

18 MR. BRYANT: Thank you. Good morning. My
19 railroad career began, I have 34 and a half years with
20 the C&O and CSX and then at age 53, I took advantage
21 of a retirement program that enabled me to try
22 something new and different and that is to buy a short

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1 line railroad in Buckingham County and operate it. It
2 was scheduled for abandonment.

3 During the 15-year experience at the
4 Buckingham Branch, we have provided shippers
5 transportation option. Otherwise, they would only
6 have trucks. We have focused on the customer. We
7 reinvested earnings in deferred maintenance on the
8 lines. We corrected defects in the tracks. We never
9 had an FRA citation. We have never filed an insurance
10 claim. Our safety record is very, very good.

11 As a result of our very, very good
12 operating record, CSX invited us along with a number
13 of other short line operators to submit proposals for
14 this 200-mile segment. This process began about a
15 year ago and BB was chosen on March 10 and
16 negotiations began. And negotiations became so, I
17 guess you'd say, good that we had to delay the filing
18 with the STB for about three weeks.

19 But we finally reached agreement and of
20 course, the big issues were freight revenues by
21 commodities and of course service, the interchange
22 times. But anyhow we reached a agreement and this

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1 application, we do not consider it a sham. We don't
2 participate in such. We've met with customers and
3 they're ready for change and they've been real nice
4 and about 18 of them have written letters in support
5 of our application.

6 Of course dealing with the customers has
7 been the exciting part of this process and the
8 industrial development opportunities are very good on
9 this section of railroad because we'll bring some
10 stability to it and a 20-year lease will enable us and
11 enable customers because when you're looking at a long
12 term investment, 20 years seems to be a key timeframe.

13 Our dialogue continues with Amtrak and we
14 continue and expect to have a good relationship with
15 them. We recognize our responsibility to keep the
16 track in condition and to provide access for the three
17 trains that run daily there, they are on the property
18 about a little over four hours, about four hours and
19 twenty minutes. So we expect to provide and do our
20 part to keep that operating smoothly.

21 We have enjoyed a good relationship with
22 the Norfolk Southern and the shippers are very

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1 interested in this additional option that they will
2 have to reach their market. Buckingham Branch's
3 relationship with the Commonwealth of Virginia has
4 been constructive in the past 15 years. They have
5 been supportive of us because it relates to highway
6 conditions and of course, the optimum for to highway
7 safety and highway conditions is to put some of the
8 heavy loads on the railroad. We expect this
9 relationship to continue.

10 BB is aware of the magnitude of this
11 obligation and we are fit to maintain and operate the
12 line. We anticipate, as we have in the past putting
13 freight revenues or a portion of it back into the
14 property. And of course, this year the tax credit for
15 short line railroads will be a very helpful part of
16 this process.

17 Track inspection and maintenance teams
18 will work out of Doswell, the Charlottesville area and
19 Staunton to optimize effectiveness for assigned track
20 segments. Track inspections will be made at least
21 twice weekly on the Amtrak route and at least once
22 weekly between Richmond and Gordonsville. Of course,

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1 the train crews will also provide helpful information
2 about track conditions and of course, defects will be
3 corrected promptly. It's much more efficient to
4 correct the defects than to clean up from a derailment
5 and then repair the tracks.

6 We are confident that our dedicated staff
7 will be effective in meeting our commitments as
8 outlined in our maintenance plan. Of course, when
9 necessary, we will engage the services of responsible
10 contractors. We intend to maintain our good record
11 with the Federal Railroad Administration throughout
12 the term of this lease and we've had a good
13 relationship with them on the Buckingham Branch and
14 we appreciate an extra set of eyes to check our track
15 and it gives us a special comfort level.

16 BB's team is committed to providing
17 responsive service that meets existing needs and
18 compete and earn new traffic. We and the shippers and
19 receivers are now actively working to meet the growing
20 need for a reliable rail service and options to
21 overloaded highway systems.

22 We are optimistic and we have ordered

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1 three additional locomotives for a total of five to
2 serve this line. Three additional high rail vehicles
3 have been ordered for track inspection. We are hiring
4 people now and are engaged in developing a training
5 program and an orientation program.

6 We will be ready and we will be
7 successful. BB intends to provide a safe, sound and
8 efficient rail transportation system. I'll be glad to
9 answer any questions that you might have. Thank you.

10 CHAIRMAN NOBER: Okay. You're all done.
11 Mr. Mulvey. Why don't we ask questions now and then
12 we'll ask other ones of the others.

