UNITED STATES OF AMERICA

* * * * *

SURFACE TRANSPORTATION BOARD

* * * * *

PUBLIC HEARING

* * * * *

UNITED STATES RAIL SERVICE ISSUES	:	Ex Parte No. 724

Hilton Garden Inn
4351 17th Avenue South
Fargo, ND 58103
Thursday
September 4, 2014

The above-entitled matter came on for hearing, pursuant to notice, at 8:00 a.m.

BEFORE:

DANIEL R. ELLIOTT III Chairman

DEB MILLER Vice Chairman

ANN D. BEGEMAN Commissioner

T-A-B-L-E O-F C-O-N-T-E-N-T-S

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

(8:00 a.m.)

CHAIRMAN ELLIOTT: Okay. Can everyone hear me okay? I think so. Welcome, everyone. Thank you very much. We have what appears to be a wonderful attendance for this very important matter that we're going to hear today. I have a few remarks, and then we'll get on with the panels. We will also hear from the other board members.

First of all, the Board has called today's hearing to discuss the service problems that continue to affect the nation's rail network. Since the hearing we held in April in Washington, D.C., the situation may have improved in some respects; but, in other ways, it has not improved or has even gotten worse.

This is especially troubling as another winter approaches with possible increases in coal demand, another bumper crop to move, the peak intermodal season about to start, and greater demand on the rail system overall. As we saw last winter, the rail network is vulnerable to the effects of cold weather; and I am extremely concerned about what will happen this year to a system that is already badly congested in many areas.

In terms of service problems that have

continued or gotten worse, what the farmers and others in the agricultural industry are facing in this region is a great example. We chose to hold this hearing in Fargo, North Dakota, because we recognize that agriculture in the northern plains region is in especially dire straits when it comes to rail service and capacity.

In the hearing today, I want to have an open and forthright conversation about how the rail industry can work with its customers and what we, as regulators, should consider to expedite the service recovery. I hope to get further into the causes of these service problems and, more importantly, to dig deeper into solutions. But there's no doubt in my mind about the effects. We've heard loud and clear about elevators that are too full to accept more grain with another large crop on the way, farmers losing sales, penalties for not delivering products on time, and the danger that a wealth of grain produced in the nation's breadbasket will spoil on the ground.

And I know that farmers aren't the only ones who are hurting. Electric utilities and other consumers of coal across many parts of the country have watched their stockpiles dwindle to precariously low levels as deliveries are reduced and cycle times increase. Producers and distributors of other commodities, from ethanol to automobiles to chemicals, have faced disruption of their supply chains and impacts on their businesses. Passengers on Amtrak trains in many parts of the country have been severely delayed, missing connections and having to make other travel plans due to the effects of rail network congestion.

Nor are the service problems limited to the northern plains. We've also heard concern about the effects or potential effects in Michigan, Illinois, and Washington state among others.

Rail backups in and through Chicago have been a particular issue in the past, and we expect that the fluidity of traffic passing through that crucial hub will continue to be a deciding factor in mitigating and preventing rail service problems. As Chicago goes, so goes much of the nation's rail system. I visited a number of rail sites, including the CTCO in Chicago, in the last several weeks to see firsthand both the infrastructure projects to relieve rail congestion in some of the areas where congestion is a huge issue. The issues are complex and longstanding but must continually be addressed if the nation's first-class freight rail system is going to be as good as it can be.

And, finally, I recognize the effects of rail network congestion are not limited to rail customers. Congestion can also affect local communities as backups lead to slower or stopped trains and crossings are blocked for longer periods of time.

As I mentioned, there have been some areas of improvement. We issued an order in April that directed BNSF and CP to provide their plans to ensure delivery of fertilizer for spring planting; and it is my understanding that, for the most part, farmers received enough fertilizer for planting. I know that BNSF has been working hard to build up its infrastructure in this region and add crews and locomotives; and important infrastructure improvements are taking place in other parts of the country, like the Tower 55 project in Fort Worth, which I understand is almost done.

But infrastructure can take a long time to finish, and efforts to improve capacity in later years are a small comfort to shippers suffering from a rail network that is severely strained right now. Part of the reason we're here today is to get the information we need to determine what steps the Board, as a regulator, should take to facilitate the improvement of rail service issues.

The Board has broad authority to deal with emergency situations. The agency has used that authority to deal with severe congestion. Of course, the Board has been and must be careful about not requiring actions that have negative, unintended consequences; and I also recognize that the careful timing of transportation decisions of shippers has to be taken into account in whatever the Board might consider.

We have directed Canadian Pacific and BNSF to appear today. We will also hear from shippers, Amtrak, and others who depend on the rail system, which will help us to further pinpoint the problems that are occurring and to figure out what they need right now and how their business planning is being impacted. We will hear from a number of representatives of federal and state governments whose perspective we always value greatly. I would like to note that Senator Thune had hoped to attend today, but he was unable due to scheduling conflicts. He has provided a written statement, which I have right here, which will be made part of the official record of today's proceeding.

Also, we have the North Dakota governor and several members of Congress, including Senator Hoeven and Congressman Cramer; and we will accommodate them and also other members of Congress as they arrive. We may have to ask the sitting panel to step down to allow those individuals to speak, and we ask for your understanding and cooperation. We are very thankful to the governor and these members of Congress for being here today at this important hearing.

Before we begin, let me take just a few minutes to review a few procedural points about today's hearing. We want to hear today from every party that has filed a notice of intent. To allow that to happen, we will have to ask parties to stick as closely as possible to the time that has been allotted. We recognize that that is not always going to allow you to say everything, but we want to make sure that there is an opportunity for everyone to speak. The clerk will hold up signs indicating the number of minutes you have left. That's the clerk over here. If you are scheduled to speak, please make sure that you check in with the clerk at the front of the room.

To CP and BNSF, please ensure that you have representatives in the room for the entire hearing, even for the period between your morning and afternoon panels. I have also asked to remind speakers to please speak clearly into the microphone. In addition, the public should be aware that a video archive of the entire hearing will be placed on the STB website within a few days of the close of the hearing.

In the unlikely event that we have a fire alarm or other event requiring evacuation, please proceed in an orderly fashion out of the double doors at the back of the hearing room and out of the building through the nearest marked exit.

Also a note regarding slide presentations. Please make sure an electronic copy of your presentation is saved on the board's laptop. If you are unable to provide an electronic copy, please make sure to send two hard copies or an electronic copy to the board's Office of Proceedings within the next two days. Contact information is available from the clerk. Finally, if you have not done so already, please turn your cell phones off.

And I would be remiss also if I did not mention I was looking in the paper, sports page, which I usually read on Sundays; and I would like to congratulate North Dakota State. I know that's a cheap trick. But they did beat Iowa State, which I understand is the fifth time in a row that they've beat an FBS school, and apparently have won 25 in a row and two championships in a row.

UNIDENTIFIED SPEAKER: Three championships.

CHAIRMAN ELLIOTT: Three championships in a row? I had to at least get corrected, act like it wasn't too much of a cheap trick. So congratulations on that. It's very impressive, and I'll look forward to you guys being in the FBS soon. It looks like that'll happen. I will now turn it over to the vice chairman.

VICE CHAIRMAN MILLER: Well, thank you very much, Mr. Chairman. And I would just like to say, in regards to this football discussion, that I am a Kansas State fan. And one of those Division I teams you beat was us last year, and the sting is still upon me. But as we play Iowa State next week, we were actually kind of happy to see the beatdown that you gave them.

But, at any rate, turning now to more important issues, I too want to recognize Governor Dalrymple, Senator Hoeven, and Congressman Cramer. Thank you all very much for being here. I think, as you can see from the capacity, the overcapacity in this room, this is clearly an important issue that matters a great deal to a big portion of the U.S. economy. This has been a really difficult time in railroading, whether you're the railroad that's providing the service or the shipper whose been relying on it.

I want to say that I do recognize and I appreciate that the railroads are working very hard to close this gap; and the current backlog we have is, in many ways, not for their lack of trying. But, by the same token, velocities continue to be slow; and we are not seeing the improvement that's necessary in service. I'm also very sympathetic, though, with the plight of the shippers who, through absolutely no fault of their own, are unable to move their products and are consequently losing market, losing money, and losing customers.

Since my first month on the board, I have preached the concept of transparency; and my hope is that this hearing, along with other steps that I'm hoping the Board will take, will bring greater transparency to these issues. I believe that many of the complaints that shippers have had could have been improved if they had had more information and more information in a timely way.

I've seen the evidence that the railroads, particularly BNSF, are prioritizing communications with their customers during these service disruptions, yet it's clear from the conversations I've had with shippers that they're still not receiving sufficient information so that they can make informed decisions.

They need more information about when cars will be delivered, the cause of delays, and how long it will be before they can begin to rely on normal service again. In many too many instances, when they've received that information, it's proven to be inaccurate; and that's not helped the situation at all.

One of my goals for the Board moving forward is to ensure that the shippers have the information they need to make rational and informed decisions about their own businesses. Even if they aren't able to get all of the rail service they need, they should at least have sufficient information to appropriately plan for the future.

I know and appreciate that there's concern on the part of the railroads about sharing too much information. But I think it's important to emphasize that the rail network is a shared network, and it's a shared network that currently has insufficient capacity to serve all of those that rely on it. As a consequence, the railroads are making the difficult decision about which shipper's traffic gets priority and how much of that traffic gets moved. In my view, those being impacted need and deserve greater transparency as to how that rail network is being shared.

Another consequence of the lack of transparency during this period of service disruption has been that assumptions, conjecture, and rumor have often taken the place of facts. I believe that more information would dispel some of the inaccurate claims and accusations that have been made both against the shippers as well as the railroads. I hope that the parties that are here today welcome the opportunity to tell their story. Hopefully, today's dialogue will help railroads better understand the needs of their customers and the customers better understand the realities of the challenges faced by the railroads.

Finally, I would also like to note that I am mindful that the Board needs to be careful in whatever future actions we take. Despite the calls for the Board to take strong measures, I am aware that such measures are just as likely to end up doing more harm than good. That is not to say that the Board should not consider all options available to it, but the Board's first concern should be to do no harm. And we should only take steps likely to alleviate the service problems, not just generate headlines.

I look forward very much to today's discussion and appreciate all of you who have taken a day out of your daily lives to come and spend it with us and to help us understand better the issues that we're trying to deal with. Thank you.

COMMISSIONER BEGEMAN: Well, I will be very brief. I think we're all interested in hearing what you all have to say. Please know how much we value your input, your views. At the hearing that we had in April, we learned of the fertilizer delivery concerns really for the first time and the very serious, almost dire concerns that farmers had in this part of the country. And we responded quickly. And the railroads, in turn, delivered fertilizer for the spring crop. Now we need to make sure that they can move the crop that has been produced.

Again, thank you all for attending; and you'll hear much more from me throughout the day. Thank you.

CHAIRMAN ELLIOTT: Okay. Thank you very much. Now we'll begin with our first group; and we will hear first from Senator Hoeven, then the governor, and Congressman Cramer. Senator?

SENATOR HOEVEN: Thank you, Chairman Elliott, and welcome to North Dakota. Also, to the Vice Chairman Miller, thank you for being here, and to Commissioner Begeman. And I understand, Commissioner, you're from South Dakota.

COMMISSIONER BEGEMAN: Right.

SENATOR HOEVEN: So we thought you looked particularly sharp and alert. And, you know, being from the Dakotas, we want to particularly extend a warm --

COMMISSIONER BEGEMAN: South Dakota, yes.

SENATOR HOEVEN: -- welcome. I'm going to make some preliminary remarks and then turn to the governor. It's our tradition to let the governor present, make his presentation. So, if that would be all right, Mr. Chairman, with you, we would proceed in that order.

CHAIRMAN ELLIOTT: That would be wonderful.

SENATOR HOEVEN: Okay. The main point that I want to make right up front is you and I met in Washington just a little over a month ago. You were kind enough to come up to my office, and we went through the situation we have in North Dakota with these backlogs for grain shipment. And, you know, I was clear with you and I think you were clear with me that we've got to address this; and we've been working very hard with both BNSF and CP Railroad to do that.

And both railroads -- We've been pressing for both railroads to take short-term steps, immediate steps, emergency kind of steps, if you will, and also have a long-term plan. What I mean by that is, in the short-term, they need to add variable inputs that will enable them to catch up on the backlog and also be able to handle the harvest. When I say short-term inputs, I mean more people, more railcars, more locomotives; and that needs to be brought to bear right now. And that's what we've been pressing for over the past number of months and, of course, what we continue to press for today.

On a longer-term basis, we need more capacity. We're the fastest-growing state in the country. We're not only producing over a million barrels of oil every day, we're a huge producer of many, many different ag commodities; and we've got to be able to move those ag commodities to market in a timely way. It is vitally important to the well-being and the operation of our farmers in this state and in this region. So we need more capacity in terms of track. That's the long-term piece. It has to start now, but we need a bigger railroad. We need more track. So surge capacity in the short-term, more track in the long-term. Both of those have to be an immediate effort.

Now, with BNSF, I'm going to detail, after the governor makes a presentation, all the steps we've taken. They have a plan that's a resource plan, both short-term and long-term, to increase their capacity and address the backlog now and make sure we're not back in this situation in the future. I'd like to go through that at some length for a minute.

With CP, we need to see the same thing. So one of the most important things to come out of today is that we need to see a resource plan from CP in the same way, and then we need to work with both railroads and monitor and make sure that they're both taking the immediate short-term steps to address the problem and the long-term steps so we're not back in this problem in the future.

And that needs to be an effort between ourselves here in North Dakota, between the STB, and the railroads to make sure we address the situation that we have which is of critical importance to our farmers, our ranchers, but also our coal. We have a huge coal industry. So that, you know, we continue -- We not only produce power for this state, we produce power for the whole region, for our other shippers, as well as for energy.

And I think, in a nutshell, that's where we have to go today. And, again, I'll reserve the balance of my comments, with your permission, after allowing the governor to present. It's tradition in our state to allow his presentation; and, having been governor for ten years here, I'm a little sensitive to that. So Governor Dalrymple.

GOVERNOR DALRYMPLE: Thank you, Senator Hoeven, for allowing me to speak first. I appreciate that. Chairman Elliott and Vice Chairman Miller, Commissioner Begeman, thank you very much for coming to North Dakota for this hearing. That means a lot to us; and, as you can see by the attendance in this room, there are a lot of people that are eager to give you their input.

Let me just start by referring to a letter that we recently received in the governor's office from the Wilton Farmers Union Elevator Company in Wilton, North Dakota. This is a typical letter, and I just want to give you a flavor of it.

"We presently find ourselves in a very difficult position as harvest is just getting started and our facilities are full. CP is 525 cars behind in their service. We are presently waiting for a train that was scheduled for April 8, 2014. This is collectively costing Farmers Union Elevator and our individual patrons millions of dollars and is adversely affecting their farming operations." And, in the last paragraph, "We respectfully ask for your help."

I just wanted to impress on you that this is really what this hearing is all about. It's not about commodity groups or public officials coming in to tell you something. It is about the individual elevators and farmers out there who have no place to go. They have no recourse. They have no power. They have no influence over the situation, except for you. And so we're trying to let you see what an impossible situation this is for many of our shippers.

North Dakota is, of course, heavily dependent on agriculture. We say we are the most agricultural state in the nation. We are number one in the production of eight commodities and a top five producer of 17 different crops. That has long been our number one industry. A recent study has estimated that the losses to our shippers and farmers from delayed shipments is in the hundreds of millions of dollars. And we know that work has been done and work is being done to correct the situation, but that does not eliminate the fact that the damages have been real and they are continuing.

To be accurate, in this latest status report, BNSF has reported a total of 1,016 past due railcars in North Dakota averaging about ten days. And, to give credit where credit is due, that is a dramatic improvement over the situation in April; and a lot of equipment and effort has been brought to bear by the BN. However, there is great apprehension about how things will go this fall because it appears that the last four months have been an extraordinary effort.

The Canadian Pacific reports a total of 7,535 open requests in North Dakota averaging about 13 weeks. The North Dakota-owned State Mill and Elevator has reported that it has been forced to shut down its flour mill production 25 times this year due to delays in rail shipments. There are a number of other processors in the state that report the same kinds of effects.

The CP has announced its plans to implement a dedicated train program. That may be an improvement; but there is a great deal of apprehension that simply canceling all back orders is not a solution, that the transition to any new kind of program needs to recognize the existing order backlog and recognize that those orders are in for a reason.

With harvest now underway, we need to have the railroads step up with extraordinary effort to be sure that the situation improves. We also know that the number of ways that we can influence this situation are somewhat limited, and so I'm trying to be specific about the request.

First of all, one thing that I think the STB can do is provide an oversight role from the standpoint of equity. The railroads have several different kinds of service involved here, agricultural being just one sector that they serve. But the balance between sectors is very important, and they profess to be providing balanced service across all sectors. It would be a good idea, I think, to verify that that is true.

Second of all, within this agricultural sector, they have three different types of service. One is tariff cars. The second is shuttle trains, and the third is intermodal transportation of specialty grains and oilseeds. Again, this Board could play a role in providing equity between those groups.

At times, we have received complaints that there is little attention being paid to the tariff cars. At other times, we hear just the opposite. And, especially, we hear that the intermodal service, which we have worked so hard to build up in North Dakota, originating out of our port in Minot is in great danger for lack of service.

These customers have been developed over a period of many years, and for those exporters to suddenly be unable to provide product through the intermodal system is permanently damaging to those exporters. It causes them to lose customers for the long haul. So balance and equity among the various levels of service is something that I believe you can do and can be improved.

And, finally, looking at the situation with the Canadian Pacific, I think that you should consider that to be an emergency situation. We would ask you to consider what you would do if there were no services being provided on a line in North Dakota like the Canadian Pacific. What would you do as the Surface Transportation Board if no car service was taking place? And I would submit to you that, although that is the obvious extreme, we are about halfway to that point. And the Surface Transportation Board, we believe, does have a role here.

The Canadian Pacific, like other railroads, is a common carrier. They have a responsibility to provide service to the public; and, if that service is not being provided, you do have the authority to step in and begin to arrange ways for additional equipment and additional service to be provided, either directly or contractually, through another operator.

So I think that, although I'm not an attorney and I don't know where all of these various laws and regulations really shake out, I would seriously ask you to consider this an emergency situation for North Dakota. Thank you very much.

SENATOR HOEVEN: Thank you, Governor. And I certainly want to concur with your remarks. To the chairman, the vice chairman, and the commissioner, again, thanks for being here. I'm not going to read my testimony, but I will present my testimony for the record.

The key, as I said, is we've got to make sure there is a resource commitment to deal with the current backlog, to handle the harvest, and to create the capacity so we're not back in this situation in the future; and we need to talk in terms of specific steps, okay, not generalities. We've been working on this issue for a long time; and I want to just give you a sense of that so you can see, when I talk about making sure that when you leave here you're looking at a resource allocation plan that will take care of the problem, that we've talked in terms of the kind of specifics that we need to see.

On February 11 back in 2014, I brought the managing director for the BNSF, Matt Rose, and commodity groups into my office in the U.S. Senate. At that time, BNSF agreed and committed to the following: First, that they would invest $5 billion in new resource -- in resources this year, $5 billion. Now, this is systemwide. $600 million of that would be in track and investments in the northern corridor. They would add 5,000 crew members and 250 maintenance workers in -- 5,000 crew members total, 250 maintenance workers in North Dakota, 500 new locomotives as well as an additional 125 temporary locomotives that they were -- they were willing to dispatch to North Dakota within two weeks of that meeting, 5,000 new railcars, and that they would begin posting their past due orders on their website so that ag shippers could track their progress. That was in February of this year.

Then, in April, we had an immediate issue getting fertilizer to our producers; and it became quite acute as far as the backlog. And, obviously, that's a very key timing issue. If you can't get that anhydrous in, that affects the entire crop for the entire year. So, on April 12, again BNSF agreed to take steps. At that time, they agreed to assign unit trains to hauling -- dedicated to fertilizer.

And so for, I think, more than a two-week period, they used shuttle trains to haul fertilizer and actually were able to catch up on the backlog in anhydrous delivery. So there's an example of the kind of short-term step that can have an immediate result, and that's what happened with fertilizer.

Then you and I met, Mr. Chairman, right around the 1st of August and talked about the need to make sure that both railroads, both railroads were taking these kind of steps; and we had dialogue specifically on the CP and the steps that they need to take. On August 7, Managing Director Rose was out here and agreed to spot 450 railcars a day for the non-unit -- the non-shuttle train shippers, which is where they were seeing a real backlog and where these timing issues are incredibly important.

You're going to hear from the soybean guys today. If they can't deliver crop within a certain window, then that could affect their sales for the entire year because they've got to deliver them at a certain time; so we've got to turn a certain number of shuttle trains. I think you'll hear from BNSF they're talking about turning two and a half shuttle trains on a regular basis, which should help them stay current with the backlog. But we've got to -- For the smaller shippers, we've got to get them cars to make sure that they meet some of their windows. Otherwise, it doesn't work for them; they can't ship this year.

Then, on August 11, we had the -- I had the CEO of CP Rail here in Minot on August 11, Hunter Harrison. They talked -- As a result of that meeting, they are now changing their ordering system. As the governor said, that may help. But it's got to be fair, and it's got to be transparent. And I think that is -- there's a role for you there in evaluating and monitoring how that system gets changed, meaning talking to shippers as well as the railroad and making sure that if they're going to change their ordering system now both in terms of shuttles and in, you know, single cars, that it's fair and that it's transparent, number one. And every bit and even maybe more importantly is they're not going to solve -- CP will not solve their backlog without a resource plan.

Mr. Harrison talked in terms of a $150 million investment. But it isn't specific, and we don't have the detail. And that's why I've taken some time to talk about BNSF's plan. They'll present it again today. It's something we have to continue to work on and make sure it gets the job done in the short-term, like I've talked about, with people, with locomotives, with cars, but also with more track.

They're investing $400 million this year in track in North Dakota. We'll have to see if that works because our volumes are growing. Whether it's grain, whether it's coal, whether it's oil, they're growing. So we've got to have that resource plan, and it's got to be detailed. We have one from BNSF. We're going to continue to work with them. But we've got to see the same kind of plan from CP.

So I hope that, when you go out of here today, that there is some very serious discussion, some very specific discussion and some very direct discussion on what is that plan. What is the plan? Let's see the detail. Let's set the timelines, and let's make sure that it will solve the backlog. I believe right now BNSF is down to about a 1,000-car backlog, about a ten day -- ten days late. And, in the case of CP, you're still talking 7,500-cars backlog. And we don't -- They're talking 13 weeks. What does that mean? We still don't have a reporting system. This is something you and I talked about, Mr. Chairman. We still don't have a reporting system where we really understand what their backlog is.

So let's make sure we have the resource plan and clear and understandable reporting to track progress on CP. And I think we're getting there on BNSF, but we've got to continue the effort. Those are the specifics I think you can help us accomplish here today in a very, very meaningful way.

As the governor said, this is about all of our shippers. We want to make sure all of our shippers are treated well and their concerns are addressed, but we have to be up front. Right now, this is an acute, critical problem for our farmers. That's the pressure point, and we've got to make sure that we provide them with assistance both now and over the long term.

Again, thank you for being here; and thank you for the way that you've been open and willing to address this problem. You know, in North Dakota, we pride ourselves on building a good business climate. We work very hard on this. We work hard with companies so that they see North Dakota as a good place to invest, where they get treated fairly so they want to invest here and they want to employ people and they want to build their business. That's how we approach it. That's how we'll continue to approach it.

But right now we have a different situation given the nature of how railroads work and, you know, the fact that they have a monopoly in some senses. So they've got to step forward with resources, with resource plans. That's what we're talking about. We've got to make sure that it's going to be reasonable and adequate, and we've got to be able to track the process for our -- for our farmers and for our business people.

Thanks again so much for being here. We appreciate it.

CONGRESSMAN CRAMER: Thank you. I'm feeling a little bit like I'm part of a choir. I think we're all singing from the same songbook. But, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman, let me add my welcome and thank-you for being here. I've provided each of you copies of my testimony as well as to the clerk for distribution and for the record.

You know, I served nearly ten years as a regulator in North Dakota on the Public Service Commission, a/k/a the Railroad Commission; and I can attest to the value of your being here. This is really important. This is a testament to the importance you place on it and certainly a testament, with the crowd behind me, to the importance they place on it. And your willingness to come to Fargo is important, and I thank you for listening.

And, also, I want to -- I want to add a thank-you to your staff. You know, you all, as members and your staff, have been incredibly accessible to me and to my staff; and I know we've spent hours on the phones and in meetings. And I want -- I say that for the benefit of our constituents who need to know that this public service is taken seriously by all of you.

We all, of course, obviously realize the pressing nature of today's delays and the purpose of today's hearing. And while progress is being made, as others have discussed, against the backlog, I, like they, remain concerned about the ability of this system, the rail system to handle another large harvest, which we are now day to day, depending on the day and how much rain we have, is in full swing. The next several months, of course, will be crucial as we're only a few months away from another weather change, which will challenge the efficiencies of the system certainly in our part of the world.

My testimony from the April hearing is in the docket already. I will not reiterate a bunch of that. I, too, want to acknowledge the progress that's been made by the BNSF. It's been encouraging. We have seen consistent reductions in their backlog as they've worked hard, and I think in good faith, to alleviate many of their issues. They've laid down additional track, as the senator referred to, throughout North Dakota while simultaneously increasing their supply of cars and locomotives. In short, they've said what they're going to do; and they've been doing what they said.

BNSF has also taken important steps to promote transparency. You've heard that word. I appreciate your reference to it, Vice Chairman Miller. Transparency is so important because sometimes telling the bad news is as good as -- well, it's certainly better than not saying anything; and it's certainly better than telling something that's less than truthful, as planning is an important part of this.

So, obviously, more work needs to be done; and many questions are still in order. However, I too want to give credit where credit is due; and I want to recognize BNSF for their -- for their efforts and their transparency. In contrast, the CP has not demonstrated similar progress. After months of confusing and discouraging data, recent reports show an unrealistic improvement in the backlog, which appears to be the result of orders being canceled rather than fulfilled. We need to see more transparency in how they arrive at their data. Today, I hope this Board will hear of proactive efforts by CP in solving this crisis.

Loading more cars with grain in North Dakota, however, will only solve part of the problem. We continue to see severe rail congestion in

Minneapolis/St. Paul and Chicago. I appreciate that reference, Mr. Chairman, in your comments. These two hubs are vital to our transportation network. I hope the companies here today, along with the STB, will work aggressively to improve the situation. Every stakeholder involved has a shared interest in reducing the problems associated with these important gateways.

I have serious concerns also about Canada's decision earlier this year to impose performance mandates and propose fines against Canadian Pacific and Canadian National railways for lack of compliance. This decision puts U.S. producers and shippers at a lower priority than the Canadian customers of these railways. As a neighbor and chairman of the Congressional Northern Borders Caucus, I appeal to Canadian officials to reconsider this unfortunate decision.

Now, while their disappointment in the United States' opposition to a pipeline that could alleviate much of the congestion on the rails is understandable, this aggressive step cannot be ignored. I hope you will analyze Canada's actions and do what is necessary to make sure U.S. shippers and customers are not left behind.

Finally, I do caution against an overreliance on the Board's emergency powers. Commodity discrimination may sound like a good solution, but it may also exacerbate rather than alleviate the problem. Deregulation was supposed to improve the bottom line of our railroads, their efficiency, and eliminate the need to nationalize our nation's railroad operators. By many accounts, this was successful. Yet prolonged service problems like the ones we are experiencing in North Dakota often result in further government involvement. I hope BNSF and CP, working with customers, will do everything in their power to demonstrate the effectiveness of the current regulatory environment.

Again, welcome and thank you. And we should never forget, you are here because we are blessed. North Dakota produces more of what our world needs than our transportation infrastructure is able to move as efficiently as it should; but I'm confident it will, hopefully soon. I am committed to resolving these serious backlogs, as well as ensuring American consumers and producers are not further disadvantaged by these delays. I look forward to hearing from the two railroads, this Board, and all stakeholders to further our collective goal for a solution to these pressing issues. Thank you.

CHAIRMAN ELLIOTT: All right. Thank you very much for attending today. I know it means a lot to us. I did want to note, before we go on, with respect to the Board's ability to help in certain specific situations, we do have a group called the Rail Customer and Public Assistance Program. They have worked with the senator, the governor, and congressman on various issues, I believe, including the letter that you referenced.

So Lucille Marvin, who is the head of that group, is right there; and Mike Higgins also works in that group, as does our clerk, Mr. Ross. So, if you do have specific problems or issues that you would like to discuss or address, please talk to them or at least you can call them at our office at any time. As the congressman mentioned, they are very accessible; and there is an ear there for you. So anything else?

VICE CHAIRMAN MILLER: No. Thank you for coming.

CHAIRMAN ELLIOTT: Thank you very much for coming. Why don't we bring up the No. 1 panel. Okay. It's a little tight up here today; but that, once again, shows you how important this is to the public officials. And why don't we start with the first panel as we always do. Please begin.

MS. FEDORCHAK: Okay. Good morning. Can you hear me?

CHAIRMAN ELLIOTT: Yes.

MS. FEDORCHAK: Good morning, Commissioners. Thank you so much for coming to North Dakota and having a hearing here in the field where so many people can have access to you and express their concerns. I have to say, serving on the Public Service Commission of North Dakota, you must be a lot more popular than us because our hearings are never this crowded.

I am honored to be here this morning representing the citizens I serve on the Public Service Commission. Efficient and cost-effective rail service is essential to North Dakota. We depend on this to transport large volumes of grain, coal, oil, and fertilizers. We need the railroads, and we want them to succeed.

At the same time, we need them to be responsive and to fully comply with their fundamental common carrier obligations to the public. So I have a few -- I want to offer a few comments, just of context, for the situation in North Dakota and then offer four measures that I think can help remedy the situation for our shippers.

North Dakota's producers and shippers are captive shippers, as we've already discussed this morning. They have a perishable product with no other rail options. They are beholden to railroads who are charging premium prices for inferior service, all the while touting the businesses' effective planning and profitability in letters to shareholders. Berkshire Hathaway chairman Warren Buffett described in his February 28, 2014, letter to shareholders the company's "Powerhouse 5." He described it as a "sainted group," which includes BNSF, that generated $10.8 billion in earnings in 2013.

Later in the report, he referenced "extraordinary customer satisfaction" and touted BNSF's diligence in anticipating customer needs. Quoting from his letter, he said, "Like Noah, who foresaw early on the need for dependable transportation, we know it's our job to plan ahead." With all due respect to Mr. Buffett, I don't think our shippers would necessarily agree that BNSF has had the same level of divine intervention as Noah in anticipating and planning for the needs of the rail system serving our customers.

That said, I'm not here merely to complain, but to offer some measures to help get service back on track; and there is four of them. I'd like to call for more transparency, better reporting, a temporary field office in North Dakota, and more focus on Chicago. So I'll talk briefly about each one of those.

First, these service challenges beg for more transparency; and I appreciate Commissioner Miller's comments to that effect at the beginning of the hearing. In May, we asked the railroads, the North Dakota Public Service Commission did, for some simple information that should be readily available given the resources of these large, profitable corporations. Both BNSF and CP refused to provide that information and insisted that they are accountable to one and only regulatory body. That's you. This is basic information that will help North Dakota shippers and us better understand and evaluate railroad performance and assist with business planning.

So, today, I urge you to gather this information and other data that will be requested today and make it available to the captive shippers who feel their service is falling short of the reasonable service and dispatch benchmarks that railroads are obligated to meet. We understand the Board has already ordered some biweekly reporting by carriers. However, we respectfully submit that this reporting has been insufficient. It's difficult for anyone, including your Board, to evaluate if services rendered are reasonable without this data.

Secondly, you've required the Class 1 railroads to provide seasonal service plans for dealing with the fall peak by September 15. This is a good step. However, I understand that similar fall peak requests were made last year; and the responses generally predicted both increased traffic volumes and the unquestioned ability of the carriers to meet the demand.

Today, I strongly urge you to take another step and require the railroads to submit more detailed plans and specific service commitments for the fall peak period, and beyond a simple letter request that they have in the past. I also urge you to require the railroads to update these plans every two weeks. As we learned this spring, it's vital for the Board to stay focused on service issues so the railroads don't back off on their efforts.

We had a -- You had a hearing in April, and CP said that they would be returning back to normal within four to six weeks. We had the railroads in our office at the end of April, and they pledged to be caught up by the end of July. Both railroads fell far short of these goals. It wasn't until pressure increased in late July that they began to deploy the resources really necessary to improve this service.

We can't make this same mistake this fall. It's not enough for the railroads to generically point to planned new capital investments. They need to have ongoing reports, and you need to keep a close eye on their plans for allocating resources to meet the needs of the system as a whole.

And, third, I propose that you open a temporary field office in North Dakota this fall and for as long as conditions warrant it. A vast majority of BNSF's increased volumes are coming from our state. This is ground zero for service challenges involving coal, oil, and agriculture commodities. Your office should have personnel here to help monitor the situation, track progress, and serve as a liaison to shippers, producers, and railroads.

Finally, I also share your concerns, Chairman Elliott, about Chicago. During all of our discussions with the railroads this spring and summer, the one challenge that has surfaced repeatedly is the congestion in Chicago. It's like the "black hole" of railroad challenges. It's like purgatory where no one seems responsible or has a plan for fixing it.

Chicago is the intersection for so many

systems. These are private railroad systems that have received considerable public support through CREATE and other programs. The railroads need to address the congestion that exists there and find solutions for modernizing the system to address the needs of our nation today. I urge the STB to hold the railroads and any other responsible parties accountable for fixing Chicago.

That concludes my suggestions. Thank you for your time this morning.

MR. CHRISTMANN: Good morning, Commissioners. Randy Christmann also from the North Dakota Public Service Commission. I too want to thank you for being here to -- and recognizing the severity and urgencies of the rail service problems that we have. I appreciate your efforts to restore dependable and affordable rail service. That has certainly been lacking.

I expect, throughout the day, you're going to hear a lot of anecdotal information from shippers about the problems they have and the severity of them. I also expect you're going to hear more about the progress the railroads have made. I would warn, though, that if that progress is based on strong-arming shippers into canceling orders or on focusing almost exclusively on big unit trains at the expense of small shippers, then maybe that progress hasn't been so good. It's just reduced the large number of late cars, but it maybe isn't so good anyway.

At the end of the day, though, I'm sorry to say I expect we're still going to be struggling to figure out exactly how to quantify the extent and severity of this problem. I don't want to get into the business of picking and choosing winners and losers in all this and shuffling around between ag or oil or coal or that sort of thing. What I expect and what I think you ought to demand is reasonable and dependable service for all shippers.

When -- And this gets to Vice Chairman Miller's point about transparency. But when things were just so out of hand this spring, we held our own hearing; and we requested more information, looking for that transparency to try and get a handle on the problem. We were flatly denied; and I have to say that, with that denial of information, it was seasoned with a level of arrogance that I have seldom seen in almost two years on this commission and 18 years previous to that in the North Dakota Senate. And, without that valuable information, I have no other alternative but to accept the anecdotal information from the shippers and seek help from you all.

This field hearing tells me that you also are not so certain about the extent and severity, and I find that troubling. In their denial of our information, they talked about that it was too burdensome to provide and that they would prefer to do business with you. If it's too burdensome to provide it, it suggests to me they're not providing it to you either; and I find it astounding that you wouldn't have the information about their shipping at your fingertips from over the years to compare to what's going on now.

Phone companies, including small rural telephone co-ops, they gather all kinds of data on every minute of every phone call, where it originated, where it terminated and whose lines it traversed. Our electric utilities keep enormous amounts of data on where the power is generated, whose lines it traversed, time of day usage, outage times. And the railroads say that keeping basic information like when cars were ordered, when they were supposed to be delivered, when they were delivered, when they were picked up full and when they reached their final destination, they find that too burdensome. I really find that astounding.

I think it's time for the STB to make a strong stand and demand accountability. When railroad regulation -- I want to remind you of this. When railroad regulation was shifted from the states to the federal government several decades ago, Congress recognized then the special importance of land-locked captive shippers of food, fuel and fiber like North Dakota. As a matter of fact, there was a special amendment passed called the Andrews Amendment, named after Congressman Mark Andrews, our congressman who later became a U.S. senator. And, at the time, the big issue was rail line abandonment. That special amendment limited the amount of miles of line that could be abandoned in North Dakota in a year, recognizing the special importance of this captive -- of the captive shippers here.

I think it's time to again recognize that importance and -- because it's not just the lost money, if people lose money for a few weeks until things go. Food quality is diminished for American people. Crops like edible beans can be lost completely because of spoilage. Shippers with port dates can lose sales completely. Shippers -- Individual shippers and the country as a whole can lose our recognition as a dependable food source around the world.

Less affluent people don't have the option of, when someone doesn't have what they want, just going down the block and getting it. There are countries like Angola and Central America, when our product is not on their ship, their people go hungry. It's a serious deal.

And, frankly, we have power plants, including, Commissioner Begeman, your Big Stone Power Plant in South Dakota that is not running at full capacity because they cannot get enough coal. It's not a new problem that's been caused in the last year because of oil or something like that. This has been a problem that has been getting worse for many years, actually a decade or more.

Four suggestions here: First of all, as far as collecting data and it being too burdensome, they are big -- these are big companies. They're successful companies. Don't buy into their sob stories. Demand the data. Make the data available to the public. When some grain got shipped across the country is no national security issue. Make the data available to the public. Clarify what you, as the experts, think is reasonable and acceptable service. And then, finally, compel the railroads to live up to that standard.

That's what I ask of you, and thank you again for being here.

MR. LENTSCH: Good morning. My name is Lucas

Lentsch. I serve as Secretary of Agriculture for South Dakota; and on behalf of the State of South Dakota, I'm here to read into the record the remarks of Governor Dennis Daugaard.

"Dear Chairman Elliott, Vice Chairman Miller, and Board Member Begeman,

"Thank you for coming to the Dakotas today and for your continued attention to our state's shipping needs. We are thankful for the work that you have done to date.

"The recent orders issued by the Surface Transportation Board have given South Dakota and other states the critical information we need to communicate the magnitude of this problem to the public, advocate for shippers and farmers, and work with the railroads to find solutions. Further, the reported information has allowed us to prepare our farmers for the reality that grain is not likely to move as quickly as it has in the past.

"They can, for now, prepare for expected lags in shipping times, which will necessitate the need for greater grain storage capacity. Even as I continue to encourage the railroads to do everything they can to provide reliable and efficient service, I am also urging producers to do everything they can to prepare their own operations while we await the expanded rail infrastructure necessary to transport our ever-larger harvests.

"Agriculture is South Dakota's largest economic sector; and without reliable rail service, our producers cannot get their products to market. Unlike some other agricultural states, South Dakota relies almost entirely on railroads to move our agricultural products, in many cases to markets hundreds of miles from our borders. Our state does not have multiple Class 1 carriers, which means our farmers do not have the option of utilizing competition to select a lower-cost service. We do not have a barge transportation system that other top agricultural states utilize when railroads experience delays and harvests outpace rail capacity. And we consume a modest amount of the grain we produce, so the majority must be sold to out-of-state buyers.

"As a result, South Dakota is almost entirely dependent upon the Burlington Northern Santa Fe and Rapid City, Pierre & Eastern railroads to move our grain to market. If they cannot carry the load, our South Dakota farmers have few remaining options. In recent years, we've been blessed with plentiful harvests. Now more than ever, our producers need timely, reliable rail service.

"Thank you for doing what you can to help them get the optimum performance from the railroads that service the Dakotas, and thank you again for your time and attention to this critical issue." Signed Dennis Daugaard, Governor of South Dakota.

Also, as a lead voice for our state's agricultural producers, our family farmers and ranchers, your focus and attention on this is very critical and continues to be critical in the sense of the economic impact to our state's $25.6 billion ag industry, tens of millions of dollars, hundreds of millions of dollars of impact with the delays in shipment and costs of transportation that continue to burden our family operations.

And so, on behalf of our producers, thank you for your time and attention today. And, as we celebrate 125 years with our neighbor to the north here in North Dakota, this is of vital importance for our future because we are vitally dependent on sufficient rail service. Thank you.

SENATOR SINNER: Good morning. My name is George Sinner. I am a state senator, and I serve on the Economic Impact Committee for the North Dakota legislature. Thank you, Chairman Elliott, Vice

Chairman Miller, and Commissioner Begeman for being here today. You are obviously heeding the call from myself and others for action to address the critical shortage of railcars in this region. Our losses from these delays are mounting, some say upwards of $100 million since the first of the year.

On December 30, I was in my hometown of Casselton and witnessed firsthand the train explosion. As a concerned citizen and member of the North Dakota legislature, I immediately started researching ways to make our trains safer. But what was first brought to my attention was the rail backlog that so many of our shippers were, and still are, dealing with. In January, to the North Dakota legislature, I brought this issue; and I have been working on this issue ever since.

Over the past several months, I have held meetings with stakeholders including farmers, input suppliers, grain dealers, and financial executives across North Dakota. At every stop, in every meeting, I have heard exactly the same thing: The rail industry's lack of service is severely damaging North Dakota's ag economy. The widening basis of up to and more than a dollar per bushel over normal means that our transportation alone is costing our ag producers more than a billion dollars per year.

North Dakota is at the center of North America. The rail system here is our lifeline to the global marketplace. We cannot conduct our business without it. The BNSF and CP have monopolies overseen by this board. If they are not performing, we have no recourse nationally except to turn to you, the Surface Transportation Board.

Now, we have seen and heard of progress made by the BNSF; and we thank them for their efforts. They appear to be taking this matter seriously, which honestly is more than I can believe that the CP is doing. It appears that the CP is more concerned about their stock price than they are about customer service. Recently, I have heard of three CP shippers who are now constructing facilities on the BNSF line because the service and productivity of the CP is so abysmal.

But I am not just here to talk about problems. I want to talk about solutions and immediate relief for our farmers who are the backbone of this state and have been for 125 years. One thing we can do is level the playing field. We know that shippers face demurrage charges if the cars sit too long on their siding. However, if rail companies fail to deliver on those accepted orders, they suffer no consequences.

Companies say they pay the price of lost business, but their balance sheets and stock prices say something different. These rail companies are posting record profits while our farmers continue to suffer record losses and cannot move their products. As I stated, these contracts appear to be completely one sided. I ask you to level the playing field, making the railroads pay a price to the shippers for the orders that they have accepted and have failed to deliver.

Leveling the playing field is just one step in the right direction, but part of the immediate resolution has to be the utilization of the Board's emergency powers. Today, I am asking the Surface Transportation Board to open these rail lines to other rail companies to come in and help service this terrible backlog. Across this nation, rail companies have agreements with other companies to utilize tracks to improve services. My understanding is, prior to 2006, right here in North Dakota there was an agreement between the CP and the Union Pacific.

Now, folks, I have been in private business for more than 35 years; and, if there's one thing that motivates a business to do better, it's competition. I believe that temporarily opening these rail lines to other companies will bring better service, a more reasonable rate structure, and alleviate this serious backlog that currently exists. North Dakota could and should, and our region, have a bountiful future; but right now that future is being held captive by the lack of reliable transportation service. With the projected growth of our oil industry 20 to 30 percent over the next two years, this region's success could play a major role in reducing our nation's reliance on foreign energy sources.

However, we need long-term investments in pipelines, personnel, and track; but these things will not happen overnight or even in the next year. So something must be done now. The financial security of this state and region depend on it. These problems have solutions, and these solutions are up to you. I hope that you will take the steps necessary to ensure a successful future for our shippers, our state, and our nation. Thank you so very much for coming here today and hearing from our people. Thank you.

SENATOR AXNESS: Well, good morning, Chairman Elliott and members of the Board. Thanks for coming back to North Dakota to hear about the prolonged backlog of rail service that we have across the upper Midwest here. For the record, I'm Tyler Axness. I am a state senator representing District 16 in the North Dakota Senate and was previously on the transportation committee in the last session. And I am here before you today not only as a state senator but somebody who has been a lifelong North Dakotan, that grew up in rural North Dakota in a small farming community.

My first job was at a grain elevator, so I understand basically the work that goes in from planting the crop to getting it to the table. That elevator now sits at capacity and is waiting on rail service, like many across this state; and it's at no fault of the elevators or of the farmers themselves. So we need to find the solution, and I'm glad that this hearing is taking place because I believe it's a good start.

You know, working there was many years ago; but the hard work hasn't changed. It's just the reliability of our railroad, you know. And what I've heard over the last few months, as I've traveled across the state, is the frustrations from our farmers, specifically up in Benson County, that estimate that they've lost hundreds of thousands of dollars because they aren't able to get their grain to market.

Other farmers in other parts of the state have been told by individuals to basically just put up another grain bin and increase your own capacity. And I think that is completely unacceptable to add that additional burden to our farmers in an already stressful position in the middle of harvest.

Others that I have visited with across this state have documented instances where they have witnessed trains sitting idle for days; and not only is that frustrating for people that are waiting to use that rail system, but it's also, in my opinion, a very big safety hazard for our North Dakota communities.

And, like many in this room, I'm disappointed in the delayed action from many of our officials and the rail industry itself. You know, I'm frustrated with the railroad's apparent lack of urgency; and, quite frankly, I'm frustrated in our state's lack of involvement through our commission with railroad jurisdiction because the railroads themselves don't feel that our rules apply to them.

This backlogged railroad emergency is, in my opinion, a systematic failure for our farmers and other industries that rely on access to these lines; and it's only going to be resolved if everyone is at the table and everyone is talking honestly and if everyone is ready to get to work to solve the problem.

So I am today asking that our railroads

re-assess their current rail capacity versus what is needed for all of our state's industries and undertake the needed investments to improve the service expected of them. And I understand some of those talks have already started, and I am encouraged to hear that. And as the Surface Transportation Board, I am requesting that you hold these shippers accountable. And, finally, I am asking that you consider ways of partnering with resources in the states.

In North Dakota, we have the Public Service Commission that has railroad jurisdiction; and we need to find ways that the work that they are able to do in our state's Century Code is going to benefit this overall process and find solutions that are for North Dakota. We, in my opinion, as a commission in the state, have the ability to find the information, as was sought earlier this year, and hold these railroad shippers, their information transparent to people that need to use their services.

So I'm asking that we all come to the table and work together, and I think that is starting today. So I want to thank you again because the bottom line is this is a big problem, and the only way to find a solution best fitted for North Dakota is if everyone is working together. So, with that, I'll pass the mic along; but I want to thank you again for coming and hearing the concerns. And I look forward to working with you to find solutions for North Dakota and our shippers, so thank you.

MR. FREDERICKSON: Well, thank you very much. I'm Dave Frederickson. I serve as Commissioner of Agriculture in Minnesota. Chairman Elliott and Commissioner Begeman and Commissioner Miller, thank you so much for being here today. You are, in essence, shining the spotlight on this issue. Your mere presence here today causes that to happen; so we thank you very much on behalf of the farmers from North Dakota, South Dakota, and Minnesota.

Today's farming looks very different from the farming that I did for 25 years in western Minnesota. There are new technologies, methods and markets which today's farmers must navigate. Of course, some things don't change. The weather has to cooperate. It didn't last night, and we were awakened by the alarm in the hotel at 4:30. I'm sure many of you were also. So, if you see us kind of like that (indicates), you know what happened; right? A little too early for us.

The harvest is stressful enough at this time of year, and certainly crops have to reach those new markets. All this is to say that farmers, by their very nature, certainly don't expect many guarantees in life; but that doesn't mean that we don't recognize problems when they're staring us in the face.

This summer, my department partnered with Minnesota Soybeans and the University of Minnesota to sponsor a study on basis fluctuation and the resulting economic loss to our farmers. And I'm submitting this study today for the record on behalf of our farmers in Minnesota and also on behalf of Governor Mark Dayton. The study shows how farmers lost in excess of $109 million to regional basis costs in the region affected by rail congestion. That's real dollars that would have been in farmers' pockets.

We understand more and more is being asked of BNSF and CP Railroad while they are already at or near capacity, yet we have heard that BNSF and CP say they are committed to getting last year's crop out in time for this year's harvest. So we appreciated it when, this past June, the Surface Transportation Board decided to take a "trust but verify" approach to the commitments expressed by BNSF and CP. We believe we understood the spirit of that order. It would be to provide the STB, shippers, and stakeholders with a clear picture of where the problems are and what's being done about them.

I don't know -- I don't want to belabor requests for more information that you already are aware of. However, Governor Dayton has made similar requests directly to BNSF after speaking with their CEO, Matt Rose, earlier this week; and they responded immediately. And we're hopeful that the dialogue will lead to better communication between the governor's office, the commissioner's office, and BNSF in assisting Minnesota -- Minnesotans to meet the challenges that we're facing, particularly as we move into, again, the season change and are concerned about propane supply and then also ensuring rail safety while growing our local economies. I want to work -- Governor Dayton and I both want to work with the railroads to address the challenges we face, and I'm pleased to say that that process has started right now.

In closing, I want to say that the farmers, Governor Dayton and I are looking to you, the members of the Surface Transportation Board, to ensure that we have the information we need to plan for the challenges that lie ahead. And, again, thank you for your time and attention. I also have, in hand, testimony from our senior senator, Senator Amy Klobuchar, who was not able to be here.

I spent many years working with and for

Senator Klobuchar; and for those staffers that are here representing members of the Senate, they have to understand that "once a staffer, always a staffer." And so I have in my hand testimony that I would like to please submit for the record from Senator Amy Klobuchar. She has witnessed the difficulties that farmers are struggling all across Minnesota and reflects that in her testimony and comments. Thank you very much, Chairman Elliott.

MR. GOEHRING: Good morning, Chairman Elliott and Commissioner Miller, Commissioner Begeman. My name is Doug Goehring. I am the North Dakota agriculture commissioner. I am also a third-generation farmer here in North Dakota, along with my son. Thank you for the opportunity to testify today and for holding this public meeting and hearing.

My department provides over 100 different programs to help promote a healthy economic, environmental, and social climate for our state's agricultural, rural and urban citizens. As you know, we're here because of the extreme service disruptions that are preventing North Dakota producers, processors, and elevators from getting their product to the market. It's harming their reliable reputations, their bottom line, and jeopardizing our domestic and overseas markets.

In North Dakota and throughout the entire upper Midwest, a reliable and accessible transportation system is necessary. In North Dakota, for example, 82 percent of all of our grain and oilseeds move via rail, with a significant portion of those shipments traveling nearly 1,500 miles to the Pacific Northwest. The distance our products need to travel for export and processing requires timely shipping, especially when we're dependent on rail. The slower cycle times and unprecedented shipment delays from Burlington Northern Santa Fe and Canadian Pacific created a problem where the only option our farmers have is to store their crops, which is an unacceptable solution.

Both BNSF and CP need to prioritize grain and oilseed shipments. For example, soybean shipments have a very small window to meet market demand in Asia and Southeast Asia. These products must be shipped between October and February, demonstrating the need for certainty in our rail service because we can't store our way to prosperity.

Planted acres in North Dakota for corn, soybeans, and wheat are record breaking or near record breaking this year. This should be good news. Instead, it's increasing producer anxiety because these products can be trapped in the system on farms or in the elevators and not be moved. Also compounding the problem is that over 15 percent of our 2013 crop is still in storage.

In the short-term, the agricultural community needs communication about delivery and plans for improvement and to know that their business is valued. BNSF has added locomotives and employees and undertaken drastic rail construction measures to try and meet the future and expanding needs in North Dakota. But there are still delays in cars received or shipped, and costs of shipping are extremely high. The more open communication between BNSF and the agricultural community have been appreciated while they work towards these solutions.

However, agricultural producers have to be moved -- agricultural products have to be moved by both companies. I am actually more disturbed when I hear stories about individuals that haven't seen grain cars in months from CP. It's clear that the backlog is not the only problem. I'm not telling railroads how to run their businesses. I'm telling railroads that they have businesses here in North Dakota that they need to serve.

Long-term, it seems that the problems that were experienced last spring and winter could happen again this fall and winter. In the spring, the Surface Transportation Board ordered BNSF and CP to provide their plans and data regarding movement of grain and fertilizer because of the fertilizer delivery delays. These delays cost producers the opportunity to move grain at a time when the market was higher and to shore up fertilizer for this planting season.

