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SURFACE TRANSPORTATION BOARD

HEARING ON PROPOSED MERGER OF CP/KCS

Docket No. FD 36500

PUBLIC HEARING

Via Zoom

Wednesday, September 28, 2022 -- Day One

9:30 a.m.

The above-entitled matter came on, pursuant to notice,
at 9:30 a.m., Chairman Martin Oberman presiding.

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

2 CHAIRMAN OBERMAN: By my watch it's 9:36,
3 which means we're on time. Good morning, everyone,
4 and welcome. Thanks for joining us for this hearing
5 on the proposed merger of Canadian Pacific and Kansas
6 City Southern. For the record, the docket number is
7 FD 36500.

8 In the interest of time I will summarize
9 things briefly, but there are a number of things that
10 have to be covered. By way of a quick history,
11 Canadian Pacific and all of their U.S. subsidiaries
12 which I won't name notified the Board of their intent
13 to file an application on March 23rd of 2021 for the
14 acquisition and control of Kansas City Southern. On
15 April 23rd of last year the Board found the
16 transaction subject to the regulations known as,
17 quote, the old rules pursuant to a waiver for
18 transactions involving Kansas City Southern. On
19 October 29th of last year the applicants filed their
20 formal application, and by decision on November 23 of
21 last year the Board accepted the application.

22 The issues raised here are very important

1 and ones which the rest of the Board and I are
2 extremely interested in hearing from all interested
3 stakeholders. I do want to note at the outset that
4 the purpose of this hearing for the next three days is
5 to hear comments and input and testimony on the merits
6 of the transaction, what we intend to refer to around
7 here as the transportation merits. The Board's Office
8 of Environmental Analysis is currently engaged in a
9 separate environmental review process under NEPA, and
10 it is through that process that the Office of
11 Environmental Analysis and the Board will separately
12 consider any potential environmental and historic
13 issues presented by the transaction before any final
14 action is taken.

15 As I'm sure many of you know, as part of the
16 environmental process our OEA office issued a draft
17 environmental impact statement on August 5th and
18 invited public comment. The comment period on the
19 draft EIS remains open until October 14th. That's
20 important because I know a number of people are here
21 to testify on environmental issues, and while I also
22 know, and I assume that most of you know this,

1 environmental issues cover a broad range such as
2 automobile traffic going over crossings and so forth,
3 it's not just air and water quality and things that we
4 usually think of as environmental.

5 I think it's worth noting also that the
6 Board members are quite intent and just as interested
7 in the environmental aspects of this transaction as
8 well as the transportation merits, and for that reason
9 we all attended at least one of the regional
10 environmental hearings. I had the honor of attending
11 all four, so if my eyes look a little baggy I'm still
12 recovering from that soiree around the country, but it
13 was extraordinarily enlightening, and a number of
14 individuals took time to talk to our environmental
15 office, which was very helpful to this process.

16 Today, however, we do ask that people really
17 focus their comments as much as possible on the
18 transportation merits, what we call the transportation
19 merits of the transaction, which includes everything
20 other than those environmental issues. If you do
21 raise issues relating to the environmental process we
22 will ask that you submit those comments to the OEA so

1 that their record is as complete as possible by the
2 October 14th deadline. There is a website which I've
3 been asked to read, www.cp-kcsmergereis.com. I'm sure
4 if you go on our website you'll find it. That website
5 has more information on exactly how to file those
6 comments.

7 I'd like to thank everyone in advance for
8 your participation and for your efforts to prepare for
9 this hearing. It's quite an undertaking, certainly,
10 for the Board and particularly for our staff, as well
11 as for the applicants and the other interested
12 parties, and we can't perform our statutory
13 obligations without this kind of participation and
14 input from everybody who's concerned.

15 I want to say a special thank you to our IT
16 and facilities teams and all the other staff who have
17 worked so hard to make this hearing possible, and
18 certainly with a heavy emphasis on the IT folks.
19 We've had quite a learning experience through the
20 first use of this room and we've made some electronic
21 adjustments in an attempt to iron out all the
22 wrinkles, but I think we'll proceed well during these

1 hearings.

2 Let me go over a few technical matters. As
3 always, please silence your cellphones. We have a
4 packed schedule and we want to make sure that we hear
5 from everyone. To allow that to happen -- I'm not
6 heavy-handed with the gavel, I don't even have a
7 gavel -- actually, I do have a gavel but I can't reach
8 it. We want you to stick to your allotted times. For
9 the most part people got the time they requested, but
10 if you go over you're going to keep someone else from
11 having an opportunity to make their statement. If you
12 bring paper or drinks or some snacks into the room,
13 that's okay, but this isn't Wrigley Field, so pick
14 them up and take them with you when you leave. There
15 will be trash cans out there someplace.

16 If you're here in person here's how this
17 will work. You'll see lights in front of you that
18 guide your time. One minute before your time expires
19 a yellow light comes on, and when your time is expired
20 you'll see a red light, so try to finish the sentence
21 you're in the middle of and conclude. If you are
22 using slides in your presentation, please let us know

1 when you would like to have those slides displayed on
2 the screen. We'll provide you with a clicker so you
3 can navigate through the slides during your
4 presentation. To use the microphones press the
5 button -- I want to get this correct because this is
6 one of the complications we had at the last hearing --
7 press the button once to turn it on and again to turn
8 it off. Please note that only one microphone can be
9 on at a time, so if you're not speaking or someone
10 indicates they have a question you have to turn your
11 microphone off or else the questioner's microphone
12 won't be on and nobody can hear them. We want to make
13 sure the court reporter gets everything as well as
14 everyone watching virtually on YouTube. And if we run
15 into an issue where you couldn't be heard we may ask
16 you to repeat the question because the microphone
17 wasn't on.

18 If you are testifying through Zoom, please
19 keep your camera and microphone off and mute yourself
20 when you're not speaking. When you're presented a
21 timer will also be on indicating what your time is,
22 and it will just wind down to zero, and that will

1 indicate that you ought to wrap up your comments.

2 There is also a chat function on Zoom, but
3 we ask that you use only it for technical questions.
4 If you're on Zoom and you become disconnected from the
5 hearing and you can't reconnect, there's a phone
6 number you may use to call in as a way for us to try
7 to help you clear it up. Please e-mail us if you are
8 going to call in from Zoom at hearing@stb.gov with a
9 phone number, so when you call in our tech staff can
10 identify you and who's calling. There's also a
11 Frequently Asked Questions section on the board's
12 website for further troubleshooting.

13 We have a court reporter here who will cover
14 these entire hearings, and I have to be reminded when
15 the fingers need a little rest. If we keep going,
16 sometimes it gets intense here, so Mr. Reporter, speak
17 up. For the rest of you, speak clearly and enunciate
18 clearly so the court reporter can get an accurate
19 record for us, and the court reporter himself or
20 herself or whoever it is is welcome to interject,
21 which they frequently -- not frequently, but may have
22 to do to just ask you to repeat a word if they didn't

1 get it.

2 It's our plan during the course of this
3 hearing, and if you've seen the schedule you know the
4 witnesses will be called up in panels to allow each
5 panel to finish their presentation before we then ask
6 questions. We may interrupt before the panel's
7 completed if it's for clarification or if we're not
8 sure what other issues the witness is going to cover,
9 but we will try to restrain ourselves. Speaking for
10 myself, I'm not very good at that, but we would like
11 to let panels finish so we can get through these
12 presentations.

13 I've referred to YouTube. I think everybody
14 knows it is being streamed live on YouTube. There is
15 a link to get on to YouTube on the Board's website
16 when the hearing is completed. The transcript of the
17 entire hearing will be on our website, and a recording
18 will also be available.

19 Today the plan is to hear from speakers on
20 panels one through seven. Tomorrow we'll begin with
21 panel eight and go through panel 15, and on Friday
22 we'll begin with 16 and go through to the end.

1 Roughly speaking, we'll undoubtedly take a very short
2 break midmorning and midafternoon if needed -- I
3 assume it will be needed -- and we're going to try to
4 limit lunch breaks to 30 minutes, and we'll aim for
5 1:00 Eastern for a 30 minute lunch break. But, as
6 always, I try to break at a natural conclusion of
7 somebody's testimony. I don't want to break in mid
8 thought of a witness who's dealing with a complex
9 subject.

10 The plan is -- we've begun today at 9:30.
11 Tomorrow we're going to begin at 9:00, and in the
12 notice of the hearing we also said we're going to
13 begin at 9:30 Friday. We're amending that. We're
14 going to begin at 9:00 on Friday as well. We're going
15 to aim to finish every day at 5:30, which means we'll
16 finish no later than 6:00, but 5:30 would be better.
17 But on Friday, for a number of people, including the
18 chairman, we are going to end at 6:00 exactly because
19 there are flights to be caught by a lot of people, so
20 we're really going to push through, and let's have
21 everybody keep an eye on that time schedule.

22 A couple of other important points. In the

1 past week this building and actually the entire
2 Patriot Plaza had two threats. I don't even know
3 exactly what the threats were, and when I asked one of
4 the Homeland Security police officers they said they
5 weren't allowed to tell me, so that shows you where I
6 stand, but the buildings were evacuated. It took
7 about an hour and a half or two hours for a complete
8 inspection. Both evacuations resulted in no problem
9 other than being out on the street for a couple hours,
10 so I wanted to alert people to that because it could
11 happen again.

12 I'm just going to assume if a threat is
13 called in it isn't going to be by a disgruntled
14 railroad or shipper for this hearing, but if it does
15 happen please take everything with you and leave the
16 building in an orderly manner, and then one way or
17 another try to monitor our website so that you will
18 get the notice. People that work here get notices on
19 our phones when the evacuation is over, so stay in the
20 area, but if it happens it's going to be at least an
21 hour, an hour and a half, and what that will do to our
22 finishing the hearing I don't know, but we should be

1 alert to it because it's happened twice. We will also
2 put a banner up across the website indicating the
3 evacuation notice and when it has ended.

4 One final notice, and that is I notice that
5 the -- we already have a presentation by the
6 applicants. The Board members have -- I think this
7 must be your PowerPoints, and it's marked as the
8 highly confidential version. You're welcome to use
9 that. Our plan, unlike for those of you who sat
10 through the Gulf Coast hearing, which is actually what
11 we call a hearing on the record, a trial in which we
12 had to hear confidential information and we had to
13 clear the room and go into breakout rooms on Zoom,
14 we're not going to do that in these hearings.

15 We expect that all of the people who are
16 testifying and presenters will stick to the
17 non-confidential versions. And it is the Board's
18 intent to avoid asking questions that reveal the
19 confidential information. We probably don't know it
20 as well as you do, so we may slip up, but it's our
21 intent to respect that.

22 Having said that, obviously the people who

1 are presenting what has been marked confidential, if
2 you would want us to hear it in public, you're free
3 to, in effect, waive your prior marking and tell us.
4 I just wanted to alert everybody here because we've
5 already got a book that's labeled highly confidential.
6 I'm not sure what you're planning to do with it, and
7 it's your choice obviously, but I wanted to sensitize
8 everybody to that concern.

9 With that, in the interest of time my fellow
10 Board members and I have all elected not to make any
11 opening statements on the subject matter here, and
12 we're going to proceed right to the hearing. And,
13 with that, we will call our first witness from near my
14 hometown, the Honorable Congressman Raja
15 Krishnamoorthi, who represents the Illinois Eighth
16 District and who is here and who I think is waiting to
17 be called out here. We will start with Congressman
18 Krishnamoorthi. I think you probably all have the
19 schedule, but, if you don't, following Congressman
20 Krishnamoorthi is Commissioner Bentzel.

21 Congressman, good morning. Congressman, you
22 may begin.

1 MR. KRISHNAMOORTHY: Good morning, Chairman,
2 and good morning to the Board. I'm Congressman Raja
3 Krishnamoorthi of the Eighth District of Illinois.
4 Thank you to the STB for holding these hearings to
5 listen to the many stakeholders associated with the
6 proposed merger between Canadian Pacific and Kansas
7 City Southern railroads.

8 I represent communities stretching from
9 Elgin, Illinois to Bensenville, Illinois, which are
10 part of the northwestern suburbs of Chicago, which is
11 the largest metropolitan area anywhere in the country
12 affected by this proposed merger. The suburbs are
13 almost entirely located in my congressional district.

14 CP currently projects that the proposed
15 merger would nearly quadruple the number of freight
16 trains from three to eleven freight trains traveling
17 through our communities every single day. I'm
18 extremely concerned that this increase in freight
19 train traffic would have a substantial impact on
20 commuters and commuter rail operations in the Chicago
21 metropolitan region.

22 I also continue to be concerned that the STB

1 has not verified CP's projections for train counts and
2 freight tonnage that this merger would involve.

3 Without verifying this data which is heavily disputed,
4 the STB cannot fully evaluate the proposed merger's
5 impacts.

6 I'd like to address two issues. First, let
7 me turn my attention to commuter train operations.
8 Chicagoland is home to over 9.5 million people and a
9 complex public commuter transit system called Metra
10 connecting suburban commuters to downtown. Before the
11 pandemic our vital Metra system had 700 trains running
12 daily over eleven lines to support hundreds of
13 thousands of commuters from our region.

14 Metra's Milwaukee District West line runs
15 through Elgin to Bensenville over approximately 20
16 miles of track with ten different stops, the majority
17 of which are in my congressional district. In 2019
18 this one line had almost six million passenger trains
19 and operated 58 daily trains. The pandemic caused a
20 dramatic dip in ridership in April 2020 to about three
21 percent of 2019 levels. Since then Metra ridership
22 has steadily climbed to almost 45 percent today and is

1 projected to reach 80 percent by 2024. Metra expects
2 the eventual return of ridership to pre-pandemic
3 levels and is planning and budgeting accordingly.
4 That said, if the current merger proceeds as proposed
5 Metra ridership and its finances will be devastated.
6 Here's why.

7 Though freight train traffic is largely
8 directed outside of Chicago, freight train operators
9 use commuter rail routes in the suburbs, including the
10 Metra line that goes through our communities and my
11 district. CP's three freight trains that currently
12 run on this line frequently cause commuter delays
13 today. This is because, although Metra owns the rail
14 line, CP has dispatching rights on Metra's lines and
15 therefore can control whether freight trains or
16 commuter trains receive preference to travel on these
17 same tracks.

18 Though CP and Metra have an operating
19 agreement for Metra to operate during specified
20 windows of time, Metra has stated that, quote, CP
21 violates this contractual obligation regularly, close
22 quote, and gives preference to freight rail over Metra

1 trains, thereby leading to commuter delays even during
2 peak periods.

3 According to Metra's data from this last
4 August, most delays were roughly six to ten minutes,
5 but also reached 16 to 20 minutes or even over 20
6 minutes. CP's projected increase of an additional
7 eight trains per day would bring more delays to
8 commuters and prevent an expansion of Metra's service
9 to support the recovery of pre-pandemic ridership
10 levels.

11 Metra has suggested that this merger as
12 proposed would cause an almost 300 percent increase in
13 delays, which would, quote, break its system, close
14 quote, and cause undue harm to community members.
15 There are ways to mitigate this harm such as by giving
16 Metra dispatching control over its lines, but the
17 current merger as proposed does not envision that.

18 As Congress has made a historic investment
19 of \$108 billion for public transportation through the
20 Bipartisan Infrastructure Law, I fear that this
21 proposed merger would increase commuter delays in one
22 of the country's largest metropolitan areas and would

1 work against our efforts at the federal level to
2 increase public transit ridership and would decrease
3 public trust in the reliability of Metra.

4 CP claims that this merger would greatly
5 enhance the environment and simplify logistics in the
6 Chicago region and nationally. But, in reality, this
7 merger as proposed would cause potentially hundreds of
8 thousands of commuters to drive rather than take Metra
9 trains, thus clogging our roads, harming the
10 environment and setting back public transit for
11 decades.

12 I urge the Board to strongly consider these
13 impacts on commuter transit in its review of the
14 merger and ensure that you provide strong,
15 comprehensive mitigation and oversight measures if the
16 merger is eventually approved.

17 Finally, let me turn to the issue of data.
18 I brought this up before in your hearing in Itasca,
19 Illinois, but I'd like to revisit this briefly.
20 Metra, Canadian National and a coalition of
21 communities in my district who happen to be
22 represented here today all file their concerns that

1 CP's data are, quote, inconsistent and flawed, close
2 quote.

3 Notably, CP projects that this merger would
4 increase freight traffic in our communities from three
5 trains to eleven trains, but Metra and communities in
6 my district contend that actually there will be closer
7 to 18 trains per day. To fully understand the impact
8 of the proposed impact on commuter train delays, the
9 STB must ensure the reliability of CP's data and
10 resolve the strong dispute over this data.

11 Therefore, I respectfully request that the
12 STB provide a comprehensive review of CP's projected
13 train counts and tonnage to ensure that they are
14 accurate. Under federal law this board cannot approve
15 a merger of two Class I railroads if the proposed
16 transaction is not consistent with the public
17 interest. I respectfully submit that the merger as
18 proposed is not consistent with the public interest,
19 and in our communities we will face undue harm.

20 I thank you again for the opportunity to
21 testify before you and to allow all of our
22 stakeholders to do the same. Thank you so much.

1 CHAIRMAN OBERMAN: Thank you, Congressman.

2 I have just one question. Do I understand that the --

3 MR. KRISHNAMOORTHY: Is it an easy question,
4 Chairman?

5 CHAIRMAN OBERMAN: Yes. The calculation of
6 18 trains a day is something that Metra prepared, and
7 so if we want to get into those details it would be
8 with Metra.

9 MR. KRISHNAMOORTHY: Metra, and the
10 coalition has chimed in on this as well.

11 CHAIRMAN OBERMAN: All right. Thank you.
12 Any other questions for the congressman?

13 Congressman, thank you. We appreciate your
14 taking time to come over because you obviously have a
15 busy schedule as well, so we appreciate your presence
16 here. Thank you.

17 MR. KRISHNAMOORTHY: Thank you, Chairman.
18 Thank you to everybody.

19 CHAIRMAN OBERMAN: Commissioner Bentzel.
20 Commissioner, before you speak, I'm not good at
21 reading Roman numerals. We will go through panel
22 eight today, not panel seven. If they'd just written

1 it in Arabic I'd get it. Thank you. Commissioner
2 Bentzel.

3 Mr. BENTZEL: Mr. Chairman, you referenced
4 that we came over and chaired your space last week.
5 It was a pleasure to work with your staff. It was
6 needed. We still don't have sound, so we're working
7 through a lot of technological issues.

8 CHAIRMAN OBERMAN: It just means that trains
9 beat ships any day. That's all.

10 MR. BENTZEL: Perhaps. Thank you, Chairman
11 Oberman, and Board Members Fuchs, Schultz, Primus and
12 Hedlund for the opportunity to provide testimony on
13 this really important issue.

14 I respectfully urge the Surface
15 Transportation Board to disapprove the consolidation
16 of the railroad systems of the Canadian Pacific and
17 the Kansas City Southern railroad. In my view, the
18 proposed consolation does not ensure that the
19 anti-competitive effects of the transportation
20 outweigh the public interest in meeting significant
21 needs.

22 I've spoken with you before on this issue.

1 Specifically, I believe the proposed merger will
2 adversely impact U.S. ports and the primarily U.S.
3 based intermodal railway systems that serve our ports
4 and would disproportionately benefit Canadian ports
5 and the primarily Canadian based intermodal railroad
6 systems that service those ports. And this is for the
7 transportation of U.S. cargo into the United States.

8 Canadian policies supporting the Canadian
9 port use per capita is financially significant than
10 similar policies in the United States, contributing to
11 erosion of U.S. port and railroad market share for
12 U.S. bound cargo, a point that I will address further
13 in my testimony.

14 Further, I contend that while there may be
15 economic benefits to certain shipper organizations'
16 locations in the United State that overall there will
17 be a greater negative impact relating to employment
18 and long term investment affecting intermodal
19 shipments through U.S. ports and the other business
20 entities providing warehousing and distribution
21 centers servicing these ports and any entities that
22 handle cargo bound through the ports.

1 Such economic losses will be far greater
2 than any economic value that might ensue because of
3 the consolidations of the railroad systems of Canadian
4 Pacific and Kansas City Southern.

5 I've previously raised these concerns with
6 you, Mr. Chairman and the Surface Transportation Board
7 members, and I am sure that both the FMC and the STB
8 will be considering the implications of supply chain
9 disruption in the future, but I believe that this will
10 have impact on how we address supply chain in the
11 future as well.

12 For purposes of today's hearing I will get
13 right to the point. There is a distinct difference
14 between how Canadian and U.S. support of port
15 infrastructure development, including intermodal rail
16 services, are provided. I believe the policy
17 differences and levels of funding support are
18 drastically impacting how intermodal cargo moves in
19 and out of the United States, and this should be a
20 major consideration that you consider as you
21 contemplate this merger.

22 Geography and population have played a large

1 role in the Canadian government's support of port
2 development and allowed it to a far greater extent
3 than what we do in the United States. The lesser
4 population density has allowed Canadian authorities to
5 target financial support on fewer ports.

6 Canada has two port complexes on the west
7 Coast, Vancouver and Prince Rupert Sound, and two on
8 the East Coast, Halifax and Montreal, that handle over
9 250,000 TEUs annually. By way of comparison, the
10 United States has 15 port complexes that are scattered
11 throughout the West Coast, the Gulf Coast and the East
12 Coast that handle over 250,000 TEUs of cargo. Because
13 of population density most U.S. ports have focused on
14 the market for U.S. destined cargos, whereas Canadian
15 ports rely heavily on transshipment of U.S. cargos
16 through Canadian ports. In effect, Canadian ports and
17 railroads are targeting U.S. consumers.

18 Canada's constitution, the British North
19 America Act of 1867, vested jurisdiction over Canadian
20 ports to the Canadian federal government, and while
21 modifications to the Canada Marine Act made at the
22 turn of the century provided for greater level of

1 local controls, Canadian ports are still classified as
2 agents of Her Majesty in the right of Canada.

3 The opposite is true in the United States,
4 where control over U.S. ports is diffused between
5 states and municipal governments and the private
6 sector. In the United States, in *Gibbons Versus Ogden*
7 the Supreme Court held that the Commerce Clause,
8 Article 1, Section 8, Clause 3 of the United States
9 Constitution grants the federal government the right
10 to regulate navigation. This primarily confers the
11 right to regulate safety of navigation.

12 The regulation of ports is explicitly dealt
13 with under the provisions of the United States
14 Constitution, Article 1, Section 9, Clause 6, which
15 provides in pertinent part that no preference shall be
16 given by any regulation of commerce or revenue to the
17 ports of one state over another. This has been
18 construed to confer either state or local control of
19 U.S. ports to local authorities and constrain the
20 level of federal government and involvement in port
21 modernization and expansion.

22 I contend that this fundamental difference

1 between U.S. and Canadian policy works to the
2 detriment of U.S. ports and in favor of Canadian ports
3 attracting transshipment of U.S. cargo through Canada.
4 Clearly, Canada should not be constrained to adopt
5 policies supporting utilization of their own ports,
6 but we must do all that we can to address the market
7 inequity between Canada's support of its ports and
8 U.S. efforts and the competition of U.S. bound cargo
9 that's cargo being used by our consumers.

10 Cognizant of the need to stay away from
11 xenophobic diatribe, I believe it's important to
12 recognize the role played by government policies for
13 support and the implications that this has made in the
14 diversion of trade from U.S. ports to Canadian ports.
15 I believe the proposed merger will further exacerbate
16 cargo diversion to Canada and could also potentially
17 harm U.S.-based railroads in their efforts to expand
18 intermodal rail capacity as intermodal rail revenues
19 shift northward. We need U.S. railroads that service
20 the U.S. ports to do much better. We need that
21 service. It's vital to allow our ports to continue to
22 expand.

1 In 2005 the Canadian federal government
2 initiated the Asia-Pacific Gateway and Corridors
3 initiative to provide infrastructure to benefit
4 western Canadian ports to increase Canada's share of
5 Asia-Pacific commerce. This in turn benefited the two
6 Canadian railroads primarily providing service at
7 those ports.

8 From 2006 to 2018 the government of Canada
9 funding for this program was Canadian 17 billion
10 dollars. The bulk of the funding went to the ports of
11 Vancouver and Prince Rupert Sound for enhancements to
12 terminal affiliated rail and road intermodal systems.
13 In 2017 the Canadian federal government established
14 the National Transportation Corridors Fund to
15 establish a merit-based program for facilitation of a
16 similar program, but to extend it throughout Canada
17 over the next eleven years.

18 Additional funding for this program and
19 supplemental funds increased total levels to \$4.2
20 billion of investment, and there has been further
21 efforts to expand this program. These are programs to
22 establish freight gateways into the United States.

1 Canada's initial target focus was on the
2 development of the port of Vancouver on the newly
3 established Pacific Coast gateway and the port of
4 Prince Rupert Sound by drawing on dedicated federal
5 resources. The success in Canada in capturing Pacific
6 Coast trade of U.S. bound cargo is now being pursued
7 in the Atlantic Coast trade. Major expansion plans
8 are under way in both the Canadian East Coast ports of
9 Montreal and Halifax, and the Canadian government has
10 major investment plans for the port of St. John in New
11 Brunswick. These expansion projects are aimed at
12 taking U.S. destined cargo from U.S. East Coast ports
13 by enhancing intermodal services through Canadian
14 ports to the inland railroad terminals of the United
15 States.

16 As mentioned previously, Canada's ability to
17 focus federal resources for major port entry points is
18 not only more favorable because of policies
19 authorizing federal control, but also as a as a result
20 of a smaller population and geography. In essence,
21 they can focus the federal resources to targeted port
22 entryway points, and in the United States we don't

1 have that choice. Our nation desperately needs
2 railroad service at U.S. ports. There is simply not
3 enough space or land in our major port areas to
4 continue to rely mostly on trucking distribution.

5 For instance, I recently spoke with Gene
6 Seroka, the port director from LA, who indicated that
7 60 percent of his total trade is carried by railroads
8 into the interior of the United States, 30 on dock and
9 30 from the railroad terminals themselves.

10 Since the start of the pandemic I have
11 visited major ports and freight gateways in the United
12 States, and the message from the maritime industry
13 leaders is always the same. They need expanded rail
14 services so that cargo can move expediently and
15 efficiently. Quite frankly, there has to be better
16 coordination in moving boxes from our ports and on to
17 the rail system. That means more capacity and
18 equipment, a willingness to communicate, and I don't
19 believe that our existing railroad infrastructure
20 would be able to handle the international trade
21 without committed railroad investment and
22 participation.

1 What concerns me is that other countries in
2 their logistical businesses have already figured this
3 out. The U.S. has been slow to make meaningful
4 investments in connecting our maritime infrastructure
5 to our railroad network. We need to make substantial
6 private and public sector investments to help connect
7 inland rail, trucking and barge services, and we are
8 simply running out of room at our major port entry
9 points.

10 For instance, in terms of the market, market
11 share for U.S. bound cargo from the West Coast in 2007
12 was dominated by U.S. ports with over 60 percent
13 market share. In the 15 years since that time the
14 market share has shifted with Canadian ports now
15 handling 60 percent of the U.S. cargo that comes in to
16 the United States.

17 Concluding, I would offer the following
18 observations as you consider the merits of the
19 proposed transaction. The Canadian constitution and
20 policy have resulted in the development of a national
21 policy allowing the Canadian government to focus
22 resources on intermodal trade gateway ports. In

1 contrast, the U.S. constitution and policy has been a
2 more hands-off approach and allowed U.S. ports to be
3 developed through a more limited perspective in
4 state and local government policies. Since 2005 the
5 Canadian government has worked closely to help finance
6 two Pacific gateway ports and, more recently, two
7 Atlantic Coast gateway ports to attract U.S. bound
8 cargo to benefit the Canadian ports and the Canadian
9 railroads. U.S. ports receive a less proportionate
10 share of financing support than their Canadian
11 counterparts, and evidence suggests that the greater
12 levels of support seem to be paying off with a greater
13 share of U.S. bound cargo.

14 The Canadian Pacific and Kansas City
15 Southern proposed merger expansion is explicitly aimed
16 at continuing to build on policies to use Canadian
17 ports and Canadian railroads to carry U.S. destined
18 cargo. The proposed transaction will undoubtedly
19 provide some benefit to different areas and segments
20 of the U.S. shipping community. However, in my view
21 this benefit is outweighed by the potential economic
22 loss to the U.S.-based intermodal industry.

1 This is an industry which includes U.S.
2 longshoremen and rail labor, port trucking companies,
3 U.S.-based intermodal railroads servicing U.S. ports,
4 warehousing and distribution centers that service U.S.
5 ports, and other entities that handle cargo bound for
6 U.S. ports.

7 I urge that you closely consider this vital
8 segment as you consider the competitive values of the
9 transaction. Thank you for all that you do with our
10 nation's rail system, thank you for the opportunity to
11 appear today, and I'm happy to answer any questions
12 they have.

13 CHAIRMAN OBERMAN: Thank you, Commissioner.
14 I think Member Hedlund has a question.

15 BOARD MEMBER HEDLUND: Thank you,
16 Commissioner, and thank you for your extensive remarks
17 about Canadian ports. This is a bit of a history
18 walk. I know that American railroads in the 1890s
19 worked for very, very hard to get to Mexican ports.
20 Arthur Stillwell, the founder of Kansas City Southern,
21 tried very, very hard to get to a port in Mexico and
22 was only stopped by the Mexican Revolution. Santa Fe

1 battled the Denver and Rio Grande to get over the pass
2 to get into Mexico, a battle which the Santa Fe won
3 literally at the point of a gun. That's another
4 story.

5 So my question to you, sir: Do you have any
6 concern about competition from Mexican ports that
7 might be enhanced by this merger?

8 MR. BENTZEL: I would say that the Mexican
9 intermodal system has developed less slowly than the
10 Canadian intermodal system, so a major diversion has
11 occurred through Canadian ports because they're more
12 efficient and they're more capable of providing
13 high-level services.

14 We are seeing some potential diversion to
15 the Mexican ports. The longshoreman's union contract
16 for the West Coast covers all of the ports in the
17 United States and all of the ports in Canada. It does
18 not cover Mexico, and it's a coast-wide contract, so
19 we're having some of the same issues in the maritime
20 world with concerns that that contract would not be
21 renegotiated.

22 We have seen some diversion to Mexico, but

1 it hasn't been to the extent, and that's just because
2 that infrastructure surrounding intermodal shipping is
3 not developed as well in Mexico.

4 CHAIRMAN OBERMAN: Commissioner, I thank you
5 also for the well thought out presentation here. And,
6 like you, I and, I think, other board members have
7 been immersed in this supply chain issue over the last
8 two years. It's hard not be immersed when the White
9 House calls every other day asking how are we solving
10 this problem.

11 It's quite clear to me, and I'm only
12 speaking for myself, that a significant part of our
13 problem in this country is inadequate infrastructure,
14 short term thinking on both ports, but also the
15 railroads, in terms of carrying their load of
16 intermodal traffic, none of which, it seems to me, is
17 directly related to what the impacts of what this
18 proposed merger might be.

19 I think that we should note regardless --
20 I'm happy to be enlightened on the constitutional
21 history of port development compared to Canada,
22 something I didn't know about, but none of that seems

1 to have stopped the Congress from passing the
2 bipartisan infrastructure bill, which has, according
3 to my notes \$17 billion designated for port
4 development and of course billions more that are
5 available for grants potentially for rail. And we
6 need to increase our infrastructure.

7 I wonder if the development of the Canadian
8 ports hasn't been spurred by shippers finding our
9 ports inadequate. They wouldn't be going to those
10 ports if they could get the service they needed in our
11 ports and from our railroads. So it seem to me we
12 have to keep our eye on the ball, and I haven't sorted
13 out in my own mind the Canadian -- what is it? -- the
14 North American Canada Act of 1867 and how that relates
15 to the standards for mergers in railroads under our
16 statutes.

17 But, to me, I'd like to see more competition
18 from our ports and our railroads so that everybody
19 benefits. We are a continent that has a pretty
20 interlocking economy, in my view, and the fact that
21 the Canadians may be able to more efficiently get
22 goods that we need is not necessarily a bad thing as

1 long as we do our part in our country, which I think,
2 quite frankly, we've fallen down in this area.

3 So I think some of this may be amended by
4 the Congress's recent actions.

5 MR. BENTZEL: It's as perspective that I
6 could completely agree with. I'm looking at it
7 throughout the lens of our port industry and services
8 that they provide, but it's clear that there's
9 challenges moving -- we had a 27 percent increase in
10 intermodal cargo since the pandemic, so there's been a
11 challenge with that. And there's been challenges in
12 Canada. But, clearly, they've done a little bit
13 better job, and their intent in this merger is to use
14 the Canadian ports, so I thought it would be good to
15 bring to your notice that that is one of the primary
16 objectives.

17 CHAIRMAN OBERMAN: And we much appreciate
18 it. And we're going to continue to work together, and
19 the room is yours when you need it.

20 MR. BENTZEL: Thank you very much,
21 Mr. Chairman. It's nice to see all of the board
22 members here.

1 CHAIRMAN OBERMAN: Member Primus has a
2 question.

3 BOARD MEMBER PRIMUS: I just have a couple
4 of questions. In your statement you kind of alluded
5 to the fact that you would be put in an unfair
6 competition model by setting this transaction up. Are
7 there any positives to this that you see?

8 MR. BENTZEL: You know, I think that there's
9 going to be some positives to individual areas where
10 they get additional services as a result of this and
11 enhanced efficiency, so I can't say that it would have
12 a negative impact looking at some of those other
13 issues, other areas. I would really defer to your
14 evaluation on that.

15 I do think that it is aimed at intermodal
16 cargo shipments into the United States. If you review
17 the literature, the Canadian government statutes and
18 the policies that they support, they're clearly
19 looking at our market and supplying cargo to our
20 market. I think, for instance, some of the Gulf Coast
21 ports really have a different view from this. I think
22 that the Atlantic Coast's northern ports and LA, Long

1 Beach, Oakland and the Pacific Northwest ports are
2 concerned about it. But I think that every time you
3 have a merger there's going to be some winners and
4 losers, but I really haven't focused that much on that
5 in the context of this merger.

6 BOARD MEMBER PRIMUS: And just to follow up,
7 you had spoken about how Canada has four major ports,
8 two in the east and two in the west and we have 15.
9 Do you think that if you have increased competition
10 and increased lanes and opportunities that are opening
11 up and you're looking at NAFTA 2.0 and the expansion
12 of trade and opportunities, do you think that would
13 actually get some of the U.S. ports to start being
14 more proactive as well at the Class I's you're looking
15 at how to increase their development in the ports?

16 MR. BENTZEL: You now, we're capacity
17 constrained right now in the United States. Most of
18 our terminals are at a hundred percent capacity. Our
19 problem is fluidity, so moving cargo through the ports
20 is the major challenge that we have. So there's just
21 no space. Infrastructure funding will help to some
22 extent, but on the West Coast our problem is that I

1 don't know if we can build anymore. There's no
2 opportunity to get through the environmental
3 permitting process major projects for expansion, so
4 what we're looking at is the railroad system could
5 provide expedited services through the port complex to
6 places inland where it could be handled better.

7 So I think that infrastructure enhancements
8 are going to be difficult to our port infrastructure.
9 What we're looking at is enhancements to fluidity, and
10 the railroad system is the primary way to get cargo
11 through a port and out into the system where it can be
12 handled. But if you go to the port of LA Long Beach
13 the containers are stacked six high, 60 feet high for
14 miles, and we're taking cargo out of ports right now
15 offsite just so we can handle cargo. So there's
16 capacity constraints through the system right now, and
17 I don't know what the answer is to that.

18 BOARD MEMBER PRIMUS: Thank you.

19 CHAIRMAN OBERMAN: Any others?

20 Commissioner, thank you very much. We appreciate your
21 time and your thoughts.

22 All right. We will now proceed with Panel

1 III, and we have listed -- it looks like everybody is
2 here, but I'm going to read it off for the record --
3 Keith Creel, Patrick Ottensmeyer, John Brooks, James
4 Clements, Raymond Elphick, John Orr, Robert Majure,
5 David Meyer and Bill Mullins.

6 A five-minute break for the switchover here,
7 but don't anybody go anywhere. It will be short.

8 (Recess.)

9 CHAIRMAN OBERMAN: This is Panel III, which
10 is of course the representative of the applicant.
11 David, you wanted to make a comment on the record
12 before we actually begin the presentation.

13 MR. MEYER: Thank you, Chairman. Mr. Creel
14 will introduce the panel, but before we get started I
15 wanted to let you know that regarding the binder that
16 you have in front of you, the binder contains simply
17 copies of the slides.

18 Mr. Creel will introduce the panel, but
19 before we get started I just wanted to reassure you
20 that the binder that you have contains a copy of the
21 slide presentation in its entirety with only one
22 difference, and that is there are a couple of slides

1 at the very end. Dr. Majure, our economist, will be
2 speaking to issues where the underlying chart or graph
3 or document that he's referring to is a highly
4 confidential document. None of that will be discussed
5 on the public record, but, in the interest of pointing
6 the Board in the direction of what he's referring to,
7 we've provided you with an unredacted version of the
8 slide presentation. Everything that's in the slide
9 presentation that's redacted is something that's just
10 an extract directly from material that we've already
11 filed with the Board.

12 CHAIRMAN OBERMAN: I appreciate that, David,
13 and I think as you get to those points it would be
14 good to point it out so board members don't
15 inadvertently, which we may anyway, but we try to
16 avoid --

17 MR. MEYER: We'll be mindful of that. The
18 version on the screen will have a redacted view and
19 the version in your binder will not, so we'll let you
20 know that the material on that page is confidential.

21 CHAIRMAN OBERMAN: Got it. Very helpful.
22 Thank you.

1 MR. CREEL: Good morning, ladies and
2 gentlemen, honorable members of the Board. My name is
3 Keith Creel. I'm the CEO of Canadian Pacific. And if
4 the board approves our control application I'll be
5 honored to serve as the combined --

6 (Discussion off the record.)

7 MR. CREEL: So if I may, Chairman, I'll
8 start over. Good morning, ladies and gentlemen,
9 honorable members of the Board. My name is Keith
10 Creel, CEO of Canadian Pacific. And if the Board
11 approves our control application I will be honored to
12 serve as the CEO of the combined CPKC network. On
13 behalf of the entire CP team as well as our friends at
14 KC, and our broader regulatory team of lawyers and
15 experts, I thank each of you for the care and
16 seriousness with which the Board has been evaluating
17 our application.

18 There's certainly no doubt that the Board
19 has an important job to do in these proceedings to
20 assess if our proposal serves the public interest.
21 That said, we're honored to be before you today to
22 help you understand why we feel so strongly about the

1 public benefits our proposed CP/KCS transaction will
2 create.

3 There are several of us here at the table
4 today, and, while we have a lot of important facts to
5 share, we will strive to be concise and very brief.
6 Providing the Board an overview of our testimony, I
7 will open, conveying key highlights of the transaction
8 benefits and how we've been approaching the Board's
9 review process.

10 Next, my friend, Pat Ottensmeyer, KCS' CEO,
11 will provide his perspective on why this is the right
12 transaction and its customers as well as other
13 stakeholders.

14 John Brooks, CP's chief marketing officer,
15 will speak next to provide more detail on the key ways
16 in which the transaction will enhance CPKC's ability
17 to serve transportation customers and the U.S. economy
18 while, in the process, injecting new competition into
19 the U.S. rail industry.

20 After John Brooks we'll have John Orr, KCS's
21 chief operating officer, and Ray Elphick, CP's ABP
22 service and product design who is our service design

1 expert speak to our operating plan, which will be the
2 engine supporting the operating efficiencies and
3 exciting new service CPKC will be able to deliver.
4 They will also address briefly claims by some that our
5 operations will cause disruption.

6 Next up will be James Clements, senior VP
7 strategic planning and technology, who is also in
8 charge of the integration management office. As the
9 IMO leader, James is responsible for all the
10 integration planning that we're currently doing. He
11 will briefly explain how the two railroads are well
12 resourced, operating well, and poised with Board
13 approval to hit the ground running and begin
14 delivering the benefits of CPKC's new single line
15 services.

16 And, finally, you'll hear briefly from our
17 competition economist Bob Majure, who until recent was
18 one of the senior economists at the U.S. Department of
19 Justice's antitrust division. He will explain how the
20 transaction is pro-competitive and should not be
21 conditioned in a way that would hamper CPKC's ability
22 to compete more effectively with the new network this

1 transaction will create.

2 As you can see, we're also flanked with
3 regulatory counsel, Mr. David Meyer and Mr. Bill
4 Mullins, who will be able to address any questions the
5 Board might have that raise legal issues.

