RAIL COMPETITION AND SERVICE

(110–70)

HEARING

BEFORE THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE HOUSE OF REPRESENTATIVES

ONE HUNDRED TENTH CONGRESS

FIRST SESSION

SEPTEMBER 25, 2007

Printed for the use of the
Committee on Transportation and Infrastructure

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Ward W. McCarragher, Chief Counsel

Washington, DC 20515

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Ranking Republican Member

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September 21, 2007

SUMMARY OF SUBJECT MATTER

TO: Members of the Committee on Transportation and Infrastructure

FROM: Committee on Transportation and Infrastructure Majority Staff

SUBJECT: Hearing on Rail Competition and Service

PURPOSE OF HEARING

The Committee on Transportation and Infrastructure is scheduled to meet on Tuesday, September 25, 2007, at 10:00 a.m., in 2167 Rayburn House Office Building to receive testimony on rail competition and service.

BACKGROUND

In the 1970s, the railroad industry was in poor financial health, suffering from rising costs, losses, and bankruptcies. Congress responded by passing the Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Rail Act of 1980 ("Staggers Act"). Together, these pieces of legislation substantially deregulated the railroad industry. In particular, the Staggers Act gave the railroads substantial freedom to set rates, including the freedom to use differential ("Ramsey") pricing (which allows railroads to charge higher rates to captive shippers than shippers with competitive options), enter into contracts, and rationalize their physical infrastructure through the abandonment and spin-off to short lines of track and yards. At the same time, the Staggers Act gave the Interstate Commerce Commission ("ICC"), and later the Surface Transportation Board (STB or Board), the authority to establish a process so that shippers could obtain relief from unreasonably high rates. This process establishes a threshold for rate relief, allowing a rate to be challenged if it produces revenue equal to or greater than 180 percent of the variable cost of transporting a shipment.

Since passage of the Staggers Act, the freight railroad industry has become more concentrated. In 1976, there were 30 independent Class I railroad systems, consisting of 63 Class I railroads operating in the United States. Currently, there are seven Class I railroads in the United States: BNSF Railway; CSX Transportation; Grand Trunk Corporation, which consists of the U.S. operations of Canadian National (CN); Kansas City Southern (KCS); Norfolk Southern (NS); the former Soo Line, owned by Canadian Pacific Railway (CP); and Union Pacific (UP). Nearly half of the reductions since 1976 are attributable to mergers. According to the Association of American Railroads (AAR), in 2006, the seven Class I railroads controlled 87 percent of all ton-miles for the 562 railroads in the United States (1.776 trillion of 2.04 trillion ton-miles), which accounts for 40 percent of intercity freight ton-miles across all transportation modes (more than any other mode of transportation).

The reduction in the number of corporate entities since the Staggers Act has been matched by a decrease in the physical infrastructure of the railroads. In 1970, the Class I railroads operated about 206,000 route-miles of track. Today, abandonment and spin-offs to smaller railroads (which the Staggers Act authorized) have reduced this figure by 32 percent to about 140,810 miles. The contraction of the industry has been matched by a revival of its fortunes. In the 1970s, large portions of the rail industry were in financial and physical disrepair. Perhaps the prime example was in the Northeast, where the entire rail network (including the Penn Central and several smaller carriers) was bankrupt.

Today, most observers agree that the Staggers Act has been profoundly beneficial for the freight rail industry. A 2006 Government Accountability Office ("GAO") report examining the health of the freight railroad industry found that its financial health has improved substantially as railroads have cut costs by streamlining their workforces, right-sizing their rail networks, and reducing track miles, equipment, and facilities to more closely match demand. Freight railroads have also expanded their business into new markets—such as the intermodal market—and implemented new technologies, including larger cars. Over the past 10 years, the seven Class I railroads have reported progressively greater income, as shown below.

Railroads' Net Income (in $ millions)

	2006	2005	2004	2003	2002	2001	2000	1999	1998	1997	1996
BNSF	2,139	1,776	1,032	1,063	1,042	1,138	1,397	1,470	1,409	1,138	1,061
CSX	1,108	816	531	368	528	456	360	362	609	694	611
UP	1,819	1,279	929	1,422	1,521	1,397	1,319	1,306	399	883	1,009
NS	1,752	1,608	1,273	899	912	843	586	441	681	858	788
KCS	124	67	79	52	57	65	61	57	78	27	66
CN	525	447	309	220	136	67	55	86	-14	5	-22
CP	92	82	11	54	52	55	60	40	49	91	183
Total	**7,559**	**6,075**	**4,164**	**4,078**	**4,248**	**3,610**	**3,838**	**3,762**	**3,211**	**3,696**	**3696**

Source: Association of American Railroads, Railroad Facts, 1996-2006

These gains for the railroads have come at a price for shippers. According to the GAO, in its recent report entitled *Updated Information on Rates and Other Industry Trends*, the railroads are shifting more costs to the shippers. For example, the GAO reports that a 20 percent shift has occurred in railcar ownership since 1987. In 1987, railcars owned by freight railroad companies moved 60

percent of tons carried. In 2005, they moved 40 percent of tons carried, meaning that the freight railroads' railcars no longer carry the majority of tonnage.

The GAO also found that in 2005, the amount of industry revenue reported as "miscellaneous" nearly tripled over 2004 levels, rising from about $633 million to over $1.7 billion. This miscellaneous revenue includes some fuel surcharges and other charges for providing rail service. In 2004, miscellaneous revenue accounted for 1.5 percent of freight revenue reported, while in 2005 it had risen to 3.7 percent. Also, in 2005, 20 percent of all tonnage moved in the United States generated miscellaneous revenue. While the STB in January 2007 adopted a rule stating it was unreasonable for freight railroads to compute fuel surcharges as a percentage of a shipper's base rate as well as applying a fuel surcharge, known as "double dipping," the STB has not finalized rules for railroads to report revenues raised from fuel surcharges. In May 2007, Dust Pro Inc. filed a class action lawsuit against BNSF, CSX, KCS, NS, and UP alleging that the railroads "moved in uniform lockstep" to fix prices for the fuel surcharges, which it said had no relationship to actual fuel costs. The case is pending.

Railroads have also been charging shippers, in particular captive shippers, higher rates. According to the GAO, while 2005 rates remain lower than 1985, they rose 7 percent over their 2004 levels. This represents the largest annual increase in rates during the 20-year period from 1985 through 2005, and outpaced increases in inflation – five percent in 2005.

While the GAO reports that the amount of captive traffic traveling at rates greater than 180 percent of the variable cost of transporting a shipment and the revenue generated from that traffic have both declined since 1985, the tonnage from traffic traveling at rates substantially over the threshold for rate relief has increased. Total industry tonnage has increased significantly (from 1.37 billion tons in 1985 to 2.14 billion tons in 2004), and the tonnage traveling at rates greater than 300 percent of the variable cost of transporting the shipment has more than doubled—from about 53 million tons in 1985 to over 130 million tons in 2004.

THE SURFACE TRANSPORTATION BOARD

The STB is the economic regulatory agency that Congress charged with the fundamental missions of resolving railroad rate and service disputes and reviewing proposed railroad mergers. The STB is decisionally independent, although it is administratively affiliated with the Department of Transportation. It was created in the Interstate Commerce Commission Termination Act of 1995 and is the successor agency to the Interstate Commerce Commission.

The STB serves as both an adjudicatory and a regulatory body. The agency has jurisdiction over railroad rate and service issues and rail restructuring transactions (mergers, line sales, line construction, and line abandonments); certain trucking company, moving van, and non-contiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission.

The Board's adjudicatory decisions are appealable to the Federal courts. The court may overturn an STB decision (and remand the case to the STB) if the court finds that the Board's

decision was arbitrary, capricious or an abuse of discretion; was unconstitutional; exceeded the STB's statutory authority; failed to observe procedures required by law; or was unsupported by substantial evidence. The STB defends its own decisions against challenges in court and may appear in any civil action involving matters within its jurisdiction.

The Board is headed by three commissioners, which are appointed by the President and confirmed with the advice and consent of the United States Senate for five-year terms. The current commissioners are Chairman Charles D. "Chip" Nottingham, Vice Chairman W. Douglas Buttrey, and Commissioner Francis P. Mulvey.

Two important components of the current regulatory structure for the railroad industry are the concepts of revenue adequacy and demand-based differential pricing. Congress established the concept of revenue adequacy as an indicator of the financial health of the industry. The STB determines the revenue adequacy of a railroad by comparing the railroad's return on investment with the industry-wide cost of capital. For instance, if a railroad's return on investment is greater than the industry-wide cost of capital, the STB determines that railroad to be revenue adequate. Historically, the ICC and the STB have rarely found railroads to be revenue adequate, which many observers question given their sharp increase in revenues. Others, however, state that it is due to their cost structure. Railroads incur large fixed costs to build and operate networks that jointly serve many different shippers. Some fixed costs can be attributed to serving particular shippers, and some costs vary with particular movements, but other costs are not attributable to particular shippers or movements. Nonetheless, a railroad must recover these costs if the railroad is to continue to provide service over the long run.

Recently, the STB announced a proposed rulemaking to update its cost of capital methodology by updating how it computes the railroad's cost of equity. The cost of capital is integral in the Board's annual evaluations to determine the adequacy of the individual railroads' revenues each year, as well as in various types of regulatory proceedings. Under the proposed rule, the Board would use a Capital Asset Pricing Model (CAPM), rather than the discounted cash flow (DCF) method that it has applied since 1982. CAPM has become the private sector norm for measuring cost of equity and is also the measurement utilized by the Board's counterpart in Canada. The Board expects that CAPM will significantly reduce the railroad's reported cost of capital, as shown below in this comparison chart.

Cost-Of-Equity Comparison

Year	Current DCF	CAPM
1997	13.8	10.5
1998	13.1	8.8
1999	12.9	9.3
2000	13.9	9.3
2001	12.8	8.2
2002	12.6	7.3
2003	12.7	6.7
2004	13.2	7.1
2005	15.2	7.5

Source: STB

As a result, under the proposed rule, there is a greater likelihood that the majority of Class I railroads will be revenue adequate, which should lower the maximum rate a railroad may charge a captive shipper.

Demand-based differential pricing, in theory, permits a railroad to recover its joint and common costs—those costs that exist no matter how many shipments are transported, such as the cost of maintaining track— across its entire traffic base by setting higher rates for traffic with fewer transportation alternatives than for traffic with more alternatives. Differential pricing recognizes that some customers may use rail if rates are low, and if they have other options if rail rates are too high or service is poor. Therefore, rail rates on these shipments generally cover the directly attributable (variable) costs, plus a relatively low contribution to fixed costs.

In contrast, customers with little or no practical alternative to rail—"captive" shippers—generally pay a much larger portion of fixed costs. Moreover, even though a railroad might incur similar incremental costs while providing service to two different shippers that move similar volumes in similar car types traveling over similar distances, the railroad might charge the shippers different rates. Furthermore, if the railroad is able to offer lower rates to the shipper with more transportation alternatives, that shipper still pays some of the joint and common costs. By paying even a small part of total fixed cost, competitive traffic reduces the share of those costs that captive shippers would have to pay if the competitive traffic switched to truck or some other alternative. Consequently, while the shipper with fewer alternatives makes a greater contribution toward the railroad's joint and common costs, the contribution is less than if the shipper with more alternatives did not ship via rail.

The Staggers Act further requires that the railroads' need to obtain adequate revenues to be balanced with the rights of shippers to be free from, and to seek redress from, unreasonable rates. Railroads incur variable costs—that is, the costs of moving particular shipments—in providing service. The Staggers Act stated that any rate found to be below 180 percent of a railroad's variable cost for a particular shipment is not unreasonable and authorized the ICC, and later the STB, to establish a rate relief process for shippers to challenge the reasonableness of a rate. The Board may consider a rate case only if the carrier has market dominance over the traffic at issue if: (1) the railroad's revenue is equal to or above 180 percent of the railroad's variable cost (R/VC); (2) the railroad does not face effective competition from other rail carriers or other modes of transportation; and (3) the rate is already in effect.

Where a railroad has market dominance over traffic, its rate for that traffic must be reasonable and the STB must determine the reasonableness of the rate if challenged. A shipper may seek both reparations and a prescribed rate by the STB of the maximum reasonable rate that the railroad may charge for future shipments. However, there is a limit to the rate relief that the STB can award, as it cannot require a railroad to lower a rate below the jurisdictional floor (180 percent of the R/VC ratio) and it cannot award reparations based on a rate below that level.

In assessing whether challenged rates are reasonable, the STB normally applies the Constrained Market Pricing (CMP) guidelines developed by the ICC in *Coal Rate Guidelines, Nationwide,* 1 ICC.2d 520 (1985), *aff'd sub nom. Consolidated Rail Corp. v. United States,* 812 F.2d 1444 (3d Cir. 1987). Notwithstanding the title of the ICC's decision, the CMP guidelines are not limited to coal rates, but apply to rates on all types of repetitive, high-volume traffic.

CMP imposes four constraints on a railroad's pricing of captive traffic that are applied by a shipper in making a rate case: (1) a captive shipper should not be required to pay more than is necessary for the railroad involved to earn adequate revenues (the revenue adequacy constraint); (2) a captive shipper should not pay more than is necessary for efficient railroad operation (the management efficiency constraint); (3) a captive shipper should not bear the costs of any facilities or services from which it derives no benefit (the stand-alone cost constraint); and (4) changes in the rate should not be so precipitous as to cause severe economic harm (the phasing constraint).

Rail shippers have generally preferred to use the Stand-Alone Cost (SAC) test in making rate disputes.[1] They find it easier and more effective to analyze a selected subset of rail operations than a large railroad's entire system, and to design an entirely new and optimally efficient system than to suggest improvements in conducting existing, potentially dated rail operations. Given the massive and detailed nature of the evidence needed in SAC cases, the Board has issued general guidelines for presenting evidence in SAC cases to standardize the format and focus the evidentiary presentations.

However, a CMP presentation can be expensive and not feasible for a shipper if the amount of money at issue is not large enough to justify that expense. Therefore, the STB has adopted simplified guidelines for use in those cases in which it finds that CMP cannot practicably be applied. The simplified rate guidelines use three average revenue-to-variable cost (R/VC) benchmarks, in combination, as a starting point for a more individualized case-by-case rate reasonable analysis.

While the simplified guidelines have been in place since 1997, a rate case has not been decided under the process set out by the guidelines. The STB held public hearings in April 2003 and July 2004 to examine why shippers have not used the guidelines and to explore ways to improve them. At these hearings, numerous organizations provided comments to the STB on measures that could clarify the simplified guidelines, but no action was taken. Shippers are concerned about using the simplified guidelines because they believe the guidelines will be challenged in court, resulting in lengthy litigation and further delaying rate relief.

In response, in September 2007, the STB issued new simplified rate guidelines. Pursuant to this process, freight rail customers can obtain an award of up to $5 million in relief within 17 months of filing a complaint. The Board's decision allows freight rail customers to choose which rate dispute resolution process they would like to use. In an effort to minimize litigation, the Board will require mediation in all rail rate disputes. However, many shippers believe the new simplified guidelines are not an improvement over the old guidelines. For example, the 17-month deadline is one month longer than the STB's rules for large rate (SAC) cases (which call for a 16-month schedule). Additionally, shippers contend the simplified standards are unnecessarily complicated. Further, the shippers point out that the involved shipper participants uniformly opposed the rules as unworkable.

While the STB reports it has taken a number of actions to improve the rate relief process and assess competition, the GAO reported in 2006 that further actions are needed to address competition and captivity concerns. The Staggers Act and the ICC Termination Act encouraged competition as the preferred method to protect shippers from unreasonable rates and granted the

[1] The top-down (revenue adequacy) approach has been used in one pipeline case. *See CF Indus., Inc. v. Koch Pipeline Co., STB No. 41685 (May 9, 2000), aff'd sub nom. CF Indus. Inc. v. STB, 255 F.3d 816 (D.C. Cir. 2001) reh'g denied (D.C. Cir. Sept. 25, 2001).*

STB broad legislative authority to monitor the performance of the railroad industry. However, the GAO reports that these processes have proven to be largely inaccessible because the standard process remains expensive, time consuming, and complex, and the simplified process has not been used.

The GAO also reported that there is widespread agreement that the STB's standard rate relief process is inaccessible to most shippers and does not provide for expeditious handling and resolution of complaints. The process is expensive, time consuming, and complex. The GAO found that the process can cost approximately $3 million per litigant and that the dispute must involve more than several million dollars to make it worthwhile to spend $3 million on a case that they could possibly lose, not including upwards of $178,200 to file a rate case before the Board. Thus, only large volume shippers, such as coal shippers, with set origins and destinations have the money to be able to afford the STB rate relief process. Additionally, shippers report that they do not use the process because it takes so long for STB to reach a decision. Lastly, shippers continue to state that the process is both time consuming and difficult because it calls for them to develop a hypothetical competing railroad to show what the rate should be and to demonstrate that the existing rate is unreasonable. Since 2001, 11 CMP cases have been filed with the Board. All but one is a coal rate dispute. Of the 11, three have been settled and dismissed, one was withdrawn, and one is still pending. Of the six in which final decisions were issued (all using the SAC constraint), all were shipper losses. Further, the STB reports that the average processing time is 2.8 years, with the fastest case taking 1.8 years for a decision to be reached and the longest being over four years.

Finally, the STB offers an arbitration process to resolve disputes that has never been used. Under this approach, an arbitrator would decide the rate, using a "give and take" approach—that is, the arbitrator would determine the rate without being required to pick one of the two offers. The STB reports this option has not been used, in part, because the cases that go before STB are contentious, with high monetary stakes. As a result, there is less willingness from either side to arbitrate.

COMPETITIVE ACCESS ISSUES

Shipper groups, economists, and other experts in the rail industry have suggested remedies that could provide more competitive options to shippers in areas of inadequate competition or excessive market power. These groups view these approaches as more effective than the rate relief process in promoting a greater reliance on competition to protect shippers against unreasonable rates. Some proposals would require a reopening of past STB decisions or a legislative change. These include:

- *Reciprocal switching:* This approach would allow the STB to require railroads serving shippers that are close to another railroad to transport cars of a competing railroad for a fee if such an action would serve the public interest. The shippers would then have access to railroads that do not reach their facilities. This approach is similar to the mandatory inter-switching in Canada, which enables a shipper to request a second railroad's service if that second railroad is within approximately 18 miles. Some Class I railroads already interchange traffic using these agreements. This approach could also reduce the number of captive shippers by providing a competitive option to shippers with access to a proximate but previously

inaccessible railroad and thereby reduce traffic eligible for the rate relief process. This issue is addressed in H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, sponsored by Chairman Oberstar and Ranking Republican Member Baker.

- *Terminal agreements:* This approach would allow one railroad to grant access to its terminal facilities or tracks to another railroad for a fee. Current regulations require a shipper to demonstrate anti-competitive conduct by a railroad before the STB will grant access to a terminal by a non-owning railroad unless there is an emergency or when a shipper can demonstrate poor service and a second railroad is willing and able to provide the service requested. However, shippers assert that proving anti-competitive conduct by a railroad is excessively onerous and, to date, no shipper has succeeded in proving that a terminal owning railroad has engaged in anti-competitive conduct. Granting access to terminal facilities or tracks for a fee would also make it easier for competing railroads to gain access to the terminal areas of other railroads and could increase competition between railroads. This issue is not addressed in H.R. 2125.

- *"Bottleneck" rates:* This approach would require a railroad to establish a rate, and thereby offer to provide service, for any two points on the railroad's system where traffic originates, terminates, or can be interchanged. Some shippers have more than one railroad that serves them at their origin and/or destination points, but have at least one portion of a rail movement for which no alternative rail route is available. This portion is referred to as the "bottleneck segment." The STB's decision that a railroad is not required to quote a rate for the bottleneck segment has been upheld in Federal court (See *Mid-American Energy Co. v. Surface Transportation Board*, 169 F. 3d 1099 (8th Cir.: Feb.10, 1999) and *Union Pacific Railroad v. Surface Transportation Board*, 202 F. 3d 337 (D.C. Cir.: 2000)). The STB requires a railroad to provide service for the bottleneck segment only if the shipper had prior arrangements or a contract for the remaining portion of the shipment route. The proposed alternative would give shippers access to a second railroad, even if the single railroad is the only railroad that served the shipper at its origin and/or destination points, and create more competition. This issue is addressed in H.R. 2125.

- *Paper barriers:* This approach would prevent, or limit, paper barriers, which are contractual agreements that can occur when a Class I railroad either sells or leases some of its track to other railroads (typically a short-line railroad and/or regional railroad). These agreements stipulate that virtually all traffic that originates on that line must interchange with the Class I railroad that originally sold or leased the tracks or pay a penalty. Since the 1980s, approximately 500 short lines have been created by Class I railroads selling a portion of their lines; however, the extent to which paper barriers are a standard practice is unknown because they are part of confidential contracts. These agreements prevent smaller railroads that connect with or cross two or more Class I rail systems from providing rail customers access to competitive service and prevent those smaller railroads from expanding service and earning more revenues. This issue is addressed in H.R. 2125.

- *Trackage rights:* This approach would require one railroad to grant access of its tracks to another railroad, enabling railroads to interchange traffic beyond terminal facilities for a fee. In the past, the STB has imposed conditions requiring that a merging railroad must grant

another railroad trackage rights to preserve competition when a merger would reduce a shipper's access to railroads from two to one. This issue is not addressed in H.R. 2125.

The STB has previously required railroads to adopt the actions listed above as a condition for approving mergers in order to maintain adequate competition. For instance, the STB granted the BNSF and other railroads trackage rights over about 4,000 miles of track as a condition to approve the 1996 merger of UP and the Southern Pacific. In the case of the breakup of Conrail in 1997, the two acquiring railroads, NS and CSX, share some of the lines and terminals of the former railroad.

Today, shippers assert that the improved financial health of the railroad industry warrants a reexamination of the goals of railroad policy as stated in the Staggers Act. They contend that existing interpretations of the statute are based on precedents established in an outdated era of excess rail capacity. With segments of the rail network now experiencing congestion, captive shippers argue that, as a matter of public policy, rail shippers should be given greater latitude to reroute their traffic to less capacity constrained routes. In contrast, the railroads maintain that the shippers' concerns about rail service would be resolved with increased infrastructure investment, which would expand capacity on the rail network. They also contend that shippers are paying outdated rates covered in long-term contracts that are now up for renewal and that those rates do not cover the railroads' transportation costs and investment needs. The Committee will receive testimony from both sides of this issue.

EXPECTED WITNESSES

Mr. W. Douglas Buttrey
Vice Chairman
Surface Transportation Board

Ms. Susan M. Diehl
Senior Vice President, Logistics & Supply Chain Management
Holcim, Inc.

Mr. Glenn English
Chief Executive Officer
National Rural Electric Cooperative Association

Mr. Ronald R. Harper
Chief Executive Officer and General Manager
Basin Electric Power Cooperative

Mr. JayEtta Z. Hecker
Director, Physical Infrastructure Issues
Government Accountability Office

Mr. Wayne Hurst
Vice President
Idaho Grain Producers Association
On behalf of the National Association of Wheat Growers

Mr. Terry Huval
Director
Lafayette Utilities Service
(Lafayette, Louisiana)

Mr. Bruce I. Knight
Under Secretary of Agriculture, Marketing and Regulatory Programs
U.S. Department of Agriculture

Mr. Charlie N. Marshall
Senior Vice President of Industry Relations
Farmrail System, Inc.

Mr. Francis P. Mulvey
Board Member
Surface Transportation Board

Mr. Charles D. Nottingham
Chairman
Surface Transportation Board

Mr. William Rennicke
Director
Oliver Wyman, Inc.

Mr. Gary Spitzer
Vice President and General Manager
Chemical Solutions Enterprise
DuPont

Mr. Jim Young
Chairman, President, and Chief Executive Officer
Union Pacific Railroad

HEARING ON RAIL COMPETITION AND SERVICE

Tuesday, September 25, 2007

HOUSE OF REPRESENTATIVES,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The Committee met, pursuant to call, at 10:10 a.m., in Room 2167, Rayburn House Office Building, the Honorable James L. Oberstar [Chairman of the Committee] presiding.

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will come to order, with apologies from the Chair for not being on railroad time. Unfortunately, I had more meetings this morning to attend to than I could fit in the requisite time in order to start this hearing on order.

October 14 marks the anniversary of the passage of the Staggers Rail Deregulation Act. I remember so well in the days leading up to that vote and on the day of the vote itself being in some indecision about whether this was a good policy for the Country or whether it would, in the end, turn around to be harmful to us.

I could understand we had already passed trucking deregulation, intercity bus deregulation. We had enacted aviation deregulation. It made an awful lot of sense that trucks could move and enter markets and compete with each other. Intercity buses could do the same. Airlines could compete with one another through different airports.

But I found it difficult how you would be able to pick up a set of rail tracks, move them around to different cities and actually compete. We had 60 Class I railroads. The argument was we would have an awful lot of competition if we just took the Government out of deciding market entry and pricing. In the end, I voted for it.

Well, today, we have seven Class I railroads. The freight rail network in 1980 was 178,000 miles. Today, we have 140,810 route miles. Abandonments, spinoffs to short lines, all have caused a deterioration in the miles and in the market opportunities.

Railroad fortunes also had a dramatic turnaround. Many railroads were on the brink of bankruptcy in those years just prior to the Staggers Act, and that stands in stark contrast to their financial today. In the last 10 years alone, the combined income of the Class I railroads, seven Class I railroads, has increased over 104 percent, $3.7 billion to $7.6 billion.

I think we have a slide on that to put up. It shows how revenues are going up. It also shows a rather paltry investment in capital expenditures, and that has antecedents in the marketplace. When

railroads were not doing as well, the shareholders were insisting on withholding on capital investments.

You can see a little tilt upward now in 2006, a pretty substantial investment in that year, but it does not by any means compensate for the years of low investment, somewhat reflective of what the Federal Government has done with the rest of our transportation infrastructure.

On paper, we have seven Class I railroads, but in reality the railroad industry has consolidated, has evolved into two regional duopolies, essentially east of the Mississippi, CSX and Norfolk Southern, and one in the West, Union Pacific and BNSF.

In that market setting, shippers with access to two rail carriers offer counter rail rates closer to those of a captive shipper. A shipper operating in a duopoly market is like a captive ship. A railroad enjoys greater opportunity to assign costs to a shipper who has little to do with the actual cost of service.

A report in 2006 by the GAO found that railroads increasingly are transferring costs onto shippers, costs that are not reflected in their rates. Since 1985, rail car ownership has shifted nearly 20 percent to shippers, so that today shippers own a majority of rail cars in use.

GAO found that shippers are paying other costs such as infrastructure upgrades, fuel surcharges, congestion fees. Unfortunately, the Surface Transportation Board does not track these charges, and that led GAO to conclude that shippers in those markets may be paying excessive rates for rail service.

The railroads contend that the system works, and they say that any shortfalls in the system will lead to unacceptable reductions in their revenue and a decrease in capital investment. They contend vigorously that despite the benefits of the Staggers Act, they are struggling to arrive at financial health, reflected by the Surface Transportation Board's analysis that the industry as a whole is revenue-inadequate.

Since the Staggers Act, the rail industry as a whole has never been found to be revenue-adequate. The Association of Railroads reports that the Staggers Act and the years since its enactment, the difference between the industry's return on investment and cost of capital has not substantially narrowed. What should follow from such a record would be significant capital shortages and disinvestment in the rail sector.

The ICC's 1981 decision implementing the current Revenue Adequacy Test calls "Any firm that earns less than its cost of capital will be unable to compete in the market for funds. Its owners will neither wish nor be able to keep the enterprise's capital intact. They will withdraw their capital as quickly and as expeditiously as they can."

However, the railroads continue to get capital from Wall Street, from the marketplace. They earn substantial profits. They invest billions of dollars in their systems despite the constant shortfall of meeting the regulatory standard for revenue adequacy.

That discrepancy between the railroad reports of revenue shortfall and the continued availability of investment capital is understandable if you examine the regulatory method used to determine the railroads' revenue adequacy. There are many methods to deter-

mine, but the model implemented in 1981 fell out of favor with Wall Street some time ago. The marketplace views it as overly pessimistic in the railroads' cost of capital and their financial health.

In 1995 and again 1999, Standard and Poor's industry surveys reported that the rail industry "is actually fit as a fiddle"; "explain that the ICC's definition of cost of capital is not particularly meaningful, given the many flaws in the design of the financial test."

When Wall Street measures revenue adequacy of an investment, it uses a newer and more accurate tool to measure revenue adequacy, the Capital Asset Pricing model. You have to spend a little time and get close up to this and put your arms around it and spend a little time reading late at night and early into the morning. But it is also the system that the Canadian counterpart to the STB uses.

According to that analysis, the railroads are financially healthier than reported by the Surface Transportation Board. In fact, the Board recently announced it is updating its revenue adequacy methodology to reflect the marketplace.

Any economist will tell you that for the regulatory purposes, it is better for the railroads' profits to remain revenue-inadequate. This gives them a favorable regulatory environment from the Surface Transportation Board. That then allows them to charge higher rates to their captive customers without coming under the threat of an adverse rate decision.

While the railroads' financial health continues to improve and their pricing power increases, the current regulatory environment still reflects an industry closer to its position that existed prior to passage of the Staggers Act, and that works to the detriment of shippers seeking rate relief.

Now when Congress passed the Staggers Act, it did not wash its hands of oversight by the Executive Branch or the Legislative Branch of rail operations. It created the successor entity, the Surface Transportation Board, much more limited authority but still allowed market pricing and market entry to be determined by the railroads themselves in the context of the marketplace, but it retained, the Staggers Act retained authority in the Surf Board to protect captive shippers from unreasonable rates. It granted broad authority to monitor the performance of the railroad industry.

Shippers tell me, however, over many years now that the Board is not effectively exercising their responsibility to protect or at least give voice to the concerns of captive shippers. The GAO report of 2006 reinforces the shippers' claims. GAO found "There is little effective relief for captive shippers because the Surface Transportation Board's standard rate relief process is largely inaccessible."

Contesting a case now is so expensive, is so time-consuming, so loaded with paperwork that only the egregious cases have a chance to come to the Board's attention. Since 2001, shippers filed 11 cases with the Board. All but one of these 11 is a coal rate dispute case. Of that 11, the Board settled and dismissed 3, 1 was withdrawn and 1 is still pending. Of the remaining six, the Board issued decisions in favor of the railroads.

The Surface Board reports that these cases, on average, took nearly three years to decide. Shippers report that they spent upwards of $5 million contesting rate cases, only to lose.

GAO then reports that traffic traveling at rates substantially over the threshold have not had rate relief. That is why Mr. Baker of Louisiana and I introduced H.R. 2125, the Rail Competition and Service Improvement Act.

The railroads claim it to be re-regulation. That is a cute bumper sticker phrase. It is not.

It is using the existing authority to give shippers the opportunity of access to the Board under reasonable terms without excessive cost to file a rate case, without excessive time to pursue it—even if you won, you have already been out of pocket a huge amount of money—and to use the residual authority to give shippers a fair hearing.

The Board is not meeting its responsibilities. This legislation will ensure that the Board does a better job of carrying out its rate relief responsibility.

Now there is also another historical context that I think we want to keep in mind as we begin this hearing. The railroads received enormous grants of land in the 19th Century in the public interest to develop rail service for the public use, convenience and necessity. They received some 278,000 square miles of public land. That is about 8 percent of the total land surface of the United States.

That map shows those land grants. They were given the surface timber rights, surface mineral rights, subsurface mineral rights, coal, oil in some cases, gas in others that they could use for themselves or to sell off, worth billions of dollars.

I think it is important to keep this public interest in mind and the claim that the public still has on the railroads to serve the broad public interest.

Mr. MICA. Well, thank you and good morning and I would like to welcome all of our Members and witnesses to this hearing this morning on rail competition.

I have got a couple of comments, some that may agree with some of the comments of the Chairman and others that disagree, but this is indeed an important topic.

Thirty years ago, our Nation's rail system was literally falling apart. Twenty-five percent of the system had to be operated at reduced speeds due to dangerous track conditions and more rail lines were bankrupt than in any time since the Great Depression of the 1930s. In fact, the Nixon Administration seriously considered at that time nationalizing both freight and passenger rail service. In fact, they did nationalize passenger service by creating a company called Amtrak, and we all know what a success that has been.

Now today, the United States freight rails are one of the least subsidized and best operated and actually profitable systems in the world. Most countries still have very high subsidies of their freight rail systems.

I know none of us would like to revert to an all government or some type of Soviet style system and total re-regulation. I know that is not the question before us.

Luckily, however, instead of nationalizing our freights, Congress decided back then to attack the root of the problem which was, in fact, excessive government regulation that brought down our rail service. We passed the Staggers Act which allowed the railroads to respond to the free market and rebuild the system without big gov-

ernment subsidies in any of the operations that we see today. In fact, it is almost zero according to the information that my staff has compiled.

Our Nation's rail system is now running well, but our regulatory system still creeps along like it is in the 1890s. Over the last decade, STB regulations have denied small shippers an effective forum to challenge excessive rates, and that is one of the reasons for this hearing here today. STB proceedings have been so complex that, in fact, it has cost millions in legal and consulting fees just to bring a case, and the Chair cited some of the problems that we have in trying to get some resolution.

The STB, as we know, has recently taken some steps to simplify their proceedings and also to reduce litigation expenses. We have also seen a speedup of some of the processes, but there are still difficulties for some people to access what they consider fair rates. We do need to have some time to see how the STB new protocols work and give them the opportunity to succeed.

I am looking forward to learning more about the new STB procedures that we will hear about at this hearing.

While I recognize the difficulty of some captive shippers and some current flaws in our system and the inability to sometimes seek the lower costs that some feel are fair, we must be very careful in looking at what options we adopt. Also, I think this will be a good opportunity to look at reasonable options to improve the system that has already seen some improvement with STB's recent action.

As you can tell, I am clearly against re-regulation of our national railroads. Government rail regulation has proven, without a doubt, not to work. Unfortunately, too, some government re-regulation can reverse some of the great successes our rail system has enjoyed. Actually, I think it can also result in further reducing shippers' choices and also the long term effect may be increasing rates again in the longer period of time for everyone including those we are trying to help.

I come from a business background. You look at investment in any type of industry or business activity, but railroads have one of the highest capital costs and lowest returns of equity, and that is not my finding. We have got a little chart here we will pass out: Capital Intensive, Low Returns. So that does create some difficulties for them.

But if we want a strong efficient, financially viable rail system, I believe the answers lie in working with the rail industry to create some additional competition, that Congress adopt a tax policy that insists that we encourage better planning and that we also support even more private investment in an industry that is very capital intensive.

I look forward to a full airing of the issues today, and I thank you for bringing this important subject before the Committee.

Mr. OBERSTAR. I appreciate the gentleman's comments and his perspective and well thought out remarks, and that is why we have hearings. We have differences of view, but they are matters that we can resolve in the course of the hearing.

Other Members of the Committee will have opening comments, but in respect for Senator Dorgan's schedule, I know he is already

overdue back in the other body. We welcome you back to this house where you started your service in Congress. Thank you for coming, making the long journey across the way from the other body.

Thank you for coming. You are the sponsor of comparable legislation in the Senate, and we thank you very much, Senator.

Senator DORGAN. Mr. Chairman, thank you very much. I will be mercifully brief this morning and then depart.

As I was sitting here, I was thinking about the description of a journalist who couldn't distinguish between a bicycle accident and the end of civilization. I was thinking in some ways the politics of this railroad issue are that. Some would suggest there is just a minor flaw or two here, and other would suggest that this is a catastrophe. It is, of course, somewhere in between.

Let me describe to you where that somewhere is for me. Because I assume there are people in this room, representing the railroads, let me be quick to say that I like railroads. I like trains, in fact. I grew up in a town of 300 people. When you grow up in a very small town, we actually named the train that came through our town, the Galloping Goose.

Every time the Galloping Goose would come in twice a week, we would go down where they stopped and pick up the cream cans, and I just thought it was wonderful to have a train coming through our town, bringing new people. So I have a long history with trains including the Galloping Goose.

I understand that railroads are very important to this Country. This Country runs in a significant way on rails, and we want a railroad industry that works.

I also believe at the same time that we are off-track in some significant ways. This is an industry, I think, that would be better with competition and is, in some ways, devastating to captive shippers without competition. We have ended up now a couple of decades past the 4R Act with the worst of all possible worlds: near monopolies and no regulation.

I know there are people here that have an epileptic seizure when you mention regulation. Well, the fact is you either have competition, which is the way the marketplace is supposed to work in a free market, or you must have some sort of sensible regulatory authority, one or the other.

The fact is, as the Chairman indicated, we have fewer and fewer Class I railroads. We have now four Class I railroads that handle 90 percent of the freight rail in this Country. Rural areas, especially, are frequently left with one carrier who decides here is what I want to charge you. If you don't like it, tough luck.

Well, that is defined as a lack of competition. It is clogging the arteries of the free marketplace, and it begs for the Congress to take a look at it and decide to do something to deal with it.

Now I think the lack of competition not only affects and victimizes, in many cases, rural areas. It affects the profitability of other industries. It also affects the pocketbooks of the consumers in this Country.

It seems to me that we have created something called the Surface Transportation Board which was I guess the divine interpretation of what Congress felt should succeed the Interstate Commerce Commission. Again, without offending anyone I hope, I think the

Surface Transportation Board has been largely an irrelevant Federal agency. It consistently does nothing and yet seems unaffected, perhaps even satisfied, by this paralysis.

I think it is safe to say there are a whole lot of Americans that are not satisfied by the paralysis of an agency that is supposed to be looking after the public interest. I have often said the STB is dead from the neck up, but I probably should stop saying that because there is clearly life there but precious little effective capability to intervene on behalf of consumers and on behalf of competition.

Let me just mention to you quickly the experience of a resident of Dickinson, North Dakota, a farmer from Dickinson, North Dakota. He said to me, you know, I am told by the railroad that I must truck my grain 200 miles east to put on the railroad in order to move it west, and they move it right back through my farmyard and, in fact, with a terminal in the community next to me, but I have to truck my trail 200 miles east to get the lowest rate from this carrier.

When he said, I asked the carrier why that was the case, the carrier said it is strategic planning. I said, I am from a small town. I don't understand strategy or strategic, but I understand what doesn't make any sense, and there is simply no common sense in this.

When you talk to people, it is hard to describe to them why all of this happens the way it happens.

I will give you one more example, and I don't know whether these numbers are accurate. They used to be.

You put a carload of wheat on the railroad in Bismarck, North Dakota, move it to Minneapolis, and you will pay about $2,300. The same carload of wheat from Minneapolis to Chicago, about the same distance, you will pay $1,000.

Why would we be more than double charged for the same distance? Because on one segment, there is one carrier; on the other segment, there is competition, huge difference. Where there is no competition, the consumers are victimized in my judgment.

Let me just mention briefly that I have passed a piece of legislation in our Appropriations Committee that changes the cost of challenging the railroads with respect to rates. As I think the Chairman mentioned, it is currently now $178,000 for a significant shipper to challenge the rates. I have passed an amendment through the Senate Appropriations Committee, reducing to $350. That is the cost of filing an action in Federal Court were you able to do such action.

