

ORIGINAL

HOUSE OF REPRESENTATIVES  
COMMONWEALTH OF PENNSYLVANIA

IN RE: TRANSPORTATION COMMITTEE, UNFULFILLED COMMITMENTS  
BY NORFOLK SOUTHERN RAILROAD

MAIN CAPITOL  
SENATE ROOM 8 E-A  
HARRISBURG, PENNSYLVANIA

THURSDAY, APRIL 26, 2001, 10:08 A.M.

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1       BEFORE:

2           HON. RICHARD GEIST, CHAIRMAN

3           HON. MIKE VEON

4           HON. PAUL PARSELLS

5           HON. DICK HESS

6           HON. JOHN MAHER

7           HON. JERE STRITTMATTER

8           HON. DANTE SANTONI

9           HON. JOHN PIPPY

10          HON. FRANK DERMODY

11          HON. KATE HARPER

12          HON. RUSS FAIRCHILD

13          HON. ELLEN BARD

14          HON. RONALD MARSICO

15          HON. DAVID LEVDANSKY

16          HON. JOSEPH MARKOSEK

17          HON. STANLEY SAYLOR

18          HON. ERIC BUGAILE

19          HON. GENE MCGILL

20          HON. JOSEPH PETRACA

21          HON. LEANNA WASHINGTON

22          HON. STEPHEN STETLER

23          HON. JESS STAIRS

24

25

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1                   CHAIRMAN GEIST:  A quorum being present,  
2  we'll start the meeting.  We're going to go right  
3  into the testimony.  First of all before we do the  
4  testimony, what I'd like to do is show the film clips  
5  that we used to open the meeting in Altoona.  And I  
6  think they're very explanatory and can do a much  
7  better job than I can.

8                   This Committee held hearings before the  
9  merger.  We took testimony all over the state.  
10 Norfolk Southern, we summarized their commitments to  
11 us.  We put those commitments in writing.  They're  
12 part of the Surface Transportation Board agreement,  
13 and I think that the black and white part of that  
14 issue is pretty much covered.  To the railroad, it's  
15 all in black and white.

16                   So, Eric, if you would run the tape and  
17 then we'll get started.

18                   (The videotape was shown.)

19                   (The videotape will be put in the file.)

20                   CHAIRMAN GEIST:  I think that tape can do  
21 one heck of a lot better job than I ever could  
22 summing up David Goode and Norfolk Southern's  
23 comments about our part of the state.

24                   What were their comments to this  
25 Committee when we did our testimony?  We were told

1 that the rail supply industry in Pennsylvania would  
2 be kept whole. We were told that it would be an  
3 unprecedented public/private partnership with the  
4 State of Pennsylvania. We were told that the short  
5 lines in Pennsylvania would have the best working  
6 agreements and the best relationships that they've  
7 ever had, better than Conrail.

8 We were told that the efficiencies were  
9 going to be great and that we would be taking a  
10 million trucks off the road and off our interstates  
11 and what a great partnership that was going to be and  
12 we can go on and on.

13 At our hearing in Altoona, we had  
14 testimony that was presented by Norfolk Southern.  
15 And in there, I was mystified. I went out and got  
16 Jeff Foxworthy's book on how to speak southern  
17 because I'm trying to find out when you make written  
18 promises and commitments to a state, how you can call  
19 them projections. How do you tell the people that  
20 work at the Hollidaysburg car shop, how do you tell  
21 the people at Juniata that that \$67 million and those  
22 jobs up there, they were merely projections?

23 In the State of Pennsylvania -- we're the  
24 largest state of the 21 states in the Norfolk  
25 Southern system. The relationship with the Norfolk

1 Southern Corporation is so good that the Governor,  
2 the Administration of Pennsylvania along with rail  
3 labor is in front of the Surface Transportation Board  
4 fighting for the promises that were made by Norfolk  
5 Southern to the State of Pennsylvania.

6 We have some testifiers today who are  
7 going to bring some things out and -- Rudy, welcome  
8 to the hearing. And I hope that by the time we get  
9 done we can summarize more information. And our  
10 Committee needs to take a look at working with our  
11 leadership, and we have two of the members of  
12 leadership who are testifying today -- what actions  
13 our General Assembly will take in an unprecedented  
14 public/private partnership.

15 The most telling statement in the  
16 testimony in Altoona, the heart of the Norfolk  
17 Southern system, was that they didn't even pay their  
18 Chamber of Commerce dues from the day they hit town.  
19 I'm one Chairman who's very disappointed, and I think  
20 that you'll hear from the testimony statewide and  
21 from testimony that you won't hear because people  
22 were afraid to testify.

23 Yesterday, I met with Phil McFerron, who  
24 runs the Short Line Association. And I think that  
25 it's a shame that when we have that kind of

1 relationship with our corporate entities in the State  
2 of Pennsylvania.

3 So I'm not going to say anything else. I  
4 think what we'll do is we'll call Sam Smith now, and  
5 then we'll let the members of the Committee ask  
6 questions when people are testifying. Sam, it's all  
7 yours.

8 REPRESENTATIVE SMITH: Thank you, Mr.  
9 Chairman, and all the members of the Committee. And  
10 to the Democratic Chairman, if you're being able to  
11 watch this today, God bless you, and I hope you have  
12 continued strength and perseverance.

13 It's my pleasure to be with you. I've  
14 got to admit that I'm a little nervous. I presented  
15 a bill before a Senate committee one day in this  
16 room, but this is the first time I ever testified  
17 before a House committee. So I hope you guys will be  
18 gentle with me. I'm not used to being on this side  
19 of the table, you know.

20 I think the tape that was presented, Mr.  
21 Chairman, was an excellent portrayal of the hope and,  
22 you know, the good feelings that people had and the  
23 potential of this merger with Norfolk Southern coming  
24 into Pennsylvania. But, you know, as it focused on  
25 Altoona, the example that I would like to bring to

1 you folks today is one off to the side of Altoona. I  
2 come from Punxsutawney, which was at one time the  
3 heart of the B&O Line. We had a pretty big railroad  
4 operation there. But over the years it became a  
5 short line, and it's now just one of the fingers that  
6 feed into the main lines.

7           And the testimony that I would like to  
8 present to you doesn't have to do just with my  
9 district but certainly it has affected that short  
10 line all the way up through Clearfield, Jefferson,  
11 Elk, McKean and Warren County, several counties up  
12 through the North and West Central Region of  
13 Pennsylvania.

14           And what's important about this is just  
15 as the tape showed the importance of Norfolk Southern  
16 being centered in Altoona and those jobs that were  
17 talked about there -- what's important to this, as I  
18 see it, is the spin-off jobs and the related  
19 industry, not just the railroad jobs, but the coal  
20 and aggregate and timber industries that can use the  
21 short line railroads that actually feed into the main  
22 lines. And I did think that we had a promise given  
23 to us that there would be a cooperation. And as the  
24 Chairman noted, these railroads are very, very  
25 concerned about their current relationship.



1                   And I'd like to just put on the record  
2                   that my interest in this was not spurred or asked --  
3                   I wasn't asked by any of the short lines to do this.  
4                   I was concerned because of just some local things  
5                   that I saw going on in my region.

6                   I'd also say, just as a quick  
7                   observation, given my position within the House,  
8                   particularly with the Republican Caucus, it's my  
9                   perception, Mr. Chairman, that under the current  
10                  situation the way things are working or not working,  
11                  it would be my observation that the folks at Norfolk  
12                  Southern really are not in good favor within the  
13                  legislature, from where I sit anyhow.

14                  And that's something that I think we need  
15                  to work to mend, and I think that they need to come  
16                  to the table in that regard because there is still a  
17                  lot of potential here. But we need to work together  
18                  to maintain what the interests are, particularly and  
19                  specifically in Altoona, but also the spin-offs that  
20                  I'm going to give you one example of.

21                  My specific example pertains to a Norfolk  
22                  Southern proposed expansion and reconstruction  
23                  project in Southern Indiana County. They're looking  
24                  at about 5.4 miles of track expansion from Saltsburg  
25                  to Clarksburg and about an 11.8-mile track

1 reconstruction from Clarksburg into the Keystone  
2 Generating Station. The proposed cost is about \$28  
3 million.

4 Now, I'm not sure if Norfolk Southern  
5 proposes to spend that out of their own pocket or if  
6 they're going to plan to come to the State for some  
7 capital assistance, redevelopment assistance-type  
8 program moneys, rail freight assistance-type moneys.  
9 I'm not sure how they plan to fund that projected \$28  
10 million. The bottom line is, Norfolk Southern will  
11 be coming to the State or wanting more development  
12 funds as they had been part of the original deal.

13 And my concern is that it's all one big  
14 pot of money really. I mean, let's say that they  
15 have a -- just for the sake of arbitrary numbers,  
16 let's say they have \$100 million of their money that  
17 they want to invest in rail improvements in  
18 Pennsylvania.

19 They're going to try to use that \$100  
20 million to leverage maybe another \$100 million of  
21 taxpayers' money, and wherever that fits into the  
22 system to me is irrelevant. You know, you put it  
23 where it's best used and where it works. And so I  
24 look at that \$28 million project that they're  
25 proposing there as, you know, related to the whole

1 system, it's kind of a zero sum game.

2 Over the past few months as I've been  
3 checking into this, I've been inquiring into the  
4 necessity of this project and the impact on the local  
5 community. Clearly when you're talking about  
6 building 5.4 miles of brand new track -- I mean,  
7 we're talking no track here. We're not talking an  
8 abandoned railroad. We're talking, you know, virgin  
9 ground. You're talking about a major impact on a  
10 local community.

11 But what's really bothersome to me is  
12 that currently the Norfolk Southern is running new  
13 coal into the Keystone Station on the short line,  
14 which runs kind of up from Butler and across to  
15 Punxsutawney and back down to Indiana. Granted, it's  
16 a longer route and it's somewhat circuitous. But  
17 it's not an inefficient route in that sense.

18 And, well, Norfolk could say that the  
19 line they're proposing is more efficient. But the  
20 key thing that it will do for the \$28 million is it  
21 will kind of shut off a lot of the bloodline to this  
22 track that supports a greater area of rural  
23 Pennsylvania and actually is, you know, a big part of  
24 that short line system.

25 For about half of that money,

1 approximately \$15 million, that short line could do  
2 the renovations to make that a more efficient track  
3 -- the slightly more circuitous, admittedly more  
4 circuitous route, not as direct. The direct route  
5 that Norfolk's proposing would only help them, only  
6 them. The other way, for half the money, would  
7 benefit them adequately and would, you know, sustain  
8 a whole other community for other spin-offs and  
9 industries that might be affected by that.

10 So I really think that when we look at  
11 those things that we have to look at that balance and  
12 getting the best bang for the buck and how we can  
13 work with not only Norfolk Southern but also with the  
14 short lines.

15 And so my main concern and the point that  
16 I'm trying to make is that I'm very concerned about  
17 what they're asking for or what they may be asking  
18 for. I don't know. I want to see the short lines be  
19 able to work with and thrive in conjunction with the  
20 main lines.

21 I mean, it's just like, Okay, maybe this  
22 project doesn't go. They get it the way they want  
23 it. That's maybe just lopping off one finger of your  
24 hand. But, eventually, as a short line dwindles here  
25 and another one there, pretty soon you may still have

1 the hand, but it won't be near as effective if it  
2 doesn't have the fingers on it. And I think that's  
3 important for us to recognize, and I know the  
4 Chairman and many of the Committee members share that  
5 view. And I just wanted to put it on the record.

6 One point that I need to make in full  
7 disclosure because it could be used either way  
8 against my statements today, on this very short line  
9 extension from Punxsy to Indiana just about a week or  
10 so ago, there was a bridge that collapsed. And it  
11 demonstrates the need of the improvement on that  
12 short line.

13 And the other folks could say, Well,  
14 that's proof that we should build our own line. It  
15 will be more efficient and more direct. I would  
16 argue -- and that's a fair argument. I'll give them  
17 that one. But I would argue that the fact that the  
18 short line already has the steel -- in less than a  
19 week, they have the steel in there. It's probably  
20 sitting -- the bridge is probably half reconstructed  
21 in less than two weeks, which you all recognize more  
22 than any of us that that's an amazing turnaround.

23 Their commitment to doing the job as a  
24 short line is tremendous, and I'm really, really  
25 proud of the work they've been able to accomplish.

1 And so, you know, there are problems on this  
2 railroad. But that's why that short line route needs  
3 its share of reconstruction. And with the commitment  
4 from the Norfolk Southern, I think it would make the  
5 whole short line system more viable.

6 And as we get into the capital budget  
7 projects and all -- I'm going to be honest -- I'm  
8 going to have real problems being supportive of  
9 projects that don't enhance and cooperate with the  
10 short lines.

11 I'll stop my testimony there, Mr.  
12 Chairman, and I'll be glad to answer any questions.

13 CHAIRMAN GEIST: Thank you. Anybody have  
14 any questions? Thank you very much, Sam.

15 REPRESENTATIVE SMITH: Mr. Fairchild  
16 wants to --

17 CHAIRMAN GEIST: Russ.

18 REPRESENTATIVE FAIRCHILD: Thank you.  
19 Representative Smith, just for clarification, I guess  
20 Norfolk Southern thinks that the short line is  
21 ripping them off. Is that the bottom line?

22 REPRESENTATIVE SMITH: I don't know that  
23 they think they're being ripped off. My guess is  
24 they just feel -- in this particular case?

25 REPRESENTATIVE FAIRCHILD: Yes.

1                    REPRESENTATIVE SMITH: They can make more  
2 money by running this short track and not have to  
3 pay, you know, the short line for the haulage across  
4 their lines. I imagine it just looks better for  
5 their bottom line over the short term. I think  
6 that's a shortsighted view if that is the case  
7 because as the short lines dwindle and die off, I  
8 think those feeder routes that provide other traffic  
9 on the main lines and provide that expansion of the  
10 communities.

11                    I mean, you know, that the railroads are  
12 important to us. Even though they're not the  
13 dominant force that they were years ago, they're  
14 still very important to us. And as we lose those  
15 short lines through the rural areas, that's the  
16 long-term view that Norfolk isn't looking at.

17                    REPRESENTATIVE FAIRCHILD: Yeah. Well,  
18 my second follow-up question that I think you've  
19 answered part of is that with the \$13 million  
20 difference, has Norfolk Southern made any projections  
21 as far as when they could recapitalize that cost? I  
22 mean, that's certainly not going to be recapitalized  
23 over the short term.

24                    And then my final thing is, you know, I  
25 agree with you. It seems to me I can remember when

1 the railroads were encouraging, absolutely  
2 encouraging, short line. In fact, they were the ones  
3 that were selling and hoping, trying to find short  
4 lines to pick their lines up. Now, it seems that  
5 we're going into an age of, perhaps, reversal. And I  
6 agree with you. I think it's take a -- it's going to  
7 take a hard look by all of us.

8 REPRESENTATIVE SMITH: I appreciate that.  
9 I am truly disappointed because I was hopeful kind of  
10 like the tape was for those jobs in Altoona. I was  
11 hopeful that our short lines would be able to thrive  
12 in this new atmosphere, and I'm disappointed and very  
13 concerned because it's a critical transportation  
14 artery in Pennsylvania and in particularly with the  
15 short lines in some of the more rural areas.

16 CHAIRMAN GEIST: Thank you, Sam.

17 REPRESENTATIVE SMITH: Thank you, Mr.  
18 Chairman. I appreciate the opportunity.

19 CHAIRMAN GEIST: From one Whip to  
20 another, from the Republican Whip to the Democratic  
21 Whip, Representative Mike Veon.

22 REPRESENTATIVE VEON: Thank you, Mr.  
23 Chairman.

24 Mr. Chairman, first of all, I want to  
25 join Sam Smith and best wishes for the Democratic



1 Chair of this Committee. We certainly miss him in  
2 Harrisburg, and we appreciate his efforts over all  
3 the years. And we wish him the very best for a  
4 recovery so he can sit here in this spot to your left  
5 or to your right.

6 Number two, Mr. Chairman, I want to thank  
7 you for the efforts that you've made on this issue in  
8 particular, for your leadership on rail issues in  
9 general. Really there's no one in the legislature  
10 that has done -- no single legislator that has done  
11 more for rail labor, for rail companies, for rail  
12 production, for rail travel, for rail carrying in the  
13 State of Pennsylvania than you have. And I really  
14 appreciate those efforts over so many years, Chairman  
15 Geist.

16 Thank you also for making sure that we  
17 have testimony and hearings on this very important  
18 issue, and I know firsthand how it's affected your  
19 area directly. But as you know, it has had impact  
20 all across the State of Pennsylvania.

21 I'm from Beaver County. We had a  
22 significant Conrail presence for years. We have a  
23 very significant railyard in Beaver County, Conway  
24 Yards. So this issue is not only important to  
25 Chairman Geist. But he's provided the opportunity

1 for members like me, a very significant presence in  
2 my home county, to make the points that I'd like to  
3 make here today.

4 I also agree, Mr. Chairman, that the tape  
5 that you showed here this morning was more compelling  
6 than any testimony from any member of the House would  
7 be on this issue. Comment after comment, position  
8 after position stated on that tape clearly  
9 demonstrates what we're dealing with right now with  
10 this company, Norfolk Southern.

11 Based on that tape and based on the  
12 experience and based on my observation and based on  
13 what has happened over the last few months, this is  
14 the most blatant, arrogant and shameful act by a  
15 company in the 17 years that I've been in the  
16 legislature. In my judgement, they've slapped the  
17 Governor in the face, they've slapped this  
18 legislature in the face, they've thumbed their nose  
19 at state government and said they're going to do what  
20 they want no matter what the state government thinks.

21 Everybody in this panel knows that this  
22 state government invested a significant amount of  
23 political capital in making sure that Norfolk  
24 Southern was successful in their acquisition of  
25 Conrail. The Governor of Pennsylvania, I think, did

1 a very good job in making sure that the federal  
2 government responded to the needs of Pennsylvania in  
3 that acquisition process.

4 This company, Norfolk Southern, made very  
5 clear, very direct promises to the Governor, to the  
6 state legislature, to the people of Pennsylvania, to  
7 the workers of this rail company on what would happen  
8 in Pennsylvania if they were successful in acquiring  
9 Conrail in this state.