6 So let me kick things off by summarizing why
7 our proposal is in the public interest. It's a
8 three-legged stool. Our transaction creates huge
9 benefits that CP or KCS could not achieve without
10 combining. Significant new competition is chief among
11 them. Our transaction causes no public interest
12 harms, and the Board should take comfort on how
13 applicants are proposing to address the concerns about
14 the transaction that have been raised by others.

15 We've engaged in good faith with everyone.
16 We've entered formal settlement agreements with some,
17 and we've made a series of commitments designed to
18 reassure members of the public that the concern some
19 have will not materialize. The CPKC benefits are
20 extraordinary. They could not be achieved without the
21 combination.

22 Our combination creates an unparalleled

1 single line network connecting three nations. It's a
2 one in a lifetime combination to inject new
3 competition into the U.S. rail industry where every
4 existing customer has more options, not one less
5 option, and, in fact, many shippers will have an
6 alternative single line rail option where today they
7 only have one.

8 If the Board allows us to create the new
9 CPKC, I am personally committed to lead it through a
10 successful integration into 2026 and beyond. In
11 fairness to our family of railroaders, I can tell you
12 my words do not adequately capture how excited our
13 collective teams are about the opportunities
14 represented by this transaction. This is truly a once
15 in a lifetime opportunity, which explains why we've
16 been working so hard for so long to bring it to
17 fruition.

18 Combining CP and KCS, we will build a
19 railroad for the future, one that will serve customers
20 better, create new compensation and serve the public
21 interest by creating new markets, new access, new
22 shipper options and new capacity that will not be

1 created otherwise at a time we would all argue has
2 never been needed more for our nation's shippers.
3 Others on our panel will speak in somewhat more detail
4 about those benefits. In addition, our application
5 rebuttal offer extensive evidence on them. But it's
6 worth noting that the CP/KCS transaction is the kind
7 of rail combination that we feel the facts will prove
8 to the Board undeniably the real public interest
9 benefits across a broad spectrum of interests.

10 It supports new and better options for
11 shippers. There is not one less existing shipper
12 option than today. It supports investment in the U.S.
13 rail network that creates additional rail capacity
14 again at a time in our nation's history where it's
15 never been needed more, and it improves efficiency and
16 reduces unit cost, all of which add up to more robust
17 competition.

18 Simply said, our entire industry will have
19 to compete harder like they never have before to
20 become better railroads to be able to compete with the
21 benefits that a CPKC network will bring to shippers.
22 If approved, we will remain the smallest but the most

1 service centric and capable railroad in North America,
2 a true catalyst of competition.

3 Beyond the competitive benefits, our
4 combined network will foster safety and help improve
5 the environment by taking thousands of trucks annually
6 off the highway while enhancing the efficiency of
7 transportation and at the same time facilitate
8 passenger service. At Canadian Pacific we're
9 extremely proud of our proven industry best track
10 record of providing excellent passenger service while
11 coexisting providing excellent freight service at the
12 same time.

13 We have earned Amtrak's best in class
14 industry service awards as a testament to that
15 commitment, and our combination at the same time will
16 create jobs and support better working conditions and
17 not reduce any of our employees but grow and add
18 employees. I'm particularly proud as well of the
19 relationship at C that we've already begun to build
20 with the representative employees who will be the
21 backbone of the future CPKC operation.

22 I'm pleased to say today that we've not only

1 made tremendous progress in securing our required
2 implementing agreements. We've also pre-negotiated
3 industry leading progressive agreements where many
4 current KCS running trades employees in the
5 consolidated territories will receive substantial pay
6 raised while they enjoy scheduled time off and a much
7 better quality of life.

8 In turn, with our simplified agreements and
9 scheduled service our customers will experience much
10 better and much more reliable service. At the same
11 time, there are no public interest harms that flow
12 from this transaction that will have to be remedied or
13 that have to be offset to support the conclusion that
14 this transaction serves the public interest.

15 Again, there is no harm to competition
16 anywhere, no reduction in the number of serving
17 railroads, no elimination of competitive options.
18 Instead, there's more competition. And with emphasis
19 added, it's very noteworthy that the concerns about
20 competition come from the Class I's that have the most
21 to fear from our ability to compete harder. This fact
22 itself validates that the public stands to benefit

1 from CPKC's new services as UP, BNSF and CM will
2 undeniably have to work harder to compete with us.

3 Dr. Majure will address the issue of
4 competition in more depth, and to the point of service
5 disruption concerns, this combination will not be any
6 reflection of the challenged merger experience
7 shippers have endured in our industry's consolidation
8 past. There will be no service disruptions, no
9 reduction in the level of service customers will
10 receive, and, instead, our service will improve in our
11 combined network.

12 It's an undeniable fact that our success
13 depends on this. If our service becomes unreliable we
14 will not have a chance to attract the new traffic that
15 we've forecasted. This area of execution has been
16 given deep and careful thought and planning. Mr. Orr
17 and Mr. Elphick will summarize the planning and the
18 investments that will ensure the CPKC will handle its
19 future traffic without service disruption.

20 There will be no adverse impact on passenger
21 service by Amtrak of the commuter services that
22 coexist with CP and KCS freight trains. Again, at CP

1 we're proud to have earned Amtrak's support for our
2 transaction through our longstanding track record of
3 excellent service along with support from a host of
4 other passenger interests. To that point Mr. Elphick
5 will discuss why we're confident that we will not have
6 an adverse impact on Metra's commuter operations on
7 the lines that we share in the Chicago area.

8 We recognize that there will be some modest
9 local environmental impacts from the new traffic we
10 anticipate being attracted to our network. While we
11 acknowledge this is the kind of change that comes
12 along with the broader public benefits of creating new
13 and better transportation alternatives, the Board's
14 environmental staff is addressing appropriate
15 mitigation, and we've been very proactive in reaching
16 out to those communities to support reasonable steps
17 to address the localized concerns about the nation's
18 commerce flowing closer to their homes.

19 We've approached concerns about the
20 transaction's impacts with seriousness and willingness
21 to work reasonable solutions since the start, and we
22 remain committed to that process. While I'm certainly

1 close enough to the facts to know that the
2 transaction's public interest benefits are undeniable
3 truths, I also understand that not everyone sees the
4 transaction's public interest impacts exactly the way
5 we do.

6 So let me tell you how we have approached
7 concerns about the potential impacts of the
8 transaction. First, we've engaged proactively with
9 all parties expressing concerns. We've consistently
10 been open to reasonable steps to address concerns.
11 Second is a testament to our commitment. In many
12 cases we have reached formal agreements with numerous
13 parties: Amtrak; numerous communities in Iowa and
14 Illinois; in Iowa Davenport, Muscatine, Bettendorf,
15 LeClaire; in Illinois Pingree Grove, Hampshire, and
16 we're talking with many more, the Iowa state railroad
17 as well and Bayer.

18 We've had constructive and good faith
19 discussions with many other parties about the concerns
20 they've expressed to the Board and the conditions they
21 have sought. And I can tell you some of those
22 discussions continue, they're ongoing, and I will

1 refrain from commenting on them. But specifically,
2 that said, we will always remain open to trying to
3 work things out.

4 Unfortunately, in some cases reaching
5 agreement has proved impossible typically because
6 parties were seeking relief unrelated to or out of
7 proportion to any real impacts of this transaction.
8 Pressing their position in the proceedings was more
9 important to them than a reasonable solution. The
10 hope that they stood more to gain by asking for the
11 moon in hopes the Board would give them more and/or
12 fetter our ability to compete unfortunately was an
13 approach and a strategy that has played out to this
14 point by several parties. You will hear from these
15 parties in these proceedings.

16 Finally, we've made several important
17 commitments that reflect how confident we are that the
18 transaction will generate benefits for the public
19 interest which are captured on the summary chart or
20 proposed conditions. And I would be remiss not to
21 point out these are not remedies that are needed
22 because of risks we will create or harms our

1 combination will cause. Rather, they are reassurances
2 that we will not cause those harms or those risks.

3 Let me briefly run through them. We support
4 up to five years of oversight by the Board. We
5 welcome that period to be shortened once it becomes
6 clear that this transaction is not causing disruption
7 or harm. We will adhere to the commitments made in
8 the settlement agreements we've reached, the safety
9 implementation plan we have submitted to the FRA and
10 our voluntary mitigation commitments communicated to
11 the Office of Environmental Analysis. We accept the
12 New York Dock labor protective conditions, and we
13 expect to live up to and honor our on-the-record
14 commitments, our commitment to keep gateways open on
15 commercially reasonable terms and create no new
16 bottlenecks, which Mr. Brooks will cover in more
17 detail -- our CPKC service promise also will be
18 covered by Mr. Brooks -- our commitment to collaborate
19 with other users of the lines in Texas that KCS uses
20 today and that CPKC will depend upon to connect Mexico
21 with our U.S. network. It's in our interest to make
22 sure this part of our network works for all users, and

1 we're confident that it will.

2 We've reached out to UP and BNSF proactively
3 to start the collaborative process, and meetings are
4 scheduled with one of these parties and are in the
5 process of being scheduled with the other. We're also
6 committed to KCS's TIH shippers to make available the
7 terms of our existing settlement that we reached with
8 Bayer, and of course our meaningful and thoughtful
9 commitments to Metra.

10 Since I'm an operating guy let me say a few
11 more words about Metra, the railroad that runs in the
12 community I live in as well. Ray Elphick will give
13 more detail, but let me make it clear right from the
14 top that we are committed to being a good operating
15 partner to Metra. We think the record shows that we
16 perform well, but there's always room for constructive
17 improvement, and we will do our very best to live up
18 to that.

19 The transaction will not cause the impacts
20 to Metra's operations that they fear that are
21 outlined. We are committing to numerous steps to make
22 that clear. That said, Metra's proposed remedies,

1 which are billion in unneeded capital improvements and
2 a forced takeover of dispatching, are not needed and
3 in effect would be counterproductive. CP dispatching
4 with advantage that spans not only the Metra lines
5 near Chicago but approaches to those lines as far away
6 as St. Paul or Kansas City and dispatchers who
7 understand the priority Metra trains are entitled to
8 is the best way to ensure that trains operate well for
9 Metra and CP alike.

10 In closing, I want to highlight to the Board
11 this process to bring these two companies together to
12 create these unique benefits for all stakeholders
13 began more than two years ago when I woke up to the
14 news that a private equity investor was pursuing an
15 acquisition of KCS, and as a result of that pursuit
16 that we engaged in at CP we've been before the Board
17 for the last 18 months since filing our Notice of
18 Intent in March of last year. And while there's
19 certainly been bumps along the way and no shortage of
20 challenges, we've been steadfast in pursuing this
21 opportunity because it's so fundamentally
22 transformative. And, like I've said, it's truly a

1 once in a lifetime opportunity for CP and for the
2 public interest across our full spectrum of
3 stakeholders. This team is raring to go to begin
4 bringing the benefits of this transaction to our
5 current and our future customers.

6 I want to thank you again for your
7 attention, and unless you have any questions I'll pass
8 the baton to Pat to give you KCS's perspective on the
9 transaction.

10 CHAIRMAN OBERMAN: Thank you, Keith. I
11 think we'll move on to Pat.

12 MR. OTTENSMEYER: Thank you, Keith, and
13 thank you, Chairman Oberman and members of the Board for
14 the opportunity to speak today.

15 For KCS this process began more than two
16 years ago, when, as Keith mentioned, KCS received an
17 unsolicited purchase offer from a private equity firm.
18 After many challenges, board meetings and after
19 carefully considering other proposed transactions, I
20 can unequivocally say that this transaction with CP
21 best serves the public interest.

22 As Keith said, this transaction is good for

1 shippers, employees, shareholders, communities and the
2 overall economy. It has no anticompetitive impacts
3 and creates a strong, vibrant and effective competitor
4 throughout North America.

5 To know why this is in the best interest at
6 this time, it is important to understand the history
7 of KCS and why CP is the best next step in our
8 strategic vision to become the first North American
9 railroad.

10 Prior to 1993, we were in effect a large
11 switching railroad in the middle of the country
12 surrounded by railroads many times our size. We
13 depended almost entirely on interchange traffic and
14 could offer very few single line options. Largely
15 driven by our customers' desires to increase both
16 their single line and interchange options, KCS
17 undertook a series of transactions to expand our
18 reach.

19 The purchase of MidSouth provided our
20 customers with an east-west option that they did not
21 previously have, but we still depended on interchange.
22 It did allow us to start a new interline partnership

1 with Norfolk Southern for intermodal traffic to and
2 from the southeast, a partnership that was enhanced
3 and solidified with the MS LLC joint venture
4 transaction 13 years later.

5 Recognizing the importance that NAFTA could
6 bring for North America and realizing that Mexico was
7 beginning the process of privatizing its rail system,
8 in 1995 KCS purchased 49 percent interest in the Texas
9 Mexican Railway, which was owned by a Mexican shipping
10 line called TMM. This was a strategic risk, buying a
11 line that KCS did not actually connect to, but it was
12 the next logical step in creating a North American
13 railroad to provide our customers with service to and
14 from Mexico.

15 That strategy paid off. As a result of the
16 UP-SP merger in 1996, Tex-Mex was awarded trackage
17 rights to connect with KCS at Beaumont, Texas. This
18 allowed KCS to provide its customers and interchange
19 partners with direct access to the Mexican markets,
20 providing an alternative to UP's dominance of this
21 market.

22 In 1997 KCS acquired the Gateway Western and

1 Gateway Eastern. This acquisition gave shippers new
2 interchange options at St. Louis, all with the notion
3 of providing a third option for seamless service
4 between the U.S. markets and Mexico in competition
5 with UP and BNSF.

6 At the same time, to get closer to our
7 vision of a strong independent competitor for traffic
8 to and from Mexico, especially for automotive and
9 intermodal traffic, KCS partnered with TMM to purchase
10 the northeast rail concession of the federal Mexican
11 railroad, which was being privatized. UP bid on the
12 franchise, but TMM and KCS won the bid. KCS and TMM
13 named the newly privatized railroad TFM with KCS
14 owning a 49 percent share.

15 With the startup of the new privatized
16 service in June of 1997, KCS was able to provide
17 customers with new options into Mexico that had not
18 existed before. From 1997 to 2005 KCS did not
19 undertake any other acquisitions. Instead, we focused
20 on the vision of providing shippers, especially grain,
21 intermodal and automotive shippers, with that third
22 alternative into Mexico.

1 As KCS did not have single line access into
2 the grain markets of the Midwest or the automotive
3 markets of Chicago and Detroit, KCS had to rely on
4 marketing, haulage and joint line agreements with
5 other carriers to provide that service.

6 During this time KCS tried two different
7 ventures with IMRL, later acquired by CP. KCS also
8 entered into a marketing alliance with CN. These
9 ventures failed for several reasons, but mainly
10 because interline carriers do not share the same
11 vision, operating practices, long term capital plans
12 and financial incentives.

13 This inevitably leads to a breakdown of even
14 the best efforts to develop interline service in
15 competition with larger single line carriers. To help
16 remedy that problem, in 2005 KCS was able to acquire
17 control and eventually one hundred percent ownership
18 of Tex-Mex and TFM, which KCS renamed Kansas City
19 Southern de Mexico.

20 UP and BNSF vigorously opposed that
21 transaction. They made the same arguments that they
22 are making now, except substituting KCS for CP. They

1 argue that KCS would disadvantage UP at the Laredo
2 bridge. KCS would manipulate divisions to favor KCS
3 routings. Shippers would be forced to take longer KCS
4 routings at the expense of shorter UP and BNSF
5 routings.

6 The Board rejected these arguments in 2005,
7 and it should reject them again today. In the 17
8 years since the KCS/Tex Mex/TFM transaction, none of
9 the alleged harms have occurred, and no party has
10 complained to this Board until now. For the first
11 time in an argument fashioned to advance its position
12 in this case, BNSF has alleged that we foreclosed them
13 at the Laredo Robstown gateway.

14 We did not foreclose them. In fact, KCS and
15 KCSM did exactly what we told the Board in 2005 that
16 we would do. We created a strong independent
17 competitor for traffic to and from Mexico. We
18 improved service for customers regardless of whether
19 that traffic stayed on KCS or was interlined.

20 For the record, I would like to note that
21 none of the transactions that I just discussed
22 resulted in service problems or competitive

1 complaints. KCS has an outstanding record of merger
2 implementation and integration, and this transaction
3 will be no different. Since the 2005 KCSM deal, KCS
4 has done its best to compete, provide better service
5 without mergers and expand options for customers.

6 A successful example of that is the Meridian
7 Speedway exempted by the Board in 2006. Unlike the
8 previous marketing or alliance efforts, the Meridian
9 Speedway worked because we formed an actual joint
10 venture company with NS. As such, our vision and
11 interests are financially aligned.

12 The CP/KCS transaction does not impact the
13 Meridian Speedway. There is no basis for the Board to
14 use this transaction that undo the benefits of the
15 Meridian Speedway or to rewrite the terms of the deal
16 that NS made. There are no anticompetitive effects
17 for NS or CSX. Their concerns are not transaction
18 related. If there are changes to be made, they should
19 bring those ideas to CPKC and negotiate an appropriate
20 marketplace solution.

21 For another example of what we have done to
22 expand options for our shippers since the completion

1 of the 2005 transaction, one only needs to look at
2 what has happened on the former gateway lines. As
3 this slide shows, there's now significant traffic that
4 originates or terminates on the line or is
5 interchanged with other carriers at St. Louis. This
6 traffic was practically nonexistent when we bought the
7 line. We partnered with our shippers and developed
8 three new grain shuttle loading facilities on that
9 line for export to Mexico. This line is now the aorta
10 of the KCS grain franchise to Mexico. We also
11 developed new interline services with other carriers
12 at St. Louis and elsewhere.

13 The argument put forth by CN that between
14 Chicago and Kansas City there is existing parallel
15 competition between a CP single line move and a CN-KCS
16 joint line move so that the merger would result in a
17 loss of competitive options is simply not accurate.
18 There is almost no traffic that interlines with CN.
19 The line also does not compete against CP for
20 intermodal or automotive movements to or from Chicago.

21 Absent competitive harm, there is no reason
22 to condition this merger on the extraordinary remedy

1 of requiring CPKS to divest that line. In fact,
2 divestiture would create significant and substantial
3 harm. None of the customers who use this line support
4 the CN divestiture request. Instead, they support
5 CPKC, and you will hear from several of them in these
6 hearings.

7 So from 2005 until two years ago KCS did its
8 absolute best in competing and providing its
9 interchange partners and customers with options
10 between Mexico and the heartland of the U.S. Despite
11 this, KCS is still dependent upon interchange, with
12 about 80 percent of our traffic being interchange
13 traffic. We simply could not provide the same
14 seamless single line service to Mexico or elsewhere
15 that UP and BNSF could.

16 Accordingly, after being approached two
17 years ago by private equity looking to buy us, which
18 would not have required STB, it became clear that to
19 provide seamless single line service and to complete
20 the vision of a highly efficient new single line North
21 American railroad we had to partner to grow. After
22 much rigorous analysis, the KCS board of directors

1 determined that a strategic merger with one of our
2 interline partners was the best way to go. We
3 eventually selected CP based on the procompetitive and
4 transformative nature of this transaction.

5 So, in conclusion, and you've seen this
6 slide before, but now knowing a little bit of our
7 history and our network, you can easily see how it
8 completes our vision of developing an independent
9 single line alternative that will serve all of North
10 America.

11 The CP/KCS transaction presents a unique
12 opportunity to achieve the Board's public interest
13 goals. CPKC will facilitate USMCA trade flows, inject
14 new competition and new capacity into the U.S. rail
15 network, improve safety, grow employment, facilitate
16 new passenger service and has net positive
17 environmental benefits.

18 It puts two well managed and well run
19 like-minded railroads who both have a commitment to
20 safety and customer service together. I urge the
21 Board to approve this transaction without conditions
22 other than those that we have already agreed to.

1 And, with that, unless there are questions,
2 I will pass the microphone to Mr. Brooks.

3 CHAIRMAN OBERMAN: Thank you, Pat. I think
4 we'll hold and go ahead with Mr. Brooks.

5 MR. BROOKS: Good morning. I'd like to
6 thank the Board for the opportunity to speak today.
7 My name is John Brooks, and I'm Canadian Pacific's
8 executive vice president and chief marketing officer.
9 I've been railroading on the commercial side of the
10 industry for about 28 years. I started my career at
11 the UP. I then went to the shortline industry and
12 spent about 12 years there, and I've spent the past 12
13 years at Canadian Pacific.

14 As Keith said, I'm going to spend some time
15 today to talk about some of the benefits that will
16 result from the proposed CP/KCS combination and also
17 try to address some of the other issues raised by some
18 of the other commenters.

19 From my vantage as CP's chief marketing
20 officer, the benefits to shippers by enabling CPKC to
21 offer new and improved transportation options to
22 better meet and service customers' needs at a time

1 when North America needs it more than ever, the supply
2 chains we're phasing today need optionality and they
3 need greater resiliency. And in the process of doing
4 this, we will also drive greater competition across
5 all elements of the marketplace, including with other
6 Class I's and trucks. There's no doubt we have
7 ambitious goals, and the only way I see us achieving
8 those goals is by giving customers more and better
9 options, not taking away any of their existing
10 options.

11 Our success will clearly depend on our
12 ability to deliver capacity and service at competitive
13 economics. The only obstacle we see, and as Keith
14 mentioned, are the requests for protection from some
15 of the other Class I's who are now going to have to
16 compete at a higher level.

17 So let me begin by saying the driving force
18 for this transaction is about growth. It's growth for
19 our customers, and it's growth for CPKC by providing
20 transportation options that CP or KCS could never
21 offer independently. Since the time we've announced
22 our attempt to combine these networks, I can tell you

1 I've met with hundreds of customers, many of them
2 multiple times, with the objective to sit and listen
3 to their needs and begin to really understand what
4 they believe the benefits of this combination will be.
5 This process with the customers has really created the
6 core drivers as you think about what our integration
7 process is going to look like, but it will also create
8 the foundation of what Ray and John Orr will talk
9 about, and that's what our service needs to be to be
10 successful in the marketplace.

11 Let me emphasize that, based on my meetings
12 with customers, they prefer single line haul
13 transportation options over most interline service
14 options. At CP and KCS I can tell you in terms of the
15 Class I railroads we're kind of like the shortlines of
16 the Class I railroad industry. Because of that our
17 reach is limited, and we depend on the ability -- our
18 customers depend on our ability to create those
19 interline solutions.

20 Our CP/KCS ice pick initiative that I wrote
21 about in my verified statement and countless other
22 initiatives that I've been part of over my years have

1 taught us that single line hauls improve customer
2 shipment reliability, efficient use of capacity, it
3 decreases cycle times, it improves economics and it
4 enables investment for growth. Like CMIC 20 years
5 ago, the CP/KCS combination is essential to enable
6 these north-south networks, allowing customers to
7 realize the benefits of this new, highly competitive
8 transportation artery.

9 Now, if I can, I'd like to take the Board
10 through a few of our business segments and provide
11 some additional color on the opportunities we have
12 identified in collaboration with our customers. So
13 let me start with the opportunities this transaction
14 will unlock for domestic and international intermodal
15 customers.

16 Based on the working sessions we've had with
17 these customers and the success I think we've had at
18 growing intermodal at Canadian Pacific, we will create
19 a premiere north-south superhighway linking producers
20 and consumers across three nations. Our intermodal
21 product will create new single line haul competition
22 for the existing Class I and trucks by offering

1 service offerings that just flat out don't exist
2 today.

3 We'll give customers the speed, capacity and
4 consistency that many of them lack today with their
5 current service providers. We will offer seamless
6 service between terminals in major markets such as
7 Mexico City, Monterey, up to Dallas, Chicago and into
8 Canada to places such as Toronto. These new routes
9 are additive to the interline routes that exist today,
10 and that means these customers will have more choices
11 in the marketplace.

12 We're working with customers that you're
13 going to hear from this week which are transporting
14 almost a hundred percent of their freight today by
15 truck. We're working with these customers to develop
16 and test what our new intermodal service needs to look
17 like. As an example, one large produce customer
18 during peak times is shipping nearly 50 to 100 trucks
19 per day from Mexico into the U.S. and up into Canada.
20 This non-rail served customer today will convert to
21 intermodal by loading specialized equipment in Mexico
22 or at the border that will ride our new route up to

1 Chicago for distribution to a variety of upper Midwest
2 markets. Then this equipment that's used for this
3 route will be repositioned and reloaded with proteins
4 and other perishable goods for return shipments into
5 Texas or Mexico for delivery into those markets.

6 CHAIRMAN OBERMAN: Just so I understand what
7 you're saying there, are you saying that the movement
8 in Mexico to the border will be by truck, and then at
9 the U.S. border -- could you just describe that again
10 so I understand?

11 MR. BROOKS: So we're actually looking at
12 both alternatives there, Chairman Oberman.
13 Principally, it would be a truck haul within Mexico
14 into like Monterey or a Mexican based ramp loaded into
15 the equipment and then moved single line haul up to
16 the destination.

17 CHAIRMAN OBERMAN: And I think you said
18 specialized equipment. Is it something different than
19 a usual container?

20 MR. BROOKS: In this case I'm speaking -- it
21 would be a refrigerated container.

22 CHAIRMAN OBERMAN: And are these today

1 trucks going all the way to Chicago?

2 MR. BROOKS: Yes, they are.

3 CHAIRMAN OBERMAN: Okay. Thank you. And I
4 don't know if you were going to get to it, but I would
5 be interested in hearing a description of other
6 examples, because I think we've seen the number 64,000
7 trucks that you estimate being removed from the
8 highways, something near and dear to our hearts, so if
9 you could elaborate on that, it would be enlightening
10 for us.

11 MR. BROOKS: I was doing the math a little
12 bit this morning. This opportunity alone could pull
13 about 15,000 to 20,000 of those trucks alone, and this
14 is with one customer, and you're going to hear from
15 this customer this week.

16 I think the neat thing about this
17 opportunity is that's for the northbound movement.
18 That equipment, then, will be repositioned in the
19 southbound movement. All that freight today is also
20 moving by truck. And, actually, the description of
21 this opportunity is something -- it's an intermodal
22 ecosystem that doesn't exist today, but with CPKC, as

1 you've alluded to, it will take trucks off the road
2 and will certainly help to reduce greenhouse gas
3 emissions for the benefits of all.

4 Shifting gears to the international side of
5 the business, we're going to offer a new menu of
6 eleven port options that span across Canada, the U.S.
7 and Mexico designed to give U.S. consumers more
8 options to receive their goods. We are particularly
9 excited about the link between the port of Lazaro
10 Cardenas up into Texas and also up into the upper
11 Midwest, providing another competitive option and
12 escape valve for traffic that flows by a
13 variety of other ports. Lazaro will not come close to
14 replacing LA Long Beach or putting U.S. ports out of
15 business, but, rather, it provides access to new
16 capacity for U.S. consumers.

17 Our interline testing in this area, which
18 doesn't have the advantages of single line service,
19 shows that we can offer an attractive service offering
20 that is currently seven days from vessel arrival in
21 Lazaro to availability in Chicago. Our discussions
22 with the steamship line carriers and also the

1 beneficial cargo owners, so the retailers that have
2 their products on these ships, indicate that they want
3 more options, they want to turn their assets faster,
4 and they want to be able to get their products
5 reliably to retailers across the United States.

6 Finally, CN's proposal on the sale of KCS's
7 network east of Kansas City along with a 50 percent
8 interest in KCS's IFG intermodal facility is
9 troublesome. CN's interest in this facility would
10 enable veto power over our development of the
11 facility, which will be a critical hub for our
12 intermodal product.

13 CP has a strong track record of working with
14 our customers to develop the land around our
15 terminals, and I can tell you that the IFG facility
16 today is attracting strong interest for the
17 development of new warehousing, container export
18 programs and new transload solutions. So let me
19 emphasize the customer benefits identified extend to
20 the entire KCS system and cannot be fully realized if
21 we're ordered to sell off part of the KCS network.

22 I'd like to shift to the next slide and talk

1 about our grain and ag products, which is timely. The
2 opportunity here for farmers, grain and food companies
3 is powerful. If you could look at the mop, it
4 combines a combination that will bring together an
5 origin rich CP network with a destination rich KCS
6 network.

7 Grain and ag products have always been a
8 strength of the U.S. CP franchise, but without a route
9 that goes beyond Kansas City, Chicago or out to the
10 P&W terminals out west, we've struggled and have had
11 limited options to provide farmers and merchandisers
12 with market outlets as we become fully dependent on
13 interline carriers to reach those necessary markets.

14 KCS's network is faced with a similar
15 dilemma in that its reach into the major growing areas
16 is limited. However, when you combine the two
17 networks CPKC will offer new single line service to
18 markets for grain and ag products customers
19 originating across the upper Midwest with consumers in
20 St. Louis, the south central states, down to the Gulf
21 and ultimately into Mexico. I can tell you we're in
22 active discussions with these shippers that are ready

1 to make new expansion investments contingent on this
2 transaction in our 8,500 foot high-efficiency train
3 product.

4 Our grain service model at CP was designed
5 in partnership with our customers and delivers new
6 capacity to grain handling facilities. We see an
7 opportunity for over \$250 million of customer
8 investments in grain elevators, crush plants and new
9 terminals.

10 One final point on the grain area. The
11 Springfield and St. Louis lines are critical arteries
12 for this base KCS business, as Pat spoke to, and new
13 CPKC single line access into these markets. These line
14 segments will unlock new service for customers into
15 St. Louis. It will connect both rail and river
16 fertilizer to the farm fields across the central
17 states and is a critical area where this new grain
18 investment is planned. CN's proposal will inject
19 unnecessary complexities to the line and deprive the
20 customers in this region of their ability to
21 capitalize on the benefits of our transaction.

22 We'll go to the next slide. With respect to

1 the automotive area, this is one area where CPKC
2 creates much new competition or, as we say, a lot of
3 constructive tension as in any other lines of business
4 we serve. Here we'll bring together a fairly small CP
5 auto network with a KCS network in Mexico that is rich
6 in both automobile production plants and the need for
7 auto parts.

8 Combined, the new network will compete to
9 serve 23 production facilities and will utilize our
10 single line haul north-south service to create an
11 ecosystem for automobiles and auto parts linking
12 regions in Ontario, Detroit and Chicago with Texas and
13 Mexico. CP's underutilized auto compound capacity
14 when linked with KCS's production plants will unlock
15 more choices and create head-to-head competition for
16 automakers into these key markets.

17 In the energy chemicals segment KCS's
18 network provides access to a host of chemical and
19 petroleum facilities in the Gulf while CP's network
20 serves northern Alberta chemical and oil producing
21 regions of Canada. The transaction will more
22 effectively link these two regions, providing a safer

1 link for customers that operate not only in both
2 markets but also new product and source competition
3 for those that don't. The benefits of CPKC single
4 line haul service will help enable the advancement of
5 transitioning Alberta's crude by rail to a safer
6 nonhazardous shipment of crude in the form of DRU-bit.

7 In addition, the same kind of single line
8 advantages will also drive benefits to our merchandise
9 customers of all sizes with access to markets through
10 direct service, but also through our vast transload
11 and shortline connections. Having personal extensive
12 background in the shortline railroad industry, I
13 understand the struggles that these properties have
14 effectively with developing interline solutions and
15 creating more options for their customers.

16 For CP and KCS the enabled revenue from our
17 shortline connections and transloads effectively make
18 these our largest business partners. We equally
19 depend on them, and working through these partners we
20 see opportunities to improve our service, extend their
21 reach and create new competition.

22 A great example in this area is with Texas

1 being the largest consumption market for lumber and
2 construction materials. There's an opportunity to
3 work with those transloads in that region and also
4 those shortline partners to extend their reach up into
5 the upper Midwest and producers also in Canada.

6 I could go on for hours to talk about the
7 benefits and the color I've had with these customer
8 interactions, but I'd like to pivot now and touch on
9 three additional points for the Board around some of
10 the concerns and proposals raised by some of the other
11 commenters.

12 First, despite our extended network CPKC
13 will offer customers, we'll still be a small fish in a
14 big pond, and we will have strong incentives to
15 continue supporting interline options and keeping
16 gateways open with all our connecting carriers. In
17 other words, CPKC's interest in serving our customers
18 well and attracting their business means we're going
19 to have to continue to support and will continue to
20 support interline options if that's what the customer
21 chooses.

22 In my experience, if you work closely with

1 your customer and you give them options and you
2 understand their business and you maximize their
3 success in the marketplace, it usually serves you
4 well. It gives you the opportunity to grow, and
5 that's what we strive for at CPKC. Ultimately, we
6 believe the ability to offer CPKC single line service,
7 new capacity and attractive pricing will win the day.
8 But if customers want, they will still be able to
9 choose all the other interline options that they have
10 available to them.

11 Number two, the second area. The conditions
12 UP and BNSF have proposed will not preserve anything
13 other than their own continued dominance. They look
14 to create a new set of rate regulations that will
15 limit our flexibility to improved single line rates
16 and service. In my mind this undermines competition.
17 Our economist, Bob Majure, will speak to this in more
18 economic terms, but, as I think about it, mileage
19 prorate divisions for CPKC, UP or BNSF that are
20 mathematically derived from the single line rates we
21 offer for the same movement is anticompetitive. It
22 essentially takes the competitive bidding process out

1 of the hands of the customer and turns it over to the
2 railroads.

3 This methodology actually also creates a
4 disincentive for CPKC to offer attractive rates for
5 our new single line options. Further, both approaches
6 would give UP or BNSF a windfall, as many of CP or
7 KCS's rate factors today on interline routes are
8 priced above what a mileage prorate would dictate. In
9 my mind, customers should have the right to control
10 and choose the best routing and pricing option. The
11 notion that we should be regulated in terms of our
12 interline divisions based on a rigid structure is
13 contrary, I think, to how customers want to bid their
14 traffic options, but also how the real world works in
15 making rates.

16 Finally, I'd like to speak to the importance
17 of capacity and service to our customers. At the end
18 of the day, our success will purely depend on
19 attracting new rail traffic to our network, and we're
20 going to do that either by taking it from other
21 railroads, we're going to do it by taking trucks off
22 the road, or we're going to do it by generating new

1 economic activity. Our routes aren't always going to
2 be the shortest, but what I've heard from customers is
3 they want a network that they can depend on in terms
4 of single line routes, new capacity and reliable
5 service.

6 Customers are looking for the capacity to
7 grow, and our commitment is, If we sell you our
8 capacity we will protect the movement of your goods on
9 our network. It's a simple concept at Canadian
10 Pacific, but one other others simply struggle to
11 execute on.

12 From our discussions as recent as last week
13 with our customer advisory council, we know service is
14 a critical component of the CPKC value proposition.
15 We have no reluctance to make our service promise both
16 to our current and prospective customers.

17 The promise is outlined by five pillars:
18 Plan thoroughly for transaction implementation. We're
19 well into that. Monitor our post-transaction
20 performance. Transparently report on our performance.
21 An important one, proactively communicate and consult
22 with our customers and ultimately resolve any concerns

1 and promptly fix any issues. Through this promise we
2 are offering affirmative better solutions for
3 customers and we'll be proactive in engaging to ensure
4 we're delivering those promises.

5 So I'm going to stop and I'll now turn it
6 over to John Orr and Ray Elphick that are going to
7 talk through how we're going to take those benefits
8 and operationalize them. Thank you.

9 BOARD MEMBER HEDLUND: Mr. Chairman, can I
10 ask a clarifying --

11 CHAIRMAN OBERMAN: Go ahead, Karen.

12 BOARD MEMBER HEDLUND: Thank you for your
13 comments. If I don't ask this question now, I'll
14 forget what it was. Actually, two questions.
15 Mr. Brooks, you said it currently takes seven days to
16 get from Lazaro to Chicago, or with the combined
17 system it will take seven days?

18 MR. BROOKS: The test runs -- we're running
19 this service about once a month right now, and in the
20 test runs we've been able to land in about that seven
21 days.

22 BOARD MEMBER HEDLUND: Seven days. What

1 would it currently take today?

2 MR. BROOKS: Currently, we've been able to
3 land in around that seven day mark.

4 BOARD MEMBER HEDLUND: I See.

5 MR. BROOKS: The opportunity is with the
6 combined network to even see if we can shave more time
7 off that and add consistency to that service.

8 BOARD MEMBER HEDLUND: I see.

9 MR. CREEL: Member Hedlund, if I can add a
10 bit of color to that. So that particular train, we
11 call it a hotshot dedicated train. It essentially
12 means it's a green light train. We move other trains
13 out of the way essentially to test the model to see
14 what's possible. However, to sustain that it requires
15 the investment that this transaction would unlock to
16 create the siding capacity, the additional rail
17 capacity, so that we don't have a detrimental impact
18 to our existing customers.

19 BOARD MEMBER HEDLUND: Got it. Okay. And
20 then the other clarification. I really appreciate
21 what you've said about traffic originating in the
22 United States and going to Mexico or going to Canada,

1 because we're focused here on the public benefits to
2 shippers in the United States, not to shippers in
3 Mexico going to Canada and vice versa.

4 In terms of your estimate of additional
5 traffic that this merger would attract, do you have an
6 estimate of what percentage of that traffic would
7 originate or end in the United States versus traffic
8 that's going to go from Mexico to Canada?

9 MR. BROOKS: So, Member Hedlund, we
10 definitely would want to get back to you on this, but
11 I'm just thinking it through here. As I think of
12 grain in bulk and those areas, pretty much all of that
13 traffic either originates in the U.S. and goes to
14 Mexico or originates, like in the case of potash,
15 would originate in Canada and terminate in the United
16 States.

17 A lot of this intermodal traffic is bound
18 for Chicago and that area, so there is a tremendous
19 opportunity that we see in that upper midwest of the
20 United States, Minneapolis, Chicago, Kansas City, St.
21 Louis in and out of Mexico. You know, a lot of the
22 merchandise, what I call like the single carload or

1 business that's with shortlines, a lot of that's
2 lumber, construction materials in and out of Texas. A
3 lot of that traffic would be U.S. based. I'm going to
4 tell you I think it's a high percentage. I'm going to
5 say 85 percent plus.

6 BOARD MEMBER HEDLUND: It would be helpful
7 if you got back to us on that. And then I hope you
8 will, and this is just me speaking, continue to
9 cooperate in the CREATE program in Chicago so that it
10 no longer takes seven days to get across Chicago.

11 CHAIRMAN OBERMAN: All right. Mr. Elphick
12 and Mr. Orr?

13 MR. ELPHICK: Good morning. My name is Ray
14 Elphick. I'm the assistant vice president of service
15 and product design for Canadian Pacific.

16 MR. ORR: And I'm John Orr. I am the
17 executive vice president of operations at Kansas City
18 Southern. Together with Ray I develop the operating
19 plan.

20 MR. ELPHICK: We'd like to thank the Board
21 for this opportunity to speak. Today's presentation
22 will be divided into three parts. First, I'll provide

1 an overview of the operating plan as built for a
2 consolidated network designed to run the operation in
3 the real world to achieve the benefits of the merger
4 and to make use of existing and planned capital
5 investments to support the anticipated growth.

6 Second, John will discuss operations in Texas, and
7 then, third, I will return to discuss operations in
8 Chicago.

9 The process we used to build the operating
10 plan was executed in the way that we would design any
11 new service on CP. My team of experts in modeling,
12 resource planning and design worked through CP's
13 transformation over the past ten years. This
14 transformation has led CP to be one of the most
15 efficient service oriented rail carriers.

16 For the operating plan we started with
17 establishing a base. First, we mapped the entire CP
18 and KCS network. We analyzed the base traffic and
19 studied customers, yards and interchanges. This gave
20 us a solid representation of the pre-transaction
21 design.

22 Second, we considered how to create

1 efficiencies for the combined network using a
2 combination of blocking and turning design changes.
3 This gave us our day one operating plan.

4 Third, we designed the network for year
5 three growth, incorporating new traffic and traffic we
6 anticipate attracting from other railways and the
7 highway. This gave us a year three operating plan.

8 Fourth, we assessed current infrastructure
9 and resources, considered organic growth and built a
10 three year capital investment and resource plan to
11 ensure we could deliver the service.

12 In addition to being a template for how CPKC
13 will operate, the operating plan also provides a
14 reliable basis for the Board's analysis of the merger
15 related effects. We used the best available data for
16 the base year operations and known quantities for
17 merger related growth. At CP we're constantly working
18 to anticipate and stay ahead of growth. CPKC will be
19 nimble and able to adjust as the volumes emerge.

20 I'd like to now spend some time talking
21 about the operating plan made possible by the
22 combination, how it unlocks new services through

1 velocity and reliability. For Vancouver on the west
2 coast of Canada and St. John on the east coast of
3 Canada to the U.S. Gulf states and from Lazaro
4 Cardenas in the southwest of Mexico to the upper
5 midwest of the U.S. all points in between will benefit
6 from the combination. The studies pointed to
7 meaningful volumes of traffic that could be attractive
8 to the system's north-south corridor comprising
9 intermodal, automotive, merchandise and bulk
10 commodities. Once we saw where all the opportunities
11 were it reinforced our view that all of CP and KCS's
12 lines are important.