Finally, the fuel surcharge issue gives, I think, evidence of substantial concentration in this industry. There is, by most evidence, about a $6 billion overcharge for fuel on the fuel surcharges. The regulatory authorities have said stop it, you can't do it anymore, but the railroads are allowed to keep the overcharge. I don't understand that, but that is where we are.

I want a healthy railroad system. I want competition, either competition or regulation, but I want a healthy rail system that serves this Country, and I also want fairness to this Country's consumers. Regrettably, at this point, we don't have fairness to consumers.

So my hope is that we will be able to advance legislation that you have offered here in the House of Representatives, and in the Senate we have introduced and are moving similar legislation. I serve on the Commerce Committee. We are going to be holding a hearing on our legislation and hopefully moving it.

We just passed legislation out of the Judiciary Committee, introduced by Senator Kohl on which I was a co-sponsor, dealing with the antitrust issues. That bill will allow the review of railroad mergers and acquisitions to remain with the STB, but it allows the Department of Justice to enjoin the merger in Federal District Court if the merger as approved would violate the Nation's antitrust laws.

So I think we are working on a number of issues that I think are very, very important. Some very significant groups of industries and businesses representing the shippers have formed to say, look, all we want is we want fair opportunity. I think they want, as well, a healthy railroad industry, but they fair rates, and that is a reasonable thing to do.

Finally, I would just say at the end of a long period of time, let us decide what we are going to do. We are either going to have some competition or regulation. You can't have near monopolies and no regulation. If we change those near monopolies to a competitive environment, this Country would be a whole lot better off. If not, we should have a series or steps of regulation that affect and safeguard the consumers in this Country.

Mr. Chairman, thank you for allowing me to come by. You have a long hearing today, and you have a lot of Members, but I did want to tell you that we are working on similar issues in the Senate and wish you well in the House as you address these important issues.

Mr. OBERSTAR. Thank you very much for your statement, your comments. I look forward to meeting you in conference on this legislation.

Your example of the farmer who trucked his grain east to have it shipped west, I have a similar situation in the southern end of my Congressional district, the Peterson Mill. Because the railroad doesn't serve it any longer, because they wouldn't meet an ever increasing threshold for quantity to be shipped, now grain is hauled by truck.

I stood there with Jerry Peterson as the trucker handed the farmer 86 cents. That was all that was left from his shipload of grain trucked 100 miles with no back haul. That is not acceptable. That is not service in the public interest.

You have given us good fodder for the future.

Does anyone have a question of Senator Dorgan?

It looks like you scared them all off.

[Laughter.]

Mr. OBERSTAR. Thank you.

Now we will go to Members. Mr. Rahall.

Mr. RAHALL. Thank you, Mr. Chairman for recognition and for holding today's hearing.

This particular gentleman from West Virginia has a long and intimate relationship with the Staggers Rail Act of 1980, primarily over the issue of captive shipper protections. The Staggers Rail Act,

of course, being named after the senior Member of Congress from West Virginia from the House side at that time, Harley Staggers from West Virginia, then Chairman of the Interstate and Foreign Commerce Committee.

There are many in this room, pushing this legislation, who were pushing similar efforts back in those days. I guess they sent their kids to college on this issue back then, and now it is time to send their grandkids to college. We are revisiting this issue again.

The publication of Traffic World once described me in my sophomore as coming "within a coal lump's distance of derailing the Staggers Rail Act."

Indeed, when the legislation that was to become the Staggers Rail Act was being considered by the House back in 1980, our former colleague, Bob Eckhardt, of Texas, and myself teamed up with a captive shipper amendment. It was so successful—indeed, it passed the Floor—that the bill's Floor manager at that time, Jim Florio from what was then called the Committee on Interstate and Foreign Commerce, pulled the bill from further consideration.

Mr. Chairman, I recall returning to my office on that fateful day and seeing a railroad lobbyist in the front foyer, literally crying like a baby. I guess those were the days when lobbyists were perhaps more in touch with their inner selves and allowed to display emotion.

Subsequently, however—and it was not due to the tears of the railroad lobbyist, I might add—a compromise was reached on the captive shipper issue in the form of the Staggers-Rahall-Lee-Loeffler Amendment which paved the way, as you will recall, Mr. Chairman, for the House passage and ultimately the enactment of the Staggers Rail Act.

It was no secret that post-enactment, I became extremely dissatisfied with the way the Interstate Commerce Commission was implementing the law. Every railroad, regardless of profitability, was deemed revenue-inadequate. I recall a time when Norfolk Southern was the darling of Wall Street, but the ICC described N-S in those days as being revenue-inadequate.

The means for devising revenue to variable cost was corrupted. Determining what was market dominance was a joke. According to the ICC, there was always, always product and geographic competition. For example, a coal-fired power plant conceivably could convert to oil—yeah, right—and a power plant in Colorado could conceivably ship coal in from West Virginia instead of its neighboring Wyoming.

During the decade of the eighties and into the nineties, I was the flagbearer for re-regulating the railroads, offering bill after bill, amendment after amendment, only to be stonewalled by the now Energy and Commerce Committee, much to the consternation of my truly captive shippers of coal.

Let me say one thing, Mr. Chairman. By golly, if the Republicans did one thing right when they ran this place, it was transferring the jurisdiction over the railroads from the Energy and Commerce Committee to this Committee under your leadership, if they did anything right.

[Laughter.]

Mr. RAHALL. As we got well into the 1990s, however, something happened. My shippers stopped complaining. Appalachian coal producers and those in West Virginia stopped being the subject of railroad predatory pricing practices, and with that reality I became a recovering re-regulator.

I will conclude with this note: Cross subsidization in the parlance of the railroad regulatory scheme known as differential pricing is part and parcel of maintaining a healthy and viable railroad network which is in the national interest.

I accepted that concept back in the 1980s and throughout my efforts to re-regulate the railroads. I always accepted that concept. During the course of this hearing, I hope the issues involving the matter are clarified.

Again, Mr. Chairman, I thank you for having the hearing. I yield back.

Mr. OBERSTAR. Thank you for those eye-opening remarks. We appreciate your candor.

The gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. I thank the Chairman.

I would wish that we go in order of seniority, so I would defer to Mr. Baker to go first before me in the order of seniority.

But, first, I want to just mention that Ranking Member Mica had to depart to go to a ceremony to honor some American soldiers that served in Iraq.

With that, if it is all right with the Chairman, go to Mr. Baker first.

Mr. OBERSTAR. The gentleman from Louisiana, Mr. Baker.

Mr. BAKER. I thank the Chairman and the Ranking Member for the courtesy. I certainly want to express appreciation to the Chairman for his keen interest in the subject and his sponsorship of the legislation which addresses many of the concerns which I am sure will be discussed in the course of the hearing today.

For the purpose of balancing the record and those who have been critical of the legislation pending, I would quickly establish that I am not a pro-regulatory kind of guy. I am very much a free market, believe in competition, let the best guy with the best product sell it at whatever price he deems appropriate and let consumers make educated choices.

I am not a proponent of re-regulation the rails. I am for expressing the best market operation that will enable more competitors to provide more consumer choices to those who, under the current system, have none today.

I do believe that competition, where competition exists in the rail industry, has in fact brought rates down, but were you to establish two charts, one of the rates paid by captive shippers over the last decade and hold it up next to a chart of rates paid by those in the competitive marketplace, you would find two very divergent trend lines.

Captive shippers are what the name says. They are captive. They have no market choice.

Whether one be Republican or Democrat, the consequences of being a captive shipper in a marketplace which is internationally competitive has real world consequences. Where you can no longer

manufacture your product, put it into a rail car and sell it in the United States, people will vote by moving their plants elsewhere.

It was, at best, a modest inconvenience in years past, but with fuel charges where they are today, which legitimizes the rate underlying assessment for the rails, it is becoming a factor in making decisional locations which are of extreme importance to all of us who want to keep as many people employed in this Country as is practical.

I don't know that there will be arguments made that the current STB methodology is fair in its handling of these difficult decisions, but regardless of whether one takes that position or not, it is certainly justifiable to conduct a thorough examination of how it works and the consequences of the pricing regulatory methodologies. It is important to note that in the current environment that the STB is now in a period of receipt of public comment over making a significant change in the way they determine cost of capital.

For Members who haven't spent a lot of time looking at capital assessment formulas—I know that people were probably doing that over the weekend, getting ready for this hearing—this is a significant component in establishing the rate base.

The capital asset model methodology is now subject to public comment which will close in mid-October by the STB to move away from the discounted cash flow methodology. The manner in which that new structure is constructed will have considerable affect on rate-making as we go forward.

Having said that, there are many other elements of this problem that the legislation the Chairman has offered, that are outside simply the cost of capital, the bottleneck problem. Yes, you have the right to move freight and to get quotes from competitive rail carriers, but if you happen to hit a bottleneck where there is only one provider of service through that short distance between where you are located and where your ultimate goal is located, you have a significant problem. You can't even force a rate quote unless you meet certain contractual obligations to that provider.

We do not have an open market in rail service in the United States. It is a significant economic concern, but then there is one other important matter. As consolidation has occurred in the financial services sector, consolidation has occurred in the rail industry. Despite that consolidation and the efficiencies that has brought about, fewer miles to maintain with fewer competitors, the rails are in fact undervalued in the market, and that is the reason why significant hedge fund operators have begun to target acquisition of stock in rails because of that analyst view that these are assets that the market has ignored and underpriced.

That has led the rails to reacquire their own stock, which I do not have a problem with, but it has diverted their investment practices from putting it into infrastructure and hoping to forestay the takeover of those in the hedge fund world who see them as undervalued assets.

All of that is to point out that smart people on Wall Street say the rails are in extraordinarily good condition. In fact, they are in such good financial condition, it is the kind of industry those smart investors are wanting to get a significant piece of.

The rail industry is sound. We need them to continue to succeed, but there are significant sectors of our economy who are now subject to predatory pricing. The remedy is not to re-regulate the industry but merely to carefully evaluate the process the STB engages in and ensuring, as a regulated utility, that the rates they charge are in fact representative of a competitive marketplace.

I sincerely appreciate, Mr. Chairman, the courtesies extended and your leadership in this matter. I yield back.

Mr. OBERSTAR. I thank the gentleman for his very thoughtful and well conceived statement and elaboration of the intricacies of this legislation and of the rail marketplace.

The gentlewoman from California, Mrs. Tauscher.

Mrs. TAUSCHER. Thank you, Mr. Chairman.

I find myself as somebody who spent 14 years on Wall Street as a very small child looking at the arcane valuations for this industry and scratching my head and, at the same time, understanding that in California, where 60 percent of the goods that are shipped into ports of Oakland and Long Beach and L.A. are moved out of state, how desperately we need a robust rail network and infrastructure that is have to have, not a nice to have.

I think that what is very clear to me is that, on the one hand, we need to assure that private investment has some predictability in their ability to look forward for their rates of return and to look at regulatory scheme that isn't obsessing so much that it prevents them from getting that rate of return and feeling as if they can do the kinds of investments that are going to keep their own people happy. But, at the same time, when you have a squeeze on the credit capital and capital formation, you find yourself without the ability to make these investments.

So I think we need to look at lot more at public-private partnerships, innovative financing, the kinds of things that are a little out of the box and different from the traditional kinds of financing that we have looked at in the past.

In the Bay Area, we tax ourselves. Almost every one of our counties, we tax ourselves for highway infrastructure.

Many of the companies that are in the Bay Area are companies that are high tech companies, just in time inventories. They are not only companies that have short rail but long rail for finished products. They need things delivered on time, so they can put them together and then ship them out.

A lot of our products, obviously, some of our sourcing comes from overseas too. So we need things to come out of the ports quickly.

This is a very, very vexing, complicated issue. I think I stand very similar to Mr. Baker in a place where I want to solve for the issues of having competitive railroad companies that are good investments for Americans, not only for their investment portfolios but for good jobs so that we can have a 21st Century railroad network. At the same time, I want to help the people that are captive shippers who find themselves unable to be competitive because they don't have enough competition to get better pricing to ship.

That is the sweet spot, I think, that we have to find. We have to find some place in there. I am not for more regulation, but I certainly am for competition, and I am certainly for helping the people

that need to ship goods to markets that are not only my constituents but the consumers of my district too.

So I look forward to this hearing. Once again, I think that it is always better to amplify these things and have as much as we possibly can in front of us.

I appreciate all of the folks that are going to be testifying in the hearing today, and I look forward to working with everybody to find that place, that tension between too much regulation but the ability at the same time to help the captive shippers so that we can have the kind of robust market that we need.

I yield back.

Mr. OBERSTAR. I thank the gentlewoman for her statement, and that is the purpose of this legislation, to try to find that proper balance.

The gentleman from Wisconsin, Mr. Petri.

Mr. PETRI. Thank you very much, Mr. Chairman, for holding this important hearing.

I also want, if I could, I don't know if I need unanimous consent or not but to submit for the record a statement by the Wisconsin Agri Service Association on the subject of this hearing.

Mr. OBERSTAR. Without objection, so ordered.

Mr. PETRI. Thank you.

I would also like to make just a point of thanking the chairman of the Surface Transportation Board who is on the first panel, Mr. Nottingham, for taking a day and a half of his time to come out to Wisconsin to meet with and listen to the representatives of a number of shipping associations in our region and a number of concerned people affected by the things that have happened in the transportation industry.

I would like to also associate myself with the spirit of the remarks of our colleagues, Mrs. Tauscher and Mr. Baker.

No one is really or few are looking for a return to strict top-down regulation of the rail industry, but everyone is looking for an improvement in service in the rail industry so that actually it can be used more to do higher value added shipments and provide service to the just in time economy in addition to bulk shipments.

Everyone is looking for fairness in pricing. Of course, fairness is always in the eye of the beholder, and there are a number of different ways in looking at costs and how this should be assessed.

I appreciate Chairman Nottingham making a number of changes in the procedures of the Surface Transportation Board so as to enable smaller and medium size shippers to not only have theoretical but to have practical access to the Board's processes, so that they can have their situations looked at in a timely and cost-effective fashion and either get some understanding of the process or some satisfaction and sense that they actually are being dealt with fairly.

I would urge that if there is anything that can be done to help rail management through I don't know if it is a regulatory process or what kind of process to improve the quality of service and of information in the rail industry, so that people are not confronted with the trains stopping on Friday at 5:00 and not knowing that the scheduled shipment is not going to come. No one even being told for two or three days.

You just can't operate a modern economy without a lot of unnecessary costs if a modern ability to communicate is not shared by the employees and the railroad industry. This is an area where we really could get good efficiency or improvement in our whole situation.

Beyond that, I appreciate your looking at the investment in the rail industry to make sure that, in fact, everyone involved is trying to make sure we have first-rate rail industry, and I thank you, Mr. Chairman.

Mr. OBERSTAR. I thank the gentleman.

Ms. Brown, the Chair of our Rail Subcommittee, the gentlewoman from Florida.

Ms. BROWN. Thank you, Mr. Chairman, and I want to thank you for your leadership as Chair of this Committee. I think this Committee has been one of the most productive Committees in Congress, and I am proud to serve as Chair of the Rail.

Today's hearing is important because we always need to consider ways to improve competition in every business sector, and there is room for some improvement in the railroad business. But I am concerned that many of the rail sector fixes being discussed by shippers would be devastating to the industry, and there are lots of shippers that support the railroads.

In fact, I have over 2,000 letters from shippers who oppose any new regulations for the rail industry, and I ask unanimous consent to have them submitted to the record.

Mr. OBERSTAR. Without objection, so ordered.

Ms. BROWN. Our Nation's railroads were in the red for a very long time and have only recently started to make a reasonable profit and should be given time in the black before making major changes to their business model.

I feel that the loss or railroad earnings that is expected with the decline in rates will have many negative consequences. Less money being spent on capacity will slow growth and put many more trucks on the highways, compounding safety issues and harming the environment. We will soon have an additional 3,000 trucks a day leaving the Jacksonville port.

If we can't find a rail solution, which I am working on, it will jeopardize our entire community. Decline in profits will also prevent the industry from hiring more employees for good paying jobs that we know can't be shipped overseas.

I also believe that the Surface Transportation Board which, for a long time was not operating to full capacity and in fact had only member, is starting to address many of the issues that are priorities for shippers. In talking with the members and visiting with the Board, I know that they are planning to continue to look at ways to protect shippers from unreasonable rates.

Mr. Chairman, at the proper time, this is the first time they have had an opportunity to testify before the Congress. The fact that so many of us have mentioned them, I am hoping that we can give them additional time when it is time for them to address the Committee.

A significant increase in capacity would also help eliminate many of the problems facing customers and the industry, and we all need

to work together to find ways to provide serious reasons for capacity expansion.

I look forward to hearing from today's panelists on ways that we can improve competition in a way that is fair to both shippers and the railroad and ensures a sound national rail transportation system.

As I yield back my time, let me say in visiting with many countries all over the world, our railroad freight is the envy of many of those countries, and I want us to keep that in mind.

Thank you and I yield back the balance of my time.

Mr. OBERSTAR. Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman, and thank you for holding this hearing this morning.

I want to welcome everybody to this hearing on rail competition. I want to point out to my colleagues, for those that have been deeply immersed in rail issues in the past, this is an extremely complicated issue. I would encourage and I am glad to see many of you here, asking questions and understanding.

You are going to hear terms that were Latin to me before I started to talk to many of the people in the industry, things like revenue to variable cost, differential pricing, the revenue shortfall allocation method. When you start talking about these things, as I said, at first they don't make sense. Quite frankly, I have an MBA and still to me they are difficult to comprehend and understand in this complicated system that we have in this Country for railroad freight.

I believe in free markets. When we look at the rail industry, I would love to have a rail industry that was based on free markets, but because of the way it has developed over the years, it is very difficult for us to have a completely free market system because to build railroads, new lines in this Country, having two and three railroads serve different areas, it is just not possible because of the difficulty in getting the rights to build them, getting through the government regulatory or our legal system. For us to move to what would be a completely free market system, as I said, just isn't in the realm of possibility.

What we have, we have to work with, and we have to make it work as best we can. Having competition, having government regulation work efficiently, and hopefully we can decrease that, but today our railroad system is the most efficient in the world.

As the Chairwoman mentioned in her travels around the Country, it is the envy of the world. Our shipping rates are lower than any other developed country. Our freight railroads require virtually zero Federal Government capital, no taxpayer dollars. Our railroads are so efficient that we can move a ton of freight 423 miles on a single gallon of fuel.

But it hasn't always been like this. The Chairman, as he always does, gave us a very comprehensive history lesson of what has happened since the Staggers Act. As I said, as always, very comprehensive and informative, but I think we need to also focus on what happened before the Staggers Act.

On June 21st, 1970, one of the largest companies in the world, the Penn Central Railroad went bankrupt. At the time, it was the largest bankruptcy in the history of the world. Penn Central which

was headquartered in my home State of Pennsylvania had thousands of employees. They owned over 4,000 locomotives, 200,000 freight cars and 5,000 passengers car. The Penn Central bankruptcy was, to say the least, a financial disaster.

It also dragged down other companies: The Buckeye Pipeline had 7,000 miles of pipeline; the Arvida Corporation which was developing 35,000 acres in Florida; the Great Southwest Corporation which had realty ventures across the Nation and, of course, had numerous property holdings in New York City.

Congress and the Nixon Administration spent years, thinking about ways to save the rail system. They drafted legislation to come up with loan programs, but in the end it didn't go forward.

Meanwhile, things continued to get worse. In 1972, five Class I railroads went bankrupt. In 1976, 25 percent of our Nation's tracks were under slow orders. In my home State, conditions became so bad that parked rail cars literally fell off the tracks.

In the 1960s, in Blair County, Pennsylvania, we had 2,500 folks that worked for Penn Central, later to become Conrail. Today or after the Penn Central bankruptcy and with Conrail being absorbed into a few other railroads, we have about 1,000 people employed there today.

The root cause of the Penn Central bankruptcy and the decline of the entire rail industry was government regulation. The government set the shipping rates. The railroads could not respond to the free market and could not recover their costs. Every day, the railroads lost more business to trucking companies.

Finally, in 1980, Congress deregulated railroads or I should say partially deregulated the railroads under the Staggers Act, and since then the turnaround has been amazing. It has been done mostly with private capital. I think that is extremely important for us all to realize. By and large, private capital is what turned this around, not Federal funds, not a huge injection from our Federal Government.

Our rail system now earns a profit. It is gaining business, and I believe it has a very bright future, but government regulation is still a problem.

We have to admit that over the years the STB has acted like we were still in the steam engine era. Challenging a rate has cost shippers millions of dollars and, in fact, because it was so expensive, they didn't challenge some of the rates. The STB regulations effectively denied smaller shippers any relief from excess rail rates or poor service.

Thankfully, the STB has finally taken steps to bring the Agency into the 21st Century. The new STB small rate case procedures will shorten and simplify the regulatory process, and we will be watching very closely as that moves down the road. Also proposed is a new way of calculating the cost of capital which has promised to make rates more reasonable. We need to give these procedures a year or so to see how they work.

I am against re-regulating the railroads because the private sector always can run things better than the government, and I think we have seen that since 1980. A great concern of mine is that re-regulation would return us to the days of low or no profits of our railroads, and no profits mean no private investment.

Our railroads are already one of the Nation's most capital intensive industries. In 2006, they spent $10.6 billion on capital projects and right of way maintenance.

The Chairman also pointed out that revenues are going up. His statement was that it is a paltry reinvestment, but as a number, if you look at other industries, it is probably a smaller number. What you have to look at is the percentage. I think the percentage is the real measure.

The rail reinvests 18 percent of every revenue dollar while other industries such as chemical and auto manufacturers are between 5 and 7 percent. So a significant amount of their revenue is going back into their system.

If we move towards re-regulation, I am very concerned that these private investments in railroads will disappear, and then we have to ask ourselves some really big questions. If that private money disappears, are we willing to ask the government to replace the spending with taxpayer dollars?

If we pass re-regulation now, in five or ten years, if we don't have the kind of private investment in our railroads, are we going to be looking to the government for a bailout plan as we did in the seventies?

These are huge questions, and this hearing is extremely important to talk about these issues and understand that what we do today is going to affect us down the road.

While I am against re-regulation, I want to make it clear that I am not against fixing a broken STB. If the STB's new procedures and guidelines don't work, we need to revisit this issue and we need to work to make sure that the system, the STB, works to the betterment of all our industries in this Country.

I want to thank the Chair for indulging me to go over my time. Thank you.

Mr. OBERSTAR. I thank the gentleman for his comments. The history pre-Staggers Act to which I devoted just a few sentences, the gentleman elaborated on and is quite right. The purpose of this hearing is to explore all these issues and to fix the Surface Board so that we don't have calls for re-regulation.

The Chair will acknowledge the gentleman from Florida, Mr. Mica, our Ranking Member, for a personal statement.

Mr. MICA. Thank you. First of all, I want to apologize for leaving right after my opening statement, but I had the opportunity. I wanted to meet a young man from my district, also from Ms. Brown's district. He is from DeLand, Florida.

Every once in a while, you get to meet heroes, and we have got one of them with us today. He is from our district, Ms. Brown's and mine. His name is Jonathan Chad McCoy. He is a Staff Sergeant.

Listen to this. He is one of 12 Outstanding Airmen of the Year. Staff Sergeant McCoy was named the Air Force Special Operations Command Non-Commissioned Officer of the Year, awarded the Bronze Star Medal with valor and a second Bronze Star Medal.

Sergeant McCoy demonstrated courage and leadership during Operations Enduring Freedom and Iraqi Freedom. The point man in a high risk compound assault, he fiercely fought hand to hand, defeating an enemy guard and enabling the capture of a high value

target. Twice, he deliberately risked his life, braving deadly small arms fire to treat and evacuate severely injured teammates.

Part of a sniper element, Sergeant McCoy established climbing routes over a 15 foot compound wall, allowing access of the assault force. Commanding a 17 man joint combat search and rescue team, he led a daring complex mission to recover the crew of a downed helicopter submerged in an Iraqi lake.

These are just a few of his accomplishments.

Sergeant McCoy and his wife are here. I would like him to stand and be recognized.

[Applause.]

Mr. MICA. I yield back. Thank you, Mr. Chairman.

Mr. OBERSTAR. I join our Ranking Member and congratulate our guest for his great service.

The bell has rung, but we have plenty of time before the vote. There is a motion to suspend rules.

We will go to Mr. Salazar of Colorado.

Mr. SALAZAR. I want to thank you, Mr. Chairman.

I ask unanimous consent to submit my full statement for the record and a couple of letters that I have from the Colorado Department of Agriculture.

Mr. OBERSTAR. Without objection, so ordered.

Mr. SALAZAR. I want to thank you, Mr. Chairman, once again.

I understand the issue. It is a very difficult issue. I hear from both sides. I hear from railroad, and I hear from my grain shippers.

The Colorado Governor, last month, issued an executive order in order to be able to comply with the transportation needs of Eastern Colorado where we had over 10 million bushels of wheat on the ground.

In looking at the chart that the Chairman put up on the board, I see the profitability doesn't seem to coincide with the added needed infrastructure, I think, that the railroads or the money they are putting into infrastructure.

I am very pleased to have the Surface Transportation Board here. The Senator actually made pretty strong remarks against the STB. I really am looking forward to hearing your comments.

I am a strong proponent of free enterprise. I know it has been only in the last few years that the rail industry has become profitable again, and I would really also like to see those profits put back into the infrastructure. As the Senator said, rural areas are especially affected by the lack of rail capacity.

With that, Mr. Chairman, I look forward to today's hearing and I want to thank you.

Mr. OBERSTAR. I thank the gentleman.

Members on the Republican side, Mr. Diaz-Balart, welcome.

Mr. DIAZ-BALART. Thank you very much, Mr. Chairman. Again, thank you for your leadership.

Really, a comment, Mr. Chairman: Obviously, the need for further investment in our rail infrastructure has become a front page, front burner issue in recent months particularly. Part of this discussion is, obviously, who should make the investment in the rail infrastructure. Should it be the private sector as it is now or should it be the taxpayer?

The rail industry is the one industry in our Country that does not rely on public investment—Mr. Shuster already talked about that—but rather builds, operates and maintains its own infrastructure, very expensive infrastructure, spending as much as 18 percent of its revenues on capital expenditures. That is a serious investment.

This is an industry that again, until very recently, was not making a profit, and yet they are reinvesting up to 18 percent into infrastructure. But it is obviously clear that we need more investment in the rail infrastructure—we talked about that—to meet the growing needs of our economy.

So I guess this is the question: Where should we look for that investment?

If we are going to continue to rely primarily on the private sector, on their investment to increase our Nation's freight rail capacity, it is obviously essential—this is not rocket science—that we provide further incentives for businesses to make these huge investments.

I am assuming that any bill that deals with rail would go through the Subcommittee that I sit on, chaired by the Honorable Congresswoman Corrine Brown from Florida, who is extremely knowledgeable on rail issues.

Mr. Chairman, I look forward to working on this very, very important, and I thank you for your allowing me this time.

Mr. OBERSTAR. Thank you for your comments, your observations.

Before I go to Mr. Kagen, I do want to acknowledge and introduce to the Committee, our newest Member, Laura Richardson of California, the 37th District. She holds the seat that was once held by our colleague on the Committee and recently deceased, Juanita Millender-McDonald, who was a great asset to this Committee and delightful Member of Congress, a treasured friend.

We welcome Congresswoman Richardson who had the opportunity at one point to work for Juanita Millender-McDonald, considers her a mentor. She served in the California State assembly and was appointed Assistant Speaker Pro Tem.

We welcome you to the Committee.

Now, Mr. Kagen.

Mr. KAGEN. Thank you, Chairman Oberstar and Ranking Member Mica for holding this critically important hearing today.

I would also like to thank the Members of the panels that will be appearing here, and I look forward to hearing and reading your testimonies. It is my sincere hope that the witnesses will enlighten us, everyone on the Committee, about how important it is to deliver rail services at prices everyone can afford to pay.

I have two particular concerns that I will share with you now. The first concern is the impact that the high rates for delivering products by freight and the declining standards of service are having on doing business in Wisconsin.

I am also very concerned about how the railroads are using what appears to be their monopoly power to effectively tell customers what will be shipped, when it will be shipped and what rates with very little negotiation being offered.

These are not just my concerns. These are concerns of companies that do business in Wisconsin, companies like Georgia-Pacific,

Green Bay Area Chamber of Commerce, Green Bay Packaging, Neenah Foundry, Procter and Gamble, Sadoff Metals, Stora Enso, the Wisconsin Farm Bureau, Wisconsin Farm Union, Wisconsin Manufacturers and Commerce, Wisconsin Paper Council and also the Wolf River Lumber Company which I will address now.

In the State of Wisconsin, we received a grant in our district in the City of New London, $350,000 to extend a rail line to the City of New London. In my several conversations and meetings with our mayor there, Mayor Wayne Toltzman, he indicates that the Wolf River line is imperiled, that they only were able to ship three carloads of their product to Chicago because the excessive cost in the last year. That occurred after Canadian National took ownership of the line.

Sturm Foods, which is located 12 miles west of New London in the City of Manawa, is currently finishing a major expansion on their facility, and they are going to add 200 very important jobs to our region. A lack of adequate rail service would significantly impede this progress that they are making.

Additionally, the Bemis Corporation has two plants, two manufacturing plants in my area. New London is this home. They have had 250 carloads of plastic resin delivered to them last year, and the State of Wisconsin granted $200,000 to add a spur to their plants several years ago. They are interested in enhancing their transport of their product over the rail service.

As such, I share the concern of Mayor Toltzman and other manufacturers in Wisconsin, that the railroad may soon request in the very near future that this line, this single access line, may be abandoned due to continuing losses of revenue on the part of the railroad company.

This would be a crippling blow to the economy of my district and the people living in the region, not just the agriculture industry but our manufacturing base as well. It would displace another industry and many, many jobs. Unfortunately, many areas of Wisconsin are held captive by a single larger railroad that will provide limited services.

I believe in improving our railroad competition. I believe railroads are necessarily not just for improving the health of our local economy, the State and our Nation but also to help combat global warming and reduce traffic by trucking.

To this end, I am very proud to be a co-sponsor of H.R. 1650, the Railroad Antitrust Enforcement Act which was introduced by my colleague, Congresswoman Tammy Baldwin, and H.R. 2125, the Railroad Service and Improvement Act which is sponsored by our Chairman.

I look forward to working with my colleagues on this Committee and across party lines to guarantee that these measures are advanced and succeed, and I look forward to listening and reading your testimonies.

I yield back my time. Thank you.

Mr. OBERSTAR. I thank the gentleman for his comments.

We have a series of four votes pending on the House Floor. We will recess until the conclusion of those votes. I suspect that will take the better part of an hour.

I say to the witnesses, be refreshed, be ready for a long sitting.

[Recess.]

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will resume its sitting.

There are still some two Members of our first panel who are missing, but they will arrive in due course, I am quite sure.

Mr. Nottingham, the Chair of the Surface Transportation Board, thank you for being with us. We look forward to your testimony. You may present it in full or summarize it as you wish. The entire statement will be included in the record.

TESTIMONY OF CHARLES D. NOTTINGHAM, CHAIRMAN, SURFACE TRANSPORTATION BOARD; W. DOUGLAS BUTTREY, VICE CHAIRMAN, SURFACE TRANSPORTATION BOARD; FRANCIS P. MULVEY, BOARD MEMBER, SURFACE TRANSPORTATION BOARD; KENNETH C. CLAYTON, ASSOCIATE ADMINISTRATOR, AGRICULTURAL MARKETING SCIENCE, U.S. DEPARTMENT OF AGRICULTURE; JAYETTA Z. HECKER, DIRECTOR, PHYSICAL INFRASTRUCTURE ISSUES, GOVERNMENT ACCOUNTABILITY OFFICE

Mr. NOTTINGHAM. Good afternoon, Chairman Oberstar, Ranking Member Mica and Members of the Committee. My name is Charles Nottingham, and I am Chairman of the Surface Transportation Board. This is my first appearance before this Committee since becoming Chairman of the STB in August, 2006, and I appreciate the opportunity to appear before you today to address the important issues of rail competition and service, the relationship between railroads and shippers, the state of the railroad industry and the role of the STB in resolving disputes between railroads and their customers.

I will briefly summarize my written testimony.

Ensuring effective competition is one of the central goals of the Nation's rail transportation policy. Yet, throughout railroad history, there have been some rail customers who do not enjoy the full benefits of a competitive market.

What do we mean when we refer to captive traffic that falls under the jurisdiction of the STB's regulation of rates?

Our most recent data indicates over 71 percent of the Nation's rail traffic moves at rates deemed by statute to have been a product of a competitive market.

Of the remaining 29 percent, some is traffic that is exempted from regulation because the particular commodities and services involved, such as intermodal traffic, have competitive transportation alternatives available, and some is traffic that moves under private contract and is therefore outside the Board's jurisdiction.

Less than 10 percent of the Nation's freight rail traffic is recognized as captive and eligible for STB rate regulation. As we focus on this important but relatively small portion of rail traffic at the STB, we strive to assess and anticipate how our regulatory and policy decisions might impact the broader universe of rail customers as well as national transportation policies such as the development of an efficient system of interstate commerce.

As is the case in many markets, some freight rail customers pay higher rates than others. Under the principle of differential pricing, railroads with high sunk costs and with fierce competition for most

traffic are expected to charge more, even substantially more from their captive traffic than from their competitive traffic if they are to achieve enough revenues to cover their costs and invest in necessary facilities. Although differential pricing is practiced in many other industries as well, it is understandable that shippers on the captive end of this differential pricing scale would not be satisfied with the status quo.

As policymakers examine alternatives to this longstanding differential pricing system, several important questions merit consideration including: If the railroads' ability to differentially price their services based on the market forces of supply and demand is significantly constrained, who will make up the difference?

Who will end up paying more?

How will the railroads in this highly capital intensive industry maintain their existing infrastructure, not to mention attract additional private investment needed to expand their capacity to meet projected dramatic growth and future demand for access to the rail network?

The Board recently commissioned the economic consulting firm, Christensen Associates, to conduct an extensive study on the extent of competition in the railroad industry. The study will also assess various policy issues including current and near future capacity constraints in the industry, how competition and regulation impact capacity investment, how capacity constraints impact competition and how competition, capacity constraints and other factors affect the quality of service provided by railroads.

The study team will have the full benefit of all of the STB's powers to inquire into and gather information from the freight rail industry. I look forward to briefing this Committee on the results of this study next year.

Examples of ways that the STB promotes competition can be found in our major merger rules in cases where we impose competition-protecting conditions such as in previous merger cases, in other cases where the board has prevented larger carriers from interfering with the ability of smaller carrier to meet their obligation to provide service, in our management of the Federal Environmental Review Process required for the proposed construction of new rail lines and in decisions authorizing the construction of those new rail lines.

With regard to the financial condition of the Nation's rail system, I can report that our data reinforce what others will report today. The rail industry has gradually recovered from its pre-Staggers Act state of ruin, and the industry is currently in good health.

The Board is currently awaiting final comments on an important rulemaking that proposes to change a key measure of the financial health of the railroads, the annual cost of capital determination. That calculation ties into our entire annual determination of the railroads' revenue adequacy and is also a significant factor in rate cases and other Board proceedings.

I believe that the Board must continue to examine all of our procedures and to constantly explore improvements, no matter how controversial the issue may be to stakeholders.

The Board's procedures for handling rate disputes are particularly important, and I will now turn to that issue.

Under our statute, the Board must ensure that rates are reasonable while, at the same time, not preclude railroads from obtaining adequate revenues, but balancing these potentially conflicting objectives is not an easy task. Rates that are too high can harm rail-dependent businesses while rates that are too low will deprive railroads of revenues sufficient to pay for the infrastructure investments needed.

The Board has recently improved its procedures for handling rate cases. In the fall of 2006, we made some significant changes in how we apply the stand-alone cost test and calculate the amount of relief in large rate cases in an effort to reduce litigation costs, create incentives for private settlement of disputes and shorten the time to litigate large rate cases.

Also, in the small rate case resolution process, our new rules allow smaller cases to proceed on one of two tracks. First, freight rail customers may seek up to $1 million in relief, using a revised version of the three benchmark test with more predictability built into it. Under a second approach, customers can seek up to $5 million in relief.

Another important issue that the Board is keeping a close eye on relates to fuel surcharges imposed by railroads. In January of this year, we issued a decision declaring it an industry-wide unlawful practice for carriers to use a fuel surcharge to recover more than the increased fuel cost attributable to the particular movement to which the surcharge supplied.

Mr. Chairman, I will wrap up. I realize the time is running.

This action ended an industry practice of charging fuel surcharges as a percentage of the shipper's base rate regardless of the actual fuel cost associated with the transportation of the shipper's goods. The Board will aggressively use the authority granted to us by statute to stop unreasonable practices, thereby protecting shippers and advancing the public interest.

It is worth noting that the Board investigated and acted on the fuel surcharge problem on our own initiative and without any formal complaint. This Board has not received a single formal complaint about fuel surcharges. We will remain vigilant on this issue and will expeditiously review any formal complaints related to fuel surcharges or other unreasonable practices or unreasonable rates.

Moreover, in addition to our process for adjudicating formal disputes, we also have an effective informal dispute resolution process which we encourage stakeholders to take advantage of.

In sum, the STB is actively engaged in the pursuit of enhanced competition, the implementation of accessible and affordable dispute resolution procedures and continuous process improvement aimed at making our Agency a more effective economic regulator of the freight rail industry.

Our initiation of a major national study of the state of rail competition and related policy alternatives along with our recently improved dispute resolution procedures, our pending rule on how the railroads' cost of capital should be measured and the other proactive steps outlined in my full statement all combine to demonstrate this Board's strong commitment to providing robust regulatory oversight of the freight rail industry.

I look forward to the opportunity today to discuss our record of reform in more detail and to returning to this Committee in the future to report on our progress.

Thank you.

Mr. OBERSTAR. Thank you, Mr. Nottingham. We look forward to those initiatives and the report on your several reviews that were enumerated in your testimony. You can rest assured, we will invite you back.

Vice Chairman of the STB, Mr. Buttrey.

Mr. BUTTREY. Good afternoon, Mr. Chairman. Thank you very much for this opportunity to be here today before the Committee. I commend you for holding the hearing.

I think to have a conversation about this issue from time to time is probably very useful to everybody, the Congress and the shippers and railroads and other people who are interested in the railroad industry, including investors and potential investors and shareholders.

I do not have a separate statement. In the interest of time, I will dispense with any kind of formal statement. I have associated myself with the remarks of the Chairman who is the normal spokesman for the Agency, and I will be very happy to answer any questions you might have.

Thank you very much.

Mr. OBERSTAR. Thank you. We will certainly have questions for you.

Mr. Mulvey, welcome back to the Committee where you once served and served with great distinction, preceded by a very long and distinguished career with the General Accounting Office, now the Government Accountability Office, and the Inspector General's Office and our own Committee on Transportation and Infrastructure.