10 And again, Mr. Chairman, the tape was  
11 compelling. The action since those promises were  
12 made are clear. They have lied to the people of  
13 Pennsylvania. They've lied to the Governor of this  
14 state. They've lied to the state legislature. And,  
15 frankly, they've done it in a very blatant, arrogant  
16 and shameful way.

17 So I just want to say to you, Mr.  
18 Chairman, that I appreciate the testimony that you're  
19 getting across the State of Pennsylvania on this  
20 issue. I want you to know that, in a very bipartisan  
21 way, we stand ready on the Democratic side to join  
22 with you and other members of this Committee, that  
23 once this testimony is provided, we stand ready to  
24 join you in whatever action that you deem appropriate  
25 that this Committee ought to take, this legislature

1 ought to take and this state government ought to take  
2 in dealing with Norfolk Southern in the State of  
3 Pennsylvania.

4           Again, I appreciate your effort and look  
5 forward to working with you. I think that we need to  
6 stand up for what we believe in, what's right and  
7 what they did and make sure that it's clear from us,  
8 the state legislators involved in this process, that  
9 what they did is wrong. We need to hold them  
10 accountable in this process, and we look forward to  
11 working with you to do just that.

12           Thank you, Mr. Chairman.

13           CHAIRMAN GEIST: Thank you. Any  
14 questions? Thank you very much, Michael.

15           The next testifier is Michael McClellan,  
16 Vice President Intermodal Marketing, Norfolk Southern  
17 Railroad, accompanied by General Richard Timmons.

18           Rudy, do you want to come up?

19           MR. TIMMONS: Good morning, Mr. Chairman,  
20 and members of the Committee. This is the second  
21 time I have appeared before you in as many weeks, and  
22 I thank you for the opportunity to provide additional  
23 information concerning Norfolk Southern and its  
24 presence in the Commonwealth of Pennsylvania over the  
25 past 22 months.

1                   This morning I have with me Mr. Mike  
2                   McClellan, Vice President of Intermodal Operations  
3                   for Norfolk Southern, who in just a few moments will  
4                   provide you with information concerning  
5                   intermarketing and intermodal operations in the  
6                   Commonwealth.

7                   Before that, however, let me bring you up  
8                   to date on several issues and clarify others that  
9                   were part of the testimony that some of you heard on  
10                  the 12th of April in Altoona. And as all of you  
11                  know, under separate cover, I provided copies of that  
12                  testimony which outlined in some detail the  
13                  investments that Norfolk Southern has made in the  
14                  state.

15                  At the time that I testified on the 12th,  
16                  I mentioned that we had committed \$342.8 million into  
17                  the Commonwealth in a 22-month period across the  
18                  state in a variety of projects, and I outlined those  
19                  projects and those investments in some detail. Now,  
20                  I'm pleased to report this morning that that number's  
21                  being revised upward as a result of a decision last  
22                  week by Norfolk Southern to invest \$1.9 million into  
23                  the enhancement of the Enola freight yards. We'll  
24                  increase the switching capacity in the yards from 125  
25                  cars a day to 600 cars a day, and that's a very

1 significant advance as far as ensuring that this  
2 region is a solid transportation hub.

3 Now, this 344.7 million total along with  
4 an additional 30 million commitment in the coming  
5 years to the Commonwealth is a clear indication of  
6 Norfolk Southern's commitment to the rail network in  
7 Pennsylvania and our belief in the future of the  
8 system that we're building here.

9 Now, our investment priorities have been  
10 established with the intention of building a railroad  
11 in Pennsylvania and in the Northeast that is  
12 competitive, service oriented and adaptable to the  
13 fast-moving market conditions in the freight shipping  
14 world. Our expenditures in this region of the state,  
15 in the Rutherford intermodal yards, the Enola yards  
16 and the Harrisburg intermodal yards, our Northern  
17 Region headquarters and dispatching center along with  
18 the renewed Triple Crown roadrailer operation in  
19 Swatara Township are all long-term investments  
20 developed with an eye to handling the well documented  
21 freight increases expected in the future.

22 Now, let me also reemphasize the Norfolk  
23 Southern commitment to safety across our system. The  
24 record is admirable by any measure and clearly is the  
25 focus of the Pennsylvania Public Utilities

1 Commission, the Federal Railway Administration and  
2 Norfolk Southern management. For ten consecutive  
3 years, Norfolk Southern has won the industry safety  
4 award for the Class I railroads, the Harriman Award.

5 And in the year 2000 in just the  
6 Harrisburg Division, which is roughly half of the  
7 state, the eastern half of the state, we spent \$26.7  
8 million on road bed and bridge maintenance and \$13.5  
9 million in signal projects. We're proud of our  
10 safety record, and these investments are intended to  
11 sustain our safety tradition.

12 And, Mr. Chairman, with your permission,  
13 I'd like to clarify just a couple of points that were  
14 of interest both to labor representatives as well as  
15 the Committee members following my testimony in  
16 Altoona. Is that okay with you, sir?

17 I was asked about future job  
18 opportunities for the 330 Norfolk Southern employees  
19 working in the Hollidaysburg shops. And my response  
20 was at that time that all would be offered jobs at  
21 Norfolk Southern facilities following the closure on  
22 1 September of this year. This statement is  
23 accurate, and it is correct notwithstanding other  
24 testimony provided to the Committee.

25 Also following my testimony in Altoona,

1 there were questions concerning the provisions of the  
2 New York Dock for the Hollidaysburg employees. The  
3 New York Dock is a labor protective agreement  
4 extending from the Penn Central merger of many years  
5 ago.

6 Let me say that this is a New York Dock  
7 transaction and the relocation benefits have been  
8 programmed for employees that are offered jobs  
9 distant from Altoona. As a matter of fact, these  
10 benefits far exceed the New York Dock standard  
11 requirements.

12 As you may not be aware as was not clear  
13 in that last hearing, the New York Dock benefits are  
14 not purely a railroad decision but are an agreed-upon  
15 position that can go to arbitration if employees are  
16 not satisfied. And now, of course, everyone responds  
17 to the arbitration results.

18 And, lastly, is pertaining to the New  
19 York Dock, there were some comments concerning the  
20 railroad's willingness to pay New York Dock. From  
21 Norfolk Southern's standpoint, we pay an average of  
22 one and a half million dollars monthly to former  
23 Conrail employees in the Commonwealth of Pennsylvania  
24 alone. Last month, it happened to be two million.  
25 But on average month to month, it's about a million



1 and a half dollars.

2 I testified previously that our service  
3 had dramatically improved from the summer and fall of  
4 1999 and that the Norfolk Southern performance  
5 metrics provided to the Surface Transportation Board  
6 in Washington each week reflect that upturn. To  
7 highlight this change in service efficiency, I would  
8 point out that Norfolk Southern has received  
9 laudatory letters from PP&L, U.S. Steel and short  
10 line operators thanking us for the improved service,  
11 the cooperation and the commitment that Norfolk  
12 Southern has shown in working through the problems  
13 and shortcomings since we've been up here.

14 I'd also point out that Pennsylvania has  
15 the strongest short line association of any in the  
16 nation. Norfolk Southern is a part of that. It's a  
17 healthy organization. Mr. David Goode led the  
18 railroad industry fight to establish a short line  
19 Class I railroad marketing arrangement called the  
20 Railroad Agreement. He led that. It's in effect,  
21 and we're working effectively with short lines across  
22 the state.

23 We're proud of that relationship.  
24 Despite testimony to the contrary a little earlier,  
25 we think that the statistics, our working

1 relationships and our marketing agreements will  
2 validate that.

3 Now, at this time, I'd like to introduce  
4 Mr. Mike McClellan, Vice President Intermodal  
5 Marketing, for comments that he has for your use and  
6 information. And following his comments, we will  
7 certainly be prepared to answer any questions that  
8 you may have of us. Mike.

9 MR. McCLELLAN: Well, good morning, Mr.  
10 Chairman and Committee members. My name is Mike  
11 McClellan. I'm Vice President of Intermodal  
12 Marketing for Norfolk Southern.

13 My responsibilities cover all shipments  
14 on the Norfolk Southern, moving trailers, containers  
15 and roadtrailers. I handle the pricing, product  
16 development and investment decisions associated with  
17 these businesses. Triple Crown, our trucking company  
18 in Fort Wayne, and Thoroughbred Direct, our postal  
19 logistics company in Plymouth Meeting, Pennsylvania,  
20 both report to me as well.

21 I'd also like to note that I started my  
22 railroad career at Conrail and spent ten years with  
23 that company. And during some of that time, I had  
24 the pleasure of living in the state of Pennsylvania.

25 Today I would like to talk about NS's

1 perspective on the commercial impacts that these  
2 investments and transactions as a whole have had on  
3 our business in Pennsylvania. As you know from Mr.  
4 Timmons' testimonies, Norfolk Southern has invested  
5 or launched investments of over 342 million in the  
6 Commonwealth of Pennsylvania over the past two years.

7           This unprecedented commitment underlines  
8 Norfolk Southern's belief in the franchise that we  
9 have acquired and our preparation for the future.  
10 The size of this investment and the investments that  
11 are forthcoming, however, are largely irrelevant if  
12 they do not serve the shippers, namely the shippers  
13 in Pennsylvania, more effectively and with a higher  
14 value product. In turn, without a higher a higher  
15 value product, the NS will not grow.

16           The Conrail transaction, and this  
17 underlying investment, were ultimately designed to  
18 ensure that the NS grows its rail business, whether  
19 that is through taking share off the highway or  
20 participating in the economic growth and success of  
21 its businesses here in Pennsylvania.

22           The Conrail transaction and these  
23 investments have supported and will support Norfolk  
24 Southern's growth effort in three very important  
25 ways: improving the quality of rail service,

1 stimulating the demand for rail services and  
2 improving the options and services available to rail  
3 shippers.

4 One of the most basic ways to retain  
5 business and stimulate demand for rail service is  
6 very simply to improve the quality and reliability of  
7 rail service. NS stumbled in this effort,  
8 admittedly, in 1999, but we have made considerable  
9 strides with supporting investment to turn around  
10 this and in many cases, excel beyond Conrail levels  
11 now. Of the \$342 million invested in Pennsylvania,  
12 the majority or \$208 million, has gone to improving  
13 the quality of the services that Norfolk Southern  
14 provides in this state.

15 This includes: \$108 million in basic  
16 railway infrastructure investment; 34 million in  
17 capacity expansion and de-bottlenecking projects such  
18 as the double tracking that we did right outside here  
19 in Harrisburg; \$19 million in improvements in shops,  
20 primarily Juniata; \$32 million in improvements in  
21 public related infrastructure, most notably the  
22 relocation of our main line from the streets of Erie  
23 up to the CSX main line; and \$15 million in other  
24 miscellaneous investments.

25 Norfolk Southern did this to ensure that

1 the business remained with the railroads and to meet  
2 the more stringent business demands of today's  
3 shipper. As I said earlier, none of this investment  
4 makes sense if it does not serve the shipper better.  
5 But this investment has.

6 And I'd like you to consider the total  
7 cars on line, a measure of congestion, has improved  
8 by over 15 percent since June of 1999. Average train  
9 speed has improved by 20 percent in the same period.  
10 Terminal dwell time, another measure of velocity and  
11 fluidity has improved by 20 percent since 1999.

12 The performance in my business unit,  
13 intermodal, which is probably one of the most  
14 service-sensitive, has improved by 100 percent in  
15 this period. And while the performance in the north  
16 rivals that of Conrail, who had a very service  
17 tradition in intermodal, the performance in the  
18 former NS territory is better than it ever has been.

19 Are the shippers happy? I'd like to say  
20 that they were, but I know that this would be wishful  
21 thinking. Are they getting better value for their  
22 shipping dollars? I believe the answer to that is  
23 absolutely.

24 Consider, as Mr. Timmons addressed  
25 earlier, the endorsements offered by two of the

1 largest shippers in Pennsylvania, PP&L and U.S.  
2 Steel, of the improvements that Norfolk Southern has  
3 made for their business. We have also had comments  
4 from our short line partners, of whom there are over  
5 60 in the Commonwealth, noting the improvements in  
6 service levels and overall improvements in the level  
7 of communications that they have day-to-day with our  
8 company.

9           The investment in service improvement  
10 does not end here. Mr. Timmons stated that the NS is  
11 planning on spending almost \$2 million to  
12 rehabilitate parts of Enola yard outside of  
13 Harrisburg. This is actually part of a much larger  
14 initiative to fundamentally change the way the NS  
15 runs the majority of its business.

16           NS, with its consulting partner  
17 Multimodal, is developing a new rail service plan  
18 that moves significantly closer to the concept of a  
19 scheduled railroad. Enola is just one of the pieces  
20 of this rather complex initiative. But the end  
21 result is simple, to provide greater speed and more  
22 predictability to the rail shippers using Norfolk  
23 Southern.

24           The second thing this investment does is  
25 improve the demand for rail services. Service is the

1 shotgun approach to improving business levels. When  
2 you improve service, it rises the tide to all modes.  
3 But some businesses require more direct investments  
4 to improve the efficiency of their rail operations,  
5 launch or expand their businesses on the NS, or  
6 expand their rail handling capacity.

7 In this regard, the NS has invested over  
8 \$92 million in Pennsylvania for incentives to expand  
9 or locate a business on the Norfolk Southern in the  
10 Commonwealth.

11 Some of the most notable of these include  
12 the following: NS will be investing about a half a  
13 million dollars to expand the rail siding capacity at  
14 three Pennsylvania industries including Novalog in  
15 Fairless, Filmtech in Allentown and Schmalbach  
16 Plastics in Chapman, Pennsylvania. This will allow  
17 these businesses to expand in the Commonwealth and  
18 provide increased rail shipments to the NS.

19 Also, as was discussed earlier today, NS  
20 is investing in a new rail line to better serve the  
21 Keystone power plant owned by Key-Con in Shelocta,  
22 PA. This will provide a more efficient means for  
23 this customer -- for the customer to move coal, will  
24 remove up to 43,000 truck trips annually from the  
25 roads in Indiana County, and will eliminate almost a

1 train move per day from over 70 Pennsylvania grade  
2 crossings.

3 Other incentives for growth have included  
4 adding a rail-to-truck transload facility at Midwest  
5 Generation's Homer City power plant to reduce the  
6 costs of Pennsylvania Coal for this customer,  
7 increasing the loading capacity at Consol's Bailey  
8 mine in Southwest Pennsylvania so that they can  
9 increase total production and meet the rising demand  
10 for energy in this state, and assisting RR Donnelly  
11 with an expansion of their rail siding so they could  
12 increase the amount of rail shipping that they do at  
13 their Lancaster facility.

14 Another significant investment made by  
15 Norfolk Southern in Pennsylvania is in its new fiber  
16 optic network through Thoroughbred Technology and  
17 Telecommunications, or T-Cubed. By the end of 2001,  
18 Norfolk Southern will have invested \$52 million in  
19 conduits and fiber optics from the Pennsylvania-Ohio  
20 border through Harrisburg to Alexandria, Virginia.

21 While this investment does not  
22 necessarily lure any rail shippers to Pennsylvania,  
23 it does create a new telecommunications  
24 infrastructure in the Commonwealth that could benefit  
25 existing companies and organizations and perhaps draw



1 others to the region. We also believe that this is  
2 very complementary to Governor Ridge's technology  
3 focus and initiatives.

4           These growth efforts, admittedly, are not  
5 purely altruistic. They are designed to keep rail  
6 freight and expand the demand for rail freight here  
7 in Pennsylvania. Consider how unique the rail  
8 industry is. When a business picks up and leaves a  
9 location, the motor carrier industry simply takes  
10 their assets and follows that customer.

11           The Norfolk Southern has 2200 miles of  
12 rail lines and associated facilities in Pennsylvania.  
13 And if a customer picks up and leaves to a non-NS  
14 point, the NS likely loses the business for good.

15           We have every incentive to work and  
16 ensure that businesses stay in and expand or relocate  
17 in Pennsylvania. We are all on the same team in this  
18 effort, and we have committed significant resources  
19 to help foster and ensure companies stay and expand  
20 on the Norfolk Southern.

21           The final thing that this investment has  
22 done is expanding the service options available to  
23 shippers. The final contribution that the Conrail  
24 transaction and the subsequent investment that has  
25 been made -- has made to the shipping public, within

1 and outside the Commonwealth, is the expansion of  
2 shipping options. At its very basic level, the split  
3 of Conrail unleashed a new competitive rail  
4 environment that Conrail simply did not provide. The  
5 most notable examples of this include the following:

6 First, before the transaction, Conrail  
7 owned the Northeast in terms of intermodal. Norfolk  
8 Southern and CSX were also-rans. Now, CSX and NS  
9 trains race from the Midwest to the East and vie for  
10 speed and consistency. Intermodal traffic between  
11 the Midwest and the East that in the past could only  
12 realistically be handled by Conrail is now regularly  
13 bid out to two very aggressive competitors.

14 Second, before the transaction, little  
15 rail competition existed in the Mon Valley -- Mon  
16 Valley Coal. Now both the CSX and the NS with their  
17 very expansive networks, access to ports and to  
18 utilities throughout the Eastern United States,  
19 regularly bid for traffic that formerly moved solely  
20 on Conrail.

21 Third, before the transaction, most  
22 shippers in the Philadelphia and South Jersey areas  
23 were beholden to Conrail. Now, many customers in  
24 this area, served by the Shared Asset Area around  
25 Philadelphia, have rail options that have not been

1 seen since the Reading and the Pennsylvania Railroads  
2 duked it out on their way to bankruptcy.

3 The list of expanded shipper options does  
4 not end here. Norfolk Southern has invested or  
5 caused to be invested \$50 million that has given  
6 shippers expanded shipping options.

7 Consider this: Norfolk Southern invested  
8 over \$30 million for a new intermodal facility in  
9 Rutherford, Pennsylvania, right outside of  
10 Harrisburg. This investment, combined with a massive  
11 intermodal operation in Harrisburg, has evolved into  
12 the second largest intermodal hub for the Norfolk  
13 Southern.