Now this fall, the STB ordered the railroads to disclose more information about their backlogs. The trust between producers and railroads is only weakening. With the 2013 crop still needing to be moved and this year's harvest fast approaching, we need to know that there are plans in place so we can enter the 2014 and '15 marketing year with some confidence. Producers want to know that this cycle can be broken and that progress is being made with real solutions for our real problems.

Service is critical, knowing that grain, coal, oil and ethanol all share the same rail system and all need to reach other markets. These delivery problems are pushing more products onto trucks and straining other transportation systems that already have enough pressure, raising safety concerns, reducing efficiency and increasing costs.

At an August 11 meeting in Minot with CP, an option was suggested by a couple of the elevators to them about using short lines to alleviate pressure from within the system and move cars to hub locations where CP could pick them up and move them to end users. This solution was dismissed as "not an option." If these problems are going to be addressed and short- and long-term solutions are going to emerge, it's going to require investment in equipment, workforce, and communications with those that are receiving the service.

Agriculture and our agricultural markets are seasonal. Products are not delivered year around. And to retain customers, we need to supply products in line with when historically they were received and are currently expected. A thriving transportation system benefits all industries in North Dakota, and we want to work with BNSF and CP. Breaking this cycle of delivery failures is crucial in order for all industries in North Dakota and across the upper Midwest to flourish. Thank you for your time and attention to this matter.

CHAIRMAN ELLIOTT: Thank you very much, Panel 1.

COMMISSIONER BEGEMAN: I also want to say thank you very much, and I think it is very commendable that a number of you are taking such a leadership role and wanting the facts besides just good news. We recognize capacity issues will not change overnight, but I know that you want your producers to be able to plan for the future to the best of their ability. So thank you for doing that. We certainly are going to be supportive in helping do that as well and hopefully make more progress. Thank you.

VICE CHAIRMAN MILLER: Is it okay if I ask a couple of questions?

CHAIRMAN ELLIOTT: Of course.

VICE CHAIRMAN MILLER: So -- And, Julie, excuse me if I butcher your name. Commissioner Fedorchak --

MS. FEDORCHAK: Very Close. Fedorchak.

VICE CHAIRMAN MILLER: -- Fedorchak and Commissioner Christmann, could either of you or both of you say a bit more -- either say a bit more about what sort of data you would like to see, what information you need? Or, if it's simpler, if you would even just submit it to us, I would just be interested in knowing more about your ideas for what would be helpful.

MS. FEDORCHAK: Sure. That is included in my --

VICE CHAIRMAN MILLER: Okay. Great.

MS. FEDORCHAK: -- more extensive testimony, and I'll give you that.

VICE CHAIRMAN MILLER: Okay. Excellent. Thank you.

MR. CHRISTMANN: And, also, I have it in my written testimony and will forward it on.

VICE CHAIRMAN MILLER: Okay.

MR. CHRISTMANN: But I do want to say that, you know, we need it not for just this year, like how they're catching up, but a longer period, an example being when -- when we talk about the success of getting that fertilizer out this spring. At my own ranch in the feedlot, a water system that had never frozen up in over 30 years was frozen up this year. We had unprecedented frost in the ground from the extremely cold winter with very little snow to insulate the ground. Harvest -- or seeding was a month late, and so that was part of why they got caught up on fertilizer too. It's also given them an extra month with no harvest to get caught up on '13 crop, but it's congested the '14 harvest. So look for this again in the coming season.

VICE CHAIRMAN MILLER: Uh-huh. Yeah. Yeah. No, I appreciate that. And then with the head of three states' Department of Agriculture, I'd just be curious if any of you could address what you think the current status is of the grain markets. And what I'm wondering is -- I know we've had unprecedented large harvests last year and again this year; but I also understand, at least with corn, you know, prices are getting driven down because there is such a large harvest.

And so what I'm wondering is, is even though there is a lot of grain to move, are there buyers for that grain? Do shippers -- or, excuse me, maybe I should say producers -- want to hang onto the grain because of the prices? And even if we took some extraordinary measures, is all that grain going to be moving out; or are people going to be hanging onto it?

MR. LENTSCH: You know, that's a -- On behalf of South Dakota -- And I'll defer to my counterparts here as well from North Dakota and Minnesota. You know, it's incredible the amount of backlog and pent-up storage capacity that just doesn't exist. You know, when we look at the 2013 crop, that has really congested and taken the available space up.

When you have a billion gallons of ethanol produced in our state and we have plants that have to idle because there isn't the manufacturing or the -- or the access to the infrastructure to ship it out, the costs are being driven down because, frankly, the shippers can't take delivery because they also incur the risk if they don't have the storage and they have to pile. So they're going to de-incentivize the producers to take grain because they don't have a place to put it necessarily.

And so that's going to continue to drive down the price of the commodities. And, frankly, the good years that we've seen in agriculture, it doesn't take too much imagination to look at how much equity is being pulled out of our rural economies across the state of South Dakota because of this backlog and because of, frankly, just not the infrastructure to support what is currently on hand and what's in the fields.

We're looking at a 1.1 billion bushel harvest in the state of South Dakota between our top commodities. The concern here is the backlog is going to continue to be exacerbated by this pending harvest. Just as the commissioner said, a concentrated soybean and corn harvest is going to only put additional pressure and potentially downward pressure on those prices.

MR. FREDERICKSON: Well, from a Minnesota perspective, it's kind of a mixed bag. Some areas of the state are clear and ready to go for this harvest.

My crystal ball is about as clear as yours. And we have to remember, we talk aggregate numbers; but farmers farm individually. They don't farm in the aggregate. And so all of these issues eventually end up with a face on them, and that's -- that's what we're concerned about. So it's going to be hard to tell what our crop is going to look like. Obviously, we have a lot of drowned-out areas; but what's there really looks good. So time will tell.

VICE CHAIRMAN MILLER: I'm just going to ask this question, though. Because prices have been dropping, do you expect your producers, if they can, to hang onto their grain and to wait to sell it to try to see if the market doesn't come back with a bigger price -- a better price, I should say?

MR. GOEHRING: I would suggest that probably most of them will look at the market, try to determine what they can do. There is limited storage out on the farm and within our elevator system. But they already did that last year. That's a problem. They've got complicated issues coming into this spring. When producers had to go and borrow for the 2014 crop year when they still hadn't paid off debt from operating in 2013, we start compounding that issue.

Banks, financial institutions, they need to see product moving. So now you have 2013 crop moving through the system. There are some indications that we're not going to see improvement in prices overall on the futures board; but with the basis being so far out of whack, that's one issue that does need to be addressed because 50 cents on a -- of basis, it means a great deal.

For example, in my area, $1.15 basis on corn. That is unbelievable. Where we talk about 20 to 40 cents -- If we could get that 60 cents back, that would be meaningful. If we could get 80 cents of that, that would be meaningful. That would be meaningful to a lot of farmers, and you would probably see a lot of that change. I think there's quite a bit of frustration within the global markets when you see where wheat should probably be in the global market. Soybeans have certainly taken some beatings here lately, and let's hope that we can retain those customers.

I think the key thing is, in North Dakota alone, we're going to produce over a billion bushels of commodity this year in multiple crops, almost 40-some different crops that are going to be produced. If our basis is that far out of whack, I would suggest it's not just a couple hundred million dollars that's affecting the bottom lines of our farmers here in North

Dakota. It's probably upwards of 400 to $500 million because of the basis being so out of line.

But it's about protecting our markets. If we don't deliver soybeans, for example, into the Pacific Northwest and to our customers in Southeast Asia and Asia, we will lose those customers. They will go to the Gulf, and they will go to South America. They will definitely be going to South America by February or March, so we need to have those shipments. Wheat is another one of those that we need to stay on top of.

But, as for in-state, we have Busch and we have the State Mill & Elevator. They have dedicated markets, and they have to provide that service into those places. For Busch, they've got to get barley -- because we're the number one barley producer in the nation. They have to get that malt barley into Wisconsin and down to St. Louis. That's it.

We have the State Mill & Elevator that has a lot of customers on the east coast. They have to get that flour out. Once it's processed, it has added value to it. It has to leave. If it doesn't, they put it on a truck or it sits.

And we have ethanol plants that are shutting down across this state, across Minnesota and across South Dakota. It's a problem. So it's the end product that has to move along with the product within the system, the raw product, to our markets, to our customers.

MR. FREDERICKSON: I again would like to refer you to the Minnesota basis analysis that we prepared, and you have a copy of that in hand. And because we were able to quantify the losses incurred by farmers, but also you have to consider the losses that were incurred by elevators and other parts of the system that weren't able to move grain at the time that they chose to move it. So, again, I refer you to the -- to the analysis.

SENATOR SINNER: Vice Chairman Miller, I have a special interest in this issue that you brought up. I grew up on a family farm just outside of Fargo, and that family farm has been in my family for over a hundred years. But, for over 35 years, I have been an ag and business banker here in North Dakota. My bank started looking at the cash flow problems of farmers last winter, and we noticed a severe drop in cash flow.

Now, what's happened since then is, because many farmers could not move their crops from last year, they were -- they were unable to get adequate financing for this year. In my meetings with input suppliers, a lot of those folks are sitting on accounts receivable that they don't know what to do with; and now we've got this other problem coming this fall.

We also have to make sure that we address the problem of American Crystal Sugar Company, the largest beet sugar company in the world that's based right here in this -- in this -- in this community. We have plants up and down this valley. Right now, American Crystal Sugar is getting ready to go into harvest and, after harvest, to go into production of sugar.

To do that, they need massive amounts of coal; and they had two dedicated trains constantly bringing coal to their coal facility north of Grand Forks. Now, since that time, recently they've only had one. We don't know what's going to happen; but we know that, if we lose those sugar plants in this valley, we have serious problems. These people are the backbone of agriculture in the Red River Valley. It is very serious, and we ask you to address these issues as soon as possible. Thank you.

CHAIRMAN ELLIOTT: Thank you very much to Panel No. 1. We really appreciate you coming here, and we will take back a lot from what we heard from you today.

Why don't we bring up Panel No. 2. Okay. Why don't we get started with Panel No. 2, which is the railroad panel. I know it's a little bit cold in here. We're trying to check on that, and I'm hoping that will be remedied soon. Why don't we start, as we always do, with the panel on my left, CP.

MR. BROOKS: Well, good morning, Chairman Elliott, Vice Chairman Miller, Commissioner Begeman. I'm proud to be here to represent Canadian Pacific today to help provide some of the transparency that folks have asked for and we've talked about already this morning. I'm going to talk to you today a little bit about our rail service, some of the things that we've dealt with, and where we think we're going specifically on our grain business.

My name is John Brooks. I'm our vice president of our bulk business. I'm based in Minneapolis, Minnesota. My responsibilities specifically are for the marketing and sales functions within Canada and the United States for our grain business, our coal business, and our fertilizer business. I'm going to focus my comments today on ultimately three areas.

One, collaborating with our customers and where we are at in that process. Number two, infrastructure investments and what CP has done and will continue to do. And then, number three, our efforts to continue to hire people to better strengthen and protect our commodities that we move across our upper plains network.

But I think it's important for me to start talking a little bit about our franchise in the upper Midwest. Unlike the U.S. carriers in the west, CP's franchise, when we move our commodities both east and west from the upper plains, are very dependent on our connecting carriers. So, whether we go east to the northeast U.S. through the Twin Cities or Chicago gateway or whether we're going west to the Pacific Northwest, we have a dependency on interchange connections to reach those marketplaces.

It's critical to understand this; and, whether we're moving grain, crude, crude-related products, frac sand, you name it, these products and their origins and destinations require interchange fluidity for our products. In many cases, CP requires two or three connecting carriers to reach our marketplaces. It's important to recognize this because this, at times, will impact our cycle times and flows and service levels we provide.

As a point of reference, I think it's important to also point out that CP recognizes our rail service is critical to all the shippers, shippers represented today here in the room in North Dakota and across our total upper plains network. But, with that, CP's market share, based on production for our grain and grain products in North Dakota, typically falls in the 20 to 23 percent range. That is critical. In Minnesota, it's approximately 9 percent. And, as we look at our crude business, we represent about 11 percent of the crude that's shipped out of North Dakota.

As you think about CP's network and our movement of grain and grain products and all of our crude-related products, this is a growing business area; and we expect to continue to haul more of these products. But I can assure you CP is not favoring the movement of one commodity over another commodity. We are committed to work with all of our customers to try to move these in the most efficient manner from our upper plains network.

As we look back over the past year, I think it's critical, as we think specifically about grain, that I reinforce a couple points today and try to provide some of the transparency that the folks are asking for. First, as we look at North Dakota, despite one of the worst winters on record and ongoing related St. Paul and Chicago congestion, CP's grain billings of our grain and grain products business are in line with our historical performance and the market share that we would expect to move based on the crop size.

CP has moved approximately 5 percent more grain than our three-year average; and last year's crop production in North Dakota was up approximately 6 percent over that same time period. Last fall through early winter, we had a strong operating performance. We moved historical records of grain and grain products from both the United States and Canada to market. As reference, I can tell you, specifically in the month of October, the Canadian Pacific moved its all-time record volume to the Pacific Northwest marketplace out of our U.S. franchise. The majority of this grain was hauled out of the state of North Dakota.

Unfortunately, as December hit and into the spring, severe winter weather, flooding, and the related congestion to Chicago gridlock and Twin City gridlock definitely impacted our business. These events exposed our dependency and the rail business dependency on interchanges and our eastern carriers. At the same time, CP felt unprecedented levels of car requests to flow to these eastern markets.

Following that period, CP has worked hard with our customers; and we recognize, in many cases, communication wasn't the best and needed to improve. But we've worked hard with our customers to recover following this period. Since the beginning of April, we have moved 9 percent more grain than our three-year average. And, from a workload perspective, over the same period, we've moved approximately 26 percent more RTMs, revenue ton miles.

So where are we at today? Let's start with our open request system. The open request system allowed customers to enter as many free car requests as they desired without any consideration of, one, our weekly ability to supply those cars, market flows, where those cars were going, or market demand. There was no doubt it was our system, and it was a severe weakness of our system.

Unfortunately, as we've heard from many folks, our U.S. requests grew to over 40,000 as we were flooded with unprecedented levels of car requests. And I can tell you we've looked long and hard at these requests to try to sort through them. I'm going to get into the details of our findings; but, in comparison, at the end of the previous crop year, CP had about 30 open requests in total. To put the spike that we received this last year of requests into further context, if CP would have met 100 percent of this demand in the state of North Dakota, our market share would have spiked by over 40 percent.

So why did this happen? And I think there's a lot of -- there's a lot of reasons and certainly still uncertainty on our side; but it seems like there was a perfect storm of factors that contributed to this extreme, unprecedented level of car requests that we received, including weather and interchange congestion that I spoke about, certainly market factors and directional flows, the volume of traffic that needed to move or at least was requested to move to go to St. Paul and to Chicago during the fall and winter months, certainly competitive rail dynamics and transportation's car costs in the marketplace, and potentially higher levels of Canadian grain that was -- that flowed into United States -- into the United States. I think all these factors played a role. At the end, the result was CP's car requests exceeded what we expected to move and could possibly ship.

So, more importantly, let's talk about what we're doing about it. Again, I'm going to go back to the three elements that I started with. One, we're going to talk about the collaboration and where we're at with our customers and our new grain system that was brought up earlier. Infrastructure investments, I want to touch on those, try to bring some more clarity to what we're doing. And then, three, talk about hiring folks.

Number one, we are working with our customers to improve communication. We know this was raised in the last hearing. It's been raised already again today. I have personal accountability to improve that communication. Number two, part of that communication that we are having with our customers is to really roll back and understand the demand that they need for our service. What is really out there? When does it need to move, and then how do we go about putting the plans in place to move it? And rolling out and changing our car request system, because we are not going to go into the new crop year with a similar system.

So, number one, let's talk about it. Working directly with our customers to understand their needs both in the near term -- so what needs to get moved out now -- and then what needs to move for the entire crop year. No doubt, this process has included cleaning up old requests that shippers have to markets that no longer exist or, frankly, no longer require any more cars.

Further, CP has initiated discussions -- and let me emphasize this -- over ten months ago with our shippers around a new car ordering system. This has been in the plans and has continued to be in the plans for months now. These dialogues have been collaborative. They have been in the means of trying to ask our shippers what new system works best for them as our intentions have been to introduce this now for many months.

The intention of the new program is three-fold. One, we want to provide more transparency to what our shippers can expect. Number two, certainty. If they know what they can expect and what they have for cars or trains, in this case, then they can plan around it and can plan their sales to those trains. And then, three, we need to provide a platform for growth; and we think, between the capacity enhancements that CP will continue to make and our new program, we will be providing a platform so our customers can grow.

So we have spent the past couple months working with the customers to understand their needs. They have canceled requests as we work to make an orderly transition into our dedicated train program. Allegations that CP has strong-armed, bullied shippers into canceling requests are not fact based. CP and our customers have made contractual commitments and established transition plans to run dedicated trains. By the end of this week, we expect to have 18 dedicated trains in service and running on our network. This number will continue to grow on a weekly basis as we transition out of requests and into dedicated trains.

This reflects and, we believe, will reflect real demand for our service from our shippers; and, as a result, we've seen a drop in the open requests to now approximately about 6,200 open requests older than 14 days. Of the remaining 6,200 car requests that are out there, approximately 2,000 of those are for trains that are in transition into a dedicated train product. The remaining 4,200 are for less-than-train orders.

CP is committed to work with those less-than-train shippers. There's still a lot of work for us to do to understand the validity, the need for those less-than-train orders; but I can assure you our intention is to fill every one of those if they are required. Our operating team will focus on those less-than-train orders, and we will fill them oldest orders first to get those completed.

Let's talk a little bit about infrastructure investments. Between 2009 and 2013, we invested more than $700 million to sustain and expand capacity in our upper plains states. This includes approximately $200 million in North Dakota. Looking forward, CP is planning to make record levels of capital investments in our property. Depending on demand levels, we expect investment in the upper plains to exceed $500 million between 2014 and 2016. This includes additional and extended sidings, route contingency plans, and a full upgrade to centralized train control from Canada to St. Paul. These enhancements will not only improve the safety on our railroad but also capacity to our network to the benefit of all of our shippers.

In Chicago and St. Paul, CP is leading efforts, through the coordination with other railroads, to attempt to enhance the throughput through these terminals. We recently invested millions of dollars to install an automatic switch in our St. Paul yard area to allow directional running across our own railroad. We believe this will enhance and protect our traffic flows that are required to go east through the St. Paul area and ultimately to and from Chicago.

Our marketing and sales team is working hard with all of our shippers as we come into this winter to determine route contingencies for our customers to avoid the St. Paul and Chicago markets. We are working with marketers on both the origin and destination side in the northeast U.S. to put plans in place to route over our own railroad up through Canada and back down into the northeast U.S. to try to avoid some of these critical congestion areas.

Hiring people. North Dakota's robust economy has created strong competition for employees in the communities we've served and certainly all the grain elevators and businesses we serve through North Dakota. It's no doubt CP is also facing those challenges. We are actively recruiting employees to ensure that CP is positioned to sustain movements to the best of our ability through these upper plains communities. Training classes have been underway throughout the year, and we are actively bringing on new hires across our entire upper plains system.

In North Dakota, we are buying housing, providing temporary living, and offering as many competitive compensation alternatives to employees as possible to retain them and attract them to Canadian Pacific. We currently have, either being hired, in training, or marking up today, a plan for approximately 400 additional employees.

In closing, I want to reiterate that CP is focused on understanding, improving communication with our customers -- and, again, I am accountable for that -- and developing reasonable expectations for service. This is job one. We realize it. We are not favoring one commodity over another. We are certainly not ignoring our U.S. business because of orders in Canada. We are investing and will continue to invest significant amounts of capital enhancements as well as look at all options to move more traffic through the Twin Cities and Chicago. We will work through the challenges described and expect to deliver lift and move more products as we move into this peak season. Thank you.

CHAIRMAN ELLIOTT: Thank you, Mr. Brooks.

MR. BROOKS: Yep.

CHAIRMAN ELLIOTT: We will now hear from BNSF, Mr. Bobb and Mr. Lease.

MR. BOBB: Good morning, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. I'm Steve Bobb, executive vice president and chief marketing officer for BNSF. Accompanying me is Bob Lease, vice president, service design and performance. We are here to address some specific questions and issues raised in your hearing order. You routinely receive a lot of reporting from us, so we won't take time to rehash much of what you already have.

The specific items I will address are, first, review our progress to date, specifically agricultural products; second, provide BNSF shuttle turn time information; third, provide a service improvement outlook and time frame; and, fourth, address the question, is there more action yet to be taken.

Before I progress, I do want to acknowledge that we have customers present here today. Your business is important to us; and, as we've indicated previously, we know our service has not met your needs, nor have we met the needs of Amtrak and commuter rail. Beyond safe operations, nothing is a higher priority than restoring the fluidity of our network.

It's appropriate, since we are in North Dakota, to comment on how this state is literally ground zero for economic and rail volume growth, not just in this region but in the entire country. Each dot on this map represents a rail-served customer facility that began shipping between 2010 and July of this year or will be operational by year-end. Examples of these facilities include lumber transloads, construction product transloads, chemical transloads, petroleum facilities, grain facilities, and grain products facilities.

You may remember from my last appearance that 2013 shipments to or from North Dakota represented 40 percent of the BNSF volume growth and 20 percent of industry growth. That growth rate continues to be strong again this year. However, as we are all aware, with this growth has come challenges. I want to first give you a BNSF progress update. Much of this detail is not new to those in attendance. We included it in the information submitted to the Surface Transportation Board. We post it on our website, and we have been sharing it with producers and shippers in the multiple meetings we have had in North Dakota.

We are or are [sic] ahead of plan to add resources, and those resources are making a difference already. September and October track work, in particular, will enable another step level in capacity in terms of overall performance. The good news is we've improved terminal dwell, reduced trains holding for power, and improved on-time performance. However, train speeds have not improved and are actually slower, impacted by continued volume, maintenance season, and weather-related service interruptions.

There continues to be allegations that crude is favored over other commodities, especially agriculture. The fact of the matter, and one we are not proud of, is that both ag and crude fleet velocities are down the same amount year over year. We strongly believe that the investment we are making will result in a stronger railroad and will support more capacity and improve service for all customers and markets. We are seeing very good improvement in upper Midwest ag volumes with recent shipments higher than the past four years. Additionally, year-to-date total shipments from North Dakota are our record volume.

As we reported last week, August 28 U.S. past dues stood at 2,029, an 88 percent decrease since March, in North Dakota, the epicenter of our volume growth. North Dakota past dues were 1,016, an 88 percent decrease since March. Also, as information, South Dakota past dues were 251. Minnesota were 61, and Montana were at 408.

I expect that you will hear many comments today that we are not moving as much coal as our customers would like. Additionally, you will hear that there are instances of our customers having to manage their burn rates given inventory levels. We are aware of these circumstances and know that, while moving more coal year over year, we are not meeting demand. Our primary volume focus is to meet our contractual obligations and adjust best as possible where customers want to move more volume than their contract declarations.

That said, there are also circumstances where we are not meeting our customer declarations. We have a network planning process that is informed by frequent communication with our customers. This allows us to make decisions to balance our resources across the network to move the most volume while identifying and addressing critical needs.

As I mentioned already, we are seeing the benefits of resource additions to our network. Despite a significant rain-caused track outage and ongoing track work, coal movement during August was our best month since January. Investments in eastern Montana and North Dakota during September and October will further directly help coal volumes on our northern corridor. Additionally, those investments will enable traffic currently moving on reroutes to move back to the north, opening up much needed train slots on other parts of our network. Overall, we still have work to do. Rebuilding stockpiles will take place in 2015 with some completing in 2016.

Before I move to our ag outlook, I want to briefly mention ethanol and propane, which were noted in your hearing notice. Ethanol volumes are up 7 percent year over year through July. We are not meeting demand. For propane, the upper Midwest experienced scarcity in supply last year due to several factors coming together at once. Looking ahead this season, as usual, weather will drive demand. Overall market storage and rail loading capacity have been increased, and the capacity lost in the pipeline reversal will need to be replaced by several rail carriers and other pipelines. We continue to advise customers to fill storage early and be cognizant of transit times and equipment availability as they plan.

I'd like to make some comments looking forward for grain markets. I committed to you in April that we would be reset in time for the upcoming harvest, and we are. I'll also note that, during the first half of the year, we have moved more grain and agricultural products than we did in the first half of 2013. Per your request, we are providing shuttle turns per month by region. As you can see, geography matters and influences cycle time. The volume mix across these lanes will impact our overall performance as we move forward. More demand to longer or slower turn regions will impact resources and ultimately volume handle.

As we approach the harvest season, I do want to note that, overall, we are experiencing strong demand from nearly all of our customer segments and geographies we serve. As we complete preparations for harvest, we are currently moving back to an appropriate balance of grain cars in shuttle service. Twenty-seven shuttles of railcars have been in non-shuttle service to help reduce past dues. To move maximum volume, we will need to complete shifting these railcars back into shuttle service during September. This will reduce non-shuttle order fill rates from current levels and increase the number of past due orders. Maintaining shuttle service during the heavy demand will allow us to move the volumes that markets and subsequently our customers need us to move to meet demand.

You can see the significant volume leverage provided by our shuttle network year to date. This October, our grain fleet will be split about 51 percent shuttles and 49 percent shuttles [sic], which is a different mix than what you've seen thus far during the year. We expect this more appropriate balance will enable slightly over 50 percent of our railcars in shuttle service to move 70 percent of our grain volume. We have sold record ag capacity for fall 2014 and winter 2015. This car capacity combined with the expected fleet velocity should give us the capacity and capability to move record volumes.

Note I said "should." While we are fairly sure of a large harvest, we don't yet know what volumes will move to which markets and when. Ag markets, volumes, and timing of grain movement are impacted by many variables including rail service, weather, crop size, price, storage, geography, demand, et cetera. We may see farmers choose to not move crops. We may see markets swing from wanting grain transportation to not wanting it to wanting it again over a matter of months. This is the nature of the business that we serve.

I believe that I can say with certainty a couple of things. We are much more capable to handle demand this year than last. And, if a big crop wants to move all at once or if we experience greater-than-historical demand into eastern domestic wheat milling markets, we could be running perfectly and past dues would grow; and it could increase by several thousand or more. All that said, we expect our grain volumes year over year, over the next four to six months, to increase by 10 to 15 percent.

Turning to a status update and timeline for our service improvement, there are a few things that turned out differently than we expected when I was last providing you with an expectation. For the north, we expected frost heaves in the spring. However, the magnitude and duration was not expected. Thus, June service in the north was much worse than anticipated.

For the central region, our coal velocity was negatively impacted by June reroutes off of the north and then again for 16 days by flooding in July followed by additional volume in August. We were correct that snow melt wouldn't drive significant flooding events. Instead, significant rain events created the challenges. On the other hand, our overall progress at adding capacity and our grain reset went about as expected.

For the Southern Transcon, we continue to improve as a majority of the significant track work projects are winding down. Capacity projects to address remaining Southern Transcon bottlenecks are targeted for 2015 delivery. In the central region, this region has been challenged as a result of weather impacts on the north and continued high demand for coal. We foresee more gradual improvement as we may continue to operate -- as we continue to operate a very high number of coal sets towards all destinations while track work programs in this heavy-haul route approach the two-thirds point of completion.

The Northern Transcon continues to see incremental improvements as capacity projects come online. Progress is uneven as we have continued traffic recovery efforts stemming from outages caused by heavy rains in late August. Heavy maintenance programs will continue into the fall which are necessary to continue improving the fluidity of the network but impacts short-term velocity. If you look at our Northern Transcon route from Fargo, North Dakota west, as we complete these track improvement projects in October, this will be a different railroad with capacity that is significantly increased over any time in our prior history in this part of the -- of the country.

Regarding your question on solutions to rail capacity challenges, let me start by saying that the BNSF network and the U.S. rail network are experiencing tight capacity with current volume demands. BNSF and the rest of the industry are investing in the necessary additional capacity. As this key private-sector solution, investment, occurs, we believe that there are also other private-sector solutions that are underway or have been attempted. Ultimately, increased capacity is a key solution; and we are well along and, in some cases, ahead of plan in all facets of capacity: people, maintenance, rail, terminal, locomotives, and railcars. This information is provided as part of our ongoing weekly update.

We also continue to stay in close communication with our customers so they know what to expect and we know about critical needs. While not able to successfully react to every customer support call, I believe our team has done a very good job, under difficult circumstances, of fielding the calls and attempting solutions.

We also have worked with our customers to make commercial adjustments. For example, providing coal contract flexibility where that could make a difference. We also recently worked with a regional short line to ensure that we have rates in place to provide an option for grain movements to a couple of higher-velocity BNSF-served destinations.

We recognize the need to improve our service, particularly in the upper Midwest. However, more extreme regulatory actions, as you stated in the hearing order, should not benefit one industry at the expense of others or spur unintended consequences with the overall impact of moving less total volume and reducing service levels for other commodities. We are the largest carrier in the national freight rail network, and we urge you to be mindful of the impact of calling out particular segments on the fluidity of the network as a whole.

Examples of regulatory action that could negatively impact our customers include, as we have discussed, the need for more capacity, an action that forces more railcars onto our system. Either private cars to move on BNSF or cars for BNSF to handle to or from another carrier will not create more capacity. It will reduce capacity, and some BNSF customer volumes will be negatively impacted.

You have heard a couple of requests this morning to allow another railroad onto already congested subdivisions. This will not create more capacity. Again, some BNSF customer volume will be negatively impacted. You have heard and read testimony from other witnesses requesting regulatory action that mandates commodity or geography preferences. As we stated earlier, this will not create more capacity. BNSF customer volume will be negatively impacted as the chosen commodity or region will move at the expense of all others.

The recent Canadian directive on grain is instructive as to the impacts of such a course. BNSF has already received requests for additional volume out of Canada as we are staying focused on our existing customers. These Canadian customers are seeking relief by jumping into the U.S. system as a better alternative.

From the standpoint of what you should do, I can point out two things. First, assess the total volumes we are handling and hold us accountable for our commitments to add capacity to grow that volume. Second, recognize that we have processes to deal with customer issues. Examples are how we've balanced resources to deal with critical coal inventory levels and how we've balanced resources to become current on single-car past due grain orders.

Additionally, to the public policymakers in attendance, we would also ask that you assess the impacts of public policy choices on rail capacity and the rail network ability to handle volume growth. Some individual examples at play here are potential crude-by-rail train speed regulations or positive train control implementation timelines, as well as the cumulative effects of all regulatory actions over time on rail capacity.

An example of a public policy choice having a positive effect is the streamlined permitting process that now occurs in North Dakota. Thank you, Governor Dalrymple, for your support in this area, as we have installed new capacity, has very -- has been very impactful. Also, I appreciate recognition of what we've done to date. That said, we know we have more to do.

I'll finish where I concluded last time I was before you. We're going to invest whatever it takes to handle all of our customers' business, both current and future. Commissioners, thank you for this opportunity to provide a progress update and answer your questions. We are happy to address further questions that you may have.

MR. BROWN: Okay. Good morning. Excuse me. Good morning, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. I'm David Brown, chief operating officer for Genesee & Wyoming. Rapid City, Pierre & Eastern Railroad is a fairly recently created railroad company for G&W to operate -- or for RCP&E to operate, a 670-mile railroad that was -- and other assets that were acquired from Canadian Pacific around the first of the year.

Since the first of the year, we've been in an intense planning process and preparation process to begin operation of RCP&E, which started on June 1. And I must say, we're delighted to do business in South Dakota. We certainly -- We see ourselves as South Dakota's railroad, a short-line railroad that connects to three Class 1 partners.

And we, since June -- During at least the initial phase of the start-up of Rapid City, Pierre &

Eastern Railroad since June 1, the focus was to establish safe and efficient protocols and procedures to hire, train and orient almost 200 new employees and to deploy assets necessary to safely meet the initial perceived needs of the communities and customers served by the railroad. This work is largely complete. We're three months into operations.

Concurrent with the start-up, RCP&E management became acutely aware of the growing backlog of grain awaiting transport out of the state. Elevators were near capacity while facing a series of expected bumper crops through the balance of 2014. Action was taken to secure or accelerate additional crews, locomotives, and freight cars. Also, an ongoing and intense effort began to coordinate actions with connecting Class 1 freight railroads. While much more work remains to be done, over the last three weeks, promising gains have been made in addressing the backlog of grain. RCP&E employees will continue to work to improve this situation as we continue to move forward in further weeks.

I know we've heard about transparent and open communications; and I want to talk about that a little bit because one of the things that we've instituted is a very open, fact-based communication process. In collaboration, especially with Governor Daugaard and his staff, we created a fact sheet, which I've distributed. It's a one-page document that we periodically update. This is our second update, so I guess we say we periodically update it about on a monthly basis.

And I won't go through all the details; but these are the facts around the additional people that we hired, around locomotives that we, in working with our partner Canadian Pacific, have brought into South Dakota and into the RCP&E in order to increase the amount of trains that we operate, additional grain cars that have either been leased or purchased by RCP&E to increase the size of the fleet as we have seen that the harvest demands additional equipment; and we also address an operating plan change that we made at the time of a meeting with Governor Daugaard. It was facilitated by STB on August the 8th with CP and RCP&E.

And we sat down, and we created a change to our operating plan that added an additional three trains out of South Dakota on a weekly basis to our original operating plan, so essentially adding the capacity to do about 50 percent more grain movements on a weekly basis as we go forward and address the additional demand.

We also talk about our investments; and each week we update all of our constituencies around the -- whether it's the shipper community or the government agencies that we're dealing with, on the number of loads that we actually move from the state of South Dakota on a weekly basis.

So we -- we have found, as the newcomer in South Dakota, that -- we have found a very engaged community of shippers; we found a very engaged community of elected officials and, perhaps more than anywhere we operate, at least in the U.S., a very strong understanding of how railroads operate and a partnership, a willingness to understand the important vital role that railroads play in the supply chain from harvest to market.

So, again, thank you for your time and for this opportunity to update you on where RCP&E is on our new operation. Thank you.

CHAIRMAN ELLIOTT: Thank you, Mr. Brown. I have just a few questions. For CP, just a few quick clarifications of points. I just wanted to make sure -- You know, earlier you mentioned that the cancelations that occur in your new dedicated train system are initiated by the shippers themselves; and I'm sure there's some anecdotal things going around out there that that's not the case. So I just want to hear from you that you assure the shippers and especially the ag shippers here that that is in fact the case, that this is a decision by the customers themselves to cancel what are considered open orders that they no longer need. Is that correct?

MR. BROOKS: Yes, Chairman. So let me just talk a little bit about that. So, as I mentioned, number one, I have personally been involved in a number of these discussions with our shippers; and, as I stated, many of these discussions started and have been taking place for months now. This isn't as a result of the last couple weeks. This isn't a result of the last 60 days. This -- A lot of these discussions initiated back in January, February, or even before, before 2014.

As part of our dedicated program, these shippers will now take full ownership of these trains and have the flexibility to run these trains from a variety of their origins to a variety of destinations. Really, the intent is to try to create as much velocity as we can with these shippers.

So, as part of this, the shippers will no longer have requests in our network for specific spots on a given week. They will run and control these trains. So the effort has been, with the customers, to say, all right, if you're going to run X number of trains and you have X number of requests in our system, what sort of transition plan do we need to put in place to move from the request to the trains?

We weren't going to just snap our fingers and say, look, you get rid of all your requests and we'll start up, on day one, X number of trains. We've put transition plans in place over, in some cases, a couple months with shippers to say, all right, you're still going to need this many requests; and, as we fulfill those, we'll start up trains. And that's really been the process. So, yes, as I said, the allegations of forcing the cancelation is not true.

And I guess the other thing, Chairman, I'll mention, in many cases, our shippers have both train and less-than-train requests in place. And all the less-than-train requests, if they want them and they need to remain and there's demand to be filled with them, as I stated, our intent is to keep those in; and we'll fill that demand.

CHAIRMAN ELLIOTT: Earlier you mentioned that some of the requests were cleaned out because the markets no longer exist. What exactly does "the markets no longer exist" mean?

MR. BROOKS: Yeah. So one of the instances that we've found is, particularly during the fourth quarter of 2013 and early into the winter, we received a lot of requests for eastbound movements. And, largely, the market had shifted to wheat; and that was the market for our grain. Well, we struggled; and the challenges getting through St. Paul and Chicago to move that grain, you know, were prevalent and well-understood.

The issue was, those car requests that weren't filled during that time period, the markets there in many cases no longer exist. So that grain car no longer wants to go to Chicago or beyond. It now wants to be filled with corn or soybeans to go to another marketplace. So part of the effort has been saying, all right, if you still need the car, that's great. Let's get it in the system and let's get it reflecting exactly what you want to load in it, where you're going to load it from, and to what market it's going to go to.

CHAIRMAN ELLIOTT: I did notice the significant decrease in the number of open cars that you had, and I've seen other numbers over time. I saw the letter from your CEO, Mr. Harrison, that there was only a backlog of about a thousand cars in North Dakota itself. And can you describe why there's that difference in the numbers that you're reporting today? Obviously, these numbers are very important. You heard it from the prior panel that, to know really what's out there -- we would rather know the truth than what -- or at least accurate numbers.

MR. BROOKS: Yep.

CHAIRMAN ELLIOTT: Can you just describe that difference and why that's occurring?

MR. BROOKS: Yeah. So, I guess, first of all, we, you know, as I stated, have about 6,200 open requests. We expect about 2,000 of those to be trains that are in transition. The remaining leaves about 4,200. We still have a lot of work to do with those shippers to sort through, to determine when they need those, if those are valid, and how quickly we can get plans in place to supply those cars. Those discussions and those efforts are underway.

If you look at, historically, what CP has shipped based on crop production in North Dakota -- And it's simple math. If we -- If we take the crop production in North Dakota, look at the various commodities that were produced and translate those into carloads, potential rail carloads, our market share sits at 20 to 23 percent historically. So, if we do that against last year's crop, we've moved about exactly what we would expect to have moved given that mathematical equation; and that puts us right in about that thousand-car variation.

CHAIRMAN ELLIOTT: And how did you go about choosing customers that were going to be involved in the dedicated train program? Was that made available to everyone, or did you specifically seek out certain customers?

MR. BROOKS: Yeah. So, you know, obviously we have a lot of historical relationship and understanding of what shippers have facilities that are designed to ship trains or have a desire to ultimately run a train product. So it was largely that discussion with the customers, obviously, and also our knowledge of the facilities that have the capability to ship trains; and then we reached out to those shippers. We are -- We are invoking the exact same process with our Canadian shippers also.

CHAIRMAN ELLIOTT: And so, with that in mind, that means the shippers that are not involved in the dedicated train program will still be able to seek cars in an orderly manner. That will be filled by CP as well, just through a different system, a single-car system, I assume.

MR. BROOKS: Yes, Chairman. You know, part of the effort here -- And just to be very candid, with so many open requests in the system -- and I've pointed out the flaws to them, of the system -- we needed a way to really begin to segment out our two types of shipments. And what we feel this will allow us to do is take our U.S. fleet and really understand and know exactly the demand and the number of trains we need to run; and then it will also let us exactly understand all the less-than-train shipments that will be out there. And those shippers will have the ability to put in requests for the less than trains just like they have in the past.

But we truly believe it will give us a better visibility to exactly those shipments because it will be segmented out. I can tell you the operating team has -- We've instituted a 72-hour plan for all of our less-than-train shippers; and what it's done is it brings visibility up to the top of CP's operating house on exactly what our plans are to fill these less-than-train orders, how we are pecking away at them, the progress we're going to make or not make on a weekly basis. But it's really begun to provide the visibility within CP that, to be quite honest, previously under the old system we just didn't have.

CHAIRMAN ELLIOTT: And on to another topic.

With respect to the amount of money that's being spent on the infrastructure, you referenced, from '09 to '13, that you spent $700 million in this area alone. And then, '14 through '16, you anticipate spending, what was it, $400 million? Is that --

MR. BROOKS: Yeah, 500.

CHAIRMAN ELLIOTT: $500 million? Well, first of all, how much of that money specifically is going to increase capacity, that's dedicated to increasing sidings or double tracking or things of that nature?

MR. BROOKS: Yeah. So, as our CEO, Mr. Harrison, referenced specifically in Minot a few weeks back, we've got about $150 million planned in the state of North Dakota; and that is -- that goes beyond, you know, regular blocking and tackling in terms of keeping the railroad running. So that gets to the centralized train control, you know, from our Canadian property down into the Twin Cities. It gets to the point of, you know, where do we -- where do we need to extend sidings, where do we need to add sidings, all those components.

CHAIRMAN ELLIOTT: And, in light of what has been occurring in the increase in the carloads that are on the U.S. system, including what's been going on in Chicago and what happened to you in St. Paul, do you believe that that is going to be an adequate number; or do you anticipate -- especially with the increase in the economy, I assume your intermodal is picking up too -- that that will be an adequate investment to continue the flow? Or do you believe that we are in a time period where flow will just be slower than it has been in the past?

MR. BROOKS: You know, Chairman, I think that's going to be an ongoing assessment. I think a lot of it depends on -- on the markets and what develops with -- you know, on CP's franchise. I can tell you there's a -- there's a big effort to try to differentiate ourselves and find new solutions in St. Paul and Chicago. I think we expect that to be, again, very challenged coming into the fall and into the winter. We've added the redundancy to improve our route directionally through the Twin Cities; but we would be fooling you if we didn't think there was, you know, more work that needs to be done there.

You know, as it relates to Chicago, you know, we're working hard with the other Class 1 carriers, but more importantly the BRC, the IHB, the intermediate carriers there, to find better solutions because, as you stated, the traffic -- our traffic requirements but, you know, all the major carriers' traffic requirements through that corridor are expected to increase.

CHAIRMAN ELLIOTT: With respect to the employees, you said that you were going to add 400 additional employees. Are those new employee numbers on top of what you already have, or are those to fill attrited spots in the system?

MR. BROOKS: Yeah. So there's certainly an attrition factor within that that -- that we're facing. So that's across our entire network, so that's from Harvey to Enderlin and also down into our -- onto our River Subdivision down in Iowa. Mason City, Davenport and Marquette, those are the primary locations at which we're -- we're adding people.

CHAIRMAN ELLIOTT: And how many do you believe that you are adding that aren't attrition spots?

MR. BROOKS: Yeah. Okay. So we expect the attrition rate to be about 20 percent on that; so, you know, we'd be looking at somewhere of a net of, well, whatever that math is, 100 -- 150 to 180.

CHAIRMAN ELLIOTT: And do you believe that will be adequate to satisfy what's coming up in this winter?

MR. BROOKS: We do. We do. Now, I'd be

lying if I didn't say, you know, it's been certainly a challenge to get the right folks in place, particularly in North Dakota. But our operating team and our HR team has been diligent in trying to be competitive; and, as I know Mr. Harrison spoke about in our last meeting, we're working hard with our unions to try to bring some change to some of those agreements. That, we believe, will also give us some lift in that area.

CHAIRMAN ELLIOTT: Thank you. Vice Chairman?

VICE CHAIRMAN MILLER: Thank you. So, Mr. Brooks, I'm curious, going back to the issue of Chicago --

MR. BROOKS: Yes.

VICE CHAIRMAN MILLER: Well, even more broadly than that, this is something I'm curious about with the CP Railroad Company. So it's my understanding, in Chicago, that there is this entity called CTCO, which is all the railroads cooperating together to try to solve Chicago problems; but CP doesn't participate in that. Can you explain to us the rationale and how it is that, as an entity with a vested stake in how Chicago moves, CP's needs can be served if you don't participate in that cooperative undertaking?

MR. BROOKS: Vice Chairman Miller, I am going to apologize to you up front. I'm not particularly well-versed in CP's position as part of that group or not. I mean, I can tell you there's been extensive discussion with all those members; and whether or not we decide ultimately to get back in that group or not, I can't give you an answer to that. I know there are efforts being focused on with -- as I mentioned to the chairman, with the BRC, the IHB, which we utilize a lot for our interchange connections, to find -- try to find better alternatives to move that traffic through there. But I apologize. I can't specifically answer that.

VICE CHAIRMAN MILLER: Okay. So, on a different issue that's sort of related, at least as I've tried to, in the short time I've been on the Board, understand the data that is provided by railroads and do the comparisons, it's much more difficult to compare the operating condition of the CP with the other railroads because the way you're reporting the data is not comparable. And can you explain that to us and why it is you don't report it in a way so that we can make direct comparisons with other railroads?

MR. BROOKS: I guess I would need the details on specifically, Vice Chairman Miller, if there's -- if there's something -- And I guess I'm not aware of the discussions that have taken place with our management on that. But, if there's certainly something in particular that needs to be displayed or demonstrated in a different way, I -- I wouldn't know why we wouldn't consider that.

VICE CHAIRMAN MILLER: Okay. Great. We can follow up on that. And then one of the things we heard this morning from Senator Hoeven is the concern that what we need is a very specific plan and understanding of what CP intends to do and that that plan really has not been provided. And so my sense is that you might say, on behalf of the railroad, that you feel like you do have that plan in place. But I think for many of the shippers and others, to the extent it's in place, it's not clear or understandable to us what the plan is. Could you describe it in more detail?

MR. BROOKS: Yeah. I mean, again, I think this goes back to a plan that's been in the workings for ten-plus months with our shippers. And it really began with a recognition of, we don't have a good handle on demand; and part of it is this system. And why, in fact, you know, have requests, at unprecedented levels, suddenly decided to come to Canadian Pacific's railroad? We still don't have a good answer for that.

So the reality is, we've said we've got to change our system. We've got to go to the customers and create a system that says, all right, we're going to run dedicated trains. And we think those dedicated trains will give us a new product. It will give our shippers transparency. They'll know what they have. It'll create capacity. It'll allow us to use tools such as power-on on our grain trains to ensure that, when trains are lifted, they're spotted and filled in a timely manner; and then we've got power on the site to run the train and launch the train to market as quickly as possible.

As I spoke about, it's the notion of breaking out our system so we have a clear visibility to the less-than-train orders, the smaller shippers, the shippers that want to ship 25s to -- to, you know, markets across the country. So we have better visibility, and we can plan specifically around those. It's -- It's the hiring plan. It's getting people in place in locations like Harvey and Enderlin so we can protect the traffic movements. It's the ongoing capacity improvements that we have made and will continue to make through North Dakota and the upper plains.

You know, adding centralized train control from Canada to St. Paul is going to be a big capacity enhancement that has been well underway. So it's the components -- it's all those components. You know, in terms of locomotives, we've been very consistent in stating we've got a good up-to-date fleet. We've got the right number of locomotives to run the business. In terms of cars, you know, where we've needed to add cars we've added cars.

We don't see cars being the solution. The cars need to move and be brought up to a velocity to help us move more grain; and, again, we believe our dedicated train product will help do that. And then the focus we can put on our smaller less-than-train shippers should also help to do that also.

You know, I can tell you one other thing that, you know, our team is actively managing is, as we send cars -- And we hadn't done a good job on it before. But, if we send cars through Chicago and to our eastern destinations, we are now actively working and calling on our eastern destinations to get cars unloaded and get them back because that will certainly impact, on a week-to-week basis, the amount of service we can provide back here in the upper plains.

VICE CHAIRMAN MILLER: I'd be curious to come back and ask you another question about this issue of unloading cars, but I want to go back to the dedicated trains before doing that. So can you -- When you talk about these dedicated train sets and going to your customers, your shippers, how many customers are we talking about? Does that mean five major customers? Are we talking about 35 shippers? I just -- I don't have a sense of the -- the magnitude and --

MR. BROOKS: Yeah. Now, again, I've got to be a little bit conscious of the shippers. And these are all confidential contracts, so I certainly need -- need to respect some of that. But, you know, we're talking about 10 to 15 customers. And I give you a range because they're still in --

VICE CHAIRMAN MILLER: Sure.

MR. BROOKS: -- you know, some are still in discussions.

VICE CHAIRMAN MILLER: Okay. And then one of the things -- I guess, going back to your method for distributing cars and the plans to make a change, I would just say, speaking for myself from the time I've been on the Board, I've heard discussions and references to the fact that you all were looking at changing your car ordering arrangement. But, until I saw Senator Heitkamp's letter yesterday, I was not aware that you had changed it.

And so, as a member of the Board not knowing that in fact CP had actually taken the step of changing it, it makes me wonder how many of your customers in fact knew that. I mean, how broadly did you communicate that you were changing, the date when you were changing, how that rollout was going to work?

MR. BROOKS: I guess, Vice Chairman Miller, there's, you know, maybe communication or things -- There's always chances to do better in certain -- certainly some of those areas on the communication front. But, again, I'll go back and say we're dealing with a handful or a couple hands full of customers; and I sit here with complete confidence that the majority of these have been well-aware of this process for a long time and, in some cases, very collaborative in terms of their helping us create what the system looks like. And this has been going on for months and months and months. This is not new. And the intent was to have it rolled out with the new crop year, August -- August 1.

VICE CHAIRMAN MILLER: Okay. Going back to the issue of getting cars unloaded, one of the things that we've also heard is that one of the issues that's been a problem for CP is, in some cases -- Maybe this isn't the right way to characterize it; so, by all means, correct me. But shippers, particularly on the east coast, aren't getting cars unloaded and turned back around. Is that sort of a correct understanding?

MR. BROOKS: Well, as I explained earlier, a unique characteristic of CP's upper grain plains network is that we are dependent upon the eastern carriers or connecting carriers in general to reach a lot of our markets. And so, as a result, when those cars go offline, whether it be, you know, western shipments to the PNW or eastern shipments over Chicago, that dependency on that car getting out to the destination, unloaded in a timely manner and back to us is critical to our supply capability back -- back here. And, you know, certainly, as we've watched and begun to track more closely the unloads at those destinations, that is an issue that we are concerned with and are trying -- trying to address. So, yes, you've characterized that correctly.

VICE CHAIRMAN MILLER: And is this, like, slower than normal, or just a common problem but it's, you know, more concerning in a year when capacity is at such a premium?

MR. BROOKS: A little bit of both. But certainly our awareness, given capacity at a premium and our desire to try to get these cars back and get a lot of these non-trains -- it's typically the non-train markets we're talking about -- has certainly heightened our focus on trying to work with those customers to say, you know, you've got to get these cars unloaded in a timely manner.

VICE CHAIRMAN MILLER: Do you incentivize that in any way?

MR. BROOKS: On the eastern carriers, no. No, we do not.

VICE CHAIRMAN MILLER: And then, finally, I think in your comments you addressed this; but I would be curious so I'm going to be sure I'm clear about this. So the -- the Canadian government's decision to require CP and CN to deliver a certain number of cars of grain, that is not having any sort of an impact on your U.S. service? Did I understand you to say that?

MR. BROOKS: Yes, you did. And we run -- Our Canadian and our U.S. fleets are now run independently, so the cars that we have set up to meet the demand in the United States are different than the cars that we've set up for our Canadian demand.

VICE CHAIRMAN MILLER: Thank you.

CHAIRMAN ELLIOTT: Commissioner?

COMMISSIONER BEGEMAN: Thank you. And I apologize in advance. I have a lot of questions. Perhaps, as also being a former Senate staffer, we will do some of them in writing, for the record, to spare all of you. Maybe we'll take up a new policy here.

But, Mr. Brooks, not to -- You're in the hot seat, so I'm just going to keep you there for a few moments if you don't mind. But phantom orders aside, canceled orders aside, you still have a significant backlog, some shippers waiting since April. How are you serving the people that you know you have orders for? I mean, they're not all phantom orders. You know that they're not.

MR. BROOKS: Correct.

COMMISSIONER BEGEMAN: So what are you doing to focus attention to get them served?

MR. BROOKS: Yeah. So, I mean, part of it is working with those customers and understanding what is a reasonable expectation for service. Right? Is a hundred percent growth at an origin station a reasonable expectation for service? I want to serve it. That's how I make money. That's how I return to our shareholders. But is it -- But is it reasonable, and what can we do?

