RAIL CAPACITY

(110–119)

HEARING

BEFORE THE

SUBCOMMITTEE ON

RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

SECOND SESSION

APRIL 23, 2008

Printed for the use of the
Committee on Transportation and Infrastructure

U.S. GOVERNMENT PRINTING OFFICE

42–131 PDF WASHINGTON : 2008

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
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April 22, 2008

SUMMARY OF SUBJECT MATTER

TO: Members of the Subcommittee on Railroads, Pipelines, and Hazardous Materials

FROM: Subcommittee on Railroads, Pipelines, and Hazardous Materials Majority Staff

SUBJECT: Hearing on Rail Capacity

PURPOSE OF HEARING

The Subcommittee on Railroads, Pipelines, and Hazardous Materials is scheduled to meet on Wednesday, April 23, 2008, at 10:00 a.m., in 2167 Rayburn House Office Building to receive testimony on rail capacity. The hearing will examine current and projected demand on the nation's freight, intercity passenger, and commuter rail infrastructure.

BACKGROUND

The U.S. economy is growing, and with it the demand for rail transportation services. Freight railroads move more than 40 percent of our nation's freight (measured in ton-miles). Amtrak, the nation's primary intercity passenger rail provider, moved 25.8 million passengers in 2007, and the nation's 22 commuter rail providers had 460 million trips in 2007.

It is uncertain the extent that demands for rail services will grow in the future, but two recent studies suggest that this growth will be significant. The American Association of State Highway and Transportation Officials ("AASHTO") reports that even moderate growth projections in the economy — about three percent per year — will result in a 57 percent increase in domestic freight tonnage by 2020 and import-export tonnage will increase by nearly 100 percent. A more aggressive projection by the bipartisan National Surface Transportation Policy and Revenue Study Commission ("Commission") predicts U.S. economic output will lead to an increase of the total freight movements by 92 percent over the next 30 years.

Freight rail's performance will degrade significantly if it maintains its current capacity levels under either of the AASHTO's or the Commission's future growth projections. For example, the Commission found that currently 88 percent of primary freight rail corridors currently operate at

levels below their theoretical capacity, meaning there is sufficient capacity to accommodate periodic maintenance activities and to recover from incidents that interfere with routine operations. Further, nine percent operates near its theoretical capacity and three percent operates at its theoretical capacity limit, meaning there is limited ability to accommodate maintenance needs or accommodate incidents.

Under the Commission's growth projections, without additional capacity by 2035, the percentage of rail corridors operating below capacity will decline to 44 percent and corridors operating at capacity will increase to 15 percent while corridors above capacity will increase to 30 percent, which means unstable flows and service breakdown conditions. This would result in routine service interruptions and a constant questionability of product delivery.

Yet while demand for rail service continues to grow, capacity has shrunk since passage of the Staggers Act in 1980, which largely deregulated the railroad industry. In 1970, the Class I railroads operated about 206,000 route-miles of track. Today, abandonment and spin-offs to smaller railroads have reduced this figure 32 percent to about 140,810 miles. Further, the DOT reports that the rail network has decreased by almost 20 percent while revenue ton-miles increased by 64 percent since 1990.

Overall, the Class I railroad's total capital spending has increased, though it has declined as a percentage of revenue. Over the past five years, the seven Class I railroads spent an average $8.02 billion per year on capacity compared to the twelve year average of $7.687 billion. However, an analysis of the annual reports of the seven Class I railroads shows that over the past five years, capital investment has averaged 16.3% of revenue compared to the past 12 years at 17.8% of revenue. While railroads are generating greater revenues than ever before, a smaller portion of those revenues are being dedicated to capacity spending.

The Department of Transportation ("DOT") also states that freight railroads have the financial resources to raise additional capital for capacity expansion. According to industrial sector data compiled by New York University's Leonard School of Business, the U.S. railroads' debt ratio for the 18 largest railroads (Class I, II, and III) has improved by over 25 percent in recent years, moving from 41 percent to 30 percent in 2004. Using AAR data, if the analysis is confined to the seven Class I railroads, it appears the industry has the capability of assuming up to $4 billion in additional debt.

IMPACTS OF CONSTRAINED CAPACITY

Constrained capacity imposes its own cost. It adds extra cost to virtually all goods and services produced in the economy. The resulting congestion adds to direct transportation costs and forces companies to carry larger inventories and invest in increased warehouse space, making U.S. businesses less competitive both here and abroad. Transportation congestion also reduces productivity, increases levels of harmful emissions, and reduces safety. The DOT estimates that congestion adds over $200 billion per year to the costs of goods, a portion of which is attributed to the Nation's rail network.

Further, freight-rail service is vital to many state's economies. States have made freight-rail service, especially the retention of lower-density branch lines, a significant part of their economic

development and transportation programs. Idaho's Department of Commerce, for example, stated in 2002 that "Idaho's economy, particularly in rural areas, relies heavily upon the freight-rail system to facilitate movement of the state's ... natural resources and manufactured products to local, national, and international markets. Most Idaho companies surveyed that ship by rail state that they could not exist without access to railroads."

Many shippers are dependent on rail to move heavy materials or large volumes of materials that is significantly cost-effective over trucks. Depending on the density of the commodity, one railcar may move the same weight or volume as four or five trucks. Even industries that ship their finished products by truck may be dependent on rail. For example, while poultry farmers ship their chickens to market by truck, most of the cost is in buying and moving feed, done by rail. The availability of rail service can be an important factor for states and municipalities interested in retaining and attracting these types of businesses.

However, following passage of Staggers, much of the rail industry has consolidated. In 1976, there were 63 Class I railroads operating in the United States. Following passage of the Staggers Act of 1980, which largely deregulated the industry, many of these railroads merged with one another. Currently, there are seven Class I railroads in the United States: BNSF Railway ("BNSF"); CSX Transportation ("CSX"); Grand Trunk Corporation, which consists of the U.S. operation of Canadian National ("CN"); Kansas City Southern ("KCS"); Norfolk Southern ("NS"); the former Soo Line, owned by Canadian Pacific Railway ("CP"); and Union Pacific ("UP"). Nearly half of the reductions since 1976 are attributable to rail mergers. According to the Association of American Railroads, the seven Class I railroads controlled 87 percent of all ton-miles for the 562 railroads in the U.S. (1.776 trillion of 2.04 trillion ton miles), which accounts for 40 percent of intercity ton-miles across all transportation modes (more than any other mode of transportation).

This reduction in capacity and overall consolidation of the industry allows greater pricing power for the railroads, and also affects system performance. The DOT reports that since 1990, average train speed has reduced almost 20 percent, accompanied by deterioration in service reliability. Yet, railroads are increasingly able to shift more costs to shippers. For example, the Government Accountability Office ("GAO") reports in *Updated Information on Rates and Other Industry Trends* that a 20 percent shift has occurred in railcar ownership since 1987. In 1987, railcars owned by freight railroad companies moved 60 percent of tons carried. In 2005, they moved 40 percent of tons carried, meaning that freight railroads' railcars no longer carry the majority of tonnage.

Further, railroads have also been charging shippers, in particular captive shippers, higher rates. According to GAO, while 2005 rates remain lower than 1985, they rose 7 percent over their 2004 levels. This represents the largest annual increase in rates during the 20 year period from 1985 to 2005, and outpaced increases in inflation.

Looking into the future, it is evident that where feasible, public policy will increasingly favor transferring freight movements from truck to rail. AASHTO reports that currently trucks and the highway system carry 78 percent of domestic tonnage, the freight-rail system carries 16 percent, and barges and coastal shipping carry six percent. Under its modest projections, AASHTO predicts that by 2020, the highway system will carry an additional 6,600 million tons of freight (an increase of 62 percent), and the freight rail system must carry an additional 888 million tons (an increase of 44 percent). However, the highway system is increasingly congested, and the social, economic, and environmental costs of adding new highway capacity are prohibitively high in many areas. State

departments of transportation are asking if expanding the capacity of the freight-rail system in some cases might be a cost-effective way of increasing the capacity of the total transportation system.

These increases in freight traffic will also act to the detriment of intercity passenger and commuter rail services. A majority of Amtrak's intercity passenger rail service operates over freight ("host") rail tracks outside the Northeast Corridor ("NEC"). Freight congestion negatively affects these services. For example, Amtrak reports that approximately 80% of delay minutes experienced by Amtrak trains operating outside the NEC are caused by host railroad issues. These issues cause the majority of variability in Amtrak delays, compared to Amtrak and third party delays which are generally small and stable. Finally, Amtrak reports that host railroad delays are increasing dramatically, up 50% during the five years from the first half of FY2002 to the first half of FY2007.

Amtrak has a statutory right to not only operate over the tracks of these host railroads, but has also been granted preference over host transportation in using a rail line, junction, or crossing. However, host railroad delays significantly impact Amtrak's operations. The DOT Inspector General ("IG") recently reported that freight movements contributed to Amtrak's poor on-time performance ("OTP") off the NEC, substantially impacting Amtrak's finances and ability to attract ridership. If Amtrak achieved 85 percent OTP off the NEC in FY 2006 (when it was 68 percent) it would have saved Amtrak $136.6 million in operating expenses (of an operating budget of $540 million). The DOT IG also found that improving OTP is an important element in making rail a more viable alternative for travelers. A large number of travelers who had previously used other modes would choose to travel by rail if it was reliably on-time. This has implications for reducing congestion on airways and roads.

The nation's 22 commuter rail services also rely heavily on freight track to provide their services. Rail transit services exist in over 50 metropolitan areas and small cities, and the number grows annually. Indeed, the American Public Transportation Association ("APTA") states that transit ridership has grown over 30 percent since 1995, and is outpacing both the growth of the nation's population, at 12 percent, and the growth in the use of the nation's highways, at 24 percent, since then. Each weekday, 34 million trips are made on public transportation.

Today, over 90 percent of commuter rail trips are on lines publicly owned. This includes long-established systems such as New York's Long Island Rail Road and Metro North Railroad, NJ Transit, the Southeastern Pennsylvania Transportation Authority, and the Massachusetts Bay Transportation Authority. New systems such as Florida's Tri-Rail, the Trinity Railway Express in Texas, the Rail Runner in Alburquerque, and the soon to be open system in Salt Lake City have opted to acquire their own rights of way. Chicago's Metra system and the Metrolink system in Los Angeles own some of their own lines, while using other lines owned by freight railroads. Systems including the Virginia Railway Express ("VRE"), Seattle's Sounder, the Altamont Commuter Express and Nashville's Music City Star system operate entirely on tracks owned by freight railroads. For these later systems, there are often few if any redundant freight lines available for public purchase, making partnerships with Class I railroads a necessity.

GAINS IN PRODUCTIVITY

Freight railroads' productivity gains have allowed them to carry much more traffic. For example, from 1987 to 1999, railroad productivity grew by nearly 48 percent, while traffic measured

in ton-miles grew by nearly 52 percent. In comparison, the U.S. manufacturing sector as a whole increased productivity by only 16.1 percent over the same period. Tons originated grew by over 25 percent, with coal, chemicals, metal products, and motor vehicles and equipment leading the way. Rail intermodal shipments, measured in units shipped, grew by 73 percent. The locomotive fleet grew by only one percent, but new units are now able to haul more trailing tons; lighter and larger freight cars now carrier heavier payloads. Overall, the industry has been able to improve productivity on every part of the system.

Increasing productivity through assistance of new technologies will also allow additional traffic on the existing system. Two of the most important new opportunities are Positive Train Control ("PTC") and Electronically Controlled Pneumatic ("ECP") brakes.

Under PTC, enhanced communications and real-time information headways and improve train speeds and safety. The information provided by PTC will permit more effective management of train movements over the affected infrastructure. These improvements will eventually allow the carriers to move more freight over the system under existing capacity. Better train speeds improve a carrier's asset utilization. For example, a one mph increase in average train speed will save Class I railroads an estimated $200 million per year. By moving freight faster over long distances with the same number of trains and crews, the effective number of workers and locomotives per mile falls, generating large efficiencies. On January 8, 2007, FRA announced approval of the first PTC system capable of automatically controlling train speed and movements to prevent certain accidents, including train collisions.

Additionally, ECP brakes allow a train to apply its brakes uniformly and virtually instantaneously on every rail car throughout a train, vastly improving train control, improved network management, fuel and equipment maintenance savings, and enhanced safety. On March 29, 2007, FRA announced that it had approved a BNSF/NS joint waiver request for operating ECP brakes on their systems.

CAPACITY EXPANSION PROPOSALS

The railroad industry is one of the most capital intensive of all industries. Class I railroads on average spend 17% of their annual revenues on capital investment while manufacturing industries average 3% and truck transportation spends 5%. As a result, railroads will typically only invest in capacity expansion where they expect to receive the greatest return on their investment.

AASHTO contends that freight railroads will be able to generate a majority of the funding necessary (up to $142 billion) to meet future demand, though approximately $2.65 billion annually would have to come from other sources.

Here is an overview of federal funding options:

General Revenue. Current options for federal funding for freight railroad infrastructure loans, grants and tax expenditures and are taken from the General Fund and the Highway Trust Fund. GAO states that these multimodal funding mechanisms do not maximize specific national public freight transportation benefits. In addition, GAO considers Highway Trust Funds and General

Revenue funds high-risk because revenue from traditional transportation funding mechanisms may not keep pace with the demand.

Rail Trust Fund. The railroads are the only transportation mode in the United States that do not benefit from a federal trust fund similar to the highway, waterway and airway trust funds. Trust funds are financed with levies on the users of the transportation system provided. Examples of levies include taxes on fuel, new equipment, cargo waybills and passenger fares. However, the railroads contend that a trust fund would not allow the railroads to make their own decisions on capital investments, and may impose higher costs on freight due to a "trust fund tax" thereby diverting freight to other modes of transport.

Highway Trust Fund. Funds could be diverted from the highway trust fund to rail projects. Proponents argue that dollars can be used to alleviate congestion on highways and state transportation officials and other planning organizations could be given the power and flexibility to decide which projects gets funded. However, opponents state that this proposal undercuts the "users-pay" principle, since the trust fund is paid through the gas tax. Additionally, rail projects would then be in competition with highway and transit projects.

Tax Credit Bonds. A tax-credit bond allows a bondholder to receive a credit against their federal income tax liability instead of cash interest. Bondholders must report the tax credit as income, but after calculating their tax liability as if they had received that compensation in cash, they can subtract the amount of the credit from the tax due. Although the federal government effectively pays the interest on the bonds by granting tax credits, the repayment of the principal at maturity is the responsibility of the entity that issues the bonds. However, using tax-credit bonds to fund programs that could be funded through federal appropriations would cost the federal government more per dollar than a more conventional financing method, such as issuing taxable bonds through the Treasury or through general appropriation.

Railroad Rehabilitation & Improvement Financing ("RRIF"). The RRIF program was established by the Transportation Equity Act for the 21st Century (TEA-21) and amended by the Safe Accountable, Flexible and Efficient Transportation Equity Act: a Legacy for Users (SAFETEA-LU). Under this program the FRA Administrator is authorized to provide direct loans and loan guarantees up to $35.0 billion. Up to $7.0 billion is reserved for projects benefiting freight railroads other than Class I carriers. The funding may be used to:
acquire, improve, or rehabilitate intermodal or rail equipment or facilities, including track, components of track, bridges, yards, buildings and shops; refinance outstanding debt incurred for the purposes listed above; and develop or establish new intermodal or railroad facilities. Direct loans can fund up to 100% of a railroad project with repayment periods of up to 25 years and interest rates equal to the cost of borrowing to the government. Eligible borrowers include railroads, state and local governments, government-sponsored authorities and corporations, joint ventures that include at least one railroad, and limited option freight shippers who intend to construct a new rail connection.

WITNESSES

Mr. James (Jim) Daloisio
President
Railroad Construction Company

Mr. Ed Hamberger
President and CEO
Association of American Railroads

Mr. Evan Hayes
Chairman
Idaho Barley Commission

Mr. Lance Grenzeback
Senior Vice President
Cambridge Systematics, Inc.

Mr. Alexander Kummant
President and CEO
Amtrak

Mr. Al Moro
Chief Harbor Engineer
Port of Long Beach

Mr. Steve Sharp
Principal Engineer
Arkansas Electric Cooperative, Inc.

Mr. Dale J. Zehner
Chief Executive Officer
Virginia Railway Express

HEARING ON RAIL CAPACITY

Wednesday, April 23, 2008

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
Washington, DC.

The Subcommittee met, pursuant to call, at 10:05 a.m., in Room 2167, Rayburn House Office Building, the Honorable Corrine Brown [Chairwoman of the Subcommittee] presiding.

Ms. BROWN. Good morning.

Will the Subcommittee on Railroads, Pipelines, and Hazardous Materials come to order?

The Subcommittee is meeting today to hear testimony on rail capacity. Congestion has become a major problem across all modes of surface transportation. Current transit studies all suggest a growing congestion problem on our passenger and freight rail network.

Since deregulation in 1980, Class I ton miles have increased 93 percent while miles of track decreased 40 percent. The U.S. Department of Transportation estimated that the demands of freight rail transportation will increase 88 percent by 2035 with studies estimating that the investment of $148 billion in infrastructure expansion will be needed over the next 28 years to keep pace with economic growth and meet DOT's forecasted demand.

Passenger trains are also seeing increase ridership with demand expected to grow. Amtrak ridership is at its highest level since the operation began in 1971 with 25.8 million passengers in 2007. This is the fifth straight year of record ridership for Amtrak.

Unfortunately, as freight movement has grown, so has the conflict between freight and passenger trains. Even under existing Federal law, Amtrak trains have priority over freight trains. This demand for space on the rail system has also caused unintentional consequences for shippers.

As we begin to develop and reauthorize the next SAFETEA bill, it is critical that the needs for additional rail capacity for both freight rail and passenger rail be addressed. The future of ground transportation is on our rail, whether it takes freight off of congested highways or moves people through high-speed rail corridors.

There is no one solution that will solve rail congestion. New and creative ideas from both government and the private sector must be utilized to increase and improve both freight and passenger rail capacity.

I hope this hearing will help the Committee understand what action we can take to ensure our Nation's rail system is prepared for

the future. With this, I would welcome today's panel and thank them for joining us. I am looking forward to the hearing.

Before I yield to Mr. Shuster, I ask the Members to be given 14 days to revise and extend their remarks and to permit the submission of additional statements and materials by Members and witnesses. Without objection, so ordered.

I yield to Mr. Shuster.

Mr. SHUSTER. I thank the Chairwoman and welcome the witnesses here today.

It is an extremely important hearing that we have here today and talk about rail capacity and come up with solutions, real solutions to the problems we face.

In 1980, as everyone is aware, our Nation's rail industry was in terrible shape, was a mess. Twenty percent of the railroads went into bankruptcy, including most of the railroads in the Northeast and, of course, my home State of Pennsylvania, Penn Central was front and center.

Derailments were an everyday occurrence. More than 70,000 route miles or about 25 percent of the total had to be operated at reduced rates because of dangerous conditions. Something had to be done or the entire rail system would have been in bankruptcy.

Congress was faced with the choice to continue to regulate the system and bail out the railroads, using taxpayer money, or to deregulate and let the private sector rebuild our Nation's railroads. Congress, I believe, chose the right path, and we are here today, and that is a testimony to the success.

By passing the Staggers Act in 1980, deregulation occurred and billions of new private capital poured into the system. Rates declined, rail productivity tripled, and safety improved. Today, we find it is the safest we have seen our railroad industry in its history.

But now the railroads have become victims of their own success. Our railroads are becoming congested and sometimes to the point of gridlock. We need to add new rail capacity, and we need to do it fast.

A good way to promote that, I believe, promoting new rail capacity is with an investment tax credit. That is why I favor H.R. 2116 which was introduced by Kendrick Meek of Florida and Eric Cantor of Virginia, the Freight Rail Infrastructure Capacity Expansion Act.

Trains use less fuel, producer fewer emissions than other modes and, as I think we are all aware of the statistics, trains can take off hundred, up to 300, trucks off our Nation's highways. By passing an investment tax credit for rail, we can reduce our dependence on foreign oil and spur economic growth.

Madam Chairwoman, I am looking forward to this morning's hearing. I appreciate your calling it, and I am sure we are going to learn a lot here today, which we always do with a distinguished panel like we have before us.

So, thank you and I yield back.

Ms. BROWN. I am pleased to introduce and welcome our first panel of witnesses here this morning. Our first witness is Mr. Ed Hamberger of the Association of American Railroads. Our second witness is Mr. Dale Zehner of the Virginia Rail Express. Our third

witness, Mr. Alexander Kummant of Amtrak, I understand recently is a new father, and I am sure he is going to give us the name of the baby when he gives his presentation.

And, our fourth witness is Mr. Al Moro of the Port of Long Beach. Our fifth witness is Mr. Evan Hayes of Idaho Barley Commission. Our final witness on the first panel is Mr. Steve Sharp of Arkansas Electric Cooperative.

Let me remind the witnesses that under our Committee rules, oral statements must be limited to five minutes, but the entire statement will appear in the record. We will also allow the entire panel to testify before questioning the witnesses.

We are very pleased to have you with us this morning, and I recognize Mr. Hamberger for his opening testimony.

TESTIMONY OF ED HAMBERGER, PRESIDENT AND CEO, ASSOCIATION OF AMERICAN RAILROADS; DALE J. ZEHNER, CEO, VIRGINIA RAILWAY EXPRESS; ALEXANDER KUMMANT, PRESIDENT AND CEO, AMTRAK; AL MORO, CHIEF HARBOR ENGINEER, PORT OF LONG BEACH; EVAN HAYES, CHAIRMAN, IDAHO BARLEY COMMISSION; AND STEVE SHARP, PRINCIPAL ENGINEER, ARKANSAS ELECTRIC COOPERATIVE, INC.

Mr. HAMBERGER. Thank you, Madam Chairman, Mr. Shuster, Mr. Sires, Mr. Space. On behalf of the members of the Association of American Railroads, thank you for the opportunity to discuss railroad capacity.

As the National Surface Transportation Policy and Revenue Study Commission noted in its recent report, "Congestion is affecting every mode of surface transportation for ever lengthening periods of time each day as a result of the mismatch between demand and supply of limited capacity."

Railroads are not exempt from that assessment. Rail freight traffic has increased substantially with 2006 and 2007 standing out as the two busiest years in rail history. Railroads today carry more than twice as much freight per route mile as they did in 1990. This has led to capacity constraints on some points along the rail network.

As you point out, Madam Chairwoman, all forecasts agree that the demand for rail freight transportation will continue to increase, with the DOT predicting an 88 percent increase by 2035. To meet this increased demand, it is clear that railroads will have to expand their capacity.

If they don't, nearly one-third of the Nation's 52,000 miles of primary rail corridors will become so congested by 2035 that service delays would be persistent and substantial, according to a recent report by Cambridge Systematics whom you will hear from later this morning.

Railroads are working hard to meet present and projected transportation demands. In my written testimony, I tried to give the Committee insight on how the industry works with its customers to assess shipping needs, then designs the network to optimally meet those needs and finally deals with the complexities of traffic mix, weather, changes in demand and new traffic flows on a 140,000-mile long outdoor assembly line.

My testimony also points out that there are indeed many ways for the industry to improve its throughput, such as new technologies, a growing and well-trained workforce and improved operating strategies, but the immutable truth is that capacity depends on spending increased amounts on infrastructure and equipment. Since 1980, the industry has invested approximately $420 billion, more than 40 cents out of each revenue dollar, for these purposes.

Since 1997, the railroads have put an average of 17 percent of all revenue into capital improvements. The average for U.S. manufacturing is 3 percent.

Indeed, the two largest U.S. railroads spend more to maintain and improve track and roadway than all but three State highway departments spend on their respective highway networks. The next two largest railroads would also be ranked in the top ten in comparison to the States.

The ability of the railroads to continue investing heavily in plant and equipment is heavily dependent upon earnings. As the CBO noted two years ago, "Profits are the key to increasing capacity because they provide both the incentive and the means to make new investments."

Although rail earnings have improved in recent years and may now be, in fact, at record levels, it is important to remember that those earnings still fall short of the earnings achieved by most other industries against which they must compete for capital.

In order to meet the projected demand for rail freight service in 2035, Cambridge Systematics estimated that the $148 billion will need to be invested in capacity expansion alone. While much of that money will be generated by the railroads themselves, there will remain a considerable gap between what should be invested and what could be invested.

There are substantial public benefits to be realized if the railroads are assisted in closing that gap. These include improved ability of commerce to reach markets, improved flow of international trade and reduced fuel consumption, pollution, greenhouse gas emissions and highway congestion.

I would like to suggest several things that could be done to address the rail capacity funding gap.

First, as Mr. Shuster referenced, enactment of the Freight Rail Infrastructure Capacity Expansion Act which provides a 25 percent tax credit for investments in new track, intermodal facilities and other projects that increase capacity. That credit would be available not just to railroads but to our customers or any entity that invests in rail capacity expansion.

I gratefully acknowledge the support that the Chair and Mr. Shuster have given to H.R. 2116.

Second would be passage of the Short Line Rail Investment Act which extends a targeted tax credit for smaller railroads that expired at the end of last year. Cross tie replacements, a critical element in handling heavier freight cars, increased by a half million ties a year, thanks to the short line tax credit.

Third, encouragement of public-private partnerships in which the public pays for the benefits it receives and railroads pay for the benefits they receive. The Chicago CREATE project, which had the support of this Committee, the Heartland Corridor and the Ala-

meda Corridor are all examples of such projects in which public and private dollars are leveraged together to produce public benefits that otherwise would not be realized.

Finally, avoid policies that would impede the industry's ability to earn the revenues needed to reinvest in its capacity.

We look forward to working with the Members of this Committee in developing programs that will reduce congestion and improve transportation mobility.

Thank you for the opportunity to be here this morning.

Ms. BROWN. Mr. Zehner.

Mr. ZEHNER. Chairwoman Brown, Ranking Member Shuster and Members of the Subcommittee, thank you for taking on this critical issue of railroad capacity.

My name is Dale Zehner. I am the Executive Officer of the Virginia Railway Express which operates commuter service in Northern Virginia into Washington, D.C. from Fredericksburg, Virginia and Manassas.

People ask me all the time, why do people take the trains? Why does a person take a train? They think because they love trains, they take trains. That is not the case at all.

What a person wants to do is get in their car and drive to work, park in the front of the building, walk in and then walk out at the end of the day, drive home, uncongested, to their house. When they cannot do that, they will take transit. That is the only time they will take it. So they are not in love with trains for trains' sake.

The roads are congested—you know that—I-95 in Virginia, I-66 in Virginia, and now the commuter cannot get to work in a reliable way. When they cannot get reliably use their cars on the roads, they shift to transit.

VRE was started in 1992. We started with 4,000 passengers. We are now at almost 16,000 passengers a day, and we continue to grow.

That growth has increased because of investment in the railroad. About $100 million has been invested in the last 15 years by the Federal Government, the State Government and the local government.

However, with that investment, we continue, we are starting now to hit capacity again. On the CSX corridor, running south to Richmond, 78 trains a day operate a day on that railroad: Amtrak, VRE and freights. If a train falls out of slot in their time period, delays start to ripple back against the trains behind them.

The management of this railroad has increased drastically over the last five years with CSX in their dispatching, signal and switch, maintaining the railroad. Amtrak and VRE have increased their management of their crews, our mechanical operations to ensure that our trains operate on time. Because of that, we have seen growth in passengers on all of the modes.

Demand for the transportation services, both freight and passenger, are at record levels and are projected to increase into the future. We have requests to go to Charlottesville. We have requests to go to Richmond. Continued investment in the railroad at the Federal, State and local levels is paramount to permit this increased growth.

The Commonwealth of Virginia now invests $26 million a year in the railroad networks within the State of Virginia for both freight and passenger services. The Federal Government has been a great partner over the last 15 years with us, with substantial investment including the Quantico bridge that went into service a year ago and cut delays on this corridor by 30 percent, but we must continue to make those investments over the next years to continue the growth in the passenger and freight operations.

Thank you very much, Chairwoman Brown.

Mr. KUMMANT. Good morning, Madam Chair, Mr. Shuster, Members of the Subcommittee. Thanks for the opportunity today to testify on this important subject.

As you know, Amtrak operates on close to 22,000 miles of track in 46 States. In fiscal year 2007, Amtrak generated over 37 million train miles, and 70 percent of those were on tracks owned by 22 freight railroads.

These railroads span the whole range of American carriers from the giant Class I systems down to small short lines. All these examples are freight haulers, but Amtrak also operates over commuter authority lines such as Metro North in Connecticut. It is important to note that 80 percent of the host railroad train miles are run over just 4 carriers: BNSF, UP, CSX and Norfolk Southern, in order of magnitude.

I would like to talk a bit about the issue of capacity on the freight railroad system in the context of Amtrak's on-time performance. It is a tough issue for us.

Amtrak's system on-time performance (OTP) outside of the Northeast Corridor has declined almost every year since 2000. Reliability is important to the passenger who expects to arrive at his destination on time, and it is also important obviously to the taxpayer who subsidizes Amtrak. Poor OTP translates directly into greater operating costs and lost revenues for Amtrak.

Just last month, at the request of the Senate Commerce Committee, the DOT Inspector General prepared a report that measured the cost of poor on-time performance. This report notes correctly that on-time performance for long distance trains fell from an average of 51 percent in 2003 to almost 42 percent in 2007 while on-time performance for non-Northeast Corridor routes fell by 10 percent from 76 percent to 66 percent.

The DOT Inspector General calculated that a 75 percent on-time performance in 2006 would have had a net positive effect on our operating budget of about $122 million.

If we could raise the on-time performance to 85 percent, the net favorable effect for the year would have been $137 million. This figure reflects increased revenue from better on-time performance and cost savings associated with late trains, and that amounts to almost a third of Amtrak's operating losses.

The DOT Inspector General's report did not address the cause of poor on-time performance. But at Amtrak, we obviously know this issue well, and there are two principal sources.

The first is interference with Amtrak trains by freight trains. This happens when Amtrak trains are routed into sidings or held at rail yards or junctions to let freight trains pass or have to slow

down to travel behind slower moving freight trains, sometimes for many miles.

The second cause is known as slow orders which are essentially restrictions placed on train speed over a stretch of track. These instances arise because of ongoing maintenance but are usually due to track defects and other maintenance issues that host railroads have not been able to prioritize for long periods of time.

Freight train interference delays and slow orders are the two biggest components of all the delay minutes for Amtrak trains in 2007.

Let me give you a little more detail on that topic. I would like to provide the Committee our monthly system on-time performance report for fiscal year 2007. The report shows an overall improvement in long distance on-time performance during the course of 2007 from 30 percent of trains arriving on time to 41.6.

A long distance train is classified as late if it fails to arrive at its destination within 30 minutes of its scheduled time, a time that includes a variable number of schedule recovery minutes to allow trains to make up for delays. As of the end of March, we continue to see improvement.

I would, parenthetically, also like to mention that we had a very good meeting last week brokered by Secretary Peters. It was a meeting between the Amtrak Board and the leadership of the freight railroads, where we are engaging on this issue.

So, overall, we have improved 16.7 points on on-time performance. This falls into a category, of course, of better by comparison, but we are still far below the 80 percent on-time performance target.

The numbers I have cited are averages, and I want to start by saying that some of the host railroads do a good job of handling our trains. Burlington Northern Santa Fe, for example, does a good job on the Empire Builder and the Southwest Chief across thousands of miles, while the Canadian Pacific dispatches 14 Hiawatha trains a day on a busy route between Chicago and Milwaukee, trains that were on time 89 percent of the time in fiscal year 2007. These are very different operations, and they are run over very different pieces of railroad.

While it is fair to point out that the mix of traffic and the infrastructure configuration play a large role here, those differences highlight a salient point: Good on-time performance is possible when host railroads use targeted operating and maintenance practices and give appropriate attention to timely delivery of Amtrak trains.

Poor on-time performance has very real, very measurable effects on Amtrak ridership, revenue and costs. As on-time performance worsens, we need more equipment to protect the same schedules, a trend that is reinforced by the maintenance issues that come with shortened turnaround and servicing times and longer over the road times.

Those longer over the road times translate directly into greater expenses for diesel fuel and labor, both of which are becoming more expensive, and this is very hard on our people as well in terms of hours of service. It is a classic example of a vicious cycle with each event compounding the effects of the others.

Those are the effects of poor on-time performance and the principal causes. The issue remains: What is the solution?

Let me start by addressing the issue that is the central topic of this hearing today, congestion and capacity.

Last year, the Association of American Railroads released a report which contains a discussion of the volume of traffic on freight railroads. It is noted that about 80 percent the national railroad system is operating within its practical capacity, 12 percent of it is operating at practical capacity and that less than 1 percent of it is over practical capacity.

So, again, it is not to deny that there are serious congestion issues in some spots along Amtrak routes or that investment in expanded capacity is a matter of sound public policy in everyone's best interest, but congestion is not always the primary cause of poor performance. Where congestion is an issue, I would argue that there are some immediate steps host railroads can take to provide some relief.

All of us need a cooperative process which focuses on individual routes to identify and address the reasons for poor on-time performance specific to each route. To be successful, the process will need three steps: address poor dispatching management, address slow orders and, finally, address capacity constraints.

To start with, we must ensure that host railroads abide by their legal obligation to give Amtrak trains preference over freight traffic. The U.S. Code requires this.

The railroads have made progress on this issue in a number of our routes. Our experience has been that when top management of host railroads focuses on this issue and makes the movement of Amtrak trains a priority, the operating discipline of all trains on a route improves because a well-run railroad naturally expedites its trains as well as our own. This benefits not only Amtrak passengers through improved OTP but also freight shippers as well.

Let me close by saying we have seen improved on-time performance over the last year. We are still not where we want to be or where we need to be. There have been some gains, but the job is far from finished.

We didn't get a 17 percent improvement in on-time performance in one year because of massive capital investment. We got because a number of the freight carriers made some much-needed improvements to maintenance and operating practices and, at the end of the day, I think we all benefit.

I hope this pattern of cooperation and joint effort can become a general practice, and I look forward to working with our freight partners on it.

Thank you very much.

Ms. BROWN. Thank you.

Mr. Moro.

Mr. MORO. Madam Chairwoman, Members of the Committee, thank you for the opportunity to speak to this important Committee today.

My name is Al Moro. I am the Chief Harbor Engineer at the Port of Long Beach. The Port of Long Beach is the second largest seaport in the United States and combined with its neighbor, the Port of Los Angeles, we are the fifth largest port complex in the world.

In 2007, the Port of Long Beach handled more than 7.3 million containers also known as TEUs for 20-foot equivalent units. Combined with Los Angeles, both ports handled over 15.7 million TEUs which represented over 43 percent of the containerized goods entering the United States.

The Ports of Long Beach and Los Angeles, also known as the San Pedro Bay Ports, are the leading gateways for trade between the United States and Asia. Port operations support approximately 1.4 million jobs nationally and provide consumers and businesses with billions of dollars in goods each year. About $4 billion a year is spent in the U.S. for port industry services, and trade valued annually at more than $100 billion moved through the Port of Long Beach in 2007.

Transporting containers via rail has become the optimal form of goods movement for a variety of industries and requires reliable and dependable shipments of products. The primary source of transport for these goods by rail is through the Alameda Corridor and out of California by rail systems operated by Union Pacific and Burlington Northern Santa Fe Railway.

As a significant intermodal project, the Alameda Corridor is a 20-mile long grade-separated railway connecting the ports to the Intercontinental Rail Yard in downtown Los Angeles. In its first year of operation, the corridor moved slightly more than 14,000 trains and, in 2007, it moved 18,000 trains. We are proud to say that the corridor recently celebrated running its 100,000th train.

In 2007, the Ports of Long Beach and Los Angeles and the Alameda Corridor Transportation Authority commissioned a trade impact study which found that the San Pedro Bay Ports have an impact on every congressional district in the United States. In particular, the study looked at jobs and State and local taxes generated directly and indirectly by goods moving through the port complex and found that these goods are reaching consumers all over the Country including other port cities.

