UNITED STATES OF AMERICA

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SURFACE TRANSPORTATION BOARD

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HEARING

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IN THE MATTER OF:

CSX Corporation and CSX Transportation, Inc., Norfolk Southern Corporation and Norfolk Southern Railway Company--Control and Operating Leases/Agreements--Conrail Inc. and Consolidated Rail Corporation.

STB Finance Docket No. 33388 (Sub No. 91)

7th Floor Hearing Room
Mercury Building
1925 K Street, N.W.
Washington, D.C. 20423

Monday,
May 3, 2004

The above-entitled matter came on for hearing pursuant to notice at 10:00 a.m., Roger Nober, Chairman, presiding.

BEFORE:

THE HONORABLE ROGER NOBER, Chairman

C O N T E N T S

C O N T E N T S

P R O C E E D I N G S

(10:07 p.m.)

CHAIRMAN NOBER: Well, good morning, everyone, and I apologize for being late.

The hearing will come to order, and today the Surface Transportation Board is holding its second oversight hearing in Finance Docket No. 33388, CSX Corporation and CSX Transportation, Incorporated, Norfolk Southern Railway, and Norfolk Southern Railway Company, the control and operating and lease agreements for Conrail and the Conrail Consolidated Rail Corporation, which is, I think, bureaucrat-speak for saying we're holding our oversight hearing today in the Conrail transaction.

In this proceeding, the Board approved the split of Conrail between CSX and Norfolk Southern Railroads, and as part of its approval of that transaction, the Board provided for a five-year period of oversight which is set to expire on June 1 of this year.

As I mentioned, this is the second hearing in this proceeding. The first was held last month in

Trenton, New Jersey, and focused on the shared assets areas created in the transaction. And today's hearing will address the Conrail transaction more generally.

Now, before we begin, I'd like to just make a couple of quick observations. It is interesting to me that these two hearings are most notable for the fact that they are being held at all, and as most of you know, since I became Chairman 18 months ago, I've worked hard to institute a more open and accessible process for resolving important matters, and the hearings that we're holding today are part of that effort.

Now, any doubts I might have had about the decision to hold these hearings were settled last month when the Board held our field hearing in Trenton to look at the shared assets portion. Now, almost 25 witnesses testified, and these included carriers, state and local authorities in the region, customers, and short line partners of the railroads.

I thought it was an interesting and especially productive hearing, one where I was able to better understand the operations and future of those three unique areas.

Now, it is also interesting that a large number of private citizens came and sat through all four and a half hours of the hearing, which I have to confess I was surprised about, and I hope they enjoyed it.

Now, I am pleased that we have --

(Laughter.)

CHAIRMAN NOBER: -- a similarly robust panel of witnesses at today's hearing. We will first be hearing from the railroads, both of whose CEOs are here, Michael Ward, the CEO of CSX, and David Goode from Norfolk Southern. I know that they are accompanied by their legal officers, and I thank both of you for taking time out of your busy schedules to join us today.

I hoped the Board would have two new members for this hearing and that this would be the first hearing of our newly constituted three-person Board. Unfortunately, Mr. Mulvey and Mr. Buttrey have not yet been confirmed by the Senate. Now, there is hope that their long nomination and confirmation process will be over soon and that while this is not the first meeting of the three-person Board, at least I am hopeful that it is the last meeting of myself as a two-person Board or as a one-person Board. Excuse me.

(Laughter.)

CHAIRMAN NOBER: And you'll hear during the hearing today referring to the Board many times in the royal "we."

Before we get going, I'd also like to just mention a few housekeeping matters. First, I'm pleased to say that this is the first Board proceeding where our new streaming audio available on our Web site is going to simulcast the hearing live.

So for anyone who is out there who wasn't able to make it and wants to listen, they're able to, and in addition the hearings are kept on. They're archived. So any of you who testified or may want to listen to this or are having trouble sleeping one night, you'll be able to sign on and listen to it, and I promise you it will all be there.

Secondly, it's the last hearing we'll have these bench pews, and for those of you who are regulars here, you may miss them, but we're going to do a renovation project and make the room more flexible. So starting next week we'll have a different look in here.

And third, procedurally as we go forward, my general policy is I'd like everyone on the panel to testify first, and then we'll ask questions at the end. I ask everyone who has cell phones to please turn them off or turn them on vibrate.

And, again, I appreciate all of the witnesses coming today. We look forward to the testimony, and I understand that the two CEOs need to leave soon after their panel. So I'm sorry about that, but we'll certainly try to accommodate your schedules as best we can.

And with that I think I've probably spoken more than enough, and we can now turn to the first panel.

MR. HIXON: Good morning, Chairman Nober. My name is Jim Hixon. I am the Senior Vice President, Legal and Government Affairs for Norfolk Southern

Corporation.

On behalf of Norfolk Southern, we appreciate the opportunity to participate in the oversight process in these hearings. Presentations will begin with Mr. Goode, to be followed by Mr. Ward.

Under the STB's procedures, Norfolk Southern will not reserve any time at the hearing to respond to other presenters. Rather, as we said at the Trenton hearing, we will respond with written comments later in the oversight process.

Now it is my pleasure to present David R. Goode, the Chairman, President, and Chief Executive Officer of Norfolk Southern Corporation.

Mr. Goode.

MR. GOODE: Thank you, Jim, and thank you, Chairman Nober, for the opportunity to present the views of Norfolk Southern at this hearing.

As you noted earlier, we are nearing the end of the five-year formal oversight period. The Board set up this oversight period to insure that the conditions it imposed worked as intended and to determine whether the transaction resulted in any major competitive issues.

In its decisions at the end of the first four years of oversight, the Board found then that the conditions have worked as intended. We believe that this continues to be the case. Accordingly, we recommend today that formal oversight should terminate as scheduled and should not be extended.

And in that context, it may be useful just briefly to review the broad contours of the transaction going back to 1998 as it was approved.

Before 1998, there were three major rail systems in the East: Norfolk Southern, CSX, and Conrail. Significantly though, while there was plenty of competition in the Southeast, most areas north of Maryland and east of Ohio were served by only one Class I railroad, and that was Conrail, with a few exceptions, and that was the case, had been the case for more than 20 years.

The Conrail transaction, approved in 1998, divided the use and operation of most of Conrail's 10,500 mile system between Norfolk Southern and CSX. A very important and unique aspect of the transaction was that both of us would serve shippers on some 700 miles of lines to be retained by Conrail in three shared asset areas: the North Jersey, South Jersey-Philadelphia, and Detroit areas.

Norfolk Southern and CSX both have the right to operate on those lines, but they serve most of the shippers in these areas through a physical interchange with Conrail, and Conrail handles the traffic for those shippers as the agent of either one of us.

This aspect of the transaction brought direct two-carrier, competitive service to shippers in important population and industrial centers, and there were centers that had not had such service for many years.

The transaction also gave CSX access to about 190 miles of line that was allocated to Norfolk Southern in what we call the Monongahela, or Mon coal fields, in Pennsylvania and West Virginia.

Now, in assessing whether the transaction has met the expectations of the Board, I'd like to refer back to the Board's specific approval language in 1998. In part, the Board said, and I'm quoting, "The transaction will result in a pro competitive restructuring of rail service throughout much of the Eastern United States. After the transaction is fully consummated, both CSX and NS will provide vigorous balance and sustainable competition."

I believe the history of the past five years shows that the transaction has, indeed, lived up to the Board's expectations. The transaction greatly expanded the single line reach of NS and CSX in the Eastern United States. Shippers now enjoy single line service on Norfolk Southern between all points in our former system, and many former Conrail points in New Jersey, Maryland, West Virginia, New York State, and Pennsylvania, which we didn't reach before, and that now provides better service for our shippers.

The transaction also brought new two-carrier service to the shared asset areas and the Mon coal fields, and that is working smoothly and well today. Perhaps most important, the transaction resulted in two competitively balanced rail systems serving the Eastern United States. NS and CSX are now engaged in strong and vigorous competition not only with each other, but also with other modes of transportation, particularly trucks, a factor that was important at the outset, but it has become much more important since the transaction was approved because of increasing highway congestion in our service areas.

In specific terms, the transaction has led to improvements at Norfolk Southern in safety, service, and competition.

First, starting with safety, as we usually do, with respect to safety, the Board required NS and CSX to prepare safety integration plans and to work with the Federal Rail Administration to insure that those plans were properly implemented.

And, indeed, we did that. I'm very pleased to report that those efforts, representing the hard work and commitment of a lot of people with the strong support of the Board, have paid off. Safety has improved on our system.

In 2003, Norfolk Southern employees won their 14th consecutive Harriman Gold Medal Award for achieving the lowest employee injury ratio among Class

I railroads. CSX at the same time won the silver award, and Conrail won the silver award in the switching and terminal railroad category.

Now, while we can never be satisfied when it comes to safety, we have every reason to believe the transaction has been successful from a safety standpoint. The good results of all three participants in the industrial benchmark competition simply illustrate the success in safety.

Regarding customer service, the story is also strong. After some initial challenges, we're very pleased that the service metrics on Norfolk Southern are now the best ever. In the first quarter of 2004, our network velocity measured by average train speed reached an all time high and was among the best in the industry.

The average dwell time for cars in Norfolk Southern terminals has decreased from 25.3 hours in 2000 to 22.9 hours in 2003, and overall our network fluidity has continued to improve, and this, of course, only serves to increase our ability to compete more effectively against other rail carriers and against other modes of competition.

In recent days, increasing traffic volumes -- and I'm happy to say there have been increasing traffic volumes, and they have been handled without disruption throughout our system.

In addition, of course, the transaction has created vigorous new rail-to-rail competition throughout the former Conrail territory. The prime beneficiaries of this new competition, but by no means the only ones are the shippers and communities in the shared asset areas which were the focus of the Board's hearing in Trenton last month, and intermodal shippers in the critical Chicago, New York, and north-south lanes, which now have two carriers competing hard for their business.

The expanded reach of our system and the new rail-to-rail competition brought about by the transaction has allowed us to achieve some noteworthy results in addition to the overall improvement in our service metrics, and I'll just mention a few of them. They include, for example, an increase of over 230,000 intermodal units handled by Norfolk Southern from 2000 to 2003; an increase in rail traffic in the shared asset areas of almost ten percent over that same period; and a steady increase in the number of carloads interchanged with our short line partners in the shared asset areas from 9,521 in 2000 to over 12,000 in 2003.

And in the Mon Valley, we handled a record number of coal trains moved in the months of February and March 2004. We've seen an increase in our north-south intermodal traffic through Hagerstown Maryland. It has gone from just over 30,000 units in 2000 to 90,000 units in 2003, and there was an additional 28,000 units handled in just the first quarter of this year.

These increases are particularly gratifying because that's a lane on which the traffic before the transaction Conrail had little incentive to move on the joint line basis. We're now better able to move it because of the single line service that the transaction created, and that is pretty much absolutely new growth business.

Another instance of this increased north-south traffic is the explosive growth of intermodal traffic into and out of the Ohio Valley. Just one example of this, the number of intermodal units we moved between the Ohio Valley and Norfolk, Virginia, more than doubled between the years 2000 and 2003.

I think it's important to understand that our business has changed in major respects since the transaction was approved. The economy today is very different from the economy we saw in 1998 and, indeed, from the economy we thought we were going to see looking forward back originally.

Our traffic base has diversified as a result of our expanded reach, and greater efficiency and competitiveness. This means that Norfolk Southern today has greater flexibility to respond to economic and market changes than we had before the transaction.

Now, I'll give you a good example of that, and that is our export coal business. Despite the significant downturn in that business in the years after 1998, we at Norfolk Southern have more than made up for it in other areas: automobile and intermodal, among others. Our success in doing that is apparent by any measure I can apply, and the Conrail transaction has been significant in enabling us to adapt to those changed market conditions.

I might note parenthetically that we have seen some upward trends in the export coal market recently, I'm pleased to note, and I can only say that I hope this trend continues.

It's also important to note that over the last four years we have made very substantial capital investments in the former Conrail territory. Major projects -- and I'll mention just a few of them -- have included new intermodal facilities in Rutherford, Pennsylvania, Maple Heights, Ohio, and in progress at the former Navy base in Philadelphia; an expansion of our yard in Croxton, New Jersey; major improvements in coal lines and facilities on the former Monongahela Railroad in central Pennsylvania; and we've made other improvements to serve utility plants in Pennsylvania, in Maryland, and in Ohio.

Other major improvements have been made in our yard at Enola, Pennsylvania, and in Buffalo, New York. We have increased the weight limits on lines on the Delmarva Peninsula from 236,000 pounds to 286,000 pounds, which has greatly improved the economics and opportunities for our coal and grain customers on the Peninsula.

We had a major reconfiguration of our track structure throughout Cleveland, and in partnership with Delaware, we've reconstructed the Shellpot Bridge, which when it is finally completed will positively affect operations throughout Delaware.

In addition, over the last four years, Norfolk Southern has spent almost 95 million annually on program rail ties and ballast program work on former Conrail lines. This year we have budgeted an additional 110 million in those areas.

In other words, the Conrail transaction has been a success, as the Board hoped it would when it approved it, and we haven't always made everybody happy. We have had to systematically improve our service levels over the period of the transaction. That has, however, happened.

And we now have a stable, well tuned system in the formal Conrail areas. Not everything is perfect. Some issues were raised in the first four years. The Board addressed them in its previous decision and other issues have been raised in these hearings.

For the most part, however, the issues raised have been the kinds of issues that arise routinely between railroads and their customers. Their concerns about service or problems affecting a particular locality, they're important to the parties. They're vitally important to the parties, but they're not necessarily related to the transaction.

Moreover, there are issues that carriers and their customers can and routinely do resolve in the normal course of business because they have every mutual incentive to do that without the need for Board intervention or oversight.

In that connection, I will note that Larry Parsons of the Wheeling and Lake Erie will not be here to speak today. Larry asked me to convey his regrets and to inform the Board, however, that he is very pleased that the Wheeling and Norfolk Southern had been able to reach a tentative resolution of the various issues between our two railroads. He asked me to convey his appreciation for the hard work by a lot of people that went into that result, including the efforts of the Board.

In summary, we think the Board's previous conclusions overall continue to apply today. Conditions that establish for the transaction have, indeed, worked as intended. No major competitive or other problems related to the transaction have occurred that have not been worked out. No party has demonstrated any transaction or other issues that warrant extending the formal oversight period beyond its five-year term.

We, therefore, request that the Board not extend its formal oversight and the periodic reporting requirements that go along with it.

Of course, the Board retains jurisdiction, as you always do, even in the absence of formal oversight proceedings, to address any major problems related to the transaction that might arise in the future.

Thank you again, Mr. Chairman for the

opportunity to appear today, and I'll be pleased to answer any questions you might have.

CHAIRMAN NOBER: Well, thank you.

And I am pleased that you all and the Wheeling and Lake Erie were able to work out your issues.

MR. GOODE: We were.

CHAIRMAN NOBER: Well, Mr. Ward, Mr. Shudtz.

MR. SHUDTZ: Good morning, Chairman Nober.

I am Pete Shudtz, counsel for CSX.

On behalf of CSX, I'd like to thank the Board for conducting this hearing and providing us the opportunity to comment on the Conrail transaction and the Board's oversight.

Like NS, CSX will not reserve any time for rebuttal today. We intend to submit written comments later in this proceeding to insure a complete record before the Board.

Now, it's my pleasure to introduce Michael Ward, Chairman, President and CEO of CSX, who will make our presentation today and respond to your questions.

Thank you.

CHAIRMAN NOBER: Mr. Ward.

MR. WARD: Well, thank you, Mr. Chairman. I'm delighted to be here this morning to share with you the CSX view on the Conrail transaction and the oversight period that is now drawing to a close.

My testimony this morning won't relate one of those O'Henry short stories, always in doubt right up to the surprise ending. I will tell you right at the outset today the three key points that make up my message.

We believe the Conrail transaction has been a success. We believe that the Board's five-year oversight period that followed the transaction has achieved its objectives, and that we are now at a time where additional oversight is unnecessary. And the ordinary authority of the STB is more than sufficient to insure that the public good continues to be served.

Our success is a credit to the Board, both for your oversight role and for your role in the development of the safety integration plan. It's a credit to my colleagues on the CSX team, as well as Conrail and Norfolk Southern who, despite our fierce competitive relationship made sure that this transaction was a success for all concerned, especially rail customers and the American consumer.

From the outset we saw the Conrail transaction as a tremendous strategic opportunity. The challenge was to achieve something that had never been done before: divide a Class I railroad, integrate it effectively, and create a competitively balanced eastern rail system.

I believe that working with the STB and with Norfolk Southern, we have risen to that challenge. When you look at what has been achieved over the past five years on behalf of our customers, our short line partners, our employees and the public, as well as our own long-term growth, and then compare it to the objectives. It is clear the transaction has been a success.

We set out to extend market reach into the northeast and within the midwest growing traffic and replacing exclusivity with competition. We set out to provide customers with two balanced rail systems in the east. We set out to improve efficiency. We set out to make significant capital investments to improve the infrastructure, and we set out to shift traffic from other modes to our railroad, easing the burden on the U.S. highways with all of the benefits that entails for the environment and for transportation safety.

