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BEFORE THE SURFACE TRANSPORTATION BOARD

REGULATORY REFORM TASK FORCE LISTENING SESSION

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REPORTED BY:

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DIRECTOR CAMPBELL: Good morning,
everyone.

UNIDENTIFIED SPEAKER: Good morning.

DIRECTOR CAMPBELL: Thank you, thanks for
that. Energy in the room, I like that. I'm Rachel
Campbell, the director of the Office of Proceedings,
and more important for today's purposes, the Board's
regulatory reform officer.

I am here with the Regulatory Reform Task
Force, so I will ask them to introduce themselves in
just a moment.

We are here today for a listening session
regarding this initiative.

The task force was formed to comply with
the spirit of Executive Order 13777. Today we look
forward to hearing from all of you, to help us
identify and address rules and practices that are
burdensome, unnecessary or outdated, or anything
else you would like to share with us that is within
the spirit of that executive order.

Because our regulations have a direct
impact on you, our stakeholders, we are particularly interested in your perspective and what you have to share with us. So we are ready to listen, which means we are not going to be asking a lot of questions. We really are going to be listening. We may just ask you to clarify a thing or two, but don't take our quiet listening posture as disinterest. We are very, very interested in what we're hearing.

There will be a transcript prepared today, so you'll all be able to see that. It will be posted to the Web site.

As you came in today, you signed in. I have a list of that sign-in sheet. We are going to be having you speak in the order in which you signed in. Given the number of speakers, we ask that you limit your remarks to no more than 10 minutes. We're not going to have our timers running, so don't look -- for those of you familiar with our hearings, don't look for our lights. But I will have my handy dandy iPhone timer running. So I will give you a little sign if you're going to be exceeding your 10
minutes and ask you to wrap up.

And so procedurally, that's what we've got for you today.

And now I'm going to ask the members of the task force to introduce themselves.

MS. GOSSELIN: Hi. I'm Danielle Gosselin, I'm an attorney in the Office of Environmental Analysis.

DIRECTOR MARVIN: Hi. I'm Lucy Marvin, I'm Director of the Office of Public Assistance, Governmental Affairs, and Compliance.

DIRECTOR KEATS: I'm Craig Keats, general counsel.

MS. BROWN: I'm Cynthia Brown, Chief of the Section of Administration in the Office of Proceedings.

MR. O'CONNOR: Frank O'Connor, Section Chief in the Office of Economics.

DIRECTOR CAMPBELL: Okay. So when I call you, if you will just come up to the podium and speak, that will be great.

So we'll have our first speaker, Barbara
Cataneo from the Private Railcar Food and Beverage Association.

MS. CATANEO: Thank you. Good morning, ladies and gentlemen of the STB Regulatory Reform Task Force. My name is Barbara Cataneo, and I'm the Secretary of the Board for the Private Railcar Food and Beverage Association.

The Private Railcar Food and Beverage Association was formed in January of 2016 as a result of a group of frustrated food and beverage rail shippers that felt that their voices as individual companies were not being heard by the North American Railroad Network, nor by the STB.

The PRFBA members formed this group with the following objectives in mind, to provide private railcar food and beverage shippers a forum/organization that will allow them to collectively advocate for rail reform regulation, including reciprocal switching, rate competitiveness and performance KPIs.

Additionally, the association members share best practices for the management of their
private railcar fleets, they share common issues and concerns regarding the underlying rail terms and conditions of service, they explore supply chain efficiencies within the group and work with the railroad providers directly and then collaborate with each other to develop efficient railroad network opportunities such as empty private railcar backhaul programs.

Unreliable rail service in the U.S. and the effects of the current outdated deregulation surrounding railroad service directly and greatly impact our membership on a daily basis.

The member companies that comprise PRFBA are McCain USA, PepsiCo, which includes Pepsi, Tropicana, Frito-Lay, Quaker and Gatorade, National Frozen Foods, Borden Foods, Land O'Lakes, Bonduelle USA and Canada, Kraft Heinz, Kellogg's, Pinnacle Food Group, Twin City Foods, G3 Enterprises, which is Gallo Wine, Martin-Brower, which is McDonald's, and Cavendish Farms.

The board of directors for the PRFBA organization are Charles Penrow III, chairman of the
board for McCain Foods, Brian Watson, board director from National Frozen Foods, Patrice Legare, board of directors, Bonduelle USA and Canada, and Herman Haksteen, board director ex officio, Cryo-Trans.

While PRFBA has been very successful in achieving many of our goals and objectives as set forth above, ultimately the association members are handcuffed by the antiquated regulations that encompass the rail industry today.

As we know, the Staggers Rail Act, which was made into law in 1980, deregulated the American rail industry to a significant extent and replaced the regulatory structure that existed since the 1887 Interstate Commerce Act.

At that time, 37 years ago, the regulatory reform was needed and changes were made in order for railroads to compete with the growing truck and airline transportation services available to shippers, and in an effort to allow the railroads to earn adequate revenue.

It is no secret to anyone in this room that railroads have had the home team advantage when
it comes to rates and services that are provided to
the food and beverage railcar shippers.

The current railroad regulations lean
heavily on the railroad side. Our members are stuck
with whichever railroad services they are shipping
or receiving facility and they have absolutely no
options for rail competition.

Just like in 1980, when Congressman Harley
Staggers recognized that the regulations surrounding
the rail industry need to be updated from their
93-year-old origins, it is now time to revisit the
railroad regulations and once again, in order to
provide healthier and more productive economy in the
United States.

All of the PRFBA members are major
manufacturers and producers of food and beverage in
the United States. The current state of the
railroad industry has adversely affected our members
as rates have skyrocketed, services left unaccounted
for and food processing plants have been shut down
because inbound products have not arrived as
anticipated.
The current Staggers Rail Act through which the railroads operate today has many policies that are antiquated and do not represent the current trends or market expectations that our PRFBA members are faced with on a daily basis.

Each of our member companies provides a food or beverage to consumers in the United States, Mexico and Canada. Without reform regulations that are more balanced between shippers and the railroads, the consumer pays the price.

Today's railroad industry is eerily reminiscent of a monopoly. With two railroads on the East Coast and primarily two Class 1 railroads on the West Coast, there is little competition available to the shipper, particularly when a shipper is captive to only one railroad.

There are several avenues through which regulatory reform can take place, which provide a fair and level playing field for both the shippers and the railroads. Either through the STB's reforms directly, such as reciprocal switching proposal, or through a modification of the Staggers Act as
presented by Senator Tammy Baldwin through the Rail Shipper's Fairness Act in 2017, however the regulatory reform takes place, the PRFBA members support any reform and reregulating certain aspects of the rail industry that provide the shippers with a more competitive rail marketplace and allows the shippers to explore more than one railroad option.

Allowing reciprocal switching throughout the U.S. rail network would be a positive and progressive commitment on the part of the STB and would most certainly be in line with President Trump's EO 13777 identifying regulations for repeal, replacement or modification.

Implementing and enforcing rail regulations that will allow food and beverage rail shippers of the United States to have multiple railroad options instead of being captive to one railroad ultimately will trickle down to the end consumer. The more options available in the rail industry, the more cost-effective and reliable services will be, and in the end, the consumer will pay less at the store or restaurant for the food and
beverages.

In 2013, the Canadian government made a bold move when they started to enforce a law that had been on the books for many years. The Canadian Transportation Act, and in particular interswitching, which is provided for at S127 of the Act, the Canadian government heard the concerns shared by the Canadian rail shippers and they implemented a mandatory switching law which allows either railroad, Canadian Pacific or Canadian National, the opportunity to quote rates and service to the shipper regardless of which railroad owns the track.

Interswitching, or in the United States reciprocal switching, in Canada guarantees that a shipper with direct access to only one railroad at the origin or destination of a move can have the shipment transferred to another carrier at a rate prescribed by regulation if the origin or destination is with a certain radius of the exchange point.

Interswitching is available
unconditionally to all shippers having direct access
to one railway.

In the U.S., the STB can require terminal
facilities owned by one carrier to be used by
another carrier, terminal traffic rights, or the
railroad owning terminal facilities to transport the
traffic on behalf of the other carrier, reciprocal
switching, if it finds this to be practical and in
the public interest.

Since 1985, the meaning of public interest
and the context has been greatly narrowed to mean
determining whether the incumbent carrier has acted
in an anticompetitive manner.

The U.S. food and beverage rail shippers
need the same opportunity as their Canadian
counterparts, unconditional reciprocal switching to
all shippers having direct access to one railroad.

In the U.S., the policy to allow the
maximum extent possible competition and demand for
services to establish reasonable rates and to
minimize the need for regulation of a rail system.

In Canada, it is instead stated the objectives of
the policy are more likely to be achieved when competition and market forces are the prime agents for providing transportation services.

   Clearly, the focus on U.S. regulations needs to change to be more in line with the Canadian approach, where rates are not even a part of the objective of the policy.

   The CP and CN railways furnished their 2016 annual earnings earlier this year, and it is apparent that the best operating ratio -- that they have the best operating ratio of all Class 1 railroads in North America. CP recording an operating ratio of 58.6 percent and CN reporting an operating ratio of 55.9 percent, interswitching or reciprocal switching has clearly not eroded their profitability.

   Our friends at the American Association of Railroads state that we do not need more regulation and we would agree with that statement. However, there must be reform of the current rules.

   Today's monopolistic environment created by the railroads requires that reciprocal switching
be allowed. Reciprocal switching does not yield more regulation. In fact, it creates more freedom for all parties.

In conclusion, the Private Railcar Food and Beverage Association strongly supports regulatory -- railroad regulatory reform and modifying Staggers Act of 1980 with respect to multiple rail acts for shippers, reciprocal switching, advocating for real railroad options for shippers, advocating less of a monopolistic hold on food and beverage rail shippers, and supporting a more balanced approach between shippers and railroads with regard to the current railroad regulations or outdated deregulations.

