

**NOMINATIONS TO THE
U.S. DEPARTMENT OF TRANSPORTATION,
THE U.S. DEPARTMENT OF COMMERCE,
AND THE SURFACE TRANSPORTATION BOARD**

HEARING

BEFORE THE

**COMMITTEE ON COMMERCE,
SCIENCE, AND TRANSPORTATION
UNITED STATES SENATE**

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

NOVEMBER 21, 2013

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

FIRST SESSION

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**NOMINATIONS TO THE
U.S. DEPARTMENT OF TRANSPORTATION,
THE U.S. DEPARTMENT OF COMMERCE,
AND THE SURFACE TRANSPORTATION BOARD**

THURSDAY, NOVEMBER 21, 2013

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

The committee met, pursuant to notice, at 2:37 p.m., in Room SR-253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

**OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV,
U.S. SENATOR FROM WEST VIRGINIA**

The CHAIRMAN. This hearing will come to order, or this nominee questioning will come to order.

There are a lot of people out there. How many of you work for the agencies which are being interviewed? Hands raised, please.

[Laughter.]

The CHAIRMAN. Well, that is not so many.

How many of you are lobbyists against what they are doing?

[Laughter.]

The CHAIRMAN. No hands. I guess it is easy. I guess it is all easy. OK.

Senator THUNE. And how many of them are NSA just spying on the hearing?

[Laughter.]

The CHAIRMAN. Yes, that is true. That is true. And how do you find minimization?

[Laughter.]

The CHAIRMAN. That is a big word, Cory.

Senator BOOKER. Yes, sir.

The CHAIRMAN. OK. Today we are going to hear from nominees for the positions in the Federal Government that don't generate a lot of headlines, except with some of us around this table, but they play a key role in our country's economic success.

We are going to hear first from Ms. Debra Miller, who has been nominated by the President to be a Commissioner on the Surface Transportation Board. Ms. Miller has extensive working experience on transportation policy at the state level and in something called private practice.

As we discussed at our meeting earlier this week, however, Ms. Miller knows, the STB is an agency with a different function than

a state transportation department. They are very, very different. The STB's job is to serve as an honest broker between freight railroads, shippers, and the millions of consumers, farms, and small businesses that our country's freight railroad network serves.

Since Congress passed the Staggers Act in 1980, the STB has seen as its primary mission, in this person's judgment, as helping the freight rail industry get back onto a stable financial footing. Under the STB's watch, the freight rail industry has consolidated from 39 companies to 4 large carriers today: 2 that dominate the market east of the Mississippi River and 2 to the west. And the STB has set a high bar for captive shippers—that is not a good thing to say—who have the resources and the guts to challenge these dominant railroad business practices.

It is not any secret, I think, that more than 3 decades after the Staggers Act the STB needs to change its perspective. The evidence is overwhelming, at this point. The four dominant freight railroads are financially strong, very strong. It is time for the STB to refocus its mission on supporting the businesses and people who use the rail network.

I documented in a Commerce Committee staff report that I issued 3 years ago and in a new staff report that I released this morning that the freight railroads are setting new financial records almost every single quarter. While the rest of the economy has been limping along for the past few years, the freight railroads have been hauling in record amounts of cash.

Even after paying for their operations and even after making needed capital investments, the companies are buying back record amounts of their stock and raising their dividends to their shareholders. They are hitting every benchmark of financial health that Congress, the STB, and the investor or anybody else in the wide, wide world has set for them. They are doing well.

I ask unanimous consent to insert this Commerce Committee staff report, the recent one that came out this morning, into the record of this hearing,

[The information referred to follows:]

[The report is printed below. It can also be found at http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=3cf1b5f2-9487-4c9c-9cea-efb9eb5499d7.]

Office of Oversight and Investigations—Majority Staff

UPDATE ON THE FINANCIAL STATE OF THE CLASS I FREIGHT RAIL INDUSTRY

Staff Report for Chairman Rockefeller—November 21, 2013

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Executive Summary

In September 2010, Chairman Rockefeller issued a Senate Commerce Committee Majority Staff Report on the financial condition of the freight railroad industry. Relying on financial information that the dominant Class I freight railroads regularly report to their investors, the Staff Report concluded that the freight railroad industry had recovered from the serious financial problems that prompted Congress to pass the Staggers Rail Act of 1980. The report found that, three decades after the Staggers Act, the Class I freight railroads were financially sustainable and highly profitable companies.

Understanding the financial condition of the railroads is integral to assessing whether the current regulatory system effectively balances the interests of railroads, shippers, and consumers. Because railroads were struggling financially when the Staggers Act was enacted, the regulatory system that was built on that law places heavy focus on helping railroads earn higher revenues. For example, under the Staggers Act, shippers that do not have access to other transportation modes ("captive shippers") subsidize the freight railroads' revenues by paying transportation rates that far exceed the railroads' costs. If the railroad industry is now proving to be financially viable for the near and long term, policymakers will need to consider whether regulatory changes are in order to make sure the industry does not enjoy unfair advantages.

Because the debate over freight railroad policy continues both in Congress and at the Surface Transportation Board (STB), Commerce Committee staff recently reviewed the railroad industry's latest financial reports to update the findings of the September 2010 Staff Report. These financial reports, as well as the public statements the companies' executives have recently made to their investors and Wall Street analysts, show that the financial performance of these companies is at its strongest since the passage of the Staggers Act. The positive financial trends identified in the 2010 Staff Report have continued in the most recent years, and the railroads appear confident they will continue for the foreseeable future.

Specifically, this Committee staff report finds:

- In every reporting period since the last quarter of 2009, at least one of the three largest publicly traded Class I freight railroads set an all-time company quarterly record for operating ratio, operating income, or earnings per stockholder share (EPS);
- In the past four years, these companies broke records for operating ratios in 29 of the 48 quarters, with Union Pacific having a streak of 8 consecutive quarters in the most recent reporting periods. A decrease in operating ratio means a company is keeping more income after operating expenses are removed from revenue;
- In 30 of the past 48 quarters, the companies set new records for operating income—or the amount of income left over after subtracting a company's operating expenses from its gross profit. It is a measure of the profitability of a company's basic business activities;
- The railroads have also achieved record results in earnings per share (EPS) for stockholders, with Union Pacific breaking its EPS record in 15 of the last 16 quarters, and Norfolk Southern setting records for 6 straight quarters in 2011 and 2012;
- In the last few years the STB routinely has been finding these companies to be "revenue adequate" under an analysis that examines a company's return on investment in relation to the industry's cost of capital. This trend stands in stark contrast to the decades following enactment of the Staggers Act, where railroads in the vast majority of years were found not to be "revenue adequate;"
- The companies' publicly traded stock shares have performed significantly better in recent years than the Standard and Poors stock market index; and
- Increasing free cash flow of the companies in the past few years has enabled them to increase capital expenditures at the same time they boost dividend payments and stock buyback programs. For example, between 2006 and 2010, CSX increased its dividend per share payments by 445 percent and the cumulative

value of its share buyback grew from \$500 million in 2006 to \$5.6 billion in 2010.

While much of the rest of the American economy has been struggling to recover from a deep recession, the freight railroads have been achieving new financial performance milestones. These financial results are especially remarkable as they were accomplished even while overall rail volumes were still below prerecession levels, and while the two dominant railroads operating east of the Mississippi River, CSX and Norfolk Southern, experienced significant drops in the volume of their coal shipments. Each new quarter brings further evidence that the large freight railroad companies are highly profitable enterprises that have confidence that their financial success will continue.

I. Background on Freight Railroad Financial Performance

In September 2010, the Senate Commerce Committee Majority Staff issued a report examining the financial state of the Class I freight railroad industry.¹ This report presented evidence showing that, 30 years after the passage of the Staggers Rail Act of 1980, the freight rail industry had reached the law's goal of financial stability and profitability. It found that the large U.S.-based Class I railroads that dominate the industry today were generating significant profits for their owners, investing substantial capital in their networks, and competing successfully against other transportation modes.

The current financial condition of the freight railroads is an important issue for policymakers because the laws regulating the railroad industry were written at a time when the industry was experiencing serious financial problems. Two of the important goals of the Staggers Act were "to assist the rail system to remain viable in the private sector of the economy" and "to assist in the rehabilitation and financing of the rail system."² If these goals have been achieved, policymakers should take a fresh look at whether the current U.S. freight rail system is meeting another important goal of the Staggers Act, "to provide a regulatory process that balances the needs of carriers, shippers, and the public."³

In early 2011, recognizing the changing landscape of the freight railroad industry, the Surface Transportation Board (STB) initiated a new public hearing process to examine competition issues. Among the factors the Board cited as its reasons for opening the proceeding were, "the improving economic health of the railroad industry" and "increased consolidation in the Class I railroad sector."⁴ In this proceeding, *Ex Parte 705*, the STB heard from a variety of interested parties on competitive access issues including whether to mandate "reciprocal switching" and "terminal use" policies that require railroads to carry cars of a competitor or allow a competitor access to terminals for a fee.⁵ The proceeding also reviewed policy options concerning "rail bottlenecks," where the origin or destination of an otherwise competitive route is served by only one carrier, and contractual provisions known as "interchange commitments" that limit the incentive or ability of a rail line purchaser or tenant carrier to interchange traffic with competitors of the seller or lessor railroad.⁶

¹Senate Committee on Commerce, Science, and Transportation, *Majority Staff Report on the Current Financial State of the Class I Freight Rail Industry* (hereinafter "September 2010 Staff Report") (Sept. 15, 2010) (online at http://commerce.senate.gov/public/?a=Files.Serve&File_id=76823478-a901-4b4d-869b-9301bb43343b).

²The Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895 (1980). In order to increase the railroads' ability to earn "adequate revenues," the Staggers Act allowed railroads to charge higher rates to shippers over which they had "market dominance." U.S. House of Representatives, *Staggers Rail Act of 1980 Conference Report*, 96th Cong. (H.R. Rep. No. 96-1430), at 90-91; 49 U.S.C. § 10707. According to the Staggers Act conference report, regulators would have greater authority to review this so-called "differential pricing" when the railroads were once again financially stable businesses. *Staggers Rail Act of 1980 Conference Report*, at 91 ("The Conferees have adopted the concept of a jurisdictional level that varies according to the performance of the railroad industry. When the industry is earning revenues which are adequate, it is appropriate for the Commission to have the authority to review rate increases more carefully").

³*Id.*

⁴*Competition in the Rail Industry*, S.T.B. Ex Parte No. 705, 2011 WL 93782, *3 (Jan. 11, 2011).

⁵*Competition in the Rail Industry*, S.T.B. Ex Parte No. 705, 2011 WL 93782, *1-4 (Jan. 11, 2011).

⁶*Competition in the Rail Industry*, S.T.B. Ex Parte No. 705, 2011 WL 93782, *2-4 (Jan. 11, 2011).

Following the July 2011 closure of the record on *Ex Parte 705*,⁷ the STB initiated a proceeding regarding certain rules on rail rate cases and ultimately adopted a number of rule modifications.⁸ In a separate ongoing proceeding, *Ex Parte 711*, the STB is considering a petition for a rule to modify reciprocal switching and terminal use policies.⁹

II. Railroads Have Been Setting New Financial Performance Records

A. Overview

A detailed review of the freight railroads' financial results over the past four years shows that the companies have been establishing record-low operating ratios, experiencing record growth in operating income, and posting record earnings-per-share figures.¹⁰ As detailed in this report, 35 of the past 48 individual quarters of publicly available financial information were described by the three largest publicly traded Class I railroads as "record" or "record-breaking" quarters.¹¹ In each of the most recent 16 quarters, at least one freight railroad set new records for operating ratio, operating income, or earnings per share.

These impressive operating and earnings accomplishments occurred at a time when overall rail volumes were below their record 2006 peaks. Importantly for the purposes of this report, the freight railroads were able to continue improving their operating and earnings results even as the shipment of coal, which makes up a significant share of rail volume, decreased significantly as the U.S. utilities began a transition to natural gas a primary fuel for electrical generation.¹²

The companies' public statements about their financial performance have been replete with superlatives, highlighting the companies' record-shattering results.¹³ For

⁷ See *Petition for Rulemaking to Adopt Revised Competitive Switching Rule*, S.T.B. Ex Parte No. 711, 2011 WL 5257467, *1 (Nov. 3, 2011); see also *Competition in the Railroad Industry*, S.T.B. Ex Parte No. 705, 2011 WL 2596922, *1-2 (June 30, 2011).

⁸ Association of Corporate Counsel, *Ex Parte No. 715, Rate Regulations Reforms* (July 19, 2013) (online at <http://www.lexology.com/library/detail.aspx?g=9ef9f5b5-b8e7-4ec8-997d-ba4bc395a6b9>). For example, STB removed the \$5 million relief cap previously imposed on pursuit of certain simplified relief cases. *Id.* It is unclear at this point whether these reforms will have a significant impact on rate regulation cases.

⁹ *Petition For Rulemaking to Adopt Revised Competitive Switching Rules*, S.T.B. Ex Parte No. 711, 2012 WL 3059230, *1-2 (July 25, 2012). The rule would allow shippers located in terminal areas without competitive alternative carriers to be granted access to a competing carrier if there was an interchange within a reasonable distance. *Id.*

¹⁰ To conduct this update, Committee staff reviewed the last sixteen quarters of financial information reported by CSX, Norfolk Southern, and Union Pacific. Committee Staff reviewed 10-Q Financial Reports filed by the companies with the Securities and Exchange Commission (SEC), company earnings press releases, transcripts of the companies' quarterly earnings calls, as well as transcripts of rail industry investor conferences. Any subsequent revisions companies may have made to these reports were not part of this review. The September 2010 Staff Report included BNSF quarterly financial results, while this update does not. Since Berkshire Hathaway acquired BNSF in early 2010, the company ceased conducting quarterly earnings calls, and it no longer reports earnings in the same manner as when it was a standalone company.

¹¹ For the purposes of this report, a "record quarter" occurs when the management of the railroad described its quarterly performance as a new quarterly or all-time financial record with respect to any of the following financial metrics: operating ratio, operating income, or earnings per share. In determining a quarterly record, the point of comparison is the same quarter in the previous year; e.g. first quarters are compared to first quarters in previous years, not to the immediately preceding or succeeding quarter.

¹² Between 2008 and 2013, the price of natural gas in the United States fell from \$13 to less than \$4 per British thermal unit. This decline in the price of natural gas contributed to a drop in coal consumption by the Nation's electrical power plants from 264.3 million to 212.4 million short tons of coal between Q1 2008 and Q1 2013. This five-year drop was part of a larger trend of power plants in the United States turning to alternative energy sources. While in 1990, American power plants generated 53 percent of their electric power from coal, by 2015, power plants are estimated to generate an estimated 39 percent of their electric power from coal. *Railroads Struggle at the Coal Face*, *The Wall Street Journal* (Mar. 16, 2012); *A Declining Source of Energy*, *The New York Times* (May 29, 2012); Investment Mine, *5 Year Natural Gas Prices and Natural Gas Price Charts* (Nov. 13, 2013) (online at <http://www.infomine.com/investment/metal-prices/natural-gas/5-year/>); U.S. Energy Information Administration, *Quarterly Coal Report* (Oct. 2, 2013) (online at <http://www.eia.gov/coal/production/quarterly/>); U.S. Energy Information Administration, *Electricity Net Generation: Total (All Sectors)* (Oct. 2013) (online at http://www.eia.gov/totalenergy/data/monthly/pdf/sec7_5.pdf).

¹³ When the Committee in 2010 issued its initial staff report on the financial state of the railroad industry, the Association of American Railroads (AAR) took issue with the report's use of "accounting measures" such as operating revenue and operating ratio, arguing for a focus on the railroads' return on investment instead. See Joint Verified Statement of Robert S. Hamada and Rajiv B. Gokhale, *Competition in the Railroad Industry*, Surface Transportation Board Ex Parte No. 705 (May 27, 2011) (report commissioned by AAR discussing the 2010 Committee

Continued

example, at an investor conference in June 2011, Union Pacific's CFO, Rob Knight, summarized his company's record-breaking 2010 performance:

A little more than a year ago, we started to see a rebound from the severe economic downturn of 2009. As 2010 progressed, we continued to gain momentum, and ended up recording the most profitable year in the history of our Company. Topline growth and efficiency gains in 2010 resulted in an all-time record operating ratio of 70.6. We achieved best-ever earnings per share, free cash flow, and return on invested capital. These were impressive results, considering our volume levels were still 10 percent below peak levels of 2006.¹⁴

Since that conference, Union Pacific's operating results continued to follow a record-breaking course. On the company's most recent quarterly investor teleconference, Mr. Knight asserted:

Let's start with a recap of our third-quarter results. Operating revenue grew 4 percent to an all-time quarterly record of nearly \$5.6 billion, driven mainly by solid core pricing gains. Operating expense totaled \$3.6 billion, increasing 1.5 percent. Operating income grew 10 percent to \$1.96 billion, also hitting a best-ever quarterly mark. . . . These results combined to produce a best-ever quarterly earnings of \$2.48 per share, up 13 percent versus 2012.¹⁵

In CSX's investor teleconference call announcing the company's results for the second quarter of 2011, CEO Michael Ward commented:

Last evening CSX was pleased to report another record quarter of financial results. . . . From a financial perspective, it was an excellent quarter. Operating income was up 21 percent to a record \$926 million, and the operating ratio improved 190 basis points to 69.3 percent. That represents real progress against our target of achieving a high 60s operating ratio for the year and a 65 percent operating ratio by no later than 2015. Looking at the full year, we expect the upward trends in markets we serve to continue going forward and for CSX to produce another record year in 2011 for our shareholders.¹⁶

CSX went on to have a record year in 2011 regarding performance in operating income, operating ratio, and earnings per share. Describing CSX's overall 2012 results, Mr. Ward predicted that even with a drop in its coal shipping volumes it was well positioned to reward shareholders:

At this time last year, we had just completed eight straight years of operating ratio improvement with earnings growth in seven of those years. Both occurred in a period that included one of the most severe economic periods in our Nation's history. In 2012, we again grew earnings while facing a major drop in a key market, one of the slowest economic recoveries on record and a political environment that has added even more uncertainty to the mix. Through all of this we have remained a vibrant, healthy company with a compelling long-term value proposition for investors.¹⁷

On January 24, 2012, Norfolk Southern CFO Jim Squires announced to Wall Street analysts that his company had set new records concerning several key financial metrics for 2011:

Record revenues of \$11.2 billion, up 17 percent versus 2010, contributed to record income from railway operations of \$3.2 billion, up 20 percent compared to \$2.7 billion in 2010. These results generated a 70 basis point improvement in our operating ratio, which was 71.2 percent for the year, a close second to our 71.1 percent post Conrail records set in 2008. Net income for the year reached \$1.9 billion compared to \$1.5 billion in 2010 and diluted earnings per share increased from \$4 to \$5.45 per share. These results reflect a 28 percent increase in net income and a 36 percent increase in diluted earnings per share. Both measures set new records.¹⁸

Staff Report). This criticism ignores the fact that when top rail industry executives themselves describe their companies' financial performance to investors and analysts, they repeatedly focus on the very same "accounting" metrics used in the Committee staff report.

¹⁴Union Pacific Presentation at Deutsche Bank Securities, Inc. Global Industrials and Basic Materials Conference (June 15, 2011).

¹⁵Union Pacific 3rd Quarter 2013 Earnings Conference Call (Oct. 17, 2013).

¹⁶CSX 2nd Quarter 2011 Earnings Conference Call (July 20, 2011).

¹⁷CSX 4th Quarter 2012 Earnings Conference Call (Jan. 23, 2013).

¹⁸Norfolk Southern 4th Quarter 2011 Earnings Conference Call (Jan. 24, 2012).

A drop in its coal volumes would also impact Norfolk Southern in 2012. However, when discussing the company's second quarter of 2013 financial results, Norfolk's Chief Marketing Officer Don Seale argued that with potential decreasing coal shipments, the company remained well-positioned for continued growth:

Wrapping up in summary, we expect that our diverse market base will generate volume growth ahead, despite continuing challenges in the coal market and a slow growth economy. We also remain committed to market based pricing at levels that equal or exceed the rate of rail inflation. Obviously, with current conditions in our coal business, this is a short-term challenge. But that doesn't alter the value of our strong service product across a very diverse set of markets, where our pricing remains solid.¹⁹

B. Freight Railroads' Operating Ratios Continue to Improve

One of the financial indicators that reflect the railroad industry's strong financial performance is its steadily improving operating ratio. This metric expresses as a percentage the relationship between operating expenses and revenues. A company that lowers its operating ratio is improving the productivity of its operations by keeping more income after operating expenses have been removed from revenues. As Union Pacific CFO Rob Knight explained to investors, the operating ratio measures "UP's progress on improving total returns and profitability."²⁰

As the September 2010 Staff Report documented, between 2000 and 2009, the largest U.S. Class I freight railroads lowered their operating ratios by approximately nine percentage points, from ratios in the mid 80s to ratios in the mid 70s.²¹ The data the companies have reported during the last 16 quarters shows that they are continuing to drive their operating ratios even lower. While operating ratios vary from quarter to quarter for various reasons, Table I shows that the companies have regularly achieved quarterly operating ratios in the low 70s to high 60s, occasionally dropping into the mid 60s, over the past four years.²²

TABLE I—Operating Ratios Reported by the Three Largest Publicly-Reported Class I Freight Railroads (green highlight = company record)²³

Year	2009				2010				2011				2012				2013		
Operating Ratio	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3			
CSX	74.9	74.5	71.2	69.1	70.0	72.5	69.3	70.4	71.5	71.1	68.7	70.5	72.1	70.4	68.6	71.5			
NSC	73.9	75.2	69.8	69.6	73.2	77.1	69.5	67.5	71.4	73.3	67.5	72.9	73.4	74.8	70.2	69.9			
UNP	73.3	75.1	69.4	68.2	70.2	74.7	71.3	69.1	68.3	70.5	67.0	66.6	67.1	69.1	65.7	64.8			

As the green highlighting in Table I²⁴ indicates, the three largest publicly traded Class I railroads broke quarterly operating ratio records in 29 of the 48 quarters Committee staff reviewed. CSX and Union Pacific set new operating ratio records for six straight quarters in 2010 and 2011. Union Pacific exceeded this streak recently with its eight most recent record-breaking quarters.

C. Operating Income Continues to Grow

Another investment measure the railroads tout in their quarterly earnings calls and press releases is their growing operating income. Operating income is the amount of income left over after subtracting a company's operating expenses from its gross profit. It is a measure of the profitability of a company's basic business activities.²⁵ The railroads have set new operating income records in 30 of the 48

¹⁹Norfolk Southern 2nd Quarter 2013 Earnings Conference Call (July 23, 2013).

²⁰Union Pacific 4th Quarter 2009 Earnings Conference Call (Jan. 21, 2010).

²¹September 2010 Staff Report, at 6. See note 10 *supra* for a discussion of why BNSF financial results were used in the September 2010 Staff Report, but were not available for this report.

²²See also the CSX Power Point slide included at Appendix XI. Presented as part of CSX's fourth quarter 2010 earnings call, this chart shows the dramatic improvements the company made in operating ratios over the previous several years, dropping from 78.6 percent in the fourth quarter of 2006 to 70 percent in the comparable 2010 quarter. CSX 4th Quarter 2010 Earnings Presentation, at 22 (Jan. 25, 2011) (online at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9Nzg0Mzd8Q2hpbGRJRjRD0tMXxUeXB1PTM=&t=1>). CSX continued to set new operating ratio records in 2013, posting a first quarter record of 70.4 percent and a second quarter record of 68.6 percent.

²³See note 11 *supra* for a discussion of the use of the term "record quarter" in this report.

²⁴All tables and figures depicted in this report are included in the appendices section in the order in which they appear in the text.

activities.²⁵ The railroads have set new operating income records in 30 of the 48 quarters Committee Staff reviewed, as shown in Table II.

TABLE II—Operating Income (\$ Millions) Reported by the Three Largest Publicly Reported Class I Freight Railroads (green highlight = company record)

Year	2009					2010					2011					2012					2013		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3			
CSX	583	634	768	825	846	773	926	878	841	856	943	854	804	875	963	854							
NCS	549	555	733	746	642	600	875	938	800	745	934	731	714	691	836	849							
UNP	1,002	988	1,279	1,401	1,313	1,137	1,392	1,578	1,617	1,510	1,724	1,786	1,725	1,633	1,878	1,962							

D. Freight Railroads Are Breaking Earnings Per Share Records

The healthy financial performance of the companies is also driving record results in earnings per share (EPS) for shareholders, a metric that the financial markets monitor closely. Comparing a company's EPS to a previous period's EPS (adjusted for any stock splits) is one of the most common ways for investors to see how fast a company's profits are growing.²⁶ As shown in Table III, Union Pacific has broken its EPS record for 15 of the last 16 quarters. Norfolk Southern set new record EPS marks for six straight quarters in 2011 and 2012. And CSX broke its quarterly EPS records in two of the last three quarters before its 3:1 stock split in May of 2011, as well as in two quarters in 2011 and one of the last three quarters in 2013.²⁷

TABLE III—Earnings per Share Reported by the Three Largest Publicly-Reported Class I Freight Railroads (green highlight = company record)

Year	2009					2010					2011					2012					2013		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3			
CSX	0.77	0.78	1.07	1.08	1.14	1.06	0.46	0.43	0.43	0.43	0.49	0.44	0.43	0.45	0.52	0.46							
NCS	0.82	0.68	1.04	1.19	1.09	0.90	1.56	1.59	1.42	1.23	1.60	1.24	1.30	1.41	1.46	1.53							
UNP	1.08	1.01	1.40	1.56	1.56	1.29	1.59	1.85	1.99	1.79	2.10	2.19	2.19	2.03	2.37	2.48							

E. STB Now Is Routinely Finding Class I Freight Railroads "Revenue Adequate"

As the top Class I freight railroads report quarter-after-quarter of record results with respect to operating ratios and revenues, they also have been performing well in the "revenue adequacy" evaluation of rail companies that the Surface Transportation Board is required to conduct annually under the 1980 Staggers Act. "Revenue adequacy" is defined under law as revenues sufficient to cover "total operating expenses, including depreciation and obsolescence, plus a reasonable and economic profit or return (or both) on capital employed in the business."²⁸ While for many years following enactment of the Staggers Act, the top Class I freight railroads were found to be "revenue inadequate," that trend has been changing in recent years.

The 1976 Railroad Revitalization and Regulatory Reform Act (known as the "4R Act") instructed the then-Interstate Commerce Commission (ICC) to help freight railroads regain their ability to earn "adequate" revenues.²⁹ Four years later, the 1980 Staggers Rail Act ordered the ICC to begin calculating annually "which rail carriers are earning adequate revenues."³⁰ When it implemented this annual re-

²⁵ Jan R. Williams, Susan F. Haka, Mark S. Bettner, and Joseph V. Carcello, *Financial & Managerial Accounting The Basis for Business Decisions*, at 622 (2008).

²⁶ Morningstar, *Morningstar Investing Glossary* (Nov. 16, 2013) (online at http://www.morningstar.com/InvGlossary/earnings_per_share.aspx).

²⁷ On May 4, 2011, CSX announced that its board of directors approved a 3-1 stock split, meaning that all shareholders of record would receive three shares for every one share owned at the close of business on May 31, 2011. CSX Corporation, *CSX Announces Stock Split, Dividend Increase, Share Buyback* (May 4, 2011) (online at <http://www.csx.com/index.cfm/media/press-releases/csx-announces-stock-split-dividend-increase-share-buyback/>). CSX appears to have set an EPS record in an additional recent quarter, Q2 of 2013, as the company press release on this quarter said that CSX saw "record results" in "all key financial measures." Because the company statement did not specifically address whether EPS was one of these measures, however, the Committee staff report does not count the CSX EPS results in that quarter as a "record."

²⁸ 49 U.S.C. § 10704(a)(2).

²⁹ Railroad Revitalization and Regulatory Reform Act of 1976, Pub. L. No. 94-210, 90 Stat. 31 (1976) § 205. The STB's current statutory authority continues to recognize the broad policy goal that "rail carriers shall earn adequate revenues." 49 U.S.C. § 10701(d)(2).

³⁰ Staggers Rail Act of 1980, Pub. L. No. 96-448, 94 Stat. 1895, § 205.

porting requirement in 1981, the ICC decided that to be revenue adequate, a railroad must be “earning a rate of return equal to the current cost of capital.”³¹

The theory behind this formula was that freight railroads could not be financially viable over the long term if their operating revenues were not strong enough to attract investors, either through selling equity shares or issuing debt. A railroad producing a return on investment high enough to attract investment (*i.e.*, at the cost of capital level):

[S]hould be able to generate sufficient revenue to cover all of its operating expenses, including depreciation and taxes; generate sufficient cash flow to fund needed capital expenditures; retire maturing debt; pay interest on existing and new debt; and earn for the shareholders a fair and reasonable return on their investment commensurate with the risk involved.³²

In its 1986 *Coal Rate Guidelines* decision, the ICC offered more helpful guidance about the regulatory significance of the revenue adequacy evaluation. “Adequate” revenue meant the level “necessary for a railroad to compete equally with other firms for available financing in order to maintain, replace, modernize, and, where appropriate, expand its facilities and services.”³³ The revenue adequacy standard represented “a reasonable level of profitability for a healthy carrier” that “assures shippers that the carrier will be able to meet their service needs for the long term.” But once the freight railroads reach the revenue adequacy standard, the decision explained, shippers should no longer be asked to subsidize carrier operations:

Carriers do not need greater revenues than this standard permits, and we believe that, in a regulated setting, they are not entitled to any higher revenues. Therefore, the logical first constraint on a carrier’s pricing is that its rates not be designed to earn greater revenues than needed to achieve and maintain this “revenue adequacy” level. In other words, captive shippers should not be required to continue to pay differentially higher rates than other shippers when some or all of that differential is no longer necessary to ensure a financially sound carrier capable of meeting its current and future service needs.³⁴

Since the original 1981 ruling, the ICC, and from 1996 onwards, the STB, have made a number of adjustments to the formulas used to calculate each freight railroad’s return on investment (ROI) and the cost of capital (COC) against which it is annually compared. Many of these changes have been responses to concerns raised by freight railroads, shippers, or other interested parties about elements of the STB’s methodology for calculating revenue adequacy.³⁵

While the freight rail community continues to debate whether the STB is properly calculating revenue adequacy,³⁶ in recent annual evaluations the agency has routinely found that the large Class I freight railroads have been earning rates of return that meet or surpass their cost of capital.

As Table IV below shows:

- With the exception of 2009, Norfolk Southern’s ROI has either exceeded, met, or come close to meeting the cost of capital in every year for the last decade.

³¹ Interstate Commerce Commission, *Standards for Revenue Adequacy*, Ex Parte No. 393, 364 I.C.C. 803, 807 (1981).

