

Testimony of the Brotherhood of Maintenance of Way Employes Division/

International Brotherhood of Teamsters

Committee on Transportation and Infrastructure

Subcommittee on Railroads, Pipelines, and Hazardous Materials

January 28, 2009

The Brotherhood of Maintenance of Way Employes Division/International Brotherhood of Teamsters (BMWED) respectfully submits the following written testimony to the Subcommittee on Railroads, Pipelines, and Hazardous Materials pertinent to the January 28, 2009 hearing regarding “Freight and Passenger Rail: Present and Future Roles, Performance, Benefit and Needs.” The BMWED is an autonomous Division within the International Brotherhood of Teamsters representing over 35,000 men and women who perform the infrastructure work on the nation’s Class I railroads and many regional and short line carriers as well. The BMWED is a member of the Teamsters Rail Conference which includes the Brotherhood of Locomotive Engineers and Trainmen. The Rail Conference speaks for the interests of over 40% of the nation’s railroad employees.

The Subcommittee requested our comments on the following topics: (1) the role of freight and/or passenger rail in the U.S. economy; (2) the impact of the current economic crisis on the railroad industry and its workers; and (3) the benefits and importance of investing in freight and/or passenger rail. We will address those topics in turn.

(1) THE ROLE OF FREIGHT AND/OR PASSENGER RAIL IN THE U.S. ECONOMY

One cannot dispute that the railroads played a major role in the development of the U.S. economy since the Baltimore & Ohio Railroad began operations in 1830. On a more somber note, the boiler explosion on “Best Friend of Charleston” in 1831 led to the establishment of railroad operating rules and specific training and job assignments for railroad employees. However, simply because railroading is a venerable industry, some may consider it “obsolete” or nothing more than a glorified operating museum. Such sentiments are wrong. The BMWED will leave to others to demonstrate in detail that which is obvious upon reasonably diligent research: railroads are among the most energy efficient means of moving goods and people that exist today. However, a very

quick glance at some statistics demonstrate how important rail transportation remains to the U.S. economy.

In 2005, even though railroads carried more ton-miles of freight than trucks, fuel usage by rail was dwarfed by rubber tired transportation. The Class I railroads used 4,098 million gallons of fuel compared to a whopping 24,411 million gallons for combination trucks.¹ Employee productivity in the railroad industry increased by 42% between 1997 and 2006, while it only increased 12% in trucking over the same period. This is not to say that trucking is an “inefficient” mode of transportation. The transport of goods by truck is an integral part of any balanced transportation system. But those figures do show that rail transportation is energy efficient and provided by a highly productive workforce. It is that workforce, and what it brings to the U.S. economy that we will next address.

The recent problems in the U.S. auto industry focused unwarranted attention on the wages and benefits obtained by unionized workers in that industry. Some misguided commentators alleged that those “union wages” were the root of the industry’s problems and for some, the solution was simple – slash wages and benefits and all will be well in time. What those purveyors of industrial misery do not understand is that no nation’s economy is strong if those who toil within its industries do not receive wages and benefits sufficient for them and their families to thrive, and not merely subsist. Reasonable wages and benefits permit workers to have the security to accept new financial burdens – ownership of a home, higher education for their children and purchases of durable goods because they know they will have the income security both in work and retirement to take such risks. The railroad industry today provides such solid middle class jobs, but they are at risk from “market forces” interested in short term gain at the expense of social stability and growth.

Railroad labor relations are governed by the Railway Labor Act, this nation’s oldest labor law. A cornerstone of that Act is expressed in one of its general purposes: “to forbid any limitation upon freedom of association among employees or any denial as a condition of employment or otherwise, of the right of employees to join a labor organization.” In other words, the national labor policy, first enunciated in 1926, favored collective bargaining in this vital industry. Indeed, Congress directed that “all disputes” should be considered and, if possible, decided expeditiously by duly designated representatives of the

¹ Bureau of Transportation Statistics, *National Transportation Statistics*, Table 4-5.

railroads and their employees. Clearly, Congress believed that collective bargaining was the preferred mode in the rail industry because through collective bargaining disputes could be resolved “with expedition” and rates of pay, rules and working conditions would be established through collectively bargained agreements.