Thank you again for your time today and allowing the Private Railcar Food and Beverage Association this opportunity to share our feedback on the importance of regulatory reform in the rail industry. We appreciate your listening to our concerns, ideas and solutions and we would be agreeable to assist in the Regulatory Reform Task Force, the STB or any other governmental agency or
person that wishes to support the agenda of railroad regulatory reform.

Thank you.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Gordon MacDougall of Smart TD New York.

MR. MAC DOUGALL: Good morning, everyone. I'm Gordon MacDougall. I am appearing on behalf of Samuel Nasca, who is the New York State Legislative Director for Smart Transportation Division.

Mr. Nasca has been in many proceedings before this Board, and it rarely takes more than five minutes, and I will not take more than five minutes today, I guarantee you, probably only two minutes. And the reason for that is I submitted an 11-page comments filed yesterday, and I think a large number of subjects raised by the AAR in its petition and the five subjects to be finished by the task force makes it kind of unwieldy to use the oral process.

Therefore, AAR's 10-page or 11-page
comments, and then I filed an 11-page comments.

The principal point is I don't think the executive order applies to this agency. I made a check this morning to the FCC, FERC and all the others, independent agencies, and I didn't see anything on the Web site. Our memorandum points out that this agency -- this executive order does not apply to them. And the AAR finally in their filing has also pointed out that it may not apply to you.

If it doesn't apply to you, I think you should discontinue the proceeding, and if possible, if you want, take the record of this case and put it in an Ex Parte 712, which Mr. Nasca is a party to that, which is pending. You would have to have a more expanded notice, let people file additional comments in this case and also an Ex Parte 712. But this subject you have here dovetails with that proceeding, where there is a separate response to the President which really doesn't apply to you.

Thank you.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Ed Hamberger from AAR.
MR. HAMBERGER: Good morning. I'm here representing the Association of American Railroads. On behalf of the AAR and our members, I want to thank the Board for establishing a rail regulatory officer, for impanelling this committee today to hear us, and I take exception with Mr. MacDougall. I believe that your announcement that you are adhering to the spirit of the executive order is exactly, exactly what you should be doing. Thank you for doing it.

We believe that reforming the nation's regulatory system is a crucial and timely undertaking that will help unleash the power of the American economy. Indeed, the rail industry is evidence that eliminating unnecessary, burdensome and outdated regulation can be tremendously beneficial to the economy.

The single greatest regulatory event in our industry's history occurred at the Staggers Act. By passing Staggers, Congress recognized that America's freight railroads, the vast majority of which are private companies that operate on an
infrastructure that they own, build, maintain and pay for themselves, faced intense competition for most of their traffic, but excessive regulation prevented them from competing effectively.

To survive, railroads needed a common sense regulatory system that allowed them to act like most other businesses in terms of managing their assets and pricing their services.

This agency and its predecessor agency, the ICC, personified a balanced regulatory approach and implementing a deregulatory statute that Congress passed in 1980.

Since the act was passed, average rail rates have fallen approximately 45 percent, accident rates are down 78 percent, and the industry has invested more than $635 billion, that's private sector money, not government money, not taxpayer money, $635 billion back into our network so that we can give our customers the service they need and demand.

These results strongly suggest that balanced regional regulation works for rail
customers, railroads and America at large.

And I will emphasize Congress has taken note of that. There are some who say it's time to revisit the Staggers Act. I would draw your attention to the fact that in 2015, Congress did just that. And they rejected calls for further regulation. They rejected calls for forced switching. And they passed the 2015 STB Reauthorization Act.

I suggest it is your duty to follow Congress's lead. Congress rejected some of the same things that are being called -- that you are being called upon to do, and I believe it is your job to follow Congress's lead.

Let me just skip down here a little bit. There are three categories of regulations that I would like to draw your attention to.

First, the Board should withdraw pending proposals that are inconsistent with deregulation. We outlined several of these in the 11 pages that Mr. MacDougall referred to, but let me quickly summarize a couple of them.
First, the proposal to regulate certain exempt commodities is a solution in search of a problem. It is troubling because it is a reversal of a spectacularly successful deregulatory initiative and relies almost exclusively on RVC ratios instead of the market.

Second, the forced switching proposal runs directly counter to what Congress's direction is to this agency.

Third, the concept of revenue adequacy as a rate constraint was first formulated by the ICC in 1985. It is not a congressional mandate. In fact, Congress did not establish firm-wide revenue adequacy as a ceiling on revenues that a railroad could earn. Such a constraint would discourage railroad efforts to act capacity, innovate, improve service and improve safety.

Fourth, the limit price test for market dominance applied in recent rate cases violates the fundamental tenet of the deregulatory regime created by the Staggers Act that natural competition and demand for service should establish rail
transportation rates. The statute mandates that only where a railroad is market dominant should the government regulate or examine a rate and determine whether it is unreasonable.

The use of formula approaches designed to short-cut market dominance determinations erodes the sound economic principles behind the STB stand-alone cost procedure for assessing the reasonableness of rates, and does a disservice to railroads and shippers alike.

The second category of regulations that the board should repeal are regulations that impose costs exceeding new benefits. Two examples here are the performance data reporting requirements that were made permanent earlier this year and the continued reporting of agricultural contract summaries.

A third category occurs where the Board should repeal regulations that are outdated, unnecessary and ineffective. This task force has already recognized that the Board should finish the work it began in 2011 to review its existing
regulations.

We identified many ineffective and burdensome regulations in 2011 that have yet to be addressed. One that I would draw your attention to is the maintenance cost benchmark used in abandonment proceedings.

The Board recently declined to index this benchmark for inflation and postpone updates to a future proceeding, even though the benchmark has not been updated since 1970.

In addition to these three categories of regulations, we believe the Board can become more responsive to stakeholders while furthering deregulatory agenda by modifying its ex parte communication rules, to allow increased dialogue between stakeholders, Board members and staff in the policy reporting and rulemaking context. The Board's efforts to improve its processing and gathering technical information, such as proceedings regarding URCS, demonstrate the limits and drawbacks of formal filings and would be facilitated by a more direct exchange of information.
Indeed, many other agencies, including independent agencies like the Board, regularly accept ex parte communications subject to disclosure rules.

Recent Board efforts in this regard, including this meeting this morning, are steps in the right direction, and we encourage you to proceed along that path.

Finally, the Board should advance a deregulatory agenda by actively defending its jurisdiction in the public interest and federal preemptive matters. The STB plays a critical role in the federal statutory scheme to promote a safe and efficient national rail system.

Congress's decision to deregulate broad aspects of rail transportation to achieve this goal did not create a vacuum for states and localities to fill. Unfortunately, many states and local governments around the country haven't gotten that message, and so railroads and their customers alike have had to seek the aid of the Board in defending the public interest from these unlawful
encroachments by state and local regulators with only mixed success.

The Board has a crucial role to play to protect the public interest from parochial efforts by states and localities to restrict or in some cases prevent rail transportation.

The agency should actively promote and defend the regulatory structure that Congress has devised, a structure aimed at ensuring the national uniformity and regulation that is critical to a sound rail transportation system capable of meeting national needs.

We recognize the Board is in a period of transition now, as it awaits the confirmation of two new members. In light of the important issues before the Board, the acting chair's plan to defer major regulatory actions to wait until a full complement of Board members is seated is appropriate and reasonable.

However, your task force can complete important work that can guide the Board to action consistent with the administration's direction on
the regulatory reform and Congress's deregulatory mandate.

The AAR and our members look forward to working with the Board and you as you complete your important mission.

Thank you for the opportunity to be here.

DIRECTOR CAMPBELL: Thanks very much.

Our next speaker is Jeff Sloan with the ACC.

MR. SLOAN: Good morning. I am Jeff Sloan, Senior Director of Regulatory and Technical Affairs from the American Chemistry Council. ACC commends the work and goals of the Regulatory Reform Task Force and appreciates this opportunity to provide our views on the STB's regulatory reform priorities.

ACC represents the leading companies in the business of chemistry. The U.S. chemical industry is a nearly $800 billion enterprise, one of the largest exporting sectors and one of the largest customers of the U.S. freight rail system.

Our industry is experiencing tremendous
growth with over 260 announced new manufacturing projects representing a total of more than $180 billion in new capital investment.

In fact, last year, investments in the chemical manufacturing represented nearly half of total construction spending on manufacturing projects in the U.S. This growth drives further need for efficient and competitive transportation options.

Improving STB procedures and reducing unnecessary regulatory burdens will help support our industry's growth as well as the broader American manufacturing renaissance.

Well before President Trump issued Executive Order 13777, STB initiated several key initiatives intended to streamline procedures and reduce regulatory burdens. Two initiatives in particular, STB's proposal to revise its reciprocal switching rules and its exploration of alternative rate case methodologies, are critical to the administration's objective of reducing burdensome, unnecessary and outdated rules and practices that
inhibit job creation.

The ACC urges the task force to focus on the completion of these initiatives as STB regulatory reform priorities.

To the first of these, the Board's proposed changes to reciprocal switching rules would remove regulatory barriers and provide greater market choices to rail customers. Reciprocal switching empowers rail customers to choose a freight rail carrier that provides the most competitive rates and best service. While Congress has expressly authorized switching as a tool to advance competitive markets, the STB's existing rules are so burdensome and unworkable that no shipper has ever successfully gained access to switching.

As stated by the Board itself, these rules have effectively operated as a bar rather than as a standard under which switching could be granted. The Board's long-awaited reforms proposed in Ex Parte 711 would remove these regulatory barriers and provide market choices for regulatory customers that
currently have no competitive transportation options.

I would like to emphasize three points. STB's proposal is deregulatory. It would allow many current and captive shippers to rely on competition rather than regulation to address rate rail -- to address rail rate and service issues. By reducing regulatory barriers to competition, the need to protect and cap some reasonable rates would shrink to just a short distance from a facility to an interchange point, rather than for the entire long-distance move.

Second, STB is not creating new regulations here. It's proposing to replace existing regulations with less onerous ones. And workable competitive switching rules would reduce the need for STB rate regulation.

