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MILWAUKEE RAILROAD RESTRUCTURING ACT

GOVERNMENT DOCUMENTS

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HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 1905

TO PROVIDE FOR THE ORDERLY RESTRUCTURING OF THE
MILWAUKEE RAILROAD, AND FOR OTHER PURPOSES

S.J. Res. 114

TO PROVIDE FOR THE ORDERLY RESTRUCTURING OF THE
MILWAUKEE RAILROAD, AND FOR THE PROTECTION OF THE
EMPLOYEES OF SUCH RAILROAD

OCTOBER 29, 1979

Serial No. 96-74

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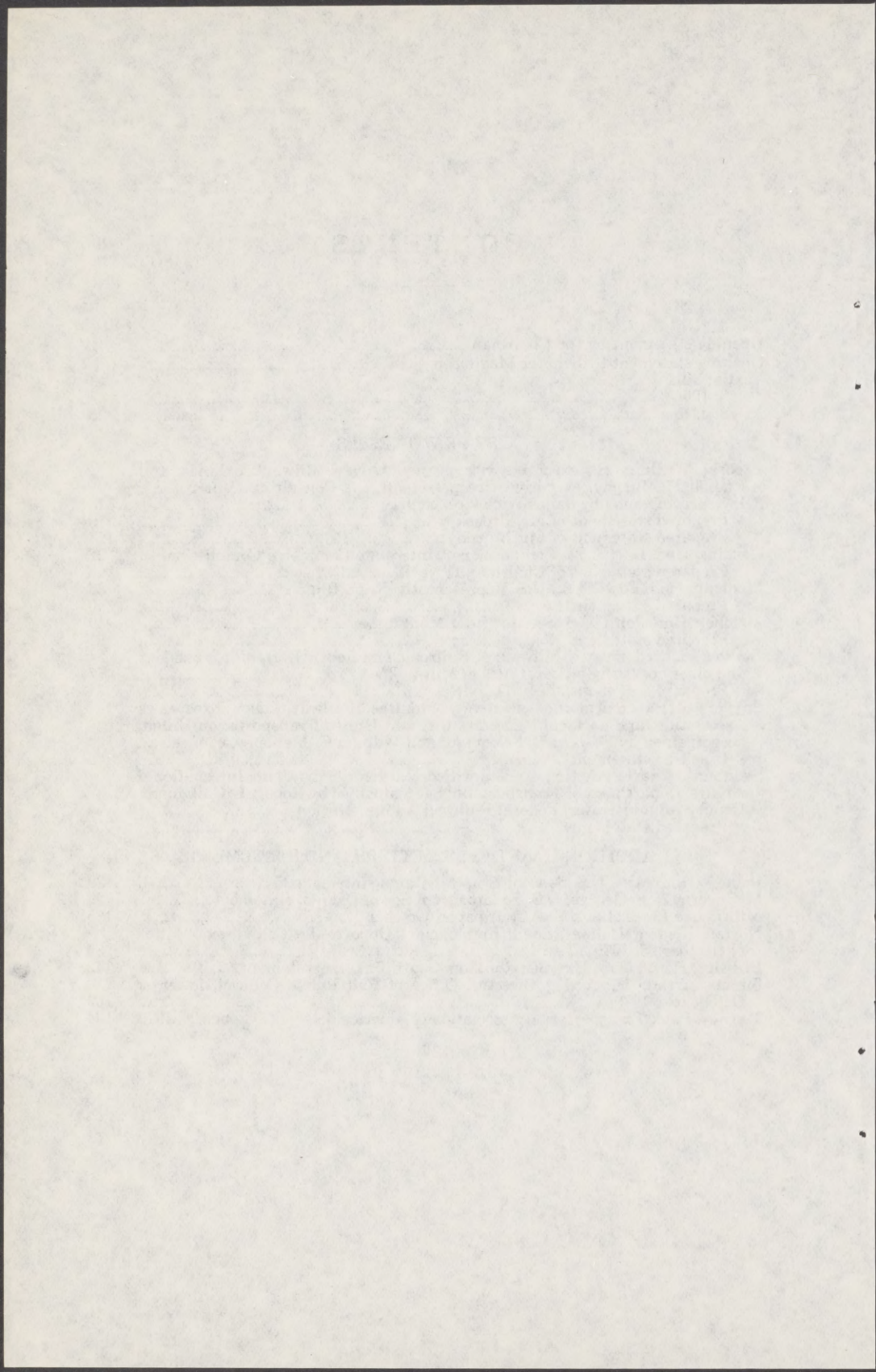
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MILWAUKEE RAILROAD RESTRUCTURING ACT

MONDAY, OCTOBER 29, 1979

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, D.C.

The committee met at 9:30 a.m., in room 235, Russell Senate Office Building, Hon. Howard W. Cannon (chairman of the committee) presiding.

OPENING STATEMENT BY THE CHAIRMAN

The CHAIRMAN. The hearing will come to order. Is Congressman Madigan here? Some of our colleagues have been delayed and will be here a little later so I think we will start with the panel this morning: Mr. Robert E. Gallamore, Deputy Administrator, Federal Railroad Administration, Department of Transportation; and Mr. Charles Swinburn, Deputy Assistant Secretary for Policy and International Affairs, U.S. Department of Transportation; and Hon. Darius W. Gaskins, Commissioner of the ICC.

This hearing was scheduled today to consider pending legislation intended to deal with the problems of the bankrupt Milwaukee Railroad. That legislation includes S. 1905 which I introduced together with Senator Long and Senator Packwood; and S.J. Res. 114, introduced by Senator Magnuson and seven other Senators, several of whom will be here this morning.

Both of these bills and similar legislation which has been introduced in the House by Congressman Florio, House Joint Resolution 341, would retain more than the core system proposed in the trustee's reorganization plan if an employee-shipper ownership plan for restructuring is submitted and found feasible in accordance with the strict statutory timetable set forth in our legislation.

All of the bills involve substantial amounts of Federal funding. It must be recognized, however, that there are very serious questions concerning the viability of an extended system. Most of the studies indicated that such a system would not be viable. Even the Milwaukee line study prepared by PMA, which has been severely criticized by DOT and others as based on speculation and totally unrealistic, states that a final judgment cannot be made at this time because of the unresolved issues regarding mergers and acquisitions relating to competitive railroads in the Midwest and the lack of information on traffic, expense forecasts, and operations.

Because of the importance of this matter, the Commerce Committee has previously held 2 days of hearings on the Milwaukee Railroad problems. Today's hearing was scheduled so we could take

a hard look at questions concerning the viability of an extended system before legislation is enacted.

However, unexpected events have intervened. The Department of Transportation and the trustees were unable to reach an agreement on further borrowings. Just last Friday the reorganization court authorized an embargo effective November 1, 1979, based on the fact that the funding contemplated by House Joint Resolution 412 had not been made available. Obviously this action has increased the need for Congress to determine as soon as possible what further steps need to be taken with regard to the Milwaukee.

An executive session is planned following this hearing for the purpose of considering S. 1905 and any amendments that may be offered. I understand the House contemplates action on House Joint Resolution 341 tomorrow.

[The bills follow:]

1 referred to as the "Milwaukee Railroad") threaten to
2 cause cessation of its operations in the near future;

3 (2) a cessation of operations by the Milwaukee
4 Railroad would have serious repercussions on the
5 economies of the States in which the Milwaukee Rail-
6 road principally operates (namely, the States of
7 Washington, Montana, Minnesota, Idaho, North
8 Dakota, South Dakota, Illinois, Iowa, Missouri, Michi-
9 gan, Indiana, and Wisconsin);

10 (3) a cessation of operations of the Milwaukee
11 Railroad would result in the loss of many thousands of
12 jobs of railroad workers and other workers whose em-
13 ployment is dependent upon rail service over the lines
14 presently operated by the Milwaukee Railroad;

15 (4) the ownership by employees or by employees
16 and shippers of part or all of the Milwaukee Railroad
17 may be a valuable tool in reorganization and should be
18 given serious consideration;

19 (5) a cessation of essential transportation services
20 by the Milwaukee Railroad would endanger the public
21 welfare;

22 (6) a cessation of such services is imminent; and

23 (7) there is no other practicable means of obtain-
24 ing funds to meet payroll and other expenses necessary

1 for continuation of services and reorganization of the
2 Milwaukee Railroad.

3 (b) The Congress declares that emergency measures set
4 forth in this Act must be taken to restructure the Milwaukee
5 Railroad and to avoid the potential unemployment and
6 damage to the economy of the region and of the Nation
7 which a cessation of essential operations by the Milwaukee
8 Railroad would otherwise cause.

9 COURT-APPROVED ABANDONMENT AND SALES

10 SEC. 3. (a)(1) Upon the occurrence of an event described
11 in section 11(b) of this Act, or on March 1, 1980, whichever
12 first occurs, the bankruptcy court may authorize the aban-
13 donment of lines of the Milwaukee Railroad pursuant to sec-
14 tion 1170 of title 11, United States Code. Pending the expi-
15 ration of the time for appeal of an abandonment order or the
16 determination of any such appeal, the bankruptcy court may
17 authorize the termination of service on a line to be aban-
18 doned, and the order authorizing such termination may not
19 be stayed. When a rail carrier is involved in a transaction
20 under this section, the court shall require the carrier to pro-
21 vide a fair arrangement at least as protective of the interests
22 of the employees who are affected by the transaction as that
23 required under section 11347 of title 49, United States Code.

24 (2) Prior to the date specified in paragraph (1) of this
25 subsection the bankruptcy court may hear and consider any

1 request for the abandonment of lines of the Milwaukee Rail-
2 road, and may fix the time for the Interstate Commerce
3 Commission's report on the request, but it may take final
4 action authorizing such abandonment only in accordance with
5 paragraph (1) of this subsection.

6 (b) Section 11346 of title 49, United States Code, is
7 amended by adding at the end thereof the following new sub-
8 section:

9 "(e) Notwithstanding any other provision, when the pro-
10 ceeding involves the sale or transfer of a line of a railroad in
11 reorganization, the Commission shall give the proceeding
12 preference over all other proceedings related to that type of
13 carrier and make its decision at the earliest practicable time,
14 not to exceed 90 days if the proceeding does not involve a
15 significant competitive impact, nor 210 days in any event:
16 *Provided, however,* That this subsection shall not apply to
17 proceedings commenced prior to the date of enactment of this
18 subsection."

19 (c) Nothing in this shall be construed to affect the prior-
20 ities or timing of payment of labor protection which might
21 have existed in the absence of this Act.

22 COURT APPROVED ABANDONMENTS IN PENDING CASES

23 SEC. 4. Notwithstanding any other provision of law, the
24 court in any case pending under section 77 of the Bankruptcy
25 Act on the date of enactment of this Act may authorize the

1 abandonment of lines of railroad pursuant to section 1170 of
2 title 11, United States Code. Pending the expiration of the
3 time for appeal of an abandonment order or the determination
4 of any such appeal, the court may authorize the termination
5 of service on a line to be abandoned, and the order authoriz-
6 ing such termination may not be stayed. In authorizing any
7 abandonment pursuant to such section 1170, the court shall
8 require the carrier to provide a fair arrangement at least as
9 protective of the interests of employees as that required
10 under section 11347 of title 49, United States Code.

11 EMPLOYEE OR EMPLOYEE-SHIPPER OWNERSHIP PLAN

12 SEC. 5. (a)(1) Not later than December 1, 1979, an as-
13 sociation composed of representatives of national railway
14 labor organizations, employee coalitions, and shippers (or any
15 combination of the foregoing) may submit to the Interstate
16 Commerce Commission a single plan for converting all or
17 substantially all of the Milwaukee Railroad into an employee
18 or employee-shipper-owned company, and a method for im-
19 plementing such plan. The plan shall include a comprehen-
20 sive evaluation of the prospects for the financial self-sustain-
21 ability of the Milwaukee Railroad.

22 (2) The Commission shall, within thirty days after the
23 date of submission of a plan under paragraph (1) of this sub-
24 section, approve the proposed plan if it finds that such plan is
25 feasible. The finding of the Commission with respect to the

1 feasibility of the plan shall be made pursuant to section 554
2 of title 5, United States Code.

3 (3) The Commission shall make a finding that the plan
4 submitted under this subsection is feasible if it determines
5 that—

6 (A) adequate public and private financing is avail-
7 able to the proponents of such plan;

8 (B) such plan is fair and equitable to the estate of
9 the Milwaukee Railroad;

10 (C) implementation of such plan will occur by
11 March 1, 1980;

12 (D) the railroad can be operated on a self-sustain-
13 ing basis; and

14 (E) the plan contains an assessment of all operat-
15 ing practices, and includes the implementation of
16 changes designed to achieve the greatest possible labor
17 productivity increases consistent with safe operations
18 and adequate service.

19 For purposes of the determinations under this paragraph,
20 adequate financing shall include all sources of private funds,
21 the probable value and priority of valid claims against the
22 estate that will be released as part of implementation of the
23 employee or employee and shipper ownership plan, and Fed-
24 eral, State, or local funds available under programs (in exist-

1 ence as of January 1, 1980) which are or will be available to
2 the proponent.

3 (b) If the Commission finds that the plan submitted
4 under this section is feasible, it shall immediately submit its
5 finding to the bankruptcy court. Within ten days after the
6 day of such submission, the bankruptcy court shall, after a
7 hearing, determine whether such plan is fair and equitable to
8 the estate of the Milwaukee Railroad.

9 (c) If the Commission finds that the plan is feasible and
10 the bankruptcy court determines that the plan is fair and
11 equitable to the creditors of the Milwaukee Railroad, the pro-
12 ponents of such plan shall, no later than March 1, 1980,
13 implement the plan.

14 (d) Except as provided in this section, the findings of the
15 Commission with respect to the plan shall not be subject to
16 review.

17 (e)(1) The trustee of the Milwaukee Railroad shall
18 promptly provide to the person engaged in developing the
19 employee or employee and shipper ownership plan under this
20 section—

21 (A) its most recent reports on the physical condi-
22 tion of the railroad; and

23 (B) traffic, revenue, marketing, and other data
24 necessary to determine the amount of the acquisition
25 cost of the railroad or portion of the railroad that

1 would be required to continue rail transportation over
2 the railroad line.

3 (2) Information provided pursuant to this subsection
4 shall be used only for purposes of preparing a plan and shall
5 not be disclosed to any competitor of the Milwaukee Rail-
6 road.

7 (f) In the implementation of any employee or employee
8 and shipper ownership plan involving expenditures or guar-
9 antees of Federal funds as hereinafter provided, authoriza-
10 tions shall be conditioned upon an appropriate contribution
11 from labor, including such measures as exchange of assets for
12 relinquishing labor protection claims and changes in work
13 rules to increase productivity: *Provided, however,* That the
14 employee-shipper actual or in kind contribution shall be no
15 less than 25 per centum of the total required financing.

16 EMERGENCY RAIL SERVICES ACT OF 1970

17 SEC. 6. (a) Subsection (a) of section 3 of the Emergency
18 Rail Services Act of 1970 (45 U.S.C. 662(a)) is amended by
19 striking out "upon a finding" in the fifth sentence and all that
20 follows in that subsection and inserting in lieu thereof a
21 period.

22 (b) Section 3(c) of the Emergency Rail Services Act of
23 1970 (45 U.S.C. 662(c)) is amended to read as follows:

24 "(c) The Secretary shall not guarantee any certificate
25 under this section unless such certificate is treated as an ex-

1 pense of administration and receives the highest lien on the
2 railroad's property and priority in payment under the Bank-
3 ruptcy Act, except that this subsection shall not apply to
4 certificates guaranteed for a railroad that is actively engaged
5 in restructuring, as defined by the Secretary. For purposes of
6 this subsection, the term 'restructuring' includes an employee
7 ownership plan or an employee-shipper ownership plan."

8 (c) Section 3(e) of the Emergency Rail Services Act of
9 1970 (45 U.S.C. 662(e)) is amended by striking out
10 "\$125,000,000" and inserting in lieu thereof
11 "\$200,000,000".

12 (d) The Secretary of Transportation shall, under the au-
13 thority of the Emergency Rail Services Act of 1970, immedi-
14 ately guarantee trustee certificates of the Milwaukee Rail-
15 road, on the basis of an estimate of the amount required to be
16 provided under subsection (e) of this section, for purposes of
17 allowing the Milwaukee Railroad to maintain its entire rail-
18 road system and for purposes of financing the operations
19 which the Milwaukee Railroad continues for the sixty day
20 period beginning on the date of the occurrence of an event
21 described in section 11(b) of this Act or on March 1, 1980,
22 whichever first occurs. Such guarantee shall be made without
23 regard to the findings set forth in section 3(a) of the Emer-
24 gency Rail Services Act of 1970 (45 U.S.C. 662(a)).

1 (e) The Secretary shall guarantee trustee certificates of
2 the Milwaukee Railroad pursuant to this section in an
3 amount equal to the difference between (1) the total expenses
4 found necessary by the trustee of such railroad for the main-
5 tenance and the continuation of service in accordance with
6 this section, and (2) the revenues of such railroad, both deter-
7 mined in accordance with the Uniform System of Accounts
8 prescribed by the Commission.

9 (f) Notwithstanding any of the provisions of section 3(c)
10 of the Emergency Rail Services Act of 1970 (45 U.S.C.
11 662(c), as amended by this Act, certificates guaranteed under
12 this Act shall be subordinated to the claims of any creditors
13 of the Milwaukee Railroad as of the date of enactment of this
14 Act. No payment of interest or principal upon certificates
15 guaranteed under this section shall be required until the con-
16 clusion of the Milwaukee Railroad reorganization proceed-
17 ings, or three years from the date of enactment of this Act,
18 whichever first occurs.

19 NEW CAREER TRAINING ASSISTANCE

20 SEC. 7. (a) Any employee who elects to receive a sepa-
21 ration allowance shall be entitled to receive from the Rail-
22 road Retirement Board expenses for training in qualified in-
23 stitutions for new career opportunities.

24 (b) To be entitled for assistance under this section, an
25 employee must begin his course of training within two years

1 following the date of his separation from employment with
2 the Milwaukee Railroad.

3 (c) Entitlement to expenses for assistance under this
4 section shall be determined by the Railroad Retirement
5 Board on the basis of an application therefor filed by an em-
6 ployee with the Board.

7 (d) As used in this section—

8 (1) the term “expenses” means actual expenses
9 paid for room, board, tuition, fees, or educational mate-
10 rial in an amount not to exceed \$3,000;

11 (2) the term “qualified institution” means an edu-
12 cational institution accredited for payment by the Vet-
13 erans’ Administration under chapter 36 of title 38,
14 United States Code.

15 (e) The Railroad Retirement Board may prescribe such
16 rules as may be necessary to carry out its duties under this
17 section.

18 (f) There is authorized to be appropriated for new career
19 training assistance under this section not to exceed
20 \$1,500,000.

21 OBLIGATION GUARANTEES

22 SEC. 8. (a) The Secretary of Transportation, under the
23 authority of section 511 of the Railroad Revitalization and
24 Regulatory Reform Act of 1976 (45 U.S.C. 831), shall guar-
25 antee obligations of the Milwaukee Railroad for purposes of

1 providing protection of employees affected by restructuring,
2 transactions, or reduction in service by the Milwaukee Rail-
3 road. Such protection may include, but need not be limited
4 to, moving expenses, compensation for employee relocation
5 and separation allowances. Such guarantees shall be entered
6 into without regard to the requirements of subsection (g) of
7 such section 511. Any obligation guaranteed pursuant to this
8 section shall be treated as an administrative expense of the
9 estate of the Milwaukee Railroad.

10 (b) The aggregate unpaid principal amount of obliga-
11 tions which may be guaranteed by the Secretary pursuant to
12 this section shall not exceed \$75,000,000.

13 (c) If funds available to the Milwaukee Railroad pursu-
14 ant to obligation guarantees of the Secretary of Transporta-
15 tion under this section are insufficient to pay the total amount
16 of benefits and allowances for which employees are eligible,
17 the Milwaukee Railroad shall reduce, on a pro rata basis, the
18 amount provided under each such section.

19 (d) Except in connection with obligations guaranteed
20 under this section, the United States shall incur no liability in
21 connection with benefits and allowances.

22 (e) Pursuant to the Railroad Revitalization and Regula-
23 tory Reform Act of 1976, as amended, the Secretary of
24 Transportation shall guarantee obligations to finance an
25 equipment repair program for the Milwaukee Railroad, or its

1 successors, during the remainder of 1979 and 1980. Obliga-
2 tions guaranteed under this subsection shall not exceed
3 \$30,000,000.

4 (f) Obligations guaranteed pursuant to this section shall
5 be subordinated to the claims of any creditor of the Milwau-
6 kee Railroad as of the date of enactment of this Act.

7 TRANSACTION ASSISTANCE

8 SEC. 9. Section 505 of the Railroad revitalization and
9 Regulatory Reform Act of 1976 (45 U.S.C. 825) is amended
10 by adding at the end thereof the following new subsection:

11 "(f) REHABILITATION FOR COMMON CARRIER SERV-
12 ICE.—Notwithstanding subsections (a) through (e) of this sec-
13 tion, the Secretary may purchase redeemable preference
14 shares or trustee certificates convertible to redeemable pref-
15 erence shares under this section to facilitate the rehabilitation
16 and improvement of Milwaukee Railroad property that has
17 been sold to another person prior to November 1, 1980, or
18 retained by the Milwaukee Railroad, and that will be used for
19 continuing rail service."

20 APPLICATION OF NATIONAL ENVIRONMENTAL POLICY ACT

21 SEC. 10. The provisions of the National Environmental
22 Policy Act of 1969 (42 U.S.C. 4321 et seq.) shall not apply
23 to transactions carried out pursuant to this Act.

CONTINUATION OF SERVICE

1

2 SEC. 11. (a) Until the occurrence of an event described
3 in subsection (b) of this section, the Milwaukee Railroad (1)
4 shall maintain its entire railroad system, as it existed on the
5 date of enactment of this Act, (2) shall continue no less than
6 the regular level of service provided by it as of that date, and
7 (3) shall not embargo traffic (other than when necessitated by
8 acts of God or safety requirements) or abandon or discontinue
9 service over any part of its railroad system.

10 (b) The Milwaukee Railroad shall comply with the re-
11 quirements of subsection (a) of this section until—

12 (1) an employee or employee-shipper ownership
13 plan is not submitted to the Interstate Commerce
14 Commission within the time period prescribed under
15 section 3(a) of this Act;

16 (2) the proposed plan is found by the Commission
17 not to be feasible;

18 (3) the proposed plan is found by the bankruptcy
19 court not to be fair and equitable to the creditors of the
20 Milwaukee Railroad; or

21 (4) the plan is not implemented within the time
22 period prescribed under section 3(c) of this Act.

1 AMENDMENT TO THE REGIONAL RAIL REORGANIZATION

2 ACT OF 1973

3 SEC. 12. Section 211(d) of the Regional Rail reorgani-
4 zation Act of 1973 (45 U.S.C. 721(e)) is amended by striking
5 out paragraph (2) thereof and the sentence following that
6 paragraph, and inserting in lieu thereof the following:

7 “(2) increase the principal amount of such loan to
8 such railroad, in an amount not to exceed \$4,000,000,
9 only if the Association makes the finding referred to in
10 paragraph (1)(B) of this subsection, determines that
11 such railroad is establishing an employee stock owner-
12 ship plan which will be reviewed and approved by the
13 Association, and assures that by December 31, 1980,
14 the railroad will contribute to the employee stock own-
15 ership plan an amount of convertible preferred em-
16 ployer stock, or cash used to purchase convertible pre-
17 ferred employer stock, equal to the lesser of (A) 20 per
18 centum of the amount made available under this para-
19 graph, or (B) 20 per centum of the fair market value of
20 the railroad as of that date. The Association may not
21 take any action pursuant to the preceding sentence of
22 this subsection after December 31 1980.”.

1 AMENDMENTS TO THE DEPARTMENT OF TRANSPORTATION

2 ACT

3 SEC. 13. (a) Section 5(h)(3)(B) of the Department of
4 Transportation Act (49 U.S.C. 1654(h)(3)(B)) is amended—

5 (1) in the second sentence thereof, by striking “In
6 accordance with the formula stated in this subsection,
7 the”, and inserting in lieu thereof “The”; and

8 (2) by adding at the end thereof the following:
9 “Notwithstanding the provisions of this subsection,
10 funds available for reallocation as of October 1, 1979,
11 shall be reallocated by the Secretary solely to States
12 which require supplementary assistance to mitigate the
13 effects caused by the filing of large-scale abandonments
14 by railroads in liquidation or reorganization under the
15 Bankruptcy Act. In making such reallocation, the Sec-
16 retary shall give consideration to the amount of mile-
17 age in the State for which an application for abandon-
18 ment or discontinuance has been filed with the Inter-
19 state Commerce Commission in accordance with the
20 provisions of section 10903 of title 49, United States
21 Code, but has not been approved or denied. Considera-
22 tion shall also be given to the relationship which such
23 mileage bears to the total rail mileage in each State
24 requiring supplementary assistance under this subpara-
25 graph.”.

1 (b) The second sentence of section 5(h)(2) of the Depart-
2 ment of Transportation Act (49 U.S.C. 1654(h)(2)) is amend-
3 ed by inserting immediately after "and" therein the follow-
4 ing: ", except as otherwise provided in this subsection,".

S. J. RES. 114

IN THE SENATE OF THE UNITED STATES

MR. MAGNUSON (for himself, Mr. MCGOVERN, Mr. MELCHER, Mr. BAUCUS, Mr. YOUNG, Mr. JACKSON, Mr. CHURCH, and Mr. HATFIELD) introduced the following joint resolution; which was read twice and referred to the Committee on Commerce, Science, and Transportation

JOINT RESOLUTION

1 *Resolved by the Senate and House of Representatives*
2 *of the United States of America in Congress assembled,*

4 SECTION 1. (a) Congress hereby finds that—

(1) the severe operating losses and the deteriorating plant and equipment of the Chicago, Milwaukee, Saint Paul, and Pacific Railroad Company (hereinafter the "Milwaukee Railroad") threaten to cause cessation of its operations in the near future;

1 (2) a cessation of operations by the Milwaukee
2 Railroad would have serious repercussions on the
3 economies of the States in which the Milwaukee Rail-
4 road principally operates (the States of Washington,
5 Montana, Idaho, North Dakota, South Dakota, Illinois,
6 Iowa, Minnesota, Missouri, Michigan, Indiana, and
7 Wisconsin);

8 (3) a cessation of operations of the Milwaukee
9 Railroad would result in the loss of many thousands of
10 jobs of railroad workers and other workers whose em-
11 ployment is dependent upon rail service over the lines
12 presently operated by the Milwaukee Railroad;

13 (4) experienced railroad employees make a valua-
14 ble contribution toward strengthening the railroad
15 industry;

16 (5) other railroads have the ability and willingness
17 to employ displaced Milwaukee Railroad employees;

18 (6) the ownership by employees or employees and
19 shippers of a substantial part or all of the Milwaukee
20 Railroad may be a valuable tool in reorganization and
21 should be given serious consideration;

22 (7) coal shipments from the great coal deposits
23 underlying Montana, Wyoming, North Dakota, and
24 South Dakota are dependent upon continuing rail serv-
25 ice over the lines of the Milwaukee Railroad;

(8) the agricultural producing and marketing activities in this tier of States is equally dependent upon rail service provided by the Milwaukee Railroad;

(9) cessation of essential transportation services by the Milwaukee Railroad would endanger the public welfare and would reduce rail competition in the affected tier of States;

8 (10) cessation of such services is imminent; and

9 (11) there is no other practicable means of obtain-
10 ing funds to meet payroll and other expenses necessary
11 for continuation of services and reorganization of the
12 Milwaukee Railroad.

(b) The Congress declares that emergency measures set forth in this resolution must be taken to restructure the Milwaukee Railroad and to avoid the substantial unemployment and damage to the economy of the region and of the Nation which a cessation of operations by the Milwaukee Railroad would otherwise cause.

19 SALES AND TRANSFERS

SEC. 2. (a) The Milwaukee Railroad, in consultation with the Secretary of Transportation, may negotiate and enter into agreement to sell all or any portion of its railroad system to any other rail carrier or to any other person. Such sale agreements may in no event become final and effective

1 until the occurrence of an event described in section 22(b) of
2 this joint resolution or May 10, 1980, whichever first occurs.

3 (b)(1) The Secretary of Transportation, under the au-
4 thority of section 5(a) through (e) of the Department of
5 Transportation Act, may develop plans and participate in ne-
6 gotiations for, and recommend to the trustee of the Milwau-
7 kee Railroad the sale or transfer of any portion of the Mil-
8 waukee Railroad. In developing such plans and entering into
9 such negotiations, the Secretary shall give preference to fi-
10 nancially responsible persons, including governmental enti-
11 ties, negotiating for the purchase of any lines with the intent
12 of providing common carrier service.

13 (2) Proposals developed under this section shall be sub-
14 mitted to the court having jurisdiction over the reorganiza-
15 tion of the Milwaukee Railroad (hereinafter the "bankruptcy
16 court"). Such a proposal may in no event become final or
17 effective until the occurrence of an event described in section
18 22(b) of this joint resolution, or May 10, 1980, whichever
19 first occurs.

20 COURT APPROVED ABANDONMENTS AND SALES

21 SEC. 3. (a)(1) Upon the occurrence of an event described
22 in section 22(b) of this joint resolution, or on May 10, 1980,
23 whichever first occurs, the bankruptcy court may authorize
24 the abandonment of lines of the Milwaukee Railroad pursuant
25 to section 1170 of title 11, United States Code. In authoriz-

1 ing any abandonment pursuant to this section, the court shall
2 require the carrier to provide a fair arrangement at least as
3 protective of the interest of employees as that required under
4 section 11347 of title 49, United States Code.

5 (2) Prior to the date specified in paragraph (1) of this
6 subsection, the bankruptcy court may hear and consider any
7 request for the abandonment of lines of the Milwaukee Rail-
8 road, and may fix the time for the Interstate Commerce
9 Commission's report on the request, but it may take final
10 action authorizing such abandonment only in accordance with
11 such paragraph (1).

12 (b)(1) Upon the occurrence of an event described in sec-
13 tion 22(b) of this Act, or on May 10, 1980, whichever first
14 occurs, the bankruptcy court may authorize the sale or trans-
15 fer of lines of the Milwaukee Railroad subject to paragraph
16 (2) of this subsection.

17 In authorizing any such sale or transfer, the court shall
18 provide a fair arrangement at least as protective of the inter-
19 est of employees as that required under section 11347 of title
20 49, United States Code.

21 (2) The bankruptcy court may not authorize a sale or
22 transfer pursuant to paragraph (1) of this subsection unless
23 an appropriate application with respect to such sale or trans-
24 fer is initiated with the Interstate Commerce Commission
25 and, within such time as the court may fix, not exceeding one

1 hundred and eighty days, the Commission, with or without a
2 hearing, as the Commission may determine, and with or
3 without modification or condition, approves such application,
4 or does not act on such application. Any action or order of
5 the Commission approving, modifying, conditioning, or disap-
6 proving such application is subject to review by the court
7 only under sections 706(2)(A), 706(2)(B), 706(2)(C), and
8 706(2)(D) of title 5. An application may be initiated with the
9 Commission prior to the date specified in paragraph (1) of
10 this subsection.

11 (c) Nothing in this section shall be deemed to affect the
12 priorities of timing of payment of labor protection which
13 might have existed in the absence of this joint resolution.

14 EMPLOYEE OR EMPLOYEE-SHIPPER OWNERSHIP PLAN

15 SEC. 4. (a)(1) No later than January 1, 1980, an associ-
16 ation composed of representatives of national railway labor
17 organizations, employees, and shippers (or any combination
18 of the foregoing) may submit to the Interstate Commerce
19 Commission a single plan for converting all or a substantial
20 part of the Milwaukee Railroad into an employee or
21 employee-shipper owned company and a method for imple-
22 menting such plan. The plan, which may include one or more
23 alternative system configurations, shall include a comprehen-
24 sive evaluation of the prospects for the financial self-sustaina-
25 bility of that portion of the Milwaukee Railroad.

1 (2) The Commission shall, within thirty days after the
2 date of submission of a plan under paragraph (1) of this sub-
3 section, approve the proposed plan if it finds that such plan is
4 feasible. The finding of the Commission with respect to the
5 feasibility of the plan shall be made pursuant to section 554
6 of title 5, United States Code, and for purposes of making
7 such finding the plan as submitted shall be presumed to be
8 feasible.

9 (3) The Commission shall make a finding that the plan
10 submitted under this section is feasible if it determines that—

11 (a) adequate public and private financing is availa-
12 ble to the proponents of such plan;

13 (b) such plan is fair and equitable to the creditors;

14 (c) implementation of such plan will occur by May
15 10, 1980; and

16 (d) that portion of the railroad covered by the plan
17 can be operated on a self-sustaining basis.

18 For the purposes of the findings under this paragraph, ade-
19 quate financing shall include all sources of private funds, the
20 probable value and priority of valid claims against the estate,
21 and Federal, State or local funds available under programs
22 which are or may be available to the proponent and which
23 the proponent is qualified to obtain.

24 (b) If the Commission finds that the plan is feasible, it
25 shall submit its findings to the bankruptcy court. Within ten

1 days after the date of such submission, the bankruptcy court
2 shall, after a hearing, determine whether such plan is fair and
3 equitable to the creditors of the Milwaukee Railroad. The
4 Commission's determination with respect to that issue shall
5 be rebutted only by clear and convincing evidence.

6 (c) If the Commission finds that the plan is feasible and
7 the bankruptcy court determines that the plan is fair and
8 equitable to the creditors of the Milwaukee Railroad, the pro-
9 ponents of such plan shall, no later than May 10, 1980, take
10 such steps as may be necessary to implement the plan. For
11 purposes of this section, the term "implement the plan"
12 means that the proponents shall (1) obtain preliminary com-
13 mitments from private and public sources of financing and (2)
14 obtain a certificate of public convenience and necessity to
15 operate as rail carrier.

16 (d) Except as provided in subsections (a)(2) and (b)
17 hereof, the findings of the Commission with respect to the
18 plan shall not be subject to review.

19 (e)(1) the trustee of the Milwaukee Railroad shall
20 promptly provide to the person engaged in developing the
21 employee or employee and shipper ownership plan under this
22 section—

23 (A) its most recent reports on the physical condi-
24 tion of the railroad; and

1 (B) traffic, revenue, marketing, and other data
2 necessary to determine the amount of the acquisition
3 cost of the railroad or position of the railroad that
4 would be required to continue rail transportation over
5 the railroad line.

6 (2) Information provided pursuant to this subsection
7 shall be used only for purposes of preparing a plan and
8 shall not be disclosed to any competitor of the Milwaukee
9 Railroad.

10 EMERGENCY RAIL SERVICES ACT OF 1970

11 SEC. 5. (a) Subsection (a) of section 3 of the Emergency
12 Rail Services Act of 1970 is amended by striking out "upon
13 a finding" in the fifth sentence and all that follows in that
14 subsection and inserting in lieu thereof a period.

15 (b) Section 3(c) of the Emergency Rail Services Act of
16 1970 is amended to read as follows:

17 "(c) The Secretary shall not guarantee any certificate
18 under this section unless such certificate is treated as an ex-
19 pense of administration and receives the highest lien on the
20 railroad's property and priority in payment under the Bank-
21 ruptcy Act, except that this subsection shall not apply to
22 certificates guaranteed for a railroad that is actively engaged
23 in restructuring, as defined by the Secretary. For purposes of
24 this subsection, the term "restructuring" includes an employ-
25 ee ownership plan or an employee-shipper ownership plan."

1 (c) Section 3(e) of the Emergency Rail Services Act of
2 1970 is amended by striking out "\$125,000,000" and insert-
3 ing in lieu thereof "\$200,000,000".

4 (d) The Secretary of Transportation shall, under the au-
5 thority of the Emergency Rail Services Act of 1970, immedi-
6 ately guarantee trustee certificates of the Milwaukee Rail-
7 road, on the basis of an estimate of the amount required to be
8 provided under subsection (e) of this section, for purposes of
9 allowing the Milwaukee Railroad to maintain its entire rail-
10 road system in accordance with section 22 of this joint reso-
11 lution, and for purposes of financing the operations which the
12 Milwaukee Railroad continues for the 60-day period begin-
13 ning on the date of the occurrence of an event described in
14 section 23(b) of this joint resolution or on March 1, 1980,
15 whichever first occurs. Such guarantee shall be made without
16 regard to the findings set forth in section 3(a) of the Emer-
17 gency Rail Services Act of 1970. The provisions of para-
18 graph 3(b)(3) and of the last sentence of subsection 3(d) of
19 such Act shall not apply to the guarantee of trustee certifi-
20 cates under this section.

21 (e) The Secretary shall guarantee trustee certificates of
22 the Milwaukee Railroad pursuant to this section in an
23 amount equal to the difference between (1) the total expenses
24 found necessary by the trustee of such railroad for the main-
25 tenance and the continuation of service as required by section

1 22 of this joint resolution, and (2) the revenues of such rail-
2 road, both to be determined in allowance with the uniform
3 system of accounts prescribed by the Interstate Commerce
4 Commission.

5 (f) Notwithstanding the provisions of section 3(c) of the
6 Emergency Rail Services Act of 1970, certificates guaran-
7 teed under this joint resolution shall not have priority in
8 bankruptcy over the claim of any creditor of the Milwaukee
9 Railroad as of the date of enactment of this joint resolution.
10 No payment of interest or principal upon certificates guaran-
11 teed under this section shall be required until the conclusion
12 of Milwaukee Railroad reorganization proceedings, or of five
13 years from the enactment date of this joint resolution, which-
14 ever first occurs.

15 RAILROAD PREFERENTIAL HIRING

16 SEC. 6. Notwithstanding any provision of law which
17 affect the granting of preferences or priorities or equal treat-
18 ment in employment, each rail carrier shall give preference in
19 hiring to any employee of the Milwaukee Railroad who is
20 separated from his employment by reason of any reduction of
21 service by such railroad occurring prior to March 1, 1981.
22 For purposes of this section, "reason of any reduction of
23 service" does not include resignations, retirement, or dis-
24 charge for cause.

MOVING EXPENSES

1

2 SEC. 7. (a) Subject to subsection 15(c) any current em-
3 ployee of the Milwaukee Railroad—

4

(1) who, in connection with a restructuring trans-
5 action carried out by the Milwaukee Railroad prior to
6 March 1, 1981, is required to make a change of resi-
7 dence prior to April 1, 1981, in order to maintain his
8 employment with such railroad; or

9

(2) who is separated from his employment by
10 reason of any reduction of service by the Milwaukee
11 Railroad prior to March 1, 1981, and is required to
12 make a change of residence, prior to April 1, 1981, in
13 order to obtain employment with another rail carrier,
14 shall be entitled to receive moving expense benefits in
15 accordance with this section.

16 (b) The benefits to which an employee described in sub-
17 section (a) of this section shall be entitled are as follows:

18 (1) The actual expenses of moving such employ-
19 ee's household and personal effects.

20 (2) The actual, necessary traveling expenses of
21 such employee and members of his family.

22 (3) The actual wage loss, not to exceed 7 working
23 days, to enable the employee to find a new place of
24 residence.

1 (4) The closing costs involved in disposing of a
2 residence and acquiring a new residence, including a
3 realtor's fee of not more than \$3,000.

4 (5) If the employee holds an unexpired lease on a
5 dwelling occupied by him as his home, reimbursement
6 for all loss and cost in securing the cancellation of such
7 lease.

8 (c) Claims for moving expense benefits under this sec-
9 tion shall be paid by the Milwaukee Railroad, and shall be
10 treated as administrative expenses of the estate of such rail-
11 road.

12 (d) Any claim of an employee for moving expense bene-
13 fits under this section shall be filed with the Railroad Retire-
14 ment Board. The board shall determine the amount to which
15 such employee is entitled under this section and shall certify
16 such amount to the Milwaukee Railroad for payment.

17 (e) As used in this section, the term "current employee"
18 means an employee who has performed active service for the
19 Milwaukee Railroad on or after September 1, 1979.

20 SUPPLEMENTARY UNEMPLOYMENT INSURANCE

21 SEC. 8. (a) Any current employee of the Milwaukee
22 Railroad and any employee of the Milwaukee Railroad—

23 (1) who (A) is employed by the restructured Mil-
24 waukee Railroad, and (B) is separated from that em-
25 ployment by reason of any reduction of service by the

1 Milwaukee Railroad occurring prior to March 1, 1984;
2 or

3 (2) who (A) is separated from his employment
4 with the Milwaukee Railroad by reason of a reduction
5 of service, and obtains employment, prior to March 1,
6 1981, with another rail carrier, and (B) is separated
7 from employment with such other carrier prior to
8 March 1, 1984, shall be entitled to receive monthly
9 supplementary unemployment insurance in accordance
10 with the provisions of this section.

11 (b) Each employee described in subsection (a) of this
12 section shall be entitled to receive supplementary unemploy-
13 ment insurance during each month in which such employee is
14 not employed, for all or a portion of such month, by the Mil-
15 waukee Railroad or another rail carrier. Each such employee
16 shall be entitled to receive such insurance for a total of not
17 more than 36 months, except that—

18 (1) the period of entitlement for assistance under
19 this section shall not exceed the employee's total
20 months of service with the Milwaukee Railroad; and

21 (2) no compensation shall be provided under this
22 section after March 1, 1984, unless it is necessary in
23 order to provide an employee with at least 8 months of
24 such insurance, but after such date, such employee

1 only shall receive such 8-month minimum if such em-
2 ployee is not employed continuously after such date.

3 (c) Supplementary unemployment insurance under this
4 section shall be payable to an employee on a monthly basis in
5 an amount equal to—

6 (1) 80 per centum of such employee's average
7 monthly normal compensation from employment with
8 the Milwaukee Railroad during the period beginning
9 June 1, 1977, and ending on the date of enactment of
10 this joint resolution, less

11 (2) the sum of (A) the amount of any benefits pay-
12 able to such employee for such month under the Rail-
13 road Unemployment Insurance Act or under any State
14 unemployment insurance program, and (B) the amount
15 of any earnings of such employee for such month from
16 employment or self-employment of any kind.

17 (d) Entitlement to monthly supplementary unemploy-
18 ment compensation under this section shall be determined by
19 the Railroad Retirement Board on the basis of an application
20 therefor filed by an employee with the Board.

21 (e) Any supplementary unemployment insurance re-
22 ceived by any employee pursuant to this section shall be con-
23 sidered to be compensation solely—

24 (1) for purposes of the Railroad Retirement Act of
25 1974 (45 U.S.C. 231 et seq.); and

1 (2) for purposes of determining the compensation
2 received by such employee in any base year under the
3 Railroad Unemployment Insurance Act.