Both ports are expected to meet the growing demand for international cargo which is estimated to increase from 15.7 million TEUs in 2007 to over 35.3 million TEUs by 2020.

A combination of insufficient rail capacity due to terminal logistics issue as well as community opposition to port projects will make it challenging to complete future port-rail and terminal capacity enhancement projects.

Cargo transported via rail has significant environmental benefits, and the Clean Air Action Plan adopted by both ports in 2006 encourages terminal operators at the port complex to place more cargo on rail and rail lines to use new technologies and alternative fuels to reduce emission impacts. Every train using the Alameda Corridor can eliminate 750 truck trips on congested freeways.

Portions of the existing rail and transportation systems within and adjacent to the port complex are slowly becoming constrained and will likely worsen due to cargo growth.

In 2006, both ports completed the San Pedro Bay Ports Rail Study Update to address the current and future rail capacity issues. The study identified rail system deficiencies, substantiated the actions required to meet rail yard demand and looked at ways

to maximize capacity and utilization of rail systems like on-dock rail.

Even after maximizing the potential on-dock rail yards propose, there will be a substantial shortfall in rail yard capacity by at least 2010. That is why both ports recommend that, in order to develop a more comprehensive rail system, rail yard capacity be developed at near-dock facilities in the vicinity of the Alameda Corridor.

At its highest estimated cargo volumes, train volumes generated by on-dock rail yards are forecasted to exceed 100 trains per day, more than double the current 45 trains per day handled by the Alameda Corridor. Total train volumes on the port-rail network are also expected to exceed 250 trains per day and those on the Alameda Corridor by 200 trains per day by the year 2030.

The total estimated cost for rail improvements at or adjacent to the ports is estimated at over a billion dollars. The Port of Long Beach believes that making investments in rail infrastructure is vital to the Nation's economy. In 2006, voters in California approved Proposition 1B, a $2 billion measure designed to invest in the State's goods movement infrastructure.

In addition to Proposition 1B funds, the Ports of Long Beach and Los Angeles recently approved an infrastructure cargo fee that will raise a total $1.4 billion to fund critical goods movement projects within the port complex. This fee will provide funds for upgrades to the ports' aging rail and bridge infrastructure, reduce congestion, expedite goods movement and improve air quality.

The ports will levy this fee on each loaded import or export container moved through the port terminals by truck or rail. It is anticipated that the fee would begin at $15 per loaded TEU and will range over a period of 7 years between $10 and $18 per TEU, depending on the projects that need to be funded. The ports will end collection of the fee once the approved projects are completed and paid for.

The ports will use the revenue from this fee to match funds from the Proposition 1B and Federal funds to help pay for major port-related transportation infrastructure and air quality improvements.

In closing, in order to move goods more efficiently from the San Pedro Bay Ports to regions across the Nation, additional investments will need to be made to fund regional and nationally significant rail projects.

Additional Federal funding is needed, and the Port of Long Beach looks forward to working with the Committee and other key stakeholders on the upcoming Transportation Authorization Bill, to assist in developing a list of critically needed rail projects and discuss alternative sources to fund projects that will allow goods that fuel our economy to continue moving.

We invite you to visit the port to see the rail issues firsthand.

Thank you.

Mr. HAYES. Chairwoman Brown, Members of the Committee, my name is Evan Hayes. I am a barley and wheat producer from Southeastern Idaho. I am a real farmer. I am a sit in the seat tractor, down playing in the dirt.

I am not a professional at this, and so I ask for you to bear with me. I am going to read my testimony to you, hoping to try to stay as straight as I can.

I am pleased to provide testimony today on behalf of the Alliance for Rail Competition, the National Barley Growers Association, the Idaho Barley and Wheat Commission, the Idaho Grain Producers Association and the agricultural community.

The members of the Alliance for Rail Competition include utility, chemical, manufacturing and agricultural companies and agricultural organizations. Producers of commodities as wide-ranging as soybeans, dry beans, peas, lentils, sugar beets, rice, wheat and barley have expressed concerns similar to those I will share with you today. Together, these organizations represent farm production in more than 30 States.

Agriculture producers know that an effective rail system is necessary for the success of our industry. However, we continue to face many problems that are directly tied to the service and capacity issues that you are addressing today. Helping our members find solutions to their rail freight problems remain a top priority for U.S. agriculture producers.

Captive rail customers continue to be subject to excessive freight rates, curtailment and limiting of markets by market down the railroads and sub-par service. The railroads continue not to live up to their common carrier obligation based upon capacity problems. A large portion of our agriculture shippers have become captive to a single railroad, which makes them particularly vulnerable to rail service problems.

Since the passage of the Staggers Act in 1980, the degree of captivity in many barley and wheat growing regions has increased dramatically. Our producers experience both unreliable service and higher freight rates. There are continuing rail equipment shortages. Today, whole States, whole regions and whole industries have become captive to a single railroad.

In the grain industry alone, there are substantial pockets of captivity in Texas, Oklahoma, Arizona, Colorado, Kansas, Nebraska, Wyoming, Idaho, South Dakota, Minnesota, North Dakota, Oregon, Washington and Montana. Because of these pockets of captivity, the cost of transporting grain now represents as much as one-third of the overall price a producer receives for his or her grain. The cost comes directly from the producer's bottom line. Unlike other businesses, we cannot pass these costs along.

Some specific examples of rail service failures that have directly impacted our producers' bottom line are:

In the fall of 2007, more than 10 million bushels of Colorado wheat had to be stored underground in areas where there was a lack of adequate rail service. All of these areas are captive to a single carrier. Grain stored underground loses quality and thus loses value. Many other States had similar service issues and had grain on the ground.

Similar rail capacity issues are being experienced by the U.S. barley industry, resulting in loss of traditional feed barley markets in California and the loss of upper Midwest malting barley contracts to Canadian competitors as documented in my testimony.

In California, barley historically captured 50 to 60 percent of the large California dairy feed market. Today, we have less than 5 percent of that market due to rail marketing decisions.

California corn producers can't even compete in this market in their own back yard because the dominant western railroad chose to push Iowa and Nebraska corn into markets with shuttle train rates below full rail costs.

One of my own malting barley customers built a new malting plant in eastern Idaho five years ago to supply its Mexican breweries. After one and a half years of negotiation to find a competitive transportation relationship with the single railroad that served this area, the brewing vice president told our governor—and I was at that meeting—that if the company knew when they planned to build this plant in Idaho what they know today about the effects of rail captivity, they would never have located in Idaho.

These wheat and barley examples underscore an economic model that encourages railroads to dictate their capacity and infrastructure improvements to large single crop intermodal movements at the expense of value-added agriculture and other commodities.

As documented in my written testimony, we have experienced many instances of rail's failures to meet the service needs of grain shippers. It is very timely that you are holding this hearing to closely examine rail capacity. In recent years, railroads, blaming capacity constraints, have made decisions that favor hauling larger and larger movements of a single grain commodity from a single origin to a single destination.

A question for you: Is there a rail capacity shortage on the Nation's rail system or are the railroads just using alleged capacity shortage to demand concessions from rail customers and government?

I would call your attention, and you have covered this somewhat already, to the final report of the National Surface Transportation Policy and Revenue Study. The Commission was established by Congress in the 2005 highway bill, SAFETEA-LU, and charged with assessing national infrastructure needs.

The Commission's final report suggested the proposition that additional rail infrastructure is needed. The Commission does not conclude there is a near-term failure in the rail system due to the lack of adequate infrastructure nor does the Commission urge actions that would give the railroads free hand with respect to raising rates and rejecting service.

On the contrary, the Commission found, and this was used in AAR data, the Nation's freight rail network is relatively uncongested at current cargo volumes. Eighty-eight percent of today's primary freight rail corridor mileage is operating below practical capacity. About 12 percent is near or at practical capacity, and less than 1 percent is operating above capacity.

If I could, I would like to conclude by saying agriculture producers, together with the members of the Alliance for Rail Competition, believe that a healthy and competitive rail industry is essential to our continued viability.

Furthermore, current poor service and increase rail rates are making it increasingly difficult for agriculture producers to remain competitive in the world marketplace. We urge Congress to work with us to address these challenges.

However, we also believe that these claims of rail capacity shortage may be overstated and need to be examined very closely. Build-

ing public policy of investment into future rail capacity should be based on factual capacity shortages.

Thank you for this opportunity to testify.

Ms. BROWN. Finally, Mr. Sharp.

Mr. SHARP. Madam Chairwoman, Mr. Shuster, Members of the Subcommittee, thank you for the opportunity to testify today before you on the important subject of rail capacity and reliable rail service.

Arkansas Electric Cooperative has been affected by numerous rail service issues over the years, including captive shipper pricing, rail build-outs, a paper barrier that prevents a short line railroad from serving one of our plants, rail merger impacts and major rail delivery shortfalls.

Since the early 1990s, AECC has experienced three major rail service disruptions. We have had other problems too, but in these three instances we actually had to reduce the output of one or more of our coal-fired plants because of the difficulties of getting rail transportation to the plants.

The severity of each of these disruptions has been progressively worse than the previous one. The first disruption in 1993 and 1994 was due to widespread regional flooding. That was beyond the control of the railroad management.

The last two major service disruptions have been the direct result of railroad management actions. These include the 1997-1998 merger meltdown that followed the merger of Union Pacific and Southern Pacific and the massive problems that stem from the Powder River Basin Joint Line throughput problems that arose in May of 2005 as a result of deferred roadbed maintenance by the railroads operating there.

Today, almost three years after this latest episode began in 2005, AECC's PRB coal deliveries are just about back to pre-disaster levels. We are not quite at 100 percent, but each year since 2005 our deliveries have been improving. As I said, it has taken basically three years to get us back to the point that we were at before 2005.

In the aftermath of these initial joint line disruptions, Union Pacific railroad imposed an embargo on new PRB business that lasted until March of 2007. During this time, Burlington Northern Santa Fe, the only other railroad that can move PRB coal, was able to engage in monopoly pricing even for movements that theoretically could also be served by the UP, except with the embargo, UP was not taking on any new business.

As a result, rates for new PRB movements shot up during this period. This has effectively undone the long decline in competitive rail rates that we have seen, for coal hauling at least, that marked the first 20 years of rail competition for PRB coal movements.

Railroads have tried to create the impression that the volume increases they have experienced inevitably have exhausted the capacity and caused poorer service and higher rates. This may be intuitively plausible, but it is not a valid excuse for what has happened.

During the wave of railroad mergers that followed the Staggers Act, the railroads told a different story. Then, heavy volumes were good. Shippers were told that high concentration in the rail industry was okay because the railroads have economies of scale and

handle higher volumes more efficiently than they can handle lower volumes.

More recently, the railroads' own study of future capacity needs performed by Cambridge Systematics shows how the railroad arguments about capacity and congestion require that you ignore the way productivity improvements effectively add capacity and ignore the greater contribution that is available to support infrastructure just from adding traffic volumes at current rates.

Current railroad arguments about capacity constraints are also refuted by the railroads' own history of serving PRB coal movements. For 20 years, rail competition, productivity and economies of scale produced the result that the railroads are now trying to claim is impossible, infrastructure investment to move higher volumes at lower rates. Especially with the railroads now approaching or achieving revenue adequacy, there should be no question that they are earning the returns needed to support adequate capacity investment.

The railroads say that the volume and density they have been pursuing for decades and that has provided much of the rationale for their major mergers is now preventing them from providing reliable service at reasonable rates.

We believe, rather, that the volume and density now being enjoyed by the major railroads make it both possible and appropriate to place greater reliance on market forces to ensure shippers receive reliable service at reasonable rates and avoid the types of service problems that we and other shippers have been forced to endure.

AECC is doing everything we can to improve the quality of rail service we are receiving. AECC wishes that the major railroads, upon whom we and our customers rely, would match our efforts. We believe the forces of competition, rather than monopoly power, would lead to the reliable rail service at reasonable prices that we seek.

Thank you.

Ms. BROWN. Thank you. Thank you all.

Mr. Hamberger, recently, I went to Barcelona. I took the train from Barcelona to downtown Madrid, 300 miles, 2 hours and a half. I mean we in this Country are the caboose, and we don't even use cabooses anymore. We have to figure out a way to grow our industry.

I was just in Tallahassee yesterday. We are discussing a commuter rail which is very important to central Florida because of the congestion, and we are working with CSX. One of the major problems that keeps coming up is the feeling we have to have this partnership between public and private, but safety is also an important issue.

Is your industry going to sit down with the unions and discuss safety and how we can grow the industry together, because that keeps coming up?

Mr. HAMBERGER. Madam Chairwoman, I appreciate that question.

We have, in fact, worked very closely with this Committee, with the House, with the Senate Commerce Committee and hopefully with the full Senate and finally get into conference a very far-

reaching safety bill that would address the issue of fatigue, the issue of making sure that those individuals who are driving the trains are guaranteed in law the rest that they deserve.

In fact, I would offer that they get that rest today. Only 5 percent of our employees actually work more than 250 hours a month. Only 17 percent work more than 200 hours a month. So we are committed to fatigue management. We are committed to working with our employees not only to make sure they are properly trained but to make sure they are properly rested.

But you also put your finger on, as you have a wont to do, a very important issue, and that is the cooperation that is required between both the freight and passenger operators of rail systems. I think Mr. Zehner talked about it in his written testimony as well as here this morning, the cooperation that he is experiencing with CSX in improving and expanding the operations between Richmond and Washington.

Mr. Kummant referenced the meeting that occurred just last week between the AAR Board and the Amtrak Board and the commitment to sit down and take a look at how to improve on-time performance. That commitment to partnership is there, not only with our employees in the area of safety but also with our partners providing the passenger service to make sure that we can improve on-time performance.

Ms. BROWN. I will come back with additional follow-up questions.

Mr. Moro, I want you to know that Mrs. Napolitano took me to your area. I was in a helicopter. I have seen your entire operation and what you have a hope to improve, and it is very impressive.

As we expand port operations and try to be competitive with people in different countries around the world, it is so crucial that we have the track infrastructure working. We are talking about bringing in big containers into Jacksonville, but we are talking about if we don't put the infrastructure in place with the tracks, we are talking about, what, 3,000 minimum or up to 10,000 tractor trailers a day, 365 days a year. That is not acceptable to any community.

But to expand the operation is expensive. So how did you all do it?

Mr. MORO. Well, Madam Chair, we agree with you. We think we have a pretty impressive port complex. We are very proud of that. It is actually built out of need. The consumers are consuming, and we are the gateway for all of those goods into the Nation.

We are working on more reliance on rail. Everybody knows the freeways and main arterials in southern California are very congested. So, reliance on rail is an efficient way to move cargo as well as a clean way. It is good for the environment.

The way we have done is, of course, we have very good revenues from our operation that we reinvest in our capital improvement projects on our terminals.

We have had a little bit of difficulty over the last couple of years in getting through our environmental document process. However, the difficulty has just really been a challenge in order for us to provide proper mitigation measures as we develop these terminals.

So on-dock rail, we have a couple of terminal projects which are funded by our port revenue that will help the rail infrastructure.

Then, off-terminal, the projects we have underway, and I mentioned that we have State Prop 1B funds that we are using our local match to leverage, to do these off-terminal projects, near-dock projects that really allow us to maximize the movement of rail cargo. Because they are an off-terminal yard, they are there for a number of terminals to use, the short haul rail carrier as well as the long haulers to build up the trains.

So, to answer your question, the way we do, frankly, we just reinvest a lot of our revenue into rail. We recognize the significance of it, and it is definitely an infrastructure that we are going to keep pursuing.

Ms. BROWN. I will come back.

Mr. SHUSTER. Thank you.

Obviously, we have a wide range of issues in front of us. I am going to focus first on, Mr. Moro, did you just say you, as a port, you invest in rail yourselves?

Mr. MORO. Yes, sir. Mr. Shuster, that is correct. We use port revenues and reinvest those back into capital improvement projects for rail, rail yards and rail infrastructure.

Mr. SHUSTER. You do that with a partnership with the railroads or just on your own?

Mr. MORO. It is on our own.

Mr. SHUSTER. It is on your own.

Mr. MORO. Yes.

Mr. SHUSTER. How many railroads serve your port?

Mr. MORO. Union Pacific and BNSF, Burlington Northern Santa Fe.

Mr. SHUSTER. Trucking is not a factor, coming in and out of there, or very minimal? You use trains mainly to get things out?

Mr. MORO. No. Well, we use approximately, actually primarily trucking. There is a localized consumer there. There is, of course, the metropolitan area. The five counties there are our big consumers. So, for the local distribution and consumption, no, we rely on trucks heavily.

The Port of Long Beach moved just under 80 percent of the goods moved via truck. Only 20 percent in 2007 moved via rail. Our hope is to increase, continue to increase that. That is usually for destinations.

Mr. SHUSTER. Increased rail?

Mr. MORO. Increased rail, yes, sir.

Mr. SHUSTER. It is a lot less expensive to move?

Mr. MORO. That is correct. It is the most efficient way to move the cargo out.

Mr. SHUSTER. Mr. Hayes and Mr. Sharp, in your industries, do you invest in rail upgrades or do you rely mainly on the railroad industry to do that?

Mr. HAYES. Madam Chairman, Member of the Committee, obviously, in the grain industry, in most cases, the rail takes care of the infrastructure. However, there are many elevators that have their own car-loading tracks, 100 unit circle trains or whatever they may be. Obviously, some of our industrial partners are very much involved in building their own rail infrastructure to load and unload, et cetera.

But if I were to give it a broad answer, I would simply say that yes, the grain industry is very involved because all of this investment, all of these loading facilities, this is all part of a cost of doing business with a farmer. As I testified earlier, we are probably the only American industry that cannot pass our costs on to someone else. We are the bottom of the feeding chain.

We ship through industry, but we pay the bill through freight rates or handling fees or elevation fees or whatever it may be. The cost still falls back onto the back of the American farmer.

Mr. SHUSTER. Mr. Sharp, does your industry invest in railroads, railroad operations or is it mainly left up to the rail industry?

Mr. SHARP. Yes, sir, we do to a certain extent. The coal is hauled from the Powder River Basin to power plants like ours in unit trains. The customers provide the coal cars.

So, in our case, we are providing all the coal cars that the coal is hauled in, provide those to the railroads for those trips, and also the facilities that we have onsite at our power plants, the rail loop that is needed. When that rail loop needed to be expanded from smaller length train consists to larger ones, we made those expansions.

So, to the extent that we can do anything that helps improve the efficiency or speed up the process, we will make those investments, yes.

Mr. SHUSTER. What about both your industries? The use of trucking, is that utilized as a means to transport?

Mr. HAYES. Madam Chairman, Representative Shuster, never in my life have I ever seen a train come to my barley field to pick up a load of barley. I have to deliver that barley via truck to my marketplace, be it a local elevator or, in my case, I am a contract malt producer and I have a 275-mile round trip.

Of interest to you perhaps today, with the cost of diesel fuel, I am a small farmer. I own two semis. That is all I have, and obviously they are old. At $4 diesel, it costs me $1 a mile for diesel fuel. My trucks run four miles to the gallon.

So, I hope I answered you question in that obviously trucks have to carry, in agriculture, carry the good to the train.

Mr. SHUSTER. To the train, but then the train takes it.

Mr. HAYES. Absolutely, and we cannot make it without the train.

Mr. SHUSTER. Right. When we talk about re-regulation and what we are talking about in a lot of these cases is a great concern to me, that when we talk about the increase in costs. Definitely over the last couple of years, we have seen a 5, 6, 7 percent increase. But when you look over the last 28 years, we have actually seen, from 1980 when we passed the Staggers Act, a 55 percent decrease in the rates to ship in real terms.

My concern is when we talk about re-regulating, I don't know how that is going to solve the problem if, in fact, and I think we do have a capacity issue. I don't know how re-regulation is going to solve that. My concern is the situation is going to get worse.

I know in your industry, I believe, and I am not exactly sure, but of course there are peak times in the electric, when it comes to when they need coal and when they don't need coal.

In your industry, when you are shipping your grain, there is a period of time when you harvest it in the fall that you need increased capacity.

I guess the question is are you recommending that the rails increase significantly to build capacity to handle those peak times?

Mr. HAYES. Madam Chairman, Representative Shuster, it is absolutely apparent that we have to have more capacity to move our grain movements as the Colorado example I gave you.

However, I think there is a misinterpretation here a little bit. Once the initial harvest onslaught of grain disappears, there is a constant movement of grain in large volumes throughout the entire year.

As I said earlier, I am a malt barley contractor, and the primary company that I contract with, two years ago, could not get cars to move the crop to the East. So we could not move our grain from the farm to them. Their facilities were full, and we were full, and this happens to be the largest purchaser of barley in the North America.

Anyway, what happened was we ended up with grain in our bins as harvest began. We had, if I recall correctly, this would have been 2005 grain in our bins as we began harvesting in 2006. Now the problem is just compounded.

What do you do with that grain? Because like I said, I am 270 miles, and I certainly don't own enough trucks to make that movement. So, yes.

Mr. SHUSTER. Do you hold any of the grain to get a better price at market?

Mr. HAYES. Absolutely. In my case, no. I am pre-contracted.

Mr. SHUSTER. Well, what about across the industry?

Mr. HAYES. I think across the industry, there is a lot of it held, yes.

Mr. SHUSTER. They do that because they want to send it to market to get a higher price, is that it?

Mr. HAYES. Obviously, you are going to play the price. There is no question about that, as any other business does, but also you have to look at it from what you physically can do with your operation.

The large guys have to be able to spread that load out. They just don't have the capital to do that.

Mr. SHUSTER. I wasn't paying attention the clock. I am way over. Could I just ask one quick question or do you want me to come back?

Ms. BROWN. We will come again.

Mr. SHUSTER. Okay, I will save the question. Thank you.

Ms. BROWN. Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Madam Chair, and I beg your indulgence because I do have a markup. There are many issues that I have, and I would like to be able to submit some of them for the record and thank you for yielding to me.

One of the really serious areas, and I will talk to Mr. Moro on this and the Port of Long Beach because you are implementing a cargo container fee. You are using it only in the port area, am I correct, the infrastructure?

However, as we know—we have heard it and we have talked about it—most of that cargo goes up into L.A. and then through my whole district. I have 54 grade crossings, only 20 grade separations. That is going to slow down traffic. Yet, I can't get the support to be able, not support, funding I should say to be able to increase the number of grade separations to increase the speed of those trains to get them out of the area.

With the increase of—what was it—110 trains a day, that is going to be 1 almost every 10 minutes in my district. I need help, and I need to be able to ensure that whatever comes out of the port is going to be able to go through my area without derailments. We had another one just not too long ago in my area, about a month ago probably.

In the infrastructure, the UP has done a great job in doing some of the upgrading of the infrastructure, but we are still going to have a lot of issues with safety.

Now, if you are going to be able to speed up, if you will, your loading capacity on the rail yard itself at the port, that is not going to help us. We are going to need some help.

Now if you are going to be able to increase and get trucks off the road—as you know, 710 is congested out the wahoo—what else do we need to do to be able to then, because the price of fuel is going to exacerbate the issue of using trucks?

They are going to put more on your rail cars. How are we going to address that?

I know that you have had banner years. I am rolling everything into one, if I can.

Labor has been part of the concern that I have had in making sure the employees have enough rest. You have heard me time and again, that they have enough down time, that they have enough support to be able to do their job safely. Again, are you talking to labor to ensure that all of this happens?

Whoever wants to take it, I am game.

Sir, Mr. Hayes, I was in Las Vegas, Nevada, probably 12 years ago. The same issue was talked about then. So it is not really getting any better, is it?

Mr. HAYES. Madam Chairman, Representative, I don't think it has improved significantly. In fact, if anything, perhaps it has decreased due to the amount of rail service available to us. I live in a captive State. We only have one railroad, and so that complicates it for us.

Thank you.

Mrs. NAPOLITANO. Thank you, sir.

Gentlemen?

Mr. MORO. Well, I think if I could start, you mentioned the cargo infrastructure fee. The port has adopted a fee to help pay for infrastructure. You are correct. It is.0

Projects that have been identified are immediately in or adjacent to the two ports. We feel that that is a significant contribution on our part. It is, again, a reinvestment of the port revenue and fees on cargo to improve that infrastructure.

Mrs. NAPOLITANO. Mr. Moro, excuse me, but wasn't the San Gabriel Council of Governments informed that they would be able to

get some of that revenue to be able to possibly do grade separations?

Mr. MORO. That is correct. It is for roadways and for rail. It is not limited to rail, and there have been a lot of stakeholders involved in that. By law, there are limitations as to where that money can be spent.

To answer your question, what more do we need to do, I think both on the local, State and Federal level, there has to be investment of funds to improve, in terms of rail, improve the rail infrastructure including grade separations outside of the harbor district.

Mrs. NAPOLITANO. That would increase the percentage of the rail participation?

Mr. MORO. Yes.

Mrs. NAPOLITANO. Mr. Hamberger?

Mr. HAMBERGER. You are placing, again, your finger on an important point, the Alameda Corridor East project which is a public-private partnership, and I think that our railroads are working with your local communities. Hopefully, the Federal Government is involved as well, and the State, in trying to improve service through the Alameda Corridor East corridor.

As far as the port fee, we do not have a position on the San Pedro port fee, but I know that the national commission that just issued its report called for a national fee of some sort that would be used and would therefore not be dedicated just to the portside facilities.

But with respect to Mr. Hayes, while you are still here, Congresswoman Napolitano, I would just like to point out that indeed the one growth area, actually, two growth areas in our business right now are not intermodal. Intermodal is down.

Our two growth areas are grain and coal, and we are moving grain and coal at record levels. Coal is trading at $110 a ton on the spot market in Europe. Powder River Basin coal is at $14.50 up from $5 a ton just a few years ago.

We are moving more grain and more coal. Export grain is at record levels. So I would suggest that we are, in fact, providing reliable service at reasonable rates and keeping those two industries, the coal producers and the grain producers, competitive on world markets.

Mrs. NAPOLITANO. Well, thank you, Mr. Hamberger, but some of my businesses would argue with that because short haul does have a problem in my area.

Madam Chair, thank you much. I will submit some more questions for the record.

Ms. BROWN. Thank you.

Mr. Mica.

Mr. MICA. Well, first of all, I want to thank you, Ms. Brown, for conducting this hearing on the important topic of rail capacity.

When we look at the things that we can do to improve the environment, to improve our transportation system, nothing, I think, should be higher on the agenda than improving our Nation's rail capacity, both for freight and also for passenger service and for high-speed service. We need a partnership of the freights. We need a partnership of the Federal Government, Amtrak and others to make this happen.

However, I have some concerns. We have a RRIF program. I understand it has about a $35 billion capacity of which not a lot has been used.

I would like to know, maybe from Mr. Hamberger and some of the others if you would like to comment, how we could make what we have work and then how we can craft other programs that would partner Federal, State, local and private sector resources to get us to the infrastructure and rail capacity that we need.

I know this DME project, I believe it was, went down the tubes. That was also to move, I guess, energy resources cost effectively.

But we have a fund that is not utilized. We have had a major project go down the tubes. Maybe you can tell us how we could do it better or what is wrong, Mr. Hamberger.

Mr. HAMBERGER. I would like to respond in more detail on the record for that, Mr. Mica. Class I railroads do not view the RRIF program as being there for them. It is much more for the Class II and Class III railroads. I know General Timmons has testified before this Committee on this issue.

Mr. MICA. But you have access to it.

Mr. HAMBERGER. We have access to it, but our chief financial officers do not see it as really a major benefit.

Mr. MICA. Is there something we could do to recraft it so that it could be used also? I mean the intent is to help those that sometimes may not have the resources of the Class I's, but our goal is to increase rail capacity.

We had another proposal—was it RIDE 21—that proposed $79 billion or $70 billion in assistance, and that didn't float. What would it take for us to partner?

Mr. HAMBERGER. Well, the tax revenue bonds I believe that were in RIDE 21 were an excellent approach, we believe, and we thank you for your cosponsorship of the investment tax credit. This credit would encourage more investment and which would bring many of the projects that don't quite reach the hurdle rate for investment in the private sector to actually now be a reasonable investment from an economic standpoint. So we would encourage that.

Then, of course, the public-private partnerships that have begun to blossom, really CREATE, the Heartland Corridor, the Alameda Corridor is what we are talking about.

I would like to get back to you for the record on the RRIF program if that is possible.

Mr. MICA. Okay.

The other thing that I have questions about, there is legislation now, Amtrak reauthorization and some other proposals that would penalize freight rail for delays for passenger service. I believe there is some better way to resolve this problem. Would you like to comment, Mr. Hamberger or Mr. Kummant?

Mr. KUMMANT. I guess I would make a brief comment which is I believe the current bill you all are contemplating, I haven't seen details of, but I know what on the Senate side it is.

I am not entirely sure that the STB is honestly equipped for dealing with this in terms of the number of issues. We certainly are working hard on the engagement front, but I guess would echo that we need to take a close look at kicking every issue back to the STB.

I believe there is a provision that said if you fall below 80 percent or 75 percent OTP for a period of months, that has to be reviewed. I think that, at this point, could shut them down. So I think we have to take a careful look to see what is really a constructive process.

Mr. MICA. Okay.

Mr. HAMBERGER. I would echo that. We have some problems with the language as it came out of the Senate. I think we have some suggested language that we have submitted to the Committee. A lot of this is covered in the contracts between the freight railroads and Amtrak in the first place. So I would echo what Mr. Kummant said.

Mr. MICA. Well, thank you. I appreciate your responses.

Thank you, Madam Chairwoman.

Ms. BROWN. Thank you.

Mr. Sires is new to the T&I Committee, and I think he joined March 11th, 2008. Welcome, and it is your time.

Mr. SIRES. Thank you, Madam Chair, and I look forward to working with you and all the Members of the Committee, and I want to thank the panelists for being here today.

I represent the northern part of New Jersey, places like New Jersey City and Newark. It is very congested. I have been dealing with a problem, and I think it is going to become a problem that is growing beyond New Jersey.

The problem that I am dealing with is obviously we need all the alternative fuels that are coming, especially ethanol. We are moving ethanol through a lot of areas that are very, very congested. I know the demand is going to keep growing, obviously, as you are telling me that you are moving more grains and so forth. Are we ready for that?

Is the railroad industry ready to move fuel through all these congested areas and how safe is it?

Mr. HAMBERGER. I want to say, first, Mr. Sires, thank you for your sponsorship and co-sponsorship of H.R. 2116 as well.

Our industry is working very closely with the ethanol industry in trying to make sure that we have the capacity available. It burst on the scene a couple of years ago. In fact, Mr. Braley is not here from Iowa, but I am told by the National Grain and Feed Association that Iowa will soon be a net importer of corn, and so you can imagine that that has some implications for design of our network and traffic flows and traffic patterns.

So we are working very hard to make sure that we do have the crew. The tank cars is another issue. Will there be enough tank cars available?

Then the power, and the fourth issue is at the ethanol plant itself. Is there enough capacity to deal with what we hope to be a unit train full of ethanol so that it doesn't tie up the main line?

That is a concern in urban environment. Is there enough space, just physical geography, for that to occur?

So there is a lot of planning and discussion going on between our members and the ethanol community. For now, the head of the Renewable Fuels Association is saying that we are a virtual pipeline and that there seems to be adequate service. It is something that we are worried about going forward as the requirements kick in for

more and more ethanol, but we think that we will be able to keep up.

Mr. SIRES. One of the concerns of the constituents I spoke to is the safety factor because some of these railroad cars are going right through residential areas, places like Woodbridge, New Jersey, and Carteret. I receive many calls in my office, especially because apparently you leave the car running on the tracks, waiting for the next.

I don't know too much about the way it works, but I do know that there is a big concern. How safe is it to move all these fuels near residential areas?

Mr. HAMBERGER. I can give you a generic answer to that, but I would like to come in and sit down with you or your staff and get to the specific issue with the railroads involved that your constituents have concerns about.

Generically, we move toxic material, hazardous material 99.997 percent from origin to destination without any accidental release. So it is 99.997 percent safe.

Ethanol itself is not a toxic by inhalation hazard. I am not sure where it is in the pantheon of hazardous materials. The ones that cause the most concern, of course, are those that are toxic by inhalation, something like chlorine or anhydrous ammonia.

Mr. SIRES. I have that in my district too.

Mr. HAMBERGER. Yes, yes. Those also move safely, but obviously a great concern should anything happen. That is a big issue for us. We will be testifying later this week over at the STB about that.

But with respect to ethanol, of course, that does not have the toxicity or the hazardous quality that something like chlorine would have.

Mr. SIRES. One just last question, you said that your industry spent $420 billion in investment by all different companies?

Mr. HAMBERGER. Yes, sir.

Mr. SIRES. The Federal Government, what have we spent?

Mr. HAMBERGER. Well, on freight railroads, very, very, very, very, very little, almost nothing. There are some projects where there is some. For example, now there is $100 million going into Chicago that was authorized in the last TEA-LU bill, but basically nothing.

We are the mode that is privately funded, privately maintained and, as I like to say, we also get to pay taxes, real estate taxes on our right of way. And so, it is a different model than, obviously, highways.

Mr. SIRES. Thank you very much, Madam Chair.

Ms. BROWN. Mr. Michaud.

Mr. MICHAUD. Thank you very much, Madam Chair and Mr. Ranking Member for having this hearing. Rail capacity is extremely important to both freight rail as well as passenger rail. I really appreciate having this hearing.

I have a few questions, the first one for Mr. Hayes. You had mentioned that in order to get your product out, that you have to use trucks.

There isn't an equity across the United States on truck weights. Some areas have 100,000; others have 80,000. Does your area allow 100,000 pounds or 80,000 pounds?

Mr. HAYES. Madam Chairman, Representative, the State of Idaho is capped at 105.5. Our neighboring states, Montana to the north is uncapped Federal Formula B as is Utah to the south, uncapped Federal Formula B.

If you are asking for my recommendation, I would say this. Congress is very lax. If they do not work on the truck weight issue today with the cost of moving freight, with the so-called pollution from the trucks on the road, I think it is a very foolish error by us, the American public, who do not recognize the fact that we can haul products on trucks at much heavier weights by simply changing the configuration of the truck, actually increasing the safety of the truck and yet we are still locked in a primitive 80,000 pound freeze that was put on back in the eighties by the same rationale that is happening today.

Mr. MICHAUD. Thank you.

My next couple of questions would be to Mr. Hamberger. As I mentioned, I am very supportive of rail, freight and passenger, and I know there is legislation that actually will help deal with the capacity issue but also realizing that you have to work in a cooperative effort with all those concerns. It is my understanding that the construction trades are concerned about H.R. 2116 particularly as it relates to prevailing wage.

My first question is have you been able to work with the construction trades group? If not, will you be able to work with them to address the concerns as it relates to prevailing wage?

My second question is Maine is a pretty rural State, particularly in my district. The First District is not as rural. Maine is not unique when you look at States all across the Country. Rail is very important.

However, there might be some areas, for instance, Maine from Portland to Brunswick, that would like to have passenger rail. The capacity is not there, but there is also a freight line system from Portland to Brunswick.

What has your association been doing, if anything, to help work in a collaborative effort where you can use freight rail lines to help out with passenger rail as well?

Mr. HAMBERGER. Thank you for both of those questions, and I am going to be getting a look firsthand at that area. My son is going to Bowdoin next fall. So I will hopefully be spending some time in Brunswick.

Taking the second question first, that is what is the cooperative relationship, I think Mr. Zehner's testimony really goes to it. As an association, we have not done much because it is really a bilateral issue between the passenger operator and the freight rail operator to get together and try to figure out how to improve service.

I think Mr. Zehner's testimony here today is that his partnership with CSX is exemplary, and I like to think that that is the way it is around the Country. It is not always smooth going in that there may be difference of opinion on what the cost for capacity expansion is, what the need for capacity expansion is. But generally speaking, we are committed, and as an industry we are committed and understand the importance of trying to provide capacity both for freight and for passenger.