And finally, competitive rail service will help promote growth and jobs in a broad range of manufacturing, agriculture and energy-producing industries.

Second major area I would like to touch on
is the STB's rate case procedures. The stand-alone cost rate case procedures are really the epitome of unnecessarily burdensome regulation.

The STB is charged with resolving disputes between freight rail shippers and railroads, is stymied by its own outdated and overly burdensome rules. And as acting chairman, Ann Begeman perfectly encapsulated these concerns. The STB's rate review process is too costly, too time-consuming and too unpredictable. And the heart of the problem is the Board's arcane stand-alone cost rate standard.

To successfully challenge a rate, a shipper must design on paper an entire railway business and prove that this railroad can serve same traffic at a lower cost than the rates charged by the existing railroad. Because of the incredible complexity involved, this act has been characterized as a full employment bill for economists.

Recent SAC cases for chemical shippers have taken an average of five years to complete and cost the shipper well over $5 million. Some claim
that these burdens are necessary, calling SAC the
gold standard for reviewing rates. However, SAC
fails on economic grounds as well.

In fact, Professor Gerald Faulhaber, the
economist who first defined the SAC concept, has
testified at the Board that the use of the
stand-alone cost test for STB ratemaking has "no
economic validity."

ACC supports STB's ongoing efforts to
streamline and improve its rate case procedures.
The Board's current proposals would provide some
incremental improvements. However, in order to
truly address burdensome, unnecessary and outdated
rules and practices that inhibit job creation, the
STB must prioritize efforts to develop alternatives
to SAC that are more economically sound and not so
inherently complex, costly and time-consuming.

Thank you again for holding this session
and for this opportunity to provide ACC's views.

DIRECTOR CAMPBELL: Thank you.

Next, Jennifer Hedrick from NITL.

MS. HEDRICK: Good morning. I'mJennifer
Hedrick, Executive Director of the National Industrial Transportation League. On behalf of the League, I want to thank the Board's Regulatory Reform Task Force for inviting industry stakeholders to share our view on regulatory reforms that would streamline STB processes and eliminate or improve outdated and burdensome regulations.

We commend the task force for your efforts and look forward to working with you on this important matter. The league is no stranger to the Board. Our organization and members routinely participate in Board proceedings representing the voice of the shipper community. League members range from some of the largest purchasers of transportation services to smaller companies engaged in the shipment and receipt of goods.

The league's rail shippers are from a multitude of industries, including chemicals, petroleum, agricultural and forest products and paper, among others.

Railroads are vitally important partners to NITL rail shippers. Our members strongly support
a robust and financially sound rail industry that
can invest in the national rail network for the
benefit of the railroads, their customers and the
American economy.

However, our members also need a
competitive and efficient rail industry that can
meet the demands of increasingly complex supply
chains and support American manufacturing and
business growth.

When problems arise between railroads and
their customers that require the Board's assistance,
our members also need an agency that is readily
accessible and a regulatory system that is more user
friendly and cost-effective.

Thus, we applaud your efforts to improve
and streamline the Board's regulations and
procedures.

A number of the Board's current regulatory
initiatives, such as its proposals to repeal and
replace its reciprocal switching rules in EP 711, to
revoke certain commodity exemptions from EP 704, and
to consider alternative rate case procedures in EP
722 are all consistent with the task force mission to "identify rules and practices that are burdensome, unnecessary or outdated," which can be repealed, replaced or modified.

Accordingly, within the spirit of President Trump's Executive Order 13777, we urge the Board to take the following actions. First, the Board should move forward expeditiously to repeal and replace its outdated, burdensome and unworkable reciprocal switching rules. The Board's existing reciprocal switching rules were adopted over 30 years ago, before the major rail mergers in the 1990s that dramatically consolidated the rail industry and reduced competitive rail service for many American businesses.

Although Congress envisioned a competitive switching would be available when "practicable or in the public interest or when necessary for competitive rail service" the current rules have never resulted in the establishment of new competitive switching arrangements.

In fact, no shipper has even attempted to
bring a competitive switching case in many years, despite the strong concerns voiced by captive shippers of their lack of competitive rail service.

In its EP 711, subnumber 1, reciprocal switching rulemaking decision issued in July 2016, the Board granted in part a petition filed in July 2011 by the league which asked the Board to adopt new switching rules consistent with the governing statute.

In that decision, the Board proposed new switching rules based on its findings that the rail market has changed substantially and the current rules impose insufferable regulatory barriers that inhibit competitive switching arrangements.

Specifically, the Board determined that applying a single competitive abuse standard in order to obtain a switching remedy "makes less sense in today's regulatory and economic environment." It also found that its current reciprocal rules have "effectively operated as a bar to relieve rather than a standard under which relief could be granted."
The league strongly agrees with these conclusions, which demonstrate that the current reciprocal switching rules are outdated and burdensome and must be modified.

The league urges the board to act expeditiously to provide reciprocal switching rules to eliminate the "competitive abuse, regulatory barrier, and allow the competitive marketplace to establish railroad practices."

Despite the railroad industry's claims, facilitating reciprocal switching arrangements would be deregulatory and not reregulatory, because it would eliminate STB regulation over the entire origin to destination movement, reducing rate regulation, if any, to the shorter switching movement.

Thus, revising the current switching rules would not only be consistent with the President's executive order, it would be consistent with the national transportation policies "to allow to the maximum extent possible competition and demand for services to establish reasonable rates for
transportation by rail," and to "minimize the need
for federal regulatory control over the rail
transportation system."

Second, the Board should revoke outdated
and unnecessary commodity exemptions as proposed in
EP 704, subnumber 1, review of commodity boxcar
NTFC/COFC exceptions.

In the Ex Parte 704 proceeding, the Board
has proposed to revoke a number of commodity
exemptions that were determined to be outdated and
no longer necessary, and representatives of exempt
paper and forest products have asked the Board to
revoke these commodity exemptions based on the
submitted evidence.

Citing its own economic analysis, the
Board determined that EP 704 that "the dynamics of
the particular transportation markets appear to have
changed so significantly since the exemptions were
first promulgated as to warrant the application of
the Interstate Commerce Act in order to carry out
the rail transportation policy."

The Board's finding that certain commodity
exemptions were no longer warranted was also supported by "an increased likelihood of railroad market power featuring specific commodity groups."

It is important to note that the exempt members are also forced to endure unnecessary regulatory burden and costs since they must first file and litigate petitions to revoke an exemption at the Board before they can access the Board's procedures to address rail pricing and service concerns or unreasonable practices.

Certainly, eliminating outdated regulatory exemptions that subject American manufacturers, producers and receivers of goods to railroad market power and unnecessary costs would be consistent with President Trump's executive order.

Third, the Board should revise or develop an alternative standard to the burdensome and unworkable stand-alone cost rate case procedures, hereafter referred to as SAC. Large SAC rate cases are widely recognized for being incredibly complex, time-consuming and costly. The league supports the Board's ongoing efforts to improve SAC cases based
on its evaluation of court procedures that could expedite such litigations at the Board.

However, recent SAC cases have demonstrated that this remedy is unworkable for car load or noncoal traffic and simply expediting SAC cases will not address this problem.

The Transportation Research Board recently completed a comprehensive study of the current freight rail regulatory structure modernizing freight rail regulation, in which it was found "that more appropriate, reliable and usable procedures for resolving rate disputes are needed to fulfill the regulatory interests and protecting the shippers in the marketplace, in markets that lack effective competition from unreasonably high rates."

The Transportation Research Board suggested that a practical and pro-competitive benchmarking methodology be developed to replace SAC. The league and other shipper organizations supported the development of such an alternative approach and the Board's pending EP 722, subnumber 2 revenue adequacy proceeding.
Accordingly, the league encourages the Board to not only look for ways to improve the working of its large rate case proceedings but to develop a more workable, effective and less burdensome alternative to the SAC standard itself.

Finally, I would like to note that the league submitted additional regulatory reform recommendations in the Board's ex parte number 712, improving regulation and regulatory review proceeding established in 2011, and continues to support those comments to the extent not already addressed by the Board or Congress.

I would also ask that my statement today be included in the Ex Parte 738 docket, and we will submit a copy to the Board today.

Again, the league greatly appreciates the efforts of the Board's Regulatory Reform Task Force.

Thank you for the opportunity.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Eddie Johnston from the Chemours Company.

MR. JOHNSTON: Good morning. My name is
Eddie Johnston, and as was stated, I work for the Chemours Company. We're headquartered in Wilmington, Delaware, a 2015 spinoff from The DuPont Company.

It's a pleasure to speak to you today.

This is not my first time before the Board, but I do count it an honor to be here.

I'd like to begin my comments by thanking the STB for holding this listening session and commend the Board for taking the first steps on a path toward long overdue regulatory reforms.

Chemours relies heavily on rail transportation for receipt of raw materials and shipment of products to customers. 96 percent of Chemours's loaded shipments are captive, with no access to competitive rail service.

The United States needs, and thankfully has, a strong, financially secure rail system in 2017. There's never been a better time to be a railroader. Just read their reports to shareholders.

It is not a good time to be a captive rail
customer. The freight railroads enjoy unprecedented 
market power over captive shippers like Chemours. 
The simple fact that rail service continues to 
decline while rates continue to increase should tell 
you everything you need to know about the state of 
competition, or lack thereof, in the rail industry. 

And my experience is not unique. It's 
typical of other captive shippers. 
Recognizing that your decisions regulate 
not just the railroads but rail customers too, what 
should your regulatory reform agenda be? Let me 
suggest a threefold approach. 

First, regulatory reform should encourage 
greater competition between railroads, where 
possible. I'm talking about real competition where 
railroads fight for business, something that does 
not exist today, for captive shippers. 
The Board's proposed rule to expand 
reciprocal switching is a modest but positive step 
in encouraging competition between railroads where 
structural competition is nonexistent. 
The Board has our ideas on how the
proposal can be improved. I encourage the Board to proceed with rulemaking on reciprocal switching, and also to examine other policies that encourage greater competition.