4 (f) The provisions of this section shall not apply to an
5 employee in the event of his resignation, retirement, or dis-
6 charge for cause from the employment of any rail carrier.

7 (g) As used in this section, the term "restructured Mil-
8 waukee Railroad" means the entity which operates the lines
9 of railroad of the Milwaukee Railroad after May 10, 1980, as
10 reduced or modified by the bankruptcy court.

11 (h) The first sentence of section 7(b)(7) of the Railroad
12 Retirement Act of 1974 is amended—

13 (1) by striking out "The" and inserting "Notwith-
14 standing any other provision of law, the" in lieu there-
15 of; and

16 (2) by inserting "and the joint resolution entitled
17 'Joint Resolution to provide for the orderly restructur-
18 ing of the Milwaukee Railroad, and for the protection
19 of the employees of such railroad'" immediately before
20 the period at the end thereof.

21 (i) As used in this section the term "current employee"
22 has the same meaning as given to such term in section 7(e) of
23 this joint resolution.

1 EMPLOYMENT OF MILWAUKEE RAILROAD EMPLOYEES

2 SEC. 9. (a)(1) Within sixty days after the date of enact-
3 ment of this joint resolution, and at the end of each of the
4 sixteen following thirty-day periods, the Milwaukee Railroad
5 shall submit to the Railroad Retirement Board a list of indi-
6 viduals separated from employment with the Milwaukee Rail-
7 road who at the time of such separation indicated a desire to
8 appear on a list to be distributed to all rail carriers. Each
9 such list shall include the class or craft qualifications of each
10 employee listed, his seniority status with the Milwaukee Rail-
11 road, and such other information as the Board considers ap-
12 propriate. The first list shall include only individuals separat-
13 ed after the date of enactment of this joint resolution and
14 before the date on which the list is submitted pursuant to this
15 paragraph. Each subsequent list shall include only those indi-
16 viduals separated after the submission of the previous list and
17 before the submission of such subsequent list.

18 (2) Within five days after each day specified in para-
19 graph (1) of this subsection, the Railroad Retirement Board
20 shall mail a copy of the list submitted to the Board by the
21 Milwaukee Railroad by such date to all other rail carriers. In
22 addition, the Board shall maintain a current copy of such list
23 in each office of the Board.

24 (b)(1) Within sixty days after the date of enactment of
25 this joint resolution, and at the end of each of the sixteen

1 following thirty-day periods, each rail carrier shall submit to
2 the Railroad Retirement Board a list of employment, by class
3 and craft, available with such carrier as of the date of the
4 submission of such list. Each such list shall
5 information with respect to such employment as the Board
6 considers appropriate.

7 (2) Within five days after each date specified in para-
8 ;

9 shall prepare a compilation of all of the positions of employ-
10 ment by class and craft submitted by each rail carrier by such
11 date, and shall mail a copy of such compilation to each em-
12 ployee who, pursuant to subsection (c) of this section notifies
13 the Board of such employee's interest in such compilation. In
14 addition, the Board shall maintain a copy of such compilation
15 in each office of the Board.

16 (c) Any employee of the Milwaukee Railroad described
17 in section 6 of this joint resolution may notify the Railroad
18 Retirement Board that he is interested in receiving a copy of
19 each compilation of positions of employment by class and
20 craft prepared by the Board, pursuant to subsection (b)(2) of
21 this section.

22 (d) Within twenty days after the Railroad Retirement
23 Board mails a compilation of employment positions to em-
24 ployees pursuant to subsection (b)(2) of this section, any such

1 employee may submit a bid on any position contained in such
2 compilation to the rail carrier which listed the position.

3 (e) Any rail carrier which, during the twenty-day period
4 after a compilation of positions is mailed, receives one or
5 more bids on any employment position listed by such rail
6 carrier in such compilation shall offer such employment posi-
7 tion to the employee who submitted a bid on such position
8 during such period who has the most seniority in the class or
9 craft within which such position is listed. Such offer shall be
10 made to such employee whether or not such rail carrier hired
11 another person for such employment position during the
12 period of time beginning on the date of the submission to the
13 Board of the list containing such position and the last date on
14 which bids were submitted by employees for such position
15 pursuant to this section.

16 (f) Nothing in this section shall impair the seniority
17 rights or other interests under a collective bargaining agree-
18 ment of any person employed by a carrier which offers em-
19 ployment positions pursuant to this section, unless otherwise
20 specifically authorized or required by applicable union law.

21 EMPLOYEE RELOCATION INCENTIVE COMPENSATION

22 SEC. 10. (a) Subject to subsection 15(c) any current em-
23 ployee of the Milwaukee Railroad and any employee of the
24 Milwaukee Railroad—

1 (1) who is employed by the restructured Milwau-
2 kee Railroad; or

3 (2) who is separated from his employment with
4 the Milwaukee Railroad by reason of a reduction of
5 service, and obtains employment, prior to March 1,
6 1981, with another rail carrier.

7 shall be eligible for employee relocation incentive compensa-
8 tion in accordance with this section.

9 (b) Each employee described in subsection (a) of this
10 section shall be eligible to receive a total of not more than
11 thirty-six months of employee relocation incentive compensa-
12 tion under this section. No such compensation shall be pro-
13 vided after March 1, 1984, unless it is necessary in order to
14 provide an employee with at least eight months of such com-
15 pensation, but after such date such employee shall only re-
16 ceive such eight-month minimum if such employee is em-
17 ployed continuously after such date.

18 (c)(1) Employee relocation incentive compensation shall
19 be payable to each employee described in subsection (a) of
20 this section in any month in which—

21 (A) 80 per centum of such employee's average
22 monthly normal compensation from employment with
23 the Milwaukee Railroad during the period beginning
24 June 1, 1977, and ending on the date of enactment of
25 this joint resolution; exceeds

1 (B) such employee's compensation for that month
2 from his new position with the Milwaukee Railroad.

3 (2) The amount of compensation payable to an employee
4 shall be the amount by which the monthly compensation de-
5 scribed in paragraph (1)(A) of this subsection exceeds the
6 monthly compensation described in paragraph (1)(B).

7 (d) An employee shall not be eligible to receive compen-
8 sation under this section during any month in which such
9 employee is eligible for or receives supplementary unemploy-
10 ment insurance under section 7 of this joint resolution.

11 (e) Employee relocation incentive compensation under
12 this section shall be paid by the Milwaukee Railroad, and
13 shall be treated as an administrative expense of the estate of
14 such railroad.

15 (f) Any claim of an employee for employee relocation
16 incentive compensation under this section shall be filed with
17 the Railroad Retirement Board. The Board shall determine
18 the amount to which such employee is entitled under this
19 section and shall certify such amount to the Milwaukee Rail -
20 road for payment.

21 (g) As used in this setion, the term "restructured Mil-
22 waukee Railroad" has the meaning given to such term in
23 section 8(g) of this joint resolution.

1 (h) As used in this section the term "current employee"
2 has the same meaning as given to such term in section 7(e) of
3 this joint resolution.

4 SEPARATION ALLOWANCE

5 SEC. 11. (a) Subject to subsection 15(c) any employee of
6 the Milwaukee Railroad may, no later than April 1, 1981,
7 elect to receive a separation allowance from the Milwaukee
8 Railroad, in an amount equal to \$2,000 for each year of com-
9 pleted service and, in addition thereto, full payment for all
10 vacation time earned but not previously taken and of deferred
11 compensation. The amount of separation allowance payable
12 to an employee under this section shall not exceed \$25,000.

13 (b) Any separation allowance under this section shall be
14 paid by the Milwaukee Railroad, and shall be treated as an
15 administrative expense of the estate of such railroad.

16 (c) As used in this section "any employee" shall mean
17 an employee who has performed active service for the Mil-
18 waukee Railroad on or after September 1, 1979, and who is
19 separated from his employment by reason of any reduction in
20 service by such railroad occurring prior to March 1, 1981.
21 For purposes of this section "reason of any reduction of serv-
22 ice" does not include resignation, retirement, or discharge for
23 cause.

NEW CAREER TRAINING ASSISTANCE

1 SEC. 12. (a) Any employee who elects to receive sepa-
2 ration allowance under section 11 of this joint resolution shall
3 be entitled to receive from the Railroad Retirement Board
4 expenses for training in qualified institutions for new career
5 opportunities.

6 (b) To be entitled for assistance under this section, an
7 employee must begin his course of training within two years
8 following the date of his separation from employment with
9 the Milwaukee Railroad.

10 (c) Entitlement to expenses for assistance under this
11 section shall be determined by the Railroad Retirement
12 Board on the basis of an application therefor filed by an em-
13 ployee with the Board.

14 (d) As used in this section—

15 (1) the term "expenses" means actual expenses
16 paid for room, board, tuition, fees, or educational mate-
17 rial in an amount not to exceed \$3,000;

18 (2) the term "qualified institution" means an edu-
19 cational institution accredited for payment by the Vet-
20 erans' Administration under chapter 36 of title 38,
21 United States Code.

ELECTIONS

22 SEC. 13. (a) Any employee who receives moving ex-
23 pense benefits under section 7 of this joint resolution, supple-
24
25

1 mentary unemployment compensation under section 8, or
2 employee relocation incentive compensation under section
3 10, shall not be eligible for a separation allowance under sec-
4 tion 11 or for new career training assistance under section
5 12.

6 (b) An employee who receives a separation allowance
7 under section 11 of this joint resolution shall not be eligible
8 for assistance under section 7, 8, or 10.

9 (c) Any employee who receives any assistance under
10 section 7, 8, 10, or 11 of this joint resolution shall be deemed
11 to waive any employee protection benefits otherwise availa-
12 ble to such employee under the Bankruptcy Act, title 11 of
13 the United States Code, subtitle IV of title 49 of the United
14 States Code, or any applicable contract or agreement.

15 AUTHORIZATION OF APPROPRIATIONS

16 SEC. 14. (a) There is authorized to be appropriated to
17 provide supplementary unemployment insurance under sec-
18 tion 8 of this joint resolution not to exceed \$5,000,000.

19 (b) There is authorized to be appropriated for new
20 career training assistance under section 12 of this joint reso-
21 lution not to exceed \$1,500,000.

22 (c) There are authorized to be appropriated to the Rail-
23 road Retirement Board to carry out its administrative ex-
24 penses under this Act not to exceed \$750,000.

1 (d) Amounts appropriated under this section are author-
2 ized to remain available until expended.

3 OBLIGATION GUARANTEES

4 SEC. 15. (a) The Secretary of Transportation, under the
5 authority of section 511 of the Railroad Revitalization and
6 Regulatory Reform Act of 1976, shall guarantee obligations
7 of the Milwaukee Railroad for purposes of providing moving
8 expenses under section 7, employee relocation incentive com-
9 pensation under section 10, and separation allowances under
10 section 11. Such guarantees shall be entered into without
11 regard to the requirements of subsection (g) of such section
12 511. Any obligation guaranteed pursuant to this section shall
13 be treated as administrative expense of the estate of the Mil-
14 waukee Railroad.

15 (b) The aggregate unpaid principal amount of obliga-
16 tions which may be guaranteed by the Secretary pursuant to
17 subsection (a) shall not exceed \$75,000,000.

18 (c) If funds available to the Milwaukee Railroad pursu-
19 ant to obligation guarantees of the Secretary of Transporta-
20 tion under subsections (a) and (b) of this section are insuffi-
21 cient to pay the total amount of benefits and allowances for
22 which employees are eligible under sections 7, 10, and 11 of
23 this joint resolution, the Milwaukee Railroad shall reduce, on
24 a pro rata basis, the amount provided under each such sec-
25 tion.

1 (d) Except in connection with obligations guaranteed
2 under this section, the United States shall incur no liability in
3 connection with benefits and allowances provided under sec-
4 tions 7, 10, and 11 of this joint resolution.

5 (e) Pursuant to the Railroad Revitalization and Regula-
6 tory Reform Act of 1976, as amended, the Secretary of
7 Transportation shall guarantee obligations to finance an
8 equipment repair program for the Milwaukee Railroad, or its
9 successors, during the remainder of 1979 and 1980. Obliga-
10 tions guaranteed under this subsection shall not exceed
11 \$30,000,000.

12 (f) Obligations guaranteed pursuant to this section shall
13 be subordinated to the claims of any creditor of the Milwau-
14 kee Railroad as of the enactment date of this joint resolution.

15 TRANSACTION ASSISTANCE

16 SEC. 16. Section 505 of the Railroad Revitalization and
17 Regulatory Reform Act of 1976 (45 U.S.C. 845) is amended
18 by adding at the end thereof the following new subsection:

19 "(f) REHABILITATION FOR COMMON CARRIER SERV-
20 ICE.—Notwithstanding subsections (a) through (e) of this sec-
21 tion, the Secretary shall immediately purchase redeemable
22 preference shares or trustee certificates convertible to re-
23 deemable preference shares under this section to facilitate the
24 rehabilitation and improvement of Milwaukee Railroad prop-
25 erty that has been sold to another person or retained by the

1 Milwaukee Railroad and that will be used for common carrier
2 rail service.”.

3 ASSESSMENT OF COAL HAULING NEEDS

4 SEC. 17. The Secretary of Energy shall immediately
5 conduct an assessment of present and potential coal hauling
6 needs in the area served by the Milwaukee Railroad and
7 report his findings to the Congress within thirty days after
8 the date of enactment of this joint resolution.

9 DIRECTED SERVICE

10 SEC. 18. Until May 10, 1980, the provisions of this
11 joint resolution shall be in lieu of any directed service under
12 section 11125 of title 49 of the United States Code.

13 APPLICABILITY OF NATIONAL ENVIRONMENTAL POLICY

14 ACT

15 SEC. 19. The provisions of the National Environmental
16 Policy Act shall not apply to transactions carried out pursu-
17 ant to this joint resolution.

18 AUTHORITY OF THE RAILROAD RETIREMENT BOARD

19 SEC. 20. (a) The Railroad Retirement Board may pre-
20 scribe such rules as may be necessary to carry out its duties
21 under this joint resolution.

22 (b) In carrying out its duties under this joint resolution,
23 the Board may exercise such of the powers, duties, and reme-
24 dies provided in subsections (a), (b), and (d) of section 12 of

1 the Railroad Unemployment Insurance Act as are not incon-
2 sistent with the provisions of this joint resolution.

3 PUBLICATIONS AND REPORTS

4 SEC. 21. (a) Within thirty days after the date of enact-
5 ment of this joint resolution, the Board shall publish, and
6 make available for distribution by the Milwaukee Railroad to
7 all its employees, a document which describes in detail the
8 rights of such employees under sections 7 through 13 of this
9 joint resolution.

10 (b) During the two-year period beginning on the date of
11 enactment of this joint resolution, the Railroad Retirement
12 Board shall submit a report to the Congress every six months
13 describing its activities under sections 7, 8, 9, 10, 11, and 12
14 of this joint resolution.

15 CONTINUATION OF SERVICE

16 SEC. 22. (a) Until the occurrence of an event described
17 in subsection (b) of this section, the Milwaukee Railroad (1)
18 shall maintain its entire railroad system, as it existed on May
19 1, 1979, (2) shall continue no less than the required level of
20 service provided by it as of that date, and (3) shall not embar-
21 go traffic (other than when necessitated by acts of God or
22 safety requirements) or abandon or discontinue service over
23 any part of its railroad system: *Provided, however,* That the
24 Milwaukee Railroad shall expend such funds as may be nec-
25 essary from the funds provided in section 5 of this joint reso-

1 lution, not to exceed a maximum of \$10,000,000, for the
2 purpose of meeting safety requirements.

3 (b) The Milwaukee Railroad shall comply with the re-
4 quirements of subsection (a) of this section until—

5 (1) an employee or employee-shipper ownership
6 plan is not submitted to the Interstate Commerce
7 Commission within the time period prescribed under
8 section 4(a) of this joint resolution;

9 (2) the proposed plan is found by the Commission
10 not to be feasible;

11 (3) the proposed plan is found by the bankruptcy
12 court not to be fair and equitable to the creditors of the
13 Milwaukee Railroad; or

14 (4) the plan is not implemented within the time
15 period prescribed under section 4(c) of this joint resolu-
16 tion.

The CHAIRMAN. In view of these developments, I would urge that your summaries-of-prepared testimony be brief and that you supplement your statements with discussion of the events of last week and the current situation.

I see that Senator Melcher is here now. Senator Melcher, do you wish to make a statement?

Senator MELCHER. Yes, I do, Mr. Chairman.

The CHAIRMAN. Would one of you step aside and let him get to the microphone there?

Before Senator Melcher starts, Senator Magnuson would like to make a statement as well.

OPENING STATEMENT BY SENATOR MAGNUSON

Senator MAGNUSON. In the interest of time, Mr. Chairman, I will be very brief. I had hoped that today's hearings would be followed by a 30-day period to consider the proposals to be made today, but because of the Federal Railroad Administration's flagrant disregard of the will of the Congress, the embargo covering the Milwaukee's western line will become effective on Thursday if we do not act immediately. The House will take up, as the chairman said, the Milwaukee legislation tomorrow. That's my understanding.

Today's hearings must focus on what is essential to: one, prevent the November 1 embargo from going into effect; two, and the most important, to allow shippers, employees, and others an opportunity to submit a plan for taking over all or a substantial part of the Milwaukee system; and three, provide reasonable labor protection coverage for Milwaukee road employees.

As I see it, these are the most important issues this morning. In the coming days we can decide what changes need to be made at the FRA to assure compliance with congressional intent in the future. I hope they will heed this warning.

The CHAIRMAN. All right. Senator Melcher, do you have a statement you wish to make?

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

Senator MELCHER. Thank you, Mr. Chairman. I have a prepared testimony which I will just make part of the record and very briefly summarize it.

The CHAIRMAN. It will be made a part of the record in full.

Senator MELCHER. I know your witness list is long and I appreciate the fact that the committee wants to act today which I think is absolutely essential.

The following factors I think the committee should be considering: first of all, if the embargo were allowed to go into effect, what is the cost of directed service, and I think the testimony to be presented is that the directed service will be a very expensive proposition if that's the outcome or the effect of the embargo.

I would urge the committee to avoid directed service and to continue the operation of the Milwaukee in its entirety for some period of time for several months until we can come up with a better scheme for reorganization. I think reorganization is absolutely essential in the long run for this country to assure the coal haul and the grain haul.

I serve on both the Agriculture Committee and the Energy Committee of the Senate and in both aspects the more we probe into what's going to happen to coal haul or grain haul, the more determined I become to feel that we must preserve the entire transcontinental operation of the Milwaukee. It will be pointed out by the trustee and others that the coal haul can well be taken care of if the core is such that it extends as far west as Miles City, Mont., and indeed, currently that is true.

The testimony will also be offered by the trustee and others that if there is further development of coal in Montana the Burlington will continue to serve that development area and therefore we can presume that the coal haul will be taken care of. However, that's a little bit short-sighted.

First of all, the Department of Energy projects that the coal haul out of the Montana area and the North Dakota area and the northern Wyoming area will be doubled by 1985. That being the case, the question then comes to, well, what about the density of cars on just the Burlington, or the Burlington plus the Milwaukee from Miles City east? The answer to that is obviously we had better maintain both systems.

Let's review this in detail then. What happens from Miles City west? While much of the mining that is projected during the next 4 to 6 years of either expanded coal mining operation in Montana or new mines that might come on, it is true that the Burlington will serve most of them. However, one is north of the Yellowstone served by the Milwaukee and if that mining operation is to come into full force by 1985 with production around 2 to 3 million tons per year, it's going to require the operation of the Milwaukee west of Miles City. If that were to be picked up by the Burlington, that portion of the track would be picked up by the Burlington which is possible, it would not be any cheaper than if the Milwaukee were operating as part of its system. The fact also is that no prospective mine north of the Yellowstone from Miles City west is going to go forward at all unless there's some assurance of continued rail operation in that area.

The question of the grain haul is even more pressing at this time because while national policy of this country is to increase our grain production in the West and indeed we are faced right now with whether or not we are going to have the 20 percent set-aside or the 15 percent set-aside or a 5 percent set-aside in the coming years, the Department of Agriculture and the administration's position is that there should be virtually no set-aside. This means added grain production in our part of the country.

Right now, at any given time, the situation in Montana is that upon checking the car orders on the Burlington you can find anywhere from 6,000 to 8,000 or 9,000 car orders that are unmet for grain haul. The production of the grain in the Northwest and my State included is going to increase. It's obvious that more of it will be shipped for export from either the Portland or Seattle area. That means that it's long-haul freight. It requires a continued operation of all the railroads that we have presently available and it continues to mean we have got to improve that situation or we are never going to meet our national goal of indeed selling more grain abroad.

As to the proposition of funding, it's too early for us now in late October of 1979 to project a long-term plan for reorganization of the entire line, but I think that it's fundamental—it's absolutely essential for this country that we do.

I would urge the committee to keep in mind that the funding of that, the necessary capital for reorganization, should be on the basis of very long-term, low-interest loans that are subordinated to the interest of the creditors of the Milwaukee.

The competitive aspect of the loss in the Milwaukee's operation in Montana and other Northwest States is something that we cannot ignore. In my State, if the Milwaukee should be bobtailed at Miles City and no extension of it or no operation of it west of Miles City, we would find ourselves virtually a captive of the Burlington on both the grain and coal haul and from the standpoint of competition it would mean that already intolerable freight rates would climb further. Much of our wheat now already has to pay a third of its value that comes out of the producer's pocket just so it can reach market. We are talking in the neighborhood of \$1.10 to \$1.15 per bushel. That's a pretty high freight rate when the grain is selling for about \$3.50 to \$3.75 when it reaches market.

So whatever is necessary to keep the Milwaukee in operation should be seriously considered by this committee to give us time to work out a long-term arrangement for the reorganization of the entire line. I'm sure the trustee will speak to that point very concisely, but I would remind you all on this committee when we're talking about rehabilitation of the track west of Miles City we are talking about a total of \$85 million for that rehabilitation of the track, the mainline track west of Miles City. That will be about 16 or 17 percent of what the trustee will indicate will be required for rehabilitation of all of the tracks, but I don't believe we should let \$85 million for rehabilitation of the track west of Miles City stand in our way of keeping that transcontinental railroad.

The CHAIRMAN. All right. Thank you, Senator Melcher, and your statement will be made a part of the record in full.

[The statement follows:]

STATEMENT OF HON. JOHN MELCHER, U.S. SENATOR FROM MONTANA

I want to thank Senator Cannon for his continuing interest in this matter of grave concern to us in the Northern Tier states and how this concern affects our nation as a whole. I am particularly gratified that the Committee will be taking prompt action in response to the Judge's embargo order.

I will not make a recitation of the numerous judicial, administration, and congressional actions that have taken place to bring us to where we are to date. I will, however, try to crystalize the facts as I see them and what should be done given these facts.

Mr. Chairman, as you know, I sit on both the Senate Energy and Agriculture Committees. From this vantage point, I am able to see the direction that our policies are taking us in these two particular areas especially as they relate to the Milwaukee.

GRAIN

Our present agriculture policies are encouraging greater production. This incentive to produce is provided by the U.S. Agriculture Department curtailment of the wheat land set aside program and the sale of 10 million metric tons of wheat to the Soviet Union, part of which will move through the Northwest ports. This increased production can have two major benefits for our nation; one, a dampening effect on food prices and, therefore, reduced inflationary pressures and second, an improved dollar through a better balance of payments. However, it is quite clear that without

the ability to move the grain in the area served by the Milwaukee, the two benefits I have mentioned cannot take place.

Is the concern for the ability to move grain to market a real one?

Mr. Chairman, let's look at the facts. I have been told by the ASCS Director for Montana that the Milwaukee carries 15 percent of the wheat exported by rail or 1,125,000 bushels per month and this means 341 hopper cars carrying 3,300 bushels each.

Again, I stress we are talking only about wheat. Of the 120 million bushels of Montana wheat exported (10 million/month), 25 percent of that is moved by truck. Because of the squeeze that trucks are feeling as a result of increased fuel prices, some of this percentage previously carried by truck will undoubtedly no longer be able to be competitive with the rail freight rates. Additionally, the BN has a standing back order of 6,000 grain hopper cars. Storage capacity is almost non-existent. To give you a specific example of the level of service provided and how far behind the BN is:

In Hingham, Montana an elevator operator received the following cars for the comparable periods of the past two years:

	1978	1979
May.....	40	28
June.....	50	19
July.....	29	18

and as of the end of August, he had received only 3 cars, all of which he had leased. Was his situation an unusual example? The answer is no. My staff contacted the BN car utilization manager and was informed that this elevator had received its fair share of the cars and that this situation was not unique. Does this mean additional revenue for the Milwaukee? Yes. In testimony before the ICC it was stated that the Western Grain Exchange in Great Falls has had an unfilled standing order for 10 hopper cars per day from as early as May, 1978. Figuring revenue at \$2,000 per car that is \$20,000 a day, \$100,000 a week and \$5 million a year in revenue and from other points another \$14 million in revenue is waiting for the Milwaukee. The point I think is clear, Mr. Chairman, there is sufficient potential business just on the branch line in Montana from Harlowton to Agawam, Montana alone that will generate substantial revenues on a line only 290 miles long. Yet this area is west of Miles City.

COAL

A second commodity to be moved on the Milwaukee which has a substantial benefit to our nation is coal. West of Miles City, Montana, north of the Yellowstone River is a large deposit of coal. Presently, Louisiana Land and Exploration Company is developing a site on the BN land in Roundup, Montana, near Milwaukee right-of-way. Within four years, this mine will be producing. Other mines would also open in this deposit, given the surety of Milwaukee service. The coal in the deposit is high BTU, low sulphur, the very type needed by this country and Asian nations as well. Active negotiation is taking place for movement of coal west on the Milwaukee to our Northwest ports. Such a movement of coal will also have a beneficial effect on our balance of trade. Without the Milwaukee, the potential for this coal will never be realized. I have attached testimony before the ICC from Louisiana Land and NERCO, Inc., a Portland, Oregon Corporation regarding the need for Milwaukee service west of Miles City for coal.

OTHER COMMODITIES

Mr. Chairman, grain and coal are not the only resources needing transportation on the Milwaukee. Montana has a thriving lumber products industry that provides revenue to the Milwaukee. Also, Dresser Industries recently purchases a bentonite deposit near Melstone, Montana west of Miles City between Miles City and Roundup. Rail service will be necessary for the production from this plant. Other bentonite deposits are expected to be mined near Roundup as well in the near future.

REVENUE PICTURE

The above facts, I believe, say clearly that there is additional money to be made by the Milwaukee in Montana. The recent testimony before the ICC regarding the Milwaukee's various submissions of its Appendix K is a case in point.

The Trustee claims that the lines west of Miles City are a drain on the rest of the Milwaukee Road System. However, evidence in the pending abandonment case before the Interstate Commerce Commission shows that the western lines contributed approximately three million dollars to the rest of the system in 1978.

Milwaukee had claimed the western lines lost \$445,000 in 1978. However, the Office of Rail Public Counsel (ORPC), in cross-examining the Railroad's witnesses, showed over three million dollars of expenses were double counted. Subsequently, ORPC presented an expert witness who testified that the western lines actually made a profit greater than three million dollars in 1978. His testimony was neither cross-examined nor rebutted by the Milwaukee.

The three million dollar profit was derived using the ICC's cost methodology developed for use in abandonment proceedings. This methodology was developed in response to Congress' mandate in the 4-R Act.

At this point, I should describe briefly the ICC's cost formula. Basically, it compares the revenues and costs for the line to be abandoned to determine if the line makes a profit or runs at a loss. The revenues are based on all traffic originating or terminating on the branch. The formula assumes all revenues attributed to the branch line will be lost.

The costs for the line are broken down into on branch costs and off branch costs. The on branch costs are the actual expenses of operating the line segment, including, for example, maintenance and labor costs. On branch costs also include an allowance for return on investment for locomotives. This is not really an expense, but rather a profit allowance. The off branch costs are the costs of moving the traffic on the line over the rest of the system and are developed using the ICC's Rail Form A. The formula assumes all these costs will be saved upon abandonment.

The Milwaukee has claimed that this costing procedure is inappropriate for application to the western lines. However, the Office of Rail Public Counsel presented another expert witness who testified as to the validity of the Commission's cost formula for the western lines. He rebutted the Milwaukee's claims point by point. For example, the Milwaukee (and the Department of Transportation) claim that the Commission's methodology is deficient because it assumes the Railroad will lose all revenue attributable to the line to be abandoned. The Milwaukee contends it will retain some of that revenue, through traffic diverted to other gateways. Yet, what the Milwaukee neglected to point out was that the formula also assumes the Railroad will save all costs attributable to that traffic. To the extent the Milwaukee retains traffic, the costs of moving that traffic will also be retained. Thus, the formula's assumption that all revenue will be lost is largely offset through the corresponding assumption that all costs will be saved.

The Milwaukee believes the Commission's methodology is inappropriate because of the large scale of the proposed abandonment. However, ORPC's expert witness pointed out that since the Commission's Rail Form A methodology depends on broad averages for the costing of movements off branch, it is, in fact, more appropriate for larger scale abandonments than for the more typical small branch line, with a more limited variety of traffic.

The Milwaukee may also claim that the cost formula is inappropriate as it does not take into account reduced overhead and administrative costs. Yet, Rail Form A, in fact, takes into account the variability of overhead and administrative costs.

Thus, we see that the Milwaukee's criticism of the Commission's methodology is nothing but a red herring. In fact, the Milwaukee did not even bother to rebut the testimony of ORPC's expert witness.

It is true that the ICC's formula does not take into account rehabilitation cost (although the ICC considers this as a separate factor in its abandonment decision). However, in the short run, pending the ICC's determination on reorganization, rehabilitation costs are, at best, a minor factor. Rehabilitation costs must also be considered in light of potential costs for labor protection. Another expert witness for the Office of Rail Public Counsel, Paul Reistrup, formerly AMTRAK President, pointed out that the costs of labor protection for the Trustee's proposed Milwaukee II could exceed costs of rehabilitation by \$720 million dollars. I might point out to the Committee that the cost of rehabilitating the lines west of Miles City is only about \$85 million.

What we are left with, then, is the fact that the western lines are profitable. They were profitable in 1978. They were profitable (by the Milwaukee's own figures) in

1976 and 1977. They are likely to continue to be profitable, if they are given a chance.

COST

I believe the Committee should focus on the fact that the cost of rehabilitating the mail line west of Miles City is only \$85 million. We are not talking about a large sum for rehabilitation. Nor are we talking about any proportionally larger sum for operations assistance for the lines west of Miles City as compared with the entire system. As my earlier testimony has stated, the lines west are no more of a drop in the entire system than is the core of the Milwaukee II. The point, on which the Committee must inquire is how much federal assistance the Trustee plans to obtain under the core and the how much additional would be needed for lines west.

Mr. Chairman, with the extend of labor protection that is pending against the estate, it is clear to me that it would be money well spent to rehabilitate this railroad, get it on its feet and let it run.

LEGISLATION

As the Committee is aware, I am a cosponsor of Senator Magnuson's bill. I believe it represents the proper mode of addressing the Milwaukee crisis until the employee/shipper stock option or other long term solutions are proposed. I hope the Committee will move Senator Magnuson's bill out of Committee this afternoon.

Additionally, the Committee also has before it my bill S. 1286. Representatives of the stock holders and creditors have voiced support for this legislation.

This legislation makes only minor changes to present railroad law.

Title One clarifies present confusion over the effect of Sec. 333 of the Bankruptcy Reform Act of 1978 (P.L. 95-598) which repealed Subsection (c) of section 3 of the Emergency Rail Services Act of 1970 (54 U.S.C. 662). Title One makes it clear that the repeal is applicable to ERSA funds provided to the Milwaukee.

Title Two allows that the bankrupt carrier be the directed carrier without receiving the 6 percent profit. This change would also insure that the ICC direct service over the carrier's entire system before going to the so-called pocket theory in determining essential service. The effect of the combination of these two provisions is that directed service may be run cheaper and insure that during the period of directed service competing carriers would not be allowed to cannibalize the directed carrier's system, plus provide a smooth transition from present levels of service to the pocket theory.

Title III will insure that the FRA provides rehabilitation to railroads for track and equipment in need as was the original intent of section 505 assistance.

I want to again thank the Chairman and hope that the Committee will move expeditiously on this matter.

The CHAIR. I wonder if we can hear from the panel now. We have Mr. Gallamore, Deputy Administration, FRA; Mr. Charles Swinburn, Deputy Assistant Secretary for Policy and International Affairs, DOT; and the Honorable Darius Gaskins of the ICC. You may lead off as you see fit. Do you want to toss a coin and go?

STATEMENT OF CHARLES SWINBURN, ACTING ASSISTANT SECRETARY FOR POLICY AND INTERNATIONAL AFFAIRS, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY ROBERT E. GALLAMORE, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Mr. SWINBURN. Mr. Chairman, I'm Charles Swinburn, the Acting Assistant Secretary for Policy and International Affairs in the Department of Transportation. With the Chair's permission, I would like to submit my formal statement for the record and present you with a brief statement at this time.

The CHAIRMAN. It will be made a part of the record in full and you may summarize from it.

Mr. SWINBURN. Thank you, Mr. Chairman.

Since our last appearance before you on September 7 there has been a series of events culminating in the Federal Railroad Admin-

istration's inability to make a legal finding for continued ERSA funding required by law, and in last Friday's court decision requiring the Milwaukee to order a November 1 embargo of certain of the railroad lines.

Our position remains as it has been. We believe that the embargo should be effected; that the ICC should issue directed service orders over those portions of the embargoed lines which are essential, and that the shrinking of the system in an attempt to find a reorganizable core should begin.

In our view, that process is necessary to prevent the entire railroad either from shutting down or becoming nationalized. We are aware of the concerns which have been raised about our position. We have carefully considered those concerns and I speak to our conclusions at length in my prepared statement.

To briefly outline those conclusions, they are:

First, continuation of Milwaukee's service beyond the core is unnecessary. Through a process of sale and transfer to other railroads, combined with local rail service assistance, approximately 95 percent of the traffic now served can continue to be served.

Second, all coal which now moves on the Milwaukee will continue to move and only one mine or mine site will be without Milwaukee service.

Third, the Milwaukee's present market share in the Western States is too small to have any significant effect on rail rates and fears of monopoly pricing after the Milwaukee pulls out are unjustified.

Fourth, the railroad's western lines are not essential to national defense or to the provision of competitive rail service to Pacific north coast ports.

Fifth, the highway system should have no problem handling the small amount of traffic that will be diverted from the railway system.

Sixth, except for those lines which we expect will be purchased by other railroads, the Milwaukee's western lines are not essential to the movement of grain and grain products. In the worst case, where no other railroad picks up any of the Milwaukee service, the potential Federal cost of cushioning the economic dislocations are far less than the cost of keeping the western lines operational.

Finally, because of the labor protection provisions in the various pieces of pending legislation, there will be little or no secondary effects from layoffs of Milwaukee personnel.

As a result of our assessment, Mr. Chairman, we think that attempting to establish most of the Milwaukee system as a going concern could cost up to \$1 billion in Federal investment. In contrast, we estimate that the trustees' proposal to create a self-sustaining core system would cost less than \$400 million. Even if the potential Federal cost of economic dislocation mentioned earlier are added to the cost of the core solution, it may well cost more than half a billion in additional Federal dollars to implement the plan for preservation of transcontinental service on the Milwaukee.

Turning to the several bills which are before the Congress, we are, for the reasons I mentioned, opposed to the idea of a freeze while an employee-stock ownership plan is being developed. We are, however, in favor of labor protection provisions, particularly

those contained in S. 1905 which would limit Federal responsibility to new career training assistance and the guarantee of up to \$75 million to the Milwaukee estate.

We oppose the statutory enumeration of benefits contained in the other bills.

We also support the provisions of S. 1905 that expedite abandonment of rail lines involved in any pending railway reorganization, including the Milwaukee's.

Also, we request the committee to make the sale and transfer provisions of the new Bankruptcy Act applicable to existing bankruptcies as does the House bill. In addition, the House bill makes a useful contribution by enabling preliminary approval of a sale and interim service by prospective purchasers.

We are opposed to sections 8 and 9 of S. 1905 which change the requirements for loans and loan guarantees to the Milwaukee under title V of the 4R Act. Adequate financing for essential equipment repair and track rehabilitation is available under existing title V statutory authority with appropriate protection for the Federal investment.

Finally, we oppose section 12 of S. 1905 which would provide additional operating funds to the Delaware & Hudson. If bankruptcy of the D. & H. is inevitable, we prefer to deal with it directly rather than postpone it.

That completes my summary statement, Mr. Chairman. I might add that the committee staff has asked us to bring with us some computer printouts on the local rail service assistance program allocations to the States based on formulas reflecting the changes that occurred in the continuing resolution. We have those and can enter those in the record if you desire.

The CHAIRMAN. All right.

[The information follows:]

LOCAL RAIL SERVICE ASSISTANCE PROGRAM ALLOCATIONS TO STATES

State	Miles	Percent		Distribution	Eligible ¹ mileage	ICC		Milwaukee Bank- ruptcy mile- age ³
		Miles	Adjust- ed miles			Category 1	Category 2 ²	
Alabama	0	0.77	1.00	670,000.00	118.41	60.0	29.0	.....
Alaska	0	0	1.00	670,000.00	0	0	.....	.....
Arizona	0	0.39	1.00	670,000.00	14.64	0	64.0	.....
Arkansas	0	0.80	1.00	670,000.00	104.66	76.0	23.0	.....
California	0	2.09	1.85	1,240,732.72	244.58	255.0	18.0	.....
Colorado	0	0.53	1.00	670,000.00	66.52	0	67.0	.....
Connecticut	0	0.52	1.00	670,000.00	84.80	3.0	55.0	.....
Delaware	0	0.32	1.00	670,000.00	56.30	1.0	32.0	.....
District of Columbia	0	0.07	1.00	670,000.00	0	0	12.0	.....
Florida	0	2.01	1.78	1,194,751.31	157.61	258.0	38.0	.....
Georgia	0	0.72	1.00	670,000.00	97.34	22.0	66.0	.....
Idaho	0	1.72	1.52	1,019,628.19	77.14	162.0	115.0	169
Illinois	0	4.23	3.75	2,511,788.14	877.81	296.5	93.5	346
Indiana	0	6.00	5.32	3,562,674.30	854.73	334.1	385.0	156
Iowa	0	6.53	5.79	3,879,195.58	582.48	794.0	137.0	1,053
Kansas	0	1.30	1.15	770,524.87	134.34	149.0	28.0	0
Kentucky	0	0.68	1.00	670,000.00	45.29	67.0	37.0	0
Louisiana	0	1.79	1.59	1,064,266.67	240.78	93.0	128.0	.....
Maine	0	0.90	1.00	670,000.00	99.91	64.0	56.0	.....

LOCAL RAIL SERVICE ASSISTANCE PROGRAM ALLOCATIONS TO STATES—Continued

State	Miles	Percent		Distribution	Eligible ¹ mileage	ICC		Milwaukee Bank- ruptcy mileage ³
		Miles	Adjusted miles			Category 1	Category 2 ²	
Maryland.....	0	1.44	1.28	854,612.87	349.70	40.0	71.0	.....
Massachusetts.....	0	2.08	1.84	1,234,840.36	125.10	91.0	231.0	.....
Michigan.....	0	6.59	5.84	3,910,747.70	1,371.92	386.0	219.0	143
Minnesota.....	0	4.88	4.33	2,898,990.17	502.70	475.3	191.8	741
Mississippi.....	0	1.89	1.68	1,123,520.16	146.69	279.0	0	.....
Missouri.....	0	3.78	3.35	2,244,728.60	109.18	635.6	0	140
Montana.....	0	1.40	1.24	831,522.87	146.65	190.3	0	1,028
Nebraska.....	0	1.79	1.58	1,061,666.10	276.56	154.0	51.0	0
Nevada.....	0	0.84	1.00	670,000.00	74.03	80.0	40.0	.....
New Hampshire.....	0	1.54	1.37	916,855.07	144.83	154.0	63.0	.....
New Jersey.....	0	2.52	2.24	1,497,464.67	190.48	0	374.0	.....
New Mexico.....	0	0.03	1.00	670,000.00	14.47	0	0	.....
New York.....	0	7.50	6.65	4,454,030.61	1,652.01	3.0	648.0	.....
North Carolina.....	0	1.36	1.20	805,788.97	67.80	105.0	111.0	.....
North Dakota.....	0	1.09	1.00	670,000.00	19.93	154.0	35.0	265
Ohio.....	0	6.24	5.53	3,705,050.05	1,194.32	141.0	477.0	.....
Oklahoma.....	0	2.38	2.11	1,410,562.62	227.17	250.0	82.0	.....
Oregon.....	0	0.72	1.00	670,000.00	108.92	38.0	45.0	0
Pennsylvania.....	0	6.09	5.40	3,616,687.04	1,399.34	43.0	461.0	.....
Rhode Island.....	0	0.22	1.00	670,000.00	20.90	0	31.0	.....
South Carolina.....	0	1.00	1.00	670,000.00	43.42	100.0	62.0	.....
South Dakota.....	0	3.52	3.12	2,087,987.42	447.17	344.6	99.7	.....
Tennessee.....	0	1.06	1.00	670,000.00	123.34	123.0	15.0	1,194
Texas.....	0	2.38	2.11	1,412,643.71	299.23	184.0	118.0	.....
Utah.....	0	0.06	1.00	670,000.00	11.59	3.0	2.0	.....
Vermont.....	0	0.70	1.00	670,000.00	289.60	3.0	0	.....
Virginia.....	0	0.80	1.00	670,000.00	220.69	11.0	39.0	.....
Washington.....	0	1.62	1.44	962,089.99	156.93	202.5	23.1	800
West Virginia.....	0	0.88	1.00	670,000.00	241.08	1.0	56.0	.....
Wisconsin.....	0	2.22	1.97	1,316,649.25	303.78	254.9	16.0	615
Wyoming.....	0	0.02	1.00	670,000.00	9.11	0	0	.....
Total.....	14,144.98	100.00	100.00	67,000,000.00	14,144.98	7,080.8	4,944.3	7,100
						⅓	12,025.1	(%)

¹ Eligible mileage is the total eligible under current law as of Oct. 1, 1978.

² The Milwaukee mileage in categories 1 and 2 has been subtracted from the States' total for each category to present the situation that would occur under present law if all Milwaukee category 1 and 2 mileage were to go into category 3. This Milwaukee mileage is less than the estimated 7,100 miles to be abandoned because the 7,100 total miles includes category 5 mileage as well.