The results of collective bargaining as of 2007 resulted in a \$11.6 billion payroll for the 167,000 overwhelmingly unionized employees of the nation’s Class I railroads.² Additionally, collective bargaining created a medical social insurance system with the Class I carriers called the “National Railroad Employees Health & Welfare Plan” which has existed since 1954. That Plan provides health insurance to railroad employees, their spouses and dependents through a nationally administered Plan providing access to managed care to almost all railroad employees. In 2008, that Plan will pay out about \$1.7 billion in benefits on behalf of those employees and their families and will be paid from premiums collected from the railroads and partly reimbursed by the employees. While the cost of medical care for railroad employees is substantial, this collectively bargained benefit supports the U.S. economy because railroad workers and their families will not forego medical care because of a lack of insurance or because a particular medical procedure is too costly. As we have all learned by now, the lack of health insurance for some simply means economic misery and poor health for them and their families. Ultimately the absence of affordable health insurance places an increased burden on local and state governments which are often burdened with the cost of caring for the uninsured. Additionally, the financial burdens of families struggling to provide insurance and medical care for loved ones ripples through the economy and manifests in home foreclosures, personal bankruptcies and demands on social services.

Additionally all railroad employees in the United States participate in the Railroad Retirement system which provides, in essence, a defined benefit retirement annuity. The Railroad Retirement and Survivors Improvement Act of 2001 (RRSIA) lowered the retirement age to 60, provided that the railroad employee had 30 years (360 months) of credited service in the industry. Given the great influx of employees to the rail industry during the 1970’s, an entire generation of railroaders are nearing retirement age. Given the current state of the economy, the ability of those long service workers to retire with a secure

² 2007 Statement No. B-300, Surface Transportation Board

pension will open up positions for younger workers and those workers who have become unemployed in other fields.

The Railroad Retirement system also is sound financially. The most recent annual report from the Board states that under any of the three assumptions used by its actuary, the Trust Fund is solvent through 2032.³ Additionally, the RRSIA permitted the investment of part of the Trust Fund in the private equity markets. The most recent quarterly report from the National Railroad Retirement Investment Trust (NRRIT) shows that although the recent financial reverses suffered by others also have affected the assets managed by the NRRIT, the sound investment of Trust funds grew from \$20.7 billion in 2002 to almost \$26.8 billion on September 30, 2008 despite paying out \$6.3 billion in benefits during that period.⁴

Railroad employees are the beneficiaries of a national labor policy that favors and expects collective bargaining in the industry. Collective bargaining, especially on the Class I railroads, has resulted in solid, middle class jobs for railroaders and a health insurance system that protects them and their families. The Railroad Retirement system provides for a defined benefit age-based annuity and because retirement can occur in the industry as early as age 60, the system provides the financial means to exit the industry so that new employees may be incorporated into it. The BMWED submits railroad workers presently have a wage and benefit structure that forms the backbone of the U.S. economy and will sustain it until other sectors of the economy rebound.

While we will discuss the effects of the current crisis on railroad employees, we must stress that another systemic attack is being made on the economic security of railroad employees completely unrelated to the current financial woes afflicting the country. There have been a number of new passenger rail operations that have been created as non-railroad operations, even in situations where the service is provided on rail lines that are owned by railroads, or were owned by railroads, and are still being used for interstate freight and passenger rail operations. Not only is this unfair to, and abusive of, the employees who have worked on those lines for decades, it is bad for safety and efficiency of operations and will lead to balkanization of the interstate rail system.

³ Source - Railroad Retirement Board Annual Report, June 2008 at 3.

⁴ Source - NRRIT Quarterly Update for the Period Ending September 30, 2008 at 3.

BMWED submits that the laws governing railroads and any funding for expansion of passenger rail operations must ensure that railroad operations and railroad work on existing rail lines used in interstate commerce, and on new lines on existing railroad rights of way, must be subject to the federal laws that were created especially for railroads and railroad workers such as the Interstate Commerce Act, the Railway Labor Act, the Federal Employees Liability Act, Federal Railroad Safety Act, and the Railroad Retirement Act. Such laws have applied to all railroad operations and persons who perform railroad work for decades, but there have recently been developed a number of schemes to evade the railroad laws through sorts of chicanery and shenanigans that resemble the empty shell “investments” on Wall Street, Enron-like pseudo-transactions and Ponzi schemes that have so damaged our financial system. The result has been that persons performing railroad work are not covered by railroad laws, rates of pay and benefits for good railroad jobs are being undercut, railroad functions on individual lines and systems are being divided among multiple entities none of whom has overall responsibility for operations and safety, and whole lines of railroad integral to the interstate system have been taken out of the system by sleight of hand.

