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SURFACE TRANSPORTATION BOARD

Hearing on the Proposed CP/KCS Merger

Docket No. FD 36500

REMOTE PUBLIC HEARING

Thursday, September 29, 2022

9:00 a.m.

Surface Transportation Board

395 E Street, S.W.

Washington, DC

The above-entitled matter came on, pursuant to notice, at 9:00 a.m., Chairman Martin Oberman presiding.

P R O C E E D I N G S

CHAIRMAN OBERMAN: All right. Good morning everyone. We are back on the record, and I have a few preliminary announcements. Pat, my microphone is on. If you can't hear me we're in trouble. When I was in the Chicago City Council they gave me a gigantic red megaphone because Mayor Daley used to cut off your microphone if he didn't like what you were saying, literally, and I learned to speak very loudly. I never brought the megaphone there, but I still have it.

So, that was a long time ago. A few preliminary announcements. It's quite clear that we are not going to be able to finish all of the witnesses during today's and tomorrow's session, and we have asked a number of witnesses who were testifying virtually, what their flexibility is. And fortunately, a number of them have some flexibility, and so our anticipation is once we hear from all of those people today we will reorganize the schedule for some of the virtual witnesses, and convene virtually, probably around mid-day on Monday.

Long before then we'll give you the specifics of how that is going to work out, so everybody knows what the order of witnesses is, and what the time is, and if we need time we'll go over to Tuesday morning and finish in advance of the beginning of Yom Kippur on Tuesday afternoon.

But it seems realistically that that's what's going to happen. Number two, we do plan to finish enough witnesses that we will hear at least a major part of CP's rebuttal, CP/KCS's rebuttal case in person before we leave here tomorrow, and we're just going to have to see how the schedule works out. But if we haven't finished all the other witnesses, we will plan to give CP some additional rebuttal time after the last witness because as the applicant they do, and should normally have the last word.

One other thing I had meant to mention at the end of Metra's presentation yesterday, and I wanted to see if they were still here. Hopefully they're listening virtually. I know there were issues raised about some evidentiary matters that were part of Metra's presentation. I'm not sure

there was any issues still to be resolved, but I wanted to let CP know that CP certainly has the liberty to raise any issues they had on an evidentiary basis to Metra's presentation yesterday.

That's not foreclosed, just because we listened to it. If you have any. If you don't, fine, but I wanted to let people know because of the nuances of the evidentiary motions that I think we ruled on one of them before the hearing started, and I didn't hear from CP during that presentation, so if you have anything to say about it evidentiary-wise you're free to do that.

David, you're not on the record, that's the problem.

MR. MEYER: Chairman, we will be filing a letter addressing that issue, just a short letter. We do object to that. I didn't think it would be appropriate to stand up yesterday and try and intervene in the middle of their presentation, but it was the case that many, if not most, of the RTC related slides were exactly the evidence that just the day before the Board told Metra they were not

allowed to put it in the record. We'll address that then.

CHAIRMAN OBERMAN: Well to me the issue is still somewhat murky, David, because we did tell them that they were free to make their arguments in both their oral presentation and their closing brief. So we have to sort it out, and that's what I didn't want to foreclose you from sorting that out.

MR. MEYER: Chairman, we'll address this argument, but not evidence. And I think there's a very important distinction, but we'll address it.

CHAIRMAN OBERMAN: I'm aware of that distinction. I wasn't sure I could always tell where the line was drawn, that's why I wanted to give you the opportunity to address it. With that we are going to begin this morning with two of yesterday's witnesses, and mentioned, and then we will go right into Panel 9.

First up is let me get my -- first up is Canpotex Limited, represented by, I'm not going to say this well, Vidyadher Kachroo, who is testifying virtually. Mr. Kachroo are you there?

MR. KACHROO: Hi Mr. Chair.

CHAIRMAN OBERMAN: All right. Proceed.

MR. KACHROO: Thank you. Good morning to you all. Mr. Chair and Board Members I want to thank you for the opportunity to speak to you today in support of this CP/KCS combination. My name is Vee Kachroo, I'm the Senior Vice President of Operations for Canpotex, Limited.

Canpotex -- (Webex interference) was founded in 1972, and proudly celebrating our 50th year of nourishing the world. The cornerstone of our offering to our customers is great poly products delivered in a reliable and cost-effective manner.

As the need for potash continues to grow, our volumes are growing. We're shipping over 13 million tons -- 13 million metric tons of potash around the world to countries like Brazil, India, China, Malaysia, Indonesia, Australia and 40 other countries. Transportation logistics is a key part of what we do and it's deeply important to us.

Our investments into our supply chain is significant. For example, we currently operate a

fleet of more than 6,500 railcars, and keep them in safe working order at our own rail maintenance facility in Saskatchewan. As our volumes grow we will continue to invest in increasing the size of our fleet, using railcar manufacturers in Canada, the U.S. and Mexico, and we see significant growth in 2023 for railcars.

Our potash moves by rail from mine locations in Saskatchewan to our terminals in the ports of Vancouver, British Columbia, Portland, Oregon and St. John, New Brunswick. As well, we use the Port of Thunder Bay.

At these terminals our potash transfers from rail cars to a storage shed, or directly to ocean-going vessels which we charter. CP originates over 75 percent of our rail business. And as recognized by the Board yesterday multiple times, we can also attest with the reliability service levels from CP that we receive today.

As such, the CP/KCS combination is exciting for us because it opens up possibilities that do not exist today. First, the CP/KCS

combination will expand CP's reliable service to a new, single line option to the U.S. Gulf Coast, served by the KCS network currently.

Shipping via Gulf ports is onerous with the existing rail options that we have available to us. Access to the Gulf by CP/KCS new single line offering, however, changes the calculus. It gives us additional port optionality, and will expand our market reach by offering new competitive transportation options for our shipments of potash to existing and new customers around the world, but with even more focus on Latin America, Brazil, Mexico, and other countries in Central South America.

The world demand for our Canadian origin products will continue to be on a strong growth trajectory over the coming years. Currently there is a significant gap in world potash supply due to sanctions against Belarus, which currently produces about 20 percent of the world's export flow of potash.

And due to the war conflict in Ukraine it's also hampering the flow of Russian potash, which

is another 20 percent of the world's export supply. And even if these sanctions and conflicts ended today, it could take several years for my production and the supply chains in these countries to return to normal levels.

Canpotex and CP/KCS, with a new routing by a Gulf port terminal could help supply necessary potash for agriculture around the world. With this, additional export terminal capacity is a requirement for reliable, resilient, supply chains. And as I indicated the previous facilities, that's part of how we get our product to market.

Adding port optionality will shore up our ability to supply new parts of the world when supply chains are impacted, or tested by severe weather events. Recoverability is something we think about and discuss with our rail partners. We had multiple weather events in 2021 in western Canada, specifically British Columbia last year, and terminal optionality and routes that were preplanned to develop with CP were extremely helpful for us to recover those volumes, and we continue to see more

weather related events occurring with more frequency as in recent years.

With strong growth in the South American markets the Gulf is ideally positioned for us. We've been testing several different U.S. port options this year, and have not found one where the economics are favorable. The single line haul made possible by the combination of CP and KCS will create a seamless connection between origin and Saskatchewan, and destination with faster car cycles and more effective freight rates, and will be the impetus for Canpotex to commit volumes to an export terminal in the Gulf.

We are currently in discussions with CP regarding this potential, and could move forward should the merger be approved by the STB. We're also excited to explore the possibility of delivering some of our products to Mexican customers by rail as an alternative to our current supply chain.

As you know CP/KCS will be the first railroad connecting Canada, the U.S. and Mexico, and this overland route has not existed before in this manner. In short, Canpotex supports the CP/KCS

combination because it will expand service by an already trusted rail partner, and enhance the reliability and resiliency for our supply chain to our customers.

This will create new reach, creating new possibilities for us to support the growing volumes for the environments we serve around the world. We, therefore, respectfully, urge the Board to approve the combination. Thank you again for the opportunity to speak as part of the CP/KCS combination, thank you. Are there any questions?

CHAIRMAN OBERMAN: Thank you sir. Appreciate your flexibility.

,MR. KACHROO: Thank you. Take care, have a great day.

CHAIRMAN OBERMAN: Next up is Joel Kennedy of Unifor.

MR. KENNEDY: Good morning Mr. Chair, and Board Members. My name is Joel Kennedy. I am a national representative of Unifor, Canada's largest, private sector union. We have nearly 315,000 members who work across almost every industry in

private sector. Specifically, in the rail sector, we represent nearly 10,000 employees working in ticketing offices, passenger rail service, engineers, conductors, electricians, mechanics, et cetera.

Thank you to the Board for providing us with opportunity to provide our comments supporting the CP/KCS merger. Unifor is for the merger of Canadian Pacific and the Kansas City Southern Railway merger, and we would also ask the Board rule the same.

This is potentially one of the last possible mergers in North America, and is of great significance in post-pandemic planning in strategic North American supply chain protection. The merger between CP and KCS will bring more rail competition for shippers, and consumers in North America. This venture will also unlock new markets and more products for consumers living in all three countries.

Also, with the Canadian Pacific and Kansas City Southern merger, forms a single rail line between Canada, United States and Mexico, with increased intermodal and passenger rail services. In

our view, one the merger's most relevant, significant benefits is reducing the number of trucks and other vehicles off highways, and helping protect our environment by reducing carbon and other greenhouse gas emissions, providing more sustainable mode of transportation.

Another significant benefit to the public, and one I must add emphasis to, is with the increase of freight and passenger rail traffic volumes, is the creation of good-paying jobs, and employment opportunities in all three countries, Canada, the United States, and in Mexico.

In terms of existing jobs the applicant has satisfied us by committing to either honoring or improving existing employee protective conditions, such as job security, employment security, providing family/work life balance, and competitive wages.

Finally, the COVID-19 pandemic exploited many things, including the global supply chain in particular, in North America, the availability of shipping containers diminished, driving higher consumer costs and limited products, and shipper

availability. But the merger of CP and KCS, a single rail line will be developed between Mexico, the U.S.A. and Canada, giving North America greater control and security of its own supply chain, and reduce reliance on other foreign markets. Thank you.

CHAIRMAN OBERMAN: Thank you Mr. Kennedy. And again we appreciate your flexibility in adjusting the schedule.

MR. KENNEDY: Thank you sir.

CHAIRMAN OBERMAN: Any questions for Mr. Kennedy? All right. Thank you very much. All right. So we will now proceed to Panel IX, and that is Ron Reynolds, Texas State Rep; Rodney Ellis, Harris County Commissioner; and Robert Gallegos, a Houston City Council Member. Are you all here? Okay. Come up to the panel please.

MR. REYNOLDS: And Ron Reynolds is appearing virtually.

CHAIRMAN OBERMAN: Oh, okay, Mr. Reynolds, why don't you lead off.

MR. REYNOLDS: Thank you. Good morning, and thank you for the opportunity to speak in front

of the Board today. My name is Ron Reynolds, and I'm a six-term State Representative from Southeast Texas. Earlier this month I was elected Chair of the Texas Legislative Black Caucus, and also serve as Chair of the Texas House Progressive Caucus.

I have represented Texas House District 27 for nearly 12 years. I know this community. I know this region, and I know the challenges that we face. As proposed, the pending acquisition between Canadian Pacific Railway and Kansas City Southern will have detrimental effects to the most marginalized Texans in Harris and Fort Bend counties, two of the most diverse places in the country.

This is only the latest in a long history of environmental injustice for the benefit of corporate interest. Before discussing the merger itself, I'd like to say a word about the process. I remain concerned about the lack of engagement with local leaders in Southeast Texas regarding the merger.

Harris County Commissioner Rodney Ellis, who is before you now, has sent no fewer than three

letters to the Board requesting site visits, asking for public hearings, and suggesting mitigation measures. His office did not receive as much as an acknowledgement of his letters.

Earlier this month nine of my Southeast Texas colleagues in the Texas House and I sent a letter urging the Board to hold an in-person hearing in Houston. I submitted the letter twice through the STB's online filing system, and called to confirm that it had been received.

Despite this, as of today, our public comment has not been published, and we have not received a call from STB staff as promised. While I'm glad that the Board moved this monthly in-person EIS hearing from Vidor, Texas, a well-known sundown town, to Beaumont, this meeting alone was insufficient for the working families in my district and in Harris County, driving almost 100 miles one way was just not possible on a week night.

While I understand that this hearing is intended to discuss the public interest, rather than the environmental effects, I would argue that the

public interest in Southeast Texas cannot be separated from the tenants of environmental justice and health. Harris County already struggles with industrial air pollution, and its health consequences.

The merger compounds existing pollution at a time when Southeast Texas needs to be improving air quality, not worsening it. Harris County is already a non-attainment area for ozone, and is nearing non-attainment status for PM 2.5, additional pollutants can lead to severe health risks.

According to the EPA, the small particle generated by the trains pose the greatest problems. Exposure to PM 2.5 can harm both the lungs and heart, leading to many health risks, including premature death in people with heart or lung disease, non-fatal heart attacks, irregular heartbeat, aggravated asthma, decreased lung function, and increased respiratory symptoms such as irritation of the airways, coughing or difficulty breathing.

And Houston's Fifth Ward, where residents already endure population from multiple industrial

sources, asthma and cancer rates for the majority of black and brown communities, far exceeds surrounding areas, and life expectancy is a full decade lower.

I am also concerned about the impacts of increased train traffic through our communities. STB analysis projects an additional eight trains per day as a result of the merger. That's nearly 3,000 additional trains per year running through 890 at-grade crossings in Harris County. Despite Canadian Pacific's promises to run shorter trains, the average length of their freighters in late 2021 was 1.5 miles long, more miles long means more traffic, which impacts everything from a worker's daily commute to response times in emergency situations.

First responders up and down the proposed line have voiced their concerns about the impact on emergency response. The Board's impact study minimizes three concerns, but first responders have stated that even a split second delay could mean the difference between life and death. I have yet to hear a satisfactory response to these concerns from the railways or the Board.

And I know my time is up, so I'll just get to the conclusion. Despite all of this, the safety issues, the environmental risk, the health concerns, Harris County has largely been overlooked from the public comment period, even though at nearly 5 million strong, it is the largest population center along the proposed lines.

The acquisition of Kansas City Southern by Canadian Pacific is not in the public interest of Southeast Texas. It is only in the interests of the railways, and their bottom line, and I urge the Surface Transportation Board to reject it. And I thank you for your time and your consideration.

CHAIRMAN OBERMAN: Representative Reynolds, thank you very much. And I have to say I would be extremely concerned if our staff did not respond to any citizen, but particularly an elected representative. And I think there must have been something lost in the transition, but maybe Commissioner Ellis can enlighten us on this because back in July I think we did miss, Commissioner, your first message.

But it's my understanding that our environmental office did email you back in July in response to your inquiries, and you know, certainly we respect every citizens, and if it isn't happening I want to know about it. But I think we did get back to you, and maybe you could enlighten us on that, but I do appreciate the issues you've raised Representative, and if there are no questions we'll move on to Commissioner Ellis. I'm sorry Robert?

BOARD MEMBER PRIMUS: I don't have a question, but I just want to echo what Marty just said. We do take this very seriously, especially with the public and community's input, and I'm going to follow-up, and I'll talk to our folks as well. I know even coming down like I said we had moved it from Vidor. I think that was an error on our part, and we moved it closer into Beaumont.

Whether or not we should have looked at other, or other ways to address. And I'm from New Jersey, so I'm not from Texas, of not knowing the 100 miles. You know I get mad when I have to drive ten miles, so I certainly understand that. But I'm happy

to look into that further.

CHAIRMAN OBERMAN: By the way I would add that I'm sympathetic to not having had more site visits, but there's I think 12,000 loop miles here, and we couldn't hold hearings everywhere in the country. I thought this particular matter was so crucial to the public interest, as well as to the rail network specifically, that I concluded that Board Members should be out attending these meetings.

And actually Board Member Hedlund and I were at the meeting in Beaumont, and I am sympathetic to the fact that we couldn't be everywhere all the time. I will say I was somewhat disappointed that there weren't more people in Beaumont, and maybe it's for the reason that you said, Representative, but we did hear from some very forceful witnesses on behalf of the community there.

I also attended all of the other regional environmental hearings, as did each Board Member attended one with me. So we've tried to get out there, but you know it's a big country. We can't be

everywhere all the time. We did I think, the best we could. But we do appreciate your views. Thank you.

MR. REYNOLDS: Thank you.

CHAIRMAN OBERMAN: Commissioner Ellis?

COMMISSIONER ELLIS: Thank you Mr. Chairman and Members. I'm Rodney Ellis, and I'm a member of Harris County Commissioner's Court. I've been in politics a long time. I'm a former Houston City Council Member, State Senator for 26 years.

And as a County Commissioner in Harris County, we're slightly smaller than Cook County. So that means if we were a separate state, we'd be the 25th largest state in the country. Part of the concern about a hearing in Houston was in part driven by the decision to have a meeting in Vidor. And Representative Reynolds pointed out a sundown town by the way, is one where when I was in graduate school, there was a billboard up saying people who look like me don't get caught when the sun goes down in that town, in Vidor.

Beaumont is a great town. No disrespect to them, but how a decision was made not to have one

in Houston, when there's such tremendous impact there is just very troubling. And I'm going to be here for several days and would be more than happy to get with your staff. And I have staff here, but I appreciate the work. I know how tough it is as an ex-City Council member in particular.

But look, I appreciate you letting me come here. My precinct has 1.2 million people in it, many live inside the city limits of Houston, some do not. Many of whom have been born with disproportionate burdens from pollution, illness, and inaccessibility because of existing activity by freight corporations in our region. I know how important they are.

I happen to have worked on the North American Free Trade Agreement, and got a lot of my friends in labor angry. I was supportive of it when I was in the State Senate. My office has already engaged with the Surface Transportation Board environmental review process with this merger. So far the process has failed to adequately assess the potential harm of this merger on America's third largest county.

The transportation merits, or demerits of this merger, are necessarily interwoven with the environmental and public health impacts that it will have if it's approved. It would be irresponsible in my judgment to discuss the impact of adding more railcars without mentioning the attending delays, the increase in emissions, and the risk of a crude oil spill.

We know in our region in particular, those possibilities are real. The health and quality of life for our constituents depends on strong regulation. That's why two weeks ago the Harris County Commission's Court passed a resolution affirming our commitment to seeking equitable and proportional mitigation should this blockbuster merger be approved.

I want to give you a sense of how existing train traffic impacts Houston residents. Waste removal schedules in many neighborhoods are complicated by stalled trains. One vendor has a referenced delays of several hours that prevent that truck from accessing neighborhoods and delivering

waste to landfills.

The City of Houston's Fire Department, the department which serves many of my constituents, has been forced to detour over 3,000 routes in three years because of trains stalled at grid crossings. These blockages don't just make it harder to deliver essential services, and respond to emergencies, they also create risk.

At several locations in my precinct, children traveling from school on foot, race across tracks when they see a train approaching, and hop in between stalled cars to reach their destination. Oftentimes the destination is school. Train traffic in one such residential neighborhood will increase to 51 trains a day if this merger is approved, turning a burdensome reality into an untenable situation.

Freight and rail corporations currently operating in our region claim that service is just sufficient for current levels of activities. But the concerns of my constituents compel me to disagree. Anticipated impacts of any increases in activity must be offset by strong mitigation, including investments

in capital improvements.

I find it troubling that the applicants have not extended themselves to study the impacts of that merger, or the impacts it will have on 4.68 million residents, on proposed capital improvements to the Houston complex. I expect, and hope that as regulators, the Board will mandate such a study, and condition any approval of the merger on equitable, and proportionate mitigation for impacted communities.

Doing so is not only within the Board's power, but it is also morally imperative given the vast influence of freight corporations on the lives of everyday Americans. I appreciate all of you being here, and being so attentive. I would be more than happy to answer any questions, or defer to my colleague.

CHAIRMAN OBERMAN: Thank you Commissioner. Does anyone have any questions? Robert?

BOARD MEMBER PRIMUS: I just have one quick question. What area is seeing, is potentially seeing 51 trains a day? What area of Houston?

COMMISSIONER ELLIS: It will be on the east end and near Fifth Ward.

BOARD MEMBER PRIMUS: And do you know how many trains a day they are currently incurring?

COMMISSIONER ELLIS: I do. I know I have it in my submitted testimony. I'm not sure if my Junior Staff would have to pass me a note, but I think in my footnote here it is. It says here stalled trains, eastern drivers are tracking delays themselves, and the City of Houston. This is an article from the Houston Chronicle by Doug Bigley, May 14, 2022. And we'll submit my testimony, if we have not already, and there's a link to it.

BOARD MEMBER PRIMUS: Okay. So the 51 trains are from the newspaper article?

COMMISSIONER ELLIS: Yeah. Well no here it is, Draft Environmental Impact Statement prepared by the Surface Transportation Board, so train traffic is one such residential neighborhood it will increase to 51 trains a day if this merger is approved. So we're pulling that from the Draft Environmental Impact Statement proposed by the Surface

Transportation Board.

CHAIRMAN OBERMAN: (Off mic) Do you -- you probably don't have it with you but I would be interested to know where blockages are now are that's KCS trains or whose trains they are because there are a lot of trains that go to Houston.

COMMISSIONER ELLIS: Yeah. We can submit it. I'm not sure which ones, be we documented it. I know that our County legal department is doing a more thorough environmental assessment. I don't know how long it will take them to complete it, but once the Commission has passed a resolution, they're digging in, and they're digging with the numbers. Believe me with the big pictures.

You can recall as a former Council Member, you let the bureaucracy dig in deep and put a face on it.

CHAIRMAN OBERMAN: I am partial to Council Members.

COMMISSIONER ELLIS: Well that's the way I started if there's Councils in this process.

CHAIRMAN OBERMAN: Current and former.

Member Karen Hedlund has a question.

BOARD MEMBER HEDLUND: Commissioner, I, as was mentioned, I had the privilege of going to Beaumont, and I would second the testimony in Beaumont was very forceful, and your name was mentioned, so I'm very happy to see you here today. Thank you for coming so far to visit us, and bring your concerns to us.

COMMISSIONER ELLIS: Thank you. I practiced law with a Beaumont firm, so I'm always sensitive, and Beaumont's such an important region obviously. It has a declining population, but in terms of that port, it's a major economic hub in our region, but most of them people, a good number of people in Beaumont and Orange by the way, commute to Houston, if they're working class people, and then go back.

BOARD MEMBER HEDLUND: Thank you.

CHAIRMAN OBERMAN: Yeah. All right. Any further questions? Okay. All right. Commissioner if you would turn your mic off, we're ready for Mr. Gallegos.

MR. GALLEGOS: Thank you. Chairman Oberman, Members of the Surface Transportation Board, good morning, and thank you for this opportunity. I'm Robert Gallegos, Houston City Council Member for District I, and I'm here this morning representing the City of Houston, along with State Representative Reynolds and County Commissioner Ellis, to express our shared concerns regarding the proposed merger between Canadian Pacific Railway and Kansas City Southern Railway.

We at the City of Houston oppose the merger as proposed. As has been reported, the proposed merger will funnel additional freight trains through an increasingly busy Houston railroad complex, which will cause further congestion, and have significant impacts across numerous communities, including historically underserved and socially vulnerable neighborhoods in the City of Houston.

As the Surface Transportation Board may be aware, Union Pacific Railroad and BNSF Railway own most of the tracks in Houston. Both companies maintain extensive operations, and have a

significant presence in our city. Over the last few years communities in Houston, especially on the East side, which I represent, have had to live with the problems and nuisances stemming from increasingly busier railroad tracks.

From impacts on public safety, mobility, air quality, and noise, the community is experiencing adverse effects in many ways, and this merger will make things worse by bringing even more freight trains through the middle of Houston, a city of 2.3 million residents. But let me focus on a couple of important points today.

Impacts on mobility and emergency response. Our community has been impacted by more trains and longer length trains, occupying railroad tracks and crossings that block major thoroughfares, and neighborhood access points lasting from several minutes to hours.

Prolonged blockages, and associated disruptions are not rare, isolated occurrences. In fact, through a new smart camera pilot program the City of Houston launched earlier this year, we had

documented multiple instances in which major thoroughfares, specifically those vital to Houston emergency response have been blocked for hours at a time.

Let me be clear, blockages have become increasingly frequent and excessive. This leaves motorists stranded, prompting unsafe motorists and pedestrian behavior, and too frequently forces emergency responders to scramble to find alternate, longer routes. Let me give you some numbers across our city.

The Houston Fire Department reported 905 incidents in 2019, in which first responders had to reroute, or were delayed by trains occupying critical crossings. That number grew to 974 in 2020, and surged to nearly 1,400 reports in 2021. That trend has remained consistent year to date with almost 900 incidents reported as of September 27, 2022.

The impacts on emergency response, coupled with unsafe motorist behavior have elevated advanced costs by freight trains to become a threat to public safety. This concern, and our requests for

assistance and mitigation, have been repeatedly reported to the railroad companies and the Federal Railroad Administration.

As I have already noted, the Houston terminal has experienced congestion issues with only a minor increase in its yearly average of trains. So what will happen when the merger increases traffic? Even more troubling to us at the city is the fact that the applicants have proposed no infrastructure, or capacity expansion projects in Houston to mitigate impacts related to the merger, nor have they proposed any mitigation agreements with local authorities as they have done in other places.

This is likely because the applicants to our knowledge have not conducted any formal analysis of Houston's capacity to determine whether the existing infrastructure in the Houston complex can handle the increase in traffic.

Of the 25 capital improvement projects proposed, not a single project -- let me repeat that. Not a single project would take place in Houston or Harris County. And by the way, even these projects

would only be as needed. This is unacceptable. The applicants should not be allowed to add to an already strained railroad complex without fully studying and analyzing the impacts they will cause in Houston, and without investing in mitigation.

That is why we at the City of Houston are alarmed, and oppose the merger as proposed. Before any further action is taken on this matter we implore the STB to require CP/KCS to conduct such an analysis, and to identify the infrastructure needed to responsibly handle the increased traffic resulting from the merger.

Equally important is the need for the applicants to engage local stakeholders, including city and county leaders, emergency officials, and especially the community on their plans to manage increased traffic through the Houston complex, and mitigated effects on safety, mobility and quality of life. Let me just add this. If the federal government allows this merger to proceed as proposed, with no mitigation investments in Houston by CP/KCS, then the federal government should be

prepared to play a leading role in resolving ongoing issues, merger related problems, investing in solutions, and providing more oversight and enforcement.

Federal regulatory agencies must be responsible for protecting Houstonians from merger related impacts. The City of Houston asks the Board to give our concerns all due consideration. We also welcome and encourage the Board and the applicants, to come to Houston, and hear directly from our communities before taking further action. Thank you Mr. Chairman and Board Members.

CHAIRMAN OBERMAN: Thank you Councilman Gallegos. Are there any questions? Karen?

BOARD MEMBER HEDLUND: Councilman (Off mic).

MR. GALLEGOS: Definitely we are. I know I'm working with public works, so that way we can try to secure some of that funding. But again, right now BNSF and Union Pacific operate in the Houston region. The City of Houston has been working on a grade separation coming into downtown Houston with Union

Pacific.

The past history that we've had with the railroads unfortunately have impacted our city. There is a project that Public Works and Union Pacific have been working on for some time in regards to a grade separation, but unfortunately -- well from the last that I've heard, Union Pacific has reneged on an agreement in regards to adding some monies to that infrastructure improvement, and of course this is before the Infrastructure Bill.

So now with the Infrastructure Bill, hopefully, we can actually finally do that grade separation. It's a major, major point of entrance into the City of Houston coming from the east end. So that's the history that we've had with the railroads.

And now that you have Canadian Pacific, and Kansas City Southern merger, where they're not even considering one, two, or three infrastructure improvements in the City of Houston, when we've already been impacted many, many years by the railroads that we have there now.

BOARD MEMBER HEDLUND: I would note that those programs do require a roadmap.

MR. GALLEGOS: Yes.

BOARD MEMBER HEDLUND: Thank you.

CHAIRMAN OBERMAN: Councilman, I would say to you and to the other panelists, that I would urge you to have your remarks filed in the environmental process as well, because that is really where these concerns get taken up when we ultimately consider them, whether to approve this merger.

And if you have any specific mitigation proposals relating to the CP/KCS traffic, please include that in your remarks, or if your public works department has been studying them, so we can have that in the record.

MR. GALLEGOS: Yes, thank you Chairman. I will definitely bring that to our public works attention, so that way we can submit information and see if Canadian Pacific is willing to do some infrastructure improvements to help mitigate this issue.

CHAIRMAN OBERMAN: Yeah, but in order to

even think about that we would have to have -- I'd like to see the specifics of which projects you think are needed. All right.

MR. GALLEGOS: Thank you.

CHAIRMAN OBERMAN: Thank you. Thank you all very much, and I appreciate your traveling all the way here to see us, even if we didn't get to every place to see you, thank you.

COMMISSIONER ELLIS: It's a little cooler here than it is in Texas.

CHAIRMAN OBERMAN: Yeah, and it's going to get a little windy here in the next day or two. Thank you. All right. Next up is Canadian National. I'm going to read off all the people who are listed as appearing here.

Let's see if they're all here. Rob Reilly, Doug MacDonald, Daniel Bresolin, Derek Taylor, Sarah Slazinski, Kathy Gainey, Ray Atkins and Matt Warren. So let's -- yes it would be thank you.

(Off mic chat.)

CHAIRMAN OBERMAN: The music is still playing, so you have time to take your seats. So is

everybody I read off is here as it looks like. Is anybody not here? Yeah. Okay. Thank you. Who is going to lead off here, Ray? All right you may proceed.

MR. ATKINS: Thank you. Chairman Oberman, Members of the Board, yesterday you heard CP's vision for this merger with KCS. It plans to unlock one billion dollars a year of additional profits by replacing current, joint line service through Kansas City with single line service, and by implementing PSR principles more aggressively on the KCS network.

The operating ratio of the combined railroad would fall to 57 percent. Capital investment as a percentage of revenue would also fall, and a large amount of high margin traffic would be diverted for the western carriers to much longer CP/KCS routes. In the world according to CP, it will generate these new profits with no plausible risk of public harm to customers, communities or the railroad network validity.

Anyone who steps forward and challenges either the plausibility of those diversions, their

operating plan, or the seriousness of the potential public harms is labeled by CP as an obstructionist, a newbie, or a frightened competitor. If CN has one single request at outset, it is that the STB not view this merger through CP's rose colored glasses.

This is the largest railroad merger in decades. No merger of this size and complexity is free from potential risks of public harm. There are obvious questions that STB must address. Will there be service disruptions that could dwarf any public benefits?

How should the agency protect against competition foreclosure at gateways? Does CP have sufficient resources in planning to advance its ambitious plan in an pro-competitive manner, and will that ambitious plan harm local communities? And whether or not the public interest favors divestiture of a parallel line.

What we think is unique about this merger is CP's unwillingness to propose solutions to the concerns raised by stakeholders. If you look at the major mergers in the past, the applicants understood

that the benefits they sought nonetheless posed potential risks to service competition and local communities, and they worked to solve those challenges so the merger would be clearly in the public interest.

Whether it's the Conrail merger, or the UPSP merger, the BN Santa Fe merger, the CNIC merger, the Tex-Mex merger, the applicants worked with stakeholders and devised meaningful solutions that were then imposed by the STB as conditions of the merger.

Indeed, even in the far, smaller Pan-Am transaction, which you are very familiar with, CSX bent over backwards to address stakeholder concerns. CP has taken a different path. And it was a bit surprising to hear Mr. Kreel claim to have engaged in good faith with everyone.

I could tell the STB there has been no serious engagement with CN to address any of its concerns. But whatever engagement CP was referring to, the results are unimpressive. CP is offered no meaningful merger conditions to assure the public

that its implementation of this merger will not cause service disruptions. It has offered only vague promises to protect against foreclosure at gateways. Nothing whatsoever to address the parallel line, and nothing to address the congestion concerns in Houston that you just heard of, and Chicago, which you heard about yesterday.

Instead, CP demands something unheard of in modern memory. An unconditioned rail merger. Chairman Oberman, Members of the Board, an unconditioned merger is plainly not in the public interest. Private profits do not equate to public benefits, and the merger related public benefits of this transaction are far from clear, and the multiple risks of public harm must be addressed.

So why is CN here? Well contrary to CP's rhetoric, CN is not here because it fears competition from an integrated CP/KCS network. Their own diversion data, which is in the record, shows that they expected to earn about .1 percent of CN's annual carloads. CN's not afraid of that competition. CN is here today because it is the single, largest

interchange partner with CP.

It is concerned that CP has failed to present a reliable plan that would mitigate service disruptions, particularly given the careless operating plan it submitted to this agency. If CP is successful, and is suddenly flush with traffic diverted from UP and BNSF customers, does it have sufficient resources, planning, and capital investment to handle that surge in volume?

As a major interchange partner, CN will bear the brunt of any resulting service disruptions, and if CP is unsuccessful in diverting that traffic away from the western railroads, what happens then? Given the price they paid, and the promises to shareholders, CP will have to replace those missing profits, and CN is deeply concerned that CP will try to exploit the newfound ability to foreclose competition.

So our presentation here today is going to have three chapters, each one addressing one of CN's key concerns. The first chapter will focus on service. Rob Reilly, CN's Chief Operating Officer,

and my colleague Matt Warren, will discuss the need for the Board and stakeholders to see a service plan from CP to avoid the kind of service disruptions that have unfortunately, followed in past mergers, and has followed prior efforts to impose PSR principles in an unstructured and unplanned fashion.

It's very hard, Your Honors, to understand CP's hostility to offering the public, and the STB a concrete plan for public scrutiny. Indeed, CP promised you this kind of information in exchange for getting the old merger rules. CP should be held to its representation, and a trust us approach is not a plan. To protect the public interest you should demand more.

The second chapter is going to focus on the parallel line between Kansas City and Chicago. Matt Warren will lead that discussion and introduce you to the team from CN that will describe its plans for the Springfield line. Now Congress specifically gave you the authority to order the divestiture of a parallel line when it's in the public interest.

And CN has attempted to craft a solution

to the parallel line that it is in my view, the most applicant friendly merger condition I've ever seen, and we think it's in the public interest. It results in no harm to combine CP/KCS, other than the increased competition, which of course is a public benefit.

You'll see massive investment by CN in the Springfield line to unlock its potential, to strengthen supply chains, and improve the fluidity of the U.S. network. CN would provide better service and more options for its existing customers on that line, and this massive infusion of capital would permit CN to divert 80,000 long haul trucks off the roads annually, more than the CP and KCS project for their whole merger.

In the final chapter I will briefly discuss the importance of imposing a binding gateway commitment on the combined CP/KCS. CP has acknowledged the need for that commitment, even if their counsel seemed at times yesterday to walk back the promise, but it's obviously too late for CP to withdraw its commitment to keep gateways open on

commercially reasonable terms.

However, CN is asking the STB to make sure that the gateway condition is not so vague, or so difficult to enforce as to be essentially useless. The condition must be clear, the gateways to which it applies must be clear, and the process to enforce the condition should be practical. I'll discuss in a bit more detail, CN's proposal, which is to require CP to arbitrate any disputes around this gateway condition.

Arbitration to enforce merger conditions is not uncommon, and it would create a practical process that could be used by both the customers, and interchange partners, to give the gateway condition teeth. So with that overview, I'll turn the presentation over to Mr. Rob Reilly to discuss service issues in greater depth. Well good, we'll skip over the slides that correspond to my. You were on a roll, so I wasn't going to interrupt. How do we advance the slides?

MR. REILLY: All right good morning. My name Rob Reilly, Executive Vice President, and Chief Operating Officer at CN. I've been a railroader for

33 years now, beginning my career at the Atchison, Topeka and Santa Fe Railway, which became BNSF, where I worked for 30 years, and now at CN for the last 3 years.

During my railroad career, I've had the opportunity to be responsible for some of the busiest, and most challenging railroad operations in North America such as Chicago, where I worked four different times, Kansas City, Texas, Los Angeles, San Bernadino, Barstow, and several other stops along the way.

I'm pleased to be with you today. My CN colleagues will speak about our responsive application to acquire the Springfield line, which we think is a way the Board can preserve competition in a way that significantly benefits the public interest, in part by converting more than 80,000 long haul trucks to rail service annually.

But before we start talking about the Springfield line, I'd like to talk about some of the broader issues that this proposed merger has for the rail network. CN is dedicated to providing safe, and

reliable service to its customers. That's why we are concerned about the proposed mergers potential impact on rail service in the United States.

If you approve the proposed CP/KCS transaction, the stakes for CP and KCS getting this right are extraordinarily high. Flaws in the applicant's data, lack of plans for service integration, and other issues will have real world impact if the STB approves the merger, and those impacts are not just limited to CP and KCS and their customers.

The rail network is interconnected. The failures on one or two Class 1 railroads can quickly cascade across the rail network to other railroads, and other customers, and supply chain partners. Unfortunately, we have seen such a scenario play out before.

In 1996 Union Pacific and Southern Pacific merged, as the railroads began to integrate, severe congestion developed on the combined network, particularly in the Houston area, and this began affecting rail service throughout the United States.

The Board had to step in with a wide ranging emergency service order to address the transportation emergency in the Western United States, including service in Southern California, service to Midwest grain shippers with the Board concerned about EP's, SP's and BNSF's ability to prioritize grain, so that it did not spoil, and service for coal mines in the Powder River Basin, Utah, Colorado and Southern Illinois.

The emergency began in Houston, and the Board addressed the problem in the west by focusing on Houston. The agency ordered UPSP to release shippers from contracts to use other railroads, directed UPSP to allow BNSF and Tex-Mex, before it was owned by KCS to modify their operations to minimize congestion by routing traffic around Houston, rather than going through it.

It took an extended period of time, nearly a year, before the service situation improved adequately for the Board to halt the emergency service order. I lived through these events. In 1997 and 98 I was at BNSF, and saw the havoc caused

by the UPSP integration and service issues. And while Houston was the epicenter of that disruption, we felt that it at other railroads, and in other parts of the United States.

I wasn't with UP or SP, I was with BNSF, but we felt the impacts of Houston disruption hundreds of miles away, and it took years to fully resolve. A short time after, despite stepped up scrutiny, and more advance planning, Norfolk Southern and CSX acquisition of Conrail also led to significant service problems.

Our rail network is connected and interdependent, and service problems in one area, on one railroad, can cascade throughout the system. And more recently in 2013 and 2014, we saw congestion in the networks of Canadian Pacific. This resulted in service problems, including concern whether CP could finish moving harvest before the next harvest began, and widespread congestion, particularly in Chicago interchanges with other railroads.

I was on the Board of Directors of the Belt Railway in Chicago at that time. I can tell you

the impact was felt there and throughout the city. These prior experiences show why it is critical to get this right. We must take further steps to avoid the mistakes of the past.

One condition that CN and other commenters, such as the United States Department of Agriculture, and a coalition of shipper groups, including the American Chemistry Council, the Fertilizer Institute, National Grain and Feed Association, and the National Industrial League have all sought at various stages of the proceedings is for the Board to require CP and KCS to prepare a service assurance plan, and submit it for public comment.

CP and KCS promised that they would do as much when they asked the Board to waive its current merger rules. After many commenters, including seven shipper associations, asked the Board to require CP and KCS to submit an application under the current rules, with the service assurance plan, CP and KCS told the Board that was unnecessary because they give the Board and other stakeholders all of the

information needed to demonstrate that integration has been carefully planned, and that they had plans in place to safeguard service levels, including at interchanges with connecting railroads.

But the information submitted thus far, is sorely lacking. The Board should require a service assurance plans to avoid repeating the mistakes of the past. The service assurance plan is especially critical, given the service issues in the United States rail network this year, ongoing supply chain congestion at the ports, and a shortage of truck drivers and equipment.

It will benefit CP/KCS, other railroads, customers, supply chain participants, other stakeholders and communities through which the railroads operate. This country has already experienced first-hand the effects of a merger related service meltdown in Houston, and its wide ranging impacts to other areas of the country.

No one would want to repeat that experience. But what Houston was to the UPSP merger, and accompanying service failures, Chicago could be

to the CP/KCS merger. Chicago, and this merger's impacts there should be a key concern for the Board and all stakeholders who depend on fluidity in the Chicago terminal, the heart of the U.S. rail network.

This map from CP's application shows CP's route in the Chicago terminal. O'Hare Airport is near Bensonville Yard for reference. You will notice that CP does not own lines in the Chicago terminal. As Metra discussed yesterday, CP operates over tracks owned by Metra in the Chicago terminal, which is the red hash lines.

CP also operates over tracks of other Class 1's like CN and Norfolk Southern. CP also operates over tracks owned by two short lines known as the Indiana Harbor Belt Railway, and the Belt Railway of Chicago, which are partially owned by CP. CP projects that almost eight new trains a day from west into Bensonville Yard, or to the west from Bensonville Yard, yet CP just assumes that all the traffic from those eight new trains per day will all be handled by existing trains within the Chicago East, and south of Bensonville Yard.

Given the realities of the Chicago terminal, such a merger related increase could impact other railroads and rail shippers. As this Board is aware, rail services face some challenges this year, and I know the Board has been focused on improving service.

But even a perfectly functioning rail network faces challenge on the congested Chicago lines, particularly during winter. Chicago is critical to the entire U.S. rail network. A quarter of all U.S. freight rail traffic, and over 40 percent of all intermodal traffic touches Chicago.

As a result, CN participates along with other Class 1 short line and passenger railroads in Chicago to regularly monitor and improve Chicago terminal operations. Such coordination and advance planning is critical. So let's focus on CP's operations over CN's track in Chicago between Tower B-12 and Franklin Park, and Schiller Park Yard.

CN's track is shown in blue.

MR. MEYER: I'm going to, since I was addressed earlier today with respect to the Metra

issue, there was evidence put in the record late by CN.

CHAIRMAN OBERMAN: I can't hear you David.

MR. MEYER: Is it working now?

CHAIRMAN OBERMAN: Better.

MR. MEYER: Sorry. So applicants filed a motion to strike with respect to certain evidence regarding exactly the issue this witness is about to discuss, just raised the topic. The Board granted that motion, and struck the evidence. And this is another backdoor attempt to testify about evidence that was stricken from the record. So I would object, and be happy to address it in writing, but I don't think the witness should be allowed to proceed.

MR. WARREN: If I could address that. I think it is outrageous that applicant's Counsel is trying to interrupt a public hearing, and he's wrong. He's true that there was a motion to strike that was granted, but we addressed this issue specifically in our June 9th comments. That is what Mr. Reilly is talking about.

So this is absolutely in the record, something that applicants had an opportunity to respond to that they did not. They filed a motion to strike for something totally different, or rather a larger expansion of that, but this is in the record. They have not proceeded to respond, and the idea that they are standing up and interrupting our presentations to make an objection is outrageous.

MR. ATKINS: And if I might suggest Chairman, they can file a motion, you can just note the motion and we could address it in briefing after this hearing, maybe we could just proceed forward.

BOARD MEMBER HEDLUND: And finally I'll add that this is a public hearing, and any person was invited to speak.

CHAIRMAN OBERMAN: Well, let me suggest this. First of all I do not think it's outrageous that Mr. Meyers got up. And it's better for us to know what parts of the record that may be challenged, rather than going back after hours trying to sort out what might be objected to, so I don't

accept that characterization.

I think the approach Ray, actually was I was about to suggest that we proceed, that CP focus on any parts of this presentation which you think should be stricken or not taken into account, and specify that in your final briefing, or in a motion after the hearing.

It's hard, almost impossible, I think for the Board to sort out the nuances of what may or may be in the record as having not been objected to before. But it would be better for you to parse it when you have the transcript, and have exactly whatever it is Mr. Reilly is going to deal with. And so, unless the Board disagrees, we'll proceed in that fashion.

MR. REILLY: Proceed ahead? Okay. Let's focus on CP's operation over CN's track in Chicago between Tower B-12 and Franklin Park and Schiller Park Yard. CN's track is shown in blue on CP's map, and is located on the map, partially underneath the label Bensonville.

CP and KCS projects sizable increases in

carload and truck activity at Schiller Park. They disclosed no tonnage data, or trains per day data, in either their operating plan, or amended operating plan for the 2.3 mile line segment owned by CN that a merged CP/KCS must traverse to reach Schiller Park Yard.

CHAIRMAN OBERMAN: Rob, I'm just having, you don't -- I'm trying to place where precisely you're talking about the blue line between Bensenville up to Schiller Park, is that the stretch you're talking about?

MR. REILLY: Exactly.

CHAIRMAN OBERMAN: Okay. It's a small map.

MR. REILLY: Yeah.

CHAIRMAN OBERMAN: So all right. Go ahead.

MR. REILLY: To get to Schiller Park from Bensenville Yard, CP moves over Metra's tracks, and then performs a reverse shove move to come on the CN track to reach Schiller Park Yard. This missing data is needed for the Board and interested stakeholders

to analyze the impacts of the proposed merger.