13 But it's a network. The growth will enable
14 all points to be better served. A good portion of the
15 density of growth is fed by volume from the edges of
16 the network. For example, enough traffic is
17 anticipated to come together from north of St. Paul in
18 western Canada to support a new block out of St. Paul
19 to Shreveport. That new block will then anchor a new
20 train design between those cities, crossing the
21 boundaries of the pre-transaction railway.

22 Over time even longer distance trains will

1 emerge. This design principle of deeper blocking and
2 longer distance trains reduces transit times,
3 generates greater reliability and improves resource
4 utilization.

5 On this network a car is a car. For
6 example, a UP car from Mexico City to Laredo, a BN car
7 heading to Robstown, an NS car heading to Meridian, a
8 CN car to Jackson or a CSX car to East St. Louis.
9 Regardless of the origination destination, these cars
10 are part of the density of traffic, the economies of
11 scale that generate blocks and trains to expedite past
12 yards. And based on the anticipated year three
13 growth, connecting roads will receive the same or
14 better service than they do today.

15 Deeper blocking opportunities work in tandem
16 with train design. By year three the traffic
17 anticipates that five long haul single line scheduled
18 train pairs will anchor the growth plan. They unlock
19 the potential to compete through both velocity and
20 reliability.

21 We've heard from customers that velocity and
22 reliability are important to them. Velocity is about

1 total transit time on both loaded and empty cycles.
2 We will compete on total transit time getting on long
3 distance trains, and bypassing yards is a key part of
4 that equation. Reliability means being consistent and
5 predictable. The daily train runs running the same
6 plan daily reduces day of week fluctuation in yards
7 and onto trains. It evens out locomotive and railcar
8 supply through the week. It simplifies workforce
9 planning to a more repeatable set of tasks and makes
10 train meets and yard work events more predictable, in
11 turn making infrastructure investments easier to
12 identify. Lastly, supply chains will better adapt
13 their production to that consistency.

14 Let's take a closer look at one of those
15 trains, train 175. This train departs daily from
16 Interpuerto at the bottom left of the graphic to
17 Chicago running 2,200 miles carrying intermodal,
18 automotive and merchandise to the U.S. market. It
19 will only have one intermediate stop at Sanchez to
20 pick up traffic destined for Chicago. This is
21 superior to the way the traffic moves today.

22 Today manifest traffic would flow from San

1 Luis Potosi to Sanchez for processing and the to
2 Shreveport for processing, Kansas City for processing
3 and interchange and then into CP's Nahant Yard for
4 another process before arriving in Chicago. Without
5 the coordination, investment and growth brought by the
6 merger, today's processing and transit time is not
7 easily addressed.

8 CHAIRMAN OBERMAN: Could I just ask you to
9 explain that? Between Mexico and Kansas City, that's
10 a route that's already under KCS's control, so why do
11 you have to have all those intermediate transit spots
12 now at least until you get to Kansas City?

13 MR. ELPHICK: This is merchandise traffic
14 heading to Chicago, and today the density's not there
15 to support a service that will create a train design
16 anchored by a block from Interpuerto through to
17 Chicago.

18 MR. ORR: If I could add, Mr. Chairman, the
19 originating train at SLP wouldn't have the density to
20 warrant a through train all the way to Chicago, and so
21 we take it from SLP to Sanchez and it gathers mass,
22 and that mass includes traffic going to Shreveport.

1 So it will go SLP, Sanchez, which is our major
2 terminal just south of the U.S. border in Mexico, on
3 to Shreveport, which is a hub and spoke switching
4 operation that would put it on a train to continue on
5 to Kansas City.

6 At the join agency where CP and KC share a
7 facility it would be put onto a CP train with the
8 density of traffic to Chicago. So those five stops
9 are a product of the inability to have deeper blocking
10 in the current state. In the new company the blocking
11 density will allow us to create a train that could go
12 straight to Chicago without the interim steps at
13 Sanchez, Shreveport. And certainly the only reason it
14 stops at Kansas City is because they're two entities.
15 I hope that's a deeper explanation.

16 CHAIRMAN OBERMAN: Traffic that's going to
17 Sanchez and Shreveport after the combination will go
18 on a different train? Is that what you're saying?

19 MR. ORR: We'll have a different blocking
20 scheme that Ray's going to talk about and how those
21 deeper blocks extend those blocks beyond intermediate
22 stations of today and actually decrease work along the

1 way.

2 CHAIRMAN OBERMAN: Thank you.

3 MR. ELPHICK: So train 175 will be a direct
4 single line service. We think the expedited service
5 to Chicago is a game changer and it brings new
6 competition into this corridor. The changes unlocked
7 by the merger bring out not only qualitative
8 improvements and service and reliability but
9 quantified savings in costs and fuel consumption with
10 associated environmental benefits.

11 Now, an efficient design needs the network
12 to support it, so I will now turn to the
13 infrastructure projects planned to support these train
14 pairs. CP has a well established process for
15 determining how to build out its network. That
16 process was used to comprehensively review the entire
17 CPKC network.

18 We first considered the current
19 infrastructure capabilities, including both work in
20 progress and work planned independent of the
21 transaction. Next, we looked at changes in operations
22 across the entire network from Mexico through to

1 Canada. And, finally, we identified concrete
2 incremental merger related needs which we presented to
3 the Board with our application.

4 \$276 million in capital is planned for the
5 north-south corridor in the U.S. which will support
6 velocity and reliability. For example, at Kansas
7 City, where CP and KCS come together, the greater
8 terminal will see a concentration of investment
9 reflecting new business and its increased role in
10 block swapping, crew changes, expedited operations and
11 managing traffic to and from East St. Louis. When
12 done, almost ten miles of double track will exist, 4.4
13 miles at Blue Valley and 5.5 miles at Kansas City's
14 intermodal facility IFG, the international freight
15 gateway. Along with yard work at IFG, the spend on
16 thee two projects alone will be \$43 million. KCS is
17 independently adding tracks this year at IFG in 2022.
18 In summary, \$276 million in strategically located
19 projects like those in Kansas City will completely
20 transform this north-south corridor.

21 John Orr will now address capital investment
22 and operations in and around Houston.

1 MR. ORR: Thank you, Ray. Chairman Oberman
2 and members of the Board, I will build on the
3 foundation that Ray has laid in order to address some
4 of the concerns voiced about Houston and the Gulf
5 Coast, which I call the shared track area. I have
6 three points.

7 First, there is adequate capacity to handle
8 both the existing and future operations. Second, KCS,
9 UP and BNSF can work together to resolve operational
10 and service issues without the need for immediate
11 additional infrastructure. Third and finally, there
12 are existing agreements that govern investment in
13 track and infrastructure that have been in place for
14 25 years.

15 I draw your attention to the slide
16 representing train counts. In Houston KCS is
17 collocated with UP and BNSF at the Spring, Texas joint
18 dispatch center. There we coordinate with UP and BNSF
19 and monitor dispatching of KCS trains over the shared
20 tracks. Our experience there, coupled with our
21 capacity and throughput analysis, confirms the
22 existing infrastructure can handle the CPKC merger

1 related growth.

2 Shared tracks have routinely supported
3 traffic well above the current levels, this even
4 before the completed and ongoing capacity improvement
5 projects.

6 The graph shows in yellow the historic
7 annual average daily train counts. The light yellow
8 is future annual average daily train counts for 2023
9 to 2026 based on the averages of the prior years. In
10 red are the projected CPKC merger related growth
11 trains. The green reference line is the 2016 average
12 annual train count. It's the peak during that period
13 that we saw since 2016. The blue reference line marks
14 the peak train movements per day that's documented in
15 the Union Pacific Houston terminal playbook. The
16 purple reference line is derived from the 2021 Texas
17 Department of Transportation Houston to Beaumont
18 region freight study.

19 As you can see, the forecasted CPKC growth
20 to 2026 is within the referenced capabilities of the
21 Houston terminal.

22 CHAIRMAN OBERMAN: Can I just -- I'm not

1 sure I understand these lines. The UP playbook and
2 the DOT study, do they show levels of traffic? What
3 do they show about the delay or congestion and getting
4 those levels through? Are you saying that those
5 studies showed that the Houston area could handle
6 those levels without causing any congestion or delay?
7 Is that what you're saying here?

8 MR. ORR: Mr. Chairman, what I would refer
9 you to first, if I may, the gold, which represents the
10 actual trains for that measured period, you can see
11 the oscillation of high peaks and high movements,
12 those are taken from information from the Spring
13 dispatching center of actual trains, through trains,
14 switchers et cetera, and by nature they have the
15 delays and the efficiencies or call it inefficiencies
16 already baked into that. So that's the actual
17 snapshot.

18 When I compare the green line, the green
19 line is just the reference point of the highest number
20 of trains on average based on 2016, so that also
21 includes whatever efficiencies or inefficiencies were
22 found in the referenced trains. The UP playbook, I

1 don't have the background on what the considerations
2 were, but as I read their playbook it is a reference
3 that the dispatcher should be able to move 127 trains
4 on their peak day service.

5 And the DOT reference point -- again, I
6 don't know all of their inputs, but it references the
7 sum of the trains based on the four major corridors
8 through Houston and what they should be able to
9 handle. And I guess the one thing that I would note,
10 if I may, is that, again, this is before the
11 investments that have been made in Houston or around
12 Houston since 2019, so the nearest watermark is 2019.

13 CHAIRMAN OBERMAN: I guess my question is:
14 When you say that the studies show that the Houston
15 area should be able to handle these levels, handle
16 them without delay, without congestion? I mean, how
17 do we measure that aspect of this?

18 MR. ORR: Well, I'll go on to explain in
19 time, but I will answer it now, that in a manner that
20 our customers expect and that are within the service
21 standard that we all expect.

22 CHAIRMAN OBERMAN: Well, that doesn't tell

1 me very much, because in many parts of the country
2 expectations are quite low, and I have been expressing
3 my frustration with the industry as a whole. I think
4 we too often have settled in to getting back to some
5 level of service that itself is mediocre, so I don't
6 know what's optimum here and I don't know if you have
7 any further -- it may be in other things that you've
8 submitted, so if it's already submitted to us I don't
9 need to take up the time now, but in terms of setting
10 standards for rail performance in this country, I
11 think a lot of customers have just come to accept poor
12 service or mediocre service. And I'm not saying
13 that's in your case. I just don't know what that
14 standard means.

15 MR. ORR: Well, if I could add, and I'll
16 just give a foreshadow of what I'm going to talk
17 about, but since April of this year through a lot of
18 the hard work through KCS and the parties, we've
19 improved velocity through Houston significantly,
20 upwards of 30 percent. And as a chief operating
21 officer, my goal is to meet or exceed the standards
22 that we've laid out in our operating plan. So the

1 time-distance studies that drive our capacity analysis
2 and that drive our commitment and our service design
3 and our trip plan compliance to your customer are
4 standards that I aspire to, and there are realities
5 baked into operations, as you well know, that we don't
6 excuse but we work hard to work through.

7 But I'm fortified that, number one, we've
8 been able to achieve the improvements in Houston
9 before these investments I'll talk about come on line,
10 and that we're working towards a solution as a common
11 purpose with the parties that are affected in Houston
12 particularly.

13 CHAIRMAN OBERMAN: Okay. I appreciate that.
14 I guess it would be interesting if it's in the record
15 someplace to know just what those operating numbers
16 are that you're either meeting or that you're striving
17 for.

18 MR. ORR: Very well. Thank you,
19 Mr. Chairman.

20 CHAIRMAN OBERMAN: Thank you.

21 MR. ORR: If I could just draw the Board
22 back to the map that demonstrates the capacity

1 projects since 2013 from northern Mexico to Louisiana
2 on both KCS owned lines and the UP lines we operate
3 that are in use today.

4 The projects in blue represent approximately
5 \$650 million of investments that KCS has made on its
6 own lines. The projects in yellow represent \$123
7 million in capacity that KCS has made on these UP
8 lines. Over the same period we have paid UP over \$270
9 million in trackage rights fees for usage and
10 maintenance. These fees and capital expenditures were
11 made under the existing framework of our trackage
12 rights agreements.

13 Assertions that the new CPKC traffic will
14 clog this capacity and cause a 1997 like service
15 meltdown are misguided. First, the problems that
16 occurred in Houston in 1997 resulted from the UP and
17 SP changes in resources, trains in yard operations in
18 the core of the Houston complex. CP will not do that.
19 CPKC trains will only run through Houston. They do
20 not stop and switch traffic at yards, they do not stop
21 to make planned crew changes on the main line, and
22 they do not stop to provide local service. They run

1 directionally through the core of Houston.

2 Second, the infrastructure between the
3 border and Beaumont has expanded tremendously since
4 1997. As the slide shows, KCS has invested heavily in
5 its own track structure. In addition, in 2008 we
6 rebuilt the former SP Rosenberg-Victoria line, adding
7 back about 85 miles of track at close to \$200 million.

8 This next map shows the ongoing projects in
9 2022 alone. KCS is investing over \$90 million in
10 additional capacity projects to facilitate KCS traffic
11 to and from the border of the shared lines. This
12 includes construction or extension of six sidings on
13 our Laredo and Rosenberg subs, expanding capacity and
14 lead extensions on our Kendleton and Laredo yards and
15 the beginning of construction of our second bridge at
16 Laredo.

17 And just to add some context here, these
18 projects represent almost all of my capital project
19 budget envelope. That's the level of commitment to
20 this corridor, recognizing the importance these play
21 in allowing trains to ingress and egress Houston
22 effectively. And I view all of these investments as

1 concentric. Our investments and the efficiencies they
2 amplify multiply Houston's terminal capability to the
3 benefit of all users.

4 The same goes for UP and BNSF. Both have
5 invested heavily in their own tracks and yards over
6 the same period. This includes UP double track on
7 high traffic sections of the Brownsville, Glidden and
8 Houston subdivisions, the beginning of construction on
9 the north bypass track at Englewood Yard and runaround
10 track at Bloomington. These are all projects that we
11 have or will pay for under the trackage rights
12 agreements.

13 UP and BNSF also collaborate on three siding
14 extensions on the Englewood subdivision. All of these
15 things support usable capacity in Houston and on the
16 shared tracks. KCS usage of the shared track
17 infrastructure is minimal compared to another users.
18 The projected annual eight through trains per day
19 phased in will not complicate operations oh the shared
20 track through Houston.

21 BN and UP's positions are based on their
22 static look at capacity, that they are entitled to

1 unlimited use of track capacity, and that CPKC has to
2 add infrastructure that they must first pay for --
3 that they must first approve, rather, in order for us
4 to grow.

5 My experience in managing operations in
6 Houston reinforces that capacity is not static.
7 Available capacity is a function of use, not just
8 infrastructure. When used efficiently and
9 collaboratively there's adequate capacity on the
10 shared tracks for all the parties to grow and innovate
11 together. KCS, UP and BNSF have a long and successful
12 history of working together to resolve operational and
13 service issues without the need for immediate
14 infrastructure.

15 For example, through a lot of hard work by
16 the parties that KCS led in these past six months,
17 overall transit times of KCS trains traversing the
18 shared tracks between Beaumont and Kendleton have
19 improved by more than three and a half hours; as I
20 said, a 30 percent improvement. It is noteworthy at
21 the same time that the average daily train count in
22 Houston increased.

1 Additionally, transits over UP tracks
2 between Victoria and Robstown have seen similar 30
3 percent improvement since April. These improvements
4 have been accomplished through an increased focus on
5 executing to standards and customer expectations, the
6 establishment of a ready team in the Spring center
7 late in the second quarter of last year, by fortifying
8 our Spring center staffing levels, and, quite frankly,
9 being a more involved user. All of this follows
10 increase of KCS train and engine crew staffing in this
11 area. Our train crew staffing is up 30 percent versus
12 pre-COVID levels.

13 And I also want to give credit to the UP and
14 the BN. They are also increasing their staffing and
15 resource levels over this same period, and the field
16 engagement is contributing to beneficial activities
17 within the area. This kind of approach has been
18 successful throughout my career managing and improving
19 operations in Canada, the United States and Mexico.
20 It delivers immediate results before any need to build
21 new track and infrastructure. This approach will
22 apply in a post-transaction environment.

1 Finally, while operational improvements are
2 the first line of service, as new infrastructure
3 investments become necessary the existing agreements
4 govern how it will be provided. Board approved
5 agreements give us access to shared tracks equal to
6 UP's. They also require UP to maintain capacity to
7 accommodate our traffic while maintaining service
8 standards as well as established capital cost-sharing
9 mechanisms. There is no need for the Board to
10 intervene here and change what has been working for
11 more than two decades.

12 In summary, there is sufficient capacity to
13 handle the future traffic of UP, BNSF and CPKC without
14 service problems or operational concerns. And if
15 there are service and capacity issues, the parties
16 have proven we can collaborate consistent with
17 existing agreements and past practices. Any service
18 or capacity issues can be solved not by imposing
19 unnecessary and artificial limits on CPKC's ability to
20 invest and grow, but by working together and
21 implementing collaborative solutions.

22 I communicated with UP and BNSF earlier this

1 year at Chairman Oberman's suggestion in the ex parte
2 770 hearings, and James Clements and I invited UP and
3 BN to work towards a smooth implementation should this
4 transaction be approved, and I'm pleased to say that
5 we are in the process of setting up those discussions.

6 CPKC will have the resources, ability,
7 process and willingness to collaborate with other
8 stakeholders to efficiently manage operations over the
9 shared tracks. We are committed to the successful
10 integration and to continuing our history of
11 collaboration. Now I will return the microphone back
12 to Ray to talk about Chicago operations.

13 CHAIRMAN OBERMAN: Before you leave that,
14 Mr. Orr, on the question of UP and BN's comments, and
15 they're going to be up here obviously to talk about
16 them, about insufficient infrastructure in Houston,
17 has either railroad communicated to you a specific
18 request to say, Well, if this merger goes through you
19 need to build a track here at this siding? Is there
20 anything specific they've proposed to you? I haven't
21 seen anything -- I may have missed it -- other than
22 general statements about infrastructure.

1 MR. ORR: Mr. Chairman, that I have seen
2 myself, no. We have worked on our capacity planning
3 independent of what UP and BN may have in mind in
4 their longer range plans, so that is an opportunity to
5 have a more consolidated view on what that is. But to
6 the extent that UP and BN are investing in Houston and
7 around Houston, yes, we know about that and we support
8 this, and we're supporting it financially as well in
9 the case of UP. But I think that's an opportunity to
10 work more cohesively in targeting capacity and
11 infrastructure as it's required.

12 CHAIRMAN OBERMAN: I ask, because if they're
13 going to ask us to require something I'd like to know
14 what it is. I've just seen generalities and you
15 haven't heard more specifics, I take it.

16 MR. ORR: No, sir.

17 CHAIRMAN OBERMAN: Robert?

18 BOARD MEMBER PRIMUS: If I could just
19 piggyback on that quickly. Can you guys hear me in
20 the back, first of all?

21 I appreciate your comments, John. One of
22 the things that concerns me actually is what Marty

1 just brought up in that, you know, in the Houston area
2 there are two areas between Beaumont that you have
3 trackage rights issues or trackage rights with other
4 carriers. We've also seen before this Board that the
5 other two carriers in question have had trackage
6 rights problems between themselves. There was a
7 docket before the Board earlier this year on that
8 subject. And so we've got a bit of a soup even right
9 now before we're getting into the future of how
10 operations are currently going now and the issues and
11 problems that are there.

12 And so I think -- again, it's a little
13 difficult for anybody to project out considering all
14 the issues we have yet to resolve with the current
15 network and the current issues, and I know you're
16 building out and you're talking about the future, but
17 for me, especially in Houston and the difficulty of
18 Houston, not just now but historically, we have to
19 have everyone on the same page really if we're going
20 to do this because the increase in traffic and
21 increase in the demand of that is going to be such
22 that, if we don't, you may come to the table with the

1 right mix, but, you know, again, you're going to be
2 dealing with two other carriers and the trackage
3 rights with others and their capacity and what they're
4 doing, which could basically just gum up everything
5 perfect that you're trying to put into play.

6 And I think for us there's that concern.
7 Because again, as Marty just said, we're going to hear
8 them from almost saying the direct opposite of what
9 you just spelled out. So that's the complexity for
10 us, that we've got to figure out where the wheel hits
11 the rail, you know, in this instance.

12 MR. CREEL: Certainly. If I could add a
13 comment to your point. I think this is a key
14 fundamental truth. It's true about Houston, Chicago,
15 any location, any terminal where a main line comes
16 together and terminal work occurs. The design
17 matters. The use of the asset or the capacity that's
18 there matters. Specifically, in Houston capacity,
19 theoretical capacity and actual capacity are
20 determined by a couple of factors. It's train speed,
21 it's train length, and it's also track length.

22 If you have a disconnect between length of

1 track and length of train and you're dependent upon a
2 speed on the track that goes through, then you're
3 going to have unintended consequences. And I liken it
4 to on an airline. You know, we all want big plane
5 economics. We want a lot of seats and we want those
6 seats to fly a lot of passengers and it cost less per
7 passenger. We want that capacity. But it does no
8 good if you try to land a large plane on a runway
9 that's not equipped to land it. You have a problem.

10 So in a terminal, especially a jointly used
11 terminal, which Houston is, it's critically important
12 that all parties respect the way the terminal's
13 designed. You can't take through tracks, which our
14 success would depend upon -- your point -- and make
15 them parking tracks to put trains on that won't fit in
16 yards. The yards where those trains are destined to
17 or originate from must be able to accommodate the
18 trains that are going to them or coming from them.
19 Otherwise, you have unintended consequences.

20 So. Again, critical to any capacity theory
21 is the proper use for the proper design of the asset,
22 and that's true for Houston, Chicago, and it's true

1 for St. Paul, Minnesota. You have to make a plan
2 that's based on a design and match the two. There
3 cannot be a disconnect or you can't build enough
4 capacity.

5 CHAIRMAN OBERMAN: All right. Mr. Clements.

6 MR. CLEMENTS: We're going to go back to Ray
7 first.

8 MR. ELPHICK: I'll go to Chicago.

9 CHAIRMAN OBERMAN: Well, I don't want to
10 leave that out.

11 MR. ELPHICK: I'll now turn to the Chicago
12 area, which is one of the most critical hubs in North
13 America. We understand this both from a freight and a
14 passenger perspective. We've carefully reviewed the
15 concerns.

16 In the next few minutes I will cover first
17 our planned investments and capacity around Chicago;
18 second, CP's commitment to is maintaining a very high
19 level of service; third, how CP dispatching essential
20 to all parties' success.

21 In considering Chicago it's important to
22 first step back and take a broader perspective. Three

1 new sidings will be constructed on the subdivision
2 between River Junction and Sabula. A total of \$56
3 million -- sorry. This maps shows CP's current and
4 planned investments on the lines to the west of
5 Chicago. These investments will create capacity along
6 CP's core north-south corridor. The yellow boxes and
7 sections along the track from River Junction at the
8 top left to Ottumwa at the bottom were planned or
9 completed outside the transaction. The green boxes
10 and track segments are capital investments driven by
11 the merger. At Sabula the increased volumes diverge
12 with trains running either on the north-south
13 Marquette subdivision or flowing to and from
14 Bensenville.

15 So I'd like to now turn the Board's
16 attention to CP's Marquette subdivision, where there
17 will be ample capacity to support the growth in
18 trains. In addition to 2022 investment in CTC and
19 broken rail detection, three new sidings will be
20 constructed on the subdivision between River Junction
21 and Sabula.

22 CHAIRMAN OBERMAN: Could you just define for

1 me what is encompassed when you say Marquette
2 subdivision? Where does it start and where does it
3 end?

4 MR. ELPHICK: Yes, sir. It's noted by the
5 blue on the slide from River Junction at the top and
6 the arrows pointing through the word "Marquette" to
7 Sabula Junction at the bottom in blue.

8 CHAIRMAN OBERMAN: I see. So it's the blue
9 arrows.

10 MR. ELPHICK: That's right. That's the
11 Marquette subdivision.

12 CHAIRMAN OBERMAN: And then south of Sabula
13 to Davenport.

14 MR. ELPHICK: That's right, the Davenport.

15 CHAIRMAN OBERMAN: Thank you.

16 MR. ELPHICK: Okay. So a total of \$56
17 million will be spent to complete the sidings and CTC.
18 To the south of the Marquette subdivision additional
19 investments in newer extending sidings and CTC are
20 planned. Towards Chicago a new siding at Monroe will
21 be added. Together, the result will be a network
22 capable of handling the growth and smartly planning

1 trains into and out of Chicago. It's important to say
2 as a matter of principle CP would never by design take
3 a St. Paul to Kansas City train 250 miles out of route
4 through Milwaukee and Chicago on the way to Kansas
5 City.

6 So next I'll focus on the available capacity
7 on the line to Chicago, particularly where we share
8 trackage with Metra. For the graphic now shown, CP's
9 Bensenville Yard is indicated by the blue arrows.
10 It's alongside the Elgin subdivision in yellow where
11 CP trains share the track with Metra. At Bensenville
12 CP's initiated a multiyear project worth several
13 hundred million dollars. The investment will
14 transform the yard, significantly expanding the
15 capacity to receive and depart trains efficiently.

16 West of Bensenville the Elgin subdivision is
17 23 miles of CTC high-speed, high capacity double
18 track. The merger has the potential to add eight
19 trains west of Bensenville. We note, though, that
20 many of Metra's stated concerns about impacts to their
21 operation and demands for new infrastructure are
22 targeted to track east and north of Bensenville.

1 To be clear, the transaction does not
2 anticipate adding any trains to the east or north of
3 Bensenville. Existing trains will have the capacity
4 for the incrementa carloads.

5 I'd now like to spend some time looking at
6 how we schedule and assess capacity from Bensenville
7 west back to Sabula Junction. I can walk you through
8 this string line graph. This graph helps in
9 understanding capacity.

10 On the Y-axis the track is illustrated. At
11 the top is Sabula Junction moving east to Chicago.
12 Then below Sabula Junction is the new siding to be
13 built at Monroe, which is 12,200 feet. On the
14 bottom -- let's look at the detail -- ohm shoot. What
15 in the heck have I done here?

16 On the bottom left you can see the double
17 and triple track along the Elgin subdivision from
18 Randall Road past Bensenville Yard, noted by the blue
19 arrow. As you can see, there are many crossovers, as
20 indicated by the diagonal lines between the tracks.
21 These crossovers create operating flexibility for
22 Metra and CP alike.

1 Across the X-axis is one 24 hour day. The
2 lines on the graph depict trains running across the
3 track. The short red and blue lines are Metra
4 commuter rush trains. They're not all rush trains, so
5 the red lines are the Metra trains in the rush hour
6 and the blue lines are off peak Metra trains. The
7 other trains there are freight trains. There are
8 eleven freight trains depicted on the chart, three
9 trains which exist today, and an additional eight
10 trains anticipated from the merger.

11 Let's look at detail for one of the train
12 pairs. Remember earlier we talked about train 175?
13 The train is scheduled to enter the Chicago
14 subdivision at Sabula Junction in the evening
15 following the bolded line to Bensenville. The train
16 arrives by plan at 11:30. The reverse train, train
17 174, departs Bensenville at 8:30, and by schedule the
18 two trains will meet at the new siding at Monroe.
19 Also note train 174 is now shown departing between two
20 non-peak Metra trains. A westbound Metra train runs
21 faster than a freight, but with station stops the
22 average speed is about the same, so we can dispatch

1 the freight train to follow one Metra while staying
2 ahead of the next Metra train.

3 These spaces between Metra trains are slots
4 where we can successfully run our operation alongside
5 Metra's. So looking back at the main graphic, you'll
6 note that there is a lot of white spaces in the graph.
7 These are unused slots, giving us the flexibility to
8 adjust the operation, to manage if trains are off
9 schedule, to do maintenance work or run a local
10 service.

11 Let's contrast that to the maximum freight
12 capacity now known in the left graphic. The graph on
13 the left illustrates what we view to be the maximum
14 freight capacity without having to resort to fleeting
15 of trains or adding infrastructure. These available
16 slots all avoid Metra interference.

17 CP would never run at maximum capacity.
18 What matters to me most, though, is the contrast
19 between these two graphs. This is what we monitor on
20 a routine basis for capacity. These graphs illustrate
21 what we know, that the demand is not near maximum
22 capacity. The RTC simulation tool does not tell you

1 how much spare capacity exists, though our due
2 diligence work with RTC confirms what we know: that
3 Metra will not see additional delays.

4 CP's management of Metra and Amtrak
5 dispatching is excellent. The level of Metra
6 performance between 2018 and 2021 is now shown in the
7 graphic. Freight train interference with Metra is
8 extremely low, less than one percent. We achieve this
9 by coordinating freight trains into Chicago from at
10 least as far away as Kansas City, St. Paul or Toronto
11 and a solid understanding of train priorities,
12 including Metra's and the ability to effectively
13 manage those priorities, close coordination of
14 interchanges and line capacities with other Class I's
15 in Chicago, and having a clear understanding of
16 Bensenville Yard status. With those Metra's well
17 served by having CP dispatch the operation as it does
18 today with a broad network viewed 24/7 and looking at
19 all stakeholders.

20 This doesn't mean we aren't working to make
21 freight train interference even lower. We are, and
22 our network of investments, including Bensenville

1 Yard, will support the very high levels of performance
2 that Metra and its passengers expect.

3 To recap for me and John, a combined CPKC
4 will deliver significant operating efficiencies. The
5 operating plan is built to be the plan we use, and the
6 network investments will give us the capacity to
7 handle the anticipated growth and compete. We always
8 strive to improve and to work with underlying
9 carriers, passenger operators and other users of
10 shared track. And, finally, with a broad network
11 perspective CPKC is in the best position to dispatch
12 all trains into and out of Chicago for the benefit of
13 all parties, including Metra.

14 CHAIRMAN OBERMAN: I have -- were you
15 finished?

16 MR. ELPHICK: Yes.

17 CHAIRMAN OBERMAN: I have a few questions on
18 this issue. First of all, for at least the last eight
19 years of my life railroad people have been showing me
20 these line drawings and I still don't know how to read
21 them, so I appreciate what you said. I'm going to
22 rely on our crack staff to enlighten me further if I

1 need it. I understand the point, but it all looks
2 like gibberish to me, to be frank about it.

3 So a few questions. Metra and some of the
4 municipal folks who we're going to hear from raise the
5 question that the Marquette subdivision is at capacity
6 and it's not realistic that it's going to be able to
7 handle these six trains and they fear that those
8 trains are going to come into Chicago. So do I
9 understand that you need to have the capital projects
10 you identified in order to be able to run those six
11 trains on the Marquette division?

12 MR. ELPHICK: That's correct.

13 CHAIRMAN OBERMAN: So the second question
14 they raise is, Okay, if that's true, how long will it
15 take to build that infrastructure and where are those
16 six trains going to go in the interim?

17 MR. ELPHICK: The traffic will not all
18 emerge day one. It will take time to compete when
19 that traffic will be brought on the line. CP has a
20 well established process for reviewing capital, and we
21 will be nimble. If the traffic changes, if it comes
22 early, for example, those projects have been in our

1 plans for years. We have the opportunity and the
2 ability to expedite some of those projects. However,
3 if the project isn't complete -- you know, I
4 personally review the traffic as it comes on to line
5 on our traffic, on our network, and we work with
6 commercial and we work with the customers to bring
7 that traffic on line when the capacity is there.

8 CHAIRMAN OBERMAN: But if you are Metra and
9 if you are these local towns, it's hard to plan if all
10 the information they have is what you just said. So
11 if the merger were approved, let's say, sometime next
12 year, in 2023 how many more trains, where are they
13 going to go in 2024, et cetera, so people could have
14 some anticipation of what to expect and how to
15 ameliorate it in between? How do you answer those
16 concerns more concretely? I think what you're saying
17 is eventually in the long run, whatever that long run
18 is, two, three, four, five years, it will work out.
19 There's a big concern about the intra.

20 MR. ELPHICK: In our application we did
21 outline how we thought the traffic would come onto the
22 network in terms of what year it would come on.

1 CHAIRMAN OBERMAN: Well, will any of those
2 years involve any of these six trains being added on
3 to the eight more that you're already planning for the
4 Chicago area? Where are they going to go, or will
5 they go someplace else? In other words, will it ever
6 be more than eight trains on the line from Bensenville
7 out to Elgin?

8 MR. ELPHICK: The traffic studies is what I
9 worked with, and it suggests that that is the
10 requirement that we will build to, so over the course
11 of the three years, the eight trains, if we compete
12 and win that traffic, will come onto the network.

13 CHAIRMAN OBERMAN: Well, the fear they say
14 is it's going to be 14 because you don't have space
15 for the six trains yet on the Marquette subdivision.
16 That's what I'm trying to pin down. Is there some
17 commitment that it will never be more than eight, that
18 none of these Marquette trains will end up over near
19 Bensenville?

20 MR. CREEL: If I could comment, Chairman
21 Oberman, the commitment is that we don't oversubscribe
22 our network. It's an approach. It's a discipline

1 we've applied to Canadian Pacific. So I can't without
2 getting into the specific details tell you exactly
3 when all six of those trains will come because we're
4 yet to win that business, but I can say that they will
5 not come before the capacity is built.

6 We have a plan. It will be in lockstep with
7 the capacity, because if we were to do it any
8 differently, again, we'd destroy the velocity and the
9 magic that makes our railroad work today. We will not
10 be diverting trains that can't go down the subdivision
11 on the Marquette side 250 miles out of route and be
12 able to win any business, rest assured.

13 CHAIRMAN OBERMAN: And in terms of
14 conditions are you saying -- well, would you have an
15 objection to a condition which says there won't be
16 more than eight trains on the Elgin subdivision, that
17 there will not be more than eight additional trains at
18 any time, even during the transition period?

19 MR. CREEL: I would say that the eight
20 trains will not come before the capacity comes that
21 allows our modeling to be true. But I would also say,
22 Chairman Oberman, at some point in the future, whether

1 it's ten years from now or 15 years from now, we're
2 going to work collaboratively with Metra to invest in
3 the needed infrastructure and capacity to handle
4 tomorrow's traffic as well. But in the short interim
5 which Metra's concerned with we're not going to
6 oversubscribe that network.

7 CHAIRMAN OBERMAN: Well, that was sort of my
8 next question. If I look at your exhibit that says no
9 trains east of Bensenville and no trains on the north
10 line no additional trains, how many years is that
11 representation good for?

12 MR. CREEL: That's for the three years
13 that's covered in the study for certain.

14 CHAIRMAN OBERMAN: And beyond the three
15 years you're not at this point committing to zero
16 trains east of Bensenville or on the north line, zero
17 additional. Is that the way I understand it?

18 MR. CREEL: Beyond the three years, for me to
19 make any prediction not knowing how successful we'll
20 be to win business, it would be irresponsible for me
21 to make that commitment.

22 MR. MEYER: Mr. Chairman, if I may, James

1 wants to point out something about a commitment we
2 have made that relates directly to this point.

3 MR. CLEMENTS: Chairman, what I was going to
4 point out is one of the commitments we made in our
5 application and in our additional responses is that we
6 would not reroute trains that would want to flow
7 between River Junction and Sabula Junction through
8 Chicago unless, obviously, there's an event. The
9 Turkey River Bridge got washed out in 2018, and it was
10 prudent in that case to reroute I think it was ten
11 trains a day through Chicago in that case.

12 But in normal operations we would commit to
13 the trains that want to take that route going from
14 Twin Cities, River Junction, Sabula to Kansas City.
15 We would not in the normal course route them through
16 Chicago. So what that says is that the eight growth
17 trains that we've forecasted into and out of Chicago,
18 the Bensenville center, those are the only trains, the
19 growth trains associated with Chicago that would move
20 on this line segment.

21 CHAIRMAN OBERMAN: I appreciate that. But
22 if you're operating Metra or you're otherwise living

1 in this area, you want to know what's going to happen
2 in the long term and you want to be able to prepare
3 for it, and the only opportunity people have to ask
4 for some condition or restraint is during this
5 proceeding. So that's what I'm trying to grasp here.
6 And I appreciate this, Keith, without --somebody's got
7 an extra microphone on, I suspect -- artificially
8 restricting how you do business, I appreciate what
9 you're saying, but there's some uncertainty in the
10 air, and that's what I'm trying to get at.

11 So you're saying -- I think you're saying
12 you would not agree anyway to a condition that says
13 you could never run more than those eight additional
14 trains or zero additional trains in these other
15 places. You're only saying that's the plan for the
16 next three years.

17 MR. MEYER: Chairman, if I may, I want to
18 make sure that we're orienting around what the eight
19 trains are that we're talking about. Our analysis is
20 that full implementation of the merger related changes
21 would occur over a three-year period. So the
22 transaction related traffic growth that we're talking

1 about is the eight trains. That is the eight trains
2 related to the transaction.

3 Now, we also anticipate organic growth in
4 CP's and future CPKC's overall network. Traffic in
5 commodities will grow, over time the economy will
6 grow, and that's just not -- that's not within the
7 scope of an analysis of the merger. Now, I will say,
8 of course, to be complete, Mr. Elphick and Mr. Orr
9 when they were evaluating capacity did take into
10 account both sets of growth, so there is capacity for
11 everything, including organic growth. But once you
12 get to year three and the merger's fully implemented,
13 and that's when we're saying the traffic growth from
14 the transaction will be fully realized, that's the
15 eight trains.

16 CHAIRMAN OBERMAN: I understand that. But
17 if you're not CP/KCS and you're trying to deal with
18 these lines, really it's not relevant to Metra whether
19 it turned out to be more than eight trains in a
20 significant number, whether they came from the merger
21 or organic growth, they still have to run their
22 network.

1 And I would imagine, although I'm not a rail
2 expert, that the synergies which you hope for from
3 this merger would make it difficult to discern ten
4 years from now how much growth came because you're a
5 much better railroad and how much of it was organic.
6 Hopefully, the whole is going to be greater than the
7 sum of the parts. That's why you're here. And so for
8 us at some future time to try to sort it out and say,
9 Well, you can't run that train because that was merger
10 related, and you're here saying, No, it's organic,
11 we're not going to litigate that. So I'm trying to
12 figure out -- well, maybe we'll litigate it; I doubt
13 it -- how we build in some management of a longer term
14 than three years, because three years is not very long
15 in the railroad world.

16 MR. MEYER: Well, the commitment
17 Mr. Clements was describing is perpetual. That's not
18 just a three-year commitment.

19 CHAIRMAN OBERMAN: Which commitment now?

20 MR. MEYER: The commitment not to route
21 trains that are moving between Kansas City and St.
22 Paul via Chicago and Milwaukee, to use the Marquette

1 subdivision and not to use the Elgin subdivision.
2 That is the commitment, other than in detour
3 situations and so forth. That's a commitment for
4 life.

5 CHAIRMAN OBERMAN: Well, that's helpful to
6 understand it that way. And I assume when you say
7 it's a perpetual commitment, you have no objection to
8 our including that as a condition is any order we
9 might issue.

10 MR. MEYER: Absolutely not.

11 CHAIRMAN OBERMAN: What I'm searching for is
12 some way to manage or monitor beyond just monitoring,
13 and there's been discussion about a five-year
14 monitoring program, and I'm still struggling with it,
15 I'm not proposing it, I have no idea what the other
16 board members' views would be, but some mechanism by
17 which if traffic exceeds these numbers by any
18 meaningful amount five years from now, eight years
19 from now, there's an opportunity to revisit this and
20 impose additional requirements to make sure that
21 neither Metra or the other interests aren't too
22 adversely affected. That's what I'm groping for. You

1 may have some suggestions on that. I don't mean you
2 have to say them today. There's time for you to
3 submit.

4 MR. MEYER: I think we'll give this some
5 very serious thought this week and perhaps on Friday
6 we'll have --

7 CHAIRMAN OBERMAN: I think it's important,
8 because we have, as you know, David, rules about
9 reconsideration of prior orders that are fairly
10 stringent, and that is different from retaining
11 jurisdiction over an ongoing matter, which is more
12 what I'm thinking about, the latter, but I think it
13 needs to be explored.

14 I wanted to ask a question about the
15 dispatching issue. This concept came up, you know, in
16 the Pan Am case.

17 BOARD MEMBER FUCHS: Before we get on that
18 topic can I just --

19 CHAIRMAN OBERMAN: Go right ahead.

20 BOARD MEMBER FUCHS: Mr. Brooks, I think in
21 your verified statement you talked about the CPKC
22 service promise, and part of that was report

1 specifically on the performance, trackage owned by
2 third parties, including Metra, and so I'm wondering
3 as you all are thinking about it, whether or not
4 fleshing out that aspect of your service promise,
5 particularly looking at the performance of traffic,
6 not only your own traffic, but maybe if there are
7 measures of commuter traffic that you all would commit
8 to reporting to the Board, that might be an avenue for
9 the Board to focus more so on performance than just
10 train counts, because capacity can change with train
11 counts, and then what we really care about is, of
12 course, the performance of bot freight and passenger.
13 So maybe that's something that you all could consider
14 fleshing out in the course of this hearing and beyond.

