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MILWAUKEE RAILROAD FINANCIAL CRISIS

HEARING

BEFORE THE

SUBCOMMITTEE ON SURFACE TRANSPORTATION

OF THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

NINETY-SIXTH CONGRESS

FIRST SESSION

ON

S. 839

TO PROVIDE FOR THE MAINTENANCE OF ESSENTIAL BRANCH LINE RAIL SERVICE IN RURAL AREAS THROUGH ASSISTANCE FOR COOPERATIVE OWNERSHIP OF LINES

S. 1286

TO AMEND SECTION 3 OF THE EMERGENCY RAIL SERVICES ACT OF 1970, RELATING TO RAIL EMERGENCY SERVICE ASSISTANCE, AND FOR OTHER PURPOSES

S. 1492

TO SAVE MILWAUKEE ROAD'S FREIGHT-CARRYING CAPACITY

SEPTEMBER 7, 1979

PART 2

Serial No. 96–30

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MILWAUKEE RAILROAD FINANCIAL CRISIS

FRIDAY, SEPTEMBER 7, 1979

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

The subcommittee met at 10 a.m., in room 5110, Dirksen Senate Office Building, Hon. Russell B. Long (chairman of the subcommittee) presiding.

OPENING STATEMENT BY SENATOR LONG

Senator LONG. This hearing will come to order.

Let me first announce that we are going to have a number of witnesses to hear from today. To conserve time I will ask all witnesses to summarize their prepared statements and just give us the main points so all witnesses can be heard this morning.

The prepared statements will be analyzed and put into the record as well as any additional information submitted in response to written questions that might be asked in followup to testimony given today.

This morning's hearing is our second look at the continuing financial crisis of the Milwaukee Railroad. Since our first hearing in May on this matter of the Milwaukee Railroad, we have been advised that the deterioration of the railroad's tracks and equipment and declining market shares has remained the trend despite an additional $35 million in loans the railroad has received to continue operating the entire system.

While the economic and physical problems of the Milwaukee have not gotten any better since our last hearing in May, several major developments have occurred.

As a result of testimony received at our hearing and in expectation that the bankruptcy judge would rule to grant the trustee's embargo request, this committee reported out, and the Senate passed, Senate Joint Resolution 81, which provided for the continuation of the entire Milwaukee system for 60 days while certain studies could be completed assessing the potential viability of the western lines of the Milwaukee system.

Four such studies, either contracted out or conducted by the Department of Transportation, have been completed.

In addition to these studies, the trustee has filed his reorganization plan with the court, and simultaneously requested expedited abandonment proceedings at the Interstate Commerce Commission.

The question before this subcommittee on May 21, and the question now is whether there is a potentiality for the Milwaukee, or a

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CONTENTS

Page

Opening statement by Senator Long 273
Text of bills:
S. 839 275
S. 1286 287
S. 1492 290
Agency comments:
Department of Transportation 293

LIST OF WITNESSES

Baucus, Hon. Max, U.S. Senator from Montana 305
Durenberger, Hon. David F., U.S. Senator from Minnesota 340
Prepared statement 342
Kamm, Linda, General Counsel, Department of Transportation; accompanied by Robert Gallamore, Deputy Administrator, Federal Railroad Administration 311
Prepared statement 314
Melcher, Hon. John, U.S. Senator from Montana 298
Prepared statement 303
Nelson, Hon. Gaylord, U.S. Senator from Wisconsin 293
Prepared statement 296
Ogilvie, Richard B., attorney-in-fact and trustee, the Milwaukee Railroad; accompanied by John Rowe, counsel 327
O'Neal, Hon. A. Daniel, Chairman, Interstate Commerce Commission; accompanied by Henri F. Rush, Associate General Counsel; and Richard Schieffelbein, Deputy Director, Rail Services Planning 320
Prepared statement 321
Snyder, J. R., legislative representative, United Transportation Union; accompanied by William G. Mahoney, counsel; William Brodsky, executive vice president, Milwaukee Lines, Inc.; and Richard Trenery, the Consultant Center 330

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

Adams, William P., Chairman, Railroad Retirement Board, statement 354
Areas for work rule relief, table 344
Claytor, W. Graham, Jr., Acting Secretary, Department of Transportation, letter of August 15, 1979 317
Gallamore, Deputy Administrator, Federal Railroad Administration, DOT, letter of September 5, 1979 356
Hagen, Bruce, commissioner, North Dakota Public Service Commission, statement 353
Ploetz, Donald G., chairman, transportation committee, and James Borchert, chairman, industrial rail task force, Metropolitan Milwaukee Association of Commerce, letter of September 11, 1979 362
Riegle, Hon. Don W., Jr., U.S. Senator from Michigan, statement 353
Snyder, J. R., chairman, legislative committee, Railway Labor Executives' Association, letter of September 17, 1979 363
U.S. District Court, Northern District of Illinois, Eastern Division, memorandum 357

part of it, to ever operate on a self-sustaining basis. Unless there is a reasonable chance for this railroad to succeed, or unless there is a demonstrable overriding public need for services provided by the Milwaukee, this Senator could not justify recommending that the Federal Government put taxpayer money into a hopeless proposition.

Much of the testimony this subcommittee has received—and I understand that the studies completed to date—all suggest that a substantial part of that railroad is not potentially viable.

I am aware that two additional studies relating to the Milwaukee are currently being conducted and will be completed later this month.

These documents will be analyzed by the subcommittee when they are completed and a summary will be made a part of this hearing record.

It is my hope that today's hearing will provide us with additional information so that we may soon make a decision on what legislative action, if any, is warranted.

[The bills and agency comments follow:]

96TH CONGRESS
1ST SESSION

S. 839

To provide for the maintenance of essential branch line rail service in rural areas through assistance for cooperative ownership of lines.

IN THE SENATE OF THE UNITED STATES

MARCH 29 (legislative day, FEBRUARY 22), 1979

Mr. PRESSLER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To provide for the maintenance of essential branch line rail service in rural areas through assistance for cooperative ownership of lines.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Rural Rail Cooperative Act of 1979".

FINDINGS AND DECLARATION OF POLICY

SEC. 2. The Congress finds that in order to provide alternatives to local rail users to maintain rail service in low density, rural areas which stand to lose this vital service,

there shall be established a Rural Area Transportation Office to promote cooperative ownership of rail beds and track of lines through guaranteed loan assistance.

DEFINITIONS

SEC. 3. For the purposes of this Act the term—

(1) "Office" means the Rural Area Transportation Office established by section 4;

(2) "Director" means the Director of the Rural Area Transportation;

(3) "Secretary" means the Secretary of Transportation;

(4) "Class A or B branchline railroad" means a railroad which carries under 5 million gross ton-miles per mile of track annually;

(5) "actual cost" of commercial railroad equipment or facilities, as of any specified date, means the aggregate, as determined by the Director, of—

(A) all amounts paid by, or for the account of, the obligor with respect to such facility on or before that date, and

(B) all amounts which the obligor is then obligated to pay from time to time thereafter, for the construction, reconstruction, or reconditioning of such equipment or facility;

(6) "depreciated actual cost" means the actual cost depreciated on a straightline basis over the useful life of the property involved as determined by the Director;

(7) "obligation" means any note, bond, debenture, or other evidence of indebtedness issued for one of the purposes specified in section 6(a);

(8) "obligee" means the holder of any obligation;

(9) "obligor" means any person primarily liable for payment of the principal of or interest on any obligation; and

(10) "eligible applicant" means any local government entity, utility company, coal mine company, grain company, farm organization, feed or fertilizer company, local rail user, or any combination thereof.

ESTABLISHMENT

SEC. 4. There is established within the Department of Transportation a Rural Area Transportation Office. The Office shall be headed by a Director appointed by the Secretary.

FUNCTION

SEC. 5. The Director may, with the approval of the Secretary, make loan guarantees to eligible applicants for the purpose of establishing independently owned and operated class A or B branchline railroads. The Director in carrying

out assigned duties under this Act shall act subject to the authority of the Secretary.

APPLICATION REQUIREMENTS

SEC. 6. (a)(1) The Director may, subject to the provisions of this section, guarantee, or make a commitment to guarantee, the payment of interest on, and the principal amount of, any obligation issued by an obligor for any of the following:

(A) the financing and refinancing (including reimbursement of amounts previously expanded) of the cost of constructing, reconstructing, or reconditioning of any railroad for the purpose of establishing such railroad as a class A or B branchline railroad;

(B) the financing of the acquisition of used railroad equipment or facilities in connection with their reconstruction or reconditioning; and

(C) the refinancing of any existing obligation issued for any of the purposes specified in subparagraph (A) whether or not guaranteed under this section, including any obligation incurred for the purpose of obtaining temporary funds.

(2) Guarantees and commitments to guarantee may be made under this section without regard to section 3679(a) of the Revised Statutes of the United States (31 U.S.C. 665(a)).

(3) The full faith and credit of the United States is pledged to the payment of all guarantees made under this section with respect to both principal and interest, including any interest which may accrue between the date of default under a guaranteed obligation and the payment in full of the guarantee.

(4) Any guarantee, or commitment to guarantee, made by the Director under this section shall be conclusive evidence of the eligibility of the obligation for such guarantee, and the validity of any guarantee, or commitment of guarantee, so made shall be incontestable.

(b)(1) Obligations guaranteed under this section—

(A) shall have an obligor approved by the Director as being responsible and possessing the ability, experience, financial resources, and other qualifications necessary for the adequate operation and maintenance of a class A or B branchline railroad;

(B) shall be in an aggregate principal amount which does not exceed 87½ percent of the actual cost, or the depreciated actual cost, as determined by the Director, of construction, reconstruction, or reconditioning;

(C) shall have maturity dates satisfactory to the Director, but not to exceed 25 years;

(D) shall provide for payments by the obligor satisfactory to the Director; and

(E) shall bear interest (exclusive of charges for the guarantee and service charges, if any) at rates not to exceed such percentage per annum on the unpaid principal as the Director determines to be reasonable except that the Director may allow a rate of interest higher than otherwise allowable when the obligee conducts the basic economic feasibility and credit investigation for the Director's review and agrees to finance, on an unguaranteed basis, not less than 20 percent of the cost of construction, reconstruction, or reconditioning.

(2) No obligation shall be guaranteed under this section unless the obligor conveys or agrees to convey to the Director such security interest as the Director may require to reasonably protect the interests of the United States.

(c)(1) The Director may charge a fee for any obligation guaranteed under this section, the amount of which shall be established by the Director by regulation but which may not exceed 1 percent per annum of the outstanding principal balance of the obligation. Fee payments shall be made by the obligor to the Director when moneys are first advanced under a guaranteed obligation and at least 60 days before each anniversary date thereafter.

(2) The Director shall charge and collect from the obligor such amounts as may be reasonable for the investigation of the application for any guarantee, for the appraisal of properties offered as security for any guarantee, and for the inspection of such properties during construction, reconstruction, or reconditioning. Such charges shall not aggregate more than one-half of 1 percent of the original principal amount of the obligation to be guaranteed.

(3) All fees and other amounts received by the Director under the provisions of this subsection shall be deposited in the Fund established pursuant to section 7.

(4) Obligations guaranteed under this section, and agreements relating thereto, shall contain such other provisions with respect to the protection of the security interests of the United States (including acceleration and subrogation provisions and the issuance of notes by the obligor to the Director), liens and releases of liens, payments of taxes, and such other matters as the Director may prescribe.

(d)(1) In the event of a default, which has continued for 30 days, in any payment by the obligor of principal or interest due under any obligation guaranteed under this section, the obligee or his agent shall have the right to demand, at or before the expiration of such period as may be specified in the guarantee or related agreements, but not later than 90 days from the date of such default, payment by the Director of the

unpaid principal amount of said obligation and of the unpaid interest thereon to the date of payment. Within such period as may be specified in the guarantee or related agreements, but not later than 30 days from the date of such demand, the Director shall promptly pay to the obligee or his agent the unpaid principal amount of the obligation and unpaid interest thereon to the date of payment. The Director shall not be required to make such payment if before the expiration of such period he finds that there was no default by the obligor in the payment of principal or interest or that such default has been remedied before any such demand.

(2) In the event the obligee does not make a demand on a defaulted installment before 90 days from the date of such default, that portion of the guarantee which represents the defaulted installment shall be lost but the remainder of the guarantee shall continue in full force and effect.

(3) Payments required to be made by the Director under paragraph (1) shall be made by the Director from the fund established pursuant to section 7.

(4) In the event of any payment by the Director under paragraph (1), the Director shall have all rights in any security held by him relating to his guarantee of such obligations as are conferred upon him under any security agreement with the obligor. Notwithstanding any other provision of law relating to the acquisition, handling, or disposal of property by the

United States, the Director may, under such terms and conditions as the Director prescribes or approves, complete, recondition, reconstruct, repair, maintain, operate, or sell any property acquired by him pursuant to a security agreement with the obligor.

(5) After any default referred to in paragraph (1) the Director shall take such action against the obligor or any other parties liable thereunder that in his discretion, may be required to protect the interests of the United States. Any suit may be brought in the name of the United States or in the name of the obligee and the obligee shall make available to the United States all records and evidence necessary to prosecute any such suit. The Director may accept a conveyance of title to and possession of property from the obligor or other parties liable thereunder for an amount not greater than the unpaid principal amount of such obligation and interest thereon. In the event the Director receives through the sale of property an amount of cash in excess of any payment made to an obligee under paragraph (1) and the expenses of collection of such amounts, he shall pay such excess to the obligor.

(6) Whoever, for the purpose of obtaining any loan or advance of credit from any person with the intent that an obligation relating to such loan or advance of credit shall be offered to or accepted by the Director to be guaranteed, or

for the purpose of obtaining any extension or renewal of any loan, advance of credit, or mortgage relating to an obligation guaranteed by the Director, or the acceptance, release, or substitution of any security on such a loan, advance of credit, or for the purpose of influencing in any way the action of the Director under this section, makes, passes, utters, or publishes, or causes to be made, passed, uttered, or published any statement, knowing the same to be false, or alters, forges, or counterfeits, or causes or procures to be altered, forged, or counterfeited, any instrument, paper, or document, or utters, publishes, or passes as true, or causes to be uttered, published, or passed as true, any instrument, paper, or document, knowing it to have been altered, forged, or counterfeited, or willfully overvalues any security, asset, or income shall be punished by a fine of not more than $25,000, or by imprisonment for not more than 2 years, or both.

(e) The Director shall promulgate such rules and regulations as may be deemed necessary or appropriate to carry out the purposes and provisions of this section.

RURAL TRANSPORTATION DEVELOPMENT FUND

SEC. 7. (a) There is established in the Treasury of the United States a Rural Transportation Development Fund (hereinafter referred to as the "fund"). The fund shall be available to the Director as a revolving fund for the purpose

of carrying out, and administering this Act. The fund shall consist of—

(1) any sums appropriated to the fund;

(2) any fees received by the Director in connection with any guarantee made under this Act; and

(3) recoveries and receipts received by the Director under security, subrogation, and other rights and authorities under this Act;

All payments made by the Director to carry out the provisions of this Act (including reimbursements to other Government accounts) shall be paid from the fund, only to the extent provided in appropriation Acts. Sums in the fund which are not currently needed for the purposes of this Act shall be kept on deposit or invested in obligations of, or guaranteed by, the United States.

(b) If at any time the moneys in the fund are not sufficient to pay any amount the Director is obligated to pay under subsection (d)(1) of section 6, the Director shall issue to the Secretary of the Treasury notes or other obligations (only to such extent and in such amounts as may be provided for in appropriation Acts) in such forms and denominations, bearing such maturities, and subject to such terms and conditions as the Secretary of the Treasury prescribes. Such notes or other obligations shall bear interest at a rate determined by the Secretary of the Treasury, taking into consideration

52-943 O - 80 - 2

the current average market yield on outstanding marketable obligations of the United States of comparable maturities during the month preceding the issuance of such notes or other obligations. The Secretary of the Treasury shall purchase any notes and other obligations to be issued hereunder and for such purpose he may use as a public debt transaction the proceeds from the sale of any securities issued under the Second Liberty Bond Act, and the purposes for which securities may be issued under such Act, are extended to include any purchases of such notes and obligations. The Secretary of the Treasury at any time may sell any of the notes or other obligations acquired by him under this subsection. All redemptions, purchases, and sales by the Secretary of the Treasury of such notes or other obligations shall be treated as a public debt transaction of the United States. Moneys borrowed under this subsection shall be repaid by the Director from the fund.

AUTHORIZATION FOR APPROPRIATIONS

SEC. 8. There is appropriated to the fund, without fiscal year limitation, such sums as may be necessary to provide initial capital to carry out the provisions of this Act.

96TH CONGRESS
1ST SESSION

S. 1286

To amend section 3 of the Emergency Rail Services Act of 1970, relating to rail emergency service assistance, and for other purposes.

IN THE SENATE OF THE UNITED STATES

JUNE 5 (legislative day, MAY 21), 1979

Mr. MELCHER introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To amend section 3 of the Emergency Rail Services Act of 1970, relating to rail emergency service assistance, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Emergency Rail Assistance Act of 1979".

TITLE I—EMERGENCY RAIL SERVICES

FINANCIAL ASSISTANCE

SEC. 101. The provisions of section 3(c) of the Emergency Rail Services Act of 1970 shall not apply to any rail

carrier or railroad (as defined in section 10102 of title 49, United States Code) which filed for bankruptcy after October 1, 1977 under section 77 of the Bankruptcy Act.

TITLE II—DIRECTED SERVICE

SEC. 201. Section 11125 of title 49, United States Code, is amended by—

(1) inserting "or that carrier" after "another carrier" in the first sentence of subsection (a):

(2) adding at the end thereof the following:

"(c) In the event that the Commission directs the discontinuing carrier to continue service under subsection (a) the amount payable to such carrier under paragraph (5) of subsection (b) shall not include a profit margin. The Commission in determining the amount of payments under the preceding sentence shall assure that there is no erosion of the assets of the directed, carrier as a result of such directed service.

"(d) Any action by the Commission directly serviced under this section shall cover the entire system of the discontinuing carrier for the first 60 days of such directed service.".

TITLE III—REHABILITATION AND IMPROVEMENT FINANCING

SEC. 301. Section 505 of title V of the Railroad Revitilization and Regulatory Reform Act of 1976 (45 U.S.C. 825(b)(2)) is amended by striking subsection (b)(2)(C) and inserting in lieu thereof the following new subsection:

"(C) the public benefits to be realized from the project to be financed in relation to the public costs of such financing.",

and by striking subsection (c)(2)(B) (ii) and (iii).

96TH CONGRESS
1ST SESSION

S. 1492

To save the Milwaukee Road's freight-carrying capacity.

IN THE SENATE OF THE UNITED STATES

JULY 12 (legislative day, JUNE 21), 1979

Mr. NELSON (for himself, Mr. DURENBERGER, and Mr. PROXMIRE) introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation

---

A BILL

To save the Milwaukee Road's freight-carrying capacity.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ABANDONMENT OF RAILROAD LINES

SECTION 1. Section 77(o) of the Bankruptcy Act (11 U.S.C. 205(o)) is amended by striking out "or as it may be hereafter amended" and inserting in lieu thereof "unless a petition had been filed between December 18, 1977, and November 6, 1978.".

SHIPPER PROTECTION

SEC. 2. (a) Section 11125(a) of title 49, United States Code, is amended by adding after the first sentence thereof the following new sentence: "The Commission may also negotiate with, and issue directions to, a willing provider of truck or water transportation to transport the traffic of shippers using a railroad line abandoned pursuant to court action under section 77 of the Bankruptcy Act, if the Commission finds that such transportation would be less costly or more energy efficient than directing rail service.".

(b) Section 11125(b)(4) of title 49, United States Code, is amended by inserting "(but only to the extent feasible in the case of a directed carrier by truck or water)" immediately after "A directed carrier shall".

LABOR PROTECTION

SEC. 3. Section 11125 of title 49, United States Code, is amended by adding at the end thereof the following new subsection:

"(c)(1) Any employee displaced from his employment by an abandonment pursuant to court action under section 77(o) of the Bankruptcy Act who does not receive employment under subsection (b)(4) of this section or otherwise in the railroad industry, and any such displaced employee whose employment under subsection (b)(4) of this section is terminated at the conclusion of directed service, shall be provided a fair

arrangement at least as protective of his interests as the terms imposed under section 11347 of this title before February 5, 1976, and the terms established under section 565 of title 45.

"(2) Any rail carrier required to provide protective arrangements for employees under this section shall be reimbursed for the cost of such arrangements by the Railroad Retirement Board. At such time as the Board determines that the financial condition of such rail carrier so permits, the Board shall direct such carrier to repay the Board for such reimbursement.

"(3) There are authorized to be appropriated to the Board such sums as may be necessary for making reimbursements under this subsection.".

OFFICE OF THE SECRETARY OF TRANSPORTATION,
Washington, D.C., September 17, 1979.

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

DEAR MR. CHAIRMAN: This is in response to your request for the views of the Department on S. 839, a bill "To provide for the maintenance of essential branch line rail service in rural areas through assistance for cooperative ownership of lines."

In order to assist local rail users to maintain rail service in low density rural areas which stand to lose the service, the bill would establish in the Department of Transportation a rural Area Transportation Office. The Director of the Office would, with the approval of the Secretary, be authorized to guarantee loans to eligible applicants to finance (and refinance) the cost of acquiring, constructing or rehabilitating railroad properties and equipment for the purpose of establishing such properties as independently owned and operated class "A" or "B" branchline railroads.

The Department would oppose enactment of S. 839 as unnecessary. Under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 831) ("4R Act"), the Secretary of Transportation is authorized to guarantee obligations of an applicant for the purpose of acquiring or rehabilitating railroad facilities and equipment. Similarly section 5 of the Department of Transportation Act (49 U.S.C. 1654) provides grants to States to cover the cost of acquiring or rehabilitating railroad branch lines. In light of these programs, a new financial assistance program to assist in establishing branchline railroads is not necessary. Clearly, the establishment of a new office in the Department to administer such a program is not necessary. Finally any new rail loan guarantee program should be folded into and operated under the basic criteria of section 511 of the 4R Act.

The Office of Management and Budget advises that from the standpoint of the Administration's program there is no objection to the submission of this report for the consideration of the committee.

Sincerely,

LINDA HELLER KAMM,
General Counsel.

Senator LONG. I now call our first witness, Senator Gaylord Nelson of Wisconsin.

STATEMENT OF HON. GAYLORD NELSON, U.S. SENATOR FROM WISCONSIN

Senator NELSON. Mr. Chairman, I will comply with your request that we be brief.

There are witnesses here this morning who are experts on the railroad industry, and there are witnesses here who are experts on the financial condition of the Milwaukee Railroad, and I am not an expert on either.

First, Mr. Chairman, I conducted hearings in Wisconsin on July 20 in order to give a broad spectrum of businesses and industries an opportunity to testify before the Small Business Committee on the importance of the Milwaukee Railroad to their businesses, knowing that many of them would not be able to come here as witnesses, and even if they could, the committee could not hear them all.

So I would ask the chairman if he would permit me to submit for the record the written testimony that was submitted at that hearing in Milwaukee for your own record, and thus avoid repetitious reading of what they submitted.

Senator LONG. Well, if it's already been printed, Senator—has it already been printed?

Senator NELSON. I have two things here, Mr. Chairman. I have the printed hearing record itself; I have the statements that were made by the witnesses.

It would be up to the committee whether you wanted to——

Senator LONG. I would just suggest that we consult after today's hearing as to how much of it should be printed in this hearing record and how much of it should be kept in the committee files.

But in any event, we'll cooperate with you.

Senator NELSON. That's fine with me.

The statements from a number of industries, and a statement by Governor Dreyfus are of course shorter than the hearing record that we have printed. I'll submit them both, and you can use your own judgment as to which and how much of them you believe would be helpful to have printed.

Senator LONG. We're going to have, Senator, as you know, a number of studies and documents, and that sort of thing, and I would suggest that we make those all available to anyone who wants to use them to buttress their arguments or respond to them.

I think that this hearing record is going to be voluminous if we print everything that's already been printed in one place or another about this subject matter.

And that being the case, we'll see that the record properly reflects what those statements indicate.

Senator NELSON. Mr. Chairman, I agree with that. Much of the testimony at our July 20 hearing was repetitious.

Now, I have a statement of my own which I ask be printed in full in the record, and I will only read one paragraph of it, which will take about 60 or 70 seconds.

The Milwaukee Road is of critical importance to the State of Wisconsin. It operates 1,385 miles of track in the State, 24 percent of our total railroad mileage.

In eastern and southern Wisconsin, the Milwaukee trackage constitutes almost 50 percent of our total rail line. It provides rail service to 220 Wisconsin communities, 16 of our largest cities, and for 180 communities is the only railroad.

The Milwaukee serves 28 percent of the railroad traffic in Wisconsin, 5 million tons outbound and 9 million tons inbound.

Thirty-five percent of our manufactured goods in Wisconsin move by rail and 34 percent of that traffic is carried on the Milwaukee.

The major commodities transported on the Milwaukee are processed foods, limestone for agriculture, paper, autos, and heavy industrial machinery.

Inbound Milwaukee commodities include coal, fertilizer, metals, and raw materials for manufacturing.

Mr. Chairman, I would ask that the balance of my statement be printed in the record, and I will leave with your committee staff the testimony of various witnesses at our July 20 hearing.

Governor Dreyfus, I understand, could not make the hearing today. He did not get notice, apparently, until it was too late for him to rearrange his schedule.

But I do have the prepared statement he did submit at the hearings in Milwaukee.

Thank you very much, Mr. Chairman.

Senator LONG. Thank you.

Well, I read the statement of—I suppose the question I was going to ask you, Senator, is: Can you be explicit whether you think your analysis of this matter—is it possible to save this entire railroad, whether that is practical and feasible, and whether you want us to do it or try to do it?

Senator NELSON. Well, Mr. Chairman——

Senator LONG. I take it you feel there's a better chance for the core area of the railroad than there is for the entire railroad?

Senator NELSON. I have no independent expertise on it at all. I read what proposals were made to the bankruptcy court; I listened to the testimony that was given in Milwaukee. And that testimony made the case that the core plan is the only way to keep even a portion of the railroad viable.

I happen to think it's a great tragedy that the railroads around the country are being abandoned. I think someday we're going to have to restore them.

I would like to see them maintained.

Obviously, not all of them can be maintained, but I think it's a vital part of our transportation system, and I think as the years go by, the railroads are going to become a more and more important part of our transportation system.

And I hate to see these abandonments if there's any way in the world that as a practical matter the old trackage could be maintained.

And I would say that I have in the past and will in the future support congressional action when it would be possible to keep railroads viable.

The argument will be made by some distinguished members of the Senate—including Senator Melcher—that tremendous amounts of coal are going to be moved out of the west and that there are not enough cars to move it today by the Burlington or the Milwaukee, and that the amounts will be increasing dramatically and that both of those railroads ought to be there to haul it.

They may be absolutely right. I'm not making a judgment on it. All I'm saying, Mr. Chairman, is I know the service of the Milwaukee Road is vital to the State of Wisconsin. For many of our corporations there is simply no substitute for railroad service.

We have the Bucyrus-Erie Co., for example, that makes shovels that go out and remove the overburden in strip mining, and it takes 50, 60, or maybe 100 cars to haul just one of them.

There's no way to haul that kind of product on the highways. There is no way for us to haul coal on the highways. So there's lots of equipment, machinery, and heavy material produced in my State that cannot be shipped in or out except by rail.

So I know it's vital to Wisconsin, and I'm sure it's vital to many other parts of the country too.

Senator LONG. Thank you, Senator.

Senator Pessler?

Senator PRESSLER. I just want to commend the Senator from Wisconsin and say I share the same goals with him and the Senator from Montana.

The Milwaukee is of great concern to South Dakota, and I don't know what kind of basic solutions we're going to have; both the

labor and the management problems involving the Milwaukee are great.

I have long supported the concept of rail cooperatives as a possibility to allow shippers to retain service by purchasing the rail bed and track and taking other steps.

That would certainly require the cooperation of the unions, and I would call the Senator's attention to S. 839, the proposed Rail Cooperative Act of 1979 which might be of some assistance.

I've met with the Governor of Wisconsin recently when he was in Washington on this matter. But I also want to hear the points of view of the Senator from Montana, who has a somewhat different slant on this; though I do commend the Senator and look forward to our next witness.

[The statement follows:]

STATEMENT OF HON. GAYLORD NELSON, U.S. SENATOR FROM WISCONSIN

First, I want to thank Senator Long, the Chairman of this subcommittee, for holding this hearing on the future of the Milwaukee Road. The Milwaukee faces an ever-deepening financial crisis, which threatens the economy of Wisconsin and of the entire Midwest. The need for legislative action is urgent.

Last July 20, in Milwaukee, I held a hearing under the auspices of the Senate Select Committee on Small Business on the probable impact in Wisconsin of a cessation of services by the Milwaukee. The record of that hearing, which I will make available to this committee, made clear the extent to which the Milwaukee Road is living on borrowed time and the degree to which vital industries in Wisconsin depend upon continued Milwaukee Road service.

The Milwaukee Road is of critical importance to the State of Wisconsin. It operates 1,385 miles of track in the state, 24 percent of our total railroad mileage. In eastern and southern Wisconsin, the Milwaukee trackage constitutes almost 50 percent of our total rail line. It provides rail service to 220 Wisconsin communities, 16 of our 20 largest cities, and for 180 communities is the only railroad. The Milwaukee serves 28 percent of the railroad traffic in Wisconsin, 5 million tons outbound and 9 million tons inbound; 35 percent of our manufactured goods in Wisconsin move by rail and 34 percent of that traffic is carried on the Milwaukee. The major commodities transported on the Milwaukee are processed foods, limestone for agriculture, paper, autos, and heavy industrial machinery. Inbound Milwaukee commodities include coal, fertilizer, metals, and raw materials for manufacturing.

Along with Senators Proxmire and Durenberger, I have submitted a bill, S. 1492, which is a companion measure to H.R. 4686, which was introduced in the House by Congressman Reuss and 17 cosponsors. The bill provides a legal framework within which the essential "core" of the Milwaukee Road can be preserved.