14 The opening of Rutherford allowed the NS  
15 to offer expanded intermodal services to  
16 Pennsylvania, including our recently launched  
17 transcontinental stack product from California to the  
18 East. This is the fastest transcontinental  
19 double-stack train service available, either now or  
20 when Conrail existed.

21 When NS opens its new \$100 million  
22 intermodal facility in Atlanta, Georgia, a new  
23 portfolio of North/South services will be launched  
24 providing new Southeast Pennsylvania intermodal  
25 services that have not existed with the NS, the CSX

1 or with Conrail. This new service, by the way, will  
2 be launched in September.

3 With the opening of Rutherford, NS runs  
4 two to four more intermodal services per day over the  
5 Pennsylvania line now than Conrail did prior to its  
6 split-up. Trains that used to move through New York,  
7 Virginia and Tennessee now have been routed through  
8 Pennsylvania, providing new origins and destinations  
9 for shippers in the Commonwealth.

10 This project has solidified Harrisburg's  
11 and Eastern Pennsylvania's position as a logistics  
12 hub for the Eastern United States. Consider also  
13 that NS caused a new intermodal facility to be built  
14 in Bethlehem, PA.

15 With the opening of Rutherford and  
16 Bethlehem, Norfolk Southern has increased its  
17 intermodal capacity in the Commonwealth of  
18 Pennsylvania by 250,000 units. That's a thousand  
19 loads a day that we can take off the highway every  
20 business day. We serve eight intermodal terminals in  
21 Pennsylvania. This is two more than Conrail served,  
22 and Norfolk Southern now serves more intermodal  
23 terminals in Pennsylvania than in any of the other 22  
24 states that it serves.

25 Despite losing our largest intermodal

1 customer, APL, which left our terminals here in  
2 Pennsylvania, we handle about 10 percent more  
3 intermodal business in the Commonwealth than Conrail  
4 did in its last full year of operation. Intermodal  
5 operations are very important for commerce in this  
6 state. It is a low-cost alternative for  
7 over-the-road shipping. And with more intermodal  
8 options, Pennsylvania shippers have access to lower  
9 cost logistics. You have a premier intermodal  
10 network that's been invested in highly here in the  
11 Commonwealth of Pennsylvania.

12 I'd also like to note that the Canadian  
13 Pacific and the NS teamed up to rebuild the Sunbury  
14 line to launch improved North/South services.

15 These options that I've just talked about  
16 are real options. And combined with the incentives  
17 that we're offering for expansion, NS expects  
18 important gains to be made, not only in Pennsylvania,  
19 but throughout its network.

20 Final comments here. These investments  
21 and their impact, both within and outside the  
22 Commonwealth, are compelling. However, there are  
23 some more market forces at work now, and market  
24 forces we expect going forward that are fundamentally  
25 changing the way that the Norfolk Southern and the

1 railroads look at their operations and their costs.

2 First, the Norfolk Southern is going  
3 through some profound shifts in its business mix that  
4 are merely a reflection of the shifts going on in  
5 industrial America. Our business is shifting from  
6 the movement of traditional carloads of business,  
7 such as boxcars and gondolas and covered hoppers, to  
8 more containerized shipments and more movements or  
9 vehicles in specialized multi-levels.

10 This shift was punctuated in our first  
11 quarter results that some of you may have seen and  
12 that were released yesterday. While our coal and  
13 intermodal loads were up modestly, our merchandise  
14 business; gons, boxcars, covered hoppers, which moves  
15 in these conventional types of equipment, was down  
16 over 75,000 units in the first quarter -- versus the  
17 first quarter of 2000. And the first quarter of 2000  
18 was not one of the great quarters in the history of  
19 our business.

20 This business shift has resulted in newer  
21 equipment and requires fewer railroad-owned assets  
22 and more assets owned by other parties. Even in the  
23 coal business, which has ebbed and flowed over the  
24 past few years, more of the car responsibility  
25 industrywide is going to the customers and not the

1 railroads.

2           Even with less railroad-owned equipment,  
3 improvements in velocity and train performance that I  
4 talked about earlier and that NS has achieved thus  
5 far and will continue to achieve, have resulted in  
6 better use of that equipment reducing overall fleet  
7 demand.

8           The second major shift going on in our  
9 business is that we are in one of the most difficult  
10 financial environments -- transportation as a whole  
11 is in one of the most difficult financial situations  
12 that we've been in in the past six years. Capacity  
13 in the motor carrier industry significantly outstrips  
14 the demand for shipping. And as a result, price  
15 pressure on the motor carriers, and by default the  
16 railroads, is extreme.

17           At the same time, the cost of operating  
18 any transportation company -- any transportation  
19 company is going up. Increases in fuel costs by as  
20 much as 30 percent last year, rising labor costs,  
21 rising benefit costs, soaring insurance costs and  
22 decreasing asset valuations -- and this is the motor  
23 carrier industry, by the way -- are putting extreme  
24 pressure on this industry resulting in a record  
25 number of failures or buyouts of trucking companies

1 in the fourth quarter of 2000.

2 While these pricing pressures may abate  
3 to some degree, the cost pressures will not. Labor  
4 wages and demands for benefits continue to increase  
5 faster than inflation. Fuel and other material costs  
6 remain largely unstable. And the returns demanded by  
7 investors -- they're the ones funding these  
8 investments we make -- put increasing pressure on the  
9 cost of capital.

10 This is a real dilemma. The shipping  
11 marketplace cannot, in my opinion, absorb all of  
12 these costs. And the NS cannot meet the demands of  
13 the marketplace without continually upgrading key  
14 routes, and at the same time, supporting  
15 underutilized infrastructure that it has on its  
16 books.

17 This cost/price squeeze is the rail --  
18 it's happening to the rails themselves. The NS and  
19 the CSX battle for Conrail's business. And as they  
20 continue to battle for business, prices remain  
21 constrained and costs increase. Although rail prices  
22 have rebounded to some degree with the improvements  
23 in service, the softness in trucking prices has put a  
24 lid on our pricing flexibility.

25 This pricing situation is generally good



1 for shippers. The prices are stable. It's generally  
2 good for Pennsylvania. It's terrible for  
3 transportation companies, and the earnings  
4 disappointments for the railroads and for the motor  
5 carriers over the past two quarters is a stark  
6 reminder of how bad it is.

7           To counteract this squeeze, NS and CSX  
8 are going to behave like any other company in a  
9 capitalistic economy. We are going to seek ways to  
10 streamline our operations and make our companies more  
11 efficient. By doing so, we can continue the  
12 investment cycle. To do otherwise would have a  
13 predictable and unpalatable result.

14           The cost/price squeeze is real, and it is  
15 unabating. Prompted by this fact and the changes in  
16 the business mix, Norfolk Southern reduced its  
17 dividend by 70 percent and is quickly progressing  
18 with its plans to reduce its costs.

19           My closing remarks. Despite these dark  
20 clouds, the NS remains not only optimistic, but  
21 enthusiastic about its strategic commercial position.  
22 Rail transportation, although not the fastest, can  
23 often be the lowest cost form of ground  
24 transportation, especially in longer hauls. This  
25 reality, combined with the incredible franchise that

1 we've assembled, is the reason that NS is making  
2 these investments.

3 NS has invested an incredible amount of  
4 money in the Commonwealth to improve service, foster  
5 growth and provide new shipping options. As this  
6 investment yields results, it will encourage more  
7 investment on the part of the NS. And I believe that  
8 Pennsylvania will continue to be a significant  
9 benefactor of this.

10 NS will meet the demands of its shippers  
11 and its investors. And I expect that the result will  
12 be very positive, not only for Norfolk Southern, but  
13 for the Commonwealth of Pennsylvania.

14 I thank you for your time today.

15 CHAIRMAN GEIST: Thank you very much. I  
16 have a couple questions. The first one is, would you  
17 define unprecedented public/private partnership for  
18 this Committee as Norfolk Southern defined it three  
19 years ago?

20 MR. TIMMONS: I think our commitments at  
21 the time were for investments and an enhanced rail  
22 system in the Commonwealth. We fully expected, based  
23 on the economic factors from 1995 to the period when  
24 we acquired the system in June of 1999, to meet the  
25 obligations and the expectations that we held out for

1 ourselves.

2           Those economic forces that Mr. McClellan  
3 has just mentioned in some detail have driven the  
4 company to look very, very seriously at how it  
5 conducts its business, how it's structured to do its  
6 business and how it goes after revenues. That  
7 partnership with the state, I think, is a solid one.

8           I'm not sure many people are aware of the  
9 scale of the investment that we have provided to the  
10 state in a host of areas from one border to another.  
11 A number of senior officials in the administration  
12 have said most recently we had no idea that the  
13 magnitude of the investment that you had made touched  
14 so many different areas across so many fronts, both  
15 facilities and infrastructure.

16           As you are all fully aware, much of what  
17 we have done has got a direct bearing on the  
18 communications system in the Commonwealth, the  
19 electrical energy system in the Commonwealth, safety  
20 factors and environmental.

21           CHAIRMAN GEIST: Next question. When we  
22 held our hearings before, one of my large concerns  
23 and the concerns of the Committee was the supply  
24 industry in Pennsylvania for rail which is huge. At  
25 that time, we were told Norfolk Southern would keep

1 that industry whole, that if you were a supplier for  
2 Conrail, you would be a supplier for Norfolk  
3 Southern.

4 Now, would you please provide for this  
5 Committee a report of all the suppliers and all the  
6 buying that Conrail did from all the  
7 Pennsylvania-based companies and what you're buying  
8 and spending in supplies with those companies today?

9 MR. TIMMONS: We will give that -- we  
10 will give that a try. But as a case in point,  
11 Norfolk Southern buys an enormous quantity of steel  
12 from Pennsylvania Steel Technologies down here in  
13 Steelton, Pennsylvania. In the year 1999 alone, we  
14 spent \$57 million in purchases from Bethlehem Steel.  
15 Smaller organizations have also felt the results of  
16 our buying.

17 But you must know that as a standard  
18 procedure, Norfolk Southern bids out almost  
19 everything that we acquire in the rail industry. And  
20 as a consequence, we take the value of the product.  
21 If it meets our needs and the pricing is the lowest,  
22 then we take it. And now in that 57 million  
23 purchased from Bethlehem Steel, that was only about  
24 half of what we purchased that year. The other half  
25 came from other entities in the Continental US.

1                   CHAIRMAN GEIST:  Let's go back to that  
2   for a second, unprecedented public/private  
3   partnership.  Rutherford yard, Pennsylvania  
4   Technologies has their plant four miles down the  
5   track, a company that this General Assembly has  
6   worked very hard to keep in business.

7                   I couldn't believe it when I got a  
8   telephone call and they said, Rick, you've got to go  
9   down there.  You won't believe they're putting French  
10  rail in that yard.  And we went down, and we took  
11  photographs.  And we tracked that rail right through  
12  Canada right back to France.

13                  We call it dumping.  You call it  
14  partnership with Pennsylvania?

15                  MR. TIMMONS:  Now, Mr. Chairman, you know  
16  the story on that.

17                  CHAIRMAN GEIST:  Yeah, I do know.

18                  MR. TIMMONS:  You're well aware of that  
19  -- that we were doing in Pennsylvania.  And our  
20  people have French rail, Australian rail, Japanese  
21  rail, Korean rail and American rail in inventory in  
22  Atlanta.  They do not pay any attention to source of  
23  origin.  When a project comes up, that stuff is  
24  pulled out, it's welded into rivets and transported  
25  on the system to the location where it's needed.

1                   Unfortunately, through no particular  
2 effort to work against the Commonwealth, that rail  
3 was delivered up here. The same problem happened a  
4 month or two earlier at Chambersburg, and we quickly  
5 -- as soon as we found out about that, that rail was  
6 removed and replaced with rail out of inventory that  
7 happened to be Bethlehem rail.

8                   That was not a design by any Norfolk  
9 Southern management entity. It was just a simple  
10 oversight, and it was unfortunate. And we apologized  
11 for that and made amends for it.

12                   CHAIRMAN GEIST: In your testimony, you  
13 said \$18 million in the Juniata shops. What happened  
14 to the rest of the money? Now that -- once again  
15 now, we're back to this difference between  
16 projections and promises. Was the 67 million a  
17 written promise?

18                   MR. TIMMONS: I don't know that. I have  
19 heard that.

20                   CHAIRMAN GEIST: Congressman Shuster said  
21 he has written documentation. We have the  
22 documentation. Your testimony from Norfolk Southern  
23 said projections. Is it a projection, or was it a  
24 promise?

25                   MR. TIMMONS: I can't answer the

1 question. I heard that \$67 million were expected to  
2 be invested. You certainly cannot fault us for the  
3 amount of money that we have invested in the Altoona  
4 region in the past 22 months. That's a fairly  
5 sizable amount of money. It's almost \$18 million  
6 into Juniata and Hollidaysburg and 17 million in  
7 fiber optic cable in that same general region. So  
8 that's not an inconsequential amount of money.

9 CHAIRMAN GEIST: All I want to know is  
10 the difference between promise and projection.  
11 That's the question. This is the State of  
12 Pennsylvania now. This is overall, the promises and  
13 commitments and the testimony that we took, that we  
14 gave the Surface Transportation Board, that the  
15 Federal Railway Administration is supposed to oversee  
16 and the Surface Transportation Board is supposed to  
17 administer.

18 MR. TIMMONS: I don't think either one of  
19 us --

20 CHAIRMAN GEIST: The agreement with the  
21 Surface Transportation Board, is that a projection, a  
22 promise or a contract?

23 MR. TIMMONS: Now, our intent is not to  
24 get into Surface Transportation Board matters because  
25 as you well know, both the Commonwealth, labor unions

1 and Norfolk Southern have filed comments with the  
2 boards in the adjudication of differences of outlook  
3 on where both parties stand on that will be taken  
4 care of by that agency, which is their proper role.  
5 And we'll stand by the results, obviously.

6 But the semantic distinction between  
7 promise and projection and who said it is something  
8 that I don't think I can speculate on.

9 CHAIRMAN GEIST: All right. Questions  
10 from the Committee? Russel.

11 REPRESENTATIVE FAIRCHILD: Thank you, Mr.  
12 Chairman.

13 I apologize for not being at the prior  
14 hearing concerning this matter. But after reviewing  
15 the tape and after listening to the Chairman's  
16 questions concerning the written promise, I guess I'm  
17 concerned when I hear and see a US Congressman state,  
18 publicly state, that we have these agreements in  
19 writing and there seems to be some discourse and some  
20 confusion about whether these things were actually in  
21 writing.

22 And I am respectfully requesting that you  
23 forward to this Committee any commitments made to  
24 anyone in the state of Pennsylvania, any  
25 Congressional delegation or anyone else that would



1 have written commitments contained therein so that we  
2 can get to the bottom and find out whether  
3 commitments were indeed made in writing.

4 To you, it may seem, Well, they don't  
5 mean anything. To many of us who run for office that  
6 are elected leaders, many of us come from business  
7 backgrounds and many of us are aware that certainly  
8 written comments or written commitments do mean  
9 something. So in all fairness to Norfolk Southern,  
10 I'm respectfully making that request of you today.

11 Thank you.

12 CHAIRMAN GEIST: Anyone else? Joe.

13 REPRESENTATIVE MARKOSEK: Thank you, Mr.  
14 Chairman.

15 Gentlemen, I was unable to make the  
16 meeting in Altoona unfortunately. But I know your  
17 Mr. Goode there talked about commitments, and you  
18 certainly mentioned the word commitment many times  
19 today in your testimony. And, obviously, you have a  
20 credibility problem not only with us here in the  
21 General Assembly but with the people of Pennsylvania  
22 and our Administration.

23 And I guess my very simple question to  
24 you is, In light of what has transpired here so far,  
25 why should we believe anything that you tell us here

1 today since we've had so much, if you want to use the  
2 word, bad information or misinformation in the past?

3 We're hearing today that things are being  
4 explained away as just simply things that for  
5 business reasons that you had to do certain things.  
6 We all understand that there is certain things that  
7 you have to do because you are, in fact, a business  
8 for profit.

9 I think this rail issue, for example, you  
10 know, this Committee toured the rail mill last year  
11 in Bethlehem and down in Steelton. And to find out  
12 that we have French rails in Rutherford, which is  
13 literally several miles away, is really appalling.  
14 You're expanding your facility in Enola. Are we  
15 going to see French rails there?

16 Very simply, you know, I think the  
17 frustration is coming out here with all the members.  
18 And why should we believe anything that you tell us  
19 here today?

20 MR. TIMMONS: Sir, let me make one  
21 observation. There is no French rail from Norfolk  
22 Southern in the Rutherford yards. I thought I  
23 explained that, but apparently I did not. It was  
24 rail delivered and never installed. And it was taken  
25 up, and PST rail was put down.



1 Chairman.

2 CHAIRMAN GEIST: Ellen.

3 REPRESENTATIVE BARD: Thank you, Mr.

4 Chairman.

5 I would just like in the interest of  
6 background information -- I'm not clear. Has any  
7 public money been invested since the origination of  
8 this project?

9 MR. TIMMONS: Which project is that,  
10 Representative Bard?

11 REPRESENTATIVE BARD: Norfolk Southern's  
12 move to take over Conrail and commence those  
13 operations.

14 MR. TIMMONS: Public money, I suppose you  
15 mean state money?

16 REPRESENTATIVE BARD: Yes.

17 MR. TIMMONS: To my knowledge, we have  
18 not received any state funding for any projects in  
19 the Commonwealth.

20 Now, as you know, there are grade  
21 crossings across the state. And there's a  
22 combination of priorities established by the  
23 Pennsylvania Department of Transportation for federal  
24 and state and railroad matching moneys to enhance  
25 grade crossings as appropriate, and that's an ongoing

1 program.

2           There was federal money applied to the  
3 relocation of tracks in the state -- or in Erie, the  
4 19th Street track relocation project. And there was  
5 federal money applied in Chambersburg for relocation  
6 of the tracks and the elimination of nongrade  
7 crossings.

8           The Norfolk Southern matching amounts for  
9 those two projects totaled \$8 million. I don't know  
10 of any other projects that we have received any money  
11 on that have anything to do with our commercial  
12 activities or track upgrades.