The electric utility industry and telecommunications industries faced similar structural barriers, yet developed models for increasing competition. These models might be instructive and might have parallels for railroads.

Secondly, shippers must have recourse when railroads exert their monopoly power in setting the rates. Because of the structure of the rail network, you must anticipate that measures put in place to encourage competition will be inadequate in many cases.

The Board must have a rate complaint process that reflects sound economic principles and recognizes the realities of the 21st century U.S. rail network.

The Board has commented in numerous decisions in recent years, including the DuPont case, later assigned to Chemours, that the
stand-alone cost methodology does not, indeed
cannot, offer a viable way for captive car load
shippers to challenge unreasonable rates. The rate
complaint process must change.

Last year, a panel of economists provided
economically sound alternatives to SAC. I urge you
to actively take this back up, make it a priority
for action, and bring forward a complaint process
that will give shippers hope that justice and equity
can be found here.

A fair method that results in fair rates
will not bankrupt freight railroads. You need not
fear that.

The current process for computing revenue
adequacy should be abandoned and replaced by the
financial reports railroads make to their
shareholders. Investors make decisions every day
based on these reports. There's no reason the Board
cannot rely on them too, saving the Board and the
railroads countless time and effort and costs in
preparing a fictitious metric.

Third and finally, the Board must be more
proactive when it comes to addressing service failures, and act decisively when carriers fail to correct problems they create for their customers.

There are chronic failures occurring across the eastern United States, as we speak. Chemours has had to take extraordinary steps at increased risk and cost to keep our customers' U.S. manufacturing plants supplied and operating, simply because CSX has repeatedly failed to pick up and deliver cars. One of our own plants came within hours of shutting down because the railroad is not delivering raw materials.

Service failures began in late May when sweeping, unannounced changes were made to operating plants. Despite our repeated complaints, service has only worsened.

Dealing with CSX has become impossible, as person after person we work with one day are gone without replacement the next. Problems are now being communicated directly to a CSX vice president. Still, I have a plant located on the CSX mainline that got no rail service for two consecutive days
late last week. This is a plant that runs 24/7. No rail service for two days.

This behavior is inexcusable, period.

Last week, after announcing record profits, CSX told financial analysts that customers might have to endure a little pain and suffering to get over a bump in the road. They told the analysts this, not us, their customer. We had to read about it in the newspaper.

The remarks lack any genuine concern for customers, underscoring the operation's centric obsession of a railroad.

Why would a supplier ever treat a customer like this? There is only one answer. Because they can.

You will need to understand service failures from the customers' point of view. Railroad operational metrics matter, but so does communicating openly about changes before they happen, being responsive when problems arise, and working aggressively to correct those problems, and being easy to communicate with and do business with.
The irony is these are nonnegotiables for businesses like Chemours who must compete, who face the real prospect of losing the next order if they fail to deliver the expected service.

Poor to mediocre service, high rates and other indifference from rail suppliers we depend upon, that's what it is like to be a captive rail shipper in 2017.

I told you earlier that 96 percent of my company's loaded shipments are captive. Sadly, the railroads have no fear of losing my business. The antidote is for the Board to encourage competition between railroads, where possible, to finish the work of reforming the rate complaint process, and to make the Board's oversight of rail service more robust.

I've given you an ambitious but sensible threefold assignment, but I've also asked Congress to give the Board the resources needed to do it. A strong STB, one that is fully funded and fully staffed to deliver on these priorities is in the public interest and necessary to fulfill the Board's
It is essential if America's farmers and manufacturers are to prosper and grow.

Thank you again for holding this session and for the opportunity to discuss these important issues with you today. The STB has wisely challenged outdated regulations that are hurting many large and small businesses across America. I encourage you to keep moving forward on reform.

Thank you.

DIRECTOR CAMPBELL: Thank you.

Next speaker is Adam Weiskittel from BNSF Railway.

MR. WEISKITTEL: Good morning. Good morning, my name is Adam Weiskittel, I'm Senior General Attorney at BNSF in Fort Worth, Texas. On behalf of BNSF, I want to thank the Board for creating this task force and for giving stakeholders like us the chance to invite comments today.

Let me start by saying BNSF supports the initial list of potential proposals that the task force identified in its May 25th memo to acting
Chairman Begeman, in particular we support efforts
to modernize and digitize the Board's filing
processes, which we believe can only lead to more
efficient, environmentally-friendly administration
Board proceedings.

In addition to work being done by this
task force, BNSF supports the other efforts that
have been made by the Board recently to reexamine
and streamline its procedures, including the review
of the rate case procedures in Ex Parte 733 and
review of Board regulations in Ex Parte 712.

While it may not appear on its face to be
directly related to those streamlining efforts, I
did also want to mention the benefits BNSF has seen
from the work done by the Board's rail customer
public system group in recent years. BNSF has found
that the RPCA is usually informed of the U.S. issue
customers that might otherwise have unnecessarily
consumed Board resources through more formal
avenues.

We support and join in the comprehensive
comments we heard from Mr. Hamberger from AAR
earlier. I'm here because BNSF wants to emphasize two issues we think the task force should focus on and continue to support.

The first is the Board's pending exemptions proceeding Ex Parte 704 sub-1, and second is the Board's approach to ex parte communications with stakeholders.

Regarding exemptions, Executive Order 13777 directs agencies to identify regulations that create a serious inconsistency or otherwise interfere with regulatory reform initiatives and policies. This, of course, in addition to our national rail transportation policy to minimize the need for federal regulatory control over the rail industry and to allow competitive market forces to establish rail rates to the maximum extent possible.

From BNSF's perspective, the one thing this task force can do that would most clearly resonate with the administration's deregulation policy and this task force would be to recommend to the Board that the exemptions proceeding be abandoned.
In that proceeding, the Board proposes to reregulate five categories of commodities that have been transported by rail carriers on a exempt basis for more than 20 years. As we described in our filing, in that time, BNSF has offered innovative and competitive service options that enable us to successfully compete in those markets. We built upon that success by joining with our customers to make significant investments in our network that will allow us to compete and grow together into the future.

But contrary to that deregulatory success story, the Board theorized the dynamics of those transportation markets have changed so significantly that reregulation is now necessary to protect shippers from abuse of market power by railroads.

The Board's conclusion was built on a record that essentially consisted of a review of changes to industry average revenue variable cost ratios for those commodities over time. As BNSF pointed out in its comments, RVC ratios are not reliable indicators of what's happening in complex
markets where BNSF participates.

To the contrary, changes in RVC ratios can often falsely signal that a railroad is exercising increased market power by charging higher rates when, in reality, that railroad is actually lowering rates in response to competitive pressures.

Justifying regulatory intervention with RVC base metrics also has the perverse effect to be less cost efficient and to refrain from making capital investments in places where market forces would otherwise suggest they should be made.

We believe that the Board's exemptions proposal would be an unnecessary intervention and in fully functioning markets where there's no evidence that reregulation is needed. At a time when the administration has tasked agencies with identifying and eliminating unnecessary regulations, the Board's proposal would instead represent perhaps the largest expansion of the Board's regulatory reach. We urge the task force to take on that inconsistency in formulating its recommendations to the Board.

Turning to the issue of the Board's
approach to ex parte communications, BNSF understands and agrees that the Board must follow processes and rulemakings in other nonadjudicatory proceedings that guard the Board's independence and ensure the credibility of the Board's actions and satisfy the Board's obligations under the Administrative Procedure Act. But it can also be tremendously valuable for Board members and Board staff to have the benefit of experience and technical knowledge of all relevant stakeholders when formulating its rules and decisions. We think the Board's current approach to ex parte communications is overly restrictive and unnecessarily hinders that beneficial flow of information.

Enabling the Board to have access to more information can only further its understanding of complicated issues and should produce decisions that take a more streamlined approach to achieving the Board's policy goals.

In short, the Board should not view maximizing the flow of information with its
stakeholders, all of its stakeholders, as something that is in conflict with its ethical or legal obligations.

We saw benefits of a more reasonable approach to ex parte communications in the Board's 2015 service reporting proceeding. In that proceeding, written filings revealed to the Board that railway data collection practices were technically complicated and varied across the industry.

The Board rightly recognized a chance to talk to stakeholders in person would help Board staff develop a better understanding of the issues than could otherwise have been achieved only through filings. By waiving its normal ex parte rules for that proceeding, the Board was able to craft service reporting regulations that more closely tracked the realities of railroad operations and thus achieved the Board's policy goals in a more efficient and less burdensome manner.

Even though the Board has occasionally taken a less restrictive approach to ex parte
communications over the years, we think it can and should do more. Specifically, BNSF recommends that this task force investigate possible revisions to the Board's default ex parte prohibition found in its ethics, to instead create a standardized process allowing for increased ex parte communications in weighing in on nonadjudicatory issues. We think revised process should allow for increased stakeholders communications not also with just the Board staff but also with Board members itself.

The approach taken in the Ex Parte 711 reciprocal switching proceeding is a good starting point, allowing stakeholders to meet with the Board on an ex parte basis and then having high level summaries of those discussions filed in the record nicely balances the Board's ability to continue important dialogue with stakeholders with its obligations under the APA.

In closing, BNSF is encouraged by the Board's decision to create this task force and we thank you for the opportunity to provide these comments.
DIRECTOR CAMPBELL: Thank you.

Our next speaker is Lawrence Spiwak from The Phoenix Center.

MR. SPIWAK: Good morning. My name is Lawrence Spiwak. I am the president of Phoenix Center For Advanced Legal and Economic Public Policy Studies. By way of quick background, in case you may not have heard of us, we are a small but influential think tank, we're a 501(c)(3) and we study broad policy issues with a particular emphasis in providing academic level work on law in economics of regulated industries. All of our work is freely available on our Web site, www.phoenix-center.org or on the research network.