13 VICE CHAIRMAN MULVEY: In the lease
14 agreement between CSX and Buckingham Branch, it calls
15 for a different annual rate if the connections are
16 made to a line other than CSX. What's the basis for
17 this differential rate, charging a different rate for
18 connections made? It's \$140,000 annual rent if the
19 connection is made with CSX. But you suggest that it
20 will be higher and I'm curious as to how much higher.
21 Is that specified in the agreement?

22 MR. GITOMER: I believe it is specified in

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1 the agreement, in the confidential portions of the
2 agreement. But the reason is that CSX calculated the
3 lease of the line based on the interchange of a
4 certain volume of traffic. If there is a different
5 volume of traffic or if traffic is interchanged
6 elsewhere, CSX believes the lease payment should
7 increase.

8 VICE CHAIRMAN MULVEY: Is there a cost
9 basis for that? Is there a cost basis for that higher
10 payment or is it based upon other considerations?

11 MR. GITOMER: The additional payment is
12 both cost based and competitive based.

13 VICE CHAIRMAN MULVEY: I'd be interested
14 in what the cost basis would be. Is there a time
15 limit in the agreement to say ,more for interlining
16 with other? Is this what is called a paper barrier?

17 MR. GITOMER: No, this is not a paper
18 barrier. It does not prevent the Buckingham Branch
19 from interchanging traffic with any other railroad.
20 The other Class I railroad on that line is Norfolk
21 Southern.

22 VICE CHAIRMAN MULVEY: Well,as for the

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1 barrier to entry is anything, that increase the cost
2 of entering a market for a would be competitor. It
3 doesn't mean it has to be a physical barrier, but
4 anything that raises the cost of a potential
5 competitor that the incumbent market from does not
6 incur is a barrier to entry. So it doesn't have to be
7 a requirement that you pay charges, but if you
8 establish a rate that is so high that it would make it
9 impossible, for other railroads to interchange with
10 Buckingham, that, in effect, would be a barrier to
11 entry, would it not be?

12 MR. GITOMER: If that were the case in
13 this proceeding. However, in this proceeding, the
14 additional rent that Buckingham pays is not so high as
15 to prohibit them from interchanging with Norfolk
16 Southern. As you heard Mr. Bryant say in his
17 statement, Buckingham Branch and the shippers along
18 the C&O line are looking forward to being able to
19 interchange with Norfolk Southern for additional
20 competitive options.

21 VICE CHAIRMAN MULVEY: Is that rate, that
22 differential rate, in Article 5, Section C of the

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1 agreement?

2 MR. GITOMER: Please give me a minute.

3 VICE CHAIRMAN MULVEY: Okay. Sure.

4 (Pause.)

5 MR. GITOMER: Do you mean Article 5 of
6 Exhibit F to the agreement?

7 VICE CHAIRMAN MULVEY: Yes.

8 MR. GITOMER: That is correct.

9 VICE CHAIRMAN MULVEY: For some reason,
10 although this doesn't say that this is a public copy,
11 I must have gotten a redacted copy. Article,5 it is
12 blank in all the copies that I've seen. I've checked
13 several copies. We thought that there might have been
14 a problem.

15 MR. GITOMER: No, there was no problem.
16 When we initially filed the application, we filed a
17 public version with that information redacted. We
18 also filed I believe ten or 20 copies of the entire
19 lease agreement that were filed under the Confidential
20 seal in the confidential document.

21 VICE CHAIRMAN MULVEY: It wasn't here in
22 the public version though.

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1 MR. GITOMER: No, the public one doesn't
2 have it.

3 VICE CHAIRMAN MULVEY: Okay. I'll look at
4 the private one because as you know, under Section
5 11324 which governs transactions with the smaller
6 railroads, it does say that the Board shall approve an
7 application unless, and the language says, "as a
8 result of the transaction there is likely to be
9 substantial lessening of competition, creation of a
10 monopoly," which is not the case here,"or restraint of
11 trade in freight transportation in any region of the
12 United States." My concern is whether or not these
13 kinds of paper barriers do represent a restraint of
14 trade and in fact, make it difficult to have
15 competition in these markets.

16 MR. GITOMER: My response would be that
17 CSX and Buckingham Branch have negotiated the terms of
18 this. Again, as you heard Mr. Bryant say earlier, he
19 expects to be able to interchange traffic with the
20 Norfolk Southern under this lease agreement and under
21 Exhibit F of the lease agreement which provides for
22 this additional rental payment. I don't want to speak

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1 for Mr. Bryant but two points (1) he wouldn't have
2 agreed to this if he didn't think he could interchange
3 traffic with Norfolk Southern and (2) the second point
4 being that therefore the additional rent is not high
5 enough to be either a paper barrier or a barrier to
6 entry.