Under the Interstate Commerce Act, a rail carrier is defined as a person providing common carrier rail transportation for compensation, but not a street, suburban or interurban electric railway operated apart from the general interstate rail system (49 U.S.C. §10102(5)). The ICA gives the Surface Transportation Board jurisdiction over transportation between states and within states as part of the interstate rail network, and transportation by rail carriers and over routes, services and facilities of carriers (49 U.S.C. §10501(b)(1)). The ICA also provides that a person that is not already a carrier may not construct or acquire a line of railroad without STB approval only pursuant to 49 U.S.C. §10901, and a carrier may abandon a rail line or discontinue service on a line only pursuant to ICC/STB approval under 49 U.S.C. §10903. The RLA, FELA, FRSA, and RRA all cover entities that are defined as carriers under the ICA. The ICA (as amended by the Interstate Commerce Commission Termination Act) now exempts provision of mass transportation service by local government authorities from STB regulation, but expressly states that the other railroad laws that use the ICA definitions still apply to local governments.

For decades it was clear that transfers of rail lines were subject to ICC/STB jurisdiction, that a non-carrier, including a state, required ICC/STB approval

to acquire rail lines that are part of the interstate rail system, that acquisition or abandonment of rail lines that are part of the interstate rail system required ICC/STB approval, and that persons that are not carriers become carriers once they acquire rail lines that are part of the interstate rail system. And for many years through today, the major commuter rail systems (Long Island Railroad, Metro-North, New Jersey Transit, Massachusetts Bay Transportation Authority, Southeastern Pennsylvania Transportation Authority and others) have been carriers under the ICA, and the other railroad laws; and their employees have been covered by those laws. Moreover, the question of whether an intra-state, state agency-owned rail line used for intra-state commuter operations but also used for interstate train movements as part of the general national rail system was decided by the Court of Appeals for the Second Circuit which held that state agency was a rail carrier subject to ICC jurisdiction and the Federal railroad laws. *Staten Island Rapid Transit Operating Authority v. I.C.C.*, 718 F.2d 533 (2d Cir. 1983).

However, in recent years, certain state entities and purported rail operators have employed a scheme to acquire rail lines still involved in the general interstate rail transportation system while avoiding carrier status and application of the railroad laws to the state agencies and their operators.

Under the new scheme, the freight railroad “sells” a line used in interstate commerce to a state agency which grants a so-called “operating easement” back to the freight railroad that allows the freight railroad, and only that railroad, to continue to serve shippers on the line and continue freight operations over the line; the freight railroad retains a so-called “residual common carrier obligation” for freight. As owner of the line, the state agency assumes responsibility for the maintenance of way, signal and dispatching work on the line that is still being used for interstate operations, but retains contractors to do that work; the state agency also retains contractors to operate the trains, perform work for inspection and maintenance of locomotives and rail cars and clerical work. The train operator may or may not be a carrier entity and the other contractors are usually not carrier entities; typically, there are multiple contractors responsible for operations, maintenance of way, signal, maintenance of equipment dispatching and railroad clerical work. While the sale of a carrier’s rail line, or abandonment of a line by a carrier, are expressly subject to STB authorization, the new scheme evades that by the fiction that nothing really happens since the freight carrier retains an operating easement for freight and an inchoate common carrier duty for freight. In recent

decisions the STB has held that it lacks jurisdiction over transactions structured in this manner. Not only is this at odds with the decisions in *Staten Island Transit*, it is also without basis in the statute. The ICA is a very detailed statute that was amended several times to expand and clarify its coverage; it addresses many varied forms of railroad transactions and transfers of ownership, control, and operating rights over rail lines. The statute never refers to or uses the term “operating easement” and it does not describe or refer to anything like that concept. The “operating easement”/retained common carrier obligation concept is merely an artificial construct designed to allow the supposed sale of rail lines with retained operating rights without application of the ICA and railroad statutes.