Section 1 of the bill would amend the old federal bankruptcy law to allow federal judges to order abandonment of uneconomic lines for railroads already in bankruptcy at the time the Federal Bankruptcy Act amendments were passed in 1978. This provision would bring the Milwaukee Road under procedures similar to the expedited abandonment procedures provided by the Bankruptcy Act.

Section 2 of the bill would provide that the ICC could direct another railroad to operate for up to 240 days a line abandoned by a railroad pursuant to the order of a federal bankruptcy judge. Under present law, "directed service" can only be ordered after an abandonment has been ordered pursuant to ICC proceedings. Section 2 would also permit the ICC to direct service by truck or water transportation if this would be "less costly or more energy-efficient than directing rail service." Public money is required to subsidize directed service, and we want that money to be spent as efficienctly as possible. Section 2 also states that railroad employees need only transfer to other transportation modes "to the extent feasible." The present directed service law only provides for one railroad assuming temporarily the routes of another and employees generally transfer. It would not make sense for, say, a barge company to have to accept railroad employees who were either unable or unwilling to learn barge work. Likewise, it would be ill-advised to require that railroad workers make a sudden adjustment to the very different job demands of other transportation modes.

Section 3 provides the labor protection which is generally made available after other officially approved abandonments. What will be provided to discharged employees is either one lump sum payment or six years of payments, both based on previous salary. What this will cost the taxpayers is at present uncertain. It has been estimated that the services of approximately 2,000 of the Milwaukee's 10,000 employees would no longer be required when reorganization was complete. Payments to them might amount to $125 million, according to preliminary estimates. Obviously, much more detailed cost estimates need to be made during the committee process. Section 3 would require that the reorganized railroad would have to repay to the government such funds as it can. However, in all candor, I doubt that much, if any, labor protection payments will ever be repaid to the U.S. Treasury, as even a reorganized Milwaukee Road will not possess many excess dollars.

It ought to go without saying that there are possibilities of compromise on specific aspects of this legislation. But the Milwaukee's desperate financial condition renders some form of effective legislative action absolutely necessary. Let us review the relevant figures briefly.

The Milwaukee Road went into bankruptcy in December, 1977, after three years of losses totaling $100 million. In 1978, the Milwaukee Road lost $82 million. In the first quarter of 1979, the Milwaukee Road lost $45 million. The Milwaukee's total losses for 1979 are projected to be $157 million. This loss will be approximately seven times higher than the 1976 losses.

These losses and daily cash deficits are preventing the Milwaukee from performing vitally needed maintenance work. The amount of deferred maintenance reported to the Interstate Commerce Commission by the Milwaukee Road in 1978 was a staggering $578,431,000. Deferring needed maintenance causes service breakdowns, derailments, and slows down many trains to a crawl. According to the City of Seattle's testimony in the bankruptcy proceeding, it commonly takes four days for freight trains to travel from Seattle to Chicago. Milwaukee Road trains usually take 12 days.

As one would expect, those customers who can switch to other railroads are doing so. In 1977, the Milwaukee handled 866,000 carloads of freight. In 1978, 806,000 carloads were handled, and, in 1979, it will handle about 725,000 carloads.

What this amounts to, quite simply, is a vicious circle. It ought not to be forgotten that at present the Milwaukee is being kept alive only by the "artificial respiration" of Emergency Rail Services Act federal payments. And those payments must, at some time, come to an end.

Let me underscore this point. So far, the Milwaukee has received $25 million in ERSA payments. There is $30 million left to be paid out in the ERSA fund. It is probable, according to the estimates of the Milwaukee Road, that the most recent ERSA payment may carry the Milwaukee through October. The Department of Transportation has stated that it will provide no more ERSA money for the Milwaukee as long as it is operating its entire 9,800 mile system. To put the matter starkly, but accurately, within two months, if nothing is done, the Milwaukee will collapse into liquidation with terrible consequences for the people of Wisconsin and the entire Midwest.

What can be done? I am persuaded by the careful work done by the Milwaukee's trustee in bankruptcy that our best hope lies in allowing the railroad to be reorganized along the lines proposed by the trustee. Other proposals concerning possible employee and/or shipper ownership of the Milwaukee do not strike me as being plausible alternatives. Frankly, with all due respect to my colleagues who support these proposals, I believe that any time and energy spent on these alternatives constitutes a waste of that time and energy, especially when disaster is staring us in the face.

At present, the Milwaukee's legal situation is tenuous and uncertain. Currently pending before U.S. District Judge Thomas McMillen (N. D. Illinois), who is presiding over the Milwaukee's bankruptcy proceeding, is a proposal by Richard Ogilvie, the distinguished former governor of Illinois, the Milwaukee's trustee in bankruptcy, to "embargo" approximately two-thirds of the Milwaukee's trackage. Judge McMillen earlier held that he could not legally order such an embargo, which would amount to a de facto abandonment, unless the Milwaukee faced a situation of imminent "cashlessness." The court held that abandonments fall properly within the purview of the ICC. The trustee has also filed a reorganization plan for the Milwaukee with the ICC. However, it is likely that under the best of circumstances no decision will be forthcoming from the ICC until early 1980, which may be too late.

This legislation would allow the bankruptcy judge to do what must be done to give the Milwaukee a fighting chance to maintain a viable system and provide a

significant measure of labor protection without spending ..ndreds of millions of additional federal dollars to prop up a moribund system for a few more months or years. I urge speedy action on this legislation.

Senator LONG. All right. Next we'll call Senator John Melcher from Montana.

We're pleased to have you again here to discuss this problem and we're pleased to hear your thoughts about the developments since the last time we discussed this matter.

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

Senator MELCHER. Thank you very much, Mr. Chairman.

Of course, I want to thank you for scheduling these timely hearings.

I have a prepared statement, and I know you'll make it a part of the record, and I won't take time to read it all. I want to first of all get into the coal hauling proposition. This is a map which shows the Milwaukee Railroad. I have outlined here the Fort Union coal deposits.

Now, Mr. Chairman, you've been in the forefront on energy development in this country for a long time, and I realize I've been here just a brief part of the time that you've been here.

But for 10 years, ever since I came to Congress, I've listened to the Nixon administration, the Ford administration, and the Carter administration talk about coal development. That's our strong suit here in the United States—a basis for having some type of hope to reach a situation where we can have sufficient supplies of energy to meet all our needs.

I've watched these projections during three administrations of how much coal will be utilized in the future.

In the last year—in 1978 I watched the United States coal production and coal consumption slump rather than increase. A part of that slump was in this Fort Union coal deposit. It's low sulphur coal. It involves much of my State, and it involves much of North Dakota, and it involves much of Wyoming—low sulphur coal, which was supposed to be the type of coal that would be utilized more and more in this country.

In this Fort Union coal deposit, there was 10 million tons left in 1978 that was mined, that was contracted for, but wasn't moved. Now, we know that not on any basis of what the Department of Energy has told us or any other federal agency has told us.

We know it on the basis of calling up the individual mines and saying, "How much had you contracted and had you mined in 1978 that wasn't transported?"

It was 10 million tons.

The Milwaukee carries a portion of that. I'm sorry; I have an error in my statement. I say that Milwaukee carried 10 million tons out of Fort Union coal deposit. They did not in 1978. They carried out about 4 million tons from that deposit; 10 million tons is about the total amount of coal that the Milwaukee transported in 1978.

They pick up the coal here at Miles City and carry it on east. They picked up the coal here in North Dakota and carried it on east.

Now, the t ..ee has proposed that the core area end in Miles City, recognizing the importance of that particular coal. Now, the only thing wrong with that is that it's so short sighted that before the next decade is out, and we're almost there right now—before the next decade is out, there would be mines opened here in this area on the Milwaukee. And how it's going to be transported, I don't know.

Now, I asked the Department of Energy to formulate a study, a quick study of the energy needs, the coal haul needs, particularly of the Milwaukee.

We've seen the first draft of that last night. Now, one of the reasons—and it isn't just particularly the Carter administration—but one of the reasons we haven't had an energy policy in this country is that we've had inept energy planners, whether it was in the Ford administration, the Nixon administration, or the Carter administration.

And the ineptness is of such a magnitude that there is no credibility. The study, the first draft, shows that while there's a tremendous amount of coal on this side of the Yellowstone, on the south side of the Yellowstone, there's no coal of any significance on the north side of the Yellowstone.

My God. What have we got the USGS for? What have we got the Department of the Interior for? Why can't they inform the Department of Energy where the coal is at?

A mine is planned here at Roundup in northern Montana. It happens to be on Burlington land, a landgrant railroad.

The Burlington Northern owns tremendous quantities of coal up here. You could assume then that perhaps the Burlington Northern is going to carry any amount of coal that is produced. Well, forget it.

Forget it.

We produced about 30 million tons in Montana last year. In northern Wyoming they produced about 50 million tons. In western North Dakota they probably produced another 20 to 30 million tons.

The projection by 1985 or 1990 will triple that. The Burlington Northern will be in better shape in 1979 to transport coal than they were in 1978. They'll have 5,000 additional cars probably, and then they'll add a couple of locomotives. So that means they can haul more coal.

But by no means out of the Fort Union coal deposit can the Burlington Northern keep up on the coal haul. They just can't do it. Some of it goes south. Some of it goes on the Burlington tracks east. They just can't do it.

What's the projection—what's the projection of how many utility plants are coming on-line by 1990? 156. If you look at this area south of Montana clear to Texas and go as far east as Indiana, 156 coal fired plants are supposed to come on-line by 1990. 122 of those are supposed to be on line by 1985.

Can the coal come from elsewhere? I guess it can. I guess it can, if this low sulphur coal isn't important. But how important is low sulphur?

These plants coming on line for the most part are intended to use low sulphur coal out of the Fort Union coal deposit. It will be

impossible—absolutely impossible—for that happen unless there is significantly more rail transportation out of here.

We've killed the coal slurry bill three times since I've been here in these 10 years; I expect to help kill it again. I don't think it's going to happen very quickly—if it does happen—for coal lines out of this water short area out there in the West.

Will there be some sort of line built that doesn't use water or that has a reversal, brings back the water to where it's taken from? I'm told not.

I'm told there's nothing that the Department of Energy can project, and certainly I have not been advised by any transportation company that they are proposing a coal line with either the return of water or using some other type of liquid to transport the coal.

So I would say that coal slurry lines out of the Fort Union coal deposits are highly unlikely in the immediate future, at least for the next decade, two decades, maybe forever.

For coal hauling out of this area, I think we have to look to our railroads. the Burlington Northern is in excellent shape. They were not able to keep up in 1978 in delivering the coal that was mined and under contract. They may be able to keep up in 1979. I don't know.

It will depend on how much of their new locomotives and their new coal cars actually come on-line during 1979.

Well, so much for the coal hauling. Out of this same area, my State of Montana, as of Tuesday of this week, there are 8,000 car orders to haul grain not met; 8,000 grain car orders that were not met as of Tuesday of this week.

Is that unusual? No, sad to say, that is—the usual case. And this may be just a very minimal number of car orders for grain cars that are being waited for in Montana because we can't get any information out of the Milwaukee. I doubt whether the trustee has any information.

The 8,000 cars that are on order as of Tuesday and were not met is all on the Burlington Northern.

Now, what does that mean nationally? My State isn't unique in that, of course. You would find a similar situation over here in North Dakota and a similar situation in South Dakota. The grain haul is in a tragic situation. The Burlington has been concentrating on the coal haul. They've been adding more cars for the coal haul than they have new cars for grain haul.

We'll never catch up. We'll never catch up by allowing the Milwaukee to go under on the grain. We just can't catch up.

It will just aggrevate the situation.

Now, people will testify—I'm sure the trustee will testify—that since the Burlington parallels so much of here that they should be able to pick up tonnage normally hauled on the Milwaukee. The lack of cars on the coal haul out of Montana and North Dakota and Wyoming last year is a very minor thing compared to the lack of available cars to the grain haul.

Our State happens to be part of the Northwest and this happens to be a growing area. The movement to the west coast with grain is rapidly increasing.

To get to these ports out here we need the railroads. To China, movement of grain may be forthcoming, if we're able to sell them anything, and to Taiwan and to Korea and Japan, the movement is long standing.

Some of the grain sold to Russia leaves from these ports. It will continue to grow. The movement of grain will continue to grow in this whole area.

The argument is made, well, let's keep the Milwaukee a core railroad; just get it as far as Miles City to accommodate these few coal hauls that are existing now, and therefore all the rest of it could be picked up by the other carriers.

In Montana that means virtually a monopoly for the Burlington Northern if that's allowed to happen. Can the Burlington pick up some branch lines? They would pick up a couple good branch lines of the Milwaukee, but it won't be any reassurance to our elevators and to our farmers that they're going to pick up part of that branch line service of the Milwaukee when they can't meet the demand on their own present lines.

I think, Mr. Chairman, that from the standpoint of coal haul and grain haul that we're strapped in looking at just what our railroads can do in the next 10 and 20 years.

There isn't any barge traffic. You have to go clear over here to Lewiston, Idaho to handle some of it, and it can't handle it all; it is handling about as much as it can right now. And getting there depends upon having railroads, and if you don't have that, you have truck after truck after truck tearing up the highways.

And they can in no way keep up for both grain and coal. Out of this area, we just have to have railroads. The Burlington, with the help of the Union Pacific, which comes into my State in its western part simply isn't going to be able to do it.

I think that the requirement here in Congress is to face the future, that the means near term future in the eighties and the first half of the nineties. To allow the Milwaukee to cease operations in this area, we're just going to hurt the entire Northwest, which is very vital to the entire country.

Now, the Booz-Allen report, which I understand you're going to be discussing as part of these hearings, will show that if you can keep the Milwaukee alive for 4 or 5 years as a complete line, that their stability and profitability is better than the core.

Now, I understand the constraints of the bankruptcy court, the constraints of the creditors, the constraints of the trustee of the Milwaukee, they really have to opt for the near term.

But I don't think that Congress and the country can afford to opt for the near term. I think if 4 or 5 years of sustained help from Congress was provided and if it was clear to the court and to the trustee that that sustained help would be forthcoming, I believe the whole railroad would be kept running.

I believe the Milwaukee can become a very viable and profitable line again. I think it will take 4 or 5 years, and I think it would take $30 to $40 million each year to help.

We did that for the Penn Central. I think we're still doing it for the Penn Central through ConRail. I think it has proven to be the only decision that Congress could make at that time and maintain a railroad system in the Northeast.

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I believe now that in order to have an adequate railroad system in the Northwest, we have to maintain the Milwaukee for the next 4 or 5 years with that amount of help, $30 to $40 million a year during those 4 or 5 years, and that it will then again become viable.

The credibility of the planners in the administration right now is sorely taxed. We have the Department of Transportation recommending that no more funds go into the Milwaukee west of Miles City out of the Emergency Rail Service Funds.

The folks out here in this area—whether they're shippers or labor or just ordinary business people or farmers—know that that cannot be allowed to happen. They know they cannot look to the Burlington with any confidence at all in meeting the projected needs of this area.

They know that the Milwaukee is in sad shape. They witness those bad portions of track where the trains travel at 10 to 20 miles an hour and they know they can't make any money as long as that situation exists. But the business is waiting there. The business is just waiting.

The improvements to the road bed and the availability of cars and power for the Milwaukee is what is lacking.

Mr. Chairman, I have a bill before you, S. 1286, which is by no means a total solution to the Milwaukee situation. And I have specified in the various titles there—my testimony explains it in a little more detail—what it hopes to accomplish.

I think you will find that those proposals in S. 1286 are not contrary to what this committee would want to recommend to the Senate. Indeed, I think you will find that the trustee and the FRA will probably agree with the need for those various modifications to our law.

But that's only part of helping the Milwaukee. I must stress that the commitment by Congress for financial aid over the next 4 or 5 years is really what is needed, not only for the Milwaukee, but in assisting the Milwaukee we will be helping the entire Northwest region and the entire capability of this country in meeting its coal haul needs out of this area and its grain haul needs.

Mr. Chairman, that concludes my remarks.

Senator LONG. Thank you, Senator.

Senator Pressler?

Senator PRESSLER. I would like to commend Senator Melcher for his great efforts in saving the Milwaukee Railroad, and I certainly share in those.

Now, recently the Burlington Northern has expressed an interest in buying parts of the Milwaukee, and apparently feels it can operate those parts profitably.

Have any of those interests been expressed in your State of Montana? Are you aware of Burlington's interest in buying parts of the Milwaukee Railroad?

Senator MELCHER. I don't think Burlington has made any proposal at all, but I'm sure there's a branch line or two that they would be interested in.

Senator PRESSLER. Just a branch line situation as far as you know? They have not made a formal proposal?

Senator MELCHER. No, I'm sure they have not made a formal proposal. The Burlington's position would be greatly enhanced if the Milwaukee folds west of Miles City. If that situation happens, I'm sure at the proper time they will come forward and pick up some scraps.

They'll pick up in particular one very fine branch line that does generate a lot of business for grain hauling. But, no, it wouldn't be timely for them yet to make their move.

Senator PRESSLER. I very much support your remarks and your efforts. The so-called Wisconsin plan, the one that Governor Dreyfus proposed—I guess it's in the bill; apparently S. 1492—now, that doesn't really protect Montana's interest adequately, does it?

I have never gotten to the bottom of this.

Senator MELCHER. It doesn't protect Montana's interests, and unfortunately for the Governor, it doesn't really protect Wisconsin's interests because they are one of those States projecting some new coal fired plants. And we can—just haul so much coal over the Burlington. If the Milwaukee isn't there, why, it goes without saying that the coal haul problems are going to increase more rapidly because there are less options.

And the Burlington, frankly, would have to double track all the way from Billings east into the Twin Cities and double track wherever these plants are, in order to be able to take care of all the projected needs in the Midwest for those generating plants that are already planned.

Senator PRESSLER. Good. I thank you very much for your testimony. As far as I'm concerned, I simply want to commend you on your efforts in the national energy problem. I guess we're about to spend a total of $88 billion over a 10-year period, and I've been one of those who feel that part of that should be for gasohol, but that's another story.

We spend money sometimes in spite of ourselves, and there are some obvious things to do to keep the Milwaukee going that would really address the energy problem. That's a fundamental point in your testimony, is it not?

Senator MELCHER. That's correct.

Senator PRESSLER. Thank you very much, Mr.Chairman.

Senator LONG. Thank you very much, Senator.

[The statement follows:]

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

Mr. Chairman, I want to thank you for scheduling this hearing today on my legislation, S. 1286, designed to assist railroads facing financial problems. The Milwaukee Railroad, which is presently in bankruptcy before the federal district court in Chicago, is an important rail transportation system from the Midwest to the Northwest ports in Oregon and Washington. My bill was designed with the Milwaukee in mind; however, it is not limited solely to the Milwaukee situation.

Before addressing the specific provisions of my bill, I would like to discuss various aspects of the Milwaukee's situation.

First, Mr. Chairman, there is the Milwaukee's present coal hauling which should increase substantially in years to come. The Milwaukee system overlays the world's largest deposit of coal, the Fort Union coal field, underlying parts of the states of Montana, North Dakota and Wyoming.

Coal must become a more important part of the nation's energy sources. In the area of the country from Montana on the north to Indiana on the east and Texas on the south, there exist 156 applications for coal fired electricity generating plants between now and 1990; 122 of these are for plants to be on line by the end of 1985.

This is only a small portion of the demand for new coal fired plants. Further east, where Montana coal is presently being marketed for contracts in the mid-1980's, a multitude of new coal fired plants are expected to be on line. These plants could be reached through interchange of Milwaukee traffic with barges, or Great Lakes ore boats, and interlining with midwestern and eastern railroads. The present rail system in the country, I believe, is reaching an overloaded state and without the Milwaukee the situation will only worsen.

Out of this Fort Union Deposit in 1978, there was a rail car and locomotive shortfall resulting in ten million tons of coal that was mined and sold left waiting. Consequently, I do not think it overstates the case to say that some of the coal shippers out of that area are looking to the Milwaukee to increase its present coal hauling potential. This could mean, in the immediate future, a major additional movement of coal on the Milwaukee system. Already the Milwaukee is an important coal hauler to the nation. During the past year, the Milwaukee carried approximately ten million tons of coal from the Fort Union Coal Deposit area. In the area serviced by the Milwaukee near Roundup, Montana, in the Bull Mountains, Louisiana Land and exploration Company, in partnership with the Burlington Northern, is planning major coal development which will reach an annual production of two million tons by 1984. Obviously, that will depend on the opportunity to ship coal at that time. But, it does mean that maintaining Milwaukee services as far west as Roundup or Harlowton, Montana, is important to provide rail service for that mine. The alternative methods of moving coal are not sound.

Recently, the Burlington Northern has sought, but was denied by the Interstate Commerce Commission, to abandon its line from Silesia to Red Lodge, Montana. Near Red Lodge is a coal mine owned by the Beartooth Coal Company. The abandonment of the BN line was strongly opposed by the coal company, a prospective shipper on the line depending on marketability of the operation's coal. If the BN had been allowed to abandon the line, Beartooth would have been required to ship its coal by truck for many miles to the closest BN track. This proposition would have reduced the marketability of the Beartooth Coal Company's coal. West Virginia and Kentucky already well know the extreme cost of wear and tear on their roads of transporting coal by truck, which would be equally expensive for the state of Montana.

A new coal fired power generating plant, Portland General, is being planned in Boardman, Oregon, which could also require service on the Milwaukee line. I am in contact with Ambassador Mansfield in Tokyo regarding Japanese purchasing interest in coal from the U.S. It would likely be transported on the Milwaukee or the Burlington Northern.

The Milwaukee is likewise important to Montana and the northwest for the shipment of grain. Just yesterday, my office received a call from a grain elevator operation on the Burlington Northern system. During the months of May through July of 1978, they received 119 cars and this was insufficient to satisfy the needs for that period. This year they have received three cars leased by the elevator and were not BN cars. The elevator has a standing order for 100 cars for the next three months. I lay out this information to counter the argument that is so often made that, if the Milwaukee is removed, the BN will pick up those cars of grain waiting shipment now and make up the difference.

The facts I have brought here this morning show that the BN cannot satisfy its own customers, let alone pick up those on the Milwuakee. Physical proximity and a so-called alternative railroad once scrutinized further does not assure service as our DOT experts are leading many of us to believe. That, Mr. Chairman, is exactly why many of the shippers on the Milwaukee line are talking about other options. They know that mere existence of the BN does not translate into service.

The freight rates that Montanans pay to get their grain to market are high, but the service is not now adequate. Without the Milwaukee, competiton ceases throughout most of Montana, leaving the BN virtually a monopoly and very much incapable of providing adequate grain and coal hauling services.

My legislation, S. 1286, is by no means a total solution to the Milwaukee situation.

I will address the provisions of S. 1286:

Title I of the legislation would clear up any conflicting legislative history to insure that section 3(c) of the Emergency Rail Services Act of 1970, which becomes inoperative October 1, applies to all railroads no matter when such a railroad filed bankruptcy. At the time the legislation was drafted, there were some technical and legal questions raised as to the applicability of the phaseout of section 3(c) of ERSA to the Milwaukee situation. However, I am presently not convinced that this change goes far enough based on the refusal of the Department of Transportation to provide

additional ERSA funds to the Milwaukee. It seems strange to me that the necessary findings were made for the Penn Central which system now nine years later is still being subsidized through ConRail legislation and yet the Federal Railroad Administration is unwilling to help the Milwaukee get back on its feet. Mr. Chairman, I think the clear intent of Congress is being evaded. ERSA was intended to help railroads in the exact situation as the Milwaukee presently exists. Consequently, Title I of S. 1286 needs to be strengthened to assure that the Milwaukee can continue to receive ERSA assistance.

Title II, Mr. Chairman, addresses the directed service provisions under the jurisdiction of the ICC. The changes that I propose are intended to provide a smooth transition from one railroad to another under the directed service plan of the ICC or to abandonment. First, the changes give the Commission the discretion to allow the directed carrier to be the bankrupt carrier. This will allow the Commission to get a better feeling of the railroad's operation before handing it over to another railroad. Secondly, it is cheaper for the government to have the bankrupt carrier be the directed carrier since my change would remove the profit percentage from being received by the bankrupt carrier. Finally, Mr. Chairman, to assure a smooth transition, the directed carrier must run the entire system of the discontinuing carrier for 60 days before any abandonment can take place. I understand, Mr. Chairman, that the Trustee of the Milwaukee supports this type of approach.

Title III, like Title I of S. 1286, is intended to give better direction to the FRA as to what Congress intended it do in assisting railroads like the Milwaukee. As I have heard the Chairman himself say, Section 505 of title V of the 4–R Act is not being used to assist railroads as was intended. The Chairman has accepted the substance of this Title as an amendment to the AMTRAK authorization in the most recent legislative days completed.

Mr. Chairman, S. 1286, with some minor changes, I believe deserves favorable consideration by your Subcommittee and the entire Commerce Committee. I certainly hope you will help move it expeditiously to the Senate floor.

Mr. Chairman, the Milwaukee situation is a complex one. There will have to be other future actions taken. But, I think these hearings will provide an important step in the eventual overall solution.

Senator LONG. Next we'll hear from the junior Senator from Montana, Max Baucus. Senator, we're happy to welcome you here today.

STATEMENT OF HON. MAX BAUCUS, U.S. SENATOR FROM MONTANA

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

Before I begin, I've been informed that it's hot in the back of the room. I wonder if, with your permission, some of the hot people could take off their jackets.

Senator LONG. If they want to take off their coats, they're welcome to do so. It's all right up here.

Senator BAUCUS. Mr. Chairman, I have several very brief, but I think important, points to make.

The situation here is really quite simple. The Milwaukee Railroad is vital to a good part of the United States, certainly the States of Washington, Idaho, Montana, North and South Dakota, Minnesota, and Wisconsin.

It provides a crucial form of rail transportation for a lot of shippers in our part of the country. Obviously, the Milwaukee is in trouble; it's in deep financial trouble.

And quite naturally, when that situation occurs and Congressmen, Senators, Governors, shippers, everybody is interested in the part of the country that they represent.

We of Montana are naturally concerned about the Montana portion of the Milwaukee. Representatives, Senators, Governors from Wisconsin and Minnesota are quite naturally concerned about the operation of the Milwaukee in their part of the country.

The bill you have before you this morning is designed to help save one part of the Milwaukee system.

I'm glad to hear that Senator Nelson indicated that some arrangement can be worked out to help all of the Milwaukee Railroad, that that would be his preferable solution.

It's certainly my preferable solution, because I think the strength of the Milwaukee in Montana depends on the strength of the Milwaukee in other parts of the country.

You recall that you met with groups of shippers and labor several months ago and discussed the plight of the Milwaukee Railroad. They said that they would be willing to meet Uncle Sam and the trustee at least half way in trying to develop a plan for the future of the Milwaukee Railroad.

They formed an organization; it's called New Milwaukee Lines. The board of directors is composed of shippers, employees, and a wide spectrum of management people.

It's solidly based; it's a widespread kind of board of directors, and I think the organization is off to a very good start. Labor and shippers also have commissioned a study of the four reports that were done under the auspices of the FRA. Unfortunately, there hasn't been enough time to fully analyze those reports.

I also want to point out that in my judgment the cash position of the Milwaukee is not as dire as some might suggest. Strangely, we've heard predictions that the cash position of the Milwaukee is so bad that unless it's helped immediately, the Railroad is going to go out of business.

We've heard these predictions several times over a period of close to a year. Some way or another there appears always to be enough cash. Sure, there have been some loans, but basically the cash position has never been as bad as the Railroad's predictions.

Many bills have been introduced. As the chairman knows, we passed a bill out of your subcommittee and the full Senate which was designed to help the Milwaukee. That bill was primarily to forestall the possibility that the Federal judge in Chicago would grant the trustee's petition to abandon lines on the Milwaukee system.

As it turned out, the judge ruled that he did not have legal authority to grant the embargo. Rather, the application must first go to the Interstate Commerce Commission under the law, and only the ICC under the law can decide to grant abandonment, unless the cash position is so dire that the railroad cannot operate.

My position is we should continue that process. As you know, under the ICC process, hearings are held on the petition to abandon, and then the proponents have time to present their case.

The point here is that there is a significant and sufficient amount of time under the ICC proceedings for opponents and proponents to present their case.

Senator Nelson's bill would virtually abolish—annihilate ICC's role. We westerners would not have the authority or the opportunity to present our case. And we think that is crucial.

Also, it's important, I think, to consider the consequences: What happens if the Milwaukee is abandoned in the West? Well, we don't know what's going to happen. Certainly we know that shippers are going to be in a very difficult position, particularly where there are vast distances and spaces between various communities.

Montana will be served by only one railroad. Wisconsin and Minnesota are served by several railroads at present, and they're much smaller States; the railroads are much closer together.

But in Montana we have only two: one is the Milwaukee, and the other is the Burlington Northern. We desperately need those two railroads.

Certainly, there would be greater reliance on truck transportation. That's great for the trucking industry. But what's it going to do for the highways?

We're all beginning to realize what a pounding our State highways and primary system roads are receiving due to truck transportation. Sure, the highways are there. They provide help by truck transportation.

But the more pressure we put on the highways, the more problems we are going to cause and the more related costs are going to increase.

In addition, I'm not so sure that the trustee's core proposal is all that profitable. The Booz-Allen report shows that in the long run the operation of the entire Milwaukee system is more profitable than just the core system.

And also, Mr. Chairman, I'd like to urge delay for another reason. I'm a little bit disturbed at the role of the Federal Railway Administration in this whole area. The FRA did commission these reports, but in the cover letter the FRA sent Congress describing the four reports the FRA took the worst case among the various cases that were described. To me that is a tipoff of the role that the FRA is playing in the Milwaukee question.

They don't want to help the Milwaukee Railroad. Why, I don't know; I think it's partly because they're looking at historical statistics. I don't disagree with those statistics. The figures are there. The Milwaukee is in tough shape.

But they did not consider the future.

Senator Melcher ably demonstrated the increased need for rail transportation for grain and for coal in the west. But in addition to that, Mr. Chairman, the FRA didn't seriously consider an ESOP, or employee stock option plan.