I am sorry. I got carried away with Bowdoin. Your first question was?

Mr. MICHAUD. Deals with the prevailing wage.

Mr. HAMBERGER. I am sorry. Davis-Bacon, exactly. You know there is a substantive and a political answer to that.

Substantively, we already pay the prevailing wage or more. I mean we are the prevailing wage when it comes to maintenance of way, for example. No one else does it, so we are the prevailing wage, and so there is not an economic issue for us.

It is, to be blunt, a very controversial issue here inside the halls of Congress. We are really being guided by our supporters and our leaders. Congressman Kendrick Meek, our lead Democratic sponsor in the Ways and Means Committee, indicates that it is not something that the Ways and Means Committee has done very much in the past as a provision on tax incentives.

So we do not have a substantive problem with it, and we would like this to be a bipartisan, as it is so far with about 60 co-sponsors, way of encouraging investment and really just trying to work our way through that at this point.

Mr. MICHAUD. Great. Thank you very much.

Ms. BROWN. Mr. Diaz-Balart.

Mr. DIAZ-BALART. Thank you, Madam Chairman.

I have a couple of questions, and I am not quite sure whom to direct them to. It is about specific legislation.

The first one is obviously we all know about the need for infrastructure investment, but in the case of rail it is, frankly, private investment. It is a place where, as we all know, there is not a lot of government investment. It is all private sector investment.

If you look at the numbers—what is it—17 percent which is an incredible number, and yet we still know that there is going to be a lot of unmet needs in the future.

There are two bills out there, the tax incentive bill, H.R. 2116 which is the Freight Rail Infrastructure Capacity Expansion Act, which is a 25 percent tax incentive for all new rail infrastructure, and the other one is the Short Line Tax Credit. How important are those bills in order to help the private sector continue to invest in their infrastructure and what other things can we do to help that?

Number two, and I guess this one would probably be to Mr. Kummant, I know that there is another bill out there, H.R. 5644, to promote the development of high-speed rail. Does Amtrak currently have the engineering capacity to do a multibillion dollar high-speed rail project in the Northeast Corridor or what do we need to be looking at?

So if you would care to address those questions.

Mr. HAMBERGER. I will defer to the member of my board first. Go ahead, Mr. Kummant.

Mr. KUMMANT. Well, on the first point, look, we support any legislation that brings capital into the system. What I would say, however, is not to forget that the States have actually made dramatic choices in unmatched funds. California, for example, has put $1.9 billion into their rail infrastructure in partnership with the railroads since 1990, and those are unmatched funds.

So, first, I would say is whatever we can do to create structures where matched funds can be made available to the States for rail

investment is enormous. That has been contemplated in a number of different Amtrak approaches to have matching funds. I think that is significant.

As far as high-speed rail, look, high-speed rail is something that in our lifetimes clearly has to be here. It is what Amtrak does, but I would also suggest that there is no one in this Country today that is really configured to manage, say, a $30 billion construction project in and of itself. That has to be managed in segments.

I am sure there are some pieces of that we could handle, but I don't think you could point to any individual A&E firm or rail-oriented firm that is configured today to manage something of that magnitude.

Mr. DIAZ-BALART. Thank you.

Mr. HAMBERGER. With respect to the two tax bills—and thank you, Mr. Diaz-Balart, for your co-sponsorship of H.R. 2116—addressing the Short Line Tax Credit first, they have three years of experience. It works. The incentive actually incents, and people go out and they spend more money. As my testimony indicated, a half a million more cross ties purchased by the short lines.

Short lines have an incredibly difficult challenge in front of them. Getting up to 286,000 pounds per car requires heavier steel, better substructure of the right of way. There is a study, it is years old now, that shows that $6 billion is necessary to upgrade the short line system. About 25 percent of all cars either terminate or originate on short line—so, a very critical need for the short lines.

With respect to the infrastructure tax credit, 2116, also incredibly important, but let me emphasize that we are going to continue to invest. We are going to continue to put 16, 17 percent back into cap ex as we have done.

The question for Congress, it seems to me, is do you want that to be even higher?

Do you want that to be even more, not for the benefit of the freight railroads, but for the benefit of the public because the 280 trucks, at least, on each intermodal train takes 280 trucks off the road. We are up to 435 miles per gallon, 1 ton of freight moves 435 miles on 1 gallon of fuel. Then do you want the concomitant benefits of cleaner air, better fuel use? So I think it is important that it be viewed in that context.

Mr. DIAZ-BALART. I would imagine that we also have to guard from the inverse, which is to make sure that the government doesn't do anything to disincentivize that investment. Incentivize more and not do something silly or stupid to disincentivize that investment, correct?

Mr. HAMBERGER. I would not characterize things as silly or stupid, but I would say we certainly would not want to see to disincent, yes.

Mr. DIAZ-BALART. I want to thank the Chairwoman. As you know, nobody is safe when we are in session. Thank you, Madam Chairwoman.

Ms. BROWN. Mr. DeFazio.

Mr. DEFAZIO. Thank you, Madam Chair.

Mr. Hamberger, in your testimony, you are pointing out, and it has been raised elsewhere, the issue of investment.

You say on page 22, that Class I's are anticipated to be able to generate, through earnings growth from additional traffic and productivity gains, only $96 billion of the $135 billion needed for new capacity identified by the Cambridge Systematics study, and that is a problem. You go on to make some suggestions, some of which I think merit consideration by the Committee as ways to encourage or induce the necessary investment.

I guess the question goes beyond that. I wonder if the $96 billion is going to be available, and my concern goes to the last hearing held. I think it was the last hearing by this Subcommittee, which was on the issue of basically investors, shall we say. I have a concern, and I am looking for a way to deal with this.

We need people investing long term. We need what we would call, roughly, patient capital in rail. We don't need the hedge fund speculators, the same people who are unnecessarily driving up the cost of gasoline, the same ones who are unnecessarily driving up the cost of food, to deprive of critical rail capacity.

I am wondering, since a number of the companies you represent are publicly held, do you have any ideas how we might deal with this potential problem?

Mr. HAMBERGER. No.

Mr. DEFAZIO. Okay.

You know we have over in the aviation sector, we have what we call fitness standards. We finally managed to, for instance, throw Frank Lorenzo out of the industry when he was trying to destroy his fourth airline. I am just wondering whether or not we need to look at, what the government needs to look at something in those areas.

I mean rail infrastructure is critical. It is much more fuel efficient. We need more capacity. But if we have people coming in and speculating on that sector and depriving that sector of the capability of making capital investments, I think this is a tremendous problem.

Mr. HAMBERGER. Let me just say. I was directly answering your question if I had any specific recommendations and, frankly, we do not have any recommendations.

Mr. DEFAZIO. Right.

Mr. HAMBERGER. But conceptually what you are saying is accurate. That is to say that, while it is always great to see that there is private capital interested in our industry because, in fact, we need the private capital, we need the investment, it is always important that there be a recognition of a balance of both short term and long term.

Our assets are 30, 40-year assets, and so sometimes you have to make sure, as you take a look at whether or not to make an investment, that you have both a short-term and a long-term perspective.

Mr. DEFAZIO. This Committee is wrestling with this issue, as am I.

We have had, as you know, dealing with a short line in my district, a hedge fund purchase of RailAmerica. Then RailAmerica seems to be, in some places at least, walking away from its common carrier obligation, particularly in my district, but I don't think my district is that unique. I expect it will happen elsewhere as pressures grow, these trust funds, and other bad debts are going

to increase pressure on where they have ownership of assets. I am very concerned about that.

Mr. HAMBERGER. The STB seemed to move aggressively in that area.

Mr. DEFAZIO. Yes, that seems fairly unprecedented.

Mr. HAMBERGER. Yes.

Mr. DEFAZIO. You did hear from Mr. Hayes, concerns about captive shippers. In particular, he mentioned a company that would not have cited a facility. That was the barley processing, was it, for malt?

Mr. HAYES. That is correct. It was the Grupo Modelo Company, Mexico City, the largest importer or the United States' largest import beer. They have their only malt facility in Idaho Falls, Idaho, the only U.S. malt facility in Idaho Falls, Idaho.

Mr. DEFAZIO. Well, as someone who enjoys beer, we have to rectify the situation.

I am curious, does your association have any response to those who raise concerns of the rates imposed on captive shippers?

Mr. HAMBERGER. Well, there are several responses, if I might.

Mr. DEFAZIO. I know there are profits, and therefore the profits are going to go to the capital that we need for the investment, but other than that.

Mr. HAMBERGER. And, in fact, the important point that is sometimes lost is that we get no business if someone is not shipping. So the idea is to price at the market to make sure that the product does move. In fact, one of our members has just been honored by another brewery as supplier of the year because of the great service they are giving in moving barley into that brewery.

I did hear Mr. Hayes indicated in his oral testimony, something about corn moving on shuttle trains into California at below full rail costs. I am not quite sure where he gets the data for that.

But, in fact, shuttle trains of corn are probably more efficient. That is why they have developed. They get about 30 turns a year, and so if the market has shifted to corn from barley, I am not sure that is because of something the railroads have negatively done. They have helped the corn producers find other markets for their product.

Mr. DEFAZIO. You never think there is an instance of sort of monopoly?

Mr. HAMBERGER. No.

Mr. DEFAZIO. I mean there is the whole thing of competition. I would suppose you would say the competition is trucking, but given the fuel efficiency advantage of rail, if rail starts to price very close to trucking, you have to wonder either that is a very inefficient rail line or there are other factors in play in that pricing.

We worry about someone who might have competition over here, saying, well, gee, we are going to actually compete and shave our rates over there, but over here is where we are going to be able to get an excess rent or profit because of our monopoly capability.

Mr. HAMBERGER. The word, excess, of course, is where we would probably disagree. That is why the STB has developed its small shipper and new rate review cases. I am pleased to see that a small shipper, DuPont, has taken advantage of that and is the first to file

three cases under that against CSX and those, I think, will be decided sometime later this summer.

So I believe that there are avenues for relief if, in fact, excess rates are being charged.

Mr. DEFAZIO. Mr. Hayes, since he questioned the corn example, do you want to tell him where you got those numbers?

Mr. HAYES. I was looking quickly for those numbers, but I did not see where the statistics came from, and I apologize for that. I will see that this Committee gets the source.

I would just like to remind this Committee that prior to the inception of the unit trains hauling corn out of the Midwest into California, we moved between 60 and 70 million bushels of barley, feed barley, into California annually. Well, that is about 50 rail cars a month.

Currently, we move about 200,000 bushels, to give you an example of the impact it has on feed barley. Most of this barley originated in Idaho and Montana, some out of North Dakota.

Mr. DEFAZIO. Okay. All right. Thank you.

Thank you, Madam Chair. Thanks for the generous allowance of time.

Ms. BROWN. Mr. Moran.

Mr. MORAN. Thank you, Madam Chairman.

Mr. Hamberger, one would expect in the economy for capital to flow where there is a rate of return that justifies the capital moving in that direction. If profits can be made, one would expect capital to be available. What is it about the rail industry that makes that less likely to occur or not occurring insufficient quantities?

The railroads always talk about the need for additional capital, and the market ought to be taking care of that.

Mr. HAMBERGER. Well, we are the most capital-intensive industry in the Country and the fact that our investments are long term and are not very flexible. That is to say once you lay the track from Point A to Point B, if the traffic shifts or if traffic patterns shift, you have that asset stuck in the ground, and so it requires a recognition of the long-term aspect of it and a belief that, over time, you will get the return on that asset.

As I say, we will continue, at $95 billion, to invest 16, 17 percent. So I think we are, in fact, putting our money back into the industry. The question is with the shift in traffic—with the San Pedro ports doubling.

I know when I first got this job, there was a lot of excitement 10 years ago because they hit 300,000 containers a month. That was a big milestone, and now I wrote down 15.7 million a year. So with that shift in traffic, with $4 a gallon diesel fuel, there will be an even greater demand to shift to rail. The question is can we keep up?

The Cambridge report, I guess I will defer to Mr. Grenzeback on the second panel to get into a little bit more detail of how they came up with that delta.

Mr. MORAN. Well, I would assume that rail looks very attractive as a future mode of transportation with, again, I assume the predictions are an ever escalating price of fuel, rail being perhaps more efficient and a growing global economy that, as you forecast

the future of the rail industry, I assume that you would find it positive?

Mr. HAMBERGER. Yes, sir, absolutely. I think that is right.

I think there is a recognition that as the economy and as public policy-makers wish to move toward a greener way of moving things, at 435 miles per gallon, we provide that opportunity. A side benefit of the investment tax credit would be more capacity not only for freight, but it would also lead to easier negotiations with my friend, Mr. Zehner here, on how to provide more capacity for commuter rail as well.

I think that the future is bright. The question is can we invest enough? Can we convince our owners and our investors to invest enough to keep up with the growing demand? That is really what the Cambridge report is about.

Mr. MORAN. In the eighties, we saw, in my opinion, significant concentration or at least additional concentration of the rail industry. Is that predicted in the future? Would you expect additional acquisition mergers by existing railroads of each other?

Mr. HAMBERGER. At the Class I level?

Mr. MORAN. At the Class I level.

Mr. HAMBERGER. At the Class I level, I have heard members of my board opine that that would occur only when and if our customers believe that that would be an imperative to provide better service. I don't see it happening on the immediate horizon, but it is possible somewhere down the line.

Mr. MORAN. Is it safe for me to assume that the economies of scale, the size of the Class I carriers today, is such that the desired efficiency exists?

Mr. HAMBERGER. Well, I think what would be left would be an end to end merger, the so-called transcon, and that would probably have efficiencies as well, but I think much of the efficiency has been achieved.

Mr. MORAN. Thank you, sir.

Thank you, Madam Chairman.

Mr. HAMBERGER. Reduction in redundancy, I should say.

Ms. BROWN. Mr. Hamberger, the expansion of rail infrastructure is clearly an important investment issue, and the Federal Government should look very closely at providing assistance. As you are aware, with Federal assistance, usually there are certain requirements like the application of Davis-Bacon. I think someone mentioned that earlier.

Is the rail industry prepared to sit down with the construction unions and discuss how these two issues intersect going forward?

Mr. HAMBERGER. Yes, and in fact I believe we have sat down with our friends from the construction trades department.

We have not, I don't believe, reached an accommodation, but it is, as I mentioned to Mr. Michaud, both a substantive and a political issue. We believe that we already pay the prevailing wage rate, but what we are trying to do is figure out how best to proceed and get this enacted.

Ms. BROWN. Do you still feel the same about the rail trust fund?

Mr. HAMBERGER. For the record, we believe that a Rail trust fund is not warranted in that we are already investing 17, 18 percent of our revenues.

Question number one is where would the revenue come from for a Rail trust fund? We assume that it would be some sort of a tax either on us, our operations or our customers, which could perhaps have traffic diversion and would certainly potentially affect the ability for us to achieve the returns that we need to have the investment capability that we have.

Second, would then be where would the decisions be made for the investments from the Rail trust fund? We believe that working with our customers we have a pretty good idea where those investments should be made, and those investments can then be made quickly by our companies and not have to go through a governmental agency which might be tugged in different ways to invest in other places that we and our customers may not find to be optimal.

Ms. BROWN. Would you give us, in writing, some of the major issues that you think we should be addressing in the next Transportation Reauthorization Bill? I mean you can take a minute to discuss it, but I want more in depth what you think we are doing, particularly how we can forge this Federal-private partnership to really grow the industry.

Mr. HAMBERGER. Indeed, we have been having in-depth discussions as an industry to try to come up with a white paper along the lines of what you are suggesting.

Obviously, one of the issues that will be front and center next year is the interplay between what Congress decides to do with greenhouse gases and what Congress decides to do with transportation policy. This Committee will have jurisdiction over both of those issues, and to some extent the Senate Environment and Public Works Committee has a great deal of overlap of jurisdiction.

So I think the interplay between those two issues is something that Congress is going to have to take a look at. As we have talked about the 436 miles a gallon that we get, somehow it seems to me that recognition of that could come through as Congress works its way through those issues.

Ms. BROWN. Thank you.

Mr. Kummant, you state in your testimony that host railroads are legally obligated to give Amtrak trains preference over the freight rails. What legal recourse do you have when it doesn't work?

Mr. KUMMANT. Yes, there are really two avenues.

One is that it is, in the end, the Justice Department that needs to bring suit to enforce preference itself. I believe that was only done once with the Southern Pacific quite a few years ago. Otherwise, we do have specific contracts with individual railroads that guarantee certain performance standards such as slow orders and overall velocity. So those are really the two avenues.

Ms. BROWN. Also, choking points, can you explain that a little bit and more extensively and explain to us when there is a disagreement as far as what is this particular area and how to rectify it?

Mr. KUMMANT. Sure. First, maybe let me give you an example of where I think a process is working effectively. We have, brokered by Administrator Boardman of the FRA, an I-95 improvement plan where we have worked with CSX, where there is a specific number of identified capital expenditures as well as operating practices

with specific metrics associated with them. Again, I referenced a meeting that Secretary Peters brokered. We are going to look to take that process and move it across the Country and pick routes around the Country.

That being said, I do think that most of the real constraints that we feel, the freight railroads feel themselves, and they are not a mystery to anyone. Around Colton Yard, the folks in Los Angeles know well; Porter, Indiana, with NS trying to get across their major route between Chicago, Detroit and Cleveland; Tower 55 which is Fort Worth, just getting through Dallas-Fort Worth is a real challenge.

So we have a running list that probably is six to nine billion dollars in capital, where again it is not a mystery to any of us or our host railroad partners, where if we had incremental capital we would put that.

I would reference California's great capital expenditure. The States end up being powerful partners in being able to bring capital. Virginia has done that with the Quantico River bridge, the State of Washington does that effectively, Illinois, California. So I think, again, a State-Federal matching fund is critical there.

I would also, if I may, say that going forward it is my belief that passenger rail in this Country will really not develop as long as we are trapped in an annual funding cycle that is always highly politically charged. So I would probably part company with my friend, Mr. Hamberger. Perhaps it is not a trust fund, but some sort of dedicated funding source has to happen in order for us really to progress and not always be trapped in the annual appropriation cycle.

Mr. HAMBERGER. I would, just for the record, indicate that the question I interpreted from the Chair was whether or not the trust fund would be for freight investment.

Mr. KUMMANT. Okay. Forgive me.

Mr. HAMBERGER. It would certainly not in any way.

Ms. BROWN. So you are saying it is okay for passenger rail?

Mr. HAMBERGER. A passenger fund? That is really up to Mr. Kummant. The difficult question would be where the funds come from.

Your question, Madam Chair, I interpreted to be whether or not there should be a Railroad trust fund to invest in freight rail capacity, and that was the essence of my answer.

Ms. BROWN. As you all know, we have to figure out how to get additional monies into the infrastructure. Private is one way, public-private. I have looked at other countries and how they are financing their infrastructure. I mean we are just so far behind.

So we really need to come up with some creative ideas about how we can move forward. I think some of the bills before the Ways and Means would be a step.

Mr. HAMBERGER. Indeed, they would.

I would just offer one further observation that I think you also may have seen when you were on your trip looking at rail in Europe, and that is that the Europeans have just the flip side of the issue that you are talking about with Mr. Kummant. That is they move less than 10 percent of their freight by rail, and we get visitors every week from Europe wanting to know how they can de-

velop a rail freight system in Europe that can move freight as efficiently and at such reasonable prices as we do here in the United States and in North America.

Ms. BROWN. I agree with you. We're number one, and we are the image as far as freight rail is concerned, but they have done something that we have not done. They have separate tracks, and we have to figure out how to put that infrastructure in place so that we can move people too because we are behind.

With gasoline at almost $4 a gallon—you talk about diesel—we are talking about regular. People can't go to work. I mean it is really a problem. We have to figure it out.

Fifty years ago, we did the highway system, and it was a great investment. Now it is time for us to be creative and come up with how we are going to move these people in this Country and move them around.

Mr. HAMBERGER. For the record, Mr. Kummant and I are both nodding yes.

Mr. KUMMANT. That is right. We would agree, although again I would also say there is an awful lot we can do at 110 miles an hour, and we don't have to go 250 miles an hour.

If you look at the well-established networks in France and Germany, for example, high speed is great, but it actually moves a fairly modest proportion of the total population. Most people who use the train daily are moving a fairly conventional speeds. The high speed in that case is sort of the froth on the latte.

I think you need a parallel path approach. Clearly, high speed has to happen, but at the end of the day there is awful lot we can do with conventional equipment at 100 to 110 miles an hour.

Ms. BROWN. Absolutely, but part of the problem, like you said before, is reliability, knowing that the train is going to be there every day at 8:00 or 12:00. On-time performance is just crucial.

Mr. KUMMANT. That is right. I agree completely.

Ms. BROWN. Mr. Kummant, what is the status of the Sunset Limited, in New Orleans where I had the hearing about service?

Mr. KUMMANT. Yes. I don't really see any way to bring that service back at this point, given the infrastructure. We have no budget for it. It effectively will not run unless there is some sort of incremental action.

It is painful to be in a state of conflict there, but it was never very effective service, three times a week, one of our worst on-time performances. It came through the towns there at night.

We would very much like to and are putting our energy into corridor discussions within Florida, and we would like to look at the future of what a corridor would look like between Mobile and New Orleans. We just really think that is where growth could be, and that in the end could provide the most utility for the region.

Ms. BROWN. Mr. Kummant, I will continue to provide a lot of pain for you in that area because it is not just transportation. In my opinion, it is also homeland security. It is safety.

Of course, it wasn't a good service. It was 2:00 in the morning.

It is just economic development. There should be a way that we could innovatively work with the people from New Orleans, the different States surrounding, coming up with some kind of a service

that works. I wish you all would go back to the drawing table and think about how we could do that.

I mean it could be wonderful from New Orleans to Orlando or New Orleans to Mobile. I mean it is more than just moving transportation. As I said, it is safety. We have to figure out how to get people out of harm's way in case of another hurricane.

Mr. KUMMANT. I understand.

Ms. BROWN. Okay.

I have one other question. Mr. Sharp, you stated in your testimony that Arkansas Electric Cooperative runs about 25 percent below planning inventory levels due to rail delivery shortfalls. Did you reach out the Surface Transportation Board for assistance and what was their response?

Mr. SHARP. Well, we did have one particular situation that I would like to highlight where during some of those shortfalls, the president of Arkansas Electric Cooperative wrote a letter to them, the Surface Transportation Board, Roger Nober, explaining to him the problem and the great expense that our cooperative members were having imposed on them due to the times we could not run our coal plant and more expensive fuel that we had to substitute. We never received a response from Mr. Nober.

The letter was not copied to anyone other than the STB Chairman, but a couple of months after we sent the letter, we got a response from Burlington Northern Santa Fe. Apparently, Mr. Nober had given the letter to Burlington Northern Santa Fe, and Burlington Northern Santa Fe's response was, the opening phrase of it was: We would like to correct the inaccuracies in your letter.

So that was the tone of the letter.

Ms. BROWN. Can we get a copy of the letter?

Mr. SHARP. Absolutely. I will provide a copy of both letters.

Ms. BROWN. Thank you.

Mr. Hayes, do you participate in a co-op?

Mr. HAYES. Personally, no, I do not, Madam Chairman.

Ms. BROWN. Is one available in your area?

Mr. HAYES. There are multiple co-ops across the United States.

In the West, we primarily do our marketing through the large corporations. For instance, I am a barley farmer, and our primary market is the Anheuser-Busch folks, Great Western Malting, Grupo Modelo and so on.

Ms. BROWN. Mr. Shuster.

Mr. SHUSTER. Yes. I initially started asking questions to Mr. Hayes and Mr. Sharp. I didn't get to my point. I ran out of time, unfortunately, but I wanted to ask that now.

If you are advocating for surplus capacity or, again it can be argued, significantly increased capacity in railroads, would you also support or advocate for mandatory rates of return similar to what I think happens in the other utilities, in the electric or in the power industry? Is that something you would advocate for?

Mr. HAYES. I am not really sure I can answer that. Let me tell you what we are advocating, and I was hoping you were going to get to this in your earlier questioning. You were talking about regulation of railroads.

We are advocating House Bill 2125 which is the Rail Competition Act. It is a very simple piece of legislation. Basically, what we want

is we want the referee that was established in the Staggers Act to referee.

It is kind of like playing football game, and I think you are aware of a football game, in which the referee is totally biased to your opponent. It is a little difficult when the whistle blows to know that the rule is not going to be enforced against the opposition. I mean that is a simple way of putting it, and maybe it is a difficult way of putting it, but in reality it is what happens to us in the captive areas.

Mr. SHUSTER. I don't know. I may disagree with your analogy because I would think that it is a customer relationship. So, in my view, it would be more like the coach deciding maybe what play we are going to run.

It seems to me it is not a head to head competition with you with the railroads. Now CSX and UP, that is more of a competitive situation, head to head.

Again, I have great fear that we do what is in that bill, and we will wind up pre-1980, and rates will be driven up even higher or rates will be driven higher because over the last 25 years, as I made the point, in real dollars they have gone down by 55 percent. What we are seeing now is an increase, but over the long haul I think it has been very, very positive for both agriculture and all the industries that have utilized rail.

The other question, I don't have the numbers but the investment tax credit, the agriculture industry and, Mr. Sharp, your industry, what is your view on the tax credit? Do you think that is a positive thing?

Mr. SHARP. I will address that briefly, Mr. Shuster. We would have no problem with an investment tax credit bill similar to the one being proposed as long as there were some assurances that the investments would actually be made in areas that would help some of the problems that we are having.

Like I said, we have a lot of captive shippers in the electric industry, and we have a plant that is captive ourselves. We absolutely have no choice. I mean we have to deal with the one railroad that delivers to that plant. It is not a sit down and negotiate sort of situation. It is kind of a take it or leave it situation.

We don't have really any hope at this point of getting any help from the STB, and that is not the situation that was intended or proposed or written in the Staggers Act.

If I may, you previously mentioned re-regulation and the competition bill that Mr. Hayes mentioned. We are also supporting the antitrust legislation that is kind of a companion bill and goes along with that. Really in those, what we are asking for is that the Staggers Act really be implemented as it was intended and as it was written, where the folks who are captive and the folks that are subject to monopoly power and excess market power by the railroads would have some place to turn and would have some outlet.

There is nothing in those pieces of legislation that would have any great impact on pricing. They are simply measures to help shippers be able to access competition and be able to have someone to turn to when we do have problems that we can't work out with our friends at the railroads.

Mr. SHUSTER. A final question, the state of competition in the railroad industry over the past 30 years, we have seen the consolidation of Class I railroads. Mr. Hamberger, will you talk about competition and what the status of competition is within your industry?

Mr. HAMBERGER. Well, I think the idea that everybody, 25 years ago, had 3 railroads serving them is incorrect. The fact is that the mergers that occurred under the ICC and the STB were done in such a way to make sure that any customer who had multiple rail service continued to have multiple rail service, so that the mergers did not in fact have an anti-competitive effect.

Indeed, the new regulations at the STB for future mergers now say that not only can they just not adversely affect competition, but they have to positively have a benefit for competition. So the fact that there are fewer railroads does not translate into fewer choices for the shippers.

The end result, we believe, of the legislation espoused by my friends at the other end of the table would be a compression of our ability to earn our cost of capital, a compression of our ability to reinvest, and therefore a lack of capacity.

I draw your attention to Senator Kent Conrad of North Dakota who has many constituent shippers who are singly served in the agriculture industry, and he took a close look at what to do about improving rail freight service in North Dakota. He decided to be the lead Democratic sponsor of the investment tax credit in the Senate because he believed that an incentive to invest and an incentive to expand capacity was the way to address the issue.

So we believe that is the way to go, and I would ask permission of the Chairwoman to put into the record a list of private sector organizations that support the infrastructure tax credit. On the passenger side, I have Virginians for High-Speed Rail and the National Association of Railroad Passengers believe that that is the way to go.

The Alliance of Automobile Manufacturers, the American Association of Port Authorities, the National Mining Association that actually provides the coal for the co-ops in Arkansas and others, the Portland Cement Association, the U.S. chamber of Commerce, and so they believe that the increase in investment would help all customers. We are an integrated network.

As far as whether or not it is going to help customers who burn coal, I draw your attention to the Powder River Basin where the railroads involved there are now quadruple tracking the joint line into the southern Powder River Basin so they can go from 470 million tons a year up to close to 600 million tons a year in 5 years. That is the kind of investment that we are making, and that kind of investment would be spurred by the investment tax credit.

Mr. SHUSTER. Just one more question that has to do with passenger rail for Mr. Kummant or Mr. Zehner or both of you, the Keystone Corridor at 110 miles an hour, it seems to be highly successful and a good partnership between Amtrak and the State of Pennsylvania. Is that anything you looked at for Washington to Richmond and would that be something there would be a demand for?

Mr. KUMMANT. Yes, that stretch is clearly one of the most congested and difficult pieces of railroad, frankly, in the Country with a mix of commuter, intercity passenger, coal trains and high-speed UPS style intermodal trains. So, at the end of the day, it is all a question of investment dollars, but I would defer to the gentleman who knows the area specifically.

Mr. SHUSTER. The investment in the Keystone, to my mind it comes to $110 million.

Mr. KUMMANT. I believe it was about $145 million split 50-50 between Amtrak and the State. One of the fortuitous pieces was it was a pretty good piece of railroad to start with, that was well suited for this type.

Mr. SHUSTER. Is it about the same distance?

Mr. KUMMANT. About 110 miles.

Mr. SHUSTER. Is it the same distance from Richmond to D.C.?

Mr. KUMMANT. I would have to ask what the specific distance to Richmond is.

Mr. HAMBERGER. A hundred miles, it is a hundred miles to DC.

Mr. KUMMANT. Yes, it is. So it is roughly the same.

Mr. ZEHNER. From a commuter rail perspective, you stop every eight to ten miles at a station. So you are never going to get to 110 miles an hour.

Mr. SHUSTER. Right.

Mr. ZEHNER. So, from that perspective, an 80 miles an hour railroad is fine with us.

We do have a commitment contractually with CSX to provide a third rail between Washington and Fredericksburg by contract, and we are trying to piecemeal that with the State. The idea is that third rail would be down the middle. The two sides would have platforms. So, in that case, that third rail could act in a way that I don't think it will be designed as high speed, but a few stops. Let's put it that way.

But right now, there is no plan for 110 miles an hour. It is extremely expensive to go to 110 miles an hour from 80 miles an hour. Right now, we would like to see more improvements to allow more trains at 80 miles an hour.

Mr. SHUSTER. Thank you very much.

Ms. BROWN. Okay. I think what we will do is give you all one minute to say any final remarks that you want to make, and I will start with Mr. Sharp.

Mr. SHARP. Thank you very much, Madam Chairwoman and Members of the Committee. I do very much appreciate the opportunity to speak to you all today.

As you have said, this is a very important issue to us and the service problems that we have experienced since the 1990s, actually we really are concerned that we are going to continue to experience problems like this in the future. One of the main reasons that we think this is happening is the lack of competition in the rail industry.

So we would like to see the Rail Competition Act and the antitrust legislation that has been proposed and introduced, passed.

Thank you very much.

Mr. HAYES. Madam Chairman, Members of the Committee, again, thank you very much for allowing us to come in and visit with you.

I am going to have to say that I endorse the remarks that Mr. Sharp has said. For those of us in captive shipper areas, we have seen incredible increases in our cost of freight, even though some of the records show that there is a 55 percent decrease. We are not seeing that at Evan Hayes' farm. I am seeing these costs of rail increase drastically.

Now, don't misunderstand agriculture. I want to make this very clear. We are supportive of the rail industry. We rely on the rail industry. They are our bread and butter to get our product to market.

However, as you look at the overall rail industry, don't forget the little guys. Don't forget those captive shippers out there in the hinterlands that do not have access to competitive rail.

Thank you very much.

Mr. MORO. Madam Chair and Members of the Committee, thank you for the opportunity to be here today.

The cargo growth is real. Clearly, we need more reliance on rail and what we would like to see is more public-private partnership. We are doing that and leveraging our matching share with State funds. We would like to see Federal participation.

Again, the goods are coming and they need to be moved throughout the United States through the ports.

So, thank you.

Ms. BROWN. Just one question for you, how many trucks come into your area every day?

Mr. MORO. We have thousands of trucks every day.

Ms. BROWN. Thousands?

Mr. MORO. Thousand, yes, ma'am.

Ms. BROWN. I see.

Mr. MORO. Yes. We have a local market, of course, of consumers. We also have near-dock rail yards. So that involves a truck trip, sometimes a short truck trip, but nevertheless it has to get on the main freeways and arterials. So there are thousands of trucks every day, yes, ma'am.

Ms. BROWN. I didn't think that the rail shipping had developed as well as it could in your area, like you said, thousands of trucks.

Mr. MORO. Yes, ma'am.

Ms. BROWN. Mr. Kummant.

Mr. KUMMANT. Madam Chair, Mr. Shuster, thank you again for your time.

Success for us really depends on three areas. It is constructive engagement with our freight railroad partners on dispatching and operating practices. There is certainly room for improvement there. It is about slow orders reduction which, in the end, is capital that they have to deploy. In the end, it is also about overall capacity capital.

Let's say we would be concerned about legislation that may reduce capital inflow to the network. Capital inflow can take multiple forms in terms of how we get capital, be it investment tax credit, a matching fund where States and Amtrak can avail themselves of capacity projects in partnership with the railroads and, again, some

sort of an ongoing funding structure for passenger rail that is not dependent on an annual cycle.

Thank you.

Mr. Zehner. Madam Chair, the Federal Government has been a great partner with the area and the Commonwealth of Virginia. It is your duty, your direct investment over the last 15 years that I have seen the service levels go up as well as on-time performance. With the State now committing $26 million a year, we use that money in relation to your money to make an improvement.

I would like to make one comment about competition. You talk competition in the sense of railroad providers. You can structure things in terms, well, structure your funding in terms of being competitive.

Have the process, and this is what the Commonwealth of Virginia has done: $26 million, I have to compete with projects along with the two freights that operate in Virginia. The best projects, in fact, float to the top.

I am committed to a 30 percent match as well as the railroads. What I have seen over the last two years is those best projects that give you the best benefit for that period of time and that project do float to the top. I would suggest the Feds kind of look at that process.

This is an incremental game. You are not going to get there overnight, but you should incrementally get there, putting your money on the best available project that gives you the best on-time, the best performance, maybe the best service to customers whether it be freight or passenger.

You can get there. It is a long haul but look at funding in a competitive process. You have a strong hand and a big hammer if you want to use it. The commonwealth is doing that.

The railroads know how to play the game, and they want your money as well as the Commonwealth of Virginia. You make it competitive, and they will give you a good deal.

Mr. HAMBERGER. Three comments, if I might, Madam Chairwoman: Number one, Mr. Sharp, Mr. Hayes, thank you for your business.

It doesn't always come across at these hearings but, in fact, as Mr. Hayes indicated, we are mutually dependent upon each other. We are in business to serve them. If we don't give them good service at reasonable rates, they are not in business, and so we have a symbiotic relationship, if you will. So, thank you for your business.

The same with Mr. Moro.

Mr. Kummant and Mr. Zehner, I offer you my recommitment to a recognition and a partnership between freights and passengers, which I believe occurs every day across the Country, but again my recommitment to that policy.

Then, thank you to you, Madam Chairwoman and you, Mr. Shuster, for your leadership for this industry and your support for legislation like H.R. 2116 which will provide, we believe, the necessary incentive to get to the capacity we need to continue to serve all of our customers here to my left. Thank you.

Ms. BROWN. Thank you very much. Thank you all.

Our second panel, I would like to welcome you today. Our first witness is Mr. James Daloisio of the Railroad Construction Company and Mr. Lance Grenzeback of Cambridge Systematics.

