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SURFACE TRANSPORTATION BOARD

HEARING ON CSX/PAN AM MERGER

APPLICATION REVIEW

DOCKET NO. FD 36472 et al

PUBLIC HEARING

Thursday, January 13, 2022 -- Day One

9:30 a.m.

Via Zoom

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

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

2 9:30 a.m.

3 CHAIRMAN OBERMAN: I think we are here.

4 Good morning everybody and welcome to our remote
5 public hearing. I want to thank everyone for joining
6 us in the hearing on the CSX/Pan Am Significant
7 Transaction, which is Docket Number FD 36572.

8 Briefly, the Applicant's revised
9 application seeks Board approval for CSXT and related
10 entities to acquire control of the seven railroads
11 controlled by Pan Am Systems and Pan Am Railways,
12 and for CSXT to merge six of the seven railroads into
13 CSXT. In addition, there are six related
14 transactions to which parties seek Board approval.

15 We are looking forward to the hearing and
16 the witnesses today and tomorrow, and discussing this
17 transaction and the relevant issues. This is our
18 first hearing with our new Board composition, and I'd
19 like to take this opportunity to welcome Karen
20 Headland our newest Board member who I'm sure many of
21 you in the rail industry know.

22 We are delighted to have her on the Board.

1 She is up to speed as fast as anything I've ever
2 seen, and ready to go along with the rest of our
3 Board, Patrick Fuchs, Robert Primus and Michelle
4 Schultz. So we are ready. This is the first time to
5 my knowledge that the Board has ever had an entire
6 virtual hearing in homage to the current surge. We
7 had hoped to be there in person, and inaugurate our
8 new taxpayer-funded hearing room, which I promise you
9 we will do sometime this year on other matters.

10 And I want to start out by expressing our
11 gratitude to our IT team who both in house and our
12 contractors who have just done a fantastic job
13 getting us ready, and I think, and I hope -- think
14 this is going to go smoothly. If anybody makes it not
15 go smoothly it will probably be me.

16 So let me move ahead to -- I also want to
17 acknowledge the fact that while there will be a large
18 number of witnesses who have asked to appear in
19 person, many people have filed written comments who
20 are not going to be here in person, but of course
21 those comments are in the record and will be taken
22 into account.

1 Let me go over a few procedural and
2 technical matters at the outset. The usual
3 admonitions. Please silence your cell phones, and
4 when you are not speaking please turn off your
5 cameras and mute yourselves in Zoom. Your panel is
6 up for appearance, then please turn on your camera
7 and keep it on for the entire duration of the panel.

8 When you are presenting a timer will
9 appearing counting down your allotted time. When
10 that timer reaches zero your time will have expired,
11 and we ask that you conclude your remarks. But I
12 want to underscore that I am not a harsh task master,
13 there are a lot of important issues to be discussed
14 here, and I am sure Board members will have many
15 questions for witnesses.

16 So this is not like an Appellate Court
17 when your time expires even though the Judge has
18 taken up all your time. So we will continue asking
19 you to address us and answer questions, and finish
20 your presentations so you have a full opportunity to
21 tell us what needs to be told. And I assure you that
22 as has happened in our past two public hearings, at

1 least that Patrick and I participated in, you will
2 probably be interrupted at some point for questions
3 when you are making your presentation, but then you
4 can get back to where you were.

5 If by the way, if anyone has a slide or an
6 exhibit that you have not previously filed with the
7 Board for presentation, please get it to us
8 immediately. Another technical point for panelists,
9 you have access to the chat function in Zoom. Please
10 only use this for technical questions. If you become
11 disconnected from the hearing and are not able to
12 connect via Zoom, there's a phone number you may use
13 to call in, included in the hearing information that
14 you were already provided.

15 You can also refer to the frequently asked
16 questions section on the Boards website for further
17 troubleshooting or contract information. But if in
18 fact a witness does run into that kind of problem we
19 want to get it fixed. We don't want you to be
20 disadvantaged at all when speaking to us.

21 This hearing is also being streamed on
22 YouTube, and that link is available on the Board's

1 website. A transcript of the hearing will be placed
2 on the Board's website after the close, and the
3 recording will be available as well. For the benefit
4 of our Court Reporter, please speak clearly into your
5 microphone, and minimize background noise.

6 The Court Reporter is welcome to interject
7 if he can't hear, which does happen you know in legal
8 proceedings, so if that happens let's address the
9 Court Reporter's concern. Further, we're trying to
10 keep this record open for a week following this
11 hearing, until January 21, to allow for the filing of
12 any additional written materials, but I want to
13 underscore that is not an opening of the record to
14 file stuff that you just thought of for the first
15 time.

16 If things come up at the hearing that were
17 new information to you, and you feel a need to
18 respond, or we ask a question that you needed to do
19 some more homework on, those are the reasons for
20 keeping the record open. The plan is to take a 30
21 minute lunch break each day somewhere around midday
22 when there's an appropriate time to break. I also

1 plan to take several short breaks throughout the day
2 to allow you know people to just do what they have to
3 do, and in the interest of time let's try to adhere
4 to those timeframes that I set. The breaks will be
5 five minutes really.

6 If someone really needs a break for any
7 reason let us know, and we'll accommodate that. In
8 the interest of time we have all decided not to make
9 any opening statements for ourselves. We will have
10 plenty of time for questions, so we will begin with
11 the first panel. Pardon me, the first panel. And as
12 I think most of you will know from looking at our
13 recent order we plan to call people up in groups.

14 The first panel consists of CSX. And I'm
15 going to read the names. There are quite a few
16 people just so we all know who is supposed to be on
17 these panels, and perhaps the leaders of these
18 groups can tell us if any of these people are not
19 going to appear. But according to our schedule, the
20 first panel consists first of CSX, and of course Jim
21 Foote who I am looking at, so I know he's there,
22 James Boychuk, Kevin Boone, Sean Pelkey, Dr. David

1 Reishus, Anthony LaRocca and Peter Denton, so let me
2 stop there. Are all of those folks present Jim?

3 MR. FOOTE: Yes Mr. Chairman.

4 CHAIRMAN OBERMAN: Okay thank you. The
5 panel will also include one of the names are long,
6 it's really B&E Pittsburgh and Shawmut Railroad,
7 d/b/a Berks and Easter. And I have Michael Miller,
8 Matthew Walsh, Leonard Wagner and Erik Hocky, are all
9 of those folks present as well?

10 MR. WALSH: We are all here.

11 CHAIRMAN OBERMAN: Okay thank you. And
12 finally for Norfolk Southern Bill Melton.

13 MR. MELTON: I am here Mr. Chairman.

14 CHAIRMAN OBERMAN: All right. So
15 everybody is present and accounted for, that's great.
16 Why don't we start Jim the floor is yours.

17 MR. FOOTE: My name is Jim Foote, and I'm
18 the President and Chief Executive Officer of CSX. I
19 have more than 45 years of the Berks Railroad
20 industry experience, including the successful
21 completion of numerous railroad mergers and
22 acquisitions, including Chicago Northwestern's

1 acquisition of Rock Island Railroad Lines, and sale
2 to Union Pacific.

3 And while at the Canadian National the
4 acquisition of the Illinois Central, BC Rail,
5 Wisconsin Central and Great Lakes Transportation. I
6 believe this merger between CSX and Pam Am Railway if
7 approved, will significantly improve and strengthen
8 freight and passenger rail serve in New England and
9 beyond, and it is my pleasure to be here to discuss
10 the many public interest benefits of this
11 pro-competitive merger.

12 I want to begin by thanking the STB
13 members for holding this hearing and providing us the
14 opportunity to talk with you firsthand about why this
15 proposed merger between CSX and Pam Am is good for
16 rail shippers, passenger rail customers, the national
17 transportation network, and the public at large.

18 We are eager to explain why this proposed
19 transaction should receive Board approval, and are
20 ready to answer any questions you may have. In a few
21 minutes my colleagues will outline specific aspects
22 of the merger, but first I want to share with you my

1 thoughts on the numerous benefits that will result
2 when Pam Am is integrated into our Class 1 rail
3 network:

4 Benefits for rail shippers, passenger rail
5 customers, and state and local communities. CSX
6 plans to make significant infrastructure investments
7 in Pan Am's network. These network upgrades will be
8 good for the environment as I will discuss in a
9 moment, and customers will benefit from seamless
10 single line service into and out of New England.

11 This transaction is a huge step forward
12 for rail users in New England, and will further
13 strengthen our national transportation network
14 overall. It's widely known that this New England
15 rail network was on the brink of bankruptcy not too
16 long ago before it was saved by the Guilford Group,
17 now Pan Am.

18 That effort did a great job of keeping the
19 New England network viable, and now we have higher
20 aspirations for Pan Am and its customers. We want to
21 bring Pan Am and its customers into a new era, which
22 will start by bringing them into our Class 1 rail

1 network.

2 For nearly 200 years CSX has played a
3 vital role in the nation's economic expansion and
4 industrial development. Our 23 state-wide network
5 connects the eastern half of the United States,
6 where nearly two-thirds of the nation's population
7 resides. Our network connects more than 230 short
8 line railroads, 70 ocean, rail and lake ports in the
9 national rail network with major population centers
10 and farming towns alike.

11 I am very proud of the job that the men
12 and women at CSX do every day in serving our
13 customers. Over the last four years we have
14 significantly changed the focus of the company to be
15 more customer and service focused. Since I became
16 CEO at the end of 2017, CSX has evolved to become by
17 far a leader in the industry in terms of faster
18 transit times and service reliability.

19 We introduced specific service
20 measurements such as trip plans, and innovative tools
21 for customers to have greater ability to track
22 shipments. At the beginning of 2020 CSX had the best

1 service product in its history, and the best well,
2 train speed, and fewest cars online in the industry,
3 and our plans for the future are to build on this
4 platform and to continue striving to improve all of
5 those numbers measurably.

6 And we plan to do so by growing our
7 business. Pan Am is key to those plans as you will
8 hear more about today. Why this intense focus on
9 service? Because if we don't provide a better
10 product we cannot grow the business. And growing the
11 business is our goal. When we do this successfully
12 we take trucks off the highway, improve the
13 environment, and create more jobs.

14 For decades this industry has ceded share
15 to trucking. And at CSX we are focused on reversing
16 that train. In fact, 2019 was the first year our car
17 load business grew since 2015, and we have plans to
18 continue this trend into 2022 and beyond. Of course
19 I wish I could say we delivered these record service
20 levels in 2020 and 2021.

21 Unfortunately, our business, like every
22 other essential business in the world has bene

1 operating to very tough conditions due to the impacts
2 on our people and business from COVID. Let me
3 provide some perspective. 4,804 of our employees
4 have contacted the disease since the pandemic began.
5 31 of our employees died. In just the last two weeks
6 nearly 800 of our employees have been off because of
7 COVID, but we have continued to operate and serve
8 all of our customers, not with the level of service
9 we would like, but I know our hard working men and
10 women have been doing a remarkable job under these
11 trying circumstances.

12 In all the turmoil last year we moved more
13 loads than we did in pre-pandemic 2019. I am well
14 aware that Board members have expressed concerns
15 about rail crew shortages across the nation,
16 including at CSX. I want to discuss this directly
17 with you and provide you some background on our
18 approach to addressing this issue.

19 As business levels began to quickly
20 recover in late 2020, we were presented with an
21 unexpected new challenge. Employees were not
22 returning to work at normal rates, and as we began to

1 gear up to aggressively hire new employees, our
2 traditional hiring practices and markets for
3 employees weren't panning out.

4 This is not a problem that is unique to
5 CSX. We had to expand the pool of job candidates and
6 how we hire. We rapidly did that and over the last
7 15 months we have hired over 1,000 T and E employees
8 and will continue to hire. In addition we offered
9 significant financial incentives to existing
10 employees to work extra days, or transfer between
11 crafts to help fill voids and keep our service as
12 fluid as possible during this pandemic.

13 I make these comments because I believe
14 that CSX is a great company with great employees who
15 work hard every day to serve our customers. I also
16 believe that Pan Am is a great company with great
17 employees. In fact, we plan on making sure that
18 every Pan Am employee who wants to have a job with us
19 will have a job with us.

20 I am committed and determined to filling
21 positions and providing the best service product we
22 can to our customer. Combining Pan Am with CSX will

1 bring substantial benefits to our network and beyond.
2 New seamless single line service will provide
3 shippers with low cost, environmentally friendly rail
4 service with truck like reliability.

5 Pan Am shippers can more effectively reach
6 a wider customer base over an expanded territory.
7 Together we'll create new services so customers can
8 capitalize on a robust pipeline of market
9 opportunities to move freight to, from, and within
10 New England.

11 Pan Am shippers will benefit from CSX's
12 superior customer service, greater schedule
13 reliability, and greater transparency. For example,
14 we have made major investments in our customer facing
15 technology, including our innovative trip plan
16 performance tool which allows customers to see
17 detailed performance data on every container and
18 railcar they ship.

19 New England will also benefit from CSX's
20 track record as an environmental leader. Through the
21 adoption of new technology we have increased our
22 sustainability advantage over our competitors,

1 setting records for fuel efficiency and exceeding our
2 emissions reduction targets.

3 In fact, CSX is the only Class 1 railroad
4 to operate below one gallon of fuel per thousand
5 gross ton miles. On average, CSX moves a ton of
6 freight 508 miles on a single gallon of fuel, which
7 is three to four times more fuel efficient than
8 truck. This reduces emissions, takes trucks off the
9 highway, and relieves highway congestion, and reduces
10 America's carbon footprint.

11 CSX will use newer, high horsepower
12 locomotives which will allow us to operate the Pan Am
13 network with a more reliable, and more fuel efficient
14 fleet, significantly reducing fuel consumption.
15 These benefits are a large reason why this merger has
16 tremendous support from shippers and business
17 organizations throughout the region.

18 As you know there is no opposition to this
19 merger in the shipping community, none. And as you
20 will see and hear throughout this hearing there is
21 abundant support from those essential stakeholders.
22 On that note I'd like to thank each of the shippers

1 and other proponents who are appearing to voice their
2 support for this transaction.

3 The proposed transaction has substantial
4 public support in New England, as evidenced by the
5 many letters received from local, state and federal
6 officials and legislators. This support reflects
7 broad recognition that the agreement CSX has already
8 reached will enhance competition while strengthening
9 the rail network in the region.

10 While there is overwhelming support for
11 the transaction, there have been a few expressions of
12 concerns. We do not take any of those concerns
13 lightly, even though in most cases these concerns
14 are really not about our proposed transaction, but
15 about the state of the existing rail network.
16 However, we take all concerns seriously and have been
17 working hard to address every concern we can that has
18 been raised by these common parties.

19 By example, I'll start with the
20 Commonwealth of Massachusetts, which wants to make
21 sure that existing passenger rail service in the
22 Boston area will not be adversely affected. We have

1 reassured the Commonwealth, and its representatives
2 many times that we are not making any traffic changes
3 that will negatively impact passenger rail service,
4 rather we expect it to improve.

5 And our track record over the last few
6 years supports that expectation. The Commonwealth
7 can rest assured that we will treat passengers
8 service as a priority throughout our network, and we
9 will do so here. The Commonwealth has also raised
10 concerns about the rail lines running along the
11 Wachusett Reservoir near Boston.

12 The conditions of those rail lines has
13 been a concern of the Commonwealth for many years.
14 This proposed transaction is not the source of the
15 Commonwealth's concern, but we have committed to
16 make major improvements on those rail lines to make
17 that quarter safer and more secure. As in other
18 areas, our transaction is going to produce a better
19 and safer rail network throughout the region.

20 The Islington Creek neighborhood of
21 Portsmouth, New Hampshire has also shared its concern
22 about locomotives idling in a local yard. We have

1 reached out to the neighborhood to assure them that
2 we will work with them to address their concerns. As
3 the Board knows Amtrak has also raised some issues.
4 I have good news regarding Amtrak. Yesterday we
5 submitted a letter to the Board reporting that we
6 have agreed to begin hosting the Berkshire flier
7 service, and we have also accepted all of Amtrak's
8 remaining requests for conditions.

9 This is a significant commitment by CSX
10 that puts teeth behind their assurances that we will
11 continue to work collaboratively with Amtrak and
12 other passenger rail stakeholders. Since I have
13 become CEO, we have worked to achieve an outstanding
14 record hosting Amtrak service, having progressively
15 improved from a 73 percent on time performance in
16 2017, to mid-90 percent levels today.

17 Amtrak itself has congratulated us on our
18 industry leading performance. In addition, we have
19 worked hard to ensure that we have no disputed
20 schedules under the FRA's metric and standard
21 regulation. I'm proud to say that we're the first
22 U.S. Class 1 to have agreement with Amtrak on 100

1 percent of our schedules.

2 Canadian Pacific has recently raised
3 concern about the continued viability of the Patriot
4 corridor on PAS as an independent railroad between
5 Upstate New York and the Boston area. We are the
6 second largest user of Pan Am Southern, much larger
7 than CP, so we have a strong incentive to keep PAS
8 viable. I believe Norfolk Southern, the largest user
9 of this corridor, will also comment on its commitment
10 to this line's viability.

11 CP's concern appears to be focused on the
12 aging Hoosac Tunnel which has a long history of
13 maintenance issues. I've written to CP's President
14 and CEO, and assured him that our part ownership of
15 Pan Am Southern with NS will ultimately serve to make
16 PAS a better railroad.

17 And in the event there is a blockage of
18 the Hoosac Tunnel we have expressly committed to
19 making available our alternative route to Boston
20 through Selkirk yard should it be necessary.

21 Finally we know that the Board has been
22 rightly focused on the unprecedented supply chain

1 challenges facing our country. We at CSX will
2 continue to do all we can to work with our
3 transportation partners to help restore the network's
4 fluidity, and we take this merger transaction very
5 seriously.

6 We are committed and determined to
7 smoothly integrate Pan Am into CSX. It is imperative
8 that we put the two companies together properly, and
9 without needless destruction to customers or other
10 carriers. The team at CSX has the experience and the
11 expertise to ensure a smooth integration for all
12 parties involved, and we are ready to go.

13 Thank you for your attention this morning,
14 and I look forward to addressing any questions you
15 have.

16 CHAIRMAN OBERMAN: Jim, I'd like to,
17 before you move on, ask a few general questions and
18 other Board members may have some as well. And then
19 we might have some for your other members of the
20 team. But here at the outset a couple of things.
21 First of all I noted late last night the agreement
22 that was filed with Amtrak, and I think we'll be

1 going into that in more detail.

2 I just wanted to make the observation that
3 I hope this is shades of things to come involving
4 Amtrak in general, and I think you know what I'm
5 talking about. But let me get into some of the
6 broader comments that you've made, and that have been
7 of concern to the Board.

8 You know that the Board has focused on
9 service issues at CSX and others, but certainly at
10 CSX over the last year. We've exchanged some
11 meaningful correspondence on the questions that
12 we've raised. Our RCPA office continues to get
13 complaints about service problems.

14 As recently as November, which is I think
15 your last letter to me, you acknowledged and I'm
16 quoting, "That current CSX service levels are not
17 where the carrier wants them to be." And you've
18 pretty much acknowledged that this morning. What I
19 heard you say in your statement is the same general
20 promises that you are committed to first class
21 service and so forth.

22 But it really does raise a question in my

1 mind that you're planning to take over the operation
2 of some 1,200 more miles of railroad. How is your
3 team going to manage all of that and continue to
4 improve the service you have? It is a problem which
5 seems to stand out at this point in the history of
6 CSXT.

7 You're taking on a big new challenge, a
8 railroad that you acknowledge needs a lot of work,
9 Pan Am. How can we have confidence that you really
10 are going to be able to get your service levels back
11 to where you say they should be, so we can stop
12 hearing about it from your customers?

13 MR. FOOTE: Mr. Chairman yes you and I
14 have dialogued about this topic for more than a year.
15 When we started this process of acquiring the Pan Am
16 I don't think any of us anticipated that we'd be
17 sitting here today doing this virtually, with 99
18 percent of the people in this room wearing masks with
19 800 of our employees off sick, listening to the CEO
20 of Delta Airlines this morning talking about their
21 disruptions over the holiday weekend with 8,000 of
22 their employees currently off sick.

1 United yesterday 3,000 employees off sick.
2 Chicago Public Schools shut down for a week, no snow
3 plow drivers, no nothing, and complete chaos. And as
4 I've said to you on many occasions the principal
5 reason that we are having service delays across our
6 network, even though we did a fantastic job as the
7 economic switched to e-commerce, and we performed
8 extremely well during the peak season and the holiday
9 rush, again making sure that everybody, all the kids
10 got their toys this year.

11 The reason we're having problems is
12 because of the pandemic. And the pandemic is going
13 to be over one of these days. When? I don't know.
14 Is there such thing as herd immunity? I don't know.
15 Every transportation and service provider in the
16 world is struggling, so we're struggling too.

17 So and we have hired 1,000 employees
18 keeping up with the number of people that are off
19 sick, so that we can continue to run the railroad.
20 With industry leading metrics -- industry leading
21 metrics. Your metrics, that the STB established to
22 judge the performance of a company throughout this

1 process.

2 So why do I have confidence? Because I
3 know and I trust, and I believe in the people at CSX,
4 and when the cases subside, there's no reason in the
5 world to believe that we will not get back to the
6 point where we were in 2019, when you didn't hear
7 anything about CSX. And from a service perspective,
8 and continue to do even better in the future.

9 Our goal is to not get back to 2019. Our
10 goal is to get back to 2019 because that would be
11 kind of the base camp for the launching to get even
12 better and better and better in the future. And --

13 CHAIRMAN OBERMAN: Well let me talk about
14 what you're trying to get back to because that is an
15 issue I have raised in other contexts many times, not
16 only with CSX, but with others. And while you say
17 that your metrics are industry leading, I don't think
18 it's stretching it to say they're leading this
19 industry at this time and service -- and lack of
20 service complaints is not a particularly impressive
21 standard.

22 But the thing that concerns me, and I'd

1 like to hear you address it specifically if you can,
2 is that aside from other industries, and whatever
3 problems they may be going through, what we know
4 about the rail industry is the tremendous cuts in
5 work force over the past five or six years.

6 CSX has led the industry in cutting 35
7 percent of its workforce since 2016. And I wonder if
8 you will agree with me specifically that when the
9 pandemic hit having cut so much of your workforce
10 prior to the pandemic, you were left with little
11 cushion, no cushion. And this isn't unique to the
12 pandemic. We have it when the polar vortex's hit,
13 and they hit predictably and regularly.

14 What I'd like to know is, is your hiring
15 plan just to fill in the gaps that you now have
16 because of the pandemic, or is it to restore any
17 level? I don't suggest the entire 35 percent of
18 your workforce to a level higher than what it was
19 before the pandemic, so that you can operate the
20 railroad as you and many others tell me, as an
21 outdoor sport, and have a cushion when you run into
22 unexpected problems? Do you have any plan or

1 commitment to do that?

2 MR. FOOTE: I think our plan always
3 envisions having the appropriate level of employees
4 to run the railroad in all circumstances. Yes, we
5 have during the pandemic yes, we had polar vortex
6 during the pandemic. How many hurricanes did we have
7 during the pandemic? We had the hurricanes, we had
8 sun kinks, we have issues constantly, and we staff
9 the railroad appropriately, so we have enough
10 employees to be able to operate in those difficult,
11 and recurring circumstances.

12 And we will get the railroad back staffed
13 appropriately to make sure that we can continue to
14 operate at the levels that we were operating in,
15 excluding the pandemic. In 2019 we planned to
16 continue hiring. We told everybody in the world that
17 in 2020 we would be hiring, and we will get back to
18 that point and continue to staff appropriately.

19 CHAIRMAN OBERMAN: Jim, the word
20 appropriate doesn't give me a lot of comfort. The
21 railroad obviously thought it was appropriate that 35
22 percent fewer employees in 2019 than it had in 2016.

1 What I want to know is, is the appropriate level
2 going to be higher than it was before the pandemic,
3 so that you have some cushion that you've removed
4 when you went into full PSR mode to get back in
5 whenever that started.

6 That's what I want to know, not what you
7 think is appropriate. What's appropriate has not
8 been enough to sustain your railroad and many others
9 in a pandemic, in hurricanes and polar vortex's.
10 There are crew problems. Whenever there are these
11 events, so appropriate doesn't tell me an answer.
12 Are you going to hire more people back up to some
13 percentage of that 35 percent you've cut? That's the
14 specific question. Can you answer that?

15 MR. FOOTE: Well again yes, if the volumes
16 continue to increase like we expect the volumes to
17 continue to increase. We would need to hire probably
18 additional employees yes.

19 CHAIRMAN OBERMAN: Well it's really a
20 staffing strategy that I'm interested in hearing.
21 You had a lot more employees before you began PSR,
22 and as a result of that strategy you reduced the

1 entire footprint of the workforce on the railroad.
2 Is that going to continue to be your strategy that
3 way because it doesn't leave you a cushion.

4 If you have more volume to serve, but you
5 still have no cushion you're going to run into
6 problems, but that's my question, and I'm not sure
7 I've gotten a clear answer as to whether you're
8 going to rehire any of these folks.

9 I know you're under a lot of pressure to
10 strip down your cost structure, but the public's
11 under a lot of pressure to have a good rail network,
12 and so that's why.

13 MR. FOOTE: I do not feel like I am under
14 any kind of pressure to strip down our cost
15 structure. What we did from 2017, starting in 2017,
16 and when I took over basically in 2018, and into '19
17 when the railroad continued to improve significantly,
18 was dramatically change the way the railroad ran. .

19 We eliminated significant amounts of
20 excess, unnecessary work throughout the railroad that
21 was left over as a legacy of many, many decades of
22 not properly realigning the operations with the rail

1 network that had been assembled through multiple
2 mergers and acquisitions historically.

3 Process re-engineering of the rail network
4 results in millions, the elimination of millions of
5 unnecessary work activities that had the result of
6 improving our transit times by 48 hours. The rail
7 network speeded up because we just didn't stop at
8 places and do work that was unnecessary because no
9 one had ever done the appropriate analysis and
10 re-engineering of how the work got done across the
11 network which was slowing down the railroad and
12 adding a tremendous amount of unnecessary touches.

13 That's what we did. By eliminating
14 unnecessary work we speeded up the railroad, we
15 improved the quality of our product, and we were at a
16 good spot in 2019, had no plans to make any kind of
17 further headcount reductions anywhere across the
18 network, and were fully anticipating that we were on
19 a trajectory of growth, and at that point in time we
20 began to hire the appropriate amount of people to run
21 the railroad.

22 I don't think you think I'm being evasive.

1 We're not going to go back and put in unnecessary
2 work into the rail network when I think we have a
3 fiduciary responsibility to our customers. We have
4 an obligation to try and run the rail network in the
5 best way we can.

6 CHAIRMAN OBERMAN: Jim nobody is
7 suggesting that the railroad do unnecessary work.
8 The customers who complain to our RCPA about missed
9 switches, where are my cars, where's the service,
10 would not think that the work they're not getting is
11 unnecessary. Let's move on because I know the other
12 members are going to have some questions.

13 One specific point on employee work
14 levels, and then there's one other area I want to
15 deal with quickly, and then hand it off to the Board
16 members, or to your other witnesses. You said in
17 your opening statement that everybody who works at
18 Pan Am now will have a job if they want one.

19 As I understand it the B&E proposal, and
20 if you think I should ask this question to B&E that's
21 fine, I will, is to cut staff that's currently on
22 PAS. Are you going to have jobs for those people at

1 CSX?

2 MR. FOOTE: The principal reason, and
3 correct me if I'm wrong Mr. Pelkey, the principal
4 reason for the reduction in the workforce at the B&E,
5 on the PAS is because they won't be doing capital
6 work on the railroad. We will be doing it right?
7 Right, we will be doing the capital work on the
8 railroad. So those people are redundant.

9 We will hire those people to work
10 elsewhere on the Pan Am, and if necessary we will
11 hire those people to work on CSX.

12 CHAIRMAN OBERMAN: Well are those people
13 going to be included in the group that you say will
14 all have jobs if they want one.

15 MR. FOOTE: They work for them today, they
16 can work tomorrow, the next day. Post transaction
17 day one they'll have a job.

18 CHAIRMAN OBERMAN: And just to be
19 specific, the ones that B&E says it doesn't need?

20 MR. FOOTE: Absolutely.

21 CHAIRMAN OBERMAN: Okay. Just one other
22 area because it relates to this whole area of service

1 and growth, which is intimately related in my view to
2 the level of work force. Here's the problem I'm
3 having, and I'd like you to address us. All of the
4 things that you have said are going to be
5 improvements to what is now the Pan Am system and
6 network through what you say is CSX's best in class
7 operation for additional capital improvements and so
8 forth.

9 When you made your projections for our
10 environmental evaluation, the projections we got were
11 only a growth of 2.3 percent over the first three
12 years that you were going to operate this railroad.
13 That's a growth level that just matches the general
14 economic growth in the economy that any railroad
15 would get without trying to increase traffic.

16 And when we asked for five year
17 projections, it was projected that there would be
18 after the third year -- after the third year, an
19 increase of 1.5 percent derived from moving truck
20 traffic to rail. Those do not in my view reflect a
21 so called pivot to growth, which the industry has
22 been touting as a result of PSR. Those are modest.

1 To me there's almost no growth at all
2 attributed to the merger itself. So where is it that
3 CSX is going to take trucks off the highway, help the
4 environment, help the highways, really grow the
5 railroad? I don't see it in the numbers you have
6 given us.

7 MR. FOOTE: The numbers that we presented
8 yes, they have growth projections that are consistent
9 with the growth basically, the GDP, and there's some
10 question about whether or not the Pan Am in its
11 current state would have even been able to handle
12 that level of growth.

13 As I discussed in my comments, the
14 strategy for our involvement in Pan Am, and what we
15 think is the future improvement in the Pan Am service
16 levels, primarily comes from us improving the
17 infrastructure of the rail network, improving the
18 speed and reliability of the network.

19 Mr. Boychuk will present this morning as
20 well and show you a few pictures of what the current
21 Pan Am main line track looks like compared to what it
22 will look like compared to our main line traffic in

1 the future. So it's going to take some time for us
2 to improve the overall network speed, reliability,
3 efficiency, and once those capital improvements have
4 been in place, that's when yes, there is an
5 additional step up from GDP to GDP plus.

6 And so we do expect what I guess would be
7 referred to as outsized growth once we have improved
8 the overall network performance of Pan Am.

9 CHAIRMAN OBERMAN: That's going to take
10 five years to get there?

11 MR. FOOTE: That's going to take at least
12 a couple, and I think the numbers were like in three
13 years we'll start to see this step up.

14 CHAIRMAN OBERMAN: That's not the numbers
15 I've seen, but you know what if Jamie is going to
16 address that I know others have questions, you know,
17 maybe I'll talk about that with him. Patrick Fuchs
18 has a couple of questions for you Jim.

19 BOARD MEMBER FUCHS: Thanks Marty. I want
20 to start by recognizing that you know CSX has worked
21 through a number of the most challenging issues with
22 its application, with parties, and came to reasonable

1 settlement agreements. And so you know our
2 preference at the Board echoing the Chairman, is
3 always for parties to work out issues amongst
4 themselves, and so I want to recognize the fact that
5 CSX had done that, and that's a very good thing.

6 You know where Marty left out Jim I'm
7 going to ask you in your experience is a substantial
8 portion of the service issues that CSX encounters
9 related to switching as well as interchange with
10 other railroads? And I wanted, I know you're going
11 to cover this later in your presentation, but I want
12 to quick get your thoughts on what CSX is planning to
13 do proactively in terms of reducing, switching an
14 interchange where we saw, and see some of the service
15 problems?

16 MR. FOOTE: Well again in terms of
17 developing single line service across the network,
18 and the resulting service improvements, when you
19 eliminate the delays associated with the hand-offs,
20 which is the biggest reason for train operation
21 delays, that's where you see the trans in time
22 improvements and the reliability levels, which is the

1 critical number that the customer wants.

2 The customer wants reliability, and that's
3 door to door. That's not just train operations.
4 That's what our trip plans do. They measure it from
5 door to door, which takes into consideration the
6 delays, not only just over on the main line trains,
7 or the local deliveries, but the switching operations
8 as well. So all of the changes that will come from
9 having an integrated network as opposed to the
10 stop/start, stop/start that you get when you have
11 multiple railroads involved in a shipment would be
12 improved, and that will have a result in increase in
13 the key metric, which is reliability.

14 BOARD MEMBER FUCHS: Would it be fair to
15 say that CSX has observed delays and service
16 challenges at Barber's Junction where you currently
17 interchange with the Springfield terminal?

18 MR. FOOTE: I think that's part of the --
19 I'll turn that over to Jamie who can answer that
20 question directly.

21 MR. BOYCHUK: Yeah I would say that we
22 have Barber's Station seeing some delays with respect

1 to the interchange. I'll talk a little bit about
2 some of those issues that go on with respect to their
3 yards and the infrastructure we're looking at adding
4 into that location. But you know Pan Am, like every
5 other railroad has been struggling with what's going
6 on with COVID and with people, so yeah, I would say
7 that we see delay in today's environment.

8 And even before this pandemic there is
9 delays in 24 hours of moving any type of interchange
10 traffic between railroads.

11 BOARD MEMBER FUCHS: Jamie, on your
12 interline moves you know the potential delay at
13 Barber's Junction, potential delay which I know
14 you'll get into with the equality of the track
15 currently on the Pan Am, and as I understand it the
16 transaction is looking to make improvements on both
17 those single line service through capital investment.

18 Are there other key sources of delay, some
19 of the service issues existing in interline moves
20 that CSX plans to address through the transaction?

21 MR. BOYCHUK: Yeah. you know I'm going to
22 discuss a little bit about how we can use the South

1 Brickyard or hump yard in New York to be able to
2 improve some of movement that currently occurs on
3 that.

4 BOARD MEMBER FUCHS: Hey Jamie I don't
5 know if it's just me, but I'm having a bit of
6 difficulty hearing you.

7 CHAIRMAN OBERMAN: Yeah there's a volume
8 problem here Jamie.

9 MR. BOYCHUK: Okay. Can you hear me
10 better now?

11 CHAIRMAN OBERMAN: A lot better.

12 MR. BOYCHUK: Okay thanks. All right.
13 I thought they tested of these ahead of time my
14 apologies. With respect to some of movements that
15 are moving up and down, up and through the Pan Am,
16 we will be utilizing, and I'll talk a little bit
17 about our Selkirk, New York hump yard, on how we'll
18 block traffic differently to and from on the north
19 which will help assist on going beyond locations
20 where currently that traffic goes to, to be flat
21 switched in a smaller yard.

22 And then from there it may go out miles,

1 it may not. It takes a longer time for that point
2 you know to move on to the customer. So we will, and
3 I will discuss a little bit about the benefits that
4 we can certainly work on and with respect to our
5 current network.

6 BOARD MEMBER FUCHS: Appreciate it thank
7 you.

8 MR. FOOTE: I'm sorry Mr. Oberman, you're
9 on mute.

10 CHAIRMAN OBERMAN: Thank you Jim. Any
11 other Board members, Karen? You're on mute too.
12 There you go.

13 BOARD MEMBER HEDLUND: Yeah. Thank you
14 very much. Mr. Foote you said that you anticipate
15 being able to make significant improvements in
16 passenger rail, and at the same time significantly
17 growing your freight business. Do you see any
18 conflict between the two? How are you going to
19 handle both?

20 MR. FOOTE: Well Commissioner Hedlund,
21 first of all it's a pleasure to meet you for the
22 first time. I wish it was in person. You know we

1 are railroaders, and we don't mind running whether
2 they're trains, whether they're passenger trains or
3 freight trains, and we are the largest railroad in
4 terms of Amtrak service today, and the number of
5 trains that we host on our network.

6 And Jamie and his team have done an
7 exceptional job of improving the overall quality and
8 experience that Amtrak has when they're on our
9 railroad. If you saw what we have done in terms of
10 being open and willing to work with the State of
11 Virginia, and expanding the passenger service in the
12 Virginia, and into the Washington area, that was
13 really revolutionary I think for our freight railroad
14 to have wholeheartedly endorsed that project, and
15 worked with the states to make that happen.

16 The one area of concern that I always have
17 is the comingling of passenger and freight service,
18 and making sure that it's done safely. So with the
19 appropriate level of infrastructure in place, we're
20 wholeheartedly able, willing and able, to do that.
21 Like I say we do that every day. We do that on a
22 regular basis.

1 As you can imagine with our network,
2 Amtrak trains operate on our main lines. So you know
3 I spent 15 years in Chicago. We're working with the
4 Chicago Northwester. I know metro, and we interfaced
5 there on a regular basis, so I'm aware of the
6 complexities of what's needed, so I'm not concerned
7 that we are going to do something that would limit
8 our ability to grow and provide service to our
9 freight customers while providing an exceptional
10 level of service to the passenger trains at the same
11 time.

12 BOARD MEMBER HEDLUND: Well the Congress
13 as you know has appropriated an unprecedented amount
14 of money for passenger rail in the Infrastructure
15 Bill, 66 billion dollars, so in addition to just
16 making the existing passenger rail system work more
17 effectively, they are really encouraging a
18 significant level of investment to grow passenger
19 rail.

20 You talk about taking trucks off the road.
21 They want to take cars off the road too, that's of
22 significant importance. Let me ask you one final,

1 very general question. You have spoken quite
2 optimistically about the advantages to you and your
3 customers, passenger rail, the general public, about
4 this merger.

5 What concerns do you have? What do you
6 worry about? You know what's keeping you awake at
7 night? For example if inflation continues on the
8 path that it's on right now, how might that
9 negatively impact plans? Are there other things that
10 you're really concerned about that what are the major
11 risks?

12 MR. FOOTE: The number one thing, the
13 primary thing that keeps me up at night and I worry
14 about constantly is safety for our employees, and
15 safety for the communities. And that was my number
16 one objective when I took over four years ago. And
17 we had dramatically, dramatically improved the
18 overall safety performance of the company.

19 We put forth in our filing an extensive
20 safety plan, including Norfolk Southern who has a
21 rock solid safety plan including the Genesee in
22 Wyoming, and their operations, their safety numbers

1 are extremely low. So we take safety extremely
2 serious, and that's the number one thing that I worry
3 about. Inflation is inflation, you know.

4 It's part of just doing business and
5 managing a company and trying to figure out how to do
6 it. Inflation is not going to stop us from making
7 the necessary capital improvements. We've made
8 capital improvements at CSX consistently over the
9 last four years putting in more rail ties, ballast
10 into the infrastructure of the railroad, improving
11 the yard operations of CSX since I've been here.

12 Investing in whatever technology is the
13 cutting edge to improve the overall quality of the
14 operation and improve the safety. And we bring that
15 wherewithal to Pan Am, which you know simply can't
16 afford to have that cutting edge -- invest in that
17 kind of cutting edge technology.

18 So besides safety, over the last two years
19 have no idea what the next event is going to be, and
20 I'm waiting for a meteor to crash into the river out
21 there, outside our building, and you know cause you
22 know floods or whatever it might be. You know the

1 black swans we're trying to figure out.

2 So I'm confident, I'm extremely confident
3 again having done this before many times in my
4 career, but I am extremely confident that we have the
5 team, the wherewithal, the expertise and the
6 commitment to make sure that this gets done right.

7 BOARD MEMBER HEDLUND: Thank you. And I
8 certainly appreciate your comments about making
9 safety, or having safety be your number one priority
10 yes.

11 CHAIRMAN OBERMAN: All right. Any other
12 --

13 VICE CHAIRMAN PRIMUS: Yeah I'd like to
14 jump in if you don't mind.

15 CHAIRMAN OBERMAN: Yeah Robert?

16 VICE CHAIRMAN PRIMUS: Thank you. Hey
17 Jim, good morning. I'm a little surprised at your
18 last answer. I thought you know your top answer what
19 kept you up late at night would be you know coming
20 before us and this firing squad that you have to
21 endure for the next hour or so. You know --

22 MR. FOOTE: You're not that scary.

1 VICE CHAIRMAN PRIMUS: Not yet, not yet.

2 MR. FOOTE: No, Mr. Oberman
3 was right, I hear from the customers all the time.
4 They call me all the time, so you guys are I'm used
5 to getting beat up.

6 VICE CHAIRMAN PRIMUS: No. Well you know
7 it's not about you know beating anybody up, but I
8 think we have to call you know a lot of this you know
9 for what it is. I mean you know this is a dog and
10 pony show. You know you guys are going to be here
11 saying you know everything is going to be blue skies
12 and sunshine going forward, there's going to be no
13 problems.

14 You know, no one will have an issue, no
15 one will have anything going on. And I think the
16 reality is we all know that's not true. We all know
17 that you know mergers always come with risks. We
18 know that you know when you're looking at trackage
19 rights, interchanges, you know the world is full of
20 failed trackage rights.

21 And you know failed promises on
22 interchanges and other things. And I think the

1 reality is we have to call it for where we are and
2 what we're going forward. You know I acknowledge the
3 fact that COVID has did a number on the industry, but
4 I also think the industry has also done a number on
5 itself with PSR, and with these cuts that we've
6 endured.

7 I think COVID has just exposed that we
8 have no slack left in the system, and because we have
9 no slack left in the system we're not able to recover
10 the way we are. And you're right, there are
11 employment challenges out there, but we knew that.
12 And I think you know COVID just exacerbated it, and
13 now we realize that we don't have a plan to get them
14 back. People aren't coming back, but you know again
15 you want to grow, but you can't grow if you don't
16 have a labor force.

17 You can't grow if you don't have the
18 people out there running it at the level that we're
19 running it, and I think that's a big challenge. And
20 I think taking over a network in New England that
21 shows tremendous promise that you're right. That was
22 rescued from bankruptcy, but also has a lot of

1 capital expenditure needs.

2 The industry has been cutting their
3 capital expenditures along with you know lowering OR,
4 to win over Wall Street. You know we're at a point
5 now where the reality is you know a lot of people
6 you know yes, you get a lot of letters from folks
7 that support you, but you've got a lot of people also
8 wringing their hands because they're nervous as to
9 what they're going to get.

10 Because of what's out there now, yes,
11 you've improved. You know coming in 2019 you did
12 better than 2016, and some of the others when you
13 guys were stumbling. That's great. But you know
14 it's not the platinum level where I think the
15 industry should be, whether it's you or others, and I
16 think here we're looking at you know we've got to
17 take that into consideration as to where we are now
18 and where we're going.

19 And you know as someone who you know
20 worked in the mass delegation of 20 years in New
21 England, I'm very familiar with the network there,
22 and also how well it works with passenger rail. You

1 know this is a network now where you have more
2 passenger rail than freight rail.

3 And so you know, you and I had a
4 conversation almost a year ago, and I remember asking
5 you how you felt about passenger rail. And to a
6 certain extent, you know I'm going to paraphrase,
7 but you said you know hey, you know, I don't like an
8 increase in passenger rail, but we're working. You
9 know passenger rail and freight rail don't really mix
10 together. That was sort of what you were saying.

11 Well it mixes a lot in Massachusetts in
12 particular, and it mixes, it's going to mix a lot in
13 New England as well. And I know you know you guys
14 have these you know late night deals with Amtrak and
15 you know I applaud you for that, for getting them,
16 getting that moving, but there's a lot more to it.

17 We've got MBTA concerns. I'd like to hear
18 you know your thoughts on the dispatching issue. I
19 want to hear your thoughts on New Hampshire, talking
20 about their regional, their commuter line intercity
21 passenger because this is a lot that we're going to
22 be looking at you know, this is what the future is in

1 these regions.

2 And I know you're not interested too much,
3 and I know you said you're ready and willing to
4 address the passenger rail, but I don't know again,
5 from the conversations we had I don't know how much
6 willing you're looking at expanding passenger rail,
7 and that's what these states want to do, you know,
8 expanding potential Amtrak service.

9 I understand you know, having passenger
10 service now, and I know you added Berkshire, and I
11 appreciate that. But you know moving forward the
12 growth in the passenger rail side. You know how are
13 you going to come to terms with a growing freight
14 line that you want? You know again, you've got to
15 answer to your stakeholders, but also a growing
16 passenger rail network. We're not your
17 stakeholders.

18 You know I'd love to hear you know your
19 comments on that. And I know you've got your team,
20 and I'll be asking your team that too. But you know
21 like I said you know I get what you're saying. I
22 understand like you said, you know, you want to take

1 trucks off the highways, you know. That same notion
2 was said during the Conrail deal, yet there's tons of
3 trucks still on I-95 running up and down there.

4 As a matter of fact the industry hasn't
5 really made that much of a dig in in the trucking you
6 know since the early 2000's, so you know how is that
7 going to be different now you know? I really want to
8 hear the real answers to how you're looking forward
9 and dealing with some of these issues.

10 MR. FOOTE: Yeah that's a lot of
11 information.

12 VICE CHAIRMAN PRIMUS: It is.

13 MR. FOOTE: Yeah. That's fine and you
14 know I apologize if you think this is a dog and pony
15 show. As I said earlier we take this extremely
16 seriously. We have put a tremendous, tremendous
17 amount of effort into this transaction. We have
18 looked at every detail to make sure that this
19 transaction is successful, it is good for all the
20 constituents, and I believe -- I could be wrong, I
21 believe this is probably the first time ever that the
22 STB has ever looked at a major -- a railroad

1 consolidation where there was no shippers
2 complaining.