³² Interstate Commerce Commission, *Standards for Railroad Revenue Adequacy*, Ex Parte No. 393, 3 I.C.C. 2d 261, 268 (1986).

³³ Interstate Commerce Commission, *Coal Rate Guidelines, Nationwide*, Ex Parte No. 347, 1 I.C.C. 2d 520, 535 (1985).

³⁴ *Id.*, at 535–36.

³⁵ For example, in 2008, in response to concerns raised by the shipper community, the STB replaced the “Single-Stage Discount Cash Flow” model for estimating the rate of return investors require to buy shares of freight railroads, with a different accounting method known as the “Capital Asset Pricing Model.” A year later, the STB modified its method for determining this so-called “cost of equity” by adding the Morningstar/Ibbotson “Multi-Stage Discount Cash Flow” method to the calculation. Surface Transportation Board, *Use of a Multi-Stage Discounted Cash Flow Model in Determining the Railroad Industry’s Cost of Capital*, S.T.B. Ex Parte No. 664, 2009 WL 197991, *11 (Jan. 23, 2009).

³⁶ See, e.g., Statement of Professor Alfred E. Kahn and Report of Professor Jerome E. Hass on Revenue Adequacy Standards (Feb. 1997) (“The STB’s measure of return on investment for each Class I railroad is fraught with short-comings and severely short-sighted; and the cost of capital estimate it uses as a benchmark against which to judge adequacy is severely flawed as well. Simple measures, such as market-to-book ratios, retention rates and debt ratings indicate that the railroads have a high degree of financial integrity and are expected to earn returns on the book value of equity well in excess of their cost of capital. They clearly have no difficulty in raising capital without causing any dilution for existing shareholders”).

- While CSX was reporting ROIs in the 4–6 percent range in the 2003–05 period, the company has come within a few basis points of meeting, or has exceeded, COC in the 2010–12 time frame.
- In 2012, UP’s ROI surged to 14.69 percent, exceeding the COC by more than three full percentage points.

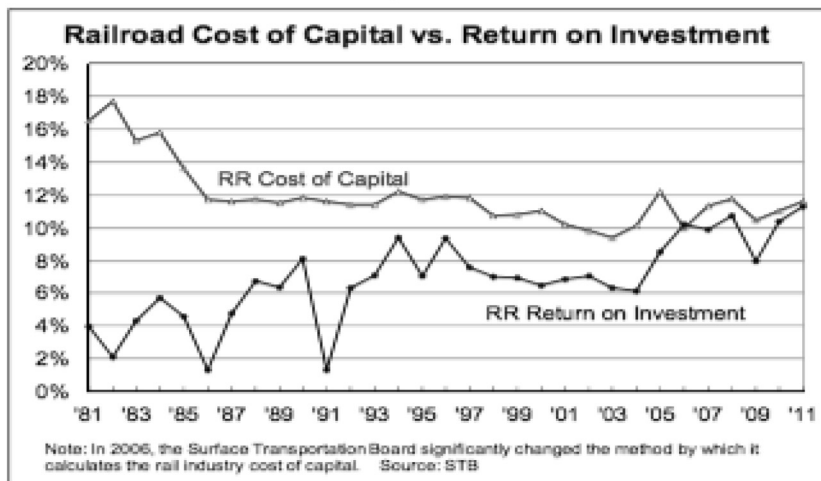
TABLE IV—STB’s Railroad Cost of Capital and Revenue Adequacy Determinations (* Indicates Pending STB Evaluation)

Year	Cost of Capital	BNSF	CSX	NSC	UNP
2003	9.40%	6.20%	4.00%	9.10%	7.30%
2004	10.10%	5.84%	4.43%	11.64%	4.54%
2005	12.20%	10.32%	6.23%	13.21%	6.34%
2006	9.94%	11.43%	8.15%	14.36%	8.21%
2007	11.33%	9.97%	7.61%	13.55%	8.90%
2008	11.75%	10.51%	9.34%	13.75%	10.46%
2009	10.43%	8.67%	7.30%	7.69%	8.62%
2010	11.03%	*	10.85%	10.96%	11.54%
2011	11.57%	*	11.54%	12.87%	13.11%
2012	11.12%	*	10.81%	11.48%	14.69%

Source: STB Revenue Adequacy Filings

This pattern contrasts starkly with the two decades following the passage of the Staggers Act, during which the STB determined that most railroads in most years were not revenue adequate.³⁷ As the graph below prepared by the American Association of Railroads (AAR) shows, in the most recent years, the freight railroads’ ROI has been converging with the STB-calculated COC.

Figure I—Railroad Cost of Capital vs. Return on Investment Since the Passage of the Staggers Act



Source: American Association of Railroads

³⁷ Between 1980 and 2005, the ICC and STB made 445 individual determinations of revenue adequacy for railroad companies. It found railroads to be revenue adequate in just 32 instances. Congressional Research Service, *Rail Transportation of Coal to Power Plants: Reliability Issues*, at 78 (Sept. 26, 2007).

Furthermore, while the ROI numbers reported by BNSF in the years following its 2010 purchase by Berkshire Hathaway were below the cost of capital, the recalculation of BNSF ROIs required by a recent STB ruling is expected to boost the revenue adequacy results for BNSF for the years 2010, 2011, and 2012.³⁸

These recent revenue adequacy findings suggest that the long-term policy goals of the Staggers Act have been reached with respect to the major Class I freight railroads. These companies are now reliably producing enough income to fund their operations, make appropriate capital expenditures, and attract and reward their investors. If the companies are now profitable and, as a regulatory matter, revenue adequate, policymakers need to take a new look at the competitive advantages Congress gave the railroads 30 years ago.

III. Companies Project Continuing Financial Improvement

In their conversations with Wall Street analysts, railroad executives have repeatedly stated that they expect to continue delivering strong financial performance by “pricing above inflation” in future quarters and by continuing to drive operating ratios lower. These projections reflect a business environment starkly different from the one that existed at the time of the passage of the Staggers Act of 1980.

A. Freight Railroads Continue to Enjoy Strong Pricing Power

One of the key drivers behind the railroads’ improving financial performance is their ability to charge their customers increasingly higher rates to move their goods. The September 2010 Staff Report reviewed the growing evidence that after many years of declines in the rates they could charge their non-captive shippers, the freight railroads started raising their prices beginning in about 2004 and 2005.

According to outside experts and the railroads themselves, this “pricing renaissance” occurred because the railroads had steadily improved their productivity and were reaching the end of long-term “legacy” contracts they had entered when they had less pricing power.³⁹ In testimony before the STB on June 22, 2011, J.P. Morgan transportation analyst Tom Wadewitz commented: “Since 2004 we believe that a favorable pricing trend has been an important factor that has attracted investors to the railroads.”⁴⁰

A review of the company’s recent filings and investor calls shows that the railroad companies continue to expect they will be able to raise rates faster than the rate of rail inflation for the foreseeable future. For example, on a third quarter 2012 earnings call, Don Seale, Norfolk Southern’s Chief Marketing Officer, stated:

With respect to pricing, our commitment remains to price at levels above the rate of rail inflation over the long run. Export coal markets made this a difficult task in the third quarter, and we expect those same headwinds over the next few quarters. But based on our internal analysis, and excluding that negative effect of export coal, we met our objective of pricing above rail inflation in the third quarter, and we expect that positive trend to continue as we provide excellent service and value to our customers across our network.⁴¹

Similarly, CSX CEO Clarence Gooden highlighted the company’s expectations to price above rail inflation, in the following exchange with an analyst:

Analyst: It doesn’t seem, at least from your results, that there is any aggressive pricing between you and the NS going on right now. I just wanted to make sure that that is the case.

Gooden: What do you mean by aggressive pricing between us and the NS?

Analyst: I’m saying aggressive—are you guys getting more aggressive with trying to steal freight from one another? I think that was the crux of Bill’s question.

Gooden: Absolutely not. As we’ve told you earlier, we are going to price to above rail inflation. We’re going to price above it because, one, we think we’ve got a product that offers a significant value. And, secondly, because it’s necessary for

³⁸In July 2013, the STB ruled that BNSF needed to calculate its ROIs for 2010, 2011, and 2012, to exclude the \$8.1 billion “acquisition premium” it had previously included when calculating its investment base. *Western Coal Traffic League—Petition for Declaratory Order*, S.T.B. FD 35506, 2013 WL 3834052, *25–26 (July 24, 2013). Because the investment base represents the denominator of the ROI ratio, the \$8.1 billion acquisition premium makes the company’s net operating income look smaller in comparison and reduces the return on investment percentage.

³⁹September 2010 Staff Report, at 8–10.

⁴⁰Testimony of Tom Wadewitz, J.P. Morgan, *Competition in the Railroad Industry*, Surface Transportation Board, Ex Parte No. 705 (June 22, 2011).

⁴¹Norfolk Southern 3rd Quarter 2012 Earnings Conference Call (Oct. 23, 2012).

us to invest in our infrastructure. We've had a solid plan over the last 10 years now, nearly, in which we've wanted to work on our pricing. And that's what we're going to continue to do.⁴²

B. Projected Improvements in Operating Ratios and Operating Income

Executives from CSX have told investors and Wall Street analysts that the company's operating ratios will continue to improve, publicly announcing the company's goal of a 65 percent operating ratio by 2015. In the company's third Quarter 2011 earnings call, CEO Michael Ward told analysts, "We remain highly committed to a 65 percent operating ratio by no later than 2015, and we fully expect that this will be achieved."⁴³ CSX CFO Fredrick Eliasson, in a recent conference call with investors, noted that, even considering the "coal headwinds" that impacted CSX's financial results throughout 2012 and 2013, the company "remains on track to sustain a high-60s operating ratio by 2015, and a mid-60s operating ratio longer term."⁴⁴

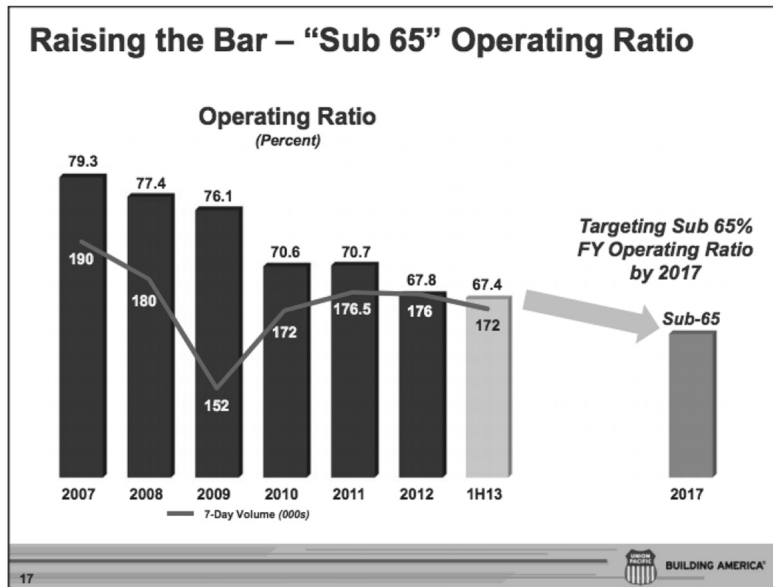
Union Pacific has set a similarly ambitious operating ratio goal. In 2007, the company initiated "Project Operating Ratio" with a goal of achieving a "low 70s operating ratio by 2012."⁴⁵ Union Pacific CFO Rob Knight recently explained that his company had already achieved the goals of "Project Operating Ratio," and had set a new, even lower goal:

While it's evident that the math of today's higher fuel prices can inflate the operating ratio, as we just saw in the fourth quarter, we are focused on achieving our new target of 65 percent to 67 percent full-year operating ratio by 2015.⁴⁶

According to Committee staff's analysis, Union Pacific has set a new, lower operating ratio record for 14 of the last 16 quarters including the last eight consecutive quarters.

Union Pacific has used the slide below at investor conferences over the past year to discuss progress made since initiating Project Operating Ratio and targets going forward:

Figure II—Union Pacific Analysis of Improvements to its Operating Ratio Since the Beginning of Project Operating Ratio



Source: Union Pacific Investor Presentation

⁴² CSX 1st Quarter 2013 Earnings Conference Call (Apr. 17, 2013).

⁴³ CSX 3rd Quarter 2011 Earnings Conference Call (Oct. 19, 2011).

⁴⁴ CSX 2nd Quarter 2013 Earnings Conference Call (July 17, 2013).

⁴⁵ Union Pacific, Project Operating Ratio Presentation (May 2008) (online at http://www.up.com/investors/attachments/presentations/2008/analyst_conf/rmk_slides.pdf).

⁴⁶ Union Pacific 4th Quarter 2010 Earnings Conference Call (Jan. 20, 2011).

On the company's most recent conference call, Mr. Knight updated investors and Wall Street analysts on Union Pacific's record-breaking operating ratio of 64.8 percent, noting "We are not going to stop. So the sub-65 percent is not an end game, it's just the next rung on the ladder."⁴⁷

In this same call, Union Pacific CEO Jack Koraleski reaffirmed his confidence in the company's future financial performance in the following exchange with an analyst:

Analyst: When you look at the Union Pacific network and you see what you have been able to achieve over the last five to seven years, which in margin terms are kind of breathtaking, is there anything about the network that makes you say, yes, it is going to be hard for us to ever achieve record profitability relative to our peers in the industry? Is there anything about your network structure that limits how good you can be?

Koraleski: Man, I can't think of anything.⁴⁸

IV. The Railroads' Strong Financial Performance is Benefiting Shareholders

The publicly traded shares of the freight railroads have performed significantly better in recent years than the widely followed stock market indexes. This strong performance is tied to the companies' excellent financial results. In June 2011 testimony before the STB, J.P. Morgan analyst Tom Wadewitz explained that "[f]avorable EPS [earnings per share] growth performance and a broader trend of improving financial returns have been key factors that have attracted equity investors to the railroad stocks over the past seven years."⁴⁹

In testimony delivered during the same hearing, Scott Group from the Wolfe Trahan transportation industry analysis firm presented a graph showing that "Rail Stocks Have Materially Outperformed Other Transports and the S&P Since 2005." According to this graph, "Large-Cap Rails" have provided investors annualized returns of 15 percent since 2000, and trucking stocks had returns of 6.1 percent, while at the same time the S&P index return was -1.2 percent.⁵⁰

The September 2010 Staff Report presented a graph showing that the performance of freight rail stocks between 1999 and 2009—the first decade after the rail industry had consolidated into four dominant U.S. based carriers—far exceeded the performance of companies that are part of the S&P 500 Index.⁵¹ A *Fortune* magazine story on the freight railroad industry showed the same graph updated through July 29, 2011. This graph was captioned, "The total return of the Big Four railroads' stocks has left the S&P 500 far behind."⁵²

While AAR critiqued the September 2010 Staff Report's analysis of stock performance,⁵³ the railroads themselves have presented similar information to their investors to illustrate the strong recent performance of their shares.

For example, during an investor conference in 2011, a Norfolk Southern executive presented the graph below showing that over the past five and a half years, her company's stock "has returned a compound annual growth of 11.4 percent versus 2.4 percent for the S&P 500."⁵⁴ It is worth noting that, as of mid-November 2013, Norfolk Southern shares were trading at or near their 52-week highs.⁵⁵

⁴⁷ Union Pacific 3rd Quarter 2013 Earnings Conference Call (Oct. 17, 2013).

⁴⁸ Union Pacific 3rd Quarter 2013 Earnings Conference Call (Oct. 17, 2013).

⁴⁹ Testimony of Tom Wadewitz, *Competition in the Railroad Industry*, Surface Transportation Board Ex Parte No. 705 (June 22, 2011).

⁵⁰ Testimony of Scott Group, Wolfe Trahan & Co., *Competition in the Railroad Industry*, Surface Transportation Board Ex Parte No. 705 (June 22–23, 2011).

⁵¹ September 2010 Staff Report, at 6–7.

⁵² *Showdown on the Railroad*, *Fortune* (Sept. 26, 2011) (online at <http://features.blogs.fortune.cnn.com/2011/09/13/showdown-on-the-railroad/>).

⁵³ Joint Verified Statement of Robert S. Hamada and Rajiv B. Gokhale, at 4–6, *Competition in the Railroad Industry*, Surface Transportation Board Ex Parte No. 705 (May 27, 2011) (statement commissioned by AAR). AAR takes the position that there is "nothing extraordinary about railroad stock performance," arguing that the appropriate point of comparison is industries with similar capital intensities. See Reply Comments of the Association of American Railroads, *Competition in the Railroad Industry*, Surface Transportation Board Ex Parte No. 705, at 15 (May 27, 2011).

⁵⁴ Norfolk Southern Presentation at Morgan Keenan Industrial/Transportation Conference (Sept. 14, 2011).

⁵⁵ Stock price graph for NSC, January 6, 2006 to November 19, 2013, via Google Finance (accessed Nov. 19, 2013).

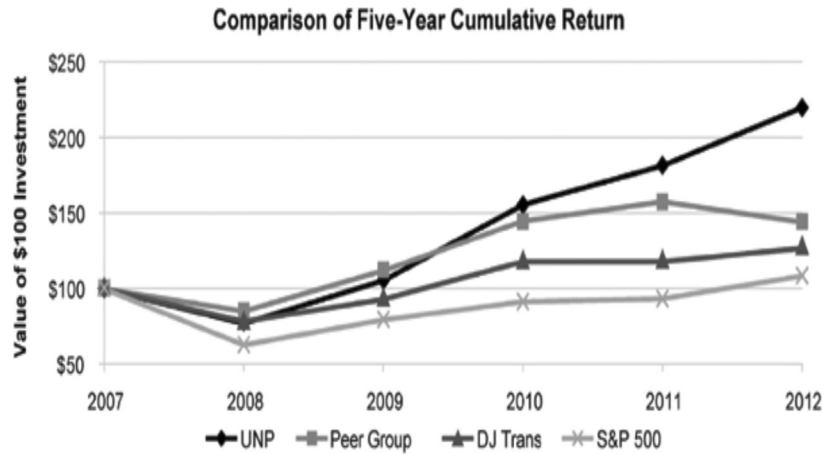
Figure III—Norfolk Southern Shareholder Return



Source: Norfolk Southern Investor Presentation

Similarly, as part of its 2012 10-K financial filing to the Securities and Exchange Commission, Union Pacific (UNP) published the graph below showing that the company and its peers have substantially outperformed stocks in the Dow Jones and S&P indexes over the past five years. According to this graph, a \$100 investment in UNP stock on December 31, 2007, with subsequent dividends reinvested, was worth approximately \$230 at the end of 2012, while \$100 invested in the major stock indexes would have only been worth marginally more at \$110.⁵⁶

Figure IV—Union Pacific Shareholder Return



Source: Union Pacific SEC Filings

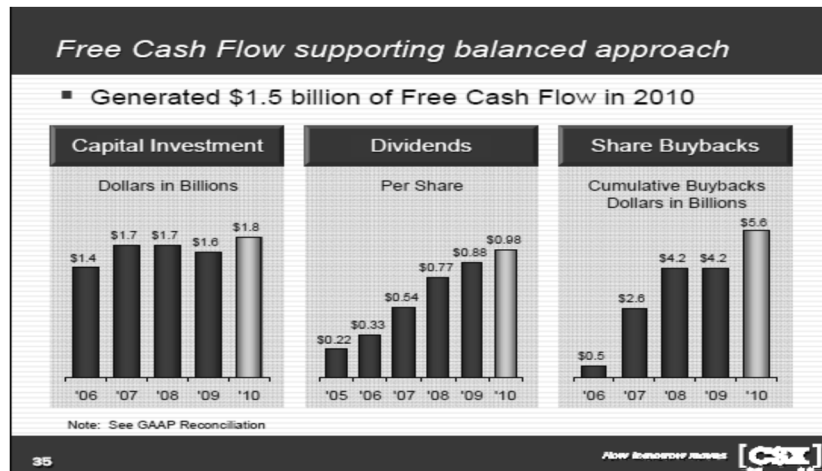
The owners of freight railroad stocks are not just benefiting from the increasing value of their shares. They are also benefiting from the railroads' aggressive use of their free cash flows to expand their dividends and buy back outstanding shares. As noted in the September 2010 Staff Report, the freight railroads have been using

⁵⁶Union Pacific 2012 Form 10-K Securities and Exchange Commission Financial Filing, at 20 (Feb. 8, 2013). With respect to this chart, Union Pacific in its 10-K filing defines "peer group" as CSX and Norfolk Southern, and "DJ Trans" as the Dow Jones Transportation Index.

the growing income left over from operations to increase their capital expenditures.⁵⁷ At the same time, they were also using significant portions of their free cash flows to boost the short-term value of their shares through stock buyback programs.

The CSX Power Point slide below illustrates what the company calls its “balanced approach” to managing its growing free cash flows. Free cash flows represent the cash a company has remaining after investing for the growth of its business operations.⁵⁸ These funds can be used to pursue opportunities to enhance shareholder value. As depicted in the chart, at the same time the company continued its strong commitment to capital expenditures between 2006 and 2010, it also increased its dividend per share payments by 445 percent between 2005 and 2010, and the cumulative value of its share buyback grew from \$500 million in 2006 to \$5.6 billion in 2010.⁵⁹

Figure V—CSX Free Cash Flow



Source: CSX Investor Presentation

At a 2012 investor conference, CSX CFO Frederick Eliasson also highlighted CSX’s ability to support a balanced approach to its cash deployment. Presenting the slide below, he commented:

Our cash deployment, really since 2005, has been very, very balanced, both between reinvesting in our business, but also in regards to returning cash to our shareholders. Prior to 2006, we weren’t really in the position to either fully reinvest in our business, nor to return significant amounts of cash to our shareholders because of where we were in regards to our margins in our business. But since then, we have improved that significantly, and also as a result of that, been able to reinvest and return cash to our shareholders in a way we hadn’t done previously.⁶⁰

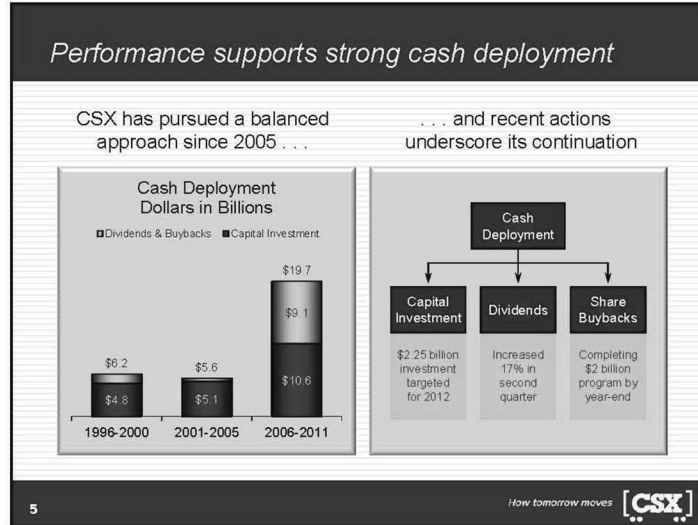
⁵⁷While the dollar value of the freight railroads’ capital expenditures has generally been growing in recent years, the portion of operating revenues they dedicate to capital expenditures has remained at a steady 16–18 percent. Testimony of Scott Group, Wolfe Trahan & Co., *Competition in the Railroad Industry*, Surface Transportation Board Ex Parte No. 705 (June 22–23, 2011).

⁵⁸Morningstar, *Morningstar Investing Glossary* (Nov. 16, 2013) (online at http://www.morningstar.com/InvGlossary/free_cash_flow_definition_what_is.aspx).

⁵⁹CSX 4th Quarter 2010 Earnings Presentation, at 35 (Jan. 25, 2011) (online at <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9Nzg0Mzd8Q2hpbGRJRDR0tMXxUeXBIPtM=&t=1>).

⁶⁰CSX Presentation at UBS Best of Americas Health Care Conference, at 5 (Sept. 6, 2012).

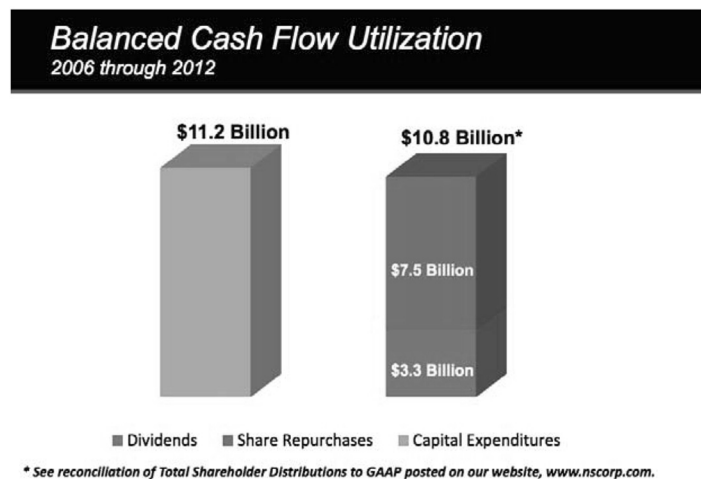
Figure VI—CSX Strong Cash Deployment



Source: CSX Investor Presentation

Norfolk Southern also has deployed its increasing cash flows to both increase capital investments in their networks and deliver short-term rewards to company shareholders. The slide below, recently presented by Norfolk Southern at an investor conference hosted by Citi, shows the scale and split of the cash distribution the company has managed since 2006 through the end of 2012. Norfolk Southern split its \$22 billion in cash flow roughly evenly between long-term capital investment and shorter-term shareholder gains. The company spent 34 percent of cash flow on share repurchases, 15 percent on dividends to shareholders, and 51 percent on capital expenditures.⁶¹

Figure VII—Norfolk Southern Balanced Cash Flow Utilization



Source: Norfolk Southern Investor Presentation

⁶¹Norfolk Southern, Cowen Securities Global Transportation Conference, at 24 (June 11, 2013). (online at http://www.nscorp.com/content/dam/nscorp/get-to-know-us/investor-relations/Slides/cowen_presentation_2013.pdf).

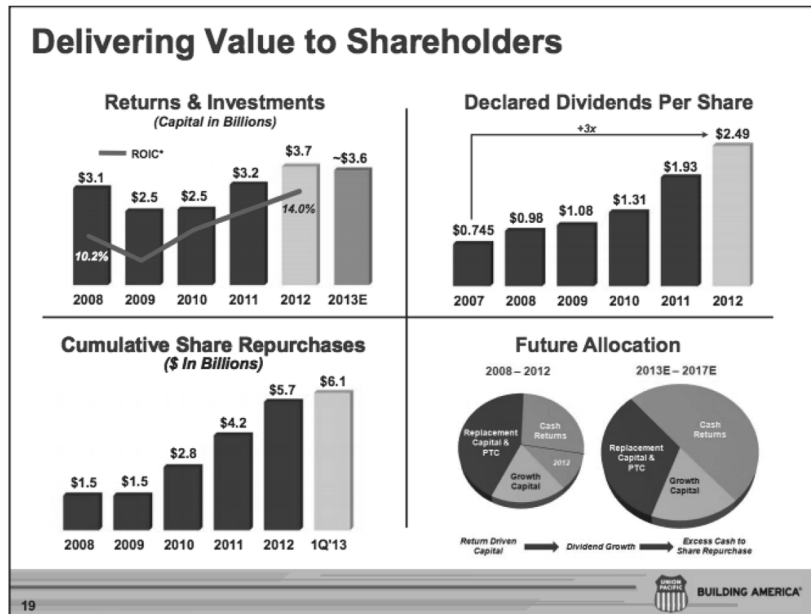
Union Pacific as well has been using cash flows to pay dividends as well as buy back shares. In comments to investors and analysts in 2011, Union Pacific CFO Rob Knight asserted that since 2007, his company had “distributed more than \$6.3 billion to shareholders through a combination of dividends and share repurchase,” and that the company anticipated even larger shareholder payments in the future.⁶² At another investment conference in 2011, he explained:

In 2010, we achieved a record return on invested capital of 10.8 percent and free cash flow of \$1.4 billion. Looking ahead, we are confident our returns and cash flows will be even higher, as we stay dedicated to growing our business, improving pricing, and driving efficiency gains. Beyond investing back into the business, we will reward our shareholders directly through both dividends and share repurchases. And as our cash grows, so does our ability to return even more to the shareholders through these programs.⁶³

More recently, at an investor conference earlier this year, Mr. Knight discussed how Union Pacific was “delivering value to shareholders.” Referencing the slide below, he explained:

Beyond funding our capital programs, our record profitability has enabled us to grow shareholder returns. In the past five years we have increased our declared dividend per share over three-fold and bought back almost \$6 billion worth of stock. Cash returns in 2012 alone totaled over \$2.6 billion, driven by a 30 percent dividend payout ratio and opportunistic share repurchases. Looking ahead, we expect to generate even more cash to allocate over the next five years. Even with a larger capital budget, we expect shareholders will receive a bigger piece of the cash pie going forward.⁶⁴

Figure VIII—Union Pacific Analysis of Benefits to Shareholders Since 2007



Source: Union Pacific Investor Presentation

Conclusion

In 1980, at the signing ceremony for the Staggers Act, President Jimmy Carter heralded the Act’s regulatory reforms with the following description:

⁶² Union Pacific, J.P. Morgan Aviation, Transportation & Defense Conference (Mar. 24, 2011).

⁶³ Union Pacific Presentation at Deutsche Bank Securities, Inc. Global Industrials and Basic Materials Conference (June 15, 2011).

⁶⁴ Union Pacific Presentation at Cowen Global Transportation Conference (June 11, 2013).

[S]tripping away needless and costly regulation in favor of marketplace forces wherever possible, this act will help assure a strong and healthy future for our Nation's railroads and the men and women who work for them. It will benefit shippers throughout the country by encouraging railroads to improve their equipment and better tailor their service to shipper needs. America's consumers will benefit, for rather than face the prospect of continuing deterioration of rail freight service, consumers can be assured of improved railroads delivering their goods with dispatch.⁶⁵

There is a broad consensus that the Staggers Act enabled the successful restructuring of the American freight rail industry. Three decades after President Carter signed the Staggers Act into law, the large U.S. Class I freight railroads in the United States see a "strong and healthy future" for their businesses. In recent public statements, the railroads have confidently predicted that their record-setting financial performance will continue for the foreseeable future.

While the railroads are prospering under the regulatory system established by the Staggers Act, it is less clear that today's shippers and consumers are enjoying the benefits President Carter envisioned in his 1980 statement. The goal of the Staggers Acts was not to enrich railroad companies, but to "provide a regulatory process that balances the needs of carriers, shippers, and the public." As policymakers continue to discuss the future of America's rail transportation network, they will need to carefully consider whether changes are needed to reach this goal.