Let me remind the witnesses that under our Committee rules, all statements must be limited to five minutes, but the entire statement will appear in the record. We will also allow the entire panel to testify before questioning the witnesses.

You may begin.

TESTIMONY OF JAMES DALOISIO, PRESIDENT, RAILROAD CONSTRUCTION COMPANY; AND LANCE GRENZEBACK, SENIOR VICE PRESIDENT, CAMBRIDGE SYSTEMATICS, INC.

Mr. DALOISIO. Chairperson Brown, Congressman Shuster, I am Jim Daloisio representing the National Railroad Construction and Maintenance Association known as the NRC. We are a national trade organization representing the independent railroad construction and supply industry. The NRC has more than 200 member companies with employees in all 50 States.

The NRC members serve every type of railroad owner: Class I railroads, regional railroads, short line railroads, industrial track, the U.S. Military, ports and terminals, and the rail transit agencies with operations such as light rail, street cars, elevated rail, metros and commuter rail systems. There are now over 650 independent railroad contracting companies in the United States, performing over $10 billion of rail infrastructure construction and maintenance work every year.

As we all are well aware, both freight and rail passenger play a crucial in taking cars and trucks off of our already overcrowded roads. Railroads also play a crucial part in safety and security of our Country by providing military transport, a safe way of transporting hazardous chemicals and also by lessening our dependence on foreign oil.

Despite all of the benefits of rail transportation, we have a major problem facing this Country. We are running out of capacity, and it is going to get much worse unless we start fixing the problem as soon as possible.

In the recent study by Cambridge Systematics, it was estimated that using today's dollars, that over the next 28 years the investment of $135 billion for Class I rail infrastructure is necessary just to keep up with economic growth and meet the U.S. DOT's forecasted demand for rail freight, and this is just to maintain their existing market share, not taking into account the desired shift in market share to rail that would benefit this Country.

The Class I railroads anticipate that they will be able to generate approximately $96 billion of the needed investment through internal generated cash flow. This leaves a shortfall of $39 billion, $1.4 billion per year to be funded from outside sources.

I would like to note that the railroads' ability to invest heavily in their own infrastructure going forward is based on the assumption that the present regulatory environment will remain stable. If Congress were to increase regulation on the railroads, their ability to manage their own businesses and produce sufficient return on investment would be hampered, and thus their ability to invest back into their networks would be decreased.

The NRC believes that Congress should use the opportunity of the next transportation reauthorization legislation to completely revamp the transportation law in this Country. As a basis of this transformation, we endorse the Transportation for Tomorrow framework put forward by the National Transportation Policy and Revenue Study Commission.

Specifically, we support:

Number one, the adoption of the proposed Freight Rail Infrastructure Capacity Expansion Act which provides a 25 percent tax credit for infrastructure investment.

Number two, the extension of the Short Line Railroad Rehabilitation Tax Credit which provides a 50 percent tax credit for money spent on railroad rehabilitation.

Number three, the creation and funding of a national freight transportation program and surface transportation trust fund that would be mode-neutral and direct Federal funding towards projects on a strictly merit-based approach.

Number four, strong Federal support of the public-private partnership such as the Alameda Corridor, the Chicago CREATE and the Orlando commuter rail-CSX deal.

Number five, a major increase in investment in intercity rail with reform of the current Amtrak system.

Number six, the expansion and improvement of innovative financial tools and programs such as TIFIA and RRIF.

Number seven, the shortening of the project delivery process and the time it takes to complete reviews and obtain permits. Projects must be designed, approved and built as quickly as possible.

Number eight, grow the current transit program in size while maintaining the overall structure and funding guarantee system.

If Congress adopts these proposals, there will be a dramatic increase in investment in national rail infrastructure and a corresponding expansion of rail capacity.

The question that naturally arises as to whether the railroads and independent construction, maintenance and supply industries could handle all the increased work, the answer is yes, they can.

NRC members are large and sophisticated construction companies, and we have a large and diverse supplier base providing us with necessary materials, tools and equipment. Our people are well trained, and we provide good wages and good benefits. Many of our members are unionized, and we draw on a strong pool from organized labor.

Railroad contractors are already performing over $10 billion of rail infrastructure construction and maintenance every year, and I believe we could handle double that amount in a relatively short period of time.

I would like to note that the legislative proposals mentioned earlier in my testimony and submitted for written record do not all need to wait for the next transportation reorganization legislation. Some of these programs should be implemented now, such as the two tax credit proposals. They should be included in the economic stimulus number two package or at least a one-year extension of the short line tax credit could be included in a tax extenders bill.

Another program that should be funded in a second economic stimulus program is the $50 million capital grants program for

Class II and III railroads. This program was authorized but was not appropriate into 2007.

Intercity passenger rail reform can be implemented via the Amtrak authorization or appropriation process.

Finally, we strongly urge all rail construction and maintenance work that is performed with direct Federal assistance or tax benefit be competitively bid. Railroad contractors have long and well-documented histories of providing quality service at competitive prices. We have learned how to do more with less, and the efficiency and competency we bring to this task will be of great benefit as we all search for ways to improve America's transportation infrastructure.

Thank you.

Mr. GRENZEBACK. Madam Chairwoman, Mr. Shuster, my name is Lance Grenzeback. I am a Senior Vice President with Cambridge Systematics. We provide transportation policy, planning, and management consulting services to Federal, State, and local transportation agencies and to private sector transportation and investment companies.

I am pleased to appear before you today to describe the findings of our National Rail Freight Infrastructure Capacity and Investment Study. The objective of the study was to assess the long-term capacity expansion needs of the continental U.S. freight railroads. The study was commissioned by the Association of American Railroads at the request of the National Surface Transportation Policy and Revenue Study Committee.

Current demand for rail freight transportation is pressing the capacity of the rail system. Ten to fifteen years ago, capacity was primarily a problem at the local level with short line railroads, but what we are looking at today is a problem that covers the entire national network.

The U.S. Department of Transportation estimates that demand for rail freight transportation, measured in tonnage, will increase by about 88 percent by 2035. This projected growth is not extraordinary, but it comes after two decades of growth that have absorbed much of the excess capacity in the system.

Our study focused on about 52,000 miles of primary rail freight corridors, as shown on the slide before you. These corridors carry the preponderance of rail freight traffic. These corridors represent about half of all Class I operated miles in the U.S. and about one-third of the 140,000 miles in the U.S. rail freight network.

The study estimated the need for new tracks, signals, bridges, tunnels, terminals, and support service facilities. However, it did not estimate the cost of acquiring land, replacing track, or maintaining existing track.

And, finally, the study did not address passenger rail. The Commission convened a separate Passenger Rail Working Group to estimate passenger rail needs.

I will try to summarize the findings of the study, using the following maps for you.

The first slide shows a map of current corridor volumes in terms of trains per day. The thinnest lines indicate a corridor that carries up to 15 trains per day; the thickest line, between 100 and 200 trains per day.

The next map compares current train volumes to current capacity. Capacity is measured in terms of the number of tracks, the type of signal system, and the mix of passenger and freight trains. The volume-to-capacity ratios are expressed as level of service grades, as is done in the highway industry, and in colors.

What you are looking at here are the corridors that are operating below practical capacity—that is at level of service grades A, B or C—are mapped in green.

Those operating near capacity—at grades C and D, between 70 and 80 percent of capacity—are in yellow.

Those that are operating at capacity, at grade E, are in orange.

And above capacity, grade F, in red; those are very congested.

Today, with this kind of a national snapshot, approximately 12 percent of primary rail corridor miles are operating at or near capacity. About 1 percent are operating above capacity in highly congested conditions.

We then projected the anticipated train volumes in 2035. To make the smooth a little clearer to you, we provided the next slide, Slide 4, which shows the growth in trains per day between 2005 and 2035. Here, a thin black line indicates that the corridor will carry up to 30 additional trains per day by 2035; the green line, 30 to 80 additional trains per day; and a thick black line, between 80 and 200 more trains per day.

The next step in the analysis was to compare future volumes to current corridor capacity as a measure or a way of dimensioning the problem. I do not anticipate we will see exactly this pattern on the network, but as you can see clearly, without improvements, upwards of 30 percent of the primary corridor mileage in the system will be operating above capacity. Those are the lines that have turned red in this slide.

That level of congestion would affect nearly every region in the Country. If we ever reach that point, it would quite likely shut down the system.

We estimated, as my colleagues noted here, that an investment in new capacity—not the replacement of existing capacity, but new capacity expansion—of $148 billion over the next 20 years would be needed to keep pace with economic growth and meet the U.S. DOT's forecast demand.

The Class I share of that is projected to be about $135 billion, roughly 91 percent of the total. The short line and regional freight railroad share would be approximately $13 billion.

Slide 6 compares future corridor volumes to future rail capacity, assuming the necessary improvements have been made. With the improvements, 97 percent of the primary corridor mileage will be operating below capacity, and less than 1 percent will be operating above capacity. So it is quite possible for us to keep up and maintain the capacity of the national rail network.

The Class I capital expenditure for infrastructure expansion today averages about 1.5 billion dollars per year. It has been creeping up over the last several years from about 1.1 and going up toward 1.7 billion dollars per year.

To meet the demand in 2035 that is show for the investment here, the Class I's must be investing about $4.8 billion per year. These are all in 2007 dollars. So it is a considerable investment.

We looked at what portion they could fund if revenue and capital expenditures for expansion follow the growth in rail tonnage. So if they match today's investment rates and those continue with the growth in tonnage, what could you be invested?

The expectation there is that—over the 30 years—the Class I's could realize about $70 billion of the $135 billion from their internal capital generation.

If the Class I's can continue to achieve train productivity gains of up to a half a percent per year, the railroads could realize savings of about $26 billion that would lower their capital requirement. This would leave a balance somewhere in the range of $39 billion to $40 billion dollars or about $1.5 billion per year to be funded either from railroad investment tax incentives, public-private partnerships, or other financing services.

The findings of this study are our first approximation of investment needs. They provide a starting point for assessing future rail capacity and investment requirements.

It was a hallmark study. It was the first collective assessment by the major freight railroads of their long-term capacity expansion and investment needs, and I believe its findings point clearly to the need for more investment in rail freight infrastructure and a national strategy that supports that investment in infrastructure capacity.

I thank you very much for the opportunity to appear before today. I would be happy to answer any questions.

Ms. BROWN. Mr. Shuster.

Mr. SHUSTER. Thank you very much.

Mr. Daloisio, I understand that a substantial portion of your industry is represented by two unions, laborers and operating engineers. The question is to what extent does labor support the National Rail Contractors' comprehensive proposal to rebuild the rail infrastructure?

Mr. DALOISIO. Right now, we believe that the laborers and the operators which are the two unions in question, laborers, as you may be aware, are 700,000 strong in this Country, and we have been working with them for some time.

We work together on a group called RAILCET. RAILCET is a group composed of laborers, operators and also management for construction companies. We believe that they support us on these proposals.

The only question is they have a hang-up over prevailing wage. They want prevailing wage language included in every bill possible, prevailing wage requirements that any job that is done using Federal money or tax credits will have a prevailing wage component to it.

We are meeting with them in a couple weeks, as a matter of fact, and are going to prepare a very comprehensive agenda which we will be happy to forward to you on those issues.

Mr. SHUSTER. Okay. Thank you. Thank you very much.

You stated in your testimony your support of Mr. Mica's request for proposals to solicit those for the Northeast Corridor. Can you elaborate on your support of that and what your view is and how you think of those?

Mr. DALOISIO. On the Northeast Corridor, as far as supporting Amtrak?

Mr. SHUSTER. Excuse me?

Mr. DALOISIO. You are referring to the support of Amtrak and support of the Northeast Corridor?

Mr. SHUSTER. The Northeast Corridor, high-speed rail, yes.

Mr. DALOISIO. Right. Our concept is we support the expenditure for intercity rail traffic completely.

Mr. SHUSTER. I am sorry?

Mr. DALOISIO. We support the expenditures for intercity rail completely. We believe that is something that we should be doing. Okay.

We disagree exactly with how it is being done presently with Amtrak. Okay. We believe it should be done differently. We believe a lot of the money should go to the States, and the States should be setting up their own programs. Okay.

We view overall, now I am talking for the NRC, not everyone else, but the NRC would love to see Amtrak become similar to the Corps of Engineers, in the way they operate. Okay. The Corps of Engineers, as you know, directs programs, directs things to be done but then contracts out that work to be done by others. That is the way we think that we would get the best value for the dollars spent, best way of using our money through the Country.

Mr. SHUSTER. So Amtrak would no longer be an operator?

Mr. DALOISIO. Right. They would be an overseer, similar to the Corps of Engineers. Correct.

Mr. SHUSTER. That is interesting, although the Corps of Engineers has its share of problems too, I might point out to you, that I have had to deal with up close and personal many times.

Mr. DALOISIO. Well, I think everyone has their share of problems.

Mr. SHUSTER. Well thank you for that answer.

Mr. Grenzeback, you stated in your testimony that future freight capacity did not include the added pressure on the increase in passenger service on the rail lines.

Mr. GRENZEBACK. You are correct. That is correct.

Mr. SHUSTER. Is that something you could talk about?

Why didn't you include in there and what impact would it have, because I think we see that there is a greater demand and increase in passenger rail, and how would that impact? Is that something you could address?

Mr. GRENZEBACK. Certainly. It was not included because the Commission had set up a separate Passenger Rail Working Group to address that issue, and the AAR and the freight railroads did not feel that they should project passenger rail ridership.

We did make provision in the estimates for maintaining capacity for the existing Amtrak services as well as for the existing commuter services, and those are simply carried forward. There was no projection of growth in those.

I think if you were to add the types of intercity service and the growth in the commuter rail we are expecting, you would press the capacity of the system quite significantly. I think in many of the corridors that today are shown as operating just below or at capacity, we are pressing the ceiling. To expand rail into those areas, you are going to have to add infrastructure.

It will depend considerably on the individual line, but you are going to have to be adding track. You are going to be upgrading signals. In many situations, I think we are fast approaching a point where you are going to have separate lines—and, if you want very high-speed passenger systems, sealed separate corridors will be required.

We have basically absorbed much of the existing capacity, and we are right at the point where passenger rail additions are certainly possible, case by case. But as I said, on a network level, we are right up to the ceiling.

Mr. SHUSTER. Right.

We talked a little bit about it here earlier. I don't know if you were here and heard some of the testimony. If the Federal government were to re-regulate or become involved, significantly more involved in the rate structure of the railroad or determining how much a railroad could charge, how big an impact would that have on your study and what the outcomes were if, in fact, the Federal Government were to decrease even small amounts of the revenues or the earnings of the railroads?

Mr. GRENZEBACK. We did not look in great detail at the individual railroads' ability to finance these projects, but clearly one of the assumptions we made in the cost estimates was that the railroads were going to be able to increase share and that prices would go up commensurately. So they would continue to generate their own internal revenue and invest in these projects.

If they are restricted, if rates are restricted, if earnings are restricted, then clearly these improvements will be made at a slower rate and will be targeted to the most profitable lines.

Mr. SHUSTER. Did you look at the rate increases over the last three to five years or over the last twenty-five years? Over 25 years, they have actually, in real dollars, gone down.

Mr. GRENZEBACK. Prices have been coming down, but I think it has reached a turning point. Over the last 20 years, you have taken a 19th Century rail network and completely refigured it to serve today's markets, and we have slowly absorbed the capacity of that reconfigured network.

At this point, the railroads—probably for the first time since the 1930s—are price-setters instead of price-takers. They are using pricing as any business would to allocate capacity, and that is obviously affecting people's ability to ship at the same rates they did before.

Mr. SHUSTER. One final question, did you take into account any of the new technologies: positive train control or the new braking systems?

I have looked at this and studied it, both positive train control and the new braking system could increase capacity without adding track in some cases. Is that something you considered in the study?

Mr. GRENZEBACK. We discussed it at length. We did not actually try to make an estimate, but the productivity improvements that are included in the study are quite straightforward. It is putting more freight on a car, and putting more cars on a train; and we were trying to project the past trend in doing that.

There are clearly opportunities to apply technology to improve signal systems and positive train control. The time and the budget

for this study did not allow us to get into that, but you are correct, those are obvious areas for productivity improvement that would lower somewhat the requirement for actual physical capacity to be built.

Mr. SHUSTER. With the growth of freight over the next, I think I saw 2035, at 80 or 90 percent increase, obviously you didn't study it, but you believe that technology would have an impact but not enough to significantly curtail the amount of investment that you are projecting? Is that a fair statement?

Mr. GRENZEBACK. Yes, sir. It would have a big and valuable impact, and I would fully expect the railroads to invest heavily in it, but I do not believe that technology alone will take care of the capacity needs.

Mr. SHUSTER. Okay. Thank you very much.

Mr. GRENZEBACK. Thank you.

Ms. BROWN. Mr. James Daloisio, you mentioned something in your comments. You said something about central Florida, the CSX.

Mr. DALOISIO. Yes.

Ms. BROWN. Do you know what could possibly derail that project?

Mr. DALOISIO. No, I am not aware of anything going wrong with it.

Ms. BROWN. I was in Tallahassee yesterday. It is not using labor safety factors.

I mean if you are using taxpayers' dollars, it is important, one, that we have prevailing wage. I mean the idea that you would pay under prevailing wage in an area, I would never support a bill under any circumstances that did not have prevailing wage.

Mr. DALOISIO. We, as railroad contractors, certainly support that stand. I totally agree with you.

Ms. BROWN. You all pay more than prevailing wage. So why wouldn't it be a part of the package?

Mr. DALOISIO. Absolutely. Absolutely, we do.

Ms. BROWN. The second thing is perhaps you do not know. You mentioned the Army Corps, but part of the problem in the lawsuit is the Army Corps did not do what they were supposed to do as far as the levies are concerned, and that is what is part of the problem where thousands of people got killed in New Orleans.

So you could not say we need to model any system behind the Army Corps. We need to improve the Army Corps. In fact, I have gone and they have improved, but they don't just direct the projects. They participate in the projects.

Mr. DALOISIO. Yes. Yes, they provide guidance and other things.

Ms. BROWN. No, no, no. They actually build projects, and they build projects not just in the United States, all over the world.

Mr. DALOISIO. Yes, but primarily what they do is they scope and specify projects primarily. Not always, you are right. They do get involved in doing some of the work themselves, but they do, primarily, specify projects and have projects done by outside sources under their direction.

Ms. BROWN. Under their direction, yes, but they do operationals also.

Mr. DALOISIO. They do some, yes.

Ms. BROWN. I heard some of the things that you said about what we need to do in the next reauthorization, and you talked about the recommendations. Some of them, I thought were interesting, some of them from the Commission. But some of them, as an elected official, I would not be supportive of it because the bottom line is that I have to stand to the taxpayers and make sure that I feel that we are doing what we think is the best deal. And, some of the programs, they want to merge.

I mean did you go through the entire package?

Mr. DALOISIO. Well, we have eight different programs that we support. Following listening to you on this panel today, and during the previous panel, I don't know why you would be against any of those eight programs. I will be perfectly honest.

All eight of them support expansion of the railroad industry and expansion of their facilities and infrastructure.

Ms. BROWN. One of the things you said, prevailing wage, you said you are not 100 percent in favor of it and you are discussing it.

Mr. DALOISIO. I am sorry.

Ms. BROWN. What did you say about prevailing wage.

Mr. DALOISIO. No, no. We support prevailing wage. It would be great. No. We are totally in favor of prevailing wage.

Ms. BROWN. Maybe I didn't hear what you said then.

Mr. DALOISIO. Okay. What I said, to clarify it a little bit, was that I was asked whether or not the unions agree with our positions expressed here today. I said, yes, they do agree with them, but they would want included in any law that passes a prevailing wage requirement.

We are not against that. We support that too, but we are also realistic and know that that may be a very difficult thing to get into law in every case. Okay.

We would accept it without that, these programs without the prevailing wage. The fact that we pay a prevailing wage to our own people is a fact, okay, but that doesn't mean that we would oppose the law change if they did the things that we requested just because prevailing wage language was not in there.

Ms. BROWN. You know I have known lots of programs here in the Congress that have just sat here because someone else was in charge and that was not a part of the package. So it just died.

There are strong feelings on both sides.

Mr. DALOISIO. I know there are.

Ms. BROWN. If you are spending taxpayers' dollars like in New Orleans right after the hurricane, and we passed a bill that did not have prevailing wage. Then we had people coming in, paying lower than minimum wage. That is unacceptable, and certainly I don't think we need to be doing it with taxpayers' dollars.

Mr. DALOISIO. I totally agree, totally agree. The companies that I am President of are both totally, 100 percent unionized, which means we pay prevailing wage or, in many cases, better than prevailing wage.

Ms. BROWN. Most of the cases, better than prevailing.

Mr. DALOISIO. Absolutely. Absolutely. Absolutely.

Ms. BROWN. All right, Mr. Grenzeback, one question for you: One of the things we have been discussing is the capacity for freight

and commuter. How should freight rail, passenger rail and commuter rail work together to identify and alleviate major capacity constraint points?

Mr. GRENZEBACK. Thank you, Madam Chairwoman.

The best example I can recite for you is work we did several years ago under the I-95 Corridor Coalition. We worked with Amtrak, Norfolk Southern, CSX and the five States from New Jersey down through Virginia.

What we did was basically spend two years looking at the network and taking a bottom-up look at all the choke points and capacity problems there, worked our way to the point of understanding, across all the railroads, what the critical problems were and eventually building a program that laid out general priorities for fixing those, so we got the greatest system benefit out of that.

It took some time. It took a considerable amount of discussion at the neutral table that the I-95 Corridor Coalition provided, but it was effective.

I think you asked earlier in the session what the public sector could do to deal with the issues. I would break it down into really three sort of categories. One is main line capacity. I think in that case the railroads will be able to finance and engineer the expansion they need on the intercity lines.

I think we are going to find a number of major choke points. The Chicago rail hub is one of them; the Baltimore tunnels another. There are a series of them around the Country, which are so large and so complex that they probably will warrant Federal action to catalyze a solution.

Ms. BROWN. They need upgrading too.

Mr. GRENZEBACK. Yes, ma'am.

Then the third category is really the question of urban freight terminals. We are basically moving from a railroad system that was retail to a wholesale system, where you are hauling from Chicago to New York, and they are really not distributing inside the cities. Rebuilding and relocating those terminals and providing access is where the freight railroads, the intercity and the commuter rail come together, and that is very complex.

I think that there is a role both for the public sector and the Federal Government to begin to think about how we fund those projects, how you bring the groups together, how you clear the community issues that you have talked about, the air quality issues, as well as the just pure operations and capacity expansion.

So I would suggest from your earlier comments, that looking at the area where the commuter rail, freight and intercity come together in the urban areas is probably one of the most complex areas and something that would deserve your attention.

Ms. BROWN. We don't have any additional questions. So would you all like to make closing statements?

Mr. DALOISIO. First of all, I would like to thank the Committee for inviting us to testify today.

Second of all, I would like to say that the NRC, as a group, is both union and non-union. Okay. We are devoted to servicing the railroad industry and to work on expansion projects and modernization projects for both industry and also the railroads. We can

provide the additional manpower necessary to get these programs accomplished.

What we need is the money in the system to generate these programs for us to go out there and build. It is very simple. Hard to get the money, but it is a very simple problem.

The expansion of our system is something we have to do. If we don't expand the system, the infrastructure system, in the future, we are going to find ourselves in a real problem. We are getting there. We are getting to the point where some of the lines are running over capacity.

In the future, by projections, even if we do not increase the freight share that goes on rail, 35 years from now we are going to have serious problems, capacity problems.

So we support the programs as outlined in our presentation, and we thank you again for inviting us to testify. Thank you.

Ms. BROWN. Thank you.

Mr. GRENZEBACK. Ms. Brown, Mr. Shuster, thank you very much.

I would reiterate the key points: that we are reaching a point where the capacity in the rail network is tightening; and that we will see over the next years increasing numbers of lines in the metropolitan areas light up in red. The costs for addressing those are going to be fairly significant.

I would also add that in addressing the rail issue, you are also indirectly addressing the highway issue. We have a highway system which, I am sure you are quite aware, is also reaching capacity.

When we look at both long-haul and short-haul trucking and the capacity needs on that side, they are quite severe. As diesel prices go up, as driver labor gets tighter, the carriers are looking to the railroads to make the long-haul move and the trucks to do the short-haul operation.

We are at a point where unless we keep both systems at capacity—building and adjusting quite steadily and readily—we are going to find ourselves facing very sharp increases in the price of moving our goods, both for import and export.

Thank you very much.

Ms. BROWN. We thank you.

[Whereupon, at 1:01 p.m., the Subcommittee was adjourned.]

Statement by Congressman Jerry F. Costello
Committee on Transportation and Infrastructure
Subcommittee on Railroads
Hearing on Rail Capacity
April 23, 2008

Thank you, Madame Chairwoman. I am pleased to be here today as we discuss rail capacity. I would like to welcome today's witnesses.

Our current rail network spans approximately 143,000 route miles. This rail network connects businesses all over the country to move commerce efficiently and effectively. With rising fuel prices, more companies are turning to railroads as a cheaper way of transporting goods. With more businesses and people creating an increased demand, we must make additional investments in infrastructure projects to enhance service, promote efficiency, and reduce prices.

In my home state of Illinois, the city of Chicago is the busiest hub in the U.S. with more than 1,200 trains passing through it every day. Because of a capacity crunch on its rail lines, the City entered into a public private partnership to invest $1.5 billion for railroad upgrades, establishing the CREATE project. Six major rail companies pledged $212 million, and Congress has put forth $100 million for the project.

With demand continuing to exceed supply, the rail system is extremely strained overall and I look forward to hearing from our witnesses on other proposed solutions.

Again, thank you Madame Chairwoman for calling today's hearing.

Written Submission of James Daloisio
President of Railroad Construction Company of South Jersey
President of Railroad Constructors Incorporated
Past Chairman of the National Railroad Construction and Maintenance Association (NRC)
Secretary-Treasurer of Railroad Cooperation and Education Trust (RAILCET)

Submitted to the
Transportation and Infrastructure Committee of the Unites States House of Representatives
Subcommittee on Railroads, Pipelines, and Hazardous Materials

Hearing on Rail Capacity
Wednesday, April 23, 2008, 10:00am
2167 Rayburn House Office Building

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Transportation and Infrastructure Committee of the Unites States House of Representatives
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Hearing on Rail Capacity
Wednesday, April 23, 2008, 10:00am
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The National Railroad Construction and Maintenance Association, known as the NRC, is the national trade association representing the independent railroad construction and supply industry. The NRC has more than 200 member companies, with employees in all 50 U.S. States and each of the Canadian provinces. NRC members perform every type of rail infrastructure work imaginable - from design and engineering to basic construction and maintenance to highly specialized and custom jobs. Work includes laying new rail, rail welding, rail grinding and surfacing, ballast distribution, tie insertion and removal, grade crossings, signal systems, switches, turnouts, re-railments, bridge maintenance, and the list goes on.

NRC members serve every type of track owner, including Class 1 railroads, short line and regional railroads, industrial track owners, the United States military, port facilities and terminals, and rail transit agencies operating light rail systems, street cars, subways, metro systems, and commuter rail operations.

As the railroad industry has grown dramatically since de-regulation by the Staggers Act in 1980, the size of the railroad contractor and supplier community has grown in proportion. There are now over 650 independent railroad contracting companies in the United States performing over $10 billion worth of rail infrastructure construction and maintenance work every year.

The consistent growth of the rail freight and rail transit industries has provided tremendous benefits to America. Our rail freight system is widely regarded as the world's most efficient, and is a major contributor to the economic competitiveness of American industry. The railroad industry employs well over a quarter million people, pays billions of dollars in taxes,

efficiently serves tens of thousands of shippers, is growing every year, and is one of the true economic success stories of the last 25 years.

In addition, moving freight and people by rail is environmentally friendly. Railroads are three to four times more fuel efficient than trucks on a freight-ton mile basis. A railroad could move one ton of freight from here in Washington DC to Boston on one gallon of diesel fuel. Moving freight by rail, as compared to trucks or even water barges, dramatically reduces greenhouse gas emissions and cuts fuel consumption. Steel wheel on steel rail is simply the most efficient way we have to move freight in this country.

And moving people by rail transit on public transportation systems has an equally dramatic effect. By taking existing public rail transportation instead of driving a car, a single person saves 4,800 pounds of carbon dioxide emissions per year. Taking rail transit to work provides more benefit to the environment, combined, than adjusting the thermostat in your home, installing energy efficient light bulbs, and buying Energy Star appliances.

Investments into rail transit systems also have the benefit of encouraging more efficient and environmentally sound land-use patterns and facilitating high-density economic development focused around rail transit stations.

And both freight rail and passenger rail play a crucial role in taking cars and trucks off the road and decongesting our crowded highway system. And there is no doubt that our highway system is already unacceptably congested – the Texas Transportation Institute tells us that motorists in the largest urban areas in the country are spending 54 hours in traffic delays every year. That is more than a full working week each year, completely wasted sitting in traffic. TTI estimates that traffic congestion cost our economy $78 billion last year. A typical freight train takes over 200 18-wheelers off the road, eliminating close to 100 million truck trips last year. And there were over 4 billion trips taken on rail transit systems last year. Without these rail systems, highway congestion would be much worse. And with increased investment into these rail systems, highway congestion can be reduced and the pressure and expense of building new highways can be relieved.

Railroads also play a crucial role in the safety and security of our country by providing military transport, and by lessening our dependence on foreign oil. Railroads are used for disaster evacuation and recovery and are often the most resilient form of transportation. And railroads also transport the vast majority of hazardous materials in the country, moving them safely and keeping them off of our highway system.

Despite all of the benefits of rail transportation, we have a major problem staring us in the face. We are running out of capacity, and it's going to get much worse unless we start fixing the problem as soon as possible. Commissioners on the National Surface Transportation Policy and Revenue Study Commission believe that freight volumes will be 70% higher by 2020 than they were in 1998. According to AASHTO, the organization of State DOTs, tons shipped into the U.S. will rise from 16 billion in 2007 to 31 billion in 2035.

A lack of capacity causes higher prices for shippers, decreased efficiency for carriers, and the loss of the benefits that rail transportation can provide for our country.

The major recent study by Cambridge Systematics estimates that, using today's dollars, an investment of $148 billion for rail infrastructure expansion over the next 28 years is required to keep pace with economic growth and meet the U.S. DOT's forecasted demand for rail freight. And this is not even taking into account the desired shift in market share to rail that would provide further benefits to the country. Of this $148 billion amount, the Class 1 freight railroads' share is $135 billion and the short line and regional freight railroads' share is $13 billion.

The Class 1 railroads anticipate that they will be able to generate approximately $96 billion of their $135 billion share through internally generated cash flow. This would leave a balance for the Class 1 freight railroads of $39 billion, or about $1.4 billion per year to be funded from outside sources, simply to maintain their current share of the freight market. The amount of funding required is much higher if we aim for our goal of expanding freight rail market share.

This problem, of more funding being required than the private rail system can generate on its own, is precisely the issue this Committee will have to grapple with during the next transportation re-authorization legislation. The short line and regional railroads face the same issue as the Class 1s, and rail transit systems throughout the country are also seeing demand for their services far exceed funding resources that are currently available.

I would like to note quickly that the railroads' ability to invest heavily into their own infrastructure going forward is based on the assumption that the current regulatory environment will remain stable. If Congress were to increase regulation of the railroads, their ability to manage their own businesses and produce sufficient return on investment would be hampered, and thus their ability to invest back into their network would be decreased. This would be counter-productive public policy that would harm the nation's economy and competitiveness. In fact, prices for rail service have fallen by about 50% since de-regulation, while productivity and volume have risen sharply. If rates are capped then re-investment into the infrastructure will decrease and these gains are put at risk and thousands of jobs in the railroad construction and supply industry will vanish.

So, it seems clear that rail transportation, both freight and passenger, is highly beneficial to America. And it is equally clear that the current rail system is running out of capacity and needs a dramatic infusion of new investment to meet demand in the near-term future. And I think we would all agree that the current transportation legislation framework is not organized in a way that makes it easy for Congress to direct increased funding to the rail system.

The NRC believes that Congress should use the opportunity of the next transportation re-authorization legislation to completely revamp transportation law in this country. As many of the leaders of this Committee believe and have stated publicly, the next transportation re-authorization legislation should not be incremental in nature – it should be transformational.

As a basis for this transformation, we endorse the Transportation for Tomorrow framework put forward by the National Surface Transportation Policy and Revenue Study Commission.

Specifically, we support:

- The adoption of the proposed Freight Rail Infrastructure Capacity Expansion Act (H.R. 2116/S.1125), which provides a 25% tax credit for rail infrastructure investments that would expand capacity. This has been introduced by Representatives Kendrick Meek (D-FL) and Eric Cantor (R-VA), and Senators Kent Conrad (D-ND) and Gordon Smith (R - OR).

- The extension of the Short Line Railroad Rehabilitation Tax Credit (H.R.1584/S.881), which provides a 50% tax credit for railroad rehabilitation spending to preserve the viability of short line and regional railroads as feeder lines for the national rail network. This has been introduced by Representatives Earl Pomeroy (D-ND) and Dave Camp (R-MI), and Senators Blanche Lincoln (D-AR) and Gordon Smith (R - OR). As of today, the House bill has 244 co-sponsors, including 42 Members of this Committee.

- The creation and funding of a national freight transportation program and surface transportation trust fund that would be mode-neutral and direct federal funding towards projects on a strictly merit-based approach. The program would provide public investment in crucial, high-cost transportation infrastructure including strategic intermodal connectors, key freight corridors, and national rail bridges and tunnels where the cost of construction exceeds the return on privately invested capital.

- Strong federal support of public-private partnerships such as the Alameda Corridor, Chicago CREATE, and the Orlando commuter rail/CSX deal. It must be explicit that public entities and private entities should pay for their respective benefits, and that public investment should complement private investment, not replace it.

- A major increase in investment into intercity passenger rail, with reform of the current Amtrak system. The eventual goal should be true high speed rail, with separated right of way. However, the current reality is a system of joint use by freight and passenger rail. Passenger rail should be improved, but that can not come at the expense of freight rail or else it is counter-productive to the country and our goal of increased rail capacity.

- Innovative financial tools and programs such as TIFIA are already working well, and they should be expanded. RRIF, the Railroad Rehabilitation and Improvement Financing Program, is a valuable infrastructure program that is under-utilized by the railroads.

RRIF provides low interest, 25 year money for railroad rehabilitation and construction. The FRA has approved 20 RRIF loans for a combined total of $743.6 million. One of the reasons the program is underutilized is the unnecessary length of time it takes to process an application, due to institutional opposition to the program in the OMB. The OMB should not oppose a successful program that would increase rail capacity. The RRIF program was enacted in 1998 and no railroad has ever missed a single RRIF loan payment. The program should be expanded and improved.

- The project delivery process must be reformed by significantly shortening the time it takes to complete reviews and obtain permits. Projects must be designed, approved and built as quickly as possible if we are to meet the huge transportation capacity challenges facing us. It takes too long and costs too much to deliver projects, and the waste due to delay in the form of administrative and planning costs, inflation, and lost opportunities for alternative use of the capital hinder us from achieving our capacity expansion goals.
    - This expediting of transportation projects can be accomplished while retaining all current environmental safeguards

- Grow the current federal transit program in size, while maintaining the overall structure and funding guarantee system. This system has been very successful and simply needs to be bigger to meet rail transit demand. Transit projects would also benefit from expedited review and project delivery reforms, which would help limit their high cost.

If Congress adopts these proposals, there will be a dramatic increase in investment into the nation's rail infrastructure, and a corresponding expansion of rail capacity. The question then naturally arises as to whether or not the railroads and the independent construction, maintenance, and supply industries could handle all of this increased work. The answer is yes.

NRC members are big and sophisticated construction companies, and we have a large and diverse supplier base providing us with the necessary tools and equipment. Our people are well trained and we provide good wages and good benefits. Many of our members are unionized and draw on a strong pool of organized labor.