But it is also data CN needs to understand how operations will work on that segment going forward. You heard yesterday from Metra and the Coalition of Chicago Communities about their concerns. In addition to concerns with CP/KCS is wrong in changing data, their failure to disclose data for line segments anywhere, but especially in and around Chicago terminal may have long standing impacts that are impossible to predict.

It is not enough for merging railroads to simply assert to the Board that they will get it right. No doubt that CP and KCS have many smart and capable railroaders. UP and SP did as well, in 1996, as did Norfolk Southern, CSX and Conrail a few years later.

That's not enough, and merger applicants must be required to affirmatively demonstrate to the Board other railroads with whom they interchange traffic with, and rail shippers, that their integration will not repeat the service mistakes of the past.

With that, I'll turn it over to Matt to talk more about the concerns about the unreliable and inconsistent information that CP and KCS have provided, and what the Board should do about it at this stage.

CHAIRMAN OBERMAN: Rob, before you -- while we're on this I'd like to ask a couple of questions, and other board members may too. What is -- can you be more specific, other than saying CP hasn't given us data, what's your concern? What is CN's concern about this particular transit point that you were focused on? I thought it was an operations question.

MR. REILLY: Yeah, I'll start. Maybe you have something to add. I don't want to cut you off. This is an area where we run trains, so obviously if the traffic is changing, and the patterns are changing, we need to be aware of that so we can adjust our plans. I mean making a reverse shove move is kind of like taking a semi out on Lake Shore Drive, taking a left and then backing up. Not a great move. So we need to understand how that's

going to work.

CHAIRMAN OBERMAN: So have you been engaged in any communication with CP?

MR. REILLY: We have not.

CHAIRMAN OBERMAN: They haven't reached out to you? You haven't reached out to them I take it.

MR. REILLLY: That's correct.

MR. WARREN: I mean as I said in our June 9th comments we raised this issue and the concern that essentially there's no information on their plans, you know, densities on this corridor, and we haven't heard anything back from them.

MS. GAINEY: And to be clear, the no information, it's a missing line segment both in the operating plan and in the information that was submitted to the OEA.

CHAIRMAN OBERMAN: And the harm that you figure will come from this is what? Can you be more specific?

MR. REILLY: Well we don't know. We just

need to understand, so our customers aren't impacted on that line, the segment that we operate on, so we just need disclosure in terms of what that is, so we can plan the operating plans as such.

CHAIRMAN OBERMAN: And you're not necessarily saying you're going to do, it should be not allowed, you just say.

MR. REILLY: That's exactly right.

MS. GAINEY: We need to know what it is, and the information they provided about activities in Schiller Park Yard, which is shared with CN and CP disclosed that the truck activity and railcar activity in the yard exceeds the Board's thresholds for environmental analysis.

So from our perspective this is a missing line segment that's nowhere described in the operating plan, or in the environmental information that is provided to the Board.

CHAIRMAN OBERMAN: Okay.

BOARD MEMBER HEDLUND: If I could go up to the 5,000 foot level, we're talking here about eight additional trains into the Chicago terminal. How

many trains a day transfers to Chicago terminal today?

MR. REILLY: I don't have the exact number.

BOARD MEMBER HEDLUND: But it's hundreds, right?

MR. REILLY: Oh yeah. It's a significantly busy.

BOARD MEMBER HEDLUND: So why is a mere eight additional trains a day likely to cause significant more congestion? And I realize the Chicago terminal is the most congested terminal in the country.

MR. REILLY: Yeah. You just got to know where it's going to. Eight trains could definitely have an impact in the Chicago terminal. Not only that, you know, having lived part of my life parked on the Stevenson Freeway, I'd be concerned where that's going in the City of Chicago across town. Whether it's going on the Eisenhower, the Tri State, the Dan Ryan, all of that is going to get more congested.

I don't know. I don't know where the traffic is going in Chicago, but and that would be really what we'd need to answer your question appropriately.

BOARD MEMBER HEDLUND: I'm from Chicago, so I know what you're talking about.

CHAIRMAN OBERMAN: Rob, you should have been on Metra's Heritage line. All right. Any other questions at this point, Robert?

BOARD MEMBER PRIMUS: I do. Just for me, clarification because I haven't been out to see. So can you just talk to me about, sort of describe the activities at Schiller Park? Like how many trains you usually operate through that?

MR. REILLY: Derek? Do you want to respond to that?

MR. TAYLOR: Yeah, good morning. Our operation through there, that's our actual access to get to the Indiana Harbor Belt Railroad, and also to the BRC? We operate between four and eight trains a day, it just depends on the bulk trains that may move through potash and other bulk commodities, but four

to eight, the core plan is about three.

BOARD MEMBER PRIMUS: Okay. Do you typically see a lot of congestion there now? I mean its operations?

MR. TAYLOR: No. In today's world you know we work with our partners at CP. Obviously, you have two Metra crews there, you have the line that runs east/west, which is essentially on the CP route, but we also run Metra's on our Waukesha, so it actually connects at B-12 to that route, to get to downtown.

So you essentially have you know 24 hours a day in Chicago, and you can in 18 hours. So there are times that Schiller Park can get congested, you know we have separate yards there. They have their facility there, we have our freight facility there. We run a local out of there also, so there's separate locations, but they're right next door to each other, and the access in and out of there is controlled by our dispatch office, hence Mr. Reilly's comments about having the knowledge of what it is and where it's going is very important for us to be able to

plan to work with Metra through those curfews.

BOARD MEMBER PRIMUS: Thank you.

MR. WARREN: Kathy, just for my own understanding, can you state the missing segment claim again, and why you believe it trips our thresholds?

MS. GAINEY: We do not know whether the segment does, or does not trip the threshold, because the segment was not included in any of the operating plan tables, or the information that was provided to the environmental office. So that includes the Appendix T of the amended operating plan.

And so the base data was not provided, the projected train traffic increases, merger related, were not provided, and thus the post merger traffic increases, both for GTMs, and trains per day are not included in the record from applicants.

MR. WARREN: And the one thing I'd add to that is that we filed a comment on the Draft EIS that you know spells this issue out.

CHAIRMAN OBERMAN: Karen?

BOARD MEMBER HEDLUND: One last question.

If you're so concerned about congestion in Chicago, why did you withdraw from the Create Program?

MS. GAINEY: I believe after -- Doug or Derek, do you want to take it, otherwise I can go.

MR. TAYLOR: I would just say in terms of that you know, we are still part of Create, although we don't actively go through different things. But you know we did purchase the EJ&E, that would have essentially allowed us to do different things, and have a single line direct around Chicago that we control.

Before the EJ&E purchase, we had to run every single train to and from Western Canada over the IHB or the BRC, so the EJ&E allowed us unique to connect our entire network, so that enabled us to not have to do certain things with Create.

MS. GAINEY: And then purchasing the J it was a $303.00 acquisition, but then we invested 271 million dollars in rail line connections, and improving the track facilities in Chicago.

CHAIRMAN OBERMAN: Any other questions? All right. Matt, you were going to take it from

there?

MR. WARREN: Yes, thank you Mr. Chairman. So you know after UPSP mergers approved by the STB typically have featured substantial service related conditions. So for example, in Conrail there was a significant settlement agreement with the National Industrial Transportation League, a number of implementation level conditions.

CNIC features a stipulation that CN and IC entered into with NITL guaranteeing service levels for certain shippers for ten years. When KCS acquired Tex-Mex, that was just a minor transaction, they also negotiated an agreement with NITL to guarantee service levels, and CN Wisconsin Central actually had a full voluntary service assurance plan, again just for a minor transaction.

So it's somewhat remarkable that this major merger application that is being proposed in the midst of network wide service issues in 2022, has so few concrete commitments relating to service, and so little information about how the applicants plan to protect service during implementation.

And the Board has heard from many parties concerned about the impact of this proposed merger on service. You heard from Metra yesterday. You've heard concerns about impacts in Houston, and you've heard from a number of shipper associations asking for the Board to take steps to ensure that service is not harmed.

CN is also concerned that there's been inadequate planning for the merger transition. So unlike some parties, we don't have a particular part of the network where we're asking for a particular condition, or a particular investment. You know our concern is similar to the concern that the Department of Agriculture had, that we think that the applicants you know have not provided sufficient information on how they're going to implement their merger without impacting service.

And we think the answer to that is a service assurance plan. And we think that, let's see if I can get my clicker to work. We think that primarily for three reasons. First, CP is planning significant operating expense cuts in year one, that

could impact the rail network if they're not well executed.

Second, now I'm pushing too hard, and there we go. And second, they would not produce a reliable operating plan, or supporting density data that can give the Board confidence that they have a plan to implement the merger without transitional service disruption.

And third, CP and KCS promised this Board in April 2021, that they would be providing all of the information needed to satisfy the Board that applicants have carefully planned for integration, including measures to monitor and safeguard service levels all under Board oversights.

They have not fulfilled that promise. And we think the best way to hold them to it is to require them to prepare a service assurance plan for public comments. First, let's talk about the planned operating expense cuts. Go ahead.

CHAIRMAN OBERMAN: Matt, let me interrupt you for a second. How is our court reporter doing? Okay. Let me know, raise your hand when you need a

break, thank you. Go ahead Matt.

MR. WARREN: Okay. Yes. Well I know these numbers are small, so hopefully you can see this in your slide deck. And we do have footnotes on this slide that are even smaller, so you can see where we're pulling all of this information from at the records.

The Board's heard a lot of talk about how CP and KCS expect to grow their revenues by diverting traffic from other railroads, but they have also proposed over 115 million in annual operating expense reductions. And they have done very little to demonstrate that this cost cutting can be achieved without disrupting service and the interconnected rail network.

So in the base year of 2019, CP and KCS reported combined gross ton miles of 385.6 billion. By year three they project increasing those combined gross ton miles up to 461.9 billion. So I'm having trouble reading, but a 76 billion increase, or about 20 percent.

And just to be clear, this is only

counting merger related growth. This does not include projected organic growth. And I would love to put the organic growth up there, but it's actually coming out of you know highly confidential work papers, so I can't. It's actually even higher.

But as you see this substantial increase in volume is not being matched by an increase in the people or the resources to move that volume. The employment is only going up 5 percent. They're not actually increasing the labor force to keep up with their projected volume growth.

The locomotives are flat. Revenue cars are actually going down. They're proposing to have less cars to carry this much higher volume. And they're not planning for the capital investment to keep pace with volume growth either, so their overall capital investment is planned to stay flat. It's 1.9 billion in the base year, and all of these numbers are coming out of the financial exhibits in their application.

1.9 in the base year, 1.9 in year one, 1.9 in year two, 1.9 in year three. Not changing. So as

the gross ton miles are going to go up and up and up allegedly, and their revenues are going to go up and up and up, they're not planning to increase the cap backs. So the cap backs as a percentage of revenues is actually you know projected by them to go down over the course of their merger.

And we have heard a lot about 200, and I can't remember if it's 275 or 276 million in merger related capital investment. That is not, and I think they've said a couple times in their papers, that this is not something that is coming out of their ordinary capital investment. That's not what their financial exhibit shows of course.

Their financial exhibit doesn't show you know a 275 billion dollar bump. They're just keeping it flat, so you know it's coming out of the ordinary budget. And the context of a major merger, I mean it sounds odd to say that 270 million isn't a lot, when the context of a major merger, it's not really a lot.

UPSP was 1.2 billion, and that was in 1996, so if you escalate that up, that's well over 2 billion. Conrail, you know 1.2 billion. One was

1.3, one was 1.2, I can't remember which one. The Conrail was 1.2 billion, and again you know well over 20 years ago, so if you guys swipe that up, that's approaching 2 billion.

And you know back when CP you know bought the DM&E a decade and a half ago, they were going to invest 300 million just on the DM&E lines in South Dakota. So 276 million is not a particularly high level of capital investment that would lead you to believe that they've got a transformative plan to start reducing you know, not increase their locos not increase their freight cars because they've got all of these great capital investments lined up.

And we'll get to Springfield in a moment, but we'd note that you know CN's plan for the Springfield line would invest 250 million just on that, which on a per mile basis is significantly you know higher than -- it's significantly higher than the applicants are planning to do.

And if you do the math, according to them, they are headed towards record low operating ratios. Again, you see the footnotes, this is all out of you

know Heath Randall verified statements. You know he calculated that the applicants were projecting that their operating expenses per gross ton mile that were about 13 percent lower than pre-merger performance, and this slide shows as he calculated, how that would translate to a projection operating ratio.

BOARD MEMBER FUCHS: Matt?

MR. WARREN: Yes.

BOARD MEMBER FUCHS: I think in January of this year when Canadian National announced a 1,800 person -- 1,800 job cut, what was the target operating ratio for 2022 at the start of the year?

MR. REILLY: That was announced in September, and part of that was a 57. 57 percent.

MR. WARREN: Right. So I take your point, but I think the point that we're making is that this is a significant reduction that is in their plan immediately.

BOARD MEMBER FUCHS: We are also making the point that it's unprecedented. The plan is unprecedented, but your plan in 2022 was lower.

MR. WARREN: Yeah, and I apologize. What I mean was it was unprecedented for KCS.

BOARD MEMBER FUCHS: Okay.

MR. WARREN: And the question really is how are they going to get there? You know where are the efficiencies? It's not going to be through more efficient routes. The networks only touch at one point where they already share a yard.

There's a lot of vague language in their filings about how they're going to apply PSR experience, and about re-optimizing operations, but there's not a whole lot of detail, but exactly how and where they're going to be cutting back, just that they're going to be doing more work with fewer cars, the same locos, only a few more people, and the same cap X.

And of course KCS has already implemented precision scheduled railroading, so it's not clear what further expense cuts CP thinks it's going to get out of KCS. But whatever changes they're making are going to be happening almost immediately.

You know you heard yesterday that there's

not going to be a big bang. And there's going to be a methodical march as they integrate, but that is not true for the expected operating expense cuts and their optimized plan. You know 80.8 percent of those operating efficiencies are supposedly going to be realized in year one.

That's not a methodical march. And our concern is that CP and KCS have not produced any reliable planning to show that they'll be able to achieve these operating cuts without harm to service. They have promised you. They certainly have promised you, but they haven't shown you.

Moreover, it could be that they're going to need to cut even deeper to match their promises to investors. Like as we showed in the verified statement of David Hunt, CP's and KCS's experts have made extraordinarily aggressive assumptions about traffic diversions. They've assumed that they're going to immediately get market share without any meaningful price concessions, even though their rail to rail diversions average 217 route miles longer than existing routes.

If CP and KCS don't achieve those aggressive diversion assumptions, they're going to be under even more pressure to cut expenses. And while I'm on the topic of diversions, Mr. Chairman you were asking yesterday about environmental impacts from diversions.

So rail to rail diversions that are on average a 217 miles longer, obviously have a negative environmental impact. More fuel, more emissions, more traffic, more blocked crossings. And the Draft EIS currently assumes that all the rail to rail diversions are awash environmentally, but that's obviously not true when the rail to rail diversions are going to go under a much longer route.

And applicants are planning to transport that merger growth traffic at extraordinary low costs. So this slide is you know taken straight from Appendix B to their application, depicts their total claims incremental revenue growth from traffic diversions, and their claimed cost of handling that additional traffic.

And if you go to the sort of normalized

year, it's at 1.15 in revenue, and 345 million in costs, which translates to a 333 RVC ratio. And of course by definition, every single one of these cars is something that has competitive options. It's something that's already moving on another railroad. It's something that already is being transported by truck.

And I think the Board and its Staff have got enough experience with RVC ratios to know that a 333 average RVC on traffic, that by definition has other options, is not likely to be achievable. And here, you know, if you run the numbers on an operating ratio you get to 30, and Member Fuchs, I don't think anybody suggests anybody is going to get to 30.

So what does all this mean? Like it is not a concern to the public interest if CP and KCS get these profit projections, or they don't get these profit projections, from a public interest perspective, that doesn't matter. The real concern, and CN's concern, is what are they going to do to make up the difference when they don't get hundreds

of thousands of cars or diversion traffic at a 333 RVC.

They're already planning aggressive operating expense cuts with little explanation of how they will get there. But how deep are they going to cut when those sky high diversion profits don't materialize, and they are under pressure to match their promises to shareholders. That is something that can have a substantial impact on the public interest.

And the second reason we're concerned is that the data at the foundation of the operating plan is just not reliable. Again, we've detailed these concerns in the verified statements of Carl Van Dyke, and I just want to summarize the major issues here.

So I think this slide, if I could ever get there, on the Springfield line, sort of illustrates our basic concern. So the first column of numbers here is the original density numbers in the application, Exhibit 14, which we understand are the numbers that CP and KCS maintained at the ordinary course of business, so that's Column A.

So Column B are the modeled numbers that they gave the environmental office last October. They are obviously different. And as we've explained, and as I'll get to in a moment, those actually that's supposedly 2019 data, but it's actually not based on 2019 data. Most of it is modeled based on a single month in 2020, which they combined with some data from 2021.

Now after this issue came to light earlier this year, CP and KCS re-submitted those numbers in March, and said you know actually we apologize for you know, for our original Exhibit 14. The OEA numbers are the right numbers. These are the OEA numbers are the right Exhibit 14 numbers. But after you ordered them to resubmit their operating plan, we've got a brand new set of modeled numbers to their remitted operating plan. And that's Column C.

So the explanation that we've gotten for the numbers is that the applicants, there were inaccuracies in the data that they had collected, so therefore they had to develop a model for purposes of the operating plan. So there's been a lot on the

record where they've tried to explain you know why they had Column A, and why they had Column B.

But there in the first place I'll say there was no suggestion in their original application that Exhibit 14 was unreliable. Like on the contrary, the original operating plan explicitly pointed to Exhibit 14 as the source for projected changes in train volumes and density.

But the broader point is that while they explained why they think they had to use the model, at no point have the applicants given the Board any coherent explanation for why the May outputs in Column C are different from the March outputs in Column B.

And I would point out that the Board's April 27 decision contemplated that the numbers in the amended operating plan would be essentially the same as those provided to OEA, and they plainly are not.

BOARD MEMBER FUCHS: Matt?

MR. WARREN: Yes.

BOARD MEMBER FUCHS: And I understand

you're going to continue with the data point, but maybe to frame the discussion, can you just summarize or give an example of a condition that the Board ought to impose if they used your preferred traffic numbers, but we wouldn't impose if we used CP's preferred traffic numbers.

MR. WARREN: So that's an excellent question. And I think you know CN is probably not in a position where we are going to be proposing conditions based on that. It is, I think, very important because as I'll get to, where the data gets really unreliable is at a segment level.

And those are the things that are going to be driving community concerns. They could be driving conditions that a railroad might ask for if it's a segment that can be addressing interchange. You know, but I don't want to -- go ahead.

BOARD MEMBER FUCHS: Are you able to identify, I think what I'm trying to get at is understanding reliability in and of itself is an important goal, but what I'm trying to ascertain is whether or not the difference makes a difference when

it comes to Board action.

So you know, can you point to a specific Board action that is no longer justified because CP has a particular estimate for a particular segment?

MR. WARREN: So I think that in a couple slides I will show you, you know, a slide that I suspect the panel in front of us will be very interested in, and I do think that you know most of these specific conditions are going to be driven by that the parties might ask for, are really driven by the individual segments.

The condition we are asking for, is we're asking for a service assurance plan. We're not saying this is a segment that looks wrong, you know please contribute to our capital investment on the segment, or please, we're not asking for train load traffic.

BOARD MEMBER FUCHS: It doesn't appear to me that a service assurance plan would be driven by a particular segment density.

MR. WARREN: Well I think that the densities that are informing the operating plan do

suggest that there has been a level of casualness in the way that they've approached this public review process that gives us some concern, so.

MS. GAINEY: I can offer two perspectives, and Matt's going to talk about this some more. You know we've emphasized the importance of a service assurance plan, and the idea -- one way we've been thinking about this is the need for public comment on such a plan.

And one way Patrick, to your question, that a condition could be integrated would be to order the applicants to use the actual ordinary course data in such a service assurance plan because inevitably in a service assurance plan you're looking at what the historic service levels were for example, if you're trying to maintain certain service levels.

That's one way that it can be integrated into a condition. But I'd like to come back to a 10,000 foot level and say these are the baseline GTM 2019 numbers that underlie the operating plan, and also the environmental submissions from the

applicants.

And so all of our witnesses have very complicated flow charts that illustrate where these inputs flow into other aspects of the case, but this isn't a number that just sort of sits by itself in the case. It feeds into other aspects of the planning and the work that the applicants have done in the operating plan, and that everyone has been commenting upon.

BOARD MEMBER FUCHS: What service assurance plan in the agency history factors in segment level GTM?

MR. WARREN: I think Pat, Member Fuchs, we all have a data set of one. We have Wisconsin Central, which was a very simple service assurance plan because it was a minor transaction.

BOARD MEMBER FUCHS: Yeah I know. I'm just not hearing the nexus to a particular decision point though.

MR. ATKINS: Patrick, if I can just weigh in and try and maybe I'll go above 10,000 foot. We think it's important that you have a plan from CP

that assures that service will not be disrupted as a result of their plan. One of our concerns is if you look at the operating plan, in total it's not a specific problem with densities, it's so laden with errors and problems, that it cannot give you the confidence that they've got a service plan in place to successfully implement their plans for this merger.

So all of these examples we're giving you, they're not isolated instances where we're concerned about a particular corridor. When we looked at their operating plan, and our experts came in, there are just so many data inconsistencies with this submission that we've drawn to their attention, which they don't necessary correct that it should give you pause.

And so the result of it is not a specific line segment investment, although individual communities, if they saw the right data might ask for it. We think it actually just lends support for you holding them to the commitment that they made at the very beginning of this case, which is to give you

sufficient information to assure yourselves that they can deploy their vision without causing service disruptions.

That's the ask, and that's why we're walking you through all of the data and consistencies to make sure that you're seeing what we're seeing.

BOARD MEMBER FUCHS: I appreciate that very much, and that's why I wanted to jump in at the start of your slides to make sure that they're in the right context.

MR. ATKINS: Absolutely yes. We appreciate it. Matt, do you want to continue?

MR. WARREN: Yeah, and so we're going to show just a couple more examples again of why we're concerned. So the slide that I'm going to try to get to is focusing on Seville versus Airline Junction. And in this slide if I can ever get to it, we're only looking at the May numbers in the amended operating plan.

On this segment CP and KCS are planning to route more than 14 new trains. Just let me go back. So anyway, it's in the decks in front of you, and I'm

apparently never going to get it on the screen.

BOARD MEMBER FUCHS: That's okay.

MR. WARREN: But this is something we've explained in Mr. Van Dyke's verified statements. The projected train counts don't change. They say, I think it's 14.1, and that those are going to be the project train counts. But the densities are going up and down on the line, and as we explained in Mr. Van Dyke's verified statements, you know, these are just run through trains.

They're not stopping. They're not doing work. There's no logical reason for the densities to be changing, and essentially the implications that the trains waits must be changing, which can't possibly be correct. So you have that, that will be in the record.

And a couple of slides that might be relevant to the panel in front of us, you know, these are the numbers in Houston, and you know it's obviously a critical you know segment from Beaumont to Rosenberg, and we have gotten a number of different numbers from them, you know, as pretty much

everywhere else.

We've got a different number in the original Exhibit 14, a different number submitted to OEA, and a different number in May. The difference in Houston is that we actually got two different numbers in that. So on this critical segment Appendix A is the amended operating plan, has the densities at 17039, and appendix T has them at 2590.

And that lowest number out of all of those is actually the one that's being used for the Draft EIS. And one thing we've heard from the applicants is you don't need to worry about this because base year densities don't matter, all that matters is the delta. All that matters is how it's changing.

In the first place that's not true, because how much traffic is on the line right now, has an impact on how much additional traffic it can accommodate. Second, the projected growth is also all over the place. Sticking with the same segment in Houston, you know again, we've got one number on Exhibit 14 to the application.

You've got a different number, a

substantially higher number that was provided to OEA, and then in May you've got two different numbers again, Appendix A to the amended operating plan had a 14,000 number, which was you know kind of close to what they gave OEA, but Appendix T has a much lower number, and the current Draft EIS actually uses that lowest number.

And bad results are typically stem from a bad process, and that's what happened here. So the applicants really had a choice here. They could have just used their actual 2019 data. Now we recognize that they think that there were problems with that data, things they needed to correct. They certainly could have done that.

As we showed in our evidence, most of our problems with actual data that they claim are things that they are easily fixed. They say well the KCS tonnages have locomotives, and the CP tonnages don't. But it's not that hard to back out the locomotive waits.

We've showed how to do that. They didn't follow that approach. They picked the model. And so

to create segment density for 2019, they didn't start with any data from 2019. Instead they took daily train counts for carload traffic, and intermodal traffic from October 2020.

So in the middle of the pandemic, and they only for October 2020, that's just the manifest and the intermodal. For other unit trains we have step two, where they added the unit trains. They didn't use October 2020 for those, they used different periods in 2021 for CP and KCS.

And step three was actually to yank some trains for those train counts. They applied something called the 25 percent rule, which meant that if they didn't see a train that was hitting 25 percent of the stations on the line, they pulled it out, they didn't count it, and we think that's probably a process that would lead to them you know missing some locals, and missing some yard trains.

And then so now they've got their trains counts that they've cobbled together, so you could figure out the densities, they took historic average train waits. That's step four. And again, they used

different time periods for reasons that you know defy explanation.

They used 2020 for CP, early 2021 for KCS, and then what they did is they you know multiplied the system wide average train weight to you know, to the train counts for the segments, and they got their uncalibrated base period data. So the assumption in their analysis is that train waits are perfectly even across the entire CP system, the entire KCS system, and of course that's not true.

And when they got to the end of that process, the reason it's not the final data they gave you, and it's the uncalibrated data, is because the totals of that data don't look anything like the totals for 2019. So they had to try to figure out a way to force the totals that they calculated for the segments to the actual totals they had, and they call this calibration, which all that means is they took the difference between the actuals, and the differences between what the model spat out.

They figure out a factor to what the mathematical difference is, and then they just like

spread it evenly across all the segments.

BOARD MEMBER SCHULTZ: Just a quick question?

MR. WARREN: Yes.

BOARD MEMBER SCHULTZ: I wonder if you could tell me in what way they did not meet the Board standard with regard to submission?

MR. WARREN: So well I think you know for -- I think the Board has determined already that this approach did not you know violate the rule for Exhibit 14. We think that's you know, we had a different interpretation of the rule. We thought the rule you know required, as has happened in past applications, that actual data be used.

You know, we do think that there are significant public or interest reasons for the Board to be relying on reliable data, and not model data. Even you know regardless of whether it is technically compliant with the rules or not, the question is do you have the best data that you need?

And it's a different question. I think in the environmental context, or the transportation

context. I'm not an environmental lawyer, so I don't know, but I think on the environmental context there is a requirement underneath it to use the best available data.

But the Board has much more discretion under a public interest test. We just think it's important carrying out your public interest duties, to have the best available data.

MS. GAINEY: And if I can just add as well, in the Board's decision in April when it asked the applicants to amend the operating plan, it noted that a modeling perspective, a model could be used, but that the question of whether the model was reliable would be deferred until the end of the case, and asked commenters to put comments in on whether the model was reliable.

And then the Board also stated its expectation that the data that was going to come in May in the amended operating plan would be essentially the same data that the OEA had received last October. That is not actually what happened. And then CN submitted in our June comments, a

verified statement of NATCOM that explained why the modeling effort was not reliable.

BOARD MEMBER SCHULTZ: Thank you.

MR. WARREN: And I think our bottom line for all of this is that we think the Board should be requiring more of CP and KCS, and we think that the Board should start just by holding them to their word. So last April, seven major shipper organizations, the U.S. Department of Justice, multiple other parties, all asked the Board to use its current merger rules to review this merger.

And one of the major reasons they asked for that was that the new rules required service assurance plans. And somehow I've jumped slides again because I can't seem to work this thing. So, and we have a screenshot up here from what the joint shippers you know put in.

And they pointed out that the reason you do service assurance plans is to ensure that potential service problems are addressed before disruptions happen. And there is a good reason you know why the Board developed the service assurance

plan requirement in 2001, and good reasons why these stakeholders ask for one.

A service assurance plan has key elements that are needed for the Board, and for stakeholders to analyze the impacts of a merger. And you know, it's a plan that shows the precise steps that the applicants are going to take to ensure that their projected service levels would be attainable, to explain with reasonable precision how the operating plan efficiencies are going to translate into present and future benefits for the shipping public.

To describe areas of potential service degradation that might result, and how you might mitigate them. Yet to notify connecting railroads, and passenger agencies of how you're going to coordinate with them. Provide evidence that contingency plans are in place, and to provide benchmarking for key corridors, yards, and terminals, and for passenger performance.

So in response to these calls to use the current rules, one of the things that CP and KCS said is you don't need to use the current rules because we

will voluntarily give the Board all the information it needs to satisfy itself that applicants have carefully planned for the integration of these railroads, and will implement measures to monitor and adjust service levels during the integration process, so that shipper's service levels are safeguarded, all under appropriate Board oversight of course.

Now I want to be fair here. Like CP and KCS did not say that they would be doing a service assurance plan. But they did indicate that they would be providing some of the key elements that the Board adopted. You know, sufficient information to satisfy the Board that there was a careful plan for integration. Evidence that they would implement measures to monitor and adjust service, evidence that service levels would be safeguarded, and a plan for Board oversight of all of us.

But when it came time to file an application, they didn't follow through on that promise. They gave you no detailed information on integration planning, they proposed no metrics. They initially proposed no monitoring of Board oversight

at all, and they didn't even acknowledge this promise that they made back in April 2021.

And you know, we pointed out in our comments in February that we thought that they promised to do a service assurance plan. They filed or applied on July 12th. They didn't respond to our basic argument, which is that you promised to do this. And instead they said well, we're going to have something new.

We're going to have a service promise. It's just jumping all over the place. But the service -- just quickly. The service promise isn't a whole lot more than the platitudes they put in the original application. They say they will plan, but they don't actually reveal the plan. They promise to fix service problems that arise with a SWAT team, but that's something that raises more concerns than it resolves.

The purpose of the service assurance plan is to forestall the need for SWAT teams to fix problems after they happen. The point is to plan so that you don't need SWAT teams. They do say we're

going to produce metrics, but they primarily are promising to give you the ex parte 724 and 770 data that they're already required to give you.

And they do say that they are going to produce data on a couple of additional corridors, but they've got no detail on what additional metrics they are producing. They say that they are in the process of assessing the specific metrics. This is their final evidentiary filing, filed at a time when no party can respond to it. They're still in the process of developing the metrics.

This is not a substitute for an actual service assurance plan subject to comment. And I think I'm starting to wrap up. You know we can compare what they've offered with what a service assurance plan requires. You know have they explained anywhere in their filings, the precise steps to ensure that their service levels are going to be attainable. They haven't.

They've just announced a very aggressive plan to cut expenses that will be achieved almost immediately after merger. Have they shown with

reasonable precision how operating plan efficiencies will translate into benefits for the shipping public? They've got 150 million in alleged operating savings on their merger benefits exhibit, but that's just a projected future profit statement.

That's not a statement of public benefits. How is it that they're translating their plan into better service, and not just increased profits? Have they identified particular problem areas? Again, they haven't. They just have this happy talk that they're aren't going to be any problems because they're great operators.

And I agree, they are great operators. But the point of this is to plan for worse case scenarios, and not assume that everything is going to go according to plan. Have they provided connecting railroads and passenger entities with sufficient information on how their operations would be affected?

You heard about the segment that we're concerned about, that we pointed out in our June 9th comments. You heard form Metra yesterday. I don't

think they're satisfied. You know have they given you contingency plans? There's nothing public. Have they given you clear metrics to monitor service? They haven't.

You know, and yesterday we heard for the first time, I think, that Mr. Clements apparently is in charge of an integration planning team, but they haven't shared any plan with you. They haven't shared it with stakeholders, and they haven't explained how they're going to reconcile their aggressive operating expense cuts and inconsistent data with a well calibrated and careful plan to integrate operations without harming the network.

So in wrapping up this chapter I just note that there are some interesting post mortems written at the wake of the UPSP service meltdown. So one of those was a Fortune Magazine piece that concluded that the fundamental cause was arrogance. It was a team of very smart, and very talented railroaders who thought they could walk in the door and make everything work immediately because they were the smartest railroaders in the world.

And the real lessons of UPSP is that major mergers have to be undertaken with some humility with careful planning in advance for the ways that things could go wrong, with a willingness to go slow to avoid disruption. And with the listening to stakeholders with concerns about the impact with the first major merger in over 20 years.

And not just assuming that every party with a concern must be ignorance, or malicious or a nimby or scared of competition. One of the core purposes of a service assurance plan is to make merger applicants be humble, to plan for the worst case scenarios and not just the best case scenarios. And to share those plans with stakeholders and the Board in advance, so they know what is coming and they can offer improvements, and so the Board has a measuring stick to keep them honest.

The Board should order the applicants to fulfill the promise they made in April 2021, to give it sufficient information, to understand that they have sufficient integration planning. We think the best way to do that is to make them produce a service

insurance plan for public comments.

So unless there are any questions, I think we'll start moving on to Springfield.

CHAIRMAN OBERMAN: I wanted to -- I was trying to, there's too much paper in front of me. I was searching for it, but in terms of the operating positions, which you've dealt with earlier, somebody dealt with earlier, your comments that they weren't really increasing the workforce.

According to one of the filings they anticipate they say adding 1,000 union operating positions to accommodate traffic growth.

MR. WARREN: Yes. And I think Mr. Chairman, that's the same number we've got on our slide.

CHAIRMAN OBERMAN: Okay. And you're saying that's not enough?

MR. WARREN: Our point is that they're growing volumes by 20 percent. And their workforce they say they're going to grow by 5 percent, with the locals flat and the freight cars down. That's our point. We're not denying, and we're just putting up

what their plan is. They absolutely say they're going to increase.

CHAIRMAN OBERMAN: The 5 percent you're talking about are those in position?

MR. .WARREN: Yes, yes, the math is on that slide, and then it cites back to where it's in the record on it.

CHAIRMAN OBERMAN: I was trying to go back to your slide and their file and I couldn't get the two together. Okay. That was the only question I had for the moment. Any other questions, Karen?

BOARD MEMBER HEDLUND: Matt, do you have any particular concerns about issues related to a vertical merger as opposed to a horizontal merger? UP/SP was a horizontal merger.

MR. WARREN: Well I think that so, Member Hedlund, if I could understand, do you mean from a service perspective, or from a gateway, from a competition perspective?

BOARD MEMBER HEDLUND: No, no, from a service perspective. What are the unique service issues with respect to a vertical merger, and because

the reference that you make UP/SP was a different kind of merger.

MR. WARREN: Yeah, I think that's a fair point, and I think that there again, I would just point to the 150 million in operating expense changes. So if it's just, I think the premise of your question is in a vertical merger you're not going to be reducing as many facilities, and so you won't have as many issues.

Well they're going to find 115 million in operating expense savings, and they think they're going to get 81 percent of those savings in the first year. So they are planning changes. They haven't really explained what those changes are going to be, but they you know, they have something. They call it the optimized plan that's going to roll out.

So it may not you know, and again service assurance plans we think probably come in all shapes and sizes. You go back to the one at Wisconsin Central, it's pretty short. You know I think if you had one in an east/west merger, it would be pretty big. And you know I think the service assurance

plan, you know for this, for CP/KCS is probably going to be somewhere in the middle.

We do think there are issues, and we think that it's appropriate to ask them to produce that integration planning.

BOARD MEMBER HEDLUND: Thank you, I'm done.

CHAIRMAN OBERMAN: Patrick?

BOARD MEMBER FUCHS: The last merger that could be characterized as sort of more vertically integrated, a major merger, would be CN/IC. Is that fair to say?

MR. WARREN: I think that's right, yes.

BOARD MEMBER FUCHS: Okay. And what were the operating expense savings in the years following that merger?

MR. WARREN: That is not something that I have in my head, but we could certainly provide it. But I feel like you might know the answer already.

BOARD MEMBER FUCHS: Well a pretty substantial drop in the operating ratio at CN during that time period after the merger. Fair to say?

MR. WARREN: I think it's fair to say, it's 20 years ago yes.

BOARD MEMBER FUCHS: Okay. And did CN/IC submit a service assurance plan under the old rules?

MR. WARREN: No. I don't think they did.

BOARD MEMBER FUCHS: Were there any service problems?

MR. WARREN: There weren't.

BOARD MEMBER FUCHS: Okay.

MR. WARREN: So what I would say is that you know I think that it's important to not just point to the situations where everything worked out, and assume that, and make the assumption that everything is going to work out here too. You know we're not saying, you know, we see catastrophe on the horizon.

Like what we're saying is we see a plan for substantial cuts upfront. We see very unreliable data that's just all over the place in the operating plan, and we are worried that this is a situation where the assumption is we're the smartest railroaders in the world, we do great service. This

is going to be easy, we've got it.

And like all we're asking to do, all we're asking for is that they be asked that they be required to do what they promised you they would do, which is they put forward a service assurance plan. And they tell the Board, you know, publicly that this is the planning that we have done. These are the problems that could happen, this is how we're going to fix them. These are the metrics that we're going to give you to show you how to measure our service metrics that go pre-merger to post-merger, that's our only request.

BOARD MEMBER FUCHS: And understanding they weren't major mergers, but obviously CN has engaged in a number of transactions post 2000, not counting the Wisconsin Central. Did CN submit a service assurance plan? And by the way, appreciating what applicants state their point is understood.

Did CN submit a service assurance plan in any other transaction that it engaged in?

MR. WARREN: I think the only one has been at Wisconsin Central.

BOARD MEMBER FUCHS: Were DM/IR any issues that a service assurance plan you think could have helped say coming out of EJ&E, or any other transaction. I think there was another one.

MR. WARREN: I think that in a lot of ways a service assurance plan is requiring applicants to do publicly what they should be doing privately. And to put their integration out there publicly, so that members that are interested in service, and members of the public that are interested in service, obviously members of the Board that are interested in service can see what the plan is, and know in advance where the hot spots are going to be. You know, what are the metrics we can use to measure this?

Like we don't think it's enough for them to say we're going to give the 724 and 770 metrics we're already giving you, and again as I said, they say that they're going to do some other metrics. They haven't told you what they are yet. And you know they haven't given any party any opportunity to comment on that, which is sort of ironic, you know,

given our earlier interruption today.

MR. ATKINS: So Chairman, before we move on the next segment chapter is rather lengthy, it might be an appropriate spot for a five minute break. I'm just saying in terms of timing it would work well for our presentation.

CHAIRMAN OBERMAN: Noted. But before we get there I just wanted to follow-up on this question Matt. As I understand it your lengthy discussion about a service assurance plan, you're referring to a service assurance plan which would have been required if the new rules had applied?

MR. WARREN: Yes, that's right.

CHAIRMAN OBERMAN: And then you seem to be saying we should require it anyway, but you also have pages in your slide deck say well if there were no service assurance plan they should have provided X, Y, and Z that they said they would provide. So I'm not clear what would satisfy CN, what request you're making.

Are you saying it's sufficient if we agreed with your construction of what you say CP

"promised." Or are you saying nothing short of the kind of service assurance plan that would have been required under the new rules will be adequate?

MR. WARREN: Sorry, so Mr. Chairman, I think we are where we are in this proceeding, so I suspect that if the application filed a year ago had something that was short of a service assurance plan, but was taking some steps to fulfill that promise to the Board, we probably wouldn't be here today asking for it.

I mean a service assurance plan is something that is you know there are clear roles for it, you know, it was developed by the Board. We think it's a good model. And we think that if the Board, or the applicants -- the applicants have just said no, we're not giving you anything.

If they said boy, you know, we think that this one particular element isn't appropriate here, but we'll do the other elements, that might be something that the Board could certainly consider that as a condition, or could consider something that is less than the full service assurance plan. You

know we think they haven't done anything. They clearly haven't met the requirements.

One, I think administratively simple way for the applicants to fulfill that promise, would be to just you know tick down the steps of a service assurance plan.

CHAIRMAN OBERMAN: Well I understand that, but I'm trying to really nail down what you minimally are asking of us. I assume you're not actually asking us to -- well maybe you are, to reverse our decision and apply the new rules. So I can't quite, you know you keep going back and forth between much of this presentation has been saying what would be great about a service assurance plan, but we I think as you point out, we are where we are.

So what exactly, can I find this in your slide deck, or in your filings, what you think we should require short of a service assurance plan?

MR. WARREN: So I think what we said in our original comments that the service assurance plan or it's equivalent. I think the Board in its discretion absolutely can require more of applicants

than -- can require you know any manner of information from applicants. You did that earlier this year where you told them to resubmit their operating plan. So I think that --

CHAIRMAN OBERMAN: I know. I'm just trying to get the specifics.

MR. WARREN: Right, yeah.

CHAIRMAN OBERMAN: So you know something. It's very hard to implement if we were to agree with you, something that's "adequate".

MR. WARREN: Yes.

CHAIRMAN OBERMAN: So you seem to have a lot of details in here, I'm trying to pinpoint which ones you would say are minimally required.

MR. WARREN: Yeah, well and I think and again the applicants haven't really addressed this. They've just said no, we don't need to do it. So, and they haven't really offered to come halfway. I will say again, in their reply, their last evidentiary filing, not their application, they said oh now we will submit Board oversight, and now we will give you some metrics.

So no party was able to comment on that, and you know --

CHAIRMAN OBERMAN: Well you're able to comment on it now, that's one of the reasons why we're having a hearing and there will be --

MR.WARREN: Well I'm not sure applicants agree I could comment on new things now.

CHAIRMAN OBERMAN: Well there will be final briefs, that's one of the reasons we're having the hearing, and we said there will be final briefs. Comment is not necessarily new evidence, as Mr. Meyers pointed out before, assuming we could sort that out.

I just want your best advice to the Board if we were to accept it with precision as to what you think is needed, so that's all.

MR. WARREN: So my best advice would be that applicants would be asked, and maybe they'll offer to do it tomorrow. Applicants should be asked to provide a service assurance plan for public comment.

I would ask that it be based on actual

data, and not some set of model data, and you know if applicants want to say you know actually we think that this particular part of the service assurance plan is unneeded, or this particular part is too burdensome, they could certainly say that.

You know we're sort of arguing you know, negotiating against myself here because we asked for it. Applicants said nothing, and you know we agree from the outset. I mean they did not say we'll do a service assurance plan. They told me they would do more than the old rules required, and that is something they didn't do.

CHAIRMAN OBERMAN: Well that is what I'm trying to focus in on. If you could provide us with an alternative. I understand you think they should provide a service assurance plan, but assuming we're not going to require that, and I'm not making any prejudgment, I have no idea what the Board will do. Is there some other way to be specific based on what they said they were going to do in your view that they haven't done?

That's what I'd like, and maybe it's in

the slide deck.

MR. WARREN: Yes, and you know one thing the Board, again we think the service assurance plan actually provides a good framework, but the Board could you know say we order applicants to comply with this promise. We order applicants, and I can go back to that slide.

We order them to provide the Board with sufficient information to satisfy us that you've appropriately planned for implementation.

CHAIRMAN OBERMAN: Which slide? Is it the slide that's up there now? Is that the one you're talking about?

MR. WARREN: You know how I am with the slide deck Mr. Chairman, but I will do my best. I am going to blame the clicker because I promise I'm pushing the button.

CHAIRMAN OBERMAN: Well we can all take out our anger on an inanimate object.

MR. WARREN: Yeah.

MR. ATKINS: Can I say one thing?

MR. WARREN: Yeah, go right ahead.

MR. ATKINS: So Chairman, let me just make one observation though. So everyone wants you know, contrary to what CP may think. You know we understand that we want this whole process to be efficient. And so it's clear they didn't meet their commitment, so the question is what do you order?

You have an off the shelf set of rules that you can simply pull off, and there will be no longer any dispute that they've complied with it. If we try to customize something that was specific to their promise in the vertical nature of this merger, I'd be worried that they'll submit it, and you'll have people, maybe us, maybe NITL, maybe Ag saying it's insufficient.

But you've got basically something that you designed to assure the Board that there would be sufficient planning in place, all the regulations are there. It's just it's very -- for us it was the easiest ask, as opposed to coming to you and saying, let's try and craft something that's customized for this circumstance and that promise.

So I appreciate you know you may decide

you want to tailor it yourselves, but that was why we picked the request they simply be required to follow, you take it off the shelf basically, and implement it.

CHAIRMAN OBERMAN: I understand that. But since we have already made a decision a long time ago about the old rules versus the new rules, I'm asking you to take the opportunity to be specific. So if we were to agree with you, we could figure out if we can order what you think is needed, so whether we agree with you or not, but I'd like to have something concrete to measure it.