You know, Commissioner Begeman, admittedly we probably needed to do a hell of a lot better job of communicating what that expectation should have been with those shippers. But, regardless, yes, in that case, we're working on that backlog. In that instance, you know, where we have a shipper, in that case, that can load 25 cars at a time, you know, we have attempted to institute a plan where we're trying to give them 50 at a time. It's not the best utilization because we're going to have 20 cars -- 25 other cars sitting there until they can load the other -- the first 25 because that's what their track can hold, but it's something we're trying to do to get them caught up.

There's a couple ways to access some of those shippers. There was a comment about not working with our short-line railroads on alternative routes. Well, we are working with our short lines on alternative routes. You know, we've got the DMVW short line which we can connect both at Hankinson and at Max; so we're trying to utilize both of those interchanges more effectively to get cars, in this case, to that shipper.

COMMISSIONER BEGEMAN: So has the April train been delivered yet? Or, you're working on that?

MR. BROOKS: I believe the April train has -- has been delivered, yeah.

COMMISSIONER BEGEMAN: Help me understand the weekly reports that you've been filing with us at our request since June 20. You know, one of the reasons that we are here in North Dakota is because of your reporting. You know, you really haven't made any progress. I know that you've been serving customers, certainly some customers. You've moved about 18,000 carloads since you started reporting.

But the trendline didn't change until your customers canceled orders, for the most part, in terms of cars fulfilled or orders fulfilled. But your trendline went from a 9-week delay to what last week was a 13-week delay. That's a lot of days of delay. At what point will the delay period start going in the right direction --

MR. BROOKS: Yeah. So --

COMMISSIONER BEGEMAN: -- besides cancels?

MR. BROOKS: Sure. And so you understand, we work with the customers to fill the orders. As I mentioned, in some cases, the orders -- the old orders are no longer to markets that exist; so they don't need it.

COMMISSIONER BEGEMAN: So the days keep just piling on, and they're not ever going to be filled.

MR. BROOKS: Yeah. So we may fill an order that is actually recent because that's the pertinent movement, or the cancelations that came out were a lot of the recent orders versus the old orders. Now, again, there's no excuse; and we understand there are orders out there that are old and need to be filled and will be filled. But part of the effort has got to be getting our arms around the reality out there of what these are. And we realize we created this with our system, not our shippers. It's not their fault. So the only thing I note that we could do is sit down, literally, with every one of these folks that have these to try to understand what they need, when they need it by, and a reasonable expectation to when we can get it to them. And that's the process.

COMMISSIONER BEGEMAN: And that is ongoing.

MR. BROOKS: That is ongoing.

COMMISSIONER BEGEMAN: One of the PUC commissioners suggested that we needed a field office. Do you have a field office here? Maybe you need a field office to help facilitate and --

MR. BROOKS: Yeah. I'm right in Minneapolis, and I've got a team in Minneapolis. I've got an employee in Fargo, and we obviously have all sorts of great men and women that run our trains that are all accountable to this too. So we've got a lot of employees in North Dakota that I -- that we're going to be calling upon to help, you know, improve this communication.

You know, one thing that we've talked about, and maybe this goes to your -- to your question, Commissioner, is, you know, again, I'm going to call on myself to be accountable to improve this communication thing. And that's going to start with, you know, a biweekly call that all shippers are going to be welcome to join to sort of give a state of the -- state of the nation. And, you know, whether it's talking about the infrastructure improvements that were made and where those stand or our hiring efforts or simply where we're at, you know, in terms of expectations on filling orders, you know, I think that's part of the accountability on the communication piece that -- that we're going to start up.

COMMISSIONER BEGEMAN: Well, you know, one of the things that you didn't mention during your testimony, and I think you should have because you had been working with Rapid City/GWI since the May 31 transition. It was a rocky transition, I think, from the -- well, maybe still is a little rocky. But I know from at least last week, I think, what, 13 trains moved or so? Sort of the record number so far.

Part of that reason is because of the number of locomotives and the coordination that you have been trying to do with Rapid City. Thank you for that. Do more. Keep it up. In the first filing on June 27, one of the things that you indicated in the letter or, I should say, Mr. Creel indicated, was that GWI was planning to bring its own cars online in the fall but, in the meantime, you would augment. Is that a correct assessment, and when will that occur?

MR. BROWN: That's a correct assessment, yes. We have had some supplementary fleets, you know, brought up from CP over the fall. And, in this document, I have the actual numbers; so I'll just quote those quickly. We actually are bringing 2,089 additional grain cars to RCP&E. We have 1,175 of those online now, already in use; so there's substantially more to come. And, in the meantime, CP has been very cooperative with supplementing that fleet size so that we have a sufficient number of cars.

And, really, since that rockiest -- rockiest period in June, we have not had an issue with equipment availability. That's not been the issue. It's just been making sure we're moving trains on and off of the line at a much higher grain volume than we anticipated when we set up our planning before June.

COMMISSIONER BEGEMAN: And I believe you've moved three additional grain trains. Is that correct?

MR. BROWN: Three additional trains.

COMMISSIONER BEGEMAN: Okay.

MR. BROWN: But, you know, essentially our plan was to operate one train east a day for all commodities. So we operated -- We've added three extra trains, but we haven't really increased the volumes of any other commodities. So they're moving within ten trains at the same volume, and all the rest of the capacity is grain. So you could look at it as three additional trains for grain.

COMMISSIONER BEGEMAN: And how long do you plan to be able to do that? Until -- Until demand ceases?

MR. BROWN: Until we -- Yeah, until the demand no longer supports it. We have a commitment from our partners at CP to supply the equipment as needed to continue that operating plan into the future, I expect the rest of the year at least.

COMMISSIONER BEGEMAN: How are you doing with -- I know you indicate, on your new updated sheet, which I didn't want to read while you were --

MR. BROWN: Right.

COMMISSIONER BEGEMAN: -- talking but -- So, long-term, what do you envision for that line in South Dakota? Will you maintain ten trains per week? Will you ultimately -- I mean, given the number of cars you plan to bring on, it sounds like you're planning to grow the network.

MR. BROWN: Yes. Certainly it's, you know, based on the demand from our customers. But we see, looking at this year's harvest and the backlog that's occurred, you know, both at the farm as well as at the elevators, and looking into 2015 and thinking about the 2015 harvest coming in on the back of 2014, it's pretty obvious that this situation is going to continue well into -- probably through all of 2015.

So our plan today is to remain sufficiently resourced, especially in people; and in terms of our locomotive fleet, our plan is to continue those extra trains for the foreseeable future. We have a slate of capital projects that we have begun to evaluate in terms of new sidings and siding extensions and different -- additional yard capacity. We're also actively working on economic development projects.

So the growth potential is very obvious and strong, and we're going to continue to make certain our operating plan is robust enough to support the growth that -- the demand we have today as well as the growth we expect in the future, so certainly the foreseeable future.

COMMISSIONER BEGEMAN: (Interruption in audio.) I will have to say that I am amazed that service is as good as it is in the wintertime given that Chicago is like one big rail yard in many ways. And what I would really like to urge you, Mr. Brooks, is -- And I had talked to Mr. Creel about it when I met with him during the last months. But, you know, CP did pull out of CTCO. But it really is about communication. I think that's one thing, hopefully one of the lessons learned from the last winter situation in Chicago.

I would really urge consideration of rejoining or -- and/or how to make it a more fluid, successful operation. And, with that, I'd like to hear some of your lessons learned through Chicago in winter. And you all know we're going to have another winter. Service is going to lag. But what have you done? What, going forward, do you know that you at least will do better this time? And that question is for you too, Steve.

MR. BROOKS: Well, I think, you know, one of the items that I touched on -- And certainly I will deliver that message back to Mr. Creel. You know, one of the things that we've tried to focus on across not only my business unit but all our business units at CP, because we do expect, at some point, congestion and struggles through Chicago, is to try to work with our customers to find alternative routes. We'd be crazy not to try to come up with contingencies.

You know, we fully expect, given the automated switch in St. Paul, the contingency routing, directional routing we have through there, to improve our ability to control our own destination to and from Chicago. But, ultimately, when we get into Chicago, there will be a dependency on our interchange connections. So, as part of this, where we can find customers and commodities and routes that can go around or avoid the Twin Cities, Chicago markets, that's something we're trying to do.

And, if you look at CP's network, we've got a northern route through Canada that comes back down in the northeast U.S.; so we've been actively trying to identify all the traffic that currently routes through the Chicago gateway today that we can work with our customers to establish routes and pricings as a contingency through that lane.

We've also tried to utilize and we've worked close with, particularly in this case, the CSX to improve our interchange capability through Buffalo, again, as a means to take traffic out of the Chicago gateway to focus on other lanes.

MR. LEASE: Yeah. With respect to Chicago, really it started in, I guess, the blizzard of 2000 that led to the formation of the CTCO and then subsequently the CREATE project from there. Really, we repeated several of the lessons learned from 2000 in the last winter. Notably among those are about two-fold. Growth that occurs in Chicago has to be handled in such a way that it conforms in and around the commuter train windows that occur on almost each route that you have, which means you have to have trains very close to Chicago to be able to hit interchange slots in between the carriers.

So Steve described in detail what our capital expansion plan is for 2014. While clearly we're working on our '15 plan, which is not yet approved but is equally as robust as '14, that now contemplates an expansion away from the North Dakota area and more towards Chicago to be able to improve both fluidity over the line but also to create capacity at Chicago or near Chicago so that we can stage and hold trains, which we don't like to do, but the criticality of hitting the opportunity in between the commuter train windows is so important. You have to be close to Chicago so, when we hit the afternoon parade or the morning parade, in between you have a chance to move trains, we can move trains. So we're doing that by creating staging capability at three separate locations on our route just on the outside of Chicago.

Second thing we've learned, similar to what Mr. Brooks commented on, and we did it in the last winter, we used alternate gateways. So we took traffic flows away from Chicago, physically moved those towards St. Louis and towards Memphis for both CSX and NS connections. We actually improved velocity by taking out our own movements through that, which says how can we leverage that more fully? So we're active and underway right now with one of the eastern routes, really putting in place a connection that existed probably on the order of 20 to 25 years ago that's no longer being used in central Illinois as a way to bypass Chicago. It adds on the order of about 130 route miles; but it keeps that train out of Chicago, keeps it out of the commuter train windows, and allows us to probably improve the overall throughput and velocity by using it.

Third piece is the -- And each of you have mentioned it in your own way, and that is the critical nature of the Chicago Transportation Coordination Office, CTCO, that we were all a part of at one time. I mean, that's critically important because we do rely on two big switching carriers, the Belt Railway Company (the BRC) and the Indiana Harbor Belt. And we saw through the winter, when the BRC inventory gets above 4,000, which it was for some period of time, all of Chicago starts to slow down. Same is true with the IHB. So that means each of us have to do our part to flow traffic in and to move it out.

Now, in recent -- recent times, Canadian Pacific right now is way over their allocation going on the BRC; and each of us feel it. As they move more traffic in, there's less slots available for the rest of us. So that coordination, volume coordination of flows is really important. So it's those three things: Alternate junctions and gateways, chambering capacity near Chicago to hit slots in between windows, and leveraging our participation in CTCO. I think those are our three big lessons, no different than what they were in 2000, same thing we relearned in 2014.

COMMISSIONER BEGEMAN: Could you comment a bit? You touched on the fact that your single-car trains, that you've really -- you broke apart your shuttles in order to really get the grain backlog, ag backlog taken down to 2,000 -- I guess that is your current number. I think what you're doing is you're kind of cluing us in that the orders for single cars -- you know, people are going to start seeing a bigger backlog unless they can utilize the shuttle services. Is that what you're trying to forecast for us, because you can move the greatest amount of grain using the shuttle?

MR. BOBB: I'm really touching on a couple of -- a couple of items that are interwoven. The first is we are transitioning the fleet back to a more normal balance, so we're not doing something that we haven't done in the past. And that is we're -- we have a specific plan, as our shuttle deck decreased coming into the summer, to take those cars and put them against our past dues. So it was a lever that we could pull to go out and get caught up. As we come into the fall, we need to transition those cars back into the -- into the shuttles. So, first, being transparent that we are -- we are doing that.

Second, it is a feature of our program that, once a car is into its fourth day past its want date, it will go into what we report as past due. And so it is not unusual, as we come into harvest, to see those past dues come up. Certainly what we experienced last year was, while not historic in terms of magnitude of past dues, it was a level that -- that we wouldn't want to get back to. But we would expect, in a normal harvest year, our past dues normally -- normally to ramp up depending upon how fast the harvest -- how fast the harvest comes in.

And then the third message is, yes, our shuttle network, while it has slightly over half of the railcars in it, will tend to move approximately 70 percent of our volume as we move into the fall.

COMMISSIONER BEGEMAN: And I was trying to jot down quickly what you were saying at the time, but I may have gotten it wrong. Did you say 51 percent of your cars go to shuttle or 51 percent of elevators can be served by a shuttle?

MR. BOBB: 51 percent of our railcars, in October, will be in shuttle service.

COMMISSIONER BEGEMAN: And can you give me a sense of how many elevators are able to utilize that service compared to those that cannot?

MR. BOBB: Bob, can you touch on that?

MR. LEASE: Yeah. I think we have on the order of 6,000 origins that can load a grain car and about 210 shuttle-qualified equipped locations.

MR. BOBB: Yeah. Our shuttle -- Our shuttle network is on our website as well as the qualifications for being one. It's been developed since 2000 -- Actually, starting in 1999 is when we began developing it.

COMMISSIONER BEGEMAN: Back to you, Mr. Brown, and a bit to you, Mr. Brooks, because I want you to stay in that hot seat. When Rapid City was created on May 31, it did not really have a zero backlog, although on record it appeared to be a zero backlog because it started fresh. However, I know that at the time there was an approximately 6,800-car backlog on the old CP/DM&E line.

So you have this big backlog, even though it's maybe only in my mind and the shippers that want to be served but not on paper, coupled with the fact that you have not gotten the number of cars that you have requested from CP. I think about maybe two-thirds of the requests have been filled. Of the 5,000 you've requested since you started, I believe 3,100 have been supplied; so there's -- there's a growing gap. It seems like the backlog still remains for your shippers. At what point can it get cleared out? Or is it just a matter of the 13 trains chugging along and eventually, be patient.

MR. BROWN: Yeah. It's -- Yeah. It's -- Of course, we started fresh on June 1. G&W has its own car ordering system that's different than CP's; so we, of course, did a lot of work with our customers before that to make sure they understood how to order cars on

RCP&E. And we began using that system, which did create the impression, you know, that there was -- they were current for the period of time until their orders began to exceed -- exceed the actual loadings. And that's -- that has occurred to some degree.

We initially found the car supply coming from CP to be inadequate to some degree, which was reported. We have -- Of course, over time, that's improved fairly dramatically, which is also evident in our reportings as well as in our weekly discussions with the STB. There was -- What really occurred was there became a little bit of a backlog of loaded cars online. So, instead of having a backlog of empties, there was actually more loaded cars online than we really had sufficient capacity to handle. That's why when we --

COMMISSIONER BEGEMAN: Was it capacity, or was it crew, was it locomotives or --

MR. BROWN: It was more the fact that -- It was more the fact of the balance of locomotives between CP and RCP&E. You know, the fundamental fact is it takes more locomotives to go east than it does to go west. So, once we got in the balance and understanding and good cooperation from CP about just make sure you give us the same number of locomotives back with the westbound train that we give you with eastbound train, we can balance this out, which has happened.

At our 60-day checkup -- We did a 60-day checkup with CP, which happened to be coincidently the day before the meeting we had in Washington on August the 8th. So we met with CP on August the 7th and did a little checkup and just reworked our operating plan cooperatively with the operating team from CP. And, from that day since, we have seen a great deal of improvement in locomotive balance. So, in fact, they were oversupplied for some period of time as we worked on making sure that our horsepower hours balanced between the two railroads.

So what that says is, over about the last three to four weeks, we've largely cured the locomotive challenges that we've had; and that's allowed us to move more loaded cars offline. Therefore, that creates capacity to bring more empty equipment online; and now we begin to be able to cycle equipment on the RCP&E more quickly, because it's not a matter of the speed of loading.

When we place cars, our customers are loaded immediately. Obviously they want the cars. They have the product, so they're loaded immediately. And we appreciate that. And we're able to then go back and get the cars and decrease the cycle time of a loaded car from when it's released loaded until we deliver it to our interchange carrier, whether that be UP or CP, as far as the carload business is concerned.

COMMISSIONER BEGEMAN: When you bring cars online in the fall, will you be bringing locomotives with them?

MR. BROWN: Our fleet of locomotives is set at the number -- at the maximum number that we have ourselves. What we're doing is balancing locomotives between CP and RCP&E. So, when we send a train to CP, it may have RCP&E locomotives; but we get one back. We get one from CP to balance that. And so, if we need to adapt the fleet size to operate even more trains, then we will -- we'll bring additional locomotives to the RCP&E.

COMMISSIONER BEGEMAN: And, if you did that, would that not free up locomotives for Mr. Brooks to move more North Dakota product; or am I being too simplistic?

MR. BROWN: Yeah. Actually, what we're trying to do is maintain a -- Instead of paying each other for the use of each other's locomotives, we balance that out by hours. It's called horsepower hours. So what we're trying to do is balance that. In the initial two months, the balance of the horsepower hours was greatly in favor of the RCP&E because more RCP&E locomotives went east than CP locomotives came back west. So we have to just keep that balanced. Now, if we were to bring more RCP&E locomotives into the operation, they would essentially become locomotives that would be operating more on CP than on RCP&E, which means that there would be a problem with how the locomotive hours are balanced.

COMMISSIONER BEGEMAN: Mr. Brooks, could you -- you mentioned that last October was your record. What was that record in terms of volume or ton miles or however you wanted to clarify it?

MR. BROOKS: I'll have to look. But, in the context of it, you know, our shipments in October of last year from our U.S. franchise to export PNW, that's what I was saying, it was our largest shipment month ever for the history of the franchise. I don't have specifically the number of carloads, but we can certainly report that back to you.

COMMISSIONER BEGEMAN: Okay. And we'll have another chance to talk to you later this afternoon; so, I guess, for now I will -- I will stop. And thank you all.

CHAIRMAN ELLIOTT: Thank you very much. We will bring up the next panel. I believe it's Panel 3.

(Brief recess.)

CHAIRMAN ELLIOTT: Why don't we all get seated. I think we're ready to get started again. We have a lot more to go through here, so we want to keep this moving along. Okay. Now we have our third panel, which is coal shippers. Although, we have a surprise guest speaker. Not really. But we have Congressman Peterson who will go first; and we will begin with you right now, Congressman. Thank you very much for attending.

CONGRESSMAN PETERSON: Well, I want to thank you for coming out here and holding this field hearing in Fargo; and I want to thank the North Dakota delegation for, I guess, leading the charge to get you out here and Governor Dalrymple and our commissioner of agriculture, who I think is here, Mr. Frederickson. This has been, well, as you can see with the turnout here -- If I had a farm meeting, I might get 20 people, you know; so I think this kind of turnout shows you the concern that people have on this issue.

And back in the spring, Congressman Walz and I and Congressman Nolan sent you a letter that you have received laying out our concerns about what we're hearing from our constituents and so forth; and we're still getting those kinds of concerns. I think it's gotten better from what I can tell anecdotally, from what I hear from my constituents. But I've got a written statement for the record I'll make available. I'm not going to read the whole thing, and I'll try to be as brief as I can. And, also, Senator Franken wanted me to let you know that he has a letter that he wants submitted for the record so you know his concern about this as well.

So this has been a serious problem; and, as I said, it seems like it's getting better. I've talked to some people in my district. And this is anecdotal information. But what I can tell, the folks that have unit trains and have the bigger facilities seem to be more satisfied with what's going on, although I wouldn't say they're all totally satisfied. But that seems to be working better than the folks at the smaller elevators. And it seems like, if you're on the main line, that you've got -- it's a better situation than if you're not. So it's kind of like the crop we've got right now. It's kind of spotty. In some places, you get better response about what's going on than others.

I think that, you know, Burlington Northern has been making significant investments to try to get at the issue; and I think it's probably too early to tell just exactly how that's going to all sort out. But there is a lot of nervousness out there within the farming community about what's going to happen this fall and whether -- you know, how big of a problem this is going to be. So the fact that you're here listening to everybody, I think, is very positive. Hopefully you can sort through all of this and come up with a magic solution so that everything will get taken care of, but that's probably too much to ask for. So we just appreciate that you're here and hearing from everybody.

I think, in terms of farmers, what their -- what I hear from them more than -- And they're concerned about the availability of railcars. But what I hear from them more than anything is this basis situation that they have. And I guess you don't have direct control over that. Maybe you have some -- something to say about it. But it's a big problem. And, depending on where you're located, you know, it can be a very big problem if you're located in the wrong place. And, you know, we've got people, apparently the basis is $1.00, $1.10 a bushel, which is a significant problem. So, if you're by the river or if you're by an ethanol plant, you know, it may be not that big of a problem. But, if you're stuck someplace where you're not on a main line and so forth, it can be a real issue.

So I guess I'm mainly here to let you know that I'm hearing a lot about this from my constituents. They're very concerned about where this is all going. You know, I've had -- I've been in three meetings with top leadership of BNSF; and I think they're trying to resolve this, they're trying to address it. I don't know the ins and outs of all of this that much, but what I'm hearing from some -- anecdotally from some of my constituents is that they feel like they've gotten a better response out of BN than they have out of the Canadian Pacific. I don't know, you know, exactly why that is.

And I was just visiting with a representative of the United Transportation Union; and he was telling me that they sent a letter to CP back in January when they saw the plan that they were putting out there for this year, telling them that they didn't think this was going to work, that this was not adequate. And I think they were right, you know. So, you know, CP is now trying to play catchup; but, you know, there were people telling them this way back in January. So whatever you can do to put the heat on and make sure these railroads are doing everything they can to try to deal with the situation, we'd appreciate it.

So, again, I'll make -- I've got a much longer statement that I'll enter in the record, and you've got plenty to do. You're going to be here a long time today anyway, so I won't drag it out. Thank you for being here.

CHAIRMAN ELLIOTT: Thank you very much, Congressman. And now we will begin with Panel No. 3, which, as I mentioned, is mainly made up of coal shippers.

MR. CANTER: Good morning, Commissioners. My name is Tom Canter, and I'm the executive director of the National Coal Transportation Association. Just some quick -- by way of quick background so everyone knows in the room who we're representing and what we are, our main mission is to educate and to inform the general public as well as our own membership and governmental entities. We are not a lobbying organization. We do not take positions on legislation, but we certainly do get involved in the -- with the Surface Transportation Board and are happy to do so.

We have approximately 140 corporate members and are associated both from the coal producers' standpoint, the utility or coal consumers' standpoint, and industrial consumers of coal as well; and in the last 14, 15 years, we've had members that produce your wheels and the axles and the car bodies, et cetera. So we have a large interest. We do not have primary transportation carriers as members simply because there should be a certain arms' length arrangement. However, the rail carriers are active and participating members of all of our working subcommittees; and we do this and we think this is an important part of communications as well as education for us.

My job today is not to give you a lot of facts and details that I have collected through the association in this short time frame. Even though we did do some polling in April, we did not do polling for this particular public hearing; so I will defer to my colleagues on this panel and the later panel on coal to give you some details and some recommendations. But let's take a quick look because I think it is important that you understand where coal fits into the picture.

Since the Staggers Act, one of the things I think we're looking at, and I saw it on graphs here earlier today, is -- The good news of Staggers, of course, is not only for the economic viability of the railroads but traffic density. And we find out that, when you take a look at the corridor, we have -- through abandonment, through mergers, we have increased traffic density. And this is a good thing.

But I think the rule of thumb is, once you reach the capacity level, about 70 percent of capacity level, you're almost guaranteed to have congestion. And we've heard the railroads here just on the prior panel talk about the need for capacity increases, and we would absolutely agree. And we want to support them in every way that we can to increase that capacity; and, in that regard, I think utilities and coal producers have done a good part on providing capacity increases.

We've watched the Powder River Basin, which is what we're mainly going to talk about today because, even though the CSX has had some challenges, I think when you have a meeting in Fargo, North Dakota, we're going to talk regionally here about the Powder River Basin.

Utilities have stepped up since Staggers with private car ownership; and, in the west, we're looking at about 90 percent of the railcars, a totally different scenario than what we're talking about here with grain. Each one of those railcars today have replacement values of about $70,000 to $80,000. Our membership has about 80,000 railcars either under their control, owned or leased. That's over $6 billion of capacity that we have to the gain.

Utilities, for the most part, operate 24/7 to unload the trains. Some have even hired third-party unloaders for extra efficiency. And under tariff, we're always there or try to be always there for the railroad and at the convenience of the railroad when they arrive and when they want to unload the train and try to unload it quickly.

Coal producers are third-party beneficiaries of a contract between the shipper, which is the utility normally, and the railroad; and sometimes they don't get -- Well, they don't get to see the whole contract terms. They get to see the tariff that may be applied to that contract, which they have to accept in their coal supply agreement. And, as such, you look in the Powder River Basin, they are loading under a tariff that requires at least -- or no more than four hours to load a train of 15,800 tons on average; and they're mostly loading in less than two hours. And they're doing so with a fast loadout and a weight -- a batch weigh system that can load the coal, removes the need for the railroads to load in line with the weigh-in-motion scale, and it can load into 1/4 or 1 percent accuracy. And that's about a $20 million investment.

The coal producer also has to, at about 2 to

$3 million a mile, put in two or three loops for empty trains. All these things have helped the efficiency of the railroad. And the utilities, in addition, have purchased new aluminum cars. And so all these things, longer trains, more net lading within each car, leads to that 15,800 tons of efficient unit train loading.

However, it's painful to take that multi-million dollar asset and have it sitting on its siding. It actually makes a negative return at that point because you usually have to pay to store the car when it's laid down. So we are also interested, very much so, in system validity and velocity and accountancy. However, from a utility standpoint, from a particular power plant standpoint, cycle time is everything; and cycle time is a bit like real estate. It's location, location, location. So just because we look at some metrics that show that the system velocity has increased does not mean that my plant somewhere in North Dakota or Missouri has seen a decrease in cycle time.

Now, within this infrastructure, there's no question, you've heard it all morning. And we're not here to beat up on any particular railroad; and you're going to see from my colleagues that we're going to talk about four, not just the BN and the CP. But you'll also hear about the UP and the CN this morning relative to inadequate service. But what happens when you have inadequate service? It reduces the spot coal market, which is a hedge for utilities.

In other words, you don't want to put a hundred percent of your market into a long-term contract. You'd like to have the spot market capability. But you've changed the dynamics and the pricing of the spot market. You've changed the ability to move coal into the spot market. You may have take-or-pay contracts with your coal producer if you're a utility. You now have some legal liability to either push out or renegotiate contracts. You have to manage your coal stockpile.

Now, I've been told by several railroads that they haven't had a failure because no coal plant has run out of coal. But, to the utility, it is a failure. It is inadequate service if he has to manage the coal pile and, in doing so, either go out on the grid, pay more money at the bus bar from what he would have at his own bus bar -- or, I'm sorry, on the grid; or he has to have more expensive natural gas, if he has that capability. But not everyone has that capability. For some people, either it's coal or nothing. And it also affects grid reliability, and winter is coming.

Last year on the PJM -- not directly applicable here, but it could happen to MISO as well in terms of the interconnect capability -- on the coldest day, January the 6th of last year, only 13 percent of installed wind capacity was available. Natural gas, shale gas even, was freezing at the valve trees coming up; and deliverability was already short in New England, in any case, and Mid-Atlantic states. So, therefore, coal -- And coal that you can physically see and touch and look at out the power plant window is very important to grid reliability; and it's also important to Grandma Olson because her residential rates are going to be more stable and decrease during the winter.

I saw WeatherBELL Analytics is predicting for this winter, just based on history, not computer models and the El Nino situation, that we're looking at the possibility of another cold winter.

Equipment utilization. We do not understand -- And this is actually intercommunications. If the railroad lays down a train -- And, yes, you can go on the computer website, and you can find out that the train is laid down. But I have no idea what the intention is. Is it going to be re-crewed? Have the locomotives been removed? Is it going to be re-crewed in four days? two days? three hours? We don't know. So we ask for more communications, and that can be done on the website. And, yes, it would cost the railroads money to revamp the website; but I think it's worth it. It's part of the transparency.

And I think the vice chairman took away some of my notes by talking transparency in the opening statement, but it's absolutely true. There's a perception by the railroads that they're doing everything they can to communicate. There's a perception by the shipper they're not doing enough to communicate. So we need to work on that together. In that regard, the NCTA has put together two subcommittees. And, yes, the BN and the UP are cooperating; and I appreciate that. We're looking at forecasting and equipment utilization. In other words, what can we do to communicate better when we lay trains down? And, two, the forecasting process. We need a better set of metrics. I need to know or my utilities need to know what the cycle time is going to be next month, not what it has been over the last six months on average.

Is there a way to do that? Can I get feedback? And, yes, it may take some personnel and it will take some review by the railroads to make it happen. I think these would happen -- or these would be helpful. My recommendation is -- I doubt that there's budget for a field hearing in Denver or St. Louis for coal, but you've got a RETAC meeting coming up on October 2. I'd like to see the agenda really focus on communications and what we can do. And the NCTA stands by you. If it takes monthly conference calls, we'll be there for you to help you do that, whatever it takes. And that's all I have, and I'll defer to my colleagues.

MR. WANNER: All right. As Tom mentioned, we're going to be filling in maybe some more detailed examples of the kinds of things he's been talking about. But, first of all, I'd like to the thank the Surface Transportation Board for giving me the opportunity to speak today about some of the service problems that my company has been experiencing and their effects on our customers, and then also discuss some of the broader impacts on Western Coal Traffic League members, who I am also representing today.

My name is Dave Wanner, and I am the manager of fuel services for Wisconsin Public Service Corporation, or WPS for short. And WPS serves approximately 445,000 electric customers and 323,000 natural gas customers, primarily in northeastern

Wisconsin. During 2013, approximately 82 percent of all the electricity that we generated and 55 percent of all the electricity we provided to our customers came from our own coal-fired power plants or those that we jointly own with some other utilities. Our coal-fired power plants burn coal from the Powder River Basin in Wyoming, and all the coal is transported by rail. And we really don't have any viable alternatives.

I'm going to talk about events that began in late 2013 and are still continuing even to this day that illustrate the importance of rail to our business and our customers and also the need for improvement on the part of our rail service providers. The majority of my comments are going to be based on events that occurred at our Weston site, which is located in north central Wisconsin and is our largest source of coal-fired generation. The coal for this facility is delivered through a joint UP/CN move; so both railroads are involved.

Now, at the beginning of December 2013, our coal inventory at Weston was sitting at about 105 percent of our targeted level; so things were pretty good, and rail deliveries during 2013 had been pretty reliable. However, rail service started to degrade in December. Our December cycle times -- and

Tom talked about how important cycle times are -- increased over 25 percent compared to our cycle time average for the year up until then. And, by the end of December, our inventory had already dropped to 72 percent of its target.

Of course, by then, everybody remembers what kind of winter we were experiencing; and electricity production at reasonable prices during such cold weather is really critical to our customers. And our coal-fired plants are especially critical because they're the only major generation source where we are able to store significant fuel on site; and that guarantees consistent, cost-effective electricity for our customers. However, with rail service having really degraded, we were relying on supplementing our production with natural gas. Unfortunately, delivering natural gas into parts of Wisconsin, the prices had really skyrocketed. At times, the cost of natural gas into our territory was five times higher than the commonly quoted Henry Hub price, which was itself on the rise.

Now, our rail service continued to be substandard throughout January and February of 2014; so by the end of February, our inventory had dropped all the way down to 23 percent of our target level.

Therefore, at the beginning of March, we instituted coal conservation measures in order to avoid completely running out of coal. We also began providing weekly updates of our Weston inventory to our Public Service Commission, who by this time were very interested in the situation; and we also filed a Form OE-417 with the Department of Energy on March 6, 2014. Now, the OE-417 was filed to notify DOE of a fuel supply emergency with the potential to impact electric power system adequacy or reliability. Our coal conservation measures increased the cost of providing electricity to our customers because lower-cost coal-fired generation was replaced with more expensive alternatives.

Now, our coal conservation measures, though costly, did little more to stop our inventory erosion because cycle times continued to degrade. During the first quarter of 2014, our cycle times were more than 65 percent greater than the 2013 January through November average. Now, Weston's inventory finally recovered significantly because we had a long, planned May 2014 outage at our largest Weston unit. However, we kept coal conservation measures in place because we still weren't getting rail service; and we also were concerned about the impact that a hot summer might have on our coal inventory.

Now, initially when we talked to UP and CN, they indicated that the severe winter weather was really the primary cause of our service issues. However, after winter ended, rail service didn't really significantly improve. Our cycle times during the second quarter 2014 were still almost 50 percent greater than our 2013 January through November average. Now, we had a cool start to summer; and that helped us retain inventory to some extent. So we temporarily removed our coal conservation measures in June.

However, service still is struggling; and we have lost an amount of inventory that was equal to about 17 percent of our target during July. And another 20 percent more of our target has been lost during August. Now, as a result, we reinstituted our coal conservation measures in mid-August, which is adding to the millions of dollars that these measures have already cost our customers.

Our customers have been affected by other rail service shortfalls as well. We're joint owners of the Columbia facility, which is located about 40 miles north of Madison, Wisconsin, and which is operated by one of the other utilities that also owns part of the plant. Now, this facility is under contract with the BN, although CP is also involved as the delivering carrier in this move. Despite Columbia being served by a different railroad from Weston, Columbia has experienced the same type of rail service shortfalls as our Weston facility; and we have also implemented coal conservation measures at Columbia, which continue to this day, creating, again, additional replacement energy costs for our customers. And, of course, we're now concerned about having inadequate inventory as we head into winter.

Now, other WCTL members, going even broader, have experienced similar problems. Many WCTL members have seen their coal stockpiles depleted to the point where they also have had to use coal conservation measures. Many have been conserving coal for extended periods of time. The STB heard about such measures back in its April hearing, and here I still am talking about some of the same things.

Among the other -- Among the things that WCTL members have experienced are significant increases in cycle times in the same period in 2013; sets of railcars parked for weeks -- BNSF apparently had 100 or so sets parked sometime in June of 2014 -- an inability to add railcar sets; millions of tons of coal has been requested but not delivered; inability to plan for future periods due to poor rail service performance.

We don't know if this is going to end next week or two months from now or when. Inability to -- I'm sorry, millions of dollars in replacement energy costs; increases in dwell times at our plants; increases in interchange times; and the switching of units to alternative fuel or taking units offline or running units at very low levels just to keep them in service just in case we have some really hot weather or really cold weather.

Many WCTL members are also particularly concerned about the reassurances from the railroads, such as BNSF, that they will not let the utilities run out of coal. Well, these reassurances are not very meaningful considering that we're going to take action to conserve coal well before we completely run out; and all these measures cost our customers money.

Now, BNSF has also suggested it'll spend its way out of this problems. Matt Rose made this point just two weeks ago. However, most WCTL members have been told that service may not get back to normal until 2016. Now, other carriers, such as UP, have kind of flown under the radar on these service issues. There's been a lot of focus on BN and CP. However, WPS's situation demonstrates that problems persist with many carriers; and the Board has to be vigilant maybe with all of them.

WCTL has requested, on several occasions, that the Board require additional reporting from BNSF and other railroads as necessary. These coal-specific statistics are vital to utilities trying to understand and track the recovery of the railroads, and WCTL submits that the Board would also benefit greatly from having this kind of data. Moreover, agencies and entities charged with electric system reliability are also keenly interested in such data.

As such, WCTL requests that the Board require the following information from BNSF on a biweekly basis: The actual number of coal cars loaded; the number of coal cars requested; the average number of coal train sets presently in service, broken down between shipper-supplied private train sets and BNSF-supplied train sets; any restrictions on utilization of shipper-provided equipment in BNSF coal service; any restrictions on the availability of train crews for coal service; any shortages in locomotive power available for coal service; and the average cycle times for coal trains operating between the PRB mines and in certain key interchanges such as Council Bluffs, Iowa; Chicago, Illinois; Minneapolis/St. Paul; Superior, Wisconsin; Kansas City, Missouri; or Fort

Worth, Texas. Now, the Board should also consider requiring BNSF to supplement in detail any recovery plans it has for coal service on a biweekly basis.

As for the other railroads, WCTL requests that the Board order UP to provide interchange dwell times and yard dwell times in Illinois and Wisconsin for UP and CN as well as UP coal train cycle times from the PRB and Colorado to Chicago, Illinois; CN's average coal train speeds to and from Chicago, Illinois; and any restrictions on the availability of crews of coal service on UP and CN. Likewise, UP should provide cycle time data for coal trains moving from the PRB to Chicago, Kansas City, or Fort Worth.

WCTL also urges the Board to consider any other actions it believes will aid all the shippers impacted by BNSF's service crisis and other railroad service issues. So, on behalf of WPS and WCTL, I thank you for allowing me this opportunity to testify today. And, also, I am putting a copy of my testimony in the record; so I'm happy to answer any questions.

CHAIRMAN ELLIOTT: Thank you. Mr. Adkins?

MR. ADKINS: We're about out of it, but I still wish you a good morning, Commissioner, and I appreciate this opportunity to once again testify before the Board. My name is Mark Adkins. I'm vice president of TUCO Inc. TUCO is a single-purpose entity that provides coal transportation and coal handling services to two large coal-fired power plants in the Panhandle region of Texas. TUCO typically delivers approximately 8 million tons of coal to these two power plants under transportation agreements with the BNSF.

The BNSF and its predecessors have delivered TUCO's coal since the 1970s. Our prior contracts contained meaningful service standards, but the BNSF stopped entering -- agreeing to those several years ago. TUCO operates and utilizes ten sets of privately-owned railcars. Each set is 120 cars. With these, we deliver about 8 million tons of Powder River Basin coal to Wyoming. Including the spare cars, our fleet consists of approximately 1,300 rapid discharge and gondola cars. This fleet of cars has a value of about $85 million.

I appeared before the Board and testified at the first hearing in this proceeding on April the 10th. At that time, I made reference to what could best be described as poor rail service. In January through March of 2014, TUCO's cycle times were 124 percent of expected/historical values. These high cycle times translated to lower coal stockpiles at the plants. Since that April 10 hearing, TUCO has experienced month after month after month of even higher cycle times. Average cycle times for August were 170 percent of expected/historical values. This can only be described as horrific rail service, if you could consider it service at all.

BNSF has declined our request to put additional equipment, either privately-owned cars or railroad-owned cars, into service to make up for the extremely long cycle times and increase our coal inventory. It has now become common for BNSF to park our trains without notice, either before or after the fact. TUCO routinely discovers that a train, usually a loaded train, has been parked when one morning trace of cars has been compared to the prior morning's trace. There's no voice mail. There's no e-mail. There's no text message, nothing. It's just parked. I found out this morning I had four sets out of the ten sets parked. Yesterday, it was just two sets. But anyway.

When questioned about this lack of communication in another forum, Matt Rose of the BNSF reportedly replied that shippers could go to the BNSF website and find out where their cars are located. One of the things you can't find out on this website is what the disposition of these cars and these trains is to be. Are they going to be parked there 24 hours?

Are they going to be parked 48 hours? Are they going to be parked there over nine days like one of our trains was last month?

So you have to remember that TUCO is -- we're using privately-owned railcars -- these aren't BNSF sets -- to deliver the coal. Parking one of my trains involves setting an asset that's valued at 8 to 9 million dollars on a siding, usually awaiting power, sometimes crews, sometimes both. Power and crews are referred to as critical resources.

I can certainly empathize with all the ag folks that are here today, as my family has been involved in farming and ranching for multiple generations, mostly in Kansas. And I -- And I certainly enjoy consuming the products that result from these farmers' and ranchers' hard work. Review of the August 29 edition of the 2014 Grain Orders Update as provided by the BNSF shows the 2,029 past due cars and 2,285 filled order cars. I just want to give you a little perspective.

BNSF's coal shippers utilize an online coal forecasting tool to communicate the quantity of coal to be loaded each month. We communicate this to both the coal producers and the railroad. These quantities are referred to as coal nominations. January through

August of 2014, TUCO nominated 5.9 million tons of Powder River Basin coal. During that same eight-month period, TUCO received only 4.2 million tons, a shortfall of 1.7 million tons. That's equal to 14,300 railcars that are past due. To help you visualize this, if you could put all these cars together end to end, it would form a line of cars that would stretch from the STB's E Street office in Washington to Independence Hall in Philadelphia; and you would still have enough cars left over to circle the block a few times while you looked for a parking place.

BNSF has stated on more than one occasion it will not let any utility run out of coal. In the first place, why should the fate of the electricity supply of a region of Texas or anywhere else be put into the hands of a single railroad? But, in any event, how will BNSF make good on its promise? Will they add additional BNSF resources to the mix? I don't know. If you assume for a minute that a power plant has reached what BNSF considers critical inventory level -- that's ten days of inventory -- and then a significant weather event like the October 13 blizzard in the Powder River Basin occurs, what then?

That blizzard shut down coal production and train loading at some of the mines for three days and prevented BNSF crews from getting to the trains. Recovery from a disruption like that can take a week or longer. If BNSF is the only railroad allowed to serve that utility, running out of coal could become a reality. What are BNSF's plans to address extreme weather events during the winter of 2014/2015? Weather forecasts for much of the BNSF territory seem to indicate below-normal temperatures and higher-than-normal precipitation; but other ones say it could be above-normal temperatures and below-normal precipitation.

On August the 7th, TUCO sent a letter to Fred Forestall and Gabe Meyers at the STB's Office of Public Assistance. We summarized the current state of affairs between TUCO and BNSF and requested assistance in getting better service from the BNSF. This letter followed a meeting that we had with Mr. Forestall and Mr. Meyers in April. It's too early to determine if their contacts with the BNSF will result in improvements to the situation, but TUCO is not optimistic.

As part of my April 10 testimony, I asked the Board one question: What is the BNSF's Common Carrier Obligation to its customers? Surely, in the case of TUCO, the BNSF is not meeting it. TUCO is reviewing its options available under its contracts to rectify the current situation. TUCO is also asking the STB to take more forceful action in making BNSF take steps that are necessary to improve transportation of coal to TUCO facilities. Some of these steps may include specific commitments to dedicate the new -- the necessary crews and equipment to reduce its cycle times to historical levels and to help us re-establish inventories to acceptable levels. Obviously things need to change.

Finally, as I have stated previously, TUCO and the power plants it serves have been around since the 1970s. They have experienced the passage of the Staggers Rail Act of 1980. We've experienced the benefits of real competition and rail transportation contracting that followed immediately after the passage of the act, and then we've also experienced the consolidation of the rail industry and the diminishment of competition and contracting for PRB coal service to the point where we are today. We're to a point where BNSF can mismanage its business to the point that coal plants are on the verge of running out of coal, but the options for averting that disaster are almost exclusively dependent on BNSF's ability and willingness to act.

TUCO submits that this latest service crisis highlights the need for the Board to take steps to counter the harm caused by rail industry consolidation, such as improving the ability of shippers to obtain access to service from other railroads using the tracks of the railroads that cannot meet their legal obligations to serve. I thank the Board for its willingness to continue its investigation into this rail crisis, and I also thank you for the time allotted to me today.

CHAIRMAN ELLIOTT: Thank you, Mr. Adkins. We'll now hear from, I guess, a late addition, the Basin Electric Power Cooperative, Mr. Tomac.

MR. TOMAC: Yes. Thank you, Mr. Chairman, Chairman Elliott, Vice Chairman Miller and Commissioner Begeman, my name is Steve Tomac. I work for Basin Electric. I'm here today on behalf of Basin Electric and our subsidiary, Dakota Gasification Company. First of all, as Mark indicated, good morning or what's left of it. You know, we have long advocated -- And we really appreciate your presence here today because we've been long advocates for a more engaged board when it comes to taking proactive action for protected -- for affected shippers. Your presence here is appreciated and very timely.

Basin Electric is a member-owned wholesale generation and transmission cooperative. We serve approximately 2.8 million consumers and 137 rural electric co-ops in nine states. While many in the energy sector look at this issue from a singular perspective, most of our member owners are at the end of the line -- at the end of the line are the very ag shippers who are facing long waits for rail service. We support our members as they air their concerns and service issues with the railroads.

Our concerns today are really two-fold, and I'll consolidate those into two categories: coal deliveries and shipments of products. First, on the -- with respect to the coal deliveries. I want to make it clear that we appreciate that the Burlington Northern Santa Fe has been trying to work with us. Last December, our Lee Olds Station near Stanton, North Dakota, was 19 days from shutting down due to dwindling stockpiles. To return the stockpile to an acceptable level, we spent 30 days trucking coal to the plant, hauling up to 250 loads per day.

Last spring, Burlington Northern brought on an enhanced third crew, which helped. With our stockpile facing similar problems in recent weeks, Burlington Northern has stated they will resume enhanced service this fall to help rebuild our stockpile to the 650,000 target that we have. We trust that they will deliver on that promise.

Also, with respect to coal, the Laramie River Station in Wheatland, Wyoming, which we operate, is the only other coal power plant receiving coal by rail that we operate. For much of the spring, our stockpile held enough coal in reserve for roughly 17 to 19 days of operation. That level recovered substantially last spring and into the early summer due to an outage of one of the three units that we operate there.

Burlington Northern has given us assurance -- Now that all three units are back in operation, Burlington Northern, BNSF has given us assurances that we'll return to the 136 car units that we have had in the past. Again, we're hopeful that the promise will be as delivered -- delivered as promised.

On product shipments, it's a little bit of a different story. Dakota Gasification Company is a unique part of our operations. It's a mine-mouth facility that converts lignite coal into natural gas. It's located north of Beulah, North Dakota. In addition, the natural gas is delivered by pipeline; and it's a one-of-a-kind facility in the United States. It was built during the Carter Administration. Twenty-six plants were originally going to be built. One got built. It was adjacent to our Antelope Valley Station there, and it has a lot of synergies with our Antelope Valley Station. We acquired ownership of that in the late '80s.

In addition to the carbon dioxide -- We produce a number of coal products there. One of those is carbon dioxide that is pipelined and sequestered in Canada for enhanced oil recovery. The facility also produces a number of other coal products such as anhydrous ammonia, phenols, cresylic acids, kryptons, ammonia sulfate fertilizer, and tar oil. All of these products are shipped either by truck or rail depending on their final destination. But I think it's noteworthy to mention that, in 2002, we shipped nearly 80 percent of those coal products by rail; and in 2013, that dropped nearly in half to just 48 percent. The local rail crews at that facility are really great. They show up when they say they will, and they do as we request. But it takes too long to get the product to the consumers and get those cars back.

Since 2010, DGC, Dakota Gas, has been -- has seen drastic increases in transit times to all products. For example, in 2014, we began shipping an additional 30,000 to 50,000 tons of ammonia, anhydrous ammonia by truck rather than by rail just to keep up with the demand. But the most extreme example is the tar oil movements to Bayport, Texas. We based a lot of our decision based on the -- our delivery assumptions on last year's cycle times for those cars; and so we invested nearly $40 million or are investing that into facility upgrades so that we could produce more tar oil.

But, since last September, cycle times have jumped from 30 days last September for a cycle time on those cars to more than 50 days. That's just in one year or a little less. That is -- And so, because of that, we are shipping only 60 percent of our contract to Bayport, Texas. These delays have resulted in more than $17 million in lost revenue since July of 2013. We've also contracted, for $3 million, to lease an additional -- a hundred additional railcars to allow us to meet those demands. But this congestion is forcing us to actually burn the tar oil in our boilers rather than market it because we simply cannot get the product to the market on time.

In addition, you should also know that Dakota Gas is investing $400 million to build a urea fertilizer plant. This type of plant is sorely needed in the region and is in high demand for our agricultural customers. Our urea plant, when it's completed, is projected to ship 40 percent by rail. Shifting to urea means we will be shipping less anhydrous ammonia. Good thing. Reducing shipments of the TIH material by rail is really a good thing, but we need the confidence to know that we can ship the urea and have it delivered to our agricultural users in a timely fashion.

Finally, another one of our subsidiaries is the Dakota Coal Company, which handles lime deliveries from our Frannie Lime Plant in northwest Wyoming. Lime is an essential product used in the power plant emission scrubbers and water treatment facilities. Lime is also used in the purification process for sugar beet production and other industrial and environmental uses. Cycle times and lack of services required shipping more and more of this product by truck rather than by rail. Rail disruptions for one product can have ripple effects through the entire economy.

Thank you again for coming to North Dakota and hearing our concerns. I think we all want a robust rail economy because we rely on it so much. We have a cordial working relationship with the railroads and hope that the public hearings like this bring the much needed attention to the rail challenges we are facing, and maybe together we can find a mutual solution to this.

I think, in closing, I was struck by what Commissioner Frederickson from Minnesota had to say. It seems to me that, you know, obviously the Burlington Northern is delivering more. They've got more product to deliver, and they're delivering more. But it seems like we're in a "trust but verify" situation. We are made promises, and now we just need to verify that. We have no choice but to trust, but we appreciate your help in verifying that. Thank you.

CHAIRMAN ELLIOTT: Thank you very much to the panel for their presentations. It was very helpful. It gives us a better perspective on what's going on with respect to the Powder River and coal train service throughout the country. I understood from several of you that most of your train service is based on contracts. Have you tried to work with the railroads at all on suspending some contract obligations to possibly receive coal through other avenues? Has that been explored at all?

MR. ADKINS: I think some utilities have agreed to what's called going out of route and increasing cycle times to help the railroads out and doing a few things of that nature. And, in turn, I don't think they've been able to add unit trains into the system, in other words, get more train sets.

CHAIRMAN ELLIOTT: I see.

MR. ADKINS: But, you know, that's good for everybody if we can do it.

MR. WANNER: Yeah. We've had discussions also on maybe trying to avoid Chicago, come up with different interchange points. But, at this point, none of them have really come to fruition at all.

MR. TOMAC: I think the remedy --

CHAIRMAN ELLIOTT: Go ahead.

MR. TOMAC: From our perspective, the remedies have been suggested. We've visited with them. The remedies for the Laramie River Station are to get back to 136 sets, and I think that we're at -- currently delivering at 125 or something. And that would be helpful. They've agreed to do that. Again, we're waiting for that to happen. And for the Stanton Station, which is located here in North Dakota, we needed that third set -- third set to begin deliveries to the Lee Olds Station. And they've agreed to that, but we're again waiting for that to happen.

CHAIRMAN ELLIOTT: Okay. You've painted a fairly gloomy picture with respect to service. And what do you anticipate as we go forward here and when we get into the winter months? It sounds like your inventories are down, your cycle times are down. It doesn't sound like they're significantly improving based on what I'm hearing from this group. You were mentioning reliability of the grid, the electric grid. Do you see any serious concern about the reliability of the electric grid as we go forward here based on what you've been telling us?

MR. WANNER: Yeah. I mean, you know, we're definitely concerned; and I think a big part of it is just the lack of transparency. You know, we would plan -- we'll plan way differently if we know we're going to have service issues that last a month -- I mean, that's part of the reason we have inventory -- as compared to service issues that are going to last nine months like this has. You know, we can -- we can attempt to take measures to conserve coal maybe earlier if we think it's going to be very lengthy in duration and maybe have less overall costs to our customers than if we keep hearing, "Yep, things are going to get better, things are going to get better" and then they don't. And then all the sudden we have to kind of panic, if you will, and put some extreme measures in later. So I think there's just -- there's just a lack of transparency, I think, as to when this is going to get resolved; and I don't have an answer to that.

CHAIRMAN ELLIOTT: Do you think we can help by supplying more information? I think you referenced that.

MR. WANNER: I think that that could be a possibility.

CHAIRMAN ELLIOTT: Okay.

MR. TOMAC: I think, with respect to, again, our -- Mr. Chairman, I think your question is a very good one because the reliability of the grid is going to affect us all. And, you know, we don't need to go back until, oh, the last January when we had the polar vortex and what we saw happen with the natural gas situation during that period of time where gas prices spiked, went unbelievably high. You know, with respect to coal, though, you know, the stockpile gives us that insurance against that. And so you're very perceptive with that.