An ESOP may have a very important role to play in not only saving some companies, but in strengthening ongoing concerns.

We here in the Congress have several roles to play. The FRA has one role; that is, the financial viability of railroads. But we, as Members of the Senate, have another role, which is not only to consider the present financial viability of railroads, but also to look to the future.

Now, I don't know what America is going to be like in the 1990's, but we can try to picture what 1995 is going to look like. I think we want America to be forward looking, not backward.

I think we probably—even though we don't know what kind of airplanes we're going to be flying in 1995, what kind of cars, what fuel they're going to utilize, what river barge traffic will be like in 1995—we're probably going to want a good, sound rail transportation system.

I sense we probably will want rail among the various other forms of transportation. I hope that in 1995 we're in a better transportation position than we are in 1979. My sense is that if we allow railroads today to go down the tubes—and the Milwaukee is certainly in a difficult situation—then I think in 1995 we're going to be a bit sad that we weren't more forward-looking in 1979.

There are ways to help the Milwaukee Railroad continue service. South Dakota has developed its own South Dakota plan to help in that stretch of the Milwaukee system. The State of Montana is looking toward the same kind of assistance to help the Milwaukee.

That underscores my main point, which is we need time. The cash position is not all that dire. The figures show that net profits are eventually available on the portion of the lines west of Miles City.

Also, figures show that the number of cars shipped in 1977, 1978, and 1979 has not fallen. In many areas, carloadings on the Milwaukee system have risen, showing that shippers desperately need the Milwaukee.

This underlies another point: Many of these are captive shippers. I think we want to continue competition in the West, and two railroads will maintain better competition than the trucking industry.

That basically concludes my testimony, Mr. Chairman, except I want to also indicate that if the Department of Justice and the ICC are a little more vigorous in some antitrust actions and merger actions affecting the Milwaukee, they can press for gateways and trackage rights for the Milwaukee.

Both of those agencies, in my judgment, have been derelict in refusing to press those points. These are rights that the Milwaukee has pushed for in the past, but are not pursuing now, at least for the western portion of the railroad.

If we allow the lines west to fold, in fact what we're doing is subsidizing the rehabilitation of the core system at the expense of the lines west. The road bed in both lines west is in bad shape.

I think that the only fair solution is a solution which addresses the entire system.

Sure, not a lot of traffic originates in Montana, but a lot of traffic passes through, and I think more traffic will originate in Montana as markets in grain and in coal grow.

The future of the Milwaukee, with a little bit of effort and imagination, will be very successful. Thank you.

Senator LONG. Let me say this to you, Senator Baucus: I am not sure that those of us from other parts of the country who may be asked to vote to put more money into this, should.

The people who would have the greatest interest in saving that railroad ought to be the workers. After all, it's their jobs, and they want to protect their jobs. They have money available to them accumulated in the labor protection provisions, which could be, at least in part, channeled back into the railroad.

They could give us a lot more productivity than we're getting at this moment.

Now, I had small business people come to me asking us to save their business by making them a small business loan or something of that sort. And I really think that without exception any one of them is willing to work hard. They're willing to work longer hours and go the extra mile to make that business succeed.

If the Government would make them a loan when no one else would do it, well, they would do things that prior to that time they hadn't done, just to pursue the American tradition.

What has made this country great is the worker trying to save what he owns; and to save his little business or to save his home or whatever it is that he does own in this country.

If we put more money into it—I'll bring this matter up with our labor friend as well—but I think we have a right to expect them to put something into it and also for them to go into it with the understanding that they're going to have to make a sacrifice.

I'm talking about a real sacrifice; I mean working, working really hard, harder than they have in the past in order to make this thing succeed because otherwise I don't think it's going to be a viable proposition.

That's one thing I think is important about employee stock ownership. All records indicate where businesses are substantially owned by the workers, they work harder. There is more productivity. That's a fact. That's not a theory. I can produce documents on that.

I think the indication is we get about 65 percent more productivity when those workers feel like they are owners or at least their equity position is enough to give interest to them.

If they don't want to go into it recognizing that they're going to be asked to do more than in the past, then we shouldn't fool around with them.

Senator BAUCUS. I couldn't agree with you more. I've been very encouraged by the progress that employees of the Milwaukee have made toward employee stock ownership plans; that is, toward employee ownership in the railroad.

All new ideas are initially met by cynicism and skepticism, whether it's by labor or whether it's by management. In my experience—and I've spent probably more time on the Milwaukee Road than any other single subject in the last half year—labor has come a long, long way.

They have committed money, for one thing. When you commit money, your committed. I think you're right. I think that everybody will buckle down, as long as everybody realizes that everybody has to buckle down and work a little harder and maybe do a little more than has been done in the past.

I'm extremely encouraged by the efforts so far. If we keep going with these kinds of efforts, we'll be able to save the Milwaukee.

But if we pass legislation that just gives emphasis to one portion, we are likely to fail. I think even the core system in a few years, if only that system is helped, is going to be in the same position as the entire Milwaukee Road is now.

Senator LONG. Thank you very much.

Senator Pressler?

Senator PRESSLER. Yes, I want to commend Senator Baucus because he is one of those that has worked hardest at saving the Milwaukee and trying to expand our transportation system.

Also, I think the point that both Senator Long and Senator Baucus have made, it's going to take a joint effort is well taken. I

don't think we're going to get Congress to send some money out without employees making visible efforts. The rail cooperative bill is a suggested thing that would urge shippers and others to make an effort; and of course management is going to have to, too.

My question, Senator Baucus, is to explain a lot of the talk about saving the Milwaukee. I know you've spoken to me privately about the feeling that Montana may be left out of some of the rail plans that some of the other States have agreed to.

I'm not going to speak for Senator Durenberger this morning, but I want to commend him also for his efforts. I think you expressed to me some concern that Montana is being left out of some proposals to save the Milwaukee.

Could you expand on that?

Senator BAUCUS. Well, quite obviously, the proposal sponsored by Senator Nelson from Wisconsin will benefit the core system at the expense of the western extension.

I would like to hope that the solution is to find a way to help the entire Milwaukee system get on its own two feet so that fairly soon it can be in the black.

I'm pushing for legislation; in fact, the bill which I introduced and which this subcommittee, the full committee, and the Senate passed several months ago, was designed to help the entire Milwaukee Road get on its own two feet.

In fact, the core proposal, which includes basically the eastern ends of the Milwaukee system to Miles City, Mont., assumes the continued operation west by Burlington Northern and maybe Union Pacific. Which means that even the core proposal is dependent upon a system which runs across the country.

And that's again why I think that the entire Milwaukee Road—except maybe some branch lines—should be maintained.

Now, I realize that the present trustee of the Milwaukee disagrees with that. The trustee would like to keep the core system.

And, frankly, I think it's partly because it's the easier route. If you look at the figures, there's a little more density of traffic in the core. And maybe in the shorter run, it's more viable than a west coast extension.

So the trustee to large degree has fulfilled his responsibility, both to creditors and the employees of the railroad.

But I think that we, as members of the U.S. Congress, have an obligation to serve our country. We're not here just to help the trustee do what he thinks is best. We have a bigger obligation to do what we think is right for the country.

And I'm saying that I think that probably in future years we're going to be more dependent on rail transportation. Maybe 5 or 6 years from now there will be a massive congressional effort to reorganize the railroads. My sense is probably we're going to want to build the railroads up from the present state of disrepair.

And look at energy costs—they're not going to go down. I don't think diesel fuel is going to go down in future years. I think it's going to go up, and that's all the more reason for continued rail transportation.

Senator PRESSLER. Thank you. I certainly want to commend you on your efforts. And I'm going to have to go to another meeting so

I'm going to miss Senator Durenberger. I want to apologize again for that.

But I want to commend both of you.

Senator LONG. Thank you very much, Senator.

Next we'll hear from Hon. David F. Durenberger, the Senator from Minnesota.

Senator DURENBERGER. Mr. Chairman, if I might enjoy my jacketless status for awhile, I'd like to defer to the next witness.

Senator LONG. The next is Linda Kamm, general counsel for the U.S. Department of Transportation, accompanied by Mr. Robert Gallamore.

STATEMENT OF LINDA KAMM, GENERAL COUNSEL, DEPARTMENT OF TRANSPORTATION; ACCOMPANIED BY ROBERT GALLAMORE, DEPUTY ADMINISTRATOR, FEDERAL RAILROAD ADMINISTRATION

Ms. KAMM. Thank you, Mr. Chairman.

Mr. Chairman, I'd like, if I might, to summarize my testimony, but I would ask that it be incorporated in full in the record.

I have also submitted for the record copies of our testimony and a brief in the current court proceedings on the Milwaukee embargo, which I think further explain where the administration stands on these issues.

I'm pleased to be here to discuss with you the administration's view of the need for an orderly transition from the Milwaukee's current transcontinental system to a smaller system focused in the midwest.

We recognize that such a plan carries with it difficulties for the employees, and we see the need to moderate the impact of such a change on the employees.

The administration's policy, basically, has the same objectives of S. 1492. On the other hand, we disagree with S. 1286, which would maintain the entire system intact rather than provide for restructuring. On July 31, Acting Secretary Claytor sent to the committee four DOT studies of the Milwaukee, the conclusions of which I'd like to just note briefly.

The Reebie Associates analysis shows that in 1977 the Milwaukee's western lines carried approximately 28 percent of the railroad's loaded cars, but accounted for 50 percent of the railroad's losses.

That same study shows that even with expenditures of $115 million for track rehabilitation, the Milwaukee could not reach the transit times of the other carriers in the region.

And the same report shows that except for coal, rail traffic in the region itself is declining. The Reebie analysis concluded finally that even if the western lines were rehabilitated, they would show a loss of $26.5 million in 1985.

And that figure excludes the rehabilitation expenses and the associated financing costs.

The Booz-Allen study which was done for the trustee and reviewed by FRA showed similar results, and concluded that even a rehabilitated system could not be competitive. Our analysis of the SORE proposal performed by the Consulting Center concluded that even with SORE's optimistic revenue projections, operating the

Milwaukee lines west of Twin Cities, Minn. as an independent company would cost about $700 million in external financial support. That's in 1979 dollars.

And of that amount, the rehabilitation in terms of operating losses would cost more than 300 million.

These studies have led us to conclude that the western lines as a whole cannot survive as a useful part of the rail system without the infusion of hundreds of millions of Federal dollars.

And we're convinced that the present system really can't be reorganized, even with massive Federal assistance.

More importantly, we question whether such assistance is justifiable in face of the redundancy of the western part of the Milwaukee, the vastly inferior condition of its track compared with that of competitors, and the static traffic base in the area for all commodities except for coal.

Even with respect to coal, regional traffic is not expected to increase significantly before 1985, and the other railroads in the area are available to service that future development.

Recognizing these problems, how do we proceed?

We're faced with a lot of difficulties in implementation; the new bankruptcy laws, which will be very helpful in the future, do not apply to railroads already in bankruptcy, such as the Milwaukee.

The reorganization court has so far concluded that it has no authority to issue a partial cessation of service without approval of the ICC, unless the railroad is literally cashless.

And the ICC under its procedures cannot order abandonment until May 10, 1980.

We're urging the court in a second embargo proceeding to use its equitable powers, given the deteriorating cash situation, to break the impasse. But one thing is sure: The entire Milwaukee system cannot continue to run until May 10 without substantial additional funds.

By forcing the trustee to attempt this, the court may and the ICC may insure that the entire Milwaukee simply stops operating in January or at some other point this winter, except insofar as the ICC directs service. And directed service is extremely hard to implement in the winter.

Thus, we're concerned that shippers might suffer more if Milwaukee service on the western lines ceased during the fall.

In addition, this raises the possibility that thousands of Milwaukee employees could be furloughed during the winter when it's harder to find jobs.

So, looking at the fact that we regard a winter cessation of service as unacceptable and we're opposed to continued Federal funding of uneconomic and redundant portions of the rail network, we need to look to restructuring of the Milwaukee in the private sector, targeting the Federal resources on those portions of the Milwaukee system that are useful to the national rail network, to devote the rest of our attention to helping the displaced employees find new jobs.

We've taken a number of steps. We've provided the trustee with financial assistance through title V to improve service on those portions of the Milwaukee that are likely to remain part of the national system.

And we've provided working capital assistance through ERSA to the trustee.

However, we have indicated that future ERSA funding should be used only for those portions which are reorganizable.

We're also supporting, as I mentioned, the trustee's petition for an embargo, and supporting the ICC's expedited abandonment procedure, which unfortunately will still take quite a bit of time.

In addition, Mr. Gallamore has been working with the state of Iowa and the railroads to try and do some restructuring in that region under the 401 process and we are available to provide similar assistance in the area west of Miles City.

Additionally, we've worked with the States to help them through the rail service assistance program.

The administration now is looking at a procedure that would expedite both sales and abandonment, taking into account the interests of all the parties. We're evaluating whether the reorganization court should be allowed to authorize sales and abandonments without ICC approval, but after considering recommendations from the ICC and DOT.

With respect to labor protection, a recent study by Mark Battle Associates indicates that under current law, labor protection costs from an abandonment could cost between $83 and $521 million.

The Battle estimates the most likely figure to be about $320 million.

Payment of that amount plus the amounts due in the future could prevent reorganization and the result could well be increased job losses and an inability to maintain even a core system; at the same time, delay in benefits doesn't help the worker find a new job, and it doesn't help him meet his expenses.

So we want to have the Federal Government do what it should to enable the displaced employee to move to another rail job, either with the Milwaukee or with another carrier.

In a May 30 letter to the trustee, the Association of American Railroads stated that members were prepared to offer qualified Milwaukee employees about 8,000 positions between June and the end of 1979. They stated that many of these jobs are in the western Milwaukee region.

The administration believes that Milwaukee employees should be helped to find and take these and other jobs. We would support legislation that provided Federal assistance in matching employees to jobs and for retraining. We would also favor some Federal assistance to the Milwaukee through guarantees of loans to be repaid by the estate for moving expenses and for limited supplemental unemployment payments to protect the displaced employee if he or she is furloughed before attaining a reasonable seniority level in the new job.

And we would make guarantees available for reasonable separation payments.

We firmly believe that assistance to those who plan to stop working should be limited.

As you know, the Senate passed a 60-day freeze bill in May, and while that has not been enacted into law, we at DOT have done our homework during those 60 days to study the issues that have been raised.

We think that we told the court and we want to make clear to the committee that we've concluded on the basis of those studies that keeping the Milwaukee's western lines going is simply not in the public interest. It's time now to move forward and restructue and preserve that part of the system that can remain viable.

We're very anxious to work with you, Mr. Chairman, and the members and staff of this committee and the House committee to try and achieve a reasonable piece of legislation that will meet the needs of the workers and will not simply continue to prolong the agony of the western lines of the Milwaukee which we don't think can be viable in any event.

Thank you very much.

Senator LONG. Thank you very much, Ms. Kamm. I hope we can hear all these witnesses in the morning session, and that being the case, I'm going to ask that we withhold questions at this point.

Would you stick around here, Ms. Kamm, so we can call you back, and we can call back the other witnesses who testify after we've had their statements in chief.

Thank you very much.

[The statement follows:]

STATEMENT OF LINDA HELLER KAMM, ACTING DEPUTY SECRETARY, DEPARTMENT OF TRANSPORTATION

Mr. Chairman and members of the Committee. Robert E. Gallamore, the Deputy Administrator of the Federal Railroad Administration, and I are pleased to be here today to discuss S. 1492 and S. 1286 and the Administration's policy on the future of the Milwaukee Railroad. Our policy, which is based on thorough study and analysis of both the national freight rail system and the Milwaukee, advocates an orderly transition from the Milwaukee's present transcontinental system to a smaller system focused in the Midwest. We also recognize the need to moderate the impact of this change on displaced employees. In that sense, the Administration's policy has the same objectives as S. 1492. On the other hand, we disagree with the policy of S. 1286, which calls for continuation of the entire existing Milwaukee system rather than orderly restructuring.

ADMINISTRATION RAIL POLICY

Before discussing the Milwaukee specifically, I would like to reiterate this Administration's rail policy. We are committed to maintaining this energy-efficient form of freight transportation, and we think that it belongs in the private sector. To keep it there, we must help the railroads become more efficient by substantially reducing the scope of the regulations governing them, reducing the size of the rail network, improving labor-management relations and facilitating corporate restructuring where necessary. We can't continue to dole out federal money when these funds are not being used to solve the underlying problems.

This committee has before it the administration's proposals on regulatory reform, S. 796. We are still firmly committed to the goals of that bill, although we recognize that modifications will be necessary. You are also considering our financial assistance proposal, S. 1151. That bill would direct federal aid toward those railroads that can become more efficient through restructuring. A significant innovation in S. 1151 is the proposal to use some of these funds for labor protection costs resulting from improvements in labor productivity. In addition, S. 1151 would clarify the fact that assistance under Title V of the 4R Act is available for labor protection costs directly related to physical restructuring projects. In the context of this overall Administration policy, let me now turn to the Milwaukee.

DOT STUDIES OF THE RAIL INDUSTRY

In October 1978, the Department issued its study of the freight rail industry, pursuant to sections 504 and 901 of the 4R Act. As we consider the Milwaukee, it is useful to remember what that study said: The railroad industry must make substantial changes in its economic and physical structure. This is particularly true for financially weak railroads, which must analyze, in cooperation with appropriate

public authorities, specific line segments to determine whether such segments are profitable (or can be made profitable). * * * Restructuring should be aimed at preserving cost-effective services.

We stated that the existing bankruptcy laws did not provide an expeditious method for accomplishing these goals in cases where a railroad was already in bankruptcy or undergoing reorganization before restructuring was attempted. We noted that restructuring would be difficult due to lengthy delays and shifting responsibility for decisionmaking from court to ICC to court, as well as the traditional reluctance of both the ICC and reorganization courts to reduce the nation's rail system significantly. Finally, we recommended legislative changes that, I am happy to say, were enacted last session as part of the general bankruptcy law revision. Unfortunately, the bulk of these changes do not apply to railroads now in reorganization, including the Milwaukee.

DOT STUDIES OF THE MILWAUKEE LINE

Since October, many of the issues the report discussed have become pressing problems, particularly with respect to the Milwaukee. On July 31, Acting Secretary Claytor transmitted to the Committee four DOT-sponsored studies of aspects of the Milwaukee problem and a summary of their conclusions. I'd like to highlight some of the results:

The Reebie Associates analysis, done for the Federal Railroad Administration, shows that in 1977 the Milwaukee's Western lines carried approximately 28 percent of the railroad's loaded cars—and accounted for about 50 percent of the system's losses. These lines represent only about half (42 percent) of the Milwaukee's route miles.

The same analysis concluded that, even with an expenditure of $115 million (in 1977 dollars) for track rehabilitation, the Milwaukee could not match the transit times of the other carriers in the region. The report also found that, except for coal, rail traffic in the region has been declining. These findings make us question whether the Western lines can attract a sufficient traffic base to become profitable.

The Reebie analysis concluded that, even if the Western lines were rehabilitated, they would show a loss of $26.5 milllion in 1985. And that figure excludes rehabilitation expenses and associated financing costs.

The Booz-Allen & Hamilton study, done for the Trustee and reviewed by the FRA, showed similar results. That study found that the Western lines did not contribute to the Milwaukee's income in 1977. It concluded that there was little hope that a railroad built around or including the Western lines would generate sufficient cash flow to justify any investment in rehabilitation, and that even a rehabilitated system would not be competitive.

An analysis of a proposal by Save Our Railroad Employment (SORE) to create a separate railroad of the Western lines, which was performed by the Consulting Center, Inc., for the Office of the Secretary, concluded that even with SORE's optimistic revenue projections, operating the Milwaukee lines west of Twin Cities, Minn., as an independent company would require about $700 million in external financial support (in 1979 dollars). Of this amount, rehabilitation and coverage of operating losses would cost more than $300 million. This concluded that the SORE proposal was not feasible.

These studies led us to conclude that the Milwaukee's Western lines could not, as a whole, survive as a useful part of the rail system without the infusion of hundreds of millions of federal dollars. We are convinced that the Milwaukee system as presently structured cannot be reorganized, even with massive federal assistance. More fundamentally, we seriously question whether such assistance is justifiable in the face of the redundancy of the Western part of the Milwaukee, the vastly inferior condition of the Western line's track compared with that of competitors, and the static traffic base in the area for all commodities except coal. Even with respect to coal, the studies show that, based on existing and projected development, regional traffic will not increase significantly before 1985 and that other railroads in the area are available to service future development. In a time of tight budgets, all proposed expenditures of this magnitude must be examined carefully.

Having studied the problem and decided upon a course of action, however, we are faced with the difficulties of implementation highlighted in our October report on the future of the rail system. As I previously stated, the new bankruptcy laws do not, in general, apply to ongoing reorganizations, such as the Milwaukee's. The Milwaukee's reorganization court has thus far concluded that it has no authority to issue an order for a partial cessation of service without approval of the Interstate Commerce Commission (ICC) unless the railroad is literally without sufficient cash to operate. The ICC, in turn, cannot authorize an abandonment that would be

effective before May 10, 1980. Our participation before the reorganization court in support of the Trustee's second embargo request is based on the need to use the court's equitable powers, given the deteriorating cash situation and the onset of winter, to break this impasse.

Regardless of the Milwaukee's actual cash balance, it is clear to all parties that the entire Milwaukee system cannot continue to run until May 10 without substantial additional funds. By forcing the Trustee to attempt this, the court and the ICC may ensure that the entire Milwaukee simply stops operating in January except insofar as the ICC directs other carriers to serve portions of the system. Because of the need to upgrade parts of the system before another carrier can be required to serve Milwaukee customers, directed service, particularly over the system's branch lines, would be difficult to implement starting in the winter. Thus, shippers would suffer more than if Milwaukee service on the Western lines ceased during the fall. In addition, thousands of Milwaukee employees would be furloughed during the season when railroad jobs are hardest to get. Finally, any hope of reorganizing the Milwaukee as an independent railroad would be lost. Unfortunately, we see these same consequences, given the limited funds available under the Emergency Rail Services Act (ERSA) and Title V of the 4R Act, if S. 1286 were to be enacted. And, given the results of our studies, we think that putting more money into those funds for the purpose of operating the entire Milwaukee system would be unwise.

STEPS TO ALLEVIATE THE PROBLEM

The Administration believes that a winter cessation of service over the entire Milwaukee system is intolerable, as is continued federal funding of an uneconomic, redundant portion of the rail network. We need, instead, to work toward encouraging a reorganization of the Milwaukee in the private sector, targeting federal resources on those parts of the Milwaukee system that are useful portions of a national rail network, and helping displaced employees find new jobs. These are the steps we are taking toward those goals:

We have provided the Trustee with financial assistance through Title V of the 4R Act to improve service on those parts of the Milwaukee that would most likely remain part of the national rail system.

We have provided working capital assistance, through ERSA, to give the Trustee time to study and plan a reorganization. However, as Acting Secretary Claytor stated in this July 31 letter to this Committee, "we will require future ERSA assistance to be used only for those portions of the system which are reorganizable."

We are supporting the Trustee's recent petition to the reorganization court for an embargo. Dr. Gallamore testified before the Special Master in Chicago on August 28, indicating that an embargo is necessary to preserve future service in a reorganizable core given the fact that FRA is unable to make the legal findings which would permit further ERSA funding for the entire system.

We have supported the ICC's expedited abandonment procedure, and have submitted written testimony in support of the Trustee's abandonment application for the lines west of Miles City, Mont.

We have, under the authority of section 5 of the DOT Act, participated in meetings in Iowa to bring about the orderly transfer of the Milwaukee's Iowa lines where this is consistent with the state's rail plan. We are ready to provide similar assistance for the lines west of Miles City.

We have worked with affected states to help them, through the Local Rail Service Assistance Program, retain essential services. For example, South Dakota's effort to rehabilitate the line east of Miles City so that it continues as part of the Milwaukee system will be partially funded through this program.

NEW APPROACH NEEDED FOR MILWAUKEE REORGANIZATION AND DISPLACED WORKERS

In testimony earlier this year, we stated that we hoped existing laws would provide sufficient tools to resolve the Milwaukee's problems in an orderly fashion. Although we have tried to use those tools to the maximum extent possible, we now find them inadequate in two areas: expediting the reorganization process and protecting displaced workers. What is not in the public interest is a further freeze of service on the existing system, and we will not support such a freeze.

Applying the abandonment provisions of the new bankruptcy law to existing reorganizations might have been sufficient to deal with the Milwaukee's problems if these provisions had been in effect since the reorganization started. At this point, with the railroad fast running out of cash, and with sales as well as abandonments available to assist a reorganization, something more is needed. The Administration is studying a procedure that would expedite both sales and abandonments, taking into account the interests of all parties. We are evaluating whether the reorganization court should be allowed to authorize sales and abandonments without ICC approval, but after considering the recommendations of the ICC and DOT.

A recent study done by Mark Battle Associates for the Office of the Secretary indicates that under current law, labor protection costs arising from an abandonment of the Western lines could be between $83 and $521 billion. Battle's estimate of the most likely figure is $321 million. Using a cost estimate of $325 million, the Trustee has stated that if this amount "must be paid immediately or at any time in cash," it "would prevent reorganization of any portion of the Milwaukee and result in further job losses." The Trustee's own analysis suggests that "first year" entitlements would in any event be limited to approximately $100 million. However, if payment of that amount, plus that due in future years, would prevent reorganization, the result could well be increased job losses and decreased service. On the other hand, a delay in payment of benefits due does not help tide over the displaced worker until he can find a new job, nor does it help him find that job.

The Trustee has proposed to the court a labor protection settlement program under which $50 million would be immediately available to pay for deferred back pay, vacation pay and severance pay. The Administration believes that further relief, through legislation, may be necessary. In particular, we think that the federal government should do all it can to enable a displaced Milwaukee employee to move to another railroad job, either with the Milwaukee or with another carrier.

In a May 30, 1979 letter to the Trustee, filed as part of the preliminary reorganization plan, the Association of American Railroads stated that its members were prepared to offer qualified Milwaukee employees about 8,000 positions between June and the end of 1979. The letter also stated that many of these jobs were in the Western Milwaukee region. The Administration believes that Milwaukee employees should be helped to find and take these and other jobs. We would, therefore, support legislation that provided for federal assistance in matching employees to jobs and retraining them. We would also favor providing some federal assistance to the Milwaukee, through guarantees of loans to be repaid by the estate, for moving expenses and limited supplemental unemployment payments to protect the displaced employee if he or she is furloughed before gaining a reasonable seniority level in a new job. And we would make guarantees available for reasonable separation payments. But we firmly believe that assistance to those who plan to stop working should be limited.

As you know, the Senate passed a 60-day freeze last May to give all concerned parties time to study the condition of the Milwaukee and to develop some reasonable solutions. DOT has done its homework. The issue has been studied long enough. We have told the court, and we want to make it clear to the Committee, that simply continuing the Milwaukee's Western lines is not in the public interest. Now is the time to move forward vigorously to protect the interests of the Milwaukee's workers and to restructure the system.

Once the legislation that we are proposing has been passed, we think it possible to have an orderly reorganization of the Milwaukee that is consistent with national transportation policy goals and that takes into account the interests of displaced workers. We will continue to work with you and the House committee to secure passage of such legislation.

That concludes my prepared statement, Mr. Chairman. Dr. Gallamore is prepared to answer any specific questions you have on the DOT studies and 401 activities, and we both would be pleased to expand upon this statement.

THE SECRETARY OF TRANSPORTATION,
Washington, D.C., August 15, 1979.

Hon. THOMAS R. MCMILLAN,
U.S. District Court,
Chicago, Ill.

DEAR JUDGE MCMILLAN: Enclosed please find the affidavit of Robert E. Gallamore, Deputy Administrator of the Federal Railroad Administration, in support of the Administration's position that a partial embargo of the Milwaukee railroad is necessary at this time to further the public interest and is essential to the ultimate reorganization of the Milwaukee as a self-sustaining railroad. This conclusion was reached in light of events that transpired in the period since the Reorganization Court denied the Trustee's earlier request for an embargo of all operations outside of the Miles City subcore.

In the time since the court's denial of the original embargo petition, the Department has completed a study of the Lines West, a review of the Booz-Allen &

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Hamilton analysis, a study of the S.O.R.E. proposal, and a study of the labor protection implications of discontinuance of Milwaukee service on the Lines West. As a result of these studies, as well as our work under Section 5 of the DOT Act with respect to the transfer of the Milwaukee Lines, we have concluded that no further ERSA funds will be available for the entire Milwaukee system.

While we recognize that any such embargo may work a hardship on certain employees of the Milwaukee, we are convinced that action is required to prevent termination of service on the entire railroad next winter, to the detriment of many more employees. We believe the Trustee's commitment of certain funds for labor benefits is helpful, and we are also looking at alternative means of providing assistance.

We wholeheartedly support the need for a smaller railroad system for the Milwaukee and the use of an embargo to move toward it. The Trustee has made a number of adjustments to his original core system, however, and now specifically proposes embargo of several branch lines within the Milwaukee II core territory. We have not analyzed the desirability of including or excluding these branch lines from the core, and therefore cannot comment on that aspect of his proposal.

We urge you to afford the petition an expedited and sympathetic hearing. Mr. Gallamore will be present at the hearing to elaborate on his testimony and answer further questions as to the government's views.

Sincerely,

W. GRAHAM CLAYTOR, Jr.,
Acting Secretary.

Enclosure.

IN THE U.S. DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS EASTERN DIVISION

In the matter of Chicago, Milwaukee, St. Paul and Pacific railroad Company, Debtor.

In proceedings for the reorganization of a railroad, No. 77 B 8999.

AFFIDAVIT OF ROBERT E. GALLAMORE, DEPUTY ADMINISTRATOR OF THE FEDERAL RAILROAD ADMINISTRATION

1. I am Robert E. Gallamore, Deputy Administrator of the Federal Railroad Administration ("FRA"), an operating element of the Department of Transportation ("DOT"). My business address is 400 Seventh Street, S.W., Room 5424, Washington, D.C. 20590. I have served as Deputy Administrator since July 1977.