APPENDICES

The Largest Publicly Traded Class I Freight Railroads Are Breaking Records in Several Key Financial Measures

(Green Highlighting Indicates Record Breaking Quarter)

TABLE I - Operating Ratio

Year	2009				2010				2011				2012				2013		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3			
CSX	74.9	74.5	71.2	69.1	70.0	72.5	69.3	70.4	71.5	71.1	68.7	70.5	72.1	70.4	68.6	71.5			
NSC	73.9	75.2	69.8	69.6	73.2	77.1	69.5	67.5	71.4	73.3	67.5	72.9	73.4	74.8	70.2	69.9			
UNP	73.3	75.1	69.4	68.2	70.2	74.7	71.3	69.1	68.3	70.5	67.0	66.6	67.1	69.1	65.7	64.8			

TABLE II - Operating Income
(In Millions)

Year	2009				2010				2011				2012				2013		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3			
CSX	583	634	768	825	846	773	926	878	841	856	943	854	804	875	963	854			
NSC	549	555	733	746	642	600	875	938	800	745	934	731	714	691	836	849			
UNP	1,002	988	1,279	1,401	1,313	1,137	1,392	1,578	1,617	1,510	1,724	1,786	1,725	1,633	1,878	1,962			

TABLE III - Earnings Per a Share

Year	2009				2010				2011				2012				2013		
	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3	Q4	Q1	Q2	Q3			
CSX	0.77	0.78	1.07	1.08	1.14	1.06	0.46	0.43	0.43	0.43	0.49	0.44	0.43	0.45	0.52	0.46			
NSC	0.82	0.68	1.04	1.19	1.09	0.90	1.56	1.59	1.42	1.23	1.60	1.24	1.30	1.41	1.46	1.53			
UNP	1.08	1.01	1.40	1.56	1.56	1.29	1.59	1.85	1.99	1.79	2.10	2.19	2.19	2.03	2.37	2.48			

Appendix I

⁶⁵Statement on Signing S. 1946 into Law, 3 Published Papers of the President, Jimmy Carter 1980-1981 1949, at 2229 (Oct. 14, 1980).

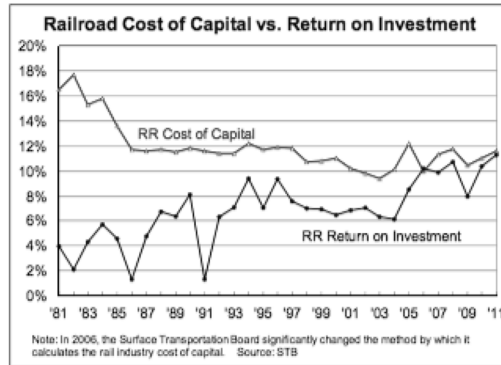
**STB's Railroad Cost of Capital
and Revenue Adequacy Determinations**
(* Indicates Pending STB Review)

Year	Cost of Capital	BNSF	CSX	NSC	UNP
2003	9.40%	6.20%	4.00%	9.10%	7.30%
2004	10.10%	5.84%	4.43%	11.64%	4.54%
2005	12.20%	10.32%	6.23%	13.21%	6.34%
2006	9.94%	11.43%	8.15%	14.36%	8.21%
2007	11.33%	9.97%	7.61%	13.55%	8.90%
2008	11.75%	10.51%	9.34%	13.75%	10.46%
2009	10.43%	8.67%	7.30%	7.69%	8.62%
2010	11.03%	*	10.85%	10.96%	11.54%
2011	11.57%	*	11.54%	12.87%	13.11%
2012	11.12%	*	10.81%	11.48%	14.69%

Source: STB Revenue Adequacy Filings

Appendix II

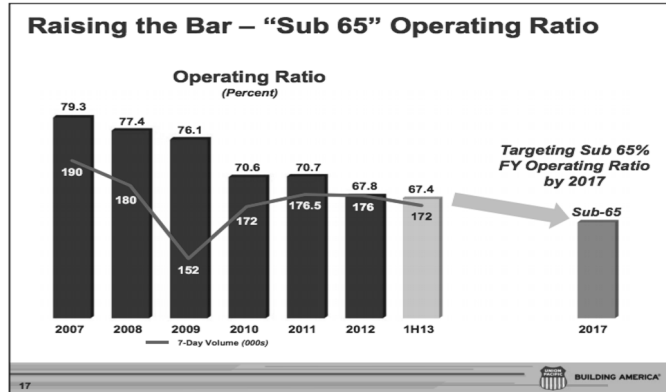
**Railroad Cost of Capital vs. Return on Investment
Since the Passage of the Staggers Act**



Source: Association of American Railroads

Appendix III

Union Pacific Analysis of Improvements to its Operating Ratio Since the Beginning of “Project Operating Ratio”



Source: Union Pacific Investor Presentation

Appendix IV

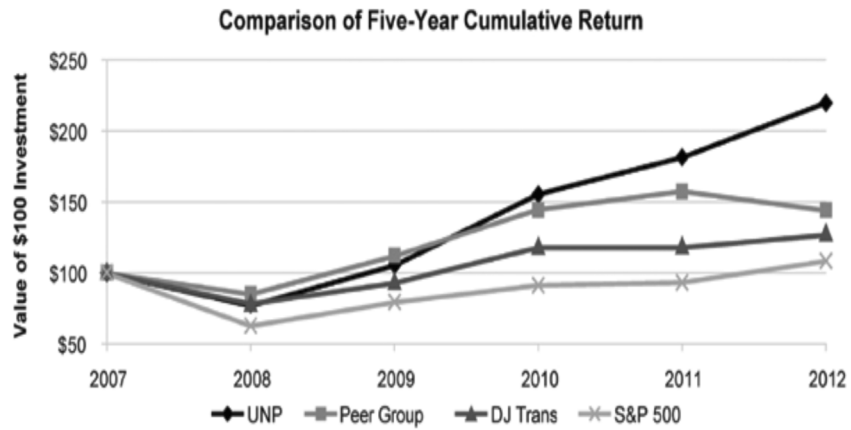
Norfolk Southern Shareholder Return
2006 – Q2 2011



Source: Norfolk Southern Investor Presentation

Appendix V

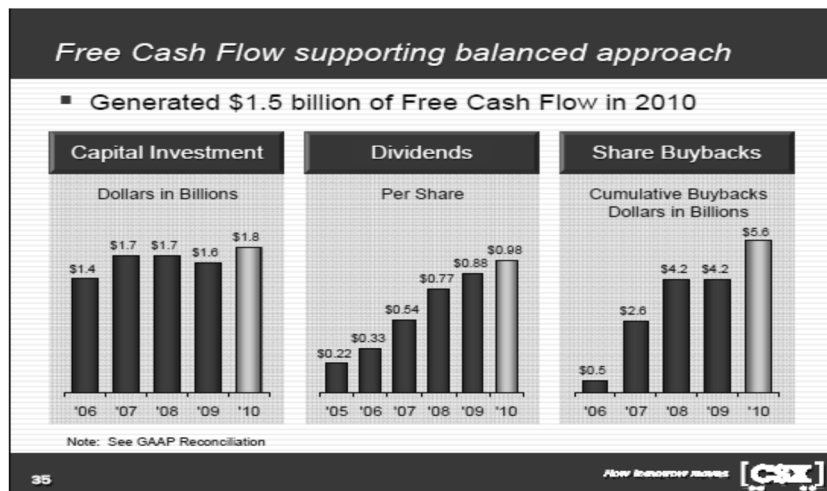
Union Pacific Five Year Shareholder Return 2007 – 2012



Source: Union Pacific Securities and Exchange Commission Filing

Appendix VI

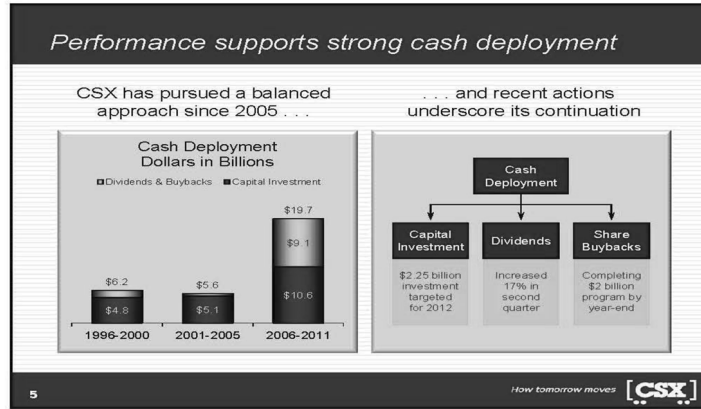
CSX Free Cash Flow 2006-2010



Source: CSX Investor Presentation

Appendix VII

CSX Cash Deployment 2006-2011 compared to 1996-2005

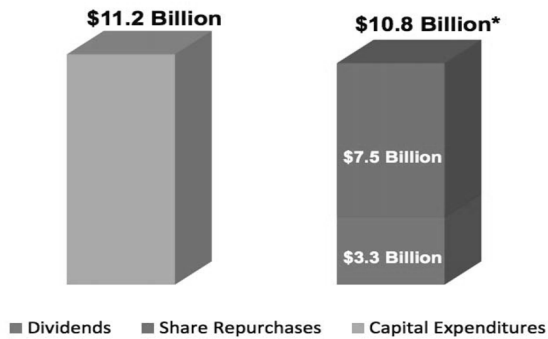


Source: CSX Investor Presentation

Appendix VIII

Norfolk Southern Balanced Cash Flow 2006-2012

Balanced Cash Flow Utilization 2006 through 2012

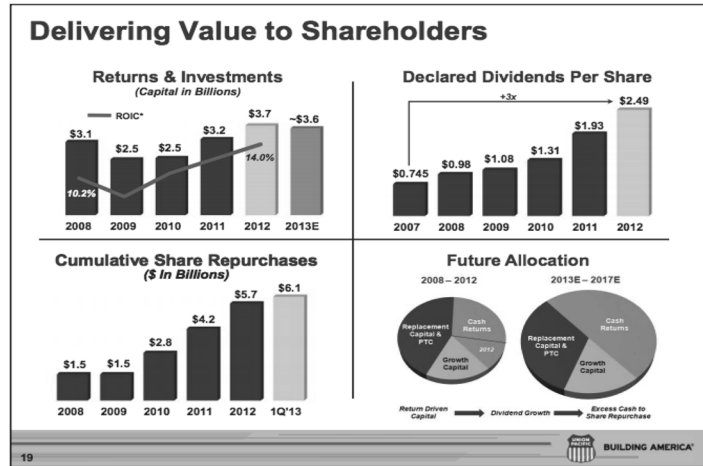


** See reconciliation of Total Shareholder Distributions to GAAP posted on our website, www.nscorp.com.*

Source: Norfolk Southern Investor Presentation

Appendix IX

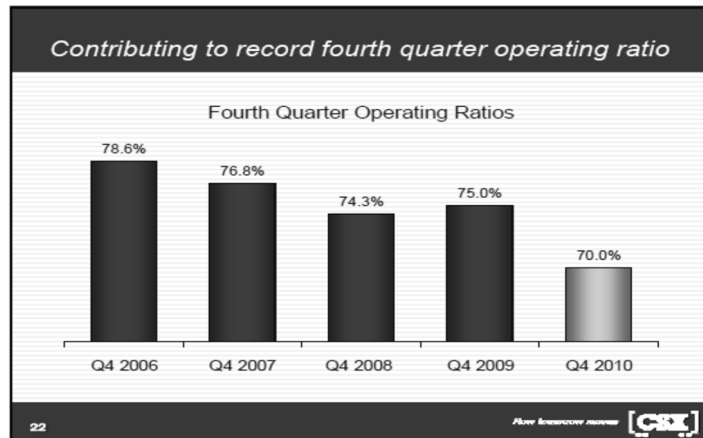
Union Pacific's Dividends and Share Repurchases 2008-2012



Source: Union Pacific Investor Presentation

Appendix X

CSX Falling Operating Ratio Fourth Quarter 2006 - 2010



Source: CSX Investor Presentation

Appendix XI

The CHAIRMAN. As I told you in our meeting, Ms. Miller, I think that the STB needs to stop worrying so much about the financial health of the railroads and focus more on the persistent complaints coming from the shipper community about poor service, bullying tactics, and lack of competition. I also think that the STB needs to do a better job of responding to its stakeholders in a timely way. And we discussed these issues.

Our next nominee is Chip Jaenichen—thank heavens for, you know, phonetic writing.

[Laughter.]

The CHAIRMAN. I mean, I don't know what I would have done with that.

[Laughter.]

The CHAIRMAN.—who has been nominated to lead the Maritime Administration within the Department of Transportation. Mr. Jaenichen would bring to this job the leadership experience he gained during a 3-decade-long career in the United States Navy.

The maritime industry is critical to the continued success of our country, whether it is expanding exports, the opening of the—or the reopening of the Panama Canal, the new Panama Canal, creating jobs, or managing goods movement, especially in the growing energy sector.

States around the country are looking to expand service, like many in my state of West Virginia, where we have been working to move more goods on Marine Highway 70 and add container-on-barge service.

If you are confirmed, Mr. Jaenichen, you will be tasked with maintaining the health of the industry, including the support of mariners, shipbuilding, shipping, and port operations. You also have a vital role to play in working with the military and the Department of Homeland Security to ensure our country's national security.

And I would also like to welcome Mr. Arun Kumar, who is the President's nominee to be Assistant Secretary for Global Markets and Director—this must be recently combined. This is a powerful group, in my mind—Director General of the U.S. and Foreign Commercial Service at the Department of Commerce.

I remember when Susan Schwab—did you know Susan? I remember when she was doing that job.

If he is confirmed, Mr. Kumar will lead the department's newly organized Global Markets Unit within the International Trade Administration. His job will be to promote exports by assisting American businesses access and penetrate foreign markets.

He would also lead SelectUSA, President Obama's new initiative to promote foreign direct investment. My state of West Virginia is a great example of the profoundly positive impacts that foreign investment can have on our local economies.

After decades of private-sector experience, Mr. Kumar retired in September of this year as a partner and member of the board of directors of KPMG. I don't know what that means, but it sounds like an enormous law firm.

Mr. KUMAR. It is actually an accounting firm.

The CHAIRMAN. Sorry about that—where he worked for nearly 20 years. He has executive experience, including as a CEO, at numerous companies before arriving at KPMG.

And that is my statement. We welcome you all.

And I turn now to my partner in this effort, Senator Thune.

**STATEMENT OF HON. JOHN THUNE,
U.S. SENATOR FROM SOUTH DAKOTA**

Senator THUNE. Thank you, Mr. Chairman. Thank you for holding the hearing today to consider the nominations of Debra Miller to be a Member of the Surface Transportation Board, of Arun Kumar to be Assistant Secretary of Commerce for Global Markets and Director General of the U.S. and Foreign Commercial Service—that is a long title.

The CHAIRMAN. It is. The U.S. and Foreign Commercial—it is impossible to say.

Senator THUNE.—and Paul Jaenichen to be Administrator of the Maritime Administration.

I want to thank each of our nominees for being here and for their willingness to serve the Nation.

As the Committee knows well, the Surface Transportation Board plays an important role as the independent Federal agency with regulatory authority over freight railroads. Among other things, the STB is charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers.

Ms. Miller has had a distinguished career in the transportation sector, including her service from 2003 to 2011 as Secretary of the Kansas Department of Transportation under both Governor Sebelius and Governor Brownback. In that capacity, Ms. Miller managed more than 3,000 employees and a \$1 billion budget. She was responsible for a state highway system spanning 10,000 miles, as well as overseeing shortline railroad grants and rail planning. That is something I can relate to, as a former state rail director.

I look forward to hearing her views on how the STB can help maintain a strong national rail network while also serving the interests of shippers, particularly small shippers, who often have difficulty bringing a case before the STB.

I am also interested in hearing about Ms. Miller's major rail initiatives during her time as Transportation Secretary for Kansas and how her experiences there will shape her approach to issues that are brought before the Surface Transportation Board.

Our nominee to be Assistant Secretary of Commerce for Global Markets and Director General of the U.S. and Foreign Commercial Service, Mr. Arun Kumar, has achieved success in the private sector and I look forward to hearing from Mr. Kumar about how he will measure success in terms of creating a favorable environment for U.S. export growth. I will also be asking Mr. Kumar what role he anticipates playing as Congress considers trade promotion authority.

After serving at the helm of the Maritime Administration as Acting Administrator since June of this year, I am pleased to see that Captain Paul Jaenichen has been nominated to lead this important agency. Captain Jaenichen has a distinguished 30-year career in the United States Navy as a submarine commander and brings a

wealth of maritime experience to bear in this position, should he be confirmed.

Mr. Chairman, while we must fulfill our obligation to carefully examine the qualifications of these nominees, I expect that we will work together to advance these nominations through the Committee and hopefully the Senate in a timely manner, as we have done with several other Commerce Committee nominees this year.

I do have to note, however, the irony of our holding this hearing on a day when the Senate has fundamentally changed the way it will consider such nominations. I think the dramatic rules change that we witnessed earlier today will have a lasting and damaging impact on the Senate and possibly even on the quality of nominees confirmed to executive and judicial positions because they will now require less bipartisan consensus to be confirmed.

Nonetheless, Mr. Chairman, I thank you for holding this hearing. I look forward to hearing the testimony from our witnesses. Thank you.

The CHAIRMAN. Well, I am all gloomy about your analysis of the Senate.

[Laughter.]

The CHAIRMAN. But I am going to overcome that and go right to Paul Jaenichen.

Please, sir.

**STATEMENT OF PAUL N. JAENICHEN, SR., NOMINEE TO BE
THE ADMINISTRATOR OF THE MARITIME ADMINISTRATION,
U.S. DEPARTMENT OF TRANSPORTATION**

Mr. JAENICHEN. Chairman Rockefeller, Ranking Member Thune, and members of the Committee, it is an honor for me to appear before you today as the President's nominee to serve as the Administrator of the Maritime Administration.

Before I begin, I would like to thank my wonderful wife, Paula, who is sitting behind me. She is here today. And I would like to express my gratitude for her support, both during my three decade military career and now as I look to continue in public service.

The CHAIRMAN. If you were down in a submarine for 30 years, you darn well better express your appreciation.

[Laughter.]

Mr. JAENICHEN. Yes, sir.

I would also like to acknowledge the support of my two children. My son, Nathan, is a captain in the United States Marine Corps, and my daughter, Rachael, is a high school teacher.

Although neither could attend today's hearing, the fact that every member of my immediate family, including Paula, who is a retired teacher, as well as my brother, Lee, who is here as well today—he retired from the Navy. And both of our parents served in the Army and retired there. All those folks either served in the defense of the Nation or in public service to others, and that is certainly one of the proudest accomplishments that I can credit.

I have had the privilege of serving the U.S. Department of Transportation in the Maritime Administration since July of 2012, first as the Deputy Administrator and since June of this year as the Acting Administrator.

Over the past 16 months, I have developed a firm understanding of the challenges facing the U.S. marine transportation system and the maritime industry, but I have also seen its great potential. I have seen firsthand the dedication that the Maritime Administration employees, the Department of Transportation leadership, and key maritime stakeholders, both public and private, have shown in supporting the industry.

During my time at the Maritime Administration, I have established a positive working relationship with stakeholders across the industry. This experience has provided me the insight and the background needed to lead the Maritime Administration as it works to fulfill its mission to foster, promote, and develop the U.S. Merchant Marine.

Prior to coming to the Maritime Administration, I served for 30 years in the U.S. Navy as a nuclear-trained submarine officer. And that career was about two things: managing disparate interests to achieve a common goal and working to meet at-sea operational commitments to secure our national defense. Each of those tasks instilled in me that I must bring my full focus and full attention to detail to make sure, whatever I do, I do it correctly. Those leadership qualities are needed at this time as we meet the issues facing the U.S. maritime industry.

If confirmed, I look forward to working with this committee in support of the Maritime Administration programs, as well as collaborating on new ideas to improve and grow the industry to ensure its viability in the future.

And, as such, I plan to focus on the following areas if confirmed:

First, I will continue to work with the industry stakeholders and Congress to revitalize the U.S. Merchant Marine.

The U.S.-flag fleet not only provides safe, reliable, and environmentally responsible transportation of cargo to support economic activity both domestically and internationally, it also supports the Department of Defense sustainment sealift capacity requirements in times of armed conflict and national emergency.

U.S.-flag vessels engaged in international trade has steadily declined since World War II and currently carries roughly 2 percent of our Nation's overseas cargo. We need a strategy that will result in a significantly higher portion of the U.S. overseas trade being carried on U.S.-flag vessels. This increased trade for U.S.-flag vessels would produce greater demand for additional ships and, more importantly, U.S. mariners to crew them.

Support for the Merchant Marine Act of 1920, more commonly referred to as the Jones Act, is critical and is one of the strongest elements of U.S. maritime policy, one that encourages investment in privately owned U.S. companies to operate shipyards and vessels that employ trained crews and maritime industry workers.

Second, policies must be supported that will protect U.S. mariner jobs. Sustaining a pool of qualified U.S. mariners is critical to meeting our national security needs. Programs and policies already in place need to be supported, as well as training at the U.S. Merchant Marine Academy, the six state maritime academies, and our maritime union training centers.

All are key to ensuring this pool of mariners is ready and available when needed to support military sealift requirements. Without

these programs, we will not have the skilled personnel we need to crew government-owned ships in time of armed conflict or national emergency and commercial ships to provide sustainment sealift capacity for the Department of Defense.

Since without ships we have no requirement for mariners, I will support efforts to increase domestic shipbuilding. The Maritime Administration has seen increased applications in recent months for vessel loan guarantees, otherwise known as Title XI, reflecting a willingness to invest in this critical industry. If confirmed, I plan to focus on improving the administration of MARAD's Title XI ship financing program in order to support the increase in demand as efficiently and as effectively as possible.

Finally, I will continue to support MARAD's programs to improve port infrastructure, increase marine highway services, and address maritime environmental challenges. Each of these will make our ports more efficient, increase cargo capacity, spur economic development, and promote job growth.

The U.S. maritime industry plays a critical role in meeting the Nation's economic and security needs. If confirmed and given the honor to serve as the next maritime administrator, I plan to capitalize on opportunities to revitalize the U.S. Merchant Marine, and I look forward to working with this committee to address these important marine transportation issues and restore our Nation's status as one of the premier maritime nations in the world.

Mr. Chairman, thank you for your scheduling of this hearing. And I will be happy to respond to any questions you or the Committee might have.

[The prepared statement and biographical information of Mr. Jaenichen follow:]

PREPARED STATEMENT OF PAUL N. JAENICHEN, ACTING MARITIME ADMINISTRATOR,
MARITIME ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION

Chairman Rockefeller, Ranking Member Thune and members of the Committee, it is an honor for me to appear before you today as the President's nominee to serve as Administrator of the Maritime Administration (MARAD).

Before I begin, I would like to thank my wonderful wife, Paula, who is here today, and express my gratitude for her support both during my three decade military career and now as I look to continue in public service. I would also like to acknowledge the support of my two children, Nathan, who is a Captain in the U.S. Marine Corps assigned to Marine Light Attack Helicopter Squadron 469 at Camp Pendleton, CA and Rachael, who is a teacher at McCracken County High School in Paducah, KY. Although neither could attend today's hearing, the fact that every member of my immediate family including Paula, who is a retired school teacher, all chose careers in service to others is one of my proudest accomplishments.

I have had the privilege of serving the U.S. Department of Transportation's Maritime Administration since July 2012; first as Deputy Administrator and, since June of this year, as Acting Administrator. Over the past 15 months, I have developed a firm understanding of the challenges facing the U.S. Marine Transportation System and the maritime industry, but I have also seen its great potential. I have seen firsthand the dedication MARAD employees, Department of Transportation (DOT) leadership and key maritime stakeholders, both public and private, have shown in supporting the industry. During my time at MARAD, I have established positive working relationships with stakeholder participants across the industry. This experience has provided the insight and background needed to lead MARAD as it works to fulfill its mission to foster, promote and develop the U.S. Merchant Marine.

Prior to coming to MARAD I served for 30 years in the U.S. Navy as a submarine officer. During my career, I was assigned to numerous leadership positions including Officer in Charge of a Moored Training Ship to educate and qualify officer and enlisted nuclear operators, Commanding Officer of a nuclear Fast Attack Submarine

and Commander of a Submarine Squadron of six Fast Attack Submarines. Additionally, as Chief of the North Atlantic Treaty Organization (NATO) Policy Division for the Joint Staff, I was responsible for military-to-military engagement on security cooperation and involvement in coalition operations with all NATO member nations.

In short, my career has been about two key things: managing disparate interests to achieve a common goal and working to meet naval operational commitments to secure our national defense. Each instilled in me that whatever the task, you bring your full focus and make sure you do it correctly. These leadership qualities are needed to meet the issues facing the U.S. maritime industry. If confirmed, I look forward to working with the members of this Committee to continue support for MARAD programs, as well as collaborating on new ideas to improve and grow the industry to ensure its viability into the future.

If confirmed, I plan to focus on the following areas:

First, I plan to continue to work with industry stakeholders and Congress to identify ways to revitalize the U.S. Merchant Marine. The U.S.-flag fleet not only provides safe, reliable and environmentally responsible transport of cargo to support economic activity, both domestically and internationally, but also supports Department of Defense (DOD) sustainment sealift capacity requirements in times of armed conflict or national emergencies.

The U.S. Merchant Marine engaged in international trade has steadily declined since World War II and currently carries less than 2 percent of our Nation's overseas trade. We need a strategy that will result in a significantly higher portion of U.S. overseas trade being carried on U.S. flag vessels. This increased trade for U.S. flag vessels would provide greater demand for additional ships and more U.S. mariners to crew them.

Support for the Jones Act is also critical to maintaining reliable coastwise trade and to ensuring the existence of a domestic maritime industry of shipbuilders, vessels and merchant mariners. The Jones Act is one of the strongest elements of U.S. maritime policy, encouraging investment in privately owned U.S. companies to operate shipyards and vessels that employ well-trained crews and maritime industry workers.

Second, policies must be supported that will protect U.S. mariner jobs. Sustaining a pool of qualified U.S. mariners is critical to meeting the Nation's security needs. Programs and policies such as the National Defense Reserve Fleet (NDRF) and its component Ready Reserve Force (RRF), the Maritime Security Program (MSP), cargo preference, the Jones Act and training at the U.S. Merchant Marine Academy and State Maritime Academies are all key to ensuring this pool of mariners is ready and available when needed to support military sealift requirements.

Without these programs, we will not have the skilled personnel needed to crew Government-owned ships in time of armed conflict or national emergency and commercial ships to provide sustainment sealift capacity for the DOD.

Third, I will continue to support MARAD's programs to improve port infrastructure, increase Marine Highway services and address maritime environmental challenges. Each of these will make our ports more efficient, increase cargo capacity, spur economic development and promote job growth.

Finally, I will support efforts to increase domestic shipbuilding. Earlier this year, I was pleased to share the findings of a MARAD report on the economic impact of the U.S. shipbuilding and repair industry which showed that although most shipbuilders are located in coastal areas, the direct and indirect economic benefits reach all 50 states. On a nationwide basis, the industry supported 402,010 jobs, \$23.9 billion of labor income and \$36 billion in Gross Domestic Product. In addition, MARAD has seen increased applications in recent months for Maritime Loan Guarantees (Title XI) and Small Shipyard Grants, reflecting a willingness to invest in this critical industry. If confirmed, I plan to focus on improving MARAD's administration of its Title XI ship financing program in order to support this increase in demand as efficiently and effectively as possible.

The U.S. maritime industry plays a critical role in meeting the Nation's economic and security needs. As I stated earlier, while there are many challenges facing the U.S. maritime industry, there are also many opportunities. If confirmed and given the honor to serve as the next Maritime Administrator, I hope to capitalize on those opportunities and I look forward to working with this Committee to address these important issues and restore our Nation's status as one of the premier maritime nations in the world.

Mr. Chairman, thank you for scheduling this hearing. I will be happy to respond to any questions you and the other members have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Paul Nathan "Chip" Jaenichen, Sr.

2. Position to which nominated: Maritime Administrator, United States Department of Transportation.

3. Date of Nomination: September 11, 2013.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: Washington, D.C.

5. Date and Place of Birth : 9/21/1960; Muenchweiler, Germany (U.S. Citizen. Father was in the U.S. Army stationed in Germany).

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Paula Auclair Jaenichen (wife); Small business owner, Vine Grove, KY. Children: Paul Nathan Jaenichen, Jr. (son), Age 30; Rachael Lynne Jaenichen (daughter), Age 28.

7. List all college and graduate degrees. Provide year and school attended.

United States Naval Academy (1978–1982), B.S. Ocean Engineering
Old Dominion University (2003–2011), M.S. Engineering Management

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated. *italics denote management-level positions

Acting Maritime Administrator (June 2013 to present)

Deputy Maritime Administrator (July 2012 to present)

Executive Officer, USS KENTUCKY (SSBN 737) BLUE (September 1994–June 1996)

Officer-in-Charge, Moored Training Ship 635 (September 1996–December 1998)

Commanding Officer, USS ALBANY (SSN 753) (September 1999–June 2002)

Executive Assistant to Director, Submarine Warfare Division (July 2004–March 2005)

Chief, Western/Eastern Europe and NATO Divisions (March 2005–March 2007)

Commander, Submarine Squadron ELEVEN (April 2007–September 2008)

Director, Submarine/Nuclear Officer Distribution (September 2008–October 2010)

Deputy Chief of Legislative Affairs, Department of the Navy (October 2010–April 2012)

Senior Member, Atlantic Fleet Nuclear Propulsion Examination Board (June 2002–July 2004)

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years: None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years: None.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member, Army Navy Country Club (May 2013 to present)

Member, Aircraft Owners and Pilots Association (Feb 2001 to present)

Member, USS ALBANY Association (September 1999 to present)

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt: No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period: None.