We recognized sometime in last October or November that we were going to be short based on the turnover or based on the number of sets we were receiving at the Lee Olds Station, and so we did similar to what Dave mentioned. We implemented a drastic measure, and we began trucking coal that 8, 10, 12 miles, whatever it is from the Stanton -- or from the mine north of Beulah to Stanton. And so we had to implement emergency measures to get that.

But we also understand that, during the middle of the winter, there are service issues that even the railroad has no control over. The cars cake. I mean, they froze -- the coal gets frozen in there. And so there's service issues that we have; so we need some better planning and better service early on, which is, I think, what David is suggesting.

CHAIRMAN ELLIOTT: Thank you. Commissioner?

COMMISSIONER BEGEMAN: Thank you all. I very much appreciate it. Some of you are repeating things that you told us a few months ago, but it is perhaps even more important now and can inform your planning for the months ahead. The illustrative, I guess, calculation that you provided us, Mr. Adkins, about the 14,300 carloads behind, so what have your utilities done in the meantime? Is it that they had such a stockpile in advance that they were able to make up for that or --

MR. ADKINS: We typically kept a little bit larger inventory than maybe the target inventory just because -- I'm an old guy, and I've been around a long time. And bad things happen. They always happen. Something happens. Weather, flooding. You could have mechanical breakdowns at the mines or the -- or the plants. So it's just -- That's an insurance policy. Those have been depleted.

COMMISSIONER BEGEMAN: Because, I mean, I think collectively -- I don't want to put words in your mouth, but certainly two of you were not really enamored by the fact that BN committed to making sure that no utilities ran out of coal. I, for one, actually commend them for that being their first priority for you. Certainly that doesn't mean that you don't need additional stockpiles. But I don't want them left with the impression, from a lack of comment from -- at least from me sitting here, to go ahead and let them run out and that we're not going to care because that would be devastating.

You know, I'm curious to -- given what the current administration has been proposing with coal going forward, you know, obviously you have to have that in your planning. Maybe things aren't all a done deal yet, but you're probably in the midst of planning alternative energy supplies. And I'd like to hear from you as far as how you've expedited that or how -- You know, you're kind of getting it from all sides, from not getting the service that you need to ultimately maybe being told you can't even burn the coal at the facilities that you have. So what are you doing in terms -- beyond just your service problems, as far as planning to keep the lights on for your customers?

MR. WANNER: Well, we're still planning to have coal. I mean, we have kind of -- are looking -- Of course, it's way too early to see what's going to happen exactly with that clean power plan, if that was one of the regulations you were referring to. But, you know, at our Weston site in particular, we have a plant that first went into operation in 2008. It has all the latest emission controls on it, and that plant we certainly expect to run very much going forward. We have another large unit at that site that we're in the midst of installing pollution control equipment on it. Again, we expect that plant to run very much going forward. So we will certainly work around whatever rules come out, but we definitely expect some units to be running definitely well into the future.

MR. TOMAC: Commissioner Begeman, again, that's an excellent question. We feel a little bit --

COMMISSIONER BEGEMAN: That means it's not.

MR. TOMAC: I mean, we could give you a whole day on this thing because we find ourselves in a unique situation probably not unlike the Burlington Northern Santa Fe in this respect: We serve the Bakken also.

And the load growth in the Bakken is going to be -- Just for the Bakken, I think our latest forecast is somewhere on the -- over 1,000 megawatts by 2025. So we need to find an additional thousand megawatts.

Unfortunately, with the current administration's proposed 111(b) and 111(d) rules on carbon capture -- on carbon intensity, we find ourselves in a situation where we can't finance additional coal plants, or the private industry won't; and so the only alternative is natural gas. We have built or are in the process of building six 45-megawatt peakers in the Bakken area just to fulfill and stabilize this region until we can get additional transmission into the area.

We've also put out an RFP so that we can -- looking across the country or within the local grid, if you will, to see what's available. We also have plans for two combined cycle plants, and they're very preliminary at this point in time. But one somewhere in the central part of North Dakota, a 500-megawatt combined cycle plant, natural gas fired, which is located in central North Dakota; and I believe we're looking at something in the states of Wisconsin or Minnesota in a partnership with a combined cycle plant also.

So we are reaching out. We've got a planning process with a 10- to a 15-year window as to how we address that need. Coal will continue to be a substantial part of that. We currently have about -- Almost 20 percent of our generation comes from renewables, a bit from natural gas, a bit from nuclear by a plaint in Iowa; and the rest would come from coal, which is in that 60 to 70 percent range in rough terms. That will continue to -- We continue to depend on that, those same coal plants, and will until probably 2030 to 2040 when some of those plants reach their age where we'd have to make some determination on that.

Keep in mind that most of the coal -- most of the coal generation facilities for the cooperatives were built in the mid-'80s, partly due to the Fuel Use Act passed in 1978 when we had the last natural gas shortage. So our coal plants are relatively young. They're very, very environmentally controlled. They've got the latest technology, and so we're doing the best we can to keep those up and reliable.

COMMISSIONER BEGEMAN: And my last question is this: What is your current stockpile level? I mean, how many days out? Is it -- Are you reaching a desperate situation? Which I don't want you to do. Or maybe you want to talk more from your membership, from the membership from the league.

MR. WANNER: From, I guess, our individual standpoint, we -- you know, as I had mentioned, we had done some building when we had our largest unit out in May. And we have been degrading since, but we're not back into crisis mode at this point. But it's just that we're kind of heading back that way. That, I think, is the most disconcerting with winter coming.

MR. TOMAC: I would add to that this point: Keep in mind that the -- I think measuring the stockpile today is a good barometer, but keep in mind that the spring and the fall are our catch-up months. The heavy, the peak use for electricity is the summer peak and the winter peak; so these are our catch-up months. These are the months where we have an opportunity to increase our stockpile. If we can't increase it at this point in time, it's not going to happen and we're going to be in a crisis situation. So we need to be moving today, now through the first of November, because who knows when winter will set in. We have an acceptable stockpile at both facilities that are served by rail today; but, again, we're concerned as we get into the winter months. If we get another winter like we did last year, we could be in a critical situation.

COMMISSIONER BEGEMAN: And just one last question for you; and, of course, then you -- You had mentioned the two, I guess, commitments from BN right now, that you are hopeful. And at what point will you know whether that has been successful, the delivery time? Or should I wait for the last panel to tell me that? You must have a ballpark as far as --

MR. TOMAC: You know, we're monitoring this on a daily basis. To be honest with you, Commissioner, I'm not sure whether we make an assessment September 15 or October 1; but sometime in the early fall here we'll -- we'll re-analyze that. We'll continue to communicate with them and -- and continue to put the pressure on.

COMMISSIONER BEGEMAN: All right. Well, let us know if it --

MR. TOMAC: We will. Thank you.

COMMISSIONER BEGEMAN: Thank you.

CHAIRMAN ELLIOTT: Vice Chairman?

VICE CHAIRMAN MILLER: So I'm curious, following up on Commissioner Begeman's questions. So generally, when you're thinking about the number of days of stockpile that you want to have available -- And I appreciate the point you made, Steve, that it's not so much what you have today but being prepared for

winter. But how many days would make you comfortable?
MR. TOMAC: You guys eluded to some contractual arrangements you had.
MR. WANNER: Well, you know, and, actually, this whole thing that we've been going through is actually making us re-evaluate our inventory policy; and, to some extent, maybe it's a little bit of a competitive -- competitive-type issue to put exactly a number of days necessarily. But, like I said, we have been looking at increasing that number. Now, certainly, you know, you hear some of the -- I think the categories that maybe the railroads -- You know, 10 days is a crisis; 20 days is another category; 30 days is kind of another. And, if you're over 30, then that's the lowest priority.
VICE CHAIRMAN MILLER: That's what you're being told by the railroads.
MR. WANNER: Well --
VICE CHAIRMAN MILLER: That's kind of the way they're looking at that.
MR. WANNER: Right. But, from -- from our perspective, 30, you know, used to be a -- used to be a reasonable number; but we don't think it is anymore.
VICE CHAIRMAN MILLER: So, among other things, if the railroads are making a commitment to say

that, when it gets critical, we'll see to it that your needs are met, would you want to communicate to them that, you know, the point at which in your view it's critical is sooner than when they think it's critical?

MR. WANNER: Well, we talk to the -- I mean, we talk to the railroads' operations people, you know, obviously every day. Every time, you know, we look and a train gets set down, you know, they might not tell us. But we check, and we call them and ask why. So there's those conversations. We have conversations every week now throughout this thing. They know exactly, actually, what our inventory is; and they know the issues going into the winter. And, you know, I think there's -- there's a lot of communication that we're having with the railroads over our inventory and where we think it needs to be. So they certainly know that ten days is not the time to start concentrating on it.

MR. CANTER: Commissioner, maybe I can comment as a non-producer. It is something of a competitive issue because you're going to be selling into the bus bar or into the grid. And, if you have coal, you might be able to sell your electricity when other folks don't have it at, let's call it, a phenomenal price. If you don't have coal in your stockpile, you might buy it on the grid at a phenomenal price. And so that can have quite a competitive effect that may have not existed 20 years ago, but it certainly exists today with all the interconnect systems and the larger interconnect systems.

Every plant may have a unique what is normal and a prudent amount of coal in terms of days of coal burned on the ground. Do you have natural gas as a buildup -- or as a backup in your system? Do you have natural gas on the same property? Are you a plant that has no natural gas nor any hope of getting natural gas to your property? And so, therefore, if you run out of coal, you've ran out of electricity as well. So they have to make those decisions on what's normal.

And then you have the public service commissioner telling you, well, you know, you really should have fewer days on the ground because it costs money and it costs money to the consumer to have it. And so it's going to be an ongoing issue. But I've also seen, since April, not every utility is going to increase their stockpile on the ground because they have some -- they may feel like they have alternatives. But I'd say 20 to 30 percent are saying, "I have a new normal."

VICE CHAIRMAN MILLER: Mm-hmm. Mr. Canter, you made the point that your industry basically has made a $6 billion investment in railcars, plus there's been extensive investments made in terms of being able to load coal quickly, measure it, all of those sidings and those kind of things. So, when those investments were being developed, what sort of dialogue or contractual discussions did you have with the railroads? I mean, in terms of making that sort of an investment and commitment to help secure your transportation, did you get service commitments in return from the railroads?

MR. CANTER: Again --

VICE CHAIRMAN MILLER: Was there dialogue about whether or not they would make that investment for railcars rather than the utility industries making that investment?

MR. CANTER: Those investments started probably in the late '70s and early '80s when the railroads simply didn't have the money pre Staggers. And then we saw also, in the east particularly, if you were to put in a better and a fast loadout, the railroads would contribute some money, or if you -- because you had short and less-than-train loads and smaller loop tracks in the eastern, you know, haulers there in West Virginia and Kentucky.

And so they would actually contribute some money, or they would let you pay it off on a per-ton basis. They would put up the money because they would encourage a smaller co-operator to go ahead and build a fast loadout. It may not be a batch weigh system, but it would be a flood loader, which they didn't have before. I mean, you had the old-fashioned tipples into the '70s as time was moving on. And then they wanted to get longer train sets, go to 100 cars, 110 cars in the east again so that they would look for the loop track.

When the west got started in the Powder River Basin, there was all this land; and it just started out with a better system. But then they started doing multiple loadouts. And, yes, the railroads did work with the coal producers to go to two and three loop tracks on a particular property; and so that was kind of an understanding between the parties. But, for the most part, the coal producers looked at their customer, their customer base; and this is what they wanted to do to get the capacity to move that kind of coal. You're talking 400 million tons out there.

VICE CHAIRMAN MILLER: So I would be curious. Really maybe all four of you might want to comment on this. I mean, certainly I've heard from some of the grain shippers, you know, this feeling that it's sort of an unfair playing field in terms of how the contracts are written and the negotiations. You know, there's a demurrage charge if the shipper doesn't do what they're supposed to do; but if the railroads don't deliver, there's no reciprocal break on pricing or whatever. And I'm curious what your reaction is to that. Does it feel like you negotiate with the railroads in a -- In the environment in which you have to negotiate with the railroads, does it feel like it's tipped in the balance of the railroads?

MR. CANTER: I guess, as an example, it just seems like a lot of times when the contract comes and you go through contract negotiations with the railroads, you're provided a PDF document, not a Word document; and you can't do a whole lot with it but -- And that's because of being a captive shipper. But it's not that bad. It just sometimes feels that way, I'm sure.

MR. WANNER: I would say, you know, it might depend on when you -- when you last renegotiated your contracts. But I think, starting maybe around 2005 or so, I think we started to see that the railroads became increasingly assertive, if that's the word, over contract terms in general. And I think there's been a significant amount of degradation since then on service standards and things like that, from my perspective.

MR. ADKINS: It's pretty much one-sided. I mean, they cite the documents that are in place. Then that's how your demurrage is determined, whether it's $600 an hour. And they will charge me $600 an hour if I have a mechanical breakdown in an unload facility, but there is no reciprocal penalty if they park one of my trains for five days, you know, so --

MR. TOMAC: That's a good question. I'm not sure that -- I think maybe, for the most part, the ag guys find themselves in a little different situation. I mean, we have a process in place that's very expensive to -- I guess I can't comment on that. That's the ex parte $9 million and 9 years later, so we'll leave that alone. But I -- I -- I'll stop there.

VICE CHAIRMAN MILLER: And then several of you had mentioned this issue of, you know, communications, transparency, data. And, Mr. Adkins, you made the point that one of your train sets might get parked on the side of the road. You don't even know about it. You're not even given any information. So what I think might be helpful if you could each do, to the extent maybe one building on the other, lay out the kinds of communications you would like to have from the railroads that you are not getting now, that, if you were getting it, you think might make your situation better.

MR. ADKINS: Well, we can get information. There are great employees at BNSF. But we have to take that initiative. I mean, they take my asset, they park it, and I have to find out about it through my own efforts. But then you can contact the operations people, and they will tell you generally what the situation is, whether they're waiting on crews or power and what -- typically what the plan is, that we're gonna pick it up tomorrow afternoon. And so you can get the information that you need.

As David pointed out, you don't get the forecasting information for down the road of how you can expect those sets to run because you just kind of have to look back and kind of apply that information to, you know, take it forward as to if your cycle time is going to be eight days or if it's going to be twelve days or five days, whatever.

VICE CHAIRMAN MILLER: So, Mr. Adkins, are you saying, since you know who to call at the railroad and you have direct contacts, you don't really need any additional information from the railroads? You know everything you need to know?

MR. ADKINS: No, you know, because sometimes it doesn't work out. Then you've got to go back and say, "Okay. Well, it was supposed to be picked up yesterday. Why isn't it? Where is it? What's the next plan? That one didn't work so" -- But it's not -- it's not a matter of integrity or anything. It's just -- It's a very complex operation they run. There's no doubt about it. It's hard. You know, if it was easy, everybody would want to do it. But I certainly don't.

MR. WANNER: Yeah. I think I -- I agree pretty much with Mark that you can always, you know, once you find out your train is stopped -- Which you can, like he said, if you look on your own. You can call them, and they can -- you can have a conversation. But, again, it's kind of a -- You know, it's not like you pull a car off to the side of the road because you have to put gas in it or something like that. I mean, you have discrete crews, discrete other movements, you know, trains crossing. So sometimes if a train gets set down, it could be -- it could be 24 hours, 36 hours before they actually have a situation where they can get a crew on it at the right time to move it. So I don't think additional reporting on an individual train basis would really add anything that we can't already find out.

MR. CANTER: Well, I'm just in Camp Swampy sometimes and don't have the access, you know, to ship coal since I don't ship any coal. But I think I get a lot of feedback that folks would like to have more information on their cycle time forecasts. And maybe that's not possible. We're asking for predictive cycle times. But how can you put in a forecast of the tonnage that you're going to ship next month with the unit -- the trains that you own or control if you don't know what the cycle time is? And the cycle times you're using is what you've -- is up on the website. So that's a complaint that I have. I don't know how big of a deal that is, and you can work around it. But it makes it hard, other utilities tell me, for them to plan.

VICE CHAIRMAN MILLER: So, Mr. Wanner, the kind of last question. You laid out some additional information that you would like to have in your testimony.

MR. WANNER: Correct. Right.

VICE CHAIRMAN MILLER: I couldn't write fast enough to write it all down, but I figured that we could get it through the testimony. But one of the things I'm wondering is, you know, if you had all of that information, how would you see that helping your members and what would you see as the benefit?

MR. WANNER: Well, I think, you know, the benefit would probably be in trying to do some kind of planning. Or even if we looked at the information over time, are things moving in the right direction? the wrong direction? And we're focusing a little bit more on coal service. I think some of these numbers that we get in aggregate don't necessarily reflect what's happening or what's going to happen to us. When we see the railroad overall is moving more cars or even overall is moving more coal cars, that doesn't really speak necessarily to the corridors that are affecting my clients.

VICE CHAIRMAN MILLER: So, in some ways, maybe some of the information that's out there now is the right sort of information; but you need it provided in a more granular way.

MR. WANNER: Yeah. I think that would be a very good way of putting it. Yes.

VICE CHAIRMAN MILLER: Okay. Thank you.

CHAIRMAN ELLIOTT: Thank you very much for coming today. Why don't we just call up the next panel, Panel IV. It'll be a little bit before we get the commissioner back.

(Brief recess.)

CHAIRMAN ELLIOTT: Okay. I think we are ready. We have the next panel, Panel IV, another ag panel. But, before we start this panel, two things. Number one, I think Senator Heitkamp is on her way; so we may stop in the middle of this panel to let her go. Also, I wanted to let everyone know, for those of you who do not know, and I'm sure a few of you will be there next week. But we do have the National Grain Car Council meeting next week, I believe on Thursday, in Minneapolis. So I do urge you, if you are interested in hearing more about the circumstances with respect to rail service and grain cars, to also attend that meeting. It's a public meeting, so that will have more discussion of these topics. And you will also have the ability to speak there during the public section of the meeting, so I just wanted to let you know about that. If you need information on that, you can get it on our website; and also you can speak with one of us. I'm sure we can get you some information on that. So why don't we begin with the panel, and we'll start with Mr. Whiteside.

MR. WHITESIDE: Good afternoon. Let me pull this up. Good afternoon. And, Mr. Chairman and Vice Chairman Deb Miller, I appreciate you being here, and Commissioner Begeman especially. I've been impressed with the ability that you guys have taken and the interest you've taken in these matters. What I want to do -- Fargo is kind of interesting. I'm never usually in Fargo except in January for the North Dakota Grain Dealers Association, and I found out there's grass where I thought there wasn't any. It's -- It's a lovely town. I don't -- But it is a different place in the middle of the winter.

And I want to -- I want to start today -- Let me kind of give you a brief background on -- My name is Terry Whiteside. I'm from Billings, Montana. I serve as chairman at the Alliance for Rail Competition and represent and appear here on behalf of ARC and many of the wheat and barley commissions in the United States, including Montana wheat and barley and South Dakota, Colorado, Oklahoma, Washington, Oregon, Idaho barley, Idaho wheat, Wyoming, Nebraska, Texas, Montana Farmers Union, et cetera. But I also want to talk about the pea and lentil business and a little bit about the turkey farmers' issues as well as general agriculture.

It's interesting, as we go forward in looking at what we're doing -- I want to thank you for the -- for having this in Fargo especially. Fargo is kind of ground zero for a lot of things, but your office of -- In Lucy's office, the staff that came out to North

Dakota and Montana and South Dakota and Minnesota did a marvelous job out here in gathering up information; and I compliment them on their abilities and just -- They were able to help us kind of understand where you guys were going. Additionally, allowing the railroad industry folks here to hear from the railroad customers.

Wheat, barley, pulse growers, growers of grain including corn and soybeans have, for over a year, been adversely impacted by recent railroad service problems, particularly on the BN and CP. But the service irregularities have culminated in one of the worst service meltdowns in modern history that I've been around, and what concerns the farmers the most is the lack of straight answers from the railroads. Yes, they've been reaching out. Yes, they've been making speeches. Yes, they've been working with their shippers. But the facts keep changing.

When agricultural interests participated in the STB annual Grain Car Council a year ago at the TEGMA meeting, the picture according to them was characterized by a few issues but they, the railroads, would be through them shortly. Well, in fact, they thought they would be done by December. Then came January, and then it was going to be March. Then came

April, and then it was going to be June. Then it was going to be the end of the harvest in 2014. Then at the end of 2014 and last week, I heard Matt Rose talk in a speech to coal shippers that looked to the end of 2015 or early 2016. We need a department of straight answers at the railroads.

I commend this Board for requiring the filing of important information. If we didn't have that, we wouldn't even be getting the answers we're getting right now; but the concern I hear from growers of grain is their ability to provide timely and efficient service on the upcoming harvest in heavy shipping periods. What I'm going to do today is just kind of expand a little bit. We've talked about North Dakota, and I don't want to -- I don't want to leave out Montana and Washington and Minnesota and South Dakota and all of the problems.

But, if we can go to Chart 1, Chart 1 up there -- That probably needs a little focus. Chart 1 is your reporting requirements of the Burlington Northern from -- that you issued on June 20. And it's very commendable that the back order numbers have fallen, but it's the red line that bothers me. What we've done is we've taken Minnesota, Montana, North and South Dakota, combined them, compared them against the full numbers of back orders. And they run in the -- Right now they're running -- about 85 percent of all of the back orders are in those four states, 85 percent. It's been as high as 90. Now, the -- And, yet, that comprises about 18.9 percent of the whole system geographically. But 90 percent or 85 percent of all the back orders are sitting in these states.

It's great to have them coming down, but it's not the whole story. It's still this part of the country that's getting hammered. There's a massive concentration in Minnesota, Montana, North and South Dakota of back ordered cars. And I won't go through those numbers again, but let's -- My second concern is Chart No. 2. In Chart No. 2, all we're doing here is we're starting to chart the average speeds for the system and the average speed for the grain. They're still falling.

Now, I have a theory. Until they turn those numbers around, the average speed numbers, we're not going to get out of this. It's like a freeway with a bunch of cars on it. It's all packed up. The answer is not putting more cars on but getting the speeds up, getting them to start to run. So, when we start looking at these numbers, we start to get very concerned. Table 1, which is the next one, simply shows you the concentration. BN, UP and CP comprise over 80 percent of the cars carried and over 80 percent of all the revenue in grains; and this is in wheat. But the key is that, until we get those speeds moving, we're not going to be able to get through this.

I'm going to try to go real quick to try to catch us up a little bit. But Chart 3 simply was an interesting number we took off the STB site; and it simply starts to show that, if we take corn, wheat, and soybeans versus oil and sand, we find that -- and measure carloads, what we find out is that the BNSF, in the fourth quarter of 2003, are now moving more oil than corn and soybeans and wheat together.

Last week, when I was at that coal conference, one of the things that was stated by the Burlington Northern was that we now have more train sets in oil than we do in all of grain. Now, if we go to the next chart, we'd simply show that wheat alone, instead of all of the other commodities, was bypassed in the third quarter of 2012. Now, for us to sit there and say, well, it's the polar vortex and it's all the other things, the real reality is it might have been a combination. But what started it? Last summer.

Contrary to popular opinion, winter doesn't come to North Dakota in September. And what was going on was they were out of power, this is growing so quickly. Now, is that a solution? No. But I want to show you something, something that we've never seen before. Out in Montana -- Let me talk a little bit about wheat and how it's -- how it's -- Winter wheat extends all the way up the prairies into South Dakota, and they have it in Montana in the central and western part of the state. Spring wheat is mostly in North Dakota and in the northeast corners of Montana.

Now, what's interesting is winter wheat is cut in Texas as early as June. It goes all the way up, and it finally gets into Montana in mid to late August. We are just completing the winter wheat cutting. Spring wheat hasn't really started yet. It hasn't started really in earnest here. But what's important is, look at what's happened with winter wheat. Photo 1. Photo 1, we don't put grain on the ground like they do in Kansas and Nebraska. They don't ever put wheat on the ground in Montana. Reason? Because we have about a year and a half's worth of on-farm storage in the state.

This is in Moccasin, Montana; and you'll see by the map that's right near Lewistown, right near the -- And I know the chairman was out there in that part of the country. That's a very large pile of wheat sitting in Moccasin. It's right in center state. We go to page -- or photograph 2, and you'll see that's at Hardin. This is an interesting pile. This is owned by a farmer. Now, it's a rather large farmer. But he can't -- he hasn't gotten all of this 2013 crop to move out of storage, so he's putting the '14 crop on the ground. Now, this is winter wheat.

If we go to photo number 3, this is interesting. There's two shuttle facilities up at Chester, Montana. Chester is right at the center of the highline at the north end of the triangle. Chester -- This is the EGT facility. They are awaiting railcars. They just got rid of their 2013 pile in June of 2013. The other facility at Chester just down the road is the Columbia grain facility. Again, huge piles; and they're awaiting railcars.

Let me go on to photo 5. And, by the way, we didn't -- we didn't get to all of them. We just got to as many as we could. As you know, it's a long way around in Montana. This is Conrad, Montana. Conrad is up on the western part of the triangle just south of Shelby, Montana, where the highline comes across. Wheat is on the ground. Barley is in the elevator. You can't put barley on the ground. Again, these are huge gigantic piles.

And then, finally, two more. This one is in Fromberg, which is just northeast of Billings; and that's a fairly large pile. It's sitting on the ground. Farm storage is still full. Again, that's a farmer-produced one. And then Moore, Montana. Moore is just south of Moccasin right around the Lewistown area again. This one was planned for storage. You can start to see by looking at that photograph that they actually had those and then started building them. We have never seen piles of grain on the ground in Montana in winter wheat like this ever.

Now, is that because everything is working well? No. It's because things aren't working well. So the strains on the BN capacity have resulted in added costs for grain shippers. This panel is going to talk a lot about that, so I don't want to kind of go over what they're going to go over. We sat down and talked a little bit last night, most of the participants.

And the basis values due to poor service has cost the grain producers millions. Vice Chairman Miller was talking -- was asking this morning about what would improve basis. What will improve basis is reliability of transportation. You'll get the basis back just with consistency of transportation, and that's what's distorting the basis everywhere. The estimated -- North Dakota had a state study out here. First four months of this year, $67 million for North Dakota farmers. And that was spring wheat and corn and soybeans; but it did not include durum, barley, sunflowers, canola, peas, lentils, beans, flax oils, et cetera.

Here is my concern: When the BN says that we're going to readjust the fleet so that 51 percent are in shuttle service, that's 3 percent of the elevators handling 70 percent of the volume. Our less-than-shuttle facilities are very important in the west. Reason? They provide all of the markets for the rotational crops. All the other crops basically go through those smaller or less-than-shuttle facilities. And I know you know that. We've been through this. But I think it's important to understand. Those are the ones I'm hearing 120-day reports behind right now, and those are the ones who provide all of our rotational crops.

Remember that, for example, Montana is the number one pea producer. You've got numbers of crops in North Dakota that are -- that are at the top of the list. When I talked to Washington state, the Washington Grain Commission, they tell me that they're trucking further than they ever have. They can truck to the river, but they're not -- the service is so bad on the railroads that what they're doing is they're actually trucking well up into north of Spokane down into the river.

BN participates in the primary market. They don't participate in the secondary market. They've made hundreds of millions of dollars in that primary market. And that doesn't -- that doesn't go into the URCS costing system, so it's not considered revenue. According to the USDA, the primary market has been in historic highs. In late May, they were saying that the July 17 ranges were from $2,700 to $3,200 a car and, in September, between $2,800 and $3,000 a car. That's on top of the basis gone in the tank. So, although farmers and shippers are incurring higher transportation costs, particularly on the BN, service has deteriorated.

Now, my last chart on there that I want to talk about is simply looking at an indexing of rail rates. And what you see is, in the fourth quarter -- And this comes off the STB site. Fourth quarter of 2013 and the first quarter of 2014, the rail rates have skyrocketed. What happens is, if you end up with poor service, it means tighter capacity, it means higher prices. Burlington Northern is set, in January, to increase all of the northern tier rates again; and, meanwhile, the basis is in the tank.

I want to talk real quick about the pea and lentil growers. They've been hard hit. They ship in less-than-shuttle quantities, and we've had reports from them that their back orders are up to 120 days behind. Those don't show up on these -- on these ones that you're doing. And a couple of them have told us that they've had to recertify their rail carloads for final sanitary certificates. Those final sanitary certificates only last 30 days. It's taking over 30 days to get the cars to Portland, so they're having to recertify them.

The turkey producers in the northern states -- And you've heard about that today a little bit. Propane is the big issue. I didn't realize that until I started talking to Matt Damon. Matt Damon is the executive director of the turkey producers. I will put his e-mail in the record for you.

And then, lastly, I want to talk a little bit about corn. Mark Starbuck is here. And we tried to work out a system where we could get everybody up, and it just wouldn't work. So what we're going to do is I'm going to submit that statement also for the record for national corn. The key is we're all in this together, but it extends all the way out. You're seeing -- You're hearing coal. You're hearing all sorts of commodities. It extends all the way out to the west coast.

The long-term implication, the worst implication -- I was talking with Justin Gilpin the other day in Kansas at the Wheat Commission. What they're most worried about is that we will lose our status as the world's reliable supplier for grains. And, if that goes -- They've spent years getting that U.S. wheat. We're the reliable supplier for all these countries. Yes, it costs a little bit more; but they can always get it from us. That's in jeopardy now. Okay. Thank you. I appreciate the opportunity very much.

CHAIRMAN ELLIOTT: Thank you very much, Mr. Whiteside. I did notice that Senator Heitkamp did come in, so we'll bring her up here to the front. I met with her a month ago, and I know she has a great interest in these issues. Can we pass that mic down? Thank you.

SENATOR HEITKAMP: To start with, Mr. Chairman and members of the Surface Transportation Board, I want to applaud you for coming out and holding this local hearing in North Dakota among the producers, among the shippers, and among the people. I think we all remember the times when we felt that the Surface Transportation Board was not responsive and tended to be a rubber stamp. And I think my experience in the last year working with all of you, raising the alarms, talking about these issues has been extraordinarily positive.

And I think that that is a tribute to what I would say is this metamorphosis of the Surface Transportation Board looking at all of the relationships and looking at all of the interested parties moving forward. And so my great thanks for you coming to Fargo to address these concerns directly. I know I've been talking certainly to the chairman over the last many months about the concerns of the shippers as expressed to our office, but there is nothing like coming here and seeing a room full of people who are very anxious and rightfully anxious about their economic livelihood.

And so I want to start off by first saying we need to at least take a look at the past because I think sometimes people say, well, this is a new issue. This issue has been ongoing. We had concern about moving the '13 crop almost immediately after the '13 crop had been harvested. There were, along with representations made to the Surface Transportation Board as well as to the congressional delegation, not just ours but across the board, about when this issue would clear; and there were assurances given that we would see the bulk, if not the majority, of the '13 crop move before the '14 harvest.

I'm not convinced that's true. I'm not convinced that that's the current factual state. And so we need to understand that there's been an extraordinarily high level of patience from the ag producers and shippers recognizing the challenges on the -- on the railroads regarding shipping, this new boom that we have shipping the crude oil out of North Dakota, the increased shipments in the Upper Great Plains. And so, recognizing that, I think these folks have been extraordinarily patient; but patience is wearing thin as they see the '14 crop coming.

So my suggestion is we need a better idea, not this "he said, she said" that we have, but a better idea of where we are right now. How much crop is waiting to get moved? How many commodities have been delayed? What have been the challenges? And I would really suggest we also need to understand what the monetary consequences of that delay have been for these producers.

Now, we talk a lot of numbers. And NDSU did a study, and Minnesota did a study. And I guess we'll find out as those studies work their way through and become completed, preliminarily, the study at NDSU. But, as they become completed, we'll know. But I will tell you that just two weeks ago I was standing with six shippers -- six producers, ag producers from the middle part of my state; and all of them said collectively they believed that those six producers, ag producers have lost over a half a million dollars because of the failure to ship product on a timely basis. So we have to do something about this in order to balance the common carrier responsibilities of moving all commodities.

And so our great hope is, coming out of this study that you have today -- this hearing that you have today, that we are going to have a better understanding and a better method of collecting data in terms of what the actual delays are. I think -- I think, if I were sitting in your chair, I would be extraordinarily frustrated listening to the concerns here and then listening to how we don't think there are -- there is that level of backlog. Where is the truth, I think, is the question we need to ask.

And the final point that I want to make is that I don't want to be back in this room a year from now. We have the '14 crop coming in, and we will have the '15 crop challenged if we don't figure out how we are going to move this product and these ag products and all of the products that we have. And I applaud, in particular, Burlington Northern for the mammoth amount of investment that they're making. But my concern, once again, is that their plans for investment in the state of North Dakota in two, three years will be inadequate to deal with what we need to do to move.

We have a projection right now that about -- from our great ag economists who understand this, that we will see a 14 percent decline in net income for producers in the '14 year. Think about adding the challenges of shipping the product and marketing the product to that. Think about all of the people here. You'll hear wonderful stories about how they've developed markets in places, you know, after years and years of cultivating those relationships, now have a market only to be a product that can't move to the market when it needs to move to the market and losing that sale and losing the ability to be the best provider of black beans, the best provider of navy beans.

And so I would just, once again, thank you. Thank you on behalf of all of the shippers in North Dakota for your attention to this issue, for your willingness to come here and listen to the concerns. I would ask that you give me a little extra time to submit written comments. We're still gathering a number of things and would appreciate an opportunity to submit some final written comments within a reasonable period of time so that we can better dialogue all of the issues that I've talked about this afternoon.

CHAIRMAN ELLIOTT: Thank you, Senator.

SENATOR HEITKAMP: Thank you.

CHAIRMAN ELLIOTT: Vice Chairman?

VICE CHAIRMAN MILLER: Senator, I know, because of your schedule, you weren't able to be here this morning; but I would be curious to your reaction. When we heard from the railroads and specifically from CP about their new system for ordering cars, one of the things that was laid out for us is that they've been working over some period of time with their shippers. In many cases, their shippers were helping them, you know, sort of determine what was the best plan for them and that, you know, all of the shippers were very well-informed about this plan and the time frame for moving into the plan. Now, I know you've sent a letter to the president of CP, Hunter Harrison, raising some questions and concerns. And sort of on behalf of your constituents, I'm wondering if what we heard this morning from CP is consistent with your understanding from your constituents.

SENATOR HEITKAMP: I would suggest to you it's not. Obviously, you've probably heard about a meeting that we had in Minot a couple weeks ago where this was a work in progress. What are we going to do? How are we going to work so that we are responsible, you know, so we get the accurate count of what absolutely needs to be delivered in terms of hopper cars, and then when it's going to be picked up and how we're going to monetize that relationship. But there was nothing set in stone; and it's my belief that, at the time we had that conversation in that meeting, that that was the first time very many of those shippers had heard about that transition.

And I think there is a tendency maybe -- And without -- without being accusatory, I think there is a tendency to think about the very large shippers that they deal with, which might be about 80 percent, as they believe, 80 percent of the crop that they move, and that there's 20 percent. But that's not the -- that's not the numbers. When they deal with the

80 percent, they're probably dealing with two or three major shippers. When they're dealing with the other 20 percent of the product that needs to move, they're dealing with probably 80 percent of the number of people that they need to communicate with. And I think the communication tends to be on the large -- to the large shippers and not to the local shippers or our small grain elevators, not to the single-car shippers.

VICE CHAIRMAN MILLER: And I'm curious, based upon having had that earlier meeting and knowing there was this discussion about the new car ordering system, were you aware that it was going to go into effect when it went into effect; or were you surprised to learn it had gone into effect?

SENATOR HEITKAMP: We anticipated that they would be making an announcement. What I had hoped is that the announcement would be, "This is what we plan to do. Please now give us comment." Instead, orders were canceled causing a great deal of concern. And you'll, again, hear that from the very many shippers who are present here. And so it seemed to be without a lot of increased discussion.

And, you know, I hesitate, again, to be accusatory; and I know that everybody is working through a very, very difficult situation, including

Mr. Harrison and Mr. Brooks and obviously Mr. Rose. They're very concerned about meeting the needs. They want the business. There's no doubt about that. But, again, we've got to be able to have a board such as yourself who listens to these concerns, who can help perhaps smooth the way for a better system of balance, a better balance in terms of how we meet the needs of all of our shippers in North Dakota and really across the country.

VICE CHAIRMAN MILLER: Thank you, Senator.

SENATOR HEITKAMP: Thank you.

CHAIRMAN ELLIOTT: Thank you, Senator. We will continue with the ag panel. Mr. Cope?

MR. COPE: Well, thank you, Chairman Elliott, Vice Chairman Miller, Board Member Begeman. I appreciate the opportunity to come before you today. My name is Jerry Cope, and I'm president of the South Dakota Grain and Feed Association, also marketing manager for Dakota Mill and Grain in Rapid City, South Dakota. But my testimony today is primarily on behalf of the South Dakota Grain and Feed Association, who is also an affiliate of the NGFA, the National Grain and Feed Association.

As you know, you know, we've talked a lot about agriculture. South Dakota ranks in the top ten in nearly all the crops, so this rail service disruption has impacted our state greatly. We thank you for your efforts to bring this issue to the forefront at past hearings and hold railroads accountable for restoring service to acceptable levels.

Our industry group believes that, if we're going to voice concerns, then we also hold a responsibility to stick to the facts and present ideas on how we can get better. So, today, I'd like to talk about where we were, where we are today, and let you know what we want, expect, and need as we move forward.

First of all, I believe my company was typical of others in the state. We began to experience this real disruption last fall, well before the winter weather, well before any hearings. As the winter rolled through and by spring, we were behind over a thousand cars. And thinking about that number today, you know, people bandied about how many cars behind. Is that really the important thing, or is the important thing the trend? We had sales behind every one of those car orders, so we had to try and figure out a way to work through that as the spring and summer approached.

We weren't the only ones. We had farmers and other elevators in the state with over twice the normal grain inventory as we approached spring planting. We had almost no regular communication with the railroads; and if they had a plan, we sure couldn't identify it. And the BN secondary freight car costs were roughly equal to the freight rate. At the peak, somewhere around $5,000 per car was paid for cars. That's about $1.25 a bushel. That effectively doubled the freight rate for corn to the Pacific Northwest. These costs had escalated over time. It wasn't a sudden jump up. And elevators absorbed many of these costs as they went along, but eventually they had no choice but to reflect them in a lower basis. And that equated to probably on the average of 50 cents on a bushel.

My company deals primarily in wheat; and I know wheat costs, in the lost opportunity of selling for an immediate flour mill demand versus selling for two months down the road, was in the range of 75 cents to $1.50 a bushel. Ironically, you know, the secondary freight car market rewarded carriers for poor service. The bigger the delay, the larger the premium for freight.

Now, railroads will argue that day-to-day secondary freight market premiums don't go to them but to the owner of the freight. They're right. That's true. However, this urgency to secure adequate freight for this fall's harvest has resulted in BNSF shuttles selling for up to a 2.5 to 3 million dollar premium in shuttle auctions. To date, the BN has collected over $120 million in these premiums; and that's money that did go to the railroad. Through this crisis, there was little or no communication from the railroads and not a credible plan; and, simply put, we in South Dakota felt we were without a voice.

Now, in the aftermath of the Board's involvement and advocacy as well as the combined efforts of Senator Thune, our state and national organizations, we are being heard. As a result of this additional communication between the railroads and us, their customers, there is some easing of the fears that we had on if they have a plan for both short- and long-term. The answers aren't always what we want, but it's a first step. We have made progress cutting the backlog of cars in our region, and this is great news. But it's still very serious. If you need a train every five days and get one every ten to get ready for the fall harvest, you've got a problem.

In regard to the CP's performance reports, until recently, it had not provided the locomotives that it committed to, which left the RCP&E unable to clear their lines of loaded cars. This resulted in loaded cars sitting at RCP&E elevators for a week or longer, and we saw a very direct result in buyers shying away from buying RCP&E-origin cars until they had proof that the ones they already had bought were actually going to move. The interchange at Tracy, Minnesota, still concerns the shippers in South Dakota. Scheduling is critical because there is no actual yard to aid car flow; so if that meet is not perfect, things lag.

Talking to South Dakota shippers on the line just this week, we all agreed that things are better. But one week is not enough to restore confidence after what we've been through. Without the CP honoring all of its commitments on an ongoing and evenhanded basis, the problems will only again get worse in South Dakota. That's because South Dakota crop production is expected to be a record high this year. Even though our wheat acres were down from the five-year average, we're seeing yields running double the normal; so our total production is still going to be 10 to 20 percent above our five-year average. And corn production, USDA projects it relatively flat with last year. But, if you talk to other private forecasters, they think we could set a record in corn production. And other crops look just as good, such as soybeans, sorghum, sunflowers, oats, and millet.

Given these projections and the BNSF's and CP's current pace of service recovery, this backlog will continue through this crop year and probably into fall of '14 and '15. You know, that would depend somewhat on the weather; but I think it's logical to assume it's with us until at least next June. So there's no room for even a minor hiccup in rail service this fall and winter. It doesn't matter if it's weather, doesn't matter if it's Chicago, Doesn't matter if it's demand from coal or oil. There just isn't any room for any slips. So, if there is no change of pace of rail service, the storage of this abundant crop is going to create challenges.

In my travels through western South Dakota, I've seen farmer piles ranging from 20 to over 200,000 bushels. Elevators have open-ground piles waiting to be shipped. And another thing that hasn't been talked about today is we do have some quality problems in this year's wheat; but with the elevators sitting full and unable to blend or clean that wheat, there is some real risk that there's some wheat out there that won't even become marketable because the elevators -- If they don't have the room to work with it, then they're just stuck. And then that translates back to farmers just losing not cents per bushel but dollars per bushel.

Secondary freight costs have relaxed, but the bids that elevators are offering probably more closely reflect actual freight costs. It looks like they're somewhere in the neighborhood of 25 to 30 cents per bushel put in for nearby freight and 40 to 50 for harvest. Now, the CP Railroad and the RCP&E and the processing industry do not participate in the secondary market; but they are part of that larger market because pricing for all buyers is inversely proportional to freight availability. The higher the extra cost of rail freight, the less there is to go around. And this impacts the elevator's ability to handle grain.

So then we have to ask the question, is it an option for companies to expand storage to accommodate this? Over the past 15 years, hundreds of millions of dollars have been invested in South Dakota grain and fertilizer facilities based on expectations of reasonable and predictable rail service. Investments at rail facilities today can run from over $3 million for a minimal amount of bins and a 25-car track upgrade to over $30 million for a state-of-the-art shuttle shipper and fertilizer receiver. So, as an industry, we have to ask ourselves, when does the risk outweigh the reward given the unpredictability of transportation services?

Now, moving forward, we encourage the Board to continue your stringent oversight of the ag rail service crisis as the recovery in service continues and ultimately returns to more normal levels. Hopefully, in the long-term, your continued vigilance and a spotlight on this crucial issue will bring about needed communication between the railroads and their shippers that will come into play when railroads are making investment decisions.

Now, the BNSF, to their credit, has responded to this heightened awareness with locomotives, crews, and double track. We hope that the CP will follow through with their basic commitments also, especially to the RCP&E. It is disconcerting, though, that it took your spotlight to get them to actually live up to something they had already agreed to do in the terms of the sale. Now, ease of doing business and safeguards against overregulation are also important. There are things that can be done, the NGFA is working on, that would make it so the railroads can still invest in their systems and grain elevators can still efficiently handle grain.

I'll end with saying that we have a saying in our company that the problem with communication is the illusion that it actually took place. This might sound tongue in cheek, but it speaks to a real problem. Communication has to be open, honest, and real. Action plans, reports, scorecards from railroads on a realtime basis are needed. In our written testimony, we've got further thoughts on things that the railroads can do and that the STB can do and we can do together to make real progress addressing these backlogs.

In summary, I'd like to thank you. And let me stress, we're not asking for direct government intervention. We're not asking for preferential treatment for grain. We just want to ensure that we are not disadvantaged or that grain is marginalized in the rail freight picture. Thank you for your time today entertaining input from us in South Dakota.

CHAIRMAN ELLIOTT: Thank you, Mr. Cope. Mr. Zelenka?

MR. ZELENKA: Mr. Chairman and Commissioners, my name is Bob Zelenka. I'm the executive director of the Minnesota Grain and Feed Association. We represent the grain elevator and feed mill industry in Minnesota. We have nearly 300 cooperative and independent grain elevators and feed mills in Minnesota. There are approximately 150 grain elevators served by rail. Of that, 50 of those locations are what you would call maximum-capacity unit train loading facilities. We have a storage capacity in Minnesota of about 670 million bushels commercial and over 2 billion bushels on farm. Roughly 75 percent of the total available storage in Minnesota is located on the farm.

The problem we have right now is we do have some situations where producers do want to clear out their farm storage to obviously store their grain in their own bins verus having to store it at the elevator at 3, 4 cents a bushel per month option. So there is some areas where there are some grains backing up onto the farm. I certainly want to thank you for your role in providing and asking for service metrics over the last month or two. It's been very helpful to be more transparent about what the railroads are doing.

This problem that we ran into essentially for us started in September, October with the propane issue. We had a propane shortage in Minnesota and the upper Midwest, but Minnesota had an acute shortage of propane. A lot of it had to do with the high-moisture corn crop followed by an early winter for heating. And this wasn't totally a rail issue, but it was the first time we started to see the congestion issue on the rail. There are some terminals that were served by rail and others served by pipeline, and that's -- and it was a problem with the turkey barns as well in terms of the heating. So the list goes on.

Suffice to say that we did get through it. We've had some meetings and some summits, if you will, to try to address the issue. One concern we have is that there was a pipeline servicing the Benson area in Minnesota. That's in western Minnesota. That has been now reversed. The pipeline is moving north with some other product, and that now is being expanded to be served by rail. When you look at service metrics, I'm wondering if the STB would consider propane as well, service metrics related to propane in terms of the movement of propane. It is more and more of an issue moving that product less by pipeline, more by rail. At least in Minnesota this coming fall, we're a little concerned about that as we approach this fall.

Losses were talked about. The commissioner talked about the losses in Minnesota by producers. In the study that he referenced, it came out to $18.8 million for soybean growers, $72 million for corn growers, and another $8.5 million in farmer losses in spring wheat. And in terms of elevators, it certainly has been nice to see that the BNSF particularly has been catching up with the past dues. CP is doing what they can.

But, in the end, we've lost millions of dollars at the country elevator level. A lot of that is dependant -- was related to contracts that we had where we'd get discounted when we can't deliver on time, and that can add up quite quickly. You know, we had that issue. We had high interest on money that we borrowed to buy farmer grain that we had to sit on because we couldn't move the grain. We had ground piles that we're dealing with and quality issues that go with that in terms of loss of quality and a number of other issues.

In terms of the -- Before I finish up on the propane, I wanted to mention that we had a couple members that wanted to build a propane unload facility on the CP. They were willing to spend the money on the infrastructure; but when it came to the insurance requirement by the CP, it went up from a $25 million general liability policy to they required a $100 million general liability policy, which would have been about 80,000 to 90,000 dollars estimated premium, annual premium. So both these elevators decided that it just wasn't worth the investment. You spend that kind of money whether you're unloading one car of propane or 40 cars of propane. So that's just a-- I forgot to mention that when I was talking about propane.

The congestion has certainly been an issue for us in dealing with this issue. I don't want to be redundant, so I'm trying to jump around my comments. But we certainly do appreciate what the BNSF did in developing a strategic plan, addressing the past dues; and that strategy did seem to pay off. Canadian Pacific, on the other hand, has been less than forthcoming compared to the BNSF in service metrics; and their shippers on the CP continue to be very frustrated with the lack of transparency and this uncertainty that exists.

They seemed to be on the right track late this last winter, and all the sudden grain shippers found themselves waiting for timely service again. CP blamed the setback on congestion problems moving freight through Chicago, as you heard. Well, the problem with that excuse is that, at the time, most of the grain freight was moving to the Pacific Northwest, not going through Chicago. A more likely culprit was the Canadian government's intervention, which apparently forced the CP to reallocate locomotives and grain hopper cars to the Canadian side of the business, again, at the expense of CP grain shippers in Minnesota and North Dakota.

Grain shippers on the CP continue to be dissatisfied with the level of communication. CP has shippers, for example, calling an unmanned service desk to try to locate trains. Earlier this year, the CP raised their rates to help pay for a new communication system for grain shippers between Portal, North Dakota, and Glenwood, Minnesota; but apparently the system is yet to be installed. CP has unveiled its new service program, as was mentioned, with little or no detail of the actual service contracts; and that didn't come out until last week. In order to sign up for the new contract, again as I understand it, grain shippers were asked to cancel their old orders, which would make them look like they were caught up.

The new program also contains some hidden surprises effective September 1. The CP canceled the OEP program which offered a financial incentive to load a train in a timely fashion, up to $150 per car if loaded within ten hours. Apparently the CP was thinking, why provide this financial incentive when they're not picking up these cars in a timely fashion as well. But whatever the reasoning was, the unfortunate part is that grain elevators spent thousands if not many thousands of dollars upgrading their facilities for higher-speed legs and storage and so on to help meet -- to take advantage of those savings that are no longer there; and that's something you'll never recover.

Since early '13, we've debated this issue obviously quite a bit; and, as a result of the hearing, we'd like to see, again, the STB to continue requiring the BNSF and CP to provide greater transparency through these service metrics. In addition, we'd like to urge the STB to consider investigating unreasonable rate practices on its own initiative. We'd like to require rail carriers to publish reasonable service expectations for customers, consider establishing a binding arbitration system to resolve railway issues, rail practice, maybe even common carrier service complaints. I'd like, also, the STB to address the so-called "paper barriers" that Class 1 railcar carriers can use to restrict or preclude the ability of a tenant or purchaser railroad to interchange traffic with railroads other than the seller or landlord carrier, which I think has been done to a degree. And, lastly, and I guess also the commissioners providing staff support to the STB proceeding.

These steps would allow a more balanced environment. It would encourage railroad/shipper dialogue to resolve business issues directly, thereby enhancing the efficient transport of agricultural commodities. Again, I think, as Jerry mentioned, we're not looking to receive preferential treatment; but we don't want to be disadvantaged either. We have had, again, a lot of elevators that have went through a lot of pain this winter. We certainly don't want to repeat that. Although, chances are, and it looks like with the congestion that's on the system yet, we're going to have, hopefully not a repeat of last year, but certainly going to have and run into a lot of traffic delays on the system.

With that, I guess I would just encourage your Grain Car Council meeting next week, which is on Thursday in Minneapolis, to maybe take a look at the rail freight issue. That's obviously been a big issue for us, is the cost of freight and, thus, the relationship to what we can pay our producers. As well as maybe take a look at the secondary market. How that works, how it functions certainly is having an impact on our bottom line. Thank you.

CHAIRMAN ELLIOTT: Thank you.

MR. THYKESON: Thank you, STB board and thank you, Chairman Elliott and Vice Chairman Miller and Commissioner Begeman. First correction would be my name is not Dan Wogsland. I'm Brad Thykeson. I am the immediate past president of the North Dakota Grain Growers Association. We are a grower group that represents 15,000 wheat growers and 4,000 barley growers in North Dakota. I'm kind of the root of this whole problem because I'm a North Dakota ag producer, and I am a third-generation farmer. I have two boys that are currently farming with me, and I have a two-year-old grandson that only knows how to play with tractors. So I'm hoping to keep the sustainability of my farm proceeding into the future.

We're experiencing right now a downturn in the future market, and we're also experiencing a logistics problem in getting rid of this crop. The problem, when I say I'm the root of the problem, is I am at the bottom of the totem pole. You've been visiting with shippers. You've been visiting with merchandisers all morning long, but I'm the one that's producing that crop that needs to get through this pipeline.

And what has happened in the recent years is that genetics and due to the ambition of just economics as far as our new -- our ability to get site specific through variable rate seeding and fertilizing, we're able to push these yields to things that we've never seen before. I know my farm is experiencing record spring wheat yields. I think, if this corn crop makes it, we're going to have a record spring wheat crop also. In order to get this product processed through the normal channels, it won't sit on the farm and just rot in its bins, because our commodities are perishable and we need that timeliness in order to get that crop delivered into the marketplace.