Railroad contractors are already performing over $10 billion worth of rail infrastructure construction and maintenance work every year, and I believe we could handle double that amount in a relatively short time frame. The major design, engineering and consulting firms stand ready to begin the process of planning major rail projects right away, and we will be able to implement them safely and effectively. Financial and strategic investors also continue to demonstrate interest in the railroad construction and supply industry, and they would be available to help us ramp up to meet an investment program of any reasonable size.

Finally, I would like to note that of the legislative proposals mentioned earlier in my testimony and submitted for the written record, not all of them need to wait for the next major transportation re-authorization legislation. Some of the proposals should be implemented now, such as:

- The two tax credit proposals, the capacity expansion tax credit and short line rehabilitation tax credit, could be included in an "Economic Stimulus 2" package if Congress decides that is necessary
    - A one year extension of the short line tax credit, which expired at the end of 2007, was passed by the full House last year in a tax credit extenders bill. We encourage you to get that extenders package enacted into law this year.

- Another program that should be funded in a second economic stimulus package if it happens is the $50 million Capital Grants for Class II and Class III Railroads program that was authorized but not appropriated in the Energy Independence And Security Act of 2007

- Intercity passenger rail reform can be implemented via the Amtrak authorization or appropriations process. We think that the new process of providing matching capital grants to states to let them improve rail transportation holds great promise, and suggest that 50% of the available capital grants be allocated to the states, rather than directly to Amtrak. This will encourage additional state investment and increase rail service. We also believe a high speed rail section, such as the one recently proposed by T&I Ranking Member Mica in H.R.5644, should be added to the Amtrak legislation.

- Finally, we'd like to strongly urge that all rail construction and maintenance work being done with direct federal assistance or tax benefits be competitively bid to the independent railroad construction industry, to the fullest extent possible. Railroad contractors have a long and well-documented history of providing quality services at competitive prices. We have learned how to do more with less, and the efficiency and competence we bring to this task will be a big benefit as we all search for ways to improve America's transportation infrastructure.

TESTIMONY OF LANCE R. GRENZEBACK
Senior Vice President
Cambridge Systematics, Inc.
100 CambridgePark Drive, Suite 400
Cambridge, MA 02140

on

NATIONAL RAIL FREIGHT INFRASTRUCTURE CAPACITY AND INVESTMENT

before

THE SUBCOMMITTEE ON RAILROADS, PIPELINES,
AND HAZARDOUS MATERIALS
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
U.S. HOUSE OF REPRESENTATIVES

Wednesday, April 23, 2008

Introduction

Mr. Chairman, distinguished committee members, my name is Lance Grenzeback. I am a Senior Vice President with Cambridge Systematics. We provide transportation policy, planning, and management consulting services to Federal, state, and local transportation agencies and to private-sector transportation and investment companies.

I am pleased to appear before you to discuss the findings of our *National Rail Freight Infrastructure Capacity and Investment Study*.[1] In my remarks I will describe for you—

- Current demand for rail freight transportation, and the capacity of the system to meet this demand;
- Future demand for rail freight in 2035, and the additional capacity needed to accommodate that demand; and
- Investment required to provide the additional capacity.

Current Demand and Capacity

Current demand for rail freight transportation is pressing the capacity of the rail system. Ton-miles of rail freight carried over the national rail system have doubled since 1980, and the density of train traffic—measured in ton-miles per mile of track—has tripled since 1980.[2] The

[1] *National Rail Freight Infrastructure Capacity and Investment Study*, prepared by Cambridge Systematics, Inc. for the Association of American Railroads, Washington, D.C., September 2007. The report is available at http://www.aar.org/Newsroom/Capacity_Investment_study.asp.

[2] One ton of freight moved one-mile counts as one ton-mile.

U.S. Department of Transportation (U.S. DOT) estimates that the demand for rail freight transportation—measured in tonnage—will increase 88 percent by 2035.

To keep up with the anticipated economic growth between now and 2035—and the accompanying demand for freight transportation services—the railroads must add capacity to handle almost two-thirds more tonnage and nearly three-quarters more ton-miles. The projected rate of growth over the next 30 years is not extraordinary, but it comes after two decades of growth in rail freight tonnage that has absorbed much of the excess capacity in the existing rail freight system.

The study was commissioned by the Association of American Railroads (AAR) at the request of the National Surface Transportation Policy and Revenue Study Commission. The objective of the study was to assess the long-term capacity expansion needs of the continental U.S. freight railroads. The study provides a first approximation of the rail freight infrastructure improvements and investments needed to meet the U.S. DOT projected demand for rail freight transportation in 2035.

The study focused on 52,340 miles of primary rail freight corridors, which carry the preponderance of rail freight traffic.[3] These corridors, which represent about half of all Class I-operated miles in the U.S. and about one-third of the 140,810 miles in the U.S. rail freight network, are expected to absorb the bulk of the forecast traffic and nearly all of the investment to expand capacity. For comparison, the Interstate Highway System comprises about 47,000 route miles, and the National Highway System, which adds other major U.S. and state freight highways, comprises about 162,000 route miles.

The study estimated the need for new tracks, signals, bridges, tunnels, terminals, and service facilities in these corridors. The study did not estimate the cost of acquiring additional land, locomotives, and freight cars, nor the cost of replacing and updating existing track, facilities, locomotives, and freight cars. The study assumed no shift in modal tonnage shares among rail, truck, and water beyond those projected by the U.S. DOT.

Finally, the study did not forecast passenger rail demand or estimate future passenger rail capacity needs; however, capacity was maintained for the long-distance Amtrak and local commuter passenger rail services that are currently operated over rail freight lines. The Commission convened a separate Passenger Rail Working Group to estimate the improvements and investments needed to support passenger rail demand through 2035.[4]

[3] Nearly all of these primary corridor miles are owned and operated by the seven Class I freight railroads: BNSF Railway, Canadian National (Grand Trunk Corporation), Canadian Pacific (Soo Line), CSX Transportation, Kansas City Southern, Norfolk Southern, and Union Pacific. There are more than 550 short line and regional freight railroads.

[4] See "*Vision for the Future: U.S. Intercity Passenger Rail Network Through 2050.*" Report prepared by the Passenger Rail Working Group for the National Surface Transportation Policy and Revenue Study Commission, Washington, D.C., December 2007. The report is available at http://www.transportationfortomorrow.org/final_report/pdf/volume_3/commissioner_submissions/03_vision_for_the_future,_intercity_passenger_rail_network_through_2050.pdf.

The study estimated rail capacity and investment requirements by—

- Establishing **current** corridor volume in freight and passenger trains per day for each primary corridor, based on 2005 Surface Transportation Board Carload Waybill data;
- Estimating current corridor capacity in trains per day for each primary corridor; and
- Comparing current corridor volume to current corridor capacity.

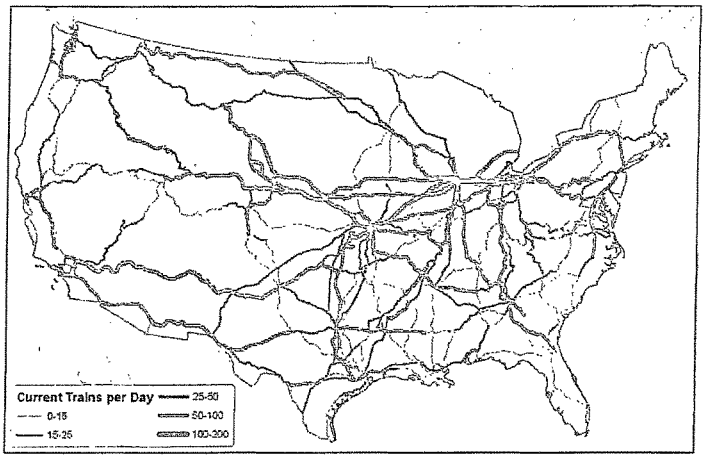
The process was then repeated—

- Estimating **future** corridor volume in trains per day using the U.S. DOT's Freight Analysis Framework Version 2.2 forecasts of rail freight demand in 2035 by type of commodity and by the origin and destination locations of shipments moving within the U.S. and through international land and port gateways; and
- Comparing the future corridor volume to current corridor capacity.

With this information, we calculated the additional capacity needed to accommodate future train volumes at an acceptable level of service reliability. The results are summarized in the series of maps that follow.

Figure 1 maps the current corridor volumes in trains per day for the primary rail freight corridors. The number of trains per day is indicated by the width of the corridor line. The thinnest line indicates that a corridor carries up to 15 trains per day; the thickest line, between 100 and 200 trains per day.

Figure 1. Current Corridor Volumes by Primary Rail Freight Corridor
2005 Freight Trains and 2007 Passenger Trains per Day



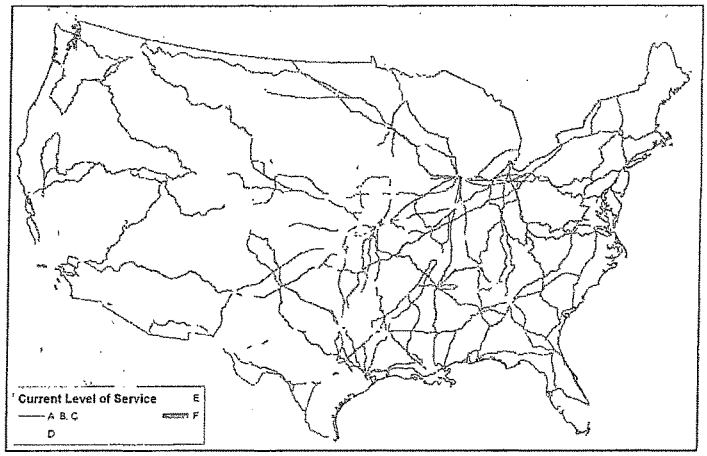
Source: Cambridge Systematics, Inc.
Note: Volumes are for the 85th percentile day.

Figure 2 maps current capacity on the primary rail corridors. The volume-to-capacity ratios are expressed as level of service (LOS) grades.

- Rail corridors operating at LOS A, B, or C (where current volume is below practical capacity) are mapped in green;
- Corridors operating at LOS D (where current volume is near practical capacity) are mapped in yellow;
- Corridors operating at LOS E (where current volume is at practical capacity) are mapped in orange; and
- Corridors operating at LOS F (where current volume is above capacity) are mapped in red.

Analysis of the current levels of service shows that 88 percent of today's primary corridor mileage is operating below practical capacity (LOS A/B/C), 12 percent is near or at practical capacity (LOS D/E), and less than 1 percent is operating above capacity (LOS F).

Figure 2. Current Corridor Volumes Compared to Current Corridor Capacity
2007



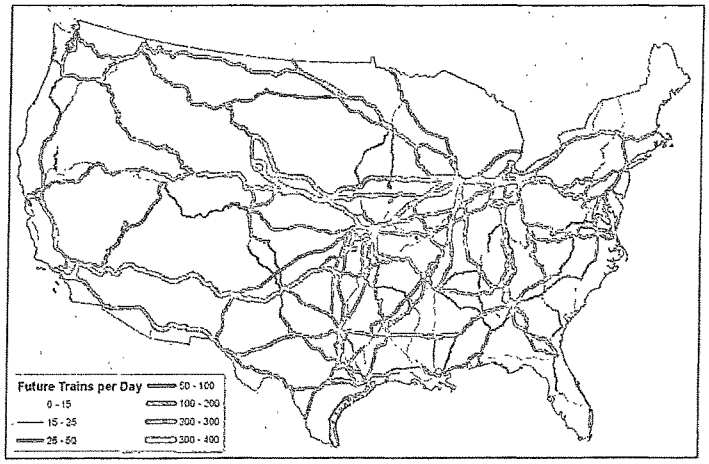
Source: Cambridge Systematics, Inc.

Note: Volumes are for the 85th percentile day.

Future Demand and Capacity

Figure 3 maps the projected train volumes in 2035.

Figure 3. Future Corridor Volumes by Primary Rail Freight Corridor
2035 Freight Trains and 2007 Passenger Trains per Day



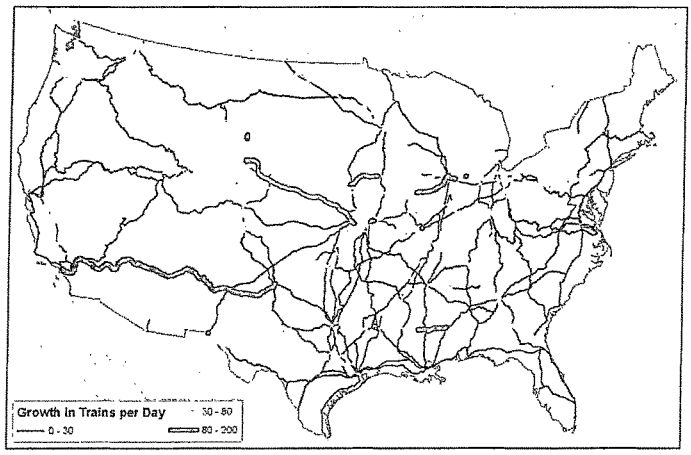
Source: Cambridge Systematics, Inc.

Note: Volumes are for the 85th percentile day.

The next figure, Figure 4, shows the growth in train volumes per day between 2005 and 2035. The growth is indicated by the width and color of the corridor line. A thin black line indicates that a corridor will carry up to 30 additional trains per day by 2035; a green line indicates that a corridor will carry between 30 and 80 additional trains per day; and a thick black line indicates that a corridor will carry between 80 and 200 additional trains per day.

Figure 5 compares the future train volumes to current corridor capacity. The analysis shows that many of the key national rail corridors supporting domestic and international trade could face severe capacity shortfalls in coming years if rail capacity does not keep pace with economic growth and demand.

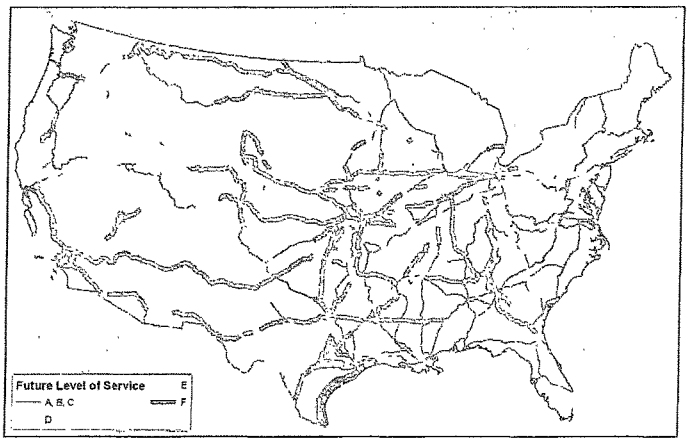
Figure 4. Growth in Trains per Day from 2005 to 2035 by Primary Rail Corridor



Source: Cambridge Systematics, Inc.

Note: Volumes are for the 85th percentile day.

Figure 5. Future Corridor Volumes Compared to Current Corridor Capacity
2035 without Improvements



Source: Cambridge Systematics, Inc.

Note: Volumes are for the 85th percentile day.

Analysis of the 2035 levels of service shows that—without improvements—45 percent of primary corridor mileage will be operating below capacity (LOS A/B/C), 25 percent will be operating at or near capacity (LOS D/E), and 30 percent will be operating above capacity (LOS F). The resulting congestion would affect nearly every region of the country and would likely shut down the national rail network.

Future Capacity and Investment Requirements

The study estimated that an investment of $148 billion (in 2007 dollars) for infrastructure expansion over the next 28 years will be required to keep pace with economic growth and meet the U.S. DOT's forecast demand. Table 1 shows the types of rail infrastructure improvements needed by 2035 and their allocation between the Class I railroads and the short line and regional freight railroads. The Class I railroads' share of improvements is projected to be $135 billion or about 91 percent of the total. The short line and regional freight railroads' share is projected to be $13 billion. Adding capacity to main lines (line haul expansion), upgrading major bridges and tunnels, and clearing lines for doublestack use are the major expense items, absorbing 81 percent of the $148 billion.

Table 1. Cost of Rail Freight Infrastructure Improvements
Millions of 2007 Dollars

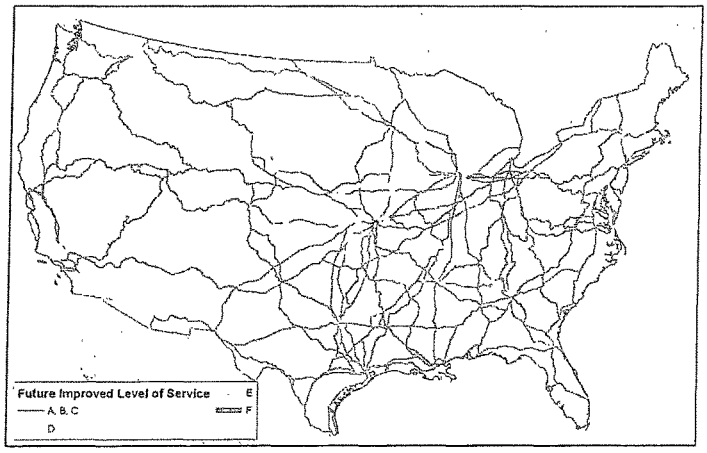
	Class I Freight Railroads	Short Line and Regional Freight Railroads	Totals
Line Haul Expansion	$94,750	$320	$95,070
Major Bridges, Tunnels, and Clearance	$19,400	$5,000	$24,400
Branch Line Upgrades	$2,390	$7,230	$9,620
Intermodal Terminal Expansion	$9,320		$9,320
Carload Terminal Expansion	$6,620		$6,620
Service Facilities	$2,550		$2,550
Totals	**$135,030**	**$12,550**	**$147,580**

Source: Cambridge Systematics, Inc.

Note: All estimates exclude real estate acquisition costs, consistent with national highway needs analysis study practices. Line expansion costs for short line and regional railroads are only for segments used to connect the primary corridors, not the entire system. The category Major Bridges, Tunnels, and Clearance covers very large projects such as expansion of major bridges and tunnels (or construction of new parallel bridges and tunnels) and corridor overhead clearance projects that are not adequately accounted for by per mile unit costs. The category Branch Line Upgrades covers upgrades to secondary main and branch lines to meet 286,000-pound weight-limit standards for the Class I railroads. A preliminary analysis shows limited need to upgrade the capacity of secondary mainlines and branch lines.

Figure 6 compares projected future corridor volumes in trains per day to projected future corridor capacity—assuming that the necessary improvements are made.

Figure 6. Future Train Volumes Compared to Future Train Capacity
2035 with Improvements



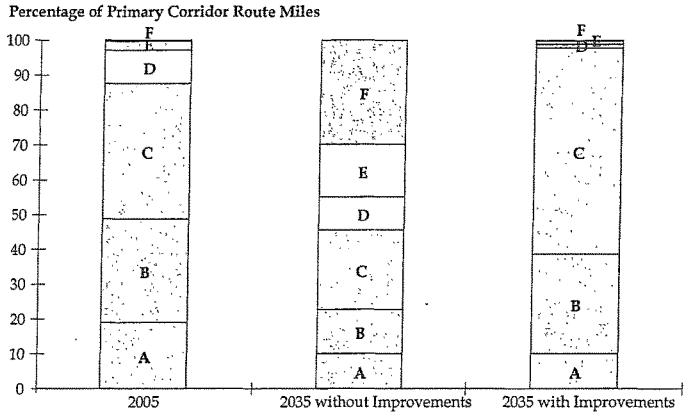
Source: Cambridge Systematics, Inc.

Note Volumes are for the 85th percentile day.

Analysis of the 2035 levels of service shows that—with improvements—97 percent of primary corridor mileage will be operating below capacity (LOS A/B/C), 2 percent will be near or at capacity (LOS D/E), and less than 1 percent will be operating above capacity (LOS F).

The impact of the investment is illustrated in Figure 7, which compares the percentage of primary rail freight corridor miles by LOS grade and year.

Figure 7. Percentage of Rail-Freight Primary Corridor Route Miles by Level of Service Grade in 2005, 2035 without Capacity Improvements, and 2035 with Capacity Improvements



Source: Cambridge Systematics, Inc.

The left column shows the percentage of miles by LOS grade for the current rail system. The center column shows the percentage of miles by LOS grade for the primary corridors in 2035 without improvements. Thirty percent of the rail miles in the primary corridors would be operating above capacity, causing severe congestion that would affect every region of the country and shift freight to an already heavily congested highway system. Finally, the right column shows the estimated LOS grades in 2035 with improvements. The improvements sharply reduce the number of primary corridor miles operating above capacity.

Meeting the U.S. DOT's forecast demand will require the Class I freight railroads to increase their investment in infrastructure expansion. The AAR estimates that between 2005 and 2007, Class I freight railroad capital expenditures for infrastructure expansion averaged $1.5 billion per year. To meet the U.S. DOT's forecast demand for 2035, the Class I freight railroads must invest about $4.8 billion per year.

The Class I freight railroads anticipate that they will be able to meet most of this increase in investment through growth and productivity gains. If revenue and capital expenditures for expansion follow the growth in rail tonnage, the Class I railroads could realize about $70 billion of the $135 billion from growth. And if the Class I railroads can continue to achieve train productivity gains of up to 0.5 percent per year, the railroads could realize savings of $26 billion in reduced capital expenditures for a total of $96 billion. This would leave a balance for the

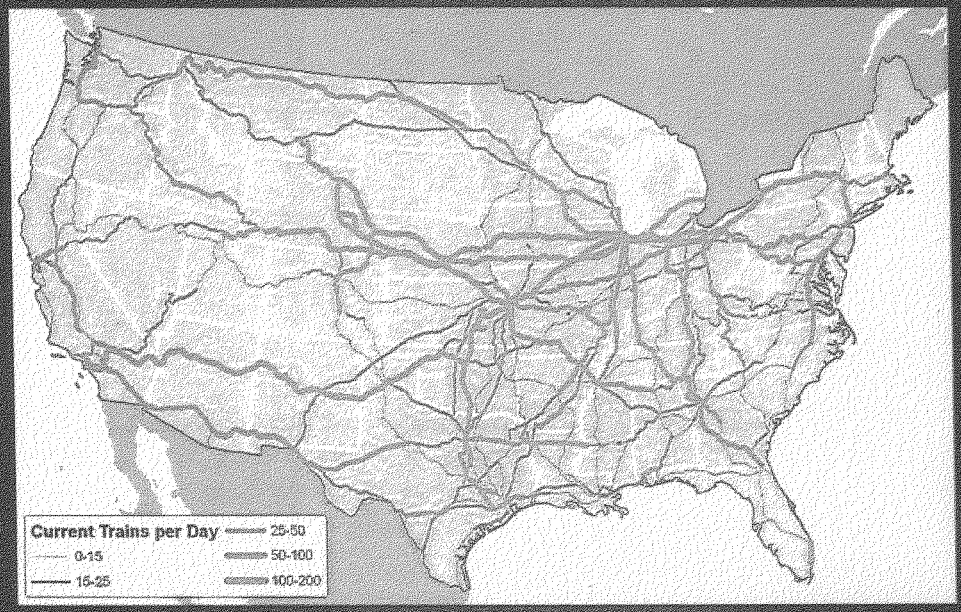
Class I freight railroads of $39 billion or about $1.4 billion per year to be funded from railroad investment tax incentives, public-private partnerships, or other sources.

These investment projections assume that the market will support rail freight prices sufficient to sustain long-term capital investments. If regulatory changes or unfunded legislative mandates reduce railroad earnings and productivity, investment and capacity expansion will be slower and the freight railroads may not be able to meet the U.S. DOT's forecast demand.

The findings of this study provide a starting point for assessing future rail freight capacity and investment requirements. The findings outline the improvements and investments required for the railroads to carry the freight tonnage forecast by the U.S. DOT. Additional work is needed to determine how much more capacity and investment would be needed for the railroads to increase their share of freight tonnage and reduce the rate of growth in truck traffic on highways. Finally, the forecasts and improvement estimates in this study do not fully anticipate future changes in markets, technology, regulation, and the business plans of shippers and carriers. Each could significantly reshape freight transportation demand, freight flow patterns, and railroad productivity, and, thus, rail freight infrastructure investment needs.

This was a hallmark study, the first collective assessment by the major freight railroads of their long-term capacity expansion and investment needs. Its findings point clearly to the need for more investment in rail freight infrastructure and a national strategy that supports rail capacity expansion and investment.

Current Corridor Volumes
2005 Freight Trains and 2007 Passenger Trains per Day

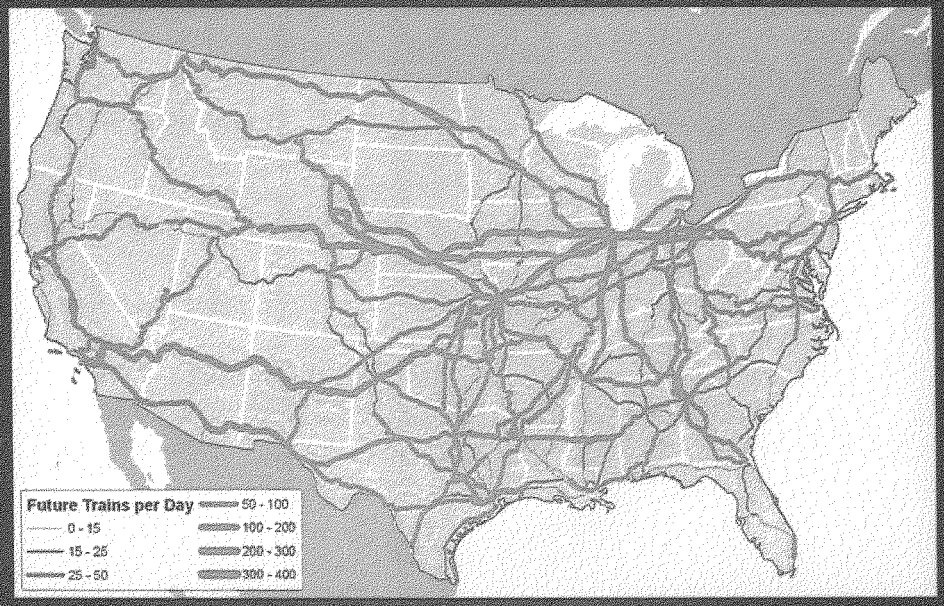


Slide 1

CAMBRIDGE SYSTEMATICS

Current Train Volumes Compared to Current Train Capacity
Current Level of Service
A; B; C
D
E
F
CAMBRIDGE SYSTEMATICS
Slide 2

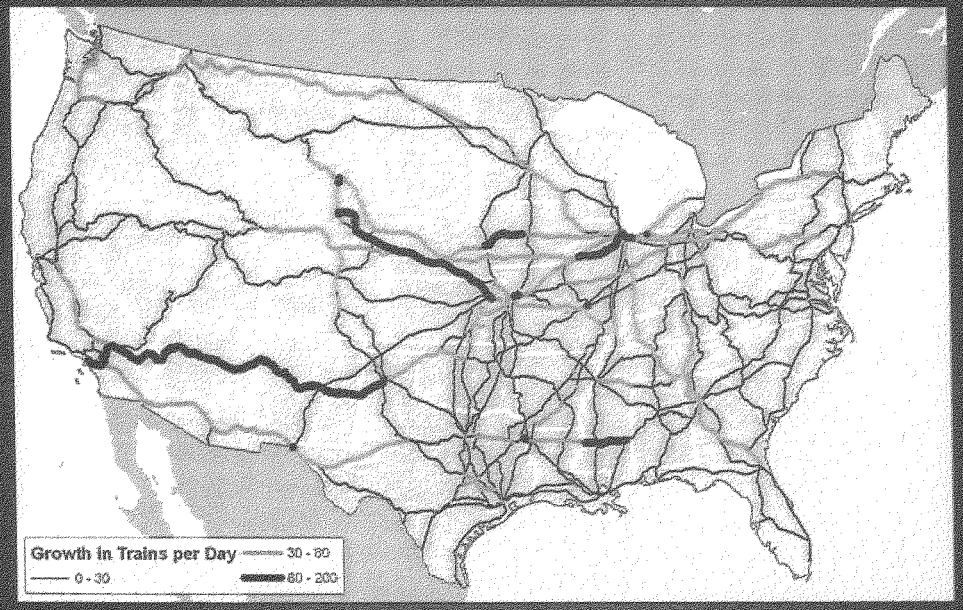
Future Corridor Volumes
2035 Freight Trains and 2007 Passenger Trains per Day



Slide 3

CAMBRIDGE SYSTEMATICS

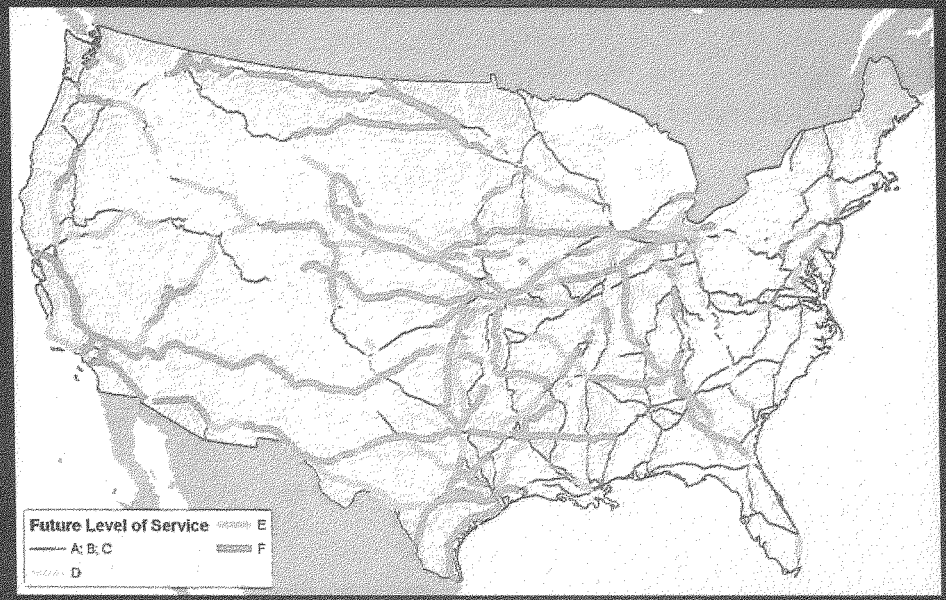
Growth in Trains per Day
2005 to 2035



Slide 4

CAMBRIDGE SYSTEMATICS

Future Corridor Volumes Compared to Current Corridor Capacity
2035 without Improvements



Slide 5

CAMBRIDGE SYSTEMATICS

Future Train Volumes Compared to Future Train Capacity

2035 with Improvements

Slide 6

CAMBRIDGE SYSTEMATICS

STATEMENT OF

EDWARD R. HAMBERGER

PRESIDENT & CHIEF EXECUTIVE OFFICER

ASSOCIATION OF AMERICAN RAILROADS

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

HEARING ON RAIL CAPACITY

APRIL 23, 2008

Association of American Railroads
50 F Street NW
Washington, DC 20001
202-639-2100

Introduction

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to discuss railroad capacity. AAR members account for 75 percent of U.S. freight railroad mileage operated, 92 percent of employees, and 95 percent of revenue.

Comprehensive, reliable, and cost-effective freight railroad service is critical to our nation. Today, freight railroads serve nearly every industrial, wholesale, retail, agricultural, and mineral-based sector of our economy. And in the words of the former Railways Adviser at the World Bank, "Because of a market-based approach involving minimal government intervention, today's U.S. freight railroads add up to a network that, comparing the total cost to shippers and taxpayers, gives the world's most cost-effective rail freight service."

Looking ahead, the United States cannot prosper in an increasingly-competitive global marketplace if our freight railroads are unable to meet our growing transportation needs. Having adequate rail capacity is critical to meeting those needs. Railroads must be able to both maintain their extensive existing infrastructure and equipment and build the substantial new capacity that will be required to transport the significant additional traffic our economy will generate.

I respectfully suggest that members of this committee, your colleagues in Congress, and other policymakers have critical roles to play. Indeed, a primary obligation of policymakers is to take steps that assist — and, just as importantly, not take steps that hinder — railroads in making the investments needed to provide the current and future freight transportation capacity our nation requires.

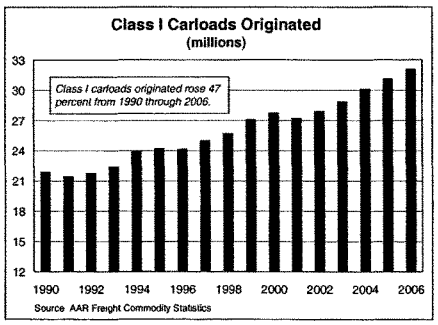
Capacity is a Challenge Everywhere in Transportation, Including on Railroads

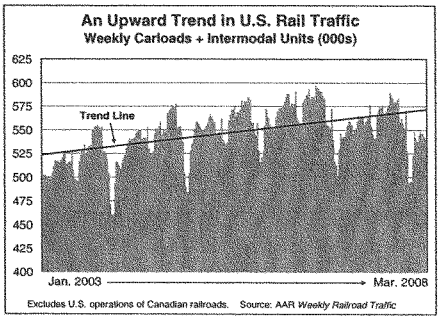
As the National Surface Transportation Policy and Revenue Study Commission noted in a recent report, "Congestion [is affecting] every mode of surface transportation for ever-

lengthening periods each day, as a result of the mismatch between demand and supply of limited capacity."[1]

To be sure, there is a tremendous amount of strength and flexibility in our nation's transportation systems, and the freight is still being delivered by all of the modes. But it is clear that all freight transportation modes are facing capacity challenges today.

Freight railroads face capacity challenges thanks largely to substantial and sustained increases in rail traffic. From 1990 to 2006, Class I tons originated rose 33 percent, carloads originated rose 47 percent, car miles rose 49 percent, and revenue ton-miles rose 84 percent. In each successive year from 1998 through 2006, Class I railroads originated more tons than ever before. Beginning in 2002, they moved more carloads in each year than ever before. Growth in intermodal traffic has been especially rapid. Beginning with the second quarter of 2002, U.S. rail intermodal traffic rose for 20 consecutive quarters, sometimes by double-digit amounts compared with the same period in the previous year.



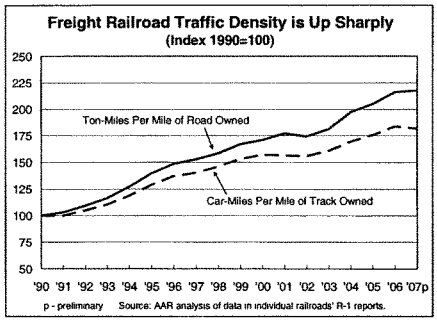


There was a slight decline in rail traffic in 2007, due mainly to the severe problems in the housing and automotive sectors. Even

[1] *Report of the National Surface Transportation Policy and Revenue Study Commission*, Volume 1, p. 4.

so, railroads operating in the United States moved more freight in 2007 than in any previous year except 2006.

As a result of these substantial traffic increases, average freight rail traffic density has increased sharply. Just from 1990 to 2007, Class I car-miles per mile of track owned rose approximately 82 percent; revenue ton-miles per mile of road owned rose some 118 percent.

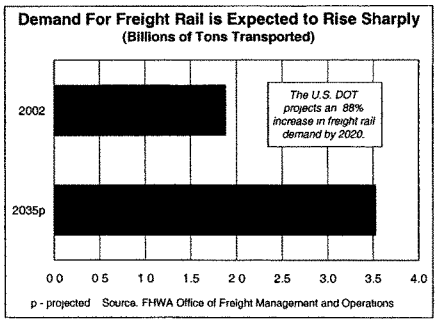


The increase in traffic and traffic density have led to capacity constraints on some rail corridors and points on the rail network. Railroads may differ in the degree to which their capacity is constrained, but there is no question that there is much less room on the U.S. rail network today than there was even a few years ago.