By any one of those measures, the transaction was a positive. By all of those measures taken together, a success that strengthens transportation in the United States. Without question, this transaction has done what we said it would. It has brought balanced rail competition to the major markets of the mid-Atlantic and the northeast areas formerly served solely by Conrail.

Mr. Chairman, CSX also takes enormous pride that we executed this complex transaction safely, the most important test faced by any railroad. That was something that was drilled into me on my first day on the Chessie system 27 years ago, and it remains fundamental at CSX today.

In the rail business, you cannot talk about service without talking about safety, good operations or safe operations, period. I believe we set the pattern on split day, a direct result of more than a year of intense planning and preparation. I managed the integration effort for CSXT, and it was a major challenge. We had trains on new routes, crews on new territories. We had to face overnight changeovers in our information systems with tremendous potential for error. All of this had to be accomplished in the unforgiving railroad environment.

We came through the split safely. That achievement speaks not only to the commitment of our managers, but also to the dedication of our crews, dispatchers, yard masters, indeed, all of the 34,000 employees of CSX. And it demonstrates the extraordinary level of cooperation between Norfolk Southern and CSX.

You know me. I tell it like it is. The fact is after two years of hard won improvements in 2001 and 2002, our safety record slipped in 2003. There are no excuses for this. Just as we have with our operational changes, we put renewed accountability on our managers to restore the safety levels we have achieved before and set our sights on taking home the Harriman Award, the rail industry's award for the nation's safest railroad.

What I would like to do in the next few minutes is take a deeper look at the five objectives I outlined and how the transaction has worked for the overall benefit of all stakeholders. First, the goal of opening new markets. It was strategically vital for CSX to extend its market reach into the northeast. The largest consumer market in the country and the largest port on the East Coast just out of reach. We knew we had to be there. The Conrail acquisition gave us that opportunity.

Our ability to compete in northeastern markets and our enhanced capacity in the Midwest has been pivotal to an important element of our competitive strategy: increased modal conversions, moving traffic from trucks and barges over to rail.

Mr. Chairman, you've heard a lot about truck to rail conversions, but we're winning business from water carriers as well. Here's a quick snapshot of the kind of moves we've been able to make since the Conrail transaction. With USX Corporation in the first quarter, we moved more than 1,200 cars of coking coal from Bessemer, Pennsylvania to Gary Indiana. This movement displaced four 25,000 ton vessels.

Working with General Mills, we're moving an anticipated 1,500 car loads of wheat from two Great Lake locations to Buffalo, displacing 20 barges a year.

On the truck side of modal conversion, intermodal traffic continues to be our biggest growth market for the foreseeable future. As more goods are produced overseas and shipped to the United States in containers, CSX Intermodal is in an excellent position to move them. For CSX, intermodal traffic is up 11 percent since the transaction was completed.

This is a result of strong increases in east-west traffic and the infrastructure investments we made to insure our physical plant could provide the capacity necessary to meet the new customer demand. As an example, we invested $2.3 million last year to expand our Bedford Park intermodal terminal to address increasing customer demand and operating constraints.

In addition, to complement our B&O capacity project, which I will discuss later, we constructed the 59th Street intermodal terminal in Chicago to meet market growth of the Conrail transaction.

In addition to growing our business through modal shifts, CSX is reaching new markets with new services. Take the market we're now making for moving municipal solid waste from the Northeast, which is home to the greatest concentration of consumption in the country, to underutilized landfills in the southern United States. This is a market that didn't exist for us four years ago.

Now, building on the economies and efficiency of rail, it's growing to a $120 million business last year, a new record.

There's also Transload, our integrated provider of logistics management distribution services and bulk transloading. We have a Transload terminal within 50 miles of every major metropolitan city on our 23-state system. By enabling customers to reach buyers who don't have rail sidings, Transload has enabled us to grow our market position in the northeast.

Another example is Express Lane. A CSXT-Union Pacific service that moves perishable goods quickly across the country in temperature controlled boxcars that preserve fruits, vegetables, and other time sensitive products and get them to their intended markets while the consumers still have plenty of time to enjoy them.

We're proud of this kind of innovation, and we recognize that the STB's Conrail decision helped make this success possible.

A second objective of the transaction that I mentioned was to bring balanced rail competition to the East. This has yielded significant benefits according to many who feel the impact every day, including port authorities such as the Port Authority of New York and New Jersey, and NITL members and shippers.

When you look at the competitive service the East now enjoys, it's important to keep in mind that it benefits the region as a whole, not just those who see direct rail-to-rail competition. A major retailer, for example, is looking to locate a warehouse in the region. The fact that it has two Class I railroads competing to provide services widens the options. That's exactly what balanced rail competition in the East means.

I think all of us involved recognize from the outset the transaction would present unique challenges. As you know, we spent a great deal of time in Trenton last month talking about the operations in the shared asset areas. A true success story as two fierce competitors proved that they could work together. Three carriers operating in a shared assets area on an infrastructure designed for only one is an example of the difficulties we faced and how successfully we have followed through.

We have seen the operating cooperation in the shared area, shared asset areas replicated in other areas on our system. Consider the rail service for shippers in the Monongahela coal area.

Christopher March of CONSOL Energy is here today, and I know he will be speaking about our success there.

As you know, Conrail's former Monongahela properties were conveyed to the Norfolk Southern, but CSX paid to have full and equal access to the mines served on the line. Obviously, this presented challenging operational issues. Two operators sharing what is is mostly a single track railroad with relatively few passing sidings.

In addition, it has often been complicated to load at a mine, and the Monongahela lines are often blocked. What was the solution? CSX agreed to an operating agreement under which Norfolk Southern conducts all operations on the line using CSXT locomotives to position our coal cars for our customers.

This was not an easy decision, giving our competitors sole control over the service to a number of our customers. Ultimately this required trust in our competitor, the Norfolk Southern. But the success of this operation demonstrates that that trust was well founded.

Mr. Chairman, we have also pursued another of our goals, increased efficiency, in several ways. First and foremost, consider the benefits awarded many shippers through new, single line service. By eliminating the interchange between CSXT and Conrail, we have reduced costs and reduced transit times. The development of more direct routes has resulted in increased commercial opportunities for our shippers.

In addition, our expanded network and the development of more direct routes has made CSX competitive with trucks in the intermodal business, Transload, waste products, produce, and many other markets.

We have also improved our car handlings, reducing handlings between CSXT and the Canadian National, the Burlington Northern, and the Union Pacific between five and 12 percent due to gateway optimization projects largely made possible by the Conrail transaction.

The increased volumes help us to move more run-through trains without interchanges that add on average a 24-hour delay.

We've also been able to expand our pre-blocking capability where blocks of cars can be handed off between carriers as single units.

Our customers have benefitted by the reduced handling damage, the improved transit time, and the introduction of new, competitive products made possible by the increased utilization of the assets.

Another of our objectives was to make significant capital investments in the infrastructure. We produced about 50 capital projects in our transaction application, and we've completed almost all of them. From construction and upgrading of mainline tracks, connection tracks and sidings, to the installation of new signaling systems, control systems, expansions and upgrade of many yards and intermodal facilities.

Overall we have invested almost $800 million to integrate Conrail assets into the CSXT system. That includes our B&O double track project, CSXT's $220 million centerpiece capital project to fully exploit the opportunities of acquiring our share of Conrail. This new double track rail superhighway connects CSXT's former B&O main from Chicago with Conrail's water level route to New York; the B&O double track, which took 18 months to complete, added 101 miles of new second main line, making it one of the most ambitious rail building projects undertaken any time in the last 25 years.

In addition to the capital projects described in our June 2000, 2001, and 2002 filings, we have also invested in our infrastructure and in the communities we operate in connection with the Board's environmental conditions and our settlement agreements.

In the shared asset areas in particular, CSX and Norfolk Southern have also invested $75 million from 2000 through 2003 to maintain, enhance, and upgrade our shared infrastructure.

Mr. Chairman, we were together at the announcement of the Create Project in Chicago last year, and I know the person interest you take in this kind of collaborative, cooperative project in which the federal government, cities, states, and railroads are investing $1.5 billion in essential infrastructure, eliminating commuter delays both on the highway and on rail, and opening commercial development of a key downtown Chicago corridor.

Of that $1.5 billion, railroads are putting up more than $200 million. To my mind, the Conrail transaction facilitated Create by making it simpler to reach a unified rail position on that project. Without the transaction, we would have had one more eastern railroad at the table with one more point of view, making it just that much more difficult to achieve the consensus essential to Create.

Of course, the true test of this or any transaction is whether it improves competitiveness and thereby serves the consumer. That's the beauty of our market system. It's the basis of the gains we see from the Conrail transaction. Strip away the complexities and CSX's goal is simple: grow revenues profitably.

But in doing so, we contribute significantly to reducing highway freight traffic. Our goal is bottom line driven, of course, but it contributes significantly to the relief of congested highways and diminished air pollution emissions.

As the Board's environmental analysis concluded, modal conversion reduces energy consumption significantly. As we forecast seven years ago in our original application, the transaction has, indeed, converted traffic from highways to our railroads. We developed some innovative ways to achieve that.

One example is our load board initiative, which allows CSX Intermodal to provide capacity in the spot market for brokered freight. Here's how it works. First, we inventory our excess train capacity. Then we get on line and bid to carry freight otherwise destined for truck transport. It's a door-to-door solution.

This was a nonexistent business for us two years ago, and today we're moving 1,500 truckloads per week through the load board, and I don't think we're anywhere near this program's potential.

A moment ago I described the hundreds of millions of dollars we have invested in capital infrastructure, improved efficiency and new products. The competitive market we're in guarantees that the investments we're making won't stop when your oversight ends. When you look at the investments we've made it is not surprising that the public benefits have come faster than the private benefits, and that the benefits have reached our customers even before they have reached our shareholders.

We've invested in improved capacity, locomotives, terminals and line of road. We've invested in the development of Internet based customer service tools in keeping with our philosophy that CSX wants to be easy to do business with.

We've invested in new products that allow us to reach beyond our track network, such as Transload and intermodal.

We've invested in the environment. That includes the development of an innovative system that cuts down on locomotive idling time, improving our fuel efficiency, and reducing air pollution. With fuel prices now over $1.00 per gallon, this is also a increasingly significant aspect of our cost control programs.

In short, we have invested in the future.

We're building a stronger tomorrow for CSX by improving our ability to meet customers' needs today. In the next few years, we expect our shareholders to see the benefits of continued growth and operating efficiencies. The Conrail transaction has positioned CSX to reap the operating efficiency of our expanded network.

We have already had tremendous success in growing our revenues, including eight consecutive quarters of surface transportation revenue growth, despite a soft economy. Last year CSXT produced revenue growth that outpaced the general economy in many commodity areas.

Over the last two quarters our surface transportation revenue was the highest on record. We are going to continue to focus on profitable revenue growth, matching our capacity to grow revenue with a comparable ability to cut costs. And we're going to do that while continuing to introduce innovative products and technologies.

The Conrail transaction laid the basis for more efficient operations, including fewer train miles, more direct routes, reduced switching costs, and more efficient car utilization. We're determined to build on that basis.

I'm confident that these steps, combined with our investments, will lead to the profitability we are targeting.

Mr. Chairman, as this oversight process draws to a close and I look back over the last five years, I'm proud of how much we have achieved. I want to thank the team at CSX, our partners in the process at Conrail and Norfolk Southern.

I also want to thank you and the staff at the Surface Transportation Board for guiding this process toward the public good.

As citizens we sometimes hear about government efforts that go awry. To the contrary, this is one of the instances where the government's goals were met and where the government oversight achieved its objective.

The benefits of this transaction have been widespread, extending the market region to the northeast, providing two balanced rail competitors in the east, improving service center efficiency, making significant capital investments in our infrastructure, and taking trucks off the highway, all in ways that promote competition that benefits our customers who, in turn, serve the consumer.

Mr. Chairman, you have my word that our focus, serving customers who serve the consumer, will remain the goal that guides CSX.

With that, I look forward to your questions.

CHAIRMAN NOBER: Well, thank you very much, and thank you both for your excellent presentations. And in fact, you answered many of the questions that I had written out.

But let me start with I mean ultimately this is a proceeding on ending oversight, and let's just start with what you all are asking us to do, which is, yes, that we end all Board oversight of the transaction going forward; is that correct?

MR. GOODE: I think that would be a fair summary.

MR. WARD: That is correct.

CHAIRMAN NOBER: Now, some of the other witnesses at this hearing and the other hearing, and the Trenton hearing, have both asked us to continue oversight for a period of time. I think Pennsylvania asks that we keep it generally for another five years, and many asked us in shared assets to retain oversight over just that portion of it.

How do you all respond to those requests?

MR. GOODE: I guess I would say that we believe that the need for formal oversight procedures has been completed, and we recommend that they be ended. Naturally, I would expect that there will be an ongoing close and continuing dialogue with many of the folks you have mentioned, the states, for example, where we have an ongoing relationship and a continuing basis for discussions about projects and things that need to be done, that we both have mutual needs in certain areas, and that that would continue.

But certainly if specific instances arose where there is a need for the Board to take a look or have a proceeding, we believe that there is ample opportunity to do that without continuing the administrative burden and other burdens of having a continuing formal oversight.

MR. WARD: I think CSX's position would largely mirror that. We believe in this five-year oversight process. We've developed some very good relationship with the communities and many of the agencies that have expressed an interest in continuing the hearings. We think the relationships we have formed in the projects we're working on jointly can move forward without the need for the Board to oversee those normal commercial relationships.

CHAIRMAN NOBER: I certainly understand for the main part that there is a lot of reporting that goes on that, you know, perhaps these proceedings can bring to a close, but I would sort of rephrase the question and point it towards shared assets. Is there something about those particular setups that might make, you know, some limited continued oversight feasible or advisable?

Would you be more amenable toward that?

MR. GOODE: I guess, again, we would think that it would not be necessary. We certainly have every expectation to continue the operations, not only the operations of the shared asset areas, but to continue to improve and make the service in those areas better and expect that to be a continuing dynamic process, as, indeed, economic conditions and other changes will dictate.

But I guess on behalf of Norfolk Southern, we don't see that there are any particular things that are present in the shared asset area that would require formal oversight.

MR. WARD: From the CSX perspective, I think when we created the shared asset areas, there was a lot of questions whether to really serve the customers well. I think what the last five years has proved is that it has been a success, and it has done very well.

I was not at the Trenton hearings as you know, but my understanding is most of the customers in the shared asset areas are very pleased with the service they have been provided. It's certainly the intention of CSX and Norfolk Southern to keep that same high customer service there.

So it's my view we probably do not need the continued oversight, but if an issue should arise, one, we would deal with them on a commercial basis, and secondly, if we were unable to, then it may be appropriate for the Board to intervene.

MR. GOODE: We have certainly recently, for example, agreed again with the Port Authority that we will continue our one-on-one dialogue with them certainly with respect to the short lines that operate in the shared asset area we expect to have continuing dialogue and discussions, but believe all of these can be handled in the normal course of events.

CHAIRMAN NOBER: Do you all think that either of your railroads would be able to be as successful going forward if you hadn't done the transaction or do you think without it -- I mean, is it critical to your railroad's success going forward?

MR. GOODE: Well, there's no question in my mind that the transaction has been absolutely essential for Norfolk Southern for us to be in the strong and dynamic position that we are today, when you look back over the last five years and the way in which the economy has changed. We went through a significant downturn and contraction of the economy. We went through a significant decline in the coal business followed by significant recovery in that business.

Throughout all of this time as we analyze our own operations and our own ability to be economically successful as a transportation company, having this expanded reach and the ability to market has been key to the growth, just looking at the intermodal business alone, but having our portion of the Conrail assets, we believe, has been key to our ability to have this explosive growth in the intermodal business, and the expanded marketing reach has been absolutely essential.

I think what Conrail in a nutshell, the new system, the new Norfolk Southern system has much more flexibility and ability to serve our customers and meet their needs, whatever the economic conditions are, whatever is happening to the industrial economy and the consuming economy, we're now much better able to respond to it.

MR. WARD: As I indicated in my testimony, I think having access to this highly populous northeast market was a strategic imperative for CSX, and we've been very pleased with the results to date, the new markets that we were able to develop, the tremendous population base here. We've been very pleased with it and expect to see continued growth as we go forward. So we're very well pleased with the transaction.

CHAIRMAN NOBER: Well, Mr. Ward you mentioned a number of different businesses that you can do now that you feel you couldn't have done without the transactions. Could you layout a couple of those as well for NS?

MR. GOODE: Well, I guess I would return to the intermodal business in a way, and certainly the joint line transcontinental services that we have put in with both of our western rail connections in improving the transit times and the service to and from the West Coast and the East and for that matter the Southeast, have all been crucial.

From our standpoint, one of our objectives five years ago was to create something that Norfolk Southern didn't even have and that was a north-south intermodal business. That's completely new business for us because we didn't have the scope of that, and we had made a number of efforts to develop that business but had been largely unsuccessful, and today that's one of the fastest growing lanes.

In Chicago we call it our Golden Triangle business and that is the Chicago, New York, Atlanta triangle, and if you looked at the traffic density maps in our system today compared to what they were, you would see that that's exactly where the growth of the business is.

We see the future of our business in this whole area is centered around opportunities to grow truck competitive business and convert that business, has been very successful over the last five years, and it's going to grow enormously.

