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NOMINATIONS TO THE SURFACE TRANSPORTATION BOARD AND THE FEDERAL MARITIME COMMISSION

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

MAY 6, 2015

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ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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NOMINATIONS TO THE SURFACE TRANSPORTATION BOARD AND THE FEDERAL MARITIME COMMISSION

WEDNESDAY, MAY 6, 2015

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

The Subcommittee met, pursuant to notice, at 10:03 a.m. in room SR–253, Russell Senate Office Building, Hon. John Thune, Chairman of the Committee, presiding.

Present: Senators Thune [presiding], Nelson, Wicker, Blunt, Fischer, Gardner, Cantwell, Klobuchar, Blumenthal, Schatz, and Manchin.

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

The CHAIRMAN. This hearing will come to order.

Today we are going to consider the nominations of Daniel Elliott to be the—to be a Member, I should say, of the Surface Transportation Board and Mario Cordero to be a Commissioner at the Federal Maritime Commission. Both nominees have either served or are serving their respective independent agencies as Chairman, and both have previously been confirmed by the Senate by voice vote.

As the Committee knows well, the STB 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.

Mr. Elliott previously joined the STB as its Chairman in 2009. During his tenure, he worked on important policy questions concerning competitive access, class exemptions from regulation, revenue adequacy, and rate regulation. These are complex and interrelated issues that this Committee and various stakeholders believe that the Board must confront more effectively. That's why I have worked with Ranking Member Nelson to pass a bill out of this Committee that would reform the STB, known as the STB Reauthorization Act of 2015, or Senate bill 808.

Among other things, our bill would allow Board members to speak to one another, and improve the Board's ability to function as Congress intended since it was established in 1995 as the successor to the Interstate Commerce Commission. Our bill would also allow the board to initiate some investigations, not just respond to

complaints, and require the STB to establish a database of pending complaints and prepare quarterly reports on them.

I'm hopeful that the Senate will be able to pass this bipartisan STB reform bill in the near future.

Turning to our other nominee before us today, Mario Cordero joined the FMC in 2011, and has served the last two years as Chairman. The FMC is the regulator tasked with maintaining an efficient and competitive international ocean transportation system, protecting the public from unlawful, unfair, and deceptive ocean practices, and resolving shipping disputes. The FMC also conducts oversight of marine terminal operators, and the agency played a role in resolving the severe port congestion on the West Coast that languished for nearly 10 months and caused billions in economic losses to businesses and our economy earlier this year. As Chairman, however, Mr. Cordero has also inherited some challenges with FMC personnel issues. For example, a recent Inspector General Workplace Evaluation Report noted that FMC employees feel legacy leadership challenges at the agency have left a negative imprint on the organization that has not been fully resolved.

I'll be asking Mr. Cordero about these issues today and some of the other challenges the FMC is faced with regarding globalization and the increasing strain being experienced at our Nation's ports.

While we must fulfill our obligation to carefully conduct oversight of these nominees and related independent agencies, I also recognize the complexities that exist when it comes to the challenges they face. We appreciate your willingness to serve in these important positions and I look forward to your testimony today.

With that, I will turn to our distinguished Ranking Member, Senator Nelson, for any remarks you'd like to make.

STATEMENT OF HON. BILL NELSON,
U.S. SENATOR FROM FLORIDA

Senator NELSON. Thank you, Mr. Chairman, our distinguished chairman.

Railroads and ports, they're quite important to this country and the demand for rail service is growing by leaps and bounds. Rail increasingly is moving a great deal of freight and just maintaining the network doesn't just happen on its own, it takes huge investments. Railroads are investing nearly $30 billion a year and they are hiring thousands of new employees to maintain this rail system.

CSX, for example, in 2013, invested $210 million just in Florida alone. And while the railroads are making the big investments, decisions at the Surface Transportation Board are going to have a long-lasting impact on our railroads and therefore on our country's economy. And it's important that these decisions don't discourage private investment in rail infrastructure.

Now, the other area, subject area, is the ports. My state, we have quite a few deep water ports. Mr. Cordero, if confirmed, would sit on the Federal Maritime Commission, which makes sure that our Nation's ports are competitive. It's absolutely vital to this country's economy.

To give you an example. In a recent report, Florida ports generated more than 680,000 jobs; $96 billion in economic value; more than 3 million containers; and 14 million cruise passengers.

A few months ago, I was down in Panama to see the expansion of the canal. They say it will be completed in April 2016. It's likely, I think, to slip a little further but what they will maintain are the locks, the existing locks, but the new and expanded locks so that the large ships from Asia can come through. And that's going to be an even more efficient way of shipping a lot of the containers to get to the East Coast just to go through the canal. But for the system to work, we need Federal partners that will help keep our ports safe, strong, and secure in working with the ports as they integrate all of the different modes of transportation.

And so, I look forward to the witnesses.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Nelson.

With that, we will turn to our witnesses and begin with Mr. Elliott.

Mr. Elliott, please proceed.

STATEMENT OF DANIEL R. ELLIOTT III, TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD

Mr. ELLIOTT. Thank you, Chairman Thune. Thank you, Ranking Member Nelson, Members of the Committee.

I would like to thank you for this opportunity to appear before you today. It is an honor to be nominated by the President to return to the Board for a second term.

Chairman Thune, thank you in particular for your deep interest in freight rail issues both in South Dakota and throughout the nation, including your sponsorship of the Surface Transportation Board Reauthorization Act of 2015 and your work with the Board on rail service issues. I would also like to thank Ranking Member Nelson, who I know has long been interested and involved in transportation issues. And I would also like to thank my family for their support, my wife Nawara, and my stepson Bennett. Becker could not be here today because he has a choir concert.

It was a true privilege to have been Chairman of the Surface Transportation Board between 2009 and 2014. I have been involved in the rail industry issues for more than 20 years as a lawyer practicing before agencies and then as STB Chairman. It has been remarkable to see the industry continue to grow from bankruptcies of the 1970s to what is a rail renaissance. Today, the freight rail industry carries more than 1.7 billion tons of freight a year, including everything from agricultural products, energy products, manufacturing inputs, and retail goods. The freight rail industry also hosts passenger carriers from Amtrak to local commuter railroads.

Recent changes in the freight rail traffic mix, some unanticipated by railroads, along with other factors, cause well-documented stress on the rail network. Service quality suffered as a result. I led the board in both formal and informal actions to promptly address these issues including: held two major hearings in 2014 focused on service issues; issued orders related to fertilizer, agricultural, and coal traffic; required rail carriers to submit extensive data on service performance; regularly coordinated with Federal and State gov-

ernment officials; and I met with many carriers and shippers and sent Board staff to the field throughout the country.

This multipronged approach focused the rail industry on rectifying service issues, anticipating upcoming stress on the network, and communicating effectively with customers and stakeholders. If confirmed, I will press the Board to take all necessary action to promote a reliable and efficient rail network. This is also the right time for a thorough examination of rail economic regulatory policy much of which was adopted decades ago and applied to a very different rail industry. Should I be confirmed, I will continue the process I initiated to examine its core policies as applied to a modernized industry to ensure that the agency continues to meet the regulatory policy goals laid out by Congress. That includes ongoing reviews of competitive access, rate regulation, revenue adequacy, and commodity exemptions. Board assessment of these issues does not necessarily mean that there should be a sea change in the way railroads are regulated. Rather, we must be confident that our methods and policies take into account both the changes in the industry and sound economic policies.

I also want to continue to work to make sure the Board's processes are fair, efficient, and accessible. It is no secret that the Board's rate case process is time-consuming and expensive. During my tenure, the Board initiated several rate reforms specific to rate case processes and accessibility, and lowered fees for non-rate complaints as described in my written statement. But there is more to do. Last year, I initiated an examination of whether agricultural shippers have true access to the Board's rate process and also engaged an independent firm to study rate reasonableness methodologies used in other industries and throughout the world. This is the time to consider new ideas and invite our stakeholders to participate so that the Board has the most effective and accessible regulatory process we can.

If confirmed, I also look forward to continued reforms that increase the Board's ability to process cases efficiently and effectively. I understand the concern that things take too long and want to continue the hard work of serving the Board's stakeholders as quickly and transparently as possible. I have implemented many new policies to improve the case process at the Board as set forth in my written statement, and I am committed to find innovative ways for the Board to improve its customer service and leverage the considerable staff talent that we have.

Thank you, again, for the opportunity to appear before you and I look forward to your questions.

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

PREPARED STATEMENT OF DANIEL R. ELLIOTT III, NOMINEE TO BE A MEMBER OF THE SURFACE TRANSPORTATION BOARD

Chairman Thune, Ranking Member Nelson, members of the Committee, I would like to thank you for this opportunity to appear before you today. I had the privilege to serve as the Surface Transportation Board's Chairman from 2009 to 2014, and it is an honor to be nominated by the President to return to the Board for a second term.

Before I begin my remarks, I would like to thank Chairman Thune for your deep interest in freight rail issues both in South Dakota and throughout the Nation, in-

cluding your sponsorship of The Surface Transportation Board Reauthorization Act of 2015 and your work with the Board on rail service issues. I would also like to thank Ranking Member Nelson, who I know has long been interested and involved in transportation issues. And I would like to thank my family for their support: my wife Nawara and my stepsons Bennett and Becker.

I feel so fortunate to have been Chairman of the Surface Transportation Board during what has been a critical period in the rail industry. And I do not use the word "critical" lightly. On the brink of financial ruin in the 1970s, the freight rail industry in 2013 originated more than 1.7 billion tons of freight. The commodities carried by rail are used to stock our pantries, heat our homes, supply our Nation's manufacturing sector and fulfill many other needs. And a host of passenger rail carriers—from Amtrak to local commuter railroads—utilize freight rail lines, thereby reducing congestion on the Nation's highways.

Recent changes in the freight rail traffic mix, some unanticipated by the railroads, caused well-documented stress on the rail system. Service quality for many rail shippers suffered, especially during 2014. The Board's role in such situations is key and, if confirmed, I will continue to make sure the agency keeps service quality for all shippers a focus. During my tenure, the agency undertook major steps to improve rail service. The Board held two major hearings in 2014 on service issues; issued orders related to fertilizer, agricultural and coal traffic; required rail carriers to submit extensive data on service performance on an interim basis; proposed rules that would require service performance data reporting on a permanent basis; and regularly coordinated with our counterparts in other parts of Federal and state government. I met with many carriers and shippers to resolve service issues, and I sent Board staff to the field in South Dakota, North Dakota, Minneapolis, and Montana to do the same. I firmly believe that the Board's even-handed efforts focused the rail industry on rectifying service issues, anticipating upcoming stress on the network, and communicating effectively with customers and stakeholders on a real-time basis. If confirmed, I will press the Board to take all necessary action to promote a reliable rail network, including ensuring that the Board and other agencies, as well as shippers, have the data needed to properly assess rail service difficulties. Ultimately, I think we are in the midst of a necessary assessment of infrastructure demands that requires coordination among our Nation's rail carriers, their customers, local communities and policy makers. I am proud of the Board's ability to bring these diverse parties to the table. That sort of collaboration goes a long way toward ensuring that our efficient freight rail network continues to be the envy of the world.

The rail industry's growth also makes this an important period for a thorough examination of rail economic regulatory policy. Many of the agency's longstanding policies were adopted decades ago when the rail industry was struggling to stay alive. Now that the industry is both financially healthier and restructured with far fewer large railroads, I believe the Board should continue the process I started to examine its core policies to ensure that they fit today's modern rail industry and meet the goals that Congress laid out for the agency. Throughout this inquiry, the Board must fulfill the mandate we received from Congress—balancing the 15 Rail Transportation Policy factors in the Interstate Commerce Act in a manner that serves the public.

To this end, over the last 5 years, I led the Board to an ongoing review of competitive access, rate regulation, revenue adequacy, commodity exemptions and other core policies. The Board has initiated proceedings to examine these important issues so that it can make a determination as to whether any of its processes and policies should change, and if so, how. Board assessment of these issues does not necessarily mean that there *should* be a sea change in the way railroads are regulated. Rather, it means that we have to be confident that the manner in which the Federal Government regulates rail rates and competition is the product of thoughtful decision-making that takes into account a modernized rail industry and sound economic policies.

The Board also has a continuing responsibility to make sure that our processes are fair, efficient and accessible. The Board's rate case process is complicated, time consuming and expensive—a view that I know is shared by the agencies' stakeholders. During my tenure, the Board initiated several reforms, including the adoption of rules that (1) clarified certain revenue allocation issues in large rate cases, (2) raised the award caps for smaller rate cases, and (3) changed the interest rate for damage awards. In addition, in several recent complex rate cases, the Board developed a modified test for the threshold market dominance inquiry. I also thought that it was important to reduce the fees the Board charges for non-rate related complaints and the Board did just that in 2011, lowering fees from $20,600 to $350.

But there is more to do to make sure that all of our stakeholders have a meaningful path to the Board. During my tenure, the agency initiated an examination of whether agricultural shippers have true access to the Board's rate reasonableness process and also engaged an independent firm to study the wide variety of rate reasonableness methodologies used in other industries and throughout the world. This is the time to consider new ideas and invite our stakeholders to participate in that process so that the Board has an effective regulatory process that makes sense today.

If confirmed, I also look forward to continuing reforms that increase the Board's ability to process cases efficiently and effectively. I know that shippers and railroads alike believe that it takes too long to adjudicate cases at the Board. I understand that concern and want to continue the hard work of serving the Board's stakeholders as quickly and transparently as possible. During my tenure, I restructured several Board departments to increase efficiency and accountability. After several years of budget uncertainty that impacted the agency's ability to hire on a large scale, I am pleased that in 2014 the Board hired 15 employees. These strategic hires will enhance the agency's ability to move cases more expeditiously. In 2014, I set up a program that allows the Board to use Administrative Law Judges from other agencies to resolve disputes related to discovery—thus freeing up Board staff to focus on the substantive aspects of cases. I was pleased to see that the first cases were assigned to an ALJ under that program just a few weeks ago. I also began an examination of how the Board processes the most complex cases—how teams from various offices are assigned, how they work together, how internal deadlines are established and monitored. The Board's FY 2016 budget request reflected the growth in resource demands for rate cases in particular. If confirmed, I commit to find innovative ways for the Board to improve its customer service and leverage the considerable staff talent we have.

Finally, I want to continue my work in turning the Board into more of a problem solver and not just an adjudicator. I grew the Board's alternative dispute resolution program, increasing the agency's use of mediation and broadening our arbitration rules. I bolstered the Rail Customer Public Assistance program, which helps many smaller shippers that may not be in a position to file a formal case at the Board. The program has resolved thousands of transportation matters since the beginning of my term, and is cited by rail shippers and rail carriers alike as a tremendous success at the agency.

Thank you again for the opportunity to appear before you. If confirmed, I look forward to rejoining the Board and working with my fellow Board Members and Board staff to continue the progress that we have made.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Daniel Robert Elliott III.
2. Position to which nominated: Chairman of the Surface Transportation Board.
3. Date of Nomination: November 12, 2014.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.
Office: Surface Transportation Board, 395 E Street, SW, Suite 1220, Washington, DC 20423.

5. Date and Place of Birth: December 1, 1962; Ann Arbor, Michigan, USA.
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—Nawara T. Omary, Senior Technical Project Manager, Sprint Corporation; children: James Bennett Spear, 16; Justin Becker Spear, 11.

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

Ohio State College of Law, J.D., 1989
University of Michigan, B.A., 1985

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.

Bishop, Cook, Purcell & Reynolds (now Winston & Strawn LLP), Washington, D.C. 1989–1990.

Marshman, Snyder, Berkley & Kapp, Cleveland, Ohio 1990–1991

Chester Giltz & Associates, Cleveland, Ohio 1991–1992

United Transportation Union, Lakewood, Ohio 1993–2009. One of my responsibilities in this position was to monitor and handle cases at the Surface Transportation Board.

Surface Transportation Board, Washington, D.C. 2009 to present. I am the chief executive of the agency and thus responsible for its regulatory agenda and overall management.

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.

DRE RE, LLC, Owner

12. Please list each membership you have had during the past ten years or currently hold with any civic, social, charitable, educational, political, professional, frate1nal, 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 3such club or organization restricts 1nembership on the basis of sex, race, color, religion, national origin, age, or handicap.

Cleveland Tenants Organization, Board Member, 1997–2009

Fairmount Presbyterian Church, 1995–2009, Deacon, Trustee, Elder

Christian Legal Services, Board Member, 2006

American Bar Association, Member, 2008–2009

Supreme Court of Ohio Bar, 1989–2009

13. Have you ever been a candidate for and/or held a public office (elected, nonelected, 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.

Barack Obama, President, 2008—$2,000

Sherrod Brown, U.S. Senate, 2006—$1,250

Sherrod Brown, U.S. Senate, 2012—$2,500

15. List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals, and any other special recognition for outstanding service or achievements. None.

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.