STB Decisions Enabling the New Scheme

Despite the language of the Statute and the Staten Island decision the STB has allowed an increasing number of these transactions of increasingly larger sizes. The line of cases runs back to *State of Maine, Department of Transportation*, 8 I.C.C.2d 835, 1991 WL 84430 (I.C.C.), where the State of Maine sought to obtain 15 miles of track from the Maine Central Railroad Company when the carrier was planning to discontinue service. Under the deal, the State would own the track and the real estate and would “explore the possibility of commuter service”, but the freight carrier would have a permanent easement to continue its common carrier freight operations; the freight carrier would also continue to be responsible for maintenance of the track, right of way and signal system. The State filed a petition with the ICC requesting an exemption from approval under Section 10901, and then filed a motion to dismiss the petition claiming the ICC lacked jurisdiction because it was not actually acquiring a “railroad line” under Section 10901. The ICC found that it did indeed lack jurisdiction because no common carrier rights or obligations would be transferred with the sale since the carrier could continue to perform its common carrier obligations, including maintenance and renewal of the line. The ICC cautioned, that its decision was limited to the facts of the case; and that varied circumstances could result in a different determination. This decision was followed by *Utah Transit Authority*, 8 I.C.C.2d 835, 1991 WL 84430 (I.C.C.), where a state agency and Union Pacific entered an agreement under which UTA would operate a light rail through use of a right-of-way on UP’s tracks while UP retained the exclusive right to perform freight operations on the tracks for five hours per day during the night. The ICC found that it lacked jurisdiction over the transaction because UP retained the common

carrier obligation. In State of Wisconsin Department of Transportation, STB Finance Docket No. 34181, (July 30, 2002) the Wisconsin DOT sought a declaration that it would not be a carrier when it would acquire a rail line from a carrier and would contract for provision of commuter service, but the carrier would retain the common carrier obligation through a perpetual easement for freight operations. The STB noted that the normal rule is that when a noncarrier, including a state, acquires a freight line that has not been abandoned, it must seek STB approval and the new owner would be presumed to succeed the previous owner in maintaining the common carrier obligation. But in this instance, where only the physical assets would be conveyed and the common carrier obligation remains with the previous owner, STB approval was not required. Recently, in *New Mexico Department of Transportation*, STB Finance Docket 34793 (February 3, 2006) New Mexico acquired 297 miles of rail line from BNSF. New Mexico would provide commuter rail service but BNSF would retain an exclusive operating easement for freight service, and Amtrak service over the line would continue as before. New Mexico would be responsible for track and signal maintenance and it would use contractors to perform those responsibilities. The STB concluded that it need not approve the transaction because the common carrier rights and obligations that attach to the lines would not be transferred, New Mexico would not hold itself out as a common carrier for freight service, and the State would acquire only physical assets.

Thus over a number of years a decision of allowing a State to acquire a 15 mile line that could have been abandoned, where the carrier would continue to be responsible for maintaining the track, right of way and signal system, and which was characterized as unique, has been expanded into a doctrine and been the basis for a transfer of almost 300 miles of line where there were ongoing significant freight and Amtrak operations and the carrier was not responsible for maintaining the track, right of way and signal system.

PROBLEMS WITH THE NEW SCHEME

WORKERS

When these new entities buy rail lines and set up new commuter rail operations, freight employees, particularly maintenance of way, signal and dispatcher employees are often displaced because the freight carrier has given up responsibility for the line; operating employees may also be affected because while freight movements continue, they may be reduced. Additionally, many of

these new commuter operations are deliberately structured to be non-carrier/non-union operations in order to avoid industry standard wages and benefits. That is the main point of invoking the line of cases that circumvent the ICA and the federal railroad laws. Those who promote these schemes routinely promote the possibility of at least 20% savings in costs by running as a non-carrier operation. Indeed, Rail labor has documentation from a number of cases where there was an express plan to avoid using railroad workers who belong to unions. Moreover, even if railroad workers are willing to stay on the conveyed lines and take lower paying jobs with lesser benefits, they do not do so. They are compelled to decline these jobs because use of non-carrier contractors means that they would be working for non-carrier entities and would not be railroad workers, thereby severing their connection with the industry which means substantial reductions in their vested Railroad Retirement benefits, in addition to the wage and benefit cuts they would endure.

Additionally, the use of this device undercuts standard national railroad worker pay and benefits replacing good, middle class jobs with lower paying jobs with lesser benefits. Furthermore, railroad entities that might want to bid on these contracts are placed at a great competitive disadvantage in doing so because the lower paying/lower benefits/non-union bidders can submit substantially lower bids. And in the long run, creation of a cadre of non-railroad railroad workers paid at substantially below standard salaries and benefits will place downward pressure on the pay and benefits of railroad, railroad workers.