MR. ATKINS: Absolutely. We'll be sure to brief this point in detail Chairman.

CHAIRMAN OBERMAN: No I understand.

MR. ATKINS: I just wanted to indicate why I still believe you're better off picking a plan that you know is going to be sufficient, than us trying to customize one for this proceeding, but, so do you want to take a break?

CHAIRMAN OBERMAN: I think that's a good idea. Let's take a ten minute break. We'll

reconvene at 11:30.

(Break)

CHAIRMAN OBERMAN: All right. We are back on the record. Let me just say something here by way of scheduling to give some people advance notice here in order to make sure we get this done, or get as much done as possible. Hold on one second.

So here is the current plan, which hopefully will not change. We're going to finish with CN, and then we're going to hear from two witnesses who cannot be here later in the afternoon, hopefully they're listening so they can be ready. I'm not sure how long we're going to continue with CN, but whatever it takes.

Dan Borgen of USD Group, and James Irving of J.D. Irving, Limited. And then we will break for lunch. And excuse me, immediately after lunch we will move ahead to BNSF and NS for a couple of reasons. One, they may take longer, and two, at least one NS witness has some time limitations, and then we will resume after that whatever time is left for today to hear as many witnesses as we can.

I think it is the Board's intent to be available to keep going at least until 7:00, assuming there are witnesses who are still available to testify at that point. So with that Ray, proceed to your next section.

MR. WARREN: Well and I'll ask for my nemesis, the slide deck, to see if it can come up on the screen. I'll just go ahead and get started. CN's responsive application seeking divestiture of the Springfield line is strongly in the public interest, and we have a number of witnesses here today who are going to talk about the public interest benefits of the application, and the steps that CN has taken to ensure that it's good for all parties.

Yesterday you heard from the applicants quite confidently that CN's responsive application should be denied because the Springfield line isn't a competitive alternative to the CP line between Kansas City and Chicago. Well, that is not what Mr. Creel said in his July 12th verified statement when he said that he was concerned that an independent Springfield line in CN's hands would compete with CP/KCS for

traffic opportunities of the Kansas City - Chicago lane.

In that sworn statement -- it would "poach traffic" that CP/KCS would otherwise pursue in the Kansas City - Chicago lane. You can't poach traffic unless the line is competitive. And of course, one of the core principles of this Board's merger precedent is that carriers are not entitled to protect their traffic opportunities from being poached by competitors.

Competition is good. And merging carriers do not have the right to snuff out competition because they want to concentrate traffic on CP's Kansas City line to build densities on that line. And you can see from a map why it is that Mr. Creel said that the Springfield line views it as a competitive threat. There's not really serious dispute from CP and KCS that the lines are parallel, and Congress specifically amended the Board, the statute in ICCTA to make clear that this agency has the authority to order divestiture of parallel lines when that is in the public interest.

There was about a 4,000 page reply filing from the applicants in July. Not once in there did they address this statutory language in which Congress explicitly added language making it clear that the Board had the authority to require divestiture of parallel lines, and that's a standard.

In a Class I merger the Board will impose conditions that remedy a merger related harm, that are consistent with the public interest. And one of the tools that Congress wants you to consider is divestiture of parallel lines when you can show that that's in the public interest.

The core argument from CP and KCS is that there's not really any competitive harm here. Is there are other routes between Chicago and Kansas City, and there's not much CN/KCS traffic that has historically moved over the line in recent years. And that's wrong for a few reasons.

In the first place, CP's suggestion that this Board has to have a purely backward looking approach to competitive analysis is not consistent with Board precedent or the public interest. The

Board has historically granted competitive conditions where the only competitive harm was a loss of future potential competition.

That's what the Board has done when a merger might affect incentives to do a future buildout. That's a loss of future competitive potential because the buildout obviously doesn't exist yet, and that's a competitive harm that's warranted conditions. And as we pointed out in our August 11th rebuttal, modern anti-trust policy recognizes that there are serious concerns with mergers that are designed to snuff out potential competition.

The Board has looked to the future, and future potential, and it should keep to that policy here. And here of course you don't just have to look to the future because it's not a buildout. The line is a current competitive option for interline traffic, both for CN, and for other carriers at Springfield and East St. Louis.

We agreed with applicants that the line is not currently being used to its full competitive

potential, largely because there's a need for investment on the KCS side. But there's also no doubt that it's a current option with enormous future potential, and that's what our witnesses are going to talk about. Allowing a merged CP/KC to cut off that potential, and to eliminate the threat their traffic opportunities might be poached, is the textbook definition of a merger related harm.

And in this major merger under a public interest test, the Board is at the apex of its authority to impose a condition that would mitigate a merger harm, particularly when that condition is designed not to hurt any legitimate merger synergy, and to be such a clear benefit to the public interest.

Before I turn it over to Doug to talk about those public interest benefits, I want to correct the record on a couple of issues. First, CP and KCS suggested yesterday that the Springfield line was somehow key to the growth plans. They put up a slide with a graph that I don't think I had ever seen before, claiming that this was the aorta of the

KCS great network.

That is not what their application says, so this is a page straight from their own amended operating plan, the one they filed in May. This is Exhibit 14, page 72. That is their projection of the traffic volume in year three. So you can see that big thick line on the north/south routes, and essentially nothing on the Springfield line.

This is not part of the plans for merger growth. And as you can see on the next slide again, pulled this straight of their May operating plan, they plan no merger related capital investment on the line. No investments in intermodal service over the line, no investments in automotive service, no planned investments in East St. Louis, or in Springfield, and no planned investments to improve service to the great customers on the line.

The second thing I'd like to clear up. Mr. Ottensmeyer testified yesterday that there is no customer on the line that supports CN's responsive application. He has been misinformed. ADM has facilities on the Springfield line at Mexico, and

again at Cockrell.

And it submitted a letter supporting the Springfield divestiture, which was attached to our July 12th reply. As ADM noted in that letter, it believes that divestiture will be particularly beneficial to agricultural customers and producers across the Midwest, they rightly noted that CN's investments in the line would improve transit times and track speeds, increase the frequency of manifest service, and that it "makes sense" to support change that increases velocity and creates competitive alternatives.

Lastly, the suggestion yesterday from CP and KCS that the only real value of the Springfield line was as a grain gathering line for the KCS network, is also not supported by the record. According to the waybill sample these are highly aggregated numbers, so I can share them. In 2019 about 39,000 loaded and empty cars and intermodal units were interchanged at either East St. Louis or Springfield, the seven different railroads.

This isn't just a grain feeder line. To

be sure this is a line that's not living up to its potential. And it can be a critical competitive link in the supply chain, if it's got an owner that's willing to invest in it. CP and KCS's application makes clear that they don't see that future potential, and that they aren't willing to make those investments.

CN has a very different vision for the line, and I'll now turn it over to Doug to talk about that vision.

CHAIRMAN OBERMAN: Before you leave Matt, what is if any, the amount of traffic that's moving from Kansas City to Chicago on this line currently?

MR. WARREN: From Kansas City to Chicago over this line. I think, yes.

CHAIRMAN OBERMAN: The one that you say is a parallel competitive line, that's what I understand there's virtually no traffic moving.

MR. WARREN: And that's exactly, I think that that's why the emphasis on it is on future competition. I mean I think if you're asking about you know KCS, you know CN interchanges over the

line, you know, I think in recent years it's only been about 200 cars. Again, you know, as we've described in papers.

CHAIRMAN OBERMAN: So why is that?

MR. WARREN: Primarily, and some others might be able to address that. I think primarily, go ahead.

SPEAKER: So we did have an agreement for a while with an interchange at the KCS on that line, so due to the poor service involved, due to the slow speed of it all, we were never able to grow that business. So what we did is we reverted back to an either East St. Louis interchange, or over Jackson.

CHAIRMAN OBERMAN: You're saying that the condition of the line between Springfield and Kansas City, what's the rating, what classification is it?

SPEAKER: And we just do our due diligence that our prior look at the KCS, around Cockrell, a lot of it is 10 miles an hour, and then it gets up to approximate 25 up to Roodhouse and from Roodhouse which is a line that comes from St. Louis to Roodhouse, and then to Kansas City. That is Class 3

at 40 miles an hour if I recall.

CHAIRMAN OBERMAN: So you're saying the slow sections are sufficient to deter moving traffic from Kansas City to Chicago, and that's why it hasn't been done. Is that your contention?

MS. GAINEY: I would say it's the customers, sir, who are saying that the service was to slow to be able to justify it.

SPEAKER: And this is something that Derek Taylor is going to be speaking about momentarily, but there's also a lack of interchange facilities on the KCS side near Cockrell.

CHAIRMAN OBERMAN: All right. Well I wanted to get the history because I assume you're going into the future, so go ahead.

MR. MACDONALD: Okay. Good morning. My name is Doug MacDonald. I am the Chief Marketing Officer of CN, a position I've held since April of 2022. In my role I oversee all customer related business areas and activities, including the strategic commercial roadmap for CN.

I have more than 30 years of experience in

the rail industry, and prior to my current role I've held diverse roles at CN in marketing, sales, information technology, and operations, including the Senior Vice President, Special Products, Office of the President, and CEO, Senior VP, Information Technology, Vice President of Operations for Eastern Region, Senior Vice President Sales and Marketing for all products, Vice President for Industrial Products, and Vice President for Corporate Marketing.

I'm excited to talk to you about CN's responsive application to acquire the Springfield line. Combining CN's network with the KCS and Springfield line would be a pro-competitive opportunity that would best utilize the competitive presence of the Springfield line to the benefit of shippers and the public.

As CN's responsive application describes in detail, there is a tremendous market opportunity for a CN owned Springfield line that could compete aggressively with trucks and a combined CP/KCS for traffic. Take 80,000 long haul trucks off the road annually, and offer a vastly improved railroad that

avoids the congested Chicago terminal.

Customers and stakeholders have recognized the opportunity, which is reflected in the 75 letters of support for divestiture of the Springfield line to CN. As described in my verified statement, CN was looking at the potential of the Springfield line to compete with trucks before CP and KCS first announced the planned merger in 2021 in March.

In fact, CN's efforts to increase the market opportunities presented by the Springfield line significantly predates the news that KCS was contemplating a sale of its franchise. In addition to CN's efforts decades ago to grow the Springfield line through the alliance with KCS, CN has in recent years considered options to invest in the Springfield line to develop its full potential.

Ranging from partnership discussions with the private equity group, to CN's proposal last year to acquire KCS. CN's longstanding interest in the Springfield line was something KCS talked about publicly over the summer of 2021. So after KCS and CP signed a new merger agreement last September, we

were disappointed to see that CP and KCS had planned zero investment for the Springfield line, with no plan to improve the service over the line, or develop new intermodal and automotive traffic on the line.

Instead, their plan is to treat the Springfield line as a minor feeder line, and concentrate traffic on the parallel CP route between Kansas City and Chicago. We at CN are concerned about the combined CP/KCS plan to under utilize the Springfield line in order to concentrate traffic on CP's parallel line, and forever foreclose a strong competitor from the opportunity to develop the Springfield line.

This plan is anti-competitive. Allowing CP to acquire a new KCS rail asset, and prevent it from being used to compete effectively with CP's legacy service, would subvert competition in the rail industry, and desert the public interest -- disservice the public interest.

Indeed, the only outcome that would permanently extinguish the Springfield line as a competitive alternative between Kansas City and

Chicago is approval of the CP/KCS merger without a divestiture condition. In response we decided to propose the Springfield responsive application as a solution for preserving the competitive option of the Springfield line.

In doing this, we did something different from what you've seen in condition requests for prior mergers. We designed our responsive application to not harm CP and KCS at all. We have offered to give CP and KCS unfettered access to all customers on the line, and to use the line for interchange with other rail carriers in the East St. Louis and Springfield gateways as they wish.

We have offered a haulage agreement with a provision assuring the merged CP/KCS traffic would receive service as good as CN traffic gets. We have committed to invest 250 million to upgrade speeds and facilities on the line, and we have designed a service plan with equal or more frequent service than KCS provides today.

It's an incredibly good deal when it comes to a combined CP/KC's ability to access existing

customers on the Springfield line, and their ability to pursue any new opportunities with those customers, or even with new customers that may locate on the line.

The only actual drawback from CP's perspective is that it would mean that they can't foreclose the Springfield line as a competitive option to CP's existing and parallel line from Kansas City to Chicago. While a combined CP/KC may prefer the private business benefits of less competition, foreclosing competition is clearly a public interest harm.

By contrast it's plainly in the public interest to preserve competitive presence of the Springfield line by allowing it to continue as an independent routing option, and to let CN invest in the line to grow intermodal and automotive traffic, compete with the combined CP/KCS, and take tens of thousands of long haul trucks off the road.

Derek Taylor is here to discuss CN's vision for the Springfield line can become with CN's planned 250 million investment, planned hiring, and

our plan to improve service. I also have Dan Bresolin and Sarah Slazinski here to talk about the benefits we see for intermodal and automotive customers from the new terminal facilities at East St. Louis, Illinois and expanded capacity in Kansas City Missouri.

Before I turn it over to my colleagues, I'd like to talk about the impact of our responsive application on grain customers. Grain shippers stand only to benefit from a CN owned Springfield line. While it appears that CP and KCS have been saying the opposite to their customers, I want to reassure every grain customer in the United States that a CN owned Springfield line will only increase, it would not at all decrease their rail shipping options, and would improve service as a result of CN's planned investment.

Let me talk first about customers on the Springfield line who are currently shipping to KCS destinations in Mexico, or elsewhere in KCS's network, and who want to continue doing so. They will be able to do so with better service and more

competitive leverage.

As we explained in our filings, a combined CP/KC would be given haulage rights to all current and future customers on the line. The haulage arrangement would permit a merged CP/KCS to quote rates directly to customers on the Springfield line for the entire move, origin to destination as KCS does today. If the customer wants to ship on the merged CP/KCS, they can deal exclusively with CP/KCS, and get single line pricing. They don't need to get a rate from CN.

That haulage traffic is going to receive the same level of service as CN traffic, that's not just a promise. It's something that we have offered to write into the haulage agreement. For carload traffic, any CP/KCS haulage traffic would move in the same trains as CN traffic.

For unit trains moving to KCS territory, we've required that the KCS put dedicated locomotives on the unit train sets, which would enable efficient cycling. There would just be a step on, step off crew change in Kansas City, similar to what happens

today between the crews of the former Gateway Western and KCS.

And of course CN will be making major investments in the line, which will improve service for all online customers, including increased track speeds between Cockrell and Roodhouse, Illinois. Moreover, all of those Springfield line customers would have an additional competitive option. If they wanted to, they would ask -- they could ask CN for a rate to Kansas City, and get competition for that leg of the route.

Or they could ask for an eastbound rate to Springfield or East St. Louis, and take advantage of geographic competition to ship to a CN served destination. Even for customers who only intend to ship to KCS destinations, having the competitive leverage is plainly an advantage.

That is one of the reasons that more than 75 customers and stakeholders, including ADM have come out to support the Springfield divestiture. While we're preserving existing competition, and insuring better service, and options for grain

customers, we'll also be creating new opportunities for intermodal and automotive customers to reach markets in Kansas City, and East St. Louis, and avoid congestion in Chicago.

I'm going to turn it over to Derek Taylor to share CN's vision for what the Springfield Line could become with CN's ownership and investment.

MR. WARREN: Thanks Doug.

BOARD MEMBER SCHULTZ: I'll ask a quick question before you switch. It's my understanding that BN, UP and NS all have competitive routes along the Springfield line, so I was wondering if you could just speak generally to how the applicants' retention of the line would actually reduce competition.

MR. WARREN: Maybe I should address that. And I don't want to pick on them, but I would go back again to Mr. Creel thinks that it would reduce competition, and claimed that that would be a harm of the merger because CN would be able to you know poach their traffic. So we absolutely -- I mean there are multiple routes, it's a really competitive market.

You know obviously there's truck, there's

truck competition there now, and most of what CN is trying to capture is traffic that is currently moving by truck. But you know, the applicants see it as a competitive threat.

So even though as Doug laid out, they're getting in a lot of ways the deal of a lifetime, because you know when prior divestitures were proposed, nobody was proposing that the party who the line was being taken away from would actually get to retain access to all of their customers, and use the line for interchange, you know, and have you know additional new investment in the line, and a guarantee that they'd get the same level of service.

So you're right. There are different ways to get there. It's a really competitive market. But this particular line, they've got competition on this line is going to be foreclosed, and that is a merger harm.

MR. ATKINS: I would also just add, Member Shultz, the standard for you to think about viewing this lens is set forth in the statute, which is, is this in the public interest? So you need to

look at what are the benefits that flow from this divestiture, and compare them to the public costs of doing so. That's the standard Congress gave you, and I think by the time you're done hearing from -- I think the benefits are overwhelming, and the public harms are -- we designed it to minimize them, or remove them.

So I think in the grand scheme of things when you think about this, the standard that Congress gave you to decide whether to divest a parallel line, this exact circumstance. It's that broad public interest standard, which is what we're here to hopefully convince you that you know this type of increased investment, trucks off the road, increased competition is in fact in the public interest.

BOARD MEMBER SCHULTZ: And I appreciate that, and I guess I would just highlight the term poaching to me actually underscores the fact that competition is in fact available.

BOARD MEMBER PRIMUS: I got a question.

CHAIRMAN OBERMAN: Robert?

BOARD MEMBER PRIMUS: Yeah, if you don't

mind. Doug or whoever, you know it says that you guys are planning potentially taking 80,000 long haul trucks off the road annually. More than CP is taking off the entire CP/KCS system. Where's that 80,000 come from?

MR. MACDONALD: That's existing business moving between really Kansas City today, and Detroit in Eastern Canada market, and it's only a small portion of what we're -- like that 80,000 represents only a small portion of the exact number of trucks moved.

BOARD MEMBER PRIMUS: Right, and so how did you guys arrive sort of at the 80,000? I mean was there a target? And according to what I'm reading right here you're saying you're only adding, increasing the amount of traffic on that line by two trains a day.

You know how do you get 80,000, pick up 80,000 truckloads on two trains a day worth of growth?

MR. WARREN: So I would say Board Member Primus, so the source for this is the verified

statement of David Hans. He did the diversion analysis, so he you know, when he went through and analyzed the market, and as Doug mentioned, there's an absolute enormous long haul truck market, so you don't have to capture very much of it to be able to take 80,000 you know in trucks off the road.

And so that's where the 80,000 you know trucks come from, and how you get 80,000 trucks on two trains a day, a lot of it is you're going to hear about it's the great math of efficiency of an intermodal train. And when you have a long intermodal double stack train, you can take so many trucks off the road with every single train, I think it's 300, have I got that right?

So every single train is 300 trucks. Okay.

MR. WARREN: And so that's how you can get to those public interest benefits without you know actually you know only doing it on two trains a day.

BOARD MEMBER PRIMUS: So 300 trains, that's they're all full times 365 okay, I'll do my math, I'm a little slow, but I'll get this, I'll get

there.

MR. WARREN: And then in both directions.

BOARD MEMBER PRIMUS: And so how do you, so what does it mean in terms of 85,000 to the capacity, and to the overall volume of that line? I mean we are we getting -- what levels are we getting?

MR. TAYLOR: That's something I'm going to be touching on next when we talk capacity investments and where, but that line can handle the two additional trains a day right now from our area between Chicago to Springfield, which is our current network, and then from Springfield to Kansas City with the investments we're making on the current KCS network.

CHAIRMAN OBERMAN: My math is that 80,000 trucks is 266 trains, which is almost five trains a day, not two. If you're moving 300 containers per train, so I share Robert's concern about the math.

MR. WARREN: I don't have a calculator here, but I do think it's laid out pretty well in Mr. Hunt's verified statement. I might be scribbling

some math here while Derek talks.

BOARD MEMBER PRIMUS: No, I get that. And I wish Mr. Hunt was around because I really would like to ask him, I mean, because its an important point if you guys are saying what it's going to do, and it's implications. I mean even what you're saying in terms of it's doing more than what CP/KCS is even suggesting throughout their whole network, that's pretty substantial.

So you know having those answers and address again, and asking if you just wanted to go further into it, so.

MR. ATKINS: So I'm going to let Matt continue to do the math while we move on to Derek.

MR. WARREN: I promise I'm not using my phone for any other purposes than the calculator function.

BOARD MEMBER PRIMUS: Let me ask just one last, and I said one, so attached to this, you know, again agreeing with moving through on this merger, and you're asking for this divestiture. Would you also be putting a service assurance plan together for

those customers on that line? And if so, could you detail it for us?

MR. WARREN: So we think, that's a great question. I mean it's a minor transaction, so.

BOARD MEMBER PRIMUS: I know, but.

MR. WARREN: We think it's really important. I mean to do that we would need some cooperation from the applicants because as you probably know, you know, one of the main things you're trying to do is you're trying to compare prior service to later service.

And you're going to hear we're increasing service frequency, so Derek is going to lay out our service plan. But to actually get those metrics we probably need to get some cooperation from the applicants to put that together. But if the Board wanted to make that a condition of the divestiture.

SPEAKER: I don't want to go out on a limb.

SPEAKER: Yes, CN wouldn't worry about it.

MS. GAINEY: CN of course would be happy and willing to do so.

BOARD MEMBER PRIMUS: Okay, thank you.

BOARD MEMBER FUCHS: I just want to follow-up on a question that Member Schultz raised, Vice Chairman Shultz. Mainly focused on intermodal and auto right, and for years, I would say decades, the rail industry has maintained to the Board that these are the most intensely competitive categories of traffic, which is why they're exempt.

And so I think the question is right on in the sense that at the shipper level, have you all conducted an analysis of kind of the base line level of competition, in terms of competitive options, that these auto and intermodal shippers have compared to the post transaction level of competition?

MR. WARREN: I mean I think that's something we're going to address. I mean it's an additional option. I mean I don't know we didn't, there's not I think a competition metric that we decided pre-transaction, post-transaction, but we're adding an option, and we obviously have a lot of support from intermodal and automotive shippers, we have a lot of support.

So I don't know if we've got a math number I can give you that this is how competition has changed, but I think you know you'll hear from the railroad people who are you know trying to you know, or building these business portfolios, and from the customers, they think it helps competition.

BOARD MEMBER FUCHS: Well you know the rail industry has said there's immense geographic competition because there's ports all over the country, and you know, there's a lot of facilities all over the country, and you know that's before you get to a truck competition, and you know to some extent additional waterway competition.

And you know, would you agree there's a difference between a facility that has eight options, and could have nine, versus one that has two options, and would have one. Yeah, there's a substantive difference.

MR. WARREN: Yes. I agree that there's a substantive difference. I think the other thing I would say is that you are not the Department of Justice, like you're not applying the anti-trust

laws, you're applying the public interest.

And so there is certainly a different degree of competitive harm when you're going from three to two, or two to one, than when you're going from you know maybe four to three, or five to four, but it's still a harm. And if it is a harm to competition, then I think then the Board is at the maximum of its authority to think about if there's a condition to mitigate that harm.

And you know in most instances you know parties have historically proposed conditions that are designed to grab something from the applicants and take it for themselves. That is not what CN is trying to do here. Like the reason we're focusing on the 80,000 trucks, the intermodal automotive, that's what we're trying to do.

Like everything they want to do they get to do, as Doug laid out, you know, they will have full access to all of their grain customers, we will support their service to customers that want to keep shipping to Mexico. We will invest in the line, so a customer is going to be getting better service, and

will commit in the contract that they get the same level of service that CN gets.

So what we've tried to design, and we understand that it is not you know, SSPSF levels of competitive harm. But we also are not doing any harm to the applicants. And we're doing it in a way that we think has substantial public interest benefits.

BOARD MEMBER FUCHS: So it's your view that there has to be some level of competitive harm in order for the Board to impose this type of condition. And but, once there is some level of harm, even if it's going from 11 options to 10 options. Then the Board moves to just a benefit cost analysis, that's the framework you think we should be employing.

MR. WARREN: I think that's right. I think my only amendment would be I mean we think this is competitive harm, but I don't think that the Board is limited to addressing competitive harms in a Class 1 merger on a public interest test. Like I mean the statute has other factors, such as adequacy of transportation.

I mean I don't think the Board you know, we've presented this as competitive harm. The thing is competitive harm. The Board isn't limited that way when you're in this context of a Class 1 merger where the standard is the public interest.

SPEAKER: Back to Derek.

MR. TAYLOR: Yes sir. Good morning Chairman Oberman. Good morning Board Members. My name is Derek Taylor. I'm CN's Vice President of Transportation for the Southern region, and I cosponsored CN's Springfield operating plan alongside Carl Van Dyke from Oliver Wyman.

You heard earlier from a couple of my colleagues about the tremendous opportunities we see for a CN owned Springfield line. To capitalize on those opportunities, we will invest in this route, which will enable us to increase service and grow the traffic.

The operating plan we submitted to the Board does that, and CP and KCS really do not question CN's basic approach to operating the Springfield line in the written filings. I would

like to share how we plan to increase service on the line with our investments. First, we will have a new intermodal automotive train from Chicago with single line service to Kansas City, which is planned for 7 days a week.

This will serve intermodal and automotive shippers moving traffic between Kansas City, East St. Louis and the Toronto Montreal Detroit markets. Second, we'll have the new intermodal automotive service to East St. Louis, which will connect to the direct service from Chicago at Roodhouse, Illinois, that's also planned for 7 days a week.

Third, we will have a manifest train operating 6 days per week in each direction between Kansas City and East St. Louis to support local train and yard assignments, improving on the current frequency.

Fourth, we'll have improved local service along key corridors between Roodhouse, Illinois and Mexico, Missouri, by extending service to Ladonia, Missouri with increased frequency, multiple times per week. The net result is that existing local service

experienced by Springfield line customers will continue at the same, or higher frequency than is provided today, while there will also be additional through line opportunities.

CN has also proposed a haulage agreement, which I will discuss in more detail shortly, which will allow a combined CP/KC to continue to serve both its existing customers on the Springfield line, and any new customers it obtains. CN would also be able to serve these customers, increasing competition.

As stated above, a combined CP/KC would continue to have access to any current or potential customers on the Springfield line via haulage agreement proposed by CN. Despite some statements to the contrary, haulage service is not an inferior offering.

Indeed haulage service is used by every Class 1 railroad, and numerous short line railroads, and is typically viewed as a benefit, not a detriment for customers. CN proposed a haulage agreement so that local customers on the Springfield line will continue to have direct commercial and pricing access

to the merged CP/KC network, with CN performing a local service on behalf of the merged CP/KC.

CN's proposed haulage would also enable a merged CP/KC to interchange traffic with other railroads in East St. Louis and in Springfield, Illinois. For unit train traffic on the Springfield line the handoff between CN and a merged CP/KC would be functionally identical to what it is today with KCS.

The shipper and KCS would negotiate car supply for unit trains moving to KCS destinations, and KCS locomotives would be used. There would be a step on, step off crew exchange between CN and the merged CP/KC at Kansas City that is virtually identical to the KCS Gateway Western crew changes that occur today, where a KCS, formerly Gateway Western crew operates west to Kansas City over the Springfield line, and a separate KCS crew operates south of Kansas City. The only difference will be which railroad pays the salaries and employs the crews of the former Gateway Western.

Customers of a combined CP/KC would also

benefit from the increased train service described above, and the increased capital investment in the line. CN proposes to make capital investments of approximately 250 million dollars on the Springfield line and adjacent Gilman subdivision.

CN's objective is for the entire Springfield line, main line tracks between Kansas City and Gilman, Illinois to be at Class 3 standards to allow for a minimum freight speed of 40 miles an hour. At Roodhouse, Illinois, 5,000 feet of new yard track will also be constructed.

On the adjacent Gilman subdivision, CN will install new ties, upgrade certain curves for increased speeds, remove rail defects in the existing track, upgrade the rail on the main line, install a full flange bearing diamond at Mount Pulaski, Illinois, and make a few other improvements to achieve 40 miles an hour speeds on the entire subdivision.

CN will extend seven siding's on the Springfield line, and build an entirely new siding at Cockrell, Illinois. At East St. Louis Yard,

significant investments will be made to support increased intermodal and automotive traffic in line with CN's diversion analysis and operating plan.

Specifically, CN will construct 6,000 feet of track -- 6,000 track feet with intermodal pads and accompanying pavement to handle over 90 lifts per day. CN will also invest in the construction of 5,000 track feet for multi-level loading and unloading and car storage, giving it the ability to handle on the order of 40 inbound and outbound auto racks per day.

In addition, approximately 25 acres will be developed with necessary roadways, parking and truck areas. Similar investment will be made at the IFG terminal at Grandview, with facilities constructed to accommodate 360 intermodal lifts per day, consisting of 20,000 track feet and associated pad, and associated storage, and accompanying pavement.

For automotive traffic CN will construct sufficient capacity to accommodate on the order of 50 inbound and outbound multi-levels per day. This

project will require construction of 6,600 track feet for multi-level loading and unloading and storage. The accompanying work will include roadways, and rail head parking and truck access. Yes sir.

CHAIRMAN OBERMAN: Can I just ask you on this slide, the one you just had up. I'm trying to follow the dots, and there is a green indication for track improvements, but I don't see it on the map.

MR. TAYLOR: Yeah, if you look maybe the light blue, with my eyesight too, but if you look between Springfield and Jackson, oh there we go. So between Springfield and Jacksonville, Illinois, and then you see Roodhouse with a big yellow, a dot there.

CHAIRMAN OBERMAN: I see the yellow dot, but I don't see any green dots.

MR. TAYLOR: Yeah I don't, it may be a lighter blue.

SPEAKER: It's the green dashes on the line.

MR. TAYLOR: It's the green dashes there between the two.

CHAIRMAN OBERMAN: Oh that's supposed to be the track improvements, okay.

MR. TAYLOR: That's correct.

CHAIRMAN OBERMAN: I'm just trying to follow the map, thank you.

MR. TAYLOR: Springfield to Roodhouse. The glasses came in handy.

CHAIRMAN OBERMAN: My wife says I'm color blind, so we're good.

MR. TAYLOR: So as numerous stakeholders have recognized, CN's routing would also help avoid Chicago congestion, which as Rob explained, could be a critical issue for the proposed merger. CN's existing route for traffic between the Springfield line, and the Detroit Eastern Canada largely avoids the Chicago terminal all together, as shown on the map.

In particular, traffic moving to or from the Springfield line would move east towards Detroit, or south towards the Springfield line from Madison, Illinois and the rail yard to Madison's immediate north and Harvey and Hazel Crest, Illinois, while

staying well south of Chicago.

The route bypasses the City of Chicago, avoids the terminals most congested rail lines, and does not require the use of intermediate switching railroads, and does not compete for operating slots with any Metra commuter train operations.

CHAIRMAN OBERMAN: Can I ask you a question? Do you on the slide bypassing Chicago, do you have any information on what that bypass would mean to the plan increase on traffic, if any, on the Metra lines that we heard about yesterday?

MR. TAYLOR: Sure. Yeah, there is no impact to any Metra trains with the service. We stay on the southeast side of Chicago.

CHAIRMAN OBERMAN: No, I understand that, but if you had this line would it decrease the proposed impact on the Metra lines?

MR. TAYLOR: Potentially it could, yes sir.

CHAIRMAN OBERMAN: How would it do that?

MR. TAYLOR: Well this traffic here is going to be focused on automotive and intermodal that

would come from the greater Kansas City area, or some point south, which I'll let Sarah get into in her presentation, and it will directly compete. We could go CN single haul from Kansas City, basically, minus the small trackage rights we're asking for, IFG, all the way to Halifax, Nova Scotia essentially.

So that volume that we've be competing for with CP going to eastern Canada, that would be some of this line.

CHAIRMAN OBERMAN: Well is the volume that CP is going to increase on the Metra west line, that's not going from Nova Scotia is it?

MR. TAYLOR: Well no, but that is going to Southern Ontario per some of their maps I believe earlier, and potentially parts of Michigan, so it is a one to one competition with that, so they will come up from Kansas City, and then come through the line into Bensenville and then head east.

We will take a different route. We would come through Kansas City to Springfield onto the far east side of Chicago to run to Indiana and head east.

CHAIRMAN OBERMAN: Are you able to say

that if you obtain this divestiture, that there would be fewer than eight new trains a day on that Metra west line?

MR. TAYLOR: I don't know CP's projections, so I can't speak to that, or what that traffic is, but I can say that is competing for the same traffic.

CHAIRMAN OBERMAN: Okay, thank you.

MR. TAYLOR: Yes sir.

BOARD MEMBER HEDLUND: I've got a related question. Does part of this line going to Chicago, I see where it goes through Gilman and Kankakee. Is that the line that hosts the Amtrak trains?

MR. TAYLOR: Yes it does, and I actually have some comments to that in a bit, but it hosts six Amtrak trains pre-COVID. Right now they're not running on full strength. It's the City of New Orleans, which is a pair of trains, and then the four Illini/Saliki trains.

BOARD MEMBER HEDLUND: Right. And that has pretty poor, I think, on time performance. Would this further impact the on time performance of those

Amtrak trains?

MR. TAYLOR: That answer is no. A number of issues with Amtrak performance over the years, and we're still involved in some items with that, and some of the legalese. But I don't want to touch upon it all here. But at the same time I can tell you that segment of track is only about 57 miles from Homewood to Gilman. The Homewood station is actually three main lines there, so we don't have any issues at Homewood per se.

It's actually 7 mile siding space and with 5 siding's between where we go to single track just out to Chicago to Gilman. And then the Amtrak station at Kankakee you mentioned, there is a CTC siding at actually 20,000 feet, that is just 3,000 feet north of that station. So on that short segment we have a practical capacity, and I have it in my notes here in terms of trains.

Where did I put it -- of about 30 to 32 trains per day. Even with these two trains due to increase, right now we're only running 18 to 20 trains a day in that short 55 mile segment, so we do

not anticipate from our model that any issues would impact Amtrak.

MS. GAINEY: And if I can chime in. CN is working with Amtrak to try to update the schedules for both the City of New Orleans service, and the Saluki service, so that process is underway pursuant to the FRA's final rule for the on time performance rulemaking. But even though the schedules have not been aligned to the new customer on time performance metric, CN's City of New Orleans service, the long-distance service, is one of the most consistently high performing services in the country.

BOARD MEMBER HEDLUND: Thank you.

MR. TAYLOR: With the 250 million dollar investment, plus the ability to bypass Chicago congestion, CN's ownership can unlock the potential of the Springfield line for automotive, intermodal and grain customers. As Dan Bresolin and Sarah Slazinski will discuss, we project over 80,000 units of truck to rail diversions annually, including almost 1,500 multi-level cars. In crafting the operating plan our goal is to serve that traffic

safely and efficiently.

Along with our plan for investment and increased service, CN is committed to hiring the employees working on the Springfield line today. As shown above, CN anticipates hiring 140 employees with 129 of those in new positions. No major changes in the current number of positions are anticipated on the Springfield line.

These significant benefits are achievable with a minimal increase in trains per day over the Springfield line and CN's Gilman subdivision. To serve the projected automotive and intermodal traffic, CN will add an average of two trains per day between our terminals in Harvey and Hazel Crest, Illinois, south of Chicago, and the international freight gateway in Grandview, Missouri, south of Kansas City.

Those new trains would avoid congestion in Chicago, and automotive and intermodal traffic east of Madison, Illinois would move on existing service trains. Overall, the operating plan will increase train frequencies on the Springfield line, and CN's

Gilman subdivision by approximately 2 trains per day.

But beyond the Springfield line in the Gilman subdivision the traffic will be absorbed by existing CN trains as it heads to Detroit and Eastern Canada, or other destinations. That means there is substantial public benefit, including taking 80,000 trucks off the roadways for relatively small increase in trains and limited impact on the broader rail network.

There are no harms of CN's proposed Springfield divestiture. In that regard I want to address some of the CP and KCS's criticisms on the operating plan regarding ownership of the IFG and the current Springfield interchange.

BOARD MEMBER PRIMUS: Hey Derek?

MR. TAYLOR: Yes sir?

BOARD MEMBER PRIMUS: I'm sorry real quick. So I'm just going back, the bypassing Chicago, is there any infrastructure improvements that are going to be needed for the increased train traffic at Madison or anyplace east?

MR. TAYLOR: No sir. From Madison to

Griffith, Indiana, all the way to -- actually double track on the former EJ&E than our South Bend Sub after the connection is actually double track minus two segments all the way to Battle Creek, Michigan.

BOARD MEMBER PRIMUS: Okay. Thank you.

MR. TAYLOR: Make sure we're getting out of here, okay. CP and KCS have stated that CN's plan to share the IFG's ownership with CP and KCS is somehow unworkable. CN's proposed that each carrier would conduct separate operations and stagger the facility. CN's shared ownership interest in IFG is important so they can operationally protect its facilities, interest, and traffic there.

These types of arrangements are common in the rail industry. Most notably in this context, CN and CP share Schiller Park Yard in Chicago, Illinois with each carrier conducting segregated yard operations in distinct areas of the yard. Just as it proposed for IFG.

In addition, CN has a comparable 50/50 arrangement with CSXT for the intermodal yard in Memphis, Tennessee, where both carriers separately

operate their own respective intermodal terminals. CN owns the lead tracks into the facility in Memphis, and CSXT and CN own the property underlying the facility on a 50/50 basis.

Even CP and KCS themselves have jointly owned and operated Knoche Yard in Kansas City, the so-called joint agency for decades. These relationships are perfectly manageable and common in the rail industry. CP and KCS also claim that CN sought to shut down the existing Springfield interchange. This is incorrect. The Springfield interchange gateway with KCS remains open and remains both viable and important for CN.

The physical Springfield interchange is at Cockrell, Illinois, just southwest of Springfield. This location has two complicating factors. First, Union Pacific retains ownership of a short, isolated segment of track known as the airline block, east of Cockrell on the Springfield interchange route between CN and KCS.

Because of contractual restrictions between KCS and Union Pacific, KCS may not operate

over the airline block to interchange certain traffic with CN at Springfield. CN can operate without restriction over the airline block to interchange traffic with KCS at Cockrell, where KCS's line begins.

Second, there are insufficient track facilities to interchange traffic with KCS at Cockrell, hence our investment of a siding at Cockrell, Illinois. KCS's track at this location is a single line, main line, with no siding in the vicinity. There is a ADM facility located at Cockrell, but the tracks at the ADM facility are ADM's private tracks.

Interchange at that location between CN and KCS for manifest traffic could cause interference with ADM's operations at the Cockrell facility. CN and KCS therefore mutually decided in 2019 to move the physical interchange location for some Springfield traffic from Cockrell, Illinois to East St. Louis, Illinois, in order to minimize these issues.

However, this has caused longer transit times for the traffic involved because moving the

physical interchange adds over 350 miles round trip because the traffic must go out of route to the south on CN to Du Quoin, Illinois before reversing back to the KCS connection in East St. Louis.

The interchange at Cockrell remains open, but there is inadequate space in that location for the move CN/KCS need to make given the inadequate facilities on the KCS line. Moving interchange because of current physical limitations, does not discount the overall potential of the Springfield line interchange to provide competitive value.

Finally, I wanted to address concerns raised by Amtrak in the written comments. First, CN always stands ready to work with Amtrak and other passenger railroads. Second, Amtrak receives, and will continue to receive the highest priority dispatch in our U.S. lines. Yeah, you bet, it was coming at some point. But the concerns Amtrak has raised really speak to pre-existing conditions that are unrelated to the divesiture proposal.

There is adequate capacity on CN's Homewood-Gilman line segment for two additional

freight trains per day, as demonstrated by CN's internal capacity forecast submitted with our evidence, and shared with Amtrak's management team. For the Board's background, there are only two Amtrak stations located on CN's Homewood to Gilman segment.

Homewood and Kankakee. At the Homewood Station Amtrak's stop is on main one where CN freight trains can also use main two and main three to enter and exist the area at Hazel Crest, where there should be no operational issues there.

At Kankakee, the two new trains are not likely to cause disruption to Amtrak service. Amtrak trains stop at the station on the CN main line, and there is a long passing siding 3,000 feet from the station. CN's proposed two new trains per day are through trains carrying intermodal and automotive traffic, and will not be making any local stops between the Springfield line, and the automotive, and intermodal yards at Hazel Crest and Harvey.

There are not planned crew changes between the Springfield line and those CN yards. There is simply no reason to believe these additional trains

would adversely impact Amtrak performance. But once again, CN stands ready to assist Amtrak with its operation on CN lines.

Thank you for the opportunity to share with you CN's plans for the Springfield line, and why operational concerns raised about the plans are misplaced. I will now turn it over to Dan Bresolin to discuss the benefits of the Springfield divestiture for intermodal customers and consumers, or happily take any further questions.

CHAIRMAN OBERMAN: Patrick had a couple questions.

BOARD MEMBER FUCHS: I think probably now is the appropriate time before we get into gateways. So I just want to make sure that we're pinning down how the Board should be analyzing the competitive harm. So there are three scenarios. One is that there's no transaction, main transaction. The other is that there is a transaction without any of the conditions that you all request, and then the other is the transaction with the divestiture.

For the analysis of harm we should be

looking at if there were no transaction compared to if there were a transaction with no condition. That's what we should be looking at for the assessment of harm. Is that correct?

MR. WARREN: Yes.

BOARD MEMBER FUCHS: Okay. And in that are you able to tell us from no transaction to transaction with no condition. Any specific shipper that loses any particular option.

MR. WARREN: So I think that the intermodal and automotive customers that Dan and Sarah are going to talk about you know will be, there are again we're talking about you know potential. So it's not shippers that are using the line today, but it's the loss of a potential client as a -- yeah.

Well and I was just going to say, and the difference is, I mean the difference between you know no transaction and you know approved transaction without Springfield divestiture, is that they made very clear that they're not interested in investing in the line and working with CN.

BOARD MEMBER FUCHS: They? That's CP and KCS. Like they don't have

the same vision for the line. If there were no transaction, you heard from Doug you know CN was working on proposals to jointly develop the Springfield line with KCS.

BOARD MEMBER FUCHS: But we have to evaluate what would happen in the absence of the transaction, and you all have not provided any indication that there will be an additional option in the absence of the transaction.

MR. TAYLOR: I mean I think we've said we can't prove it because we're talking about the future. But we have proven that CN was looking at this very hard. I think the record shows we've got, and I don't want to get into highly confidential stuff, but we've got sections of our rebuttal that makes very clear KCS was really excited about this opportunity too, and they're not interested in the opportunity now.

Now we're hearing a very different vision for the Springfield line. So that's what I think, that's the difference between you know, pre-merger, where it's an independent Springfield line that's

independently competitive with the CP line, and post-merger, where you have the two lines, where there -- these two parallel lines will be jointly controlled.

BOARD MEMBER FUCHS: Would you agree that when the Board assesses competitive harm from no transaction scenario to transaction without condition, the competitive harm has to be significant?

MR. TAYLOR: I would think for one, this is a Class 1 merger, and not a significant or minor transaction, so the standard is different. So I would not agree that the Board can only impose conditions when there is significant competitive harm.

BOARD MEMBER FUCHS: What was CN's position in CN/IC?

MR. TAYLOR: So I was in college. So I think, but this is what I you know, but I think when the Board has talked about significant competitive harm, like it has used that as an example. As an example of this sort of situation. I don't think

there's anything in the statute, or anything inherent in the public interest standard that says that in a Class 1 merger you don't have to worry about competitive harm unless it's significant.

BOARD MEMBER FUCHS: In the history of Class 1 mergers, what's the condition that comes closest to what you want?

MR. TAYLOR: I think the condition that probably comes closest to what we want is you know I would point back to you know CN/IC, you know the preservation of build out options. You know, addressing future and again this is completely, it was hypothetical future competition, you know from the shipper buildouts that was now there wasn't the same sort of incentive for those buildouts to be built, and so actually you know I mean CN actually consented to give some of the you know, considered the competitive conditions for some shippers, and then the Board expanded that and added the two additional shippers.

BOARD MEMBER FUCHS: You know there's a lot of precedent about the conditions being narrowly

tailored. Obviously, this is a significant structural change, and you all argue you know about DOJ's views on structural remedies, versus that, so I appreciate that point very much. But can you point to under the Board's rules any instance where considering our narrowly tailored precedent, we've kind of embarked on this type of divestiture?

MR. WARREN: No. But that's because for one thing whenever we're looking at past mergers, or you know, have a relatively limited dataset, and so two, this is different from other divestitures because this is not, we are not coming in to try to grab a bunch of traffic from them.

This is you know there has never been a divestiture proposal like this that where the party proposing divestiture is bent over backwards the way that CN has to try to ensure that the applicants actually are left in a better position. They have access to every current customer, every future customer, they could use the line for interchange traffic.

We're investing in the line. We're making

a service commitment. Like we've done everything we could to ensure that it is not actually causing any harm to applicants.

MR. TAYLOR: If I could just add one other observation. So Congress clarified that this was a remedy condition for when you see parallel lines with ICCTA. And so I don't think the precedent, before ICCTA, is particularly useful because Congress, you know you need to take into consideration Congress doesn't change the law without reason, and the standard they set is if it's in the public interest.