15 MR. MEYER: Yeah, we'll do that.

16 CHAIRMAN OBERMAN: I think that's a really
17 great point, Patrick, because, you know, one of the
18 issues we have to think about is that none of us are
19 immortal, and years from now as the railroad has grown
20 there will be a different cast of characters, and who
21 knows what the situation will be? And it may well be
22 if you find that your traffic has grown substantially

1 beyond even your wildest dreams that you will have
2 already negotiated more track capacity with Metra and
3 the issue will never arise. But if nobody is watching
4 the store and all of us are gone and our collective
5 memories are gone it may not work out so easily.
6 That's really what I'm searching around for. Keith?

7 MR. CREEL: Mr. Chairman, if I could make
8 one last comment on this, your concerns are well
9 stated. I clearly understand what you're saying.
10 There is a theoretical maximum capacity, and at some
11 point a combination of Metra trains CPKC will reach
12 it. There will be a commitment. We'll figure out a
13 mechanism that's fair to both parties that allows the
14 user of, the need for growth available capacity to be
15 built to accommodate it so that we can maintain a
16 positive coexistence between Metra trains and freight
17 trains. Both are needed. It's not one at the expense
18 of the other, we will coexist, so we will create a
19 mechanism and suggest to the Board a condition that
20 we'd be willing to accept in these proceedings.

21 CHAIRMAN OBERMAN: That would be great, and
22 I assume in the process of creating that you'll

1 negotiate it with my good friends from Metra who are
2 in the room here.

3 MR. CREEL: We'll do our dead level best.

4 CHAIRMAN OBERMAN: On the dispatching
5 question, and I recognize that the Chicago terminal is
6 not the same as Boston, but there was a great deal of
7 discussion in the Pan Am case by I think it was MBTA
8 that also wanted us to require dispatching to be put
9 in their hands. And as I understand it, the
10 resolution of that matter was that the dispatchers for
11 both railroads were physically going to sit next to
12 each other, something along those lines --

13 MR. ELPHICK: Right.

14 CHAIRMAN OBERMAN: -- here, if my memory is
15 correct, the Metra dispatchers at Union Station and
16 the CP dispatchers in Minneapolis. Am I right about
17 that?

18 MR. CREEL: That is correct.

19 CHAIRMAN OBERMAN: Have you considered the
20 idea of working out something along the lines of what
21 happened in Boston to physically have these people
22 together to avoid or minimize the concerns? And I'm

1 not prejudging what's going to happen with the
2 dispatching. We have no idea how we're going to
3 decide any of the issues, including the main issue in
4 this case. But as a way to ameliorate or minimize the
5 dispatching concerns raised by Metra have you
6 considered the idea of somehow having the two
7 dispatchers be side by side?

8 MR. CREEL: It a possibility that we have
9 not to this point, we certainly will take that back
10 and look at it. The practicality of that, you know,
11 the location, be it in Chicago, be it in --
12 ultimately, we intend, after only negotiating this
13 with our unions, to centralize our dispatching in
14 Kansas City. So ideally our preference, obviously, if
15 that were to be created, is we would want a Metra
16 dispatcher in our command center, our operations
17 center in Kansas City, but, again, we'll take a look
18 at that, Mr. Chairman.

19 CHAIRMAN OBERMAN: Well, that's good,
20 because they'd probably never get there if they had to
21 take the Empire Builder. I have no idea what Metra's
22 view of that is. I'm going to ask them when they get

1 up here on Friday or whenever they're here. But while
2 you're here I wanted to just -- and I'm not even sure
3 it's a good idea, but it seemed to have had some merit
4 in the Pan Am case, and so if it's a constructive
5 solution here I wanted to see if you could explore it.
6 Thank you, Keith. Does anybody else want to follow up
7 on this? Go ahead.

8 MR. CLEMENTS: That you, Chair Oberman.
9 Good morning. It's good to be before the STB again.
10 My name is James Clements. I am CP's senior vice
11 president for strategic planning and technology
12 transformation. I've been at CP for over 20 years,
13 and I'm here today because as part of my role at CP
14 I'm responsible for overseeing the operation of CP's
15 network service center and driving results through the
16 application of technology and delivering continuous
17 process improvement.

18 I'll note that the network service center
19 includes our customer service center as well, so it's
20 not just inwardly focused but customer focused, too.
21 And my most important role at CP right now is
22 overseeing the preparations for the seamless

1 implementation of the proposed CP/KCS transaction.

2 CP has been working tirelessly since we
3 signed the merger agreement with KCS in order to be
4 prepared for the combination. We have developed an
5 integration management office leading the development
6 of those plans for day one that reports to me, and
7 since last October there's been a lot of work done,
8 and with the Board approval we are poised for
9 successful launch of the new CPKC.

10 I want to emphasize three principal points.
11 First, both companies are well managed and well
12 resourced. Secondly, we've been doing our homework to
13 ensure readiness for the integration. And thirdly,
14 the companies have an proven track record for
15 implementing end-to-end transactions seamlessly.

16 In terms of being well managed, CP and KCS's
17 recent operational track records demonstrate that
18 their managements and thus the management of the
19 combined CPKC will know what it takes to carry on
20 reliable and efficiently resourced services during
21 times of change. We're both providing good service
22 today. If you look at the EP 770 metrics that affect

1 our customers the most, those being on time
2 performance and first mile/last mile performance, you
3 can that CP and KCS are performing at the top of the
4 industry. And while everyone was faced with
5 challenges coming out of the COVID, we avoided the
6 disruptions that have befallen most of the other Class
7 I's.

8 In terms of coming into this merger well
9 resourced, both companies have locomotives to support
10 the forecasted traffic levels. Our workforce levels
11 are good, and hiring is going well. When I was here
12 in April I indicated that CP had hired 662 people
13 across its network. We're now up to 2,293 people
14 hired and we're continuing to hire more, and in that
15 same time period the KCS has hired 360 people. And
16 when you look at the combined company in terms of
17 resources going forward, we foresee that with the new
18 operating plan it will create additional locomotives
19 to be available to meet both those growth plans and
20 any incremental demand. All of these resources put us
21 on a trajectory for successful implementation on day
22 one and operations into the future of the combined

1 network.

2 In terms of planning for the transaction,
3 we're already well into that process, and with the two
4 strong operations I've described, one of the things
5 that we'd note is we don't have any need to fix
6 anything. This means given that we're not in that
7 position we will not implement any of the transaction
8 related changes to our systems and processes until
9 we're prepared to do so without causing service
10 disruptions.

11 We've spent countless hours and
12 extraordinary care planning for operational
13 integration and also preparing our IT systems to
14 ensure a smooth transition, and we're methodically
15 working forward to be ready to start the integration
16 on day one and proceed after that in a thoughtful and
17 careful way.

18 Our motto in terms of planning is: Don't
19 make day one bigger than it needs to be. Consistent
20 with that motto, we will not be doing a big bang in
21 terms of systems implementation and change. We won't
22 be cutting all the systems over on day one. We won't

1 be changing all the processes on day one. It will be
2 the start of a methodical march towards the full
3 integration, and we expect that to take the two to
4 three years that we've portrayed the achievement of
5 the synergies on this transaction.

6 And, finally, I just want to comment on
7 previous transactions. We've been a good steward of
8 the lines that we've acquired in the past, and another
9 reason for confidence that we won't have problems on
10 day one is that both companies have a proven track
11 record. Specifically, CP seamlessly integrated the
12 DM&E in 2008 and the CMQ in 2020. I also note that
13 the leader of our integration management office at CP
14 has experience with both of those transactions.

15 And on the KCS side, as Pat has mentioned,
16 they have a history of successful acquisition and
17 integration as well, most recently with the
18 Tex-Mex/TFM. With that experience that both the
19 companies have in terms of integrating the operations
20 of other single line connections or end-to-end
21 connections and coupled with our strong competencies
22 in operational planning and execution, we believe this

1 will result in the smooth integration of CP and KCS,
2 and that will enable the new extended network to
3 compete vigorously in the market and provide options
4 and competition to both our existing and new customers
5 to the network.

6 So, with that, I'm going to hand it over to
7 Bob Majure to talk a little bit about the competitive
8 issues in the file.

9 CHAIRMAN OBERMAN: Before we get there, Mr.
10 Clements, just a couple of questions. The on time
11 performance metric, how do you measure that?

12 MR. CLEMENTS: We're measuring that relative
13 to the trip plan that the shipment is given and the
14 delivery within 24 hours, I believe it is.

15 CHAIRMAN OBERMAN: But the delivery to a
16 serving yard or to the customer?

17 MR. CLEMENTS: To the customer.

18 CHAIRMAN OBERMAN: So that is a complete
19 origin and destination measurement.

20 MR. CLEMENTS: Yes. And I just want to add,
21 that capability, when we think about where we're going
22 to go with the KCS is that we're going to bring our

1 trip planning capabilities to the combined entity, and
2 we will have that view and create that discipline in
3 the operation as we go forward as well.

4 CHAIRMAN OBERMAN: And I just wanted to say,
5 James, that we appreciate your report about how you
6 and -- both you and KCS have been performing, and you
7 may have noted that you were not included in our
8 service recovery plan order for that reason. And I
9 say that more as a message to those who were.

10 The only other question I had from an
11 operations or transitional point of view, CP is sort
12 of the bigger surviving partner, and I have no idea
13 how you're planning to integrate your workforces. You
14 obviously have operating experience in Canada and the
15 U.S. but not Mexico. Are you retaining the KCS people
16 who know Mexico? That seems to me a challenge,
17 because Mexico, as I understand it, is not the most
18 obvious place to do business at.

19 MR. CREEL: To the point, Chair Oberman, and
20 this requires a bit of humility and accepting we don't
21 what we don't know. Pat and his team have done a
22 phenomenal job at KCS de Mexico of running the Mexican

1 operation. My intentions, our intentions, are not to
2 do anything to destabilize that. We're going to focus
3 on U.S. operations and U.S. integration as we partner
4 with what we hope will be CPKC de Mexico and maintain
5 that autonomy. We're going to sell to one larger
6 network, but the capacities we have today of running
7 the operation in Mexico will be maintained and
8 complemented. They will not be dramatically changed
9 at all.

10 CHAIRMAN OBERMAN: So the people who know
11 Mexico are going to stay with the company.

12 MR. CREEL: Absolutely. Yes, sir.

13 MR. CLEMENTS: Overall -- I just want to
14 comment on people -- this is a merger that's about
15 growth. This isn't one about generating a whole bunch
16 of synergies from cutting people and cutting the
17 operation. And so when you look at whether it's
18 Mexico, whether you look at the growth that John has
19 described in intermodal and building out Kansas City
20 and other ramps, we ultimately see the overall
21 employment of the combined entity being larger than
22 the two separate entities as a result of the combined

1 growth.

2 CHAIRMAN OBERMAN: Thank you. Patrick, did
3 you have --

4 BOARD MEMBER HEDLUND: I wanted to add a few
5 more words about the international nature of this
6 combination and what it means for integration. We
7 appreciate your comments on it. Our experience
8 obviously 20 years ago with mergers was not good.
9 There have been large mergers in other industries that
10 have taken quite a while to get resolved. I'm
11 thinking about the United-Continental merger that was
12 still looking for bags two years later. But you have
13 the additional challenge of combining a railroad that
14 is governed under Canadian rules with a railroad that
15 is governed under Mexican rules.

16 Had you been subject to the new merger
17 regulations, and you're not, they would have required
18 you to provide information concerning any restrictions
19 or preferences under foreign or domestic law and
20 policies that could affect your commercial decisions,
21 and we would be required -- we, the Board, would be
22 required to consult with relevant officials to make

1 sure that this all conforms with NAFTA or USMCA and
2 any other pertinent agreements that the United States
3 is a party to. In terms of going forward, one of the
4 things I think we should ensure is that although the
5 three countries compete with each other, as the
6 maritime commissioner pointed out, it is also very,
7 very important that the three countries cooperate with
8 each other, and we need to be reaching out to our
9 Canadian and Mexican counterparts to make sure that
10 the creation of this new NAFTA railroad, should we
11 approve it, goes as smoothly as possible and is as
12 beneficial to all three countries as it can be.

13 MR. CLEMENTS: Thank you, and I appreciate
14 the thoughts and the comments. They certainly warrant
15 consideration. From our perspective, CP successfully
16 operates across the Canadian-U.S. border. We've got
17 deep experience. KCS similarly has deep experience in
18 working between the U.S. and Mexico. As we've said,
19 we're going to retain all that expertise on all that
20 side of the border. And this really is an end-to-end
21 combination that meets in Kansas City but just south
22 of the joint agency. And so with that nature of the

1 combination you're not introducing a whole lot of I'd
2 call it complexity that's changing the nature of the
3 cross-border operations in any one location.

4 Certainly, there's going to be new services that are
5 going on different OD pairs. We think that the
6 expertise that the combined organization will have
7 from running in all of those countries for, you know,
8 a hundred plus years and then 25 plus years in Mexico
9 will serve it well to be able to meet the needs and
10 interests of all the national stakeholders and NAFTA
11 combined.

12 BOARD MEMBER HEDLUND: Mr. Ottensmeyer, is
13 there anything in your agreements, under your
14 concession agreement or the extension of it or the
15 approval from the Mexican agencies that we should be
16 apprised of that might raise any concerns?

17 MR. OTTENSMEYER: No, Member Hedlund. We
18 have all of the approvals we need in Mexico. They've
19 been in place for some time. And we know anecdotally
20 that the Mexican government officials -- I was with
21 the Mexican ambassador to the U.S. last week. I've
22 have had a lot of interaction with the secretary of

1 the economy, the foreign minister and other cabinet
2 level ministers in Mexico that have expressed to me
3 their pleasure for this transaction, and they see it
4 as validation of the Mexican investment thesis, the
5 positive investment thesis that a transaction like
6 this that is based largely on promoting and growing
7 investment across North America, including Mexico, is
8 something that they see very positively.

9 I think the Mexican government and certainly
10 members of the administration understand how important
11 an efficient rail network is to their economy and how
12 important that has been to promote foreign investment
13 in Mexico.

14 Look only at the auto industry. You saw the
15 charts that were put up earlier. There are 16 auto
16 plants in Mexico. It is important and I think very
17 significant to remind the Board that we received a
18 letter of support for this transaction from the
19 Mexican automotive trade association, and that
20 includes all the brands in Detroit, in Japan, all of
21 the manufacturers that have a presence in Mexico.

22 They see this as a new alternative, a new

1 competitive alternative to move parts and supplies
2 from North America into Mexico and finish vehicles out
3 of Mexico across North America, including Canada.
4 They have other options that will not be foreclosed,
5 obviously, but they see this as something that will
6 improve attractiveness in Mexico for investment in the
7 KC auto industry and improve options for them to get
8 their products where they need to be.

9 BOARD MEMBER HEDLUND: Thank you.

10 CHAIRMAN OBERMAN: Patrick?

11 BOARD MEMBER FUCHS: Mine was just a minor
12 clarification. The on time performance number in the
13 record, if it's a closed gate facility it measures
14 only the constructive placement as opposed to the
15 customer destination. Is that right?

16 MR. CLEMENTS: Yes. That's fair to say on
17 closed gate.

18 CHAIRMAN OBERMAN: Any other questions of
19 Mr. Clements?

20 VICE CHAIR SCHULTZ: Just one.

21 CHAIRMAN OBERMAN: Michelle?

22 VICE CHAIR SCHULTZ: In your application you

1 indicate that there will be 750 new jobs in the U.S.,
2 and I wonder if those jobs were already included in
3 your 2,293 head count on page 45.

4 MR. CLEMENTS: No. Those 2,293 are people
5 that we have brought onto the property to date at CP
6 across North America, so Canada and the U.S. The 750
7 U.S. jobs are related to how we are going to support
8 the growth in traffic that we've described that would
9 accrue into the U.S. network both on Kansas City's
10 existing network as well as CP's existing network.

11 VICE CHAIR SCHULTZ: So those are future
12 hires.

13 MR. CLEMENTS: Those are future hires,
14 correct, related to synergy growth.

15 CHAIRMAN OBERMAN: For the moment are we
16 done? I'm sure we're going to come back to you. Is
17 it "Majeure" or "Major?"

18 MR. MAJURE: "Major."

19 CHAIRMAN OBERMAN: Every time I saw your
20 name in the record I kept thinking "force majeure,"
21 and I expect you to be a force majeure, so please
22 proceed.

1 MR. MAJURE: All right. Well, thank you,
2 Chair. My name is Bob Majure. I want to spend a few
3 minutes today explaining my key conclusion that the
4 CP/KCS transaction is procompetitive. There are no
5 horizontal competitive concerns and there are no
6 vertical competitive concerns. The economics of
7 vertical mergers instead confirm that the merger is
8 likely to enhance competition. Nevertheless, larger
9 Class I railroads seek remedies that are not going to
10 help shippers. Indeed, I've shown that the remedy UP
11 and BNSF have asked for would itself harm competitors
12 and would harm competition.

13 The other Class I's ask the Board to give
14 them various other handouts that are not designed to
15 fix any existing competitive issue nor any competition
16 that would have happened but for the transaction,
17 especially CN's hypothesis of adding significant
18 competition to a route that already has four single
19 lines on it.

20 I've also looked at the issues non-railroad
21 parties have raised that they says are competitive
22 concerns. As a whole, these are not in fact

1 competitive issues with the transaction. To the
2 extent that they do reflect shippers' concerns about
3 the stated competition, the best way to promote
4 competition here is to approve the transaction to
5 encourage CPKC to compete against the larger Class I
6 railroads, not to tie their hands with unnecessary
7 conditions.

8 Let me summarize the work that I've done in
9 this case. I submitted an expert statement in October
10 with the application in which I examined the CP/KCS
11 combination through the lens of modern competition
12 analysis. I used the confidential waybill sample
13 to perform rigorous analyses consistent with the
14 Board's review of all forms of competitive issues from
15 previous mergers.

16 Using the tests that have become standard in
17 those reviews, I examined whether the CP/KCS
18 combination created any horizontal competition
19 concerns. I examined competition within corridors. I
20 tested if there were any origin or destination markets
21 for specific commodities likely to suffer a reduction
22 in competition, and I looked at the possibility of

1 coordinated effects. I found no reason for
2 competitive concerns in any of these forms.

3 I also analyzed the possibility of vertical
4 competitive concerns. Now, as the Board knows,
5 vertical mergers involve firms that are not rivals for
6 a customer's business but, instead, are working
7 together in some fashion to produce a joint product
8 for that customer. A vertical merger can make that
9 joint product better, and that can be good for
10 competition.

11 In the rail industry end-to-end railroad
12 mergers have long been recognized to follow this
13 pattern, enhancing competition by turning a joint
14 product, interline service, into a single line service
15 that shippers generally see as an improvement. That
16 spurs competition, because the shippers can choose the
17 improved service if their current interline service
18 doesn't match up. That's what competitor Class I's
19 are truly worried about.

20 In my experience, this sort of
21 procompetitive effect from a vertical combination is
22 most credible and is consistent with the economic

1 theory of vertical effects where the parties to the
2 transaction have tried unsuccessfully to achieve the
3 same benefit for customers through arm's length
4 negotiations prior to combining. That is the case for
5 the CP/KCS combination, as Mr. Brooks and
6 Mr. Ottensmeyer described earlier.

7 In certain cases a vertical merger can
8 instead create anticompetitive effects. The vertical
9 merger guidelines issued in 2020 by the Antitrust
10 Commission and the Federal Trade Commission identify
11 two prerequisites to such an effect: One of the
12 merging parties must have the ability to preclude or
13 control a rival's ability to compete, and there must
14 be an incentive for the merged entity to exercise this
15 ability over rivals. I found neither of these
16 elements present here. All of my results confirm what
17 a simple look at this map shows: that the CP/KCS
18 combination is a vertical end-to-end merger, the kind
19 of transaction that enhances competition.

20 Now, when I was at the DOJ one rule of thumb
21 we followed was that when competitors complain about a
22 merger's affect on competition it's often the case

1 that they're complaining because they will face more
2 competition. Nobody complains about a merger that
3 will soften the competition they'll face. That seems
4 to be the case here as well. Indeed, unlike most
5 competitor complaints that I've seen, the ones in this
6 case are often transparent about the fact that they
7 are presuming any enhanced ability to compete by CPKC
8 is exactly what they would identify as a competitive
9 harm.

10 But as the Board said in KCS-Tex-Mex, harm
11 to a competitor is not the same as harm to
12 competition. All of the constraints these competitors
13 propose for the Board to place on a combined CPKC are
14 contrary to the Board's goal of fostering competition.
15 They're remedies against competition rather than
16 remedies to promote competition.

17 It's also informative to look at who's not
18 complaining. The Department of Justice has a long
19 history of concern for competition in the railroad
20 industry. Their absence from these proceedings tells
21 me that they don't agree with these comments.

22 On the vertical concerns of UP and BNSF the

1 Board has the benefit of some history. UP and BNSF
2 made all the same arguments about vertical foreclosure
3 back in 2004, when KCS acquired control of TFM, what
4 is now KSCM. The Board rejected those claims then,
5 and history has proven the Board right, as there has
6 been no evidence of foreclosure at Laredo or Robstown.
7 Overall, cross-border traffic has not been restrained,
8 as you can see from the confidential exhibit in your
9 binder.

10 To support their claims of foreclosure,
11 commenters have presented various cuts of the data
12 showing UP, BNSF and KCS's traffic shares over time at
13 Laredo. However, these exercises do not prove
14 foreclosure. Rather, commenters simply assume that
15 out of all possible reasons shares may have evolved as
16 they did, some partial foreclosure is the relevant
17 one. In doing so, they offer no evidence that might
18 help distinguish their favored explanation from
19 procompetitive explanations, from deliberate changes
20 to their own traffic flows and from other changes in
21 traffic patterns that are unrelated to whatever vague,
22 unspecified theory of foreclosure they may have in

1 mind.

2 Taking one of those alternatives, for
3 example, many of the exhibits submitted in the reply
4 demonstrate that these shifts in traffic such as to El
5 Paso and Eagle Pass, are a deliberate choice by the
6 other railroads. The exhibit in your binder is one
7 such example.

8 Why is this important? Because commenters'
9 analysis only focused on traffic flows through Laredo.
10 That makes their exercise of competitive options look
11 like traffic that disappeared, and it paints a false
12 picture of whether these competitors have been
13 foreclosed or whether competition was enhanced by the
14 merger. The bigger picture shows that KCS has been
15 effective in competing with its extended single line
16 service and the UP and BNSF have also found ways to
17 step up their competitive game.

18 These thin concerns are a poor justification
19 for UP and BNSF's requests for price regulations that
20 would perversely create a competitive problem where
21 none exist. Though advertised as innocuous, these
22 regulations would inhibit competitive pricing from

1 CPKC, and they would insulate UP and BNSF from facing
2 the full competition petition of new single line
3 service. The proposed remedy would tax CPKC's ability
4 to compete with single line service anywhere that
5 interline rates on the KC SM segment happen to be
6 higher than a mileage based prorate.

7 I looked at the traffic tape data and
8 determined that interline movement systemwide
9 routinely have one rate or the other that is larger
10 than the share of distance. As you can see from the
11 exhibit in your binder, that disproportionality makes
12 it possible for interline carriers to balance out all
13 of the other considerations they have in such
14 movements, the kinds of flexibility that efficient
15 flexibility depends on.

16 It shouldn't surprise anyone, then, that
17 regulating the flexibility out of CPKC's operations
18 will impair competition. A simple example shows how
19 this works. Consider a hypothetical interline
20 movement that currently has a through rate of \$900
21 with divisions of \$500 to UP or BNSF and \$400 to KCSM.
22 As often happens, this division is not proportional to

1 distance, so let's assume KCSM carries 30 percent of
2 the miles in a single line haul. As CPKC considers
3 how to price single line service to compete with this
4 interline, they'd likely consider something like the
5 table on this chart to see how various prices affect
6 revenue.

7 Note how that table would look differently
8 under the remedy regulation. Because the regulation
9 ties the rate to the division, any time CPKC would
10 looking to offer shippers more savings they take an
11 additional revenue hit. To balance out this tax on
12 being competitive they may have to start from an even
13 higher price point. In this example it takes a price
14 increase of \$100 to get back to where they would have
15 been just matching the interline rate with no
16 regulation.

17 On this next slide we can see how that
18 upward pricing pressure of the remedy regulation hurts
19 shippers and helps UP and BNSF. That new higher price
20 for zero revenue impact means that instead of starting
21 from the scenario on the left and letting the new
22 single line service compete freely, the regulation

1 means CPKC's single line offer is effectively starting
2 from a higher price point and giving UP or BNSF \$100
3 in improved division. That's the black bar n the
4 scenario on the right. It's the tax on CPKC's Mexican
5 segment, and it essentially goes directly to UP of
6 BNSF.

7 Paying for this tax is what gives CPKC
8 upward pressure on their prices. In this diagram
9 that's evident from the higher prices CPKC would need
10 to charge to remain revenue neutral. UP and BNSF get
11 all the benefit from this scheme. They get the \$100
12 black bars in improvement in their division and they
13 get a \$100 cushion on the competition they face, so
14 they can raise their proces to shippers, as shown by
15 the red bar.

16 Using traffic tape data, I determined that
17 this proposed regulation would not just tax CPKC's
18 ability to compete for new traffic. It would affect
19 hundreds of millions of dollars of current KCS single
20 line service and hundreds of millions in current KCS
21 interline service that interchanges north of Laredo.
22 The exhibit from your binder illustrates how I used

1 traffic tape data to calculate those effects. The
2 details of those calculations are in my testimony.

3 But each of the red dots in this chart is a
4 real movement, and each of these movements has the
5 same sort of fact pattern we just talked about in the
6 example. And, to be clear, these are movements in
7 2019, not in some hypothetical foreclosure attempt
8 after the transaction. As a smaller but still
9 important point, the proposed mechanisms would also
10 allow competitors to learn CPKC's single line rates,
11 which would further harm competition. This is why
12 restrictions on merging parties should be a last
13 resort and only where competitive harms clearly
14 establish a need for them. Otherwise, the unintended
15 consequences generally make the remedy worse than
16 allowing unfettered competition.

17 Of the complaining competitors, only CN
18 claims there's some horizontal competitive concern. I
19 examined this claim and didn't find it to have any
20 merit. The St. Louis-Springfield line, the line they
21 identify as a concern, is not competitive and is not
22 likely to become competitive in the way CN

1 hypothesizes. Their claim is that the line would be
2 made competitive and that investing in this line would
3 allow diversion of thousands of truckloads of traffic
4 between Kansas City and Chicago on the rail.

5 That claim defies logic. If there was such
6 a potential both KCS today and CPKC tomorrow would be
7 expected to see that large revenue potential as
8 something that would warrant investment, but in
9 reality the line has a track record of being
10 competitive in this Kansas City to Chicago corridor.
11 My analysis showed that shippers are unlikely to
12 experience a significant competitive effect from not
13 having an independent KCS on this corridor
14 particularly due to the four other independent single
15 line rail routes already serving it.

16 In my time at the antitrust division I
17 followed the principle that if there's no harm then we
18 should be skeptical of claims that a supposed remedy
19 could make competition better. The reason that we
20 promote competition is that we trust that competitive
21 pressure drives firms to make better decisions about
22 investments and their ability to compete than we would

1 make for them in a regulatory proceeding.

2 Here, CN's proposed divestiture would have
3 the Board second guess the competitive process that's
4 already dismissed CN's hypothesis as not credible, and
5 in doing so the Board would likely cause harm by
6 depriving shippers of some of the enhanced competition
7 the CP/KCS combination would otherwise generate.

8 Finally, in my July statement I also examine
9 the concerns of non-railroad parties that they
10 describe as competition issues. Overall, I did not
11 find these concerns to be about the effects on
12 competition from a CPKS combination. Instead, the
13 most compelling of these concerns were about the
14 overall level of competition that has developed in the
15 industry over the last decades. While I certainly
16 understand why shippers would look for any opportunity
17 to gain some relief from that, I think it's important
18 to keep in mind that the CP/KCS combination is about
19 enhancing competition, and the restrictions on how
20 CPKC can compete will likely mean that these same
21 shippers will see less of the relief that they are
22 seeking, which brings me to my bottom line conclusion.

1 To advance the Board's objective of
2 fostering rail competition and to address the concerns
3 of these shippers, the best way to proceed is to force
4 the railroads responsible for that concern, the larger
5 Class I's, to face competition from an unfettered
6 CPKC. Thank you.

7 CHAIRMAN OBERMAN: Thank you, Mr. Majure. I
8 just have one very quick question for the moment, and
9 that is the charts that you showed us is about the
10 regulated rates and so forth, you're analyzing the
11 BN/UP request for a prorated mileage based rate. Is
12 that what it's based on?

13 MR. MAJURE: It is. It's based on the
14 aspect those have in common.

15 CHAIRMAN OBERMAN: Okay. Thank you.

16 BOARD MEMBER FUCHS: To your analysis, and
17 I won't touch on the highly confidential aspect of it,
18 but what do you see as the best measures of whether or
19 not vertical foreclosure has occurred? Is it
20 cross-border flows or are there other measures that
21 can be brought to bear.

22 MR. MAJURE: I think that the question of

1 whether foreclosure has occurred, we're looking at
2 something 15 years later, but looking at the first
3 confidential chart that I showed you, we see the way
4 traffic has flowed across the various Mexican gateways
5 and how the different carriers handled that traffic,
6 who handled that traffic. I think what you see there
7 is a story of growth. You do see that shares are
8 affected when KCS becomes a more effective competitor
9 at Laredo, but looking at how everyone has grown,
10 that's clearly the opposite of what one would expect
11 if there was a story of restraining competition and
12 giving shippers fewer options and degraded overall
13 service.

14 BOARD MEMBER FUCHS: So would you propose
15 following the merger that the Board should take a
16 close look at cross-border flows to ascertain whether
17 there's been vertical foreclosure?

18 MR. MAJURE: I think that the -- I think
19 that those -- those are the -- well, I don't know why
20 you would look at those any more than anywhere else,
21 but I think what you should be looking at is whether
22 there's a pattern of shippers not being able to get

1 options as distinct from shippers choosing a different
2 option because it's better.

3 BOARD MEMBER FUCHS: I think part of the
4 reason why the Board may hone in on that is because
5 it's such a contested issue in the documents. We know
6 in part because a number of parties have raised the
7 prospect of gaps in the Mexican regulatory regime and
8 the lack of sufficient alternatives such that, if
9 there is a foreclosure problem that happens in Mexico,
10 the Board may have limited tools to address it, so how
11 would you propose that the Board think about vertical
12 foreclosure that occurs in Mexico? How do we measure
13 it? How do we know if it's occurring? What do we do
14 if it does occur?

15 MR. MAJURE: And the reason that I say I'm
16 not sure I would look at the one -- well, I think you
17 had said cross-border traffic, and I think answered in
18 thinking you were asking about Laredo specifically.
19 But I think is the key point there in evaluating how
20 that has played out, it looks like there is a history
21 here of exercising competitive options within
22 Mexico -- exercising options across the gateways says

1 that involve competition that happens between the
2 gateways and between carriers in Mexico. So as long
3 as you're taking a broad enough look that you can see
4 both the competitive response that's being employed
5 and the lack of this hypothesized monopoly power in
6 Mexico, I think that looking at the cross-border
7 traffic flows is going to be a good way to see that
8 this merger is going to be enhancing competition.

9 MR. OTTENSMEYER: If I may offer a comment,
10 I think Dr. Majure started out by pointing out that
11 the Board has the benefit of history in looking back
12 on the past 17 years, and I stated with my testimony
13 that these are the same claims that we faced 17 years
14 ago, and the fact is that there really is no change in
15 some of the dynamics that exist at the Laredo border.

16 We have agreements in place. We have an
17 agreement, conditions that were imposed by this Board
18 in the KCS/Tex Mex transaction. We have agreement
19 that we will continue to be bound with the NIT League
20 that adds some teeth, for lack of a better word that's
21 coming to mind, to that agreement, and then there are
22 market forces.

1 So we have a commitment to keep gateways
2 open. We are going to offer a new option, a third
3 option. We will compete for traffic that's available
4 for us, but we will keep gateways open for traffic,
5 for example, that wants to move across the Laredo
6 bridge and the Laredo gateway that's going to markets
7 we can't serve. We have no interest in doing anything
8 different for that type of traffic. And there's an
9 oversight in the fact that over the last 17 years
10 we've had not a single shipper or customer complain
11 about foreclosure.

12 BOARD MEMBER FUCHS: I appreciate that. And
13 tying this in that I'm standing in between people and
14 lunch, I'll just quickly get a little clarity on the
15 nature of the commitment on open gateways, because I
16 do think this is probably the most contested
17 competitive issue in the record.

18 So just a couple points. One is: Is there
19 a time period by which you're judging whether or not
20 that interchange was open and people were
21 interchanging? I think you probably saw that shippers
22 have advocated January 1st, 2018 as the time period

1 which we should look at interchanges. Do you have a
2 date certain that you're judging when an interchange
3 existed?

4 MR. MEYER: Let me try to address that from
5 my vantage, and perhaps others will have insights. I
6 haven't, at least, and I think therefore I'm speaking
7 for "we," haven't specifically fixated on a date
8 certain as of which, you know, if a car's not moving
9 on that date then it's not covered. We're thinking
10 more in terms of the pre-transaction use over time for
11 particular traffic flows.

12 So, you know, if an option, and I take, you
13 know, Laredo as a useful illustration, you know, if
14 there has been a particular opportunity available for
15 automotive shippers, for example, moving either
16 containers or boxcars of auto parts between Mexico and
17 Chicago, regardless of whether it's a specific shipper
18 or a specific commodity within the box that moved on a
19 particular date, the idea is that if that option was
20 available to that customer pre-transaction using KCSM
21 in Mexico and is choosing Union Pacific beyond Laredo,
22 then that would be an example of traffic that we would

1 consider within the scope of the commitment.

2 BOARD MEMBER FUCHS: And when you say you
3 would quote a Rule 11 rate, they ask whether or not
4 you'll give a choice of contract or tariff, do you have
5 a view on that? Will you quote the rate for both
6 forms?

7 MR. BROOKS: I think that makes sense.

8 BOARD MEMBER FUCHS: And they also ask, you
9 know, whether or not you'll include traffic that
10 originates on a Class II or III as long as there's an
11 interchange point later in the move?

12 MR. BROOKS: So it would connect to
13 ultimately to a short line?

14 BOARD MEMBER FUCHS: Yes, ultimately, be it
15 origin or destination. Would that be included?

16 MR. BROOKS: Yeah.

17 BOARD MEMBER FUCHS: And, lastly, and we'll
18 probably have to dive into this more after lunch, but
19 I think that there's some questions in your
20 deposition, Mr. Brooks, about what the standards are
21 for commercially reasonable, and of course cognizant
22 of the Board's imposition of a commercially reasonable

1 standard in past mergers and also aware that you all
2 negotiated with CSX and Pan Am about some aspects of
3 that on the surface side and other things, I'm sort of
4 wondering, and maybe this could be a launch off point,
5 is what do you see as the specific standards for
6 commercially reasonable? We understand that you don't
7 like the prop right mechanism, but how should the
8 Board consider what's commercially reasonable in
9 thinking about your adherence to your commitment?

10 CHAIRMAN OBERMAN: Patrick, let me suggest
11 that that question be answered after lunch.

12 BOARD MEMBER FUCHS: That's a great
13 suggestion.

14 CHAIRMAN OBERMAN: That will bring a lot of
15 follow-up. Robert, you had one question? And then we
16 should break for lunch.

17 BOARD MEMBER PRIMUS: Yeah, and I'm hungry,
18 so I'm going to be very short. Doctor, I appreciate
19 your testimony here. My one, I guess, sticking point
20 is when you said or you sort of alluded that we didn't
21 hear from the Justice Department, your former
22 employer, about this merger. I kind of don't want to

1 see that silence should not imply that they're signing
2 off on this, either. You know, I'm sure if I were to
3 place a call or asked them during this break if they
4 had concerns, I'm sure I might get a different answer.
5 I'm not going to do that, but I also don't want to
6 simply say that because they haven't weighed in --
7 because they did weigh in earlier with voting trusts
8 and other issues earlier, so it's not like they
9 haven't, and it's not like I'm assuming that it's just
10 a done deal from their side. I'm actually surprised,
11 too, why they're silent. But I don't want to leave it
12 as if to imply -- for anyone listening to imply that
13 they haven't said anything so it must be okay.

14 MR. MAJURE: And I didn't mean that in a
15 legal interpretation sense. I just know from my own
16 experience that they do not tend to be shy about
17 expressing their concern, particularly in the rail
18 industry, and so from that experience I would say I
19 can infer from that how they feel about the potential
20 for harms from this particular transaction.

21 CHAIRMAN OBERMAN: All right. With that,
22 thank you. We will break for lunch. It is 1:18, and

1 we will reconvene at ten minutes of 2:00 sharply.

2 We've got a lot to accomplish this afternoon. Thank
3 you all.

4 (Recess.)

5 CHAIRMAN OBERMAN: All right. We are back
6 in session, and there was a question pending by
7 Patrick to Mr. Brooks, I think.

8 BOARD MEMBER FUCHS: Yes. I'll just restate
9 it briefly. The question was CP has committed to
10 quoting Rule 11 rates and making those rates
11 commercially reasonable, making the entire product
12 commercially reasonable. You were asked in your
13 deposition what those standards are for commercially
14 reasonable. I did not see standards clearly laid out,
15 so I was offering you the opportunity to clarify what
16 commercially reasonable means to you and how the Board
17 can judge your commitment.

18 MR. BROOKS: Thank you, Member Fuchs. Let
19 me start by saying you're right. Commercially
20 reasonable, and I guess it's been a term that predates
21 all of us and who knows how long, I'm sure some of the
22 historian lawyers could tell us, but it's somewhat

1 skooshy. I think part of it is that it may be that
2 way by design, and it's that flexibility that we would
3 ask the Board to think long and hard about in this
4 area.

5 It's more of a feature in terms of how we
6 intend to compete than a hard mechanism or guideline.
7 And I know that may be not what you wanted to hear,
8 but it's maybe what you might have expected to hear.
9 Ratemaking in my history in working in this commercial
10 space for a lot of years, there's no book on it.
11 There's all sorts of complexities that go into it.
12 And it's part of the reason why when we look at what's
13 proposed by UP and BNSF and the rigidity of a mileage
14 prorate, it makes us extremely uncomfortable in
15 ultimately enabling our single line haul to be able to
16 compete.

17 Now, I know that's a little different than
18 offering Rule 11 pricing, and I'll get to that in a
19 second. But I think ultimately the Board, if we're
20 blessed with, you know, being able to go forward with
21 this transaction, a big part of the reason why is you
22 want us to create that competition; you want us to

1 create that, as I call it, the superhighway
2 north-south. And to do it, to have any sort of
3 rigidity in working with the customers to create that,
4 I think, is counter to what not only what you'd want
5 us to do but what the customers are looking for.

6 I've talked about this subject a fair amount
7 with the customers as I've met with them. And, again,
8 I think, number one, they want us to go toe to toe and
9 have the flexibility to do it, but they've also made
10 it very clear if they want a Rule 11 price or an
11 interline price via the gateways they have today, then
12 they should be entitled to it.

13 I think if you look at -- and I referenced
14 this earlier -- our history and I think the history
15 that Pat describes in this area, we've been dependent
16 on those relationships and trying to make those
17 interlines work independently with each of our own
18 railroads. This merger is about growth, and if we go
19 into this with any different mindset or with the
20 thought to foreclose customers of options -- and I say
21 customers, not railroads -- the customers of options,
22 I think we're going to lose in it. That is not how

1 we've been successful at Canadian Pacific.

2 Now, let me just go back to Rule 11 pricing
3 and making sure that shippers and customers have all
4 the rights they have today. That is philosophically
5 number one our commitment, our commitment as it
6 relates to bottlenecks. The rights that a CP customer
7 or KCS customer has today will be the same rights they
8 have in the future. If they want gateway pricing
9 we'll provide it.

10 I believe the mechanism, though, for
11 ultimately gauging our success in that or how the
12 public views it or how customers view is really the
13 market, and it should be the customer that has
14 ultimately that voice. And I think in this case that
15 that customer will not be bashful if in fact they
16 believe we've done something to their pricing to
17 express that.