We welcome you back here. It is good to have you on the other side of the table now.

Mr. MULVEY. It feels a little different being on the other side of the table, but thank you very much for having me.

Good afternoon, Chairman Oberstar, Chairwoman Brown, Ranking Member Shuster and other Members of the Committee.

In 1995, the Surface Transportation Board was created to balance the needs of shippers, who must rely on railroads for reasonable rates, with the need for the railroads to earn adequate revenues.

The overall questions we face today are: How well has the Board met its charge to balance those interests and what is the state of competition in the transportation of those bulk commodities that are largely captive to the railroads?

I don't think I am understating it when I say that many people believe the Board could do more to promote competition, ensure reasonable rates for captive shippers and improve the reliability and quality of railroad services.

For a long time following the Stagger's Act, the ICC and the Board, after 1995, focused on ensuring that the railroads recovered their financial health. It has been well documented, the state of the industry before Staggers in the seventies and eighties.

In October, 2005, the STB held a hearing on the state of the railroad industry, and that testimony revealed there was nearly unanimity that the industry had largely recovered from the financial malaise that plagued it during the sixties and seventies.

As Chairman Nottingham has mentioned, the Board has taken a number of initiatives at balancing the scales between railroads and shippers, and there are a few areas where I believe some real progress has been made.

It was already mentioned, fuel surcharges and that the railroads were charging the shippers fuel surcharges based upon a percentage of their rates. This meant that the captive shippers who already paid high rates had to pay higher fuel surcharges as well despite the fact that their shipments did not necessarily engender greater fuel use. The Board found this to be an unfair practice and directed the railroads to compute surcharges to more closely reflect actual fuel consumption.

Secondly, with regard to access to rate relief, the cost to bring a case before the Board and using its stand-alone cost guidelines can cost a shipper several million dollars. It is not the filing cost. It is the cost of the lawyers and the cost of all the consultants necessary for the shipper to undertake a stand-alone cost procedure. Shippers, whose traffic does not warrant the expense of bringing cases under the stand-alone cost guidelines, believe they have no access at all to the Board for relief.

For 20 years, the Board and its predecessor, the ICC, studied how to make the Board's procedures available to small shippers. Finally, the Board has now acted to address both the cost and timeliness issues for the large rate cases as well as finally establishing new procedures for small rate cases.

In October, 2006, the STB issued new large rate case guidelines that were designed to reduce the cost of bringing a case significantly and to speed up the process. Just last month, we issued new procedures. In fact, earlier this month, we issued for bringing small rate cases before the Board.

These rules give the shipper the option of selecting how they want to proceed to challenge their rates but, as the Chairman pointed out, they do set limits on recovery depending upon which process is selected.

I am committed, Mr. Chairman, to monitoring the results of these initiatives to make sure they work as intended and to make changes if necessary.

Thirdly, the cost of capital, the Board has consistently found that the Nation's railroads are revenue-inadequate despite the fact that Wall Street has found the railroads to be profitable. The reason for this disparity lies in the way the Board has taken to determine the cost of capital, especially equity capital.

The discounted cash flow approach that was used has long lost favor with the financial community. The Board staff reviewed the academic literature. We held hearings on this issue, and we have come up with the decision, proposed rulemaking rather, to adopt the capital assets pricing model. If this change is adopted, it could reconcile the Board's estimation of revenue adequacy of the railroads with that which prevails on Wall Street.

However, there are still a number of areas that still concern me, first of all, paper barriers. Paper barriers are contract provisions that arise when a Class I railroad sells or leases some of its light density track to a short line. Often, the short line must agree to interchange traffic only with the Class I carrier that leased or sold them the track. Interchanging with any other railroad would result in severe penalties. The restrictions generally continue on into perpetuity.

I have found this practice to be anti-competitive and I have dissented from the majority of the Board in several cases where paper barriers were contained in sales or lease agreements.

With respect to the status of competition, I believe the GAO study on railroad competition was a very worthwhile and well done effort. However, I do feel that it inaccurately claimed that the extent of captivity was declining. Even if relative captivity—which is what I think they mean—the percentage of traffic that is captive has declined, there is no evidence that competitive options have increased for captive shippers.

The GAO also suggested the Board undertake a study of competition in railroad industry, and the Board has recently, as the Chairman pointed out, contracted with a private firm to have such a study done.

I personally regret that those resources were not committed to a study that was authorized in the SAFETEA-LU legislation which would have focused on how well the Board has handled its mission rather than the larger issue of competition in the industry. How well has the Board acted on its mission, and that study would have been undertaken by the Transportation Research Board of the National Academy of Sciences.

I have a few suggestions for improving rail service and competition. If we as a Nation are serious about shifting traffic off our highways and onto rail, we need to devote more resources into improving our rail infrastructure. The railroads favor an investment tax credit for this purpose, but I personally believe the amounts that will be needed would be far greater than what a tax credit could realistically produce.

I believe that a railroad trust fund of the type recommended by former Representative and T&I Committee Member, Bill Lipinski, could generate the monies. A railroad trust fund could generate the monies needed to upgrade and build our Nation's rail transportation infrastructure.

Also the Board currently exercises regulatory oversight only over about a third of the traffic. Much traffic is exempt from our regulations because it is presumed to be competitive with other modes of transportation. But as times change, so does the competitive landscape. I believe we need to examine the class exemptions periodically to determine whether those premised on the availability of intermodal competition remain warranted in the 21st Century.

Finally, the Board may begin an investigation of a potential violation of the rail portions of its statute only on complaint. If the Congress wants the Board to continue to actively seek out and stop problems, it might be appropriate to revise this language by striking the word "only" and adding "on its own initiative."

I thank you for the opportunity to testify today. I look forward to answering any questions you may have.

Mr. OBERSTAR. Thank you very much, very crisp and thoughtful set forth testimony. I appreciate that.

From the U.S. Department of Agriculture, Associate Administrator in the Agricultural Marketing Service, Mr. Kenneth C. Clayton, welcome and thank you very much for being with us.

Mr. CLAYTON. Thank you, Mr. Chairman, and Members of the Committee, thank you too for the opportunity to appear before you today to share USDA's views regarding rail competition and service.

As Associate Administrator of USDA's Agricultural Marketing Service, I oversee a variety of domestic and international marketing programs for American food and fiber including our work on agricultural transportation issues.

There are many reasons for the productive and competitive strength that the U.S. agricultural sector has enjoyed over the year. Three factors, I think, stand out as particularly important.

First, we have been blessed with an extremely productive natural resource endowment. Second, we have an impressive record of technological development in the production, harvesting and processing of agricultural products. Third, we have benefitted from a transportation system that has facilitated the efficient and effective movement of agricultural products from farms to destinations both at home and abroad.

Clearly, rail is a critical component of our overall transportation system. In fact, the agricultural industry in the United States is highly dependent on a viable rail network, particularly producers in more remote locations with long distance transportation needs.

USDA shares the view of many that the deregulation of the rail industry under the Staggers Act and related legislation was of positive effect in preserving the industry. At the same time, in regaining their economic standing, the railroads have taken steps that have reduced service levels and shifted costs to the users of their service.

Consequently, as important as rail rate measures may be for judging the exercise of market power, changes in rail rate are not fully reflective of either the costs associated with movement of products from origin to destination or the impact on the international competitive position of industries like agriculture.

USDA has heard and continues to hear from many in the agricultural industry regarding their concerns about rail competition and service. For many grain producers, rail is virtually the only cost-effective bulk shipping alternative, and agricultural shippers continue to express concern about decreased rail to rail competition, increased rail rates, poor rail service, rail capacity constraints and the fair allocation of rail capacity.

Compounding this concern, of course, is the fact that agricultural producers have little influence over prices that they receive for their commodities and typically must absorb cost increases. Thus, increasing transportation costs translate into lower producer incomes which can have important implications for the production of food and fiber as well as the vitality of rural and regional economies.

One of the key assumptions underlining deregulation of the rail industry in 1980 was that there would be sufficient competition, at least in most markets, to promote reasonable rates and discourage the abandonment of branch rail lines vital to agricultural producers. However, rail competition has declined over the past quarter century due to rail consolidation.

The implications of this decline are somewhat difficult to assess, given incomplete and inconsistent data. To provide a clearer perspective on the state of competition in the rail industry, USDA notes and supports the GAO recommendation and subsequent STB action to take onboard a study of national rail competitiveness.

Let me conclude, Mr. Chairman, by thanking you and the Committee for holding this hearing today. An efficient and effective transportation system is clearly important to the U.S. economy, particularly for our agricultural producers and shippers.

Thank you.

Mr. OBERSTAR. Thank you very much. Your complete statement will, of course, be included in the record. Your summary was very well presented.

Mr. CLAYTON. Thank you.

Mr. OBERSTAR. Ms. JayEtta Hecker has been in front of our Committee on many occasions and on many subjects, and we greatly appreciate your learned analysis of the transportation issues. Thank you for being with us again.

Ms. HECKER. Thank you, Mr. Chairman. I am very pleased to be here to speak before you and the other Members of the Committee.

The topic is, of course, as we heard, an extremely important one, and we are pleased that we can speak on the basis of two very recent and very comprehensive reports. We were most recently asked to look at 25 year retrospective on the impact of the Staggers Act and what kind of overall effects there have been. So I am basing a lot of my comments on that report as well as a more recent update looking at an additional year of rate changes.

The three topics I will cover are, first, the major changes in place post-Staggers with this very broad perspective; second, I will talk about the protections, the balance that was always envisioned for the protection of captive shippers; and then, finally, I will briefly address the actions that the Board has taken.

I will try to go through those very quickly because I think you are familiar with our report, and I am sure questions will be more useful as an exchange.

If you look at page two, I do have a slide. It is unequivocal and all have recognized that the financial condition of the railroads was grievous before 1980. It was very important to our overall economy and our performance, and in many senses Staggers had a remarkably positive impact over a long period of time of allowing the industry to return to financial health through a number of the measures that are indicated there.

The next slide, and again many people recognize this. One of the extraordinary things with the nature of the competition, the kind of measures that the railroads took, rates went down, went down for over 15 years, almost steadily every year, every commodity. We developed an index to try to make that a pure basket of goods, so it didn't deal with changes in geography or changes in the product,

but rates consistently went down and went down even more if you look at it, as this chart does, relative to GDP price index.

It has gone up. There is no doubt, and I am sure you have heard this from many shippers, that rates have started to turn up slowly in 2000 and rather significantly, the most significant single year rise between 2004 and 2005. But in real terms, railroad rates, the cost to move shipments by rail are still below 1985 levels.

I might say that one of the views maybe that this deregulation and the competition and the measures the railroads were enabled to undertake to streamline their operations wasn't just in their performance, but these increases in the efficiency of the industry have actually been a macroeconomic factor in overall economic growth.

The improvements in the performance of the logistics sector, several Members talked about the fact that we are one of the countries that is the cheapest in the world to move goods, and that was part of the benefits, not just the rate issue but the kind of efficiencies that we saw the railroads undertake and put in place with the flexibilities they were given.

Slide four, again as you know, while all rates went down, they went down at different rates for different commodities, and this slide basically showed that the least decline has been in the grain area. The next one that started moving up more recently is miscellaneous mixed shipments which is largely containers. The bottom one where the rates were the lowest, coal has ticked up. You have got a number of increases occurring differentially in different commodities.

Now some of our analysis is you can't immediately infer this to monopoly power or whatever. There are lots of real factors in the industry. As many of us are well aware, capacity constraints have really become a reality in railroads, and that obviously turns into rate increases.

The railroads made new investments, as was discussed. They expanded employment. They changed some of the mix to focus on different traffic, and there was a demand growth that was consistently occurring. So there are lot of reasons, and you can't necessarily have a nefarious concern when you see the rates ticking up. It is a difference in a competitive and economic environment.

Now, in looking at the overall picture, we also wanted to try to look behind the rates because you, Mr. Chairman, noted there had been a transfer of a number of costs to shippers. One of the areas we looked at, because we thought it would be useful to understand a rarely examined factor, is this miscellaneous revenue.

As you see from this chart, slide five, miscellaneous revenue has skyrocketed. It has gone up 10-fold in just 5 years. Now a big factor in there is fuel surcharges, but one of the concerns that we had that related to one of our recommendations is this very inconsistent reporting by railroads. This isn't good data, and so we recommended that the Board take some action to improve the consistency of data and the transparency of this information.

On slide six, I quickly go into some of the information on captive shippers. You yourself have noted that while slide six uses this proxy for an indicator of captivity and uses the statutory definition which just opens access to rate relief. With this global factor, the

share, whether it is in tonnage in revenue of potentially captive shippers, has gone down.

But then to try to probe a little further, we looked in a more isolated subset at traffic which was traveling at substantially above the statutory threshold, and that was a ratio of 300 percent of revenue to variable cost. We found that has been rather significantly increasing.

And, we looked at it on a geographic basis. You see differences in where those very high revenue to variable cost ratios occur, and it is in States like Montana, New Mexico, North Dakota and West Virginia.

The key question that we had was, I think as several people said, we really did not believe that effective relief had been provided for shippers. In the 25 year history, in the balancing that was envisioned and while there was always the concern about the revenue adequacy, there really was very little effective relief provided.

It is true that the Board very recently has started to take some actions. You have heard those, and I don't need to recount them. I will say that some of them, particularly this change in the calculation of revenue adequacy, could be very substantial. Really, it is too soon to tell what kind of impact some of these changes would have.

What we did do in our report was recognize that in our view there were a number of alternatives that have been proposed and that I know you and others are aware of that could promote competition. That is the really the interest in these alternatives. They are not giving up on the marketplace working. They are trying to efficiently intervene to promote competition.

Although each of these have been argued as opportunities to do that, each has real costs and benefits. We did not feel we had the information to recommend any particular action by the Board. That combined with our concern with the absence of relief and the continued presence of some captive shippers led us to recommend that the Board more comprehensively, using its full authority, evaluate this situation.

The conclusions then on slide 10, the Staggers Act has had far-ranging benefits not only to railroads but to our economy and to consumers and to many shippers. We did conclude that widespread changes in the relationship between the railroads and their customers are not needed.

We did observe and do believe that there are pockets of potentially captive shippers that remain and that more examination is needed to determine whether some of those rates were really justified by market conditions or reflected in abuse of market power. As I said, that led to our recommendation for a more comprehensive study by the Board and some specific improvements in data as well.

That concludes my statement, and I apologize for going over.

Mr. OBERSTAR. Oh, no, not at all. It is an excellent statement. We expect that thorough review from the GAO. Thank you very much.

Chairman Nottingham, you referred in your statement that earlier this month the Board issued new guidelines for small and medium size rate disputes. Shippers are saying, well, the new guide-

lines, they welcome some action. There hasn't been much over many years on this issue.

But they do not reflect any of their recommendations. What recommendations were made that you think were useful and what recommendations were not?

Mr. NOTTINGHAM. Thank you, Mr. Chairman, and I will say that issue stands out.

That rulemaking where we endeavored to, with a lot of effort and time put into this by the career staff at the STB and hearings and a period of years of observing a system that really did not work, endeavored to put together a set of new procedures so that the Board can be more accessible to smaller and medium size rate cases, and that is what the recent rulemaking was all about.

I will say that a number of shipper groups have already asked and we have given them some more time to decide whether they want to begin the process of appealing that decision. I believe some of the railroads have already filed some legal paperwork indicating intent to appeal. Somehow we have managed to attract concerns on all sides of the issue.

But we think we have, by setting up two new channels to bring smaller cases, putting the shipper in the driver's seat—the shipper can choose which one to take advantage of—and allowing a shipper to receive up to $5 million in damages under what we call the mid-level review or up to $1 million under the most simplified, we have greatly improved a situation that really wasn't working.

We had no cases resolved under the preexisting special procedures for simplified rates, and that was over a period of many years. Clearly, that is not because there are no shippers who believe they have cases. It was because of some problems with the dispute resolution process that existed.

It will be interesting to see as time goes by whether shippers take advantage of this opportunity, how it works. We do have one significant shipper. I believe it is the DuPont Company that has already filed several complaints, and I know they are before you later today. I will let them speak for themselves.

Time and experience will tell whether we are on the right track, but I do believe we have made a big improvement.

Mr. OBERSTAR. It is an ongoing process is what you are saying.

Mr. NOTTINGHAM. Yes, sir. Until we see a case play out, that is when we really know whether it works.

Mr. OBERSTAR. You made reference to hedge funds and other large investors that are in your words, showing extraordinary interest in railroads. I met with the AAR Board earlier this year. That issue was brought up. Two major railroads, two of the Class Is have suddenly found themselves the target of investment.

I would have concerns about hedge funds investing significant amounts at least up to the ability to have control over the railroad from the experience that I have had with a paper company in my Congressional district, the one that acquired Boise Cascade.

Then what this hedge funds do with some regularity is spin off assets, cut down workforce, trim the company, increase its apparent profitability and then sell it off at that higher value. But, in this case, they sold off the woodlands that have been for 100 years in company ownership.

If you are in the pulp and paper business, your asset is wood. It is trees. You sell your asset off, then you deprive the company of the ability to counterbalance forces in the marketplace. Those hedge fund guys didn't care a hoot about that.

Now I can envision hedge fund operators coming in. Everybody welcomes increased capital investment, but when that capital investment comes in and strips the asset, its viability, then you have a serious situation. In this case, the serious situation is the future ability of the railroad to serve the public.

Have you at the Board given thought to reviewing the potential effects of hedge fund investments in the railroads?

Mr. NOTTINGHAM. We have, Mr. Chairman. It is an issue and an area we are looking at closely, and it represents really an example, probably one of the most glaring examples of how fast changing this industry and this marketplace really is.

We are living through incredibly dynamic times where after many years of disinterest by large segments of the financial community in the rail sector as an attractive place to invest money, we are seeing huge amounts of resources pouring into the railroads from large investors.

Some of them go by the general name, hedge fund. Some of them don't. Some of them are prominent individuals like Warren Buffett who have earned a lot of respect generally over the years for being a wise investor, and others are people like Bill Gates, and people who just seem to have significant capital and they want to invest it.

We want to be sure, though, that anyone who does get involved in the railroad business, and we will ensure that anyone who does get involved in the business of railroading, has the public interest at heart and is not interested in just cashing out tomorrow and leaving shippers stranded.

Mr. OBERSTAR. I think that is a very good perspective, but the question that I would like the Board to be asking is: Do these investors bring an increase in capital to the railroad for investment in its capital needs or are they just playing around with the shares, taking hold and getting a controlling interest in the railroad to further their own pocket, not to advance the cause of the railroad itself? That is what I would like the Board to be asking.

Mr. Mulvey, your statement, I think, makes a profound observation. The Staggers Act greatly reduced economic regulation of the industry. It didn't take away economic regulation.

Mr. MULVEY. It did not. It greatly reduced by allowing, especially allowing the railroads to enter into contracts with shippers. Historically, before Staggers, all railroad rates were the tariff. With contracts, the deal was the rich could be more competitive. They could make agreements, et cetera, and the railroads could become more competitive.

But you know you always have to be careful what you wish for because some of those contracts the railroads entered into back in the days when they were still financially in distress, were very, very lucrative for the shippers. They went on 10, 15, 20 years and, over time, these contracts became a real burden on the railroads.

Now, of course, as these contracts are coming due, the railroads turning that around and raising rates 50, 60, 100 percent in order to make up for the years when these contracts were bad.

Staggers also allowed the railroads to abandon lines much more easily. It sped up the abandonment process. So they were able to reduce their costs, reduce the size of their infrastructure, continue to cut back on the labor force until they are a fraction of what they were 30 years ago.

There is good with that—they are more efficient—but there is bad with that because today we have a railroad system that is not well positioned to meet the demands in the future.

Mr. OBERSTAR. Thank you.

The conclusion we could draw from that is attempts for the Board to exercise its inherent authority, more authority or encourage the Board to vigorously use its authority is not re-regulation. Regulation remains but at a diminished level, right?

Mr. MULVEY. Yes, and there is a new question as to what the Board's authority is. We have a general counsel. They have views of what our authority is. We don't want to overstep the authority that Congress has given us, but there have been some cases where we have been questioned as to whether or not we had the authority to do what we did.

Fuel surcharges, for example. A lot of people believe the Board did the right thing in fuel surcharges, that the railroads action was unreasonable, but some of the railroads' claim that the Board had overstepped its authority in the fuel surcharges. We didn't have authority to do what we did.

I recommend that the Board be able to initiate investigations on its own. Right now, we don't have the authority to initiate investigations on our own. We have to wait until a complaint is filed. That, again, would strengthen us.

Mr. OBERSTAR. I definitely think that is an initiative we should take and should be an outcome of this legislation.

Mr. Nottingham, do you disagree with subsequent witnesses who will come before the Committee, who have already many times said, filing fees are excessive, cost of proceedings are excessive, time consumed in proceeding on a rate case is excessive?

Do you disagree with that?

Mr. NOTTINGHAM. I sympathize with those concerns because looking back at the record over the years, in some cases over a hundred years, in some cases more recently, what I have had to do as a new chairman, 13 months into my appointment here, I will say I have been distressed to see that it has gotten to this point.

But I am pleased to say that my colleagues, well before I came onto the board, initiated a number of very sweeping, important reforms that I was pleased to join with, and almost all of our major actions have been unanimous and bipartisan in those reform areas. We are changing fast for a regulatory agency, and I just ask the Committee's forgiveness to judge us on what this Board, these three members and the staff, actually accomplish and have accomplished.

Mr. OBERSTAR. You are moving in the right direction. I appreciate that.

I would say that on those issues, even railroads that disagree with other provisions of my legislation will say those filing fees are too high, the barriers are unreasonable, the time consumed is unreasonable. That ought to be adjusted.

I have one question that I want to ask, and then we will go on with other Members.

Is there or could there be a rate that is so high a percent of variable cost that it would be appropriate for the Surface Transportation Board to use its powers to declare the rate unreasonable?

Mr. NOTTINGHAM. Mr. Chairman, I assume you would like me to take a first stab at that. Yes, sir, we get that question a lot. It seems pretty straightforward that if a rate got to a certain level percentage-wise that common sense would say the Board would de facto deem it to be unreasonable.

I will say, though, we don't do that, and I have to be careful how I speak here because we do expect this kind of issues to come before us in an active litigation context.

How high is too high is the question we often get. What is the big magic number? Should it be 300 percent, 189, 450, 600?

Really, it is important that we look at the facts and circumstances of each case and apply the modeling and the tests that have withstood Federal Court approval to make sure there is not a width of randomness or arbitrariness in the way we do that because these are multimillion dollar disputes and we prefer not to see them dragged out in appeals unnecessarily.

Mr. OBERSTAR. Thank you.

Mr. Mulvey, do you have a comment on that?

Mr. MULVEY. I would agree that we have a process, and any particular number would be somewhat arbitrary. So we do have a process, and we do look at the stand-alone costs. If the rate is higher than that which would be necessary for the railroad to continue operations and reinvest in itself for its investment, then that rate is too high and we will roll the rate back.

In some of the cases that came before us, some of the large rate cases, it is true that I don't think we have ever given a shipper a complete win, but we have rolled back the rate somewhat in some of these cases. But I am not sure there is a magic number.

Mr. OBERSTAR. Ms. Hecker, have you had GAO consider that issue?

Ms. HECKER. No, we haven't explicitly, but I have to say in our discussion of the problem with the revenue to variable cost ratio, we point out and discuss explicitly in the report that the nature of a ratio can have perverse effects. You can have a rate decrease where the entire decrease is passed on to individual shippers, but the ratio will change and the revenue to variable cost ratio will go up.

So it is very dangerous to not have it be case specific.

If I may, I wanted to add a point, though, about authority which I think is a very important one and clearly a legislative issue. In our report, we basically observed and we put a lot of our lawyers on this issue, that we though the Board's authority did reach to its ability to inquire into and report on railroad practices and to study and to monitor and take action to promote and enhance competition.

One of the statutory objectives of Staggers and the formation of the STB is about ensuring effective competition. While some of the measures that are being explored are the subject of prior rulemakings where they decided one thing, there is the potential where circumstances have changed where we think the Board has the authority.

In early discussions of our recommendation, there were some issues about whether the Board could even undertake the study that we were recommending. At the end of the day, they finally agreed that they could do that.

We would be happy to have our lawyers talk with you at the same time with the STB lawyers. We think there is a lot of authority there, and it has been a question of the balance that we really haven't seen in the past.

Mr. OBERSTAR. Thank you. That would be very useful. We could do that.

Ranking Member Shuster.

Mr. SHUSTER. Thank you.

Chairman Nottingham talked a lot about the new procedures and processes he just put in place to handle rate cases. It is my understanding you attempted the Board attempted to do that in the 1990s and it failed.

What is in these new procedures that is going to assure us that they will succeed and can you talk about a few of the changes you have made to those procedures that you think are going to come out with positive world changes where we will see success as we move forward?

Mr. NOTTINGHAM. Yes, sir, I would be happy to. Under our recently adopted rulemaking in the area of creating a simplified process for small and medium size rate case dispute resolution, what is of, I think, most interest to me and should be of high interest to shippers is that for a $150 filing fee, which is a pretty routine filing fee you see in a lot of courts, you can bring a $1 million complaint. You can choose to do that or you can choose to pay a higher fee and bring a $5 million complaint.

Under the three benchmark approach, which is the smaller $1 million and less approach, we basically set up almost a small claims court type model, that you don't have to bring in four law firms and five consulting firms and spend millions of dollars arguing over 99 different assumptions.

We make a lot of the assumptions for you. It is laid out in the rule. You just bring your case, and within eight months you are guaranteed an answer.

Now that is assuming that the parties don't prevail upon the STB to extend which we hope that we don't see requests for extension, but that is the reality that you may want to ask future panels about today because you will hear a lot about the lengthiness of procedures. Very often, it is borne out by the repeated requests for extensions by both shippers and railroads.

Mr. SHUSTER. What is the time frame?

Mr. NOTTINGHAM. So it is eight months gets you a decision under that. Under the slightly more complicated $5 million simplified stand-alone cost procedure, you get an answer in 17 months, which

for complex civil litigation with $5 million on the table is a great improvement. We are going to do our best to stick to that.

Today is probably a good opportunity with the audience we have through the internet and here for me to say that we will be looking at extensions very tightly and we will not, if I have anything to do with it, just be granting them as quickly as we may have in past years.

Mr. SHUSTER. As the Chairman said, I am sure we will be calling you back because we will be watching, watching closely. I think it is extremely important that we do streamline it and get it down to where small shippers can get in there and get relief if it is necessary.

The fuel surcharge situation, I have seen some advertisements on the Hill. You commented it on it briefly, and I think Dr. Mulvey, you had commented on it. Can you explain that again to me?

Did shippers come in and file cases or not? I am not quite sure I understood that.

Mr. NOTTINGHAM. A lot of this transpired before I was on the job, but I am told by our staff, who searched the records very carefully, that we have to this date never received, this Board in the last period of years when this issue has been playing out, a formal complaint from any shipper about a specific case of fuel surcharge, misconduct or abuse or unreasonableness.

Now the Board, under its own authority—and I would be happy to let my colleagues address this because they should get the credit for this—actually heard about this issue because we are constantly meeting with shippers and stakeholders and others, that this was a problem. Under our own authority, we actually initiated a sweeping industry-wide investigation and hearings and put an end to the practice.

It was an outrageous practice, personally, if I might say, where railroads were actually asking shippers to pay something called a fuel surcharge that had no relation necessarily to the use of fuel by those shippers. How it lasted and played out as long as it did is a mystery to me, but I am pleased to be part of the group that actually put an end to it. If we ever do see a formal case brought to us, we will take a good look at it.

Mr. SHUSTER. Dr. Mulvey.

Mr. MULVEY. The advertisement that you saw in Roll Call, I guess the other day, didn't refer to the STB's finding that the fuel surcharge was an unreasonable practice which we did find. It complained that we didn't make it retroactive, that the shippers had already paid all these fuel surcharges and they did a calculation which said that the railroads made $6.4 billion above and beyond what was justified with these fuel surcharges.

Now you will be hearing from the railroads later, and they very much dispute the calculation. Clearly, to the extent that these fuel surcharges were unreasonable, while they were in place they were unjust, but we decided to go forward with the fuel surcharges rather than try to rebate those that were already paid. But that is what the complaint in that ad was.

Mr. SHUSTER. Dr. Mulvey, I wonder if you could shed some light on the 180 percent of revenue to variable cost rates. We keep hearing that talked about, and it is my understanding it wasn't devel-

oped very scientifically as many things on Capitol Hill aren't developed very scientifically. So can you talk a little bit about that?

I think a lot of people and I don't know about other Members of the Committee's understanding of it, but I think it is important as to where did the 180 percent, what does it mean, is it a scientific number.

Mr. MULVEY. Well, the actual number itself, 180 percent of variable cost, it is my understanding that it was decided on by one of the staff people on the Hill many years ago late at night.

Mr. SHUSTER. You are pointing to John.

Mr. MULVEY. It wasn't John, but it was a staff person apparently, but there was a lot of evidence it had to be somewhere near that number.

Revenue had to be greater than variable cost obviously because it has to cover fixed costs. The presumption is how large are those fixed costs and how much more then the fixed costs must revenues be to make sure they are covering all the out of pocket or variable costs as well as making a return on investment and having enough money to replace capital.

The actual number, people talked about different numbers, and then finally it was set at 180 percent. It is not based on any kind of scientific knowledge that I know, but basically it is somebody's best guess.

Mr. SHUSTER. Mr. Chairman, I wonder if I may ask one more question. My time has expired.

Mr. OBERSTAR. Sure.

Mr. SHUSTER. Ms. Hecker, you had mentioned that there has been no effective relief to the shippers. At the same time, you said the rates are actually below what they are 1985 rates. When I hear that, I think, well, rates have been reasonable. So is there relief necessary?

At the same time, my understanding is there have been very few, especially small shippers, relatively few cases. Can you explain that to me?

No relief has occurred. Is that because there have been no cases brought because it is too expensive or is there no relief because the rates have been relatively low?

Ms. HECKER. I think if you are able to stay for the next panel, I am sure people will tell you far more eloquently than I can the specific concerns.

Mr. SHUSTER. I intend to.

Ms. HECKER. Basically, as I mentioned, while we report aggregate data, that when you go deeper into it, there are these pockets where there appear to be captive shippers, and it is indicative. It is illustrative. The kind of work that we were able to do, given our data that we had access to, but there appear to be some captive shippers who are paying substantially more, so even though overall on an aggregate basis, rates might be going down

Don't forget there are these costs transferred. I am sure you will hear more about that too.

So you have to look at a complete picture. There are these pockets where there could be shippers who are totally captive and while there is the rationale for differential pricing, there is the process that is supposed to be there to protect from unreasonable or exces-

sive prices. Basically, as you have heard, nothing has ever gotten through the process.

Mr. SHUSTER. That is obviously a big, big concern of ours here.

You mentioned out West, I believe it was, 300 percent of revenue to variable cost. Does that include large fixed or large capital investments?

I know out west they have double and triple tracked out there to try to move coal.

Ms. HECKER. I don't believe it is just the western areas. I remember that West Virginia was one of the States, and there are pockets. Those were just States that there were some pockets of it. So it is not just one area.

Again, that was just an illustrative piece of data, and that is why we are pleased that the Board is commissioning a far more comprehensive and rigorous study.

Mr. SHUSTER. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. The Chair of the Rail Subcommittee, Ms. Brown.

Ms. BROWN. Thank you, Mr. Chairman.

I guess what still stands out most in my mind is that the rail industry is operating in the black and that is exactly what we want. I have been reading these 2,000 letters that I received, and it is surprising that it is comprehensive where I have gotten them from, particularly the number of letters I have gotten from people in agriculture, grain, coal.

One of the statements is that this bill is a one size fits all type of remedy that will not achieve the desired goal. What is the desired goal?

I guess I want to go to the Board and ask, in the instance that you have enacted some additional relief for the shippers, can you expand on that? Does that address most of the pricing that the small shippers have expressed their concern?

Mr. NOTTINGHAM. Madam Chairman, if I could, first of all, your reference to the thousands of letters that you reference, it is a good reminder. I know here at the Board, we, of course, spend most of our time working with folks who are not happy with the current system of regulation, and that is understandable. People who are not satisfied are the first ones to come to Washington and petition for change, and that is the way it should be.

Our system of rail transportation, though, is so big and enormous and so important to our economy. It is always important to not forget that there are thousands, hundred of thousands of other shippers busy moving product by rail in a system that overwhelmingly works well and is a model in the world for an effective freight rail system.

Yes, we have got challenges and problems. Yes, this Agency, STB, has its work cut out for us, and we embarked on an extensive series of reforms. That gets to your question.

I believe that our new simplified procedures for resolving small and medium size rate disputes will give shippers a significant new avenue to come to the Board and actually bring cases and get results.

I believe that our pending—and we are waiting for comments to get finalized this week—rule on the cost of capital decision, and we

are keeping an open mind, of course, as the Administrative Procedures Act requires until we see all the comments and responses. We will come in during October and by the end of this year we hope to have something to say in final form on that.

These actions and others will make a real difference for shippers. Now I am not going to sit here and say that when you have this hearing in six months or a year or one month, that you are going to have a room full of 100 percent happy witnesses. Looking at the history, going back to the 1800s of this Agency and our predecessor, that would probably be unreasonable for me to say that to you.

Ms. BROWN. I would like to hear from the other board members. Also, it is still going to take about eight months. Is there anything that you can do to cut that time down?

The cost is a factor, but how long it takes these things to be resolved is another factor.

Mr. NOTTINGHAM. I know. We are sympathetic. Eight months is a long time. We put the challenge to our staff and tested them over and over again. Give us the fastest process that, remember, allows for discovery.

This is still complex civil litigation with discovery back and forth, and the parties tell us that they do need some time to make their case, and to bring it. The railroads do get the procedural opportunity, obviously, to provide information and make their case. And so, that literally was the shortest feasible time period.

We wish it could have been a lot less, but that was the quickest amount of time we felt we could have a reasonable process that would survive, frankly, survive the kind of appeals that we expect are coming. Anytime you try to change something in Washington, in a number of ways, we are getting challenged every step of the way in the courts of appeals from all sides.

It is kind of interesting. Somehow, you are making all sides unhappy. You are either doing something right perhaps or maybe not, but we think we are on the right track.

Ms. BROWN. Dr. Mulvey.

Mr. MULVEY. Yes, I agree that we do get a lot of complaints though not only about rates. On rates, we do hear from the captive shippers. But other shippers, who aren't captive or have alternatives but rely heavily on rail, also complain about cost of availability, how long should things take, delays, et cetera.

We don't have formal procedures for all of these. We do have informal procedures. We have a grain car council that we meet with a couple of times a year to make sure that the grain cars are going to be available to meet shipper needs, so they have an understanding of what the crops are going to look like and what the needs are going to be, where they are going to be.

We have a group called the Rail Shipper Transportation Advisory Council or RSTAC that discusses some of the upcoming shipper needs and how shippers are viewing the quality of service, and they meet quarterly.

We just established a new Committee called the Rail Energy Transportation Advisory Committee which will focus very much on the availability of rail cars and equipment to meet the energy

transportation needs, not only coal but also biofuels and other materials.

We try to work with the railroads and the shippers to resolve some of those complaints and some of those issues in an informal manner.

Ms. BROWN. Did you want to respond to that, Ms. Hecker?

Ms. HECKER. No, I have nothing to add.

Ms. BROWN. My last question, the Board is currently dealing with some competition barriers. What additional issues with competition does the Board plan to do to address these additional issues?

Mr. NOTTINGHAM. Thank you, Madam Chairman.

We do continue to see competition problems and challenges across the Country. It is one of the reasons we commissioned this million dollar study, and we expect our consultants out of Madison, Wisconsin to go out and spend quality time with many stakeholders, GAO, others, shippers and railroads to really help us come up with some more recommendations in those areas.

I don't have the complete menu of solutions in my mind yet, but we have our work cut out for us.

Of course, in our work as we see mergers, which in recent years have mostly been coming out of the short line sector, we do make sure that shippers are protected.

We have a big merger heading our way. The paperwork hasn't been filed yet, but it has been in the press involving the Canadian Pacific and the Dakota, Minnesota and Eastern railroads. That could have some important consequences for competition, particularly the possibility of getting a third major railroad into the Powder River Basin.

Our Agency has already done much of the environmental work which has taken years to develop, and we survived huge lawsuits from communities and individuals who don't want to see additional railroad track put through their towns.

And so, that brings me back full circle to what we really need to see here which is some serious construction of new railroad track across our Country. We are so far past the day when our top problem is too much track in too many communities that needs to be abandoned. I look forward to the day when we don't have any abandonments in our docket, and we have got nothing but applications for new line construction.

That is what we need both in your port community of Jacksonville which you were kind enough to show me the real opportunity you had there to get some of that traffic off of the trucks and the highways and really develop the rail system. Unlike some other systems out there, there is really room for the rail system to grow in many important places.

Ms. BROWN. Thank you.

Mr. Chairman, are we going to have another round?

Mr. OBERSTAR. Oh, yes, we will.

Ms. BROWN. All right, thank you.

Mr. OBERSTAR. Mr. LaTourette.

Mr. LATOURETTE. Thank you very much, Mr. Chairman, and thank you all for you testimony.

When Ms. Hecker was speaking, I wrote down a couple of things, and one was I wrote down at one point she said small pockets of captive shippers and another time, pockets of captive shippers. That leads me, I think, to my first line of inquiry with you, Chairman Nottingham.

She also indicated it is difficult to get around what is a captive shipper and what isn't a captive shipper.

But from your perspective, you know there is a number of pieces of legislation floating around here, one by the Chairman, that attempt to address the issue of captive shippers. When you, as the Board, look at rail shipments as a whole, what percentage of those shipments do you consider to be captive?

Mr. NOTTINGHAM. When you actually look at everything that is moving under contract that is outside of our review, everything that is moving under an exemption because it is intermodal, for example, and has the benefit of competitive options, and you peel it all away as I outlined in my statement, Mr. LaTourette, we are really talking about less than 10 percent of all the Nation's rail traffic that is viewed by us from a technical perspective as captive.

Now are there others who feel captive sometimes? Probably yes. Are all those captive on every day of the week all year long, feeling completely mistreated? Probably not.

That is where it might be a pocket to some but, of course, if you are that captive and it is your family farm or your family business, you are not in a pocket. You are in a huge hole, and it is understandable why those folks feel the way they do.

Mr. LATOURETTE. Then that gets to my next question. When you used the word, intermodal, some members of this coalition that are behind Mr. Oberstar's bill, the C.U.R.E. Coalition, I think they are called. I know I speak at my peril because Mr. Baker is to my left as I ask this question.

There was a box company from my district. I said, well, if you are complaining about the rates that the railroads are charging, why don't you put it on a truck?

They said, well, because the truck is more expensive.

My question to you is do you consider someone who defines himself in that circumstance, that has an intermodal option to meet the definition of a captive shipper?

Mr. NOTTINGHAM. Well, one of the important considerations we look at, of course, is does the shipper have a meaningful alternative. I am not an expert on the box industry, but typically if it is just boxes and they are not made out of heavy steel or something, trucking probably could be an option.