7 VICE CHAIRMAN MULVEY: Okay. Thank you.
8 Following up on that, is it your understanding that
9 this additional amount would not foreclose your
10 interchanging traffic with Norfolk Southern?

11 MR. BRYANT: That was the most difficult
12 issue that we had in negotiating with CSX and we went
13 around and around on that issue because access to the
14 market is very important to us and to the customer and
15 we have reached the terms which we think are workable.

16 VICE CHAIRMAN MULVEY: Okay.

17 CHAIRMAN NOBER: Doug.

18 COMMISSIONER BUTTREY: Mr. Bryant, I was
19 listening to your comments earlier about your early
20 retirement and I was thinking about my early
21 retirement as well. I think you and I both may have
22 jumped from the frying pan into the fire as they say.

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1 You mentioned that your line was going to be taking on
2 some more power to be able to meet the demand on that
3 line.

4 MR. BRYANT: Yes.

5 COMMISSIONER BUTTREY: What type of
6 specialized cars are there? Do you have those or are
7 you going to have to acquire those or do you require
8 those to meet the customers' demands in that market?

9 MR. BRYANT: Do you mean rail cars for
10 hauling freight?

11 COMMISSIONER BUTTREY: Yes.

12 MR. BRYANT: Yes, and we are talking with
13 people that are in that business, of course, in
14 addition to CSX and Norfolk Southern. We're talking
15 to rail car leasing companies and we have some
16 exciting opportunities that we think will work out
17 very well.

18 COMMISSIONER BUTTREY: Okay. I was just
19 curious about what the train speeds are like in that
20 part of the world. I'm somewhat familiar with that
21 area, but I was curious what the speed limits are on
22 that line and how your speeds on that line, the

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1 velocity on the line, is going to compare to the
2 velocity on the lines prior to the transaction.

3 MR. BRYANT: Well, we expect to maintain
4 the same speed level and in the case we need to
5 maintain it to enable our train crews to have a
6 reasonable work day. So the track conditions need to
7 be adequate to accommodate trains that can meet the
8 needs of that day.

9 Of course, we will operate four trains a
10 day and five days a week. All of our train crews will
11 be stationed and they will have a regular assignment
12 and they have their work to do and they'll go home
13 each evening.

14 DR. FOSTER: If I might, the majority of
15 the traffic on the line moves on either Class II or
16 Class III track which I believe is 25 and 40 mile an
17 hour traffic.

18 COMMISSIONER BUTTREY: Do you anticipate
19 any major maintenance projects on that segment of the
20 line in the next short period of time? Someone had
21 said earlier, I think the comment was made, that there
22 may have been some deferred maintenance issues on the

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1 line at some point and you had said I think pretty
2 emphatically that you had very vigorously attempted to
3 address those matters and those issues.

4 MR. BRYANT: Yes.

5 COMMISSIONER BUTTREY: I was wondering if
6 you have some outstanding major maintenance issues
7 that are looming on the horizon.

8 MR. BRYANT: Well, I don't consider them
9 outstanding. I would consider them normal in our
10 industry and of course, the key is to respond to the
11 need and if there's a track condition that you're
12 fearful is going to put you on the ground, you do
13 something about it right away. But yeah, we intend to
14 do that.

15 But as far as any large immediate capital
16 expenditures, we have not planned such. We're going
17 to meet the needs. The trains are operating every day
18 now and safely. So we sense and we know when the
19 track inspections show where the needs are to be dealt
20 with immediately and we will do that.

21 MR. O'BRIEN: If I might, Commissioner
22 Buttrey. They have committed to set aside \$1.8 to

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1 \$2.2 million dollars a year for maintenance projects
2 and each year of the lease they are intending to
3 replace up to 20,000 ties. So they have clearly
4 anticipated and are committed to doing this throughout
5 the term of the lease.

6 COMMISSIONER BUTTREY: Are those concrete
7 ties or are those just regular standard railroad ties?

8 MR. BRYANT: No, we would stick with the
9 basics, good wood ties.

10 COMMISSIONER BUTTREY: Basic good wood
11 ties.

12 MR. BRYANT: Right.

13 COMMISSIONER BUTTREY: You had mentioned
14 earlier about some of the customer opportunities that
15 are very exciting from your point of view.

16 MR. BRYANT: Yes.

17 COMMISSIONER BUTTREY: Are there certain
18 segments of the market where you see the growth coming
19 on that particular segment?