³ Estimate.

[The statement follows:]

STATEMENT OF CHARLES SWINBURN, ACTING ASSISTANT SECRETARY OF
TRANSPORTATION FOR POLICY INTERNATIONAL AFFAIRS, DOT

Mr. Chairman and Members of the Committee. I am pleased to be here today with Robert E. Gallamore, Deputy Administrator of the Federal Railroad Administration, to discuss the future of the Milwaukee Railroad. There have been several important developments since the Department's September 7 appearance before you. Specific legislative proposals are now before this Committee and the House; the Milwaukee bankruptcy court and a reviewing court have ruled favorably on embargo of some Milwaukee service; and the Congress has modified the Emergency Rail Services Act to facilitate the funding of Milwaukee losses during the month of November.

Specifically, Congress has amended the ERSA Act to permit funding of the entire Milwaukee through November 30th without regard to most of the normal criteria for aid: in particular, we are not required to determine that the railroad in question can be expected to become self-sustaining. However, we are required to subordinate Federal funding only to "such priority in payment as the Secretary deems appropri-

ate to secure repayment." In other words, in this case it is necessary to make the legal funding that the money loaned will be repaid by the bankrupt Milwaukee. On the basis of the Congressional action, the court authorized the Trustee to request \$15 million in ERSA assistance at a repayment priority subordinate to the claims of all other creditors to fund operations until November 30. Last Friday the Milwaukee Trustee advised the bankruptcy court in Chicago that the Milwaukee could not repay fully subordinated ERSA funding for the entire system and should not undertake the new borrowing. The Federal Railroad Administration, which had been discussing terms of ERSA funding with the Trustee, has thus been unable to make the finding required by the continuing resolution. As a result of these developments the Trustee requested and the court authorized the embargo to take place on November 1st.

Our position regarding the Milwaukee remains as it has been: That the railroad's track condition and traffic base have so far deteriorated that no economic case can be made for continuing it as a transcontinental system. An attempt to establish a smaller, economically self-sustaining, and nonredundant "core" system as proposed by the trustee is now necessary, so that the whole railroad does not either simply cease running or become permanently subsidized by the taxpayer. As you know, our general policy regarding the railroad industry is that management should be permitted to react to market forces and set the terms and conditions of service accordingly. Railroads like the Milwaukee are subject to detailed regulation which inhibits their ability to respond to competition and tailor their service to market opportunities. We look forward to working with the Committee to develop a strong rail regulatory reform bill so that the Milwaukee situation is not repeated.

Since we first expressed our support for moving forward with the restructuring of the Milwaukee, a number of concerns have been raised regarding this course of action. Within the past two weeks, we have carefully reviewed these concerns, working closely with other Cabinet agencies. I would like to share with you some of the conclusions of our analysis.

First, regarding service, it has been argued that the loss of the Milwaukee's western lines would leave current or potential shippers with an inadequate level of service. We do not share this view.

On a transportation needs basis, our studies show that a continuation of Milwaukee service beyond the core railroad is unnecessary. The Burlington Northern and Union Pacific railroads already service nearly all the areas currently generating significant business west of Miles City. Moreover, these railroads are the dominant providers of transcontinental service. For example, the Burlington Northern operates about 20 trains daily on its two transcontinental routes, while the Milwaukee operates two.

The red markings on the map indicate those Milwaukee lines we would expect to be sold or transferred to other railroads, particularly the Union Pacific and the Burlington Northern, for continued service. In the middle segment of the Milwaukee service areas (Minnesota, South Dakota, North Dakota and Iowa), application of state rail plans, with some Federal assistance, will, we believe, preserve most other services.

In Minnesota, the lines that appear to be of primary importance are a local service line from Austin to Jackson, and the line west of Jonathan to Miles City, Montana. Under the State Assistance Program, funds for rehabilitation of both of those lines have been granted. Both are to be kept in the core system with state assistance.

In South Dakota, the only significant part of the Milwaukee that has so far been analyzed by the State is the line from Jonathan, Minnesota to Miles City, Montana. As a result of this analysis, \$2.3 million in State assistance was provided for emergency rehabilitation during 1979. Further, the State is committed to assisting the Milwaukee in securing an additional \$23 million to completely rehabilitate this line over the next three years. All other Milwaukee Lines in the State are currently being evaluated by the State DOT to develop recommendations for funding for presentation to the State legislature in January 1980.

Iowa has engaged in extensive rail planning regarding the cessation of service by Milwaukee. We have also conducted Section 401 meetings with all railroads interested in purchasing Iowa properties. We are confident that as a result of both efforts an improved basis for providing economically warranted service in Iowa will result.

Several lines on the western portion of the Milwaukee could lose service, particularly the main line in central Montana, some of the branch lines in the Great Falls, Montana area, and portions of the Columbia Basin in Central Washington, although some of these lines could also continue in operation through existing local rail

service assistance programs. Other lines with potential for future service can be "rail banked" through the same program. The combination of these anticipated actions (including sales to other railroads), should leave less than 5 percent of the traffic now served by the Milwaukee west of Miles City with rail service no longer available.

A specific argument has been made that increased coal traffic from Montana will require preservation of transcontinental Milwaukee service. The Milwaukee Road now receives at Miles City, and in the Twin Cities, coal that originates on the Burlington Northern in the Powder River Basin of Southeastern Montana and Wyoming. This coal moves eastbound, and would continue to be served by the Milwaukee's core system, "Milwaukee II." In fact, there is only one potential source of coal on the Milwaukee transcontinental line, at Roundup, Montana. That site, owned by the Burlington Northern, is undeveloped. A developed mine at Roundup would produce a little over 1 million tons of coal annually, only slightly more than 1 percent of that being shipped from all of Montana. We think "railbanking" by the state of a small part of the transcontinental line, if justified, would be preferable to continuing to operate the entire Milwaukee system to preserve service to this point.

With respect to grain moving from Montana, the flow is both east and west. Approximately 60 percent moves by rail, 20 percent by truck and 20 percent by truck/barge. In 1977, the Milwaukee carried less than 15 percent of all rail grain movements and that was largely to Seattle and Portland. The Milwaukee grain service is concentrated in the Great Falls-Lewistown, Montana area where the BN is the major rail carrier.

A second concern that has been expressed is that elimination of the Milwaukee's lines west of Miles City will leave a substantial number of shippers at the mercy of the remaining carrier. In answer, an ICC staff analysis submitted to the White House by the ICC Chairman found that the danger of rail monopoly exists only in Montana and that the Milwaukee's market share in that state is too small to affect pricing. The paper concludes that the presence of the intramodal competition provided by the Milwaukee is not a significant factor in controlling rail rates in any state that is likely to lose all or most of its Milwaukee service.

The paper also notes that even if rail rates in Montana for farm products are set at unreasonable levels, maximum rate relief remains available at the Commission. As you know Mr. Chairman, we have indicated a willingness to work with the Committee to incorporate into regulatory reform legislation such mechanisms as are needed to protect shippers who have no alternatives against unreasonably high rates.

A third argument made is that retention of the railroad is essential for national defense. Particular concern has been expressed regarding service to Malmstrom Air Force Base in Great Falls, Montana. The base is also served by the Burlington Northern and the Defense Department has met with BN to request its purchase of the Milwaukee 6-mile spur into the base. The most recent Defense Department map of rail lines essential to the National defense includes no Milwaukee owned lines west of Miles City, Montana which will not be purchased by other railroads.

Fourth, some have questioned whether retention of the railroad is necessary to provide competitive rail service and rates for Pacific North Coast ports. We expect the impact of the Milwaukee's withdrawal from transcontinental service to be minimal. Service will continue as before by the BN and UP, which already provide the bulk of rail service to midwestern and eastern markets. Only two smaller ports have been served exclusively by the Milwaukee and we expect these services to be continued by another carrier. While some rate adjustments may be made as a result of the Milwaukee withdrawal, these adjustments will not place any of the ports at a competitive disadvantage for high rated merchandise traffic since rail rates between the ports and inland points are equalized.

Fifth, it has been suggested that large or unforeseen highway impacts will result from abandonment. Working with FHWA, we have analyzed the possible increased traffic and maintenance needs that could result from sale, transfer, or abandonment of Milwaukee lines west of Miles City. From a capacity standpoint, it appears that none of the affected highways would have a problem in handling additional volume by truck. This assumes, in line with the plans for sale and transfer of lines with significant traffic, that most Milwaukee traffic will continue to move by rail. As I have indicated, we expect a combination of private sales and State planned operations of important lines with Federal assistance to continue to provide for most Milwaukee traffic. On this basis, the maintenance of the existing highways system should not be significantly affected either.

A sixth argument that has been made is that cessation of the Milwaukee's services, particularly in Montana, will seriously disrupt the nation's ability to move

grain harvests. The Department of Agriculture's recent assessment of the potential impacts of cessation of Milwaukee's western line indicates that 47 percent of Milwaukee's 1978 agricultural carloads originated or terminated at stations also served by another railroad.

Of the 73,000 remaining rail agricultural carloads that would have to be continued by another operator over Milwaukee lines, moved by highway to another rail head, or diverted to another mode of transportation, 70,000 were forest products and less than 3,000 carloads were grain and grain products. For comparison, national statistics for 1978 indicated that all major railroads handled over 1.3 million carloads of grain and almost 1 million carloads of grain mill products. Further, testimony in the Milwaukee line abandonment case indicated that only 2 percent of the wheat and 3 percent of the barley products produced in Montana moved by the Milwaukee.

It has also been argued that we may have significantly underestimated the Federal costs of abandonment of the Milwaukee western lines because there will be severe local economic dislocations which will have to be cushioned through the use of EDA or other Federal programs. In fact, the Department of Commerce estimates that under a worst case situation, where none of the abandoned Milwaukee service is picked up by other railroads, the impact on EDA's programs would be approximately \$42 million. That amount is far less than the amounts of Federal funds needed to keep the Western Lines operational and in practice will be diminished drastically since, by our estimates, about 95 percent of the shippers will continue to receive service.

Finally, it has also been claimed that there will be significant direct and indirect costs associated with the layoffs of Milwaukee railroad employees. The Department of Labor has reviewed the labor protection provisions of the pending legislative proposals and has estimated that they would require approximately \$80 million, an amount which is strikingly close to that which is provided in the form of loan guarantee assistance in the several legislative proposals and which the Trustee's Preliminary Reorganization Plan agrees to fund. Further, the Department of Labor expects that because labor protection will be provided, any secondary economic or ripple effects of the layoff of Milwaukee employees will be negligible.

To summarize our assessment of the potential costs of alternative proposals, we believe that the costs of preserving the entire Milwaukee system are far greater than those of moving to a more efficient, restructured system. For operation of the full system from now until next spring, the price tag for the Federal taxpayer would be at least \$55-60 million. Based upon the individual studies of the costs of rehabilitating and operating the Western Lines and the Trustee's core system, our estimates are that attempting to establish most of the Milwaukee system as a going concern could cost up to \$1 billion in total Federal investment, including the costs of restructuring in Iowa and South Dakota, but not including the costs of purchasing the rail assets from the Milwaukee estate. In contrast we estimate that the Trustee's proposal to create a self-sustaining core system would cost less than \$400 million, also including the costs of restructuring in Iowa. Even if the potential Federal costs of economic dislocation mentioned earlier are added to the costs of a core only solution, it may well cost more than half a billion additional Federal dollars to implement a plan for preservation of transcontinental service on the Milwaukee.

These figures give us all the more reason to object to any further freeze that delays the permanent restructuring which is necessary to make the Milwaukee economically viable. We have often said, and I re-emphasize today, that delay in taking the necessary restructuring steps will impair the chances of establishing a successful core railroad. Since 6,000 jobs and service to Milwaukee's prime territory in Minnesota, Wisconsin and Illinois are at stake, we should avoid further delay. I should note that a de factor freeze has been in effect since last May when the Trustee first petitioned for embargo. We are also concerned that an indefinite continuation of Milwaukee service will discourage sale or transfer of lines to solvent carriers.

In light of these facts, our view is that little legislative change is necessary or desirable to accomplish needed Milwaukee restructuring. Under the bankruptcy court's embargo ruling for Milwaukee noncore lines, the Interstate Commerce Commission will be able to authorize directed service over those lines or portions of lines which are essential. It is likely that this will speed up the sale or transfer of viable lines to solvent railroads, and will minimize the effects on shippers while alternative arrangements are made. The directed service period will also provide time for the Congress to provide reasonable labor protection for any Milwaukee employees dislocated by reduction of Milwaukee service.

The Department will support legislation that improves the chances for a successful reorganization of that portion of the Milwaukee which can become self-sustaining. However, the approaches taken in the two bills before your Committee and the one in the House all tend to slow down the process of restructuring, with the general exception of improved abandonment procedures. We advocate substantial modifications of the bills.

Each of the bills conditions Federal funding beyond a certain date on the successful development of an Employee Stock Ownership Plan (ESOP), converting all or substantially all of the Milwaukee into an employee-owned or employee/shipper-owned company. The basic idea of placing a commercial venture in the hands of those who stand to gain the most from its success is a promising one that has been successful in several cases, and we do not dismiss the concept. However, such a venture must be capable of being self-sustaining as a private enterprise. We have concluded, after careful study, that insufficient traffic and better-equipped competition will make profits impossible for any management operating the Milwaukee lines as a whole, whether or not an ESOP is in place. That conclusion has been supported by virtually all of the studies done to date. The one exception is a recent study done by Policy and Management Associates for proponents of maintaining Milwaukee's Western Lines. That study purports to demonstrate that the Milwaukee's Western Lines can be made profitable by 1985. We have carefully reviewed that study and find it to be overly optimistic and based upon assumptions that are highly unrealistic. I have attached our review of that study to the copy of my testimony which is submitted for the record. Based upon the evidence, therefore, we think it risky to expose the employees and shippers to a venture based on the success of these lines. While we recognize that the Committee's bill requires that labor contribute to the ESOP's assets in the form of relinquished labor claims and work rule changes, we must caution that an ill-conceived ESOP that failed would deprive labor of the benefits of these contributions. Under S.J. Res. 114 and the House bill, the ESOP venture would replace directed service for a significant time period. When service not operated by the ESOP would cease we could have a chaotic situation in the event of an ESOP failure.

While we do not support any of the three ESOP proposals, the approach taken in Committee bill S. 1905 appears to be the least objectionable. It does not presume the feasibility of the ESOP plan for review purposes, does not require the heavy burden of "clear and convincing" evidence to oppose the plan in bankruptcy court, and includes the most appropriate test for estimating the financial assets of the ESOP that might come from governmental sources. Under S. 1905, the ESOP plan must be submitted by November 30th. Labor must contribute to the ESOP in the form of work rule changes and relinquishment of claims against the estate. The employees would have to "implement" the plan by March 1, 1980, or Federal funding of the entire Milwaukee could cease 60 days thereafter.

In contrast, S.J. Res. 114 would require submission of the plan by January 1, 1980, and would only require that the ESOP employees "take such steps as may be necessary to implement the plan" by May 10, 1980. This is defined to mean obtaining preliminary commitments for sources of financing and a certificate of public convenience and necessity. It is not clear what responsibility or authority would exist in the Federal Government to assure continued Milwaukee service if this stage of "implementation" is reached but operational control has not been assumed by the ESOP.

We support S. 1905's provisions on labor protection, which would limit Federal responsibility to new career training assistance and the guarantee of up to \$75 million to the Milwaukee estate for moving, relocation and other expenses associated with employee dislocation, with repayment guaranteed as an expense of administration. In general, it is our view that labor protection should be worked out between employer and employees on an equitable basis. We oppose the statutory enumeration of benefits contained in S.J. Res. 114 and the House bill, including any which suggest a suspension of laws and obligations related to equal employment opportunity. We are particularly concerned with the Federal Government assumption of costs associated with supplementary unemployment insurance coverage for all employees working on a reorganized Milwaukee core. The future liability of the Federal Government under that feature could be sizable.

We support the provisions of S. 1905 that expedite abandonment of rail lines involved in any pending railroad reorganization, including the Milwaukee's. Section 3 of S. 1905 would authorize abandonments under the new bankruptcy law, and would permit actual abandonment to begin while any abandonment appeal is pending. S.J. Res. 114 does not contain the right to abandon during the pendency of appeals, and does not extend the new bankruptcy law to pending railroad reorgani-

zations other than the Milwaukee. The House bill is similar to S. 1905. All three bills delay Milwaukee abandonments until the ESOP matter is resolved.

Because there is a substantial likelihood that expedited sales or transfers will be needed to resolve not only the Milwaukee matter but also the pending Rock Island situation, we recommend that the sale and transfer sections of the new Bankruptcy Act be made applicable to existing bankruptcies. The House bill generally follows that pattern. In addition, the House bill makes a very useful contribution by enabling preliminary approval of a sale and interim service by prospective purchasers. However, additional consideration will have to be given to protection of employees involved in interim service by another carrier.

S. 1905 contains a requirement that the Secretary guarantee loans under section 511 of the 4R Act for equipment repair for the Milwaukee, or its successor, up to a total of \$30 million during 1979 and 1980. S. 1905 and the other bills contain an amendment of section 505 of the 4R Act which permits (but requires in the House bill and S.J. Res. 114) the Secretary to purchase redeemable preference shares or similar instruments to facilitate the rehabilitation and improvement of Milwaukee railroad property, whether sold or retained, that is used for continuing railroad service. We oppose these provisions as undesirable because of their implication that different standards for determining the merits of Federal funding should be applied to assistance for the Milwaukee. Adequate financing for essential equipment repair and track rehabilitation is available under existing Title V statutory authority, with appropriate protection for the Federal investment. Instead, we strongly urge the Committee to take up the provisions in the House bill that would fundamentally improve the distribution of Federal assistance by channeling 505 funds toward restructuring projects, even where solvent railroads are involved, and by conditioning assistance in other cases on restructuring efforts.

Finally, section 12 of S. 1905 would provide additional operating funds to the Delaware and Hudson (D&H), while requiring that the railroad continue to develop and ESOP. The D&H has been plagued with financial problems since 1971, and has received \$30 million from the United States Railway Association since 1976 under the 4R Act. In 1978 DOT refinanced \$8 million in locomotive purchases to provide additional working capital from USRA's loan authority. Deferred interest on USRA loans presently totals \$4.7 million, and we expect the D&H to ask for deferral of up to \$4.3 million more in the next year. The USRA forecasts D&H losses of \$12 million for 1980 and indicates that the D&H may require as much as \$5 million in additional Federal assistance.

Section 12 would relieve the D&H of a 1978 legislative requirement to have an ESOP in place in order to gain access to the last \$2 million in working capital assistance from USRA, and would add \$2 million in new funds. This will not reverse the steady downward trend in the D&H's traffic, earnings, and asset base. We do not support additional funding. If bankruptcy is inevitable, we prefer a deal with it directly, rather than by repeated postponement.

In closing, we believe that the necessary restructuring of the Milwaukee Road must occur. We are convinced that the combination of purchase by other railroads and continuation of local services under the state rail assistance program will minimize the loss of rail service so that less than 5 percent of present traffic would be affected. We support expedited abandonment, sale, and transfer of rail lines belonging to railroads undergoing reorganization. We also support the approach to labor protection for Milwaukee employees taken in S. 1905. However, we do not support the ESOP provision, or the "freeze" of operations through the winter. We do not support the modification of Title 5 assistance programs to favor Milwaukee rehabilitation over worthy projects of other railroads.

This completes my statement. Deputy Administrator Gallamore and I would be pleased to answer any questions you might have.

The CHAIRMAN. Mr. Gallamore.

Mr. GALLAMORE. Mr. Chairman, I have nothing further to add at this time to Mr. Swinburn's statement, but I will be happy to attempt to answer questions.

The CHAIRMAN. Mr. Gaskins.

STATEMENT OF HON. DARIUS W. GASKINS, COMMISSIONER, INTERSTATE COMMERCE COMMISSION

Mr. GASKINS. I'm Darius W. Gaskins, Commissioner of the Interstate Commerce Commission.

I appreciate the opportunity to be here today to present the view of the Commission on the Milwaukee Road and the legislation relating to it. Chairman O'Neal was unable to be present today.

Unfortunately our statement has been largely overtaken by events. I thought what I would do today is supplement our statement with a brief discussion of the directed service order that the Commission is prepared to use in case of the embargo on the 1st of November.

Briefly, this order would direct four railroads to provide service on the portion of the Milwaukee Road outside the core. It's our anticipation that this service would be provided for 99 percent of the originating and terminating traffic now in the noncore area of the Milwaukee Road. We would be using 75 percent of the trackage which is outside the core. If you look at the western part of the system, from Miles City west, the directed service order would involve the use of 50 percent of that track, but as I said before, we would essentially provide service to almost all of the shippers that originate or terminate traffic.

The reason for that is the nature of the order. It's a highly selective order, an order which is directed at getting service to the shipper but rerouting much of the traffic over lines that are in better physical shape and are not Milwaukee lines.

The Commission has, at its disposal through the continuing resolution, enough funds to engage in this directed service activity through the month of November. On the 1st of December, if we don't get additional funds through the appropriations process, we would not be able to continue with that directed service activity.

One other comment that I'd like to make is that with respect to the expense of this alternative, vis-a-vis other alternatives, it's clear that directed service, directly compared to grants or some other funding, is more expensive to the Federal Government because we would have to pay 6-percent profit to the railroads that engage in directed service.

That basically summarizes the directed service order that the Commission is prepared to put in place. We could start that service at the time of the embargo. Thank you.

[The statement follows:]

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION

Mr. Chairman, Members of the Committee: I appreciate the opportunity to be here today to discuss the Milwaukee Road System and two legislative proposals relating to it. As you know, the Commission previously testified before this Subcommittee on the Milwaukee Road in May and September of this year. I will not reiterate the prior testimony; rather, I will give you a general update on the railroad's financial and operational situation and the various administrative and judicial proceedings involving the Milwaukee Road. I will also discuss S. 1905, the "Milwaukee Railroad Restructuring Act", and Senate Joint Resolution 114.

First, let me outline the financial and operational condition of the Milwaukee Road. As of October 25, 1979, the Milwaukee had \$13.2 million in treasurer's cash with no withheld vouchers reported, reflecting a draw-down of \$5 million, which represents the final amount of ERSA funds authorized by the Secretary of Transportation.

On October 14, H.J. Res. 412 made an additional \$15 million of ERSA funds available to the Milwaukee to ensure that the entire system would operate through November 30, 1979. As of October 25, 1979, there was \$7.9 million deposited in the Milwaukee escrowed land sale account, and \$7.8 million cash in the Milwaukee

Land Company; however, the Bankruptcy Court has indicated that those funds may not be used until an embargo is in effect.

On the operational side, current traffic being handled on the Milwaukee is only slightly below that of a year ago. In September of last year, it handled 64,089 carloads of traffic and in September of this year 62,871, down 3,818 cars. Last year it handled 74,967 carloads in October, and it is projected that slightly over 73,000 cars will be handled in October of this year. Carloadings during the third quarter of 1979 showed a 4.3 percent decline from the third quarter of 1978, and the first three weeks of the fourth quarter showed a 7.2 percent decline from the comparable period in 1978.

Train operations on the eastern part of the Milwaukee system are approximately the same as last year. Train operations west of Miles City are down somewhat, with one train being operated each day between Miles City, Montana, and Tacoma, Washington, plus about one extra train each week. A year ago the Milwaukee was running about three extra trains each week. Track conditions have deteriorated and there are long stretches of poor track over which trains are operated at very slow speeds. This means that in order to maintain one train per day eastbound and one train per day westbound, three complete trains must be operating in each direction at the same time. Daily service requires that one train be starting, one ending, and one in the middle of the system.

At the present time, the locomotive fleet is in better condition than it has been for a long time, with a bad order ratio of 15.9 percent as of October 22. In order to maintain current traffic levels without delay for power would require about 450 locomotive units, but only about 400 are available. This does not mean that cars are piling up awaiting movement, as was the case last winter, but rather that significant traffic delays are being encountered. While there continue to be shortages for most types of rail cars, car supply conditions are generally comparable to those on other carriers in the Midwest.

There are several administrative proceedings at the Commission of which the Committee should be aware.

As discussed in our prior testimony, the Commission has implemented an expedited processing schedule for the major Milwaukee abandonment application covering lines west of Miles City, Montana. Public hearings in this proceeding began in Butte, Montana on September 10. The hearing in Butte, and hearing sessions in Chicago, which began on September 24 were designed principally for the presentation and examination of Milwaukee's abandonment case and for presentation and examination of the more complex technical evidence submitted by protestants to the application.

Hearings were also held in Montana, Washington and Idaho to provide convenient locations for testimony by shippers, communities and other interested persons.

Hearings were completed on Friday, October 26 and the Commission will issue a final decision by January 10, 1980 on abandonment of the lines west of Miles City.

A number of other smaller abandonment applications are pending at the Commission. An update of those proceedings is attached as an appendix to this statement.

I should also mention that the Commission is anticipating that in mid-December the Milwaukee Trustee will file, at the instruction of the bankruptcy court,¹ abandonment applications for the entire remaining Milwaukee system. The Commission may use an expedited procedure in handling those applications. Under such a procedure, if the Trustee files at the earliest opportunity, December 17, then the Commission could give adequate notice, hold public hearings and reach a final decision within 155 days—that is, by May 10, 1980.

The Commission has received pursuant to 11 U.S.C. 205(d), plans of reorganization from the Milwaukee Road Trustee, from the Association of Save Our Railroad Employment (SORE), and from the New Milwaukee Lines.

The Trustee's plan would establish a 3,200 mile "Milwaukee II" core system extending from Louisville through Chicago, Milwaukee and Minneapolis to Miles City, Montana, with a line also from Chicago to Kansas City. The Trustee's plan would not include lines west of Miles City.

The Association to Save Our Railroad Employment is an association of some 600 employees who work on the Western lines of the railroad and they contemplate establishing a company to acquire the assets of the railroad west of St. Paul, Minnesota, extending to Tacoma, Washington as well as acquiring the Milwaukee Land Company.

The New Milwaukee Lines is a non-profit corporation which includes representatives of governments, shippers, and employees organized for the purpose of acquiring

¹ Judge McMillen directed filings for the entire system so as not to prejudice the question of whether the railroad can or cannot be reorganized.

ing and operating portions of the Milwaukee railroad. The New Milwaukee Lines proposes to acquire all of the assets of the present Milwaukee estate. That "acquisition would be followed by a period of rationalization in which the system would be reorganized around the transcontinental artery extending from Seattle through the Twin Cities, Milwaukee and Chicago to Louisville, with a gateway to the southwest via Kansas City. The resulting system would resemble a large, horizontal 'Y' linking the Louisville and Kansas City gateways to the ports of the Pacific Northwest." Further detail is expected to be submitted in the form of amendments to this plan.

As required by statute, notices of the plans of reorganization are published in the Federal Register and parties of interest have 30 days to submit their views. The time for submitting such views will expire toward the end of November. It is anticipated that the reorganization proceeding will receive expedited treatment and should progress in tandem with the proceedings for the abandonments expected to be filed in December.

On October 5, the Commission held an open conference to consider a plan for directed service over certain Milwaukee railroad lines. The Commission tentatively approved a plan which would be used in the event it becomes necessary. Under the plan, the number of other railroads would be ordered to operate portions of the Milwaukee's lines outside of a 3,200 mile "core" system which the Trustee would continue to operate. As of this date the Commission has named the following railroads as possible candidates to provide parts of the directed service: the Burlington Northern; Chicago & North Western; Curtis, Milburn & Eastern; and the Union Pacific.

Approximately 25 percent of the "non-core" Milwaukee rail line would not be operated under directed service; however, about 99 percent of the "non-core" traffic would continue to be moved. Under the plan favored by the Commission the directed carriers would provide service for a period of 60 days, subject to an extension for up to another 180 days.

The plan discussed at the open conference is under consideration by the Commission, and could be implemented on short notice should the need arise.

The Commission's previous testimony discussed various court proceedings directed at reducing the size of the system run by the Milwaukee Road to a "core", pending completion of the abandonment and reorganization proceedings which the Commission expects to complete by May 10, 1980. Since the previous testimony the following significant events have occurred.

On September 27, 1979, Judge Thomas R. McMillen granted the Trustee's renewed request for authority to embargo all but the lines contained within the core system believed by him to be reorganizable, as set forth in a plan of reorganization filed with the Court on August 10, 1979. In that opinion Judge McMillen stated that in his view the railroad would become cashless effective November 1, 1979, absent federal assistance. The time for appeal of that decision expires the end of November. We anticipated that the need for that assistance had been provided at least temporarily by the Magnuson Amendment to the Continuing Resolution, H.J. Res. 412, which authorized use of ERSA loans on a low priority basis to keep the entire Milwaukee system operating through November 30, 1979. Counsel for the Milwaukee Trustee has negotiated with the United States Department of Transportation for a \$15 million loan of an acceptably low priority (lower than those of both secured and unsecured creditors); however, on Friday, the Commission learned that those negotiations have not been successful. Therefore it may be necessary to provide for directed service over a portion of the Milwaukee after November 1, 1979.

Recently the United States Court of Appeals for the Seventh Circuit reached a decision with respect to Judge McMillen's prior orders. Judge McMillen earlier (1) authorized use of \$15 million in internally generated cash which could be used in continuing operations for the whole system; (2) found himself to be without authority to order an embargo as requested by the Trustee; and (3) authorized borrowing of \$20 million in priority ERSA funds to continue operation over the entire system. The Court of Appeals affirmed the order permitting use of \$15 million. At the same time it vacated the order denying the embargo and modified the order authorizing the \$20 million borrowing to foreclose use of any funds remaining unexpended for providing services outside of the core. The principal basis of the Court of Appeals decision was the undisputed discretion of a reorganization court under Section 77(c)(3) to impose conditions on borrowings. According to the Court, the Milwaukee would have been cashless but for the borrowing and could have ceased operations without prior ICC approval.

On remand to the bankruptcy court, the Commission argued that the Court of Appeals' decision did not foreclose Judge McMillen from adhering to the November 1 embargo date established in the second decision, because the public interest

considerations underlying that decision were substantially different from those underlying his prior decision. He agreed, initially, that with federal funding continued operation of the entire Milwaukee system through November 30 was possible. However, because the railroad and DOT have not been able to negotiate terms for continued ERSA funding, Judge McMillen on October 26 ordered an embargo of much of the non-core Milwaukee effective November 1. Of course, the Commission will not be able to deal in an orderly fashion with the various proceedings involving the reorganization of the Milwaukee and the abandonment of its lines prior to that date.

Before discussing the proposed legislation, I would like to point out that the Commission has a strong commitment to its expedited procedures for the Milwaukee reorganization and abandonments. These proceedings are moving rapidly and as I have mentioned, should be completed in an administratively final form by May 10, 1980. By that date, the Commission will have held extensive public hearings, received testimony from all concerned parties, analyzed that testimony and reached decisions on all Milwaukee abandonments as well as on a plan for reorganization of the railroad.

The Commission feels that the public hearing process is the most appropriate means of reaching a balance between competing public and private interests. Therefore, we believe it would be useful if ERSA funding could be made available for the continued operation of the Milwaukee until May of next year, by which time the Commission will have completed its expedited proceedings.

Let me now turn to a discussion of S. 1905 and S.J. Res. 114. Both proposals have two broad purposes. The first is to provide interim assistance to the Milwaukee Road so that it may continue to serve shippers while longer-range solutions are being developed. The second is to promote some form of employee or employee/shipper ownership of the railroad.

We are generally in agreement with the methods of interim funding proposed by both bills. If Congress determines that funds should be provided to the Milwaukee for interim assistance, then Emergency Rail Service Assistance (ERSA) funding is the best means of avoiding major service disruptions or discontinuance. While the Commission does have authority and is prepared to direct service, that approach is likely to be more expensive due to the required six percent profit to the directed carrier and because there is no possibility of repayment as there is even under ERSA funding in which DOT does not necessarily have a priority for repayment over other creditors.

With respect to the clear intention of the legislation to promote an employee or employee/shipper plan, we should not prejudge such an approach due to the pendency of our reorganization proceeding. If this is the will of Congress, the Commission of course stands ready to cooperate. However, we do have some observations on the mechanics of the legislation should Congress decide to pursue this course of action.

First, the Commission is given only 30 days (under section 5 of S. 1905, and section 4 of S.J. Res. 114) to pass on the feasibility of the submitted employee or employee/shipper plan. We believe it is functionally impossible to hold full adjudicatory hearings and reach a competent decision within such a short term period. If the Commission is to make a fair and full decision on the merits of a submitted plan, we need time to resolve the difficult question of whether the submitted plan will actually work. We would need to examine operational as well as financial feasibility. Both subjects are extremely complex, with facts being susceptible to differing interpretations. Such difficult issues cannot be adequately treated in 30 days. We feel that a more reasonable period of time to consider the plan would be 90 days.

Under the timetable proposed in S.J. Res. 114, it appears that there would be time for such a 90-day decisional period without extending ERSA funding beyond the May 10 deadline stated in the legislation. The January 1, 1980 to May 10, 1980 time frame in S.J. Res. 114 could allow for a 90-day Commission decisional period followed by a 10-day analysis by the court. We recognize that 10 days is an extremely short period of time for the court to act on the plan. Nevertheless, in view of the court's familiarity with the entire reorganization process, it appears that this may be the place where an extremely tight deadline can best be accommodated. If the plan is approved, there would still be 30 days to implement it prior to May 10. The proposed 90-day time frame for a Commission decision would be used to comply with section 554 of the Administrative Procedure Act as the draft legislation contemplates. This would permit issuance of a notice, a 30-day initial evidentiary filing period, a 20-day reply period, and 40 days for Commission analysis and decision.

There are several other concerns which we would like to bring to the attention of the Committee. A slight difference in language between the bill and the resolution raises some questions about the procedures envisioned by the two pieces of legislation. On one hand, section 5(a) of S. 1905 directs that a plan be submitted converting "all or substantially all" of the Milwaukee Road to an employee or employee/shipper owned entity. On the other hand, section 4 of S.J. Res. 114 uses the language "all or a substantial part" of the Milwaukee in a comparable section.

These two provisions are distinctly different in meaning, and the more restrictive language of S. 1905 would appear to preclude a partial-system plan, such as some that have been proposed for the Western lines.

Possible procedural confusion could result if a plan were submitted and approved by the Commission and the Court, which plan included only a substantial portion of the present Milwaukee system, and there remained a portion of the Milwaukee which could also be reorganized. Both bills would appear to render the present Commission and Court reorganization proceeding moot if the submitted plan is found feasible and encompasses the whole of the reorganizable system. However, to the extent some decision may be required on any part of the system which could be reorganized independently of the submitted plan, the legislation is unclear as to how the Commission and the Court should proceed.

For example, a plan submitted by an employee organization to the Commission could probably qualify as the designated employee plan under S.J. Res. 114 if it were to encompass, for example the lines between Minneapolis-St. Paul and Tacoma. If that plan were found to be feasible and fair to the creditors, implementation would commence.

However, that plan would not necessarily preclude another railroad being reorganized out of the remaining system. In fact, the Commission would still have to conduct the proceedings, since nothing in the proposed legislation would instruct otherwise. However, the Court would also assume jurisdiction over all the railroad's abandonments with the passage of the date set forth in section 3(a)(1)² of S. 1905 (March 1, 1980), or section 4(c) of S.J. Res. 114 (May 10, 1980). Obviously, the abandonments and the reorganization are interrelated. It would seem inconsistent to have the Commission make a decision on a reorganization plan while jurisdiction over abandonments has already been transferred to the Court.

This same incongruity would arise if the employee or employee/shipper plan were rejected by either the Court or the Commission. Again, the reorganization proceeding would of necessity continue. Again the Court could exercise abandonment powers in a manner inconsistent with the efforts of the Commission. Thus, if the Commission is to continue to process various reorganization plans under either circumstance, then the responsibility for abandonments should remain with the Commission until after it has completed the normal process. Once again, I would point out, this completion date should fall within the time frame proposed by S.J. Res. 114—May 10, 1980.

In summary, let me emphasize that the Commission is closely monitoring the Milwaukee's situation and is responsive to its changing circumstances. In the absence of legislation we can process the necessary reorganization and abandonments by May 10, 1980. We are also prepared to order directed service in the event it becomes necessary.

We recognize that in the absence of legislation, there would be a substantial danger of interruptions to rail service or the need for directed service on the Milwaukee. Therefore, the proposals contained in this legislation for the use of E.R.S.A. funds, until longer term solutions are found, may be appropriate.

This concludes my prepared testimony. I will try to answer any questions which you may have.

Commissioners Alexis and Gresham did not participate in this matter.

The CHAIRMAN. Would you give us the benefit of your views on the advantages and disadvantages of directed service versus a continuation of service by the Milwaukee, and also provide us with your estimate of the respective costs; and then after you've done that, I will ask your colleagues from DOT to comment on that same point.

² It appears that section 11(4) intends to refer to section 3(a)(1) rather than 3(c) as it does in the bill.

Mr. GASKINS. The primary disadvantage of directed service, as I see it, is that it would funnel traffic off the Milwaukee system. If you're anticipating a subsequent reorganization which would include a major portion of the Milwaukee system west of Miles City, the traffic will have been moved off that system onto competing roads and there's concern that any subsequent reorganization would be doomed by the nature of the directed service operation.

In terms of the expense, I think you have to be careful in what you're comparing here. If you provide the same level of service in an area of the Milwaukee system and your alternatives were either a grant from the Federal Government directly to the Milwaukee Road or directed service by other railroads, it's clear that the grant alternative would be 6 percent cheaper because you don't have the profit contribution to the railroads to consider.

The CHAIRMAN. Well, you do under existing law.

The directed service would require the cost of the service plus the 6-percent profit now, unless Congress should change the law to provide that they could direct the basic carrier to provide the service at no profit. Would that be correct?

Mr. GASKINS. That is correct, although I would anticipate that there would be concern about whether or not carriers would be willing to accept the directed service without any contribution.

The CHAIRMAN. All right. Do you gentlemen care to comment?

Mr. SWINBURN. Mr. Chairman, I certainly agree with the statement that if you're providing the same level of service under directed service or another alternative such as yours, the funding costs of directed service are more expensive, because of the 6-percent profit contribution.

In the immediate case, it's our understanding that the Commission will not run all of the Milwaukee's western lines under directed service, as opposed to the alternative of a freeze of all the Milwaukee's lines, and our calculations show that the cutback in service under directed service orders should pretty much compensate for the 6-percent profit that is to be paid, and that the cost of the two throughout the winter would be just about equal.

The CHAIRMAN. So you're saying because of the fact that they would not direct service over the entire system beyond the core system, that that would make up for the difference in the 6-percent profit on the directed service?

Mr. SWINBURN. That's correct, Mr. Chairman.

The CHAIRMAN. You think that's just about a wash?

Mr. SWINBURN. Yes, sir.

Mr. GASKINS. I would only comment that if you're making that comparison, you should take a look at whether or not the same level of service is provided, because our directed service order is aimed at providing essentially 99 percent of existing service and in your alternative you're talking about less service than that and are really comparing apples and oranges.

The CHAIRMAN. Have you got a map that you could indicate to us just what you're talking about?

Mr. GASKINS. If you would allow Mr. Richard Schiefelbein to lay out the map here.

The CHAIRMAN. Yes, please.

Mr. SCHIEFELBEIN. Is that visible to you, Senator?

The CHAIRMAN. Yes.

Mr. SCHIEFELBEIN. The directed service plan that the Commission is prepared to put in place would cover the traffic generating areas over the west coast extension of the Milwaukee. You will see certain areas, particularly on the north-south line of the Milwaukee which is now jointly owned which would continue to have at least one other railroad serving all the shippers. There are segments of the Milwaukee's main line on which there are no originating or terminating shippers or shippers who generate just a few carloads per year. The plan would not include service to those points but would focus on the traffic generating points.

In the South Dakota and Iowa area, which would be outside the core, there is a generally higher level of traffic and no long segments without originating and terminating carloads. The directed service order, at least for the first 60 days, would cover most all of those stations.

The colors that are shown on here indicate which railroad would be the directed carrier. For example, the brown lines in the area around Tacoma, represent the Curtis-Millburn and Eastern, which is a subsidiary of Weyerhaeuser, and has expressed an interest in purchasing that stretch of railroad eventually. The purple in Idaho and around Tacoma indicates the Union Pacific. The green through the northern lines indicates the Burlington Northern and the blue in the Iowa and South Dakota area indicates the Chicago and North Western.

We can make this map available to the Committee if you wish.

The CHAIRMAN. Well, now, where on that line would you not have service existing under the directed service order?

Mr. SCHIEFELBEIN. The area from Miles City out to Ryegate, Mont., which is just about where the northern Montana branch connects to the main line; Cardwell down over to Virginia City would not have service. An area from Steventon to around Butte, I think it's Newcomb, would not have service. The area between Butte and Deer Lodge and between Deer Lodge and Bonner Junction which is near Missoula; from Missoula to about the Idaho State line would not have service. A small section near the Washington/Idaho State line and an area from Ellensburg up to the Snoqualmie Falls branch line would not have service. There's also a small area outside of Clinton, Iowa, which would not have service.

The CHAIRMAN. In those areas that you have indicated would not have service under the directed service order, is there alternative service available so that those shippers would have some kind of opportunity to get to market?

Mr. SCHIEFELBEIN. The directed service order would establish a general temporary order for motor carriers to permit them on a very expedited basis to have permission to serve in those areas. There are very few carloads of traffic in those areas.

The CHAIRMAN. I wonder if you gentlemen would comment on the most recent study, the one prepared by—

Senator MAGNUSON. Could I ask a question?

The CHAIRMAN. Yes, certainly, Senator Magnuson.

Senator MAGNUSON. When you direct an order to the motor carriers, who do you direct it to? What motor line?

Mr. GASKINS. What we do in that instance is we provide the general temporary authority for anybody, any trucking company, to haul traffic.

Senator MAGNUSON. It would be wide open?

Mr. GASKINS. It would be wide open.

Senator MAGNUSON. It wouldn't be an established line?

Mr. GASKINS. That's right.

Senator MAGNUSON. An established line may make the application though?

Mr. GASKINS. Absolutely, and the established line might go after the traffic, but we do not have any particular carrier in mind.

Senator MAGNUSON. That's the problem with motor carriers. Can I ask a question of Mr. Swinburn?

The CHAIRMAN. Surely.

Senator MAGNUSON. Where is Mr. Sullivan?

Mr. SWINBURN. I believe Mr. Sullivan has a meeting at the White House this morning, Mr. Chairman.

Senator MAGNUSON. A meeting at the White House?