Books/Articles:

The Railway Labor Act, Senior Editor (BNA 2d ed. 2005 & Supps. 2006–2007)

The Railway Labor Act Bargaining Dilemma, Journal of Transportation Law, Logistics and Policy Volume 74 (2007)

The Railway Labor Act Cumulative Supplement, Contributing Editor (BNA 1998, 2000 & 2001)

The Shore Line Status Quo Requirement, Cleveland State Law Review Volume 46 (1998)

Speeches:

Surface Transportation Board Update, American Short Line and Regional Railroad Association, Southern Region
Naples, Fla. (2014)

Surface Transportation Board Update, The Fertilizer Institute North American Transportation Conference
Tucson, Ariz. (2014)

Surface Transportation Board Update, South Dakota Farmers' Union
Aberdeen, SD (2014)

Rail Service Update, American Bakers' Association
Washington, D.C. (2014)

The Surface Transportation Board's Enforcement of PRIIA
Chicago, Ill. (2014)

Spring 2014 Update, North American Rail Shippers Association
San Francisco, Calif. (2014)

Spring 2014 Update, Industrial Minerals Association
Washington, D.C. (2014)

Spring 2014 Update, National Coal Transportation Association
Hilton Head, SC (2014)

Fall 2013 Update, Rail Trends Conference
New York, NY (2013)

California Short Line Railroad Association Annual Meeting
San Diego, CA (2013)

North American Rail Shippers Association
Baltimore, MD (2013)

Railtrends
New York, NY (2012)

Nat. Assoc. of Rail Shippers
Chicago, IL (2012)

Dahlman-Rose Transportation Conference
New York, NY (2011)

RBC Capital Markets
Miami, FL (2010)

Midwest Shipper's Association
Minneapolis, MN (2010)

A New Philosophy for the STB, Association of Transportation Law Professionals
Washington, D.C. (2010)

American Short Line and Regional Railroad Association
Orlando, Fla. (2010)

National Coal Transportation Association
San Antonio, Texas (2010)

Freight Rail Sustainability: Opportunities and Barriers, Transportation Research Board
Washington, D.C. (2010)

The Need for Change and Openness, Wolfe Research Transport Conference
Washington, D.C. (2009)

Railroading in the Warren Buffett Era, Washington Chapter Transportation Research Forum
Washington, D.C. (2009)

The Green Technologies of Rail and Steel, Steel Manufacturer's Association
Washington, D.C. (2009)

CREATEing a New Chicago, William 0. Lipinski Symposium on Transportation Policy
Chicago, Ill. (2009)

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.

Letter to Senator Rockefeller and Senator Thune re S. 2777, Surface Transportation Board Reauthorization Act of 2014, September 16, 2014

Letter to the Record, U.S. Senate Committee on Commerce, Science, and Transportation Hearing, Freight Rail Service: Improving the Performance of America's Rail System, September 10, 2014

Testimony Before U.S. Senate, Committee on Commerce, Science, and Transportation, Hearing on Federal Role in National Rail Policy, September 15, 2010

Testimony Before U.S. Senate Committee on Commerce, Science, and Transportation, Hearing on Nomination to be Chairman of the Surface Transportation Board, July 29, 2009

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?

My experience over the last 5 years as Chairman of the Surface Transportation Board, as well as my prior experience as a lawyer for the United Transportation Union, qualify me for a reappointment to the chairmanship of the Board. Based on my work at the United Transportation Union, I came to the Board already familiar with both the governing statute and the top issues affecting the rail industry. Since joining the Board in 2009, I have led the Board to a review of important policy questions that must be reexamined in light of changing conditions, including competitive access, paper barriers, class exemptions from regulation, revenue adequacy and rate regulation. Many of these questions—which are complex and interrelated—have not been addressed by the Board in a comprehensive fashion for decades. I believe I am best suited to continue the Board's efforts so that the agency can complete its reviews and revise its approaches as warranted.

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 will continue to have responsibility for the management and operation of the Surface Transportation Board. Thus, I will continue to ensure that the Board has the necessary tools to fulfill its mandate and that the Board carries out its duties with the highest degree of fiscal and ethical accountability. Over the last 5 years, my management achievements include (a) developing and hiring new members of the Senior Executive Service, (b) restructuring Board departments to increase efficiency, (c) growing the Board's public assistance program, and (d) effectively utilizing the Board's budget to achieve mission-critical objectives. If confirmed, I will continue to ensure that the Board follows all applicable statutes and regulations.

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

The first challenge facing the Board is the serious degradation of rail service levels that began this past winter. These service problems are the result of a combination of factors: dramatic changes in the rail traffic mix and volume, extre1ne winter weather conditions, and management and resource decisions by rail carriers. Rail carriers' recent difficulty in providing acceptable levels of service has impacted both freight rail shippers and passenger rail customers. Under my direction, the Board has been proactive in addressing rail service issues by closely monitoring rail service metrics, issuing targeted orders that improve service levels and increase accountability, holding numerous hearings/meetings to gain stakeholder input, and making Board staff available to resolve immediate service crises. The Board must continue to facilitate the resolution of service issues so that interstate commerce flows as smoothly and efficiently as possible in support of the U.S. economy.

The second challenge facing the Board is the need to reassess long-standing policy positions in light of a dramatically altered railroad industry. Due in large part to the efficiency gains that resulted from the Staggers Act, a rail industry that was on the brink of ruin in the late 1970s is now enjoying a sustained period of healthier profits and increased ability to attract capital. It is critical that the Board carefully consider whether its major policies are effective in fulfilling our Congressional mandate in today's environment. To this end, I have led the Board to review competition, rate regulation, paper barriers and commodity exemptions. I am also leading the Board's efforts to implement the Passenger Rail Investment and Improvement Act of 2008, the statute designed to improve Amtrak's on-time performance.

The third challenge facing the Board is reducing the complexity, cost, and processing time of the cases that come before it. Rail shippers have long complained that the Board's rate regulation processes are too complicated and expensive to provide meaningful relief. During my tenure, I have shepherded a number of reforms intended to address this issue, such as completing a rulemaking that raised/eliminated the award caps for the simplified methods of rate regulation, initiating a proceeding to examine whether current rate methodologies are adequate for agricultural shippers, and awarding a contract for an independent study of alternative rate methodologies. The increased complexity of rate regulation also taxes the agency's resources. I have initiated a review of the Board's internal rate procedures aimed at reducing errors and increasing efficiencies in the Board's processing of rate cases. In FY2014, a modest increase in the Board's budget enabled me to increase the Board's staffing levels. The agency must continue to improve its ability to process all cases efficiently.

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: None.

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.

The only relationship that may present any appearance of a conflict of interest would be my former employer, United Transportation Union, which has appeared before the Board as a party in various proceedings both before and after I joined the Board.

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.

See Answer 3.

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.

I appeared before the State of Minnesota legislative committees for one day in March of 2005 to speak in support of a rail safety bill on the issue of preemption.

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

My past affiliation with the United Transportation Union has never had any effect on my decisions at the Surface Transportation Board and, if confirmed, that will continue to be the case. Consistent with my Ethics Agreement in 2009, I have recused myself when applicable from any case before the Board that involves any United Transportation Union matter on which I worked during my employment there. Moreover, having been a member of the Supreme Court of Ohio, I have abided and will continue to abide by the Ohio Rules of Professional Conduct and Code of Professional Responsibility with regard to any conflicts of interest provisions.

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.

I was arrested once in 1986 in Columbus, Ohio for disorderly conduct and open container in a vehicle (not driving). I pled guilty to these two minor misdemeanors and paid a fine. I was also charged with two separate housing violation actions in 2008 in Shaker Heights, Ohio. Both cases were dismissed.

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.

I was involved in two eviction cases as a plaintiff in 2006 in Shaker Heights, Ohio. Both cases were decided in my favor plus back rent.

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.

See Answer 2.

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.

Agency was voted Best Place to Work in Federal Government for Small Agencies by the Partnership for Public Service all four years I served as Chairman. Agency also received Most Innovative Agency from the Partnership the two years the award has existed. The agency also received the highest effective leadership score for all four years.

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 DANIEL R. ELLIOTT

Summary

An experienced government executive and attorney in the fields of transportation economic regulation and railway labor. Leading a Federal independent regulatory agency for the last five years to numerous personnel awards and innovative policy changes.

Experience

August 2009 to present—*Chairman, Surface Transportation Board*

- Appointed to the Board and designated Chairman by President Obama. Responsibilities include management of the agency and its $31 million dollar budget, creation of economic regulatory policy, and issuance of administrative decisions on various types of cases.
- Contact with members of U.S. Congress and state and Federal Executive Branch leadership to inform them of and explain activities at the Board; confer with corporate and trade association heads on relevant transportation matters and the state of the rail industry on a regular basis; testify at congressional hearings regarding railroad issues; and give speeches often at large trade association conventions as well as smaller group meetings.
- Manage a staff of 140. Revitalized the agency by making organizational changes and increased morale through an open door policy. Agency was awarded Best Place to Work in Federal Government for Small Agencies by the Partnership for Public Service all four years of my tenure, Most Innovative Agency for the two years the award has existed, and highest effective leadership score for all four years.
- Rule on and draft case decisions that come before the Board, including complex rate challenges, rail construction projects, Amtrak performance, mergers and acquisitions, and a large variety of other matters; create and review railroad economic regulatory policies informally and formally through studies and Board proceedings, such as revising rate case processes to make them more accessible, devising a new arbitration and mediation program, beginning proceedings on revenue adequacy, reciprocal switching, grain rail rates, auditing and review of rate case processes, studying new rate regulatory methods, among others.

1993–2009—*Associate General Counsel, United Transportation Union*

- Handled Federal agency matters in front of the Surface Transportation Board, National Mediation Board, National Labor Relations Board, and Department of Labor. Duties included testimony, trials, and drafting pleadings.
- Labor and employment litigation on behalf of union mainly involving cases in Federal district and appellate courts. Served as sole counsel on *United Transp. Union v. Gateway Western Ry. Co.,* 284 F.3d 710 (7th Cir. 2002); *Ryan v. Union Pacific R.R. Co.,* 286 F.3d 456 (7th Cir. 2002); and *Adirondack Transit Lines, Inc. v. United Transp. Union, Local 1582,* 305 F.3d 82 (2d Cir. 2002).

1991–1992 · *Associate, Chester Giltz & Associates*

- Commercial and residential real estate appraisal.

1990–1991—*Associate, Marshman, Snyder, Berkley & Capp*

- Research and drafting memoranda and motions for general litigation practice.

1989–1990—*Associate, Bishop, Cook, Purcell & Reynolds*

- Research and drafting memoranda for general litigation practice.

Education

May 1989—*Juris Doctor, Ohio State College of Law*
May 1985—*Bachelor of Arts, Political Science, University of Michigan*
Varsity track letterman 1982–1983

The CHAIRMAN. Thank you, Mr. Elliott.
Mr. Cordero?

STATEMENT OF MARIO CORDERO, TO BE A COMMISSIONER OF THE FEDERAL MARITIME COMMISSION

Mr. CORDERO. Chairman Thune, Ranking Member Nelson, and Members of the Committee, it is a pleasure and an honor to be here today to discuss my nomination for a second term as Commissioner of the Federal Maritime Commission. With me here today is my wife, Gloria, my wife of approximately 41 years.

Having served nearly 4 years at the Commission, I appreciate the Committee considering my reappointment to continue leading the Federal Maritime Commission, a small independent agency with a large global responsibility.

I want to acknowledge my fellow Commissioners, Rebecca Dye, Richard Lidinsky, Michael Khouri, and William Doyle. As Chairman, I have the administrative responsibility to keep our agency headed in the right direction, but the full Commission, as a collegial body, is the engine that propels the agency forward. In that respect, the advice, support, and committed participation of my fellow Commissioners has been key to the FMC's success. Also, let me express to the Commission staff my deep admiration for each of them and the work that they do day in and day out, despite Federal workplace challenges. Recognizing the importance of working in a positive atmosphere, facing these challenges has been my priority for the FMC since I joined the Commission in 2011. By taking substantive steps to address employee engagement, I will continue to build on the FMC's organizational strengths.

I referred to the Commission as a small agency with large global responsibilities, and so it is. The FMC, as of today, has 119 employees and operates on a very lean budget. The FMC's work includes monitoring more than 300 active liner shipping agreements in the trans-Pacific, Latin American, trans-Atlantic, and other U.S. trades; vetting and licensing thousands of ocean transportation intermediaries; enforcing the prohibited act provisions of the Shipping Act; providing mediation services and assistance with cargo shipment problems and cruise passenger issues; and overseeing the activities and impacts of government-controlled foreign carriers and foreign shipping laws and practices.

Those activities advance two strategic goals: to maintain an efficient and competitive international ocean transportation system in the U.S. trades; and to protect the shipping public, the American exporter, importer, consumer, and producers from unfair, unlawful and deceptive ocean transportation practices. In effect, the FMC exercises a role similar to that of the Federal Trade Commission but in the international liner shipping arena. I am pleased to report that we have the in-depth expertise to accomplish those goals.

Ultimately, the Commission works to protect the American importer, exporter, and consumer.

The importance of the Commission's regulatory role is imperfectly measured by the number of agreements we review and monitor, the number of transportation intermediaries we vet, the number of enforcement actions we take, and the number of American shippers we assist each day. Its impact is large but mainly unseen by the American consumer and shipper. The Commission's efforts to ensure a fair, efficient, and competitive liner shipping system is felt in the family budgets and oversea trade opportunities of all Americans and many American industries.

Last week, a trade journal attributed an interesting comment to the Chairman of a major European shipper organization. In discussing changes taking place in the liner shipping industry, he reportedly "expressed regret that the European Commission did not have the same resources as the FMC to devote to the oversight of the ocean shipping industry."

That is a sentiment I understand and appreciate. On the same journal's annual list of the most influential people in the container shipping industry, it ranked the FMC as number ten as we continue to keep a very close eye when considering the interest of the U.S. public during a period of consolidation in container shipping trades.

The liner shipping industry is currently involved in a dynamic series of major changes, occasionally bordering, quite frankly, on the chaotic. As it adjusts to the financially challenging market situation that has existed in the past several years and is likely to continue for several more, the Commission has had and will continue to have multiple roles with respect to those ongoing industry changes. We evaluate the potential effects of the new, large, multicarrier alliances and closely monitor competitive behavior once they take effect so that the Commission can react early to adverse changes if those changes are necessary.

As you may be aware, the congestion at U.S. ports has increased significantly which negatively impacts our import and export communities. The Commission has been involved in proactive outreach efforts to reduce the likelihood of future port-related congestion. We are working with our nation's ports, our shippers, our trucking companies, and carriers to identify key problems and issues and encourage cooperative efforts among those stakeholders to mitigation and/or correct the problem. In light of the challenges related to global alliances, the Commission has engaged with fellow global international regulators, the European Union, and the Chinese Ministry of Transportation to exchange views on a global liner industry. That outreach process began with the Global Regulatory Summit in December 2013 here in Washington. A second discussion is being planned for this summer.

If confirmed, I look forward to working with the Committee to ensure that our Nation benefits from fair, efficient, and competitive ocean transportation system.

Thank you for your kind consideration. I will be happy to answer any questions you may have.

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

PREPARED STATEMENT OF MARIO CORDERO, CHAIRMAN, FEDERAL MARITIME COMMISSION

Chairman Thune, Ranking Member Nelson, and Members of the Committee, it is a pleasure and an honor to be here today to discuss my nomination for a second term as Commissioner of the Federal Maritime Commission. Having served nearly four years at the Commission, I appreciate the Committee considering my reappointment to continue leading the Federal Maritime Commission—a small independent agency with large global responsibilities.

I want to acknowledge my fellow Commissioners, Rebecca Dye, Richard Lidinsky, Michael Khouri, and William Doyle. As Chairman, I have the administrative responsibility to keep our agency headed in the right direction, but the full Commission, as a collegial body, is the engine that propels it forward. In that respect, the advice, support, and committed participation of my fellow Commissioners has been key to the FMC's success. Also, let me express to the Commission staff my deep admiration for each of them and the work they do, day in and day out. The FMC does excellent work and will continue to do so, despite Federal workplace challenges. Recognizing the importance of working in a positive atmosphere, facing these challenges has been my priority for the FMC since I joined the Commission in June 2011. By taking substantive steps to address employee engagement, I will continue to build on the FMC's organizational strengths.

I referred to the Commission as a small agency with large global responsibilities, and so it is. The FMC has 119 employees and operates on a very lean budget. The FMC's work includes monitoring more than 300 active liner shipping agreements in the trans-Pacific, Latin American, trans-Atlantic, and other U.S. trades; vetting and licensing thousands of ocean transportation intermediaries; enforcing the prohibited act provisions of the Shipping Act; providing mediation services and assistance with cargo shipment problems and cruise passenger issues; and overseeing the activities and impacts of government-controlled foreign carriers and foreign shipping laws and practices.

Those activities advance two strategic goals: to maintain an efficient and competitive international ocean transportation system in U.S. trades; and to protect the U.S. shipping public—American exporters, importers, consumers, and producers—from unlawful, unfair, and deceptive ocean transportation practices. In effect, the FMC exercises a role similar to that of the Federal Trade Commission but in the international liner shipping arena, and I am pleased to report that we have the in-depth expertise to accomplish those goals.