13           REPRESENTATIVE BARD: Thank you very  
14 much.

15           MR. TIMMONS: Yes, ma'am.

16           REPRESENTATIVE HARPER: Thank you for  
17 coming in. I missed the hearing in Altoona, but I  
18 did review your testimony that you've provided to us.  
19 And I've listened to you carefully this morning.

20           I appreciate that it is difficult for an  
21 industry like yours to be nimble in the face of  
22 business changes in such a scope and a magnitude that  
23 they've been coming at you. But what I didn't hear  
24 this morning and what I didn't see in your testimony  
25 before was your answer to why Hollidaysburg, why this

1 decision, why these workers. Can you enlighten us on  
2 that?

3 MR. TIMMONS: Let me just basically say  
4 in a very simple way that we lost money there.  
5 That's the bottom line. Now, notwithstanding the  
6 testimony on insourcing that was provided to this  
7 body on the 12th of April, there is a difference of  
8 opinion on the amounts of money. And Norfolk  
9 Southern does not disagree that there were benefits  
10 derived from the insourcing program that was under  
11 way. That's only one portion of that job's  
12 operation.

13 In the main, we lost more than \$6 million  
14 at Hollidaysburg. Those points are in dispute. We  
15 know that. And both sides have submitted that  
16 information, their points of view, their numbers to  
17 the Surface Transportation Board, and they will  
18 adjudicate that.

19 But I must reemphasize that Norfolk  
20 Southern has the right as a private corporation to  
21 make business decisions that are in its own best  
22 interest in the long term. We obviously have a very  
23 important investment here. We've got 5500 workers in  
24 the state. If the railroad does not do well up here,  
25 we put at risk another very, very large segment of

1 rail employees in this important region.

2 REPRESENTATIVE HARPER: Just one  
3 follow-up please, if I might.

4 Based on that however, if those figures  
5 are in dispute and since Norfolk Southern made  
6 significant promises to the people of that area --  
7 this can't be the first time you've had ups and downs  
8 at a particular shop or at a particular location --  
9 why won't you reconsider that decision and give those  
10 folks another chance?

11 MR. TIMMONS: We did. As you may recall,  
12 we announced the closure in last November. And based  
13 on efforts from officials in the Commonwealth, we  
14 deferred closing that shop and tried to find either  
15 buyers or additional insourcing that could offset the  
16 losses that we had experienced and we anticipate.

17 And we spent another 90 to 120 days  
18 trying to find out if we could make that happen. We  
19 worked very, very hard and very conscientiously. If  
20 you look at the public documents that we filed with  
21 the Surface Transportation Board, I think you will  
22 see the extent of the effort that we applied to try  
23 to make that happen. In the end, it just did not  
24 play out.

25 CHAIRMAN GEIST: Frank.

1                   REPRESENTATIVE DERMODY: Thank you, Mr.  
2 Chairman.

3                   I also want to apologize for missing the  
4 hearing in Altoona. So you may have already answered  
5 these questions, but I'll ask them anyway. I noticed  
6 in your testimony that you're going to promise or  
7 you're going to offer jobs to the 330 people that  
8 will lose their jobs at Hollidaysburg. I just want  
9 to ask you, What does that mean?

10                  MR. TIMMONS: That means in our six other  
11 shops that are in the Northeastern area -- for the  
12 most part, they are primarily in Ohio -- we will  
13 offer similar jobs to those employees, all of those  
14 330 people.

15                  REPRESENTATIVE DERMODY: Most of them are  
16 in Ohio?

17                  MR. TIMMONS: Well, I may have a list  
18 here: Bellevue, Ohio; Columbus, Ohio; Decatur,  
19 Illinois; Macon, Georgia; Lynwood, North Carolina.  
20 All of those are for trades and crafts, the same for  
21 clerical. One additional clerical is Atlanta. As  
22 you probably know, the seniority roster is in effect  
23 at Juniata for these workers.

24                  REPRESENTATIVE DERMODY: Does that  
25 include relocation costs for these workers?



1                   MR. TIMMONS:   Indeed it does.   The New  
2   York Dock provisions establish a relocation cost, and  
3   the negotiating cost for this particular move for all  
4   those workers exceed the Dock minimum requirements.

5                   REPRESENTATIVE DERMODY:   Well, I guess my  
6   question is, Does that mean they get the move paid  
7   for or not?   I don't know what the New York Dock  
8   provides, but does it mean they get the move paid  
9   for?

10                  MR. TIMMONS:   Yes.

11                  REPRESENTATIVE DERMODY:   In full?

12                  MR. TIMMONS:   Yes, to the best of my  
13   knowledge.

14                  REPRESENTATIVE DERMODY:   I noticed on the  
15   tape -- just one more, Mr. Chairman -- there were  
16   tremendous comments made about part of the reason you  
17   were so happy to be in Altoona and Hollidaysburg was  
18   the quality of the work force, the long history that  
19   you have there.   Most of these workers are probably  
20   second and third generation railroad workers.   Is  
21   that right?

22                  MR. TIMMONS:   I would assume so.

23                  REPRESENTATIVE DERMODY:   And the previous  
24   question, you mentioned that you did reconsider  
25   because of the quality of the work force you have

1 there, correct?

2 MR. TIMMONS: Because of the capability  
3 of the shop, because of the quality of the work  
4 force, it was clearly something that was worth  
5 reconsidering.

6 REPRESENTATIVE DERMODY: What is the  
7 likelihood -- you said that many of those people have  
8 lived in Altoona for two and three generations will  
9 leave there and move to Decatur, Illinois or Alabama?

10 MR. TIMMONS: I'm not in a position to  
11 speculate on that, sir.

12 REPRESENTATIVE DERMODY: Thank you, Mr.  
13 Chairman.

14 CHAIRMAN GEIST: Mike.

15 REPRESENTATIVE VEON: Thank you, Mr.  
16 Chairman. And, gentlemen, thank you for being here.  
17 Thank you for taking the time, and I appreciate your  
18 testimony.

19 I just wanted to comment because you had  
20 mentioned to the question posed by Representative  
21 Markosek for the comments that he made, that you were  
22 concerned that our comments and our position and our  
23 representation here today was somewhat out of  
24 balance, I think, was the way you put it.

25 I just want to say to you, and I know I

1 speak for other members, certainly in the Democratic  
2 Caucus. I want to remind you that when Norfolk  
3 Southern went in front of the various federal  
4 government agencies, they asked for our support.  
5 They asked for our support from the Governor on down  
6 through the legislators.

7 Many legislators very publicly supported  
8 your position in acquiring Conrail. I stood in front  
9 of several hundred people in Beaver County and said,  
10 This is the right thing to do. We have assurances  
11 from this company on this, this and this. And we  
12 ought to support this for the good of Pennsylvania  
13 and for the long-term benefit of rail transportation  
14 in Pennsylvania, etc., etc., etc.

15 So I hope it gives you some perspective  
16 of where we're coming from when you can do what  
17 happened to Bud Shuster -- I'll speak for myself on  
18 this issue -- I'm waiting for the next shoe to drop.  
19 And if it can happen to Bud Shuster, it can happen to  
20 anybody that has any kind of presence in their  
21 district. That's my fear. No one is more powerful  
22 on transportation issues than Bud Shuster.

23 So when you observe that as a politician,  
24 as a representative, when you've made public  
25 presentations to people about what's the right thing

1 to do -- and that we all stepped up, as you know, at  
2 your request, at this company's request. We all  
3 stepped up and said, We should support this at the  
4 federal government level. And we invested some  
5 political capital in helping that process go  
6 smoothly. We, meaning the legislators, the Governor  
7 and the State of Pennsylvania.

8 So just to give you some perspective, you  
9 say it's out of balance. I would strongly and  
10 respectfully disagree with that. I think it's very  
11 much in balance for the job that we have to do.

12 And, again, the bottom line is we're  
13 concerned as to where does the next shoe drop? And  
14 the credibility issue, therefore, becomes very  
15 important as we try to deal with this company from  
16 now through, hopefully, what's a long and productive  
17 future.

18 Thank you, Mr. Chairman.

19 MR. TIMMONS: Thank you, sir, for those  
20 comments. I understand.

21 REPRESENTATIVE LEVDANSKY: Thank you, Mr.  
22 Chairman.

23 I did have the benefit of your testimony,  
24 Mr. Timmons, from Altoona. And I just want to cite a  
25 couple numbers for you and maybe you could explain

1 this for me because -- I mean, I listened to your  
2 presentation and now Mr. McClellan's testimony. And  
3 I still am no closer to gaining an understanding of  
4 how and why this corporation made a decision to close  
5 this particular facility. Based on your testimony  
6 today and previously, I'm even more perplexed than I  
7 was when I began this process.

8           According to your figures from 1995 to  
9 2000, your steel shipments -- you lost shipments of  
10 about 34 and a half million dollar revenue, according  
11 to your testimony. But you replaced that with about  
12 another 72.1 million gained in revenue. So you've  
13 had a net gain of 37.6 million in revenue and still  
14 shipments over that five-year period.

15           On chemicals, you lost about 23 million  
16 -- and this is just Pennsylvania numbers, I presume.  
17 You lost 23 million, but you gained 21.4 million. So  
18 that's a net loss of 1.6 million. And over that same  
19 time period of '95 to 2000, you lost about \$10  
20 million revenue in coal shipments.

21           If you look at steel, chemicals and coal  
22 in Pennsylvania in a five-year period, you  
23 experienced a net increase in revenue of \$26 million.  
24 So your revenues are going up. And during this time  
25 period you make these, seemingly, commitments to

1 investments in a particular community not just to the  
2 entire Commonwealth.

3 MR. TIMMONS: Can I comment on that, sir?

4 REPRESENTATIVE LEVDANSKY: Well, let me  
5 ask the question. So what happened when all these  
6 commitments were made a net increase in revenue over  
7 a five-year period? Something happened between June  
8 of 2000, when these commitments were made, and  
9 January of this year. What happened to cause you to  
10 decide not to make those investments and honor those  
11 commitments to the Blair County area?

12 MR. TIMMONS: Those numbers -- if you  
13 recall, those numbers were on the front end of that  
14 testimony and outlined the general rationale for why  
15 we were so optimistic about the economy and our entry  
16 into the Northeast.

17 Those are not purely Pennsylvania  
18 numbers. Those were examples -- extracted examples  
19 on coal and on steel and on chemicals that  
20 highlighted the volatility of our industry. It  
21 pointed out the fact that, as Mr. McClellan said  
22 earlier, that if an industry goes out of business,  
23 truckers pick up and move with it. The rails are  
24 stuck with their facilities and infrastructure.

25 And even though we offset with additional

1 steel facilities, additional chemical facilities,  
2 etc., we still had large, very large investments in  
3 order to capitalize on that, large capital  
4 investments in new plants, new facilities and that  
5 sort of thing.

6 So that was the point of those examples  
7 that I cited, and those were not related specifically  
8 to Pennsylvania. There are maybe some Pennsylvania  
9 facilities in those numbers. But, generally, that  
10 was not meant to be an aggregate of steel, chemical  
11 and coal for the Commonwealth.

12 REPRESENTATIVE LEVDANSKY: Okay, so it  
13 was more than just Pennsylvania. It was the general  
14 Northeast. But the point still stands that it shows  
15 a net increase of \$26 million in revenue over that  
16 time frame. I mean, it shows at least three  
17 significant markets of your shipments that there's  
18 actually a net increase in revenue.

19 So, again, back to the question, Was this  
20 seemingly growing business environment -- what  
21 happens in a seven-month period between June of 2000  
22 and January of 2001?

23 MR. TIMMONS: Well, you might recall some  
24 of the other numbers in that testimony that suggested  
25 the extreme economic difficulties that the railroad

1 experienced. We may have generated some revenues  
2 during that time period, but really our revenue  
3 concerns started in June of 1999.

4           The company was pretty healthy up until,  
5 like, the takeover. At takeover, we started  
6 experiencing a variety of problems that have plagued  
7 us up until the last year when the system started to  
8 clean up a little bit. We lost customers. Our stock  
9 was reduced by about 70 percent in value. Dividends,  
10 bonuses, any number of things befell us and caused us  
11 to go into deep difficulty, not the least of which  
12 was the acquisition of a host of new equipment in  
13 order to try to cope with the problems that we were  
14 experiencing here in the Northeast.

15           We are still -- this first quarter is --  
16 we're optimistic about the first quarter. But it  
17 does not suggest that we have turned the corner. We  
18 benefitted this first quarter primarily as a result  
19 of coal and cold weather. This first month in April  
20 is not particularly good. So our economic situation  
21 and our servicing of our debt has kept us in check in  
22 terms of economic growth.

23           REPRESENTATIVE LEVDANSKY: Are you losing  
24 money on those Blair County facilities? I mean, just  
25 in terms of finances and economics, are you losing



1 money? Is that why you're closing --

2 MR. TIMMONS: Hollidaysburg, yes, in  
3 excess of 6 million last year.

4 REPRESENTATIVE LEVDANSKY: I mean, I  
5 would certainly -- at least as one member of this  
6 Committee, I would certainly appreciate if you could  
7 provide us, or at least me, with detailed financial  
8 information about why, you know, what economic and  
9 financial considerations have led you to take the  
10 position you have and make the decision you've made  
11 relative to those Blair County facilities. I would  
12 certainly appreciate it.

13 I mean, if there's some economic and  
14 financial reason for doing this, you know, I could  
15 maybe understand that. But I am still left to wonder  
16 how you make a commitment and seven months later -- I  
17 mean, how your projections and numbers lead you to  
18 conclude that it's wise to make a significant  
19 investment in these two facilities and then seven  
20 months later, you decide that the economics and the  
21 finances have so changed that you're not going to  
22 make investments there.

23 I mean, I'm just wondering whether your  
24 initial decision to invest and the commitments to the  
25 facility -- I'm just wondering if that decision was

1 made based on economic reasons or for political  
2 considerations. Did you make these commitments to  
3 Blair County just because you wanted to get the  
4 support of Congressman Shuster and the legislative  
5 delegation and you needed to get their support  
6 because you needed to get the final approval from the  
7 Surface Transportation Board for the merger? Is that  
8 why you did this?

9 MR. TIMMONS: Well, postacquisition, as  
10 you know, we put at least 17 and a half million  
11 dollars into those two facilities in hard  
12 improvements and then invested another \$17 million in  
13 fiber optic cable in that region. So I would not say  
14 those are inconsequential numbers that were -- that  
15 undercut our original commitments.

16 We believed that we were going to be able  
17 to use and capitalize on those facilities, and we put  
18 money into those facilities to take advantage of  
19 that. It's just turned out over the past 22 months  
20 that it has not turned out the way we expected.

21 REPRESENTATIVE LEVDANSKY: Again, I'm  
22 going to drop it at this point. But, again, I don't  
23 know whether this was just a purely financial,  
24 economic decision-making process that led you to  
25 commit and then not commit or if there was some

1 larger political considerations going on here as  
2 well. I'm still confused because I don't understand.  
3 But to the extent that you provide me with detailed  
4 financial explanation or an economic projection or  
5 stuff like that, I'd welcome that.

6 MR. TIMMONS: Respectfully, sir, the only  
7 thing that is available in writing that we would be  
8 willing to offer up is our previously submitted  
9 filing to the Surface Transportation Board. All of  
10 those matters are under consideration, and we do not  
11 want to influence that or engage in any additional  
12 information until they have ruled on the position.

13 REPRESENTATIVE LEVDANSKY: Okay, thank  
14 you.

15 CHAIRMAN GEIST: Jere.

16 REPRESENTATIVE STRITTMATTER: Thanks.

17 I have a series of questions just as a  
18 follow-up. Maybe if you could provide -- it might be  
19 good for the Committee if you could show -- you  
20 probably in your projections, you figured what the  
21 quality of the work was going to be, you know, what  
22 the output that you were going to have from those  
23 shops.

24 If there was some downturn in seven  
25 months, you know, to show where you weren't getting

1 the productivity or that the union work rules or  
2 whatever it was that might enlighten us to know why  
3 it is in Pennsylvania that we're not able to compete  
4 with Ohio and Illinois and Georgia and I forget, you  
5 know, the other places where you say you are able to  
6 make money. And, obviously, you keep those  
7 facilities open, but you don't keep them open in  
8 Pennsylvania.

9           So if we could see what the work rules  
10 are here, you know, then maybe that would help us  
11 save some of the other existing jobs.

12           A couple of the other questions I have --  
13 when you talked about the investment by the State  
14 looking into the double stack capacity, I'm happy to  
15 see that we're working on that in order to lighten  
16 the load, you know, on the highways. To have a  
17 complete transportation system, you know, we need to  
18 have all of them working well, you know, from the  
19 airports and the airlines to the rails to the  
20 highways to the ports and canals.

21           We invested in Pennsylvania, before the  
22 merger, a lot of money in the Port of Philadelphia  
23 for double stack capacity, you know, for containers.  
24 We then have had the Port of Philadelphia coming  
25 before us, you know, asking for additional funds.

1           I understand that there's been a lot of  
2 investment in the Port of Wilmington where a lot of  
3 traffic in the Port of Wilmington which then has  
4 caused a lot of truck traffic coming from the Port of  
5 Wilmington up to the Harrisburg area whether it be  
6 the Rutherford line or other Harrisburg yards. I'm  
7 not exactly sure where they're coming from.

8           But can you explain to the Committee, you  
9 know, what your relationships are with this double  
10 stacked capacity? Are you going to be using the Port  
11 of Philadelphia? Should we be putting any dollars  
12 into the Port of Philadelphia, or should we abandon  
13 that idea and you're just going to use the Port of  
14 Wilmington and truck everything through Lancaster?

15           MR. McCLELLAN: As far as the economics  
16 for ports go in shipping, the railroads are not  
17 really that big an impact on when a shipper decides  
18 to use Wilmington over Philadelphia over New York  
19 over Baltimore or whatever the ports might be. You  
20 know, our price or whatever to go to Chicago is 500  
21 bucks, but the stevedoring costs can be 500 bucks.

22           Certainly, the vessel economics are the  
23 biggest factors that determine which port is there.  
24 We offer daily service to the Port of Philadelphia,  
25 St. Louis, Kansas City and Chicago, the places that

1 the customers want to go. Between the CSX and the  
2 Norfolk Southern, I believe, the intermodal traffic  
3 in Philadelphia has indeed grown.