SAFETY

Proliferation of this new scheme will have significant safety ramifications. Because qualified and certified professional railroad workers will not take these jobs, they will be filled by less qualified workers. It is perverse that employees who will be involved in the movement of things will be more qualified and expert than employees involved in the movement of people. Another safety problem arises from the splintering of responsibility of rail operations. When there is a single carrier operator that is responsible for train movements; maintenance of the track, right of way and signal system, and maintenance of the locomotives and rail carriers, it has a powerful incentive to maintain safe, efficient and quality operations because all responsibility ultimately runs to that carrier. But under the model where there is one contractor for train movements, another for maintenance of way, one for signal work, another for maintenance of locomotives and cars, one for railroad clerical work, and

another for dispatching, there are incentives for each to minimize its responsibility and leave concerns to the other contractors. And in the event of an accident the operator whose engineer was driving the train might blame the signal contractor, or the maintenance of equipment operator who inspected the air brakes; or one or more of them might blame the maintenance of way contractor for poor maintenance of the track, or all of them might blame each other. Instead of determining what went wrong to prevent a recurrence, there will be a blame-game and years of litigation. This is no way to run a railroad.

BALKANIZATION OF THE NATIONAL RAIL SYSTEM

The ICA was amended and the ICC was given more powers after World War I because it became apparent that we had a patchwork rail system; that patterns of ownership, connections and responsibility were not conducive to an effective national rail system and that the system could be hurt by failures of disconnected parts over which there was no meaningful oversight and service standards. The current new scheme, which developed at the same time as the new and unregulated financial instruments developed, threatens our rail system with the sort of problems that occurred with our rail system prior to the 1930s and that currently plague our financial system. When entities that own right of way and trackage in the middle of our interstate rail system are not carriers, when the STB has no authority over the entities that own track used in heavy interstate freight and intercity passenger movements, when a state agency that owns a line of railroad could walk away from the line with the STB powerless to act, there is danger to our rail system. While we are beginning to take steps to develop a top flight passenger rail system, our freight system has been the envy of the world and our established commuter rail systems have been quite effective. We are ill-served by a system where rail lines cease to be owned by responsible carriers and subject to STB oversight and regulation, and where passenger rail operations are a mere hodge-podge of disconnected entities who do not see the operation as a unified whole.

(2) THE IMPACT OF THE CURRENT ECONOMIC CRISIS ON THE RAILROAD INDUSTRY AND ITS WORKERS

The U.S. economy has been in a recession since December 2007 according to most economists. No one can dispute that the financial and housing sectors of our economy are in dire economic shape with bad news coming almost daily from those sectors. The nation's automobile manufacturers, both domestic companies and "transplants" face declining sales and economic difficulties.

There also can be no disputing that railroads are part of our national economy; however, their financial performance in 2008 was a bright spot.

Three of the four largest railroads recently issued their financial reports for the fourth quarter of 2008.⁵ These results glittered in comparison with other financial news received recently:

CSX – operating income up 22% over the full year in 2007⁶;

UP – operating income up 21% over the full year in 2007⁷;

BNSF – operating income up 14% over the full year in 2007⁸

These results were achieved despite falling unit volumes. Simply put, the major Class I railroads remain in strong financial shape and performed well throughout 2008 despite the U.S. economy slipping into a recession. As late as November 2008, total employment for all Class I railroads was slightly below that of November 2007.⁹ However, that month did show drops in train and engine crew employment of between 3 and 4 per cent over the previous year. We also note that all of the Class I railroads report that carloadings for January 2009 are below those for the previous year. Clearly, the slowing down of the U.S. economy is being felt by the railroads, at least as that slowdown is reflected in lower carloadings.

We will defer to our brothers and sisters in the UTU to describe the impact of this drop in carloadings on their membership. For those of us in the BMWED, the drop in carloadings does not year appear to have had an impact on employment. The primary reason is seasonal. Most railroads engage in reductions of forces around Thanksgiving as weather conditions preclude the operation of production gangs in many areas of the country. Therefore, a rise in layoffs during the months of November and December is a “normal” phenomenon. The real test will begin in late March and April when the railroads traditionally increase their forces to accommodate the need for extra employees to staff production gangs that had been idle during the winter. As of today, we have received no direct information from any railroad that it intends

⁵ Norfolk Southern will announce its fourth quarter results on January 27, 2009, after this testimony has been submitted to the Subcommittee.