So you have to infer from that that Congress at least understood that letting an applicant retain two parallel lines is an industry where we're not going to see a great deal of additional you know new lines springing forth, is something that they wanted you to look at carefully. And the standard is not in the statute, the degree of the lack, it's is it in the public interest to require the divestiture.

BOARD MEMBER FUCHS: If we granted your request would that itself create a parallel line

issue between Springfield and East St. Louis?

MR. WARREN: We don't -- no. No it wouldn't in part. I think we have a couple of answers there as we put in our rebuttal. I mean number one, you know, because we are giving CP/KC, they keep haulage rights, there's no loss of competition at all. So they have the exact same level of competition too. There's absolutely no evidence that those are any kind of realistic parallel, you know, corridors.

I mean we kind of showed in our evidence how such traffic would have to move over the relatively short difference which they need East St. Louis and Springfield. But the primary answer is that there's no loss of competition because you know KCS can certainly you know serve both points today. CP/KCS will be able to serve both the points in the future.

So to the extent that there's actually rail traffic going back and forth between East St. Louis and Springfield, there's no loss of that competition.

MS. GAINEY: And not only is there no loss of competition, but there's also actually going to be increased access for those customers on the line. Because today they have access to one Class 1 railroad. Under the haulage proposal that we've made where every existing customer on the line, as well as any new customer in the future that locates on the line because of the haulage, they would have access to the merged CP/KCS network, as well as the CN network, so it's actually increasing options for customers who are located on the line. Thank you.

CHAIRMAN OBERMAN: Just one question, and we have to take a break for a technical reason. Matt you just said this is not a situation where we're coming in to grab traffic away from the applicant, but one of your words to that effect, but you're citing Mr. Creel's alleged statement that what you want to do is poach traffic as a reason that you'd like to do this, so you could compete.

So I don't get, what's the difference between poaching and grabbing?

MR. WARREN: I could tell you were a good

trial lawyer Mr. Chairman. So let me be clear. You are, and to be clear you know, I've obviously spoken inelegantly, but you know the point here is we are not, you know, prior divestiture proposals were proposals typically by other railroads to come in and take the whole line hook, line, and sinker, not leaving anything left for the applicant carrier.

That is not you know what you know, CN is proposing to do here. We're proposing to compete. But they have everything, so that's their grain customers you know that KCS has indicated that you know they're very important to this network, that they get to keep shipping on KCS, and we will support that service.

And those shippers are actually going to be better off because right now they're all captive to KCS, and they'll have two options. They can keep shipping down to the KCS network if they want the geographic competition of going the other way, they can do that too, but yes you did a good job of catching me in inelegant language.

CHAIRMAN OBERMAN: I just wanted you to

know I was paying attention. We have to take a very short technical break because apparently on Zoom all people are getting a spotty audio, and I am told we have to reboot, which will take about five minutes. So get up and stretch, but don't go too far because we want to keep going, all right? So we'll take a short break.

CHAIRMAN OBERMAN: We are rebooted and we're reconvening and we're back on the record. I had a couple of questions for Mr. Taylor, then we'll proceed. One is you cited, or one of the two of you, Doug MacDonald, cited 75 letters of support. Other than Archer Daniels Midland, are any shippers among those 75 on this line? Or who is supporting it?

MR. WARREN: As far as shippers I think the only shipper on the line and these are all obviously -- oh, I'm sorry. Yes. All right.

CHAIRMAN OBERMAN: My bad. I'm going to start over again. I'm going to start over again.

MR. WARREN: Okay.

CHAIRMAN OBERMAN: We are back on the

record. I was so anxious to move us along, so I did. Question for Mr. Taylor and Mr. MacDonald, the 75 letters of support. Are there any shippers among those others other than ADM on this line?

MR. WARREN: So there are -- I'll answer it. There are many shippers. The only shipper on the line is ADM, and these are KCS customers, but yeah, the only shipper on the line that issued a letter of support is ADM.

CHAIRMAN OBERMAN: And where are the other, how many of the 75 are shippers, and where are they?

MR. WARREN: I don't have the exact number in my head, but I think you know it's primarily intermodal and automotive customers who are excited about the opportunity, so you would see that number from -- Kathy, you may be able to help me here. You know Michigan, Eastern Canada, but we have a number of -- and there's some public officials there too, but it's all, it's the appendix to our responsive application at the beginning of the letters of support.

We've got a table of everything who has put in a letter.

MS. SLAZINSKI: Sara Slazinski, speaking with their customers, but on the intermodal side it includes customers who are shipping refrigerated product to Kansas City and from Kansas City, and other intermodal customers.

CHAIRMAN OBERMAN: Well let me, I did the math again, Mr. Taylor maybe you could enlighten us on it. Two trains a day is 104 trains a year if you run them every day, it's 365 days, 760 trains, is that what you're talking about?

MR. TAYLOR: Yeah the pair of trains, so it's 365 times two.

CHAIRMAN OBERMAN: And you know are those trains going to all be the equivalent of 300 containers or?

MR. TAYLOR: From a planning point, that's what you have to do from a planning point of view. I mean it's obviously you know that's the forecast, marketing forecast. It could be service of goods can be more, but that's what it's based upon.

CHAIRMAN OBERMAN: If we did the math are you going to get to 80,000 truckloads there?

MR. WARREN: So we can all report on our math homework Mr. Chairman. So the way I did it is 80,000 divided by 365, and what that gets you is 219 a day, so when you're talking about you know two trains, you know 300 you know, capacity for a train there's ample capacity there. And as I think we said in our responsive application, we're not going to wait until we have 300 units to run the train. The way it's got to work for this service.

CHAIRMAN OBERMAN: No, I understand.

MR. WARREN: If the trains do start running, and you know we'll fill them up, and once we've got enough capacity to run two, we'll run two.

CHAIRMAN OBERMAN: All right. Go ahead with I think you were moving to another witness.

MR. BRESOLIN: Good afternoon Chairman and Board Members, and thank you for listening today. My name is Daniel R. Bresolin, and I currently serve as Vice President Intermodal for CN. In my role I focus on driving growth in both domestic and international

intermodal traffic, and I am responsible for all components of CN's international and domestic intermodal portfolios, including strategic investments, service innovations, and customer centric growth.

I am proud that CN is the industry leader in intermodal growth and service offerings. CN is skilled at providing tailored supply chain solutions that help our intermodal customers access markets in their supply chains, so that we can all grow together as one team.

CN's future oriented planning, customer minded investments, and innovative product offerings have led to incredible growth in our intermodal traffic since 2010, which has seen intermodal growth of 76 percent or 1.1 million additional units. We are a growth focused railroad. For example, CN has added multiple new inland destinations and connections with other rail partners since 2010, to the benefit of our intermodal customers, and our overall rail network.

These new destinations and connections

include New Richmond, Wisconsin, Regina, Saskatchewan, Chippewa Falls, Wisconsin, Joliet, Illinois, Duluth, Minnesota, and steel wheel interchange connections with CSX and NS to the Ohio Valley, which includes destinations like Cleveland, Columbus, Cincinnati and Louisville.

A new connection at Indianapolis with our regional partner, the Indiana railroad, and new connections at the Port of New York, and the Port of Mobile. CN also offers unparalleled equipment and infrastructure options to tailor our intermodal service offerings to meet our customer's needs, including a centralized dispatch group, a logistics management team, heated, refrigerated, and dry 53 foot containers, access to CN's large wholesale partnership fleet, and more.

CN's three coast network adds to the strength of CN's intermodal service offerings, and continues to drive CN to innovate in a way that adds value to our intermodal customers. If the Springfield line is divested to CN, I am excited about our ability to offer industry leading services

to more intermodal customers and connect to Kansas City and St. Louis to more ports with single line service.

CN's investment in the Springfield Line will intensify competition, improve service, increase efficiency, and reduce transit times for our customers. There is no other entity in this proceeding who has the ability, track record, or vision for fully utilizing the Springfield line to ensure its competitive presence is preserved and is used to fiercely compete with the combined CP/KCS parallel route to the west.

Divesting the Springfield line to CN will take tens of thousands of trucks off the U.S. highways in Michigan, Indiana, Illinois and Missouri, offering U.S. communities primarily along Interstate 94, 55, 72, cleaner air, less highway congestion, and less road maintenance expenses pulled from taxpayer funds. When it comes to the Springfield line there is a massive addressable truck market for movements between Kansas City area and Chicago, Detroit, and Eastern Canada that a combined CP/KCS has no plans to

pursue.

As we explain in our responsive application, intermodal customers are eager for more competitive and sustainable rail transportation options between Chicago and Kansas City, that a CN owned Springfield line would provide. Today, intermodal containers are moving primarily by truck on highways between Chicago and Kansas City, and their vicinities.

This negatively impacts communities along the I-94 in Michigan and Indiana, I-55 in Illinois, and I-72 in Missouri. Many of those truck movements can become rail movements. It just takes a willingness to invest in the intermodal business, and offer attractive transportation options to intermodal customers. That's what we do at CN, and that's what we are asking the Board to allow us to do with a CN owned, Springfield line.

CN already has a strong track record of successfully diverting tens of thousands of trucks off U.S. highways, and onto rail in a relatively short period of time as a result of CN's efforts to

design new service offerings. For example, CN's recent partnership with CSX at the Port of New York, New Jersey and Philadelphia, is a great example of how CN turns its investments into value for its intermodal customers and surrounding communities.

In late 2019 CN invested in a partnership with CSX to allow CN to access both gateways. Despite the fact that these were highly competitive markets in the intermodal space, with fierce truck competition within a little over a year, CN began successfully winning traffic, and has taken tens of thousands of trucks off the road since 2021 as a result of this investment.

CN's traffic from this partnership moving imports, exports, and refrigerated containers from the U.S. Northeast to Toronto and Montreal has continued to grow year after year. This example highlights how CN successfully invests and coordinates with its underlying partners to grow with our intermodal customers, and to drive that growth while benefiting ports and the surrounding communities by taking trucks off local roads and

highways.

If CN acquires the Springfield line, CN would do the same. I want to emphasize the unique opportunity a CN owned Springfield line would be for our customers, and our nation's environmental and sustainability goals. Rail is more environmentally friendly and sustainable than trucks. And just as CN has committed publicly to reduce greenhouse gas emissions progressively over time, our intermodal customers are looking for ways to ship via rail to achieve their own environmental, social and corporate governance, or ESG initiatives.

At the same time our intermodal customers ship goods that are time sensitive, so they require efficient rail transit times that are competitive with the speed of trucks. A CN owned Springfield line would marry these two important objectives, speed, and sustainability for our intermodal customers, and would benefit the environment as a result.

Divesting the Springfield line to CN would also strengthen the U.S. supply chain, and increase

the fluidity of the North American rail network. Over the past two years we have seen increased external shocks to the rail network from the COVID-19 pandemic, extreme weather, and international conflicts.

Those unpredictable events have illustrated that the strength and fluidity of the North American supply chain are critical to the public interest. CN's commitment to invest 250 million dollars in the Springfield line will directly address this very real concern.

For example, CN plans to grow the capacity of the Springfield line to accommodate 10,000 foot intermodal and automotive trains. CN will address current inadequate facilities on the line by adding a new siding at Cockrell, a new yard track at Roodhouse, upgraded track on the line, and new sidings to transform this track from a low volume branch line to a true main line intermodal corridor.

CN also plans to invest in expanding other sidings along the Springfield line through Illinois and Missouri. This will further increase capacity

and fluidity via an improved route that runs through America's heartland. CN's investment plan for the line will also connect intermodal shippers with major and growing markets in the Gulf, Southeast, Midwest and Northeast, as well as international Atlantic and Gulf ports in the U.S. and Canada.

With this added capacity, a CN owned Springfield line would offer critical support to supply chains, both nationally and internationally to support the U.S. economy, and get consumers what they need when they need it, including critical products like food and medical supplies. CN's network has capacity available in the Gulf at the Ports of New Orleans and Mobile, and at the ports in Eastern Canada.

We have multiple weekly departures for exports to ports that CN serves as shown in the map. This capacity, combined with the efficiency and optionality of a CN owned Springfield line would help goods move faster and more reliably to consumers, and help businesses sell their goods in global markets to power the nation's economy.

When it comes to moving perishable food, CN has one of the largest refrigerated container fleets in North America, with access to 3,000 refrigerated containers and other assets, other supporting assets. CN's equipment fleet would enable perishable food exporters located near Kansas City to reach ports served by CN and the Gulf and Eastern Canada, to help feed the globe.

Turning to intermodal shippers in particular, there will be new tangible benefits from CN's ownership and investment in the Springfield line. For example, upon acquiring the Springfield line CN plans to create a new intermodal facility in East St. Louis that does not exist today.

CN's intermodal customers would benefit from the efficient single line route to move containers between Kansas City, and points in Michigan and Eastern Canada. In addition, new markets would open up for intermodal shippers. If CN acquired the Springfield line, CN's investments would provide intermodal customers with new access, be it CN to KCS's Yard in East St. Louis, and result in

more traffic moving through CN's Memphis intermodal terminal, meaning more jobs and a boosted economy in West Tennessee.

Ensuring the Springfield line is an alternative to a combined CP/KCS road to the west is also important because it preserves optionality for customers who would prefer to avoid the aforementioned infamous congestion in Chicago. If CN acquired the Springfield line, we would be able to compete with CP to move intermodal and automotive freight between Kansas City, East St. Louis, and points in Michigan, such as Detroit and Eastern Canada.

CN's route would have minimal impact on the Chicago area, particularly as compared to CP's parallel route. It's no accident that over 75 intermodal shippers and other stakeholders have submitted letters supporting the Springfield divestiture. Divesting in the Springfield line to CN is a tremendous opportunity for the STB to impose a condition that would at the same time remedy the competitive harm of the merger that would result from

CP consolidating control over parallel lines, and promote the public interest on multiple levels, as I just discussed.

On the flip side, the substantial benefit of CN owned Springfield line, including diverting tens of thousands of trucks off road each year, and strengthening supply chains, would be lost forever if this merger is approved without divesting the Springfield line to CN.

In closing the time to reserve competitive options over Springfield line is now. The Board will not get this opportunity back. If CN does not get the Springfield line, CP will let it lie foul. Foreclosing competition, and the many public benefits that this line can achieve under CN's ownership, every piece of rail capacity is precious, shipper optionality is critical. Thank you. And I'll pass it over to Sarah.

MS. SLAZINSKI: Chairman Oberman and Members of the Board. My name is Sarah Slazinski. I currently serve as Assistant Vice President Automotive for CN in Troy, Michigan. In my role, I

prioritize serving our automotive customers, and that means ensuring fluid and resilient supply chains by rail, as well as developing future innovative services.

The automotive industry is undergoing a transformation from internal combustion engines to electric vehicles. Although we are in the early stages of this transition, the race is on to achieve a resilient North America supply chain, to support President Biden's objectives for the federal government to achieve 100 percent zero emission vehicle acquisition by 2035.

As a brief background, CN moves both finished vehicles and auto parts to major population areas in the U.S., Midwest and Gulf regions, as well as in Canada. CN's three coast network allows us to compete and offer flexibility, which enhances supply chain, and supports the customer's ability to import and export raw materials, production parts, and finished vehicles around the globe.

Today I'll describe how CN's ownership of the Springfield line would build resiliency, increase

transportation competition, preserve a much needed alternative route for automotive rail shipments, and produce significant benefits for the automotive industry in North America that could not be achieved but for CN ownership.

I'd like to start by describing why CN's network with the Springfield line is uniquely positioned to increase competition and offer significant value to North American automotive shippers. First, CN's network has access to 22 vehicle assembly plants, producing approximately 3 million vehicles in Ontario, Michigan and Ohio. That would have a new competitive option via a CN owned Springfield line that does not exist today.

This new competitive option would offer new solution for outbound finished vehicles and the inbound network of raw materials and production parts that move through North America. In addition with the Springfield line, CN would offer new competition, new competitive options for the two vehicle assembly plants in Kansas City, which would be able to reach new points in the United States and Canada.

To paint the picture more clearly, currently for the automotive industry there's only one Class 1 railroad option that directly connects Michigan to Kansas City via single line service, and only one Canadian Class 1 railroad that directly connects Ontario to Kansas City via single line service.

CN ownership of, and investment in the Springfield line would offer automotive customers a new direct service, and increased competition for shipments moving to and from Kansas City. Automotive customers want this option. A CN owned Springfield line would directly benefit automotive customers who would ensure the time and cost savings of an additional route that bypasses the congestion of a Chicago interchange, and that could connect to the automotive network that already exists today in Kansas City.

A CN route, via the Springfield line, would offer automotive customers a new route linking Canada, Michigan, and Ohio to the local Kansas City market. There could also be a potential future

design, interchanging traffic to Kansas City, to the large automotive markets in the west and Mexico.

A CN owned Springfield line would also benefit automotive customers and the American public consumers connected to the Mexico vehicle export market. Like the Michigan, Ohio and Ontario vehicle origin market, Mexico has 19 vehicle assembly plants that produce over three million vehicles, of which over 80 percent are exported into the U.S. and Canada.

Kansas City is one of the locations where these export vehicle shipments are interchanged. With the Springfield line soon could offer a new competitive interchange solution in Kansas City that does not exist today, offering new solutions and flexibility as well as increased competition with trucks.

This new CN interchange at Kansas City would also benefit the automotive supply chain, preserve thousands of tier 1, 2, and 3 car suppliers, in addition to the vehicle assembly plants, all of which could benefit from an alternative gateway to

move raw materials and parts that U.S. and Canada vehicle assembly plants need via CN's Springfield line.

More generally, a new CN interchange at Kansas City via Springfield line could build critical resiliency into the North American rail network, as well as create an alternative to Chicago interchange, where much of the vehicle traffic flows today.

As we all know from the past few years, severe weather, and unexpected global events impact railroad operations and service, so alternative railroad connections are important now more than ever to support the North American automotive supply chain. A CN owned Springfield line would result in just that, more connections feeding into an existing auto network, ultimately providing increased stability, optionality, and more service for automotive customers to the benefit of the American public.

Lastly, I'd like to touch on the future we need to build together, and how divesting the

Springfield line to CN will support that future. New clean and traceable supply chains will need to be built to support a sustainable North America eco system for EV vehicles. Like the US, Canada has abundant natural resources essential for battery productions, such as lithium, nickel, cobalt and copper.

With the recently passed Inflation Reduction Act of 2022, we expect to see higher demand for raw materials in the U.S. and Canada. The Act requires 40 percent of critical minerals and battery content to be sourced within the United States, or a country with which we have a free trade agreement, which includes Canada, with the content requirement increasing to 80 percent by 2027.

The original equipment manufacturers, known as OEMs, are currently in the process of making sourcing decisions, so their customers can get the benefits of the new program. That means that new, resilient and sustainable value chain solutions need to be created.

A CN owned Springfield line to Kansas City

would be critical support for the EV vehicle supply chain because CN's network would connect the battery resource areas to auto manufacturing plants, while simultaneously adding rail capacity to support this new market currently in its infancy.

CN is taken part in pledges to improve sustainability, and is committed to its automotive customers innovating to make sustainability more and more possible. In this regard we are bringing ideas to the table to improve supply chain resiliency that is scalable. Alongside our customers innovation, we continue to innovate to expand our offerings, offer more competition, and deliver better products and service.

To support the budding EV market and our national sustainability goals, we need to make foundational investments now to navigate the future, and set us up for sustainable and resilient success. A CN owned Springfield line would be a critical resource in this innovation towards a more sustainable future. I also want to highlight that CN is uniquely positioned to utilize the Springfield

line in a way that results in significant public benefits for the automotive shippers and the U.S. public.

CN is deeply committed to its automotive customers, and has continued to invest in their existing automotive compounds and intermodal terminals. To support growth, we recently added capacity and invested in a multi-million dollar automotive and intermodal terminal in March of 2021, in New Richmond, Wisconsin, to service Minneapolis and the surrounding areas.

If Springfield divestiture is approved, CN will likely invest in the vehicle and intermodal facility on the 64 acres at the international freight gateway, IFG, outside of Kansas City, which would increase capacity through Kansas City to support the transportation needs of the automotive supply chain. This increased optionality is an extremely effective way to strengthen supply chains, and enhance the validity of the rail network.

By contrast, a combined CP/KCS network is uniquely positioned to foreclose competition for

Kansas City automotive traffic. If CP is permitted to acquire KCS, a combined CP/KCS network will be the only option for automotive customers in Canada to reach Kansas City and single line service.

Now KCS is neutral, and has a strong incentive to grow the automotive business as it has. However, a combined CP/KCS would control the parallel lines between Kansas City and Chicago for automotive traffic, permanently foreclosing the competitive presence and potential of the Springfield line.

A merged CP/KCS would not have an incentive to work with CN to ship automotive traffic over the Springfield line, or invest in the Springfield line because that would directly harm their single line service over CP's parallel line.

Approving the proposed merger without divesting the Springfield line to CN would be a significant lost opportunity to increase competition, add capacity, build much needed resiliency for automotive traffic, and support national sustainability efforts, including the emerging electric vehicle market.

In my informed opinion, a CP/KCS consolidation without divesting the Springfield line to CN would be an anti-competitive result. I can tell you that customers have asked for competitive alternatives to access Kansas City markets via the Springfield line.

I can confidently say that CN would be a good steward of the Springfield line, and is the only entity in this proceeding who has the ability, incentive, and vision to utilize the line for public benefit. Thank you for the opportunity. I'll turn it over to Matt.

CHAIRMAN OBERMAN: I have a few questions here, and other Board Members may as well. First of all it's interesting for me to hear the praise for President Biden's competition initiative. I didn't hear that from any parts of the rail industry a year ago, so perhaps people are seeing the light.

But here's what I'm trying to understand. The 80,000 movements are both intermodal and automotive. Mr. Bresolin is that the way we're supposed to understand it?

MR. BRESOLIN: Yes.

CHAIRMAN OBERMAN: If this line would be a parallel line to CP's, why are not those 80,000 movements going to move over the CP parallel line if its directly competitive? Why not? I don't know if that's a legal question. I mean you can answer it. Matt, I think it's not a railroad question, somebody answer.

MR. WARREN: So I mean I don't think you know it is more of a railroad question, so I may get out of my depth quickly, but I don't think CP has a great route to some of those markets.

You know they have limitations on their ability to get into Detroit and so, I think that's -- and when you look at there, and I think you actually can see it there in their application, that they have sort of discounted, or are not planning to have as significant versions there, which is about the only place their application they didn't anticipate that they would be getting very significant diversions.

CHAIRMAN OBERMAN: So then it's not competitive.

MR. WARREN: So for this level of intermodal it is competitive, and they may see it as competitive, but these are categories of traffic that we're going after that they're not going after because getting intermodal and automotive business takes investment. It takes a lot of money. It's 250 million dollars that CN has been putting into the Springfield line. They're proposing just to put zero to it.

CHAIRMAN OBERMAN: No. But why wouldn't they use it on the so-called parallel? I mean I don't assume necessarily the accuracy of your description of this being a parallel line, but for purposes of this inquiry, why if the lines are truly parallel, why wouldn't CP want to take that 80,000 additional movements on their line and make money off of it? I'm not following it's either competitive or it's not.

MR. WARREN: Mr. Chairman, I would say that we don't know for sure, but you're right. This is a large market between Detroit and Kansas City that's now dominated by trucks. So it is -- and you

heard yesterday maps showing their vision for their auto market. And if you look at where the red lines went, they went right up to Kansas City, over their northern tier up to Detroit.

So I expect you're absolutely right. That this is an opportunity that CP would, if they can, with their new single line service, try to compete those trucks off the highways. All we're telling you is they didn't put that into their plan, so we're kind of we're looking at what they're projecting over the next three years.

But yes, and you heard from Creel that their concern is that if you permit this divestiture to CN, that then is going to be competing with their vision for the northern route, which is why they're not investing in the southern route. In the Springfield line they're investing in the northern line.

CHAIRMAN OBERMAN: Well I'm only trying to follow-up on all the pluses for the auto industry that Ms. -- and I'm going to get your name wrong, Slazinski, thank you I had to look, talked about why

all those pluses to the auto industry won't flow through CP as well as CN?

MR. WARREN: You could probably imagine Chairman when you talk to any rivals, they're going to say that their network is better than their rival's network, and I'm confident we agree that CN has some competitive advantages that it would like to deploy on this route, but you're absolutely right.

Technically they could you know this market opportunity for autos intermodal, if they make the investments, is something that they could transport, or seek to try to compete for from Kansas City up through Chicago, and then along their various corridors and trackage rights and haulage arrangements to get to Detroit and points north.

CHAIRMAN OBERMAN: Because I'm trying to sort out the advantages to the public interest, and I heard a lot of advantages for sustainability, new electric vehicles, and the whole automobile market, but it strikes me that's a wash if we accept your notion that it's truly a competitive line. So it's more rates that would be at stake in theory about

competing.

MR. WARREN: It's also investment, Chairman. So you began this proceeding by talking about the need for the rail industry to invest in order to unlock this particular market that you just heard Dan and Sarah talk about. You've got to invest to make sure you can offer basically truck like service from Detroit all the way to Kansas City, and CN has a plan to do it on the Springfield line, and if CP takes control of it, that plan will vanish.

They will have no incentive to work cooperatively because they're going to be protecting their northern tier.

CHAIRMAN OBERMAN: You're not going to invest that money if you don't think you're going to make money on your investment.

MR. WARREN: Correct, that's right.

CHAIRMAN OBERMAN: And am I to assume that Mr. Creel is a different profit seeker than CN is, and wouldn't invest money if he thought he couldn't make money on it? I mean what are you asking us to assume here?

MR. WARREN: I'm not asking you to assume anything about CP Chairman, I'm just saying that we -- CN, has identified this as an opportunity, and it's real, and it will vanish, and it's not in the public interest to let that happen. Now CP has launched with a different vision of where they're going to be targeting markets. This is an expensive market to go into, and they're likely to you know minimize the capital investment perhaps.

I don't want to speak for CP about why they're not going after this market, but CN wants the opportunity that you foreclose if you let the parallel lines get consumed within one entity, that opportunity will disappear.

CHAIRMAN OBERMAN: Well if in order to realize, to come to grips with these fairly general notions that we have to grapple with here, I'm trying to assess who's going to try to take advantage of potential markets, and take traffic off the highways and make money from it, which is fine. That's what business you're in.

I don't see anything about CP's recent history that says they're afraid to invest. They've

just made this big investment in the Rupert intermodal. They just bought CM&Q, is that the name of it?

MR. WARREN: Port St. John.

CHAIRMAN OBERMAN: Yeah, but then CM&Q railroad, so they could get to Port St. John. It's not like this is a railroad with a history of being afraid to invest in growing intermodal.

MR. WARREN: If they do that will be great, and you'll see robust competition between CN and CP to win that traffic, which is uniformly is what, Chairman, you've been speaking to as something you'd like to see more of in the rail industry combined with additional investment in infrastructure that's being underutilized.

CHAIRMAN OBERMAN: I would, but I'm also trying to assess the fairly dramatic relief you're asking for, for us to deprive people of property that they've bid for. And so, I've put all of that in context, and what I'm hearing here it was sort of a portrayal that somehow there would be a huge loss to the general economy, and to the public if CP gets

this line rather than CN. And I'm not seeing exactly why that is because I have to accept conflicting parts of your presentation, you know.

Either it's not going to happen, or it is going to happen because it's the same parallel like. Those two don't -- there's a disconnect there as I'm hearing the evidence, that's what I'm talking about.

MS. SLAZINSKI: And if I can give just one example. So to use the IFG facility as an example, in CP's plan for year one through three, they're planning to primarily use that facility in terms of changes for block swaps of carload traffic, and minimal amounts of merger related traffic, whereas in CN's vision we would invest within that facility to create expanded capacity for intermodal and automotive traffic to flow through that facility.

CHAIRMAN OBERMAN: Because you see the potential to make money off of that investment. I assume CP could figure that out too. I mean I don't hear you know this isn't some kind of fly by night organization coming in here for this, so I'm just having difficulty with understanding why your

business strategies are so different from CP's business strategy. I don't get it.

MR. WARREN: And I would say Mr. Chairman, I mean you would anticipate that everybody is going to be economically rational. But if you got two parallel lines, the economically rational thing to do is to pick the line you're going to favor, and concentrate the traffic, concentrate the investment there. And that's what they propose to do.

We're saying you keep those lines independent, the way they are today, and let the railroads compete. I'm sure you could put, you know, CP's intermodal person, automotive person, would get up here they would talk about why their network is great, why they're going to go compete.

But when you have two parallel lines which are parallel routes, and you're letting you know the merging railroads, you take one and decide that's what they're going to favor, and they're not going to favor the other one, we think that's a harm to competition.

CHAIRMAN OBERMAN: Let me ask this

question. Is there something less than divestiture that would provide you with the alternative you seek? Trackage rights, haulage rights, that kinds of divisions?

MR. WARREN: So I think the issue with trackage -- and you know they haven't proposed it, so I feel like I'm negotiating against myself again. But you have, and --

CHAIRMAN OBERMAN: No, you're negotiating with me.

MR. WARREN: Yes. So I would say that's -- I would say that you know you've got to have a level of ownership to be able to make the investments to the line. And the problem with trackage rights or haulage rights is that we're not going to be able to make the investments that are needed to develop the line. And that's why we ask for you know divestiture.

It's certainly possible you know, if they're willing to talk to us, you know, we might be able to work out some sort of a joint venture, or something like that. That is what as Doug

explained, that is what CN was thinking about proposing to KCS before all this merger stuff happened, was to find a way to work together.

But there's got to be an ownership interest there, and you have to invest in facilities. And Kathy talked about IFG. I mean you've got to it seems we need to build a terminal there, and if you don't have the ability to have a terminal, just having trackage rights isn't going to actually you know give you the ability to develop the business.

CHAIRMAN OBERMAN: So let me ask this question. As I think Mr. Creek himself said, and I think it's pretty clear from the facts. The great interest in somebody acquiring KCS was simulated by I think it was Pat Ottensmeyer who said it actually. A hedge fund that came forward two years ago as I recall, two or three years ago.

Before that I mean this market automotive, trans -- I'm sorry, intermodal. That's nothing new. Where was CN three, four, five years ago if this was such a great plan of approaching KCS and offering them a bundle of money for this line, or some kind of

joint venture, which both people could make money?

I mean this proposal strikes me quite frankly as reactive, rather than something CN figured out would be good for the world. So I wonder if anyone wants to comment on that.

MS. SLAZINSKI: Do you want to take it and talk about the CNIC, or do you want I can do that if you want to. So one thing that we have done over the years is to try to work with KCS in a variety of ways, and that included during the CNIC merger.

There was an effort to override that contractual restriction that presented KCS to come on to an interchange with CN on our side of the ownership at the Springfield terminal. The Board denied that request with the expectation that interchange facilities would be built at Cockrell. Over time that hasn't happened, and so as a result to the train traffic that was moving at the time over Cockrell has not, you know, has suffered as a result of that lack of facilities and the layout at Cockrell.

And so we have over time tried to work

together with KCS to explore opportunities, and the two sides independently, the business lines haven't sort of worked out, and so instead that traffic has been flowing over East St. Louis as Derek Taylor described earlier.

CHAIRMAN OBERMAN: So how did the economics change? I mean everything has a price if it had that much potential. Why didn't CN figure out a way to make it happen years ago?

MS. SLAZINSKI: And so the critical difference is up until now KCS has been a neutral operator. So if it was traffic say in Eastern Canada trying to reach Kansas City markets, or trying to reach points in Mexico, from KCS's perspective, whether they were going to give a certain interline division to CP from Kansas City to points in the Eastern Canada or to CN, off of the Springfield line. They are neutral in terms of trying to develop as much traffic as possible.

It was mentioned yesterday that approximately 80 percent of KCS's traffic is interchanged with other carriers. It's the loss of

the neutrality when CP owns the KCS that CNC has the loss of permanent options from the Springfield line.

CHAIRMAN OBERMAN: What I'm missing though is that this seems in the absence of this transaction it would have -- this would have been a business opportunity for KCS to either joint venture, or sell this off at a fancy price if it was as valuable to you as you're now telling us. And I'm not clear why that hasn't happened if it was such an important addition.

MR. WARREN: So, and I think the one thing I'd add Mr. Chairman, I do think situations change, and as we put in our testimony, and as actually some of the exhibits they used in their July 12 replies showed, you know CN was looking at this before we knew that you know, anything about a CP/KCS transaction.

But if you go back you know three or four years ago, yeah. We probably -- CN probably wishes that we had talked, you know that they talked to KCS earlier. You go back five years ago you know, KCS had you know haulage rights over hundreds of miles of

the CP network, and so it wouldn't have been an end to end merger you know, five years ago.

I mean I think you've got to look to the future, and I think that's what we're concerned about is the loss of that future competitive potential.

CHAIRMAN OBERMAN: Well what strikes me, and I say this only so you know it's of concern that you can address, is what's changed is that CP seems to have won the bidding war with CN for KCS, and now you're here trying to ask us to force a deal that you have been unable, or unwilling to make with KCS over the years up until now, and taking the advantage of the fact that there's a merger application in front of us to obtain something that you couldn't obtain in the private market.

So that's what I'm hearing. If I'm missing something, you know I want to be enlightened of it.

MR. ATKINS: Yeah, so Chairman we appreciate the feedback, and I will make the same two points that Matt did versus things do change. You heard from Dan and Sarah that actually the markets

are changing as well, so the EV development, all of this stuff in the auto that you're speaking to. But I will just be frank, yes to some extent it's reactive.

You see a parallel line that you thought that all of a sudden it's going to be acquired and disappear. It does focus one's attention on what is lost, what are the opportunities associated with that line. So I appreciate your perspective, but we think the question is not why didn't we structure this deal with KCS three or four years ago to perhaps to our regret is, is it in the public interest?

That's the standard Congress set for you to let the two parallel lines be subsumed by a single carrier, or in these circumstances, is it in the public interest to require the divestiture of that line? And we do think, particularly given the modern messaging from the board about what is in the public interest, investment, taking trucks off the highway, increasing competition, increasing resiliency, that this divestiture satisfies that standard Chairman.

CHAIRMAN OBERMAN: And do I take it, and just to nail down a response to my earlier question that if the Board were to approve the merger and not grant your responsive application for divestiture, then you're not interested in a trackage rights condition?

MR. ATKINS: I'd ask you to let us take that away and discuss with it, but trackage rights you need to have the incentive to invest.

CHAIRMAN OBERMAN: All right.

MR. ATKINS: And so we've have to -- it wouldn't be what you'd view as a trackage rights agreement. We would be putting into that agreement, you know, the rights to invest at their discretion. That's not really a trackage rights agreement, but let us take that away and we'll make sure that we brief for you the lesser alternative of a trackage rights agreement, and whether that would --

CHAIRMAN OBERMAN: Or maybe some other kind of agreement, something short of divestiture. Is there something we should be thinking about? That's really my question.

MR. ATKINS: Understood, and we'll take that away.

CHAIRMAN OBERMAN: Any other, Karen?

BOARD MEMBER HEDLUND: So Ms. Slazinski, I apologize. People murder my name all the time too. The only time people get Hedlund right is punting this. What percentage of the additional traffic that you would be taking over this line would be originated in Canada versus Michigan?

MS. SLAZINSKI: There's currently 14 U.S. assembly plants, vehicle assembly plants and eight in Canada, so more than 50 percent.

BOARD MEMBER HEDLUND: Would be that you serve? That you can serve?

MS. SLAZINSKI: That we have service and access to, yes.

BOARD MEMBER HEDLUND: Okay. And then just to comment on it, it really goes to where I think the Chairman was getting. I appreciate that this, you're proposed divestiture would be of enormous value to you. What I am concerned about is that it seems disproportionate to the competitive

harm that may arise from this if any.

And if we, this Board, could wave a wand and rationalize the whole U.S. rail system, I think that would be great. And I would start with you know Amtrak's long distance service. But we don't -- that's not what we're here to do, and although this might be a major opportunity to you know help create a new market for you, I just don't know if this is the time or place where we can do that. And we'll have to discuss that further.

MS. SLAZINSKI: The automotive customers are interested in options, and we understand we get questions about Kansas City, and we currently don't go there. We stopped short in Chicago, or elsewhere. So to create new solutions, and new opportunities, and perhaps decongest Chicago, this is a great solution and a great opportunity that we're asking for consideration.

BOARD MEMBER HEDLUND: Thank you.

CHAIRMAN OBERMAN: Any other questions at this point, or let me just say for scheduling purposes. We're up here, I think I speak for all

five of us, prepared to just plow ahead before lunch and have CN finish, unless anybody is feeling light-headed, tell me about that.

The two witnesses who I've mentioned, whose names are not in front of me that we were going to try to finish with their testimony before -- non-CN people, before the lunchbreak. We're not going to get there. Those people have agreed to be available on Monday or Tuesday.

So we will finish with CN, and then we have another witness after lunch from Richardson International, and then we will move into both the Norfolk Southern and Burlington Northern. So unless anybody on the panel doesn't have the stamina, we'll proceed. Go ahead.

MR. WARREN: Mr. Chairman, so we're going to turn to the Gateway condition, which is our third concern. And you're going to hear a lot of about this from other carriers, so what I'm going to try and do is just highlight the two features, the two parts of our request since it seems to be accepted by everyone that there needs to be a condition to

protect the foreclosure of gateways.

So we have really two key concerns. The first is if the condition should be clear. I want to make sure that this gateway condition is not so amorphous, and so difficult to implement, that it becomes empty. And so for example, Member Schultz you asked what gateways does this apply to.

That shouldn't be a hard question for them to answer, and we asked them the same questions in depositions. The answer that we got was similar to what you heard from counsel, which is any place the Class 1's interchange traffic. We've asked in our comments for them to clarify that that was what they meant by a gateway condition.

They ignored it. We'd ask you to enforce that as the definition of what is or is not a gateway in these circumstances. And it's important because we're not just talking about the southern gateways, like Jackson, and Kansas City and Loredo. You need to make sure that the gateways with CP also remain open on commercially reasonable terms.

So we think that's probably our first

biggest request is to make sure it's clear. The second thing that I think that is unique to CN's proposal is how are you going to enforce the condition? I know I'm putting off the third bucket, which is how do you define it, but how do you enforce it?

And as the Chairman mentioned, you need some sort of practical process. And CN's proposal is to use arbitration. Now arbitration is not uncommon to use to enforce a merger condition. You impose it on the applicants as a condition, which means that a customer or an interchange partner, would be able to go to arbitration and try to resolve whether or not it's a commercially reasonable rate, and if not, the arbitrator resolves that, and on a confidential basis.

And then that could be reviewed by the Board under your normal lace curtain type of standard review, very highly differential. This is how you resolve labor disputes. So you impose labor conditions in mergers. And if the labor employee and their carrier has a dispute, they don't come to the

Board and start fighting over whether what part of our doc applies or doesn't apply, it goes to arbitration and then it comes up to the Board.

We think this is a really good idea that we put in our proposal in our comments, and has been completely ignored by CP. And you know for all the reasons why you know that arbitration can be superior to formal litigation. It's faster. I mean just we praise to respect bringing a new case to the board on commercially reasonableness would probably take longer to resolve than the market opportunity might exist.

So it's a quick process, and it should be available to everybody. So it's not just customers who should be able to pursue relief, interchange partners should be able to protect themselves as well. So those are the kind of two key features. The last point I know is a more challenging one, we're actually going to just let you defer that conversation to BNSF and UP.

We're trying to define how do you -- what is commercially reasonable? CN has not put forward a

proposal. Our thinking would be is that you let the parties argue what they think is or is not commercially reasonable to the arbitrator, so it maintains some flexibility. And all the arguments that you've heard from other parties could be presented to the arbitrator as justification for why it is or is not commercially reasonable.

Factors, you know I'm not sure I would recommend you try to delineate factors, because it might elevate in the arbitrator's mind, factors above others that people might want to bring. But the obvious ones include things like the relationship between the rate, the interline rate and the single line rate, or what are the cost differentials between the two movements.

What are the different densities of the line, or the geographic differences? There's a number of arguments that you could present, rather than you trying to resolve all of that in the condition we think the approach that CN recommends is that you actually basically take it to an arbitrator, let the parties submit their presentation to the

arbitrator, the arbitrator resolves the dispute, and hopefully we move on.

If necessary, you can apply it to the Board, but under standard, very deferential standards of review. So those are our two key points, and I'm willing to handle any questions you have on gateways, or that ends CN's presentation here. But I'll just pause, so does anybody have any questions for CN related to gateways?

BOARD MEMBERS FUCHS: I'll be very brief. Very much appreciate your point on the clarity to gateways. On your second point about binding arbitration, obviously commercially reasonable is not a new standard in terms of what carriers have offered. Can we point to any carrier that has agreed to a binding arbitration process? Perhaps even outside the purview of the merger that would be a good model beyond the labor model?

MR. WARREN: Yep, Tex-Mex. And you don't have to look very far because I think it's Exhibit 1 to Mr. Brook's verified statements, but a guess. Tex-Mex.

CHAIRMAN OBERMAN: Is that all you had

Patrick?

BOARD MEMBER FUCHS: Yep.

CHAIRMAN OBERMAN: Just a couple of observations. If CN has anything further to add on how commercially reasonable is defined, you've got a final brief.

MR. WARREN: Yes sir.

CHAIRMAN OBERMAN: What you could advise us. What I -- hearing this question about defining gateways, one possible way to move forward with clarity, or as much clarity as the interchange partners want, and I'll say this to the other four as they come before us is you know where your interchanges are, give us a list.

Rather than guessing what's an interchange, we'll have something concrete to look at.

MR. WARREN: We'll provide you that in the final brief absolutely.

CHAIRMAN OBERMAN: Yeah. All right. Are there no other questions, Michelle?

BOARD MEMBER SCHULTZ: Kind of circling

back on the service assurance plans. If the Board would decide to uphold the standard under the old rules, and not require a service assurance plan, maybe in the final briefs if you could just set forth what the applicants asserted, and what standard the Board should hold them accountable to.

MR. WARREN: We could do that.

CHAIRMAN OBERMAN: Any other questions on this point? All right. Do you have some conclusions?

MR. ATKINS: Actually I'm just going to skip the conclusions and let us all go to lunch.

CHAIRMAN OBERMAN: Okay. Before we go -- who? Okay. Where is that person? We do have one witness we're going to hear before we break for lunch, but Ray that was a wise move because I don't think we can hear anymore than what's already been said.

MR. ATKINS: I assumed as much.

CHAIRMAN OBERMAN: Okay. All right. Thank you. We have one very short witness that we're going to hear before lunch, and then we will break.

And that is James Irving, from J.D. Irving, Limited, who is testifying virtually.

Thank you all from CN. I appreciate it. Very, very interesting and thorough presentation.

MR. IRVING: Mr. Chairman?

CHAIRMAN OBERMAN: Are you there?

MR. IRVING: Yes, yes sir, can you hear me? Can you hear me?

CHAIRMAN OBERMAN: Mr. Irving?

MR. IRVING: Yes sir. Mr. Chairman can you hear me?

SPEAKER: We're trying to get on here, we're trying to speak.

MR. IRVING: Mr. Chairman can you hear me?

CHAIRMAN OBERMAN: That's not -- where is this guy? Mr. Irving?

MR. IRVING: Yes sir I'm right here.

CHAIRMAN OBERMAN: Are you ready to go? We can't hear you if you're saying anything.

SPEAKER: You're muted.

CHAIRMAN OBERMAN: You may be muted. Still can't hear you. I can't. Try again.

MR. IRVING: Yes sir, can you hear me now Mr. Chairman? Can you hear me now?

CHAIRMAN OBERMAN: We're trying to fix this problem, don't anybody leave.

MR. IRVING: Can you hear me sir? Hello, hello. Can you hear me Mr. Chairman, hello, hello?

SPEAKER: They're working on it, they just can't hear you. But everyone can.

CHAIRMAN OBERMAN: Apparently the people on Zoom can hear, but we can't hear.

SPEAKER: Testing, testing.

SPEAKER: We might be able to take his testimony and listen to it on Zoom on the lunch break.

CHAIRMAN OBERMAN: No. I think I'd like to hear Mr. Irving he's been very patient. If we can get this fixed in the next couple of minutes so. Mr. Irving bear with us.

MR. IRVING: Okay that's fine. Mr. Chairman can you hear us? Hello?

SPEAKER: I believe we're still working on it. One second.

MR. IRVING: Okay, we're here. Hello, hello? Hello.

CHAIRMAN OBERMAN: Mr. Irving do you want to try this again?

MR. IRVING: Yes sir, can you hear me?

CHAIRMAN OBERMAN: No, sorry hold on.

MR. IRVING: Okay.

CHAIRMAN OBERMAN: Can you hear us?