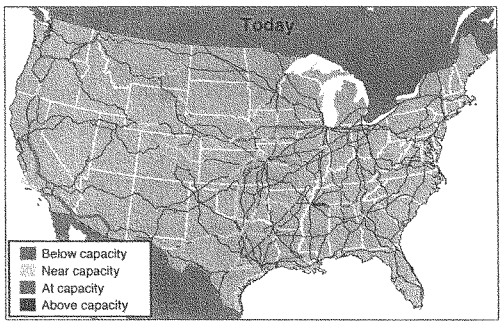
In recent years, solid growth in the economy (the current slowdown notwithstanding) and population, improved rail service offerings, expanding international trade, increasingly-congested highways, sharply higher fuel prices, and other factors have pushed more and more freight to railroads. Even when taking into account the current lessened traffic demand due to the present economic conditions, analysts generally expect market forces to continue to encourage more freight to move by rail in the years ahead.

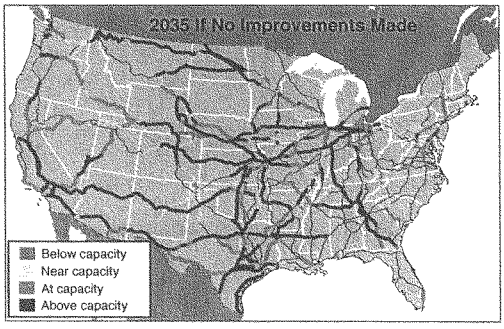
As a result, the long-term forecast is for freight rail traffic to trend steadily higher. For example, Global Insight recently projected a 28 percent increase in U.S. freight rail tonnage from 2006 through 2018. The U.S. Department of Transportation recently forecast that freight railroad demand will rise 88 percent by 2035. If the increase in rail traffic in the 15 years

following 2006 simply matches the rate of growth over the 15 years prior to 2006, by 2021 Class I carriers will be originating approximately 41 million carloads — up from 32 million in 2006.



The magnitude of the looming freight rail capacity issue was also borne out by a recent study by Cambridge Systematics, a prominent economic and transportation consulting firm. The purpose of the study, which focused on 52,000 miles of primary rail corridors, was to estimate the cost of the expansion in capacity necessary for U.S. freight railroads to handle the 88 percent increase in freight rail traffic forecast by the DOT for 2035, assuming no gain in rail's market share of intercity freight movements.





The study found that if rail capacity needs are not properly addressed, by 2035 some 16,000 miles of primary rail corridors — nearly one-third of the 52,000 miles covered in the

study — will be so congested that train flows would be unstable and congestion and service delays would be persistent and substantial. Because the rail system is so interconnected, this outcome would mean that the entire U.S. freight rail system would become, in effect, disabled.

The significance of the network aspects of rail operations cannot be overemphasized. As rail lines are operated at or near full capacity, efficiency (including operational predictability) becomes more critical. Service disruptions caused by inefficient asset utilization can have impacts not only on the railroad involved but potentially throughout the entire rail network.

All of this means that the characteristics of the U.S. freight railroad industry today are significantly different than they were in the past, when traffic levels were much lower and capacity was rarely an issue. The rail network faces capacity challenges now and could face a capacity crisis in the future if the necessary investments are not made. Looking ahead, as their traffic continues to grow, railroads will increasingly need to concentrate on building new capacity and finding ways to better utilize their existing capacity — while continuing to maintain existing capacity at high standards.

Railroad Networks Are Extremely Complex to Plan and Operate

In 2006 (the most recent year for which data are available), the approximately 560 U.S. freight railroads originated 36.5 million carloads of freight — equal to approximately 100,000 carloads, on average, every day of the year.[2] Each day, dozens of different types of freight cars are used to haul a huge variety of products between thousands of different origin and destination pairs on journeys that might be only a mile or two — or could cover several thousand miles.

[2] Rail traffic is not uniformly distributed each day, so on some days considerably more than 100,000 carloads are originated. In fact, the carloadings on the heaviest business day of the busiest season may exceed by 40 percent those of the lightest business day of the lightest season. The variance is caused in roughly equal parts by seasonal demand and the five-day work week of most rail customers. These demand variations have a significant impact on rail capacity requirements.

And unlike other network industries which transmit fungible products (*e.g.*, electricity is the same, no matter who generates it) or products that can readily be routed to particular customers using automated equipment (*e.g.*, electronic signals for telecommunications), railroads must move specific railcars carrying specific commodities from specific origins to specific locations. Railroads can accomplish this only because they devote enormous resources to plan and operate their networks to meet their customers' needs safely and efficiently.

Different Train Types Create Different Demands on the Rail Network

Managing the current and future use of rail network capacity is an extraordinarily complex process that involves a wide variety of elements. These include current and expected traffic volumes; the types of trains to be moved (*e.g.*, unit trains vs. manifest trains, passenger trains vs. freight trains, etc.), their speed, and priority status; the quantity and quality of available assets; the availability of funds for new investments; pertinent laws and regulations; and much more. Sophisticated analytical processes (*e.g.*, advanced computer modeling) help railroads understand and incorporate many of these factors into rail decision making. No computer program, though, is sophisticated enough to incorporate everything that could impact how well a rail network runs at any point in time. Thus, railroads depend critically on the experiences and judgment of their employees.

The mix of train types determines the speed and spacing of trains on a track. All else equal, a corridor that serves a single type of train can usually accommodate more trains per day than a corridor that serves a mix of train types. Trains of a single type can be operated at similar speeds and with more uniform spacing between the trains, in part because they have similar braking and acceleration capabilities. This increases the total number of trains that can operate over a track segment each day. When trains of different types — each with different length,

speed, and braking characteristics — share a track segment, greater spacing is required to ensure safe braking distances and accommodate different acceleration rates. As a result, the average speed drops and the total number of trains that can travel over the corridor is reduced.

Moreover, different train types and customer segments have different service requirements. For example, premium intermodal movements demand high levels of delivery reliability, timeliness, and speed; bulk trains (*e.g.*, coal or grain unit trains) may need consistent, managed service with coordinated pick-up and delivery, but high transit speed is often less important; customers who own or manage their own fleet of freight cars may require railroads to undertake network strategies which help them minimize these costs, such as maximizing the number of annual loaded trips rail cars make; passenger trains require high speed and reliability within a very specific time window; and so on.

In addition, a railroad must be able to move empty freight cars through the network in a manner which positions them to provide service based on continually-changing levels of customer demand.

The extent to which all of these sometimes-conflicting demands seek to use the same portions of the rail network defines the complexity of the management problem. The more complex the demand base which seeks to use the network, the greater the mixture of differing train types, the more complex network management will be, and the greater the required capacity investment.

Rail Network Planning

Like firms in every other industry, railroads have limited resources. Their ability to meet customer requirements is constrained by the extent and location of their infrastructure (both track and terminal facilities); by the availability of appropriate equipment and employees where they

are needed; and by the availability of funds necessary to augment what they already have. The constraints railroads face — particularly those involving their physical network — cannot be changed quickly. It can take a year or more for locomotives and freight cars to be delivered following their order; six months or more to hire, train, and qualify new employees; and several years to plan, permit, and build new infrastructure.[3]

In light of these factors and many more, railroads must design effective operating plans that meet customer requirements within the confines of the physical constraints they face.

The complexity of such a plan is enormous. For example, it must incorporate the differing types of demand placed on various portions of a network, as well as the changes in that demand. Sometimes these changes evolve over several (or more) years and are based on changes in underlying markets — *e.g.*, the emergence of the Powder River Basin as the premiere source of domestic coal, the growth of imported goods from the West Coast, or the development of ethanol markets. At other times, these changes are relatively sudden — brought on, for example, by natural events (*e.g.*, floods or hurricanes), economic factors (*e.g.*, export surges due to a weaker dollar), or the loss or gain of traffic flows of a major customer or group of customers through plant openings or closings or the competitive bidding process. Sometimes these changes can be foreseen; at other times, they are wholly unexpected.

A railroad's operating plan must allocate this demand across a network that has terminal processing constraints (*e.g.*, the number of yard tracks, locomotive facilities, configuration, etc.); line-haul capacity constraints (*e.g.*, number of main tracks and crossover points between them; location and frequency of sidings; types of signaling systems; speed limits; connections with other routes; etc.); locomotive availability (*e.g.*, the number, their horsepower, availability of

[3] Railroads typically have a number of projects far enough along in the planning process that construction can be initiated quickly if funds become available.

support facilities for fueling and maintenance, etc.); and employee constraints (*e.g.*, number, location, crew support facilities, equipment maintenance and servicing personnel, etc.).

On every major railroad, all of these factors must be combined to develop a plan to move traffic safely and efficiently 24 hours per day, every day of the year.

Sophisticated computer models are available to assist in the network planning process. However, these simulation results must be interpreted and validated by knowledgeable railroad personnel who use their judgment and experience as to what works and what does not.

Because of its complexity, the development of a new network operating plan to accommodate substantially-changed conditions typically takes months or years, not days or weeks. (However, refinement of an existing plan is a continuous improvement process.) In essence, the overall planning process must create a number of "mini plans" for each of the various train types (such as premium intermodal, international intermodal, coal, grain, other bulk, automotive, manifest, local, passenger, etc.) that overlay and share the physical network. Each network use plan also attempts to bring resolution to the thousands of competing customer interests that make daily use of the railroad resources.

Managing an Operating Plan

Implementing and managing an operating plan in the field is also challenging. When dealing with networks of this complexity, even the best plans will have gaps that must be filled with the managerial experience of knowledgeable personnel. Moreover, the operating situation is always fluid — day-to-day fluctuations in volume, weather, crew and equipment availability, and more can have an enormous impact on the ability of a railroad to manage to the dictates of its operating plan. Even in the best operation, trains may be late (or early), customers may not

release cars on time, bad weather may ensue, grade crossing accidents may happen, and delays may occur.

Although operating plans often build in some flexibility, where possible, to accommodate these variances, no plan can either predict or accommodate all eventualities for all portions of a rail network. Moreover, accommodation is much more difficult when capacity is constrained. In fact, when capacity is tight, disruptive incidents are more common and recovery takes longer than when the network is not fully utilized. And because the rail system truly is a network, disruptions in one portion of the system can quickly spread to distant points.[4]

The need for safe operations trumps everything else, and proper line maintenance is essential for safe rail operations. However, the need for maintenance adds still another level of complexity to rail planning. In fact, because of higher rail volumes and a trend toward heavier loaded freight cars, the maintenance of the rail network has become even more important. Railroads have no desire to return to the days when maintenance "slow orders" (speed restrictions below the track's normal speed limit) were one of the most common causes of delay on the rail network. That's why one of the most important parts of any railroad operating plan is the accompanying maintenance plan with which it is integrated, and minimizing the impact of maintenance disruptions on rail operations is one of the major reasons for the additional main track capacity that is being added to the rail network today.

Terminals and their operation are another key consideration for preserving fluidity in a rail network. A train may operate without delay over a segment of main line. However, if it cannot enter a terminal due to congestion, then it must remain out on the main line or in a siding

[4] Unlike airline networks, where the period after midnight can usually be used to recover from the previous day's problems, a rail network operates 24 hours a day. Thus, incident recovery must be accomplished while current operations are ongoing.

where it could block or delay other traffic. The ability of a terminal to hold trains when necessary and to process them quickly is one of the key elements in preventing congestion and relieving it when it does occur. Thus, one of the most important factors in increasing capacity for the rail network is enhancing the fluidity of terminals.

Unfortunately, terminals are often one of the more difficult areas in which to add capacity. They are frequently in, or near, urban areas. Expansion generally means high land and, potentially, high mitigation costs. And as discussed further below, even in less urban areas, a rail terminal is rarely considered positive by nearby residents, and its development or expansion to accommodate freight capacity growth is usually the subject of intense debate.

Four-Stage Railroad Capacity Upgrade Process

Railroads typically have four stages in the process of upgrading their capacity. They are explained sequentially below, but in actual practice tend to be used in parallel:

1. Identify and implement process changes that can enhance capacity. This includes a wide variety of steps, such as redesigning the railroad's transportation and operation plans (described above); redesigning, negotiating, and implementing new interchange plans with connecting railroads; redesigning yard and terminal operations; working with customers to improve their inbound or outbound flow processes; changing a maintenance plan; redesigning the process utilized to inspect and maintain equipment, rethinking and implementing new freight car distribution strategies; and redeploying locomotives for more effective utilization.

   Some of these process improvements can be designed and implemented in weeks or months. Others may require a year or more.

2. Develop and deploy improved information technology and processes for utilizing that technology. This includes improvements in such areas as dispatching and control systems; terminal management systems; maintenance planning systems; transportation planning systems; work assignments; locomotive and freight car monitoring; track defect identification and diagnostic systems; and locomotive maintenance management systems. Some of these improvements too can be implemented in only a few months, while others are more complex and may take several years to develop and implement.

3. Acquire and deploy assets that can be used "flexibly." This includes assets such as locomotives, freight cars, and higher-capacity maintenance machinery. These items are not restricted to any particular portion of the rail network, but can be deployed where and

when needed. Trained employees are perhaps the most important of the "flexible" assets. Equipment usually requires at least six months to acquire, often after many additional months of planning and design; employees usually require at least six months to train.

4. Adding more infrastructure, or "iron in the ground." This represents long-term assets that, once in place, cannot be redeployed elsewhere. Usually, they take at least one year to deploy, and frequently take three to ten years to plan, design, permit, and build.

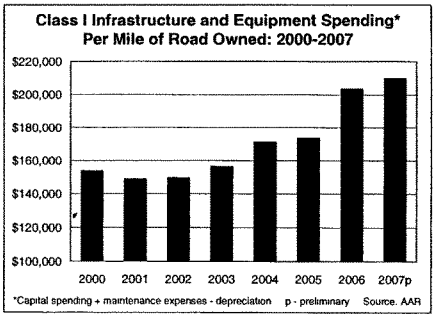
   These include projects such as main line capacity additions (*e.g.*, new main tracks, sidings, and signal systems); new terminal capacity (*e.g.*, intermodal and automotive terminals, freight classification yards, locomotive and freight equipment repair and servicing facilities); large scale upgrades of choke points in urban areas (such as the Alameda Corridor and the series of Kansas City "flyover" projects); new customer access routes; major bridge additions or rebuilds; improving tunnel clearances; and improvements in connectivity between different portions of the rail network.

Railroads Are Working on a Variety of Fronts to Increase Capacity

Railroads are committed to working to meet present and projected transportation demands by addressing the host of factors that influence the fluidity and resiliency of their operations, as well as the operations over the entire rail network. Examples of the railroads' efforts are described below.

Spending on Infrastructure and Equipment

Of the many different factors that affect how well a rail network functions, the basic amount and quality of infrastructure and equipment are among the most significant. For this reason, U.S. freight railroads have been expending, and will continue to expend, enormous resources to improve their asset base. In fact, rail spending for these purposes has never been higher than in recent years, demonstrating the diligence with which railroads are responding to the capacity issue.



Based on preliminary data, Class I capital spending in 2007 was approximately $8.8 billion. In 2003, by contrast, Class I capital spending was $5.9 billion. In addition, in recent years substantially higher percentages of rail investments have been directed to expanding capacity. If maintenance expenses are included in addition to capital spending, from 1980 through 2007, U.S. freight railroads have invested approximately $420 billion — more than 40 cents out of every revenue dollar. In 2006 and 2007, Class I railroads alone devoted more than $19 billion per year to these purposes.

Class I Spending on Infrastructure and Equipment ($ billions)

	Infrastructure				Equipment				Total Infrastructure & Equipment			
	Capital Spending	Mainten. Expenses	Deprec.	Total	Capital Spending	Mainten. Expenses	Deprec.	Total	Capital Spending	Mainten. Expenses	Deprec.	Total
2003	$4.6	$5.8	$2.4	$8.0	$1.3	$7.3	$1.1	$7.6	$5.9	$13.1	$3.5	$15.5
2004	$4.9	$6.4	$2.7	$8.6	$1.3	$7.9	$1.1	$8.1	$6.2	$14.3	$3.8	$16.7
2005	$5.4	$6.5	$3.1	$8.8	$1.0	$8.1	$1.2	$7.9	$6.4	$14.6	$4.3	$16.7
2006	$7.0	$6.8	$3.2	$10.6	$1.5	$8.5	$1.2	$8.7	$8.5	$15.3	$4.5	$19.3
2007p	$6.9	$7.2	$3.4	$10.7	$2.2	$8.6	$1.4	$9.5	$9.2	$15.8	$4.8	$20.2

p - preliminary Numbers may not add due to rounding. Source: AAR analysis of individual railroad R-1reports to the STB

The following is just a sampling of the diverse types of capacity-enhancing investments individual Class I railroads have recently made or will soon be making:

- BNSF plans a $2.45 billion capital commitment program for 2008, including leasing 200 locomotives at a cost of around $400 million and $200 million in track and facility expansion. The 2008 capacity expansion program comes after a record capacity expansion program in 2007. Major 2008 capacity expansion programs include continuing to double- or triple-track the Southern Transcon route, including a second main line across Abo Canyon in New Mexico; continuing to install double-track on a major coal route in Nebraska and Wyoming; expanding intermodal facilities in Kansas City, Los Angeles, and Memphis; and adding sidings between Fort Worth and Houston.
- Canadian National plans capital spending of around $1.5 billion in 2008, including approximately $1.1 billion on track infrastructure, $140 million on equipment, and approximately $250 million on transload facilities and distribution centers to grow the business. More than $300 million in rail infrastructure projects will be in the United States. Among many other projects, CN plans to complete the multi-year $100 million upgrade of the Johnston Yard in Memphis.
- Canadian Pacific plans capital spending of $885 million to $895 million in 2008, about equal to what the railroad spent in 2007. Funds will go to freight cars, locomotives, track renewal, and other key areas.

- CSX plans $5 billion in capital spending from 2008 to 2010. The railroad plans to spend some $200 million each year for the next three years on new locomotives and more than $100 million per year on freight cars, mainly for coal and automotive traffic. Infrastructure projects include terminal expansions in Atlanta, Buffalo, Charlotte, and Jacksonville, as well as a new intermodal terminal in northwest Ohio.
- Kansas City Southern plans capital expenditures of approximately $500 million in 2008. KCS also plans to spend about $65 million to buy 30 new locomotives for U.S. operations.
- Norfolk Southern plans to spend, in 2008, approximately $1.5 billion on capital investments (an increase of $148 million, or 11 percent, over 2007). Investments in 2008 will include a new locomotives and freight cars; the construction or expansion of facilities in Columbus and Maple Heights, Ohio; and major investments in expansion projects related to the Heartland Corridor (from the East Coast to the Midwest) and the Crescent Corridor (which will link the Northeast, Mid-Atlantic, and Central Southeast).
- Union Pacific plans to invest a total of $3.1 billion for capital projects in 2008. Major investment categories include $840 million to increase network and terminal capacity, especially on coal, ethonal, and intermodal routes and in the Houston region. UP also plans to invest $1.6 billion to maintain and strengthen track infrastructure; $490 million to upgrade the locomotive and freight car fleet, including the acquisition of 175 high-horsepower locomotives and new covered hoppers; and $170 million to upgrade information technology systems.

The massive investments railroads must make in their systems reflect their extreme capital intensity. Railroads are at or near the top among all U.S. industries in terms of capital intensity. In fact, from 1997 to 2006 (the most recent year for which data are available), the average U.S. manufacturer spent 3 percent of revenue on capital expenditures. The comparable figure for U.S. freight railroads was 17 percent, or more than five times higher. Likewise, in 2006, railroad net investment in plant and equipment per employee was $662,000 — nearly eight times the average for all U.S. manufacturing ($84,000).

Capital Expenditures as a % of Revenue for Various U.S. Industries: Avg. 1997-2006

Average all manufacturing	**3%**
Food manufacturing	2%
Petroleum & coal products mfg.	3%
Machinery manufacturing	3%
Motor vehicles & parts mfg.	3%
Wood product mfg.	3%
Fabricated metal product mfg.	3%
Chemicals manufacturing	4%
Plastics & rubber products mfg.	4%
Paper manufacturing	4%
Computer & electr. product mfg.	5%
Nonmetallic mineral product mfg.	5%
Electric utilities	13%
Class I Railroads	**17%**

Note: Utilities are 1999-2006
Source: U.S. Bureau of the Census, AAR, EEI

As a further illustration of the magnitude of rail infrastructure spending, the four largest Class I railroads spend far more on capital outlays and maintenance of track and roadway than

the vast majority of state highway agencies spend on their respective highway networks. For example, only the highway agencies of Texas, Florida, and California spend more on roadway capital and maintenance than Union Pacific and BNSF each spend on their networks. CSX and Norfolk Southern are in the top ten compared with all states.

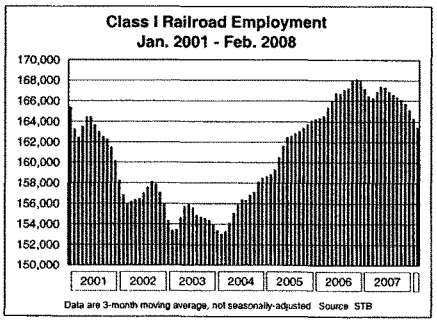
RR Spending on Way & Structures vs. State Highway Agency Spending: 2006 ($ billions)

		Total
1.	Texas	$7.57
2.	Florida	$5.69
3.	California	$4.19
	Union Pacific	**$4.17**
	BNSF	**$3.89**
4.	New York	$3.59
5.	Pennsylvania	$3.30
6.	Illinois	$3.30
	CSX	**$2.62**
7.	Michigan	$2.61
8.	North Carolina	$2.48
9.	Ohio	$2.14
	Norfolk Southern	**$2.12**
10.	Georgia	$1.88

Data include capital outlays and maintenance expenses. Sources: FHWA Highway Statistics Table SF-12 and AAR analysis of R-1 annual reports.

Hiring New Employees

In addition to equipment and infrastructure, personnel are a key determinant of rail capacity, and railroads have been aggressively hiring and training new employees. Class I railroads had 11,000 more employees in December 2007 than in December 2003, when the industry began to reverse a decades-long trend of fewer employees. The number of "train and engine" employees — mainly engineers and conductors who operate trains — was up 11 percent during this period, the number of maintenance of way and structures employees was up 5 percent, and the number of maintenance of equipment employees was up 7 percent.



Infusion of Technology

Technology has always played a key role in expanding rail capacity. Signaling systems have become more sophisticated; trains have become longer and heavier; locomotives have

become more powerful and more reliable; and track structures have become more robust and thus less prone to outages for maintenance or because of failure.

Freight railroads have always been at the forefront in the use of computers and information technology, and today railroads are rapidly expanding their use of these technologies to improve overall efficiency and the fluidity of their operations, thereby adding capacity without adding more infrastructure.

For example, railroads use advanced computer modeling software in a wide variety of rail applications, from automating rail grinding schedules and improving customer demand forecasting to optimizing yard operations. CN, for example, is implementing what it calls "SmartYard," complex computer software that identifies and analyzes every possible combination and outcome for sequencing cars in a large classification yard and simultaneously updates and communicates the car processing plan. The result is more efficient, faster yard operations. Other railroads are engaged in similar efforts.

Recognizing that another way to add capacity is to move more trains faster over the same length of track, railroads are also working with their suppliers to design, implement, and improve innovative computerized "trip planning" systems. These highly-complex systems automatically incorporate and analyze a mix of ever-changing variables (*e.g.*, crew and locomotive availability, terminal congestion, the different priority status of loads of freight, track conditions, maintenance plans, weather, etc.) to optimize how and when cars are assembled to form trains, when those trains depart, and how they are sequenced across the railroad in conjunction with the other trains that are operating.

Trip-planning systems, electronically-controlled pneumatic (ECP) brakes, train control systems, heavy-axle load research, and advanced rail car and track defect detector systems are

just a few of the many technological tools that railroads are using to improve equipment "cycle time" — *i.e.*, the total time it takes for a freight car to be loaded, hauled to destination, unloaded, returned to the same or a different shipper, and loaded again. These tools also increase the capacity of rail mainlines by allowing more precise braking, reducing the number of rail cars required to move a given amount of freight, and dramatically decreasing train delays due to equipment or track maintenance problems.

The benefits of increased efficiency can be seen through the results of rail efforts to "supersize," automate, and increase the velocity of traffic flows where practical. For example, railroads have offered trainload service to grain customers who have built high-speed "shuttle loader" elevators, which dramatically improve the efficiency of transporting grain by rail. At BNSF, for example, a typical grain car in shuttle service hauls approximately three times as much grain over the course of a year as a car in non-shuttle service.

Expanded over a network, this type of operational efficiency can free up substantial capacity for other uses. Union Pacific, for example, has estimated that a one mile-per-hour increase in system-wide velocity frees approximately 250 locomotives, 5,000 freight cars, and 180 train and engine employees to move additional traffic.

Cooperative Alliances and Collaborations

Railroads are also entering into cooperative alliances with each other and with their customers to improve capacity utilization, lower costs, and improve service.

As just one example, in October 2007, Norfolk Southern and Union Pacific announced new westbound intermodal train service that will shorten by a day the trip for standard intermodal freight from the southeastern United States to Los Angeles. This shift began with the completion of the first phase of improvements on the Meridian Speedway — Norfolk Southern's

and Kansas City Southern's joint venture corridor between Meridian, Mississippi, and Shreveport, Louisiana. In establishing this route, the railroads shortened the trip length by 130 miles compared to moving freight via the Memphis gateway.

Challenges to Capacity Expansion

The preceding section details many of the ways that railroads are diligently addressing the capacity issue. However, there are a number of serious impediments to meeting the rail capacity challenge which in many cases have prevented, delayed, or significantly increased the expense of realizing the desired capacity improvements.

The National Surface Transportation Policy and Revenue Study Commission, in its final report released in January 2008, stated that, "Simply put, the Commission believes that it takes too long and costs too much to deliver transportation projects, and that waste due to delay in the form of administrative and planning costs, inflation, and lost opportunities for alternative use of the capital hinder us from achieving the very goals our communities set."[5] The Commission's point often applies to rail infrastructure expansion projects, including projects that involve little or no public financial participation.

Under existing law, a comprehensive regulatory regime preempts state and local regulations (with the exception of local health and safety regulations) that unreasonably interfere with railroad operations. Moreover, detailed environmental reviews, when required, identify the impacts of railroad infrastructure projects and determine necessary mitigation measures.

Nevertheless, often some members of the affected local communities still oppose many rail expansion projects, and their opposition tends to be quite vocal and sophisticated. Trains do make noise, rail operations may at times be disruptive to those who live or work nearby, and the

[5] *Report of the National Surface Transportation Policy and Revenue Study Commissiot*, Volume 1, page 11.

regional or national benefits of rail freight service are often not readily apparent to, or deemed important by, the local population. Even those who recognize the benefits of rail freight service may prefer that railroads run their trains near somebody else's building or through some other town. In many cases, railroads face a classic "not-in-my-backyard" problem.

In the face of local opposition, railroads try to work with the local community to find a mutually satisfactory arrangement. These efforts are usually successful. When agreement is not reached, however, projects can face seemingly interminable delays and higher costs. For example, Norfolk Southern had to endure almost five years of delay and uncertainty before it was allowed to construct and begin operating its terminal in Austell, Georgia, needed to handle rapidly-increasing intermodal traffic within the region. More recently, Union Pacific continues to suffer delays in double-tracking its Sunset Corridor in Arizona due to issues with a state agency.

Often, local communities allege violations of environmental requirements to challenge the proposed project. Railroads understand the goals of environmental laws, and appreciate the need to be responsive to community concerns, but community opposition to rail operations can serve as a significant obstacle to railroad infrastructure investments, even when the opposition has no legal basis.

These types of delays can have significant negative affects on the costs of rail projects, and, in turn, the ability of railroads to respond to service requests. Based on railroad cost index data from the AAR, just in the five years from the first quarter of 2003 through the first quarter of 2008, railroad wage rates rose 15 percent, wage supplements (fringe benefits, such as health insurance for employees) rose 11 percent, and the cost of materials and supplies (which includes such items as rail, crossties, and ballast) rose 52 percent.

Railroads will continue to advocate that the time required for these review processes be shortened without adversely affecting the quality of that result, but until that happens, rail expansion projects will often be delayed unnecessarily.

Today's Earnings Pay for Tomorrow's Capacity

As described above, the railroads are diligently doing everything they believe to be prudent to maintain and expand their capacity to provide service, including committing record levels of investment.

However, it is important to note that because U.S. freight railroads are overwhelmingly privately owned and must finance the vast majority of their infrastructure spending themselves, capacity investments are accompanied by substantial financial risk. As the Government Accountability Office noted in a recent report, "Rail investment involves private companies taking a substantial risk which becomes a fixed cost on their balance sheets, one on which they are accountable to stockholders and for which they must make capital charges year in and year out for the life of the investment.[6] Accordingly, railroad capacity investments must pass appropriate internal railroad investment hurdles — *i.e.*, the investments will be made only if they are expected to generate an adequate return.

For this reason, adequate rail earnings are critical for capacity investment. As the Congressional Budget Office (CBO) has noted, "As demand increases, the railroads' ability to generate profits from which to finance new investments will be critical. Profits are key to increasing capacity because they provide both the incentives and the means to make new investments."[7] If a railroad is not financially sustainable over the long term, it will not be able

[6] Government Accountability Office, *Freight Railroads: Industry Health Has Improved, but Concerns About Competition and Capacity Should Be Addressed*, October 2006, p. 56.

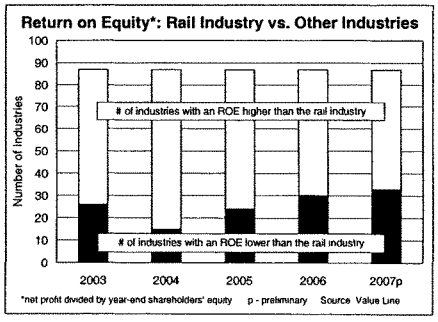
[7] Congressional Budget Office, *Freight Rail Transportation: Long-Term Issues*, January 2006, p. 11.

to make capacity investments to maintain its existing network in a condition to meet reasonable transportation demand, or make additional investments in the replacement or expansion of infrastructure required by growing demand.

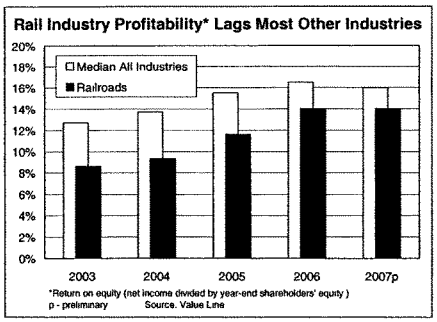
To be sure, railroads in recent years have achieved financial results that are much better than their results since the 1970s. In 2006, U.S. railroads carried more freight than ever before, and their net income was higher than ever before as well. The railroads enjoyed relatively good financial results in 2007 as well.

But these financial results need to be kept in context. Statements about railroads' "record profits" often ignore the fact that rail profitability in earlier years was relatively poor. Thus, an improvement from earlier years may be a "record," yet still fall short of the earnings achieved by most of the other industries against which railroads compete for capital. In fact, that is the case with the rail industry. Rail industry profitability has consistently lagged most other industries — and that is still the case today.

Return on equity (ROE) is a common profitability measure. According to data compiled by Value Line (a financial information firm), the ROE for the rail industry in 2006 was 14.0 percent — possibly the best ROE the U.S. rail industry has ever had. (Value Line's railroad universe includes BNSF, CSX, CN, CP, KCS, NS, UP, and Genesee & Wyoming.) By contrast, the median ROE in 2006 for the 88 industries (encompassing around 1,700 firms) for which Value Line calculates ROE was 16.5 percent — 18 percent higher than the rail figure. In fact, in 2006



railroads ranked tied for 58th among the 88 industries for which Value Line calculates ROE aggregates. Preliminary Value Line data for 2007 indicate that the railroad median (14.0 percent) will again fall short of the median for all industries (16.0 percent).



Data from the Fortune 500 tell a similar story: the median ROE for the four major railroads in the Fortune 500 was 15.0 percent in 2006. By contrast, the median ROE for all Fortune 500 firms was 15.4 percent.

In other words, while recent years may have been the best financial years ever for railroads, they have not been sufficient to bring railroads even to the mid-point among all industries, and the need for financial sustainability is as pronounced today as ever before — especially in view of the projected investment requirements the industry will be facing.

According to the Cambridge Systematics study noted earlier, an investment of $148 billion in 2007 dollars (of which $135 billion is for Class I railroads) will be necessary for rail infrastructure expansion to keep pace with economic growth, meet the DOT's forecast demand, and maintain (but not grow) rail's current market share. That expenditure is in addition to the hundreds of billions of dollars necessary over this period to maintain and replace existing rail infrastructure, and to maintain and replace locomotives, freight cars, and other equipment.

Class I railroads are anticipated to be able to generate (through earnings growth from the additional traffic and productivity gains) only $96 billion of the $135 billion needed for new capacity identified by the Cambridge Systematics study. That leaves a funding shortfall that

could be covered by tax incentives for rail infrastructure investments, public private partnerships, or other means.

Railroads will continue to spend significant amounts of their own funds to address the capacity challenges described above. However, they are, and will continue to be, unable to pay for all of the capacity that would be required to serve all shippers' needs all of the time. Since the amount of rail capital available for investment is limited, investment decisions in these circumstances focus on which investments to choose between, rather than solely whether a specific investment should be made. In such cases, those investment decisions should be based on projected returns that will most favor the long-term sustainability of the rail network.

Public Involvement in Freight Rail Infrastructure Investment

Freight railroads will continue to spend massive amounts to improve and maintain their systems. But even with their improved financial performance, funding constraints will likely prevent railroads from meeting optimal future rail infrastructure investment needs entirely on their own. This funding shortfall means that many rail projects that would otherwise expand capacity and improve the ability of our nation's farms, mines, and factories to move their goods to market; speed the flow of international trade; relieve highway congestion; reduce pollution; lower highway costs; save fuel; and enhance safety will be delayed — or never made at all.

I respectfully suggest that it is in our nation's best interest to ensure that optimal freight railroad capacity enhancements are made. Policymakers can help address the rail capacity funding gap in several ways:

- Rail Infrastructure Tax Incentives. S. 1125/H.R. 2116 (the "Freight Rail Infrastructure Capacity Expansion Act of 2007) calls for a 25 percent tax credit for investments in new track, intermodal facilities, yards, and other freight rail infrastructure projects that expand rail capacity. All businesses that make capacity-enhancing rail investments, not just railroads, would be eligible for the credit.

The budgetary cost of a rail infrastructure tax credit (ITC) would be about $300 million per year, but the stimulatory benefit to the economy would be much greater. U.S. Department of Commerce data indicate that every dollar of freight rail infrastructure investment that would be stimulated by a rail infrastructure ITC would generate more than three dollars in total economic output because of the investment, purchases, and employment occurring among upstream suppliers. We estimate that new rail investment induced by a rail ITC would generate approximately 20,000 new jobs nationwide.

The AAR gratefully acknowledges the support many members of this committee have shown toward H.R. 2116, and congratulates them on recognizing that a rail ITC addresses the central challenge of how to move more freight without causing more highway gridlock or environmental degradation.

- Short Line Tax Credit. Since 1980, more than 375 new short lines have been created, preserving thousands of miles of track (much of it in rural areas) that may otherwise have been abandoned. In 2004, Congress enacted a 50 percent tax credit ("Section 45G") for investments in short line track rehabilitation. The focus was on assisting short lines in handling the larger and heavier freight cars that are needed to provide their customers with the best possible rates and service. Since the enactment of Section 45G, hundreds of short line railroads rapidly increased the volume and rate of track rehabilitation and improvement programs. For example, the replacement of railroad ties, a key component of handling heavier cars, has increased by half a million ties per year in both 2005 and 2006 as a result of the credit. Unfortunately, Section 45G expired in 2007. Pending legislation in Congress (S. 881/H.R. 1584, the "Short Line Railroad Investment Act of 2007") would extend the tax credit and thus preserve the huge benefits it delivers.