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

Service Medals

Defense Superior Service Medal (1 Award—March 2007)

Legion of Merit Medal (4 Awards—April 2012, October 2010, September 2008 and July 2004)

Meritorious Service Medal (3 Awards—March 2005, June 2002 and December 1998)

Navy-Marine Corps Commendation Medal (5 Awards—June 1996, July 1994, August 1993, January 1991 and July 1990)

Navy-Marine Corps Achievement Medal (2 Awards—July 1985 and October 1988)

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

I have done my best to identify all books, articles, columns, or other publications and relevant speeches, including a thorough review of my personal files and searches of publicly available electronic databases. Despite my searches, there may be other materials that I have been unable to identify, find or remember. I have located the following:

Speeches

Ground Breaking for TIGER Grant Project and Economic Development Roundtable with Governor Scott in Port Manatee, FL (August 17, 2013)

“President Eisenhower Atoms for Peace Visit of the Nuclear Ship SAVANNAH”; at the 50th Anniversary Commemoration in Savannah, GA. (August 22, 2012)

“Maritime Administration Update”; at the National Waterways Conference in Washington, D.C. (October 17, 2012)

“Maritime Industry Advocacy”; at the Propeller Club of the United States, DC Chapter in Washington, D.C. (October 31, 2012)

Texas Maritime Graduation at Texas A&M University in Galveston, Galveston, TX (December 16, 2012)

Motor Tanker FLORIDA Christening at the Aker Philadelphia Shipyard in Philadelphia, PA (January 30, 2013)

“Academy Update”; at U.S. Merchant Marine Academy Alumni, DC Chapter in Washington, D.C. (February 7, 2013)

“Jones Act and Cargo Preference Update”; at the Exporters Competitive Maritime Council Meeting in Washington, D.C. (April 4, 2013)

“Maritime Administration Update”; at the National Defense Transportation Association, Transportation Advisory Board Meeting in Ponte Vedra Beach, FL (April 16, 2013)

Memorial Day, National World War II Memorial in Washington, D.C. (May 27, 2013)

“Support of the US. Merchant Marine”; at the United Seamen’s Service (USS) and the American Merchant Marine Library Association (AMMLA) in New York, NY (June 7, 2013)

U.S. Merchant Marine Academy Commencement in Kings Point, NY (June 17, 2013)

“Announcement of Maritime Administration Strong Ports Initiative”; at the Future Ports Annual Conference in Long Beach, CA (June 19, 2013)

“Maritime Administration Sea Services Update”; at the Navy League of the United States Annual Convention in Long Beach, CA (June 21, 2013)

“Maritime and Port Infrastructure Investment”; at the Rhode Island Port Summit in Providence, RI (June 24, 2013)

Small Shipyard Grant Announcement in New Albany, IN (July 24, 2013)

“Maritime Administration Update and Strategic Vision”; at the American Waterway Operators Executive Committee Meeting, in Washington, D.C. (July 31, 2013)

“American Marine Highways and Strong Ports Update”; at the American Association of State Highway and Transportation Officials (AASHTO)/Federal Highways Administration Freight Transportation Partnership Meeting in Washington, D.C. (August 1, 2013)

“Maritime Industry Update and Academy Status”; at the U.S. Merchant Marine Academy Alumni, Chesapeake Chapter Meeting, in Baltimore, MD (August 11, 2013)

“Marine Transportation System Update”; at the Inland Waterways User Board Meeting, Louisville, KY (August 13, 2013)

“American Marine Highways Update”; at the 2013 Barge and Rail Symposium, Louisville, KY (August 14, 2013)

“Maritime Administration Update and Strategic Vision”; American Waterway Operators Southern, Midwest and Ohio Valley Regions Meeting in Louisville, KY (August 15, 2013)

“Marine Transportation System Infrastructure Investment”; at the Inland Rivers, Ports and Terminal Operators Webinar, in Granite City, IL (August 16, 2013)
TIGER Grant Announcement at Port of Duluth in Duluth, MN (September 5, 2013)

“Maritime Administration Update and Strategic Vision”; at the Maritime Trades Department AFL–CIO Convention in Los Angeles, CA (September 6, 2013)

“Marine Highway Crossing Designation Announcement”; at the Northern Virginia Regional Council Ferry Stakeholders Meeting in Fairfax, VA (September 11, 2013)

“Maritime Administration Update and Strategic Vision”; at the American Maritime Partnership Annual Meeting, in Washington, D.C. (September 17, 2013)

“Maritime Industry and Jones Act Update”; at the TradeWinds Jones Act Shipping Forum in New York, NY (September 18, 2013)

“Impact of Panama Canal Expansion and Roll-out of Maritime Administration Panama Canal Phase 1 Study”; at the Eno Center for Transportation Forum on Panama Canal Expansion in Washington, D.C. (September 19, 2013)

“Commercial Maritime Industry Update”; at the Joint Military Operations Curriculum at the Naval War College in Newport, RI (September 23, 2013)

“Commercial Maritime Industry Update”; Joint Military Operations Curriculum at the Naval War College in Newport, RI (September 23, 2013)

“Inland Rivers and Waterways—America’s Marine Highways”—2013 American Society for Transportation and Logistics Annual Conference held in conjunction with the Sino-American Logistics Conference and Yangtze-Mississippi Rivers Forum in Chicago, IL (October 28, 2013)

Christening of the Green Trade Corridor—Container on Barge Marine Highway Service (M–580) at the Port of Stockton, CA (November 1, 2013)

“Maritime Industry Update”; Ship Operations Cooperative Program Fall Conference in Baltimore, MD (November 6, 2013)

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

United States House of Representative Committee on Transportation & Infrastructure’s Subcommittee on Coast Guard and Maritime Transportation’s Legislative Hearing on *“Maritime Transportation Regulations : Impacts on Safety, Security, Jobs and the Environment, Part J”* (September 10, 2013)

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

The combination of my nautical background gained through a career in the U.S. Navy including having command at sea coupled with 15 months experience as Acting Administrator and Deputy Administrator in the Maritime Administration. As a

result, I have a firm understanding of the challenges and issues facing the U.S. marine transportation system. Additionally, I am acquainted with and have developed a professional relationship with Maritime Administration employees, DOT leadership and with most of the key maritime industry stakeholders, including labor, U.S. Flag Fleet corporate leadership and numerous major port directors.

The challenges facing the U.S. maritime industry, specifically the U.S. Flag companies operating in foreign trade are especially acute. Strong, innovative leadership is needed to resolve these challenges, and I desire to part of the solution, if confirmed as Maritime Administrator.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

If confirmed, I would continue to supervise a staff of over 800 government employees and contractors responsible for waterborne transportation and port infrastructure as well as being an advocate for the U.S. maritime industry, the Jones Act and providing oversight for U.S. cargo preferences laws. To accomplish these responsibilities, I would issue strategic guidance and engage the Maritime Administration's senior management team to develop priorities with plans of action and milestones for achievement. Since I am currently working in the Maritime Administration, I am familiar with accounting controls and budget authorities. If confirmed, I would provide continued oversight and periodic reviews of the Budget and Acquisition offices.

I served in the U.S. Navy as a Submarine Officer for 30 years and was selected to serve in a progressive series of leadership assignments including Department Head, Executive Officer and Commanding Officer of a nuclear powered submarine and Major Command of a squadron of submarines. I was also handpicked to serve in several other specialized leadership assignments including Officer-in-Charge of a Moored Training Ship and Director, Submarine/Nuclear Officer Distribution. My operational leadership assignments included direct supervision of both small and large groups ranging from as few as six enlisted personnel to as many as 400 officers and enlisted personnel. Additionally, I have experience managing government civilian employees and contractors from GS-7 to Senior Executive Service.

20. What do you believe to be the top three challenges facing the department/agency, and why?

Development of a National Maritime Strategy—The size of the U.S. Merchant Marine including the number of U.S.-flagged deep ocean vessels involved in international trade has declined over 80 percent in the last 20 years. It is a national security imperative that our Nation be able to move our military, their equipment and supplies when required. We are at a point in which that might not be possible. The Maritime Administration (MARAD) will work with maritime industry stakeholders to identify new markets and promote policy and regulatory approaches that boost the competitiveness of the U.S.-flagged vessel operators. MARAD is committed to retaining a strong and viable U.S.-flagged deep ocean fleet operating in international trade.

Issue Cargo Preference Enforcement Rules as directed by the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009—Government impelled cargo volumes that fall under cargo preference regulations have declined significantly, that coupled with a lack of monitoring, compliance and enforcement is challenging the U.S. Maritime Industry. MARAD will work with the Office of the Secretary of Transportation and the Office of Management and Budget to issue rules to ensure that Cargo Preference laws are vigorously enforced to support the existing U.S.-flagged fleet.

Implement changes to ensure the Title XI Federal ship Financing Program is relevant and supports current U.S. Maritime Industry requirements and U.S. Shipbuilding—There is an extensive recapitalization effort to replace aging Jones Act Fleet vessels and the need to build additional Jones Act tank vessel capacity to support domestic production and movement of petroleum products. Additionally, with advancement in technology and the availability of alternative fuels, U.S. flag carriers are building the world's first container ships that will use liquefied natural gas (LNG) as a marine propulsion fuel. MARAD will implement changes to the Title XI program to be responsive and able to process applications in a timely manner to support this significant increase in demand.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

I have contributed to retirement accounts through the Federal Thrift Savings Plan both while on active duty in the U.S. Navy and during my employment with the Department of Transportation. Additionally, my spouse and I have Roth Individual Retirement Accounts (IRAs) through American Funds. As a result of retiring from the U.S. Navy after a 30-year career, I began receiving a retirement annuity paid on a monthly basis effective 1 June 2012.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with Department's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with Department's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

While serving as Deputy Chief of Legislative Affairs for the Department of the Navy, I participated in drafting testimony and assisted in hearing preparations for the Secretary of the Navy, The Honorable Ray Mabus, and the Chief of Naval Operations (CNO), Admiral Gary Roughead, for hearings on the U.S. Navy's Fiscal Year 2012 and 2013 Budgets. Additionally, I prepared and accompanied the CNO on over 30 office calls with Senators to discuss the United Nations Convention on Law of the Sea (UNCLOS) Treaty.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Transportation's Designated Agency Ethics Official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with Department's Designated Agency Ethics Official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain.

In May 2011, I was named as a responsible management official in my official capacity as the Deputy Chief of Legislative Affairs at the Department of the Navy in an EEO complaint filed by a subordinate employee. I was named in that complaint because I was in the Complainant's official chain of command. There was no finding of any wrongdoing.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain. No.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

In May 2011, I was named as a responsible management official in my official capacity as the Deputy Chief of Legislative Affairs at the Department of the Navy in an EEO complaint filed by a subordinate employee. I was named in that complaint because I was in the Complainant's official chain of command. There was no finding of any wrongdoing.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF PAUL NATHAN JAENICHEN, SR.

Summary

- *Proven Leader*—Selectively assigned to four U.S. Navy command/director assignments.
- *Maritime Professional*—Presidential Appointee to the U.S. Maritime Administration. Detailed understanding of the industry including U.S.-flagged vessel operations, maritime labor, shipbuilding and port facilities.
- *Continuous Improvement/Change Agent*—Significant experience identifying deficiencies, assessing root causes and implementing corrective action in a resource limited environment.
- *Technical Expert*—U.S. Navy Certified Nuclear Engineer and Nuclear Propulsion Plant Inspection Team Leader.
- *Training Specialist*—Officer in Charge of a Navy Nuclear Propulsion Program Training Ship. Supervised a training staff of over 400 military and civilians responsible for operational training and qualification of over 1,200 officer and enlisted student operators annually.
- *Human Resources Specialist*—Extensive experience and detailed knowledge of accession, retention and career progression of nuclear trained submarine and surface warfare officers. Directly responsible for assignment of over 5,200 nuclear trained officers and manning for 105 nuclear powered warships and three training commands. Developed and implemented the plan to integrate women into the Submarine Force.

Experience

United State Department of Transportation (DOT), Maritime Administration, Washington, D.C.

Acting Maritime Administrator—June 2013 to present

Deputy Maritime Administrator—July 2012–May 2013

- Political Appointment to a Senior Executive Service position with oversight for the Nation's marine transportation system.
- Supervised a staff of over 800 government civilians and contractors responsible for waterborne transportation and seamless integration with all other modes of the transportation system. The Maritime Administration's programs promote U.S.-flagged ships and shipping, maritime labor, movement of government im-

pelled cargo, shipbuilding, port operations, vessel operations, national security, environment and shipboard safety.

- Manages an annual budget of over \$600M including \$300M for operation and maintenance of a fleet of 46 U.S. Government reserve sealift vessels strategically located at ports throughout the U.S to support Department of Defense transportation of equipment, material and supplies for wartime operations and national emergencies. These vessels can be activated to support humanitarian or contingency operations such as housing relief workers during the recovery from Hurricane Sandy. The agency is also responsible for three government maintained anchorages supporting over 70 National Defense Reserve Fleet vessels.
- Provided executive leadership in the planning, direction and coordination of all operational and administrative activities related to support of the U.S. Merchant Marine including oversight for the United States Merchant Marine Academy in Kings Point, NY and six state maritime academies, each with an assigned training vessel.
- Oversight for the U.S. Government's \$2B shipbuilding loan guarantee program.

United States Department of the Navy, Washington, D.C.
Deputy Chief of Legislative Affairs—October 2010–April 2012

- Supervised a staff of 34 military and 17 Civilians responsible for engagement plans and strategy to develop and coordinate the relationship between senior Navy leadership and members of Congress and Committee Staff for all matters affecting the Department of the Navy).
- Congressional Liaison for Navy Programs and National Defense Authorization legislation.
- Provided executive leadership in the planning, direction and coordination of all operational and administrative activities related to support of the Navy's Programs and Congressional oversight, including the formulation of plans, policies, procedures and standards to affect information exchange between the Department of the Navy, Department of Defense and the U.S. Congress.
- Personally prepared the Secretary of the Navy, Chief of Naval Operations and other senior Navy military and civilian leaders for testimony before the Senate and House Armed Services Committees.
- Coordinated the flow of information to Congress including legislative proposals, responses to congressional correspondence and other matters involving Navy policy.
- Provided final authority and oversight of a \$3M Budget to support Congressional travel escorted by the Navy.
- Awarded Legion of Merit Medal (4th Award) for distinguished service.

United States Navy Personnel Command, Millington, TN
Director, Submarine/Nuclear Officer Distribution (PERS-42)—September 2008–October 2010

- Responsible for managing job assignments for over 5,200 nuclear trained officers to meet manpower requirements for 94 nuclear powered submarine crews, 11 aircraft carriers and three nuclear propulsion training commands. Managed a \$25M Budget to execute over 1,700 personnel moves worldwide each year. Implemented financial and operational controls to meet reductions in funding resources while maintaining the same level of support to control individual officer career progression and prevent shortfalls in Fleet manning of the Navy's nuclear powered warships.
- Additional duties as Navy Nuclear Propulsion Program Manager (N 133) on the Chief of Naval Operations Staff (OPNAV), Washington, D.C. Responsible for career management of over 14,400 nuclear trained enlisted personnel. Managed a \$235M Budget for special, incentive and retention pays. Developed the vision and long-term requirements to smooth the variation in retention trends through use of these special and incentive pays. Using an innovative statistical approach, developed the nuclear officer accession and enlisted recruiting plans executed by Navy Recruiting Command which dramatically reduced fluctuations in monthly and annual goals.
- Experience in mentoring and developing leaders to succeed in the today's changing operational environment.

- Ranked No. 1 of 8 Division Directors by Assistant Commander, Navy Personnel Command (1-Star Navy Flag Officer)
- Awarded Legion of Merit Medal (3rd Award) for distinguished service.

Submarine Squadron Eleven, San Diego, CA
Commander—April 2007–September 2008

- Responsible for operation, maintenance, training and certification of five nuclear powered fast attack submarines (SSNs), a floating Drydock and three open ocean vessels used for underway training and exercise torpedo recovery. Senior officer responsible for providing vision, leadership, management and direction for all Submarine Squadron activities.
- Managed \$8B in Navy capital assets including ships, small craft and facilities, 1,100 military and civilian personnel and an \$11M Budget. Squadron staff included operations and maintenance experts, public relations, medical facilities and staff, a legal team and a logistics and shipping department handling over \$10M in provisions and repair parts inventory. Developed the long-term vision to meet maintenance and operational requirements to ensure prudent use of available resources.
- Experience leading a large a complex organization to develop and maintain the U.S. Submarine force's operating proficiency, tactical superiority and undersea dominance in every theater, open ocean and in the littorals.
- Navy spokesman with California state, county and city officials as Area Commander for Radiological Emergencies. Duties included oversight of a \$3M Emergency Control Center and supporting equipment, facilities and infrastructure.
- Experience in training, mentoring and developing leaders to succeed in today's changing operational and tactical environment.
- Ranked No. 1 of 5 Commodores by Commander, Submarine Force U.S. Pacific Fleet (2-Star Navy Flag Officer).
- Awarded Legion of Merit Medal (2nd Award) for distinguished service.

Western/Eastern Europe and North Atlantic Treaty Organization (NATO) Strategic Plans and Policy (J-5), Joint Staff, Washington, D.C.
Division Chief—January 2005–March 2007

- Supervised 12 military and civilian personnel in the development and implementation of defense security cooperation plans and theater engagement with the military organizations of all 26 NATO nations including the integration of U.S. Government interagency activities.
- Coordinated policy and coalition partner participation in NATO missions in Afghanistan and Iraq.
- Principal member of combined Department of State and Department of Defense negotiating team that planned and executed the closure of Naval Air Station Keflavik in Iceland which resulted in an annual budget savings of \$200M.
- Significant understanding and experience working with the Federal Government and interagency policy and processes as well as the underlying principles and structure of both the U.S. and foreign governments.
- Award Defense Superior Service Medal for distinguished service.

United States Navy, Naval Operations (OPNAV), Washington, D.C.
Executive Assistant to the Director, Submarine Warfare Division (N87)—June 2004–January 2005

- Supervised a staff of 35 military and civilian personnel coordinating overall policy for Submarine Force planning, platform integration and budget requirements.
- Provided executive support and advice to the Director (2-Star Navy Flag Officer). Coordinated activities for the staff including liaison with outside organizations and engagement with senior Navy military and civilian leaders.
- Experience leading a large and complex organization to develop and maintain the U.S. Navy's undersea programs including nuclear powered submarines, sensors and weapons.
- Experience in mentoring and developing leaders to succeed in today's changing military and working environments.
- Awarded Meritorious Service Medal (3rd Award) for distinguished service.

U.S. Fleet Forces Command, Norfolk, VA

Senior Member, Atlantic Fleet Nuclear Propulsion Examination Board (NPEB)—July 2002–June 2004

- Handpicked for assignment as Chief Inspector by the Director, Naval Nuclear Propulsion (4-Star Navy Flag Officer).
- Conducted complex, technical operation and administrative inspections of all operating nuclear powered submarines, aircraft carriers and land-based training facilities on the East Coast (over 45 inspections). Ensured the highest standard of excellence, best practices and operational proficiency was gained and maintained on all U.S. Navy nuclear powered vessels.
- Conducted time-compressed assessments (less than one week) to determine compliance with written technical guidance, maintenance standards and knowledge requirements to produce a comprehensive written report that identified deficiencies and root causes to support improving the organization's performance.
- Profound impact on the Navy's ability to educate and train highly qualified nuclear operators to man and operate the Fleet's nuclear powered vessels.
- Awarded Legion of Merit Medal (1st Award) for distinguished service.

USS ALBANY (SSN 753), Norfolk, VA

Commanding Officer—September 1999–July 2002

- Responsible for operation, logistics and maintenance of \$1.8B warship including managing a \$1.2M annual budget. Achieved significant improvement in the ship's operational performance that resulted in numerous unit awards. Senior officer responsible for providing vision, leadership, management and direction for all nuclear-powered submarine activities including both import and at sea operations.
- Supervised training, certification and professional development of a crew of 15 officers and over 130 enlisted personnel. Ensured a strong and productive academic and practical training program that delivered well qualified operators to stand watch and maintain a nuclear-powered submarine. Elevated shipboard morale directly resulting in retention that was recognized by the Fleet Honor Roll for having greater than 70 percent retention for seven consecutive quarters.
- Forward deployed to the North Atlantic and Mediterranean Ocean to conduct missions of vital importance to the national security of the United States.
- Planned and executed a one-year \$125M depot modernization period (DMP) shipyard maintenance availability. Maintained strong fiscal and operational controls to ensure prudent use of resources.
- Awarded Meritorious Service Medal (2nd Award) for distinguished service.

Moored Training Ship One (MTS 635), Nuclear Power Training Unit, Charleston, SC

Officer-in Charge—September 1996–December 1998

- Supervised a training staff (faculty) of over 400 military and civilian personnel responsible for executing a rigorous around the clock (24 hours/day) six-month technical curriculum to successfully graduate over 1,200 officers and enlisted mechanics, electricians and reactor operators annually for their initial sea assignment aboard one of the Navy's 130 nuclear powered warships.
- Senior officer responsible for providing vision, leadership, management and direction for all Moored Training Ship activities.
- Directed initial "hands on" technical training and qualification of Navy nuclear propulsion program operators using an operating nuclear propulsion plant training platform. Ensured a strong, productive academic and practical training program that delivered well qualified graduates to the U.S. Navy.
- Directly responsible for providing a safe, effective academic and practical training environment that addressed both the needs of the students and the assigned faculty.
- Personal oversight for the development and implementation of scholastic standards to encourage the intellectual, professional growth and physical well-being of assigned student operators.
- Planned and executed the first ever out-of-area extended maintenance availability for a U.S. Navy nuclear prototype training unit. The \$110M availability required two 600 mile open ocean tows to support a 9-month dry-docking period. Demonstrated strong fiscal responsibility and implemented stringent operational controls to complete the availability on-time and under budget.

- Provided the highest standard for education, excellence, best practices and learning in a shipboard training environment.
- Experience in training and developing leaders to succeed in today's changing operational environment.
- Awarded Meritorious Service Medal (1st Award) for exceptionally distinguished service.

Education

Old Dominion University, Norfolk, VA
Master of Science, Engineering Management—December 2011

United States Naval Academy, Annapolis, MD
Bachelor of Science, Ocean Engineering (Hybrid Degree for Mechanical and Civil Engineering)—May 1982

Other

United States Patent, Department of the Navy
Wave Energy Conversion, 1989

Security Clearance Level
Top Secret (SCI/SSB), Expires February 2014

The CHAIRMAN. Thank you, sir, very much.
And now Ms. Debra Miller, to be a Member of the Surface Transportation Board.
Welcome.

**STATEMENT OF DEBRA MILLER, NOMINEE FOR
COMMISSIONER, SURFACE TRANSPORTATION BOARD**

Ms. MILLER. Thank you. Thank you, Chairman Rockefeller, Ranking Member Thune, and members of the Committee, for the opportunity to appear before you today. I am very honored to be here as the President's nominee for Commissioner for the Surface Transportation Board.

Before I begin my remarks, I would also like to thank my family members and friends who are here today. My husband, Jim McLean, flew in just this morning. And our good friends, David and Lynn Barclay and Bob Day, have come in, as well.

The CHAIRMAN. Where is your husband? He needs to raise his hand.

OK. You married well, sir.

[Laughter.]

Ms. MILLER. Thank you, Senator. I will pull that out of my pocket sometime soon when I need it.

[Laughter.]

Ms. MILLER. If confirmed, I look forward to working closely with the members of this committee to ensure that the STB's policies and regulatory initiatives promote a vibrant, 21st-century railroad network that will grow the nation's economy, create jobs, and enhance our nation's ability to compete in the world economy.

I bring to this nomination over 30 years of private- and public-sector experience in the transportation field, including serving as a Director of Planning and as the Chief Executive of the Kansas Department of Transportation. Because of my experience and broad perspective and deep knowledge of the industry, it is my broad perspective and deep knowledge that informs my approach to governing.

I understand the importance of and the need for pragmatic, effective, and responsive regulation in the nation's rail transportation

system. Rail issues were a significant part of my early public-sector career. In 1980, I was working for Governor John Carlin when the Chicago, Rock Island, and Pacific Railroad halted operations. Kansas faced the loss of 1,080 miles of track, and those were important tracks that bridged a number of communities and many vital shippers in our state.

Seeking to preserve as much of the Rock Island system as possible, the Governor formed a working group and assigned me as his representative. I have to say, I learned a great deal through that experience about crisis management. I saw how much rail service matters to communities and shippers, and I learned the value of healthy railroads.

In 2003, I had the privilege of being appointed as the Kansas Secretary of Transportation. During my 9-year tenure, I worked effectively for Republican and Democratic Governors and with our state legislature.

My primary objective was to make sure that our state's transportation system was meeting the needs of our citizens, facilitating economic growth, fostering innovation, promoting safety across all modes, and making Kansas a better place to live and work. These objectives, I found, are shared by Republicans and Democrats, and, if confirmed, I will work with all members of this committee to achieve common goals.

As secretary, I managed a budget of more than a billion dollars and led more than 3,000 employees. I logged thousands of miles on Kansas roads, traversing the state to review projects, meet with employees, and, most importantly, engage with constituents.

In my view, you can only be an effective leader of a public agency if you have an understanding of the people you serve and understand how your decisions are affecting them. If confirmed as STB Commissioner, I will work diligently with shippers large and small, railroads large and small, port authorities, intermodal facilities, and our partners in the Federal, state, and local governments to gain that necessary understanding and perspective.

As the chief executive of a state agency, I focused on two management themes: accountability and transparency. They are ones I believe very much in. Over time, public agencies can become isolated from the people they serve, leading to an us-and-them mentality.

I found that KDOT was headed in that direction when I took the reins, but thankfully we changed course. Our pro forma public meetings became real listening sessions, and based on what we heard, we changed projects and we changed processes. And people noticed and appreciated it, and our credibility went up as an agency. If confirmed, I will apply this same mindset to ensuring that the STB listens to its stakeholders, balances their needs, and keeps their trust in the regulatory process.

Before closing, I want to mention my view on the importance of developing a balanced freight and passenger rail system. I fully support a robust passenger rail network where population densities make it feasible. Recognizing the STB's important jurisdictional role in passenger rail matters, I am eager to help set the nation's course on passenger rail. As secretary of KDOT, I worked with Am-

trak, freight railroads, and neighboring states towards the development of new passenger rail lines in the Midwest.

In closing, I would say that I am honored to appear before the Committee as the President's nominee. If confirmed, I look forward to working actively with each of you and with your staffs on the important issues in the rail transportation industry.

Mr. Chairman, thank you very much for your consideration and for scheduling this hearing. And I will be happy to answer your or any of the Committee members' questions when it is appropriate.

[The prepared statement and biographical information of Ms. Miller follow:]

PREPARED STATEMENT OF DEBRA MILLER, NOMINEE FOR COMMISSIONER,
SURFACE TRANSPORTATION BOARD

Thank you, Chairman Rockefeller, Ranking Member Thune, and Members of the Committee for the opportunity to appear before you today. I am honored to be here as the President's nominee for Commissioner of the Surface Transportation Board.

Before I begin my remarks, I would like to take a moment to introduce some of my family members and friends who are here with me today: my husband, Jim McLean, my good friends, David and Lynn Barclay, and Bob Day. I thank them for their support and encouragement and for their presence.

If confirmed, I look forward to working closely with the Members of this Committee to ensure that the STB's policies and regulatory initiatives promote the development of a vibrant, 21st Century railroad network that will grow the Nation's economy, create jobs, and enhance our ability to compete in the world economy.

I bring to this nomination over 30 years of private and public-sector experience in the transportation industry including serving as a Director of Planning and as the chief executive of the Kansas Department of Transportation. My experiences have provided me with a broad perspective and a depth of knowledge of the transportation industry and have informed my approach to governing. Through that experience, I have gained an understanding of the importance and the need for pragmatic, effective and responsive regulation of the Nation's rail transportation system.

As a point of reference, Kansas ranks sixth, nationally, in terms of total route miles, rail tons carried and rail carloads. We have approximately 4,700 miles of railroad track, and the state is served by four Class I railroads—primarily Union Pacific Railroad and BNSF Railway and to a lesser degree, Kansas City Southern, and Norfolk Southern. We have approximately 14 Class III shortline railroads, which originate and terminate freight in connection with long-haul service. Kansas shippers mostly move agricultural products, outbound, and a variety of commodities, including coal, inbound.

Indeed, rail Issues were a significant part of my early public sector career. In 1980 I was working for Governor John Carlin when the Chicago, Rock Island and Pacific Railroad filed for bankruptcy. The state faced the imminent loss of approximately 1,080 miles of track providing Kansas communities and rail shippers with a significant economic shock. The state quickly went into action, looking for ways to salvage as much rail service as possible. The Governor formed a railroad working group and assigned me to serve as his representative on the group. I learned a great deal through this experience about crisis management and saw firsthand how much rail transportation matters to communities and shippers. The experience taught me the value of healthy railroads, the need for shipper access to the rail network, and the challenge of being a captive shipper.

In 2003, I had the privilege of being asked to serve as Kansas' Secretary of Transportation and did so for nine years. During my tenure, I worked for both Republican and Democratic governors and worked effectively with our state legislature. Managing the vast transportation sector is challenging enough without allowing partisan politics to complicate it further. As secretary, my primary objective was to make sure that our state's transportation system was meeting the needs of our citizens, facilitating economic growth, fostering innovation, promoting safety across all modes and making Kansas a better place to live and work and I was happy to work with anyone who could help accomplish these objectives. These objectives aren't unique to Democrats or Republicans. They are shared by both parties and, if confirmed, I will work with the members of this Committee to achieve our common goals.

The best part of my job at KDOT was meeting with representatives from local communities, businesses and transportation stakeholders, and the people of my

state. I was responsible for managing a budget of more than \$1 billion and leading more than 3,000 employees. I logged thousands of miles on Kansas roads, visiting every corner of the state to review projects, meet with employees, and, most importantly, engage community leaders and stakeholders. Effective leadership of a public agency requires an understanding of the people served and how they are impacted by the decisions made. The best way to acquire that understanding and perspective is to get out of the office when possible and appropriate. If confirmed as STB Commissioner, I will work diligently with shippers, large and small railroads, ports authorities, intermodal facilities, and our partners in federal, state and local governments working to gain that necessary understanding and perspective.

One of my major accomplishments while serving as Secretary of KDOT was securing the passage of "T-WORKS" an \$8 billion transportation program designed to be implemented over ten years. Even as we speak, the program is creating and sustaining thousands of jobs, preserving Kansas' enviable highway infrastructure, and creating multimodal economic development opportunities across the state. A key feature of T-WORKS is its focus on public participation, ensuring that individuals and communities can be active participants in the decision-making process.

I will also mention one additional feature of T-WORKS which may be of interest to these proceedings; the reauthorization of, and increase in the funding for, the Kansas State Rail Service Improvement Fund. This fund provides low-interest loans and grants to railroads and port authorities to preserve rail service as well as make improvements to service. The funds can be used for the purchase of rail cars and for the rehabilitation of tracks, bridges, yards, maintenance shops, building and sidings. T-WORKS also broadened the list of eligible applicants to include shippers and local units of government who partner with the involved railroad. It has been an extremely important tool in Kansas for insuring that shippers and communities have access to needed rail services.

Intermodal freight is also vitally important to Kansas. That is why as Secretary, I personally oversaw the process of providing BNSF with a \$35 million grant that helped the company leverage \$200 million of private-sector investment for construction of a new intermodal yard in Edgerton, Kansas and worked closely with the impacted local governments. Recognizing the significant, positive, economic impact the facility would have on the State, I helped resolve business, policy and community-specific challenges that had to be overcome to make the intermodal yard a reality.

My relatively long tenure as Secretary also allowed me to address a cultural problem at KDOT. Put simply, over time large public agencies tend to become insulated from the people they serve. Too often, this leads to an "us" and "them" mentality that can, if not addressed, result in adversarial relationships between agencies and the people and communities they serve. That is where we were headed when I took the reins at KDOT. Thankfully, we changed course. Public engagement meetings that were once considered pro-forma became real listening sessions. We made changes in projects based on what we heard. And slowly, everyone in the agency, long-time engineers included, came to understand that real engagement with the public was just a better way to do business. The culture change that we accomplished during my years as Secretary is one of my proudest accomplishments. And it's one that I believe will serve me well in this new role where careful attention to the concerns of all parties is essential to balancing their needs and maintaining trust in the regulatory process.