We look at each market, though, in each specific case to make that determination, to see whether a shipper really does have a meaningful option.

If you are a coal mine, though, in the Powder River Basin of Wyoming or Montana, trucking is just not a reasonable option to move your coal a thousand miles. So we have seen most of the big cases in recent years have been right there in the Powder River Basin and dealing with coal and utilities unhappy with the rates they are paying. You will hear much more about that this afternoon. I know from having seen some of the statements.

Mr. LATOURETTE. Okay, thank you.

Commissioner Mulvey, my question to you is that in light of the fact that the STB has come up with recent decisions on the cost of capital and the small shipper rate relief that has been discussed by Chairman Nottingham in response to other questions, would you say that most of the issues, at least that I get into my office, the complaints by the shipper groups, have been addressed by the actions that the Board has already taken?

Mr. MULVEY. I guess in a word, no. We hope that will be the case. I mean it was meant to do that. My suspicion, of course, is that while these will go partway in meeting some of their needs, I think there will be still be complaints about the Board processes.

Some of the shippers feel that, for example, our relief numbers, $1 million under the three benchmark approach, $5 million under simplified guidelines, are too low. That is a five year figure. It is only $200,000 a year under the first and a million a year for the second. So I think there will still be complaints. It goes part of the way, but I would be very, very surprised to see our phones stop ringing.

With regard to one thing the Chairman said, I want to make it clear about captive traffic. Some of the traffic that is captive is under contract, and we do not regulate that. It may still be captive, but it doesn't come into our purview until the contract expires and it comes down to a common carrier rate.

Then there is also traffic that is captive to railroads, that is to railroads by traffic, but it is not really feasible for that traffic to move by barge or by truck.

Mr. LATOURETTE. Okay, thank you for that clarification.

Ms. Hecker, to you, towards the end of your testimony, you indicated that the STB has taken some actions, and I assume that you are talking about the two improvements that I just asked Mr. Mulvey about. You also indicated that it may be too soon to pass judgment on how those changes affect the issues that are under study by your organization and also the issue that is before this Committee today.

How long do you think we would need to wait to determine whether or not those changes are actually working and if Mr. Mulvey's answer in a word, no, might be in a word, yes, after it has had some time to work?

Ms. HECKER. Well, let me preface by saying that we haven't even had the opportunity, given our work was completed a number of months ago, to systematically review the major actions. So I answer with only a broadest brush of what the measures are and therefore what kind of time frame might be necessary to assess them.

The main one that we had recommended was the study, and that is not done for a year. Surely, I think, there could be very meaningful results. I was encouraged that the study group would have the same authority and access that the Board had. That was one of the concerns we had in the study being contracted out.

So that time frame is one that I think the Congress would be in a position to have very high expectations from the Board to not only forward you a copy of the study but to comment themselves what their strategy is, what they read in it, what they see, whether

there is consensus or whether there is a mix of views about proceeding. I think that is a very important window.

These measures, I think there are still some legal disputes on the way. Obviously, one often has to wait to see whether even new processes are upheld. So I think it is certainly at least a year to look at the potential impact of new procedures.

The one not yet done, as I mentioned I think could be the most important of all, and that is changing the way revenue adequacy is defined.

Mr. LATOURETTE. I thank you.

Mr. Chairman, I am still smarting over the theft of my chief of staff by the Surface Transportation Board, but I tried to be tried to be polite to them notwithstanding.

Mr. OBERSTAR. Cross-fertilization is important, though, in this town.

[Laughter.]

Mr. OBERSTAR. Mr. DeFazio, since the gentleman was called to other duties during the opening remarks, if the gentleman wishes to make an opening statement.

Mr. DEFAZIO. Well, thank you, Mr. Chairman. At this point, I would just proceed to questions if I could. I appreciate the offer. I had to run to the Homeland Security Committee for their minor portion of the Coast Guard Reauthorization. They are building on our good work over here.

I just want to further pursue this definition of captive. I am a bit puzzled to tell the truth.

Rail is much more fuel efficient generally than truck. I don't know how it compares. I mean basically if we are looking at lumber, it is two and a half truckloads on one rail car. I think it is about three times as fuel efficient, as I understand, over a longer distance. I have a lot of lumber producers in my district.

So the question is if they have access to trucking but trucking, because of the laws of physics, is going to be much more expensive than the rail, we still consider because someone could theoretically put it on a truck, they are not captive. Is that the way it works?

Mr. MULVEY. Well, theoretically, almost anything can be carried by truck.

Mr. DEFAZIO. Right.

Mr. MULVEY. If you go to the Powder River Basin, for example, you will see that when the coal comes out of the ground, the first thing it goes on is a truck with eight foot wheels. Theoretically, they could go on the highways. The highways wouldn't last very long, but theoretically that could happen.

But the reality is there are some commodities for which truck or other modes of transportation just aren't feasible. Coal, for example, virtually has to travel by rail.

The cost, we have a process called exemptions, class commodity exemptions. We decided that a number of commodities are modally competitive and therefore we do not regulate them. Now, we made those decisions back in the eighties and the nineties. One of the things I had in my statement was that we need to look at those commodity exemptions. Over time, circumstances change and with rising fuel rates, with the shortage of truck drivers, et cetera, it

may very well be true that some things that we have said historically are modally competitive may not be.

I think we need to review those exemptions periodically to decide whether or not things are captive or whether or not they are modally competitive.

Mr. DEFAZIO. Right, but if there is a contractual obligation because it spun off a short line, there is no way to void that contractual obligation and/or can you regulate in that area if you determined that they are captive but they are only captive by virtue of a short line which is under contract to deliver to one Class I?

Can you do anything in that case?

Mr. MULVEY. If they are under a contract to a short line which is under a contract to a Class I, once they are into contracts, we cannot do anything until the contracts expire. We did talk about the short line being under contract, the paper barrier issue. Again, too, it is one of those things.

Mr. DEFAZIO. Some of those are perpetual.

Mr. MULVEY. Some of those are preventable. As I said, I have been very critical of paper barriers. I have dissented on several cases when paper barriers have been involved. Right now, they are accepted and, no, we can't do anything about that then.

Mr. NOTTINGHAM. Mr. DeFazio, the so-called paper barrier or interline agreement issue is very much with us from a regulatory perspective. We hope to have something to say publicly soon. Hearings were held last summer in 2006, and it is a very important issue. We are going to have something to say about that.

Mr. DEFAZIO. Does that apply only to future agreements or is there any way? I mean there is contract law and all that. I don't know whether there is any way to deal with existing agreements.

Mr. NOTTINGHAM. As much as I would like to have a full discussion on this today, I really have to be careful or my lawyers will worry.

Mr. DEFAZIO. You are in the rulemaking process.

Mr. NOTTINGHAM. We are in the rulemaking process, but let me say something to answer your question.

Hypothetically, a shipper who only has a rail option and that rail option is tied up, for lack of a better word or phase, in an agreement with a Class I, that could, hypothetically, be a captive scenario, so depending on the facts and everything. We could see a case like that in the future.

Mr. DEFAZIO. When will we see a rule? When do you think there will be a rule on the paper barrier issue?

Mr. NOTTINGHAM. I think within a month. I always need a second vote. I am always careful to point that out. It is a three person board as you see here. We should have something out very soon.

Mr. DEFAZIO. Okay. I am trying to drill down to what is real and what is theoretical.

We want to become more fuel efficient as a Nation and, in many cases, being more fuel efficient is also going to be more cost efficient because of the cost of fuel. In many cases for a lot of heavier products, that means movement by rail, but if there are other impediments to better utilizing the rail system which relate to contractual agreements between Class IIs and Class Is or other things.

I mean the reality is in my district. I have a lot of people who are on a contracted short line. Burlington Northern comes to the north of Eugene, but they can't get to Burlington Northern. So they can only go to UP because they are not allowed to get to BN unless they want to truck to north of Eugene which becomes pretty inefficient with the unloading.

That is one side.

The other side we have to consider is how do you provide for an industry that is stable and can generate the revenues it needs to make investment. But, in a deregulated environment, of course, we aren't guaranteed that the profits that might come from captive shippers or access charges are going to necessarily flow to investment because you can't direct them to make investments, right? That is beyond the role of the STB at this point and time.

Mr. NOTTINGHAM. Correct.

Mr. DEFAZIO. In the old days, of course, it was a whole different system.

I guess the question, in listening to Mrs. Tauscher and some of the other remarks here, is how we can be creative and balance these interests, both helping the shippers and assuring the Country that we are going to best utilize this resource which is more fuel efficient, which is the interest of our businesses and our national economy.

Yes, I guess that probably gets beyond your rulemaking, but I would be interested in any ideas you have along those lines outside of your normal day to day activities.

Mr. NOTTINGHAM. We would be happy, sir, to come brief you as soon as we get this rule out. That should be a little better time procedurally. We can have a good, full, open discussion about it and explain to you what is in there.

Mr. DEFAZIO. Sure.

Mr. MULVEY. We also talked about the investment tax credit that the railroads are looking for, and I also mentioned former Congressman Lipinski's suggestion for a railroad trust fund, whereby you would fund it similarly to the way the highways and airplanes and roadways trust funds are financed and use those monies to invest in the infrastructure to expand the capacity to meet the projected growth needs.

There are a lot of difficulties in how you would actually do it, but nonetheless there needs to be more money put in the infrastructure than the railroads can afford to do out of retained earnings.

Mr. DEFAZIO. Right, that would get to the unique partnerships that Mrs. Tauscher was referring to.

My State is doing that with something called ConnectOregon where they are partnering with a freight railroad to build more sidings, to mitigate congestion in the hope of avoiding more trucks on the highway and other costs that flow through to the rest of society and also hopefully to more efficiently move the passenger trains through that same congested area.

Partnerships like that, I think, could be very valuable. I am open to ideas along those lines. So thank you.

Thank you, Mr. Chairman, for the time.

Mr. OBERSTAR. I thank the gentleman.

That is an interesting observation that the gentleman from Oregon made. The State is engaged in building sidings and other capital facilities for railroads. Is that a subsidy to railroads?

Is that a kind of government intervention that the railroads would not welcome?

Mr. DEFAZIO. Well, I think these days, there is a new generation of management that is more interested in creative partnerships like that with the State of Oregon or at least in our part of the Country they are interested in it.

Mr. OBERSTAR. Let us hope that is the case. I thank the gentleman.

The gentleman from Louisiana, Mr. Baker.

Mr. BAKER. Thank you, Mr. Chairman.

Ms. Hecker, I was recently provided a copy of an executive summary by the American Chemistry Council of a study engaged by them with Snavely King, which looked at fuel surcharges over the period of 2003 through the first quarter of 2007. The simplified conclusion of this lengthy report was that over the period, it appears that there was about $6.4 billion in rail overcharges coming from fuel assessments.

Have you had opportunity to become familiar with it as far as the GAO look at the fuel surcharge issue previously?

Ms. HECKER. No, I have not looked at that. I think you heard quite explicitly, though, from the board members about their concern about this, their action, and I think Dr. Mulvey made clear that one of the issues here whether there is a retroactivity in some of the actions of the Board.

I think there is a recognition that there was a very inequitable application of the way the surcharges were levied and that it was to the serious detriment of the more captive shippers because it was percent-based on the revenue.

Mr. BAKER. I just really wanted to establish as to whether the GAO had opportunity to examine it.

If not, Mr. Chairman, at the appropriate time, I am sure you have this data, but I would provide you with this information and perhaps request could be made of the GAO to examine this issue because I think it goes toward the overall governance question about how matters of this import should be addressed. I will discuss that with the Chairman at the appropriate time.

Mr. OBERSTAR. I would suggest the gentleman submit the data to GAO, and we will direct them to respond to the Committee.

Mr. BAKER. I thank the Chairman for that assistance.

Mr. Nottingham, there is some question as to how frequently the STB has found significantly in a shipper's favor. For the record, I note that there has been representations made that the findings are relatively balanced.

In looking at the record from my perspective, in 2001, in the case of Wisconsin Power and Light, the STB is generally viewed in that instance as having made a measurable decision in favor of the shippers. Since the 2001 decision to date, is there another decision of similar scope and consequence to Wisconsin Power that you could make us aware of?

Mr. NOTTINGHAM. Congressman Baker, most of the attention we see in this area—we have had some comments and I know you will

hear much more from later panels—does focus on this one type of major, major case. These are multimillion dollar, sometimes tens of millions. Sometimes the amount in dispute can be upwards of over $100 million, and you think about the possibility of the Board being asked to put a 10 or 20 year rate prescription in place.

In my look at the record, having come to the Board just 13 months ago, there seems to have been a period of years in the nineties where there were a number of shipper wins, so to speak, followed by a period of years more recently, since 2001, where there have been some shipper defeats.

I was told before I came to the Board, don't fall victim to the appeal of trying to decide one case one way and another the next just so you can say that there is sort of some kind of 50-50 ratio. We have to look at these cases, obviously, in a very exhaustive manner. They are fact-specific.

I will say, though, while those cases get a lot of notoriety because they are big and because law firms and consultants convince their clients to part with millions of dollars to pursue the cases in a way, frankly, we never require or ask anybody to spend millions, but the process has somehow developed out there to become that which is a problem that we continue to work on.

Remember, we have about 1,300 cases and proceedings and actions we do in an average year. I would say hundreds of those are to the benefit, if not most, of shippers. You may never hear about them because they might be small from a national perspective.

But if you are a shipper in Defiance, Ohio, and you petition the Board, which is a case we decided against a major Class I this past year about a Class I cutting off a short line's access, hurting shippers potentially. We forced that Class I to put that connection back in place at a significant cost and immediately. That is just one example. I could give you a list of 1,300 cases.

But, yes, in the very large, hard-fought major cases, we have seen a string of railroad wins in recent years.

Mr. BAKER. That brings to the forefront the question of conditions to file with regard to fees that are necessary. Can you give the Board's apparent thinking with regard to the relatively high rates for filing as contrasted with, say, an action in district court where it may be protracted litigation?

There may be a series of expert witnesses, but generally the court does not require filing fees that prepay all future anticipated administrative costs.

I know you are working toward an imposition of a new system which has only been recently deployed for small filers, but I am really asking the question from the big filers' side. What rate relief could be given there on facilitating access to the Board in a more financially painless way?

Mr. NOTTINGHAM. Thank you for that question because we do see a lot of misinformation out in the popular media about fees.

Let me be the first to say, we take no pleasure in imposing fees. Personally, I wish we didn't have to charge a fee to anybody. It is aggravating, and it just creates, frankly, some ill will that we prefer not to engender.

We do this because there is a statute that requires Federal agencies that are charged with resolving private sector disputes, such

as our Agency, the Independent Agencies Act, that requires that we seek to recover our costs. Because these cases require enormous STB time and money, we have had a policy consistent with statute to charge fees.

Sometimes they are as low as a dollar a page for some small proceedings, $35 fees and now in the small cases for up to a million dollars, it is $150. Then it goes as high as merger fees for railroads merging which are very high. In major cases that you probably have heard most about from your chemical industry constituents and others, it is a high fee.

I would say we have written to the Congress on this issue, that if we get some type of statutory relief or some type of appropriations relief that relieves us from that obligation, we would be happy to get out of the fee business, but until it happens, we feel like it is our obligation to follow the law.

Mr. BAKER. Well, the bill now pending would reduce that fee to the common district court filing rate which you would not necessarily find an objectionable modification.

Mr. NOTTINGHAM. Sir, with one key proviso because I know your constituents and our stakeholders want prompt action by the STB and have complained about how long it has taken. Be sure we have the resources coming through the appropriations process to counterbalance that because if we can't hire up the staff to pursue and resolve those cases, you will just be creating another problem.

Mr. BAKER. You raise an extremely good point. I am concerned about the current three year period to get a decision out typically, which I think is an unreasonable regulatory constraint on an applicant. Whether the fees are high or not, the time to get a yes or no, you at least ought to be able to get a friendly no in a few months.

Mr. OBERSTAR. Would the gentleman yield?

Mr. BAKER. I would be happy to yield.

Mr. OBERSTAR. Just supplementing the question, a very, very appropriate question and a very thoughtful comparison with U.S. District Court filing fees, what relationship is there between these fees and documented real costs to the Board of processing a case? I have never seen anything on that.

Mr. NOTTINGHAM. We would be happy to follow up in writing on that, sir, because it is a question we have fielded before.

We did a very extensive and exhaustive hour by hour workload assessment study. We have updated it recently, and I checked it out because I was astounded when I first heard about these fees, to be honest. It is unusual. I can tell you there is solid data and documentation to back it up. The fees are directly proportionate to the amount of time required by these cases.

Remember, these are taxpayer hours, your Federal employees at work, and it is to resolve a private sector dispute often between Fortune 100 or 500 companies who do have a lot of resources. It is a policy question. Who should bear the cost of those cases, the taxpayer completely or litigants through the fee?

We will implement whatever the law tells us to do. Right now, it tells us to collect a fee.

Mr. BAKER. I thank the gentleman.

I would merely point out that the application of the fee is not objectionable as long as it is related to services rendered, but it is the

up-front collection before we have gone through the process. Even some staged fee assessment would be helpful to people. At least they know what they are getting into.

It is like sitting down with a lawyer to get advice. You want to know when his clock starts, and you want to know what it costs per hour. You may have a 10 minute conversation or it might be 10 days, but at least you know going into it where you are.

In this case, somehow the Board is predicting the overall resolution cost at the time of filing, which seems a bit out of step with the likely consequences of all the complications that the Board is engaged in, in making these judgments.

A bigger question, what is your view, Mr. Chairman, of the STB's jurisdictional reach in relation to all operating rails?

Is every rail in the Country subject to your review?

Do you see yourself only as a responsive entity where differing parties come before you?

How do you define the jurisdictional scope of the STB?

Mr. NOTTINGHAM. If I could just real quickly say and commit that I will look at the staged fee suggestion. Frankly, it is the first time I have heard that proposal. I think it makes good sense. We do waivers of fees for local governments and public entities and other extraordinary cases, and staged fee collection is something we can take a look at.

Mr. BAKER. You can do it in relation to credit risk. If it is Fortune 500, you have got a pretty shot you are going to find. They are not going to want to make you mad.

Mr. NOTTINGHAM. Obviously, we don't spend all of our hours in the first week. So it makes good sense. Thank you.

On your actual question,—I appreciate your patience—I believe the Board has broad scope to look at especially practices, as Ms. Hecker mentioned, looking into the records and gathering information from the freight rail sector in its entirety to look at practices in a very sweeping way.

We have broad, broad powers. Of course, we have a hugely important power which is to review mergers, and that is where we actually have the ability to put in conditions that really can provide meaningful reforms in the area of access or shared right of way and other arrangements that we have seen play out in different merger approvals.

In our more discrete area of rate disputes, there, the Congress has limited our jurisdiction, and so we are mindful of those limits. But I am not one to say that the Board can't address or take on the big issues of the day because there is some technicality that says we can't.

Generally speaking, I am the kind of leader and manager that wants to take on the challenges, fix the problems and sort of don't ask permission. If we have got a responsibility consistent with the spirit of the law and statute, we will move forward.

Mr. BAKER. A reason for asking that is to make sure I understood the implications in your September 5th STB release talking about simplification of rail rate dispute mechanisms.

In the fact sheet that accompanies that release, there is a statement that this new mechanism—I am paraphrasing that from the earlier page—provides access to rate reasonableness process for all

sizes of rail rate disputes, in particular to the estimated 73 percent of challengeable rail traffic for which the large rate case process would be financially impractical.

That struck me that if your jurisdiction is national in scope and the finding in this release is that 73 percent of rail traffic which would not be able to normally utilize the large rate resolution process, I am trying to create an understanding with the Board.

There is a reason why people feel frustrated and call themselves captive for whatever reason. If they are physically captive and there is only one rail in and out or if they are financially captive and don't have the resources to come to you with an application for relief because there is price gouging involved, they are still trapped.

I think this speaks to the urgency of why, at least I know I am and I believe Chairman Oberstar is proposing the legislation that is being remedied, it is more than casual discomfort. There is a business consequence.

I have four plant managers who were in an internationally competitive market and when assets are depreciated in the current site because of the cost of rail traffic in for raw material and finished product out, which is the lifeline of the industry, they are considering, strongly, relocating outside the United States. Now there are other contributing factors, of course, but the rail issue is at the top of the list.

We need to have some way of expanding the scope of reasonableness in examining these rate applications. Certainly, we have to get past the stand-alone construction idea where you are going to build your own rail system and prove to the STB that that is more economical than what your current provider is giving you.

Some of those machinations that we require people to go through don't yield logical results because they are not capturing the current state of economic factors, and I think that is the frustration, but that 73 percent figure really jumps.

I know I am out of time. I have one last thing. Well, actually, I have much more, but I have got one thing I really need to get to.

In the bill before us today, H.R. 2125, it makes some really simplistic changes. It doesn't re-regulate anybody. It doesn't diminish the STB's review right or process. It doesn't even tell you that you need to go to a different capital asset model. It doesn't do any of that.

What is it in the bill, in your opinion, that creates any problem for the administration of STB business?

Mr. NOTTINGHAM. Thank you for the question. If I could quickly just address the 73 percent issue, if that is okay, because I felt personally that was important that we put that in our press release.

Mr. BAKER. I was surprised.

Mr. NOTTINGHAM. People would often tell me, often Members, when I was a staff rep in this body, and some of my happiest professional memories are from working in this body. People tell me all the time: Try to simplify what the STB is doing. Make it understandable and make it work.

That is what I have been focused on the last 13 months. We looked at this issue of how to come up with a simpler and stream-

lined and cheaper procedure to resolve rail rate disputes. Nothing stood out more to me than the fact that the major rate case dispute process had gotten so expensive, three to four or more million dollars per side, railroad and shipper.

When you look at the average shipments around the Country, the amounts that were being disputed in a case, basically 73 percent of all the shipments out there in the Country are lower than that three or four million dollar threshold, meaning why would they ever bring a case if they couldn't get at least some money back out of it. And so, that underscores to me the importance of this new forum that we have created, two options and a shipper gets to choose and one only costs $150 and you get an answer in eight months.

Now, H.R. 2125, we have not as a Board, as far as I know, been asked for any formal views on that. We are not on record. I won't speak for my colleagues. I know we probably have different views on it.

I will say just personally as one board member, I do have some concerns with some of the provisions in the bill. At a time of great change, when we are moving forward with several critical regulatory initiatives, not the least of which is our pending cost of capital measurement, to see the Congress moving forward, sort of changing the rules. Now, we will earnestly and in good faith implement any set of rules the congress puts in place, and so we respect that completely.

But you asked the question. I need to say, and it is really in the area of access to private property and how we ask the railroads or tell the railroads that they have to allow competitors access to private property.

Mr. BAKER. Well, I will follow this opportunity up with correspondence to ask in the manner that is best appropriate, whether the Board chooses to do it as a Board. Whether you as an individual choose to give us your personal observations, I would just like to have the view of the experts about the mechanisms in the bill that will create in your view any operational problem on either side of the fence.

What we are trying to accomplish is an appellate process to give people options and to facilitate lower cost access to regulatory relief. Nothing in the bill, and I have thought about this for some time, would affect the capital asset model nor any decision the Board might make about the cost of capital. So I would hope that we can follow this up with correspondence quickly and that we could get some indication from you as to how we could work together on the remedy.

Thank you very much, sir. I yield back.

Mr. OBERSTAR. I thank you, Mr. Baker, for a very thoughtful line of questioning. I would observe that if the Congress and the Board are working on the same issues toward the same objective, then legislation should not preclude Board action.

Mr. Larsen, you have been very patient.

Mr. LARSEN. Thank you, Mr. Chairman.

Ms. Hecker, first off, between all the questions that have been asked and the issues currently before the Board that we can't talk

about, I have run out of a lot of questions to ask, but I do have some that haven't been asked yet.

For Ms. Hecker, you had a statement in your report regarding a divergence, so I would like you to explain it for me. How do you explain the divergence of a decrease of potentially captive traffic while traffic traveling at rates above the threshold for rate relief have increased?

It seems to me that those are divergent statements. How can those two exist? Can you explain to me?

Ms. HECKER. Well, first of all, I want to go back to Dr. Mulvey's criticism that the information, the data on the amount of traffic traveling over 180 is an illustrative piece of data, but it is a factual piece of data. It is the amount of traffic paying a certain rate in that ratio.

A subset of that is actually paying more. It is that simple. The universe is actually going, but there is a smaller group that is paying more. So you have captivity potentially going down, but for the ones who are captive they potentially may be paying far more, significant rates over that ratio.

Mr. LARSEN. A smaller subset is paying more while there is an overall number going down?

Ms. HECKER. Potentially.

Mr. LARSEN. Potentially?

Ms. HECKER. It is an illustrative piece of data. It is a rough proxy for captivity.

Mr. LARSEN. Mr. Mulvey, does that then get at your statement to say no evidence that competitive options have increased for these so-called captive shippers?

Mr. MULVEY. I think what JayEtta is referring to is relative captivity. In other words, the relative amount of traffic that is captive as to the expansion in traffic for the railroads is recent years has largely been intermodal traffic. That is where the real growth has occurred. That is not captive. So, therefore, captivity as a percent of total traffic would be going down.

But it would be difficult to infer from that that the number of captive shippers, the absolute number of captive shippers has gone down. That probably isn't the case because that would have required more firms entering the industry or existing firms going into those other markets, and we haven't really seen that happening.

So the number of captive shippers has probably stayed the same, but the relative importance of them compared to the overall market has gone down. In that sense, we don't disagree. I was concerned more about how it could be taken and how it was represented, that maybe things are getting better for captive shippers when I don't think that is the case.

Mr. LARSEN. I appreciate that. It is important for at least me to understand that as we discuss this concept of captive shippers.

I will also just note that every time I read captive in GAO's report, there are quotes around it. So I am assuming that the term, captive, is term of art. It is not really a legislative or regulatory term, is that correct?

Mr. MULVEY. That is correct.

Mr. LARSEN. Mr. Mulvey, you make an argument for a general power to investigation. Now are there other models and other inde-

pendent administrative or legal boards in the Federal Government that you can point to that would be a model of language for a general power to investigate?

Mr. MULVEY. I am not a lawyer, so I would not want to posit an answer to that. I can come back to you with some examples, but I am sure there are other agencies that do have investigative powers.

We had them, but they were taken. The ICC had them, but in 1995, in the ICC Termination Act, we lost those powers. Now if you look, for example, in our fuel surcharge action, we pretty much behaved as if we had that because it was on our own initiative.

Mr. LARSEN. Right.

Mr. MULVEY. But we could have been challenged on that, and we were not, but it could have been challenged. We think the Congress should clarify what our investigatory powers are.

Mr. LARSEN. Mr. Nottingham, when does the STB project completion of this independent analysis that we have been discussing?

Mr. NOTTINGHAM. In one year. We launched it a couple weeks ago, and they have been given a year. I believe the actual might be 13 months to be specific. I wanted to give them time to get around the Country, to get their hands around this issue.

It is a daunting enough issue that GAO, with all its skill and staff and having done an excellent job with their report for many, many months, even today says they couldn't actually get their arms completely around it, and they actually came forward with the idea to us, the recommendation to do this study.

It does take time, but we look forward to seeing the results.

Mr. LARSEN. Let me get my last question.

Ms. Hecker, with this study, have you examined the parameters of the study and is the methodology adequate and you believe it will get to some of these answers about an analysis of competitive markets that GAO requires to take a look at?

Ms. HECKER. We have not been given an opportunity to review it, and I have no information other than the press release announcing it, what the scope of the study is and the representations made by the Chairman today that the group would have the same authority and access to data, which was our concern when we made the recommendation.

Mr. LARSEN. Is that of concern or importance to you to be able to look at the parameters of the study as they move forward?

Ms. HECKER. Well, I would imagine it is kind of moot if the contract has been let. It would be what scope it is. I would imagine that we may be asked after the fact to review.

Mr. LARSEN. It might be moot if you say it is. It may not be moot if we say it isn't.

Ms. HECKER. I have no information to speak to the scope of the work.

Mr. LARSEN. Do you want to see the scope of the work?

Ms. HECKER. If you would like us to review it, we would be happy to review it.

Mr. NOTTINGHAM. Mr. Larsen, if I could just interject, we have tasked our consultant team as one of their first orders of priority to spend some quality time with GAO. They obviously haven't called Ms. Hecker yet—they will be—and your staff, so that the

consultant team can fully understand the report and vice versa to give an opportunity to brief GAO on anything GAO would like to know about the report.

Any recommendations or advice we get formally or informally from GAO, we will take a good look at. My general attitude is if the GAO gives some good thought to something, makes a recommendation, we are going to go ahead and implement it.

Mr. LARSEN. We want to be very encouraging in that.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you.

Mr. Moran, thank you for your patience.

Mr. MORAN. Mr. Chairman, thank you very much.

Generally, I know we are talking about captive supply here at this hearing, and clearly Kansas is not immune from those concerns with coal and grain shipments and chemical shipments, but let me ask about a broader topic.

It seems to me that rail capacity in this Country is less than it needs to be. My impression is that is a given, although I assume the markets ultimately determine what that capacity will be. But the demand for services exceeds the ability of the railroads to meet that demand.

Is there any measure that says that we are moving in the right direction or that demand for services and capacity will intersect in the near future? I guess this would be for the Chairman.

Mr. NOTTINGHAM. Thank you, Congressman Moran.

We held a major hearing on this issue in April, looking at traffic forecasts nationwide, short term and long term, the state of capacity. We actually asked a very diverse group of stakeholders. The hearing went, I think, 14 hours just as an example of the level of interest in this issue. It probably could have gone on longer. Just people got worn out finally.

What we heard from railroad CEOs, and you will have one of them before you shortly, and also leading shipper groups was complete—this is amazing actually—agreement on at least one issue, which is that we are not on pace as a Country to meet our rail infrastructure needs especially in the mid and the longer term, out 10 and 20 years.

While the railroads are spending, and you will hear more about this today from the railroad themselves, we are spending more than we ever have before. You have got to really dig into those numbers because the need is so much bigger than before. It is not just enough, in my personal view, to say great, we are on track because more is being spent than last year.

We have really got to look at these choke points in the system, the Chicagos, the Houstons, the Port of L.A., Long Beach and others, not to mention in agricultural country, to hold the railroads accountable for what they are really delivering in the way of meaningful infrastructure and investments.

But I would say that is the number one top rail policy challenge before us as a Country—how will we step up and actually build enough track in this Country to keep our economy moving because we pretty well know, I know from having labored in the highway sector for eight plus years at the State and Federal level, the highway system and the best planners there are assuming that the rail

system will continue to carry its share of the load. If that assumption starts to not hold valid, we have just an incredible problem in this Country.

Mr. MORAN. Mr. Clayton, one way that Congress attempted to address infrastructure needs in the rail industry is on the short line side. This Congress, three years ago, passed a tax credit for short lines and/or their shippers to utilize in improving the road bed, the rail line, bridges and try to move the short lines up to the capacity to carry 286,000 pound cars.

Any evidence at USDA that we are better meeting the needs in regard to agriculture, utilizing short lines, capacity increasing? Are things improving or continued problems into the future?

Mr. CLAYTON. Thank you, Mr. Moran.

I think the evidence is positive in terms of progress that has been made with short lines filling in, and certainly that plays a role.

I think also the evidence is fairly clear that overall capacity in our transportation network is really being strained. It doesn't apparently take much, a good hurricane, for example, where the barge lines have to shut down and we look to the rail system to pick up the slack and it is not able to do so. That, to me at least, suggests that we are running on kind of a razor's edge here in terms of margin of error and in terms of the state of capacity that is out there.

So, certainly, to your question, the short line piece is important. There has been progress there, but I think one still needs to look at the larger issue of capacity particularly as it interacts between the modes of transportation.

Mr. MORAN. That short line tax credit is set to expire in the near future, and there is legislation that I would encourage my colleagues to act on that would renew that tax credit. It is my impression it has made at least some difference in our ability to invest.

Mr. Mulvey, you are shaking your head. I am looking for an ally. I am happy to hear you saying something positive.

Mr. MULVEY. When I was working for Mr. Oberstar, I worked very hard on that bill, and I am very proud of the success we achieved with it. The short line railroads, for the most part, have taken advantage of it, and the legislation does need to be reauthorized this year.

Mr. MORAN. The reason I think this is so important is in part what Mr. Baker said. We often decry the fact that we are losing jobs to other countries, that we are outsourcing employment. Factories, plants and facilities are moving abroad, and our infrastructure is a significant component in the business decision that will be made as to whether or not a business remains in the United States.

Let me go down one other line of questioning before my time is totally gone.

I do care a lot about biofuels, and the rail infrastructure is critical to that industry. In addition to hearing concerns about a captive shipper, I often hear concerns and complaints about the quality of service.

So my question is two-prong. What role does the Surface Transportation Board have? Mr. Mulvey mentioned this perhaps more

than just in passing but the role that you have in addressing lack of rail cars, the timeliness, the shipment.

I know that in Kansas we produce a lot of flour, wheat flour, and the timeliness of those shipments and bottleneck is often described to me as the cars sat outside of Los Angeles waiting for their turn to be unloaded at the ports. So what role does the Surface Transportation Board play in trying to improve the quality and timeliness of the service?

Secondly, in regard to the biofuels issue, explain to me the role that this phrase, common carrier, has in requiring or determining that service must be provided to a new ethanol plant, for example.

Mr. MULVEY. Well, the common carrier obligation for a railroad goes to any commodities that are regulated. If a commodity is not regulated as it stands right now, the railroad does not have a common carrier obligation. Ethanol would be regulated by us and therefore a common carrier obligation would apply. Anybody who offered cars for shipment, the railroad would have to serve them.

Now in terms of the quality of the service, that is basically between the railroad and the shipper. If the service quality declined, the Board could open an investigation.

The Board also has its group offices. We have group which focuses on railroad and shipper issues. They would call the railroad up and try to work with the railroad in order to get the problem resolved.

The railroads will tell you later on that it is in their interest and they want to be cooperative with shippers. We try to facilitate that cooperation through our Office of Compliance and Enforcement.

Mr. NOTTINGHAM. I would just like to add, Congressman Moran, that this is the work that we focus on probably more than anything else, the day to day, week to week service complaints that we field. We have an office of Consumer Assistance. Calls come also directly into commissioners' offices. We send people out around the Country on occasion, and each of us gets around and looks at service situations.

We have a number of tools available to us. I will just give you a couple of examples. One, you touched on the common carrier obligation. That is the touchstone in freight transportation as to really what the shipper can expect and should expect, which is reasonable service upon reasonable request.

Now there are some general words in there, and people can have pretty serious arguments about what those words all mean in a specific case. But we take those cases very seriously, so seriously, in fact, that in an agricultural-oriented situation down in Texas recently, we actually ordered a railroad that was not providing adequate service to get out of the rail business and we forced them to sell their business. It is now with us. Two interested railroads are considering buying that railroad now.

That is an example of how far we are willing to go as a board. We are literally in the process of putting a non-performing railroad out of the rail business, and we are replacing it with someone who is willing to serve the shippers.

But we have other means at our disposal too, and these issues get particularly complex and interesting when you look at materials and commodities that the railroads, on occasion, would prefer

not to have to carry like hazardous materials and materials that sometimes trigger large insurance premiums for the railroads.

Mr. MORAN. Thank you for responding to my questions.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Thank you for your very thoughtful line of questioning.

The gentleman from Tennessee, Mr. Cohen.

Mr. COHEN. Thank you, Mr. Chairman.

I have tried to understand a bit about this issue just reading some of the statements, including getting ahead of myself and reading Mr. Spitzer's statement, and I kind of get the picture of this being the railroads on one hand and the shippers on the other.

But all politics are local. In my situation, local is Tennessee 9. Tennessee 9, though, is America's distribution center which makes it national. Our distinguished Vice Chairman has knowledge of Tennessee 9, and I would like to ask the Honorable Mr. Buttrey what his advice would be for me and the Country on how these different bills. Particularly, 2125 would affect Tennessee 9 and therefore the entire Country.

Mr. BUTTREY. Thank you, Congressman, and thank you, Mr. Chairman. It is an honor to be here and to answer or try to answer the Congressman's question, my good friend from Tennessee.

I think I would start by saying that etched in concrete on a building not too far from here, there are the words—and I am paraphrasing here—that the right of the citizens to petition their government for redress of their grievances shall not be abridged. One of my strong points at the Board has been to make sure that people have access to the regulatory process.

I think we have gone a long way during my short tenure at the Board, which will come to an end before too long because appointees don't stay around forever and that is probably good. We have tried very hard to create a regulatory process that is accessible to everyone and to keep the fee levels, Congressman Baker, down to levels that aren't egregious while trying to understand the prescriptions that are placed on us by the GAO in determining what our fees shall be.

We will be getting back to you, Mr. Chairman, on that as we said earlier.

Your district in Tennessee is a huge crossroads for the railroads of this Country, and you don't have to live there to know that. I mean people who are in this business, people who are shippers know that if the weather is bad in Memphis for some reason, which it usually isn't by the way. It is usually great. That is why another company is located there that I have some knowledge of.

The infrastructure that is there is very important to the way the commerce in this Country works, and Chicago and other places are the same way. Long Beach, California and others are out there.

I think a lot of the complaints that I have heard even before coming to the Board and certainly after arriving at the Board. I think what we have tried to do in the recent past anyway, certainly since the three of us have been members of the board, has been to work very hard and to keep that phrase on that building very uppermost in our minds and to work very hard to try to come up with im-

proved access, along with the expert advice of our staff which is very expert and I take my hat off to them.

They are very hardworking, talented, knowledgeable professionals, if you will. I think we would all agree. We may disagree on other things, but I think we certainly agree on that.

Taking their advice and counsel and doing our very best job in coming up with new rules and procedures that will facilitate reasonable access to this regulatory process.

As Senator Dorgan said this morning, I think his statement was eloquent. As he said this morning, earlier today, where there is a lack of competition, there must be regulation.

In the situation that we have today with the railroads the way they are structured in this Country, which is a product of many, many years of development and metamorphosis, if you will, evolution—choose your word—we have come to a point now where competition is not as great as it once was, and so we have to have a system of regulation that works. We are trying very hard to do that.

The bill has some ideas about that. I think we have gone a long way in the very recent past to implement a lot of the things that the Congress is concerned about and that shippers are concerned about.

Are we going to make everybody happy? No, we are not. We are not. The way this economy of ours continues to develop and to evolve and to restructure itself and re-engineer itself, there are going to be pockets out there where the system is not going to serve those pockets as well as we would all like for it to happen.

There are going to be organizations, companies, small and large, that are going to suffer some severe disruptions, if you will, from time to time in the way they operate their business.

Someone earlier today said is a truck a better way to carry cardboard? I don't know. I am not in the cardboard business. I have never been in the cardboard business, but I suspect that people who are in that business keep a pretty close eye on how they operate their system and how they structure their supply chain.

Today's supply chain is very rapid, very fast, very time-sensitive. If one mode of transportation doesn't meet my objective in terms of time sensitivity, I am going to find one that does or I am going to move my business or I am going to do whatever I need to do so that my supply chain is not disrupted.