2. My background in rail transportation is extensive. My doctoral thesis at Harvard University dealt with railroad mergers and the future organization of the railroad industry. I have held other positions within DOT in which I dealt with rail matters, and I served with the United States Railway Association which prepared a plan of reorganization for the bankrupt Northeast railroads and designated those rail lines which were conveyed to ConRail.

3. As Deputy Administrator, I am responsible for directing FRA's efforts to restructure and rationalize the national rail system, particularly in the Midwest, and I am directly concerned with formulation of the Department's position on the Trustee's proposals to reorganize the Milwaukee system.

4. DOT's involvement first with the Milwaukee management and then with the Trustee in attempting to revitalize the railroad began in 1976. We have since then provided $80 million in financial assistance for facilities and equipment rehabilitation and working capital. We have also joined with the Trustee in initiating Milwaukee's highly successful "Sprint" intermodal service between Chicago and Twin Cities and have offered our help through the "401 process"[1] in facilitating the orderly sale of Milwaukee lines at a fair price.

5. DOT strongly supports a partial embargo as a solution to the Milwaukee's immediate financial problems and in order to permit restructuring of the Milwaukee into a self-sustaining system. The Department, after examination of the present Milwaukee system, is persuaded that the entire railroad cannot be kept in service by the railroad through the winter, that the entire system cannot become self-sustaining, and that ERSA funds cannot again be made available for the entire system. For these reasons, court action is necessary to embargo non-core lines so that the railroad's cashlessness does not impel a cessation of service this fall with resulting dire consequences to the national transportation system.

[1] FRA's efforts to restructure railroads using the new tools provided the Secretary of Transportation under section 5(a)-(e) of the Department of Transportation Act (section 401 of the 4R Act) are known throughout the railroad industry as the "401 process".

6. The Trustee's present application for embargo asks that certain lines not included in the original proposal also be embargoed: specifically, certain branch lines in Wisconsin, Minnesota, Illinois and Iowa. As the Department's studies have not taken these additional exclusions into account, we cannot, at this time, support the embargo of service on these branch lines.

7. In the event the embargo is appoved by this court, we will recommend that the Interstate Commerce Commission (ICC) direct other carriers, under 49 U.S.C. § 11125, to serve shippers affected by a shutdown. We have reviewed the ICC staff's standby plan for directed service over the western lines of the Milwaukee and agree that the institution of such service will serve the vast majority of the Milwaukee's shippers.

8. During the period of directed service, the Federal Railroad Administration will work with the Trustee through the "401 process" to achieve the orderly transfer of former Milwaukee services. ICC directed rail transportation will permit some prospective purchasers to begin immediately serving shippers on the embargoed lines which they hope to acquire. The ICC could allow permissive service under 49 U.S.C. 11124 or temporary operating rights for prospective purchasers without the high cost of directing service.

9. On July 19, the ICC proposed and requested comments on an expedited abandonment procedure for the western lines of the Milwaukee. DOT strongly supported this proposal. We will offer the Commission any assistance that is appropriate in meeting the expedited schedule that it has proposed.

10. The Trustee's embargo petition also addresses the need for labor protection for employees displaced by the partial embargo. These conditions appear promising, and we are evaluating them and other options.

11. In April 1978, DOT guaranteed a $5.1 million loan to the Milwaukee Trustee under the Emergency Rail Services Act of 1970 (ERSA). In July 1979, the Milwaukee received an additional ERSA loan guarantee which was conditioned on the development of a reorganization plan, which would lead to a smaller self-sustaining railroad. We permitted these ERSA funds to be used to continue operations on the entire system while such a plan was being developed and approved.

12. Section 3(a) of ERSA requires the Secretary to make six findings in order to provide an ERSA guarantee. These findings deal with cessation of service, public interest in continuing service, likelihood of reorganization, and security for the Federal investment. The Secretary's authority to make these findings has been delegated to the Administrator of FRA.

13. ERSA Finding No. 5 requires the Secretary to determine that "the railroad can reasonably be expected to become self-sustaining." We were able to make this finding for the previous ERSA guarantees only because of the actions of the Trustee in moving toward a self-sustaining railroad and in developing a reorganization plan.

14. When the Trustee filed his first embargo petition on April 23, DOT did not support this action because we were conducting studies of the viability of the Lines West and were reviewing the Booz-Allen & Hamilton anaylsis of the core system (Miles City subcore) proposed by the Trustee. We have only recently completed these studies. The results of the studies have now convinced us that the Trustee's core system offers the best chance of continuing the Milwaukee as a self-sustaining railroad, and that the entire Milwaukee system has little or no prospect of achieving self-sustainability even with a massive infusion of Federal funds. As I indicated earlier, the effect of discontinuance of service on the additional branch lines included in the new embargo petition merits further study.

15. In addition, the actions of the Trustee in filing a preliminary reorganization plan, and his application to the ICC for abandonment of the western lines, provide further reason for determining that ERSA loans not be made available for the entire system. The combination of the partial embargo with directed service by the ICC, the expedited abandonment proceedings, and FRA's 401 process will, in our opinion, adequately protect the public interest while a long term solution for the Milwaukee's problems is being worked out.

16. Even if it were possible for FRA to make the requisite ERSA findings for the entire Milwaukee, we think that expenditure of additional high priority funds for the whole system would lessen the prospects for successful reorganization of the core system. Any such expenditures would be inconsistent with the national policy.

17. The ERSA assistance program presently has only $30 million in loan guarantee authority remaining and no additional funding has been requested. There are two other railroads in reorganization which may need some or all of the limited ERSA funds. We expect, therefore, that any future application by the Milwaukee for ERSA assistance will have to be reviewed with respect to the needs of these railroads for loan guarantees.

18. For the reasons stated in the preceding paragraphs, we have concluded that recent events preclude us from providing ERSA assistance for the entire Milwaukee system.

19. Given these facts, the Milwaukee railroad, if it is required to continue to operate the entire system, will reach a state of cashlessness late this fall. This would result in an abrupt cessation of Milwaukee service for the entire system at the beginning of the winter, even with the infusion of the $15 million in internal funds requested by the Trustee.

20 The availability of directed rail transportation orders under section 11125 would not provide a complete solution in the event of complete cessation. The ICC has stated that it would be hard pressed to find a single carrier willing to serve all former Milwaukee shippers under ICC directed rail transportation. Even if it could, the public cost of directing service over the entire system would be enormous. Furthermore, the cessation of service or the beginning of directed service would occur at the onset of the winter when the severe weather in the region combined with the years of deferred maintenance can be expected to make day to day operations extremely difficult.

21. A railroad should be considered cashless, not when its treasury is bone dry, but when cash and other liquid assets are insufficient to permit an orderly shut down of service, pay trade creditors and employees, and provide for the orderly winding down of the estate. This is consistent with our drawndown procedures under ERSA findings, which permit drawdowns to maintain treasury cash between $5-10 million. DOT anticipates, as indicated above, that the already committed ERSA funds and funds from internal sources will be expended by the Milwaukee some time this fall. Thus, while the exact date of the Milwaukee's cashlessness is uncertain, its inevitability in the near term is certain, making continued operations of the entire system impossible.

22. In conclusion, it is the Department's position that the Milwaukee system will become cashless this fall and that this will result in abrupt cessation of service unless this court orders a partial embargo. The public and Milwaukee shippers will be adequately protected in this embargo through the directed service orders of the ICC, and expedited abandonment proceedings, and the vigorous efforts of FRA and the Trustee to find buyers for the western lines through the "401 process". It is the Administration's position that authorization of a partial embargo at this time offers the best prospect for an expeditious solution to be serious Milwaukee problem in a manner that is consistent with the long- and short-term interests of the public and national transportation policy.

ROBERT R. GALLAMORE.

Senator LONG. Next we'll hear from A. Daniel O'Neal, Chairman of the Interstate Commerce Commission.

STATEMENT OF HON. A. DANIEL O'NEAL, CHAIRMAN, INTERSTATE COMMERCE COMMISSION; ACCOMPANIED BY HENRI F. RUSH, ASSOCIATE GENERAL COUNSEL; AND RICHARD SCHIEFFELBEIN, DEPUTY DIRECTOR, RAIL SERVICES PLANNING

Mr. O'NEAL. Thank you, Mr. Chairman.

Yes, I have a summary outline, which I'll go through very quickly. We do have a longer statement, which I'll submit for the record.

With me on my left is Henri Rush, who has represented the Commission before the bankruptcy court on the Milwaukee issues.

On my right is Dick Schieffelbein, who is the deputy director of rail services planning at the Commission and has dealt with establishing a directed service program.

Just very briefly, the Commission's position before the bankruptcy court has been and continues to be that the court cannot terminate service over any portion of the Milwaukee Railroad unless it finds that the Railroad does not have enough cash to operate at the present time or cannot generate sufficient cash without an unconstitutional erosion of its assets.

We currently have before the Commission a massive line abandonment application from the Milwaukee Road amounting to an additional 1,780 miles or so; adding in the trackage rights, it comes to about 2,500 miles.

Essentially, they're applying for abandonment of the lines west of Miles City, Mont.

We have established an expedited proceeding for handling these abandonments, and we are committed to a decision, up or down by January 10.

This will include several hearings so that all the parties affected will have a chance to be heard. We are also contemplating the receipt soon—September 10—of the reorganization plan from the Milwaukee trustee.

On the bill before the committee, S. 1492, the bill essentially eliminates the Commission from the abandonment process. We have opposed that in the past, but our feeling is that if the Congress is to move forward in this direction, we would think that a better way to do it would be to use the new bankruptcy law, from which the Milwaukee is not now exempted, and just have the Milwaukee come under its provisions, rather than enact a special law for the Milwaukee.

We have set forth our reasons for that in the prepared statement.

We have another problem with the bill: It has a provision for directed service by motor carriers and water carriers, and we don't feel that's a necessary provision. We think, if you're going to have a transition period from rail to other modes of transportation, that directed service to rail makes more sense, and that we don't need directed service to the other modes of transportation.

And there are some inequities we feel would flow from that provision. And that's also laid out in the statement.

I want to just close by saying that we are ready to direct service over the Milwaukee Railroad if it becomes necessary.

We are updating our plans and we feel that we'll be ready if the occasion arises.

At this time, I think I'll just close with those comments, and if you have questions, I'll be happy to try to answer them.

Senator LONG. We'd like to ask you to stick around here for a little while, while we hear the other witnesses' testimony. Some of my questions I'll submit; the others, I'll ask you, if you'd just please stay with us. We'll call you back after we hear the other statements.

[The statement follows:]

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

Mr. Chairman, members of the subcommittee, I appreciate the opportunity to be here today to discuss the Milwaukee Road System. As you know, I preveiously testified before this Subcommittee on this subject in May of this year. I will not reiterate my prior testimony; rather, I will give you a general update on such matters as the reorganization court proceeding and the various abandonment applications which have been filed by the Milwaukee, discuss S. 1492, a bill "To save the Milwaukee Road's freight-carrying capacity", mention directed service, which I covered in some detail in my previous testimony, and discuss generally the situation surrounding the Milwaukee's lines west of Miles City, Montana.

In my previous testimony, I discussed a petition filed with the reorganization court by the trustee which, among other things, sought an order requiring him to embargo all freight service over most of the Milwaukee's lines not included in a 2,400 mile "core system". The Commission, during a hearing on this petition, advised the court that we believed it lacked authority to order such an embargo.

During the course of extended proceedings before the judge and a special master, the Commission took the position that the only basis on which the court could properly authorize a termination of service by the railroad without prior Commission approval would be that the Trustee had in fact run out of cash to continue operations and that no cash was available to him which would not result in unconstitutionally eroding the assets of the bankrupt's estate. We explained that requiring continued operation of the railroad pending the processing of an abandonment application was necessary to afford interested parties an opportunity to come up with a public interest solution providing for continued operation of the essential portions of the Milwaukee system.

At the time of those hearings the Department of Transportation, which has primary responsibility for rationalizing the nation's rail system, took no real position on the issue, and the Trustee had filed neither a plan of reorganization nor applications to abandon the portions of the system considered unreorganizable. In view of the foregoing, the Commission took the position that, at the very least, the request for authority to embargo was premature. At the same time the Commission advised the court that, if it were to grant the embargo request, the agency would be prepared to direct service over the embargo lines of the Milwaukee under 49 U.S.C. 11125.

In an opinion filed June 1, Judge McMillen adopted the Commission's position and declined to enter the order requested by the Trustee "for the reason that we cannot find any statutory or other authority for our entering the order requested by the Trustee" (Slip opinion, page 2). This decision, together with the decisions to permit the Milwaukee to use $15 million in internally generated cash from land sales and to borrow $20 million priority ERSA funds to continue operations over its entire system, is now pending on appeal in the United States Court of Appeals for the Seventh Circuit (Nos. 79-1683, et al.). Expedited procedures have been adopted and oral argument is set for September 17 with the result that these appeals could conceivably be decided by October 1.

The Trustee has recently filed a second request for authority to embargo operations over all lines not included within its plan of reorganization simultaneously filed with the Commission. By Order No. 210 Judge McMillen has ordered that the reorganization plan be transmitted to the Commission on September 10. At that time the procedures contemplated by Section 77(d) of the Bankruptcy Act looking toward development of a plan of reorganization by the Commission will be commenced. The Trustee's embargo request is not based on 49 U.S.C. 11125, as was the prior petition but rather seeks to invoke the court's inherent power to facilitate reorganization.[1] In addition, it relies on the changed circumstances of DOT's determination not to provide further Emergency Rail Services Act funding for lines outside of the core[2] and the filing of the Milwaukee's abandonment application covering lines west of Miles City, Montana (assigned Finance Docket No. AB-7 (Sub-No. 86)).

At a hearing on the new request before the Reorganization Court, commencing August 27, the Commission took the position that nothing had changed to warrant the Court reversing its prior position. The Commission stated its view that, if anything, requiring continuing operation so long as any cash was available to the Trustee was even more important than it had been before. We argued that if the Commission is to perform its functions under Section 77(d) of the Bankruptcy Act, which makes us primarily responsible for developing a plan of reorganization, it is imperative that the Commission be able to do so without having its options limited as they would be by granting the petition for embargo of all lines outside the system included in the Trustee's plan of reorganization.

The Commission further stated that, in its view, directed service is no substitute for a continuing operation over the entire system by the Milwaukee Railroad. However, the Commission also indicated that it would be prepared to direct service to insure that there is no disruption of essential service over all or part of the Milwaukee system, should it be necessary to do so. The Commission has also requested the Court to delay to October 1, 1979 the effective date of an embargo, if

[1] It was primarily on this basis that the Special Master, prior to Judge McMillen's decision, had recommended authorizing the embargo.

[2] DOT is also now strongly supporting the Trustee's renewed embargo petition.

the court decide to grant the Trustee's petition. A decision on these matters is expected during the last two weeks of September.

I would now like to mention briefly an abandonment application recently filed by the Milwaukee.[3] In this application, assigned Docket No. AB-7 Sub-No. 86, the Milwaukee seeks authority to abandon all lines and discontinue all operations west of Miles City, Montana, with the exception of trackage rights between Miles City and Billings, Montana. The application, filed August 8, 1979, involves nearly 2,500 route miles of trackage which the railroad operates through ownership, or trackage rights (approximately 591 miles out of the 2,500 miles consist of trackage rights and 127 miles are jointly owned). The Milwaukee requested, and on August 22, 1979, the Commission granted expedited procedures to decide the proceeding within 155 days of the application was filed. Hearings on the matter will commence in Butte, Montana, on September 10, 1979. The Commission expects to issue its administratively final decision by January 10, 1980.

I cannot, of course, comment on the merits of this proceeding at this time. I would like to assure you, however, that the Commission will process this and other applications as quickly as possible, while giving due consideration to the interests of all affected parties.

I should mention that the Reorganization Plan developed by the Trustee will not formaly be before the Commission until September 10, and any remaining applications for abandonment authority cannot be filed until mid-December, due to the system diagram map requirements discussed in my previous testimony. The Commission staff has been informally advised that large-scale abandonment applications will be filed in mid-December.

I have included an attachment to this statement a profile listing of all abandonments filed by the Milwaukee since it filed for reorganization, and the disposition, if any, of these applications.

I would now like to discuss S. 1492. Section 1 of the bill would amend section 77(o) of the Bankruptcy Act, 11 U.S.C. 205(o), to eliminate the requirement that the Milwaukee obtain Commission approval for abandonments and sales of rail lines. The provision apparently would leave to the reorganization court the power to authorize such abandonments and sales.[4]

Prior to passage of the new Bankruptcy Act, Public Law No. 95-598, 92 Stat. 2549 (November 6, 1978), Congress had historically shown a preference for administrative expertise in matters involving the operations of railroads. There was an established policy to entrust to administrative agencies the type of public interest review called for by abandonment proposals. The new Bankruptcy Act demonstrated a change in Congressional preference. Section 1170 of that act, 11 U.S.C. 1170, 92 Stat. 2549, 2643, empowers the bankruptcy courts to authorize abandonments by railroads filing for reorganization after the effective date of the new act (October 1, 1979). Section 1 of the bill would, therefore, give the Milwaukee reorganization court authority respecting abandonment similar to that which courts will hold in future railroad reorganizations.

In commenting on the bill which was enacted as the new Bankruptcy Act, the Commission stated the belief that the importance of rail service to the communities, shippers and passengers who rely upon it is such that, even for a railroad in reorganization, services should not ordinarily be terminated except in accordance with the abandonment provisions of the Interstate Commerce Act. We felt that the Commission would be better able to weigh the public interest in continued or alternative rail service than would the bankruptcy court. The Congress obviously did not endorse those beliefs, and gave the court the power to authorize abandonments, with the Commission acting in an advisory role. We, of course, accept the Congressional directive in this matter, and will not renew our arguments on this point.

Section 77 of the Bankruptcy Act apparently would retain, under the proposed amendment, the requirement that the judge hold a hearing before authorizing abandonment or sale. Properly administered, that hearing requirement should provide interested persons an opportunity to present views on abandoment proposals. Opponents of abandonment, of course, would not have the full panoply of notice and

[3] In my previous testimony, I stated that since the Milwaukee filed for reorganization in late 1977, it had filed 45 abandonment applications. At that time, 19 of these applications, involving 660 miles, had been granted while 25 of them, involving some 1,700 miles, were still pending (one application was withdrawn). Since that time, two additional applications have been granted, involving 139 miles.

[4] There may be some question as to this, because the clause that would be inserted in section 77(o) pursuant to the bill arguably could apply to both the court and the Commission, and thus neither might have the power to authorize abandonments. Perhaps this matter should be clarified.

procedural safeguards built into 49 U.S.C. §§ 10903–10906. Also, we should note that under the new Bankruptcy Act the court is required to consider the public interest of a proposed abandonment and also to request a report from the Commission on an abandonment application.

Under S. 1492, neither of these reguirements would have to be met. Accordingly, this bill does not really put the Milwaukee in the same position as if it had filed for reorganization after enactment of the new Bankruptcy Act. If Congress believes that the Commission's role in the Milwaukee's abandonments should be removed, it woulds seem preferable to apply the requirements of the new Bankruptcy Act rather than merely to remove the requirements of the old Bankruptcy Act.

Section 2 of the bill would amend the directed service provision, 49 U.S.C. 11125. Section 2(a) would empower the Commission to direct motor and water carriers to transport the traffic of shippers using a rail line abandoned pursuant to court action under section 77 of the Bankruptcy Act, if the Commission finds such transportation would be less costly or more energy efficient than directed rail service.

A principal problem with section 2(a) is the determination of appropriate compensation for the motor or water carrier, and thus the cost of directed service. The difficulty would arise if those carriers were directed to handle the traffic at the abandoning railroad's rates, with the Commission making up the difference (with directed service funds) between those rates and the motor and water carriers' costs. In planning for directed service for the Milwaukee, the Commission found that, at least in the short run, preserving service often equates to preserving rates. A shipper protected by directed service might either reap a windfall or absorb a loss if it continued to pay the prior rail rate, since motor and water services are rarely comparable to rail service in terms of time, flexibility of scheduling, compatibility with shipper and consignee facilities, interchange arrangements for movement to final destination, etc.

An existing Commission mechanism—a general temporary authority order—may provide sufficient intermodal emergency service, and thus section 2 may not be necessary. Through a general temporary authority order, the Commission can do much to supplement transportation in areas affected by a sudden cessation of rail service. The Commission can direct that all persons proposing to provide motor carrier services in affected areas may apply directly to certain Commission field personnel for temporary authority to transport property in interstate or foreign commerce. To the extent those officials certify a need for service, the Commission grants temporary authority pursuant to special expedited filing and processing procedures. The Commission stood ready to issue a general temporary order in the event of an embargo of Milwaukee lines, an order which would have supplemented the protection provided by directed service. We believe that this approach not only assures continued rail service for eight months, but also permits shippers to begin a transition to motor carrier service if they need to.

Section 2(b) of the bill would require directed motor and water carriers to hire the abandoning rail line's employees only to the extent feasible. Considering the short lead time, the limited duration of directed service, and the general lack of applicability of railroad experience to motor or water employment, that feasibility would probably never exist.

Section 3 of S. 1492 would provide employees displaced by an abandonment under section 77(o) of the Bankruptcy Act (as amended by section 1 of the bill) with protection similar to that which the Commission accords employees adversely affected by abandonment. By removing primary responsibility for labor protection payments from the abandoning railroad, and giving it to the Railroad Retirement Board, the provision greatly enhances the railroad's chances for reorganization as an operating entity.

I would now like briefly to discuss directed service. In my previous statement I discussed this matter at some length, including a description of the approach ultimately selected by the Commission to be used in the event of an embargo. Since that time, as mentioned, the Trustee has filed another petition seeking an embargo, and that embargo would be over a slightly different portion of the system. Furthermore, the creditors of the Milwaukee are seeking an embargo of the entire system. For these reasons, the Commission staff is updating its contingency planning efforts to enable the Commission to respond quickly if a directed service order becomes necessary to provide service to shippers on all or part of the Milwaukee system. We have advised the Bankruptcy Court that if the date an embargo is allowed is delayed to October 1, and we are given adequate notice, we will be prepared to direct service over the entire system or portions thereof.

Finally, I would like to make a few observations about the Milwaukee's "Western Lines". I will not be able to address directly the issue of the viability of the Western

Lines, since this is one of the issues the Commission as a decisionmaking body will be called upon to resolve in the abandonment matter, not to mention the soon-to-be-filed reorganization plan. In both matters, we will surely be involved in detailed consideration of the Western Lines, and it is essential that these issues not be prejudged. I can discuss the situation of those lines in general terms, however. In the past several years there has been service deterioration throughout the Milwaukee system. This service deterioration seems to be particularly evident on the lines west of Miles City, Montana, where vast stretches of Track serve only an overhead function with virtually no originating or terminating traffic. Proper maintenance of those lines would require large amounts of cash which the Milwaukee has not had. Accordingly, deferred maintenance on these line has been significant, and a massive rehabilitation effort would appear to be a prerequisite to providing good service. Booz-Allen, for example, in its report estimates a need for about $500 million just for deferred maintenance for the entire Milwaukee system, including the Western Lines but excluding certain light density lines.

We will continue to monitor the Milwaukee's situation, and expect that the general observations outlined above, a well as other factors, will be prominent considerations in any decision we make with regard to reorganization.

That concludes my prepared statement. I will be glad to respond to any questions you may have.

Commission Trantum has the following separate expression: "In general, I am in agreement with this statement, except with its support of continued operations so long as any cash is available to the Trustee (page 4). As I have noted previously, cash should not be the standard for continuation of service as the obvious erosion of assets is in effect resulting in informal liquidation of the corporate entity."

Commissioner Gaskins has the following separate expression: "I am in favor of section 2(a) of S. 1492."

Commissioner Alexis did not participate.

*SEARCH ROAD: MILW AND FILE DATE GE 12/18/79
46 RECS FOUND

PROFILE LISTING OF SELECTED RAIL ABANDONMENT CASES
TOTAL OF 46 CASES AS OF AUG-30-1979

DOCKET	SUB	RAILROAD	STATE1	TOTAL MILES	DECISION	DECD. DATE	TOTAL ORT	TITLE
7	41	MILW	SD	47.30	PENDING		.00	BETWEEN MADISON AND BRYANT IN LAKE,KINGSBURY & HAMLIN COUNTIES
7	43	MILW	IA	33.50	PENDING		.00	PARALTA TO HOPKINTON BRANCH IN LINN, JONES & DELAWARE COUNTIES
7	47	MILW	WI	46.70	PENDING		.00	NEAR MONROE AND MINERAL POINT IN GREENE, LAFAYETTE & IOWA COUNTIES
7	54	MILW	IA	65.20	PENDING		.00	INDIAN CREEK TO RUTLEDGE BRANCH IN IOWA, KEOUT, MAPELLO COUNTIES
7	60	MILW	WI	28.80	PENDING		.00	BET IRON RIDGE AND FOND DU LAC IN DODGE, FON DU LAC COUNTIES
7	63	MILW	WI	5.70	PENDING		.00	WAUSA TO HEAFFORD BRANCH BET MP 133.4 TOHAHAWK & MP 139.1 HEAFFORD
7	64	MILW	WA	108.60	PENDING		.00	BET EAST SPOKANE & NEWPORT, ALSO BET NEWPORT & METALINE FALLS
7	65	MILW	WI	13.50	PENDING		.00	RONDOUT & JANESVILLE IN ROCK & WALWORTH COUNTIES
7	68	MILW	MI	117.00	PENDING		.00	BET ORTONVILLE & FARGO
7	69	MILW	MT	43.40	PENDING		.00	BET WINIFRED JUNCTION & WINIFRED
7	71	MILW	WI	19.00	PENDING		.00	BET RIPON JUNCTION & OSHKASH IN FORD DU LAC & WINNEBAGO COUNTIES
7	73	MILW	SD	82.90	PENDING		.00	BET NAPA AND PLATTE IN YANKTON,BON HOMME AND CHARLES MIX COUNTIES
7	74	MILW	MI	23.10	PENDING		.00	BET CHANNING AND REPUBLIC IN DICKINSON AND MARQUETTE COUNTIES
7	75	MILW	SD	75.60	PENDING		.00	BET ROSCOE SOUTH DAKOTA AND LINTON NORTH DAKOTA
7	76	MILW	SD	63.30	PENDING		.00	BET ABERNDEEN AND EDGELEY IN BROWN COUNTY,S.D.& DICKEY & LE MOURE N.D.
7	78	MILW	MT	31.30	PENDING		.00	GREAT FALLS BRANCH BET FAIRFIELD AND FORWAY, IN FETON COUNTY
7	79	MILW	SD	42.80	PENDING		.00	BRAMPTON BRANCH NEAR ANDOVER TO BRAMPTON IN DAY & MARSHALL, SARGENT
7	81	MILW	IA	79.90	PENDING		.00	FOR CHICAGO-OMAHA LINE BET GREEN ISLAND & DOVE - DELMAR & MADUOKETA
7	82	MILW	WI	30.10	PENDING		.00	PRARI DU CHIEN BRANCH NEAR LONE ROCK TO PRARI DU CHIEN
7	83	MILW	WI	54.00	PENDING		.00	RAPID CITY BRANCH NEAR MITCHELL AND RAPID CITY
7	84	MILW	SD	286.00	PENDING		.00	ONTARIO-ONTARIO LINE IN BROWN,OCONTO & MARINIETTI, WI-DICKINSON,IRON BARAGA
7	85	MILW	WI	208.00	PENDING		.00	PACIFIC COAST EXTENSION-EAST OF MILES CITY, MONTANA
7	86	MILW	MT	1780.20	PENDING			
TOTAL PENDING			23	MILES REQUESTED1		3305.90	MILES GRANTED1	.00
7	40	MILW	MN	29.50	GRANTED	FEB-17-78	29.50	WELLS TO MANKATO BRANCH, NEAR MINNESOTA LAKE TO MANKATO,
7	42	MILW	WI	11.80	GRANTED	JUN-08-78	11.80	BETWEEN RIPON JUNCTION AND BERLIN IN FON DU LAC, WINNEBAGO,GREEN LAKE
7	44	MILW	MN	37.00	GRANTED	FEB-28-78	37.00	EAU CLAIRE JUNCTION BRANCH BET EAST WINONA & TREVINO
7	45	MILW	MN	22.50	GRANTED	FEB-28-78	22.50	FROM ST. CROIX JUNCTION TO BAYPORT IN WASHINGTON COUNTY
7	46	MILW	MT	40.30	GRANTED	FEB-24-78	40.30	THREE FORKS TO BOZEMAN LINE
7	47	MILW	MN	32.60	GRANTED	FEB-28-78	32.60	BET ST. CLAIR JUNCTION & PEMBERTON IN FREERORN,WABCO,BLUE EARTH COUNT
7	48	MILW	SD	15.20	GRANTED	DEC-16-78	15.20	HOONBOCKET TO HESSINGTON BRANCH
7	50	MILW	IA	11.06	GRANTED	DEC-16-78	11.06	CONOVER TO DECORAH IN WINNESHIEK COUNTY, IOWA
7	51	MILW	IL	14.50	GRANTED	DEC-18-78	14.50	KIRKLAND TO DEHALE IN DEHALE COUNTY, IOWA
7	52	MILW	IL	35.00	GRANTED	MAY-18-78	35.00	DELMAR TO JOLIET BRANCH BET MOHENCE & JOLIET
7	53	MILW	IA	37.50	GRANTED	MAY-09-78	37.50	BET MP 262.5 NEAR BEDFORD TO MP 300.0 NEAR SEYMOUR
7	55	MILW	MN	38.80	GRANTED	MAY-04-79	38.80	ROCKWELL CITY TO STORM LAKE BRANCH
7	56	MILW	MN	54.90	GRANTED	APR-13-79	54.90	BET FARMINGTON AND MANKATO IN DOKOTA,SCOTT,RICE,LESUER, BLUE EARTH
7	57	MILW	MN	23.50	GRANTED	APR-13-79	23.50	FARMINGTON & SHAKOPEE IN DOKOTA, AND SCOTT COUNTIES
7	58	MILW	MN	100.00	GRANTED	MAR-16-79	100.00	N.W.& D. JUNCTION BET LA CRESCENT & RAMSEY IN HOUSTON,FILLMORE,MORVER
7	59	MILW	WI	41.00	GRANTED	MAY-30-79	41.00	BET MILTON JUNCTION AND WAUKESHA IN ROCK,WALWORTH,JEFFERSON,WAUKESHA
7	61	MILW	MN	98.00	GRANTED	JUN-07-79	98.00	BET JACKSON AND EAGAN IN JACKSON, NOBLES, MURRAY,PIPESTINE COUNTIES
7	62	MILW	MN	35.00	GRANTED	MAR-19-79	35.00	BET FAIRMAULT AND ZUMBRATA IN RICE AND GOODHUE COUNTIES
7	67	MILW	WI	16.70	GRANTED	OCT-16-78	16.70	BET CAMBRIA AND PORTAGE IN COLUMBIA COUNTY
7	70	MILW	SD	56.00	GRANTED	NOV-16-78	56.00	BET MOREAU JUNCTION AND HANFORD IN BENTON COUNTY
7	77	MILW	WA	20.80	GRANTED	JAN-18-79	20.80	BEVERLY JUNCTION & ISABEL IN CORBON & DEWEY COUNTIES
7	80	MILW	MT	66.00	GRANTED	MAR-22-79	66.00	BET CHANNING AND ESCONABA IN DICKINSON,MENOMINEE & DELTA COUNTIES
TOTAL GRANTED			22	MILES REQUESTED1		837.66	MILES GRANTED1	837.66
7	66	MILW	MT	3.50	WITHDRAWN	APR-06-79	.00	BET KINGLING AND DORSEY IN MEAGHER COUNTY

Senator LONG. Is Hon. Lee Dreyfus, Governor of Wisconsin, here today?