3 There is no shippers. There is no
4 NIT League, there's no American Chemistry Counsel.
5 There is no granite theater organization, there's no
6 pulp and paper. The shippers endorse this deal
7 wholeheartedly because it's good for the shipping
8 community.

9 And all the other people who have raised
10 issues, the passenger rail entities, we have met
11 them, and we have met their requests, so in Amtrak
12 --

13 VICE CHAIRMAN PRIMUS: Hey Jim I haven't
14 seen that. I haven't seen anything from Mass or
15 NBTA. Does that include those two?

16 MR. FOOTE: I think it did. Boston is
17 the only area where we still have some concerns, but
18 we --

19 VICE CHAIRMAN PRIMUS: New Hampshire too?
20 I know you did Vermont, but New Hampshire as well?

21 MR. FOOTE: There's no issue in New
22 Hampshire.

1 VICE CHAIRMAN PRIMUS: Okay. So that
2 commuter line that they were talking about that
3 they've been working with Pan Am, yeah you have no
4 problem with their continued, yeah they asked for
5 good faith negotiations on your part.

6 MR. FOOTE: To the best of my -- there's
7 no issue with New Hampshire.

8 MR. DENTON: Yeah sorry this is Peter
9 Denton. Hi Vice Chairman Primus. So we have no
10 issues with New Hampshire. Representative Pappas and
11 Kuster asked about us supporting commuter rail
12 options into New Hampshire, and we were clear that
13 we're willing to consider the introduction and
14 expansion of passenger service on request, just as
15 Mr. Foote has been saying.

16 MR. FOOTE: As I said earlier you know
17 what I say is what I mean. Do I have concerns about
18 comingling passenger trains with freight trains?
19 Yes. That's why it needs to be done correctly.
20 That's why it needs to be smoothly. Done. That's
21 why there needs to be the appropriate amount of
22 analysis to make sure that that gets done.

1 I think Chairman Oberman referred to it
2 earlier that he would like us to resolve the issues
3 of the Gulf Coast Amtrak commuter trains they want to
4 put in between New Orleans and Mobile. I told Amtrak
5 two years ago, we'll run the train tomorrow. We're
6 not opposed to putting passenger service in the Gulf
7 Coast. We're not opposed to that transaction
8 whatsoever, but it has to be done properly with the
9 appropriate level of infrastructure, so that it's
10 safe. So it could be done safely.

11 That line down there is a single line
12 piece of railroad that's extremely busy freight
13 traffic that the Port of Mobile has spent billions of
14 dollars on developing in order to put more freight
15 traffic on it, and they want to startup a train
16 without an analysis, without a study and saying that
17 they don't have to spend any capital to do it.

18 There's not even a freight station.
19 There's not even a passenger station on the line. Do
20 I have concerns about that? Absolutely. I don't
21 want anybody to get killed just because somebody
22 wants to say oh my God we have a national edict to

1 start putting passenger trains on, let's go out and
2 do it. So --

3 CHAIRMAN OBERMAN: Jim I know you know
4 that I gave you some encouragement to resolve that,
5 but if we litigate the Gulf Coast case in this case
6 we'll never finish with this case.

7 MR. FOOTE: All right. Well I'm sorry for
8 getting off track.

9 CHAIRMAN OBERMAN: That's all right. I
10 started it, so I'm going to try to finish it.

11 MR. FOOTE: You finished it perfect.
12 We'll leave that for another day. Your other
13 question about capital, railroads cutting capital. I
14 said before we haven't cut capital. We have
15 increased the capital that we put into this railroad.
16 We have increased the amount of rail ties ballast.
17 The infrastructure of the rail network, we've
18 increased investment over the last four years, and
19 we're committing to rebuilding the rail network of
20 Pan Am. Again, Mr. Boychuk will get to it. You ought
21 to take a picture of some of these main line tracks.
22 Is that what we want in perpetuity? It was so

1 overgrown with trees and weeds you don't even know
2 there's a railroad there.

3 So we think that our abilities to enhance
4 and improve service to the customers, and do it in a
5 more safe and efficient manner is a good thing, and
6 that's why we think that you know we're here today
7 earnestly putting forth, and with a significant
8 amount of filings already, explaining what our plans
9 are.

10 VICE CHAIRMAN PRIMUS: Hey Jim and I
11 appreciate that. You know and thank you. You know
12 when I said dog and pony, I didn't mean that this was
13 you know, you're coming here with you know other
14 issues. What I'm saying you know is everything
15 you're saying is everything is going to be perfect,
16 and you know I get that because you know you're going
17 into this merger thinking everything is going to
18 happen and it's going to be perfect.

19 Well my issue is that you know I know that
20 it hasn't in the past, I know more likely it won't in
21 the future, and just sort of acknowledging what are
22 the challenges coming into this merger and you know

1 how are you going to address those. Let me ask this
2 one last question. You know you're talking about
3 growth. You know where do you anticipate that growth
4 coming from within the region?

5 MR. FOOTE: Well I think it's kind of
6 broad based growth, and again Mr. Boone has a
7 presentation about the benefits associated with the
8 customers, he'll get into a little more detail. If
9 you improve the quality of the rail service, one of
10 the reasons that the railroads have not grown
11 historically is because they have had a product that
12 was not as good as the truck in terms of
13 reliability, and if you improve the reliability of
14 your product, and the reliability comes from a lot of
15 things, but principally you know do you run a good
16 operation, and then do you have seamless services,
17 and do you have a network?

18 One of the biggest reasons that we have
19 delays that customers don't get their goods is
20 because there's a mechanical breakdown, there's an
21 engineering defect in the rail that causes the
22 railroad to slow down. You've got slow orders out

1 there. Take a look at you know, take a look at how
2 many slow orders they've got on the Pan Am.

3 Take a look at the track speeds on the Pan
4 Am. The reason they got low slow track speeds is
5 based upon the quality of the track, that's what
6 determines how fast you can go. So when we make the
7 investments we will improve the quality of the
8 service and the reliability, and we believe that we
9 can grow across the board up there.

10 There is again, the shippers have already
11 talked to us about opportunities of expanding into
12 new markets further down into the U.S. from where
13 they can't go today. And so it's broad based, and as
14 I said Mr. Boone in his presentation will get into
15 specific details of customers.

16 VICE CHAIRMAN PRIMUS: Thank you.

17 BOARD MEMBER FUCHS: I'll very quickly
18 jump in and mention that you know I think the Vice
19 Chairman rightly points out the trade-offs of tax
20 mergers and that certainly some mergers difficulties
21 have ensued afterward.

22 I do want to point out though in the

1 recent history of the Board there are actually in my
2 observation, have been substantial benefits that
3 we've seen through some of the capital investment
4 promises of Class 1 railroads, as well as single line
5 service.

6 What comes to mind specifically is the CP
7 CMQ transaction where we've recently seen CP commit
8 about 74-75 million dollars for capital investments
9 and really opening up the Port Saint John. So you
10 know there have been several noteworthy instances,
11 particularly recently where some of these capital
12 investment promises and single line service claims
13 were validated by the facts that emerged after the
14 merger, but you know of course there are other
15 instances where transition has been difficult.

16 I just wanted to quick add that, that the
17 history goes both ways. But I think Michelle was
18 going to pop in with more questions.

19 MS. SHULTZ: Thanks Patrick. Hi Mr.
20 Foote. I'd just like to take a moment to reiterate
21 the comments of my colleagues, Chairman Oberman and
22 Patrick with the number of agreements that have been

1 entered into in this transaction. Most recently
2 yesterday with Amtrak, and speaking on behalf of
3 myself, I for one believe that the best outcome for
4 the network is always when the parties themselves
5 hammer out the terms of the agreements, and then
6 enter them, so appreciate that.

7 Just one question for you today. The
8 Department of Justice has recommended that the Board
9 condition the transaction on a requirement that CSX
10 divests interest in PAS. What if there isn't a buyer
11 that has both the ability and incentive to run PAS
12 successfully, and the Board required that divestiture
13 anyway. What would be the impact on the network, and
14 on the customers or other stakeholders?

15 MR. FOOTE: Well I think that they
16 transaction that we put together here is truly the
17 best solution for all the parties involved,
18 especially the shippers. It's you know when we began
19 the process to acquire Pan Am, we stood in the shoes
20 of the past 50 percent ownership with Norfolk
21 Southern.

22 And so, having a partner with the

1 wherewithal to make the appropriate levels of
2 investments in that railroad is the good thing, is a
3 good thing. Recognizing that there may be some
4 concerns raised by our involvement in the past we
5 took a step back and said okay, so we'll stand in the
6 shoes, but we are not in any way, shape or form going
7 to be involved in the commercial decisions over that
8 line, that that would rest with the B&E.

9 So we have the two strongest railroads,
10 the two largest users of that line involved in it
11 with a third party to make sure that there are no
12 issues raised from a commercial standpoint, and we
13 believe that that is the absolutely best decision.
14 Should the decision be made that you know somebody
15 else should own that line, or some other decision,
16 then we would have to take an assessment of what
17 would that mean, and decide you know what the
18 implications are on that decision on the overall
19 transaction.

20 BOARD MEMBER SCHULTZ: Thank you.

21 VICE CHAIRMAN PRIMUS: Marty I just want
22 to if I could real quick.

1 CHAIRMAN OBERMAN: Go ahead Robert.

2 VICE CHAIRMAN PRIMUS: I want to follow-up
3 on something that I just wanted to look up. You said
4 that you were with respect to Amtrak scheduling you
5 guys were in 100 percent agreement on the
6 scheduling. Is that correct?

7 MR. FOOTE: Correct.

8 VICE CHAIRMAN PRIMUS: Are you talking
9 about just in New England, or all your scheduling?

10 MR. FOOTE: The entire network.

11 VICE CHAIRMAN PRIMUS: Okay.

12 MR. FOOTE: All of 40 some trains.

13 VICE CHAIRMAN PRIMUS: Okay. Because I'm
14 trying to figure that out, because in May 2021, FRA
15 called us and said that you guys had 12 certified,
16 and 42 disputed schedules, so are those 42 schedules
17 now cleared up, Or did you guys?

18 MR. FOOTE: Yes, yes, 100 percent
19 agreement.

20 VICE CHAIRMAN PRIMUS: Okay. Since when?

21 MR. FOOTE: I want to say a month, six
22 weeks.

1 VICE CHAIRMAN PRIMUS: Okay.

2 MR. FOOTE: Maybe longer, two months at
3 the most maybe.

4 VICE CHAIRMAN PRIMUS: Okay. Thank you.

5 CHAIRMAN OBERMAN: Jim one quick follow-up
6 to your response to Michelle. When you said your
7 plan is to take a step back on PAS, I'm sure I want
8 to explore this later with other members of your
9 team, but just to be clear it is true is it not that
10 in terms of capital investment on the PAS line, you
11 will have a veto right. You have a 50/50 vote on
12 that, and so they can't go ahead unless you agree
13 with NS on the capital improvement plan. Is that
14 fair?

15 MR. FOOTE: Yeah that's a fair assessment.
16 Yeah it's 50/50 on capital correct.

17 CHAIRMAN OBERMAN: All right. I want to
18 go into that further, but I'm going to save it for
19 other witnesses. If the Board members are finished
20 for the moment Jim, we should let you get back to you
21 presentation, which I think you were in the middle
22 of, or?

1 MR. FOOTE: No I think I was just wrapping
2 up, and I was ready to turn it over to Mr. Boychuk to
3 go through.

4 CHAIRMAN OBERMAN: I meant your team's
5 presentation so.

6 MR. FOOTE: Oh, okay great.

7 CHAIRMAN OBERMAN: Yeah go for it.

8 MR. BOYCHUK: Well good morning, and thank
9 you for the opportunity to present our vision for the
10 future of Pan Am under CSX's operation. My name is
11 Jamie Boychuk, and I am CSX's Executive Vice
12 President of Operations. I oversee mechanical,
13 engineering, transportation, and network operations,
14 as well as the company's safety and facilities
15 functions.

16 I have been involved in the analysis of
17 CSX's acquisition of Pan Am since the beginning of
18 the bid process, and I sponsored the CSX operating
19 plan. First I'd like to reiterate Jim's point that
20 CSX's overarching philosophy is to be a safe, leading
21 railroad that grows the business through an
22 unrelenting focus on service.

1 And to do that we need to have all the
2 right resources in place. First among them are
3 people. My team has been laser focused on hiring and
4 retaining throughout all of last year, and into this
5 year. We've seen tremendous progress, and we will
6 continue these efforts for the foreseeable future.

7 As Jim explained, our acquisition of Pan
8 Am will extend our customer focused Class 1 rail
9 service to New England. I plan to briefly discuss
10 how the New England rail network, and all of its
11 users will benefit from joining the CSX network. I
12 intend to cover four topics -- all of which were
13 described in greater detail in our filings.

14 First, the benefits of the transaction to
15 New England passenger rail service. Second, the
16 infrastructure investments that we plan to make in
17 the PAR system, increasing safety and efficiency.
18 Third, I would plan to modernize PAR's rail
19 operations and have this more consistent and reliable
20 service will benefit all rail users and the
21 environment.

22 And fourth, how the interest of rail labor

1 will be protected. But before I discuss the
2 benefits, I'll begin by providing a brief overview of
3 the transaction, and the two railroad systems at
4 issue. Pan Am owns and operates the railroad network
5 known as Pan Am Railways, or PAR.

6 PAR extends about 800 miles primarily
7 through Massachusetts, Maine and New Hampshire. The
8 PAR network is shown in red on these maps. After CSX
9 acquires PAR, CSX will integrate the PAR system
10 directly into our national network which is shown in
11 blue on these maps.

12 Pan Am also owns a 50 percent interest in
13 Pan Am Southern, or PAS. An independent railroad
14 established in 2009, as a joint venture between Pan
15 Am and Norfolk Southern. The PAS network is shown in
16 green on these maps. It consists of two principal
17 lines -- one running more south between Vermont and
18 Connecticut, and one running east/west between
19 Massachusetts and Upstate New York.

20 Pan Am currently operates PAS on a
21 contract basis. As we will discuss in more detail
22 today, we've negotiated a restricting of PAS that

1 will result in PAS hiring, the Berkshire Eastern, or
2 the B&E to operate and set rates for PAS, all for the
3 benefits of PAS and its owners.

4 As Jim briefly discussed earlier, we
5 recognize the importance of passenger rail to these
6 railroads and their communities. We treat passenger
7 trains as a top priority across our network, and we
8 have dedicated 24/7 passenger rail team that works
9 around the clock to closely resolve any issues raised
10 by our passenger rail partners.

11 Amtrak operates over more than 3,000 miles
12 on CSX's network. They operate 40 trains per day.
13 Combined with our commuter rail partners, about 112
14 trains per day run on our network. Additionally, we
15 have extensive experience hosting and partnering with
16 commuter rail services such as VRE in Virginia and
17 MARC in Maryland.

18 We recently entered into a major line sale
19 transaction with the Commonwealth of Virginia to
20 bring more passenger rail onto our system. CSX also
21 operates as a tenant if a rail line is owned by seven
22 different passenger railroads, just as Pan Am does

1 with MBTA and Mass DOT on certain lines. We expect
2 to apply all of this experience to our work on the
3 PAR system.

4 Our Amtrak performance level has recently
5 hit historic highs. The chart here shows how our
6 Amtrak on time performance levels have improved over
7 time from 60 to 70 percent prior to our
8 implementation of our scheduled plan in 2019, to more
9 than 90 percent after that time.

10 We also recently became the first U.S.
11 Class 1 to achieve certification of all Amtrak
12 schedules on CSX lines in accordance with the
13 customer on time performance, metrics and standards,
14 put in place by the FRA. The improved infrastructure
15 and more reliable operations that would result from
16 CSX and B&E taking over operations from Pan Am of the
17 PAR system and the PAS network, will provide great
18 benefit to passenger rail services that run on these
19 rail networks.

20 We will maintain or improve existing
21 passenger service, and fully step into the shoes of
22 Pan Am with respect to all of its obligations to the

1 sponsors of passenger rail services. This includes a
2 commitment that dispatching for any MBTA, or Mass DOT
3 lines will be conducted indefinitely at the new
4 dispatching center built by MBTA and Pan Am. Since
5 announcing our proposed acquisition of Pan Am we have
6 engaged in many discussions with rail, passenger rail
7 stakeholders, yielding a number of settlement
8 agreements and statements of support.

9 These include the Connecticut, New
10 Hampshire, and Maine Departments of Transportation,
11 and the Northern New England Passenger Rail
12 Authority, the state sponsor of Amtrak's downeaster
13 inner city passenger service.

14 You will hear from many of these
15 supporters later in the hearing. We've made several
16 commitments to preserve existing passenger service,
17 including infrastructure upgrades and Ayer that will
18 benefit MBTA commuter rail service, and installation
19 of positive train control on the power line that
20 hosts the Amtrak downeaster.

21 I'll talk about these infrastructures a
22 bit more in a minute. Additionally, we have

1 committed to explore with Mass DOT the introduction
2 of additional, or expanded passenger service in
3 western Massachusetts.

4 The second topic I'd like to address is
5 infrastructure. To the unending credit of the
6 Springfield Terminal employees, the PAR system has
7 been maintained for decades with limited resources.
8 I have personally ridden across most of the Pan Am
9 system, and I have seen both the resourcefulness and
10 the deferred maintenance first-hand.

11 CSX will upgrade and modernize the
12 infrastructure, elevating the network's potential,
13 and maximizing its efficiency. My team and I have
14 identified a number of capital projects, totaling
15 more than 100 million, including 50 million this year
16 alone, that will transform the PAR network, and bring
17 it up to the standards that New England rail users
18 deserve.

19 Pan Am has done an amazing job running the
20 rail network with such limited resources. But New
21 England deserves better, and we're going to upgrade
22 it to a Class 1 rail network. I'll walk through a

1 few images here that show you some typical conditions
2 on the PAR network as compared to the CSX network.

3 This slide shows the main line on the PAR
4 network alongside the main line on the CSX network.
5 You can see the differences in surfacing, tie
6 condition, and overall quality of the track, as well
7 as the general cleanup from previous work. Our
8 next slide --

9 CHAIRMAN OBERMAN: Jamie where was that?
10 What part of the network are you showing us?

11 MR. BOYCHUK: This is for us it's a --

12 CHAIRMAN OBERMAN: No the PAR, the PAR.
13 When you go through these photos would you tell us
14 where in the geography you're taking these pictures,
15 on the PAR network?

16 MR. BOYCHUK: Yes absolutely. This end
17 here that you're looking at the pictures off of
18 Branch Line that connects just north outside of the
19 Worcester connection.

20 CHAIRMAN OBERMAN: Now how many shippers
21 are on that line, or where does it connect?

22 MR. BOYCHUK: There's just a couple of

1 shippers out towards that line.

2 CHAIRMAN OBERMAN: It would be helpful as
3 you're showing us these to put them in the context of
4 how they have -- I think it would save time, for me I
5 don't want to go back. But in terms of the
6 conditions of the PAR network that needs work, it
7 would be helpful to put that in place as to where,
8 how this network is going to function after the
9 merger, what trains are going to be on it, how many
10 trains and so forth. So if you put it in context it
11 would be helpful.

12 MR. BOYCHUK: As well as velocity.

13 CHAIRMAN OBERMAN: Pardon? I didn't hear?

14 MR. BOYCHUK: Velocity, to any velocity.

15 CHAIRMAN OBERMAN: Yes. That would be
16 helpful too Jamie, thank you.

17 MR. BOYCHUK: So the one that you're
18 looking at there is the main line north of
19 Waterville. Okay that's a track that operates
20 anywhere -- there's so many slow orders on some of
21 this track, there are anywhere from 15 to 25 miles
22 per hour on that track. There's one train a day that

1 services up and down that area, but there are some
2 locals that run in that area with respect to some of
3 the customers that are north of Waterville.

4 So the next picture if we move on, so this
5 is an image on the left that shows a condition on the
6 PAR network, that's a road crossing on the Worcester
7 main. The crossing has deteriorating conditions you
8 can see, clearly not been maintained. This also
9 includes the vegetation overgrowth which causes
10 necessary site line issues.

11 This main line again is an interchange
12 main line that operates one train up and down daily.

13 CHAIRMAN OBERMAN: Where is it Jamie?

14 MR. BOYCHUK: This is on the Worcester
15 main, so this is between Barber station and up
16 towards Ayer. And the image that you see on the
17 right shows a crossing on our CSX Somerset County in
18 Pennsylvania. The crossing is in good condition, but
19 as you can see there's material on the ground, which
20 is still being, this crossing is going to be updated,
21 which is part of our routine maintenance program. We
22 would consider this a deteriorated poor condition

1 crossing on the CSX network.

2 VICE CHAIRMAN PRIMUS: Hey Jamie the
3 Worcester main yeah, how much traffic are you guys
4 anticipating on that line? How much do you see
5 having to spend to fix that?

6 MR. BOYCHUK: We are anticipating still
7 one freight train a day up and down that main for the
8 next couple of years as we grow this business. We
9 move anywhere from 40 to 60 cars interchange with the
10 Pan Am on that main. This is an area that if elected
11 there would be a intermodal train at some point in
12 time that NS would use, running down along our lower
13 route in order to get to Ayer so they could double
14 stack instead of doing the current single stack
15 operations that they run today from Mechanicsville
16 across to Ayer.

17 VICE CHAIRMAN PRIMUS: What would be the
18 velocity on that track?

19 MR. BOYCHUK: Well this is slow track.
20 We're 10 to 15 miles an hour. There are some
21 sections at 25, but this is slow track. Everywhere
22 we're dealing with respect to freight operations

1 with the number of slow orders, and the condition of
2 the track, we're anywhere from 10 to some areas five
3 miles an hour on branch lines, up to a maximum of 25
4 miles an hour where the freight operations are
5 running. Now you do have sections that comingle
6 with Amtrak and other areas that would be running
7 anywhere from 50 to 60 miles, but of course those are
8 smaller sections.

9 BOARD MEMBER FUCHS: Hey Jamie, you
10 mentioned slow a couple of times. I think Jim did
11 too. Can you put some numbers around slow order
12 volume on the Pan Am in comparison to what you would
13 expect on equivalent track of the CSX, or by
14 equivalent I mean you know traffic characteristics,
15 topography, et cetera.

16 MR. BOYCHUK: There are 200 miles of long
17 term slow order on the Pan Am network. Just remember
18 it's not a very big network. On CSX our network, you
19 might find about 20 slow orders maximum on our entire
20 network, 20 miles worth, so think about the
21 difference of our network compared to what you see on
22 the Pan Am network.

1 CHAIRMAN OBERMAN: I'm going to interject
2 here Jamie, if you don't mind, in terms of your
3 presentation, and suggest a short break.

4 MR. BOYCHUK: Yes sir.

5 CHAIRMAN OBERMAN: We've been going for
6 about an hour and a half here. Is this a convenient
7 time for you Jamie, are you okay with that?

8 MR. BOYCHUK: Yes sir, absolutely Mr.
9 Chairman.

10 CHAIRMAN OBERMAN: All right. And just
11 one announcement for our participants in this
12 hearing. I am told that there have been some access
13 problems from our original YouTube link on our
14 website. I am told that that has been fixed by the
15 miracles of modern electronics, so if you need to
16 re-enter through YouTube, I think the updated link on
17 our website should solve your problems, if not be
18 sure to let somebody know.

19 With that let's take a break of 10
20 minutes, does that work for everybody.

21 MR. BOYCHUK: Yes sir.

22 CHAIRMAN OBERMAN: Because we're all not

1 physically moving around that much, we will convene
2 promptly at 10 minutes after 11:00 Eastern.

3 (Break).

4 CHAIRMAN OBERMAN: Alright I think we have
5 reconvened. Jamie the floor is yours.

6 MR. BOYCHUK: Thank you Mr. Chairman. The next
7 slide. Next you can see a PARS Hillsboro Branch line
8 on the left. This branch line is jointed rail, as you
9 can see marginal tie conditions, surface conditions,
10 alignment issues, and vegetation which is
11 encroaching again on the line, which is poorly
12 maintained rails.

13 CHAIRMAN OBERMAN: Where is that Jamie, I'm
14 sorry.

15 MR. BOYCHUK: So the Hillsboro Branch is up
16 north connecting off of again, I believe it's just
17 south of Waterville.

18 CHAIRMAN OBERMAN: And what kind of traffic
19 does that carry?

20 MR. BOYCHUK: Again, these branch lines don't
21 have a lot of traffic on them. This is, I believe, a
22 as needed basis for service for customers.

1 CHAIRMAN OBERMAN: Okay.

2 MR. BOYCHUK: It's all ten mile an hour track.

3 And as I talk about some of the conditions that you
4 see on the branch lines, it's good to note that if
5 you compare some of the rail defects, Pan Am being
6 around 1300 miles, there sitting with 1700 FRA rail
7 defects, on CSX which is 23,000 miles we have less
8 than 200 rail defects that we're constantly repairing
9 and changing out. So, very big numbers when you take
10 a look at the difference in the rail condition.

11 On the right of this screen here is our CSX
12 Dalton line branch, if you go back, which has good
13 vegetation control, ties are in good condition,
14 ribbon rail and track surface. This is what we
15 expect when we've done our infrastructure projects
16 for Pan Am, to look like over the next number of
17 years, as we continue to look at the dollars and
18 capital that we put in.

19 On the next image here, on the left is PARS
20 Rigby yard in Portland. While the image on the right
21 is our CSX Avon yard in Indianapolis. You can see the
22 big differences. The image on the left shows of

1 course, alignment issues, surface issues, and this is
2 their main switching lead, with the small rail. On
3 the right you'll see one of our mains switching leads
4 at CSX, a ladder track that has 136 pound rail,
5 improved walking conditions for employees, and train
6 crews along with ergonomic switch handles for
7 employees. Again this is --

8 CHAIRMAN OBERMAN: But what gets
9 interchanged there in the picture on the left Jamie?

10 MR. BOYCHUK: On the left is where they do
11 all of their switching with respect to their traffic
12 to go north and south, so pretty much all of the far
13 north track.

14 CHAIRMAN OBERMAN: From where is this
15 yard?

16 MR. BOYCHUK: That would come out of both
17 Deerfield and/or off of CSX lines today, so all PAR
18 north traffic heads up to this location where it gets
19 switched in Rigby Yard gets blocked, and then either
20 sent south to customers, or further north for
21 customers.

22 This is their main switching yard other

1 than Waterville, which would have a smaller
2 footprint, but this location is Pan Am's main
3 switching yard.

4 CHAIRMAN OBERMAN: Thank you.

5 MR. PRIMUS: Hey Jamie where would your
6 main switching yard? Were you guys doing it
7 somewhere in the Ayer?

8 MR. BOYCHUK: No, no, Ayer yard for us as
9 I'll mention here next is really a location that
10 we're going to help support building some bypass
11 tracks and some more capacity. We don't plan on
12 doing switching at Ayer, our plan would be to upgrade
13 what you see here in Rigby, as well as doing some of
14 the blocking I had mentioned in Selkirk Yard, so that
15 blocking would be pre-blocked ahead of going up on
16 the northern line, so we can service customers
17 between that location, and then we would switch here
18 as well to continue the traffic to go north.

19 VICE CHAIRMAN PRIMUS: How much more
20 capacity are you expecting Selkirk to endure?

21 MR. BOYCHUK: Selkirk is the well
22 underutilized hump yard today. We process around

1 1,600 to 1,700 cars. That is a hump yard that could
2 handle 2,500 to 2,600 cars each day. Most of the
3 cars today that go to the north off of our railroad
4 already goes through Selkirk yard and gets put into
5 one block which heads to Worcester, and then connects
6 on an interchange to the Pan Am, so we'd still be
7 handling the same number of cars today, but we would
8 expect that would be an encouragement of growth in
9 the future to have such a direct connection, and it's
10 been that much faster to get into the National Rail
11 Network.

12 VICE CHAIRMAN PRIMUS: How much and
13 thanks, how much growth. I asked that to Jim you
14 know expecting, looking at the lines that you
15 currently have. You know what type of capacity are
16 you looking in? You can only grow due to your
17 capacity, and due to you know the rail
18 infrastructure. You know how do you envision that
19 you know going forward sort of hand in hand, and you
20 know what's going to happen?

21 You can't grow until you I guess I'm
22 looking at you know you improve that infrastructure,

1 but how do you sort of measure that, or sort of look
2 at you know how you're going to measure growth with
3 that infrastructure?

4 MR. BOYCHAK: Right. And I'll let Kevin
5 on his comments talk about some of the growth
6 itself. But with respect to the operating side we
7 look at a 3 percent increase in a lot of
8 circumstances means you know five or six cars on the
9 tail end of a current train that we run today.

10 So the business that's up there really
11 isn't extraordinary when we think about the PAR
12 network itself, so as we continue to bring in better
13 product up to New England, and Kevin and his team are
14 able to grow that business, and I'll talk a little
15 bit about our connection that we're looking at
16 putting in, which is 113 miles that connect up to the
17 Port of St. John.

18 We want to, and we will compete on that
19 route with the two Canadian Class 1's in order to
20 move that traffic down that route, so this is a very
21 competitive lane that we feel we can be in
22 competition with those two Canadian Class 1's to

1 connect to the eastern United States, and further
2 into the U.S. network really from a great connection
3 that we have in New York.

4 The map you see on your screen here --
5 where am I at? Slide 13. The map you see on your
6 screen here highlights many of the areas and types of
7 projects that we plan to implement. The small
8 colored circles are placed along the PAR lines at
9 locations where we plan to implement projects.

10 Each colored circle represents a different
11 type of project, and at the bottom center of the map
12 is the key identifying the various types of
13 infrastructure projects. For example, a green
14 circle represents a track upgrade intended to fix
15 speed restrictions that result from deferred
16 maintenance or needed capital investment.

17 You can see many green circles on the PAR
18 lines. We plan to restore the PAR system main line
19 track, eliminating long-term slow orders that
20 currently reduce the efficiency of the PAR system.
21 Yellow circles represent bridge improvements that we
22 will make.

1 Red circles identify yard improvement
2 projects that will reduce derailments and improve
3 yard fluidity. CSX led Class 1 industry with the
4 fewest engineering derailments in 2021, and we
5 expect to make the necessary investments to achieve a
6 similar safety performance on the PAR system.
7 There's a lot of information on this map. I don't
8 intend to go into all the detail about each project,
9 but I'd like to give you a flavor of the various
10 infrastructure projects by walking through this map
11 from the bottom up.

12 The first region includes the PAR line
13 that connects CSX's network at Worcester to the
14 important junction point of PAR and PAS at Ayer.
15 This line segment passes along the reservoir outside
16 of Boston. We appreciate that there are
17 long-standing concerns about the PAR system and the
18 rail infrastructure and operations along this line.

19 We have committed to making extensive
20 upgrades to the PAR line near the reservoir that will
21 protect public health and the local ecosystem. We
22 will upgrade and maintain the tracks and structure.

1 We will set a 25 mile per hour speed limit. We will
2 not park or idle trains on the segment, and we'll
3 improve communications with local stakeholders.

4 This project is a priority for CSX, and we
5 plan to complete this work within a year of starting
6 it.

7 CHAIRMAN OBERMAN: Jamie before you leave
8 that, I'm trying to identify this location on a
9 larger map.

10 MR. BOYCHUK: If you take a look sir at
11 the map I just put up now, you will see a circle of
12 where that location is at.

13 CHAIRMAN OBERMAN: I know, but I'm looking
14 at a larger map, so I can identify it. Is this
15 between Harvard and Ayer?

16 MR. BOYCHUK: Yes sir it is.

17 CHAIRMAN OBERMAN: And that is a line
18 that's currently owned by PAS right?

19 MR. BOYCHUK: No. This is a PAR line.
20 This is where it connects up to Ayer, which then goes
21 on to PAS for a number of miles before it gets back
22 onto PAR.

1 CHAIRMAN OBERMAN: Okay. Because the map
2 I am looking at that you filed, the line between
3 Harvard and Ayer is red, which I thought was symbolic
4 of PAS. So I'm just trying to make sure I
5 understand what you're talking about.

6 MR. LAROCCA: Mr. Chairman, this is
7 Anthony LaRocca. Let me just clarify. The line that
8 we've circled here goes between Barber Junction,
9 which is a little bit north of Worcester. Just a
10 little bit north of Worcester.

11 CHAIRMAN OBERMAN: I see it.

12 MR. LAROCCA: And it goes all the way up
13 to Ayer. The line between Barber Junction and
14 Harvard is actually a PAR line.

15 CHAIRMAN OBERMAN: I see that, but from
16 Harvard to Ayer it looks like it's PAS does it not?

17 MR. LAROCCA:

18 That's exactly right. That's a PAS line, and we
19 have trackage rights over that line, and extending
20 from Ayer to the north, trackage rights to a location
21 you'll see there called Willow.

22 CHAIRMAN OBERMAN: Yeah I see it, so.

1 MR. LAROCCA: And from there it's PAR
2 again.

3 CHAIRMAN OBERMAN: All right. So what is
4 the reservoir? That's my -- Clinton, is that?

5 MR. LAROCCA: Closer to the Barber
6 Junction, down in the southern part of that line.

7 CHAIRMAN OBERMAN: Okay, all right.

8 MR. BOYCHUK: And this reservoir is the
9 main reservoir for Boston drinking water.

10 CHAIRMAN OBERMAN: Right. Okay. Just
11 trying to place it. Thank you.

12 MR. BOYCHUK: Absolutely. Let me show you
13 what it looks like. The two photos show examples of
14 the main line tracks through water reservoirs. As
15 you can see on the left a PAR line near the
16 reservoir is overgrown with vegetation, which
17 inhibits the ability to inspect or perform
18 maintenance on the track. When you think about it,
19 vegetation does not grow on rocks. This is a
20 condition typically caused by contaminated ballast
21 sections. It needs to be shoulder ballast clean,
22 undercut in order to improve the drainage, and allow

1 for easier vegetation management without the use of
2 harsh chemicals.

3 Now the photo on the right is the CSX line
4 that runs adjacent to Lee Hall Reservoir in Newport
5 News, Virginia, where we operate safely and
6 efficiently for over 100 years. Moving north the
7 next region includes Ayer yard. Ayer is an important
8 location because it is both the eastern and a PAS
9 Patriot corridor, and also a crucial link between the
10 CSX network and PAR locations to the north and east.

11 There are also passenger operations that
12 use the infrastructure around the yard. The photo on
13 the right shows the current state of Ayer yard, with
14 many of the tracks occupied on a typical day. CSX
15 has agreed to make substantial investments in Ayer.
16 With these improvements operations around Ayer will
17 become much more efficient, we will free up tracks,
18 reduce congestion at the MBTA commuter station, and
19 provide additional capacity.

20 By utilizing our current network --

21 CHAIRMAN OBERMAN: Do you have a picture
22 of what the Ayer yard looks like now compared to the

1 one --

2 MR. BOYCHUK: That is it right there.

3 CHAIRMAN OBERMAN: Okay.

4 MR. BOYCHUK: What you see now is what
5 Ayer yard looks like.

6 CHAIRMAN OBERMAN: I thought that was one
7 of your yards, okay. All right thank you.

8 MR. BOYCHUK: Yes sir. By utilizing our
9 current network, CSX will now be able to pre-block
10 certain traffic bound for PAR territory and our
11 Selkirk yard in New York. Rather than switching the
12 traffic at smaller yards on PAR, Selkirk is a gateway
13 to the National Rail Network, and is under utilized
14 today.

15 Blocking PAR traffic at Selkirk will free
16 up capacity at Ayer for traffic inbound to the PAR
17 network, providing efficiencies above and beyond the
18 infrastructure projects I just discussed. For
19 outbound movements from PAR using Selkirk will
20 provide a faster, further reach into the National
21 Rail Network.

22 In short, we believe using Selkirk to

1 block cars headed to and from PAR will encourage
2 growth.

3 BOARD MEMBER FUCHS: Hey Jamie?

4 MR. BOYCHUK: Yes.

5 BOARD MEMBER FUCHS: Just quick bounce
6 back to Ayer for a second. In the I believe the
7 settlement agreement, there's an attachment B about
8 operations, protocols, engineering planning, and
9 capacity roadmap. And there's discussion about
10 levels of service. You know both, and aesthetic yard
11 plan, and appreciating that some aspects of that may
12 be commercially sensitive, I was wondering if there
13 is information you can provide publicly, in terms of
14 how you are thinking about levels of service at Ayer,
15 what the Board and the public should expect in terms
16 of service improvements.

17 MR. BOYCHUK: We've stated, and my team is
18 fully committed to maintaining the service levels
19 that everybody has today, if not improving those
20 levels. The number of days that folks, our
21 customers, are being serviced and will be maintained.
22 If they require more service because of the fabulous

1 work that I know Mr. Boone and his group will do,
2 we'll provide more service to those customers.

3 The project that we are looking at doing
4 at Ayer Yard is more of a bypass track, so we don't
5 have to fight through the current volume that's out
6 Ayer in order for us to bypass on the PAS section, in
7 order to get to the Northern part of the Pan Am
8 system. Along with that are more discussions with
9 respect to whether or not the requirement is to build
10 more tracks in some of the areas where there is open
11 land, but those are of course discussions that would
12 take part between ourselves and our partners on PAS.

13 BOARD MEMBER FUCHS: Thank you.

14 MR. DENTON: Commissioner Fuchs this is
15 Peter Denton. I would just add that I think a
16 critical part of our agreement with Norfolk Southern
17 with respect to Ayer is that there's an existing cap
18 on the amount of trains that Pan Am railways can run
19 across that section of PAS that we were talking about
20 there starting in Ayer.

21 And part of what we've done with Norfolk
22 Southern here is agreed to lift that cap, such that

1 our single line service will be able to run freely
2 and efficiently through that PAS portion through
3 Ayer.

4 BOARD MEMBER FUCHS: Thank you.

5 VICE CHAIRMAN PRIMUS: And I have a quick
6 question too. So I know the MBTA also brought up an
7 issue about working together with you guys in the
8 Ayer region, especially about between Ayer and
9 Willow, and their thoughts of increasing their
10 passenger service there. Can you comment on that?

11 MR. BOYCHUK: We are going to be working
12 on some double track out there, and I'll mention some
13 of that here coming up, but with respect to any
14 passenger service running in those areas, and/or
15 increasing, we've told all of our partners that we're
16 willing to sit down and listen. We feel like we are
17 very good at what we do with respect to moving
18 passenger trains.

19 We understand what this corridor is all
20 about and what it means for passenger rail, and
21 commuter rail, and you know we're going to sit down
22 and listen to every one of these requests that are

1 made. If there is some infrastructure that needs to
2 be done on the PAS section we have a partner that we
3 need to make sure that we confer with, and have a
4 discussion to ensure that Norfolk Southern and
5 ourselves are both aligned on this, but I know that
6 we have all committed to continuing to improve and
7 expand where it makes sense for everybody, commuter
8 and passenger service.

9 VICE CHAIRMAN PRIMUS: Okay. Their
10 concern of course is capacity in that area as you
11 guys are growing, you know, and they're worried how
12 it affects passenger rail. You know they've asked to
13 be a part of that planning. I mean do you guys have
14 any opposition to them being a part of that?

15 MR. BOYCHUK: Absolutely not, we encourage
16 it. Absolutely encourage it on the operating side.

17 VICE CHAIRMAN PRIMUS: Thank you.

18 MR. DENTON: I would just Jamie briefly,
19 Vice Chairman Primus the area there they're concerned
20 about, Ayer to Willows is a PAS line, so CSX would be
21 50 percent owner. Any potential changes in PAS
22 traffic that Mass DOT is concerned about just don't

1 have -- do not result from this transaction.

2 The transaction itself will actually be
3 moving trains, Norfolk Southern trains on CSX's
4 southern route coming into Ayer, taking it off the
5 Patriot corridor there. The transaction brought
6 before you won't have negative impacts from that Ayer
7 lines.

8 CHAIRMAN OBERMAN: Who is that who was
9 speaking? I'm sorry?

10 MR. DENTON: Yeah Chairman Oberman, this
11 is Peter Denton with Steptoe and Johnson.

12 CHAIRMAN OBERMAN: Oh Peter, I'm sorry
13 your thumbnail is so small I couldn't see you. Thank
14 you. But I know you have a bigger presence, so it's
15 okay.

16 MR. DENTON: Thanks.

17 MR. BOYCHUK: All right. Moving north
18 this region covers the PAR main line north of Ayer
19 and into Maine. As is clear from the map, we're
20 going to make numerous track, yard and facility
21 improvements along this line. Let me highlight just
22 a few of those projects. We have pledged to assist

1 in the installation of PTC along the PAR lines
2 between Massachusetts, New Hampshire state line, and
3 the Brunswick Station to support safer operations of
4 Amtrak's downeaster passenger trains.

5 There are six bridge improvement projects
6 along the line. We will be adding several miles of
7 double track capacity, via extension of the well
8 siding, as well as the signaled interlocking system
9 to support the siding extension.

10 And in the northern region where PAR
11 connects the lines running to the New Brunswick Port
12 of Saint John. We will be upgrading 113 miles of
13 main line track in order to allow for direct
14 interchange. This will allow us to compete with
15 Canadian Class 1's at the Port of St. John's with
16 more efficient connections into the National Rail
17 Network.

18 On the next slide --

19 CHAIRMAN OBERMAN: Something I'm missing
20 here. How could you have service on that main line
21 now without PTC already being installed?

22 MR. DENTON: So PTC requirements, Chairman

1 Oberman, are not necessarily relevant to a Class 2
2 railroad such as Pan Am that currently hosts the
3 downeaster.

4 CHAIRMAN OBERMAN: Isn't it well --
5 wherever the passenger runs there has to be PTC does
6 there not?

7 MR. BAYCHUK: No, only Class 1 railroads
8 are required.

9 CHAIRMAN OBERMAN: All right. Thank you.

10 MR. BAYCHUK: Yep.

11 CHAIRMAN OBERMAN: So what you're really
12 saying is you have to, once you take it over you're a
13 Class 1, you have to put the PTC in, it's not
14 something you're volunteering to do.

15 MR. DENTON: So Chairman Oberman I'm not
16 sure if that's the case. They have an MTEA, which is
17 a main line track exception. I think we would coming
18 in that exception when we take it over. We've been
19 in discussions with FRA about this, but the bottom
20 line is that we are going to install PTC on this
21 line.

22 CHAIRMAN OBERMAN: Okay.

1 MR. DENTON: It's something that wouldn't
2 happen otherwise, unless we were coming in.

3 CHAIRMAN OBERMAN: All right thank you.

4 MR. BOYCHUK: On the next slide the image
5 on the left shows a typical segment of PAR main line
6 in Maine at the town of Lincoln. The image on the
7 right shows a typical main line on a CSX network
8 located just south of Selkirk. Again these photos
9 provide another example of the difference in rail,
10 tie and surface conditions of the two railroads.

11 In addition to infrastructure
12 improvements, both rail operations and the
13 environment will benefit from our replacement of
14 high maintenance, older and less fuel efficient
15 Springfield terminal locomotives, to the more modern,
16 fuel efficient and powerful CSX fleet.

17 Better and cleaner locomotives will result
18 in operating reliability and environmental benefits
19 to the PAR system. We will also implement our
20 industry leading operating practices to modernize
21 operations, improve reliability, and introduce
22 careful data measuring and management.

1 Pan Am currently uses a manual combination
2 of magnetic boards, paper forms, and spreadsheets to
3 operate their system. The photo on the left shows
4 the magnetic board which tracks locomotive movements
5 on the Pan Am system. CSX's modern tool includes our
6 real time locomotive tracking and health system shown
7 here on the screen on the right.

8 We will replace the outdated Pan Am
9 approach with the CSX approach. On a daily basis my
10 operating team reviews detailed performance metrics
11 regarding the CSX system, including charts and data
12 on a wide range of issues, such as a train velocity
13 and on time performance. We will apply that same
14 approach to the PAR network.

15 Additionally, we anticipate operating the
16 PAR system on a scheduled basis to bring more
17 reliability and consistency to PAR customers. I
18 recognize current rail operations are experiencing
19 the effects of crew shortages caused by COVID, but we
20 expect that to be short-lived. Over the longer term
21 the network will be improved by scheduled operations
22 that will provide more reliable service.

1 All of these efficiencies will result in
2 safer, more efficient, and more environmentally
3 friendly railroad operations that will benefit all
4 users and the New England public at large.

5 Finally, fair labor will be fully
6 protected. CSX does not anticipation any reduction
7 of the Springfield terminal workforce that is
8 providing service today over the PAR system. In
9 fact, we plan on hiring additional employees to work
10 on that territory, and we will leverage our
11 world-class Atlanta training center to develop
12 current and future employees working on the PAR
13 network.

14 Moreover, the standard New York dock labor
15 protective conditions will apply here. One of the
16 strongest benefits of the proposed transaction for
17 rail labor is the expected improvements in safety.
18 Safety is a vital component of both our operating
19 philosophy and goals. We have led the industry with
20 the lowest FRA reportable injury rate in 2019 and
21 2020.

22 Let me turn the microphone over to Kevin

1 Boone who will describe the customer benefits that
2 will result from the infrastructure and operational
3 improvements that I have identified.

4 MR. BOONE: Jamie real quick.

5 CHAIRMAN OBERMAN: Go ahead Patrick.

6 MR. BOONE: No Marty you go.

7 CHAIRMAN OBERMAN: Jamie before you leave
8 -- I know you're not leaving, but before you turn it
9 over can we go back to the map of the overall capital
10 infrastructure projects? There we go, yeah. So what
11 -- are you able to say here publicly, what is the
12 total amount of capital you are budgeting for all of
13 these projects?