Our triple crown services with having the Conrail area have grown enormously. We have created our new modalistic service, which is largely intended to help us market the expanded reach.

So there's a long list we could go through.

CHAIRMAN NOBER: Now, one of the sort of more difficult issues that's been raised by the parties has to do with what had been anticipated and promised in the transaction versus what has transpired over the past five years, and I'd be remiss not to raise this.

One of the themes of many of the later witnesses, many of the witnesses coming up is that there had been promises, you know. Your companies had made promises before the transaction went forward. Our agency had in its decision said that we were going to hold the companies to their representations, and as time has worked out, they have for one reason or another. You know, circumstances have changed, and you all have not necessarily done everything that was promised back in '97 and '98.

How would you all address this issue and how would you have us address this issue?

MR. GOODE: Well, I guess I would say I think the important thing to concentrate on is that the vast majority of promises and commitments and expectations at the outset have, indeed, been met, and enormous investments have been made to that end.

Now, we well know that and we have continuing discussions with a number of people about things that we -- in some cases there are even disputes as to whether we've done them or not, and we expect to have a continuing ongoing dialogue about that, and you know, we meet our commitments and our expectation is to do that.

In some cases things have taken longer than we anticipate that they would. The economy changed enormously over the last five years, and the facts changed a lot in some cases. Some things make more sense than other things, and not everything looks the way it did at the time, and we should not ignore that.

But our commitment is to continue to have an honest dialogue and try to satisfy everyone that the commitments have been met, but there should be no doubt about the commitment of our company to the development of the areas that are encompassed in this transaction because the investment has been enormous, and what we need to do is work together with all of our constituencies in order to get the economic benefits to come up to the expectations we had at the beginning.

MR. WARD: It is difficult sometimes to forecast what the future is going to be, which is what we did attempt to do so many years ago, five to seven years ago when we created this. I think when you look at the record, you will see that the majority of the commitments that have been made, were made at that time, have been fulfilled.

Those few that may not have been, we will, as we said earlier, we will respond in written form to each of those. But I think it is noteworthy that I think we have met the vast majority of those commitments.

But in addition, we have done a number of things that were not in the original transaction agreement. As we worked with various state agencies and customers, we found there were opportunities we didn't envision as we were looking five years forward, and we've put money and investments into those programs as well.

So I think part of it you have to look at the spirit of what the transaction was. Did we largely live up to the commitments? I would say the answer is yes in the vast majority, and secondly, when new opportunities presented themselves, we were very responsive and I think you'll find that the Norfolk Southern was as well.

So I think with the benefit of 20-20 hindsight it's much easier to say what would the future be, but I think by and large, I think we have been very responsive to the opportunities in the marketplace and the various agencies involved in this area of the country.

MR. GOODE: And I think what we should make clear is our ongoing willingness to work with all of the parties and to try to go as far as we can and, indeed, the extra mile to make sure that everyone's expectations for this are met to the extent they possibly can be.

CHAIRMAN NOBER: I mean, it's as much an

issue for our agency in that it's our decision that, you know, held this, and courts and parties have been asking us every since what does it mean. And you know, other Commissioners have raised what it means, and it's one that I'm not sure what it means going forward.

So I recognize the difficulty in putting a blanket, catch-all provision that says we'll hold private companies to every representation that they make because I don't know how you do that and I don't know how sitting where we are now you look back and you do do that to every single letter.

On the other hand, you know, a lot of entities who supported the transaction did so expecting certain things would be done and not everything was done, and they are, you know, I think legitimately concerned raising that.

So it's a tough issue for us going forward, but you know, I'm not sure how we take that into account right now.

MR. GOODE: I would say, Mr. Chairman, if I may, I think it is just important for us not to lose overall sight of what an important economic benefit this has been not only to the companies involved, but to the region.

CHAIRMAN NOBER: Well, one question that, you know, I asked of all the witnesses at the Trenton hearing and will ask of all the witnesses today, and you know, you have already talked about this. So I don't need to ask you specifically. The first is are you better off having done the transaction than if the transaction had not been done.

And I think if you look at the Trenton hearing transcript almost every shipper said yes or every short line partner said yes to that.

Then, you know, the follow-up was is it everything that the carriers had said it would be, and the answer to that is no, but you know, that's the issue in a nutshell. To me, are the carriers and the region and the folks who rely on rail service and the public at large better off for having done the transaction than not, and I'll ask all of the witnesses today, and I'll be interested to hear what they say.

One allegation, another allegation that has come out of this that has directly come before me, and they're an issue in some pending cases. So I've got to be a little circumspect, but it comes from some of the captive shippers on your system, and as you know, there are some people who felt that the price paid for Conrail was high and that ultimately to finance that, the railroads would raise prices on some of their captive shippers, and that has been raised before us.

How would you all respond to those allegations?

MR. GOODE: I guess I would say that the market dictates the prices and I would say a fair market price was paid originally in the transaction, and I guess I can't find an acquisition, so-called acquisition premium in this.

There's no question in our view overall that the investment has been a very good investment. From the standpoint of pricing, pricing one way or the other is always market based pricing and sustained on that basis in what is here a very competitive environment because of the nature of where this transaction took place.

And so I guess my response to that would be that I think it really is not sustainable, that there has been the effect that was suggested.

MR. WARD: I guess I would also question the base premise of that question. I think even in prior Surface Transportation Board hearings, I think that the Board itself found that there was no acquisition premium paid in this Conrail transaction. So it's difficult to pass on something that wasn't paid.

I'll also echo Mr. Goode's comments that we do approach the marketplace and charge market based rates, which is what you're supposed to do in a market economy such as the United States, and I know while some shippers may feel that these rates are unreasonable, I think at least some of the current cases that have come before this Board have found that that was not the case.

So we will continue at CSX to price the market to the value we are creating, always conscious of the fact that our customers need to serve their customers, and we will keep that in mind as we determine what that market price is.

CHAIRMAN NOBER: One final question. Let's turn to your short line partners. How have you felt that your relationships with the former Conrail short line partners has gone?

A number of them will be testifying later today as well.

MR. GOODE: I think we regard that as both a great success story for us and market and growth opportunities for Norfolk Southern. We have worked with our short line partners, frankly, in efforts to develop business and in many cases they are very good at it, and it has been important relationships to us.

We have sought not only in the former Conrail areas, but for our system as a whole to enhance those relationships in a variety of ways and have very close ongoing meetings in both individually but also as a group in order to see how we can most effectively expand business for everyone, all of which doesn't mean that we will or that we have not and will not from time to time have individual disputes with individual people, but our experience is that these can usually be resolved in the normal course of business.

MR. WARD: At the risk of sounding a little like a braggart, I think I would say that CSX in general has some of the best relationships with the short line industry of any of the Class I railroads. We work very actively with them. We do view them as business partners, and I think they will echo that sentiment when queried.

Obviously if there's any concerns that aren't being addressed, as we said earlier we will address that with our written comments, but I think by and large we view our short line partners as partners and work with them in that manner.

CHAIRMAN NOBER: Let me just follow up on a couple of the issues that came up at the shared assets hearing, and I know we had a separate hearing and you'll respond in writing. But one of the concerns that came up -- and I don't know what to make of this -- is that some of the folks in the shared assets area, particularly in Northern New Jersey, feel that there has been an under investment in the shared assets area, and that instead, you know, there's been an increase in truck traffic, and in northern New Jersey, in particular, we heard that from a number of the New Jersey witnesses, and less investment in the shared assets area than perhaps they would like.

How would you all respond to that?

MR. GOODE: Well, one, I don't think that I would agree with that. As I said in my testimony, we have invested between the two of us over $765 million in the past three years in their shared asset areas. Clearly, it's a high growth area for both of our companies. As a matter of fact, this is not directly in the shared areas, but we have made significant capital improvements to our river line which runs from Albany, New York down into the shared asset areas to be assured that we can move those growing volumes into that area.

So I don't think there's any issues that we, in my opinion at least, that we have not been investing adequately in the infrastructure in those shared areas because that's one of the main reasons we wanted to get involved in this transaction, was to take advantage of that populous northeast, especially New York-New Jersey area.

MR. WARD: In a sense, it should be remembered as well that largely our customers dictate investments for us and in some cases the flow of traffic, and while I believe that what we have invested in the shared asset areas and, indeed, the service in the shared asset areas is good today and improving, and we have a good team at Conrail that is devoted to making it better all the time, and that's what ultimately provides business, but it is also true that there has been the growth of some in some ways unexpected growth of some areas that are outside of the Shared asset area, and the customers dictate that.

I think we're in the business to please and satisfy our customers to the extent we can, and we'll do everything. I think our willingness and commitment is to make investments to do just that, and certainly we will work with people inside the shared asset area to do that because it is simply good business to do so, and we're in the business of trying to make money.

CHAIRMAN NOBER: Well, good. Well, going forward, what would you have us -- I mean, so your all's view, if I could summarize it, is that you'd rather just see us end oversight now, even over shared assets, and let the normal Board processes deal with any issues that come up. Is that the consensus?

MR. GOODE: I think that is exactly correct.

MR. WARD: That is our position at CSX as well.

CHAIRMAN NOBER: Even given the sort of ongoing dynamic of shared assets and some of the issues that are up there?

MR. WARD: Yes.

MR. GOODE: We believe that there are other mechanisms for working out any ongoing basis and that a formal oversight is no longer necessary.

CHAIRMAN NOBER: Okay. Well, thank you all very much for your testimony and your time, and I'm sorry to keep you a little beyond what we said.

MR. GOODE: Thank you for the opportunity to come and testify today.

MR. WARD: Thank you very much.

CHAIRMAN NOBER: Thank you all, and with that we will move on to our next panel.

Okay. We have Paul Samuel Smith from the Department of Transportation; Mayor Scott King from Gary, Indiana; representatives from Pennsylvania and New Jersey; and Rear Admiral Richard Larrabee.

And I'll give everybody a minute to sit down.

All right. Well, welcome, all of you. And, Mayor King, I understand you have a plane to catch. So can we start with you?

MAYOR KING: Yes, Mr. Chairman. It is a pleasure to be here.

CHAIRMAN NOBER: What time did you need to leave?

MAYOR KING: Let me think here. It's 11:15 here? In approximately 30, 35 minutes.

CHAIRMAN NOBER: Okay. Well, we'll try to get through your testimony and ask questions.

MAYOR KING: Thanks.

I'm here not only as Mayor of the City of Gary, but we're one of four cities that at the advent of this acquisition formed a consortium, and in fact, our title is the Four City Consortium. Geographically we occupy the immediate eastern point of entry to the Chicago area, I'm told the busiest nail hub in the United States.

We have submitted written testimony, and I believe we have or will be supplementing it with some additional correspondence that has been received from CSX and Norfolk Southern. I know one letter which I received this morning, dated April 28th, 2004.

As of a week ago, our position would have been to request an extension by a three-year period of oversight. However, based upon developments in the last week or so, where both railroads have come to the table and agreed in writing to some of the continuing dialogue that we think has, on balance, made this last several years more of a win than not in our area, our bottom line position is a suggestion to the Board of agreeing to what the rail lines are requesting in discontinuing oversight, but some form of reservation of right to return should the dialogue and should some of the current voluntary discussions, which have been very positive, with the railroads prove unavailing.

One of the main points that we've had to deal with and contend with historically has been the dissection of this urban area, this larger urban metropolitan area by these various and sundry rail lines. Many of the problems predate this acquisition.

You've been provided with a map, and you can see circumstances whereby we've had increase on various and sundry of these lines since the merger and the acquisition. This presents, in addition to being obviously a painful experience for any commuter stuck in that circumstance.

It's a very serious issue in cities regarding, among other things, deployment and public safety infrastructure. In the City of Gary, historically we have had to make decisions that would be somewhat duplicative in building fire stations, for example, depending on what side of the tracks they might be on.

If I look at a map of our city without reference to the rail lines, I could see almost overnight a ten to 14 percent reduction in public safety infrastructure just simply by getting away from blockage by the rail lines.

We have had, I think, good dialogue with both rail lines about a solution for the City of Gary, which is shown on the map and the corridor demarked with a red and blue line, and basically it's getting some of the freight lines onto a grade separated corridor and off of the at grade crossing area.

This would do two things: alleviate some of the problems I spoke of a moment ago, but secondarily, looking forward, it would enhance and facilitate continued expansion and development of the Gary-Chicago airport, which is the third airport in the City of Chicago. It's subject to a cooperative agreement between the City of Chicago and the City of Gary, and in a grouping along with O'Hare and Midway.

The rail lines both to the west and to the north present some challenges for expansion, all of which are being addressed as we speak.

We have set aside in our metropolitan area approximately six and a half million dollars of an estimated approximately thirty million dollar cost to rebuilt this grade separated corridor from the Tollistan area west.

One of the things we asked of this Board is such assistance as it would deem appropriate moving forward in assisting our efforts not only with our own congressional delegation, but the balance of getting appropriate federal funding to achieve this goal.

This not only helps the City of Gary, but it significantly adds to the relief of congestion as we move westward into the Cities of Hammond and East Chicago, in particular, which are the venues of the greatest number of disruptions due to the in some cases increase in train traffic.

In terms of the reservation of right to return to this Board should problems come in the future, I mean, the good news is that the rail lines have come and submitted letters to us in writing memorializing their discussions and articulating their desire to continue in the sort of positive dialogue that has, in fact, been the case.

I would be remiss, however, if I didn't point out that these letters were received on the eve of this hearing, and our experience I could best sum up by saying it has been substantially more positive than I anticipated at the outset of even involving ourselves in this whole process.

CHAIRMAN NOBER: Sometimes our hearings have a way of focusing issues.

MAYOR KING: Yes, and that's the best description that I can give. It has been more positive. We have received some results, but as is pointed out in my written testimony, at some times our various and sundry police departments had to write seven million dollars worth of tickets for blocking crossings and ended up in federal court and a whole bunch of other things.

What has been pleasing by both railroads has been though that they have continued dialogue, and in some circumstances we could say, "Well, look. Up front you promised this, this, and this."

I would have to say, well, some of that

might not have been done. In many cases, if not most of the cases, it was a result of mutual compromise, both sides having learned from experience after the fact, and such direction and shaping as this Board could do to not necessarily memorialize, but to realistically encourage that sort of approach.

Quite frankly and candidly, from a local government perspective it facilitates getting it done more quickly and traditionally that means more cheaply than a more formal sort of process.

I would give them a reasonably good grade in our personal experience. Well, I do speak on behalf of my three colleagues from this area.

I think that gives a fair oversight of my testimony. Some additions, again, with some of the materials we received recently, and I'm, of course, happy to respond to any questions you may have.

CHAIRMAN NOBER: We certainly will make these additions part of the record.

And I will just sort of notice an observation that the issues that you've raised in terms of having, you know, heavily used rail lines in dense urban areas is not a unique one. It is probably not even unique to the transaction.

I can tell you I spent much of the past three months in various urban areas around the country, and this is a chronic issue involving, you know, whether it's in Houston or Chicago or Southern California or, you know, any number of places around the country. It is a growing problem.

And we certainly don't need formal oversight to be involved. If that's the case, we have formal oversight in over half of the population in the U.S. right now.

But if there are issues going forward in trying to make operations better fit, you know, day-to-day life in a crowded urban area, we certainly can and will continue to work with you on that.

That sounds like what the crux of your concern is.

MAYOR KING: It is, and again, the only addition would be -- and I dare say this is probably true of most of your metro areas throughout the United States -- it's not simply a question, and this is where it has been more pleasing than not dealing with the CSX and Norfolk Southern -- in many circumstances it's not simply making the current configuration as good as it can be, but most every municipality is doing planning for its future.

In our case, the water-front from the shoreline of Lake Michigan, historically the steel industry; well, as the steel industry shrinks in size, there's many efforts made by us, by the City of Chicago and others in the Great Lakes Basin to reclaim and to renovate that land and redevelop that land, and in many circumstances we of necessity have to implicate the railroads as part of our experience today, has been at least a receptivity on their part, which I think should be in the record as a positive.

But there may be circumstances, and I'm glad to hear the Chair express the potential opportunity for involvement of this Board in those sorts of issues as well.

CHAIRMAN NOBER: We'll be happy to, and you may not remember, but in a former life I worked with you on the rail lines near the Gary airport and the constraint, the increase in capacity that that is. I know you would all like to be an alternative to Peotone.

MAYOR KING: Well, we are an alternative, and we thank you for your efforts.

CHAIRMAN NOBER: Especially because you exist and they don't, but yeah.

(Laughter.)

CHAIRMAN NOBER: But, yeah, I understand the problem with expansion given the rail lines and the shortness of the runways, but that's also a chronic problem, believe it or not. There's one up at O'Hare and there's one at many other airports around the country because it's not all that uncommon for airports to have been built around rail lines.

MAYOR KING: Thank you, Mr. Chairman.

CHAIRMAN NOBER: Well, Mr. Whitlock, I apologize for taking Mayor King out of order, but please.

MR. WHITLOCK: Your Honor, Mr. Chairman, I represent the Commonwealth of Pennsylvania, Department of Community and Economic Development, and our department's focus is to cause to happen economic development transactions. These transactions typically, almost invariably, involve multiple sources of financing, many pieces that have to fall into place in a finite time frame.