I know we're in depressed prices, and I don't have the luxury of being able to carry many, many years of crop on storage in order to, you know, wait for a better time. I think what we're experiencing now is the fact that oil has become our big competitor and that we're having to fight with this, you know, competition for our rail service. If we didn't have oil, we'd still probably be dealing with the infrastructure of just the massive amount of bushels that are being produced by the producers in North Dakota and in the upper Midwest.

I would say that it isn't just bushels that we're -- I think Robert eluded to the propane issues. Last year, we experienced where we actually had to shut down corn harvest during our harvest schedule because the supplier was short of propane. These are other things that we need to have an eye looking at, the input costs that producers have to absorb and take.

And we are at the bottom of the totem pole, so we have to stomach it on the output and we have to stomach it on the input as far as the price goes.

I would say that your role as a transportation board would be to make sure that we recognize that this forecast of things aren't going to go away, that we need to have a policy in place in order to deliver these products on time -- or deliver the cars on time so that farmers can be timely in getting their products to market and also being able to be viable as far as their cash flow situations go.

I don't want to take a whole lot of time. I think what we're here for today is that we want to become the squeaky wheel; and we want to keep, you know, making sure that this issue is brought, you know, to the forefront. We understand that policy takes time to change and that dynamics take time to change.

But we have to recognize that agriculture is a very competitive thing, and it's also -- American agriculture is the envy of the world; and we need to work together as farmers, shippers, and government in order to find solutions that we face. North Dakota Grain Growers would like to thank you for the opportunity, that you came to Fargo, and that we hope that we can enlighten you to some of the situations we have in the upper Midwest. Thank you.

MR. LETCHER: Good afternoon. Thank you, Mr. Chairman, and thanks to the entire board for coming to Fargo and holding this hearing. I'm Stu Letcher. I'm the executive vice president of the North Dakota Grain Dealers Association. And we're a 103-year-old voluntary membership organization that represents 90 percent of the grain elevators in the state of North Dakota.

This isn't the first time that we've experienced rail delays in the state, and one of the things we've done as an industry is we've invested significant investments in our facilities to increase our storage capabilities and our railcar handling and loading efficiencies. The average capacity of the North Dakota grain elevators has increased in the last decade by almost doubling. In 2003 and '04, the average capacity of a North Dakota grain elevator was 600,000 bushels. Today, that's over a million bushels. Our elevator network also includes 65 shuttle train loading facilities in which our members have invested hundreds of millions of dollars.

You've heard a lot of testimony today about anecdotal evidence, what's happening in the industry; so what we did is we decided to try and bring you up-to-date numbers. So last week we did a poll of our members, and we did a survey. We sent out about 100 surveys and received 42 responses. Of those responses, we had seven BNSF shuttle loaders respond that said they're completely caught up on shipments but they're 100 cars behind on less-than-shuttle shipments.

We had 16 BNSF non-shuttle shippers respond; and they report being 333 cars behind. We had 14 CP shuttle loaders respond, and they reported being 5,800 cars behind on shuttle shipments and 1,430 cars behind on less-than-shuttle shipments. We had six CP non-shuttle shippers respond, and they report being 1,260 cars behind. I'd like to share a few of the comments that were in some of these surveys. I think it's better for you guys to hear from the people out in the country on the front lines than to hear from me.

One less-than-shuttle shipper on the CP who reports being 150 cars behind, his comment was, "Frustrated with CP power on BN pulling oil, ignoring small to average shippers. Now CP is asking us to trim orders saying our demand is overstated when we've had to truck out grain." Another reported, "CP has asked us to cancel all our existing orders and add our new orders as needed after 9 a.m. on 8/29/14. I am confused as to why we need to do this. We have also had quality issues, and we have had corn in our facility as well as farmers with contracts that have been stored so long that now we've had to dump 25 cars and reload to make grade as they became musty. I had planned to have my shipping done by May."

On the shuttle side, we've heard from a couple shuttle loaders. One shuttle loader on the CP reports being a million and a half behind in shipping. And he says, "Keep in mind we are coming off a 50 percent preventive plant year. The CP continues to ask if all our orders are real. The answer is yes. We do not have a freight order on our books that we do not intend to ship against. There is no secondary market. There is no reason to carry more orders than we need." Another CP shuttle loader reported being 1,900 cars behind. He said, "We canceled 1,900 orders on August 20 in order to sign up for the CP's DT program that is supposed to start on September 1. We have seven locations that load railcars to our shuttle loaders. Harvest is in full swing, and all of our elevators are full." So that's what we're hearing from the field.

There's a couple other things this survey also shows. It also shows that the less-than-shuttle shipper is experiencing the greatest amount of delays in service. North Dakota produces over 30 different commodities, and only a handful of those are marketed by a shuttle train. The smaller-unit train and single-car shipments are vital to many shippers in this state. One non-shuttle shipper on the BNSF also -- BNSF also reported being 135 singles behind, which is two months' worth of orders. And you have heard -- I think you have a letter up there from another one of our shippers that reports being 21 to 25 unit car trains behind.

So where do we go from here? We are encouraged by the BNSF's pledge for infrastructure improvements, and we applaud their efforts to address the backlog. But infrastructure improvements take time to complete, and there are still concerns related to their ability to keep current once the bulk of harvest arrives and we move into the colder winter season.

The Canadian Pacific has introduced a new railcar program, and we applaud any efforts that they make to improve the efficiency of their system. But those canceled orders represent a large amount of grain volume that has yet to move. CP's new ordering system may help manage the shuttle fleet, but it does little to help the non-shuttle shipper on the CP system who has basically had to cancel all their old orders and start the ordering process over.

We would like the STB to consider -- continue the metric reporting. Grain shippers watch increased movement of oil on rail and wonder if a major reason for the grain backlog isn't additional rail resources dedicated to oil. Grain shippers report rail yards being clogged with oil trains, and shippers are rightfully upset about their investments and their products sitting idle while new business seems to take priority.

As I stated earlier, the grain industry in North Dakota has made major investments in infrastructure to become more efficient rail handlers. We feel that it's time for rail carriers to deliver on the promise of better service. Thank you for this opportunity to present our views and suggestions on the matter.

MR. KLABUNDE: Thank you. On behalf of the Minnesota Farmers Union, I'd like to thank you guys for your attendance. And, if I sound nervous, it's because I almost froze to death in here earlier; and I'm still recovering. So I am actually with Farmers Union. We're going to be flying to Washington this weekend, and I think we're going to meet with the Surface Transportation Board on Monday or Tuesday. So I'm going to speak today as a farmer and an advocate for rural Minnesota because we need a voice too.

I'm a fourth-generation farmer. I've got a seven-month-year-old son who doesn't play with tractors yet, but he looks like he's going to be interested. What I'm going to -- I want to talk -- You know, we talked $500 million, $600 million. You know, a lot of money is being thrown around here today. I want to put a little smaller number, a smaller face to the issue a little bit more and talk about, on farms, the direct and indirect impacts that we deal with every day. It's on our mind all the time.

And the first direct impact is the basis loss that we incur. You know, yesterday, December corn closed at $3.52. And, historically, a good basis in our area might be -- A good one would be 20, and 50 would maybe be average. Well, this morning in Mahnomen, Minnesota, it was 90 cents. In Ulen, it was 94 cents. And those are both unit train facilities meant to handle at the greatest efficiency.

So taking a farm that raises 500 acres of corn, that's easily 40,000 to 50,000 dollars of direct basis loss to that one farm. And I assume that that's a lot of money; right? I mean, anyone can say that's real money. And that's a direct loss. That's just on corn. You know, I didn't -- You know, it goes on and on with everything else. So that -- You know, that's the easy direct problems.

The indirect thing or some -- you know, what people don't consider sometimes is, you know, we're working with a perishable product. It has to get sold at some point, you know. We're dealing in a day and age where, you know, green is good. People talk about that a lot. And we're ending up storing this grain a lot longer. We're moving it more. What ends up happening -- to happen is we're using extra irrigation, extra electricity, you know, and putting more power -- or more stress on the power grid just in not being able to move anything; and not being able to move any grain also adds to the cost of accrued interest on our farms.

Our credit lines are way bigger than they ever have been; and they're running at a large number, a lot longer because guys are not able to move grain or, you know, just know where to go with stuff or poor pricing options. 50 cents of difference might make the difference in a sale. It makes a big difference in a sale, actually. And us building more storage on the farm isn't really a great answer either because that means we just borrow more money, accrue more interest and more -- more overhead. You know, I mean, those are real issues for us.

And when it comes to these full-capacity elevators -- I have a friend, and he farms in the Bakken area out in North Dakota. And his bins are full right now, and he's got his wheat sitting out there. It's wet. He can't combine until it's dry because they don't dry the corn -- or don't dry wheat out there, I guess. But when you do bring it in, it's cash only if they can take a load, which they generally can't. But, if they do, it's cash only. And you dump it. It's sold, but you don't know what your discounts are because they're going to get shipped off and they're going to be checking for vomitoxin and falling numbers and all that. So it's sold, and you don't even know the price you got. That's a pretty big deal too.

And, you know, maybe one of the bigger, for the whole broad rural Minnesota -- Farmers spend all their money locally. I mean, within 50 miles of home, that's where their money gets spent; so it does have an effect on main street business ownership and on down the line. Farmers' money really does stay local. It's not going to an overseas account. It stays in the hometown so --

And, you know, I don't know what the truth is; but the perception to the farmers out in western North Dakota is they want to know, of these late cars, how many of them are ever an oil car, you know, or are they all just grain cars? And, if it's all grain cars, it seems like the farmers and small businesses are basically subsidizing big oil, you know, on our dime.

So, with that, I want to thank you guys again; and I'll probably see you next week.

CHAIRMAN ELLIOTT: All right. Thank you very much to this panel for your presentations. Just quickly, a couple of questions. With respect to CP's new program, we've heard various sides to that program. How are you, the ag shippers, viewing that as a community? Are you viewing it as something that can be helpful down the road, or are you viewing it as something that maybe would hinder you as you go forward, especially as a smaller shipper?

MR. LETCHER: I'll be the first to tackle that. For my membership, they're very positive on the new program. They're happy that they're going to a system that will help them manage the fleet better, if that's what it does. They're -- The concerns we've been hearing is that let's not forget about the crop that was there against the old orders that were canceled. There's still a lot of crop that needs to move. So, if that new system does improve efficiency, great. But, there again, you know, the single-car shipper, it's not going to solve their problem. It's a shuttle train program. So, if you're a single-car shipper, you're still going to be struggling with the same issues.

CHAIRMAN ELLIOTT: Are you hearing -- And maybe your response answers this question. But are you hearing anything with respect to cancelations that we've heard about that are unilateral from the railroad side as opposed to the shipper side? Or do you view that as a bilateral decision between the railroad and the shipper themselves? Are you hearing anything either way?

MR. ZELENKA: Well, it seems like it's bilateral. I mean, there is -- Yes, it's initiated by the -- by the shipper; but I don't think there's an option really to not do that. In order to get on the new system and participate in the new system, you have to cancel your old orders. I think there's a lot of uncertainty, as Stu was talking about, a lot of uncertainty particularly by the less-than-shuttle or less-than-unit-train loaders or shippers, that is, on whether they should cancel and try it through the new system.

But, again, it's only been a week; and so there's still a lot of uncertainty as to whether this will in fact work. You can be hopeful that it is and will. But, again, communication has been less than ideal between the shippers and CP. Hopefully that will improve. But, yeah, that's been a -- I think that's just part of the deal that, I think, elevators have to -- have to abide by.

CHAIRMAN ELLIOTT: And have you heard any -- I get a lot of anecdotal stories, so I'm kind of trying to eliminate some of them from the way I think of this issue. So have you had any issues, with respect to especially the smaller shippers, the single cars, with respect to any of the carriers refusing to move a car in a certain direction or to a certain place? Or have the railroads been pretty much, "We'll take your order. Maybe it's not going to be on time, obviously; but we will take your order and move it wherever you would like it to go"? Has that posed any issues for anybody as far as being able to move a car to a certain place at a certain --

MR. ZELENKA: Well, I think there was a time when the CP wouldn't take any orders going through Chicago just because of the congestion problem there but --

MR. WHITESIDE: What I -- What I hear more of is not so much that they won't take it someplace. They don't bring them in the first place. I mean, if the less-than-shuttle loaders can't get the cars, it really doesn't matter. But I think that's what we're -- What we're hearing is that a number of them have cars that are outstanding for long periods. You heard someone this morning talk about April, just filling April orders now. We're seeing 120 days behind. And, remember, this is a very important part of the system.

Now, this is not -- You know, we're not trying to beat up on anybody. I think the railroad -- I think that Burlington Northern is trying very hard. But the real reality is, as they realign the fleet to more shuttles, they have less for less-than-shuttles; and that's of concern to a lot of producers out in Washington and northern Idaho and Montana especially because that's where all their rotational crops and peas and lentils and pulse crops go. They aren't marketed through the shuttles. I think they were saying that -- someone was saying that on the panel here. So it's a matter of not that they won't. They just aren't delivering the cars with consistency.

CHAIRMAN ELLIOTT: Okay. Vice Chairman?

VICE CHAIRMAN MILLER: Nothing.

MR. COPE: I have one -- Mr. Chairman, I did have one comment on your last question.

CHAIRMAN ELLIOTT: Sure.

MR. COPE: And I know we're not, you know, here to talk about rates; but I think that this fits in the context of cars not coming because of the destination, does that happen or doesn't it. You know, we've heard that expression from all the railroads we deal with that, you know, Chicago's a bottleneck, Chicago's a bottleneck. But then we've asked the question back, not just our own company but others in the state. Well, if that's true, then there are destinations short of Chicago, particularly in wheat, that could easily be accessed; but the rates to those destinations are actually higher than Chicago even though they're closer. So our pushback has been, if you're serious about avoiding Chicago, then do something to incent us to go somewhere other than Chicago. So far -- So far, no good. I mean, I'd like to say so far, so good; but it hasn't happened.

MR. WHITESIDE: That's something we were talking about last night is they aren't incentifying to go anywhere else. And two things that I wanted to close with. One, you've heard mention about oil metrics. It would be really helpful, I think, for the farm community if you would require the Burlington Northern and the CP to give us oil metrics on back ordered cars on oil and have -- You know, where are they? Because we don't have any idea where some of these back orders go or come from. The other one was on propane. You heard that earlier today, and I think that one is a good one.

Years ago, we had seven years of drought in Montana; and there was a farm producer that said to me, "I know one thing for sure about the drought." And I said, "What's that?" And he says, "Eventually it'll get back to normal." And he was right. In this particular case, eventually this will get back to normal, but not without your help. And I commend you for that because, if it wasn't for what's going on right now, I don't know where we would be; but I don't think we would be as far down the road to solving the problem or getting through it. We're looking at 2015, 2016 at least before these things will get back to normal. That's hundreds of millions of dollars later. But I commend you all for coming here and listening.

COMMISSIONER BEGEMAN: Mr. Letcher -- First of all, I thank the entire panel for your information. And certainly, as a daughter of a farmer, I know that you guys do not have many well-slept nights. I mean, it's a tough job every single day. Thank you for the effort that you went to to canvas your elevators to give a sense of what the demand is out there.

I've been sitting here -- I've really -- One of the things I would like to try to accomplish here, collectively perhaps is the way to do it, is to help CP find out what its back order is. I think we're all willing to accept that it's not 22,000. Let's help them get to what that real number is. I don't know if, from what you were able to put together -- And I was trying to write frantically, and I didn't get past 5,800. But did you have the tally?

And I also wonder if you could find out from the folks that did respond, could you provide that to CP? I've learned, mostly through Mr. Whiteside over the years but, frankly, at so many meetings I have and our staff also conveys -- reminds me more than I'd like to hear, that people are worried about retaliation. And so they'll share their frustrations but are kind of hand-tied and can't necessarily do anything about it with specificity.

MR. LETCHER: That was one of the things that we put into our survey. You know, we asked the question whether we could use their name or not. And some allowed us to, and some said, "You can use my information, but please don't say my name." And so we would be happy to share that information. As a matter of fact, that was one of the things we put out in the survey was that, hey, we're going to share this with railroads and anybody else who is interested.

COMMISSIONER BEGEMAN: And, if anyone else has an idea -- I know not everyone responded to you; but if there is another way -- I mean, if we just start calling all of your elevators, I'll start doing that if I need to. I think we all would. I just -- We just need -- And I know that that isn't the only thing that matters because the point is they need to get served, which is a point I was trying to make when I mentioned the letter. It was clearly not a phantom order, and it was languishing since April. So how can we facilitate service? But I welcome your ideas on how we can best get to the bottom line on this.

The issue of propane, which I appreciate you bringing up, is important. I met with the Minnesota Regional Railroad Association in July, and it was an issue that we were talking about. And, you know, I certainly know that the pipeline has shut down; and that is going to put a much bigger stress on your ability to get propane. But, as I was talking, a gentleman from BN pointed out to me, "We have no orders for propane at this point." And I know you asked for metrics, et cetera. And I also met with some CHS propane folks from Minnesota, and they -- This was about a couple weeks ago, and one of the gentlemen is in the audience. But they have been going around to their customers trying to urge folks to make sure they place orders. You know, a carrier can't deliver if it hasn't been given a request.

So, to the extent that you actually do, make sure that you can communicate you need to get your requests in because winter is around the corner and, with it, probably a wet -- based on last night, a wet harvest that needs drying. Just the more that you can -- I mean, we don't want to create a big rush on propane orders; but the railroads -- you can't beat them up for not delivering something that they didn't have advance notice that you needed.

I just have one more question if I could ask. When I was at that Minnesota meeting, a gentleman in the audience, who was not from Minnesota, said, "Aren't you -- You know, there's always a car shortage. And, you know, it's always the farmer against the railroad. And isn't this just the same old thing?" And I'd like to hear your response to that. I mean, my impression is that it is not.

When I first went to work on the Hill, one of the first jobs that I had was talking to a farmer in

Parker, South Dakota, who could not get grain cars. I think that the difference now is just the extent, the numbers, you know, whether it's really not 22,000. But the numbers have been significant, and I'd just like to -- I mean, some of you guys have been here a little longer than I have. But is this just typical, or is this unprecedented?

MR. THYKESON: I'll speak as far as producer goes. You know, the trouble is we deal with mother nature; so the timing of the crop and the size of the crop and the wetness of the crop, when it comes to propane, is all kind of in her cards. So, to order those propane cars or to know when that harvest starts is always that wild card. So, to get timeliness, that takes a big amount of communication and somebody with their, you know, ear to the pulse as far as when the maturity of that crop is. So I think that's the whole logistics thing here, is that we don't know the demands we need on propane; and we don't know the timing -- the timing of it and the size of the crop until we actually get out there.

MR. ZELENKA: In terms of grain car shortage, I think it's more of a utilization or a proper positioning of the inventory. Perhaps, you know, back in the '90s, we did have car shortages. I don't think we have technically a car shortage anymore but, again, more of its placement. In terms of the propane question you had, last year there was a small amount of propane that was hauled by the railroads. It's an increasing amount, though, coming up this year both on the CP and on the BNSF; and that's the concern I have, just with that growing dependence on propane delivery by rail. That concerns us.

MR. COPE: For South Dakota, it's unprecedented. And I would agree with Bob. It's not necessarily a car shortage. It's a utilization, it's a velocity problem because really the shuttle system was built on velocity. But, for South Dakota, normally we would always snap back and catch up in April, roughly, during car shortages because elevators and farmers are on to agronomy and other things. It didn't happen this year because we carried -- had a huge carryover into this year, so it's new territory for us.

MR. WHITESIDE: I guess I'm one of those people you're referring to that's been around for a long time. It's interesting. After the Burlington Northern/Santa Fe mergers and the UP/SP mergers, once they got through the problems with the service metrics there, we did not have any major car shortages for the last probably ten years. And what's going on now is a service meltdown that really was systemic to too much business too quickly that came onto the system, and that was predominantly oil.

But it's -- So I don't -- I think the railroads have done a marvelous job over the years. Yes, there is spot shortages every single year. One person out here, somebody in Kansas doesn't have it, I mean, that's normal. But not like this. Now, remember, we're not seeing these kind of issues on the UP right now; so this is really a northern tier problem. And I think the railroads have done a marvelous job over the years of actually providing car supply sufficient enough to get us through the harvest. Harvest is always tough because it peaks and it, you know, comes to the system very quickly.

I'm very concerned about the long-term implications into the Pacific Northwest with oil moving over there and the potential of export coal at some point. Although, that's getting a little cloudy. But the key is all of those tell me that this solution is a long way off for solving some of these issues. So this is why we need the Board engaged, and I appreciate it.

CHAIRMAN ELLIOTT: Thank you very much. I really appreciate you coming. Okay. Why don't we do the Panel V here. After this, we'll take a relatively short break. We're running a little slow here, and for good reason, because we're getting a lot of interesting discussion about these important matters. But why don't we begin now with Mr. Stadtler from Amtrak.

MR. STADTLER: Thank you. Good afternoon. Good afternoon and thank you for coming here this afternoon. On behalf of Mr. Boardman and the Board of Directors, we greatly appreciate the opportunity to be here to testify. Again, my name is DJ Stadtler. I'm the vice president for operations for Amtrak. As you know, we at Amtrak like to the call ourselves America's railroad. We operate over 21,300 miles, and we provide service to 500 different communities in 46 states. As bus and airline services have contracted in recent years, they've focused more and more on urban corridors. We've begun to play a progressively larger role in servicing America's heartland. Our network reaches about 40 percent of the rural population of America. Over that network, we own very little trackage of our own outside of the northeast; and we operate most of our traffic, a total of 70 percent of our train miles, on tracks owned by other railroads. These are what we call our host railroads.

I'm here today to discuss the performance of Amtrak services on these host railroads, which has deteriorated significantly over the last year. As the delays from host railroads mount, our On-Time Performance, or OTP, continues to decline. Here in North Dakota, we offer a single train a day in each direction on our Empire Builder service, which is run on tracks owned by BNSF. I know this issue has concerned the Board, and I very much regret that I have to start this conversation by telling you that the performance of our long-distance trains in general, and this train in particular, has continued to deteriorate since you saw me last April.

The long-distance trains are a core Amtrak public service and a vital part of the interstate passenger rail network. They generate a substantial portion of our ridership Amtrak-wide. These 15 services are the only Amtrak trains on about 70 percent of our system and the only services at half of our stations. In most places, again, like North Dakota, the service is a single daily train in each direction. They provide essential service to many areas that increasingly are lacking mobility choices. On average, they are as full as our Acela service trains are going up and down the corridor. That's how many passengers ride each day. On-time performance closely correlates to customer satisfaction. That obviously affects ticket revenues and costs. It also affects the connecting revenue as people change trains in the major hubs like Chicago, et cetera.

We're just starting to feel the financial impacts of this poor host railroad performance as the costs are rising and the revenues are dropping. Section 213 of the 2008 PRIIA Act authorized the STB to investigate if an Amtrak train's on-time performance falls below 80 percent for two consecutive quarters. Today, we don't have a single long-distance train that hits that mark. We don't have a single train that's hit 80 percent this fiscal year to date. Most of them aren't even close.

Not only are the delays increasing, but the magnitude of the delay is increasing as well. It would be bad enough if we had more trains that were late, but now they're missing their scheduled arrival time by progressively greater and greater margins. The chart that you see on the screen captures the total minutes of delay for each of our Class 1 hosts for which the carrier is responsible. As you can see, it's risen across the board; and the Empire Builder in particular has been seriously affected.

There are numerous indications that the situation is worsening, not improving. Long-distance trains are particularly hard hit. The long-distance service on-time performance are currently down 21.4 percentage points in this fiscal year versus last fiscal year to date. In July, the Washington to Chicago Capitol Limited train arrived on time only 1.6 percent of the time at the endpoint terminals and 19.6 percent of the time at intermediate stations along the way. The California Zephyr managed an 8.1 endpoint on-time performance in the same month. Both the delays and the overall magnitude of the delays continue to increase. As this situation worsens, the word spreads, our ridership falls off. The Empire Builder's revenues, for example, are 18 percent lower than they were at this time last year. That's by far the biggest decrease among our long-distance services.

We have already worked with the railroad and added time to the schedule of the Empire Builder to help the railroad recover; but despite some improvements, the train is still arriving late more than 70 percent of the time. The negative impacts on Amtrak include: Our service becomes less trip-time competitive. Our revenue is reduced. We have missed connections for our passengers to other trains. We're driving customers away from the train and damaging our brand. And it also forces us to steal cars from other services in order to make up for the fact that the train is so late. The Empire Builder gets late to Seattle, and instead of having everybody wait to leave Seattle to head the other way, we've made up a separate consist that we keep up there that's ready so it will always leave on time at the endpoint. It just loses time along the way. That forces us to spend more money on maintenance and other services as we have to have faster turns in New Orleans and L.A., et cetera.

These trends have shown little hope of reversing themselves, and some kind of action will be required to address them. If they're not addressed, the quality of the transportation we provide to our customers will continue to deteriorate. That's an issue for them. It's also an issue for the 19 state partners who work with us and fund part of our operations on many of the host railroads. It's also an issue for the federal government which will have to meet Amtrak's operating costs when, not if but when, they continue to rise.

Amtrak is happy to join the host if they want to seek funding for additional capacity, but the host must demonstrate that they have made the decision to take our passenger train performance seriously and address the operational and maintenance issues that impede our trains on their lines. We previously urged this Board to require each Class 1 host to report to the STB on the steps it was taking to reduce delays to Amtrak trains whose monthly on-time performance fell below 80 percent. Again, since we made that request in April, the situation has only worsened.

And I want to close this statement by reiterating the importance of the STB oversight and monitoring of the performance on host railroads. We urgently need your assistance in this matter, and we believe that an STB reporting requirement will both demonstrate attention and focus and provide all parties with a clear understanding of the challenges that we have. I would be happy to answer any questions you have.

CHAIRMAN ELLIOTT: Mr. Glover?

MR. GLOVER: Thank you. I thank the board members, and I thank all of the rail customers in the room for their comments today. It's given me a bigger perspective; and I hope, in my couple minutes, I can offer a different perspective as well.

My name is Bruce Glover. I am a vice president with the Brotherhood of Maintenance of Way Employees, a division of the International Brotherhood of Teamsters. We are the union that represents the men and women that construct and maintain railroad tracks, bridges, and buildings. This is my 40th year in the industry, and I have spent all 40 years up here on the northern tier on the Great Northern, Northern Pacific, and SP&S lines. I also represented Montana Rail Link since it started in 1986.

As a representative of railroad employees, I do study every day the capacity and the service issues that are currently going on. I make that part of my job. I care about them, and I help where I can when the railroad needs help to get something changed to do it better. But I ask the Board and all of the customers in the room to understand that we too have problems with the railroad, some of it related to this capacity. The railroad is short on employees. They've been short on employees for a long time, several years. They know about it. We've told them about it. And until very recently, they've done very little about it.

In 2011, I wrote to BNSF; and I described the employee shortage and described the impact that that shortage was having. They wrote me back and said, "We weren't short on employees. We just had too many vacancies." In January and March of 2014, I again wrote BNSF; and I detailed the exact employee count shortage using the railroad's own documents.

And I explained that in the Twin Cities district, which is North Dakota, South Dakota and Minnesota, so the area we're talking about, there were 100 fewer maintenance employees in July of 2013 than there were in July of 2009. And there was a lot more trains in July of 2013 than there were in July of 2009. And, in addition to a hundred fewer maintenance employees in July of 2013, we had 100 vacant positions. These are positions advertised that there is no one to fill them because there are no more employees.

Now, I can see that some improvement has been made. But when I look at the July 2014 Twin City district list, the 100 jobs that were cut since 2009 have been restored; so it puts us back now to 2009 staffing levels. But that same list has 120 vacancies, jobs that they need and want filled but there were no employees to fill in July of 2014. Likewise, to look at our large rail and tie, our production gangs in July of 2014, 180 vacant positions on the production gangs. That's in the middle of the construction season when we should be, as they say, making hay.

I'll give you an example of what these shortages mean. Just last week, we had a high-speed tamping crew on the main line track between Fargo and Minot, the BNSF KO subdivision. A tamping crew is a highly-sophisticated, multi-million dollar group of machines that grabs the rail, raises it a little, tamps the rock level and smooth so the train can go as fast as possible. So the sophisticated tamping machine starts its work, picks the rail. The ties don't come up with the rail. Spikes roll under the rail. The tie plates get skewed. Those are all FRA track defects.

So, at the end of the day, that 60-mile-an-hour track is now 25-mile-an-hour track. So what happens? They park the sophisticated tamping machines. They send the machine operators back, who are not tooled, they don't have the equipment, back to straighten tie plates and spikes. And so what happens is, for several days, that track stays at 25 miles an hour. And why does this happen? It's because there's no local forces available to support the mechanized equipment doing this work. It should also mean something else to you, and that is the ties in that particular location of the mainline track are so bad they don't come up with the rail. And there is no tie gang scheduled to replace those ties this year or we wouldn't be out there surfacing.

Another example of what the shortage means is, when I look at the April to August 2014 average daily slow orders on the Twin Cities division, which again is North Dakota, South Dakota and Minnesota, they are -- they're measured in minutes. The minutes are double in 2014 than they were in 2013; so it's another indication that we are behind. There is not enough people to maintain to this level of service.

But there is another impact of this shortage, and it's important to us. And that is the employees that are out here are working day and night and night and day, doing their best, giving it their all to try to keep the whole thing bolted together. And I know, because they tell me, they're stretched, they're stressed, and they're feeling abused. The railroad, with the hair-on-fire management, because of this shortage, has pushed and shoved these employees every which way, wherever, whenever, needs them today, tomorrow or yesterday.

And, in order to do that -- I mean, these are all collective bargaining agreement employees. In order to do that, you've got to ignore their seniority and abuse their collective bargaining agreement. That's a concern to us. We start contract negotiations November 1. It's a long, drawn-out process. But nobody wants to start it when the company is not honoring its current agreements or when it decides it wants to start a tug-o-war with the employees. So these issues are important.

It's my 40th year in the industry. I want it to be successful. It's been very good to me. I want it to remain successful. But we think it's important, vitally important, when we have discussions about rail service issues, that rail labor, the employees be incorporated into those discussions. I think they can bring another perspective that may not be -- that may not be incorporated in the current discussion. We can't just accept the railroad's view that everything is okay, it was just a bad winter, because that's not necessarily true. All of rail labor has something to contribute to these discussions.

But I think, in particular, with the increase in crude oil, maintenance employees have really taken on a very -- a more critical role; and every day they're out there dodging more and more dangerous trains. So I think that the maintenance piece of this really has to be incorporated into these discussions. Thank you.

CHAIRMAN ELLIOTT: Thank you, Mr. Glover. Thanks to both of you. Just a clarification, Mr. Glover, with respect to your comments. They were regarding BNSF?

MR. GLOVER: Yes, they are. But that's the property I came off of that I know the most about.

CHAIRMAN ELLIOTT: Right. Right.

MR. GLOVER: I can tell you CP numbers. On their maintenance force, if I look at the same July -- July 2009 to July 2014, what I gave you in the BN, I think CP maintenance force is up 50.

CHAIRMAN ELLIOTT: And you're just strictly talking about maintenance of way.

MR. GLOVER: Exactly. Exactly.

CHAIRMAN ELLIOTT: Okay. I just wanted to clarify that for the record and for my own knowledge. Mr. Stadtler, just a quick question. You alluded to that most of the, I guess, trains, long-distance trains are not hitting the 80 percent number. And how do you -- Do you view that as a service issue amongst the Class 1s or a preference issue as laid out in the statute or maybe a combination?

MR. STADTLER: Well, I think it's a combination; and it's a preference issue as laid out in the statute. But I'll sit here and very clearly say I don't envy the BNSF because they're in a situation where basically they've got ten pounds of potatoes in a five-pound bag. Somebody previously talked about trains being parked. When they park trains, and they have to do it for whatever reasons they do, there are no longer sidings to put freight trains in so Amtrak trains can go by. So it's really a congestion issue. Preference is statutorily required, but the service aspect of it comes into place too. The dispatchers almost get to a point where they don't have a choice and they've got to back us up.

And, again, I don't want to praise the BNSF; but they really have done a great job in working with us and communicating. Last week, I spent -- we took the entire Empire Builder ride with the vice president for passengers on the BN. And slow order by slow order, he said, "Look, here's where we're replacing ties. Here's where we've got work taking place." And we're working very closely with them to adjust the schedules. We'll probably add a little bit at a time. As I think you know, we have detoured around on the KO sub in order to stay out of the congested places. So they are working with us to try to make it better, but better has turned out to be 16 percent or so. So we've got a lot of work to do.

CHAIRMAN ELLIOTT: I know the numbers were higher last year at some point, significantly higher. When did you see that downturn start to occur with respect to the on-time performance?

MR. STADTLER: We can show -- We've got the slide. It's really been continuing to deteriorate over the last -- the last year or so, specifically. Mark, if you can bring it up. The last six months has been pretty significant. And we have the data for you.

CHAIRMAN ELLIOTT: It's in the record, though?

MR. STADTLER: Yes.

CHAIRMAN ELLIOTT: Okay.

MR. STADTLER: You can see -- On this chart, you can see month by month. The bottom line is this year, and it got a little better in the April time frame. But since April, May, it's really gone down.

CHAIRMAN ELLIOTT: Thank you. Vice Chairman?

VICE CHAIRMAN MILLER: So, based on the dialogue you've had with BNSF and what you know about their capital improvement program, do you have a notion or sort of a sense about when the service level for Amtrak might be able to improve and how much it would improve once that full capital program is carried out?

MR. STADTLER: I don't think I have a full sense for that based on conversations. We know when their slow orders are coming off, and it was referenced earlier sometime in the October time frame. But then they start construction again in February and March, so it's going to be a continuing process over the next couple years. They're putting, as you know, record levels of capital into their infrastructure; but that work impedes our progress.

VICE CHAIRMAN MILLER: So, based on what you know about what they're planning to do, what you know about, you know, sort of your business, the way Amtrak trains run, you would foresee that these usually delayed trains are going to continue into the foreseeable future? You're not seeing any daylight at the end of the tunnel?

MR. STADTLER: I'm not overly optimistic, no.

VICE CHAIRMAN MILLER: And do you, from the perspective of Amtrak, have a set of approaches that you think could help relieve the situation?

MR. STADTLER: From our point of view, we're working to modify the schedules to make them more aligned with the work that's being done. We're also moving the consists so we have more cars available as we suffer these late trains. And we're doing as good a job as we can of notifying the passengers that, hey, there's a good chance of this train being late.

VICE CHAIRMAN MILLER: Do you have a set of items you've asked the freight railroads to do to help relieve the situation that, to date, they've been unwilling to do?

MR. STADTLER: Really it's the consistency of the communication. We have -- We're just starting electronic delay reporting where we can sit down and we can see minute by minute why the delays are taking place and where they're taking place. In the past, we've done that all manually and literally with the curled fax paper. So I think this is going to go a long way to getting the right data on the table so we can sit right across and say, okay, we're seeing huge numbers between here and here. What can we do to fix that?

VICE CHAIRMAN MILLER: And you said that process has just started?

MR. STADTLER: It's just rolling out now. I believe the pilot is finished, and it's just rolling out.

VICE CHAIRMAN MILLER: And when you say rolling out, so how long will it take before it's rolled out?

MR. STADTLER: By the end of this calendar year, it will be across the network.

VICE CHAIRMAN MILLER: Okay. Thank you.

CHAIRMAN ELLIOTT: Commissioner?

COMMISSIONER BEGEMAN: Thank you. I don't have any questions, but thank you for your testimony.

CHAIRMAN ELLIOTT: Thank you very much. All right. We're going to take a 15-minute break, and we will be back here for the rest of the hearing. Thank you.

(A recess was held at this time.)

CHAIRMAN ELLIOTT: All right. Why don't we reconvene and begin with our next panel, Panel No. 6, which is another ag panel. Why don't we begin with Mr. Peterson.

MR. PETERSON: Good afternoon, Chairman Elliott, Vice Chairman Miller, and Board Member Begeman. My name is Lance Peterson. I am a corn, soybean, and wheat farmer from Underwood, Minnesota, in west central Minnesota. I would like to thank you for traveling to this area and allowing us to have this further discussion on the very important rail issues. My testimony today is on behalf of the American Soybean Growers Association and also the Minnesota Soybean Growers Association.

On April 10 of this year, I had the opportunity to testify before your board in Washington. And, at that hearing, the message I delivered was that inadequate rail service through delays and increased freight costs is not just a business challenge but creates a massive loss which is passed on directly to the agricultural producer, the farmer. We've heard about that message today, so I -- I won't expound on it. But I certainly want to reaffirm it. It's real dollars.

The dollars that I had -- The dollar amount that I had talked about on April 10 was $100,000 for one producer. That was myself. If you take that times the thousands of producers in the upper Midwest, we reach that very sizable figure in the hundreds of millions of dollars, which is a staggering sum of money. It impacts not only the farmer but the farm community and indeed main street.

At the April hearing, the rail industry stressed that the cold winter had severely impacted the ability to move railcars. They talked about the huge push to clean up that issue; and, in fact, the statement was made that it was likely to be taken care of by June. And we have certainly passed that mark, and there is still a fair amount of last year's crop that is still present in the bins. I've heard numerous stories where grain bin companies are experiencing a very large sales amount this year to the point where they literally cannot take on any more business.

Certainly some of that is because of the bountiful crops that we expect to harvest, but some of that is because the farmers are in a very difficult position of having their bins still full of last year's crops and having to figure out how to deal with this year's harvest and wanting to avoid piling it on the ground. So it's certainly a very serious situation.

The rail problems of last year have grain shippers trying to figure out how to navigate through this year. I heard the gentleman from South Dakota. Mr. Cope had talked about millions of dollars being spent to reserve or to access shuttle trains for this coming year. $2.5 million per shuttle was the number I talked about with my local shipper. That equates to about $700 per car just to access that railcar; and that's a number that, in years past, was virtually nonexistent. You put your order in or participated in the auction, but were not paying in the millions of dollars in order to access that shuttle for the year.

So, with that said, though, that dollar amount, that $2.5 million was paid with the expectations that we will see an adequate turnaround time of these shuttle trains. And right now, the figure that's being talked about is two and a half times per month. And, if that number holds true, then the freight that is purchased will hopefully meet the needs of the shipper for this season. But that's what brings forward the area of concern, if indeed the shippers have to go out and seek additional freight on the secondary market.

Mr. Cope had expressed that the secondary market numbers were now down to around, I think, a thousand or slightly more than that in order to access cars on that route. The number that I had heard exactly one week ago today, the bid price was $3,500 per car. That's for October-November shipment. The ask was --

UNIDENTIFIED SPEAKER: That's per car?

MR. PETERSON: That's per car, yep. So for corn, at 4,000 bushels per railcar, if the bid was $3,500, the asking price was north of $4,500 per car. So if we use 4,000 as the point where those two possibly come together, that's still a dollar per bushel that that secondary market was asking for last week at this time. And has that market possibly softened since then? It is possible because of the changes -- actually, the challenges we're seeing in spring wheat harvest. Not as much spring wheat has been harvested at this time, so some of those trains have become available for use for other things.

So that does talk about the fluctuating ability of that secondary market, but it also speaks to the importance of we -- we desperately need to see adequate rail movement this fall to keep the shippers from needing to access that secondary market. They need to be able to rely on that freight that they've already booked and put that to use.

Through the directive of the Surface Transportation Board, we now know the movement, velocity, and turnaround time of grain cars. And this is helpful, but that's only part of the story. Mr. Whiteside brought it up in the previous panel. He said we really are to the point where we want to know the metrics of what's happening in the other sectors of the rail industry. Obviously, the oil is the one that really comes to mind. And that -- I echo those comments in what I had put together as testimony.

How and where are the railroad assets, the locomotives, crews, and tracks being utilized? Are the rail assets consistently managed for total overall efficiency, or are some sectors being favored over the others? And the only way to answer that question is to include full reporting of rail service.

So my request to the Surface Transportation Board is to require the railroads to submit the metrics showing past dues, average days late, turnaround times, et cetera, for agriculture -- agricultural shippers, the oil industry, coal, and other customers. This information would help to give a clear picture of railroad service issues; and based on the size and scope of the rail shipment problems being faced in the upper Midwest, this is not too much to ask.

My testimony is very brief in light of the fact that a lot of the points have been already touched on in previous panels today, so I'll shift to my summary. Basically, we know that the farm losses have been tremendous. We're very concerned about the upcoming fall peak use. And, lastly, increasing transparency through full disclosure can only help to understand the factors that affect rail movement as we move forward to find solutions. Thank you for the opportunity to testify.

CHAIRMAN ELLIOTT: Thank you, Mr. Peterson.

MR. BROTEN: Good afternoon, Chairman Elliott, Vice Chairman Miller, Commissioner Begeman. My name is Eric Broten. I'm a farmer from eastern North Dakota. I farm 90 miles northwest of here. I'm taking time today to speak with you on behalf of the North Dakota Soybean Growers Association and all farmers across the state that are dealing with transportation issues.

Where I farm, corn and soybeans have become a majority of what we grow. Our need for storage and transportation have increased due to higher yields associated with corn. To address this issue on our farm, we have added 1.25 million bushels of storage in the past two years. Farmers in North Dakota need this storage capacity on-farm because we have very extreme harvest conditions.

Our local elevators do their best to work with producers and provide the best service they can; but with ever-present weather threats, farmers are forced to harvest their crop as quickly as possible or risk losing it.

During this increased harvest pressure, elevators will fill with grain and need timely trains to provide the storage needed to hold the entire crop. To address this issue, producers have started to build their own storage, allowing them to dump directly into their bins without having to wait in line at the elevator or risk getting caught with their local elevator full and not being able to unload grain.

Another real issue on the horizon, due to the increased basis in the upper Midwest and lower cash price, a lot of 2013 grain stored in farmers' bins is still there. Yes, many elevators are going to be empty going into harvest; but the built-in buffer of on-farm storage will run out almost immediately. This puts an increased demand on railroads for timely movement of grain through these elevators so producers can continue to harvest their grain before losing it to weather.

To prepare for this, farmers have started to look for other ways to store their grain, as has been mentioned earlier, by piling it on the ground, using older, maybe salvageable grain bins that haven't been used previously. Traditionally, our marketing doesn't require us to hold this much crop; but farmers fell victim to the basis.

When we harvest, we usually store grain on-farm and then deliver this grain either in the spring or summer. This is done to capitalize on a traditionally better basis because the demand to move grain is lower during this time, usually lower in cost as well. This year didn't play out that way, and this spring we were faced with a horrible basis. This basis or cost of transportation is directly taken out of what I get paid for my grain.

Last spring, realizing how important this issue was and how greatly it affected me and my ability to pay my bills, I jumped on a plane with Lance Peterson and went to D.C. to listen to the STB hearing. After sitting through this meeting, I left thinking the railroad, a partner that the Midwest farmers have helped to build and are extremely dependent on, was going to start to improve and our basis would come down. We were told of improvements being made and excuses from a horrible winter; this would be corrected and rail service would return to normal. This basis improvement never came.

I understand this is not due entirely to the rail carriers but also to the secondary market taking advantage of the situation, along with the drop in commodity prices. This left farmers with a tremendous amount of grain still in their bins. As we look at the growing demand for rail service and the growth the railroad is undertaking, I am worried that we are still falling behind. Yes, the railroad is working very hard to improve service; but we are in a remarkable time of growth in our state.

This year, the North Dakota soybean crop is estimated at more than 190 million bushels, an all-time high. As a soybean farmer from North Dakota, I know 95 percent of my crop will leave the state and much will leave this country to be consumed. We as farmers absolutely need the railroad to continue to provide the world with a dependable source of protein. In the past, we were told of weather issues and quick fixes that would help to improve the rail service. I think everyone knows what needs to be done will not be a quick fix.

On my farm last year, we raised nearly a million bushels of grain. Because of rail service issues, I estimated the basis on my crops increased about 60 cents per bushel. Sixty cents per bushel times one million bushels equals $600,000 in potential lost income due to these transportation issues. There have been times this year where the basis has been $1.00 per bushel over where it traditionally is. If we take that over a corn yield of 150 bushels per acre, that's an additional $150 per acre towards transportation costs.

This additional transportation cost would be higher than any other single cost: land payment, seed, fertilizer, or chemical. Farmers in the Midwest cannot afford to pay these high costs and continue to be in operation. I am asking for the railroads to continue to work with producers in the Midwest and provide the rail service we have come to expect, along with providing producers with accurate information, whether it is good news or bad.

We support the request made by the ASA for the STB to require railroads to submit metrics showing past dues, average days late, and turnaround times for agricultural customers versus crude oil customers and other customers. We are ready to help find long-term solutions for this ongoing transportation challenge. As grain marketers trying to figure out a very complex market, our ability to successfully market our grain is extremely dependent on reliable information.

I appreciate the time to speak with you. Thank you.

MS. O'CONNELL: Good afternoon, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman. My name is Christine O'Connell, and I am the trading and operations coordinator for Trinidad Benham Corporation from Denver, Colorado. Trinidad Benham is the leading independent packager of dry edible beans in the United States. We have, in recent years, made strong investments in North Dakota for our bean origination needs. We opened a facility in Pillsbury, North Dakota, in 2010 and an additional facility in Colgate, North Dakota, last year.

Railroad service is extremely important for us at these facilities to maintain our product flow beginning with the grower and ultimately ending at one of our nationwide packaging/distribution systems. Since December 2013, I've had to file over 300 claims due to past car orders outside the guarantee period. I am cautiously optimistic with the improvements I have seen with the BNSF. I feel they've done a good job responding to our complaints and notifying us of their plans to improve car supply and railroad service.

We do still continue to have car order fulfillment problems in western North Dakota. For example, since June 2014, late shipments in Ray, North Dakota, have increased by 23 days. The most recent claims filed for July and August shipments resulted with an average days late of 71 days. Other areas of North Dakota that are still challenging for car supply needs are Leeds, North Dakota, with an average of 45 days late, along with Johnstown, Northwood, and Walhalla, North Dakota, each at 36 days late on average. This was a short period after the BNSF had said they would improve car order fulfillment.

I find that, as car supply improves, at the same time the service levels have deteriorated. In the past month, we had a loaded car wait for more than 30 days in Colgate, North Dakota, before it was pulled. I communicated regularly with the trainmaster, and the constant factor was the lack of crew. I even questioned why I wasn't notified of missed switches. I was told that they don't have the manpower to notify customers of a missed switch.

Our Colgate, North Dakota, facility has service only one day a week. For every missed switch, we are out two weeks. If this continues into harvest, we will run out of storage capacity and therefore be unable to receive additional beans, essentially shutting us down.

We are also experiencing service problems in Colorado. Since July 2014, 100 percent of the BNSF cars en route to our plant in Greeley, Colorado, have resulted in plant shutdown logs. I've been told it's due to congestion in Denver, Colorado. I have noticed cars can sit anywhere from one to two weeks in Omaha, Nebraska, before heading towards Denver.

There are also interchange problems at our plant in Sterling, Colorado. For example, since June 2014, our transit times from North Dakota to Sterling, Colorado, have increased 21 days. On average, we see a delay of seven full days before a car that has arrived in Sterling, Colorado, is interchanged to the UP for delivery. I currently have a car on the BNSF in Sterling, Colorado, that has been there for two weeks without an interchange.

As much as I can complain about the car supply on the BNSF, there have been a couple CP shippers that have had no choice but to turn to the BNSF for service due to car order delays. The outstanding CP car orders were topping the seven-day mark on average. One shipper that used BNSF cars to fulfill a contract for us eventually received the cars from the CP 113 days past due.

And, also, going off Mr. Brooks' statement about the cancelations of cars no longer needed, I wonder how many of those are no longer needed because shippers had to truck and turn to different loading facilities with the BNSF.

I also wanted to go to some comments that Mr. Lease of the BNSF spoke about, using alternate junctions for Chicago. Our largest packaging facility is outside of Nashville, Tennessee, on the CSX. I route all of my freight through Chicago. I have constantly asked for rates into East St. Louis and Memphis, and I've never gotten them.

So, if they would like shippers to try to use an alternate route -- because all my freight is Rule 11, I decide which way it's routed -- then I would love a motivation of a better rate. But the rates are higher to East St. Louis. They're higher to Memphis. And then, on the other hand, then the CSX, who serves Tennessee, then they need to also reciprocate with better rates out of those junctions as well. But we don't see them, so we're not going to route our freight on that lane.

Trinidad Benham is an employee-owned company of over 700 people who rely on consistent railroad service out of this region. I would like to thank you for taking the time to listen to our service needs. We are looking forward to drastic improvements with your continued support.

MR. PROSSER: Thank you. Good afternoon. My name is Ed Prosser. I am the VP of agricultural trading at Gavilon, LLC. Gavilon is a grain and ingredient fertilizer asset management -- excuse me, supply chain management company based in Omaha. I appreciate the Board's flexibility in moving me up from the eighth panel. I've got a conflict on my transportation, ironically. I've been told that I'm a little verbose, so I'm going to read my testimony to make sure that I stay underneath my time limit.

I want to thank the STB for the opportunity to share Gavilon's thoughts today. Gavilon is the second largest grain storage company in the United States as well as one of the largest fertilizer distributors in the world. We have approximately 200 grain and fertilizer facilities scattered throughout the United States.

We are particularly sensitive to transportation issues in the northern plains as we have 15 facilities in the Dakotas along with 83 employees. Gavilon is an asset and supply chain management company. We do not produce or consume the agricultural products we handle. We manage the logistics, both storage and movement, for farmers and end users. This puts us in a unique advantage -- unique vantage point to comment on the current rail problems.

First, to define this as a rail-only transportation problem is too simple. These perishable commodities will find a way to market even if certain avenues are closed. The inflation that we've seen in the rail freight market has affected other modes of transportation as well. We are seeing some regions where truck freight costs have doubled.

Other ways of moving grain, such as container boxes and barges, are historically high. What started as a regional rail crisis has turned into a nationwide transportation tax on agricultural commodities. This tax has to be paid by someone in the supply chain. Today, it has pushed interior price levels much cheaper than expected, which comes out of the farmer's pocket. On the sale side of the transaction, the increased freight that we must pass on has pushed export prices to levels that make us uncompetitive with our world peers.

Gavilon has learned long ago that we cannot manage what we cannot measure. We would encourage the Board to continue requiring the Class 1 railroads to provide benchmarks so the outside can fully assess their performance. Gavilon is a member of the National Grain and Feed Association, and we fully support the additional metrics that the NGFA is recommending.

First, realtime information on train velocity and cycle times as well as realistic projections on restoring service. Second, weekly carloads by product and state. Third, weekly average dwell times for trains hauling grain and grain products, coal, and crude oil. Fourth, weekly averages for miles per day transited for grain, coal, and crude oil. Five, the level of capacity utilization by rail corridors, including the heavy grain corridors of the PNW and Texas Gulf. And, finally, realtime data on the number of grain, oilseed, coal, and crude oil sets transported by rail.

We believe that the forces of the market are the best distributor of scarce resources. However, when certain utilities are granted singular access to provide essential services, sometimes the market is prevented from rewarding good behavior and punishing bad. Those penalties accrue to the customers of the railroad, be it a farmer or an exporter. Today, the railroads have no penalty for non-performance.

We encourage the STB to use its oversight powers to bring transparency to the process of distribution of assets within the railroads and to make the railroad a stakeholder in the process. One way for us as a company, and agriculture as an industry, to be able to effectively manage the increased logistics risks that we are taking on as a result of the current rail situation is to be able to better -- have better information regarding the data that NGFA is requesting.

Agriculture and the railroads have a long and intertwined history. We should not forget the efficient provider of transportation that the railroads have been, and we applaud the additional capital investments that several of the carriers have recently committed to making. However, in the recent past, it is increasingly evident that the railroads' sales commitments have exceeded their infrastructure spending.

We would encourage the Board to be the reasonable voice advocating disciplined sales increases until infrastructure can catch up. To assure that agriculture continues to be able to make effective use of the limited transportation available to us, we request that the Board require the railroads to make public the benchmarks that it and the public can use to assess the performance and the efficiencies of the railroads. Thank you.

CHAIRMAN ELLIOTT: Thank you. Just one question that I asked the other group. With respect to the new CP designated train system, have any of you had any involvement in that at all? No?