14 MR. BOYCHUK: Yes. We are looking at this
15 point in time we've put together 100 million dollar
16 plan. 50 million of that being in our first year, so
17 50 million expected to spend this year, and the
18 additional capital over the next couple of years.

19 CHAIRMAN OBERMAN: So that 100 million
20 will be done within three years?

21 MR. BOYCHUK: Yes sir. As a matter of
22 fact the 100 million will be in the next three years

1 and that number may even grow as we continue to
2 analyze the railroad.

3 CHAIRMAN OBERMAN: All right. And here is
4 where I'm having trouble understanding about this
5 overall transaction, and I'll direct it to you, but
6 if anybody else on the team wants to weigh in please
7 do. I asked some of these questions of Jim at the
8 outset.

9 You're spending a significant sum to make
10 this purchase. I'm not putting that in the record
11 unless you want to, plus at least 100 million on top
12 of it. The traffic projected growth of 2.3 percent
13 for three years, and then an additional 1.5 percent
14 for the next two years assumes that most, if not all
15 of these capital expenditures will have been made to
16 the extent it's necessary to serve the existing
17 traffic and natural growth.

18 I'm having trouble understanding how you
19 are committing 100 million dollars of more
20 expenditure, and you say it may be more on top of the
21 purchase price to generate basically no new growth
22 resulting from the merger, but only normal growth for

1 the growth of the economy. I still don't understand
2 the economics of that.

3 And it troubles me because as it relates
4 to the overall traffic for National Rail Network, I
5 don't see the pivot to growth in the numbers you
6 actually sent to us. And I think it's crucial if
7 we're going to have a healthy national rail network,
8 so can you explain how you're going to pay back that
9 100 million dollars or more in capital investment
10 with virtually no additional growth?

11 MR. BOYCHUK: Before I turn it over to
12 someone else, this is a 100 year asset. We're
13 purchasing something that is going to be with us,
14 that we're bolting on to our network a lot longer
15 than you know multi-generation as we sit and think
16 about the people who are at this table. So the
17 investments no matter who takes it over has got to be
18 done.

19 I'm showing you a few photographs and
20 pictures, but really if nobody puts this money into
21 this railroad at some point in time, I'm not sure
22 what kind of a railroad is going to be left up there.

1 So we're looking at it as an approach that 100 years,
2 what's the business going to look like, the growth
3 that Jim had explained, and I know Kevin will go
4 through maybe minimal to start off with, but when we
5 start to get up into that region, and Kevin and his
6 team starts working with the customers, we believe
7 that there may be opportunities further years down
8 the road.

9 I mentioned to you the connection for us
10 to be able to compete with the two Canadian Class 1's
11 up in New Brunswick. You know we're hoping that over
12 a period of time we're going to be able to grow
13 business up in that area as well, whether that's five
14 years from now, or ten years from now.

15 So the opportunities as we continue to
16 look at the investment that we're putting into this,
17 we're doing this not necessary for the next two or
18 three years, we are doing this because it's the right
19 thing to do, and we're doing it because we believe
20 that the business over 50-100 years is going to be
21 providing more than enough to continue to pay for any
22 of the capital that we've been putting up there.

1 CHAIRMAN OBERMAN: Well Jamie I'm not an
2 MBA, but I'm going to take a wild stab and say that I
3 don't think your shareholders are looking to wait 100
4 years to recover this investment, both the purchase
5 price and the 100 million. So I'm wondering if you
6 could enlighten us, and maybe it's a different
7 member of your team.

8 What is the time period you're projecting
9 on which these investments are worth making in terms
10 of increased traffic and growth on the railroad.
11 That's what I'm concerned about. Of course railroads
12 have long-term investments, but there's been a long
13 period of time in my view since the railroads have
14 not picked up their share of the increase generated
15 by the growth in our economy, and 50 years is too
16 long to wait in my view, and you've only given us
17 projections for five years, and we haven't seen the
18 growth there, so how much longer than five years
19 justifies this investment?

20 That's really what I'm talking about, and
21 I wonder if you have some numbers. You must have
22 some numbers that would warrant making these

1 expenditures.

2 MR. BOYCHUK: I'll let Sean answer, but I
3 just want to make one comment that I'll take it a
4 compliment that as the railroad was always accused of
5 doing everything for the shareholder, you're right.
6 We believe that this is something that is the right
7 thing to do for a lot more reasons than that. I'll
8 turn it over to Sean.

9 CHAIRMAN OBERMAN: Yeah well we haven't
10 heard from the shareholders yet.

11 MR. PELKEY: Thank you Jamie. So look
12 we've got a rigorous financial model that we put in
13 place as we went through this transaction. That
14 financial model included the investments that Jamie
15 just talked about. It also included the traffic
16 projections that we provided to the Surface
17 Transportation Board. In addition to that it
18 included the fact that we expect to run a much more
19 efficient railroad than what the Pan Am is able to
20 run today, simply because of the infrastructure
21 that's in place.

22 When you've got infrastructure that looks

1 like that, and you're running it 10 miles an hour as
2 opposed to 25 or 40 miles an hour, you're going to
3 have more crew changes, you're going to have more
4 overtime, you're going to be less fuel efficient,
5 you're going to have locomotives that break down in
6 the line of road.

7 There's going to be significant additional
8 cost, and that additional cost prevents Pan Am today
9 from generating the kind of profitability they would
10 need to make the kind of investments that we are
11 going to make in that railroad. Do we expect growth
12 above and beyond the projections that we set forward
13 in the transaction?

14 We are going to fight vigorously to try to
15 win new business over from the trucks. And the
16 investments that we're making in the rail
17 infrastructure give us confidence, and our service
18 product that we're going to bring forward, give us
19 confidence in our ability to beat those projections,
20 I think as Jamie said, with these investments we will
21 have the capacity to be able to do that.

22 So Kevin will give you a lot more in terms

1 of the types of customer acquisition efforts that
2 we'll have, and a few of the opportunities that we
3 may get into, but it is absolutely our goal, whether
4 it's three years, or five years, or seven years I
5 don't know, but what I can tell you is that we
6 wouldn't be doing our job if we didn't invest at a
7 purchase price that generated a return in excess of
8 our cost to capital, and that's what we fully expect.

9 CHAIRMAN OBERMAN: I appreciate that.
10 Just want to follow-up with Patrick. But you know as
11 a sophisticated business operation I just have to
12 assume that there are some more concrete projections
13 here. And I'm wondering if you would be comfortable
14 sharing those with us on a proprietary confidential
15 basis because I am, as you know, laser focused on the
16 growth of the National Rail Network.

17 So it would be very enlightening for us to
18 measure how this develops over the next ensuing
19 years, and when we could expect to see that growth
20 based on your expertise. You have more than we do,
21 and you're the ones investing the money. You've got
22 the skin in the game, so I assume you're not doing it

1 just on a wing and a prayer.

2 Would you be willing to share those kinds
3 of projections with us on traffic growth to justify
4 these investments?

5 MR. FOOTE: Well Mr. Oberman we're focused
6 on growth too. And we invest 1.8, 1.7 billion
7 dollars each year in CSX. So you know and we do a
8 vigorous analysis to justify that level of
9 investment back into our private company. And if the
10 --

11 CHAIRMAN OBERMAN: I assume you've done a
12 rigorous analysis. I'm just wondering if we can see
13 it.

14 MR. LAROCCA: Mr. Chairman we submitted
15 the forecasts to you, and they're quite detailed. I
16 would point out that your concern about rail traffic
17 not tracking the national economy is directly
18 addressed. The baseline we assumed, is that we will
19 keep up with the growth of the economy. That's
20 something far better than you can say about the
21 current Pan Am railway right now.

22 We will keep up with that, and after year

1 three we have forecasted growth once we start
2 implementing a more consistent scheduled system that
3 can attract shippers, and see that they have
4 opportunities to compete with trucks. And it's at
5 that point that we see the beginning of a pivot
6 toward a growth that actually exceeds economic
7 forecasts.

8 CHAIRMAN OBERMAN: Well what we saw, what
9 you submitted to us is that after year three for the
10 next two years an addition of 1.5 percent. Is that
11 all you need to justify this investment? That's what
12 I'm trying to get at.

13 MR. FOOTE: I think it's 1.5 on top of
14 GDP.

15 CHAIRMAN OBERMAN: Yes. But it's an
16 additional 1.5. It's not -- listen, I'm not making
17 the investment Jim. It's hard for me to imagine that
18 you're making both the purchase price capital
19 investments here just to keep up with GDP, that
20 doesn't make sense to me for merging the railroad,
21 but maybe it does in the railroad business.

22 I'm just trying to find out what traffic

1 numbers we can look forward to over the long haul,
2 and are we going to see this general movement of
3 freight.

4 MR. FOOTE: Well I would say again you
5 know this is not a huge intermodal franchise. Based
6 on my 45 years of freight railroad experience anybody
7 that can grow their freight railroad, car load
8 business at 1.5 times plus GDP would be off the
9 charts rock stars. It hasn't been done. It hasn't
10 been done since deregulation.

11 The freight railroad system has been
12 shrinking. That's just the facts, so it's the facts.
13 So we're saying that we're going to outgrow
14 historical rates of growth, we're comfortable with
15 the internal rate of return on that investment, and
16 we have presented to you the required information to
17 make your determination.

18 CHAIRMAN OBERMAN: We found your
19 application complete, so I agree with you. You don't
20 have to commit to in here if you don't want to, but
21 I'm going to -- I am requesting if you were
22 comfortable, of sharing with us what kind of

1 long-term growth we can expect up here. Obviously it
2 can be kept under a confidential basis. So you don't
3 have to answer that now if you don't want to.

4 Patrick had a follow-up question.

5 BOARD MEMBER FUCHS: Yes. I think first
6 of all I want to say that I you know obviously share
7 that transparency in terms of wanting to see the
8 freight network grow, and you know I think the
9 essential question here is what will happen to Pan Am
10 before and after the transaction.

11 So you know to me the relevant comparison
12 is I think what Jamie, Jim and Tony eluded to, which
13 is what would happen in the absence of the
14 transaction. So as you are evaluating your capital
15 improvements, and you know I think Jim you reference
16 your internal rate of return, you're taking a look at
17 what additional would be gained on top, you know on
18 top of what's to be expected.

19 So maybe could you provide to us, or
20 summarize what you would expect the growth numbers to
21 look like if CSX were not to take over the line --
22 the lines?

1 MR. FOOTE: Well I think I stated earlier
2 that we don't think that the existing infrastructure
3 could keep up with GDP growth.

4 BOARD MEMBER FUCHS: Would you expect the
5 traffic to decline in absolute terms?

6 MR. FOOTE: I don't know if we make that
7 function.

8 MR. LAROCCA: Commissioner Fuchs, Patrick
9 the supplemental verified statement that sets out our
10 traffic assumptions includes a kind of range of
11 possible growth in traffic without the transaction.
12 And that's all we can do. We really don't know what
13 would happen. I think there certainly is the
14 possibility that there would be no growth, or even a
15 decline given the current state of the rail network,
16 but we assumed that there would be at least we
17 assumed for purposes of just modeling this, which is
18 all we can really do when you're looking into the
19 uncertain future.

20 We assumed that a range of possible growth
21 scenarios for the Pan Am network, but you know
22 starting with a kind of minimal, minimal growth to

1 correspond with economic growth extending to a
2 somewhat healthier growth, and I think that's about
3 all we can really, really do at this point in terms
4 of forecasting what would happen without the
5 transaction.

6 BOARD MEMBER FUCHS: And if you could
7 provide anything publicly in terms of you mentioned
8 that some of these capital investments have
9 offsetting cost savings. I think Sean you mentioned
10 it, and I think you did a very good job at the
11 revenue adequacy hearing explaining what goes into a
12 capital investment decision for CSX.

13 Can you put any numbers around what you
14 would expect, you know, maybe percentage-wise, or in
15 absolute terms what you would expect the cost savings
16 operationally, or otherwise from some of the capital
17 investment decisions, the 100 million that Jamie
18 would.

19 MR. PELKEY: Yes. So I think it would
20 probably not be appropriate on a public mic to give
21 you kind of exactly what that looks like, but I can
22 give you in general terms. I think there's two

1 things to think about. The first is these capital
2 investments are supportive of growth, so they're not
3 -- it's not simply I'm looking for cost tradeoffs
4 that are going to support and give me a return on a
5 stand alone basis on 100 million dollars of capital.

6 That being said look, the Pan Am railways
7 today operates at an operating ratio that's
8 significantly worse than any Class 1 carrier operates
9 at, regardless of where that carrier operates. It's
10 a lower density line. Is it going to end up becoming
11 as efficient as our main lines due to the density of
12 traffic? Probably not, but we do think there are
13 significant opportunities from an expense standpoint
14 to generate a lot more efficiency than what Pan Am is
15 at today. I can't give you a specific number, but
16 hopefully that gives you a general idea.

17 BOARD MEMBER FUCHS: And directly related
18 to that 100 million as well, not just from you know
19 the single line service and general CSX operating
20 practices, but I think I heard you correct to say
21 that the 100 million itself you know generates some
22 offsetting cost savings as well.

1 MR. PELKEY: That's right. And we've seen
2 it here within our own network simply you know
3 focusing on the investments in the yard, the main
4 line track that Jim and Jamie talked about. We've
5 seen a significant decrease in track caused
6 derailments, best in the industry, and that has real
7 cost savings associated with it. We expect to see the
8 same thing at Pan Am.

9 BOARD MEMBER FUCHS: And I just have one
10 last question for Jamie, I know he's handing it over.
11 But you know you mentioned that you believe that the
12 totality of CSX's actions would lead to better
13 service and more reliable service. You know when you
14 wake up in five years what numbers are you going to
15 look at to judge whether or not CSX was successful in
16 what it set out to do?

17 What will tell you what are your
18 thresholds from a service metrics standpoint?

19 MR. BOYCHUK: The basic service metrics
20 obviously of our you know dwell, speed, any other
21 type of velocity metrics that's out there, but I
22 think the real success with this is growth right?

1 We're not purchasing a railroad just to keep it at
2 status quo. We're going to grow.

3 And to Jim's point the amount of growth
4 that we've committed to is more than probably anybody
5 else has done in a very long time. So you know when
6 we see that we're able to grow this railroad because
7 the service metrics are where they are, and we've
8 been able to improve the fluidity of that network,
9 we're able to move traffic better for our customers.

10 We have a better connection in through the
11 National Rail Network. That's our success in five
12 years from now.

13 BOARD MEMBER FUCHS: Okay thank you.

14 MR. BOYCHUK: Peter you're on, you're not
15 coming through.

16 CHAIRMAN OBERMAN: Who's up here? Peter?
17 Sorry.

18 MR. DENTON: Can you hear me now?

19 CHAIRMAN OBERMAN: Yes.

20 MR. DENTON: Okay great. So Commissioner
21 Fuchs I just wanted to direct you to a point in the
22 record where we do quantify some of the cost savings,

1 specifically with respect to locomotive improvements
2 and the better locomotives that Jamie talked about.

3 Dr. Reishus calculated the savings, 2
4 million dollars just on fuel levels alone. He also
5 calculated annual locomotive cost savings of
6 \$800,000.00 not including fuel. So that's at page
7 57 of the operating plan if you'd like to look at
8 that in closer detail. Thank you.

9 BOARD MEMBER FUCHS: Thank you.

10 MR. FOOTE: All right. So if we're ready
11 we'll move over to Mr. Boone now.

12 VICE CHAIRMAN PRIMUS: Actually I'm sorry.
13 I thought someone else had a question. This is --

14 CHAIRMAN OBERMAN: Well actually you have
15 Robert and then Karen had a question as well. Why
16 don't you go ahead Robert?

17 VICE CHAIRMAN PRIMUS: Okay thanks. Hey
18 Jamie before we let you go I got a few more
19 questions. So in terms of this growth over the next
20 five years I know we've mentioned it briefly before,
21 and you know as you're improving the tracks, are you
22 planning you know with the growth that's expected,

1 this 1.5 that's going to be coming up, are you
2 expecting to add just the cars, or are you going to
3 add more trains to that network?

4 MR. BOYCHUK: Well the growth that we're
5 talking about really is something we can absorb with
6 the current train plan that's out there. You know
7 three, four, five years from now, or if something
8 breaks loose that we don't expect at this point in
9 time with the Port of St. John, then maybe we do talk
10 with our stakeholders about another train start.

11 But at this point in time the growth will
12 be absorbed with our current trains that are running
13 out there.

14 VICE CHAIRMAN PRIMUS: Okay excellent,
15 thank you.

16 CHAIRMAN OBERMAN: Karen you had a
17 question?

18 VICE CHAIRMAN PRIMUS: No, no.

19 BOARD MEMBER HEDLUND: Go ahead Robert.

20 CHAIRMAN OBERMAN: Sorry.

21 VICE CHAIRMAN PRIMUS: That's okay. And
22 thank you for indulging me Karen. Yeah if the merger

1 goes through you're talking about also having a 50
2 percent stake in Pan Am Southern who actually you know
3 they're going to have part of that, they're going to
4 have the northern route.

5 You'll have 50 percent of that. Are you
6 guys talking about any sort of improvements to the
7 northern route at all?

8 MR. BOYCHUK: Well our plan is to continue
9 along with all the great work that the NS and Pan Am
10 has done together. They've put 100 million plus I
11 believe of capital up in that area, and we'll
12 continue to work with them to continue to improve
13 that line.

14 So for us it's on a contract basis. We
15 said the B&E will run it, but we'll partner with NS,
16 and we absolutely will continue to make sure we
17 contribute to make that line viable.

18 VICE CHAIRMAN PRIMUS: So no part of the
19 100 million dollars, or is there any part of that 100
20 million in improvements are going to go to Northern?

21 MR. BOYCHUK: Nope that's separate.
22 That's a separate. This year's capital has already

1 been put together between Pan Am and Norfolk
2 Southern, and as soon as the snow melts and
3 everything starts -- the frost comes out of the
4 ground they've got a tie program, and a rail program
5 that they're getting onto, so no this is separate.

6 MR. FOOTE: The Pan Am Southern on the
7 freight network excluding the lines that the Amtrak
8 or commuter trains operate over today is by far the
9 best conditioned line on the network because it is a
10 key and critical route which you'll hear from later
11 from Norfolk Southern, for their business into and
12 out of Boston, so it has been maintained at a higher
13 standard than the rest of the network.

14 VICE CHAIRMAN PRIMUS: And Jim so then is
15 there any effort to increase growth or traffic on
16 that line since it's already as you're saying it's in
17 much better shape?

18 MR. FOOTE: it's our plan to try and grow
19 the business on the entire network. If the customers
20 that are local to that line originating or receiving
21 traffic can grow because of the --

22 VICE CHAIRMAN PRIMUS: And sometimes that

1 1.5 that you guys are talking about, is that included
2 in that on that line?

3 MR. FOOTE: That would be PAR.

4 VICE CHAIRMAN PRIMUS: Okay thank you.
5 Hey Jaime moving over to are you familiar with the
6 Springfield master plan, which includes Union
7 Station?

8 MR. BOYCHAK: No I'm not myself.

9 VICE CHAIRMAN PRIMUS: Okay. I know M DOT
10 had put it into their submission, talking about a 950
11 foot long shoefly track. Are you familiar with that?

12 MR. BOYCHUK: Yes I am familiar with that
13 at Springfield yes.

14 VICE CHAIRMAN PRIMUS: Okay. Do you guys
15 have any opinion on that? You know their concern is
16 whether or not we're able to -- would like to keep
17 that and not have it go away.

18 MR. BOYCHUK: We don't have any plans to
19 remove it at this point in time.

20 VICE CHAIRMAN PRIMUS: Okay.

21 MR. BOYCHUK: A request was made. I
22 wasn't even aware of the shoefly until the request

1 was made. I had spoken with my head of engineering,
2 and we have no plans to remove that. There's no
3 plans to remove that shoefly.

4 VICE CHAIRMAN PRIMUS: Okay. And you said
5 you are not familiar with the master plan?

6 MR. BOYCHUK: I am not familiar with the
7 master plan, no sir.

8 VICE CHAIRMAN PRIMUS: Okay. Just saying
9 that that's an important part for M DOT and hopefully
10 you folks in your discussions can talk about that.

11 MR. BOYCHUK: I will make sure that
12 personally this afternoon or tomorrow I will be up to
13 date on that.

14 VICE CHAIRMAN PRIMUS: Right. Great thank
15 you. Go ahead I'm sorry.

16 MR. DENTON: Commissioner Primus can I,
17 this is -- can you hear me now, Peter?

18 VICE CHAIRMAN PRIMUS: Absolutely yep.

19 MR. DENTON: Okay good. Yeah I just want
20 to be clear we have committed to work on the
21 Springfield master plan. We have a long history,
22 CSX, of working with Springfield on the Union Station

1 project, and the Springfield master plan we see you
2 know as something that we're going to continue to
3 work on.

4 But this is not, we're not pushing back
5 against working with Mass DOT on these issues in
6 Springfield and elsewhere.

7 VICE CHAIRMAN PRIMUS: No I didn't suggest
8 that you guys were pushing back. I just wanted to
9 make sure that you guys were aware of it, and what
10 you know your stance is on that shoefly track, and
11 start working with them on the project. Last --

12 MR. LAROCCA: I'm sorry, Commissioner
13 Primus Tony LaRocca again. I want to go back to your
14 question about infrastructure on PAS.

15 VICE CHAIRMAN PRIMUS: Okay.

16 MR. LAROCCA: And I'll refer you to the
17 Vermont settlement agree that --

18 VICE CHAIRMAN PRIMUS: Right.

19 MR. LAROCCA: We recently filed. There's
20 Section 16 talks about investments that are ongoing
21 in the Hoosac Junction area, which is a very
22 important point on the line to the west of the Hoosac

1 Tunnel which is an important interchange point for
2 traffic going through the Vermont rail.

3 And that is an infrastructure project that
4 the settlement agreement, the parties have pledged to
5 continue supporting.

6 VICE CHAIRMAN PRIMUS: Okay.

7 MR. LAROCCA: And we'll have one concrete
8 project that is underway, and will have clear
9 benefits for transportation on PAS, and for the
10 Vermont shippers.

11 VICE CHAIRMAN PRIMUS: Okay thank you.
12 Thank you for that. Last question Jamie, I brought
13 it up earlier with Jim about operations, and I'd like
14 for you to comment on CSX's position with MBTA and
15 their request for the right to dispatch on MBTA and
16 Mass DOT owned track.

17 MR. BOYCHUK: This is something that you
18 know we thought about extensively, and you know we
19 feel very, very comfortable with the way we dispatch.
20 We dispatch a very large number of commuter trains,
21 VRE, MARC and others, and really ultimately we've
22 committed to leaving the dispatch center indefinitely

1 up in the New Hampshire area.

2 And truly we believe that we're the best
3 at it, and we don't want to give up that piece of
4 dispatching because it's important for us to be able
5 to live within the windows that are provided, and to
6 have control over those windows, so when it is our
7 turn to get a train through we've had past
8 experiences where we didn't control certain sections,
9 and it turned into some type of a battle day in and
10 day out.

11 We believe that we have proven that we --

12 VICE CHAIRMAN PRIMUS: Are you talking
13 about that, are you talking about in the region?

14 MR. BOYCHAK: No. Not in that region at
15 all, a total separate corner of the railroad. You
16 know ultimately we would like to be able to maintain
17 control of those trains that are moving in those
18 areas that we run, and we're comfortable we can do it
19 right. You know we commit to moving those trains the
20 way that their schedules call for them to move.

21 VICE CHAIRMAN PRIMUS: I mean I've got to
22 say that VRE and MARC are a lot smaller than MBTA

1 number one. And I think a little bit, and MBTA is a
2 little bit more complex. I've seen some of the
3 problems in the past with MARC especially, in terms
4 of you know on time in terms of scheduling, in terms
5 of that. So you know there is for me, there is
6 concern there, and I think that you know when you're
7 considering such an integral part in terms of what
8 MBTA has to offer, in terms of what they're doing
9 right now, I think you know I really think that this
10 you know deserves more than just you know I think we
11 can do it better.

12 I think it deserves a sort of sitting down
13 and really you know having that conversation as to
14 how this can coordinate. There's a lot at stake as
15 you well know, you know with the dispatch, and what
16 goes on coming out of Boston, coming in and out of
17 Boston on a daily basis, and I think that's
18 important. You know we look at it I think a little
19 bit closer than has been looked at up to this point.

20 MR. DENTON: Yeah. Vice Chair Primus I
21 would just say that we've had multiple conversations
22 with Mass DOT about dispatching. We commit fully to

1 cooperate with them. We will need to be partners
2 with Mass DOT going forward. We recognize the
3 importance of Mass DOT and MBTA service on those
4 lines. I would also say that --

5 VICE CHAIRMAN PRIMUS: When you say
6 partners what are you guys proposing as a
7 partnership? Are you, you know, in terms of sharing
8 information, in terms of you know having people in
9 the room, you know what is this you know, what does
10 this entail?

11 MR. BOYCHAK: Yeah sure. With a new
12 dispatch center being built they're all going to be
13 together right. So you're going to have the folks
14 that dispatch both sides are going to be in the same
15 room, the same building, the same area, and you know
16 we've committed to providing the service that's
17 required there, and today it's being done.

18 It's being done really well, and we've
19 committed to live up to whatever Pan Am's commitments
20 are with passenger service, and we are going to fill
21 their shoes. So whatever commitments they have made,
22 we are right along with those commitments. We have

1 fully stepped into those shoes if this goes through.

2 MR. LAROCCA: And I just want to add one
3 other thing which is that there is an existing
4 agreement in place which has protections. It's been
5 worked out over the years. It was a negotiated
6 arrangement between Pan Am and the local authorities,
7 agencies, and it provides for remedies in the event
8 of a problem.

9 So we're stepping into the shoes of an
10 existing contractual relationship, and we're not
11 changing it. We're not moving the dispatching
12 center. We're going to occupy the joint one that's
13 being created, that's being constructed right now.
14 And so there's really no reason to be concerned that
15 anything is going to change.

16 VICE CHAIRMAN PRIMUS: Okay all right.

17 CHAIRMAN OBERMAN: Karen?

18 BOARD MEMBER HEDLUND: Yeah. I want to go
19 back to Jamie with a question. As you analyzed what
20 the capital needs are for upgrading the PAR system,
21 when you looked at it did you also take into account
22 issues related to resiliency? You're buying a

1 railroad that is in part a coastal railroad. It is
2 going to be exposed to the result of climate change,
3 having looked at portions of that railroad that are
4 likely to be impacted by floods, and sea level rise.

5 The scientists are predicting we're going
6 to have more hurricanes. What would happen if
7 another Katrina -- not to get into the south coast
8 issues, Gulf Coast issues, but you know hurricanes
9 are going to be they're saying more frequent,
10 potentially more severe.

11 Sandy completely disrupted the northeast
12 corridor in flooding the Hudson River Tunnel, so have
13 you looked at the sections of the Pan Am system that
14 may be exposed to future climate change issues?

15 MR. BOYCHUK: That's a great question.
16 And if anybody, or any railroad out there who knows
17 hurricanes, I think we got that one with respect to
18 how to restore them and how to deal with them. But
19 the areas of any concern of ours when we looked at
20 the railroad was more of the Portland area, with
21 respect to some of the climate change you're talking
22 about.

1 It is elevated to a point where you know
2 we're comfortable for periods of times, there's more
3 work we're going to have to do. We probably have
4 more issues on our railroad for climate change down
5 in the south, down in Florida and other places in the
6 Gulf as you mentioned, and our concerns are up north.

7 I'm from the great big white north myself,
8 so I understand snow conditions well, and how to deal
9 with rail conditions in cold weather and snow, so as
10 that may ramp up in the future, we feel we have that
11 taken care of, and we have a fantastic team who knows
12 how to shore up rail lines for hurricanes. We do it
13 every year, and we do a heck of a good job to restore
14 the line as we did this year when we lost up to 12
15 miles of our Gulf line, and had it restored within
16 seven days, so we're constantly looking at those
17 issues.

18 BOARD MEMBER HEDLUND: Yeah I'm not asking
19 about restoration. I'm asking about building
20 resiliency into the network that you have, so that
21 you don't have the disruptions, and don't have all
22 the work, restore the railroad after an event occurs,

1 that was really my focus.

2 MR. BOYCHUK: Right.

3 MS. HEDLUND: You're acquiring a 100 year
4 asset. You want to know it's going to be there in
5 100 years.

6 MR. BOYCHUK: Right. I'm not sure what
7 else I can add to that, but there are a lot of short
8 lines that run around there, we've talked a little
9 bit about Vermont and others. You know we have to
10 continue to work with some of our connections. If we
11 lost a piece of our railroad like we did today, in
12 some areas we're able to work with the NS, and the NS
13 vice-versa with us to be able to move traffic around
14 areas while you're restoring and repairing, so those
15 are relationships that we would continue to build as
16 we would move forward with this deal.

17 MS. HEDLUND: Thank you.

18 MR. BOYCHUK: Thank you.

19 CHAIRMAN OBERMAN: Any other questions?
20 Why don't you folks proceed where we cut you off. I
21 think Jamie you were handing it off to Kevin. We
22 lost Kevin?

1 MR. BOONE: Let me start over. I
2 apologize for that, my mic wasn't working. Well good
3 afternoon. I think maybe before I get into my
4 prepared remarks, I'd like to talk a little bit about
5 the growth discussion that we've been having. I'm
6 sure we'll have more of that over the next few
7 minutes here.

8 We've been very successful here recently
9 in attracting new business to the railroad. You may
10 have heard about the EV plants that have been
11 announced, the Ford plant in Tennessee and the Rivian
12 plant in Georgia, and just recently here yesterday we
13 got a new steel plant that was announced in West
14 Virginia all on our lines.

15 These are three, four year projects for
16 our customers, so not only do we have to invest in
17 our rail network, we would have suspected the
18 customers to have to make those decisions, and those
19 can be multi-year decisions, and based on improved
20 service, based on reliability, based on the
21 opportunity to reach new markets, my expectation as
22 we get into that with the customers is they're going

1 to be more willing to make those investments over
2 time, so that's why we have the accelerating growth,
3 and beyond five years I'll expect that to accelerate
4 because these investments are long-term, and really,
5 really start to accelerate over time.

6 And the other thing is I would say you
7 know when you put it in a discount and cash flow
8 model you know even year six, seven, eight, can have
9 huge returns for the company as the growth
10 accelerates, so I just wanted to make that point.
11 I'm sure we'll get into it more, but now I'll give it
12 in the prepared remarks.

13 My name is Kevin Boone, and I'm CSX's
14 Executive Vice President of Sales and Marketing. I
15 oversee the company's growth strategies, as well as
16 the customer service, customer engagement, and
17 business development activities. As you heard from
18 Jim we are exciting about the incredible customer
19 support.

20 Not a single shipper has expressed
21 opposition to the proposed transaction, and dozens of
22 shippers have submitted support letters and written

1 op-ed columns. And many of these shippers will
2 appear at this hearing later today and tell their
3 individual stories.

4 During this presentation I will focus on
5 four broad points that cover the benefit to shippers.
6 First, freight rail customers located on Pan Am will
7 be able to better control their logistics through
8 CSX's state of the art customer support tools.
9 Second, single line service between the Pan Am and
10 CSX network will improve the ability of Pan Am's
11 shippers to access national markets and CSX shippers
12 to access New England markets.

13 Third, the proposed transaction should
14 lead to the reduction of truck traffic from congested
15 highways, and deliver significant environmental
16 benefits that come with it. And fourth, we
17 anticipate commercial opportunities will become
18 available as Pan Am customers can competitively
19 access new markets.

20 We will illustrate these opportunities by
21 walking through a few specific markets. First I will
22 walk through and talk about customer support tools.

1 Pan Am's customer will benefit from CSX's
2 considerable investments in customer facing
3 technology, including ship CSX, an industry leading,
4 customer facing tool that provides exceptional
5 transparency into railcar shipments and management.

6 Access to ship CSX will be a major
7 improvement for Pan Am customers who currently have
8 limited insight into the status of their rail
9 shipments. CSX will provide Pan Am customers with a
10 suite of tools that integrates the ability to price
11 rail shipments, ship and trace railcars, track trip
12 plant compliance, and pay for services, including
13 account invoices, and assessorial charges.

14 Rail customers in New England will have
15 increased transparency, allowing for improved
16 pipeline management and asset utilization. Pan Am
17 does not have the resources or scale of operations to
18 implement a type of sophisticated operating systems
19 and practices that customers are looking for.

20 Expansion of CSX's integrated operations into New
21 England will allow customers to schedule their supply
22 chains more precisely, better manage inventory, and

1 reduce costs.

2 This slide shows how CSX works seamlessly
3 on mobile devices, allowing customers to access the
4 tools from any location. The slide also depicts the
5 trip point performance dashboard within Ship CSX.
6 Each shipment is assigned a trip plan with a number
7 of expected days from original to destination.

8 A trip plan performance metric allows
9 customers to monitor and measure performance over
10 time. Additionally, Ship CSX offers a track and
11 trace feature. This allows CSX customers to monitor
12 specific railcars or shipments, whether at the
13 customer's facility and the serving yard, or in route
14 to the destination.

15 Customers can create customized reports
16 based on traffic types or events, along with reports
17 to monitor inbound and outbound pipeline by location.
18 Technology innovation is a core pillar of CSX's
19 strategy, and we will continue to invest in these
20 customer tools.

21 A second major benefit for rail customers
22 is expanded market access. The combination of CSX

1 and Pan Am will create opportunities for New England
2 customers to compete in new markets by leveraging
3 efficient, single line service. Customers will also
4 have more direct and efficient access to New England
5 markets.

6 This will enhance their ability to reach
7 new markets, increase speed to market and improve
8 asset utilization. One of our primary objectives in
9 acquiring Pan Am is to support the growing New
10 England economy by offering superior rail
11 transportation service to customers. That growth in
12 economic activity can be further promoted by
13 expanding New England rail users access to markets on
14 the CSX network, and to CSX interchange partners
15 across the country.

16 Customers utilizing port facilities across
17 the Pan Am can expect expanded market opportunities
18 due to the improved service and reliability that
19 result from the proposed transaction. The merger
20 will also expand customer choice by creating more
21 efficient access to consumption points, warehouses,
22 and distribution locations across the CSX network.

1 Next I would like to talk about truck
2 diversion opportunities, the railroad's largest
3 competition in New England. We expect that a major
4 benefit of the CSX Pan Am combination will be the
5 movement of freight, from trucks to rail as we
6 improve service and reliability of rail
7 transportation across the Pan Am network.

8 We have seen that shippers often prefer
9 rail service, but choose trucks when they do not have
10 sufficiently reliable rail service, and cannot manage
11 their inventory easily as they can with trucks. By
12 increasing the reliability of rail service, and the
13 ability of shippers to track their shipments, we can
14 attract business from trucks and deliver
15 environmental and infrastructure benefits by reducing
16 congestion on the region's roads and highways.

17 As shown on this map -- sorry?

18 BOARD MEMBER FUCHS: Sorry to jump in. I
19 just want to quick ask on your previous point about
20 fewer handlings and decreased mileage, and I know you
21 provide detailed training information in the record,
22 but maybe you could summarize in aggregate what you

1 expect in terms of the decreased interchanges, maybe
2 on a daily or weekly basis, as well as putting some
3 numbers around the decreased mileage.

4 MR. BOONE: Yeah maybe I'll hand that over
5 to Jamie to discuss.

6 MR. BOYCHUK: All of it. When you think
7 about it everything is interchanged to us, which I'll
8 say any interchange points you have across any of the
9 rail networks it's a 24 hour period that you have to
10 plan on those cars taking a delay. So every one of
11 the cars that come off of the Pan Am North, the PAR
12 side of the business will all get that 24 hour speed
13 up.

14 Again, you're going to see on the opposite
15 direction the same type of deal with respect to the
16 cars I explained that go to Portland to get switched.
17 A lot of those cars are going to go more direct to
18 the smaller yards that serve the customers, so every
19 one of these cars are effected. They are all
20 interchanged.

21 Mileage -- I wouldn't necessarily say that
22 there is a backhoe on mileage, there are cars that go

1 up to Portland as I explained, they get switched, but
2 then head south, so there is a number of backhoe
3 miles that will be saved also through our use of
4 Selkirk yard.

5 BOARD MEMBER FUCHS: When you talk about
6 the emission savings you mean both what you're
7 describing on this slide before us right now, and the
8 diversion of truck, but also just more efficient rail
9 operations as well, the CO2 savings, and other
10 pollutants on both fronts.

11 MR. BOONE: Yeah absolutely, and utilizing
12 the best in class fuel efficiency that we have as a
13 railroad today. You know that's really important
14 too. You know over the last four years we've just
15 seen a 30 percent improvement in our fuel efficiency,
16 and really leveraging that to you know additional
17 volume.

18 When you look at this map here there's a
19 lot of opportunity to gain traffic from long haul
20 truck movements once we upgrade the Pan Am network.
21 This map focuses on a few key commodities that move
22 in and out of the New England region. The arrow

1 represents the truck movements from the New England
2 that are over 500 miles.

3 We will be in a position to complete this
4 freight with the improvements that we'll be making.
5 And most of these movements, approximately 75 percent
6 are going to regions east of the Mississippi River
7 where we can offer customers more options. Truck
8 conversion to rail has significantly carbon emission
9 savings as we talked about.

10 A CSX Pan Am combination will allow
11 customers who leverage these environmental savings
12 and deliver benefits to the consumer. We have seen a
13 dramatic shift in the prioritization that customers
14 have placed on opportunities to improve their carbon
15 footprint. Additionally, highway congestion in the
16 New England region remains high.

17 An opportunity to transition trucks to
18 rail will help reduce the need for additional
19 government investments in road infrastructure as
20 well.

21 Finally, let me give you some more detail
22 on the types of commercial opportunities --

1 CHAIRMAN OBERMAN: You know Kevin could I
2 just ask a question about the movement, the trucks
3 that you're seeking? Is there some way for us to be
4 able to measure that as time goes on here?

5 MR. BOONE: We'll certainly be measuring
6 it internally, and that's a key element to our
7 commercial strategy.

8 CHAIRMAN OBERMAN: Is there some way for
9 you to keep us informed on that strategy? I mean it
10 is one of the major issues I think for the entire
11 rail network if CSX is going to show the way, I'd
12 like to be able to know about it.

13 MR. BOONE: Yeah I would tell you about
14 three years ago we started a team here, a commercial
15 team within the sales and marketing team that's
16 strictly focused on looking at all the truck
17 movement throughout the U.S., and solely focused on
18 the over 500 miles. We think that can come down over
19 time, maybe it's 400 miles, and really identifying
20 those opportunities and going out to market and
21 working with customers.

22 There couldn't be a better environment to

1 have those discussions right now, so not only are we
2 going to do it for Pan Am, we're doing it across the
3 whole network right now, and we have a team really
4 put up against it.

5 CHAIRMAN OBERMAN: Well I appreciate that.
6 I'd like to see the results of it if there's a way to
7 do that, so I'm going to make that request of CSX to
8 somehow supply that kind of information to us. I
9 think it's key.

10 MR. DENTON: Yeah Chairman Oberman this is
11 Peter Denton. CSX is committed to a five year
12 oversight period with respect to this transaction. I
13 think something like that sounds like an appropriate
14 request for that oversight period, and we'd be
15 pleased to evaluate it at that time.

16 CHAIRMAN OBERMAN: All right. So are you
17 saying Peter that the oversight can explicitly
18 include some kind of regular reporting on transfer of
19 your success of bringing truck on the rail?

20 MR. DENTON: For PAR, for the PAR system I
21 think that sounds appropriate yes.

22 CHAIRMAN OBERMAN: Okay thank you.

1 MR. DENTON: Yep. Okay.

2 MR. BOONE: As I've mentioned we have done
3 extensive work looking at the freight movements in
4 and out of the New England region, and believe there
5 are many opportunities that CSX and Pan Am, the
6 combination can deliver. This slide specifically
7 shows three of those commodity types on Pan Am for
8 new opportunities we believe will be available.

9 Take for example forest products like
10 printing paper and lumber moving from Pan Am's
11 service territory into the greater New York
12 Metropolitan area, a consumption market of over 20
13 million people. We also know about the significant
14 highway tunnel and bridge congestion in the region,
15 and the infrastructure challenges that come with it.

16 As shown on this slide much of this
17 commodity moves today on Pan Am to Ayer where it is
18 trans-loaded to trucks for movement to New York. The
19 yellow arrow shows the truck movement. A CSX Pan Am
20 combination will remove operational complexity in
21 these shorter haul moves, a necessity to create a
22 service product, and cost profiled as competitive

1 with trucks. Customers will benefit from an
2 integrated network that improves reliability and
3 service.

4 In addition, Pan Am customers will have
5 access to a larger fleet of railcar equipment, like
6 boxcars and center beams, which will allow them to
7 grow their rail business. We believe there is
8 significant opportunity to convert these movements to
9 single line rail into the New York area as shown on
10 the right.

11 Another example is liquid propane gas, or
12 LPG opportunities. The New England region is heavily
13 reliant on propane for home heating during the colder
14 months. A CSX Pan Am combination will link low cost
15 sources of propane in the Appalachian region and
16 Sarnia with large New England consumption areas on
17 the Pan Am.

18 This will provide a competitive
19 alternative to overseas imports in western Canadian
20 sources. On this slide you can see the improved
21 routing and service options for the movement of
22 energy products between the Port of St. John and U.S.

1 customers. The new and efficient route from St. John
2 over Pan Am will support new opportunities for
3 propane and refining products into the United
4 States.

5 As you can see on the right customers will
6 have more options, allowing them to reach new markets
7 with the reliable rail service.

8 CHAIRMAN OBERMAN: Kevin on the propane
9 traffic do you anticipate an increase in the amount
10 of propane traffic totally going into New England?

11 MR. BOONE: No. I think this one is more
12 about giving them more options -- the customer more
13 options at a lower cost, and as you know if there's
14 more customers competing for the same business that
15 generally can be a good thing for the customer.

16 CHAIRMAN OBERMAN: So I'm trying to follow
17 this, particularly on the propane. The propane
18 that's going into New England now via both you and NS
19 right, as well as CN and CP? So all four?

20 MR. BOONE: That's right. Right, but you
21 don't see -- you can see on the right where there's a
22 new route coming from the south that opens up new

1 opportunities.

2 CHAIRMAN OBERMAN: I understand. But
3 currently the current map, I'm not sure I understand
4 in terms of the propane traffic. Oh there, there you
5 have it, so.

6 MR. BOONE: Yeah.

7 CHAIRMAN OBERMAN: So there you have some
8 its coming from CSX, and is some coming from NS as
9 well?

10 MR. BOONE: Yeah you can see from CN CP
11 with the red lines, and then the blue line is over
12 you know, using the PAS as well.

13 CHAIRMAN OBERMAN: Right. But is part of
14 that NS, or is it all just CSX, that's what I'm?

15 MR. BOONE: I think that could be both.
16 This business is very transactional.

17

18

19

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21 CHAIRMAN OBERMAN: So are we trying to
22 suggest that you're going to compete with CN CP, and

1 have more of it move on your line rather than theirs?

2 Is that what this is trying to suggest to us?

3 MR. BOONE: I think that would be the
4 customer has the option, more options going forward
5 than they do today.

6 CHAIRMAN OBERMAN: Well I understand they
7 have more options, but are you only showing us
8 options, or are you showing us how the traffic is
9 going to be actually be projected to be divided up.

10 MR. BOONE: We would expect some of this,
11 you know, the new access to some of these markets to
12 be very competitive with the current sources, so we
13 would expect some more traffic moving from the
14 southern parts of that.

15 CHAIRMAN OBERMAN: To win some of that
16 traffic, that's what you're trying.

17 MR. BOONE: We would.

18 CHAIRMAN OBERMAN: Yeah.

19 MR. BOONE: We would.

20 CHAIRMAN OBERMAN: Yeah okay. I just
21 wanted to make sure I understood, but we're not
22 talking about a total growth in the amount of

1 propane, you're just talking about being competition
2 for it, where PAR is not now. Is that the point?

3 MR. BOONE: Right. And this market will
4 probably grow with GDP as the consumption grows.

5 CHAIRMAN OBERMAN: Okay. Thank you.

6 VICE CHAIRMAN PRIMUS: Hey Kevin this is
7 Robert. Just sort of following-up on that, and so
8 the questions that I think that some of the members
9 have been asking before. Do you see your growth
10 going forward, is it going to be in energy? I mean I
11 know truck traffic as well, you know, do you see you
12 know the majority of your you know immediate growth
13 coming off of trucks, or is it you know going to be
14 once you've finished this, you know, the
15 improvements, would it be more energy, you know, how
16 are you looking to break that down sort of going
17 forward in your targets?

18 MR. BOONE: Yeah. When you look at the
19 division of the business today energy represents 7
20 percent roughly of the carloads today, so that's not
21 you know this is one of the many, many examples, but
22 it probably is not the larger growth driver, it's

1 more the truck conversion that we see over the longer
2 term as the big opportunity.

3 VICE CHAIRMAN PRIMUS: Okay. Have you
4 guys identified specific industries, you know from
5 the paper, or other yet, or is it to be determined?