⁶ CSX Quarterly Financial Report, Fourth Quarter 2008

⁷ UP News Release “Union Pacific Reports Fourth Quarter Earnings Growth Driven by Productivity and Lower Energy Costs”

⁸ BNSF Form 8-K, January 21, 2009

⁹ Statement M-350, Surface Transportation Board – November 2008

to make substantial cuts in its capital maintenance budget for 2009 that will impact on force levels in the maintenance of way department.

One must remember that railroad production maintenance gangs and trains compete for the use of the rails. Production gangs can have upwards of 100 employees working on them, so they cannot “hop” on and off the tracks to work around train traffic. Once such a large gang begins work on the tracks, it needs a reasonable block of uninterrupted time to perform work. In times of high traffic, those track “windows” are necessarily smaller. When traffic drops, as it has recently, those same gangs can gain additional time to work on the tracks. Therefore, it is in the railroads’ interests to continue to work these gangs during a downturn in business because they become more “productive.” Indeed, since the railroads were complaining that at some points on their systems they were “capacity constrained” before the economic slowdown, the current recession will give them the opportunity to improve capacity for the inevitable rebound of the economy from this recession. Indeed, the railroads’ need for capacity improvements brings us to the last topic suggested by the Subcommittee.

(3) THE BENEFITS AND IMPORTANCE OF INVESTING IN FREIGHT AND/OR PASSENGER RAIL

Passenger Rail

Investment in passenger rail is a necessary part of any coherent national energy and transportation policy. None of us will forget that in the immediate aftermath of the September 11, 2001 attacks, Amtrak continued to provide intercity passenger service while the nation’s airlines were grounded. Rail passenger operations are the only intercity transportation mode that delivers passengers directly to the heart of cities, both large and small. Unfortunately, to the detriment of our nation’s transportation network, Amtrak has been unfairly targeted by some ideologues as undeserving of public assistance. The BMWED commends the hard work performed by this Subcommittee in the last Congress that resulted in passage of the Passenger Rail Investment and Improvement Act of 2008 which provides a generous multi-year authorization for capital improvements at Amtrak. Finally, we have a coherent plan for the development and growth of Amtrak, a policy which will ease transportation congestion in the Northeast Corridor and create new, good paying railroad jobs for those involved in Amtrak’s expansion.

While BMWED supports investment for the expansion of passenger rail, Congress should insure that it is not done on the cheap with unqualified workers, with contractors who lack experience and do not have overall responsibility for all rail operations, and with rail line owners who are not carriers and subject to the federal railroad laws. The long-established major commuter rail operations in the United States operate safely and efficiently and they are rail carriers that employ railroad workers for all railroad functions. That is the model for expansion of commuter rail. Congress should act to insure that owners of rail lines are rail carriers, that the STB has jurisdiction over entities that own rail lines in the interstate rail system, and that the persons who perform rail work (especially work involved with the movement of people) are professional, qualified railroad workers. And any program of grants for expansion of passenger rail should be conditioned on requirements that mandate that those involved will be rail carriers and railroad employees.

Freight Rail

Historically, freight railroads have been responsible for the investment in their infrastructure. Indeed, as we discussed earlier, the three of the four major Class I railroad reported financial performance for 2008 that exceeded that of 2007. However, we are in uncharted economic and financial waters. The Rail Safety Improvement Act of 2008 mandates the implementation of positive train control on many of the lines operated by the Class I railroads (and some regional and short line railroads as well). Additionally, the entire U.S. economy faces a credit squeeze that prevents even credit-worthy companies from obtaining bank credit at any terms at all. We do note that BNSF announced its proposed capital expenditures for 2009 at \$2.7 billion, a figure about \$150 million less than that for 2008. Similarly, the two Canada based Class I carriers, Canadian National and Canadian Pacific, have announced cuts in capital expenditures, although the exact affect on U.S. expenditures is unknown. Certainly there appears to be a perceptible slowing of private investment in infrastructure by the major railroads.

Presently, the BMWED continues to study the various proposals and suggestions for ways freight railroads can invest in improving and expanding their infrastructure. We can offer no specific proposal at this time, but we intend to continue to study the matter and hope this Subcommittee will hold additional hearings on this significant issue.

We thank you again for the opportunity to express our views to the Subcommittee.