Another characteristic of a successful government agency is transparency. Under my leadership, KDOT opened up many of its processes to more collaborative engagement and greater accountability. The approach taken in 2011 when we updated our comprehensive railroad plan, which set policy objectives based on a study of our freight and passenger systems, is an example. To foster an open environment we established a Rail Stakeholder Outreach and Involvement Plan providing stakeholders with multiple opportunities to express their views and to guide KDOT in policy development. We also created a State Rail Plan Advisory Committee to analyze the findings from our public outreach, the work of our consultants and to advise our staff.

In addition to my public sector experience, I have experience working in the private sector as an industry leader and a transportation planner. Currently I am a Senior Consultant with Cambridge Systematics, Inc., a firm that specializes in transportation planning and policy. Previously, I was a consultant at HNTB, a national architectural and engineering firm, at which I provided strategic planning and public communication assistance to municipalities and state DOTs. At the national level, I chaired the Transportation Research Board's Executive Committee, and headed various task forces at the American Association of State Highway and Transportation Officials (AASHTO), including chairing the Standing Committee on Planning for nine years.

Before closing, I want to mention my view on the importance of developing a balanced transportation system that provides options for its users whether they are shippers or passengers. I believe in establishing and supporting a robust passenger rail network where population densities make it feasible. Recognizing the important jurisdictional role the STB has in passenger rail matters and that many of the issues that will come before the Board will be cases of first impression, I am eager to play a productive role in helping to set the Nation's course in passenger rail.

In my role as KDOT secretary, I have experience with the development of passenger rail. In connection with Passenger Rail Investment and Improvement Act (PRIIA) and High Speed Intercity Passenger Rail Program (HSIPR), KDOT has been actively studying intercity rail passenger service between Kansas City, Oklahoma City, and Fort Worth. In November 2011, while I was Secretary, KDOT completed a Service Development Plan for this line working with the FRA, AMTRAK, BNSF and the states of Oklahoma, Missouri and Texas.

In closing, I am honored to appear before this Committee as the President's nominee for Commissioner of the Surface Transportation Board. If confirmed, I look forward to working actively with each of you and your staffs on the important issues in the rail transportation industry. Mr. Chairman, thank you for your consideration and for scheduling this hearing. I would be pleased to answer any questions that you and the Committee may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used):
Debra L Miller
Debra L Harrison (maiden)
Debra L McKinzie (former married name)
Deb.
2. Position to which nominated: Commissioner, Surface Transportation Board (STB).
3. Date of Nomination: September 25, 2013.
4. Address (List current place of residence and office addresses): Topeka, KS.
5. Date and Place of Birth: 12/25/1954; Scott City, Kansas.
6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).
Jim M. McLean (spouse), Executive Editor, KHI News Service Kansas Health Institute, Topeka, KS. Children: Adam Miller (child)—29, Ian McLean (step-child)—25, Katy McLean (stepchild)—30.
7. List all college and graduate degrees. Provide year and school attended.
December 1976—Kansas State University—B.A. in Sociology
8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.
June 1977 to July 1978—Executive Director of Associated Students of Kansas—Management Level
Oct. 1978 to Nov. 1980—Management Development Trainee and Business Office Supervisor Southwestern Bell—Management Level.
Nov. 1980 to Sept. 1984—Policy Aide to Governor John Carlin.
Sept. 1984 to Mar. 1986—Special Assistant to Secretary of Transportation, Kansas Department of Transportation—Management Level.
Mar. 1986 to Mar. 1997—Director Planning and Development, Kansas Department of Transportation—Management Level.
Feb. 1998 to Jan. 2003 Senior Transportation Planner for HNTB Corporation.
Jan. 2003 to Dec. 2011—Secretary of the Kansas Department of Transportation—Management Level.
2012 to present—Senior Associate, Cambridge Systematics, Inc.
9. Attach a copy of your resume. A copy is attached.
10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years.

Eno Foundation, Member, Board of Advisors, Oct. 2011 to present.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Board of the American Association of State Highway and Transportation Officials.

Executive Committee of the Transportation Research Board (functions as a Board of Directors).

Chair of the TRB Executive Committee 2008.

Mark A. & Debra L. Miller Trust, Trustee (a simple, family revocable trust on behalf of my child, Adam Miller. The trust is described in more detail in section E.6.).

All of my transportation clients as senior associate with the consulting firm Cambridge Systematics, Inc. are listed on Schedule D, Part II of my certified Executive Branch Personnel Financial Disclosure Report.

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Member of the Transportation Research Board's Executive Committee, January 2005 to December 2010; Chair of the Executive Committee, January 2008 to January 2009.

Member of the American Association of State Highway and Transportation Officials Board of Directors, January 2003 to December 2011; and Chair of the organization's Standing Committee on Planning, January 2003 to December 2011.

Member of the Board of the Kansas Turnpike Authority, January 2003 to December 2011 (by virtue of position as Secretary of KDOT).

Member of the Eno Foundation's Board of Advisors, October 2011 to Present.

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt.

Appointed by Governor Sebelius to be the Kansas Secretary of Transportation in January 2003, and reappointed by Governor Brownback in January 2011.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

Kathleen Sebelius for Governor: Sept. 2005, \$1,000; Oct. 2005, \$500; Dec. 2005, \$500 (refunded \$100 12-31-05); Aug. 2006, \$1,000; Sept. 2006, \$1,000

Jim Slattery for Senate: Mar. 2008, \$500

Tom Holland for Governor: July 2010, \$2,000

Kansas Democratic Party: Feb. 2012, \$500

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

2011—National Highway Traffic Safety Administration Public Service Award, Ingram's Magazine "50 Kansans You Should Know", Kansas Safe Kids Award of Excellence

2010—Transportation Research Board's W.N. Carey Jr. Distinguished Service Award, Kansas Wildlife Federation Conservationist of the Year

2009—Kansas Public Transit Association Willie M. Murry Award

2008—Kansas Public Transit Assoc. Certificate of Appreciation for Visionary Leadership in Long Range Planning

2007—Pratt Community College Alumnus of the Year, American Planning Assoc. Kansas Chapter Sod Buster Award for Advancing the Cause of Planning

2004—Kansas Public Transit Association Appreciation Award

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

As the Secretary of Transportation, I gave numerous speeches to civic organizations, employee groups, etc. and frequently testified before the Kansas Legislature. Our agency had an employee newsletter that included my column. The table below lists 10 presentations that I made as Secretary. These are representative of the public speaking I did when I held that position.

Railroad topics that I would have covered either in speeches or testimony included support for the State's railroad loan and grant program that was set up for the shortline railroad industry.

Date	Forum	Speech Title
11-09-2011	Topeka, KS	Division of Administration's All Hands Meeting
10-06-2011	Topeka Kansas Press Conference	Transportation Project Announcement
03-10-2010	Topeka KS Senate Transportation Committee	T-WORKS Program Summary
02-06-2010	Audubon of Kansas	Acceptance Speech for the Land Stewardship and Roadside Beautification
02-04-2010	Kansas City Chamber	Transportation Update
02-01-2010	Kansas City MO, WTS Inaugural Luncheon	Women in Transportation
01-20-2010	Kansas House Transportation Committee	Overview of Transportation in Kansas
10-15-2009	Dodge City Kansas	SW Bypass Ribbon Cutting
09-02-2009	Kansas Public Transit Association	Luncheon speaker; State of Transportation and Transit in Kansas
07-22-2009	Pleasanton Kansas	Ribbon Cutting for the U.S. 69 Project

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony.

February 15, 2011
Committee on Transportation, Subcommittee on Highways and Transit
U.S. House of Representatives
Hearing on "Accelerating the Project Delivery Process: Eliminating Bureaucratic Red Tape and Making Every Dollar Count"

March 17, 2009
Committee on the Budget
U.S. House of Representatives
Hearing on "Funding and Financing Options Available for the Surface Transportation Program"

February 6, 2008
United States Senate Committee on Environment and Public Works
U.S. Senate
Hearing on "State Perspectives on the Transportation for Tomorrow Recommendations of the National Surface Transportation Policy and Revenue Study Commission"

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

I had the privilege to serve as the Secretary of Transportation in Kansas for almost a decade (2003-2011), and I believe that experience qualifies me for appointment as a member of the STB, if I am fortunate enough to be confirmed. During my tenure as Secretary, I worked on diverse aspects of transportation policy, such as: transportation infrastructure matters; the transportation needs of Kansas busi-

nesses; the importance of public transit; and the relationships between local interests and transportation providers. I was responsible for a 10,000 mile state highway system, Kansas' rural public transportation, and overseeing shortline railroad grants and rail planning.

Most of my working life has been in state government. I have always approached that work with a service mentality. Serving the public is a high and honorable calling, and the public deserves committed and engaged public servants. It would be an honor to continue my career in public service at the Federal level as a member of the STB.

My service as a state cabinet secretary has given me the confidence and the experience to handle myself in public and to perform under pressure. The STB regulates a \$60 billion freight rail system that is vital to our national economy and the shippers and communities who rely on that transportation. It is therefore important to handle the responsibilities of a member of the STB wisely. My priority as a new Board member would be to dig in and learn the job. If appointed to the STB, I will be committed to becoming an appropriate ambassador to the public and the community that the Board serves.

In my previous work life, I have used my service mentality and a sense of humor to create mission focus and job satisfaction for myself and my staff and to create constructive working relationships with the public and the industry constituencies that I have served. That would be my approach in this job if I were confirmed.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

I take very seriously the need to maintain proper management and accounting controls. In a public position one has a responsibility to taxpayers to deliver needed, quality, competent services and products to them and to bring focus and commitment to the job which requires management and accounting controls. Doing this matters from the standpoint of upholding public trust and is equally important to the employees of an agency. Employees deserve to know that someone is minding the store, that their hard work is not being wasted and that their efforts are not being squandered by actions outside of their control.

As Secretary of Transportation at the Kansas Department of Transportation I managed an agency of 3,200 employees with over a \$1 billion budget. In that position, I took very seriously the responsibility to ensure that appropriate accounting controls and processes were in place. As Secretary of KDOT I viewed the overall management of the agency as my highest responsibility, and would intend to maintain that viewpoint at the STB, if confirmed.

20. What do you believe to be the top three challenges facing the department/agency, and why?

Balancing freight shipper and railroad interests—As the Federal agency with economic regulatory authority over freight railroads, the STB must balance the interests of the shippers against the interest of the railroads. Getting the balance right can be difficult but is important. Over-regulation of freight railroads can stifle innovation, service, and investment, but over pricing shipping can be unfair and harmful to shippers. Balancing the economic interests of both industries and pushing for private sector negotiations where possible will be important challenges at the STB.

Passenger Service—The renewed interest in high speed passenger service may present a number of challenges. For example, the sharing of rail lines between passenger, commuter, and freight railroads can present conflicting public policy goals and conflicting economic interests of important constituencies. Balancing all of these interests will be an important challenge.

Efficiency & Transparency—In today's fiscal times, a top challenge facing the STB will be to find ways to operate more efficiently, and to do more with less funding while still carrying out its congressional mandates. It will also be important that the agency demonstrate its commitment to open communications and transparency.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Surface Transportation Board's ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved

in accordance with the terms of an ethics agreement that I have entered with the Board's ethics official, a copy of which has been provided to this Committee.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. None.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Surface Transportation Board's ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Board's ethics official, a copy of which has been provided to this Committee.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Surface Transportation Board's ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Board's ethics official, a copy of which has been provided to this Committee.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy.

As Secretary of Transportation, my responsibilities included administering and executing public policy. My responsibilities also included some advocacy in legislative and public policy matters. For example, as the Secretary I sought funding for the State's railroad loan and grant program for the shortline railroad industry and frequently would reference the program and its importance to rural communities in Kansas and to the State's economic growth. I also supported and testified in favor of legislation that provided a state loan mechanism and other provisions that led to the construction of a rail intermodal facility in Johnson County, Kansas. Additionally, I worked to secure passage of T-WORKS, an \$8 million, 10-year transportation program, and a variety of major safety transportation measures, such as a primary seat belt law and a ban on texting while driving.

Since leaving public service, I have not worked as a lobbyist or been hired to represent anyone before a legislative body.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Surface Transportation Board's ethics officials to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered with the Board's ethics official, a copy of which has been provided to this Committee.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

As Secretary of the Department of Transportation, I was named in my official capacity when legal action was brought against the agency. I have been personally named in a few situations when an employee was either dismissed or did not get promoted. No findings of wrongdoing have ever been found against me.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

I long with others was accused of sexual discrimination in my official capacity by a female employee who did not receive a promotion. I was the Director of Planning and Development at the Kansas Department of Transportation in 1988 when the allegation was made. No findings of wrongdoing were made as to me.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF DEB MILLER

Experience

2012 to present—Senior Associate, Cambridge Systematics, Inc.

Responsibilities: Project Management, Business Development, Senior Advisor

Key Accomplishments:

- Invited by TRB to facilitate one of the premier events at the 2012 Annual Meeting, “A Conversation with the U.S. Secretaries”
- Advising FHWA and creating the prototype for their performance reporting
- Member of the team leading FHWA performance management regional workshops for state DOTs, transit agencies, and MPOS, responsible for facilitating the group discussion
- Asked to facilitate a TRB initiated dialog on “Transitioning from Reliance on Fuel Taxes to Other User-Paid Alternatives”—A Planning Meeting

2003 to 2011—Secretary, Kansas Department of Transportation

Responsibilities: Directed a transportation agency with a \$1 billion+ budget and 3,100 employees. Responsible for a 10,000 mile state highway system, rural public transportation, shortline railroad grants and rail planning, regional and community airport grant program, and assistance to cities and counties. Served on the Governor’s cabinet and as a board member of the Kansas Turnpike Authority.

Key Accomplishments at KDOT:

Cultural Change

- Transformed the agency’s culture to be more collaborative, transparent, and accountable to the public
- Significantly improved the agency’s working relationship with cities and counties
- Decentralized the decision-making process giving greater authority to Districts
- Rebuilt the senior leadership team at the Department after key retirements and to support evolving priorities
- Instituted agency-wide performance measures along with a reporting structure

Program Delivery

- Completed and delivered every major project under the ten-year, Kansas Comprehensive Transportation Program despite the loss of nearly \$1 billion in funding
- Created a new financial unit and instituted significantly tighter fiscal controls
- Eliminated 5 percent of the department’s positions in anticipation of a difficult economy
- Secured authority for first design/build project in Kansas

- Changed project development thinking from “here’s the scope, what does it cost?” to “here’s the budget, what can we build?”

Transportation Funding Legislation Authorized

- Secured passage of T-WORKS, an \$8 billion, 10 year program funded through a sales tax increase and an increase in truck registrations, during difficult economic times:
 - Used a multi-year, collaborative engagement process to craft proposals and projects that had strong community support and credibility
 - Developed an economic impact analysis process to show linkages between transportation projects, the economy and job creation

Other Legislation Approved

- Crafted a financing approach enacted in law which allowed an intermodal facility, a major economic development opportunity, to be constructed
- Gained passage of major, key safety measures:
 - Primary seatbelt law
 - Booster seat law
 - Graduated Drivers Licensing (GDL) requirements for teens
 - Texting ban

National Level/International Level Experience

- Chair of AASHTO’s Standing Committee on Planning for nine years
- Led multiple taskforces and working groups on behalf of AASHTO, including two on speeding up project delivery and one on performance based planning and programming
- Chair of the TRB Executive Committee in 2008
- Testified to Congress on behalf of AASHTO
- Participated in an international discussion on transportation performance management hosted by the Bipartisan Policy Center in Bellagio, Italy
- Provided an overview of U.S. transportation finance for a Chinese government audience in Beijing, China for a project funded by the Asian Development Bank

Key Accomplishments: KTA

- Reduced operating costs of the turnpike by \$1 million in anticipation of a slow-down in traffic

1998 to 2003—Senior Planner for HNTB

Responsibilities: Provided strategic planning and public engagement assistance to public sector clients

Key Accomplishments:

- Developed several successful community engagement approaches to make difficult decisions about corridor alignment, project design, etc.
- Updated the priority formulas used by KDOT to select projects
- Participated in the development of Long-Range Transportation Plans in Missouri, Louisiana, and Kansas

1986 to 1997—Director of Planning and Development, Kansas Department of Transportation

Responsibilities: Supervised a staff of 105 with a budget of \$30 million. Coordinated Congressional affairs and analysis of national issues for KDOT. Assembled the state construction program, managed the rail, public transit and safety programs

Key Accomplishments:

- Established credibility with the staff, agency, and core constituents, overcoming a perception that I was too young and an outsider
- Core member of the team that secured passage of the Kansas Comprehensive Highway Program (CHP), the largest infrastructure program ever passed in Kansas at that time
- Developed national reputation for understanding authorization issues

1984 to 1986—Special Assistant to Secretary of Transportation Kansas Department of Transportation

Responsibilities: Served as liaison to the Legislature and Governor. Supervised Office of Inspector General. Prepared speeches, talking points and briefing materials for Secretary

Key Accomplishments:

- Led a task force to increase the number of women working at KDOT
- Served as hearing office for all DBE/WBE appeals

1980 to 1984—Policy Aid, Office of Governor John Carlin

Responsibilities: Policy analysis and legislative coordination for transportation, environment, energy and regulatory issues

Key Accomplishments:

- All personally assigned legislation passed by the Legislature
- Member of the team that worked on the Governor's agenda, which included passage of the following landmark legislation: construction of a transportation program; a constitutional amendment to reclassify property; creation of a state lottery; first time ever severance tax; increased funding for education

1978 to 1980—Management Development Trainee, Southwestern Bell

Responsibilities: Managed eight Business Office service representatives

Key Accomplishments:

- Moved my unit from last in all metrics (out of six units) to first in the space of a few months

1977 to 1978—Executive Director, Associated Students of Kansas

Responsibilities: Managed the organization's six university campus operations. Working with the Board, developed the organization's policy positions. Represented the organization before the Legislature, Board of Regents, and Governor

Key Accomplishments:

- Successfully lobbied for increase in work study pay
- Gained insights into how to manage an association and work with strong personalities
- Learned the "real" legislative process, not the theoretical one.

Major Awards

- | | |
|------|---|
| 2011 | National Highway Traffic Safety Administration Public Service Award
Ingram's Magazine "50 Kansans You Should Know"
Kansas Safe Kids Award of Excellence |
| 2010 | Transportation Research Board's W.N. Carey Jr. Distinguished Service Award
Kansas Wildlife Federation Conservationist of the Year |
| 2009 | Kansas Public Transit Association Willie M. Murry Award |
| 2008 | Kansas Public Transit Association Certificate of Appreciation for Visionary Leadership in Long Range Planning |
| 2007 | Pratt Community College Alumnus of the Year
American Planning Assoc. Kansas Chapter Sod Buster Ward for Advancing the Cause of Planning |
| 2004 | Kansas Public Transit Association Appreciation Award |

Education

Kansas State University, BA in Sociology, 1976

- Magna Cum Laude
- Phi Beta Kappa
- John Thurlow Hill award for outstanding senior sociologist

Attended Pratt Community College

The CHAIRMAN. Thank you very much. And your timing was impeccable. Five minutes on the dot.

Mr. Arun Kumar, to be Assistant Secretary for Global Markets and Director General of the U.S. and Foreign Commercial Service. We welcome you, sir.

**STATEMENT OF ARUN KUMAR, NOMINEE TO BE THE
ASSISTANT SECRETARY FOR GLOBAL MARKETS AND
DIRECTOR GENERAL OF THE U.S. AND FOREIGN COMMERCIAL
SERVICE, INTERNATIONAL TRADE ADMINISTRATION,
U.S. DEPARTMENT OF COMMERCE**

Mr. KUMAR. Thank you.

Chairman Rockefeller, Ranking Member Thune, members of the Commerce Committee, thank you for this opportunity to appear before you.

When I landed at Boston's Logan Airport the Labor Day weekend of 1978, I would not have dreamed that 35 years later I would be here in front of this august committee of the Senate of the United States of America.

Three days later, on my first day at MIT, one of my classmates remarked that I seemed shell-shocked. It must have shown on my face how different an experience America was for me. This, despite the fact that I had grown up on a staple of American history and literature, from the ample shelves of the United States Information Service library in my hometown of Trivandrum, India. I had been inspired by the accomplishments and eloquence of America's historic leaders—Washington, Jefferson, Franklin, Lincoln. I had been moved by the words of John F. Kennedy and Martin Luther King.

If I seemed shell-shocked then, today I feel a sense of awe and honor to be here in this great city where many of those heroes influenced the trajectory of this great nation. I am humbled to have the chance to talk to you of my interest in serving this great country that has been my home for almost all of my adult life and has offered me so many great opportunities.

I am deeply grateful to President Obama for nominating me and to Secretary Pritzker for her confidence and support.

With me today to share in this experience are my wife of 35 years, Poornima—while, Debra, in your case, you have a good match here, some people say that I married up. You married well, I married up.

[Laughter.]

Mr. KUMAR.—and my sons, Ashvin and Vikram.

Our entire life together, as a married couple and then as a family, has been in this great country. A molecular biologist by training, Poornima has worked in the biotech industry in California for the last 25 years. Our sons, Ashvin and Vikram, were born in Palo Alto, California. Ashvin lives in Mountain View, California, and is founder and CEO of a Silicon Valley e-commerce company, and Vikram works here in Washington for an Internet company.

My family has gained from the best of what America offers. I am before you today because I feel impelled to give back to this great country.

My almost 40 years of business experience, global orientation, and engagement with broad industry issues has prepared me for the role with regard to which I appear before you.

My experience comprises a blend of leadership roles in a large organization, KPMG, with 23,000 people in the U.S., and in entrepreneurial organizations in Silicon Valley. Prior to KPMG, I was involved in founding three companies in Silicon Valley, covering the entire cycle from the business plan stage through funding, staffing, product development, manufacture, and sales.

In my advisory career, I have worked with companies in North America, Europe, and Asia. I founded the U.S. India Practice at KPMG to assist U.S. companies with their entry into the Indian market and Indian companies with investing and operating in the U.S. I was a Member of the Board of Directors of KPMG Americas. Over the years, I have been involved in business negotiations in the Americas, Asia, and Europe. As a member of the board of directors of the U.S. India Business Council, I have been deeply engaged in the mission of promoting U.S. exports to India.

In my new role, should I be confirmed, I will strive to execute our national priorities of increasing exports as well as increasing the amount of foreign direct investment in our country and our communities, both with the express purpose of creating valuable jobs here in America.

In the past couple of weeks, I have had the opportunity to meet with a number of the dedicated civil servants who constitute the leadership of the International Trade Administration's Global Markets and the U.S. and Foreign Commercial Service. I find their knowledge and desire to help American businesses succeed at home and abroad to be inspiring.

If confirmed, I look forward to having the opportunity to lead this organization and will come to it with my global experience and business background that I believe can help enhance its effectiveness.

As the Assistant Secretary for Global Markets, should I be confirmed, I would like to strengthen the focus on the markets offering the biggest opportunities for American products and services and on orchestrating efforts to increase our market share in those markets. I would make sure that my organization fully embraces efforts to work with cities and communities across this great country to attract foreign direct investment to create high-value jobs.

The creation of high-value jobs and the enhancement of our global businesses are of critical importance to the wellbeing of our people, the strength of our economy, and our influence in the world. I would look to you for ideas, support, and counsel to help Global Markets contribute to its important goals in the service of our country.

Thank you for your consideration of my nomination.

[The prepared statement and biographical information of Mr. Kumar follow:]

PREPARED STATEMENT OF ARUN MADHAVAN KUMAR, NOMINEE FOR ASSISTANT SECRETARY FOR GLOBAL MARKETS AND DIRECTOR GENERAL OF THE U.S. AND FOREIGN COMMERCIAL SERVICE, INTERNATIONAL TRADE ADMINISTRATION, U.S. DEPARTMENT OF COMMERCE

When I landed at Boston's Logan airport the Labor Day weekend of 1978, I would not have dreamed that 35 years later, I would be here in front of this august committee of the Senate of the United States of America.

Three days later, on my first day at MIT, one of my classmates remarked that I seemed shell-shocked. It must have shown on my face how different an experience America was for me. This despite the fact that I had grown up on a staple of American history and literature, from the ample shelves of the United States Information Service library in my hometown of Trivandrum. I had been inspired by the accomplishments and eloquence of America's historic leaders—Washington, Jefferson, Franklin, Lincoln. I had been moved by the words of John F Kennedy and Martin Luther King.

If I seemed shell shocked then, today I feel a sense of awe and honor to be here in this great city where many of those heroes influenced the trajectory of this great nation., I am humbled to have this chance to talk to you of my interest in serving this great country that has been my home for almost all of my adult life and has offered me so many great opportunities. I am deeply grateful to President Obama for nominating me and to Secretary Pritzker for her confidence and support.

With me today, to share in this experience, are my wife of 35 years, Poornima and my sons Ashvin and Vikram. Our entire life together, as a married couple and then as a family, has been in this great country. A molecular biologist by training, Poornima has worked in the biotech industry in California for the last 25 years. Our sons, Ashvin and Vikram, were born in Palo Alto, California. Ashvin lives in Mountain View, California, and is founder and CEO of a Silicon Valley e-commerce company, and Vikram works here in Washington for an Internet company. Ashvin's wife Melisa was born in Georgia, and is a physician in San Jose, California. Ashvin, Melisa and Vikram are graduates of great American universities: Stanford, Emory and New York University. In addition, my late father-in-law was a Fullbright scholar from India and earned his graduate degree from Harvard University in 1955. Thus three generations of my family have gained from the best of what America offers.

I am before you today as I feel impelled to give back to this great country. My late father, who was a public servant in India all his life, and my high school headmaster both taught that it is more important to give than to receive. It is in that spirit that I would like to pursue this calling of public service.

My almost forty years of business experience, global orientation and engagement with broad industry issues has prepared me for the role with regard to which I appear before you.

My experience comprises a blend of leadership roles in a large organization (KPMG, with 23,000 people in the U.S.) and in entrepreneurial organizations in Silicon Valley. Prior to KPMG, I was involved in founding three companies in Silicon Valley, covering the entire cycle from the business plan stage through funding, staffing, product development, manufacture and sales.

In my advisory career, I have worked with companies in North America, Europe and Asia. I founded the U.S. India Practice at KPMG, to assist U.S. companies with their entry into the Indian market and Indian companies with investing and operating in the U.S. I was a member of the Board of Directors of KPMG Americas. Over the years, I have been involved in business negotiations in the Americas, Asia and Europe.

As a Member of the Board of Directors of the U.S. India Business Council (USIBC), I have been deeply engaged in the mission of promoting U.S. exports to India.

In my new role, should I be confirmed, I will strive to execute our national priorities of increasing exports as well as increasing the amount of foreign direct investment in our country and our communities, both with the express purpose of creating valuable jobs here in America.

In the past couple of weeks, I have had the opportunity to meet with a number of the dedicated civil servants who constitute the leadership of the International Trade Administration's Global Markets and the U.S. and Foreign Commercial Service. I find their knowledge and desire to help American businesses succeed at home and abroad to be inspiring. If confirmed, I look forward to having the opportunity to lead this organization and will come to it with my global experience business background that I believe can help enhance its effectiveness.

As the Assistant Secretary for Global Markets, should I be confirmed, I would like to strengthen the focus on the markets offering the biggest opportunities for American products and services, and on orchestrating efforts to increase our market share in those markets. I would make sure that my organization fully embraces efforts to work with cities and communities across this great country to attract foreign direct investment to create high value jobs. The creation of high value jobs and the enhancement of our global business are of critical importance to the well-being of our people, the strength of our economy and our influence in the world. I would look to you for ideas, support and counsel to help Global Markets contribute to its important goals in the service of our country.

Thank you for your consideration of my nomination. I am happy to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Arun Madhavan Kumar (formerly used, until about 1980, Madhavan Arun Kumar).

2. Position to which nominated: Assistant Secretary, Commerce and Director General, U.S. and Foreign Commercial Service.

3. Date of Nomination: October 7, 2013.

4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.

Office: None, retired on September 30, 2013 from KPMG LLP, 3975 Freedom Circle Drive, Santa Clara, CA 95054.

5. Date and Place of Birth: November 25, 1952; Mavelikkara, India.

6. Provide the name, position, and place of employment for your spouse (if married) and the names and ages of your children (including stepchildren and children by a previous marriage).

Spouse: Poornima Kumar, not employed. Children: son—Ashvin Arun Kumar, 31 years; son—Vikram Menon Kumar, 28 years.

7. List all college and graduate degrees. Provide year and school attended.

Massachusetts Institute of Technology, Sloan School of Management, SM (Master of Science) in Management, 1980.

University College, University of Kerala, Trivandrum, India. Bachelor of Science (BSc) in Physics. 1972

8. List all post-undergraduate employment, and highlight all management level jobs held and any non-managerial jobs that relate to the position for which you are nominated.

KPMG LLP (including KPMG Consulting/BearingPoint) (1995–2013) Retired on September 30, 2013.

Note: KPMG LLP spun out KPMG Consulting Inc. (which changed its name to BearingPoint Inc. and went public) in February 2000. I transitioned into this new entity. I returned to KPMG LLP from BearingPoint Inc. in March 2005, following a four month break after leaving BearingPoint in October 2004.

Member of the Board of Directors (2008–2013) (The highest governing body of KPMG LLP)

Member of Audit, Finance & Operations Committee (4 years), Compensation Committee (2 years), Partnership and Employer of Choice Committee (2 years), Partner Rights Committee (1 year), Professional Practice and Ethics Committee (1 year). Member of the Board of Directors of KPMG Americas (4 years).

- Leader, Management Consulting/Finance Management, West (2005–2013)
- Leader, U.S. India Practice (2007–2013)
- Strategic Alliance Leader for a key alliance (2011–2013)
- Finance Management leader, KPMG LLP/KPMG Consulting Inc/BearingPoint Inc. (1995–2004)

Planning & Logic Inc. (1993–1995)

Chief Executive Officer, Member, Board of Directors, and founder.

Netlabs Inc. (1991–1993)

Co-founder and Chief Financial Officer.

Elite Microelectronics Inc. (1990–1991)
Chief Financial Officer.

Silicon Graphics Inc. (1989–1990)
Director of Planning & Management Information.

Cydrome Inc. (1984–1988)
Co-founder, Chief Financial Officer, Vice President, Operations, and Member of the Board of Directors.

Elxsi Inc. (1980–1984)
Controller.

Tata Administrative Service (TAS) and Nelco, Mumbai, India (1973–1978)
Central management cadre of the Tata Group. Assigned to Nelco, the electronics company of the group.

9. Attach a copy of your resume. A copy is attached.

10. List any advisory, consultative, honorary, or other part-time service or positions with Federal, State, or local governments, other than those listed above, within the last five years. None.