6 MR. BOONE: Yeah when you think about
7 paper and packaging and the boom we've had in
8 e-commerce in the corrugated boxes, this market has
9 -- the Pan Am market is big in that particular
10 market, and so that will continue to be a growth
11 opportunity for them, and also for them to be able to
12 reach new markets that they don't today in that
13 business.

14 VICE CHAIRMAN PRIMUS: Okay.

15 CHAIRMAN OBERMAN: Kevin, can I just go
16 back to this map for a minute.

17 MR. BOONE: Sure.

18 CHAIRMAN OBERMAN: The red arrows of CNCP,
19 they're just left hanging in the air there. What
20 rail line do they get to? Do they get --

21 MR. BOONE: We're just showing that yeah,
22 they're coming into that Pan Am network today. I

1 know it's not showing the connection right now, but
2 if we had a bunch of lines it gets convoluted, so. I
3 think how you need to think about it is the CN and CP
4 markets today, the Canadian western markets, reach
5 into the Pan Am and serve that market, and now you
6 know post the transaction, we believe some of the
7 other sources of energy could actually reach that
8 market efficiently as well, as efficient as those
9 markets.

10 CHAIRMAN OBERMAN: Can you pinpoint the
11 access points on PAR?

12 MR. BOONE: Let me defer to my colleague
13 Jamie who is an expert on that area.

14 MR. BOYCHUK: Really the only access
15 points that you would have where they would connect
16 across is either PAR or PAS that would then move up
17 towards the northern parts of the PAR line.

18 CHAIRMAN OBERMAN: Which junctions Jamie,
19 that's what I'm trying to get at.

20 MR. BOYCHUK: So the Canadian stuff coming
21 down and around the junction, I would say that the
22 way it moves today would probably come down around

1 through the Vermont railroad I would imagine, that
2 would then connect across. I'm not sure the exact
3 junction where they would come in.

4 Upon the northern part they'd probably
5 come down into Bangor, and then off of CP, which was
6 an interchange point at this point in time in Maine,
7 so some of that northern route would flow down
8 through there and head south as well.

9 CHAIRMAN OBERMAN: So you're talking not
10 about the green PAS line on this map, you're talking
11 about a Vermont line that's not shown on this map
12 that would then go all the way south to PAS, and then
13 back up north to Bangor?

14 MR. BOYCHUK: Some of those lines do
15 connect directly into some interchange points where
16 they cross the current PAR railroad.

17 DR. REISHUS: You see, Dave Reishus, you
18 see LPG traffic going into Maine through CPM and CMQ,
19 and then down from Canada into eastern -- I mean into
20 western New England, you know Vermont, New Hampshire,
21 you know, coming down off of the RS and CR.

22 CHAIRMAN OBERMAN: Are you saying it's

1 coming in by ocean into the port and then on to CP?

2 DR. REISHUS: No. Some of the CP's, no,
3 it's coming from Canada west, or possibly St. Johns,
4 but then over the CMQ.

5 CHAIRMAN OBERMAN: To where does it then
6 interchange with PAR some place from the CMQ?

7 DR. REISHUS: Yeah. Is it Bangor?

8 MR. BOYCHUK: Bangor, Maine is where it
9 would interchange from CP to PAR, and a lot of this
10 traffic would come out of the Sarnia area, and that's
11 where you see this propane flow out of which is where
12 Kevin had those arrows heading up and around.

13 CHAIRMAN OBERMAN: So you're saying once
14 you have the merger you can compete for those
15 customers by bringing up propane from the south?

16 MR. BOYCHUK: Yeah, so we own about a 15
17 mile piece of territory in Sarnia where we service
18 customers. That traffic is routed then on a haulage
19 agreement with CN, which would come around through
20 Toledo, and then could connect up south of the Great
21 Lakes on our water line heading to PAS and/or PAR.

22 CHAIRMAN OBERMAN: Got it, okay. So then

1 yeah.

2 BOARD MEMBER SCHULTZ: Some follow-up. A
3 follow-up question. I think you've indicated that
4 the transaction could potentially increase
5 competition for propane. Could the transaction also
6 potentially compensate for what seems to be lack of
7 propane pipeline going into New England?

8 MR. BOYCHUK: That's a great point, and
9 the discussions I've had with David Fink and his team
10 is a lot of commitments that governors have made with
11 David to make sure that there is sufficient numbers
12 of propane sitting around in some areas waiting for
13 cold snaps and other items and market conditions, but
14 yes this would open up not only to Kevin's point of
15 competition, but also some better routing that might
16 work for customers in order to have more access to
17 propane.

18 MR. LAROCCA: And let me add the
19 resiliency. I mean more options means more
20 competition. It means a more resilient network
21 that's able to deal with you know climate change and
22 other disruptions that are impossible to predict. So

1 more options which are being created here, improve
2 both the competitive landscape and the service.

3 MR. BOYCHUK: Right. And I think to
4 Tony's point there when the Canadian lines were
5 dealing with the first nations who were having
6 blockades on their railroad, this would be another
7 route in order for customers to be able to get that
8 needed propane.

9 CHAIRMAN OBERMAN: Let me ask a question.
10 I'm sorry Michelle were you finished? I didn't want
11 to cut you off.

12 MS. SHULTZ: Oh yeah I'm finished, thanks
13 Marty.

14 CHAIRMAN OBERMAN: Yeah. Let me just ask
15 this question. I have a number of questions
16 involving these access interchange points and the
17 pricing that's talked about in the application. Are
18 those questions appropriate for Kevin or for Jamie,
19 or for one other member of your team, since I've been
20 holding them for the moment?

21 MR. BOONE: It would probably be in my
22 area, someone might help me out as well, but yeah

1 that's probably.

2 CHAIRMAN OBERMAN: Kevin you're the tariff
3 person?

4 MR. LARocca: And Marty if the questions
5 involve the settlement agreements as well, maybe the
6 lawyers will have some -- could help clarify if
7 that's --

8 CHAIRMAN OBERMAN: Well I have a number of
9 questions which are going to take a few minutes, and
10 I don't want to interrupt the flow at this point
11 because I really want to get into it, but I will save
12 them for when Kevin is done, but Robert did you have
13 a question?

14 VICE CHAIRMAN PRIMUS: Well I can come
15 back to it. I had a question for Jamie, and I'm
16 sorry you guys had talked about sort of the access
17 and how you know things were connected to PAS, and
18 PAR, and I could wait until later if it's more
19 appropriate to do it then as a wrap up. Kevin if you
20 want to keep going?

21 MR. BOONE: Yeah I've only got one more
22 slide to wrap up, so I can quickly do that, and then

1 we can get into all of these questions.

2 VICE CHAIRMAN PRIMUS: Okay go ahead.

3 MR. LAROCCA: And Robert, I'm sorry, in
4 the meantime map 1E from our application is a
5 detailed listing of all of the interchange locations
6 on the system, if you'd like to point out.

7 VICE CHAIRMAN PRIMUS: Yeah I'm aware of
8 that. So Kevin it was basically a follow-up on that,
9 just one question, but thank you. Go ahead Kevin
10 because I have questions for you too, so why don't
11 you go ahead.

12 MR. BOONE: Okay. All right. I think
13 we're on slide 32 now. So finally our last example
14 focuses on the waste market. New England landfill
15 capacity is limited, and becoming scarcer with
16 pronounced near term challenges in Connecticut and
17 Massachusetts. Shrinking local capacity will require
18 municipalities to seek alternatives to dispose of
19 construction and municipal solid waste.

20 The improved service and integrated
21 operations of the combined CSX Pan Am network will
22 support development and implementation of rail based

1 solutions for waste disposal in the New England
2 region. CSX will bring its expertise as the largest
3 hauler of waste by rail to support safe, compliant,
4 and cost effective rail service to the Pan Am
5 communities.

6 As you can see through these examples, a
7 CSX Pan Am combination can deliver many new market
8 opportunities to New England customers and consumers.
9 We expect many other opportunities beyond these to
10 develop as we work closely with customers and invest
11 in the network.

12 That kind of wraps up my prepared remarks,
13 and maybe we'll get into the Q and A now.

14 CHAIRMAN OBERMAN: I'm wondering if the
15 assemblage is ready for a short break, and then
16 reconvene, and then break again maybe in an hour or
17 so for lunch. Does that seem comfortable with
18 everybody? We've been going for an hour and a half
19 since our last break.

20 VICE CHAIRMAN PRIMUS: Marty what time do
21 you want to do lunch? It's a quarter to one time in
22 the east coast.

1 CHAIRMAN OBERMAN: Well would you rather
2 break for lunch non on the east coast? In the
3 Midwest we just finished breakfast. Would people
4 prefer to just take their lunch? I think it's a good
5 time to break. Would you like to break for a half an
6 hour for lunch now? Everybody feel comfortable with
7 that?

8 VICE CHAIRMAN PRIMUS: Works for us.

9 CHAIRMAN OBERMAN: All right. Why don't
10 we reconvene at 1:15 Eastern.

11 VICE CHAIRMAN PRIMUS: Thanks Marty.

12 CHAIRMAN OBERMAN: All right gang. Okay.
13 Thank you everybody.

14 (30 minute lunch break.)

15 CHAIRMAN OBERMAN: Good afternoon. I
16 assume everybody has refueled and refreshed. So we
17 will keep going. So Kevin were you done with your
18 slide presentation?

19 MR. BOONE: Yes I was. Yeah I think we
20 were going to move into Sean after there was any Q
21 and A.

22 MR. DENTON: And Chairman Oberman this is

1 Peter Denton. I might suggest, it seemed like there
2 were a couple of questions that might start coming up
3 about Pan Am Southern. We think it would probably be
4 best to let Mr. Pelkey and then Dr. Reishus provide
5 their presentations which go into some depth on that
6 topic, and then --

7 CHAIRMAN OBERMAN: I actually had some
8 questions dealing with the rest of the network, which
9 I'd like to follow-up with Kevin, and then if he
10 needs to hand it off to Mr. Pelkey and Dr. Reishus we
11 can then defer those questions so they're finished,
12 but I'd like to get back to the traffic flows that
13 Kevin was describing because this is an area of
14 particular concern to me, I think the Board in
15 general.

16 So Kevin when you showed us the flow of
17 various commodities now versus the future, and I know
18 we were focused on propane for the moment, or I was
19 focused on it anyway. So I'd like to get back to
20 that and ask you some questions about propane as an
21 example, and then we might you know see if I can get
22 an understanding of how that applies to general

1 movement of freight.

2 So there's a couple aspects of the
3 application, which I want to read to you, and then I
4 want to focus on what those actually mean. At page
5 12 of the application it says that CSX has committed
6 to keeping all gateways to other rail carriers open
7 on commercially reasonable terms to ensure that PAR
8 system shippers continue to have access to other
9 carriers.

10 It doesn't say receivers, but so that's
11 one question I have. And then there's another
12 statement at page 287, which says CSXT has committed
13 to waive any rights CSXT might otherwise have under
14 the Board's rules to refuse requests by shippers to
15 establish local separately challengeable rates for
16 movements on the PAR system to interchange with the
17 other rail carrier.

18 So I want to flush out what that means in
19 terms of some specific examples of the shipments
20 we're talking about. I just want to make sure I am
21 clear on it, and that it is clear on the record. So
22 let's just take the propane that we were talking

1 about Kevin, that a reasonable -- some amount of
2 propane leaves Narnia, which is served by CSX -- I'm
3 sorry, Sarnia. Narnia may get us into another world
4 here, sorry about that.

5 Sometimes I feel like I've gone through
6 the wardrobe into Narnia since I've been at the
7 Board, but that's a different problem. So right now
8 you have traffic that comes from Sarnia that is
9 served by CSX, CN and CP as I understand it.

10 And some of this propane comes from Sarnia
11 and interchanges with PAR at Bangor I think is what
12 you told us. So the question I have is that after
13 the merger, but for these commitments that I've just
14 read from in the application, under the bottleneck
15 rule because CSX also serves that route, you would
16 not have to quote or provide access to CN and CP to
17 bring that same traffic in at Bangor.

18 And that you're committing to waiving that
19 right, and you will let them in, at least for some
20 period of time. Is that an accurate way to
21 understand the commitments you're making?

22 MR. DENTON: Yeah Tony I think this is an

1 appropriate one for you to jump in on.

2 MR. LAROCCA: Oh great, I'm the
3 bottleneck.

4 CHAIRMAN OBERMAN: I think this is the
5 bottleneck question, and I want to get it flushed out
6 here.

7 MR. LAROCCA: Yeah. Under the bottleneck
8 rule of course if a carrier can provide service
9 through service from an origin to a destination, it
10 is not obligated to quote a Rule 11 rate for an
11 interchange that would have the traffic move in
12 inter-lying service. It can simply quote a rate for
13 its through service. That's what the bottleneck rule
14 -- that's one of the principles underlying the
15 bottleneck rule.

16 CHAIRMAN OBERMAN: I understand that.
17 That's my question. My question is now what happens?

18 MR. LAROCCA: So what happens now is we
19 have said if a situation exists today where a shipper
20 could, or could ask for interlining service for a
21 particular movement where say the origin was provided
22 by Pan Am with an interchange to another carrier,

1 that we will not invoke that principle that I've just
2 describe as to prevent, or to refuse to quote a local
3 rate for movement to that existing interlining
4 partner that we will not invoke the principle that we
5 would otherwise have to refuse to quote a local rate
6 for interline.

7 Therefore, and that's one way of keeping
8 the gate, the existing gateways open, that if a
9 shipper wants a rate to an existing gateway we'll
10 give them a rate. That's basically the principle.

11 CHAIRMAN OBERMAN: All right. Tony, let
12 me stop you right there. We were talking about
13 propane, what about a rate for a receiver company
14 getting the commodity in from some place else into
15 the PAR line? Is this gateway -- because you said
16 there's a place where the application says you're
17 going to keep all the gateways open, at page 12, so
18 it's got to be open in both directions, as I read
19 your application. Is that correct?

20 MR. LAROCCA: Yes, that's right. I mean
21 the same rule would apply that we could not refuse to
22 quote an interline rate where we were the destination

1 receiver simply because we could provide the through
2 service without the interchange yeah.

3 CHAIRMAN OBERMAN: Well the reason I ask
4 is because in your previous statement you were
5 talking about shippers, but it's fair to say you mean
6 shippers and receivers, traffic in both directions?

7 MR. FOOTE: Tony this is Jim. Yeah, I
8 mean I guess in the railroad industry we would refer
9 to it you know they're all shippers. I'm sorry that
10 we were not clear.

11 CHAIRMAN OBERMAN: Well it depends, the
12 reason I ask Jim is that there's not a lot of as I
13 understand it in New England, not too many factories
14 shipping stuff out anymore, it's more people that are
15 receiving good than shipping them out, but whatever
16 the amount is, this commitment to keep the gateways
17 open and not invoke whatever rights you have under
18 the bottleneck rules applies to traffic going in to
19 New England, and ending up on PAR, or starting on PAR
20 and leaving New England, is that?

21 MR. FOOTE: Absolutely, absolutely,
22 whoever, whether it's the receiver, the shipper,

1 whoever is paying the freight, it's got the bill that
2 gets the rate from us today, or rate from them today
3 will get the same -- they'll get the same routing
4 tomorrow.

5 CHAIRMAN OBERMAN: All right. So just to
6 be clear, to use the propane as an example, if CP is
7 bringing propane gas from Sarnia to Bangor today,
8 after the merger you will give them a rate on PAR,
9 and keep that gateway open to bring that same propane
10 gas in?

11 MR. FOOTE: Yes.

12 CHAIRMAN OBERMAN: All right. And does
13 that commitment apply to every commodity? We were
14 using propane because we've got the nice chart up
15 here, but those movements, without going through how
16 every commodity under the sun moves to New England.
17 Does this not invoking, let me put it that way, the
18 bottleneck rule apply to every commodity from every
19 source that now goes into New England?

20 MR. FOOTE: Yes.

21 CHAIRMAN OBERMAN: All right. So that's
22 very helpful. So now let me get to the rates as I

1 understand it. Presently, and I'm looking at PAR
2 tariffs, I can give you the numbers if you would
3 like to follow along. The one I'm looking at now is
4 4127-L1 in which the same rate is provided to all
5 interchange points.

6 Well this one is really a PAS
7 Mechanicville, Rotterdam, Hoosac, all have the same
8 rate quoted for interchange regardless of the
9 carrier that's coming in. It's an equalized
10 treatment as I understand the PAR pricing policy.

11 Going forward, and again we'll hold off
12 for how long this commitment is because I know you've
13 got some limits there, but when we say you're going
14 to keep these gateways open, are you going to keep
15 them open under the same equalized pricing policy to
16 all comers?

17 MR. FOOTE: Well it's a tariff rate that
18 they're saying from this origin point to any offline,
19 or any gateway. They have a rate in place that I'm
20 sorry I'm not familiar with every tariff that they
21 might have, but if that's what their tariff says,
22 that from this origin point to any of these gateways,

1 here's what we charge for copper ton, for mile
2 whatever it is that the rate is. Yeah, like I said
3 we'll honor it.

4 CHAIRMAN OBERMAN: And that applies to
5 every gateway, or interchange point on the entire PAR
6 system?

7 MR. FOOTE: Yes. Absolutely yes.

8 CHAIRMAN OBERMAN: All right. So and
9 these will be tariff rates you're going to offer
10 obviously, not contract rates right?

11 MR. FOOTE: No. I think it's contract
12 rates too. We're not just opening tariffs up. If
13 someone has -- the concept is Mr. Chairman, if
14 somebody has a rate today to move freight, you know
15 there's two ways to physically close a gateway. One
16 is to physically close the gateway, you don't go
17 there anymore, and the other one is to do something
18 with a price that financially closes the gateway.

19 Our commitment is we are not going to do
20 anything either physically or financially that is
21 going to take away a competitive option that exists
22 today.

1 CHAIRMAN OBERMAN: All right. Well that
2 is precisely what I was going to get it, and I assume
3 if you can -- if somebody wants to negotiate a
4 contract rate you're not going to shy away from that,
5 but when you say challengeable rate I assume you mean
6 a tariff rate in the application, that's one of the
7 reasons I asked the question, that's correct right?

8 MR. FOOTE: If that's what we said in the
9 application, yes, and that's what we meant yes. But
10 I mean again most freight moves under contract, so
11 everybody knows what the rate is, and the question is
12 you have to maintain the rate structure so that the
13 gateway remains viable.

14 CHAIRMAN OBERMAN: All right. So let's
15 talk about time periods. Are these commitments time
16 limited?

17 MR. LARocca: They're not.

18 CHAIRMAN OBERMAN: These are permanent
19 commitments?

20 MR. FOOTE: Yes I believe so yes.

21 CHAIRMAN OBERMAN: Okay. Because I know,
22 and I think some of this may be confidential, so I

1 have not wanted to mention year periods. You can
2 tell us when we get to those parts of the case
3 involving certain commitments for a period of years.
4 But whatever those commitments are, what we've just
5 been talking about about keeping the gateways open,
6 and having equalized pricing, that is in perpetuity.

7 MR. FOOTE: Yes.

8 CHAIRMAN OBERMAN: Okay.

9 MR. FOOTE: Open gateways, it's you know
10 it is a concept that I developed along with a couple
11 other people that don't work here. When we did the
12 NIT League arrangement and when CN bought the -- it
13 was Wisconsin Central, that's where this concept
14 comes from, so I helped develop it, I know how it
15 works.

16 You can't close it off. If the customer
17 has an option to go on an interline rate today, you
18 keep it open.

19 CHAIRMAN OBERMAN: Well Jim the philosophy
20 of openness, I hope you will hold on Jim for two
21 months so we can talk about it in another context at
22 the reciprocal switching hearing, but I'll pass on

1 that for the moment. But I am pleased to hear the
2 way you have described it. I think it is the way it
3 seems to me that CSX is one way that CSX's commitment
4 in this merger to not decrease competition will be
5 carried out. Is that a fair statement?

6 MR. FOOTE: Yes.

7 CHAIRMAN OBERMAN: Yep, okay. That was
8 all I had on this point. I don't know if anybody
9 else had follow-up questions, or should we move on to
10 Mr. Pelkey? Does anyone else have a question, or
11 should we move on to Mr. Pelkey?

12 VICE CHAIRMAN PRIMUS: Yeah I mean I had
13 one question, and --

14 CHAIRMAN OBERMAN: Go ahead Robert.

15 VICE CHAIRMAN PRIMUS: Jim since you're
16 there. You know you had mentioned before that you
17 know no shippers are opposed to the proposed merger,
18 or filed anything, but you're right no one has
19 opposed it, but none of the big guys have endorsed it
20 either, and as a matter of fact ACC did file
21 something that said a comment that asked us not to,
22 if we're going to approve it, not to approve it

1 before the B&E transaction has gone forth because of
2 anti-competitive concerns.

3 In your response you guys said basically
4 that you're going to go forward, hope to go forward,
5 and consummate this merger before that. And so what
6 I'm asking is that still your intended plan of
7 action, or are you guys going to wait until the B&E
8 transaction is completed, until they take over PAS,
9 and then move forward?

10 MR. DENTON: Yeah. Vice Chairman Primus
11 this is Peter Denton. We kind of walked through in
12 our application the various steps of the
13 transactions, and the way we see it playing out is
14 there is an immediate close of the merging agreement
15 with PNM systems. We would then control Springfield
16 terminal. We would not merge Springfield terminal
17 with CSX at that time. That would occur at a later
18 date.

19 So it wasn't entirely clear to me which
20 step in the process ACC was referring to, but again
21 --

22 VICE CHAIRMAN PRIMUS: What I'm saying a

1 B&E transaction has to be completed first.

2 MR. DENTON: Yeah exactly. I don't think
3 that is a necessary step the way we've laid it out
4 right, so the way we've laid it out is that we would
5 acquire control of Springfield terminal. We have
6 certain protections in place to ensure that during
7 any period between our control, Springfield terminal,
8 and B&E taking over that there be no anti-competitive
9 effects. That's all laid out in our application.

10 But the way we've laid it out I think is
11 the best approach, and the way we plan to proceed.

12 VICE CHAIRMAN PREMUS: Well if it's the
13 best approach for you guys, but you know overall, you
14 know why wouldn't it be prudent to let B&E go ahead
15 and get that transaction out of the way?

16 MR. DENTON: I just don't think it's
17 necessary. I think the way we've laid it out we will
18 control Springfield terminal. There's steps in place
19 during the pendency of you know the B&E takeover
20 which requires some labor in many agreements, and we
21 believe that the way we've presented the transaction
22 works.

1 MR. LARocca: Let me jump in also to add
2 to that. The only reason that B&E will not operate
3 day two is because they need to enter into
4 implementing agreements with labor, that's it. And
5 as soon as those are done they're going to be
6 operating PAS. We're hopeful that that could be done
7 quickly. We don't know, but it would be a problem
8 for all of the stakeholders to leave everything up in
9 the air until all that's done.

10 What's going to happen to all of these
11 investments that we're planning along the reservoir
12 line and everything else? In the meantime there's
13 adequate protection. Springfield terminal will be
14 run by the same people that are running it today, and
15 we have committed to keep the rate structure, and the
16 operating arrangements stable at static as they are
17 today until B&E takes over, which shouldn't be more
18 than a few months at the latest.

19 So in the interim there's no risk of
20 competitive harm because nothing is going to change,
21 and but nevertheless we will be able to move forward
22 with our plan to modernize Pan Am right away, which

1 is what we are very anxious to do. That's why we've
2 structured it this way, with a very short period
3 until B&E takes over, hopefully the shortest possible
4 period where everything stays the same, and there
5 would be no impact on competition.

6 VICE CHAIRMAN PRIMUS: Well if it's such a
7 short period I don't see why you then have to put
8 those in place if it's relative short, a few months.
9 Why not just let it play itself out and then just go
10 forward after the transaction is completed?

11 MR. LAROCCA: Well a few months is a few
12 months of deferral on the benefits that we're going
13 to be bringing, and think about it.

14 VICE CHAIRMAN PRIMUS: And I mean you guys
15 say it's a generational you know, acquisition, so a
16 few months versus a generational position, that's not
17 that long.

18 MR. FOOTE: I'm sorry again, this is the
19 ACC that's -- who -- the American Chemistry Council
20 wants us to delay. They're protecting the labor
21 agreements? Well I mean if they want us to delay,
22 and we've explained that the reason for the delay is

1 for them to enter into labor agreements, and
2 implement labor agreements, so the American Chemistry
3 Council wants to delay to make sure that the labor
4 agreements are correct, because that's the only
5 reason.

6 VICE CHAIRMAN PRIMUS: Jim, I don't see it
7 as necessarily a delay. I just see it as look, you
8 know, and they're looking at it from an
9 anti-competitive standpoint, and I get that. I
10 understand that. And you know they're saying let's
11 just get that done and then we can move forward. No
12 one is saying that they want to stop it. No one is
13 saying that you can't go forward at the end, just
14 it's an important part to establish that.

15 You know to get B&E on the record, get the
16 transaction done and we can move forward. Again, no
17 one is saying it's going to hold them up for a year,
18 or for a long period of time. I mean even Tony just
19 said it should be quick.

20 MR. FOOTE: Okay. Well as I said you know
21 we want to get to the public benefits. We want to
22 get to the competitive advantages that the customers

1 are going to realize, and the customers all want us
2 to get going, and to get this done, and I don't
3 understand why the Chemistry Council wants to worry
4 about the labor agreements with the B&E, so we set
5 forth that you know we think it's in the best
6 interests of everybody to move forward.

7 MR. LAROCCA: And there are provisions
8 that we discuss in confidential filings about the
9 timing here, and how delays in being able to
10 consummate these transactions could create some
11 severe problems for the negotiated arrangements.

12 So the question really is you know of
13 course a little bit of time isn't you know in the
14 vast ocean of time isn't going to make that much
15 difference, but it could have an impact because of
16 the way the transactions have been put together. And
17 the question really is how much benefit do you get by
18 taking that huge risk? We've committed to doing, to
19 keeping everything stable during this time period.
20 The risk is negligible.

21 VICE CHAIRMAN PRIMUS: I don't think it
22 puts us in an unstable position. I mean again you're

1 looking at B&E, you know they're going to be a
2 neutral operator. I mean if anything it's about
3 transparency, and making sure this goes through so
4 people you know like ACC aren't worried about
5 anti-competitive, or any other sort of issues. You
6 guys have stated that in your notes as well, you and
7 NS has said that.

8 That you know B&E's operations are key
9 protections you know against those competitors, so I
10 don't see what the big deal is over you know a couple
11 months of making sure this thing, of B&E's
12 transaction gets done.

13 MR. DENTON: Well I don't think -- yeah we
14 acknowledge those concerns, and that is the reason
15 why we put in the protections that we stated in our
16 application, and we think that solves the issue.

17 VICE CHAIRMAN PRIMUS: Well I don't think
18 you need the protections if you just let B&E just go
19 ahead and get the transaction done. You don't need
20 those protections. That's enough.

21 MR. PELKEY: Let me just make one more
22 point, and then I hope I'm understanding this

1 correctly. But two things, one just to emphasize the
2 point Tony made. This deal turns into a pumpkin at
3 one point in time here, you know, that's confidential
4 in terms of the timeline, but I think it's important
5 just to note that and emphasize it.

6 So you know hopefully that's not before
7 whenever everything that needs to fall in.

8 CHAIRMAN OBERMAN: Who's speaking here.
9 Who is speaking?

10 MR. PELKEY: I'm sorry this is Sean
11 Pelkey.

12 CHAIRMAN OBERMAN: Oh I'm sorry Sean, I
13 couldn't see you. Sorry go ahead.

14 MR. PELKEY: No problem. So there is a
15 timeline in terms of the transaction. The other
16 thing is you know remember this, the agreement have
17 B&E operate over Pan Am Southern is an agreement
18 between the co-owners of Pan Am Southern, which right
19 now are Norfolk Southern and Pan Am. CSX is not a
20 co-owner until the transaction closes.

21 And so I'm just trying to think through
22 and maybe from the legal side you could help me, but

1 how does Pan Am agree to B&E operating a line that it
2 still owns? They're the operator today, so I think
3 there's some complexity if we were to try to reorder
4 things versus how it is currently structured.

5 VICE CHAIRMAN PRIMUS: Like I said you
6 guys are going around in circles. On one side you've
7 got Tony saying hey, we're going to get this done
8 only a few months after. Now you're saying there's
9 complexities involved in how we're going to get it
10 done, and you're going to turn into a pumpkin you
11 know, if something doesn't get done in that
12 timeframe.

13 MR. PELKEY: Yeah, the complexity is
14 simply that you know Pan Am is the current owners, 50
15 percent owner of Pan Am Southern, you know, I can't
16 speak for them as to whether they would agree to
17 have B&E take in and start operating the line prior
18 to the sale, that's up to them to decide.

19 MR. LARocca: And this is all driven by
20 the labor, by the need for implementing agreements so
21 that this all comes together without unnecessary
22 disputes. The very limited concern about operations

1 during the period where those implementing agreements
2 are being hammered out is not worth jeopardizing all
3 the benefits that this deal brings.

4 VICE CHAIRMAN PRIMUS: So you're saying
5 that this whole thing hangs in the balance of B&E?

6 MR. PELKEY: Not at all no. I think you
7 know the other point is we don't foresee any
8 challenges getting B&E fully approved as the operator
9 post-closing, but we have a fallback. If that
10 doesn't work the agreement states that immediately
11 CSX and NS would put out essentially an RFP to find
12 another operator who could do what we envision B&E
13 doing today.

14 So you know I don't think there's any
15 reason for concern here.

16 VICE CHAIRMAN PRIMUS: Okay. I'm done for
17 now.

18 MR. PELKEY: Okay. So why don't I turn to
19 the section of my presentation here, and I do want to
20 thank the Commissioners for the opportunity to
21 describe why we think our acquisition of Pan Am will
22 be a major step forward in the development of the

1 rail network in New England.

2 As you know I'm Sean Pelkey, and I'm the
3 Vice President and Acting Chief Financial Officer of
4 CSX. As I explained in verified statements filed in
5 support of CSX's application for authority to acquire
6 Pan Am, I was heavily involved in the analysis and
7 negotiation of the proposed acquisition since the
8 beginning of the bid process.

9 I was also directly involved in the
10 negotiations with Norfolk Southern, and Genesee in
11 Wyoming. As such I'm going to focus my comments this
12 morning on those negotiations, which aim to realign
13 the rail network in New England, and ensure that rail
14 users will have competitive and high quality rail
15 service.

16 When we learned that Pan Am was part of a
17 sale process we recognized the unique opportunity to
18 extend our rail network into an important region of
19 the country that is not directly served by Class 1
20 rail carriers today. Our network currently reaches
21 the Boston area, but does not penetrate further into
22 New England.

1 We were excited to bring a proven level of
2 rail service, investment in technology, to this
3 important and growing region. As you can see on the
4 map our acquisition of Pan Am would be a straight
5 forward end to end combination of the CSX rail
6 network that currently ends in Worcester,
7 Massachusetts, and the Pan Am railways network that
8 extends to the north of Worcester.

9 There is virtually no overlap between the
10 two networks, and there is undisputed overwhelming
11 public benefit associated with CSX's acquisition of
12 this route. Pan Am also owns 50 percent of another
13 independent rail carrier, the Pan Am Southern. NS
14 owns the other 50 percent.

15 Turning to the next slide the map you now
16 see shows the CSX and PAS lines that run roughly
17 parallel from Upstate New York into the Boston area.
18 The east west line toward the north is PAS's Patriot
19 quarter, south of that line is CSX's southern route.

20 CSX uses both the Patriot corridor and the
21 southern route to move traffic from upstate New York
22 into Boston. In fact, most of the traffic that we

1 move on PAS, goes to or from PAS locations that we
2 don't serve ourselves directly. Having these two
3 routes available gives us tremendous flexibility.

4 In acquiring Pan Am, CSX would become a 50
5 percent owner of PAS along with NS. As the Board is
6 aware, there are many examples of facilities jointly
7 owned by railroads, including facilities jointly
8 owned by CSX and NS that are highly effective
9 providers of competitive rail service.

10 Conrail is perhaps the most notable. CSX
11 and NS co-own and utilize Conrail to provide
12 competitive service to some of the most important
13 markets on the east coast. Since 2019, I have
14 served on the Conrail Board of Directors. I can
15 speak firsthand to the success of the structure.

16 During my tenure on the Conrail Board I've
17 witnessed significantly improved safety performance,
18 increased investment, and important changes to the
19 operating plan designed to better serve customers.
20 We've also worked together closely with NS to
21 resolve key issues in a way that Conrail on its own
22 would be challenged to do.

1 When Conrail was created the Board saw the
2 joint ownership structure as highly pro-competitive,
3 and while it does require time and attention to
4 ensure things are working properly, the joint
5 ownership of Conrail has been a resounding success.
6 We have proven this can work, and neither party has
7 any doubt we can replicate this track record with
8 PAS.

9 Against this backdrop we began discussions
10 with NS to work out a structure for our joint
11 ownership of PAS. Our discussions had two basic
12 objectives. First, we wanted to make sure that the
13 two routes into New England would continue to be
14 viable, both operationally and financially.

15 Second, given that CSX and NS contribute
16 the lion's share of traffic across PAS today, we were
17 jointly incited to create an agreement that resulted
18 in significant service improvements. After lengthy
19 discussions we reached a settlement agreement with NS
20 that will not only achieve these objectives, but will
21 in fact improve the competitiveness of PAS. Let me
22 now walk through the principal elements of that

1 settlement.

2 We agreed to several provisions that will
3 preserve PAS as a competitive route. CSX will remove
4 itself from all PAS competitive decisions, and will
5 have no say in rates or service offerings, in short,
6 PAS will continue to operate as an entity that is
7 independent of CSX.

8 Second, we made a commitment on Pan Am
9 rates that will ensure that rail carriers using PAS
10 to reach locations on Pan Am railways will have the
11 exact same access they have today. Third, PAS will
12 be operated by an independent proven rail operator
13 that will be responsible for setting PAS rates. We
14 agreed to retain the Berkshire and Eastern, a G&W
15 subsidiary.

16 As I'll explain in a minute we also agreed
17 to a compensation arrangement for the rail operator
18 that will create a strong incentive to grow the PAS
19 business, and continue to compete with CSX and other
20 railroads.

21 Finally, we agree to allow NS, or someone
22 designated by NS to acquire our interest in PAS, for

1 a period of time at a predetermined valuation. With
2 this agreement there is no reason for the Board to
3 consider a forced divestiture. Our settlement
4 agreement with NS also went beyond simply preserving
5 competition in New England. It will result in
6 substantial enhancements to competition.

7 Most important is our grant of trackage
8 rights to NS to move intermodal and automotive
9 traffic over CSX's southern route. Intermodal
10 accounts for the largest volume of rail traffic
11 moving into and out of New England. The problem for
12 NS is that PAS's Hoosac Tunnel has a height
13 restriction that prevents NS from moving double stack
14 intermodal cars on PAS into New England, a far more
15 efficient form of intermodal traffic than single
16 stack.

17 By giving NS trackage rates for intermodal
18 trains on CSX's southern route, competition for
19 intermodal traffic into New England will be
20 substantially improved. You heard earlier about the
21 importance of Ayer Yard for competition in the
22 region, and about the improvements we've agreed to

1 make to infrastructure and operations at Ayer.

2 As a result of these improvements, PAS and
3 CSX will both be stronger competitors for traffic
4 into and out of New England. Our agreement to retain
5 B&E as PAS operator will result in improved rail
6 service levels. This was important to both CSX and
7 NS because between us we have a significant majority
8 of traffic on PAS.

9 We need a strong and viable PAS to serve
10 that business. Today PAS is operated on a contract
11 basis by a Pan Am carrier, the Springfield terminal.
12 It also operates all of the other Pan Am lines. In
13 contrast, B&E will be exclusively responsible for
14 operating PAS. We believe that the ability to focus
15 only on the success of PAS will enable better
16 service.

17 We have also agreed to require B&E to
18 establish non-discriminatory prices for PAS
19 transportation so that all rail carriers seeking to
20 use PAS to reach markets in New England will have
21 equal access to those markets. The assurance of a
22 neutral route into New England will encourage

1 competition to serve New England shippers.

2 Finally, we have agreed to include
3 financial incentives in the operating agreement that
4 will give B&E strong motivation to improve service
5 and expand PAS's business. B&E through a profit
6 sharing mechanism, participates in the upside, and
7 therefore has a significant incentive to grow the PAS
8 business, and to improve the financial viability of
9 PAS.

10 The incentive is based on the financial
11 performance of PAS, and could represent a meaningful
12 share of B&E's total compensation. B&E is highly
13 motivated to achieve the incentive, and the only way
14 they get it is if they are able to help secure PAS's
15 long-term financial viability. All parties are
16 aligned to ensure PAS endures. We're confident this
17 model will be successful, however if at any point CSX
18 and NS as the owners of PAS, determine that B&E is
19 not living up to its contractual obligations, we can
20 terminate the contract and hire a new operator.

21 There are two other competitive issues
22 that our economist Dr. Reishus will address in more

1 detail. First, the Vermont Transportation
2 Department and Vermont Rail Systems, or VRS
3 originally expressed concerns about the retention of
4 B&E to operate PAS. But we have reached a settlement
5 agreement with the Vermont parties, and they have
6 withdrawn their concerns about the transaction.

7 In fact, there are elements of the
8 settlement agreement that will significantly
9 strengthen VRS in serving Vermont shippers. Second,
10 CP raised concerns that the restructuring of PAS
11 might jeopardize the viability of the Patriot border
12 route. These concerns are unfounded.

13 As I have noted previously, CSX and NS
14 together account for the vast majority of freight
15 handled on PAS, and we as co-owners will have a
16 strong incentive to keep PAS viable to handle this
17 traffic. We have also agreed to implement safeguards
18 regarding critical governance issues, such as future
19 capital funding decisions. NS is the party with the
20 most to lose if PAS's viability were to decline.

21 But NS is clearly satisfied that the
22 agreed upon structure is the best way to strengthen

1 PAS as a viable and competitive route into New
2 England. The restructuring of the rail network in
3 New England through these settlement agreements was a
4 difficult task, given the fragmented and complicated
5 structure of the network in place today.

6 But we have created a new structure that
7 has resulted in tremendous support from the shippers
8 and railroads that connect with PAS. Indeed when it
9 comes to the PAS structure, not one shipper has
10 expressed concern, and if we turn to all the
11 railroads in the region that connect to PAS, only one
12 has expressed concern -- CP.

13 The strong support we have received from
14 so many other rail stakeholders shows there is
15 widespread confidence that we have created a stronger
16 and more resilient structure for rail transportation
17 in New England that will better serve rail
18 stakeholders.

19 Finally, I'd like to ask the Board to be
20 very careful in considering requests by some
21 commenting parties for fundamental changes to the
22 negotiated restructuring of PAS, particularly the

1 DOJ's request that CSX be forced to divest its
2 interest in PAS. The tri-party arrangements involve
3 numerous commitments and trade-offs that could not
4 easily be renegotiated if fundamental changes were
5 required, particularly in light of the time
6 constraints that I have described for the Board in
7 confidential pleadings.

8 If fundamental changes were required, the
9 entire interconnected set of proposed transactions
10 could unravel, with the loss of public benefits
11 described above that have generated such widespread
12 support for the transaction. I thank you for your
13 time. And I think we would now send it over to Dr.
14 Reishus.

15 CHAIRMAN OBERMAN: I think Karen had a
16 question. And I have a few questions about the
17 arrangement with B&E. Karen?

18 VICE CHAIRMAN PRIMUS: I have a question
19 too.

20 BOARD MEMBER HEDLUND: Yeah my question is
21 this, understanding that you're obviously not subject
22 to all the procurement rules, could you at least

1 describe what methodology you used in the selection
2 of B&E? Did you solicit proposals from other
3 potential operators, and so forth?

4 MR. PELKEY: Thank you for the question.
5 The process was one that was it was critically
6 important that we find the right operator, and I
7 think it's important to recognize that it was in the
8 mutual best interests of both CSX and NS to find an
9 operator we were both confident could operate it
10 efficiently, and with better levels of service than
11 what Springfield terminal is providing today.

12 The pool of potential operators who could
13 do that in short order that have the financial
14 resources to mobilize quickly, and that you know given
15 the time line that we have on the closing of this Pan
16 Am transaction could do it in short order, was fairly
17 small. We discussed several names between the two
18 parties, and we narrowed in on Genesee and Wyoming,
19 who has a tremendous presence in the area, has done
20 this many times across North America, and have done
21 it successfully.

22 And we also needed a party that was

1 interested in participating. This is a complicated
2 situation to step into. When we began those
3 negotiations with G&W they not only expressed
4 interest, but also excitement about that opportunity,
5 and so we moved forward very quickly to begin to
6 draft the terms of an agreement with G&W that would
7 allow them through Berkshire and Eastern to operate
8 Pan Am Southern.

9 BOARD MEMBER HEDLUND: So as I understand
10 it you didn't formally solicit letters of interest,
11 or proposals from other operators, you just discussed
12 various potential operators among yourselves and
13 decided that B&E was the right entity.

14 MR. PELKEY: That's correct. Yeah, you've
15 got to sort of go back to where we were in the
16 transaction. You know we had already announced that
17 we were going to acquire Pan Am. We then needed to
18 shift our attention to you know getting an agreement
19 with Norfolk Southern around how this structure,
20 50/50 ownership of Pan Am Southern was going to work,
21 getting an operator was one piece of that.

22 Had we gone to a full RFP, you know,

1 that's a process that takes a fair amount of time,
2 and I think both parties were very confident G&W
3 could do this. If it fell apart we were open to
4 going forward and doing something different, and the
5 agreement like I mentioned already, stipulates you
6 know, if the B&E arrangement doesn't pan out, that's
7 exactly what we would do as a next step is go to an
8 RFP process.

9 BOARD MEMBER HEDLUND: Thank you.

10 CHAIRMAN OBERMAN: Sean I have a few
11 questions about the relationship between CSXT and how
12 the PAS line is going to be operated on this question
13 of independence. You know we did get a fairly strong
14 argument from DOJ that they think structural
15 solutions are the way to go. Your contention is the
16 structural solution is not needed here because of the
17 protections, and I'd really like to explore those a
18 little bit more at this point.

19 You seem to be the person who was
20 responsible for setting this up, but Tony or Peter
21 may want to weigh in as well. As I understand the
22 term sheet with B&E, according to your application,

1 it says that NS and CSXT will agree on a suite of
2 operating metrics and goals that B&E will measure and
3 report on at certain intervals.

4 So doesn't that, and the LLC agreement
5 provides that both CSX and NS will have
6 representatives on the PAS management committee,
7 "responsible for amending PAS's investment policy,
8 setting the budget, and carrying indebtedness and
9 making capital calls." That doesn't seem to me that
10 you're removed from decisions about PAS.

11 MR. PELKEY: Yeah I think the way I would
12 frame is I don't know if the right terminology is
13 removed from decisions, but I think you know that PAS
14 will operate independently of CSX right? We're not
15 setting the rates. We're not setting the schedules
16 we're not setting the you know the terms of service.
17 Are we going to monitor it? Absolutely.

18 Is it our investment? It's 50 percent our
19 investment, 50 percent Norfolk Southern. So we'll
20 monitor the budgets, we'll approve the budgets, both
21 operating expense and capital, and I think everybody
22 will be jointly incented to have a better run

1 railroad.

2 CHAIRMAN OBERMAN: Well you know that's
3 not a structural solution. That relies on the
4 intentions of the human beings that are in place at
5 any moment, and with no aspersions on any particular
6 human beings, the reason we have conflict of interest
7 rules, and other kinds of rules is that we don't want
8 to put human beings in positions where they have
9 conflicting loyalties.

10 And if the occasion were to arise where it
11 was in CSX's best interest to devote resources to the
12 southern route, and to let the northern route
13 deteriorate, if CSX has got veto rights over budgets
14 and capital expenditures and so forth, how are we
15 protected? We being the public from such an outcome
16 two, three years from now when the world will change,
17 or ten years from now?

18 MR. PELKEY: I think there's two things
19 I'd say, and lawyers may want to chime in too. The
20 first is you know I brought up the example of Conrail
21 for good here. The management committee has
22 envisioned Pan Am Southern is very similar to the

1 Board of Directors as constructed at Conrail. I
2 happen to sit on that Board. We've got lively
3 discussions and debates amongst both parties, as well
4 as with Conrail who is the operator, in a similar
5 way that B&E would be the operator of Pan Am Southern
6 here. Somehow we figure it out, and we create a
7 capital plan.

8 Our engineering team goes in, Norfolk
9 Southern's engineering team goes in, Conrail's
10 engineering team weighs in, and we come up with a
11 budget that's in the best interest of all parties as
12 well as the customers who are on that line, so it's a
13 structure that can work.

14 I would also say in terms of capital
15 expenditures specifically on Pan Am Southern, while
16 we do have a 50 percent vote, and while I do envision
17 that reasonable parties across that management
18 committee will come to a good agreement about what
19 capital to invest in the line, we've agreed that in
20 the event that there's any dispute that lingers over
21 our you know, our view versus Norfolk Southern's that
22 we would submit it to accelerate in arbitration, and

1 that arbitration would be using the standard of an
2 independent investor in that line, and we want it to
3 maximize its return.

4 We'd be subject to whatever that
5 arbitration came out with, and that would be the
6 capital budget that would be set.