18 These customers know what the rate levels
19 are today through these corridors, and they're going
20 to have every right to voice concerns if in fact we
21 take action to crank up or increase the rates to a
22 level to force something unnatural. That may be a

1 long-winded answer, but it's a complex situation.

2 MR. CLEMENTS: And maybe just one minor
3 detail I'd add around knowing what's going on. The
4 advantage of a Rule 11 rate, and you did mention the
5 difference between tariff versus contract, ultimately
6 if you have a Rule 11 rate in tariff it can be
7 challengeable, and so that's the ultimate backstop.
8 If nothing else works, then the way we would provide
9 rates would give them a mechanism to come forward and
10 challenge the rate, but, as John has described, we
11 don't think it will ever get there.

12 BOARD MEMBER FUCHS: Right. But at the same
13 time, in Appendix A of the rebuttal verified statement
14 from you, Mr. Brooks, you said that CP would not take
15 the position that commercially reasonable equals
16 maximum reasonable rate, which suggests that
17 commercially reasonable is some level below the
18 maximum reasonable rate in most if not all instances.
19 But there's a lack of clarity beyond that.

20 Okay. So we know it's somewhere below the
21 maximum reasonable rate or you're not going to take
22 that position, but beyond that there's not a lot of

1 clarity about what a shipper could actually bring to
2 the Board to prove that something's beyond
3 commercially reasonable. You know, one clause that's
4 been inserted in some agreements without reference to
5 a particular agreement is, you know, something that
6 supports the movement of traffic on a particular
7 alternative route, but even that -- and so I totally
8 appreciate the concern about something that's too
9 mechanical that might introduce cost subsidies or
10 perverse incentives, but, you know, we're faced with
11 something that is pretty undefined.

12 MR. MEYER: Well, Member Fuchs, I can share
13 the frustration with the concept of looking for some
14 tight standard approach to interline pricing that
15 addresses this issue. I represented one of the
16 parties in the KCS/Tex Mex matter many years ago
17 looking for that kind of solution, and I know how
18 ephemeral it is. And I think what you're hearing from
19 Mr. Brooks and from the other evidence we've submitted
20 is the first line of defense here is the market and
21 our incentives. That's number one. Number two, at
22 the other end of the spectrum perhaps, although I

1 don't know whether it ends up being there or not, as
2 Mr. Clements said, we're not creating new bottlenecks.
3 So to the extent the factor is challengeable now, it
4 will be challengeable in the future under the rate
5 reasonableness standard.

6 What we're saying with respect to the
7 commitment about interline pricing is that's a
8 commitment that doesn't have jurisdictional
9 thresholds. You know, you don't have to come in and
10 prove market dominance. There's none of those
11 hurdles. So any shipper, any shipper, who thinks that
12 the rate action that CPKC has taken over an affected
13 gateway for affected traffic was somehow outside the
14 range that would make sense as an interline division
15 to move traffic but was instead designed instead to
16 shut off an option, they can make that case.

17 There ought not be a tight sort of bar they
18 have to clear to make the complaint. There never has
19 been under the Board's prior precedents. We don't
20 have a track record of seeing how those disputes have
21 been adjudicated because there has never been a
22 complaint, or at least certainly never one that's made

1 it into the record that I'm aware of, and none about
2 the KCS/Tex Mex/TFM transaction.

3 So then the question is in that context,
4 right, the first thing a shipper would do, presumably
5 and hopefully, would be to come to us, you know, We've
6 got a problem with this, you're not supporting this
7 interline option anymore, and presumably there'd be a
8 dialogue, there'd be engagement, and ideally it would
9 never get to the Board. If it got to the Board in the
10 form of a dispute we would be called upon to explain
11 why whatever action it was under whatever
12 circumstances, whatever market context, you know, what
13 we were doing wasn't shutting off an option.

14 Now, it really is important to remember that
15 in any interline context it's going to take two
16 railroads to make that work, so it's not really within
17 the control of CPKC to make the traffic move under
18 that interline option. Both parties, or all three
19 parties depending on the movement, will have to be
20 working together. And it may be that divisions have
21 to move around and it may be that, you know,
22 investments need to get made by another party in order

1 to continue to support an interline option being as
2 attractive as it was relative to single line options
3 that are going to become much better.

4 So I think what Mr. Brooks was saying about
5 this flexibility, inherent flexibility of a standard
6 like commercially reason terms, is that it allows for
7 all of those circumstances to be considered in any
8 given case without creating hard rules that would get
9 in the way of market based pricing.

10 BOARD MEMBER FUCHS: I appreciate that, and
11 maybe I'll wrap up with an observation and then one
12 more question. So my observation is that I certainly
13 can appreciate, just given how long the Board has
14 struggled with defining maximum reasonable rates, the
15 difficulty in setting hard and fast standards even in
16 the regulatory context where somebody lacks effective
17 competition. So I can certainly appreciate that, and
18 I also appreciate, you know, the degree to which a
19 proper rate mechanism deviates from the way the Board
20 has thought about ratemaking.

21 I totally understand that. I'm wondering
22 whether or not maybe to advance the ball about what

1 commercially reasonable means you all might be able to
2 specify some of the factors that the Board would look
3 at if the Board were to preserve a more flexible
4 approach to commercially reasonable but the shipper
5 had an idea of the types of factors that it should
6 address in a filing before the Board should it allege
7 that something's not commercially reasonable. That
8 might provide some brackets or at least get people
9 thinking a little bit more about what that means in
10 practice. So that's just an observation/request, and
11 not speaking for any of my colleagues.

12 And then my final question is: When this
13 issue has come up before, including with you all, in
14 another proceeding it wasn't just about rates, it was
15 about service levels, and of course that's another way
16 that competition can be undermined. You all might set
17 a rate that people might view as within the realm of
18 commercially reasonable but might take some sort of
19 action from a service standpoint. Other agreements
20 have addressed service specifically. I don't see
21 anything on the record that talks about what service
22 may mean in the context of commercial reasonableness,

1 and I'm wondering if you might address that.

2 MR. MEYER: Let me just organize a few
3 thoughts, and then I think others on the panel are
4 better equipped to speak to the facts.

5 Number one, just to put things in context,
6 the concerns that CP had about the Pan Am case were
7 not about a vertical issue at all, they were about a
8 loss of horizontal competition, and that's just a very
9 different setting. But, that said, I understand your
10 question about the ability of -- you could imagine
11 shutting off a gateway option by no longer supporting
12 traffic operationally, and I think our commitment is
13 intended to extend to that kind of action as well.

14 There are existing commitments that will
15 continue as applicable to the case relating
16 specifically to Laredo, and they can speak to that
17 more directly. But, in addition to that, Mr. Elphick,
18 perhaps, can explain how the service levels to the
19 interchanges on the CPKC system will not be degraded
20 for purpose of interline traffic.

21 BOARD MEMBER FUCHS: That would be great.
22 We'll stipulate that it's obviously contingent upon

1 overall demand, so no one's expecting a certain
2 service level if the demand's not there, but of course
3 the two are interrelated, so I'd appreciate it if you
4 could address that.

5 MR. ELPHICK: Precisely. I would say that a
6 car is a car, and I make that statement because a car
7 sitting in a yard is a car dwelling and has less
8 capacity. We have to keep cars moving to have a
9 service product, and that density that I spoke to
10 earlier comes about including interline traffic. It's
11 not just our traffic. And so on CP's network today,
12 as an example, we move traffic from St. Paul to
13 Edmondton for CN on the same train we move our traffic
14 on. Our principle of moving cars seven days, keeping
15 it moving, it's embedded in the operating plan.

16 BOARD MEMBER FUCHS: Would that extend to
17 local service? I understand it gets to a point where
18 they're all on the same train, but is there potential
19 for discrimination at the local level, and how should
20 the Board think about that if that's a mechanism
21 that's being used?

22 MR. ELPHICK: We did not change the local

1 design. We reviewed it but we did not change it
2 because it's a growth story. Again, we will go and
3 meet in the local areas to understand the customer
4 requirements, dig deeper on it, but, you know, my
5 expectation from my experience with Mr. Creel at CP
6 was that we will find opportunities to increase the
7 frequency.

8 BOARD MEMBER FUCHS: Thank you.

9 CHAIRMAN OBERMAN: Michelle?

10 VICE CHAIR SCHULTZ: What gateways are
11 currently included in your open gateway commitment,
12 and, also, are there other locations where you
13 interchange with other carriers?

14 MR. BROOKS: So we look at it in terms of
15 what we consider affected traffic. So those would be
16 the gateways where maybe in simple terms areas where
17 CPKC can extend our haul, so a longer length of haul
18 than where we do today or where we create that single
19 line haul between the carriers. So maybe as an
20 example, certainly, traffic running over Laredo to
21 Chicago would fall into that category. Other gateways
22 may be not affected by the transaction. Our current

1 interchange with carriers up in St. Paul today are not
2 affected by how we operate through there in the
3 future.

4 VICE CHAIR SCHULTZ: I think I was looking
5 more for specific locations and a number.

6 MR. MEYER: Member, we can perhaps attempt
7 to create such a list, but I think perhaps looking at
8 it from the other end of the telescope, so to speak,
9 might help. I think what we're saying is that it's
10 any place that we interchange traffic today, any
11 interline route that exists that would be affected,
12 because instead of the CP system going only as far as
13 Kansas City, and Kansas City being an example of a
14 gateway, it will now extend south of Kansas City. So
15 for traffic going to a place that reached by Kansas
16 City Southern's network or the interchange is at
17 Kansas City, that would be affected traffic over an
18 affected gateway and the commitment would apply.

19 If the traffic interchanges at a different
20 gateway but going between the same points, so, you
21 know, traffic from Edmondton to Texas that might be
22 interchanged in St. Paul, the commitment would apply

1 to St. Paul with respect to that traffic.

2 And so there's not really a limited list of
3 gateways. It's really asking the question of for what
4 interline traffic are we creating an extended haul
5 potential. And we're saying with respect to that body
6 of traffic, wherever the current interline option
7 exists, we're going to -- you know, when it's
8 commercially reasonable, assuming, again, consistent
9 with Member Fuchs's point about, you know, traffic
10 volumes and so forth, we're going to keep that open.
11 And so we really haven't created a limited list,
12 because we'd be looking at it from the perspective of
13 the traffic, not the gateway.

14 VICE CHAIR SCHULTZ: Thanks.

15 MR. OTTENSMEYER: If I may, Mr. Chairman,
16 just go back for a point of clarification to Member
17 Fuchs's question, and I don't know if this is helpful
18 or not, but, again, you asked a question about means
19 other than rate in terms of the foreclosure question,
20 ask my verified statement refers to the Tex-Mex
21 agreement and the commitments that were made -- the
22 requirements made by the Board in the Tex-Mex

1 agreement which include, and it seems like you might
2 be looking at that or --

3 BOARD MEMBER FUCHS: I'm looking at the
4 exact paragraph, yeah.

5 MR. OTTENSMEYER: Okay. So you see that
6 it's a commitment to continue to work with UP and BNSF
7 on operating matters, keep the Laredo gateway open in
8 commercially reasonable terms, treat all carriers
9 fairly, operate safely. So, in addition to rate
10 issues, there are operational issues and commitments
11 that will be inherited and accepted by CPKC going
12 forward.

13 BOARD MEMBER FUCHS: Would you think that
14 the NIT League KCS agreement as it pertains to service
15 measurements is something the Board should be thinking
16 about to apply more broadly?

17 MR. OTTENSMEYER: I may defer to my counsel
18 on that question, if I may.

19 MR. MULLINS: Well the NIT League agreement
20 was -- obviously I represented KCS in that case, and
21 it negotiate as part of a negotiation of a
22 give-and-take, so I don't know if you can just take

1 the specifics of the NIT League agreement and apply it
2 to it here, but certainly if NIT League wants to sit
3 down with CPKC to ask something similar I would not
4 say that we should just automatically apply something
5 that was privately negotiated in a transaction 17
6 years ago to this transaction.

7 CHAIRMAN OBERMAN: I'd like to follow up on
8 this area. I find it perplexing, to say the least,
9 and I don't say that as a criticism, because, David,
10 the concept's difficult. But, as I understand it, if
11 you commit, as you have, to not invoke the bottleneck
12 rule you are then committed to quoting a rate, and but
13 for anything we might do here, if the person doesn't
14 like the rate and can't agree with you, they're left
15 to bring a rate case with us. And I think, and tell
16 me if I've got this wrong, and I believe everybody in
17 this case has said, Well, when we say commercially
18 reasonable it would be something less than the maximum
19 rate that could be set in a rate case. The first
20 thing that comes to my mind is why do we have this
21 system. The rates that you're allowed to charge under
22 our rate review mechanisms are higher than what's

1 commercially reasonable? Does that make a lick of
2 sense in this industry?

3 So I'm having trouble with the whole rate
4 problem. And, as you know, we have some rate review
5 mechanisms under consideration, but they're going to
6 not necessarily solve this problem whatever we do in
7 those cases. So I'm having trouble figuring out how
8 ultimately what the shipper or the other railroad's
9 leverage is if they can't reach an agreement with you
10 on a concept that's completely undefined.

11 MR. MEYER: Chairman, I think I may have a
12 bit of a disagreement with the premise of the
13 question. And that is that it's not necessarily the
14 case that what would be commercially reasonable is
15 necessarily above or below the regulated maximum rate.
16 The point I was making is there's always that
17 backstop, whatever that is. But, in addition to that,
18 wherever the rate levels are today on these interline
19 rates, I presume, and, frankly, I don't know this, but
20 I presume they're all under the jurisdictional or the
21 regulatory maximum. They're subject to intense
22 competition in many of these lanes.

1 We're not saying the shippers have only the
2 recourse of going into the regulatory process. Much
3 of this traffic is likely exempt. Intermodal traffic,
4 you can't challenge an intermodal rate, but you can
5 hold us to our commitment that we're not going to
6 cause an intermodal movement and force it away from
7 the shipper's preferred route by charging a
8 commercially unreasonable rate for the portion that
9 we're handling it.

10 Now, if the question is to say, Well, what
11 exactly is that rate, the market has to enable the
12 flexibility to determine, you know, in the future as
13 things evolve, markets evolve, costs evolve, traffic
14 volumes, capacity needs, everything that contributes
15 to ratemaking, and I'm sure my lift was extremely
16 incomplete, you know, we're going to be disciplined by
17 the market first, and all the things you heard from
18 Mr. Brooks and others about needing to participate,
19 wanting to participate in the traffic rather than
20 losing it to another gateway or to another shipper
21 option or having the shipper lose the business
22 entirely, all of those disciplining forces will

1 remain.

2 All we're saying is, you know, as a
3 backstop, you know, if you don't trust the market is
4 enough and don't trust that our incentives will be
5 sufficient, as a backstop you can come and make the
6 case, again, without having to go through regulatory
7 standards that we have shut down an option in some
8 unreasonable way, and we're prepared to stand that
9 test because we know it's not going to happen.

10 CHAIRMAN OBERMAN: Well, I believe that in
11 one of the filings here on behalf of the applicants a
12 statement was made, and now correct me if I'm wrong,
13 or in a deposition, but somewhere the statement was
14 made that the commercially reasonable rate will not be
15 determined to be as high as the -- doesn't have to be
16 determined to be as high as the maximum reasonable
17 rate.

18 MR. MEYER: That's right.

19 CHAIRMAN OBERMAN: So the point is the two
20 concepts don't mesh.

21 MR. MEYER: They don't.

22 CHAIRMAN OBERMAN: You would think that if

1 we're in the business of setting reasonable rates,
2 which is generally what our rate review process is
3 under the statute, it's almost inherent or implicit
4 that it be commercially reasonable because you're all
5 in commerce. I mean, I can't separate those concepts
6 in my head, and it just, as an aside from this merger
7 proceeding, tells me the arbitrariness and
8 capriciousness of our whole rate review system because
9 we can't even really use it here.

10 The problem I'm having, David --

11 BOARD MEMBER FUCHS: Marty --

12 CHAIRMAN OBERMAN: Well, let me just finish
13 this question. You're suggesting that a person who
14 ultimately can't work out a rate with you can litigate
15 it without going through all the 180 R/VC and market
16 dominance hoops. Where are they going to litigate it?
17 Here? And are you going to waive the exemption if we
18 didn't waive it for you so that that shipper, if it's
19 an exempt commodity, can come here, and, if so, what
20 is the proceeding, a violation of an order approving
21 the merger? What is the proceeding?

22 MR. MEYER: Again, I think the focus, the

1 scope of what I'm addressing right now is this
2 commitment to keep gateways open. It's only in the
3 context of a claim that we have shut off an interline
4 option by some rate or other mechanism that is
5 commercially unreasonable, that the shipper thinks,
6 you know, I used to have, for example, a
7 KCSM/Laredo/UP option, and now that KCSM/UP option has
8 gotten much worse for some reason. Right? The
9 shipper's going to see that and the shipper's going to
10 ask why -- by the way, this is a counterfactual
11 hypothetical because this isn't going to happen. But
12 were this to happen, the shipper would presumably come
13 to us to say, you know, We think the problem is the
14 KCSM division between somewhere in Mexico and Laredo,
15 we think that's commercially unreasonable, here's why
16 we think that. We try to work it out, presumably.

17 You know, probably we would have talked
18 about this long before that in the course of working
19 with that customer in Mexico. But, you know, I'm sure
20 there's an infinite variety of scenarios. So then if
21 there were a dispute and we said, No, we really didn't
22 close this gateway, here's why it was necessary for us

1 to do this, that or the other thing, and the shipper
2 disagrees, one place they could come is the Board to
3 enforce or the Board to impose a commitment as a
4 condition, to come to the Board. That's one option.

5 CHAIRMAN OBERMAN: Come to the Board and --

6 MR. MEYER: Seek to enforce --

7 CHAIRMAN OBERMAN: Seek to enforce an order
8 -- a condition that might be in the order approving
9 the merger. Is there a time limit on that
10 enforcement?

11 MR. MEYER: No, just like there's no time
12 limit on enforcement KCS's commitment made in 2004 to
13 keep the Laredo gateway open on commercially
14 reasonable terms. A shipper could go today, you know,
15 come to us, come to the Board to raise an issue about
16 that, so there's no time limit and there's no
17 relationship of that commitment to the Board's rate
18 regulatory principle. So exemption's not relevant.
19 We're talking about closing the gateway to any
20 traffic. With respect to the 180 R/VC jurisdictional
21 threshold, not relevant. We're not going to close the
22 gateway. We're go not to have the debate in those

1 terms. We're going to have the debate in terms of
2 have we closed the gateway.

3 CHAIRMAN OBERMAN: So you -- let me just --
4 I've got a few observations and questions here.
5 You're saying that the applicants would agree to a
6 condition in any order that says any traffic of any
7 kind, exempt traffic defined in the future, is subject
8 to having an avenue of relief to come before this
9 Board to enforce a condition about open gateways. You
10 would agree to that.

11 MR. MEYER: I believe we have already said
12 that.

13 CHAIRMAN OBERMAN: Well, I'm not sure how
14 clearly it's stated with regard to exempt traffic.
15 The problem I have with what you said earlier, David,
16 I that I think that we can stipulate everybody here
17 today is a saint, but this merger is going to last a
18 lot longer. So when you say it's never going to get
19 this far, who knows who will be running these
20 railroads 20 or 30 years from now? They may take a
21 much harder nosed view about these kinds of open
22 gateways, and so I think -- I think responsibly we

1 have to think about a mechanism that's on paper and
2 not just in everybody's goodwill.

3 But, beyond that, everything I have heard
4 from the rail industry primarily, but also from
5 shippers and other stakeholders, is that when we act
6 we have to have standards and we have to have
7 criteria. And you seem to be suggesting a procedure,
8 and maybe it is the best procedure -- I haven't really
9 thought this through; I've thought a lot about it --
10 in which there are virtually no standards except to
11 look at the case at hand and then try to divine what's
12 commercially reasonable at that time under those
13 circumstances without any guidelines. That's what I'm
14 having trouble with it, and I think that's what
15 Patrick was having trouble with.

16 MR. MEYER: A couple of quick things,
17 Chairman. First, I don't think a commercially
18 reasonable terms commitment is the best mechanism at
19 all. I don't think it's necessary and I don't think
20 it's the best. I think the best is the marketplace,
21 and Dr. Majure can perhaps address why that's so.
22 We're offering this in large part because its been

1 offered in every vertical merger since 2000 and
2 because it's worked. As far as the record discloses,
3 there's never been an issue with gateways being closed
4 following the end-to-end transactions in which this
5 commitment's been made.

6 CHAIRMAN OBERMAN: Well, isn't this a only a
7 problem in a place where there isn't a marketplace?
8 If there was a marketplace in this industry for
9 everything you wouldn't need us to be here. The
10 problem, as I understand it, the potential problem is
11 where a gateway can be closed and the shipper who's
12 affected has no feasible alternative market, so
13 they're under your thumb. That's where they need
14 relief by definition.

15 MR. MEYER: I think there are really two
16 scenarios here. Dr. Majure is probably better
17 equipped to handle this from an economic perspective,
18 but if you look at a shipper -- and really what I
19 think you do is you go back and look at the Board's
20 precedents, particularly the KCS/Tex-Mex decision, but
21 the long line of precedents addressing end-to-end
22 mergers and vertical effects. The BN/Santa Fe

1 transaction is another very good example.

2 The economics that the ICC and the Board
3 have applied consistently and the conclusion that is
4 reached consistently is that the concerns we're
5 debating aren't actually competitive concerns that are
6 real because -- two scenarios. A scenario where a
7 shipper has no option on one side of the gateway. So
8 there's a solely served shipper, and let's assume
9 there aren't any other ways for that shipper to get --
10 you know, they can't truck to a transload facility.
11 There's just no options.

12 All of the economics says that the merged
13 railroad in that situation has a compelling incentive
14 to support the most efficient origin to destination
15 route. Why? The concept has been referred to as this
16 one lump doctrine, but the concept is, if they already
17 have the shipper under their thumb, they're already
18 exploiting that shipper. The merger doesn't change
19 anything about that. The merger may create a better
20 option for that shipper beyond the gateway, but if
21 that option's not really better that carrier has every
22 incentive to continue to support the interline route

1 because that's what earns it the most profit. And
2 that's the Board's economics going back for decades.

3 At the other end of the spectrum, or really
4 anywhere outside of that case where the shipper has
5 options, well, that's exactly why there's an incentive
6 to do the same thing. Now, the rates that shipper
7 pays may be lower because of the better options, but
8 if that shipper has options, then forcing him to
9 choose an option that he doesn't like will cause him
10 to switch to the other options that he had before.

11 For example, you see examples in the record
12 from the post transaction effects in KCS/Tex-Mex.
13 There's evidence that shippers have chosen or
14 railroads have chosen to route their traffic over
15 other gateways. Well, that's a situation where there
16 couldn't be foreclosure. There certainly couldn't
17 have been an incentive to foreclose, because under no
18 circumstances would a railroad like KCSM or KCS want
19 to lose all of the revenue entirely to another option.

20 So if you look at the economics and think
21 about how the merger affects the dynamic, in any case
22 the incentive that CPLC has isn't going to change to

1 support interline options, and if a shipper thinks the
2 best option is some other option there's no incentive
3 to force him away.

4 Now, then why propose any commitment at all
5 if that's true? Very simply, because shippers and
6 shipper groups have expressed these concerns in the
7 past, and really there's no harm to us in making a
8 commitment like this, provided the commitment doesn't
9 become some rigid regulatory imposition on exactly how
10 we must price our interline rates. That would be
11 counter to market forces and get in the way of the
12 give and take, the normal interplay of those forces to
13 create rates that move up and down and all over the
14 place over time.

15 CHAIRMAN OBERMAN: The point about not
16 imposing a rigid solution is, I think, well taken.
17 The dilemma is to impose a solution that in a
18 practical sense is useable. And I'll just say for
19 myself, David, that invoking the economic decisions in
20 the long history of this Board and the ICC are no
21 longer impressive to me, given the current state of
22 the rail network which has operated under those

1 concepts and is the result of many, many mergers in
2 the past, not yours, and has brought us to the
3 disaster we're facing this year at least with some
4 railroads; not the two here, as I pointed out before.

5 So it's been my approach, more intensely
6 recently, to rethink how we do things, because we've
7 got a system that, in my view, is not healthy for the
8 national economy. So I think we have to think these
9 things through, and I appreciate the difficulty of
10 coming up with a practical solution, but there has to
11 be some backstop or else I think, you know, there's a
12 real risk of people being unprotected in the future.
13 And we wouldn't have -- I agree with you. If
14 everybody had options you wouldn't really much need
15 us. I think we're only talking about those situations
16 where a shipper has options now because CP stops at
17 Kansas City and it's no longer going to stop there and
18 so there is the threat of people not having a
19 practical option. That's the concern.

20 MR. MEYER: Well, I think -- understood.
21 And, unfortunately perhaps, the way in which interline
22 pricing works leaves us without the ability to have a

1 standard, some kind of mathematical or numerical or
2 quantitative or other precise definition of what is
3 the maximum rate in a particular case. That's
4 something that -- if that were feasible to do
5 consistent with the rail network reacting to market
6 and competitive forces, it would have been done a long
7 time ago across a much broader swath of the traffic
8 environment.

9 I would urge you to remember that what's at
10 issue in this case is not to use this merger to find a
11 new regulatory regime that the Board might wish to
12 apply to the industry and apply it just to us.
13 Remember that if that happens we'll be uniquely
14 handicapped with respect to the flexibility that we
15 have to respond to market forces, whereas what I think
16 the industry as a whole would benefit from and the
17 entire United States economy and the shipper community
18 would benefit from is these parties unleashed to
19 compete more aggressively and more nimbly and more
20 flexibly against all of those other carriers who
21 handle the vast majority of the traffic about which
22 the concerns you're expressing relate.

1 The best antidote for shippers who are
2 concerned about the amount of competition in the rail
3 industry is to have more of it, not to try and
4 regulate only in those cases where you have parties
5 before you.

6 CHAIRMAN OBERMAN: Let me ask this question.
7 It's been pointed out with some persuasiveness that
8 there haven't been any complaints about the Tex-Mex
9 interchange in 17 years, the suggestion being that one
10 of the ways to measure what's commercially reasonable
11 is what actually has happened looking backwards as we
12 try to predict the future.

13 Would it make sense for us to include as a
14 condition some kind of review rather than setting
15 precise numbers -- I'm just playing devil's advocate
16 here as I'm trying to grapple with this problem -- of
17 measuring just whether there has been two years from
18 now, three years from now, after the merger's
19 implemented, whether there has been any foreclosure or
20 diminution and take a look at it then? Wouldn't that
21 be the best measure of your commitment? As you say,
22 you don't expect the problem ever to arise, so that

1 would be the best solution, but how do we know it's
2 not going to arise?

3 MR. MEYER: Understood. And I think one of
4 the things that we take on board when we make a
5 commitment or accept up to five years of oversight is
6 that parties who are interested, including some in
7 this proceeding right now who have invested a lot to
8 try to make the case that foreclosure's likely but
9 without any evidence of it, won't be bashful about
10 coming into the oversight process to conduct exactly
11 the study you describe.

12 And, you know, I think it would be perfectly
13 understood by us that one of the issues that we might
14 be asked to address in future oversight proceedings is
15 exactly the question you pose.

16 CHAIRMAN OBERMAN: I would only say this,
17 and I'll hand it off to Patrick. The railroads may
18 not be bashful, but I hear nothing from bashful
19 shippers who don't come in here because they're afraid
20 of retaliation. I agree with you that a railroad
21 thinking it would be foreclosed would likely not be
22 bashful.

1 MR. MEYER: I can't speak for my client, but
2 if what you're suggesting is that in any oversight
3 report that we might be asked to make we address the
4 topic. I don't think that there's anything
5 unreasonable about that.

6 CHAIRMAN OBERMAN: Patrick?

7 BOARD MEMBER FUCHS: I just have a couple of
8 concluding kind of thoughts. The first is, you know,
9 I think it's important, David, on your clarification
10 to interpret the commitment as you all are not saying
11 that the commercially reasonable rate will always be
12 less than the maximum reasonable rate. You're only
13 saying that you're not going to say that just because
14 you could win a rate case therefore it's commercially
15 reasonable. Just to be absolutely clear on that, it's
16 not that it's always less.

17 MR. MEYER: That's exactly what I'm saying.

18 BOARD MEMBER FUCHS: Okay. Right. And I do
19 appreciate, again, understanding how much we've
20 grappled with maximum reasonable rate, how, you know,
21 difficult it would be for CP under these Rule 11 rates
22 to have its own rate review regime, you know,

1 considering how much the Board has struggled with the
2 broader rate review regime and what that could
3 potentially mean for your operational flexibility. I
4 do appreciate that.

5 A couple other things. Marty, you
6 mentioned, you know, Board precedent and how much we
7 should rely on it. I'd only make the observation that
8 the health of the industry was much worse before the
9 mergers. So, you know, if you were to look at when
10 there were 33 railroads I think every measure of
11 productivity, safety and rates would be worse. Not to
12 say that every merger was a good idea or that the
13 Board couldn't have done better in those mergers, but
14 there may be some positive outcomes that came from
15 many of those.

16 It seems to me that we're sort of circling
17 around a few things. One is there needs to be more
18 clarity about process, about how something would be
19 enforced. Marty, I think you raised an excellent
20 point about, you know, what exactly would be the
21 process for enforcing a Board order.

22 I know in past merger condition cases, one

1 which I know that there are some panelists that are
2 very much not a fan of, there's been reluctance to
3 reopen mergers that have long gone by, and so we
4 should think about what an enforcement order would
5 mean in the context of reopening and other things,
6 especially as Marty, I think, astutely pointed out
7 with the great passage of time. You know, I think
8 that, you know, some factors around the rates and
9 other examples of market based factors and other
10 contexts, again cognizant that we don't want to build
11 a rate reasonableness regime just for you, but you
12 know, certainly the term "commercially reasonable"
13 calls for some sort of interpretation at some point if
14 it's going to mean anything at all.

15 And then, lastly, I think it would be
16 helpful for you all to look at past commitments on
17 service as they pertain to gateways and what that
18 means in this context because rates and service can be
19 a particular tradeoff.

20 And one more thing. You know, you talked
21 about the visibility and the studies and the things
22 that the Board can evaluate. One of the things that I

1 think that I'm struggling with is, you know,
2 Dr. Majure, you talked about how we could look at
3 cross-border flows, but from a Board standpoint, our
4 visibility stops there. So there are all sorts of
5 exogenous factors that can affect cross-border flows,
6 production trends in the U.S., production trends in
7 Mexico, things that are completely outside of any
8 railroad conduct. I understand that, you know -- and
9 you can look at rates, but we have limited visibility
10 into the Mexican side of the rate division, I think.

11 So, you know, as you all are thinking
12 through this it seems to me among the gateway issues
13 one of the reasons that Laredo stands out is not just
14 because it's so important but because the Board's
15 visibility is much less in those scenarios. I just
16 offer that up as something I'm thinking about as we
17 have this discussion.

18 MR. MEYER: I appreciate those remarks.
19 And, again, one additional or comment about process
20 that I was remiss in not mentioning earlier, and that
21 is that we have been open to agreeing with
22 stakeholders to processes involving some form of

1 adjudication that doesn't involve the Board, some form
2 of -- you know, whether it's mediation or arbitration
3 or some informal resolution dispute process. And, you
4 know, I think for reasons that are difficult to
5 generalize, there haven't been parties interested in
6 that kind of constructive engagement. But, you know,
7 we can't very well propose unilaterally a particular
8 informal process. Arbitration, as everyone knows, is
9 limited to agreement of the two parties.

10 You know, we don't have a desire to have the
11 Board be required to field these kinds of complaints,
12 if there ever were one, which there never has, but, on
13 the other hand, we will certainly give further thought
14 to whether there are things that we can specify in the
15 way of process that help spell out with more clarity
16 what we are proposing.

17 BOARD MEMBER FUCHS: Thank you.

18 MR. MEYER: There was one other thought
19 about your last comment with respect to many of the
20 issues raised by other parties in this case. One of
21 the advantages of being in a proceeding like this is
22 being able to get access through discovery to data.

1 Dr. Majure's examination of the gateway flows was
2 informed not just by waybill data but by one
3 hundred percent traffic tape data from other parties.
4 Now, we didn't have Ferromex data, the Mexican
5 railroad at Eagle Pass and El Paso, but we had one
6 hundred percent data from all the other gateway
7 cross-border participants. And, you know, I expect
8 that we may in our ability to assess the full picture
9 going forward we'll probably be somewhat handicapped.
10 We'll know what we know, but we won't necessarily have
11 one hundred percent of the picture ourselves.

12 BOARD MEMBER FUCHS: That might be something
13 to consider in the oversight period. Whatever would
14 be at your fingertips to help provide clarity might be
15 something to think about as you're thinking about the
16 types of data to provide to the Board going forward
17 for the next five years.

18 CHAIRMAN OBERMAN: One more observation on
19 this subject, and I have a couple of other questions I
20 wanted to follow up on. Just so I can try to be clear
21 from an industry-wide position, to the extent there
22 have been prior conditions requiring commercially

1 reasonable rates in other cases, I don't know that the
2 Board is limited in trying to come to grips with what
3 commercially reasonable means as we apply it in any
4 case. So the notion that somehow there'd be a unique
5 standard for this merger if it were approved is not
6 something I had contemplated or anticipated. But I
7 would also say that, you know, with the advantage of
8 hindsight a lot of arrangements as a result of the
9 many mergers that took place long before our time here
10 have not necessarily been the most productive for the
11 country, and I don't know that this agency is forever
12 limited from trying to straighten things out. But
13 that's a much broader, more philosophical question.
14 But I'm not trying come up with something that's
15 unique to KCS, CP and their merger, if it's approved.

16 MR. MEYER: I think my observation,
17 Mr. Chairman, was really directed to the question of
18 what is the Board's authority to impose a condition
19 here, what would be the source of a condition in this
20 case. And under all of the Board's precedent under
21 the old rules the Board's authority here would be to
22 preserve what existed before, not to create something

1 new. And preserving what existed before would
2 inherently preserve the flexibility that CP and KCS
3 already have with regard to not just interline pricing
4 but all of their pricing.

5 Now, it's of course all subject to the
6 Board's general regulatory strictures. What we're
7 trying to solve for here is only a question of is
8 there a difference because of the merger in the
9 incentives and ability of a future CPKC to close a
10 gateway. And the answer to that question is no,
11 there's not. Right? So as the Board decided in
12 KCS/Tex-Mex, the right answer is no condition at all.
13 That's what the Board said in KCS/Tex-Mex: there's no
14 competitive concern. They were right.

15 Enforcing the commitments as a condition, I
16 won't speak for the Board, but it is a backstop. We
17 have no problem with that backstop because we have no
18 concern about creating a problem. But I just want to
19 be, you know, crystal clear that the only thing we're
20 trying to solve for is to preserve the pre-merger
21 situation, not to engraft a new regulatory regime that
22 might be a desirable thing writ large, but that would

1 be a huge policy debate for the industry and is really
2 not a product of this merger.

3 CHAIRMAN OBERMAN: I don't necessarily
4 disagree with the last point you made. I do think the
5 Board has the inherent authority to enforce
6 commitments and representations made to us in any case
7 to obtain a ruling from us, so I think we're in
8 agreement on that.

9 MR. MEYER: We are.

10 CHAIRMAN OBERMAN: So if that's the basis of
11 a condition we don't have to look further, in my view,
12 to authority. And, again, I'm speaking for myself.

13 I have one follow-up question to the
14 discussion we were having this morning about -- and I
15 can't remember who it was with, I think it was with
16 Mr. Orr, I can't remember now -- about the density of
17 having these non-stop trains going from Mexico to
18 Chicago. Was that you, Mr. Brooks? One of the two.

19 The question I have, and I'm trying to think
20 through your answer -- I've been given a note that
21 when you're finished be sure to turn your mic off
22 because it affects the camera. Where is the increased

1 density coming from? That's what I was grappling
2 with. In other words, is it coming from other
3 railroads that you're going to win traffic from who
4 are already taking it non-stop to Chicago or is it
5 coming from some other source? Can you try to
6 enlighten me on that? I'm trying to figure out if
7 this is actually better for the environment, better
8 for traffic, more efficient, or is it just switching
9 from one railroad to the other.

10 MR. ELPHICK: It's a mix of new business
11 with intermodal, both domestic and international, the
12 automotive business. It's a mix of all of the
13 business, so it's not -- it definitely is track
14 conversion as well.

15 CHAIRMAN OBERMAN: Okay. So it's not just
16 taking traffic off of one of the other railroads and
17 putting it on yours.

18 MR. ELPHICK: No. It's not, no.

19 CHAIRMAN OBERMAN: The other question I had,
20 and I don't know who this is for so I'll throw it out
21 and anybody can answer it. By my count, KCS currently
22 has 59, and I counted quickly, reciprocal switching

1 tariffs in the Kansas City terminal that are in
2 operation now. Is the new railroad committed to
3 keeping those reciprocal switching tariffs in place?

4 MR. CLEMENTS: You know, from the CP side we
5 haven't reviewed the competitive details of those
6 reciprocal switch tariffs. We can see the ones that
7 are open. You know, obviously ones that are
8 reciprocal between CP and KCS, they don't need to
9 remain, we'll take over, but everything else we would
10 continue to provide, the reciprocal switching that's
11 described in those tariffs.

12 CHAIRMAN OBERMAN: Well, so you will make
13 that commitment.

14 MR. CLEMENTS: Yes.

15 CHAIRMAN OBERMAN: Because that would, as
16 you might have learned from hearing from me,
17 reciprocal switching has something to do with
18 competition, and if we're not going to diminish
19 existing competition it would be a concern to me if
20 those reciprocal switching tariffs were no longer in
21 place.

22 MR. CLEMENTS: And we've said that there's

1 no shipper that's going to lose an option as a result
2 of this combination.

3 CHAIRMAN OBERMAN: But specifically with
4 regard to these tariffs.

5 MR. CLEMENTS: Yes.

6 CHAIRMAN OBERMAN: And can we apply that
7 anywhere on other railroad lines now besides Kansas
8 City where you have reciprocal switching tariffs, that
9 same commitment?

10 MR. CLEMENTS: Well, Kansas City is the only
11 place where we touch.

12 CHAIRMAN OBERMAN: Yes, but you may have
13 reciprocal switching tariffs in other places on your
14 line which could be brought into play now that people
15 will have an option of using the new single line
16 railroad.

17 MR. CREEL: Chairman, I would say that if
18 the option is there today, regardless of where it is
19 we're not going to eliminate it and keep our
20 commitment to have zero less options, so the answer is
21 yes.

22 CHAIRMAN OBERMAN: Through the entire --

1 MR. CREEL: Anything that exists today,
2 we'll bake it in.

3 CHAIRMAN OBERMAN: That's what I wanted to
4 hear. Thank you. Are there any other -- Karen. I'm
5 sorry.

6 BOARD MEMBER HEDLUND: This is for Mr. Creel
7 and Mr. Ottensmeyer. This is for the two CEOs.
8 Mr. Creel, you entered into an agreement with Amtrak
9 to assist them in expanding their service on a number
10 of rail lines. Several were on your own rail lines.
11 Two were on KCS. I notice from that agreement that
12 KCS was not a signatory to it. Is there a reason for
13 that?

14 MR. CREEL: No specific reason. We had an
15 existing relationship with Amtrak because we had
16 passenger service to build upon. My assumption, and
17 Pat can answer this, is that KCS did not.

18 BOARD MEMBER HEDLUND: Right. They did not
19 currently host Amtrak.

20 MR. CREEL: Right. And our commitment was
21 contingent upon our merger being approved as far as CP
22 stands, and I'll let Pat speak to KCS. In the event

1 the merger should not be approved I would assume --

2 BOARD MEMBER HEDLUND: The way I read your
3 agreement is that your commitment to Amtrak with
4 respect to expanded service on your own routes was not
5 conditioned on the merger being approved. But with
6 respect to KCS it was, because of course KCS was not a
7 party to the agreement and you couldn't bind them if
8 the merger doesn't go ahead.

9 So, Mr. Ottensmeyer, with respect to the
10 routes that were identified in that agreement, one
11 being from Baton Rouge to New Orleans, and the other
12 one being an east-west route I think to Meridian, if
13 this merger were not approved would you continue to
14 cooperate with Amtrak on their efforts to extend
15 service on your lines?

16 MR. OTTENSMEYER: Yes. We would be happy to
17 engage with Amtrak and to do the necessary studies of
18 course to understand what their service requirements
19 and expectations are and how that affects the freight
20 traffic and what will be required to introduce
21 passenger without degrading freight service, yes.

22 BOARD MEMBER HEDLUND: And we hope that we

1 won't see further proceedings on that before this
2 Board.