Ultimately, the Commission works to protect American importers, exporters, and consumers. Our Bureau of Trade Analysis is responsible for monitoring agreements among some of the world's largest vessel operators to ensure that carriers do not abuse the limited antitrust immunity that they receive pursuant to the Shipping Act. I will add that our Bureau of Enforcement does have a no-nonsense reputation in dealing with unlawful, unfair, and deceptive practices. Also, our Bureau of Certification and Licensing ensures that ocean transportation intermediaries have the experience needed to handle international shipments competently and that they maintain the required financial responsibility to protect U.S. consumers of their services.

The importance of the Commission's regulatory role is imperfectly measured by the number of agreements we review and monitor, the number of transportation intermediaries we vet, the number of enforcement actions we take, and the number of American shippers we assist each day. Its impact is large but mainly unseen by the American consumer and shipper. Last year, roughly 11.9 million twenty-foot equivalent units (TEUs) of U.S. exports and 19.2 million TEUS of imports transited U.S. ports, a large portion going to or coming from Asia but with considerable volumes moving to and from Europe and Latin America as well. The Commission's efforts to ensure a fair, efficient, and competitive liner shipping system is felt in the family budgets and overseas trade opportunities of all Americans and many American industries.

Last week, a trade journal attributed an interesting comment to the chairman of a major European shippers' organization. In discussing changes taking place in the liner shipping industry, he reportedly "expressed regret that the European Commission did not have the same resources as the FMC to devote to the oversight of the ocean shipping industry." That is a sentiment I understand and appreciate. On the same journal's annual list of the most influential people in container shipping, the Commission was ranked as number ten as we continue to keep a close eye when considering the interests of the U.S. public during a period of consolidation in the container shipping trades.

The liner shipping industry is currently involved in a dynamic series of major changes—occasionally bordering on the chaotic—as it adjusts to the financially challenging market situation that has existed for the past several years and is likely to continue for several more. Not just in U.S. trades, but globally. Following the world-wide recession of late 2008 through 2009, the growth in international trade has been slower than the on-going expansion of liner fleets. Carriers' revenues have been negatively affected. To reduce costs and enhance efficiencies, carriers are ordering larger, fuel-efficient vessels that can provide economies of scale and lower fuel costs. The expense and risk of investing in and operating these huge vessels, coupled with the lines' expansive service networks, could easily have led to significant merger and acquisition activity—and, thereby, resulted in greater market concentration. That has not happened. Instead the lines established cost-reducing, multi-carrier, operational agreements, informally known as "alliances," that preserve the member lines' independent marketing and pricing. Significantly, such market concentration did not occur as these agreements were required to be filed, reviewed, and monitored by the Commission in order to operate.

In addition, many lines cut costs by exiting unprofitable, non-core businesses. In particular, they have largely divested their truck chassis assets—the trailers used to carry ocean containers between seaports and inland distribution centers, warehouses and rail heads. What chassis ownership and provisioning to its customers will ultimately look like is still a work-in-progress.

Given China's slowing economic growth, the precarious financial situation in Europe, and the poor GDP growth forecasts for some of Latin America's largest economies, the lines are expected to continue to face market-driven revenue pressures—despite the reduction in their fuel costs from low oil prices. In short, incentives for alliances to intensify their operational cooperation—and concerns about the competitive consequences—are unlikely to diminish soon.

The Commission has had, and will continue to have, multiple roles with respect to these on-going industry changes. We evaluate the potential effects of the new, large, multi-carrier alliances and closely monitor their competitive behavior once they take effect so that the Commission can react early to adverse changes if necessary.

We also oversee agreements under which various stakeholder organizations work out ways to ensure that enough chassis are available at U.S. ports when and where they are needed, and discuss other steps to help reduce marine terminal congestion. FMC staff also works with shippers, truckers, and other affected parties to help them address issues related to shipment delays and associated charges which result in increased and/or unforeseen costs.

As you may be aware, congestion at U.S. ports has increased significantly which negatively impacts our import and export communities. The Commission has been involved in pro-active outreach efforts to reduce the likelihood of future port-related congestion. We are working with our Nation's ports, shippers, trucking companies, and carriers to identify likely problem issues and encourage cooperative efforts among those stakeholders to mitigate or correct them. In light of the challenges related to alliances, the Commission has engaged with its fellow global regulators, the European Commission and the Chinese Ministry of Transportation, to exchange views on the global liner industry. That outreach process began with the Global Regulatory Summit in December 2013. A second discussion is being planned for this summer.

If confirmed, I look forward to working with the Committee to ensure that our Nation benefits from a fair, efficient and competitive ocean transportation system.

Thank you for your consideration. I will be happy to answer any questions you may have.

A. BIOGRAPHICAL INFORMATION

1. Name (Include any former names or nicknames used): Mario Cordero.
2. Position to which nominated: Commissioner, Federal Maritime Commission.
3. Date of appointment: Nominated January 13, 2015.
4. Address (List current place of residence and office addresses):

Residence: Information not released to the public.
Office: 800 N. Capitol Street NW, Washington, DC 20573.

5. Date and Place of Birth: August 31, 1952; Los Angeles, CA.
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).

Gloria Cordero, spouse—owner, Cordero & Associates

Celine Cordero, daughter, 38 years of age

Mario Andres Cordero, son, 35 years of age

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

Santa Clara University School of Law, J.D. 1975–1978

University of Southern California 1974–1975

California State University Long Beach, B.A. 1970–1974

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

Chairman, Federal Maritime Commission, 2013 to present
Washington, D.C.

Commissioner, Federal Maritime Commission, 2011–2013
Washington, D.C.

Commissioner, Board of Harbor Commissioners, 2003–2011
Port of Long Beach, CA

Senior Attorney, Law Office of Wayne Singer, 2009–2011
Long Beach, CA

Adjunct Instructor of Political Science (part-time), 1995–2011
Long Beach City College

Counsel, Safeco Insurance, 2007–2008
Long Beach, CA

Attorney, Adelson, Testan & Brundo, 2001–2006
Long Beach, CA

Attorney, Altman & Shoemaker, 1998–2001
Encino, CA

Attorney, Ochoa & Sillas, 1996–1998
Los Angeles, CA

Attorney, Robin, Carmack & Gonia, 1993–1996
Tustin, CA

Attorney, Nezin, Maher & Johnson, 1988–1993
Tustin, CA

Counsel, Industrial Indemnity Insurance 1987–1988
Los Angeles, CA

Attorney, State Compensation Insurance Fund 1986–1987
Los Angeles, CA

Sole Practitioner, 1982–1986
Long Beach, CA

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.

President, Association of Pacific Ports, 2010–2011

Vice President, Association of Pacific Ports, 2009–2010

Member, Board of Directors, 2008–2011
California League of Conservation Voters

Member, Board of Directors, 2004–2011
Museum of Latin American Art

Member, Board of Directors, 2005–2009
St. John Bosco High School

12. Please list all 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 or-

ganization. Please note whether any such club or organization restricts membership on the basis of sex, race, color, religion, national origin, age or handicap.

None of the following organizations restrict membership in any way, and I have not served on any of the organizations below since May 2011.

California League of Conservation Voters, Board of Directors, 2008–2011

Miller Children's Hospital, Advisory Council, 2007–2011

Museum of Latin American Art, Board of Directors, 2004–2011

St. John Bosco High School, Board of Directors, 2005–2009

Long Beach Bar Association, Committee Chair, 2003–2004

Mexican American Bar Association, Committee Chair, 2001–2003

State Bar of California 1980 to present

Bar of the U.S. District Court, Central District of California, 1980 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.

I was appointed to the Long Beach Harbor Commission. There was no campaign; therefore, no debt incurred.

I was appointed to the Federal Maritime Commission. There was no campaign; therefore, no debt incurred.

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.

I have not held any office or provided any service to a State or National political party and/or election committee.

I have made contributions to the following individuals:

Mayor Bob Foster, Long Beach, CA—2006—$500.00; 2010—$500.00
Mayor Beverly O'Neill, Long Beach, CA—2002—$500.00

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

Stanley T. Olafson Award for Advancement of World Trade, 2014

Alternative Fuel Vehicle Institute, 20/20 Vision Award, Public Servant Award, 2009

Community Hispanic Association, Community Award, 2008

League of California Cities/Latino Caucus, Public Servant Environmental Leadership Award, 2007

Mexican American Bar Association, Attorney of the Year Award, 2007

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 authored one article, "Port & Counter Port: Lawsuit will slow cleanup," which appeared in the *Long Beach Press Telegram* on February 17, 2008.

As a Port of Long Beach Harbor Commissioner, I gave the following speeches relevant to the position to which I have been nominated:

Latin American Delegation Port Conference
Addressed port operations and environmental policy.
2005, 2007, 2008

Hemispheric Latin American Conference
Addressed sustainable practices at ports.
Attended two conferences hosted in Panama, Brazil.

Mexican Pacific Port Conference
Addressed cooperative agreements on security and environmental technology.
2007 Conference, hosted by the Ports of Long Beach and Los Angeles
2009 Conference, hosted by the Port of Manzanillo, Mexico
Addressed the subject of international trade with an emphasis on western hemispheric relations on behalf of the Port of Long Beach before an audience of maritime legal professionals.
2006, Buenos Aires, Argentina

American Association of Port Authorities
Participated in panel presentations concerning environmental initiatives and sustainable policy.
2005, 2007, Port of Long Beach, CA

Texas Corridor Transportation Coalition Conference
Addressed efficient transportation of goods.
2005, 2006

Fast Freight Clean Air Conference
Addressed sustainable, environmental port operations.
2007, Los Angeles, CA
2008, New York City, NY

Footwear Logistics Distribution Conference, Recycle Exporter Association
Addressed sustainable practices and advancement of exports.
2010

As a Federal Maritime Commissioner, I have given the following speeches relevant to the position to which I have been nominated:

The Biogas USA West Conference
Addressed sustainable shipping practices.
Oct. 2011, San Francisco, CA

The Global Shippers Forum Addressed port infrastructure.
Nov. 2011, Atlanta, GA

World LNG Fuels Conference
Addressed environmental maritime practices.
Jan. 2012, Houston, TX

Panama Week
Addressed expansion of Panama Canal and U.S. port infrastructure.
Mar. 2012, Washington, DC

The XXI Latin American Congress of Ports
Addressed sustainability in Latin American port development.
Apr. 2012, Antigua, Guatemala

Logistics Conference, Sala de Las Americas
Addressed role of the Federal Maritime Commission.
Aug. 2012, Bogota, Columbia

FIATA World Congress
Addressed port logistics and infrastructure.
Oct. 2012, Los Angeles, CA

Organization of American States
Addressed sustainable port practices.
Nov. 2012, Washington, DC

Transportation Research Board
Addressed maritime infrastructure and freight policy.
Jan. 2013, Washington, DC

Association of Pacific Ports
Addressed sustainable port practices.
Apr. 2013, Seattle, WA

International Association of Ports and Harbors
Addressed international trade.
May 2013, Los Angeles, CA

Los Angeles Custom Brokers Freight Forwarders Association
Addressed port infrastructure.
Sept. 2013, Long Beach, CA

Port Tech Expo
Addressed global technology and ports.
Sept. 2013, Los Angeles, CA

Marine Log Global Greenship Conference
Addressed sustainable port practices.
Sept. 2013, Washington, DC

International Warehouse Logistics Association
Addressed sustainable port practices.
Sept. 2013, Los Angeles, CA

2013 CONECT Round Table
Participated in round table discussion on international trade.
Oct. 2013, Washington, DC

International Propeller Club
Addressed Federal Maritime Commission's role and regulatory responsibilities.
Oct. 2013, Washington, DC

California Association of Port Authorities
Addressed port infrastructure and policy.
Oct. 2013, Seattle, WA

Inaugural Conference on Creating an Environmentally Sustainable Maritime Industry
Addressed sustainable port and maritime practices.
Oct. 2013, San Pedro, CA

Western Cargo Conference
Addressed efficiency of maritime transportation.
Oct. 2013, Rancho Mirage, CA

National Association of Waterfront Employers
Addressed consolidation of vessel carrier industry.
Oct. 2013, Washington, DC

Sixth SeaCargo Americas Conference
Addressed port development.
Nov. 2013, Miami, FL

2014 Port Productivity Conference
Addressed challenges facing U.S. ports.
Feb. 2014, Fort Lauderdale, FL

Pulse of the Ports Peak Season Conference
Addressed competitive environment of maritime industry.
Apr. 2014, Long Beach, CA

40th Annual NCBFAA Conference
Addressed Commission regulations affecting ocean transportation intermediaries.
Apr. 2014, Summerlin, NV

Valparaiso Sustainable Ports Seminar
Addressed sustainable port practices.
May 2014, Valparaiso, Chile

FuturePorts
Gave welcoming remarks.
June 2014, San Pedro, CA

South Carolina International Trade Conference
Addressed port infrastructure.
Sept. 2014, Charleston, SC

5th Annual PortTech Los Angeles Expo
Addressed innovative port technology.
Sept. 2014, Los Angeles, CA

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.

- House Committee on Transportation & Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, testimony on FMC 2014 FY Budget request—Apr. 16, 2013
- House Committee on Transportation & Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, testimony on regulatory review—Sept. 10, 2013
- House Committee on Transportation & Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, testimony on FMC Re-authorization—Oct. 29, 2013
- House Committee on Transportation & Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, testimony on FMC 2015 FY Budget request—Mar. 26, 2014
- Senate Committee on Commerce, Science, and Transportation, confirmation hearing—Nov. 30, 2010

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 experiences 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?

For the past three years, I have served on the Federal Maritime Commission (FMC) and currently serve as Chairman, effective April 1, 2013. As Chairman, I am the chief executive and administrative officer of the FMC.

In the role of Chairman, I provide management direction to relevant directors at the FMC, and ensure the efficient discharge of their statutory responsibilities.

The FMC carries out important statutorily-mandated programs aimed at maintaining an efficient and competitive international ocean transportation system; protecting the public from unlawful, unfair, and deceptive ocean transportation practices; and resolving shipping disputes. In addition, the FMC's oversight of ocean common carriers, ocean transportation intermediaries, and marine terminal operators is an important element in the effort to protect our Nation's seaports.

Prior to joining the FMC in June 2011, I served eight years on the Board of Harbor Commissioners for the Port of Long Beach (POLB), the second largest port in the Nation. The Board is charged with the exclusive control to manage and set policy in relation to the Harbor District. The duties include providing for the needs of commerce, navigation, and operations related to international trade.

My experience as POLB Harbor Commissioner provided me with first-hand experience on many aspects, not only with regard to port operations, but in addition, paramount issues faced by the maritime community, both in the domestic and international arenas.

My desire to continue to serve on the Federal Maritime Commission as Chairman stems from the positive experiences I gained at the FMC and the Port of Long Beach, which specifically addressed challenging issues presented before an independent regulatory commission and one of the Nation's largest port complexes.

I have dedicated the past 11 years to the maritime/port industry, an industry that not only is vital to the Nation's economy, but one for which I have exhibited a personal passion with regard to the relevant issues of international trade, goods movement, and sustainable development.

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 managing a large organization?

First, as Chairman of the FMC I have presided over the Performance and Accountability Report for Fiscal Year 2013 (PAR) submitted by the agency. The Fiscal Year 2013 independent financial audit, performed by the Inspector General, resulted in an unqualified opinion. In the Statement of Assurance section of the PAR, I provided my assurance that the FMC has no material weaknesses, significant deficiencies, or instances of non-compliance with the laws and regulations to report.

The goals and objective of the Commission are dependent on a keen partnership between the Commission and its management staff. My responsibility would continue to involve not only ensuring the proper oversight, but being proactive on the issues before the Commission by ensuring the staff is accountable to the policies expressed by the Commission and responsive to the needs of the industry and consumers.

Second, my service at the Port of Long Beach provided valuable experience in oversight of management and accounting controls. The gross operating revenue for the Port of Long Beach in Fiscal Year 2009 (a down year) was estimated at $311.4 million. In 2008, the revenue sum exceeded $360 million. Total employees at the POLB approximated 400. The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the POLB, for year ending September 30, 2008. This was the 26th consecutive year the POLB had received this prestigious award. Serving on the Board of Harbor Commissioners has provided relevant experience, which has recognized the POLB as a leader in the industry.

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

First, a paramount concern is furthering economic recovery. In this regard, our ability to facilitate commerce and specifically promote policies to advance exports, given the trade imbalance of export-import containerization, is essential. Promoting the Administration's National Export Initiative is central to the domestic economy and serves to provide a positive impact to the economy.

Second, the emergence of global alliances among ocean carriers brings new dynamics to the Commission's oversight role. This mandates we balance the potential benefits of the cost savings and environmental efficiencies resulting from the coordi-

nated deployment of newer, larger vessels with the potential harm that could come from a concentration of decision-making power in terms of port coverage, sailing schedules, and necessary capacity in the appropriate trade lanes. As part of reviewing the competitive impact of a global alliance, oversight of the changes in capacity is paramount. Specifically, realignment of previously independently operated service strings and how those capacity changes might affect shippers, given current market conditions.

A third challenge is budgetary in nature. As noted, the FMC is an independent agency charged with the regulation of U.S. oceanborne foreign commerce valued at $930 billion annually. In its oversight role, the FMC's legislative mandate is not only vital to the Nation's economy, but ever more important given the increased immunity agreements filed by ocean carriers and marine terminals at our Nation's port authorities. For Fiscal Year 2015, the FMC submitted budget request totals of $25,660,000, which includes salaries and benefits for 124 full-time equivalent employees. The requested amount represents minimal spending levels necessary to effectively conduct the Commission's basic day-to-day operations and to meet the responsibilities Congress has entrusted to the agency. While the agency will continue to use its limited resources wisely, I would be remiss not to raise our budgetary issue as one of the top three challenges facing the agency.