20 MR. BRYANT: Yes. Well, one of the things
21 we're working on now is movement of sand. Western
22 Virginia needs some good sand from Eastern Virginia

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1 and so we see a great opportunity there to handle
2 hundreds of carloads of traffic that's now being
3 trucked from that area over there. That's an area of
4 course we'll need to lease some cars for that purpose.
5 Another thing is there's a barrel and paper movement
6 to the Richmond newspapers. There's a shuttle
7 movement that's being developed and designed and very
8 short haul. It's now going around the horn by truck
9 and we think we can help and relieve the streets and
10 highway systems of Hanover County and at that same
11 time, we think we can earn a few dollars doing that.

12 COMMISSIONER BUTTREY: That's directly
13 from the pulp plant to the newspaper.

14 MR. BRYANT: Right. Yes. So we go places
15 every day and that's one of the first things on our
16 agenda is to do this experimental move. Our Assistant
17 Vice President and General Manager, Steve Harold (PH),
18 who is here with us today, is designing that and he's
19 readying some retired boxcars that will come out of
20 service and go into that service.

21 When we use retired boxcar, we won't be
22 doing interchange. So the same level of the condition

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1 of the car would not be provided for an interchange
2 service. It would be movement between the paper mill
3 and customer, Richmond Newspaper. A number of things
4 of that nature that customers have approached us about
5 and shippers and receivers as well. So every time we
6 go and talk to customers, they tell us about
7 opportunities that are there for us. All we have to
8 do is just respond to them with the right rates and
9 the right service level. The rates are already
10 established. They'll be maintained. The service
11 levels will be improved.

12 COMMISSIONER BUTTREY: Thank you, sir.

13 CHAIRMAN NOBER: I have basically one
14 question which will tie together some of the points
15 that you've all made up to now. Under the statute
16 which for those of you that have come to these, you
17 know where I always start in these kinds of matters,
18 under 11324(d), does it allow the Board to take into
19 account either safety concerns or paper barrier
20 concerns when considering a transaction like this?

21 MR. GITOMER: Section 11324(d) is very
22 specific in the factors that the Board can consider.

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1 Now we've heard argument from the BMW that the Board
2 needs to take into account the rail transportation
3 policy as well. We have, in our papers, said that the
4 Board can consider the rail transportation policy as
5 informing its decision under 11324(d).

6 If you take the transportation policy
7 together with Section 11324(d), the Board certainly
8 can consider other factors, but the primary factor,
9 and that's what the Board has said, to be considered
10 is the competitive concern arriving from a
11 transaction. Secondary factors would be safety, would
12 be paper barriers. You may be able to look at a paper
13 barrier as a competitive impact like Vice Chairman
14 Mulvey, was, I think, beginning to say that it might
15 be a competitive issue. Along those lines, I would
16 like to correct a statement I made.

17 CHAIRMAN NOBER: Right. Let me ask you
18 that. I mean right now the lines are like CSX. CSX
19 isn't under any obligation to interchange with NS,
20 right?

21 MR. GITOMER: That's correct.

22 CHAIRMAN NOBER: Mr. Shudtz can answer

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1 that.

2 MR. SHUDTZ: Yes.

3 CHAIRMAN NOBER: So if they lease the line
4 under the exact same terms they have now, is that
5 alternating the competitive landscape?

6 MR. GITOMER: No, it's not.

7 CHAIRMAN NOBER: Now if you say they had
8 a short line and that no one could interchange and it
9 was being bought and they were eliminating that, that
10 might be a, at least in my own view, change in the
11 competitive landscape, but this, at worst, arguably is
12 just maintaining it. Right? And you might say that
13 the current situation is competitive too, but this
14 isn't making it worse, is it?

15 MR. GITOMER: No, you are just
16 substituting one railroad for another railroad here.
17 You are not reducing the number of railroads. You're
18 not reducing the number of options that a shipper has.

19 CHAIRMAN NOBER: Okay. And then on the
20 safety front, where is it in our jurisdiction to
21 consider potential safety concerns? I'm going to ask
22 the other side this same question so they can start

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1 thinking about it.

2 MR. GITOMER: I was looking through the
3 statute looking for that as well and looking through
4 some cases where the Board said it can look at safety,
5 but I think the Board's position, and we agree with
6 it, is that the authority to oversee the safety of the
7 railroad has been delegated to the Federal Railroad
8 Administration and they have a very broad safety
9 program.

10 As the Board does in major mergers, it
11 works in conjunction with FRA and if FRA has a
12 problem, it would bring it to the Board, but I don't
13 think that it has a problem in the transaction before
14 the Board. But in fact, the safety function was
15 removed from the Board when the Department of
16 Transportation was created. So on an individual basis
17 on an individual case, I think there would have to be
18 a major, major safety problem and probably
19 consultation with the FRA for the Board to take any
20 type of jurisdiction over safety.