4 I know that our intermodal traffic is  
5 less than what Conrail had, but that's simply because  
6 the CSX and the Norfolk Southern split what we had.  
7 But what we have found and what I have found, very  
8 profoundly, in my career here is that we very often  
9 don't drive which port of call shippers use.

10 REPRESENTATIVE STRITTMATTER: Are you  
11 able to or have you worked out agreements that would  
12 take freight, you know, from Harrisburg to the Port  
13 of Wilmington? Or is it the fact that if it comes to  
14 the Port of Wilmington that you can't get it to  
15 Harrisburg and that's why you might take all the  
16 bananas, you know, and drive them up through  
17 Lancaster or why you have at the Chrysler plant in  
18 Newark, Delaware, that you'd be driving trucks from  
19 Harrisburg down there rather than being able to keep  
20 them on the rail, keep them on the double stack and  
21 keep them off the highways?

22 MR. McCLELLAN: Well, I know that in the  
23 Wilmington and Newark, Delaware area, there really is  
24 not -- there's not an intermodal option available  
25 down in Delaware. And my understanding of the motor

1 carrier economics is that it is more efficient to  
2 truck or ship between Delaware and Harrisburg than it  
3 is between Philadelphia and Harrisburg. Also, we  
4 serve more points out of Harrisburg than we do out of  
5 the port facility.

6 REPRESENTATIVE STRITTMATTER: On the NS  
7 trucks, you know, from the Port of Wilmington to  
8 Rutherford yard or Harrisburg yard, how many trucks  
9 would you say over the past two years and what are  
10 your projections for the, you know, future years of  
11 the number of trucks that will be going through  
12 Lancaster County, for instance?

13 MR. McCLELLAN: I would like to clarify  
14 that the Norfolk Southern doesn't make those trucking  
15 decisions. We're a wholesaler of transportation  
16 between terminals, and then folks such as HUB or  
17 those folks actually make the final decisions on how  
18 and where and what terminals they're going to use,  
19 what ports they're going to use, etc., etc., etc. So  
20 we really don't have any data on that -- that type of  
21 relationship.

22 REPRESENTATIVE STRITTMATTER: But you do  
23 know how many trucks, don't you, that are running,  
24 you know, with -- they say NS on them? You know,  
25 they have your logo on them.

1                   MR. McCLELLAN: Are you talking about the  
2 roadrailer trucks, the Triple Crown trucks?

3                   REPRESENTATIVE STRITTMATTER: Yeah.

4                   MR. McCLELLAN: Yeah, those trucks --

5                   REPRESENTATIVE STRITTMATTER: How many of  
6 those in the past two years? Is it increasing? Are  
7 you going to be trying to keep the freight on the  
8 rail, or are you going to be seeing it come on the  
9 highways?

10                  MR. McCLELLAN: That freight -- Triple  
11 Crown's business has been stable over the past two  
12 years. It has not grown. Their business that goes  
13 down to Newark is directly tied into the fate of the  
14 production levels at the Chrysler plant down in  
15 Newark. That's where the business that is going down  
16 there is coming to and from. And I couldn't really  
17 tell you off the top of my head whether that's grown  
18 or declined, that particular piece of business nor  
19 exactly what the Rutherford terminal here has done  
20 with regard to shipments in and out of Wilmington.

21                  REPRESENTATIVE STRITTMATTER: I guess I  
22 would appreciate it if you could, you know, check  
23 with the people that would know -- to the Committee  
24 through the Chairman if you could get that to me  
25 because we have really helped with your



1 infrastructure, you know, with your NS trucks. And  
2 the fact that we're investing a lot of money into the  
3 highways.

4           But we didn't, you know, in our planning,  
5 plan on having these thousands of trucks that are on  
6 the road. And, also, we weren't planning on for  
7 safety considerations. And I think, you know, Mr.  
8 Timmons knows that because he's been very helpful in  
9 contacting with many of your truck drivers who were  
10 speeding and driving recklessly. They shift lanes  
11 recklessly at 80, 85, 90 miles an hour, and I've  
12 reported some of those in the past to you.

13           And I would like to know and we're  
14 concerned with how many more we're going to be  
15 expecting. But I do appreciate the help that I've  
16 gotten from the office from the fact that you're  
17 trying to cut down -- and I presume because I really  
18 didn't ask. I thought that was probably an internal  
19 matter as to what's happened to those drivers that  
20 had been reported. But, you know, we are concerned  
21 with that, with what we're going to do with the  
22 highways.

23           With passenger rail and Amtrak is another  
24 thing we have a concern with having an intermodal hub  
25 transportation service. And all of us in the

1 Committee are trying to increase Amtrak service, you  
2 know, trying to hope that -- you know, just like  
3 yourselves. We want you to be successful. We want  
4 Amtrak to be successful. Just like yourselves, you  
5 said you're having trouble. Now Amtrak is having  
6 trouble.

7 So we want to make sure we're making wise  
8 decisions. But when we're doing that, understand  
9 that in order to increase the frequency, you know,  
10 that we would then be rubbing up against their right  
11 of way.

12 And maybe you're not prepared to talk  
13 about it now, but I would like to, you know, through  
14 the Chairman, to know how we can anticipate, you  
15 know, to make the right decisions because we're  
16 investing money again at the state level with Amtrak  
17 to get additional service. But if we can't, you  
18 know, get additional -- then we're up against the  
19 frequency level of being able to get more trips with  
20 what's happening with your plans, with that.

21 And so I'm very concerned with working  
22 together. If these other members are concerned about  
23 what, you know, what's been happening, that's another  
24 thing that if you could help us, you know, with  
25 better information on that, I would appreciate that.

1                   MR. TIMMONS: We'll be happy to do that.  
2                   As you may know across the Commonwealth there are, by  
3                   rough estimate, five very significant commuter  
4                   passenger rail initiatives and studies under way that  
5                   I think are very important for the future. We're  
6                   working hard with PennDOT on those, with Amtrak on  
7                   those. And we'd be happy to come forward and talk to  
8                   the Committee or a subcommittee on this matter at  
9                   your call.

10                   REPRESENTATIVE STRITTMATTER: Thanks.  
11                   And then another point to raise and then we can move  
12                   on is ways to streamline the regulations while  
13                   ensuring safety to reduce cost with the building and  
14                   the rebuilding of the bridges, you know, over and  
15                   under your lines. I know we have -- in Lancaster  
16                   County right now so your NS trucks can run, you know,  
17                   fast, we're replacing 18 bridges at this time. And  
18                   several of them are over or under your facilities.

19                   And I understand that it's very costly,  
20                   you know, in order to try to coordinate that. And  
21                   I'd like to work with you and have our Committee work  
22                   with you to see where it is that we can improve  
23                   because, you know, we're competing with the rest of  
24                   the world.

25                   And I want to make sure that we don't,

1 you know, waste your money and waste our money with  
2 not being able to, you know, do this in the best way,  
3 as I say, making sure that we ensure safety. But  
4 there's got to be a better way to reduce, you know,  
5 the amount of dollars that it costs in order to  
6 repair these bridges on your lines.

7 Thank you.

8 MR. TIMMONS: We'd be happy to work with  
9 you, meet with you and with the state and federal  
10 officials, all of whom are involved in below grade  
11 and above grade structures.

12 REPRESENTATIVE STRITTMATTER: Thanks. If  
13 you could, maybe just start it and give your ideas  
14 through the Chairman so, you know, we're aware of  
15 that. On all these points if, through the Chairman,  
16 you could, you know, take a first crack at those and  
17 then we could, you know, develop that at your  
18 convenience and at the Chairman's convenience.

19 Thank you. Thank you, Mr. Chairman.

20 REPRESENTATIVE MAHER: Mr. McClellan and  
21 Mr. Timmons, I was surprised to hear both of you  
22 indicate that your service improvements, which you  
23 made sound like in contrast to Conrail, are so  
24 notable that you were referring to some of the  
25 applause that you received from U.S. Steel.

1           And I will be honest with you that I was  
2 very surprised to hear that since at a rail  
3 conference at just about this time a year ago, I was  
4 -- witnessed a very unusual step where a  
5 representative of U.S. Steel addressed the entire  
6 conference lamenting the absolute abysmal service,  
7 lost shipments, delayed shipments and the deleterious  
8 effect it had on their ability to conduct business,  
9 either on goods coming in or goods going out.

10           So while I'm happy to hear that you have  
11 some applause from them now. I must say that if I  
12 had not had this contact from another experience, it  
13 would have sounded like you had good service. And  
14 from what I hear, this is sort of like going from a  
15 low F to a high F.

16           But that also -- and the reason I visit  
17 on that is because it caused me -- I came in here  
18 today with a pretty open mind on this whole  
19 circumstance. But just the way that your testimony  
20 was framed and presented insofar as it relates to  
21 that causes me to have a considerable skepticism  
22 about the voracity of the overall picture that you're  
23 painting.

24           I would also say that I'm a free market  
25 guy. I'm a big supporter of the free market. At the

1 same time, your rails involve a public accommodation  
2 that creates a public duty. When you have public  
3 investments that you're beneficiaries of, that  
4 fosters a public duty.

5 But most of all, when you make public  
6 promises -- just as we saw on this tape earlier  
7 today, there were no caveats. There were no commas.  
8 There was no fine print. When you make public  
9 promises, it creates a public duty.

10 And I am astonished that through both of  
11 your testimonies today, the word Hollidaysburg never  
12 came up. I cannot express to you fully how much I  
13 must really wonder about if a public promise where  
14 your spokesperson was talking about a hundred years  
15 into the future here in Altoona, which I appreciate  
16 is hyperbole. But for heaven's sakes, gentlemen, we  
17 didn't get a hundred months. We didn't even get a  
18 hundred weeks into the future before that promise  
19 about making an investment was abandoned.

20 And I for one do not believe that a  
21 promise that's made should not be kept, and you can  
22 offer that from your internal financial analysis you  
23 need to deal with market conditions. And, again, I'm  
24 a free market guy, and that generally is what I would  
25 agree to. But once you have crossed the threshold of

1 making a public commitment in connection with a  
2 public decision, you have forfeited, in my mind, the  
3 right to a year later sit down and say, Oh, well, we  
4 didn't really mean it. We need to deal with the  
5 market as it is.

6 Well, if you didn't believe it, you  
7 shouldn't have said it. If you did believe it, it's  
8 time to fulfill it.

9 MR. TIMMONS: Do you even want a  
10 response, sir?

11 REPRESENTATIVE MAHER: I would be happy  
12 to have one if it was -- but I'm not really  
13 anticipating much of a --

14 MR. McCLELLAN: I'd like to respond on  
15 the customer side of it, and I hope that nobody up  
16 there thought that we were thrilled by the level of  
17 service that we are providing right now. I would not  
18 describe it as an F minus to an F plus. I would  
19 describe it as an F to a B, quite honestly. I would  
20 not --

21 REPRESENTATIVE MAHER: You must have gone  
22 someplace where they had pretty easy grading.

23 MR. McCLELLAN: I'll keep away from my  
24 educational background on this one. But the fact of  
25 the matter is that Norfolk Southern is not 100

1 percent pleased with where it is in the service side,  
2 and our discussion today was very simply to show what  
3 we're doing to improve the services that we offer.

4           And I've got to tell you, as I've said --  
5 I've said it, Are the customers happy? I don't think  
6 they are all happy. Are they pleased with the  
7 progress that we've made? I think a lot of them are.  
8 That was a year ago that USS said that, and we're  
9 well aware of that. And they weren't the only ones  
10 saying it.

11           I think people are kind of stunned how  
12 far we have come. They're also beating us to go  
13 further, and that's the right thing to do. That's  
14 the way that we're going to get more business, and I  
15 think that that's sort of the nature of that  
16 discussion.

17           MR. TIMMONS: I don't think there's any  
18 question in that first year that our performance was  
19 abysmal. My office was besieged 24 hours a day with  
20 service complaints and problems. And we committed at  
21 the time, that we were going to try to invest and  
22 work our way out of it. I can tell you very candidly  
23 that in the space of the last ten months, we have  
24 received two service customer problems, both very,  
25 very minor, both easily fixed because they were



1 computer problems, fixed within a matter of six  
2 hours.

3           Your observation is correct. It was  
4 terrible. The letters that are part of the testimony  
5 that I submitted from PP&L and U.S. Steel are  
6 indications that things have changed and that we've  
7 worked hard to make those turn around. I hope that  
8 our credibility has not been undercut by the  
9 framework in which we tout what we had done to make  
10 things better.

11           And the metrics that are provided each  
12 week, which are very, very measurable and go to the  
13 Federal Surface Transportation Board and tell you how  
14 fast the trains run, what the car loadings are, etc.,  
15 etc., etc., are all very, very positive. The  
16 railroad has not -- has not run better for several  
17 years. There's plenty of capacity on it.

18           So I'm sorry. We'll work hard to shore  
19 up our credibility with you, sir, and provide you any  
20 information that will help in that connection.

21           CHAIRMAN GEIST: Thank you very much. I  
22 would like to ask you guys if you would please stay  
23 to be called back after the three of the presenters  
24 are finished. I think there will be some additional  
25 questions that we'd like to ask.

1           At this time, we're going to take a  
2 15-minute recess. Eric said I'm to make it 10, which  
3 will mean it will be 15. It will be a 10-minute  
4 recess. The late Stanley Saylor has to grab a  
5 sandwich, and then we'll be right back to work.

6           (A break was taken.)

7           CHAIRMAN GEIST: All right. If we could  
8 get moving, 10 minutes is up.

9           REPRESENTATIVE HARPER: Twenty minutes is  
10 up, but who's counting?

11           CHAIRMAN GEIST: Tom Lutton's brother,  
12 Ronald -- the Lutton brother -- I think that's pretty  
13 neat. Ron Lutton, the Norfolk Southern Safety  
14 Assurance Compliance Program Project Manager for the  
15 Federal Railway Administration. And anybody who saw  
16 the tapes, the short little blond lady was Jolene  
17 Molitoris, the former FRA Chairman. And the remarks  
18 that she has made in public are the tracking that FRA  
19 is doing of the merger, and with us today is Ron  
20 Lutton to offer testimony.

21           MR. RONALD LUTTON: Thank you Mr.  
22 Chairman. I guess my role here today is to change  
23 from the business side over to the safety side since  
24 that's what FRA does is safety, and that's what I do  
25 in the safety department.

1           A little background on myself since this  
2 is my first time here. Prior to me hiring out on the  
3 railroad in 1969, I did have three uncles, a  
4 grandfather and a father all proceed me at the same  
5 railroad yards. So I do come from a railroad family.  
6 And this year, I will have 32 years in the railroad  
7 industry working on the railroad and with the FRA.

8           And I've worked in numerous positions  
9 within the FRA from field inspector to director of  
10 training through deputy regional administrator and  
11 now on this newly created position established in  
12 October of 2000 as the SACP program manager, which I  
13 am permanently assigned to Norfolk Southern. One  
14 hundred percent of my time now is Norfolk Southern.

15           So what I'd like to do today is talk a  
16 little bit just about a little background on the FRA,  
17 what we've got and a couple of the major programs  
18 that we have in place, which we call SACP and SIP and  
19 explain what those are and then talk about the safety  
20 record as FRA sees it right now and then some of the  
21 things we have going on.

22           So, again, good morning, Mr. Chairman and  
23 other distinguished members of the Committee. I want  
24 to thank you for extending the opportunity to the FRA  
25 to appear at this meeting. I wasn't aware that there

1 was one in Altoona. And as one of the first  
2 individuals, I think, this morning said, first time  
3 sitting here. This is my first time sitting here, in  
4 fact, my first time in the Capitol from that  
5 standpoint.

6 So I would like to start off by talking  
7 about the FRA organization to give you an idea of who  
8 we are and what we're comprised of because sometimes  
9 there's misconceptions as to what we really do. The  
10 FRA itself, there are 400 safety inspectors in 47  
11 offices nationwide. We are supplemented by 155 state  
12 safety inspectors that are FRA-certified to actually  
13 help us in our objectives with overall safety.

14 The magnitude of what we do is we monitor  
15 roughly 675 railroads, 220,000 employees, 265,000  
16 miles of track, 1.3 million freight cars, 20,000  
17 freight locomotives and about 8,000 passenger-type  
18 locomotives and coaches. So as you can see, that's a  
19 pretty tall order for roughly 550 individuals.

20 The Commonwealth of Pennsylvania is  
21 within Region 2 of the FRA, which is -- headquarters  
22 for that FRA office is in the Philadelphia area.

23 The rapid growth of new railroads and  
24 traffic gains in the recent years has increased our  
25 demands on monitoring railroad safety and compliance

1 with the federal regulations. The FRA looks at five  
2 different parts of safety, looks at track, motive  
3 power and equipment, operating practices, hazardous  
4 materials, signal and train control.

5 The efficient use of our resources is  
6 very critical as you can see by the amount of work  
7 that's out there and the number of people that we  
8 have. The agency traditionally relied upon  
9 site-specific inspections that focused on regulatory  
10 compliance as our means of oversight.

11 While the railroad safety programs have  
12 improved since 1978, the FRA has been concerned with  
13 some of the progress we have seen. In addition,  
14 freight traffic has grown more than 50 percent  
15 nationwide since 1986. In 1994, we responded to  
16 President Clinton's directive to reinvent the  
17 government. And that's what we came across with a  
18 program, a new way of doing business which we call  
19 the Safety Assurance and Compliance Program, better  
20 known in the industry as SACP.

21 The initial SACP used a team of  
22 inspectors, headquarters and field, under the  
23 direction of a project manager, like myself,  
24 conducted coordinated safety audits of a particular  
25 railroad, looking at trends and other historical

1 avenues just to see how that railroad was. Listening  
2 sessions were also held with railroad employees,  
3 labor and management.

4 To foster cooperation during this SACP  
5 effort, FRA does exercise their enforcement  
6 discretion regarding safety violations that are  
7 voluntarily found through this process. So what that  
8 basically means is we use some discretion as to  
9 whether we will file a violation or not for a  
10 particular deficiency of a regulation.