3 MR. OTTENSMEYER: Understood.

4 CHAIRMAN OBERMAN: You're weren't opening up
5 on another whole case here today, were you?

6 BOARD MEMBER HEDLUND: Oh, no.

7 CHAIRMAN OBERMAN: I think it's
8 unreasonably degrading, but I don't want to interject.

9 BOARD MEMBER HEDLUND: I have one last
10 comment. I have noticed in your public filings and in
11 your websites that both companies have a very strong
12 commitment to diversity, and I see diversity in your
13 C-suites, there is diversity on your boards, there is
14 a real commitment to expanding diversity in your
15 general labor pool, and those things are very
16 important to me and to other members of the Board.

17 However, I think it's a little unfortunate
18 that the folks you brought to talk to us today don't
19 represent that diversity unless you count having white
20 hair or black hair as diverse. That's all I have.

21 CHAIRMAN OBERMAN: I wanted to just deal
22 with one other labor issue on the record here to make

1 sure I understand it. According to the numbers that
2 staff derived from your papers, there will be a total
3 reduction of non-union jobs on both railroads of 204.
4 There will be 135 non-union jobs relocated to Kansas
5 City from Minneapolis and 72 union jobs relocated from
6 Kansas City to Minneapolis. Does that sound right?
7 I'm sorry. I reversed them. From Minneapolis. Does
8 that sound right?

9 MR. CLEMENTS: Yes, that sounds about right.

10 CHAIRMAN OBERMAN: And you had a chart
11 showing us the new jobs you expect to be created.

12 MR. CLEMENTS: No. The chart I was showing
13 was our hiring chart that I presented, the 2,263 that
14 we've hired year to date.

15 CHAIRMAN OBERMAN: So we have some jobs that
16 are moving. We're not going to have any loss of union
17 positions. Is that right?

18 MR. CLEMENTS: I'd have to look at the exact
19 breakdown, but it would be a minimal loss in any
20 positions. If you look at the combined entity, that's
21 20,000, so 204 is not a significant --

22 CHAIRMAN OBERMAN: That's the non-union

1 positions, and I understood that. I mean, I assumed
2 there's some back office or front office with two CEOs
3 sitting in front of me. I'm not offering an opinion.
4 But given the situation in the labor market and the
5 rail industry, if you've got any that you don't need
6 I've got a few places they could fill, I'm sure. But
7 I don't see any plan to reduce the unionized operating
8 people at all.

9 MR. CLEMENTS: No, not on the operating
10 side. That's correct.

11 MR. ORR: That's correct. I was going to
12 make that clarification.

13 CHAIRMAN OBERMAN: I don't see any -- on the
14 list that was assembled to me, I didn't see any union
15 jobs being reduced of any kind. Is that right?

16 MR. ORR: The model that we have represents
17 a growth in hiring throughout the whole merger related
18 growth period, so it is absolutely not about
19 regression. It is about hiring.

20 CHAIRMAN OBERMAN: Excellent.

21 MR. CLEMENTS: And I was just going to
22 observe that given the size and given the very modest

1 number of even the non-union positions that get
2 reduced, attrition will take care of that. Except
3 maybe in very limited cases, we do not expect any
4 departures from the organization. It will be
5 attrition related.

6 CHAIRMAN OBERMAN: Okay. I don't think
7 there are any other questions of this panel. I do
8 think that as a result of everybody else we're going
9 to hear from when you come back up for your rebuttal
10 there are going to be some follow-up questions and a
11 chance for you to clarify and maybe all of our
12 thinking will be more crystallized.

13 We're going to take a ten minute break. We
14 obviously as usual had a much more ambitious schedule
15 than is practical, and we are going to attempt to
16 reschedule some of these speakers who are going to
17 testify virtually so we can make sure we at least get
18 through the in-person people over the course of these
19 three days.

20 We won't be able to do it all, and we
21 haven't figured out when and how we're going to
22 reschedule them. Nobody will be precluded from

1 speaking to us, but it's apparent we're going to have
2 to do some scheduling. But for those people who are
3 here and are on the schedule, you're still here and
4 you're still on the schedule. Don't leave. But we're
5 going to take a ten minute break to try to figure that
6 out, and I'll explain it when we come back. Thank
7 you.

8 (Recess.)

9 CHAIRMAN OBERMAN: We're going to resume.
10 If I could ask people to be seated, please. We are
11 going to go out of order because a number of the
12 speakers who are speaking virtually were kind enough
13 to be flexible. Let me just say what we're trying to
14 work out here. Today we're going to end at 6:00.
15 Tomorrow, if it means that we can really get through
16 all this, we'll go as late as 7:00, but no later than
17 that. Friday we're also going to end at 6:00.
18 Assuming we don't get finished -- we're definitely
19 going to finish all the people who are here in person
20 to testify.

21 If we don't finish on Friday we expect to
22 reconvene virtually either Monday or Tuesday or both.

1 We're still working out things with the Zoom operator
2 and the court reporter. We'll know more either by the
3 end of today or tomorrow to make that firm. So those
4 people who are listening in, and particularly those
5 who have been kind enough to be flexible here on our
6 schedule, we much appreciate it, and we'll get you
7 more specifics as soon as we have it. But all of this
8 is in the interest of having really a full and
9 complete record and not cutting people off, because we
10 do want to hear from you.

11 With that in mind, we are going to jump to
12 Panel VI. Several of the people who are here, not
13 all, only the people who are here in person, and let
14 me read them off: William Gluba, Benedict Schweigert,
15 Michelle Solis Russell and Michael LaRoque. Are
16 those people here?

17 So if you would all come up and be seated.
18 On that panel two people, Amy Koch, I believe, from
19 Minnesota and Eugene Tibbetts, I believe, are virtual.
20 They're not here in the room. Correct? Okay.

21 So somebody I called did not come up.
22 Michelle Russell is not here? Let's go ahead. We'll

1 start with Mayor Gluba, who I had the pleasure of
2 meeting in person in Davenport. You have to turn your
3 mic on.

4 MR. GLUBA: Thank you, Mr. Chairman. Good
5 afternoon. Thank you, Mr. Chairman and Mr. Primus,
6 for coming to Davenport. I am in opposition to this
7 merger. First of all, the first major reason for the
8 merger is to create an above ground crude oil pipeline
9 from Canada to Mexico using tanker cars. This will be
10 a pipeline on rails. It's essentially a run around
11 for the failed Keystone pipeline. We'll see it
12 transported by triple the number of trains, lengthier
13 train and, faster travel resulting in more train
14 derailments. Climate change is happening at an
15 alarming rate, and to save mankind and our planet we
16 must wean the world off fossil fuels. This should be
17 enough to reject this scheme.

18 Second, this rail merger limits competition
19 and creates a railroad monopoly that will result in
20 higher freight prices, higher costs, gouging
21 deteriorating service and inflation. And if you think
22 there's a shortage of freight cars today, just wait

1 and see how many less are available once CP increases
2 the hauling of the more lucrative crude oil. Tanker
3 cars will replace freight cars and every other user
4 will be shortchanged. Not good for American commerce.

5 Thirdly, the tactics CP officials used when
6 they contacted local officials about the merger were
7 outrageous, wrong and borderline illegal. They
8 bullied and railroaded these officials into agreements
9 by suggesting that the merger was a done deal just
10 waiting to be approved by STB and there's nothing that
11 can be done to stop it, so take what we give you, be
12 quiet, or you'll get nothing, advising them that they
13 could get the rest of the money needed to fix the
14 things with grants from the federal government. This
15 amounts to forcing American taxpayers to subsidize the
16 cost of this foreign corporation's merger. One
17 editorial writer referred to these tactics as a form
18 of bribery.

19 Fourth, Davenport is an old city
20 incorporated in 1836. Davenport's an old city with
21 many historic buildings along the right-of-way, and CP
22 has shown complete lack of sensitivity to them. The

1 extra vibrations caused by this increased traffic will
2 destroy them.

3 Fifth -- and I think there's some pictures
4 up on the screen if you want to put them up, please --
5 this merger will cause irrevocable damage to the very
6 fabric of small towns and cities from Canada to
7 Mexico. It will jeopardize the lives of thousands of
8 people in the United States. Davenport has invested
9 hundreds of millions of dollars to draw people to our
10 Mississippi Riverfront and make it the most
11 spectacular in America. Thousands of people
12 congregate around the many the recreational and
13 leisure time amenities located there. They enjoy
14 concerts in LeClaire Park, watch major league baseball
15 games in our stadium, they shop in our farmer's
16 market, and they come off the excursion ships from up
17 the Mississippi to visit our city.

18 What do all these events have in common?
19 They have one thing in common, people, and the report
20 confirms that of all the cities along this proposed
21 2,000 mile trade route the most severely impacted by
22 the merger is about a 14,000 foot section running

1 through Davenport's recreational corridor. Because of
2 the thousands of people who frequent this area this is
3 the railroad stretch that presents the most severe
4 threat to the lives of people should a derailment take
5 place, and derailments do happen all the time.

6 Davenport has accommodated the handful of
7 freight trains, but to jump to 22 or more trains per
8 day, many carrying flammable shale oil from Canada,
9 will present a clear and present danger to thousands
10 of people. When one of these trains derails while
11 passing through one of these mega events it won't be
12 47 people killed like tragically happened in Canada.
13 It will be hundreds of people. This is a disaster of
14 monumental proportions just waiting to happen, and you
15 have the power to prevent it.

16 To eliminate this threat, what I am
17 proposing is a bit like placing a surgical stent, a
18 subterranean tunnel through this park area. State
19 Highway 67 runs right next to this stretch, so a
20 subway type tunnel could be constructed under this
21 public roadway. If we can put a man on the moon, we
22 can certainly figure out how to build a short subway

1 tunnel to protect human life.

2 CP has only agreed to spend \$10 million in
3 Davenport, which will not fix the life-threatening
4 issues this merger will cause. I ask the Board to
5 work with CP to create a mitigation fund to the tune
6 of \$3 billion, ten percent of the merger, that
7 affected cities can tap into to create tunnels and
8 other projects this merger will necessitate. This
9 could truly save lives.

10 CP offering a million here and a million
11 there to keep cities from fighting the merger is
12 hardly an approach the STB should support. Compel
13 Canadian Pacific and its \$31 billion in resources to
14 provide a bigger portion to support cities like
15 Davenport. You have the power. Send this back to the
16 drawing board or vote this merger down or have it
17 rerouted or compel CP financially to fix the issues
18 this merger creates. And if you don't think you have
19 the authority, ask Congress for it. You are up for
20 reconsideration and reauthorization in the next
21 session of Congress. Thank you for listening, thank
22 you for your time, and look out for the American

1 people, please.

2 CHAIRMAN OBERMAN: Thank you, Mr. Mayor.

3 And I would remind people to attempt to stick to the
4 five minutes if you can because we have a lot of
5 people to hear from. Mr. Schweigert.

6 MR. SCHWEIGERT: Good afternoon,
7 Mr. Chairman and members of the Board. My name is Ben
8 Schweigert. I am a senior assistant county attorney
9 for Hennepin County in Minnesota. I serve as general
10 counsel to the Hennepin County Regional Railroad
11 Authority.

12 Approximately 1.3 million people live in our
13 county, including in the city of Minneapolis.
14 Canadian Pacific has been an important member of our
15 community and a valued partner to Hennepin County, but
16 we believe that the transaction as proposed by the
17 applicants is not consistent with the public interest
18 and that if the Board approves the application its
19 approval should be accompanied by three conditions.

20 First, this Board should require applicants
21 to fund study and implementation of measures to
22 address the adverse impacts of increases in truck

1 traffic out of the intermodal facility at Shoreham
2 Yard in northeast Minneapolis, one of CP's busiest
3 facilities. All truck access into Shoreham Yard is
4 from two busy urban streets, University Avenue on the
5 west and Central Avenue to the east. This is a
6 densely populated, diverse area.

7 Central Avenue, where CP recently built new
8 facilities to increase truck traffic, is a busy
9 commercial corridor. From Central trucks travel to
10 various neighborhood arteries, all of which are
11 heavily residential and commercial. CP's own
12 estimates show this burden increasing significantly as
13 a result of the merger, but the data provided by the
14 applicants significantly understates the magnitude of
15 this impact.

16 CP has stated that it expects a total of 279
17 trucks per day in 2027 without the merger and 332
18 trucks per day with the merger. The Hennepin County
19 staff monitored actual traffic in and out of the
20 facility and identified traffic volumes that are
21 already far in excess of CP's 2027 projections.

22 On two representative days in March of this

1 year staff counted between 1,200 and 1,500 truck
2 movements each day, including trucks repositioning
3 empty containers, moving containers to temporary
4 storage and trucks moving without containers. We will
5 be submitting this evidence as part of our comments to
6 the draft EIS.

7 Given this discrepancy, this Board must not
8 approve this merger unless it requires CP to pay for a
9 study of how to address the safety, health, noise,
10 traffic and infrastructure costs a projected increase
11 in truck traffic will cause and also require CP to pay
12 for any improvements recommended by the study.
13 Without implementing these improvements this
14 transaction is not in the public interest.

15 Second, this Board should require applicants
16 to fund study and implementation of measures to
17 address adverse impacts associated with blocked
18 crossings in Hennepin County. The additional freight
19 rail traffic will adversely impact approximately 32
20 grade crossings in the county. Humboldt Avenue North
21 is most problematic. It lies just to the east of CP's
22 Humboldt Yard, a crossing that is frequently blocked

1 not just by CP's traffic but also by activities in
2 Humboldt Yard.

3 A fire station on Humboldt Avenue
4 immediately north of the crossing serves neighborhoods
5 south of the crossing, and when that crossing is
6 blocked response times for emergency services are
7 adversely impacted. These problems will get worse as
8 activities in Humboldt Yard increase and CP runs
9 longer and more frequent trains.

10 Third, this Board should require applicants
11 to undertake specific reasonable measures to protect
12 Hennepin County residents from increases in hazardous
13 materials cargoes. Applicants project that this
14 proposed merger would result in 40,000 additional rail
15 cars with a hazardous classification traveling through
16 Hennepin County.

17 In 2021, 22 Canadian Pacific railcars, some
18 with hazardous materials, derailed in Hennepin County.
19 While we were fortunate that this derailment occurred
20 in a relatively isolated area, it illustrates the
21 danger increased hazardous materials pose to our
22 residents, rivers and parks.

1 Thank you for your time today. We will
2 present more information supporting the county's
3 position in our DEIS comments and in our closing brief
4 due on October 14th.

5 CHAIRMAN OBERMAN: Thank you, Mr.
6 Schweigert. Mr. LaRoque. Proceed.

7 MR. LAROQUE: Aaniin boozhoo. Good
8 afternoon, and thank you for the opportunity to
9 provide testimony here today. My name is Mike
10 LaRoque, and I am the secretary-treasurer of the White
11 Earth Band of Ojibwe. White Earth is an Indian tribe
12 located in northwest Minnesota. White Earth is
13 directly affected by the proposed railroad merger
14 between Canadian Pacific and KCS and oppose it.

15 A railroad enters the reservation on its
16 northwest border and continues through the entirety of
17 the western portion of our reservation before leaving
18 the reservation on our southern border. It covers 38
19 miles from our north border to our south border the
20 railroad track runs through.

21 White Earth and its band members have
22 successfully reserved treaty rights throughout the

1 reservation and ceded territories. For those who
2 might not be aware, the United States holds our lands
3 and treaty rights in trust for White Earth's use and
4 benefit. The United States is our trustee and is
5 expected to look out for the best of our interests.

6 Next I'm going to talk about some of the
7 main communities that run from north to south. One of
8 our communities is Bejou, and then it would go to the
9 city of Mahnomen, and then it would go to Waubun,
10 Minnesota, and then it would go to Ogema, and then it
11 would be Callaway.

12 One of the things that I would like to
13 address is some safety concerns that are happening in
14 the city of Mahnomen, our Mahnomen community. Like
15 the guy before me that talked about EMS personnel
16 trying to get across the tracks, we have a very large
17 community to the east of the tracks, and our health
18 center is to the west of the tracks. With increased
19 traffic coming through on railroad cars we would have
20 limited services that could get over to the eastern
21 side of our communities.

22 I'll give you a story. One story that I

1 want to mention is that a few years back, even with
2 the traffic that there is right now, there was a
3 medical emergency on the eastern side of the tracks
4 where a pregnant mother had been -- she was
5 basically -- she had been in a car accident and they
6 needed to get her to the health center. Well, the
7 train was on the tracks and it was stopping them from
8 getting over to the health center, so they had to
9 reroute to another hospital probably about another 40
10 minutes away.

11 Everything turned out to be okay with this,
12 but it's not always going to be like that. EMS, our
13 fire department in our city of Mahanomen, our EMS, our
14 police and our fire department all sit on the western
15 side of the tracks with no overpass or no underpass to
16 get over there in medical emergencies.

17 Potential for train derailment. On that
18 same railway in the last ten years we've probably had
19 three or four derailments. I believe two or three of
20 them were in the city of Mahanomen, and the next one
21 went down to the city of Callaway on our southern
22 border, and we had to evacuate the entire city of

1 Callaway on the one train derailment. So, in my eyes,
2 if there's increased traffic coming through there will
3 be an increase in future derailments. And we know
4 they're going to happen. And also with the oil coming
5 through, we would like to basically keep our members
6 safe, keep our communities safe, keep our environment
7 safe, our lands and our waters and everything safe
8 from potential derailments.

9 The other thing that I would like to talk a
10 little bit about is CP or Kansas never reached out to
11 our constituents and never reached out to anybody
12 about this merger coming through and the increased
13 traffic coming through our reservation. We had to
14 find out about it from our Honor the Earth partners
15 that are going to be testifying here today.

16 So, in conclusion, I would like to thank the
17 Board for allowing me to testify today on behalf of
18 the White Earth Band of Ojibwes. White Earth requests
19 the Board to take into account the concerns we raised
20 today. Miigwech. Thank you.

21 CHAIRMAN OBERMAN: Thank you all three very
22 much. And let me remind you, Mr. Schweigert, I

1 already said it, that you should file your comments in
2 the Office of Environmental Assessment docket for the
3 EIS so that record is complete. But thank you all for
4 coming here. We appreciate it.

5 We're going to move around as follows.

6 We're going to hear next from the five witnesses who
7 are with The Coalition to Stop CPKC. Then we're going
8 to follow that by Rich Edelman, and then Metra. So,
9 Tom, do you want to bring you and your clients up
10 here, Carie Anne Ergo, Rod Craig, who I know well,
11 Christopher Snyder and James Burke?

12 MR. WILCOX: Good afternoon, Chairman
13 Oberman, Vice Chairman Schultz and the rest of the
14 Board members. Thank you for moving the schedule
15 around. We appreciate it.

16 My name is Thomas W. Wilcox, and I'm
17 counsel for The Coalition to Stop CPKC. And I'm going
18 to provide an overview of a few points, and then
19 that's going to be supplemented by the rest of the
20 panel members. In terms of order, I'm going to go
21 first, and then Chris Snyder is going to go second,
22 and then Chief Burke is going to go third and then

1 Carie, and then Mayor Craig is going to bring up the
2 rear.

3 So we understand that this hearing is on the
4 merits of the application. We were there, and the
5 chairman and vice chairman were there in Itasca for
6 the hearing for the DEIS. We also have comments on
7 the merits in terms of the operating plan, the
8 competition a little bit and then the public interest.
9 So we're going to stick to that. A little overlap is
10 inevitable, but we understand your admonition to keep
11 those short.

12 For the record, the coalition is the village of
13 Bartlett, the village of Bensenville, the city of
14 Elgin, the village of Hanover Park, the village of
15 Itasca, the village of Roselle, the village of
16 Schaumburg, the city of Wood Dale and DuPage County.

17 We also have a number of representatives of
18 the coalition communities that are here who made the
19 trip to Washington to be here because this is a
20 serious matter for the communities, if you guys just
21 want to just raise your hands or something:

22 Bartlett village president Kevin Wallace;

1 Bensenville village president Frank DeSimone; Hanover Park
2 deputy village manager David Webb and village fire
3 chief Eric Fors; the mayor of Itasca, Jeff Pruyn, and
4 village protection district chief Jack Schnediwind; the Roselle
5 village administrator, Jason Bielawski; and the Wood
6 Dale city mayor, Nunzio Pulice.

7 So the coalition communities reside along a
8 unique 22 mile segment of the 19,000 miles of the
9 combined CPKC system. Ironically, neither CP nor KCS
10 owns this track. The tracks are owned by Metra and
11 primarily used for commuter operations. We have maps
12 of the line and where the members of the coalition are
13 in Exhibit B to our opening comments.

14 The segment is also unique because it's
15 located in a densely populated area of Chicago, as you
16 heard earlier this morning, one of the most congested
17 roadway and railroad areas in the country, if not the
18 world. Some of the statistics from our evidence:
19 325,000 residents; 54 total crossings, including 30
20 at-grade crossings, 11 Metra stations; and dozens and
21 dozens of passenger train movements every day. Mayor
22 Craig will provide some additional testimony as to why

1 the line is unique and some public interest
2 considerations.

3 Firstly, none of these facts are mentioned
4 in the merger application the Board is reviewing. The
5 coalition has raised two or three points. Real
6 quickly, the coalition believes that the application,
7 the amended operating plan substantially understates
8 the number of trains CPKC will move over the first
9 three years after the merger. There's two to three
10 right now. The applicants say like 3.2. The
11 applicants say the increase will be eight.

12 And this is problematic all by itself, but
13 there's already been some discussion today the number
14 could be as high as 18. And I believe the way that
15 number is arrived at is three plus eight plus the six
16 that the applicants say will be diverted over the
17 Marquette subdivision. And then Metra has taken a
18 deeper dive on the operation plan than the coalition,
19 and they have found other trains that add to that
20 total, so you get 18.

21 But, really, that number could be even
22 higher based on representations that the applicants

1 have made. They said -- in their amended operating
2 plan they said for the first time, and I think in
3 response to the coalition, saying they were concerned
4 about longer trains and that there will be shorter
5 trains on the Bensenville sub post merger. That was
6 brand new in their operating plan, and our response
7 was, does that mean the same amount of trains, eight
8 trains, and they said, no, that means, and I think
9 they used the word "modest" or something, an increase
10 in trains, so the eight may not be the right number.
11 If they're going to use shorter trains they could have
12 more.

13 The other thing that was interesting, I
14 think, I went back and looked, but the idea that the
15 six trains from the Marquette subdivision are not
16 there right away and that they'd have to get the
17 business. I couldn't hear everything back there, but
18 it seemed to be, we don't have the traffic, we'll
19 build the capacity when we have the traffic, so
20 there'll be no diversions in the first three years.
21 That's not what the application says, and I'll stand
22 corrected if I'm wrong, but I think if that had been

1 said in the application and it was a phased approach,
2 I don't think our comments would be what they are.
3 But I think in the application they call it a
4 transaction related addition of traffic that will be
5 diverted through Chicago. It's more present than
6 future.

7 The other thing, in terms of the investment,
8 you touched on that earlier this morning, and what
9 we're listening for on the investment is when is the
10 investment going to take place, and that is both for
11 the Marquette subdivision but also the Bensenville
12 Yard, which can't handle 10,000 foot trains right now.
13 They have a lot of plans for the Bensenville Yard,
14 but they don't say when, and we're concerned about the
15 three years after the merger. Mr. Snyder is going to
16 talk about that a little more.

17 The applicants also conducted no RTC
18 modeling of their projected operations on this
19 critical line. We think that was a critical misstep.
20 Metra has taken that ball and run with it, and they're
21 next, so I'm not going to go into that. But through
22 their filings we learned that when RTC modeling of

1 their plan is conducted the Chicago rail system
2 breaks, as you heard from our first speaker this
3 morning. The plan just doesn't work.

4 And then we also learned that CP doesn't
5 limit its freight operations to non-peak commuter
6 hours per its agreement. It dispatches trains during
7 the peak commuter hours, and Metra has said that's
8 because they have to. They can't operate their system
9 now in those time slots.

10 And Metra confirmed our initial fear, just
11 by reading the operating plan and doing our basic
12 analysis, that the issues with the Marquette
13 subdivision are real. And then Metra, as I said,
14 they've identified other trains that were not counted.
15 I think there's a unit train in there, and that's
16 local traffic, but those all add up. They use the
17 lines.

18 Then from Canadian National we learned the
19 operating plan concerning the Schiller Park Yard is
20 severely flawed. CP can only reach that yard via
21 trackage rights over the CN track, but CN has pointed
22 out in its evidence that the applicants have provided

1 incomplete data on either train count increases on
2 that line or the impact of such increases in any
3 filing with the Board or any data provided to OEA.

4 And then CN has pointed out that the
5 applicants intend to abandon KCS's plans to invest in
6 the Springfield to Chicago line, and that line, as
7 will be mentioned later, that's a line that could
8 alleviate congestion in Chicago over the Bensenville
9 sub.

10 So the bottom line is that their operating
11 plan and the representations about the use of this
12 line and the impacts on the communities, they're
13 simply not reliable, and this creates a huge risk of
14 potential problems, and Chief Burke will get into some
15 of those. But because of those deficiencies in the
16 application and in the amended operating plan, the
17 merged railroad -- you can't just be given free rein
18 to simply start adding more freight trains to this
19 critical piece of the overall system.

20 And we included an extensive list of
21 preliminary mitigation measures in our opening
22 evidence, but we also said at that time the coalition

1 would continue to evaluate their needs for mitigation
2 and narrow the list as appropriate, and then we would
3 also actively participate in a NEPA process. And the
4 coalition has done both of those, and Carie Anne Ergo
5 will get into that briefly.

6 So under these circumstances the Board must
7 be proactive. And you touched on it a little bit this
8 morning about limiting the number of trains. We would
9 say you start at the three and then add trains as it's
10 feasible, as it's operationally shown to work and so
11 on, but be proactive in ensuring that the
12 implementation of the merger on this segment proceeds
13 cautiously. We believe it can be accomplished by
14 establishing a public process whereby if the merged
15 railroad wants to add trains to this line post merger
16 it must demonstrate it's operationally feasible and
17 safe and subject to all appropriate mitigation
18 measures. We think that's the way to go, rather than
19 say start loading up eight, ten, 11, 12 trains on this
20 line and then if something happens we'll deal with it.

21 And then another point is, as we said in our
22 evidence, the Board should seriously consider CN's

1 responsive application. Automotive and intermodal are
2 a big part of the merger, and that application could
3 provide, as we said, an alternative, a competitive
4 alternative but also operational, to get some of the
5 trains off of the Bensenville sub and have them get to
6 Chicago another way, not over our line.

7 Finally, and some of the other panel members
8 will get into this as well, we've urged very rigorous
9 oversight. We agree with Metra it should be ten
10 years. And to go to one of your points this morning,
11 Mr. Chairman, we think the Board should retain
12 jurisdiction over this and really be proactive in
13 making sure it works. And then to Board Member
14 Fuchs's points, we have proposed EJ&E type measures
15 which were very specific on CN as to reporting on
16 service, crossing delays and stuff like that. And
17 that's at page 20 and 21 in our opening comments.

18 So, finally, the applicant have called the
19 coalition members NIMBYs, but freight trains are
20 already in the coalition's backyard. They already
21 have problems with existing traffic. And so the
22 applicants must not be given free rein to put their

1 economic interests over the public interest of the
2 communities. Mr. Snyder is next.

3 MR. SNYDER: Thank you, Tom, and good
4 afternoon, Chairman and Board. Again, my name is
5 Chris Snyder, and I'm the director of transportation
6 and county engineer for DuPage County. In my role I
7 have the responsibility for the safe, efficient and
8 convenient operation of nearly 1,000 lane miles of
9 road.

10 Of the 54 at-grade crossings within
11 coalition communities, 30 involve roadways that carry
12 in excess of 250,000 cars each day. The operational
13 impact of the merger on these 30 at-grade crossings
14 will be staggering. Based on a study commissioned by
15 the coalition released prior to the EIS, operationally
16 communities and users can expect a cumulative increase
17 in down gate times of 20.5 to 36 hours each day, an
18 increase in the number of blocked vehicles of 15,000
19 to 23,000 each day, an increase in blocked vehicle
20 delays of 862 to 1,285 hours each day. Over the
21 course of a year there will be approximately four
22 million more vehicles blocked. There's an annual

1 total of 22,000 miles of queued vehicles, the
2 circumference of the earth. The idling of four
3 million more vehicles per year due to the merger will
4 result in hundreds of thousands of hours of lost
5 productivity, tens of thousands of gallons of wasted
6 fuel, and not to mention the emissions of idling
7 gasoline and diesel engines.

8 The end of the Elgin subdivision is the
9 Bensenville yard, which today is inadequate for
10 current train lengths, which are much shorter than the
11 two mile plus lengths proposed by the applicants.
12 There are frequent instances of current trains
13 blocking multiple road crossings at the yard today as
14 a result of inter-yard operations.

15 The applicants discuss capital improvements
16 to be made at the Bensenville yard, but they provide
17 no specific details, schedule or the impact on
18 operations during construction. Since the number of
19 trains is expected to increase immediately,
20 operational problems, crossing delays and other
21 impacts would appear to be unavoidable.

22 The applicants represent that the current

1 truck traffic at the Bensenville yard is 383 per day
2 and post merger will grow to 698 per day, or an
3 increase of 315. As part of our own assessment of
4 operational impacts at the Bensenville yard, we
5 observed not 383, but over 1,000 truck movements today
6 at the Bensenville yard, considerably more than the
7 383 provided by the applicants.

8 The increase in truck traffic at the
9 Bensenville yard as represented by the applicants will
10 result in a 31 percent growth in daily vehicle miles
11 traveled and congested vehicle hours of travel
12 locally. The applicants predict an overall decrease
13 in truck volumes of 60,000 annually nationwide but
14 ignore the local impact of a vast increase in truck
15 activity by 315 trucks per day or up to 115,000 trucks
16 annually at the Bensenville yard.

17 The applicants' failure to analyze the local
18 impact of eight and potentially up to 14 additional
19 trains per day on vehicle delays, blocked vehicles,
20 increase in truck volumes and movements should not
21 result in a post merger expenditure of limited public
22 funds to address the induced safety, capacity and

1 congested impacts within coalition communities.

2 Construction of a new rail yard west of
3 Elgin where the Metra commuter line ends would help
4 alleviate the significant adverse impact on our
5 communities and allow for a fully modernized optimized
6 facility to be built unconstrained by the currently
7 poorly configured Bensenville yard, including
8 intermodal choke points and significantly inadequate
9 track links. I'll turn it over to Chief Burke.

10 MR. BURKE: Thank you. Good evening,
11 everyone. Good afternoon, everyone. My name is James
12 Burke. I'm the fire chief of the Wood Dale fire
13 protection district. I've been in the fire service
14 over 42 years, and I'm here to represent public safety
15 on behalf of all the coalition members, police and
16 fire and EMS.

17 Providing timely fire, police and EMS
18 response to 911 calls is critical, critical to the
19 safety and wellbeing of the citizens in our community.
20 This proposed merger would create serious problems for
21 public safety and create detrimental issues for the
22 safety of our residents. Whether responding to the

1 report of a structure fire, a heart attack, assault in
2 progress, response time is the critical, critical
3 factor in these situations if they're to have any kind
4 of a positive outcome.

5 As you have heard, our communities are unique for
6 many reasons, one of which is that the rail line runs
7 right through the center of all of our communities all
8 down the line. This creates some unique challenges
9 for us in the first responder world in the sense that
10 most of our stations or headquarters are located on
11 one side of the tracks or the other. The addition of
12 8 to 14 more freight trains a day is going to
13 operationally block us from responding to these calls
14 that we need to get to in a 911 fashion.

15 The DEIS study virtually ignored emergency
16 response times, saying that they were minimal at best.
17 I can tell you the alternate routes they suggest add
18 two to three times the response time and distance to
19 those 911 calls at the furthest point in our
20 districts. To suggest they're minimal is
21 preposterous.

22 Our concern is hampering the ability of our

1 first responders to be able to arrive on the scene of
2 lifesaving emergencies in a timely fashion. Our
3 concern is for that officer caught up in a situation
4 where he or she needs backup help and it's delayed by
5 a freight train. Our concern is the survivability of
6 a citizen that stops breathing and collapses because
7 the ambulance is delayed by a freight train. Keep in
8 mind brain death starts in four minutes. Given the
9 fact that fire doubles in size every minute, our
10 concern is for the life and safety of a family whose
11 house is on fire and the closest fire equipment is
12 delayed by a freight train.

13 While the railroad states the proposed
14 merger will result in less pollution and road traffic,
15 delayed emergency response will not make our residents
16 safer. The increase in operations will undoubtedly
17 add to the amount of hazardous materials. That's been
18 pointed out by several of our previous speakers. The
19 more hazardous material transported the greater the
20 risk. We all know that.

21 Ironically, one of the towns represented in
22 the coalition has had two incidents in the last ten

1 years, the town of Bartlett. One of those incidents
2 happened on this very rail. That incident required
3 100 firefighters over the span of three days to help
4 mitigate that incident. The Board must take the
5 increase in hazardous material risk into account as it
6 considers whether to approve this merger.

7 Should the STB choose to approve the merger,
8 you must also mandate mitigations that allow public
9 safety to continue protecting our residents.
10 Currently, our public safety crews traverse this rail
11 thousands and thousands of times annually responding
12 to 911 calls. Replacing three at-grade crossings with
13 grade separated crossings as outlined by the coalition
14 is the only way for first responders to provide the
15 existing level of safety to our residents regardless
16 of train numbers or length.

17 We understand this merger is about moving
18 freight across the country, but with this densely
19 populated area with unique first responder
20 circumstances this merger should not be at the cost of
21 lives in our communities. Thank you.

22 MS. ERGO: Thank you, Chief Burke. Member

1 of the Board, thank you for your time today. My name
2 is Carie Anne Ergo, and I am the chairperson of the
3 coalition and the village administrator in Itasca,
4 Illinois. I also have the unique distinction of being
5 the only local government official in our group that
6 has worked on a railroad merger previously when
7 Canadian National petitioned to acquire the EJ&E back
8 in 2007.

9 The Coalition to Stop CPKC strongly believes
10 that nearly tripling the current level of freight
11 trains on the Elgin subdivision is not in the public
12 interest. Neither the public safety nor the economic
13 impacts in our area have been sufficiently analyzed
14 for you to conclude that any national commerce benefit
15 outweighs the inevitable loss of life and adverse
16 economic impact in our region.

17 Chairman Oberman and Vice Chairman Schultz,
18 I want to thank you for taking the time to come to
19 Itasca to the STB hearing and listen to our concerns
20 about the DEIS. And as we stated then, we'll be
21 preparing some comments on the DEIS to submit on
22 October 14th.

1 When CN acquired the EJ&E a decade ago, the
2 record shows there were 22 public hearings attended by
3 more than 7,000 people in and around Chicago. Every
4 community, the police and the fire agencies were
5 contacted. The Chicago Metropolitan Agency For
6 Planning and the Illinois Commerce Commission played
7 an integral role in analyzing the deal.

8 This time the proposal is the merger of two
9 Class I railroads and, comparatively, crickets. My
10 question is: Why did OEA do so much less this time
11 around? If you approve the merger as proposed it will
12 have life altering and in some cases, as you've heard,
13 life threatening effects on residents and businesses
14 on our section of the Elgin subdivision.

15 To completely alleviate those potential
16 harms the coalition initially estimated it would cost
17 nearly \$9 billion dollars. However, the coalition has
18 reviewed the feasibility of all the potential
19 mitigation measures and prioritized those measures
20 that are the absolute bare minimum in the near term to
21 mitigate adverse impacts of the merger should you
22 choose to allow it.

1 The coalition prioritized measures that
2 would benefit all communities as well as three
3 critical roadway crossings and three critical
4 pedestrian crossings. Our revised list which we have
5 shared with the merger applicants and will include in
6 our comments on the DEIS reduces that \$9 billion
7 number to just under \$400 million.

8 This economic burden should not be shifted
9 to local taxpayers, but should rightfully be funded by
10 Canadian Pacific and Kansas City Southern, who stand
11 to reap the benefits from the merger. \$400 million
12 represents just over one percent of the total value of
13 the merger. CP can afford it. If they can't, they
14 shouldn't be allowed to move forward.

15 In 2018 the Chicago Metropolitan Agency for
16 Planning, which is the federally mandated
17 comprehensive planning organization for the Chicago
18 metropolitan region, wrote, and I quote:

19 Freight traffic can impose significant
20 impacts on quality of life. Freight traffic generates
21 significant transportation and land use impacts,
22 including congestion, conditions of roads and bridges,

1 safety and nuisances such as noise and vibration.

2 These costs are real, and given the region's
3 role as the nation's preeminent freight hub, are
4 disproportionately borne by residents of northeastern
5 Illinois. As you're likely well aware, the Chicago
6 Region Environmental and Transportation Efficiency
7 program was formed in direct response to the federal
8 government allowing railroads to expand in Illinois
9 without consideration of the local impact. CREATE
10 exists to right historic wrongs done by railroad
11 expansion in Chicago and communities.

12 Please learn from past mistakes. With 25
13 years experience in local government management, I
14 have experienced firsthand the impact that federal and
15 state decisions have on local communities often with
16 little or no consideration of how they affect the
17 day-to-day lives of real people, families, seniors and
18 children.

19 Please do not sacrifice the lives and the
20 economic vitality of our towns for the benefit of
21 these private businesses. Now, Mayor Craig can talk a
22 little bit about the commuter.

1 MR. CRAIG: Chairman Oberman and members of
2 the Surface Transportation Board, my name is Rod
3 Craig, and since 2007 I've had the honor of serving
4 the people of Hanover Park as its mayor. And since
5 2014 I've had the privilege of serving on Metra's
6 board of directors. I'm also a proud veteran of the
7 United States Navy and served three tours in Vietnam.

8 You've already heard about the uniqueness of
9 our community, but I want to take a moment to stress
10 the uniqueness of the commuters and the adverse effect
11 that this would have on our communities.

12 This is a unique commuter line. First of
13 all, we are maxed out on Metra capacity on this line
14 because CP is in control of dispatching. We cannot add
15 any more commuter trains. Not only do we have 165,000
16 passengers using this Metra line annually, but our
17 collective communities were also built along this
18 line. Our eight communities in DuPage County are
19 attractive places to live because of our proximity to
20 the line. The Hanover Park Metra station is 33 miles
21 from downtown Chicago's Union Station.

22 Chicago's rush hour traffic often makes

1 national headlines. On a Friday afternoon you can
2 take a Metra train to Hanover Park in one hour and
3 three minutes. This past Friday would have taken an
4 hour and a half to an hour and 45 minutes to make that
5 same drive, and that was on a perfectly clear day
6 with no rain or snow.

7 This line is important to our families that
8 live along here and want to make it home on a Friday
9 night to their son or daughter's game or just to enjoy
10 a family dinner. Our community's economic viability
11 is also based around our commuter line. Hanover Park
12 and other coalition members have invested heavily on
13 transit oriented economic development, TOD. If this
14 merger disrupts our commuter traffic, that will be the
15 slow economic death of all our communities.

16 If you approve this merger we implore you to
17 cap existing levels of freight traffic and proceed
18 very cautiously in allowing more and longer trains.
19 This Board must also have a very detailed and
20 proactive oversight on this merger. In that area the
21 coalition has suggested that the Board should consider
22 creating an impartial commission similar to the O'Hare

1 Noise Compatibility Commission, which was created by
2 the FAA for the purpose of reducing aircraft noise
3 near the airport.

4 In this rail merger context such an entity
5 or commission could issue annual reports to the STB
6 quantifying the impact of the merged carrier's
7 operations on affected communities and its compliance
8 with the conditions imposed by this Board.

9 This area of Illinois deserves special
10 treatment. This proposed merger has economic,
11 environmental and, most importantly, safety
12 implications. We as mayors should have input on what
13 happens in our communities with regards to this
14 measure.

15 In closing, I should point out that Coretta
16 Scott King once said, "The greatness of a community is
17 most accurately measured by the compassionate actions
18 of its members."

19 Chairman Oberman and members of the STB, we
20 stand before you as great communities who have come
21 together for you to see us in person and consider the
22 effect of a merger on the hundreds of thousands of

1 families in our communities. Thank you very much.

2 CHAIRMAN OBERMAN: Thank you. A couple of
3 observations, one personal and full disclosure. Mayor
4 Craig and I served for two or three years together on
5 the Metra board, so I know him well, he knows me well,
6 for better or worse. And, Ms. Ergo, I just want to
7 make this observation about our environmental process
8 which is delegated to our Office of Environmental
9 Assessment. There was no limitation on who could
10 participate, and it's interesting to me, and I wasn't
11 on the Board at the time of the EJ&E transaction, that
12 various state agencies and so forth have not weighed
13 in as much as they may have before, but it wasn't for
14 any lack of effort on our part or any restriction. We
15 wanted as wide, and still do, a participation as
16 possible.