MR. PROSSER: We are going to participate, and I think at this point it's too early in the process to really understand how it's going to work.

CHAIRMAN ELLIOTT: Okay. Thank you. Vice Chairman?

VICE CHAIRMAN MILLER: As a follow-up on that question, one of the issues that has come up is whether or not there was any coercion from the railroad, CP, towards shippers to kind of wipe out those past grain car orders. What was your experience?

MR. PROSSER: We have none. I have no comment. I do not know -- In our system, we chose to become a partner in their dedicated -- their new dedicated system; but, to my knowledge, I don't know that we had any past car orders.

VICE CHAIRMAN MILLER: Anyone else on the panel? Ms. O'Connell, I wanted to be sure that I understood this. So did I understand you to say that you've asked for rates so that you can go someplace other than Chicago, but you can't get a rate?

MS. O'CONNELL: There is a -- Because we're in edible beans, the Book 5 tariff under the BNSF has some rates into Memphis, but not from origins that we ship. And so I've asked for some into Memphis from the North Dakota region. I've never seen any. I'm sure I could do a mileage scale; but, like I've said, there's not really much motivation, if I'm going to be paying more freight, to move on a different lane.

VICE CHAIRMAN MILLER: Mm-hmm. And then I'm just sort of curious kind of what the time frame might be before we all should become extraordinarily alarmed about this fall's harvest. Mr. Broten, as you were saying, you kind of left the hearing in April feeling better, thinking things were going to get better; and then they didn't.

You know, again, in some ways I think there's a feeling, you know, getting rid of that 2013 crop, we're going to be ready for 2014. But what's kind of the canary in the mine, from your perspective, of when everyone is going to realize -- I mean, should we come to that point, what would signal to us that this is really not going to be good?

MR. BROTEN: Right now, in our area where I farm, most of the shuttle-loader elevators are becoming empty. Wheat harvest hasn't started yet or is just beginning. That delay, that will start to fill up the elevators. Hopefully they'll be able to move that wheat back out when soybean harvest begins, which will be delayed again this year. The entire harvest will be set back. When the soybean harvest begins, traditionally a large amount of soybeans are sold directly to the elevators because they don't store quite as well as some of the other crops do; so we'll see the elevators become full with soybeans.

And corn harvest -- With the soybean harvest being delayed and expecting probably a frost coming near that point in time when soybean harvest begins, corn harvest could start immediately into, you know, the ending of soybean harvest. And when these elevators become full with soybeans, we're going to have a really big problem with finding a place to put the corn from next year's harvest.

VICE CHAIRMAN MILLER: So you're saying, if we get to the end of soybean harvest and soybeans haven't been able to move out, then you know, before corn harvest is started, it's going to be big trouble?

MR. BROTEN: Yeah. We might not even be able to get through soybean harvest without having issues.

VICE CHAIRMAN MILLER: Mm-hmm. And you said soybean harvest is looking like it's going to start late this year. But when would it normally start, and what does "late" mean? Does that mean a week? ten days? two weeks?

MR. BROTEN: I would say probably soybean harvest would -- You know, it -- We always are playing mother nature, so we never know. And that's kind of an ongoing theme of why this is so difficult, because there is no certain dates, there is no certain times.

Soybean harvest for us probably won't begin until October of this year, which typically it could begin as early as early September, maybe mid-September being -- end of September being more average. But we'll be into October on our farm probably before we start harvesting soybeans.

VICE CHAIRMAN MILLER: Okay. Thank you.

COMMISSIONER BEGEMAN: Thank you. Very, very helpful testimony. I will say I've kind of had alarms going off since we had the hearing last April, but I will try to keep them toned down since you guys are managing to do so as well.

I will say I'm quite surprised that, for most of the panels, their theme isn't, "Oh, my God. We have to have service. We are so desperate." It's that you would be almost satisfied with and appreciative of data. I would think that that would be something that we could all work on and try to provide. I think that everyone here probably has thought about that idea as well.

I would also just like to encourage -- There are probably more representatives from BNSF here than there are unserved shippers. If someone from BNSF could, talk with Ms. O'Connell and just help her understand how maybe she could get a rate going out of Chicago or help her, and maybe help all of us, understand why that wouldn't be possible. But, please, if you'll reach out and talk with her, I would appreciate that. That's all I have.

CHAIRMAN ELLIOTT: Thank you. I just want to thank you very much for coming. This was a great panel just because we had everything from a family farmer to a large global ag company, so it was very helpful just to get a broader perspective on these issues. And to throw in, also, the soybean issues were very helpful.

I do urge you, also, if you're not getting what you need, to reach out to us, to the Rail Customer and Public Assistance Program. You know, we can't solve everything; but we can certainly work with you and try very hard to get things solved. Thank you very much.

All right. Why don't we begin now with Panel 7, another coal panel.

MR. VAN AARTSEN: Okay. Good afternoon. My name is Randy Van Aartsen. I am the director of fuel supply for We Energies. Thank you, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman, for the opportunity to speak today; and thank you to the STB staff for arranging this hearing.

We Energies is an investor-owned utility providing electricity to approximately 2.2 million wholesale and retail customers in Wisconsin and the Upper Peninsula of Michigan. We operate four coal-fired power plants, two of which are rail served and two of which are served by lake vessel with coal initially delivered by rail to the docks, which are on Lake Superior and Lake Michigan. The rail-served plants are the Pleasant Prairie plant near Kenosha, Wisconsin, and the Oak Creek plant near Milwaukee.

The wider-served plants are the Valley plant in Milwaukee and the Presque Isle plant near Marquette, Michigan. The Presque Isle plant burns Montana and Wyoming PRB coal originated by the BNSF and transported on BNSF's northern corridor to the MERC dock at Superior, Wisconsin, where it's transferred to vessels with delivery of the coal to the plant on Lake Superior. I share the concerns that have already been expressed, but I want to focus my discussion today on the BNSF rail service for the Presque Isle plant.

Coal is ultimately delivered to Presque Isle by lake vessel, and the vessels cannot operate during the winter months when the Northern Great Lakes are closed to shipping. This means we must have a sufficient inventory of coal at the plant by the end of each year to be able to provide reliable generation during the winter and early spring when coal can't be delivered. The Presque Isle plant has five generating units operated by We Energies at the direction of the Midcontinent Independent System Operator, MISO.

Four of these units are supposed to operate 24/7 to maintain the reliability of the electric system in Michigan's Upper Peninsula and in northern Wisconsin. BNSF's slow rail service is jeopardizing the reliable operation of these units, and the problem is expected to get worse this coming winter. We nominated a total of 1.5 million tons of coal for movement to Presque Isle in 2014; but at the present rate of deliveries by BNSF, it now appears that less than 1 million tons will be delivered this year.

Historically, we've varied between two and three unit train sets in BNSF service between the PRB mines and Superior, Wisconsin. This year, BNSF initially limited us to one set in service, exacerbating an already difficult inventory situation at our Presque Isle plant. Then they allowed a second set to return to service in April. Due to congestion on BNSF's northern tier lines, train cycle times have increased from an average of less than seven days prior to the fall of 2013 to an average of about ten days thus far in 2014.

We've repeatedly asked BNSF to allow us to put a third train set into this service. Although they indicated several months ago they would do this, BNSF has not yet allowed an additional train set due to the congestion on its northern corridor. However, we believe that they have increased the number of train sets in service to Superior for other customers.

The Presque Isle inventory target for December 31, 2014, which is the traditional close of the vessel shipping season, is 650,000 tons of coal. That level of inventory is needed to enable the plant to operate during the winter months when it cannot receive coal. As of mid-August, the inventory at the plant was less than 250,000 tons.

To build up to the December 31 minimum inventory target while meeting coal consumption projections for the rest of this year, the MERC dock at Superior needs to receive 750,000 tons more via BNSF between now and the end of the year. Current cycle times with two We Energies train sets in service will not achieve this volume.

Due to the projected shortfall in coal deliveries, which we have not been able to fully mitigate through extraordinary attempts to procure coal from other sources, MISO has had to significantly restrict the operations of Presque Isle in order to conserve the limited coal inventory.

This restricted operation is expected to be in place through next spring if we do not receive significantly more coal delivered to the MERC dock by BNSF. Presque Isle is the only large generating facility in Michigan's Upper Peninsula, so restricted operation at this plant will threaten electric system reliability with the concomitant risk that the Upper Peninsula will go dark this winter.

In conclusion, we urge the STB to do

everything in its power to encourage the BNSF to increase coal deliveries to Superior for Presque Isle for the remainder of 2014. Thank you for your time.

CHAIRMAN ELLIOTT: Thank you. Mr. Barker?

MR. BARKER: Good afternoon. My name is Theodore Barker. I am with the -- I am president of Maxeefish, LLC. We are a third-party logistics company providing shipping services to grain, fertilizer, and industrial product to shippers and coal shippers throughout North America and internationally. I am appearing this afternoon on behalf of Muscatine Power & Water as a generation facility in Muscatine, Iowa.

They have -- Their history is that, back in the early '90s, they received their coal for their facility from the Illinois Basin. But, in 1992, they made a decision to begin receiving coal from the Powder River Basin in Wyoming; and at that time, they did not have rail access at the facility in Muscatine, Iowa.

And so what they did is they had a spur built into the plant; and it happens that Muscatine, Iowa, at that time, was served by Canadian Pacific. And so the service started in 1993, and they -- it was a very -- they've had a nice long-term relationship with Canadian Pacific. In 1994, they went out and bought their first of two train sets that moved their coal between Wyoming and Iowa. The second set was purchased in 1998.

Now, when cycle times are normal, which is roughly seven days, each train set should have the capacity to deliver 750,000 tons each into the Muscatine plant. Historically, Muscatine burns, on average, about 1.1 million tons. The last few years, beginning in 2009, it has fallen off a little bit. But, overall, it's -- it's pretty consistent.

But what has come about is, since -- After they began shipping in the early '90s from Wyoming, the CP spun off the line that serves Muscatine, Iowa, to what was -- what was the Iowa, Chicago & Eastern Railroad. In the fourth quarter of 2009, the Canadian Pacific reacquired the ICE and began service again into Muscatine, Iowa.

And we had -- During the time that IC&E served the facility, the goal has always been that they receive the trains from BNSF in Ottumwa, Iowa. And the IC&E would deliver the trains up to -- from Ottumwa to Muscatine; and then after Muscatine unloads the trains, they were turned back to Ottumwa. And the goal has always -- by the railroad, has always been to take -- it should take about 24 hours to deliver the trains to the plant and then, after the plant unloads the trains, return the train back to Ottumwa and give it --

interchange it back to BNSF.

After Canadian Pacific reacquired the IC&E in 2009, we saw the cycle times begin to deteriorate; and they reached a point in 2010 where we communicated with Canadian Pacific and asked if they could come to Muscatine, Iowa, and sit down with us and give us what their plan was for serving the facility going forward into the future. And so they came to Muscatine, Iowa, in August of 2010.

And at that meeting was John Brooks, who spoke earlier this morning on behalf of Canadian Pacific. And, at the meeting, John said that one of their issues they were facing at that time was the amount of crews that are needed to move all the trains moving through that corridor; and he said that they were in the midst of hiring crews and getting them trained, but it was not going to be a quick fix.

So we said, "Okay, that's fine. We'll be patient." And, after that meeting in August of 2010, things improved. But beginning in roughly late 2013, things began to deteriorate; and the -- when you would communicate with the Canadian Pacific operations department, their standard response was, "Well, it's a crew issue; and we're hiring crews. And things are gonna get better." And that's into '14.

And into the third quarter now of 2014, things have just gotten worse and worse where -- Like I said a few minutes ago, the goal was 24 hours. Why, in the third quarter as of last week, it's now up to over 71 hours it takes to go make a round trip of 166 miles from Ottumwa to Muscatine and back. And two weeks ago, in August, it got so bad that one train it took over 121 hours to make that trip; and it was due -- totally tied to not available -- CP not having the crews available that they need to move the trains.

They -- You know, their response is, is that crews, you know, because they have to mark up that they're willing to sign -- or come to work, sometimes just choose not to sign up that particular day. And it's really an issue on weekends. We now have come to the realization that we don't ever -- we don't expect, rarely expect to get trains delivered on weekends anymore until this situation gets resolved; and even during the week, it's -- it's been a problem.

In July, Muscatine had to take preservation steps because our stockpile was getting so low that we did not want to run out of coal. And so what they have done is they had to cut back their burn rate in order to keep the stockpile from reaching zero. And the result of that is, in the months of July and August, Muscatine has lost, in wholesale power sales, $619,000 due to not having the coal that they -- Had it been delivered by Canadian Pacific, they would be able to have generated that money for wholesale power sales.

And after -- after -- It's been now four years since we had that meeting with CP in 2010. A reasonable person would conclude that they should have enough crews trained by now to handle whatever number of trains that are moving between Ottumwa and Nahant, Iowa, which is a crew change point just to the east of Muscatine, Iowa, and -- But we've now reached the conclusion that, if cycle times do not improve from where they are right now, that we have -- we are not going to get our nominated tons delivered by December 31 of this year if things do not improve from where they are this afternoon.

And our real concern is coming in 2015 where we need to have delivered 1.1 million tons in order to -- for our generation needs and for the -- to rebuild the stockpile to a level that we can -- that is reliable for generation. And, given the cycle times that we are experiencing currently, we expect next year, if things do not improve, we will only get 950,000 of the 1.1 million tons.

I want to thank the Board, Chairman Elliott and Vice Chairman Miller and Commissioner Begeman, for this time to explain the situation. And we would encourage the Board to, you know, see if you can encourage CP to follow through with their -- their plan which they said again this morning, which is hiring train crews to handle their business but specifically handle it in this area which is -- which is away from what they talked about this morning, which is North Dakota.

But, still, it's their whole system. And, given their attrition that they talked about this morning, it becomes even a real more concern to us on the amount of crews that they're willing to get trained to handle our trains. Thank you.

CHAIRMAN ELLIOTT: Thank you.

MR. SEURER: Good afternoon, Board members. My name is Jim Seurer with Glacial Lakes Energy. I am not Dana Siefkes-Lewis, but I have been asked by Dana to read her testimony. She could not be here, regrettably. There was a tragedy at the ethanol plant, and they had to attend to that today.

So Glacial Lakes Energy and Redfield Energy are located -- Well, we have two plants. They have one. There's a 70-mile difference between the Watertown and Redfield and then a 40-mile difference between Redfield and Mina; so they kind of sit between us. We own 8 percent of Redfield Energy. So here is -- With that, here is Dana's testimony.

"My name is Dana Lewis. I am the chief administrative officer for Redfield Energy. I want to take this -- I want to thank the Surface Transportation Board for conducting this public hearing to seek input from affected rail shippers. Redfield Energy was built as a 50-million-gallon-per-year ethanol plant. First production began in late April 2007. With plant modifications and other efficiencies, we are capable today of producing 60 million gallons per year. We provide a good market for area corn producers.

"In the calendar year of 2013, we produced 57.9 million gallons of ethanol and used 20.7 million bushels of corn. In addition, we produced 103,000 tons of dry distiller grains and 130,000 tons of modified distiller grains. Most of this feed product is marketed to local cattle producers. Redfield Energy has 42 employees.

"For most of 2014, Redfield Energy has been running its plants at a lower-than-planned production run rate due to slower rail turns on ethanol tankers. During our recent fiscal year ending August 31, 2014, we produced 53.9 million gallons of ethanol. This is down nearly 6 percent from the 57.1 million gallons produced in our prior fiscal year. BNSF serves our plant as the only rail service provider.

"I will note some of the other impacts the poor rail service has had on Redfield Energy and what we are doing to prepare for similar conditions going into this next year. Number one, longer return times for ethanol tankers and dry distiller grain hopper cars caused us to buy some spot product at higher market prices to fulfill commitments made prior to the rail service deterioration. This in turn had a negative impact to profit margins.

"Number two, managing logistics has been a nightmare for the marketing of our feed by-products. Even truck sales were impacted as we produced less modified distiller grain for local livestock producers. Winter is our high-demand period for feed by-products. In the summer, if hopper cars don't show up, we need to sell feed products to local markets at deep discounts to keep the plant running. We lease and carry a higher number of tankers than most plants our size. Going into this past winter, we had 198 ethanol tankers under lease. At planned normal production, we would fill 40 tankers per -- 40 tanker cars per week.

"Historically, rail turns on the tankers was roughly four weeks. We are seeing our rail turns averaging about seven weeks per car. In the next few months, we will have our fleet of tanker cars up to 233 cars. This is an additional monthly lease cost burden to Redfield Energy. We are a rail customer that historically received three days a week service from BNSF. During most of 2014, we have been averaging two days a week service. Slower destination dwell times only add to the slower return times of cars.

"Number four, during the past 31 weeks, we have filled an average 33 ethanol car -- ethanol tankers per week. We filled them as fast as they were returned to us. As stated earlier, at full production, we would expect to ship 40 cars per week. During the first quarter of 2014, we loaded 454 tanker cars. This is down 9 percent from the 500 cars shipped during the first quarter of last year.

"After its April hearing in D.C., the Surface Transportation Board asked the railroads to put a higher priority on fertilizer shipments. After that, the railroads were asked to do what they could to catch up on all the grain orders. As a value-added ag entity, we are -- we are okay with these shipment priorities. Our producers need to get the fertilizer in order to ensure a better crop and yield. Plus, catching up on grain shipments meant that there would be less congestion this fall.

"It appears we are going to have a good corn and soybean crop in the U.S. We did experience even slower car returns during the second quarter of 2014 compared to the first quarter. We shipped 415 tankers during the second quarter, down from 454 tankers during the first quarter. During the second quarter of 2013, we shipped 528 tanker cars; so second quarter of 2014 shipments were down over 20 percent from a year ago.

"Number seven, because of the unknowns associated with not knowing when railcars would return, it was hard to pre-sell product to customers at fixed prices due to potential plant slowdowns or shutdowns. Again, the risk of not being able to fulfill a contract due to the longer turn times on the railcars can be costly.

"Number eight, because of these rail issues, we are spending a significant investment in additional onsite ethanol storage. We are adding 2 million gallons of additional storage to our current 1.5 million gallons. We can't afford to shut the plant down for any extended period of time in subfreezing temperatures.

"As we head into the next harvest season and year, no one knows for sure where rail service issues may lie. Redfield Energy has taken some necessary steps to keep its plant running if rail service issues persist. We simply can't afford to shut down our plant in extremely cold winter conditions. Severe damage will occur if the plant is not running for any length of time.

"We applaud the Surface Transportation Board's effort to keep the railroads providing a better level of service. Thank you. Dana Siefkes-Lewis, chief administrative officer, Redfield Energy."

Okay. So now for my testimony. My name is Jim Seurer. I am the CEO of Glacial Lakes Energy. Glacial Lakes Energy is a South Dakota-based ethanol production cooperative owned by 4,100 corn producers and main street investors who reside primarily in eastern South Dakota; but we also have investors and do business in southern North Dakota and western Minnesota.

We own and operate two large fuel ethanol production facilities, one in Watertown, South Dakota, and one in Mina, South Dakota, which is west of Aberdeen. In aggregate, our plants produce more than 230 million gallons of fuel ethanol and 750,000 tons of dry distiller grains annually. Although we buy 85 million bushels of locally-grown corn which is trucked into our plants, we ship nearly every gallon of ethanol and the majority of our distiller grain tons via rail.

Both of our plants are completely dependent upon and captive to one railroad, the BNSF. Our Watertown plant is a single-car manifest facility, while our Mina plant has unit car capability. The level of service we have received from the BNSF has been in a downward spiral since last fall.

Like many others here today, we have suffered slowdowns and shutdowns; we have lost revenue; we have missed opportunities; and we have incurred higher costs because of the BNSF's mismanagement of its monopolistic workload. Over time, we have met with BNSF officials at various locations such as Minneapolis, Orlando, and Fort Worth to request an explanation for this poor service and to discuss with them how we could best position ourselves to manage what appears to be the new norm.

During these meetings, there has been much discussion around the idea that the BNSF would prefer and is incenting shippers, such as ourselves, to move toward unit train capability to improve efficiency and lower its costs. As a result, and since we currently have such capability in Mina, we are in the process of taking a serious look at whether we should move this direction in Watertown. This is an undertaking that we estimate could come with a price tag upwards of $15 million, or perhaps more.

However, we remain concerned about the level of service we might receive even if we move this direction and make this investment. Why? Because we recently experienced a situation where two fully loaded ethanol unit trains were parked for four and five days en route to their California and Texas destinations. This caused us a four-day shutdown at our Mina plant, which came at a significant cost in lost earnings.

More concerning is that, with South Dakota's harsh winters, we could not take such a hit in the winter without a complete freeze-up of our plant. So I ask, how can we justify an investment in a unit track to our investors if the service level provided by the BNSF remains as weak as it is? As mentioned previously, and speaking on behalf of the entire industry, the majority of us do not have the capability to store production for more than several days. We are a very realtime business, and our production must be carried away in a timely and efficient manner.

While we appreciate the efforts that have been made by the Surface Transportation Board thus far, we urge the Board and the BNSF and other railroads to step up, bite the bullet, and double or even triple your investment in labor, equipment, and infrastructure so that a real difference can be felt by those of us in the grain industry who have been your bread and butter for the past several decades. Thank you for allowing me to speak.

CHAIRMAN ELLIOTT: Thank you very much. One question with respect to the power companies. How much effect do you think this service has had on the amounts that are paid by your consumers? I mean, has that had a significant effect on what people are paying for electricity?

MR. VAN AARTSEN: Yes, it has. I'm sorry. Yes, it has. I think a couple people have touched on that earlier where, as our inventories get lower and become dangerous levels, then we will conserve coal by favoring higher-cost power plants somewhere else. Our unique situation at our Presque Isle plant is there is very limited ability to do even that because it's kind of out on an island out there. I think other people have shared numbers in the millions of dollars. I'm sure that it's been -- I haven't run the numbers, but I'm sure there's been millions of dollars in costs for us too across our system.

MR. SEURER: I might be a little more bold than that. Listening to all the testimony and the individual amounts, I might venture to say that you start adding up the millions, and they become hundreds of millions. They might even be more than that in terms of losses to agriculture, to the coal industry, to every other testimony that was made here this -- this day.

As far as ethanol, I can -- I can share that some of the pricing we saw on our product that was going to the east coast that had to go through Chicago was tremendous. We did not send product to New York Harbor because it was going to go through Chicago. It was tempting. But for, you know, what could be a six- to eight-week turn, we were not willing to take that risk; so we would find other markets. I don't know what the prices of gasoline at the pump were at that time in the northeast, but I'm sure it was adding to the consumers' expense.

CHAIRMAN ELLIOTT: Thank you. Vice Chairman?

VICE CHAIRMAN MILLER: No questions. Thank you.

COMMISSIONER BEGEMAN: I think I just have one for you, Jim; and I may have missed it since you were multitasking for Redfield as well. Have you had to shut down at any point?

MR. SEURER: We've had a couple of periods of shutdown; and, interestingly enough, it's been both at the single-car and the unit-train facility. And, again, you know, I know there's some tension in the room about, well, should unit trains receive priority or not? The BNSF, other railroads see that as a way to become more efficient; and we would like to all think that, well, some of that efficiency will work its way back to the single-car manifest facilities. I'm not sure if that's the case, especially when I hear that they're hundreds of employees down. I would think, if there's, you know, less employee involvement, more efficiency, then they would be able to shift folks elsewhere.

But, no, we've suffered shutdowns, slowdowns. When we see that the cars aren't coming back, we'll start to slow down. Speaking on behalf of Redfield, I think they just chose to run at about 80 to 90 percent capacity throughout the summer and -- spring and summer. We were maybe a little more bold over at Glacial Lakes Energy. We rolled the dice a few times and didn't come up winners.

And when the two unit trains parked themselves for four and five days, that caught us; and there was four days there that we had to take the plant down and wait for the trains to come back. And, you know, who knows what happened during those four or five days. I suspect that the power was pulled off and moved somewhere else, you know. And so it didn't meet our expectations of what a unit train service should be.

So, yes, we've -- And, again, as Dana pointed out in her letter and as I'm well aware, when we get to winter and these plants are full of fluids and liquids moving around pipes, as long as that fluid and liquid keeps moving when it's 20, 30 below, we're okay. But, when it slows down or stops, then that's when the problems begin. And I don't ever -- I hope I never have to see all sorts of pipes all frozen solid and split and -- I mean, it's gonna be a real mess.

COMMISSIONER BEGEMAN: Thank you.

CHAIRMAN ELLIOTT: Thank you very much. We really appreciate you coming out today.

MR. SEURER: Thank you.

MR. VAN AARTSEN: Thank you.

CHAIRMAN ELLIOTT: All right. Why don't we call up Panel No. 8. Why don't we begin.

MR. BERTHOLD: All set? Good afternoon, and thank you again for the opportunity to speak on behalf of the North Central Bean Dealers Association and the Northarvest Bean Growers Association. Our entities represent 2,400 growers and 51 dry bean processing facilities in North Dakota, Minnesota, South Dakota, and Wisconsin. For further reference, of the 1.3 million acres of dry beans grown in the U.S., this region accounts for approximately 45 percent of that total. And, of that 45 percent, about half of that is grown within 150 miles of this room.

Dry edible beans are a perishable, non-hedgeable specialty crop that relies heavily on efficient single-car rail service. Approximately 60 percent of our production is shipped by hopper and boxcar year in and year out. Rail service issues have had an immediate and negative impact on our business over the past year.

There are numerous cases of contract cancelations, conversions to other means of transportation, export vessels missed, et cetera; and there's many other instances, as you've heard today. Losing a customer altogether because we cannot deliver our product in a timely manner is the worst-case scenario for everyone in the supply chain. If your customers are not able to access your product, it does not take long for them to find other alternatives.

When I last spoke before the Board back in April, rail service was at a low point for our industry. Late orders of greater than 60 days were common, and some were approaching over 100 days. I testified in April we were pleased with the communication that we had received from BNSF, and we were hopeful that the plans that they put forth to address the ongoing issues were successful.

At this point, we have continued to receive good communication from BNSF; and they have followed through on their commitments they have made. It appears that most of the past dues have been caught up in our industry, and we remain cautiously optimistic that we will continue to see much more reliable service moving forward. If we do not, we plan on asking you to come back here in January for further discussions; and I don't think you want to do that.

The CP Rail has been slower to respond to our membership. Of particular concern is what at least appears to be preferential treatment of one growing region over another. You have heard many instances of car orders greater than 120 days late in North Dakota. We have seen car orders in Manitoba, Canada, that have averaged 21 days late. We have no idea what the reasons are for this difference, but clearly this spread puts the North Dakota processor at a serious competitive disadvantage.

To be fair, we have seen improvement in both communication and service from the CP in the past few weeks; and we do believe that CP has heard our concerns. However, other than canceling all past due orders and reordering under a new system, the plan moving forward appears unclear to us at best. Simply hoping for a warmer winter is in no way a serious plan. We do sincerely hope for a clear and measurable method to restore service in the very near future. We hope we see that plan sooner rather than later.

Dry edible beans provide a low-cost, nutritional protein source for consumers worldwide. We do understand that we are a small fish in a very, very big pond; but dry beans are important to our local farm and regional economies. It is also important to note, however, that we are not the world's least-cost producer, not by any means. We have relied on -- An efficient single-car rail system is crucial to maintaining, much less growing, this important industry. Again, we thank you for coming to our region and hearing our concerns and look forward to better days ahead.

CHAIRMAN ELLIOTT: Thank you.

MR. SCHANILEC: Chairman Elliott, Vice Chairman Miller, Commissioner Begeman, my name is Brian Schanilec; and I am a fifth-generation farmer from North Dakota. I've had the opportunity to speak before you before in April; and I represent the Northarvest Bean Growers Association, North Central Bean Dealers Association, and the United States Dry Bean Council.

The crisis for the midwest farmer continues, especially for the North Dakota and Minnesota farms. We have harvest starting, and the logistics of taking these agricultural products to market is at a bottleneck. We have growers in our communities that have corn and wheat contracts for March 2014 delivery that is still sitting in their bins. Yes, product that is five months behind in shipping due to lack of rail service.

There are many growers whose farm-stored product has gone out of condition. This product has gone from number-one grade to substandard grade because of late or no rail shipment. As you've heard many times today, the increased basis is costing the growers in North Dakota, South Dakota and Minnesota hundreds of millions of dollars due to the rail service or lack of.

We have issues of food safety, food security, and the economic backbone of our country, agricultural exports. We the farmers are demanding to have more resources given to agriculture. In 2013, approximately 20-plus percent of the North Dakota land remained idle due to too wet of conditions. What are we going to do in 2014 with more normal production? Being a fifth-generation farmer, these are some of the biggest challenges ever presented to our farm.

Shippers of ag products in North Dakota are exceedingly far behind, as you heard many times today also. In doing an informal survey with some North Dakota CP Rail shippers of agricultural products August 21 and 22, I encountered this data:

Shipper A had cars ordered and delivery contracts ordered for March 12 unfulfilled. Shipper B had cars ordered and delivery contracts from March 17 unfulfilled. Shipper C had cars ordered and delivery contracts for March 17, March 18, March 19, and March 20 unfulfilled. That information is little over a week old. The list is very long with the same scenario. My survey had many, many shippers having product on the CP Rail four and five months behind.

Our survey concluded that there was also so much legitimate tonnage that was canceled on demand, it was astounding. There are so many orders that are five months old for grower delivery and elevator shipments, the consequences of these logistical predicaments is ridiculous.

This week, I talked to four different cooperatives; and they told me their legitimate demand on just four cooperatives on the CP Rail was 6,000 cars behind alone, just four companies in North Dakota. This is just an array of what is going on in our industry. What are we as growers and shippers going to do with our 2013 crop, which for many is five months behind in shipping, and a new crop coming around the corner that is average to above average? Having shipped on both the CP and the BN from a BN facility, I have encountered this.

I would like to thank the BNSF for their transparency, their communication, and their efforts to fix this logistical mess. I am cautiously optimistic going forward with the BNSF. They have made great efforts. We need the CP to close the five-month gap of late shipments as well as transparency, communication, and service, the same thing you have heard many times today also. The downsizing of leased cars in the post-2012 era is not working for the CP. Moving less cars faster is not working in the efficiencies of our railroad. Canceling legitimate orders and reordering is not fixing the problem either.

I have these questions for the CP Rail: What is their hopper car fleet size? How many hopper cars are operating in the U.S. fleet? A few weeks ago, we were told, in Minot, that they have one fleet. Today, we're told they have two fleets. So we would like a definition of that. How many empty hopper cars are delivered weekly in the U.S. market? We're asking for a plan. What are their solutions to the short, intermediate, and long term for these problems? Are they spending enough capital? Do we need an emergency service mandate from the STB? Those are pretty strong words. But, yes, do we need an emergency service mandate?

I hope enough improvement is realized to not warrant this. The thousands of growers, shippers, processors, and industry advocates I represent are not going to stand idle for these problems. I know we have experienced increased commerce, larger crops, more economic activity, and weather challenges in the last year. I hope we can find a balance within the railroad industry to pacify the needs of agriculture. Thank you for your time.

CHAIRMAN ELLIOTT: Thank you.

MR. ZETOCHA: Hello, my name is Roger Zetocha -- Roger Zetocha. I'm a farmer from Stirum, North Dakota, southeastern part of the state. I raise wheat, soybeans, sunflowers, corn, and have a small cow-calf operation. I am currently the Sargent County Farmers Union president, which is a chapter of the North Dakota Farmers Union, NDFU, an organization of 40,000 family farmers and ranchers from across the state.

Back in January, I was -- I was seeing a difference in my local elevator. There was a lack of capacity, and I was unable to haul hauling grain. I asked the elevator manager what the problem was. They said they were unable to get cars they had ordered. In my area, the longest wait for cars was 20 days. In southwestern North Dakota, NDFU heard reports of cars being up to 20 days late. In northwestern North Dakota, it was reported to NDFU staff that the cars were up to 60 days late.

On top of that, there was a dramatic surge in the secondary market that was increasingly burdensome to elevators. The secondary market hit a high for the year at $5,875. The average bid was $2,071 per car in March and is slated to hit $5,500 per car in October. Average bid, $3,900.

Perhaps the most debilitating piece of rail availability issues in North Dakota is the widening basis, the difference between the futures price at the elevator, which the manager sells the grain, and cash price which he pays the farmer. The basis generally covers handling and transportation costs. I'm not going to elaborate on the prices. You've already heard many, many comments about that.

Senator Heitkamp asked North Dakota State University to look into the cost of the lack of rail service to farmers here. According to the study, North Dakota farmers have lost $66 million due to agricultural shipment delays from January to April. This study also found that, if conditions didn't improve, farmers could stand to be -- could stand to lose an additional $95 million in income. And I have to say I think that's even gotten worse because of some of the stuff that's been going on with delays.

The lack of rail service has a -- has had a tremendous effect on my operation. As has been stated prior, just because of the additional cost of shipping, I've lost quite a few thousand dollars. As a result of the price of grain and the widening basis, I get less per bushel. I'm a captive shipper. As a captive shipper, it seems odd to me the railroad can make profits while not delivering on their commitment to provide cars. It also seems concerning that elevators fear retaliation if they speak up about being treated unfairly.

Monopoly hasn't really been brought up much today; but, doggonnit, it sure looks like a monopoly to me. And I've heard a lot of comments already. I've never been to one of these hearings before; and I want to, first of all, compliment Mr. Elliott, Ms. Miller, and Ms. Begeman for your openness. You're asking questions. I mean, like I said, I've never been to one of these before; and it's just refreshing as heck to see that you guys aren't just sitting there going yeah, yeah, yeah. You're actually asking serious questions. You're taking notes. I'm impressed, and I thank you for that because I've had some opinions about government entities before. And I have to say I've been impressed, and I thank you for that sincerely.

Getting back to my comments, I urge you to look at the oil traffic in this state and determine whether agriculture is being treated equally. I urge you to look at the car speeds and determine if trains are hauling at adequate speeds. I further urge you to hold railroads accountable for their handling of last year's harvest and this year's harvest. The 2014 harvest is a ticking time bomb, and the fuse is about to be lit.

I want to again thank you, to the members of the Surface Transportation Board, for coming to North Dakota, hearing our concerns. We are a state filled with possibilities with agriculture and oil development as the largest economic drivers. Our state will continue to flourish, but the state can only flourish if both are allowed to coexist. And we can only -- that can only happen if agriculture is treated equally on the rails.

Like I said, I've never done this before. I'm a farmer, like a lot of people are here. I'm not big on talking around or beating around the bush. I've been in contact with the elevator managers. And this is going to sound pretty harsh, but it's what I've been told. One of the comments I hear over and over again about the CSF is, if you order a unit train, 110 cars, when it shows up, you better show up with a real good welder or a real good cutting torch and a big hammer; and, of that, you'll probably get 90 percent of those cars ready to go.

I heard earlier today about this increased fleet. My question is, are they just reshuffling the old fleet? If you order 110 cars and only get 90 percent of them to work, you're not getting your full capacity. That's not acceptable. I don't care who you are.

Another thing that's concerning is -- and I said this in my original testimony -- is since when is telling the truth something to be held accountable for in the fact that you could be retaliated against because you're having problems with the railroad? If you've got a problem, why can't you speak up about it and have it taken care of? Every one of the elevator managers I talked to says, "Yeah, you can use my information; but don't say where you got it from." I'm going, what in the world is going on here? Since when do we have to be held hostage for stuff like that? That's totally out of line, but yet it's happening.

And another thing that affects me directly or I'm concerned about is I've heard that the Canadian government is saying that the CSF has to put more emphasis on moving Canadian grain. Does that mean they're going to take railcars from the U.S. and put them up there? I may be sounding pretty harsh, but I think we have to speak up to the issues here. And I'm just really frustrated.

The other thing that bothers me is -- I remember back when Senator Hoeven was our governor of this state, and Governor Brian Schwarting [sic] of Montana threatened to take -- or start a lawsuit against the railroads back then. When the -- When it almost came to fruition, all of the sudden the railroads kind of said, oh, jeez, we better get our ducks in a row here; and things kind of got better.

Now, I also appreciate the fact that we have the Bakken issue. Yes, that's taken a lot of oil traffic as far as shipping cars and stuff. One of the best analogies I've heard was the example of "it's rush hour all the time on the railroad now, not just nine to five." I can appreciate that. But this Bakken just didn't happen yesterday. Yes, it takes time and money. But, golly sakes, what does it -- why do we always have to be on the hind end of things here?

We're probably the only business I'm aware of that we buy retail and sell wholesale. I mean, there's something wrong with this whole picture. But the thing is, that's -- that's life in farming. I can accept that. But I can't accept being treated like a second-class person out here in the fact that, well, we got this excuse, we get that excuse. I can understand legitimate reasons, but this is stuff that's been going on. And it keeps coming back to this one phrase: monopoly. They are so big, a lot of these lines have -- a lot of these railroads have merged.

In my neck of the woods, we've got old

abandoned railroad tracks that nothing's left but just -- You can kind of look down the road or look down the field, and you can see what used to be an abandoned railroad -- or used to be a railroad. I got in one town that at one time had four railroads coming into it. Now it's down to two. And a lot of them -- That's another thing that's not been talked about is, on some of these short lines, the track isn't heavy enough to handle much for traffic; and I'm questioning if that's ever going to get changed.

There's a plant at Spiritwood up by Jamestown that's going to be producing ethanol, eventually going to have an anhydrous plant there and stuff like that. Some of the local elevators are concerned about if they can ship that direction. There's a short line or a -- whatever you call it. I think it's a short line, if I'm using the term right. But, anyway, it's not the heavy track. Yes, it's going to cost money; but, in the big picture, I think that would really solve some of the logistical problems.

Abandoning stuff all the time doesn't necessarily, to me, make sense. I can understand efficiency, but I think we've gotten past efficiency to the point where -- We've heard before they're short of staff as far as the people to do the work. I think that's all got to be addressed.

And, again, I cannot thank you folks enough for your time and your efforts here. I am very impressed with that, and I thank you.

MR. SKUNES: Chairman Elliott, Vice Chairman Miller, Commissioner Begeman, I'm Kevin Skunes. On behalf of the North Dakota Corn Growers Association, let me thank you for this opportunity to testify on an important issue so important to us.

The North Dakota Corn Growers Association is a 1,300-member organization whose mission is growing a healthy, profitable business climate for northern corn. As part of this mission, we engage in public policy participation, such as important events like here today. We understand both the frustrations and opportunities in the transportation of our product, and we wish to offer examples of how this is affecting us.

A bit of personal background: I own and operate a 5,000-acre farm in Cass County, North Dakota. I am also a board member of the National Corn Growers Association. I am a fourth-generation farmer; and, like many other members of the North Dakota Corn Growers Association, I grow a variety of crops including soybeans, wheat, edible beans and, of course, corn.

As such, my livelihood, along with thousands of others like me, depend on safe, reliable, cost-effective delivery of the products to the markets demanding them. This is not a new situation, but sadly it is one that currently has become a crisis. The lack of railcars and the inability to rectify this emergency by the shippers is harming our country and our world.

In 2013, North Dakota growers produced 396 million bushels of corn. This is a huge number. Today, another huge number looms over us: 10 percent. That is approximately how much of our product is behind the historical average in movements. To look at it another way, it equates to somewhere in the area of 10,000 railcars off of where we normally are; and that's just for corn.

While we understand that not all corn is shipped by rail and that market conditions and other variables can also play a factor, the clear reason for this disturbance in the usual trend is because of the inability of shippers to get railcars. This means, for every bushel of corn that could be feeding or fueling our nation, a huge amount of it is just stuck someplace. It's in an elevator, shoved in a bin on a farm or, even worse, rotting on the ground. Countless hours of labor have gone into producing this modern wonder of both nutrition and energy, and yet it sits wasting away.

This has not gone unnoticed by our elected officials. Because of the outpouring of concern by the people in the ag industry, Senator Heidi Heitkamp of North Dakota requested that the Department of Agribusiness and Applied Economics at North Dakota State University look at the rail transportation problems in North Dakota. The Department used an analysis to measure changes in the local cash market basis levels. The nearby basis, which has been explained, is the difference between the cash local price for immediate grain delivery and the price for the corresponding futures contract which is closest to today's date. This was used for the study.

The results the study showed were startling. And I should note at this point that the study was limited to corn, soybeans, and wheat and does not include the other crops grown in the area. And, as Roger said earlier, the study showed that approximately $66.6 million was lost in North Dakota farm-level revenue for crops that were sold from January through April of 2014. And the researchers further noted that there is a potential for the additional $95.4 million in lost farm revenue from the sale of on-farm grain stocks if the crop basis levels remain at current levels.

They also indicated that these amounts are conservative estimates because their analysis was limited to spring wheat, corn, and soybeans and didn't include any potential losses for the sale of durum wheat, barley, sunflowers, canola, field peas, lentils, dry edible beans, flax, oats, or food-grade soybeans. Imagine, just for a moment, the actual dollar amounts being lost when all of these crops are added together. Those true numbers are shocking and saddening.

Let me also add, it isn't just those of us that are ag producers that are feeling the pinch. In a recent New York -- New York Times article, food companies said they are also showing the effects of the delayed shipments due to the rail problems. General Mills, based in our neighboring state of Minnesota, told investors earlier this year they had lost 62 days of production in the quarter that ended in February of this year because of logistics problems including railcar congestion. Cargill, another Minnesota-based food giant, reported a drop in earnings that it attributed in part to higher costs related to railroad shortages.

Members of the Surface Transportation Board, as the NDSU transportation study notes, North Dakota agriculture is heavily dependent upon an efficient and timely logistics and transportation system. A reliable railroad infrastructure is a key element within that system. Our state's agriculture is more dependent upon rail transportation than many other states. This is because a large portion of our production is shipped to processors and end users outside of North Dakota, and there is a limited alternative for high-volume bulk shipments.

Today, real income is being lost by real families. This is alarming when you consider that our national economy is still recovering from its rough times. The 2014 corn crop will soon be harvested, but much of the 2013 crop is still sitting in storage. There is a looming threat that this year's crop may go to waste unless this railroad issue is fixed soon. While those of us who produce crops worry about the quality of our product deteriorating over time, we realize the railroad doesn't have this problem. They get paid the same amount to haul our crops whether they are top quality or just barely usable.

Because time equals financial loss for us as ag producers, I ask that you take action now. Please use your authority on behalf of the many women and men whose economic stability will be determined by whether or not the fruits of our labor can be converted to usable products. We can do so much better; and with your assistance, we will continue to move ahead.

I would be remiss if I were to conclude my testimony without offering at least one step towards a solution. We've heard the railroads say they are working to correct delays, and I truly hope that is the case. Part of the reason why is because they have been required to submit to the Surface Transportation Board their statistics for the numbers of cars they are behind in shipping agricultural commodities.

Let me suggest this: It would be a positive step, I believe, if the STB would also ask the shippers to provide similar figures for oil tanker cars. By disclosing weekly train sets, the number of railcars and locomotives dedicated to oil, and which direction the petroleum is being transported, you will have a baseline to compare whether each product, agricultural or petroleum, is being treated equally as the railroads say they are. From there, you could use your best judgment on any actions needed to eliminate the need for future meetings like this one.

Once again, thank you for your willingness to listen. I would be happy to answer any questions you may have today or in the future as you work on our behalf to rectify this situation. Thank you.

CHAIRMAN ELLIOTT: Thank you. Just a couple of questions. Mr. Skunes, just for my own information, you referred to a historical average and noted that it was 10 percent behind what's usually moved. What amount of years are you using in that historical average? Do you know?

MR. SKUNES: No, I'm not really sure. We just -- According to the Grain Growers Association, we -- that was the number that they came up with.

CHAIRMAN ELLIOTT: Okay. I just -- I was just curious because I've heard it used. CP has mentioned that it's ahead of what it's been doing the last three years, but it would be interesting to see where they stood with respect to a larger time period. So I was just curious about that. Also, Mr. Zetocha?

MR. ZETOCHA: Zetocha. That's all right.

CHAIRMAN ELLIOTT: Zetocha? Close. Yes. I just -- I don't have a question. I just wanted to reiterate, I think, what I've said in prior hearings and also in meetings with shippers, almost universally, that reference any type of retaliation. That's something we will not stand for.

MR. ZETOCHA: Thank you.

CHAIRMAN ELLIOTT: We hope it doesn't occur; but, if you do have a situation where it does occur, please let us know. It's something that we take very seriously.

MR. ZETOCHA: Thank you. I want to add one more thing. I do appreciate what the rails are -- railroads are trying to do. But the handout I passed out for you guys is from the -- Actually, it's from Agweek on July 13 of this year and July 13 of last year. And what's interesting is -- It has to do with the guaranteed pool freight. This happens to be from BN. But, prior to all this stuff going south on us last fall, during the summer months when traffic was slow, the railroad was actually paying the elevators to fill the cars up so they could keep the traffic going.

And then last fall everything took off; and now it's the other way around, and the secondary market's just gotten haywire. So, up until this last year or less than a year, because it didn't really start until this last September -- well, I guess it is a year already -- things were kind of moving along pretty good. So I just wanted to give you that information.

CHAIRMAN ELLIOTT: Thank you. And one last question. You referred to, Mr. -- I'm going to screw this up again.

MR. SCHANILEC: Schanilec.

CHAIRMAN ELLIOTT: Schanilec? You referred to four elevators, I believe, that mentioned that they have up to, I guess, approximately a 6,000-cars backlog, grain cars. Did I hear that right?

MR. SCHANILEC: Yes, that's correct. In fact, they are colleagues and friends; and they've reached out to me knowing I was going to testify today. And they said -- You know, they belong to the grain growers group.

CHAIRMAN ELLIOTT: Mm-hmm.

MR. SCHANILEC: But they said, "Can you just please express our situation?" So there was four cooperatives, and those are non-ADM/CHS cooperatives. And they said their demand of legitimate orders on the CP Rail, their demand and their need for cars is 6,000 cars behind. And I'm not getting into whether they canceled orders, not canceled orders, all that other stuff. I'm just saying that is their demand that they told me this week that they have.

CHAIRMAN ELLIOTT: This week. Okay.

MR. SCHANILEC: That's from -- information from this week from four shippers that claim they are 6,000 hopper cars behind; and some of those orders are going back quite a ways, like I said, four or five months.

CHAIRMAN ELLIOTT: All right. Thank you. That's very helpful. Deb?

VICE CHAIRMAN MILLER: Along that same line, you know, the question has come up again about the new ordering system and whether or not -- you know, sort of how all of that played out. Do those of you who have referenced and seem familiar with the CP grain hauling, do you know, did shippers feel like they knew what was going on, they knew when the transition was going to be to the new system, they understood how it was going to work? Had they been consulted?

MR. SCHANILEC: Well, I feel that's a pretty broad question; and probably every shipper might answer that somewhat different. You know, whether there was coercion or not, I couldn't answer that because -- I know my situation as to CP Rail is -- how it was handled. I don't know if it was presented where, you know, "Please get on board with the new system because the old system's not working" or what. But, I mean, I think you'd have to ask -- I probably couldn't answer that to represent the whole industry.

VICE CHAIRMAN MILLER: But what was your own experience?

MR. SCHANILEC: My own experience was is we did cancel cars and put in new orders, and we will see tomorrow on their computer whether we're granted those new orders.

VICE CHAIRMAN MILLER: Thank you.

COMMISSIONER BEGEMAN: Do you mean whether they're going to be fulfilled or --

MR. SCHANILEC: Correct. Are we going to have cars allocated to us and for what time? Okay. Because, in fact, some of the orders we canceled were for cars as early as February -- or late as February 17 when we --

VICE CHAIRMAN MILLER: When you -- When you reordered, did you reorder as many cars as you canceled?

MR. SCHANILEC: No. We ordered less. We ordered less and -- And, like I said, we want to get on board with them and be part of their program and be a player with them. And that was their request, and we followed their request. And we canceled cars, and we reordered. And I was given quite a few guarantees that we should have information of some very expedient deliveries of cars here on their website tomorrow on our account and when they'll arrive. So I guess the judge and jury is out for the new system, and we'll find out more tomorrow.

CHAIRMAN ELLIOTT: Questions?

COMMISSIONER BEGEMAN: I'm not going to screw up your names, John and Brian. I feel like I know you after the April hearing. But, John, actually I was stunned by your positive testimony compared to where you were about five months ago. I mean, I know it wasn't all rosy; but you said at least things are in a much better situation than when we visited last. And I believe you were mostly referring to service from BNSF. Is that correct?

MR. BERTHOLD: That's correct.

COMMISSIONER BEGEMAN: And then a few -- And I think you said it's gotten a bit better with CP in the last week or so.

MR. BERTHOLD: Yeah, I think that's true. Yeah, that's a fair statement.

COMMISSIONER BEGEMAN: They knew you were coming here today?

MR. BERTHOLD: I think so, yeah. I would assume so.

COMMISSIONER BEGEMAN: All right. Well, we'll be having that hearing in January so --

MR. BERTHOLD: I'll look forward to -- I'll look forward to seeing you someplace else.

COMMISSIONER BEGEMAN: Okay. So keep up good -- keep up good service.

MR. BERTHOLD: Thank you.

COMMISSIONER BEGEMAN: And, Brian, can you -- And I don't want to put you in a situation that you don't want to be in, but I can't help myself.

MR. SCHANILEC: I'm married, so I'm used to that.

COMMISSIONER BEGEMAN: Could you give us a sense of -- And you don't have to have the exact number if you don't want to, but maybe just a percentage kind of based on -- following on Deb's question. How many were -- How many did you cancel and not reorder? I mean, did you -- did you have a need for 6,000 before and you ordered 500?

MR. SCHANILEC: Well --

COMMISSIONER BEGEMAN: Just to get a sense of --

MR. SCHANILEC: First and foremost, edible beans is a very, very capital-intensive, low-volume type product; so we're single-car shippers. But, yes, we canceled quite a few different cars. And the reason we --

COMMISSIONER BEGEMAN: And what -- Oh, I'm sorry.

MR. SCHANILEC: Okay -- and reordered. And the reason we canceled a lot of them was because we had to take our product to BN facilities to ship them to meet our contractual needs. So our markets and our needs did not change, but our means of getting it to the market had to change. And that was taking our product to a BN facility, and the BN facility went over backwards to help us out. And that's why I gave my compliments to them for their transparency and communication.

So, because of their willingness to help us out in shipping from a BN facility, that's why our demand for CP cars dropped. Okay. So we did cancel, and we did reorder. And we probably reordered for, you know, 20 percent of what we had on the -- I had on the books. But the reason our number dropped so dramatically is, for all our efforts of hauling our product in a very expensive means to BN facilities to get our product to market, that demand that is always there.

COMMISSIONER BEGEMAN: So then with -- And maybe Mr. Brooks can give some clarity when he appears on the next panel but -- So, as you understand how the new system will work, you will log onto your website tomorrow or their website; and you will know what your expectations should be? I mean, will you have service next week or at what point in time?

MR. SCHANILEC: That's a good question. You know, I think the way it was explained to me, their new ordering system is you can order what you have the means to fill for the next month, what your capacity availability is. So, if you're -- if you can do one unit train a week, you're allowed to order a month's worth of product -- or equipment, what would be four unit trains. If you got five cars a week, you can order 20 cars for the next month.

So the way it was explained to me is that, or at least for a single-car shipper, that was -- our means of ordering is whatever our capacity, our maximum capacity could be for the next month. Did I explain that the way --

COMMISSIONER BEGEMAN: I think, yes.

MR. SCHANILEC: Yeah.

COMMISSIONER BEGEMAN: Thanks.

MR. SCHANILEC: And whether that happens, I mean, we -- They have a Tuesday deadline for this, and then by that Friday they tell you when you're going to get your cars and different things like that. So, like I said, we're just in the judge and jury stage of seeing their program being implemented. And I believe my most recent request -- We canceled on the 18th -- I can't remember the exact date -- or 14th of August, and we reordered the 21st. So the 21st had to roll into the next Tuesday's request, and then we're supposed to know tomorrow how our request, our ordering from the 21st is going to be played out.

COMMISSIONER BEGEMAN: And do you know -- And, Mr. Brooks, maybe you can help me as well. But is this part of the new -- the shuttle prong, or this is the single-service prong?