11. List all positions held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business, enterprise, educational, or other institution within the last five years.

Principal/Partner and Member, Board of Directors, KPMG LLP (2008–2013)
Member, Board of Directors, U.S. India Business Council. Member, Executive Committee, Chair of the Finance Committee. (2007–2013)

Member, Board of Governors, Asian School of Business, Trivandrum, India (2006–2013)

Executive Advisory Board, University of California, Santa Cruz. (2009–2011)

Foundation for Excellence, Santa Clara, CA. Member, Board of Directors. (2012 to present)

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, fraternal, benevolent or religious organization, private club, or other membership organization. Include dates of membership and any positions you have held with any organization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age, or handicap.

Fremont Hills Country Club, Los Altos Hills. (2011 to present)

TiE (The Indus Entrepreneurs) Silicon Valley (2005–2008). Continuing to serve on the Nominating Committee. Chaired TiE Economic Forum (2005–2010).

Kerala International Centre, Trivandrum, India. (2012 to present)

Startup Village, Kochi, Advisory Council. (2011–2013)

13. Have you ever been a candidate for and/or held a public office (elected, non-elected, or appointed)? If so, indicate whether any campaign has any outstanding debt, the amount, and whether you are personally liable for that debt. No.

14. Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of \$500 or more for the past ten years. Also list all offices you have held with, and services rendered to, a state or national political party or election committee during the same period.

2004	\$2,000	John Kerry for President
2008	\$2,300	Barack Obama, Obama for America
2009	\$800	KPMG Partners/Principals & Employees PAC
2009	\$500	Raj Goyle, Raj Goyle for Congress
2010	\$800	KPMG Partners/Principals & Employees PAC
2010	\$1,000	Charles E Schumer, Friends of Schumer
2011	\$800	KPMG Partners/Principals & Employees PAC
2012	\$2,500	Barack Obama, Obama for America
2012	\$800	KPMG Partners/Principals & Employees PAC
2013	\$800	KPMG Partners/Principals & Employees PAC
2013	\$1,000	Aneesh Chopra, Chopra for Virginia Lt Governor
2013	\$2,500	Rohit Khanna, Ro for Congress

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements.

J N Tata Scholarship (Jamsetji Nusserwnaji Tata Endowment Scholarship), 1978–80

National Science Talent Scholar, India, 1969–72

The President's Medal, Lawrence School, Lovedale, India 1969

16. Please list each book, article, column, or publication you have authored, individually or with others. Also list any speeches that you have given on topics relevant to the position for which you have been nominated. Do not attach copies of these publications unless otherwise instructed.

Co-editor of *Kerala's Economy, Crouching Tiger, Sacred Cows*, published by DC Books, 2006.

Author of a book of poetry, *Plain Truths*, published by Current Books, 2010.

Co-author of *Advancing the Bi-Hemispheric Partnership*, published in connection with President Obama's visit to India, November 2010.

Authored articles *The India Imperative*, May 2010, and *Big Data: A Boon to Business Intelligence*, in *Finance Executive*, September 2012.

Authored KPMG paper, *The India Imperative: A Janus Strategy for the Global Corporation* (published in *Finance Executive*), April 2010, and *India Prospective*, June 2008.

Authored article, *The Yin and the Yang of Business*, in *Business Line*, May 2007.

Contributed to KPMG publications, *Velocity, Visibility, Value* and *Piecing Together the Performance Puzzle* and to annual white papers on planning and forecasting, from 2009 onwards.

17. Please identify each instance in which you have testified orally or in writing before Congress in a governmental or non-governmental capacity and specify the date and subject matter of each testimony. None.

18. Given the current mission, major programs, and major operational objectives of the department/agency to which you have been nominated, what in your background or employment experience do you believe affirmatively qualifies you for appointment to the position for which you have been nominated, and why do you wish to serve in that position?

Through much of my career, my work experience has focused on elements of business leadership, global orientation and engagement with broad industry issues covering domestic and international initiatives. I have demonstrated experience in forward thinking, collaboration, team leadership and management of complex issues. I am confident that these experiences will help me successfully lead the International Trade Administration's Global Markets organization and encourage thought leadership and innovation throughout the organization.

1. Extensive management, entrepreneurial and diverse business leadership experience. I have had a unique blend of leadership roles in a large organization (KPMG, with 23,000 people in the U.S.), in entrepreneurial organizations in Silicon Valley, and in a large conglomerate in India before I came to the U.S. for graduate study. Prior to KPMG, I was involved in founding three companies in Silicon Valley, covering the entire cycle from the business plan stage through funding, staffing, product development, manufacture and consumer sales. I thus have the understanding of the dynamics of both entrepreneurial ventures and large organizations. I understand how to address diverse challenges and make considered business decisions to benefit an organization and its many stakeholders.
2. Global orientation: For the last 18 years, I have been in the advisory business, serving global clients primarily in the area of finance management. I have worked with companies in North America, Europe and Asia. I founded the U.S. India Practice at KPMG, to assist U.S. companies with their entry into the Indian market and Indian companies with acquiring and operating in the U.S. I have worked with KPMG professionals globally—presenting at KPMG internal meetings and have developed connections with senior KPMG leaders in many countries. I serve on the Board of Directors of KPMG Americas. Previously, in my role leading entrepreneurial ventures, I was involved in business negotiations and deals in Japan, Singapore and Taiwan. I started my professional life with five years as a member of the select management cadre of the

Tata Group, India, where I worked directly for its recently retired chairman. I thus gained an understanding of the dynamics of working in that country before I came to the U.S. for graduate studies. The lessons I learned over the years will help me if I am confirmed to lead Global Markets. My in depth international experience gives me a strong understanding of the importance of the global market and how to operate in it.

3. Involvement in broad industry issues: As a member of the Board of Directors of the U.S. India Business Council (USIBC), I have been deeply engaged in the mission of promoting U.S. exports to India. I was part of the Executive Delegation that the USIBC organized in connection with President Obama's visit to India in November 2010 I co-authored a white paper that was distributed at his first meeting with Indian business leaders during that visit. The experience I gained working in and with India easily translates to markets around the globe. Developing countries and top-tier markets are critically important to the U.S. economy and for supporting American jobs and I am confident that my international experience along with my broad industry experience will guide me in leading this organization.
4. Innovation, strategy and out-of-the-box orientation: My career continuously demonstrates that I have been a thought leader. At KPMG I developed new consulting frameworks and solutions. As an entrepreneur, I helped develop unique companies and strategies to take advantage of evolving market opportunities, I have also, in my Board role, focused on strategy issues and tried to bring an innovation mindset to the deliberations. I encourage my colleagues to think in new and creative ways to accomplish stated goals, develop new strategies and advance the organization. I will translate these experiences and my creative approach to help advance the Global Markets initiatives to help American companies and employees succeed in the global marketplace.

I wish to serve for two reasons.

First, I firmly believe in the value of public service, of giving back, especially to this country that has given me so much. Having had a successful career in business, the time is exactly right for me to focus my energies on giving back. I would be honored to serve our country and this President. I would consider it an honor to work with the United States Congress to help America's businesses succeed and keep our economy strong.

Second, I believe deeply in the significance of the goals of the Commerce Department. The creation of high value jobs and the enhancement of our global business are of critical importance to the well-being of our people, the strength of our economy and our influence in the world. Commercial diplomacy plays an important role in our international relations and I believe I have the experience, drive and desire to advance these important relationships.

19. What do you believe are your responsibilities, if confirmed, to ensure that the department/agency has proper management and accounting controls, and what experience do you have in managing a large organization?

I believe a significant responsibility of mine will be to ensure we have good management and enforce good governance. I will develop measures to track needs and successes and seek to enhance, as needed, management and accounting controls, supporting the organization's CFO, general counsel and other stakeholders.

As a partner and member of the Board of Directors of a major public accounting firm, KPMG LLP, I have been trained in the importance of proper controls and compliance. I have served as the Chair of the firm's Audit Committee, with a reporting line coming up to me from our Chief Internal Audit Executive as well as the Chair of our Partnership Audit Committee.

I have experience in leading the Western region business in management consulting at KPMG and various practices at KPMG over the years.

I also founded and led the firm's U.S. India Practice, coordinating a large number of people between the two countries in the areas of audit, tax and advisory services.

Finally, I have worked with a number of our clients in large scale transformation of their organizations, processes and systems.

Having a vision and being able to develop and communicate it so that all employees, world-wide, understand and internalize it will also be an important part of what I do. Ensuring a clear mission, goals and measurements will be important to my success and that of the organization.

20. What do you believe to be the top three challenges facing the department/agency, and why?

I'd first like to share what I think are the three top opportunities:

1. Drive the President's agenda to increase annual exports to \$3 trillion, and thereby generate American jobs.
2. Promote Foreign Direct Investment into the U.S., with the goal of enhancing job creation.
3. Align and coordinate the initiatives of a diverse and dispersed employee base, and with multiple agencies in the Administration to help achieve the above two goals.

The top three challenges facing the agency, in my view, are to:

1. Developing the resources needed to accomplish President Obama's goal of increasing annual exports to help strengthen the Nation's economy and create and support well-paying American jobs. Staffing and financial constraints will offer challenges that will require creativity and resourcefulness in dealing with to ensure progress.
2. Educating a diverse population on why foreign investment in the United States is important and good for our economy. This is not well understood. Developing the resources and creating visibility through a strong communications plan that highlights success stories will be critical. Establishing robust ways to track successes appears to me an area that still needs to be developed.
3. Ensuring a department-wide and government-wide ability to set goals, share information, develop relationships and speak with a common voice can be a challenge. With different missions focusing on singular goals, such harmonization can prove difficult. I believe therefore it is important to create an environment that is open and trusting and that encourages sharing information and opportunities.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing dealings with business associates, clients, or customers. Please include information related to retirement accounts.

KPMG Long Term Compensation Plan, entailing monthly payments of \$7,419 for 121 months starting October 1, 2013.

2. Do you have any commitments or agreements, formal or informal, to maintain employment, affiliation, or practice with any business, association or other organization during your appointment? If so, please explain. No.

3. Indicate any investments, obligations, liabilities, or other relationships which could involve potential conflicts of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Commerce's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department of Commerce's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

4. Describe any business relationship, dealing, or financial transaction which you have had during the last ten years, whether for yourself: on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process I have consulted with the Office of Government Ethics and the Department of Commerce's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the Department of Commerce's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

5. Describe any activity during the past ten years in which you have been engaged for the purpose of directly or indirectly influencing the passage, defeat, or modification of any legislation or affecting the administration and execution of law or public policy. None.

6. Explain how you will resolve any potential conflict of interest, including any that may be disclosed by your responses to the above items.

In connection with the nomination process, I have consulted with the Office of Government Ethics and the Department of Commerce's designated agency ethics official to identify potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered

into with the Department of Commerce's designated agency ethics official and that has been provided to this Committee. I am not aware of any other potential conflicts of interest.

C. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, please explain. No.

2. Have you ever been investigated, arrested, charged, or held by any Federal, State, or other law enforcement authority of any Federal, State, county, or municipal entity, other than for a minor traffic offense? If so, please explain. No.

3. Have you or any business of which you are or were an officer ever been involved as a party in an administrative agency proceeding or civil litigation? If so, please explain.

As is the case with all major accounting firms, from time to time KPMG LLP (the Firm in which I was a Partner until September 30, 2013) has been named as a defendant in lawsuits and administrative proceedings by regulatory bodies, and in private civil lawsuits, particularly when one of the Firm's clients suffers an economic downturn. Understandably, the details of such litigation matters are sensitive and highly confidential. Personally, I have not been named as a defendant or respondent in any such agency proceeding or civil litigation matter.

4. Have you ever been convicted (including pleas of guilty or *nolo contendere*) of any criminal violation other than a minor traffic offense? If so, please explain. No.

5. Have you ever been accused, formally or informally, of sexual harassment or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain. No.

6. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be disclosed in connection with your nomination. None to my knowledge.

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committees? Yes.

2. Will you ensure that your department/agency does whatever it can to protect congressional witnesses and whistle blowers from reprisal for their testimony and disclosures? Yes.

3. Will you cooperate in providing the Committee with requested witnesses, including technical experts and career employees, with firsthand knowledge of matters of interest to the Committee? Yes.

4. Are you willing to appear and testify before any duly constituted committee of the Congress on such occasions as you may be reasonably requested to do so? Yes.

RESUMÉ OF ARUN KUMAR

KPMG LLP (including KPMG Consulting/BearingPoint) July 1995–Sep 2013

Note: KPMG LLP spun out KPMG Consulting Inc. (which changed its name to BearingPoint Inc. and went public) in February 2000. I transitioned into this new entity. I returned to KPMG LLP from BearingPoint Inc. in March 2005, following a four month break after leaving BearingPoint in October 2004. I retired on September 30, 2013.

KPMG LLP Headquarters: 345 Park Avenue, New York, NY 10154. Office I worked out of: 3975 Freedom Circle Drive, Santa Clara, CA 95054.

Member of the Board of Directors (Nov 2008–Sep 2013)

The highest governing body of KPMG LLP.

Member of Audit, Finance & Operations Committee (4 years, Chair, Oct 2012–Sep 2013), Compensation Committee (2 years), Partnership and Employer of Choice Committee (2 years), Partner Rights Committee (Chair, Oct 2011–Sep 2012, Member 2 years), Professional Practice and Ethics Committee (1 year). Member of the Board of Directors of KPMG Americas (4 years).

- Partner; Leader, Management Consulting/Finance Management, West (March 2005–Sep 2013)
- Partner in Charge, U.S. India Practice (June 2007–Aug 2013)
- Strategic Alliance Leader for a key alliance (April 2011–Aug 2013)

KPMG Consulting Inc./BearingPoint Inc. Mountain View, CA (Feb 2000–Oct 2004)

- Managing Director, Finance Management leader
KPMG LLP Mountain View, CA and Palo Alto, CA (July 1995–Feb 2000)
 - Partner (June 1998–Feb 2000)
 - Director/Manager (July 1995–June 1998)
- Planning & Logic Inc. Mountain View, CA (1993–1995)
Chief Executive Officer, Member, Board of Directors, and founder.
- Netlabs Inc. Los Altos, CA (1991–1993)
Co-founder and Chief Financial Officer.
- Elite Microelectronics Inc. San Jose, CA (1990–1991)
Chief Financial Officer.
- Silicon Graphics Inc. Mountain View, CA (1989)
Director of Planning & Management Information.
- Cydrome Inc. Milpitas, CA (1984–1988)
Co-founder, Chief Financial Officer, Vice President, Operations, and Member of the Board of Directors.
- Elxsi Inc. San Jose, CA (1980–1984)
Controller.
- Tata Administrative Service (TAS) and Nelco, Mumbai, India (1973–1978)
Central management cadre of the Tata Group. Assigned to Nelco, the electronics company of the group. Role was to work with the CEO of the company to provide staff assistance on a number of matters.

The CHAIRMAN. Thank you very much.

We have three distinguished colleagues sitting over here, and they have the miserable problem of having to wait until myself and the Ranking Member have finished our questions, which must gall all of you very much.

[Laughter.]

The CHAIRMAN. But Senator Thune and I recall——

Senator BLUMENTHAL. We love you, Mr. Chairman.

[Laughter.]

The CHAIRMAN. Gotcha. OK.

Mr. Jaenichen, many feel that maritime issues aren't as high a priority as other transportation issues at the Department of Transportation. With the administration's focus on expanding exports and the growing demand for moving goods, especially movement on inland waterways, the maritime industry will play a critical role in our country's economic vitality.

It is interesting to me that the seventh-largest port in America—and if I am wrong, just go ahead and tell me. I will be crushed, but go ahead—is, in fact, Huntington, West Virginia. Do your research.

[Laughter.]

Mr. JAENICHEN. I will take a look, sir.

The CHAIRMAN. Yes. We boast that, so I hope we are right.

So, given that people focus on other kinds of transportation but yours is so important, getting yourself up there and getting your administration up there to the full attention of the American people is really important. For example, the expansion of the Panama Canal is, I think, a huge economic development for the country and every port, wherever it may be.

So how do you plan to protect critical maritime laws, like the Jones Act, to ensure the economic viability of America's maritime industry?

Mr. JAENICHEN. Senator, thank you for your question.

I just had the unique opportunity of traveling with the Vice President to the Panama Canal on Monday and Tuesday of this week. And I would certainly agree with you that that is going to be a game-changer once the expanded canal is open and has a possibility to increase the commerce to the U.S.

One key point—

The CHAIRMAN. And our ports are not ready. Am I right?

Mr. JAENICHEN. We have some ports that are ready and some that still have some work to do. That is correct, sir.

But two-thirds of what goes through the canal today is either going to or coming from the United States, going through the canal. So it is important that we be ready.

The other opportunity that we have had is, we are looking at a maritime strategy. Back in October, we issued a Federal Register notice to solicit comments from all stakeholders across the entire maritime industry to revitalize the U.S. Merchant Marine. That is everything from cargo opportunities to how do we bring more ships under the U.S. flag.

The Jones Act, in particular, is of critical importance and has been supported by the Obama administration and every administration for the last 100 years, and for good reason. It puts U.S. mariners on U.S. ships, ready to carry U.S. commerce and ready when we need them for national defense. We will do everything within the Maritime Administration to support the Jones Act.

I have had a unique opportunity to talk about the maritime strategy directly with Secretary Foxx. He is open to all of the mode administrators to be able to make sure that each of the modes has a focus on that.

Part of the Moving Ahead for Progress in the 21st Century required that we establish a national freight strategy. We currently, in the last 2 days, have convened essentially a session with the National Freight Advisory Council that was named to help advise us on that. We are putting together the framework for that strategy. And I will tell you that waterways, rivers, and Great Lakes are certainly part of that strategy, sir.

The CHAIRMAN. Thank you, sir.

Debra Miller, you know that I have very significant concerns about how railroads have treated captive shippers. And in the presentation that you made, which of course was gone over by OMB, that little secret that people don't know, it was a very even kind of a situation—the health of the railroads and, you know, the protection of shippers.

I, for one, don't feel that it is an equal situation at all. And I would think that it would be, from my point of view, very important that you pay special attention to shippers. They have not been paid attention to. They do not bring cases often because they know they are going to lose the cases because the railroads will simply drag out the litigation forever, so they just don't try, and therefore they lose. And we lose millions and millions, hundreds of millions of dollars a year because of that, perhaps billions of dollars a year because of that.

So you make a balanced presentation, which is understandable for, you know, a confirmation opening statement. But I don't think the work of the Commission ought to be equally divided, based

upon its long history of doing almost anything the railroads want, no matter who got appointed, that you should focus a lot on the shippers.

And I want to feel that you are going to. Help me feel that way.

Ms. MILLER. I will do my best, Mr. Chairman.

Well, coming from an agricultural state, I have engaged with a number of shippers over the years who have had issues and certainly, I think, have a good, work-a-day understanding of how important it is to maintain or to be able to obtain rail service for so many of our shippers.

And I recognize very clearly that this is not an academic discussion for shippers, this is about their livelihood, and that it is very important that they both not only be heard but, to the extent there is a recourse, that it be done in a time-sensitive way.

And I can tell you that I am a very time-sensitive person and will bring that sort of approach to the Surface Transportation Board, at least to the extent that as a member of the board I can do that—that is, if I am confirmed.

The CHAIRMAN. So you will be efficient. And, believe me, after my conversation with you, that I totally accept and believe.

What I am hoping is that you will also have sort of a special leaning toward shippers, because they have never had that leaning at the ICC or the STB in all of their history. Railroads control the show. They totally control the show. They fly below the radar, and they control the show.

So, please—I am at the end of my time, but we will talk more about this.

Ms. MILLER. Thank you, Mr. Chairman.

The CHAIRMAN. Ranking Member Thune?

Senator THUNE. Thank you, Mr. Chairman.

Ms. Miller, people, stakeholders and others, have expressed skepticism about the STB's annual determination of revenue adequacy for Class I's, that it is overly burdensome on the agency, that it doesn't give a true reflection of the—an accurate picture of the railroads' financial strength for any given year.

What are your thoughts about the usefulness of those determinations?

Ms. MILLER. Well, Senator Thune, thank you so much for the question. It is a really important one, and it is core, in many ways. It gets to the question that was asked by Senator Rockefeller, as well, in many ways.

And, obviously, I am a long ways from an expert in issues like revenue adequacy. If I am confirmed, I have much to learn, and I intend to put my head down and learn it.

I would say that it seems to me that the world changes and continues to change, and it is not unreasonable to take a step back and look at whether or not the way we approach and calculate revenue adequacy is, in fact, still the right way to do it.

I think anytime you have a process that is in place for a long time, it may very well be in place because it is the right process. And I am open to concluding that. But I also would be open to looking at whether or not there is another way to look at revenue adequacy.

Senator THUNE. I am sure you probably heard this as you prepared for this, but one of the complaints I hear from constituents in my state is that it is overly costly and time-consuming for a small shipper to bring a case to the STB.

And I know the Board has made some progress in that area, but I am wondering if there are any suggestions that you might have about how the STB can be more accessible to shippers. There is, I think, room for improvement there still, and particularly to small shippers.

Ms. MILLER. Yes. And, Senator, I have to say, I couldn't say today, I couldn't offer, I am afraid, a very specific suggestion for improvement, but I am sympathetic to the concern that it is very difficult, I think, for small shippers. Just what you have to do to bring a case, the time period that it takes, it is a very high bar.

The notion of simplifying that process is clearly one that the STB has been aware of, paid attention to. They have worked to streamline their processes. Whether or not that streamlining has gone far enough, I think, is certainly an issue that we could consider farther.

Senator THUNE. And I hope that, as you get a chance to drill down a little bit and take a look at that, if you have some suggestions that you could bring to bear on that process. As I said, there have been some changes there that I think have been in the right direction, but I still think there is significant room for improvement.

One of the most important functions of the STB is to determine the reasonableness of rates charged to shippers. And, again, this is something that can be a costly and time-consuming process. From your past work as a state transportation secretary, what concerns have you heard from shippers about how long it typically takes for the board to reach a decision on a rate-reasonableness case?

Ms. MILLER. Oh, no, I think certainly for some shippers, you know, it is a big concern.

One of the things I would say I found in our state—and I am sure this is true in others, as well—but the shortline rail network that we have gotten in place has made a huge amount of difference. I think a lot of the issues that shippers were having in our state began to dissipate once we had a strong, viable shortline rail system in place.

And so we don't have the kinds of problems that I would say 15 years ago I would hear about more regularly from shippers. But, certainly, for a small agricultural shipper, it is a very high barrier.

Senator THUNE. I hope you will continue to look at that, because I think in some cases it is almost prohibitive for a lot of those smaller shippers.

Mr. Kumar, I want to come back—I mentioned this in my opening remarks—and ask you about TPA. Recently, Secretary Pritzker stated that she would actively advocate for trade promotion authority with Congress and the American people. I am curious as to what role you anticipate playing as Congress considers TPA.

Mr. KUMAR. Thank you for the question, Senator.

The expansion of free-trade agreements has been a big priority for President Obama. The country has 20 such free-trade agreements. I would support all efforts that the President makes to ex-

pand free trade, including supporting him and the Secretary on efforts to advance the goals of expanding free trade and perhaps using TPA as a way to make that more effective.

Senator THUNE. OK. And what are some of the factors that you would consider in measuring whether or not some of these policies have been successful when it comes to promoting greater exports?

Because there are lots of factors that contribute to export growth. And if you are confirmed in this position, I am wondering, what is the metric that you will use? How will you measure whether or not particular policies are successful in promoting export growth?

Mr. KUMAR. Thank you for that question, Senator.

You know, in my working experience, one of my major areas of work with my clients has been setting metrics. And as you pointed out, as you implied, high-level metrics may not be the answer. There are a number of other contributory factors that contribute to an end result.

In the Secretary's recent statement about an NEI 2.0, she mentioned looking at the metrics and goals as a key part of looking at NEI. If confirmed, I would look forward to working with her on assisting in creating the right set of metrics and goals to measure these efforts.

Senator THUNE. OK. Thank you.

Mr. Chairman, my time has expired. I will—

The CHAIRMAN. Thank you, Senator.

Senator THUNE.—get to Mr. Jaenichen later. Thanks.

The CHAIRMAN. Senator Schatz?

**STATEMENT OF HON. BRIAN SCHATZ,
U.S. SENATOR FROM HAWAII**

Senator SCHATZ. Thank you, Mr. Chairman.

And thank you to all the testifiers and nominees. We appreciate your public service.

Mr. Jaenichen, there has been a decades-long consensus in support of the Jones Act. We all believe that it must remain an essential pillar of the United States maritime and national security strategy.

The law protects the maritime industry from cheaper foreign competitors that don't comply with our labor and environmental standards. And it protects the jobs of American seafarers, who are part of the backbone of the maritime community and meet our need for sustainment sealift and capacity.

A comprehensive maritime strategy, which I know you are undertaking, will require strong cooperation between MARAD and the private sector, particularly given the industry's occasional desire to use cheaper foreign workers. Can you describe how you will work with industry to help protect American seafarer jobs?

Mr. JAENICHEN. Senator, thank you for that question.

We have already begun the process of establishing a maritime strategy. If confirmed, I can give you my emphatic support that I am interested in increasing the number of U.S. maritime jobs that are available.

To do that, we really need to take a look at opportunities to increase the number of ships that are under the U.S. flag. And that

is the reason why it is critical to get, essentially, the ideas and the thoughts of the entire industry.

Our plan is to, one, reach out, talk to them, establish an agenda here by the end of December so that we can have a public forum so that it is open and transparent when we meet on the 14th through the 16th of January 2014 to be able to discuss those issues. Our focus at that time is going to be on cargo opportunities and increasing the number of ships under U.S. flag. At least that is what we are looking at right now based on the inputs that we have received. It could change over the next month and a half as we get additional thoughts and ideas of how we might increase that.

We are going to continue to support the Jones Act. It is the stable—what has kept our domestic and our coastwise trade there. Without the Jones Act, we would not have today what is on the order book. We have 18 ships that are under order—the first time in 3 decades that we have the construction in our shipyards of that magnitude. Plus, we have options for nine more ships. That is significant. And the only reason that has taken place is because of the Jones Act, and we have to continue to support that in the Maritime Administration. If confirmed, that will be my focus.

Senator SCHATZ. So as you are undertaking your strategy to increase the number of vessels in the fleet, I want to understand better how you determine what the requirements are in terms of the increase in the number of vessels.

I have heard some sort of aspirational numbers in the long run, and I think those are all fine. But there are sort of two ways to build out a number. One is from what is possible, and the other is from what the real requirements are from the standpoint of our national security and economic strategy.

And so what is your process for arriving at, speaking of metrics, our goals over a period of time? Because I don't want us to have aspirational goals that either can't be met or don't need to be met, especially given the economic resource constraints we face.

Mr. JAENICHEN. Senator, thank you for that question.

One of the challenges that we have—obviously, we have 70,000 port calls that occur in the U.S. at every port around the Nation. Today, roughly 2 percent of those have a U.S. flag on them.

From a national strategic standpoint, at the number of ships that we currently have today, our labor force to be able to support our national defense requirements—that includes the 60 ships that we have in the Maritime Security Program, plus the ships that we have that are what we refer to as our reserve sealift capacity, these are government-owned ships—the Maritime Administration and the Military Sealift Command—we are at the point where, with the number of ships that we currently have sailing, we have to increase the number of ships to be able to increase the number of mariners that are available in the pool to be able to man them.

Senator SCHATZ. I understand that, but my question is, how much do we have to increase it? What are the requirements? And how are you going to determine whether we need, you know, 25 additional vessels in the Maritime Security Program or 200 vessels? And what is the process for arriving at whatever number we arrive at as a matter of strategy?

Mr. JAENICHEN. What we have done, sir—and I appreciate that question—is we have taken a look at a target level. One of the outcomes of this symposium we are going to have is to determine what is achievable, one, and, two, how would we get there.

Because if you bring ships to the U.S. flag, you are going to have to have mariners to be able to man them. What that takes is additional training. We know that it takes 10 years to make a master or a chief engineer and it takes 4 years to get through either the U.S. Merchant Marine Academy or one of our state maritime academies. And even if you go through a union maritime training center, it still takes about 30 months to be able to become a third mate or a third engineer. We need to be able to have the capacity to be able to build that.

So that metric that you are talking about will be established and will be part of the maritime strategy that we put together.

Senator SCHATZ. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator.

And now Senator Booker.

**STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY**

Senator BOOKER. Thank you, Mr. Chairman. Thank you, Ranking Member Thune.

First of all, I also want to just join with the sentiments that have been already been expressed and thank all three of you for stepping up and serving. Service in this capacity is also a sacrifice, and I am just greatly appreciative of your willingness to step forward and serve your country.

If I could address a question to Mr. Kumar, who, I must say, sir, you have a haircut that is vastly superior than your two sons', and they should try—

[Laughter.]

Mr. KUMAR. I would agree with that, absolutely.

Senator BOOKER. Thank you very much, sir. They really need to look at and emulate their father in every way.

[Laughter.]

Senator BOOKER. Your story is remarkable and a testimony to our nation.

And I know it is not appropriate in this committee, but it is a testimony to the urgency of immigration reform right now. To see my generation losing out on a lot of the talent that your generation did when they came—when many people who came over from countries like India have so improved, vastly improved, the economy of our country.

And that is why we are here. And my residents in my state sent me down here to focus on jobs, jobs, jobs. Well, immigration clearly helps to fuel job growth in our country.

You have an opportunity now, I think, to serve in a role that is significant. The U.S. has right now reached a high when it comes to exports last year, even though—and this is the shocking statistic—even though less than 1 percent of America's 30 million companies export, less than 1 percent, a percentage that is lower than all other developed countries. We are way behind the game.

And this is a realization that 70 percent of the world's buying power is outside the United States.

There was an amazing article just this week in *The Wall Street Journal* that talked about one of our competitor countries, Germany. We may be doing better in recent years, but we have a long way to go. Germany is the best; they are the gold standard. And forgive my nationalistic arrogance, but I strive for America to be the best.

According to Commerce Department figures, the International Trade Administration has helped about 12,200 companies export in 2011. The export network created by Germany, a country with about a quarter of our population, helped roughly 50,000 companies to export. And we can see the positive impact it has had on the German economy.

Mr. Chairman, this is an amazing article, to see the boom that Germany has had.

I would maybe pass that down to the Chairman.

The CHAIRMAN. Do you want it in the record?

Senator BOOKER. I would love it in the record.

The CHAIRMAN. So ordered.