Given our interest in economic regulation, I would like to commend the STB for holding this listening session. It is always welcome to see an administrative agency proactively asking the public both how it can improve its regulatory procedures, as well as to help identify regulations, in the STB's own words, for "repeal, replacement and modification."
So while there are many topics that I am sure that we can discuss, and many have come up, given our interest in economic regulation, I think a good place to start and where I would like to focus on is the potential return of the increased price regulation on the freight rail industry in reciprocal switching.

Under its statutory mandate, the STB faces significant hurdles in regulating the prices of rail service. Despite noticeable tensions, it is widely acknowledged that the regulatory powers held and actions taken by the Interstate Commerce Committee and the predecessor to the STB nearly destroyed the rail industry in this country. In response we had the Staggers Act, a legislative action aimed at revitalizing the rail industry by substantially curtailing regulatory influence. In fact, I would submit that the law charged the ANC with assisting railroads achieving adequacy, essentially requiring the regulatory agency to monitor carefully the financial implications of its actions on railroads.

The STB over the years has established
stringent costs and competition-based requirements for rate regulation and consequently rate remedies have been few and far between.

Fortunately, as the heavy hand of regulation of the rail industry subsided following the Staggers Act, the financial condition of the industry has improved. Still with vigorous competition from alternative transportation modalities, it's hard to make money in the rail business.

So even as the rail industry is beginning to recover, we are starting to show signs of financial health, nonetheless this factor of aggressive price regulation looms large on the horizon with the STB's notice of proposed rulemaking on reciprocal switching, which came out last year.

For over 30 years, the federal government posed reciprocal switching only if determined that it was, and it's "necessary to remedy or prevent an act that is contrary to competition policies of the Staggers Act or is otherwise anticompetitive."

That is reciprocal switching was never
intended to function as direct price regulation, but rather as an attempt to remedy anticompetitive actions by rail companies.

So consistent with the deregulatory intention of the Staggers Act, the bar for regulatory intervention for reciprocal switching was appropriately set high, and for good reason. While railroads involved in such rates have an opportunity to arrive at a negotiated rate, reciprocal switching, failure to come to terms bring in the STB to regulate prices. And since the federal government first promulgated the standard in 1985, only a few requests for switching were filed and none were granted.

However, although the NPRN concedes the Staggers Act provisions were "not designed to provide shippers with full and open access routing," the NPRN nonetheless proposes to abandon the STB's 30-year-old standard in favor of a more permissive standard which, in the STB's view, would "encourage the availability of reciprocal switching where appropriate."
Now, although it is well established that an administrative agency can change its policy so long as it provides a reasoned explanation for doing so, I believe there are several important shortcomings with the STB's logic for abandoning its long-standing anticompetitive test.

First, the NPRN asserts that the dearth of reciprocal switching brought over the last 30 years and automatically follows that requiring a finding of anticompetitive harm is "effectively operated as a bar to relief rather than a standard under which relief could be granted."

So we are understanding the logic of the NPRN correctly, the STB does not have to demonstrate a market failure before it can intervene in the market.

However, if there is no market failure to remedy, then what is the point of government regulation?

Second, the NPRN argues that it's important to weaken the anticompetitive standard due to the increased concentration of the industry.
Well, I find this argument a bit puzzling in light of the fact that no rail merger can be approved unless the STB approves it first.

More importantly, as the NPRN observes, the Board approves such consolidation in order to remedy "decades of inefficiency and serial bankruptcies." So apparently, we seem to be at the appropriate equilibrium, as approved by the government.

Which brings me to the NPRN's third argument. Now that the rail industry has returned some modicum of financial health, again made possible by reduced regulation by the government of consolidation, lowering the reciprocal switching standard will allow the STB to, and again I quote, "avoid obsolescence of the Board's regulatory policies."

Okay. The obsolescence of regulation is good policy, right. That's what we want. It indicates that market forces are now adequate to ensure acceptable performance of the industry.

So given the three points I just made, I
think it begs some interesting policy questions. Why use such complex schemes such as reciprocal switching in the first instance. Why don't you just redirect price regulation supposedly if the price is too high.

I think unfortunately the answer is straightforward. Because the STB's own rate regulation standards rooted in valid economic and financial concepts represent a hurdle and a legitimate one to direct price regulation, using reciprocal switching alternatively grants the flexibility for the STB to craft new, less rigorous and less economically justified approach to price regulation. However, as the courts have constantly recognized, price regulation is an inexact science, I'm not sure having a softer standard really serves the public interest.

So in sum, the STB is proposing to expand reciprocal switching vastly, even though it concedes that there's no market failure and the regulations are obsolete. However, if the STB is truly interested in using this listening session to
identify and ultimately eliminate, again using STB's
own words, "burdensome, outdated or cumbersome
regulations," it would seem dropping reciprocal
switching is an excellent place to start. With
that, I thank you for your time.

DIRECTOR CAMPBELL: Thank you.

Next we have Lou Anne Rinn from Union
Pacific.

MS. RINN: Good morning, Director Campbell
and the other respected members of this task force.
I'm Lou Anne Rinn of the Union Pacific Railroad.

Union Pacific really appreciates both the
efforts and the initiative of this task team, as
well as this listening session. I personally have
gained a greater appreciation of the importance and
the art of listening by attending a CLE program
called Better Lawyering Through Better Listening,
cosponsored by the International Listening

Listening well can be a really valuable
foundation for your reform efforts, and we
appreciate the fact that you're holding this session
I'm going to start by looking back at how changes that the STB has made have enhanced listening that therefore improved its process and its results, and how those that impede or limit communication have not. Then looking forward, I will conclude with some specific recommendations that Union Pacific believes would be beneficial for this body to pursue.

Looking back, when the STB has increased opportunities for listening, there have been very positive results. Mediation in rate cases and complaint proceedings has facilitated several early settlements and laid the groundwork for later settlements.

Referring discovery disputes to FERC ALJs, those discovery hearings allow clarification and narrowing of discovery disputes. Consequently, parties have been able to compromise many of those disputes and the relatively few remaining ones are then promptly decided by the ALJ.

Adding face-to-face meetings with
shareholders in rulemakings, these provide
interactive, informal opportunities for
stakeholders, besides lawyers, to discuss concerns
with the Board and its staff. They are a particular
virtue to allow questions and answers, to clarify
facts and to build understanding of the issues are,
I think, intangible but very real benefits.

I believe that such sessions ultimately
improve the final result in Ex Parte 724 as
described by counsel for BNSF.

And the creation, the stakeholders and the
Board have opportunities to learn more about complex
topics and its changes. When the STB increases the
opportunities for its stakeholders to listen to each
other, as in mediation, discovery hearings and
advisory committees, the possibility of resolving or
avoiding disputes is increased.

When the STB enhances the channels of
communication between the stakeholders and its board
members and staff, its greater understanding of the
issues and consequences improve the likelihood of
the decision to be correct.
As Chief Justice Marshall observed, to listen well is as powerful a means of communication and influence as to talk well.

But when the STB has made decisions that shut off or unduly limit communication on important topics for procedural simplicity, the unfortunate result has been too often to expand regulation where there has been no showing of market failure, contrary to its congressional mandate.

For example, the decision to bar any evidence of products of geographic competition and market dominance determination. Followed by the summary rejection of an AAR petition to consider natural gas competition for coal without even a rulemaking, built a wall in front of a locked door.

But can there be any doubt that natural gas is placing profound pressure on rail coal rates? The adoption of a quantitative limit price test to drive decisions on qualitative market dominance on competition effectively covers the STB's fears to economic evidence widely accepted by other agencies and in favors focusing its eyes on an arbitrary and
irrelevant ratio.

The justification for not limiting -- or not listening to relevant market evidence has been to simplify a rate case process, not to improve the economic validity of the decisions. But the undoubted substantive effect of those procedural changes is at the core of the Staggers Act reform.

Combined with other proposals pending before the Board whose primary virtue, according to proponents, would be to expand STB regulation over rates or the surface, this failure to listen to economic evidence of competition can become even more serious.

So to sum up, if you look back on the experience, it leads to this general recommendation. Pursue reform proposals that enhance communication between and among the Board and its stakeholders. And please avoid procedural improvements that restrict or eliminate communication about market forces or rail operation or service that will inform the Board's decisions.

Looking forward, Union Pacific does have
some specific recommendations for regulatory reform.
And while these will be informed by comments that
have been made by prior rail speakers, I'm not going
to repeat that or go into pending proceedings, but
we do have these suggestions for specific things
that this task force could pursue.

Expand and use face-to-face meetings
between stakeholders and Board members or Board
staff to allow the exchange of information and
interactive discussion on a more regular basis,
subject of course to appropriate disclosure rules,
so that there is a fair and transparent process.

You should also explore incorporating
technical conferences and proceedings, especially
when dealing with technical subjects such as URCS or
stand-alone costs.

Rely on E filing and drop the requirement
for parties to provide paper copies for written
submissions. This will save time and money for all
of your stakeholders and possibly the Board itself,
without limiting substantive communication. And
it's good for the environment.
Please discontinue limited price test and adopt guidelines for the presentation of qualitative market evidence including types of objective information such as price comparisons, market share, negotiation and communications that other agencies have found useful in assessing competition, so that you can balance coming up with an appropriate record with an expeditious and efficient procedure.

Open declaratory board proceedings in states or localities block or delay rail construction for rail line projects or otherwise try to impose operating restrictions. Railroads and our customers are encountering increasing hostility to certain commodities, chemicals and fossil fuels lead the list. This hostility is increasingly expressed in efforts to impose preconstruction clearance requirements or restrictions on how trains are to be operated.

While we try to work with communities we serve to address their concerns, environmental activists have increasingly adopted tactics that effectively deprive us of an opportunity to present
the preemption argument to have a court heard or to rule on, and deprive us of a hearing on the preemption, while expecting us to comply with clearly unlawful permitting procedures.

If the Board were to be more proactive or develop a record, they would be able to deliver a stronger message to those agencies that such regulation is not permitted.

Thank you for this opportunity to be heard in this effort. Thank you.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is John Scheib, Norfolk Southern.

MR. SCHEIB: Good morning to you all.