And as part of the or in preparation for the Conrail transaction, the Commonwealth of Pennsylvania, the city, and Norfolk Southern and CSX negotiated an agreement under which the two railroads separately but almost identically agreed to assist with, in cooperation with the commonwealth and the city, in economic development activities.

Again, they agreed, as we believe on a contractual basis, to do this, and it has been our experience that this simply hasn't happened. Again, Norfolk Southern agreed to expend a minimum of fifteen million for rail served economic development programs in Philadelphia and across the commonwealth. The number we come up with on this is forty thousand out of fifteen million.

Similarly, in a separate paragraph of their agreement they agreed to make similar efforts to finance customer developed projects, and again, even taking all of their numbers as gospel, we come up with 15.7 million, which is far less than the twenty-five million to which they committed.

CSX has done somewhat better than the Norfolk Southern, but again, under Paragraph C of CSX's letter, which is in the record that we submitted, again we come up by our accounting we have 550,000 of investment on their part, leaving 9.5 million remaining.

The railroads here spent approximately ten billion dollars in round numbers to acquire and divide up Conrail. It may be more than that, but it's at least ten billion. It was certainly our expectation that, having committed that amount of money, they would do everything in their reasonable efforts to build and enhance traffic and turn that investment into a profitable one. And there wouldn't have been any need for us to negotiate these separate development agreements with the railroads.

But we did negotiate these agreements. They signed them and committed to joint cooperative agreements, again, to make these transactions that we work on happen, and again, this simply has not happened.

We are significantly disappointed and frustrated, and we believe that although perhaps a retention of blanket oversight may not be needed, we clearly think the evidence here clearly justifies a retention of jurisdiction by the Commission in this narrow area that would, at a minimum, require of two railroads to submit quarterly reports documenting their compliance going forward with these economic development funding requirements.

CHAIRMAN NOBER: Okay. Well, thank you very much.

Admiral Larrabee.

RADM LARRABEE: Mr. Chairman, good morning.

CHAIRMAN NOBER: We'll hold questions for the end. I'll ask them of the whole panel. Mayor King had to leave, but they will be held till then.

Yes.

RADM LARRABEE: Good morning, Mr.

Chairman. My role as Director of Port Commerce for the Port Authority of New York and New Jersey is to oversee the extensive operations we have going on right now in our port. New York is the third largest port in the United States, the largest on the East Coast. Last year we handled over one hundred billion dollars in commerce. We saw an eight percent increase in our containerized cargo and a similar growth in our automobiles and vehicles.

The Port Authority's relationship with the rail carriers serving our marine terminals and other facilities are the responsibility of my department.

The Port Authority submitted comments in the hearings in Trenton last month regarding the cooperation that exists among the carriers and the Port Authority within the North Jersey shared asset area. In those comments, it was pointed out that due to, in large part, the Port Authority's investments in terminal facilities and on-dock rail facilities, rail volumes moving through the Port of New York and New Jersey have dramatically increased over the last ten years.

In 1993, the port handled some fifty thousand rail containers of export-import freight. Last year that number has grown to two hundred and thirty-three thousand containers, and for the first quarter of 2004, the number of containers has been 28 percent higher than the same period in 2003.

In Trenton, the Port Authority also noted that its plans call for the investment of nearly four hundred and thirty-eight million dollars between 2002 and 2009, to improve and expand rail capacity at our facilities served by Conrail, CSX, and Norfolk Southern.

By statute the Port Authority is limited as to the geographic area within which we may make capital investments. The Port Authority may not invest in projects outside the port district, which is roughly twenty-five nautical miles around the Statute of Liberty.

Accordingly, while the Port Authority can seek to improve the infrastructure upon which efficient rail transportation depends within the port district, it is wholly dependent upon the carriers and others to maintain the efficiency of the inland rail transportation network outside of our district.

During the middle of the previous century, the Port Authority of New York and New Jersey was served by as many as seven Class I carriers. Unfortunately for a host of reasons, the service provided by those ultimately bankrupt carriers was at a level that the port became almost entirely dependent upon motor carrier service.

This, of course, led to the inevitable truck congestion that has now clogged the highways of the Northeast.

With the formation of Conrail the port lost intramodal rail competition, as only Conrail served the port in any meaningful way. The port did, however, obtain some competitive relief in the form of geographic competition with Conrail serving New York and New Jersey as its main port, while other carriers served the competing North and South Atlantic ports.

While this geographic competition did prod Conrail to improve service and to take innovative steps that allowed for some growth in the port's rail traffic, it did not provide similar geographic competition for the region in general.

It was the consistent position of the Port Authority that the port, as the largest port in the nation served by a single rail carrier to any significant degree, was at a serious disadvantage versus competing ports.

Similarly, the region, the largest in the nation served by a single rail carrier, was also at a substantial disadvantage. Thus, the Port Authority consistently sought a second major carrier to serve the port and the region.

The acquisition of Conrail by CSX and Norfolk Southern has provided for that long awaited intramodal competition at the port and in our region. While the Port Authority did have some reservations regarding the ability of the financially strained acquiring carriers to provide for the necessary infrastructure improvements within the shared asset area, it ultimately supported the Conrail acquisition before this Board.

I am pleased to report to you that that

has proven to be a wise decision. The head-to-head competition between CSX and Norfolk Southern has resulted in significant innovation and the growth in the port's rail traffic to which I had previously referred.

CSX and Norfolk Southern are not, however, solely responsible for the growth in traffic. The entire rail network must operate smoothly and efficiently for operations if any one region of the country are to prosper.

While we at the Port Authority of New York and New Jersey must look to CSX and Norfolk Southern for efficient service, they, in turn, must look to their connections for the same efficiencies.

Recent press reports of trouble brewing on the Union Pacific are giving us pause. To the extent that such operational problems spread to the east as they did during the post Union Pacific-Southern Pacific merger period, the welfare of the port's rail operation could be prejudiced.

The Port Authority fully recognizes that the difficulties you, Mr. Chairman, have faced in being the sole Board member during the recent past, and we hope that assistance is on the way. With a full complement of Board members, we trust that you will continue to have active oversight of the rail network, not merely with respect to Conrail acquisition, but with respect to the entire network.

To the extent that further Board action becomes necessary to prevent service disruptions that threaten to slow traffic growth through the port of New York and New Jersey and to slow economic growth generally, we trust that the Board will quickly respond with such actions.

Thank you, Mr. Chairman, for the opportunity to present remarks this morning.

CHAIRMAN NOBER: Thank you.

Mr. Guinan.

MR. GUINAN: Thank you, Mr. Chairman.

My name is John Guinan, and I'm the Assistant Commissioner for the New York State Department of Transportation.

I'm submitting this statement on behalf of New York State and the New York State Department of

Transportation.

I have already submitted written comments. So I won't read that directly, but I would like to hit some of the important points --

CHAIRMAN NOBER: Please.

MR. GUINAN: -- contained therein.

In its principal comments on the then proposed acquisition in division of Conrail by CSXT and Norfolk Southern, New York outlined its historic financial legislative and regulatory support for a sound and efficient freight rail system and the importance of such a system to the economic health of the state.

Particularly as regarded CSXT and Norfolk Southern's plans for Conrail, New York noted the applicant's claims that approval of their proposal would lead to expanded and enhanced freight service at reduced cost, expanded market opportunities for regional shippers, significant diversions of freight traffic from overburdened highways, and short and long-term synergies and efficiency gains that would benefit all affected constituencies.

Inasmuch as over 90 percent of the freight tonnage moving to and through New York was controlled by Conrail, New York was numbered among those who the applicants claimed would gain from the transaction.

New York supported the stated goals of the Conrail acquisition plan and acknowledged that many elements of the applicant's proposal as they related to the Conrail alliance within the state did offer an improvement over the then status quo. As New York explained, however, on balance, the unconditional approval of the CSXT-Norfolk Southern proposal would fail to meet the goals set by the applicants and serve the public interest.

New York proposed seven specific conditions which, if adopted would enable the state and the STB to conclude that the applicant's plan was consistent with the public interest. Those conditions related to trackage rights over the east of the Hudson River, improvements in the Buffalo area to rail competition and to improve the rail infrastructure in the region, an oversight period, assumption by CSXT and NS of Conrail's continuing obligations, cooperation with New York State for its high speed rail program, a commitment to enhance and expand the passenger rail infrastructure in New York, and conditions to protect the interest of New York short line railroads, specifically include the Livonia, Avon and Lakeville.

While CSXT and Norfolk Southern initially opposed the conditions sought by New York, eventually they agreed to assume and fulfill all contracts to which Conrail was a party. They also agreed to work in good faith regarding passenger service.

In its decision, the STB imposed specific conditions regarding CSX for the benefit of New York and its constituents. An order directing CSXT to negotiate unrestricted trackage or haulage rights in favor of CP rail over the Hudson line from Selkirk to Fresh pond, requirement that CSX adhere to its representations regarding facilities in the Buffalo area, specifically relating to technology, employment, trackage rights, switching, and investment, a directive that CSXT cooperate to upgrade the New York cross-harbor float and tunnel facilities, a requirement that CSXT establish a committee with New York City officials to develop ways to promote increased truck-rail traffic diversions to and from New York City, and a committee with Buffalo regional and local authorities to promote rail traffic growth in that region, and finally, a directive to CSXT to negotiate an agreement with the LAL regarding trackage rights over the Gennessee Junction yard near Rochester.

In addition, the STB broadly mandated that CSXT and Norfolk Southern adhere to all of the representations that they made to the Board and various parties during the course of the case.

Over the ensuing years since the decision, New York carefully monitored implementation of the Conrail plan in compliance with the conditions imposed by the Board. In many respects CSX and Norfolk Southern can claim technical compliance with the STB's New York conditions.

The state's contracts with Conrail were assumed and have been performed. CSXT and CP Rail entered into an agreement for unrestricted trackage rights on the Hudson Line, and the cross-harbor Buffalo and New York City study committees were formed and meet as specific issues arise.

In the key areas of infrastructure improvements, freight service quality enhancements, expansion of marketing opportunities, and a general commitment to the growth of the New York freight rail transportation system, however, CSXT and Norfolk Southern have failed to live up to the expectations set by their original application.

Indeed, New York's experience has show the carriers retreating from the goals and benefits that they touted in 1997, even as the state has worked to support their achievement.

For example, in the Buffalo region, following the completion of CSXT's upgrades to computer and fueling facilities and Norfolk Southern's expansion of Bison Yard, the railroads effectively suspended efforts to enhance infrastructure and improve freight service efficiency in the area.

Regarding general rail information, CSXT and Norfolk Southern both expressed concerns that the property tax infrastructure in New York State as applied to railroad assets created a disincentive to new infrastructure investment.

In response, New York enacted the Rail Infrastructure Investment Act of 2002, which provided significant property tax relief for existing rail property, as well as for new railroad infrastructure investment. Essentially the law created a ten-year property tax valuation exclusion for new investments in rail facilities and infrastructure improvements.

Despite this, neither CSXT nor Norfolk Southern has submitted a project for qualification under this program. In addition, both rails have closed economic development offices in the state.

With regard to the LAL Railroad, CSXT did enter into an agreement with LAL granting the latter access over the Gennessee Junction Yard to effect interchange with the Rochester Southern Railroad as required.

According to LAL, however, CSXT's commitment to the purpose and intent of the condition has not extended very far beyond the signing of the agreement, which provided that CSX would rehab and maintain the yard to FRA Class I condition.

In June 2000, CSXT performed a safety tie replacement. However, again according to LAL, this work did not bring the track up to FRA Class I standards, and CSXT has yet to rehabilitate the yard as promised.

The results have been rail spreads, derailments, and the closing of tracks in the yard due to unsafe conditions.

With regard to the Southern Tier rail lines as a result of the transaction, Norfolk Southern assumed control over two rail lines in New York Southern Tier: the Southern Tier main line and the Southern Tier Extension.

We commend Norfolk Southern for efforts to rehab the Southern Tier extension and restore local service. However, New York has concerns regarding the Southern Tier main line. The portage bridge over Letchworth Gorge between Buffalo and Binghamton was identified by the FRA as a safety concern during the Conrail proceeding. While Norfolk Southern now has an alternate route via the Southern Tier extension, CP Rail must depend on its trackage rights over the NS lines via the portage bridge.

Although the FRA report found that the portage bridge has a limited life without extensive rehabilitation, Norfolk Southern has not announced any plans to address the bridge's existing condition or operating plans in the event that the bridge becomes unusable.

This is a matter of great concern to New York and the interest of expanded rail freight service has lost the bridge that would dramatically reduce CP Rail's effectiveness as a competitor in the western part of the state.

Finally, but by no means least serious, serious concerns have arisen over the prospect of CSXT system downgrades contributing to increased risks at grade crossings especially in the Rochester, New York area. Investigations are underway by the FRA and others into the specific causes of accidents and grade crossing protective device malfunctions and the steps that could or should have been taken to avoid them.

New York remains willing and prepared to work with CSXT and Norfolk Southern earnestly and in good faith to address the matters described above and otherwise try to realize the promise expanded rail freight service and enhanced transportation efficiency that was part and parcel of the carrier's Conrail plan.

Expanding and improving rail transportation is an important goal of New York. The state has worked to fulfill its role by increasing its investment in rail infrastructure and assisting the carriers doing business in New York through initiatives such as the 2002 property tax legislation.

We ask the STB to provide continued oversight to assure that the carriers fulfill their commitments to New York.

Thank you for the opportunity to appear here today.

CHAIRMAN NOBER: Well, thank you.

And, Mr. Smith, welcome back.

MR. SMITH: Good morning, Mr. Chairman. Thank you very much.

And, once again, my name is Paul Samuel Smith. It is my privilege to represent the United States Department of Transportation.

The Conrail transaction changed the landscape of railroading in the Eastern United States. Beginning with the filing of the initial application in 1997 and continuing through Decision No. 89 in 1998, with early implementation troubles following the split date in June of 1999, and now through almost five years of formal oversight, this Board has considered and resolved an extremely broad array of issues: intermodal and intramodal competition; rate monitoring; fee and service prescriptions; shipper contract terms; and environmental and community impacts.

In coordination with the Board, the Federal Railway Administration has worked with CSX and Norfolk Southern to insure that all safety issues were addressed.

Through the terms to the original application, numerous settlement agreements, and far ranging conditions, the Board has striven to make sure that the features of this new landscape serve the public interest. An unprecedented increase in rail competition in the shared asset areas and elsewhere, the introduction of rail service east of the Hudson and various noise pollution or congestion mitigation measures have all been put in place.

Over the last five years, the Board has monitored these and other conditions to insure that they were working as intended and that they were being complied with by the applicants.

The oversight process during this period has followed a familiar course. Initially a relatively large number of parties raised serious issues about the applicant's compliance with various conditions. As time passed, however, the number of active participants and issues raised in the annual oversight proceedings declined.

The Board reduced the reporting burden initially imposed upon the applicants. Nonetheless, complaints about the applicant's compliance with conditions have continued, albeit at a lower level.

Allegations have most often focused on

noncompliance with one condition in particular and that is the that applicants adhere to all of the representations they made during the course of the proceeding.

In recent years, most parties claiming noncompliance with this condition have not sought specific relief from the Board. Instead they have continued to discuss these issues with the applicants, and the Board properly took no affirmative action in those circumstances.

Now, however, at the scheduled end of the oversight period, the reduced number and volume of complaints and the interest of finality suggests that the time has come to resolve the remaining issues at the end of formal oversight.

Perhaps not surprisingly in so massive a transaction, the applicants made a great many commitments to a great many parties in the course of this proceeding. By imposing adherence to these commitments as a condition of approval, the Board relied upon those representations to a major extent in order to meet the public interest standard.

The declining number of claims from individual parties indicates the applicants have by and large fulfilled their obligations in this respect. It is also quite clear from the presentations made today, those made in New Jersey last month and perhaps as well from the written statements yet to be submitted in July, that there are still issues. They encompass both representations made or commitments imposed for the benefit of individual parties, as well as those of a more fundamental nature, such as whether the structure, funding, and decisional processes of Conrail are allowed to function as intended in the shared asset areas.

After five years, it is time to resolve the lingering questions. The record compiled to date suggests that the Board's conditions have worked overall. What remains is for the Board to bring about an appropriate conclusion of the pending issues.

Specifically, complaining parties should identify the particular representations made or the conditions imposed and should advice the evidence and arguments they have that are allegedly unfulfilled to this date.

The applicants, of course, should be given an opportunity to submit any kind of rebuttal or other response. The procedures that you have in place, these hearings, the corresponding written statements, and the schedule of written comments for July provide the proper procedural framework.

After that, this proceeding should be closed. For any serious concerns that may subsequently arise, the Board has repeatedly emphasized it retains authority to take appropriate action without regard to the existence of a formal oversight proceeding.

That concludes my prepared presentation, Mr. Chairman.

CHAIRMAN NOBER: Thank you very much, and I want to thank all of you for your testimony.

Let me start with whether or not there's a need for continued oversight. As I understand it, Pennsylvania, the Port Authority, and the State of New York would all like to see us continue oversight; is that correct?

MR. WHITLOCK: That is correct, at least as to our issues, Mr. Chairman. Whether there is a need for general oversight could be discontinued, that's something that we would leave to the Board's discretion.