[No response.]

My understanding was he was scheduled to be here, but for some reason he was not notified or something so he's not able to be here today.

Let's hear from Mr. Richard Ogilvie, attorney-in-fact and acting trustee, the Milwaukee Railroad.

STATEMENT OF RICHARD B. OGILVIE, ATTORNEY-IN-FACT AND TRUSTEE, THE MILWAUKEE RAILROAD; ACCOMPANIED BY JOHN ROWE, COUNSEL

Mr. OGILVIE. Good morning. My name is Richard B. Ogilvie. I am accompanied today by my counsel, John W. Rowe.

I am pleased to have the opportunity to appear before this subcommittee today to update the status of the Milwaukee Road and our views with respect to various legislative proposals. I thank the chairman for the invitation to appear.

I was appointed to succeed Stanley Hillman as trustee of the Milwaukee Road by the U.S. district court in July, and my appointment has recently been ratified by the Interstate Commerce Commission.

I am not new to the problems of the Milwaukee, since I have previously served as attorney-in-fact for the trustee since the commencement of the reorganization proceedings.

I will not reiterate the general description of the Milwaukee and its problems which Mr. Hillman presented to this committee on May 21, 1979. Since that time the Milwaukee Road has been kept in an iron lung with borrowed money which has preserved its life as a technical matter but has been insufficient to allow proper operation of the railroad, let alone necessary rehabilitation of a continually deteriorating plant.

On June 1 of 1979, the court denied the Milwaukee's previous request to embargo a substantial portion of its operations, and later in June the court authorized the borrowing of $20 million under the Emergency Rail Services Act of 1970.

During the period of operations provided by these funds, we have conferred with the Department of Transportation concerning the availability of additional money, prepared a reorganization plan and submitted a request for an embargo of operations which are not viable based upon the current facts.

The Department advised us that as a result of the completion of its studies with respect to the west end of the Milwaukee it would no longer provide funding to continue the operation of lines which are not viable.

The reorganization plan, which I have with me and am submitting for the record, takes into account this advice and our own studies and proposes a reorganization of the Milwaukee around a 3,400-mile railroad which we call Milwaukee II.

Milwaukee II preserves our most basic operations from Chicago to the Twin Cities with extensions to Louisville, Kansas City, and Miles City, Mont.

The extension to Miles City preserves the railroad's ability to participate in all substantial western coal movements which are

likely to be available to it in the foreseeable f ure and is included due to commitments of State assistance.

Milwaukee II would preserve somewhere between 5,800 and 6,700 jobs out of the somewhat over 10,000 present employees.

Perhaps inevitably the focus of comment upon our reorganization plan has been the extent to which the Milwaukee's operations should be scaled down.

We think a more realistic reaction would be to focus on the extent to which our proposals would preserve both rail operations and rail employment.

Milwaukee II would be an efficient railroad providing valuable services in areas where it can compete successfully.

Our forecasts indicate that it will be profitable, and continuing Federal subsidies would not be necessary.

The lines which we propose to sever are largely in areas which have rail service from much stronger competitors. We expect to preserve as much rail service as possible through the sale of operating lines in those regions. Our reorganization plan describes the possible sale of about 1,660 route-miles of line.

We estimate that through the operations of Milwaukee II and other carriers on their current lines and on the lines which they would purchase from us, rail service will continue to be available for more than 94 percent of current Milwaukee shipments.

In addition, we anticipate that more than 700 of our employees would obtain jobs with acquiring carriers for work in connection with the lines that we sell.

We believe that most other Milwaukee employees could readily obtain alternative employment in the railroad industry.

The reorganization plan should remove the myth that our efforts are designed to provide some sort of windfall for the Milwaukee creditors or that labor is being ignored. The reorganization plan proposes to settle claims of the first mortgage bondholders with new Milwaukee Land Co. bonds at the rate of $500 per $1,000 of old railroad bonds.

Junior claims are also scaled down. We think a proposal of this nature might generally be considered equitable, but the bondholders have voiced strong opposition and the court may well find higher payments necessary.

Normal principles of labor protection would involve a huge claim—perhaps in excess of $300 million—against the estate, which would not be paid out until the end of the reorganization and then at rates far less than 100 cents on the dollar.

Because the size of labor protection claims could handicap or destroy the proposed reorganization of Milwaukee II and because severed employees should not be made to wait until the conclusion to obtain any relief, our plan proposes a $50 million settlement program.

Payments would be made as severance pay at the rate of about $1,000 per year of employment for each employee who is deprived of a job with Milwaukee II or on the lines we sell.

Compensation would be paid when it is needed and would not deter people from finding other work. We recognize that this is a new approach and are of course willing to discuss alternative methods of allocating severance pay with representatives of the labor organizations.

I would like to offer some thoughts to legislation dealing with crisis. First and most importantly, we do not believe the Milwaukee's problems or indeed those problems in conjunction with the problems of the Rock Island Railroad require the creation of some sort of midwestern ConRail which might pose a continuing burden upon the public purse.

Second, legislation to provide expedited procedures for railroad restructuring may be needed. The requests which we have before the court at the present time seek the borrowing of an additional $15 million to maintain the operation of Milwaukee II and an embargo of substantially all lines not within Milwaukee II.

We anticipate action by the court before the end of this month. If the current embargo request is denied, action by Congress will be necessary to provide substantial amounts of transition funds and an expedited mechanism through which our proposals can be acted upon, either in the court or before Government agencies, in order to save any part of the Milwaukee.

If our request is granted, only expedited use of existing authority is needed.

Third, while some additional transition financing, such as increase in appropriations for the Emergency Rail Services Act and directed service by the Interstate Commerce Commission, are necessary, we think that Congress should bear in mind that continuing to operate crippled railroads indefinitely while further studies are made and further procedures are followed can be a very expensive matter.

In the long run, Federal funds are better invested in plant rehabilitation and in labor protection than in continuing deficit operations.

Moreover, if the entire operations of railroads such as ours are continued, the potential of the viable portions tends to be jeopardized. Thus, we think that any federally financed freeze upon railroad restructuring should be of very limited duration and should contemplate clear and comprehensive solutions at the end of the freeze.

We also submit that directed service should not be required with respect to entire railroad operations.

Fourth, we submit that if the Federal Government wishes to require a full 6 years of labor protection payments for severed employees of bankrupt railroads who may not be required to move to obtain other jobs, the Federal Government will have to pay for it. Obligations of this sort would literally crush any possibility of reorganizing the Milwaukee or any other bankruptcy railroad.

Finally, our reorganization plan is heavily dependent upon Federal assistance under title V of the Railroad Revitalization and Regulatory Reform Act. In this context continuation of the department's authority to provide low interest rehabilitation funds under section 505 is of the utmost importance.

We also believe that proposals which the department has made to increase its flexibility with respect to providing loans for labor protection would be desirable. We believe that Milwaukee II would be able to service the debt contemplated by our reorganization

plan, but prompt and adequate provision of this financial assistance is very important.

Finally, I thank the committee for this opportunity to appear and commend all of the Senators and Congressmen who have endeavored to find a solution to our problems.

I would be happy to answer any questions which you have about the status of the Milwaukee, the remarks which I have made today, or specific suggestions on the various bills before this committee.

Senator LONG. Thank you very much. I'll ask you to stay here in the room. Yield that place at the table and stick around for a few minutes. We may call you back.

Next I want to call a panel: Mr. J. R. Snyder, national legislative representative, United Transportation Union; Mr.William Brodsky, and Mr. Russell Murphy.

Mr. Brodsky is the executive vice president, Milwaukee Lines, and Mr. Murphy is from the Consultant Center.

STATEMENTS OF J. R. SNYDER, LEGISLATIVE REPRESENTATIVE, UNITED TRANSPORTATION UNION; ACCOMPANIED BY WILLIAM G. MAHONEY, COUNSEL; WILLIAM BRODSKY, EXECUTIVE VICE PRESIDENT, MILWAUKEE LINES, INC.; AND RICHARD TRENERY, THE CONSULTANT CENTER

Mr. SNYDER. Good morning, and thank you, Mr. Chairman, and members of the committee and staff and Senator Melcher and Senator Baucus.

We have on the panel here, Senator, on my right, Mr. William T. Mahoney. He's counsel for the Railway Labor Executive Association.

And on my left here is Mr. Richard Trenery, who will be replacing Mr. Russell Murphy from the Consultant Center.

Also on my left is Mr. Bill Brodsky, executive vice president of the Milwaukee Line.

Mr. Chairman, we have a very short statement here, and if you don't mind, I'll read it.

Mr. Chairman, we appreciate the opportunity to present testimony to your subcommittee.

We are here today representing a unique coalition that was in part suggested by you. This coalition represents both the Railway Labor Executives Association, affected shippers, and those originally concerned with the continuance of service on the Pacific coast extension of the Milwaukee.

We will be very brief, Mr. Chairman, because we believe we will have more to say in just a few weeks.

Since your past hearing on this subject and our meeting with you concerning the Milwaukee, we have commissioned a study by independent consultants—Policy and Management Associates—which will review all of the studies, proposals, and analyses of the Milwaukee and its prospects in order to give an unbiased prediction as to its future.

In other words, we have listened to your advice and have come together in a coalition of labor, shippers, and concerned citizens in order to fund out of our own pockets without any Government help

an impartial analysis of the various studies that are before you today.

This important study by a noninterested party will be very useful for both your purposes and ours.

We recognize that it may well conclude that there is no prospect for successfully reorganizing the entire Milwaukee Railroad.

If so, we will be the first to walk away from this project. I want to emphasize that we are the only parties before you today who have a direct economic stake in this. We are not about to throw good money after bad, particularly when it is our own.

Just briefly, I want to comment on the two bills that are before this committee: Senator Melcher's bill, S. 1286, which railroad labor wholeheartedly supports; also S. 1492, which Senator Nelson has introduced, and which we do have problems with this particular bill.

With your permission, if the record will stay open, we will submit some issues, direct, that are affected by Senator Nelson's bill, particularly employee protection and directed service, which we have been working with the House committees, Commerce Committee over there.

And just as soon as it's available in the next few days, we'd like to incorporate that into the record with your permission.

This important new study will be completed within a couple weeks. While it is too early to say at this early stage exactly what this study will conclude, we can tell you about some of the information that has already been collected.

Based on the work that our consultant has already done, it appears that the figures in the previous studies now before you on both the total rehabilitation costs and the acquisition costs for the Milwaukee may not be far off.

While the methods of acquisition and the treatment of rehabilitation expenses, as opposed to normal maintenance expenses, may not be accurate, for the most part, the studies before you appear to be relatively accurate in these important areas.

What appears to be substantially inaccurate in the old studies is the projected operating costs of the Milwaukee and the ability of this carrier to generate revenues in excess of those costs.

Mr. Brodsky will now describe these preliminary conclusions for the committee, and then Mr. Trenery will make a few brief remarks.

Mr. BRODSKY. Mr. Chairman, my name is Bill Brodsky. I am the executive vice president of New Milwaukee Lines. This a new nonprofit organization which was recently formed to purchase the transcontinental line of the Milwaukee and in a coalition with the RLEA, shippers, and others, is examining the feasibility of reorganizing the entire Milwaukee Railroad.

I will briefly tell you a little about some of the important preliminary conclusions that the study we are paying for has found.

This study will be submitted to the committee as soon as it is finished, as will our reorganization plan.

The most glaring flaw we have found in the existing studies is their inaccuracy in predicting the growth of traffic. As you probably remember, the Booz-Allen study, for example, was not optimistic on future traffic for the Milwaukee.

This is because they used methodology that is fatally flawed. The old studies used aggregate economic data to predict the future traffic potential for the Milwaukee. A moderate overall growth rate is predicted for the economy as a whole, but these figures are extremely misleading when we look specifically at movements of those commodities in the Milwaukee's service area.

A danger in using national average growth figures to project local growth or growth in transportation is that very important influences can be missed.

An example of this is the extraordinary impact of increased coal mining in the Milwaukee's service area.

It is now clear that even a modest national growth will require a huge increase in coal production, especially if growth in oil imports is to be constrained, as the President has now indicated.

This great growth in coal production will be magnified even further in the Milwaukee's service area, since that is where two-thirds of the coal increase will originate, according to the Department of Energy.

Coal production in this area is forecast to be 2½ times greater by 1985, 6 times greater by 1990, and 10 times greater by 1995.

None of this information was contained in the old studies.

Coal movements are an important part of U.S. rail transportation even today, but in a few short years coal movements will grow to equal all other traffic put together.

In the area served by the Milwaukee, this proportion will probably be even greater and will quickly tax the modest railway system there.

Also, in this area there are no alternatives to rail such as waterways. Since about half of the U.S. coal reserves and new output are in the States of Montana, North Dakota, South Dakota, Wyoming, and northern Colorado, and the railroad lines there are less than 9 percent of the Nation's total, there will be a much heavier demand pressing upon them in the future.

In the face of this, the abandonment of the Milwaukee can only be seen as another example of the left hand of the Government not knowing what the right hand is doing. The abandonment of a railroad sitting on top of the largest deposits of low sulphur coal in North America is only one more example of conflicting policies from the Departments of Energy and Transportation.

I should add, Mr. Chairman, that the old studies are not just defective with respect to coal. We are discovering similar gross errors in other important commodities that will have to move by rail, if they move at all, such as grain.

Grain produced in this region that will move out of the region—primarily to the west coast for export—will grow from 182 million bushels to 224 million bushels a year by the year 2000.

What this means is that the Milwaukee deserves a careful, impartial look; it deserves a study it hasn't had.

Mr. Chairman, we hope to come back to you with that study in the very near future. If the study is positive, we will have a firm reorganization plan finalized by December 1, 1979, and would hope to be running a transcontinental railroad by May 31, 1980.

Mr. Chairman, this concludes our prepared statement, and Mr. Trenery will make a few brief comments on the Milwaukee II plan

of the trustee that has been submitted in preliminary form to the reorganization court.

We think it is important that you realize what this plan means.

We appreciate your interest and look forward to continuing to work with you on this important matter.

Mr. TRENERY. Mr. Chairman, my name is Dick Trenery. I am replacing Mr. Murphy as a representative of our firm.

I would like to speak now as the financial adviser of the Milwaukee Lines group in regard to the Milwaukee II proposal of the trustee.

The Milwaukee trustee recently filed a reorganization plan which entails a decision to concentrate reorganization and restructuring efforts over a 3,600 subcore, dubbed the "Milwaukee II," serving the principal cities of Louisville, Chicago, Kansas City, Milwaukee, and the Twin Cities, with a western terminus in Miles City, Mont.

Unfortunately, studies of the projections of the Milwaukee II seriously call into question the ultimate viability of the trustee's recommendations.

Moreover, financial failure of Milwaukee II would have future great implications to the interests of all parties to be served by that system.

The study also shows large differences between the Milwaukee II projections and earlier studies done for the trustees.

Moreover, the filing does not contain sufficient detail to evaluate the reasonableness or pragmatism of the Milwaukee II projections, nor any apparent differences from previous studies. Although the Milwaukee's continual losses and cash drain argue for rationalizing the system—plus moving toward a reorganizable base as quickly as possible, it would be quite regrettable to close off potentially superior options in support of Milwaukee II at this time.

Such other options may even prove to be the only viable alternatives for the region in the future. To appreciate the likelihood that support of Milwaukee II is not warranted, all that is required is a close examination of Milwaukee II projections.

Such examination indicates expectations of significant revenue gains and operating performance efficiencies without any idea or intrinsic reasons justifying such improvements. What is also noteworthy is the marked difference in the expected performance of Milwaukee II versus that of the railroad's consultant who identified eight system configurations in considering and selecting a plan.

Ironically, Milwaukee II is totally different from any of these eight systems, either singularly or in any concert.

Some of the elements of the plan which appear unwarranted or significantly contribute to a lack of confidence in its viability are the following: the total investment requirement is never identified in the Milwaukee II projections.

However, if we try to get that information out of the available data, we find that the Milwaukee II investment is very close to the Booz-Allen/Lousiville-Nashville Continental Line projections.

The revenue gains are dramatically increased over Booz-Allen's expectations without any explanation or justification.

The first year traffic volumes are never justified in view of the real climbs in the traffic base since 1977.

Furthermore, subsequent annual volumes in carloads are growing at a rate over 130 percent greater than the Booz-Allen projection.

Estimated expense efficiencies are progressing at a level almost four times greater than the Booz-Allen.

The turn-around time of the Milwaukee II is ambitiously projected to conclude 2 years earlier than the Booz-Allen projections.

The plan, even if it were assembled quickly, is obviously missing some critical information necessary for all parties with a vested interest in its outcome. Such information would include activity levels peculiar to the railroad industry, such as train miles, car miles, et cetera, as well as growth expectations by the vital commodity interests, such as the coal and grain; projections in net income; sources and applications of funds statements.

And the cost of financing the initial losses are not identified and possibly not even considered. Most crucial of all are the explicit explanations justifying all the changes in performance are missing.

The net effect of such apparent observations as noted above is to call into serious question the credibility of the financial projections and the ultimate viability of the reorganization plan offered by the trustee.

The situation simply demands greater scrutiny of all the available options.

Thank you, Mr. Chairman.

Senator LONG. Mr. Snyder, I followed your stock ownership proposal, and I thought it might be an answer to the problem. The ConRail matter has been—at least ConRail is doing better these days, is it not? At least that's my impression.

Mr. SNYDER. Yes, it showed considerable improvement, particularly in the last quarter.

Senator LONG. Can you tell me what the latest is about the employee stock ownership proposal at ConRail? Where do we stand on that now?

Mr. SNYDER. Well,right now it's kind of status quo because of the improvement in ConRail. And as you know, we've worked very closely with the committee. Right now it's kind of a status quo.

Senator LONG. I have been impressed by situations where we have had employee ownership. For example, one company—one company had given up. They thought they were going to lose it, and they said—well, the workers sought to save their jobs, and they tried to help. And I urged the EDA to make a loan to help. The local citizenry put some money into it and the workers put some of their own money into it.

And so they took it over. The Government made them a loan to help make a go of it, and they took it over. It turns out they didn't even have to have a pay cut. But they obviously had more enthusiasm when those men were working for themselves.

The result was they made the thing succeed. And they were even able to give themselves a pay raise. I do think they had one thing going for them. They had greater productivity because they had a lot of enthusiasm. The fact that it was their company, they had to

make it go, or else they were going to lose their money and their jobs.

I think when you combine that fact with the fact that you're discussing a plan where the shippers own some stock in the company, all things being equal, they should put the cargo on the carrier with the stock they have some money invested in.

So I think if it can be made to succeed, it can succeed on that basis. All the studies I've seen so far, when we have substantial stock interest value with the employees, you get higher productivity.

And I don't say this as a matter of courtesy to unions. You take the case of the South Bend. They've still got a union; they had a union. They got the same union officers, I believe.

The union represents employees. They still have a basis for employees to work. The unions take care of the problems, even if they do have a stock interest in the company.

I just believe that there's a lot to be said for it. Now, I don't know whether this company—all of this railroad can be made to succeed. I take it from what you said here now, at this point you don't know. You're not in a position to say that you're sure it can work in your mind.

Mr. SNYDER. Mr. Chairman, we are seeking the answer to that, but as you know, it takes time, and this preliminary study, which I pointed out in the testimony here, it's very reliable. We will accept that. We will accept that, as I pointed out here, because we're putting our own money in this.

The employees have put a lot of money in it, close to $100,000 of their own money into trying to save this railroad, along with the shippers, who have put in a considerable lump sum.

What we need here—we're waiting on this preliminary report, and during the month of August, we were very busy with the shippers and with the States involved to get—to try to come to—to see which direction we have to move.

I think, regardless of how the report comes out, we're going to have to have legislation one way or the other; as it's been pointed out here, if it comes out positive and we think there is a possibility, then we'd like to explore legislation in this area, which I'm sure you're interested in, as we discussed this before.

If it's not, then we've got to get as much relief as we can in the form of protection for the employees. And we're working on all of these issues just in case, because over the next few months and the next few weeks, it's very critical in this area.

You mentioned productivity, Mr. Chairman. We're very much interested in productivity, and I'm very proud of the railroad workers in this country. We have the lowest number employees in the last 15 years. We went down from 1.5 million employees to under 500,000. I think that speaks—there has to be some real productivity there someplace.

The Milwaukee Railroad, as far as this affects my organization—on that,we were the first railroad in the country to work out an agreement for production on the crew. Milwaukee has that. And our biggest problem—I get calls every day from all over the Milwaukee operating line as to mismanagement.

We have marketing people that shippers haven ι seen in years: no effort, no effort whatsoever.

The thing has been deteriorating for the last 15 years. We would welcome any congressional investigation on productivity of the railroad workers on the Milwaukee Railroad, provided they didn't include the management. But this is very important productivity, very, very important. And I agree with you, and I think the Milwaukee employees would agree with you.

They'll walk the last mile with you to try and save the railroad, get business on there and build the railroad up where we can meet the needs of this region, which is very vital to this part of the country.

Senator LONG. If we make this move and we do decide to try to save the whole railroad, if I'm going to be a part of it, I think we're going to have to—as I say, Mr. Snyder, we expect your people to put up more than a token contribution. I heard the statement from Mr. Ogilvie that if we shut the railroad down your workers would have $1 billion coming to them, perhaps not that much. That's what I thought he said.

It could be that high. Well, it seems to me, if we go into this thing with you, your people ought to be willing to ask each worker this question: "Now, do you want in or out?"

If you want out, we'll pay you. We'll pay off your labor protection money, and you're out.

If you want in, you've got a job; you're a partner in this deal. If it succeeds, OK, you succeed with it. You've got a good job. You've got some good stock. If it doesn't succeed, you've lost your money and you've lost your job along with it, and you've got a lot less labor protection than you'd have if you got out when the other guy got out.

But that's how business operates. You know, you might make a lot of money; you might get rich, but you might lose it too.

Mr. SNYDER. I would think, Mr. Chairman, I would think if this would come into play—the shippers, the States, the employees—I think you would find some real good management there with a high productivity because they've all got so much at stake.

Senator LONG. Yes, sir?

Mr. BRODSKY. The New Milwaukee Lines board of directors is comprised of principal shipper interests across the Northern States. There are labor representatives on that board as well as representatives from the Governor's office.

I'm confident that the reorganization plan that we will come forward with will spell out specifically the contribution of the employees and the contribution of the shippers in financial terms that will be required in order to make the thing work.

We will be working closely with the RLEA as that thing is put together, as well as the individual employees and shippers. That will be a part of the program; there's no question about it.

Senator LONG. Senator Melcher, would you care to ask some questions.

Senator MELCHER. I have no questions, Mr. Chairman.

Senator LONG. Thank you very much, gentlemen.

Mr. SNYDER. Thank you, Mr. Chairman. I'm glad to work with your committee on this present problem.

Senator LONG. Yes, sir. Thank you. All right, now, I believe we'll recall Ms. Linda Kamm.

Here are a couple of questions that Senator Baucus left with me.

Did you make specific recommendations as to how lines west could be made more viable?

Ms. KAMM. Mr. Gallamore can answer that.

Mr. GALLAMORE. My recollection is that they did make some suggestions as to how the projected financial performance of the lines was—the SORE proposal could be improved.

Senator LONG. Did not the Booz-Allen study results indicate in terms of both short term and long term net operating income that the Louisville transcontinental system—let's see—the Louisville transcontinental system was the best alternative?

Mr. GALLAMORE. Again, my recollection, sir, was that the Louisville transcontinental showed among the better results with respect to net railway operating income. I'd like to make two comments: My recollection is that particular option had a higher rehabilitation cost than some of the other options, and that those rehabilitation costs, the carrying charges, the repayment of those rehabilitation charges and the interest in them are not included in the concept of a net railway operating income.

So it would be necessary for us to sit down and make sure we're comparing apples to apples if you want to look at a statement like that.

Senator LONG. Senator Melcher?

Senator MELCHER. Yes. I do have a couple of questions.

The testimony that was given earlier carefully separated out the growth of the coal haul in the area and did not, however, project the need for coal haul in the area.

Doesn't the department do that?

Mr. GALLAMORE. Senator Melcher, we did take a look at the coal development in the State of Montana. We, of course, are not the Government's best experts on that subject.

Senator MELCHER. Then I won't ask you any questions because the Government's best experts on that subject are hardly good enough.

Mr. GALLAMORE. I understand that the Department of Energy is completing a report that you referred to earlier this morning, if I heard you correctly.

We have undertaken similar studies of our own. The results of those are that most of the heavy movements of coal that we foresee from the area, the Yellowstone River basin area, are likely to move by the Burlington Northern. The Milwaukee Road is currently moving very small amounts of coal out of the Bull River Mountain area near Roundup.

My understanding is no unit trains move out. It's primarily local consumption.

If we're talking about movements of coal to the West, I'd be quite certain that Burlington Northern has ample capacity to move westbound coal.

If we're talking about movements to the East, of course, the trustee's Milwaukee II core proposal does provide service as far as Miles City and includes trackage rights as far as Billings.

So we would be able to pick up some of the eastbound capacity.

Senator MELCHER. Well, none of the coal from the intermediate points between Billings and Miles City is moving on the Milwaukee.

Mr. GALLAMORE. I understand that the coal presently originating in Coalstrip, Mont. from Burlington Northern branches, some of it is being hauled by the Milwaukee to Miles City and destination points in the Midwest and Wisconsin in particular.

Senator MELCHER. Yes; you have just stated, however, that the Milwaukee has trackage rights west of Miles City on the Burlington.

Mr. GALLAMORE. And Billings, Mont.

Senator MELCHER. Then I assume your testimony also is to the effect that they have trackage rights to the mines at Coalstrip and the mine that Westmoreland has?

Mr. GALLAMORE. My understanding is they have trackage rights to Billings and the traffic that the Milwaukee has provided historically over those trackage rights is on Burlington Northern trains, actually, rather than operating their own service.

I'm not positive of that. I did want to make that point, that the largest mover of Milwaukee coal in the western part of the system that Milwaukee originates is from the Night River mines in North Dakota. And that is a movement that we've been very concerned about because of the dependence of power users in Minnesota on that particular generating capacity.

We're very pleased that the trustee has included the Miles City extension in his core proposal so that that traffic will continue.

Senator MELCHER. On the proposed new mine at Roundup, how would that coal be moved? The mine is proposed to mine at least 2 million tons by 1985.

Mr. GALLAMORE. I think I have a few numbers on that, Senator Melcher.

My understanding is that that development would not be fully operational up to its full potential before approximately 1985.

Let me see if I can find you a few more numbers that we have on that; tonnage moving out of the Bull Mountain area south of Roundup today is estimated to be about 20,000 tons per year. That was for last year.

It is difficult to mine that coal for a number of reasons that I'm sure you're aware of. There's a State tax on strip mining coal; I think part of the problem is that the seams are a little thinner than elsewhere, and so on. The reserves themselves are not as large as the Powder River reserves.

Senator MELCHER. The proposed mine will generate 2 million tons by 1985. How would that be hauled?

Mr. GALLAMORE. We have proposed that the State of Montana might want to consider a proposal by which any lines that have to be abandoned from the Milwaukee could be held onto by the State.

Now, if the development is as great as you indicate and would appear to be profitable to an operator, whether it be a private railroad or the State of Montana seeking to contract with an operator seeking to provide service on the Milwaukee tracks, that could be done.

Senator MELCHER. Milwaukee could also do it, could they not, if it were profitable?

Mr. GALLAMORE. Excuse me?

Senator MELCHER. The Milwaukee could do it also if it were profitable.

Mr. GALLAMORE. If Milwaukee had the capability, assuming that they had the requirement to serve that area.

Senator MELCHER. What I'm trying to point out—and it's taking me a long time to get to the point—is if the Milwaukee doesn't operate between Roundup and Miles City, which is about 140 miles——

Mr. GALLAMORE. Right.

Senator MELCHER [continuing]. That coal would go west to get on the Burlington over some existing Milwaukee lines. It would be about 110 miles going west to bring it back to Billings, which would be 140 miles.

So it would seem the most practical way to move that coal is from Roundup east to Miles City.

Mr. GALLAMORE. My suggestion was that if the State could rail bank that property, the 147-mile segment or the 30-mile segment from Roundup west—in either event, the service could be restored if it were profitable to do this, though, and the coal mining actually occurred.

I think the difficulty would be if you asked the impoverished Milwaukee estate with its financial obligations that have been discussed in great detail this morning to in fact cover the charges—the costs of continuing in that capacity until such time as speculative development occurs; that's where you would be imposing quite an obligation on the State.