B. POTENTIAL CONFLICTS OF INTEREST

1. Describe all financial arrangements, deferred compensation agreements, and other continuing financial dealings with business associates, clients, or customers. Please include information related to retirement accounts: None.

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 FMC'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 FMC 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 FMC'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 FMC 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.

Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have entered into with the FMC's designated agency ethics official and that 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.

In the fall of 2007, I appealed an unemployment benefit reduction that I had received from the State of California Employment Development Department. From December 2006 to February 2007, I had received unemployment from the State of California while I was between jobs. Months later, I received a notice of repayment because the benefit calculation did not account for a stipend of $100 per meeting that I received as a Commissioner for the Port of Long Beach. I appealed the notice on the issue of whether the stipend was considered income. The Department denied my appeal, and I promptly repaid approximately $500 in unemployment benefits.

In 1989, a malpractice suit filed by one of my previous firms' clients named every attorney at the firm. I was quickly dismissed by the Plaintiff because I had not had any significant involvement in the matter at issue.

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 sexual harassment, or discrimination on the basis of sex, race, religion, or any other basis? If so, please explain.

A former agency employee named her then-acting supervisor in an informal EEO complaint filed with the FMC's EEO Director. The complaint is unclear as to specific allegations against me other than conclusory allegations, but appears to state claims relating to an application for the Inspector General position. I had no role in the resume screening process or the first round of interviews. I have a one-fifth representation under the IG Act; accordingly, my role was limited to the final round of interviews like that of every of other Commissioner.

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

D. RELATIONSHIP WITH COMMITTEE

1. Will you ensure that your department/agency complies with deadlines for information set by congressional committee? 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 disclosure? 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 MARIO CORDERO

Experience

Federal Maritime Commission, Washington, D.C.
Chairman, April 2013 to Present
Commissioner, June 2011 to April 2013
Nominated by President Obama and Confirmed by the United States Senate

Acts as Chief Executive and Administrative Officer of the Commission; administers policies and ensures the efficient discharge of the agency.

Provides management direction with respect to all matters concerning overall Commission workflow, resource allocation {staff and budgetary), work priorities, and managerial matters.

Law Office of Wayne Singer, Long Beach, CA
Senior Attorney specializing in workers' compensation defense. November 2009 to June 2011

Safeco Insurance, Long Beach, CA
House Counsel exclusive to workers' compensation defense, February 2007 to December 2008

Adelson, Testan & Brundo, Long Beach, CA
Attorney specializing in workers' compensation defense and related employment law. August 2001 to Dec. 2006

Altman & Shoemaker, Encino, CA
Attorney specializing in workers' comp defense and related employment law. 1998 to 2001

Ochoa & Sillas, Los Angeles, CA
Attorney specializing in workers' comp defense, civil litigation and political advocacy. 1996 to 1998

Educator, Long Beach, CA
Long Beach City College
Political Science and California Politics, 1996 to 2011

Education
Santa Clara University School of Law, San Jose, CA
Juris Doctor, 1978

Languages
Fluent in Spanish

Licenses

- Admitted to The State Bar of California, 1980
- Admitted to Bar of the U.S. District Court, Central District of California, 1980

Affiliations

- Member, The State Bar of California
- Member, Long Beach Bar Association, Long Beach, CA Past Chair, Workers' Compensation Committee
- Member, Mexican-American Bar Association, Los Angeles, CA Past Chair, Workers' Compensation Committee

Awards

- *Stanley T. Olafson Award* 2014
  Los Angeles Chamber of Commerce ". . .honoring "an individual who has contributed in the advancement of world trade."
- *National 20/20 Vision Award* 2009
  The Alternative Fuel Vehicle Institute, Las Vegas, NV
- *Attorney of the Year* 2007
  Mexican American Bar Association, of Los Angeles County
- *Environmental Award* 2007
  League of California Cities

References available upon request

ADDENDUM ONE

Federal Maritime Commission, Washington, D.C.

The FMC is the independent Federal agency responsible for regulating the U.S. international ocean transportation system for the benefit of U.S. exporters, importers and the U.S. consumer.

- *Designated Chairman by President Obama: April 1, 1013*
- Nominated *Commissioner* by President Obama: September 17, 2010
- Confirmed by U.S. Senate: April14, 2011
- Sworn into office: June 2, 2011

This FMC Chairman:

- Acts as Chief Executive and Administrative Officer of the Commission: administers policies and ensures the efficient discharge of the agency;
- Testifies before the U.S. Senate and U.S. House of Representatives on yearly FMC budget, other appropriations, ocean transportation policies and at either body's request on FMC issues of concern to Congress;
- Negotiates with international counterparts on ocean transportation policies and facilitates with various foreign government officials the protection and promotion of U.S. ocean-going interests inforeign commerce;
- Addresses audiences across the U.S. and the world as necessary to advance Administration polices and, in particular, receive input from all FMC stakeholders; and;

- Provides specific management direction with respect to all matters concerning FMC workflow, (2) resource a/location (staff and budgetary], (3) work priorities, and 4) managerial matters.

My Personal Goals as FMC Chairman include:

(1) To be a hands-on chairman overseeing the superb staff workings of this agency;
(2) Work closely with fellow commissioners regardless of party to (a) to protect the public from unfair and deceptive practices and (b) ensure competitive and efficient ocean transportation services for the shipping public is maintained;
(3) To promote, advance, encourage, facilitate American commerce and shipping interests to all the world's hemispheres in a fair, transparent manner; and
(4) To move the industry to conduct itself in the most environmentally progressive ways possible

Congressional Testimony. Acts & Stakeholder Engagements (partial list)

- Testimony before Congress on the FMC budget—March 26, 2014,
- Testimony before Congress on FMC reauthorization legislation—October 29, 2013
- Testimony before Congress regarding Regulatory Review—September 10, 2013
- Testimony before Congress Regarding FY 2013 FMC budget—April 16, 2013

Guest Speaker (partial list)

- *2014 Port Productivity Conference*—February 14, 2014
- *Sixth SeaCargo Americas Conference*—Emphasized cooperation i n trade, investment and infrastructure development in the western hemisphere. November 6, 2013
- *Inaugural Conference on Creating an Environmentally Sustainable Maritime Industry*—October 17, 2013
- *California Association of Port Authorities Annual Meeting*—October 11, 2013
- *International Association of Ports & Harbors (IAPH) 28th World Ports Conference*—May 07, 2013
- *Organization of American States on sustainable port management*—November 13, 2012

ADDENDUM TWO

Commissioner, Board of Harbor Commissioners

Port of Long Beach, Long Beach, CA

America's Second Largest Port

The Environment

Spearheaded the innovative, environmentally unprecedented *Green Port Policy* at the Port of Long Beach. Through voluntary and mandated efforts, it revolutionized environmental clean-up ports through the *Clean Trucks Program, Vessel Low-Sulfur Fuel Program, Technology Advancement Program* and others. In conjunction with the Port of Los Angeles, *Green Port Policy* is today an *international model* for striking balance among industry, labor, shippers and the health and safety of the people who live and work in and around the ports.

Promoted and expanded Port Community Outreach Initiative including the new, *Pulse of the Port,* award winning cable TV program.

International Environmental Cooperation

Served as Executive Board member on the American Association of Port Authorities' Latin American delegation. Instrumental in development of policy urging greater cooperation between North American and Latin American ports.

Guest Speaker (partial list)

- Application of new Environmental Port technologies, Brazil 2009
- First Environmental Latin American Hemispheric Conference, Panama 2008
- Port of Rotterdam symposium (Europe's largest port) to speak on *POLB's Green Port Program.* 2007
- Organized First Annual Conference between Mexican Ports of the Pacific and Ports of Long Beach and Los Angeles. 2007

Appointments

- Elected Harbor Board Commission, President, July 2007–2008; Vice President, July 2006 to July 2007 and July 2009 thru July 2010.
- President of the Association of Pacific Ports, Sept 2010–2011, Vice President, 2009–2010.
- First appointed to Board Commission in 2003 by then Mayor Beverly O'Neill. Reappointed in July 2009 by Mayor Bob Foster. Both times the City Council unanimously approved these six year term appointments.

The CHAIRMAN. Thank you, Mr. Cordero.

We'll start with some questions and I will direct this one to Mr. Elliott, and it has to do with adjudication in rate cases. The STB's Fiscal Year 2016 budget request states that the Board participates in roughly 1,300 decisions in court-related matters each year and a significant portion of the STB's resources are consumed by complex rate cases. This workload is expected to increase. Your colleague, Vice Chairman Ann Begeman, dissented on the proposed Fiscal Year 2016 budget request on the grounds that she believes the budget fails to dedicate enough attention and resources to improve its adjudication process, as well as simultaneously doubling its travel budget.

So Mr. Elliott, could you share your views on the Vice Chairman's criticism of the 2016 budget proposal?

Mr. ELLIOTT. Sure.

As far as dedicating money to the process itself, the Board has taken some of the money. I've commissioned a study on the rate case process. What has occurred since I've come to the Board is the cases have gone from coal cases with one or two routes to cases which are incredibly more complex with hundreds of routes. So what I have done is dedicated money, number one, to look at studies of alternative ways to bring rate cases in a simpler fashion. So I've committed money to an external consultant to take a look at that because I thought the Board needed new ways to make the Board more accessible.

Second, I've also commissioned an internal study about faster ways to bring rate cases through the board and more efficiently and more quickly.

As far as the travel budget itself, I don't believe that our budget is large in comparison to most agencies but we do travel very conservatively over the last several years. So I'm not sure exactly if that—it's not a big number. So I have committed and I've committed as an attorney that practiced before the board every possible human resource in the board to look at ways to improve the way we process cases.

The CHAIRMAN. Thank you.

I think I mentioned, and you mentioned as well, I have a keen interest in agriculture, as you know——

Mr. ELLIOTT. Yes.

The CHAIRMAN.—and rail transportation. I had an Ag roundtable back in South Dakota recently. And one of the recurring themes that came out of that was the high shipping cost and its effect on farmers across South Dakota who rely on rail transportation to get their harvest to the market. In your response to the Committee's questionnaire, you mentioned that under your direction the Board has been proactive, I should say, in addressing rail service issues

by closely monitoring rail service metrics, issuing targeted service orders that improve service levels and increase accountability, gain stakeholder input, and making more staff available to resolve immediate service crises. That's from your statement.

So I question: Do you characterize your efforts as having been successful and what steps would the STB take to prevent future rail service delays?

Mr. ELLIOTT. As far as future rail delays, what we have done is, on December 31, we did issue a decision, a proposed rulemaking, that asked for more information from the railroads so that we can better understand the service issues and the metrics involved in the rail industry. That has never been done before, despite all of the service issues. So we are going to have a more careful examination of what is going on with respect to the rail industry.

In addition, since the rail crisis that occurred, in 2014 occurred, we have been in close contact with the railroads and their shippers to make sure that we understand their issues and we also want to make sure that the railroads are coordinating amongst themselves to make sure that these issues don't arise again, especially in Chicago.

The CHAIRMAN. Chairman Cordero, the continuing formation of carrier alliances to consolidate their routes and services, I believe there are roughly now four major alliances, has given rise to reports that the operations of these alliances may be a contributing factor to the chronic congestion at West Coast ports and perhaps at other U.S. ports. There's an article, it appeared earlier this week in the *Wall Street Journal,* that noted that the sharp growth in container ship sizes is also a contributing factor to overwhelming ports at key periods and costing millions to importers and exporters who can't access their cargo on time.

What can you tell us about the impact these alliances and the sharp growth in container ship capacity are having on the shipping community? And will you, as shippers, benefit from this consolidation due to a greater choice of services and lower freight rates in the short and in the long term?

Mr. CORDERO. Thank you for your question, Chairman.

First of all, the assessment is correct in terms of the impact or the potential impact that these alliances may be having, not only on the domestic front, but in the international community. I think it's fair to say that at this point the FMC is monitoring what those impacts are. We are taking this responsibility very seriously, and I can represent to the Committee that the monitoring that we are addressing at this point is addressing that issue. In other words, what are these impacts and to what extent are they impacting the American shipper?

I'll state two points further to that. One is the, preliminarily, as we saw in the West Coast experience, the impact is logistics in nature for sure and I'm referencing the Marine Terminal Operators who, in my view, were not prepared for the unloading and loading of thousands of containers these large vessels bring in. Number two, the impact on the American shipper. And I, and our staff here, have been very adamant with regard to protecting the interests of the American shipper. One issue with regard to that is the cost of

it being incurred, and, as a result of congestion, some of the cost in reference to demurrage and detention, are of serious concern.

The CHAIRMAN. I'm going to, just for purposes of the record too, ask unanimous consent to include those two *Wall Street Journal* articles, one dated May 4, 2015, the other April 28, 2015, into the record.

So without objection, we'll include those as part of your response to that particular question.

[Below are both the web addresses and the articles themselves:]

"Growing Shipping Alliances Ares Straining Major U.S. Gateway Ports" by Costas Paris, May 4, 2015 5:58 a.m. ET, *Wall Street Journal*

http://www.wsj.com/articles/growing-shipping-alliances-are-straining-major-u-s-gateway-ports-1430733531?mod=e2tw

"U.S. Ports See Costly Delays as Cargo Ships, Volumes Grow" by Adrian Campo-Flore and Cameron McWhirter, April 29, 2015, 4:41 p.m. ET

http://www.wsj.com/articles/u-s-ports-see-costly-delays-as-cargo-ships-volumes-grow-1430340113

The Wall Street Journal

GROWING SHIPPING ALLIANCES ARE STRAINING MAJOR U.S. GATEWAY PORTS

Ocean carriers are cooperating on capacity on their new, larger ships, adding to handling problems

The world's largest container lines are joining forces to get the most out of their new, bigger ships, bringing more cargo to ports at concentrated periods. EPA/ALEX HOFFORD *PHOTO: EUROPEAN PRESSPHOTO AGENCY*

By Costas Paris

A sharp growth in container ship sizes and alliances among the world's biggest shipping operators is overwhelming U.S. major gateway ports during peak periods, costing millions to importers and exporters who can't access their cargo on time and prompting the country's marine watchdog to warn of legal action if the parties don't deal with the mess.

Container shipping, which moves over 95 percent of the world's manufactured goods, is largely controlled by around 15 mostly European and Asian operators,

which recently have accelerated the pooling of operations within giant alliances to cut costs. Long a feature of maritime shipping, the alliances have grown in recent years as carriers have introduced bigger vessels that are least twice the size of those calling on U.S. ports for years.

The economic imperatives of carriers trying to get the most out of the new ships meet the cargo-handling limitations at ports such as those the largest U.S. gateways at Los Angeles and Long Beach. Upon arrival, containers often are randomly unloaded, which swamps terminal operators as they try to organize the metal boxes in stacks and move them to specific destinations by truck or rail.

"Existing terminals were designed two decades ago to handle ships half the size of today's vessels, and with the alliances, six ships belonging to the same alliance can show up at five different terminals in Los Angeles and Long Beach." said Gene Seroka, executive director at the Port of Los Angeles. "This disperses cargo over a wider array of facilities making it challenging for truckers to pick the containers as well for western railways to amass the cargo and move it to specific destinations.

"We have 13 different terminals in Southern California. So there is a lot of confusion in picking up cargo," said Mr. Seroka.

For years, the workhorse vessel that moved goods across the Pacific had a capacity to carry between 5,000 and 7,000 containers and it would take up to 10 hours to move a container from the port. But over the past couple of years, ships calling at West Coast ports have doubled in size. At the height of the peak period late last year the congestion was so severe that it would take up to eight days to move a container out of port and on to major importers of Asian goods such as Wal-Mart Inc., Home Depot Inc. and others.

Mr. Seroka said that on average terminal operators had to pay $3 million in added spending a week to deal with the congestion.

California ports handle the largest share of cargo moved from and to Asia, everything from clothing and home appliances to toys, luxury goods and electronics coming in and packaged food, fresh produce and scrap metal going out. Peak periods include September and October when retailers prepare for the Christmas holidays and the first-quarter period before the Lunar New Year, when U.S. importers typically stock up for spring before Chinese factories shut down for up to two weeks.

Jon Slangerup, chief executive at the Port of Long Beach, says that as ships get bigger, they call to more ports in Asia where containers are loaded randomly, with little attention to the ownership of the containers or their final destination. When docking at multiple terminals at the West Coast, unloading the ships is also done randomly, straining port operators and truckers as they try to figure out which box goes where.

Historically, a single ship had its containers stocked in blocks, with each block destined for a particular location by a particular mode of transport. The process known as block stowage was for decades the preferred method for port operators and it worked well.

"In the past, we handled a container one to three times before it left port, Mr. Slangerup said. "Now, at peak times, it is five to eight times, and when it happened last year nobody really understood the magnitude of the problem. It wasn't expected or planned for and so the physical gridlock that ensued was very serious."