RADM LARRABEE: We share that same position. We don't take a position on formal oversight.

MR. GUINAN: Yes, I think we would like to see the oversight extended, at least as it relates to these major issues that we've raised.

CHAIRMAN NOBER: Okay. DOT'S suggestion is that we hear evidence on specific representations or conditions that are not being complied with and resolve them now and just leave, you know, the Board's normal power to review any of its orders at any time in place and consider that to be sufficient to address concerns.

Do you all fee that that would address yours? Is that sufficient for New York, Pennsylvania, or the Port Authority?

You can say you don't know.

(Laughter.)

MR. WHITLOCK: Well, from Pennsylvania's perspective, a lot of these things can't be done overnight. Again, economic development projects come up from time to time, and the willingness of the carriers to be serious about their obligations to participate in projects that the state brings to them can only be measured over time, and therefore, we don't think it would be practical to simply have testimony in the hearing this summer and wind the matter up.

CHAIRMAN NOBER: I think in advance of both New York and Pennsylvania's concerns, you heard the carriers earlier testify that while they may not have made every investment that was foreseen back in '97 and '98 -- and I'm going to characterize this a little bit -- they have made other investments in other areas, and that if you look at the net of their investment in the States of Pennsylvania and New York and for service to the Port Authority, that they've exceeded or met the spirit of what they have intended to do.

How do you all feel about that? How would you respond to that? Let me ask this.

MR. WHITLOCK: From Pennsylvania's perspective, again, we would assume that, again, having spent ten billion dollars to acquire Conrail that the carriers would be making valiant efforts to improve and develop customers and improve the efficiency of their service for their own proper business reasons.

The goal of the commonwealth in entering into these agreements which is the basis for our support of the transaction was not general development, you know, as the carrier saw fit, but rather, a coordinated development incentives under the active coordination of the Commonwealth.

And so I think for the carriers to say that, yes, we've made these other investments, you know, we appreciate those other investments, but we think really that's comparing of apples to oranges.

CHAIRMAN NOBER: That they should be doing both?

MR. WHITLOCK: They should be doing both.

CHAIRMAN NOBER: Mr. Larrabee or Mr. Guinan, do you all have a comment?

RADM LARRABEE: Mr. Chairman, from our perspective, rail is becoming a more and more vital part of our port system. We have invested literally billions of dollars to dig deeper channels to make dramatic improvements in our terminals and to invest nearly $500 million in our intermodal rail facilities within the port.

We're making those decisions based on the fact that the system has continued to serve us well. We've seen about a 17 percent increase in rail traffic over the last ten years. The figure this year is about 28 percent increase, and we believe there is a significant pent-up demand for additional rail service.

We continue to work on a regular basis with all three rail interests, with regular monthly meetings. We are very much focused on current objectives as well as looking at the future and looking at new and innovative ways to move our rail business.

As I mentioned in my testimony, rail is important to us not only from a business perspective, but also from an environmental perspective, and we believe that rail is an integral part of our region's future.

I, like Mayor King, received a letter this morning from both CSX and Norfolk Southern addressing our continued efforts to work together and pledging their continued efforts in that regard, and that relationship is working very well.

CHAIRMAN NOBER: Yes, sir.

MR. GUINAN: I think from New York State's perspective, we do want to partner with the railroads, and we do recognize that both of these railroads have made investments in New York State. Norfolk Southern has cooperated with the MTA and Metro North for improved commuter service in the lower Hudson Valley and cooperated with the interest in Western New York to rehabilitate the southern tier extension, and we how have trains running over that for the first time in a couple of decades.

CSX has improved the West Side Hudson

Line, has made improvements to some of their yards, and more recently has made improvements to grade crossings across the middle part of the state.

We do appreciate that, but some of the promises that we had hoped would materialize have not. The ones that I highlighted, for example, are the Gennessee Yard near Rochester, the Portage Bridge, which is critical to the continued viability of the Southern Tier main line, and the general development of the terminal areas in Buffalo.

You said at the start of the hearing that you would ask each if we were better off. Certainly we are better off.

CHAIRMAN NOBER: That was my next question.

MR. GUINAN: But there's no question that we are, but the railroads are better off, too. I mean, we've enacted legislation that essentially cut their property taxes in half right off the bat and provided for a ten-year exemption in the event of new developments in order to encourage that kind of investment and encourage economic development in the diversion of freight from trucks to rail, and we are just concerned that more can and should be done.

CHAIRMAN NOBER: Well, obviously the ultimate question for the transaction is, I mean, you've all testified that the railroads haven't done everything that they had said they would do, but is Pennsylvania and the Port Authority in New York and, Mr. Smith, the country better off for the fact that the transaction occurred than if it hadn't?

You know, isn't that ultimately what we need to look at? How would you answer that? Mr. Whitlock, you can.

MR. WHITLOCK: Well, I think the ultimate answer to the question is, yes, the Commonwealth probably is net better off as a result of this transaction occurring, although on a regional basis there has been -- there is a legitimate debate as to whether the mid-state Harrisburg area has done comparatively much better than Philadelphia.

But again, we believe that the improvement in the rail service would have come, should have come from the transaction without the conditions imposed, and the carriers to obtain our support in front of this Board back in 1997 agreed to a set of specific controls.

CHAIRMAN NOBER: Oh, I worked for a Pennsylvania member. I'm familiar with what went on getting there. I understand.

MR. GUINAN: And so we believe that the carriers -- again, that it is important for this Board, both for this deal and for other transactions that it may consider and approve in the future needs to, again, hold the carriers to their contractual and quasi-contractual obligations, and that's where we really see a failure to meet those obligations here.

CHAIRMAN NOBER: Mr. Guinan, you answered that before, but do you have anything to add?

MR. GUINAN: Just that we recognize that we exist in a dynamic arena here, and we're not asking that everything that was promised be pursued, but certainly the critical things that were of strategic importance, like the ones that I mentioned, we would hope would be pursued.

CHAIRMAN NOBER: Admiral Larrabee?

RADM LARRABEE: Mr. Chairman, just to answer the question, I think we are better off. I think we're better off because we, the Port Authority, have invested a significant amount of money in our intermodal business. I think we're better off because the rail business today is an integral part of the port's operation, and more importantly, I think the question is will we be better off ten years from now.

Our plan is to grow our rail business from today's share of about 11 percent to about 23 to 25 percent of our overall growth. We expect to double the amount of cargo that we bring into our port in the next ten years, and rail is going to be a significant part of our ability to succeed in the future.

CHAIRMAN NOBER: Mr. Smith.

MR. SMITH: Mr. Chairman, indeed, I hope the country would be better off, but I wouldn't say that that is the deciding criterion in this case. As you just mentioned, you were well aware that both applicant railroads made commitments to specific parties in return for their support and withdrawal of opposition.

It may well be, as in the case of Hollidaysburg, that it becomes infeasible to continue to insist upon a specific commitment being followed through, regardless of consequence, regardless of present day circumstances. But the onus should be on the applicants. They made the commitments. They obtained the support. If conditions have changed and their response to claims that a condition is not being made or a representation is not being followed through, then they can advance that and see whether or not in the Board's judgment that warrants a departure from the original condition.

CHAIRMAN NOBER: On balance, do you think that the country, the public interest has been served by the transaction? I mean, we'll deal with the specific representations in a moment, but does the department believe that the transaction has been to the benefit of the public?

MR. SMITH: I think as conditioned, I think overall, as we've said, the course of the oversight has demonstrated a reduction in the number and intensity of concerns. Those still exist and should be addressed, but I think overall, yes, the conditioning and so forth that the Board has imposed have certainly been to the benefit of the public interest.

CHAIRMAN NOBER: The representations clause I know has created a great deal of difficulty and question, you know, among your states, in particular, and you know, in Pennsylvania has caused a great deal of concern. And what it means is something that I think many people are struggling with.

I mean, do you all feel that the representations clause in the Conrail approval means that each of the carriers should be held to each and every representation and promise they made?

MR. WHITLOCK: Yes, Mr. Chairman, we do, absent an extraordinary showing by the carriers that it's not feasible to meet those, and in this context, we're noting that what we're requesting essentially is a payment of money, and in contrast the circumstances at the time the Hollidaysburg situation was brought before this Board, Norfolk Southern, I believe, has just reported record earnings and CSX is close behind.

So the carriers are not in a position to say that it's that. ‘’business is decling, and it would cripple us to do what we understood to do in the course of the 1997 representations.’‘

CHAIRMAN NOBER: Admiral Larrabee.

RADM LARRABEE: Mr. Chairman, I'm going to defer. I don't have personal knowledge of that. I'll be happy to answer it for the record.

CHAIRMAN NOBER: Of course.

Mr. Guinan.

MR. GUINAN: Mr. Chairman, once again, we do feel that we're better off. We don't want to go back to the Conrail days. We understand that circumstances change and that there may be a need to close economic development offices or defer certain improvements that are of a tactical or operational level, but some of the things that we've been interested in and focused on, we believe are of strategic value and should be pursued as originally contemplated.

CHAIRMAN NOBER: You know, I mean, what to do about this representations clause is a very difficult one. On the one hand, you know, railroads are businesses. The rail and freight environment is a dynamic one and one seven years later can't necessarily say that every projection made back in 1997 is going to turn out to be the right one and that every investment that was thought to be necessary then would turn out to be needed.

You know, many states and many people predicated their support for the transaction based upon carriers falling through their commitments, and that just can't be rendered meaningless either, and I think that that's a difficult struggle for us to have in retrospect and whether or not our decision raised expectations of what could be enforced, you know, maybe perhaps our own agency is partly to blame as well. But that's a struggle now looking in hindsight.

I will also say that from an infrastructure standpoint, it is hard to predict in the future, you know, what infrastructure investments will really make sense. And, you know, I will cite as an example I was in February out at the Alameda corridor,which on the one hand is one of our best example of public private partnership in frastructure, and on the other hand is an example of the difficulty in planning public investment, and that while its use is over projections, it's only a third of capacity because the freight market has moved beyond that, and as you well know -- Admiral Larrabee, you're shaking your head because you know, many distribution centers have now been set up that are outside past the Alameda Corridor with the truck containers as they come in and process the inbound freight right, you know, in the L.A. region and then put it on a container and ship it out. So the Corridor isn't being used to the maximum extent possible.

I'm sure that that's an issue that you all are facing in New Jersey as well, and it is hard, and that wasn't predicted I know for a fact when the Corridor was proposed, and you know, trying to predict in advance what investments are going to be needed and ought to be made in a dynamic marketplace is a difficult balance and one that I will tell you that, you know, how I used the first time the royal "we" at the border, struggling with what is the right balance there.

But it is a very, very difficult issue and, you know, is it everything that everyone had promised? Of course, the answer to that is no, and you know, are you better off for the transaction if you have all answered that yes? And so how do we then end oversight in a way that, you know, allows for having some meaning to the representations clause is I think the challenge going forward.

Do you have anything to add or any further comments for the record?

MR. WHITLOCK: No, Mr. Chairman, not from Pennsylvania.

CHAIRMAN NOBER: Well, with that, I thank you all for your thoughtful testimony and for accommodating the schedule of Mayor King, and with that, why don't we take a 15-minute break before moving on to the next panel?

(Whereupon, the foregoing matter went off the record at 12:09 p.m. and went back on the record at 12:28 p.m.)

CHAIRMAN NOBER: That was pretty close to 15 minutes.

So why don't we start with our next panel, Donald Alexander from Savage Services; Michael Scanlon from PP&L Energy; Christopher Marsh from CONSOL Energy; John Gallaher from Kinder Morgan; and Tom Schick from the American Chemistry Council.

I want to welcome all of you and the practice is to go from my left to right, and we'll hear from all of you first and then save questions to the end of the panel if that's okay.

So Mr. Alexander.

MR. ALEXANDER: Thank you, Mr. Chairman.

As has been stated, my name is Donald Alexander. I'm a Senior Vice President of Operations with Savage Services Corporation.

Savage is a creative solutions company based in Salt Lake City, Utah. We focus on materials management systems, transportation systems, focus in the industries with refining and energy, as well as industrial and rail.

In 1996, Consolidated Rail Corporation made a strategic decision to divest itself of its branded flexiflow transload facilities throughout its rail network.

In February of 1997, Savage entered into an agreement with Conrail to purchase the equipment and assets of 11 of these facilities.

Since the merger, Savage transloading operations in the Eastern United States have grown to 26 facilities in ten states and one Canadian province, including those on the former Conrail lines. Four of these facilities are in or affected by the shared asset areas. Savage transload facilities are rail served properties where the shipping public, typically non-rail served, can enjoy the benefits of rail line haul economics and the flexibility of trucking for first or last mile distribution.

Savage transload facilities live and die by the railroad's ability to get cars into and out of the facilities to meet the demands placed upon us by the various shippers and consignees using our facilities. Our experience with the merger and the expanded single line service has been very positive and has allowed us to expand and grow our service offerings into areas that otherwise would not have been possible.

We are very much in support of the Board's decision regarding the Conrail acquisition and would support a decision to end formal oversight.

Thank you.

CHAIRMAN NOBER: Thank you very much.

Mr. Scanlon.

MR. SCANLON: My name is Michael Scanlon. I'm coal transportation manager for PP&L Energy Plus.

PP&L would like to thank the Board for scheduling public hearings to permit parties interested in the operation of the Norfolk Southern-CSX since the Conrail merger to relate their experiences. On behalf of PP&L, I will talk about our experience using the incorporated Conrail lines operated by the Norfolk Southern and CSX Transportation in western Pennsylvania and northern West Virginia, known as the MGA or the Monongahela

Railroad.

I will also address PP&L's experience using Norfolk Southern and CSX services from West Virginia, Virginia, and central Pennsylvania during the years since the Conrail acquisition.

In the East, PP&L consumes about eight million tons of bituminous coal annually at three coal-fired generating stations in Pennsylvania. PP&L also owns two coal-fired stations in Montana, but service to these facilities is not the subject of today's hearing.

Norfolk Southern provides rail service to all three Pennsylvania plants. To support PP&L's eastern coal supply needs, the company operates 11 unit trains consisting of 105 rail cars each, averaging between ten and 11,000 tons of bituminous coal per train. PP&L sources over three million tons of its coal supply requirements from mines served by the MGA rail system.

Because of the large volumes of coal originating at these mines, 42 million in 2003 and an estimated 47 million tons in 2004, quality rail service is an absolute necessity.

In our experience both the Norfolk Southern and CSX have done a good job to insure that adequate locomotive power, equipment, and manpower are available to meet the ever growing demand for bituminous coal from this region.

Norfolk Southern has provided quality service to PP&L with little or no disruption over the past five years of operation. In the early days of the Conrail split, Norfolk Southern and CSX Transportation caused some disruptions to service to our generating station, but both railroads have worked hard to overcome the problems.

Today's service is consistent and predictable. This is not to say we do not encounter problems, but they are no different from normal operational problems we encountered when Conrail operated the railroad.

The Bailey Mine and Enlow Fork Complex, one of the mines shipping coal to PP&L, are the two largest underground coal mines in the United States shipping some of the best quality coal in the world.

Moving these volumes requires quality rail service day in and day out. Without excellent rail service, the mine would have to start and stop operations, which would have a significant negative effect on production and cost.

PP&L was involved in a rate case against Conrail, NS, and CSX at the time of the Conrail acquisition. Our original complaint was filed against Conrail, which was making procurement of low sulfur coal from central Appalachia uneconomical.

As a result of the bottleneck decision, I reluctantly added NS and CSX as defendants. Our rate dispute aside, Conrail was providing good rail service at the time of the acquisition, but PP&L supported the acquisition by NS and CSX to increase competition in the Northeast.

After the acquisition, we settled our rate case and have been served by CSX and NS under contract since that time. Overall PP&L has been satisfied with the rail service we have received at the rates we agreed to pay. Dual access for NS and CSX to MGA served mines has worked well for those mines, PP&L and other receivers.

NS provides the loading service at the MGA served mines and interchanges those loaded trains with the CSX for movement to destinations served by CSX. As a result, coal from Pennsylvania and West Virginia mines has found new markets in southeastern United States generating stations.

PP&L's access to service from those mines has been good, and I believe enhanced competition between NS and CSX helps both railroads to stay on top of their operation. PP&L also purchases coal directly from mines in central Appalachia, which includes West Virginia, Virginia, and Kentucky, and central Pennsylvania that are served by Norfolk Southern.

Once the start-up problems that are associated with the Conrail acquisition were resolved, Norfolk Southern has provided quality train service to PPL generating stations.

PPL also purchases coal from mines in West Virginia served by CSX. We have again seen consistent service. CSX did have operational problems in the West Virginia area this past winter because of cold weather that affected current supply.

However, PP&L has experienced few, if any, delays related to car supply mainly because PP&L operates private unit trains. PPL unit trains from CSX origin mines move in a timely manner. Overall PP&L is satisfied with the current transportation contracts with both Norfolk Southern and CSX.

PPL's overall tonnage volumes have increased over the past several years, and Norfolk Southern and CSX have provided good quality service, moving PPL unit trains to and from mines and generating stations.

Thank you for this opportunity to speak.

CHAIRMAN NOBER: Thank you, Mr. Scanlon.

Mr. Marsh.

MR. MARSH: Thank you, Mr. Chairman, for this opportunity.