MR. SCHANILEC: We're the single service.

COMMISSIONER BEGEMAN: Okay.

MR. SCHANILEC: Okay.

COMMISSIONER BEGEMAN: And I don't want to butcher your name either, sir. Thank you so much for taking the time to come and talk with us today. But can you -- You talked a bit about the retaliation. But, what do they mean? What are they going to do to them?

MR. ZETOCHA: Well --

COMMISSIONER BEGEMAN: And I realize you're not the elevators.

MR. ZETOCHA: No. I'm just -- I'm a farmer that supports these elevators. But the general gist I got was, okay, if you get in a crunch for needing more cars, well, you might be the last dog on the totem pole to even be thought about, that kind of stuff. I mean, they're not gonna come in and burn down the elevator but --

COMMISSIONER BEGEMAN: Well, that's good.

MR. ZETOCHA: Yeah.

COMMISSIONER BEGEMAN: We succeeded here today. Okay.

MR. ZETOCHA: But, anyway, that's the gist of it was they were -- they were concerned about, you know, needing cars at an important time and, "Hey, screw you. You stepped on us, we're gonna step harder on you." That's kind of the mentality they're receiving. And, again -- But it frustrates the heck out of me because, you know, you can't speak up because you're afraid of retaliation. I mean, how haywire is that?

COMMISSIONER BEGEMAN: And I do think, based on our experience with our staff who has been able to help individuals -- or a group of shippers -- with the individual railroads, I certainly haven't heard of any negative blowback that they've received as a result.

MR. ZETOCHA: Good.

COMMISSIONER BEGEMAN: And so I thank the carriers for that and --

MR. ZETOCHA: I do too if that's -- But, again, why is this even an issue?

COMMISSIONER BEGEMAN: Exactly.

MR. ZETOCHA: I mean, every one I talked to had the same thing: "Yeah, use my information; but don't tell them where you got it from." That's not right.

COMMISSIONER BEGEMAN: That's -- That's -- I'll just stop there. Thank you all so much.

CHAIRMAN ELLIOTT: All right. Thank you very much.

MR. ZETOCHA: Thank you.

CHAIRMAN ELLIOTT: I'll call up the final panel of the day, Panel No. 9.

COMMISSIONER BEGEMAN: It's pretty impressive there's still this many people in the room.

CHAIRMAN ELLIOTT: It is impressive. Okay. I think the way we decided to do this is we'll provide you some time to make comments if you feel the need; and then we would ask some questions afterwards, similar to what we've been doing.

MR. BROOKS: Let me just introduce real quick -- This is Mark Redd. Mark is our general manager for operations. He has our main line from the Canadian border down to Chicago.

CHAIRMAN ELLIOTT: Thanks for being here. If you have -- Do you have any further comments that you would like to --

MR. BROOKS: I do.

CHAIRMAN ELLIOTT: Okay.

MR. BROOKS: And I'll -- I'll make this fairly brief but -- and then open it up to your questions. I just want to comment on a couple things. My experience over the last ten months with our shippers and transforming from our open request system to a new program has been well-received. They like it. In fact, the major train shippers that I'm speaking of right now, again, helped put together the program, to develop it, and have really been a proponent to where I think we are today. I think the communication with those shippers, specifically relating to the train program, has been fair. Certainly getting a lot of good feedback in terms of there was room for improvement. But, again, with the train shippers, I think that communication has been -- has been good and been collaborative.

We have not forced anybody to cancel their orders, their requests. A request is not required as part of the train program. Again, these are dedicated trains; and any demand that these train shippers have will be fulfilled through their dedicated train. There will not be -- There won't be corresponding requests in the system. They own a train. We've worked with our customers as we've decided how to roll in these trains to figure out how we transition from the open requests to their train programs.

In terms of our less-than-train program, we're still in the fact-finding period on that. There's still work to be done in terms of that communication with all shippers. I think a big part of the effort has been trying to figure out, again, what exactly are the real orders, what the customers need, and then how we can go about filling them.

I think the other question that continues to sort of rattle around with the team at Canadian Pacific is trying to understand specifically, if there are this many requests out there and this much demand, where did this grain come from? And it gravitated to Canadian Pacific. We have no doubt that, with the harvest coming, the technology in farming -- and the opportunity is great -- we have to step up. We've got to move soybeans when they're ready to move to the PNW coming up. We've got to move the wheat as it's presented to us. We've got to move the beans and these other commodities.

But we still, as we look back on this last year, are trying to figure out if the expectation to grow our market share by 40 percent in North Dakota was realistic; and we're struggling with that. And, again, that aside, the only way I know how to sort through that, and I think that we've been embarking upon, is trying to get that sorted out directly with the customer.

There's no doubt it's disturbing to me when I hear four cooperatives with 6,000 when, after our session in Minot, I had my team call every one of those small shippers to find out real demand; and the numbers don't add up. So, you know, CP wants to understand that demand with these shippers and what's out there. Then we'll figure out and work a plan to get those cars spotted, and they can move the traffic.

I think it's worth just commenting on just a -- two other things that I heard this afternoon. During the January to April time period, CP's car demand did swing heavily to the east. 65 percent of all requests we got during that time period were for the eastern markets. And, again, right or wrong, that presented challenges. That's the one thing.

The second thing is, the propane and the $100 million insurance was raised; and I think it's important to comment. And I'm not as versed on all those opportunities, but certainly the one I did get involved in -- You know, we have got a risk management team that assessed that; and then there was residential housing specifically within 900 feet. And it was our feeling that the liability warranted the insurance level. That's all I have.

CHAIRMAN ELLIOTT: Thank you, Mr. Brooks. Mr. Bobb?

MR. BOBB: Well, we certainly recognize the issues that people have raised today and certainly appreciate, you know, what our -- what our customers have said and appreciate how our customers have worked with us over this difficult time. We will continue to be transparent, and I say that knowing that sometimes that transparency means we have to deliver news that might not be what people want to hear in terms of our capability going forward. And I also recognize that that transparency means sometimes we may have to go back and communicate a changed plan as circumstances change going forward.

Our capital investments are well underway; and, as I said earlier, in the north, when we look at the period after September and October, grain going west is going to have a different railroad. Likewise, coal in the north will have a different railroad. And the investments that we are making in this region will be here forever for all of our customers.

As we look forward into next year, we know we have a lot of work to do between Fargo and Chicago from an expansion perspective. We still need to do that, and it will get done. So we've been specific about our resource plans, and we will continue to update our customers and the Board going forward on our progress.

CHAIRMAN ELLIOTT: Thank you, Mr. Bobb. I don't have a lot of questions. I did have one question for Mr. Brooks just with respect to your reporting. We discussed earlier the numbers from the 15th through the 22nd and the 22nd through the 29th dropped significantly. Although, when I looked at the numbers with respect to canceled orders -- and I assume the big drop in numbers was due to cancelations -- there wasn't a reflection of that. Is that just because it came through this new system or it was just an oversight?

MR. BROOKS: I'm sorry, Chairman. I don't -- I don't understand the question.

CHAIRMAN ELLIOTT: Yeah. When you report to us, you report the backlog; and it reflected the change from the 21,000 to 10,000. But also in there, there was a line for canceled orders; and I believe on the report on the 22nd, it only reflected about 120 canceled orders, which doesn't seem to jibe with what we've been hearing today, at least the term. So, if you could at least check on that --

MR. BROOKS: All right. Yep.

CHAIRMAN ELLIOTT: -- and make sure that whatever is being reported is being reported accurately, it would be --

MR. BROOKS: It might've just been timing. What report date are we looking at?

CHAIRMAN ELLIOTT: I was looking at the 22nd.

MR. BROOKS: 22nd?

CHAIRMAN ELLIOTT: I don't have the 29th in front of me.

MR. BROOKS: Okay.

CHAIRMAN ELLIOTT: And the only other thing I have to say is, you know, I don't -- Like I said, I don't really have any other questions; but I just hope that, you know, everybody -- The railroads have sat here and listened to what their customers have had to say. I assume that's a given. Otherwise, you wouldn't be so successful in what you do.

I would say to CP, I do appreciate you coming here today. I noticed a difference in tone and candor, and that was much appreciated. Thank you for that. I think you have an opportunity here to go forward, improve communication. I have heard numerous anecdotal stories about communication not only with the customers but actually with other railroads as well because sometimes they need to know when your train's coming; and if there's not good communication there, that can be a problem.

Also, with respect to information, just presenting the information in a way that's clear and that's understandable, I think you're going to have less complaints from people. I think you heard it pretty much universally here. If they can't understand it, it really doesn't help them that much. And, also, I think you have another opportunity with respect to your new program. The customers seem to think positively of it. They're willing to give it a chance. So I think, if you take that and combine those communication skills and information skills together, that you could make a successful run from here. So I do urge you to go forth from this meeting and then take it as a good learning lesson, and hopefully we won't be here in January. Vice Chairman?

VICE CHAIRMAN MILLER: Well, after that lovely speech, I feel terrible even asking other questions, but just a couple of things. So, Mr. Brooks, one of the things that I'm wondering, talking about the new ordering system, is as you're rolling it out and thinking about it, inside the company, have you thought through a set of metrics or a time frame that you'll use to measure whether or not the new ordering system is being successful, whether or not you need to tweak it? I'm just wondering if you sort of have a plan for that. And in what time period do you think you'll be able to determine if it's working the way you hope it works?

MR. BROOKS: Yeah. I think, in terms of our unit-trains train program, we'll be measuring the cycles similar to other rail carriers. As I said, we've got 18 of those up and running; and the results so far are pretty good. We're seeing about 13-day turns. But we will be reporting those.

And then, for the less than -- less than train, similar to what we do today, we'll have a clear view, given those will be broken out, into what's out there, what hasn't been filled, and how late those are.

VICE CHAIRMAN MILLER: One of the -- And, honestly, at this point I don't remember. I've got it someplace in my notes. But somebody made a reference to being referred to an unmanned CP customer service desk or phone line or something. I'm just wondering a bit more about your customer service program in terms of the new employees you're hiring. Do you have a customer service program with customer service reps? How do you sort of do all of that?

MR. BROOKS: A couple things. We've got a -- Certainly we've got a marketing and sales team that own a lot of this at the end of the day. That's my team. So, in terms of the communication piece or service issues at the local elevator or facility, whatever it is, that'll start really with our sales team. But then we've got, you know, bulk grain desks that do a lot of the planning and then ultimately communication with -- with our shippers.

The third leg of that -- And this is something that is somewhat transformational as we work through it. But Mark's team and the local operating folks will carry a lot more responsibility going forward in terms of communicating directly with the elevators in the locations they serve on our property. We want to build that local relationship between Mark's operating team and the facilities those folks serve.

VICE CHAIRMAN MILLER: Mm-hmm. And then, finally, for Mr. Bobb, one of the things that I think makes a lot of the folks who have been here today feel uneasy about moving into this harvest season is the fact that it feels like you got it so wrong in April and that the message in April was, yes, things have been bad, it was a bad winter, but we're going to get caught up, we're going to be able to move this harvest.

And, while we've seen lots of positive things and, you know, quite frankly, heard many positive things today in terms of people really appreciating the communications that they've gotten, seeing some improvements, there's still just a little bit of unease. And I think part of that unease -- and I certainly feel that -- is because the message seemed much more positive in April and it didn't pan out. So help us feel more confident walking away here in early September that things really are on track.

MR. BOBB: Well, I won't repeat what I said in my testimony in terms of what we think we got right about our expectations in April and what we missed in April. Certainly there were some -- some episodic events that we did not predict that would impact our recovery on the various corridors; and I walked through that. I think -- I think what's important to recognize is that, in the very specific capital programs that we have laid out at capacity, those are coming on over time; and -- and the impacts of those are going to be felt more over the next 30, 60, 90 days rather than felt over the last 2, 3, 4 months.

We have -- We have -- Coming into this year, we were over resourced in terms of people and locomotives relative to the significant volume growth that we were having; and it's simply the velocity of the system that was consuming those resources. And that's what made it appear for us to be short crews or short power, but the reality is that we had -- we had staffed quite aggressively in those areas. I think -- I think, with the capacity coming online and the fact that we are in a -- in a reset position, that's why I believe we're in a far better position to move grain as it wants to move this fall as well as our other customers' products this fall going forward.

Now, all that said, we have more capacity yet to add; and there are some corridors and some geographies -- and I mentioned specifically east of here into Chicago -- that we have capacity yet to add; and the velocities in those lanes will continue to be challenging. And even in April, I think our story was weather was a compounding effect but not the root issue. Our root issue, as we've always said, has been about volume growth.

VICE CHAIRMAN MILLER: Thank you. And I'm afraid I've got to go shooting out of here, so I just want to say thank you to both railroads. I know days like this are not easy, and you've all been very calm and very measured in your responses. And I appreciate it.

COMMISSIONER BEGEMAN: Thank you. Mr. Brooks, would you care to comment on the testimony from the gentleman from Muscatine? I think I'm saying that correctly, aren't I?

MR. BROOKS: You are.

COMMISSIONER BEGEMAN: He met with you in 2010, and it was because of crews. And then it was Groundhog Day again, and it's still Groundhog Day. But could you just comment on that and give some hope?

MR. BROOKS: I have. I told Mr. Barker I don't remember being at that meeting in 2010. He's got a better memory. But currently there are plans -- And I shudder at even saying this. I just got the hiring plans for the Muscatine area, and we're hiring a number of crews in that area. That, again, we expect to help stabilize any sort of train operations related to the Muscatine Power & Water's trains running down there. I don't know timing on when those crews are going to be able to mark-up. Maybe you do, Mark. But certainly we will follow up with Muscatine Water and let them know.

COMMISSIONER BEGEMAN: Thank you for doing that and staying in touch with them.

MR. BROOKS: Yep.

COMMISSIONER BEGEMAN: We've talked a lot and many people have talked about the car ordering system and what the actual demand is. And, you know, certainly not only did the Bean Dealer Association representative talk about the -- I guess it was the 6,000 cars for the four co-ops, but also the Grain Dealer Association had quite a list of large numbers.

And what I'm wondering is, is there anything that the Board could do to assist you in helping to resolve the issue? I mean, I guess you were calling your elevators. What else can be done? How many do you serve in North Dakota?

MR. BROOKS: Oh, I think the number is upwards of 50.

COMMISSIONER BEGEMAN: Okay. But then do you also have individual customers replacing orders such as for the single-car shipments? I'm a little fuzzy on how that's working.

MR. BROOKS: Yeah. So, I mean, the grain dealer's comments, I guess, two thoughts on that. One, certainly the representation of the less-than-train orders seems reasonable. You know, many of our customers that are entering into the dedicated train program also have less-than-train orders; and, again, they've -- those are in the system and are, you know, ready to be filled by us.

You know, in terms of the shuttle, I suspect a lot of those are no longer in there as part of the transition plan; but I certainly would be eager to talk to Stu and his members about, you know, which customers are those and let's make sure we've got the right transition plan. Again, I think we've -- we've worked with those customers and most of the members of Stu's group. But, if there's certainly somebody we've missed or additional capacity that needs to be in the system, then we need to find out what it is.

COMMISSIONER BEGEMAN: Well, again, I'll just reiterate. If there is something that we could do legally, et cetera, we certainly would like to facilitate this and really help to resolve it for everyone and move forward and not backward.

Could we talk propane for a moment from both carriers as far as your plans? What is the demand that you're seeing, if any?

MR. BROOKS: Well, I guess just -- just to build on my comment, I know we've had, in particular, one shipper that I'm aware of that has been aggressive in wanting to build facilities; and this was the item I spoke about. So we're working with that particular shipper to try to accommodate the locations they're looking at.

MR. BOBB: What I can tell you is that the rail system that will be in place in terms of our customers' facilities to load and unload railcars is probably not yet fully completed. The good news is that, coming into this fall season, there is more rail loading and unloading capacity than there was last year because the issue was last year, you know, the marketplace essentially lost some pipeline capacity and fell -- some of that demand fell immediately back to rail; and there just weren't the loading and unloading facilities. So the good news is we have more facilities to operate against.

And, secondly, from a fill perspective, when we look at our propane demand this summer on a year-over-year basis, we've seen about double the movements on a year-over-year basis. Now, how much of that is pre-fill going on? How much of that is just the fact that there's new facilities? I really couldn't get that specific. But we have seen more rail volume move so far this year than we had last year at the same time.

COMMISSIONER BEGEMAN: And I guess on closing for me, just to discuss the dreaded word "retaliation" again, you know, the chairman indicated that the Board certainly won't tolerate it. I think we'd like to hear "We agree with you" as well.

MR. BOBB: We certainly agree. We've -- We've always told our customers, "We encourage you to engage in the debate and the discussion, and we encourage you to have an opinion." Having a neutral position on issues in the rail policy space or in forums like this doesn't help move the ball forward. So we have always told our customers, "If you agree with us, great. If you disagree with us, great. But let's have a fact-based conversation and move forward."

So the concept of retaliation is -- I just don't understand it. I've heard now, in both sessions, it insinuated; and I have talked to the vast majority of customers in the industries that we serve. And I have never known a one of them unwilling to give me unvarnished feedback.

MR. BROOKS: Certainly we agree. It would be intolerable at Canadian Pacific. And, I mean, certainly, as I said from the very beginning, job one here is to understand what the customers need. And hopefully that is unfettered, pure communication back and forth that then we can put into deliverable plans.

COMMISSIONER BEGEMAN: And, actually, I just have one more issue I want to mention to Mr. Brooks. As you move forward with your new car ordering program, I hope you will include that data in your weekly reporting so that we can see how successful it is or where you may need to tweak it.

MR. BROOKS: Yes, we will.

COMMISSIONER BEGEMAN: Thank you.

CHAIRMAN ELLIOTT: I'd like to thank everyone for coming today. Thanks to the railroads. Thanks to the shippers and the other groups that have participated, the politicians. I think it has been a very helpful and useful hearing. And we will be handing out Ironman medals for anybody that stayed here from eight to five o'clock. Ann's got them in her bag.

And, with that, the hearing is hereby adjourned. Thank you.

(Whereupon, the hearing in the above-entitled matter was concluded at 5:05 p.m.)

STATE OF MINNESOTA

COUNTY OF DOUGLAS CERTIFICATE

- -

I hereby certify that I reported the public hearing of the Surface Transportation Board held on September 4, 2014;

That the testimony was transcribed by me and is a true record of the testimony of the witnesses (with amendments made by the Surface Transportation Board, said changes submitted to me by Ms. Arlene Jeffcoat on November 7, 2014);

That I am not a relative or employee or counsel of any of the parties or a relative or employee of such attorney or counsel;

That I am not financially interested in the action and have no contract with the parties, attorneys, or persons with an interest in the action that would affect my impartiality;

WITNESS MY HAND AND SEAL this 10th day of November, 2014.

Leah M. Klitzke

Leah M. Klitzke, RPR
My commission expires January 31, 2015.

LEAH MARIE KLITZKE
NOTARY PUBLIC-MINNESOTA
My Comm. Exp. Jan. 31, 2015

B

C

J

K

L

Q

R

S

U

V

Y

Z

STB Hearing: Ex Parte 724

September 4, 2014

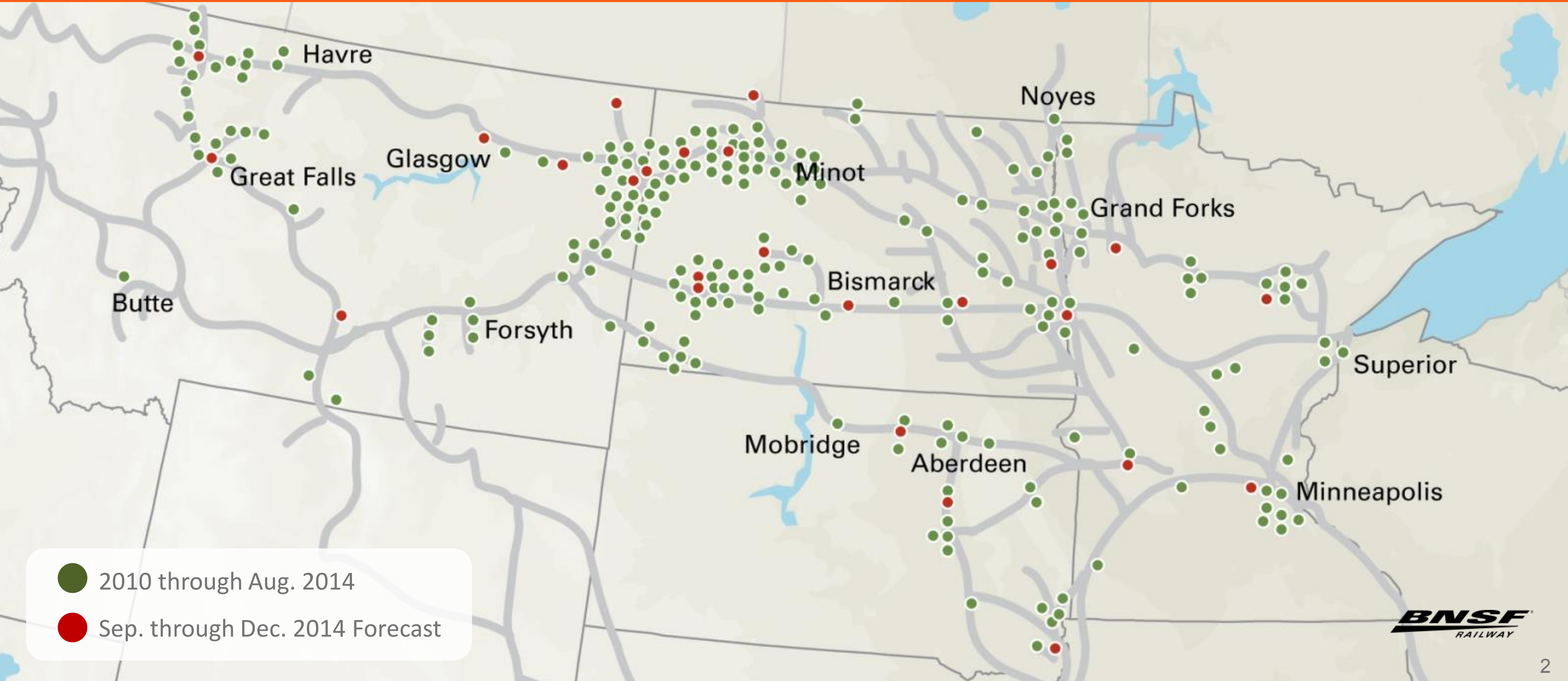
Fargo, North Dakota

Testimony of BNSF Railway

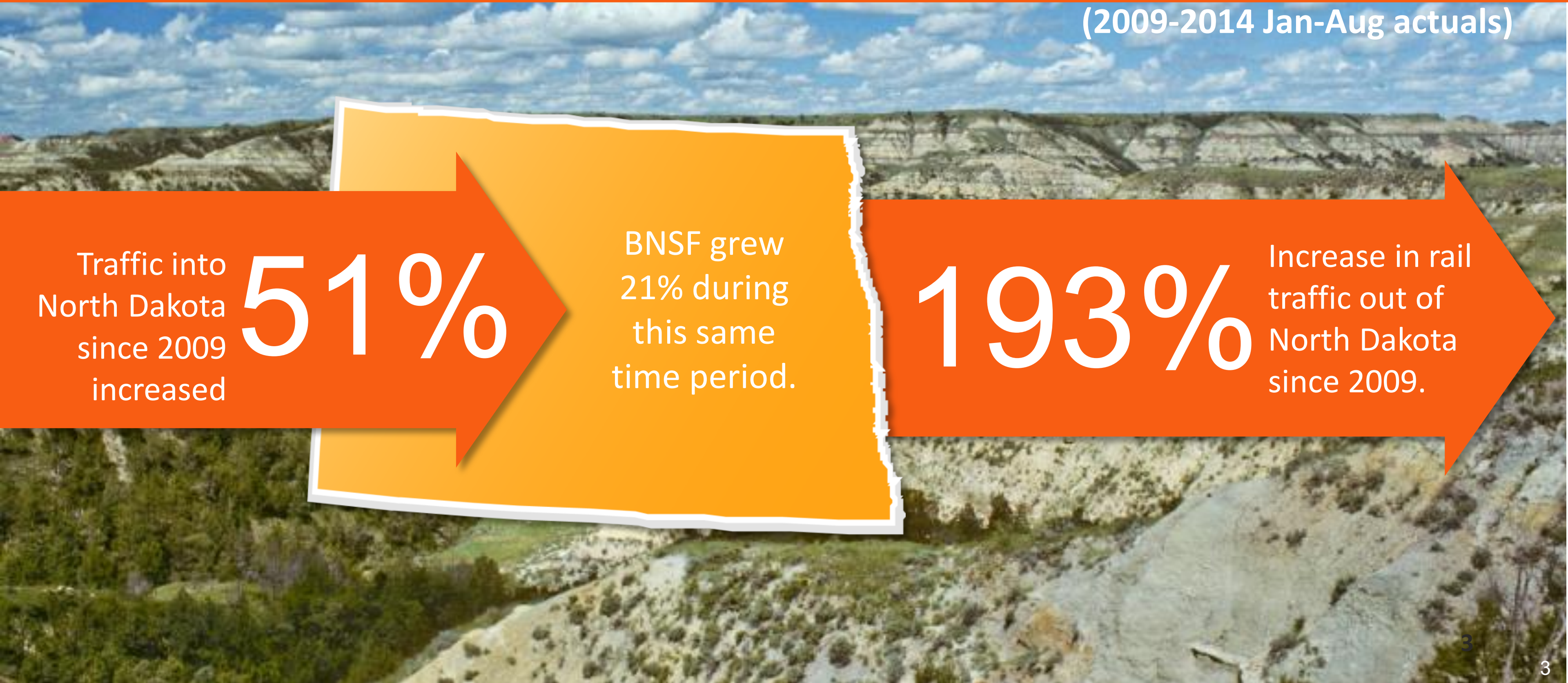
Steve Bobb, Executive Vice President, Chief Marketing Officer

Bob Lease, Vice President, Service Design and Performance

Economic Development and Rail Growth in the North Dakota Region



North Dakota Represents 36% of BNSF's Growth This Year Alone



(2009-2014 Jan-Aug actuals)

Traffic into North Dakota since 2009 increased **51%**

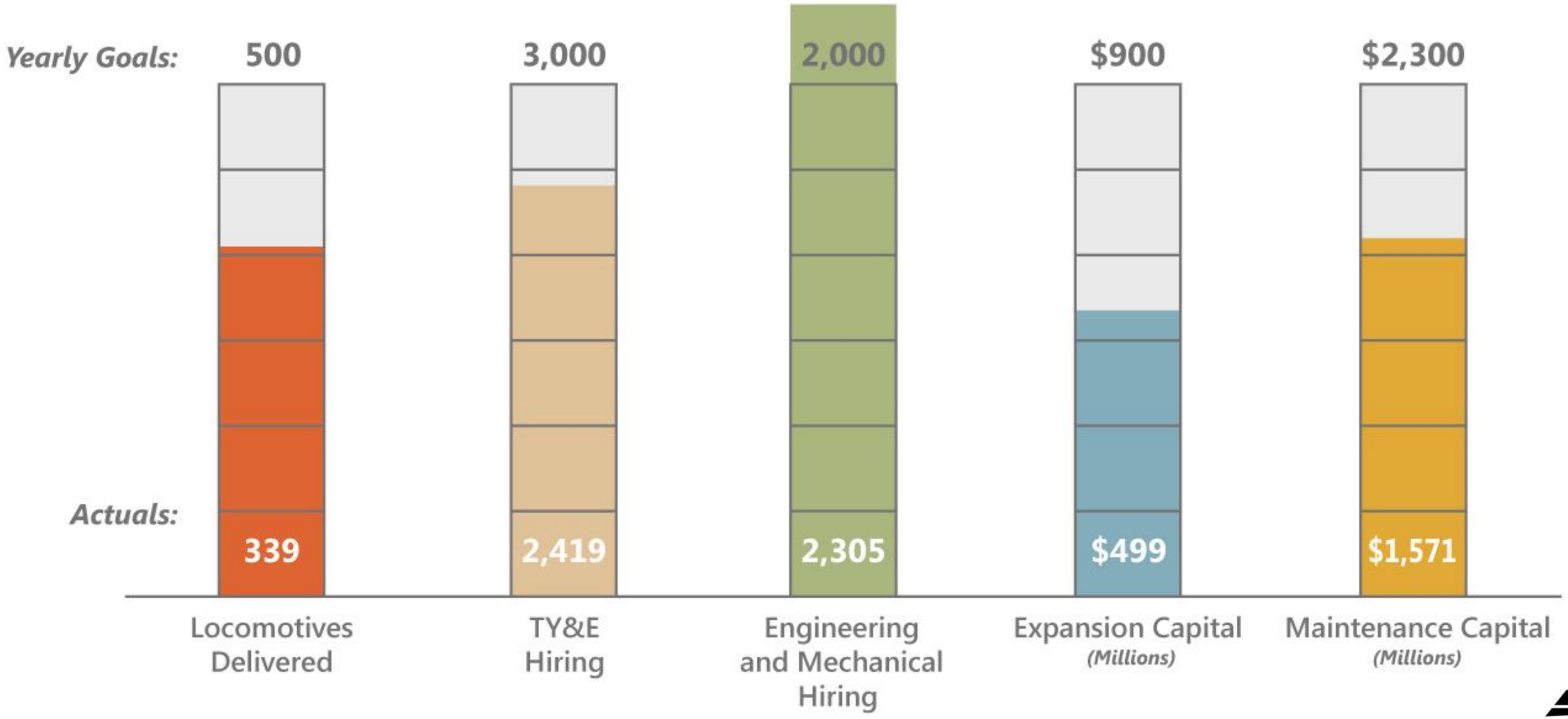
BNSF grew 21% during this same time period.

193% Increase in rail traffic out of North Dakota since 2009.

3

Progress Update

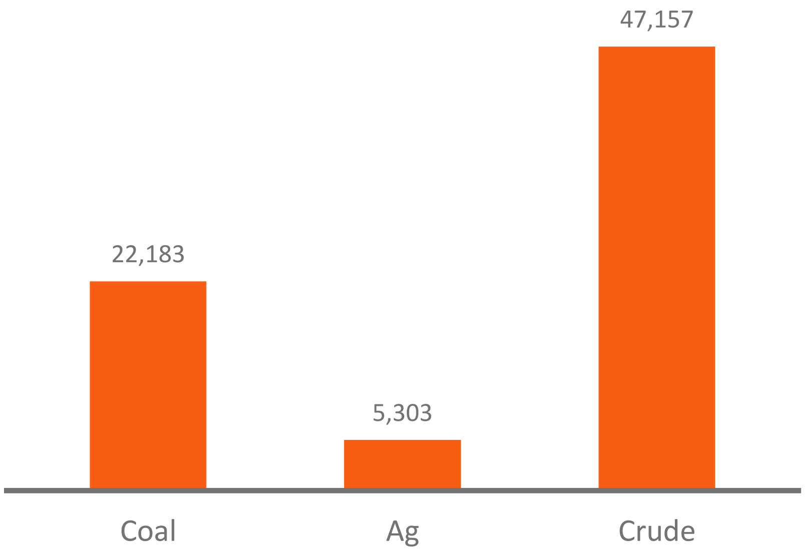
2014 Long-Term Actions to Add Capacity YTD



As of August 31, 2014; capital represents YTD actual through July 31, 2014 and August 2014 planned

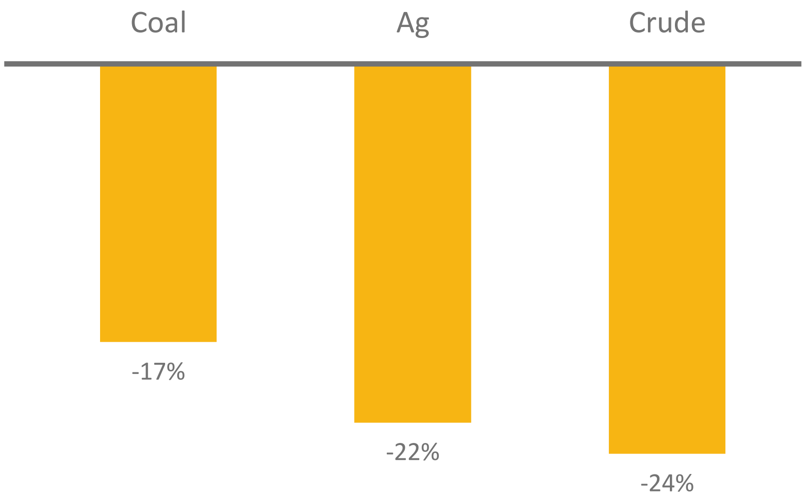
Increasing BNSF Volumes Across Commodities has Impacted Service Across Commodities

GROWTH YEAR TO DATE OVER 2013 IN COAL, AG AND CRUDE SHIPMENTS



Measured in Units Handled

SLOWER TRAIN VELOCITY YEAR OVER YEAR HAS BEEN FELT ACROSS COMMODITIES

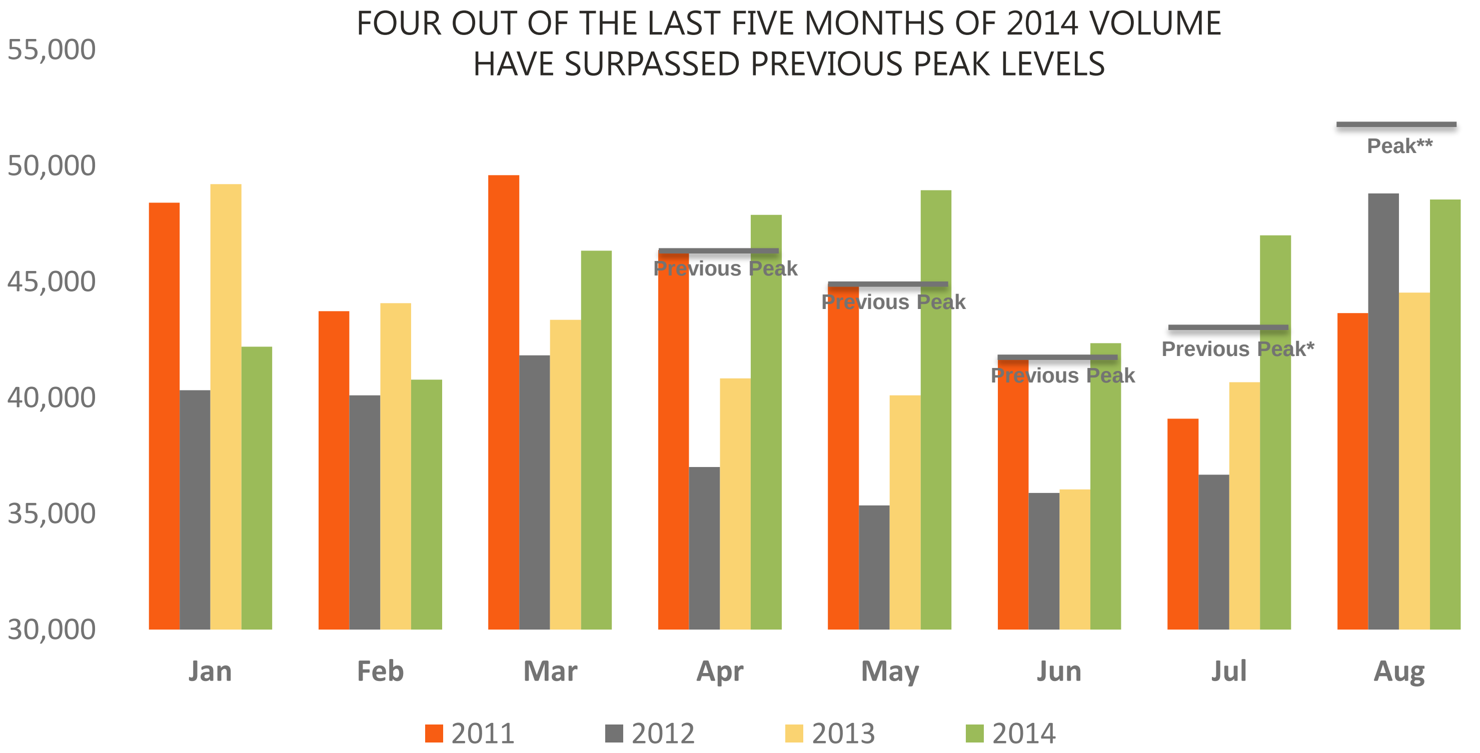


Miles Per Day Change for Coal and Crude (Aug. 2014 v Aug. 2013)
Shuttle Trips Per Month Change for Agriculture (Aug. 2014 v Aug. 2013)

BNSF RAILWAY

Source: BNSF internal data year-to-date through August

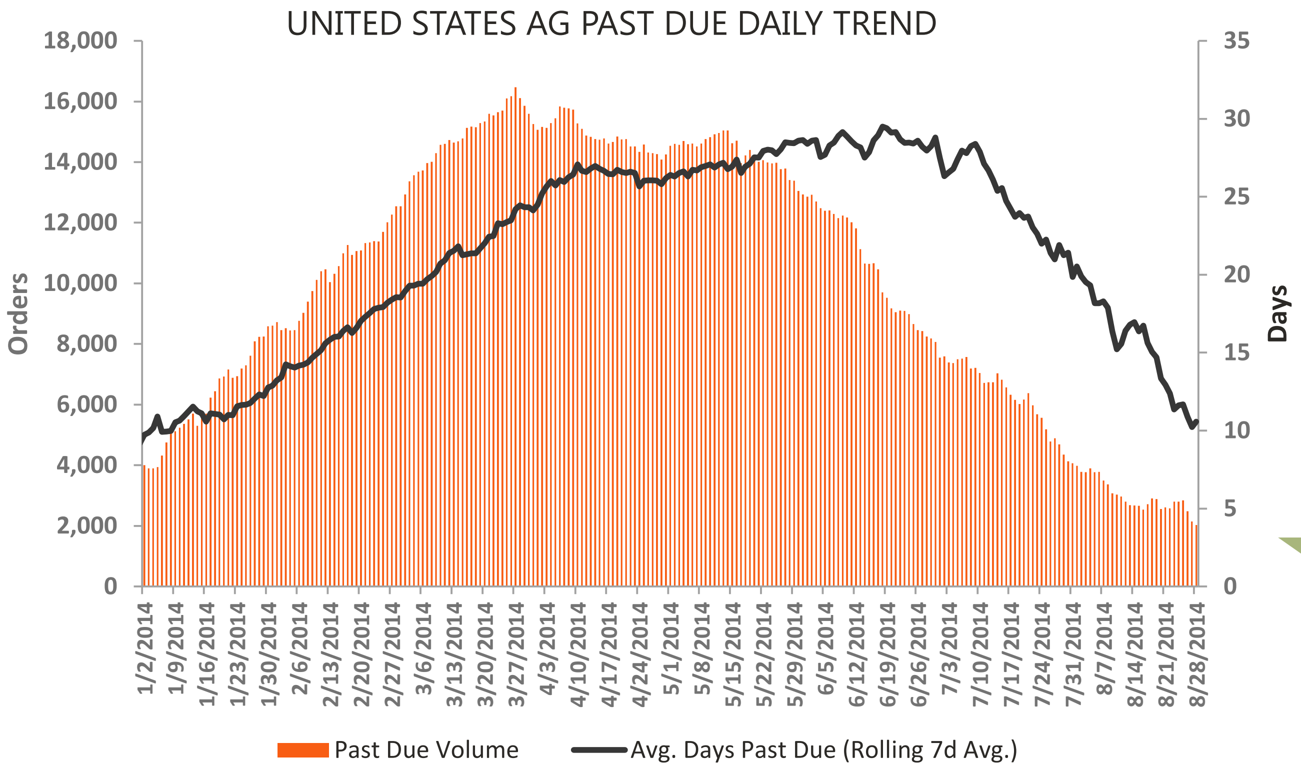
Ag Volume YTD has Grown to/from North Dakota, South Dakota, Montana and Minnesota



* Previous July peak occurred in 2010. ** August peak occurred in 2010.

Source: BNSF Internal data year-to-date through August for origins/destinations to/from North Dakota, South Dakota, Montana and Minnesota.

Ag Past Dues Progress

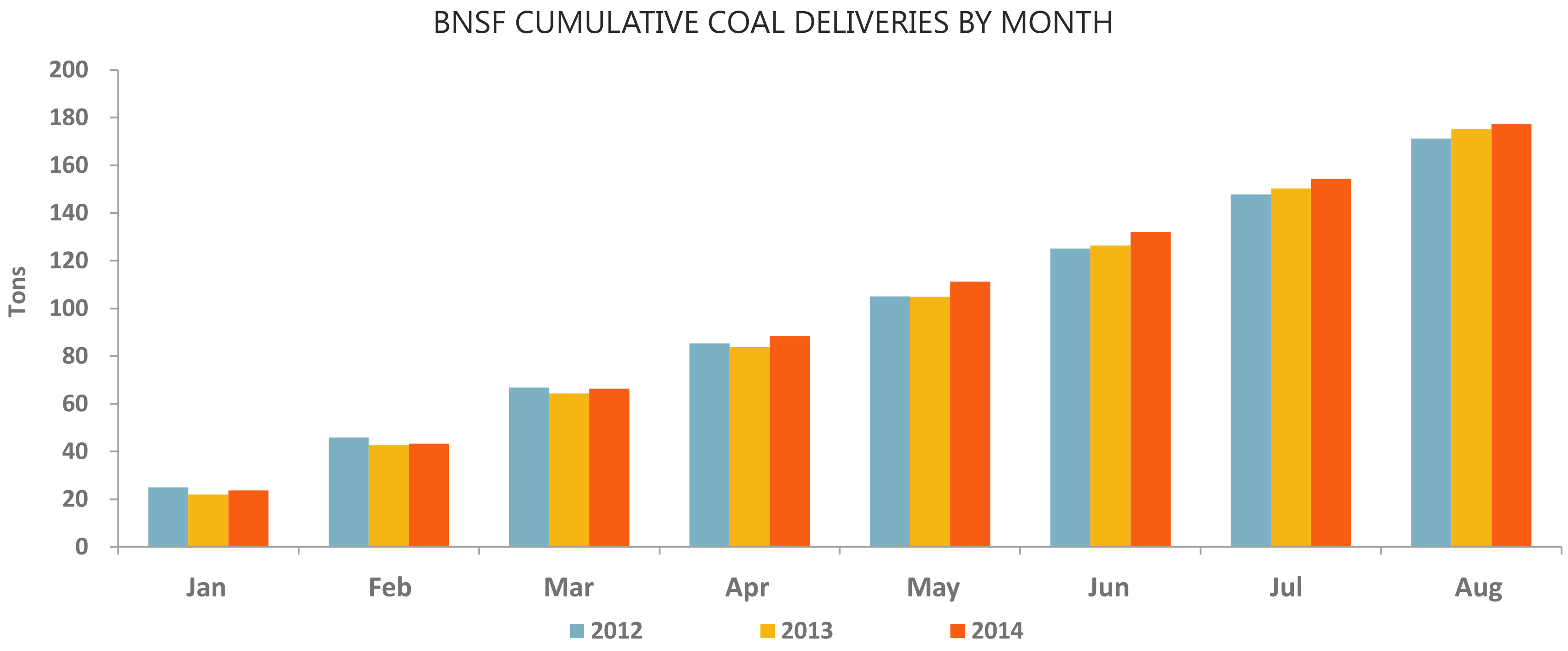


88%

Decrease in U.S. Past Dues Since March 2014 High

BNSF RAILWAY

Coal Tons Delivered Year-to-Date



Coal Network Planning Process

- **Coal movement is part of the network planning process.**
- **Coal tons delivered is a function of set productivity, which is a function of network productivity. An increased number of sets results in velocity declines and less coal delivered.**

Customer review and escalation:

- *Criticality of plant to reliability*
- *Contractual obligations*
- *Operating parameters*

Critical customers under watch:

- *Under or at 10-day stockpile*
- *Under or at 5-day stockpile*

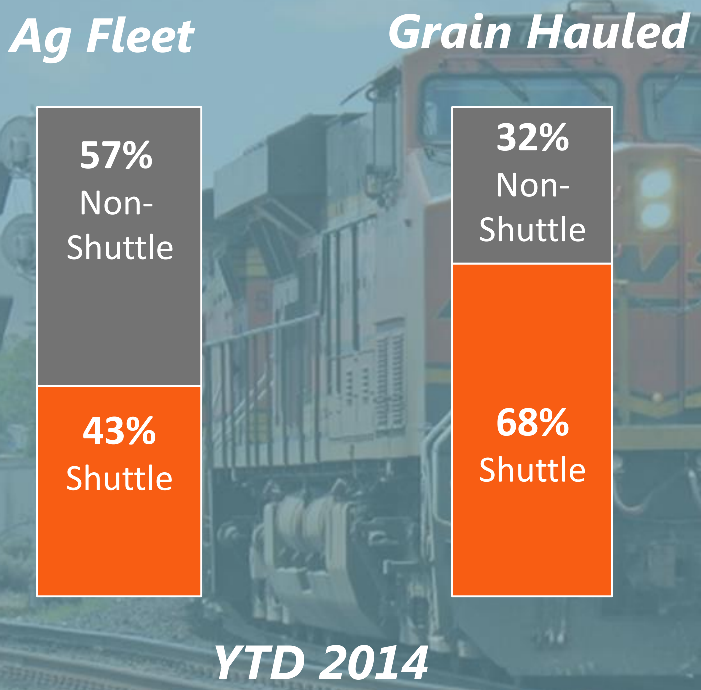
BNSF RAILWAY

Ag Market Outlook

Shuttle Trips Per Month (TPM)

	August 2014 PLAN	Week Ending Aug. 30	Week Ending Aug. 23	Week Ending Aug. 16	Week Ending Aug. 9
BNSF System	2.3	2.1	2.2	2.2	2.4
California	2.3	1.8	1.7	1.6	2.1
Texas Gulf	2.0	2.1	1.5	1.7	2.6
PNW	2.5	2.5	2.8	2.5	2.5
West Texas	2.8	1.9	3.6	2.2	2.6
Mexico	1.3	1.0	1.2	1.0	1.8

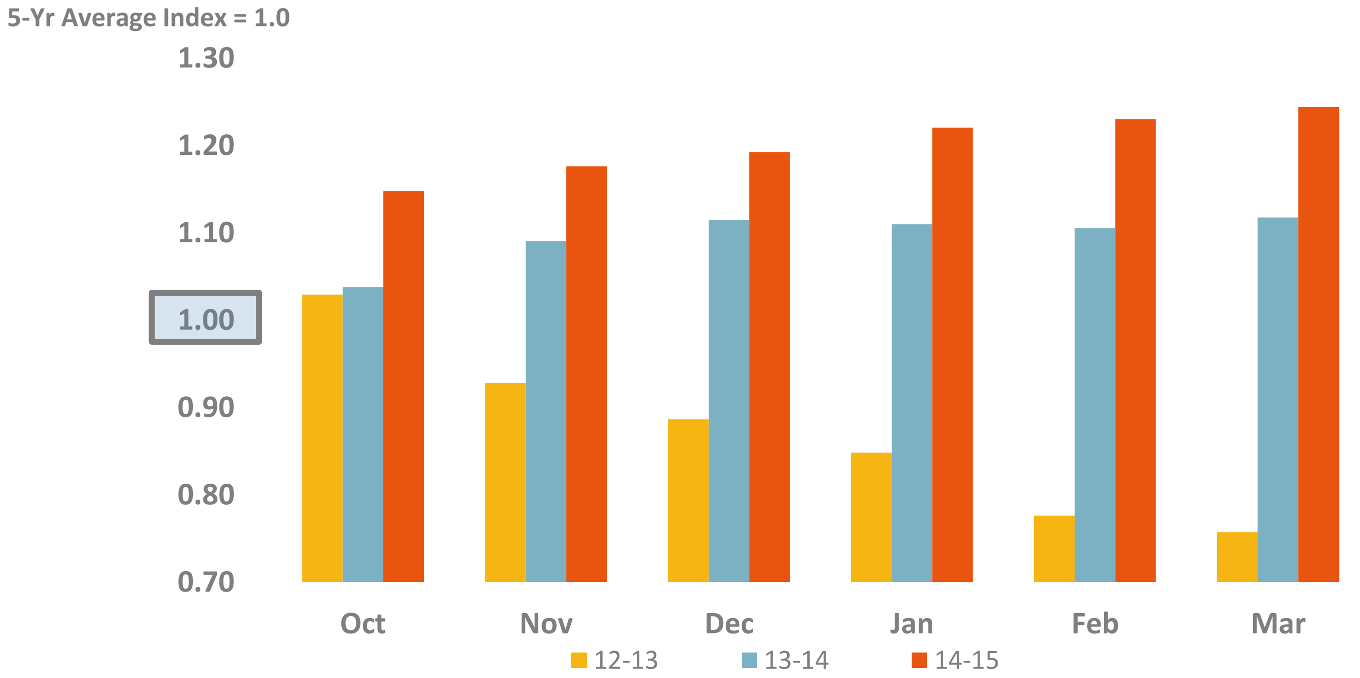
Shuttle vs. Non-shuttle Assets



- In March 2014, Ag non-shuttle fleet was 14,222
- Winter storage of Ag shuttle sets created more line, crew, and locomotive capacity for the rest of the network
- In April, increased non-shuttle sets to 14,882
- In June, the number of shuttle sets sold decreased by 27
- The cars from those shuttle sets were transitioned to the non-shuttle fleet which increased the size to 17,282

2014-2015 BNSF Ag Shuttles

BNSF WILL RUN HIGHEST NUMBER OF SHUTTLES EVER DURING THE UPCOMING OCTOBER-MARCH PEAK SEASON



Factors Influencing Grain Movement

- Crop Size
- Crop Prices
- Storage Availability
- Crop Quality
- Weather
- Cycle Time Variability Due to Demand
- Export Demand vs. Domestic
- Freight Performance Expectations
- Market Structure – Carry vs. Inverse

Service Outlook

Recovery Outlook by Region

South Region

Improvement will continue as the majority of the major track work projects are winding down. Capacity projects to address remaining Transcon bottlenecks for 2015 delivery.

Central Region

More gradual improvement as we continue to operate a very high number of coal sets toward all destinations, while track work programs on this heavy-haul route approach the two-thirds point of completion.

North Region

Incremental improvements as capacity projects come online. Uneven progress as track recovery continues following several outages stemming from heavy rains in late August. Heavy maintenance programs will continue into fall, which are necessary for improvement, but impact short-term velocity.