MR. IRVING: Yes sir I can. Mr. Chairman can you hear me now?

CHAIRMAN OBERMAN: Yes.

MR. IRVING: Okay, can you hear me sir? Hello.

SPEAKER: There's a delay. I think they're looking at it over YouTube.

CHAIRMAN OBERMAN: Go ahead.

MR. IRVING: Mr. Chairman can you hear me now? Can you hear me?

CHAIRMAN OBERMAN: Can you hear me? Okay.

MR. IRVING: So can we proceed?

SPEAKER: Please go ahead.

MR. IRVING: Okay. Mr. Chairman I

apologize for the delay to your lunch. My name is Jim Irving. I'm the co-CEO with my brother Rob. We're a family business here in --

CHAIRMAN OBERMAN: Go ahead and give your presentation Mr. Irving. I think we can hear you.

MR. IRVING: Okay, can you hear me now sir?

CHAIRMAN OBERMAN: Yes.

SPEAKER: Please go ahead.

MR. IRVING: Okay. Mr. Chairman I apologize for the late lunch. My name is Jim Irving, I'm co-CEO with my brother Rob. We're a family business. We are in --

CHAIRMAN OBERMAN: Go head and give your presentation.

MR. IRVING: Am I supposed to speaking here, or what am I supposed to do? Someone tell me?

SPEAKER: Mr. Irving please go ahead.

MR. IRVING: Okay. So Mr. Chairman, okay I apologize for the delay here. As I said my name is Jim Irving, I'm co-CEO of our family business with my brother here located in St. John --

CHAIRMAN OBERMAN: Mr. Irving. If you, I'm sorry it's really almost impossible to get the benefit of your presentation. Can you be available in a half and hour and we'll take our lunch break and convene, and we'll try to hear you before you have to take off. Is that okay?

MR. IRVING: 100 percent, that's fine, good half an hour, thank you.

CHAIRMAN OBERMAN: All right. I feel like I'm in the Fifth Dimension. All right a half an hour, we'll break for lunch. Let's be back sharply, thank you.

(Lunch break.)

CHAIRMAN OBERMAN: Mr. Irving can you hear us?

MR. IRVING: Do I got the Chairman here? Oh my God, yes sir.

CHAIRMAN OBERMAN: You have the Chairman.

MR. IRVING: Can you hear me?

CHAIRMAN OBERMAN: For better or worse. I really apologize.

MR. IRVING: Don't worry about a thing.

You're on important business, and we're patient here. No problem at all. I hope you had your lunch.

CHAIRMAN OBERMAN: Well we did have our lunch and your business is equally important. So the entire Board is gathered here. We're actually in my office with the court reporter, and of course we're on the public feed, so this is a public meeting, and we want to hear your testimony, so if you are ready proceed.

MR. IRVING: Okay sir, I'll do that. And thank you for listening to me this afternoon. I will speak to you and the Board. I tell you just by way of introduction my name is Jim Irving, and I'm Co-CEO with my brother Robert of our family owned business. We're up in -- the head office is in St. Johns, New Brunswick, where I am today. And you referenced the Port of St. John at one point I heard on your discussions here this morning, so that's where we are, eastern part of Canada.

We're a privately owned family-owned business. Been in business since 1882, almost 20,000 employees, and we're in a variety of businesses from

ship building to food processing, horse products, transportation, and a number of other companies. So those are the businesses we operate. We're manufacturers and exporters, and do a lot of business in our operations both in Canada and the U.S.

So we're most interested in today's activities because this is about efficiency, reliable service, and it's been difficult to get reliable service for the last couple of years, but I'm optimistic that this is going to make a difference. Plus, having a single line that connects with CP and KCS. From our part of the world it's going to be very beneficial.

You know we are going to be able to access new markets in Texas, Mexico, very important for both our Canadian and our U.S. operations, efficiency and supply chain. As railroaders we have a small issue, I should have mentioned that. We have a small railroad, a short line operation, it's part of our transportation business.

Even though we're in a trucking business, and we are both the fifth largest trucking company in

Canada, we have a short line with 500 miles of track, 40 locomotives, and it's somewhere around 1800 box, and center beam cars and another 500 or so would ship.

So we're a bit familiar with railroading, and so we're very interested in being able to put our cars with product coming out of the U.S. or Canada on a line, and get to our customers, and get the cars back directly without being re-routed on all kinds of other railroad, so that's important to us, a lot of efficiencies to be gained there in the field.

And also you know we've had good luck with the folks at CP. We know the senior management, Keith Creel, and his executive team. Very good folks. They've done what they said they were going to do. They acquired the CM as was mentioned earlier this morning, and they've done -- that's who we interface with here in New Brunswick, over in Maine I should say, the State of Maine.

So but they've done a good job. They've lived up to their promises and executed, and we've seen dramatic improvement at the surface. And having

this is going to allow for more competition as far as we're concerned. The Port of St. Johns, an east coast port, undergoing major renovations at the present time. And BP World is a large container ship operator, one of the largest in the world, and our port facility operator I should say.

So imports into St. John, exports out of St. John, connecting all the way down to Mexico. We see that as a very important train line, and boy do we need more port capacity in North America on both coasts to get this thing really rolling. So we're very keen on that.

And it should lower costs to shippers, and provide better service, and that's what the world is all about. I can tell you when we go, and we're a major supplier to folks like Home Depot, the lumber. We're about the eighth largest lumber producer in Canada, or Sam's Club with our tissue products, it's all about efficiency, all about cost, all about performance.

And nobody wants to hear any excuses of why we're late, it's just get it there and do it.

And so, we are very focused on that aspect of it, so we think more customer service, more competition, what we have to have. And then you know sustainability, it's been mentioned here about ESG.

We're very proud to say in our forest products, which we're a pretty good size producer of, pulp paper, tissue, lumber. We're carbon neutral. We're about the fifth largest land owner in North America, and we plant over a billion trees ourselves over our history. We're proud of that. And so they can be able to have a train where we could have roughly a train that's 8 to 10,000 feet long. We take 300 trucks off the road, great. We're off of that because we've got to be more environmentally responsible, and we're proud of what we're doing, and we want to keep improving our number.

So that's a brief overview, very quick. I realize that, I apologize for being so brief, but I don't want to waste your time, but we certainly support you know CP/KCS merger. We think it's a good thing. We're going to have more competition, better service to both our Canadian and our U.S. operators.

And I'll try and answer any questions I could to do for you.

CHAIRMAN OBERMAN: Thank you much Mr. Irving, and very, very helpful information from your perspective. Any questions by any Board members? We don't, and again I do apologize for the inconvenience, but I am very glad we got to hear your testimony before you had to disappear, so we appreciate it.

MR. IRVING: Have a good day sir, and the rest of the Committee. Thank you very much.

CHAIRMAN OBERMAN: Thank you. Thanks very much.

MR. IRVING: Thank you.

CHAIRMAN OBERMAN: All right. We will now go off the record for a couple of minutes while we reconvene in the hearing room, and then we'll be back on the record. Thank you all.

(Break.)

CHAIRMAN OBERMAN: All right. We are back on the record, and in order to accommodate another witness who has a time constraint, we're going to

hear from him first, and then we will hear from NS and BN. So Mr. Justin Cauley is still here? There he is, okay. I know he has a flight to catch, and we don't want to miss out on your testimony. All right you may proceed.

MR. CAULEY: All right. Thank you for the opportunity to speak to you today. My name is Justin Cauley, and I am the Senior Director of Transportation for CHS, Inc. CHS is diversified, global, agri business cooperative, owned by farmers and local cooperatives across the United States, and it employs over 10,000 people.

Together CHS employees based in offices, retail operations, processing facilities, and refineries across the U.S. and Canada serve more than 600,000 farmer owners, either as direct CHS members, or as members of approximately 1,000 member cooperatives. CHS also does business with a multitude of non-cooperative energy, grains and foods customers.

CHS trades and transports corn, wheat, soybeans, feed grains, propane, fuels, bio fuels, and

a litany of other commodities. Rail is essential to our business model, and having competitive rail access -- having competitive access to markets via rail is critical.

CHS previously submitted a letter supporting the approval of the CP/KCS merger. I am here today to confirm that we continue to support this merger. The merger will benefit CHS, farmers, their families, and rural communities in which they live by creating new single line routes that were more efficient than existing interline routes.

These single line routes will provide much needed optionality for grain shippers, and likely spur further investments in efficient infrastructure. Currently CHS ships around 32,000 railcars per year per year on CP. We are happy with the CP as a trusted partner.

In the past five years CP has made significant improvements in the capacity and quality of its fleet and service. For example, CP has made a significant investment of a half a billion dollars in its covered hopper fleet by investing in more than

7,300 new high capacity cars.

These hoppers are shorter, lighter, and can carry more grain per car enabling CHS to ship more grain per train. Although we've been happy with CP's existing service, the lack of single line haul destination outlets for our origins on CPS has limited the services CP can officially provide.

Single line haul routes are generally more efficient than interline routes. That is why we are excited about the CP adding KCS demand destinations in the Gulf region, Texas and Mexico to their network. Access to those destinations will enable CP to offer single line routes connecting our grain growing origins with grain consuming destinations, and generate additional benefits for CHS and the farmers we serve.

These benefits will be particularly important for corn, soybean and wheat growers in the Dakotas, Minnesota and Montana, who are adjusting to the changing weather patterns and consumer demand. Currently these growers depend on the few existing north south shipping lanes to ship their crops in the

U.S. and the Gulf and Southern U.S. Export terminals.

These properties will still benefit from single line hauls and direct north/south access to ports in both those regions. Every season in agriculture is different, and crop production areas are increasingly subject to changing weather patterns and consumer demand.

For example, corn acres are shifting north. Sunflower acres are shifting west. Highly valued Durham wheat acres are north into Canada. This year the drought in the southern plains and Southwest creates the need for railroads to haul grain farther from the northern plains.

A merged CP/KC will create significant optionality for producers and grain shippers, allowing CHS to buy more grain and compete more effectively to Mexico, to the Gulf, and to the feeder market south of Kansas City, all to more effectively serve customers, farmer owners, and agriculture.

Destination optionality reduces risk, and will allow CHS to buy and sell more grain and other commodities even through traditional P and W outlets.

Finally, CHS firmly believes the increased efficiencies in market access created by the CP/KCS merger will be an impetus for rail using companies, such as CHS to capitalize on those benefits considering -- capitalized by considering new potential investments and supply chain infrastructure.

CHS has been investigating potential new investments in both U.S. and Mexico. Without the CP/KCS merger and aforementioned benefits, such investments will be unlikely to provide a strategic rationale, or rate of return sufficient to justify the capital investment, and therefore simply not happen. For these reasons, CHS respectfully urges the Board to approve the CP/KCS merger in its entirety with no line concessions.

Thank you again for allowing me the opportunity to voice CHS's support.

CHAIRMAN OBERMAN: I have a couple of questions. The kind of infrastructure capital investments that you'd be incentivized to make if this merger were approved, what type of facilities

are you talking about?

MR. CAULEY: Those would be destination type facilities. CHS has origins today on the CP.

CHAIRMAN OBERMAN: So can you be more concrete?

MR. CAULEY: Perhaps distribution facilities that could take grain to feed the local feed in the regions where the KCS operates today. It's nothing concrete yet.

CHAIRMAN OBERMAN: But I mean are we talking about spur lines to distribution centers, or what kind of rail oriented infrastructure would be involved?

MR. CAULEY: I'll have to get back on exactly the locations we're looking at.

CHAIRMAN OBERMAN: Well not so much location, just the type of -- are we talking about building tracks that can handle unit trains, or what kind of infrastructure are we talking about.

MR. CAULEY: Yeah. We're looking at potentially track that can handle unit trains, and they're very large trains.

CHAIRMAN OBERMAN: All right. The other question I had is the 32,000 cars per year, is that all the U.S. or did you include Canada as well?

MR. CAULEY: U.S. origins, sometimes routed through Canada, but all the origins we operate today are in the United States.

CHAIRMAN OBERMAN: All right. You said something about approving this without any line exceptions. Were you referring to the Springfield line?

MR. CAULEY: It was any line that could reduce the competitiveness.

CHAIRMAN OBERMAN: Okay. All right. That was all I had. Any other questions?

BOARD MEMBER FUCHS: Mr. Cauley thank you very much for being here. Would you expect the improvement post merger to show up in both rates and service?

MR. CAULEY: You know my impression would be yes, yes, rates and service.

CHAIRMAN OBERMAN: Any other questions? I thank you for your patience, and bearing with us and

adjusting the scheduling, but I'm glad we were able to accommodate you.

MR. CAULEY: Thank you.

CHAIRMAN OBERMAN: All right. So while Burlington Northern and Norfolk Southern are coming up to speak, I just would like to make an observation to all of the stakeholders who have asked to testify, and to the public who may be watching that I think on behalf of the Board I want to sort of apologize for some of the scheduling adjustments.

None of it is based on the substance of who the witnesses are, or anything they have to say. It's really trying to accommodate a complex schedule, and sometimes it has been easier to ask witnesses who are testifying virtually to adjust their appearance rather than people who have traveled to Washington to be here in person.

So if it may seem like some of the shipper representatives are getting short tripped, they're not. It's all just a complex Rubik's cube of trying to get everybody on to testify when they're available, and when we can get them here. So I

apologize to those in the past, and anybody in advance if we have to adjust their appearance. With that, it looks like we are close to being set here.

So while people are sitting, according to my list we have four people from Norfolk Southern. Ed Elkins, who I know. Michael McClellan, who I also know, John Mayo and Carrie Mahan, you're all here. From BN we have Roger Nober, who everybody knows well at this entity anyway, Courtney Estes, Jon Gabriel, Paul Hirsch, Peter Denton, and David Reishus. I'm not sure I pronounced that correctly, close enough.

Okay. So is everybody here? Okay. So Norfolk Southern is listed first. So who wants to lead off for NS?

MS. MAHAN: That would be me. Good afternoon Chairman Oberman and Members of the Board. Norfolk Southern appreciates the opportunity to appear before the Board, and address its concerns regarding the CP/KCS transaction.

I am joined today by Mr. Ed Elkins, Executive Vice President and Chief Marketing Officer of Norfolk Southern, who will provide an

overview of Norfolk Southern's intermodal business, and the importance of efficient on time service, and Norfolk Southern's investment in the Meridian Speedway for our intermodal customers.

He'll also address the impact of the applicant's proposed transaction on these customers. I'm also joined to Mr. Elkin's right by Mr. Mike McClellan. Mr. McClellan is a Senior Vice President and Chief Strategy Officer of Norfolk Southern, who will explain the rationales and the goals for the Meridian Speedway joint venture.

He'll then provide a high level overview of the structure and critical terms of the joint venture agreements, address the applicant's opposition to Norfolk Southern's narrow request for conditions, and explain how CSX's arguments and requests are misguided.

Finally, I am joined by Dr. John Mayo, who can provide his expert economic opinion with respect to the proposed transaction, as well as to address arguments raised by CSX unrelated to the CP/KCS transaction raised in this proceeding. Before I turn

the microphone to our esteemed colleagues, I wanted to provide the board with a brief overview of Norfolk Southern's positions and requests with respect to the transaction.

Norfolk Southern is participating in this proceeding for one reason, and for one reason only, to make sure that its shippers retain the same efficient options and service levels they enjoy today after a combination of CP/KCS. Norfolk Southern has carefully reviewed the CP/KCS application, and has identified discreet transaction specific changes that threaten to harm our intermodal shippers, and we accordingly request a narrowly tailored condition to remedy this harm, to protect our shippers, and to preserve competition as it exists today.

As we will explain, Norfolk Southern asked the Board to require the applicants to enter into a contingent trackage rights agreement with Norfolk Southern on the KCS line between Shreveport and the Wiley intermodal terminal near Dallas.

These contingent trackage rights would not

give Norfolk Southern access to any new routes. It would not give Norfolk Southern access to any new categories of traffic, and it would impose no new burden on the applicants. Rather, the request to relief merely allows Norfolk Southern to step in if necessary and maintain the level of service that its customers require, and that would exist without the CP/KCS transaction.

Now despite the extremely limited nature of this request, CSX has inundated the Board and the parties with a raft of allegations related not to the proposed CP/KCS transaction, but to the Meridian Speedway joint venture created by KCS and Norfolk Southern nearly two decades ago.

As you likely know, the Meridian Speedway joint venture owns and operates the Meridian Speedway, which is the rail line between Meridian, Mississippi and Shreveport, Louisiana. As Mr. Elkins and Mr. McClellan will discuss in detail, Norfolk Southern and KCS formed this joint venture because the Meridian Speedway was in dire need of significant repairs.

And KCS did not have the money available at the time to make the long-term investments needed to support the existing traffic. Indeed, as part of the Speedway joint venture, Norfolk Southern invested over 300 million dollars to develop this intermodal route.

To put that investment in perspective we heard yesterday of the applicants' three year investment projections for 276 million dollars across their entire combined network. When Norfolk Southern invested 300,002,006 dollars just on the Meridian Speedway.

As outlined in detail in our written filings, CSX requests related to the Speedway joint venture should be rejected. Not only because they're procedurally deficient and don't meet the clear standards set by this Board for this proceeding, but also because they're simply factually, legally and economically wrong.

As an initial matter CSX attack on the Speedway joint venture doesn't meet the standards set by this Board for the review of the transaction,

which is the sole focus of this proceeding. For this Board to grant CSX's request for conditions the harm alleged by CSX must be directly and causally related to the CP/KCS transaction.

But CSX has identified no nexus between the harm it alleges and the CP/KCS transaction, nor does the CP/KCS transaction exacerbate any of the harm CSX alleges. As Mr. McClellan will explain, the CP/KCS amended operating plan excludes one category of traffic with which CSX takes issue, and shows no change in the other.

CSX has failed to identify any effect of the CP/KCS transaction for which the imposition of conditions is warranted. And this Board has ruled before that it will not impose conditions that are in no way related to the merger.

Further, because this Board has determined that the pre-2001 rules apply to its review of the CP/KCS transaction, the Board must consider whether a requested condition would preserve competition lost as a result of the transaction, not whether a requested condition would enhance competition.

Put another way, the purpose of the condition power is to preserve competitive options, not to expand them. CSX has not been shy about its disregard for the Board standard in this proceeding. In February, CSX stated its goal was to re-establish the competitive status quo before 2006, and in CSX's notice of intent to participate in these hearings just two weeks ago they reaffirmed this stance, arguing that their proposed conditions would result in new competition, not preserving existing competition.

Finally, CSX's anti-trust arguments in support of its request fail on the facts, and are unsupported by the economics. As Dr. Mayo will explain, joint ventures are consistently upheld under the anti-trust laws as pro-competitive. Transactions that generate efficiencies and promote competition.

The last 16 years make clear that the Speedway joint venture achieved both of these outcomes. The formation of the Speedway was exempted by the Board in 2006. The notice of exemption was

duly and publicly filed, and no party, including CSX filed an opposition.

In fact, 41 intermodal shippers filed letters of support for the joint venture in 2006. And since that time output on the Speedway has gone up, service has improved, transit times have decreased, and competition for intermodal traffic in the southeast has flourished.

CSX's attempt to unravel the joint venture is an attempt to abuse the Board's review of the CP/KCS transaction to place itself in a better position than it would have otherwise occupied, and their requested relief should be denied. So I thank you again, Mr. Chairman and members of the Board, for your time and attention, and I will pass the microphone to Mr. Ed Elkins.

CHAIRMAN OBERMAN: Before you do that. Would you do me a favor, perhaps other Board members, so I do not have this entire record in my head. Some people think I have nothing in my head, but that's a different day. Could you briefly summarize the CSX contention -- request that you are responding to,

just so I have it in front of me.

MS. MAHAN: I certainly can, just give me one minute. Excuse me. CSX has a number of different requests, which I think we'll got through in some degree when we go through Mr. Elkins' and excuse me Mr. McClellan's statements, so it actually may be better if possible to do that because I think it will flow a little bit better.

CHAIRMAN OBERMAN: I'd just like to set up what you're knocking down, so I have it in my head. Okay. Are you next?

MR. ELKINS: Yes sir.

CHAIRMAN OBERMAN: Go ahead.

MR. ELKINS: All right very good. Thank you Carrie. Chairman Oberman, Members of the Board, thank you again for the opportunity to speak today. As Carrie mentioned, I'm Ed Elkins, I'm Executive Vice President and Chief Marketing Officer at Norfolk Southern.

I'm responsible for developing and implementing our marketing strategies to provide the competitive and responsive rail transportation

services that our customers demand. I appreciate the opportunity as always, to discuss our business at Norfolk Southern, and the potential negative effects on rail competition and service arising from the CP/KCS transaction that impact NS and our customers.

Norfolk Southern's rail network is a key component of the nation's supply chain, covering the Eastern United States. We operate approximately 19,300 miles in 22 states, including the District of Columbia, and we serve every major container port in the Eastern United States, providing efficient connections to other rail carriers as well.

Intermodal transportation is the strategic focus for Norfolk Southern. And intermodal transportation is generally considered the most competitive sector of rail transportation of all. Intermodal customers have many options in North America to move their goods. This includes rail of course, highways and barges as well as utilizing different carriers in combination with any or all of these services.

Our intermodal customers need fast and

reliable rail service. And to meet their needs, we at Norfolk Southern have invested significant time and capital over the past two decades. When I met with you in the spring I spoke about our new operating plan called Top SPG, and how that plan creates a platform for consistent service, continuous productivity improvement, and unlocks smart growth for our customers.

At Norfolk Southern our goal is to deliver both a good service product, and a good customer service experience. A good service product means how well do we move a shipment from point A to point B, and does it arrive when it's supposed to? And a good customer service experience means how well we provide logistical support to proactively solve our customers supply chain issues, not all of which are NS caused.

These points are very critical for our intermodal customers, which is a core element of our growth strategy going forward. The Meridian Speedway, which runs between Meridian, Mississippi and Shreveport, Louisiana, connects with KCS's line in Shreveport, and it's an important component of our

intermodal network today.

Now however, this was not always the case. In the early 2000's it was apparent that the service on what is now the Meridian Speedway, was not adequate to meet intermodal customer demand, or compete with highway alternatives between Dallas and the Southeast markets.

To facilitate the necessary investments to meet shippers' growing needs, we entered into the Meridian Speedway joint venture with KCS. We invested more than 300 million dollars directly into the Meridian Speedway joint venture. 260 million of which went right into track infrastructure improvements.

These investments double the capacity on the speedway and significantly decreased transit times. Today, almost all that traffic is moving between 50 and 60 miles an hour. Since 2006 we've continued to invest in the Meridian Speedway, and we've invested an additional 300 million dollars plus in intermodal facilities throughout the Southeast.

As a result intermodal customers have a

reliable, and competitive option between Dallas and the Southeast, and a significantly improved rail option for transcontinental intermodal traffic. Today the Speedway supports three categories of growth for Norfolk Southern.

The first is the Dallas intermodal traffic, which moves on the Meridian Wiley route over the Speedway and KCS's line between Shreveport, Louisiana and Wiley, Texas. Second, is our transcontinental intermodal traffic, which traverses the Meridian Speedway, connecting points on the west coast and points in the Southeast, and lastly as international traffic between Mexico and the Southeast.

Focusing first on Dallas intermodal traffic, the investment in the Meridian Speedway created a new and competitive rail option for customers who previously had been using the highway. Our support for, and participation in the Speedway joint venture keeps that option available to them. In fact, most of the growth on the Meridian Speedway has been traffic that we diverted from the highway,

not from rail.

It is our hope to keep it that way. Our investment also significantly decreased transit times on the transcontinental route that traverses the Speedway. In 2006, the standard run time from Los Angeles to Atlanta was at 100 hours. By 2007 the Meridian Speedway premium run time was down to 74 hours. These operational improvements resulted in significant benefits to customers, and increased competition for the provision of transcontinental intermodal service.

Given these facts it's clear why more than 40 customers supported the Meridian Speedway joint venture when the transaction was first announced. These benefits would not have been achieved without our significant investment in the Speedway. Now I'm aware that CSX is using the Board's review of the CP/KCS transaction to argue that the Meridian Speedway joint venture is anti-competitive, and has somehow harmed customers.

To be frank, their arguments are simply inconsistent with the reality. While our investment

created a better, and more competitive rail option, the Meridian Speedway is by no means the only option for intermodal customers. For Dallas intermodal traffic, despite the significant investment that we've made, the highway continues to serve most of the traffic in this lane.

For trans-con traffic, we face competition from multiple other rail routes, including the BNSF, CSXT partnership, which connects the west coast in Atlanta, which I viewed as a direct response to the Meridian Speedway joint venture, and from other accommodations of rail and highway alternatives.

Now as it relates to the proposed merger between CP and KCS itself, the primary message that I hear from customers is the desire to maintain the existing and efficient rail transportation options that they utilized today. I understand the applicants predict a trans-con specific increase in traffic on the lane that runs between Shreveport, Louisiana, and Wiley, Texas, of more than 50 percent, 52 percent.

To put it simply, this increase in traffic

risks disruption of intermodal customers who demand and expect consistent and reliable service on this lane. As I've discussed our investment in the Meridian Speedway created a rail option that competes with the highway between Dallas and the southeast. And the majority of the growth on the Speedway came from traffic that previously moved on the highway.

If the transaction specific growth the applicants predict will follow the CP/KCS transaction, harms our service in this lane, many of these intermodal customers in this lane will have no choice but to switch back to truck using the highway. The potential foreclosure of this existing rail option is bad for customers, bad for competition, and bad for passenger traffic utilized in our highways.

To ensure that customers don't lose an option as a result of the CP/KCS transaction, we're requesting a very narrow condition. Contingent trackage rights on KCS's line between Shreveport, Louisiana and the Wiley intermodal terminal near Dallas, Texas.

These rights could be exercised only if the service provided by the applicants deteriorates below contracted service levels, and even then we could only exercise the contingent trackage rights if we exercise our option to purchase the Wiley intermodal terminal located near Dallas, Texas.

The contingent trackage rights that we seek are extremely narrow, and seek only to preserve the status quo, in which case the contingent trackage rights granted need never be triggered. But if it's necessary to protect the service, these rights will be there. Put another way, these contingent trackage rights guarantee that we can continue to provide the level of service that our intermodal customers demand and receive today.

To briefly conclude, our goal at Norfolk Southern is to be customer centric and operations focused in everything that we do. We're participating in this proceeding to ensure that our customers do not lose any of the options that they relied upon over the past decade, and that they continue to utilize today.

We carefully reviewed the evidence put forward by CP and KCS, including the amended operating plan, and we identified potential harm that may occur if the transaction is approved without appropriate conditions.

These conditions that we seek are narrowly tailored to address this transaction specific harm. Mr. Chairman, I thank you for the opportunity to speak today, and if you'll allow me, I'll now turn it over to Mike McClellan.

CHAIRMAN OBERMAN: Do we have any questions? I'm not sure if I didn't miss something, but what is it about this transaction that causes you to fear that you won't get the continued service over that Shreveport to Wiley section?

MR. MCCLELLEN: Do you want me to answer? Okay. There were three things that we're concerned about. And it's not just one thing, it's the combination of these three things. The first one, there is going to be traffic growth between Wiley and Shreveport. We understand that. Whether that results in additional train pair today, or longer

trains, that could potentially impact the service that we have on that line.

Second of all the amount of volume they're putting into Wiley, it looks like that capacity at Wiley is going to exceed the current capacity of the facility. And I know that this is something that the CP has addressed in subsequent filings, but from our view, and from the public records, it does appear that there is going to be more volume ascribed to Wiley than there is capacity, which could squeeze out the customers that use the Norfolk Southern KCS route.

The third thing is that recently the UP and the CP stopped doing business together on the EMP program. The EMP is a free running box program, that was started by UP and NS. CP was in it for a while, they're no longer in it. That creates a real problem for us because a significant amount of our business moving between Dallas and Atlanta moves in the EMP program.

The KCS has access to the EMP program, the CP doesn't, and at this point we don't really have a

replacement program for that box program and the significant number of customers that are using it.

CHAIRMAN OBERMAN: I'm not following you. If CP is out and KCS is in, wouldn't they just take their place if the merger goes through?

MR. MCCLELLAN: They can't do that.

CHAIRMAN OBERMAN: Why not?

MR. MCCLELLAN: I don't want to get into the details of the UP agreement, but the UP has the right to determine who can and cannot participate in the EMP program. And the UP has chosen to exclude the CP from that program.

CHARIMAN OBERMAN: But you said KCS is in the program.

MR. MCCLELLAN: That is correct.

CHAIRMAN OBERMAN: So why wouldn't if the merger goes through, KCS just pick up where CP left off?

MR. MCCLELLAN: They can't do that.

CHAIRMAN OBERMAN: You said they're in the program. What? You said UP won't let them do it. Is that what you're saying?

MR. MCCLELLAN: UP, I can't speak for the UP, I'm just telling you what happened, and UP does have the right to determine which western railroads could participate in the EMP program.

CHAIRMAN OBERMAN: So you're saying even after the merger it will be still excluding CP. That's what you're saying. They won't pick up KCS's participants?

MR. MCCLELLAN: I can't speak for the UP, but I suspect that that's what will happen.

CHAIRMAN OBERMAN: Okay.

MR. MCCLELLAN: Based on the UP's recent announcement.

CHAIRMAN OBERMAN: Do I understand Ed that you have some contractual right to have your intermodal traffic move from Shreveport to Wiley?

MR. ELKINS: We have an agreement of course through the Meridian Speedway that moves it across the Speedway, and then on to Wiley, Texas, using KCS beyond the Speedway.

CHAIRMAN OBERMAN: And why isn't that agreement enough to protect you?

MR. ELKINS: Well I think what Mike explained is that given the amount of growth that's projected in the filing on the portion between Shreveport and Wiley, we believe that it might, could possibly, exceed the capacity of that line at the velocity levels that our customer require.

And as he mentioned also it appears from the filing that the amount of freight that might be moved into Wiley could exceed the current capacity of that facility, which we think would also endanger our service.

CHAIRMAN OBERMAN: Does your contract or agreement give you any kind of service metrics that they're required to live up to now?

MR. MCCLELLAN: Yes.

CHAIRMAN OBERMAN: Well why wouldn't those survive the merger?

MR. MCCLELLAN: Well those metrics are primarily on the Meridian Speedway of Shreveport and east, and --

CHAIRMAN OBERMAN: Well that's what I'm asking. Are there service levels under your

agreement that KCS is required to meet from Shreveport to Wiley?

MR. MCCLELLAN: Right now there are not. It is an interline service between the KCS and Norfolk Southern on the Dallas freight, so the route would be Dallas, or Wiley, KCS, Meridian, Norfolk Southern. It's an interline move.

CHAIRMAN OBERMAN: All right. But I thought you said you have an agreement, which requires them to move the traffic from Shreveport to Wiley? I thought that's what Ed said.

MR. ELKINS: No across the Meridian Speedway through Shreveport and then on to Wiley.

CHAIRMAN OBERMAN: So you have no agreement in existence between Shreveport and Wiley? That's all I'm trying to get at.

MR. MCCELLAN: Our agreement, it's an interline service today, all right. If Norfolk Southern, as I've mentioned, if Norfolk Southern elects to purchase the Wiley facility, then that interline deal turns into a haulage deal, okay, and the KCS would provide haulage for NS between

Shreveport and Wiley.

At that point service guarantees, service standards, do kick in. So there is a triggering mechanism that would drive service standards west of Shreveport.

CHAIRMAN OBERMAN: Do you have that agreement now?

MR. MCCLELLAN: We do have that agreement now, yes.

CHAIRMAN OBERMAN: You have an option to buy the Wiley Yard now?

MR. MCCLELLAN: Yes we do.

CHAIRMAN OBERMAN: So what do you need from us? What am I missing here?

MR. MCCLELLAN: Well what we're asking, what the ask is as Carrie said, is specifically, is that there are service standards if this freight goes to haulage between Shreveport and Wiley.

And what we're asking is if there is a material deterioration in the service standards, which is spelled out in the Meridian Speedway joint venture, and that is a sustained material

deterioration in service, that Norfolk Southern can exercise contingent trackage rights, so that we can put our crews into that, and take better control over the operation of that train.

CHAIRMAN OBERMAN: I understand what you're asking for. What I'm mystified here, maybe I'm just thick headed, is what that gives you beyond what you already have. You have an option today it sounds like if your service falls below a certain standard, to have certain standards in the haulage agreement, and a right to buy the Wiley Yard now if this transaction never existed. Do I understand that correctly?

MR. MCCLELLAN: No. What we have right now is an option to buy the Wiley facility. If we do that then it converts to haulage. If it converts to haulage west of Shreveport, then there are service standards associated with that.

CHAIRMAN OBERMAN: Right. And why isn't that enough to protect you in terms of keeping the standards up that you say you need to serve your intermodal customers?

MR. MCCLELLAN: The remedies in the agreement are limited. If there is a sustained deterioration in the service between Shreveport and Wiley, the remedies in the agreement are very limited, and we're asking for an additional remedy, which is the ability to go to trackage rights, put our crews on the train.

CHAIRMAN OBERMAN: Well what I heard you say is that the haulage agreement that would come into effect has service standards in it.

MR. MCCLELLAN: Yes it does.

CHAIRMAN OBERMAN: Are those service standards not adequate to protect your customers?

MR. MCCLELLAN: They're adequate, but the remedies associated with them are limited.

CHAIRMAN OBERMAN: What do you mean by that? What are the remedies that are limited? I mean you negotiated a contract to provide either service you need, it seems to me. I'm just I'm at a loss to see why you need more. What's the difference?

MS. MAHAN: The option to acquire the

Wiley terminal is part of, was part of the Meridian Speedway joint venture agreements. The Meridian Speedway joint ventures don't cover the traffic that is not on the Meridian Speedway. I think what Mr. McClellan was explaining is that in the future if that option is exercised as part of that, we will have the ability to have a haulage agreement on the portion that is not the Meridian Speedway.

If those, and there are service standards in there. You are correct Mr. Chairman. If they breach those service standards, and if it is a sustained service standard failure, the terms of the agreement, which forgive me as I don't have the copy of the agreement sitting here with me, are not particularly efficient, and I think that they would leave -- the company would leave Norfolk Southern with an inability to adequately address and get the service standards level back up to keep the intermodal customers on that route, and prevent them from going back to the highway.

So what they're asking for is a contingent trackage right that basically says if it is

contingent, if the terminal is acquired, and if we then have the haulage rights, and there is a sustained service standard failure, that Norfolk Southern has the ability to convert that to trackage rights, so that they can get their crews and their trains to address the service standard, and keep the route moving at a competitive place. Do you agree with that Mike?

MR. MCCLELLAN: Yeah.

CHAIRMAN OBERMAN: What you're concerned about is more traffic on that Shreveport to Wiley segment, which is going to interfere with service.

MR. MCCLELLAN: I'm sorry, our concerns are the three that we enumerated. Traffic being one of them.

CHAIRMAN OBERMAN: Right. And the inadequacy in the Wiley hard which you can solve by exercising your option to buy it, then do with it what you feel needs to be done.

But, and forgive me for not knowing exactly what the trackage rights would bring you, but if your concern is that the merged company will add

more traffic to the Shreveport Wiley section, thereby deteriorating the service you now get, excuse me, if you have trackage rights, rather than haulage rights, your trains are still going to compete with the CP/KCS trains for the use of that line.

What's the difference? How will your service be protected, and trackage rights, vis-a-vis haulage rights?

MR. MCCLELLAN: One thing that's import here, two things that are important to point at are number one, we hope these contingent -- we would never have to exercise these contingent trackage rights. I mean CP is an excellent operator, and we're talking about this 20, 30 or 40 years, or two, three or four years into the future, right?

This is not something we necessarily would want to do. It would be a last resort. The second thing you have to remember is that right now the way that the Meridian Speedway joint venture is set up if there are material and sustained service failures on the Meridian Speedway, on the haulage, Norfolk Southern has the right to convert that to trackage

rights.

And so if that also happened between, on the whole route from Meridian to Dallas, we'd have trackage rights on the speedway, and then haulage from Shreveport to Wiley. What we are trying to do here is to ensure that we have the control to provide the service that we need between Meridian and Wiley.

CHAIRMAN OBERMAN: All I'm trying to figure out is if there's too many trains on the Shreveport to Wiley section to allow your service to run at the speeds or the efficiency that you have now. Those trains are still going to be there even if you have trackage rights, so how are you trains going to get through regardless of who's driving the train. That's all I'm confused about.

MR. MCCLELLAN: Yeah. Again, our concerns are really the sum of those three issues, and not just the volume of trains on that line.

CHAIRMAN OBERMAN: I know, but I'm still trying to figure out how this condition you're asking for guarantees you the service you need. If the problem is that the line is too congested. What

difference does it make whether it's haulage or trackage? The train still can't get through if there's too many other trains on it.

Unless there's something about this railroad operations which I have yet to learn, which is a lot, so I'm asking you to enlighten me.

MR. MCCLELLAN: No, I mean -- I'm sorry. Okay. What we're saying here is that the additional trains on this line in their three year plan, in and of itself, is not the primary concern. It is the sum total of the three things that we talked about, capacity to Wiley, the volume on the line, and the EMP program.

CHAIRMAN OBERMAN: I'm trying to separate them out.

MR. MCCLELLAN: Okay.

CHAIRMAN OBERMAN: The capacity of Wiley can be solved under your current arrangement because you have an option to buy it. Am I right?

MR. MCCLELLAN: Yes.

CHAIRMAN OBERMAN: So that would be the same way that we grant your condition or not. You

don't get anything new that you don't have now. So the thing that you're concerned about is too many CP/KCS trains on that line, which are going to slow down your trains moving as efficiently as you want to Wiley, back and forth between Wiley and Shreveport, right?

MR. MCCLELLAN: Yes.

CHAIRMAN OBERMAN: All right. How is that going to change if you have trackage rights? Those other trains are still going to be there. I mean I don't know how many tracks, is that double tracks, single track?

MR. MCCLELLAN: It's largely single track yeah.

CHAIRMAN OBERMAN: Yeah. So trains still have to get past each other, whether you're driving them, or CP's crews are driving them. I don't understand what you gain from the trackage rights in this situation. I can understand in other situations.

MR. MCCLELLAN: Well I think in this case I mean it might be the number of trains. It might be

the priority under which we're dispatched. It might be a crew availability.

CHAIRMAN OBERMAN: Well if you have trackage rights you're not going to get dispatching rights with it are you?

MR. MCCLELLAN: No I'm not getting dispatch. I'm just saying that's not the only reason that a train gets delayed.

CHAIRMAN OBERMAN: No. I understand.

MR. MCCLELLAN: Yeah.

CHAIRMAN OBERMAN: I just can't fathom what advantage it is to get the condition you're asking for.

MR. MCCLELLAN: Well if there is a sustained and material decline in service we can't exercise our rights for trackage rights between.

CHAIRMAN OBERMAN: I think we're going around in circles.

MR. MCCLELLAN: Okay.

CHAIRMAN OBERMAN: So I'm going to pass and let somebody else.

BOARD MEMBER FUCHS: Very quickly Marty.

I want to ask a really broad question, and then maybe a more narrow one. My broad question is you know you heard me say earlier for years railroads have maintained that this is the most competitive traffic on the network, intermodal traffic, and I think we generally see in our service numbers, the intermodal traffic performs much better than a lot of the other traffic on the network.

Why isn't it that competitive market forces will not cause any service issue?

MR. ELKINS: I just want to make sure I understand sir. Can you repeat the question?

BOARD MEMBER FUCHS: So your condition is contingent upon CP providing port service.

MR. ELKINS: Right.

BOARD MEMBER FUCHS: CP/KC, and I'm wondering why the market won't discipline CP/KC?

MR. ELKINS: It probably would. I think it's a rational market, and I think what you're inferring is yes, it would happen. What we're looking to do though is set up some safeguards so that rather than market forces pushing all that

freight back to the highway, congesting the highway, and forcing us to sort of rebuild that traffic base, is have some contingencies in place so that we can respond before the market reaches that tipping point so to speak.

BOARD MEMBER FUCHS: I appreciate that. You know I have the occasion though to look at your filing and commodity exemptions, and you know for years NS has maintained before the agency that there is no need for regulatory backstop for a lot of traffic that is subject to market forces, including intermodal, which is our largest exempt category.

And you know there is a bit of a disconnect with you all coming up here and saying I need regulatory protection for the most competitive traffic, and you all maintaining across wide swaths of traffic, much of which has a much lower degree of competition in intermodal that they need no protection whatsoever.

And so there's a bit of a disconnect between your filings that I'm trying to make sense of.

MR. ELKINS: You know I think what we're really trying to do is set up a backstop so that the good work that we've done over the past two decades in terms of building a franchise which includes Dallas as part of that across Meridian Speedway.

And you know I think I said it earlier, most of that freight came directly off the highway, and onto our service on the train, which I think is a very good story, not only for us, for our customers, for the general public who uses the highway between Dallas and Atlanta, but also for the communities along the way.

We don't want to see that work eroded because of what I would call an action on the part of the transaction, which would probably not willfully, but might inadvertently degrade that service over time.

BOARD MEMBER FUCHS: Well I'm trying to -- you raise an interesting point because you mention a causal element to the transaction. But Mr. McClellan mentions that it could be 20 years, 30 years in the future, and so I'm trying to disentangle something

20 to 30 years in the future might be directly caused to the transaction and how we can you know ascertain that difference.

I guess maybe a better way to say it is what about the transaction would be causal here, the CP/KCS. Is it just more traffic overall?

MR. ELKINS: No. I think and I'll refer to Mike or to Carrie, but I think that when we look through the transaction we really looked for anything that would really jeopardize the status flow so to speak, and our customers I think want us to do that. They want us to make sure that we're protecting what is a very viable intermodal route by the least intrusive means possible.

BOARD MEMBER FUCHS: One other question from me, I mean this is the narrow question.

MR. ELKINS: Yeah.

BOARD MEMBER FUCHS: So I heard you were careful to say current capacity at Wiley, and I noticed that the record included some indications from applicants that they plan to expand Wiley, you know, some of which I believe are operational

changes, when it came to track work cycles. And some were, I think there were two new pad tracks in the record, potentially new cranes, and some paving projects.

And so I'm wondering if those investments were evaluated as part of your capacity analysis, and whether or not those go a long way towards resolving your first concern about the capacity of Wiley.

MR. ELKINS: Member Fuchs, I'll defer to Mike.

MR. MCCLELLAN: Yeah right. Yeah, we noticed those as well, but I don't think those were in the original application, and certainly there is room to do that. We just we don't have the full understanding of what is planned to do there, but it was not in the original application.

BOARD MEMBER FUCHS: Having seen those in the rebuttal, does that satisfy you?

MR. MCCLELLAN: Remember, we have three concerns, so that would be one way to solve one of the concerns.

BOARD MEMBER FUCHS: Thank you.

CHAIRMAN OBERMAN: Any questions down here? All right. I don't think we have time, proceed.

MR. MCCLELLAN: All right. Well where was I?

CHAIRMAN OBERMAN: You were here.

MR. MCCLELLAN: That's right. Well thank you Ed, and thank you Chairman Oberman and Members of the Board for the opportunity to speak. I'm Mike McClellan. I've been in this industry for 35 years, and I'm currently Chief Strategy Officer of Norfolk Southern.

The Meridian Speedway joint venture as you've heard is between NS and KCS, has been the subject of extensive briefing in this proceeding you may recall Pat Ottensmeyer talking about it as one of the important strategic developments of the KCS in the past two decades.

I was involved with Meridian Speedway transaction on behalf of NS from its inception. And I continue to be involved in the strategy for our operations on the speedway. I am here to provide

background on the Meridian Speedway joint venture, our current operations, and the significant demonstrable benefits to shippers that the Speedway transaction has delivered, and will continue to deliver.

I will then address potential harm that we see resulting from CP/KCS transaction, and the condition, the narrow condition that we are requesting to resolve that harm. I will close by addressing the baseless attacks that CSX has leveled against this Meridian Speedway joint venture.

So it's important for me to begin by describing the condition of the line between Meridian, Mississippi and Shreveport, Louisiana, known as the Meridian Speedway, as it was in the early 2000's. Because this was the impetus for the joint venture.

In 2000 NS and KCS entered into a series of haulage agreements for certain intermodal traffic moving on KCS's line between Dallas and Meridian, Mississippi, including the Meridian Speedway.

The haulage agreement between NS and KCS

was renegotiated periodically, but we both recognized that a longer term solution was needed. The Meridian Speedway was deteriorating, and required significant maintenance. Service concerns by our customers on the route were becoming acute, and business loss, especially by our premium customers was all but assured it would continue on that course.

It became clear to us that the Meridian Speedway would not be able to support the service that our customers demanded unless significant upgrades were made. However the KCS did not have the capital to make the required investments to preserve and grow the intermodal business.