11 From the information gathered, we  
12 identify systemic issues that may be occurring on a  
13 particular railroad. And some cases, they may not  
14 involve federal regulations. That was one of the  
15 most notable things about the SACP. The FRA's  
16 authority is somewhat guided by the federal  
17 regulations. The SACP has permitted us now to enter  
18 into areas that we really don't have legislative  
19 jurisdiction, but we have cooperative efforts between  
20 labor and the management to get in these areas.

21 We present those recommendations and any  
22 of our findings during the senior management meetings  
23 on that railroad, and then we look for them to tell  
24 us how they are going to make those corrections that  
25 we have found and we think need to be done in regards

1 to safety.

2 Over the years, the SACP process has seen  
3 an evolutionary change as we see with our best  
4 practices on the railroads across the country. As  
5 you can see, going from an East Coast Norfolk  
6 Southern to CSX to a West Coast BNUP, the structures  
7 of the railroads are quite a bit different. You can  
8 go out West and run 4 or 500 miles and not really  
9 have any industry in between. Whereas here in the  
10 East Coast, there's a lot of industry within a few  
11 miles. So the makeup of the SACP is guided by the  
12 makeup of the railroad.

13 The SACP process has several elements:  
14 communication, system safety reviews, root cause and  
15 analysis just to name a few. But one of the  
16 principal elements I'd like to talk about and shed  
17 some light on is that of the partnerships that are  
18 developed between labor, management and FRA.

19 The identification and developing of  
20 solutions to the safety problems through a  
21 cooperative effort is the goal. Through the  
22 fostering of the partnerships, we have also been  
23 permitted to address safety-critical issues where we  
24 lack the authority. And that's one of the most  
25 important things which I'm going to get to now.

1           One of the successes of the SACP -- and  
2 we've seen it here, we've seen it here in  
3 Pennsylvania -- is what we call a Switching  
4 Operations Fatality Analysis Committee. I don't know  
5 if anyone here has heard of it. It's called SOFA.  
6 Leave it to, I guess, FRA to come up with the term  
7 SOFA from that standpoint.

8           What it is is an analysis of employee  
9 fatality over several years to find what might be  
10 some root causes of those fatalities, why were  
11 employees getting killed on the railroad, were there  
12 some common elements that could be applied. So they  
13 did that, and basically they came up with  
14 recommendations. This was a working cooperative  
15 effort between FRA, labor and management all sitting  
16 in the same room looking through the same files that  
17 are usually internal to railroad occupations. So it  
18 was somewhat of a first.

19           When the trends were developed which was  
20 narrowed down to basically five rules nationwide that  
21 were causing or played a major role in employee  
22 fatalities. Those rules were recommended as a -- to  
23 the railroad industry that they need to start  
24 targeting these general areas of safety. Every  
25 railroad in the country today now has the SOFA rules



1 as part of their safety program.

2 Now, I will say -- I use the term SOFA  
3 rules, but they're really SOFA recommendations.  
4 They're not cast in stone as a rule, but there are  
5 usually railroad operating rules that are applicable  
6 to each recommendation.

7 While there have been several successful  
8 partnerships over the years, another success story  
9 involving the Norfolk Southern was they were the  
10 first railroad ever to initiate an Employee Fatality  
11 Analysis Committee on their railroad. This was sort  
12 of taking what the SOFA was for nationwide, Norfolk  
13 Southern decided just to do it just for their  
14 railroad. They were the first railroad to enter into  
15 this partnership and open up their files for review.

16 While the investigation of employee  
17 fatality is not an easy task, the effectiveness of  
18 the Committee and the resulting recommendations have  
19 now, no doubt, made the workplace safer.

20 Has our idea of partnerships worked at  
21 all times? No. When we look at what were some of  
22 the common causes behind the failures, there usually  
23 was a breakdown of communication or a lack of goal.  
24 But I firmly believe that the communication and  
25 partnerships, from an FRA standpoint to the

1 railroads, are better than we had before.

2           Probably the issue that's most important  
3 to you today is the FRA's involvement in the Conrail  
4 acquisition. About everywhere I go, I get asked  
5 about that. As I said, I'm the permanent program  
6 manager for SACP. But for the last two and a half  
7 years, I've also been the responsible team leader for  
8 the Conrail acquisition portion that went to NS.

9           So I've been involved with the SIP from  
10 the beginning, from the first meetings to now. The  
11 SIPs still continue even though there's a lot of, I  
12 guess, rumors out there that FRA has eliminated the  
13 SIP process. That's not true. We're still doing it.  
14 We don't do it in the same format that we did before.  
15 The SIP and SACP are now combined entities, where  
16 they used to be separate.

17           While mergers and acquisitions have been  
18 an historical part of the railroad industry, FRA did  
19 become concerned that the recent acquisitions for  
20 Class I -- resulting in the creation of  
21 mega-railroads. They posed new and challenging  
22 trends, not only to labor and management, but to FRA  
23 on how to enforce compliance with the regulations,  
24 how do we deal with these size of operations. So the  
25 size and the complexity did pose some, needless to

1 say, some interest.

2 So what FRA did was looked at responding  
3 to the assessments of the BN and the Union Pacific --  
4 both the Santa Fe and the Union Pacific Railroads in  
5 the West. As everyone is well aware after the Union  
6 Pacific got together out there with the BN and a few  
7 other railroads, we started seeing some fatalities  
8 and some train accidents that should not have been  
9 occurring, which were directly related to the  
10 mega-railroads and the safety trends being of  
11 concern. We did not want that to happen with the  
12 Conrail acquisition.

13 So, basically, the FRA developed the  
14 initiative for the SIP. We recommended to the STB  
15 that in order to let the Conrail acquisition go  
16 through there should be a safety integration plan to  
17 be developed by the railroads that will tell FRA  
18 exactly how we pull off this Conrail acquisition and  
19 still maintain the safe posture that we have. So  
20 that was one of our first important recommendations  
21 to the STB.

22 On September 4th of 1998 is when FRA  
23 initiated the formal long-term monitoring team, the  
24 team that Administrator Molitoris mentioned in the  
25 video. They were permanent staff that would do

1 nothing but work on Norfolk Southern and CSX during  
2 the acquisition. They would report all their  
3 findings. They would monitor the SIPs. They would  
4 monitor safety. They would look at the operational  
5 criteria, how were the shippers doing, things like  
6 that. Even where we didn't have jurisdiction, we  
7 were looking because we had to keep a pulse, from an  
8 FRA standpoint, on where was safety going to go.

9           As a SIP grew, state managers and  
10 inspectors became involved in part of the process.  
11 And, again, I have to say that without the state  
12 inspectors, FRA would not have been able to pull off  
13 obtaining some of their goals that they did. They  
14 are a true asset to the FRA safety program.

15           The SIPs, I think, are somewhat  
16 misunderstood. The SIPs were a living safety  
17 document. They were not cast in stone. They were --  
18 I know I heard the term recommendations and promises  
19 and things. When they came to the FRA, when we sat  
20 down and developed the safety profiles, these were  
21 the projections that we thought were needed based on  
22 what we knew at the time.

23           As the SIPs continued on month after  
24 month, there were some things that FRA and the  
25 railroad saw that maybe weren't going to be needed,

1 maybe there were some things we had to add. And so  
2 we refined them as we went from meeting to meeting.  
3 Like the SACP, we learned over time that refinements  
4 make the process better.

5           This was a first for FRA. This was a  
6 first for the railroad industry to have a SIP. No  
7 one had ever had to do one of these before. As you  
8 are aware, we are currently under rulemaking that  
9 will make the SIP a permanent fixture in any future  
10 regulation -- or mergers.

11           While everyone expected some glitches, we  
12 had a fairly smooth transition on June 1st, 1999. As  
13 we are all aware, our expectations quickly  
14 evaporated. We thought for sure based on the two and  
15 a half years of meeting with the railroads and going  
16 through the criteria and looking at what we could or  
17 could not do, that we would come up with somewhat of  
18 a smooth transition. We figured we wouldn't have all  
19 the angles covered, but it would be somewhat smooth.

20           I guess what could be further from the  
21 truth? We had computer shutdowns. We had trains  
22 standing. We had crews in the wrong place.  
23 Basically, anything that could go wrong really went  
24 wrong. And a lot of it was related right back to the  
25 IT issues.

1           So now I'll just talk about the Norfolk  
2 Southern. Even though we had these problems, labor  
3 and management rose to the occasion and formed the  
4 partnerships that were needed to ensure the prime  
5 directive that came from FRA: Safety would not be  
6 compromised. If trains had to stand all day while we  
7 figured out who was safe and who wasn't, that's what  
8 FRA was expecting. We weren't going to be running  
9 trains and doing things needlessly and putting  
10 employees' lives in jeopardy.

11           So while not all the issues have been  
12 resolved to satisfaction even to this day, the FRA  
13 does commend labor and management for their efforts.  
14 Since June 1st with all the distractions of getting  
15 the railroad back to smooth operation, there's not  
16 been one employee fatality related to the Conrail  
17 acquisition. If you remember when this Conrail  
18 acquisition came to be, there was a lot of comments  
19 made that safety was going to be the first thing to  
20 go.

21           I think regardless of everything else  
22 that has happened in the business end or the economy  
23 or whatever the case might be, I think they have  
24 shown that safety was maintained and labor and  
25 management were able to pull this off. I think

1 that's a remarkable achievement and one to be proud  
2 of.

3 To further expand upon the safety record  
4 of the industry of Norfolk Southern in regards to  
5 employee injuries for the year 2000, the Northern  
6 Region which comprises Harrisburg, Pittsburgh and  
7 Dearborn Divisions experienced some of the safest  
8 monthly and quarterly records in their history since  
9 June 1st.

10 In fact, for the first quarter of this  
11 year -- I just got the figures yesterday. First  
12 quarter of this year versus the first quarter of last  
13 year, FRA reportable injuries are down 46 percent  
14 with overall injuries down 23 percent. Again, this  
15 achievement could not have occurred without the  
16 exceptional efforts of labor and management  
17 regardless of what's been happening on the business  
18 side of the coin.

19 I would also like to briefly cover  
20 track-related accidents in Pennsylvania. I'm sure  
21 this is probably one of the concerns. We see it in  
22 the paper all the time. I did do some analysis on  
23 previous Conrail versus NS today, and we have not  
24 seen a spike. In 1998, there were 22 yard-related  
25 accidents. In 1999, there was 19. And in 2000,

1 there was 20. So you can see we didn't see a jump in  
2 track-related accidents, but we did see a spike in  
3 main line accidents over the three years of about  
4 another additional 23 percent on the main lines from  
5 1998 to the year 2000.

6 One of the things that FRA is doing is we  
7 are going to be looking at the track structure. The  
8 production season is starting on the Norfolk  
9 Southern. And as it does every year, we do look at  
10 what we need to see. When I talked about the  
11 reductions in injuries, employee injuries that  
12 covered all crafts; mechanical, track, the train and  
13 engine service people, the signal maintainers.

14 So when I said it was down 46 percent in  
15 this total last year that was taking in all shops,  
16 Hollidaysburg, you know, Conway, the whole nine  
17 yards. So that was everything. The counties that we  
18 found from a track standpoint having the most each  
19 year were Beaver and Philadelphia, as far as  
20 Pennsylvania is concerned. They seem to be popping  
21 up the last three years as the most.

22 I want to emphasize, since there are some  
23 reporters here, that these accidents are what we were  
24 saying -- we're saying there's accidents there. But  
25 some of these are nothing more than just a fender



1 bender, a couple cars on the ground. FRA's reporting  
2 threshold is \$6600. As you can see with that type of  
3 equipment, it doesn't take much to cause a damage of  
4 \$6600. One turnout is roughly 10 to 15,000. And if  
5 a car derails on a turnout and switches a switch,  
6 then we're going to meet threshold.

7           So when I say that Beaver and  
8 Philadelphia had the most accidents based on our  
9 data, that doesn't mean that they're serious  
10 accidents. That just seems to be where they're  
11 popping up. So what we are going to do -- and most  
12 of those are in the yard environment -- Beaver  
13 County, which has Conway yard for the most part and,  
14 of course, Philadelphia which is basically a terminal  
15 operation.

16           Mr. Chairman and members of the  
17 Committee, I appreciate the opportunity to talk about  
18 FRA with you today. FRA realizes that even with the  
19 best intentions, there have been problems since June  
20 1st, and we still have issues to resolve. FRA is  
21 committed to ensuring that the railroad industry is  
22 the safest.

23           And my sincere thanks for listening to me  
24 this morning. And I'll be happy to answer any  
25 questions you have, which I'm sure you may have on

1 other issues I didn't cover.

2 CHAIRMAN GEIST: Thank you very much.  
3 It's reassuring to know that rail safety is doing  
4 very well in Pennsylvania, and we certainly  
5 appreciate your testimony.

6 Next up will be the other Lutton, Tom.  
7 And will you bring your crew up and introduce them?  
8 I always have to introduce Tom Lutton because he's  
9 from Altoona.

10 MR. TOM LUTTON: Thank you, Rick. The  
11 only two of the crew that's coming up is myself and  
12 our attorney, Rich Edelman. And Rich will be doing  
13 the testifying for us.

14 MR. EDELMAN: Thank you, Tom, and thank  
15 you, Mr. Chairman and members of the Committee.

16 I'm Richard Edelman with the law firm of  
17 O'Donnell, Schwartz & Anderson in Washington D.C. I  
18 appreciate the opportunity to be heard on behalf of  
19 various unions in the matter of this Committee's  
20 inquiry into the plan of Norfolk Southern to close  
21 the Hollidaysburg car shop.

22 I've represented various unions in  
23 proceedings before the United States Surface  
24 Transportation Board. In the Hollidaysburg shop  
25 joint petition of the unions and the Commonwealth of

1 Pennsylvania, I represent the machinists union, the  
2 boilermakers, the electrical workers, the refinement  
3 oilers, the sheet metal workers, Transportation  
4 Communications International Union and Transport  
5 Workers Union, of which Mr. Lutton is an officer of.

6 I've represented these unions and many  
7 others in Surface Transportation Board proceedings  
8 including other major consolidations since 1986 back  
9 when it was called the Interstate Commerce  
10 Commission. I represented many of these unions and  
11 others in the STB proceedings on the CSX/NS  
12 acquisition and division of Conrail. So I'm fully  
13 familiar with what was said there and what was done  
14 there.

15 Generally, I will not repeat in detail  
16 what the union representatives said at the last  
17 hearing in Altoona. I will elaborate on a few points  
18 and address the attempted defects by Norfolk Southern  
19 of its actions. I have provided the Chairman with a  
20 full copy of the joint petition of the unions and the  
21 Commonwealth. And I won't -- again not review that,  
22 but there is some points that I will go over just to  
23 highlight some key -- key items.

24 My primary focus today will be to respond  
25 to NSR's attempted defense of itself both in Altoona

1 and before the STB. And I do note, as members of the  
2 Committee already have, that frankly nothing was said  
3 by NS today about Hollidaysburg, although that was  
4 one of the basic reasons for calling this hearing.

5           They've talked more about what they say  
6 they will do in the future, but not about what they  
7 said they would do because they don't want to talk  
8 about what they said they would do. They want to  
9 talk more about, again, what they say they'll do even  
10 in the face of not doing what they said they would  
11 do. I will also discuss what's happening at the STB  
12 and raise some questions for this Committee to  
13 consider.

14           What is the position of the unions and  
15 the Commonwealth at the STB? The position is that  
16 NSR made repeated representations to the STB, to the  
17 Commonwealth, to officials of the State of  
18 Pennsylvania, to communities in Pennsylvania, to  
19 Conrail employees and the public at large that they  
20 would retain the Hollidaysburg car shop, consolidate  
21 work there and bring new work there, expand  
22 employment there and invest \$4 million there.

23           These representations were made in the  
24 context of a vigorous campaign for approval of the  
25 transaction, first, in the context with CSX to

1 acquire Conrail and then as part of the joint  
2 CSX/Norfolk Southern application.

3 We submit and the Commonwealth submits  
4 that Norfolk Southern is bound by those commitments  
5 and representations, especially in view of the  
6 Surface Transportation Board's order binding it to  
7 the representations it made during that proceeding.

8 With respect to the nature and scope of  
9 NSR's representations, they are laid out in full in  
10 the petition and were discussed at the last hearing.  
11 Many of you are fully aware of what was said. Some  
12 of it was said to you, and we all saw the video  
13 today.

14 There are a few items I just want to  
15 highlight. They are in our joint petition. But just  
16 because of the attempted wiggling by NS to dumb down  
17 their commitment to an expectation or a hope or an  
18 aspiration or a thought on their part, it is  
19 important to recognize, not only what was said in the  
20 video on Day One, but to recognize that as a  
21 culmination of a campaign by NS for years.

22 We start with what is Exhibit 4 in our  
23 joint petition, a newspaper ad. This one is from the  
24 New York Times. But it was in Philadelphia, I  
25 believe, and it was in Pittsburgh. The Altoona and

1 Hollidaysburg shops, Norfolk Southern is committed to  
2 continuing to operate the Hollidaysburg car shop and  
3 its Juniata locomotive shop at Altoona and will  
4 promote employment there.

5           You can't say it any more clearly than  
6 that. This is to all Conrail constituencies. You  
7 don't have to be a Conrail shareholder to benefit  
8 from Norfolk Southern's offer. They want to wiggle  
9 around with words like intent and aspiration, but  
10 there is the word commitment published for everybody  
11 to see.

12           Conrail -- Norfolk Southern's Chief  
13 Executive Officer, Mr. Goode, whom you saw on the  
14 videotape, testified at a United States Senate  
15 hearing under questioning from Senator Specter of  
16 this Commonwealth and he gave him assurances that  
17 they would retain the shops.

18           Mr. Goode said -- this is Exhibit 6 to  
19 the joint petition -- since Norfolk Southern will be  
20 the likely beneficiary of the lines and of those  
21 shops, we do not have nearby shop facilities as CSX  
22 did in Cumberland. So we are in the position of not  
23 only being able to give assurances that we will keep  
24 those shops and keep them operating, we are going to  
25 need them.

1           That's the CEO of NS. And after further  
2 colloquy, Senator Specter says, Okay, that answer  
3 will be well received in Blair County. Thank you. I  
4 would like just to note that Senator Specter has just  
5 submitted comments to the STB in support of the joint  
6 petition and of the Commonwealth of Pennsylvania and  
7 the unions in large part because of what Mr. Goode  
8 said to him in the United States Senate.