Jonathan Gold, vice president of National Retail Federation which represents 18,000 U.S. retailers, says members also have been levied by shipping companies with congestion charges to compensate for the for the extra time a vessel stays at port while cargo is being shorted out.

"It's a very large issue that adds major costs to cargo owners," he said. "We want to see better port operations overall that moves cargo quickly. We need a wider conversation with everyone involved in the supply chain, but it will take years to deal with the problem."

The impact of the alliances isn't limited to the United States. European and Asian ports have moved faster to adopt the infrastructure needed to handle the megaships. Those ports still face congestion and the alliances exacerbate the problem, but the loading of containers bound for Europe is less of an issue in part because of different port handling procedures.

Last month, the Federal Maritime Commission, the U.S. marine watchdog, voted to call in all parties involved to discuss the issue and come up with proposals to address the problem. It said that in many cases, congestion charges are deemed unfair since importers, exporters and truckers aren't responsible for the delays, and the regulator warned it could penalize unfair practices by shipping companies and terminal operators.

The Morten Maersk Triple-E Class container ship, operated by A.P. Moeller-Maersk A/S. Chris Ratcliffe/Bloomberg *PHOTO: BLOOMBERG NEWS*

"The message from cargo owners, importers and exports is loud and clear," said FMC *FMC 0.30 percent* Commissioner Richard Lidinsky. "These alliances and their big ships are causing major problems at U.S. ports and by our vote all parties involved will have to sit down over the next 90 days identify what went wrong and come up with solutions. After that, the FMC will have a clear picture and if needed get involved in specific cases with investigations, subpoenas and fines."

"We had shippers telling us they are being regularly charged for the congestion by shipping companies. The operators cause the congestion and they want to profit on top of it. This is unacceptable," Mr. Lidinsky said.

Maersk Line, the world's biggest container operator with 15 percent of global capacity, according to the Singapore-based maritime research group Alphaliner, says the larger vessels actually improve efficiency as the cost savings are largely passed on to customers.

The FMC and the marine regulators from the European Union and China is set to meet in Brussels in May to discuss whether the alliances are in line with international competition practices and their role in congestion at U.S. ports.

The big players in the business have said that pooling their resources and deploying bigger ships—such as the Triple-E class, which can carry in excess of 18,000 containers—cuts their costs and provides better service to cargo owners.

The world's two biggest alliances in capacity terms are the 2M and Ocean Three.

The 2M consists of A.P. Møller-Mærsk A/S's Maersk Line of Denmark and Swiss-based Mediterranean Shipping Co., the world's top 2 container lines, with a combined 28.2 percent of all capacity, according to Alphaliner. The 2M moves around 35 percent of all goods between Asia and Europe and controls a market share of 15 percent and 37 percent of goods moved on the trans-Pacific and trans-Atlantic routes, respectively.

Ocean Three, consisting France's CMA CGM, China Shipping Container Lines Co. and Middle East shipping major United Arab Shipping Co., controls a 20 percent slice of all cargo between Asia and Europe and 13 percent and 7 percent across the Pacific and Atlantic oceans, respectively.

The Wall Street Journal

U.S. Ports See Costly Delays as Cargo Ships, Volumes Grow

Problem shows how global trade logistics are falling out of sync

Severe congestion at Norfolk International Terminal in Norfolk, Va., and other ports around the country has made it difficult for the U.S. to keep up with growing shipping capacity. Photo: AP

By Arian Campo-Flores and Cameron McWhirter

PORTSMOUTH, Va.—The Port of Virginia, one of the Nation's largest, was built to handle high volumes of cargo traffic entering and exiting the U.S.

But on his way recently to pick up a load of bedding, Albert Newcomb was stalled for two hours before his rig could make it through a mile-long line to one of the port's terminals. Once inside, the 43-year-old independent truck driver hit a traffic jam 13 lanes wide and 10 trucks deep. By the time he left with his load, he had waited for a total of eight hours. "It's ridiculous," he said, as he sat in his truck idling outside the gates. "It's almost to the point where you want to quit."

A key reason for the holdup: a surge of containers from three large ships at dock was straining the port's capacity and tying up dockworkers and cranes.

Such congestion is becoming increasingly common at major U.S. ports—a problem that could have profound implications for the $900 billion worth of goods transported to and from the U.S. each year by container ships.

The slow movement of imports and exports illustrates how the logistics of global trade have fallen terribly out of sync. Ocean carriers are deploying progressively bigger vessels. Some would be taller than the Empire State Building if stood on end. They can carry more than twice as much cargo as their predecessors, and are more fuel-efficient than smaller vessels. To ensure they travel as full as possible, shipping lines have formed alliances to combine their loads.

But the floating behemoths are overwhelming many U.S. ports that weren't built to handle such supersize ships. Of the 10 busiest U.S. ports by container volume, as calculated by the American Association of Port Authorities, at least seven are grappling regularly with congestion.

In Newark, N.J., a shortage of chassis—the undercarriages used to haul containers off the port by truck—is contributing to miles-long lines. In Los Angeles and Long Beach, the arrival of giant vessels and the growth of shipping alliances has caused terminal gridlock for months, leaving ships stuck offshore waiting to unload. That situation was exacerbated by a labor dispute at West Coast ports that was resolved in February.

The big ships "have stressed the infrastructure to the breaking point," says Jock O'Connell, an international trade adviser at Beacon Economics LLC in Sacramento, Calif. There needs to be "a concerted effort to rethink and redesign the ports to accommodate these larger vessels and the additional cargo they're generating," he says.

It is only likely to get worse. Container volume at U.S. ports has increased steadily since the recession, hitting all-time highs in 2014 at many East Coast terminals.

Between 2010 and 2040, the volume of the U.S.'s container trade with Northeast Asia—which accounts for the majority of the U.S.'s overall container trade—is projected to more than triple, according to a 2013 Department of Transportation study.

West Coast ports already receive megaships bearing as many as 14,000 containers traveling from Asia across the Pacific Ocean, while East Coast ones are receiving 10,000-container vessels from Asia through the Suez Canal. That volume will only grow when expansion of the Panama Canal is completed next year. The widened, deeper canal will allow ships carrying as many as 13,000 containers to travel en route to the East Coast, compared with ships hauling 5,000 containers today.

The cost of port congestion to retailers, meanwhile, is expected to climb—and ultimately be passed along to consumers.

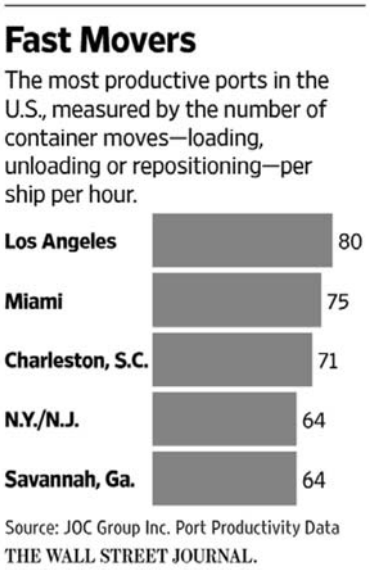
Frank Layo, retail strategist at consulting firm Kurt Salmon, forecasts that the cumulative costs of shipping delays could reach $7 billion this year and climb as high as $37 billion in 2016. He expects some retailers to divert shipments from Asia to more-expensive routes to avoid congested West Coast ports. Consumers could "feel it in the form of mass out-of-stocks and price increases," Mr. Layo says.

Lower fuel costs could help offset congestion costs, but whether carriers will pass along such reductions to customers is unclear, analysts say.

Audax Transportation hauls goods ranging from car engines for Ford Motor Co. to frozen chicken parts for Perdue Farms. Bottlenecks at the Port of Virginia have reduced the amount of goods its truck drivers can move in a day by 50 percent in the past year, says Ed O'Callaghan, the firm's president and an agent of trucking company Century Express in Norfolk, Va. To make up for lost revenue, his company has raised prices for customers by about 35 percent.

"It is not enjoyable to approach shippers who have supported you over the years with such increases," Mr. O'Callaghan says. Because congestion has limited the number of containers the company can move, Mr. O'Callaghan has had to drop some 20 clients in the past year, including a tobacco exporter and furniture importers.

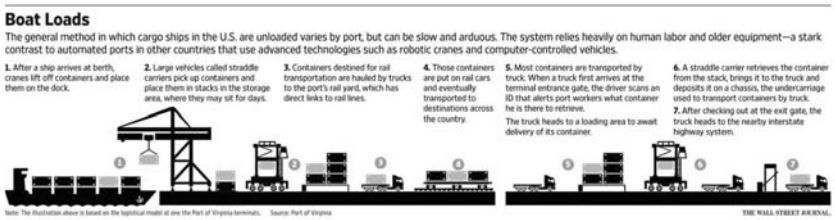
Port congestion has also made it difficult for home-goods importer Hooker Furniture to gauge the staff it needs to handle the dressers, dining tables and sofas it imports from Asia, says logistics coordinator Kimberly Clark. "One day, we could be planning for 15 containers, and we may only get six" because of shipping delays, she says. Another day, a flood of containers could arrive, forcing the Martinsville, Va., company to pay workers overtime or bring in temps.



The backups have "put a lot of pressure on everybody," says Port of Virginia spokesman Joe Harris. "We definitely regret" such situations, he adds. To alleviate congestion, the port in recent weeks has extended operating hours and added chassis and container-handling equipment.

The problem didn't happen overnight. Investment by federal, state and local governments in U.S. ports and surrounding infrastructure—such as roads and rail

lines—mostly dried up during the recession. And declining cargo volumes squeezed ports' finances, limiting their ability to make significant investments in bigger cranes and other improvements, says John Martin, a maritime economist at Martin Associates in Lancaster, Pa.



Around the time the economy began to recover, shipping lines started deploying more megaships to U.S. ports—years earlier than most port officials anticipated, Mr. Martin says. Yet government funding has been slow to return amid budget constraints. The result was a "perfect storm," says Mr. Martin, as surging cargo volumes slam ports ill-prepared to handle them.

Now, ports are scrambling to catch up. They lag some foreign counterparts, which rely on unmanned cargo-handling machines to efficiently move, stack and retrieve containers, Mr. Martin says.

Journal of Commerce data on port productivity in the first half of 2014 showed that the world's most efficient port was Jebel Ali in the United Arab Emirates. It managed to perform an average of 138 container moves—loading, unloading or repositioning—per ship per hour. The Port of Los Angeles—the U.S.'s most efficient port at the time—had only 80 container moves per ship. One difference between the two: Jebel Ali has invested heavily in automation and technology to serve megaships, including $850 million in a new container terminal unveiled last year.

The White House has provided special infrastructure grants worth $479 million for 38 port-related projects in recent years. President Barack Obama has visited Miami, Wilmington, Del., and other cities to promote more investment in the Nation's ports. The Federal Maritime Commission has made resolving port congestion one of the agency's top priorities. But it lacks budgetary authority, which rests with Congress.

In the U.S., a "long-term lack of investment and lack of focus" has inhibited modernization, says Curtis Foltz, executive director of the Georgia Ports Authority. "We are woefully positioned to deal with continued growth in the 21st century."

Some ports have modernized. The Georgia Ports Authority, which owns and operates the Port of Savannah, is spending about $1.5 billion over the next decade to improve crane operations, storage facilities and other port infrastructure. The state of Georgia is spending another $120 million on road improvements near the port, to be completed in 2016. As a result, shippers say the port, the second-busiest by container volume on the East Coast last year, operates smoothly for the most part, regularly handling big vessels stacked with cargo for companies such as IKEA and Target Corp. *TGT 2.05 percent*

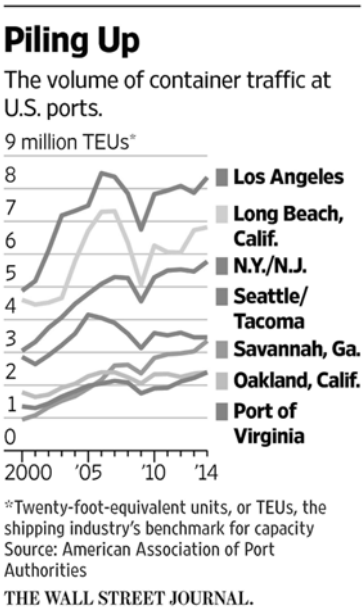
Unlike port authorities in cities such as Los Angeles and New York that are landlords and lease their multiple terminals to private companies, the Georgia Ports Authority owns and operates the sole terminal at the Savannah port. That gives it control over capital expenditures and growth plans.

To prepare for larger ships, the Savannah port says it started investing a decade ago in upgrades. Recent improvements include the tallest available cranes and a state-of-the-art computer system that tracks in real time the location of containers, speeding their retrieval for trucks. In 2007, it helped launch the South Atlantic Chassis Pool, a collection of about 50,000 chassis shared by various Southeastern ports and rail lines. Savannah is now building out undeveloped property inland to store empty containers, freeing up more space for cargo near the dock.

Others are following Savannah's lead. Chassis companies are trying to relieve congestion in New York and Los Angeles by creating pools similar to the one used in Savannah, says Keith Lovetro, president of chassis-leasing company TRAC Intermodal.

The challenges in the U.S. are on display at the Port of Virginia, which has two main container terminals, in Portsmouth and Norfolk, bustling with activity as towering cranes unload ships and enormous vehicles pile containers in stacks. Infrastructure investment at the port suffered during the recession as well as a two-year period of uncertainty, ending in 2013, when the state weighed privatizing it. But

the bigger ships began arriving in 2011—years earlier than expected, says Mr. Harris, the spokesman.



Rising container volume along with backups caused by a spate of winter storms pushed the Portsmouth terminal, called Virginia International Gateway, beyond capacity for weeks in March, Mr. Harris says. Crews repeatedly worked late into the night to clear backlogs, only to have them "gobbled up by a single ship," he adds.

Trucks are stalled for hours in a miles-long line to gain entry to a terminal at Port Elizabeth, N.J. *PHOTO: KEITH BEDFORD FOR THE WALL STREET JOURNAL*

Nearby Norfolk International Terminal, also part of the Port of Virginia, is dealing with congestion problems as well, compounded by much older equipment prone

to breakdowns. One yard at the terminal is packed with straddle carriers—large vehicles used to move containers—undergoing maintenance.

"If you had more of those strads working, you would have lower turn times" for trucks, says Bill Jackson, chairman of RJR Elite Trucking in Norfolk.

The terminal also gets so crammed with containers that dockworkers need to move them around frequently to retrieve the right ones, leading some to be misplaced, he says. "We've had drivers sitting in line five to six hours waiting for them to find the container they want," Mr. Jackson says.

Every month, he says, he loses several drivers fed up with the congestion—a common occurrence at ports across the country. Many truckers are independent operators, meaning they only make money when they complete a delivery. These days, they're lucky to make two hauls a day, compared with four or five several years ago. The resulting shortage is contributing to increased freight costs.

John Reinhart, chief executive of the Virginia Port Authority, which operates the Port of Virginia terminals, says truckers' complaints are justified. But "we have limited resources," says Mr. Reinhart, who took the helm last year amid pressure from the state to make the port profitable.

He says upgrades, including a new computer-operating system and additional cargo-handling vehicles, have improved productivity. And a coming GPS-like system to track individual containers will make retrieving them easier.

To tackle congestion issues in New York and New Jersey, a port authority task force recommended several measures, such as more flexible hours for gate operations and building more warehouse space to store imports away from docks. Port operators and others are now trying to implement those ideas. In the last decade, the port authority has spent $2.7 billion in upgrades at the port. Another $1.3 billion is being used to raise the Bayonne Bridge so that megaships can pass underneath.

Congestion relief can't come soon enough for Jonathan Gold, vice president of supply chain and customs policy at the National Retail Federation, which represents some of the Nation's largest retailers. "We can't have U.S. ports acting as a barrier to trade," he says. "We're shooting ourselves in the foot."

The CHAIRMAN. Senator Nelson?

Senator NELSON. Let me inquire of Senator Manchin, if you've got a time crunch, would you like to go first?

As a follow-up to the Chairman's question, the congestion at our ports, what about the role that our freight program funds projects both inside and outside the ports to reduce congestion?

Mr. CORDERO. Thank you for your question, Senator.

Clearly that's a very important role. As you may know, the Federal Maritime Commission last summer, the summer of 2014, we undertook this endeavor to address the cost and the causes and effect of congestion. One of them clearly is the issue of infrastructure.

And if I may add to that response, one of the trade journals recently quoted a very respected economist, Walt Kemmsies of Moffatt & Nichol, who referenced the fact that in his opinion the greatest danger to international global trade is not so much issues like terrorism but the issue of the lack of infrastructure. So I think that question is very much on point to one of the major factors that we need to address in this nation, this country.

Senator NELSON. You're from Long Beach?

Mr. CORDERO. That's correct.

Senator NELSON. What's going to be the effect on the West Coast ports when the big ships don't have to unload on the West Coast and some of them will be going through the Panama Canal to the East Coast?

Mr. CORDERO. Well, Senator, I think it's clear that there will be some impact. The question is to what extent? You mentioned in your opening statement the question of the Panama Canal, the Third Lock Project. That project is going to make it more beneficial

to American shippers to have choices and the choice of direct water from Asia, direct water cargo transportation to the East Coast and the Gulf. So in summation, we don't know exactly what that impact will be but, most definitively, it seems that the American shipper is looking to some real options and choices.