If NS and KCS were going to reduce a route that could effectively compete against highways, something had to be done. Track speeds had to be upgraded, bridges had to be replaced or repaired, sitings expanded, et cetera. If the route was going to be an effective strategic link in North American network, significant investment had to be made, and KCS could not do it.

So after extensive negotiations, which

lasted well over a year, NS and KCS agreed to the Meridian Speedway joint venture, and NS agreed to invest 300 million dollars into the property, 260 million dollars went directly into capital investment. In turn, Norfolk Southern took a minority position in the company, less than 30 percent.

So as Ed explained, our investment in the Meridian Speedway was intended to and did, increase the capacity and the speed of the speedway, and improve the quality of service on that line. The improvements we made were extensive. To give just one example we said about installing over 440,000 feet of 136 pound rail on the line, almost 80 miles.

One cannot simply invest in a rail line, and then walk away as we know. Constant maintenance and renewal is required to sustain a rail route. NS was, and is committed to maintaining the route at high levels, and we ensure that the JV has the resources to do this through three important mechanisms.

First, as we noted, NS contributed 260

million dollars that went directly into the infrastructure. Second, to support growth on the JV, NS has continued to invest on our network, and equipment facilities in connections all in order to provide customers with a level of service and capacity that they expect on this route.

And we have made this investment because of the strategic access we had to the Meridian Speedway through the JV. Finally, NS has an obligation to support capital calls for infrastructure should the JV not be able to fund such improvements, and we have. These mechanisms, combined with our minority position on the Board of the JV, helps NS ensure the strategic viability of the line.

The Meridian Speedway agreements were the result of extensive work and negotiations between NS and KCS to make sure we were allocated the rights and responsibilities between NS and KCS. This in turn, laid the foundation for a very close working relationship between KCS and NS, and one that has helped ensure the joint venture could deliver on new

and improved service options for both KCS and NS, and in turn our customers.

As one example, the Meridian Speedway joint venture agreements create long term governance mechanisms that enable NS to have a seat at the table in ensuring the significant capital investments we make in the Speedway were used to deliver, to improve, service to our customers.

Another example is that while KCR was hired to be the operator of the Meridian Speedway, for maintenance, dispatch and service, the agreement specifies the service levels that must be provided by the Speedway joint venture with KCS as the operator. And to make sure that traffic that moves on the Speedway for NS benefits from the investments made by NS.

So the Meridian Speedway JV was explicitly a mechanism to enable significant investment and expansion of capacity in the Meridian Speedway. And two, to ensure for the sustained competitive operations of both parties on the line. Both of these ultimately benefited both NS and KCS, and our

mutual customers.

Ed described the improvements and service that our investment in the Meridian Speedway joint venture generated for our customers. The growth on the Meridian Speedway is a testament to those benefits. Our intermodal traffic on the Meridian Speedway grew by 340 percent between 2004 and 2021.

As Ed highlighted, a significant portion of the growth came from the highways. Over 40 customers wrote to the STB voicing their support for the transaction in 2006, and the continued and growing use of the Meridian Speedway by these customers demonstrates the ongoing benefits that they are receiving.

So with this background in mind, I will now turn to the CP/KCS transaction, as we just discussed. You heard yesterday from the applicants that our requested conditions have no connection to the CP/KCS transaction. We think that is wrong because the applicant's amended operating plan shows an increase in traffic on certain segments of the combined network, and plan to make certain

operational changes as a result of the CP/KCS transaction.

In particular, CP and KCS plan to operate more and longer trains over the route, between Shreveport and Wiley. CP and KCS also plan to combine our intermodal, and KCS manifest traffic, which we believe will create operational hurdles, which could degrade the quality of the intermodal product that KCS and NS currently provide our customers.

These changes, which are transaction specific, threaten to harm service on the overall Meridian Wiley route, and the overall viability of the intermodal product. To address this potential harm NS has filed an amended responsive application seeking these very limited contingent trackage rights.

CP and KCS oppose our request on the contingent trackage rights raising a number of alleged concerns, regarding the operational execution of the rights. Our August filing addressed those concerns, but I'll briefly explain why the CP/KCS

opposition falls short.

NS is requesting contingent trackage rights to move Dallas intermodal traffic on the KCS line between Shreveport and Wiley. This traffic currently moves in an interline basis between KCS and NS. As part of the JV agreements, NS has the contractual right to purchase the Wiley terminal which we just talked about.

If NS chooses to do this then Dallas intermodal traffic will cease moving on an interline basis, and will convert to KCS haulage moving between Meridian and Wiley, the entire route between Meridian and Wiley.

Under the current agreement if there are prolonged service failures in the haulage service that KCS provides to traffic, then haulage only on the Meridian Speedway, the Meridian Shreveport, we would have the right to exercise trackage rights over that during a period of sustained service degradation.

In other words the business would move via trackage rights between Meridian and Shreveport, and

then haulage from Shreveport to Wiley. This is the baseline that we talked about earlier.

So turning now to the effect of the requested contingent trackage rights, it is important to note that one of the contingencies that must occur before we can actually exercise the trackage rights, is the deterioration of the service level below that which the KCS is currently obligated to provide.

If the CP/KCS transaction is approved, the service obligation continues with the JV agreement. In other words, our request for contingent trackage rights impose no new service obligations on CP/KC. Rather, the contingent trackage rights are designed to preserve the options and quality of service that our customers rely on today.

NS's contingent trackage rights would kick in only if service falls below pre-existing level that CP/KC would be obligated to provide as part of the JV agreement. Even then, the only change would be from movement from haulage to trackage rights. And the shift would allow NS to move Dallas intermodal traffic via NS trackage rights over the

full route, and not just Meridian to Shreveport.

Very simply, these contingent trackage rights would ensure that if CP does not adequately serve customers on the line that NS has the opportunity to do so. During the negotiations in 2006 we did not negotiate trackage rights for this traffic on KCS line between Shreveport and Wiley.

At the time we could not have envisioned that the CP would be seeking to acquire KCS, or what CP's plans for the line would be. Now, however, we are concerned that the incentives and priorities of a combined CP/KC would differ from an independent KC. In fact, the transaction specific growth in traffic between Shreveport and Wiley, and related plans made clear that the combined CP/KC if approved, would indeed have different incentives and priorities that could negatively impact the current intermodal customers.

CP and KCS argue that they would have every incentive to provide quality service for Dallas intermodal traffic. If that's the case, then our requested contingent rights are sleeves off the

vest. Again, as I said earlier, this is not something we would want to do.

In other words, if service continues to meet levels specified in the agreements, then we receive nothing under this, under the contingent trackage rights. If service deteriorates, however, then the contingent trackage rights would give NS the ability to continue to provide service to our customers' demand, and would have absent this transaction.

So let's turn to the CSX request right now, and I'd like to address the absurd claims that CSX has made against the Meridian Speedway, and the conditions they are seeking in this proceeding. CSX is asking the Board to effectively unwind the Meridian Speedway agreement, a venture that has removed freight from the highway, and enhanced competition between railroads.

CSX has argued the opposite, that these agreements are anti-competitive. These allegations are inconsistent with the reality of intermodal competition today. As I explained, the Meridian

Speedway transaction revitalized a deteriorating route, and increased competition for intermodal traffic into and out of the southeast.

As a result of the Meridian Speedway transactions, shippers have a faster, more reliable route for transcontinental intermodal traffic. As I previously described, the Meridian Speedway agreements are hundreds of pages with innumerable and interrelated terms. The agreements in their entirety, and all of the terms contained therein were necessary for us and the KCS to form the joint venture, and bring the benefits to the customers.

CSX however, either ignores, or doesn't understand the full set of rights and obligations that make up the Meridian Speedway agreement. And instead takes issue with a cherry picked provisions. This is why CSX's arguments in this proceeding relating to the Speedway are out of context, misleading, and ultimately invalid.

As Ed said, NS has two main categories of traffic on the Speedway. The transcontinental intermodal traffic, which traverses the Speedway

connecting points in the west coast, and points in the southeast, and the Dallas intermodal traffic, which moves on the Meridian Wiley route over the Speedway, and over KCS's line between Shreveport and Wiley.

The first category, transcontinental intermodal traffic, is subject to the NS traffic provision in the Meridian Speedway agreement, and a focus of CSX's arguments to the Board. NS traffic consists of intermodal traffic that one, originates or terminates west of Dallas, or and originates and terminates east of Meridian.

And two, does not originate or terminate on the KCS system, and this is traffic that traverses the Meridian Speedway. Our eastbound Trans Con moves UP, Shreveport NS in the opposite way, westbound. It is important to know at the outset that this traffic moves in haulage.

The Speedway joint venture with KCS is the contract operator. It is merely the haulage carrier has no role in the marketing or promotion of this service. As a result this traffic is not included in

the CP/KCS amended operating plan, and is unaffected by the proposed CP/KCS transaction.

That is reason alone not to discuss the matter further, nor to entertain CSX's misguided objections. But as context for this provision it would have been irresponsible for NS to make a 300 million dollar investment in the Meridian Speedway, and subsequent investment on our own facilities without an assurance that we could deliver for our customers.

The limited restriction for NS traffic is one part of the many provisions NS negotiated in order to ensure the joint venture could deliver new, improved intermodal services. But it was not the only aspect. The service standards, line commitments, access to additional capacity, to further investment and delegation of operations were all necessary components for us to effectively serve our customers over this route.

Without the service assurances in the Meridian Speedway agreements and the guarantee that NS would have the volume to offer a commercially viable

intermodal service, these significant improvements could not have been achieved.

In the fact of these facts CSX argues that this narrow restriction deprives shipper of options. I'm sorry, okay. In addition, I would argue just the opposite, and CSX's own actions and operations over the years contradict this argument. In addition to the growth on the Speedway itself, the Meridian Speedway joint ventures spurred competition into and out of the southeast among other carriers.

In October 2006 in response to our new service of the Meridian Speedway, the NSF and CSX announce the new high volume intermodal corridor connecting California, Atlanta, and the rest of the southeast. This BNSF CSX route was, and remains, a very attractive option for shippers. In fact, so much so, that NS lost half of its Meridian Speedway traffic, Trans Con traffic, when they launched the service.

So let me repeat that. CSX started a new competitive service as a result of the Meridian Speedway deal, and NS lost half of its business over

the Meridian speedway. The 2006 BNSF/CSX route, which connected west coast with the southeast through Birmingham was in fact the better option than the Meridian Speedway for Trans Con intermodal traffic.

The Meridian Speedway transaction spurred competition for Trans Con intermodal traffic, and there continues to be significant competition between the BN/CSX route and the Meridian Speedway, as well as at least two other interline rail routes, and six overall rail routes, that handle Trans Con traffic in this corridor.

And that doesn't include the most competitive option, which is truck. CSX's suggestion that shippers have suffered harm because CSX does not have access to the Meridian Speedway is misleading. Rather, the traffic growth on the Speedway itself, and the new service launched by the BN and CSX are all consistent with competition, and demonstrate the benefits to shippers that resulted from the Meridian Speedway transaction.

The second category, Dallas intermodal traffic involves a lift or drop at KCS's Wiley

intermodal terminal near Dallas. NS has the right of first refusal to move Dallas intermodal traffic. For Dallas intermodal traffic, KCS must first offer a rate quote to NS, and NS can either accept it or decline it.

As with the Trans Con intermodal traffic, I am not aware of any increase in this traffic resulting from the CP/KCS transaction. This is again a reason alone not to discuss this further in this hearing, or to entertain CSX's objections, but again we will respond.

As with the NS traffic provision governing Trans Con intermodal traffic, CSX seeks to take a single provision from the innumerable and interlocking terms of the Meridian and Speedway agreement out of context, innumerable. I tried to say that yep.

The right of first refusal is connected to the service standards, the volume commitments, access to additional capacity through further investment, and delegations of operations that were all necessary to ensure that the joint venture could run

efficiently and effectively.

CSX ignores the significant highway competition in this lane. Trucks, not NS and KCS, handled the majority of the truck traffic between Dallas and the southeast. NS and KCS developed a new truck competitive service through our JV, one that has removed well over 1 million trucks from the highway since its inception.

It cannot be the case that there's an anti-competitive outcome when the Meridian Speedway transaction created a new competitive alternative to the highway. There is nothing preventing CSX from developing a rail competitive service between Dallas and the southeast for either the BN, or the UP, exactly the way they did with BN to create the Trans Con service in 2006.

Further, if NS chooses to purchase the Wiley terminal, CP/KC and CSX will have no restrictions on starting a Dallas southeast service on the CP/KC lines. The final category of NS traffic on the speedway is international traffic between Mexico and the southeast. This represents a

very small percentage of our business.

And contrary to CSX's arguments, there are no provisions in the Meridian Speedway agreement that impact their ability to contract with KCS to move this traffic. And as such we have no idea why they're trying to confuse the matter by introducing this false claim.

To put it simply, CSX seems to be taking advantage of these proceedings for an unrelated issue. CSX has known about the Meridian Speedway since its inception, and to the best of our knowledge has never challenged or opposed this transaction. CSX has operated, invested and competed in the environment that included the Meridian Speedway for nearly two decades, and has done so successfully as we have pointed out.

CSX's arguments are inconsistent with the actual outcomes in the commercial reality today. The Meridian Speedway transaction increased competition for traffic in and out of the southeast, and created new rail options for shippers. The results of the Meridian Speedway make it clear the transaction was,

remains and will be pro-competitive.

I want to close by echoing something Ed said. We are participating in this proceeding to ensure our customers did not lose any of the options or services they have today. Our requests for contingent trackage rights is carefully crafted to accomplish this, and nothing more. We identified potential harm to our customers, that has not been addressed by the CPKC, and our requested relief is only available if that harm actually materializes.

This is exactly the kind of request the Board can impose, and impose to ensure our customers do not lose options or services. CSX on the other hand, is using this proceeding in an attempt to revisit the Meridian Speedway transaction, which is wholly unrelated and unaffected by the CPKC transaction.

The argument CSX has put forward are out of context, and inconsistent with the actual outcomes of the Meridian venture. The Meridian Speedway is pro-competitive, that increase output, improve service quality and continues to benefit shippers.

The Board should grant NS's requested conditions, and deny the CSX's absurd requests. Thank you for the opportunity to speak today, and I'll turn this over to Dr. John Mayo.

CHAIRMAN OBERMAN: Mike, I have a few questions before we switch.

MR. MCCLELLAN: Sure.

CHAIRMAN OBERMAN: Just a couple of factual questions about this Speedway. How many miles is the Speedway, and how long is the Shreveport to Wiley section?

MR. MCCLELLAN: I don't know the exact mileage, but ballpark 300 and 160.

CHAIRMAN OBERMAN: 300 from Meridian to Shreveport and 160 from Shreveport to Wiley?

MR. MCCLELLAN: I believe so.

CHAIRMAN OBERMAN: And what was the reason when you put this deal together that the Speedway stopped at Shreveport if it's really to serve intermodal all the way between Dallas and Meridian? Did the Shreveport to Wiley segment not need a lot of investment, or why did it evolve that way?

MR. MCCLELLAN: I prefer not to answer this question in this room.

CHAIRMAN OBERMAN: Okay. So it wasn't necessarily physical, it has something to do with the business relationships.

MR. MCCLELLAN: Yes sir.

CHARIMAN OBERMAN: I don't want to pressure you in the proprietary information, but I sort have always been mystified by a Speedway which stops halfway to the end, just using layman's parlance. So what I'm still a little bit at a loss is what, if you could -- CSX's argument, put it into context.

What is the situation? CSX does not, because you've mentioned that CSX if this merger goes through would have the option to make a deal with CP/KCS to use the Speedway. Did I hear you say that, or did I misunderstand it?

MR. MCCLELLAN: No. what I said is that if NS purchased the Wiley terminal, then KCS would have the right to do a deal, a similar deal with another railroad.

CHAIRMAN OBERMAN: To use the Speedway you mean, or the whole line?

MR. MCCLELLAN: To use a portion of the line.

CHAIRMAN OBERMAN: Right now CSX does not have access to the Speedway.

MR. MCCLELLAN: I don't know if they do or not. I mean for intermodal traffic.

CHAIRMAN OBERMAN: Or for any purpose. I mean they don't connect to the Meridian Speedway anywhere. They go, the Meridian Bigbee Railroad connects the CSX to Meridian via Montgomery, Alabama, I believe. One CSX Montgomery Meridian Bigbee, Meridian, Meridian Speedway.

CHAIRMAN OBERMAN: What are they asking for that you're objecting to?

MS. MAHAN: The combination of all of their requests relating to gateways and rights, which Dr. Mayo will explain, is really they're seeking to unwind several key portions of the joint venture agreement, including for instance the exclusivity provisions that Mr. McClellan walked through in some

detail.

They're looking for the Board to pick apart a very complicated joint venture agreement and say this portion you can keep, but this portion over here we're going to abrogate 20 years after you reach these agreements. So one of the key aspects Mr. Chairman is the exclusivity provisions in the Meridian's Speedway joint venture.

CHAIRMAN OBERMAN: They want access to the Speedway, is that what you say?

MS. MAHAN: Correct.

CHAIRMAN OBERMAN: Without putting any capital in. Is that your position?

MS. MAHAN: Well they're not looking to put capital in Commissioner.

CHAIRMAN OBERMAN: That's not part of their --

MS. MAHAN: Yes.

CHAIRMAN OBERMAN: All right. And do I understand that if the CP/KCS merger goes through the joint venture agreement will survive and be imposed on the new entity?

MR. MCCLELLAN: Yes.

CHAIRMAN OBERMAN: So nothing will change in that regard, correct?

MR. MCCLELLAN: Correct.

CHAIRMAN OBERMAN: Okay. Just a couple of -- any questions? All right. Dr. Mayo.

DR. MAYO: Good afternoon, and thank you for the opportunity to present some material to the Board. My name is John Mayo. I am the Elsa Carlson McDonough Chair of Business Administration at Georgetown University's McDonough School of Business, and I am a Professor of Economics Business and Public Policy at Georgetown.

I'm also the Executive Director of Georgetown's Center for Business and Public Policy. I don't want to go in to a long story of my background. A copy of my vitae has been provided to the Board. I have written hundreds of articles, a number of which have to do with the rail industry. I've recently co-edited a book on the rail industry.

I hope you all have it in your offices. Turning to the present matter.

CHAIRMAN OBERMAN: Do you want to send us copies, autographed?

DR. MAYO: I'll be happy to after this proceeding is over. Turning to this proceeding, I was engaged by Norfolk Southern in February of 2021, to provide an independent assessment and evaluation of the various proposals that have been made to restructure this industry.

And in the current matter in Canadian -- the merger proposal between Canadian Pacific and KCS. I have filed three verified statements for the Board. In the first statement I undertook an independent review of the proposed CP/KCS merger, and I found that absent the imposition of regulatory conditions, the merger of CP and KCS would increase both incentives and the ability of the merged railroad to harm competition.

Given the threat to competition that is posed by the proposed CP/KCS merger two categories of regulatory conditions appear appropriate. First, conditions that provide vigorous protections of existing gateway traffic to ensure that price and

quality, terms and conditions for traffic exchanged at the gateways are not adversely affected by the merger.

And secondly, conditions that ensure that the preservation of competition exists as the merger provokes asset reallocation throughout the industry. Mr. Elkins and Mr. McClellan are versed in how those conditions apply to Norfolk Southern, and you've begun that discussion already.

In my second and third verified statements I addressed a different matter that has risen in these proceedings, specifically I began aware that CSXT has advanced a claim through its economists that the Meridian Speedway joint venture known as the MSLLC, and the agreements associated with it, represent an anti-competitive conspiracy.

An anti-competitive conspiracy that sought to limit price competition. For reasons that I described in my verified statements, there is absolutely no merit whatsoever to the claim that the Meridian Speedway joint venture acts to harm competition. In fact, quite the opposite is true.

The Meridian Speedway joint venture removed competitive restraints that existed in the rail industry in the early 2000's. Since it's consummation virtually every single competitive metric related to the Meridian Speedway has improved.

Consequently, there is simply no economic basis upon which to compel through regulation an unwinding of this joint venture. Now what I'd like to do in the time that I have before you this afternoon is to explain how I got to that conclusion, and perhaps give you some comfort that the analysis is sound.

To begin let me say that when I first became aware of this joint venture I observed it as simply a collaborative venture between two firms. Fortunately, the field of economics is rich with a literature on collaboration of firms and the lessons of that research are documented in my second verified statement.

The bottom line takeaway from that literature is that firm collaborations are both common and most typically, most typically

pro-competitive and efficiency enhancing. This is especially true in cases as is the case with a joint venture between Norfolk Southern and KCS. The firms offer complimentary, rather than substitute products.

Even in cases where unlike here, firms are competitors, the anti-trust agencies, the Department of Justice Anti-Trust Division and the Federal Trade Commission, through their collaboration guidelines, indicate that in situations of joint ventures that act to expand access to markets, to fund innovative efforts, and to lower costs are "not only benign, but pro-competitive."

Joint ventures such as the one fashioned by Norfolk Southern and Kansas City Southern are a common collaborative tool to advance these pro-competitive aims. In that context I should say that it is not uncommon, nor a prima facie threat to competition, that joint venture agreements will often contain language that restricts the behavior of one or more parties to the contract.

For example, joint venture agreements that involve large, specific assets, investments, often

contain exclusivity language that prevents free riding on those investments. In the case at hand the MSLLC is exactly the sort of joint venture with a 300 million dollar investment made to upgrade the quality of the Meridian Speedway, and which to prevent free riding contains language that provides that a portion, a portion of that traffic that traverses the Meridian Speedway is to be exclusive to NS.

Now with that general understanding at hand, I did undertake a detailed examination of the economics of the Meridian Speedway joint venture to assess its affect on competition. To do so I followed a roadmap, the roadmap offered by the anti-trust agencies in their collaboration guidelines.

They indicate that there are two steps that they follow, two paths. First, to analyze the business purpose of the joint venture, or of the collaboration. What's the motivation? What was the rationale for this in the first instance?

Scondly, to assess the effects of the agreement on key competitive metrics. Two steps.

What's the rationale? What was the motivation? Second step, what are the key economic metrics that followed in the wake of the collaboration. As I've detailed in my second verified statement, I found that the business justification for the MSLLC was pro-competitive.

This conclusion follows straight forwardly from an examination of the contemporaneous documents from 2005 and 2006 that discuss the rationale for the formation of the MSLLC. They show that the up side potential for demand growth for traffic over the Meridian Speedway at the time was really high, but that the poor physical infrastructure of the speedway was a constraining factor for that growth.

KCS was simply not in a financial position to provide the funding necessary for the capital improvements to enable and accommodate that growth. The joint venture then was a classic gains from trade that economists speak about, in which the track would be upgraded through substantial infusion of financial capital by Norfolk Southern, and in return it would secure a 30 percent equity share in

the Meridian Speedway joint venture.

The multi-million dollar investment in turn would permit increased output, and improved quality. These are exactly -- these are exactly the economic characteristics that economists speak about and point to when they describe an action as pro-competitive, increased output and improved quality.

The second step necessary to assess the competitive consequences of collaboration is to examine the impact of the collaboration here at the Meridian Speedway joint venture on standard economic metrics such as output, price, quality and investment. My second and third verified statements provide empirical evidence on all of these metrics.

What I observed is that in the wake of the formation of the Meridian Speedway joint venture virtually every single metric improved substantially. Output expanded dramatically. I think you just heard Mr. McClellan say that output growth over the Meridian Speedway was 340 percent over the last 17 years.

Prices have fallen, quality has improved markedly, and both direct and indirect investment occurred that have improved the ability of rail service, this rail service, to compete more generally in the market for transportation services. Along the way the Meridian Speedway joint venture provoked, as you just heard, increased rivalry between Norfolk Southern and CSXT. This is the sort of thing that gets business school professors very excited about competition.

It is exactly this sort of increased rivalry that provides the foundation of effective competition which benefits consumers. Now, despite this very clear, I think, and unambiguous evidence of the pro-competitive impact of the Meridian Speedway, CSXT's economists have none the less argued that the MSLLC joint venture was anti-competitive and should be unwound.

I have considered those arguments carefully, and I will tell you that I do not find them credible at either a theoretical, or at an empirical level. At a theoretical level, CSXT's

economists have offered two alternative theories of harm to competition. First, they argue that the joint venture was primarily an afront to horizontal competition, by having two competing firms in the same market allocate themselves certain customers and types of services.

In making this argument they acknowledge though that the potential for -- that there are potential efficiencies in the case of vertical joint ventures, or vertical agreements, but argue very clearly that the joint venture agreement is horizontal in nature.

The problem with this theory is that at the time of the formation of the MSLLC the joint venture partners did not compete in the provision of transcontinental intermodal traffic. Prior to the JV, KCS simply provided complimentary haulage services for NS under a series of short run contracts. The joint venture allowed the firms to solidify that relationship, but it did not remove any horizontal competitors as the theory of horizontal harm would require.

So in fact there was no harm to horizontal competition. Perhaps, perhaps in recognition that the horizontal theory of harm is particularly ill suited to the facts CSXT's economists more recently have pivoted to emphasize a vertical theory of harm.

Under this theory of harm NS, either has used the MSLLC to foreclose competition, or it has used the MSLLC to raise its rivals' costs, that is CSXT's costs. In theory, either could harm competition. And again, however, the theory is it turns out utterly inconsistent with the facts.

As shown in figures 1 and 2 of my third verified statement, I described that CSXT, sorry there's lots of letters in this rail industry. CSXT has a completely independent viable routing that allows it to participate as a carrier for transcontinental intermodal shipments from the west coast to the southeast, and vice-versa.

Given this completely independent routing from NS, there is robust competition for west coast to southeast transcontinental intermodal traffic. There is literally no way for NS to foreclose CSX,

and to foreclose that competition. Nothing about the MSLLC prevents CSX from competing robustly for that traffic.

CSXT also claims that because the Meridian Speedway provides an attractive low-cost routing for transcontinental traffic, the MSLLC joint venture has raised CSXT's costs, and therefore reduced competition. This I must tell you is an ironic twist in an otherwise legitimate economic theory of raising your rival's cost to harm competition.

CSXT did not use or rely upon the Meridian Speedway to provide transcontinental intermodal traffic at the time of the formation of the joint venture. As such, nothing about the formation of the joint venture altered CSXT's cost to providing the competing service. On the other hand, the formation of the MSLLC did lower the joint venture partners' own costs of providing service.

But lowering your own cost in contrast to raising the cost of rivals is distinctly pro-competitive. Let me say that again. Lowering your own costs is pro-competitive, distinct from

what's being alleged, which is raising your rival's costs. Beyond the theoretical inconsistencies in CSXT's argument, CSXT's economists also offer a variety of empirical analyses that they believe support their contention that competition has been harmed by the joint venture.

I've considered each of these carefully, and I will tell you that neither individually, nor jointly support the contention that the joint venture has harmed competition. While an exhaustive recounting would take far too long here today, let me briefly highlight three propositions advanced by CSXT's economists to give you a sense of what they're asking you to believe.

First, the CSXT economists claim that high market shares for NS traffic indicate a lack of competition. But in my review of CSXT's market share analysis, which is documented in my second and third verified statement, it reveals that the market share analysis suffers from at least five rather fundamental and fatal flaws.

I'll just simply recount these here in a

list form, and commend the article, or my verified statement to you for the details. Number one, the shares calculated are not shares of the economically relevant markets. Number two, the competitive presence of a major intermodal carrier is arbitrarily excluded from their analysis.

Number three, the competitive alternative of trucking -- remember this is for intermodal traffic, is omitted. Number four, high market shares can result from, and are quite logically the outcome of pro-competitive efforts of lowering price and raising quality. This possibility is never considered by CSXT.

And finally, fifth the market shares that CSXT would have you look at are cherry picked routes in which they believe NS has a high market share, while it curiously omits market share routes in which CSXT has a high market share. In sum, the consequence of all these errors I believe are that the market share presentation presented by CSXT is not credible.

Secondly CSXT's economists claim to have

empirically identified anticompetitive output reductions cause by the MSLLC, but in my review, which is detailed in my third verified statement, it indicates that both examined at a very simple and intuitive level, and at a more sophisticated econometric level, that any conclusion that the MSLLC has led to output reductions is flawed.

As a simple matter it's shown on my third verified statement, the output growth has been very significant. Again, I'll point to Mr. McClellan's growth rate of 340 percent, so there's been terrific growth over the speedway over time. This growth, I think is powerful evidence of a lack of anticompetitive output reduction.

In addition, CSXT has argued that through its econometric analysis that perhaps, perhaps we should look at the counter factual world, well maybe, maybe, output would have been even higher had it not been for the presence of the joint venture. I examined this proposition econometrically and find it to be lacking.

Third, CSXT's economists claim that price

premiums for NS traffic that moves over the Meridian Speedway relative to the NS traffic that does not move over the speedway, is an indication of competitive harm. But to conclude that the presence of anti-competitive harm exists from the mere fact that a firm charges a high price for some of its products rather than for others, is completely without economic foundation.

For instance, UPS charges more for its overnight service, delivery service, than it does for the three day ground service. That certainly doesn't mean anything, or imply anything about the super competitive pricing, or market power that UPS may enjoy.

Let me conclude by simply saying this. My analysis indicates that the Meridian Speedway joint venture was fashioned as a pro-competitive collaboration, and the effects have indeed been demonstrably pro-competitive. Nothing I've seen from CSXT's economists provides convincing evidence that leads me to question this conclusion.

Consequently, I conclude that there is

simply no sound economic rationale for using the heavy handed regulation in this instance to unwind a collaborative agreement that has been so demonstrably pro-competitive. Thank you for your patience in listening.

CHAIRMAN OBERMAN: Okay. Are there any questions of Dr. Mayo? Go ahead Patrick.

BOARD MEMBER FUCHS: Thank you for being here Dr. Mayo. One question for you. You addressed one one theory and vertical foreclosure in your verified statement, and you've also written about the economic foundations of rate regulation. I'm wondering if you could provide a view on the proper rate mechanism?

DR. MAYO: On?

BOARD MEMBER FUCHS: Proportional mechanism setting bottleneck rates based on mileage.

DR. MAYO: Okay. So I haven't looked at any specific proposals of setting rates based on mileage in this proceeding. I heard some of the discussion yesterday, but I really am not in a position to comment on that. I did hear the

discussion of the one lump theory yesterday, and I have some thoughts on that, but I don't want to go off script here if that's not what you're looking for.

BOARD MEMBER FUCHS: Appreciate it. Nope. Thank you.

CHAIRMAN OBERMAN: Any other questions? Carrie does that conclude your presentation?

MS. MAHAN: It does Your Honor. It does Chairman.

CHAIRMAN OBERMAN: Hey I'm Honorable.

MS. MAHAN: You're very, very Honorable.

CHAIRMAN OBERMAN: That's only an incremental increase, it's what you have to deal with. I'm wondering if we ought to take a short break for everybody, perhaps the court reporter's benefit before we begin.

BOARD MEMBER FUCHS: We're fine to take a five minute break yeah.

CHAIRMAN OBERMAN: All right. Let's just try to keep it at five minutes. Okay thank you.

(Break.)

CHAIRMAN OBERMAN: We're back on the record, and we are going to hear from my friends at BNSF. And I think on a personal note I would just like to note Roger's appearance here. Roger I don't know. If this is your swan song before the STB, maybe not because the year's not out yet, and you're still around.

But I do think it's the first time in public you've been here, and we've been here since you made your announcement, and I really do think we should all acknowledge your great contribution to the rail industry in many different roles over a very long period of time, and it's been a distinguished record of service, and I think we all appreciate it and respect it.

MR. NOBER: Thank you very much. You should probably wait until after I speak, to say such kind things, but thank you so much for that.

CHAIRMAN OBERMAN: Roger, I already know what you were going to say, so I thought -- with that are you leading, who's leading, Peter are you leading the presentation? Okay Peter you're on.

MR. DENTON: Okay. Good afternoon Mr. Chairman, Board Members. My name is Peter Denton. I'm outside Counsel for BNSF Railway Company. I'm joined today by someone who apparently needs no introduction. Roger Nober, Executive Vice President, Law and Corporate Affairs, and Chief Legal Officer. Mr. Nober will explain why two characteristics of this transaction require the narrowly tailored conditions we're requesting here.

Next, to his right, John Gabriele, Vice President, Service Design and Performance. Mr. Gabriele will explain our concerns about service and the critical Houston terminal, and why applicants must be responsible for the cost of their merger.

To Mr. Gabriele's right is Paul Hirsch, Assistant Vice President of the Mexico business unit. Mr. Hirsch will discuss why access to the markets served by the Laredo gateway are so important, and why BNSF struggles to compete over Laredo today.

Next is Dr. David Reishus, outside Economic Consultant for BNSF. Dr. Reishus will explain many of these issues from an economic

perspective, and address criticism of our proposals by applicants. To David's right is Courtney Estes, Assistant Vice President and Associate General Counsel for BNSF, and Ms. Estes and I will be available to answer questions regarding our joint facilities arrangements with UP and KCS and any other legal issues.

So without further ado I'll turn it over to Mr. Nober. And I apologize, we have a slide deck. I'm not sure if we have that loaded up here today.

CHAIRMAN OBERMAN: It may be that we have to apologize the way things have been going, but hopefully it's here. There it is okay, we don't have to apologize so far.

MR. NOBER: Well good afternoon Chairman Oberman, and Members of the Board, and again I just want to -- I probably don't need to introduce myself again, but do want to thank you for that very humbling comment, your comments from earlier, and thank you very much for that.

Now on behalf of BNSF, I think I can speak for all of us in that we appreciate the opportunity

to address and raise a couple of our specific concerns with the pending CP/KCS transaction. And what I would say is in this transaction when you look beyond the proponent's general positioning, and what this merger actually entails, BNSF believes that combining CP and KCS raises two significant, competitive and operational concerns regarding cross border traffic to Mexico.

Yet they are asking this Board to let them move forward without addressing these valid concerns, and we'd like you to consider our suggestions. Now as a former Chairman I appreciate the difficult past this agency faces. How to carefully assess whether an unconditioned merger, or any merger is in the public interest, or whether you must impose any of the conditions that have been requested by BNSF and many of the other parties that have testified before you, and whether that would be necessary to meet the public interest standard.

And certainly, I could say with respect to the conditions BNSF requests, we strongly believe that you should. So let me start with some

background. At the outset, and I think this is a point raised yesterday, I want to emphasize that BNSF believes that end to end mergers, such as this, are generally pro-competitive, and benefit the rail industry and the public.

And but this merger creates two unique concerns. The first is that a combined CP/KCS will have the ability and the incentive to dominate the critical Laredo gateway by manipulating rates on the Mexican side of the border, and as we know you've read in our filings, we believe that a mere commitment to maintain an open gateway on commercially reasonable terms is not sufficient to maintaining the long-term competitiveness of the gateway and traffic to Mexico.

And that secondly, the combined CP/KCS will access the critical markets, Mexico markets, via trackage rights over UP and BNSF lines through Houston and the Gulf Coast, and I know you've heard about that earlier today as well. They forecast significant increases in traffic in Houston, yet are not proposing to fund the infrastructure to address

that traffic.

And my colleague, Mr. Gabriel, will speak further about that, and my colleague Mr. Hirsch and our expert Dr. Reishus will help me a little bit on the gateway and the foreclosure. So, I'll first turn to the issues at Laredo. Now as you know this merger has the potential to reshape how freight moves across North America.

And most importantly, the real issues in this transaction arise from accessing and serving the locations in Mexico. Now we believe it's clear that without the conditions requested by BNSF, and suggested by others, the combined railroad will be able to use its newfound market power to force traffic onto their new network.

So what is the problem, and let me see if I can walk through it. Let's start with the situation today. KCS, UP and BNSF compete for traffic over the Laredo gateway, however, as my colleague Paul Hirsch will explain, south of the border only KCS serves the key Mexican markets that could only be reached via Laredo gateway.

And gateways to Mexico are unique. The map that's up there if you can see it, shows the route that each carrier takes to Laredo. The KCS route must go through downtown Houston. UP has its own route that allows it to access Laredo without going anywhere near Houston.

BNSF similarly operates to the west of Houston, but we cannot really reach Laredo on our own, and we must interchange traffic with the KCS at Robstown to be further moved to the Laredo border interchange. Now the importance of Laredo is not new. In two key railroad mergers over the last quarter century this Board is focused on how to preserve competition at the Laredo gateway.

So first, in the merger of UP and SP in 1996, this agency ordered BNSF to serve as a competitive replacement for SP and the Mexican markets that were accessed via Laredo. At the time of the UPSP merger, the Board thought correctly at the time, that access for BNSF to Robstown the interchange would be sufficient to get to Laredo.

Because at the time Tex-Mex and the

Mexican Railroad were both independent. Tex-Mex is a short line, the Mexican Railroad was the concession TFM, and they had no reason to disfavor traffic brought to them by the BNSF. Now second, in 2004 and 2005, KCS acquired first the Tex-Mex, and then later an exclusive concession to operate lines in Mexico that are accessed via Laredo, giving it economic and operational control of that important gateway.

This now allows KCS to offer single line service between its U.S. network via Mexico, Robstown and Laredo. Now as you probably know I was the Chairman when this Board assessed and approved KCS's acquisition of the Tex-Mex. And in that proceeding the parties and KCS acknowledged the problem that we raised today, which is the foreclosure of competition at the Laredo gateway, and recognize that it was a potential issue the Board must protect against.

KCS proposed to generally keep the gateway open on a commercially reasonable basis, the same as they are proposing now. Now ironically at the time, CP recognized the general commitment would not be enough, and they stated that the importance of the

future competitive viability of interline routes connecting Mexico and the rest of the North American continent via Laredo is too important to leave to chance.

But CP has now embraced the exact same approach that KCS addressed back then. And after probing these issues in the Tex-Mex transaction, the STB thought that the open gateway commitments made by KCS at the Laredo border crossing would be sufficient to protect against cross border harms.

Now I can tell you that in hindsight that I've learned both from my official capacity, and now at BNSF, that that guarantee proved to be wrong. We now know that CP and the other railroads who raised concerns about Laredo gateway and the KCS Tex-Mex proceeding were right.

Now as this slide shows, shortly after KCS integrated the Tex-Mex line, and the Mexican lines into their network, KCS doubled their rate on the Robstown Laredo line, and BNSF volume dropped precipitously as you can see. Now you might ask, and I'm sure you will, why didn't we complain to the

Board then or after the traffic jobs?

There's no real easy answer for that, and the reasons are multiple. The first, and a very important for the Laredo gateway is that BNSF does not have visibility into the Mexican portion of the rate. And as you can see the traffic didn't leave all at once. It left incrementally over several years.

At the same time BNSF desired to grow in Mexico, and we had to weigh the consequence of both trying to develop new markets through Eagle Pass and El Paso with the consequence of bringing a complaint before the STB when we wanted to do more business with the KCS.

And finally, and as you've seen in some of your other cases, BNSF has found that it is difficult post-hoc, to demonstrate that ongoing incremental commercial actions actually violate merger conditions in a way that is actionable, and I won't go into that, but you're all well familiar with what some of those issues are.

Now Mr. Hirsch will explain that BNSF

currently struggles to compete at the Laredo border crossing due to KCS's practices, and that in the future a combined KCS/CP further freezing out competitors at the border crossing could result in higher costs and worse service to shippers in the long run.

It could also drive shippers to move their freight from rail to trucks, or not to put it on rail at all. So, what happened and what did the STB miss in 2004? We have an example with some demonstratives that I'm going to hope to get right to demonstrate the problem and the proposed solution.

We first need to understand the mechanics of how CP/KCS could restrain competition in a stealth way, and of course, a combined CP/KCS will be able to take advantage of single line efficiencies and compete strongly for traffic through Laredo as it should.

But the combined railroad will have a much broader reach of destinations that it can reach through single line service, again as it should. But KCS and CP will also have the ability and the

incentive to manipulate the rate allocations between Mexico and the U.S. segments of the move, to effectively constrain or eliminate competition from BNSF and other railroads.

And neither we, nor shippers, would have visibility to prevent this, and the shippers and the markets will suffer long-term consequences. . Now we have a hypothetical example here that shows an international movement as things stand today, with two independent U.S. carriers, we call them A and B, that can interchange with an independent Mexican carrier at Laredo.

Now assume that the rate for this full origin to destination movement from Mexico into the U.S. is $1,000.00.

CHAIRMAN OBERMAN: Roger, I'm sorry to interrupt, but aren't there three carriers?

MR. NOBER: There are. This is just we're trying to just simplify it.

CHAIRMAN OBERMAN: Oh, okay.

MR. NOBER: It's an example, it's.

CHAIRMAN OBERMAN: So it's just a

hypothetical?

MR. NOBER: This is just a hypothetical. I'm sorry if I skipped over that, yes. Yes because we try to -- we poured over this to make this as simple and understandable as possible, and then Dr. Reishus will get into the complex realities, but just a level set.

CHAIRMAN OBERMAN: Simple is good for me.

MR. NOBER: It's good for all of us. So assume that the rate from origin to destination is $1,000.00. This consists of a rate on the Mexican railroad, which here is going to be $400.00. And the rate each U.S. railroad charges for the U.S. portion of the move, and this example again simplified, is $600.00.

And applicants have told us that Mexican law requires the Mexican railroad to charge the same amount for movements in Mexico to any interchanging U.S. railroad, so that has to be the same. Now if railroad A acquires the Mexican carrier, so now we have a now merged carrier of one, the now merged international carrier will establish the price that

the competing U.S. carrier must absorb for the Mexico part of the movement.

The merged carrier can now raise rates on the Mexico portion of the move, but maintain the same through rate to shippers for movements in the merged carrier, and we'll see if we can take this slowly, and make it understandable.

Now in these figures the merged carrier raises the internal allocation, so it divides the $1,000.00 rate, and put more on Mexico and less on the U.S. And it does it from $400.00 to $700.00, and lowers the allocation of the $1,000.00 rate in the U.S. from $600.00 to $300.00.

Now in each case if the shipper is staying on the merged railroad, it pays $1,000.00 for the through move on the merged carrier. And the merged carrier should be indifferent as to whether the Mexico portion is $700.00 or $400.00 or any other number because it's a rate that's an internal allocation.

The merged carrier would need to offer the same rate that it allocates in Mexico to the

competing U.S. carrier, as part of a Rule 11 interline movement, but the U.S. carrier doesn't have the same ability to artificially reduce its $600.00 rate for the U.S. portion of the move, so the shipper would pay to use the U.S. carrier for an interline movement where the merged carrier would go from $1,000.00 to $1,300.00.

So the merged carrier has effectively left the existing U.S. carrier non-competitive in the market, and that's the concern. So how does this turn into gateway closure? After it has eliminated competition from the -- effective competition from the U.S. carrier, the merged carrier is free to raise its rates through the movements from $1,000.00. In our example, it raises it to $1,100.00.

In fact the merged carrier could keep raising the rate the shipper would need to pay as long as it's less than what the interline rate would be, that a shipper could assemble from the U.S. carrier, and the U.S. portion and the merged carrier for the Mexican portion.

Now the potential for this type of

manipulation, I have to be honest with you, is what the STB missed in the Tex-Mex transaction in 2004. Now I'd also like to address a couple of issues that were raised yesterday. For traffic to or from Mexico, a shipper has no ability to challenge a rate before the STB as unreasonable.

In fact, in the 2004 hearings on the KCS Tex-Mex hearing, when I was Chairman I explored this very question first with KCS CEO Mike Haverty and then with representatives of UP, BNSF and CN, how to address potential rate challenges in Mexico. And I will tell you that at the time I was very concerned that it would amount to -- that a Mexican railroad was independent, and the STB while it would have jurisdiction over a through rate, not necessarily over Rule 11 rate, and we wouldn't be able to impose rate regulation in Mexico.

That was the concern at the time. And I think that there are some changed circumstances here, but that was one of the factors that if you go back when I re-read the hearing transcript I remember vividly we explored in detail. Now as Mr. Meyer very

carefully explained yesterday, a shipper carrier's recourse would be to bring a case before the Board alleging that the pattern of rates were charged did not constitute a commercially reasonable gateway, and that the carrier had generally violated a merger condition.

Now that's not a practical remedy however, because it would be looking in the future retroactively at what had happened, and essentially put the burden on the complaining shipper or the carrier, to show that the actions weren't commercially reasonable. You have to prove the negative because that would be your burden.

You'd have to show that what the existing carriers do is not commercially reasonable, and that's just not a practical alternative for a competitor, or for a shipper. Now a competing carrier like BNSF, has no visibility into the rate factor quoted in Mexico, so as a practical matter all we would know is if we won the business or not, not why we did it.

Now Dr. Reishus will explain the mechanics

of how this would work in further detail and far more eloquently. But to address in advance two of your apparent concerns from yesterday, I will just say summarily that we believe that our proposed solution prop rate is neither rigid nor overly regulatory. So what's our solution?