The Board, on the other hand, has a responsibility to try to look into those situations. When someone comes to us with a complaint, to look into those situations to see if there is not some regulatory response to what is going on. Sometimes there is and sometimes there isn't.

All I can say is, as I said in the recent past, we have tried to develop rules and procedures that makes the regulatory process accessible to them so that shippers, not only in Memphis but all around the entire Country and all around the entire globe as a matter of fact because our trade is so global now, get the service that they need.

That is a long way around to try to answer your question, but those are just some thoughts that I had, and I hope in some way they may be responsive.

Mr. COHEN. It is a long way to Capleville.

Mr. BUTTREY. Yes. Nobody knows where that is but us.

Mr. COHEN. It is where all the rails are.

Chairman Nottingham, Mr. Spitzer says in his testimony that evidence suggests the STB process is skewed in the railroads' favor. He also quotes a report from a coal and energy price report that says that people realize they can't win with the current STB, so they have to take it back Congress.

Do you think Mr. Spitzer's comments are accurate?

Mr. NOTTINGHAM. Well, I prefer not to argue with individual witnesses today. He will have his opportunity to speak.

I would just like to say that it does occur to me that too often, whether it is in some of these advertisements we see floating around the town, in the press or in some of the advocacy pieces that come across our desks, this Committee see plenty of them, it occurs to me that a lot of stakeholders wrote their talking points a couple years ago probably and haven't actually spent quality time looking at the actual work and performance of this three person Board in the last 13 months and the number of sweeping reforms and changes we have initiated.

I can understand why they don't want to do that because if they actually look at our reforms and our proposals and give them the credit, I think with all due respect, that they are due, it does call into question some of the talking points that you have heard already earlier today and you will hear again about the history of the Board and what some past Board did or didn't do.

It is frustrating for those of us who are actually in the arena day to day, wrestling with real cases and real disputes and moving forward real reforms over the objections, in many cases, of the railroads who are dragging us into the courts as we speak, trying to appeal many of these, and on occasion some shipper groups who have concerns.

I just encourage everybody to take a fresh look at what is actually going on. I know this Committee will. Because I think there is a real story to be told about meaningful reform and an Agency that is committed to improving the way we do the people's business.

Mr. COHEN. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. We certainly will watch very closely what the Board is doing and follow it. I must say that the Board is moving in ways that it has not done since its inception.

The gentlewoman from California, Mrs. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair, and thank you for holding this very important hearing on railroads.

My district has a lot of small business, a lot of manufacturing, small manufacturing. The companies there in my district rely on moving their goods for fair rates and adequate service. In the past, I have had businesses complain about the issue of demurrage. I haven't heard that recently for a number of reasons. I guess because I will pick up a phone and I will call a railroad, very simple.

But given the fact that in my district, the whole Alameda Corridor East traverses and the increase in traffic and the already burdened rail traffic going through my district kind of sets back

some of the small businesses' needs to move their goods. So how do we do that?

Another question I would pose to the three gentlemen from the Board is how do I tell my businesses, here is a number, if you have an issue that you feel is hurting your business to use to call?

I don't know that they know. I didn't know. Some of those things that are important to my district, to the continuing economy in my district, that it is not going to be overshadowed by the increase in traffic of imported goods to the rest of the United States is a big concern. That is one question.

Mr. NOTTINGHAM. Thank you. I will take a stab. I know my colleagues probably have plenty to say on this and more experience than I do working on these issues.

Demurrage, you mentioned, is still a very active area of concern. We hear concerns all the time about demurrage charges or charges for storing, basically, cars on property. An effective and efficient rail system depends on empty cars getting put back into commerce quickly, and we see it on both sides. Sometimes we hear from shippers, saying, hey, I unloaded a car three days ago. I want to get rid of it, and now I get a demurrage fee sent to me.

We actively work these out. We do have a phone number. We will make sure we get that to you right away. Board commissioner offices handle calls regularly. We actually have a very active consumer assistance program.

You are right, Congresswoman Napolitano, describing your district. You are really in that kind of proverbial ground zero of international commerce. You know that, and you don't need me to tell you that. I know, having been out in that area, the challenges that that evokes for neighbors, residents, businesses. You have got the whole world, in some ways, coming through in freight cars and intermodal containers.

It is so important that we keep that system moving, and at the same time, that we don't treat any community as just a crossroads, but that the community knows it can have access to the system of interstate commerce as well and get that service provided.

So if you ever get concerns from shippers or complaints about any of those issues, please put them in touch with us. Call any of us. Call my office. We will get on it right away.

Mrs. NAPOLITANO. Thank you.

Anybody else?

Mr. MULVEY. This has become a problem, especially with railroad capacity and getting more and more constrained. The railroads have been changing their rules on demurrage and tightening the rules on demurrage as well as raising charges.

Sometimes you have bunching problems where the shipper needs five cars a day and all of a sudden gets no cars for four days and then 25 cars show up at one. He can't handle them all or they come at times when they can't be unloaded because the shipper has problems with his workers and when they can work. This is an ongoing problem.

As the Chairman said, we do have a number which shippers can call. We will get that number to you. We often are able to work with the railroads and work out these problems, but they are ongoing.

Mrs. NAPOLITANO. Anybody else?

Mr. Chair, we recently did a Congressional delegation visit to three countries on high speed rail, London and Paris and Spain. One of the interesting things, and I heard the Chairman address this in his comments, was that all those high speed rail groups specifically spoke to the fact that they own the property. The government owns the property. So for them, mass transit is a priority for people to move.

The United States leads in being able to move product, but we fall desperately short in moving people. And so, how do we come to a balanced approach?

Not to say back to the railroads, we are going to take our land back and utilize it for the benefit of the people who pay the taxes but rather be able to say how do we address without being heavy-handed and ensuring that we look at not losing the economy that is created by the transportation of goods.

Mr. NOTTINGHAM. I am glad to hear about your trip. I had a chance in my past job at the Federal Highway Administration to manage several offices, one which was the International Programs Office, and I had a chance to occasionally get overseas and see what other countries are doing in the area of both highways and transit and rail, including China and riding the Maglev Train with Secretary Peters and exploring how those projects and systems get paid for and what the tradeoffs are.

In our Country, you are right, we have put a premium on using our rail system to move freight, and we have a world-class model that nobody outperforms in productivity and efficiency of moving freight rail, large amounts of tonnage across large distances. So we can take a lot of pride in that as a Country.

As we talked earlier today, it is threatened by capacity constraints and some under-investment that needs to be addressed over the years, but it sets up a real challenge in how we then try to transpose onto that system, as many people often suggest, a world-class passenger rail and a high speed passenger rail system onto the freight system as opposed to building up a separate system or a side by side system.

I do think that it is not just a question of our current freight system not serving people. The freight, of course, is going to people. It is going to the shelves of the stores we all shop at, and it is employing people, creating jobs. More importantly, from a transportation perspective, it is getting trucks off the highways.

So if we aren't extremely careful how we encourage the expansion of passenger rail, which I am personally a strong believer in and live two blocks from an Amtrak station in Fredericksburg, Virginia. I would love nothing more than to see higher speed, better passenger rail.

We have to be very careful that we don't just drop a big unfunded band-aid or a burden onto the railroads with the result that they can't manage their freight business. That traffic then goes back onto the highways, and then we actually have a worse problem. We have a less efficient railroad system, we still have a marginal passenger rail system, and we have an even worse highway system.

The issues and the stakes are extraordinarily complex and high, but it needs to be addressed.

Mrs. NAPOLITANO. Any suggestions?

Mr. NOTTINGHAM. The Board, I just would say we don't hold ourselves out as experts in passenger rail and transit. Each of us brings experience. I will let my colleagues speak to that.

I just would say it gets back to my major point earlier about the need to build more infrastructure. We are not going to be able to have a world-class passenger rail system if we don't build some new track because if we just ask the freight railroads to make it happen, we are going to see all kinds of unintended consequences that will hurt everybody: highway users, consumers, freight railroads, railroad passengers.

We have got to set up some programs and procedures and polices that actually result in getting some new track built.

Mr. MULVEY. As something of an expert on passenger rail, I did my Ph.D. thesis on Amtrak when it was first getting started. So I had been in this business for a while when I worked with Mr. Oberstar on the high speed rail bills, et cetera.

But I think it is fairly clear that if you are going to have high speed rail systems like you have in France and Germany and Italy, you are going to have to have dedicated right of way. It can be in the same right of way as freights, but it has to be on dedicated track.

It is going to take an enormous investment. Many of the proposals to expand higher speed services in the Country bring the speeds up from 40,50 miles an hour to 70, 80 miles an hour. That is an improvement, but it doesn't give you the kind of service that you are seeing over in Europe. To get that, you need an enormous amount of investment in rail transportation infrastructure.

I would hope that you could make investments in rights of way that would benefit both the freight and the passenger services simultaneously so that the freight railroads see the high speed passenger stuff as something that benefits them as well. By doing that, you can get the freight railroads and the passenger railroads to work together and make that investment.

But to try to put high speed passenger trains on today's freight railroads would only bring the problems that Chairman Nottingham talked about, and you would have no winners.

Mrs. NAPOLITANO. Thank you.

Mr. Chair, I have a whole bunch of other questions, but I would like to submit them in writing if I may.

Mr. OBERSTAR. Thank you. We all have a lot more questions than we have time with which to engage the Board.

Mrs. Capito?

Mrs. Capito defers at the moment.

I just want to pick up on Dr. Mulvey's observation about passenger rail. While this is not a hearing on that subject, that is always an issue before this Committee and one to which we will devote time at later hearings in the Rail Subcommittee.

It was the railroads, which in the 19th Century in a period of roughly 20 years, we see nearly 8 percent of the land surface of the United States. It held onto that land. It kept that right of way in-

stead of selling it off. For whatever money they made or wherever that money went, we have those rail corridor rights of way.

Mr. MULVEY. A lot of it was sold off and a lot of it was developed. A lot of the monies that went to made the railroad captains of industry, or the robber barons as they were called, rich but did not necessarily help the railroads. As you said, a lot of those rights of way are gone now.

Mr. OBERSTAR. Mr. Clayton, we have hardly laid a glove on your today.

Mr. CLAYTON. That is okay.

[Laughter.]

Mr. OBERSTAR. You made some very pertinent observations in your testimony. The average freight revenue per carload for major trains has increased 39 percent while the average freight revenue for all commodities increased only 24 percent. Now if we had excluded grain from that number, it would been even less, right?

Rates on corn, sorghum, soybeans, wheat have gone up 41, 38, 53, 31 percent, respectively, you say. Grain shippers bear a greater responsibility for car supply and other functions that railroads formerly provided. Senator Dorgan made an observation of those.

Is it appropriate for a company like, say, Cargill to have to be the owner of 19,600 rail cars and store them on its property?

Mr. CLAYTON. I am not sure exactly how I want to answer that question. I do think, Mr. Chairman.

Mr. OBERSTAR. Well, our job is to make you uncomfortable.

Mr. CLAYTON. You will get me there. I am sure.

I will make a couple of observations, though, if I could. One, I think there may be good business reasons why a grain company, in fact, might want to invest in cars.

Mr. OBERSTAR. None of them willing, though.

Mr. CLAYTON. Well, there may good business decisions along with that.

The more important point, I think, that I tried to raise earlier on in the hearing is that from agriculture's point of view, what is important is the total cost of moving the commodity. In part, rail rates play a role in that, but to the extent that certain functions have been rolled off to others to incur the costs, those don't get reflected in rail rates. Those are additional costs.

Ultimately, in terms of the competitive position of agriculture in this Country, it is the total cost of moving a product that matters.

I would just hope as we look at some of these issues that, while I can appreciate the interest, the need to focus first specifically on a given mode of transportation as you are doing, from the standpoint of the transportation user community, it is the total cost of moving a product that ultimately matters and the components matter as well, but one needs to be holistic, I think, in looking at that kind of a question.

Mr. OBERSTAR. Yes, that is true.

But you go on to say rail emphasis on unit trains causes shippers to make more significant capital investments in sidings, grain inventory, storage capacity, and loading facilities—shippers to make those investments—and that USDA is concerned about the percentage of grain tonnage and revenues moving at rates exceeding revenue to variable cost.

Now we know that grain, in some cases, moves in international markets on as little as an eighth a cent a bushel, right?

Probably the world's most significant grain export facility is New Orleans.

Mr. CLAYTON. Yes, sir.

Mr. OBERSTAR. If you look at a map of the two hemispheres, North and South America, and you look at Recife, Brazil, the point of Brazil that sticks out into the South Atlantic Ocean, it is 2,500 miles closer to markets than New Orleans. That is a five-day sailing advantage at least.

Now if rail rates in the United States are so high as to impose costs on grain shippers, they are that much less competitive in those markets that Brazil serves competitively with U.S. shippers.

Soybeans, for example, in that delta region of Brazil, the Brazilian Government and the States of Brazil accelerated their exploitation of the soil and of the development of soybeans, a major competitor for the United States. If soybean rates have gone up 53 percent, according to your testimony, we have been that much less competitive in the international marketplace with East Africa, West Africa and the Pacific Rim, if shippers from Brazil have that kind of a shipping advantage.

That has got to be a concern to the U.S. Department of Agriculture. It has got to be a concern to the Board. It is certainly not a concern to the railroads. They are shoving the rates up ever higher as they can.

For the record, it will be noted that Mr. Clayton is nodding.

Mr. CLAYTON. I was searching for the question, Mr. Chairman, but I did agree with what you said.

Mr. OBERSTAR. I expected you to draw your own conclusion.

Dr. Mulvey and Mr. Nottingham, one of the requirements in a rate case for an appellant is to create a virtual railroad. In the days when they were losing lots of money, I wonder why in God's name you would ask them to do that and ask them to lose that amount of money in creating a virtual railroad.

But in the days that they are making a lot of money, how do you expect a shipper, a chemical company, a power company, an REA to create a virtual railroad in order to pursue their case?

Isn't that an unreasonably high, steep hill to climb to make your case or do you think this is a justifiable responsibility of an appellant in a rate case?

Mr. NOTTINGHAM. Let me take a stab, Mr. Chairman, at an answer, and then I will also ask Commissioner Mulvey to help. He has more years experience on the Board and expertise on this.

It is. It is a tall order. It is a high mountain to climb, I must say, and there are reasons for that. Some of these major disputes get up into the tens and I mentioned even eclipse a hundred plus million dollars when you look at the Board's power to prescribe a rate for 10 or 20 years in support of shippers in the past, unfortunately for them not real recently.

Most days, I think it would be a lot easier to come up here and say we have an exact 50 percent ratio. On any day of the week we have 50 percent shipper wins, 50 percent railroad wins, but it is never that simple with complex cases that get brought forward.

We have to have a test. We have to be basically the opposite of arbitrary and capricious. We have to show, before we are forcing a private sector business, a railroad, to actually change their rates and pay millions of dollars to a customer, that we have actually done an extremely quantitative economically-based analysis. That is how this so-called stand-alone cost model has developed, and it has been endorsed by the courts under appeal a number of times.

I would welcome suggestions for a better model if people want to come forward. It has got to meet that test, though, of not being arbitrary and capricious. It is the model that I walked in and inherited. It seems to be very economically sound, but we are always open to new ideas as well just as we are with the very major and controversial issue of our measurement of cost of capital.

Dr. Mulvey, anything?

Mr. MULVEY. The reality, of course, is whether or not somebody could come into the industry, have a railroad, operate a railroad for less and charge the shipper less than the railroad is asking to charge.

What you are asking the shipper in building this virtual railroad is say: Look, if you put together a railroad with certain kinds of traffic and certain kinds of routes that carry traffic, other traffic as well as your own traffic, and if you meet all the expenses that the railroad needs to make to pay its crews, to pay for the materials, to keep the railroad operating and to replenish capital, if you took all of those costs, what rate would you charge yourself in order to cover your costs and is the rate the railroad asking for on those bases, unreasonable?

That results in rates that are many times or a couple of times higher than 180, the 100 percent revenue to variable cost ratio because we say that railroads are allowed to differentially price and to take captive traffic and extract from them a premium to cover in those markets where the ratio is less than 180.

Is it a good model? It is the model that the courts pretty much approved. It is not necessarily what the Board wanted to do, but it is what the court in the McCarty Farms case said is a model that comports with current economic bearing.

I agree with Chairman Nottingham. We would if there was a simpler less costly model that would pass muster with the courts. Our hope is that our simplified standards and our three benchmark approach will be one the courts will accept and not say that that is arbitrary and that the new approaches do comport with economic bearing.

Mr. OBERSTAR. There is a great deal of work for the Board to do yet on this subject matter. At least in the last year, the Board has begun to address this issue and to think it through and reassess, but the 180 percent factor seems to me needs to be adjusted.

Mr. MULVEY. As I said before, it is not something that we can ever find out where it came from or what the science was. I think you can best call it the best guess at the time. But I think that you are right, that it is something we ought to look at and see whether or not that is the correct standard.

Mr. OBERSTAR. Maybe it should be removed from law.

Mr. MULVEY. That is certainly an option.

Mr. OBERSTAR. In the Civil Aeronautics Board cases, where airlines were competing for market entry and rates and where rates were challenged, I don't think the CAB required the challenger to go through such hoops. My recollection is that was not the case.

Mr. MULVEY. No, it was not. They didn't have the same kind of standard as we do. It was different. Of course, David Heymsfeld on your staff would be very expert on that issue.

Mr. OBERSTAR. Mr. Shuster, no further questions?

Mr. Baker?

Mr. BAKER. I will be real brief.

Mr. Chairman, just by way of an authority question, does the STB have any control over ownership issues or an ability to affect ownership issues, for example, the hedge fund acquisition of controlling interest of rail stock?

The reason for bringing the question is that we do have Federal prohibitions on ownership control with the airlines for evident reasons. I worry about the same consequences to much less consumer volatility but from the standpoint of delivery of vital services and goods.

What could you do if an Iranian investment group wanted to buy out five of the big railroads?

Mr. NOTTINGHAM. The best way to answer that is to say we have broad authority in cases not like the one you are proposing, in cases where a railroad seeks to merge or buy another railroad. We have extremely broad powers there to approve, disapprove, approve with conditions, force line-sharing arrangements in certain areas for certain reasons, just very broad power.

The discussions we are seeing out in the business press and elsewhere talk about hypothetical cases that we have not yet seen yet, but we have seen the real development of something exciting from a level of investment perspective, that major firms with access to private capital, not taxpayer dollars, are actually putting those monies into the freight railroads to help pay expenses and expand the system, we hope.

Now if some of those entities were to then actually decide they want to get actively involved in the railroad business and start managing a railroad, seek control of a board of directors, for example, making a play as they call it in the industry at control of a railroad, we would not have, if they are non-railroad, we don't have much to say about that.

Mr. BAKER. There is a concerted effort because the rails have a relatively low debt to asset basis compared to traditional leverage in the marketplace. They are significantly under-leveraged, and that is why Buffett and others are aggressively seeking rail ownership, to try to leverage themselves up, spin up the value of those shares and reap the profit and leave them to deal with it later. We can see that repetitively through other areas.

So it is a two-pronged concern: Structurally as a board, being logically constrained by due process, whether it is advisable for us to consider granting authority paralleling that granted to the airlines regulatory process to specifically prohibit foreign ownership, given these terrorism concerns.

Then, secondly, as a business matter, to worry about the long term as the Board properly does, is it advisable to allow an invest-

ment takeover group to come in and drive the debt ratios up and then leave town?

I worry about that from a generational perspective of safe and sound operations. If you don't have the authority for prudent financial governance or if there is a question, that is something I think we should seriously investigate.

With that, I yield back, Mr. Chairman.

Mr. NOTTINGHAM. Mr. Chairman, could I just try to respond briefly to that?

Mr. OBERSTAR. Briefly.

Mr. NOTTINGHAM. Thank you, Mr. Chairman.

I just want to clarify because this is a very important area and an emerging area. As soon as a non-railroad actually enters the business, though, and takes control under your hypothetical, then of course that railroad will be completely under the existing regulatory oversight of the STB. You don't get some kind of carte blanche because you came in as an outsider.

But you are right. You touched on an interesting gap in the statute. It is an apparent gap that basically we don't have broad approval of a transaction. It could happen overnight before we would necessarily even know about it.

I would just urge the Committee to proceed with great caution on doing anything that would discourage non-U.S. funds from coming into our infrastructure, our rail infrastructure. The Canadians, for example, are heavily involved currently in moving freight and running railroads in the U.S.

From the perspective of looking at a situation that needs investment, if we say that non-U.S. investment is not welcome here, I think we want to be very careful and understand how it is going to impact our ability to meet the challenge of building out our system.

Mr. BAKER. No. I don't deny that. We love people's money. We just don't necessarily want voting control. In the same form and fashion that we considered the airlines constraint, it may be warranted in light of the essential necessity of the rail service to the economic function.

It is just a question for review and, if appropriate, comment at a later time. Thank you.

Mr. OBERSTAR. I thank the gentleman for raising those issues, as usual, in a thoughtful questing manner.

The matter of rail is an under-leveraged sector attractive to hedge funds, as you pointed out, something I raised earlier, we saw the devastating consequences in aviation when Northwest Airlines was the subject of a takeover. At the time, the two investors put together with $25 million a piece. For $50 million, they acquired an airline.

I was asked about this, and I said, well, why would you spend $150 million for a 747 when you could buy a whole fleet of them for $50 million?

That is what these two investors did, Checchi and Wilson. They took an airline that had two billion dollars in equity and a billion dollars in debt and turned it into one that had two and a half to three billion dollars in debt and less than a billion dollars in equity, and it went precipitously downhill from there.

You wouldn't want to see that happen to the rail sector. There are comparisons. One aircraft engine is equal in cost to at least that of a locomotive in the railroad sector.

Let me return, Dr. Mulvey, to the question I posed earlier. Public utility commissions in all of our States regulate the power entities, and they set reasonable rates, and they do so without forcing rate payers to establish what it would cost. If a new utility were to come into this area and build a facility to compete with the existing one, does that model apply here?

Mr. MULVEY. It is traditional utility regulation, and it differs from what we do. It is basically cost-based. What is the cost of providing the service. There is a markup to give a return to investors, and that is what the rate is. It is much simpler. It is more straightforward, but that is not what the law.

Nobody presumes at all that there is any competition in the utility industry. Pretty much, for the most part, it is a monopoly where as the argument is that much of railroading is not a monopoly and only part of it was monopolistic areas. So we are trying to regulate industry that is a part of an industry rather than regulating the entire industry as you do with utilities.

You don't have the same kind of cross subsidization issues with utilities as you do with the railroads also. In some ways, the railroads are more complex and more difficult to deal with. Yes, the utility form of regulation is one in which you could put back on the railroads, but that indeed would be re-regulation.

Mr. OBERSTAR. Thank you.

That is just the start of the vote, and I have one question for Ms. Hecker.

Are you aware of other Federal Government agencies that self-initiate cases similar to those of the Board rate cases?

Ms. HECKER. I am also responsible for conducting studies of Federal communications regulations, and just last year we completed a review that, interesting, had very parallel findings to what we observed in the review of rail rates and the STB role.

Basically, we had concern that there had been such a commitment to deregulate local markets, that there was no focus on the effect on competition. We demonstrated that there was a severe lack of competition. We then talked about the commission's obligation that in our view the commission had an obligation, in fact, to be affirmatively examining competition and couldn't write itself out of the picture by having a rulemaking that basically declared markets competitive that weren't.

So it is interesting because it is another network industry. It is like STB in some senses, largely deregulated but some remnant regulation and it is that careful balancing. But like our observation about the STB, we felt the Congress had built a structure that left a remnant responsibility to monitor the state of competition and, in fact, much as has happened here, we have actually the commission focusing on these issues. These are local competition rates or rates for very large businesses.

If or you staff is interested, we could share it. Because I also do airlines and telecom and railroads, it is very interesting to look at some of the differences of the remnant regulatory structures that were established, the different authorities. But the presumption

that this competition in our view, in summary, is one that merits continuing oversight whether there really is.

Mr. OBERSTAR. I think there is a strong appeal for self-initiation authority with the Board. GAO has that authority. You don't have to wait for Congress or a Committee or a Member of Congress to ask you to inquire into something. You have authority to look over the entire scope of Government agency activities and see whether they are living up to their mandate under the law.

Ms. HECKER. That is quite right. While we don't use it lightly, I think the Controller General has used it in a very strategic sense to raise major issues about the fiscal condition of the Country, and it is one that no single Committee was raising those issues for us.

Mr. OBERSTAR. There could be a question then in extending the authority of the Board that we might have runaway Board or they might exceed their authority. Perhaps it would be useful if you meditated on that matter and gave us some thoughts about limits to such authority.

Ms. HECKER. We would be glad to reflect because open-ending that somehow there is a new regulator and that there is regulation potential would have a chilling effect on the performance of the industry. So it can't be done lightly, but we think the statute already has an investigatory initiating authority that is in place.

Mr. OBERSTAR. I concur with that, but I think we need to approach it with further thought.

With that, I will call the second panel and thank our first panel for very long endurance at the witness table and for your very constructive responses to Members' questions and hold you excused.

Our next panel consists of Glenn English from the NRECA; Ron Harper for Basin Electric Power; Gary Spitzer for Chemical Solutions Enterprise, DuPont; Terry Huval for Lafayette Utility Service; Susan Diehl for Holcim; Wayne Hurst for the Association of Wheat Growers.

We will stand in recess for a period of time. It could well be an hour. I will say to all we will pursue the hearing until whatever time it takes in the day to conclude hearing from all the witnesses. Whatever refreshment you need right now, take care of it.

[Recess.]

Mr. OBERSTAR. The Committee on Transportation and Infrastructure will resume its sitting.

The Chair has already called the panel, panel two, but the Chair at this time will recognize the gentleman from Louisiana, Dr. Boustany, to introduce a constituent.

Mr. BOUSTANY. Thank you, Mr. Chairman.

It is my privilege to introduce a constituent of mine, Mr. Terry Huval, who is a panelist today. Mr. Huval is the Director of the Lafayette Utility System in Lafayette, Louisiana, which is also my hometown. LUS, Lafayette Utility System, is the largest public power provider in Louisiana, serving 60,000 electric, water and wastewater customers.

He also serves as this year's Chair of the American Public Power Association, the industry trade organization representing the Nation's 2,000 plus publicly-owned electric utility systems.

Since the beginning of his service to LUS as Director in 1994, LUS has propelled itself to be recognized as one of the leading elec-

tric utility companies in the Country, setting benchmarks for customer responsiveness and competitively priced services. He was awarded the APPA James Donovan Award in 2007 for his innovative leadership on Lafayette's Fiber to the Home Initiative.

Terry has previously testified on rail issues affecting our community in Lafayette, Louisiana, in the Senate Commerce Committee, the House Transportation and Infrastructure Committee as recently as 2004. He has served as a member of the Executive Committee of Consumers United for Rail Equity in 2005 and 2006.

I would like to formally welcome Mr. Terry Huval to the Committee. Thank you.

Thank you, Mr. Chairman.

Mr. OBERSTAR. Mr. Huval, with that splendid introduction, big things will be expected of you.

[Laughter.]

Mr. OBERSTAR. We will begin with our former colleague, Mr. English, my classmate of 1974 and the 94th Congress. It is good to see you back here in the halls of the House. Although we didn't serve on the same Committee together, we certainly served together with great affection and friendship and great admiration for the gentleman from Oklahoma.

Please proceed.

TESTIMONY OF GLENN ENGLISH, CHIEF EXECUTIVE OFFICER, NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION; RONALD R. HARPER, CHIEF EXECUTIVE OFFICER AND GENERAL MANAGER, BASIN ELECTRIC POWER COOPERATIVE; GARY SPITZER, VICE PRESIDENT AND GENERAL MANAGER, CHEMICAL SOLUTIONS ENTERPRISE, DUPONT; TERRY HUVAL, DIRECTOR, LAFAYETTE UTILITIES SERVICE; SUSAN M. DIEHL, SENIOR VICE PRESIDENT, LOGISTICS AND SUPPLY CHAIN MANAGEMENT, HOLCIM, INC.; WAYNE HURST, VICE PRESIDENT, IDAHO GRAIN PRODUCERS ASSOCIATION, ON BEHALF OF THE NATIONAL ASSOCIATION OF WHEAT GROWERS

Mr. ENGLISH. Thank you very much, Mr. Chairman. I appreciate that, and it is certainly a pleasure to be here and to see that you have ascended to such a powerful position here within the House of Representatives, a classmate of mine.

Mr. OBERSTAR. Well, elevation, yes.

Mr. ENGLISH. It is always good to see classmates.

Mr. OBERSTAR. You just wait around long enough, good things can happen.

Mr. ENGLISH. I appreciate that, Mr. Chairman, and I appreciate the opportunity to testify before the Committee.

I think most Members of the Committee know that I am the Chief Executive Officer of the National Rural Electric Cooperative Association. I also have the honor of being the Chairman of the Consumers United for Rail Equity. I am wearing two hats today, Mr. Chairman.

Some of that, though, I think it is worthwhile to think back just a little bit about 1980. We were both here. Most of the Members of the House were here, but there is something to be said, I think, for understanding what the intent was of the law and what was

promised, and that is really where I think so much of this should come from.

I noticed the time that I was in Congress, one of the things I became very frustrated about and anybody who has been very active, I think, in the legislative process understands the frustration I am talking about. When you see a piece of legislation pass, it goes over to the Administration or some regulatory body and you see a group of people interpreting it differently than what you intended whenever you passed it. That is a very frustrating thing to take place.

If you recall back in the late 1970s, when we had a little effort on a legislative veto, you remember that, in which you would have one house veto and you would have these rules and regulations come back and you could bring them to the Floor of the House. If, in fact, the Congress found they were not in keeping with the intent of the law, what the Members passed, they could veto it.

Unfortunately, the Supreme Court said that was unconstitutional, but that does not, I think, set aside the importance of Members of Congress being able to see their legislation carried out in the manner intended. I would suggest to you that is the real issue that we have before us today.

Now everyone has talked about the Staggers Rail Act and the success it had in bringing back vitality to the rail industry. I think there is a lot of truth to that. I really do.

But there is that little piece, that little provision with regard to captive shippers, and that one little piece has not been in keeping with what Harley Staggers intended, and I don't think anyone can disagree with that. I don't care what side you are on. I don't think anyone can say that this thing has been carried out in the manner in which it was intended.

If you remember back at that time, we had the Interstate Commerce Commission, and they were a very active and powerful commission at that time. They were really aggressively enforcing what they saw as the requirements of the law as it was passed.

Now the Interstate Commerce Commission is gone. We have got the Surface Transportation Board, and in all honesty I don't think it has the same kind of attention that we saw with the Interstate Commerce Commission, nor do I think they have been as active, nor do I think they have been as aggressive.

That brings us back to the problem that we are facing and the reason that your legislation, Mr. Chairman, is so important, and that is the fact that we deserve, those people who are subjected to this law, those who are captive shippers, we deserve to have the Staggers Rail Act carried out as intended by the author.

That means that we deserve to have those protections that Harley Staggers wrote into this legislation. We deserve to have that enforced, and that is not taking place today and that is what the problem is. That is the bottom line.

Now if you recall at that time, we had, as you pointed out earlier today, Mr. Chairman, about 60 railroads. We were going to bring competition in, and we were going to see all these improvements take place. Well, 60 railroads competing, now that is real competition. I think we would all agree that is a lot of competition. You have got 60 Class I railroads competing.

But over the years, we have seen this thing shrink down. Now, we don't have 60 Class I railroads. We don't have 40. We don't have 20. We don't have 10. We don't even have five. We have got four that have about 90 percent of the business in this Country. That is what this thing has come down to, only about four are left.

Anybody that is not served on a rail line on which you have got two of those railroads operating, there is no competition, and that is what is known as monopoly. You have got monopoly power in those areas. Whenever you have got a monopoly power, then you have opportunities for abuse and whenever you have a regulator that refuses to regulate.

Mr. Chairman, I would like on page three to amend my statement. I think there is an error in there. It says the rail industry continues to be protected by the Surface Transportation Board that is either unable or unwilling to provide adequate oversight.

I think we ought to strike that unable. I think they are just unwilling. I think that is where we are right now. That has been the history of the Surface Transportation Board for 20 years. They have been unwilling.

Now, as I understand it, the reason that they say they have been unwilling is because of the fact, well, we have got to take care of the rail industry. The rail industry will go broke. The rail industry is vital to the economy of the Country.

That has been the case all along. We suffered this for about 20 years.

Now, all of a sudden, the rail industry is not going broke. They are in the black. They are the darlings of Wall Street. Everybody wants to buy into them, take advantage of them. So, obviously, they have done very well financially.

We have waited 20 years, Mr. Chairman, 20 years to see the Surface Transportation Board—it started out as the ICC, but the Surface Transportation Board—carry out promises that were made in the Staggers legislation. That is what we deserve to see happen today.

Now the GAO concluded that the rate relief process under the Surface Transportation Board is largely inaccessible and rarely used. Rarely used, now why would it be rarely used? Well, I would suggest the reason it is rarely used is because those who are stranded shippers see little hope in the Surface Transportation Board taking care of the needs of the stranded shippers.

Mr. Chairman, we have got record profits, record share prices, and we have got enough revenue in the rail industry to buy back billions of dollars worth of their stock, and we are seeing that happen today. That is where we are today.

We have a situation in which the bulk of that money is coming from stranded shippers. It didn't come from those shippers where you have got competition.

You saw the GAO's graph up here where it showed in real money how the rates were going down. You see the railroads will produce a chart similar to that showing the rates are going down.

What we should see is a chart that shows the difference between those shippers where there is competition and those where there is no competition. The rates are going down steeply for those where

there is competition. Where there is no competition, what we see is the rates are going up.

That chart shows four different industries. That is just the first quarter of this year. Look at the difference in those rates. Now tell me that is what Harley Staggers intended. Just tell me if that is what Harley Staggers intended.

I would suggest to you there is no way that this is meeting the intent of the law. There is no way that the promise that was made 27 years ago is being carried out here, and that is what I think this Committee needs to address.

We have got a little issue here, Mr. Chairman, of the integrity of the Congress—the integrity of the Congress. The question that we have here is: Is the Congress simply going to allow any group, I don't care who they are or what part of this government, to ignore what Congress writes into the law, to interpret it in their own way and to go merrily down the road? Is Congress going to turn their back on that?

Now I would suggest to you if you disagree with that provision in the Staggers Rail Act, the honest thing to do is to offer an amendment to the Staggers Rail Act to repeal that provision. Either Congress insists on its will being carried out, the law that it passed being carried out, or repeal it, get rid of it. But don't get into the sham that we have been in for 20 years to pretend like there is some kind of protection for stranded shippers, some little fig leaf out there.

We keep hearing the promise, next year, next year, next year. We even heard it again today, Mr. Chairman. We heard people promise, oh, we are going to change. Oh, we have got a new approach. Oh, we have got a study underway.

Well, it is 20 years. My goodness, how many years do we have to go before the Congress says enough is enough?

I would also suggest to you, Mr. Chairman, what we need to have done here is look for results. What is the bottom line?

You heard members of the Surface Transportation Board say, oh, we got some wins for the shippers and we got some wins for the railroads, and I don't know when. It has been 2001 since we had a win for the shippers. Before that, well, we had some wins for the railroads—all this kind of stuff.

What it really comes down to, bottom line, the bottom line it comes down to is what kind of relief has been provided to those shippers? How much?

What they classify as being a win, most people classify as being a loss. If you shave off 5 percent of a proposed rate that is going to be increasing by 50 percent, I wouldn't call that a win, but the Surface Transportation Board does, and that is not right. It is not right.

The 180 percent of variable cost is an issue that was raised today. Where did that 180 percent come from? Well, what we heard was it was pulled out of thin air or some staff thought it up during the conference.

Mr. Chairman, I will tell you this. I will tell you this. Anytime we go through the legislative process, what we are looking for is fairness. We are trying to do the right thing, and I would suggest to you that is where the 180 percent came from.

Now you think about it in terms of where Harley Staggers was and what the legislation. Remember when you put that together. You were on this Committee when they were talking about coming up with this.

What they were trying to find was a place in which we knew that it was abusive. You were getting up in the range that it was just hard to see why it wasn't abusive and somebody needed to take a look at it. One hundred and eighty percent sounds pretty darn abusive to me, if you are looking at 180 percent of variable cost.

I would suggest to you that Harley Staggers, Members of Congress back in those days would look at that and say, well, that 180 percent, somebody ought to take a look at it if it is in excess of 180 percent. They were, in effect, saying well, we will give you 180 percent. Anything above 180 percent ought to be looked at by somebody because the chances are pretty good that that is abusive.

What we are finding today is that this whole concept has been turned on its head, Mr. Chairman. The Surface Transportation Board comes back and says, you can't charge less than 180 percent.

Anybody ever heard the Surface Transportation Board come back and saying, golly gee, you have got too much? No. In fact, now the question is: Is it too little? That is contrary to what Harley Staggers had in mind.

The question is Congressional intent. The question is: Is Harley Staggers' provision going to be carried out as it was intended?

The real question that we come down to is not re-regulation. The question is are you going to enforce the darn law as you wrote it?

If you are not going to enforce it, then repeal it. Repeal it, Mr. Chairman.

I have heard a lot of discussion, a lot of talking take place here today. I am against regulation. Oh, I am against regulation. I am for a free market.

I haven't heard anyone profess that they are opposed to monopolies. I haven't heard anyone who has professed I am opposed to abusing consumers.

I represent a consumer-owned organization. We have got 40 million consumers that own electric cooperatives. We are being abused by each and every day by the actions of the railroads, and the Surface Transportation Board could care less. That is a fact.

Mr. Chairman, I want to commend you for your legislation. I hope that you will continue to press forward. We want to work with you and do everything that we can. We want to make sure that the intent of the law as passed under the Staggers Rail Act is fully carried out, every provision, and the Surface Transportation Board be made to follow that intent.

Thank you very much.

Mr. OBERSTAR. If this were a tent revival, we would all be saved.

[Laughter.]

Mr. OBERSTAR. I thank the gentleman.

Mr. ENGLISH. You can be saved, Mr. Chairman, and I will be happy to lay hands on if it does any good. I have got some folks over here will be happy to lay hands on.

Mr. OBERSTAR. Thank you very much for that compelling presentation.

Mr. Harper.

Mr. HARPER. Yes, thank you, Mr. Chairman.

To start with, I am the CEO and General Manager of Basin Electric Power Cooperative. I stand before you today, representing the Missouri Basin Power Project which otherwise is known as the Laramie River Station in Wheatland, Wyoming.

I want to put a couple stakes in the ground. When we got into this process, and I will go through that here in a minute, we took a position that we all recognize that we must have a financially viable and strong rail system in this Country. That is not the issue. We have been consistent in that message.

The second thing is I would like to applaud the STB for recognizing that they need to be doing something to change the processes. Unfortunately, some of their changes prejudiced our case, and I will talk a little bit more about that in a minute.