Mr. SWINBURN. Yes, sir. That's physically where he is.

Senator MAGNUSON. Well, he's the one that made these statements, isn't he? He made some pretty drastic statements about the Congress, did he not? I think he ought to come and prove those statements.

Mr. SWINBURN. Mr. Chairman, it was our understanding that the committee expressed a desire to have the Department of Transportation as the primary testifier and that's why I'm here.

Senator MAGNUSON. I know, but you would think he would be the one that would want to comment. He's head of the FRA.

Mr. SWINBURN. Yes, sir; he is the head of the FRA.

Senator MAGNUSON. How long is he going to be at the White House?

Mr. SWINBURN. I don't know the answer to that, Mr. Chairman. We could find out.

Senator MAGNUSON. Is he down there for political reasons?

Mr. SWINBURN. I don't know the answer to that, Mr. Chairman.

Senator MAGNUSON. Now the Congress told you people that there should be no embargo before November 30, did they not? Didn't they say that?

Mr. SWINBURN. Sir, I believe the Congress directed us to provide funding to keep the railroad operating through November 30 so long as we could find the ability to secure repayment for the funds that were provided to the railroad.

Senator MAGNUSON. No. We said that was at the discretion of the Secretary, didn't we?

Mr. SWINBURN. I'm advised by our counsel, Mr. Chairman, that the language that was in the continuing resolution is pretty specific as to the requirement that we find the ability to secure repayment, and I don't believe we could walk around that finding.

Senator MAGNUSON. How about the copy of that opinion, can you get it?

Mr. SWINBURN. Yes, sir. I'm sure we can provide you with it.

Senator MAGNUSON. Is it oral or is it written?

Mr. SWINBURN. I have been advised of that orally by counsel. We would be glad to give you a written opinion to that effect, sir.

Senator MAGNUSON. Didn't you have a written opinion before you went to court and violated what Congress told you?

Mr. SWINBURN. I don't believe we did, Mr. Chairman. I have a copy of the Continuing Resolution before me.

Senator MAGNUSON. Well, the Continuing Resolution says it's within the discretion of the Secretary. We gave the Secretary discretion to support the funds. Did you get a written opinion from the Secretary or did you discuss it with the Secretary?

Mr. SWINBURN. This matter has been generally discussed with the Secretary; yes, sir.

Senator MAGNUSON. It what?

Mr. SWINBURN. The matter has been discussed with the Secretary; yes, sir.

Senator MAGNUSON. Before you went to court?

Mr. SWINBURN. Well, I believe the matter was discussed with the Secretary before we went to court. He has been out of town, as you know.

Senator MAGNUSON. Don't you think that with a matter of this importance that you should have had some definite word from the Secretary? You believe? What kind of business is that? You're going up to court to violate the directive of the Congress.

Mr. SWINBURN. Well, sir——

Senator MAGNUSON. And then you say that you believe that you have discussed it with the Secretary.

Mr. SWINBURN. To the best of my knowledge, sir, the Secretary was aware before the Department appeared in court on Friday that——

Senator MAGNUSON. What do you mean "to the best of your knowledge"? You went to court. Didn't you have something specific?

Mr. SWINBURN. Well, yes, sir. We had an inability on the part of FRA to make a finding that is required by law.

Senator MAGNUSON. No. The finding was made by the Secretary—should be made by the Secretary, and you say you believe that the Secretary——

Mr. SWINBURN. The authority under the Emergency Rail Services Act has been delegated to the administrator of the Federal Railroad Administration, Mr. Chairman, and we have no reason to believe that his decisions in this matter were inappropriate and I have looked at the evidence that was available to him at the time of the court hearing and I agree with him that you could not make a finding as required by law.

Senator MAGNUSON. Well, did you consider that the congressional intent on this matter was an advisory opinion or was it the law?

Mr. SWINBURN. Well, sir, the language in the continuing resolution is the law.

Senator MAGNUSON. Yes.

Mr. SWINBURN. Yes, sir.

Senator MAGNUSON. And you went ahead and interpreted the law the way you felt it should be without consultation with the Secretary and went up to court; isn't that correct?

Mr. SWINBURN. Sir, I have a copy of——

Senator MAGNUSON. You or Mr. Sullivan, I don't know which one.

Mr. SWINBURN. Sir, I have a copy of the continuing resolution before me and I must say I do not believe there's much discretion available within the language. It says that we are to seek such priority in repayment as the Secretary deems appropriate to secure repayment, and the circumstance——

Senator MAGNUSON. You know, Congress was in the process of looking at this and that time was of the essence?

Mr. SWINBURN. Yes, sir.

Senator MAGNUSON. And you looked for a loophole, didn't you, and you found it, bearing out your personal opinion or Mr. Sullivan's personal opinion, and nobody discussed it with the Secretary? Nobody. Did they?

Mr. SWINBURN. Sir, the matter——

Senator MAGNUSON. I mean the continuation until November 30 until we could get action. You knew that, didn't you?

Mr. SWINBURN. Sir, I do not believe it's correct to say that FRA sought and found a loophole. I believe an honest effort was made to——

Senator MAGNUSON. I said you knew we were in the process of looking at this matter.

Mr. SWINBURN. Yes, sir.

Senator MAGNUSON. And you went ahead and went up to court and made a statement without consultation with the Secretary, knowing that we only had a month to try and resolve some of these matters? You went in and shot it right down, didn't you?

Mr. SWINBURN. Sir, I respectfully can not agree with that characterization. The trustee, in court, made a statement that the funds could not be repaid at a fully subordinated position. That statement was made first by the trustee. Our attorney in court has advised me that that left little for him to quarrel with.

Senator MAGNUSON. Knowing what was going on up here, did you make any argument to counter that? You agreed with it, didn't you?

Mr. SWINBURN. Yes, sir.

Senator MAGNUSON. You knew what was going on up here, didn't you?

Mr. SWINBURN. Yes, sir.

Senator MAGNUSON. All right. It's about time you people down there gave us a little help in this matter instead of just taking your own opinion, and we will set the national rail policy, not you. You're supposed to carry it out, aren't you? Isn't that your job?

Mr. SWINBURN. Yes, sir. We do the best we can.

Senator MAGNUSON. And you're trying to set the national rail policy on the Milwaukee Railroad and you knew Congress had been working on this matter and you knew we had only 30 days to do it. All we wanted was 30 days. You went up and I don't know whether it was you or not, but at least it was your organization and you didn't consult at all with the Secretary, either Mr. Adams or Mr. Goldschmidt, did you? Did you or didn't you?

Mr. SWINBURN. I believe the Secretary was consulted.

Senator MAGNUSON. You don't believe. Did you or do you know of any consultation with the Secretary?

Mr. SWINBURN. Unfortunately, for the circumstances——

Senator MAGNUSON. Unfortunately, you have no written opinion or anything. Well, OK. I've said enough about that.

The CHAIRMAN. Did you finish your last response to Senator Magnuson?

Mr. SWINBURN. Yes, sir.

The CHAIRMAN. Would you gentlemen comment on the most recent study, the one prepared by Policy and Management Associates?

Mr. GASKINS. We have had our staff review that study and must admit that we are somewhat skeptical about some of the assumptions that have been made that we think are crucial to the results. We will be glad to provide for the record our detailed comments, but let me just highlight the key assumption that we're concerned about. The study assumed that there would be substantially more revenue that would accrue to the proposed reorganized railroad than we thought originally. I believe the number was something like an additional \$67 million worth of revenue in 1983. They may be right. Perhaps we misjudged the market in that area and that revenue will be forthcoming, but the critical assumption they made was that the operating ratio associated with that—that is how much it would cost to service that traffic—was only .5, or 50 percent. Now they got that number from various other studies that talked about operating ratios for incremental traffic on the Milwaukee Road and other circumstances. While a 50 percent operating ratio may be appropriate for an additional carload or for some small addition to traffic, when you're talking about a substantial increase in the traffic over a railroad our experts think that operating ratio of .5 is just unrealistic and that you should use an operating ratio closer to the average for the railroad system as a whole. We think that particular assumption is critical to the results. We are concerned about it.

The CHAIRMAN. Do you wish to comment on the study?

Mr. SWINBURN. Yes, sir. I generally agree with the Commissioner's statements. We find the study to have built upon the most optimistic of previous studies and layered on top of them some further optimism and we think some unrealistic projections. We don't think they can get the revenue, but we agree fully with the Commissioner that even if they got the revenue they could never obtain the operating ratio that is assumed in the study.

The CHAIRMAN. Do you have any general opinions with regard to the viability of the western lines, for example, Twin Cities west, if operated as a separate entity, Mr. Gaskins?

Mr. GASKINS. I think it would be inappropriate for me to comment on that, Senator, because of the potential prejudgment of the reorganization plans.

The CHAIRMAN. OK. Mr. Swinburn or Mr. Gallamore?

Mr. SWINBURN. Yes, we do, sir, and we have previously provided the Committee with copies of various studies we have done and a letter summarizing these studies and the basic conclusion is we do not think the lines west of Twin Cities or Miles City can be made profitable.

The CHAIRMAN. Now there's been some mention in various studies of increasing coal traffic and Senator Melcher referred to that this morning. Do you agree with critics of the PMA study who

indicated that this traffic will develop primarily in areas served by the Burlington Northern?

Mr. SWINBURN. Speaking for the Department, yes, we do agree with that.

The CHAIRMAN. So that you're saying that there would really be no shortfall basically in the coal traffic because Burlington Northern would be able to handle it? Is that what you're saying?

Mr. SWINBURN. That's correct, sir, and the majority of that coal can only come on to the Milwaukee system at Miles City, Mont., which is proposed to be part of the core and it would continue to move eastward from Miles City, Mont.

Mr. GASKINS. I would generally agree with that assessment that the Burlington Northern would be able to haul the coal traffic. However, the Commission would continue to be concerned about the importance of competitive alternatives for the Burlington Northern, and as we turn to contract rates for handling coal traffic, the existence of an alternative may be quite crucial to the negotiation of a competitive freight rate for coal traffic.

The CHAIRMAN. But based on the map you showed us this morning, the Burlington Northern would service substantially all of that area?

Mr. GASKINS. Yes, sir.

Senator MAGNUSON. What about the grain?

The CHAIRMAN. What about the grain?

Mr. GASKINS. Our directed service order which would extend only 8 months would cover all the loading points for grain over this system, so we are convinced we can supply service.

Senator MAGNUSON. The wheat that Montana raises comes—that's the big exporter of the wheat market.

Mr. GASKINS. Yes, Senator. I believe we are providing for almost all of the transportation needs.

Senator MAGNUSON. There's a car shortage now on the Burlington Northern.

Mr. GASKINS. Yes, there is a car shortage in this area; however, our statistics indicate that the car shortage in the general northern tier region is no worse—in fact, less severe this year than it was last year. However, there is a general car shortage.

Senator MAGNUSON. As a matter of fact, Mr. Chairman, docket No. 1 of the ICC in 1889 was a petition to get the farmers to relieve the car shortage and they haven't settled it yet since 1889, docket No. 1. That was No. 1.

Mr. GASKINS. We are a little slow in some of these things.

The CHAIRMAN. And Mr. Gaskins, can the Commission insure that the rates do not become excessive?

Mr. GASKINS. Certainly during the period of the directed service order we are going to be focusing very carefully on the level of rates and while in our order we are encouraging the railroads involved to come in with surcharges, we will continue to scrutinize those rates very carefully to make sure they remain appropriate. To the extent that the Milwaukee Road is ultimately liquidated, we will of course continue to worry about maximum rate regulation for whatever railroad is replacing the Milwaukee's service, including Burlington Northern. However, it is not so easy to really mandate service levels and to provide competitive service through our

maximum rate regulation. So while we will continue to have jurisdiction over maximum rates, I'm uncomfortable with the reliance upon only one railroad in this region.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. Let John go first.

The CHAIRMAN. Senator Warner.

Senator WARNER. I'm going to defer my questions to the next representative from Congress that appears. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Magnuson.

Senator MAGNUSON. Could the ICC expand the directed service order if needed?

Mr. GASKINS. It certainly could, Senator.

Senator MAGNUSON. It could?

Mr. GASKINS. It could.

Senator MAGNUSON. That's all I have.

The CHAIRMAN. I have some questions here for Senator Stevenson that he's asked that I inquire of the DOT witness.

The regional transportation authority, the Chicago area public transportation agency, subsidizes commuter rail service to both the Milwaukee and the Rock Island. It has invested over \$67 million in rehabilitating commuter rail lines and in new equipment for the Rock Island service and has invested additional tens of millions in the Milwaukee service. The Milwaukee carries over 30,000 riders a day and the Rock Island carries over 14,000 riders a day.

Does the Department agree that preservation of these services is essential?

Mr. SWINBURN. Yes, sir.

The CHAIRMAN. Now I understand one last attempt is being made to find a way to reorganize the Rock Island. If this attempt fails and the Rock Island is liquidated, is the Department aware of any possible purchasers of the Rock Island Chicago quad-cities line?

Mr. GALLAMORE. Yes, we are, sir.

The CHAIRMAN. You are aware of possible purchasers?

Mr. GALLAMORE. Yes.

The CHAIRMAN. If attempts to reorganize either the Rock Island or the Milwaukee fail and RTA is forced to purchase the commuter lines of one or both of these carriers to keep essential commuter service operating, would the purchase and rehabilitation expenses be eligible for title V loan financing?

Mr. SWINBURN. I think they are probably eligible under the 511 loan guarantee program, Mr. Chairman. I'd like to provide a formal opinion for the record.

The CHAIRMAN. Would you respond for the record on that?

Mr. SWINBURN. Yes, sir.

[The following information was subsequently received for the record:]

FEDERAL ASSISTANCE FOR THE TAKEOVER OF ROCK ISLAND AND MILWAUKEE
COMMUTER LINES BY THE CHICAGO REGIONAL TRANSPORTATION AUTHORITY

If the Chicago Regional Transportation Authority purchases commuter rail lines and equipment from the Rock Island or Milwaukee railroads, purchase and rehabilitation expenses could be eligible for Title V loan guarantee financing. Under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, the Federal

Railroad Administrator may guarantee obligations of any party where those proceeds will be used to rehabilitate and improve or acquire railroad facilities such as commuter lines.

Section 511(g) establishes six prerequisites to a guarantee which are designed to insure that the project will be in the public interest and that the Government's investment will be secure. The sixth finding specifically relates to passenger transportation.

Under section 511, therefore, the RTA is eligible and funding would be available provided that the Administrator, based on information provided in an application for funding consistent with Department of Transportation regulations (49 CFR Part 260), is able to make the six statutory findings.

The CHAIRMAN. Would the Department be willing to work with the RTA to find a solution that insures the preservation of both the Rock Island and the Milwaukee commuter rail service?

Mr. SWINBURN. Yes, sir; we will, and I might add we, of course, would be glad to work closely with them.

The CHAIRMAN. Senator Baucus, did you desire to ask any questions?

Senator BAUCUS. Yes, Senator. Thank you very much, Mr. Chairman.

Gentlemen, as you know, other agencies have begun to take a look at the Milwaukee Road problem, although they have begun their examination a bit late. The Department of Agriculture report, for example, prepared for the Domestic Council concludes that—this was just completed a matter of a few days ago—"there are obviously benefits to agriculture to having two northern tier transcontinental railroads serving the upper Great Plains and Pacific Northwest. Freight rate competition, track capacity, car supply, elevator storage, etc." USDA has advanced a proposal involving trackage rights that would "cut in half the burden on the Federal treasury and maintain the effective presence of the Milwaukee Railroad with minimal impact on agriculture in the region," and according to the Federal Office of Rail Public Council, if lines west of Miles City are abandoned "there will be no future opportunity to achieve a properly restructured rail service with balanced integral competition in the Northwestern States. Integral competition encourages competitive ratemaking and more pointedly, marketing innovations which can best be described as the effort to merchandise service packages which include equipment rates and rail service schedules tailored to shipper needs."

The Office of Rail Public Counsel opposes abandonment of lines west of Miles City and recommends that alternative reorganization plans, including joint trackage rights, be examined. The Office of Rail Public Counsel also points out that the potential cost of labor protection exceeds cost of rehabilitation but that costs of labor protection were ignored in the Booz-Allen analysis that led to Milwaukee II.

The Department of Commerce, the third agency, has concluded that 28,000 jobs are threatened by abandonment of lines west of Miles City and that Federal costs for readjustment assistance may total \$42 million for the Department of Commerce programs alone. That's on top of all the other costs that otherwise would be incurred by the Federal Government.

Mr. Swinburn, your statement suggests that Milwaukee must be transformed into a "smaller, economically self-sustaining and non-redundant core system." The Milwaukee II plan would eliminate

transcontinental service and preserve lines from Chicago to the Twin Cities, Louisville and Kansas City.

My first question is, How many class I railroads operate in the Chicago-Kansas City corridor which would be included in the Milwaukee II plan?

Mr. GALLAMORE. My recollection is that there are approximately eight. I wouldn't say all of them are service routes in the sense they are equally competitive.

Senator BAUCUS. The point is, there are eight class I railroads presently operating in the Chicago-Kansas City corridor. Has the Department of Transportation identified Chicago-Kansas City as a corridor of excess capacity?

Mr. GALLAMORE. I believe we have.

Senator BAUCUS. You have already identified that as a corridor of excess capacity, remembering this is in the proposed Milwaukee II reorganization. How many class I railroads operate in the Chicago-Louisville corridor?

Mr. GALLAMORE. I'd have to get out the map and count them. I believe there's more than one.

Senator BAUCUS. That's correct. For your information, the answer is four. There are presently four class I railroads operating in that corridor. Has the Department of Transportation identified Chicago-Louisville as a corridor of excess capacity?

Mr. GALLAMORE. I don't recall.

Senator BAUCUS. The answer is yes, you have, according to a 503(a) study. You have made that assessment.

How many class I railroads operate in the Chicago-Duluth corridor?

Mr. GALLAMORE. I believe there would be two or three.

Senator BAUCUS. For your information, the answer is four. Has the Department of Transportation identified Chicago and Twin Cities as a corridor of excess capacity?

Mr. GALLAMORE. I don't recall.

Senator BAUCUS. Yes, you have. You have identified that as a corridor of excess capacity.

How many railroads will offer Minneapolis-west coast service if the Milwaukee transcontinental lines are abandoned?

Mr. GALLAMORE. Minneapolis to west coast service?

Senator BAUCUS. That's correct, the northern tier States.

Mr. GALLAMORE. Only one.

Senator BAUCUS. That's right, only one.

Mr. GALLAMORE. That's from Twin Cities to the Port of Seattle.

Senator BAUCUS. That's correct. Does the Milwaukee II plan eliminate redundant service in light of your answers to the questions I have asked?

Mr. GALLAMORE. I tried to answer your direct questions directly, but what it leaves out is an overview statement that I would like to make.

Senator BAUCUS. So it does not eliminate redundant service.

Mr. GALLAMORE. Milwaukee II provides service to important shipping points in Illinois, Wisconsin, and Minnesota particularly, but other States as well. It is the originating carrier for a great deal of traffic. This contrasts with other parts of the Milwaukee system where it must run mile after mile with very few origina-

tions, as pointed out on the map this morning. Once those traffic carloads are originated in the Milwaukee II prime service territory it is to the railroad's advantage, and therefore hopefully it will help Milwaukee II to be a self-sustaining railroad, if it can then transport those originated carloads to connections. That's the reason for the Milwaukee II plan extending its lines to Louisville, to Duluth, to Kansas City, and even to Miles City. The railroad must obtain some kind of a haul to connections in order for its best profit opportunities to be realized.

Senator BAUCUS. Now just frankly, Mr. Gallamore, that sounds like doubletalk to me because exactly the same argument can be made for the transcontinental system. In your statement today you say that the Milwaukee must be transformed—and I'll quote again—"into a smaller, economically self-sustaining and nonredundant core system."

Through the questions I've asked and the answers you have given, there is immense redundancy and excess capacity in the system.

Mr. GALLAMORE. There are a great many shippers—

Senator BAUCUS. How is that system therefore in the long run going to be profitable if there's redundancy and excess capacity? Even in your statement you claim there shouldn't be, but you admit there is.

Mr. GALLAMORE. There are a great many shippers in Milwaukee II's primary territory that have access to no other railroad than Milwaukee II. That's where it generates its carloads and it's a service to those shippers and the approximately 6,000 employees that Milwaukee II would employ that we are most concerned about. If we let Milwaukee II fall apart and never get off the ground, then we would have a much more serious problem I think.

Senator BAUCUS. Has the FRA concluded that Milwaukee II is economically self-sustaining?

Mr. GALLAMORE. No, we have not.

Senator BAUCUS. You have not maintained that the Milwaukee II organization is self-sustaining?

Mr. GALLAMORE. No. It would be a very marginal enterprise, but we have said this is the one best hope to preserve those 6,000 jobs and that service to those shippers which at present do not have another alternative. In the transcontinental, by comparison—

Senator BAUCUS. And part of the reason it is not economically self-sustaining is the excess capacity and redundancy that you have established?

Mr. GALLAMORE. I would agree with you, Senator, that there's quite a bit of competition in general in the Midwest, but there are also a great many shippers that presently connect only with the Milwaukee. For a transcontinental service, by comparison, if we're talking about overhead service, Burlington and the Union Pacific providing transcontinental service to the Pacific Northwest ports are able to provide much higher level of service than the Milwaukee is. I don't think it's fair to look specifically at city-to-city points because the nature of competition in the railroad industry is not necessarily based on city-to-city originations, but rather on traffic flows, market territories, et cetera. In fact, the rates are in some cases equalized or at least the competitive factor of ratemaking is

reduced by rates that are set by rate bureaus and then approved by the Commission.

Senator BAUCUS. Let me ask another set of questions. What happens to western grain shipments if the Milwaukee II system goes into effect and after directed service is completed.

Mr. GALLAMORE. Well, first of all, we expect that—

Senator BAUCUS. Before I get into that, you assert that directed service will accommodate and take care of the grain shipments in the West. I suppose you know that we have a tremendous car shortage today in the West. BN has a very severe car shortage. The BN itself has a severe shortage so how in the world can it provide service not only to BN but also on another line?

Mr. GALLAMORE. Senator, I have testified before this committee a number of times on the question of car shortages and I have always made the comment that additional rate flexibility, some of which is already available to us in the 4R Act, such as peak and seasonal rates, are going to be the way we have to deal with grain car shortages in the future. Already we are seeing some benefits of that. In some States, particularly in the corn and soybean areas further east from Montana, multiple car rates are beginning to lead in the direction of unit car shipments and faster turnaround of freight cars that are going to be the salvation of this industry.

Senator BAUCUS. What about after the completion of directed service? Then how are you going to accommodate grain shipments in the West?

Mr. GASKINS. I want to make a comment. You should recognize that directed service order does not eliminate cars. In other words, cars now on the Milwaukee Road system could continue to be used in the grain market and they would continue to exist in the railroad system. So that the question of what will happen beyond 1981 really hinges on whether or not people pick up the service to the points that will go with the termination of the directed service order. But the car service question is somewhat separate because you will resolve that issue to the extent we provide incentives for the production of enough cars and I think that—

Senator BAUCUS. I don't want to quibble with that point.

My question is after 1981, after the conclusion of directed service—

Mr. GALLAMORE. Senator Baucus, two points I'd like to make. First, we do expect other carriers will pick up substantial amounts of service and naturally they will pick up those traffic generating points that are most productive of cargo traffic. The Department of Agriculture's recent assessment of what would happen if all lines west of Miles City were abandoned came up with a figure of 3,000 grain product cars that wouldn't be served by other railroads. I'm not sure whether that includes a consideration of those lines that might be picked up by other railroads, but 3,000 carloads is not a lot. By comparison, nationally, 1978 figures show that there were 1.3 million carloads of grain and almost 1 million carloads of grain mill products. So we are talking about a relatively small amount of traffic that wouldn't be served.

The second point is that this concept that I mentioned of grain moving in multiple car units at unit train rates and so on on a contract basis, considering peak and seasonal rate adjustments, is

the way the grain in the Western part of the country is going to have to start moving in the future. It's already happening in corn and soybeans and if it happens for wheat I think we will see operating economies and that will be one way to hold down the cost to wheat shippers as well as provide better car service and better car utilization, hence fewer car shortages.

Senator BAUCUS. You're just proposing lots of speculative, wishful thoughts that might help out in the future, but the fact of the matter is if the trustees' plan goes into effect and if there is only the Milwaukee II system in effect, then after the conclusion of directed service—that's the end of the service for a very, very large portion of the Pacific Northwest. There are a lot of communities and a lot of farmers and other shippers who are probably going to be left high and dry.

Mr. GALLAMORE. We have a map, Senator Baucus, of lines that we anticipate would be picked up.

Senator BAUCUS. That's my point. You say you anticipate. You don't know that. Nobody knows that. Nobody knows anything. We know as a matter of fact that at the conclusion of the directed service that is it. Now your wishful thinking may come into effect and may come true, but we don't know that.

Mr. SWINBURN. The alternative, Senator Baucus, according to all of our calculations and all of the evidence we have seen is a very, very expensive one to the taxpayers, perhaps \$500 million more.

Senator BAUCUS. I'd like to follow up on Senator Magnuson's point here. You knew that we in Congress were attempting to provide a breathing period in which some organization could present a viable plan to keep the Milwaukee going because rail transportation is so important to our country.

None of us want a Conrail West. We don't want to keep pumping Federal money in to operate a railroad in any part of the country and certainly not in the Western part of the United States.

But we do want to give an organization a legitimate, reasonable chance to come up with a plan. All we ask is that you don't frustrate the reasonable efforts by reasonable people to come up with a reasonable plan to operate the railroad. That's all we're asking. It is, frankly, very disappointing on my part to find an agency that is so determined to set its own policy and not to pay any attention to the Congress. I thought the Congress as a general rule sets policy, passes legislation, and it's up to the agency to implement policy that the Congress establishes. I'm finding that the FRA is not trying to be reasonable in finding a reasonable solution to the problem. I'm sorry I have come to that conclusion; it's an unfortunate realization.

Mr. SWINBURN. Very respectfully, sir, I disagree with that.

Senator BAUCUS. Well, that's your privilege.

The CHAIRMAN. Senator Exon, do you have any questions?

Senator EXON. I have no questions at this time, Mr. Chairman.

The CHAIRMAN. Thank you very much, gentlemen. I appreciate you being here.

Senator MAGNUSON. Could I ask a question of the ICC?

The CHAIRMAN. Yes.

Senator MAGNUSON. Well, all of you really. I haven't heard about these other lines picking up what might be left of the Milwaukee. I

have asked privately and informally of the Burlington Northern and the Union Pacific what lines they would pick up and I never get an answer. Do you know what lines they are willing to pick up?

Mr. GASKINS. We do have a recent communication from the Union Pacific with regard to specific lines.

Senator MAGNUSON. But not the Burlington?

Mr. GASKINS. In general, we are in the same situation you are. We have heard there is an interest, but we do not have the information.

Senator MAGNUSON. Well, the directed service would mandate it, wouldn't it?

Mr. GASKINS. Not necessarily, Senator. It's conceivable that directed service will provide a bridge which will enable the railroads to firm up their plans and make the applications and for us to judge the applications.

Senator MAGNUSON. And they would pick up the cream and leave the skimmed milk alone for all of these shippers that can't be accommodated.

Mr. GASKINS. There's always a concern about that problem.

Senator MAGNUSON. Sure they will, and until I see something that indicates to me just what lines they would be willing to pick up, I can't subscribe to the fact that directed service is going to be effective. That's why I asked the question.

Mr. GASKINS. I think we are reasonably confident that directed service would be effective. We are not so confident about the ultimate disposition of the lines.

Senator MAGNUSON. The Union Pacific and the Great Northern Burlington will just pick up the lines that are good and let the rest go. That's what will happen. The little guy shipping grain and the coal, they don't think is going to be very profitable and maybe they don't look to the future growth and they will leave it alone and we will be without service.

Mr. SWINBURN. If I may, Mr. Chairman, we have knowledge of most of the transactions that are being discussed between the parties as to purchases by the railroads and we would be happy to provide a separate briefing or give that information to staff. There are quite a few deals going on and quite a few close to consummation.

Senator MAGNUSON. Is there anything definite?

Mr. SWINBURN. I think probably several will be announced in the next several weeks hopefully.

Senator MAGNUSON. That's why we want some time.

The CHAIRMAN. Thank you very much, gentlemen.

[The following information was subsequently received for the record:]

During a Congressional hearing held on October 29, 1979 to consider a legislative solution to the Milwaukee problem, Senator Magnuson questioned the extent of the Secretary's discretion regarding the appropriate priority of payment required under section 115(a) of H.J. Res. 412 in order for the Secretary to provide a guarantee under the Emergency Rail Services Act of 1970.

Section 115(a) amends section 3(a) of the Emergency Rail Services Act of 1970 to provide that—

"With respect to a railroad which filed a petition for reorganization during fiscal year 1978, during the period October 1, 1979, through November 30, 1979, certificates shall be issued without regard to the limitations of subsection (a) and with such priority in payment as the Secretary deems appropriate to secure repayment,

for the purpose of continuing service on the railroad system at the level in effect on October 1, 1979."

On its face, the quoted language requires a priority of payment which would secure repayment of the obligation. There is nothing in the legislative history that would indicate that the language was intended to have other than its apparently clear meaning. It is a primary rule of statutory construction that "the meaning of the statute must, in the first instance, be sought in the language in which the act is framed, and if that is plain . . . the sole function of the courts is to enforce it according to its term."¹ This rule has come to be known as the "plain meaning rule". While courts will look behind the meaning of a statute's language, they will normally do so only when it appears that the words do not convey the intent of the legislature.² To contend that a statute should not be taken at face value, one must show that the act when considered with other laws or with the legislative history imports a different meaning, that some other section of the act expands or restricts its meaning, or that the plain meaning would be repugnant to the purpose of the act.³ None of these conditions exists with regard to H.J. Res. 412. Consequently, the plain meaning applies.

It has been suggested that the statute affords the Secretary unrestricted discretion to determine a priority of payment. A reading of the provision in accordance with the normal rules of English usage, however, clearly confirms that the Secretary may use discretion in determining the priority of payment, but that priority must, at least, be sufficient to secure repayment.

The CHAIRMAN. Next we will hear from the Honorable Edward R. Madigan, Congressman from Illinois.

All right, sir, you can proceed.

STATEMENT OF HON. EDWARD R. MADIGAN, U.S. REPRESENTATIVE FROM THE TWENTY-FIRST DISTRICT OF ILLINOIS

Mr. MADIGAN. Mr. Chairman, at the outset, I am appearing here today on behalf of Chairman Florio of our Transportation Subcommittee in the House, and myself, and wish to express the regrets of Mr. Florio, who was detained in New Jersey on Congressional business. Both he and I intended to appear and I have a formal statement which I should like to make a part of your record, if I may, and then proceed in summary fashion.

The CHAIRMAN. It will be made a part of the record.

Mr. MADIGAN. Thank you very much.

The most recent embargo ordered by the Judge in the Milwaukee case affects nearly three-quarters of the Milwaukee Railroad system. Under the proposed embargo which takes effect on Thursday, service would either terminate to shippers in the Midwest and Northwest, or the Interstate Commerce Commission would have to begin expensive directed service operations.

In the House we are convinced that the embargo route is not the way to go in the Milwaukee case because of the expense involved in directed service which could last up to 8 months, and because an embargo does nothing to rationalize traditional labor protection payments.

We are also opposed to the opposite option of freezing the entire Milwaukee system as has been suggested in the past. The Milwaukee Railroad, which has been bankrupt since 1977, needs to be restructured, Mr. Chairman. The restructuring process needs to be done in such a way as to provide shippers now served by the Milwaukee with better rail service and to provide employees with fair but not excessive employee protection, thereby assuring that

¹ *Caminetti v. United States*, 242 U.S. 470 (1917).

² Sands, C., *Sutherland on Statutory Construction*, at § 46.01 (4th ed., 1973).

³ *Id.*

the Milwaukee estate is left with enough money to be reorganized into a viable railroad core system.

Congressman Florio and I have spent many hours over the last 4 months attempting to negotiate a bill which would permit the orderly restructuring of the Milwaukee without draining off all of its assets because of labor protection payments.

I believe we have succeeded in putting together a workable solution which represents the least possible cost to the taxpayers. Our bill does four things:

It permits one last evaluation of the employees' shipper ownership proposal.

It gives the Judge new authority for abandonment and sales and requires the close cooperation of the Secretary of Transportation and the Interstate Commerce Commission.

It establishes a labor protection option which would provide prompt benefits to affected employee in exchange for their waiving of traditional labor protection benefits.

And it establishes a framework for Congress to avoid becoming as deeply involved in the Rock Island reorganization.

Let me highlight what I believe to be the biggest breakthrough in the Florio-Madigan proposal, which is the cost of labor protection.

Under traditional labor protection, the costs to the Milwaukee Estate are estimated to run anywhere between \$300 million and \$1.2 billion. That cost is so high that the Milwaukee would have no money left for operating the reorganized railroad, and in all probability the Federal Government would eventually have to pay some of the labor protection claims.

Traditional labor protection grows out of the Washington Job Agreement of 1935 and is guaranteed under Federal law. Traditional labor protection is: 16½ months' severance pay, or up to 6 years' guaranteed annual income.

Under the negotiated bill, an employee who accepted benefits under this bill would be encouraged to continue working in the railroad industry, rather than being paid for not working. The cost of benefits under this bill fall into two categories: those paid by the estate; and those paid by the Government. There is an overall cap of \$75 million on those labor protection benefits to be paid by the estate. We estimate the cost of the benefits to be paid by the Government as being a maximum of \$7.5 million.

The labor protection agreement makes it possible for the rest of the Milwaukee bill to be workable. Since I do not believe a shipper- or employee-owned railroad will be found to be a feasible option, I am convinced that restructuring of the Milwaukee Railroad would begin shortly after January 1 of next year. That means the entire Milwaukee Railroad system would be frozen for but 2 months. After January 1, lines which are to be sold to other railroad carriers would be continued under operation and other lines would be abandoned.

We are given the opportunity of avoiding the creation of a ConRail West or a ConRail II by acting promptly to insure a sensible reorganization of the Milwaukee Railroad. That sensible approach cannot be taken without addressing the matters contained in the

House bill—namely, an expedited method of abandonment and sales and rationalization of labor protection costs.

With regard to the Rock Island, Mr. Chairman, I am convinced that by giving the Bankruptcy Court the authority for the expedited abandonment and sales, the liquidation of the Rock Island Railroad can proceed on an orderly basis.

We also feel in the House that it is important to permit the use of existing loan programs or rehabilitation of those lines which will be purchased by other carriers.

Congressman Florio and I intend to offer our proposal on the House floor tomorrow morning. I am hopeful that legislation can be on the President's desk before Thursday so that the politically appealing but very costly embargo is not necessary.

Mr. Chairman, thank you for permitting me to proceed in summary fashion. I would be pleased to respond to any questions that I may have provoked.

The CHAIRMAN. Well, thank you very much much for your statement.

Do you anticipate action on your bill on the House floor tomorrow?

Mr. MADIGAN. That is correct, Mr. Chairman. We are on the schedule tomorrow, and we anticipate being called tomorrow.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. I have no questions.

The CHAIRMAN. Senator Magnuson?

Senator MAGNUSON. No, I have no questions.

The CHAIRMAN. Senator Warner?

Senator WARNER. Thank you, Mr. Chairman.

I am concerned about your labor protection provisions and, in particular, that Congress may soon be faced with another problem in connection with the Chrysler Corporation. If we are going to establish new precedents here, I want it clearly in mind as to how they got started and where we are going on this, because I am concerned that we're in the wrong direction.

Could you trace for me the genesis of the section in your bill, which provides for \$2,000 a year completed service, not to exceed \$25,000?

Mr. MADIGAN. Well, Senator, we have to talk in terms of comparisons. The Washington Job Agreement in the railroad industry, which goes back to 1935, was originally an agreement between railroad labor and railroad management. It guarantees labor protection in excess of anything Mr. Florio and I are contemplating.

On two instances the Congress has formalized in legislation the essence of the 1935 Agreement. One of those being the ConRail legislation; the other being the Amtrak legislation.

Senator WARNER. Now the ConRail seems to me to be a distinct situation, because there the Government simply got in and handled that reorganization. But here it is still in the private sector.

Mr. MADIGAN. What we are attempting to do, if I may make the comparison, it would be possible under law presently for a person to get up to 5 years' full salary labor protection under existing Federal law.

We are talking about \$2,000 a year for each year of service up to a maximum of \$25,000. So what we are talking about is consider-

ably less than what is provided in the existing law. We are scaling that back and attempting, instead of making those kinds of awards, to concentrate on keeping people working in the railroad industry by offering new kinds of labor protection—namely, relocation costs and supplemental insurance benefits, unemployment insurance benefits for the first 3 years while someone goes from one job in the railroad industry to another job in the railroad industry.

We feel—and as a matter of fact I think the American Association of Railroads agrees with us—that the jobs available through attrition in the railroad industry nationwide on an annual basis exceed the maximum possible number of jobs that would be lost as a result of a Milwaukee reorganization.

What we are going to attempt to do in our House bill is see that those people continue working in the railroad industry by offering them incentives to do that.

Our House bill also contains a provision that allows hiring railroads to ignore other Federal laws and to give preference to the unemployed Milwaukee employee.

Senator WARNER. Well, on that preference provision, is that still to be a part of your bill? As I understand it, you have not put it in yet.

Mr. MADIGAN. The language will be different than that which we originally contemplated, but we will have that language.

Senator WARNER. Have you made a change in the language to get around what I understand to be the Equal Employment Opportunity Commission indication that the provision would be discriminatory?

Mr. MADIGAN. I believe that we have that worked out.

Senator WARNER. You are going to make the correction?

Mr. MADIGAN. Yes, sir.

Senator WARNER. To come back to the Senate bill, it seems to me that the Senate bill handles the situation, but in a manner that does not set a precedent for direct Federal intervention.

Mr. MADIGAN. Well, if I may make the point again, at the risk of being redundant, I think the precedent has already been established, both in ConRail and in Amtrak. The precedent is there for Federal Government involvement in labor protection costs.

What we are trying to do is to set a new and less costly precedent that has an emphasis on keeping people on the job instead of having them opt for a rather high award and going out of the railroad industry.

Senator WARNER. Well, thank you. We have a difference of view.

Senator MAGNUSON. Well, the House bill spells out more of the detail of the labor protection than the Senate bill. Is that not correct?

Mr. MADIGAN. To the degree that I am not familiar with the Senate bill, I would have to yield to you, Senator. But our House bill is specific.

Senator MAGNUSON. It spells it out. The Senate bill does leave some discretionary authority to handle the labor situation.

Mr. MADIGAN. We are trying to arrive at a cost in the House bill, because we anticipate the Government loaning the Milwaukee estate the money up front to take care of the labor cost, and that loan of Federal funds being a priority claim then against the

estate. By setting specifics in the bill as to what is involved, we hope then to be able to set the price tag as well.

The CHAIRMAN. I may say, we have a letter here from the Equal Employment Opportunity Commission raising questions about the provisions of section 6 and section 9 of Senate Joint Resolution 114, and suggesting that they be rewritten to remove their adverse impact as far as the Equal Employment Opportunity situation is concerned.

If there is no objection, I will make this letter a part of the record.

[The letter follows:]

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., October 25, 1979.

Hon. HOWARD W. CANNON,
Chairman, Committee on Commerce, Science and Transportation,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: I am writing on behalf of the Commission, with great concern, regarding S.J. Res. 114, providing federal assistance for the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. The Commission is very much concerned that Sec. 6 and Sec. 9(e) of the bill, as currently drafted, would abrogate civil rights laws related to equal employment opportunity. I have been authorized to say that these concerns are also shared by the Administration.

We therefore ask that you take steps to ensure that the provisions of Sec. 6 and Sec. 9 of S.J. Res. 114 are rewritten to remove their adverse impact. Most importantly, we ask that any labor protection provisions which are considered make clear that federal and State laws concerning equal employment opportunity are unaffected.

I am enclosing for the record of your hearing a copy of a letter to Senator Magnuson, outlining our concerns. In view of the length of your witness list, I appreciate your offer to raise these concerns at the hearing.

With best regards,

ELEANOR HOLMES NORTON.

Enclosure.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION,
Washington, D.C., October 25, 1979.

Hon. WARREN G. MAGNUSON,
U.S. Senate, Washington, D.C.

DEAR SENATOR MAGNUSON: Knowing of your special interest and long history of support for the civil rights efforts of the federal government, I am writing to draw to your attention two provisions of S.J. Res. 114, a bill which originated as a substitute amendment in the House. We are concerned that Sec. 6 and the corresponding Sec. 9(e), which are identical in both House and Senate bills, would result in an unprecedented abrogation of civil rights laws affecting equal employment. Our understanding of the situation in the House is that prior to introduction, Members had not been alerted to the adverse civil rights implications of these provisions. Since the Senate will be holding hearings, I wanted to make sure that this matter was brought to your attention. I have been authorized to state that this view of the Commission is shared by the Administration.

In addition to very generous relocation and severance provisions—up to \$25,000 plus accumulated leave and retirement benefits—Sec. 6 of S.J. Res. 114 would give any employee separated by reason of the restructuring of the Milwaukee Railroad, a right to any available job with any other railroad in the country, "notwithstanding any provision of law which affects the granting of preferences or priorities or equal treatment in employment."

At present, the Milwaukee and seven other railroads are under consent decrees in settlement of suits brought by the EEOC. Examples include the consent decree in settlement of a suit brought against the Illinois Central, concerning the treatment of blacks and Spanish surnamed Americans; settlement of a suit against the Illinois Central and the International Brotherhood of Firemen and Oilers, Roundhouse and Shop Laborers, et al. which alleged discrimination against blacks; settlement of a suit against the Atchison, Topeka and Santa Fe Railway and the Brotherhood of Locomotive Engineers, et al. concerning the treatment of women; etc. We presume

that these decrees would be unaffected. However, the issues of discrimination raised by these suits are typical of problems existing within the industry.

Seven other railroads are currently in litigation. These suits grew out of charges originally brought by aggrieved individuals. In short, they do not reflect a government policy of special scrutiny for the rail industry, so much as they reflect public response to an industry which has been especially egregious in its treatment of minorities and women.

Indeed, the history of segregated unions and job assignments—of for example, confining blacks to certain positions on train crews—is widely known and, more than almost any other industry, was rigidly enforced as the rule rather than the exception. So while we can see no justification for exempting any industry from the obligation to take reasonable steps as remedial action for past discrimination, it would be particularly inappropriate to do so for the railroad. Government policy has been to link federal funds to compliance with civil rights laws. By creating an explicit exemption, S.J. Res. 114 establishes a reverse and wholly anomalous precedent for other corporations which may request federal aid to avoid insolvency.

