned
6 it themselves through that proceeding.

7 And that has, obviously, been a concern
8 for labor since what happened in the 10901
9 transactions in the '80s and early '90s due to the
10 liberal interpretation of that statute there, the
11 concern raises its head again here in this situation
12 and we just want that situation to be addressed. And
13 it has also been of more serious concern lately
14 because it appears that some of the major carriers are
15 at the present time, unloading quite a bit of their
16 marginal lines. So it's a timely concern.

17 And also, it's not an unfounded concern
18 because if the Board recalls, there's been several
19 instances, well, two instances specifically, where this
20 has occurred. The first one that I recall was the
21 Land Conservancy King County case involving Burlington
22 Northern and Santa Fe in Finance Docket 33389 back in

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1 1997. In that instance, the BNSF sold a marginal line
2 to the King County Land Conservancy group and as a
3 result right after they obtained the property, they
4 abandoned it. UTU filed a petition to revoke at the
5 time and the Board found that what they did in that
6 instance by by-passing the possibility of Oregon Short
7 Line Labor Protection and using 10901 to jump into the
8 abandonment through another carrier was abuse of the
9 processes and that is the type of abuse of processes
10 that the United Transportation Union and Labor are
11 concerned about.

12 A similar thing happened just recently in
13 the SF&L case with Toledo Peoria and Western in
14 Finance Docket 33995, in 2003. So that's a
15 significant -- obviously, a significant concern for
16 rail labor and also addresses one of the rail
17 transportation policies in Section 101.111. Also and
18 just generally speaking, UTU has some concerns about
19 the possibility that this will make it easier for the
20 carriers to abandon lines and as a result there may
21 not be enough scrutiny and as a result some lines may
22 disappear as obvious, Labor likes to see as many lines

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1 in operation as possible because where there's lines,
2 there's obviously, work, generally speaking.

3 And just two quick points that jumped out
4 at me when I reviewed the petition, which I found to
5 be some of the premises that the petition was based on
6 which I found to be somewhat I guess lacking in some
7 logic. First of all, the Petitioners claim that the
8 present procedures are extremely burdensome and highly
9 inappropriate for the small railroads, Class II's and
10 Class III's and it seems to me while they cite quite
11 a bit of factual data regarding the small size of
12 these carriers, what had been ignored in the petition
13 itself was the fact that many of these as we know from
14 the 10901 proceedings are -- many of these companies
15 are subject to holding companies and parent companies
16 and in fact -- and my count may not be accurate, by my
17 count 22 out of the Petitioners were all owned by the
18 Genesee and Wyoming company which is a significant
19 corporation in itself and based on their annual report
20 from last year, did \$240 something million in
21 operating revenues, so we're not talking about mom and
22 pop operations that are just running over several

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1 miles of line and also one of the major carriers was
2 the Montana Rail Link which in itself is a big
3 carrier, but is also owned by the Washington companies
4 and based on their website did a billion dollars, not
5 just in operating revenues but in the overall scheme
6 of things for those companies.

7 So, I mean, we're not talking entirely
8 small companies. So the cry that they can't afford to
9 do these things is somewhat disingenuous because there
10 is some money there and I'm not saying that every
11 small carrier around has these type of resources but
12 certainly many of them do. And as a result, I guess
13 the point is, is that what they're claiming that they
14 can't do now to stop the deterioration of these lines,
15 it seems to me in many instances can be done because
16 the resources do exist, especially in the instance of
17 Genesee and Wyoming.

18 The second point that seemed somewhat
19 illogical was with respect to the Petitioners' claim
20 that this will result in less deterioration of the
21 lines because there won't be as long a waiting period
22 due to this new abandonment procedure and also improve

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1 the OFA process because when they abandon earlier
2 because they'll have the sure thing, as a result other
3 companies will be more likely to come along at that
4 time. And as a result the market will act.

5 And there is some logic obviously to that
6 but the one part that I'm not seeing with respect to
7 that logic is that there already is a market mechanism
8 in place under various sections under the Act, which
9 allow the carriers to sell off their lines without
10 going through the abandonment procedure and, in fact,
11 that is basically how many of these companies got
12 started, the carriers -- more significantly,
13 obviously, the major carriers sold off their marginal
14 lines and these entities stepped in and were able to
15 run them cheaper, mainly on the backs of -- a lot of
16 times on lower labor costs because obviously these
17 operations weren't organized.

18 So in any event, I mean, those were two
19 major points that jumped out at me and now I'll give

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