7 CHAIRMAN OBERMAN: Do you have an
8 arbitration provision like that at Conrail?

9 MR. PELKEY: I am not aware of that. I
10 don't know if the legal team does. It's not
11 something we've ever had to even envision using
12 frankly I do not.

13 CHAIRMAN OBERMAN: That actually is an odd
14 way to run a railroad, to have your business
15 decisions being made by -- you've got to stop what
16 you're doing and go into arbitration. You know a
17 lot of these decisions are time sensitive.
18 Obviously, right now NS has an interest for example,
19 in raising the height of that Hoosac Tunnel.

20 CSX has a completely different motivation.
21 I don't think that you can change that. The day
22 could come, it could be a P3 with the State of

1 Massachusetts and some other interest in investing in
2 that Hoosac Tunnel and CSX's team may have no
3 interest at all in spending money on that. And
4 everything has to stop when it goes into arbitration.

5 MR. PELKEY: Yeah so we have agreed to
6 support any kind of public funding proposals that Pan
7 Am Southern agrees it's in the best interest of Pan
8 Am Southern to put forward to that specific point. I
9 don't know Peter is there anything you'd like to add?

10 MR. DENTON: Yeah. I would like to add.
11 I think we set out in the record how CSX is
12 incentivized to keep the PAS Patriot corridor viable.
13 So when you said that CSX wouldn't have an incentive
14 to repair the tunnel, or to --

15 CHAIRMAN OBERMAN: Not to repair it, but
16 to make it available for double stacks. It doesn't
17 need it, it's got the southern route.

18 MR. LAROCCA: NS doesn't need it either
19 now.

20 CHAIRMAN OBERMAN: Well.

21 MR. LAROCCA: In light of -- that's really
22 the beauty of this. When you think about it from a

1 social policy economic perspective, would it make
2 sense to spend the magnitude of millions of dollars
3 to double stack that several mile long tunnel? Or to
4 run those double stack trains over the trackage
5 rights?

6 I think from a perspective of the public
7 who ends up having to pay for all of these costs, the
8 solution that we have come up with is a far more
9 efficient one, and one that is going to benefit
10 competition and the public far more than just
11 spending more money on something that isn't needed.

12 CHAIRMAN OBERMAN: Well for the moment
13 it's not needed, but NS has topped out at one 9,000
14 foot train each way. If intermodal grows the day may
15 come when they may need more. If the funds were
16 available they may well find it to their business
17 advantage to deepen the Hoosac Tunnel and not have to
18 rely on trackage rights because they own half the
19 railroad.

20 So I just don't know in the long-term you
21 can assume that the motivations will be the same, and
22 that is the reason I think that the DOJ has urged

1 divestiture to avoid ever having to be put into that
2 conflict. And I'm trying to ferret out here, you
3 know, how you've come if not equal to the incentives
4 in a divestiture, at least close enough to satisfy
5 the public interest. That's what I'm trying to
6 explore here.

7 MR. LAROCCA: Well in a balance Mr.
8 Chairman, think of the risk that you're contemplating
9 here, and compare the risks. The risk here of an
10 inappropriate decision by CSX to not fund an
11 investment that would otherwise make sense. That's
12 one risk on one hand. On the right on the other hand
13 is that this whole deal goes away, and all of the
14 modernization that we're talking about goes away.

15 You have to be considering the relative
16 risks here. On the first risk I don't even think
17 that that's much of a risk, but if it were that is
18 that CSX would do something that is not economically
19 rational. But if it were, the point is we have
20 established a back stop. We have established a
21 remedy that is not perfect, but it would be
22 effective, and it would be a way of addressing that

1 risk.

2 And so I think it's important to weigh the
3 relative benefits that you get by divestiture, which
4 would be -- or the relative risks that you get if you
5 were to require divestiture, compared to the relative
6 risks that CSX who uses this line for a substantial
7 amount of traffic is going to make an uneconomic
8 decision, and I don't think that there's really much
9 of a comparison there between those two concerns.

10 CHAIRMAN OBERMAN: Tony I think the question
11 is that I'm focused on is given the fact that CSX has
12 a parallel line which it owns 100 percent of. The day
13 may come when it may well make economic sense for CSXT
14 to not want to invest further in PAS. And that is what
15 we're focused on here.

16 So yes, I don't assume that CSX will shoot
17 itself in the foot someday, but it may well be in
18 CSX's selfish interest to not make the same
19 commitments that NS might, or some other independent
20 owner. That's what I'm trying to get at, and the
21 solutions, the structural solutions that have been
22 proposed strike me as being somewhat awkward, either

1 to stop what you're doing and go into arbitration, or
2 the one you suggested that you don't like, and that
3 is to have a fiduciary come in and make these
4 decisions.

5 I for one am trying to figure out how you
6 put a fiduciary in the same with -- how you instill
7 in a fiduciary the same incentives to make business
8 decisions as an actual owner and entrepreneur would
9 be. I mean contrary to popular belief I believe in
10 the entrepreneurial system and the free market.

11 And I think there's nothing like having an
12 ownership interest in it to motivate you to make the
13 best economic decisions, and so but yet we're trying
14 to leave CSX in kind of a dual position. An owner,
15 but the person who is going to make the decisions
16 isn't an owner. I'm just find it problematic to
17 figure out how this is actually going to protect the
18 public interest in the long run. I'm not saying it
19 can't, but I'm trying to explore it.

20 MR. LAROCCA: That's why we don't favor
21 the fiduciary. We think it would be a way of dealing
22 with if you really believe that the risk was

1 un-takeable, that CSX would do something irrational,
2 then that's a solution. We don't like it. We don't
3 think it's necessary.

4 We think as an owner CSX is going to make
5 decisions in the interest of an owner of this line,
6 and while you are absolutely right, we do have the
7 southern line, most of the traffic that we use, that
8 we run on PAS is local to PAS. We don't -- most of
9 that traffic is not served, cannot be served directly
10 from the southern line. So we will have the same
11 incentives that an owner, an independent owner would
12 have to keep this line viable.

13 And that's why we don't favor the
14 fiduciary approach. It's one that we put out there
15 if you really don't believe that we are capable of
16 acting rationally, but we don't think that that's
17 the right approach either. We think that we have the
18 correct incentives to keep this line operational,
19 viable, and indeed better served than it is today.

20 MR. DENTON: Mr. Chairman there's a reason
21 why traffic, CSX traffic runs on PAS today, and that
22 reason will remain post-transaction. This traffic,

1 we're not just moving it on PAS for you know the good
2 of PAS right now, we're doing it because that's the
3 most efficient way to run this traffic. And that's
4 not going to change after the transaction, the
5 traffic flows will remain the same.

6 CHAIRMAN OBERMAN: How much traffic is CSX
7 running on PAS now?

8 DR. REISHUS: If I can go ahead and say
9 this. They account for a little over a quarter of it
10 on the tape recorder.

11 CHAIRMAN OBERMAN: But that's a relatively
12 small absolute number though isn't it.

13 DR. REISHUS: Well it's a relatively small
14 absolute number on the corridor as a whole.

15 CHAIRMAN OBERMAN: Yeah I understand so a
16 quarter of it is even smaller.

17 DR. REISHUS: Yeah.

18 MR. DENTON: Chairman Oberman with respect
19 I think Dr. Reishus's presentation discussion is
20 going to touch on it.

21 CHAIRMAN OBERMAN: All right. Well let's
22 hold off then because I wanted to get back to one

1 other part in the application that I found a little
2 bit concerning speaking of fiduciary duty. One of
3 the representations that was made to the Board is
4 that another protection in terms of CSXT functioning
5 in the best interest of PAS is a statement in your
6 papers that says CSX representatives on the Board of
7 PAS would be bound by their fiduciary duties under
8 corporate law to act in the best interests of PAS.
9 Are you familiar with that? Peter, are you familiar
10 with that?

11 MR. DENTON: Yes. Yes I am.

12 CHAIRMAN OLBERMAN: We looked at the LLC
13 in whose shoes you're going to step, and it appears
14 that the LLC has exercised its rights under the
15 Delaware Corporate Code to excuse all
16 representatives of CSX "to the fullest extent
17 permitted under Delaware law to owe any duties of law
18 or equity, including fiduciary duties to PAS."

19 So that's really not much of a protection
20 is it? They don't have any fiduciary duties to PAS
21 because you have exempted them from it. Not you
22 have, but the LLC did.

1 MR. DENTON: And it's a good question
2 Chairman. We'd have to take this back and look at
3 the LLC agreement in order to present a good answer
4 to you.

5 CHAIRMAN OBERMAN: All right. Well maybe
6 you can do that before the close tomorrow because we
7 read the LLC, and maybe we're missing something,
8 unless maybe you've amended the LLC, but the current
9 status of that LLC utilizes the Delaware law
10 exemption from fiduciary obligations, so that's a
11 little bit troublesome.

12 MR. DENTON: Right, just for clarity
13 you're referring to the existing agreement, is that
14 right? In place between Pan Am and Norfolk Southern,
15 or are you referring to the revised version that we
16 submitted.

17 CHAIRMAN OBERMAN: I think it's the one
18 you submitted. But I'll check.

19 MR. DENTON: Okay because we submitted
20 both.

21 CHAIRMAN OBERMAN: I'll check them both,
22 and I'll check with my staff to make sure.

1 MR. DENTON: Sure.

2 CHAIRMAN OBERMAN: But that's my
3 understanding. And that's problematic. I mean it
4 would be a little bit more comforting if they hadn't
5 exempted themselves from their fiduciary duties which
6 are strong under Delaware law if they're in place.
7 If they're not in place there's no protection at all.

8 The other thing I find a little quizzical
9 about the CSX's position in terms of the protections
10 on the PAS is that in your papers you talk about the
11 B&E contractual obligations in terms of its
12 obligations and how to run PAS. You talk about the
13 CSX fiduciary obligations, and you say that the
14 public is protected because the STB stands there to
15 enforce all these obligations.

16 What you say and quoting is an important
17 function of the STB has historically been to provide
18 efficient supervision of the implementation of rail
19 transactions, and ensure that commitments made in
20 these transactions are carried out. I am flattered.
21 I do think that is what the Congress expects us to
22 do, but I must say that in the three years I've been

1 on the Board I have heard continuously from certainly
2 the Class 1 community, that the STB should keep its
3 nose out of the Class 1's business.

4 And you're now telling us that the best
5 way to protect the public on your keeping your
6 commitments is that the STB should stick its nose
7 right into the business by making sure B&E operates
8 the place the way its supposed to be, and CSX doesn't
9 act as an obstructionist in the best interest of PAS,
10 so I'm a little confused Peter, to be honest about
11 what you want the STB to do.

12 You want us to keep our nose out, or stick
13 our nose in?

14 MR. DENTON: Well from a policy
15 perspective Mr. Chairman, I think there's a big
16 difference between enforcing your condition of a
17 merger, and you know any other activity. There's a
18 well trod process here. We've proposed a five year
19 oversight period. Many other mergers there are
20 commitments made that are then subsequently enforced
21 as necessary at the STB. I'm think of some UP SP
22 conditions that you know have been in place for 25

1 years now, and still come up from time to time when
2 an enforcement decision is necessary.

3 So I think not speaking for the entire
4 Class 1 community here. I think that people
5 recognize that merger commitments are important, and
6 that the Board serves an important role as a
7 backstop to enforcement.

8 CHAIRMAN OBERMAN: Well I don't disagree
9 at all. It's one thing to enforce commitments for
10 access, or trackage rights and so forth. It's
11 another thing to get in there and manage the
12 business of B&E if we don't think they're managing it
13 correctly. That's what I was talking about. That
14 seems awfully intrusive request of the STB to in lieu
15 of divestiture, to step in there and make sure
16 they're making the right business decisions, and
17 they're offering you know pricing strategies to not
18 disadvantage NS.

19 Those are pretty minute business
20 decisions. That's really what I was focusing on.
21 And to be honest Peter, I don't feel particularly
22 equipped to make those decisions. I don't run a

1 railroad.

2 MR. DENTON: Yeah Mr. Chairman I believe
3 those decisions, that's the reason we've set up a
4 robust LLC agreement, and other oversight from the
5 owners of PAS. I mean CSX and NS says, each
6 one-half owners of PAS are incentivized to make sure
7 that B&E runs this the right way.

8 And we first will be the ones who see
9 something like that, and frankly to the extent it's
10 necessary we'll correct it. I think that is a very
11 you know remote risk of something like that needing
12 to come before the STB.

13 CHAIRMAN OBERMAN: Well maybe so, you
14 know, it's hardly perfect. We're right now engaged
15 in a case in which CSX and Norfolk Southern are
16 pretty much at each other's throats at the Norfolk
17 and Portsmouth Port issue. We're still sorting out
18 Lake Charles merger conditions. That case has been
19 pending for ages. You know it's not always so
20 smooth. And you know I think that's why structural
21 solutions are urged.

22 It may not be appropriate in this case,

1 but I really wanted to air out here that the
2 solutions you are presenting as to how to ensure
3 competition here, that's really what we're talking
4 about, are not without meaningful risk. The attorney
5 talked about risk. To me there is meaningful risk if
6 the STB has to get in here and try to manage this
7 situation.

8 We don't want it, and I'm sure you don't
9 want it, but that's what you're setting up as the
10 backstop.

11 MR. DENTON: Yeah, Mr. Chairman I would
12 offer that I think most mergers don't, you know what
13 the two scenarios you described are kind of a very
14 tip of the iceberg right? I think most issues get
15 resolved in a commercial basis. They are not
16 required to be brought before the Board, and you know
17 merger conditions are dealt with by the Class 1
18 community you know every day.

19 Every Class 1 is basically living on the
20 backs of their prior mergers. So I really don't see
21 this as any different than those other issues.

22 CHAIRMAN OBERMAN: Well I hope you're

1 right.

2 MR. LAROCCA: And I would also add Mr.
3 Chairman that my experience is we don't want to get
4 brought before the Board. We resolve things so that
5 we don't have to. And the fact that this is you know
6 an available remedy likely ends up resolving the
7 problems before they are forced to be resolved by
8 you.

9 It's I mean, and that goes more broadly
10 than I don't want to get into it. We've got enough
11 to talk about here, but I mean that truly is a
12 dynamic that is very important in the railroad
13 industry. The fact that you're there means we
14 resolve an awful lot of stuff because we don't want
15 to have to litigate.

16 CHAIRMAN OBERMAN: And Tony I appreciate
17 that, and I think that we're on exactly the same
18 wavelength. I have said many times in public
19 statements, and particularly since I've become
20 Chairman, that the best solutions are ones where the
21 industry resolves these issues themselves.

22 You've done that in this case with some of

1 your settlement agreements so far. But I am just
2 felt it very important to air out these backstops
3 that you're asserting as a reason to avoid what DOJ
4 has urged. And they're not pain free. That's all I
5 am suggesting, and we have to weight that.

6 MR. LAROCCA: And I think, and I fully
7 understand what you're saying and I agree. And I
8 think the precedent though is relevant here. I mean
9 these issues have come up in the past, and the agency
10 has recognized that they're not risk free, some of
11 these solutions, but they also recognize that the
12 risks associated with forced structural changes are
13 far greater.

14 CHAIRMAN OBERMAN: And that is an issue
15 that we have to decide, so but I hear what you're
16 saying. Robert I think you had a question?

17 VICE CHAIRMAN PRIMUS: I defer to Patrick.
18 I think Patrick wants to follow-up. I'll come back.

19 BOARD MEMBER FUCHS: I appreciate it
20 Robert. I think my follow-up is what Tony said is a
21 great segue. You know in terms of comparing whatever
22 analysis that can add an effect to the overall

1 benefits of the transaction, you know, which you all
2 spend a good bit of the morning presenting.

3 You know CP DOJ, the two parties that took
4 issue with the current arrangement on the northern
5 route, has either party to your eyes made a showing
6 that the claims to anti-competitive effects outweigh
7 the benefits of the transaction?

8 MR. DENTON: No, no. Moreover, I don't
9 think either has made a showing that the claims are
10 likely or substantial, which is the statutory
11 standards that you must first grapple with.

12 BOARD MEMBER FUCHS: And the second
13 question is did either party contemplate -- let me
14 ask you this. Does Norfolk Southern's grant of
15 trackage rights on the southern route. Your
16 negotiation with Norfolk Southern, the 50 percent
17 ownership stake that you're going to have in the
18 northern route was important, was an important reason
19 for why you gave them trackage rights over the
20 southern route. Is that a fair thing to say?

21 MR. DENTON: Yes that's correct.

22 BOARD MEMBER FUCHS: Did either CP or DOJ

1 analyze the effects of some sort of condition, the
2 effects of some sort of condition would have on the
3 benefits of NS trackage rights?

4 MR. LAROCCA: No. And indeed I mean I
5 would not to be critical of the DOJ, but I don't
6 believe they understood how trackage rights work, and
7 how extensive they are in the railroad industry, and
8 how effective they are in railroad industry, and how
9 relatively free from dispute they are.

10 So I don't think that the Justice
11 Department really understood the benefits side of
12 that deal as it relates to the trackage rights.

13 MR. DENTON: And Tony I would also add
14 just briefly that kind of the quasi structural nature
15 of trackage rights. I mean this is not just a
16 contract that can go away tomorrow. Trackage rights
17 are you know regulatory entry, exit authority. It
18 would be a conditions of the merger, this is not some
19 kind of transitory system that could disappear you
20 know at a whim.

21 BOARD MEMBER FUCHS: And you know Norfolk
22 Southern is a result of getting trackage rights on

1 the southern route, it's going to be automotive and
2 intermodal. You know in a global sense that is
3 traffic that would compete with the CP. Perhaps
4 that's a question for Norfolk Southern hey?

5 MR. LAROCCA: Yeah I think so.

6 MR. FOOTE: No that statement would be
7 incorrect. CP doesn't move any intermodal in that
8 territory.

9 BOARD MEMBER FUCHS: Do you think that the
10 origination points for Norfolk Southern in terms of
11 whatever they are originating for intermodal or
12 automotive, would compete with CP somewhere else on
13 CP's network? For example, are there shippers that
14 they would have in common that if Norfolk Southern
15 offers a better intermodal, or automotive product
16 would somehow have any negative effect on CP?

17 MR. FOOTE: Well we all compete with one
18 another in various different lanes, and I'm sure NS
19 does compete with CP in some lane or another. But
20 today CP doesn't move any traffic into Boston.

21 BOARD MEMBER FUCHS: Okay. And then
22 switching back to what I think Peter and Tony alluded

1 to in terms of the standard. When Congress added
2 Subsection D, D1 being likely substantially less than
3 the competition, or trade or monopoly, is it fair to
4 say that that language was drawn from Section 7 of
5 the Clayton Act?

6 MR. DENTON: I need to brush up on my
7 legislative there.

8 BOARD MEMBER FUCHS: Well the language
9 pretty much mirrors Section 7 does it not?

10 MR. DENTON: Honestly, I just don't have
11 the Clayton Act in front of me, but.

12 BOARD MEMBER FUCHS: The reason I mention
13 it is because in DOJ's brief they extensively quote
14 the remedies manual of the DOJ.

15 MR. DENTON: Right.

16 BOARD MEMBER FUCHS: Which as I understand
17 it draws you know, is mean to implement Section 7.
18 And the D1 criteria is very similar to the Section 7
19 standard, but what's I think relevant, and kind of
20 circling back to my first question, is the Congress
21 didn't stop at that standard. The Congress added a
22 provision that said that not only is there likely

1 substantially less competition, but those effects
2 have to outweigh the benefits.

3 And I think a review of the record of the
4 time would, is actually on point for what we're
5 discussing right now, which is there was a concern,
6 DOJ -- the Carter administration proposed that we
7 just go under Clayton. Everything goes under Clayton
8 except for coordination, would have a two part
9 standard.

10 And the Congress deliberately decided not
11 to just put it under a Clayton standard, which is
12 what DOJ was referring to in its remedies manual, but
13 to also consider the broader public benefits of the
14 transaction, which is 1F D2, and so not only did it
15 reside with the Board as an expert agency, but the
16 standard was different than what could be brought
17 under an anti-trust case.

18 And I only put that forward to say whether
19 or not if we're only looking at conditions through
20 the prism of a remedies manual, we're ignoring a key
21 criterion that the Congress added deliberately to
22 avoid being treated like we're under Clayton. I

1 think you all will have any commentary on that.

2 MR. DENTON: It's a great point Patrick,
3 and I'm going to get into this in my kind of prepared
4 remarks a little bit later, but what we see as the
5 key here is that under either of the approaches that
6 have kind of been debated amongst Board members it
7 seems like in recent decisions, there's a threshold
8 issue. It's whether or not there are substantial and
9 likely anti-competitive effects that would flow from
10 the transaction.

11 And we believe that we have established
12 here that that is simply not the case. So regardless
13 of whether you need to evaluate public benefits, we
14 don't believe any of the conditions that have been
15 requested even get past that initial D1 standard that
16 you talked about for likely substantiality.

17 BOARD MEMBER FUCHS: And to your point
18 Peter neither party made an attempt to show
19 substantiality. MR. DENTON: That's
20 absolutely correct yes.

21 MR. LAROCCA: Well and we, and Dr. Reishus
22 in fact focused much of his analysis on showing that

1 there is not, that the substantiality factor is not
2 met, or the likelihood factor.

3 BOARD MEMBER FUCHS: And last question for
4 me and Robert, thank you for your indulgence very
5 much. It's also true that the Board denied
6 conditions in BL&E decision four by citing the lack
7 of substantiality, and that the Board denied
8 conditions, actually in this very area, and the CMQ
9 transaction by citing a lack of unsubstantiality, and
10 has done so repeatedly throughout its history.

11 So it's you know would you say that the
12 bulk of precedent is that the Board doesn't give
13 conditions unless substantiality is established, and
14 no party in this case had made an attempt to do so.

15 MR. DENTON: Likelihood and
16 substantiality, and I completely agree.

17 BOARD MEMBER FUCHS: All right thank you.

18 CHAIRMAN OBERMAN: I want to follow-up on
19 that Patrick because you raised as always important
20 points. And by the way Peter I can't answer any of
21 those questions either. No one knows the statutes
22 and the history better than Patrick. Now if he

1 weren't here we'd all be lesser for it.

2 So but it adds to the discussion. I just
3 want to be clear here, you recall the exchange that I
4 just had with Jim and others about keeping these
5 access points open on equalized tariff rates going
6 forward into perpetuity. That is being done by CSX
7 to avoid diminishing competition.

8 So whether we weight it as likely or
9 substantial, if it eliminates a diminution of
10 competition we don't have to get to the likely and
11 substantial part, wouldn't you agree?

12 MR. DENTON: Absolutely.

13 CHAIRMAN OBERMAN: Yes. So it's an
14 important commitment by CSX that it's going to keep
15 those access points open for all these other carriers
16 on equalized tariff rates going forward in
17 perpetuity. You may raise them, but they have to be
18 equal to everybody correct? Is that the commitment?

19 MR. DENTON: Yes that's the open gateway.

20 CHAIRMAN OBERMAN: What?

21 MR. DENTON: That's the gist of the open
22 gateway commitment yes.

1 CHAIRMAN OBERMAN: Yeah, yeah. So I think
2 that's important because if we were to conclude that
3 that avoids -- that's one way of avoiding a
4 diminution in competition, then we don't have to get
5 to this -- weighing part under D1 and D2 correct?

6 MR. DENTON: That's exactly what we
7 offered yes. Mr. Chairman is that essentially if you
8 don't get past D1, you don't have to even consider
9 the weighing of D1 and D2.

10 CHAIRMAN OBERMAN: Right. These facts
11 that we've been going into we were just talking about
12 particularly the gateways, which I find important, is
13 one of the ways that you would argue anyway that we
14 don't get to D1 in the first place.

15 MR. DENTON: Absolutely.

16 BOARD MEMBER FUCHS: That is really the
17 ideal scenario right Marty? That we don't have to
18 get passed either.

19 CHAIRMAN OBERMAN: Yes, well if the goal
20 here is to have as much competition in the railroad
21 world as possible, which as you all know is one of my
22 goals, then I agree Patrick, that is ideal.

1 The only other thing I wanted to explore a
2 little bit on what Patrick asked at the outset here
3 about the motivation for giving the traffic rights to
4 NS. There is something that caught my attention
5 Peter. I don't know if you're the right person, or
6 Tony. As I understand the agreement between NS and
7 PAS when NS bought in its 50 percent ownership
8 interest, whatever it was, 12 years ago.

9 Their agreement provides that if the PAR
10 system is sold as is being proposed here, NS
11 immediately takes control of the management of PAS.
12 So the new owner coming in who succeeds that 50
13 percent ownership, basically has no control over PAS.

14 MR. LAROCCA: Right.

15 CHAIRMAN OBERMAN: Is that right? And --

16 MR. LAROCCA: It's a right that they have.

17 CHAIRMAN OBERMAN: Yeah right.

18 MR. LAROCCA: It's a right that they have,
19 and it's unclear exactly how it would get triggered
20 or implemented, but.

21 CHAIRMAN OBERMAN: Well I thought the sale
22 itself is what triggers the right to take over the

1 management. And I have been assuming, and I'd like
2 you -- so I'm glad Patrick asked the question,
3 because I wanted to get some enlightenment in this,
4 that CSX would be highly motivated if it was going to
5 you know you've all said you didn't want to buy PAS
6 in the first place, but it was the only way that Mr.
7 Mellon would make the deal. That's the way we
8 understand it.

9 At least we understand that's what you've
10 told us. CSX I assume would very much like to not
11 have a situation where it's stuck owning 50 percent
12 of the railroad over which it has no control. So
13 I've been assuming that the motivation to make a deal
14 with NS was for NS to say okay, we will give up our
15 right to take control.

16 What do we get in return? And what they
17 got were the double stack trains on the southern
18 route. Is that a fair understanding?

19 MR. DENTON: There are many levers, I mean
20 Chairman Oberman there is so many different moving
21 pieces with respect to the NS settlement agreement.
22 I don't think you can identify one particular one.

1 CHAIRMAN OBERMAN: Is that part of it at
2 least?

3 MR. DENTON: Yes. I mean we've committed
4 that both parties, CSX and NS, NS has basically said
5 that they're not going to exercise their change of
6 control rights under the project.

7 CHAIRMAN OBERMAN: And they got something.
8 They didn't give that away for nothing fair?

9 MR. DENTON: Sure. Yeah that's the
10 essence of the settlement agreement.

11 CHAIRMAN OBERMAN: I'm not criticizing it,
12 I'm just trying to get it aired out.

13 MR. DENTON: Yeah, yeah, true.

14 CHAIRMAN OBERMAN: It seems like a normal
15 business trade-off you know in this context, so.

16 MR. DENTON: I think each side got things
17 and each side gave things in the settlement agreement
18 honestly, and I think it came out in a you know a
19 good place market commercially.

20 CHAIRMAN OBERMAN: The best of our world.

21 MR. DENTON: Exactly.

22 CHAIRMAN OBERMAN: Okay. I think that --

1 MR. FOOTE: I'm sorry Mr. Chairman one
2 second.

3 CHAIRMAN OBERMAN: Go ahead.

4 MR. FOOTE: I don't want there to be a
5 misunderstanding on this topic.

6 UNIDENTIFIED SPEAKER: And you guys should
7 mute your mics.

8 MR. FOOTE: It's not super secret.

9 MR. DENTON: Yeah just to be clear. As I
10 was saying Chairman Oberman, there was not one
11 particular quid pro quo in that agreement. There is
12 you know each party gave certain things. Each party
13 got certain things. You know NS agreeing to not
14 exercise its change of control rights was not a
15 trigger for you know the trackage rights that we gave
16 NS, or any other part of the settlement agreement so.

17 CHAIRMAN OBERMAN: Not be itself, but it
18 was part of the pro quo. Is that a fair statement?

19 MR. DENTON: Again, we all decided that
20 the terms of the settlement agreement made sense
21 based on all the various pieces yes.

22 CHAIRMAN OBERMAN: All right. I'll end

1 the psychoanalysis. All right. I think Robert you
2 had a question.

3 VICE CHAIRMAN PRIMUS: I appreciate it.
4 And it's always tough following Patrick I'll tell
5 you, whether this or any place else. Yeah, great
6 statement, questions Patrick. Mine will be quick.
7 Will any of PAR traffic move to connect at Rotterdam
8 Junction over PAS following this transaction? Is it
9 the plan of CSX to connect at Rotterdam Junction?

10 MR. FOOTE: Yes.

11 VICE CHAIRMAN PRIMUS: Okay. Can you just
12 elaborate more on you know what you see at that junction,
13 sort of an increase in traffic in that type of
14 traffic. Is that going to be a substantial move?

15 MR. FOOTE: It would stay the same as it
16 is today. It's local traffic originating or
17 terminating on that line, and that's what we said all
18 along. We have a vested interest in making sure we
19 keep that business, and so that business will stay.
20 And along with earlier conversations grow over time.

21 VICE CHAIRMAN PRIMUS: Okay.

22 MR. LAROCCA: Yeah. Rotterdam is the

1 entry today for CSX's traffic onto PAS, and it will
2 remain the same tomorrow. It will go through
3 Rotterdam as it does today.

4 VICE CHAIRMAN PRIMUS: Okay. So the PAR
5 traffic will continue to be connected there?

6 MR. LAROCCA: No, no, no the PAS traffic.
7 The traffic that CSX.

8 VICE CHAIRMAN PRIMUS: That was what my
9 question was, is any PAR traffic going to be
10 connected at Rotterdam?

11 MR. LAROCCA: You mean overhead traffic
12 that goes overhead on PAS to PAR on the eastern end?

13 VICE CHAIRMAN PRIMUS: And some like PAS
14 heads off some CSX traffic right now at Rotterdam,
15 which includes some freight from PAR. And what I'm
16 saying is will PAR -- that PAR traffic, will that
17 continue to be and connected there?

18 MR. LAROCCA: Yes.

19 DR. REISHUS: It is my understanding that
20 much of that traffic would still go over PAS and
21 Rotterdam following the transaction based on existing
22 operational leases is what I understand.

1 MR. DENTON: Yeah, so to get into some
2 detail here, the traffic moves over PAS today from
3 CSX for a reason right? That was kind of one of the
4 principles I laid out earlier. And the traffic that
5 moves out to PAR over the PAS line right now, over
6 the northern corridor, it does so because it's easier
7 for it to come off of PAR at Ayer, and then get
8 routed into certain PAR locations like New Hampshire
9 near the Boston area.

10 Otherwise, if we had taken the southern
11 route, and Jamie can feel free to elaborate on this,
12 we would need to take it past there all the way up to
13 Portland, and then back down to Ayer to get it shut
14 off into various PAR locations. So the same
15 principles that you know there are reasons why
16 traffic moves on PAS today, and those reasons aren't
17 going away as a result.

18 VICE CHAIRMAN PRIMUS: Yeah, and I'm just
19 saying from the PAR side of the world. You're going
20 to increase a lot of that traffic there at Rotterdam,
21 do you see that increasing?

22 MR. DENTON: I think that we've described

1 kind of the traffic growth forecasts, and I think
2 that's you know it's just --

3 VICE CHAIRMAN PRIMUS: And I'm saying is
4 that a yes or no? Do you see it increasing?

5 MR. DENTON: Yes. I mean consistent with
6 our traffic growth forecast, yes.

7 VICE CHAIRMAN PRIMUS: Okay.

8 BOARD MEMBER SCHULTZ: I wanted to circle
9 back to -- Robert, I'm sorry were you finished?

10 VICE CHAIRMAN PRIMUS: Go ahead I'll let
11 you go.

12 BOARD MEMBER SCHULTZ: Are you sure? And
13 back to the issue of divestiture, and propose a
14 possible scenario, and that is if the Board ordered
15 divestiture, and there wasn't a buyer that could run
16 PAS successfully, what would be the impact to
17 network, and the customers?

18 MR. DENTON: Well I think one of the
19 issues with divestiture, one of the big issues is
20 that there are a lot of unknowns. And a large amount
21 of risks that come up if the Board were to take that
22 extreme step to order divestiture. So we would have

1 to if the Board made such an order, we would have to
2 re-evaluate our agreement with Norfolk Southern. We
3 would have to essentially consider a restructuring of
4 the entire deal.

5 And I think we've described in the record
6 how we have serious concerns that this transaction
7 could unravel to the extent that such an extreme
8 measure were.

9 MR. FOOTE: Well I think to make sure I
10 understand your question is B&E can't do the
11 operator, go find somebody else to operate. We can't
12 find anybody to operate? I guess we shut the
13 railroad down. Man, I guess the railroad stops
14 running, there's nobody to move freight from -- it's
15 done, the railroad is done. We shut it off, turn off
16 the lights, there's no operator.

17 MR. LARocca: Well and I also I would add
18 as well the uncertainty that would prevail while all
19 of this is playing out in the market. I mean these
20 things take a long time as we have seen here in this
21 transaction itself. A forced divestiture, or
22 something radical like that could take years to play

1 out. And so think if you're a shipper, and you rely
2 on service from the railroad, or you're a connecting
3 carrier, or you're Vermont, and you rely on VRS
4 shipments of propane that come over PAS. You're
5 going to be living with some extreme uncertainty for
6 a long time, while this plays out.

7 And I think that really is why it's a much
8 better approach to allow the market to let these
9 things work the way the market is calling for them,
10 rather than try to inject tremendous uncertainty that
11 would ultimately harm shippers.

12 MR. PELKEY: Yeah Tony, let me just add
13 one point here. One is you know in a forced
14 divestiture there's going to be a buyer right? It's
15 a matter at what price, and you know they're going to
16 know there's a fire sale going on. You may end up
17 with a financial party that steps in that doesn't
18 have the same interests that we do, and preserving
19 the viability of that line long-term, you know it can
20 be a very challenging scenario that would not
21 necessarily result in that line getting the attention
22 that it's going to get under this structure.

1 The other thing I'd add is you know think
2 about the employees of Springfield terminal today who
3 are operating every day that line across Pan Am
4 Southern that know today each and every one of them.
5 If they were listening today they heard they will
6 have a job when this transaction closes.

7 If you've got a financial buyer coming in,
8 it's going to be a rock bottom fire sale, who knows
9 what happens. That puts those employees who've
10 already been waiting a very long time to see this
11 transaction close, in an even more precarious
12 situation.

13 BOARD MEMBER FUCHS: Are you all aware of
14 any scenario in a Subsection D transaction where the
15 Board has issued a divestiture without even knowing
16 who the operator was, would be?

17 MR. LARocca: No. Absolutely not.

18 And to be clear this
19 is a significant transaction, not a major
20 transaction, and Patrick I think you're referring to
21 that with respect to Subsection D. This is a
22 different legal standard that the Board would

1 consider in a for example, a Class 1 versus Class 1
2 merger.

3 BOARD MEMBER FUCHS: And typically even
4 when we would order trackage rights, or something of
5 the sort, you would expect to see an application
6 where the Board could evaluate the relative merits,
7 and we have nothing here right?

8 MR. DENTON: Correct. There would be a
9 responsive application where someone would bring the
10 transaction before the Board and say we prefer this
11 solution. To be clear, even in a you know major
12 merger scenario, a divestiture, the Board has very
13 explicitly declined to impose divestiture remedies.

14 VICE CHAIRMAN PRIMUS: I have a follow-up
15 to my question earlier. So you know would it be fair
16 to say that CSXT's interest in PAS is primarily
17 north/south traffic, and not east/west traffic?

18 MR. DENTON: I don't think that's
19 necessarily fair. I think CSX like we've discussed
20 is a major user of the PAS Patriot corridor, the
21 east/west. Along with Norfolk Southern I think we're
22 the second largest user and when Dr. Reishus makes

1 his presentation we'll going into kind of the more
2 details about the incentives of CSX to move that
3 east/west traffic.

4 VICE CHAIRMAN PRIMUS: I mean you look at
5 that east/west that she said, it's a quarter of the
6 traffic, and that traffic is not as big if you
7 measure it compared to the southern route. I mean it
8 may be equal up to maybe 20 or 30 percent of CSX's
9 traffic, so you're taking a quarter of that.

10 So you know it stands to reason that I
11 mean in terms of what you're looking for in growth,
12 and looking at that line, and that's one of the
13 reasons why I was asking that other question about
14 the junction. It seems that it appears to be that
15 it's going to be a north/south.

16 MR. DENTON: I can see why that wouldn't
17 make sense in the abstract, but once you really dig
18 into the details and the traffic flows, and again
19 Dr. Reishus can speak to this, but there are reasons
20 why CSX moves traffic east/west on PAS. I mean today
21 if it made sense we wouldn't be moving that on the
22 southern corridor on our route.

1 VICE CHAIRMAN PRIMUS: You're about to own
2 it, so I mean I understand today, but if it goes
3 through and you get the southern route, you know then
4 it makes perfect sense.

5 MR. DENTON: No, wait, wait, to be clear
6 we own the southern route now. I mean, but you know
7 all the more reason after the transaction why we will
8 be even more incentivized to keep the northern route
9 viable, as a 50 percent owner. That kind of gets
10 into the argument that Marty made before, but you
11 know I'll wait for David to go into that further.

12 DR. REISHUS: Let me say nearly all the
13 traffic on PAS runs on the Patriot corridor. Not all
14 of it runs the full length of the Patriot corridor,
15 but virtually all of it uses the corridor to one
16 extent or the other.

17 VICE CHAIRMAN PRIMUS: I guess my question
18 is do you still see that existing after this deal
19 goes through?

20 DR. REISHUS: Yes because --

21 VICE CHAIRMAN PRIIMUS: And to the same
22 level?

1 DR. REISHUS: Most of it yes. Most of the
2 revenue and you know most of the revenue of PAS will
3 remain, and most of CSX's traffic that uses the
4 corridor uses it now because the southern corridor is
5 not a competitive option. If they're already a
6 competitive option for that traffic, it would be
7 doing it today.

8 The traffic that CSX is running over PAS
9 is for the most part incremental traffic that they
10 wouldn't otherwise have.

11 VICE CHAIRMAN PRIMUS: Okay.

12 MR. BOYCHUK: One thing I think is
13 important to mention that we haven't at this point is
14 the PAS line has got better grade, and less mileage,
15 so a PAS line if we route any type of traffic like a
16 grain train as an example, onto the CSX line, it
17 takes extra locomotives and another crew.

18 So it is more cost-effective to continue
19 to utilize the PAS line compared to our current CSX
20 route that goes by Worcester. And I apologize we
21 haven't brought that up yet, but that's a real
22 important point as to why that line is so viable.

1 It's cheaper to use, and it's just it's just makes
2 more sense. Less assets to get across.

3 MR. FOOTE: Okay. Can we move to our next
4 presenter then?

5 MR. DENTON: Yeah. Dr. Reishus I think
6 is up next David, okay.

7 DR. REISHUS: Thank you. I'm my own IT
8 guy here, so give me a second. Thank you. I
9 originally said good morning, but I'll say good
10 afternoon, and thank you for the opportunity to speak
11 with you today about the competitive effects of this
12 transaction.

13 My name is David Reishus. I'm an
14 economist at Compass Lexicon, an economic consulting
15 company. I have conducted a thorough analysis of the
16 competitive impacts of the proposed transaction,
17 including the associated commitments and settlements
18 that have been entered into by and among CSX, NS, GW,
19 and the other interested parties.

20 I should point out that much of the
21 analysis uses confidential data regarding existing
22 New England rail traffic, and confidential

1 information on the structure of the transaction and
2 its associated agreements. So I provide in this
3 hearing a high level public overview of the findings,
4 but I encourage the members and staff, to refer to
5 the reports that have been filed under seal, or more
6 specific and detailed results.

7 I have three main findings to share with
8 you today. First, the transaction is overwhelming
9 pro-competitive. It will enhance competition and
10 rationalize and improve New England Rail Network.

11 The transaction extends the benefit of
12 single line service by a Class 1 railroad to portions
13 of New England that lack such service. You've heard
14 CSX witnesses describe the anticipated
15 pro-competitive investments and operating
16 improvements, and the benefits of integrated single
17 line service to PAR shippers that will result from
18 the transaction.

19 The transaction introduces for the first
20 time, competing double stack intermodal service into
21 the heart of New England. The transaction achieves
22 this now, and does not depend on uncertain market

1 portions to otherwise induce the required investments
2 in the future.

3 The various agreements from PAS's yard in
4 Ayer, Massachusetts will enhance competition by
5 making PAS more efficient. Similarly, the
6 transaction and associated agreements preserve
7 existing competition, and introduce new competitive
8 alternatives.

9 Second, as structured, the acquisition by
10 CSX of PAR and a 50 percent interest in PAS, poses no
11 risk of significant competitive harm. Any risk has
12 been eliminated by the various commitments and
13 agreements. The transaction imposes no competitive
14 harm on shippers.

15 A handful of jointly served shippers
16 between CSX and PAR, as well as between PAS and the
17 GW owned railroad, have been provided conditions that
18 preserve the benefit of existing competition. I was
19 unable to identify any other reasonable risk that
20 would pose competitive harm to shippers.

21 I am also unaware of any shipper that
22 opposes the transaction. The non-shipper parties

1 have raised two competitive issues. One involving
2 the GW owned railroad operating PAS over the
3 Connecticut River north line, and the second
4 involving CSX's 50 percent ownership interest in
5 PAS's Patriot corridor.

6 I know that these parties will not
7 continue to raise these issues in recent briefs, or
8 in this hearing. In either case, even if there was a
9 valid basis for a theoretical competitive concern,
10 there is virtually no traffic that could have been
11 harmed by the proposed transaction.

12 I've traded a couple of figures to try to
13 illustrate this point. The figures summarize the
14 proportion of traffic on each of these corridors that
15 was exposed to a risk of reduction in competitive
16 options from the transaction. The potentially
17 competitive traffic that could be affected by the
18 transaction is identified by the blue sliver at the
19 bottom of the bars, and I should point out that since
20 again this is derived from highly confidential data,
21 I've only identified a relative proportions without
22 including any units on the figures.

1 In the case of the Connecticut River north
2 line, this competitive traffic represents a small
3 volume, and a small share of the total traffic on the
4 line. Since the time I originally performed the
5 analysis for the Conn River north line reflected in
6 this figure, the parties have reached agreements to
7 eliminate any risk of competitive harm, for even the
8 small portion of interline traffic, and instead
9 enhances competitive options that did not exist
10 before this transaction.

11 And if we turn to the Patriot corridor, an
12 analysis of the east/west Patriot corridor shows
13 similar results. The figure indicates that little of
14 the traffic could be subject to potential diversion
15 or competitive harm by CSX. The transaction is
16 structure however, eliminates CSX's ability to affect
17 pricing on the Patriot corridor.

18 Instead, the pricing for traffic on the
19 corridor is determined by existing haulage
20 arrangements with NS, or by the new operator who has
21 incentives to retain and attract traffic over the
22 Patriot corridor. Moreover, the transaction provides

1 open gateway and pricing benefits to preserve the
2 existing benefits of competition, and the ability of
3 PAS to compete for traffic from CSX owned PAR lines.

4 Third, I addressed the concerns that have
5 been raised by Canadian Pacific regarding the
6 potential ongoing viability of the Patriot corridor.
7 We use it as a competitive option available for
8 interchanging traffic with CP. These concerns are
9 misplaced.

10 As I've just showed most of the cargo
11 traffic on the Patriot corridor is not currently
12 competitive with the CSX main line. NS and CSX each
13 have the incentive for the Patriot corridor to remain
14 a viable and effective rail option.

15 This figure shows the proportion of
16 traffic on the Patriot corridor that NS and CSX will
17 participate in. This figure accounts for the end
18 level trackage rights the transaction will provide to
19 NS, so therefore assumes no NS intermodal traffic
20 over PAS. Collectively, CSX and NS account for most
21 of the traffic on the Patriot corridor, both before
22 and after the transaction.

1 VICE CHAIRMAN PRIMUS: Doctor, can you
2 break that down between NS and CSX into how much,
3 what percentage either one has of that traffic?

4 DR. REISHUS: Yeah NS is number one, CSX
5 number two. I think of that.

6 MR. LAROCCA: I wouldn't go too far into
7 detail on that in public. These are confidential
8 waybill data, not STB waybill data.

9 VICE CHAIRMAN PRIMUS: It's not STB
10 waybill but.

11 MR. LAROCCA: Data from PAS waybill.

12 DR. REISHUS: If you look I guess at page
13 numbers at the bottom of the source in the highlight
14 confidential version identifies the traffic numbers,
15 it lists the NS and CSX key shares, NS is really
16 bigger than CSX, but CSX is not a small percentage of
17 that. It's not below that bar.

18 VICE CHAIRMAN PRIMUSE: So staying on my
19 line of questioning before. You know can CSX exist
20 in the northern route without going the entire route?
21 For example, maybe you know transferring to
22 Springfield instead of Deerfield? I mean would that

1 be something that's more you know competitive, or I
2 should say just more to their advantage doing
3 something like that.

4 DR. REISHUS: Well right now they
5 interchange virtually no traffic on Springfield for
6 reasons that CSX might have to go into more detail,
7 but I believe.

8 VICE CHAIRMAN PRIMUS: Yeah I'm just
9 saying would it make more sense if this goes through
10 you know that they could do it much more efficiently
11 going and doing that at Springfield rather than
12 Deerfield?

13 DR. REISHUS: For purchases of keeping
14 traffic over the Patriot border, my understanding
15 would be no, but.

16 VICE CHAIRMAN PRIMUS: Anybody else?

17 MR. LARocca: Can you repeat your
18 question?

19 VICE CHAIRMAN PRIMUS: No I just said that
20 you know does CSX have to use the entire northern
21 route? I mean can't they if this merger goes
22 through, you know, you can actually be more

1 efficient if you're transferring at Springfield and
2 Deerfield, go ahead.