- Public-Private Partnerships. Public-private partnerships (PPPs) reflect the fact that cooperation is more likely to result in timely, meaningful solutions to transportation problems than a go-it-alone approach. Without a partnership, projects that promise substantial public benefits in addition to private benefits are likely to be delayed or never started at all because it would be too difficult for either side to justify the full investment needed to complete them. In contrast, if a public entity shows it is willing to devote public dollars to a project based upon the public benefits that will accrue, the private entity is much more likely to provide the private dollars (commensurate with private gains) necessary for the project to proceed.

  Partnerships are not "subsidies" to railroads. Rather, they acknowledge that private entities should pay for private benefits and public entities should pay for public benefits. In many cases, PPPs only involve the public contributing a portion of the initial investment required to make an expansion project feasible --- with the railroad responsible for funding all future maintenance to keep the infrastructure productive and in good repair.

  Say No to Reregulation. Reregulation would prevent railroads from earning enough to make the massive investments a first-class rail system requires. Under reregulation, rail earnings, and therefore rail spending on infrastructure and equipment, would plummet; the industry's existing physical plant would deteriorate; needed new capacity would not be added; and rail service would become slower, less responsive, and less reliable.

Public investment in freight rail infrastructure projects is justified because the extensive benefits that would accrue to the general public by increasing the use of freight rail would far exceed the costs of public participation. For example:

- Fuel efficiency – Railroads are three or more times more fuel efficient than trucks. In 2007, railroads moved a ton of freight an average of more than 430 miles per gallon of fuel. If just 10 percent of the long distance freight that moves by highway moved by rail instead, fuel savings would exceed one billion gallons per year.
- Greenhouse Gas Emissions – Greater use of freight rail offers a simple, inexpensive, and immediate way to meaningfully reduce greenhouse gas emissions without harming the economy. Because of railroads' fuel efficiency, every ton-mile of freight that moves by rail instead of trucks reduces greenhouse gas emissions by two-thirds or more.
- Highway congestion – Highway gridlock already costs the U.S. economy more than $78 billion per year just in wasted fuel and time, according to a study by the Texas Transportation Institute. But because a typical train takes the freight of several hundred trucks off our highways, freight railroads reduce highway gridlock, the costs of maintaining existing highways, and the pressure to build costly new highways.
- Pollution – The EPA estimates that for every ton-mile of freight carried, a train typically emits substantially less nitrogen oxides and particulates than a truck.
- Safety – Fatality rates associated with intercity trucking are eight times those associated with freight rail transportation. Railroads also have lower employee injury rates.

The American Association of State Highway and Transportation Officials (AASHTO) has noted that "Relatively small public investments in the nation's freight railroads can be leveraged into relatively large benefits for the nation's highway infrastructure, highway users, and freight shippers."[8] The Congressional Budget Office (CBO) has also concluded that public investment in rail infrastructure should be considered: "Another way of addressing the underpayment of infrastructure costs by railroads' competitors is to provide financial assistance to the railroads." Echoing AASHTO, CBO observed that, "[p]roviding federal aid for a rail

[8] AASHTO, *Freight Rail Bottom Line Report*, p. 1.

investment might be economically justified if the net social benefits were large but the net private benefits to railroads were insufficient to induce them to make such an investment."[9]

Pass nger Railroads and Freight Railroad Capacity

Our nation's privately-owned freight railroads are successful partners with passenger railroads all across the country. Around 97 percent of the 22,000 miles over which Amtrak operates are owned by freight railroads, and hundreds of millions of commuter trips each year occur on commuter rail systems that operate at least partially over tracks or right-of-way owned by freight railroads.

Freight railroads recognize the potential national benefits of a strong national passenger rail system. The key question is: under what circumstances can freight and passenger interests advance this worthy goal?

As noted earlier, because of substantial and sustained traffic increases, U.S. freight railroads are moving more freight than ever before, and demand for freight rail service is projected to grow sharply in the years ahead. Passenger rail growth would come on top of growth in freight traffic. That's why, going forward, capacity will likely be the single most important factor determining our ability to provide the high quality rail service that will be essential for both freight and passengers.

While recognizing existing Amtrak statutory authority regarding use of freight railroad-owned facilities, the AAR has developed principles which we believe should govern new passenger rail use of freight-owned facilities:

- Freight railroads should not be forced to give passenger railroads access to their property; rather, access should be voluntarily negotiated.
- Freight railroads should be fully compensated for the use of their assets by passenger trains.

[9] Congressional Budget Office, *Freight Rail Transportation: Long-Term Issues* (January 2006), p. 22.

- Freight railroads should be adequately protected from liability.
- Freight railroads should not be asked to pay for capacity increases needed to accommodate passenger service.

These principles are grounded in the tremendous importance of freight railroads to America's producers and consumers. Freight railroads lower shipping costs by billions of dollars each year and produce an immense competitive advantage for our farmers, manufacturers, and miners in the global marketplace. If passenger railroads impair freight railroads and force freight that otherwise would move by rail onto the highway, those advantages would be squandered. Moreover, highway gridlock would worsen; fuel consumption, pollution, and greenhouse gas emissions would rise; and our mobility would deteriorate — outcomes that are completely contrary to the goals of expanding passenger rail in the first place

As part of its work, the National Surface Transportation Policy and Revenue Study Commission received a report from the Passenger Rail Working Group (PRWG), which provided a long-term vision for passenger rail development in this country. The authors of that report should be commended for helping policymakers focus on the important issue of intercity passenger rail. Freight railroads appreciate that the PRWG concurs that passenger rail progress must be complementary to — not in conflict with — freight rail development.

We believe that future passenger rail initiatives, especially on the scale envisioned by the PRWG, will increasingly require separate assets dedicated to passenger operation, rather than the incremental initiatives most typical of past passenger rail expansion. This more visionary approach would enable faster and more reliable passenger service, and would minimize the substantial operational, engineering, legal, and other impediments that often hinder the ability of freight railroads to accommodate passenger trains.

This approach will be costly, but so will any approach to meaningfully enhancing passenger rail. Policymakers must understand that no passenger system in the world pays for its operating and capital expenses solely from the fare box. But there are substantial public benefits from high speed intercity passenger rail. Freight railroads believe that the public benefits of a truly attractive and competitive national passenger rail capability will exceed public costs, and look forward to working with all appropriate parties to make those benefits a reality.

Conclusion

America today has the best freight rail network in the world. Still, it is clear that rail capacity will have to increase as the economy and population expand in the years ahead. Railroads are working hard to ensure that adequate capacity exists to meet our future freight transportation needs. Meanwhile, policymakers can help by instituting targeted tax incentives for projects that expand rail capacity, engaging in more public-private partnerships for freight rail infrastructure projects, and ensuring that the legislative and regulatory structure under which railroads operate is conducive to further investment in rail capacity.

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ARC Alliance for Rail Competition

National Barley Growers Association

Idaho Grain Producers Association

Testimony of Evan Hayes
Barley & Wheat Producer
Member of Idaho Barley Commission,
Executive Committee member of Alliance for Rail Competition
Immediate Past President of the National Barley Growers Association,
Past President of Idaho Grain Producers Association,
before
the House Transportation
Subcommittee on Railroads, Pipelines and Hazardous Materials
April 23, 2008

Mr. Chairman and Members of this Committee, my name is Evan Hayes. I am a malting barley and wheat producer from American Falls, Idaho, chairman of the Idaho Barley Commission, immediate past president of the National Barley Growers Association (NBGA) and past president of the Idaho Grain Producers Association (IGPA). Additionally I serve on the Executive Committee of the Alliance for Rail Competition (ARC).

I am pleased to submit this testimony on behalf of the Alliance for Rail Competition (ARC), the National Barley Growers Association, the Idaho Barley Commission, Idaho Grain Producers Association, and the agricultural community. The members of the Alliance for Rail Competition include utility, chemical, manufacturing and agricultural companies and agricultural organizations. Producers of commodities as wide ranging as soybeans, dry beans, lentils, rice, wheat, peas and sugar beets all have expressed concerns similar to those I will share with you today. Together, these organizations represent growers of farm products in more than 30 states.

Barley and wheat growers know that an effective railroad system is necessary for the success of our small grains industry. However, we continue to face many problems with service and rates that are directly tied to the capacity issues that you are addressing today. Specifically, a large portion of our small grain shippers are captive to a single railroad, which exacerbates service inadequacies. Helping our nation find solutions to

rail freight problems remains a top priority for all U.S. agriculture producers, and is the reason that we strongly support H.R. 2125, the Rail Competition and Service Act of 2008, which would provide a number of remedies to rail shippers.

Let me emphasize one point before I address rail capacity and service issues today. Our government has been working diligently for a number of years to open up markets for agricultural trade through bilateral free trade agreements and the World Trade Organization to facilitate a more competitive U.S. agricultural industry. However, all of this good work will have no positive effect if we cannot get our products to export points competitively with rest of the world. In today's globally competitive markets, it is alarming to realize that we are the only major world suppliers with a monopoly railroad between us and our markets which have the capability to take out all of the profit in the transaction.

Effects of Growing Rail Captivity

Since the passage of the Staggers Rail Act of 1980, the degree of captivity in many barley and wheat growing regions has increased dramatically, and America's farmers continue to experience both unreliable service and higher freight rates. We have had continuing rail equipment shortages since the railroads started aggressively consolidating and merging in the early 1990s. Producers know that increasing the breadth of crop production on farms can lead to greater efficiency and higher income, but rather than a focus on diversity, railroad companies view efficiency as hauling larger and larger movements of a single grade crop from a single origin to a single destination. Rail investment in grain movement has been shifted to the grain merchandiser and farm producer while the service level for less-than-trainload movements continues to deteriorate. We see value-added agriculture having to invest in rail rolling stock to ensure adequate equipment supply, yet when railroad service levels do not meet railroad-supplied schedules; agriculture is frequently called upon to even further increase investment in railroad rolling stock.

Twenty years ago, there were multiple transcontinental railroads servicing agricultural regions. Today, however, whole states, whole regions and now whole industries have become completely captive to single railroads as a result of many railroad mergers. In the grain industry alone there are substantial pockets of captivity in Texas, Oklahoma, Arizona, Colorado, Kansas, Nebraska, Wyoming, Idaho, South Dakota, Minnesota, North Dakota, Oregon, Washington and Montana. Because of these pockets of captivity, the cost of transporting grain can represent as much as 1/3 (or higher) of the overall price a producer receives for his or her grain. This cost comes directly from a producer's bottom line. It is important to keep in mind that producers, unlike other businesses, cannot pass their costs on; as price takers and not price makers, producers bear all transportation costs both to and from the farm and from the elevator to the processor or export terminal.

I will provide examples of how rail captivity and declining service has impacted wheat and barley producers.

Rail inadequacies fail producers in rising wheat market.
Following the grain harvest in 2007, there were more than 10 million bushels of Colorado wheat stored on the ground primarily in areas where there was a lack of adequate rail service, specifically captive branch line areas. Colorado did not experience a record crop last year but their wheat crop was above average at 87.75 million bushels. Their production was well below the all-time record crop of 134.55 million bushels produced in 1985, and the most recent high of 103.2 million bushels in 1999 and was smaller than wheat crops produced in 10 of the last 28 years. Yet millions of bushels sat on the ground because they were produced in areas served by single railroads with no rail-to-rail competition.

Since 80 percent of Colorado's winter wheat moves by rail to export position in the Gulf of Mexico and the Pacific Northwest - too far to truck - the railroads know wheat on the ground will still be there when they get ready to move it. While U.S. wheat prices were at record highs last fall and winter, many Colorado producers and elevator operators were prevented from capturing these market highs because they are located on captive rail lines and were unable to move their grain in a timely manner. One of the railroads suggested that the reason for wheat on the ground in Colorado was that wheat was not being marketed. I can assure you that simply was not the case. Grain elevator operators would not sit idling by and lose these excellent marketing opportunities unless the railroad can't or won't provide an adequate level of service. According to the Colorado Wheat Administrative Committee that this resulted in wider basis than normal and a loss of 25 to 50 cents per bushel to these Colorado wheat producers.

In addition to Colorado, wheat was stored on the ground last fall in South Dakota, North Dakota, Montana, Idaho and Washington. The reality for many of these producers and their grain elevator operators was an economic embargo, keeping them from fully participating in a higher priced wheat market due to lack of rail service.

Traditional barley markets are lost due to monopoly rail practices.
Similar rail capacity issues are experienced by the U.S. barley industry. A majority of U.S. barley production is captive to a single railroad, oftentimes leading to several economic dislocations, including the loss of traditional feed barley markets in California and the loss of malting barley markets to Canadian competitors. I will elaborate on each of these points.

Loss of traditional feed markets in the large California dairy shed.
California corn producers, in a study in cooperation with USDA two years ago showed the dominant western railroad was pushing Iowa and Nebraska corn into the California market with rates below full rail costs. The effect on California corn producers was they could not compete in their traditional feed markets just 100 miles away from their farms. The railroad push into the market also displaced Idaho barley from the California milk shed industry – a market we had enjoyed for 50 years. The railroad in question served both the Idaho markets and the Iowa, Nebraska and California markets after the completion of its last major merger. The railroad priced the Idaho barley shipments high

enough to eliminate the traditional movements into California and continues these market distorting actions to this day.

Prior to the rash of Western U.S. rail mergers and the resulting loss of competition, barley easily captured 50 to 60 percent of the California dairy feed grain market, amounting to between **60 and 70 million bushels** annually. Today we are moving fewer than 50 rail cars of barley per month into the California dairy market, amounting to less than **200,000 bushels**. This represents an astounding loss in market share.

In a 2004 letter to customers, Jack Koraleski, UP Executive Vice President – Marketing and Sales, announced the railroad's unilateral decision to limit carloadings and reduce the overall inventory of railcars due to the UP's failure to have enough workers to handle growth in demand. The UP also said it was creating an allocation system to protect terminals from overload, capping the number of incremental train starts, and regulating the volume of selected agricultural commodities.

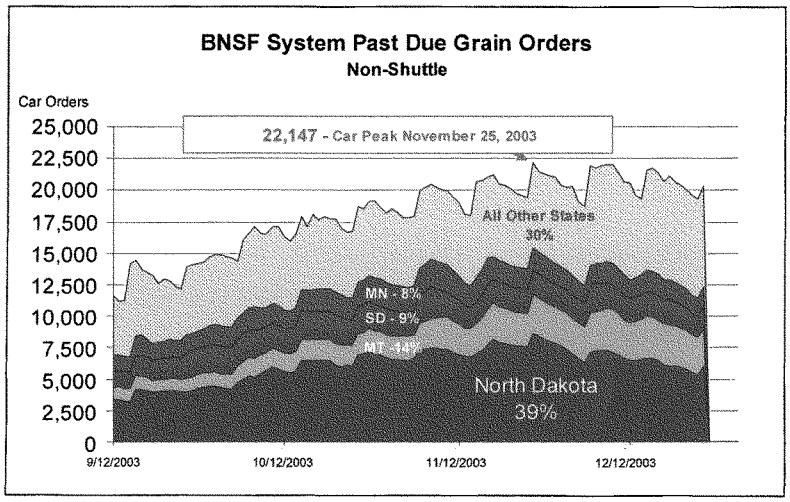
Frankly, it is little kept secret today that the monopoly railroads have no desire to move barley and will price these movements as high as needed to eliminate what would otherwise be competitive barley markets.

Loss of malting markets to Canadian competition. Again, allow me to illustrate real impacts resulting from the unrestrained market dominance by this country's railroads. Due to captive freight rates and substandard service, rail carriers effectively foreclosed any very real opportunities to move surplus malting barley from the Western U.S. to Upper Midwestern processing plants during the past three years, resulting in a 20 to 30 percent drop in prices and a 10 to 30 percent cut in contracted acreage in 2006. These U.S. malting markets were captured, instead, by our Canadian competitors, who enjoy lower rail rates in an environment where the railroads are regulated under regulatory caps. The movements from the malting producing areas in the U.S. are movements against the traditional flow. At first blush, it would seem that such an eastbound movement would produce a backhaul for rail cars headed back to the grain producing areas. However, the railroads are focused on shuttle trains and do not want to move shipments that do not conform to shuttle movement criteria even if it represents walking away from incremental business.

These wheat and barley examples underscore an economic model that encourages railroads to **dedicate their capacity and infrastructure improvements to intermodal movement at the expense of agricultural commodities**. This has been noted in numerous studies, including a GAO report issued in October 2007, *Freight Railroads – Industry Health Has Improved, But Concerns About Competition and Capacity Ought to Be Addressed*, GAO 07-94, available in full at http://www.gao.gov/new.items/d0794.pdf, that concluded those areas that are captive pay the highest freight rates yet receive some of the worst service.

During the 2003 car shortage, data produced by Burlington Northern Santa Fe (BNSF) showed that the most captive areas on BNSF system were singled out for the highest

level of past due grain orders. This is illustrated in the chart below. Of the 22,147 cars that were past due, more than 70 percent of the past due orders were in the captive northern tier states of Montana, Minnesota, North Dakota and South Dakota, though this area of the country makes up less than 20 percent of that rail system. Rail cars are currently in April, 2008, being stored all over Montana and Idaho on abandoned or soon to be abandoned branchlines.



States With Rail Captivity Continue To Lose Economic Development Due to Rail Inadequacies

One of my major malting barley customers built a new malting plant in eastern Idaho five years ago to supply its Mexican breweries. After one and a half years of negotiation to find a competitive transportation relationship with the single railroad that served this area, the brewing vice president told the Idaho Governor in a meeting I attended that if the company knew when they planned to put this plant in Idaho what they know now about the effects of rail captivity, they would never have located in Idaho.

There have been many news reports in Idaho over the last few years of plant closings where the companies have publicly stated that one of the main reasons for shutting down have been high transportation costs. In the potato industry, Idaho supplied potatoes to the JR Simplot plant in Heyburn, Idaho (famous for McDonald French fries) for many years until the plant was shut down and moved to Canada, meaning the loss of hundreds of local jobs. Mr. Simplot told us the reason was high freight costs, and, indeed, most of the shipment of frozen and fresh potatoes in my area today has been forced to trucks.

In February, 2002, the FMC Corporation's closed its Pocatello, ID phosphorous plant, resulting in the loss of 440 jobs in an already economically depressed area of the state. The local newspaper cited rail as a primary reason for the plant closure according to FMC management, "Using the Monopoly game as an example, Paul Yochum detailed how delivery costs at FMC hurt the company. If you land on a railroad in Monopoly, you pay the owner $25. Unless he owns all four railroads, in which case you pay him $200. We once negotiated with several railroads, but following several buyouts, the number of (rail) owners plummeted and our negotiating leverage stopped." Yochum went on to add, "FMC's foreign competitors can pick from any number of shipping lines; we are at a significant disadvantage to foreign producers delivering goods."

Railroad Claims of Congestion and Capacity – Do The Studies Confirm This Capacity Shortage?

For several years now, the railroads have alleged that congestion and capacity constraints necessitate changes in rail regulation. The Surface Transportation Board, and Congress, have been told that the railroad industry no longer has excess capacity, and that the need for expanded capacity warrants limiting the recourse of captive shippers in numerous ways.

We believe these questions of rail congestion and capacity constraints should be closely examined. With so many issues of such importance hanging in the balance – not just the future of the common carrier obligation, but also fundamental issues of rate and service regulation and how much say railroads should have in how captive shippers operate – it is incumbent on the Congress to closely scrutinize the Railroads' claims.

I would call the Committee's attention to the recent ***Final Report of the National Surface Transportation Policy and Revenue Study Commission***. That Commission was established by Congress in the 2005 Highway Bill, SAFETEA-LU, and charged with assessing national infrastructure needs and options for meeting increased demand, including increased demand for freight transportation.

The Commission's Final Report supports the proposition that additional rail infrastructure funding is needed. However, when the Commission analyzed the railroad industry, its findings hardly supported a free hand for railroads with respect to raising prices or rejecting service requests or declaring near term failure in the rail system due to lack of adequate infrastructure. On the contrary, the Commission found, based on AAR data:

> "The Nation's freight rail network is relatively uncongested at current volumes of cargo (see Exhibit 3-8). Eighty eight percent of today's primary freight rail corridor mileage is operating below practical capacity. About 12 percent is near or at practical capacity, and less than 1 percent is operating above capacity." [Final Report pages 3-15]

Moreover, the Commission's findings appear to have been taken from the Cambridge Systematics report commissioned by the AAR, and those findings predate the current economic downturn, which is very likely to lead to overcapacity for railroads and other carriers. *Transport Topics* recently reported that BNSF has idled some 5% of its car fleet, parking upward of thousands cars in Montana alone, due to the current "freight recession."

The AAR has argued, and the Commission found, that rail capacity constraints may exist in the future. The Commission concluded that, by 2035, 54% of freight rail corridor mileage will be below or near capacity, 15% will be at capacity, and 30% will be above capacity. It is important to note, however, that these figures **ASSUME NO NEW CAPACITY IS ADDED IN THE NEXT 28 YEARS**. [Final Report pages 4-14]

In fact, as the Railroads frequently point out, they have a commendable record of capital investment. The Final Report finds that an average total investment of $5.3 billion per year is expected to be adequate to accommodate projected freight rail demand in 2035 to a point at which 98 percent of primary rail corridors operate at a level below their theoretical capacity. [Final Report pages 4-14]

As we have noted here today, there are well-known instances of railroads failing to meet service demands from grain shippers, as well as many other shippers. However, in view of the findings of the Final Report of the National Surface Transportation Policy and Revenue Study Commission, the Committee should not be too hasty in accepting the Railroad claims of urgent capacity and congestion problems warranting wholesale rationing of service or unimpeded pricing freedom.

Railroads' calls for reduced regulation based on alleged capacity constraints are not limited to rate issues. In STB Docket No. 42060 (Sub-No,. 1), North America Freight Car Association v. BNSF Railway Company, the Surface Transportation Board (STB) addressed the complaint of providers of private covered hopper cars and other cars used for transportation of agricultural commodities, who were challenging the decision of BNSF to end its long-standing practice of providing storage for empty private cars awaiting loading.

BNSF defended its decision to impose unprecedented charges for such storage unless shippers provide their own storage, or lease track from BNSF, or agree to contracts with substantial volume commitments, squarely on capacity grounds. See the BNSF Reply Statement filed September 16, 2005 at 40:

> In this case, the NAFCA Complainants had no basis for assuming that BNSF or any other railroad might not change their demurrage or storage charge practices with respect to empty private cars. The law is clear that they cannot claim reliance on BNSF's or any other railroad's past practice to carry their burden of proving "unreasonable practice" or a car service violation. This is particularly so in light of the

> necessity for BNSF and other railroads to address the circumstance in recent years of capacity constraints on their systems. The Board has made it a priority to encourage railroads to adopt new capacity-enhancing initiatives to meet the unprecedented demand for freight rail services from almost every sector of the shipping public. Change is not only expected by the Board, but demanded.

BNSF made these arguments despite the fact that (1) Class I railroads have forced shippers to acquire freight cars for most shipments of agricultural commodities (not just peak harvest volumes);[1] (2) poor rail service increases the need for rail cars; and (3) BNSF had the most aggressive storage charge program of any major railroad, and imposed its charges regardless of whether cars stored on its lines affected capacity or congestion.

Shippers need railroads to meet increasing demand for service. However, the Railroads' continuing call for reduced regulation is not the answer. Under reduced regulation, we foresee the likelihood of higher rates and charges, demands for shippers to provide services, equipment and facilities formerly provided by railroads, and outright refusals to provide service requested by shippers. This kind of rationing is generally called "demarketing" of rail service.

These developments represent a threat to the bottom lines of many shippers, particularly agricultural shippers who cannot reasonably pass these costs along. It is often claimed by proponents of deregulation that even railroads with monopoly power will not harm the interests of their customers. However, captive shippers provided evidence to the Surface Transportation Board in Ex Parte No. 665 Proceeding, Rail Transportation of Grain, that railroad monopoly practices have managed through pricing and service differentials to virtually eliminate grain elevators that do not load 100-car or more shuttle trains from effective participation in grain marketing. As a result, many grain producers must truck their grain farther to fewer elevators, and states like Colorado, Idaho, Minnesota, Montana, North Dakota, South Dakota, Oklahoma and Texas face greater costs and burdens for maintaining and expanding their highway systems.

Furthermore, railroads have been closing selected facilities where they do not want to continue to service, such as intermodal facilities. Many states that used to have multiple facilities for loading intermodal or transloading facilities have been forced to close such facilities because the railroads refuse to provide service to such locations. This consolidation is being forced upon shippers resulting in higher transportation costs to the shippers, but lower costs and less capacity demands on the railroad.

The Railroads are likely to argue they merely seek to maximize efficient operations, and that shippers have unrealistic expectations of more and better service without higher rates and charges. In fact, shippers support reasonable efficiency improvements, but

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[1] Class I railroads provide only about one-third of the nation's covered hopper cars and no tank cars.

do not want railroads to be the sole arbiters of when service is provided and on what terms.

There is no sound public interest argument for railroads to look disproportionately to captive shippers to pay for capacity expansion so long as the contribution of non-captive traffic is not being maximized. And as a matter of law, the Long-Cannon amendment, 49 U.S.C. § 10701(d)(2), imposes further limits on differential pricing. Now that railroads have achieved or are attaining revenue adequacy, less reliance on differential pricing should be the rule even if additional revenues for infrastructure investment are required.

Conclusions

Agricultural growers together, with the members of the Alliance for Rail Competition, truly believe that a healthy and competitive railroad industry is essential for their continued viability. However, with poor service, a lack of available cars, increased rail rates and a regulatory agency that does not meet the needs of shippers, it is increasingly difficult for agricultural producers to remain competitive in a world marketplace.

It is clear, according in the ***Final Report of the National Surface Transportation Policy and Revenue Study Commission*** that rail capacity shortages may be overstated. We believe these questions of rail congestion and capacity constraints should be closely examined.

We believe that the government needs to be the facilitator and catalyst for increasing competition in this historically strong industry. We believe the railroad industry can survive and prosper in a competitive environment and, indeed, we know from history that competition breeds innovation and efficiency. The Alliance for Rail Competition, its member industries and the agricultural community believe the STB and its predecessor, the ICC, have failed to protect the interests of the captive rail shippers as the Staggers Rail Act intended.

As Congress works with the rail industry and shippers to address current and future infrastructure needs, we believe it is equally important to protect the interest of captive rail shippers. We call on this Committee to help us rebalance the monopoly practices of Railroads that seriously disadvantage captive shippers. Grain producers, along with members of ARC, believe that both railroads and shippers would be better off with more competition in the marketplace, and we strongly support provisions of HR 2125, a bill that calls for increasing competition without increasing regulation.

We believe this rail competition and infrastructure improvement legislation will improve rail transportation by providing fairness and openness in the negotiations between railroads and their customers over rates and service. By simply requiring railroads to provide rates to their customers between any two points on their system, many additional rail customers will gain access to the benefits of a competitive rail transportation system.

Thank you for this opportunity to testify today.

Evan Hayes
Barley & Wheat Producer
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TESTIMONY

OF

ALEX KUMMANT
PRESIDENT AND CHIEF EXECUTIVE OFFICER
AMTRAK

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

WEDNESDAY, APRIL 23, 2007
10:00 A.M.
2167 RAYBURN HOUSE OFFICE BUILDING

Good morning, Madam Chair and Mr. Shuster, and thank you for the opportunity to testify before this committee on the subject of freight railroad capacity. Amtrak operates on close to 22,000 miles of track in 46 states. In FY 2007, Amtrak generated over 448 million passenger miles, and 70% of those miles were over tracks owned by 22 other railroads, known as "host railroads." These railroads span the whole range of American carriers from giant Class I systems like Union Pacific and Burlington Northern Santa Fe down to small shortlines like the Buckingham Branch, the Vermont Railway and the New England Central. All of these examples are freight haulers, but Amtrak also operates over commuter authority lines such as the Metro-North Commuter Railroad in Connecticut. It's important to note that eighty percent of the train-miles are run over just four carriers: BNSF, UP, CSX, and Norfolk Southern, in order of magnitude.

I would like to talk a bit about the issue of capacity on the freight railroad system in the context of Amtrak's on time performance. This is a tough issue for us. Amtrak system on time performance outside of the Northeast Corridor has declined almost every year since 2000. Reliability is important to the passenger who expects to arrive at his destination on time, and it's also important to the taxpayer who subsidizes Amtrak. Poor on-time performance translates directly into greater operating costs and lost revenues for Amtrak.

Just last month, at the request of the Senate Commerce Committee, the DOT Inspector General prepared a report that measured the costs of poor OTP. This report notes, correctly, that on-time performance for long distance trains fell from an average of 51% in FY 2003 to almost 42% in FY 2007, while on-time performance for non-NEC corridor routes fell by 10%, from 76% to 66%. The DOT Inspector General calculated that a 75% OTP in 2006 would have had a net positive effect on our operating budget of $122.1 million; if we could have raised OTP to 85%, the net favorable effect for the year would have been $136.6 million. This figure reflects increased revenue from better on time performance and cost savings associated with late trains, and would have meant a decrease of almost a third in Amtrak's 2006 operating loss. I want to commend the Commerce Committee for asking for this information, and the DOT IG for the

effort they put into the research and preparation of this report and for delivering a quantification of the cost of poor on-time performance.

The DOT Inspector General's report did not address the causes of poor OTP, but we at Amtrak have been studying this issue in depth and have identified two principal sources. The first is interference with Amtrak trains by freight trains. This happens when Amtrak trains are routed into sidings or held at railyards or junctions to let freight trains pass, or have to slow down to travel behind slower-moving freight trains – sometimes for many, many miles. The second cause is known as "slow orders," which are essentially restrictions placed on train speed over a stretch of track. These instances arise because of ongoing maintenance but are usually due to track defects and other maintenance issues that host railroads do not prioritize for long periods of time. Freight train interference delays and slow orders are the two biggest components of all delay minutes to Amtrak trains in FY 2007.

Let me give you a little more detail on the topic of on-time performance of Amtrak trains. I would like to provide the committee our monthly system "on time performance" (or OTP) report for the end of Fiscal Year 2007. The report shows an overall improvement in long distance train OTP during the course of Fiscal Year 2007 from 30% of trains arriving on time, to 41.6%; a long distance train is classified as "late" if it fails to arrive at its destination within thirty minutes of its scheduled time – a time that includes a variable number of "scheduled recovery minutes" to allow trains to make up delays *en route*. As of the end of March, we continue to see improvement. I would also like to provide the committee with our monthly system OTP report from March, 2008. This also shows some gains over the same period in FY 2007. Our long distance OTP in March of 2007 was 41.8%; today, it is 58.5%. That's a 16.7% improvement overall, although individual train performance has been variable. This falls into the category of "better by comparison," yet still far below the 80% target which anyone would consider satisfactory.

The numbers I have cited are averages, and I want to start by saying that some host railroads do a good job handling some of our trains. Burlington Northern Santa Fe, for example, does a good job getting our daily *Empire Builder* and *Southwest Chief* across thousands of miles of prairie,

desert, and mountain railroads, while Canadian Pacific dispatches fourteen *Hiawatha* trains a day on the busy route between Chicago and Milwaukee – trains that were on time 89% of the time in FY 2007. These are very different operations, and they're run over very different pieces of railroad. While it is fair to point out that the mix of traffic and the infrastructure configuration play a large role, those differences highlight a point that's of salient importance, and that is that good on-time performance is possible when host railroads use targeted operating and maintenance practices and give appropriate attention to the timely delivery of Amtrak trains.

Poor on-time performance has very real, very measurable effects on Amtrak's ridership, revenue, and costs. As OTP worsens, we need more equipment to protect the same schedules, a trend that's reinforced by the maintenance issues that come with shortened turnaround/servicing times and longer "over the road" times. Those longer over-the-road times translate directly into greater expense for diesel fuel and labor, both of which are becoming more expensive. It's a classic example of a vicious cycle, each event compounding the effects of the others, combining, in this case, to drive our costs up.

Those are the effects of poor OTP, and the principal causes. The issue remains: what is the solution? Let me start by addressing the issue that is the central topic for these hearings today – congestion and capacity. Last year, the Association of American Railroads released a report which contains a discussion of the volume of traffic on freight routes. Page 4-9 notes that about 88% of the national railroad system is operating within its practical capacity, that 12% of it is operating at practical capacity, and that less than 1% of it is over practical capacity. You will see from the map at Figure 4.4 of that report that only a very small portion of the national network is at or above capacity, and very little of that affects Amtrak routes. That is not to deny that there is congestion in some spots along some Amtrak routes, or that investment in expanding capacity is a matter of sound public policy and in everyone's best interests. But congestion is not always the primary cause of poor on-time performance. Where congestion is an issue, I would argue that there are some immediate steps the host railroads can take to provide quick relief.

All of us need a cooperative process, which focuses on individual routes to identify and address the reasons for poor on-time performance specific to each route. To be successful, the process

will need three steps: Address poor dispatching management, address slow orders, and finally, address capacity constraints.

To start with, we must ensure that the host railroads abide by their legal obligation to give Amtrak trains preference over freight traffic. Section 24308(c) of Part 49 of the U.S. Code requires that, except in the case of an emergency, or where an exemption is specifically granted by the Department of Transportation, Amtrak must be given "preference over freight transportation in using a rail line, junction, or crossing." Some railroads such as CSX and NS have made progress on this issue on certain routes. Our experience has been that when top management of a host railroad focuses on this issue and makes the movement of Amtrak trains a priority, the operating discipline of all trains on a route improves, because a well run railroad naturally expedites its trains, as well as our own. This benefits not only Amtrak passengers through improved OTP, but also freight shippers using the same route.

The second step is addressing slow orders. When slow orders accumulate, it significantly reduces the capacity of that rail line and creates delays for Amtrak trains and freight shipments. I believe that Amtrak and freight shippers have a common interest here, because investment in railroad capacity benefits everyone. But there are two things our host railroads can do and should be doing now to improve on-time performance for Amtrak. These are adherence to the dispatching preferences contained in Federal law and the slow order obligations in their contracts with Amtrak.

Since I joined the company, I have been working directly with the freight railroad leadership to address these issues. And with some railroads, it has produced results: when the leadership of a freight carrier chooses to make the passage of Amtrak trains a priority, we see immediate and substantial improvements in performance. I think leadership engagement underpins some of the gains our long distance services made in 2007. Host railroad cooperation and engagement have been keys to these improvements.

Once dispatching management and slow orders are addressed, the third step in improving on-time performance is for Amtrak, host railroads, and potential funding partners such as states to

conduct a joint analysis of the capacity and maintenance situation along a route – model that route, identify any remaining chokepoints, and create a joint plan for capacity improvements. There is precedent for this. Any public investments in host railroad property must be tied to durable and enforceable on-time performance commitments that will protect the public's investments. As the AAR report illustrates, most Amtrak routes currently have capacity to support good OTP today as long as dispatching issues and slow orders are addressed.

In closing, while we have seen improved on-time performance over the past year, we're still not where we want to be, or where we need to be. There have been some gains, but the job is far from finished. We didn't get a 16.7% improvement in performance in one year because of massive capital investment. We got it because some of the freight carriers made some much-needed improvements to maintenance and operating practices, and at the end of the day, I think we all benefited. I hope this pattern of cooperation and joint effort can become a general practice, and I look forward to working with our freight partners on it. I think it's good for us, it's good for them, it will ultimately be good for their shippers and our passengers – and I think it's good for the nation to have a functioning and fluid rail transportation system, especially in an environment of rising fuel costs and growing highway and airport congestion.