It's where we have some concerns about their ability to fund it.

Senator MELCHER. It seems to me it's a copout for the Department of Transportation to say, well, it could be picked up by the State of Montana. Obviously, the State of Montana——

Mr. GALLAMORE. It's Federal assistance that the State of Montana would be relying on in large part.

Senator MELCHER. So in effect you're going to complicate it a bit by adding another layer of government in it and tapping virtually the same sources of funds to do the impractical thing.

It would be very impractical to move that coal 110 miles farther to get it to the same point, the same distance away from Miles City, than it would be to maintain the line from Roundup to Miles City.

I'm merely asking these questions to point out and put on the record that to solve these energy problems, this coal haul problem, isn't receiving a very straightforward recommendation from the Department of Transportation.

Mr. GALLAMORE. I'm sorry for interrupting earlier, Senator. We do think it would be an example of a very constructive, cooperative relationship between the State and the Federal Government.

I think the matching share is 80 percent of the funds which are necessary for a period of that time for the rail banking proposal, with the State then committing not only its matching share, but also its interest in terms of its designation for this particular service as the one part of the State rail plan that it wants to support.

We've had very good success working with the State of South Dakota because we understand their very real interest in the powerplant operation.

Senator MELCHER. I might point out——

Senator LONG. Senator, I'd like to ask you to submit the remainder of your questions to these witnesses because of time——

Senator MELCHER. Oh, all right, I'll do that, Mr. Chairman.

Senator LONG. We aren't going to solve this problem today, I'm sure.

Senator MELCHER. I'm afraid not. But I'll do that.

My last question deals with grain haul. And the testimony is that the need in the area—I have to assume that the Department of Transportation hasn't talked with the Department of Agriculture yet; and the Department's recommendation that the set-aside be reduced to zero, which would mean more grain would be recommended by the Department in the area, and that means that the grain haul would not be static but be further aggravated.

I would ask that the Department of Transportation review with the Department of Agriculture the necessary grain haul in the area and submit a recommendation based on that, rather than a simple assertion that the grain haul needs are going to remain static in the area.

Ms. KAMM. We'd be glad to supply that.

Senator LONG. Thank you very much.

Thank you very much, Ms. Kamm.

Senator Durenberger has been waiting here for an opportunity to be heard. He passed his first time.

STATEMENT OF HON. DAVID F. DURENBERGER, U.S. SENATOR FROM MINNESOTA

Senator DURENBERGER. Thank you, Mr. Chairman. I hope that I will solve all your problems in about 5 minutes. With the statement you just made, I won't even try it. I do have a full statement that I would submit for the record.

Senator LONG. Proceed.

Senator DURENBERGER. Let me start off by saying I've got a great deal of empathy for the Senators from Montana. I got to know both of them best working on a whole variety of rail problems.

Since I arrived in the U.S. Senate, we've been together on Amtrak, and we were together on the Milwaukee Road until it became quite clear to me that it was just impossible to save the entire railroad without some massive doses of tax money or some of the things that you suggested, which might also involve large doses of tax money as well.

So at that point we started concentrating our efforts on finding a system that will be economically self-sustaining. And we persuaded the trustee to go beyond the original proposal. We got the Minnesota Department of Transportation involved. We have at least a million or more dollars from Minnesota tax money invested in improving rail bed for part of the system in Minnesota.

We persuaded them—persuaded the trustee to extend that line up to Miles City.

At this point I feel very confident that the proposal that Senator Nelson and I put before this committee is the only one—and I think the studies that are going to take place here are going to prove that's the only one in the short term that can enable this company to survive.

Now, just by way of personal observation, during the month of August I know I should have been out talking to oil producers and folks about windfall profits tax. But instead, because of the problems I've just alluded to, I spent at least 2 weeks of my time literally walking and riding railroads in the State of Minnesota—both the Milwaukee Road and a number of others—and talking to the employees that Mr. Snyder represents and represents very well; talking to shippers and talking to the citizens in small towns who are concerned about the survival of the railroad.

I came away with a lot of strong impressions that everything everybody has said here today is all correct. The concerns about inadequate management are correct. The concerns about lack of competition are all correct. All of these things are very, very true.

But Minnesota—and I think right now the upper Midwest—as some terrific problems that this committee in the future is going to have to pay some particular attention to, and I know you've seen them coming.

The Duluth grain handlers' strike is just sort of the tip of the iceberg on transportation problems in our area. I will predict that by the 1st of October, when this railroad has gone belly up, along with the potential problems of the Rock Island and all sorts of other things in our area, we are going to have one of the major transportation problems that this country has ever faced.

In our State alone we have increased agricultural production by almost 50 percent in the last 8 years. But more importantly, we've increased the export of agricultural products by 116 percent in just these 8 years. But we've done nothing as far as how you get the product from the farm to the market.

All these folks that I've talked to understand that. They don't understand a lot about bills, legislation, transportation policies, and all those sorts of things.

But they understand—whether it's grain, sugarbeets, whatever—it's piling up on the county fairground, and—because the elevators are filled, and they can't get goods to market.

The final issue—and I guess the important issue—that these people drove home to me is that we've got to ask ourselves the question whether or not we're here to save railroads or rail companies.

As a Senator—the Senate, the Congress, we've got to vote. But the issue here is not are we going to save the right of way, the roadbed, the rails of the Milwaukee Road because in the short term this bill is not abandoning any rail.

We need to look at the public policy about how we save a transportation company; that group of people, investors, managers, employees, and so forth, who have come together to provide a transportation company.

And it's my aim in this bill to save this company, to make it economically self-sufficient so that in time it can again expand to serve the needs that have to be met in the upper Midwest.

I'm not sure that our experiments with Amtrak or ConRail will have demonstrated that the future of rail transportation in this

country lies with the Government, nor am I sure if the future lies with a few huge regional carriers without competition from other rail carriers or other land-based or water-based carriers.

But I am convinced on the basis of 6 months of effort that the only way to save this company, to save the jobs of most of the people who are involved now in the Milwaukee Road, to save something for the future, is S. 1492.

Thank you very much, Mr. Chairman.

Senator LONG. Thank you very much.

[The statement follows:]

STATEMENT OF HON. DAVE DURENBERGER, U.S. SENATOR FROM MINNESOTA

Mr. Chairman. I appreciate the opportunity to appear this morning, and speak on behalf of S. 1492, a bill that will restore stability to the financially troubled Milwaukee Road.

The financial difficulties encountered by the Milwaukee have been widely publicized, and their effect on the economy of the northwest cannot be overstated. The Milwaukee road provides the commercial lifeline through one of America's richest agricultural areas. In my State alone, the Railroad services 48 of the 100 most productive agricultural counties in the world, according to the 1974 farm census. Approximately 75 percent of the production from these counties is exported to national and international markets, and the railroad is a critical link in this national—international food cycle. Over the past 8 years, Minnesota's farmers have succeeded in increasing production by 46 percent, and increasing farm exports a staggering 116 percent. But increased production will do little for the nation or the farmers if we lack the means to get their good to market. In my own State, a grain strike, the Milwaukee bankruptcy, and the imminent collapse of the Rock Island Railroad are providing a graphic illustration of the interrelationship between Agriculture and transportation. In problems being experienced by Minnesota farmers have attracted national attention, and they illustrate the consequences that would follow the Milwaukee's demise.

In addition to its role as an agricultural hauler, the Milwaukee Road is a key link between Midwestern utilities and the coal fields of Montana and North Dakota. Interruption of service along Milwaukee's northern or mile city main line means a loss of electrical service for at least 43,000 Minnesota homes and businesses, and an even greater number in our sister States of North and South Dakota. In the longer run, deterioration of this main line would yield increasingly serious results. The recently published report of the National Transportation Policy Study Commission points out that between today and the year 2000 our national dependence on coal will increase dramatically. Before the turn of the century, the center of our coal production will shift from eastern to western fields, a trend which will magnify the importance of railroads, like Milwaukee, with the capability of hauling coal from the Rockies to mideastern and midwestern states. These same energy and agricultural considerations apply throughout the Milwaukee's Road, and the line is simply too valuable a national asset to abandon.

But as devastating as that loss might be, it is becoming increasingly imminent with each passing day. On June 1st, the Federal Court administering the Milwaukee's bankruptcy rejected a proposed reorganization that would have addressed the Railroad's long-term problems by focusing its limited resources and rolling stock on the system's most viable lines. The tragedy of this decision is illustrated in the language of the court itself, which recognized the value of the rejected plan, but found itself without jurisdiction to order its adoption because of provisions in the Federal Bankruptcy Act. Left with no alternative, the judge ordered the railroad to continue present operations until its financial resources were exhausted, and left it to Congress to make a final decision on whether the Milwaukee would live or die.

This ruling truly represents the worst possible alternative. As my colleague in the House, Congressman Henry Reuss remarked, the Railroad is literally bleeding to death, and unless some action is taken, it will cease operation before the end of October. For the farmers, this is a disasterous situation, because it threatens their ability to move fall crops to the market. For the hundreds of grain elevators along the Milwaukee lines, this situation is equally critical, since loss of the railroad would cut their commercial lifeline to state, national, and international markets. For a Federal Government attempting to balance its accounts, this bankruptcy has been an inordinate expense, draining tens of millions of dollars in operating subsidies from emergency railroad funds. But the cruelest loss is falling on the railroad to look to for security. Taken together, these events are rending both the social and economic fabric of the many agricultural communities dependent on Milwaukee Road.

S. 1492 would remove the legal obstacles to the railroad's reorganization. In doing so, it will also provide directed rail, truck and barge service to protect shippers along the embargoed lines, while creating a strong labor protection program to safeguard the financial well being of railroad employees. It will return stability to the Milwaukee by permitting it to reorganize to a more geeographically compact and economically sound system, an achievement which will yield benefits for every person dependent on the Railroad's service.

Mr. Chiarman, I am aware of the alternate proposals now before this Commitee. And as the Chairman well knows from our activities on the Finance Committee, I strongly believe in the employee stock ownership concept. My own State of Minnesota offers some fine examples of the advantages employee ownership can bring both to the businesses involved, and the communities that depend on them.

But the potential of employee ownership depends on the economic viability of the business being purchased. And as the various studies commissioned by the United States Department of Transportation illustrate, this Railroad can never be economically viable in its present configuration. The attempt to preserve the entirity of the system can only bring perpetual subsidies, perpetual insecurity for those depending on the Railroad, and incalculable loss to the shippers and employees who pledge their personal assets as security for millions of dollars in federal loans which the Railroad can never generate enough income to repay.

Frankly, Mr. Chairman, there is not perfect solution to the problem of Milwaukee Road. But of the options available, S. 1492 is the most desirable because it is the most realistic.

It would permit the Railroad to reorganize around a core system composed of the Milwaukee's most economically viable line. This is the only approach that gives the Milwaukee any real change of long-term survival as a self-sustaining entity. Rather than attempting to perpetuate a configuration that has not been, and in the opinion of most experts can never be self-supporting, it clears the way for creation of a new Milwaukee system that will provide a stable base from which the Railroad can grow to meet the future needs of the Northwest.

The bill would also permit the court and trustee to begin immediately the difficult task of reorganizing the Railroad. The price of delaying this effort is high; given the Railroad's present operating deficit, a delay of even a couple of months would necessitate an additional $15 to $20 million in operating subsidies. Moreover, by expediting the reorganization process, the bill would provide farmers and shippers with a stable commercial environment, insuring that this year's harvest will reach state, national, and international markets.

For the families of ten thousand employees faced with the bankruptcy or liquidation of their employer, the bill will provide a more financially certain future. It will preserve the jobs of the majority of Milwaukee employees, which endowing displaced employees with both employment in the directed service system, and a strong, long-term labor protection package.

For the Federal Government, the bill provides a fiscally responsible alternative to endless railroad subsidies. At present, the Milwaukee is living off Federal dollars, using tax monies to sustain daily losses in the hundreds of thousands of dollars. Twenty million dollars in emergency railroad funds are already gone, and unless action is taken, the Milwaukee will have bled the nation's emergency railroad funds dry by the end of this year. In addition to these subsidy dollars, state and federal governments will sustain millions of dollars in tax losses, economic losses, and unemployment compensation payments as the railroad slips into insolvency. This is an entirely unsatisfactory arrangement. These millions of dollars in subsidies have done nothing to bring about a solution to Milwaukee's problems; despite such masssive expenditures, we are ending up exactly where we started—with a bankrupt railroad.

S. 1492 alters that philosophy. Instead of wasting Federal dollars on subsidies, it invests those same dollars in a long-term solution to the railroad's problems. By creating structures that will facilitate the railroad's reorganization, it shifts the federal role from subsidy to solution, enabling a public service industry to solve its own problems. Allowing the Milwaukee to reorganize in accordance with the Trustee's recommendations would cost the Federal Government less than any other alternative. But more important, it offers the best prospect for formulating an economically self sustaining entity, not dependent on yearly subsidies for its continued existence.

The course we advocate is certainly not any easy one. Some lines will be abandoned, including miles of trackage in my own State of Minnesota. But these are the same lines whose financial performance is draining the Railroad, and a problem this complex cannot be resolved without facing these difficult choices.

Mr. Chairman, time is rapidly running out for the Milwaukee Road, and those who depend on it. System wide, it continues to lose several hundred thousand dollars each day, and without an infusion of new funds, the Railroad will cease operating before this year's harvest is in. The Secretary of Transportation has made it clear that the Administration will oppose further ERSA funding until the Milwaukee reorganizes, and the decisions reached by this Committee will truly determine whether the Railroad lives or dies.

In drawing this conclusion, I realize, Mr. Chairman, that little of what I have said is new to you. Although your State is not served by the Milwaukee, you have been in the forefront of the effort to address this Railroad's problems, from our preliminary hearings last spring, through the myriad of public and private meetings that followed. The fate of the Milwaukee and the communities depending on it is now in the hands of yourself and the fellow members of your Committee. I am convinced that the provisions of S. 1492 provide a sound basis on which the Railroad can reorganize, regain stability, and grow. And while this will involve some cost, the costs are minimal in comparison to the financial, economic and human costs of continued inaction. I urge you to give this bill expeditious consideration, so we can lay the groundwork for a real solution to a very critical problem.

Senator LONG. Now, I am going to recall Mr. Ogilvie, and I also want to recall Mr. O'Neal. I'd ask the two of you to come forward and take a microphone so we can address the two of you at the same time.

And you can each react to the questions as you may want to. First, let me say I've prepared a number of questions I would like to submit to each of you. And I'd like to ask that those questions be submitted in writing—answered in writing.

Next, I want to ask Governor Ogilvie if in the reorganization plan of the trustee he did not list certain areas where work rule changes are necessary for any part of the Milwaukee system to turn a profit over.

Mr. OGILVIE. Yes, sir. In the reorganization plan we have listed quite a number of work rule changes would be extremely important.

Senator LONG. I believe they're on pages 30 and 31. I think that will be made a part of the record because I believe that anyone considering going forward with an employee stock ownership plan, they ought to take a look at this because it seems to me that they should recognize that these are some of the areas where if they're going to save this railroad, they're going to have to make some plans to do some things they haven't been doing prior to this time.

[The information follows:]

AREAS FOR WORK RULE RELIEF

At present, there are many special allowances in the train and engine service crafts, and special allowances and rules in some of the non-operating crafts, which add to the Milwaukee's costs and reduce productivity. Some of these are created by local or system agreements, others by national agreements. As set out below, work rule changes eliminating or modifying these rules and practices could result in savings in Milwaukee II of more than $11 million annually.

Work Rule:	*Annual Milwaukee II savings*
Final and Initial Terminal Delay. Under present rules operating crews get double pay for certain time spent waiting to leave terminals or to tie-up after arrival at terminals	$2,430,000
Coupling Air Hose Arbitraries. Under some circumstances trainmen-yardmen couple air hoses as part of their normal duties. Under other circumstances, they receive an arbitrary of $4.67/day if they couple air hoses	615,000
Reduced Starting Rates, all crafts. At present certain entry-level employees are paid 90 percent of the rates paid experienced employees. The projected annual savings are based upon changing the differential to 75 percent	460,000
Elimination of Dual Basis of Pay, train and engine service crafts. Under present work rules train and engine service crafts get a day's pay for 8 hours or for 100 miles. Therefore, if they work 8 hours but travel 200 miles, they get 2 days' pay	2,242,000
Elimination of most Caboose Requirements. At present road and some yard trains must have a caboose, regardless of whether there is any need for one. Elimination of unnecessary caboose requirements would yield savings in depreciation, operating and maintenance expenses. This change would be particularly beneficial with respect to Sprint trains	711,000
Elimination of Starting Time and Shift Restrictions. At present maintenance shifts must start at fixed times despite the fact that heavy freight traffic may interfere with productivity at such times. Similar restrictions impose inflexible operation on yard train and engine crews	500,000
Guarantees. Certain crafts are guaranteed a minimum pay regardless of the amount of work to be done	760,000
Miscellaneous Arbitraries and Special Allowances. This includes a variety of present rules. For example, train service employees receive added pay for handling company mail between a train and a station. If under certain conditions an operating crew returns to a terminal and then leaves the terminal for a short-turn-around trip, they receive an extra day's pay regardless of hours actually worked	1,433,000
Elimination of Brakemen on Intermodal Freight Trains and Yard Transfers. Certain through freight trains, could be run with a conductor only and an engineer. Last year the union agreed to eliminate one brakeman under certain conditions. Elimination of the remaining brakeman under certain conditions would afford additional savings. These would be realized only over time as they would have to be accomplished by attrition	2,004,000
Total	11,581,400

Senator LONG. Do you believe that it's possible to make a success out of the railroad? Do you think perhaps the core area can maybe succeed?

Mr. OGILVIE. Yes, sir, I do.

Senator LONG. Now, the previous trustee testified that his thought would be that if you want to try and save the railroad, you just want to try and make the core succeed and just kind of leave the track in place on the area to the west.

And then if you can make the core part make money, then leave yourself the option of going back in and reestablishing service in that area.

How does that sound to you?

Mr. OGILVIE. I think that makes sense. I had a meeting with the Governor of Montana several days ago, and I believe the administrative assistant of Senator Baucus, and I told them at that time it

seemed to me there might be a role for a Milwaukee III. II is our core; III would be everything outside of it.

It is critical that we maintain the capacity to carry coal. We don't have any coal mines on our railroad at the present time. We don't have track to carry the weight of the cars. In that part of the country, we don't have the cars.

Senator LONG. I'm going to ask the two of you to respond to some questions by Senator Melcher. I think he's got some questions for both of you.

Senator MELCHER [presiding]. Thank you very much, Mr. Chairman.

Governor Ogilvie, what was the cash situation of the Milwaukee during June, July, and August?

Mr. OGILVIE. We were averaging, I would guess, about $10 million, but we were continuing to draw down the ERSA funds in order to maintain it at that level.

Senator MELCHER. Is it accurate to say that the cash flow for the Milwaukee during those months about balanced out without emergency rail service funds?

Mr. OGILVIE. No, that's not my recollection.

Senator MELCHER. What is the exact figure, then? Let's take August.

Mr. OGILVIE. I cannot give it to you on that basis.

Mr. ROWE. Senator, we were forced to draw down about $10 million of the ERSA loan during those months.

Senator MELCHER. What month—did you draw down any ERSA funds during that period?

Mr. ROWE. I believe $5 million was taken in July and $5 million in August, Senator, but the total was $10 million for those 2 months.

And we expect to need an additional $5 million in the next week or so.

Senator MELCHER. Well, what was the situation during June and July—did you draw down $10 million of ERSA funds?

Mr. ROWE. No, Senator; I said it was in July and August?

Senator MELCHER. July and August. Then did you expend any ERSA funds during July or August?

Mr. ROWE. Surely, Senator. They were money for us—they went into the fund that kept us going during those 2 months.

Senator MELCHER. And would you know the cash available to the Milwaukee on September 1?

Mr. OGILVIE. We can make an educated guess. It would be about in the range of $10 million.

Senator MELCHER. About $10 million?

Mr. OGILVIE. Yes.

Senator MELCHER. So during June, July, and August the cash balance was about zero because you drew down $10 million during July and August in emergency rail service funds, and you end up at about September 1 at about $10 million.

Mr. OGILVIE. Senator, one thing you have to keep in mind. We can spend that money and a lot more on any given day by spending money on things this railroad needs.

Senator MELCHER. I understand the maintenance problem. I'm just trying to understand the cash flow problem.

Now, is it projected that during the month of September that the cash will be depleted?

Mr. OGILVIE. Without further drawdowns, it would be.

Senator MELCHER. To zero?

Mr. OGILVIE. Yes.

Senator MELCHER. During the month of September——

Mr. ROWE. Senator, we project to have at least $5 or maybe $10 million of the remaining ERSA drawn down to keep the cash level from going to zero because we can't keep the door open when the cash box is zero.

Senator MELCHER. I heard the testimony by the former trustee before the court, that it is likely the cash flow for June, July, and August would about balance out, but that ERSA funds would be necessary to have any line of capital at the end of the summer.

My question is merely whether September is projected to be about like June, July, and August for these operations.

Mr. OGILVIE. I think so, yes.

Senator MELCHER. Perhaps October?

Mr. OGILVIE. We're getting on the hairy side of things?

Senator MELCHER. Excuse me?

Mr. OGILVIE. By then we will have no other ERSA funds available. We'll be drawing down our final $10 million.

Senator MELCHER. The Milwaukee, it was stated, does not have any coal mines operating on the present system.

Mr. OGILVIE. Correct.

Senator MELCHER. Is Gascogne a branch line, a Milwaukee branch line?

Mr. OGILVIE. I'd have to take a look at the map. I don't know the place names for that vicinity. But next week I'm going out there for a visit.

Senator MELCHER. Mr. O'Neal, is Gascogne a branch line of somebody else's other than the Milwaukee?

Mr. SCHIEFFELBEIN. Gascogne is on the Milwaukee's main route to South Dakota.

Senator MELCHER. Where does the coal originate, then? Doesn't that originate on the Milwaukee.

Mr. SCHIEFFELBEIN. It's my understanding that that's correct.

Senator MELCHER. I bring that to your attention, then, Governor. That line apparently is on the Milwaukee line.

Mr. OGILVIE. Thank you, Senator.

Senator MELCHER. Now, if a mine opened at Roundup, that would be on Milwaukee's current line.

Mr. OGILVIE. That's correct.

Senator MELCHER. Would a unit train haul from that mine which is projected to mine about 2 million tons about 1985—would a unit train operation there be profitable for the Milwaukee?

Mr. OGILVIE. If we had a track that would carry the unit trains, I think it probably would be.

Senator MELCHER. Then isn't it true that the shortest line from either Miles City or Roundup or Harleton to barge traffic on the Mississippi is the Milwaukee?

Mr. OGILVIE. I would assume so, yes, sir.

Senator MELCHER. We have—I previously testified that there would be some 122 new coal-fired generating plants in that area

from Minnesota—from Montana south and from Indiana west, going as far south as Texas.

The barge traffic combination to the Southwest would be very opportune for the Milwaukee if it survived, and the coal came from that area, would it not?

Mr. OGILVIE. Senator, the point you're driving at, I concur with; if you can help to get us from where we are now to where we can haul that coal, I would——

Senator MELCHER. Part of this is a paradox because a mine can't open either unless there's rail transportation. The two have to come together; the projected new mines to satisfy this demand, to satisfy these contracts for these new generating plants, must have transportation.

Many of them would be in the Fort Union coal deposit area. If the rail transportation isn't available, there isn't much use in trying to invest several million dollars or perhaps $10 to $20 million if a new mine opened up and quit.

Mr. OGILVIE. You can't have a chicken without an egg.

Senator MELCHER. That's exactly right. Well, that's the problem that I think we face here.

I only have one more question: We were led to believe by Mr. Hillman's testimony before the court a few months ago that what the Milwaukee would need would be about $5 million backup money to continue to operate the entire system for a month; not so much during the summer months.

So in May, I believe, the trustee, Mr. Hillman, testified they were virtually out of cash, but that they would probably survive June, July, and August, and perhaps September and October if it wasn't too cold.

During a cold month they'd need about $5 million additional funds just to continue operating per month during cold months. Is that still an accurate projection?

Mr. ROWE. Senator, during the cold months it goes up to at least $10 million a month. $5 million on the average has been close to the experience for the last 3 or 4 months of good weather.

For example, this spring the first quarter, the losses were $45 million in 3 months. So it was $15 million a month for those 3 months; whereas, as you correctly point out, where the engines are running well, they're down to $5 million a month, more or less, on the average.

So the average for the year that Mr. Hillman was describing was about $10 million.

As you correctly point out, it's more some months; it's less in others.

Senator MELCHER. The Department of Transportation has testified that the Milwaukee has rights over the Burlington Northern from—between Billings and Miles City as a part of the agreement on the merger of the Burlington Northern and Northern Pacific.

Governor, what are your intentions in the case before the ICC on the Milwaukee rights between Miles City and Billings?

Mr. ROWE. Senator, we're continuing to pursue in the merger case the remedy of getting our trackage rights extended so we would have direct access into the Montana coal fields.

Obviously, that kind of access could make a difference to the viability of the Milwaukee's presence in Montana. I must say, our efforts in this respect have suffered a heavy blow when the Justice Department took the position that we—that these conditions should not be imposed upon the BN.

The Justice Department took a general view that the BN should be loaded with such conditions, and while we're still pursuing that case, to the best of our ability, it's been finally briefed now, and I don't know how we can realistically plan on meeting these requirements of the Justice Department.

Senator MELCHER. Mr. O'Neal, we frequently talk about how many tons of coal are hauled by individual carriers. We're not talking necessarily about ton-miles; doesn't the ICC gather that type of data?

Mr. O'NEAL. We have some information on the amount of coal being hauled by the various railroads in that area, yes.

Senator MELCHER. By ton-mile?

Mr. O'NEAL. Probably by ton-mile.

Senator MELCHER. Is the Burlington Northern based on ton-mile?

Mr. O'NEAL. Let's see. Wait a minute. I have some information here which we sent to this committee in response to a question about coal car loadings.

Mr. OGILVIE. Senator, may I ask a question? If you're through with me, I've got an appointment with Senator McGovern. May I go?

Senator MELCHER. Yes. Thank you very much.

Mr. O'NEAL. We have a lot of data available, and we can certainly make it available to you, Senator.

Senator MELCHER. Some of the testimony submitted today contains some of that?

Mr. O'NEAL. No; it's not in this testimony. It's in written responses to questions that were submitted to us back in June by the chairman of the subcommittee, Senator Long.

Senator MELCHER. But you do have that data available?

Mr. O'NEAL. I'm sure we could find it. The ton-mile data is not in the response. We can find it, though.

Senator MELCHER. That's what I mean. You can provide that information, can you not?

Mr. O'NEAL. I think we can, yes.

Senator MELCHER. The reason I ask that is I read some information that the Department of Energy has put together that the Burlington Northern, I think it was last year, hauled 55 million tons of coal.

Milwaukee hauled x number million tons of coal. Other carriers hauled like amounts in tonnage. There's an important difference in the energy supplied, whether they relate that to ton-miles for a carrier. If he hauls 100,000 million tons 100 miles is a far different proposition than for a carrier to haul 50 million tons 1,000 miles.

And I think this has to be taken into consideration in the overall energy supply picture before the country at this time.

Now, you listened to my questions of Governor Ogilvie and Mr. Rowe and what the cash flow for the Milwaukee is; I have found during the past few months that sometimes there's a different

picture of what the Milwaukee's cash flow is as obtained from the Interstate Commerce Commission.

What's your view?

Mr. O'NEAL. As to whether they get a better picture from the Interstate Commerce Commission?

Well, we do collect cash flow data on the railroad, but I don't know if we have the up-to-date figures with us today. But we do keep track of it. I think for the month of August there was a cash drain of $3.7 million, as I recall.

Senator MELCHER. There was actual cash drain?

Mr. O'NEAL. There is a——

Senator MELCHER. When do you really think they will really be out of money?

Mr. O'NEAL. Well, with railroads it's awfully difficult to pinpoint for sure when they're going to be out of money. It depends a lot on the season of the year, a lot of different factors.

At this time I think we feel fairly confident that they will make it through the end of this year and have some money available. Indeed, based on some of the information they have made available in court, there will be some cash left over at the end of the year.

Senator MELCHER. Does that include another drawdown from ERSA funds?

Mr. O'NEAL. That includes the $20 million, not taking any more than $20 million from that.

That would also include the $15 million which has been requested from internal operations.

Senator MELCHER. From internal operations? Would that be from the Milwaukee line?

Mr. O'NEAL. It would be from some drawdown from the Milwaukee Land Co.'s dividends.

Mr. RUSH. The trustee has specifically asked the right to include $15 million from the land company as part of the various requests that are pending before the court. He, as before, would like to limit the use of those funds to running his selected core system.

But as you may recall on the prior one, the court required that he use them to run the entire system.

Senator MELCHER. All right. Now, I'm going to rephrase this so I'm sure I'm accurate. If the Milwaukee draws down the balance of what ERSA funds that have been earmarked for them, which is probably another $10 million plus the $15 million of internal funds from the Milwaukee Land Co., their cash flow, then, you project they'll end up with a slight balance as of January 1?

Mr. O'NEAL. I don't know if I want to get into the game of projecting. Can we have a quick little conference?

Senator MELCHER. Surely.

Mr. O'NEAL. The only projection we have made thus far is that the railroad would go through December 1.

Senator MELCHER. December 1?

Mr. O'NEAL. December 1. But there is some uncertainty in our minds right now because of some of the figures generated during the court proceedings which indicate they might go longer. So we're not willing to project any further than December 1 yet. But we are going to take a look at these later numbers and see if that changes the picture as far as we're concerned.

Mr. RUSH. May I add to that? I think to be accurate here, the basis for these statements is using the exhibit 15 to the trustee's reorganization plan. It was demonstrated during cross examination that those figures did not reflect $10 million in ERSA funds, which had not yet been drawn down; that it did not reflect the $15 million that could be drawn down from the land company, which would result in $25 million and show a surplus of a couple of million, rather than the $22,700,000 deficit projected on that exhibit for the year.