3 MR. BOYCHUK: I'm sorry sir. I wouldn't
4 say it would be any more efficient at all, more
5 efficient at all. Of that knowledge corridor you are
6 dealing with a whole lot of different type of traffic
7 as you're trying to get a window to go to up that
8 way. For us it would make more sense to continue to
9 go around the other way, as well as the grades
10 issues.

11 VICE CHAIRMAN PRIMUS: When you say
12 different types of traffic.

13 MR. BOYCHUK: With passenger operations,
14 and things like that that run up and down the
15 knowledge corridor, you get in the way of each other.
16 For us you know we'd have to tiptoe our way around
17 that. We could do it if we needed to at some point
18 in time because of an outage, which we have in the
19 past.

20 But it makes more sense for us to continue
21 to go around through Rotterdam, again the grade is
22 better, we can move more traffic with less

1 locomotives. The cost is less, and it just makes
2 more sense.

3 VICE CHAIRMAN PRIMUS: All right thank
4 you.

5 DR. REISHUS: All right so, NS as the 50
6 percent owner, and the largest ongoing interline
7 partner on PAS per carload traffic, retain
8 substantial economic interest in the ongoing
9 viability of PAS, even though the shift to more
10 efficient double stack intermodal service on the CSX
11 main line.

12 The Patriot corridor remains NS's
13 independent routing for carload traffic to and from
14 New England. With a large portion of NS carload
15 traffic moving under haulage with terms struck under
16 its initial investments into PAS. NS retains a
17 significant economic interest in the continuing
18 viability of PAS in the Patriot corridor.

19 NS, as CSX's primary competitor across the
20 eastern U.S. has no interest in allowing service on
21 the Patriot corridor to degrade. B&E, as the
22 operator of PAS, will have the incentive and

1 opportunity to provide pricing and service that can
2 attract additional traffic to PAS independent of
3 CSX's other interests.

4 CSX also has the incentive to keep the
5 Patriot corridor viable. A large portion of CSX's
6 traffic using the corridor, goes to locales
7 effectively served only by PAS. CSX has also
8 proposed a mechanism by which potential disputes
9 between NS and CSX about future capital investments
10 could be resolved by an accelerate arbitration
11 process.

12 CSX lacks both the incentive and the
13 ability to block economically efficient future
14 investments in PAS. It's unreasonable to conclude
15 that the Patriot corridor would not continue to be a
16 viable, economically efficient option for traffic to
17 and from New England as a result of this transaction.

18 Thank you. I think Peter has some concluding
19 remarks, but I'll take questions.

20 MR. DENTON: Thank you David. So we have
21 talked a bit about the legal standards here in the
22 last round of Q and A's, but I wanted to cover a few

1 different things here, and then Tony is going to talk
2 about some of the transportation policy options.

3 CHAIRMAN OBERMAN: Peter, I thought you
4 were going to elaborate a little bit more on Dr.
5 Reishus. I just had a couple of questions for him.

6 MR. DENTON: Sure.

7 CHAIRMAN OBERMAN: I didn't want to
8 interrupt the train of thought here. You know I just
9 want to be clear on something. You've talked about
10 the incentives that CSX will have to you know to keep
11 PAS viable. But wouldn't it be accurate to
12 understand what happened here this way.

13 CSX has told us in their briefs -- I'm
14 just looking at the reply, PAS is a low-density line
15 with marginal financial performance, and CSX sought
16 to exclude PAS from the purchase. Didn't want it at
17 all. So would it be just for our understanding,
18 you're not trying to suggest that CSX saw PAS as a
19 good business investment, they didn't have any choice
20 but to buy it.

21 Now that they own it maybe they have an
22 incentive to keep it up. But they didn't go into

1 this with the idea that PAS was a desirable line to
2 buy 50 percent of. Wouldn't that be an accurate way
3 to understand it?

4 DR. REISHUS: I'd leave it to CSX to tell
5 us what they were thinking, but yes my understanding
6 is that you know they wanted Pan Am systems, and they
7 wanted PAR, and you know the 50 percent interest in
8 PAS is part of that deal.

9 CHAIRMAN OBERMAN: Yeah, but their desire
10 if they have one, which you said they do to maintain
11 it, it's because they were backed into owning it, not
12 because they saw it as a good business opportunity
13 upfront. That's all I'm trying to get at. But
14 basically.

15 DR. REISHUS: I would say if I understand
16 the incentive, they have the incentive for PAS to
17 remain viable, whether they have the incentive to
18 want to own it or not, I'm you know it's part of the
19 deal.

20 CHAIRMAN OBERMAN: Well they told us they
21 didn't want to own it, but I'm just going by what CSX
22 has told us, so I assume they didn't want if they

1 thought it was a good business opportunity they would
2 have wanted to own it. I mean. Am I missing
3 something here?

4 DR. REISHUS: A different question about
5 whether you'd want to own it, and when you'd want it
6 to remain a viable line.

7 MR. DENTON: Exactly. Exactly. Mr.
8 Chairman I think you're conflating our desire to keep
9 this as a viable line, which would be the case
10 regardless of ownership, given the traffic profile
11 that we have over the line versus our desire to own
12 PAS.

13 Once we become the 50 percent owner
14 though, the viability you know reasons why we have to
15 keep PAS viable will certainly remain the case, and
16 even become more so, given our 50 percent ownership.

17 CHAIRMAN OBERMAN: I guess I would ask
18 this Peter. If it was important for CSX to keep it
19 viable, the best way for CSX to protect themselves
20 would be to own half of it, which was being offered
21 for sale. So because if CSX succeeded in convincing
22 Mr. Mellon to sell it to a hedge fund or somebody

1 else, then CSX is not in much of a position to keep
2 it as viable as it would be if CSX owned half of it.

3 Just stands to reason that the importance
4 of the 50 percent -- I guess what I'm trying to
5 measure is the importance of the 50 percent ownership
6 that CSX is now going to have if this deal goes
7 through can be measured in connection with CSX's
8 desire or lack thereof to buy it in the first place.

9 MR. DENTON: Mr. Chairman the history is
10 history. I mean we have a transaction before you
11 where we are seeking to own 50 percent, and we've
12 described to you why we want to keep the line
13 viable, and why that 50 percent ownership will only
14 help in wanting to keep that line viable.

15 CHAIRMAN OBERMAN: I understand, but one
16 of the things that is being argued by CP at least, is
17 a lack of desire to keep it viable, and I'm just
18 trying to measure what we're hearing, but there is a
19 desire, and I'm trying to measure it against a lack
20 of desire to buy it in the first place. I mean it is
21 a factor just in terms of human behavior in my mind,
22 so unless I'm missing something here.

1 MR. DENTON: Yeah I think those are just
2 two different issues that are being kind of put into
3 one, and unnecessarily so. I think we will have an
4 independent incentive to want to keep this line
5 viable, whether or not the transaction ever you know
6 was even contemplated, given our traffic profile
7 there, and given our 50 percent stake that we're
8 going to have now, we'll have all the more incentive
9 to do so.

10 CHAIRMAN OBERMAN: Well that may be yes,
11 but I think we've covered it so go ahead. Thank you.

12 MR. DENTON: Okay. Okay. Unless there
13 are any other questions for Dr. Reishus I'll make a
14 few remarks on the legal standards here. Okay,. So
15 we got into this a little bit in my back and forth
16 with Commissioner Fuchs earlier.

17 But I'd like us for a few minutes here
18 just to focus on the relevant legal standards at
19 issue here. And the first is approval or
20 disapproval. Under the statute that applies to
21 non-major mergers like this one, Section 11 324 D,
22 the Board must approve a transaction unless there

1 would be adverse competitive impacts that are both
2 likely or substantial -- and substantial.

3 Even if the Board were to find that there
4 would be likely and substantial anti-competitive
5 impacts, the board may not disapprove the transaction
6 unless the anti-competitive impacts outweigh the
7 benefits and cannot be mitigated through conditions.
8 As we have described throughout this hearing and in
9 the record, we have worked diligently since
10 announcing our proposed acquisition to Pan Am to
11 satisfy the reasonable concerns of all stakeholders.

12 This hard work has resulted in a number of
13 settlement agreements and conditions that applicants
14 have requested the Board impose on its approval of
15 the transactions. In short we've clearly
16 established in our submissions that with those
17 requested conditions it's unlikely there would be any
18 adverse competitive impacts arising from the
19 transactions, let alone substantial ones.

20 Under the Board's legal framework for
21 approval or disapproval, the analysis can stop there.
22 The Board should approve the transaction. However,

1 we've gone further to show that the merger will
2 result in overwhelming public benefits to New England
3 rail customers and stakeholders. So even if the
4 Board does find that some anti-competitive effects
5 may occur, the public benefits would clearly outweigh
6 those concerns.

7 Second, the imposition of additional
8 conditions. As we talked about a bit earlier with
9 Commissioner Fuchs, there has been some debate
10 clearly amongst Board members in recent non-major
11 merger proceedings, about whether the Board's
12 authority to impose conditions in non-major mergers
13 is constrained by each of the two approval criteria
14 in Section 11 324 D.

15 In one view for competition related
16 conditions the Board must only find that the first
17 criteria is met, that the issue to be addressed would
18 likely cause the anti-competitive effects. In the
19 other view the Board must also find that those
20 anti-competitive effects would outweigh the public
21 benefits of the transaction, this would clearly
22 impose a higher hurdle to the imposition of

1 conditions in non-major mergers.

2 As I discussed earlier we respectfully
3 offer that under either analysis no additional
4 conditions are necessary or warranted. Under each
5 approach in order to impose requested competition
6 related condition, the threshold requirement is that
7 the transaction is likely to result in substantial
8 anti-competitive effects. And that simply will not
9 be the case here.

10 Additionally, the Board has been clear
11 that there must be some sufficient nexus between a
12 requested condition, and the transaction before the
13 agency. In our filings we have established that
14 certain conditions requested by parties simply do not
15 meet this threshold. I'd now like to turn it over to
16 Tony to talk about some rail transportation policy
17 issues.

18 CHAIRMAN OBERMAN: Peter I just have one
19 question for you.

20 MR. DENTON: Sure.

21 CHAIRMAN OBERMAN: And Patrick has one
22 too, but when we look at this transaction CSX has

1 described many facets of what it is going to agree to
2 in its papers, and over the last few days, including
3 as late as last night, agreements it has reached with
4 various parties.

5 And it has answered a number of questions
6 today very concretely I hope, I think. I think it's
7 been a good exchange. Would you not agree that as
8 the Board evaluates the transaction and applies D1
9 and 2, that the only sensible way for us to evaluate
10 whether the standards have been met is to look at the
11 transaction that's in front of us?

12 In other words, CSX has said we agree to
13 condition A or B or C, that becomes part of the
14 transaction that we're evaluating. So I would find
15 it intellectually almost impossible to say well if I
16 didn't have this condition, then maybe the
17 anti-competitive effects outweigh the benefits. To
18 me our job once CSX has made it clear what the
19 transaction is, and what you're willing to agree to
20 as part of the transaction holistically, everything
21 we've talked about.

22 MR. DENTON: Yes, right.

1 CHAIRMAN OBERMAN: That is what we should
2 weigh under D1 and D2.

3 MR. DENTON: I agree with that. We are
4 presenting a package Mr. Chairman, and we spent a lot
5 of time preparing that package. This could have gone
6 many different ways, and you know when we announced
7 acquisition of Pan Am's systems, we didn't have all
8 this together yet. We spent the time, we spent
9 months putting this together, and bringing something
10 before you that addresses each of the concerns.

11 CHAIRMAN OBERMAN: And the package is a
12 dynamic, at least up until this moment, you know it's
13 changed as of last night with the Amtrak agreement,
14 and with some of the specificity of the answers to
15 questions today, all of which is good. I'm not
16 criticizing, and I think it's been constructive. But
17 it's the package when the record closes that we're
18 going to look at. Is that a fair way to look at it?

19 MR. DENTON: Absolutely. Absolutely.

20 CHAIRMAN OBERMAN: Yeah okay. I just
21 wanted to be clear because you could argue that some
22 of the things you agreed to you didn't have to agree

1 to. But rather than our picking our brains whether
2 you would have had to agree to it or not, if you've
3 agreed to it fair enough?

4 MR. DENTON: I think that's a fair way to
5 think about it yes. I mean we have made that you
6 know consideration for each of these conditions that
7 we've asked you impose, and we think the package as a
8 whole presents a great transaction that has zero
9 anti-competitive effects.

10 CHAIRMAN OBERMAN: By the way since
11 there's an opportunity to keep the record open here
12 for a few days, if you make any other deals between
13 now and then. I don't want to discourage you if you
14 think they're constructive.

15 MR. DENTON: You're the first who will
16 know Mr. Chairman.

17 CHAIRMAN OBERMAN: I'm guessing that's
18 true. Thank you Peter. Patrick?

19 BOARD MEMBER FUCHS: Marty I think you
20 made the point perfectly. And also I say to myself
21 with your remarks that I think we couldn't do our
22 jobs if we couldn't have people adhere themselves to

1 their representations, and obviously we also want to
2 encourage people coming to voluntary settlement, and
3 your view of looking at voluntary settlements and
4 adherences as part of the overall transaction I think
5 is one that I share.

6 CHAIRMAN OBERMAN: We've been working
7 together for too long. All right Peter, I'm sorry to
8 have interrupted, go ahead.

9 MR. DENTON: No problem. I was going to
10 throw it over to Tony next for a few brief remarks,
11 and I think that will conclude our prepared remarks.

12 CHAIRMAN OBERMAN: By the way let me
13 interject here, I'm sorry. I was aiming for a break
14 right about now, but if Tony's remarks aren't long,
15 maybe we should let him finish, and then that would
16 be a more convenient time to break. But I don't want
17 to cut him off.

18 MR. DENTON: I think that's appropriate.
19 Tony.

20 MR. LAROCCA: Do you think people can old
21 off for my very brief remarks that I will try to
22 present even more rapidly than I otherwise would have

1 presented them.

2 CHAIRMAN OBERMAN: Well I don't want to
3 truncate your moment in the sun, so.

4 MR. LAROCCA: No sunshine I'm not sure.
5 But I will say that Congress has tasked the board
6 with making sure that market forces work properly in
7 rail transactions. And the way markets work is
8 through negotiations and bargaining, and that's what
9 you have here.

10 This transaction, the related
11 transactions, and all of the various settlement
12 agreements that you referred to Mr. Chairman, that
13 we're presented to you are the product of lengthy,
14 careful, detailed, negotiations with numerous rail
15 stakeholders in New England. We've spent months and
16 months negotiating with many different parties,
17 working out the terms of a restructured rail network
18 that will serve the interests of New England's rail
19 stakeholders.

20 The economy of this important region needs
21 a modernized rail network, and this transaction will
22 bring it to New England. It's strongly in the public

1 interest, and the interest of New England's economic
2 development that you allow these market produced
3 transactions to go forward. And we thank you very
4 much for your time today.

5 CHAIRMAN OBERMAN: That was concise Peter.
6 Let's take a recess for 10 minutes, and during the
7 recess, so that will bring us back here at 3:26, we
8 will endeavor to figure out the remaining, you know,
9 how many more panels we can get here, and what an
10 ending time might be today, at least we'll make a
11 stab at it.

12 All right. Thank you all. I will see you in ten
13 minutes.

14 (Break.)

15 CHAIRMAN OBERMAN: All right are we back?
16 Can everybody hear me? Okay. Thank you all. So I
17 want to just talk a little bit about scheduling, and
18 this is perhaps somewhat ambitious, but what would be
19 good, what I'd like to aim for is that we finish the
20 first panel, which includes the folks from B&E and
21 Norfolk Southern, and that we also then because the
22 request of time are very small, try to finish panels

1 2, 3, and 4. It all depends on the questioning.

2 And wrap up tonight by 6:30 Eastern, so
3 that we have an excellent chance of finishing
4 tomorrow at a reasonable hour. So let's make that
5 our goal, but I do not want to sacrifice anybody's
6 need to talk to us, or for us to ask questions just
7 to reach the goal, but I think that is reasonable
8 based on the progress we've made today.

9 So if that makes sense let's continue on.
10 I think we're at the point of bringing on the folks
11 from B&E are we not?

12 MR. DENTON: We have concluded our remarks
13 Mr. Chairman.

14 CHAIRMAN OBERMAN: Okay. All right thank
15 you Peter. So that is Mr. Miller, Mr. Walsh, Wagner,
16 and Hocky. And I believe Eric Hocky is going to kick
17 us off. Is that right Eric? Are you?

18 MR. HOCKY: Yes. I'm going to start.
19 Thank you to the Board for this opportunity to speak
20 with you this afternoon now regarding the petition of
21 Berkshire and Eastern Railroad for an exemption to
22 enter into the contracts required to enable B&E to

1 become the contract operator of the lines of Pan Am
2 Southern.

3 My name is Eric Hocky. I'm a member of
4 Clark Hill. I'm outside counsel for B&E. Appearing
5 with me this afternoon to speak on behalf of B&E and
6 to respond to your questions are Michael Miller,
7 President of North American operations for Genesee
8 Wyoming; Matthew Walsh, G&W's Executive Vice
9 President for Global Corporate Development; and
10 Leonard Wagner, Regional Senior Vice President of
11 G&W's Northern Region, and President of B&E.

12 In its amended petition as supplemented,
13 B&E is seeking an exemption, under 49 USC Section
14 10.5.02 to allow B&E to enter into contracts for the
15 operation of the PAS lines. In Decision number four,
16 the Board ruled that B&E's use of an exemption was
17 permitted, as was its filing in a separate subtitle.

18 Under the statute the Board is directed to
19 grant an exemption from regulation, if regulation is
20 not necessary to carry out the rail transportation
21 policy of Title 49, and regulation is not needed to
22 protect shippers from abuse of market power. In

1 analyzing whether regulation is necessary to carry
2 out the RTP, the focus in this proceeding for an
3 exemption for a rail carrier to enter into a contract
4 to operate the property of another carrier, is
5 whether the transaction would have a substantial
6 adverse impact on competition.

7 As the transaction is structured, there
8 will be no anti-competitive effects. PAS will remain
9 an independent railroad, controlled by CSXT and
10 Norfolk Southern. B&E will be the contract operator
11 of the PAS lines who will operate for and on behalf
12 of PAS. No shippers or connecting railroads will see
13 any reduction in the number of serving railroads.

14 Whether the transaction as initialing
15 proposed would have had any impact on competitive
16 effects, it's clear now that with the voluntary
17 conditions proposed by the owners of PAS, and G&W and
18 B&E, including in the settlement with VRS, and
19 Vermont Agency of Transportation, anti-competitive
20 effects would be neither likely, nor substantial.

21 Significantly at this time, no connecting
22 railroads or shippers are objecting to B&E becoming a

1 contract operator of the PAS lines. In a prior
2 proceeding the Board noted that a lack of shipper
3 opposition suggests that the transaction will not
4 cause substantial competitive harm. The only
5 remaining party that has raised objections to the B&E
6 exemption is the Department of Justice.

7 B&E's responses to the Department's
8 concerns are set forth at length in our response to
9 comments filed in October, and in our final brief we
10 filed on January 3. Additionally, we note that the
11 Department's objections were raised prior to the
12 Vermont settlement, which addresses issues of concern
13 to the Department, including the independence of B&E
14 and the protection of confidential information.

15 Since the Department has elected not to
16 file a final brief, or to appear at this hearing, we
17 do not know the Department's current position, but we
18 do believe that its concerns have been fully
19 addressed.

20 Finally, and significant to note that
21 based on B&E's agreement to the imposition of New
22 York DOT effective conditions, including the

1 obligation to negotiate implementing agreements, none
2 of the commenting labor unions oppose B&E becoming
3 the contract operator of the PAS lines. I would now
4 like to turn the panel over to Matt Walsh to continue
5 our presentation of how and why B&E is the best
6 independent operator for the PAS lines.

7 MR. WALSH: Great. Thanks very much Eric,
8 and good afternoon Board members, Chairman Oberman,
9 and Vice Chairman Primus. My name is Matt Walsh.
10 I'm the Executive Vice President for corporate
11 development here in Genesee Wyoming, a company I
12 joined 21 years ago, and I'm based out of our
13 Connecticut office.

14 While Eric, our legal counsel, has just
15 introduced our goals here today with a focus on the
16 procedural and regulatory position of our
17 application, I, and some of my other colleagues, are
18 focused on highlighting the significant benefits we
19 are confident we bring to the proposed transaction,
20 and to answer any questions that you have clearly,
21 and in as straightforward manner as we can.

22 First, as Eric laid out, the role of

1 Berkshire and Eastern is to be the contract operator,
2 which I know is well spelled out in our filings and
3 briefs to the Board. This is a role at G&W that
4 we're used to performing throughout the United
5 States, however in this specific case we clearly
6 believe we are uniquely qualified to be the operator
7 of the Pan Am Southern.

8 Second, Pan Am Southern, as operated by
9 B&E, will continue to be independent and serve
10 customers, just as it does today, as well as all
11 connecting carriers. But through the proposed
12 operating agreement, and the facts and circumstances
13 of the proposed transaction as operated by B&E, PAS
14 will be even more independently operated than it is
15 currently.

16 This increased independence under the B&E
17 operation, we feel is a very important distinction,
18 and one we'll talk a little bit about more on the
19 forthcoming slides. Finally, we want to make sure
20 it's clear that not only is the B&E contractually
21 obligated to operate PAS for the sole benefit of its
22 owners, but that as we will discuss today, we'll have

1 full alignment with the PAS owners, and the
2 stakeholders, to maximize the full potential of the
3 railroad.

4 This alignment includes operational
5 alignment, as PAS is a key competitive corridor for
6 New England, but also for G&W's other railroads,
7 particular our Province and Worcester railroad,
8 which PAS provides a very important competitive link,
9 and my colleague Michael Miller will speak to in just
10 a bit.

11 Economic alignment, and I know CSX spent a
12 lot of time on this, but as the operator of PAS, we
13 are eligible to earn an operating management bonus,
14 which is effectively works as a profit share. Some
15 very simplistic terms, obviously the better PAS does,
16 the better we will do as operator. This is very
17 material to us, and one of the big reasons for us
18 wanting to be the operator of PAS.

19 And finally, reputational alignment, both
20 with the PAS owners, and with all of the New England
21 stakeholders. So this includes all of the local
22 communities, the passenger operators, including

1 Amtrak whose Vermont's service traverses both PAS, as
2 well as our New England Central in a very coordinated
3 fashion.

4 A large number of the same customers, and
5 then the union's employees that they represent. So
6 we're all very familiar with this territory, and
7 reputationally it's very important to us that we do
8 as good a job here as we can do. I think for all of
9 these reasons we have very, very broad support.

10 I think as you've heard nearly 100
11 customers are proactively supporting the overall
12 transaction. This includes Cushman Lumber, who
13 you'll hear from hopefully later today or tomorrow,
14 which is one of the customers, one of the two
15 customers that is served both by PAS, and by G&W's
16 New England Central, and they're proactively speaking
17 today in support of the transaction, and as our role
18 as operator.

19 Not one customer has raised a concern with
20 the proposal for B&E to operate PAS, and finally, no
21 connecting railroad or state, opposes B&E's operation
22 of PAS, and some are here today to support the

1 transaction and we thank once again them for their
2 time.

3 For those Vermont parties that raised
4 initial concerns, although we believe without merit,
5 we have worked cooperatively with them on an
6 agreement to address these concerns, and we ask the
7 Board to impose them as a condition. As it is
8 currently for Springfield terminal, one of B&E's role
9 as operator will be to market PAS and set rates.

10 Under the B&E this will be done with the
11 sole focus of benefiting PAS and PAS only, with every
12 incentive and obligation to do so, contractually and
13 otherwise. These include very specific language and
14 obligations where first, B&E is specifically
15 prohibited from providing any advantage to any PAS
16 owner other than those that currently exist, or to
17 any G&W affiliate.

18 Rates must be set to make PAS sustainable
19 and for the benefit of PAS, open gateways are a key
20 component of this, and one that we look forward to
21 enforcing for the benefit of PAS and for growing
22 traffic on PAS. B&E is prohibited from sharing any

1 existing rates with any G&W affiliate, with strict
2 protocols in place, and fourthly B&E is limited to
3 making rates on that traffic where it can actually
4 make rates.

5 As the Board would be aware through this
6 transaction, a set significant amount of traffic that
7 does move, or will move, does so under separate and
8 haulage agreements that are either pre-existing, or
9 have been offered as part of the transaction, in
10 which rates will only change by reference to an index
11 or general market reference.

12 All of these obligations around rates, and
13 all services are clearly defined, and there's
14 considerable oversight, and far more independent
15 oversight than currently exists with Springfield
16 terminal as operator. As part of this if B&E fails
17 in these obligations PAS can terminate the agreement,
18 and if B&E can't operate PAS profitably, PAS can once
19 again terminate the agreement.

20 Conversely, as B&E improves operations and
21 will be increasingly rewarded. As the management
22 bonus increases not only in absolute terms will it be

1 more profitable for the B&E, but as actually the
2 profit margins increase so does B&E's share of
3 profits. So under the proposed operation of PAS by
4 the B&E I'd like to emphasize again that we are
5 increasing the independence of this key railroad,
6 simplifying its operations, and adding not only
7 increased oversight from the Independent Joint
8 Operating Committee, but also providing a direct line
9 of communication to the Joint Operating Committee
10 regarding PAS performance as laid out in the Vermont
11 settlement.

12 To illustrate some of these points and
13 benefits we sort of created a before and after slide
14 assuming that the transaction would be approved. So
15 currently as you've heard from CSX in their
16 presentation, Springfield terminals employees manage
17 both their 50 percent on Pan Am Southern, as well as
18 100 percent owned PAR system, and currently there's
19 no incentive compensations in place.

20 Under the operation by B&E all employees
21 will be totally dedicated to PAS, and there will be
22 in place a full incentive compensation scheme that's

1 based solely on PAS performance, and not related to
2 anything else. There will be a dedicated commercial
3 function with specific protections that we talked to
4 before.

5 So currently today the same Springfield
6 terminal commercial team that handles Pan Am
7 railways, also handles Pan Am Southern, handles their
8 rates and industrial development. There's no
9 contractual restrictions on rate sharing between PAR
10 and PAS.

11 Going forward under B&E the commercial
12 team will be purely dedicated to PAS. The sales
13 director of B&E will report only to the B&E general
14 manager, and B&E obviously has those contractual
15 protections that we talked about that limits their
16 ability to set rates for the good of all parties and
17 to establish information barriers to other affiliated
18 railroads.

19 In terms of independent oversight with the
20 PAS operator, which is a very important point, and I
21 know one that was discussed previously, right now
22 Springfield terminal is obviously as a 50 percent

1 owner of PAS is a member of JOC. So in other words
2 they are one of those who are supervising their own
3 performance.

4 Going forward obviously, if CSX is
5 approved as part of this transaction and becomes an
6 owner of PAS, along with Norfolk Southern they'll be
7 fully independent, you know providing oversight of
8 the operating agreement and the B&E as the operator.
9 B&E general manager will be accountable to the Joint
10 Operating Committee.

11 Another important component, and I think
12 probably one of the benefits of having the
13 independent provider of service here as a contract
14 operator is currently overhead costs, which are an
15 important and material cost for Pan Am Southern, are
16 basically allocated between PAR and PAS. So in this
17 case there's just a general allocation between those
18 two railroads, and as you would imagine there would
19 be potential and incentive for Springfield terminal
20 to push more overhead costs to PAS, versus their 100
21 percent owned PAR.

22 Going forward instead of their loose sort

1 of allocation of overhead, which may not be related
2 to PAS activity, there will be a fixed overhead
3 charge made by B&E to PAS with no linkage to any
4 other relative performance by how PAR is doing, and
5 purely related to the activities of B&E.

6 And then finally with the Vermont
7 settlement agreement currently, obviously this is not
8 something that exists. There is no trackage or
9 operating rights available to VRS in the State of
10 Vermont over PAS or NDCR. Going forward as part of
11 this we have offered to the Vermont settlement
12 agreement to provide permanent overhead trackage
13 rights for VRS over the NDCR between Bellows Falls
14 and White River junction, and we've also offered
15 service related pop up overhead trackage rights to
16 East Deerfield.

17 And then as well as the other price
18 stability which are all part of that agreement
19 concerning certain rights. So I think through these,
20 hopefully this is a decent illustration of the
21 benefits that we believe will be enjoyed by the
22 stakeholders of PAS, but to further talk about why we

1 feel we're uniquely positioned to be the best
2 operator, I'm going to turn it over to Michael
3 Miller. Michael? We'll just give Michael one moment
4 he was here. Oh apologies, he just said his computer
5 locked up and he's rebooting all right.

6 Can we Mr. Chairman if you don't mind,
7 maybe just one minute.

8 CHAIRMAN OBERMAN: Matt I have a few
9 questions.

10 MR. WALSH: Oh sure if you have questions
11 that's a great use.

12 CHAIRMAN OBERMAN: Why don't I and others
13 may as well. So the way this is set up B&E is going
14 to establish the pricing on PAS right?

15 MR. WALSH: We are to the extent that
16 those rates are not already in place through haulage,
17 or otherwise you know offered as CSX had discussed
18 you know to PAR destinations, to existing VRS
19 shippers, so the whole litany of items that have been
20 offered to various shippers as part of that. So for
21 some of them yes, the B&E would be establishing
22 rates, but there's a whole slew of traffic honestly

1 that has to do with haulage and are pre-existing.

2 CHAIRMAN OBERMAN: Agreements which you
3 would inherit, the ones that are --

4 MR. WALSH: Exactly, absolutely.

5 CHAIRMAN OBERMAN: You heard the
6 discussion at some length that I engaged in with the
7 various CSX officials, including -- well everybody
8 jumped in on it at some point, including Jim Foote,
9 about their commitment to keep the gateways open, and
10 to keep the pricing of the tariff rates equalized
11 among all gateways, and among all comers.

12 So is that something that binds B&E when
13 it comes to setting the pricing, that commitment?

14 MR. WALSH: I believe some of their
15 commitments, and please maybe correct me, relate to
16 certainly open gateway commitments 100 percent
17 related as much to traffic on what is now PAR, but in
18 terms of providing rates on PAS, I believe that we
19 have the same incentive to do that, and obviously we
20 are very focused on growing these lines as much as
21 possible on Pan Am Southern.

22 CHAIRMAN OBERMAN: More of an incentive,

1 do you have the same commitment that you will
2 equalize rates at each, for each carrier at each
3 interchange point?

4 MR. WALSH: I believe our commitment on
5 the gateways those are primarily made by connecting
6 carriers for NS and for CSX traffic across the line.
7 When you say -- I guess I'm trying to understand.
8 Honestly we want to run the Berkshire and Eastern to
9 maximize volumes. I'm trying to think we obviously
10 are very committed to making sure that traffic moves,
11 and has every advantage to move on that. So
12 obviously you know VRS is receiving the Vermont
13 settlement agreement, has been provided with you know
14 effectively fixed rates to reach NS and CSX, at
15 Hoosac Junction and East Deerfield, and then for
16 further connection to what is currently Pan Am on the
17 northern route. So those are all in place.

18 But otherwise as the operator of PAS, and
19 operating for the benefit of PAS, we are only
20 operating that east/west north/south line. We want
21 to put as much traffic on that as possible, so we
22 don't have gateways in other words. We only have

1 one railroad to operate and to maximize traffic on
2 that, so hopefully that.

3 MR. HOCKY: Mr. Chairman if I could.

4 CHAIRMAN OBERMAN: Yes.

5 MR. HOCKY: It's PAS that makes the open
6 gateway commitments, and creates and maintains those
7 connections, and B&E as the operator would be
8 obligated to keep you know, to follow the direction
9 of PAS and keeping those gateways open.

10 In terms of the pricing, you know that
11 would similarly you know be in place. The operating
12 agreement itself requires that B&E set
13 non-discriminatory rates, so.

14 CHAIRMAN OBERMAN: Does that mean equal
15 rates for all comers at the same interchange?

16 MR. HOCKY: For the same traffic and the
17 same service you know there are -- it's not just for
18 going from A to B, so all propane traffic would have
19 the same rates to the same areas that they're
20 traveling the same size process.

21 CHAIRMAN OBERMAN: Once they get to PAS
22 regardless of the origin right?

1 MR. HOCKY: Yes it should.

2 CHAIRMAN OBERMAN: And the same for
3 traffic that's going outbound, the rate on PAS will
4 be the same wherever the traffic is going, whether
5 it's going to Atlanta on CSX, or Detroit on NS, it
6 doesn't make any difference?

7 MR. HOCKY: No.

8 CHAIRMAN OBERMAN: All right. And is that
9 an in perpetuity commitment as Jim puts it?

10 MR. HOCKY: It's in the operating
11 agreement, so it has the -- lasts as long as the
12 operating agreement.

13 CHAIRMAN OBERMAN: All right. I guess
14 your agreement is not in perpetuity.

15 MR. HOCKY: We're not the owners, and ours
16 is not in perpetuity. We hope it will be for a very
17 long time.

18 MR. WALSH: And in the agreement, sorry
19 one of the points that is very specifically in there
20 is that we certainly can't set any rates to benefit
21 one owner over any other G&W railroad. Our focus is
22 on growing traffic for PAS and for B&E. We're

1 indifferent to whose traffic that is.

2 Effectively in this case the way that the
3 B&E is most successful is the effectively being
4 Switzerland in this situation, and just driving as
5 much traffic across it, and has every incentive to do
6 so, so hopefully that's it. I think Mr. Chairman
7 you're on mute.

8 CHAIRMAN OBERMAN: I got muted. I didn't
9 do it. And not only not discriminating against, or
10 in favor of CSX and NS, but not against CP or any
11 other carrier that might be interchanged.

12 MR. WALSH: Absolutely, that's right. And
13 it's very much what I would call a short line model.
14 You know your pure focus is on growing volumes, and
15 you're not dealing with a much larger national
16 network, you're very much open to all comers.

17 CHAIRMAN OBERMAN: I think one of the
18 pluses as I understand it of PAR and PAS is that it
19 was non-discriminatory to all comers, and basically
20 you're standing in those shoes in that respect. Is
21 that right?

22 MR. WALSH: I think that's fair. I would

1 say even more so just because of the dedication of
2 the workforce, and just in all honesty all the
3 additional oversight that there is that separation
4 between the JOC and the operator.

5 CHAIRMAN OBERMAN: All right. I have two
6 other areas that I wanted to cover. Your bonus
7 agreement is based on in part on the OR that you will
8 generate. And would you agree with me that you can
9 increase the OR by lowering expenses, even if
10 revenues don't go up?

11 MR. WALSH: I would suggest that's
12 mathematically possible certainly. I think that's
13 not the --

14 CHAIRMAN OBERMAN: It's not only possible,
15 it's going on all over the entire Class 1 network.

16 MR. WALSH: It is absolutely. And I
17 appreciate that, and certain and I know maybe I'd
18 even ask my colleague Len Wagner who runs our
19 northern region to address this a bit, but you know
20 from a short line railroad perspective, you know
21 we're often the shock absorbers of precision
22 scheduled railroading is often how we defined it, and

1 I don't mean it to be about that, but the success of
2 a regional railroad, or a short line railroad that's
3 not operating a large network is to grow volumes,
4 because you're dealing with a much more fixed cost
5 base, and you don't really have the opportunity to
6 cut costs in that same way. You know your focus
7 really is on driving the top line.

8 But Len I think you're probably well
9 positioned to answer.

10 MR. WAGNER: Mr. Chairman I certainly
11 understand the question, and you're absolutely right.
12 I did not in my 38 years, I came previously from a
13 Class 1 environment. I understand exactly where
14 you're coming from. However, in a short line
15 regional model that's not the way we ultimately want
16 to grow our business, or influence the operating
17 ratio.

18 We survived on providing as you know that
19 first and last mile of customer service. And the
20 only way that we can do that is to take the shipper's
21 needs into consideration, do what will benefit them,
22 ultimately for them to grow their business, and for

1 us to grow ours.

2 And you're dealing with a smaller
3 operation. It's not that easy to take let's say
4 three crews and cut them down to a crew and a half,
5 or five locomotives, now we're going to go to two and
6 a half. It just doesn't work in this model. It's
7 not the model that we want to go forward with with
8 this entity.

9 I think that we have a very strong
10 operating ethic that will help this railroad to grow,
11 and grow it through the top line on the OR.

12 CHAIRMAN OBERMAN: Well thank you for
13 saying that. You know I have generally not said it
14 before. I am a fan of the short line industry
15 because I think it's more entrepreneurial, and more
16 aggressive quite frankly. So I share that impression
17 about what motivates short lines.

18 But we're being presented with a structure
19 here in which you're not the owner. When you're the
20 owner there's little doubt of the motivations you've
21 just described, but if you're in here as just the
22 operator with a set sort of contractual financial

1 incentive, and I am wondering whether it would not be
2 better for all concerned if your bonus was expressly
3 tied to growth and revenue, or growth in car loans,
4 growth in volume, however you want to measure it
5 without the incentive to be cutting expenses.

6 Not that people don't want you to run
7 efficiently, of course everybody wants that.

8 MR. WAGNER: Yes sir. I may add something
9 unique to the Genesee and Wyoming is that while the
10 agreement is not structured exactly the way you said,
11 or would like it to be, one of the unique positions
12 of G&W is that we have an outside third party that
13 ultimately surveys all of our customers across the
14 United States, and is measured against not only the
15 -- and you'll see this a little bit later in the
16 presentation, not only trucking inside the railroad
17 industry, but the trucking industry as well.

18 And I think that we take those numbers
19 very, very seriously. In the New England market they
20 are above eight, which is world class as far as
21 service is concerned, and we intend to provide that
22 on this railroad, and ultimately grow to that. We

1 take this number very, very seriously, our owners do,
2 and it will be implemented as well on the B&E.

3 CHAIRMAN OBERMAN: Wouldn't we all be
4 better off if the idea was to grow traffic if your
5 incentive was tied only to growing traffic in some
6 way, and not -- I understand, and G&W has a
7 reputation, a good one. There's no doubt about that,
8 but you know once this transaction is approved we've
9 got to rely on the contractual documents that are in
10 place.

11 We may not be there tomorrow, or there may
12 be a different business philosophy someday. Wouldn't
13 it be better just to tie it to growth in revenues, or
14 growth in volume? Leave out the OR part?

15 MR. WALSH: I guess you know one of the
16 advantages is that we are stepping into the existing
17 contract in many ways, and I think that we're
18 comfortable to do that, so we are replicating in
19 many ways what existed as the way that the operating
20 bonus worked. I would suggest you know looking at
21 some of the traffic density on the line, you know
22 that you have your hands on, and the discussion

1 about you know train length.

2 I mean there just aren't enough for us to
3 make this as viable and successful as possible that
4 we know it can be. I think that there's real
5 limitations on the ability to be successful by
6 cutting costs here. So I mean what we want to do is
7 running you know longer -- there's definitely excess
8 capacity on the trains that are being run today.

9 And the way that we'll be successful is
10 not to cut the train service, but really to put more
11 cars in the back of that train at much higher
12 incremental margin to be able to just create you
13 know, a more successful railroad.

14 I do know that our President Michael
15 Miller has rejoined. Michael spends a lot of time
16 thinking about this, and obviously preaching us to
17 our operations. So Michael do you have anything you
18 would like to add to that?

19 MR. MILLER: I would just say I was
20 previously the Chief Commercial Officer, and if all I
21 was accountable for was growth you know that would be
22 nice from a commercial standpoint, but bad from a

1 business standpoint. So I do believe you know I've
2 been around this business a long time, both at a
3 class, one on a short line. We will be successful
4 here through growth, but we're also going to be
5 accountable for really operating an efficient
6 operation.

7 So the owners generate enough returns so
8 we can continue to invest in this business because
9 you can grow carloads a lot and make no money, and
10 put your railroad out of business because you can't
11 reinvest in it. So it certainly is you know,
12 obviously I'd love to just go out here and sell, but
13 we also have to run a very safe and efficient
14 operation, and there's probably some level of
15 balance between what your operating ratios should be,
16 and what your carload growth should be.

17 But I think both of my teammates here have
18 mentioned growth on the short line world, that
19 incremental carload is where you create the
20 advantages here because there's only so many levers
21 you can pull on the call side running a short line
22 operation.

1 We can be creative, we can be efficient,
2 but ultimately carload growth is really what
3 ultimately leads to success.

4 CHAIRMAN OBERMAN: I appreciate what
5 you're saying, and I don't disagree. Everybody wants
6 you to run as efficiently as possible, but as you may
7 know from remarks I have been making all year the
8 cult of the OR seems to be undermining the Class 1
9 networks, and I didn't want to infiltrate the very
10 robust short line operations, particularly G&W.

11 Let me ask one other question. I am not
12 sure who to direct it too, but it has caused some
13 curiosity on my part since I saw the documents. I
14 won't mention the number unless you tell me it's a
15 public number, because I can't remember. But CSX
16 told us this morning about all the bottom locomotives
17 that it's going to replace on the PAR system.

18 But I noted that B&E is committed to
19 buying 33 locomotives at a price. I know the price.
20 I'm not sure you want to say it publicly, maybe you
21 can, but when I saw the price I wondered if these
22 were Lionel trains or what we were talking about.

1 I've never seen locomotives at that price before, and
2 I wonder if somebody can tell me what kind of
3 locomotives you're going to have to operate this
4 system.

5 MR. MILLER: Yeah. I'm not sure what's
6 public on the pricing side, but I will tell you
7 there's really two types of locomotives here.
8 There's the switching locomotives, and there's the
9 line haul locomotives. We are actually will be
10 acquiring the vast majority of the locomotives that
11 are dedicated to the Pan Am Southern operation today.
12 And they're typical short line locomotives. I would
13 say in some cases their line haul locomotives are
14 better. They're GE locomotives, a little more newer
15 as it relates to the short line world, probably
16 better maintained because they were running inner
17 modal, automotive service which is a premium service
18 on that railroad.

19 So we feel pretty comfortable with the
20 locomotive fleet that they have. It's very similar
21 to the locomotive fleets we operate today in that
22 general geography. And if you don't know what the

1 typical locomotive costs for short line issues, about
2 nine times less than what a Class 1 buys a locomotive
3 for, so that's kind of the delta between us buying a
4 used locomotive versus a Class 1 going out and buying
5 a brand new locomotive.

6 CHAIRMAN OBERMAN: All right. Well that
7 helps. Just for the record I didn't say line haul.
8 I said Lionel. It's okay.

9 MR. WALSH: I would say that please when
10 you view that number, it's also part of the holistic
11 offer, it's part of the transaction so.

12 CHAIRMAN OBERMAN: All right. Let me --
13 Karen Hedlund had some questions and then Patrick.

14 BOARD MEMBER HEDLUND: Pardon me if this
15 information is in the record. As you may know I just
16 very recently joined the Board, and I've tried to
17 read as much records as I can, but I haven't
18 committed it all to memory. What is the relationship
19 between G&W and B&E? Is it a special purpose
20 subsidiary that was just created for this
21 transaction, or does it have other businesses, and if
22 it's not confidential to what extent does Genesee and

1 Wyoming stand behind the contract commitments of B&E?

2 MR. HOCKY: I'll try and answer that from
3 a legal perspective.

4 BOARD MEMBER HEDLUND: Yeah.

5 MR. HOCKY: So B&E is a fictitious name
6 that was registered to operate the PAS lines.

7 BOARD MEMBER HEDLUND: Okay.

8 MR. HOCKY: But it is an existing Class 3
9 railroad by virtue of its ownership of rail lines in
10 western Pennsylvania.

11 BOARD MEMBER HEDLUND: Okay.

12 MR. HOCKY: As the Pittsburgh and Shawmut
13 Railroad. It owns rail lines and leases them where
14 they're operated by another affiliated railroad, so
15 it's a non-operating entity currently.

16 BOARD MEMBER HEDLUND: So currently does
17 not operate any of its own railroads, or railroads
18 owned by anybody else?

19 MR. HOCKY: Correct. So this would be its
20 initial operations, and you know we're using it
21 because it's an existing railroad, and therefore
22 qualifies for certain things, or triggers certain you

1 know regulatory reviews.

2 BOARD MEMBER HEDLUND: Got it.

3 MR. HOCKY: And G&W is the ultimate parent
4 company, so it stands behind it in the same way as it
5 stands behind any of its subsidiaries, but it is not
6 the direct operator, but it does provide certain
7 resources, and that it can provide to its you know
8 safety training, and IT, and things like that.

9 So it's there. It's been involved in the
10 negotiations because it is the parent company, so.

11 BOARD MEMBER HEDLUND: I understand that.
12 One sort of related question. Can you just generally
13 describe the insurance arrangements with respect to
14 B&E?

15 MR. HOCKY: Go ahead Matt, no.

16 MR. WALSH: I was going to say yeah, so the
17 B&E will go out and purchase its own insurance, and
18 have its own policy. To be honest this is something
19 that we will work out with the owners in terms of
20 what levels of insurance, but it will be
21 substantially similar to what we carry at Genesee
22 Wyoming, and you know I would imagine no less than

1 certainly what they have today. My expectation would
2 be significantly more but.