We therefore ask, on behalf of the Administration, that you take steps to ensure that the provisions of Sec. 6 and Sec. 9 of S.J. Res. 114 are rewritten to remove their adverse impact on women and minorities. Any labor protection provision should make clear that equal employment opportunity laws are unaffected.

We have been advised by the Office of Management and Budget that there is no objection to the submission of this report from the standpoint of the Administration's Program.

Again, as in the past, I want to thank you for your very generous support of this agency's efforts in enforcing the equal employment opportunity mandates of the federal government.

Sincerely,

ELEANOR HOLMES NORTON, *Chair.*

The CHAIRMAN. Senator Exon?

Senator EXON. No questions, Mr. Chairman.

The CHAIRMAN. Thank you very much, sir. We appreciate you being here.

Mr. MADIGAN. Thank you, very much.

The CHAIRMAN. Next we will hear from a panel of Mr. Richard Ogilvie, trustee, Milwaukee Railroad; Mr. Robert E. Dunlap, president and chief operating officer, Chicago Milwaukee Corp.

All right, gentlemen.

STATEMENTS OF RICHARD OGILVIE, TRUSTEE, MILWAUKEE RAILROAD; AND ROBERT E. DUNLAP, PRESIDENT AND CHIEF OPERATING OFFICER, CHICAGO MILWAUKEE CORP.

Mr. OGILVIE. Mr. Chairman, members of the committee, my name is—

Senator MAGNUSON. Mr. Chairman, could I make a statement? I want to say that I appreciate the cooperation that the trustee and the Governor have given us in this matter, very much, in trying to work something out. I appreciate it very much.

Mr. OGILVIE. Thank you, Senator Magnuson.

The CHAIRMAN. All right, sir.

Mr. OGILVIE. My name is Richard Ogilvie. I am the trustee of the Chicago, Milwaukee, St. Paul, & Pacific Railroad Co.

Mr. Chairman, I have filed a rather extensive statement, together with appendices, which I will not read in full, although I would like to highlight some parts of it. I would also like, with the committee's permission, to file the order which will be filed in the Reorganization Court, I believe this afternoon, together with the record of the judge's comments last Friday.

The CHAIRMAN. All right, sir, your statement will be made a part of the record in full, and you may file with us later in the day the copies of the additional order and the judge's comments.

Mr. OGILVIE. All right, sir.

First of all I would like to, as I have on earlier occasions, remind the committee that our railroad's losses are, as I have characterized them, staggering—\$82 million in 1978; \$93 million in the first 9 months of 1979.

In connection with track rehabilitation, this alone would cost \$540 million for the entire system; and equipment rehabilitation would cost about \$160 million. In my judgment, Federal grants for at least one-half billion dollars for rehabilitation, and a quarter of a billion dollars to offset operating losses, would be necessary to give the entire Milwaukee system a fighting chance.

The ESOP, which has been discussed earlier, in my opinion will not alleviate the requirements for Federal funds. Whether the trustee or an ESOP continues to operate it, the figures that I have given you would be appropriate in both situations.

I would like to advise the committee that we have reached agreements to sell the Metrolink Line and the Port Angeles Line in Washington. We have an agreement in principle with the Union Pacific to sell them portions of our western properties, and I am confident that our sale program will provide continued service on substantially all lines classified as essential in the Washington State plan and will meet the most crucial needs of other States.

Senator Magnuson, I believe that one of the planners for our railroad discussed in detail with a member of your staff what we would see as resulting from our proposal in your State, with specific lines and who would be operating them.

The Reorganization Court, Mr. Chairman, has stated its concern for the protection of whatever equity the shareholders may yet have. This concern is timely, since our reorganization plan already filed contemplates that the common stock of the Milwaukee may have no value. And I must advise that grants of operating funds would be more realistic than loans, since the Milwaukee is unlikely to be able to repay the operating funds provided by the proposed legislation.

I would like to refer to some of the legislation that is being considered.

Subsections 8(e) and (f) of S. 1905, which parallel subsections 15(e) and (f) of Senate Joint Resolution 114, would be extremely helpful in reorganizing a viable Milwaukee system, assuring that labor protection costs do not impose too onerous a burden, and in allowing an equipment repair program to take place during the freeze period.

S. 1905 is particularly sound, since it does not create a presumption that an ESOP is feasible. I fear that the standards in section 4(c) of Senate Joint Resolution 114 and the presumption of feasibility would result in the Interstate Commerce Commission approving an ESOP which lacks the funding to succeed. And I should caution you that in my opinion the Milwaukee Railroad problems will be right back in Congress lap if that is a conclusion of the Commission.

This problem is compounded in section 4(c) of S. J. Res 114 which allows an ESOP to be implemented even if its sponsors have no funds in hand to operate the railroad. It is my view to allow employees affected by our restructuring to receive prompt and certain settlement payments, and to limit such payments to \$75 million from the estate, is good for labor, good for our other creditors, and in the public interest, and I support what Congressman Madigan has earlier stated to your committee.

I would urge the Congress to do all that is necessary to make certain that the settlement program is made effective and that the \$75 million limit on such payments is held in place through strict adherence to the election provisions that are provided, and the pro rata distribution provisions of Senate Joint Resolution 114 and House Joint Resolution 341, section 8(c) of S. 905. Because our concern is with the existence of the settlement program and the amount of the settlement. I am not commenting upon the detailed compensation provisions such as sections 7 through 12 of Senate Joint Resolution 114, and I would urge the Congress to consider other factors which are set forth in my statement.

That, sir, is the essence of what my more lengthy statement would provide.

I would agree with what Mr. Swinburn stated as to the conclusions which he made in the earlier part of his statement about the status of this property.

I would also point out, Mr. Chairman, that when we're talking about rehabilitation, I would like to remind the committee that it now takes between 6 and 7 days for a Milwaukee train transiting from Chicago to the Pacific coast, as opposed to about one-third that time for another railroad.

It would be our judgment that, with the onset of heavy weather, that is going to be even further extended in terms of the amount of time it is going to take to move our traffic over that line. There will be no rehabilitation that can take place during the winter months on lines west. We are going to have to have subsidies in order to operate this railroad.

Finally, I would state: Keep in mind that the money that has been running this railroad has been at the expense of this estate.

The CHAIRMAN. Has been what?

Mr. OGILVIE. Has been at the expense of the estate. I mean, we have borrowed from ourself in order to keep it going with Congressional approval.

The CHAIRMAN. You're saying here that the money that you borrowed takes a priority over the claims of the stockholders.

Mr. OGILVIE. Yes, sir.

The CHAIRMAN. Now, in your judgment, is there any possible chance of this becoming a viable operation?

Mr. OGILVIE. The total system? I have looked at it personally. In my opinion, it is not possible.

The CHAIRMAN. If \$5 million—you heard the testimony here this morning—if \$5 million in ERSA funds were made available, would you be willing to withdraw your request for an embargo and continued service for a period such as 10 days to give use some breathing room to see what might be accomplished?

Mr. OGILVIE. Mr. Chairman, whatever this Congress legislates, I will follow. If that is your will, then we will make that representation to the reorganization court.

The CHAIRMAN. Do you think 10 days would give the opportunity to try to find where we go from here?

Mr. OGILVIE. No, I do not. I have had at least three meetings with representatives of the new Milwaukee Lines, and I have a meeting scheduled later this week with them. In my opinion, on the basis of our discussions, they are not in a position—although they may surprise me—to come up with any kind of a definitive program within the 10 days you are talking about.

The CHAIRMAN. What do you see as the minimum period of time in order to give the opportunity for a plan to be presented?

Mr. OGILVIE. I think it would be better coming from them. I can't really give you an assessment, and they are going to testify later, I believe.

The CHAIRMAN. That's correct.

Senator MAGNUSON. You mentioned that it takes 5 to 7 days to transfer, to move—the Milwaukee was never known as a fast freight line.

For years it never has. It catered to bulk cargo that didn't make any difference whether it was 3, 5, 7 or 10 days, and I don't suppose we'll ever make it a fast freight line. But I just wanted to make that observation.

Mr. OGILVIE. If I may respond, Senator, when I was making my first inspection, some of the old timers were talking about silk trains which I'd never heard of. Apparently in those early days, the cargoes of silk would be landed in the Seattle port area and would go on a high priority basis across our system. We also referred to, when we ran the Hiawatha trains at speeds of 60 or 70 miles per hour, I want to tell you—

Senator BAUCUS. Will the Senator yield on that? Old timers tell me that about 1970 or 1971, the Milwaukee actually beat the BN by 18 hours from Chicago to the coast, but deterioration of track service has become extraordinary.

Mr. OGILVIE. This has been referred to earlier. While we do not have a lot of originating traffic in lines west of us, they were developed with the idea that we could move from Chicago to the Twin Cities to the west coast on a very expedited basis. The only problem is, they opened the Panama Canal 3 years after that railroad was completed. That was where our freight went.

Senator MAGNUSON. We had exactly the same situation, the deterioration of the roadbed, with the northeastern corridor, and we stepped in, and now we're bringing it back. But we wanted 30 days at least to look at this and see what we can do and maybe ought to agree to a little more time.

Mr. OGILVIE. Despite what I say, I'm not trying to give you any predictions as to whether—we'll follow your legislation, but we also, of course, as you, have to follow the mandate of the court.

The CHAIRMAN. In your testimony, you indicated that the Milwaukee is unlikely to be able to repay the operating funds promised by the proposed legislation. Now in the U.S. Court of Appeals' decision of October 2, 1979, they showed a surplus of more than \$400 million, not including labor protection. If labor claims can be

settled for approximately \$75 million, as we heard this morning here, do you anticipate that the estate can repay loans subordinated to creditors' claims?

Mr. OGILVIE. I did not make that representation.

[The statement follows:]

STATEMENT OF RICHARD B. OGILVIE

My name is Richard B. Ogilvie. I am the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company. I have previously served as Governor Of Illinois and have held several other government positions. I am a director of a number of business corporations and a practicing lawyer. With me today is my counsel, John W. Rowe, and our Washington representative, D. Michael Murray.

I very much appreciate the opportunity to appear before the Committee today. At the outset, I would like to commend Senator Cannon, the Chairman of this Committee, Senator Long, the Chairman of the Surface Transportation Subcommittee and Senator Magnuson, the Chairman of the Appropriations Committee, for recognizing that the Milwaukee Road's crisis merits the attention of Congress. In the House, Congressmen Staggers, Florio and Madigan merit similar thanks. The citizens of the states through which the Milwaukee passes have been well served by their congressional delegations. Senators Baucus, Durenberger, McGovern, Melcher and Nelson and Congressmen Reuss, McClory and Sensenbrenner have held a number of constructive conversations with me and I know that other members have also been active. The United States Department of Transportation has also been most diligent in capably and thoroughly analyzing the grim facts which face our railroad and in taking positions which reflect the limitations in current legislation and funding.

In these remarks, I will describe eight key facts upon which the policy making of Congress must focus:

First: The Milwaukee will suspend operations over about two-thirds of its system either on November 1, 1979, or on November 30, 1979, unless Congress provides funds on appropriate terms to continue these operations. The Reorganization Court has found a partial embargo necessary but has directed that the date be deferred to November 30, 1979, if \$15 million in subordinated funds are provided under the resolution recently passed by Congress. The United States Court of Appeals has also determined that the Reorganization Court should not authorize borrowings which displace the Milwaukee's security holders in order to maintain operations in a hopeless situation. We have not yet obtained the necessary funds at the time this is written and I expect the embargo date will be certain when I appear before the Committee.

Second: The railroad's losses are staggering—\$82 million in 1978; \$93 million in the first nine months of 1979. Winter weather is again near and losses averaging \$10 million to \$15 million per month must be anticipated over the next six months. These losses will continue until necessary restructuring and rehabilitation are substantially completed.

Third: Rehabilitation and new equipment requirements are extremely heavy. Track rehabilitation alone would cost about \$540 million dollars for the entire system. Equipment rehabilitation would cost about \$160 million. In addition the need for new equipment would require an additional commitment of \$725 million. These requirements are stated at today's prices and are derived from the Reorganization Plan. These estimates have been developed by independent consultants as well as my officers. For example, Thomas K. Dyer, formerly chief engineer of the Boston and Maine, and Harry Williamson, formerly chief engineer of the Southern Pacific, assisted in these determinations. In considering the importance of these rehabilitation requirements, I urge Congress to bear in mind that, in 1978 alone, the Milwaukee's transcontinental competitors, Burlington Northern and Union Pacific spend about \$15 billion and \$650 million respectively on track and equipment. An ill equipped and ill maintained railroad cannot compete with these companies.

Fourth: If the entire system is to be maintained a large portion of the \$700 million in rehabilitation funds must come from Congress under new legislation. While lease financing of new equipment and state or shipper assistance can meet some of the Milwaukee's requirements, the federal government is the only possible source for most of the rehabilitation and operating funds which would be needed to reorganize the whole railroad. I am currently utilizing the 4-R Act to obtain funds, but neither the present appropriation levels nor the security and repayment requirements in the 4-R Act permit the Department of Transportation to lend us funds of the magnitude required for the entire system on terms which would allow a reorganization to take place. In my judgment federal grants of at least one-half

billion dollars for rehabilitation and one-quarter billion dollars to offset operating losses would be necessary to give the entire Milwaukee system a fighting chance.

Fifth: In the absence of major restructuring the Milwaukee system will not be viable for the foreseeable future. The year long effort of Booz, Allen and Hamilton and the studies of the Department of Transportation demonstrate that through 1986 the entire Milwaukee system cannot generate sufficient railway operating income to service existing debt and indebtedness incurred for rehabilitation and operating losses. I am familiar with the recent review by Policy and Management Associates and the Federal Railroad Administration's critique of that report. The Policy and Management Associates Report is based upon speculation which is totally unrealistic. In particular, I would point out that the coal traffic discussed in the PMA study moves east from the Milwaukee II terminus at Miles City, Montana, which does not justify rehabilitating a railroad system west of that point. Moreover the Burlington Northern is better positioned to obtain most of the coal traffic described in that report. A more detailed review of the PMA report is submitted for the record as Appendix A to this statement. In sum, the entire Milwaukee cannot be self-sufficient until the late 1980s, if ever, and is unlikely ever to repay the federal funds which are necessary to continue the operations and to finance the rehabilitation of the entire system.

Sixth: An ESOP will not alleviate the requirements for federal funds. While an employee or employee-shipper stock ownership plan may be a useful tool in railroad financial structuring, the ESOP financing which might amount to several hundred million dollars, would require repayment with the burden of repayment falling on the Milwaukee. Although an ESOP may result in productivity gains, the formation of a new organization will not supply the necessary rail, ties and ballast or offset deficits of the magnitude presently being experienced. Neither will a change of management. During the past three years, the Milwaukee has gone from control by a board of directors to the stewardship of Stanley E. G. Hillman as Trustee and now to my supervision. While Mr. Hillman and I have both made adjustments where necessary and I will continue to do so, we have found that the Milwaukee has many competent people at all levels. Many of its managers grew up on the West end of our system or have spend much of their lives in operating transcontinental railroads. Make no mistake, there is no midwestern bias among this group. If the funds were available on appropriate terms to operate an entire system, these people would do so with devotion and pride and I would be happy to direct their efforts.

Seventh: Substantial restructuring of the Milwaukee can occur with minimal impact upon present shippers. The Milwaukee II system shown on Appendix B and the potential line segment sales described on Appendix C would protect more than 94 percent of Milwaukee shipments, including all significant coal movements. For example, we have already reached agreements to sell the Metaline Falls line and the Port Angeles line in Washington and are close to an agreement with the Union Pacific. I am confident that our sale program will provide continued service on substantially all lines classified as essential in the Washington state rail plan and will meet the most crucial needs of other states.

Eighth: To delay a decision jeopardizes all opportunities. While we deliberate and evaluate the future of the Milwaukee, track is deteriorating, shippers are choosing alternatives and employees are finding other jobs. Simply funding continued operation without rehabilitation or restructuring continues decay.

These facts have caused me to pursue the "Milwaukee II" reorganization described in our Reorganization Plan. Rehabilitation of the smaller system could be performed with funds available under the 4-R Act or extensions of that Act and from the sale of assets in other parts of the system. Our prospects for viability are simply much greater along the line from Louisville through Chicago, Milwaukee and the Twin Cities to Miles City where we are well positioned geographically and have strong market loyalties than in the transcontinental market where our geographic position is less favorable and the Burlington Northern and Union Pacific provide overpowering competition. Under all of these circumstances, as Trustee, I cannot ask the Reorganization Court to displace the rights of the Milwaukee's security holders and other creditors in order to continue all operations or to assume massive rehabilitation debts for the entire system. In my view, the restructuring we have proposed is consistent with the policy which Congress set in the 4-R Act concerning "the encouragement of efforts to restructure the [railway] system on a more economically justified basis."

If the objectives of the Congress are to minimize the necessary federal investment and to maximize the likelihood that Milwaukee II can be reorganized as a private railroad, I urge that the Congress allow the embargo which the Reorganization Court has ordered to go into effect. I recognize, however, the special breadth of the

decision-making with which the Congress is entrusted and the interest of some members in providing increased rail competition and in assuring adequate rail transportation to their constituents for the next century. While I believe these concerns could be met through our sale program, or through the purchase by the government of the Milwaukee's line West of Miles City, Montana, for a "rail bank," Congress may find the rehabilitation levels which I have described to be an appropriate federal investment and may wish to provide further time to review such possibilities. In that spirit we have reviewed the pending legislation, S. 1905, S.J. Res. 114 and H.J. Res. 341.

I respectfully offer the following observations which are designed to improve the working of the legislation and to assure that a freeze of the present system does not cause irreparable harm to the potentially viable portions of our railroad. In my remarks I will address only major features of the pending bills. I have asked my counsel to submit more detailed comments to the Committee Staff.

THE FREEZE AND ITS FINANCING

Each of the three bills would freeze the current Milwaukee system in operation until midwinter if an ESOP is proposed and until the Spring if an ESOP is found feasible. Each bill would finance operations during this period with funds provided under the Emergency Rail Services Act which would be subordinated to the claims of the Milwaukee's creditors. In so providing, the Sponsors have properly recognized that the estate of the Milwaukee has already borne heavy losses to protect the public interest. The Reorganization Court has stated its concern for the protection of whatever equity the shareholders may yet have. This concern is timely since our Reorganization Plan already contemplates that the common stock of the Milwaukee may have no value. I must advise that grants of operating funds would be more realistic than loans since the Milwaukee is unlikely to be able to repay the operating funds provided by the proposed legislation.

The Senate sponsors wisely recognized that the harm to the Milwaukee's viable operations from a freeze must be offset by additional financial relief. Subsections 8(e) and (f) of S. 1905, which parallel subsections 159(e) and (f) of S.J. Res. 114, would be extremely helpful in reorganizing a viable Milwaukee system, assuring that labor protection costs do not impose too onerous a burden, and in allowing an equipment repair program to take place during the freeze. These provisions are essential if the freeze is not to handicap heavily our efforts to reorganize part of the railroad.

FINDINGS AND IMPLEMENTATION

Section 5 of S. 1905 and Section 4 of H.J. Res. 341 contain reasonable standards for evaluating the feasibility of an ESOP. S. 1905 is particularly sound since it does not create a presumption that an ESOP is feasible. I fear that the standards in Section 4 of S.J. Res. 114 and the presumption of feasibility would result in the Commission's approving an ESOP which lacks the funding to succeed. This problem is compounded in section 4(c) of S.J. Res. 114 which allows an ESOP to be "implemented" even if its sponsors have no funds in hand to operate the railroad. Such provisions will simply create another Milwaukee crisis for the Congress to solve at great expense next year.

ABANDONMENTS AND SALES

I commend the sponsors for proposing to allow the Reorganization Court to approve abandonments if the ESOP proposal fails. As Congress recognized in the Bankruptcy Reform Act this authority is necessary since the Reorganization Court is far more familiar than is the Commission with the capability of an insolvent railroad to provide service, and is able to act more responsively. We believe, however, that the Court should also have the authority to allow a potential purchaser to provide interim services over a line which may be sold, pending the Commission's review of sale applications. Such a provision, which is present in H.J. Res. 341, provides assurance that service on a potentially viable line will not be abandoned pending time consuming sale proceedings. This provision will also protect the government from additional directed service expense.

LABOR PROTECTION

The creation of the labor protection settlement package in the three bills is a most constructive effort and reflects credit on all who have been involved. In particular I know that Congressmen Staggers, Florio, and Madigan and their staffs have been working on the details of such a package for months. We appreciate this effort since any restructuring of the Milwaukee, whether to Milwaukee II or to one

of the alternatives proposed by others, is dependent upon such a program. In my view, to allow employees affected by our restructuring to receive prompt and certain settlement payments and to limit such payments to \$75 million from the estate is good for labor, good for our other creditors and in the public interest. Much time consuming litigation between labor and the other creditors with an "all or nothing" decision as the result will be avoided if the settlement is offered and the affected employees accept it. The uncertainty which presently exists with respect to the validity of labor protection claims in a liquidation would be alleviated as would questions about the priority of such claims. Employees will not be misled by the prospect of vast claims which the Milwaukee cannot pay and the restructured railroad will not be saddled with impossible obligations.

I urge the Congress to do all that is necessary to make certain that the settlement program is made effective and that the \$75 million limit on such payments is held in place through strict adherence to the election provisions (Section 13 of S.J. Res. 114 and H.J. Res. 341) and the pro rata distribution provisions (Section 15(c) of S.J. Res. 114 and H.J. Res. 341; Section 8(c) of S. 905). Because our concern is with the existence of the settlement program and the amount of the settlement, I am not commenting upon the detailed compensation provisions such as sections 7 through 12 of S.J. Res. 114. I would urge the Congress to consider several factors, however. In the absence of such detailed provisions, the proposal may be difficult to implement and unacceptable to labor. If the benefits in the detailed provisions substantially exceed the \$75 million provided by the estate there will be requests for new federal funds. I would recommend careful attention to the views of the Department of Transportation, the Railway Labor Executives Association and the National Railway Labor Conference in this respect.

As I indicated we will submit more detailed comments to the Staff. In conclusion I would point out that if the points I have described are taken into account, a bill such as those before Congress can be enacted without harm to the viable portion of the Milwaukee. However I continue to believe that the ESOP proposal is doomed without massive federal funding and would recommend that Congress focus its attention on the real issues which are restructuring, rehabilitation, operation losses and labor protection. An expensive delay is not itself a solution.

I appreciate the Committee's attention and pledge my help as Congress undertakes to develop appropriate policies.

(Appendix A)

REVIEW OF POLICY AND MANAGEMENT ASSOCIATES (PMA) MILWAUKEE LINES STUDY

The Milwaukee Lines Study by PMA is *not* an independent analysis of the Milwaukee Lines but rather a review of various studies conducted for the Trustee, FRA, SORE (Twin Cities to Pacific Coast) and various governmental agencies and commissions. Each study had its own unique assumptions, methodologies and conclusions. PMA's work offers no new facts that would alter the Trustee's conclusion, which has been substantiated by the FRA, that lines West of Miles City, Montana have no reasonable prospects of long run viability when considering the required investment commitment, competition to that market segment and ability to repay rehabilitation and huge working capital deficit funds.

The conclusions drawn by PMA are based on speculation and facts which actually support the inclusion of lines East of Miles City in a reorganized Milwaukee II.

The Principal areas of deficiency in PMA's analysis are:

(1) The revenue base is severely overstated. In general, PMA utilized the 5 year revenue level incorporated in the SORE study. This base assumes a 71 percent increase in revenues in the next 5 year period for the line West of the Twin Cities without a site specific determination i.e. origin and destination flow analysis. Booz, Allen & Hamilton's specific traffic diversion analysis and detailed market opportunity assessments coupled with macro-economic commodity projections projected a 36 percent revenue growth in the long term may be realized for a Twin Cities transcontinental configuration, but only if substantial rehabilitation was completed and equipment could be obtained on a timely basis. In addition to the lack of a specific opportunity analysis, SORE's revenue projections were not substantiated by any sophisticated analytical process. Moreover, only by quickly rehabilitating plant and equipment can revenue levels rise. Since SORE's plant rehabilitation estimate is less than one-half of Booz, Allen and Hamilton's estimate, which was compiled by Messrs. Williamson and Dyer, renowned experts in the railway engineering field, the plant they contemplate would not permit the higher revenue to be obtained even if opportunities were available.

(2) Additional market opportunities were added by PMA to SORE's base revenue levels. No correlation appears to have been made to determine whether SORE had included all or part of the additional revenues in its phenomenal growth rate estimate. The lack of such a correlation creates the possibility of double counting of the opportunities in PMA's adjusted revenues.

PMA projected additional annual revenues in coal, grain and overseas container business amounting to \$65.2 million by year five (5). About 82 percent of this increase, \$53.2 million, was attributable to coal movements extrapolated from a National Transportation Policy Study Commission (NTPSC) study of June, 1979. The NTPSC study source ironically contradicts PMA's conclusion that a transcontinental line is necessary for coal hauling. According to the study, the Milwaukee main line east of Miles City, Montana to the Twin Cities is designated as a potential coal corridor in the years ahead. This was an obvious conclusion drawn by the Trustee in evaluating the segments included in the MILW II system. Long term (to year 2000) projections indicate no need for the Milwaukee lines west of Miles City to be available for handling coal. Specific coal mines, mentioned that will be originating volume shipments were not contiguous to the Milwaukee main line west of Miles City except for one of the smaller mines. PMA's coal projection is also incredible in that it assumes a volume of 136,000 carloads, handling 9.5 million net tons of coal by 1985. This volume averages about 70 net tons/carload; volume coal movements are handled in 100 net tons/carload equipment. Seventy ton capacity equipment is obsolete and in dwindling numbers and may even be extinct in five years. It is generally recognized that to handle coal profitably, modern high capacity equipment must be utilized. The revenue per carload appears to be considerably too high even for a 100 ton capacity car. PMA projected increased annual revenues of \$8.7 million for grain traffic over the SORE base. This was an increase of 4,344 carloads or 21 percent increase. This increase was based on extrapolations of projections by the Department of Agriculture using macro-economic evaluations of the Western states' production rates. No site-specific analysis was performed to determine what portion of the grain producing areas are contiguous to the Milwaukee Road. The Railroad is not a major grain transportation source in this area. For instance, the Milwaukee only handles about 8 percent to 9 percent of the wheat and barley produced in Montana and only two counties in the entire state are served exclusively by the Railroad. Using broad production indices in lieu of evaluating specific growing areas and their physical relationship to the Milwaukee is certainly not an appropriate analysis in considering major restructuring and investment decisions.

PMA projected additional annual revenues of \$3.3 million in overseas container traffic. This is highly competitive business with relatively low profit margins. A rehabilitated plant and excellent equipment with expedited service is essential to assure any potential for bottom line impact for this business. SORE's rehabilitation program is woefully inadequate and therefore time sensitive business increases such as imports/exports could not realistically be achieved as envisioned by PMA.

(3) The incremental cost analysis performed by PMA is totally beyond reason and foundation. The additional annual revenues of \$65.2 million results in an annual incremental net railway operating income (NROI) improvement of \$36.1 million, or 55 percent. U.S. railroad industry in 1978 had a labor cost ratio of 51.6 percent to revenues. Other costs such as material, fuel, payroll taxes, etc. will be incurred to obtain revenue dollars. PMA projects an NROI of \$60.6 million in year 5 based on revenues of \$30.5 million, an average 20 percent carry-down of revenues to NROI. To test this result, consider the well maintained Union Pacific Railroad's financial results in 1978. The Union Pacific carried only about 17 percent of operating revenues down to the NROI level. Within 5 years, PMA projects that the SORE railroad will have a superior operating performance than the present Union Pacific. PMA admits that close scrutiny of expense items was not performed by them. Close scrutiny of cost elements is absolutely essential for any meaningful analysis. In addition, PMA's assumption that a heavy concentration of unit coal trains on the particular line segment would necessitate a review of plant rehabilitation requirements since tonnage has a significant impact on rehabilitation expense levels. PMA did not increase rehabilitation or maintenance costs to compensate for this tonnage.

(4) PMA's financial plan is woefully inadequate because it assumes: purchase of assets at about 41 percent of their liquidation value; rehabilitation expenses to be incurred are less than one-half required for competitive levels, working capital deficits are understated by assuming rapid growth in income levels without physical improvements completed or equipment available.

Two financing packages were displayed by PMA ranging from \$414 million to \$548 million. It was presumed that Federal loan guarantees and preference shares would be issued for the capital needs. No capital needs for debt required for

locomotive and freight cars rehabilitation was included in the analysis. Interest charges were calculated for the debt service but no provision was made for the amortization of the principal involved. The presumption for financing this enterprise is that the U.S. Treasury would provide about one-half billion dollars to fund a highly speculative railroad that would try to compete with two very strong privately owned railroads for the benefit of a very few special interests groups.

Potential line segment sales

Segment:	Route miles
Hampton, Wash—Lynden, Wash.....	5.4
Sukmas, Wash—Strandell, Wash.....	8.0
Bellingham, Wash.....	—
Everett, Wash.....	—
Port Angeles, Wash—Port Townsend, Wash.....	50.8
Seattle, Wash—Tacoma, Wash.....	36.0
Tacoma, Wash—Morton, Wash.....	65.7
Fredrickson, Wash—Chehalis, Wash.....	54.6
Helsing, Jct., Wash—Hoquiam, Wash.....	45.3
Rocky Point, Wash.....	—
Longview Jct., Wash—Longview, Wash.....	3.4
Maple Valley, Wash—Cedar Falls, Wash.....	17.0
Cedar Falls, Wash—Snoqualmie Falls, Wash.....	11.2
Othello, Wash—Warden, Wash.....	12.8
Moses Lake, Wash—Sieler, Wash.....	13.5
Metaline Falls, Wash—Newport, Wash.....	61.1
Spokane, Wash.....	—
Spokane Bridge, Wash—Coeur d'Alene, Idaho.....	13.7
Manito, Wash—Plummer, Idaho.....	19.8
Plummer, Idaho—Avery, Idaho.....	84.2
St. Maries, Idaho—Purdue, Idaho.....	49.7
Schilling, Mont.....	—
Missoula, Mont.....	—
Bonner, Mont.....	—
Butte, Mont.....	—
Choteau, Mont—Fairfield, Mont.....	17.7
Vaughn, Mont—Emerson Jct., Mont.....	8.3
Great Falls, Mont and Vicinity.....	—
Geraldine, Mont—Lewistown, Mont.....	75.6
Lewistown, Mont—Heath, Mont.....	9.2
Lewistown, Mont—Moore, Mont.....	17.6
Aberdeen, S. Dak—Wolsey, S. Dak.....	73.0
Murdo, S. Dak—Mitchell, S. Dak.....	142.4
Trent, S. Dak—Hawarden, Iowa.....	71.9
Canton, S. Dak—Marquette, Iowa.....	294.9
Marquette, Iowa—McGregor, Iowa.....	1.3
Spencer, Iowa—Herndon, Iowa.....	103.9
Herndon, Iowa—Panora, Iowa—Des Moines Iowa.....	54.1
Herndon, Iowa—Woodward Jct.—Clive, Iowa.....	33.5
Council Bluffs, Iowa.....	—
Louisa, Iowa—Marion, Iowa—Amana, Iowa.....	27.4
Edmore, Iowa—Sabula, Iowa.....	49.8
Ontonagon, Mich—Channing, Mich—Pembine, Wis.....	130.3
Total.....	1,663.1

The CHAIRMAN. All right, Mr. Dunlap. Do you want to make your statement, sir?

Mr. DUNLAP. Yes, Mr. Chairman. I'll cut it down.

My name is Robert A. Dunlap. I am the president and chief operating officer of the Chicago Milwaukee Corp., a non-operating holding company which owns 96 percent of all the outstanding common and preferred stock of the Chicago, Milwaukee, St. Paul, & Pacific Co. I would like to thank you for allowing me the opportunity to appear before this committee today.

The Chicago & Milwaukee Corp. is a publicly held company, and its securities are traded on the New York Stock Exchange. We have approximately 7,000 stockholders. The Chicago, Milwaukee, St. Paul, & Pacific Railroad Corp. filed its petition for reorganization pursuant to section 77 of the Federal Bankruptcy Act on

December 19, 1977. Since that time the Chicago & Milwaukee Corp. has had no control over the operations of the Milwaukee.

As the committee is aware, there has been appointed a successor trustee, former Governor Ogilvie, who has appeared before the committee today.

It is not my intention to cover all the recommendations made by the trustees or those of the distinguished Senators and Representatives who have appeared before you today. I would merely like to inform the committee of the Chicago & Milwaukee Corp.'s position in this matter and answer any questions that I am able.

I have with me our counsel, James H. Falk, of Washington, our counsel, Leonard Gesas, and our railroad consultant, Isabel Benham. Mr. Gesas and Ms. Benham are available to answer any questions you may have.

The Milwaukee Road's record of losses is well known. In the 3 years preceding the railroad's petition for reorganization, rail losses totaled some \$100 million. By comparison, losses sustained since the filing of the petition are projected to exceed \$200 million. On August 10, 1978, the trustees issued a plan for reorganization, stating that a system called Milwaukee II could be viable. We want to commend the trustees on the reference.

It is our position, however, that such a plan is not feasible. Government loans will not improve the long-term profitability of the Milwaukee. We urge that there be no additional loans, and there be a total embargo effective immediately of all Milwaukee trackage. This is not only my personal opinion but that of the board of directors of the Chicago & Milwaukee Corp. as adopted in a resolution of October 10, 1979. Additional Federal funds to the Milwaukee would further erode the interest of the Milwaukee shareholders, and this further erosion of investors' capital would appear to be inconsistent with Congress intent as expressed in other legislation.

We believe that the rights of the shareholders must be protected and that the estate should not be further eroded. If a legislative determination is made that the public interest requires a continuing operation of the Milwaukee and that this can be done only by the infusion of large amounts of Federal funding, we feel that such funds should be in the form of grants or loans, subordinated to the equity interests of the stockholders.

Shareholders have been aware of their obligations to the public interest. This obligation should not extend to the complete exhaustion of their monetary interests. Since the time Milwaukee filed for reorganization, the equity interests of the shareholders have been reduced by well over \$100 million and maintained in the public interest, incurred additional operating losses and erosion of stockholders' equity. Therefore, we feel that the shareholders' equity must be protected through subordination of any new funding.

With proceedings before the reorganization court on October 17, 1979, both the judge and the counsel for the trustee expressed concern for the rights of the shareholders of the Milwaukee. Specifically, Judge McMillen indicated that if he had a free hand in the matter, the presently authorized \$15 million loan would be subordinated to the common and preferred shareholder.

On behalf of myself and the shareholders of the Chicago Milwaukee Corp., we thank you again for your consideration in this matter. We know you have heard very much of this before in various forms; however, I reiterate that the Milwaukee shareholders do not seek or want additional Federal funds.

The CHAIRMAN. Thank you, Mr. Dunlap. You heard my question to Governor Ogilvie a few moments ago. If the labor claims could be settled for approximately \$75 million, as has been discussed here today, do you anticipate that the estate could repay loans subordinated to creditors biennially?

Mr. DUNLAP. No, sir.

The CHAIRMAN. Senator Packwood?

Senator PACKWOOD. No questions.

The CHAIRMAN. Senator Magnuson?

Senator MAGNUSON. Put a list of the board of directors of the Milwaukee Railroad in the record, will you? Where do they come from?

Mr. DUNLAP. Sir, I'll get it. I'll put it in the record.

[The following information was subsequently received for the record.]

NAMES AND AFFILIATIONS OF THE DIRECTORS OF THE COMPANY

Tilden Cummings, Continental Illinois National Bank and Trust Co. of Chicago, 231 S. LaSalle Street, Chicago, Ill.

Jerry Finkelstein, chairman of the board, Struthers Wells Corp., 630 Fifth Avenue, New York, N.Y.

Laurence S. Kaplan, M. S. Kaplan Co., 666 North Lake Shore Drive, Chicago, Ill.

William G. Karnes, 200 E. Randolph Drive, Chicago, Ill.

Joseph A. Maun, Maun, Green, Hayes, Simon, Murray and Johanneson, 332 Hamm Building, St. Paul, Minn.

Robert C. Reed, 960 Indigo Point, Delray Beach, Fla.

Donald F. Hunter, Suite 460, Shelard Plaza, Minneapolis, Minn.

Arthur Rubloff, 69 W. Washington Street, Chicago, Ill.

Emory Williams, chairman of the board and chief executive officer, Sears Bank & Trust, Sears Tower, Chicago, Ill.

Emmett Dedmon, Hill & Knowlton, 111 W. Wacker Drive, Chicago, Ill.

Charles W. Metter, president and chief executive officer, 666 N. Lake Shore Drive, Chicago, Ill.

Senator MAGNUSON. I was just wondering if the Milwaukee was being reorganized in Bankruptcy Court in Seattle, if it would be the same configuration? Do you think so?

Mr. OGILVIE. If I were the trustee, yes, sir.

Senator MAGNUSON. The trustee?

Mr. OGILVIE. I say if I were the trustee, yes, sir.

Senator MAGNUSON. All right.

Maybe the Court would take an entirely different look at it in those two towns, or in Butte, the Federal court in Butte.

Mr. OGILVIE. May I respond to the Senator's comment?

It's my judgment—I've been a trial lawyer for many years, Senator—that Judge McMillen has leaned over backwards in this matter to accommodate every possible interest, including, in my opinion—

Senator MAGNUSON. Oh, I'm not criticizing you.

Mr. OGILVIE. Well I don't want to leave the impression—

Senator MAGNUSON. I appreciate what you've been doing. I have no further questions.

The CHAIRMAN. Senator Exon?

Senator EXON. Mr. Dunlap, I just reread the last statement you made: "However, I reiterate that the Milwaukee shareholders do not seek or want additional Federal funds." That's the most unbelievable statement that I've ever heard made since I have been a Member of the U.S. Senate. For someone to come here and not want Federal funds is almost revolutionary.

I want to go back, though, a little more seriously because what we're talking about is the heart of the whole problem that we on this committee, at least in the U.S. Senate, have with our difficult situation with regard to the railroad. I, for one, am not moved a great deal by your statement that on March 23, President Carter submitted to Congress a special message on freight rail deregulation, and you quote the President that the solution to the railroads' difficulties is not massive government subsidies or new government intervention.

I would just say that we're dealing with a most, most difficult situation here. I, for one, hope that the Congress does not do anything to further impair the already bankrupt and disastrous situation that the stockholders of the Milwaukee find themselves in. And I have noted statements of appreciation by the Senators whose States are most directly involved in this road that you've attempted to be cooperative.

You say, though, in your statement that you hope that we will not do anything, that we will allow the judge's ruling of last Friday to stand, and that, in essence, the railroad would go out of business, as I understand it, basically west of South Dakota. Is that correct?

Mr. OGILVIE. Miles City, Mont.

Senator EXON. Miles City, Mont. I suspect that in the end that might not be the final decision of this committee in view of the fact that we might feel, without impairing the stockholders any further, that we might want to give some additional time—although as those of us here now and those of you in the private industry know, it's most convenient to put things off down the line some place.

Is there a reasonable compromise between the decision, Mr. Dunlap, that you have taken that we do nothing now and let the judge's order stand and doing what some have suggested—massive government intervention? There have been some statements made in this regard. I don't want to put you on the spot, but if you were in the position of someone like myself who recognized that simply the President saying that massive new government programs aren't good at this time, we also have to recognize that we're facing a very serious situation with regard to captive to shippers, with regard to the agricultural area, with regard to the towns served by your road, and we're going to have to make a decision, it seems to me, somewhere along the line whether we are going to pump in additional billions of dollars, not only to the Milwaukee but to the whole sagging railroad picture throughout the United States which most of us recognize is pretty bleak, with some certain exceptions.

In a nutshell, without putting you on the spot, do you have any compromises that you might suggest to me, if I say, no, I'm not in favor of doing nothing and allowing the judge's order to stand, nor am I in favor, at least at this time, continuing millions and billions

of dollars in investment in a railroad that at least you professionals think has no chance of surviving in its present mode.

Mr. DUNLAP. I think the best way to answer your question is to understand that you and I are in totally different positions. My allegiance is to the stockholders of my company. Your allegiance is to the welfare of the country. What we are saying is that we are not in any way trying to hurt the public interest, but what we are saying is that we have eroded over \$200 million in the last 2 years of this reorganization, and we are just pleading and saying, fine, we'll go along with it.

But can we step out? Can you subordinate us to any further loans that go into the company?

Senator EXON. Well, loans going into the company, it's been pointed out by Governor Ogilvie, it seems to me, I suspect that loans that have little or no chance of ever being repaid is a grant, and we'd be much better to consider a grant, it seems to me. Then that gets down to the heart of my question.

How much money, in your opinion as President of the road, would be required in a grant to keep this going for a length of time—I think 10 days was mentioned here somewhat earlier in the testimony. I can't imagine that 10 days is a length of time where very much is going to be accomplished. Again, I would ask you, if you can, to give me an answer as to how much money in the form of a grant do you think would be necessary to keep the road going, and for how long a time would you think this would be necessary, and how much money do you think it would take so that by congressional action we would not be directly penalizing private capital that's already in serious jeopardy with a bankrupt road?

Mr. OGILVIE. Senator, I think maybe that question would more properly be directed to me. I don't know that it needs to be said, but while we sit here together, Mr. Dunlap's interests and mine are not the same, necessarily. He has no responsibility for the railroad at the present time. That is my burden.

When we were meeting with Senator Magnuson several weeks ago, we understood that it was his interest and intent that we would have \$15 million to conduct the affairs of this railroad for 30 days beyond what was then the embargo date which is next Thursday.

Senator EXON. So until the first of December, roughly?

Mr. OGILVIE. We're talking about \$15 million that we will need to run this railroad through December 1. If we run it beyond that, a pretty good rule of thumb is about \$15 million a month through the winter. It's less when we get into the spring, so you can multiply that by however many months it would be your interest to continue this railroad operating. I think it's important to understand that we are in a position, in my opinion, to repay the Federal loans that we got earlier. In fact, we would repay more if we liquidate the whole railroad because we've got property of an estimated value of about \$800 million. We have no railroad, but we have a lot of real estate.

What I cannot represent is that we could repay loans beyond the point that we have borrowed so far under this present situation with a drain on the estate. So I think you should keep in mind that

if we don't get it on a grant basis, its got to be on such a subordinated basis that realistically you're not going to get it paid back.