A little information about the Laramie River Station, it is approximately 175 miles south of the Powder River Basin in Wyoming. We are exclusively captive to the Burlington Northern-Santa Fe Railroad.

We had a 20 year contract that was due to expire in October of 2004. Our negotiation process, if you will, started at a reception that I was in attendance at in November, 2003, when then an executive from Burlington Northern walked up to me and said, Ron, I just want to let you know that you have enjoyed a below market 20 year contract. Now it is our turn to get it all back.

I found it interesting that you would start negotiations for rail service under those terms. So needless to say, through the process of close to a year, we were unsuccessful in negotiating and that is why we then filed a complaint before the STB on October the 19th, 2004.

Since that time, it has been quite an adventure to say the least. We learned things about the rate-making process that continues to make me scratch my head. I have spent 22 years in Wyoming under rate regulation, and I understand how to make cost-based rates and so on, but to create a fictitious and mysterious rail system to justify rates, I find quite amusing.

But having said that, I would like to recognize that we went through this process. It started again on October 19th, 2004, and lasted until February of this year. February 26th, I believe it was. We spent $5.1 million on this case.

At that time, the February date, is when the STB decided to suspend our case along with three others and propose to go through rulemaking. The outcome of that rulemaking cost us another $870,000, and again our case was prejudiced because of that, because they changed the rules in the process. So, again, we are quite concerned about that outcome and what it did to our case.

We, obviously, on September the 10th did get a ruling, and it was not good in our favor. It was ruled that we were unable to prove that Burlington Northern's rates were unreasonable and actually even questioned why we filed the case, that the rates were very attractive and we should have basically accepted those. So, again, it was bothersome from that standpoint.

We have been involved in this process. It has been grueling. It has been frustrating, and it has been expensive, again right at $6 million that we have had to go through.

Now, I don't know whether you consider this a small or medium or large case. I am trying to define that in all the discussion that took place earlier, but I consider it a large case because I represent, along with the other five owners on the Missouri Basin Power Project, the people at the end of the line, and $6 million to file a rate case in their minds is pretty excessive.

Here is one volume of the opening remarks. Over there is just a sampling of the documents that we had to produce in this case because once they went through the rulemaking we had to go back and redo our case and refile it because, again, the rulemaking process. That was that $870,000.

Now where we are at today is that the ruling that they gave us, we have 30 days in which to decide whether or not we want to refile because they recognize in their ruling that we were prejudiced as a result of their rulemaking. So they are giving us this 30 days to decide whether or not we want to spend another half a million to a million dollars in this process. Hopefully, through that we could get a positive outcome.

So, Mr. Chairman, I would submit to you that something needs to be done for the fairness because I understand in talking with Mr. English here for quite some time that the purpose of the STB is to find a balance between the rail industry and the shippers. I would hope through this process that you are going through—and I very much applaud your efforts along with all the other Members—that we can reach that positive outcome.

Mr. Chairman, I would close by simply thanking you on behalf of the Missouri Basin Power Project, the consumers that exist in the nine States that we represent and thank you again for your efforts.

Mr. OBERSTAR. Thank you very much, Mr. Harper. That file of documents is very compelling, silent but powerful testimony to the concerns the shippers have.

Mr. HARPER. Thank you.

Mr. OBERSTAR. Mr. Spitzer.

Mr. SPITZER. Chairman Oberstar and distinguished Members of the Committee and the panels, I am Gary Spitzer, Vice President and General Manager for a global segment of the DuPont Company. A competitive and efficient rail distribution system is vital to DuPont's business and future. I want to thank you for allowing me to discuss our railroad experiences and the reforms that we believe are necessary.

DuPont is a global corporation founded in 1802 with revenues of over $27 billion and operations in 70 countries. In the U.S., we employ 36,000 people in 33 States. We market over 70,000 products and services for many markets including agriculture, energy, national defense, housing and transportation.

When Congress passed the Staggers Act in 1980, there were over 40 Class I railroads. Today, the four largest account for over 90 percent of U.S. freight rail revenues. Competition between them has essentially been eliminated, resulting in issues with pricing and service.

At 80 percent of our U.S. ship points, DuPont is captive, served by just one railroad. In many cases due to volume, distance traveled or material characteristics, alternative transportation modes

are not viable. Our recent experience as a captive shipper shows that these railroads are fully determined to exercise their monopoly pricing power even if it means driving us and our customers out of certain businesses.

In an effort to combat excessive and unreasonable rate increases, some exceeding 176 percent, DuPont has filed three small rate cases with the STB.

Costs go beyond simple rail rates. A recent study commissioned by the American Chemistry Council found that between 2005 and the first quarter of 2007, the five major U.S. railroads overcharged on fuel surcharges by $6.5 billion.

On service, we cannot reliably predict product transit times or arrival times. Some of our plants have come dangerously close to shutdown because of late deliveries. As a result, we have added rail cars, raised inventory, all further increasing our costs.

When Staggers was passed in 1980, Congress could not have envisioned that 50 mergers and consolidations would lead to the current lack of competition or that the STB would fail to restrain railroad monopoly power. One such example is the bottleneck issue. The STB has ruled that carriers are not required to facilitate competition to or from captive locations by offering a reasonable rate to the nearest interchange with another carrier.

We suffer the effects of this at our Niagara Falls plant in New York. In a competitive scenario, CSX, the only carrier serving our plant would be required to provide a reasonable rate for the 26 miles from our plant to the Norfolk Southern interchange in Buffalo, New York. Instead, we are forced to use CSX, all the way from our plant to Chicago at much higher rates. In effect, the anti-competitive decision of the STB has helped DuPont remain a captive shipper.

DuPont believes the time has come for reform which must begin with a broken and ineffective STB. Passage of H.R. 2125, the Railroad Competition and Service Improvement Act, would remove many barriers to competition between railroads and require the STB to fulfill its Congressional intent, promote effective competition, prevent excessive and unreasonable rates, and ensure efficient and reliable service.

DuPont also supports passage of House Bill 1650, the Railroad Antitrust Enforcement Act. The Justice Department and the FTC should be permitted to review railroad mergers under antitrust law as they can in other industries. Railroads should be subject to the same antitrust laws and consequences as other industries. Unnecessary protections for the railroads must end before their monopoly power harms U.S. competitiveness and our economy.

In closing, Chairman Oberstar, I want to thank you and Members of the Committee for allowing me to share DuPont's views on this important issue. It is time for the railroad industry to join with Congress and its customers to achieve a balanced, market-based system serving the common interests of carriers, shippers and our Nation. DuPont has participated in such efforts before and stands ready to participate again.

Thank you.

Mr. OBERSTAR. Thank you, Mr. Spitzer, for your testimony.

Mr. Huval.

Mr. HUVAL. [Phrase in foreign language]—and thank you to Congressman Baker for his help and support through the years.

I am Terry Huval from the heart of Cajun Country in Lafayette, Louisiana, and I am representing today the American Public Power Association for which I serve as Chair at this particular time and LUS, the Lafayette Utility System, which is a municipal-owned utility system in Lafayette, Louisiana.

I want to take the issue to talk about our customers. I want to talk about my senior class high school English teacher, Mrs. Moss, 84 years old, lives in Lafayette. She is a widow. She called me the other night to thank me for what I am trying to do to make life better in Lafayette, but she doesn't know that $300 of her annual utility bill goes to pay for the cost of rail captivity as it affects the delivery of coal to Lafayette's Rodemacher power plant.

Then to my friend, Matt Stellar, who is an entrepreneur and decided to build his own jewelry manufacturing business which is amongst one of the largest in the world and has multiple locations. He hired 1,700 people in Lafayette. Matt doesn't realize that last year he paid an extra $120,000 more in his electric bill because of the cost of rail captivity.

Then our education system in Lafayette, the university, the schools, the elementary schools, the high schools paid 1.3 million more last year because of the cost of rail captivity.

Cost alone is not the only issue that affects our customers and affects the customers of other entities that are served by coal power. Seventy percent of our power in Lafayette comes from our coal plant. The reliability of service has suffered so much in the last several years, that we have had to take extraordinary measures in order to ensure that that plant was capable of operating to serve our customers.

We had barge-delivered Venezuelan coal that we had to bring to Louisiana to help us. We had to truck-deliver Northwest Louisiana lignite. Now we have to make the decision to move forward with spending 19 million on aluminum rail cars so that each rail shipment that we have of coal can bring us more coal in the event that there is a disruption in rail traffic that it doesn't impede our ability to operate our plant.

We are one of those entities, like Mr. Spitzer, that is suffering from the bottleneck. We have a 1,500 mile trek from Wyoming to our power plant of which 20 miles is the only section that is captive. But because of the rules that the STB has in place, all 1,500 miles are subject to a captive rate. We don't think that is fair.

We can't get competing offers from the other rail provider because there is no need to do that. They don't poach each other's rates.

The STB rules, in my opinion, don't make sense. As a regulated utility, we have rules that we have to follow that require our rates to be approved ahead of time. In the case with STB, that is not how it works. The customer has all the burden of having to test out what the rates are. We believe that is senseless.

Public service commissions in this Country regulate captive arrangements, captive monopolies in a different way, and we believe the same thing should happen here.

What has happened also as we have seen it evolve, I have been testifying on this and this is my third time. Five years ago I testified before the Senate Commerce Committee. At that time, captive customers were dealt with differently, completely differently than competitive customers.

Now we have what I call the small town, two gas station analogy where the two gas stations owners collude with each other as to what the price of the gasoline is going to be at their station. As soon as one puts his price up a little bit higher, the guy across the street does the same thing. What is happening is almost all the coal providers and many others, all coal shippers who have power plants are now in a position that they are paying substantially higher.

When I hear some of the testimony raised earlier today about that it takes these captive customers to help to cover the cost of expansion. It makes me wonder if anyone really realizes that it is people like Mrs. Moss and Stellar Settings and our school systems that are paying the tab for that. They are paying an involuntary tax to be able to support the costs of the railroads' daily operations.

We don't understand why the rates go up. It just turns out that way. We wonder where is the money really going. Is it going to help out competitive routes and at the same time all we are going to do is end up paying the bill for increased costs of running the railroad companies?

We don't know, but we do believe that it is up to the Surface Transportation Board to do their job, to be able to look at non-competitive markets in a way that ensures that the customers at the tail end are properly served, both from a reliability perspective and a pricing perspective.

I thank you for your attention. This is a major issue for our community and for many utility companies around this Country. I look forward to your further comments. [Phrase in foreign language.]

Mr. OBERSTAR. Thank you very much, Mr. Huval.

[Phrase in foreign language.]

Mr. HUVAL. [Phrase in foreign language.]

Mr. OBERSTAR. [Phrase in foreign language.]

Mr. HUVAL. [Phrase in foreign language.]

Mr. OBERSTAR. [Phrase in foreign language.]

Ms. Diehl.

Ms. DIEHL. All the French speaking, I don't know. I need to go take French now, I think.

Good afternoon, Chairman Oberstar, Ranking Member Shuster and Members of the Committee.

My name is Susan Diehl, and I am the Senior Vice President of Logistics and Supply Chain at Holcim, U.S. Inc. I am here to speak to the Committee about Holcim's experience as a captive shipper of a strategic building material, mainly cement.

Cement is the critical component of concrete, an environmentally responsible building product used to build and repair our Country's vital infrastructure. Concrete is the second most consumed product in the world after water.

Although it is not the subject of today's hearing, Mr. Chairman, we pledge to work with you and your Committee as you take on the very serious challenge of rebuilding our Nation's infrastructure.

Holcim is one of the largest producers of cement in the United States with operations across the Country. Reliable and cost-effective transportation options are critical to our industry. Truck transportation increases our carbon footprint, clogs our already crowded highways and is not economical much beyond 150 miles. Simply put, we are reliant on railroads to deliver our products.

Today, as a captive shipper at over 95 percent of our origin destination carriers, we are forced to deal with near monopolistic railroads that impose arbitrary and excessive fees. We daily face uncertainty in rail service reliability, and the prospect of new entrants to create competition is grim.

To remain competitive, we consistently make significant capital investments in our company and our own infrastructure to meet the demands of our customers. In the last decade, Holcim has invested over $1 billion to upgrade its capacity and better service customers while improving its environmental performance.

Holcim is investing $1 billion additionally in Sainte Genevieve, Missouri, on what will be the largest cement plant in the United States. A major reason for this investment in the location that it is, is on the Mississippi River which will allow us to ensure cost-effective, environmentally-friendly and reliable transport of our inbound raw materials and finished cement by barge.

Because we must locate at or near our primary raw material source, we count on and pick sites with rural rail service. True to our experience, we will be captive to one railroad at Sainte Genevieve.

Like its customers, we believe that the railroads must also reinvest to serve customer needs in the years to come. However, that investment cannot be conditioned on a continuation of current monopolistic practices.

Throughout the rail competition debate, we have long sought to be part of the solution and have taken action. In 2003, we created HolRail for the purpose of constructing and operating a 2.3 mile common carrier rail line to establish competition at our cement facility in Holly Hill, South Carolina, which was captive to a single rail line with CSX.

Interestingly, our two cement competitors, operating with in five miles of our facility, are both dual served. This captivity has allowed CSX to provide poor and unresponsive service while charging unreasonably high rates to Holcim. Holcim determined that it could obtain competitive rail service at Holly Hill by constructing its own railroad over that distance to connect with Norfolk Southern railroads.

As we petitioned the STB to build that railroad, CSX has attempted to stop our railroad by blocking the only environmentally acceptable route. The STB has done little to protect shippers or restrain the increasingly consolidated rail industry. Given the track record of the STB, serving as a virtual rubber stamp for the Class I railroads, it was not surprising that after well more than two years and hundreds of thousands of dollars of legal and consulting fees, our petition was denied.

We cannot always pick sites with dual rail service. True to our experience, we will be captive to one railroad at Saint Genevieve.

Like its customers, we believe that the railroads must also reinvest to serve customer needs in the years to come. However, that investment cannot be conditioned on a continuation of current monopolistic type practices.

Throughout the rail competition debate, we have long sought to be part of the solution and have taken action. In 2003, we created Whole Rail for the purpose of constructing and operating a 2.3 mile common carrier rail line to establish competition at our cement facility in Holly Hill, South Carolina, which is captive to a single railroad, the CSX. Interestingly, our two cement competitors, operating within five miles of our facility, are both dual served. This captivity has allowed CSX to provide poor and unresponsive service while charging unreasonably high rates to Holcim.

Holcim determined that it could obtain competitive rail service at Holly Hill by constructing its own railroad over that distance to connect with the Norfolk Southern Railroad. We petitioned the STB to build that rail line. CSX has attempted to stop our railroad by blocking the most environmentally acceptable route.

The STB has done little to protect shippers or restrain the increasingly consolidated rail industry. Given the track record of the STB serving as a virtual rubber stamp for the Class I railroads, it was not surprising that, after well more than two years and hundreds of thousands of dollars of legal and consulting fees, our petition was denied.

While our company has the resources to take on this challenge, many companies do not. It should not fall to shippers to engage in litigation to become modern day trust-busters. If competition is to be restored, we believe the Congress must change the system to create a more level playing field.

What is currently being proposed in H.R. 2125, under your leadership, Mr. Chairman, and that of your Committee, has many key proposals that help strike the balance between rail growth and oversight. The re-regulation argument made by the rail industry presents a false choice. Indeed, we would not advocate for reform that would deter growth of our critical rail infrastructure. We believe that Congress must especially consider provisions that promote rate competition and expand the STB's authority over service-related issues.

Thank you, Mr. Chairman, Ranking Member Shuster, and Members of the Committee. We deeply appreciate this opportunity to speak about issues that are not only vital to our industry, but to our national infrastructure and future growth as well.

Chairman OBERSTAR. Thank you very much for your testimony. I observe that the Latin origin of the word cement, camentum, means to link together. And the product into which it is made, concrete, ceconcraetum in the Latin, is to connect together. Let us hope that you can connect some things together here with your testimony. Thank you.

Mr. HURST. Mr. Chairman and Members of this Committee, my name is Wayne Hurst. I farm in southern Idaho and produce wheat, sugar beets, potatoes, feed barley, alfalfa, silage corn, and dry edible beans. I am the past president of the Idaho Grain Producers Association and a member of the National Association of Wheat Growers Budget Committee.

I am honored and pleased to be here today on behalf of the Alliance for Rail Competition and the agricultural community. The members of the Alliance for Rail Competition include utility, chemical, manufacturing, and agricultural companies, and agricultural organizations all working together. Producers of the commodities as wide ranging as soybeans, dry beans, lentils, rice, barley, peas, and sugar beets all have expressed concerns similar to those I will share with you today. Together these organizations represent growers of farm products in more than 30 States.

I have submitted for the record a full statement and I would like to summarize that statement for you in the five minutes allotted to me. I would ask that the statement be accepted into the record. Also, recently a letter was sent to the Committee in support of H.R. 2125, and I would ask that the letter be accepted into the record as well. The letter was written by the Alliance for Rail Competition, American Soybean Association, American Sugar Beet growers Association, the National Association of Wheat Growers, the National Barley Growers Association, the National Farmers Union, United States Beet Sugar Association, USA Dry Pea and Lentil Council, U.S. Dry Bean Council, and the USA Rice Federation.

First, the importance of rail to agricultural producers. Wheat growers know that an effective railroad system is necessary for the success of the wheat industry. As captivity levels have risen, a larger and larger share of the cost of transportation has been shifted to rail customers and State and local governments. Here is the bottom line. We have between us and our markets a railroad with the economic power to take away our profits any time it wants. We captive shippers are tired of subsidizing commodity movements that have rail-to-rail competition and an STB that rules in favor of railroads and against captive rail shippers.

Second, effects of growing rail captivity. Since the passage of the Staggers Rail Act of 1980, the degree of captivity in many wheat growing regions has increased dramatically and today whole States, whole regions, and whole industries have become completely captive to single railroads as a result of many railroad mergers. What is clear is that the areas of the country served by single railroads are experiencing drastic increases in rate levels that are not found in areas that have some rail-to-rail competition. The farm producer bears the cost of transportation and cannot pass it along to anyone else. So when we say agriculture is captive, we are truly captive.

Third, the transportation cost shift. We have reports of railroads raising their rates just to drive off unwanted rail traffic, thereby abandoning common carriage. We also have reports of the railroads refusing to service locations that the railroads deem operationally unacceptable. The result appears to be that railroad market power is being exerted to create haves and have-nots in the shipping community. Every one of the crops I produce is having trouble with the level of rail rates and service. Let us look at just the crops I raise on my farm and some of the transportation issues associated with each crop, because what we find is a pattern that exists in all facets.

Wheat. Following the wheat harvest in July of this year, there were more than 10 million bushels of Colorado wheat stored on the

ground, primarily in areas where there was a lack of adequate rail service—captive branch line areas. Such wheat lying on the ground, exposed to the elements sustains an economical loss or poses a food safety risk and threatens its marketability. The elevator I sell to has told me that delays in service are threatening its existence because railroad delays cause cash flow problems. This company is one of the pioneers in identity preserved wheat marketing, which matches wheat varieties and characteristics to individual customer-specific needs. Shipments in smaller lots like identity preserved wheat are not what the railroads demand in their business model. Yet the identity preserved business practice holds one of the future keys for American agriculture to maintain market position in the world.

Sugar. I am a member of a grower-owned co-op, the Snake River Sugar Company which supplies about 10 percent of our nation's sugar. When the railroad decided it did not want to haul sugar beets about 10 years ago, it just quit hauling. Now, with one exception, all the beets in Idaho have been forced to truck.

Potatoes. In the potato industry, we supplied potatoes to the G.R. Simplot plant in Heyburn, Idaho for many years until the plant was shut down several years ago and moved to Canada, resulting in the loss of hundreds of local jobs. Mr. Simplot told us the reason was high freight costs. And indeed, most of the shipment of frozen and fresh potatoes in my area today has been forced to trucks.

Barley. Idaho feed barley used to easily capture 50 to 60 percent of the California dairy feed and grain market, amounting to between 60 and 70 million bushels annually, but today amounts to less than 200,000 bushels. What happened? The railroad serving Idaho chose not to allow barley movements into the traditional market over moving corn. It is no secret today that the monopoly railroads have no desire to move barley and will price these movements as high as needed to eliminate what would otherwise be competitive barley markets.

Loss of malting barley markets. Rail rates and service failures have also closed off access to traditional U.S. malting markets to U.S. barley producers. They have been replaced by Canadian supplies with lower freight rates. This has resulted in a 20 to 30 percent cut in contracted acreage in 2006. Why? The U.S. market dominate railroads focused their resources on shuttle trains and were not willing to participate in shipments that did not conform to the shuttle configurations.

In conclusion, agricultural growers together with members of the Alliance for Rail Competition truly believe that a healthy and competitive railroad industry is essential for their continued viability. However, increased captivity levels with poor service, a lack of available cars, increased rail rates, and a regulatory agency that does not meet the needs of shippers has made it increasingly difficult for agricultural producers to remain competitive in a world marketplace. We believe that the Government needs to be the facilitator and the catalyst for increasing competition in this historically strong industry. We believe the railroad industry can survive and prosper in a competitive environment. Indeed, we know from history, that competition breeds innovation and efficiency.

Wheat growers and other producers along with the members of ARC believe that both railroads and shippers would be better off with more competition in the marketplace. They support provisions in H.R. 2125, a bill that calls for increasing competition without increasing regulation. We fervently believe that the final offer arbitration, as outlined in H.R. 2125, will produce a host of benefits where competition cannot physically be created.

Providing for final offer arbitration and the removal of paper barriers will restore balance to the commercial relationship between the railroads and their customers. Both of these remove the STB from the process, an organization that seems only interested in the welfare of the railroads and not the shippers, and, furthermore, provides a commercial solution between the railroad and the shippers. We in agriculture and the members of ARC believe this legislation will improve rail transportation by providing fairness and openness to the negotiations between railroads and their customers over rates and service. Thank you.

Chairman OBERSTAR. Thank you very much for a very comprehensive statement and very detailed. Your full statement of course will appear in the record. Thank all the members of the panel for their presentations.

Mr. English, are there members of the NRECA who own their own rail cars to haul coal?

Mr. ENGLISH. Indeed. Mr. Harper here is a member of NRECA and certainly Basin Electric has to own their own cars. Many of our members do. Obviously, we have seen a substantial reduction in the amount of rail equipment, talking about percentage-wise, of rail cars that are available through the railroad. If I recall correctly, about a 20 percent reduction. Back in 1980, if I remember correctly, Mr. Chairman, we had about 60 percent of the rail cars owned by the railroads. Today, it is about 40 percent. Certainly that has been the case for a lot of our members.

Chairman OBERSTAR. That is a cost shifted to a consumer, on the one hand, and to a shipper, on another. When you went out to acquire your cars, Mr. Harper, did the railroads offer you a reduction in rates?

Mr. HARPER. Actually, the 20-year contract that I spoke of earlier did have incentives in there for us to make investments in the assets, of which we did with cars and our rates got lower. Today, they require us to purchase the cars with no incentives, no lowering of rates. In fact, we just spent a little over $10 million for a fourth train sent to the Laramie River Station in order to get our coal supply out.

Chairman OBERSTAR. Over $10 million to acquire cars?

Mr. HARPER. Yes, Mr. Chairman.

Chairman OBERSTAR. But no compensation on the other side in the form of a rate reduction?

Mr. HARPER. No, Mr. Chairman.

Chairman OBERSTAR. That is cost-shifting.

Mr. HARPER. Pretty much.

Chairman OBERSTAR. Mr. English, you discussed the high cost of bringing a rate case to the board. What recommendations do you have on lowering these costs and improving the fairness of the rate proceeding at the board?

Mr. ENGLISH. Obviously, Senator Dorgan spoke to that this morning and he is addressing this issue. I think there is no question that this is exorbitant. There is no reason for cost of this magnitude. Now we got into some discussion here about, well, they have to pick up the cost of the Surface Transportation Board. If I recall correctly, that is an entity of the Federal Government that is here to provide a service. And if you go back again to the original intent of the legislation, they are supposed to be here to hear these kind of disputes and to deal with the injustices in accordance with the intent of the law. I think it has to raise questions, Mr. Chairman, given the exorbitant amount, if this is here not to pick up the costs of the proceedings but instead to discourage people from bringing proceedings.

Again, this goes back to the issue, what is the Surface Transportation Board here for? If they are not here to address these issues and to hear from those who have grievances and, in effect, find the proper solution in accordance with the law, then I do not know why they are here. This again raises the issue and goes to the heart of your legislation. I want to commend you and Mr. Baker both for working on this. You had some very nice questions, Congressman Baker. Great job. Thank you.

Chairman OBERSTAR. As Dr. Mulvey said in his testimony, the Staggers Act greatly reduced the economic regulation of the industry. It did not eliminate it. It did not totally take the Government out, but provided a safety valve for the shippers and consumers. Just a further question. You own the cars. Who maintains them?

Mr. HARPER. We do. We have to pay for the full maintenance, whether it is the wheels, the cars themselves, or whatever. The cost for maintaining those train sets is the responsibility of the owner.

Chairman OBERSTAR. That is a sweet deal.

Mr. HARPER. Depends on which side you are on.

Chairman OBERSTAR. For the railroads, a sweet deal.

Mr. Spitzer, you described a number of situations that were painful for your industry and for your company. But I recall that period of time when the Union Pacific acquired the Southern Pacific, whose rail infrastructure was in very bad shape; the roadbed was in bad condition, the rolling stock had deteriorated. As one person at a meeting I presided over in Beaumont, Texas said, one of the customers, it was held together with chewing gum and baling wire and then it all fell apart when the UP acquired it because the SP management somehow knew how to keep it going even though they were losing money and it was not a very profitable operation. And then when the UP acquired it, the average transit time on coal shipments was seven miles an hour. There was a meltdown on chemical shipments from the West Coast to the Gulf. Chemicals were being off-loaded from large vessels onto smaller vessels and shipped through the Panama Canal and up the Gulf of Mexico and into the Gulf Coast. Were you affected by that period of time?

Mr. SPITZER. I do not have the specific details on that, Mr. Chairman. I would be happy to get back to you in writing with how that specifically impacted us. If I may say, while over time there have been benefits of the Staggers Act and perhaps improvements in in-

frastructure in some cases, today we are seeing a number of service issues.

[Subsequent to the hearing, Mr. Spitzer added the following: DuPont experienced major rail service disruptions and delays from the Union Pacific-Southern Pacific merger. It took years to recover from the merger and some geographic areas continue to have lingering service issues.]

As with Mr. Harper on the panel here, we too have seen a shift in costs to us for rail cars, a large fleet that we own and maintain in our company as well, and a number of service issues, as I detailed in my testimony, into and out of our sites.

Chairman OBERSTAR. You recently filed three rate cases with the board. What has been the outcome and your experience in that?

Mr. SPITZER. I think our experience before, as has been discussed today, is the large and medium rate cases have largely been prohibitive. Way too long and too expensive. Since this is ongoing litigation there is not a lot I can say. The rate cases are on the STB website. I heard a lot of discussion earlier about 180 revenue to variable cost. In these cases we have 300, 400 percent revenue to variable cost. And on an overall basis, both with CSX and what we have recently experienced, we have seen increases from on average 30 percent up to 176 percent.

Chairman OBERSTAR. The American Chemistry Council issued a report which I have claiming that fuel surcharge by the five Class I carriers overcharge shippers by more than $6.5 billion dollars. The Association of American Railroads takes issue with the study, with the premise on which it was founded. What is your response to that issue?

Mr. SPITZER. In addition to that report by the American Chemistry Council, it has been discussed here today that the GAO also took a look at it and validated a significant increase in miscellaneous charges. We are now paying fuel surcharges. In the past in some agreements it was imputed as part of the overall underlying rate. Now, as contracts expire, we are seeing the fuel surcharges come in. And they are just part of a number of miscellaneous charges that are coming up. If I may, Mr. Chairman, add one more point. One of the reasons for concern and I believe the timeliness of action is that many contracts are expiring. When you read some of the Wall Street analysts talk about legacy contracts and the great profit opportunities for the railroads due to triple digit increases, that is currently what we are experiencing today, those triple digit increases.

Chairman OBERSTAR. Thank you. Ms. Diehl, do you have any data that would reflect percentage of the cost of a ton of cement represented by the transportation cost of that cement?

Ms. DIEHL. Yes, Chairman Oberstar. Before I proceed with my answer, I just want to correct something on the record. I inadvertently said that we have invested over a million dollars. It has been over a billion dollars in the last decade. So my colleagues have informed me that there is a big difference between the two and I just want to make sure it is right on the record.

Chairman OBERSTAR. As Ev Dirksen was fond of saying.

Ms. DIEHL. In terms of our overall transportation costs, not just rail, they used to be one-quarter of our overall costs. We are look-

ing at rates that are almost double that as a component of our overall cost of cement. So it is something that is of great concern to our company. What we are looking for is really to level the playing field so we have opportunities. And we have tried to be part of the solution. We tried to create our own competition using our own investment dollars and we were denied that opportunity.

Chairman OBERSTAR. Thank you. I will withhold further questions.

I now recognize the gentleman from Pennsylvania, Mr. Shuster.

Mr. SHUSTER. Thank you very much. And all of you can feel very comfortable I will not ask any questions in French. I do not speak French.

[Laughter.]

Mr. SHUSTER. I certainly do believe that we need to make some changes at the STB and I think they have started down that road, at least this board that we had in front of us today has put some things in place. Also, as I said in my opening comments and I think all of us have to be cognizant of, if we pass something we may get some unintended consequences and one of those may be going back to the way the rail system was before 1980. I do not think anybody sitting on this panel or anybody in this room or this country wants to see us go back there. So with that being said, a couple of specific questions and then a general question that I want to ask you, because I am trying to figure out how we move forward without potentially going back to 1980 or before the Staggers Act was put in that, from my standpoint, saved the railroad industry in this country.

The first thing is on the fuel surcharges. Again, I think I know the answer but I am not quite sure because I get conflicting information when I read things. It is $6.5 billion in surcharges. Nobody filed, from my understanding, with the STB to get a remedy there. The question I guess is, is that accurate? And why did not anybody file? Was it the cost was too much and you did not think it was worth it. Anybody can take a stab at it or everybody can take a stab at it if you wish. Yes, Mr. English?

Mr. ENGLISH. I think it is an indication of the lack of confidence that people have in the Surface Transportation Board. That is the whole point. And I think we have seen that throughout the history of the board. We have waited for 20 years and you have not finished implementing the legislation that was passed in 1980. That is what this is all about. The Surface Transportation Board is not cutting it. There is no other way around it. So the question is whether the Congress is going to fix, whether in fact you are going to complete the 1980 legislation and make certain that it does the job, or whether in fact you just scrap the whole thing and forget it, because I do not think it is going to make a whole lot of difference.

Mr. SHUSTER. Did not the STB come forward and say the railroads did not account for it properly and thus everybody is getting some remedy?

Mr. ENGLISH. That is correct. Now what would you expect out of that? I would think you would expect——

Mr. SHUSTER. Well, $6.5 billion is a lot of money.

Mr. ENGLISH. That is correct. Would you not also expect that if any body, respected body in this town who has this kind of responsibility and obligation made such finding, would you not expect that they would insist that money be turned back to the shippers? But they took no such action. The second thing, would you not also expect that they would suspend that kind of abuse immediately? They did not suspend it immediately.

So the question is—that is correct, they found it—but the question is, what did they do about it? How did they deal with it?

Mr. SHUSTER. From what I understand from the testimony today, you got some of that money back and some they said they just moved forward. Which is not a very good answer for your industry.

Mr. ENGLISH. I am not aware that they put any back. They said they were going to stop it going forward. But that is $6.5 billion. That is a lot of money.

Mr. SHUSTER. Anybody else want a crack at that?

Mr. HUVAL. What I heard of the testimony today is that actually some shippers approached the STB to let them know this was taking place. I think it is good that the STB did take a look at it themselves. But they did not come up with it on their own. There were some shippers that pointed out that this was becoming an issue because these prices continued to go up. So I commend them for looking at it. But I think it is the sort of thing the STB should have been doing all along. And, again, it does raise a lot of questions when an industry is allowed $6.5 billion, or whatever the number is, anything over-collected is over-collected and it is improperly done, it should be refunded back to the shippers that were harmed by that.

Mr. SHUSTER. Absolutely. I agree with that. Again, my question, I would have thought somebody would have said hey, let us file a case, let us all band together and do something to get this stopped. So that is really the question I had. Because I agree with you that if something was done improperly it should have been addressed. It was. It was not maybe going through the proper channels, but something was addressed.

The second thing on car ownership. When did the shift occur on car ownership? I am not quite sure I know that some industries today are buying more, some I think in the past have. Your industries, have you always owned your own cars, have you recently, are you buying more, are you buying less?

Mr. HUVAL. In our particular case, we always owned our own cars. We had some steel cars in place that still probably had another 10 years of useful life left to them, but because of the reliability of getting coal, the reduced reliability, we felt that we needed to move forward to replace those cars with aluminum cars so that every shipment brings us in more coal. And that is just because of lack of maintenance of the rail lines. But we always took the position of wanting to own our own cars. We are just now in the position of having to prematurely replace those cars with aluminum cars.

Mr. SHUSTER. Right. What about DuPont, have you always owned your own cars?

Mr. SPITZER. For us it began in the mid-1980s. At this point, we feel it is necessary to have them to ensure availability and timeliness.

Mr. SHUSTER. What about liability?

Mr. SPITZER. Reliability?

Mr. SHUSTER. The concern that you wanted cars, you wanted to make sure that they were your cars, and that if something happened you knew and were responsible. I am talking about legal responsibility. Liability.

Mr. SPITZER. I would say the Department of Transportation, the FRA have clear regulations and guidelines relative to car design that we think industry on an overall basis is held accountable to meeting. In our case, it has grown since the mid-1980s to approximately 5,000 today.

Mr. SHUSTER. Yes, sir?

Mr. HARPER. Yes. I believe our ownership can track back to the mid-1980s as well. As I said a minute ago, there was recognition of incentives in the contract that we had at the Laramie River Station. But since that time, we have also had to buy, because we own the Dakota gasification synthetic fuels plant in North Dakota, we have had to buy ammonia cars, so on and so forth, we have had to buy many cars. So we have a lot of ownership in cars that we do not really want to be in, but we are there.

Mr. SHUSTER. Portland Cement industry, has that industry always owned its own cars?

Ms. DIEHL. I know that we have owned our own cars for at least the last decade. We currently own about 2,000 cars. And there have been some times in the past where we have not been able to use those cars. Certainly our concern is, as we divert our own investment dollars towards rail cars, we are not investing in our own capacity and infrastructure, and that if the capacity turns, and now the railroads have extra rail cars, we may be stuck because they are utilizing their capacity and we are not utilizing ours.

Mr. SHUSTER. Right. Mr. Hurst?

Mr. HURST. Well, I do know that some agriculture companies do own their own cars and service is tough to get. Just last week I was unloading a load of beans at a local warehouse and they said, you know, from the time we order cars, it is often 21 days to sometimes 30 days before we get the cars, and often we have to fix them when they show up, and then it is 3 days from the time we have them loaded until that order arrives at our customer. So, 60 days usually.

Mr. SHUSTER. I guess the last question I have, it is a pretty broad question and it is why we are here today. And I understand each of you is here representing your own companies, your own industries. I was in business before and I certainly wanted the best deal. But we are looking at a system which is a national system. A couple of people I think mentioned today about the days when there were 60 railroads out there. I do not know that any of them really provided national service that we can get today. And I do not know if anyone really wants to go back, as I mentioned early, back to pre-1980. We do have seven Class I railroads in this country. It has been reduced, consolidations have occurred, and now we have

a profitable industry that is spending 18 percent of its revenues to build the infrastructure, reinvest.

If we are going to start the change—and differential pricing is something that I am trying to get my head around. I understand how the airline industry does it. That is what is happening in the rail industry and some people feel they are paying unfairly. But we have a railroad system that is the envy of the world. It is the most efficient system in the world. Overall, the prices that you pay are lower than in the rest of the world. And as the Chairman mentioned earlier, it is to serve broad public interest. And in my view, the taxpayers are not paying money to support the system. So how do we move forward without disrupting that and go back to 1980? Mr. English? And Mr. English, please be brief because the Chairman is going to start to whack the gavel on me and I want to make sure I get your response.

Mr. ENGLISH. I will put in a good word for you.

Mr. SHUSTER. I know, it is a tough, big question.

Mr. ENGLISH. Very quickly, the point is just this. The problem is with the Surface Transportation Board. The problem is with the attitude. And certainly I think what you can do is this Congress can send a very strong message that you expect that the Surface Transportation Board carry out their responsibilities. Now you go strictly to the issue of fairness. Why is it that 20 percent, and I am using that 20 percent figure that Professor Grimm from the University of Maryland testified here in 2004 and said it was 20 percent, unlike the 10 percent you heard here today, probably more today, but why should that 20 percent pay for everything? That is who this thing is resting on. We are already at 180 percent of the value that was laid out earlier under the Staggers Act. That is the threshold before the Surface Transportation Board even gets involved. Now why should it be 300 percent, 400 percent, 500 percent, 700 percent? Why is there no limit?

Mr. SHUSTER. I think the answer to that question is, somebody said earlier who is much smarter than I am, you have to look case to case, what were the capital investments. And I understand that.

Mr. ENGLISH. But only the captive shippers get stuck.

Mr. SHUSTER. Mr. English, if I did not know it, I would think you were a former Member of Congress.

[Laughter.]

Mr. ENGLISH. Thank you very much.

Mr. SHUSTER. And if you were a Member of the House, you would be in a filibuster now.

Mr. ENGLISH. And your father was a great man.

Mr. SHUSTER. I appreciate that greatly. Could everyone just take a quick crack at that.

Chairman OBERSTAR. Very briefly, because we are going to have votes in just a few minutes and I want to get to other Members.

Mr. HARPER. Mr. Shuster, as I said a while ago, I think what the STB has to do is find that balance. I do not think there is any one of us sitting here who is not willing to pay for good service. We all recognize that, period.

Mr. SHUSTER. Okay. Thank you.

Mr. SPITZER. I come back, Congressman, to what Chairman Oberstar said, that if the railroads are there to serve in our na-

tional interest, it is hard for our industries and businesses to be globally competitive when there is a monopoly power in the middle of our supply chains. It is remarkable to me that with the bottleneck issue, competitive switching, and paper barriers, the STB has over many years made decision after decision that has served to reduce competition. I believe it needs to be addressed if we are going to turn it around. In the chemical industry alone, there has been a $30 billion change in imports and exports in the trade balance. It still remains a very vital industry in this country.

Mr. HUVAL. As Senator Russell Long would say, "Don't tax me, tax the man behind the tree." Well, the man behind the tree in our industry is the customer. The customers are paying the cost, a substantial cost for these investments that railroad companies are getting. That is an important thing we cannot forget. It is not just coming from just free market operations. The customers are forced to pay for that because they are only being served by one utility. So we need to make sure we consider all of that in the big scheme of this.

Mr. SHUSTER. Ms. Diehl?