[The information referred to follows:]

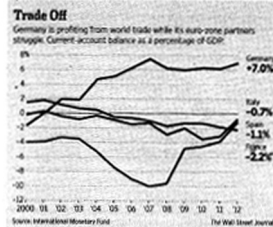
WORLD NEWS

German Export Network Fuels Gap

Behind the Scenes, Vast Support System for Foreign Sales Helps to Boost Contentious Trade Surplus

By DANIEL MICHAELS
AND BRUCE BLACKBURN

Behind Germany's export success is an intricate global sales promotion network that is helping to boost a trade surplus that has become a source of friction with its European and U.S. allies. The country's already large surplus in trade and investment income rose by almost 18% in September compared with a year earlier—as new data showed the balances posted by other European countries weakened slightly. The European Central Bank said Monday that the current account surplus of the 17-country euro zone grew less than 4% to €13.7 billion (\$18.5 billion) in September—which was less than Germany's surplus alone of €20 billion. The current account is the broadest measure of trade and investment income. Such figures have put Germany on the spot for boosting its economy through foreign sales rather than domestic consumption. The U.S. Treasury last month said Germany's export-focused approach, without a similar effort to lift domestic demand, hampered Europe's recovery from its financial crisis, which in turn dragged on the world economy. The EU last week announced it would assess



whether Germany's trade balance has breached economic targets for the 28-country bloc. "Yet there is one, sometimes underestimated, reason for Germany's export success: a low-profile but sophisticated global network of representatives built over decades to establish an export footprint for even the smallest German companies. The German Chambers of Commerce Abroad has 120 offices in 80 countries, with more than 1,700 staff to promote Ger-

man commercial interests. "I don't think it's Germany's fault" that the country runs an export surplus, said Emma Mancopella, an Italian entrepreneur and president of Business Europe, a 35-country lobbying group. "The real difference is their system." The system links the overseas commercial chambers to 80 regional chambers around Germany and relies on funds from both companies and the government. Entrepreneurs say this breadth and integration make a big difference for Germany's hundreds of thousands of small and midsize companies, known as the Mittelstand. They are companies such as Füssler GmbH, a 12-person supplier of car lights and horns based in Trier, two hours from the nearest airport. When owner Hans Otto Füssler decided last year to export to Vietnam, the distant alien market wasn't especially daunting. Mr. Füssler, who already exported to roughly 100 countries, tapped the German-Vietnam Chamber of Commerce's office in Ho Chi Minh City. For a modest fee, he said, the office conducted market surveys, found potential distributors and contacted several of them. When Mr. Füssler flew over to meet candidates, the chamber scheduled visits, hired translators and even arranged a car and driver. After just a few days, Mr. Füssler signed up a distributor. His first shipment more than paid for the chamber's fee, he said. "I think it would have been very difficult for us as foreigners to go to Vietnam" without the help, he said. Füssler's experience is typical, German executives say. Officials at the international chambers say they help roughly 50,000

Europe Nears Plan To Get Gas To Ukraine

The European Union is close in on a deal that would allow Ukraine to get natural gas from sources in the West rather than from Russia, people familiar with the matter said. Such a move could ease the way for the former Soviet republic to pursue closer economic links with Europe, despite threats of retaliation from the Kremlin.

By Laurence Hurman, James Marrese and Raphael Bostyn

The prospective natural-gas deal comes 10 days before leaders of the 28-nation EU and eastern neighbors meet in Vilnius, Lithuania. The centerpiece of the summit is intended to be a swap trade and political deal between Brussels and Kiev, but the swap has been in doubt because of a number of issues, including the EU's demand that Ukraine's parliament meet on Tuesday to consider a reform for medical treatment. Meanwhile, EU officials have been seeking ways of easing tensions between Ukraine and Russia, which has threatened to join a Russian-dominated union.

WORLD WATCH

Senator BOOKER. As a powerful senator, I can put things in the record. This is a great job.

[Laughter.]

Senator BLUMENTHAL. If he keeps talking that way, I am going to object.

[Laughter.]

Senator BOOKER. So these other countries—you know, Germany has all these offices; Canada, 155; Britain, 162. We are at about 75. And the number of Foreign Commercial Service staff we have has decreased from about 1,700 to about 1,300.

Some parts of the International Trade Administration are great—the advocacy centers, for example. But the U.S. Commercial Service has had, over the last decade, a pretty bad reputation and sub-par management.

So we have an opportunity here of incredible opportunity to drive growth, drive jobs and opportunity. And we have American exports rising even though we are experiencing attrition, this poor management, and the low morale.

And so, should you be confirmed, can you walk me through a plan and the steps you would like to take to maximize the potential of the Commercial Service and the approach you will take in diagnosing how we can do better?

Mr. KUMAR. Thank you for your very kind comments and for the very important points that you made, Senator.

I could not agree more with you, I agree wholeheartedly on most of the points that you have made, on the potential for us in the export area. As you pointed out, we export to—the potential is so huge. Ninety-five percent of the consumers live outside the United States. You mentioned that we sell 1 percent of the small businesses. And, actually, many of them only address one export market. And these are some of the areas that the Global Markets team has already been focused on.

Secretary Pritzker, in a recent statement talking about NEI 2.0, she talked about the importance of increasing the global orientation of our businesses. And she used a term called “global fluency.” I believe that we need to have a way to make all our business think more globally.

We have some great examples, by the way. Where I come from in Silicon Valley, you know, people think global from day one. You know, my wife was trying to start a company sometime ago for diagnostics for skin cancer, and she said, you know, there is a big market in Australia, we should think about Australia, along with other countries.

So I think the mindset of thinking globally, we need to promote that. And that is the term that the secretary has used, “global fluency.”

In terms of specific plans, Senator, once I get—if confirmed, I would like to work with our team to exactly address the very important issues that you brought up.

Senator BOOKER. Thank you. My time has expired, but I strongly encourage you, as I did Secretary Pritzker, that this is one of the best opportunities for this economy to grow and actually produce the kind of jobs that we as a first-rate nation should have.

The CHAIRMAN. Thank you, Senator Booker.
Senator Begich?

**STATEMENT OF HON. MARK BEGICH,
U.S. SENATOR FROM ALASKA**

Senator BEGICH. Thank you, Mr. Chairman.

I appreciate the opportunity for you all to be here, and thank you for your willingness to serve. As all the members have said, it does take dedication and time away from your family, and the hours will be longer than you probably expected or whatever they told it would be. So I appreciate your willingness.

I have a few questions. And I hope I pronounce this right. Is it "Jaenichen"?

Mr. JAENICHEN. "Jaenichen," sir.

Senator BEGICH. Thank you very much. I have a couple questions. I apologize we didn't meet up, I got delayed, but I know my staff talked to you for a little bit. But I want to follow up on a couple things.

One, let me kind of cut right to it, and that is on the Jones Act. I appreciate your opening statement and some of the comments you had there. But there are some folks in the community a little nervous about some things you have said recently, and I just want to kind of restate them, summarize them, not specifically, but regarding the Ready Reserve Fleet not necessarily having to be U.S.-controlled companies. And the second piece was, from some, it appears that some of your statements made it sound like you would be willing to allow foreign labor on U.S.-flag ships.

So I want you to respond, but before you do that, I am going to be fair to you and say I am a very strong supporter of the Jones Act. So I anticipate, hopefully, a good response here. If not, that is problematic. But in all fairness, I want to put my disclaimer on the table here. So I am curious—

The CHAIRMAN. Leading the witness.

Senator BEGICH. Yes, it is leading the witness. Well, he is free to answer however he wants.

But I am very concerned. Because we have had a very strong ship industry as it is today. There is some great opportunity ahead of us. But if we start weakening the conditions of U.S. workers on U.S. ships, I think that is a big problem, as well as U.S.-built ships.

So give me your response. And I appreciate your opening comments. You had some commentary in there which I do appreciate. But—

Mr. JAENICHEN. Thank you for those questions, Senator.

I think, first thing, with regard to the advance proposed notice of rulemaking with regard to citizenship for ship managers for the Ready Reserve Force, we have made no decisions on what to change.

The rule that we currently have in place is from 1951. We have not changed the rule since then. The last time we looked at it was 1993, over 20 years ago. At the time, we made a notice of proposed rulemaking, we received public comment, and at that time, we chose not to change the rule.

In this particular case, we are going to go take a look at it again, because we have 50 ships that are coming up for renewal in 2015 for those ship manager contracts. We want to make sure that we have gone through in a very transparent way to make sure that nothing has changed and we have the most efficient and effective way to manage those ships.

We have two different ways of doing it in Federal Government right now. And so there is what we refer to as Section 2 citizenship, which I think is what you are referring to, and there is documentation citizenship. We have two different ways of doing it; the DOD looks at it differently than we do. We want to have a very open and public comment period to be able to evaluate whether that should be changed. We have made no decision to do that.

So that is the first question you had. The second question you had was on allowing foreign labor.

What we have proposed is we have to be able to increase the number of U.S.-flag ships in the fleet. Without ships, you can't train the mariners that we need to be able to man the government ships we have, plus the MSP ships, if we were to activate all of them in support of some kind of a military operation or for a national emergency.

That is one of the concerns that we have. And as we develop the numbers that have to be there, we are going to have to have a plan for how many can you bring in, you know, what labor rate can be adjusted to be able to make sure that they are all U.S. labor.

Today, under the current rules, 100 percent of the licensed officers have to be U.S. citizens and 75 percent of the unlicensed have to be U.S. citizens. All of them have to be documented; all of them have to have U.S. Coast Guard licenses.

We don't see it necessarily to change that, but we have to be able to have a plan that if the ships come in, we have to be able to man them. Because if we can't, they won't come to the U.S. flag. And we have to have a strategy to do that.

We want to be able to talk about that as we have this maritime strategy symposium that we do in January, and it is going to be for an open and frank discussion. There have been no decisions either way, sir.

Senator BEGICH. OK. I just want to—you know where I stand. I will be anxious to engage with you at a later time to make sure we are on the right path.

Let me throw out two other things. My time is about to run out. But, one, I would like to have some further discussion with you later on Title XI, the shipbuilding loan guarantees. As you know, in the budget right now, it has been zeroed out. There is about \$36 million, \$38 million I think you have on hand in the bank.

The Obama administration has not really been aggressively supportive of this. Maybe it is the way the program is designed, but it seems logical to me that we should figure out the right kind of shipbuilding program for this country. It is good business, good for American jobs, good for American workers, and it touches so many states throughout our country.

So I would like to further that discussion. Maybe after your January meeting, there might be some good evolution that comes out of that.

The last thing, I will just throw this as a topic, and, again, something you could look at and maybe get back to me at a later time. The U.S. Merchant Marine Academy, I know it is kind of sacred and it is a legacy, but it costs us \$81 million, give or take, or that budget unit is about \$81 million. We get about 250 graduates a

year. The cost of that is about 300-and-some-thousand dollars for the graduates, in some cases, all in.

So what I want to do—we know that is more expensive than the state academies. I mean, that is just—you know, in the sense of dollars. So I would like you, if you could, at some point, internally give me an analysis between state-academy-run facilities and the Merchant Marine Academy, and why not just give scholarships and have people go to the state academies.

I know that is radical and people here—I will probably get calls within seconds of this conversation, if not right now. But, you know, I know it is a legacy program. It is a World War II concept. But it has been evolved over time. So I would like to see a cost-benefit analysis at some point. Because the goal is, and you have said it, more, we need more. So how do we do that and do it efficiently?

So I am just kind of putting that in the back of your mind, and maybe at a later time we can have that conversation.

Mr. JAENICHEN. Yes, sir.

Senator BEGICH. Thank you very much.

Thank you.

The CHAIRMAN. Thank you very much, Senator Begich.

I need to say to all that votes, two votes, are expected at 3:45, the second one being adjournment for Thanksgiving.

Senator BLUMENTHAL. Nope.

[Laughter.]

The CHAIRMAN. No?

So I now call on Senator Blumenthal, to be followed by Senator Klobuchar.

**STATEMENT OF HON. RICHARD BLUMENTHAL,
U.S. SENATOR FROM CONNECTICUT**

Senator BLUMENTHAL. Thank you, Mr. Chairman.

As you can see, the chairman exercises his leadership firmly and subtly.

[Laughter.]

Senator BLUMENTHAL. And I will be brief, Mr. Chairman, taking that as guidance.

I want to thank all of you for your public service in the past and in the future. And I anticipate I will be supporting you.

I would join my colleague, Senator Booker, in his remarks about immigration, which I have fought to reform and been proud to work on very actively in the two and a half years. And I think your story, Mr. Kumar, is certainly very powerful evidence in support of it, but I am very confident that each of our other two nominees has somewhere in his and her background the same kind of story, because we are a nation of immigrants. And we should be welcoming and embracing a form of energy and initiative and talent which are exemplified by all three of you.

And my father came to this country under somewhat different circumstances. He didn't arrive at Logan Airport. He came to Ellis Island. He was 17 years old in 1935, and he had not much more than the shirt on his back and spoke no English and knew no one. And he didn't go to MIT; he went to work and never had the immense benefits that I have enjoyed, and my brother, of a college

education, or any education for that matter. And so I think he would be very proud of a success story like yours and your sons'.

So all of that said, let me just go to the main question I have for you. Knowing of the very important locally led work such as the Commercial Service Export Center in Connecticut—and I have worked closely with them—what do you envision as the functions of these local offices of the Commerce Department in promoting exports, as has been done successfully by our Connecticut office? I have been on a trade mission that they sponsored which has produced results.

Do you foresee continuing that kind of mission and local offices? Or would you say that they must be cut back because of sequester and other similar kinds of fiscal issues?

Mr. KUMAR. Senator, first of all, thank you for your very kind comments.

Coming to your question about the local offices, just to give you an example, recently I spent a half-day with the Export Assistance Center in Silicon Valley, and it was a very inspiring experience. I found that they were very engaged with a wide variety and a large number of small and medium businesses. Like, each person was dealing with about 1,000 of them. I mean, that is a very large number.

And a variety of things: You would think, it is Silicon Valley and they are really doing technology. They were doing a lot of technology, but one was helping a winemaker export, another was helping a fish exporter in Monterey. So it was very, very impressive.

Many of those exporters would never export without the kind of connection that the Commercial Service offices brought to them, the connectivity with foreign markets and the encouragement, the ability to help them to work through the whole export process.

So I was very, very enthused. I am a big champion of the work they do. If confirmed, I would like to make sure that that work continues to be effective.

Senator BLUMENTHAL. Thank you.

I have other questions I am going to submit for the record and yield the balance of my time to Senator Klobuchar.

The CHAIRMAN. You have 1 minute and 25 seconds to ask two excellent questions.

[Laughter.]

Senator BLUMENTHAL. Thank you.

I would like to just ask Mr. Jaenichen about the Heritage Program.

You attended the launching of the newly restored sailing ship, the whaler, in Mystic, and I thank you for being there. Do you see that program continuing?

Mr. JAENICHEN. That particular program, yes, sir, Senator.

Just so you are aware, we recently signed a memorandum of agreement with the National Park Service. By statute, some of the funding that we get from the sales of our fleet that we recycle, actually, 25 percent goes to maritime heritage. We are going to share some of that funding with the National Park Service, and they are going to reestablish their grant program, which ceased in 1998. And we are looking forward to making that announcement.

Senator BLUMENTHAL. Thank you. And I look forward to your being present at other events involving the Morgan and similar kinds of efforts. Thank you.

Mr. JAENICHEN. Thank you, sir.

Senator BLUMENTHAL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Blumenthal.
And Senator Klobuchar?

**STATEMENT OF HON. AMY KLOBUCHAR,
U.S. SENATOR FROM MINNESOTA**

Senator KLOBUCHAR. Well, thank you, Mr. Chairman. Thank you for noting Thanksgiving, since Minnesota is number one for turkeys in the country.

I just said that to make South Dakota and Senator Thune jealous.

[Laughter.]

Senator KLOBUCHAR. Yes, OK.

Senator THUNE. Did you say South Dakota?

The CHAIRMAN. She said——

Senator KLOBUCHAR. I was saying we are number one for turkeys, and we are the only two states that would vie for that award.

[Laughter.]

Senator KLOBUCHAR. I first wanted to ask you, Mr. Jaenichen— one of the reasons I was actually late here is I was meeting with our Great Lakes group, very important to me. And we were talking about the importance of dredging and what it means for navigation. I think you know that the Great Lakes region is suffering from an ongoing dredging crisis. I had some of the owners of the ships right in my office today, and they were talking about how, you know, they literally leave 10 percent of the cargo behind because they can't make it through some of the locks further down the river.

Region-wide, there is a \$200 million backlog of dredging work. Both the Senate and House versions of the WRDA bill would dedicate a percentage of the Army Corps operation and maintenance dredging budget to the Great Lakes region.

Can you talk about the importance of dredging and what it means for navigation?

Mr. JAENICHEN. Senator, thank you for that question.

Obviously, as you pointed out, if you are operating a ship at only 90 percent of its capacity because of the draft requirements, then that potentially is a problem.

We typically work with the Army Corps as we are taking a look at the various commerce and how the ports work. Unfortunately, the Maritime Administration is not involved in dredging; that is clearly an Army Corps function. But we do work closely with them in coordination. They were one of our peer—we recently released a Great Lakes study, which they were a peer reviewer on.

But as you noted, the Great Lakes themselves actually provide about 28 percent of our GDP, so that dredging in that area certainly is important. And for the lakers and the operators on the lakes, they find that very important. The drafts in that area clearly are something that we need to take a hard look at.

Senator KLOBUCHAR. Thank you.

And I had some Jones Act questions, which I will ask later.

And you should know I was just named Great Lakes Legislator of the Year. I said that to intimidate you for our future questions. [Laughter.]

Senator KLOBUCHAR. But we do care a lot about that, as well.

Ms. Miller, one of the very few industries, as you know, to enjoy an exemption from antitrust law is the freight railroad industry. Due to this exemption, we have heard from rail shippers across the country that suffer from high prices because they are served by only one railroad, and especially that last leg. There may be multiple railroads, and then you get to the last leg.

The Consumer Federation of America estimated that rail rates are \$3 billion higher for captive shippers than they would be if the market was competitive.

I love rail. It takes a lot of things to and from my state. But we are still concerned about that. Could you talk about your views on that issue? I do have a bipartisan bill, the Railroad Antitrust Act, to repeal the antitrust exemption for railroads. But if you could comment on this issue of the rates.

Ms. MILLER. Yes. Thank you, Senator. I have been made aware of your interest in this issue and the bill that has been introduced.

Certainly, it is a complex issue of jurisdiction and a difficult one to sort out. It is one that I would be interested in digging into more and becoming better acquainted with exactly what it would mean.

I don't feel prepared today to give you a direct response, whether or not I think that is the right direction to go or not. But what I could say is that it is a topic that I would certainly take a look at and give consideration to.

Senator KLOBUCHAR. Very good. Because, obviously, the Surface Transportation Board can be helpful in making sure that—

Ms. MILLER. Sure.

Senator KLOBUCHAR.—they get a fair shake. So I look forward to working with you on that.

Last question. Mr. Kumar, you should know that I actually previously chaired the Committee on Competitiveness, Innovation, and Export Promotion, and I am the one that added the words "Export Promotion" to the Subcommittee because I see it as so important and have worked significantly with the Department of Commerce.

I know that Senator Booker asked you about the strategy to manage the Commercial Service. Could you talk about how you see both the domestic and international Commercial Service offices working together to help reach out to more businesses?

I really think this is a key—I am on the President's Export Council, as you may know, and worked a lot on the export control list to help some of our businesses, and getting that modernized, and then also on multiple issues with our companies.

Mr. KUMAR. Senator, thank you for your question and your comments.

I think your observations suggested that both the domestic and the foreign groups should work closely together. I think the new organization would promote that. In my conversations with the leadership team in place, I have found great willingness for them to work together.

I think the connectivity between the opportunity, wherever they might be in the world, and the field, with the 100-odd offices in the country, that would be—you know, the latency of those connections would be greatly reduced by the new organization.

So I personally am very optimistic about the new organization. I look forward to working with you to support you and the National Exports Council.

Senator KLOBUCHAR. Very good. Well, I hope you will hear about our office in Minnesota. We have one in the Twin Cities that is incredible. And then we also have in Fargo a woman named Heather who has helped so many small companies in that area.

They are all nodding their head.

And if you just want to meet an employee who does a great job, you should give her a call and see how she does it.

Thank you very much.

Mr. KUMAR. Thank you.

The CHAIRMAN. Thank you, Senator Klobuchar.

And before I adjourn the hearing, I want to say two things.

One, actually, I say on behalf of Senator Thune and myself. Everybody always starts out, except the two of us, by thanking folks like yourself who are willing to come in and make these enormous sacrifices and to work so hard for probably a relatively short period of time. Who knows? But I never do and Senator Thune never does, and I apologize on behalf of both of us. Because that is the main thing: You are willing to serve. So many people are so down on government, but you are not. You want to help, and you are here.

The second thing I wanted to say was that we had a hearing, I had a hearing I think about 10 years ago on the U.S. and Foreign Commercial Service, an actual hearing, in Charleston, West Virginia. And I was astounded and happy that the room was absolutely—it was a courtroom—was absolutely packed with people.

So, see, on the one hand, West Virginia is not that international. We don't—I do, but the folks there don't like the whole concept of foreign aid very much. I have never voted against a foreign aid bill. But the whole concept of reaching out to the rest of the world I would not necessarily associate with West Virginia. But we are ripe to do that, and that day made it very clear. So your job is an important one.

I thank you all, and this hearing is adjourned.

[Whereupon, at 3:47 p.m., the hearing was adjourned.]

A P P E N D I X

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV
TO PAUL N. JAENICHEN, SR.

Question 1. One of the most critical and cost effective investments made by the U.S. government is the Maritime Security Program (MSP), which provides our military with access to commercial maritime vessels during times of war and national emergency. How important is it that we continue to fully fund this vital program?

Answer. The Maritime Security Program (MSP) fleet transports the majority of military sustainment cargoes in support of U.S. military requirements in both peace and war. The MSP provides funds to partially offset the operating costs for a fleet of 60 privately-owned, militarily useful, U.S.-flagged and U.S.-citizen-crewed ships. The MSP fleet provides the U.S. military with assured access to a global fleet of ships in international commercial trade, plus intermodal logistics capability, to move military equipment and supplies when required. The MSP fleet helps support the employment of approximately 2,700 U.S. mariners and an additional 5,000 shore-side jobs—key personnel to provide the necessary base to support government vessel crewing. MSP vessels have been key contributors to our Nation's efforts in Afghanistan and Iraq. Over the last decade the MSP fleet has transported over 26 million tons of military cargo to the Middle East. It was the MSP carriers that led development of multi-modal services into Afghanistan via the Northern Distribution Network, establishing air-sea bridging that provide critical alternative routes to resupply and support our U.S. military forces. Currently MSP carriers are transporting over 96 percent of all military cargoes in support of OPERATION ENDURING FREEDOM.

Without full funding, it is possible that some ships subject to MSP operating agreements would have to be removed from the program. Given that MSP payments only partially offset the cost to operating under U.S. flag, many of the MSP vessel owners would have to consider placing their vessels under foreign flag registry to continue operation. The loss of these vessels would mean the permanent loss of availability of experienced U.S. mariners with unlimited all-ocean credentials needed to crew the Government-owned sealift fleet, and thus would diminish the country's ability to meet critical national security requirements. Such a loss would significantly affect our Nation's ability to meet the demands for vessels and seafarers in the event of an emergency sealift surge. Appropriations as provided by the Continuing Appropriations Act, 2014 (P.L. 113-46), enacted 17 October 2013, allowed MARAD to renew all MSP operating agreements effective 1 October 2013, permitting continuous operations of the MSP fleet. Full funding for the rest of FY 2014 will ensure no vessels are removed from the MSP due to lack of funding and will ensure that the DOD requirement for a 60-ship fleet is met with assured access to global multi-modal transportation logistics support for the U.S. Armed Forces.

Question 2. The United States Merchant Marine Academy (USMMA) directly supports Defense, Commerce, Homeland Security, and Transportation needs, in addition to the needs of numerous other Federal agencies and private industry. Despite this, the Academy had to close its doors during the recent government shutdown. What steps have you taken or do you plan on taking to make sure the Academy does not close its doors again in the event of a government shutdown?

Answer. I am committed to continuing to work with Congress to ensure that, in the event of a future government shutdown, the U.S. Merchant Marine Academy has the same flexibility as the other military academies to continue to operate over the course of a lapse in funding.

Question 2a. What steps need to be taken to ensure the Academy remains the world's premier maritime training institution?

Answer. Support for the USMMA continues to be a top priority for MARAD and DOT. This is reflected in DOT's commitment to capital improvements at the Academy to provide facilities that are conducive to an effective study environment for Midshipmen, as well as the appointment of new leadership to guide the Academy.

In addition, a new Strategic Plan for the Academy was issued in 2012. Providing sufficient support and resources for implementation of this plan will enable USMMA to effectively achieve its core responsibility of providing the highest caliber education, with state of the art learning facilities and world class faculty and staff, for the Nation's future merchant marine officers and maritime transportation professionals.

Question 3. While the Maritime Administration is not primarily responsible for port security, a strong commercial and defense maritime system depends on secure ports. As we have seen during Superstorm Sandy and past port strikes, the impact of a port closing can have significant long-term impacts on our economy and the maritime industry. And as we have seen repeatedly off the coasts of Nigeria and Somalia, pirate attacks on vessels can have serious consequences. What impact could a disruption from an attack on a port have on the industry?

Answer. Based on observations of labor stoppages in U.S. ports, there is little question that an attack of sufficient magnitude could disrupt port operations or actually cause a port closure. The impact to shipping lines utilizing that particular port could be substantial and necessitate rerouting to other ports causing delays in loading and discharge operations. Clearly any disruption of the Nation's port network would negatively impact not only the maritime industry but also our economy.

Question 3a. Are we currently doing enough to protect our ports and vessels from attacks?

Answer. MARAD believes the Department of Homeland Security (and U.S. Coast Guard) and local port authorities are taking every precaution possible (subject to available resources) to protect the safety and security of U.S. ports. MARAD participates in interagency efforts to ensure the security of U.S. ports from a commercial perspective.

Question 4. With the Administration's focus on expanding exports and the growing demand for moving goods—especially movement on inland waterways—the maritime industry will play a critical role in our country's economic vitality. How do you plan to protect critical maritime laws, like the Jones Act, to ensure the economic viability of America's maritime industry?

Answer. The Merchant Marine Act of 1920 (Jones Act) is one of the strongest elements of U.S. maritime policy, encouraging investment in privately owned U.S. companies to operate shipyards and vessels that employ well-trained U.S. crews and maritime industry workers. I strongly support and will continue to support compliance with the Jones Act.

During my time at MARAD, we have worked to develop and improve our processes for determining vessel availability under the Jones Act waiver process to maximize the use of Jones Act-eligible vessels and to achieve greater transparency and U.S. stakeholder participation. If confirmed, I will continue these efforts and work to protect the coastwise trade and the benefits the Jones Act provides to our domestic maritime industry.

Question 4a. What do you see as the primary threat to the Jones Act? Would you propose any changes to the Jones Act during your tenure as Administrator?

Answer. Critics of the Jones Act have cited the higher cost of transportation that results from the requirement to use only Jones Act compliant vessels. The Jones Act requirements for vessels in the coastwise trade to be U.S.-built and U.S.-crewed may result in higher costs than if vessels were foreign-built and foreign-crewed, but allowing U.S. jobs to disappear in favor of foreign substitutes would only erode our own economy and negatively impact our national security. Based on the present situation, there is no need to propose any changes in the Jones Act requirements. As market conditions improve and as there is increased demand for transportation capacity, we are looking for the market forces to call for additional vessel construction which will bring increased competition to the various trades.

Question 5. In recent months, MARAD has contemplated making changes to long-standing policies as it relates to the Ready Reserve Force. Specifically, MARAD issued an Advance Notice of Proposed Rulemaking (ANPRM) which may alter ship management contract policies. This question has been discussed before, why do you believe it is necessary for MARAD to reexamine it now?

Answer. MARAD has not issued an Advance Notice of Proposed Rulemaking (ANPRM) yet, but is considering doing so to request public comments on whether current ship management contract regulations should be changed. The existing MARAD citizenship regulation was last evaluated 20 years ago and was not changed at that time. It currently restricts ship managers to companies that are U.S. citizens within the meaning of 46 U.S.C. § 50501 (generally referred to as "Section 2 Citizens" because this definition derives from former Section 2 of the Shipping Act of 1916). A Section 2 Citizen is a corporation, partnership, or association

whose controlling interest (*i.e.*, greater than 50 percent) is owned by citizens of the United States.

In contrast, “foreign-owned” U.S. companies that own a U.S. flag vessel are often referred to as “documentation citizens.” The term “documentation citizen” is used to identify a vessel-owning entity that is able to document a vessel under the U.S. flag with a registry endorsement. The standard for determining a documentation citizen is lower than that for a Section 2 citizen because U.S. documentation citizen ownership does not require U.S. ownership at every tier of ownership. However, a U.S. documentation citizen still has significant control and involvement in the operation of the entity and over the vessel. The corporate eligibility requirements for documenting a vessel and the meaning for the term documentation citizen are found in 46 U.S.C § 12103(b).

Currently, the U.S. Department of Defense (DOD) allows documentation citizen companies to manage Military Sealift Command vessels. There has been inter-agency discussion regarding the merits of changing MARAD’s citizenship requirement to be the same as that allowed by DOD, given that the ship management services for these sealift vessels are similar and the purpose of the National Defense Reserve Fleet (NDRF) is to principally provide support to DOD. An Advanced Notice of Proposed Rulemaking (ANPRM) will solicit public comments about considering a regulatory change to amend the citizenship requirements for ship managers and general agents that maintain and operate NDRF vessels. At this time, no decision has been made to change the existing regulation.

MARAD plans to evaluate whether the Agency’s existing U.S. citizenship criteria for its vessel operators (ship managers and agents) benefit the maritime commercial and national security interests of the United States and provide the most current and effective approach in support of the operations of the NDRF. In particular, it will seek comments regarding the need for and relevancy of existing regulations governing the citizenship eligibility requirements for U.S. company vessel operators. MARAD will also welcome comments suggesting improvements to the Agency’s existing regulations regarding the operations of the NDRF that strengthen the U.S. Merchant Marine.

Question 5a. In addition to the public comment requirement, how are you working with stakeholders to address concerns with the ANPRM?

Answer. Consistent with the Administrative Procedure Act, the public comment period/process is the vehicle for working with stakeholders to address concerns with the ANPRM. Comments from stakeholders received in response to the ANPRM will be used to determine whether MARAD should propose any changes. At this time, no decision has been made to change the existing regulation. If deemed appropriate that documentation (non-Section 2) U.S. citizen companies should be eligible to compete for ship management services, proposed changes would be published in a notice of proposed rulemaking, providing stakeholders further opportunity to comment on the issue.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. BRIAN SCHATZ TO
PAUL N. JAENICHEN, SR.

Question 1. In your testimony, you emphasized the need to quickly grow the number of U.S.-flagged vessels in order to meet the growing domestic and international demands on the U.S. maritime fleet.