9           Then a verified statement -- verified  
10 statement sworn under oath by Mr. Goode to the  
11 Surface Transportation Board as part of the  
12 application -- I want to point out they're fond of  
13 saying, Operating plans are just sort of aspirations  
14 we talk about the kinds of things we're going to do.  
15 And they could tell you, Yes, an application  
16 sometimes looks about this big. And then an  
17 operating plan can contain about 500 pages.

18           Mr. Goode gave a statement, a verified  
19 statement, about 16 pages long, only. And when he  
20 talked about things, one of the things he talked  
21 about in that short summary was, Conrail has  
22 excellent, excellent locomotive and car repair  
23 facilities in Altoona and Hollidaysburg,  
24 Pennsylvania.

25           While NS's comparable facilities are in

1     Roanoke, Virginia, it's explained in the operating  
2     plan and the verified statement of Michael Molhan,  
3     your operating plan witness, important efficiencies  
4     can be gained by concentrating different kinds of  
5     mechanical work at each location. Then, insourcing  
6     provides another opportunity to maximize utilization  
7     of the system shops at Altoona, Hollidaysburg and  
8     Roanoke.

9             Then -- and this I took off NS's website.  
10     This was Exhibit 10 to our petition. This was a  
11     press release contemporaneous with the filing of the  
12     application: New Norfolk Southern, Best Choice for  
13     Pennsylvania. Now, here's a funny thing. After we  
14     included this in our petition, if you go to NS's Web  
15     page, this isn't there anymore. It's slightly  
16     Stalinesque, I would suggest.

17             In this paper it says, Norfolk Southern  
18     is committed to operate Conrail's Hollidaysburg car  
19     shop and Juniata locomotive shop and will promote  
20     employment there. This is it on NS paper. You can't  
21     get it anymore, but it's in the petition.

22             And just to show all the continuation in  
23     time. We have our Exhibit 18 is -- you've heard  
24     about the New York Dock arbitration. And I'd like to  
25     talk about that a little later, but it's a process of



1 negotiating an agreement for implementation of the  
2 transaction. We went to arbitration. The TWU, and  
3 the TCU and NS went to arbitration in hope of getting  
4 an agreement.

5           And one of the things that was going on  
6 there is NS said, We need our collective bargaining  
7 agreements in place at Hollidaysburg and Juniata, not  
8 the Conrail ones. We're moving work there. This is  
9 going to be part of a consolidated NS system. This  
10 is our plant, and we are going to get it through  
11 this. And we are moving all work there. We are  
12 consolidating the work there.

13           We are now -- this statement is now six  
14 months after the approval from the STB. That's where  
15 they're still going. That's what they're still  
16 saying, and then it culminates in Mr. Goode's  
17 statement that we all saw and heard today.

18           I submit that it is clear to all,  
19 obviously, it is to Committee members as it is to us,  
20 what NS said, why it said it and that those things  
21 constituted commitments which they're obliged to  
22 fulfill.

23           Now, if I may, I'll move on to what NS is  
24 trying to say to defend itself. And I'll first  
25 address the remarks of General Timmons at the Altoona

1 hearing and some of them today. I'll then address  
2 some of what they've said in their filing at the STB.

3           Initially, I want to say that I submit,  
4 as some of the members have already suggested, that  
5 the Committee should not attach much weight to what  
6 NSR has said. The fact is they are now flat  
7 contradicting what they previously say in sworn  
8 statements. They have no credibility, as correctly  
9 observed.

10           I'm not here to cast aspersions on  
11 General Timmons' personally. He can only tell you  
12 what he was given by NS headquarters in Norfolk, but  
13 I submit that NS Corporation and its entities and its  
14 high-level officers have no credibility on this  
15 issue.

16           They say they're concerned about the  
17 appearance that they lack credibility, and that it  
18 shouldn't be lost over a business decision. But  
19 there was a commitment made, and that's the point.  
20 They made a commitment. And what they're trying to  
21 do is wiggle out of it by saying, Now, we've made a  
22 different business decision.

23           Another point initially, to the extent  
24 that NS relies on its failure to meet its revenue  
25 expectations, one, we feel it is irrelevant because

1 the commitment wasn't tied to certain levels of  
2 business. As Mr. Maher noted, that's a different  
3 scenario. They made that promise.

4 This is not a question of a reduction of  
5 force as a result of declining business. Instead,  
6 they are talking about the complete closing of the  
7 shop forever while work is still available to be done  
8 there and movement of potential work to other places.

9 We did not challenge NS for a breach of  
10 its commitment when it laid off a whole lot of  
11 workers last year, but the closing of the  
12 Hollidaysburg car shop is of an entirely different  
13 order. And in the circumstances, it cannot be  
14 justified by their current financial problems, much  
15 of which is their own fault for their incompetent  
16 implementation of the merger. So we feel it should  
17 not matter, but we will address them because they  
18 rely so heavily on it.

19 Now, with respect to General Timmons's  
20 statement that NS should be excused from its  
21 representations because it relied on 1995 data and  
22 some shippers changed their plans, I think it needs  
23 to be recognized -- what he's talking about is when  
24 you do these applications for the STB, there's a  
25 whole bunch of financial analyses that have to be

1 done. And they have to provide all these statements  
2 as part of the application and traffic tapes, and a  
3 variety of things are used. And they use the base  
4 year of the last full year reported before the  
5 application.

6 That's for that purpose. That's not for  
7 their operating plan. They don't design their  
8 operating plan based upon the data that they have to  
9 use for that level of analysis, and I submit no  
10 rational corporation would do that. That's not what  
11 they were planning on.

12 The plans of shippers as to routings and  
13 total car loads is irrelevant to the decisions about  
14 where program and heavy car repair work might be  
15 done. Well, perhaps it might be relevant to a  
16 running repair facility on a line if that line is no  
17 longer being used, but not for the usage of a  
18 centralized heavy repair shop.

19 NS -- and I've heard them. I heard them  
20 at the recent Surface Transportation Board hearings  
21 on major consolidation saying, Well, look, you know,  
22 sometimes things happen, shippers move. We put in  
23 our operating plan. We're going to run a certain  
24 number of trains per day out to Shipper A, and  
25 Shipper A moves. Well, I understand that with

1 respect to operations, as to train runs. But that  
2 doesn't, again, affect your plans as to a centralized  
3 repair facility particularly as we're saying barely a  
4 year out.

5           Mr. McClellan made the point that, Well,  
6 when a shipper leaves an area, the trucker can go  
7 with it. We've got this whole physical plant  
8 involved. Again, that may run to the question of  
9 train operations, not to a centralized car repair  
10 facility. That argument is simply specious in the  
11 context of the problem that you're considering.

12           General Timmons said that Norfolk  
13 Southern based its plans on the expectations of the  
14 business levels in 1997-1998, and now they need to  
15 adjust. And that's on Page 2 of his statement.  
16 Well, that's astounding, if it's true. Surely the  
17 whole plan wasn't developed of a fine line of a  
18 continued steep economic growth of a type that was  
19 unprecedented.

20           I submit it would have been an entirely  
21 different STB hearing if NS came in and said, Here is  
22 all the things we're going to do, but it depends upon  
23 growth being off the scale. That wouldn't have  
24 happened. Surely the first economic bump in the road  
25 shouldn't be enough to derail the entire plan. I

1 would submit that if that statement is true, then NS  
2 engaged in material misrepresentation to this body  
3 and to the Surface Transportation Board.

4           General Timmons cited a loss of business  
5 attributable to the downturn in the economy over the  
6 last eight months as explaining the general  
7 retrenchment and specifically what they did in  
8 Hollidaysburg. But let's remember, NS originally  
9 proposed to close the Hollidaysburg car shop last  
10 November before anyone was talking about an economic  
11 downturn here. They were going to go in in November.

12           And this silly talk about them  
13 reconsidering because maybe something else would go  
14 on there with selling something is ridiculous. They  
15 reconsidered because Congressman Shuster was going to  
16 hold hearings. So the point was a year and a half  
17 out, that's when they were going to go do it before  
18 any of this talk was going on.

19           They also ignored the rather significant  
20 contribution to the problem of loss of business.  
21 General Timmons has acknowledged and Mr. McClellan  
22 has acknowledged that they had implementation  
23 problems. But as usual, they understate the case and  
24 they seem to minimize their own role. In fact, their  
25 implementation was a disaster for almost a year

1 largely due to their incompetence and arrogance.

2 NSR's actions contributed mightily to its  
3 own financial circumstances as it had to spend large  
4 outlays to dig out, and it lost business. Some have  
5 described NS as effectively running off business.

6 I've provided you just two articles. This is just  
7 something that I had at my office when I read this.

8 A couple of shippers who said we would like to ship  
9 by rail, but we're afraid to. We can't rely on it.

10 So they ran up tremendous losses because  
11 of their own failures. They laid off a lot of the  
12 work force already, a significant portion of it,  
13 because of the expenses that had to run out there.  
14 And by the way, they're avoiding paying benefits to  
15 the people. I'll get to that.

16 So the point is to the extent that they  
17 claim their actions are justified by a loss of  
18 business, I submit it's irrelevant, that most of the  
19 losses are self-inflicted and that to the extent that  
20 there are losses due to a general economic slowdown,  
21 they're not really a factor in this position because  
22 they planned to do it beforehand. In short, they  
23 suggested they've acted in good faith. But the  
24 arguments that NS has given them to make are  
25 irrelevant or factually incorrect.

1           Now, let me go to -- a little bit to  
2 their response to the joint petition. They filed  
3 their reply on April 17th. I don't know if they  
4 provided a full copy to the Committee, but I'll  
5 summarize some of what they've got to say and  
6 respond. They obviously were unwilling to send  
7 somebody here to talk about the Hollidaysburg car  
8 shop. I concur with the analysis that it was  
9 arrogant and shameful.

10           I would submit that there was nothing  
11 improper about them presenting their position that  
12 they gave to the STB. There's nothing inconsistent  
13 with the STB proceedings for them to sit in front of  
14 you and tell you and explain their situation. The  
15 problem is they're embarrassed to because their  
16 position at the STB is false as you know from  
17 everything you saw.

18           In their STB filing, they began with  
19 three material misrepresentations, one of which  
20 you've already heard repeated here today.

21           First, it's asserted that they made a  
22 good faith effort to follow through on their  
23 commitments regarding the car shop. And that was  
24 shown, they say, by operating the car shop for almost  
25 two years in a manner consistent with the STB



1 filings.

2           Second, they said that 300-plus employees  
3 that are currently working at the shops were being  
4 given the opportunity to follow their work.

5           Third, they said they're acting in good  
6 faith in closing the shops based on objective need  
7 because their marketing efforts were not sufficiently  
8 successful.

9           These assertions are all false. As to  
10 supposed two years of good faith effort to follow  
11 through with the plan, we note that Day One was June  
12 1, 1999. NSR sought to close the shop in November of  
13 2000. Anyone other than that railroad would realize  
14 that's a year and a half.

15           Also, NSR admits that they essentially  
16 lost a full year because of their service problems.  
17 That was a lost year. Their own papers, their own  
18 published remarks essentially say they think they  
19 returned to normalcy sometime last spring. If so,  
20 they basically gave the shop a mere six to eight  
21 months after service returned to normal to show where  
22 them where they were.

23           I don't know how they can say that their  
24 marketing efforts were not sufficiently successful  
25 for insourcing because our information that we showed

1 you shows that insourcing was actually up about 20  
2 percent over pretransaction work. In fact, they  
3 turned work away. I can't believe that their  
4 expectations were predicated on doing better than 20  
5 percent increase.

6 CHAIRMAN GEIST: Excuse me, when you say  
7 turned work away, is that the CSX stuff that they  
8 were supposed to do and they pulled out?

9 MR. EDELMAN: That and more. Mr. Lutton  
10 could be --

11 CHAIRMAN GEIST: Could you provide us  
12 with a little bit of written numbers and who they  
13 were?

14 MR. EDELMAN: Mr. Lutton will provide  
15 that.

16 Now, as to the claim of good faith in  
17 dealing with employees and the assertion of 300-plus  
18 employees being offered the opportunity to follow  
19 their work, in the back of this document, Exhibit 21,  
20 is their notice to the unions about abolishing their  
21 jobs. Now, this part only deals with the shop craft  
22 workers and not the clerks. Because at the time this  
23 was filed for the shop craft unions, the clerks made  
24 their own filing. There are problems there too.

25 As to the shop workers, there are 275

1 jobs being abolished in their notice. In their  
2 notice, they cite 142 jobs being created at the other  
3 locations. So that is at least a misrepresentation  
4 to suggest -- yes, they're going to say any one of  
5 you 300 people is offered a job over there. I guess  
6 you could say you're offering jobs to 300 people, but  
7 the reality is they've only got 142 jobs to offer.

8           What's that really about? What's this  
9 really about? And, again, I can get into this a  
10 little bit more with New York Dock. But here's the  
11 deal. Under New York Dock, if you have the  
12 opportunity to move and you don't, you lose your  
13 protective benefits.

14           So here's the scam. They tell everybody,  
15 Look, here's jobs over there. You have an  
16 opportunity to move to them. And if people say,  
17 Well, you know, I've lived here all my life. My  
18 family is here, and I don't want to move there. Or  
19 people say, You're asking me to move, uproot my  
20 family, go to Ohio, go to North Carolina. When we  
21 read stuff that says your company is an extremist,  
22 when we hear the possibility that your company may be  
23 bought out by the Burlington Northern and Santa Fe,  
24 how do I know what my future is going to be in those  
25 places?

1           So maybe some people say, Well, I'm not  
2 going to take that offer. I'm sorry. They lose  
3 their benefits. Well, that works great for them  
4 because we never get to the point of paying benefits  
5 because they put everybody in that quandary, and they  
6 can't do it.

7           But so -- as far as I'm concerned, their  
8 offers are essentially a scam to get them out of  
9 paying protective benefits. But even if you accepted  
10 in good faith, there's only 142 jobs. And to tell  
11 the STB and to tell you that they're offering  
12 300-plus jobs is just false.

13           Third, as to the claim of good faith in  
14 closing the shops, again, we note that they tried to  
15 close them last November, a mere six to eight months  
16 until they returned to normalcy. They claimed --  
17 they also have an interesting remark that the closing  
18 is a cost-cutting move because this shop is redundant  
19 because there are others shops -- these other shops  
20 do similar repair work.

21           Now, there are differences as to the type  
22 of work. But beyond everything else, this so-called  
23 redundancy existed at the time that they filed the  
24 application and made the commitments that they made.  
25 They can't sit there and say, All of a sudden, we've

1 discovered that these shops do the same work as those  
2 so we're going to take the work there.

3 They said, These two shops do the same  
4 thing. This is the finest shop in the world. This  
5 is the heart of the system. We're taking the work  
6 here. To sit here and tell you now that they're  
7 redundant is, again, misrepresentation.

8 CHAIRMAN GEIST: Isn't in the total STB  
9 agreement the only shop named, Hollidaysburg?

10 MR. EDELMAN: No.

11 CHAIRMAN GEIST: No?

12 MR. EDELMAN: No. They also named the  
13 Juniata shop, and they talked about the Roanoke  
14 shops. There are a few others. But the one that's  
15 prominent clearly are the two shops in Altoona.

16 CHAIRMAN GEIST: Thank you.

17 MR. EDELMAN: Another thing I just heard  
18 this morning, an interesting question, Mr. McClellan  
19 talked about the idea that there was a move to  
20 privately own cars. So they say, we don't need that.  
21 Well, that's kind of an odd rationale for what's  
22 going on here since what they're talking about is  
23 insourcing at the Hollidaysburg car shops.

24 If NS is saying that a lot of their  
25 customers are owning their own cars, Well, you know

1 what? A lot of those customers aren't in a situation  
2 to repair their cars. It seems to me that's a  
3 rationale for keeping this shop and not sending it to  
4 shops that are capable of doing that.

5           Second, infrastructure being  
6 underutilized. Well, infrastructure here -- that's  
7 what he says, we don't want to spend money on  
8 underutilized infrastructure. They're the ones who  
9 have done the cutbacks. They're the ones who have  
10 reduced the work force from over 400 down to  
11 300-something. They're making those choices.

12           The main argument they've made and what  
13 you tried to get your hands on and what they won't  
14 talk to you about is that what they said wasn't  
15 really on the order of commitment. It was more like  
16 an aspiration, illustrative examples of what they  
17 might do rather than an actual plan on which people  
18 might rely.

19           As I read that, I was sort of thinking  
20 they're sort of saying this is like one of those  
21 futuristic car shows you go to where they have  
22 concept cars. Nobody expects them to be built, and  
23 they would like you to accept that that's really what  
24 this is about. Their tone is sort of like, Well,  
25 gee, you guys weren't naive enough to think that we

1 were really going to go through with that. That's  
2 the tone.

3           Look at the record. As we've shown  
4 before and reiterated today, they repeatedly and  
5 explicitly said they would consolidate the car heavy  
6 repair work at the shop, they would invest \$47  
7 million. It was not a stray remark. It was not a  
8 vague projection. I heard the reference to the  
9 semantic difference between a promise and a  
10 projection. That's not semantics. Those are  
11 differences, and we all know what they are.

12           There are also assertions of, Well, this  
13 was just in our operating plan. But it was also in  
14 the sworn statement of Mr. Goode and all the other  
15 places that we've referred to and you're familiar  
16 with. And, again, it went on and on from the very  
17 first day they began their campaign until Day One and  
18 past.

19           Again, as some of you have recognized,  
20 these statements were made as part of a political  
21 campaign that they sought to gain support or at least  
22 minimize opposition from Pennsylvania and its elected  
23 officials. And they did so by these representations,  
24 not only to them indirectly but in all filings to the  
25 STB, in general media effort here to this Committee

1 and in Harrisburg and on Capitol Hill.

2 And they were successful. Pennsylvania  
3 and its officials supported the transaction based on  
4 the representations made to them, and now they say  
5 they want your expressions of good faith in them.  
6 That is to negate all that they said to gain the  
7 support now that they no longer need it.