Now BNSF, and we know you've read our materials, and are familiar with it, but let me just take a brief minute to explain it anyway. Now BNSF and UP were faced with a very similar situation in connection with the UP/SP merger. How to ensure that the Portland, Oregon gateway remained open to UP after BNSF had acquired a line from UP.

In other words, BNSF was, for different circumstances, but in the shoes of CP/KCS and today's transaction. Now unlike the applicants here, BNSF acknowledged UP's concerns. The parties decided to adopt a firm and transparent measure was necessary, and came up with what we call a proportional or prop rate mechanism to ensure that UP could continue to compete over the Portland gateway.

The parties negotiated this, and presented

the solution to the Board, which imposed this mechanism now called the I-5 prop rate as a condition to its approval of the UP/SP merger. Now we've seen for the last quarter century this mechanism is easy to implement, works well to allow both BNSF and UP to compete for traffic where the rail line ownership and geography might have otherwise stifled competition, and shippers moved freight every day using this.

Now BNSF thinks a similar proposal would work well here to limit CP/KCS's ability to manipulate the rates in order to freeze out other U.S. competitors. In fact, BNSF, UP and the coalition of shipper organizations have each independently identified similar market based mechanisms, and while you may furrow your eyebrows at referring to this as a market based mechanism, it's based on actual rates by different commodities going to different destinations.

So we believe it is market based. We think, and I would like to say that ours is limited simply to Laredo for some of the reasons I said earlier, that it's unique because there's no

visibility and because there's no real alternative, and because of the Mexican regulatory regime.

So we think our approach is best, of course. It's narrowly tailored to the Laredo gateway, and will function seamlessly and automatically in the background, and prevent some of the concerns that we've seen in other mergers.

Now Dr. Reishus will talk about the solution in further detail, but I'll provide you with some broad strokes. Under our proposal when CP/KCS traffic moves across Laredo, the market based rate for that entire movement will be prorated on a per mile basis. Now for example, as this slide shows, if full CP/KCS single line move was $1,000.00 and the rate was $1,000.00, the per mile factor would be $1.00 per mile.

That $1.00 per mile factor would be applied to the actual mileage of the portion between Laredo and Robstown, or the Mexican origin and destination to come up with a prop rate for that segment. BNSF and the other railroads could use that foundation as a market based rate for the Mexico

segment to quote through rates to their customers.

Now hopefully it doesn't sound complicated and rigid, but it actually is very straightforward, and requires no regulatory oversight. UP uses it every day to quote rates from customers without having to contact BNSF first.

So with that I won't say anymore, and turn it over to my colleagues, and start with John Gabriel who will talk now about Houston, and then we'll get to Mr. Hirsch and to Dr. Reishus.

CHAIRMAN OBERMAN: Roger, let me ask you a couple of questions.

MR. NOBER: Sure.

CHAIRMAN OBERMAN: Where on the map is Eagle Pass?

MR. NOBER: Eagle Pass is in west Texas. So it's north of the way the border goes if we can get to it, it's north of Laredo. So I guess we can't really see it. It's in front of that, so Laredo is --

CHAIRMAN OBERMAN: I can see Laredo, yeah.

MR. NOBER: Along the borders, and

northwest along the Rio Grande which is the border there.

CHAIRMAN OBERMAN: Well BN now gets into Mexico through Eagle Pass right.

MR. NOBER: Correct. So.

CHAIRMAN OBERMAN: Are we going to have a bar graph showing that as the traffic went down in Laredo, it went up at Eagle Pass?

MR. NOBER: Well Paul is going to talk about that.

CHAIRMAN OBERMAN: He's going to talk about that?

MR. NOBER: Yes he is. Absolutely.

CHAIRMAN OBERMAN: Okay.

MR. NOBER: It was not the same traffic moving gateways, it was new markets that we developed to make up for what we were losing, and Paul will talk in some detail about that.

CHAIRMAN OBERMAN: Well that's what I was trying to get at.

MR. NOBER: Yeah.

CHAIRMAN OBERMAN: Your total traffic, as

I understand it hasn't really decreased. It's just switched. There may be different traffic, but the total amount you're moving is.

MR. HIRSCH: So respectfully that would imply that there's a one Mexican market, and what we're going to explain here today is that Mexico is comprised of many markets accessed by different gateways.

CHAIRMAN OBERMAN: That may be, but you didn't start to use Eagle Pass until you were complaining about Laredo, right?

MR. NOBER: I think I would say that conflates. It's not as if we had traffic that was going to go over Laredo and go to the valley of Mexico, that we used to move over Laredo and now we're moving to Eagle Pass. It's totally different kinds of traffic going to totally different destinations.

CHAIRMAN OBERMAN: Yes but why didn't you develop Eagle Pass even when you had access to Laredo?

MR. NOBER: Oh yeah, we were moving --

CHAIRMAN OBERMAN: Oh, I thought it had increased when Laredo.

MR. HIRSH: It increased yes.

CHAIRMAN OBERMAN: All right. Well you know maybe you can deal with that in a little more detail. The other question I have Roger, the phenomenon that you've described at the end where the Mexican portion is raised to $700.00, and so now it's $1,300.00 versus $1,000.00. Has that phenomenon actually happened since this?

MR. NOBER: Well we don't have, and I don't have visibility into that because that would be in a highly confidential way bill sense, so I think --

MR. GABRIEL: What we do now is that the rate of the Tex-Mex after the merger was doubled.

CHAIRMAN OBERMAN: Yes. But the question is are your competitors --

MR. HIRSCH: No I'm sorry, it's the rate that KCSM is quoting to the shippers.

CHAIRMAN OBERMAN: The shippers aren't coming to you and saying I'm getting a lower rate

from KCS, give me a lower rate?

MR. HIRSCH: We don't know, yeah they're always going to come and say we want a lower rate.

CHAIRMAN OBERMAN: That's some evidence all right. Karen, go ahead.

BOARD MEMBER HEDLUND: Roger, you said that back in whenever it was that the Board determined it couldn't regulate rates in Mexico. Is the prop rate schedule that you are recommending, does that become a back door way of regulating rates in Mexico, and would the Mexican government complain about it, or would we have a problem under our international agreements now with respect to this with?

MR. NOBER: I don't believe so. So the issue in 2004 was that the TFM was a Mexico company that didn't come into the U.S. So all of its rates to the U.S. were interchange rates. So you could -- the STB could regulate the portion from Laredo on, but it was a question as to what would happen in Mexico.

Now in U.S. Canada mergers, of which there

have been several, the Board does have, and I think it's without question, the right to regulate through rates. In fact, we had a shipper litigated a case called Canexus before this Board about a decade ago, involving through rates from Vancouver, Canada. And so, what the Board would have is the jurisdiction to regulate the through rate on a U.S. owned carrier, which this would now be, an origin to destination rate that would be going, and the prop rate would be what they have to offer to the U.S. on the interchange in the U.S.

BOARD MEMBER HEDLUND: Not what they have to offer in Mexico?

MR. HIRSCH: Yeah it would be to offer for the Mexican portion of the movement right, so they would have to offer the $400.00 in this example rate for the Mexican portion of the movement on an interline movement between BNSF, UP, whoever else, and KCSM, and then BNSF, UP and other competitors would compete for the U.S. portion of the movement with the combined CP/KC.

And as Dr. Reishus is going to talk about

in further detail, you know there will be real competition there, and CP/KC very well may win. But we need to be able to have that prop rate in order for that competition to occur, and again Dr. Reishus will.

BOARD MEMBER HEDLUND: i will have a question, and I hope you --

MR. NOBER: I see what your question is.

BOARD MEMBER HEDLUND: I want to make sure that we don't trip over anything.

MR. NOBER: Because what you are not doing in this instance is regulating, or we would not be asking to regulate a rate solely within Mexico on a Mexican carrier. This would be on a North American carrier, so a U.S. regulated carrier by you.

BOARD MEMBER HEDLUND: Are we then regulating the allocation of a rate to the Mexican --

MR. NOBER: On a through rate, just what they have to offer as part of a through rate.

BOARD MEMBER HEDLUND: But does that mean, does that you know go through the accounting and the balance sheet and everything else that limits the

allocation of the rate to the Mexican carrier?

MR. NOBER: Member Hedlund, we have an extensive briefing on the jurisdictional issues here in this case, and applicants have not challenged the jurisdictional issues. We firmly believe that the Board has jurisdiction to address what we're asking for here, which is a mechanism to maintain an open gateway.

And the board across many different cases, and again we put this all in our briefing, has taken that on and looked at cross border moves, and made sure that in a merger like this the cross border moves preserve competition. That's really just what we're asking.

BOARD MEMBER HEDLUND: I mean what was said yesterday one of the things that I am concerned about is our not doing anything that causes a problem with either the Canadian government and its authorities, or the Mexican government and its authorities.

And we would perhaps have had more information on that had this been under the new rules

as opposed to the old rules, and so I'm concerned we're kind of flying blind here because we haven't talked to either of those authorities. And we'll have to do the best we can, but we'll take a look at your briefings on that.

I am very concerned about that. This is a very important critical international transaction, and we have to take into account you know the public interest in the United States, but as a federal entity we also have to be careful that we're not tripping over anything that will cause a problem with you know, our two closest neighbors.

MR. NOBER: And Member Hedlund, I appreciate your concern.

BOARD MEMBER HEDLUND: And you obviously have the same concern.

MR. NOBER: Back then, and there were a couple of critical differences though, which is that the Mexican Railway was a wholly, was a Mexican corporation that was owned and not owned by a U.S. entity. And so here now, it's going to be part of a through international movement. And we go to Canada

today, BNSF moves cases, and we've had rate and service cases originating out of say Vancouver, Canada that have been going into the U.S.

And so,, that was never a concern. I think it's fairly clear that for an -- you wouldn't have jurisdiction over a move solely in Canada, or solely in Mexico, but for the U.S., or for the Canadian or Mexican portion of a move to the U.S. what you could do is address the condition by which it enters into the U.S., which would be the part of the rate that would come in.

So I think that, and again as our briefing has shown, and I don't think that -- I don't believe that CP and KCS would contest, that for purely international movements, only for movements that are cross border you would have the jurisdiction to set conditions on that. Not certainly, for internal cabotage in Mexico, absolutely not, or Canada.

BOARD MEMBER HEDLUND: Thank you.

MR. NOBER: And I'll just direct you to Section 3 of our opening comments.

CHAIRMAN OBERMAN: Before we proceed I

just want to make a scheduling observation. We have two -- we have a number of witnesses we're still going to try to hear before we leave today, two of them have six o'clock deadlines, so if we're still going with this panel at around 5:30, I'm going to ask your deference to step aside for them.

I don't actually think you have to physically step aside, and we'll hear two witnesses who have six o'clock deadlines. But let's see where we are in a half an hour. Patrick, did you have a question?

BOARD MEMBER FUCHS: I'm sure we'll talk more about the prop rate mechanism, but this is probably more on the legal side of things. Why has BNSF apparently taken the position in multiple Board proceedings that mileage based divisions are not market based? I think there's at least three where BNSF made that argument explicitly, understanding the I-5 agreement, but why has BNSF repeatedly taken that position?

MR. NOBER: Well I'm not sure which one you're specifically referring to.

BOARD MEMBER FUCHS: McCarty, Excel, Major Issues.

MR. NOBER: McCarty Farms from the 1980's?

BOARD MEMBER FUCHS: Well it wasn't resolved in the 1980's, and I think in Major Issues in 2006 after Tex-Mex BNSF took this position.

MR. NOBER: Yeah. I'll just say Member Fuchs that I think we took a very close look at this transaction. We kind of assimilated all the experience that we've had with the I-5 prop rate agreement, and frankly we noted the similarities between the problem that was presented in the I-5 situation and the problem here.

And we noted that the solution, frankly, fits both of those, both of those situations. And you know I can't speak to what BNSF said 30-40 years ago in any particular proceeding, but.

BOARD MEMBER FUCHS: No. I'm actually talking about after Tex-Mex, BNSF.

MR. NOBER: Well BNSF also didn't suggest this during Tex-Mex to be clear. We are here now because we've identified the issue. We've spent the time analyzing this transaction, comparing it for

example to existing arrangements that we have like I-5, and now we're here asking you to consider this.

BOARD MEMBER FUCHS: It's been my experience in having discussions with BNSF and rate regulation, that BNSF brings a host of factors to inform how rates should be thought of, including density, including a number of other factors relevant to demand, to the actual cost structure of the local move, none of which are picked up by a mileage based threshold.

So to say that one portion of the move is just you know proportionate based on mileage, ignores all the other factors that BNSF has repeatedly cited over the years. And I'm just trying to make sense of that.

MR. NOBER: Yeah well I would say Commissioner, Member Fuchs, that there also is the issue in Mexico right, that there's no transparency into what happens there, so in many of those other things there's rate transparency, there's the fact that they're challengeable. There are regulatory options to address those, and I can't speak to every

one of those statements, every one of those was before I got to BNSF, and I'm the longest serving person on the BNSF executive, team, but even with that in 2006 I was not there.

But even with that there may have well been reasons why mileage base, or cost based for example on a switch, don't really work. But then there are other situations like you have in Mexico where you don't have visibility into what the rate is being charged. There's no ability for anyone to charge it, and to be able to challenge a rate. And while we don't love the idea of formulaic approaches to rates, that's true, there really isn't in our view, a better way to deal with it here.

Now you know, is a straight pro-rate the only way to do it? No. You could weight more towards the Mexico factor. A lot of different things that you could do. I would say in general you know we're usually the long mileage carrier, and so pro-rates usually are not for us.

And so we, we're usually on the wrong side of that generally speaking.

BOARD MEMBER FUCHS: And you heard from my comments on the first panel. It's not as though I'm not struggling with the issue of the transparency of rate in Mexico, or the possibility of vertical foreclosure. I think that's a key issue that the Board is trying to figure out in this hearing.

I'm only trying to disentangle the argument that a proportionate rate is a market based rate versus a proportionate rate is the best we can do given the information we have.

MR. NOBER: Well we would say it is market based rate because it's not based on -- it's based on the actual rates that the incumbent carrier is charging for the individual -- for individual moves.

So it's going to a certain destination for a certain commodity. It is those factors, if you will that populate the matrix. So it is based on what they're charging marketwise. Now it's allocated in a formulaic way, but it's derived not from URCS or anything else, not from cost, it's derived from the actual market rates being charged.

So maybe that's semantics, but that's why we think it is a market rate.

BOARD MEMBER FUCHS: Well if that were true then the revenue divisions observed in practice would track with the pro-rate mileage, but there is empirical evidence on record, and I don't want to then bleed into the economic case, but if it were true that a market base rate I would think that there would be a significantly better correlation between revenue divisions and pro-rate mileage formula, but there's not.

MR. NOBER: Yeah, respectfully Patrick, I think Dr. Reishus is going to cover that. Thank you.

And look, I mean because of the rules, I mean we're limited, I'm limited in what I can see and know, so there's going to be a --

BOARD MEMBER FUCHS: Fair enough. And if I've stepped on highly confidential I'll try and step back.

BOARD MEMBER HEDLUND: I have one other concern, and I have no idea what the answer is, but

does this have any tax implications as to what income is taxed in Mexico, and what is taxed in the United States?

MR. NOBER: That certainly hasn't been raised by the applicants to my knowledge. I don't think we've analyzed the tax issues here. I truly don't know. Okay. So with that we're going to turn it over to Jon Gabriel.

MR. GABRIEL: All right. Good afternoon Mr. Chairman, Commissioners of the Board. As Roger said, thank you for allowing us to talk with you today. My name is Jon Gabriel, I'm Vice President of Service Design and performance network strategy for BNSF.

As part of this role I'm responsible for overseeing capacity planning, and scheduling of service to meet our customers' expectations, and optimize the functional performance of BNSF's network. A key aspect of what I do is forward looking, anticipating the future shipper needs, changes in traffic flows, and to ensure that we have sufficient network capacity to grow with our

customers while delivering consistent service.

Canadian Pacific and KCS have asked you essentially to rubber stamp their merger application with no conditions. We share many of the same concerns raised by Council Member Gallegos and County Commissioner Ellis around bigger trains and increased train counts. We also have some of the same questions raised by the Board yesterday during CP's testimony surrounding the absence of a detailed study, and plan for infrastructure in advance of the anticipated merger volume coming on.

Just as importantly, applicants have failed to take responsibility to adequately study the impact of the step level increase in both train traffic counts, and train size through Houston. A comprehensive study is critical to help us assess the cost and the need for infrastructure improvement to handle these longer trains for this long haul traffic.

If the Board allows CP/KCS to increase traffic on these lines unconditioned, congestion in the Houston terminal, complex and metro area is

inevitable. This will subsequently lead to service deterioration for BNSF and its customers, leaving us and our customers footing the bill for this infrastructure improvement necessary to address merger traffic driven congestion.

The Board can prevent this by imposing the conditions requested by BNSF. You've heard a lot about Houston in this hearing. I'd like to start by providing some of our own context Houston is one of the most significant terminals in North America. It is a major railroad terminal serving a number of critical refineries, one of the largest port facilities in the country, and a hub for highway transportation.

The railroads within the Houston complex provide rail service to more than 900 local customers. To give the Board an idea of just how important Houston is, in 2019 1.25 million, or one out of every 30 carloads or intermodal containers shipped in the U.S. originated or terminated at Houston.

Again, these 900 local customers in the

Houston area make up one in 30 carloads and intermodal shipments in the U.S. This is who we're here to protect the interest of. As you can see from this map, the Houston terminal is a complicated web of local rail lines and yards.

We do believe that the current Houston complex network is sufficient for the current traffic levels for local flows, but the network does not have capacity to support the proposed step level increase and merger related traffic, long haul through traffic without additional capacity improvements.

As Mr. Nober explained earlier, KCS's path to Mexico through Laredo runs along the Gulf Coast right through the heart of the Houston complex. This route in Texas is over a combination of both KCS owned lines, and trackage rights owned by UP and BNSF. The map shows that unlike BNSF and UP who bypass downtown Houston with long haul traffic, KCS's long haul traffic must run directly through the Houston metro area.

Traffic moving on BNSF or UP through Laredo can avoid the Houston complex by operating on

lines bypassing to the west. To use an analogy, think of it like BNSF and UP have interstate highway bypasses that overhead traffic outside the beltway. CP/KCS's only route through is the busy local side streets of Houston, many of which operate in a one-way or directional fashion.

If the Board remembers the slide shown by CP yesterday with a chart on Houston trains and capacity, which Chairman Oberman astutely asked several questions about the details of what made up this chart, the lack of response given is exactly our concern. There were no details explained to that assertion that there's ample capacity in Houston.

What CP is trying to do is give the illusion that at first glance at a macro level, the various side streets of rail light traffic in Houston's rail complex, there's available capacity. Overall general capacity is irrelevant. They will exceed the capacity on the lines that they are using, and that will have a ripple effect through the complex of Houston.

The capacity simply isn't there to handle

this kind of step level increase in volume of longer trains. We heard from Mr. Creel yesterday that when railroads intersect at places like Chicago, we have to have a plan. But in the case of the Houston rail complex and these 900 local customers, rather than a detailed study, CP/KCS is now asking the Board simply rest assured and trust them.

The applicants project that the rail merger will result in 8 to 11 new CP/KCS trains running through the Texas Gulf Coast and Houston. That's three to 4,000 trains per year. This is a doubling of KCS's current volume on four of the five subdivisions in the Houston complex. This slide shows the annual additional trains that will be added to the already busy Houston complex as a result of this merger.

Take for example tower 26 in Houston, where BNSF and KCS cross each other at an at-grade intersection where they'll also be at a local at-grade road crossing, adding 8 CP/KCS trains per day throughout this intersection will almost certainly delay BNSF local trains, as well as

motorists, causing the cascading effect through Houston and the National Rail Network.

This is just one localized example of what will happen to the entire Houston terminal area.

CHAIRMAN OBERMAN: I -- to slow you down on this map.

MR. GABRIEL: Yes sir.

CHAIRMAN OBERMAN: I'm trying to follow where you're telling us these trains are going to intersect.

MR. GABRIEL: So it will come out of Robstown, they'll pop back out at Beaumont, but as you can see the number of web of rails that are there are really designed to serve local customers, and again I'll go back to the point that I made that BNSF and UP route their interstate traffic, or what I would call overhead traffic beyond Houston, on a bypass route west of the Houston complex.

CP will try to navigate through this web of localized rail where we have the 900 customers being served by our locals and road switchers.

CHAIRMAN OBERMAN: I mean you don' t have

a pointer but I'm trying to figure out which of these spiderwebs is going to take this traffic.

MR. GABRIEL: We can follow-up with the Board and draw kind of a highlighter heat map type, but essentially if you were to --

BOARD MEMBER PRIMUS: Can you describe which ones?

MR. GABRIEL: Yeah sure if we can go back yeah. So essentially if you were take the red map, or the red route there coming up into the middle of Houston, and then you can see it kind of opens up into what we call an east belt and the west belt.

So we essentially run this traffic. Remember when I said much of this traffic runs in a directional or one-way type street. That belt, or that circle in the middle runs in a directional fashion to serve the local customers and industries that are there, so we would split off part of the concentration of UP's through traffic across that west belt again in the face of the local industries and serving ours that are there.

Going eastward over the top end, and the

westward one over the bottom end, but it's really outside that belt where the concern is that this concentration would impact us.

CHAIRMAN OBERMAN: So is the KCS traffic coming in on the thing that's labeled East Dayton?

MR. GABRIEL: No sir.

CHAIRMAN OBERMAN: Which one of these?

MR. GABRIEL: It would be the far southwest portion of this map.

CHAIRMAN OBERMAN: Which of these lines is bringing -- that's all I'm trying to just understand the map.

MR. NOBER: Yeah it's not on the screen unfortunately. He can demonstrate it, but I don't know if that could be put on the record.

CHAIRMAN OBERMAN: Well, you know these lines are labeled east Dayton.

MR. GABRIEL: Yeah, so towards the one, that's correct. That's where they pop out and come through.

MR. NOBER: To the one that says East Dayton is the one it would come in on, yeah.

CHAIRMAN OBERMAN: The one that says East Dayton. You're going to come in that way, and then they go more horizontally towards the line that intersects and goes up to Cypress? Is that what you're saying?

MR. GABRIEL: Yes sir, there's a belt there that operates around, yeah you can kind of see the circle I guess so to say, not to call it a belt.

CHAIRMAN OBERMAN: And then it goes --

MR. NOBER: Mr. Chairman could I get up and point to you on the screen?

CHAIRMAN OBERMAN: That would be helpful if somebody would do that.

MR. GABRIEL: If you guys could get that.

CHAIRMAN OBERMAN: Well it would help me anyway. I can't speak for the other four.

MR. GABRIEL: (Off mic). We would operate them through this way and --

CHAIRMAN OBERMAN: Yeah, so if they're coming westbound they're going to go clockwise?

MR. GABRIEL: I think this complexity is exactly our concern Mr. Chairman.

CHAIRMAN OBERMAN: So what do you say is -- all right, and where is it that you said there were some at-grade intersections?

MR. GABRIEL: So Tower 26 would be down in this corner right in here. I don't have it on the map here locally, but it would be right in this intersection of this bottleneck here. And we've got a chart I think a couple that shows exactly where it is.

CHAIRMAN OBERMAN: Okay. And okay, I was just trying to understand.

MR. GABRIEL: Yeah sure.

CHAIRMAN OBERMAN: On the map what you were describing.

MR. GABRIEL: And unfortunately, that complex web that's there. It depends, the answer is sort of it depends, Mr. Commissioner and the Board, depending on where the customer traffic is, where we have industry spotting and pulling, and that's where we get concerned with 220 mile long haul you know through trains, trying to interweave between what's really a lot of local industry switching. That is the primary concern that we have, no you're fine.

CHAIRMAN OBERMAN: Go ahead.

BOARD MEMBER SCHULTZ: Wait, just a quick question. Have there been any infrastructure investments made in this area?

MR. GABRIEL: Yes. There has to support the localized you know traffic growth over the last ten years, correct.

BOARD MEMBER SCHULTZ: And who were those made by?

MR. GABRIEL: We fund a portion of that based on the trackage rights, and our usage of it. So it would be us and UP largely.

MR. NOBER: There's a formula, right for how that's done?

MR. GABRIEL: That's mileage, GTM usage base.

MR. NOBER: That comes from the UP/SP merger.

BOARD MEMBER SCHULTZ: And would those investments support the increased capacity?

MR. GABRIEL: No ma'am. Really the increased capacity and the investments that have been

made have been to support the local switching demand to take care of the localized customers. It is not to create you know, call it a thoroughfare, or a high speed freeway, through the City of Houston, that is not what we've designed it for, again us and UP have that would be our Galveston sub, which is not on the map there.

Yeah it is, so the blue line that hooks outside of Houston, that's the BNSF Galveston sub, that's where we would invest our money for overhead or long haul traffic. UP does a similar thing bypassing west of the City of Houston. That is exactly our concern Commissioner.

BOARD MEMBER SCHULTZ: Have you proposed a level of infrastructure that would actually support the increased capacity?

MR. GABRIEL: So there have been studies done in the past, but what I would I ground is we've never studied this kind of step level increase in thorough freight traffic. That is exactly what we're asking for in part today, is that the Board help us actually analyze in detail similar to what CP did in

the Chicago complex here in the Houston complex. There has been no such study though, nor have we been engaged, or formally sat down with CP to do so.

MR. DENTON: Member Schultz if I may, we believe that is the burden of applicants that has not been met here.

BOARD MEMBER PRIMUS: Just real quick, just to follow-up on what Michelle asked, so understanding that it's not the burden of the applicant, but we also understand that you know Houston's had this problem for a long time. You know, and because you and UP have like I see it here, a majority of the lines, has there ever been any consideration for that long haul?

I know you say out of Galveston, but we're looking at you know your investment in Mexico, where we're talking about opening up a gateway, so the gateway is available to everyone. So obviously, there's got to be some thought that that traffic is not going to stop at Houston, it's going to continue for and throughout your network.

MR. GABRIEL: And we would operate it

bypassing Houston across our Galveston sub, which is that blue line that goes west of the Houston complex, or green line, whatever color, sorry, color blind. Yes, green line excuse me, that goes west of the City of Houston. That is our concern. In terms of when you say the problems been there, the problems have been localized customers potentially, but we feel like there's adequate capacity to handle that customer demand there. This step level increase in overhead traffic that needs to penetrate the heart of Houston is what us, nor UP have ever had to do because again we can bypass west of the city.

BOARD MEMBER PRIMUS: So you don't anticipate --

BOARD MEMBER HEDLUND: Can you define the step level increase? What are we talking about? How many trains?

MR. GABRIEL: Yeah. Eight to 10 trains over a very concentrated route, so that would be somewhere in the magnitude of 25 to 30 percent increase on those line segments that they're traversing there. That is the step level increase

that we're referring to. Yes sir, three to 4,000 per year.

Yes, and certainly the length of the train matters that these are not localized, you know small local road switchers, they're overhead type trains.

BOARD MEMBER SCHULTZ: And all the increased trains would run on BN?

MR. GABRIEL: Shared lines, both shared I would say some KCS route, and then a portion of that would be shared with the BNSF and UP trackage right lines.

BOARD MEMBER HEDLUND: So they're currently running 24 overhead trains, and they were going to be adding 8 additional. Is that what you're saying?

MR. GABRIEL: I'm saying that the total trains by all carriers would increase by 25 to 30 percent. The KCS is doubling the number of trains that they operate over that concentrated route. That is the step level difference that we're talking about that us and our customers should not burden the infrastructure costs.

BOARD MEMBER HEDLUND: The increase in the total number, including your own trains is?

MR. GABRIEL: 25 to 30 percent.

BOARD MEMBER HEDLUND: 25 to 30 percent.

MR. NOBER: But ours are local and theirs are overhead, principally?

MR. GABRIEL: Correct. Meaning small industry jobs going from a yard close by to take care of a customer, and a train coming back. Unless you tell me I am.

CHAIRMAN OBERMAN: No, no, no, I was just wondering if you completed your presentation.

MR. GABRIEL: Absolutely. In connection with their application the applicants have claimed the studied effect of the additional merger traffic and infrastructure across their proposed network, CP/KCS had proposed 276 million dollars in capacity improvements on a number of line segments north of Texas.

But conveniently assert to new capacity was required to accommodate the three to 4,000 trains we've been talking about here that will

run directly through the Houston terminal. As you've heard the applicants claim no capacity improvements are required to accommodate all their rail merger traffic, south or west of Louisiana.

To be clear, the applicants have not today worked with BNSF to analyze whether capacity on this shared line in the Texas Gulf Coast is sufficient to accommodate their merger traffic. Contrast this with the Chicago area portion of yesterday's CP testimony, the applicant's testimony showed detailed assessments of impacts done with Metra and other key stakeholders in Chicago.

CP prepared substantial studies and traffic models, streamlines and all, to illustrate the impact of increased CP/KCS traffic. This is the level of analysis that we're asking for in the critical Houston complex, as well as requirements to fund anticipated infrastructure needs to handle this step level increase in merger traffic as well as post-merger oversight of service in Houston.

The Board is familiar with the gridlock that the Houston meltdown caused after the UP/SP

merger, so what does this all mean? BNSF has asked the Board to prevent these issues by restricting CP and KCS from increasing KCS traffic levels on shared lines in Texas, where such increases would compromise fluidity on those lines until necessary capital improvements are in place and fully funded by CP/KCS.

Next I would like to talk to you about who should pay for the improvements to accommodate the CP and KCS merger traffic. In determining where the capacity projects would be necessary to accommodate merger growth, applicants conveniently omitted the one area of the network, the shared lines in Texas, where they could claim that the competing railroads and their customers should foot the bill for the projects required by the merger.

A significant portion of these lines are owned by other railroads as we discussed, not the applicants. KCS uses those tracks today under trackage rights agreements with UP. KCS claims this is what requires UP to cover the cost of capacity projects needed to accommodate merger related traffic growth. Without intervention by this Board, the

applicants have assumed that the existing agreements could allow CPKCS to burden the cost of implementing its merger to its competitors and their customers.

You're going to have a hypothetical slide in front of you. You'll see an example of how this existing cost sharing arrangement would work in this hypothetical project. Take for example that as a result CP/KCS merger related traffic increases caused the need for a new 100 million dollar bridge to be built on a line owned by the UP, and used by UP, BNSF and CP/KCS.

This bridge, not required to support existing traffic, or ordinary incremental traffic growth through the gateway, rather simply the merger related traffic increases. Under the trackage rights agreements between UP and KCS, applicants claim that CP/KCS would have no responsibility for the cost of the project beyond the annual rents that they pay to UP for usage of the line.

Rather, under current agreements BNSF could be responsible for a percentage of the cost of the project. This amount would be equal to the

percentage usage that the line segment for the previous year, so that answers the question that we were getting at earlier of how this formula would work, that we would pay for the portion that we used the prior year.

Those agreements, not designed for the unique merger situation which comes with the dramatic increase in traffic that CP/KCS plans once the Board approves this transaction. So all this being said without STB intervention, where BNSF accounts for 35 percent of the traffic on the line, BNSF and our shippers could have to pay millions of dollars for projects that would not otherwise have been required, but for the CP/KC merger.

BOARD MEMBER HEDLUND: So you're complaining about your own contract?

MR. GABRIEL: I don't believe so. What I would say is our current contract is based on, and centered around handling the organic growth that's there for the localized customers. This is a fundamental shift in the traffic that's going to be traversing through the Houston terminal complex.

MS. ESTES: And Member Hedlund if I can just address that as well.

BOARD MEMBER HEDLUND: Yeah.

MS. ESTES: Under our agreement with UP/SP for these trackage rights, UP/SP, when they merged, they actually paid all infrastructure that was necessary for their merger. That is merger policy that's sort of all how mergers have been treated. The merging carriers come in and they pay for the infrastructure, or capacity improvements needed.

So we then got those trackage rights, and our use of those lines is based on the past 12 months use of our gross ton mile usage. And what you're going to do is you're going to have KCS come in and say, hey, we need you know a new bridge because we're bringing this step level increase.

But KCS's position is under their agreements with UP, they're not required to pay for any past usage, or future usage, they just pay a GTM rate. So they don't actually -- their position, and the position they take under their agreements with UP is that they do not pay for addition to betterments.

They pay it as part of their GTM rate, and not any extra payment for that.

BOARD MEMBER HEDLUND: Right. But that's a problem with the contract.

MR. NOBER: Again, the contract was put in place in connection with the UP/SP merger, and the predicate to the contract, the language is up on the screen here. It was that UP/SP when it merged, was responsible for the cost of all capacity improvements necessary to implement its merger.

And then after that these contracts were put in place to handle you know additional things that could happen post-merger. It's a basic merger policy. David Reishus will talk about this in further detail, not to externalize the costs of the transaction onto competitors.

BOARD MEMBER HEDLUND: Now that I understand, but what I'm trying to understand is are you saying that there's some kind of flaw in the contract that doesn't account for what you would define as a step increase in traffic, that it would be okay if it was organic, whatever that means, but

this is something else?

I just I understand your point about merger policy, but we also have a contract here that sounds like the parties of the contract are trying to get us to modify for them.

MR. DENTON: Well I guess I would say Member Hedlund, that the contract was an ongoing arrangement after the last merger reflecting the status of the parties at that time right, which meant that UP and SP paid for all their one-time costs, and then this was an ongoing study.

The factual situation is now changing right ? So the contract shouldn't apply in this circumstance because now one of the parties is now merging right, and it's going to have -- it's going to bring another one time change in its traffic patterns. It should pay for that, and then the contract may well work as an ongoing steady state, but it doesn't address, and it was never intended to address the one-time change of one of the parties merging.

BOARD MEMBER HEDLUND: What if the

increase in traffic had come from you know a very large new customer like a big new automotive plant?

MR. NOBER: It would be handled under the existing agreements, no doubt.

BOARD MEMBER HEDLUND: So how is that different from the result of the merger?

MR. NOBER: Because the merger -- this is not organic growth from individual customers who don't grow at that rate.

BOARD MEMBER HEDLUND: Does the contract talk about organic growth?

MR. NOBER: The contract doesn't talk about organic growth Commissioner Hedlund, but what we're asking for here is pretty simple, and frankly I think it's a modest ask. What we're asking for is the Board to set down a principle that applicants are responsible for the costs of any infrastructure improvements that would not be required but for the merger.

If you lay down that principle, and set it as a condition to any approval that you may give to this merger, we'll be able to take that principle and

apply it as necessary. We're not asking you to you know, to abrogate the contract, or to look at you know the details of this, it's simply to impose good merger policy on this merger, and we will take that and then you know apply it as necessary.

BOARD MEMBER HEDLUND: Well who determines what's necessary? I mean have you done an RTC study? No? How do you know what's necessary?

MR. NOBER: We have. Funny that you ask. That study was as you know stricken from the record, so we're going to try to avoid much detail discussion.

MS. ESTES: And if I can just add one more point about the trackage rights agreements, I think there's a reason why applicants haven't come in and asked for certain infrastructure in Houston, because under their agreements with UP, just as ours with UP, if the user proposes -- the user has the right to propose certain improvements on the line, but they have to fully fund that.

So I think there's a reason why you don't see applicants coming and doing what they did in

Chicago here in Houston, because if they propose something new, then they have to fund it upfront, fully fund it and there's no reimbursement.

BOARD MEMBER HEDLUND: All right. No further questions. I look forward to hearing what the applicants have to say about this.

MR. GABRIEL: All right. But on topic, as you can see on the slide here in the past merging parties have accepted responsibility of merger costs. Dr. Reishus will explain that the merging parties, not BNSF and its customers, should be held responsible for the costs imposed by their merger.

This will be regardless of how costs are allocated in the ordinary course outside the context of the merger. As was with prior railroad mergers, it would make sense that the merger proponents should be required to pay for their transaction just as UP and Southern Pacific Railway accepted that responsibility.

The fix here is simple. We ask that the Board to make it clear that CP/KCS must be fully responsible for the costs to add capacity needed to

accommodate the merger related traffic growth resulting from this transaction. Again, I'm happy to take any more questions from the Board, or I can pass it over to Mr. Hirsch with concerns around protecting rail competition in and out of Mexico.

CHAIRMAN OBERMAN: Let me because I have a few questions for Mr. Gabriel, and others may too, but I'd like to finish with Mr. Gabriel and then break for those other two witnesses, unless this goes on too long.

MR. GABRIEL: Yes sir.

CHAIRMAN OBERMAN: I want to follow-up where Karen was. The trackage rights -- well first of all, the KCS trackage rights agreement, was that part of the conditions of the UP/SP merger? Where did that trackage rights agreement come from?

MR. NOBER: They got the trackage rights based on rights granted during the UP/SP merger, yes. Basically all of this arrangement in Houston is a result of the UPSP merger.

CHAIRMAN OBERMAN: So KCS got trackage rights out of that merger?

MR. DENTON: Um-hmm. Tex-Mex I believe actually, sorry. And then KCS acquired Tex-Mex later on.

CHAIRMAN OBERMAN: Tex-Mex got the trackage rights is that what you're saying?

MR. DENTON: I believe that's right.

CHAIRMAN OBERMAN: And the trackage rights agreement, was that prescribed by the Board, or was that negotiated by the parties just as a result of a Board requirement that it gets?

MR. DENTON: There's a lot of back and forth in the record Mr. Chairman, of the UP/SP merger about how the details of these trackage rights agreements evolved. There's a lot of discussion. The parties commented on various terms. So it was proposed by the parties, and then ultimately imposed by the Board as a condition after considering concerns from various parties.

CHAIRMAN OBERMAN: But in terms of the cost arrangements and the fees and so forth in the trackage rights agreements, were those prescribed by the Board?

MR. DENTON: Sure. I mean all of these are imposed by the Board as a condition to the merger, yes.

CHAIRMAN OBERMAN: Well I understand the trackage rights, but the financial details of the trackage rights agreements were prescribed by the board?

MR. GABRIEL: Mr. Chairman there's a decision which the number I can't quote off of my head on UP/SP, where the board analyzed you know GTM rates, and there were people who were concerned that GTM rates are too high, or too low, and the Board decided that this was an appropriate measure to deal with the merger, including this basic premise that we have.

CHAIRMAN OBERMAN: And did the parties ask for provisions in the trackage rights agreements to cover future growth of traffic that might impinge on infrastructure? Yeah, so anybody?

MR. DENTON: Yeah, I'm just not sure that was necessarily relevant at the time, particularly for something like this. I mean this is a new merger

that's imposing you know new costs on the parties.

CHAIRMAN OBERMAN: I'd like to do this outside the context of a merger. Everybody in rail since I've been here anticipates growth, so we're supposed to promote growth. So it's hard to imagine, particularly in Houston, the fastest growing city in the world, or however they bill themselves, that it wasn't anticipated that traffic would grow after this merger.

So there must have been some thought by the railroads involved that as traffic grows, we're going to need more infrastructure, how are we going to pay for it? Aside from any acute infrastructure need immediately as a result of the merger?

MR. GABRIEL: If I may sir, the investment that BNSF really has made for this type of overhead or through train traffic that doesn't originate or terminate in Houston, we've invested in our Galveston sub, and the rest of our network, as has Union Pacific.

What is fundamentally different here is the type of traffic, and the size of the trains that

are coming through the City of Houston.

CHAIRMAN OBERMAN: I understand that. But I just I'd like to dissect this step by step if I could. And I'd like to know if the trackage rights agreements anticipated traffic growth of any kind that would require more infrastructure. Is that, or is it not in the trackage rights agreement?

MR. GABRIEL: Yes.

MS. ESTES: So yes.

CHAIRMAN OBERMAN: And how is it dealt with?

MS. ESTES: So in the UP/BNSF trackage right agreements the way it's dealt with is that when --

CHAIRMAN OBERMAN: No the KCS is the one I'm interested in.

MS. ESTATES: Yes.

CHAIRMAN OBERMAN: You're not asking --

BOARD MEMBER FUCHS: Doesn't it say that UP is obligated to accommodate the traffic of KCS on current service standards?

MS. ESTES: The applicants I believe are

taking a position that maybe is not what the agreement says. I think their position is that UP is responsible as part of the GTM rate for putting in any additional infrastructure that is needed to accommodate their traffic.

CHAIRMAN OBERMAN: And what's your position? What does the contract say? Hey, I'm a lawyer, tell me.

MR. DENTON: Respectfully, that's their contract.

CHAIRMAN OBERMAN: Whose contract?

MR. DENTON: It's a contract between UP and KCS I mean.

BOARD MEMBER FUCHS: It says shall, and maybe I'm not looking at the right provision, so you'll have to educate me, but it says shall be necessary to accommodate the traffic of owner and user, while maintaining service standards. Owner being UP, user being KCS. Obligation on UP. Is that right?

MS. ESTES: That is the language of that KCS agreement.

BOARD MEMBER FUCHS: So it says the traffic. There's no qualifier of the traffic, you know, there's no out clause that I might not be aware of if KCS happens to be acquired by somebody else?

MR. DENTON: Member Fuchs, again this is a contract between UP and KCS. KCS and CP have made kind of very specific claims. I think Mr. Simmons, in his response verified statement about what these contracts mean, but it's not for us, BNSF to tell you exactly how you UP and KCS are allocating their --

CHAIRMAN OBERMAN: Does -- is there, I thought that KCS uses some BN tracks as well, under trackage rights?

MR. DENTON: Right. So jointly owned tracks, that's right 50/50 line for example.

CHAIRMAN OBERMAN: Well, and is there a separate agreement between BN and KCS for trackage rights?

MS. ESTES: I'm thinking there's the Tex-Mex and there's the HBT. I believe it's the HBTS credit serve agreement.

MR. DENTON: Right. What we're focused on here Mr. Chairman is just this example that applicants themselves are telling right? If you read Mr. Simmon's statement they are telling you explicitly that they are not responsible, absent you know the rents that they pay.

CHAIRMAN OBERMAN: I know what they're saying. I'm trying to figure out what you're saying.

MR. DENTON: What we're saying is that under our agreements, our agreements with UP, we would be responsible on a usage basis, on a look back usage basis for a percentage of an improvement that KCS that would not be needed, but for the merger.

CHAIRMAN OBERMAN: Do you have an agreement with KCS for trackage rights on your tracks?

MS. ESTES: No. There's an agreement I believe with KCS for the 50/50 line. They have a right to the 50/50 line that we own jointly with the UP.

CHAIRMAN OBERMAN: All right. And --

MS. ESTES: Chairman, we can take a break

and --

CHAIRMAN OBERMAN: Are you and all three railroads are parties to that trackage rights agreement?

MS. ESTES: No, I don't believe so. The agreements at issue are between us and UP and then KCS and UP.

CHAIRMAN OBERMAN: So you have no contract with KCS? That's all I'm trying to find out. What are the contractual relationships, that's where Karen was going.

MR. DENTON: The issue here right, the issue here is that UP and KCS have a contractual relationship. KCS has told you exactly what they think that contractual relationship means. We have a separate relationship with UP, BNSF, and we're telling you under that relationship what we will be obligated to pay.

CHAIRMAN OBERMAN: All right. Let me do this because I want to pursue this further. It's 20 minutes to 6:00, so I thought we could finish with this subject matter, but I don't think we can for the

moment. I'd like to accommodate these two other witnesses, and I want to come back to this.

But when we come back if you would humor me, and try to answer specifically what I'm trying to get at, and then make your conclusionary remarks when I'm done and you're done, that would be helpful to move this along.

(Off mic).

CHAIRMAN OBERMAN: I want to know what the contractual relationships are, and what they say about traffic growth. That's what I want to know, and then we'll take it from there.

MR. DENTON: That's not a short subject.

CHAIRMAN OBERMAN: Well okay. It may not be short, but I think we need to get into it. Yeah, so what?

(Side talk.)

CHAIRMAN OBERMAN: Can you handle those two five minute witnesses? Okay, and then we will take a break. Thank you. All right. As we're waiting for these two additional witnesses apparently NS, you're not needed anymore for this

purpose. But I would say I don't know if you're planning to attend tomorrow's session, any of you, because there may be some further discussion about submissions. Virtually would be fine, but we may want to communicate with you, that's all.

Don't change travel plans on our account, just if you're on virtually. But we may want to have at least all the railroads available. With that we're going to deviate for a moment from the BN presentation. I'm going to ask the Richardson International witnesses Jean-Marc Ruest and Robert Bielik, are they virtual?

We're going to have to do this through computer, so it's going to be right here Mr. Reporter, and hopefully you'll be able to hear.

MR. RUEST: Good afternoon. Can you hear us?

CHAIRMAN OBERMAN: All right. Mr. Ruest can you hear us?

MR. RUEST: Yes I can hear you. Can you hear us?

CHAIRMAN OBERMAN: Yes. We can.

MR. RUEST: Perfect, excellent.

CHAIRMAN OBERMAN: Are you both testifying?

MR. RUEST: Pardon me?

CHAIRMAN OBERMAN: Are both you and Mr. Bielik going to speak?