Please explain the major drivers you believe are influencing the strategy to grow the U.S. maritime fleet. In your response, please specifically address the assumptions you are making about the future requirements on the U.S. maritime fleet, and how these requirements are informing the pace of development and total number of vessels and mariners needed to support U.S. economic and national security priorities.

Answer. The U.S. Merchant Marine engaged in international trade has steadily declined since World War II and currently carries only a small fraction (roughly 2 percent) of our Nation’s overseas trade. Today, there are less than 90 self-propelled U.S.-flag ocean-going ships of 1,000 gross tons or more operating principally or solely in international trades, down from more than 300 vessels in 1975. Action is required to reverse this decline, or a viable U.S. presence in international maritime commerce could be at risk. The strategic and economic interests of the United States will not be well served if America is wholly dependent on foreign companies and mariners to carry our Nation’s commerce and maintain the global supply chain. In addition, if the U.S. had no fleet in international trade, U.S. participation in the development of international vessel safety and security guidance could be compromised.

Accordingly, the Maritime Administration (MARAD) currently is developing a strategy to revitalize the U.S. Merchant Marine. The strategy will focus on minimizing impediments for ship owners to flag vessels in the U.S. and employ U.S. crews. Although the strategy will likely address other segments of the industry, the initial focus will be on developing options which, if implemented, could result in gains for the U.S. flag and U.S. mariners and potentially result in a higher portion of U.S. international trade for U.S. flag vessels. Increased U.S. overseas trade for U.S. flag vessels could also provide more jobs for American seafarers. In turn, this would increase the number of ships and mariners to respond in time of armed conflict or national emergencies.

MARAD notes that the foreign trade sector offers the greatest growth potential for U.S.-flag ships and U.S. mariners, given that domestic commerce is already served solely by U.S.-flag vessels and mariners and will grow largely at the rate of the overall economy. Any increase in the U.S.-flag share of our Nation's international trade, such as a doubling of trade share, could potentially double the number of U.S.-flagged ships and mariners operating in foreign trade.

Question 2. In your testimony, you noted that there would not be a sufficient number of licensed and unlicensed American mariners to operate all of the new vessels the United States might laydown as part of its new maritime strategy. As a result, you explained that you would consider relying on non-American seafarers to fill open positions so that the United States could expedite the growth of its maritime fleet even as it continues to develop the next generation of U.S. mariners.

What effort is the Maritime Administration (MARAD) making today to help grow the pool of U.S. citizen mariners? What additional resources (including changes to statutory authority) could help MARAD expedite its efforts to grow the pool of U.S. mariners so that we can minimize or avoid a future gap between the number of open mariner positions and the number of U.S. mariners available to fill those positions? How has MARAD engaged the maritime academies, the maritime industry and the maritime unions to determine how to minimize or avoid a future gap?

Answer. I do not support any actions that would negatively impact the number of jobs available to U.S. mariners. MARAD's initial objective in developing a maritime strategy is to revitalize the U.S. flag industry engaged in international trade, which will increase the number of U.S. mariner jobs. As a first step in developing a strategy, MARAD is hosting a public meeting on January 14–16, 2014 to generate and discuss ideas to improve, strengthen and sustain U.S. international cargo opportunities and seafarer capacity, and to develop a list of items for action, voluntary adoption or further study. MARAD will solicit not only ideas that would encourage vessel owners to operate under the U.S. flag, but also what the appropriate size of that fleet should be and how the U.S. can best sustain an expanded U.S. flag fleet in international trade. I believe this discussion is an important first step as we work to find consensus among maritime industry stakeholders to develop a national strategy.

MARAD vigorously supports maritime training and education as well as mariner recruitment and retention programs. To ensure an adequate supply of capable and well trained licensed merchant mariners, MARAD funds and operates the U.S. Merchant Marine Academy (USMMA) and provides limited funding to six state maritime academies, which collectively produce more than 850 new officers annually. MARAD also provides training vessels to each of the state maritime academies. These vessels are critical for obtaining the necessary sea time for graduates to obtain their U.S. Coast Guard (USCG) credentials.

MARAD also actively monitors mariner availability through its Mariner Outreach System (MOS) to ensure that the industry can meet both peacetime and contingency requirements. Created in 2006, the MOS monitors the number of qualified mariners through a partnership with USCG and mariner requirements through partnerships with the industry. This analysis is shared with labor, the maritime academies and our industry partners to identify trends and issues negatively affecting the workforce so that we can be proactive at devising solutions.

Finally, MARAD established and provides oversight of an Electrician Apprentice Training Program to address a developing shortage of senior unlicensed engineers critical to the activation of the Ready Reserve Force vessels. The program has proven to be a cost effective way to create trained electricians to fulfill crewing requirements to meet both the economic and national security needs of the Nation.

Question 3. In 2009, Congress granted MARAD the authority to promulgate regulations to allow for tougher enforcement of the United States' Cargo Preference laws. However, MARAD has fallen short in using its authority to promulgate those new regulations.

Please explain why MARAD has been unable to promulgate these regulations. If confirmed as the Administrator, how would you prioritize the need to promulgate these new regulations, and what is a reasonable timeline for doing so? What additional authority could Congress provide MARAD in an effort to ensure that the Nation's Cargo Preference laws are being followed as intended?

Answer. My priority is to promulgate a cargo preference enforcement regulation. MARAD currently is engaged in an intensive rule-development process to update its cargo preference regulations and implement the enforcement provisions of the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009 (FY NDAA). I acknowledge the frustration that has been expressed about the delay in implementing this rule; however, prior efforts to issue this rule have contributed to the current rulemaking effort by the Department of Transportation (DOT) and MARAD. Preliminary draft rule language is under review within DOT and I am closely monitoring its progress. MARAD appreciates the authority the Congress has provided the Agency to enforce cargo preference laws and believes the current rulemaking will meet the intent of the FY 2009 NDAA.

Question 4. The Maritime Security Program (MSP) is under extraordinary pressure as a result of sequestration. Up to one-third of the Nation's Merchant Marine ships may be pulled from service next year due to these misguided, across-the-board cuts. These ships cannot be brought back into service quickly once they are gone. And we cannot expect our Merchant Marines to wait around, hoping that they will get their jobs back.

I am working closely with my colleagues to reverse the sequester cuts so that we can protect our maritime industry. But as the Administrator, you would ultimately be responsible for ensuring that MSP remains viable, even with the pressures of sequestration.

What steps would you take as the Administrator to help blunt the impact of sequestration on the Merchant Marine fleet so that we do not lose these vessels or our Merchant Marines?

Answer. Appropriations as provided by the Continuing Appropriations Act, 2014 (P.L. 113-46), enacted October 17, 2013, allowed the MARAD to renew all MSP operating agreements effective 1 October 2013, permitting continuous operations of the Maritime Security Program (MSP) fleet. Full funding for the remainder of FY 2014 will ensure no vessels are removed from the MSP due to lack of funding and will ensure that the Department of Defense (DOD) requirement for a 60-ship fleet is met with assured access to global multi-modal transportation logistics sealift support for the U.S. Armed Forces.

If full funding is not extended for the remainder of FY 2014, the Secretary of Transportation, in consultation with the Secretary of Defense, must determine whether MSP operating agreements will be modified and/or which selected vessels should be retained within the funding level of the previous Fiscal Year. Vessels retained in the program will be those that are the most militarily useful and commercially viable.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
PAUL N. JAENICHEN, SR.

Question 1. During the government shutdown in October, the U.S. Merchant Marine Academy was required to shut down its operations—the only one of the five service academies that had to do so. While nobody wants to see another government shutdown, are there any steps that MARAD can take to prevent a similar situation at the Academy if another shutdown were to occur?

Answer. While all the Federal service academies were forced to make changes as a result of the Government shutdown, the impact on the U.S. Merchant Marine Academy (USMMA) was especially severe because nearly all of the USMMA's faculty and staff are civilian Federal employees. Unlike the other service academies whose staffs include a large number of active duty military personnel, USMMA experienced significantly reduced operations, classes were cancelled and administrative support programs ceased. I am committed to continuing to work with Congress to ensure that, in the event of a future government shutdown, the U.S. Merchant Marine Academy has the same flexibility as the other military academies to continue to operate over the course of a lapse in funding.

Question 2. In your Committee Questionnaire responses, you mention that the number of U.S.-flagged deep ocean vessels involved in international trade has declined over 80 percent in the last 20 years, which could have a detrimental impact on the U.S. military's ability to move troops, equipment, and supplies should our

national security require such capabilities. Should you be confirmed, how will you address this potential problem?

Answer. MARAD is developing a strategy to revitalize the U.S. Merchant Marine that will focus on actions that would enable ship owners to flag vessels under the U.S. flag and operate with U.S. crews. Although the strategy ultimately will include other segments of the industry, an initial focus will be on developing options which, if implemented, could result in gains for the U.S. flag operating in international trade and potentially result in an increased portion of ocean borne commerce being on U.S. flag vessels. Increased U.S. international trade and more vessels operating under U.S. flag would also provide more jobs for American seafarers. This increase in the number of ships and mariners would enhance national security by ensuring the Department of Defense has sufficient access to sealift capacity to respond in time of armed conflict or national emergencies.

As part of its strategy, MARAD plans to analyze the costs of operating under the U.S. flag compared to foreign flag and to determine if the Agency can take actions to make the U.S. flag more competitive. In addition, MARAD will be looking at challenges facing the U.S. shipbuilding industry and options to promote this industry, which has proven to be beneficial to the Nation from both an economic and defense perspective. MARAD expects to conduct extensive public outreach on these issues to identify actions that could strengthen the U.S. Merchant Marine.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. ROGER F. WICKER TO
PAUL N. JAENICHEN, SR.

Question 1. For almost a century, U.S. policy has required merchandise shipped by water within the United States to be carried by vessels that are U.S.-built, U.S.-owned, U.S.-flagged, and U.S.-crewed. This policy has enhanced our Nation's economic, national, and homeland security. Will you support and defend this policy if you are confirmed?

Answer. Yes. I strongly support the Merchant Marine Act of 1920 (Jones Act) because it is essential to maintaining reliable coastwise trade and to ensuring the existence of a domestic maritime industry of shipbuilders, vessels and merchant mariners.

Question 2. The United States is now a net exporter of petroleum products for the first time since 1949. This boom in domestic energy production could greatly benefit the U.S.-flagged fleet. What plans do you propose to take advantage of this strategic time in history? What assistance can we in Congress provide?

Answer. The potential increase in U.S. production of both crude oil and natural gas may increase the Nation's economic and national security and may present opportunities for the maritime transportation sector. Securing cargoes from this sector for U.S. carriers and U.S. mariners in this expanding market will be one of my priorities.

For example, MARAD's Deepwater Port licensing program offers the potential for new employment opportunities for U.S. citizen crews in the operation of tank vessels serving the facilities licensed by MARAD. MARAD has made it a priority to negotiate U.S. crew and build agreements with the applicants of our offshore energy import and export facilities. MARAD anticipates additional license applications for offshore/deepwater port liquefied natural gas (LNG) export facilities in the Gulf of Mexico to be filed in the coming year. If confirmed, I intend to work with applicants to maximize the use of U.S. citizens in all aspects of facility operation—to include seeking opportunities for the U.S. shipbuilding industry in the facility construction, operation and maintenance activities.

Additionally, natural gas now serves as an alternative fuel choice for marine propulsion. Over the past 18 months, five domestic ship operators have made public their intentions to convert existing and/or build new commercial cargo and offshore platform supply vessels that use LNG as a propulsion fuel. The first of these vessels is scheduled to be in service as early as spring 2014, with several more scheduled for 2015 and 2016.

Question 3. Cargo preference programs are critical to the continued economic viability of the U.S.-flagged fleet. What is MARAD doing to ensure that all civilian shipper agencies are complying with the cargo preference laws? If MARAD moves forward with an enforcement rulemaking, how will you ensure that those rules do not create exceptions for agencies to circumvent existing cargo preference laws?

Answer. There is a reporting requirement under current regulations that require shippers of U.S. Government impelled cargo to report all of their cargo moves, on both U.S.-flag and foreign-flag, to the MARAD's Office of Cargo Preference and Domestic Trade. Statistical information derived from this reporting allows MARAD to

monitor compliance on a contract-by-contract and agency-by-agency basis. Additionally, our cargo preference program staff reviews bills of lading submitted by agencies, reviews U.S. Government contract listings, and gathers feedback from our U.S.-flag carriers on U.S. Government impelled cargo moving in international trade. MARAD currently is engaged in a rule-development process to update current cargo preference regulations and implement the enforcement provisions as directed by the Duncan Hunter National Defense Authorization Act for Fiscal Year 2009. As part of this rulemaking, MARAD will consider all options to address compliance with existing cargo preference laws.

Question 4. MARAD has long maintained policies that have worked to strengthen the U.S. Merchant Marine. Those policies include preference clauses that set aside Ready Reserve Force ship management contracts for American-owned companies. As MARAD administrator, will you protect and uphold existing policies that reserve this line of work for U.S.-owned companies?

Answer. The existing MARAD citizenship regulation was last evaluated 20 years ago and was not changed at that time. Currently, the U.S. Department of Defense (DOD) allows documentation citizen companies, which are “foreign-owned” U.S. companies that are able to document a vessel under the U.S. flag with a registry endorsement, to manage Military Sealift Command vessels. There has been inter-agency discussion regarding the merits of changing MARAD’s citizenship requirement to be the same as that allowed by DOD, given that the ship management services for these sealift vessels are similar and the purpose of the National Defense Reserve Fleet (NDRF) is principally to provide support to DOD.

An Advance Notice of Proposed Rule Making (ANPRM) will solicit public comments regarding whether the Agency’s existing U.S. citizenship criteria for its U.S. company vessel operators (ship managers and agents) benefit the maritime commercial and national security interests of the United States and provide the most current and effective approach to support the operations of the NDRF. In particular, it will seek comments regarding the need for and relevancy of existing regulations governing the citizenship eligibility requirements for vessel operators. MARAD will also welcome comments suggesting improvements to the Agency’s existing regulations regarding the operations of the NDRF in a manner that strengthens the U.S. Merchant Marine. Comments received in response to the ANPRM will be used to determine whether MARAD should propose any changes. At this time, no decision has been made to change the existing regulation.

Question 5. Many of the vessels in the Ready Reserve Fleet are reaching the end of their service life. What are your plans to maintain the Ready Reserve Force as a viable component of the National Defense Reserve Fleet?

Answer. The 46 vessels currently in the Ready Reserve Force (RRF) provide half of the government owned surge sealift capability. DOD surge sealift requirements call for the full capability of the RRF as it exists today, and there is a recognized need to recapitalize the ships for the RRF program since most are nearing the end of their service life. If RRF capability is to be maintained at its present level, a recapitalization plan will need to be in effect by 2020 when several vessels reach 50 years of age. MARAD is working with the U.S. Navy and U.S. Transportation Command to determine the most cost effective manner to acquire replacement capacity.

Question 6. In your written testimony, you touched briefly upon the importance of port infrastructure. I agree with you. In fact, my home state of Mississippi is investing nearly \$570 million to upgrade our state port of Gulfport. Do you feel it is important to have a truly national transportation network that includes ports of all sizes and capabilities?

Answer. Yes. A national network of port facilities, one that has been fully integrated into our overall freight transportation network, is vital to the Nation’s future economic growth potential. Ports of all sizes and capabilities play an integral role in the Nation’s freight supply chain, contributing to economic growth, job creation and our national security. The American Association of Port Authorities (AAPA) reports that U.S. seaports generate more than \$212 billion in Federal, state and local taxes annually. It is also anticipated that between 2012 and 2016, U.S. seaports and their marine terminal partners will invest approximately \$46 billion into infrastructure projects in and around their facilities—generating significant landside economic activity. Further, seaports directly or indirectly support employment of more than 13 million people in the U.S.—accounting for \$650 billion in personal income.

Most importantly, seaports of all sizes and capabilities serve as our Nation’s gateway to the expanding global marketplace. Each year, U.S. seaports process about 2 billion tons of cargo (import, export and domestic) including food, clothing, medicine, fuel, building materials, electronics and toys. According to the AAPA, our Nation’s port network is responsible for moving nearly all of the country’s overseas

cargo volume (99.4 percent by weight and 64.1 percent by value). Each of the 50 states relies on our port network to process both their imports and exports—totaling more than \$3.8 billion worth of goods a day.

By 2050, the Census Bureau expects there to be nearly 400 million Americans—an increase of nearly 100 million people. This kind of growth will trigger a corresponding increase in freight demand and movement through the Nation's port network—making efficient port operations, infrastructure expansion and modernization even more critical to our economic interests.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV
TO DEBRA MILLER

Question 1. In 1980, the freight railroads were struggling, and Congress stepped in with the Staggers Act. This legislation, which governs much of the Board's work, was meant to help the freight railroads improve their finances, but also to "provide a regulatory process that balances the needs of carriers, shippers, and the public." At this point, I think it's clear the freight railroads don't need our help any more.

The staff report I released today shows that in each of their most recent 16 quarterly reports, one of the three publicly traded freight railroads (CSX, Norfolk Southern, and Union Pacific) have set all-time financial records. We don't have numbers for BNSF because Warren Buffett took the company private in 2009, but I'm sure he's doing fine too.

In my statement, I talked about the STB's role in maintaining balance in the freight rail industry. How can the STB restore balance to a network that clearly favors the freight railroads right now over shippers and consumers?

Answer. The STB was created to help ensure that the railroad industry earned revenues that would allow it to continue to invest in its network in order to meet the demands of a growing economy, while also protecting shippers from unreasonably high rates. Based on the earnings that the Class I railroads have achieved in recent years—as outlined in the Committee's report—it may indeed be time that more emphasis be placed on assuring that shippers are not paying more than is necessary for railroads to earn adequate revenues. In particular, the STB may need to examine in the manner in which it calculates revenue adequacy needs to be changed, or further develop the manner in which rates can be challenged when a railroad is revenue adequate.

The issue of revenue adequacy aside, there may be other steps that the Board can take to better serve not only shippers, but all of its stakeholders. Based on comments that I heard during my meetings with members of the Committee and their staffs, there is significant concern that stakeholders do not file cases because they are frustrated with the expense and time that it takes for the STB to process cases. If confirmed, one of my priorities would be to meet with the Board's stakeholders—both shippers and railroads—and hear firsthand their thoughts regarding the STB's regulatory processes. As I noted during my opening comments, one of my concerns as Secretary of KDOT was that the agency had become too insulated from the people we served. Although I cannot say if that is the case with the Board, I would like to hear directly from those that the Board serves to get their perspective on how the STB may do better for its stakeholders.

Question 1a. In September, the Board found that two of the four Class I railroads were revenue adequate; Norfolk Southern and Union Pacific. CSX was found to be just short of revenue adequacy and BNSF, while it needs to re-submit due to Warren Buffett's acquisition, is expected to be at or near revenue adequacy. Given this, do you believe the Board's revenue adequacy measurement presents a clear and accurate picture of the financial health of the railroads?

Answer. I am only beginning to learn about these complex railroad finance issues. But I do know that the railroad industry today looks nothing like it did in the 1960s and 1970s. And so I think that the agency should take a fresh look at the issue of revenue adequacy and how the concept should inform the Board's general regulatory approach. If confirmed, I plan to make this one of my priorities; learning as much as possible about the Board's current approach to calculating revenue adequacy and determining whether changes are needed and, if so, whether such changes would entail a few minor tweaks or a complete overhaul.

Question 2. Railroads have treated captive shippers very poorly—increasing rates, shifting fuel surcharge costs, refusing to provide adequate service, and bullying the shippers around. And yet, the Board has continuously failed to adequately address these issues. Do you share my concerns about the issues impacting captive shippers?

Answer. Given my background, I am very concerned about the issues that captive shippers face. As I noted in my comments before the Committee and my individual

meetings with members of the Committee and their staffs, I have seen firsthand the impact to shippers and communities when rail service is not available, or is available only on arbitrary or unreasonable terms. In many such instances, the only source of protection or relief is the STB. If confirmed, I will do my best to ensure that shippers can turn to the STB for appropriate relief.

Question 2a. Will you commit to work to ensure that the Board is accessible and affordable to shippers? What steps would you take to accomplish this?

Answer. If confirmed, I commit to using my power as a Member to make sure that the Board is doing all that it can to make its processes accessible and affordable. As noted, I have heard concerns that stakeholders are deterred from seeking relief from the Board because of how expensive and time-consuming STB proceedings can be. Although such concerns are undoubtedly shared by both shippers and railroads, in many instances it is the shippers that are more likely to suffer, particularly shippers that cannot match the resources of the railroad. To ensure that railroads do not have an unfair advantage in this regard, one of my priorities, if confirmed, will be to meet with Board staff and review the Board's internal processes to determine if there are ways to build on the steps that the Board has already taken to speed up the process and reduce costs to stakeholders. I would also like to meet with the stakeholders to gather their input.

Question 3. The Board has consistently determined that railroads are bound by common carrier obligations to transport hazardous material in instances where the appropriate agency has promulgated comprehensive safety regulations. In response to these requirements and the perceived risk of shipping hazardous materials, the Committee has received complaints that the railroads have reduced service, increased rates, and significantly altered contract terms and conditions to shippers of hazardous materials. How would you work to ensure hazardous materials shippers are not treated unfairly?

Answer. The transportation of hazardous materials creates unique challenges not only for shippers, but also for the railroads that are required to carry such traffic. I am sympathetic to the railroads' concern that transporting such materials exposes them to potentially catastrophic liability. Yet I am also sympathetic to the chemical shippers' concern that rail is often the only viable means of transporting such materials—and in some instances, the only means.

As I have noted throughout my confirmation process, the Board's processes must be accessible and affordable for shippers—including chemical shippers. Although I am too new to these issues to say whether there are special accommodations that the Board can or should make for chemical shippers, I believe that the Board needs to do all that it can to eliminate deterrents to shippers needing to seek relief at the Board, and if that is done, it will benefit chemical and non-chemical shippers alike. My commitment, if confirmed, is to work to ensure that the Board's processes are accessible to *all* shippers.

Question 4. In many instances, the Board has been slow and inefficient in its decision making which has left many shippers without a resolution to their concerns for several years. In some instances, small shippers do not even bring cases to the Board because they cannot afford the time and money it would take to reach a decision. What do you see as the reasons for these inefficiencies?

Answer. Without having been at the Board and having had the opportunity to view its internal processes firsthand, I have little basis for drawing any conclusions. I can say from my past work experience that delays tend to occur when the staff is overly concerned with eliminating risk, when the process itself has become bogged down with unnecessary layers of review, and when timeliness is simply not considered a priority. Whether any of that applies to the STB, I cannot say. However, if confirmed, this is an issue that I will explore and try to work with my fellow Board Members to address.

Question 4a. How will you improve the Board's timeliness in making decisions?

Answer. Deliberative decision-making is important and no attempt to improve timeliness should negate solid analysis and decision-making, but I believe that it is possible to accomplish both when those twin goals are kept firmly in mind. To be improved, timeliness has to be a priority, which means that it needs to be discussed and referenced regularly. In addition, an organization must assess the usefulness of each step in the decision-making process and eliminate those steps where the added value is not outweighed by the additional time that it adds to the process.

I understand the idea that justice delayed can be justice denied. Therefore, if confirmed, one of my first tasks will be to meet with the Board employees and study the Board's decision-making process to try to determine if there are ways that the process can be made more efficient. I will also speak with the Board's stakeholders to see if they have ideas that may be of value.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO
DEBRA MILLER

Question 1. Kansas is a rural, heavily agricultural state, and one strongly dependent on freight rail transportation. What were some of the major rail initiatives you advanced or participated in during your time as the state's transportation secretary? What lessons have you learned that you will bring to your position at the STB, if confirmed?

Answer. During my tenure as the Secretary of Transportation for the state of Kansas, I worked on a number of significant rail initiatives. Notably, I was an active participant in the Kansas Department of Transportation's (KDOT's) creation of rail port authorities. These authorities were given taxing power and, with the revenue that they raised, the ability to purchase rail lines for preservation of rail service. An example of the success of this initiative was the establishment of the Mid-States Port Authority, a rail authority made up of 14 counties. Established in 1981, it eventually purchased 400 miles of track. After it was created, I continued to work aggressively to secure Federal and state loans and guarantees that were needed to fund Mid-States' rail service and maintain operations. I am proud to say that Mid-States provided consistent and steady rail service to the northern tier of Kansas for nearly 30 years, a service that was important to shippers and local communities alike, before finally selling its lines to Rail America in 2009.

While Director of Planning at KDOT, the agency also actively participated in the numerous rail merger proceedings before the STB in the 1980s and early 1990s. The focus of KDOT's participation was on representing the interests of shippers and local communities.

I also led KDOT in the establishment and implementation of the Kansas State Rail Service Improvement Fund, a program that makes loans and grants to port authorities and railroads to maintain and improve service. As Secretary, I personally and aggressively defended the continuance of this program before the state legislature. During my tenure, KDOT also supported and participated in the development of several Transportation Investment Generating Economic Recovery (TIGER) grant applications for shortline railroad improvement to the U.S. Department of Transportation, including an application which was approved.

I learned many valuable lessons while Secretary of KDOT. In terms of rail transportation, I learned the vital importance that rail plays to agricultural producers and small manufacturing companies, as well as the surrounding communities. In a rural state like Kansas, rail service is often the only viable means of transportation. But I also learned how precarious rail service is—once it is lost, it is not likely to be restored. Accordingly, it is important not to take rail service for granted and take the steps necessary to prevent it from being lost.

Question 2. Several Federal transportation authorities, such as the NTSB and the FAA, have independent investigative authority, which allows them to investigate matters under their jurisdiction without the necessity of a formal complaint. The STB, however, does not have this authority. Would you favor Congress granting such independent investigative authority to the STB? If so, are there any limits you would consider appropriate to constrain such authority, such as limiting it to especially significant matters?

Answer. As I understand it, there are already ways for stakeholders that have concerns or complaints to raise them with the STB. For relatively small filing fees, parties can file formal complaints, petitions in which they seek a legal determination from the Board, or petitions for rulemaking. The STB also has a free customer assistance program that can help shippers resolve service disputes with railroads.

However, should Congress choose to grant the STB independent investigative authority, I believe that such authority should be limited to railroad service practices with industry-wide implications. Investigative authority should be limited in this manner because many individual railroad service disputes may not rise to a level of significance that would justify the expenditure of limited Board resources on own-motion investigations. And giving the Board investigative authority for rates could overwhelm the agency while not substantially reducing the burden on private parties, as parties would still have to develop substantial factual records. Investigative authority would be best limited to cases of industry-wide service disputes because those are the situations where the Board could have the most impact without creating enormous logistical challenges.

Question 3. To what extent do the total resources devoted to conducting a rate reasonableness case—by shippers, by carriers, and even by the Surface Transportation Board itself—concern you?

Answer. It has been explained to me that a rate reasonableness case generates a significant amount of litigation costs for the parties (both railroads and shippers)

and man-hours for the STB staff. Any time that a regulatory process becomes that sizeable, it is a cause for concern. I also understand that the STB has taken a number of initiatives over the last several years to improve its large-case procedures and to streamline its rate reasonableness methodologies. If confirmed, I would be interested in exploring whether those initiatives have gone far enough and whether there are additional steps that my fellow Board Members and I can take to reduce resource requirements for the parties and the Board itself.

Question 4. Would you favor regular reports by the Board to the two Congressional committees of jurisdiction, showing which cases have been open for more than six months?

Answer. As the former head of large public agency, I believe that it is wise to err on the side of accountability and transparency, and regular reporting requirements are a good way of achieving that. Accordingly, I would support regular reports to the appropriate Congressional committees.

Whether that means a report of cases pending more than six months or some different threshold, I cannot say. As for other parameters of a reporting requirement (the level of detail, the frequency), I would simply note that any reporting requirement should be adopted with the aim of improving accountability and transparency and not simply for the sake of creating a reporting requirement—otherwise, the exercise becomes meaningless. In addition, I believe it would be counterproductive if the reporting requirement itself were so burdensome that it required the Board to shift significant resources away from processing cases.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. ROGER F. WICKER TO
DEBRA MILLER

Question. Rail lines are extremely capital-intensive investments and once abandoned are rarely rebuilt. As such, I encourage you to treat every request for abandonment with trepidation and suspicion. What additional tools or reforms do you feel the Surface Transportation Board needs in order to ensure that America is able to maintain its current rail infrastructure?

Answer. I share the concern about the loss of rail lines. As I learned from my time serving at the Kansas Department of Transportation, it is indeed true that once rail lines are removed they are likely lost forever. Accordingly, if confirmed, I will be mindful of this fact when reviewing requests for abandonment authority that are filed with the Board—especially in those cases where there remain active shippers on the line.

I believe that one of the best ways for America to maintain its current rail infrastructure is through the continued support of the shortline railroad industry. In Kansas, there were many instances where shortlines were able to take over operations on low-density, marginal-revenue lines that otherwise would have been abandoned by the Class I carriers. I believe that the rise of the shortline industry is one of the true successes of the Staggers Act and that the STB (and ICC before it) did an excellent job of creating a regulatory environment that has allowed shortlines to flourish. Although I am too new to these issues to say at this time whether there are further tools or reforms that can be given to the STB in this regard, if confirmed I will continue to support the shortline industry in any way I can, and to encourage smaller carriers to step in and try to continue rail service for shippers that need it.

That being said, I am also aware that there may be shortlines whose true aim is not to preserve rail service. If confirmed, I will proceed cautiously if I suspect that a shortline's ultimate goal may be contrary to preservation of rail service.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JOHN THUNE TO
ARUN KUMAR

Question. The Government of India is engaged in an apparent pattern of discrimination against foreign products, including those from the United States, designed to benefit its domestic corporations. It is unfairly compelling domestic production of everything from information technology and clean energy equipment to medicines and medical devices, and creating barriers at the expense of American jobs and exports. This is no way for one of the world's biggest economies to treat its second largest export trading partner. And there is reason to fear other countries may adopt similar tactics.

If confirmed, what will you do to secure real and timely results for American manufacturers to ensure that they are not disadvantaged by India's non-compliance with international obligations?

Answer. From my work with India, I am personally aware of the challenges that doing business there poses for U.S. companies. These include uncertainties in the policy environment; and localization barriers to trade and intellectual property issues that have the effect of discriminating against foreign producers.

I share your concerns about discriminatory trading practices hurting U.S. businesses. I know the U.S. and Foreign Commercial Service has officers on the ground in India and around the world who are focused on helping U.S. businesses deal with such challenges.

If confirmed, I will promote U.S. exports vigorously, and support our commercial diplomacy in India and around the world to address discriminatory trading practices that affect U.S. firms and workers. If confirmed, I will support our business advocacy efforts on behalf of U.S. exporters, to assist them in succeeding in India and other large markets. If confirmed, I will work with colleagues in the Commerce Department and elsewhere throughout the government to achieve appropriate enforcement of U.S. and international laws and provisions that prohibit discriminatory trade practices, particularly when such practices affect U.S. exporters.