It's a pleasure to be with you. I'm John Scheib, Vice President Law, Norfolk Southern Corporation.

Let me start by thanking Chairwoman Begeman for her leadership in implementing a process to follow the spirit of Executive Order 13777, and thanks to you all for serving on this task force.

It's important that the task force make recommendations to set an agenda for the agency that
is consistent with both the deregulatory message of
the executive order and the deregulatory direction
of your governing statute.

During our time this morning, I'd like to
focus on three main points. First, Executive Order
13777 is very different and affirmatively
deregulatory, as compared to other executive orders.

Which means this task force is asked to do
more than simply repeat some of the unfinished work
of Ex Parte 712, although I would note that most of
the unfinished work in 712 were the railroad's
proposals.

Second, because Executive Order 13777
directs that "applicable law" should guide and
sometimes stay the Agency's hand in choosing those
regulations that ought to be repealed, replaced or
modified, the task force should take time to remind
itself that the governing statutes for the STB are
themselves deregulatory.

And third, the STB should use this task
force to correct its course back to the directives
of the Staggers Act and the Interstate Commerce

First, this shouldn't be a repeat of Ex Parte 712. The Board conducted a retrospective analysis of its regulations several years ago in Ex Parte 712, which was initiated in response to the 2011 Executive Order 13563 issued by President Obama. That executive order directed agencies to modify, streamline, expand or repeal those regulations that were outmoded, ineffective, insufficient or excessively burdensome.

13777 goes much further. It creates a Regulatory Reform Task Force which is charged with two things, to recommend ways to improve upon the implementation of regulatory reform policies, including the Obama executive order, and two, to recommend regulations that ought to be repealed, replaced or modified "consistent with applicable law." And applicable law as I have emphasized twice is an important phrase and we'll come back to that.

If I were to summarize the difference between the Obama era executive order and the one we're discussing today, it's this. The purpose of
Executive Order 13563 was to achieve regulatory objectives more efficiently. While the purpose of Executive Order 13777 is to deregulate. Don't take it from me. It's right in the preamble.

"To lower regulatory burdens on the American people by implementing and enforcing regulatory reform." Which makes some of the comments this morning ironic, given that they seek more regulation.

So Executive Order 13777 should result in a much broader, more sweeping deregulatory action than was contemplated in Ex Parte 712. In short, this task force's efforts should not merely be 712 reduction.

Second, the applicable law for the Surface Transportation Board is deregulatory. The deregulatory focus of Executive Order 13777 should be taken especially seriously by an agency that carries the deregulatory mandate from Congress.

Of course the applicable law that is the load star of this agency is one of the most extraordinary examples of deregulation in the
country's history. The Staggers Rail Act of 1980, which is widely regarded as one of the greatest public policy achievements of the 20th Century. The task force should search for ways to reorient the STB back towards its deregulatory load star.

While good government and achieving regulatory efficiency are always laudable goals and we should never stop striving for them, I would encourage the members of this task force to think bigger, to reverse the Agency's back sliding since Staggers and return to the deregulatory vision laid out by Congress nearly four decades ago.

Third, course correction is necessary to get back to the deregulatory aims of the STB's governing statutes. It's important to give back to those deregulatory principles enacted by Congress.

By the 1970s, excessive regulations had taken their toll and the freight railroads were in financial crisis. As the Department of Transportation said at that time, railroading had fallen on difficult times, in large part because regulators could not keep up with the changes that
were occurring in the marketplace with the
development of the interstate highway system and
trucking competition about which we've not heard
much this morning.

There was insufficient capital to support
service and safety. It was the decade of the 1970s
closed, the regulatory scheme had taken its toll and
we know railroads were going bankrupt.

The root cause of the problem was an
economic system -- regulatory system that was
smothering the industry and could not keep up with
the marketplace.

Congress responded, as we know, and
Mr. Hamberger went through the great successes of
the Staggers Act. Productivity and volume increased
while rail rates declined. In a recent study by
Jerry Ellig and Patrick McLaughlin showed that
safety improvements were driven solely by the
Staggers Act and not by safety regulation.

Seeing these results, Congress has doubled
down on deregulation with the Interstate Commerce
Commission Termination Act, in which it further
expanded the STB’s ability to exempt railroads from regulation.

The genius of Congress in enacting the Staggers Act is in recognizing that government regulation was not nimble enough to keep up with the changing market dynamics and competitive pressure facing the railroad industry. That principle is as valid today as it was in the 1980s. Only a deregulated railroad industry can react in time to changing events, whether the creation of interstate highway system in the rise of truck competition following World War II, the recent developments of new technologies and natural gas production that affect coal pricing, or other forms of competition that are constantly changing that we are dealing with in the marketplace.

This task force needs to help the STB to stop succumbing to the temptation to regulate. For example, the Agency’s proposed rule that Congress has repeatedly considered and rejected, forced access. Congress has been clear and consistent on this point. The Board should intervene in the
private marketplace only to remedy abuses.

But the Board has proposed a rule that would depart from the law and forced one railroad to switch to competitors traffic even in the absence of anticompetitive conduct. If adopted, this rule would undermine the financial health of the industry, reduce investment and erode hard-gained operational efficiencies.

To be called a deregulatory action, as we've heard this morning, is a joke. If regulators went in and told Coke that they had to use their facilities to produce for Pepsi, it would never be called a deregulatory action. The task force should recommend that the STB withdraw this proposal immediately and others like it that threaten to return to a failed, active regulatory philosophy.

But you shouldn't stop there. There are other opportunities, and one of them is to look at existing regulations that are antiquated or outdated. That examination must begin with revenue adequacy.
Profit regulation like revenue adequacy restraint creates a cloud of uncertainty over the regulated entity. That uncertainty has the potential to stifle innovation, productivity and competition while hampering investment.

Accordingly, regulatory history has proven that that type of regulation is ill-advised as Professor Sappington explained to the Board at the hearing on the proceeding on revenue adequacy.

This task force should recommend that the STB modify its proposed rule immediately by withdrawing the revenue adequacy -- modify its regulations immediately by eliminating the revenue adequacy constraint.

There are plenty of other areas that are ripe for exploration by the task force. Reporting regulations such as contract summaries that serve no regulatory purpose should be repealed. Environmental regulations should be modified or streamlined. You should jettison the limited price test, which shippers and railroads alike have expressed concern with and objected to.
It may even be time to examine whether railroads should be exempt from filing anything more than a notice in an abandonment proceeding, and if not, you certainly should update the costs associated -- the cost inputs into the abandonment proceeding as maintenance costs and those proceedings haven't been updated since the '70s.

The Board should take Norfolk Southern's request in the exemptions proceeding and look to find more traffic that should be exempted from regulation, not trying to reimpose regulation.

In short, this task force should be exploring bold actions to further use 49 USC 10-502 in light of the extreme competition in the economy from all sources that have made regulation not necessary to carry out the transportation policy of the United States, and where regulation is not needed to protect shippers from an abuse.

In conclusion, the task force is charged with conducting a wide-ranging examination of the Board's regulations, much broader than what occurred in 712.
All the points that I have made are highlighted not just by me but by articles and academics, and we have put together a primer that we will leave with Ms. Graab of supporting articles that demonstrate all the points that I have made this morning.

In short, I hope you as a task force can seize this opportunity you've been given and stay true to the deregulatory focus of the executive order and the deregulatory focus of your governing statute. Thank you.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Raymond Atkins from Sidley.

MR. ATKINS: Good morning. My name is Ray Atkins and I'm a partner with the law firm of Sidley Austin. I am here today speaking on my own behalf as a practitioner and a former STB staffer, although I do represent several railroad parties in ongoing regulatory matters before the STB.

This task force has a tremendous opportunity to help guide the STB on a path towards
further deregulation of the freight rail industry. And it's a bit of deja vu. The impressive steps that Congress took with the Staggers Act were sparked by federal staffers who wrote detailed reports that were encouraging old deregulatory action. It took staffers who were steeped in the regulatory history, who understood the industry and were willing to reexamine their own roles.

Fast-forward four decades, and you're in their shoes. You are being called upon to develop new and bold ideas for further deregulation.

And the STB has the tools it needs to effect huge change. As you know, Congress gifted the STB with virtually unlimited power to deregulate. The section is Provision 105-02, and with the exception of labor protection, it empowers the STB to exempt virtually anyone from anything in the statute.

The STB can remove any federal regulation that is no longer needed to promote the national transportation policy or to protect shippers from the abuse of market power. And Congress instructed
the agency to deregulate aggressively, to the
maximum extent possible, while providing a safety
valve where the STB could revoke an exemption where
needed for special circumstances.

But having sat in your seats, I can
appreciate that I offer you little help by shouting
carpe diem without offering you framework for
further deregulation or any specific ideas.

And in my view, the framework is the easy
part. Almost every economist on the planet will
agree that federal regulation is only justified
where there is a clear market failure, where you've
got a well-functioning marketplace there is simply
no justification for federal intervention.

This concept is not only a bedrock of
modern regulatory theory, but it has been compelled
by Congress for this industry. The primary policy
of the United States government when it comes to the
freight rail industry is to minimize the need for
federal control and to allow the marketplace to
govern.

Well, if the framework is the easy part,
the specifics are clearly harder. But if you follow this framework, then I think this task force should explore at least four ideas that in combination would trim away a lot of the unnecessary and antiquated federal regulations and focus the STB on its core mission.

First, as the paramount goal should be to intervene only where there's a market failure, then it's obviously terribly important that the Agency have a sound way to decide whether there is or is not effective competition.

If the STB does not perform that gate keeping function appropriately, then it's doomed to interject itself where it doesn't belong.

And as someone who must bear some responsibility for the current state of affairs, I will have to say that the Agency dominance inquiry is in disarray. First, you've excluded product and geographic competition. What that means is as a result today the Board would ignore the formidable effect that natural gas prices is having on the transportation of coal.
Then you've got the DMIR decision, where even competition from other railroads is ignored if it doesn't match the interchange point and the origin of the challenged rate. And then enters the limit price test, whose opponents are legion and fans are few. Time has revealed that that test placed its integrity on a benchmark that has no correlation to whether there is or is not effective competition. And I have taken to heart the words of the great Justice Frankfurter who said "wisdom too often never comes," so it ought not be rejected merely because it comes late.