Senator EXON. As a trustee, then, would it be fair to assume that you would say that if we would invest \$15 million of taxpayers' funds in this road for a period of 30 days, taking it up to December 1, that that in your opinion is not going to solve the problems or begin to solve the problems, but it would allow a 30-day cooling-off period to see if anything else can be worked out. And if we would do what I just outlined and what I believe you said was one of the options that we have on this side of the table, that that would not impair any further the financial position of the private stockholders that presently have investment therein.

Mr. OGILVIE. Let me say that I feel sorry for them, but that really is not a high priority in terms of what I view my responsibility to be, which is to preserve the public interest as best we can and protect the creditors.

Senator EXON. Well, I agree with you, but again we're all coming at this from different angles. I guess what I'm saying is, it always seems unfair on the bottom line for the Government to come in and say, "You stockholders, we're going to make you continue operation of something that's going to cost you even more money than the position that you're now in." Now maybe you don't have to take consideration of that, but as a bottom line, I think we have to have some consideration of that.

I guess what I'm saying is that if we in the Congress want this road to continue for any length and period of time, we should be putting up the money to do so and pretty much understand that it's not a loan. It's going to be an outflow from the Treasury.

Mr. OGILVIE. Senator, in our reorganization plan, which is on file with your committee, it is not contemplated that the shareholders would get anything in the proposed reading of the reorganization. The interest that is not represented here today, are the bondholders.

Senator EXON. But again, if we put \$15 million, the creditors, I assume, would not be further impaired; is that correct?

Mr. OGILVIE. Hopefully, they would not.

Senator EXON. Thank you, Mr. Chairman.

Senator MAGNUSON. That's why we suggest that you subordinate the amount. That's the very reason.

The CHAIRMAN. I think it would be contingent upon that and on the basis that the money was put in subordinate to the creditors' claims. Otherwise, their assets would be impaired by the priority position that the Federal Government would have; is that correct?

Mr. OGILVIE. Yes, sir.

Mr. Chairman, I don't often rise to defend any part of the Federal bureaucracy, but let me say—I may be exceeding the bounds here—that the way that that resolution was passed, I don't think the Secretary had discretion with sound legal advice to loan us the \$15 million. I think that was what the Senator intended, but that unfortunately was not the way it came out, Senator.

Clearly, it was your intent that the legislation did not give him that option.

The CHAIRMAN. Did you have any questions, Senator Baucus?

Senator BAUCUS. No questions, Mr. Chairman.

I just want to thank Mr. Ogilvie for working with us. I know we've met several times trying to find a reasonable solution to this, and I want to express my appreciation here.

Mr. OGILVIE. Thank you.

The CHAIRMAN. FRA had no problem with this before we decided to do it. Then they decided another way.

Mr. OGILVIE. I am not looking at motives. I am just saying that as a lawyer that happens to be my conclusion.

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

Senator BAUCUS. With the chairman's permission, I have several items I would like to put into the record. They are statements by Office of Rail Public Council witnesses in the pending ICC abandonment proceedings. They deal with the profitability of the Milwaukee's western lines.

The CHAIRMAN. If they're not already in the record, we'll make them a part of the record by reference.¹

Next we will hear from Mr. J. R. Snyder, national legislative representative, UTU.

All right, Mr. Snyder.

STATEMENT OF J. R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES ASSOCIATION, AND NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION; ACCOMPANIED BY EDWARD D. FRIEDMAN; AND WILLIAM G. MAHONEY, COUNSEL, RAILWAY LABOR EXECUTIVES ASSOCIATION

Mr. SNYDER. Thank you, Mr. Chairman, members of the committee, and staff. It's my pleasure to be here this morning. I am wearing two hats as the national legislative director of the United Transportation Union as well as chairman of the Railway Labor Executives Association and the legislative committee. My friends here also represent all of the 10,000 employees that are employed on the Milwaukee Railroad. I have with me this morning, to my left, Mr. Ed Friedman, who is counsel for the Railway Labor Executives Association. I also have Mr. W. G. Mahoney, who is counsel to the Railway Labor Executives Association.

We have quite a large document here of testimony and in order to cooperate with the committee, I would like the entire document to be inserted in the record, Mr. Chairman.

The CHAIRMAN. It will be made a part of the record.

Mr. SNYDER. I will confine my remarks very briefly here to conform with the committee's wishes. I would like to limit my remarks to two of the legislative proposals before this committee, S. 1905 and S.J. Res. 114.

But first I should like to note the major obstacles which have faced the employees, the shippers, and the public since the Milwaukee problem came to crisis.

From the outset, the Department of Transportation has sought the elimination of the Milwaukee as a transcontinental railroad, and, despite the funding provided by the recently enacted appropriation, DOT may have succeeded, since it refused the Milwaukee sufficient funds to continue operation; and the reorganization court

¹ The statements are in the Committee files.

has ordered the embargo to be effective as of 12:01, Thursday, November 1, 1979.

The DOT has therefore saved \$10 million at the cost of perhaps hundreds of millions. DOT actions have preempted the ongoing ICC abandonment proceeding. They have preempted the ICC and the fulfillment of its function and the evaluation of the reorganization plan.

Finally and most importantly, they have preempted the Congress in its consideration of these bills and of Senate Joint Resolution 341 and thwarted the efforts of Congress to provide itself time to enact substantive legislation.

In my statement I have assumed that DOT will not continue its defiant, brutal position but will afford the Congress and the Nation the opportunity to provide rail service on a competitive basis. I fear that it is a false assumption.

Our canvass of the employees' sentiment on the Milwaukee Road today has satisfied that the employees are ready to surrender a substantial part of their claims against the estate, valued at possibly more than \$500 million, as consideration for the acquisition of the railroad upon sufficient evidence of viability. The employees directly and through their organization have contributed considerably more than \$100,000 thus far in the effort to gain time to develop this program to preserve the Milwaukee Road as a trans-continental system, if at all possible.

We should note at this point and in the light of DOT's action that the cost to the Government posed by either S. 1905 or Senate Joint Resolution 114 or House Joint Resolution 341 is no greater than the cost of directed service, which the Government must do if the Congress should fail to act on this legislation.

If the Milwaukee trustee plan of reorganization, or one of the trustees' several planned embargos, which operation comes to about the same results, is ever put into effect, some 5,000 employees of the Milwaukee will be without jobs. Employees of the Milwaukee are older than those found on most other U.S. railroads because the younger employees, seeing the handwriting on the wall, have left the Milwaukee to seek employment at other railroads or in other industries.

Among the employees represented by my own union, for instance, 50 percent are over 40 years of age, and 30 percent are over 50 years old. Among locomotive engineers, 45 percent are over 50 years old. These employees would have lost 20 to 40 years of hard-earned seniority. They would find it virtually impossible to find work within or outside the railroad industry.

The embargo on Wednesday at midnight would result in no protection for employees, and DOT should be aware of this. The \$75 million in obligation guarantees, contained in section 8(a) of S. 1905, places no requirements on a trustee to provide employees with any protection other than afforded by the Interstate Commerce Act. Indeed, those guarantees undoubtedly would be used by the trustee as an offset of the ultimate obligation to employees under section 11347 of the Interstate Commerce Act following the employees' years of litigation to establish their claim.

Senate Joint Resolution 114, on the other hand, contains a number of provisions which we believe essential. If effected, em-

ployees are to receive meaningful protection upon a restructuring of the Milwaukee Railroad. While these provisions provide considerably less protection for employees than they are entitled to under the Interstate Commerce Act and certainly less than employees have traditionally received under earlier acts of Congress. This lesser protection would be provided the employees when it is needed most, at the time the employee is hurt.

Given the unique circumstances surrounding the Milwaukee situation, the legislative paralysis involved, and the fact that the employees retained an election to seek the protection to which they would normally be entitled under the Interstate Commerce Act, the RLEA reluctantly but firmly supports the employee protection arrangement contained in Senate Joint Resolution 114.

We respectfully submit that in terms of human and economic costs, Senate Joint Resolution 114 is the best bargain presently available to this committee, and we earnestly recommend its adoption.

In summary, S. 1905 contains no effective monetary protection for employees of the Milwaukee, and no aid to their securing other employment. Senate Joint Resolution 114 contains such protection and aid. Further, Senate Joint Resolution 114 is very similar to House Joint Resolution 341 and therefore enhances the possibility of swift enactment, which is so vital if all the efforts of Congress are not to be rendered moot on December 1, 1979.

Mr. Chairman, that concludes our brief remarks.

The CHAIRMAN. Thank you, Mr. Snyder.

Do you believe that directed service will doom the opportunity to form an ESOP?

Mr. SNYDER. Yes. We oppose the directed service on the Milwaukee Railroad unless it is provided by the Milwaukee itself. We do think that the criteria worked out in Senate Joint Resolution 114, would give us a reasonable length of time to see if it is feasible or possible to work out an ESOP plan.

The CHAIRMAN. Would you comment on earlier criticisms of the P. & M.A. study that was talked about this morning?

Mr. SNYDER. With your permission, I will let Mr. Friedman comment on that.

Mr. FRIEDMAN. As I understand the point made by the ICC Commissioner, he had no particular quarrel with the estimates of revenue, but he did quarrel with the formula which was used to identify costs of carrying the freight—the coal and the grain—west.

As I recall, the formula was 0.5, and he thought the formula would be higher. That's a matter that will have to be worked out.

That P. & M.A. report was put together during the month of August, and some more time will be needed to really look into all of the elements touching on that kind of problem. I would like to say, though, that, as I understand it, the administration has established some new export priorities, new export priority initiatives, which, as I understand it, will enhance the prospect of the Milwaukee road carrying freight west, not east. The new export policy initiatives will mean heavy export of coal and grain, and those exports will be moving west—I mean, will be moving west, not east, to Japan, to the Asian countries.

I would think that the P. & M.A. report really has begun to show some errors in the earlier reports and has to be very carefully looked at.

The CHAIRMAN. Senator Packwood.

Senator PACKWOOD. No questions.

The CHAIRMAN. Senator Magnuson.

Senator MAGNUSON. Well, those reports don't anticipate any future; do they?

Mr. SNYDER. That's correct. They don't take into account—

Senator MAGNUSON. They just say it's all over.

Mr. SNYDER. They understate the importance of coal and grain shipments, which certainly under the new initiatives are going to become very important.

Senator MAGNUSON. And the new trade agreements lean toward more and more agricultural exports.

Mr. FRIEDMAN. That's correct.

Senator MAGNUSON. This is one of the big features of the line, I think. The wheat from Montana, particularly, and the wheat that we export. We export about three-quarters of our winter wheat in the State of Washington; Montana, I think, more.

Senator BAUCUS. That's right; 80 percent.

Senator MAGNUSON. And the movements west—I am not familiar with the coal situation, but I am familiar with the grain situation. And surely, the anticipation of more freight is there, and, hopefully, the Milwaukee line could take advantage. That's why I say that the reports of the Department of Transportation don't anticipate any future at all for the railroad. They just say, "Cut them all out. There's no future because they've been losing money in the past." That's what bothers me.

That's why the timing here is very important. And there are some reports showing at least some anticipation of more handling of freight, particularly of grain and, I guess, coal, too. I am not familiar with the coal situation, but I do know the grain situation.

And the line west of Miles City picks up all kinds of little places where they raise the wheat and the grain and everything else, and that's subject to export. It used to go down the Mississippi to New Orleans, but more and more its going west.

And this year, with a particularly good grain crop, I was going to ask the railroad administrator if they had ever seen wheat stacked up on the ground for lack of freight cars and lack of transportation facilities. Every year it happens to us—every year—stacked up on the ground, particularly when they have a good big crop like they did this year. And the Milwaukee does serve a purpose.

The CHAIRMAN. Senator Exon, would you excuse Senator Magnuson and Senator Packwood and I for about 5 minutes. Finish with this panel and then start on the next one, please.

Senator EXON [presiding]. All right.

Mr. Snyder, I would just have you for the record again—I think we've heard it before, but for the record—on this particular road, would you make a general statement with regard to that portion of the testimony that Mr. Dunlop referred to, where he said on March 23, 1979 President Carter submitted to Congress a special message on freight rail deregulation. What is the attitude of your organiza-

tion to that special message and the recommendation to the President?

Mr. SNYDER. Senator, we have had numerous meetings on the railroad deregulation proposal, particularly one from the Department of Transportation, even before the draft of the legislation came to the Hill. We're very much disappointed in the proposed legislation. While the railroad labor's position is not antideregulation completely, we want to see the railroads compete with other forms of transportation. We did have several reservations as to the rate structure and captive shippers that you mentioned here, and particularly the mergers and the abandonment section, which is very vital out in your part of the country and all through the Midwest with the grain.

We have serious reservations about that because of our energy program, of the administration. In fact, we don't think it really ties in with the administration's proposal, ties in really successful with their proposal on energy.

I feel, at this time, that there is a good possibility that we will resolve this railroad deregulation issue with the carriers. I don't know about the DOT. I think perhaps maybe that's impossible. But with the carriers and the shippers and anyone who is interested in it. But we are very much concerned about it.

Senator EXON. Mr. Snyder, would you agree with my conclusion that if the recommendation to the President with regard to freight rail deregulation were law now, we wouldn't be sitting here this morning talking about the problem that confronts us; the railroads would have the authority, would they not, to do what the Milwaukee chief executive said that they wanted to do now, and that is to stop the service?

Mr. SNYDER. We don't fully agree with that. No, we don't fully agree with that.

Senator EXON. I have no further questions. Any further statement by you, gentlemen?

Mr. SNYDER. I just want to take this opportunity to say to the Senators it has been real interesting. This has been going on for weeks and months now, that we arrive at a reasonable conclusion to the Milwaukee situation inasmuch as we do have problems with other railroads in the Midwest there, but they have spent tireless long hours—Senator Baucus, Senator Melcher, Senator Magnuson, and Senator Long. We've had numerous meetings with them and their staffs, and I do say we appreciate—railroad labor appreciates—the opportunity to be a part of this and to come up with a reasonable solution. Thank you very much.

Senator EXON. Thank you very much. And we appreciate your coming before the committee.

[The statement follows:]

STATEMENT OF J. R. SNYDER, CHAIRMAN, LEGISLATIVE COMMITTEE, RAILWAY LABOR EXECUTIVES' ASSOCIATION AND NATIONAL LEGISLATIVE DIRECTOR, UNITED TRANSPORTATION UNION

My name is J. R. Snyder. I am Chairman of the Legislative Committee of the Railway Labor Executives' Association and the National Legislative Director of the United Transportation Union. I appear before you today on behalf of the Railway Labor Executives' Association, its members and the employees of this nation's railroads whom they represent, and particularly on behalf of approximately 10,000

members of the Milwaukee Road. My office is located in the Railway Labor Building at 400 First Street, NW, Washington, DC. Accompanying me are Mr. Edward D. Friedman and Mr. William G. Mahoney, counsel to the Railway Labor Executives' Association.

The Railway Labor Executives' Association is an unincorporated association with which are affiliated the chief executive officers of all of the standard national and international railway labor unions in the United States. The organizations whose chief executive officers are members of the RLEA are listed below: American Railway Supervisors Association; American Train Dispatchers Association; Brotherhood of Locomotive Engineers; Brotherhood of Maintenance of Way Employees; Brotherhood of Railroad Signalmen; Brotherhood Railway Carmen of the United States and Canada; Brotherhood of Railway, Airline and Steamship Clerks, Freight Handlers, Express and Station Employees; Hotel & Restaurant Employees & Bartenders International Union; International Association of Machinists and Aerospace Workers; International Brotherhood of Boilermakers and Blacksmiths; International Brotherhood of Electrical Workers; International Brotherhood of Firemen & Oilers; International Longshoremen's Association; International Organization of Masters, Mates & Pilots of American; National Marine Engineers' Beneficial Association; Railroad Yardmasters of America; Railway Employees Dept., AFL-CIO; Sheet Metal Workers' International Association; Seafarers International Union of North America; Transport Workers Union of America; United Transportation Union.

The Congress has before it a number of bills and joint resolutions dealing with the Milwaukee Road. Today I would like to limit my remarks to two of them, each of which is designed to achieve at least a partial solution to the transportation and economic problems caused by the collapse of the Milwaukee railroad: S. 1905 and S.J. Res. 114. As we are all so well aware, the Midwest railroad transportation problem is not confined to the Milwaukee Road. The Rock Island has ceased to operate its own properties; and at least two, and perhaps three, other midwestern railroads are in less than secure condition. Unfortunately, the overall midwestern railroad problem will not be solved by enactment of any of the pending bills.

My testimony will be divided into three parts. First, I will briefly trace the events which have brought about this hearing. Second, I will discuss the differences in the legislation in terms of the ESOP and ESSOP plans contemplated by them and finally I will turn to the subject of those who will pay the highest price for the folly of those who have managed the Milwaukee—the employees.

The bills which are the subject of the hearing today follow the same general format and generally resemble the structure and program of H.J. Res. 341, which is pending before the House of Representatives. There are differences between these bills and we shall discuss them in due course. But first, I should like to describe the background of these bills and how far we have come during the past year and a half in the efforts shared by so many to maintain the Milwaukee Railroad as a transcontinental system.

I. BACKGROUND

Until this point, the doctoral thesis of Robert E. Gallamore, Deputy Administrator of the Federal Railroad Administration (FRA) that there should be no more than four transcontinental railroads, has dominated the Milwaukee landscape. The Booz-Allen report commissioned by the Trustee in Bankruptcy of the Milwaukee Road as well as the Consulting Center and Reebie studies, commissioned by the Department of Transportation (DOT) concluded that the Milwaukee Road had no future as a transcontinental carrier. DOT's withdrawal of ERSA funds from all but the Milwaukee Core System in August, set the stage for the embargo order issued by Judge Thomas R. McMillen in September, directing a discontinuance of all service on Milwaukee lines west effective October 31. This embargo, if carried out, will result in directed service by other railroads in this part of the country, which in turn will mean that the Milwaukee Road will have been conclusively terminated as a competitive transcontinental railroad. The directed service carriers will simply acquire all of the Milwaukee customers. In short, the embargo, as the Reorganization Court held, is actually a *de facto* abandonment.

Such a result is, of course, a solution of last resort. It would have a triple pre-emptive impact: (1) DOT through its edict, will have pre-empted the ongoing I.C.C. abandonment proceedings; (2) it will have pre-empted the I.C.C. in the fulfillment of its function in the evaluation of the Reorganization Plan; and (3) finally and most importantly, it will have pre-empted the Congress in its consideration of these bills and of H.J. Res. 341. A stay of execution from this death sentence, and preservation of the opportunity for the consideration of these bills and of the I.C.C. function came in the form of H.J. Res. 412, reversing the DOT's declaration and directing the Secretary of Transportation to apply ERSA funds to maintain the competitive trans-

continental service on the Milwaukee until November 30, thereby giving Congress sufficient time to deliberate on these bills.

The Bankruptcy Court, in deference to the Congressional judgment expressed in the form of H.J. Res. 412 extended the date of its embargo to November 30, conditioned upon obtaining a subordinated loan. The Bankruptcy Court is following the progress of these bills through the Congress very closely and has held a legislative status report conference.

H.J. Res. 341, the Florio-Madigan version of the bills before this committee, should be on the floor of the House of Representatives by the time this testimony is presented.

This is the point to which we have now come after many months of great effort to reverse the process which threatened the Milwaukee Road with extinction as a competitive force in the Northwest. It has been a long, arduous up-hill fight thus far simply to slow down the rush to judgment by the doomsayers. In the course of this effort, we have worked very closely with the staffs of the Senators and Congressmen representing the affected states and the representatives of the states and the shippers.

As the chairman knows, we need time to study the feasibility of an employee-shipper acquisition of the railroad.

Our canvas of employee sentiment on the Milwaukee Road to date has satisfied us that the employees are ready to surrender a substantial part of their claims against the estate—valued at possibly more than \$500 million—as consideration for the acquisition of the railroad upon sufficient evidence of viability. The employees directly and through their organizations have contributed considerably more than \$100,000 thus far in the effort to gain time to develop this program to preserve the Milwaukee Road as a transcontinental system, if at all possible.

Rail labor from the onset doubted the accuracy of the analysis and of the conclusions in the Booz-Allen report and in the other studies. Our skepticism that perhaps something was wrong with so swift a verdict of hopelessness was confirmed by the attitudes and judgments generally expressed by the men who have been employed on this railroad throughout their working lives. These views strengthened our resolve to leave no stone unturned in our effort, working with the coalition of the states and shippers, to determine whether the railroad was viable as a transcontinental system.

We joined with the shippers, in August of this year, to commission an independent assessment of these earlier studies. The result is the report of Policy and Management Associates, a well known, reputable independent research organization, which identified basic errors in the revenue projections of the Booz-Allen and DOT. The P and M conclusion demonstrates that our reluctance to accept the Booz-Allen and DOT studies was not unwarranted and that there is, after all, hope that this railroad may continue to function as a competitor to the Burlington-Northern.

The P and M study points up the significance of a heavy upturn in coal and in grain traffic, as well as a growing market in container traffic, within the reach of the transcontinental Milwaukee Railroad all of which was either understated or overlooked by the doomsayers. The new export policy initiatives underscore this point. The two major export expansion commodities, covered by the new initiatives, are grain and coal, destined to be shipped to the West. P and M translates this aspect of potential revenue into a profit position in the 1980's; given, of course, rehabilitation of key sections of track and roadbed as well as adequacy of equipment.

These P and M findings have been capped by the findings of the Office of Rail Public Counsel that the Milwaukee Costing Department made a substantial error in computing transportation expenses for train and engine costs on Lines West, amounting to approximately \$3 million. The error consisted of an admitted double count of these off- and on-branch costs.

According to the Office of Rail Public Counsel, the correction of this error shows that the profit contribution for Milwaukee lines west of Miles City should have been stated as \$12,703,555 for 1976; \$11,027,034 for 1977; and \$2,531,977 for the critical cold winter year of 1978, even with Milwaukee's program of downgrading service in this section.

We are told that there are yet further errors in costing items involving the Lines West not as yet quantified, which should result in a further improvement in the profit position.

The Milwaukee Road has not been losing money on Lines West. This critical factor added to the correction of potential revenue estimates discussed in the P and M report, vindicate the judgment, expressed in the pending bills, that additional

time is urgently needed to examine the future of this railroad, including a sufficient period to work on an ESOP-ESSOP Program.

There are other considerations which bear on the need for this legislation. I.C.C. approval of the BN merger was predicated upon continuing the competition from a strengthened Milwaukee Railroad (See 331 ICC at p. 271). The Office of Rail Public Counsel, through its consultants in its recent testimony before the I.C.C., represented that there is a sufficiency of traffic to support both BN and Milwaukee "if traffic rights and car-haul practices are judiciously applied on the outset until traffic levels recover sufficiently to permit full Milwaukee services." The BN thus far has shown no indication of cooperating in this respect and the I.C.C., although it can do so, has failed to direct such cooperation. It appears to us that the I.C.C. should take action along these lines when the bills before this committee are enacted.

It is our understanding that because of all of these developments, the Executive Branch is now engaged in a re-examination of the basis for its acceptance of the earlier negative reports. It is hoped that in the near future this re-evaluation by the Executive Branch will produce a positive impact on the project to maintain the Milwaukee Railroad.

We should note that the cost to the government posed by either of these bills or by H.J. Res. 341 is no greater than the cost of directed service which the government must inevitably bear if the Congress should fail to act on this legislation. In other words, the cost of the death sentence and the cost of reprieve are approximately the same over a 240 day period.

II. ESOP-ESSOP DIFFERENCES IN S. 1905 AND S.J. RES. 114.

Either of these bills will provide time to continue to work on the programs which we have described. Time, is, of course, absolutely essential. We feel that, in this respect, S. 1905 and H.J. Res. 341 are insufficient. Each week counts. For example, Mr. Louis Kelso, in the meeting with Senators Long and Baucus, and representatives of all of the railway labor organizations last spring, estimated that the development of an ESOP-ESSOP program would take six months. S. 1905 would require completion of this complex task by December 1 of this year or approximately 30 days from now. In this connection, it would better serve the objective of these bills to express the time factor in terms of days after effective date rather than in terms of a calendar day certain.

The provisions in Section 4(a)(3) of S.J. Res. 114 on ESOP feasibility findings are sound in our judgment and we urge their acceptance by this committee in lieu of the more troublesome provisions in S. 1905. Recent BLS studies show that productivity in the rail industry is the highest in the United States, and consequently there should be no need to belabor the productivity point. Furthermore, the productivity provisions in S. 1905, affecting, among other things, operating practices and rules, would disrupt existing collective bargaining agreements and would destructively intrude into the collective bargaining process.

For the same reasons, we urge the committee to eliminate the provisions in Section 5(f) of S. 1905 requiring changes in work rules as a condition to acceptable implementation of an ESOP-ESSOP program. The Milwaukee employee is committed to his job, and further, he is committed to preserving his railroad which he and his antecedents have served throughout their working lives. They have already committed tens of thousands of dollars to preserve the railroad. They stand ready to commit their claims as creditors of the bankrupt estate as an offset to the acquisition costs to the ESOP-ESSOP bill, if acceptable. Provisions of S. 1905 which question this record of employee service and loyalty are, in our view, harmful.

The funding provisions in the feasibility findings also warrant close examination. If we are to be successful in establishing an ESOP-ESSOP program, there should remain time for the Congress to consider appropriate legislation, possibly including some form of financial aid such as guarantees, to the extent that legislation may be desirable. To condition feasibility on federal sources in existence prior to January 1, 1989, could be fatal to the entire effort.

We should also like to suggest that the provisions in S.J. Res. 114 requiring clear and convincing evidence to overturn an I.C.C. determination of feasibility is important and should be retained.

In short, we would urge the committee to accept in its entirety the structure of the feasibility findings appearing in Section 4 of H.J. Res. 114.

III. EFFECTS UPON EMPLOYEES OF S. 1905 AND S.J. RES. 114

If the Milwaukee Trustee's Plan of Reorganization or one of the Trustee's several planned embargoes—which, operationally, come to about the same result—is ever

put into effect, some 5,000 employees of the Milwaukee will be without jobs. This number represents just about one-half of the work force of that railroad.

Employees of the Milwaukee are older than those found on most other U.S. railroads because the younger employees, seeing the handwriting on the wall have left the Milwaukee to seek employment on other railroads or in other industries. Among the employees represented by my own union for instance, 50 percent are over 40 years of age and 30 percent are over 50 years old. Among locomotive engineers, 45 percent are over 50 years old and an additional 12 percent are 15 to 25 years from retirement. These employees will have lost 20 to 40 years of hard-earned seniority. They will find it virtually impossible to find work within or outside the railroad industry should the Trustee's plans for reorganization or embargo go into effect.

Attached to my testimony as Exhibits A through G¹ are the statements of representatives of various unions representing employees on the Milwaukee. These statements were submitted under oath to the Interstate Commerce Commission during the recent hearings on the Milwaukee Trustee's application to abandon all lines west of Miles City, Montana. I respectfully request that they be incorporated and printed in the record of this proceeding. In examining these statements, one must keep in mind the fact that the abandonments they discuss are not nearly as extensive nor as severe as those contemplated by the Plan of Reorganization or the second embargo petition of the Trustee. Consequently, the employees' testimony should be viewed as a most conservative description of effects upon employees of Milwaukee Road restructuring.

A comparative analysis of S. 1905 and S.J. Res. 114 reveals a distinct and basic contrast in approach to the protection of the interests of these thousands of employees and their families. S.J. Res. 114 provides affected employees with the right of an election between the protections normally afforded employees in rail line abandonment and sales proceedings before the Interstate Commerce Commission and specific thought lesser protections set forth in its Sections 7 through 12. These specified protections would be paid in part by the estate of the Milwaukee Road and in part by the government. S. 1905, on the other hand, provides the employee only that protection normally imposed by the I.C.C. in abandonment and sales proceedings.

It has been estimated that I.C.C.-imposed protections conceivably could cost the estate of the Milwaukee Road hundreds of millions of dollars. Quite obviously, the indenture trustees and other creditors of the Milwaukee would oppose vigorously the payment of such monies to the employees until those creditors have had their claims against the Milwaukee fully satisfied. There can be little doubt that no affected employee of the Milwaukee would receive one dollar of the protection benefits due him until the Supreme Court of the United States had determined the priority of his claim and even then he would be put to proof in an arbitration proceeding as to whether he was affected by a sale under I.C.C. authority or by an abandonment under court order and the extent of that effect.

Clearly, the employees of the Milwaukee would be forced to wait many years before receiving the monies owed them. When those monies ultimately were paid they undoubtedly would amount to considerably less than one hundred cents on the dollar, depending upon the monies available for payment and the employees' position on the list of priority creditors.

The protections afforded by the Interstate Commerce Act, would be of little or no practical value to the employees who have lost their jobs, have no income and stand very little likelihood of securing other employment.

Regretfully, S. 1905 contains no provisions which would provide any effective protection to the thousands of Milwaukee employees and their families who would be very severely hurt by the abandonment and sale of some 7,000 miles of Milwaukee system.

The \$75 million in obligation guarantees contained in Section 8 of S.1905 places no requirement on the Trustee to provide employees with any protection other than that afforded by the Interstate Commerce Act. Indeed, those guarantees undoubtedly would be used by the Trustee as an offset against his ultimate obligation to employees under Section 11347 of the Interstate Commerce Act following the employees' years of litigation to establish their claims.

S.J. Res. 114, on the other hand, contains a number of provisions which we believe essential if affected employees are to receive meaningful protections upon a restructuring of the Milwaukee Road. While these provisions afford considerably less protection for employees than they are entitled to under the Interstate Commerce Act and certainly less than employees traditionally have received under earlier Acts

¹ The exhibits are in the committee files.

of the Congress; however, this lesser protection would be provided the employees when it is needed most—at the time the employee is hurt.

Given the unique circumstances surrounding the Milwaukee situation, the legislative practicalities involved and the fact that the employees retain an election to seek the protections to which they normally would be entitled under the Interstate Commerce Act, the RLEA reluctantly but firmly supports the employee protection arrangements contained in S.J. Res. 114.

Section 7 of S.J. Res. 114 provides moving expenses for employees required to change their place of residence in order to continue working. These expenses are to be paid out of the estate of the Milwaukee. (The employees, however, are not protected against the losses they will suffer on the forced sales of their homes.) Section 8 affords to employees who are deprived of employment, supplemental unemployment insurance equivalent to 80 percent of their previous earnings for a maximum of 36 months and a minimum of 8 months. (Protection under the Interstate Commerce Act provides 100 percent for 72 months.) Section 10 provides employees with a guarantee of compensation in their new railroad job of at least 80 percent of that which they formerly earned; this to be paid by the Milwaukee. (Interstate Commerce Act protection is 100 percent for 72 months.) Section 11 provides severance pay equivalent to \$2,000 for each year of service with the Milwaukee to a maximum of \$25,000 to be paid by the Milwaukee. (The Interstate Commerce Act protection provides 16½ months of average monthly pay with no maximum.)

To provide funding for the separation pay, moving expenses and the displacement allowance or "relocation incentive compensation" as it is styled in S.J. Res. 114, the Milwaukee estate has agreed to provide \$75 million which will be underwritten by the Secretary of Transportation in the form of obligation guarantees (Sec. 15 of S.J. Res. 114).

The protection provisions of S.J. Res. 114, like those of other statutes and agreements in the railroad industry, are not self-executing and therefore we recommend the inclusion of a provision on arbitration procedure similar to that imposed by the I.C.C. under Section 11347. A suggested arbitration provision virtually identical to those now imposed by the I.C.C. and the Secretary of Labor under the law which created Amtrak and Section 13(c) of the Urban Mass Transportation Act of 1964, as amended, is attached to my prepared testimony as Exhibit H. I ask that it be incorporated and printed in the record of this proceeding and respectfully recommend that it be inserted as a new Section 14 to S.J. Res. 114 with subsequent sections renumbered appropriately.

What may become of immense positive significance to the entire railroad problem in this country are three provisions of S.J. Res. 114 which provide for preferential hiring by other railroads of laid-off Milwaukee employees (Sec. 6); a job bank maintained by the Railroad Retirement Board which, if it proves feasible in the case of the Milwaukee, could be expanded and utilized to provide employment and skilled employees throughout the railroad industry—this could prove to be a much needed boon for both rail labor and rail management; and, a program of retraining for affected employees. These latter three provisions undoubtedly will lessen the overall cost of employee protection while advancing the welfare both of the employees and the industry itself. Attached as Exhibit I to my prepared testimony is a suggested substitute for Section 6 of S.J. Res. 114. This substitute is identical to one to be submitted in the House for H.J. Res. 341 in order to avoid any possible conflict with affirmative action programs throughout the country.

S. 1095 unfortunately contains none of the provisions just mentioned with the result that no employee of the Milwaukee would receive protection payments when most needed, and probably little or no work in or out of the industry. Consequently, the ultimate burdens on the taxpayer in the form of higher cost of unemployment and welfare payments needed to care for those among the 5,000 who would become destitute, would increase significantly.

So far as we are aware, no party with a significant stake in the enactment of legislation involving the future of the Milwaukee, including the Trustee, objects to protecting effectively those persons who will bear the greatest economic and human burden upon cessation of Milwaukee operations over the major portion of the Milwaukee's lines. H.J. Res. 341, now pending in the House, is very similar to S.J. Res. 114 and, since speed of enactment is of critical importance in this situation, the RLEA respectfully recommends that S.J. Res. 114 be reported favorably by this Committee with all possible speed and passed by the Senate. These two very comparable bills may then be combined into one and quickly enacted into law.

Passage of S. 1095 because of its disparity with H.J. Res. 341 might well cause a delay of enactment beyond the point when enactment of any bill would serve a

useful purpose. As matters now stand, the Milwaukee—or at least the approximately 7,000 miles the Trustee wishes to embargo—will cease operations on November 30, 1979. Unless legislation is enacted prior to that date, there will be no Milwaukee upon which bills such as S. 1905, S.J. Res. 114 and H.J. Res. 341 could be effective. On December 1, 1979, directed service will take place at enormous expense to the taxpayer—an expense which would just about equal the cost of the government of the employee protection in S.J. Res. 114.

We respectfully submit that in terms of human and economic cost, S.J. Res. 114 is the best bargain presently available to this Committee and we earnestly recommend its adoption.

There is one additional matter which I would like to present to the Committee before closing my remarks. The RLEA consistently has opposed providing reorganization courts with authority over abandonments and sales of railroad property. There are two basic reasons for this position. First, a reorganization judge has no expertise whatever in transportation; and, second, reorganization courts, rightly or wrongly, generally are more concerned with the protection of creditors' interests than with the preservation of rail transportation in the public interest. The RLEA believes, however, that if the Congress desires to place authority over abandonments in reorganization judges, then such authority should include as well sales of rail property and the inclusion of those employee protections which the Interstate Commerce Act requires in such cases. In most cases, a sale and an abandonment will occur simultaneously and involve the same line. For example, Railroad "X" may wish to buy 20 miles of a 100-mile Milwaukee line by which "X" would have access to a very profitable gateway but have no use for the remaining 80 miles of the line. The sale and abandonment of that line is actually a single transaction which should be handled by a single tribunal.

If the authority to approve sales and abandonments is to be removed from the I.C.C. and placed in reorganization courts, the statutory protections of employee interests now required of the I.C.C. in such cases should also be required of the courts. Employees should not be deprived of their statutory rights merely because of a change in tribunals administering those rights.

We respectfully submit the law should be consistent in the matter of reorganization court authority over abandonments and sales. Whatever authority and obligations are placed upon the Milwaukee reorganization court should also be placed upon other reorganization courts. Therefore, if the Milwaukee Reorganization Court is to have abandonment and sales authority, so should all such courts.

In summary, S. 1905 contains no monetary protections for employees of the Milwaukee and no aids to their securing other employment. S.J. Res. 114 contains such protections and aids. Further, S.J. Res. 114 is very similar to H.J. Res. 341 and therefore enhances the probability of swift enactment which is absolutely vital if all the efforts of the Congress are not to be rendered moot on December 1, 1979.

For these reasons, the RLEA as the representative of the employees of the Milwaukee Road respectfully urges this Committee to report favorably and quickly S.J. Res. 114.

Thank you for your attention and this opportunity to present rail labor's views on this vital legislation.

Senator EXON. We will proceed now with the last panel that we have scheduled for the hearing this morning.

We will ask Mr. William H. Brodsky, executive vice president of the New Milwaukee Lines, and Mr. Russell F. Murphy, executive vice president of The Consulting Center in Alexandria, Virginia, to come forward at this time.

Gentlemen, we welcome you. Other members of the committee have stepped out of the room for a few moments to discuss some possible compromise, as I understand it.

The testimony that you are offering at this time will be a part of the record, of course. And we're very much interested in your input to be helpful where you can on the problems that confront us with members of the committee. So if it's satisfactory with both of you, I'll recognize Mr. Brodsky first.

STATEMENTS OF WILLIAM H. BRODSKY, EXECUTIVE VICE PRESIDENT, NEW MILWAUKEE LINES; AND RUSSELL F. MURPHY, EXECUTIVE VICE PRESIDENT, THE CONSULTING CENTER, USA INC.; ACCOMPANIED BY JAMES WICKWIRE, COUNSEL

Mr. BRODSKY. Thank you, Mr. Chairman, and thank you for receiving my statement in its entirety as a part of the record.

Senator EXON. Without objection, the statement is accepted as part of the record.

Mr. BRODSKY. Mr. Chairman, distinguished members of the committee: My name is William H. Brodsky. I appear here today as executive vice president of the New Milwaukee Lines, an organization composed of employees, shippers, and representatives of the northern tier of states served by the Milwaukee Railroad.

With me are Mr. Russell F. Murphy on my left, executive vice president of The Consulting Center, USA Inc., a Washington, D.C.-based consulting firm widely known for its expertise in transportation matters; and Mr. James Wickwire of the Seattle law firm of Wickwire, Lewis, Goldmark and Schorr, counsel to the New Milwaukee Lines.

Since I last appeared before the committee on September 7, several encouraging developments have occurred which speak well for the eventual acquisition of a substantial portion of the Milwaukee by a new employee shipper-owned company. First, through the efforts of Mr. Murphy and those working with him, we are far along in preparing our plan of reorganization, built around the transcontinental system from Louisville to Chicago, to the Twin Cities, and on to the Pacific Northwest.

We are convinced that when our plan is completed on or before December 1, 1979, it will stand up to the most rigid scrutiny. We think that we will be able to establish to the satisfaction of the trustees, the Reorganization Court, the ICC, the administration and the Congress that our plan is far superior to the trustees' proposed Milwaukee II system.

Second, an independent assessment of the various studies conducted under the auspices of the Department of Transportation has recently concluded that sufficient revenue exists in the Milwaukee's western lines to sustain a viable railroad from the Twin Cities to the Seattle-Tacoma area, and most probably a viable Louisville transcontinental system as well.

Third, expert testimony has been presented in the ongoing ICC abandonment proceedings to determine the fate of the Milwaukee lines west of Miles City, Mont., which establishes that, while the Milwaukee system as a whole is losing a large amount of money, those losses are not occurring in the system west of Miles City. In fact, the western lines have made a positive contribution toward operation of the system.

In 1976, lines west of Miles City contributed \$9.9 million of avoidable costs; in 1977, \$8 million; and in 1978, under greatly reduced service levels, the line only lost \$400,000.

In startling contrast, the rest of the Milwaukee system lost \$28.3 million in 1976; \$62.6 million in 1977; and \$73.9 million in 1978.

Contrary to what the trustee and the Federal Railroad Administration have asserted, the drain is not in the West. This informa-

tion came from the railroad's own appendix K, which is an attachment to the trustee's abandonment petition.

Fourth, we are greatly encouraged by recent interest that both domestic and foreign investors have shown in a reorganized Milwaukee system built around the transcontinental railroad. This week, at the invitation of several major trading companies, a delegation headed by Montana Governor Thomas Judge and including representatives of New Milwaukee lines, is meeting in Tokyo with Japanese companies to discuss potential investment in a shipper employee-owned railroad. Other Pacific rim countries will be the scene of similar meetings next week. This despite the fact that we have not completed work on the final reorganization plan.

We have met several times in the past few days with trustee Ogilvie and his legal counsel to discuss in a preliminary way a possible means of transferring ownership of the employee shipper-owned company. We think we have provided the trustee with a framework by which all parties to the reorganization proceeding can be treated fairly and equitably and at the same time preserve the essential rail services of the Milwaukee.

Sixth, we are pleased with the attention your committee, its members, and other interested Senators have given the Milwaukee problem in recent weeks. We are especially grateful to Senator Magnuson and Senator Baucus for their efforts to keep the Milwaukee operating for a limited period of time with the help of ERSA funding.

The Magnuson amendment, which recently enacted a continuing resolution, should have prevented the imposition of the embargo order on the railroad's lines outside of the trustee's proposed Milwaukee II and would have allowed time for this committee to complete its work on more comprehensive Milwaukee legislation in time for the full Senate and House to take final action.

We did not, however, anticipate that the FRA would take it upon themselves to defy the intention of the Congress and to frustrate the trustee in an attempt to draw down necessary ERSA funds in order to continue the operation of the entire system for a period of 30 days.

Mr. Chairman, I want to briefly address some general points that argue strongly for a solution of the Milwaukee bankruptcy that will result in a viable self-sustaining railroad in which employees will have a substantial ownership stake. I would like then to complete my statement by addressing New Milwaukee Lines' views and concerns about the various legislative proposals pending before this committee.

The greatest strength of the reorganization proposal we will make on December 1 aside from its viability is that the employees of the Milwaukee will assume an ownership position in the new railroad company. The employees appear willing to relieve the Milwaukee estate of their labor protection claims and that obligation would be transferred to a new company.

The solution that we will propose, Mr. Chairman, will minimize the Federal Government's financial participation in the reorganized railroad by drawing heavily on the private sector for financing the rehabilitation and acquisition of rolling stock, and by bring-

ing the railroad shippers into an equity position with the employees.

The Federal Railroad Administration has suggested that a Federal commitment of \$1 billion would be the price tag for a reorganized Milwaukee along the lines we will propose. The trustee has recently asserted that our employee-shipper reorganization plan would require a Federal commitment of \$500-750 million.

Neither of these numbers is even in the ballpark. We estimate that the maximum Federal participation through the use of loan guarantees, not grants, and preference share funding will be \$250 to \$300 million. This figure represents the cost of track rehabilitation and funding of initial operating losses and capital requirements through the employee stock ownership trust.