Ms. DIEHL. From our perspective, we certainly believe that we need the railroad going forward and it is a key decision point when we decide whether or not we are going to continue to reinvest in capacity. The STB, as ineffective as it stands today, and given our recent experience which has happened in the last 13 months, we do feel like we are not getting the attention of the STB to create competition when they opportunity has been provided to them. And so from that perspective, all we want is to level the playing field. We have monopolistic railroads who are not regulated and, as I heard this morning, we cannot have the worst of both worlds, which is monopoly and no regulation. And that is all we are looking for is just to level the playing field so that the railroads are playing under the same sets of rules and whatever oversight body is striking that balance to make sure that we can promote the growth but also to make sure that things stay fair.

Mr. HURST. From agriculture's perspective, we need and have to have a strong railroad. The Staggers Act basically had two things. One was to improve the financial state of the railroad, and they have done that very well through the STB. Secondly, it was to protect captive shippers that would come from deregulation. That has failed to happen in the last 27 years.

From our perspective, the answer to the STB problem is to give us final offer arbitration. That is a mechanism whereas we have the tool to solve our own problems with the railroad outside of regulation, outside of Washington even. We can take care of it on a commercial level. And so that is why we feel so strongly about final offer arbitration.

Mr. SHUSTER. Thank you all very much. Thank you, Mr. Chairman.

Chairman OBERSTAR. Ms. Brown.

Ms. BROWN. Thank you, Mr. Chairman. Mr. Spitzer, I have got a couple of quick questions for you. DuPont recently announced it would have a buy back of $1.1 billion in stock. Since you are doing it, what is wrong with share buy backs by freight railroad if DuPont is doing the same thing?

Mr. SPITZER. We do not have an objection to that. On the other hand, we are not out there, as some railroad companies are, talking about difficulties in investing in capital and in infrastructure while at the same time doing multibillion dollar buy backs. There seems to be somewhat of an incongruity in those two statements.

Ms. BROWN. I do not know. The hedge funds are moving in and they are buying up some railroads. One of the things they want to do is for them to raise the price of the shippers, which is just the opposite of what you are saying here today.

Mr. SPITZER. We are currently——

Ms. BROWN. I mean the market is part of our discussion here.

Mr. SPITZER. Yes. I would just say, Madam Chairwoman, that we are, both in the rate cases that we brought—I mean, I will just say that in the negotiations that took place with CSX, as an example, I just want to share what it is like dealing with being a captive shipper. We shared the impact that these rate increases would have on our customers, on our business, and they were ignored.

Ms. BROWN. What percentage of your pricing is established by a third party? Arbitration, what percentage?

Mr. SPITZER. To my knowledge, and I will get back to you with anything different, I am not aware of prices that have been established through arbitration in our particular case.

[Subsequent to the hearing, Mr Spitzer added the following: Prices within DuPont are generally set by competitive market conditions or through negotiations with our more significant customers. Alternative Dispute methodology, including arbitration, is generally used to resolve disputes. The rail industry that we face is distinguished from our market-based rate setting in that no competition exists that would otherwise curtail or limit monopoly-based pricing practices. In the absence of true competition, mediation, under the supervision of a government sponsored agency, is one method by which reasonable pricing that satisfies the needs of both parties and the public good might be achieved.]

Ms. BROWN. In your particular case. Anyone else on that issue? Okay, the other question. Good or bad, lower rates are not going to deal with the significant capacity problem that we have in the United States. What suggestion do you have for funding rail expansion?

Mr. SPITZER. I would say in one word, it is competition. I believe that we need the infrastructure——

Ms. BROWN. Do you think competition is going to help expand the system?

Mr. SPITZER. Yes, I do.

Ms. BROWN. It surely did not do it with the telephone industry.

Mr. SPITZER. I would just say that in the——

Ms. BROWN. A lot of people made money and you do not know who to call.

Mr. SPITZER. Well, yes, there are those rare exceptions. But I would say that my experience in the industry that I am in and dealing with customers that span everything from electronics to food to a whole variety of industries, our Nation is based upon competition. We would see, I believe, innovation, we would see new technology, we would see competition between railroads. If I may also add, the whole idea of having infrastructure and expanded ca-

pacity, we also want to be sure that we have U.S. produced goods to put on those expanded railroads that have occurred.

Ms. BROWN. Absolutely, and jobs. And this is something that we cannot send overseas. Thank goodness. But, for example, you talk about what you ship. You have the capacity to use trucks, which I am not encouraging it, as an alternative to rail. Let us say as with plastic, for example. Certain goods, like coal, coal needs to go rail. But you have the capacity with, as you just said, your diversity to use other kinds of alternatives.

Mr. SPITZER. Well, yes, we do use a variety of means of transportation. However, (1) rail is one of the safest means to transport material; and (2) based upon the long distances that may be involved or the volume, in many cases truck is simply not a viable option for many of the products that we move. And I believe that is why when we are in these negotiations it is very clear to the carrier that we do not have a viable alternative and therein comes the take it or leave it offers or the triple digit types of price increases.

Ms. BROWN. Mr. Hurst, you mentioned beans and corn. I am no expert on any of that. But my question is why would it matter to the railroads what you are shipping? I am just curious. You said that they did not want you to ship barley, they wanted you to ship corn. Why would they care?

Mr. HURST. Because I understand they load, say, Nebraska corn in large shuttle trains and they deal in 100 car shuttle trains instead of dealing with 25 cars at a time with barley. They prefer corn. They are set up for corn and that fits their model, so they just basically said to Idaho barley, forget it, we do not want to mess with you.

Ms. BROWN. I thought you said you have your own cars.

Mr. HURST. Some companies do. But producers, we do not own our own cars. We sell to an elevator or a grain buyer and some of them do.

Ms. BROWN. Would someone else like to address the expansion capacity? You know, we do have a problem. I want to see more passenger rail. We have an explosion, which is exciting, but we do have an explosion as far as products, goods and services. We need to be competitive with China and other places. But no matter who I talk to, whether it is the Russians or the Europeans, they think we have the number one rail in the world. But I am listening and I hear you saying that there are some problems. But this industry has just started operating in the black. I see a couple of hands and I guess I have got a couple of minutes. So, yes, sir.

Mr. HARPER. Very quickly. I think what we want are fair and reasonable rates and have and understand that there is someplace to go to air our concerns. I am in the electric utility business. I am not in the rail business. I want to have a supplier that has my best interest at heart. And if he has that, then he is out there building the infrastructure that is necessary to get our products to market and get coal to my power plants. That is my biggest concern.

Ms. BROWN. He is investing 18 percent of his product back into the industry. DuPont is not doing that. Nobody is putting that amount back into the industry.

Mr. HARPER. Well, if I may. Right now, we have a workplan of $5.2 billion in front of us over the next 10 years. Yes, ma'am, I do think we are investing in our system, with all due respect.

Ms. BROWN. Mr. English?

Mr. ENGLISH. Thank you very much, Chairwoman Brown. I think there are a couple of issues here. One, you should not just have a small segment of the population in this country or a small segment of the shippers who pay the entire freight. If we are going to take this on as a national policy, everyone should be involved in paying for it. It is too big for one thing, and the second thing is it is not fair.

The second issue, I have heard that 18 percent, and I hope you will challenge that a little bit and found out if that includes the maintenance and upkeep as well. If that is maintenance and upkeep, that is not what I think you are alluding to as far as investment in infrastructure. Thank you.

Chairman OBERSTAR. The Chairwoman's time has expired.

Ms. BROWN. Yes, sir.

Chairman OBERSTAR. Mr. LaTourette. We have seven minutes remaining on a vote but only a handful have voted so far. So we have plenty of time.

Mr. LATOURETTE. I thank the Chairman and I will try to be brief. I learned from my very brief tenure as the Chairman of the Rail Subcommittee not to mess with Congressman English, so I will not be asking you any questions today, sir.

[Laughter.]

Mr. LATOURETTE. Mr. Spitzer, following up on where the gentlelady from Florida led off. One of the arguments that is made by the advocates of re-regulation, and you sort of I thought in your testimony took a whack at the railroads for buying back stock and I was prepared to talk to you about DuPont's stock buy backs. But in answer to Ms. Brown's question, I think she asked the right question. And Congressman English, I will challenge it. I do not think it is 18 percent. I think it is 17 percent that railroads invest in capital expenditures, and that comes from the Surface Transportation Board. But you did in response to Ms. Brown's question, Mr. Spitzer, indicate that you do not have any problem with stock buy backs as long as they make investments. Do you know how much DuPont makes in capital expenditures based upon a function of revenue per year?

Mr. SPITZER. Well, I mean, this year it will be over 5 to 6 percent, in that range. But it is a different type of industry and I am concerned that perhaps we are getting a little bit off of the point. I am not an expert in national policy or how to go ahead and deal with the railroad funding issue. I am here saying that as a captive shipper I think there are some very serious imbalances, a very uneven playing field, and unreasonable and excessive rates. And to add on to Mr. English, the whole idea that the captive shipper ought to be the place through differential pricing where you fund railroad capital I do not agree with.

Mr. LATOURETTE. Let me be clear. I want to agree with Mr. Harper's observation. I think that people that feel aggrieved, whether it is the railroads or the people that ship on the railroads, should have a place to go where they get treated fairly. And if that

is what you are all here telling us, I could not agree with any of you more. And of the Surface Transportation Board, I was impressed by Chairman Nottingham. I think some of the changes they have made in small shipper and cost of capital are steps forward. But like anything else, you should be able to have a forum where you are treated fairly. So if that is what you are telling me, that is fine. I will tell you I cannot agree always on how you are getting there.

That brings me back to you, Mr. Spitzer. One of the observations the railroads make, and it goes to the Chairman's opening statement when he set up and talked about that big map of all the land that was given to the railroad and everything else, is that they have some kind of national responsibility. I agree with that too. But they have a common carrier responsibility and they come to me on a pretty regular basis and say you know what, if we do not have to carry your chlorine, we are not going to have the exorbitant insurance, we are not going to do this. And so I do not think that your company or any other chemical company in this country would say you would trade a beefed up STB and lower rates if they were relieved of their common carrier obligation. Right? That is part of this mix that we are in, which is why people need to be treated fairly.

And the last question, because the vote is pending. When the World Bank took a look at this in 1998, and it has actually be updated, their observation at the World Bank, from a guy named Lou Thompson, is "Because of the market-based approach involving minimal government intervention, today's U.S. freight railroads add up to a network that comparing the total cost to shippers and taxpayers give the world's most cost-effective freight rail system. Unsubsidized U.S. frail rates are not only the lowest of any market economy, they have been falling every year since 1980 even though U.S. labor costs are high." And I would refer you to Figure 2 in Ms. Hecker's presentation from the GAO earlier today. Figure 2 shows that really the only sector that has seen an increase in rates since 1985 is the guy at the end, the guy in the ag business. Everybody else has been seeing rates go down.

So I think that maybe I am going to leave this hearing with the view that rates are going down except for the ag guy who is having a problem with some of his stuff. But maybe the coming together thing here is having an organization like the STB that when you leave there you feel you have been treated fairly. Mr. Spitzer, do you want to say something about that?

Mr. SPITZER. If I can, Mr. Congressman. I would not want you to leave with let us say a misimpression. We have not had our rates going down over the past 20 years. Our rates have been going up and that does not even account for all of the other so-called accessorial charges, rail cars that add on to it.

Mr. LATOURETTE. I do not want to beat up on you, but my view is fairness. My steelworkers come to me and say that DuPont has cornered the market on something that is called neoprene, which I do not even know what neoprene is, but they need it to make rubber and that your company stands in the way of bringing in neoprene from Canada, Japan, and other places.

So again, I leave this hearing, Mr. Chairman, with the belief that re-regulation of the railroads is wrong. However, if we can develop a system at the Surface Transportation Board or someplace else so that these folks feel that their grievances are at least being fairly dealt with, then that is something I can get behind. I thank you and yield back the balance of my time.

Chairman OBERSTAR. Thank the gentleman. We do have two minutes remaining. I would say that if the purpose of this legislation were to impose rates, that would be re-regulation. But as Mr. Mulvey said, the Staggers Act reduced, and greatly reduced, economic regulation. What we are working on here is a process by which we can determine fairness in rate setting.

Mr. Baker?

Mr. BAKER. I shall be brief and just make a statement, Mr. Chairman. There will be adequate time for our witnesses to respond in writing if they so choose.

I just wish to observe that the bill that we have under consideration does address bottleneck reciprocal switching and the paper barriers, which have been mentioned by the various witnesses as important elements. If we are to assume that we may move forward with at least those essential elements, there is apparently one open door which the STB has provided us with the comment period on the capital asset pricing model. That being integral to rate decisions and a lot of other assessments the STB must make.

They have held out earlier today that if you do not like the CAP M approach, what are the alternatives. There are some alternatives, arbitrage trading practice, for example, and there may be others. And Mr. Spitzer or any of the representatives at the table who have access to financial guidance could advise the Committee or, more importantly, the STB. Now their comment period closed September 13 but it does not foreclose or forestall what this Committee might do in moving forward.

If there is a better way to bring about responsible pricing which blends the ability to make a profit with a regulated utility in this case, that is what we are looking for. Because from what I understand, the pricing models used to date was discounted cash flow, and for years past while the rest of the world moved on. They have said give us a better way to do this and we will consider it. Well, I do not want to let that opportunity pass by. We have never had this opportunity since Staggers passed. We may not get it for another 25 years. So among all the people who are the rail concerned stakeholders, this is a window for this Committee to act and for us to deliver to the STB a product that might make a great deal more market sense. With that, Mr. Chairman, I yield back.

Chairman OBERSTAR. Thank you very much, Mr. Baker. Well said and thoughtfully said.

We will excuse this panel and call the final panel for the day, panel III. We have three votes which could take as much as a half an hour. So we will resume sitting as soon as votes are concluded.

[Recess.]

[After 6:00 P.M.]

Chairman OBERSTAR. The Committee on Transportation and Infrastructure will come to order and resume its sitting.

We welcome our final panel, Panel III, including Mr. Jim Young, chairman, president, and chief executive officer of Union Pacific; Charlie Marshall, vice president of development, Farm Rail System; and William Rennicke, director, Oliver Wyman, Inc. The piece de resistance, as they say in French.

Mr. SHUSTER. What does it mean?

Chairman OBERSTAR. It means the main course.

[Laughter.]

Chairman OBERSTAR. That has many implications. Mr. Young, welcome. You have waited a long time today, you have been very patient, sat through all the previous testimony, and now is your turn.

TESTIMONY OF JIM YOUNG, CHAIRMAN, PRESIDENT, CHIEF EXECUTIVE OFFICER, UNION PACIFIC; CHARLIE MARSHALL, VICE PRESIDENT OF DEVELOPMENT, FARM RAIL SYSTEM, INC.; AND WILLIAM RENNICKE, DIRECTOR, OLIVER WYMAN, INC.

Mr. YOUNG. I feel like I have been working on the railroad today. Chairman Oberstar, Ranking Member Shuster, Members of the Committee, my name is Jim Young and as of January of this year I became chairman of Union Pacific Corporation. I appreciate the opportunity to testify today on behalf of the rail industry. I have attached the testimony of Wick Moorman, the CEO of Norfolk-Southern, to my written remarks. He had submitted testimony on behalf of the entire freight rail industry.

Mr. Chairman, as you know, our Nation is facing an infrastructure crisis. Every mode is being stretched beyond its limits. You and your Committee are at the very heart of this debate and will play a critical role in solving this great challenge. My message today is a simple one. The results of your deliberations will determine how much investment is made in the private rail system and how much traffic gets shifted to the over-burdened highway system. Let me explain why.

As the only transportation mode that pays for its own infrastructure, the rail industry must generate enough revenue to build new capacity while replacing existing infrastructure as it approaches the end of its useful life. Union Pacific is investing for growth. Our capital budget for this year is $3.2 billion, the largest amount in history. We are making substantial investments in growth capital because we believe our financial returns will continue to improve to justify these high levels of investment.

If we are going to continue to prudently invest in the capacity that our customers want and our Nation needs, we need some assurance that we can earn revenues sufficient to justify making those investments. Unfortunately, the current legislative and regulatory climate threatens those returns and makes future investment in additional capacity uncertain.

Some of our customers will tell you they are paying too much for rail service and their prices should be lowered. They are advocating proposals that would in essence cap the rates we charge and shift railroads to a cost-plus rate regime that ignores the market, impairs service, and penalizes efficiency. There is an interesting dichotomy between what we are hearing in Washington and what I

hear when I meet with the CEOs of many of those shippers, as I do regularly. I can tell you that for the vast majority of the CEOs their primary concern is whether we are investing to handle their future growth. What I tell them is that as our financial returns improve they will see the benefits in the forms of better service and more capacity.

We are concerned about the Surface Transportation Board's recent proposal on the calculation of the industry's cost of capital. And while we have always supported the STB finding a way to streamline rate cases for small shippers, we are concerned about the board's new regime for bringing those rate cases. The board's new rate case regime will undoubtedly lead to lower rates for some customers and will adversely affect our revenues. This will be compounded by the board's new calculation of the cost of capital. The new calculation establishes a cost of equity level below similar calculations by economic experts in other agencies for network industries such as electric utilities. This also increases the amount of traffic subject to rate regulation and will force a reduction in our rates as calculated under the board's rate review processes.

We have concerns with the approaches that the board is taking in these two cases and will continue to participate in the process. At the end of the day, it is clear the regulatory landscape has shifted and that our revenues will be effected.

As a publicly owned company, we have a fiduciary duty to our owners to operate the company in a profitable manner and make prudent decisions regarding capital investment. The shareholders of Union Pacific will not allow management to invest capital in projects that have an unreasonably low rate of return. Since the inception of the rail industry, many of the challenges we have faced have changed. But one constant remains the same. We can only build and maintain the size rail network that our customers are willing to pay for. The decisions you and the STB make about our regulatory structure will control how much investment we will be allowed to make. If you believe, as we do, that there is a transportation infrastructure crisis, then we should be doing everything we can to accelerate investment.

Our company and this industry have demonstrated that we will invest when the market demands it and when the returns justify it. Our country's freight railroads are finally approaching a point where the financial returns justify new investment. It would be tragic indeed if Government policy changes would step in now to stop the growth potential for a significant component of our country's vital infrastructure.

That concludes my testimony. Thank you again for giving me the opportunity to represent the railroad industry. I would be happy to take any questions.

Chairman OBERSTAR. If there is anything else you wish to add, all witnesses are cautioned to keep their remarks to five minutes, but you are certainly welcome to extend.

Mr. YOUNG. Thank you. I am sure I will have the opportunity with the questions. Thank you, sir.

Chairman OBERSTAR. Mr. Marshall.

Mr. MARSHALL. Thank you, Mr. Chairman. My name is Charlie Marshall. I am senior vice president of Farm Rail. Farm Rail is a

350-mile railroad in western Oklahoma. But I am here today representing the American Short Line and Regional Railroad Association, which is composed of about 500 small railroads all across the country. The short lines together operate about 50,000 miles of track, we have 23,000 employees, and we blanket the Nation.

I would like you to think about two characteristics of small railroads. One is that we do not go from A to B. We got to A and then we count on the big railroads to handle the freight the rest of the way to B. So we are intimately tied to the fortunes of the large railroads. The second characteristic is that a large part of the freight we carry is merchandise, things like lumber, and paper, and waste, and food products, and things that can, and do, regularly travel by truck. Indeed, we handle some 42 percent of U.S. merchandise carloads for at least some part of the haul, according to a study that a fellow from MIT made earlier this year.

Now as you look at this merchandise business that we handle, one of the things that worries us is that it is one of the less profitable pieces of business that the big railroads handle. And when the big railroads run into a capacity crunch, as they have several times in the past several years, what they do is favor the most profitable business, like any rational operator would do, and they squeeze out the lesser profitable business. Well, we are the less profitable business. We are the merchandise. And if that happens, when that happens, the traffic that we handle will not move by us, it will move by truck.

And that is our point here today. We urge this panel to think very carefully before adopting measures that would take revenue that could supply capacity away from the large railroads and thereby as an unintended consequence divert the small railroad traffic onto our crowded highways. Thank you very much.

Chairman OBERSTAR. Thank you, Mr. Marshall. Mr. Rennicke.

Mr. RENNICKE. Thank you, Chairman Oberstar and Ranking Member Shuster. I am William Rennicke, the director at Oliver Wyman. Since I started my transportation career over 40 years ago as a brakeman on the bankrupt New Haven Railroad, I have been an active participant in both carrier operations and management as well as an advisor to the transportation industry, government, financial institutions, and users of transportation worldwide.

In the late 1970s I was fortunate to be an active participant in the public and legislative process that led to the Staggers Act. I believe that Congress, shippers, the carriers, labor, and all other industry participants should be quite proud of the results of the Staggers Act and the subsequent restructuring of the U.S. rail industry. From the late 1960s to the mid-1970s, over half of the U.S. rail system was in bankruptcy or in financial distress. The Staggers Act turned the rail industry into a self-sustaining freight network and the U.S. regulatory and carrier model is now seen as a standard and benchmark for the freight systems worldwide.

In the last 20 years, Oliver Wyman and our North American consulting competitors have actually made an industry out of exporting this success story to most foreign countries. In every country where we have worked, the objectives of restructuring have been to create a self-sustaining railway network that supports the domestic economy, facilitates international trade, and is funded as

much as possible by the private sector. However, despite decades of efforts in other parts of the world, with the exception of the United States, Canada, and to some extent Mexico, no rail system anywhere in the world survives without direct or indirect support from the government and taxpayer. The billions spent by the U.S. Government to correct Conrail's situation was the last significant investment in the U.S. railroads.

I believe proposed provisions of H.R. 2125 raise the issue of whether the United States wants a freight rail system to continue to be funded and developed by the private sector or will there be a need to shift some part of the funding responsibility to tax-based subsidies. The principles and policies of differential pricing are generally recognized as the most effective path to railroad pricing. There are, however, some unavoidable realities that are embedded in the characteristics of any large transportation network that is both complex and where market-based pricing is used to maximize contribution and avoid the need for taxpayer support.

First, on pricing. For any mode or sector where pricing policy permits differential pricing there will always be some users who pay more and some users who pay less. Human and economic nature being what it is, no one in the United States or any other economy likes to be in the differential pricing bucket that is at the highest or higher than others. No one celebrates paying higher prices. No traffic manager or shipping executive receives a bonus or is compensated for being the highest revenue to variable cost ratio.

It is to be expected that there will be a continuous and natural tendency of those parties paying the higher ratios to try and modify the pricing structure to restrict the workings of differential pricing. It has been my experience over the last 25 years however that the differential pricing does not work when regulation cuts off one end of the range and tries to move as much as possible artificially to the lower levels.

Service. Overall service in the U.S. freight rail system is the envy of the world and many U.S. network planning and business practices have become global benchmarks. For example, in the United States there are over 2 million origin-destination combinations, and in 2006, 1.31 million rail cars moved 32.1 million carloads carrying almost 2 trillion tons. Even in a situation where some are unhappy about being on the high end of the rate curve or have experienced the frustration of even one service failure, it is important to recognize that the U.S. freight rail system is still the best in the world and I believe has the opportunity to be even better.

Here are several facts.

As I think it has been pointed out a couple of times here this morning, by a wide measure, if you measure just the freight rates, the U.S. freight rates are the lowest in the world, and to some extent Canadian freight rates. No taxpayer contribution is required for either of the freight service infrastructure.

The graphic I have up on the board shows the variable costs or the out of pocket costs the governments must pay in the countries that are listed on that chart for infrastructure. And as you can see, in some case, on the lower end of that chart, the users are paying

only 10 to 15 to 20 percent of the cost of the infrastructure. There is no mention of capital on that because 100 percent of the capital cost in those countries is funded by the government. So as you looked at the prior chart I had where the freight rates are the lowest, not only are the freight rates the lowest in the United States, but when you compare them against foreign countries, that measures the freight rates that the customer is paying but then also the taxpayer, as I presented in this chart, is paying primarily for the infrastructure and some other kinds of subsidies.

The U.S. system is the most productive in the world. The U.S. railroads reinvest more capital in infrastructure and equipment than almost any other sector in the economy. And I think the graphic on the left shows, whether you think it is 17 percent or 18 percent, that is a phenomenal amount of the individual dollar revenue that comes into a railroad to be put back into the property.

The chart on the right is even more interesting. It shows the return on equity or the returns the different industries in the United States earn. And while the railroads are putting the largest percentage of their revenue into investment, they basically have the lowest return of the large industries.

The other important point to take from this chart, and this gets into the realm of maybe unintended consequences, is that every one of the shipper groups, with the possible exception of agriculture, who spoke to you today are in an industry that has a far larger or far greater return on equity than the railroads. In the financial markets, when the railroads go to attract funds, they are not just competing against other railroads, they compete against all industries. So every effort that is made, for example, to move freight rates is basically going to take any of those bars in chemical or petroleum or utilities or automotive and push it farther to the right and it will take that small bar on the left and push it to the left. So, in essence, the legislation also may have the possibility of being a redistribution of where returns are. Thank you.

Chairman OBERSTAR. All right. Thank you for those very interesting and instructive charts and for your testimony.

Mr. Marshall, you set the record for testimony today for brevity and to the point, and made your point most effectively.

Mr. Young, on behalf of the industry, do you agree with or disagree with Dr. Mulvey's observation that the Staggers Act greatly reduced economic regulation of the industry?

Mr. YOUNG. I agree it reduced economic regulation of our industry. If you look at it in total, I also agree it was a tremendous success. It saved this industry. There is no question in terms of where we were heading in the 1980s and where we are today.

Chairman OBERSTAR. I certainly concur. And I say that, in furtherance of my opening remarks, as a Member of the House at the time, rubbing worry beads about was this the right vote to make. It was a good vote to make. It was an era of deregulation that the Congress engaged in at that time.

The railroad sector has such an evocative force with the American public. Hardly a county in my district, and there are hundreds, maybe thousands of towns across the Nation, hardly a town that does not have a railroad and thousands that do have a memory of the railroad era, either a caboose, or a locomotive, or a

freight car, or in the iron ore mining country iron ore carrying cars. And time and again when the economy flounders, people will say well isn't it time that we make a big investment in railroads and have the Government put some money in and build more rail track and create thousands of jobs. And I explain to them that we do not do it that way. But I say that because there is such a powerful appeal. There was a very effective ad that the Association of American Railroads ran in the 1970s and into the 1980s of a former astronaut whose concluding statement was, "America's railroads, who needs them. We all do." And we do.

But in the deregulation language, we reduced but did not eliminate Government oversight of rail rates and service. In 1930, the freight rail network counted 249,000-plus miles. By 1957 that diminished to 220,000. By 1970, it was 202,000. By the Staggers Act, it was 176,000 miles. Today it is just slightly less than the mileage of the National Highway System, which is 156,000 miles, and 140,000 miles of rail network including short line and regional railroads. Clearly, in this era of resurgence, it is not enough. We need more miles of track. We need more double and triple tracking, as many of your association members and Union Pacific have been doing. But in this process there are concerns, as you heard voiced all throughout the day, of service and of rate increases to captive shippers, and a very cumbersome, complex process by which the Surface Transportation Board, remnant of the ICC, remnant of the regulatory era, with very limited, focused authority can deal with.

And so I ask the question of you that I asked of the STB panel. Can you envision a rate that is so high a percentage of variable cost that the board should use its power to declare the rate unreasonable?

Mr. YOUNG. I cannot envision a rate that high. Although one of the things that we need to think about is what rate should I charge for chlorine moving on the railroad. And I will give you an example. In terms of the small shipper process that they have in play today, they are going to treat a load of lumber the same as they will treat a load of chlorine. And we know the risk profile on chlorine. At Union Pacific we handle 36,000 carloads of toxic inhalants a year. That is chlorine and anhydrous ammonia. And again the question there is I am not certain you could set any rate that would justify hauling that business.

Chairman OBERSTAR. When setting rates, and you make a very good comparison of a toxic substance and one that, logs, for example, that would not be toxic. It would be damaging if it fell on people but not toxic. And rate setting there is a challenge for your industry. And the purpose of this hearing is not to inquire how you do that. But when you do, you do not have to have approval of the Surface Transportation Board, do you, to set a rate.

Mr. YOUNG. We have to work within the regulations that we operate under.

Chairman OBERSTAR. But the setting of a rate by a railroad does not require approval by the Surface Transportation Board.

Mr. YOUNG. That is correct. Yes.

Chairman OBERSTAR. That rate comes into question only if a shipper or consumer contests it; is that correct?

Mr. YOUNG. That is correct.

Chairman OBERSTAR. So if there is a process in place for challenge of rates, then should not that process be equitable both for the railroad and for the challenger?

Mr. YOUNG. I think the changes that are proposed by the STB will help address some of the concerns you have heard from small shippers.

Chairman OBERSTAR. But we have discussed today, and you have heard the discussion, of the filing fee just to get in the door to file a complaint. Do you find the filing fee system that is currently in place equitable? Burdensome?

Mr. YOUNG. I think the changes that the STB made, including when they looked at their filing fees here—again, the discussion was one on the costs at the STB. I do not think they are unreasonable. We talk about small shippers. I find that DuPont has three rate cases at the Board. I quite honestly do not see them as small shippers and they certainly have the capability to cover the costs of that fee.

Chairman OBERSTAR. And the timeframe for pursuing a case, many of these go three years, some at least four years. Do you think that is a reasonable period of time in which to resolve a case?

Mr. YOUNG. No, I do not. I think whatever you can do to accelerate the resolution is fine. It would be a positive.

Chairman OBERSTAR. Good for the railroad, good for the shipper, good for the consumer. And in your judgement or in your review of the world and economic sector in which you operate, should there at all be a rate reasonableness appeal process?

Mr. YOUNG. Well, the question becomes one on what are the options for a customer. When we look at Union Pacific, I take our pricing very seriously. We try to understand what does it mean to the customer, what does it mean in terms of their competitive position, what are the alternatives. It does us no good in our industry to make a customer non-competitive. I need to have growth long term. The question becomes what is reasonable overall in terms of what will the market bear. And many of my customers, I heard today off in discussions that there is no competition. I have lost hundreds of millions of dollars in revenue in the last year alone to other railroads, to the highway truckers, to business moving through Mexico, business coming over Canada, container business moving all water around the Canal to the East Coast and to the rivers. There is a substantial amount of competition when you look at the industry today.

Chairman OBERSTAR. My question goes to the fundamental issue of whether there should be in the view of the railroads, your brothers and sisters in the rail business, or should there be a process as exists in aviation where airlines just charge a fee and enter a market without any review by the Department of Transportation?

Mr. YOUNG. I am not quite certain what your question is.

Chairman OBERSTAR. I am asking whether you disagree with the fundamentals of the existing system or whether you are prepared to continue to live within it.

Mr. YOUNG. Well, we will live within it. The question within the system at the end of day here is what type of investment, how much investment do we want in the railroad. If you look at the system as we are defined today, and it is not clear to me if you are

talking about what you are proposing in the new bill, the fundamental question will be what return will be set and how much investment we want in the business.

Chairman OBERSTAR. Where in the introduced legislation does the proposed bill set rates for the railroad?

Mr. YOUNG. Well, if you look at I believe it is——

Chairman OBERSTAR. Where does it set rates?

Mr. YOUNG. Page 15, Section 302, it talks about improvement of rate reasonableness standard.

Chairman OBERSTAR. It does not set rates. It deals with the process.

Mr. YOUNG. What it has is a formula that is a cost-based formula that considers variable and fixed cost and an adequate return. Maybe the term rates is not the appropriate term. It is fixing the investment, the margin, the profitability of the business. But either way it may not necessarily reflect the market.

Chairman OBERSTAR. It does not fix. It deals with the process. That is the difference that we have over the way your association reads the legislation and the way the legislation reads. In your report to your workforce, you say a Federal bureaucracy would determine who could use which tracks regardless of who owns them, and it would also set the rates that the owner of the track could charge. We are dealing with a process, not setting rates in this legislation.

Mr. YOUNG. Mr. Chairman, the way I look at what is potentially out there is expanded, let us not call it re-regulation, expanded perspective or process on the rates that can be charged in a particular area. It will be a cost-plus formula. We have within the bill a proposal that the Government will determine areas that lack competition. That brings into account reciprocal switching, trackage rights, which the Government again will determine how are those rates set when you look at it. Let us forget we are talking about setting rates. What we are talking here about is setting the returns on the business.

Chairman OBERSTAR. The bill does not deal with trackage rights.

Mr. YOUNG. I think in the area where you talk about the areas of inadequate competition it talks about terminal trackage rights or some type of access in terms of the network.

Chairman OBERSTAR. But does not set them.

Mr. YOUNG. Well, somebody will determine the——

Chairman OBERSTAR. But there is a process in which railroads will have a voice, in which shippers will have a voice, and consumers will have a voice.

Mr. YOUNG. Mr. Chairman, I think the question becomes one of are we confident of the process—again, ultimately the challenge you and your Committee have is to decide how much investment do we want in the rail network. And the question becomes one of how will we peg whatever that return is, how will we peg the margins in the business, how do you incent productivity and investment will flow. There is no question in my mind today. My first year as president of Union Pacific I went into my board three times and asked for an increase in capital. My board supported me 100 percent. They supported me under the perspective that we were starting to see the financial returns in this business move up. We had a debate about should we do it now or should we wait. We said

we need to do it now under the context that we can continue to improve these returns. My concern again is simply we are introducing a lot of uncertainty. I am making decisions on the Sunset corridor, you know that corridor, it runs from L.A. to El Paso, an old Southern Pacific railroad, it should have been double tracked years ago. We are making a $1.5 billion bet that the future financial returns can support that investment.

Chairman OBERSTAR. One factual question. In your statement of capital investment for the railroad and generally for your association, how much of that figure is maintenance and how much is new track and new locomotive and new rail car? What percentage?

Mr. YOUNG. The 18 percent, 17-18 percent, UP is actually investing 20 percent this year but we will use those numbers, it is all either brand new expansion or replacement of assets. If you want to put maintenance in, it is 40 percent of the revenue dollar.

Chairman OBERSTAR. Thank you. Mr. Shuster.

Mr. SHUSTER. Thank you, Mr. Chairman. First I wanted to make a comment reflecting back on your decision in 1980. As we have moved through this process, I have got my worry beads out and I hope that we are going to do the right thing and do not do something that has unintended consequences. Because as I look back and study what has happened over the 27 years, I think it has been a great success.

So I am very concerned about how we move forward and making sure that we do not overstep and cause great harm to an industry that, as Mr. Young said, is just now beginning to have the returns to make these bets. And they are bets, because you have uncertainty everyday in the economy; is the economy going to continue to grow, is it going to go into recession, what is going to happen. But now you also have to deal with a regulatory process that is uncertain at best and certainly can use some improvement.

But I turn to Mr. Rennicke. If you would, I see your company Oliver Wyman deals with shippers, it deals with the transportation companies. You yourself, and we have had a discussion, you have dealt with shippers and rail companies. Can you talk about some of the shippers that you have dealt with. Is half of your business shippers? Is 10 percent of your business shippers? I am trying to establish your credentials here before the Committee.

Mr. RENNICKE. If you look at our overall firm, transportation is about 10 percent and the other 90 percent basically works for auto companies, chemical companies, utilities, et cetera. So, in general, the company is oriented that way. I spend most of my time now working primarily for financial institutions that are looking to learn more about how the railroad industry works. I would say that is about 70 percent of my time. Probably 20 percent of the time is working for some shippers who are interested in is there a different way that we can approach, other than through litigation or regulation, our position in the industry. Most of that has been in coal and utilities and food products, consumer products. The other 10 percent is time where I actually work for carriers, both trucking companies and railroads.

Mr. SHUSTER. You deal across the gamut. Are you familiar with Mr. Spitzer's testimony? On page 9 there is a table dealing with

captive shippers, page 9 I believe it is, and how they define captive. Are you familiar with that?

Mr. RENNICKE. I have looked at that a number of times because it has actually been on a number of websites. As best I can determine from that, how they define captive I believe is the average of rates above 180, and non-captive are the rates below 180. So what this is to some extent is a little bit of a self-fulfilling prophecy. Are farm products captive? That is basically an average rate, median or something that is above. We actually talked to the company that did this several years ago when they first came out to see did they do a survey, did they actually try to go customer to customer and find out if they were really captive or not captive. And as best we could determine from what they said, it is a pure mathematical exercise using the spread of rates that are in the——

Mr. SHUSTER. Right. In your experience, are there customers that only have one railroad serving them that are paying less?

Mr. RENNICKE. Absolutely. I think the comments today, there is a whole series of competition that people do not think of—product, source competition, moving into Mexico, Mr. Young mentioned all water. They are starting to build 12,000 TEU ships. And part of the reason why the liner companies are doing that is maybe to avoid land movement of containers. So you may find many shippers who basically are paying rates that are far lower, have competitive options in that regard that are not rail.

Mr. SHUSTER. Right. In your view, H.R. 2125, the bill in question here, do you believe that it will in the end reduce the rate to returns and the costs that can be recouped, the prices that are going to be charged over the railroads?

Mr. RENNICKE. I think the biggest concern that I have, in all due respect with the process that you are going through in legislation, is that when you have an undefined process the financial community looks at that as being risk because they cannot get their arms around it.

As I said, in the last couple of years we have worked extensively for many of these. You know, 24 months ago an equity investment in the railroads may not have been an interesting thing. Now pension funds, not all just hedge funds, that name was mentioned a lot today, but these are pension funds, teachers' pension funds, retirement funds, as well as hedge funds and private equity firms, they are asking us to look at the carriers. Their first question when this bill came out earlier was what does all this mean. Do we have to start dealing now discounting for uncertainty? Because there is a whole bunch of undefined things here. There is trackage rights, there is haulage, there is the definition of what is really in the non-competitive area versus what is in the competitive area. All of those things create risk and the grand daddy of them all is final offer arbitration, which is Monte Carlo, almost baseball arbitration. It is almost a roll of the dice to figure out how those kinds of decisions are made.

So all of that creates risk and I believe will reduce their interest or it will increase the cost of capital because they will risk adjust the funds that they are lending to the railroads.

Mr. SHUSTER. All right. I see my time is up. I am going to ask one question if Mr. Young if that is okay.

Chairman OBERSTAR. Okay. Go ahead.

Mr. SHUSTER. Okay. Thank you. Mr. Young, I continue to hear people saying the railroads are buying back stock. I have some idea of that, but I wonder if you might be able to explain this. And you need to use the KISS principle here—keep it simple. Why are you buying back stock? And I think today somebody was saying that railroads are buying back stock and that is somehow a bad thing. I do not believe it is. But if you could explain it so I understand it better and we can get it on the record.

Mr. YOUNG. Well, buying back stock is very common. In fact, in the S&P 500, last year 300 companies bought back stock. In fact, of the 23 members of the American Chemistry Council that are in the S&P 500, 21 bought back stock. In fact, I think the total I read was almost $17 billion. In fact, one of the customers represented up here accelerated their program. It is a very common measure to provide improved returns to shareholders.