Senator NELSON. Does the Port of Long Beach think that there are going to be less containers coming?

Mr. CORDERO. Well, Senator, number one, there are going to be more containers coming and I think the question is what percentage of those containers are going to go, diverted to other gateways. I will represent that I believe despite what has occurred in the West Coast, I think they're going to be prepared to deal with the logistics going forward in entertaining the future cargo that's going to come. I think one example of that is the development of the Middle Harbor project at Long Beach Container Terminal. That will be the state-of-the-art marine terminal operator in this country. Having said all that, I think there is going to be diversion and, again, as to what extent but most definitively it is important to have our deepwater ports in the East Coast or in the Gulf or in the West Coast to be ready for the oncoming cargo that's coming as a result of the increasing global commerce.

Senator NELSON. Mr. Elliott, the railroads have obviously got to expand. They need private investment. What can you do to make sure that the STB's policies do everything to make this private investment possible?

Mr. ELLIOTT. We know that the railroad's ability to invest in its infrastructure is extremely important. Going back to the origination of the Staggers Act, which deregulated, for the most part, the railroad system. We know that that has been successful in bringing the railroads back, to what I mentioned in my comments, to a rail renaissance. So my job is to serve as a regulatory backstop in the situations where the market is not necessarily working but, at the same time, allowing giving the railroads the ability to make adequate revenues.

Senator NELSON. Is the STB coordinating with the Maritime Commission on integrating in order to get cargo off ships and onto rail?

Mr. ELLIOTT. We don't necessarily have a lot of coordination, but we do have discussions. A lot of our coordination has been recently with the FERC and the Department of Agriculture because of some of the service issues, but we do monitor what's going on at the ports and its effects on the railroads.

Senator NELSON. Well, I'm certainly just a little country boy and don't understand a lot of this stuff, but I think common sense would say that the efficiency of big container ships is to get those containers off fast so the ship can get underway again to go do whatever it's doing, whether it's taking a load back or go back. The efficiency of the port in order to unload those containers and get them either on rail or truck, and I assume that most of them would be carried by rail unless it's the immediate metropolitan area where it's being delivered at the port, seems like to me that your two agencies ought to be coordinating in order to get the efficiency of the ports and the rail up.

Mr. Cordero?

Mr. CORDERO. I absolutely agree with you, Senator.

Let me just add to that response that Mr. Elliott referenced.

The FMC, in the last couple years, has reached out to other agencies in order to partner and coordinate on various fronts. One of them, as you mentioned, Senator, very important, is the rail industry. We have had some discussions with STB in terms of our mutual responsibilities. I will tell you that some of the stakeholders from the West Coast who have come to my office, I have referred them to the STB to have these type of discussions because, at the end of the day, what's a very extremely important whether it's in relation from the port or from the rail perspective are intermodal facilities. Now, I talked about congestion at the port. We have had congestion at intermodal facilities.

And last, if I could say on that topic, the concept of an inland port whether it's in the West Coast or in the East Coast, and in Florida, Port Everglades is studying those concepts, is extremely important. Going back to the issue of infrastructure, how important it is to invest in infrastructure. I think experts in industry will tell you that the greatest investment is in the first mile of the movement of that cargo.

And it goes to your point, Senator, getting that container in the terminal and getting it out of there as soon as possible. And that's why some of these ports, like in the West Coast, have invested a lot of money on on-dock rail and on-dock rail is a concept to get that container on a rail and out the terminal.

Senator NELSON. I think, for the benefit of the Committee, it would be very good and helpful to us in our oversight capacity if both of you all would take as a homework assignment to think about the intermodal efficient transfer from ship to rail and from rail to ship and, at your convenience then send that back to the Committee.

Senator NELSON [presiding]. Senator Manchin?

STATEMENT OF HON. JOE MANCHIN,
U.S. SENATOR FROM WEST VIRGINIA

Senator MANCHIN. Thank you, Mr. Chairman.

And thank you all for serving and continuing to have the desire to serve. And I'm sure you'll be successful.

Mr. Elliott, if I can, we've come a long way from the 1970s when railroads were governed by strict Federal regulations and struggling to stay solvent. Today, freight rail is big business and supports seven Class I railroads. They generate almost $70 billion in 2012 alone, from the figures we have.

An efficient and effective freight rail system is also critical to the success of our Nation's energy and agriculture industries who depend on timely and affordable access to markets both here in the U.S. and abroad. If confirmed, you will again have the inimitable job of mediating and adjudicating rate disputes between railroads and the shippers that depend on them.

I remain concerned that the rate challenges processed at the STB is prohibitively expensive and time-consuming. So do you believe that the current process is fair, transparent, and efficient? And if confirmed, when confirmed, what do you plan on doing to improve your—what would you make it recommendation to do better?

Mr. ELLIOTT. In answer to your first question, whether I think the process itself is fair, the answer is no. It's very expensive. It's very time-consuming. And I think it's a deterrent to some shippers to bring cases to the Board.

As far as what I've been doing and what I plan to do, as I mentioned earlier to Chairman Thune, I've already commissioned a study by an outside consulting firm to take a careful look at all the different ways rate cases are handled in other agencies and around the world for some different ideas and different perspectives to handle cases, and this is especially relevant today. As I mentioned before, most of the cases have been strictly coal cases with one or two routes. Now the cases have become much more complex recently and are hundreds of routes. And it just seems like it's so complex that it's very difficult.

Senator MANCHIN. In my little state of West Virginia, as you know, we depend an awful lot on rail to move a lot of our coal and our product and our heavy manufacturing. With that being said, we're pretty much captive on certain lines. There's not much competition, as you know; the two rail lines we have serving West Virginia. And the rate difference doesn't make sense to me. I would think a rail mile is a rail mile; a rail mile be based on maintenance and upkeep and all the things that goes toward that. Why is there such a disparity in, I mean, the pricing? Do you have a range that they're allowed to charge in depending on if they can justify their cost to you?

Mr. ELLIOTT. I'm sorry if I——

Senator MANCHIN. Go ahead. No, no.

Mr. ELLIOTT. The range, I mean there is a standard set forth in the Act, which is a reasonable rate. And in order to meet that reasonable rate you have to withstand the test that's set forth by the Board which requires these very complex cases.

The network itself, some shippers do pay more than others and that's because of some of the market power and the ability that, as I mentioned earlier——

Senator MANCHIN. But since we are held captive in certain parts of our state, it's unfair for our Northern coal fields to pay a higher price than our Southern coal fields or vice versa if we're both going to the same port in Norfolk or wherever. That's all I'm saying. It makes it very, very hard for us to compete on a global market with the shipping. So anything you can do to improve that process and to make sure there's more of a competitive pricing to it than just justification of cost would be very helpful to us.

Mr. ELLIOTT. I appreciate that. We are also looking at competition issues, which I started this year including competitive access. So that is another thing that as one of the top things on my list to do as soon as I hopefully get confirmed.

Senator MANCHIN. Sure.

Mr. ELLIOTT. Thank you.

Senator MANCHIN. Mr. Cordero, if I could ask you one question please, sir. Through your role as chair of the Federal Maritime Commission, you play a critical role in supporting our Nation's ports and the International Commerce that they maintain, which is so important for us. The world's container port volume is twice

as large today as it was 10 years ago and it is projected to continue to grow after the Panama Canal expansion is completed next year.

I agree that we need to invest more in our nation's infrastructure, but we also need to be more proactive about improving labor relations. What lessons did we learn, did you learn, did all of us learn through the West Coast port shutdown earlier this year? And, also in the same, what do you intend to do, or what can we do, or what would you recommend that we do to improve labor relations going forward knowing that it's going to be of more demand?

Mr. CORDERO. Well, thank you for your question, Senator.

I think the lessons learned with regard to those issues are, number one, it's extremely important to have these stakeholders come to the table early and be part of the ongoing dialogue and discussion with related to port operations. More specific——

Senator MANCHIN. Did that not happen in the West Coast?

Mr. CORDERO. It has happened but, however, I think clearly the message now it has to happen at a higher level, most definitively. And I think with the FMC, I'm glad to report to this Committee, the FMC's encouragement in facilitating discussions like those two agreements we recently have looked at now that have come into place.

Number one, the agreement between the Port of Long Beach and in Los Angeles to meet with stakeholders and have discussions on those issues. And second, the Pacific Port Infrastructure Operational Agreement that is now in place that gives the marine terminal operators and carriers the opportunity to discuss, again, issues like operations and infrastructure.

Last, I will say that I think, as regarding labor negotiations, I think everybody from this experience realizes that, going forward, it is very important to have labor commence these discussions early, be part of the table, and also for other stakeholders to come together and realize that, again, at the end of the day they have to act in the best interest not only of the region, of the state, but of the country.

Senator MANCHIN. Do you have the power to bring them?

Mr. CORDERO. Well, I think what we have done at the FMC, when we commenced one of four congestion forums as I indicated, last summer the FMC moved forward to have these forums in four different regions of the country. All stakeholders were present at those forums, including labor. So we've had this dialogue and discussion with them and we're assessing right now, considering the input from these stakeholders, the causes and effects of congestions, which I'm very optimistic when we work together we're certain we can mitigate that.

Senator MANCHIN. Thank you very much.

Thank both of you all.

Senator NELSON. Senator Manchin, do you have any ports in West Virginia?

Senator MANCHIN. I'm working on them, sir.

[Laughter.]

Senator MANCHIN. We have inland ports. I was very much interested in your intermodal.

Mr. ELLIOTT. Yes.

Senator MANCHIN. But we have our inland ports off the Ohio and Kanawha Rivers.

Senator NELSON. Absolutely.

Senator MANCHIN. So very important to us and the trade that we have in the trains is unbelievable. But if you can't get the goods to the country and we ain't getting the goods out, we're in trouble anyways. So we want to make sure that you're successful in your efforts too, sir.

Mr. CORDERO. Thank you, Senator.

Senator MANCHIN. Thank you.

Senator NELSON. Senator Klobuchar?

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Well, thank you very much, Mr. Chairman. Thank you to both of you.

We do have a port. The Port of Duluth, which is quite busy in Minnesota. And I want to thank you and Senator Thune for convening this hearing, and thank both of you.

Freight rail is really important in Minnesota. It's everything from iron ore going to the Port of Duluth, iron ore pellets to all of the agriculture goods that we ship out all the time. And I think you know my view that the STB has to have all three board members serving as soon as possible to ensure that progress is made on key proceedings that are significant concern to the shippers.

Last year, the Surface Transportation Board directed some railroads to provide weekly status reports on the movement of commodities on their networks. The STB's directive increased the transparency of data and was meant to improve the congestion and delay on the rails.

Mr. Elliott, how was reporting helpful to improve rail service? I have to tell you I'm still hearing a lot of its costs, from some of our commodities, provided for the called "captive shippers." Some of it has been delayed, that we've seen some improvements with this but it's—a lot of it is cost. So how has the reporting been helpful?

Mr. ELLIOTT. Well, we've had a certain amount of reporting throughout the service crisis in 2014. So, for us, it has been helpful especially in the Ag industry and the coal industry to monitor exactly how the traffic is moving, how quickly it is moving. With respect to the Ag industry, we issued an order back in 2014 with respect to grain car backlogs, which gave us full information on how much the grain cars were backlogged. And we watched those numbers come down significantly to the point, now, where I think most of those grain car backlogs are gone.

At the same time, we are reusing the information to watch the coal traffic because some of the utilities were having low stockpiles and we wanted to make sure that the resources were given where necessary because we obviously didn't want any utilities to shut down. So it has been a very helpful tool for us and which is why we put out a proposed rulemaking to make this tool more permanent.

Senator KLOBUCHAR. OK.

One of the things, as I mentioned, I continue to hear is about the how long with rate issues when——

Mr. ELLIOTT. Yes.

Senator KLOBUCHAR.—shippers are raising rate issues, how long it takes for the STB to decide a case and the significant cost required to bring a case before the board. It is so complicated, cumbersome, and expensive that, few captive rail customers, even seek relief, too often the cases drag on for years. Are you satisfied with the process and do you think it offers a fair recourse for shippers? What improvements can be made? What can we do accelerate the timetable?

Mr. ELLIOTT. Yes, I do think the process itself is cumbersome. It has become even more cumbersome with the more complex cases that have been coming to the board. That is why, as I earlier mentioned, have commissioned a study, an external study, to look at other ways to bring cases. I also have started an internal study about complex cases inside the board. I've tried to figure out faster ways to handle these cases.

In addition, I raised the caps on some of the simplified cases right now to make them more attractive to stakeholders to use, to take and be used more quickly because the timelines in those are much shorter and the cases themselves are much simpler. So it is definitely one of my goals to make the rate case process itself more efficient and more effective.

Senator KLOBUCHAR. OK.

And are there ways we can measure that? It would be, you know, using a benchmark and how we can make these cases go faster?

Mr. ELLIOTT. Yes. That is one of the things that we are doing right now. We have been looking at the benchmarks with respect to the complex cases and to make sure that our office moves as quickly as possible. But I think the best solution could be some alternative ways of doing things. The SAC case itself is so complicated because it requires the complainant to build a hypothetical railroad, which you can imagine is incredibly complex. And so, in itself it just takes so much time. So we need to look at alternative ways.

Senator KLOBUCHAR. OK.

And then, I'm going to put this one on the record, but the examples of rulemakings that have languished for more than 3 years, of course, that's a different subject than the rate cases but that also has been taking too long.

And so, I think I'll just do that on the record because Senator Blumenthal has been waiting for a while. So I don't have delays in question like the rulemaking delays. And I would really urge you to try to speed those up as well because it is just getting more and more expensive for our shippers.

Mr. ELLIOTT. That is another goal.

Senator KLOBUCHAR. OK, very good.

And then, Mr. Cordero, we do invite you to the Port of Duluth. We are having a big celebration there in the next few months over, we got a TIGER grant and some upgrades were made. So we hope you come and visit.

Mr. CORDERO. I accept your invitation, Senator, and I look forward to that.

Senator KLOBUCHAR. OK, very good.

Thank you.

The CHAIRMAN [presiding]. And I would think you would want to go to the Port of Duluth sometime in the summer months.

[Laughter.]

Senator KLOBUCHAR. That was an unnecessary statement from the Senator from South Dakota where it can get really cold and windy across those plains.

[Laughter.]

The CHAIRMAN. I would encourage the same thing in my state. Thank you, Senator Klobuchar.

Senator Blumenthal?

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

Senator BLUMENTHAL. Thank you, Mr. Chairman.

Mr. Cordero, I was very interested in your testimony about the threat of concentration among some of the liners as a result of this situation that you characterized in your testimony as "chaotic," your word, in the wake of some of the recent economic developments and your highlighting the challenges of "congestion", again your word, in various ports around the United States. And I assume from your testimony that the danger of concentration from alliances and other combinations continues to exist?

Mr. CORDERO. Well, Senator, my response is twofold. Number one, the sharing of vessel agreements in the alliances came about among the major carriers for reasons of the economies of scale. So the $64,000 question that's out there, if they're going to save cost, is this going to trickle down to the American consumer, the American shipper? And that's exactly what we are monitoring. I believe that it should.

Senator BLUMENTHAL. It should, but is it?

Mr. CORDERO. Well, the jury is still out. I mean, you know, there's a light——

Senator BLUMENTHAL. The jury is still out and what can you do to make it happen?

Mr. CORDERO. Well, what we are doing now is, as I've noted, we are monitoring those agreements and, in fact, we are meeting with our global regulators, as I expressed, a second meeting here coming in the summer to address some of these issues. What we are doing now is, in relation to making sure that we discuss and make clear to these carriers, the expectations.

Now, as it relates to congestion, one of the unintended consequences that has occurred was, because of these big carriers coming together with these alliances, you have thousands of containers arriving at some of our deepwater ports. I will represent to this Committee that when, in reference to the word chaotic, I believe the marine terminal operators were not prepared with the adequate logistics to address that kind of cargo or that amount of cargo. Having said that, I'm very optimistic that I think the industry now is aggressively looking to address and mitigate those issues so that, going forward, I think you will see that some of these issues like equipment, availability, and chassis, will not be an issue going forward.

Senator BLUMENTHAL. To what extent can that congestion be relieved by directing some of those cargo to other ports? I'm thinking

just to give an example, New London, New Haven, ports in parts of the country where right now they might not be categorized as deepwater but could be adapted. Is that a possibility?

Mr. CORDERO. Absolutely, that's a possibility. I think the experts in industry are now saying the possibility of, what we call, transshipment, so to speak, that some of these cargo are arriving at some of these ports and then being shipped to the smaller ports for distribution. So that is something that I believe may be occurring and we will see in the coming years in terms of how this exactly plays out.

Senator BLUMENTHAL. And is there a role for your agency in encouraging the use of those ports like New London and New Haven?

Mr. CORDERO. Absolutely.

From the agency's perspective, our role is to foster fair, efficient, and reliable international ocean transportation system. Using that objective in our goal, that would include that the cargo that's coming to this country, in both imports and exports, is distribute it in a way that relieves congestion at our major gateways and takes advantage of some of the other inland gateways that we have; and in particular the smaller ports up and down the coast.

So I do see that coming in the future years.