CONSOL Energy is a natural gas and coal company based in Pittsburgh. I'm the General Manager of Transportation. I'm responsible for both negotiating rail rates, as well as the day-to-day movement of the product itself.

I'd like to briefly read a statement that is in support of the merger.

CONSOL Energy is a significant shipper on the merged Conrail system with over thirty-five million tons of product moved by rail in this region each year. Prior to the merger, CONSOL Energy's MGA operations had a single carrier access from Conrail. They now have competitive service from both Norfolk Southern and CSX Railroads.

This competitive access has expanded the direct serve markets for these operations and has improved our rail rate alternatives.

Service to our MGA mines requires cooperation between both carriers. This cooperation has been generally successful and continues to improve.

We have also seen a willingness on the part of both carriers to make investments to improve the service to our operations. An example is the Bailey batch waste system that has increased shipment efficiencies to the mine, to the railroads, and our customers.

In summary, CONSOL Energy remains cautious with regard to further railroad consolidations, but has found that the Conrail merger has had a positive impact on the ability to be competitive in the marketplace and to serve our customers' needs.

CHAIRMAN NOBER: Thank you very much. I appreciate your summarizing your statement.

Mr. Gallaher.

MR. GALLAHER: Good afternoon, Mr. Chairman. My name is John Gallaher. I'm here representing Kinder Morgan Liquids Terminals, and I serve as Vice President of Sales for the chemical market.

For the benefit of the Board and for those who are unfamiliar with Kinder Morgan, I'll provide a brief overview of our organization and discuss the role that rail transportation plays in our business, as well as to share the impact that the Conrail transaction has had on our business.

Kinder Morgan is one of the energy transportation and storage companies in America, operating more than 35,000 miles of natural gas and product pipeline and almost 100 terminals.

Kinder Morgan, Incorporated owns a general partner interest of Kinder Morgan Energy Partners, the largest publicly traded pipeline limited partnership in the U.S. in terms of market capitalization. Combined the two companies have an enterprise value of approximately twenty-four billion dollars.

Kinder Morgan Energy Partners, as mentioned, is the largest publicly traded pipeline limited partnership in the United States in terms of market capitalization and the largest independent refined petroleum products pipeline system in the United States in terms of volumes delivered.

KMP owns or operates more than twenty-five thousand miles of pipeline and almost one hundred terminals, including both dry bulk and liquid bulk facilities. Our pipelines transport more than two million barrels per day of gasoline and other petroleum products and up to 7.8 billion cubic feet per day of natural gas. Our terminals handle over sixty million tons of coal and other dry bulk materials annually and have a liquid storage capacity of approximately sixty million barrels of petroleum products and chemicals.

Kinder Morgan is also the leading provider of carbon dioxide for enhanced oil recovery projects in the United States.

Specific to Kinder Morgan Liquids Terminals, we are the largest independent terminal operator in the United States. We currently manage almost twelve million barrels of U.S. independent chemical storage and forty-two million barrels of U.S. independent petroleum storage.

Given our significant role in the storage and handling of chemical commodities, we are heavily reliant on the railroads to receive and deliver our customer's products across our terminal network as rail transportation represents the primary mode chosen by shippers to deliver product to our terminal.

In 2003, Kinder Morgan Terminals, including our dry bulk business and our transloading operation, handled in excess of 750,000 rail cars with Kinder Morgan Liquids Terminals handling more than

21,530 loaded tank cars in the United States. These statistics coupled with market data indicate that this number will grow in 2004 and in years to come.

The Conrail transaction has directly affected three Kinder Morgan Liquids Terminals facilities, all of which are jointly served by CSX and Norfolk Southern. Those facilities include Carteret, New Jersey or Perth Amboy New Jersey, and Philadelphia, Pennsylvania.

In 2003, the Carteret terminal handled 3,324 loaded tank cars serving a variety of our chemical customers who occupy more than 1.13 billion barrels of storage.

Similarly, Perth Amboy with chemical storage capacity of 921,000 barrels and 2,060 loaded tank cars, and finally our Philadelphia terminal with a chemical storage capacity of 868,000 barrels handled 934 loaded tank cars.

Kinder Morgan Liquids Terminals' ability to compete not only within the terminal sector but also against other modes, including direct truck, is directly tied to the railroad's ability to provide our customers, comprised of major chemical shippers, traders, marketers and distributors with competitive rates and services into our facilities. Since the Conrail transaction, we've enjoyed the benefits associated with shared asset areas as our customers clearly prefer the flexibility and competitiveness of joint line service.

When responding to customer inquiries, one of the most frequently asked questions is who was the serving railroad. When it's identified as a shared asset area, the response is always positive.

Another critical element of the Conrail transaction is one of customer service. Due to the high volume of rail cars that have been received into our terminals, all three facilities are switched on a nightly basis. We have found that the overall responsiveness and proactive behavior of management and throughout the work force has improved since the merger.

Some of the examples include the following. In the past Kinder Morgan Liquids Terminals and our customers endured a serious backlog of rail cars in Conrail holding yards. We have experienced a greater spirit of cooperation with regards to the identification of customers who consistently contribute to the backlog, and held joint customer and railroad meetings to establish the root cause of the problems and to develop action plans.

The result has been a reduction in the number of cars sitting idle in holding yards for an extended period of time, which not only serves to eliminate backlogs, but also minimizes cost of demurrage charges to the customers.

Kinder Morgan Liquids Terminals' chemical business in the region continues to grow and as indicated earlier, rail car shipments are on the rise. The merged entity has responded to our growth by expanding operating hours, as well as to bring in more rail cars per shift.

Furthermore, they have assisted in identifying bottlenecks within our terminals to improve the operating efficiency of the facility.

In addition to local bottlenecks, we've

seen an improvement in the reduction of rail car backlogs along New Jersey's chemical corridor, which makes our customers' overall experience much more satisfactory.

Another improvement with regards to the management of rail car activities is the ability to better track the whereabouts of individual cars as they sit idle on storage tracks. It is our experience that the rail yards are being managed much more proactively with regards to cars that are awaiting access to our facilities, allowing for an effective and efficient flow of cars in and out of our terminals.

Finally, one critical element that should not be overlooked is management's focus on safety and customer service. Meetings between railroad employees and terminal management staff has proven to be extremely successful for all parties, and we look forward to maintaining and expanding upon this collaborative effort.

The bottom line summary is this. Our rail car activity has steadily increased as a result of the

Conrail transaction, and we've experienced improved service, a renewed focus on customer satisfaction, and more aggressive pricing to support rail activity versus other modes, which has allowed for growth within our terminals organization, as well as communities in which we reside.

Thank you, Mr. Chairman.

CHAIRMAN NOBER: Well, thank you.

Mr. Schick, welcome back.

MR. SCHICK: Thank you, Chairman Nober.

I'm Tom Schick, Assistant General Counsel at the American Chemistry Council. We also appreciate the opportunity to be here.

ACC represents the business of chemistry, approximately 90 percent of the productive capacity for industrial chemicals in the United States.

If one looks back, and I'm going to look back for a moment during my comments, if you look back far enough, you'll find the name Chemical Manufacturers Association on our earlier pleadings in this same docket. We participated in the Conrail transaction.

CHAIRMAN NOBER: Are you like us, considered a successor in interest, too?

MR. SCHICK: Yes, we are the successor. And in fact, you may be pleased to know that when we changed our name, the very first document ever filed with the new name was in this docket.

CHAIRMAN NOBER: Good for you.

MR. SCHICK: Our colleagues were jealous. We had something to file.

We were very engaged in the transaction when it was being reviewed by the STB back in '97 and '98. After the approval, ACC took a spot on the Conrail Transaction Council, which was an interesting period of time for everyone concerned, and we have also participated on occasion in the oversight.

I believe we filed specifically in the year 2000, the first annual oversight, and I'll mention some of our comments from 2002, the third annual oversight.

Before I get on to the Conrail thing, I do want to thank you, Mr. Chairman, and thank the entire staff for your new E-filing system. The letter identifying that I would be the speaker today was E-filed on Thursday with great trepidation by me, and it seems to work. I have a receipt electronically that it was filed. I want to compliment everybody who was involved in that and encourage other people to use that. It's a great 21st Century system.

CHAIRMAN NOBER: Well, we appreciate that. Unfortunately I think it's really more of a late 20th Century system when you get right down to it.

(Laughter.)

MR. SCHICK: Well, for an agency whose predecessor was born in the 19th Century, you're doing pretty well here, I think.

CHAIRMAN NOBER: That's as modern as we get.

MR. SCHICK: It's pretty good.

As others have said, certainly for the chemical industry, safety is number one. It's always number one for our members, and we know it's number one for our railroad partners, and I'm not going to comment further on that because that's not a problem or an issue for this hearing.

Service is also important to our members, and we did talk to the members before this hearing. We're frankly getting reports both ways regarding the service, the two major carriers as well as the Conrail shared assets an operator. I don't think I have enough to say that there's a problem. I don't think I have enough to say that it's perfect. So I'm going to leave it at that, saying there's always concern. There's always opportunities for improvement, and it varies from member to member. In the future we may have comments from individual members, but right now I'm kind of in the middle on that. I wish I could be more specific.

Competition is the third thing I'm going to talk about today, and I think this is critical in terms of looking past the five-year oversight. I think you'll find we don't have a lot of dispute over this.

If you look at at the decision number 86 in this case, in 1998 the Board pointed out that the total amount of rail traffic that was going to be gaining head-to-head to railroad competition, it was estimated by the applicants at $700 million per year.

And the Board went on when it talked about the public benefits, that is, the balancing that led to the public interest. Just under quantifiable public benefits -- there were also unquantifiable benefits -- but under quantifiable benefits, it said that there would be almost a billion in quantifiable benefits during a normal year and 340 million of that was shipper logistic savings and competitive pricing benefits.

It was very clear at the time that the Board did the balancing that competition and benefit to the shippers was one of the things that CSX had brought to this docket in setting up the shared asset areas and the MGA and other areas where there would be competition.

So I don't think there was any question about that in the Board's mind and really anyone else's.

The oversight has been useful. It allowed us two years ago to raise some concern that our members had about the competition as it had been approved originally in 1998, but again, I don't think there's a lot of disagreement in the document.

The STB, in its Decision No. 10 in this sub-91, said that both CSX and NS will have access to existing, or in describing the operating agreements, "the existing or new shipper owned facility in the shared asset areas in both NS and CSX will have the opportunity to invest in joint facilities to gain access to such facilities.

Summarizing what CSX had said about ACC's comments, specifically the Board said CSX contends that if CSX and NS were to propose changes relating to the SAAs, they either conflicted with the condition imposed on the transaction or required Board approval under the governing statute. It appears to be obligated to bring the matter to the Board's attention.

Similarly, there was a comment on NS's, and in the end the Board concluded it is likely that any significant change regarding competition would require our, meaning the Board's, approval either because the change would conflict with the condition we imposed on the Conrail transaction or because even without any such conflict the change would require our approval under the governing statute.

So I think ACC and NS and CSX and the STB are all in agreement that if there is to be any change in the competitive access in the shared access areas regarding this transaction, that would require review by the STB.

I don't think that we need to have perpetual scheduled formal oversight. The question here is just to clarify something that has already been agreed on, that the Board does have jurisdiction. If there were to be a change proposed that would be adverse to the public interest in the regard that it was presented back at the time of the original merger.

That's the end of my comments. I look forward to your questions.

CHAIRMAN NOBER: Okay. Well, thank you very much, and thank all of you, and thank all of you for your comments.

Let me start with the two questions that I want to ask every witness today. One is do you all feel you are better off with the transaction than if it hadn't occurred. I've got the sense from all of you that the answer is yes. Is that?

PARTICIPANTS: Yes, correct.

MR. SCHICK: I think on balance with the way it was set up with the components, yeah.

CHAIRMAN NOBER: Now, do any of you feel that oversight beyond five years is necessary or would the Board's general power to review its former decisions and transactions be sufficient to cover any issues that may arise?

MR. MARSH: We're comfortable with our commercial negotiating options and your general oversight.

MR. SCHICK: I think we have already answered that.

MR. SCANLON: I can agree with that.

CHAIRMAN NOBER: Focusing on shared assets for the moment, and none of you were here at our last hearing, does anyone think that extended oversight specifically in the shared assets area is needed?

There were a number of requests for that at our prior hearing. If there's anything unique to shared assets that would require extended oversight.

MR. ALEXANDER: You know, we operate in the shared asset area and from our standpoint I don't. I mean the service has been fine. The relationships seem to be working. I don't know that there's a need for anything more than just the general oversight of the Board.

CHAIRMAN NOBER: Anyone else?

MR. SCANLON: No, we do not operate in the shared asset area.

MR. GALLAHER: We operate in the shared asset area and we see no further need for continued oversight.

CHAIRMAN NOBER: And do you all think the competition there has worked as it was intended?

MR. GALLAHER: We have certainly seen that as a result of the increased rail traffic, and there is an advanced challenge of increased traffic.

MR. SCHICK: I think for the most part it has operated as it was intended. I know there was a lot of competition when the contracts were reopened at the time of the split, and that was certainly one of the things that was contemplated by everyone, including the Board, when it issued that order.

I think going forward with their problems, they should be looked at with competition, and if they're not they're not going to hear about it.

CHAIRMAN NOBER: Okay. Well, look. I want to thank all of you for coming and testifying today. Do you have anything else to add or any further comments?

(No response.)

CHAIRMAN NOBER: I don't hear any particular issues that anyone is having. I'm always happy to see five satisfied rail customers. I don't often have five in a row.

(Laughter.)

PARTICIPANTS: Thank you very much.

CHAIRMAN NOBER: Well, thank you all very much for you time in coming here.

And with that we'll move on to the next panel.

I will just note that in addition to E-filing, which is our late 20th Century innovation, we have also adopted a 19th Century innovation of name tags, which is a great help, but it takes an extra minute between panels.

Okay. In our next panel we have Kenneth Pramik from Cemex, Incorporated; Rob Clark from Clark's Feed Mill; Dennis Schaffer from PA Distribution; and Jason Blinkoff from A&R Bulk-Pac.

And, again, following practice, we'll start from my left with Mr. Pramik.

Please begin.

MR. PRAMIK: My name is Ken Pramik, and I'm Director of Transportation with Cemex. I appreciate the opportunity to appear before the Board today and relate our experiences, especially in regard to the CSX since the time of the approval on the transaction.

Cemex is the largest cement manufacturer and shipper in North America. We ship through all modes of transportation, and we manage a private cement hopper car fleet numbering nearly 1,500.

We also operate a short line railroad in

Texas.

Personally, my career in transportation began pre-Staggers. I've been directly involved with rail transportation as a shipper for the past 30 years.

Reliable and efficient rail transportation is critical to our success as a cement supplier, and cement is a very competitive business. We recognize and value our transportation-supplier relationships, and we work to make our business attractive and profitable for them.

Also, transportation costs to a large extent determine the markets we can serve. So we are constantly looking for opportunities to stay competitive, reduce costs, and provide added value to our customers.

Cemex, as well as my experienced with the CSX since the Conrail split have been very different compared to the many years prior. It is our opinion that the financial and operational challenges CSX face with the new properties cause significant changes in management practices which have adversely affected our business and ultimately has led to the CSX demarketing of at least two or our major traffic lanes.

The service crisis we experienced just after the split was more pronounced to the Norfolk Southern. However, they recovered after a few months. The CSX service for us has deteriorated, and most recently has become a major problem affecting our Florida market, as well as driven up our cost as we must often truck to our distribution terminals to avoid stock-outs.

During the time when CSX and Norfolk Southern were bidding for Conrail assets, we were assured by CSX Chairman Snow that existing shippers and businesses would not bear the cost of the Conrail acquisition. The reasoning was that new rail business generated by taking freight off the highway system would be more than adequate to pay for the cost and provide profit for CSX.

Within a year after the transaction date we began to see a different attitude and results in our business dealings with the CSX. Since the split we have experienced annual increases every year, including the time of recession after 9/11.

These increases were above inflation, demonstrating that the increases were not market based and that CSX was taking advantage of their captive shipper.

Specific examples would include the 17 percent rate increase on our largest volume move. This was a move that CSX had handled for us for at least 15 years previously. This year we were presented with increases of 26 percent on two other major moves which have now resulted in a noncompetitive situation for Cemex in those two particular markets.

Additionally CSX has reduced service to our rail captive plant in Brooksville, Florida, and has made changes for their operational conveniences on the routings of our traffic which have increased transit times and negatively impacted our private car costs as well as overall supply costs to our terminals.

It is our position that Cemex has been and continues to pay for CSX's part of the Conrail acquisition. Cemex would recommend the extension of the Conrail general oversight proceedings beyond the original five-year term and extend this oversight beyond the shared asset areas as the issues and repercussions of CSX's overpayment of the Conrail assets continue to be dealt throughout the CSX rail system.

We would further ask the STB to take actions to reduce abusive operational and commercial practices by CSX. We also would hope the STB would soon be in position to move forward and create a procedure for small rate cases to contest rate matters via an arbitration process.

Thank you for your consideration of our issues in this matter.

CHAIRMAN NOBER: Well, thank you for your testimony.

Mr. Clark.

MR. CLARK: Thank you, Mr. Chairman.