BNSF RAILWAY


BNSF
RAILWAY

Testimony Review Before The STB Ex Parte 724 – Fargo – September 4, 2014

Terry Whiteside, Whiteside & Associates – Billings, Montana

Chart I – BNSF Backordered Cars – August 28, 2014

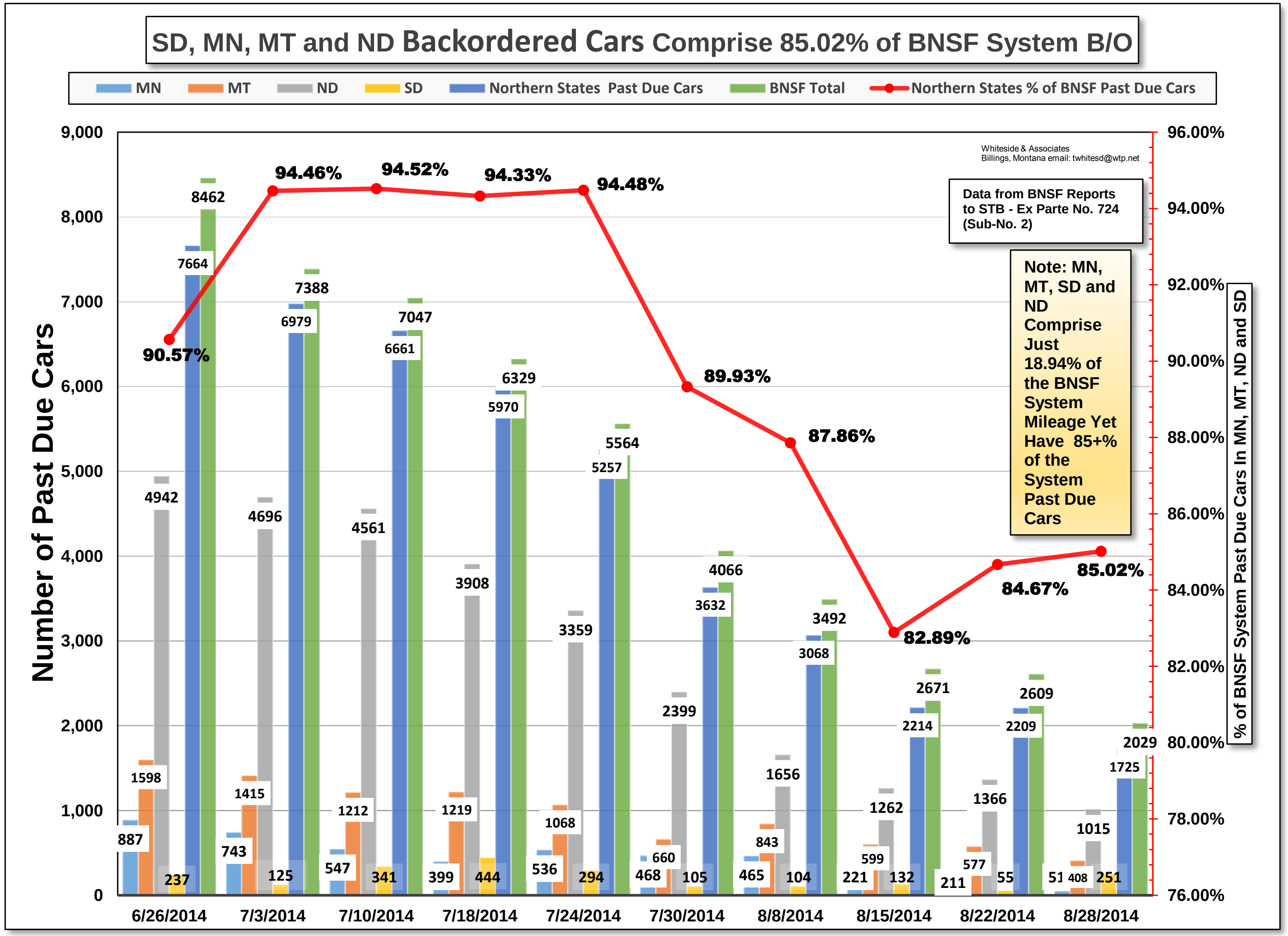


Chart II – BNSF Systemwide Average Train Speed – System and Grain

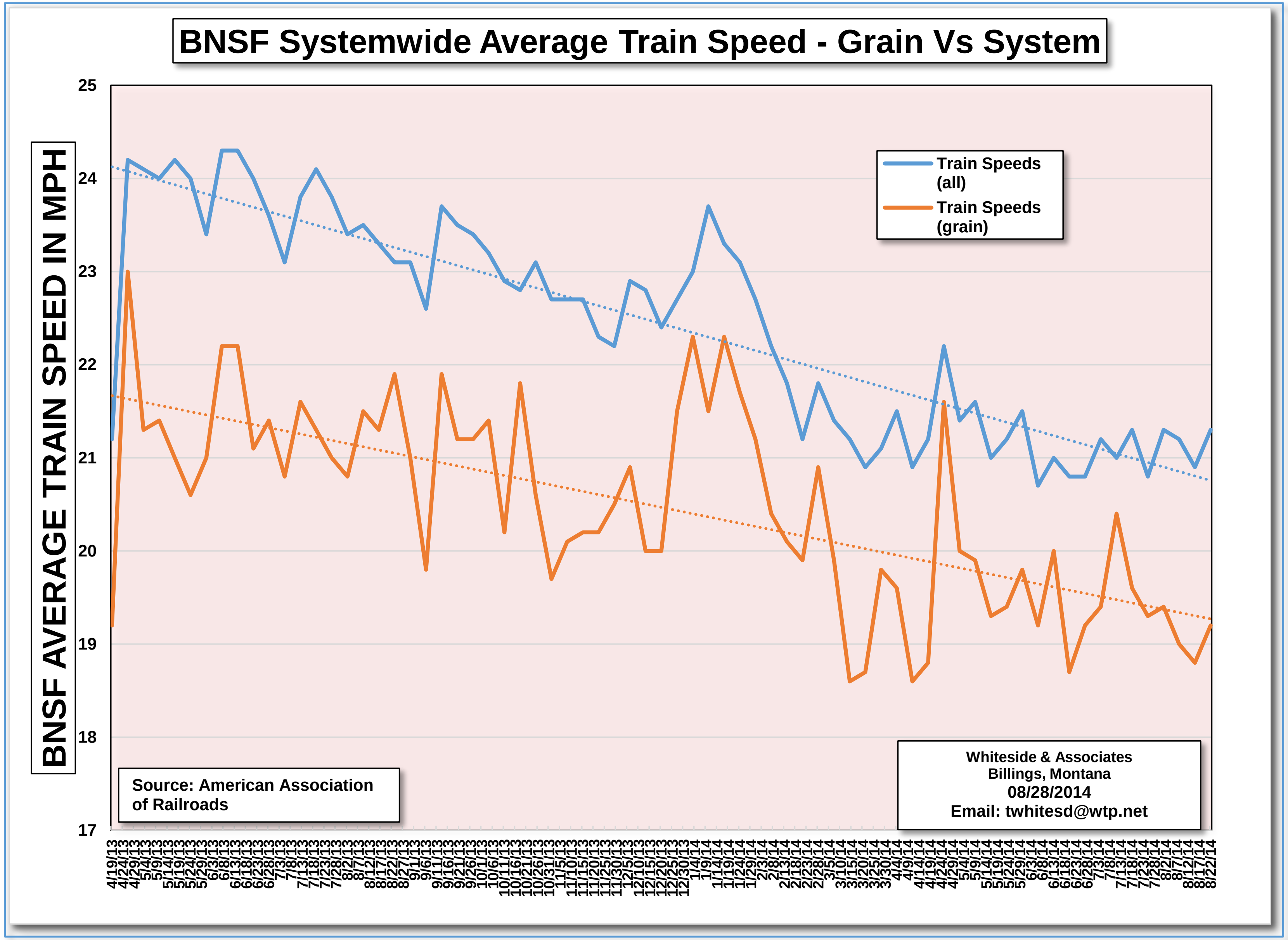


Table I – Summary of U. S. Class I Railroad Wheat Movement - 2013

Summary of 2013 U.S. Class I Railroad Wheat Movements (Source: STB 2013 Freight Commoditiy Statistics)						
Railroad	**Cars Carried**	**%**	**Tons Carried**	**%**	**Revenue**	**%**
BNSF	195,957	45.2%	21,006,544	46.0%	$765,298,045	54.4%
UP	98,318	22.7%	10,373,650	22.7%	$333,853,778	23.7%
CP	53,281	12.3%	5,331,042	11.7%	$83,878,306	6.0%
NS	38,488	8.9%	3,981,861	8.7%	$109,465,241	7.8%
CSX	34,095	7.9%	3,592,928	7.9%	$86,230,680	6.1%
CN	9,471	2.2%	980,358	2.1%	$19,018,155	1.4%
KCS	3,901	0.9%	402,762	0.9%	$8,378,528	0.6%
Total	**433,511**	**100.0%**	**45,669,145**	**100.0%**	**$1,406,122,732**	**100.0%**

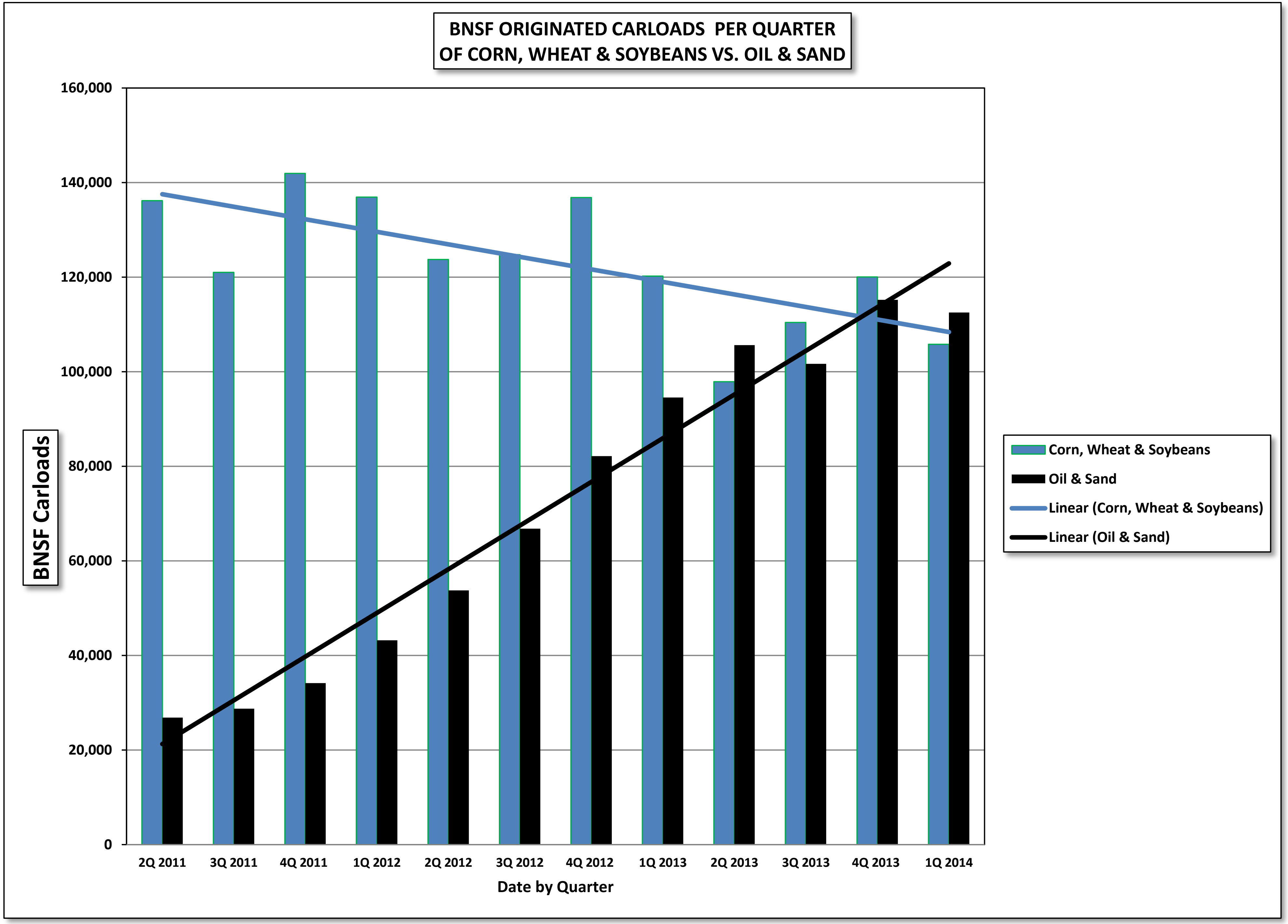

BNSF ORIGINATED CARLOADS PER QUARTER
OF CORN, WHEAT & SOYBEANS VS. OIL & SAND
BNSF Carloads
160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0
2Q 2011
3Q 2011
4Q 2011
1Q 2012
2Q 2012
3Q 2012
4Q 2012
1Q 2013
2Q 2013
3Q 2013
4Q 2013
1Q 2014
Date by Quarter
Corn, Wheat & Soybeans
Oil & Sand
Linear (Corn, Wheat & Soybeans)
Linear (Oil & Sand)

Chart IV

BNSF Originated Carloads Per Quarter of Wheat Compared to Oil and Sand

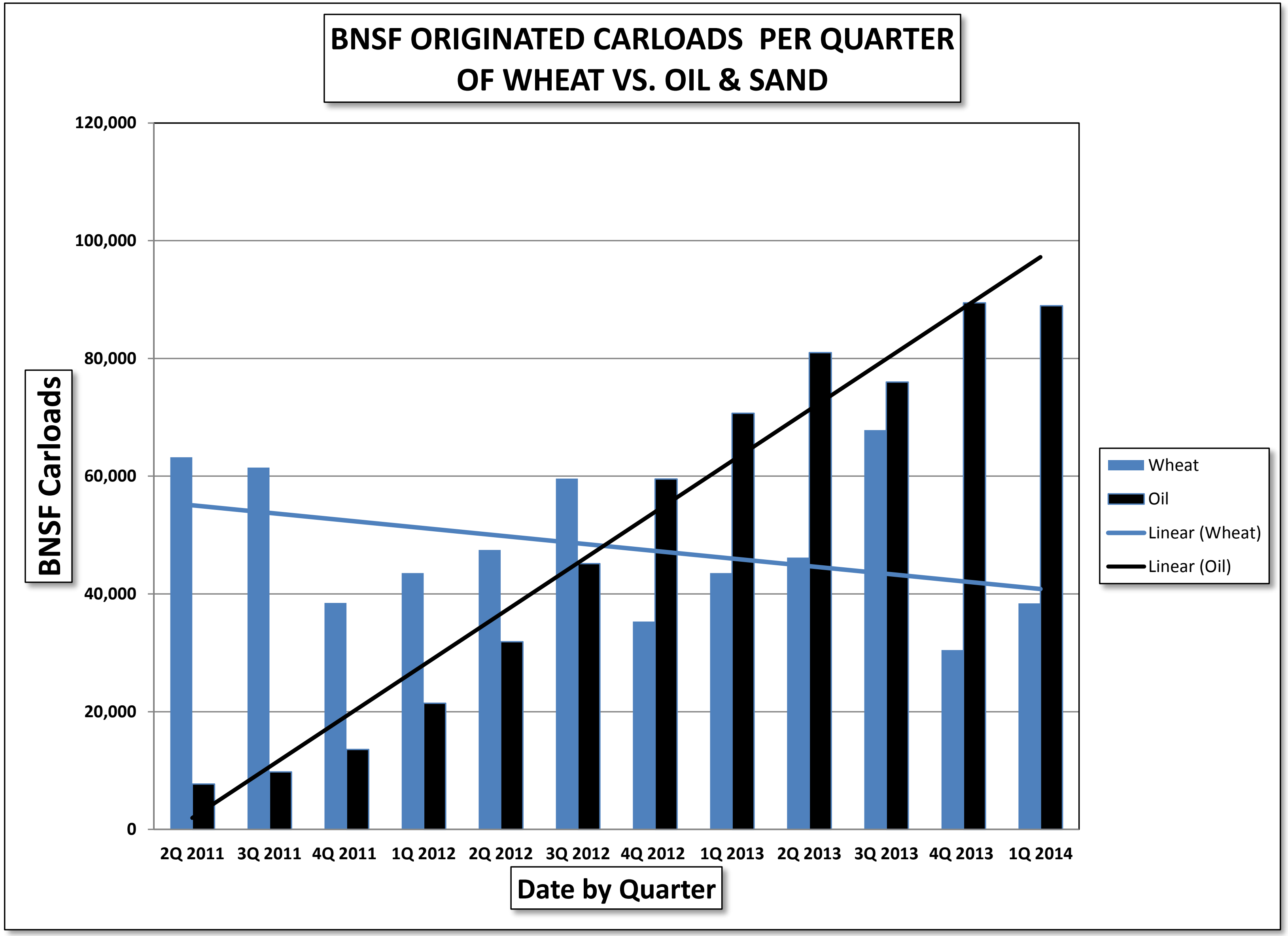


Photo I - Moccasin, Montana 08-14 – advised awaiting rail cars

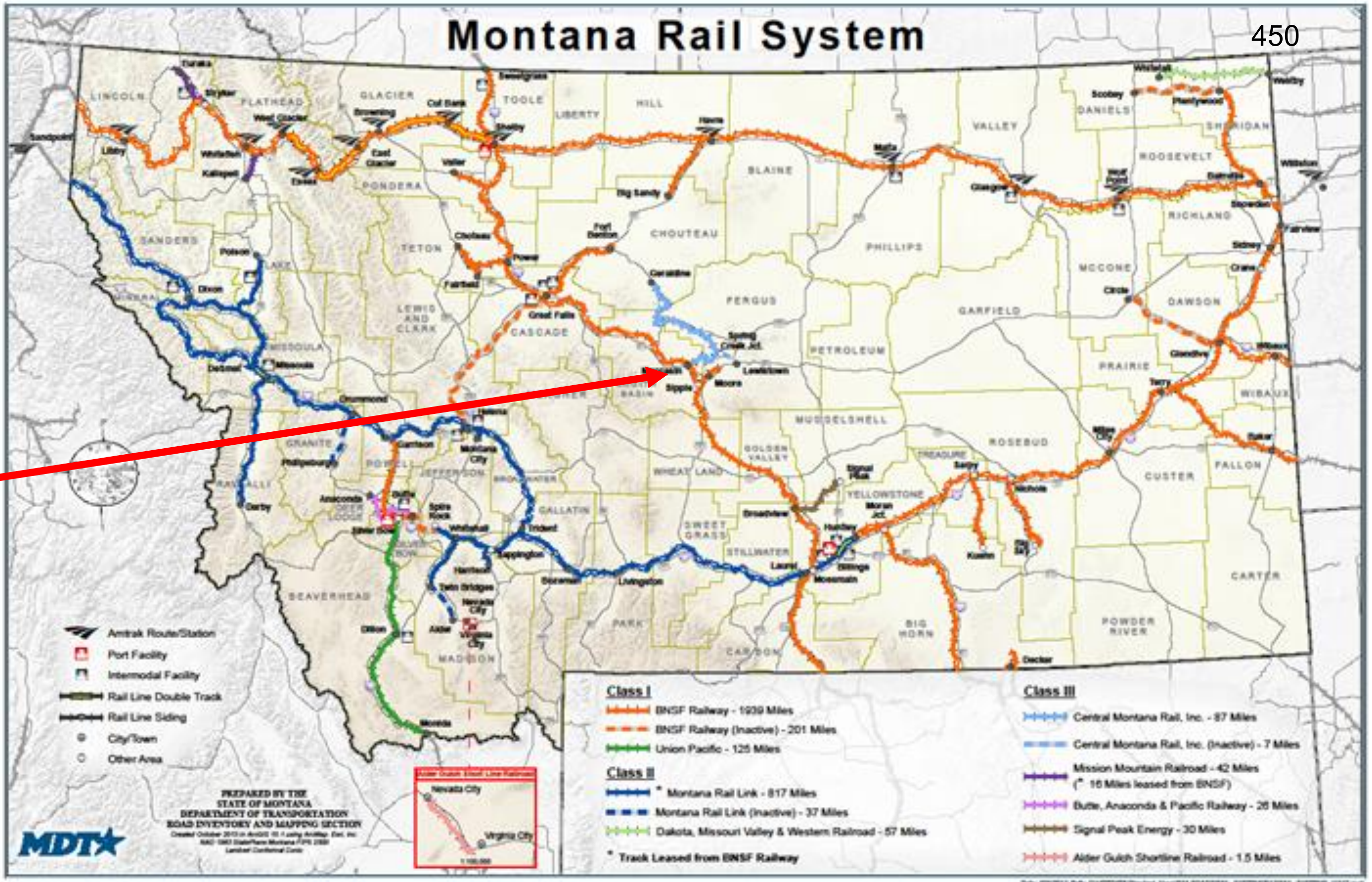


Photo II – Hardin, Montana Elevator – August 2014 – Awaiting Rail Ca

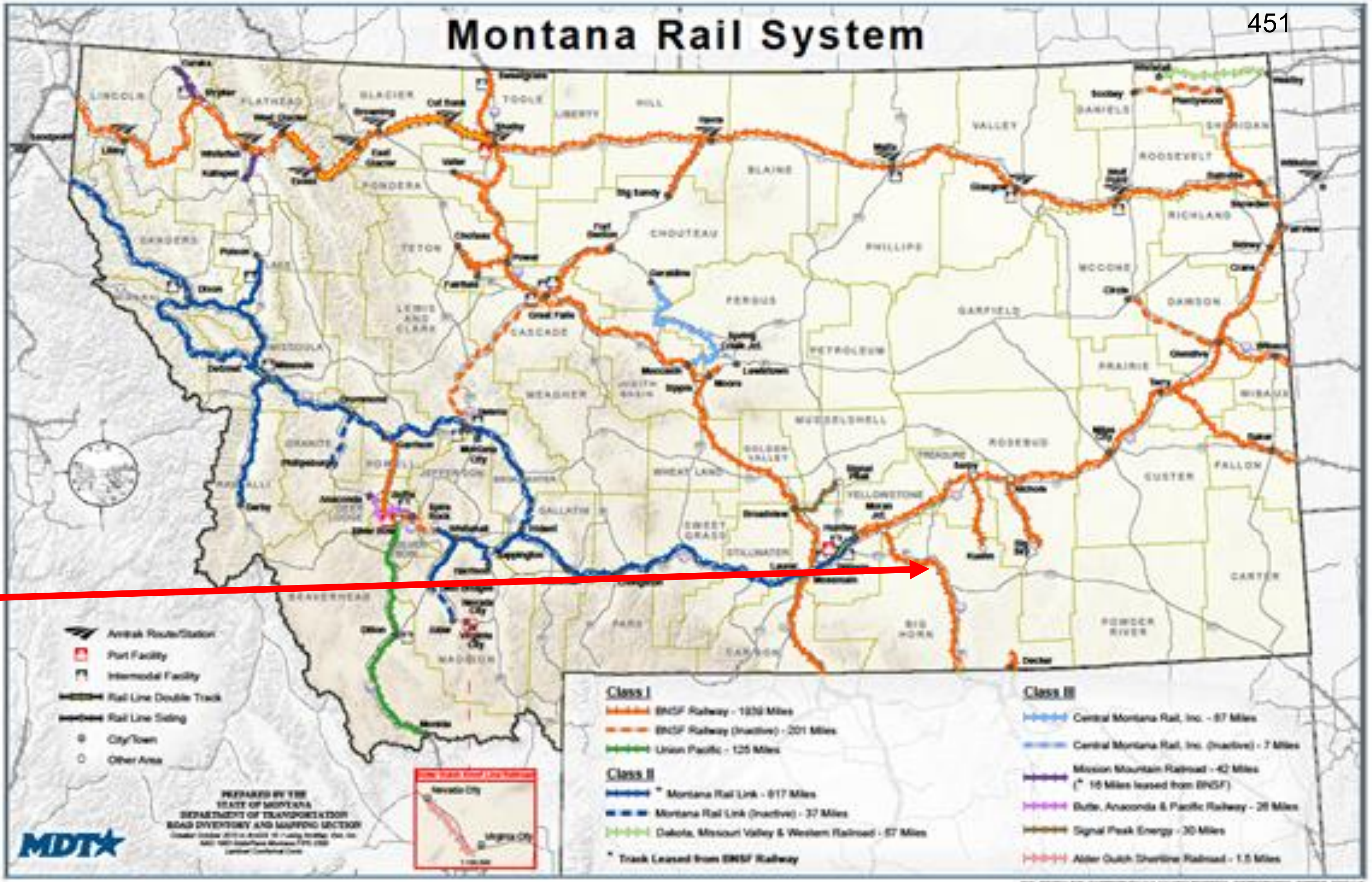
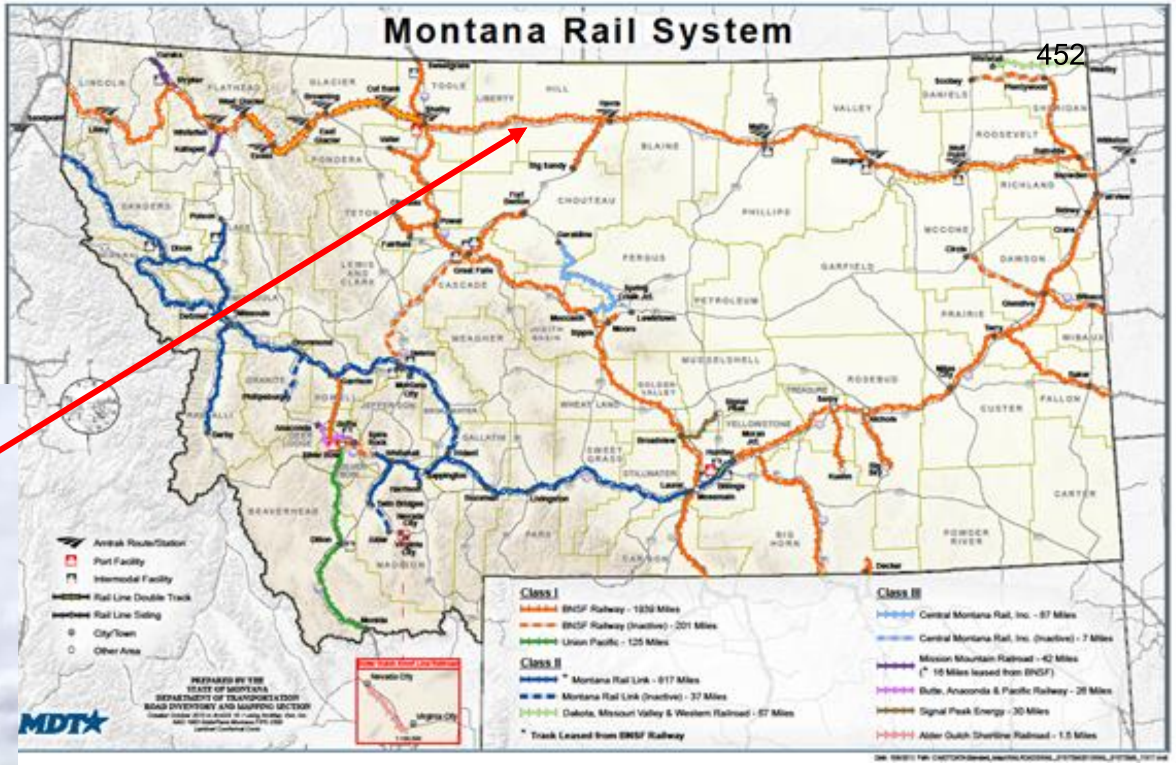


Photo III – Chester, Montana – August, 2014 – EGT - awaiting rail cars – just got rid of last of 2013 pile in early June, 2013



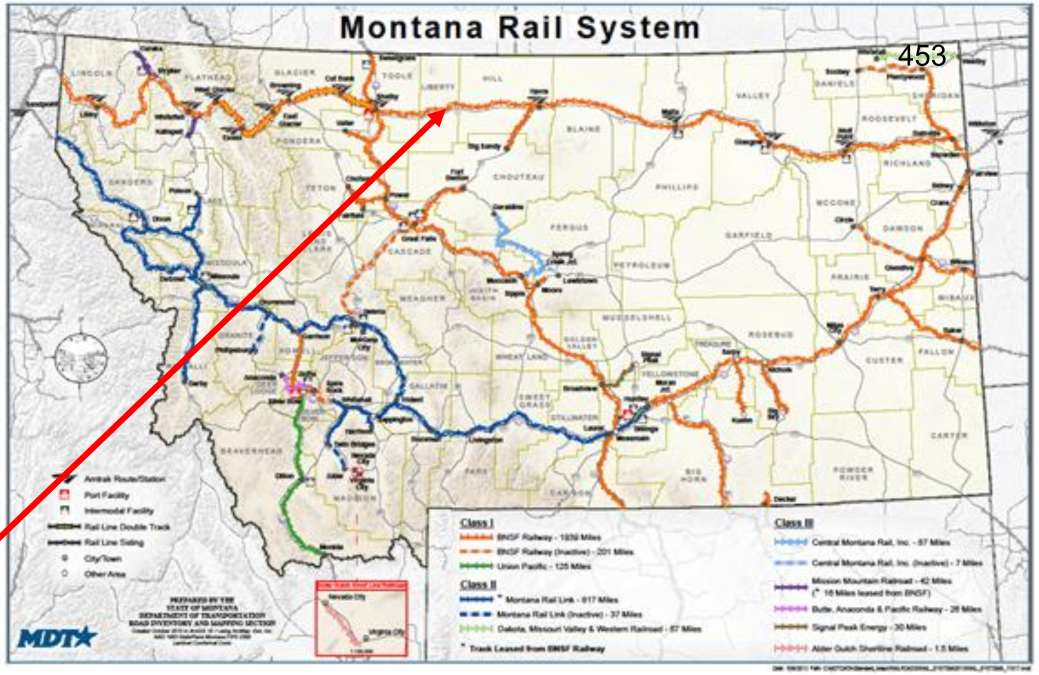


Photo IV – Chester, Montana – August 2014 – Columbia Grain – awaiting rail cars

Photo IV – Conrad, Montana – August 2014 – Wheat is on ground – barley in elevators

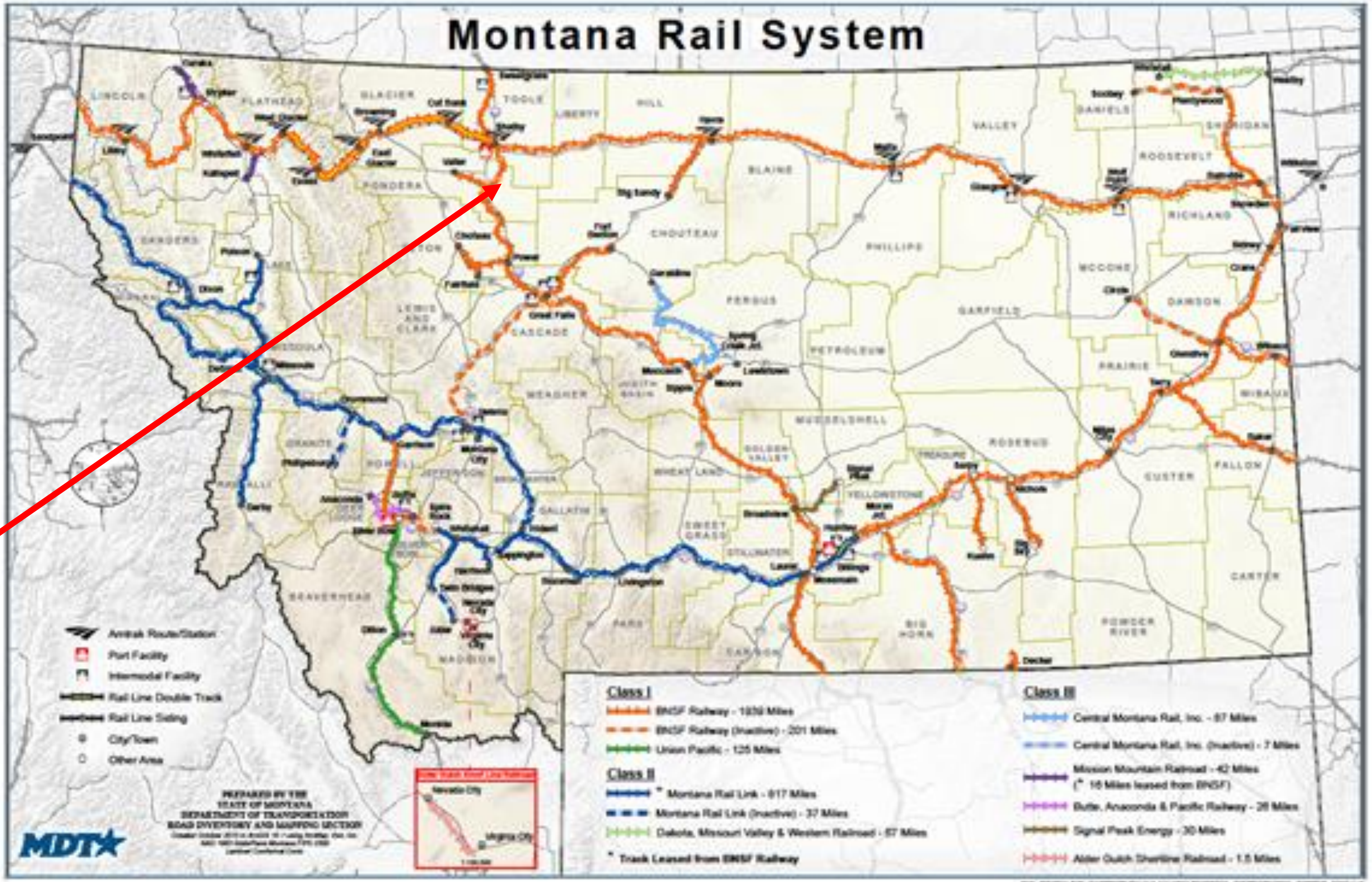


Photo V – Fromberg – August 2014 – Farm producer storing grain on the ground – on farm storage still full of 2013 crop

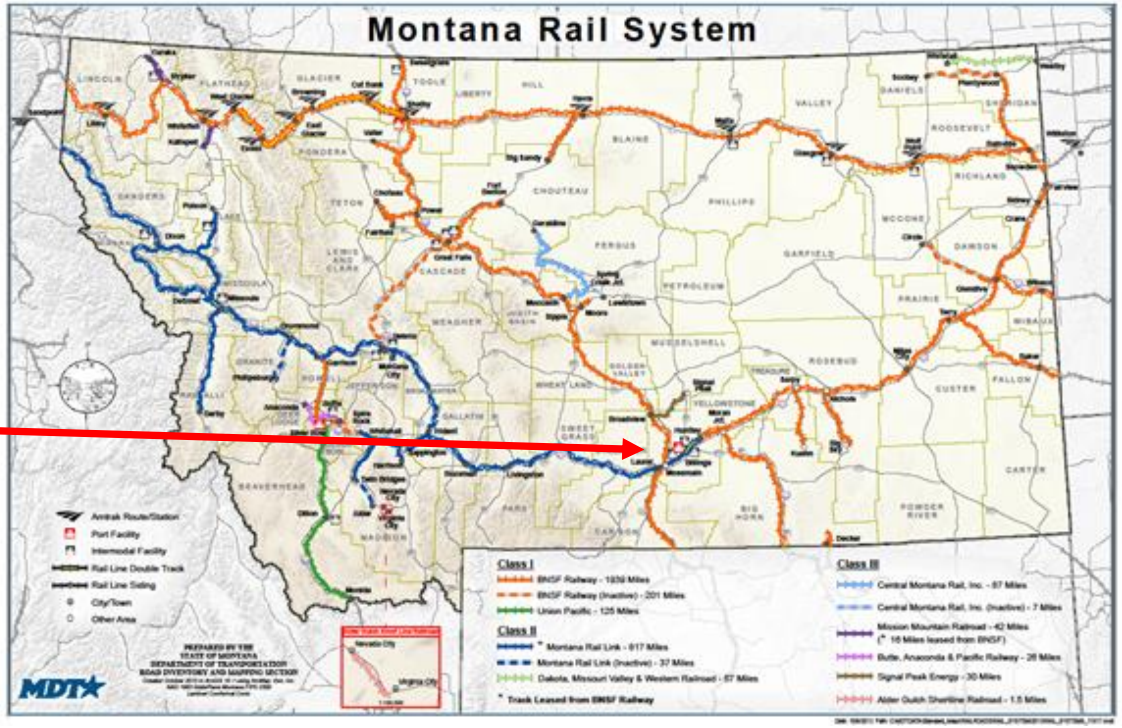


Photo VI – Moore, Montana – Gavillon – August 2014 – This was planned for storage due to lack of rail equipment

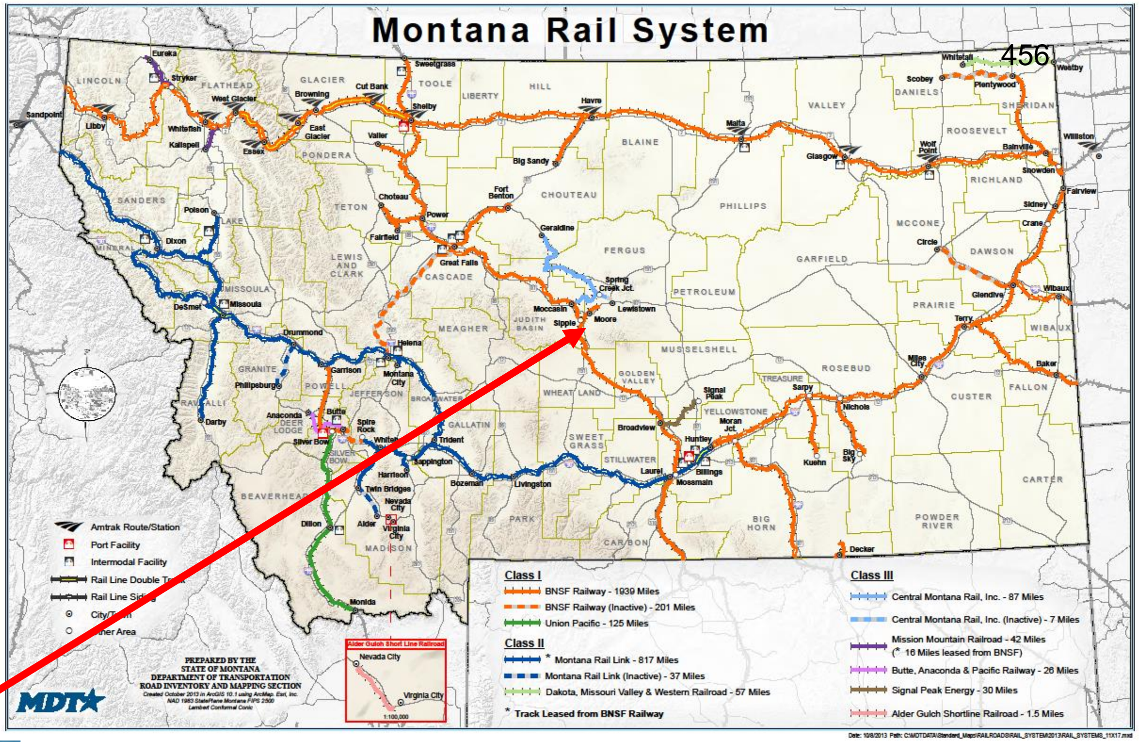
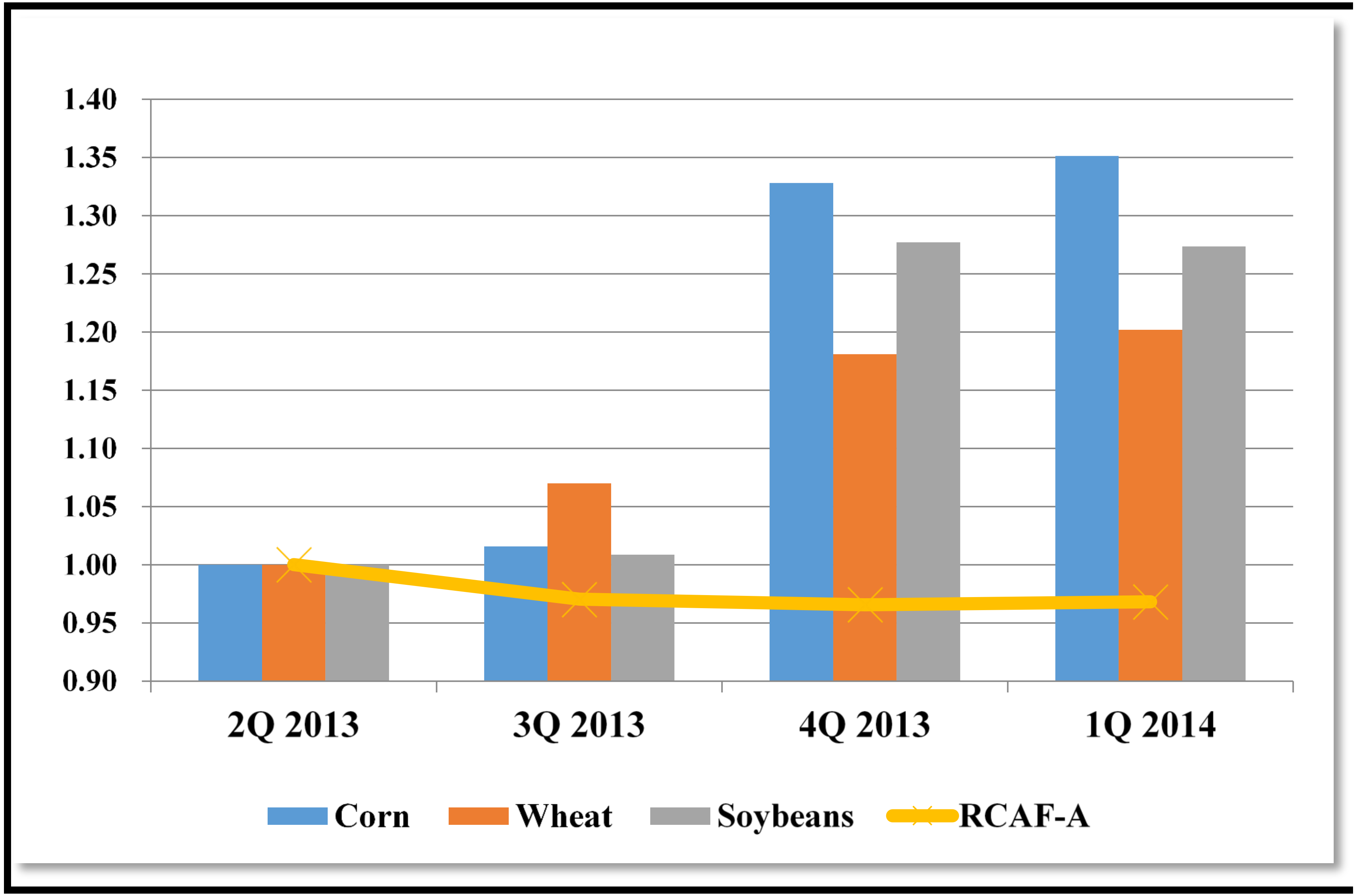


Table II

Recent Increases in BNSF Grain Rates Per Ton Carried

Poor Service = Tighter Capacity = Higher Prices



TESTIMONY OF

DJ STADTLER
VICE PRESIDENT OF OPERATIONS
AMTRAK

BEFORE THE

SURFACE TRANSPORTATION BOARD

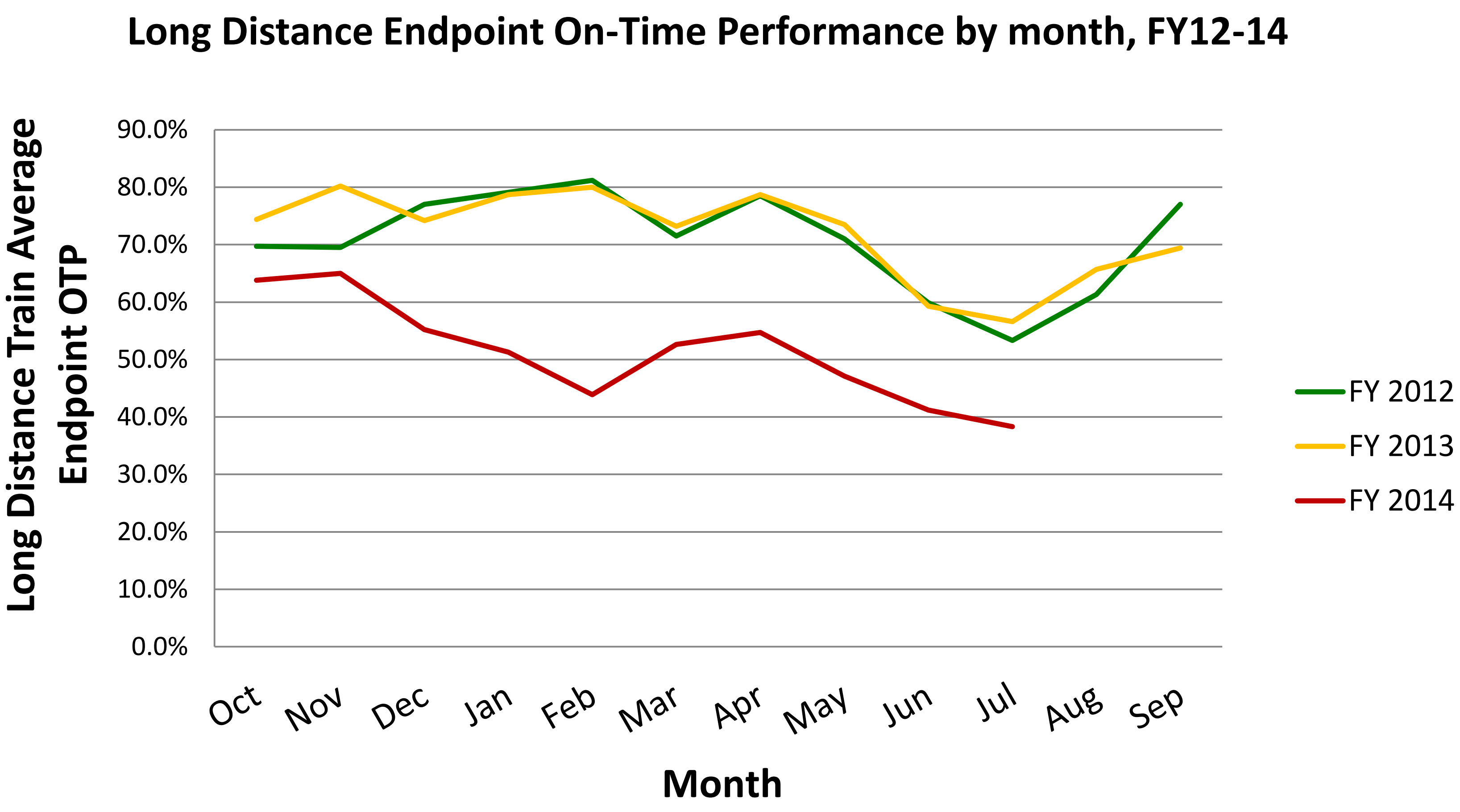
THURSDAY, SEPTEMBER 4, 2014
8:00 A.M.
HILTON GARDEN INN, 4351 17TH AVENUE SOUTH, FARGO, ND

LD quick facts page

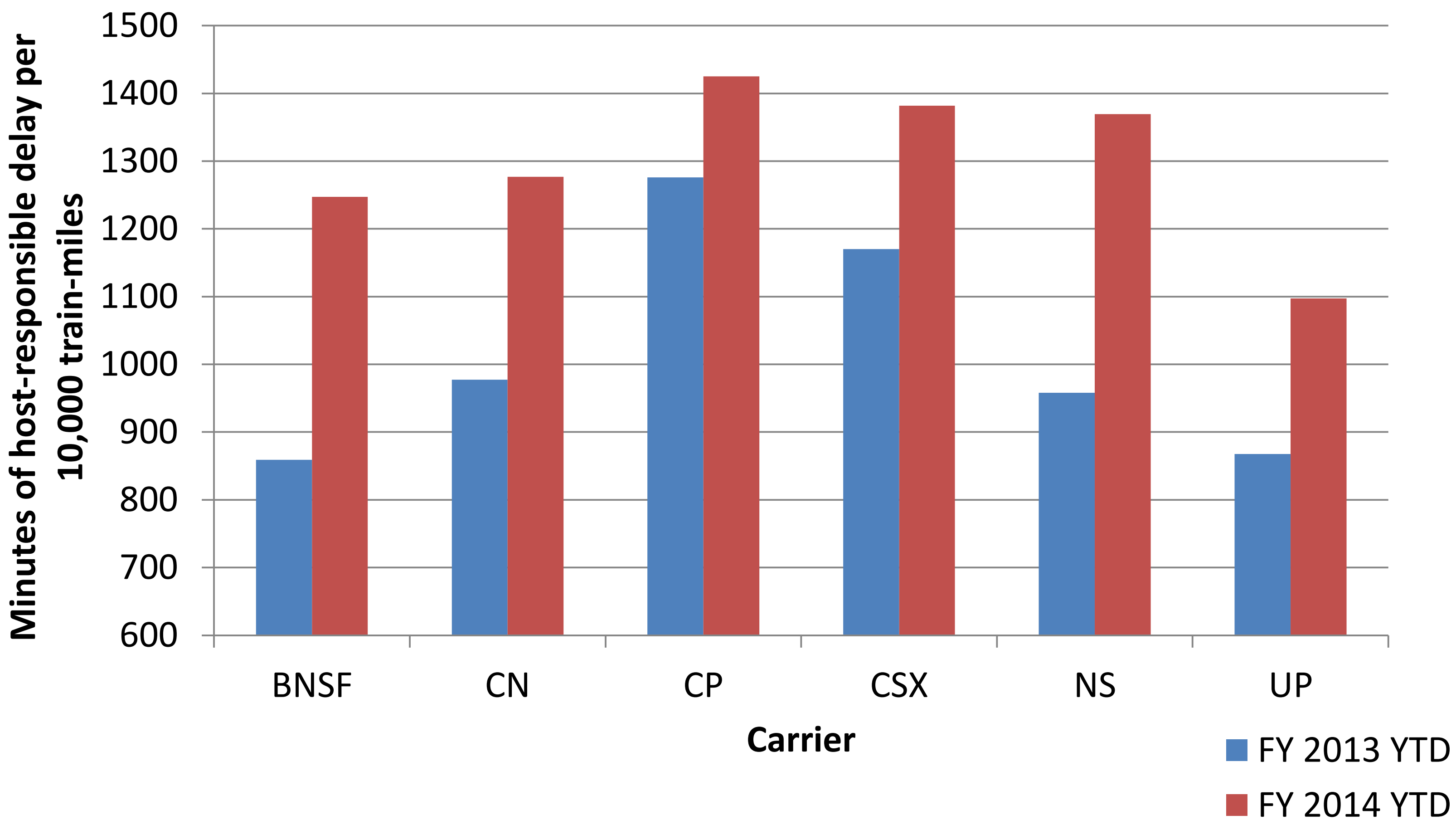
- 15 routes, carrying more than 4.7M riders in FY 2013
- A vital public service:
  - 15% of ridership
  - 11% of frequencies, but 43% of passenger-miles
  - 43% of identified passengers with disabilities who use Amtrak
  - Only Amtrak trains in 23 of the 46 states we serve
- Two trains carry a **fifth** of all LD passengers:
  - *Empire Builder* (11.3%)
  - *Coast Starlight* (10.1%)
- 2008 DOT IG study estimated that an 85% average OTP would save $136M (in 2006 dollars)
  - About $160M today
  - In FY 2006, LD OTP was 30%

FY 2014 endpoint OTP for the year to date is 51.4%

LD train performance is bad and getting worse



Not just more delay – *longer* delay



"YTD" is year to date

OTP has declined to unacceptable levels

AMTRAK

SERVICE, Year to date	All Stations OTP	Endpoint OTP
State Supported	**78.7%**	**73.8%**
Capitols	96.5%	95.5%
Carolinian	62.4%	62.5%
Cascades	72.6%	76.7%
Downeaster	79.2%	54.8%
Empire Corridor	69.2%	70.1%
Heartland Flyer	73.5%	51.6%
Hiawatha	93.5%	86.4%
Hoosier State	62.5%	52.3%
Illinois	60.7%	61.0%
Michigan	51.0%	35.6%
Missouri	83.1%	82.2%
Pacific Surfliner	87.4%	77.2%
Pennsylvanian	85.2%	91.0%
Piedmont	87.9%	69.5%
San Joaquins	77.5%	75.5%
Vermonter	70.8%	77.8%

SERVICE, Year to date	All Stations OTP	Endpoint OTP
Long Distance	**40.7%**	**51.4%**
Auto Train	74.7%	72.0%
California Zephyr	36.6%	38.8%
Capitol Limited	38.9%	38.0%
Cardinal	41.2%	42.1%
City of New Orleans	52.9%	72.9%
Coast Starlight	57.9%	78.8%
Crescent	56.6%	56.8%
Empire Builder	19.9%	24.5%
Lake Shore Ltd	28.1%	40.3%
Palmetto	64.5%	65.4%
Silver Meteor	44.6%	52.3%
Silver Star	47.2%	52.5%
Southwest Chief	47.7%	63.8%
Sunset Limited	48.2%	64.2%
Texas Eagle	33.8%	48.5%

Addressing the problem

- More than half of our long distance passengers now arrive late
- Lost revenue and higher operating costs, increases Amtrak’s federal and state subsidy need
- Congress, the FRA, and the states are increasingly concerned
- The STB is empowered to act – regardless of the outcome of the Section 207 case