Contrary to the administration's recent assurances that it would reexamine its position regarding the Milwaukee transcontinental line, it is questionable that any good faith reconsideration was ever intended. Precisely at the time the administration was supposedly reconsidering its position, Mr. John M. Sullivan, FRA Administrator, attacked the efforts of the northern tier Congressional delegation as previously discussed by Senator Baucus.

This is typical of the bias that FRA has demonstrated throughout the period in which alternative solutions have been sought that would retain competitive transcontinental service in the northern tier States. I have gone into some detail in my statement differentiating between the proposed New Milwaukee Lines solution and the situation that existed for ConRail, and I won't cover that in detail at this point. But it is in my statement.

The New Milwaukee Lines proposal will provide the only solution that protects the long-range needs of the Nation to transport coal from Montana both eastbound and westbound. Critics of the Policy and Management Associates assessment have suggested that the Milwaukee presently does not serve any of the mines directly, and they would not participate in the traffic. This is simply not true.

Mr. Paul Schmechel, president of the Montana Power Co., which owns and operates the second-largest open pit coal mine in the United States through its subsidiary Western Energy Co., has stated in previous hearings before Senate committees that traffic is available to the Milwaukee today if the Milwaukee would just make an effort to capture it.

The shippers and receivers of coal traffic can influence the routing in favor of the Milwaukee and have indicated a willingness to do so. In addition, many of the most promising new coal reserves presently have no rail service at all. When new lines are built into areas of future development, the Milwaukee will have equal access to the Burlington Northern.

I think a most fundamental problem to the entire question of coal is that Burlington Northern does not have the capacity in its present main line system connecting the coal fields and the principal area of consumption to handle the volumes of coal being projected. This is evidenced by the following factors:

One, the heaviest density single-track lines in North America can handle approximately 45 million gross tons per mile. This is half of the projected coal tonnage eastbound from Miles City and

less than a third of the projected tonnage eastbound out of Montana and Wyoming. Even in its present deteriorated condition, Mr. Chairman, the turnaround time for unit coal train equipment to common destinations is quicker on the Milwaukee Railroad than on the Burlington Northern system.

It is important to understand that economic capacity is reached far sooner than the purely physical capacity of a given railroad system. As density and congestion increase over a given line of railroad, utilization of assets decreases, thus requiring more cars, more locomotives and personnel to handle a given volume of traffic. This is the only reason that the Milwaukee can today, in its present deteriorated condition, provide a level of service for coal superior to Burlington Northern.

Capacity constraints westbound are even greater. Our operating terrain and terminal congestion substantially reduce the theoretical capacity of both Burlington Northern and the Milwaukee system. Neither the Burlington Northern nor the Milwaukee system by themselves would be able to handle the increased demand for coal traffic, in addition to the other growth in rail traffic presently being projected in the northern tier States.

The New Milwaukee Lines proposal is the only solution that will retain competitive rail service over 1,700 miles of territory between the Twin Cities and the Pacific Northwest.

Abandonment of the Milwaukee's transcontinental route will leave the Burlington Northern in a monopolistic position at the very time the administration is pursuing deregulation of the industry. It would be unconscionable to drive the final nail into the coffin of rail competition in a region of the country most dependent on rail transportation of goods and products.

Turning now to the legislation, of the two major proposals pending before the committee, we strongly support S.J. Res. 114, introduced by Senator Magnuson and other Senators across the northern tier States presently served by the Milwaukee. Since the timetable for the markup and the furthering of this bill has moved ahead at a much faster pace than what we had envisioned when this statement was prepared, I would like to call on Jim Wickwire to make a couple of brief comments concerning the legislation.

Mr. WICKWIRE. Mr. Chairman, as Mr. Brodsky has indicated, the New Milwaukee Lines strongly supports the provisions of Senate Joint Resolution 114, introduced by Senator Magnuson. However, it appears that the committee will probably take up S. 1905 as a markup vehicle here, and there are certain key amendments that New Milwaukee Lines feels are essential to a bill that would provide a reasonable process by which the proponents of the shipper and employee acquisition plan would be able to submit that plan to the ICC and have the court review it and have a reasonable period of time to implement the plan.

The key thing we feel is that the implementation date should be extended from March 1, 1980, to May 10, 1980. That's just an additional 70 days, but it is really key here because of the tremendous burden that the proponents of the plan face in implementing the very complex plan during such a short period of time.

That period, I should also add, would coincide with the ICC's consideration of the reorganization plan submitted by the trustee

and the second phase of abandonment that would be considered by the ICC.

Second, although it's a technical matter, I think the legislation should make crystal clear the problem that arose in the courtroom on Friday, that is, that I don't think the Secretary of Transportation or the Federal Railway Administration can be left with any discretion that would permit that agency to frustrate what appeared to us to be very clear congressional intent under the continuing resolution to make ERSA funds available to the Milwaukee for a limited period of time to retain that system during a period that this other process that's contemplated by S. 1905 can be worked out.

We would like to submit some language to the committee for that purpose.

Another key facet of this is that the Cannon bill, S. 1905, provides for the maintenance of service at a level in effect on the date of enactment, and we don't know when this bill is going to be enacted. And each day that goes by, there's a further falling off of service, and we would like to see the October 1, 1979, level of service maintained, which was the level of service provided for in the continuing resolution.

Finally, one last comment. Nowhere in any of the bills other than the Magnuson bill is there any attempt to define what is meant by implementing the plan. Now, if the committee is unwilling to attempt a definition, at least there should be some report language that would make it clear that if we have gone through this entire process and have succeeded in having an ICC determination that the plan is feasible, we have had the court rule that it treats the creditors fairly and equitably, and have implemented it to the point where we are really in place and ready to go, but all the funding has not been received because a decision has not been made in, let's say, the Federal Railway Administration relative to rehabilitation financing, we would not want to see the plan frustrated by the fact that the actual funds have not been disbursed as of the date that has been set as the implementation deadline. [The statement follows:]

STATEMENT OF WILLIAM H. BRODSKY, EXECUTIVE VICE PRESIDENT, NEW
MILWAUKEE LINES

Mr. Chairman, distinguished members of the Committee, my name is William H. Brodsky. I appear today as Executive Vice President of New Milwaukee Lines, an organization composed of employees, shippers and representatives of the governors of the Northern Tier States served by the Milwaukee Railroad. With me are Russell F. Murphy, Executive Vice President of the Consulting Center USA, Inc., a Washington, D.C., consulting firm with widely acknowledged expertise in transportation matters, and James Wickwire of the Seattle law firm of Wickwire, Lewis, Goldmark & Schorr, counsel to New Milwaukee Lines.

Since I last appeared before the Committee on September 7, several encouraging developments have occurred that bode well for the eventual acquisition of a substantial portion of the Milwaukee Railroad by a new employee-shipper owned company. First, through the efforts of Mr. Murphy and those working with him, we are far along in preparing a plan of reorganization built around a transcontinental system from Louisville to Chicago and the Twin Cities to the Pacific Northwest. We are convinced that when our plan is completed on or before December 1, 1979, it will stand up to the most rigid scrutiny. We think that we will be able to establish to the satisfaction of the Trustee, the reorganization court, the ICC, the Administration and the Congress that our plan is far superior to the Trustee's proposed Milwaukee II system.

Second, an independent assessment of the various studies conducted under the auspices of the Department of Transportation has recently concluded that sufficient revenue exists in the Milwaukee's western lines to sustain a viable railroad from the Twin Cities to the Seattle-Tacoma area, and, most probably, a viable Louisville-Transcontinental system as well. Although the Policy Management and Associates' independent assessment, jointly funded by our organization and the Railway Labor Executives' Association, does not answer all the questions about our proposed alternative to the Trustee's Milwaukee II plan, it nonetheless provides an unbiased review of the departmental studies and answers the threshold question of whether continuing our effort would be counterproductive. No more than you, Mr. Chairman, do we want to beat a dead horse. Building on the initial work of the SORE organization, the PMA assessment and the detailed plan that Mr. Murphy's firm is preparing, we are confident our effort will demonstrate that a solid basis exists for reorganizing a large part of the existing Milwaukee.

Third, expert testimony has been presented in the ongoing ICC abandonment proceeding to determine the fate of the Milwaukee's lines west of Miles City, Montana that establishes that, while the Milwaukee system as a whole is losing substantial amounts of money, those losses are not occurring in the system west of Miles City. In fact, the western lines have made a positive contribution toward operation of the system. In 1976 lines west of Miles City contributed \$9.9 million over avoidable costs; in 1977, \$8.0 million; and, in 1978, under greatly reduced service, the line only lost \$4 million. In startling contrast, the rest of the Milwaukee system lost \$28.3 million in 1976, \$62.6 million in 1977, and \$73.9 million in 1978. Contrary to what the Trustee and the Federal Railway Administration have asserted, the drain is not in the West. This information came from the Railroad's own Appendix K which is an attachment to the Trustee's abandonment petition. While we cannot predict the outcome of the ICC abandonment proceeding, we fail to see how an abandonment can be approved in view of these facts.

Fourth, we are greatly encouraged by recent interest that both domestic and foreign investors have shown in a reorganized Milwaukee built around a transcontinental system. This week, at the invitation of several major Japanese trading companies, a delegation headed by Montana Governor Thomas Judge, and including representatives of New Milwaukee Lines, is meeting in Tokyo with the Japanese companies to discuss potential investment in an employee-shipper owned railroad. Other Pacific Rim countries will be the scene of similar meetings next week.

Fifth, despite the fact we have not completed work on our final reorganization plan, we have met several times in the past few days with Trustee Ogilvie and his legal counsel to discuss, in a preliminary way, a possible means of transferring ownership to an employee-shipper owned company. We think we have provided the Trustee with a framework by which all parties to the reorganization proceeding can be treated fairly and equitably, and at the same time, to preserve the essential rail services of the Milwaukee.

Sixth, we are pleased with the attention your Committee, its members and other interested Senators have given to the Milwaukee problem in recent weeks. We are especially grateful to Senator Magnuson and Senator Baucus for their efforts to keep the Milwaukee operating for a limited period with the help of ERSA funding. The Magnuson amendment to the recently enacted Continuing Resolution should prevent the imposition of an embargo on the Railroad's lines outside of the Trustee's proposed Milwaukee II, and will allow time for this Committee to complete its work on more comprehensive Milwaukee legislation and time for the full Senate and House to take final action within the next few weeks.

Mr. Chairman, I want to briefly address some general points that argue strongly for a solution to the Milwaukee bankruptcy that will result in a viable, self-sustained railroad in which the employees will have a substantial ownership stake. I would then like to complete my statement by addressing New Milwaukee Lines' views and concerns about the various legislative proposals pending before the Committee.

The greatest strength of the reorganization proposal we will make on December 1, aside from its viability, is that the employees of the Milwaukee will assume an ownership position in the new railroad company. Through incentives derived from employee ownership, the prospects for the new company's success will be greatly enhanced. Where we are today with this proposal is substantially attributable to the commitment the employees have already made. Out of their own pockets, the employees individually have come up with over \$170,000 to keep this effort alive. To date, that is more than any other single source of funds that New Milwaukee Lines has obtained.

The employees appear willing to relieve the Milwaukee estate of their labor protection claims and that obligation would be transferred to the new company. When we are able to demonstrate within the next five weeks that we have a feasible reorganization plan, we are confident that the employees will step forward and make the necessary commitment. I am sure there will be a few employees that will elect not to relieve the estate of their claims, but we are convinced that the overwhelming majority will do so. We anticipate that our reorganization plan will retain the maximum number of jobs available and that through attrition, the actual number of employees deprived of work will be very small.

The solution that we will propose, Mr. Chairman, will minimize the federal government's financial participation in the reorganized railroad by drawing heavily on the private sector for financing the rehabilitation and acquisition of rolling stock and by bringing the railroad's shippers into an equity position with the employees. The Federal Railway Administration has suggested that a federal commitment of \$1 billion would be the price tag for a reorganized Milwaukee along the lines we will propose. The Trustee has recently asserted that our employee-shipper reorganization plan will require a federal commitment of \$500-\$750 million. Neither of these numbers is even in the ballpark. We estimate that the *maximum* federal participation through the use of loan guarantees, not grants, will be \$250-\$300 million. This figure represents the cost of track rehabilitation and funding of initial operating losses and capital requirements through the employee stock ownership trust.

Contrary to the Administration's recent assurances that it would reexamine its position regarding the Milwaukee's transcontinental line, it is questionable that any good faith reconsideration was ever intended. At precisely the time the Administration was supposedly reconsidering its position, Mr. John M. Sullivan, FRA Administrator, labeled the efforts of the Northern Tier congressional delegations as a "politically hysterical nonsensical exercise." This is typical of the bias that FRA has demonstrated throughout the period in which alternative solutions have been sought that would retain competitive transcontinental service in the Northern Tier states. The credibility of FRA to oversee any significant restructuring of this Nation's railroad system is subject to serious doubt.

Mr. Sullivan has expressed concern that the New Milwaukee Lines proposals for an employee-shipper owned railroad will result in a Conrail West solution. Let me assure you, Mr. Chairman, that our organization and its constituency have no interest in a Conrail-type solution. That is precisely why the employees and shippers are prepared to assume the risk of making our proposal work. Let me differentiate between the situation that resulted in Conrail and the situation that faces the Milwaukee Railroad today.

1. The economy of the Pacific Northwest is growing at an unprecedented rate placing greatly increased demand on the transportation facilities available to support that growth. The economy of the Northeast has been static at best and, for the most part, has been experiencing a decline.

2. The transportation requirements of the Pacific Northwest are especially suited to rail for the reason that bulk commodities move extremely long distances generally in excess of 1,000 miles and are simply not susceptible to diversion to trucks as compared to the East where the average length of haul is half of that of the West and trucks provide intense competition.

3. Conrail accomplished little relative to restructuring and tearing down its plants. The New Milwaukee Lines proposal will accomplish substantial restructuring in the Midwest.

4. Conrail involved the reorganization of seven individual railroads which produced a system of enormous size and complexity. The New Milwaukee Lines proposal deals with one specific carrier.

5. The rolling stock which Conrail inherited from the seven bankrupt railroads was in much worse condition than originally anticipated thus requiring greatly increased expenditures for rehabilitation and acquisition. The Milwaukee, to the contrary, has already rehabilitated a substantial portion of its locomotive and freight car fleet with 4-R Act and shipper assistance. The remaining requirements for rehabilitation and acquisition can be clearly defined and are being incorporated in our reorganization plan.

In summary, Mr. Chairman, the comparison of Conrail with the New Milwaukee Lines proposal is simply a scare tactic designed to prevent the employees of the Milwaukee from having an opportunity to acquire their railroad.

The New Milwaukee Lines proposal will provide the only solution that protects the long-range needs of this Nation to transport coal from Montana both eastbound and westbound. Critics on the PMA assessment have suggested that since Milwaukee presently does not serve any of the mines directly they would not participate in

the traffic. This simply is not true. Mr. Paul Schmechel, President of Montana Power Company which owns and operates the second largest open pit coal mine in the United States through its subsidiary Western Energy Corporation, has stated in previous hearings before Senate committees that traffic is available to the Milwaukee today if the Milwaukee would just make the effort to capture it. The shippers and receivers of coal traffic can influence the routing to favor the Milwaukee and had indicated a willingness to do so. In addition, many of the most promising new coal reserves presently have no rail service. When new lines are built into areas of future development, the Milwaukee will have equal access with Burlington Northern.

A most fundamental problem to the entire question of coal movement is the fact that Burlington Northern does not have the capacity in its present mainline system connecting the coal fields and the principal areas of consumption, to handle the volumes of coal being projected. This is evidenced by the following factors.

1. The heaviest density single track lines of North America can handle approximately 45 million gross tons per mile. This is half of the projected coal tonnage eastbound from Miles City and less than one-third of the projected tonnage south-east out of the Montana and Wyoming mining areas.

2. Even in its present deteriorated condition, turnaround of unit coal train equipment to a common destination is quicker on the Milwaukee Road than on the Burlington Northern system. It is important to understand that economic capacity is reached far sooner than the pure physical capacity of a given rail system. As density and congestion increase over a given line of railroad, utilization of assets decrease thus requiring more cars, locomotives and personnel to handle a given volume of traffic.

3. The capacity constraints westbound are even greater where operating train and terminal congestion substantially reduce the theoretical capacity of both the Burlington Northern and the Milwaukee systems. Neither the Burlington Northern nor the Milwaukee system by themselves will be able to handle the increased demand for coal traffic in addition to the other growth in rail traffic presently being projected in the Northern Tier states.

The role of the Pacific Northwest ports in handling foreign trade has been growing at unprecedented rates. The Port of Seattle has presented testimony before this Committee and in the bankruptcy proceedings that rail capacity is their primary concern relative to future growth. It has been suggested that containerized traffic will be diverted to trucks. Again, this simply is not true. Trucks do not compete for traffic which moves to the Midwest and East Coast, distances of 2,000 to 3,000 miles. Our highway system will become cluttered with this traffic only if it is forced to the highways as the result of short-sighted decisions that would destroy critically needed rail capacity.

The New Milwaukee Lines proposal is the only solution that will retain competitive rail service over 1,700 mile territory between the Twin Cities and the Pacific Northwest. Abandonment of the Milwaukee's transcontinental route would leave the Burlington Northern in a monopolistic position at the very time that the Administration is pursuing deregulation of the industry. It would be unconscionable to drive the final nail into the coffin of rail anti-competition in the region of the country most dependent upon rail transportation to market its products.

Turning now to the proposed Milwaukee legislation, of the two major proposals pending before the Committee, we strongly support S.J. Resolution 114, introduced by Senator Magnuson and other Senators across the Northern Tier of states presently served by the Milwaukee. The Magnuson bill would establish a process whereby the reorganization plan or acquisition plan, if you will, that Mr. Murphy and his associates are preparing would be submitted to the ICC on or before January 1, 1980, for a determination as to its feasibility. The reorganization court would then have ten days to review the plan's fairness to the estate's creditors, and then we would have an additional 90 days in which to implement the plan.

Given the magnitude of the task and the complexity of the issues involved, that entire time frame—between now and May 10, 1980—is extremely short in which to obtain the necessary public and private financing commitments to make it work. We recognize that from a public policy standpoint, the Milwaukee cannot be carried indefinitely with ERSA funds, but also must stress that a deadline of May 10, 1980, is virtually tomorrow in light of the task ahead. We can live with that deadline, but anything less than that, such as the March 1, 1980, deadline provided in S. 1905 would place an impossible burden on the proponents of an employee-shipper acquisition plan.

We are aware that the Trustee objects to the ESOP plan implementation provisions of the Magnuson bill. He argues that they are not tight enough and that at

the end of the five month process, we will be back seeking new legislation to provide the funds that are necessary to implement a plan found to be feasible and fair to the creditors. Let me assure you, Mr. Chairman, that such an interpretation of the language of Section 4 of S.J. Resolution 114 is not intended. We are as anxious as anyone to complete the process and, if the required public and private financing is available, to implement the plan and to commence rail operations. Our organization would be agreeable to technical changes in the language of Section 4 to make that clear.

Mr. Chairman, as the Committee proceeds to mark up legislation on the Milwaukee, New Milwaukee Lines respectfully requests an opportunity to submit any amendments that would help to ensure that the basic intent is carried out to provide a limited period of time during which to test the feasibility of an employee-shipper ownership plan and permit its implementation in the time frame specified. Again, Mr. Chairman, we deeply appreciate the Committee's sensitivity to the problems of the Milwaukee Railroad and the alternative we propose.

Mr. BRODSKY. Mr. Chairman, I would like to call now on Mr. Russell F. Murphy of the Consulting Center to advise the committee on the status of our acquisition reorganization plan and some of his preliminary findings.

Mr. MURPHY. Thank you, Mr. Chairman.

Two of my purposes for testifying today are to describe the process by which I and others are analyzing the potential viability of the Milwaukee transcontinental railroad that would include lines west of Miles City, Mont., to the Seattle-Tacoma area, as well as to present some preliminary findings and views as to why such a system appears promising.

I'd like to submit my complete testimony for the record so I may skip larger portions of it and just bring out these highlights. The general methodology of our analysis is to rely on all that has been done before and to delve into very significant aspects such as revenue potential and certain aspects of operating loss, including rehabilitation.

My statement dwells on those particular highlights. The key point I would like to get into begins with the issue of self-sustainability, and when I mention the phrase self-sustainability I'm referring to a system which is projected to perform financially well enough to adequately service equity holders, fixed debt holders, as well as any sufficient cash to meet future capital demands.

Many of the preliminary findings, some of which have been mentioned today, clearly indicate that there is traffic potential as well as a need for the service. Part of my testimony dwells on one particular point of interest, that the western lines are indeed net contributors of cash rather than losers, as so many others have asserted in the recent past.

Another aspect of our review has been the Milwaukee II plan, which is the plan of reorganization that, so to speak, is on the table at this point in time. And the point I'd really like to make is that I sincerely believe the performance of the Milwaukee II as projected by the trustees is excessively optimistic. Since that projected performance is highly unlikely, in my opinion, Milwaukee II will not meet the benchmarks of success which are established by the trustee in its reorganization plan. It is my opinion that pursuing the Milwaukee II reorganization plan is tantamount to liquidation of the entire railroad beginning about 1983.

I believe that the transcontinental option is more financially promising than the Milwaukee II option and would better meet

public interest criteria. Our transcontinental option will retain more employees, approximately 8,000 versus 5,000 to 6,000 in the Milwaukee II plan. It will avoid economic impact to shippers in the West, whose livelihood revolves around the railroad, and still service the Midwest. It will preserve railroad competition in the West, most of which would otherwise rely on a single rail carrier. It would preserve rail capacity in an area where coal, corn, and grain traffic is growing at rates far greater than historic averages, and might ultimately strain the capacity of the rail system if the western lines of the Milwaukee are absent. Furthermore, even the creditors would be better off with our plan.

Our analysis will be complete by the end of November 1979. We will immediately make copies of it available to this committee.

While I cannot speak to the financial viability of the transcontinental system we are devising with as much conviction as I can when all quantitative analysis will be complete, I am sufficiently confident to say, at this point in time, that a potentially viable transcontinental system can indeed be forged out of the existing railroad.

[The statement follows:]

STATEMENT OF RUSSELL F. MURPHY, EXECUTIVE VICE PRESIDENT, THE CONSULTING CENTER, U.S.A., INC.

My name is Russell F. Murphy. I am Executive Vice President and a founding partner of the Consulting Center, Inc., a firm which has been retained by New Milwaukee Lines to determine the potential self-sustainability of a transcontinental system comprised of lines currently owned by the Milwaukee RR. Since the formation of the firm I have been responsible for formulating and overseeing numerous financial, policy and cost studies for private and public clients in the transportation industry, including the development of long term railroad financial forecasts. Prior to my current position, I was Vice-President of Finance for the United States Railway Association. My full qualifications are set forth in an attachment to this testimony.

The purposes of my testimony today are several:

(1) To describe the process by which I and others involved in the project are analyzing the potential viability of a Milwaukee transcontinental railroad that would include lines west of Miles City, Montana, to the Seattle-Tacoma area.

(2) To present some preliminary findings and views as to why such a system appears promising, and

(3) To suggest that a reorganization plan that calls for the formation of an employee-owned transcontinental system configuration will prove more promising and more equitable to employees, shippers, creditors and the public interest than the reorganization plan submitted in August, 1979 to the reorganization court by the Milwaukee Trustee ("Milwaukee II").

As you may be aware, several studies, including one undertaken by the Consulting Center, have already addressed the question of whether the Milwaukee's western lines on their own could support continued rail operations. In view of our findings that the western lines proposed as a separate railroad by the SORE group could not be made self-sustainable, as proposed, there may be some question why are we now taking the position that a system configuration that includes these same lines appears more promising than the Milwaukee II system selected by the Trustee. The reason is that the feasibility of establishing and operating a profitable lines west railroad as a separate entity at the same time the Trustee proposed to establish and operate a midwestern subcore is not indicative of the feasibility of establishing and operating a profitable transcontinental railroad that includes the Milwaukee's western lines.

This point was also recognized by Booz-Allen & Hamilton in their study for the Milwaukee Trustee. That study, which included network simulations of various configurations based upon detailed cost and traffic analyses, concluded that the transcontinental option offered the best long range potential of any of the options studies. Although the Trustee did not favor the Transcon option for reasons relating to the risk associated with the amount of investment involved relative to the

subcore, the Booz-Allen study certainly elevated a transcontinental option into the realm of realistic alternatives worthy of further analysis.

SYSTEM BEING STUDIED

In view of the Milwaukee's cash problems and the imminence of an embargo order, we have been asked to complete our alternative plan by December 1. This deadline does not afford us enough time to develop and study a variety of options in detail; consequently, we have chosen to concentrate our energies around a transcontinental option previously analyzed by Booz-Allen. We expect to make some additions to the initial configuration described by Booz-Allen. The key consideration will be the degree to which such additions make economic sense.

GENERAL METHODOLOGY

Our approach in analyzing the potential self-sustainability of a transcontinental based system is as follows. First, we are reviewing and studying in detail the methodology used by Booz-Allen to develop the cost and revenue projections for their option. In this endeavor we have received the full cooperation of the Trustee and the staff of Booz-Allen. Second, we are attempting to identify modest adjustments to either revenue or cost estimates wherever more detailed study so justifies.

Revenues

With regard to the base level of revenues, for example, we are reviewing Booz-Allen's detailed retention analysis to determine on a case by case basis whether the probability of retaining existing traffic levels should be higher than assumed by Booz-Allen. We intend to make adjustments only where contact with individual shippers involved in the movement under study provides us with reason enough to raise expectations of retaining the traffic. With regard to future revenues we are undertaking a similar review of the Booz-Allen market opportunity study.

In addition to surveying individual shippers we are also taking a closer look at three types of traffic which may grow at rates outside the range of GNP related growth rates underlying the Booz forecasts. These are coal, grain and Port of Seattle related traffic (largely containerized freight and automobile imports.)

Costs

Similarly, in the cost arena, we are examining Booz-Allen's methodology to determine whether there are any assumptions which might warrant adjustment based upon further analysis. For example, we are examining the adjustments such as optimizing the use of equipment made by the Trustee to Booz-Allen's study in developing the Milwaukee II forecasts to see whether similar adjustments could be applied to the transcontinental option. For the most part, however, we intend to rely on Booz Allen's cost analysis and follow their methodology to determine the costs associated with carrying additional revenues if our revenue analysis indicates revenues can be increased. Another aspect will deal with empty car return ratios since Booz did not vary its assumption regarding empty car return times although it is possible this factor might change depending upon the option under study.

Labor

The reorganization plan we are helping to develop contemplates the formation of an employee-owned (or partially owned) railroad with some prospective participation on the part of shippers.

Capital costs

We are examining rehabilitation estimates and underlying assumptions in Booz-Allen's analysis. These will be adjusted for any branch lines added on to the system.

Inflation

Booz-Allen's projections are in constant dollars—we will prepare inflated forecasts.

Capital structure

We will propose a capital structure based on need to fund start-up costs, projected operating losses, rehabilitation and assumption of equipment debt. The cost of acquiring assets is also a key point in this analysis although the amount involved depends upon many considerations—these will be based upon discussions with the Trustee and other key interested parties. Sources of funding including private capital will be identified.

CONCLUSIONS WITH RESPECT TO SELF-SUSTAINABILITY

Once analysis is complete, the results will be analyzed to determine potential for self-sustainability. By self-sustainability I mean whether the financial projections of the proposed system adequately service equity holders and fixed debt as well as having sufficient cash to meet future capital demands.

Preliminary findings

Based upon the work done so far, I believe a transcontinental system looks more promising. While all of our numbers are not yet in final form of all our work to date convinces us that a self-sustainability option is indeed present.

A Mr. Bertman, under contract to us, has recently submitted testimony to the ICC on the matter of abandoning the western lines of the current Milwaukee Railroad. The key point made by Mr. Bertman, which is consistent with all our preliminary findings to date, is that revenues from the western lines of the Milwaukee exceeds its cost and that the data generated by the Milwaukee Railroad and its own consultants support this position. Mr. Bertman also points out that to the extent Booz-Allen's future market opportunities are accepted (which I do) then the western lines of the Milwaukee, particularly when linked in a transcontinental system, are a financially superior choice than the Milwaukee II offered by the Trustee. Mr. Bertman's latter point becomes particularly important when you recognize that grain traffic looks more promising than anticipated in the recent past. Port of Seattle traffic and particularly that traffic related to a mini-land bridge concept, is stronger than has been anticipated as well as the prospects for coal traffic on the system.

The Port of Seattle's traffic prospects and needs clearly argue for insuring the existence of adequate rail capacity. In the early 1970's traffic growth potential was perceived as being in the order of 4 percent per year by certain experts, yet the annual rate of growth in recent years has been in the order of 40 percent per year. Overall prospects for West Coast Port traffic are indeed very promising and argue for continued expectations in such traffic flows. When the Milwaukee Railroad is viewed in this context we need to realize that the Port of Seattle's rail traffic is generally all long haul and that the Milwaukee up to 1978 has typically handled up to almost one half of the originated and received Port traffic. The port itself needs the Milwaukee rail system to insure access to competitive rail service. Otherwise the Port may only have effective access to a single carrier and become an ineffective competitor itself to the Port of Oakland for containerized traffic.

While coal is also growing, for the present we agree that the Milwaukee Road does not have access to much of the dramatic growth anticipated for the region. At the same time, the longer term prospects (i.e. late 1980's) for coal traffic on the Milwaukee are very attractive. Thus, all of us must look to the future, not at the past, to judge the potential of the transcontinental option.

Despite these points, I cannot yet speak with certitude on the financial self-sustainability of the transcontinental option since our study is still in an analytical stage. To obtain a better indication of its potential, however, I attempted to determine what NROI results for the Booz Allen's transcontinental option would yield if subjected to the same adjustments for inflation and additional efficiencies used by the Milwaukee Trustee to translate the Booz-Allen derived NROI base levels for Milwaukee II into the inflated projections filed in the reorganization plan. The result of this exercise is to increase the Booz-Allen 1985 level of NROI for their Louisville Transcon option from a loss of \$6.4 million (in 1980 dollars) to a profit of \$87.4 million. By contrast the same analysis shows the Milwaukee II option improves from a negative \$9.7 million to a profit of \$61.3 million. This represents an improvement of \$93.8 million. I do not believe that a \$87.4 NROI is necessarily the answer for a transcontinental system. What I do believe to be more likely is that the performance of Milwaukee II as projected by the Trustee is excessively optimistic.

An example of some of the optimism that the Trustee built into his plan was to compress 10 years of economic growth in the Booz-Allen study into 5 years without any basis for such an assertion. Since this, as well as other factors, project performance that is highly unlikely, the Milwaukee II will fail to meet the "benchmarks of success" established by the Trustee in its reorganization plan. Failing to meet the "benchmarks of success" means that the plan must be abandoned. It is my opinion that pursuing the Milwaukee II reorganization plan is tantamount to liquidation of the entire railroad beginning about 1983.

SUMMARY

I believe that the transcontinental option is more financially promising than the Milwaukee II option and will better meet public interest criteria. Our transcontinental option will retain more employees (approximately 8,000 vs 5,000 to 6,000); it will avoid economic impact to shippers in the west whose livelihood revolves around the RR and still service the midwest; it will preserve RR competition in the west, most of which would otherwise be relying on a single rail carrier; it would preserve rail capacity in an area where coal, Port, and grain traffic is growing at rates far greater than GNP averages and might ultimately strain the capacity of the rail system if the western lines of the Milwaukee are absent. Lastly, if a plan could be implemented which would allow the employees to acquire the assets needed to operate a transcontinental system and leave the abandoned property plus non-rail assets, to the estate to pay off existing claims, creditors would be better off. Creditors would stand a particularly better chance of being reimbursed because they would be insulated from the financial risk associated with trying to reorganize an ongoing railroad.

Our analysis will be complete, by the end of November, 1979, and we will immediately provide copies of our reorganization plan to this Committee. While I cannot speak to the financial viability of the transcontinental system we are devising with as much conviction as I can when all of our quantitative analyses will be complete, I am sufficiently confident to say at this point in time that a potentially viable transcontinental system can indeed be forged out of the existing railroad.

Mr. BRODSKY. Mr. Chairman, that concludes our comments. We'd be happy to try and answer any questions the committee might have.

The CHAIRMAN [presiding]. Senator Long.

Senator LONG. No questions.

The CHAIRMAN. Senator Magnuson.

Senator MAGNUSON. I wanted to ask my friend, how is your toe?

Mr. WICKWIRE. Better than it was in May.

Senator MAGNUSON. This gentleman climbed K-2, 28,000 feet; he froze his toe. And I've been worried about his toe ever since.

The CHAIRMAN. Senator Exon.

Senator EXON. I appreciate the concern of my good friend about your physical well-being. We share the concern also of the people that are on that road up there.

I have a question or two. Since I listened to your testimony, I think maybe it would be better if I addressed these to Mr. Brodsky.

Mr. Brodsky, you and the others gave a very interesting presentation. You told about the possible reorganization. You told about the problems that if the Milwaukee line would be abandoned, that Burlington Northern would fall through the responsibility of taking coal traffic with that road, assuming not only the coal, but present grain traffic, plus the increased grain traffic, which was brought in earlier questioning by Senator Magnuson.

I would think that we would have a terrible glut of trying to move anything in that area if we only had the one railroad in existence. I assume that was the thrust of your testimony.

Mr. BRODSKY. I certainly agree with that.

Senator EXON. A followup question: You talked about the reorganization of this road and your efforts in this regard. Assuming that you have the cooperation of all concerned, including the FRA, what is the time frame you think that this could be brought about, assuming cooperation by all parties? Thirty days? Three years? What time limit?

Mr. BRODSKY. I think, Senator, that the May 10 deadline that we referred to, and was specified in Senator Magnuson's legislation, is a realistic timetable.

Obviously, we expect to be very well along at that point in the implementation phase, and I'm concerned that we limit the time period so that the funding, whatever the source, can go to rebuilding the railroad, rather than preserving the status quo.

I certainly think that the quicker we can get those funds channeled to some constructive purposes, the better off we are.

Senator EXON. Thank you.

No further questions, Mr. Chairman.

The CHAIRMAN. Senator Ford.

Senator FORD. I have no questions, Mr. Chairman.

The CHAIRMAN. Do our two guests have any questions?

Senator Baucus?

Senator Melcher?

[No response.]

The CHAIRMAN. Thank you very much, gentlemen. We appreciate your being here.

[Whereupon at 12:15 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. GEORGE MCGOVERN, U.S. SENATOR FROM SOUTH DAKOTA

Mr. Chairman, Members of the Committee, I appreciate this opportunity to appear before the Committee to discuss the reorganization of the Milwaukee Railroad and the various legislative proposals pending before you.

Today's hearing has taken on even greater importance in light of Judge McMillen's decision last Friday to authorize an embargo of more than half of the Milwaukee's 9800 mile rail system, effective this Thursday, November 1, 1979. However, it was not the Judge's decision which stunned many of us who represent states served by the Milwaukee, but the manner in which the Federal Railroad Administration violated Congressional intent, by refusing to provide emergency assistance on acceptable terms to sustain the carrier's operations through November 30, 1979.

Since the beginning of the debate on the restructuring of this bankrupt carrier, this agency has consistently ignored Congressional counsel. Instead, it has used the bankruptcy proceedings of this railroad to carry out their own plans for a restructured Midwest rail system, through the wholesale abandonment of thousands of miles of track. No one can argue that our midwestern rails have, to some degree, been overbuilt—and that a revitalized rail system in the Midwest will be largely dependent on some consolidation of existing facilities. But such a restructuring must be carefully crafted, similar to the development of the U.S. Railway Association's final system plan for Conrail.

The FRA has shown extreme disregard for such a carefully crafted restructuring of the Milwaukee. And now, as a result of their actions, we face a massive embargo of service on this railroad in just a few days.

Mr. Chairman, the legislation we are considering today, including the proposal introduced by Senator Magnuson and myself, was drafted in close coordination with the Federal Railroad Administration. It represented a good faith effort on our part to effect a compromise which would at least meet some of the needs of all concerned. It now appears that, again, such efforts to work with this agency were futile.

With this in mind, Mr. Chairman, I believe that it is of absolute importance that Congress move with all speed to enact legislation which will guarantee labor protection to Milwaukee employees as well as provide substantial financial assistance to other railroads and shipper organizations who wish to acquire and rehabilitate Milwaukee trackage that might otherwise be abandoned.

In addition, I request that the Committee consider drafting additional provisions calling upon the U.S. Railway Association to conduct an independent reorganization proposal for the Milwaukee. The USRA, through their existing computer capabilities can quickly develop simulation models showing the comparative benefits and costs of reorganization alternatives.

I am well aware that the FRA has already conducted their own studies on this subject, but their recent actions are clearly a serious violation of the public trust, and we must now hold their past actions in the Milwaukee reorganization as suspect. I must emphasize however, that any effort undertaken by the Committee must be accomplished with great speed. I share the trustee's concern that it is imperative that any further significant erosion of the railroad's assets could jeopardize the future of any restructuring effort.

Again, Mr. Chairman, I appreciate this opportunity to appear before the Committee, as well as the considerable effort the Committee has devoted to this critical problem.

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

Mr. Chairman, I appreciate this additional opportunity to discuss the Milwaukee Railroad.

The Congress faces difficult choices. On one hand we would like to preserve Milwaukee service and attendant public benefits.

On the other hand, this Committee has learned from the Conrail and Amtrak experiences the pitfalls of Federal involvement in railroad matters.

I have spent a great deal of time with the Milwaukee issue. Because Montana is a major loser in the Trustee's proposed reorganization, some may think my interest is parochial.

Obviously, I have a parochial interest. But my study of the issue convinces me that preserving the Milwaukee's Western Lines is sensible both in terms of minimizing Federal cost and meeting long-term national transportation needs.

I hope that my comments today will be helpful to the Committee as it develops Milwaukee legislation.

Congressional responsibility

Congress has a definite responsibility in reorganizing the Milwaukee. This responsibility arises from the Railroad's common carrier obligation and the considerable Federal expenditures at stake.

The Trustee has proposed a reorganization plan and vigorously supported that plan.

The Administrator of the Federal Railway Administration recently called the efforts of Senator Magnuson and myself to develop alternatives "politically hysterical, nonsensical exercise."

While I don't discuss my opinions of FRA personnel publicly, I will suggest that statements by both the FRA and Milwaukee management may have led to some misconceptions. I would like to address these.

Costs of continuing service

One possible misconception is that abandonment is the cheapest alternative for the Railroad and the Federal government. In fact, potential costs for labor protection could substantially exceed costs of rehabilitation.

The cost of labor protection is speculative: estimates range from \$50 million to over \$1 billion. The Trustee's reorganization plan anticipates labor protection claims of \$350 million.

According to the Federal Office of Rail Public Counsel, potential labor protection claims exceed costs of rehabilitation on every reorganization scheme studied by Booz-Allen and Hamilton for the Trustee except one that involved no mainline abandonments. Costs of labor protection were not considered in the Booz-Allen analysis.

Liabilities for labor protection are a strong argument in favor of continued operation of a major portion of the Milwaukee system.

The Congress should compare the cost of paying employee protection which does not result in any gainful benefit in services with roadway rehabilitation expenditures that retain needed rail services.

Some have suggested that the ERSA loans which would be provided to continue service in pending legislative proposals involve substantial new Federal liabilities. In fact, if pending abandonment proceedings continue on schedule, the ICC will be obliged to provide directed service until at least May 1979.

According to ICC Chairman O'Neal, this directed service will involve a grant of some \$50 million for non-core lines. Some \$30 million would be required to operate the Core during the same period.

The cost of ERSA loans to operate the entire system is estimated to be in the range of \$60 to \$70 million. The Federal exposure is roughly the same with either approach—but with ERSA loans there is some chance that the Federal outlays will be repaid.

Congress must consider Federal costs not directly related to the abandonment. The Department of Commerce estimates that 28,000 direct and indirect jobs are threatened by the proposed abandonment in Montana, Idaho and Washington. Federal costs for readjustment assistance are estimated to total \$42 million for Department of Commerce programs alone.

Viability of Western Lines

A common misconception is that Western Lines generate miniscule traffic and cause massive cash drains.

Documents filed by the Milwaukee in the pending Interstate Commerce Commission abandonment case suggest that revenues exceeded avoidable costs on lines west of Miles City in 1976 and 1977, and that there was a loss of \$3.3 million in 1979.

The Federal Office of Rail Public Counsel asserts that the Milwaukee figures include double-counted costs and that in fact lines west of Miles City earned \$12.7 million in 1976, \$11.0 million in 1977, and \$2.5 million in 1978.

A report prepared under direction of the Federal Railway Administration by Reebe Associates indicated "that the ratio of expenses to revenue generated was

slightly greater (in 1977) for the Western Lines than for the total Milwaukee system, 115 percent to 112 percent respectively."

This conclusion shows that Western Lines are roughly as profitable as lines east of Miles City.

Viability of the Core

I've heard a lot of talk about a "Conrail West." Congress cannot ignore the Federal cost of the Milwaukee II plan.

The Federal Government has already invested \$80 million in the Milwaukee Core in the form of 4-R Act Certificates and ERSA guarantees.

The Trustee's reorganization plan anticipates an additional Federal obligation of \$251.9 million for the Core system.

FRA officials say they "do not know" whether this commitment of \$330 million Federal dollars will result in a viable "Milwaukee II."

The FRA-Reebee study suggests that lines east of Minneapolis lost \$23.4 million in 1977. That loss may be understated; the Trustee's Booz-Allen report suggests that losses attributable to the Core were \$42.5 million in 1977.

The Trustee's reorganization plan projects that the reorganized system will lose \$104.5 million in 1980, \$82.6 million in 1981, and \$21.8 million in 1982.

My point is not that the Milwaukee's mid-western lines are not viable or should not be reorganized. What I hope every Senator here understands is that we are not talking about profitable mid-western lines versus hopeless western lines.

Booz-Allen and Hamilton projected that a Core system extending to Miles City would return \$5 million by 1985. A system running from Minneapolis to the West Coast would require substantially less rehabilitation investment and produce the same \$5 million return.

Western Lines are roughly equivalent to Core lines both in terms of physical condition and revenue produced. The difference is that the Trustee—for his own reorganization purposes—wants to abandon Western trackage and concentrate his limited resources in the mid-west.

Rail competition

Both the Trustee's Booz-Allen and FRA analyses suggest that competition will prevent viable transcontinental Milwaukee operations.

According to the FRA-Reebee report "the Milwaukee Road's Western Lines face an era of intense competition from other railroads and other transport modes."

FRA and Milwaukee officials have suggested that Western Lines are "excess" and "should never have been built."