My name is Robert Clark. My sister and brother and I own Clark's Feed Mills, an animal feed manufacturer located in Shamokin, Pennsylvania.

My grandfather begin this business in 1929, and our family has operated this business continuously for 75 years. Clark's is a multi-species feed manufacturer producing feed for dairy and beef cattle, chickens, turkeys, ducks, goats, sheep, deer, rabbits types (phonetic), et cetera. This activity represents only five percent of our annual feed tonnage. The other 95 percent of our feed production goes to feed our company owned specialty broiler flocks.

Clark's contracts with area independent contract poultry farmers and produces live birds for sale through various specialty markets. These specialty markets have certain growing protocol and processing requirements. The markets include kosher processing, halal slaughter, live chicken through various ethniticies in the New York City live bird market, and a no antibiotics administered protocol.

When I compare our 1998 feed tonnage sold to that of 2003, I find an increase tonnage of about 75 percent. The feed manufacturing business is highly competitive and margins are very thin. Any advantage a feed manufacturer can discover must be used if his business is to expand.

Therefore, our 75 percent increase in feed tonnage is a laudable accomplishment in the five-year period.

This time frame also coincides with the CP access in Sunberry.

In the summer of 1999, when NS took over the purchase sections of Conrail, many shippers in central Pennsylvania encountered mammoth traffic flow problems. Cars were lost, rerouted or both. Service was just not acceptable.

During this time our grain brokers and key ingredient suppliers suggested originating our largest two components of the poultry feed, corn and soybean meal, on the CP. They executed these trades for us, and we began to interchange CP cars at Sunberry. Transit times were predictable and rail freight rates were much improved over the higher NS rates.

Because of decreased inbound freight rates, we were able to expand our business, enter into new contracts, sign on more independent contract poultry growers, hire new employees, manufacture more feed.

Our other businesses in north central Pennsylvania also began using the CP access with similar results. Certainly any increased level of freight rate competition is good for freight rates and business development.

In September 2001, Richard Robey and NS entered into a confidential and complicated agreement regarding CP access in Sunberry. This agreement formalizes the promises made by the NS contained in the 1977 Bill Schaffer letter.

We have since learned that this agreement is loaded with additional interchange restrictions, car accounting caveats, penalties for interchanging volatile cars, and provisions to close the interchange.

This agreement is not consistent with the promises made by NS, nor is it consistent with the verified comments made by Jeff Silver or Richard Robey in previous years before the Surface Transportation Board.

NS appears to believe that since it now operates its sections of Conrail, the promises made to accomplish these goals need not be upheld. When NS came to central Pennsylvania seeking support for their purchases of Conrail, we had to go against the more local CSX railroad. We collectively told them we need to seek the access at Sunberry. NS agreed, the Schaffer confirms, and the NS got what it wanted after we supported the NS through writing letters, contacted elected state officials, et cetera.

We continue to wait for the NS to fulfill their promise. Last month we had a positive meeting with the Senior Vice President of NS. We are cautiously optimistic that this matter can be resolved through further negotiations. However, no outcome is certain.

We request the Surface Transportation Board keep primary oversight proceedings open until the CP access issue is resolved.

Thank you, Mr. Chairman.

CHAIRMAN NOBER: Thank you, Mr. Clark.

Mr. Schaffer.

MR. SCHAFFER: Mr. Chairman, thank you for the opportunity to meet with you this morning.

My company is PA Distribution. I'm the general manager of PA Distribution.

We are a building products wholesaler, warehouser, and distributor. We also have a rail truck reload and transfer facility.

Our business is privately owned, relatively small company. PA Distribution was established about four years ago. We invested at least for our company a substantial amount of capital in building our facility.

The issue that we have here this morning is the same as Rob Clark and also a number of other shippers located in our area. Rob and I are collectively representing not only our own positions, but also those of many of these other shippers who are likewise situated.

As Rob alluded, back when the merger was being proposed, an agreement was reached with Norfolk Southern where there would not be any opposition to their takeover of Conrail and there would actually be support of their position.

One of the most important things we got in exchange was access to the CP rail system, Canadian Pacific Rail, at Sunberry. Prior to that, under Conrail this was possible, but Conrail had a paper barrier. They would not allow it to happen.

Both Rob's company and my company are located on a system of short lines, six commonly owned and managed short lines. The North Shore system is sort of a shorthand name for that group of railroads.

And, again, as part of the takeover of Conrail, the North Shore system was allowed for the first time to have competitive access to the CP rail.

For our company specifically access to the CP is absolutely critical. We've built our company around this access. It has allowed us to grow our business, expand our markets, hire people, and has been extremely successful.

Seventy-five percent of the material we bring into our facility arrives by rail, and of that almost seventy-five percent of that comes in on the CP.

If we were to lose this access, it would potentially be devastating. The agreement that was signed between the North Shore and the Norfolk Southern about two and a half years ago we feel, and our counsel agrees with this, could have the effect of basically closing this interchange, and that would be devastating.

What we're asking here today we think is very simple. This has been a very successful arrangement to have this access to the CP, and we're asking that basically the promises that were made, and these were not verbal promises. They were written. They were covered in verified statements submitted to this Board, that those promises be honored, and that we as shippers, that the investments that we've made and the business decisions we've made in reliance on these promises, that our interest be protected and that we continue to have this access.

And in closing I'd like to say this competitive access has worked the way the classic economic model says. It has expanded the pie. There's now a lot more rail business, more jobs, more economic activity, and this has been good for the NS. They've gained more business because companies have collectively grown.

This is not an anti-NS statement. We have a high regard for the NS. We do business with them. The service is good, and we just want to also have the CP access.

Thank you.

CHAIRMAN NOBER: Thank you very much.

Mr. Blinkoff.

MR. BLINKOFF: Good afternoon, Mr. Chairman.

My name is Jason Blinkoff. I'm the Director of Sales and Marketing for A&R Bulk-Pac. We are a contract packager handling plastics and other dry bulk materials in the shared assets area in North Jersey.

We are indirectly part of the region's efforts to minimize truck traffic on highways by transferring material to and from rail cars for routes that are destined to and from the greater northeast region.

I guess the best way to look at what I'd like to talk about today is to kind of characterize the landscape prior to the Conrail split and looking at like after the Conrail split.

Before the Conrail split, I would say that the landscape reflected an outdated system that was in place for the past 40 to 50 years, and the corresponding situations that would arise as a result of an outdated system, meaning that there was limited equipment and resources resulting in an inability to provide timely service to our area.

I would say that Conrail didn't really initiate development as much as we would have liked them to have done so. There was no proactive effort by Conrail to identify new business opportunities.

And lastly, I would say that there was quite an impact with regard to the pricing that our customers felt like they were literally locked into a specific provider, because they had no choice.

After the split, we noticed quite an improvement in service, that there was a revamping of service techniques. There was aggressive funding. We felt that there was a movement out of this prehistoric approach basically with the advent of two forward thinking Class A providers, and as they both presented earlier this morning, they obviously invested quite a bit of money in that, and we've seen the result of that.

I would say secondly, that the competition element in that our customers basically now have a choice, that they don't feel that they're locked into one alternative, the result being that there's incentive for our customers to send traffic our way because of the favorable competition for their business.

To echo the sentiments actually of Mr. Gallaher earlier today, when our customers find out that we are in the shared assets area, they're obviously quite excited about that because of the competition for their business.

Lastly, I would say that the development of business and the aggressive thinking and the aggressive action that both have been displayed by CSX and also Norfolk Southern have been quite noticeable.

Our company specifically is in frequent contact with their respective chemical marketing groups, and they are always encouraging open dialogue with our facility about prospective customers, various concepts and other ways to attract new business to our area.

In summary, we support the Conrail transaction. CSX and Norfolk Southern have worked together to provide fair and reasonable joint line service to our area over the past five years. In terms of service, economic balance and competition, and at diligent focus on future development, the transaction has served our customers exceptionally well.

We appreciate the opportunity speak today.

CHAIRMAN NOBER: Okay. Well, thank you very much, and thank you all for your testimony.

Let me just start with Mr. Pramik. Would you say that the service problems you're having, are they in the former Conrail territory or are they in the sort of residual CSX territory?

MR. PRAMIK: They're in residual CSX

territory.

CHAIRMAN NOBER: So how would you say that the transaction made it worse?

MR. PRAMIK: Again, I think that the overpayment for those assets have put them in a financial position where they have changed the way they manage all of their other assets, and they have obviously made decisions, operational decisions and marketing decisions to our detriment.

CHAIRMAN NOBER: I mean, I'm always very disturbed to hear the kinds of issues that you're raising here, which is -- and I tried to write them down -- that you’r rates have gone up, your service has been de-emphasized to plants, that your transport costs are going up. Have you lost business as a result of all of this?

MR. PRAMIK: I would say not to this point. I would say we haven't lost business. Most of these most recent things have just occurred. We have found ways of adjusting. It has cost us a lot of money. We've spent a lot of money on our assets there in Florida. We are the only rail shipper of cement in the Florida market. The other cement is either manufactured there or it's imported there, and our costs of doing business there have gone up dramatically, especially in the last few years.

CHAIRMAN NOBER: Now, when you said that they have de-emphasized three lines, what do you mean by that?

MR. PRAMIK: Well, you know, by the amounts of the rate increases that we've taken in those market areas, I think they've made the decision that that's not the business they want to continue, that they would rather put their interest elsewhere, and let those markets go.

CHAIRMAN NOBER: Well, let me ask this question. Again, I'm always very sympathetic when customers are having issues with railroads, but in terms of the merger transaction, what would be helpful? What would be productive that the Board could do about it?

MR. PRAMIK: Well, you know, if there was a method for us to pursue our dispute with them, you know, that would certainly help. We have gone to

Jacksonville every year to negotiate rates, as we always do, and we've just, you know, been stonewalled there and had, you know, whatever they were after shoved down our throat as we walked away, or in one case we made an agreement the year before last, went back to Houston, and were called the next day and said, "Sorry. Upper management won't go with what we did. These are your increases."

And so the whole negotiating process has been very frustrating with CSX for us over the last five years at least, and more so over the last three. I believe that it is -- that it does go back to the Conrail acquisition and the financial position that that put the railroad in at that time.

They have continued to cut costs, cut overhead, cut people, and again, I think that also causes some of the operational problems as well as some of the decisions they have made to handle traffic more effectively for them.

CHAIRMAN NOBER: I mean are there ways that the Board could help you beyond sort of extending oversight, but just you know, we have an extensive consumer protection function here that, you know, --

MR. PRAMIK: Possibly.

CHAIRMAN NOBER: -- our head of consumer protection or some other folks could work with you?

I mean, we do this with customers on a daily basis who are having issues.

MR. PRAMIK: We haven't gone that route with this yet, but possibly that would do.

CHAIRMAN NOBER: I mean, you know, that's something that we could do if that would be helpful, if you think it would be helpful.

MR. PRAMIK: Sure.

CHAIRMAN NOBER: And we are, you know, going to look at small rate case procedures, you know, as soon as my new co-commissioners get confirmed.

MR. PRAMIK: Right.

CHAIRMAN NOBER: You know, but that's some time away before that's finally in place, but every day we get concerns from customers, you know, not dissimilar to the ones that you're facing, and we try to work with the railroads and yourselves, and customers, to make improvements.

If that would be helpful, we would be happy to do that. So think about that.

MR. PRAMIK: I'll try that. Thank you.

CHAIRMAN NOBER: Okay. Mr. Clark and Mr. Schaffer. Now, can you all trace your problems, I mean, your issues to the merger?

I guess the question I would have, help me understand a little bit. You all are shippers that are on a group of short lines that are owned by a local region, a local development company and operated by a short line operator. Is that the situation?

MR. SCHAFFER: That's correct, and prior to the NS takeover of Conrail, there was no competitive access at all on any of these short lines. It was strictly Conrail access, period, even though physically that connection was possible. There was a paper barrier imposed by Conrail.

So from the standpoint of the result of the merger, we gained, we and other shippers on these short lines, gained access to CP Rail. This was limited access. It wasn't 100 percent open. It was to the CP system and family of connecting railroads that connected with CP.

From that standpoint we as a region and as shippers gained something that we didn't have before, and this was made part of, as we understand it, the requirement for the merger to go forward.

What we're concerned about is there has been a subsequent agreement signed that will, if it's enacted, if it's implemented largely take that access away, and this access has been very, very successful for us.

CHAIRMAN NOBER: But this was signed in 2001; is that what you all testified?

MR. SCHAFFER: The agreement was signed in 2001, but the interchange, the new CP interchange was implemented at the time of the merger or shortly thereafter, within about 30 days.

CHAIRMAN NOBER: So since 1999 really you have had --

MR. SCHAFFER: Yes.

CHAIRMAN NOBER: And you both primarily use CP?

MR. CLARK: By and large, yes.

MR. SCHAFFER: Yes.

CHAIRMAN NOBER: So even though the agreement is a few years old now between NS and the short line operator, you're still using the CP, right?

MR. SCHAFFER: The terms of this restrictive agreement have not been implemented yet. So we have been able to forestall the implementation of it through various means, but we think the clock is running out on that, and the shippers have made submissions in the previous oversight proceedings, the last two proceedings.

CHAIRMAN NOBER: On the agreement?

MR. SCHAFFER: On this issue; that's correct.

CHAIRMAN NOBER: Well, NS will have an opportunity to respond to these, and you know, they will certainly have the ability and I would hope that they would submit something as to what they intend to do with this.

But we would always have, whether or not we continue oversight, the ability to go in, and if the railroads either sign a new agreement that's contrary to the merger agreement or begin implementing things in a way that's contrary to the agreement, we would have the ability to review that.

Now, you know, I know you all don't want to spend time driving to Washington and, you know, paying more lawyers, and that's something that we will have to try to help you with, but so far things are working?

MR. SCHAFFER: Up to this point it has been very successful, and as I say, what we're concerned about is if this agreement is implemented, it will go the other direction. We will lose, effectively lose that access for any real commercial application.

And I guess in terms of the oversight, we as shippers collectively want to see some mechanism to get this resolved and have our interests protected, whether that's oversight or some form of that.

CHAIRMAN NOBER: I think as long as we exist you always have an opportunity to come in and either pick up the phone or send a letter and E-mail. I'll tell you plenty of people do and raise one issue or another.

You know, obviously if it's something in contravention of one of our written orders or commitment, we'll review it.

MR. SCHAFFER: We think it is. We think it clearly is.

CHAIRMAN NOBER: But so far things are working well and business is good?

MR. CLARK: Business is very good.

CHAIRMAN NOBER: The price of soybeans is not.

(Laughter.)

MR. SCHAFFER: That's whether you're buying or selling.

MR. CLARK: Not from our account, it's not.

CHAIRMAN NOBER: Yeah, the farmers are very happy, but I know the feed processors are not.

Mr. Blinkoff, you all are very happy with things?

MR. BLINKOFF: Yeah, I would say that we are. As you have kind of I guess reviewed some of the different procedural safeguards that are in place, for a business like ours knowing that there is a method to have certain circumstances addressed as they arise, however infrequent they are, that's the important thing from our standpoint.

But, yes, I would say that everything is going well.

CHAIRMAN NOBER: I will tell you that from my perspective when shippers come in and raise concerns about service, that's always a concern of the Board whether or not it's related to a merger transaction or not.

And you know, we get those every day, and I consider that to be among the core missions that we're here to do. So if any of you are having issues with the railroads, just as you've taken advantage of the process to come today and talk about your issues, if they continue in the future, we will get involved and we will try to help.

And with any luck, I can assure you that if that's something that you decide you want us to do, we will take a look at that.

I think that either way, whether we continue oversight or not, ultimately if you're having commercial problems, and service problems with the railroads, we have to address those, and we do it. You know, we have a mechanism set up to do that.

So I hope that if you all are having issues you would take advantage of it, and you know, as you haven't hesitated to come down and talk about your issues today, which I very much appreciate, that if going forward you do have problems, you will either send us a note or pick up the phone and call us, and you don't necessarily need to hire a lawyer to do it, and we'll try to help out where we can if we can.

So with that, I want to thank you all for coming down here and your thoughtful testimony. Thank you very much.

PARTICIPANTS: Thank you.

CHAIRMAN NOBER: Thank you very much for taking the time to bring these issues to our attention.

Thank you all. This is the final panel. As you all heard, we're down one. So I'm pleased to hear that.

We have Gordon Fuller from the Morristown & Erie Railway. Welcome back.

Jeffrey Stover from SEDA-COG Joint Railway Authority. Welcome.

Peter Gilbertson from Anacostia & Pacific, who is also a member of our Rail Shipper Advisory Committee. Peter, welcome.

And william Strawn from the Ohio Central Railroad.

And, Mr. Fuller, you've drawn short straw. So why don't we start with you?

MR. FULLER: Thank you.

My name is Gordon Fuller. I'm the Chief Operating Officer of the Morristown & Erie Railway.

Morristown & Erie Railway owned and leased lines and operates in the Counties of Morrison and Union County, as we are rebuilding the Staten Island and Raleigh Valley Railroads.

We operate a freight line in the Commonwealth of Pennsylvania, and two lines in the State of Maine for Maine DOT.

Morristown & Erie is formed by the merger of two lines in 1903. We're probably the oldest operating short line or even railroad in the same name in the country.