Testimony of Al Moro, Chief Harbor Engineer, Port of Long Beach
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Before the House Committee on Transportation and Infrastructure
Subcommittee on Railroads, Pipelines and Hazardous Materials
United States Congress
April 23, 2008
"Rail Capacity"

Madam Chairwoman. Members of the Committee. Thank you for the opportunity to speak to this important Committee today. My name is Al Moro and I am the Chief Harbor Engineer for the Port of Long Beach. The Port of Long Beach is the second largest seaport in the United States and combined with our neighbor, the Port of Los Angeles, we are the fifth largest port complex in the world. In 2007, the Port of Long Beach handled more than 7.31 million containers, also known as TEUs for Twenty Foot Equivalent Units. Combined with Los Angeles, both ports handled over 15.7 million TEUs, which represented over 43% of all containerized goods entering United States ports.

The Ports of Long Beach and Los Angeles, also known as the San Pedro Bay Ports, are the leading gateways for trade between the United States and Asia. Port operations support approximately 1.4 million jobs nationally and provide consumers and businesses with billions of dollars in goods each year. About $4 billion a year is spent in the U.S. for port-industry services and trade valued annually at more than $100 billion moved through the Port of Long Beach in 2007.

Consumer products such as clothing, shoes, toys, furniture and electronics enter the Port before making its way to store shelves throughout the country. The Port of Long Beach also handles specialized goods such as petroleum, automobiles, cement, lumber, steel and other products. A majority of the consumer products and some bulk cargo are transported from the port via rail and truck throughout the region and to destinations around the country.

Transporting containers via rail has become the optimal form of goods movement for most industries. From manufacturing, retail, construction and automotive to petrochemical, technology and agriculture, hundreds of industries require reliable and dependable shipments of products. The primary source of transport for these goods is by rail through the Alameda

Corridor and out of California by the transcontinental rail systems operated by Union Pacific (UP) or the Burlington Northern Santa Fe Railway (BNSF).

As a significant intermodal and environmental mitigation projects, the Alameda Corridor is a twenty mile long grade separated railway connecting the ports of Long Beach and Los Angeles to the intercontinental rail yard in downtown Los Angeles. Since opening in 2002, the Alameda Corridor has been a successful method to transport cargo because it eliminated over 200 rail crossings, providing congestion relief and improving the efficiency of cargo movement from the ports to the rest of the nation. With almost 60% of the cargo arriving at the San Pedro Bay Ports ultimately destined for markets outside of Southern California, the Alameda Corridor has seen a 106% growth in cargo movement over the last four years.

In its first year of operation, the Alameda Corridor moved slightly more than 14,000 trains and in 2007 the Corridor moved 18,000 trains. Each day, more than 13,000 TEUs are transported on 45 trains per day that travel through the Alameda Corridor. Of note, this month the Corridor celebrated running its 100,000th train.

In 2007, the Ports of Long Beach and Los Angeles and the Alameda Corridor Transportation Authority commissioned a Trade Impact Study which found that the San Pedro Bay Ports have an impact on every Congressional District in the United States. In particular, the study looked at the jobs, and state and local taxes generated directly and indirectly by goods moving through the port complex. For example, in Florida's 3rd Congressional District, there was over an $85 million impact from imports and exports moving through the San Pedro Bay Ports. In another example, in the 9th Congressional District of Pennsylvania, the impact of goods moving through both ports was over $22 million. These examples are indicative of the national significance of the San Pedro Bay Ports, often referred to as America's Ports, because goods moving through the complex are reaching consumers all over the country, including other port cities.

Due to the geographic location of the port complex, the ports of Long Beach and Los Angeles are well positioned in relation to the transportation and rail infrastructure system that transports products throughout the region and the country. Both ports are expected to meet the growing demand for international cargo which is estimated to double from 15.7 million TEUs in 2007 to over 35.3 million TEUs by 2020. These forecasts take into consideration construction of new West Coast Ports in Canada and Mexico, a new set of canal locks in Panama, currency

fluctuations, and economic changes in the United States and Asia. Cargo forecasts are rarely accurate and have been consistently under-predicting growth for the last 20 years. San Pedro Bay Port cargo growth rates are not restrained by external factors, but by limits to terminal facilities and rail infrastructure, as well as environmental and community opposition to port projects in Southern California. A combination of insufficient rail capacity due to terminal logistics issues, as well as community opposition to port projects, will make it challenging to complete future port rail or terminal capacity enhancement projects in the short term.

Cargo transported via rail has significant environmental benefits. The Clean Air Action Plan adopted by both Ports in partnership with the United States Environmental Protection Agency, the California Air Resources Board and the South Coast Air Quality Management District, encourages terminal operators at the port complex to place more cargo on rail and rail lines to use new technologies and alternative fuels to reduce emissions impacts.

Every train using the Alameda Corridor can eliminate 700 to 750 truck trips from local freeways. Over the next five years the goal of the Clean Air Action Plan is to reduce emissions related to port activities by 50%. In particular, the CAAP calls for all diesel-powered Class 1 switcher and helper locomotives entering Port facilities to be 90% controlled for particulate matter (PM) and nitrogen oxides (NOx) by 2011 and beginning in 2012 the fleet average for Class 1 long-haul locomotives calling at Port properties will be Tier III equivalent PM and NOx. In addition, any new rail yard developed or significantly redesigned at the San Pedro Bay Ports are required to operate the cleanest available technology for switcher, helper, and long-haul locomotives, utilize idling shut-off devices and exhaust hoods and use only ultra low sulfur diesel or alternative fuels.

Portions of the existing rail and transportation system within and adjacent to the Port complex is slowly becoming constrained and will likely worsen due to cargo growth, as well as community concerns about port growth and implementation of new port terminal enhancement projects. Together with the Port of Los Angeles, the Port of Long Beach completed the *San Pedro Bay Ports Rail Study Update* in 2006 to address the current and future rail capacity issues. In particular, the Study identified rail system deficiencies and substantiated the actions required to meet rail yard demand and the need to develop a Rail Enhancement Program.

The Rail Enhancement Program was developed to coordinate conceptual improvements to port rail projects through a phased implementation plan. Both ports analyzed the complex's rail infrastructure needs and looked at ways to maximize capacity and utilization of rail systems like on-dock rail. Currently rail yards at or adjacent to the port complex have the combined throughput capacity to handle at least 30 percent of the Port cargo during the forecasted growth period between 2015 and 2030. Even after maximizing the potential on-dock rail yards proposed in the demand for intermodal rail service there will be a shortfall in rail yard capacity by at least 2010. That is why both ports recommend that in order to develop a more comprehensive rail system, rail yard capacity be developed at near-dock facilities in the vicinity of the Alameda Corridor and south of the I-405 Freeway.

At its highest estimated cargo volumes, train volumes generated by on-dock rail yards are forecast to exceed 100 trains per day, more than double the current 45 trains a day being handled by the Alameda Corridor. Total train volumes on the Port rail network is also expected to exceed 250 trains per day and those on the Alameda Corridor will approach 200 trains per day by the year 2030.

Various mainline, system and operational improvements will be required within the port complex to accommodate the projected train volumes. The total cost for rail improvements is estimated at over one billion dollars split nearly equally between rail yard projects and rail network infrastructure projects. Even with the development of infrastructure improvements outlined in the Rail Enhancement Program, the rail network is expected to suffer increasing train delays that will increase operating costs and potentially disrupt cargo flow.

The Ports have developed and are continuing to pursue development of on-dock rail yards so that cargo can be loaded onto trains at the marine terminal without generating truck trips on the local roadways and freeways. Unlike on-dock rail yards that are dedicated to a single marine terminal, near-dock rail yards have logistical advantages due to their ability to serve numerous marine terminals. Near-dock facilities are usually located within five miles of the port and are able to provide much needed intermodal capacity with greatly reduced trucking impacts, compared to more remote off-dock facilities.

Because there are not any other West Coast ports to accommodate the current and projected cargo volumes, not taking action to improve rail capacity cannot be an option. The impacts to

local communities and the region's highway system would be onerous. Long Beach Mayor Bob Foster concurs with the Port that our local communities and infrastructure system should not bare the environmental and congestion burdens of goods moving through the region to the rest of the nation.

The Port of Long Beach believes that making investments in rail infrastructure is vital to the nation's economy. In 2006, voters in the State of California approved Proposition 1B, a $2 billion measure designed to invest in the state's goods movement infrastructure. From rail and transportation infrastructure projects to environmental mitigation and port security projects, the state has taken a significant step to invest in goods movement.

In addition to Proposition 1B, the ports of Long Beach and Los Angeles recently approved an Infrastructure Cargo Fee (ICF) to be assessed to beneficial cargo owners that will raise a total of $1.4 billion to fund critical goods movement projects within the harbor complex. The ICF will provide funds for upgrades to the ports' aging rail and bridge infrastructure, reduce congestion, expedite goods movement and improve air quality. The ports will levy this Fee beginning January 2009, on each loaded import or export container moved through the ports' terminals by truck or rail. Because the program will be pay-as-you-go, the amount of the ICF will fluctuate based on that calendar year's projected funding needs for the list of approved projects that include grade separations and rail capacity improvements. It is anticipated that the fee would begin at $15 per loaded TEU and will range over a period of seven years between $10 to $18 per TEU depending on the projects that need to be funded. The ports will end collection of the Infrastructure Cargo Fee once the approved list of projects is completed and paid for. The ports will use the ICF revenue to match funds from Proposition 1B and federal funds, to help pay for major port-related transportation infrastructure and air quality improvements.

In order to move goods more efficiently from the San Pedro Bay Ports to regions across the nation, additional investments will need to be made to fund regionally and nationally significant rail projects. The Port of Long Beach looks forward to working with the Committee and other key stakeholders on the upcoming transportation authorization bill, to develop a list of critically needed rail projects and discuss alternative sources to fund projects that will allow goods that fuel our economy to continue moving.

Questions for Mr. Al Moro
Chief Harbor Engineer
Port of Long Beach
Railroads and Pipelines Subcommittee Hearing
By Rep. Grace F. Napolitano
April 23, 2008

1. **Mr. Moro do you acknowledge that port operations have drastic impacts on communities beyond the port area?**

According to the Trade Impact Study commissioned by the Alameda Corridor Transportation Authority and the ports of Long Beach and Los Angeles in 2007, it was determined that the ports have a positive economic impact on every Congressional district in the United States. In particular, the study analyzed the jobs, as well as the state and local taxes generated by goods moving through the San Pedro Bay Ports to destinations around the nation.

In addition, the Port of Long Beach is the second largest port in the United States handling over seven million twenty-foot equivalent units (TEUs) in 2007. It is estimated that due to increased consumer demand, the large consumer population in the region and the location of the San Pedro Bay Ports in relation to transportation corridors, goods will continue to move through both ports. The newest cargo forecasts predict that in 2020, approximately 36.7 million TEUs will move through the San Pedro Bay Ports. Through innovative air quality mitigation and congestion relief programs like the Green Port Policy and the Clean Air Action Plan (CAAP), the Port of Long Beach is dedicated to minimizing the negative impact of port operations throughout the region.

In particular, the CAAP adopted by the ports of Long Beach and Los Angeles, is expected to reduce emissions from port sources that include; heavy duty port drayage trucks, marine vessels, locomotives, cargo handling equipment and harbor craft by at least 47 percent by 2012. The ports along with our partners at the South Coast Air Quality Management District, the California Air Resources Board and the United States Environmental Protection Agency (EPA), will invest hundreds of millions of dollars to reduce emissions from all port-related sources.

The CAAP calls for the replacement and/or retrofit of port drayage trucks, as well as calls for a majority of major container cargo and cruise ship terminals at the ports to be equipped with shore-side electricity so that vessels turn off diesel-powered auxiliary engines while at berth. To reduce emissions, ships would also be required to reduce their speeds when entering or leaving the harbor, use low-sulfur fuels, and employ other emission-reduction measures and technologies. Additionally, the ports are encouraging terminal operators to place more cargo onto on-dock rail to reduce congestion and improve air quality. For every train placed on rail through the Alameda Corridor, up to 750 trucks can be taken off of the regional transportation corridors and freeways.

The port also partnered with transportation agencies in Southern California and the Port of Los Angeles to identify and seek funding for projects, to help reduce congestion related to port operations. From encouraging the use of on-dock rail to the proposed construction of regional infrastructure projects like the Gerald Desmond Replacement project, the port is committed to developing a comprehensive regional goods movement system.

2. **What are the Ports of Long Beach and Los Angeles doing to support a container fee in the federal , state, and/or local level that would pay for mitigating problems beyond the port area that are caused by the ports?**

   Due to decreases in state and federal environmental and transportation funding and an increase in project funding needs, the port has carefully analyzed the issue of container fees. The ports of Long Beach and Los Angeles recently adopted cargo fees to assist in funding the Clean Air Action Plan's Clean Truck Program and goods movement-related infrastructure projects.

   The ports' Infrastructure Cargo Fee (ICF) is a fee assessed to containerized cargo that will help pay for needed repair, replacement or improvement of key bridges, railway, and roadways in the harbor area. The fee will provide funds for upgrades to aging infrastructure that would reduce congestion, expedite goods movement, and improve air quality. In particular, the ICF will levy charges on each loaded import or export container moved through the ports' terminals by truck. The ports expect to use ICF funds to help leverage other local, state and federal monies to be used as matching funds for programs such as California's Proposition 1B. Collection of the fee will end once the approved list of projects is completed and paid for.

   The ports of Long Beach and Los Angeles also adopted another cargo fee that will help fund cleaner trucks and improve air quality. The fee is designed to support the replacement of nearly 17,000 trucks that serve the ports. The fees will be collected by the ports' shipping terminals and it will be used to replace and/or retrofit port drayage trucks, that is expected to result in an 80 percent reduction in air pollution from the drayage fleet in the next five years.

   In addition, the Port of Long Beach Board of Harbor Commissioners voted to support State Senator Alan Lowenthal's SB 974, that once passed will assess a $30 container fee bill on containerized cargo to fund environmental and infrastructure projects statewide. The port worked in partnership with Senator Lowenthal, to ensure that collaboratively, SB 974 and the San Pedro Bay Ports' fees will comprehensively address the regional goods movement infrastructure project needs. In addition, the Port is committed to continue working with federal, state and regional transportation agencies and port authorities to ensure that the goods movement needs of the region are met.

3. **How are you working with the Alameda Corridor East Construction Authority on supporting grade separation and grade crossing safety improvement projects that are strongly needed due to the increase in freight coming through the ports?**

   The ports of Long Beach and Los Angeles strongly support grade separation projects to improve traffic safety at railroad crossings, particularly along the Alameda Corridor East. The Port of Long Beach partnered with transportation agencies throughout Southern California and the Port of Los Angeles to identify major goods movement projects that will reduce congestion and improvement air quality. The collaborative efforts are best reflected in the recently adopted Trade Corridor Improvement Programs by the California Transportation Commission where nearly thirty grade separations in Southern California's five-county region are programmed to receive funding from the State of California's Proposition 1B goods movement funding.

4. Mr. Moro, do you think alternative freight transportation projects such as maglev systems that move containers through urban areas to rural rail heads are possible? Are there alternative freight transportation systems you are working on?

The need for alternative container mover systems is ever more pressing with severe traffic congestion, rising fuel cost, and poor air quality in the Southern California region, as the overall cost of moving containers via trucks continues to rise. The ports of Long Beach and Los Angles are currently working with other transportation agencies in Southern California in studying appropriate alternatives, including maglev that can move containers without producing emissions. The new mode of container mover systems, however, must be developed to suit intended markets by offering competitive shipping costs. To understand the market needs and to identify feasible alignments for an alternative container mover system, the ports of Long Beach and Los Angeles are cooperating with the Alameda Corridor Transportation Authority, the Los Angeles County Metro, and the Southern California Association of Governments on several concurrent studies. The outcome of these studies will provide the essential framework and constraints prior to selecting any specific technology.

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HEARING

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS

HOUSE TRANSPORTATION AND INFRASTRUCURE COMMITTEE
APRIL 23, 2008

"RAIL CAPACITY"

TESTIMONY OF

STEVE SHARP
PRINCIPAL ENGINEER
ARKANSAS ELECTRIC COOPERATIVE CORPORATION

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Madam Chairwoman and Members of the subcommittee, thank you for the opportunity to testify before you today on the important subject of "rail capacity" and reliable rail service, which is critical to my organization. My name is Steve Sharp. I am the Principal Engineer of Arkansas Electric Cooperative Corporation (AECC). One of my major responsibilities is to ensure an adequate supply of fuel for our power plants, which depends on the reliable delivery of coal by the major rail carriers that provide coal transportation to our plants.

AECC is a membership-based generation and transmission cooperative that provides wholesale electric power to electric cooperatives, which in turn serve approximately 460,000 customers located in each of the 75 counties in Arkansas. Our interest in rail issues stems from our partial ownership interests in three major coal-fired power plants in Arkansas. These power plants were designed and permitted to burn coal from the Powder River Basin (PRB) in Wyoming. The one-way distance from the PRB to our plants is approximately 1,400 miles.

Over the years we have been affected by numerous issues related to rail service, including captive shipper pricing, rail build-outs, a paper barrier that prevents a short line railroad from serving one of our plants, rail merger impacts and major rail delivery shortfalls. As a result, AECC has been a regular participant in Surface Transportation Board (STB) proceedings and we have been very actively lobbying for legislative changes that we believe will help reduce or eliminate the rail transportation problems that we have been experiencing – problems that have cost our electric customers hundreds of millions of dollars over the years.

AECC and other PRB coal shippers have concerns with the anti-competitive conduct of the western railroads in recent years. The whole movement towards "public pricing" – as opposed to negotiated transportation contracts - seems to have coincided with the reduction of head-to-head rail competition and the resulting upward movement of rail rates. Today, I will

focus mainly on the service problems AECC has experienced in transporting PRB coal from Wyoming to our power plants in Arkansas, and our view that those problems appear to have resulted from limited rail competition.

AECC's coal-fired power plants were built, and we began transporting coal to them by rail from the PRB, in the period between the late 1970's and mid-1980's. For many years the rail service to these plants generally seemed reliable. However, since the early 1990's, AECC has experienced three major rail service disruptions, with the severity of each disruption progressively worse than the previous one. While the first disruption, in 1993, resulted from widespread regional flooding that was beyond the control of railroad management, the last two major rail service disruptions have been the direct result of railroad management actions. These include the service collapse in 1997 that followed the merger of UP and SP, and the massive problems stemming from the PRB Joint Line throughput problems that arose in May 2005 as a result of deferred roadbed maintenance.

Coal fired power plants attempt to keep an adequate inventory of coal "on the ground" at our plants to guard against supply interruptions that could disrupt the operation of the plant. When the Joint Line throughput problems first arose in 2005, we were already running about 25 percent below planned coal inventory levels due to rail delivery shortfalls that had occurred for other reasons. Even so, we still had about 42 days of coal "on the ground" at our plants, which normally would be adequate to protect against variations in rail delivery performance. However, the throughput problems were so severe and lasted so long that we were forced to impose burn restrictions on our plants, purchase coal from non-PRB sources and purchase power from the spot market, all of which was much more expensive than our PRB coal-fired generation. The non-PRB coal included coal from Colorado, Colombia and Indonesia. Today, almost three years after this episode began, AECC's PRB coal deliveries are just about back to pre-disaster levels.

As a precaution, we will still be purchasing some coal this year from non-PRB sources and we may continue to do so in coming years as well as a precaution.

In the aftermath of the initial Joint Line disruptions, the Union Pacific Railroad, our rail carrier, imposed an embargo on new PRB business that lasted through March 2007. During this time, BNSF, the only other railroad that can move PRB coal, was able to engage in monopoly pricing, even for movements that theoretically could be served by the UP, but for the embargo. As a result, rates for new PRB movements shot up during this period. This has effectively undone the long decline in competitive rail coal haulage rate levels that marked the first 20 years of rail competition for PRB coal movements (1984-2004).

Railroads have tried to create the impression that the volume increases they have experienced in the past, and expect to experience in the future, inevitably exhaust capacity and cause poorer service and/or higher rates. This may be intuitively plausible, but it is not a valid excuse for what has happened.

During the wave of railroad mergers that followed the Staggers Act, the railroads told a different story. Then, heavy volumes were good; shippers were told that high concentration in the rail industry was okay because the railroads have economies of scale and can handle higher volumes more efficiently than they can lower volumes. More recently, the railroads' own study of future capacity needs, performed by Cambridge Systematics, shows how the railroad arguments about capacity and congestion require that you ignore the way productivity improvements effectively add capacity, and ignore the greater contribution that's available to support infrastructure just from adding traffic volume at current rates.

Current railroad arguments about capacity constraints are also refuted by the railroads' own history of serving PRB coal movements. For 20 years between 1984-2004, the PRB rail carriers increased productivity and invested as needed in additional infrastructure to

accommodate the growth of PRB coal from a small initial volume to one of the largest, if not the largest, rail freight flows in the world. For 20 years, rail competition, productivity and economies of scale produced the result that the railroads are now trying to claim is impossible: infrastructure investment to move higher volumes at lower rates. Especially with the railroads now approaching or achieving revenue adequacy, there should be no question that they are earning the returns needed to support adequate capacity investment.

If capacity or service is inadequate under these conditions, we believe it is the result of insufficient competition. We specifically believe that much of the instability in the service performance that has been provided by the major railroads in recent years arises from the combination of the mega-mergers and the restrictions on competition imposed by the STB's "bottleneck" rule. The bottleneck rule gave carriers free reign to exercise their "long-haul preference" by keeping other railroads from competing for portions of their movements. At the same time, the mega-mergers extended the length of haul over which that preference could be exercised, and took away independent third carriers that would otherwise be willing and able to step into the breach when service problems arise. With the combination of the mega-mergers and the bottleneck rule, shippers have no way to separate the part of a large railroad that may be working from the part that isn't.

For example, at one of our plants, the serving railroad has a 43-mile "bottleneck" segment, and is not required to cooperate with any other carrier to bring us PRB coal. To get competition, we're facing a possible need to spend $100 million or more to construct a rail "build-out" to reach a second major railroad – which investment is not needed for capacity reasons – rather than just pay the current serving carrier a fair and reasonable rate for use of the bottleneck segment.

AECC and our member consumers have also suffered from a "paper barrier" at one of our plants. This "paper barrier", which is a provision in the track lease agreement between a major railroads and a short line railroad, prevents a short line with access to our plant from providing a second, competing route for PRB and other coal deliveries to our plant. This agreement, which the Department of Justice in 2004 said would violate the antitrust laws if those laws applied to the railroads, has denied the short line railroad our business and denied our customers access to lower rates for moving coal to our power plant. The rail infrastructure has been in place to move what we need, but it can't be used because of the market power held by the railroads.

These types of restrictions on transportation competition seem inequitable to us in part because we (like many other shippers) supply much of the equipment and infrastructure that enables our shipments to move by rail. Virtually all of our coal moves in railcars that we supply. Indeed, we supported rail company efforts to improve productivity by upgrading to lightweight aluminum railcars. Our coal is unloaded at facilities (including rail loops) that have been constructed at our expense and sized to meet the increased lengths of PRB coal trains operated by the railroads in recent years.

Despite supplying our share of infrastructure and equipment, we are still subject to the full market power of the railroads. For example, if the railroads decide to increase cycle times (i.e., the number of hours that it takes one of our unit trains to complete the "cycle" of leaving the coal mine with a load of coal, traveling to an AECC power plant, delivering the coal and then returning to reload), we are forced to increase the size of the car fleet we supply in order to enable our coal to be delivered. If the railroads want us to wait for them to get around to moving the PRB coal volumes we need, or don't want to move coal to a given plant from an alternative

source, there are no market forces upon which we can rely for effective protection against these unfair and unreasonable rail practices.

The railroads say that the volume and density they've been pursuing for decades, and that provided much of the rationale for their major mergers, is now preventing them from providing reliable service at reasonable rates. We believe rather that the volume and density now being enjoyed by the major railroads make it both possible and appropriate to place greater reliance on market forces ensure shippers receive reliable service at reasonable rates - and avoid the types of service problems that we and other shippers have been forced to endure.

AECC is doing everything we can to improve the quality of the rail service we are receiving. AECC wishes that the major railroads upon whom we and our customers rely would match our efforts. We believe the forces of competition, rather than monopoly power, would lead to the reliable rail service at reasonable prices that we seek.

Thank you, Madam Chairwoman. I would welcome the opportunity to answer any of your questions.

TESTIMONY BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES AND HAZARDOUS MATERIALS
OF THE
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

"STATUS OF THE RAIL CAPACITY"

APRIL 23, 2008

SUBMITTED BY
DALE ZEHNER
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Chairwoman Brown, Ranking member Shuster and members of the Subcommittee, thank you for calling this hearing to address one of the most critical issues facing the rail industry today, "capacity". While it is often a secondary issue when transportation officials speak of growth, it is actually one of the most important factors to consider when discussing the future.

My name is Dale Zehner, Chief Executive Officer of the Virginia Railway Express (VRE) in Alexandria, Virginia. VRE operates throughout Northern Virginia and the District of Columbia and provides over 4 million passenger trips per year. VRE's ridership is comprised of residents from 37 jurisdictions and 8 cities in Virginia. On behalf of these passengers and our local jurisdictional owners, I appreciate the opportunity to appear before you today to discuss capacity and how it affects the operations and future of the VRE.

The Importance of Transportation Infrastructure Investment

From a national and state perspective, investment in the transportation system is critical to future economic growth, international competitiveness, quality of life and national security. Unfortunately, numerous studies have shown that our transportation infrastructure is not prepared to handle projected higher volumes of freight and passengers. In the Washington-Richmond corridor, which I'm most familiar with, the lack of capacity was identified as the root cause of railroad delays in the 1999 Federal Railroad Administration Report to Congress and subsequent 2000 CANAC Line Capacity Study for Virginia, VRE and CSX.

Currently, this corridor is shared by 18 Amtrak trains, 30 VRE trains and approximately 30 freight trains on a daily basis. And, until recently, these trains used a single track bridge across Quantico Creek, which was known to cause significant delays. VRE was able to partner with CSX, FTA and the Commonwealth of Virginia to fund a second bridge crossing and on-time performance skyrocketed.

Since 1992, when the Virginia Railway Express started operating commuter rail service in Virginia, over $100 million has been invested in CSX and Norfolk Southern infrastructure. As a result of that public investment in private railroads, VRE has increased the number of daily trains from 16 to the current 30 trains. Without the investment and the subsequent increase in railroad capacity, the additional service could not have been added. VRE ridership has increased from 4,000 to almost 16,000 trips per day. Further increases in the number of VRE

trains to accommodate increased ridership demands will require additional investment in railroad infrastructure. A partnership with our two host railroads is critical to future growth.

Growth and the Need for Funding

These types of partnerships are key to the future of both freight and passenger rail. The Commonwealth of Virginia has taken an active role in funding railroad infrastructure that benefits both freight and passenger carriers through the Rail Enhancement Fund. This program invests nearly $26 million per year for essential freight and passenger capacity improvements in the Commonwealth of Virginia. Current improvements funded by the Commonwealth of Virginia include, an 11-mile third track on the CSX mainline and the expansion of VRE service to Gainesville-Haymarket, which will double the capacity of the Manassas line, bringing with it nearly 6,000 more daily riders.

VRE is a prime example of the success of passenger rail given that the system was initially designed to carry 10,000 passenger trips a day and now carries close to 16,000. Moreover, demand for service reaches as far as Richmond, Charlottesville, and deep into the Shenandoah Valley. On the freight side, volumes have increased by 50 percent since deregulation of the industry in 1980 and are expected to grow by at least another billion tons in the next 20 years. Couple this with demand and the need for investment in capacity is unarguable. Riders are demanding increased rail service. Why? Because the congestion on major roads such as I-95 and I-66 have become increasingly congested. On some mornings and evenings, with accidents or severe weather, automobile commutes can increase by over two hours. Because of this congestion and the uncertainty of the automobile commute, people are moving to transit, especially commuter rail, where the commute is more predictable.

Freight Railroads Willingness to Partner

When you consider capital expenditures as a percentage of revenue, freight railroads are the most capital intensive industry in America, and the demand for capital is greater than available funds. However, despite funding challenges, between 2005 and 2007, CSX and Norfolk Southern invested approximately $35 million in the Washington to Fredericksburg, VA and Washington to Manassas corridors by replacing nearly 225,000 ties and 175,000 feet of rail. This willingness to cooperatively invest in the infrastructure is also seen in Norfolk

Southern's and CSX's commitment to providing match for grants being provided to VRE for infrastructure projects which are beneficial to both the railroad and the public. This is particularly important to VRE as local funding needed to match federal and state grants is extremely scarce and these projects would not progress without this private funding.

VRE continues to actively work with CSX and Norfolk Southern to find funding for additional improvements that will increase the capacity of the railroad and permit more fluid operations. Without this increased capacity, expansion of both passenger and freight rail in the DC area will be stagnate.

Conclusion

The demand for transportation services is at record levels and strong growth is projected to continue into the immediate future. Both freight and passenger rail are essential to the Washington, DC and Northern Virginia area, as they remove cars and trucks from the road in this heavily automobile congested region. Without an investment of public funding in our railroads, we will fall further behind in advancing both the passenger and freight rail network.

Thank you once again for allowing me to speak before you. I would be happy to answer your questions about VRE or rail service in the National Capitol region.

Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

May 5, 2008

The Honorable Corrine Brown
Chairwoman
Subcommittee on Railroads, Pipelines,
And Hazardous Materials
U.S. House of Representatives
Washington, DC 20515

The Honorable Bill Shuster
Ranking Member
Subcommittee on Railroads, Pipelines,
And Hazardous Materials
U.S. House of Representatives
Washington, DC 20515

Dear Chairwoman Brown and Ranking Member Shuster:

I am writing to provide the Surface Transportation Board's perspective on a troubling statement that was made by a witness during the Subcommittee on Railroads, Pipelines, and Hazardous Materials hearing on April 23, 2008 regarding rail capacity. Because the statement portrayed the Surface Transportation Board (STB) as non-responsive to requests for assistance, I would like the Subcommittee to have the benefit of the STB's efforts to address the situation described at your hearing.

During the April 23, 2008 hearing, Mr. Steve Sharp, representing the Arkansas Electric Cooperative Corporation, described an incident in 2005 when his company's president, Mr. Gary Voight, sent a letter to then-STB Chairman Roger Nober requesting assistance with a rail service problem. Unfortunately, Mr. Voight did not receive a written reply from Mr. Nober or anyone at the STB. He did receive a reply from the railroad in question – giving the impression that the request was simply forwarded to the railroad by the STB.

This incident was brought to my attention last year in the form of a question for the record from Senator Pryor. I am advised that the 2005 letter from Mr. Voight was inadvertently handled as an informal request and that it was delegated to STB staff who determined that it was appropriate to bring the letter to the attention of the railroad in question. The STB did not document whether Mr. Voight or his company granted permission to the STB to share his letter with the railroad. It is the STB's policy to always ask permission of rail customers in situations where the agency believes that a problem can best be resolved by sharing the specific contents of a complaint or request

directly with the railroad that is the subject of the complaint or request. It is also the STB's policy to respond to all letters from rail customers.

After investigating this matter and determining that the STB did not handle Mr. Voight's inquiry in a manner that met my expectations in the areas of customer service and correspondence control, I personally called Mr. Voight in January 2008 to apologize and to confirm that he was no longer waiting to hear from the STB on the service problems of 2005 or any related matter. Mr. Voight thanked me for my call and confirmed that he was no longer waiting for an STB response. Mr. Voight volunteered that rail service and resulting coal stockpiles were greatly improved compared with conditions in 2005. It is unfortunate that, in describing the STB's handling of this matter to the Subcommittee on April 23, Mr. Sharp neglected to mention my January call to Mr. Voight. I am enclosing my response to Senator Pryor which describes my personal attention to this matter and my call to Mr. Voight.

The STB handles hundreds of complaints and requests for assistance each year. We are dedicated to providing outstanding responsiveness and customer service. The situation I described above is clearly an anomaly that should not be seen by the Subcommittee or anyone else as representative of the STB's commitment to responding to rail customer inquiries and complaints.

Please do not hesitate to contact me if I can be of assistance to the Subcommittee. Thank you for allowing me share my perspective on this matter,

Sincerely,

Chas. Nottingham

Charles D. Nottingham

cc:
Vice Chairman Francis P. Mulvey
Commissioner W. Douglas Buttrey
Mr. Steve Sharp
Mr. Gary Voight

Enclosure

Questions for the Honorable Charles D. Nottingham, Chairman,
Surface Transportation Board
Senate Committee on Commerce, Science and Transportation and Merchant Marine Infrastructure, Safety and Security
Oversight Hearing on the Surface Transportation Board (STB)
And regulation related to the freight railroad industry
October 23, 2007

* * *

Senator Pryor:[1]

7. In 2005 the electric utilities were not getting enough coal delivered for their power plants. The CEO of Arkansas's rural electric generating company wrote the Chairman of the STB seeking assistance with this problem. I am told that my constituent never got a response to his letter from the Chairman of the STB, but rather received a letter in response from the railroad that was in question.

What legal authority does the STB have to assist a rail customer, such as my rural electric utility, that believes it's not receiving sufficient coal deliveries from its rail carrier? Why did the Arkansas Electric Cooperatives not receive a response from the STB? Why would a company sending a letter to the STB specifically and receive a response from the rail company in question and not the STB?

Answer:
The Interstate Commerce Act, at 49 U.S.C. 11101 (a), requires rail carriers to provide transportation or service on reasonable request. However, there are a variety of valid reasons, consistent with the common carrier obligation, why a particular shipper may not receive the exact level of service it wants at the exact time it wants it. The Board stands ready to ensure that carriers meet their common carrier obligation so that shippers receive services that are reasonable under the circumstances.

Service complaints or problems can often best be handled informally. In carrying out its mandate, the STB has established a very effective Rail Consumer Assistance Program, run by our Office of Compliance and Consumer Assistance (OCCA), to assist shippers with their service complaints. OCCA handles about 100 disputes in a typical year, the majority of which relate to service. The process is easy to use; it can be engaged by a simple telephone call, fax, letter or email. The follow-up by our staff is prompt and effective. Our consumer assistance staff can often bring the parties together and address their issues in a manner satisfactory to all interests. If the attempts at informal resolution are not successful, the shipper can then file a formal complaint with the Board. Such a complaint will be heard on a public record, and the Board's decision will be appealable in court.

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[1] Transmitted to Senators Lautenberg, Pryor and Smith along with the answers to the other questions for the record, on January 11, 2008.

I should note that on July 18, 2007, after hearing about coal supply concerns from a variety of sources, the STB held a field hearing in Kansas City, Missouri, to examine issues related to the efficiency and reliability of railroad transportation of resources critical to the Nation's energy supply, including coal, ethanol and other biofuels. Speakers at the hearing represented the interests of railroads, utilities, coal shippers, and other energy commodities such as ethanol. To address these issues further, the STB has established a Rail Energy Transportation Advisory Committee (RETAC) to provide advice and guidance to the agency and to serve as a forum for the discussion of emerging issues regarding the railroad transportation of energy resources such as coal and ethanol and other biofuels. RETAC is expected to address matters such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, railroads and energy-resources users. RETAC has already held its first meeting and has gotten off to a good start.

I can not tell you why the CEO of Arkansas Electric Cooperative, Mr. Gary Voight, did not receive a response to his 2005 letter directly from the then STB Chairman, to whom the letter was addressed. I can tell you that it was referred to OCCA for informal handling. In the past, OCCA would sometimes forward such correspondence to the carrier involved in an attempt to engage the parties in dialogue. Since I became Chairman, I have made sure that OCCA does not contact the carrier involved or forward correspondence to the carrier without first obtaining clearance from the complaining shipper or other party. I also ensure that all letters addressed to me (other than those that might be construed as pleadings in pending cases, as to which I cannot respond on the merits because of the prohibition against ex parte contacts) are answered promptly.

I recently called Mr. Voight, and apologized for the fact that he did not receive an appropriate response from the STB. I also informed Mr. Voight that it is my practice to respond to all inquiries. I was pleased to learn from him that rail service and coal stockpiles are greatly improved today, compared with 2005.

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