If competition prevents long-term viability in a region where there is only one competing railroad, a poorly developed highway system, no barges, and exceedingly long hauls, I question the prospects for the mid-western Core system.

New market opportunities are virtually non-existent in the mid-west. There is strong truck and barge competition.

Intramodal competition is particularly intense. The Milwaukee proposes to retain its operations in the Chicago-Kansas City corridor which is served by eight Class I railroads, and the Chicago-Louisville corridor which is served by four Class I railroads, and the Chicago-Duluth corridor which is served by four Class I railroads.

The Department of Transportation has identified Chicago-Kansas City, Chicago-Louisville, and Chicago-Twin Cities as corridors of excess capacity.

Again, my point is not to suggest that mid-western lines should not or cannot be reorganized.

Rather, I aim to emphasize that public interest has been given minimal attention in Milwaukee decision-making. Congress would be irresponsible if it simply rubber-stamped the Trustee's reorganization proposals.

Severing Western Lines enhances viability of the Core

The Trustee insists that he must quickly abandon Western Lines to preserve Core operations.

His arguments deserve critical inspection.

Abandonment of Western operations will immediately and dramatically reduce revenues. Lines west of Miles City generated roughly \$62 million in 1978, in spite of the deplorable service offered.

While revenue reductions would be immediate, cost savings will take some time to realize. Even after abandonment, such expenses as labor protection, interest on investments, and depreciation continue.

Financial evidence presented in the ICC abandonment proceedings suggests that loss of lines west of Miles City will in fact detract from both the long and short-term viability of the remainder of the system.

Certainly speedy abandonment of Western Lines is not, as the Trustee suggests, essential to preserve Core operations.

Public interest in abandonments

Both Senators Magnuson and Cannon have proposed that ICC jurisdiction over abandonments be eliminated.

I would like to bring to the Committee's attention a particular concern, which I will illustrate with a Montana case.

A short line railroad in Montana, the White Sulphur Springs and Yellowstone Park, has only one outlet—to a Milwaukee line that may be abandoned. In case of abandonment, the WSS and YP must obtain about 30 miles of Milwaukee trackage for a connection to the Burlington Northern.

Under normal ICC proceedings, the Commission could require, as a condition of abandonment, that the affected section of track be transferred to the WSS and YP. Without ICC jurisdiction, there is no guarantee that the public need for the connection will be met.

This potential problem exists throughout the Milwaukee system. I hope the Committee will provide some type of oversight authority to ensure fair treatment of short line railroads, state or local agencies, etc., that may need to acquire portions of Milwaukee trackage in case of abandonment.

Pending legislation

I compliment the efforts of Senators Cannon, Long and Packwood in introducing S. 1905. It is similar in many respects to S.J. Res. 114 introduced by Senator Magnuson and myself.

Dates established in the Magnuson proposal—January 1 for submission of a plan and May 10 for implementation of the plan—provide very little time for a massive undertaking.

Rome was not built in a day, and railroads are not purchased overnight. Developing reorganization and management plans and arranging necessary financing is an enormous task.

The dates in the Magnuson legislation should be regarded as minimum. Any earlier dates would make a sham of efforts to provide an opportunity for employee and shipper ownership.

Similar arguments apply to sections of the legislation regarding "employee or employee-shipper ownership plan." Here again, any weakening of the Magnuson language would make the legislation a sham.

Shippers in the West would be better off with no legislation than a proposal which eliminates directed service without providing adequate opportunity for presentation of alternative reorganization plans.

In accepting provisions of this legislation which will eliminate ICC jurisdiction over the reorganization, and directed service, Western interests are making a considerable sacrifice.

In return they are asking for a full and fair consideration of their efforts to assure continued service. Unless such full and fair consideration is provided, legislation will be detrimental and should be defeated.

STATEMENT OF HON. LARRY PRESSLER, U.S. SENATOR FROM SOUTH DAKOTA

Mr. Chairman, members of the Committee, as a result of the decision of the bankruptcy court judge this past Friday, October 25 to allow embargo of the greater portion of lines in the western extension of the Milwaukee Railroad effective November 1, 1979, the legislation before us takes on immediate and serious importance.

I deeply regret the actions which thwart the intentions of the Congress in approving a compromise which would have ensured continued operations on the entire Milwaukee system through November 30. That compromise, which I strongly supported, would have provided time for the orderly restructuring of the seriously ailing Railroad.

It is vital now that immediate action be taken on S. 1905 and S.J. Res. 114 and I regret that, due to the late scheduling of this morning's business, I will not arrive in time to join my colleagues in considering the two bills. I wish to commend our Chairman, Senator Cannon, and our respected colleague, Senator Magnuson, for their efforts to ensure an orderly restructuring of the railroad through the measures they have introduced.

Certainly, our primary purpose in considering this legislation is to assure sufficient time to protect the interests of all interested parties dependent on the Milwaukee

kee Road. Enough has been said regarding the economic impact of the massive abandonments that will result along Milwaukee lines in the states of South Dakota, North Dakota, Washington, Montana, Minnesota, Idaho, Illinois, Iowa, Missouri, Michigan, Indiana, and Wisconsin.

In order to be effective, any solution worked out today will require strong support and cooperation between the Congress, rail labor and shipper groups. The future of rail service in these western and upper midwestern states will determine the future livelihood of these groups and of the economies of the states.

While providing for the orderly restructure and transition of the bankrupt railroad, we must grant ample opportunity to those who seek alternatives in the purchase and continued operation of the Milwaukee Road. Having long been an advocate of cooperative ownership of rail bed and tracks and having introduced legislation to promote the formation of rail cooperatives, I endorse the goals of the New Milwaukee Lines coalition of shippers and employees. I believe that it is our responsibility to give every opportunity to those who are attempting to help themselves.

Therefore, a key provision in final legislation approved by this Committee will ensure adequate time for the completion and implementation of a plan for the coalition to assume operations on important segments of the Milwaukee.

It is also vital that adequate protection be assured the great numbers of Milwaukee employees whose livelihoods depend on the railroad. Moving expenses, unemployment assistance, as well as retraining and education assistance must be included in final legislation. In a time of national financial and economic difficulties, we must offer every opportunity to Milwaukee employees to facilitate relocation to other rail lines or other dependable employment.

Adequate time for continued operations must be provided in order to allow shippers to make alternative arrangements. Immediate abandonment of lines will bring chaos to remote communities dependent on the lines. We must ensure that operations will continue uninterrupted and that no agency intervention will override this mandate. This is no unreasonable request for unlimited funds. It is consistent with federal transportation policy that an orderly transition be ensured for all rail users and interested parties.

I want to express my strong support for S.J. Res. 114, which provides for these concerns and which has wide congressional, rail labor, and shipper support. I am pleased to cosponsor this legislation and endorse its goals.

Thank you.

OFFICE OF RAIL PUBLIC COUNSEL,
Washington, D.C., October 24, 1979.

Mr. WILLIAM JOHNSTON,

Domestic Policy Staff, Old Executive Office Building, Washington, D.C.

DEAR MR. JOHNSTON: Mr. Charles Swinburn, Acting Assistant Secretary for Policy and International Affairs of the Department of Transportation, has advised me that the Domestic Policy Staff is currently reviewing the administration position with regard to the future of the Chicago, Milwaukee, St. Paul and Pacific Railroad, and has suggested that I convey to you such views as this Office may have with regard to that matter.

This Office is currently an active intervenor in the Interstate Commerce Commission proceedings involving the proposed application of the Milwaukee Road to abandon its lines west of Miles City, Montana, Docket No. AB-7 (Sub-No. 86F), believe that the most useful role we could play in your review would be to set forth for you our approach to that case, the state of the record as we perceive it, and the likely position which we will be taking. I should caution you that the hearing is currently in process, and that the ultimate position which we take in the proceedings will be based on our assessment of the total record.

Essentially, it is our view that the Commission should not use this proceeding as the vehicle to decide the desirable long-term future structure of the Milwaukee Road. To begin with, decision on that issue requires a careful consideration of the various possible alternative operating patterns, giving consideration to such matters as capital investments needed for each option, the estimated financial results, and the degree of public interest in preserving particular services. These issues have clearly not been considered in this highly expedited proceeding which is concerned solely with the abandonment of lines west of Miles City. On the other hand, the issue of restructuring the railroad will be coming before the Commission within the next several months in connection with the reorganization proceedings. We would

reserve to those proceedings questions relating to the long-term viability of the lines west of Miles City and the relationship of those lines to the system as a whole.

Under these circumstances, we believe that the determinative question should be whether continued operation of the lines west of Miles City pending the reorganization proceeding will result in a significant financial drain on the company, impairing its ability to maintain operations over the remainder of the system and creating pressures on the U.S. Government for additional financial assistance. Our current assessment of the record is that the lines west of Miles City are profitable on a short-term basis, and that abandonment of the services would not have a favorable impact on profitability. This assessment is based upon the railroad's own calculations of avoidable losses (i.e., the losses from operations over the route which would be eliminated upon cessation of service) as adjusted to eliminate errors conceded by the carriers' witnesses. This evidence indicates a profit (a negative avoidable loss) of approximately \$2.5 million. I should caution that this figure does not take into account the costs necessary to rehabilitate out-standard track, which I understand should not exceed \$3.7 million. On the other hand, the \$2.5 profit does not take into account the very substantial labor protection costs which will be incurred as a result of the abandonment.

Although as previously indicated, we do not believe that the issue of the permanent restructuring of the railroad is ripe for decision in this case, we have nevertheless offered testimony raising what we consider to be serious questions with regard to the Trustee's Milwaukee II proposal. And we have suggested various alternatives for maintaining the Milwaukee's transcontinental operations on a more economic basis. Again, we believe that all of these considerations should be explored in the proper forum, namely the reorganization proceeding.

I am enclosing¹ for your information copies of the Verified Statements of our expert witnesses in Docket AB-7 (Sub-No. 86F).

I hope that the foregoing explanation as well as the enclosed materials will be of some use to you. I will of course be happy to make myself available if you have any questions.

Sincerely yours,

ARTHUR H. SIMMS,
Acting Director.

TRANSPORTATION ASSOCIATION OF AMERICA,
Washington, D.C., October 26, 1979.

Hon. HOWARD W. CANNON,
Chairman, Commerce, Science and Transportation Committee,
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN CANNON: During your Committee's consideration of S. 1905 and S.J. Res. 114—which we interpret as being designed to provide additional time to permit the restructuring of the Milwaukee Railroad on a status-quo basis to the maximum extent possible—we ask that the views of the Transportation Association of America be included because of some rather significant policy implications.

First, we are happy to see that your Committee has agreed to hold additional hearings on this legislation, as a number of our members with a direct stake in the Milwaukee's future have expressed concern that private interests have not had an adequate opportunity to express their views to the Congress.

Second, we are fearful that the approach of continuing to delay the restructuring of the Milwaukee's route network will make conditions worse in the long run—as proved the case with the bankrupt Penn-Central. The Milwaukee has been in serious financial trouble for some time, and it has now been in bankruptcy for well over a year, during which time numerous studies have been made regarding its prospects and a reorganization plan developed. While TAA is not in a position to say what specific lines should be abandoned, we believe the principles endorsed by the Congress in Public Law 95-598—specifically those provisions relating to railroad bankruptcy cases—should govern in the Milwaukee case. In approving major revisions in the bankruptcy laws last year, Congress gave the courts broad power to expedite reorganization of a bankrupt railroad, including the power to order line abandonments. By forcing the continuation of the status quo of a bankrupt railroad, we merely aggravate matters because of the further erosion of the carrier's plant and further weakening of the carrier's ability to provide adequate service.

Third, while we recognize the need for fair consideration of reasonable employee protection to ease personal hardships resulting from a major restructuring such as

¹ The enclosures are in the committee files.

proposed for the Milwaukee, we do not believe such protection should go beyond that normally applied by the ICC in rail cases adversely affecting employees. We urge that Congress not expand such protections, as done in the case of Conrail, because they have proved to be far more costly than anticipated and still represent a major roadblock to Conrail's efforts to become self-sufficient.

Fourth, while we are in full agreement with the protection of the security status of creditors in S.J. Res. 114, in the event of additional U.S. loans, we urge that equity holders' rights also be recognized. Even though the latter must normally assume greater financial risks, they should not be forced to see their share of a bankrupt railroad's estate being steadily reduced because of forced delays in reorganization—or because repayment of U.S. loans must come out of the carrier's estate. If the public interest demands continuation of rail lines and services that are clearly unprofitable, the public should be asked to cover any losses through direct grants.

Congress has had the advantage of seeing the problems that arise when a bankrupt railroad system far too large is forced to continue in operation—through the Conrail experience—so hopefully it won't repeat this action by preventing a long needed and early restructuring of the Milwaukee.

We request that this letter be included in the record of hearings on S. 195 and S.J. Res. 114.

Sincerely,

PAUL TIERNEY.

A REVIEW OF "MILWAUKEE LINES STUDY" PREPARED BY POLICY AND MANAGEMENT ASSOCIATES, INC., SEPTEMBER 1979

[FRA Staff Paper, Oct. 12, 1979]

SUMMARY AND CONCLUSION

FRA has reviewed the "Milwaukee Lines Study" prepared by Policy and Management Associates, Inc., (PMA) and has concluded that the study offers no new significant facts that would be useful in assessing the potential viability of the Milwaukee's Western Lines. Further, the favorable conclusions reached in the study are perched atop a series of key assumptions that are either outright erroneous or are analytically insupportable.

The principal shortcomings are as follows:

1. Revenue potential is substantially overstated due primarily to a faulty analysis as to the potential for coal traffic but also to blind acceptance of an overly optimistic traffic assumption in an earlier study. PMA conducted no independent traffic review but added another layer of optimistic assumptions to the earlier forecast.
2. The coal analysis is based on a combination of macro-economic assumptions regarding Western coal development and an assumption that the Milwaukee will have access to coal mines that it presently is in no position to serve. The macroeconomic approach is inappropriate for assessing the outlook of a specific railroad line. A site-by-site examination of all the mines referred to by PMA shows that only one—a small one—can be served by the Milwaukee. The access to that mine can be preserved by the State of Montana through a Federally-funded rail banking program. Even granting the Milwaukee access over lines of the Burlington Northern, while an extremely speculative event to presume, would not still require the lines of the Milwaukee west of Miles City, Montana, the first physical connection between the two railroads. Miles City has been included in the core system proposed by the trustee. The coal revenues described by PMA would be generated east of Miles City, not west. Ironically, the sources cited in the study contradict PMA and point to the opposite conclusion: that the Milwaukee lines west of Miles City are not needed for western coal development.
3. Even assuming that the revenue projected by PMA did develop, the expenses associated with the revenues in PMA's income statement projects are understated.
4. PMA's financing plan is based on a number of low cost assumptions that are backed up only by assertions, and not by investigation or analysis, including one related to the purchase price of the Milwaukee's assets. The plan also does not allow for amortization of more than \$400 million in debt that would be incurred to support the start-up of the railroad.

In FRA's view, an adjustment to PMA's projections for any of the serious deficiencies cited above would be sufficient to produce the contrary conclusion—that Lines West will not be viable. Such a judgment, however, should flow not from a perception of the faults in the PMA review but from other studies and analyses.

BACKGROUND

Policy and Management Associates, Inc. reviewed existing studies of the economic viability of the Milwaukee's Western lines and examined the potential of two configurations: (1) Lines West—Twin Cities to Tacoma; (2) Transcontinental—Tacoma to Louisville. The review concluded that Lines West would be a viable railroad and reserved judgment about the Transcontinental system, a conclusion substantially at odds with the results of other studies.

The primary basis for PMA's conclusion was that previous studies had seriously underestimated the amount of traffic that would be available to Lines West in three commodities: coal, grain and overseas container traffic. Coal was the major factor in the assumed deficiency, with the breakdown in incremental revenues as follows:

	Millions
Coal	\$53.2
Grain	8.7
Container	3.3
Total	65.2

According to PMA's analysis, the associated additional expenses would amount to only 45 percent of revenues, and the resulting improvement in income would be sufficient to lift Lines West into a profitable position worthy to attract investment. The analytical results turned on assumptions regarding revenues, operating expenses and financing costs.

The PMA study also concluded that (1) the estimates of traffic diversion cited in the Reebie study carried out for FRA were illogical and unrealistic; (2) that the Burlington Northern inclusion case could bring significant traffic to the Milwaukee; (3) that an ESOP could be expected to have a significant impact on productivity; and (4) that the implementation of Milwaukee II (the core railroad after elimination of the Western and other lines) would have a significant adverse impact on economic growth in the West, foreign trade through Seattle and Tacoma, energy consumption, the highway system and air quality.

FRA COMMENT

The PMA conclusions are not based on facts. The main point of the study is that Lines West is needed to support major coal market development. The "facts" cited point to just the opposite. The PMA study identified only one potential coal move that would require a line west of Miles City, Montana, and even that potential development was not addressed in sufficient detail. All the other mines cited by PMA cannot be served by the Milwaukee.

The PMA work was in fact a review of previous studies and was not a "study" in itself. PMA simply built on to a proposal that has been previously identified as overly optimistic with no independent verification or assessment of the facts. Other point-by-point comments are as follows.

(1) In its discussion of the Reebie study, PMA was apparently not mindful that the Reebie methodology assumed diversion if the railroads were not able to haul traffic that made a contribution to profit after covering full costs. The substantial diversion projected would be less under a strategy that continued the carriage of traffic below cost but the losses would be greater.

The conclusions relating to (2) BN trackage rights, (3) ESOP productivity, and (4) the economic impact of cessation of Milwaukee service went unquantified and were highly speculative. FRA recognizes the potential of the first two, and disagrees with the third on the basis that the present Milwaukee Western Lines service could be absorbed by two other rail carriers in the region. More detailed observations follow.

COAL TRAFFIC

The heart of the difference between PMA and other studies, including one by FRA, is the outlook for coal. PMA stated that the Reebie report was in serious error when it stated that "no new mining operations are now being developed along the Western Lines." PMA proceeded to tackle the coal question in two ways—from a macro-economic overview approach, and from a mine-specific approach.

To that end, PMA presented a list of coal mines in Montana and stated that: "It appears that the majority of these mining operations can be served by the Milwaukee Road." In fact, only one—that in Musselshell County—is on the Milwaukee. The potential tonnage was listed at 1.2 million tons per year and the owner of the coal rights is the Burlington Northern, the Milwaukee's principal railroad competitor in the region. The PMA list and a map of the coal mines in question is attached.

A site specific review shows that the remainder of the mines listed, in contrast to PMA's assertion, are not adjacent to the Milwaukee but are served exclusively by the Burlington Northern and are typically geographically remote from the Milwaukee. The BN, in fact, owns some of the coal reserves. (While not mentioned by PMA, the Milwaukee has trackage rights to Billings and has petitioned to be able to serve mines along the way. The Interstate Commerce Commission so far has evidenced no signs of opening up the territory to the Milwaukee. If the ICC did so rule, the Milwaukee could add service to those mines without ownership of any lines west of Miles City.)

Also, the PMA analysis did not mention where the coal would be marketed, a key assumption in deciding whether to maintain the lines east or west of Roundup, Montana, the site of one potential small local development located on the Milwaukee. FRA has suggested that the state use a rail bank program (with Federal funds) to preserve the Milwaukee's route from Miles City to the Roundup area in case of future coal development. The route would permit an eastward move to Miles City, or, alternatively, a move west or south via a connection with the BN just west of Roundup.

The question of where the coal will be directed after it was mined is central to transportation planning. PMA offered no distribution site specific assumptions, but did produce figures and maps related to regional demand. The demand figures for Great Plains coal, of which southern Montana provides only a part, forecast dramatic growth. Of the total moving out of the region, all is destined for points east and south of Montana. No moves to the west were identified, in contradiction to the assertion that Lines West would be needed for coal developments.

Further, the study referred to a recent report of the national Transportation policy Study Commission, which produced a set of western railroad identification maps and projections of coal movement for 1985 and 2000. An examination of the maps shows that they do not include the Milwaukee line west of Terry, Montana. Since Terry is located east of Miles City, the inference from the NTPSC study is that the Milwaukee's lines outside the trustee proposed core are not being counted on to transport Great Plains coal to market. (See PMA's Exhibit V—Arrow to Terry added.) Coal growth east of Terry is assumed and quantified. The 70.8 million tons of coal projected by the NTPSC for 2000 would still be available to Milwaukee II.

Turning to the medium term, PMA concluded that even the most optimistic of the coal revenue projections in prior studies was deficient, (\$24.3 million in annual revenues to be derived from 42,705 carloads or 3 million tons of coal). PMA estimated 136,000 carloads carrying 9.5 million tons and generating \$77.5 million in revenue on Lines West. Given the sources cited, this assumed growth would presumably occur on a segment from Miles City to points east and would involve delivering BN originated coal to eastbound markets. No specific moves were cited, a significant shortcoming given the lead time of utility generating plans. The portion of the Western Lines which the trustee proposes to abandon is west of Miles City and would not seem to affect those moves. Additionally, the implied Milwaukee division of nearly \$580 per car attributable to that part of the move ending at Twin Cities appears too high by a considerable margin.

GRAIN TRAFFIC

PMA also relied on macro-economic techniques to forecast grain movements rather than determining site specific Milwaukee service ability and took issue with the growth rates used by Reebie and hence the Department of Commerce. Again, PMA did not provide any assumption as to site specific origins and destinations on the Milwaukee, although the revenue of \$2,000 per car would indicate a long haul. The Reebie study, in its regional input-output analysis, did assume some growth in the movement of grain from Montana to the West Coast, and allowed for only a small diversion to other modes. The Reebie technique is clearly the more comprehensive of the two, but the difference (4,344 carloads) is within a margin of error. The Milwaukee's role as a Montana grain carrier is not pivotal; the Milwaukee hauled only 2 percent of the wheat and 3 percent of the barley produced in Montana last year, and accounted for less than 15 percent of the grain moved out of the state by rail.

OVERSEAS CONTAINER TRAFFIC

The PMA study expressed a problem in identifying overseas container traffic in the other studies and concluded that the growth rate of the market had been ignored and that Milwaukee would hold its previous market share. The Reebie study did allow for growth in the market but assumed a diversion to other railroads due to service deficiencies. The business is extremely time sensitive and highly

competitive. The revenue at issue is small—\$3.3 million—and the rates have been regarded as marginally profitable because of modal competitive factors.

COSTS

The PMA study relied on adjustments to the most optimistic proposal, that of SORE, without analyzing any of the assumptions in that proposal. Using an unexplained formula, PMA added \$65.2 million in revenue and \$29.1 million in incremental expenses to produce an improvement in SORE's net railway operating income of \$36.1 million. The incremental expense ratio of approximately 45 percent appears low, particularly considering the normally low profit margins on the three commodities involved. The conclusion is rendered more suspect by the statement that: "Without questioning or scrutinizing closely the individual expense items, we can state with a degree of confidence that the increased revenues projected in the earlier section will be translated into 'bottom line' results which will dramatically increase the NROI."

FRA would submit that individual expense items do bear scrutiny, particularly since transportation costs (just moving the trains) eat up 46 percent of the revenue generated on U.S. railroads. Maintenance, the cost of soliciting traffic, car hire and overhead are additional factors to consider.

The same analytical brush was touched to the impact of an ESOP. "While it is difficult to attach a dollar amount on the impact that an ESOP would have on NROI, we can be confident that the ESOP will have a beneficial impact on productivity." FRA does not disagree with the theoretical potential of an ESOP, but again submits that some quantification is required for a serious consideration.

FINANCING

PMA developed two financing packages for the Lines West proposal; in Transcontinental line was disregarded due to a lack of information about acquisition costs, labor protection and working capital. For Lines West, PMA's first package roughly followed along the lines of the SORE proposal. Rehabilitation costs were increased from \$118 to \$166 million, and a capital program of \$30 million was included for the fifth year. The package allowed \$152 million for acquisition costs of assets valued at \$370 million. The difference presumably would be made up in the tradeoff for labor protection—an assumption that is highly speculative. The cumulative operating deficit for the prior years was estimated at \$30 million; the Consulting Center, in its analysis of the SORE proposal, estimated \$95.4 million.

PMA used those various categories as a basis for calculating interest charges to be subtracted from Net Railway Operating Income to determine "profit" for the fifth year of operation. The approach took into account only the interest involved and allowed nothing for amortization of principal for the \$414 million in financing involved.

The first package also included the earnings from the Milwaukee Land Company, which was presumed to be acquired. That presumption is highly unlikely; the trustee has produced an alternative plan for disposition of MLC before the Reorganization Court. The second package included a higher amount of debt for acquisition, a higher amount for cumulative deficits and the absence of the land company earnings. By PMA's reckoning, both plans would produce a favorable long-term financial result.

By FRA's reckoning, that conclusion sits atop a series of erroneous assumptions:

- (1) Revenue potential is substantially overstated.
- (2) Expenses associated with the revenues are understated, assuming the revenue did develop.
- (3) The financing plan is based on a number of "low-ball" cost assumptions that are backed up only by assertions, and the payback of debt principal is not accounted for.

An adjustment for any one of the three points above would be sufficient to point to the opposite conclusion—that Lines West would not be viable.

COAL MINES IN MONTANA

Company, Mine, and County	Million tons	Startup	Or 1985	1976 production
Ammax, Inc. (E. Sarpy Creek), Crow Reservation.....		1981	1984	5.00
Decker Coal Co. (East), Big Horn.....		1980	1983	8.00
Decker Coal Co. (North), Big Horn.....		1979	1983	4.00

COAL MINES IN MONTANA—Continued

Company, Mine, and County	Million tons	Startup	Or 1985	1976 production
Decker Coal Co. (West), Big Horn.....	10.207	(¹)	1984	11.50
Dryer Brothers (Circle West), McCone.....		1984	1985	5.00
Burlington Northern (Unnamed), Musselshell.....		1980	1983	1.20
NERCO (Pac. P&L) (Spring Creek), Big Horn.....		1980	1982	10.00
Shell Oil Co. (Young's Creek), Crow Reservation.....		1982	(²)	8.00
Shell Oil Co. (Pearl), Big Horn.....		1982	1983	2.00
Western Energy (Colstrip 1-4), Rosebud.....	9.265	(¹)	1985	20.00
Westmoreland Resources (Aessloka), Big Horn.....	4.084	(¹)	1983	14.00
Total	23.556			88.70

¹ Prior to 1975.² Indefinite.DRAFT BILL—MILWAUKEE RAILROAD¹ RESTRUCTURING ACT

A brief summary of the attached bill follows:

ESOP (SECTION 5)

1. Not, later than December 1, 1979, an employee or shipper-employee group may submit to the Interstate Commerce Commission a plan for converting all or substantially all of the Milwaukee Railroad into an employee or employee-shipper owned company, such plan to include a method for implementation and an evaluation of the prospects for self-sustainability of the Milwaukee Railroad.

2. The Commission is required to determine whether the plan is feasible within 30 days after submission. Feasibility is to be based on the following findings:

- that adequate financing is available;
- that the plan is fair and equitable to the estate of the Milwaukee;
- that implementation will occur by March 1, 1980;
- that the railroad can be operated on a self-sustaining basis;
- that the plan includes changes in operating practices designed to achieve labor productivity increases.

If the plan is found to be feasible, it is to be submitted to the Bankruptcy Court.

3. The Bankruptcy Court shall hold a hearing within 10 days and determine whether the plan is fair and equitable to the estate of the Milwaukee.

4. If the I.C.C. and the Bankruptcy Court approve the plan, the proponents of the plan shall implement it by March 1, 1980.

5. Implementation of any plan involving expenditures or grants of Federal funds will be conditioned on an appropriate contribution from employees or employee-shippers. This contribution shall not be less than 25 percent of the required financing.

Section 11 of the bill provides for continuation of service at the level provided on the date of enactment until (1) the plan is not implemented, (2) the plan is not timely filed, or (3) there is an adverse finding by the I.C.C. or the Bankruptcy Court.

OTHER PROVISIONS

The bill also includes provisions for funding, labor protection, and expedited handling of abandonments and sales. The Emergency Rail Services Act of 1970 (ERSA) is amended by striking out the findings ordinarily required, including the finding that "the railroad can reasonably be expected to become self-sustaining." Certificates are not to be quaranteed under this section unless the certificate is treated as an expense of administration and receives the highest lien, except that this requirement is not applicable to certificates guaranteed for railroads engaged in "restructuring," which includes an ESOP plan. The ERSA funds provided the Milwaukee under the "restructuring" provision would be subordinated to the claims of creditors of the estate. Section 3(e) of ERSA is amended to revise upward the permissible outstanding aggregate principal amount of certificates from \$125,000,000 to \$200,000,000. ERSA certificates are to be issued to allow continued service until

¹ Chicago, Milwaukee, St. Paul and Pacific Railroad Company.

60 days after March 1, 1980, or 60 days after occurrence of an event described in section 11,² whichever first occurs. (Section 6)

Training assistance for new careers is provided for employees displaced by the restructuring of the Milwaukee Railroad or a reduction in service over the line. (Section 7)

Under Title V of the Railroad Revitalization and Regulatory Reform Act, the Secretary is to guarantee obligations of the Milwaukee Railroad for employee protection purposes, including (but not limited to) moving expenses, compensation for employee relocation and separation allowances. Guarantees under this section are limited to \$75,000,000; the obligations are to be treated as an administrative expense of the estate and not subordinated to creditors' claims. (Section 8)

The bill applies the expedited procedures of the new bankruptcy law, section 1170 of title 11, U.S.C., to pending abandonments, including the Milwaukee, the Rock Island and the Boston and Maine. However, the Bankruptcy Court cannot finally approve a Milwaukee abandonment until March 1, 1980 (unless an ESOP is not filed or their is an adverse finding by the I.C.C. or the bankruptcy court). With regard to sales and transfers by railroads in reorganization, expedited I.C.C. handling of all new cases would be required, but transactions of this nature would not be subject to the new bankruptcy provisions. (Sections 3 and 4)

In order to facilitate rehabilitation and improvement of Milwaukee Railroad property retained by the railroad or sold to another entity prior to November 1, 1980 for common carrier purposes, the Secretary is authorized to purchase redeemable preference shares or trustee convertible certificates. (Section 9)

The Regional Rail Reorganization Act of 1973 is amended to provide for an increase of \$4,000,000 in the principal amount available to the Delaware and Hudson Railway Company, provided an ESOP is being established, subject to specified conditions including review and approval by the United States Railway Association. (Section 12)

Finally, the Department of Transportation is required (in a manner similar to S. 1781) to provide for reallocation of funds available as of October 1, 1979, to States requiring supplementary assistance under the "Branch Line" legislation revised last year. This provision is intended to mitigate the effects of large-scale abandonment filings by railroads in reorganization. (Section 13)

STATEMENT OF HON. EDWARD R. MADIGAN, U.S. REPRESENTATIVE FROM ILLINOIS

Mr. Chairman, I am pleased to be here today to bring you up to date on the status of the Milwaukee legislation on the House side. Later this week, Congressman Florio and I intend to offer a substitute amendment to H.J. Res. 341 which is designed to provide an orderly restructuring of the Milwaukee Railroad at a minimum expense to the Federal Government and with a maximum of service provided to the shippers of the region.

In May, the Interstate and Foreign Commerce Committee reported the bill, H.J. Res. 341 from Committee. That bill was similar to S.J. Res. 81 and simply provided for a freeze of the entire Milwaukee system for a period of 45 days. I did not support that approach because in my mind, such a freeze simply postponed the day of reckoning and represented an unwarranted cost to the Federal Government.

As you know, the Milwaukee Railroad has been in bankruptcy since December of 1977. The trustee submitted to the bankruptcy court a reorganization plan last spring which would reduce the size of the Milwaukee Railroad from 10,500 miles to approximately 3,000 miles. The workforce of the Milwaukee Railroad would be reduced from approximately 10,500 employees to around 5,600 employees. On Friday, the court approved an embargo of all the lines not included in the reorganized railroad to be effective November 1. This latest action by the court makes it imperative that Congress move swiftly if we desire to have a more orderly restructuring of the Milwaukee with reduced labor protection.

Since last June, Congressman Florio and I have spent countless hours in trying to negotiate a solution to the Milwaukee Railroad problem. Last May, the Senate passed S.J. Res. 81 which provided for a 90 day freeze of the entire Milwaukee system with the government paying for losses incurred by the Milwaukee Railroad during that period of time. Following the Senate action, the House Interstate and Foreign Commerce Committee considered a companion bill, H.J. Res. 341 which would have frozen the Milwaukee system for a period of 45-days. I opposed H.J. Res. 341 because I felt that a simple freeze of the Milwaukee Railroad system did not provide a solution to the Milwaukee problem, but rather began a process which

² See preceding paragraph.

could lead into the creation of ConRail-West. I am sure that none of us want to see the creation of another ConRail if there is some other solution which would provide good rail service for the shippers of the Midwest and Northwest.

During the summer, Chairman Florio and I met with officials of the Milwaukee Railroad, the Association of American Railroads, officers of other railroads serving the region, the Department of Transportation, the Office of Management and Budget, railroad labor organizations, and shippers and states in the region served by the Milwaukee Railroad. Our purpose was to design legislation which would bring about an orderly restructuring of the Milwaukee Railroad in order to provide shippers of the region with better railroad service. It became clear from the very beginning that there were two major obstacles to an effective restructuring of the Milwaukee Railroad. The first problem is that existing laws make it difficult for an orderly abandonment or sale of Milwaukee Railroad lines which cannot be supported by a reorganized Milwaukee Railroad. Proposed sales, for example, could take months or even years if they were to be undertaken through the ordinary procedures of the Interstate Commerce Act. The same time lag is a factor even with respect to abandonments although the Interstate Commerce Commission has undertaken the abandonment petitions by the Milwaukee Railroad on an expedited basis.

The action taken by the judge to permit an embargo of most service by the Milwaukee Railroad effective this Thursday represents one way to get around the ordinary Interstate Commerce Commission procedures for sales and abandonments. The problem with using the embargo route, however, is that it becomes workable only if the Interstate Commerce Commission provides directed service over those lines of the Milwaukee Railroad which are candidates for sale or which are needed in order to provide essential service to shippers. Directed service is an extremely expensive operation for the Federal Government. It is my understanding that directed service is permitted for up to eight months and would have a cost per month of anywhere from \$10 million to \$20 million. I might add that the \$20 million figure per month for directed service is probably more realistic when one considers that snow will soon be falling in the Midwest and Northwest, thereby adding to the cost of rail operations. Moreover, if directed service is provided by a carrier other than the Milwaukee Railroad, the law permits a six percent profit to such carrier and would undoubtedly entail fixing up many of the Milwaukee lines in order to achieve safe operations. The expenditures in order to achieve safe operations would be particularly high if the carrier providing the directed service planned to buy the particular line at the end of the directed service period. From such a carrier's standpoint, it would be very logical to have the line improved at the expense of the taxpayer rather than subsequently improved as a direct expense of the carrier itself.

Under the proposal Chairman Florio and I intend to offer on the House Floor tomorrow, a more orderly, less costly process is established for restructuring the Milwaukee Railroad.

The process first requires the Interstate Commerce Commission to consider the feasibility of converting the Milwaukee Railroad into an employee-shipper owned railroad. Proponents of such a proposal must submit that proposal to the Interstate Commerce Commission on or before December 1 of this year. The Commission then has 30 days to determine whether or not such a proposal is feasible. Several studies have already been done concerning such a proposal and indicate that it is unlikely to be feasible. However, in an effort to carefully examine every possible solution for the Milwaukee Railroad problem, the proposal contains this final review of an employee-shipper ownership option. If the Commission finds that such a proposal is feasible, it must begin operation of the Milwaukee Railroad no later than March 1 of next year. If the Commission finds that such an option is not feasible, the Milwaukee Railroad may begin the restructuring process as early as January 1.

Under the restructuring process, the bankruptcy judge in the Milwaukee case is given the authority to authorize sales of lines to other railroads as quickly as possible. The Secretary of Transportation is directed to assist the bankruptcy judge and the Milwaukee estate in attempting to find purchasers for Milwaukee lines which are not included in the trustee's proposal for the restructured Milwaukee railroad.

Since the process of finding purchasers for rail lines which the Milwaukee can no longer afford to maintain has been ongoing one, I am convinced that nearly all of the shippers presently served by the Milwaukee Railroad will continue to have rail service. For example, the Burlington Northern, the Union Pacific, and the Chicago and Northwestern Railroads have all expressed interest in purchasing a number of Milwaukee lines. The adoption of the bill suggested by Congressman Florio and me will permit that restructuring process to go forward. It will also permit the prompt abandonment of those lines for which there is not a need for rail service. The States

in the region will also be given the opportunity to assist through their own programs and under the branchlines subsidy program in assuring better rail service throughout the area.

The second major impediment to restructuring the Milwaukee Railroad is labor protection. The embargo of service proposed by the judge does absolutely nothing to resolve the problem caused by traditional labor protection. Traditional labor protection in the railroad industry has been guaranteed both by law and contracts between railroad labor organizations and railroad management. Let me take a minute to describe traditional labor protection.

In 1933, the Federal Government froze all railroad jobs in an effort to stem the rising unemployment of the Depression. In 1935, the Federal government, the railroad industry, and the railroad labor organizations worked out what has become known as the Washington Job Agreement. Under the Washington Job Agreement, railroads were permitted to abolish jobs through normal attrition, but were required to protect an employee if a job was abolished because an abandonment, sale, or merger. That labor protection was eventually made part of the law. For example, both the Amtrak legislation and the 4-R Act require traditional labor protection when a railroad employee loses his job as a result of an abandonment, sale or merger.

The specific labor protection under the Washington Job Agreement is 16½ months' separation pay or six years' guaranteed annual income, depending upon an election by the employee. In the case of the Milwaukee Railroad, traditional labor protection could run anywhere between \$300 million and \$1.2 billion. If the estate were required to pay that kind of labor protection, there would be not enough money to have any kind of reorganization of the Milwaukee Railroad.

Under our proposal traditional labor protection has been significantly changed by providing an option for the Milwaukee employee between taking his chances in receiving traditional labor protection or receiving certain specified labor protection under the amendment. Since traditional labor protection from the Milwaukee Railroad would be subject to lengthy litigation and would perhaps be a low priority claim against the Milwaukee estate, it is our belief that most employees would elect to receive the labor protection provided under this bill.

Mr. Chairman, it has been estimated that as a result of restructuring the Milwaukee Railroad to form a viable company, approximately 5,600 employees would lose their jobs. Under the substitute amendment, all of those employees would be given incentives to take a job with another railroad or receive a prompt but scaled down lump sum payment in lieu of traditional labor protection.

Labor protection benefits under the bill fall into two categories. First, an employee may elect to receive severance pay equal to \$2,000 for each year of service he has up to a maximum of \$25,000. If he elects severance pay, he is also entitled to new career training assistance in order to become qualified for a new job. The new career training assistance would be paid for by the Federal Government and would be limited to not more than \$3,000 per employee.

The preferable option for the employee is to take a job with another railroad or the restructured Milwaukee. The bill contains incentives such as moving expenses and displacement allowances which encourage the employee to take another job in the industry.

One of the most important features of the Florio-Madigan proposal is the determination of who pays for which benefit. All of the labor protection benefits except for supplementary unemployment insurance and new career training would come out of the assets of the Milwaukee estate. There is an aggregate cap placed on benefits from the Milwaukee estate of \$75 million. The bill provides that the government shall loan the Milwaukee the \$75 million in order to make prompt payment of the benefits, but that the loan shall be considered as a cost of administration of the estate. In simple terms, that means that the government would be paid back the \$75 million before any other claims against the Milwaukee estate are paid. I should add, Mr. Chairman, that at this point in time, the Milwaukee estate is sufficiently large to assure the repayment of this loan. The longer we force the Milwaukee Railroad to continue operation of all its railroad lines, the smaller the estate becomes because the Milwaukee Railroad is losing between \$10 and \$20 million each month that it presently operates.

The Federal expenditures for labor protection are limited to \$5 million for the supplementary unemployment insurance and \$1.5 million for new career training. Both of these programs are financed by the Federal Government in that they are designed to encourage employees to work rather than receive guaranteed annual income under traditional labor protection. The supplementary unemployment insurance benefit is limited to a period of three years and would become operative only

when an employee is out of work. In addition, the supplementary unemployment insurance benefit is limited to an individual in an amount sufficient to bring an unemployed worker's income up to 80 percent of his normal compensation with the Milwaukee Railroad. Since unemployment in the railroad industry is relatively low, it is unlikely that the demand for supplementary unemployment benefits will be very great. In my judgment, the \$5 million authorized in this bill will be more than sufficient to cover the total expenses under this program. At the same time, the existence of the program will provide the necessary security for a displaced Milwaukee employee to move his family to another area in order to take another job.

The proposal Chairman Florio and I have put together addresses the two major impediments to the restructuring of the Milwaukee Railroad head on. It permits orderly abandonment and sales of the Milwaukee line and it encourages employees to elect labor protection options which are fair and equitable. There are a number of other incentives contained in the bill to encourage prosperous railroads to purchase as much of the Milwaukee system as possible through the use of rehabilitation funds for the purchased lines.

Finally, let me bring to your attention Sec. 18 of our bill which gives the bankruptcy court in the Rock Island greater authority for dealing with the liquidation of that railroad. Under Sec. 18 the bankruptcy judge in that case is given a freer hand with respect to abandonments and sales. At the same time, the section makes it clear that the Interstate Commerce Commission shall have the same rights and duties as it would have under the Bankruptcy Act which became effective October 1. For example, the bankruptcy judge would have to refer sales to the Interstate Commerce Commission for up to 180 days. The important point to remember, though, is that the Commission would have a limit of 180 days in which to act. Under the present law, sales in particular can be dragged out years and years. We cannot afford the lengthy time lag under existing law if Congress is to avoid becoming deeply entangled in the Rock Island case. Sec. 18 and Sec. 25 of the bill as printed in the Record on September 28 contains provisions which facilitate the liquidation and/or restructuring of the Rock Island Railroad. Sec. 18 gives the court greater authority. Sec. 25 makes it possible for the Secretary of Transportation to use existing loan programs for rehabilitation in order to encourage profitable carriers to buy as many lines as possible of bankrupt railroads.

Mr. Chairman, the bill we have negotiated over the last three months is interconnected and often one section is dependent upon another particular provision in the bill. I know that the staff of your Committee and the staff of our committee have been working closely in the drafting of this legislation. I hope that both Houses may pass the legislation within the next few days so as to resolve not only the Milwaukee, but hopefully the Rock Island problem as well. There is no easy solution to railroad bankruptcy problems. However, I am convinced that our proposal is far superior to the other options facing us—either freezing the entire system or doing nothing and letting the embargo result in additional cost for directed service.