8 Representative Levdansky said, What  
9 happened to make this change? Why did this occur?  
10 Well, two changes I can look at here are, one, they  
11 got the approval they were looking for. And, two,  
12 Congressman Shuster is no longer in charge of that  
13 committee. They were concerned about Congressman  
14 Shuster and his place on the committee. That was  
15 part of the reason the commitment was the commitment  
16 they had. But, again, they made it on the record.

17 They moved first when it became apparent  
18 that Congressman Shuster might not retain that  
19 chairmanship. Then they pulled it back once he  
20 called hearings. Once he resigned, they moved  
21 immediately. Now, if the commitment was merely a  
22 promise, something they said to Congressman Shuster  
23 between Mr. Goode and Mr. Shuster, Well, then maybe  
24 the commitment only lasts that long.

25 But they were part of a formal record



1 made in the administrative agency. They were part of  
2 a public relations campaign of newspapers published  
3 everywhere, of statements made to you, of statements  
4 made in Altoona.

5           They became part of the STB order that  
6 the representations they made during the course of  
7 the proceeding were binding. If at the time, they  
8 said, Well, all these things we're saying are mere  
9 aspirations, I submit that the position of the State  
10 of Pennsylvania and its elected officials would not  
11 be what it was.

12           NS has focused -- this is the tricky  
13 lawyer argument -- on the fact that, Well, the  
14 commitment appears to be open-ended. And so they  
15 infer that the unions and the Commonwealth are  
16 saying, Oh, well, under their interpretation, we'd be  
17 bound in perpetuity to keep the Hollidaysburg car  
18 shops. And then here to make it interesting, Well,  
19 that means we have no commitment whatsoever. Well,  
20 that is a crafty lawyer's argument, but it is a false  
21 one.

22           Under NS's view, if you look at it that  
23 way, since there's no end date to the commitment,  
24 they could have closed the car shop on Day Two  
25 because it's not really a commitment. Oddly, if they

1 made one commitment for two years, that would be  
2 better than an open-end commitment.

3 But beyond that, the unions don't think,  
4 and I doubt the Commonwealth does, that NS must  
5 maintain the shops in perpetuity, perhaps a hundred  
6 years as we heard Mr. Goode. But that's not the  
7 point. Obviously, again, that's somewhat rhetorical.  
8 But it's certainly not Day Two or a mere year later.

9 There must be a reasonable time period  
10 that they have to make a decision like that. And I'd  
11 submit they'd have to go to the STB affirmatively to  
12 get relief from the commitments they made not act  
13 unilaterally.

14 Now, as to the assertions that NS must be  
15 free to change to react to new circumstances like any  
16 business. I submit that they have ignored the basic  
17 nature of the STB proceedings and the unique form of  
18 authorization they received. And this goes also to a  
19 question that was asked apparently at the last  
20 hearing about how is this different from the closing  
21 of a steel mill or the United/US Air merger.

22 For this type of transaction the Norfolk  
23 Southern was required to obtain STB approval,  
24 affirmative approval, or they could not do it. It's  
25 not like other industries where's there no federal

1 agency approval involved or even ones where there's  
2 just a question of whether or not the Department of  
3 Justice is going to oppose the transaction on  
4 antitrust grounds.

5           The STB can approve, reject or approve  
6 with conditions. If there is approval, the railroad  
7 obtains immunity from other laws in carrying out the  
8 transaction. It is a very broad, powerful override  
9 of the law. And it is self-executing by action of  
10 the parties receiving the approval.

11           That's pretty powerful what they get.  
12 They get to go to the federal government. They get  
13 to do approval of a transaction that would never pass  
14 antitrust muster under any other regime. They get  
15 immunity from antitrust law. They get immunity from  
16 other law. They get approval. And that's how  
17 they've run over our collective bargaining  
18 agreements, using this immunity.

19           So when General Timmons says, We need to  
20 be free to make a business decision -- let's look at  
21 environment. They're not any other business.  
22 They're a heavily regulated business that has  
23 obtained the benefit of government approval and a  
24 get-out-of-jail-free card. And to sit there and act  
25 like free market principles apply when they are using

1 this immunity to negate the rights of labor, to  
2 negate the rights of community, to negate the rights  
3 of shippers and then get pious about their free  
4 enterprise, I submit that's misplaced.

5 Now, they have also made arguments that  
6 these sorts of things under operating plans are not  
7 binding under STB precedent. I don't want to debate  
8 that point here with you. Our position is they are.  
9 We will show they are to the STB.

10 I have provided you with reprints of the  
11 ordering sections of the last several mergers  
12 starting with the Union Pacific/Chicago Northwestern,  
13 the Burlington Northern/Santa Fe, the Union  
14 Pacific/Southern Pacific and the most recent,  
15 CSX/NS/Conrail. The one thing you will note on those  
16 ordering sections is that the three orders prior to  
17 the CSX/NS/Conrail transaction do not have the  
18 language binding the applicants to the  
19 representations that they made during the course of  
20 the proceedings.

21 Finally, as to the claim that they're  
22 losing a lot of money, first of all, I think this is  
23 primarily a certain amount of accounting trickery.  
24 We're analyzing that, and I'm not in a position to  
25 respond to that right now. But I would suggest that

1 when you consider this, you consider the credibility  
2 of everything else you've been told.

3 But here's an interesting question. Have  
4 they shown a loss or decline in the amount of work at  
5 the car shops from the time when they made the  
6 commitment and now? I mean, in essence the predicate  
7 of the argument is, Well, we made those commitments.  
8 And there was a certain of work, and now there isn't.

9 In their STB filings, there's a sworn  
10 statement from an individual who refers to the fact  
11 that there was 13,000 car repairs done in 1977 and  
12 1978. But over time, Conrail's use of the shops  
13 dwindled. Well, now we don't have anything specific  
14 about how much work was done in '77-'78. But it just  
15 dwindled. We don't know in the next 20 years -- we  
16 don't know. They don't provide us with the numbers.

17 On the next page, during 2000, NS worked  
18 on approximately 4,040 cars in the shops. So they  
19 would like you to compare -- they would like the STB  
20 and everybody else to compare the 4,000 cars with the  
21 13,000 cars. But there were three times as many  
22 employees in the shops in '78. So that's a false  
23 comparison, once again.

24 So the question is, What were the  
25 circumstances in '97-'98 when they made this

1 commitment? Our belief is that that did not  
2 materially change. And if their interesting  
3 accounting produces a loss on the amount of cars now,  
4 then it shows a loss back then, if you were to do  
5 that. And those circumstances haven't changed, and I  
6 think they ought be to required to tell us that  
7 information.

8           Again, this goes to the question, What  
9 changed? What changed wasn't the finances and the  
10 shops. What changed is that they got the benefit of  
11 the approval and Congressman Shuster is no longer in  
12 a position to control, not only their situation, but  
13 the industry in general.

14           Final point, what is going on at the STB?  
15 We filed our joint petition. NS filed a reply. We  
16 and the Commonwealth will be filing a response to  
17 that probably toward the end of next week. The  
18 matter will then be ripe for decision by the STB.

19           As to this Committee, I -- we  
20 respectfully submit it's clear that what's going on  
21 here is a renege on a commitment. And the Committee  
22 could perhaps find that NS is -- make a finding and  
23 submit that they've misrepresented the facts, that  
24 they've acted in bad faith.

25           I think it is important to review and

1 reevaluate current dealings with NS. They're asking  
2 for more money. How, and why is it going to be used?  
3 Or to consider the recent disclosure that they're now  
4 going to spend money in Enola yard, why and can you  
5 rely on that given what they've said? They've  
6 provided a whole list of things they say they're  
7 going to do. Why should you believe that?

8           And consider the impact of all of this on  
9 future transactions. There's a lot of talk about a  
10 potential Burlington Northern/Santa Fe takeover of  
11 Norfolk Southern. What does that mean for  
12 Pennsylvania, and how do you deal with Norfolk  
13 Southern?

14           Let me just address a couple of quick  
15 points about New York Dock -- you had questions. And  
16 rather than go through an extended history, I'll make  
17 a few. And if you have any, I'd be glad to answer  
18 them.

19           First of all, the New York Dock  
20 conditions did not arise out of the Penn Central  
21 merger. That's incorrect. The New York Dock  
22 conditions run back to an agreement negotiated by the  
23 labor unions and the major carriers in 1936 called  
24 the Washington Job Protective Agreement.

25           It's a negotiated agreement. There was

1 quid pro quo given there. Eighty-five percent of the  
2 country's railroads at the time were participants in  
3 that agreement. Sometime later, the ICC made those  
4 conditions a part of its standard orders. It then  
5 became enacted into law as a requirement that they do  
6 so.

7 The New York Dock conditions are a  
8 product of the conditions imposed by the ICC in the  
9 late '60s, early '70s, and the conditions that are  
10 devised under the Rail Passenger Service Act for  
11 covering Amtrak. And they were combined. Congress  
12 mandated in 1976 that essentially the higher level of  
13 both be put together, and that was done in the New  
14 York Dock conditions. That's the origin of them.

15 As to the notion of whether or not NS  
16 pays New York Dock benefits, Yeah, I guess they can  
17 say they pay people. There's also a lot of people  
18 they don't pay. I've spent a lot of time with them,  
19 dealing with the fact that they're not paying people.  
20 And to sit there and say, Well, that's controlled by  
21 an arbitrator.

22 But you know what? If you agree to pay  
23 people who are entitled to be paid, you don't have to  
24 go to an arbitrator. You don't have to do that, to  
25 say you're willing to be bound by somebody creating a



1 dispute that you're creating.

2           When they furloughed people last spring  
3 in these shops and when they furloughed hundreds of  
4 maintenance employees last spring, they said none of  
5 those people were affected by the New York -- by the  
6 transaction and were not entitled to New York Dock  
7 benefits.

8           Then, even though they were publishing  
9 reports, they were saying things in their SCC filings  
10 that said we need to cut costs here, we are going to  
11 engage in a buyout of a railroad and were going to  
12 reduce forces because of the expenses we incurred in  
13 digging out of the mess we made. They said, But  
14 those layoffs didn't have anything to do with that.  
15 I would suggest to you that that shows you the sort  
16 of good faith you can have in dealing with NS.

17           That concludes my prepared remarks. I'd  
18 be glad to answer any questions.

19           CHAIRMAN GEIST: Before we do, Tom, do  
20 you want to say anything?

21           MR. TOM LUTTON: No.

22           CHAIRMAN GEIST: All right, Dick.

23           REPRESENTATIVE HESS: Just one question,  
24 Mr. Edelman, referring to the tape that Chairman  
25 Geist played concerning Mr. Goode's statements and

1 Congressman Shuster's statements, do you have any  
2 documentation or correspondence as to concerning the  
3 commitments that were made to Congressman Shuster  
4 from Mr. Goode or from Norfolk Southern in writing?

5 MR. EDELMAN: I certainly don't have  
6 anything between NS and Mr. Goode, and we have not  
7 relied on that nor has the Commonwealth. We've  
8 relied on the documents that are in our joint  
9 petition that are ample in and of themselves to  
10 demonstrate the level of the commitment.

11 But if -- I would suspect. And by the  
12 way, I would suspect that if you asked the question  
13 to Norfolk Southern to produce documents that show a  
14 commitment, NS, in its interesting description of the  
15 word commitment, probably will produce nothing  
16 because they will tell you that none of it wasn't a  
17 commitment.

18 So I would suggest that the request might  
19 be broadened a little bit to cover there the  
20 potential for their definition of it.

21 CHAIRMAN GEIST: I just want to speak a  
22 point of good humor here quickly that Senator Craig  
23 Lewis was only here for rebuttal.

24 MR. EDELMAN: Sorry, it's lost on me.

25 REPRESENTATIVE HESS: Just one more

1 question, would you have subpoena power to subpoena  
2 such documents if they existed?

3 MR. EDELMAN: We don't. The STB would.  
4 A request could be made to the STB in connection with  
5 this to compel production. The STB, although it has  
6 that power, oftentimes has not used it of late. The  
7 other potential troubling matter in that regard is  
8 this: We are looking at a closing date at the end of  
9 August here.

10 Yeah, what I, you know -- in the best of  
11 all worlds, I would say to the STB, Bring Mr. Goode  
12 down here and make him explain what's going on.  
13 Don't send flacks up for him. Make him explain  
14 himself. I would say, Bring the operating people  
15 down here and produce contemporaneous documents and  
16 produce materials about why they're closing the  
17 Hollidaysburg car shop and what they thought at the  
18 time.

19 My problem is, very simply, that the STB  
20 is not the fastest-moving agency in the world. And  
21 we have people whose lives are going to be affected,  
22 but they would be the ones who would be able to order  
23 that.

24 CHAIRMAN GEIST: Thank you.

25 I don't know where to start, but I'm

1 certainly glad that you presented the testimony  
2 today. I think that the testimony that was presented  
3 by the TWU in Altoona was excellent. I think that  
4 your testimony was excellent, and I think the people  
5 that are out there watching on the PCN Network  
6 certainly got an earful today.

7           What we would like to do -- and, Tom, if  
8 that's okay with you -- is reserve the right to come  
9 in and have some meetings down the track so to speak.  
10 I know there's stuff that our Committee did that  
11 Attorney Wilson wrote for us after our hearings as  
12 part of the Surface Transportation Agreement, and  
13 we're very much interested in following this and  
14 making sure that we get our "day in court."

15           And that leads me to the question: If  
16 you get an order from the Surface Transportation  
17 Board that you don't agree with, what regress do you  
18 have? And is this -- if you want to say a little bit  
19 about the Dupont case, that would be okay also.

20           MR. EDELMAN: I'm not all that familiar  
21 with the Dupont case, per se. I am familiar with a  
22 lot of problems at the Surface Transportation Board.  
23 Let me say two things, one, as a technical matter, if  
24 we get a decision we don't like, we can appeal to a  
25 US Court of Appeals.

1           Two, this is another issue here, I think,  
2           and it's why we wrote the petition the way we did and  
3           where we started with. It's time for the Board to  
4           hold applicants in major rail consolidations  
5           accountable for the solemnly undertaken commitments  
6           that they make in seeking and obtaining STB approval  
7           of their transactions.

8           I would submit that this case presents an  
9           interesting test of whether that agency can do the  
10          job that it's supposed to be. And beyond the  
11          question of the court of appeals, there's the  
12          question of Congressional oversight committees,  
13          people that have to be concerned about whether or not  
14          this agency is actually doing its job. And I would  
15          think that were they not to do what needs to be done  
16          here, they would not be doing their job.

17                   CHAIRMAN GEIST: We thank you very much.

18                   MR. EDELMAN: Thank you.

19                   CHAIRMAN GEIST: Next up is Fran Horvath,  
20          District Chairman, TCU.

21                   Before you testify, I'd just like to say  
22          that Don Dunlevy that works this Committee pretty  
23          hard was to testify. And he got called to Washington  
24          D.C. today, and he'll be submitting his testimony in  
25          writing. Don is one my favorite Democrats because he

1 looks more Republican than a Republican.

2 So, Fran, you're on.

3 MR. HORVATH: Okay, this is very brief.  
4 I want to thank you for allowing us to testify. This  
5 is going to be a hard act to follow because this  
6 statement is very brief.

7 I'm representing Division Chairman Dave  
8 Bender, who works in the Altoona shop and he's  
9 working today. This is a statement by our General  
10 Chairman Tony Santoro.

11 The Transportation Communication Union  
12 actively participated in the Surface Transportation  
13 Board proceedings in the acquisition of Conrail.  
14 Norfolk Southern began to work the Hollidaysburg  
15 shops on June the 1st, 1999. It is now clear that  
16 Norfolk Southern will not retain the shop in spite of  
17 what it represented to the Surface Transportation  
18 Board in seeking approval of the transaction.

19 Was it a coincidence that Congressman Bud  
20 Shuster resigned in January of 2001 and Norfolk  
21 Southern sprang into action in February of 2001?  
22 It's pretty plain that Norfolk Southern planned to do  
23 this even as it was saying otherwise at the Surface  
24 Transportation Board proceedings. I urge you to hold  
25 the Norfolk Southern Railroad to their word.

1           General Chairman Santoro is meeting in  
2 Washington. Vice General Chairman Larry Jones is  
3 meeting with Norfolk Southern in Norfolk today. And  
4 due to the sensitivity of many of the issues, I'd  
5 appreciate no questions because a lot would be  
6 speculation on my part. But I want to thank you  
7 sincerely for the hearings that you're holding.

8           CHAIRMAN GEIST: We certainly appreciate  
9 you and Dave Bender and everybody's help with this  
10 issue. In conclusion for the hearing today, I don't  
11 know where Dave Hoover's guy is that he had testify  
12 at the last minute in Altoona. I certainly miss him.

13           I think we've had a good day today. I  
14 think we brought a lot out, and I think that the  
15 public has learned this Committee's feelings on both  
16 sides of the aisle when it concerns what's happening.  
17 And we want to do the very best job that we can to  
18 ensure that Norfolk Southern keeps its promises. And  
19 its projections are a different thing, but we want to  
20 hold them to their promises.

21           And we want to thank everybody who has  
22 testified. If we need a third hearing, we plan on  
23 having it. I know that some of the people who have  
24 contacted this Committee who were queasy about  
25 testifying have come to me.

1                   And if we find the need, then we will  
2 convene for a third time. If not, we will do  
3 everything we can to work with the Administration and  
4 those in front of the STB. And if that effort fails,  
5 then we have some efforts in Pennsylvania that we  
6 would like to try.

7                   We want to thank everybody, and this  
8 meeting is adjourned.

9                   (The hearing concluded at 1:25 p.m.)

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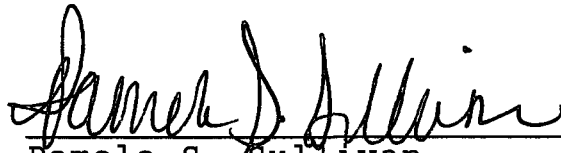
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I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the within proceedings and that this is a correct transcript of the same.



Pamela S. Sullivan  
Reporter-Notary Public

NOTARIAL SEAL  
PAMELA S. SULLIVAN, Notary Public  
Swatara Twp., Dauphin County  
My Commission Expires Jan. 31, 2005

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