3 BOARD MEMBER HEDLUND: Thank you.

4 MR. WALSH: Are there other questions, or
5 I think Michael had a couple slides he was going to
6 walk the Board through.

7 CHAIRMAN OBERMAN: Hey Pat did you have a
8 question?

9 BOARD MEMBER FUCHS: I was actually just
10 going to make an observation which is that I think
11 making this point was essential Marty on your
12 previous line of questioning in that first the
13 Board's objective in these cases is not necessarily
14 -- while I believe that there is large public
15 benefits from growth of volume by rail, that is not
16 the Board's standard for evaluating the transactions,
17 or imposing the condition on the maximization of
18 growth.

19 And the other is I think if not only you
20 know anything with management incentives be a blunt
21 way to address competitive harm, which is the Board's
22 focus in these proceedings, but it also would

1 undermine the rail transportation policy objective,
2 which is what I think what Mike alluded to in terms
3 of revenue adequacy.

4 And ensuring that you can invest in your
5 network. And so I view a little bit of a tension
6 between going too far in the maximization of growth,
7 and there's a viability question that we're also
8 exploring with this line, and I think it's important
9 that competitors be able to make sufficient profits
10 to reinvest back in their lines, and I think over
11 focused on just the maximization of growth undermines
12 that objective to some extent. So I just wanted to
13 make that observation. Thank you.

14 CHAIRMAN OBERMAN: All right.

15 VICE CHAIRMAN PRIMUS: I've got a question
16 Marty.

17 CHAIRMAN OBERMAN: Yeah go ahead Robert.

18 VICE CHAIRMAN PRIMUS: And following up on
19 what you said, you know, and the notes provided from
20 the staff. You know based on you know B&E's comments
21 previously that they said you know that they would be
22 able to operate and maintain PAS properties with 25

1 percent fewer positions, are you guys looking to
2 reduce when you take over by 25 percent? Is there
3 any talk of reduction in staff?

4 MR. WAGNER: Vice Chairman that's a great
5 question and let me address that initially here. The
6 biggest component of that as was talked about with
7 CSX a little bit earlier today, a contingency of
8 maintenance of way folks that did capital work.
9 That capital work will now be done by the owners of
10 the railroad, and thus that was where the reductions
11 were seen from and MOW standpoint.

12 From a transportation standpoint it's
13 probably a guess at this point. I don't think those
14 are hard numbers. I think we could certainly go up
15 as opposed to standing on them. It is reflective
16 again of what CSX acknowledged today of NS's
17 investment in the PAS line that has actually taken
18 the slow orders and the other impediments to velocity
19 away, and literally the railroad has gone from 10
20 miles an hour up to 25 miles an hour on average, so
21 two and a half times improvement.

22 But really I think and that only

1 represents I think a 10 percent reduction of people
2 if it ultimately came to that. We have no intent of
3 cutting for anything other than that was just an
4 estimate. We don't know for sure, but the railroad
5 is going to be operating more efficiently, I think a
6 little bit higher velocity. We're going to bring
7 some technology into the railroad as well. I think
8 you saw a few slides from CSX demonstrating where
9 there's a little bit of a lack of IT, but that will
10 certainly allow us to run where they're doing mostly
11 paper today.

12 We can certainly have some efficiency
13 there as well, but again I think those are -- I
14 wouldn't call those hard, fast numbers.

15 VICE CHAIRMAN PRIMUS: Okay. And I
16 appreciate that. So let's just say it hovers around
17 10 percent. That 10 percent would not be sort of T
18 and E would it be that the maintainers of what
19 you're saying the inefficiencies of that paper were
20 of sort of that older system?

21 MR. WAGNER: Well I think it's that and
22 the velocity of the railroad. Literally the velocity

1 of the railroad blowing up two and a half times.
2 Again without having our hands on the steering wheel
3 it is a vapor look, it is not hard and fast.

4 VICE CHAIRMAN PRIMUS: I appreciate that.
5 I mean I kind of look at it if they're promising to
6 upgrade and improve those tracks, you're going to
7 need some folks, at least in the interim to actually
8 you know put the new tracks in, and you know, fix it
9 up. Not necessarily you know reduce those
10 maintenance of way folks and others.

11 So that's why I was asking where you would
12 see those cuts happening if they were to happen.
13 Again it would be sort of the maybe redundancy, or
14 maybe the inefficiencies of like you said the
15 paperwork, you know stuff being transferred digitally
16 instead of paper, or otherwise.

17 MR. WAGNER: Well having the
18 responsibility of running this line the last thing I
19 want to do is to go in there and not have sufficient
20 resources. So I would much rather err on excess
21 than less.

22 VICE CHAIRMAN PRIMUS: Let me ask one last

1 question, and I do appreciate your answers. Would
2 PAS put pressure on you to make those decisions,
3 since they're the owners? Would they influence that
4 decision-making?

5 MR. WAGNER: I don't believe that the
6 structure is set up for that at all. I think we're
7 going to be a very independent operator that is going
8 to operate that to the best of our ability
9 ultimately for efficiencies, and for our customer
10 service.

11 VICE CHAIRMAN PRIMUS: Okay. So you guys
12 will be the ultimate maintainers of that track?

13 MR. WAGNER: As far as capital work goes,
14 the Class 1's will be, or the owners will be
15 responsible for the capital. Maintenance yes, we
16 would have the maintenance, yes sir.

17 VICE CHAIRMAN PRIMUS: Okay thank you.

18 CHAIRMAN OBERMAN: All right. Who's next?

19 MR. MILLER: Sorry about my technical
20 difficulty after being on for eight hours my computer
21 decided to lock right when it was about time for me
22 to speak believe it or not. Anyway, as noted

1 earlier I'm Michael Miller, President of G&W's North
2 American operations. I'd like to cover really three
3 primary areas today. First, why B&E is uniquely
4 positioned to operate PAS. Second, why the B&E was
5 selected by NS and CSX, and then third why the
6 long-term success of PAS is so important to G&W.

7 First the transition of the PAS operation
8 is a material undertaking. It is not an easy
9 transition. It's more complex than people may think,
10 and it's certainly more complex than a normal short
11 line startup. G&W has more experience acquiring,
12 starting up and integrating regionally short line
13 railroads than anyone else, which we believe
14 minimizes the startup risk, and helps to ensure the
15 customer service levels are maintained during the
16 integration and startup period.

17 As an example I would point to G&W's
18 acquisition and startup of the Rapid City Pierre and
19 Eastern Railroad in 2014. A similar transaction
20 which was an asset purchase from Canadian Pacific.
21 The RCP&E startup was larger and more complex than
22 the Pan Am Southern is expected to be as it included

1 the hiring of over 180 employees, including the
2 implementing agreement, procuring 50 locomotives and
3 2,500 railcars.

4 In addition you have to transition the
5 inventory as well as the traffic over into a new
6 transportation management system. So this is a very
7 similar transaction, a little bit larger in scale,
8 but really representative of the complexity of the
9 integration, and I would encourage the Board to feel
10 free to reach out to any of the key stakeholders of
11 South Dakota to get feedback on our startup of that
12 operation.

13 Second, as the largest owner of short line
14 railroads in New England, G&W is very familiar, and
15 has positive relationships with PAS's key
16 stakeholders, all of them should benefit from the
17 B&E operations. First, it obviously starts with our
18 customers, and G&W understands the New England market
19 and customer base very well.

20 As Len noted, every two years G&W conducts
21 a global customer satisfaction survey led by an
22 industry leading third party. Based upon the results

1 of the last survey, which was conducted at the end of
2 2021, the customers of our New England Railroad
3 scored us 8.5 out of a possible score of 10, with 8.0
4 or higher being considered a satisfied customer.

5 This was better than the rail industry as
6 a whole, which scored at 6.9, and believe it or not,
7 it was better than the trucking industry as well
8 which scored as a 6.7. And I think Matt pointed this
9 out that there is no customer opposition, which is a
10 reflection of our strong relationship with the
11 customers in the New England marketplace.

12 As we look at the second point here, the
13 next key stakeholder for us is the employees, and
14 this will be a unionized operation, and all of G&W's
15 New England railroads are unionized and operate with
16 substantially the same labor unions as the ST
17 operates today.

18 We have a close working relationship with
19 the unions, and this should be very helpful as we
20 develop the implementing agreement and bring
21 employees over into our work environment.

22 Third, the government entities. G&W

1 railroads in New England have a long and successful
2 history working with both the State Departments of
3 Transportation, and other rail agencies in the
4 region, and we have grown and developed key strategic
5 relationships in this area for over 20 years.

6 Passenger operations is the final bullet
7 point here, and G&W in New England both host and
8 operate passenger operations. We have close
9 relationship with both Amtrak and Metro North, and we
10 feel like those strong relationships will help us
11 here with this integration, and we're certainly
12 focused on ensuring that passenger rail service meets
13 the needs of the public.

14 As we turn to the next slide you can see
15 here G&W is the recognized safety leader. You know I
16 think Mr. Foote pointed this out. We're both a
17 regional short line and national rail leader in the
18 industry with regards to safety, and this is our
19 number one priority in any operation we have, and
20 certainly a focus that we will have.

21 G&W has a demonstrated record of operating
22 expertise and financial strength, which is important

1 for an operation of this size and this complexity.

2 Genesee Wyoming railroads as noted, have significant
3 presence in this geography, beyond the relational
4 benefits of us being in this marketplace, we also had
5 managerial and operational capabilities located
6 nearby. We have physical resources

7 in close proximity to the PAS, and these resources
8 create redundancy and resiliency whether needed
9 during the startup period, or when there's
10 challenging times such as a polar vortex, a major
11 snowstorm, or a derailment.

12 These will come in handy and create a
13 better service product ultimately with more
14 redundancy and more reliability for our customers.
15 And the last point on the page is NS and CSX are
16 very confident that G&W's ability to provide the most
17 competitive, independent solution, and are confident
18 in the ability for us to integrate and operate the
19 Pan Am Southern as the B&E as we go forward.

20 The next slide will highlight how
21 important the Pan Am Southern is to Genesee Wyoming.
22 And if you look at this map the Pan Am Southern line

1 is highlighted here in blue. The existing G&W rail
2 properties are in orange, and one of the things that
3 makes short line railroads very attractive to
4 customers, very attractive to our partners, is our
5 ability to connect with multiple Class 1 railroads.

6 When you look at our Providence in
7 Worcester, we ship thousands of carloads annually
8 across the Pan Am Southern, so we are certainly
9 incented and aligned to make sure that Pan Am
10 Southern is a competitive alternative, and a
11 competitive gateway to both NS and CP to the east, as
12 well as traffic that may want to flow to CSX at
13 Rotterdam Junction.

14 But we also have the ability on the
15 Providence and Worcester to interchange traffic to
16 CSX and Worcester as well. Similar story for the
17 NECR. We have traffic that flows across the NECR
18 that wants to move across the Pan Am Southern, and
19 across CSX, ultimately being able to keep these
20 gateways open, to keep these gateways competitive,
21 and to keep the service product is definitely in the
22 best interest of Genesee Wyoming's Providence and

1 Worcester railroad, and all of our New England
2 customers, and we view this as a key alignment
3 feature of us being the operator of the B&E.

4 In conclusion, I'd just like to highlight
5 the public benefits for the B&E as the operator PAS.
6 The B&E will be focused only on operating growing PAS
7 as an independent railroad. We've talked a little
8 bit about the structure of the agreement, and how
9 important it is, and how alignment is built into that
10 operating agreement.

11 The B&E's sole responsibility is to
12 operate PAS as efficiently, as safely, and as
13 successfully as possible. The B&E will participate
14 and benefit fully as a subsidiary of G&W, where we
15 will have the best in class safety and service
16 culture.

17 We'll also get significant rail management
18 expertise and resources to apply to the B&E, and
19 we'll be able to deploy both company and industry
20 standard technology to enhance the efficiency of the
21 B&E operation, as well as to improve the customer
22 experience for all customers that use the Pan Am

1 Southern line.

2 G&W and B&E are fully incentivized and
3 aligned with improving Pan Am's service. We're
4 certainly incentivized to increase Pan Am's rail
5 volumes, and lower its operating costs, to make it a
6 more sustainable and viable and investable rail line.

7 G&W is committed to PAS's success, and
8 anticipates investing approximately 20 million
9 dollars directly into the B&E, in addition to
10 thousands of man hours as we bring this line home,
11 as we develop the implementing plan, and as we
12 transition to us operating the PAS operation.

13 The B&E contract, and G&W's approach to
14 this operation with PAS on behalf of PAS's
15 shareholders and owners, is similar to many other
16 rail contracts that we operate successfully today.
17 Matt noted some of these.

18 We have joint facility agreements, port
19 operating agreements, entities with states where we
20 operate rail lines that are very similar to these
21 operating agreements, and we're comfortable operating
22 in this environment, and all of the stakeholders we

1 have our agreements with would be proud to represent
2 that we do a fine job running the railroads, and
3 growing business on those properties.

4 So with that I'll turn it over, and we'll
5 open it up to questions for the group.

6 CHAIRMAN OBERMAN: All right. Does anyone
7 have any further questions? Mike you're questioned
8 out on your presentation.

9 MR. MILLER: We're supper lucky then.

10 CHAIRMAN OBERMAN: Well look, G&W comes in
11 with a very good image I think for most of us, so. I
12 am tempted to say after listening to the presentation
13 maybe we'd all be better off if G&W ran the whole
14 PAR, not just this part of it, but I won't say that.

15 VICE CHAIRMAN PRIMUS: I want to ask you a
16 question, Marty?

17 CHAIRMAN OBERMAN: Yeah go ahead.

18 VICE CHAIRMAN PRIMUS: Yeah. Hey thanks,
19 I appreciate the presentation. It was very
20 informative. I have a question about the Hoosac
21 Tunnel. You know any concerns on that, and you know
22 even about the idea you know it's had its problems in

1 the past. You know do you have any sort of insight
2 in terms of you know repairs to the tunnel, and you
3 know how would you want you know the owners to
4 respond, and for the operations.

5 You know is that a concern for you?

6 MR. MILLER: I would say the collapse of
7 the Hoosac Tunnel last year probably got a lot of
8 light on the ability to get that track back in
9 service, and I would say the owners, Pan Am and NS,
10 spent a tremendous amount of time, money and effort.
11 They put that tunnel back into good state of repair.

12 We have not inspected the tunnel, but
13 we've had actually multiple conversations with NS
14 around the tunnel. They have really high engineering
15 standard, and we feel really comfortable as they
16 made these repairs they made them for the long-term.
17 So we feel good about it.

18 Obviously you know when we are awarded --
19 hopefully awarded, the operator's agreement of this
20 operation, we will go across every stitch of this
21 rail line to make sure we're comfortable, that it's
22 safe and it meets the needs of the customers.

1 But right now I would say based upon what
2 we're hearing, and what we're seeing, that to
3 continue to invest -- and the track state itself has
4 actually improved over the past couple of months, so
5 we know they're continuing to put money into the
6 property which is good. It's an asset that NS is
7 very focused on in maintaining that connectivity to
8 New England.

9 VICE CHAIRMAN PRIMUS: And how much of an
10 influence do you hope to be in terms of you know
11 maintaining the track, and even the tunnel? I mean
12 and again they own it, you operate it, but again you
13 know it's your people who are on the line, and you
14 know your reputation for delivering those goods and
15 services.

16 So you know do you feel that you guys have
17 significant sort of a seat at the table for that, and
18 for some of the other issues? Again, it's kind of
19 hard just running it you know, and not being the
20 owner, because again there are things that are going
21 to come up and you know you may think one thing, they
22 may think another, I mean there's a hope that that

1 doesn't happen, but again you know you've got to
2 think that way in a real world.

3 Everyone is staying on the same page right
4 now because you know a deal has to happen, but you
5 know five, ten years from now, you know, you don't
6 want to be in a position where you know you're
7 pleading for someone to fix the track, and having to
8 deal with it.

9 So do you feel comfortable being in that
10 position?

11 MR. MILLER: you know we have a really
12 strong relationship with all of our collaborating
13 partners, and I would say at least on the engineering
14 front Vice Chairman Primus, I feel very comfortable,
15 because the standards of engineering are very clear.

16 If there's a safety concern we're not
17 operating, and that's going to impact the
18 shareholders, the owners of the property. It's going
19 to impact our customers, and we're not going to want
20 to deal with that, so if there's a safety concern, an
21 operating concern, I feel very comfortable based upon
22 engineering standards across our industry that if we

1 brought those to the owners they would quickly react
2 and do what's in the best interest of Pan Am
3 Southern, and the customers and our employees.

4 I think Jim started off his presentation
5 talking about safety. The one thing that I think
6 with everybody involved in this transaction is we're
7 not going to jeopardize safety of any employee, or
8 anybody who traverses our railroads, so I think that
9 gives us a lot of credibility and a big seat at the
10 table.

11 And almost all of our engineering
12 practices we coordinate with our Class 1's and our
13 stakeholders as we develop engineering plans, so I
14 feel pretty comfortable about that. To say it's
15 going to be perfect, and we're not going to disagree
16 I will definitely tell you we'll probably have some
17 disagreements, but I don't think we'll get to a point
18 where safety is a concern, or long-term viability of
19 the line is ever a concern because it will get to a
20 point where we'll have to raise our hand and say we
21 can't operate on this from a safety standpoint.

22 VICE CHAIRMAN PRIMUS: Yeah. I certainly

1 know, I totally agree with you from that standpoint
2 you know. My concern honestly long-term is allowing
3 you guys to grow and get the business you need, and
4 of course you know some of the talk amongst Board
5 members is the competition between the southern route
6 and the more open that becomes, and you know whether
7 it's you know allowing double stacks or others, you
8 know how the attention is going to turn from you know
9 serving both, to maybe serving one more than the
10 other.

11 And so for us the idea of having two
12 viable lines you know is very important and critical
13 to us, and so we know you're there because you got
14 you know that focus. Your focus is on PAS. You
15 know, but at the same time you know you've got the
16 other two, even though they're in it and they're
17 50/50, the idea is you know how much they're in it,
18 versus focusing on the southern route as well.

19 So that's one of the reasons why because I
20 think you deserve a stronger seat, and a stronger
21 voice, because I think again you guys are investing
22 heavily into that and the success and growth on that

1 line. That wasn't a question, just a comment. That
2 last part. No need to answer. I'm done Marty thanks
3 a lot.

4 CHAIRMAN OBERMAN: All right. Any further
5 questions for B&E? All right. Thanks folks. Bill
6 Mullins is up next.

7 MR. MULLINS: Thank you Chairman Oberman,
8 Vice Chairman Primus, Members Fuchs, Shultz and
9 Hedlund. My name is Bill Mullins, and I'm a partner
10 at Baker Miller PLLC.

11 CHAIRMAN OBERMAN: Bill I can't see your
12 video.

13 MR. MULLINS: You can't see my video okay.

14 CHAIRMAN OBERMAN: I don't know why that
15 is. But I don't see you.

16 MR. MULLINS: I can see you. Maybe it's
17 something.

18 CHAIRMAN OBERMAN: maybe it's something on
19 my end. Oh there you are. I got it okay, thank you.

20 MR. MULLINS: Okay. So I appear today on
21 behalf of Norfolk Southern. NS respectfully submits
22 that the transaction should be approved without

1 conditions except the standard labor protective
2 conditions, and those commitments voluntarily made by
3 the applicants.

4 It is important to put this proceeding in
5 context from NS's perspective, and how the various
6 pieces fit together in a way that we believe
7 protects, not only NS's interest, but preserves and
8 enhances access and competition. A comprehensive
9 analysis requires a bit of a look back before we do a
10 look forward.

11 After the split of Conrail, and before the
12 creation of Pan Am Southern, NS had a difficult time
13 providing a cost-efficient and effective competitive
14 alternative to CSX for shippers in the New England
15 market. I'm going to share a map. Hopefully you'll
16 be able to see that.

17 As you can see NS had very little
18 presence. NS is the black line. We had trackage
19 rights from Binghamton up to Schenectady over the D&H
20 which is a CP line. We had very little presence, in
21 fact relied on two other railroads to actually serve
22 the area. As a result NS was disadvantages and

1 competing with CSX into the northeast markets.

2 NS and Pan Am decided to change that. So
3 in 2008 Pan Am and NS created Pan Am Southern as a
4 50/50 joint venture. PAS was to serve as a vehicle
5 for NS and Pan Am to create intermodal and
6 automotive services into New England and to compete
7 with CSX in the Northeast markets.

8 This map is a map after the formation of
9 Pan Am Southern. The key was the NS orange line, the
10 Patriot corridor between Mechanicsville and Ayer,
11 which is the NS landing zone for competition into the
12 entire New England region.

13 NS spent over 165 million dollars to
14 execute the Pan Am's southern transaction, including
15 over 114 million dollars in initial capital outlays
16 and line upgrades, entire on or along that orange
17 route.

18 NS has invested millions more since, and
19 in 2015 NS purchased the Delaware and Hudson line
20 from CP for 214 1/2 million dollars, even better
21 able to serve New England shippers and competition
22 with CSX. Overall, NS has committed over 400 million

1 dollars in investments in this area to more
2 effectively compete.

3 CHAIRMAN OBERMAN: Bill where on the map
4 is the Delaware and Hudson?

5 MR. MULLINS: This was the former Delaware
6 and Hudson that we now -- we used to have trackage
7 rights over that.

8 CHAIRMAN OBERMAN: Okay.

9 MR. MULLINS: Now we own it.

10 CHAIRMAN OBERMAN: Got it.

11 MR. MULLINS: So this is sort of a zoomed
12 in map. This map focuses on Massachusetts and the
13 greater Boston area. As the map shows the creation
14 of PAS and the purchase of D&H provided New England
15 shippers with a stronger NS presence, and the ability
16 to compete.

17 NS is now a major interchange partner with
18 PAS. While CP interchanges with PAS to serve New
19 England, it can also serve New England markets via
20 its own lines, something NS does not have the
21 ability to do. Various existing G&W railroads, New
22 England Central, Providence and Worcester, Connecticut

1 Southern, also depend upon the Pan Am Southern, as
2 competitive alternative, or as a competitive
3 supplement to CSX.

4 CSX itself uses Pan Am Southern for
5 shippers, but CSX cannot serve directly. In terms of
6 rail competition the shippers in the area, a strong
7 and independent Pan Am Southern is important. And in
8 the context I have just laid out no other railroad
9 party has more to lose than Norfolk Southern, if Pan
10 Am ceased to be a viable independent alternative to
11 CSX.

12 Given CSX's significant investments in Pan
13 Am Southern, and the D&H, it's dependence upon
14 interchange with the PAS, for access to New England,
15 and the substantial investments that NS has made over
16 the years, Pan Am Southern must remain viable for NS
17 to compete.

18 When NS first learn of CSX's proposed
19 acquisition of Pan Am, and with it Pan Am's 50
20 percent interest in Pan Am Southern, NS had
21 significant concerns. In this sense, when the CSX
22 proposed acquisition was initially announced, NS

1 shared some of the same concerns that have more
2 recently been expressed by even DOJ.

3 Because of these concerns CSX and NS had
4 lengthy negotiations to create a solution set that
5 would ensure that CSX's purchase of Pan Am would not
6 reduce the vitality and the independence of Pan Am
7 Southern. The outcome of those discussions was the
8 NS CSX settlement agreement, and a series of other
9 agreements.

10 As a result of these agreements NS, the
11 rail carrier with the most to lose, is convinced that
12 the proposed transaction as presently modeled,
13 maintains the viability, financial strength, and
14 independence of PAS. The agreements ensure that NS
15 can continue to provide a competitive alternative for
16 New England shippers.

17 The agreements are complex, and carefully
18 balanced. Any changes or disruptions in their
19 structure and wording risk literally the entire
20 transaction and the loss of public benefits. Indeed
21 with the agreements NS now believes that the
22 transaction not only preserves competition, but

1 enhances it in ways that could not occur without the
2 transaction.

3 Of course an important element in
4 preserving competition is the use of B&E as a neutral
5 operator of PAS. First and foremost, B&E will not be
6 a stand-alone rail carrier moving traffic over the
7 PAS lines in B&E's name and revenue waybill. B&E
8 will be the contract operator at PAS, moving traffic
9 for PAS, maintaining PAS's lines, and managing
10 operations for PAS.

11 B&E will be contractually obligated to set
12 PAS rates in a non-discriminatory competitively
13 neutral fashion. There are various financial
14 incentives for B&E to not only maintain service and
15 neutrality, but to grow the traffic. In order for
16 B&E to flourish financially under the agreements, B&E
17 must maintain PAS's access to NS, CP, and CSX and to
18 each of the short lines that connect to the PSA
19 lines, including those in the Vermont rail systems
20 and G&W systems.

21 Further there are numerous protections in
22 place to ensure that CSX cannot interfere with B&E's

1 pricing and service levels, and to ensure that CSX
2 can't block needed capital improvements. Perhaps the
3 most important check on CSX is that NS has the right
4 to purchase CSX's 50 percent in PAS if NS at any time
5 does not believe CSX and B&E are abiding by their
6 contractual commitments.

7 NS is convinced that the various
8 agreements ensure that competition will be preserved,
9 even with CSX owning 50 percent of PAS. Even more
10 than simply preserving competition, the proposed
11 transaction actually creates a more competitive
12 environment than exists today.

13 From NS's perspective, the most
14 significant of these pro-competitive enhancements is
15 the grant of trackage rights over CSX's southern
16 route to NS for two intermodal automotive stack
17 trains a day. This eliminates NS's need to use the
18 Hoosac Tunnel, which is a 4.7 mile tunnel that was
19 built nearly 150 years ago.

20 We have had a lot of discussion about the
21 tunnel today, but I don't believe that anyone has
22 actually shown a picture of it, so there is a picture

1 of the Hoosac Tunnel, and as you could see the tunnel
2 cannot accommodate intermodal double stack trains.
3 So the grant of trackage rights over CSX's southern
4 route to NS will permit the creation of a double
5 stack cleared route for NS into the greater Boston
6 market area, further strengthening NS's competitive
7 foothold in the region.

8 Further, moving the NS intermodal
9 automotive traffic to the CSX line frees up a
10 significant amount of capacity on the patriot
11 corridor that can be used by merchandise traffic to
12 which for PAS is more valuable. Even CP recognizes
13 the value of NS's ability to compete against CSX
14 using the trackage rights.

15 But rather than seeing those rights as a
16 positive force and a pro-competitive measure, CP uses
17 those rights as a basis to seek conditions that
18 merely benefit CP, and at the expense of NS and Pan
19 Am Southern, and thus at the expense of competition.

20 More on CP later, but the point is that
21 all parties recognize that the transaction, and only
22 the transaction, gives NS the ability to provide New

1 England shippers with a new and enhanced competitive
2 alternative intermodal service. This can only be
3 achieved if the transaction is approved as currently
4 presented, without changes in the agreements,
5 disruptive divestiture proposals, or market
6 constraining conditions such as those proposed by CP.

7 The transaction as currently presented,
8 and with the voluntary agreed upon conditions, is
9 unopposed by the short line community, the vast
10 majority of public bodies, and most importantly the
11 shipping community. Indeed not one shipper or
12 shipper association actually opposes the transaction.

13 Over 80 shipper statements have been
14 submitted in support. Several of those shippers have
15 taken time to appear at this hearing and express
16 their unequivocal support, and NS thanks those
17 shippers for their support and their testimony.

18 There are now few critics of the
19 transaction left, other than theoretical conjectures,
20 none of those critics have provided actual evidence
21 to show that as a result of the transaction there is
22 likely to be a substantial lessening of competition,

1 creation of a monopoly, or restraint of trade in
2 freight service transportation in any region of the
3 United States, which is the legal standard
4 applicable to this transaction.

5 Absent such a showing, Section 11324D
6 states that the Board shall approve the transaction.
7 As relevant to the statutory standard, DOJ submitted
8 comments, but no evidence. DOJ expressed some
9 concerns about the parallel pricing in CSX's 50
10 percent ownership of Pan Am Southern, yet NS and the
11 shipper community, the parties who are most impacted,
12 do not share DOJ's views.

13 DOJ did not submit a reply brief, and did
14 not appear at this hearing. A proposal submitted by
15 DOJ, that CSX is required to divest its stake in Pan
16 Am Southern, or that B&E be replaced as a Pan Am
17 Southern operator, is not only entirely unnecessary,
18 it would be counterproductive by prolonging the
19 transaction review, adding unknowns and uncertainty
20 into a market solution that can and will work.

21 And if we are wrong though, that
22 contingency has also been considered and provided

1 for. NS can take either or both of those actions.
2 NS can force CSX to divest its stake, or to replace
3 B&E as an operator, though it's provided for under
4 the agreements.

5 As for CP, it too has not presented any
6 evidence. No shipper statements, no expert
7 testimony, no rate analysis. No diversion analysis,
8 not even a verified statement, mere speculation. And
9 what philosophical conjectures they do make do not
10 show a substantial lessening of competition, creation
11 of monopoly or restraint of trade.

12 The comments submitted by CP concentrate
13 on the need to ensure that PAS remains a long-term
14 viable rail carrier for competitive rail service in
15 New England, but what CP doesn't fully acknowledge is
16 that NS shares that exact precise goal. CP
17 expresses concern that the rerouting of NS's
18 intermodal traffic will leave PAS financially harmed,
19 and the two future owners of PAS may not keep PAS
20 viable over the long-term.

21 But NS is the last party who would want to
22 see an erosion of PAS's viability. NS does not have

1 the option to route traffic away from an NS/PAS
2 routing, except for the two intermodal automotive
3 trains on CSX's east/west line. As such, NS must
4 maintain PAS's viability if NS is to maintain a
5 competitive balance with CSX with respect to the
6 remaining merchandise business.

7 Indeed the entire point of the various
8 agreements is to maintain PAS as a viable entity, so
9 that NS can remain a competitive balance to CSX.
10 Further, NS as an owner of PAS has every incentive to
11 keep PAS viable in the long term. NS has two major
12 intermodal facilities, two major automotive
13 facilities, and the largest share of interchanged
14 merchandise traffic moving on PAS.

15 NS will continue to have every economic
16 incentive, a strong incentive, to keep PAS viable, to
17 ensure NS's continued access to this traffic. If CP
18 were truly concerned, CP could have taken measures to
19 protect it. Indeed when Pan Am Southern was
20 created, NS reached out to CP to offer them to
21 partner with NS in creating Pan Am Southern.

22 That offer was rejected. Here today CP

1 could have bid on Pan Am, but instead of acting in
2 the marketplace, CP wants to use this agency to grant
3 it conditions that may be in CP's interest, but
4 certainly are not in the public interest.

5 CP wants this agency to impose service and
6 investment standards on PAS. Conditions that have no
7 precedent in any merger procedure in recent memory,
8 and are not supported by any other party, including
9 DOJ, and certainly not by the shipper community.

10 CP wants such standards without any volume
11 or rate commitments to route traffic over PAS. CP
12 wants to impose costs upon the Pan Am system, and to
13 hamstring PAS's and NS's ability to react to
14 ever-changing market conditions. Such conditions
15 harm competition, not preserve it or enhance it.
16 Certainly CP will have no government imposed service
17 or investment standards on its lines serving the
18 northeast markets.

19 CP concerns are misplaced. NS, B&E other
20 G&E railroads, and even CSX itself, have every
21 economic incentive to route as much traffic as
22 possible, including CP traffic over the PAS system.

1 For some unforeseen reason PAS's service declines,
2 the necessary capital is not being invested, or NS is
3 not benefiting from B&E's operations, NS has a remedy
4 to fix that. NS can buy CSX's 50 percent interest,
5 or work with others to do so in partnership and
6 competition.

7 Finally the transaction as currently
8 presented not only preserves competition, but
9 enhances it. NS, CSX, CP, G&W, Vermont rail all have
10 the continued ability to use a neutral PAS. NS has
11 new premium routings over the CSX lines. The
12 agreement with Vermont rail gives them new routes and
13 opportunities that they have never had before.

14 And if for some reason none of the complex
15 and carefully negotiated agreements work as intended,
16 NS has a market based remedy. In the end the
17 shippers and the railroads indeed competition itself,
18 are all much better with the transaction than
19 without it, and NS urges its approval. Thank you.

20 CHAIRMAN OBERMAN: Thank you Bill. I have
21 a couple of questions, and I'm sure others will too.
22 You present NS's interest in PAS with a considerable

1 intensity befitting of your skills, but I wonder why
2 NS didn't send any of its operating, or sales or
3 marketing people to this hearing to talk from a
4 business point of view why this is important, not
5 that your arguments aren't persuasive, but it did
6 strike me that I saw that you were the only person
7 coming here.

8 MR. MULLINS: Well and I appreciate the
9 question. It is not our transaction obviously. We
10 are not the applicant. We're an effective third
11 party intervenor, and the fact that we don't have an
12 NS person here is not an indication of the lack of
13 influence or importance that NS sees on this.

14 You know NS's position on the record is
15 very clear. NS's testimony is very clear. Our
16 evidence is very clear. I'm fully authorized to
17 speak for NS, and if I can't answer one of your
18 questions I'm happy to go back to the client and ask
19 it, so we thought that given that we were not an
20 applicant, and given the tradition of non-applicants
21 not having a business person, and I was fully
22 authorized that that is the reason, and hopefully I

1 can address your questions.

2 CHAIRMAN OBERMAN: I'm sure you can. I
3 would say as a general principle I'm trying to
4 dispense with a lot of STB traditions in the past and
5 going forward. So let me ask a key question. If PAS
6 is so important, and I don't doubt what you've
7 suggested here, why didn't NS just buy it?

8 MR. MULLINS: Well we didn't need to. And
9 the reason why we didn't need to is when we first
10 went to speak with CSX about our concerns, we started
11 to enter into these negotiations. And it became
12 clear as these negotiations went on, that we could
13 maintain the structure of having a 50/50 joint
14 venture by basically replacing one partner with
15 another, and another partner that has a owner
16 financial position that has the ability to provide
17 capital that wasn't always available by our previous
18 partner.

19 And so we decided after the agreements
20 were all negotiated that our interest would be
21 protected. And sometimes a joint venture is better
22 than having just one party. You can share the costs

1 of capital, especially in this case where we've hired
2 an independent neutral operator to operate it
3 neutrally in a non-discriminatory fashion, so in that
4 sense there wasn't a need to buy it.

5 And we've also negotiated the right to buy
6 it if all this fails. So we pretty much got
7 everything we needed, plus enhanced competition --
8 infrastructure improvements, two new trains on the
9 CSX line, all of that would have not have been
10 possible without this agreement.

11 CHAIRMAN OBERMAN: Well it strikes me that
12 if we accept what CSX has told us that A, they didn't
13 want to buy it. B, they felt some compulsion not to
14 buy it for fear that we might not like it. You were
15 in a better position then. Once this deal goes
16 through if it does, your bargaining power to buy it
17 will have changed it strikes me.

18 MR. MULLINS: Well Chairman Oberman
19 actually in the agreement with our ability to buy it,
20 the price is already set. There's parameters, so we
21 actually do not lose our bargaining power because
22 we've already put that contingency in place in the

1 existing agreement.

2 CHAIRMAN OBERMAN: So I don't know that
3 this is in the public record, so I won't mention the
4 time period, but your right to buy it at these
5 pre-determined limitations on the price expires does
6 it not?

7 MR. MULLINS: I believe it does yes.
8 You're correct.

9 CHAIRMAN OBERMAN: Yeah, so then what
10 happens?

11 MR. MULLINS: Well if we haven't exercised
12 our right, and then we presumably at that point we
13 haven't exercised our right because we're happy with
14 our partner, and we're happy with B&E. We have the
15 ability to replace B&E at that point, and at that
16 point hopefully we would have had a period of time to
17 work with our partner and work these things out, and
18 if I think by that time, Chairman Oberman, we will
19 know whether or not we need to buy this, or continue
20 as joint venture partners.

21 CHAIRMAN OBERMAN: The other thing I
22 wanted to ask you about, I believe it's the same

1 time period. The agreement you have with CSX says
2 that they will keep the -- I'm just quoting from
3 their submission, to keep paying our system rates to
4 connection with PAS at current levels would cost
5 escalation for seven years. Then what happens?

6 MR. MULLINS: Well then the marketplace
7 will govern, and you know again, invested 400 million
8 dollars into this system. We have every incentive to
9 put traffic over there. B&E has every incentive.
10 You can't freeze marketplace conditions forever, and
11 presumably again at that point we will have either
12 bought it, or we're comfortable with the way that it
13 is operating, so you know it's not a permanent right,
14 but it certainly gives us enough time to decide
15 whether this is working or not.

16 CHAIRMAN OBERMAN: One other area I just
17 wanted to ask about and I'll turn it over to the
18 others. As I understand the numbers it's not, I
19 don't think we have them with precision, the amount
20 of intermodal traffic that you're running now on PAS
21 would not fill up to one 9,000 foot train each way,
22 so you've got some room to grow because of the double

1 stack correct?

2 MR. MULLINS: Correct. That's a positive
3 enhancement transaction.

4 CHAIRMAN OBERMAN: But what happens when
5 you've used up your capacity, and you've filled up
6 your 9,000 foot train each way? Then what are you
7 going to do for intermodal?

8 MR. MULLINS: Well let's hope that happens
9 because at that point we can start working and
10 looking at the Hoosac Tunnel and trying to improve
11 the Hoosac Tunnel in sort of a public, private
12 partnership. Of course you're not going to do that
13 unless that's in the public interest, and unless the
14 traffic is there, so that's what would happen.

15 I mean that would be a positive thing.
16 Let's hope that happens because we're taking things
17 down the road.

18 CHAIRMAN OBERMAN; Yeah I didn't suggest
19 it as a negative, I hope you fill up the 9,000 foot
20 train. I want every one of those containers off the
21 highway, so we're on the same page there. But I'm
22 just wondering where you go from there, and you go

1 back to what it is filet toupee.

2 MR. MULLINS: That's true, or we can
3 continue to run depending on the market conditions,
4 we can also continue to run single stack at that
5 point you know. We don't have to you know, and the
6 Hoosac Tunnel, that route's not going away, so if
7 there's additional additive service there we can run
8 single stack, and if that's not working and the
9 market demands it, we'll work on improving that
10 Hoosac Tunnel.

11 CHAIRMAN OBERMAN: Well that brings into
12 play your need to engage CSX to come in with a
13 not-veto capital improvements, and they may not. I
14 can't see where they'll ever have the same interest
15 that you will in spending money on the Hoosac Tunnel.

16 MR. MULLINS: Well you never know with
17 public private partnerships available, and the
18 infrastructure money, and funding. It's hard to
19 gauge what type of percentage ownership or
20 improvements, or the cost of them would be, and how
21 much would be paid by NS, CSX, how much would be done
22 by government, so and again if the market conditions

1 actually justify that type of investment you know we
2 do have some remedies, and then our ultimate check is
3 if the market justifies that you know, we can always
4 buy the Pan Am Southern and alleviate that problem.

5 CHAIRMAN OBERMAN: Right. And you're also
6 subjecting yourself to the decision of an arbitrator
7 as to whether it's worth investing in that tunnel.
8 That's not the same decision as an entrepreneur would
9 make necessarily if NS owned the line. I mean I just
10 find you're putting yourself at some risk there as to
11 the future which you don't control.

12 MR. MULLINS: Yeah, that's why we have the
13 reserve the right at a certain price to buy it
14 Chairman Oberman. Look we understand what you're
15 saying, and we negotiated for that.

16 CHAIRMAN OBERMAN: Yeah, but let me ask
17 this question. I haven't seen any I've been
18 searching for it. Are there any estimates on what it
19 would cost to do what needs to be done on the Hoosac
20 Tunnel to run double stack trains through there?

21 MR. MULLINS: I don't know the answer to
22 that Chairman, but I'd be happy to get back with you.

1 CHAIRMAN OBERMAN: I don't know that it's
2 central to this you know, to our decision-making
3 here, but it has been a puzzle to me as to just how
4 costly that would be, what's preventative from
5 happening up until now. If there is even a ballpark
6 estimate, and I've seen reference to the State of
7 Massachusetts having some interest in participating
8 in that decision.

9 Obviously there is potential for the
10 federal infrastructure money made available for that
11 kind of a P3 project, but it would be interesting I
12 think for us to know at least what the ballpark
13 estimate is for that work.

14 MR. MULLINS: Absolutely Mr. Chairman.

15 CHAIRMAN OBERMAN: If you could supply
16 that to us.

17 MR. MULLINS: Sure.

18 CHAIRMAN OBERMAN: That's all I have for
19 now Bill. Thank you.

20 MR. MULLINS: Thank you.

21 CHAIRMAN OBERMAN: Patrick?

22 BOARD MEMBER FUCHS: Hey Bill, I wondered

1 if you could summarize kind of in practice terms what
2 the service impact is of routing those intermodal
3 automotive trains over to the southern route? What
4 does that mean for customers, especially in light of
5 the issues we have going on.

6 MR. MULLINS: It certainly cuts transit
7 times. It cuts you know we don't have to do the
8 filet toupee operation. It's more efficient, it's on
9 a main line CSX route that is you know kept at the
10 highest standards. We can run it at faster speeds.
11 We don't you know as we discussed even the Pan Am
12 Southern route is still pretty dang good, but this
13 would improve the efficiencies, and add densities to
14 the operation, so it's --

15 BOARD MEMBER FUCHS: Do you have numbers
16 around the transit time Bill?

17 MR. MULLINS: I can provide that. I can
18 provide that. I don't believe that's in the record,
19 but I could provide that.

20 BOARD MEMBER FUCHS: That would be great,
21 thank you.

22 CHAIRMAN OBERMAN: Anyone else questions

1 for Bill?

2 VICE CHAIRMAN PRIMUS: Yeah I have a
3 couple. Hey Bill thanks for hanging in there this
4 late in the afternoon. I appreciate that. Would it
5 be fair to say that without access to the southern route
6 you guys would rethink you know moving forward on
7 this merger agreement?

8 MR. MULLINS: It's fair to say that if any
9 part of the merger agreement is changed we would
10 reconsider moving forward with this transaction.
11 That's how important the entire package is.

12 VICE CHAIRMAN PRIMUS: All right, but the
13 southern route is pretty significant though.

14 MR. MULLINS: It is a significant part.

15 VICE CHAIRMAN PRIMUS: Okay. How you know
16 given the fact that you know it's going to enable you
17 guys to move those 9,000 foot trains, as you said you
18 know, it's on a better track, so you're talking about
19 reliability and improved efficiencies. You know what
20 do you see going forward on the northern route? I
21 mean how much are you guys now that you know you're
22 taking that off and looking at the future of the

1 northern route, I mean what's your vision going
2 forward for the northern route?

3 MR. MULLINS: Well we hope B&E is the
4 operator who is going to operate this efficiently,
5 plus with improvements into all the infrastructure in
6 Ayer and other places that you know the route now has
7 taken intermodal trains today and a lot of capacity,
8 so everybody has an incentive now to put traffic over
9 there, and to focus on merchandise traffic.

10 So that's the bread and butter. That's
11 where Pan Am Southern makes most of its money, so
12 there's complete economic incentive to focus on that.

13 VICE CHAIRMAN PRIMUS: So you guys don't
14 really have any sort of vision to sort of go out and
15 create business for Norfolk Southern on that line?

16 MR. MULLINS: Well we have invest 400
17 million dollars, so we have every incentive to put
18 traffic over that line, but B&E is really you know,
19 as the contract operator with the pricing and the
20 service, it all depends. So yes, we do have an
21 economic incentive to move traffic over that, just as
22 we do today.

1 VICE CHAIRMAN PRIMUS: All right. So are
2 you expecting more growth to happen on the northern
3 route or the southern route in this deal?

4 MR. MULLINS: We're hoping for both. I
5 mean we haven't done a strategic study to you know
6 how much growth will be on the north, or how much
7 would be on the south. Certainly the southern
8 route, since that's new service with double stack,
9 we're expecting that to grow certainly over the
10 long-term if we're successful with our plan to move
11 more trucks off the highways. So you know we'd like
12 to see growth in both.

13 VICE CHAIRMAN PRIMUS: Okay. So given
14 that you're seeing growth in both, and given now the
15 access to the southern route, you know, what's your
16 timeline for you know the re-establishment of that
17 connection in Voorheesville?

18 You know it's not up and running now. You
19 know you've got to get that set up. I mean walk me
20 through the process of getting that up and
21 operational because again nothing goes through there
22 until that gets fixed.

1 MR. MULLINS: That is correct Vice
2 Chairman, and we think we can get that done in the
3 time period while the labor negotiations are taking
4 place, while the incoming agreements are put in
5 place, and so that by the time there is a changeover
6 to the B&E operations, that will be the place. You
7 know it's hard to say exact. We don't see that
8 taking any longer than it would take to get the B&E
9 out there to get that done.

10 VICE CHAIRMAN PRIMUS: And last question,
11 so how long do you expect it to take. I know there
12 has to be other work on the Southern line before you
13 can start putting those double stacks up. When do
14 you guys expect to be fully operational on the
15 southern route?

16 MR. MULLINS: it's hard to estimate, and
17 you know we've heard anywhere from six months to a
18 year. You know it just kind of depends when all the
19 infrastructure improvements are done, and when the
20 you know, the trains could start running. But
21 certainly we have every economic incentive to do this
22 as soon as possible, but I don't think we have an

1 exact -- we can't give you an exact timeframe, you
2 know an exact deadline.