In addition, it was developed during cross examination that there was a $5 million favorable cash flow that was not taken into account. So adding those figures together, if the assumptions in exhibit 15 are correct—and those were prepared by the trustee—and these adjustments are made, there would be slightly in excess of $7 million at the end of the year.

Senator MELCHER. I had difficulty understanding Governor Ogilvie and Mr. Rowe on whether or not they made any money during June, July, and August.

You said $5 million cash flow wasn't reflected. Was that revenue during those months from the operation of the Milwaukee.

Mr. RUSH. That is my understanding. I would want to go back and check the transcript of the cross examination.

Senator MELCHER. Thank you. Thank you both very much. I thank all three of you very much.

That concludes the hearing this morning. The subcommittee will stand adjourned.

[Whereupon, at 12:45 p.m., the hearing was adjourned.]

ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF HON. DON W. RIEGLE, JR., U.S. SENATOR FROM MICHIGAN

Mr. Chairman, I commend and support the holding of Hearings on S. 1492 to save the Chicago, Milwaukee, St. Paul and Pacific Railroad's freight-carrying capacity.

Representing the State of Michigan—a State where rail service is vital to the economy—I am keenly aware of the urgency with which we must act to save the core lines of the Milwaukee Road. The railroad is losing thousands of dollars each day, and consequently, its creditors are urging the liquidation of its assets. It appears virtually certain that the Milwaukee Road cannot make it through another winter under the current circumstances without facing liquidation. Preserving the railroad's core lines appears to me to be the best solution.

The Milwaukee Road's rail line between Green Bay, Wisconsin and Ontonagon, Michigan, which services the western upper peninsula of Michigan, has been petitioned for abandonment. However, last week the Milwaukee Road's trustee agreed not to seek an embargo on that line because it is so close to being sold to another railroad.

The orderly sale of the Green Bay to Ontongagon line to another railroad that would provide full rail services is extremely important to the State of Michigan. If the Milwaukee Road should be forced into liquidation before that sale is completed hundreds of jobs in the papermaking, wood products and mining industries of Northern Michigan would be jeopardized. In all likelihood, it would be months before the transition to the rail services of another railroad could be implemented. The impact on the economy of the upper peninsula of Michigan—an area which has long suffered from high unemployment and a poorly diversified economic base—would be dealt a crippling blow. I therefore would urge this Committee to ensure that that does not take place.

Finally, I would urge the Committee to consider favorably requests to extend these hearings to enable railroad labor organizations, shippers and the States involved to complete a study of reports done by the Department of Transportation and others concerning the future of the Milwaukee Road.

Mr. Chairmen, I reiterate my enthusiastic support to save the Milwaukee Road's freight-carrying capacity and applaud these most timely hearings on the subject.

STATEMENT OF BRUCE HAGEN, COMMISSIONER, NORTH DAKOTA PUBLIC SERVICE COMMISSION, BISMARCK, N. DAK.

I am Bruce Hagen, a Public Service Commissioner from the State of North Dakota, a state in which the Chicago, Milwaukee, St. Paul and Pacific Railroad Company provides common carrier service. I am appearing on behalf of the Public Service Commission and my fellow Commissioners, Richard Elkin and Ben Wolf. The North Dakota Public Service Commission is charged, among other things, with regulating railroads within North Dakota, and representing the State before the Interstate Commerce Commission, Department of Transportation, and federal courts where North Dakota common carrier issues are involved.

On behalf of the North Dakota Public Service Commission, I submit the following statement regarding the Milwaukee Railroad. I have already testified before this committee on the oversight hearings which were held May 21, 1979. My remarks appeared on pages 61-65 of the recorded testimony. I respectfully request your committee to carefully examine those remarks.

The purpose of this statement is to try to highlight again several important points, as well as to bring your committee up to date on what has transpired in North Dakota since May 21 in so far as the Milwaukee Railroad is concerned.

The Milwaukee Road is one of three of North Dakota's major railroads, operating 366 miles of track out of some 5,040 miles in the state.

Though the Milwaukee operates only 366 miles in North Dakota it operates those miles chiefly in the southwest corner of our state where there is no alternative rail service. We are also concerned with the four Milwaukee branch lines east of the Missouri River in North Dakota. All of them are up for abandonment before the

Interstate Commerce Commission. Our Commission's position is to represent the interests of our shippers along these lines by obtaining continued rail service, if not by the Milwaukee, then by other railroads or shippers, or in the alternative, motor carrier service. However, we do know that without the main line of the Milwaukee, we will not have any branch lines.

We support before the Federal District Court in Chicago the Milwaukee's attempt to reorganize to try to retain a viable core system of 3,400 miles.

We do, however, retain the option of supporting any other feasible plan which might come before the court. This could include the employees' ESOP Plan, or other alternatives such as proposed by the Old West Regional Commission.

The Milwaukee is the only railroad that serves the Gascoyne Coal Mine, and which also serves Milbank, South Dakota, where a 440-megawatt generating station is located which is totally dependent upon lignite from Gascoyne. The Milwaukee also has access to a coal field in New Leipzig, North Dakota, which is projected as possibly becoming the largest single lignite operation in North Dakota in future years.

In addition to having sufficient lignite to serve the Milbank generating plant for the next thirty years, there is sufficient lignite at Gascoyne to power a second 440-megawatt generating station at Gascoyne for an additional thirty years.

The Milwaukee Railroad management itself believes that its main line through North Dakota and its New England branch line can become sufficiently viable that the Milwaukee wishes to keep those lines in its Milwaukee II core system.

The State of North Dakota believes the main line between Miles City, Montana, and Minneapolis, including the Gascoyne-Milbank section, is so important to the future energy development of North Dakota, that the State has pledged $500,000 of federal funds available through Section 803 of the 4-R Act to preserve this stretch of rail. The $500,000 pledged by North Dakota is part of the $1.8 million pledged by North Dakota, South Dakota, and Minnesota for emergency work on the main line of the Milwaukee from Gascoyne, North Dakota, to Milbank, South Dakota. Additional shippers' funds will bring the $1.8 million to $2.3 million.

As coal shipments expand out of the west, it seems very obvious that there is a need to retain the main line of the Milwaukee to move coal.

The Milwaukee main line, as well as its branch lines, are important to North Dakota agricultural shippers, as well as other shippers. Large portions of our state have traditionally been served by the Milwaukee Railroad. Without a railroad, our agricultural economy will suffer.

It is also important to retain the Milwaukee's transcontinental advantages through connections at Miles City, Montana. The shipments of grain to the West Coast will undoubtedly increase in future years.

I cannot emphasize enough the importance of maintaining a Milwaukee main line for both our agriculture and our movement of coal for the Big Stone Power Plant. I hope this Committee in its final decision will do whatever it can to help maintain the Milwaukee Railroad as a viable railroad, even though we do understand there is a need for reorganization.

Thank you for the opportunity to submit my statement.

STATEMENT OF WILLIAM P. ADAMS, CHAIRMAN, RAILROAD RETIREMENT BOARD

This statement, concurred in by both the Labor Member and Management Member, is directed solely to technical problems which would be encountered by any agency charged with the responsibility of carrying out the functions referred to in section 3 of the bill, S. 1492.

It is our understanding that the Department of Transportation will present the policy views of the Administration with respect to section 3 and other provisions of the bill, because that department is more directly involved in, and knowledgeable about, rail service in general and the Milwaukee in particular.

The provisions of the bill which refer to the Board are contained in section 3, which would add a new subsection (c) to section 11125 of title 49, United States Code. Pursuant to that new subsection, protective arrangements would be prescribed (presumably by the Interstate Commerce Commission) for certain employees who are displaced as a result of an abandonment pursuant to court action under section 77(o) of the Bankruptcy Act. That subsection further provides that rail carriers required to provide such protective arrangements "shall be reimbursed for the cost of such arrangements"; that such reimbursements are to be made from general revenue funds appropriated for that purpose; and that the rail carrier be directed to repay the amounts of those reimbursements when a determination is made that the financial condition of the carrier permits such repayment.

A number of significant questions would have to be resolved before any agency could carry our effectively the functions under the bill. Some of the questions which would arise if the bill were enacted in its present form are:

1. Would the functions under the proposed subsection (c)(2) of 49 U.S.C. § 11125 include the making of a determination as to whether a rail carrier properly paid a particular protective payment before it could be reimbursed for such payment, or, instead, would the function merely be to make whatever reimbursement is claimed by the rail carrier without questioning whether the payment made by the carrier was proper? If the functions would include the making of determinations as to the propriety of protective payments made by rail carriers, what recourse would a rail carrier have if it disagreed with a particular determination? This same question arose under section 509 of the Regional Rail Reorganization Act, which, in language very similar to that contained in the proposed subsection (c)(2), provides that the Board is to reimburse the Consolidated Rail Corporation, the United States Railway Association, replacement operators, and acquiring railroads for the amounts paid to, or for the benefit of, protected employees pursuant to title V of that Act. Based on the language of section 509, the Comptroller General of the United States ruled, on August 2, 1976, that the Board's sole duty under that section is to make whatever payments are called for by the certifications made to it by ConRail, the Association, a replacement operator, or an acquiring railroad and that those organizations are responsible for assuring that the payments are properly made. In a report on the Regional Rail Transportation Protective Account issued in December of 1978, the Surveys and Investigations Staff of the House Appropriations Committee concluded that the Comptroller General's decision effectively hobbled the Board's efforts to establish control of the benefit program provided by the Regional Rail Reorganization Act in a single Federal agency and recommended that Congress give consideration to lodging administration, control, evaluation, and audit responsibilities of such a program in a single Federal agency, giving it authority, funds, and personnel to support the program. It is our understanding that the General Accounting Office has made a similar recommendation with respect to the program provided by the Regional Rail Reorganization Act.

2. What cost items would be included within the costs of the protective arrangements which are to be reimbursed to the rail carriers providing them? Would rail carriers be reimbursed only for the protective payments actually made or would they also be reimbursed for the costs of setting up and administering a protective payment program?

3. In the past, the Board has consistently treated protective payments such as monthly displacement allowances made under the Regional Rail Reorganization Act, labor agreements, or conditions imposed by the Interstate Commerce Commission as being compensation creditable under the Railroad Retirement Act and the Railroad Unemployment Insurance Act because both of those Acts define compansation as including pay for time lost. Accordingly, it would appear that the same result would obtain with respect to similar payments made pursuant to the proposed subsection (c) of 49 U.S.C. § 11125. That being the case, rail carriers would be required to pay employment taxes under the Railroad Retirement Tax Act with respect to such payments and would be reimbursed for the amounts of such taxes under the proposed subsection (c)(2). Also, no benefits would be payable to an employee under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act for any month in which he received a monthly protective payment, and any amounts paid to such an employee under the Railroad Unemployment Insurance Act before his entitlement to a protective payment for that month was determined by the rail carrier would have to be recovered by the Board. Under the Regional Rail Reorganization Act such recoveries are accomplished in the following manner: Where the Board is aware that a particular employee may be qualified to receive protective payments from an employer, it notifies the employer of the unemployment benefits paid to that employee in a given month. When the employer subsequently makes a protective payment for that same month, it pays the employee only the amount of the protective payment which exceeds the unemployment benefits to be recovered and notifies the Board of the total protective payment due the employee. The Board then reimburses the employer for the amount of the protective payment actually paid to the employee and transfers the remaining amount (that portion of the protective payment withheld to recover unemployment benefits) directly to the railroad unemployment insurance account to effectuate the recovery.

4. It appears, although not expressly specified, that reimbursements made to rail carriers pursuant to the proposed subsection (c)(2) of 49 U.S.C. § 11125 would be made only if, and to the extent that, Congress has appropriated funds for this

purpose pursuant to the proposed subsection (c)(3) of 49 U.S.C. § 11125. It further appears that the proposed subsection (c)(3) contemplates that requests for such appropriations would be submitted. In this regard, it is noted that since neither the extent of the protective payments which would be provided by the proposed subsection (c)(1) of 49 U.S.C. § 11125 nor the number of employees affected is now known, there would be no basis, at least initially, for a reliable estimate as to the amount of the appropriation which would be necessary for this purpose. In view of this difficulty, it might be desirable for the bill to specifically authorize that any amounts appropriated remain available until expended.

5. Will the funds appropriated pursuant to the proposed subsection (c)(3) of 49 U.S.C. § 11125 be available to provide reimbursement for the additional administrative expenses which would be incurred in the performance of the functions under the proposed subsection (c)(2)? In this regard, it may be noted that section 509 of the Regional Rail Reorganization Act expressly authorizes appropriations to provide for the Board's expenses in administering that section.

6. Upon a determination, pursuant to the provisions of the proposed subsection (c)(2) of 49 U.S.C. § 11125, that a particular rail carrier's financial condition permitted it to repay the reimbursements previously made to it, what recourse, if any, would the rail carrier have if it disagreed with the determination? If the determination is conclusive, or if such a determination is upheld after the carrier's resort to whatever recourse is available, what actions would be available to enforce repayment?

7. Although it is assumed that any funds which are recovered from a rail carrier under the proposed subsection (c)(2) of 49 U.S.C. § 11125 would be returned to the Treasury, the bill does not expressly so provide.

DEPARTMENT OF TRANSPORTATION,
FEDERAL RAILROAD ADMINISTRATION,
Washington, D.C., September 5, 1979.

MILTON H. GRAY, Esq.,
Altheimer & Gray,
Chicago, Ill.

DEAR MR. GRAY: Our review of the transcript of the proceedings last week in Chicago on the Petition of the Trustee of the Milwaukee Road for a partial embargo shows that, after my departure, Mr. Clarke discussed with you the possibility of ERSA funds being made available to the Milwaukee for use on the Milwaukee II, while the Milwaukee used its own funds to operate the Western Lines.

In order to avoid any ambiguity in my testimony, I would like to repeat that we have concluded that it will not be possible to make the self-sustaining finding required under ERSA so long as the Milwaukee's own resources are being dissipated on the Western Lines.

We have concluded that unless the Trustee is able to devote all of his resources and attention to his core system, the railroad cannot reasonably be expected to become self-sustaining. Thus, even if such an allocation procedure were technically feasible which is doubtful, the fact that the Trustee's own funds were being used for the Western Lines would so diminish the core system's cash resources as to negate the ERSA finding of self-sustainability.

I would also like to make several technical corrections to my testimony. At Tr. 230 after a colloquy with you, Mr. Rowe inquired whether we could make ERSA funds available for the current Milwaukee or for any portion which the Trustee has determined is not viable. I answered that I believed my affidavit spoke to both. In fact my affidavit addresses only the questions of continued ERSA funding of the current system. The Department's position that future ERSA funding would be limited to the reorganizable portions of the Milwaukee system was set forth in Acting Secretary Claytor's letter to Chairman Staggers of the House Committee on Interstate and Foreign Commerce. That letter is identified as Exhibit 18 to the Trustee's preliminary plan of reorganization.

At Tr. 324 I referred to some protection being available to dismissed employees under the Unemployment Insurance Act. It was my intention to refer to the Railroad Unemployment Insurance Act, not the Act applicable to non-railroad employees, and not the Railway Labor Act.

At Tr. 283 Mr. Brewer inquired whether I was familiar with Section 3(b)(4) of the Emergency Rail Services Act of 1970. I responded that I was not and that it was not a remedy we have considered. Although both ERSA Financing agreements entered into between the Federal Railroad Administrator and the Trustee contain language for implementing Section 3(b)(4), we have not considered the statutory or contractual languages to provide an effective remedy because the lack of a Congressional funding authorization would preclude the prompt action section 3(b)(4) envisages. Rather, in the event of an actual or threatened cessation of essential services, we would endorse directed rail transportation by the Interstate Commerce Commission under section 11125 of the Interstate Commerce Act since a Congressional funding authorization is already in place.

Sincerely,

ROBERT E. GALLAMORE,
Deputy Administrator.

U.S. DISTRICT COURT, NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION

In the Matter of Chicago, Milwaukee, St. Paul & Pacific Railroad Co., Debtor, No. 77B8999.

MEMORANDUM OF THE UNITED STATES OF AMERICA IN SUPPORT OF THE TRUSTEE'S PETITION FOR A PARTIAL EMBARGO

This Court has been asked by the Trustee of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (Milwaukee) to authorize an embargo of service over a large portion of the Milwaukee's system. The Trustee has been forced by the deteriorating cash position of the estate, the lack of a source of additional operating capital, and the approach of winter to take this dramatic step, or risk the very real possibility that the entire railroad will shutdown for lack of cash. This Court must decide whether to use its equitable powers to grant such an embargo or to allow the entire railroad to operate until it is physically unable to do so.

The Court and the Trustee find themselves in a position not unlike that which the Penn Central reorganization court and Trustee faced in 1973, when they found that the configuration of that railroad could not provide sufficient income to meet its operating expenses, let alone have any prospect or reorganizing on an income basis. The statutory framework that was in place at that time, and which governs the instant proceeding, provides no mechanism for assuring the rapid restructuring necessary to deal with such a failing railroad.

In 1973, Congress passed the Regional Rail Reorganization Act, 45 U.S.C. 701 et seq., to deal with the Penn Central crisis, and Congress has recently developed a long-term solution for bankrupt railroads through the new bankruptcy law, which provides the reorganization court with increased flexibility to order restructuring and reduces the cumbersomeness of some of the provisions of Section 77. Unfortunately, because the Milwaukee is already in reorganization the new provisions of the Bankruptcy Act do not apply to it. While Congress may well enact legislation directed to certain aspects of the Milwaukee's present crisis, such legislation is unlikely to pass in time to meet the present situation, and its prospects should not preclude this Court from exercising its equitable powers to meet the immediate problem.

The Department of Transportation was created in 1966 to "provide general leadership in the identification and solution of transportation problems;" 49 U.S.C. 1651(b). It is in this role that we have presented a witness in this proceeding, and are submitting this memorandum of law in support of the Trustee's embargo petition.

1. THIS COURT HAS JURISDICTION TO AUTHORIZE THE PARTIAL EMBARGO SOUGHT BY THE TRUSTEE

It has been often noted that reorganization courts under Section 77 of the Bankruptcy Act (11 U.S.C. 205) are "essentially courts of equity and those proceedings inherently proceedings in equity." *Continental Illinois National Bank & Trust Company* v. *Chicago, Etc. Co.,* 294 U.S. 648, 675 (1935). The purpose of Section 77 is to rehabilitate the debtor railroad and to enable the corporation, if possible, to emerge from reorganization, as an operating business. As the Supreme Court stated in *Continental Illinois Bank, supra:*

A proceeding under Section 77 (11 U.S.C.A. Sec. 205) is not an ordinary proceeding in bankruptcy. It is a special proceeding which seeks only to bring about a reorganization, if a satisfactory plan to that end can be devised. And to prevent the attainment of that object is to defeat the very end the accomplishment of which was the sole aim of the section, and thereby to render its provisions futile. 294 U.S. 648 (1935) at 676. See *Baker* v. *Gold Seal Liquor, Inc.,* 417 U.S. 467 at 470 (1974). Thus, a

Section 77 reorganization court sits as a court of equity whose sole purpose is to take the necessary actions to accomplish the reorganization of the debtor railroad.

The trustee of the Milwaukee for the second time in five months has petitioned this Court to authorize him to embargo service over approximately 6,000 miles of the Milwaukee's Line. We believe this Court has power, as a court of equity, to grant that petition. The Trustee's purpose in requesting authority to impose such a partial embargo is to stem the losses flowing from operation of the western lines which will rapidly and inevitably force the railroad to a state of paralysis. Once the western lines are embargoed, the Trustee will be able to use the dwindling sources of operating cash for transition to a midwestern core of lines.

The Trustee's earlier proposal for an embargo was rejected by the Court on June 1, 1979. We believe that circumstances have changed substantially since the Court's decision on that petition insofar as it found that the estate was not, at that time, faced with cashlessness in view of the availability of Emergency Rail Services Act (ERSA)[1] financing. Under the present circumstances, because of the deteriorating cash position of the Milwaukee, the fact that ERSA financing will no longer be available to operate the entire Milwaukee system, and the approach of the winter, we believe that a partial embargo is now warranted. The questions of the meaning of the term "cashlessness" and its significance in the present situation are discussed in detail in Section II below.

The embargo now sought by the Trustee falls within the broad powers of equity conferred on the Court by Section 77. The purpose of the embargo is to stem the cash drain imposed on the Milwaukee by the western lines. This is essential to make a future reorganization possible. As the testimony at the hearing on the Trustee's petition indicated, the failure of the Court to order an embargo may doom forever the prospect of a successful reorganization of this railroad and could lead to a chaotic termination of service at the height of the winter.

While the issue before this Court is, in its precise formulation, one of first impression, there are numerous cases in which the equity powers of the Federal courts have been sought by shippers and the Interstate Commerce Commission to enjoin service embargoes by railroads. These cases offer some guidance to the factors the Courts have considered important in determining whether or not to use their equitable powers.

In determining whether to enjoin such embargoes of service, the Courts have first sought to determine whether the railroad's action is, in fact, an embargo, an emergency measure placed in effect because of some disability on the part of the carrier which makes the latter unable properly to perform its duty as a common carrier, *Froehling Supply Co.* v. *U.S.*, 194 F. 2d 637, 641 (7th Cir. 1952), or whether it is, in fact, an abandonment. The Eighth Circuit, in considering this question, has looked to whether the intention of the carrier is "to cease permanently or indefinitely all transportation service on the relevant line." *ICC* v. *Chicago and Northwestern Transportation Co.*, 533 F. 2d 1025, 1028 (8th Cir. 1976). See also *ICC* v. *Chicago, Rock Island & Pacific Ry. Co.*, 501 F. 2d 908, 911 (8th Cir. 1974) and *Myers* v. *Arkansas & Ozarks Ry. Co.*, 185 F. Supp. 36, 41 (W. D. Ark. 1960). As the testimony of the Trustee in the hearing on his embargo petition indicated (Tr. 125), the duration of the present embargo, if ordered, will depend on factors beyond the immediate control of the Trustee. Before service can be resumed by the Milwaukee, sufficient cash to continue operations must be made available from some source. The Trustee has filed a petition with the ICC seeking authority to abandon these lines, and has presented a reorganization plan to this Court which does not include the western lines. By requesting the instructions of this Court before issuing an embargo, the Trustee has made it clear that he does not intend this cessation of service to be indefinite or permanent, unless the ICC so ratifies it, or no source of funding for western lines' operations is found. The Trustee's intention is not to circumvent the ICC's abandonment procedures, but to preserve the assets of the railroad so that the ICC, in ruling on abandonment petition, and this Court and the ICC in reviewing the proposed reorganization plan, will, in fact, not have their options foreclosed by the total demise of the railroad.[2]

Assuming, arguendo, that this Court should find the embargo requested by the Trustee to be an abandonment, this should not deter it from exercising its equitable jurisdiction to authorize the cessation of service. Such determinations have not deterred other courts from refusing to enjoin de facto railroad abandonments. In *ICC* v. *Chicago Rock Island & Pacific Ry. Co.*, supra for example, the Court of

[1] The Emergency Rail Services Act of 1970, 45 U.S.C. 661, et seq. authorized the Secretary of Transportation to guarantee trustee certificates if enumerated findings are made.

[2] The ICC's argument that imposition of the embargo requested will prejudge a plan of reorganization fails in that it does not recognize the equally preclusive effect of chaotic shutdown or system-wide directed service.

Appeals instructed the district court, on remand, to consider the costs of restoration of service, the financial ability of the railroad to meet this burden, the harm to shippers from continued cessation of service, and the immediacy of an ICC determination on abandonment applications. In *Pennsylvania* v. *Penn Central, et al.*, 348 F. Supp. 28, 30 (M.D. Pa. 1972), the Court considered twelve factors in deciding not to enjoin the Penn Central's embargo of lines damaged by Tropical Storm Agnes. Among the factors discussed in that case which are relevant to this are: "the economic importance of the two branch lines; * * * the pendancy of the application to the ICC for leave to abandon the branches; * * * the reorganization of the Penn Central under the supervision of Judge Fullam of the U.S. District Court for the Eastern District of Pennsylvania; * * * the abandonment of these lines as a possible factor in the reorganization of Penn Central; * * * and the loss of jobs of railroad personnel in the Wilkes-Barre area."[3] All of these factors, and those considered in the Rock Island case, if applied to the Milwaukee, dictate that an embargo should be ordered. The lines which the Trustee proposes to embargo will, in most instances, continue in operation as a result of directed service orders under 49 U.S.C. 11125.

As evidence presented in the previous embargo hearing by the ICC indicated, well over 90 percent of the shippers will continue to have the use of rail service as a result of directed service orders. The Milwaukee is in reorganization. The financial burden of continuing operations until the ICC acts on its abandonment application would place a tremendous, and largely unnecessary, burden upon the estate. That burden is similiar to that imposed by the cost of rehabilitating lines damaged by natural disasters. The ICC has instituted an expedited abandonment procedure which will result in a "final" decision on the Milwaukee's application by mid-January. It should be noted, however, that the effective date of abandonments authorized by the ICC under its expedited procedure could be delayed 120 days by virtue of 49 U.S.C. 10903(2)(c) which requires such a delay in certain cases. Finally, the impending cashlessness of the Milwaukee makes this a more compelling case for exercise of the Court's equitable jurisdiction.

II. THE MILWAUKEE HAS REACHED THE STATE AT WHICH THE COURT SHOULD EXERCISE ITS EQUITABLE JURISDICTION TO DIRECT THE TRUSTEE TO DECLARE AN EMBARGO ON THE WESTERN LINES

As we have discussed above, this Court has equitable jurisdiction to authorize the Trustee to declare an embargo when circumstances demand such action. This jurisdiction is not one to circumvent the Interstate Commerce Act, but one to protect the Trustee, the creditors, and the public interest by ensuring that the business enterprise under this Court's supervision conducts its operations in an orderly and prudent manner. Here, where changes in the operations of the Milwaukee are inevitable, the Court can and should act to ensure that the transition occurs in such a manner, and at such a time, that the public interest is protected as well as possible under the circumstances. It is the view of the Department of Transportation that the Court should exercise its equitable jurisdiction now to authorize the Trustee to take early action to deal with the cash crisis on the Milwaukee.

A. It is not necessary that cash available to the trustee be reduced to zero before the court may authorize an embargo

The debate and testimony in this proceeding have revolved around the terms "cashless" and "cashlessness", and whether they apply to the Milwaukee, either now or at some time in the near future. The terms are somewhat misleading since a large business enterprise (indeed, even an individual) is rarely "cashless" in an absolute sense. To the extent that the term "cashless" connotes the total inability of a business enterprise to act in any sense, it is indeed rare since, long before that state is reached, preventive action is taken. This is not necessarily action which alleviates the financial difficulties of the enterprise, but action which maintains the ability of the enterprise to act. In the case of the Milwaukee, it is essential that the Court ensure that trains are not stopped on the tracks in December or January, that the condition of the tracks does not deteriorate to a state in which it is inoperable, either by the Trustee or by a directed carrier under 49 U.S.C. 11125, and that the ability of the Court to continue the administration of the estate and to pay for labor and supplies provided in the last few weeks of operations is maintained.

It should be noted that no party to this proceeding contends that the railroad should be run to that state of financial and physical paralysis. The Interstate

[3] Both the Trustee and Congress, as Representative Reuss testified, are accutely aware of the need for interim protection of employees displaced by the embargo. We are confident that such interim protection will be considered as part of an embargo decision by the Court.

Commerce Commission itself has recognized that remedial action must be taken by the Court before the level of cash reaches zero. At p. 34 of the Transcript (Tr. 34), the Commission's attorney, in response to the Master's question concerning the position of the Commission on when cashlessness occurs, indicated that such a condition occurred before cash was completely exhausted. He further stated that the level of cash which would be equated with cashlessness would be affected by the possibility that the Commission would direct service under 49 U.S.C. 11125.[4]

The question of when a railroad may cease operations, notwithstanding 49 U.S.C. 10903, was addressed by Judge Friendly in several decisions under the Regional Rail Reorganization Act of 1973, 45 U.S.C. 701 et seq. In *In re Penn Central Transportation Company,* 384 F. Supp. 895 (Special Court 1974), the Court stated in note 31 at p. 919 that there would be no need to obtain ICC approval for an abandonment:

If, after all reasonable efforts, a reorganization trustee was faced with an imminent depletion of cash that would make it impossible for him to pay current bills for wages, supplies, interline balances and similar expenses, and still leave an amount sufficient to permit an orderly liquidation.

In a subsequent decision, *In the Matter of Valuation Proceedings Under Sections 303(c) and 306 of the Regional Rail Reorganization Act of 1973,* 439 F. Supp. 1351 (Special Court 1977), Judge Friendly, in discussing at p. 1376 note 31 of his previous decision, stated that:

This assumption rests on the basis that a carrier does not "abandon" what it is simply unable to do. *Zirn* v. *Hanover Bank,* 215 F. 2d 63 (2d Cir. 1954); *ICC* v. *Chicago, Rock Island and Pacific Railroad,* 501 F. 2d 908, 911 (8th Cir. 1974), cert. denied, 420 U.S.C. 972, 9 S. Ct. 1393, 43 L. Ed. 2d 652 (1975).

This proposition is not seriously challenged by any party to these proceedings. Indeed, as an abstract proposition it is difficult to find any basis for doing so. No Trustee can do that which is physically impossible. Thus, the dispute here concerns the question of what transition expenses must be provided for, and when the cash position of the railroad will reach such a level as to imperil payment of those expenses.

B. Anticipated transition costs and the ability of the Milwaukee to meet them must determine the date of cashlessness for these purposes.

It is the position of the Department of Transportation that a state of "cashlessness" is reached when available cash resources drop below a level necessary to pay foreseeable transition costs. On cross-examination (Tr. 328, 329) Dr. Gallamore, the Deputy Administrator of the Federal Railroad Administration, pointed out that the transition costs for which provision must be made will vary depending upon the nature of the transition envisioned. Thus, total cessation of service will entail somewhat different costs than partial cessation. Whether directed service will be initiated following an embargo will have some effect on these costs, though as we have pointed out, directed service will not fund transition costs associated with pre-directed service operations.