Senator BLUMENTHAL. And what can you do to encourage the investment that is necessary? I'm assuming some investment would be necessary and also changes in practices. What specifically could your agency do?

Mr. CORDERO. Well, let me give you one example of that, Senator. Within our regulatory purview, what we are advocating are agreements; such as I mentioned the ones that occurred between Long Beach and Los Angeles. Another one that has occurred in the Northwest between Seattle and Tacoma. For these ports to come together and think about what is in the best interest of their region, in terms of some of these port operations, I think in those discussions, I think what we have done is basically tell the—or indicate to the port industry the need to have this dialogue so that we act in the best interest of the particular regions in country but obviously in the best interest of moving cargo and in an efficient manner throughout the country.

Senator BLUMENTHAL. I'd like to pursue that issue with you.

Mr. CORDERO. Absolutely.

Senator BLUMENTHAL. My staff, if we can contact you, to try to expand on the very helpful testimony that you've given this morning.

And Mr. Elliott, let me just ask you briefly, what can your agency do to encourage the kind of investment in infrastructure that, I think we all agree, has been lacking; particularly in rail? And what priorities would you determine?

Mr. ELLIOTT. Excuse me.

As I mentioned earlier, our role is to regulate the industry we serve as a backstop in the event the market is not working but, at the same time, we're here to ensure that we have a healthy rail industry. And in doing so, we try to attempt not to over-regulate which occurred in the past and permit the railroads to earn their cost to capital as they go forward.

Senator BLUMENTHAL. But regulation doesn't translate into investment.

Mr. ELLIOTT. Well, my point, I guess, is that we have to do a balancing act between allowing the shippers to have reasonable rates and service versus the railroads ability to earn enough money to invest in their infrastructure. So by doing that balancing act appropriately, which I believe that we have done in the past, the private money that comes out of the railroads, has been used to invest considerably in the industry as much as, I believe, $25 billion anticipated for this year.

So it is our goal to not regulate so much that we cut their money down that they can't invest properly and have a solid railroad industry that we need for our country.

Senator BLUMENTHAL. Maybe I might just suggest, because my time has expired, that there is a great deal of feeling that the Federal Government needs to invest more, needs to be a more active partner, and much more aggressive investor itself, and that the regulation that is your responsibility should result in greater investment as well on the private side. And maybe there's a role for a partnership in a national infrastructure bank or public financing authority. But at the same time, there is more proactive and aggressive role for the Surface Transportation Board to take.

So I appreciate both of your service and look forward to working with you.

Thank you.

Mr. ELLIOTT. Thank you.

The CHAIRMAN. Thank you, Senator Blumenthal.

I want to ask a question to this and get both of you to respond. The Office of Personnel Management conducts an annual Federal employee viewpoint survey, which gathers information about workplace culture and employee satisfaction. STB has consistently been ranked among the top Federal work places and the top small agencies in the rankings. FMC has, let's say, more work to do.

I'd like to hear from both of you about your goals for maintaining and improving workplace efficiencies in morale. I understand both agencies are working on or have recently completed management studies. So could you talk maybe about what lessons you have learned there that you can share?

Mr. CORDERO. I go first?

Mr. ELLIOTT. You go first.

Mr. CORDERO. Thank you for your question, Senator.

With due respect to Mr. Elliott, my goal is to have the FMC replace the STB as the best place to work in small agencies and I stated so.

But on a more serious note to your question, Senator, let me represent to the Committee here with me this morning is the SES, senior executive staff, and they know the direct orders in terms of what we need to do proactively on this question of the workplace. I will represent that, since I've become Chair in April 2013, there are three very important documents that have been put in place: Our statement of principles; our plan to improve the workplace and employee morale; and last, our strategic plan. The combinations of those documents give us a definitive plan of action in terms of what we need to do; much of this is employee engagement and make

sure that we address the concerns that have been raised by that service.

So, in summation, I'm taking this mandate very seriously and I think my SES staff at the FMC and my fellow commissioners, who are supporting this, they know that those directives are very serious, and we're moving forward. And I'd like to say, in the last couple of years, there has been improvement.

The CHAIRMAN. OK. All right.

Go ahead.

Mr. ELLIOTT. As you mentioned, the STB for the last five years has won the award for the best place to work, small agency, pursuant to the partnership survey. Also, the last 3 years, has won the most innovative agency. In fact, this year I believe that, as far as the scores were concerned for best agency to work for, we had the highest score of any agency in the government.

So my goal is to continue to keep the morale at a high level but, at the same time, work to make the agency more effective as far as its casework flow, while at the same time keeping people content with their positions. I find that if people become dissatisfied with their work, they become ineffective. So I think morale is just as important but, in addition, we have to address new processes to make ourselves even more effective.

The CHAIRMAN. In this sort of same vein, Chairman Cordero, a couple of months ago the FMC IG released a report on workplace evaluation and examined why the agency is ranked in the bottom 25 percent since 2011. In terms of employee satisfaction commitment in the report states: "Challenges with previous leaders remain top-of-mind at the agency and continue to impact morale and the leadership legacy issues remain top-of-mind at FMC."

So you mentioned a little bit and maybe if you could just drill down a little bit more on that and what you've been doing to try and deal with some of these concerns. And it goes on to recommend that you select an executive champion to lead improvement efforts and calls on the FMC management team to write up a corrective action plan within 30 calendar days. And I'm wondering maybe if you have done anything with those recommendations yet?

Mr. CORDERO. No, absolutely.

I mentioned the three documents in reference to what we've done as a plan of action. The corrective action has been responded to as part of a living document of our workplace evaluation and there have been amendments to that.

And as I indicated, I think one of the things that I have done specifically as Chairman, I have worked lockstep with the senior executive management at the Commission to pursue this endeavor. So I believe that most definitively what the two things that I have done is: number one, improve transparency and that, with regard to the management model; and second, move forward with ideas and plans of action of employee engagement.

I will add to that that I think, as Chairman, I will say that I've continued the practice of meeting with all the employees in the Commission, having casual conversations in order to give them opportunity to have input, and I have a number of all hands meetings that have occurred in the last two years, which I will continue to do. So suffice it to say that this is a challenge that is welcomed,

so to speak, and that I believe that we'll be, going forward, continuing to increase the numbers and the percentile that we've seen in the last couple years at the agency.

The CHAIRMAN. OK.

All right. Well, I guess that's it.

Do we have—OK.

Do you want to ask questions?

No, I'm kidding.

[Laughter.]

The CHAIRMAN. OK.

Do you want us to or not?

No?

OK. All right.

Well, we will keep the hearing record open for two weeks. During which time, Senators are asked to submit any questions for the record. Upon receipt, the witnesses are requested to submit those written answers to the Committee as soon as possible.

Again, we thank you for being here, for your willingness to serve——

She's here. OK, all right.

[Laughter.]

The CHAIRMAN. Well, I got that part in.

Senator Cantwell has arrived. All right.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. So sorry, Mr. Chairman.

The CHAIRMAN. I was going to have to tell jokes here for a minute.

Senator CANTWELL. I so appreciate it.

The CHAIRMAN. It's a good thing I'm here.

Senator Cantwell recognized for questions.

Senator CANTWELL. Thank you.

I want to say, Mr. Chairman, I don't know if you have heard but we've had another rail explosion this morning and certainly want to encourage our Committee to look at legislation in this matter. It's something I think is critically important for us to do.

So I wanted to ask Mr. Elliott about surface transportation and safety in general, and in moving freight. And there are many troubling things about, you know, where we are in improving movement of goods and services but, at the same time, getting the safety right.

And so, I don't know if you have comments on that.

Mr. ELLIOTT. As far as the safety aspects, it's not in our jurisdiction necessarily. The FRA and PHMSA handle most of those issues. Although, we do take a look at safety issues in construction matters, mergers and acquisitions, and abandonments. So when the issue of safety, like you mentioned an explosion, is raised in those proceedings, we do take a careful look at how that impacts a community. It is very important to us. We do a full environmental evaluation which includes a full safety evaluation in those situations.

Senator CANTWELL. OK.

And Mr. Cordero, in your time at the Maritime Commission, what have you learned about the Federal Government, you know, to take action to make our ports competitive?

Mr. CORDERO. Well, from the FMC perspective, Senator, I earlier testified that—give you an example of the action we have taken. Last summer, we identified congestion as a major issue for us to address in the interest of fostering fair and efficient ocean transportation systems and thus we conducted four forums in four different regions of the country. I think, as I've indicated, congestion in my mind is of a serious issue that needs to be addressed, factors related to infrastructure and funding.

So I think the lessons learned, and added to the fact that I was a port commissioner for 8 years at the Port of Long Beach, it is the importance of having our ports to be well-funded with infrastructure, which includes issues related to dredging, and infrastructure related to the first mile of operation of the movement of that cargo.

Senator CANTWELL. Do you think implementing the new freight recommendations by the Freight Advisory Board will help on that competitiveness?

Mr. CORDERO. Absolutely, Senator.

And, as you know, the FMC back in 2012 released a report on the Diversion of Cargo; specifically in relation to how the Northwest was being impacted. But one of the lessons learned about that particular study that when you look to our competitors to the North, Canada, and to the South, Mexico, both those countries have a common denominator that they have a national freight policy. So I'm glad to see that both Congress and the Administration and DOT and MARAD are very active on this and hopefully we will reach that point. Because I think it's tremendously important for us to, in order to be competitive and as our nation's ports, to have a national freight policy that moves forward to identify the funding that's so necessary for our gateways.

Senator CANTWELL. Well, thank you.

And I think this is also, Mr. Chairman, so important. You and I have had a chance to talk about this in general but this is, you mentioned the Northwest, but this is really about getting products to their destination; a lot of it through the Northwest. So the Midwest is impacted, everybody is impacted. And so, we have to do a better job of both improving our infrastructure to moving goods and services. And then on the other side, make sure we have safe transportation for these products.

So the accident that happened today is the fifth in recent months of an oil train explosion. We have a new rule that came out that I think is insufficient. In fact, it has a new disclosure requirement that rolls back, I think, where I think many of my colleagues want to go in making sure that state's emergency managers know what is happening. So we'll be sending a letter to Secretary Foxx later today urging him to immediately correct that on emergency orders so that first responders and communities can be well-prepared too; like the incident that happened today.

So I know it is complex and I know we are going to be discussing TPA on the floor soon. And so, to me, this is all about getting our economic future right. We got to make sure that we have good transportation quarters that can maximize capacity but we also

have to have safe rules for the transport of product, and we have to make sure that products can get on the rails and are not crowded out particularly by this kind of product that is, in my opinion, too volatile.

So anyway, I look forward to working with both of you. And thank you, Mr. Chairman, for the indulgence in getting my questions in at this hearing.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Cantwell, of course, representing a state in the Northwest that relies heavily not only on the ports but on railroads. And of course, we rely heavily on railroads to get our products to your ports so they can hit the export market that the supply chain is critically important to our economy and to the jobs that go with it. And so, you know, the people I represent, about one out of every three rows of soy beans that is planted gets exported.

So it's a big deal in all of our states, and we want to make sure that we get these issues right. So you and your organizations and agencies are critical to that and we will look forward to working with you. And obviously, we will have along the way, I'm sure, questions and suggestions and thoughts for you, but we appreciate your attendance here today and, again, your willingness to serve.

And we will keep the record open, as I mentioned earlier, for a couple of weeks for Senators who have additional questions. And we would ask that you get those responses back as quickly as possibly so that we can process things and keep your nominations moving forward.

With that, this hearing is adjourned. Thanks.

[Whereupon, at 11:12 a.m., the hearing was adjourned.]

A P P E N D I X

THE FERTILIZER INSTITUTE
Washington, DC, May 6, 2015

Hon. JOHN THUNE,
Chairman,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Hon. BILL NELSON,
Ranking Member,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Hon. DEB FISCHER,
Chair,
Subcommittee on Surface Transportation,
Washington, DC.

Hon. CORY BOOKER,
Ranking Member,
Subcommittee on Surface Transportation,
Washington, DC.

Dear Chairman Thune, Ranking Member Nelson, Subcommittee Chair Fischer, and Ranking Member Booker:

Thank you for holding today's "Nominations Hearing" at which the pending nominations of The Honorable Daniel Elliott and The Honorable Mario Cordero will be considered. On behalf of The Fertilizer Institute (TFI), I wish to share the views of America's fertilizer industry, specifically as it relates to former Surface Transportation Board (STB) Chairman Elliott. TFI supports former STB Chairman Elliott's reappointment, and encourages Committee members to vote in favor of it.

TFI represents a variety of agricultural organizations, particularly as it relates to crop nutrients, which are essential to U.S. food production. Research confirms that 40–60 percent of crop yields are attributable to the nutrient inputs of fertilizers. This also means that substantially less land is needed tofeed the world's 7.2 billion—and growing—people.

Fertilizer production facilities operate every day of the year, and, in terms of distribution, the industry depends year round on safe, reliable, and cost-effective rail transportation. The application of fertilizer by the farmer is typically a narrow window of opportunity. An effective rail transportation system is critical each and every day to ensure farmers have what they need when they need it.

Given the reliance of TFI members on rail transportation and a recent history of significant service issues, TFI fully supports policies that will promote greater competition between railroads and improve the efficiency and effectiveness of the STB. Likewise, the rail transportation marketplace, which has changed dramatically over the past 30 years, requires strong leadership at the STB to promote safety, reliability, and fairness. The fertilizer industry believes that former Chairman Elliott's experience and the attention, particularly by this Committee, to modernizing the STB will reenergize efforts to improve the rail transportation marketplace for both shippers and railroads.

TFI is also hopeful that former Chairman Elliott will expand the STB's proposed rulemaking—Docket No. EP 724 (Sub-No. 4)—related to service reporting requirements for certain commodities to include fertilizer. The proposal requires reports on certain commodities, but excludes fertilizer, which is vital to all crops. The exclusion of fertilizer may have the unintended consequence of incentivizing rail carriers to prioritize other commodities over fertilizer shipments. As a recent U.S. Department of Agriculture report states, fertilizer "must be moved year round in order to work within the capacity constraints ofthe transportation network." As farmers at the April 10, 2014, STB hearing on rail service testified, timely fertilizer shipments are

a very serious concern. TFI has asked the STB to include fertilizer among the reportable commodities in Docket No. EP 724 (Sub-No. 4).

Thank you again for holding today's hearing.

Sincerely,

CHRIS JAHN,
President,
The Fertilizer Institute.

Cc: Members of the Committee on Commerce, Science, and Transportation

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RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON, JOHN THUNE TO MARIO CORDERO

Dear Senator Thune and Committee Members:

Thank you for the opportunity to appear before you on May 6, 2015, and for this opportunity to address the Committee's questions on the FMC's regulations and the impact of service contracts on the ocean transportation community. I recognize the importance of these questions to the Committee, and to the public. These questions address issues currently being reviewed by the FMC staff. The results of that staff effort will be delivered to the Commission, and my fellow Commissioners and I will thoroughly review the regulations and consider potential changes and reforms to the existing regulations. The Commission's deliberative process with respect to the service contracts and non-vessel-operating common carrier service arrangements (NSAs) is likely to begin by the end of the summer, and should be concluded this calendar year. To better address your specific questions, I will respond to each question in turn.

Question 1. Chairman Cordero, do you believe that the FMC's regulations surrounding service contract filings are in keeping with the flexibility envisioned by the Ocean Shipping Reform Act of 1998 (OSRA). Some have expressed concern that the requirements are more burdensome and extensive than necessary, and have hampered the ability of shippers and carriers to react to the market as quickly as possible. Specifically, 1) the regulations surrounding contract filings make agreed-upon contracts and amendments effective only upon their date of filing with FMC, not upon the date on which the agreement is reached between the parties, and 2) regulations mandate that cargo cannot be moved under a contract or amendment until the contract or amendment is filed with the FMC. Both of these regulations appear to erect unnecessary roadblocks to carriers' ability to react quickly to market changes, and consequently, are often costly barriers to successful commerce. What in fact does the FMC do with these extensive filings, and what actions do you think the agency should take to improve and facilitate the filing process in order to avoid undue delays?

Answer. The Ocean Shipping Reform Act of 1998 expanded individual pricing options for shippers and common carriers by, in part, allowing for electronic filing of service contracts, and providing for confidentiality for contractual arrangements filed with the FMC—all in lieu of tariff pricing. Current statutory law provides that an ocean common carrier must provide all of its rates and charges either in a published tariff or in a confidentially filed service contract, with the publication of certain essential terms. 46 U.S.C. §§ 40501-40502. The FMC's regulations enable the Commission to accomplish its Congressional mandate for receipt of service contracts to ensure compliance with the Shipping Act, while allowing the industry to make the business arrangements and transactions that best respond to the needs of the shipping public. Regulations, however, can and should be reviewed to ensure that they accomplish their purposes without unduly hampering those regulated. I fully support the FMC's review of its regulations on service contract filing and plan on carefully considering recommendations made as a result of that review.