17 And I can't speak for the environmental
18 office, other than that I know they organized regional
19 hearings based on what they perceived as the interest
20 and the need. We also had, and I doubt we did it
21 years ago with EJ&E, several virtual hearings that were
22 open for thousands if they had chosen to participate.

1 So if there was a lack of input it would be to our
2 detriment, not to the Board's benefit. We'd rather
3 have more than less.

4 So thank you all for coming and traveling
5 here. We really respect that and appreciate it. And
6 for this crowd, and I think I can speak for Michelle,
7 we were really impressed by the attendance in Itasca
8 and the preparedness of the people who spoke. And,
9 Chief Burke, you represent all the uniformed people
10 who were there that night very well. I'll call up
11 Rich Edelman next. And there is one virtual witness I
12 am informed has to testify today, so if he is
13 listening, that is Eugene Tibbetts from Honor the
14 Earth. First I will call on Rich Edelman, and while
15 he's testifying if I could then ask the Metra team to
16 come up and take their seats at the panel. Rich,
17 you're on.

18 MR. EDELMAN: Good afternoon Chairman
19 Oberman, Vice Chair Schultz and Members Primus, Fuchs
20 and Hedlund. My name is Rich Edelman. I am counsel
21 to the Brotherhood of Maintenance of Way Employees, a
22 division of the Teamsters, Brotherhood of Railroad

1 Signalmen, the International Association of Sheet
2 Metal, Air, Rail and Transportation Workers,
3 mechanical division, and National Conference of
4 Firemen and Oilers 32BJ SEIU, and I'm speaking today
5 on behalf of those unions which have participated in
6 this proceeding under the name Allied Rail Unions, and
7 the Allied Rail Unions appreciate the opportunity to
8 speak today before the Board holding these hearings.

9 So the Allied Rail Unions do not support
10 or oppose the proposed CP/KCS transaction. They are,
11 however, pleased to see the applicants project a
12 significant increase in employment for the commonly
13 controlled carriers, and this contrasts with
14 transactions in the 1980s and 1990s in which
15 applicants projected and effected substantial
16 reductions in employment.

17 The Allied Rail Unions also do not support
18 or oppose the responsive applications for which CN and
19 its subsidiaries seek approval if the CP/KCS
20 transaction is approved.

21 The purpose of my remarks today is to urge
22 the Board to impose certain conditions on any approval

1 of the application and any approval of the responsive
2 applications. First, of course, are the employee
3 protective conditions that are statutorily mandated
4 under 49 U.S. Code Section 11326. CP and KCS have
5 agreed that the New York Dock employee protections as
6 promulgated at 360 I.C.C. 60 should apply if their
7 application is approved. The unions agree.

8 CN has asserted that the Wilmington Terminal
9 variant of the New York Dock conditions should apply
10 to the proposed responsive application transactions
11 that involve line sales. The unions disagree. And
12 the principal difference, of course, between the two
13 is that the original New York Dock conditions require
14 an umbrella implementing agreement with all parties
15 involved which facilitates the ability of employees to
16 move with their work.

17 We submit that the full original New York
18 Dock conditions should be imposed on any line sales in
19 connection with the CN responsive applications. CN
20 has also said that Norfolk and Western conditions as
21 modified by the Mendocino Coast case should apply to
22 the proposed trackage rights transactions.

1 Now, while the Allied Rail Unions recognize
2 that some of the proposed responsive transactions
3 would not be subject to New York Dock if they were
4 independent transactions, the response here --
5 responsive transaction would be approved only if the
6 CP/KCS transaction is approved. So the responsive
7 transactions would be part of the main transaction,
8 which is subject to the New York Dock conditions.

9 The Allied Rail Unions also note that the
10 subsidiary transactions and the CSX/Pan Am and the
11 Berkshire and Eastern transaction that were not part
12 of the merger but were integrally related to it, they
13 were subject to the full New York Dock conditions.
14 And if CN is to obtain approval of the transactions
15 that would not have occurred without the CP/KCS
16 transaction, then the CN transaction should be subject
17 to the same employee protections as the CP/KCS
18 transaction.

19 Now, for the remainder of my time I will
20 discuss the Allied Rail Union's request for imposition
21 of the so-called cramdown agreement on any approval of
22 the CP/KCS transaction and of any responsive

1 application.

2 Now, the cramdown agreement, which is more
3 formally and maybe nicely titled revised standards for
4 preemption of collective bargaining agreements for
5 transactions initiated pursuant to Section 11323 of
6 the Interstate Commerce Act -- you can see why we just
7 shorten it -- and a copy of that agreement is attached
8 to the Allied Rail Unions' comments in the CP/KCS
9 docket.

10 Now, as described in our comments, a major
11 feature of the cramdown agreement is that when work
12 subject to a transaction related consolidation or
13 coordination and that work is covered by two or more
14 collective bargaining agreements, the union or the
15 unions that represent affected employees may choose
16 the agreement that will apply post consolidation.
17 That's the point.

18 CP and KCS are parties to the cramdown
19 agreement, and they have expressly committed to abide
20 by their commitments under that agreement if the
21 application is approved. CN was not a party to that
22 agreement and has sort of but not fully agreed to

1 comply with that agreement.

2 I'll provide some background regarding that
3 agreement and explain why the unions urge the Board to
4 impose it as a condition of any approval of any
5 transaction in this docket and subdockets. Now, the
6 cramdown agreement was entered by the rail unions and
7 the Class Is other than CN. I know I told you I
8 wasn't going to do any history, but here I am. This
9 happened after about 15 years of enmity and litigation
10 over carrier use of the New York Dock protections to
11 modify collective bargaining agreements outside the
12 Railway Labor Act processes.

13 The carriers contended that if two or more
14 seniority districts were to be combined as a result of
15 an approved transaction and different collective
16 bargaining agreements applied to the different
17 districts it was necessary for there to be one
18 agreement for the combined districts and they, the
19 carriers, would get to choose which one. And the
20 carriers argued that these changes were necessary to
21 realize the public benefits of the transaction even
22 decades after the approvals.

1 The unions argued that the Railway Labor Act
2 precludes changes in agreements without compliance
3 with the Railway Labor Act processes, that changes to
4 the agreements were not necessary to realize the
5 benefits of the transactions which were, after all,
6 financial transactions about ownership, not
7 operational transactions, and that seniority districts
8 could be consolidated without changing the agreements.

9 Tensions around this were heightened because
10 the carriers used this authority when consolidations
11 were not necessary to the approved transactions. As I
12 noted in one case, CSX invoked the Chessie merger from
13 1963 in the early '90s to say it was necessary to use.
14 The carriers often invoked these processes not to
15 effectuate the transactions but to force changes in
16 collective bargaining agreements that they would
17 otherwise have had to negotiate under the Railway
18 Labor Act, and the carriers always picked the
19 agreements that were most advantageous to them and
20 least beneficial to the employees.

21 There was litigation over this in multiple
22 courts of appeals which I was involved in and before

1 the Supreme Court, which my partner was involved in.
2 There were strike threats and injunctions that I was
3 involved in. Additionally, there were three ICC and
4 STB decisions where the agency said it was trying to
5 balance the carrier's purported need to change
6 agreements and the interest of rail workers and the
7 maintenance of their agreements and the mandates of
8 the Railway Labor Act, and these were the so-called
9 Carmen I, Carmen II and Carmen III decisions.

10 The unions believe that the agency missed
11 the mark and exceeded its authority, and they
12 continued to attempt to restrain the use of STB
13 authorizations to change collective bargaining
14 agreements, and the use of that authority in the
15 CSX/NS/Conrail transaction was particularly offensive.

16 It was in the wake of completion of the big
17 mergers and control transactions of the '90s and the
18 continuing carrier use of STB authorizations to change
19 agreements that the cramdown agreement was negotiated
20 in 2001. And, as I said, reduced to its essence, it
21 provides that when there's going to be a change in the
22 agreements the union gets to pick.

1 The CP/KCS transaction is the first
2 transaction since the agreement was negotiated to
3 which it applies. We think it important that the
4 agreement be imposed as a condition here for the
5 following reasons.

6 One, the agreement was designed to settle
7 this contentious issue, and the Board should support
8 the parties' efforts by joining in and adopting the
9 negotiated resolution, especially since the decisions
10 of its predecessor agency exacerbated the tensions
11 over the practice of using approvals of financial
12 transactions to gratuitously change collective
13 bargaining agreements.

14 Two, this is the first transaction since
15 negotiation of the agreement 20 plus years ago to
16 which the agreement applies and the first opportunity
17 for the Board to join in the effort to reduce disputes
18 over the practices that gave rise to the agreement.

19 Three, the enforcement mechanism of the
20 agreement is somewhat opaque, I'll put it that way,
21 and I did not have a hand in its drafting. I disclaim
22 any responsibility for its opaqueness. If a dispute

1 arises over the agreement without it being made a
2 condition of approval of the transaction or
3 transactions, there could be a repeat of the sort of
4 tension and litigation and potential disruption of
5 operations that existed before the agreement was
6 entered and that the agreement was designed to avoid.

7 Fourth, CP and KCS have agreed to comply
8 with the cramdown agreement in their filing in this
9 proceeding, and they should be bound to the
10 representations they make before this Board in seeking
11 its approval, which I believe I heard them reiterate
12 this morning.

13 Fifth, CN is not a party to the agreement
14 for reasons not known to me, and while it has sort of
15 agreed to comply, there is no reason that CN should
16 not be subject to the same conditions as CP and KCS in
17 the transaction to which the responsive applications
18 are attached. And given that the cramdown agreement
19 was signed by all the other Class Is and all of rail
20 labor there is an industry standard that should be
21 imposed as a condition of any approval of the
22 responsive applications submitted by CN.

1 Sixth, the Board has also previously imposed
2 its conditions on representations made by parties in
3 seeking Board approval of their applications. And
4 since CP and KCS have represented they will comply
5 with the cramdown agreement and CN has mostly said
6 that it will, the representations should be made conditions
7 of any Board approvals in these transactions, and CN
8 should be held to the same level of commitment as CP
9 and KCS.

10 My last point today is that, consistent with
11 Board practice, all representations made by any party
12 in seeking approval or transaction before the Board, a
13 missed docket and related docket should be imposed as
14 conditions of any decision approving any transaction
15 in these dockets.

16 That's what I have today. I thank you for
17 listening. I'll be glad to answer any questions you
18 might have, and I may have earned back a surplus on my
19 overrun on the last time I spoke.

20 CHAIRMAN OBERMAN: You did. You're four
21 minutes ahead. Thank you, Rich. Are there any
22 questions? I think it's helpful, and I think some

1 measure of the work you and the other unions have done
2 is the fact that at least the two applicants agreed in
3 their application to accept the cramdown agreement, so
4 I think that shows some accomplishment and the
5 progress in this solo effort of all that litigation
6 that you went through. So we appreciate your being
7 here, and I think we're going to let you go.

8 MR. EDELMAN: Thank you. Thank you all for
9 your time.

10 CHAIRMAN OBERMAN: All right, Rich. Thank
11 you. We have a virtual speaker, I think, if he's
12 available, and that is Eugene Tibbetts. Is
13 Mr. Tibbetts available on Zoom? If not, why don't we
14 ask Metra's team to come up here, and if we can reach
15 Mr. Tibbetts, because I've been told he was only
16 available today, we will hear from him when Metra's
17 finished.

18 (Recess.)

19 CHAIRMAN OBERMAN: Back on the record. The
20 witnesses listed are Jim Derwinski, who's the CEO,
21 Eric Pilsch, Robert Mulholland, Greg Godfrey and Steven
22 Cork. Is everybody here? Jim, the floor is yours.

1 MR. PILSK: Chairman, my name is Eric Pilsk
2 from Kaplan, Kirsch and Rockwell. I'll start today.
3 I would ask -- we had a slideshow, and we'd ask if
4 that could be loaded. There we go. Thank you very
5 much.

6 Good afternoon, Chairman Oberman and members
7 of the Board. My name, again, is Eric Pilsk from
8 Kaplan, Kirsch and Rockwell, and I'm here today on
9 behalf of Metra.

10 As you know, Metra has submitted extensive
11 filings in this proceeding showing that applicants
12 cannot operate the merged railroad without imposing
13 serious harms on Metra. To summarize those filings,
14 we have five speakers here today to address the key
15 issues.

16 First, Metra's CEO, Mr. Jim Derwinski, will
17 give a brief opening statement. Mr. Rob Mulholland
18 from L.E. Peabody will summarize the results of the
19 RTC modelings that shows the harms that the merger
20 will impose. Mr. Steve Cork, senior director of
21 interline operations for Metra, will discuss how
22 applicants have understated post-merger traffic

1 levels, particularly east of Bensenville, and Mr. Greg
2 Godfrey, director of Metra's consolidated control
3 center, will discuss our concerns with CP's
4 dispatching and Metra's dispatching capabilities. I
5 will then discuss the legal issues raised by the
6 application and show that the Board should deny the
7 merger as against the public interest or only approve
8 subject to conditions to protect the public interest.
9 With that, I'll turn it over to Mr. Derwinski. Thank
10 you.

11 MR. DERWINSKI: Thank you very much,
12 Chairman, members of the Board. Thank you for the
13 opportunity for me to be here this afternoon. I'm Jim
14 Derwinski, Metra's CEO and executive director. I
15 represent the over nine million taxpayers in the six
16 county region that we serve. I want to thank the
17 Board for your efforts in considering Metra's concerns
18 involving the merger of CP and KCS.

19 We have serious concerns about the negative
20 impact of such a merger upon the lives of the
21 residents we serve, not just on the two lines
22 currently that CP utilizes but on the entire rail

1 network. You know that currently six of the seven
2 Class I railroads operate to the Chicago rail terminal
3 along with Metra, Amtrak and several shortline
4 railroads. There's little room for more trains with
5 current infrastructure and particularly with more
6 trains from a newly merged CP whom we've had spotty
7 cooperation from in the past.

8 The service that we provide for the
9 taxpayers that subsidize our operation depends on
10 reliability, on being able to offer frequent, on time
11 service every day of the year. Even modest seeming
12 delays have an outsize impact on customers' perception
13 and the customer experience and tend to drive people
14 off the trains and into cars. This adds to the carbon
15 footprint in the region.

16 Our trains have anywhere between 100 and
17 well over 1,000 people on them, and so that impact on
18 the carbon footprint only gets bigger as more people
19 leave the trains. And it's the intermediate stops
20 that I think we forget to talk about. Just because a
21 train makes it to final destination within five
22 minutes and 59 seconds didn't mean the customer

1 experience for all those in the middle didn't have a
2 horrible experience because they missed their stop.

3 Over the 40 year history that we have with
4 CP, we have seen numerous issues with the way CP
5 operates its trains and dispatches on our lines. We
6 have progressively had to add run time to our
7 schedules due to CP's actions. This is the only way
8 to maintain a high on-time performance and
9 realistically run on time.

10 That is why when we were first faced with
11 this prospect of the merger we took the unusual move
12 for us of dissecting CP's information to determine how
13 it would affect our customers and operation. We have
14 people here today who will give you a detailed
15 rendition of their findings, but the bottom line is
16 their findings credibly demonstrate that CP's
17 increased train traffic along our Milwaukee District
18 West Line and Milwaukee District North Line will be
19 devastating to Metra's operations both directly and
20 indirectly on the entire network.

21 In our documentation to the Board we have
22 outlined the safety risks that have resulted from CP

1 dispatching our trains. We have communicated how
2 passengers have run out in front of trains and, worse,
3 have gone on or under CP trains to make their Metra train
4 due to the way CP dispatched that day. This is not
5 acceptable now, and to exacerbate the situation with
6 even more trains is entirely unacceptable.

7 Our findings also raise serious questions as
8 to whether the merger can operate as proposed without
9 harming the public interest and public transportation.
10 I'm here to ask the Board to exercise its regulatory
11 wisdom to assure that an unworkable merger is not
12 approved, and, if it is approved, that dispatch rights
13 that were negotiated to the CP on Metra lines during
14 Metra's infancy should be returned to Metra and that
15 CP make certain infrastructure improvements in order
16 to prevent any degradation of our operation in the
17 future, thus protecting public transportation,
18 protecting local state and federal tax dollars and
19 protecting the public interest.

20 I thank you for your time, and I'll turn
21 this over to Rob Mulholland.

22 CHAIRMAN OBERMAN: Rob, before you speak I

1 just want to make an announcement for potential
2 witnesses if they're listening virtually. If
3 Mr. Tibbetts is available when Metra finishes,
4 assuming it's before six o'clock, we're going to hear
5 from Mr. Tibbetts. If we finish in time to hear
6 additional witnesses, we're going to call if they're
7 still available today other virtual witnesses who were
8 on the schedule this afternoon and who we've asked to
9 be flexible. And that includes Progressive Rail
10 Incorporated, Dave Fellon, and Canpotex Limited,
11 Vidyadher Kachroo, so that's the most we'll be able to
12 get to if those people are available.

13 So I'm sorry to interpret your presentation,
14 but I wanted to give folks fair notice so they could
15 stick around, but we are going to have to finish today
16 at six o'clock. So, with that, Mr. Mulholland,
17 proceed.

18 MR. MULHOLLAND: Good afternoon. I'm Rob
19 Mulholland. I'm a senior voice president with L.E.
20 Peabody and Associates, and together with Tom Crowley,
21 who's the president of our firm, I sponsor the
22 evidence I'll be discussing today. Mr. Crowley is

1 unable to attend.

2 I'm here to summarize our findings regarding
3 the impact of the applicant's proposed operating plan
4 on Metra's rail network and operations. The proposed
5 merged network is funnel shaped, and Metra's Milwaukee
6 district lines are positioned at the base of the
7 funnel. This is shown in the red boxed area on the
8 left-hand map which is enlarged on the right side.

9 All north-south CPKC traffic must move
10 through Sabula Junction, Iowa, which is located at the
11 bottom center of the right-hand map. North of Sabula
12 there are two routing alternatives. One is due
13 northwest over the Marquette subdivision which runs
14 along the western bank of the Mississippi River
15 between Sabula Junction and River Junction, Minnesota.
16 This is highlighted in blue on the right-hand map.
17 The other is due east via Chicago. Metra's Milwaukee
18 district lines lie on this route.

19 CP operates over Metra's lines via trackage
20 rights and CP dispatches the lines, which include CP's
21 busy Bensenville Yard. Metra's lines are located in
22 the green boxed area in the bottom right corner.

1 CP/KCS projects significant increases in
2 freight train volumes over both the Marquette
3 subdivision and Metra's Milwaukee district lines.
4 This includes high-priority intermodal and manifest
5 trains on both routes, some of which will be over two
6 miles long. CP/KCS claimed that all post-merger
7 traffic moving to and from points north and west of
8 Sabula Junction will operate over the Marquette
9 subdivision, bypassing Chicago and Metra's lines.

10 The problem is that the Marquette
11 subdivision will not have the capacity required to
12 move CPKC's projected train volumes. It is largely
13 single tracked with very few opportunities for
14 infrastructure expansion beyond the three new sidings
15 that CP/KCS plan to add.

16 In many places the right-of-way is narrow
17 with water on one or both sides. It traverses
18 wetlands and is susceptible to flooding and washouts.
19 It contains several narrow bridges, some of which are
20 timber structures, and it runs adjacent to both
21 residential communities and commercial properties.

22 We were initially asked by Metra to review

1 the operating plan included with the CP/KCS merger
2 application. We saw that the applicant used a tool
3 called MultiRail to develop their post-merger
4 operating plan. This was not surprising. At a high
5 level MultiRail assigns individual shipments
6 consisting of carloads or cuts of cars to a series of
7 trains that will collectively move the shipments from
8 origin to destination. MultiRail assigns shipments to
9 trains based on the locations of classification yards
10 between the shipment's origin and destination,
11 generally looking to optimize efficiency and minimize
12 intermediate switching.

13 However, and importantly, MultiRail does not
14 consider rail line capacity in its assignment of
15 shipments to trains. We also saw that CP/KCS used a
16 rather primitive analytical framework to evaluate
17 whether the proposed merged network had sufficient
18 capacity to accommodate its projected train volumes.
19 This was surprising given the presence of RTC and its
20 widespread use by all Class I railroads, including CP, in
21 their internal planning processes.

22 We conducted a series of RTC simulations to

1 evaluate the feasibility of the proposed operating
2 plan over Metra's Milwaukee district lines and
3 adjacent CP rail lines. This is not a new process for
4 us, as we have developed hundreds of RTC simulations
5 both in a commercial setting for our clients and in
6 numerous STB proceedings over the last several years.

7 In that setting our prior RTC simulations
8 have been thoroughly vetted by both Class I railroads
9 and this Board. We used the same processes and
10 procedures in this case that we have used in dozens of
11 prior STB proceedings. To perform these analyses we
12 requested standard RTC simulation inputs through
13 discovery. The discovery requests were unambiguous
14 and similar to discovery requests we've made in
15 similar STB proceedings. We have never had a problem
16 obtaining responsive and accurate data from any other
17 Class I railroad.

18 Using the data CP provided we developed RTC
19 simulations for both the current operations or base
20 case and the post-merger operations or future case.
21 Importantly, our future case RTC simulation could not
22 dispatch all of the modeled trains due to unresolvable

1 train conflicts. They would not run to completion
2 until we removed eleven CP freight trains from the
3 model one by one primarily on the oversubscribed
4 Marquette subdivision.

5 Even without these eleven trains our results
6 show that delay will increase significantly for both
7 Metra trains, as shown on the left, and CP/KCS trains,
8 as shown on the right, following the merger. In their
9 July 12th comments CP/KCS sought to discredit our RTC
10 analysis.

11 This map shows the individual items CP/KCS
12 claimed were erroneous in our model. Notably, they
13 criticized us for on relying on the track charts that
14 CP provided in response to our discovery requests.
15 They claimed that the track charts CP provided contain
16 erroneous data related to the length of sidings, among
17 other things. They said it should have been obvious
18 to us that the data they provided to us was
19 unreliable.

20 These claims are remarkable for two reasons.
21 First, track charts are identified in the RTC manual
22 as the correct source of input data for track and

1 structures, which CP knows. This is because they
2 contain granular data regarding track layout,
3 including grade and curvature, as well as the precise
4 location of turnouts, bridges and other structures.

5 Second, despite all their bluster regarding
6 our allegedly inappropriate use of their track charts
7 to develop infrastructure inputs, CP/KCS used the very
8 same inputs that we used in their restatement of our
9 RTC analysis. These are the items shown in the red
10 boxes in this graphic.

11 The changes to track structures that CP/KCS
12 actually made in their RTC simulations were few and
13 minor -- these are the green and gray boxes -- and
14 most are not supported by the provided track charts.
15 There are the gray items. Nonetheless, we have tested
16 the impact of adjusting our simulations to include the
17 infrastructure changes that CP/KCS actually made in
18 their model. The impact is minimal and does not
19 change our conclusions. We would be happy to
20 supplement the record with these results at the
21 Board's request.

22 CP/KCS submitted an alternate set of RTC

1 simulations which they claim demonstrate that Metra's
2 performance will not deteriorate in the post-merger
3 scenario. As a result of this claim, CP/KCS argued
4 that there is no cause for the Board to be concerned.
5 CP/KCS's conclusions are based on an incomplete and
6 misleading discussion of their own results.

7 CP/KCS has developed pre- and post-merger
8 operating statistics based on the results of 15
9 successfully dispatched cases in both the base and
10 future cases. To do this, CP/KCS used an RTC feature
11 called randomization to assign dispatch times for the
12 CP freight trains operating over the system. They
13 instructed the RTC program to attempt successive
14 dispatch scenarios until it achieved 15 successful
15 runs and then used the results of those 15 successful
16 cases to develop operating statistics.

17 In their base case scenario the model had to
18 make 17 attempts to achieve 15 successfully
19 dispatched cases, as shown in the left-hand bar. In
20 their future case the model had to make 27 attempts to
21 achieve 15 successfully dispatched cases. This means
22 that RTC could not find a solution to move the

1 projected future train volumes over the expanded
2 network in 12 out of 27 attempts. This is shown in
3 the right bar.

4 In addition to the dramatic rise in future
5 case failures, the output from CP/KCS's ultimate RTC
6 analysis show a significant increase in other key
7 metrics in the future case. Dispatch difficulty is a
8 metric generated by RTC that is an index from 0 to 100
9 which measures the relative number of attempts the
10 program needs to make to find a solution to train
11 dispatching conflicts that it encounters.

12 As shown on the left-hand chart, this
13 statistic increased by 50 percent in CP/KCS's
14 successful future cases compared to their base cases.
15 Delay per 100 train miles is a common RTC metric used
16 to evaluate train performance. As shown on the
17 right-hand chart, this metric also increased by nearly
18 50 percent in CP/KCS's successful future cases
19 compared to their base cases. These statistics
20 represent the full complement of trains included in
21 the simulations; that is, both freight and passenger
22 trains.

1 The post-merger increase in train delay for
2 CPKC freight trains as measured by CP/KCS's own RTC
3 simulations is even more significant. As shown on the
4 left-hand chart, CP/KCS project the delay per train
5 will increase by 77 percent for intermodal trains over
6 the modeled lines in the future, and delay for CPKC
7 manifest and unit trains will increase by nearly 30
8 percent.

9 The increase is even more dramatic on the
10 Marquette subdivision, where CP/KCS project that
11 manifest delay per train will increase by 86 percent
12 and delay per unit train will increase by roughly 50
13 percent, as shown as right-hand side.

14 As a result, CP/KCS's claim that Metra's
15 performance will not deteriorate comes with a
16 significant caveat. CPKC freight train performance
17 will degrade significantly following the merger. This
18 is a caveat CP/KCS failed to discuss in their RTC
19 report.

20 The three prior slides show the results of
21 CP/KCS's alternate RTC simulations as filed, but
22 CP/KCS's analysis is predicated on unrealistic

1 assumptions.

2 First, CP/KCS assumed that CPKC freight
3 trains would adhere far more closely to their planned
4 schedules than CP trains do in the real world. As
5 shown in the notes above the leftmost pie chart, CP
6 assumed that all of its intermodal trains would arrive
7 at the modeled system within one hour of the scheduled
8 time. However, CP train event data show that less
9 than half of CP intermodal trains meet this standard
10 in the real world. Similarly, CP's higher priority
11 200 Series manifest meet the CP/KCS's modeled standard
12 46 percent of the time. Its lower priority 400 Series
13 manifest trains meet the modeled standard 66 percent
14 of the time, and only 13 percent of CP's local trains
15 meet the modeled standard.

16 In our simulations we modeled the actual CP
17 operations as captured in CP's train event data. This
18 is particularly critical when modeling a option of a
19 larger system. In essence, CP/KCS wished away all
20 upstream interference and congestion that causes their
21 trains to arrive at the modeled part of the network
22 behind schedule in the real world.

1 Another unrealistic and undisclosed
2 assumption incorporated in the CP/KCS RTC simulations
3 is that its trains can block public roadways
4 indefinitely. Specifically, CP/KCS set the sit
5 restrictions in their simulations to allow trains to
6 block at-grade road crossings for up to 30 days. CP
7 applied this setting to at-grade crossings on 79
8 private roads and 23 public roads, 102 total road
9 crossings.

10 The 23 public road crossings are shown in
11 this map. Notably, most are on the Marquette
12 subdivision. Correcting just these two unrealistic
13 assumptions in CP/KCS's RTC modeling has a
14 significant impact on their results. Adjusting the CP
15 randomization windows to better reflect CP real world
16 performance causes CP/KCS's future case simulations to
17 fail 67 percent of the time, as shown in the middle
18 bar.

19 Resetting the sit restrictions from 30 days
20 to 30 minutes on just the 23 public at-grade crossings
21 in addition to applying realistic randomization
22 windows causes CP/KCS's future case simulations to

1 fail 81 percent of the time, as shown in the right
2 bar.

3 Although it's not shown in this slide, delay
4 per hundred train miles and RTC dispatch difficulty
5 increased in both sensitivity analyses relative to the
6 cases says that CP/KCS has filed.

7 The bottom line is that both Metra's and
8 CP/KCS's RTC simulations demonstrate the same thing.
9 Both analyses show that train performance will
10 deteriorate significantly for CPKC trains following
11 the merger. Train delay will increase. Metra
12 simulations also project Metra train delay will
13 increase significantly.

14 Both analyses also show the insufficient
15 capacity on the Marquette subdivision will cause
16 unresolvable dispatching conflicts. When this occurs
17 trains will need to be rerouted over Metra's Milwaukee
18 district lines which lie on the only alternate route
19 connecting the northern and southern portions of the
20 expansive merged system. This means that freight
21 volume increases will be greater than CP/KCS project
22 over Milwaukee's district lines, which will increase

1 train interference and delay for Metra's trains.

2 We can quibble over the extent to which
3 service will deteriorate following the merger, but the
4 bottom line is that both parties' RTC simulations
5 demonstrate that train delay will increase as a result
6 of projected train volumes outpacing planned capacity
7 expansion.

8 This raises two serious questions for the
9 Board to consider. First, will CP/KCS management
10 willingly accept the service degradation for its own
11 trains that even CP/KCS's RTC simulations project, or
12 will CPKC management put pressure on CPKC dispatchers
13 to elevate train priority for its own trains above the
14 train priority rules that are set as hard inputs in
15 the RTC simulations?

16 Second, when the Marquette subdivision
17 inevitably becomes a choke point for CPKC traffic
18 moving between the northwest and the south, will CPKC
19 hold trains far upstream and wait for the backlog to
20 clear, or will CPKC use the natural relief valve via
21 Chicago over Metra's Milwaukee district lines to keep
22 its own trains moving?

1 Thank you for your time and attention. If
2 you have questions I'll answer them. If not, I'll
3 hand it over to Mr. Steve Cork.

4 CHAIRMAN OBERMAN: Why don't we wait until
5 the end. I know I have some questions, but why don't
6 you finish your presentation and we'll come back to
7 them?

8 MR. CORK: Thank you, Rob. Good afternoon,
9 Mr. Chairman and distinguished members of the Board.
10 My name is Steve Cork. I'm a senior director of
11 interline operations at Metra. I've been employed at
12 Metra since 2016 in our safety, mechanical and now our
13 transportation department. Before that in the
14 industry I was employed for 23 years at Canadian
15 Pacific serving in several different roles and in
16 increased roles and capacities. I have been active in
17 various routing protocols and strategy and
18 coordination efforts in and around the greater
19 Chicagoland area involving many carriers. Between my
20 time at Metra and my years at CP I am very familiar
21 with the operation of the Chicago terminal, including
22 CP's Bensenville Yard and Schiller Park compound.

1 I wanted to take a moment to respond to a
2 few key points raised by CP and Mr. Elphick regarding
3 their testimony both to set the record straight and
4 underscore that CPKC's application rests on misleading
5 and incomplete facts and analysis.

6 First, Mr. Elphick at CP stated that there
7 will be no new trains east of Bensenville. While that
8 may be true, it's also very misleading. By CP's
9 own submission papers, they make it clear there will
10 be hundreds of additional rail cars coming into the
11 Chicago terminal and Bensenville Yard daily resulting
12 from the proposed merger. These cars must go
13 somewhere, and the most logical place is east and
14 north out of Chicago on Metra owned lines.

15 By focusing on the terminology "new trains,"
16 Mr. Elphick at CP ignored other movements that are not
17 technically new train movements such as interchange,
18 box swap assignments, traffic being processed to
19 existing schedules, as they mentioned, making those
20 trains even longer than they are today, or transfers
21 in additional local assignments. The additional
22 traffic, no matter what it's called, will increase the

1 interference to Metra's trains. CP/KCS failed to
2 disclose or analyze this additional traffic and appear
3 to be attempting to disguise it from the stakeholders
4 and the Board.

5 Second, Mr. Elphick at CP made much of the
6 proposed infrastructure improvements to the
7 Bensenville yard, suggesting that these improvements
8 will all but remove the need to use Schiller Park Yard
9 and generally improve traffic flow into and out of
10 Chicago.

11 I've looked at the proposed improvements,
12 and based on my knowledge of CP's operation this
13 appears to be flawed methodology. The simple fact is
14 that the improvements are insufficient to allow CP to
15 digest the additional traffic advertised without an
16 outlet otherwise. With the inclusion of an automobile
17 ramp or compound, and there's not one in the facility
18 today, suggests that there's additional growth
19 opportunity more so than just the organic growth that
20 CP is suggesting, and that cannot be supported under
21 the current footprint without utilizing Schiller Park
22 Yard as an overflow outlet for growth reliance. CP

1 has already demonstrated that this facility acts as a
2 relief valve after closing it and then reopening it
3 for switching and capacity overflow.

4 Lastly, for a transportation company the
5 size and magnitude of CP who promotes PSR fundamental
6 philosophies not to willingly adopt and conduct the
7 industry standardized RTC modeling to convey their
8 confidence in their ability to handle the proposed
9 merged traffic lines is naive and irresponsible.

10 CP did not conduct any RTC modeling or other
11 reliable analysis to assess the impacts until after
12 the public comments and Metra and our operating team
13 began to dilute their flawed operating logic. It also
14 appears that CP is attempting to keep the Bensenville
15 infrastructure plans out of its application altogether
16 to obscure future operational impacts. This does not
17 appear consistent with public interest.

18 Thank you, Mr. Chairman. I will turn it
19 over to my colleague, Mr. Godfrey.

20 MR. GODFREY: Thank you, Mr. Cork. Mr.
21 Chairman and Board members, thank you and good
22 afternoon. I am Greg Godfrey, director of Metra's

1 24/7 train dispatching office, where I oversee 50
2 full-time staff dispatching roughly 580 Metra trains a
3 day on Metra's network, including 35 freight trains
4 from several Class I carriers that go across our
5 lines. I have 19 years training in dispatching and
6 leadership experience in high volume, mixed passenger
7 and freight network operations across the country,
8 including the northeast corridor, California, Michigan
9 and Chicago Union Station. I've worked with almost
10 all freight railroads and many passenger carriers in
11 this capacity.

12 CP has a history of unacceptable dispatch
13 practices that have impacted safety and on-time
14 performance on Metra lines and proving CP cannot act
15 in the public interest. If CP were to increase
16 traffic through our area, then CP's poor dispatch
17 practices would exacerbate impact on the communities
18 Metra serves.

19 We at Metra are experienced in this area and
20 have a history of dispatching within the Chicago
21 terminal more effectively and cooperatively.
22 Therefore, dispatch should be turned over to Metra

1 because we do act in the public interest.

2 The Chicago terminal is dense, very complex
3 and relatively small. This environment requires
4 railroads to cooperate and coordinate effectively,
5 which will become more critical with the new trains
6 that CP wants to introduce.

7 Earlier you saw that very busy graphic that
8 CP presented, that string line diagram. That diagram
9 did not account for the time going into yards. It did
10 not account for the acceleration or deceleration of
11 varying train links. It did not account for our
12 concern of train links operating today up to 14,000
13 feet east of Bensenville -- and, again, I say "east of
14 Bensenville" -- and since our count on June 1st, 180
15 plus trains longer than ten thousand feet east of
16 Bensenville.

17 Metra has taken a leadership role in
18 coordinating to improve efficiencies with other
19 operators across the Chicagoland network. Metra
20 participated in the multi-partner cofounding of CIROC,
21 the Chicago Integrated Rail Operations Center. I have
22 personally been involved in these voluntary

1 initiatives, including the Chicago daily scorecard,
2 technology projects such as Common Operating Picture,
3 a tool that formed the foundation which now helps us
4 all exchange data needed for positive train control.

5 Metra also worked with other Chicago area
6 railroads to establish the voluntary Chicago protocols
7 for dispatching created under the AAR Chicago
8 coordination office or CTCO, which provides for
9 neutral dispatching standards. Metra at our CCF hosts
10 as part of our contribution both CTCO and CIROC. Our
11 filings have detailed serious issues metra has with
12 CP's dispatching which results in 8 to 15 percent of
13 Metra's delays on the Milwaukee lines.

14 You saw another graphic where it showed about
15 one percent, but it actually equates to 9 to 15
16 percent on a given month or year of what the actual
17 number of delays is in total, so it's pretty
18 significant in that it's controllable.

19 CP's routing of Metra's trains to unsafe
20 track assignments endangers passengers by putting
21 freight trains in the path of commuters. Metra's
22 customers miss bus connections, miss daycare pickups

1 and absorb the personal costs of CP's poor dispatching
2 decisions.

3 Bottom line is history dictates the future
4 where CP will not dispatch with us, approach us or
5 find a way to serve our customers. They've already
6 started to engage us just now as a result of this
7 process, but not beforehand. We have no guideposts to
8 plan how this proposed capacity will be used or when
9 senior staff at CP will involve themselves in the
10 prioritization of freight which should be left to
11 their front line train movement train dispatcher
12 personnel.

13 When Metra wanted to add trains to the
14 Milwaukee line, the Milwaukee north line three years
15 ago to respond to public need, our customer need, CP
16 refused. Now CP has no issues adding trains. CP/KC
17 filings demonstrate that CP does not understand our
18 team's expertise in train dispatching. Metra's
19 state-of-the-art dispatch center uses the same GCOR
20 rulebook CP uses to dispatch freight and passenger
21 trains. Metra dispatchers, including myself, are in
22 constant communication with AAR, CTCO and CIROC and

1 all freight operators in Chicagoland to facilitate
2 Chicago operations.

3 Assuming full control, full dispatch and
4 control of these lines is a very straightforward
5 process for us, should that be decided, as we
6 regularly assist CP with PTC, grade crossings and
7 other roles beyond our territory limits system.
8 Metra's dispatchers work regularly with all Chicago
9 freight railroads to exchange operating data,
10 operating plans, escalation plans, and we all have
11 regular communication and briefings on all lines we
12 interface with or dispatch freight on.

13 CP/KC's argument that we cannot see into CP's
14 system is misleading because CP could give Metra
15 visibility into CP's operations. Dispatch alone won't
16 solve all capacity problems as it relates to the
17 proposed additional and, quote, organic trains that
18 will enter the terminal. Metra's proven successful
19 history of working with all railroad partners to
20 integrate and develop relationships and protocols and
21 plans will help stabilize this key sector of the
22 Chicagoland network.

1 However, CP does not necessarily work within
2 the context Metra does. Unlike CP, Metra's
3 dispatchers make network-based decisions for all
4 railroads. Metra, unlike CP, acts in the public
5 interest because we protect the network. Unlike CP,
6 Metra dispatchers serve all customers and assist the
7 movement of freight trains during Metra's peak period
8 as necessary.

9 I have personally given instructions and
10 assisted to move a freight train several times during
11 a rush hour because it's the right thing to do for the
12 network. Unlike CP, we would not make decisions that
13 endanger human safety by making last minute changes to
14 track assignments. Metra would never force passengers
15 to cross a track in front of a CP freight train.

16 CP's failure to participate in network
17 cooperation is unique. We anticipate with the
18 increase in CP traffic and absolutely no understanding of
19 what CP is proposing for Metra lines, that CPKC's
20 dispatching will denigrate our system further. With
21 an anticipated increase in train traffic in the
22 Chicago terminal due to the merger, if approved, CP

1 has proven it cannot cooperate with Metra and in fact
2 harms Metra's operations.

3 Metra's dispatch history, on the other hand,
4 is fair, professional, experienced and provides
5 fluidity. To prevent the harm that the merger will
6 impose on Chicagoland communities dispatch should be
7 turned over to Metra because CP is not and cannot in
8 the future act in the interest of the public because
9 it has failed to explain to Metra how the network will
10 be used.

11 Thank you.

12 CHAIRMAN OBERMAN: Does that complete
13 your --

14 MR. PILSK: No. I have some additional
15 argument with my remaining time, if I may.

16 CHAIRMAN OBERMAN: Yes. Go ahead.

17 MR. PILSK: Thank you. The critical issue
18 before the Board as we've laid the groundwork for is
19 whether it is in the public interest to
20 approve a merger with such a high likelihood of
21 operational failure and of harming Metra and
22 transportation to the public. Pursuant to 49 U.S.

1 Code 11324(c), the Board may only approve a major
2 transaction like this if the transaction is consistent
3 with the public interest. 49 USC 11324(b)(1)
4 specifically requires consideration of the effect of
5 the proposed transaction on the adequacy of
6 transportation to the public, including commuter
7 operators like Metra.

8 The Board further has broad authority to
9 impose conditions to ensure the public interest and
10 protect other carriers which have a preemptive effect
11 under 49 USC 11321. Applying those principles to the
12 facts we have shown, applicants have failed to meet
13 their burden of showing the merger is in the public
14 interest.

15 First, applicants have failed to provide
16 adequate information to allow the Board to evaluate
17 the impact of the merger on public transportation by
18 failing to provide RTC modeling with the application.
19 This omission is critical. 49 CFR 1180.2(a) requires
20 that an operations plan show impacts to commuter lines
21 like Metra's. Precedent makes clear that RTC is the
22 industry standard and the preferred way to assess

1 operational impacts.