21 CHAIRMAN NOBER: Does somebody else have
22 any more questions?

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1 VICE CHAIRMAN MULVEY: Yes, I think the
2 difference between what CSX can do today with Norfolk
3 Southern and what Buckingham Branch can do with
4 Norfolk Southern is that there's now a lease in place
5 which has differential rates, differential charges,
6 for interchanging with one railroad than the other and
7 that is a different situation than we have today. CSX
8 has no extra cost when interchanging with Norfolk
9 Southern on this line.

10 Let me ask you a question about something
11 you said early on in your statement that you didn't
12 have any derailments on this line since 2002. Given
13 that we're talking about 200-miles of rail here and
14 given the size of the overall rail network, is not
15 having a derailment on a 200-mile segment particularly
16 unusual? I mean how many are expected? What is the
17 expected value, if you like, of the number of
18 derailments you would get for a 200-mile line segment
19 in this country? It seems to me that that's not
20 exactly a stellar performance. Does anybody know how
21 many derailments there are in the United States every
22 year on a 200 mile rail system?

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1 MR. GITOMER: I do not have that
2 information.

3 VICE CHAIRMAN MULVEY: You handle 62
4 trains a day for Amtrak right now including some with
5 cargo Would you say Amtrak is currently satisfied with
6 CSX's performance recently?

7 MR. GITOMER: I'm not sure that we can
8 characterize Amtrak's position. They will be speaking
9 later and I'm sure they'll be glad to characterize it.
10 However, what we can say is that for 2004, and I may
11 get these backwards, but there is a 95 percent on-time
12 performance for the westbound Cardinal on this line
13 and I believe either 70 or 79 percent on-time
14 performance for the eastbound Cardinal on this line.
15 So I think that's a pretty good performance,
16 especially on the westbound.

17 VICE CHAIRMAN MULVEY: That's pretty good
18 relative to some other Amtrak routes. I congratulate
19 you for that. To Buckingham, one more question that
20 is currently you're operating a 17-mile railroad. Now
21 you're going to be taking over a 200-mile line from
22 CSX. Do you have any concerns about your ability to

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1 increase the size of your operation by a factor often?
2 Does that concern you at all? I know it may not be
3 relevant to our decision, but I was just curious. It
4 has been raised as to whether or not your firm has the
5 experience to do this.

6 MR. BRYANT: Yes, we can do it. We
7 consider it a great opportunity and the principles are
8 the same for maintaining track and operating trains
9 and being responsible, making commitments on
10 interchanges. We have some pretty strict requirements
11 on that. It doesn't look good if you don't meet your
12 interchange and you don't serve your customers. We do
13 that and we can do that.

14 And we can just look at this 200 miles as
15 a series of short lines, where it's in two general
16 segments, but really four segments with four train
17 operations. We think we have a good handle on it and
18 we're comfortable with it. Our greatest concerns
19 probably are motorists running into our trains and
20 that really fouls up your day and vandalism. Of
21 course, we will deal with those if they are there too.
22 But no, we feel very comfortable. We're confident we

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1 can do the job.

2 VICE CHAIRMAN MULVEY: Thank you very
3 much.

4 MR. GITOMER: Vice Chairman Mulvey, if I
5 may. I misspoke earlier when I agreed with you and
6 said that Section 5(c) of Exhibit F governed the
7 additional rent. It does not. That is the trackage
8 rate compensation that CSX is going to pay to
9 Buckingham Branch for operating overhead trains on the
10 line. The additional rent provision is in the lease
11 itself. It is confidential, but it is in Section 4(b)
12 of the lease. If you look at the confidential
13 version, you will see the dollar amount spelled out
14 there.

15 VICE CHAIRMAN MULVEY: Okay. That's not
16 Exhibit F?

17 MR. GITOMER: No, it is not. It is in the
18 draft lease agreement itself and it would be Article
19 4, Subsection b which is entitled "Additional Rent"
20 and that was been redacted from the public version of
21 the lease agreement.

22 VICE CHAIRMAN MULVEY: We have that, don't

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1 we? Okay. Thank you.

2 CHAIRMAN NOBER: Okay. Now you're going
3 to reserve some time later.

4 MR. GITOMER: Yes.

5 CHAIRMAN NOBER: With that, we will turn
6 to our next presenters who are Richard Edelman
7 representing the Brotherhood of Maintenance of Way
8 Employes and Amtrak as well. I'm not quite sure who
9 is speaking for Amtrak.

10 CHAIRMAN NOBER: Is Amtrak's
11 representative here? Bill, why don't you come up and
12 we'll just do it as one panel if that's okay with you
13 all. Does anybody have an objection to that? Do you?

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