The Morristown & Erie Railroad is part of the short line network, has an important role in providing rail service for both large and small shippers alike who are not located on the main lines of railroads.

The Morristown & Erie takes pleasure in providing the service to lines that the Class Is do not want to do because we are willing for the incremental costs of providing such services.

When the United States Congress created Conrail in 1976, the Morristown & Erie Railroad began a business relationship which helped spur industrial development through throughout the Morris County area where the majority of its owned and leased lines are located.

Conrail treated short line customers as partners by taking more rail traffic for entities and worked with the Morristown & Erie Railway and many other short lines and regional railroads to that end.

With the sale of Conrail to CSX and Norfolk Southern, the Morristown & Erie hoped that further competition for business in New Jersey would result in more traffic for new shippers and additional traffic for current shippers.

However, the Morristown & Erie Railroad has been one of the unfortunate lines that was given only one interchange with one of the Class Is, the Norfolk Southern. This has resulted in less competition and less business.

We have lost customers due to the fact that some of our customers are located on the CSX and a combination of CSX and Norfolk Southern and Class I rate structure, coupled with our own, and we lose this traffic to trucks.

In these cases it is devastating. Norfolk Southern sometimes regards its short line partners as a necessary evil and not a growth and profit partner, perhaps an unnecessary evil.

Short lines have the benefit connecting them at least two Class Is, have a greater opportunity for growth and success. I suggest that the Board needs to create a program that protects the nation's rail infrastructure, the program requiring Class Is as they rationalize their systems provide on a proactive basis the ability for short line carriers to assume the common carry obligations or rationalize the line, thus protecting one of this nation's natural resources, its rail infrastructure.

The Board should also consider short lines and regional railroads with the right to connect to multiple carriers. This will provide the competition that the Board has espoused and recommended in the Conrail and similar situations.

Any short line with a single interchange partner would be considered in distress and subject to the whims and fancies of connecting carriers any time during its period of work.

Thank you for your time. I'll close my remarks.

CHAIRMAN NOBER: Mr. Fuller, thank you.

Mr. Stover.

MR. STOVER: Mr. Chairman, thank you.

I'm Jeff Stover, Executive Director of the SEDA-COG Joint Rail Authority, which is an eight-county rail authority formed specifically to preserve a central rail service in our region.

We've been around for 20 years now and we're growing, beginning with 700 carloads per year. Last year it was 30,000 carloads over 195 miles of railroad in five different operating properties. In fact, one of our short lines, the Nittany and Bald Eagle was just name by Railway age as Short Line of the Year.

We have a classic public-private partnership wherein the Rail Authority actually owns a rail facility, the infrastructure, and the real estate, but it's operated privately under a contract agreement with companies owned and managed by Richard Robey, who we refer later on in my testimony as Robey.

I'm not following exactly by my written testimony, but I wanted to refer you to the map that does appear on page 1 of my written testimony for a little bit of the geography area.

CHAIRMAN NOBER: I'm not sure that got

submitted in advance. So you might, if you have one for me, that would be helpful.

Thanks.

MR. STOVER: Just to preface my remarks, we would like to say that virtually all of our business is with Norfolk Southern. We value that partnership, and we have a good, excellent working partnership with them.

Having said that, in previous oversight proceedings the Rail Authority has expressed concerns about service and interchange issues. Now, the service issues have long since been resolved obviously, and that's a distant and not too fond memory of 1999 and the year 2000.

However, the interchange issues still remain and relate back to the pre-acquisition commitments made by Norfolk Southern as others have spoken about earlier today, that at the behest of NS, Robey with support of the rail authority and their shippers, supported NS' purchase of Conrail in our neck of the woods in central Pennsylvania.

And in fact, in 1997 we submitted a

commitment letter to him that you granted trackage rights on the Buffalo Line of NS between Sunberry and Lockhaven, which is shown on the map as well as the interchange with CP at Sunberry for CP points and short lines that connect solely with CP, and that was spoken to by two of the panelists previously.

What has happened since 1999 is that the shippers did operate under the ability to connect with CP, and they built the business traffic and new lanes of traffic with that CP access, and it kept a number of industries going, in fact, in the early days when there was a service meltdown.

The important thing to point out is over the last four years all parties have realized an increase in real traffic and real revenues, and that includes Norfolk Southern, and also we benefitted from our new job growth.

In the year 2001, Robey and NS entered into a Trackage agreement that was intended to implement the commitment letter of 1997, but that does substantially restrict access to CP.

In fact, it creates some penalties which have accrued because of misrouted cars. Another complicating factor which wasn't spoken to before is that for a customer in central Pennsylvania that wants traffic from CP, there's a second agreement that they can bring the rail traffic into, and that's under what we call the fixed divisions agreement which NS and CP signed, I believe, in 1998, which provides for cars coming off the CP to be carried to Sunberry and then down on the trackage rights to Harrisburg, handed off to NS and under haulage coming back interchanging with our operator at Sunberry.

So in essence we have two flows of traffic, two different agreements, two different interchange points. Very complicated. At best, hard to administer.

The Rail authority is seeking to achieve five different goals here today or -- I'm sorry -- not today, but in this issue. That would be nice though.

The agreement to fulfill the --

CHAIRMAN NOBER: The agreement is faster than we normally do things.

MR. STOVER: That's the next century.

The affected shippers and the Authority would like to have five goals fulfilled down the road, is that the promised of CP access be maintained as presented in the '97 letter to Robey.

And an important point, number two goal, is that our agreement be consistent in the same flow of traffic that's already existing for the CP and its fixed divisions agreement that already exists in Harrisburg, signed by NS and signed by CP. It's nothing more than that.

There were something said, I believe, that we thought we were seeking greater access than was already being granted in Harrisburg.

The third goal would be that there be meaningful grandfathering of traffic. The way the agreements read, as we understand it, if an origin changes and you don't use it for 12 months, then you lose that as a grandfather clause.

In the agricultural products arena, grain brokers go from grain elevator to grain elevator. One month you get it from one source and the next month another source, and so your origin technically has changed, and thus the grandfathering is lost. Again, we don't believe that's meaningful grandfathering.

The fourth goal would be that the agreement be permanent.

And the last one that should apply also to the owners of the railroad rather than just the operator. In our case, our operator that we've had for now 20 years, his agreement is up in three years. Not to say we would change, but you know, we should be dealing as a three-party situation, the Class I, the owner of the railroad, and the operator.

Now, we've had some good, fruitful discussion with NS. We think that that will lead to constructive resolution, but we would ask that you continue oversight for another year to allow us to play through on this issue.

CHAIRMAN NOBER: Okay. Well, thank you very much.

Mr. Gilbertson. Hi, welcome. Thank you for waiting for so long as we have.

MR. GILBERTSON: Thank you. I'm happy to be here.

Thank you, Chairman Nober, for the opportunity to speak today.

My name is Peter Gilbertson. I'm CEO of Anacostia & Pacific. We're a short line development and management firm.

We have three affiliates that connect with CSX and NS and all formerly connected with Conrail prior to the merger transaction. All three of these railroads were really failing in one way or another when we took them over.

The first was the Chicago South Shore and South Bend, which was in bankruptcy. It connected with Conrail, and now it connects with both NS and CSX.

Louisville & Indiana is a railroad between Louisville and Indianapolis that was a former Conrail line that we acquired directly from Conrail, and currently connects with CSX and NS.

And the New York and Atlantic is the former freight franchise of the Long Island Railroad on Long Island, New York, and we have a long-term arrangement with the Long Island Railroad to operate the freight service on that line.

That was, again, also formerly served by Conrail and is now served by CSX and CP and indirectly NS.

Our experience with the Conrail merger transaction has improved. That's the best thing I can start with. Our first year was very, very trying from the service standpoint. We had very degraded service, lost cars, and our customers had a lot of disruption.

We lost some customers. One customer, in particular, we've never gotten back, but over the first 12 months of the merger the service improved substantially, and now I believe the service is better in most lanes than it was prior to merger.

We've also had a number of successes working with both NS and CSX in developing new business on many routes, and some of these -- and I won't give you all of the examples, but I'll just give a representative two or three -- on merger day the South Shore, we initiated a new interchange arrangement with CSX to go directly into their principal yard in Chicago. This eliminated about a day of transit time for all of our interchange with CSX and permitted us to be collectively with CSX much more competitive on some truck movements, and we, in fact, have captured a number of those truck movements.

Similarly, with CSX, the New York and Atlantic has taken advantage of the CSX-Union Pacific express lane service, which is focused on perishables, which is a market that the railroads almost completely exited, particularly in the east.

Conrail really wasn't participating in the perishable market at all, and our first year of operations out there in New York, we handled about 20 cars of perishables, I believe, and this year we expect to exceed 2,000 cars of perishables, which is a dramatic increase, and I think that's, in part, a result of the route structure that's developed and the marketing focus that was developed as part of this merger.

We've also developed some very interesting movements of construction and demolition debris, which is one of the growth areas out on Long Island, and we're moving that with CSX to the Ohio area, and, again, making substantial inroads in the reduction of congestion in that area.

And overall this is a growth area, as both CSX and Norfolk Southern told you earlier for both railroads. The short line growth is exceeding the on-line growth in merchandise and industrial traffic, which is essentially the short line commodity mix.

Institutionally, we appreciate the continued focus by both Norfolk Southern and CSX on short lines. It has had its ebbs and flows, but both of them are committed to short lines. I think they at the highest levels realize that short lines are critical to their continued growth.

We think the shared asset area is a useful concept. It has brought competition to the area and God forbid that there should be another merger. I think it's a concept that you could apply or one could apply it fruitfully to other mergers.

We have also benefitted from the CP access to Long Island, which you've heard from the State of New York was one of the things that the state advocated for on the east side of the Hudson, and that has been a useful competitive addition to the New York freight market.

Going forward, we are quite upbeat really about the prospects of working with these two railroads to increase market share. I think they've really begun to focus on their carload business model. Concerns going forward are really related to capacity, and there has been some recent service deterioration in the East and the West, and we're concerned about that.

But really none of those things are amenable to an obvious STB solution at this point.

So we appreciate the opportunity to be here.

CHAIRMAN NOBER: Well, thank you very much.

And, Mr. Strawn, you are our last witness, but not the least, please.

MR. STRAWN: Good afternoon, Chairman Nober.

My name is Bill Strawn. I am the president of the Ohio Central Railroad System. I appreciate the opportunity to speak to the Board.

The Ohio Central Railroad System is comprised of ten short line railroads operating just under 500 route miles in Pennsylvania and Ohio. Eight of our railroads are located in Ohio. The other two are over in Pennsylvania.

Five of them were former Conrail properties, and the balance would have been CSX, and one having been totally an abandonment candidate.

The Ohio Central Railroad fully supports the STB's consideration of allowing its oversight to sunset in June of this year, and I'd like to give you several of the specific reasons.

The best test of any process, including the Conrail merger acquisition, is the constituency that ultimately uses that process vis-a-vis the railroads in this case. We went back historically as a railroad system and looked at what our shipment levels were with Conrail in existence and after Conrail was no longer in existence, and we were able to chart six to seven percent annual growth rate on virtually all of our railroads as a result of what we believe is a much more competitive reach that our customers have through us by having in many cases two line hauls, the short line being the terminator and/or originator over the Class I being the other longer reach.

Peter spoke to some of the markets that we have penetrated. Ironically Peter is the originator of construction demolition debris in New York, which we refer to as urban ore. It is a very nice renewable resource that ships to our railroads in Ohio.

As a result of the competitive access, we really have the Class Is being the bridge carriers.

CSX itself has done --

CHAIRMAN NOBER: What do you refer to the garbage that comes out?

(Laughter.)

MR. STRAWN: We have no comment yet on that. Staff is researching.

And I think ideally, too, that we would like to point to the fact that both CSX, but in this case CSX has championed its short line relationships for many years. I have the opportunity to serve both as the chairman for CSX's short line caucus committee, and at the same time chair Norfolk Southern's short line caucus committee, both nonpaying positions, I might add.

And towards that end, the Class Is have demonstrated to us that they are all about taking what they had in the past and what they purchased and maximizing it. If you have spent too much for a property, to me the goal would be to maximize what you're able to get on the return.

Talking about critical truck factor and the fact that promises were made that trucks would be an opportunity business for us, I will give you a specific example whereby five years ago the Ohio Southern shipped no carloads of coal and it was abandoned. This year it will ship over 28,000 carloads of coal. That's one of our properties, but we couldn't have done that were it not for the ability to traverse NS's West Virginia secondary and CSX's main line through Zanesville, Ohio.

Here neither Class I really participates in the revenue, but they did participate in granting rights that allowed us to compete for the business, put it on rail, and then transfer it to the utility hopefully to drive down prices for the consumer.

And basically, this is where we believe that while the STB has had oversight, that that time has now served its purpose and the STB always has the opportunity to wade back in at such time as there are other issues that may apply. So we do support the sunsetting.

Thank you.

CHAIRMAN NOBER: Well, thank you all, and let me just sort of start with a general question, which I think Mr. Strawn has closed with, which is you know, do you all feel that things are better now after the transaction than they had been before?

Mr. Fuller.

MR. FULLER: I'll be neutral on it. We've had our business increase, but there was a better relationship. We sort of are the northeast frontier of Norfolk Southern. We're out in northern New Jersey, and they're operating on transit trackage rights. So we're a little bit out in the hinterland.

CHAIRMAN NOBER: So you're not in shared assetss?

MR. FULLER: No, sir. That's why I had mentioned the two line convergence. We were supposed to get access to CSX in Carney Yard and we haven't been able to get that done yet.

CHAIRMAN NOBER: But that's a pending case here, right, that people are working on?

MR. FULLER: That people are working on it. I'm not sure it's a case. I think Mr. Clemens and I are working on it.

CHAIRMAN NOBER: Okay. Mr. Stover.

MR. STOVER: I think objectively certainly we're in better shape because we did those, Mr. Schaffer's book who had a paper barrier with Conrail there. I think we're very close to having everything we were seeking, but certainly we're better off.

MR. GILBERTSON: Our properties are better off, and I also think the question really is are you better off than what Conrail would have been in five years, because I don't think that was a steady state situation. I think we may have had a worse situation with Conrail in this competitive environment.

So I think it's substantially better.

CHAIRMAN NOBER: Now, do you all think that we need to continue oversight or the sort of commercial issues that have been raised -- are those resolvable in the normal course of Board jurisdiction?

MR. STOVER: I'd say they're resolvable in normal Board jurisdiction.

MR.STOVER: I think my formal comments are that we ask for continued oversight. If there's another way in dealing with our situation, with the Board involvement, we should look at that.

MR. GILBERTSON: We don't believe further oversight is necessary specifically.

MR. STRAWN: Nor do we.

CHAIRMAN NOBER: Well, I believe that if there was a specific agreement and specific condition rather than this sort of general representations that we talked about earlier that was in the merger decision, and you feel that the railroad has taken an action that contravenes that, we always have jurisdiction to review that. I don't think that ever goes away.

And whether or not we need to continue formal oversight or not for you all to raise an issue, I can assure you that if you look at some of the Western mergers, once the five years is up that doesn't mean that when folks have issues they don't call us. They certainly do.

I believe that you wouldn't need formal oversight to have your issues addressed going forward, but I guess my question is do you think you ought to have it or that you would be better off for having it.

MR. STOVER: I think at this point we would prefer that you continue for at least another year, as we stated previously.

CHAIRMAN NOBER: Okay. Mr. Strawn, just one question. When construction debris comes out, what do you do with it? Does it go in the landfills or do you get scrap out of it, I guess?

MR. STRAWN: It is landfilled. In the State of Ohio the law permits bricks and timber and glass to be landfilled, and that's exactly what is done with it. There's no reclamation process.

CHAIRMAN NOBER: So that's the urban ore.

MR. STRAWN: It fills in strip mines nicely.

CHAIRMAN NOBER: Interesting.

Well, anyway, Mr. Fuller, is there anything that you're asking from us specifically that we could do? I know you expressed some concerns about how things are going. I mean, obviously, you know, there's a proceeding going on and we're working on the Eastern access.

MR. FULLER: I think if we can continue to work toward my one issue, which is dual access of Class Is, then I'm satisfied.

Recognize this. The sensitivities of the Class Is has been enhanced in the last four weeks. So we're much more conversant now than we were before.

CHAIRMAN NOBER: As I've said a couple of times, sometimes the hearings have a way of focusing.

MR. FULLER: I believe so.

CHAIRMAN NOBER: Mr. Stover, for you is there anything that we can specifically do?

MR. STOVER: No.

CHAIRMAN NOBER: I know you've worked with us in the past and we've heard from you on oversight.

Well, again, I appreciate all of you taking time out and traveling to Washington to come and testify before us.

I want to thank all of the witnesses for their very thoughtful testimony, and if any of you do have specific issues, to either contact me or on commercial issues to contact Mel Clemens, whom I know many of you know already, but we would be happy to try to help with those.

Again, the fact that we had the number of witnesses and such interesting testimony today, I think to me demonstrates why these hearings are important to have in the first place, and I would say they really do help the royal "we" at the Board understand what the issues are out there and make better decisions.

I want to thank all of you for your time and your very thoughtful testimony, and if there's nothing further, the hearing stands adjourned.

(Whereupon, at 1:45 p.m., the meeting was concluded.)