The cumulative effects of this erosion of the Agency's market dominance analysis leaves little left of this important gate keeping function but the statutory threshold.

Second, where there is a marketplace failure, the Agency must follow sound regulatory principles when it intervenes in the marketplace. And on this second point, the revenue adequacy constraint described in the coal rate guidelines is
the clearest example of an antiquated and
discredited form of rate regulation that should be
on the very top of your list to be discarded.

Finally, all of the remaining STB
regulations should be viewed through the lens of
whether any of them is needed to address a market
failure. And I'll offer you two final thoughts for
how the STB could use its broad regulatory --
deregulatory powers to exempt railroads from federal
regulations whose time has run its course.

First, there is no remaining justification
for any regulatory approval for an abandonment other
than perhaps to oversee the OFA process.

This is a leftover from when the ICC would
force a railroad to operate an unprofitable line to
in effect cross-subsidize rural regions or to leave
a shipper with leverage that it can use against
trucking companies. That idea is long since dead.

There is clearly no market failure that
would justify putting a railroad through any hoop
and hurdle before it decides to cease operation and
abandon a line.
The railroad itself is far better situated and has the proper incentives to make informed business judgment about whether a line is or is not profitable.

And exempting railroads from having to obtain regulatory approval for abandonment would avoid future situations like what we're witnessing with the Harsimus case. I'm not casting any blame on the STB, but that's a proceeding to abandon a line that's been ongoing for eight years, where the line in question has not seen any traffic in over 30 years.

Second, the Board should consider exempting all traffic with rates that fall below 180 percent of variable costs. As Congress has declared that this traffic has effective competition, there's no market failure that can justify any federal regulation. Might there be some rare exceptions, some circumstance where federal regulation was needed to protect a shipper from the abuse of the market power, notwithstanding the fact that his rate fell below 180 percent? Perhaps.
But Congress contemplated that possibility when it created the safety valve whereby such a uniquely situated shipper could seek to have a revocation revoked if federal intervention were needed to address the market failure.

Let me wind up by commending this idea of having a public listening session. You have a rare opportunity to put the Board on a better path, one that conserves your own scarce resources and further minimizes the degree of federal regulatory control.

You can seize this opportunity by forgetting about how long the Agency has regulated a certain activity, but ask yourself instead whether federal control remains necessary to address a market failure today.

Congress cut away a lot of regulatory fat with Staggers and ICTA, but there's a lot more that you can propose for the members to do today. And just to recap, that list should include revisiting and reforming your market dominance guidelines, abandoning the antiquated and discredited revenue adequacy constraints, exempting carriers from the
need to obtain agency approval for abandonment and
exempting all traffic from federal regulation where
the rates in question demonstrate there is effective
competition.

Thank you for this opportunity, and I look
forward to reading your final report to the members.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Charlie Delacruz from
NGFA.

MR. DELACRUZ: Good morning, Director
Campbell and members of the task force. I am
Charlie Delacruz, Senior Vice President and General
Counsel of the National Grain and Feed Association.
We commend the Board for establishing this task
force and for the work this task force has already
done. We especially commend the task force for
conducting this listening session this morning, in
which we are proud and honored to participate. I
will do my best to provide a quick snapshot of the
written comments that we intend to follow up on
today.

NGFA consists have more than a thousand
grain feed processing exporting and other
grain-related companies that operate more than 7000
facilities and handle more than 70 percent of all
U.S. grain and oil seeds. NGFA also has 34
affiliated state and regional agribusiness
associations and strategic alliances with a number
of groups, including the North American Export Grain
Association and the Pet Food Institute.

We urge the task force to reject any
attempt by other stakeholders to rescind or weaken
the few remaining statutory protections afforded to
rail users under the Staggers Rail Act and other
federal statutes.

There are numerous references in Staggers
Act rail transportation policy that call upon the
Board to foster effective competition in the freight
rail sector.

Several of these statutory protections are
the subject of ongoing active proceedings at the
Board. The statutory obligation of the Board to
foster competition and prevent abuse of market power
is needed more strongly now than ever.
U.S. agricultural shippers and receivers in 2016 depended on just four Class 1 carriers to transport 84 percent of grain and oil seed rail traffic. That's compared to only 53 percent when the Staggers Act was enacted in 1980.

The executive orders made clear, each Regulatory Reform Task Force shall evaluate the existing regulations and make recommendations to the Agency head regarding their repeal, replacement or modification, consistent with applicable law.

Thus, we urge the task force to reject recommendations that are inconsistent or contradict the governing federal statutes.

NGFA supports several proposals contained in the May 25 status report prepared by the task force for acting Board Chairman Begeman, namely those addressing outdated environmental rules, antiquated procedural and filing rules and regulations that may be outmoded, ineffective, insufficient or excessively burdensome that were the subject of Ex Parte 712.

Unfortunately, the Ex Parte 712 proceeding
resulted only in a February 2016 decision that made nonsubstantive, inconsequential changes. NGFA concurs with then-Commissioner Begeman's assessment in that 2016 decision that more substantive changes to the Board's rules should have been considered during the four-year time span of that proceeding. And NGFA supports this task force's decision to review the comments received in that proceeding.

Many of the suggestions of rail shipper stakeholders in that proceeding follow the Board's rules and procedures governing rate reasonableness, revenue adequacy, reciprocal switching, market dominance and other rules and procedures continue to be relevant and apply today.

NGFA also respectfully requests the task force consider including the following recommendations in its report to the Board.

First, the Board should be redirected to redouble its efforts to revamp rate reasonableness rules to create a cost-effective, workable methodology for agricultural shippers to challenge unreasonable freight rail rates. The record is
clear, the Board's three existing rate challenge methodologies are too complex, too cumbersome and too costly, particularly for agricultural shippers.

The concerns of agricultural shippers about unreasonably high rail rates were borne out most recently in a June 15, 2017 report by the U.S. Department of Agriculture. It found "grain rates have consistently risen over the past half decade, even accounting for inflation, with a few brief exceptions, particularly for wheat, USDA's analysis found the changes in rates and rate spreads are significant and puzzling, relative to the price received for wheat at its destination, which has declined over the same time period."

As an example, USDA cited average rail rates for wheat, for shuttle service between the same origin and destination pairs of Wichita, Kansas and Houston, Texas, which are more than $1000 per car greater than the rate charged for corn.

USDA concluded that during a time when wheat and other grain shippers have been struggling against falling grain prices and rising rail rates,
wheat shippers in particular have found it difficult to compete in export narcotics, as they face higher rail rates than other grain shippers over similar corridors and rates that have not declined in response to changes in world wheat markets. And that's again a quote from the USDA report.

Since the Board should revise outdated rules governing reciprocal switching, that's my second recommendation, the Board's existing rules and precedent are the epitome of outdated regulations since no party has attempted to use them for nearly 30 years.

NGFA and other agricultural interests have joined with other shipper interests in urging the Board to replace its current, unworkable Class 1 competitive switching rules, to provide a fairer, more reasonable way for shippers to access the lines of competing carriers to reach customer markets.

Action by the Board would at the end of the day merely replace a wrongly decided Agency precedent and an outdated and ineffective regulation.
Updating and reforming the Board's competitive switching rules are more important than ever in today's consolidated rail marketplace.

Next, we strongly urge the task force to not tamper with the Board's existing regulations that require Class 1 railroads to import service performance metrics and to file summaries of agricultural transportation contracts.

We already are witnessing service declines by at least one significant Class 1 carrier this year, and both the reporting of service metrics and agricultural contract summaries are beneficial to agricultural shippers and to the Board itself.

In addition, NGFA notes that comments submitted as part of the Board's Ex Parte 712 proceeding in 2011 regarding potential changes to the Agency's rules for determining railroad revenue adequacy and application of the railroad -- of the revenue adequacy constraint in rate reasonableness cases continue to be relevant. Since the Board still has not addressed its rules and policies related to revenue adequacy in a substantive manner.
NGFA believes rail shippers and shipper organizations have provided considerable evidence demonstrating a Class 1 railroads have reached or exceeded revenue adequacy.

NGFA encourages the task force and the Board to continue the efforts begun in Ex Parte 712 and Ex Parte 722 to develop policies and regulations to comply railroads found to be revenue adequate.

Finally, there is one recommendation in this proceeding in which the NGFA and the AAR are aligned, and that regards the need for the Board to reform its rules regarding ex parte communications, to allow increased dialogue and information exchange between the stakeholders and Board members and staff.

Recent efforts by the Board to begin to reform and modernize its ex parte rules have been beneficial and appreciated.

We believe the task force should recommend that they be continued and expanded.

In conclusion, NGFA again appreciates the opportunity to highlight these recommendations, as
well as the task force's consideration of our more
detailed written statement to follow, and of course,
we remain willing and happy to assist the task force
in its project at any point in any manner. Thank
you.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Justin Sutton from the
Hydrogen Super Highway.

MR. SUTTON: Good morning, everyone. I
admire the work that you do. We definitely have a
huge burden to manage all these problems so
articulated today. And I also greet everyone who
has attended.

I represent the Interstate Traveler
Company, which is the builder of what is called the
Hydrogen Super Highway. If you haven't heard of it,
don't be surprised. We were told by very
influential people back in 2004 that such a
revolution in transportation technology was not for
our time.

However, I can explain to you today that I
spent the last 10 years as subject matter expert in
the United States Air Force, I just spent the last
two days with the United States Navy, who are very,
very concerned about not just transportation safety
and security but energy security, of which the
Hydrogen Super Highway, for all to see, provides a
very adequate and exciting industrial revolution
that affects all of us one way or another.