MR. RUEST: Yes we are. I'll just make some very preliminary remarks, and then Mr. Bielik will lead us through the bulk of our comments, which will be quite quick.

CHAIRMAN OBERMAN: Very good. I just can't resist asking you if you're related to J.J.?

MR. RUEST: No. Actually I go by J.M. and many people have made the mistake of I receive the occasional angry phone calls from people that thought that I was J.J.

CHAIRMAN OBERMAN: And you didn't even get his severance check I bet.

MR. RUEST: Maybe if I play my cards right. The problem is that this isn't on the record is it? All right. Well thank you very much for having us here this afternoon. My name is Jean-Marc

Ruest, and I'm the Senior Vice President of Corporate Affairs and General Counsel for Richardson International. And I am accompanied by Mr. Rob Bielik, who is our Vice President of Transportation.

Richardson International is Canada's largest agri business, and a worldwide handler and merchandiser of grains and oil seeds, and a vertically integrated processor of oats and canola based products. We were listening previously to Mr. Irving who leads another iconic Canadian corporation. He mentioned that they were established in 1882, while Richardson was established in 1857, which makes us a little bit older than the Irving company.

And to give you a little more of a reference point that is actually 57 is 10 years prior to the Canadian Federation, so we've been around for quite a while. We have operations in the United States. We own the Wesson Cooking Oil brand and its manufacturing plant in Memphis, Tennessee.

We also own an oat mill in Seltzer City, Nebraska, and grain elevators in North Dakota along the largest mill in North America, which is located

in St. Louis, operating under the Granny brand. We're here today to testify in support of the CP/KCS acquisition. We believe it will add to the footprint of the rail network in North America to which my colleague Rob will provide more details. Thanks.

MR. BIELIK: Good afternoon. My name is Rob Bielik. I'm the Vice President of Transportation at Richardson International. As Jean-Marc has stated, Richardson supports CP's acquisition with KCS, and it is our view that consolidation of the KCS network into the CP network will provide Richardson with greater transportation efficiencies and economies, by having one single line carrier, rather than two interchange carriers providing service to our U.S. facilities.

This will be achieved in our view by the elimination of handoffs between carriers, which exist today, and which create time delays, and the opportunities to negotiate rates and service with one carrier rather than two.

I will illustrate for you some examples with existing routes which we use today, along with

routes we plan to use in the future after the acquisition of KCS. For greater context, Richardson ships approximately 20,000 railcars to U.S. origins each year. This includes grain, flour, oil, byproducts and fertilizer, and make use of all the costs of railroads in the U.S., including CN and CP.

Example one, movement from grain elevators in North Dakota to our Durham mill in St. Louis. I refer the Board to slide 1, which I'll mark on the screen, hopefully you could see it. So Richardson owns grain elevators in North Dakota and a Durham mill in St. Louis. The mill consumes approximately 1 unit train, or a 100 cars per week of Durham.

Today we ship Durham from our elevators in North Dakota to the mill via CP and UP, which requires separate rate negotiations with CP and UP, along with the physical hand-off traffic between both carriers. Under the CP/KCS acquisition, we'll be presented with the opportunity to use a combined CP/KCS direct route to St. Louis as an alternative. Please see slide 2.

So the original route is lighter, and then

the new route is in the darker blue. This will provide a more efficient, direct alternative, and the fact that CP and UP routing remains available, will effectively provide more competition to this destination for Richardson.

Example two, movement of fertilizer to our fertilizer shed in Tolley, North Dakota. Please refer to slide 2, which Jean-Marc now has up on the screen. We own a fertilizer shed in Tolley, North Dakota, which we use to distribute fertilizer to farmers in the area. Today we move fertilizer to the shed primarily by truck from Idaho and Canada.

Subsequent to the CP/KCS acquisition, we would look to move fertilizer by rail from the Gulf of Mexico, either Galveston or New Orleans, via KCS to Kansas City, then via CP to Tolley, again using a single carrier. The advantage here to Richardson from this move is that the transportation cost is less with rail as compared to truck.

Example three, movement of fertilizer to our retail crop input business in Canada. Slide 4 which Jean-Marc has on the screen. Richardson owns

95 retail crop in locations that are spread across western Canada, but today we move fertilizer by rail, BNSF in Galveston and the Gulf of Mexico, under the CP/KCS acquisition we would have an alternative route to move fertilizer to our retail network in Canada via a single line carrier, either from Galveston or New Orleans, refer to slide 5.

So you see the new potential route in the darker blue. Again, this will provide Richardson another rail transportation option for existing path, thereby increasing competition. We also believe there will be other opportunities for us under the acquisition.

These include access to known markets in Mexico. Richardson believes a merger would provide greater access to some of our many customers in Mexico to receive goods from North Dakota by rail, which currently does not occur, and oil seed to Mexico. Richardson sources canola seed in Western Canada, and moves that seed via ocean going vessel from Vancouver, Canada to our customers in Mexico.

We believe that the merger could provide

opportunities to move that seed via rail in the future. Further, while we're not currently sourcing canola seed from North Dakota today, move to Mexico. The acquisition could provide the opportunity to ship to North Dakota from Mexico through a single line carrier.

In conclusion, Richardson supports the CP/KCS acquisition as we believe it will improve the efficiency and economy of our existing rail movements by providing an alternative, single line carrier to some of our existing destinations, and also open up other destinations which Richardson can use in the future. Jean-Marc and I would be happy to take your questions, thank you.

CHAIRMAN OBERMAN: Thank you very much. Are there any questions from the Board? No, it's very helpful testimony, and we appreciate your tolerance of our IT difficulties, and we're glad we were able to accommodate you before the day expired, so thank you much.

MR. RUEST: Thanks a lot, thank you very much.

CHAIRMAN OBERMAN: All right. So we are going to proceed immediately to Katherine Garcia of the Sierra Club.

MS. GARCIA: Got it, thank you. Good afternoon Chairman Oberman and the Surface Transportation Board, and I appreciate your flexibility today to accommodate my schedule. And I apologize for the interruption to the previous testifiers.

So my name is Katherine Garcia, and I am the Director of Sierra Club's Clean Transportation for All Campaign. The Sierra Club is the most enduring and influential grass roots environmental organization in the United States. We amplify the power of our 3 million members, and supporters, to defend everyone's right to a healthy world.

This proposed merger will have a profound environmental and economic impact throughout the nation. For example, in many parts of the country rail traffic shipping hazardous, dirty crude oil from Canada to Mexico will increase, threatening rural ecosystems, suburban communities and dense urban

neighborhoods.

The merger will also have a major economic impact. For example, the Canadian Pacific headquarters in Minneapolis, Minnesota, will move to Kansas City, Missouri. This will result in over 200 jobs, and an estimated 15 million in wages being lost from the Twin Cities.

This will have a lasting and devastating impact on the economy of the region. Any consideration of a railroad merger should both recognize the effects of that merger, and also incorporate actions to mitigate those impacts. It should also factor in past behavior of the railroads, and call upon them to be good neighbors to impacted communities.

In the Minneapolis St. Paul region, where the job losses will be largest, a broad coalition of local, elected officials have reached out to their Congressional representatives seeking mitigations. These local officials are understandably frustrated that CP has been unwilling to repurpose long unused, right-of-way for the public good.

You have already received this letter from U.S. Representative Betty McCollum, who represents St. Paul. And tomorrow the Office of U.S. Representative Ilhan Omar, who represents Minneapolis, will be testifying here to call on you to get the railroads to be better neighbors, and to specifically help mitigate the impact of job losses by repurposing four sections of unused right-of-way.

Converting former railroad right-of-way for bicycle and pedestrian use is hugely beneficial for economic development, public health, and climate action. Your efforts on this matter will not be wasted. The Twin Cities have a well-earned reputation as a model for the most rails to trails projects in the U.S. As just one example, the midtown Greenway in Minneapolis is so popular with people walking and biking, that it carries more daily users than 90 percent of city streets.

It is such a valuable community amenity that it has inspired a huge development boom of housing called bicycle oriented development, or BOD, for miles directly adjacent to the corridor.

Minneapolis's tax base has benefitted greatly from this, and the whole region benefits from the housing provided.

There is a brand new trail just across the Mississippi River that with a stroke of CP's pen could easily be connected to create a seamless bicycle highway connecting Minnesota's capital city to the larger Twin City.

The two cities of Minneapolis and St. Paul would love to connect these two trails, and share the direct and indirect economic and public health benefits of that connection, but they have been stymied by CP, even though there is available empty right-of-way and a bridge over the Mississippi River that has lacked a second set of tracks for many, many years.

How the STB handles this proposed merger will determine whether impacted communities only experience the down sides of economic losses, or whether compensating upsides can be delivered by a railroad that behaves like a partner and a neighbor.

Please listen to the long list of local

elected officials and their Congressional representatives, McCollum and Omar. I urge that you use this historic chance, a once in a lifetime opportunity, to bring CP to the negotiating table, to listen to two members of Congress, and 22 state and city elected officials to secure public benefits to reduce the harms of this proposed merger from Minnesota and every community impacted.

Thank you for holding today's hearing, and for this opportunity to testify.

CHAIRMAN OBERMAN: Thank you very much, and you don't have to apologize for the scheduling here. We're really trying to do what we can, and we wanted to accommodate you. I have a couple of questions. Have you approached CP about the use of these unused right-of-ways for either bicycle or walking paths?

MS. GARCIA: I believe our chapter has in Minnesota. I believe so.

CHAIRMAN OBERMAN: And they're not interested, they turned you down, what's the response?

MS. GARCIA: I believe they just have not been interested in accommodating that, and that's why we're taking this opportunity to raise these issues now.

CHAIRMAN OBERMAN: And are you asking us to condition the merger on some kind of a use of these right-of-ways?

MS. GARCIA: We essentially want to bring this to your attention that this is like the letter from McCollum specifically states that by using this -- by mentioning this as a directive essentially, this is like the right time to make this appropriate recommendation before it goes -- basically, this is the important time to make this recommendation.

CHAIRMAN OBERMAN: I'm not at all familiar. I can't picture what all of the network in the Twin Cities area looks like. Do you have a -- which you don't have to provide now, a more specific description of the rights-of-way areas that you think should be accommodated for walking paths, and so forth?

MS. GARCIA: So this particular letter

does have a map on here. And it has this information.

CHAIRMAN OBERMAN: All right. It designates the areas you're talking about, and that is a letter from whom?

MS. GARCIA: This is from Representative McCollum.

CHAIRMAN OBERMAN: To the Board?

MS. GARCIA: To the Board.

CHAIRMAN OBERMAN: What's the date on it just so we could find it?

MS. GARCIA: September 7.

CHAIRMAN OBERMAN: All right. And so that's the same area you're talking about?

MS. GARCIA: Yes, yes. I'm here basically raising up this issue on behalf of the Sierra Club.

CHAIRMAN OBERMAN: And do you know whether these rights-of-ways still have tracks and track pit on them? Have them been taken up? Do you know the condition of them?

MS. GARCIA: I don't know the condition.

CHAIRMAN OBERMAN: Okay. We'll find out

I'm sure.

MS. GARCIA: Okay.

CHAIRMAN OBERMAN: Any other Board members have questions?

Thank you Ms. Garcia and I appreciate your patience. Okay. Our court reporter has asked for relief, and I'm going to grant it to him, so let's take a 10 minute recess, and then we'll reconvene with the BN panel.

(Break.)

CHAIRMAN OBERMAN: We'll finish. The court reporter is going to fade at what time?

COURT REPORTER: 7:00.

CHAIRMAN OBERMAN: Oh you are out at 7:00. Oh okay.

COURT REPORTER: 7:00 I'm sorry.

CHAIRMAN OBERMAN: No, that's okay you were told because I was accurate. No, it's okay. Well then I have to -- then I'm not optimistic about getting finished with BN tonight. I thought -- no, no, you're fine. You were told 7:00. You're not obligated to stay past 7:00. Don't worry about it.

All right. But let's get back and finish this issue with Mr. Gabriel.

So I think when we recessed for a moment the question pending was the contractual relationship, if any. I'll just go back to the UP/SP merger, somewhere out of that merger KCS got trackage rights. And were those trackage rights, they were embodied in a contract with UP, but also with both UP and BN on this 50/50 line?

MR. DENTON: So let me try to provide some clarity here, and I apologize for not answering directly Mr. Chairman.

CHAIRMAN OBERMAN: That's all right.

MR. DENTON: So figure one to Mr. Gabriel's opening verified statement, it's page BNSF 9 - 219. I could even bring it up there if it would be helpful, but it has a map of the various line segments over which KCS operates, yeah.

CHAIRMAN OBERMAN: Do you have an extra copy it would be helpful.

MR. DENTON: Sure. Yeah. Ms. Estes is bring it up.

CHAIRMAN OBERMAN: Thank you much.

MR. DENTON: So the map depicts 11 different subdivisions or line segments between Laredo and to Quincy. You'll see that there are a number of line segments that are owned by Union Pacific over which KCS operates, along with others, BNSF, Amtrak, et cetera. But the great, large majority of these are KCS operating as a tenant over UP as a landlord.

The HBT for example, is the Belt Line, the Houston Belt Line railroad, which is a joint venture 50/50 between UP and BNSF. The only piece where KCS operates over a BNSF owned line is the 50/50 line segment, which is shown as number 2 on this map. The 50/50 line segment I understand the trackage rights agreement between KCS and the landlord, was between KCS and Union Pacific.

And after that trackage rights agreement was entered into BNSF bought a 50 percent interest in that line. So I understand that the trackage rights agreement is between Union Pacific and KCS. So again, to sum all of this up, KCS is largely a tenant

on Union Pacific lines, and the contractual relationship for those is between KCS and UP.

And again, Mr. Simmons in his verified statement, makes it very clear how KCS interprets the cost allocations.

CHAIRMAN OBERMAN: That I understand, but let me just ask this question. When you bought the 50 percent ownership in it, Did you become obligated under that contract as a new joint owner?

MS. ESTES: Yes Chairman. That particular deal was part of the UPSP merger.

CHAIRMAN OBERMAN: All right. So that agreement has something to say about who pays what under some circumstances. And my question is -- I'm just trying to get a handle on this. If the traffic growth had happened naturally over a period of years rather than suddenly as a result of a merger, sort of like the boiling frog at some point you're going to need more infrastructure. Under the trackage rights agreement who pays for it?

MS. ESTES: Chairman, in general, I don't have them all at my fingertips. I think we can

certainly submit a fuller list of all the agreements. I believe they're in our work papers. In general, under the agreements that arose out of UP/SP merger, which BNSF has with UP, the way the infrastructure is handled is an addition in betterment, a siding, a bridge, you know, a second track is handled, first we coordinate with UP.

We were talking with them all the time, determining what is needed that investment would be put in place, and then it would be billed back to the users on a usage percentage basis, based on your GTM's for the prior 12 month period.

Now all of that is after UP/SP put in whatever was needed for their merger.

CHAIRMAN OBERMAN: I understand. So the answer to my question is if we weren't in a merger situation, and KCS's traffic just increased over a period of years, by these number of trains, if more infrastructure was needed it would be paid for under this formula you've just described?

MS. ESTES: Well no, because again KCS has their own agreements with UP. So I think that's

probably a line of questions for UP tomorrow, but it's our understanding that there's a dispute between those parties as to how much KCS should pay in those situations.

I think it's KCS's position that any addition and betterment is covered by the rent they pay, and not an extra, which again is why I think the applicants in our opinion, why the applicants did not go down and study Houston. Because if they suggest infrastructure that's needed down there, they're responsible for fully funding it.

CHAIRMAN OBERMAN: Well, let me ask this question. I understand that apparently you submitted some kind of a study that was stricken because it was in a reply brief, but just not to get into it for that reason, but was it an RTC study, or some other kind of capacity model?

MR. DENTON: Yes sir, RTC study.

CHAIRMAN OBERMAN: It was an RTC study.

MR. DENTON: Yes.

CHAIRMAN OBERMAN: Do you -- yeah?

MR. DENTON: Within the last 60 days.

MR. OBERMAN: All right. And I take it, let me ask this question. You are not here and asking for this as a condition with any specific number in terms of how much infrastructure has to be built, or what infrastructure is needed. Is that right?

MR. GABRIEL: Yeah, so we're simply wanting to perform a study with all the necessary data points that we have. Obviously, we only know the assumptions that we had to perform the data. We didn't have the assumptions of where the traffic, when the traffic would come on from CP/KCS, so what we're looking to do is assess and build that roadmap of projects that are needed for when this traffic will come on.

As stated earlier, the way this would normally work is us and UP would work hand in hand regularly to address that you know slow and steady organic growth. That's what we don't have as all the assumptions here, so that's one of our basic asks.

CHAIRMAN OBERMAN: If you are asking for

us to condition this merger on an expenditure for infrastructure, is it not your burden to tell us what that condition should be? That's I guess for Peter.

MR. DENTON: Right, no. I believe Mr. Chairman that the burden is on the applicants to put forward their operating plan, and to apply that to existing infrastructure to determine whether any capacity improvements are necessary. And they did that, you know, across the majority of their network. It just so happens that in the one part of the network where they could be able to foist their costs onto their competitors, they proposed nothing.

CHAIRMAN OBERMAN: Yes, but now you're here asking for a condition. So isn't it your obligation to tell us what that condition should be, and not just free floating?

MR. DENTON: Frankly, I think the condition should be what sound merger policy is, both on in terms of studying the issue and making sure that applicants are responsible for internalizing the costs of their merger. What we're asking for is very modest. It's not for a particular project, it's

not for you to analyze an RTC model in determining you know whether or not it's correct or not.

It's for everybody to sit down, come up with a plan to handle this, and make sure applicants are responsible for their costs.

CHAIRMAN OBERMAN: So Karen asked the question about whether infrastructure was needed now if there were no merger, and I think you said it wasn't, but we just heard from Councilman Gallegos about all of the problems in Houston. It doesn't sound to me, and I haven't heard anybody contest that, that there's adequate infrastructure in the Houston terminal to handle -- I'm not sure whether it's your trains or not, but the whole terminal, it sounds like there's significant blockages inside the City of Houston.

So you know we've dealt with this conceptually, not to get into another case, in the Gulf Coast case of who's going to benefit from more infrastructure. And I'm not at all clear if more infrastructure is built to facilitate train movements through Houston, it's not going to benefit everybody,

and you're asking KCS to absorb it all, so I don't know how we sort that out.

MR. GABRIEL: So in response to that Mr. Chairman, I would say a couple things. One as you know, most of the railroads have had a challenge -- had challenges throughout most of the summer as we've talked with you quite regularly on. But what I would say is that the Houston complex is back to performing at normalized levels under normalized traffic at its current space.

The last you know six weeks would be parallel to the service improvements that we've been submitting to you, and you've seen Houston and the Houston complex would largely follow that same trend line, so again the challenges this summer were certainly there, and that could be part of what Mr. Gallegos, I don't want to speculate. But again, I would say under the current volumes and historical levels it's performing at what we would call a historical norm.

CHAIRMAN OBERMAN: It didn't sound like from Councilman Gallegos, that historical norm was

satisfactory. I didn't hear him say this was just a short term acute problem, you know. And what I know about terminals and cities that have been built up over time, my strong sense is that that's not the case.

Let me ask this question, and I don't know where all of these routes are, but you've described that your traffic and UP's traffic go around Houston. Is there capacity there to move KCS's through traffic around Houston through some alternative trackage rights agreement, rather than going through the middle of the city?

MR. GABRIEL: So I would say largely our traffic and UP's traffic utilizes the full web of tracks that are there because that's where the customers are, and that's where our serving yards are. The main line thoroughfares for lack of better words will carry the concentrated burden of this through traffic that is a step level increase.

And it does address kind of the last point we were discussing that this step level will come on faster if we would have time to do the diligence, and

certainly get ahead of the capacity projects necessary to handle it, and that's why we're asking that the traffic cannot be brought on until we at least study it. We're confident we'll identify projects that will need to be funded by KCS.

CHAIRMAN OBERMAN: Well maybe I wasn't being clear. I thought you had told us earlier that BN and UP's through traffic goes around Houston. You showed us the map showing it's based on.

MR. GABRIEL: Yes, after Temple, Texas is Fort Worth and so forth. One way is from Quincy, Louisiana circuit.

CHAIRMAN OBERMAN: But is there a way to get to KCS traffic onto these tracks that go around the city, and relieving the traffic inside the city? I don't know what the capacity is on your traffic, and UP's for your tracks and UP's tracks. I'm just trying to think logically of a system, or a network point of view if that doesn't make more sense, and if it's possible. And it may be impossible, I have no idea where the tracks go.

MR. GABRIEL: Without studying it in

detail, I would say I would have the same concerns of the step level nature of the increase, and the inability to get ahead of the capital expansion needed to handle that against a step level increase in the volume on those routes. I don't want to speak for UP, but for BNSF that's how I would.

CHAIRMAN OBERMAN: I just assume logically there's more fluidity if all the trains are through trains, than if you got a lot of stopping and starting from local trains it might be easier, and result in either no infrastructure, or less infrastructure, if you could make that arrangement with KCS if it their trains coming through the city were really going to cause that big of a problem.

MR. GABRIEL: As always we're willing to talk and engage with them on many of those discussions.

MS. ESTES: And Chairman, I think you know, applicants would have to agree that there's a problem in Houston, and we're not at that point. If they agree there was a problem, they would do what applicants do in other mergers, we would be talking,

we would be negotiating settlements. We'd do what we did in UP/SP.

CHAIRMAN OBERMAN: You're trying to get us to say there's a problem, and I'm trying to find out if we did say there's a problem, are there alternative solutions. That's why.

MR. GABRIEL: Part of our ask is that we would study you know, is there a problem or not, and quantifiably say that there is not.

CHAIRMAN OBERMAN: All right. Let me ask this question, assuming you have to come back tomorrow, which I think is a fair subject, is it possible just to get a map showing physically where your through routes go, and where they may, or may not even connect with KCS?

And maybe I'm asking the impossible, it's just a thought that occurs to me listening to your description, but that was all I had.

BOARD MEMBER FUCHS: I wanted to just make sure, Marty, clarifications are very helpful, thank you. On the kind of additions point, do you all understand -- and I know this is probably a better

question for UP, but for additions, KCS is obligated on a GTM base to pay for additions that the way it works.

UP pays sort of and bills KCS. Is that how it works?

MS. ESTES: I think it's another question for UP.

BOARD MEMBER FUCHS: Okay.

MS. ESTES: That's not certainly not KCS's interpretation.

BOARD MEMBER FUCHS: Understood. And so are you all saying that you believe that any additional traffic beyond what you deem to be the capacity of Houston complex, should be 100 percent funded by KCS, and do you understand KCS's position to basically it should be proportioned to the excess ton miles, or what are you -- can you summarize exactly where the parties are to your understanding right now?

MS. ESTES: Sure, sure. So I think KCS's position is that they should not have to pay for any infrastructure improvement.

BOARD MEMBER FUCHS: Because it's already at capacity.

MS. ESTES: And even if the Board said look, you need something new. They would say that additional betterment should be covered by the rent they pay to UP, and that is it.

BOARD MEMBER FUCHS: That's it. Okay.

MS. ESTES: So nothing would change. They would just continue to pay their rent.

BOARD MEMBER FUCHS: Okay.

MS. ESTES: Their PCM mill rate. Under, let's say you ordered 100 million dollar bridge. BNSF would then pay our usage share for the past 12 months looking back, when KCS doesn't even have those increased trains, we would be responsible for whatever our usage was at 35 percent let's say of the 100 million dollar bridge.

BOARD MEMBER FUCHS: And your position is that CP/KC should be responsible for 100 percent?

MS. ESTES: Correct. No need to bridge, but for this step up level increase.

BOARD MEMBER FUCHS: I understand, all

right thank you.

BOARD MEMBER SCHULTZ: Just a couple of general questions. I think we touched upon this earlier in terms of investment and infrastructure that has already been made in that region, around what years were those investments made?

MR. GABRIEL: So I'm going on an annualized basis, so us and UP as was mentioned earlier, worked annually throughout the year to figure out the next year and the years out capital investment, but there's been incremental investment made over the you know, in the last ten years.

BOARD MEMBER SCHULTZ: And so when you make those investments how far out do you project in terms of increased growth in the region?

MR. GABRIEL: Normally three to five years based on permitting cycles, but it does depend on the size of the project. So for example, like small siding passing track would be different than a bridge. You know so to say, based on permitting and so forth, so again the unfortunate answer is it depends on size, scope and certainly other outside

factors.

BOARD MEMBER SCHULTZ: And so this is I guess specific, but at the time you made those investments how many trains per day were you running?

MR. GABRIEL: It would again depend on the web of the rails that you think about, so again it depends on the individual line segment for that subdivision. So again going back to the route that was going to be consumed here, we'd be 25 ish trains a day, and that's where the concern is that you have this step level of call it a 30 percent add in trains, coming across that small segment in such a short period of time.

So you know it would depend on the individual traffic on that segment, or subdivision as we call it.

BOARD MEMBER SCHULTZ: I think again what I'm trying to figure out is I guess what investments were made, how many trains were running per day at the time the investment was made, and how many years out did you project for growth, and where are we today, and what is projected beyond that?

MR. GABRIEL: We could follow-up with specifics on what projects we've done and the volume. I would say typically our out years are somewhere in the 5 to 10 year range, so.

BOARD MEMBER SCHULTZ: Okay.

BOARD MEMBER FUCHS: Very quickly, and I hesitate to even suggest this or ask about it given some of the difficulty that we've had working with people on different RTC models, but there was a suggestion by applicants that they would support the work of joint RTC. Has there been thought of the parties getting together, each company has RTC experts, and I'm sure that there are independent firms available.

Contracting together an independent firm your experts weighing in, and making that type of assessment on the capacity of the region. What the Board's rule on that is open to debate, but I'm wondering what your reaction is to applicant's suggestion?

MR. DENTON: Not only was there a thought, that's our suggestion to be clear. Yes.

CHAIRMAN OBERMAN: And just so I'm clear. You're talking about an RTC study done by a different jointly hired contractor, not the one that they submitted and was stricken?

MR. DENTON: We would be open to a collaborative effort you know however we all decide to do so, where we study the issue, and all come to the right place.

BOARD MEMBER HEDLUND: how long do you think such a study would take?

MR. GABRIEL: We would call a 90 days to six months.

MR. DENTON; I will note that a fair amount of work has been done already, so again we're not going to get into details about what's been stricken from the record, but a fair amount of work has been done already that we think shows you know a good current state, plus the KCS trains.

BOARD MEMBER HEDLUND: So what you're suggesting is we should hold off a decision until a study is done that would take three to six months?

MR. DENTON: I don't think we're here

telling you that you need to you know expand your statutory deadlines at all. I think what we're telling you is that once a plan is in place, and the infrastructure is adequately assessed, paid for by applicants, and implemented, before any of that happens, we don't want KCS to increase traffic if those increases would impact existing traffic flows in Houston.

So we're not asking you right now to hit pause on your merger proceeding, and you know deal with this issue. We think this can be dealt with after approval for example, if what we're asking for is put in place by you.

CHAIRMAN OBERMAN: I always muse about how you have something that is the "gold standard" that can be hotly contested by which firm you hire. I do understand from my little knowledge of RTC studies, if you've already done one, that some of that work could be used by somebody else and you wouldn't have to start from scratch.

MR. DENTON: In fact, we didn't start from scratch. It was a Techs Dot study which was

performed, and we submitted that was not stricken from the record. It was submitted with our opening comments, where you can take a look and see where what results of that study. We took that study, built on it, and came up with what we have.

CHAIRMAN OBERMAN: So are you saying Techs Dot had a consultant, and you hired the same consultant to elaborate on their study?

MR. DENTON: Correct.

CHAIRMAN OBERMAN: Okay. Are there any other questions for Mr. Gabriel, or on this subject? Patrick?

BOARD MEMBER FUCHS: I would say I think that maybe perhaps that's the key difference then in applicants in yours, it comes down to the payment mechanism, right? So I think it sounds like a lot of people can agree to get in the same room and discuss inputs about a model, and to determine whether or not there is adequate capacity in Houston, but that doesn't necessarily answer the payment question, and you're proposing that the Board answer the payment question?

MR. DENTON: Yes, Commissioner Fuchs, in a very straightforward, and frankly, we think modest way of setting down the standard that good merger policy says that applicant should be responsible for those costs.

BOARD MEMBER FUCHS: I understand, thank you.

CHAIRMAN OBERMAN: Except for the conceptual difficulty of sorting out how much benefit you're going to get from the existing problems in the Houston area, from any new infrastructure.

MR. DENTON: Yes Mr. Chairman. And we recognize that there are complexities there, but we believe if you set down you know what we believe, and most agree, is good merger policy, we would be able to take that standard and apply it as necessary.

CHAIRMAN OBERMAN: Well merger policy doesn't answer the question of who's benefitting from physical infrastructure. See e.g. create because it's always never been clear to me who's really benefitting from those projects the most, compared to who's paying for them. So I think it can be.

There's a way to answer it, but I don't think it's just a numbers question. There was a lot of judgment calls.

All right. I think we are finished with this phase of your presentation. I really since we obviously couldn't come close to finishing today, and we do have these three witnesses who really needed today, I think we should switch. If they're very short, and we have time to get started we could proceed until seven o'clock. It seems unlikely that it would be worth it, but if you won't mind sticking around I think we're going to switch to these three other witnesses.

MR. DENTON: Sure, thank you.

CHAIRMAN OBERMAN: And listen, I apologize to everybody. It's really nobody's fault. It's just at least this Board's effort to be thorough.

MR. DENTON: We start at 9:00 tomorrow?

CHAIRMAN OBERMAN: We start at 9:00 tomorrow. And unless I am wrong, we would start with you immediately right? Yeah.

MR. DENTON: You will not delay us for

other witnesses because we really, it's important, we will but.

CHAIRMAN OBERMAN: No I think it's fair. We'll start with you.

MR. DENTON: Thank you.

CHAIRMAN OBERMAN: Okay. Let's ask Kirk Aubry from Savage, who's testifying virtually, but give us a moment until we get the computer set up. Mr. Aubry? Mr. Aubry are you with us? All right. Let's switch to Mr. Knief, Bob Knief from Bartlett? No? Did we lose him?

MR. KNIEF: Over here.

CHAIRMAN OBERMAN: Oh you're there. Are you together?

MR. KNIEF: We are, and actually Kirk is going to join from another office. I'm in Kansas City, he's in Salt Lake, so he's going to join, but I just let him know.

CHAIRMAN OBERMAN: Okay.

MR. KNIEF: So he's going to hop on here momentarily.

CHAIRMAN OBERMAN: All right. Why don't

you start Mr. Knief if you're ready.

MR. KNIEF: Okay. And I think the way we've got this if you don't mind giving him about a minute, he's going to be here, and that might work a little bit better for us.

CHAIRMAN OBERMAN: All right. All right. Mr. Aubry are you there? Can you hear us?

MR. AUBRY: I can hear you. Can you hear me Mr. Chairman?

CHAIRMAN OBERMAN: Yes sir, proceed.

MR. AUBRY: Thank you very much. Good afternoon Chairman Oberman and Board Members. We want to thank you for the opportunity to share our thoughts on the CP/KCS combination. My name is Kirk Aubry, I'm the President and CEO of Savage.

I was having a tenure envy based on the other presenters. We're only a 75 year old company, started in Salt Lake City, and our company is today a global provider of industry, infrastructure and supply chain. So I have the privilege today of speaking on behalf of our 4,500 team members in over 225 locations.

And I would share with the Board that we have a strong legacy as a company, having grown from three brothers and a truck, a truck which we still have, starting in 1946 to moving and managing what is essential to our customers around the world. Savage today handles over 800,000 railcars across North America every year.

We move grain from farmer's fields, and we partner with the KCS to move that grain from our elevators in the Midwest to our terminals in Mexico. We also handle industrial products throughout North America. And we are pleased, I would say, emphasize that we are very pleased with the service we get, and have gotten from KCS to move that grain, and more importantly, we view KCS as an important service provider, but also as a partner, and see them as focusing on meeting our transportation needs.

So in short, we support the approval of the CP/KCS combination, and I'll tell you why. We believe the transaction would provide significant benefits. When I first learned about the merger it struck me as a major step in operationalizing USMCA

and facilitating the flow of goods throughout this free trade corridor that we all worked so hard on establishing.

And I would just also say during the many years that we worked with KCS as a partner, we believe that this transaction will actually increase their ability to support us, and grow, and help us thrive into the future.

Currently, as a shipper with the KCS, we've had limited access to some upper Midwest U.S. markets to source products for our customers. We also haven't had economic rail access to Canadian markets. And so, through the combination of CP and KCS, we're going to be able to access new single line haul markets that will help us grow our business, and help us serve our customers better.

These new markets will open the door for us to competitively expand, not only our grain franchise, which is incredibly important to our growth, to help us serve more farmers and more customers, but also help us serve and create a service for our rail centric bulk material handling

business through the creation of multi-commodity transload terminals and logistics parks.

We see that as ultimately benefiting consumers by providing additional and more consistent, reliable supply chains. And it will continue our effort to take trucks off the road, and move freight more efficiently, more safely, and more cost-effectively. The transload terminals I'm talking about and logistics parks that we're contemplating, and building will benefit from the economically advantaged single line haul service to source products from across a more robust, combined network footprint.

Safety is embedded in our culture. We've heard testimony, I've had the benefit of listening to some of the other testimony, and safety is a particularly critical issue for all of us. It's in our culture, and we believe that both railroads share that strong focus on safety, and have a track record of operational excellence.

I'm confident that the CP/KCS combination will be able to integrate, and integrate their

operations to the benefit of rail customers and other stakeholders, and we've seen strong evidence of that goal as we've gone through this process. We really do see the transaction as uniquely beneficial, with none of the down sides that might result from another round of Class I railroad consolidation.

We have the benefit of working with other Class I railroads as well, most of them. We think the potential impact of the transaction is that it will allow a combined CP and KCS to drive what we consider better volume, better velocity and value. That means the ability to handle freight even more efficiently, more safely and more cost-effectively.

And we believe it will allow our company, and also other companies, to reach previously uneconomic markets ultimately improving supply chains for customers and consumers. For these reasons, Savage is voicing strong support for the combination of CP and KCS because we're convinced that it will enhance competition, provide expanded options, and drive efficiencies for customers of all sizes, so we urge this Board to approve the CP acquisition of KCS

so that the rail systems could be integrated, and the end to end benefits that we see are going to be realized for all stakeholders.

Thank you again for the opportunity to share our enthusiastic support for the combination of KCS and CP.

CHAIRMAN OBERMAN: Thank you much Mr. Aubry. Can I be optimistic enough to say that Mr. Knief spoke for you too, or do you have something you'd like to add?

MR. KNIEF: We're not so lucky Mr. Chairman. I've got a few words to share, but I'll get through it. Thanks for that opportunity. My name is Bob Knief. I'm President of Bartlett, which is a Savage company. We previously submitted a letter in this matter in support of CP/KC, the transaction, and opposing Canadian National's request for divestiture of the KCS line between Kansas City and Springfield, Illinois, which we understand in this proceeding has been referred to as the Springfield line.

We stand by both of those positions today.

Bartlett was established in 1907, we're a diverse agri business, focused on the acquisition, storage, transportation, processing and merchandising of grain. We operate 22 facilities in the U.S. and Mexico, supply all classes of wheat, feed grains, food grain, corn and soybeans to millers and processors, and we produce a full line of commercial patent flowers and animal feeds.

We're a leading exporter of U.S. grain to Mexico. For some of our facilities such as Council Bluffs, Iowa, other Class I railroads could provide service to Mexico. Since 2005 we have directed nearly all of that traffic to Mexico from those facilities via KCS routes.

Other rail options have always been available to us, but we have continued to choose KCS single line routes because they best meet our transportation needs. Further, we believe the CP/KCS transaction can only enhance the service options available to us. We find the single line options are typically superior to interline options, and we look forward to new single line options unlocked by the

transaction.

In fact, we are actively considering additional investment if the transaction is approved. In addition to supporting the transaction, we strongly oppose Canadian National's request for a forced sale of the Springfield line. The Springfield line is a key part of the efficient, KCS service, underpinning a number of important investments Bartlett has made.

A forced sale of the line to CN would remove an efficient single line available to us today, and force us to use a less efficient alternative. We operate a facility on the Springfield line located in Jacksonville, Illinois. All of the grain shipped out of that facility goes to Mexico. Last year we shipped almost 11,000 railcars from this facility alone, all to Mexico, and all on KCS.

We've made substantial investments in that facility to support shuttle service to Mexico. We've made additional investments in three regions of Mexico to further capitalize on the efficiencies of

this service. A CN takeover of the KCS line that serves our Jacksonville facility would put these investments at risk by depriving us of the single line service going west and south to Mexico, that we benefit from today.

And haulage rights we don't see as a cure, even if CP/KC were allowed to quote rates from Mexico to Jacksonville, we would be hostage to CN's operations, and the need for a new inefficient interchange at Kansas City. The last thing we want is to destroy the efficiency we have built through years of partnership with KCS, and substantial investment by injecting CN into this movement when it is not necessary, and does not remedy anything.

Adding an unnecessary hand off between CN and CP/KC to move our grain to Mexico makes no sense when we have an efficient shuttle loading operation. We don't want our single line service to Mexico to be converted into a joint line move with haulage to Kansas City for hand off to CP/KC to go to Mexico.

Slowing things down by injecting extra handlings and delays from an interchange is a step

backwards. So in sum, KCS has been a very valued partner for us for many years. We believe the CP/KC transaction will create new efficiencies, and we are in the process of evaluating substantial investment to capitalize on those efficiencies.

And finally, a forced sale of the Springfield line to the CN would move in the opposite direction, eliminating a valuable and efficient single line option that we have invested tens of millions of dollars to support, and forcing upon us in its place an inefficient alternative.

We therefore respectfully urge the Board to approve CP's purchase of KCS, and to reject CN's request for the forced sale of the Springfield line. Thank you for that opportunity, and we welcome any questions.

CHAIRMAN OBERMAN: We have -- Patrick has a question.

BOARD MEMBER FUCHS: Can you hear me?

MR. KNIEF: Yes. We can.

BOARD MEMBER FUCHS: Great. I understood you to say that the additional hand off would add

costs to the move, and eventually a source of delay. Did I also hear you say that it could potentially force alternative routings? And could you maybe speak a little bit if I did hear that, could you speak a little bit about what that means for your business?

MR. KNIEF: Yeah. I didn't, I don't think I hit on additional routings, but what we do, what we are concerned about is cost and delays and operational issues. We have facilities that are served in that way, and the direct line option is clearly a better way to go.

BOARD MEMBER FUCHS: Got it, thank you.

CHAIRMAN OBERMAN: All right. Mr. Knief, thank you very much, and I did not mean to undersell the importance of your testimony, and actually it added something that's very meaningful to what Mr. Aubry said, so I appreciate it. All right, thank you.

So we have one more witness who is here I hope still. Mr. Tavengwa Runyowa.

MR. RUNYOWA: And I want to be very clear

at the outset that this is not a presentation about what's happening in Canada, or that case. That's just the context of what brought me here, but not the content of my presentation. So the reason why I'm here is to discuss how this merger would dramatically increase the latent, but serious problems arising from CP railway's cross-border police command, or police force, that's the CP police service here in the United States.

And to just provide some general context of why does this matter, make such a difference, I'm just going to give you a few points of context around how this CP police service is structured. So, as you may be aware there's only one CP police service. CP operates in a multiple number of incarnations and subsidiaries on both sides of the Canada U.S. border.

But in terms of the CP police service itself, it's got a united command that is based in the Chief of Police in Canada, who is in charge overall of the entire police force, and then there's a Chief here for operations in the United States, and a Chief for operations in Canada.

The Chief in Canada is a police officer who is empowered under the Railway Safety Act, Section 44, and based on information that we have gathered, the Chief is not a commissioned police officer anywhere in the United States, but certainly not, and once they were able to get more data in the State of Illinois.

In terms of the reporting hierarchy, the Chief reports to the Chief Legal Officer, who as you know is a corporate civilian and is based in Canada. Now the Chief's duty, if he has to execute his duties properly, it requires that he has access to information so he can instruct his subordinates here in the United States, obtain information that is relevant to his power as someone who is commanding police officers in the country, and so on, and so forth.

So when you take all of that together there is a number of systemic issues that arise from this. The first one is the question of potential civil rights issues. Is it in the American interest to have persons who are not commissioned police

officers anywhere in the United States, who legally speaking in this country are civilians because they are not sworn police officers, exercising that cross border control over police officers in the country?

So for example, if someone is arrested by a police officer and this is not about did they do it, or did they not, but is subjecting the citizen to the law enforcement powers of an entity that is ultimately controlled from outside American soil by corporate civilians, consistent with the Civil Rights for Americans. So, because I want to express that I'm all the way over here, I'm just flagging these issues, and those who aren't educated about it can reach better conclusions.

The other question is obviously one of sovereignty, can you have a foreign, like a presence who is not based in the country who potentially might not be citizens. I'm not sure if they are, exercising the cross border command? You've got a digital tunnel of information that has to go through when a Chief asks about a file, or is providing instructions.

So who on the corporate side is getting access to this information? Is there a system to who has got the proper security clearances as the U.S. government might do if it was people who were based in the country. And then there's also the question of the expert territorial abdication of Canadian or the United States.

So because the Chief's powers as police officers arise solely under the Railway Safety Act, that raises the question of where they're commanding police powers in the United States, pursuant to a Canadian statute, is that a potential violation of American laws unless there is bilateral agreement between the countries, for example, allowing something like that to be happening.

There's also obviously customs and immigration consequences too because when the trains are going across an international border, all of those police powers are vested in corporate civilians who are based in Calgary, but they're watching trains to do their job properly.

They have to watch trains. They have to

watch Calgary, and all the things that come along with having to cross an international border. And with its merger, this is a merger of not only regional consequence, but also international consequence as well. I see that my time is running down, but I just wanted to emphasize that you know when it comes to this issue it's not only about the systemic part, but also about how deaths and serious injuries are investigated.

And I know the submissions that this Board is currently looking at, CP applied to strike those. I believe a decision on that is pending, but those submissions provide further details about all these implications that we've discussed.

So I think I will just close by saying something that was echoed a number of times by members of this panel about how you want to find the narrowest, and most proportionate way to address a problem. And I will just make it clear that we understand that the FRA in 2017 put out a regulation that allows railroad companies to contract out their police services, and they said they don't

necessarily have to hire them themselves.

There's a way that they can be independent, based in the United States, that allows CP to protect its property, to protect its workers, to protect its customer's merchandise, but without having to control that police force from said American territory.

So in closing I'll just say that you know this is a potential can of worms, it seems like it's been an underground fire that's been burning for a while. And with any can of worms it always is best you know to deal with them under conditions that you control and dictate.

Because if there's an incident down the road on any of these accesses to national security, privacy, and so on and so forth, that can puncture this can, then it will be harder to control all the problems that crawl out of it. So this merger, because it's looking at how are we extending these policing powers because once they acquire KCS the police force is not going to fall under the jurisdiction of the combined company with its

headquarters in the United States.

So what this Board is looking at is pretty much an unprecedented expansion of a police force to an entire U.S. MCA region, and this is the best time to be looking at if this merger does go through, how do we address the potential impacts of the policing side on all of the interests that I just mentioned.

CHAIRMAN OBERMAN: Thank you very much. You know you mentioned the FRA. I'm not clear as I hear your concerns whether those issues are properly something that we can even deal with as distinguished from the FRA, but we appreciate your being here, and bringing that issue to our attention.

MR. RUNYOWA: Just to clarify, I only raised the FRA to just give the Board the idea that you shouldn't be too concerned about the repercussions of taking any actions that restrict policing activity because there's alternatives, so it's not important to be in FRA's jurisdiction.

CHAIRMAN OBERMAN: But even in terms of whether we have jurisdiction to deal with these issues in the context of this merger, it's an open --

I don't know the answer to the question, but it does occur to me it may be something within the FRA's purview, not ours, but we will hear what you're saying, and we'll look into it, and we appreciate it.

MR. RUNYOWA: Thank you very much.

CHAIRMAN OBERMAN: Thank you sir, and I appreciate your patience for waiting this out, thank you. And with that it is seven o'clock, and the court reporter is going to turn into a pumpkin in about 30 seconds, so we are going to recess for today. We will convene at 9:00 a.m. tomorrow morning with the BN panel. Thank you all.

(Whereupon, at 7:00 p.m., the hearing adjourned.)

CERTIFICATE OF COURT REPORTER

I, LARRY FLOWERS, Court Reporter, do hereby certify that that the testimony contained herein is a true record of the testimony given by said witness, and I further certify that I am neither attorney nor counsel for, related to, or employed by any of the parties to the action in which this statment is taken; and, further, that I am not a relative or an employee of any attorney or counsel employed by the parties hereto, or financially interested in the action.

LARRY FLOWERS

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