While we are not in a position to present a comprehensive analysis of the magnitude of the costs of transition to Milwaukee II, the configuration proposed by the Trustee, or other core railroad, Dr. Gallamore identified certain items which must be taken into account in any transition, such as payment of employees and trade creditors, wind-down costs, and provision for the continued administration of the estate. (CX 5 at p. 9) On cross-examination, he elaborated on this testimony to identify payment of net interline balances, car hire expenses, and various employment costs which may not be current as transition expenses for which provision should be made. (Tr. 327).

In Mr. Nugent's direct testimony (TX 37), he estimated that the costs of the transition from operating the entire Milwaukee to operating Milwaukee II would be on the order of $20 to $25 million. To the extent those costs are associated with operations of the entire Milwaukee, they would not be eligible for ERSA funding,

[4] Mr. Rush's argument that the availability of directed service permits the Court to continue operations until the cash position is much closer to the margin is true only to the extent that less expense may be incurred in collection of equipment in storage areas. It is, and has long been the Commission's position, that funds under 49 U.S.C. 11125 cannot be used to pay expenses associated with pre-directed service operations. This is the literal reading of 49 U.S.C. 11125(b)(5), and a construction which has been adopted by the Commission in its cost forms promulgated at 40 FR 16066 on April 9, 1975, 49 CFR 1126. Thus, most of the transition expenses discussed below would still remain to be met with the Milwaukee's own funds even if directed service were initiated.

(CX 5, Para. 5)[5] and, as we have pointed out above, would not be paid by a directed carrier under 49 U.S.C. 11125.

It should be noted, parenthetically, that a similiar situation developed in the northwest in late 1975 and early 1976 when it became apparent that after conveyance to ConRail, the difference between the payables and receivables of the transferors would be very substantial. At least one Court began to take steps to escrow cash to meet the problem (See Order No. 792 entered by Judge Whipple in In the Matter of Central Railroad Company of New Jersey, D. N.J., No. B 401-67). The problem was solved by enactment of Section 211(h) of the Regional Rail Reorganization Act of 1973 in February 1976 (45 U.S.C. 721(h)) which provided loan funds of $350 million to meet the shortfall. Here there is no Section 211(h), and no prospect of one, to meet the transition costs.

C. The Milwaukee has reached the stage at which action must be taken to effect an orderly transition to a core railroad

The testimony at the hearing on the Trustee's petition for a partial embargo was unequivocal on two issues, first that the Department of Transportation will no longer underwrite the operation of the entire Milwaukee system with ERSA funds, and second that if operations continue on the entire system the treasury of the Chicago Milwaukee will be completely exhausted sometime in November or December 1979. The Trustee's figures suggest this will occur in November, the shippers, employees, and the State of Montana suggest it will occur somewhat later.

The consequences of the first point are dramatic. In contrast to the situation presented to the Court in May on the Trustee's first petition for an embargo, the railroad cannot add to its pool of available cash resources those of the Federal Government under ERSA. This affects the length of time operations can be continued. More subtly, it also affects the level of cash which must be on hand to prudently manage the operation. The testimony of Mr. Nugent that it is desirable to enter the winter with a $20 to $25 million level of book cash reflects the unavailability of an ERSA line of credit.[6] As reflected by present and past practice, the existence of an ERSA line of credit permits operations with much lower levels of cash. (Plan of Reorganization pp. 14, 15; TX 37).

The disputes among the parties over the precise level of book cash which will be available on each day over the next few months are de minimus, affecting the date when operations must cease in chaos by only a few weeks. If the Milwaukee were to make the expenditures necessary to bring the entire system, including the western lines, to minimum track standards, the testimony of Mr. Cruikshank suggests that even the most optimistic projections of book cash level would be insufficient to continue operations to the new year. If the Court were to countenance a policy of running the railroad until all cash is exhausted, the result would be a chaotic termination of service in mid-winter, unpaid employees and suppliers, and the Court in doubt as to whether the administration of the estate could be continued.

A more prudent response to the present condition would be to look to the $15 million which will be available from escrow accounts and the Milwaukee land Company to finance the costs of transition to a core railroad, including any interim labor protection payments to dismissed employees which may be agreed upon and approved by the Court. Once reasonable provision is made for those transition costs, continued operation of the entire system beyond the end of September or the middle of October is clearly not feasible. Exhibit 15 to the Trustee's plan projects book cash of $4,802,000 at the end of September, and ($6,443,000) at the end of October. Even if one assumes that the $5,000,000 improvement in book cash above that forecast for August continues through the following months, there is doubt that operations could be continued through October without invading the minimum reserves necessary to finance transition costs.

[5] In a colloquy between the Special Master and John Clarke, (Tr. 723, 724), Mr. Clarke suggested that ERSA funds could be used to operate Milwaukee II while funds of the Milwaukee are used to operate the other parts of the system. As Dr. Gallamore points out in the letter attached hereto, the same impediment to ERSA findings would exist under such a scenario as would exist under a scenario without segregation. The financial hemorrhage of operation of lines west precludes the ERSA finding of self-sustain ability. This situation would not be affected by the suggested device of allocation of ERSA funds to the Milwaukee II and expenditure of the Milwaukee's own funds on the western lines.

[6] One notes, parenthetically, that no other offers of cash to meet the operating expenses of the western lines have been made by any party to these proceedings, or by any entity to our knowledge. This is confirmed by Mr. Nugent in TX 37.

CONCLUSION

The principal issue presented to this Court is whether the cash portion of the Milwaukee is such that further deficit operations of the entire system will imperil the ability of the Trustee to effect an orderly transition to a smaller core railroad. The answer to this question is clear and unambiguous. Given a reasonable provision for transition expenses, the Milwaukee has reached the point at which action must be taken to secure the one best hope we have for a way out of this circumstance. (Gallamore Tr. 290, 291). This is apparent from a consideration of the estimated transition costs ($20 to $25 million), the funds available from the Land Company and the escrow accounts ($15 million as of September 30), and the estimated level of book cash, assuming use of the $10 million remaining in the ERSA loan approved in July. In view of this financial condition and the unavailability of further ERSA financing for operation of the entire system, the Court should authorize the Trustee to embargo on October 1, 1979 the non-Milwaukee II lines, excluding those branch lines which were not included in the original embargo petition.

Respectfully submitted,

ALICE DANIEL,
Acting Assistant Attorney General.

METROPOLITAN MILWAUKEE ASSOCIATION OF COMMERCE,
Milwaukee, Wis., September 11, 1979.

HON. RUSSELL LONG,
Chairman, Surface Transportation Subcommittee, U.S. Senate Commerce Committee, Washington, D.C.

DEAR SENATOR LONG. The Metropolitan Milwaukee Association of Commerce is a voluntary non-profit Association, with nearly 2,500 members located in four counties in the metropolitan area. The membership embraces heavy industry, light industry, service and financial firms, a wide range of wholesale and retail merchants, and professionals. Population of our metropolitan area is approximately 1.4 million.

Railroads have been a major force in the American economy since 1830. They opened the western frontiers, unified the continent, helped to win our wars, moved our harvests, built cities and industries, and moved our vast export traffic to our port gateways. With equal skill, they moved our raw materials and our finished products of farm and factory.

This Association and its many shipper members are deeply concerned with the plight of the Milwaukee Road, historically and presently one of our nation's most significant rail systems. We are most appreciative of the interest being demonstrated by Congressman Reuss and Senator Nelson, through their introduction of House and Senate bills, which would enable the federal court of jurisdiction to put into effect the reorganization plan proposed by the Milwaukee Road trustee in the current bankruptcy proceeding.

The bill before you would, in effect, bring congressional ratification of the proposed "core plan" of Milwaukee Road reorganization; would provide emergency funding to permit continued operation of vital rail service, pending reorganization on a long-term basis, hopefully leading to a shorter, but more solvent railroad, and would provide protection for employees unfortunately to become redundant if the Milwaukee Road system shrinks from its present 9,800 miles to the proposed core of 3,400 miles.

This Association has a Transportation Committee composed of traffic executives of about 30 major industries of this area. Recently, in collaboration with Wisconsin Manufacturers and Commerce, our statewide business counterpart, we established a small but prestigious Rail Service Task Force to deal with the Milwaukee road crisis and rail service problems generally. That Task Force has strong liaison arrangements with state, county and city governments, labor, with industry and agriculture. Both the Transportation Committee and the Task Force are on record in support of reorganizaing the Milwaukee Road as recommended by former Trustee Hillmann and the current Trustee Oglivie.

The Milwaukee area is a global center for heavy machinery and industrial components, with world leadership in mining and earth-moving machinery, power plant equipment, electrical apparatus, medical equipment, and gasoline and diesel engines. It is a national center of brewing, malting and grain processing. It is the principal mercantile and distribution center between Chicago and the Twin Cities.

Much Milwaukee industrial production involves machinery so massive in size and weight that it can be transported only by rail—for example, generating units

weighing 450 tons, moving on a single special-design rail car. No other form of land transportation can meet this kind of transport need. There is simply no alternative to rail movement for many of our shippers and receivers. Heavy-equipment producers on Milwaukee Road tracks must receive or ship by rail, or go out of business.

Other firms, such as brewers, maltsters, the paper industry, deal in such sheer volume in and out of their plants that they cannot physically or economically depart from their reliance on rail, and, specifically, the Milwaukee Road.

About 310 industries in the Milwaukee district, and over 1,800 in Wisconsin, are served by the Milwaukee Road.

This railroad serves major segments of the Amtrak passenger system, particularly the important corridor, Chicago-Milwaukee-Twin Cities. Given the energy crisis and rising reliance on Amtrak, we regard preservation of rail passenger service as a local, regional and national necessity.

Milwaukee is on the verge of losing car ferry services, on which it has relied for almost 90 years. The Grand Trunk car ferries are gone; the Chessie System ships may soon cease service. Our three land-route rail carriers thus must do a larger job, and our reliance on them will increase proportionately.

Respectfully, we advise you that it is imperative that the Milwaukee Road be preserved as a viable railroad while it is reorganized and restructured. We, therefore, suport the "Milwaukee II core railroad" concept to serve a crucial heartland area, rich in industry, agriculture, employment and global trade factors.

This railroad is important not only to Milwaukee, but to Wisconsin and to the Middle West. it is crucial to our meeting the energy crisis, solving our balance-of-trade problems, and preserving a region unique in economic value and importance to our nation.

We respectfully request that this statement be inserted in the record of the hearings on S. 1492. Thank you for your courtesy.

Respectfully,

DONALD G. PLOETZ,
Chairman, Transportation Committee.
JAMES BORCHERT,
Chairman, Industrial Rail Task Force.

RAILWAY LABOR EXECUTIVES' ASSOCIATION,
Washington, D.C., September 17, 1979.

HON. RUSSELL B. LONG,
Chairman, Subcommittee on Surface Transportation, Committee on Commerce, Science and Transportation, Washington, D.C.

DEAR MR. CHAIRMAN: During the hearings that were held before your Subcommittee on September 7 relating to the Milwaukee Railroad, particularly S. 1286 and S. 1492, I advised you and your committee that railroad labor would submit a revised House-drafted bill, which we would recommend over S. 1492.

As I assured you, I am attaching a copy of this draft bill that has been prepared by the House Legislative Counsel for the purpose of injecting it into the record of those hearings of September 7. Rail labor does support the draft that has been worked out. As I pointed out in my statement, rail labor wholeheartedly supports Senator Melcher's bill, S. 1286.

If we can be of any further service, please advise.

Kind personal regards.

Respectfully,

J. R. (JIM) SNYDER,
Chairman, Legislative Committee.

Enclosure.

[Discussion Draft September 17, 1979]

AMENDMENT IN THE NATURE OF A SUBSTITUTE TO H.J. RES. 341, AS REPORTED

Strike out all after the resolving clause and insert in lieu thereof the following:

CONGRESSIONAL FINDINGS

Section 1. (a) Congress hereby finds that—

(1) the severe operating losses and the deteriorating plant and equipment of the Chicago, Milwaukee, St. Paul and Pacific Railroad Company (hereinafter

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

(2) a cessation of operations by the Milwaukee Railroad would have serious repercussions on the economies of the States in which the Milwaukee Railroad principally operates (the States of Washington, Montana, Idaho, North Dakota, South Dakota, Illinois, Iowa, Missouri, Michigan, Indiana, and Wisconsin);

(3) a cessation of operations of the Milwaukee Railroad would result in the loss of many thousands of jobs of railroad workers and other workers whose employment is dependent upon rail service over the lines presently operated by the Milwaukee Railroad;

(4) experienced railroad employees make a valuable contribution toward strengthening the railroad industry;

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

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

(7) coal shipments from the great coal deposits underlying Montana, Wyoming, North Dakota, and South Dakota are totally dependent upon continuing rail service 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;

(10) cessation of such services is imminent; and

(11) there is no other practicable means of obtaining funds to meet payroll and other expenses necessary for continuation of services and reorganization of the Milwaukee Railroad.

(b) The Congress delcares that emergency measures set forth in this resolution must be taken 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.

CONTINUATION OF SERVICE

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

(b) The Milwaukee Railroad shall comply with the requirements of subsection (a) of this section until—

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

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

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

(4) the plan is not implemented within the time period prescribed under section 5(c) of this joint resolution.

AMENDMENTS TO EMERGENCY RAIL SERVICES ACT OF 1970

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

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

"(c) The Secretary shall not guarantee any certificate under this section unless such certificate is treated as an expense of administration and receives the highest lien on the railroad's property and priority in payment under the Bankruptcy Act, except that this subsection shall not apply to certificates guaranteed for a railroad that is actively engaged in restructuring, as defined by the Secretary. For purposes of this subsection, the term "restructuring" includes an employee ownership plan or an employee-shipper ownership plan.".

(c) Section 3(e) of the Emergency Rail Services Act of 1978 is amended by striking out "$125,000,000" and inserting in lieu thereof "$200,000,000".

REIMBURSEMENT OF OPERATING LOSSES

SEC. 4. (a) The Secretary of Transportation, under the authority of the Emergency Rail Services Act of 1970, shall immediately guarantee trustee certificates of the Milwaukee Railroad, in the amount specified in subsection (b) of this section, for purposes of allowing the Milwaukee Railroad to maintain its entire railroad system in accordance with section 2 of this joint resolution.

(b)(1) Subject to paragraph (2) of this subsection, the Secretary shall guarantee trustee certificates of the Milwaukee Railroad pursuant to this section in an amount equal to the difference between (A) the total expenses incurred by such railroad attributable to the maintenance and the continuation of service as required by section 2 of this joint resolution, and (B) the direct revenues from the handling, routing, and moving of traffic in connection with such service, together with any other source of revenues available to such railroad.

(2) The amount of trustee certificates guaranteed under this section shall not exceed the sum of (A) the cost which would have been incurred in providing directed service over the entire railroad under section 11125 of title 49, United States Code, and (B) the amount of trustee certificates which the Secretary would have guaranteed under the Emergency Rail Services Act of 1970 but for the provisions of section 2 of this joint resolution.

(c) Notwithstanding any of the provisions of section 3(c) of the Emergency Rail Services Act of 1970, certificates guaranteed under this joint resolution shall not have priority in bankruptcy over the claim of any creditor of the Milwaukee Railroad as of the date of enactment of this joint resolution.

EMPLOYEE OR EMPLOYEE-SHIPPER OWNERSHIP PLAN

SEC. 5. (a)(1) Within 90 days after the date of enactment of this joint resolution, any association composed of representatives of national railway labor organizations may submit to the Interstate Commerce Commission or plan for converting all or substantially all of the Milwaukee Railroad into an employee or employee-shipper owned company and a method for implementing such plan. The plan shall include an independent evaluation by a nationally recognized organization capable of impartiality.

(2) The Commission shall, within 30 days after the date of submission of a plan under paragraph (1) of this subsection, approve the proposed plan if it finds that such plan is feasible. The finding of the Commission with respect to the feasibility of the plan shall be made after an agency hearing on the record, and for purposes of making such finding the plan as submitted shall be presumed to be feasible.

(3) A finding of feasibility shall include (A) a determination that adequate public and private financing is available to the proponents of such plan, and (B) a finding of fairness and equity to the creditors. For purposes of this determination, adequate financing shall include all sources or private funds, the value of valid claims against the estate, and Federal, State, or local funds available under existing or sponsored programs which are or will be available to the proponent and which the proponent is substantially likely to obtain.

(b) If the Commission finds that the plan is feasible, it shall submit its determination to the bankruptcy court. Within 10 days after the date of such submission, the bankruptcy court shall, after a hearing, determine whether such finding is fair and equitable to the creditors of the Milwaukee Railroad. The Commission's finding on that issue shall be rebutted by clear and convincing evidence only.

(c) If the Commission finds that the plan is feasible and the bankruptcy court determines that the plan is fair and equitable to the creditors of the Milwaukee Railroad, the proponents of such plan shall, within 180 days after the date of the bankruptcy court's determination, take such steps as may be necessary to implement the plan.

(d) The trustee of the Milwaukee Railroad shall promptly provide to the person engaged in developing the employee or employee and shipper ownership plan under subsection (a) of this section—

(1) its most recent reports on the physical condition of the railroad; and

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

RAILROAD PREFERENTIAL HIRING

SEC. 8. (a) Notwithstanding any provision of law which establishes preferences or priorities in employment, each rail carrier shall give preference in hiring to any employee of the Milwaukee Railroad who is separated from his employment by

reason of any reduction of service by such railroad occurring within 5 months after the date of enactment of this joint resolution. For purposes of this section, "reason of any reduction of service" does not include resignations, retirement, or discharge for cause.

(b) In the event any segment or line of the Milwaukee Railroad is sold, leased, or conveyed to another rail carrier, the acquiring carrier shall accept into its employment those employees of the Milwaukee Railroad engaged in performing the work of that segment or line of railroad involved.

MOVING EXPENSES

SEC. 9. (a) Any employee who, as a result of a transaction carried out pursuant to this joint resolution, changes his residence in order to maintain employment with the Milwaukee Railroad, and any employee described in section 8 of this joint resolution who obtains employment with another rail carrier and who is required to make a change of residence as a result of such new employment, shall be entitled to the following benefits:

(1) Reimbursement for all expenses of moving his household and other personal effects, for the traveling expense of himself and members of his family, including living expenses for himself and his family, and for his own actual wage loss, not to exceed 10 working days. The Milwaukee Railroad shall, to the same extent provided above, assume such expenses for any employee furloughed within 3 years after changing his point of employment as a result of a transaction, who elects to move his place of residence back to his original point of employment. No claim for reimbursement shall be paid under the provisions of this section unless such claim is presented to the Milwaukee Railroad within 90 days after the date on which the expenses were incurred.

(2)(A)(i) If the employee owns, or is under a contract to purchase, his own home in the locality from which he is required to move and elects to sell said home, he shall be reimbursed for any loss suffered in the sale of his home for less than its fair market value. In each case the fair market value of the home in question shall be determined as of a date sufficiently prior to the date of the transaction so as to be unaffected thereby. The Milwaukee Railroad shall in each instance be afforded an opportunity to purchase the home at such fair market value before it is sold by the employee to any other person.

(ii) An employee may elect to waive the provisions of paragraph (2)(A)(i) of this subsection and to receive, in lieu thereof, an amount equal to his closing costs which are ordinarily paid for an assumed by a seller of real estate in the jurisdiction in which the residence is located. Such costs shall include a real estate commission paid to a licensed realtor (not to exceed $3,000 or 6 per centum of sale price, whichever is less), and any prepayment penalty required by the institution holding the mortgage; such costs shall not include the payment of any "points" by the seller.

(B) If the employee holds an unexpired lease on a dwelling occupied by him as his home, he shall be protected from all loss and cost in securing the cancellation of said lease.

(C) No claim for costs or loss shall be paid under the provisions of this paragraph unless the claim is presented to the Milwaukee Railroad within 90 days after such costs or loss are incurred.

(D) Should a controversy arise with respect to the value of the home, the costs or loss sustained in its sale, the costs or loss under a contract for purchase, loss or cost in securing termination of a lease, or any other question in connection with these matters, it shall be decided through joint conference between the employee, or his representative, and the Milwaukee Railroad. In the event they are unable to agree, the dispute or controversy may be referred by either party to a board of competent real estate appraisers, selected in the following manner: One to be selected by the employee or his representative and one by the Milwaukee Railroad and these two, if unable to agree upon a valuation within 30 days, shall endeavor by argument within 10 days thereafter to select a third appraiser, or to agree to a method by which a third appraiser shall be selected, and, failing such agreement, either party may request the National Mediation Board to designate within 10 days a third qualified real estate appraiser whose designation will be binding upon the parties. A decision of a majority of the appraisers shall be required and said decision shall be final and conclusive. The salary and expenses of the third or neutral appraiser, including the expenses of the appraisal board, shall be borne equally by the parties to the proceedings. All other expenses shall be paid by the party incurring them, including the compensation of the appraiser selected by such party.

(b) Any claim of an employer for moving expense benefits under this section shall be considered an administrative expense of the estate of the Milwaukee Railroad.

SUPPLEMENTARY UNEMPLOYMENT INSURANCE

SEC. 10. (a) Any employee of the Milwaukee Railroad—

(1) who is separated from his employment by reason of any reduction of service by the Milwaukee Railroad occurring within 5 years after the date of enactment of this joint resolution; or

(2) who (A) is separated from his employment with the Milwaukee Railroad by reason of such a reduction of service, and (B) obtains employment with another rail carrier and is separated form that employment within 5 years after such date of enactment, shall be entitled to receive monthly supplemental unemployment compensation in accordance with the provisions of this section. Each such employee shall be entitled to such compensation for not more than a total of 36 months, beginning with the month in which the employee is separated from his employment, except that such period of entitlement for monthly supplementary unemployment compensation shall not exceed the employee's total months of service with the Milwaukee Railroad.

(b) Supplementary unemployment compensation under this section shall be payable to an employee on a monthly basis in an amount equal to—

(1) eighty percent of such employee's average monthly gross income from employment with the Milwaukee Railroad during the period beginning June 1, 1977, and ending on the date of enactment of this joint resolution, less

(2) the sum of (A) the amount of any benefits payable to such employee for such month under the Railroad Unemployment Insurance Act or under any State unemployment insurance program, and (B) the amount of any earnings of such employee for such month from employment or self-employment of any kind.

(d) Entitlement to monthly supplementary unemployment compensation under this section shall be determined by the Railroad Retirement Board on the basis of an application therefor filed by an employee with the Board.

(e)(1) Any supplementary unemployment compensation received by any employee pursuant to this section shall be deemed to be compensation for purposes of the Railroad Retirement Act of 1974 (45 U.S.C. 231 et seq.).

(2) For purposes of determining the eligibility of any employee for benefits under the Railroad Unemployment Insurance Act after the end of the three-year period beginning on the date of the commencement of his employment with the other rail carrier, supplementary unemployment compensation received by such employee under this section shall be deemed to be compensation under such Act.

(f) There are authorized to be appropriated such sums as are necessary to carry out this section. Sums appropriated pursuant to this subsection shall remain available until expended.

(g) Whenever the Railroad Retirement Board determines that there are insufficient funds to make the payments required by subsection (b) of this section, notwithstanding section 10(b) of the Railroad Unemployment Insurance Act (45 U.S.C. 360(b)), the Board shall make such payments from the railroad unemployment insurance account. The Board shall reimburse the railroad unemployment insurance account for any funds derived from such account pursuant to the preceding sentence, plus interest at a rate for each fiscal year equal to the average rate of interest borne by all special obligations held by the Railroad Retirement Account on the last day of the preceding fiscal year, rounded to the nearest multiple of one-eighth of 1 per centum, out of the sums appropriated pursuant to subsection (f) of this section.

(h) The last sentence of section 8(a) of the Railroad Unemployment Insurance Act (45 U.S.C. 358(a)) is amended by inserting "and funds due and payable to the railroad unemployment insurance account under section 9(g) of the joint resolution entitled 'Joint Resolution to require continuation of rail service by the Chicago, Milwaukee, Saint Paul, and Pacific Railroad for a period of forty-five days' " after "railroad unemployment insurance administration fund".

(i) The first sentence of section 10(d) of the Railroad Unemployment Insurance Act (45 U.S.C. 360(d)) is amended by inserting "or under section 9(g) of the joint resolution entitled 'Joint Resolution to require continuation of rail service by the Chicago, Milwaukee, Saint Paul, and Pacfic Railroad for a period of forty-five days' " after "under this Act".

(j) The provisions of this section shall not apply to an employee in the event of his resignation, retirement, or discharge for cause from the employment of any rail carrier.

EMPLOYMENT OF MILWAUKEE RAILROAD EMPLOYEES

SEC. 11. (a) Within 60 days after the date of enactment of this joint resolution, and at the end of each of the 16 following 30-day periods, each rail carrier shall submit to the Railroad Retirement Board a list of employment, by class and craft, available with such carrier as of the date of the submission of such list.

(b) Within 5 days after each date specified in subsection (a) of this section, the Railroad Retirement Board shall prepare a compilation of all of the positions of employment by class and craft submitted by each rail carrier by such date, and shall mail a copy of such compilation to each employee who, pursuant to subsection (c) of this joint resolution, notifies the Board of such employee's interest in such compilation. In addition, the board shall maintain a copy of such compilation in each office of the Board.

(c) Within 90 days after the date of enactment of this joint resolution, any employee of the Milwaukee Railroad described in section 8 of this joint resolution may notify the Railroad Retirement Board that he is interested in receiving a copy of each compilation of positions of employment by class and craft prepared by the Board pursuant to subsection (b) of this section.

(d) Within 20 days after the Railroad Retirement Board mails a compilation of employment positions to employees pursuant to subsection (b) of this section, any such employee may submit a bid on any position contained in such compilation to the rail carrier which listed the position.

(e) Any rail carrier which, during the 20-day period after a compilation of positions is mailed, receives one or more bids on any employment position listed by such rail carrier in such compilation shall offer such employment position to the employee who submitted a bid on such position during such period who has the most seniority in the class or craft within which such position is listed. Such offer shall be made to such employee whether or not such rail carrier hired another person for such employment position during the period of time beginning on the date of the submission to the Board of the list containing such position and the last date on which bids were submitted by employees for such position pursuant to this section.

(f) Any employee who accepts an employment offer under this section shall be entitled to an additional 12 months of supplementary unemployment compensation under section 10 of this joint resolution.

(g) Nothing in this section shall impair the seniority rights or other interests under a collective bargaining agreement of any person employed by a carrier which offers employment positions pursuant to this section.

SEPARATION ALLOWANCE

SEC. 12. (a) Any employee who does not accept an employment offer under section 11 of this joint resolution shall be entitled to elect a separation allowance from the Milwaukee Railroad, as an administrative expense of the reorganization of such railroad, in an amount equal to $2,000 for each year of completed service and, in addition thereto, full payment for all vacation time earned, but not previously taken. Any employee who elects a separation allowance under this section shall not be entitled to assistance under sections 9, 10, and 11 of this joint resolution.

(b) The Secretary of Transportation, under section 511 of the Railroad Revitalization and Regulatory Reform Act of 1976, shall guarantee obligations of the Milwaukee Railroad for purposes of providing separation allowances under this section. Such guarantees shall be entered into without regard to the requirements of subsection (g) of such section 511. Any obligation guaranteed pursuant to this section shall be treated as administrative expense of the estate of the Milwaukee Railroad.

NEW CARRIER TRAINING ASSISTANCE

SEC. 13. (a) Any employee who elects to receive a separation allowance under section 12 of this joint resolution shall be eligible to receive from the Railroad Retirement Board expenses for training in qualified institutions for new carrier opportunities.

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

(c) For purposes of this section—

(1) the term "expenses" means actual expenses paid for room, board, tuition, fees, or educational material in an amount not to exceed $3,000;

(2) the term "qualified institution" means an educational institution accredited for payment by the Veterans' Administration under chapter 36 of title 38, United States Code.

(d) There are authorized to be appropriated to carry out the purposes of this section not to exceed $5,000,000. Sums appropriated pursuant to this authorization are authorized to remain available until expended. l

TRANSACTION ASSISTANCE

SEC. 14. Section 505 of the Railroad Revitalization and Regulatory Reform Act of 1976 (45 U.S.C. 845) is amended by adding at the end thereof the following new subsection:

"(f) REHABILITATION FOR COMMON CARRIER SERVICE.—Notwithstanding subsections (a)–(e) of this section, the Secretary shall, pursuant to such regulations as he shall prescribe, immediately purchase redeemable preference shares under this section to facilitate the rehabilitation and improvement of Milwaukee Railroad property that has been sold to another person and that will be used for common carrier rail service. Any such rehabilitation and improvement carried out pursuant to an employee or employee-shipper ownership of the Milwaukee Railroad shall be eligible for assistance under this subsection.".

ASSESSMENT OF COAL HAULING NEEDS

SEC. 15. The Secretary of Energy shall immediately conduct an assessment of present and potential coal hauling needs in the area served by the Milwaukee Railroad and report his findings to the Congress within thirty days after the date of enactment of this joint resolution.

COURT APPROVED ABANDONMENTS IN PENDING CASES

SEC. 16. (a) Notwithstanding any other provision of law, section 1170 of title 11, United States Code, shall apply to cases pending under section 77 of the Bankruptcy Act on the date of enactment of the joint resolution, except that—

(1) the authorization by the court of any abandonment pending on such date of enactment shall be subject to approval by the Interstate Commerce Commission; and

(2) the court, in authorizing any abandonment, shall require the carrier to provide a fair arrangement at least as protective of the interests of employees as that required under section 11347 of title 49, United States Code.

(b) The authority of the court having jurisdiction over the reorganization of the Milwaukee Railroad to authorize abandonments shall be governed by the provisions of section 7 of this joint resolution, rather than the provisions of this section.

DIRECTED SERVICE

SEC. 17. The provisions of this joint resolution shall be in lieu of any directed service under section 11125 of the Interstate Commerce Act.

APPLICABILITY OF NEPA

SEC. 18. The provisions of the National Environmental Policy Act shall not apply to transactions carried out pursuant to this joint resolution.

REPORTS

SEC. 19. During the 2-year period beginning on the date of enactment of this joint resolution, the Railroad Retirement Board shall submit a report to the Congress every 6 months describing its activities under sections 9, 10, 11, and 12 of this joint resolution.

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