3 VICE CHAIRMAN PRIMUS: Right. Yeah you
4 know what's the optimum time that you guys are hoping
5 to get, you've got to get Voorheesville up and
6 running, you've got to get a couple other things, so
7 what's on that? What's that timeline?

8 MR. MULLINS: I mean we'd like to get it
9 done in six months, but you know, that's our hope.

10 VICE CHAIRMAN PRIMUS: Okay, all right.
11 Thank you.

12 MR. MULLINS: Thank you.

13 CHAIRMAN OBERMAN: All right. Any further
14 questions for Bill?

15 MR. MULLINS: I have since heard the Board
16 members, and Mr. Chairman I've been told that it
17 would be an estimate of 300 million for the tunnel.

18 CHAIRMAN OBERMAN: Okay thank you.

19 MR. MULLINS: Still need the transit
20 times.

21 CHAIRMAN OBERMAN: Yeah, yeah. All right.
22 Bill I think you've escaped.

1 MR. MULLINS: Well thank you very much. I
2 appreciate that.

3 CHAIRMAN OBERMAN: All right. It's
4 getting late, it's five o'clock. Do you think we can
5 get through panel two and then take a short break
6 everybody comfortable with that? All right. I
7 would like to call up Panel Two, and just because
8 it's taken most of the day doesn't mean that I don't
9 have a soft spot in my heart for local elected
10 representatives, because I once was that.

11 So I greatly respect your interest and
12 desire to participate and give us your views, so let
13 me call up State Senator Adam Hinds, the former
14 Connecticut Deputy Speaker, and State Representative
15 David McCluskey, Massachusetts State Rep John
16 Barrett, III, New Hampshire State Senator Regina
17 Birdsell, and another Massachusetts State Senator
18 Patrick O'Connor.

19 Are all five of you there? I see Mr.
20 Hinds, Mr. McCluskey, Mr. Barrett, let's see who am I
21 missing, Ms. Birdsell and Mr. O'Connor, are you on?

22 MR. HINDS: I'll text Senator O'Connor and

1 find out where he is.

2 CHAIRMAN OBERMAN: Okay. He may have lost
3 patience with us, I wouldn't blame him. But you know
4 in order to move along if you don't mind, why don't
5 we start Senator Hinds with you.

6 SENATOR HINDS: Okay. Thank you Mr.
7 Chairman, and thanks to the Board. I appreciate the
8 process that you're undertaking, and I appreciate you
9 giving us the space to contribute to it. So good
10 evening to all of you. I'm currently the
11 Massachusetts State Senator representing the 52
12 western-most municipalities in the State Senate, and
13 I'm here to relay the perspective that there is a
14 genuine resurgence in rail, in passenger rail in
15 western Massachusetts at the moment, elevating the
16 importance of this decision and our attention to it.

17 And right now in our small corner of the
18 country where Representative Barrett is as well, we
19 have four new passenger rail services in the works.
20 One underway, and three more under study or ready to
21 begin. And so I would say that this resurgence in
22 passenger rail is viewed with considerable excitement

1 and urgency here, not the least of which because we
2 view this as in rail, as a part of how we adapt to a
3 changing economy in the new COVID reality, where
4 people can live and work from anywhere.

5 And so in a region like mine for it to
6 survive, and this is a region characterized by
7 population decline in recent census counts, we need
8 investments in basic infrastructure, and we need to
9 put in place the basic infrastructure like internet,
10 and like transportation, and namely rail connections
11 with economic centers.

12 These allow people to enjoy lower cost of
13 living outside of urban areas, a high quality of life
14 and much more. So importantly, we are on the cusp,
15 as you've heard today, of one significant service in
16 particular that I wanted to come in and talk about,
17 that will contribute to making such an original
18 economic connection, and that's the Berkshire Flyer
19 passenger rail service from New York City to
20 Pittsfield, Massachusetts in Berkshire County here in
21 western Massachusetts.

22 It's ready to start this summer as a

1 result of years of study and preparation by Amtrak,
2 by the Massachusetts Department of Transportation,
3 and in coordination with CSX. The pilot would start
4 as seasonal weekend service, i.e. incredibly limited
5 in scope, and it would cover about 35 miles from
6 Albany into Pittsfield in an effort to connect to the
7 rail from Manhattan to Albany and over to Pittsfield.

8 Now as I've previously testified, and I
9 know others have as well, in written form for myself,
10 that we've been concerned about the level of
11 cooperation encountered by CSX in the process of
12 promoting critical passenger rail lines. I'm here
13 now as someone who is changing my perspective on
14 that.

15 Recently, as has been noted today, CSX's
16 has conditionally made a commitment to the Berkshire
17 Flyer, and we hope that this commitment truly
18 continues to move forward in the positive direct that
19 it is today.

20 It's that type of positive relationship to
21 meet regional economic needs in both the movement of
22 goods and people, that will strengthen CSX in my

1 view, and its customers because entire regions of the
2 country will be able to flourish. I should note that
3 of course this includes not only the Berkshire Flyer,
4 but also the proposed east/west passenger rail from
5 Pittsfield to Springfield to Boston, which is just so
6 critical for connecting our Commonwealth.

7 This is my vision for how CSX can engage
8 positively with the communities it serves, and I'm
9 grateful that this is what I'm experiencing, this
10 positive interaction and engagement in the most
11 recent period. For that reason I look forward to
12 continued close work with CSX, and I look forward to
13 them continuing to meet necessary conditions as they
14 work to expand their footprint in providing critical
15 rail services through our region.

16 Thank you very much, and I appreciate your
17 time and consideration.

18 CHAIRMAN OBERMAN: Senator Hinds just one
19 question. I assume I know the answer, but I take it
20 you're pleased with the commitment that CSX filed
21 with us just last night with Amtrak?

22 SENATOR HINDS: Yeah, I mean obviously I

1 think with the understanding that any kind of capital
2 investment would be contingent on the outcomes of the
3 pilot, so we're hoping that this pilot is at least
4 two years, in large part, so that we can see you
5 know the numbers outside the Omicron surge, and
6 outside of a maybe a COVID moment.

7 And also we're trying to market into a New
8 York market which takes some time and effort given
9 the size, and so this is a multi-year effort, and
10 then working through how we make sure that we're not
11 interfering with critical freight coverage into
12 Worcester and beyond is something that we're all
13 onboard with, and we understand its importance of
14 working together here.

15 CHAIRMAN OBERMAN: All right. Thank you.

16 SENATOR HINDS: Thank you.

17 CHAIRMAN OBERMAN: Representative
18 McCluskey.

19 REPRESENTATIVE MCCLUSKEY: Good evening
20 Chairman Oberman. First of all full disclosure I
21 want to say that I was at the University of Chicago
22 with the college democrats when you were the

1 alderman on the north side, and I want to say for the
2 record that serving in the Chicago City Council,
3 especially during the council wars with A. Berdoliak,
4 and Harold Washington is far more difficult than
5 being a member of the Connecticut General Assembly,
6 so I just wanted to say that for the record.

7 CHAIRMAN OBERMAN: But David not more
8 difficult than being Chairman of the STB.

9 REPRESENTATIVE MCCLUSKEY: That maybe
10 yeah, okay, fair enough. Just for the record to the
11 members of the Surface Transportation Board. I am
12 David McCluskey, the former Deputy Speaker for the
13 Connecticut House of Representatives. I was a
14 long-time member of the Transportation Committee, and
15 I was co-Chair of the Transportation Bonding
16 Subcommittee.

17 In that last position I worked on a
18 landmark transportation funding bill which dedicated
19 monies for freight railroads for the first time in
20 many years, as well as revitalizing the Hartford line
21 for commuter service and the purchase of new
22 passenger cars for the New Haven line.

1 Since I left the legislature, I maintain
2 my advocacy for freight rail. In particular, I've
3 communicated with both state and local public
4 officials about the importance of freight rail,
5 including this proposed purchase of Pan Am by CSX.
6 Why do I care about freight rail?

7 I believe a merger in freight rail in
8 general serve many important public policy goals, in
9 particular, reducing highway congestion, reducing
10 damage to roads and bridges, improving air quality,
11 and reducing greenhouse gas emissions. I also want
12 to say I can confirm the representations of Mr.
13 Boychuk earlier regarding the quality of Pan Am
14 Southern in Connecticut.

15 I actually have high railed the line that
16 Pan Am Southern owns in Connecticut from a
17 Burlington, Connecticut to Waterbury, and it is in a
18 state of poor repair. I actually toured it as
19 recently as April of 2021 because of an interest I
20 had. There was a development going on in Plainville,
21 Connecticut, which is very near the remnants of a
22 rail line that's still in operation called the Canal

1 route.

2 And I was very disappointed on the
3 quality. And in contrast, and I will say there have
4 been numerous derailments on that route, and there
5 have been numerous complaints of a lack of
6 responsiveness of Pan Am regarding those derailments,
7 and some complaints by some of the shippers that Pan
8 Am interfaces with.

9 In contrast, I have worked with Genesee
10 Wyoming as you know, they have three other lines in
11 Connecticut, and I have not received any of the
12 complaints regarding the lines that they have in
13 Connecticut in contrast to the complaints I have
14 heard about Pan Am.

15 I know that the G&W has worked with not
16 only state officials, but federal officials in
17 improving the Palmer line. And one other thing I did
18 want to say is that prior to the State of
19 Massachusetts buying the Connecticut River route from
20 Springfield to the Vermont border, that line was in
21 such poor condition that the Amtrak Vermonter had to
22 get off the route at Springfield and take a G&W

1 route, the Palmer line, north.

2 When the State of Massachusetts bought it,
3 they brought it into a state of good repair, but
4 under Pan Am Southern at the time it was in a real
5 poor condition. So I think G&W works well in
6 Connecticut.

7 They are a great partner to work with, and
8 I think bringing another Class 1 railroad into the
9 State of Connecticut, a much more active presence,
10 will only serve to increase the likelihood that more
11 freight gets diverted to rail in Connecticut. Thank
12 you. I'd be happy to answer any questions you have.

13 CHAIRMAN OBERMAN: Thank you David. Any
14 questions? All right. Thank you very much and you
15 obviously had great success at Connecticut politics
16 having gotten schooled at the University of Chicago.

17 REPRESENTATIVE MCCLUSKEY: Thank you.

18 CHAIRMAN OBERMAN: I'm sure. All right.
19 Representative Barrett?

20 REPRESENTATIVE BARRETT: Yes Mr. Chairman.
21 I don't know if I'm at the wrong hearing after what I
22 just heard about the Hoosac Tunnel, but before I get

1 into my formal testimony here, I would like to
2 encourage the members that maybe you've already read
3 it, but go back and read about the construction of
4 the Hoosac Tunnel and what a masterful feat it was
5 some 145-150 years ago, and why I will say in this
6 testimony beforehand, if they don't do more than what
7 I just heard, there will be a new revolution in the
8 State of Massachusetts.

9 But that being said let me first of all
10 thank you Mr. Chairman for the opportunity to talk
11 about the proposed acquisition of the Pan Am Railways
12 by CX. As a State Representative from the first
13 Berkshire District of Massachusetts, I feel compelled
14 to offer testimony today regarding this acquisition
15 of Pan Am by CSX.

16 The testimony I've given today is based
17 upon what I've observed in my previous experience as
18 Mayor of the City of North Adams for 26 years, and my
19 four plus years as State Representative from the
20 first Berkshire District. During my time as Mayor
21 and Representative, I had a unique and interesting
22 perspective.

1 As I saw firsthand how Pan Am operating
2 during my time as Mayor, and later as State
3 Representative. I can say quite honestly that I can
4 never recall anything remotely nice about my dealings
5 with them. In my interactions with officials from
6 that company Pan Am thought I found them to be most
7 uncooperative in most situations.

8 When making any type of request to them
9 their favorite word was usually no. Whether it was
10 getting them to slow trains down on certain stretches
11 along the route, getting approval to build a railroad
12 crossing for new industrial park, even getting them
13 to stop the practicing of running engines of a parked
14 train in a neighborhood for over 24 hours in duration
15 was ignored.

16 They didn't seem to care about it being a
17 nuisance, or the impact those emissions were going to
18 have on the surrounding environment. They didn't
19 care about the people it impacted, or the pollution
20 that they were spreading. The arrogance displayed by
21 the company officials was something I had never
22 experienced before, nor have I experienced since.

1 All I heard from them say every time that
2 I spoke with them that the federal and state laws
3 have given us a lot of power, and there isn't much a
4 local community or state can do about it.

5 While certainly this may be true, this
6 condescending approach is unacceptable, and of
7 critical importance to me. Our railroads must be
8 operated efficiently, and also in the best interest
9 of the abutters, as well as the users. I have heard
10 much in today's testimony about how protecting the
11 public, yet I am not seeing over the past 30 years
12 that happening. The real public that is out there.

13 I want a company that not only makes good
14 business decisions, but also who acts in the best
15 interest of the communities they are in. When I hear
16 the words protect it, protect the public. Just who
17 is this public? I've tried my hardest to forget
18 those prior experiences with Pan Am, but they just
19 sit with me, and I have tried to be objective.

20 It however, all comes back around to how
21 railroads deal with people and communities, and with
22 the public in general. How they interact with their

1 neighbors. Pan Am never cared about building
2 relationships. The question before this board is
3 whether the acquisition by CSX or Pan Am will be in
4 the best interest of the region they will interact
5 with, and as well as their users.

6 Will there be an approval if CSX acquires
7 Pan Am? Will they protect the real public who they
8 interact with every day? It is all about business
9 and making money, and we understand that, and I'm all
10 for it. But is the greater public being served? I
11 would like to address an issue which is of great
12 importance to those who live in the rural areas of
13 Massachusetts, and other places in New England.

14 I represent one of the greatest concerns I
15 have about CSX acquiring Pan Am is that of one of
16 passenger service from Boston to Albany, New York.
17 Since the last census 10 years ago, only two
18 counties in Massachusetts have lost population --
19 Franklin County and Berkshire County. These two
20 counties are contiguous, and they are both served by
21 rail, which is owned by Pan Am, and is often
22 referred to as the northern tier rail line.

1 Due to the persistence of my colleagues in
2 the legislature, the Mass Department of
3 Transportation has begun a study to determine the
4 feasibility of whether commuter service between
5 Boston and North Adams is doable. Pan Am has never
6 shown any interest in passenger service along the
7 northern tier.

8 If the northern Berkshire and Franklin
9 County hopes to see any significant growth over the
10 next decade, it must have two things happen. Improve
11 broadband, which is being addressed in Congress with
12 the ARPA money in the State of Massachusetts, and
13 passenger service from Boston to North Adams at
14 least.

15 People are moving west, and work places
16 are changing with adequate passenger service the
17 benefits to these counties will be enormous. When I
18 met with CSX officials they assured me that they
19 would take a serious look at commuter service along
20 the northern tier. I'm now questioning whether I met
21 with the correct people.

22 Passenger service along this stretch of

1 railroad is critical to the economic growth in
2 northern Berkshire County, and I was very direct
3 letting them know that they better be serious in
4 honoring their commitment to explore commuter service
5 on the northern tier.

6 I also told them if they didn't follow
7 through on their commitment I would become their
8 worst nightmare. While I can be sure that it will
9 happen, I was -- my statement original said I am
10 confident, I was confident that CSX will honor their
11 commitment.

12 The involvement of Genesee and Wyoming in
13 this transaction will provide the experience and
14 expertise of bringing commuter service to the
15 northern tier, if it is done right. As a Class 1
16 railroad CSX will have more resources available to
17 make the necessary investments needed, and there are
18 many safety issues which must be addressed.

19 The Hoosac Tunnel, which was previously
20 referenced, was closed nearly two months in 2020 due
21 to structural wear and tear according to the words of
22 a spokesman from P&E. CSX will have the necessary

1 resources to not only maintain this historical
2 tunnel, but also to begin upgrading the tunnel
3 itself.

4 As stated today double stack freight
5 trains will not be able to use this historic tunnel.
6 It also should be noted that when I referenced
7 reading about the history of this, and how it was
8 built, and the lives that were lost in building it,
9 and then they tell me in the year of 2022 that it
10 can't be fixed, and made available at a reasonable
11 price, it's almost laughable.

12 When I first learned of the potential
13 acquisition by CSX I was unsure as to whether it
14 would be in the best interests of the region I
15 represent. I don't like everything associated with
16 the merger, but the positives far outweigh the
17 negatives. I hope that if this acquisition is
18 approved that CSX will live up to its commitments
19 they have made, and provide us with the best railroad
20 possible.

21 It's what we deserve, and we should take
22 nothing less. And I hope that the Board will work to

1 ensure that these rail companies keep their promises
2 and commitments, especially ensuring the commitments
3 and statements made today by the representatives
4 from the interest here will be kept. As a public
5 official this type of hearing is usually our first
6 and last chance we may have to influence how rail
7 service is provided.

8 I would ask that the Board consider, I can
9 no longer support this on the information that I
10 received in this testimony today about the Hoosac
11 Tunnel, and the lack of commitment to the northern
12 tier. It is a must, and it has to be looked at very
13 carefully. We're no different than anybody else, and
14 we deserve to have the same attention paid to us.
15 Mr. Chairman I thank you and the Board today for
16 allowing me to testify here thank you.

17 CHAIRMAN OBERMAN: Thank you
18 Representative Barrett. I just have one question.
19 Have you submitted any of your comments in writing to
20 us?

21 REPRESENTATIVE BARRETT: No, but I
22 certainly will.

1 CHAIRMAN OBERMAN: Well I would like to
2 you referenced commitments in your discussions with
3 CSX, and without you know extending the hearing
4 because it's late in the day --

5 REPRESENTATIVE BARRETT: Mr. Chairman if I
6 could just interrupt. I've been here since 9:30 this
7 morning, so I'm willing to stay a few extra minutes.

8 CHAIRMAN OBERMAN: All right. Well I
9 appreciate that. What I'd like to do is so that it's
10 clear is if you would submit to us perhaps in a
11 written comment, if you have the time, what you
12 understand the commitments that CSX made in your
13 discussions with them. They may not be the same
14 commitments they're willing to make to us, but that
15 has different legal consequences.

16 But I'd at least like to know what you
17 understand CSX and B&E, if you've talked to them
18 about what kind of commitments they have made at
19 least to you and to your community, that would be
20 important for us to know.

21 REPRESENTATIVE BARRETT: I certain will
22 Mr. Chairman.

1 CHAIRMAN OBERMAN: Yeah, and with
2 precision, because we're dealing with you know a
3 legal decision that we have to make one way or the
4 other.

5 REPRESENTATIVE BARRETT: Well I would like
6 to make it clear that the commitment, and I can say
7 this verbally today, that they would take a long,
8 hard look in, but I will put that in writing, or
9 anything that you would like.

10 CHAIRMAN OBERMAN: And are you
11 specifically referring to a commuter type service to
12 North Adams as distinguished from another Amtrak
13 train?

14 REPRESENTATIVE BARRETT: The commuter
15 service going from Boston basically along the
16 northern tier of which the State of Massachusetts has
17 now begun a study, a feasibility study on to
18 address.

19 CHAIRMAN OBERMAN: All right. So well I
20 much appreciate that precision in language is the key
21 for us, so that's why I wanted you to meet specific.
22 All right Patrick?

1 VICE CHAIRMAN PRIMUS: No I just real
2 quick, John I want to tell you I appreciate your
3 comments. You know I hope I speak for everyone on
4 the Board, you know I've been here a little over a
5 year, but I can tell you that the public interest
6 weighs very heavily on the minds of folks, members
7 here on the Board.

8 We discuss this quite a bit, and fully
9 recognize how much public interest plays in this
10 decision as well, and so you know, I take your
11 comments very seriously, and just wanted you to know
12 that I believe the Board does too moving forward.

13 REPRESENTATIVE BARRETT: Thank you. I
14 appreciate that.

15 BOARD MEMBER FUCHS: I very much
16 appreciate the comments as well. I just want to ask
17 a quick, clarifying question. Representative Barrett
18 would you say that your concerns about the commitment
19 to the Hoosac Tunnel are caused, or exacerbated by
20 the transaction, or is it that it's just not the
21 parties to the transaction haven't made the
22 commitment that you'd like to see?

1 REPRESENTATIVE BARRETT: No. They made a
2 commitment that they would look at it. They didn't
3 make a commitment to build or do anything, but they
4 made a commitment. But I'm hearing testimony from
5 the speaker on the northern southern, his name I
6 can't even think of right now, but you know who I'm
7 referring to, that basically they don't even know if
8 they're going to go ahead with this deal, and things
9 like that concerning the Hoosac Tunnel. I should
10 have been speaking to them.

11 BOARD MEMBER FUCHS: What I'm asking
12 though is given your past interactions with Pan Am
13 and the Norfolk Southern is a joint owner already, as
14 it stands today, absent any transaction there would
15 still be this very serious concern you raised.

16 REPRESENTATIVE BARRETT: Yes. Yes.

17 BOARD MEMBER FUCHS: It'd probably be
18 greater than post transaction?

19 REPRESENTATIVE BARRETT: Yes, yes,
20 absolutely. They had to close it down. I don't know
21 what's inside that tunnel, but from what I'm told
22 it's in a dangerous situation, immediate work -- it

1 should be addressed immediately. I mean they closed
2 down for two months I believe back in April of 2020.
3 There's been other concerns, there's been washouts.

4 It's a serious situation which has to be
5 addressed, but you know I'm listening to the money
6 transactions from the Southern Railroad of what
7 they're going to talk -- it's going to take a lot of
8 money, and I'm assuming that because of the Class 1
9 designation be given to CSX, they would be addressing
10 that.

11 Because one thing that I've known, and I'm
12 not a railroad authority by any stretch, was I did
13 know that double stack cars weren't going to be able
14 to get through there. And I said my God that's going
15 to be perfect for more transportation, so if that
16 doesn't happen, and they can't fix that what's going
17 to happen now?

18 That's throws something into this that I
19 think has to be taken into consideration. Who is
20 going to pay for it?

21 BOARD MEMBER FUCHS: I appreciate it thank
22 you very much.

1 REPRESENTATIVE BARRETT: Thank you.

2 CHAIRMAN OBERMAN: Thank you

3 Representative Barrett.

4 REPRESENTATIVE BARRETT: Thank you.

5 CHAIRMAN OBERMAN: If there are no other
6 questions we will go to Senator Birdsell. Senator?

7 SENATOR BIRDSELL: Thank you. Thank you
8 Mr. Chair, and I just want to say good afternoon or
9 good evening at this point, and thank you for
10 allowing me to weigh in on this critical transaction
11 to enhance freight rail operations in New England
12 that's pending before you today.

13 My name for the record is Senator Regina
14 Birdsell. I have proudly served my state since 2010,
15 representing Hamstead and Kingston in the House of
16 Representatives for four years, and the State Senate
17 now for almost eight years. In my current capacity I
18 also serve as Chair of the New Hampshire State Senate
19 Transportation Committee, so therefore I have a
20 vested interest in seeing our transportation system
21 managed most safely and efficiently.

22 As a dedicated public servant with a deep

1 knowledge of the ways and means of transportation in
2 New Hampshire, and the greater New England region,
3 I'd like to express my complete support for the
4 proposed merger between CSX and Pan Am Railways.

5 I believe this merger will bring forth
6 numerous benefits to New England by improving our
7 infrastructure and our environment, and the economy.
8 CSX has made it clear it is committed to investing
9 heavily in Pan Am's rail infrastructure, which is in
10 dire need of increased maintenance and modernization.

11 The necessary repairs and upgrades are
12 simply not feasible for Pan Am financially, but they
13 are for CSX, a Class 1 railroad with a stellar
14 reputation, which is in part why I stand behind the
15 deal. By implementing its best in class operations,
16 and elevating the current infrastructure to the
17 company's high operational and service standards,
18 freight and passenger rail operations in New England
19 will significantly improve.

20 This will bring with it many benefits to
21 freight rail, and to the businesses that depend on
22 it, as well as the passenger rail companies that rely

1 on the shared infrastructure. Excuse me,
2 furthermore, this would bring additional Class 1 rail
3 service into New England.

4 The infrastructure improvements that will
5 be made possible by CSX's investment will advance the
6 Pan Am network capabilities far beyond what they are
7 currently, which will lead to improved safety and
8 enhanced maintenance. This transaction will be a
9 benefit for my constituents as CSX's investment will
10 make both passenger and freight services far more
11 safe and efficient.

12 The environmental benefits is also
13 significant given CSX's record of investing in, and
14 implementing new technologies to make rail operations
15 more effective and sustainable. CSX is the most fuel
16 efficient freight rail operator in the United States,
17 moving one ton of freight 533 miles on a single
18 gallon of fuel, something I wish my car would do.

19 Expanded train capacity will greatly
20 reduce the number of trucks operating in the New
21 England region, which means that there were will be
22 less congestion on the road, fewer pollutants in the

1 air, including emissions of greenhouse gases, and
2 their commitment to efficiency and sustainability is
3 extremely encouraging, and I believe that New England
4 stands to benefit for decades to become one of the
5 company's strategic forward thinking.

6 It is my duty as a Representative, and a
7 Senator of the people of New Hampshire, to advocate
8 for, and support opportunities that foster economic
9 development, increase the quality of life, and
10 benefit the communities that we serve. It is for
11 these reasons that I fully support CSX's proposed
12 acquisition of Pan Am Railways, and I'm open to any
13 questions if I can.

14 CHAIRMAN OBERMAN: Senator thank you so
15 much for staying with us throughout this long day.
16 Much appreciated.

17 SENATOR BIRDSSELL: I got some of my
18 Christmas decorations down so.

19 CHAIRMAN OBERMAN: I hope everybody was as
20 productive while they were listening. Any questions
21 for Senator Birdsell? All right. Thank you all.
22 Senator O'Connor apparently had another commitment,

1 so I would like to somehow if we could communicate to
2 him to let him know we will hear him tomorrow if he
3 can appear.

4 Perhaps Senator Hinds, I don't mean to get
5 involved with the local political relationships, but
6 I'm taking it that you know him well enough that
7 maybe you can let him know to contact our people,
8 either Scott Zimmerman or Valerie Quinn, and we'll
9 arrange for him to speak when he's available tomorrow
10 if he still wants to.

11 SENATOR HINDS: Will do, thanks.

12 CHAIRMAN: Would much appreciate it. At
13 this point the next panel is Panel 3. One of the
14 members of that panel had to take off as well, and is
15 going to testify tomorrow. That leaves four people.
16 I'd like to take a 10 minute break, we've been going
17 here for a couple of hours, and I'm sure people need
18 a quick break, and get back and hear from Panel 3.

19 And depending on the length of time that
20 takes, I'd still like to see if we could hear from
21 Panel 4 this afternoon, but if we can't we'll start
22 with Panel 4 in the morning. So with that it is

1 5:33, let's get back here at 5:43 with Panel 3, and
2 just so we know it's Seth Hankowski, Dean Boylan,
3 Robert Brown, and Steven Cushman. See you all in now
4 9 minutes, thank you.

5 (Break)

6 CHAIRMAN OBERMAN: All right everybody.
7 We are back in session. I'd like to call up Panel 3.
8 Seth Hankowski who is representing All States
9 Asphalt, Dean Boylan who represents Boston Sand and
10 Gravel, Robert Brown, Broco Oil, and Steven Cushman,
11 Cushman Lumber. And I think we'll start in that
12 order. Mr. Hankowski are you here? I wonder if he
13 had to leave. Well let's go to the next person and
14 maybe he'll come back, and I see Dean Boylan, so I
15 know he's there, so Mr. Boylan why don't you take the
16 floor.

17 MR. BOYLAN: Mr. Chairman, thank you very
18 much and Board members, very much appreciate the
19 opportunity to give my views on the transaction. I
20 know obviously we're running late, so I'll try to
21 make this very brief.

22 My name is Dean Boylan. I'm the President

1 of Boston Sand and Gravel Company located in Boston,
2 Mass. I'm also the President of two of our wholly
3 owned subsidiaries. One is the New Hampshire North
4 Coast Railroad. Another is Ossipee Aggregates, both
5 located in Ossipee, New Hampshire.

6 Boston Sand was founded in 1914. We
7 produce and deliver ready mix concrete throughout the
8 Boston area. And we have participated in many of the
9 large infrastructure projects in downtown Boston,
10 obviously all of the building in downtown Boston.

11 Ossipee is a wholly owned subsidiary which
12 operates in Ossipee, New Hampshire, and produces
13 construction aggregate for our Boston operations.
14 New Hampshire North Coast is another wholly owned
15 subsidiary, which is a 42 mile long short line
16 railroad founded in 1985. It connects the short line
17 connects Ossipee Aggregates to the Pan Am main line
18 in Rollinsford, New Hampshire.

19 We have worked with Pan Am, Springfield
20 Terminal, and prior to them the Boston main since the
21 1960's, and our operation now in Boston frankly is
22 totally dependent on rail, which connects our main

1 aggregate source to our ready mix operations.

2 So I am here to speak in support of the

3 merger of

4 Springfield terminal into CSX Transportation. I

5 believe I've been told that our small little 42 mile

6 short line is the largest in terms of tonnage moved

7 in New Hampshire. We move approximately 6,000 cars

8 per year on our short line, roughly 5,000 of those

9 cars are moved to our internal operations, both in

10 Rochester, New Hampshire, all the way down to Boston.

11 We move roughly another 1,000 cars for

12 outside customers, propane, steel, waste oil. I

13 believe later on you'll be hearing from our propane

14 customer, obviously very critical that we get good

15 service, and give them good service for the winter

16 months throughout New Hampshire.

17 The cars that our short line ships

18 connecting to the main line takes approximately 16 to

19 17,000 trucks off the road annually, and allows us to

20 operate seamlessly in our main operation. We've had

21 a good, very strong relationship with the Springfield

22 terminal over many years, and we're looking forward

1 to continuing that strong relationship with CSX.

2 We feel that our short line will have
3 better access to national markets with this
4 transaction, and we feel that we will have continued,
5 efficient, reliable and safe service with the
6 commitment that CSX has made to invest in the
7 infrastructure. So we are strongly in support of
8 this transaction, and I very much appreciate the time
9 that you've afforded me, thank you.

10 CHAIRMAN OBERMAN: Well thank you much Mr.
11 Boylan, I appreciate your patience in taking the time
12 to stay with us, and I don't have any questions. Do
13 any of the other members? No? Very well stated.
14 Much appreciated.

15 MR. BOYLAN: Thank you very much.

16 CHAIRMAN OBERMAN: All right. Robert
17 Brown, Broco Oil Company.

18 MR. BROWN: Yes sir. How are you doing
19 Mr. Chairman?

20 CHAIRMAN OBERMAN: Very well thank you.

21 MR. BROWN: Good, good, I know it's a long
22 day and I thank you Board members for giving me the

1 opportunity to speak, and I'll just give you a brief
2 intro to what we do. I'm the owner of Broco Oil. I
3 was a start-up company out of the military in 2007.
4 So we started selling heating oil as our base.

5 And as we've grown, a lot of word of
6 mouth, we've become especially a big player in the
7 bio-diesel movement that we started in 2019 when we
8 purchased an old property in Haverhill,
9 Massachusetts where we now operate our biodiesel
10 terminals. That is our headquarters.

11 In 2019 when we first opened it there was
12 no real great incentives available. That is now
13 fully underway for the northeast, and getting
14 ourselves to a carbon neutral for heating oils and
15 diesel fuel.

16 So these new incentives that just took
17 place this year has really increased the volume of
18 our biodiesel imports, and so not only are we
19 supporting ourselves with the transportation of
20 biodiesel into our terminal, and selling that into
21 the markets to the northeast, we've realized we have
22 a really good strategic location to give the

1 northeast these incentives by the capacity we have in
2 Haverhill.

3 So it's been a real joy to deal with Pan
4 Am as we started you know bringing in one car at a
5 time. They really worked with us to help grow our
6 business. And even with the local rail yard the
7 service has been really, really good, so I can only
8 imagine the merger with Pan Am and Springfield
9 terminal where it will only be better with CSX, and
10 dealing with a single rail line will increase our
11 opportunities to import more biodiesel by enabling us
12 to capture all the opportunities with these suppliers
13 that are mostly situated in the Midwest, and
14 California.

15 So my company and I really look forward to
16 working with the CSX team, expanding our
17 opportunities, and getting the northeast to carbon
18 neutral with CSX being our main support and
19 supplier.

20 CHAIRMAN OBERMAN: All right. Thank you
21 Mr. Brown. I love hearing carbon neutral.

22 MR. BROWN: Thank you.

1 CHAIRMAN OBERMAN: Any questions for Mr.
2 Brown?

3 BOARD MEMBER HEDLUND: This is not a
4 question, but maybe more of a comment. First of all
5 Mr. Brown thank you for your service, and then
6 secondly, I hope you're going to have a great future
7 in selling biodiesel to the railroads.

8 MR. BROWN: Yes. That is our plan.
9 We have strong initiatives in place, and that was one
10 of the things I was looking forward to is helping we
11 have partnerships with REG selling distally
12 biodiesel, I think that would be amazing to have an
13 opportunity to help you and your team as well reach
14 that goal, so we look forward to working with you
15 guys.

16 BOARD MEMBER HEDLUND: Thank you.

17 CHAIRMAN OBERMAN: Okay. Thank you very
18 much. All right. So our next witness is Steven
19 Cushman.

20 MR. CUSHMAN: Thank you Mr. Chairman.
21 Good evening, and I just have some very brief remarks
22 to hopefully finish out the day here. My name is

1 Steven Cushman. I am Vice President of Cushman
2 Lumber Company. We are a family owned lumber trading
3 company located in Charlestown, New Hampshire.

4 We have two sidings at our facility that
5 are jointly served by Pan Am Southern, and Genesee
6 and Wyoming. One of the siting's is exclusively
7 served by Pan Am Southern, so we are in full support
8 of the CSX Pan Am merger, and that it should allow us
9 to access some new markets that CSX can connect to
10 that we weren't able to access previously.

11 So we are in full support of this, and I
12 am open to questions. Thank you for letting me
13 speak.

14 CHAIRMAN OBERMAN: Thank you Mr. Cushman.
15 That was short and sweet.

16 MR. CUSHMAN: I'm a man of few words.

17 CHAIRMAN OBERMAN: Yeah.

18 MR. CUSHMAN: Straight and to the point, I
19 like that.

20 CHAIRMAN OBERMAN: Less is more. All
21 right. Are there any questions for Mr. Cushman?
22 Okay. And has Mr. Hankowski rejoined us, or did we

1 lose him for the evening? All right. We perhaps we
2 can somehow communicate with him, and we'll let him
3 speak tomorrow if he's still available. So thank you
4 very much Panel 3, I much appreciate your patience.
5 And with that let's move on to Panel 4.

6 Panel 4 is five folks. Vince Paperiello
7 from the HUB group, Rich Spallone from Greater Boston
8 Transload, Dustin Ohlman from Swift Transportation,
9 Brian Law from Law Logistics, and Steven DiCarlo,
10 Javelin Global Commodities. So let's I'm looking to
11 see who is showing up on the screen and I'm not
12 seeing anybody, but is Mr. Paperiello there?

13 MR. PAPERIELLO: I'm here, can you hear
14 me?

15 CHAIRMAN OBERMAN: Yes I can't see you,
16 but I can hear you.

17 MR. PAPERIELLO: Yeah my video is not
18 loading. Let's try this again. Here we go.

19 CHAIRMAN OBERMAN: There you are, okay.

20 MR. PAPERIELLO: All right. Thank you Mr.
21 Chairman, ladies and gentlemen of the STB, thank you
22 for allowing me to speak at this hearing. I'm Vince

1 Paperiello, President of Intermodal and Chief
2 Solutions Officer for Hub Group. Hub Group is one of
3 the key domestic intermodal service providers in
4 North America.

5 We're a major carrier to and from Boston
6 in the New England market, and we primarily rely on
7 Norfolk Southern's direct intermodal rail services to
8 and from their Ayer, Massachusetts, intermodal ramp.
9 Our customer base includes some of the larger
10 retail, CPG and durable goods shippers in North
11 America.

12 The Norfolk Southern Services allow us to
13 offer these shippers competitive and economical
14 options for the shipping needs between New England
15 and the rest of North America. The current Norfolk
16 Southern service is challenged because it relies on
17 that route that transits through the Hoosac Tunnel.

18 The tunnel as we've heard does not have
19 the necessary clearance for double stack intermodal,
20 so it adds additional touches to the containers, and
21 time while eliminating the overall capacity in the
22 route. In 2021, the performances schedule was run

1 actually only around 20 percent, and the route has
2 been limited by volume metering 18 weeks of the year.

3 So according to the application submitted
4 by CSX, the proposed transaction will preserve
5 critical access for Norfolk Southern to New England.
6 My understanding is the agreement reached between CSX
7 and Norfolk Southern will preserve competitive rail
8 options, will increase fluidity of rail operations in
9 New England.

10 In particular, CSX and NS have stated
11 they'll invest capital to open the route to double
12 stack, and this investment will expand capacity to
13 reduce manual workflow, lower operating expense, and
14 lead to improved service and reliability. By having
15 these competitive options is a key benefit of this
16 transaction, and importantly for Hub Group, the
17 proposed transaction will significantly expand
18 intermodal rail transportation in New England by
19 facilitating that clear double stacked route on
20 Norfolk Southern and CSX.

21 So Hub Group is a major shipper on NS,
22 supports this proposed merger, and believes that our

1 business, along with our customers will benefit from
2 approval of the transaction. We also believe this
3 merger will increase competition in the region by
4 creating multiple high service and competing rail
5 options for the New England market, which in turn
6 could translate into shipments moving off of trucks
7 and onto the rail, reducing CO2 emissions, and
8 reducing traffic and congestion.

9 So we respectfully ask the Board to give
10 the proposed transaction, including the NS's trackage
11 rate, your full and fair consideration consistent
12 with applicable statutes and regulations, and I do
13 appreciate the time and your consideration, and take
14 any questions you might have.

15 CHAIRMAN OBERMAN: Thank you Mr.
16 Paperiello. Just one quick one. You do not ship on
17 CSX into New England, just NS?

18 MR. PAPERIELLO: We do not. We are
19 entirely on the Norfolk Southern Railroad.

20 CHAIRMAN OBERMAN: All right. I think
21 Patrick had a question.

22 BOARD MEMBER FUCHS: Thank you. I know

1 that Hub Group keeps a close eye on its metrics, and
2 I'm sort of wondering you mentioned the single stack
3 Hoosac Tunnel issue. What does that mean in
4 practical terms for delay for shippers?

5 MR. PAPERIELLO: Yeah, so you've heard
6 Norfolk Southern talk earlier. They have to run what
7 they call a filet toupee operation at their ramp in
8 the Albany market. So we ship you know from Chicago
9 through Albany. When the train hits Albany they have
10 to pull off the top layer, create a second single
11 stack train and run through the tunnel.

12 And the same thing from Ayer,
13 Massachusetts back. They have to get a single stack,
14 and then reformulate a double stack train. So that
15 double stack, it's going to reduce our costs, you
16 know they'll be able to be more competitive in price
17 because they're not running as long a train, they're
18 double stacked.

19 They're going to take out all those work
20 events in Albany, and yeah we've been constrained in
21 capacity in that corridor for years. There's a great
22 opportunity to take trucks off the road, and this

1 transaction and opening up to double stack for those
2 Norfolk Southern, and CSX, will create a much
3 stronger competitive environment, and create more
4 capacity in the corridor.

5 BOARD MEMBER FUCHS: And it's your view
6 both that the double stack enables better pricing,
7 but also that even more compensable in future
8 liability decreased transit times?

9 MR. PAPERIELLO: Absolutely.

10 BOARD MEMBER FUCHS: And do you have any
11 expectation for on that latter part of you know any
12 numbers that you could put around that? I know I
13 asked NS the same question, but I'm just wondering as
14 you project out your business.

15 MR. PAPERIELLO: Yeah, you know it's
16 really tough to say until they actually execute it,
17 but I would envision the transit is going to increase
18 by at least a day, and maybe two. And capacity you
19 know just by definition has to double.

20 BOARD MEMBER FUCHS: Thank you.

21 MR. PAPERIELLO: You're welcome, thank
22 you.

1 CHAIRMAN OBERMAN: Thank you. Any other
2 questions for Mr. Paperiello? All right. Thank you
3 very much.

4 MR. PAPERIELLO: All right thank you for
5 your time.

6 CHAIRMAN OBERMAN: Thank you. Mr. Rich
7 Spallone.

8 MR. SPALLONE: Good evening Mr. Chairman,
9 other members. I'm the President and owner of
10 Greater Boston Transload. We have an operation --
11 we've been fortunate enough to have an operation in
12 North Billerica at the headquarters for the Pan Am
13 Railways. We occupy probably about 10 acres of space
14 that was unused, and in 2014 they gave us the
15 opportunity to create a good business there.

16 And we've been very, very fortunate with
17 the executive team at the Pan Am, and everything
18 they've been able to do to assist us and help us with
19 our growth. We started with two employees, and we're
20 up to ten. And this merger, having the CSX come in
21 would be just very welcome to us. It opens up more
22 markets for us to be transloading.

1 We've been not able to be so competitive
2 on products and materials coming from the west coast
3 through the Chicago gateway, so that's really going
4 to enhance our product offering, and what we can do
5 for our existing customer base.

6 And we also transload some liquid chemical
7 that goes into the MWRA's treatment facilities,
8 namely Deer Island in Boston, which treats the water
9 there, and having that product readily available in a
10 much better flow will definitely help our business,
11 and our customer's business as well.

12 So we really welcome this transaction, and
13 look for favorable approval, so it would be very good
14 for us.

15 CHAIRMAN OBERMAN: All right. Thank you
16 very much. Any questions? All right. Thank you Mr.
17 Spallone, much appreciated.

18 MR. SPALLONE: Thank you for your time.

19 CHAIRMAN OBERMAN: Is Mr. Ohlman here?
20 There he is Dustin Ohlman you're up.

21 MR. OHLMAN: Good evening everyone.
22 Thanks for having me, and allowing me to address the

1 Board to you. Coming to you we believe that the
2 acquisition from the CSX is a great opportunity for
3 the American supply chain overall. We think with the
4 increased capacity that it will generate the strong
5 operational background that the CSX will bring into
6 the market, as well as allowing the NS to compete
7 throughout New England, you know Albany, and as well
8 into Ayer, is something that will bring a significant
9 amount of value to the overall supply chain of our
10 customer.

11 So we're confident in the B&E's ability to
12 operate, and we're excited about the potential
13 increase and competitiveness the B&E will have on the
14 ability for us, as well as other groups to compete
15 for customer share heading into New England on a
16 product that would be significantly improved over
17 what many customers experience today.

18 So we're fully supportive of this
19 acquisition, and hope you guys give it consideration,
20 and can take any questions or comments that you guys
21 may have.

22 CHAIRMAN OBERMAN: Thank you Mr. Ohlman.

1 Any questions? All right. Again much appreciate
2 your patience, and sticking out through the day, we
3 know it was a long day. Mr. Law I am told could not
4 stay, and hopefully will be able to testify tomorrow.
5 Is Steven DiCarlo still with us?

6 MR. DICARLO: Yes sir. Yes hi Mr.
7 Chairman. Thanks for the opportunity to speak. I'm
8 Steve DiCarlo, Vice President of Fuel Management for
9 Javelin Global Commodities. I'll give you a little
10 quick background on Javelin.

11 It's a global commodities marketing,
12 trading, logistics procurement. We're focused on
13 coal, steel, oil and gas, green carbon, renewable
14 fuels, and logistics overall. It's headquartered in
15 London, England, with approximately 85 employees.

16 Javelin currently manages over 70 million
17 tons of commodities in 2021, and has become the
18 largest user of bulk commodity transport in North
19 America, including 60 million tons of commodities on
20 the U.S. railways, so we deal with all the Class 1
21 railroads in the U.S., primarily moving coal.

22 Also move 25 million tons of commodities

1 through U.S. ports and over 1,000 barges and 250
2 ocean going vessels, so Javelin has a pretty large
3 footprint in logistics. Short and sweet we have
4 some current customers in the New England area, so we
5 certainly support you know CSX's plans to invest in
6 the Pan Am network, and the acquisition will support
7 our business initiatives, with current customers, and
8 hopefully future customers.

9 You know one of the things that CSX should
10 bring with this acquisition is some stability and
11 operational consistency, which is what we need if
12 we're going to grow our business in the New England
13 area, so I think in dealing with the CSX for many
14 years, you know, we truly understand how they
15 operate. They are a first-class operation, and they
16 do have the funds to invest in Pan Am, and bring it
17 up to what we think will be a very successful end.

18 So we wholeheartedly support CSX's
19 acquisition of Pan Am.

20 CHAIRMAN OBERMAN: All right. Thank you
21 Mr. DiCarlo.

22 MR. DICARLO: You're very welcome.

1 CHAIRMAN OBERMAN: Any questions? All
2 right. I see some tired faces out there. But not
3 Patrick, he's roaring to go. Should we call up three
4 more panelists tonight Patrick? So I think it's been
5 a long, a very, very productive day. We will recess
6 at this time until 9:30 Eastern tomorrow morning, and
7 we will begin promptly with Panel 5. I think every
8 knows there's three people just for people who aren't
9 looking, it's Amtrak, DOT from the State of
10 Massachusetts, and Canadian Pacific.

11 We'll begin promptly at 9:30 in the
12 morning. Thank you all. Thank you for all your
13 productive involvement and contributions. See you in
14 the morning. Bye-bye.

15 (Whereupon the meeting adjourned at 6:07
16 p.m.)

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