So I would like to just read the opening
paragraph here. So what is the Hydrogen Super
Highway? It is a collection of vital municipal
utilities bundled into a conduit cluster providing
its first of its kind full integration of
solar-powered hydrogen production and distribution
system technology that provides the energy to
operate at high speed magnetic levitation on demand
public transportation network, along with any
permissible -- or along any permissible
right-of-way, private, public or such as highways,
local roads, power corridors, the U.S. interstate
highway system and, of course, our many, many
railroad rights of way that are currently used.

This gives the United States economy an
opportunity to create an industrial revolution that will greatly exceed the current automotive and aerospace industries. It will require many millions of tons of steel over the course of 10 years to build the interstate highway. There's about 800 million tons of steel that would go into the rail alone.

There are about 11,000 highway interchanges on the U.S. interstate highway system. At each location, we plan to build a pair of buildings, so that people can access the system, anywhere the interstate highway happens to be.

By using this as a public transportation medium, it resolves the issues which everyone in every state and every county that we've communicated with, they all face, how do you build a public transportation system on a rail network that's already either overburdened or is really in disrepair?

So this provides an entirely new right-of-way that the public has access to, that the railroad companies can take advantage of, that the
shippers will also be able to take advantage of.

As a public access railroad network, you will be able to have vehicles of any type, scale, size, purpose, that would operate on this brand-new rail system, which was originally designed as an upgrade to the interstate highway network, hence the name of the company, the interstate traffic company.

Now, I have with me a set of booklets to provide to you, along with the formal testimony provided to the Federal Railroad Administration a number of years ago, which gives an adequate technical summary of how the system will work.

But for your visual reference, if you see here, there is an elevated rail system that's covered in solar panel material. It is not really for us to decide what type of solar panels are used. It is our job to create the new manufacturing standard. That is a standard that would be launched in the United States and will be very quickly adopted globally, as our largest export of industrial products in the history of the United States.
It is a very important transition that will be taking place in the future. Not just for transportation but also for communications, pipelines for data, for chemicals, for fuels, for any commodity liquid, vapor or gas, quite frankly, that would operate within the conduit cluster that you see inside of the rail.

It may look small, but it's actually quite large. The rail gauge is 12 feet, it's three times wider than the standard rail gauge.

The United States obviously made the decision quite a long time ago to go with the standard rail gauge. However, other places in the world have a broad gauge, which can take much larger vehicles, which adds to the serviceability of the rail line and of course the comfort of the passengers that might be riding it.

We provide the ability to support vehicles that are as wide as 16 feet and as long as 60 feet and as much as 24 feet tall. So you can literally have a tri-level structure that can be used as a mobile hospital, a mobile office, a mobile
residence, or really a mobile hospital one is the most important to me.

As a statistic, the interstate highway system is one of the deadliest places in the United States. About 35,000 people a year enter the interstate highway and either leave in an ambulance or don't leave at all. And out of those 35,000 people that perish because of a car accident, about half of them die on the way to the hospital.

We provide an opportunity for this rail system to be down the sides of the interstate highway where we can bring the critical care surgical team to the scene of the accident, and statistically we expect to be able to save at least 10,000 lives a year. If I can save one life, it's worth doing, which is a part of my motivation standing here before you today.

With that note, there is quite a bit of information we can talk about. I understand you're not asking questions today. But I will be in Washington, D.C. for the rest of the week. We'll be up on the Hill for the next couple of days.
I have these to provide to you, and if you have any further questions, please don't hesitate to contact us. And we will certainly be -- Andre Sauvageot, who you saw a moment ago, our director for Washington, D.C., he has had several political appointments, very influential having to do with international commerce and specifically the revolution of the Vietnamese economy when the trade embargo was reduced. He brought in General Electric and a couple of other very large American companies.

We are a private limited liability company from the state of Michigan. We are made up of about 400 members, and our trade missions include about the top 50 countries in the world. So our international clients are waiting to see American leadership, and hopefully we will see that here soon in the United States with the system to be built in the state of Indiana, which was permitted last year.

So with that, I thank you very much for your time. Thank you, Justin. Thank you, all.

DIRECTOR CAMPBELL: Thank you.

Our next speaker is Pete Shudtz, CSX.
MR. SHUDTZ: Well, I would not be addressing 711 today. I may be the only speaker who isn't.

Good morning. I am Pete Schudtz, and I am here today on behalf of CSX. CSX thanks the Board for convening this listening session which promotes the further improvement of the Board stakeholder relations. We have submitted written comments today for your consideration. Those comments lay out several proposals that we will briefly summarize this morning.

CSX also supports and adopts the AAR comments delivered today by Mr. Ed Hamberger. CSX's proposals are all based on our belief that the Board's regulations work best when they are focused on the Board's core mission, and most importantly, directed at those areas that promote Congress's goal for a financially healthy rail industry.

This teaches us that eliminating unnecessary regulation is often the best way to serve the interest of all stakeholders. It creates a stable, naturally healthy rail system that
provides rail service to shippers at reasonable rates.

We are all familiar with the great success story of deregulation resulting from Staggers. That Act, the rail industry's efforts and the Board's implementing regulations all led to increased productivity and volumes, more investment, safer operations and lower rates for shippers. Mr. Hamberger's statement both demonstrates that success story today.

But there's more that the rail industry and Board can do. The Board's regulations still impose unnecessary burdens that restrict efficiencies, create needless transaction costs and discourage investments, all of which are contrary to the Staggers goals and those of the Board and the rail industry.

Our written comments focus on three areas which we believe will improve the Board's regulations, the elimination of the revenue adequacy constraint and improvements to the Board's abandonment and environmental rules.
This morning I will briefly address these three topics.

First, as Mr. Hamberger and Mr. Scheib also recommend, the Board should remove revenue adequacy constraint. That constraint is an outdated and unnecessary form of regulation. It discourages investment and innovation and most importantly, the Board has other, better methodologies than SAC that are economically sound. We submit that this constraint is exactly the type of antiquated regulation that the Board should eliminate.

Another area that the Board should examine are its regulations governing applications for abandonments in discontinuation of service. The Board's 27 pages of application requirements wreak substantial and unnecessary regulatory hurdles that discourage abandonment of like lines even when these lines satisfy the Board's standards for abandonment. The Board has long recognized that it's contrary to the public interest to force railroads to operate unprofitable lines and for shippers to cross-subsidize those lines.
This policy is already encouraged by the Board's efficient, timely exemption process. By contrast, the Board's regulations for applications were so arduous as to discourage almost any abandonment that cannot be accomplished through an exemption. The Board's docket clearly reflects the wide use of exemptions and the absence of applications.

The 1920 abandonment law goes back to the steam era, the beginnings of truck transportation. The Board's application requirements today remain at essentially pre-Staggers construct. Although the Board has updated many of its regulations over the years, the application requirements still set forth arduous processes that take several years to adjudicate and/or coupled with uncertain results and lengthy post-decision conditions.

The Agency should reform its regulations, specifically the Board should consider a new cost exemption allowing railroads to abandon or discontinue service of all unprofitable lines by notice of class exemption. The new class exemption
could be modeled on the Board's very successful out
of service class exemption.

Like that exemption, you protect the
interest of any shippers on the line by providing
opportunities for offers of financial assistance to
continue rail service, thereby placing the burden of
unprofitable operations on the beneficiary of those
services.

At the same time, this suspended exemption
process will allow the Board to focus on the
financial assistance requirements of the Act and the
other public uses for unprofitable lines which the
Board encourages so well.

Finally, the Board's ongoing efforts to
update its environmental rules should employ new
thresholds for determining whether or not it would
result in significant changes to carrier operations.
Specifically, the Board should reconsider its eight
trains a day and three trains a day thresholds for
traffic increases on lines served. These are
thresholds that most commonly trigger environmental
review.
In the first place, the Board should consider whether it makes any sense to have the lower three trains a day threshold for environmental review in nonattainment areas. It is well recognized that shifting traffic from trucks to rail, has environmental benefits, both because of decreased emissions and decreased highway traffic. In light of these benefits, it's counterproductive to have lower threshold for competing rail operations in nonattainment areas.

Moreover, the Board should change the thresholds that automatically deem any increase of three or eight trains per day to be significant traffic increases. On a daily basis, those operational changes are completely unrelated to any transaction the Board makes.

Our written comments further outline these two options for changing the Board's metrics that would better focus the Board's environmental review on treating significant changes resulting from the transaction.

Lastly, the Board should consider whether
certain categories of Board decisions, like exempt
abandonments, administerial acts -- do not require
environmental review.

        In conclusion, CSX thanks the Board and
its staff for instituting this proceeding, and for
considering ways it can eliminate unnecessary
regulations. CSX appreciates the opportunity to
submit its written comments on these important
issues and looks forward to the Board's continued
deregulation efforts.

        That concludes my comments, and kindly let
me know if I may provide any additional information
to the group or to the Board.

        And I would also lastly like to just
comment on some of the earlier commenters on service
issues. I must note that we always try to be
responsive to our customers, and we appreciate very
much Ms. Marvin's office to help assist us in our
communications with our shippers on an informal
basis. Thank you again.

DIRECTOR CAMPBELL: Thank you.

According to my list, we are through all
the speakers for today. But is there anyone who had
intended to speak who somehow didn't make it on the
list? I just want to make sure everyone had an
opportunity before we close.

Okay. As I said, the transcript of this
will be available and will be placed in the docket,
the EP738 docket. Also, the status reports of the
task force are on the Board's Web site under a
landing page for the Regulatory Reform Task Force.
Right now there's just one up there that I know a
number of you referred to, so I know you found it.
But as we have more status reports, those will be
posted there as well, so you can keep an eye out for
that.

Thank you so much for coming here today,
providing your comments. I'm sure they are going to
be tremendously helpful to us, and we're all looking
forward to getting into a conference and sorting it
all. So thank you very much. We appreciate it.

(Whereupon, at 11:59 a.m., the hearing was
concluded.)
CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, CARMEN SMITH, the officer before whom the foregoing hearing was taken, do hereby certify that the witness whose testimony appears in the foregoing hearing was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said hearing is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

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Notary Public in and for the District of Columbia
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