2 Rather than present RTC modeling applicants
3 relied on conclusory statements, MultiRail and
4 rudimentary calculations regarding traffic counts that
5 did not and could not assess whether the system had
6 the capacity to handle that traffic or how the increased traffic
7 from the merger would affect Metra and other carriers.

8 Having performed the RTC modeling on our
9 part of the network and reviewed applicants' own
10 belated attempt to use RTC, we now know why they did
11 not use RTC modeling in their application. As
12 Mr. Mulholland showed, RTC modeling raises substantial
13 questions on whether the merged system will even work
14 as proposed. The model would not even run under
15 applicants' schedule and plan, and they had to remove
16 eleven trains mostly from the Marquette subdivision
17 just to make the model run.

18 And even with that reduction, Metra's
19 modeling shows that the post-merger operations will cause a
20 threefold increase in delays to Metra and shows almost
21 a doubling of delay to the merged railroad itself.

22 Now, applicants tried to downplay these

1 impacts by arguing that only a small percentage of
2 Metra trains are delayed by CP decisions and citing a
3 current high on-time performance rate, but that is
4 misleading and wrong.

5 First, on-time performance and delays
6 overall will increase as a result of the merger.
7 Secondly, CP statistics and their papers only count
8 the first train, the one train delayed by CP's
9 decisions, but ignores the cascading effects on
10 subsequent Metra trains, ignores that on-time
11 performance assumes or allows for up to six minutes,
12 five minutes and 59 seconds, of delay at the end of
13 the run and 15 minutes of delay during construction
14 schedules and ignores all intermediate delays. It
15 further ignores, as Mr. Derwinski explained, that
16 Metra has adjusted its schedule already to accommodate
17 CP trains to allow for continued on-time performance
18 by Metra trains. The point is that all of those
19 delays are real, and all affect hundreds of commuters
20 trying to get to and from work, to daycare, to make
21 appointments, to get through their days.

22 CP's cargo may be indifferent to delays, but

1 Metra's passengers are not, and CP cannot treat both
2 the same. More broadly, in terms of impact on public
3 transportation, these additional delays are
4 unacceptable. Public transit like Metra depends on
5 providing reliable, frequent on time scheduled
6 service. The merger will lead to increased delays,
7 more interference, more unsafe dispatching decisions
8 by CP, by applicants, as they face increased pressure
9 on their system. That will lead to deteriorating
10 service, reduced ridership, exactly the kind of harm
11 to the public transportation and safety the Board
12 should prevent.

13 We'd note that during the presentation this
14 morning applicants made no hard commitments about how
15 they would mitigate these effects or how they would
16 address these effects, and we think that's very
17 important as you assess whether the merger is in the
18 public interest and how it will affect public
19 transportation.

20 Applicants tried to cure the lack of initial
21 RTC modeling by presenting their own RTC model in
22 their reply, but that exercise just makes the flaws in

1 their application even clearer because, as
2 Mr. Mulholland explained, their reply modeling only
3 works by using counterfactual, inaccurate and
4 manipulated data designed to hide the truth about how
5 the merger will affect Metra and the network.
6 Moreover, even with those fundamental flaws, taking
7 applicant's model as is shown, it shows that the
8 merged railroad itself will fail to dispatch a
9 substantial amount of the time and will sustain
10 substantial new delays itself and also impose new
11 delays on Metra.

12 Fundamentally, applicants ask you to approve
13 this merger based on a completely unrealistic and
14 counterfactual set of assumptions and general promises
15 and ignore the very real and serious impacts the
16 merger will have on public transportation and on its
17 own operations.

18 49 USC 11324, the Administrative Procedures
19 Act and sound judgment all require the Board to base
20 its decisions on facts and not implausible
21 assumptions. The only credible evidence in the record
22 regarding the impacts is Metra's modeling, and it

1 shows that the system won't work and will impose
2 substantial delays and safety risks on Metra. Based
3 on the facts in the record, this Board should not
4 approve the merger with such a demonstrably high
5 likelihood of failure and such a high likelihood of
6 imposing safety risks and delays on public
7 transportation.

8 If, however, the Board is inclined to
9 approve the merger despite those fundamental flaws,
10 Metra asks the Board to impose a number of conditions,
11 including specific infrastructure improvements, a
12 process to improve Metra's service based on actual
13 capacity, an oversight condition to revise financial
14 conditions. I have a summary of those conditions on
15 these two slides, but of course they're in our papers
16 in more detail.

17 I want to be clear that the entire suite of
18 conditions is necessary because the problem is not
19 just raw capacity that new infrastructure could
20 address or even with what the current capacity is, but
21 how that capacity is used to support all forms of rail
22 transportation.

1 Again, today we only heard generalities and
2 vague promises about what they would do in the future.
3 Metra has proposed a suite of conditions to provide
4 specific measures to address specific problems to at
5 least mitigate the harms of the merger which we
6 continue to believe should not be approved.

7 The most important condition that Metra
8 seeks and the one I want to focus on is to give Metra
9 dispatching authority over its Milwaukee district
10 north and Milwaukee district west lines, because
11 dispatching is the key to the appropriate use of the
12 lines. But I want to reiterate that the same
13 principles and arguments in favor of that one
14 condition apply equally to the other conditions, and
15 the suite should be considered together as a
16 collective suite of conditions.

17 We know from current experience that even
18 under today's more modest traffic levels CP frequently
19 makes dispatching decisions that impose delays and
20 create safety problems for Metra passengers in order
21 to keep their trains moving. We already see CP
22 managers step in to direct CP dispatchers to force CP

1 traffic through the system to meet its objectives, and
2 we can see the clear safety risks that these decisions
3 create.

4 This is an example of a tweet from a
5 customer who can't get across the platform because
6 there's a freight train between the passenger and the
7 Metra train in the background. And this is a short
8 video clip showing a similar scenario with another
9 tweet. Well, it's not cooperating.

10 Applicants' efforts -- it's in the record.
11 It's in our submissions. Applicants' efforts to
12 downplay these incidents and the others like it
13 underscores Metra's point. There is simply no world
14 in which this should be acceptable, yet applicants say
15 it's okay and even desirable in certain circumstances
16 and insist they retain the power to do this again.

17 The increased traffic contemplated by the
18 merger, the longer trains, the constrained Marquette
19 subdivision will place enormous pressure on the merged
20 railroad to make whatever dispatching decisions
21 necessary to keep its trains moving regardless of the
22 impact on Metra and its riders. As Mr. Godfrey

1 explained, CP dispatches for CP's convenience. Metra
2 does and will dispatch for the safe and efficient
3 operation of the entire system, and the Board should
4 condition this merger on the transfer of dispatching
5 authority to protect all public transportation.

6 Metra recognizes that the Board has
7 declined to change the dispatching authority of Metra
8 lines in the past based on its reluctance to alter a
9 contractual arrangement between two carriers. I want
10 to address that directly, because that past reluctance
11 should not control here.

12 First, the Board's stated reluctance to
13 alter a contract is a policy decision by the Board.
14 It's not mandated by statute or regulation. Second,
15 the prior transactions like the DM&E, the EJ&E and the
16 Pan Am proceedings were not major transactions like
17 this one. In a major transaction as here the Board is
18 not focused on competition concerns but is focused on
19 the broader public interest, including specifically
20 the impact on transportation to the public.

21 The Board has broad authority to impose
22 conditions with preemptive power in order to assure

1 that the mergers protect and are in the public
2 interest. Under the facts Metra has presented, a
3 Board condition changing the contractual dispatch is
4 more than justified. We've shown a consistent and
5 persistent pattern of interference and shown that the
6 increased pressure applicants will face after the
7 merger will lead to even more delays and safety
8 problems.

9 To be clear, Metra is not asking the Board
10 to address and remedy today's problems. The past is
11 prologue, and the Board has the authority to mandate a
12 change in dispatch authority to address the magnified
13 delays and safety issues the merger will create
14 through increased traffic volumes and inadequate
15 capacity. The remedy is proportional to the harms
16 the merger will impose because the modeling by both
17 parties shows that applicants will have great
18 difficulty operating their own system and will forced
19 to increase out-of-schedule operations and diversions
20 off the Marquette subdivision just to keep their
21 system running. Giving Metra dispatch authority over its own
22 lines to protect Metra from the impact of the merger

1 is proportional to the risks of delay and interference
2 the merger will cause the applicants themselves. The
3 remedy will not harm freight operations. Metra will
4 follow and continue to follow and will follow in the
5 future the established protocols, the same GCOR
6 rulebook that CP follows in the context of the CIROC
7 and Chicago network and treat applicants' trains the
8 same as it treats other freight operators on CP's
9 network. Excuse me. On Metra's lines.

10 CP's modeling already promises near super
11 priority to peak period Metra trains, so allowing
12 Metra to dispatch in a way that recognizes that there
13 will be times when system efficiency requires Metra
14 dispatchers to hold Metra trains to keep the system
15 flowing is both predictable and fair and in some ways
16 even better than what CP is saying it would do, but it
17 really won't change the system for the merged
18 railroad.

19 In fact, applicants' opposition to this
20 condition exposes the reality that applicants want to
21 retain independent dispatching authority so they can
22 break the rules and run their trains regardless of the

1 impact on Metra or others. It's willing to place the
2 traveling public in grave danger to keep its trains
3 running, and that is why applicants cannot be trusted
4 to keep dispatching authority in the face of the
5 increased traffic, increased dispatching difficulty
6 and increased operational pressure that the merger
7 will cause.

8 Finally, it is the Board's obligation to
9 protect the public interest in transportation when
10 approving a Class I merger, addressing a clear safety
11 and operational issue by imposing appropriate
12 conditions, even if the condition revises an old
13 contract, as a fulfillment of that obligation. This
14 is particularly true here. Where CP is not willing to
15 agree to changes for decades it does not have any
16 incentive to agree to changes now, and the contract
17 lacks the incentives and penalties to protect against
18 future interferences.

19 The contract is 40 years old and it was
20 negotiated by different railroads under a vastly
21 different operational environment. That 40 year old
22 contract is not an effective way to manage the

1 densest, busiest rail network in the country following
2 such a large merger as this one.

3 In closing, I want to emphasize here that
4 the modeling of both Metra and applicants shows that
5 applicants cannot fulfill their promise of providing
6 an efficient transcontinental network, and we ask the
7 Board to either deny the merger outright or impose the
8 conditions Metra has requested.

9 Thank you.

10 CHAIRMAN OBERMAN: Thank you, Mr. Pilsk.
11 Patrick?

12 BOARD MEMBER FUCHS: Thank you. Perhaps
13 this is for Mr. Mulholland. What was the level of
14 delay in Mr. Crowley's base case when you ran the
15 model or if the model were to be run with zero CP
16 trains on the relevant lines.

17 MR. MULHOLLAND: The level of delay --

18 BOARD MEMBER FUCHS: To Metra trains with
19 zero CP trains.

20 MR. MULHOLLAND: Right. I don't recall off
21 the top of my head. There was some delay.

22 BOARD MEMBER FUCHS: Why would there be

1 delay to Metra trains if there were no CP trains on
2 the lines?

3 MR. MULHOLLAND: Well, when we modeled the
4 trains there are some Metra stops where the train will
5 only stop if -- some platforms where the train will
6 only stop if there are passengers that need to be
7 picked up, but we don't know when that will happen.
8 So in the modeling we would stop the trains at all
9 platforms, so that would require a deceleration to
10 zero. I think it was a 30 second minimum wait and
11 then a re-acceleration for all those stops.

12 BOARD MEMBER FUCHS: So the 2.4 hours of
13 delay that CP points out in its rebuttal is solely
14 because of stops at platforms?

15 MR. MULHOLLAND: I don't specifically recall
16 the 2.4 hour figure that you're citing, but that's my
17 answer.

18 BOARD MEMBER FUCHS: It's my understanding
19 that Mr. Crowley had to model some CP trains coming
20 off the Marquette subdivision and going to the Mason
21 City subdivision. Can you explain why he needed to
22 model that in simulating kind of the current

1 operations?

2 MR. MULHOLLAND: Yes. Two things. One is
3 because the line is already operating near capacity,
4 and so that was one of the things that was not
5 initially programmed in the model. That was something
6 that came about as we were trying to figure out ways
7 to get the model to run using just the sidings that
8 are available.

9 In discovery we asked for any modeling that
10 CP had done on these lines that were included in our
11 network that we chose to model. I think it was over
12 the last ten years, but I'm not sure about that, but
13 over some period of years we asked for that.
14 Initially that was not provided. We were told they
15 didn't have it or they didn't have any or nothing was
16 responsive to that.

17 Eventually, I believe we filed a motion to
18 compel, Metra filed a motion to compel, and we were
19 ultimately provided with those RTC simulations that CP
20 had run. This was very, very close to the initial
21 deadline, which I believe was February 28th or so. We
22 received that material just maybe two weeks before

1 that and started to go through some of those cases and
2 actually saw that at least in one of those cases CP
3 had done the same thing in their modeling. And so
4 that was one of the things that informed our decision
5 to try that as a solution to this. Mason City sub
6 connects to Marquette sub there, and that is something
7 that you could do operationally.

8 BOARD MEMBER FUCHS: But you're saying in
9 your original base case the model would not run unless
10 you rerouted trains off the Marquette subdivision in a
11 way that does not reflect current operating realities.

12 MR. MULHOLLAND: And so a couple of things
13 happened. First of all, the track charts that CP
14 provided to us contained inaccurate data for two
15 sidings on the Marquette subdivision. Both of them
16 were far shorter in the track charts than what is
17 actually there today. Okay? And these are two siding
18 extensions that were made in the last couple of years,
19 very recently.

20 And so in our initial efforts to model,
21 because CP's track charts that they provided to us
22 were incomplete and did not reflect their actual

1 infrastructure, we were having a very hard time
2 getting their trains to run over that. Later on we
3 discovered that the track charts were inaccurate, and
4 so once we added the actual infrastructure that's
5 there that's not reflected in their track charts, then
6 those difficulties went away and we were able to get
7 the model to run with the base case.

8 BOARD MEMBER FUCHS: CP contends in their
9 rebuttal that there were wild swings in the percentage
10 of delays to your trains.

11 MR. MULHOLLAND: Right.

12 BOARD MEMBER FUCHS: I think they said from
13 594 to over 1,000 percent and then back down to around
14 300 percent.

15 MR. MULHOLLAND: Right.

16 BOARD MEMBER FUCHS: What is your
17 explanation for these swings?

18 MR. MULHOLLAND: Right. Do it's really --
19 so what happened is it went from 594 to 320. I don't
20 have the numbers. Is that right?

21 BOARD MEMBER FUCHS: Eventually it went up
22 to over 1,000.

1 MR. MULHOLLAND: Right. And so that was a
2 regrettable mistake that we did correct in the record.
3 What happened is for one Metra train we had transposed
4 a mileage marker, a milepost. It was either like
5 supposed to be like, you know, for example, 100.12,
6 and we had entered in manually as 100.21 for one
7 train.

8 That Metra train, unfortunately, was sitting
9 in a place that it would not sit in the real world,
10 and as a result of that one train several other Metra
11 trains got backed up behind it, and that error caused
12 delays to those dozen or so trains on the last day
13 that really cranked up the statistics.

14 Once we corrected that error there is no
15 swing. It went from the 5 -- whatever the number you
16 just gave me, the 594 to the 328. That was as a
17 result of these differences in siding lengths that
18 were incorrectly entered or that were not represented
19 in the data they gave us, so it went from 594 to 328.
20 That's what you would expect when you add more
21 infrastructure. The swing in the middle was an error
22 that we corrected in the record through an errata.

1 BOARD MEMBER FUCHS: Have you gone through
2 all of their claims of missing infrastructure --

3 MR. MULHOLLAND: Yes.

4 BOARD MEMBER FUCHS: -- and validated that
5 your model perfectly captures them?

6 MR. MULHOLLAND: No. As I went through in
7 my slides, first of all their alleged errors that they
8 allege they did not correct. Most of them they
9 entered exactly the same way we did. And the reason
10 why is because you can't take a timetable siding
11 length and just willy-nilly throw it into RTC. It
12 needs to connect specifically where the turnouts are,
13 as noted by the track chart.

14 So if you want to extend a siding without
15 moving the turnouts, you have to do that through an
16 equation, which they actually did in one case, but
17 that's not reflective of actual infrastructure. So
18 they say we got it wrong. They say they corrected it.
19 They didn't. In some cases they did make adjustments.
20 The adjustments are not in line with their track
21 charts for the most part.

22 There are two or three instances where, yes,

1 it appears that there were minor things that needed to
2 be corrected. We have corrected all those things.
3 You know, the clock has run out. We have those
4 results and we'd be happy to give them to you, but for
5 the most part their allegations -- I don't want to --
6 you know, we vehemently disagree that we made an
7 error, and it's borne out by the fact that they didn't
8 correct it.

9 BOARD MEMBER FUCHS: One more from me. Can
10 you describe your validation process on three
11 different -- I guess three different margins?

12 First is to what extent you validated what
13 you were doing with Metra personnel.

14 Second is there's a contention in the record
15 that you all in allocating priority, and I know
16 there's two different ways in an RTC model that you
17 can allocate priority. But your score, let's say it's
18 8,500 or 8,000 or what have you, so to what extent did
19 you validate the scores you assigned certain trains in
20 priority with how CP actually treats those trains.

21 And then, lastly, there's a contention that
22 you all hard coded a bit of data after taking actual

1 departure times but then used machine logic as opposed
2 to real world dispatching decisions, so, you know, to
3 what extent did you validate the real world
4 dispatching decisions with what the RTC model would
5 do. So maybe take those in turn, if you could, and
6 I'm going to revisit them.

7 MR. MULHOLLAND: Could you just give them to
8 me --

9 BOARD MEMBER FUCHS: The first is what you
10 did with Metra, the second is did you validate the
11 priority of trains, the third is did your RTC
12 dispatching decisions reflect how CP would actually
13 behave given a set of departure times.

14 MR. MULHOLLAND: So we did validate with
15 Metra. Those discussions led in part to our decision
16 to stop the Metra trains at every stop where we had
17 questions about, you know, whether or not they would
18 stop and how we would go about deciding when that
19 would happen. So that was one of the things that we
20 discussed with them.

21 We talked about, you know, the locomotive
22 power, where equipment's stored at night and how that

1 works. I mean, we had several conversations with
2 Metra regarding how our modeling -- whether or not it
3 accurately reflected what they do.

4 The dispatching rules are set. You know,
5 there are parameters that are sort of given in RTC,
6 and we discussed it in some detail with Metra. But
7 we've also done this hundreds of times. I mean, this
8 isn't any different from any other RTC simulations
9 that we've run, you know, for numerous other parts of
10 the network, numerous other Class I railroads, other
11 commuter railroads, so setting train priorities isn't
12 something that's generally, you know, that
13 controversial, I would say, so I guess we didn't spend
14 all that much time on it.

15 One of the things that is important about
16 using actual dispatch times and delay times, as I
17 discussed in my presentation, is that when you're only
18 modeling a part of a system you have to accept that
19 the delays that CP incurred on the Marquette
20 subdivision, for example, are not only related to
21 conflicts that are happening there. It also is
22 related to things that are happening on the River

1 subdivision north of there, trying to get trains into
2 St. Paul or, going south, trying to get trains into
3 Davenport.

4 So if there is a long delay that is, you
5 know, longer than what might be required to, for
6 example, change a crew or fuel a train, it is
7 reflective of upstream and downstream interference,
8 and that's why it's important to model the delay
9 that's actually incurred in the real world versus
10 letting RTC assume there's no upstream or downstream
11 interference.

12 RTC wouldn't know that. It only models the
13 part of the system that you tell it to model. Right?
14 So that's why it's important to capture the actual
15 delay on the parts that you've modeled because it
16 reflects this downstream stuff.

17 Also, in Chicago, you know, it's not only
18 CP's network upstream and downstream that causes
19 interference. You know, stuff coming in and out of
20 Bensenville, there's a whole lot of railroads, foreign
21 carriers that operate in and out of there. The data
22 we were provided by CP was devoid of any event data

1 for foreign traffic, so all we have is a picture of
2 how CP's trains are moving through that part of the
3 network.

4 There's delays there. They're reflecting
5 the fact that there's other trains that are moving
6 back and forth. We don't have data for those. We
7 don't have data for when they're coming on and going
8 off the CP system, so if CP's train is delayed there
9 the inference is that it's being caused by upstream
10 and downstream conflicts, and in Chicago, I mean
11 that's unavoidable.

12 BOARD MEMBER FUCHS: Thank you.

13 CHAIRMAN OBERMAN: Michelle?

14 VICE CHAIR SCHULTZ: With regard to
15 dispatching, are you aware of any precedent where the
16 Board has overturned a similar agreement in the
17 context of a merger?

18 MR. PILSK: No. As I said, we believe the
19 prior cases where this question has come up have been
20 very different cases both in terms of the nature of
21 the merger, not a major transaction like this, and,
22 frankly, in terms of the record that has been

1 presented to the Board regarding the need for the
2 change in dispatching authority. We think this case
3 is very much unlike the earlier cases that have posed
4 dispatching change questions.

5 VICE CHAIR SCHULTZ: Maybe you could expand
6 upon that. How is this case so different from the
7 others?

8 MR. PILSK: Well, for one thing, we've
9 presented a great deal of information we've only
10 touched on today, but information showing a current
11 and persisting pattern of dispatching problems, of
12 interference by CP's dispatchers, of decisions by CP's
13 dispatchers that lead to delays in interference with
14 Metra trains. Obviously, the decisions to put freight
15 trains between passengers and the Metra trains are
16 serious safety issues.

17 So we have this baseline of issues. You add
18 to that the increased traffic that the merger is
19 calling for, and not just in the next three years but
20 looking ahead out, you know, years and years, more and
21 more growth without a corresponding policy of
22 infrastructure improvements to accommodate that,

1 you're going to have more and more situations where
2 the pressure to make their system work despite all the
3 limitations that it's under, to make the traffic move
4 over the lines is going to lead to increased pressure
5 to move those trains through the system kind of
6 regardless of the impact on others.

7 We think that critical combination presents
8 a very different situation where the changes imposed
9 by the merger increase traffic, increase pressure.
10 The need to move their trains really requires a
11 corresponding change in dispatch authority to allow
12 Metra to control its own lines and protect itself from
13 those kinds of decisions.

14 VICE CHAIR SCHULTZ: Last question. Do you
15 think any of those issues could have been anticipated
16 at the time that the parties entered into the
17 contract?

18 MR. PILZ: To be blunt, it was 40 years ago
19 coming out of a bankruptcy. It was negotiated between
20 a trustee and the Soo Line at the time. I believe I
21 have the railroads right. And, you know, I don't
22 think it was. The level of operations of both

1 carriers at the time was totally different. The
2 future that they were imagining at that time was just
3 very, very different than what we're talking about
4 today, much less the future the applicants are
5 proposing, you know, with their transcontinental
6 railroad with this tremendous interconnectivity and
7 capacity. It really isn't foreseeable.

8 And I would add one other thing that I did
9 mention in a point, but the contract that was
10 negotiated, in addition to coming from that particular
11 time, doesn't include the enforcement teeth, the
12 incentives and the penalties that you commonly see in
13 similar kinds of passenger service agreements.

14 So Metra has very limited tools to regulate
15 CP's dispatching decisions, leaving it, again, very,
16 very difficult to protect itself against the changes
17 that the merger is going to cause.

18 VICE CHAIR SCHULTZ: And, I guess, again,
19 you don't think that could have been negotiated at the
20 time?

21 MR. PILSK: You know, hindsight is 20/20, and
22 now we're talking about, you know, 2,500 Mondays ago

1 quarterbacking. I suppose it could have been, but,
2 really, how would you predict in the early 1980s,
3 coming out of a railroad failure and bankruptcy, that
4 we'd be sitting here talking about a transcontinental
5 railroad network coming through Chicago? I don't
6 think that it's really fair to saddle the citizens of
7 Chicago, Metra's users, with decisions that were made
8 by different people two generations ago in a totally
9 different context.

10 CHAIRMAN OBERMAN: Just for historical
11 accuracy, if my memory is correct, the agreement
12 between the trustee in bankruptcy and the Soo Lines
13 was made before Metra came into existence. Isn't that
14 correct?

15 MR. PILSK: That is true. That is correct.

16 CHAIRMAN OBERMAN: So it was not Metra as an
17 entity that even entered into this.

18 MR. PILSK: No. That is correct. Thank you.

19 CHAIRMAN OBERMAN: I have a few questions.

20 Mr. Godfrey, you've mentioned 530 trains that you
21 dispatched. My memory is pre-pandemic Metra was a
22 750, so this is the pandemic level?

1 MR. GODFREY: This is the pandemic level,
2 correct. And, to be super accurate, that includes our
3 integrated PTC data. Can you hear me? That is
4 correct. This is our pre-pandemic, and that total
5 number represents the actual PTC data integration of
6 all the trains that we manage. The actual direct
7 dispatch on our line is 267, but you're correct, yes,
8 sir.

9 CHAIRMAN OBERMAN: And at this point do we
10 know what Metra intends -- maybe this is for you, Jim
11 -- in terms of increasing numbers of trains?

12 MR. DERWINSKI: Do you mean from our current
13 schedule?

14 CHAIRMAN OBERMAN: Yes.

15 MR. DERWINSKI: Well, pre-pandemic we were
16 just a little over 700. And I think everybody knows
17 right now that the post-pandemic world has a lot of
18 uncertainty in it. We're seeing a tremendous shift in
19 ridership patterns on some of our lines where we have
20 the ability to -- I call it flattening out the rush
21 hour, adding trains on the shoulders of the rush hour.
22 We're seeing a different ridership pattern emergency

1 on the lines right now where we're more restricted to
2 the amount of trains and the type of trains we can
3 run. We're still seeing stagnated numbers. So to
4 answer that question, it's certainly possible it will
5 go well over 700 in the future.

6 CHAIRMAN OBERMAN: So all you can say today
7 is that you're anticipating increases, but you have to
8 await future developments.

9 MR. DERWINSKI: Absolutely.

10 CHAIRMAN OBERMAN: What is the current
11 on-time performance on the west and north lines?

12 MR. DERWINSKI: Monthly? I mean, I guess
13 you'd have to take --

14 CHAIRMAN OBERMAN: Yes.

15 MR. DERWINSKI: Every single month we take a
16 look at it. I don't have last month's numbers, but
17 it's been in the mid 90s.

18 CHAIRMAN OBERMAN: And what would that look
19 like if none of the conditions are granted? Do we
20 know? We've talked about delays and increases, but
21 usually the metric that was given at Metra meetings
22 was what's the monthly on-time record for each line.

1 MR. DERWINSKI: Like I stated in my
2 testimony, I think there's a couple of elements.
3 There's one element that is the intermediate times,
4 you know, where you're going from this station to that
5 station, not necessarily to the final destination.
6 Those times are completely erroneous right now with
7 regard to the schedule. We call it putting rubber
8 into the schedule.

9 We have to build a cushion into the schedule
10 so that if a train runs from Elgin all the way to,
11 say, Western Avenue, it might actually have five
12 minutes of fluff time in it, and it has that because
13 some of the operations that have occurred
14 historically. Otherwise, our passengers would be in a
15 position that we're not hitting any on-time
16 performance.

17 So just the on-time performance is one of
18 the measures that we worry about. The other one, of
19 course, is the ability to enhance the service. And so
20 when you take a look at the string charts that were
21 put up earlier, you saw that the current string charts
22 had the white gaps, as they pointed out and said

1 that's all the capacity. But yet when we've asked for
2 extra trains to be added pre-COVID as our riders
3 requested some reverse commuting on the north line,
4 the answer was: We have no capacity.

5 So if there's no capacity in '19 and there's
6 no capacity now and we're only going to add more
7 trains, I believe the answer's always going to be
8 there's no capacity. So I believe that's another
9 concern of Metra as we move forward. If we had a
10 different type of partnership here that may be less of
11 a concern, but right now that's absolutely a concern,
12 as we have to evolve coming out of COVID.

13 CHAIRMAN OBERMAN: Was there a way to
14 measure in the RTC modeling or some other way what
15 would happen just to the basic on-time metric, the
16 monthly metric, if none of the conditions requested
17 are granted? Is there a way to know the answer to
18 that question?

19 MR. MULHOLLAND: I believe it's in the
20 record.

21 CHAIRMAN OBERMAN: Well, if it's in the
22 record we'll find it. Mr. Mulholland, I had a

1 question. You had mentioned in your initial
2 presentation that with regard to some of the
3 information you received from CP in discovery, you
4 said that they told you that you shouldn't rely on the
5 information. Was that in writing? How did you
6 receive that information?

7 MR. MULHOLLAND: After we resubmitted our
8 verified statement and they criticized it they said,
9 You should have known that that data was erroneous.

10 CHAIRMAN OBERMAN: Is there a piece of paper
11 that would establish that for us, or was it just a
12 conversation?

13 MR. MULHOLLAND: No. It's in their RTC
14 report and Mr. Elphick's verified statement, I
15 believe.

16 CHAIRMAN OBERMAN: He says in a statement
17 that Metra -- that you should have known you couldn't
18 rely on their --

19 MR. MULHOLLAND: That's my recollection I
20 don't want to misattribute it to him, but, yeah, it
21 was reading their evidence or their filing and I
22 believe in response to some other correspondence

1 related to discovery.

2 CHAIRMAN OBERMAN: All right. We will look
3 for it if it's in there.

4 BOARD MEMBER FUCHS: On the base case did
5 you model whether or not the on-time performance of
6 Metra trains would line up with the observed on-time
7 performance in the base -- the observed in reality
8 would be identical to the modeled on-time performance
9 in the base case? I understand that RTC doesn't
10 necessarily calculate that, but if you were to.

11 MR. MULHOLLAND: Right. So it's close. I
12 don't think it's precisely the same on-time
13 performance in the model that there is in the real
14 world, but it's close, and what's shown in the
15 modeling is that it will get worse.

16 CHAIRMAN OBERMAN: I want to shift gears for
17 a minute. Is it Metra's contention that if Metra were
18 given dispatching authority these problems would go
19 away? I mean, I know you've asked for a lot of
20 conditions, but you seem to focus on the dispatching
21 authority.

22 MR. PILSK: We did focus on it, but, as I

1 said -- no. I mean, the direct answer is that alone
2 will not solve the problems. And I think it's also
3 fair to say that the entire suite of conditions won't
4 solve all of the problems, but they will help us
5 mitigate the problems and give us the tools that we
6 need to help prevent any further degradation. So
7 that's why I emphasized earlier that it's the suite of
8 conditions that's important.

9 I did emphasize dispatching because that's
10 the most tangible, direct way to address the expected
11 impacts, the day-to-day, minute-to-minute issues that
12 arise with trains coming into the system and
13 integrating freight and passenger particularly in a
14 high-frequency environment.

15 CHAIRMAN OBERMAN: Has Metra considered the
16 kind of arrangement that I asked CP about earlier
17 today that was entered into in the Pan Am situation
18 where the two dispatchers literally sit side by side?
19 Did you consider that as a potential approach that
20 would ameliorate the situation?

21 MR. PILSK: I don't think that we considered
22 it, but I think that Mr. Godfrey can address that.

1 MR. GODFREY: So today our dispatchers
2 actually work on behalf of the CP dispatchers. We
3 have two dispatchers in our center, and they regularly
4 actually have dialogue and advise the CP on certain
5 conditions. Just, you know, a week and a half ago our
6 dispatcher was advising against a move that would have
7 created that situation like you saw on Twitter, and,
8 you know, with some work on the phone we were able to
9 affect that.

10 So we already have a working relationship
11 with CP, so just putting us in the same room is not
12 going to change the operating philosophy or the
13 influence of senior management. I think in this
14 particular case dispatching from a
15 passenger/freight/Chicagoland viewpoint is vital
16 because all the other carriers in Chicago think along
17 those lines. With respect to CP, we're just not there
18 with CREATE, we're not there with train dispatching,
19 and we're not there with, you know, putting people in
20 the same room. It's not going to make a change on
21 influence.

22 CHAIRMAN OBERMAN: Are you suggesting that

1 we put Jim Derwinski and Keith Creel in the same room?
2 Well, I hear what you're saying. It's an idea that
3 seemed to be approached in another matter, and,
4 whatever the history here has been, it might be
5 something worth considering and worth talking about
6 between you and CP.

7 MR. GODFREY: Mr. Chairman, if I may just
8 extend. If that is ever a recommendation, it also has
9 to be highly regulated with purpose and a set of
10 objectives and performance metrics, so just putting
11 people together is not going to also affect the
12 change. In other experiences that I have managed in
13 there's a whole host of requirements of both parties.

14 CHAIRMAN OBERMAN: And I have one final
15 question for Mr. Mulholland. Is it your contention
16 that the infrastructure improvements that CP says that
17 it will be making on the Marquette subdivision to
18 handle the increased traffic -- as it's needed, I
19 think, is what they said -- is it your contention that
20 physically that line can't be -- that extra
21 infrastructure cannot physically be built on that
22 line? You've talked about wetlands, marshlands and so

1 forth.

2 MR. MULHOLLAND: So they've proposed to add
3 three sidings, which is reflected in our modeling and
4 their modeling. I would say I haven't done enough
5 research to opine as to whether other infrastructure
6 could be added, but based on a review of the
7 topography it would be difficult, I would think, to
8 add more infrastructure on that line.

9 CHAIRMAN OBERMAN: Well, CP has made a
10 representation to us that that's the plan, but to
11 reject that we'd have to have some reason to think
12 it's not accurate, and that's what I was searching
13 for. I have to assume CP knows how to build
14 infrastructure.

15 MR. MULHOLLAND: And so, I guess, to make
16 sure I'm understanding your question, we don't have
17 any doubt that they will in fact build the three
18 sidings that they say they will, and we have modeled
19 that.

20 CHAIRMAN OBERMAN: I thought you said in
21 your earlier presentation that you raised a question
22 as to whether the infrastructure could actually be

1 built to absorb the extra 6.6 trains.

2 MR. MULHOLLAND: No. What I said is that
3 there appears to be little opportunity for further
4 infrastructure expansion beyond the three sidings that
5 they planned to add. And if I didn't say that --

6 CHAIRMAN OBERMAN: You may well have and I
7 misunderstood you. It's getting late. But this all
8 goes to those trains being absorbed on the Marquette
9 subdivision rather than coming in through the Elgin
10 subdivision. Right?

11 MR. MULHOLLAND: Right. And it's not just
12 our RTC modeling that shows that. Their modeling also
13 shows very severely constrained Marquette subdivision
14 capacity. In fact, their future cases as often as not
15 don't run because the trains cannot be dispatched over
16 that line.

17 CHAIRMAN OBERMAN: Well, Metra's concern is
18 not having more than the trains represented, in other
19 words not adhering to the zero trains east of
20 Bensenville and the eight trains west of Bensenville.
21 If some kind of conditioning were put in the order,
22 that would give you some protection, would it not.

1 MR. PILSK: It would give some protection,
2 but, as the modeling shows, even at that limited basis
3 there still will be the delays and interferences that
4 the modeling shows. The modeling that we did just
5 assumed the eight new trains, so that alone is
6 problematic, and of course any further growth, any
7 further diversion from the Marquette subdivision, is
8 even more problematic.

9 CHAIRMAN OBERMAN: I have nothing further.
10 Any other questions? All right. With that we are
11 going to conclude today's session.

12 Is Mr. Tibbetts here? Did we lose him?

13 MR. TIBBETTS: Yes, I'm here.

14 CHAIRMAN OBERMAN: Mr. Tibbetts, are you
15 prepared? Do you want to be heard today?

16 MR. TIBBETTS: Yes, please.

17 CHAIRMAN OBERMAN: All right. Proceed.

18 MR. TIBBETTS: Hi. My name is Eugene
19 Tibbetts, and I'm a former district representative and
20 vice chairman and Chairman of the White Earth Indian
21 Nation up here in Minnesota.

22 We have several concerns about the Canadian

1 Pacific/Kansas City merger. Our reservation here, the
2 train runs north to south through 36 or 38 miles of
3 our reservation, let alone our 1855 ceded territory,
4 and there has been no tribal consultation. Governor
5 Tim Walz's Executive Order 19-24 requires tribal
6 consultation, and none of that has taken place. That
7 doesn't surprise me.

8 The train traffic is going to virtually
9 double in our area here. Oil trains coming through
10 our area and essentially giving no consideration, no
11 consultation or compensation, no capital improvements
12 plan, no community impacts considered. Proposed
13 changes like these should require negotiation with
14 tribes. That's called right-of-way justice. A good
15 plan would be to invest in your communities and nature
16 itself.

17 The merger would increase trains through low
18 income areas, not to mention Minneapolis stands to
19 lose stands to lose \$15 million annually in wages
20 through Canadian Pacific's headquarters being moved to
21 Kansas City.

22 We also have three public schools within our

1 36 mile north to south boundaries here. We have a
2 hospital.

3 CHAIRMAN OBERMAN: Mr. Tibbetts, we've lost
4 you.

5 MR. TIBBETTS: Okay. I'm here.

6 CHAIRMAN OBERMAN: There you are.

7 MR. TIBBETTS: Canadian Pacific has a
8 history of train derailments. They've already had two
9 train derailments in July alone of this year, so I
10 think the Surface Transportation Board needs to take
11 that into consideration. And we're just hoping that
12 you guys stand by our indigenous communities here.

13 Not once have I heard in anybody's testimony
14 today a mention of tribal nations, not once, and it's
15 kind of saddening to hear that, you know, especially
16 when that train is running directly through our
17 territory here.

18 I'm hoping the Surface Transportation Board
19 takes that into consideration and votes against this
20 merger. Miigwech. Thank you.

21 CHAIRMAN OBERMAN: Thank you, Mr. Tibbetts,
22 and we appreciate your patience in waiting us out so

1 could get your testimony, and I know your availability
2 was today.

3 MR. TIBBETTS: It was a long day.

4 CHAIRMAN OBERMAN: Yes, sir, for all of us.
5 Thank you very much.

6 MR. TIBBETTS: Thank you.

7 CHAIRMAN OBERMAN: All right. So here's the
8 plan. There are a number of witnesses who we were
9 scheduled to hear today, and I'm going to read them
10 off to make sure we haven't missed anybody: All of
11 Panel IV, which was the Southern Rail Commission,
12 Progressive Rail Incorporated, Campotex, Supply Chain
13 of SSAB Americas, Americold, Unifor.

14 All of Panel V: Michael Echols, state rep
15 from Louisiana Friday Ellis from the city of Monroe,
16 and Jackie Baumann, chief engineer for Gonzales,
17 Louisiana.

18 And from Panel VI Michelle Russell, who I
19 thought was here in person but apparently wasn't, and
20 then the Joint Associations and the Chlorine
21 Institute.

22 So if those people would be sure to be in

1 touch with the Board by e-mail at hearings@stb.gov so
2 that we can get you scheduled for whatever extension
3 we're going to have to set for these hearing, which
4 hopefully will be Monday or Tuesday of next week.

5 In addition, I would ask, if they're
6 listening, all of the witnesses scheduled for
7 tomorrow, particularly those who are virtual, to also
8 e-mail us at hearings@stb.gov to tell us what your
9 flexibility is in case we have to reschedule any of
10 you for tomorrow.

11 We will be hearing from a number of
12 witnesses tomorrow that may take a long time as well,
13 but one way or the other we're going to hear from
14 everybody who wants to be heard.

15 So, with that, we will recess until 9:00
16 a.m. tomorrow. And, remember, we're also going to
17 start at nine a.m. on Friday, not at 9:30. Tomorrow
18 night the Board is available to go later, until 7:00
19 if need be, so hopefully people can do that. On
20 Friday I think we have to end no later than 5:30 to
21 accommodate travel schedules. And I would only
22 suggest we may go a little later than 5:30 if we

1 really finish. I don't see we're going to finish on
2 Friday, so I think we should assume 5:30 on Friday.

3 With that, I appreciate everybody's patience
4 and participation. It was a very enlightening day,
5 and we will see you tomorrow morning at 9:00.

6 (Whereupon, at 6:23 p.m., the hearing was
7 adjourned, to be reconvened at 9:00 a.m., on Thursday,
8 September 29, 2022.)

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C E R T I F I C A T E

District of Columbia,

To wit:

I, Keith A. Wilkerson, a Notary Public of the District of Columbia, do hereby certify that the within-named witness personally appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined by Counsel. I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not a of Counsel to any of the parties, nor an employee of Counsel, nor related to any of the parties, nor in any way interested in the outcome of this action.

As witness my had and Notarial Seal this _____ of _____2022.

Keith A. Wilkerson,

Notary Public

My commission expires:

December 15, 2024

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