The FMC receives filed service contracts and amendments as part of its critical mission to protect the U.S. shipping public. The FMC uses filed service contracts and amendments to: (1) provide assistance when appropriate should disputes arise between a shipper and carrier; (2) monitor activities of carriers by reviewing General Rate Increases (GRIs), Peak Season Surcharges and other surcharges or assessorial charges that are filed in vessel-operating common carriers' (VOCCs) tariffs and determining whether or not such charges are implemented through service contracts; (3) determine if the industry is dealing with rate volatility by agreeing to index-linked contracts (ILCs); (4) monitor contracts to determine how bunker costs, one of the carriers' highest, are being recovered; (5) follow contracting practices between VOCCs and beneficial cargo owners (BCOs) that have a long standing rela-

tionships; (6) review for compliance regarding such items as the essential terms contained in contracts and the effective date in the actual contract or amendment; (7) review the activities of BCOs and non-vessel-operating common carriers (NVOCCs), including oversight of their Minimum Quantity Commitments; (8) follow certain export rates, such as, for agricultural goods; (9) address inquiries from BCOs and NVOCCs on questions they have pertaining to their contracts; (10) follow up with VOCCs on questionable shipper status in service contracts; and (11) assist in the FMC's mandated enforcement of the Shipping Act. In addition to FMC review, other Federal agencies access and utilize the FMC's service contracts and amendment filings. 46 CFR § 530.4. Currently, the U.S. Agency for International Development (USAID), the Department of Agriculture, and the U.S. Transportation Command (TRANSCOM) access SERVCON to accomplish their missions.

Carriers have indicated that the requirement to file service contracts and amendments prior to moving the cargo may limit their flexibility in reacting to market factors. Through electronic filing of service contracts and amendments, the Commission has made efforts to reduce the filing burden. Through its web services program, the FMC is already taking steps to improve the filing process. Ocean carriers' process thousands of shipments through "auto-rating systems" tied into their contract managements systems. Carriers can minimize their burden by filing amendments directly from their contract management systems through the FMC's automated web services into the Commission's service contract system (SERVCON) without requiring any manual input. A number of carriers are already using this option and have reported that web services have reduced their burden and reduced manual input errors significantly, thereby cutting costs.

Further improvements, such as revising FMC regulations, are done through rulemaking at the Commission level. I am committed to examining at the existing regulations and participating with the full Commission in the deliberation process to fully accomplish the purposes of the Shipping Act and OSRA.

Question 2. In what way, if any, do you believe the efforts of the FMC would be hampered if contracts and amendments became effective when the agreement is reached between the parties, and if carriers were allowed to file these contracts and amendments within some reasonable time after an agreement is reached?

Answer. The Shipping Act requires the publication of certain service contract terms. 46 U.S.C. § 40502. The FMC's current regulations require that the terms included in a service contract must not be uncertain, vague, or ambiguous. 46 CFR § 530.8(c). In my opinion, certainty of terms is crucial to a valid, enforceable contract. It is not clear whether a delay in filing service contracts and amendments with the FMC will increase misunderstandings or create a lack of certainty as to what a shipper's total charges and terms would be as its cargo is transported. As identified above, other Federal agencies and parties in labor disputes accessing the FMC's service contract information may also have questions as to whether a service contract or amendment exists, and its applicable terms. It is my hope that the public will file comments during the rulemaking process that will fully address the issue of certainty of terms. Accordingly, I would consider public comments and staff recommendations on this matter in determining whether to adopt any changes to the current regulations in this area.

Question 3. In 2011 the FMC set a schedule for reviewing its regulations. However, perhaps in recognition of the shipping industry's growing concern with the burden imposed by excessive service contract filing regulations, in early 2013 and under your leadership the FMC prioritized the review of service contract regulations, putting them under immediate review, and asked for the shipping industry's input on the reform process?

What is the status of the review of service contract filing regulations? If you are reconfirmed, can we expect definitive regulatory reform with respect to carriers filing service contracts? If so, when?

Answer. The Commission is currently reviewing its major regulations pursuant to Executive Orders 13563 (applicable to executive agencies) and 13579 (issued to encourage independent regulatory agencies to pursue the goals stated in Executive Order 13563). The Working Group for the Retrospective Review of Service Contracts and NSAs (Service Contract/NSA Working Group) convened in the fall of 2013 to begin a comprehensive review of FMC regulations in 46 CFR Part 530, Service Contracts, and Part 531, NVOCC Service Arrangements. These two Parts are being reviewed together because Service Contracts and NSAs share many of the same contracting attributes, and both must be filed into the Commission's SERVCON system by the VOCCs and NVOCCs. In addition, VOCCs and NVOCCs are also required to publish the essential terms for each of their contracts in a tariff format.

The Commission prioritized the retrospective review with regard for the concerns of the industry and the importance service contracts to oceanborne commerce. In 2014, not long after the immediate review of service contracts and NSAs was announced, the FMC completed its 2014–2018 Information Resources Management Strategic Plan. A major component of that plan will significantly upgrade our internal IT systems to improve data support for all Commission programs and research projects, as well as providing the technical foundation to simplify stakeholder filing processes.

The Service Contract/NSA Working Group has not submitted its recommendations to the Commission. I have been advised that the group met with numerous stakeholders to receive their views on changes to the Commission's regulations. In the course of those meetings, the Service Contract/NSA Working Group received numerous suggestions, for example, one suggestion is delayed batch filings as to contract amendments albeit on a monthly, rather than a quarterly basis. The Service Contract/NSA Working Group is reviewing the feasibility of such a change from the standpoint of our information technology infrastructure and from a staff resources standpoint. The Service Contract/NSA Working Group has also received, and is assessing, suggestions from some stakeholders that the contract correction process be modified, including the question of changes related to the supporting affidavit required for each service contract or NSA correction.

I have been informed that the staff recommendations of the Service Contract/NSA Working Group will be finalized in the coming months. The staff review will be transmitted to the Commission for potential action through rulemaking. If reconfirmed, I resolve to carefully weigh the input from the Service Contract/NSA Working Group, the industry, and the public, and consider all potential reforms to service contract filing in conjunction with my fellow Commissioners. I remain committed to lessening unnecessary regulatory burdens on regulated entities while allowing the Commission to fulfill its oversight role effectively under the Shipping Act. The Commission will likely issue either an Advanced Notice of Proposed Rulemaking or a Notice of Proposed Rulemaking in order to obtain comments from all interested stakeholders that would be affected by recommended rules changes. The notice seeking comments should be issued this year.

Question 4. Please provide an update on the status of your review of congestion in U.S. ports, and any planned future action relating to your report on this issue.

Answer. Modern ports that move the Nation's goods are vital to economic growth, increasing jobs, and enhancing the country's ability to compete globally. At the same time, U.S. ports have faced increased congestion and delays that deeply impact both the import and export markets in the United States. The FMC undertook a number of regional Port Forums in 2014 to provide an opportunity for public comment and industry stakeholders to share their views on the causes and challenges surrounding port congestion. After the Forums, the FMC resolved to take the shared information and provide a detailed, organized overview of the comments made at the Port Forums, and ultimately synthesize the main issues, ideas, and potential lessons learned and provide it to the public with a goal to shed light on those root causes that can be identified, and potential solutions.

The FMC also determined that detention and demurrage issues surrounding port congestion should be separately reviewed. Staff completed a report on entitled *Report: Rules, Rates, and Practices Relating to Detention, Demurrage, and Free Time for Containerized Imports and Exports Moving through Selected United States Ports,* which was issued by the Commission and is available on the FMC's website, www.fmc.gov. Later this summer a further report aimed at promoting further dialogue on and discussion of unsettled port congestion issues will be completed. This will be an issues-based, in-depth synopsis of the comments and arguments provided at the Port Forums. Lastly, there will be a research synthesis of U.S. port congestion causes, consequences, and challenges that will be released prior to the end of the Fiscal Year. There has been no decision on a set course for Commission action at this time—all options remain on the table.

Thank you again for the opportunity to address your questions and provide the Committee with information relating to the FMC's treatment of these matters.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO DANIEL R. ELLIOTT III

Question 1. Mr. Elliot, the STB Reauthorization Act of 2015, a bipartisan bill that I have worked on with Ranking Member Nelson, and which passed out of this Committee in March, includes a provision that would allow Board members to speak to one another as well as increase the size of the Surface Transportation Board from

three to five members, primarily to address inefficient quorum requirements. What are your thoughts on both of these provisions?

Answer. I support the goal of increasing communication among Board Members. I understand that appointees to other multi-member agencies with more than 3 members may engage in one-on-one discussions and remain in compliance with Government in the Sunshine Act. If confirmed, I stand ready to ensure that the Board takes advantage of any new procedures that increase the opportunity for more efficient communication.

Question 2. Mr. Elliot, the Surface Transportation Board Reauthorization Act of 2015 also includes a provision addressing the current inability of the STB to initiate investigations on matters other than rate cases. How would expanding the investigative responsibility of the STB enhance your ability to carry out the mission of the STB? What past experience would you draw on to implement the potentially expanded investigative responsibility of the STB?

Answer. I believe that the investigatory authority provided in S.808 will give the Board an effective tool to respond quickly and nimbly to issues that arise. For example, during last year's rail service crisis, the Board relied on its general powers provisions in 49 U.S.C. 721 to request reporting from the railroads regarding service performance. The ability to rely on a more specific investigatory provision would give the Board greater flexibility to address significant issues in the industry.

Question 3. Mr. Elliot, you commissioned a Price Waterhouse Coopers management study during your previous tenure as Chairman. What were you hoping to learn from the study? What did it show? Will you provide a copy of the study to the Committee?

Answer. I approved a contract solicitation in 2014 for a study of the Board's internal processing of rate cases and how we might improve from an organizational management perspective. While the Board staff is comprised of subject matter experts in fields related to economic regulation, the agency does not possess an in-house team/process expert. As cases get more complex and rate case teams necessarily grow in size and tasks, we need to look for ways to improve how the agency structures its internal process, which already includes multiple Board offices, dozens of agency employees and multiple levels of review. After completing a process pursuant to federal acquisition requirements, the agency engaged Price Waterhouse Coopers to complete this process study.

I understand that the study is not yet complete. Should I be confirmed, I look forward to reviewing its recommendations and receiving input from my Board colleagues as well as senior management regarding its recommendations. If confirmed, I will provide a copy of the study to the Committee.

Question 4. Mr. Elliot, you have stated that your top two goals as Chairman of the STB was to increase the transparency of the agency and create better harmony between shippers and railroads throughout the United States. What improvements were made under your leadership to increase the transparency of the STB and to create better harmony between shippers and railroads?

Answer. I pursued several initiatives at the Board that increased transparency and improved the communication between shippers and carriers. First, it was my practice to hold oral arguments and hearings in proceedings where the Board and our stakeholders would benefit from an open dialogue. During my tenure, the full Board held 28 hearings/arguments and the agency also held numerous public meetings conducted by Board staff throughout the country. Second, I worked to strengthen the Board's alternative dispute resolution program so that carriers and shippers could avail themselves of techniques like mediation, and I grew the Board's Rail Customer and Public Assistance Program (RCPA) by increasing its profile and adding experienced staff to the office. Indeed, in 2014, RCPA handled over 1,300 inquiries, approximately 160 of which were informal complaints between shippers and railroads. Many of these informal complaints were successfully resolved, obviating the need for a formal proceeding. Third, I traveled to visit the Board's stakeholders at their facilities and plants—a key component to understanding both the rail industry and the customers it serves.

Question 5. Mr. Elliot, as Chairman, I understand that one of the areas you focused on was technology improvement. Can you speak to the need for improved technology at the STB as well as what initiatives you advanced in the past or would advance in the future?

Answer. The Board has taken a number of steps in the last several years to improve its information technology capabilities. However, the infrastructure that would support the systems for an improved agency website or more automated reporting tools is badly in need of updating. The challenge for an agency the size of the Board is to find sufficient resources to completely overhaul its infrastructure,

without sacrificing mission-critical functions. In 2014, for example, the Board solicited bids to move to a cloud computing solution. The bid came in well above the Board's available funds for such a project. When I departed the agency in December 2014, Board staff was developing options for breaking the IT modernization project into smaller phases that the Board could accomplish over a number of years with smaller budget outlays. It is my expectation that work on that project has continued since my departure.

Question 6. Mr. Elliot, I am regularly hearing from constituents about the length of time it takes the STB to finalize rules and have been given numerous examples of rules that have languished for years. What steps would you take to improve the Surface Transportation Board's rulemakings process?

Answer. The Board completed several important rulemaking proceedings in the last few years involving matters such as: mediation and arbitration; procedures for assessing demurrage charges; increased damage award caps for smaller rate cases; and increased disclosure of information whenever a rail line is sold or leased subject to a "paper barrier."

But the Board has not yet completed certain proceedings related to competition issues, including competitive access, revenue adequacy, and grain rates. These proceedings, which raise issues at the core of the Board's regulatory policy, have been a source of significant contention among agency stakeholders for many years. If confirmed, I intend to resolve all of these open rulemaking proceedings within a year. My goal will be to address these interrelated issues consistently in a way that reasonably balances the goals of competition for shippers, adequate revenues for rail carriers, and a safe and efficient rail network. The Board hearings scheduled for June and July, which I will attend regardless of whether the confirmation process is completed, will facilitate resolution of these matters.

Question 7. Mr. Elliot, in your responses to the Committee Questionnaire, you mention that you are leading the Board's efforts to implement the Passenger Rail Investment and Improvement Act of 2008, a law designed to improve Amtrak's on-time performance. What steps have you taken in order to improve performance, and what steps would you take as Chairman to ensure this goal is accomplished?

Answer. The Board's PRIIA implementation has been a multi-pronged approach. First, the agency has set up a passenger task force that focuses on PRIIA issues, which includes staff from the Office of Public Assistance, Government Affairs and Compliance; the Office of Proceedings; and the Office of Economics. Second, in 2014, the agency entered into an agreement with DOT's Volpe Center for on-time performance data analysis. The Volpe arrangement will assist the Board in the development and analysis of large amounts of data that will be useful in passenger-freight rail oversight matters pursuant to the Board's responsibilities under PRIIA. Third, the Board sponsored mediation between Amtrak and those states with state-supported routes in an effort to resolve areas of concern.

Outside of these initiatives, the Board was active in ensuring that the railroads pushed to improve Amtrak's service during the service issues in 2013–2014. I met with the leadership of multiple railroads regarding Amtrak OTP issues and directed Board staff to monitor Amtrak issues during their regular conference calls with railroad operations personnel. I sought and received information from railroads regarding anticipated Amtrak performance issues in the annual "Fall Peak" submissions. In addition, the Board is adjudicating several PRIIA-based complaints that have been filed by Amtrak against individual railroads.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. DEB FISCHER TO DANIEL R. ELLIOTT III

Question 1. During your confirmation hearing, you answered a question regarding differences in rates between northern West Virginia and southern West Virginia as follows:

Answer. We are also looking at competition issues, which I started this year, including competitive access. So that is another thing, one of the top things, on my list to do as soon as, if I hopefully get confirmed.

Question 2. One could read a number of things into your answer, specifically that you have already made a decision on this proceeding. Would you please clarify whether or not you have already pre-determined the outcome of this proceeding and support competitive access?

Answer. My answer to Senator Manchin's question was intended to convey that my one of my top priorities, should I be confirmed, will be to resolve the competitive access proceeding. I believe that our stakeholders are entitled to certainty on the

direction that the Board will take with regard to competitive access, revenue adequacy and other significant issues that the Board is considering. The fact that the Board is examining these issues does not mean that there is any pre-determined outcome. Rather, in light of a changing rail industry, we must ensure that the policies we have today are as effective as they can be.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. JERRY MORAN TO DANIEL R. ELLIOTT III

Question. Mr. Elliott, my understanding is there is a current proceeding before the STB, Ex Parte 724, to require Class I railroads to submit weekly service metrics reports, but only for certain commodities, such as grain and ethanol. Why is fertilizer not included as a reported commodity?

While fertilizer distribution may be primarily an issue during the Spring and Fall, the peak seasons for its use, logistically fertilizer must still move year round to ensure its timely availability during periods of peak usage. For environmental and practical purposes, the window for fertilizer application is often narrow, requiring all pieces to be in place for the final distributions to farms. This issue is examined in far greater detail in a January 2015 report by the U.S. Department of Agriculture, entitled "Rail Service Challenges in the Upper Midwest," which states:

> "Although current rail metrics are showing improvement, concerns of timely fertilizer deliveries can arise in advance of 2015 spring planting. Roughly 60 percent of fertilizer is applied in the spring, and 40 percent is applied in the fall. Even though the demand for fertilizer is seasonal, it must be moved year round in order to work within the capacity constraints of the transportation network"(page 25).

I would be happy to provide the full text of this report if necessary. Thank you in advance for your attention to this matter, any insight you have would be greatly appreciated.

Answer. As your question indicates, the Board has proposed a rule that would require the railroads, on a permanent basis, to report service performance data on a variety of commodities, including grain, coal, automotive, crude oil and ethanol. While the initial list of specific commodities did not include fertilizer, The Fertilizer Institute has submitted comments requesting that the Board add fertilizer to the reporting requirements. Because the rulemaking proceeding is currently pending before the Board and, should I be confirmed, I would be voting on this very issue, I must refrain from directly commenting on that request at this time. As a general matter, however, I certainly agree that the timely distribution of fertilizer is absolutely critical to the Nation's agricultural sector. For that reason, fertilizer movements were the subject of the Board's very first reporting order in the recent service crisis.

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