Union Pacific this year announced our share purchase program, the first time we have had one in many, many years, and it was based on this kind of logic here. The first thing we looked at is investment in the business. Where are those returns. And $3.2 billion was the test. What do we need to do with customers, how to think long term. The next thing we did is start to think about how do we accelerate returns for Union Pacific shareholders. And that comes from a combination of share repurchase. What it does, it takes shares out of the market, increases average earnings per share, stock prices go up, shareholders see a return. It is actually pretty simple logic that is out here.

I will tell you, Congressman, no matter how you cut the returns in the railroad industry, they are still below the mean in the S&P 500. Dividend yields, return on assets, the dividend payout ratios that they have, return on equity. The ACC today, when you look at it, the average return in equity of those companies was around 20, 22 percent. UP this year was 11 percent.

Mr. SHUSTER. So in essence, what I understand, when you are buying back stock it makes it more attractive for people to invest in your company, which gives you more capital to do the things you need to do.

Mr. YOUNG. What it does is it boosts earnings per share.

Mr. SHUSTER. Final question. The cost of capital, the STB has come up with a new way to view that. My understanding is that they are taking their lead from Wall Street and Wall Street calculates the cost of capital differently from the railroad industry. Can you give me a little bit of background on that and your view. Or is that not accurate and you view cost of capital the same as folks on Wall Street, the analysts.

Mr. YOUNG. Well, there is not a Wall Street analyst out there that says I am earning my cost of capital. What they look at in the industry, there are a lot of different methods, discounted cash flow is one, the CAP M model. In theory the CAP M model and the discounted cash flow model should move the same. But there are a lot of assumptions that can be made in that CAP M model that can really cause a pretty major fluctuation in the results. Any model that takes the cost of equity and literally cuts it in half I have a concern with in terms of long term. I internally look at the cost of

capital for the Union Pacific long term as 10-plus percent. We have a long ways to go.

Mr. SHUSTER. And so again, what Wall Street is doing, they are using a different formula. You mentioned they are cutting, I do not quite understand, they are cutting it in half?

Mr. YOUNG. No, no. The new methodology. Again, CAP M and discounted cash flow should move together at some point. The variables are the assumptions that go into the equation, like the risk premium on equity. My point is when the STB results came out and you looked at the cost of equity compared to the discounted cash flow and CAP M, you cut the costs almost in half. That is a significant change that concerns me. Because ultimately what will happen is you are going to set the returns that you want for the industry. That will drive investment. The math is very straight in terms of as returns go up or go down, capital investment follows.

Mr. SHUSTER. Okay. Thank you very much.

Chairman OBERSTAR. Ms. Napolitano.

Mrs. NAPOLITANO. Thank you, Mr. Chair. That is a little confusing because I do not understand a lot of the terminology in the dialogue that was just going on. But I would refer to the recent comments that you made to STB where you state the board's new calculation of cost of capital is mistaken both technically and from a public policy perspective. Of course the STB announced that it intends to adopt the cost of capital calculation method closer to what is used in Wall Street. Why do you feel this is not fair or that the board should not do this?

Mr. YOUNG. Well, again, Congresswoman, the assumptions you make in these methodologies, and they can be fairly complicated, can have a wide range of results.

Mrs. NAPOLITANO. Based on?

Mr. YOUNG. Based on assumptions on what the risk premium is for equity, what is an investor willing to accept by investing in railroad equities. My point with all of this is if you look at ultimately what the two methodologies show on cost of capital for the industry, there is a huge difference. If you look at what was being used before by the STB and the CAP M model today, it is almost 200 to 300 basis points, that is percentage points difference. That is a 20, 25 percent difference, and it is lower. Ultimately, if the cost of capital is where this industry moves or where regulation moves, it will control how much investment is made in the business.

Mrs. NAPOLITANO. Anybody have a comment on that?

Mr. MARSHALL. May I add something on that. I have a sort of layman's view of revenue adequacy and cost of capital. That is if you see people buying railroads and then see them taking money out of railroads, that says that the railroads are not earning enough money. If you see Warren Buffet buying Burlington Northern and then Burlington Northern says next year we are going to build more track because we are going to earn money on the track, that is saying that they are earning their cost of capital and are revenue adequate.

If you have some money and you are trying to decide whether to give it to Jim Young to put in his railroad or give it to one of the other industries that was up there on the chart that earns more on its investment, you might want to do a little further analysis,

but presumptively you would go with the big numbers rather than with Jim. And when we get our business up so that we are earning as much money as other people do, then you would be more likely to send money our way. So that is sort of the gut check that I would use on whether what is going on at the STB is the right thing to do.

Mr. RENNICKE. Thank you. Just to echo what Mr. Marshall said. And I think that chart had a good deal of meaning, which is why I put it up there. I think the railroads are lagging the other industries right now. So in a competitive marketplace where, again with the dealings I had with those funds, this week they are interested in railroads, the last 20 or 24 months they have been interested in railroads. But the fact that they came in, they could also leave very quickly if they have a sense that basically the risk profile and the returns are going to get out of whack.

They represent billions of dollars of pension money, a lot of it is pension money, and they have an obligation they see. They make their money on making money for the people who have invested in pensions. And if you show them a high risk situation or if there is a lot of uncertainty in a particular path, they are going to walk away from it and they are going to put it into those other industries that traditionally have had rates of return that are much higher. Look at petroleum on there, it was three times the rate of return of the railroads. So they would be much safer putting it in petroleum or petrochemical companies or chemical companies than they would in putting it in the railroads.

Mrs. NAPOLITANO. I would beg to differ with you on a personal basis.

Mr. Young, the recent GAO report found that railroads were transferring many costs traditionally born by the railroads onto the customers. Maybe that is one of the reasons why you had banner years. But let me tell you, I have heard from some of your customers. Can you discuss some of these costs and why UP has decided to shift them onto the customers.

Mr. YOUNG. Well, let us take freight car ownership. That is one that has been talked about quite a bit today. First of all, there is a different rate for a customer that owns their own cars versus the railroad. There is a lower rate if you own your own cars.

Mrs. NAPOLITANO. Roughly, sir, what percentage are we talking about?

Mr. YOUNG. It will compensate them for the cars in terms of their capital investment. In fact, in many cases, some of the customers, their credit rating was higher. They could actually borrow at a little bit lower rate to finance those cars. But that was not the reason why what has happened here. If you look at the capital needs in the industry, and the issue is replacing assets, in terms of what we are faced with, the first priority where we put capital is in the ground—building our own highways, maintaining those highways; the second place is locomotives; and the third would be freight cars. In fact, if you get that order wrong, your railroad is not as efficient, it is slower, and you end up needing more cars. So the first place is in the infrastructure. It is a simple prioritization.

The capital requests that we look at every year in the railroad far exceed what we spend. And in a priority order, we said we have

got to get it in the highway first, locomotive second, and in many cases our customers are willing to work and assume some of that investment risk as long as I reduce their rates. A great example of that risk right now. I have 20,000 freight cars sitting idle. I heard some discussion today about grain sitting on the ground. It has nothing to do with the railroads. It has everything to do with the markets. But that is the kind of risk that some of our customers were willing to invest in.

Mrs. NAPOLITANO. And I got into rail cars because my concern is that most of them, I do not know if it has changed, are not built in the United States. We have lost that manufacturing capability. The other question that comes to mind has to do with the demarge. Like I said, I had two customers in my area, your customers, that had complained. In fact, they were in litigation if I remember correctly. Do you feel that shippers unfairly incur those demarge charges on rail cars that are left in the railroad yards due to delays or early deliveries or are just left sitting on their private property because the railroad cannot pick them up and then the shippers end up paying for that demarge.

Mr. YOUNG. Congresswoman, I would agree with you demarge was the number one complaint that I had from customers if you go back two, three years ago. We worked hard to simplify it to take a lot of the complexities out. But the fact is the railroads were the lowest cost of warehousing for many customers for years. When you had excess capacity, having a freight car loaded with lumber that sat on a track for four days was a pretty low cost for many customers. With capacity now being very tight, the whole logistics chain must get more efficient. I will give you an example. If I show up on a Friday afternoon with one customer, they have chosen not to unload on the weekend, so those cars will sit until Monday. I have other customers that invested in turning those assets. Demarge is a piece of that that says I am willing at the end of the day to be a temporary warehouse but there is a cost for that. And it really should be reflected in terms of the logistics chain.

Mrs. NAPOLITANO. Back in the 1980s when I was on local council, I can remember having to call the railroad because they were storing those cars behind people's homes for many days at a time. That was back then and I have not heard that complaint here, so I am assuming that has been one of the things that you have addressed in dealing with some of the issues that you have faced.

Mr. YOUNG. That is correct.

Mrs. NAPOLITANO. The other area is, I am assuming part of your cost is new technology for communications in order to be able to move your cars more efficiently.

Mr. YOUNG. That is correct. We invest in—really, a lot of this is about safety in terms of wayside detectors. You have the traditional hot box detectors that would read a wheel if you had a problem. We are looking at acoustic detectors today, very advanced in terms of reducing accidents. It is a technology investment but, quite honestly, it more than pays for itself in terms of improved safety.

Mrs. NAPOLITANO. Is there new technology being utilized to be able to determine whether or not you have any problems, say faced with some kind of a terrorist attempt?

Mr. YOUNG. Well, the closest we could look at would be maybe GPS in terms of some of the tankers. But I will tell you, when you operate a 33,000 mile factory out in the open, it is pretty tough in terms of ensuring complete security for the product moves. We have cameras in key locations, we are doing much more visual inspections, advanced notice in terms of cars moving. But I haul, as you know, a significant amount of toxic inhalants in our system and we are doing everything we can to keep them as secure as we can.

Mrs. NAPOLITANO. Certainly. I would like to submit other questions for the record, Mr. Chair. And with that, I thank you very much and it is good to see you again Mr. Young.

Mr. YOUNG. Thank you.

Chairman OBERSTAR. The gentlewoman's questions will be received and submitted to witnesses for a response to the Committee.

The Chair recognizes the gentleman from Ohio, Mr. LaTourette.

Mr. LATOURETTE. I thank the Chairman very much. And I want to thank you, Chairman Oberstar, for having this hearing. It has been a great opportunity for me to reacquaint myself with a number of the railroad issues. As the Chairman knows, because of my work with the Chairman on Amtrak and with the railroad industry in the last Congress, I have been promoted to the Coast Guard Subcommittee now and so I do not get the chance now to involve myself in these issues. But one of the things that I enjoy very much about the Chairman is not only is he bilingual, but he has a great sense of history, institutional history but also history, and he also asks great questions.

Mr. Young, I want to go back to a question that the Chairman asked just to make sure that I am clear in your answer. When former Congressman English was here—and I said last year when he appeared before the Subcommittee that if I was running an association in Washington I would hire him because he is like a firecracker in representing his members—but he intimated that we should make sure we inquired of you on that 17 percent figure, I think Ms. Brown used 18 percent, you mentioned 20 percent, whether somehow, he did not say you padded it, but somehow that it not only included new build-outs, but it also somehow had a maintenance figure. And just to be clear, if you put maintenance together with your capital investment in infrastructure, what is your railroad spending?

Mr. YOUNG. At UP, $3.2 billion this year for capital. Of that $3.2 billion, $2.2 billion would be replacing assets that have worn out. The other billion would fall into the category of absolute new, going from single track to double track, double track to triple track, or locomotives. The percent that we had talked about, unfortunately, in a lot of cases the term is maintenance capital, but that includes taking a 30 year old piece of railroad or a 35 year old tie and replacing it. That is not maintenance. We have to make a decision to put those in. Now if you talk about another piece which is ordinary maintenance in terms of ensuring that the are bolts tight, it is like changing oil in your car, those numbers add up to about 40 percent of every revenue dollar that we spend. It covers both replacing existing assets, expanding new assets, and maintenance.

Mr. LATOURETTE. Okay. I thought that is what you said. And I want to talk a little bit about, I got into it with the DuPont fellow, but this common carrier obligation. I think the Chairman is right, that given the history of the railroad industry in this country, there is sort of a public responsibility. Which is why I think we still have this common carrier obligation on behalf of the rails. Is carrying toxic inhalants a money-maker for your railroad?

Mr. YOUNG. You cannot make enough money. It is such a high risk. And you know the safety record in the railroad industry is very good. It is what is called six sigma, or greater. But the problem is one accident in the wrong location, and forget about the financial consequence, you talk about the lives that would be lost. You cannot charge enough.

Mr. LATOURETTE. Let me, when we had hearings on this we talked about positive train control, which is where a lot of the railroads, I think BNSF calls it something else just because they are difficult in that regard. But have you done an evaluation as to what it would cost to install positive train control on your railroad?

Mr. YOUNG. The latest numbers we are looking at, it could be close to $800 to $1 billion.

Mr. LATOURETTE. And one of the purposes, it is not the only purpose, but one of the purposes is to make sure that we do not have disasters or accidents like Granitville and Minot, North Dakota, dealing with toxic inhalants. When the last panel was here, and I have not heard anybody dispute it, Ms. Hecker was here on behalf of GAO and she took a look and she has as Figure 2 what has happened to railroad rates in this country since 1985. And except for the lentil guy, and I suggest maybe you ought to get together with the lentil guy and the ag guys, everybody has gone down. Rates on our Nation's railroads for motor vehicles, miscellaneous mixed shipments, and coal have all decreased.

And so that I think brings me to the question, the crux of this hearing. And we had a hearing in the Coast Guard Subcommittee and I am very sensitive to this issue. The merchant mariners in this country were making the allegation that because they were losing a lot of cases they felt that the administrative law judge system within the Coast Guard was rigged in their favor. And to me the crux of this hearing, and it is not the Chairman's intent, but the complaint that some shippers are making is because there are only seven Class I railroads in this country, that somehow those seven Class I railroads are taking advantage of people that have no rail opportunity, no rail option. And we had testimony about intermodal water, trucks, things like that. But I am sensitive to the guy that is in North Dakota someplace that cannot ship stuff by truck reasonably to Ohio. But that somehow your industry is taking advantage of those people that have no other choice. And really on behalf of the industry, I would invite all three of you, but start with Mr. Young first, is that what you are doing?

Mr. YOUNG. Absolutely not, Congressman. I said earlier I take our pricing very seriously in terms of understanding what does it mean ultimately to the customer. Unfortunately, if you look at the past 20 years, the pricing that we saw, 95 percent of it went back to the customer in terms of productivity. As you saw the one chart

earlier, you have a 100 percent increase in volume with little capital investment is not sustainable going forward.

The discussion about taking advantage of a customer, we have had some 100 percent price increases. I know every one of them that we have at that kind of level. If you look at it, I will tell you the example usually of what you see. You have got a long term contract, no price escalator, fuel was 70 cents a gallon. In many cases we try to work with our customers to help them understand that that is not what is out there today. Yesterday we paid $2.40 a gallon for fuel.

So what you have is a contract that really had no pricing over a long time and now it comes up, it is due. At a minimum, fuel recovery in many cases can be a 40, 50, 60 percent price increase. And no customer, I have not had a customer thank me for a price increase. And for many of my customers, what they want is to know where I am putting investment and what we are doing for the service. Again, I cannot sit here and explain to you why a 100 percent price increase makes sense. But if you step back and look at the reality in terms of where we have been and where we are going, it is very, very real.

Mr. LATOURETTE. And before I turn to the other gentlemen on that question, with the Chairman's indulgence because I am a couple minutes over. I recently saw an ad in one of the political newspapers here on Capitol Hill, Mr. Young, and the quote was that the railroads walked off with over $6 billion in customer fuels charge money. Can you tell me what your perspective is from your industry since you are representing your industry on that question.

Mr. YOUNG. Well, thank you for asking that question, Congressman. When I read that ad, I have to tell you, I really had to contain myself. I take it personally. That was a personal attack on 53,000 hard working men and women of Union Pacific. If I practiced that kind of creative accounting in my sector, somebody would go to jail. I am probably the only one in this room that was involved with fuel surcharges back to day one. Back in 2003 when fuels started to move away from $25 a barrel, we sat down with our customers and we said we have to have some mechanism to recover fuel. Our customers told us keep it simple. They actually liked the truck sector which had had fuel surcharges for years which was a percent of revenue. And again, no one wanted to pay higher rates. But what they wanted was assurance that when fuel goes back down they get a rate reduction. That is what a fuels surcharge does.

No one at that time predicted $80 a barrel fuel when we put fuel surcharges in place. No question about it. What the STB did, and there is no perfect methodology, the STB came back in and said instead of using a percent of freight, a more accurate model would be a mileage basis. I will tell you that when we made that change I did a customer survey; half of them liked it, half of them did not. The key though is when fuel goes back down the customers will see the benefit of that immediately in terms of lower costs.

Mr. LATOURETTE. Thank you. Mr. Chairman, with your indulgence, I did invite the other witnesses to talk about whether or not it is a good business model for the railroad industry to take advantage of people who have no choice.

Chairman OBERSTAR. Please continue.

Mr. LATOURETTE. Thank you. If you have an observation, great. If you do not have an observation, then I can be done. Mr. Marshall, do you have an observation?

Mr. MARSHALL. That is a difficult question until you step back and look at the alternatives. I think, if I understand your question, what you are asking and what I heard here today from the shippers is I have a one railroad power plant and I pay a lot, and he has got a two railroad power plant and he pays less. In other words, competition lowers rates. And that leads one to say well, what we need to do is artificially create a two railroad situation at all points. Unfortunately, we have tried that.

In 1975 there were seven railroads in the Northeast. Virtually every town of any consequence offered shippers a choice of one or more railroads, Altoona being a notable exception.

Mr. LATOURETTE. That is because the Shusters represent it.

[Laughter.]

Mr. MARSHALL. In fact, there were five ways to get from New York to Chicago. All seven railroads went bankrupt. What that lesson is is that the level of competitive rates, the two railroad rate level does not provide enough money to keep the railroads going. It may pay the engineer and buy the gas for the train but it is not going to keep the track fixed. And so sooner or later the railroads will collapse, as they did. And the result was Conrail which provided one railroad service to everyone.

In the Staggers Act, the compromise that we made, we being everyone here, being everyone who lived in the Northeast, was that some places could have the benefit of competitive pricing, and North America is the only place in the world where anybody gets the benefit of competitive pricing, and others would have regulated pricing. And the regulation, unfortunately, is complicated. It has gotten more complicated than any of us had imagined. But this system of differential pricing, taking advantage of competition where it exists but making sure that others do not pay more than the total cost of the railroad that serves them, is something that I think has served everyone very well since 1980. But it is not an easy issue to explain, unfortunately.

Mr. LATOURETTE. And with the Chairman's indulgence, Mr. Rennicke, do you have something to add?

Mr. RENNICKE. I think just one comment to add, and this goes back to some earlier comments that were made by Mr. English. I think there is a sense that it is only people that are over 180 that are carrying the load. Differential pricing, if you go down to 100, the very first shipper that is just to bed of 100, let us say they pay 1.00.01. Every one of those dollar amounts above 100, as the whole spectrum of rates work up, they are all making a contribution into the fixed cost of the railroad. That is what differential pricing is about. You want to capture as many of those contributions as possible. Two-thirds of the rates are less than 180. All of those customers are in various parts of the competitive spectrum but almost all of them are making a contribution to the process. Certainly, some at 181, 200, 250, 300, 350 are making a bigger contribution but they are not carrying the load for the whole system. You are maximizing the contribution across the whole spectrum of rates. So

I do not think that it is good policy to just tag one group. But I do not think that is what is happening.

Mr. LATOURETTE. I thank you for your answers. And I thank you, Chairman Oberstar, for your courtesy.

Chairman OBERSTAR. Thank the gentleman for sharing with us his wisdom, his years of experience as Chair of the Rail Subcommittee and his great work on behalf of Amtrak. We all owe you a debt of gratitude.

I want to come back to the question that I propounded to Mr. Young at the outset. Do you, does your association accept the status quo; that is, the existence of the Surface Transportation Board and the authorities that it has?

Mr. YOUNG. Yes.

Chairman OBERSTAR. Then within that context, you can accept some adjustments or adaptations, or at least we can discuss some.

Mr. YOUNG. As I said earlier, I think some of the proposals that they made will address some of the issues that have been raised.

Chairman OBERSTAR. Mr. Marshall, when Class I over time has spun off certain segments of its operations in a way that they can continue to operate they negotiate a deal with the surviving entity. That typically is a contractual agreement that prevents short line or regional rail from providing customers access to competitive service on one or more of the other competing systems. Correct?

Mr. MARSHALL. That is often the case, Mr. Chairman. It is not universally the case.

Chairman OBERSTAR. Not universally, but it is generally the case. Those agreements typically require a short line to deliver all or most of its traffic to the major carrier that originally owned that short line. What is inappropriate or wrong or objectionable to a finding by the STSB that this would be inconsistent with the public interest, that it would interfere with competition?

Mr. MARSHALL. I think there would be two objections. The first one may be a parochial interest that I have in seeing a growing short line business because I think short lines serve their customers well, often better than the Class Is, and the customers benefit from that. The instant that the STB declares paper barriers, as they are often called, to be against public policy, there will be no more short lines formed. I am convinced.

Chairman OBERSTAR. Why?

Mr. MARSHALL. Because it will, one the one hand, cause big railroads to fear that they will lose traffic at lower rates to their competitors. Now I will come back to that in a moment.

Chairman OBERSTAR. They do not like competition, do they.

Mr. MARSHALL. Well, they do not like to reduce a flow of revenue at a time when they need. On the other hand, they might be willing to sell the short lines on terms that would compensate them for the loss of revenue. But that would increase the cost to the buyer to the point that I think there would be very few lines purchased. There have been some in the past. They have tended to be ones near the point of abandonment anyway.

I think the other reason that I would be concerned, apart from the no new short lines fear, is that it would by giving multiple railroads access to points that previously had access to only one railroad, it would pull down the rates. I know that is what everyone

who ships wants. When I go to a restaurant I want to pay less for the meal than I am billed. Everybody wants to pay less. But taking revenue flow away from Class I railroads is not good for short lines.

Chairman OBERSTAR. There is another side to that coin. The other side of that coin is the shipper or the consumer. Now let us pose another situation, not necessarily hypothetical, although it could be hypothetical, but it is a real situation in a part of my district where the Class I discontinued service and a successor short line railroad is there. They are capable of providing a service. But they are not going to interconnect with another rail. They just want to use a switch. They want to cross a line. They want to use maybe a mile of track. And the Class I said no. If we do not carry it, you do not carry it either.

Mr. MARSHALL. That sounds unfair to me. But let me tell you what——

Chairman OBERSTAR. It is unfair. It is unfair to the farmers, it is unfair to the grain elevators, it is unfair to the consumers. I mean from a Class I standpoint, they want to protect their turf, protect their rates. And I understand that. That is the competitive marketplace.

Mr. MARSHALL. The short lines and the large railroads have gotten together and formed a process to negotiate just those circumstances so that service to shippers is not ended. If big railroad number one does not want it, big railroad number two can get a crack at it. And that process seems to be working. I am told there are over 100 cases where——

Chairman OBERSTAR. That is interesting to hear. And I do not take the part of those who say, well, as a short line we want to cross Class I track in order to provide service to a competing Class I railroad. The Class I owning that track has a legitimate argument against doing that. But not where the short line wants to serve the customer who has been literally cut off because the line was discontinued by the Class I and turned over to a short line. There is the public interest to be served here. And there has to be a process by which that public interest can be served.

Mr. YOUNG. Mr. Chairman, can I provide some perspective?

Chairman OBERSTAR. Yes, of course.

Mr. YOUNG. Remember the advent of short lines was really a function that said they were not economically viable under the Class I railroad labor requirements, flexibility. It was either abandon or do a short line. The short lines in many cases could operate more efficiently. They did not have the same kind of labor conditions that were employed. The requirement in terms of the business is a function of efficiency.

I will just give you an example. Railroads are efficient as they handle more volume. You drive unit costs down. You are obviously more efficient running a 100 car train than a 50 car train. In many cases what you looked at or you look at today is if you want to say all right, let us split the business up, let another railroad take half of it, what you are going to do is end up with higher costs overall. Because what will happen, as we make the interchange we will have less traffic. That drives unit costs up. It is less efficient long term.

So I think we need to be real careful in terms of ultimately the discussion about allowing the short line to go ahead and send its business to another connecting railroad because it will disrupt efficiency in that process. Also, in many cases the Class Is have provided the short lines with no rental in terms of locomotive, no car hire in terms of equipment. We have kept that in our account. So again, to me it is going back to the fundamental driver between why short lines really evolved.

Chairman OBERSTAR. I said a moment ago, in fact postulated that I think you have a legitimate argument in the case where a short line railroad would take business, use Union Pacific line in order to deliver that commodity to a competitor Class I railroad. You have got a legitimate argument about access in that case. But where the short line is going to serve that customer but needs to use a mile of track but can do so only at an outrageous sum or is prohibited from doing it at all, I think the public interest has to be served there.

Well, there are other matters but I think we have covered these largely.

Mr. SHUSTER. One question, Mr. Chairman.

Chairman OBERSTAR. Of course.

Mr. SHUSTER. When we are talking about competition, there is barges, trucks, other railroads. One of the questions I have is how much does this come into play as companies decide to build new facilities. A coal mine, coal is where the coal is so they have to mine it there and they have to deal with what they have to deal with transportation-wise. How many companies do you see today that are looking to locate where they can be served by two railroads or two different forms of transportation. I would guess if I were a railroad, I would be trying to convince customers to locate on the main line, I want to service you. Because that has got to be in the competitive mix where you are looking to keep people on your line and they are looking to find two railroads or other transportation modes.

Mr. YOUNG. Congressman, in all six of my business groups—agricultural, the industrial products, chemicals—we have seen customers pick UP only to build new facilities. Twenty-three ethanol plants were built last year on UP only lines. Chemical industry has expanded and built new facilities where they had a choice to go on a dual serve line. They picked UP. Rock customers in Texas have several announcements, new mines that are single served UP. What they see is the value. They do see some protection in terms of the maximum rates. But what they see is value in the proposition. So I have seen that really across all the business groups.

Mr. SHUSTER. That makes a pretty large statement if they are picking you only.

Mr. Marshall, what have you seen in your experience?

Mr. MARSHALL. Well, one of the things we sell is on short lines that do connect with more than one Class I, we try to get people to locate there. But I think what Mr. Young is saying is true, that there are plants that sometimes choose a single railroad. That is not probably in a majority of the cases, but it does happen.

Mr. SHUSTER. Mr. Rennicke?

Mr. RENNICKE. I think a lot of it depends on several factors. It depends on what the company's perspective is in their dealing with the railroads. We did a big project for a very large utility to help them figure out where to site plants. I was absolutely amazed. They had a number of places where they could site at a junction where they could get two railroads. That particular utility said we want the service here, that is a main line, carrier X is investing in that main line, and I am more worried about whether the main line is up or down than whether I have two carriers there.

So that is one group. You get other groups where first thing in the door they say I do not care where you look but there better be two railroads or locate me on a terminal company. So it is a mix. But there are a large number of companies including power plants that are willing to cut a long term agreement with the railroad and locate at a single service point.

Mr. SHUSTER. Thank you very much. And I would point out to you, Mr. Rennicke, there is a number of places in my district that I can locate companies that are served by two railroads. So in the future if you need to talk to me, we can talk. Thanks.

Chairman OBERSTAR. I thank the panel for participating, for waiting so late in the day, interrupted by votes and by extensive questioning of the earlier panels. I invite the Association of Railroads through you, Mr. Young, to submit your specifically written observations about provisions of our bill.

Mr. YOUNG. We plan to do that, sir.

Chairman OBERSTAR. We will welcome those comments.

The hearing is adjourned.

[Whereupon, at 7:18 p.m., the Committee was adjourned.]

Opening Statement

Congressman Richard H. Baker

Full Transportation and Infrastructure Committee –
Hearing on Rail Competition and Service

Thank you Chairman Oberstar and Ranking Member Mica for holding this hearing on rail competition and service. This hearing represents the first step in restoring competition to our nation's freight rail marketplace.

Restoration Not Re-regulation

When Congress passed the Staggers Act in 1980 there were over 40 Class I railroads competing for business. Today, after over 50 mergers and consolidations there are only 7 Class I railroads in North America and four of them control over 95 percent of the railroad business. This kind of unprecedented consolidation has led to whole states, regions and entire industries becoming captive to a single railroad. This level of concentration and the lack of competition it has brought were never envisioned by Congress in the 1980 Act.

Over this same period the agency that administers rail law, the Surface Transportation Board (STB), has produced rulings which have skewed the freight rail market place to the point that it is now a federally protected monopoly. Railroads are operating within the law, but that law is outdated given the current number of railroads and market conditions of the new century. It is our national policy that is broken and needs attention from this 21st century Congress; restoration of the STB is imperative to provide the cost effective rail competition that our nation needs in an increasingly competitive global economy.

At least 30 percent of the traffic of our nation's railroads is "captive" (where the rail customer is served by a single railroad). These captive rail customers, including coal shippers, utilities, chemical companies and agricultural producers, are at the mercy of that rail carrier with regard to both the level of their rates and their service. The captive rail customers in my state have made a very strong case to me that the STB has interpreted current law to allow their rail carriers to block their access to existing railroad competition. That I why I joined Chairman Oberstar in introducing H.R. 2125, the "Railroad Competition and Service Improvement Act of 2007."

H.R. 2125

H.R. 2125 is the answer to restoring competition to our nation's freight rail marketplace. This legislation fortifies healthy market competition by removing artificial protections maintained by an outdated policy which allows freight railroads to operate in an atmosphere which no other business in the country enjoys. Among other things, H.R. 2125 would:

- Direct the STB to (1) ensure effective competition among rail carriers; (2) ensure reasonable rates for rail customers in the absence of competition; and (3) ensure consistent and efficient rail transportation, including the timely provision of rail cars as requested by customers;
- Eliminate "paper barriers", contractual agreements that prevent short-line railroads that cross two or more major rail systems from providing rail customers access to competitive service on one of these systems;
- Reduce fees for filing rail rate cases. Shippers are now required to pay a $140,600 fee for filing a rate case. Under this legislation, filing a rate case would cost the same as filing before a federal district court, about $500;
- Prohibits the STB from using their current practice of requiring shippers challenging rail rates to submit estimates of the costs of constructing and operating a new, hypothetical railroad that carries only the commodity that the shipper transports.

In short, H.R. 2125 aims to make the Surface Transportation Board (STB) a fair moderator in disputes between railroads, customers and the public, to preserve existing rail-to-rail competition in areas of the country where competition is working, and to reduce impediments to competition that adversely affect rail customers.

Statement of Honorable Corrine Brown
Full Committee Hearing on Rail Competition and Service
Tuesday, September

I want to thank Chairman Oberstar for his leadership of the Committee. We've been the most productive Committee in Congress and I'm proud to serve as a Chairman.

Today's hearing is important because we always need to consider ways to improve competition in every business sector, and there is room for some improvement in the railroad business. But I'm concerned that many of the rail sector fixes being discussed by shippers would be devastating to the industry. And there are a lot of shippers that support the railroads. In fact, I have

over 2000 letters from Shippers who oppose new regulations for the rail industry, and I ask that they be submitted for the record.

Our nations railroads were in the red for a long time and have only recently started to make a reasonable profit and should be given time in the black before making major changes to their business model.

I fear that the loss of railroad earnings that is expected with a decline in rates will have many negative consequences. Less money being spend on capacity will slow growth and put more trucks on the highways,

compounding safety issues and harming the environment. We will soon have an additional 3000 trucks a day leaving the Jacksonville Port, and if we can't find a rail solution, we will be jeopardizing an entire community.

Declining profits will also prevent the industry from hiring more employees for good paying jobs that we know can't be shipped over seas.

I also believe that the Surface Transportation Board (STB), which for a long time was hobbled by having only one

member, is starting to address many of the issues that are a priority for shippers. And in talking with the members of the board, I know that they plan to continue to look at ways to protect shippers from unreasonable rates.

A significant increase in capacity would also help eliminate many of the problems facing customers and the industry, and we all need to work together to find ways to provide serious resources for capacity expansion.

I look forward to hearing from today's panelists on ways that we can improve

competition in a way that is fair to both shippers and the railroads and ensures a sound national rail transportation system.

I yield back the balance of my time.

CSXT
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15-3

July 18, 2007

RE: House Bill – H.R. 2125 and Senate Bill – S. 953
Attn: Transportation & Infrastructure Committee Member
Senate Commerce Committee Member

Our company, Conrad Yelvington Distributors, Inc. is a major shipper on several US railroads. We understand that federal legislation has been proposed that would reverse substantial improvements and progress made by the railroad industry since railroads were deregulated. We strongly **oppose** any move to re-regulate the railroads.

The railroads are more viable and profitable and have experienced substantial improvements in every measurable category since passage of the Staggers Act in 1980. We have personally seen great gains in service and safety and reliability along with pronounced improvements in the condition of rail infrastructure. We believe that these gains are a direct result of the carriers' ability and willingness to invest and re-invest billions of dollars in rail infrastructure, technology, and locomotive and rail car fleets.

The rail industry is essential to the economy of the United States. It is also one of the most capital-intensive industries, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would substantially reduce railroad revenues by mandating price "competition." Any time the government dictates prices, the results are generally disastrous. In this case, revenues to the railroads could decrease to levels so low that re-investment of profits would cease and they would not be able to attract new capital to expand the rail system. Our country's free market system can be trusted to create and maintain the most competitive and sustainable rail freight system in the world. We believe that interference by a new, unneeded governmental agency would hamper the railroads' ability to grow and to respond to national and global market needs. We are sure that no governmental agency or legislation, no matter how well intended, can accomplish that.

The nation's roads and highways are severely congested and the highway infrastructure needs billions of dollars in repairs and upgrades. Increased shipping on freight railroads can reduce the highway congestion problem, and can also decrease and/or delay costly repairs – at taxpayer expense – to the highway system. It does not make sense to enact legislation that would cripple the railroads and at the same time would result in aggravating existing highway damage and congestion and thereby accelerate spending on highway repairs.

The ultimate effect of S. 953 and H.R. 2125 would be to prevent the railroads from improving rail infrastructure and even maintaining current service levels. The few shippers which S. 953 and H.R. 2125 purport to help would eventually be hurt by this very legislation. We believe that this legislation is unfair and unnecessary, and we strongly **oppose** it. We ask you to vote **"NO"** on this legislation and any other attempt to re-regulate the railroad industry.

Sincerely,

Gary Yelvington
President

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Representative	Michael Arcuri	(202) 225-1891
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NEWELL RECYCLING, LLC

"Conserving Natural Resources Since 1935"

To the Honorable Saxby Chambliss
416 Russell Senate Office Building
Washington, DC 20510

July 13, 2007

Dear Senator Chambliss:

I am writing to express our company's opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Newell Recycling, LLC is headquartered in East Point, Georgia, and operates from ten yards within the state, five of which are served by the Norfolk Southern Railroad. We ship more than 6,000 railcar loads of scrap annually to destinations throughout the eastern United States.

Since the Staggers Act of 1980 deregulated the railroad industry, we have maintained a good working relationship, although at times a very challenging one, with the Norfolk Southern. As our company has grown from shipping a little less than 600 railcars of scrap metal in 1980 to more than ten times that amount in 2007, we have worked hard with the NS, and they with us, to achieve this high rate of output. Additionally, we have invested millions of dollars in our own fleet of rail cars and track improvements, as have the NS, in order to better serve us. The rail industry is a very capital-intensive one. Our concern is S. 953 and H.R. 2125 will reduce their revenues, making it difficult for the rail industry to maintain and expand infrastructure. We believe it is in all of our interest to have a very healthy rail transportation system now and in the future.

We are very concerned that re-regulating the railroad industry will have a negative result and we urge you to support the current rail regulatory environment and to vote against these Bills. Thank you in advance for your consideration regarding this critical issue.

Sincerely Yours,

Frank Goulding
Vice President, Marketing
Newell Recycling, LLC

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First Name	Last Name	Date	Office Address 1	Office Address 2
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Michael	Arcuri	D-NY-24	327 Cannon House Office Building	Washington, DC 20515
Brian	Baird	D-WA-03	2443 Rayburn House Office Building	Washington, DC 20515
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Nick	Lampson	D-TX-22	436 Cannon House Office Building	Washington, DC 20515

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Nick	Rahall	D-WV-03	2307 Rayburn House Office Building	Washington, DC 20515
David	Reichert	R-WA-08	1223 Longworth House Office Building	Washington, DC 20515
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Jean	Schmidt	R-OH-02	238 Cannon House Office Building	Washington, DC 20515
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Zachary	Space	D-OH-18	315 Cannon House Office Building	Washington, DC 20515
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Sanford	Bishop	D-GA-02	2429 Rayburn House Office Building	Washington, DC 20515
Lynn	Westmoreland	R-GA-03	1118 Longworth House Office Building	Washington, DC 20515
Hank	Johnson	D-GA-04	1133 Longworth House Office Building	Washington, DC 20515
John	Lewis	D-GA-05	343 Cannon House Office Building	Washington, DC 20515
Tom	Price	R-GA-06	424 Cannon House Office Building	Washington, DC 20515
John	Linder	R-GA-07	1026 Longworth House Office Building	Washington, DC 20515
Jim	Marshall	D-GA-08	504 Cannon House Office Building	Washington, DC 20515
Nathan	Deal	R-GA-09	2133 Rayburn House Office Building	Washington, DC 20515
Office of the Tenth Congressional District of Georgia		V-GA-10	2104 Rayburn House Office Building	Washington, DC 20515
Phil	Gingrey	R-GA-11	119 Cannon House Office Building	Washington, DC 20515
John	Barrow	D-GA-12	213 Cannon House Office Building	Washington, DC 20515

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479-783-4186

July 10, 2007

The Honorable Marion Berry
1113 Longworth House Office Bldg.
Washington, DC 20515

Dear Congressman Berry;

I am writing to you in regards to H.R. 2125, a Bill (Railroad Competition and Service Improvement Act of 2007) to amend title 49, USC, to ensure competition in the rail industry, enable rail customers to obtain reliable rail service and provide those customers with a reasonable process for challenging rate and service disputes. This Bill by any other name is a clandestine attempt to reverse the substantial progress made since Congress passed the Staggers Act in 1980, which effectively ended many forms of government intervention and regulation placed upon the railroading industry. The proponents of this legislation stems from a small group who call themselves C.U.R.E. (Consumers United for Rail Equity) This Bill was introduced by Representative Rick Boucher (D-VA) to purportedly reform various provisions of the Staggers Act so as to give freight-rate relief to certain "captive shippers"—mainly coal companies from Appalachia that are served by only one railroad.

These users, in addition to electric utilities, chemical companies, and a few agriculture interests, advocate a regulatory system similar to that which existed prior to 1980 in hopes that their rates would go down in spite of the fact that rates have declined by almost half since the 1980's. It is not that long ago in memory that the US Government controlled almost all aspects of the railroads operations under regulations that controlled pricing, stifled innovation, and mandated unprofitable services. Of course by 1980 the railroad industry was bankrupt, inefficient, under-capitalized, hazardous, and spiraling out of control. As one analyst surmised railroad service prior to 1980 was an oxymoron.

Since the Staggers Act reform the railroads have invested over $370 billion to maintain and improve infrastructure and equipment since then. This capital comes from outside markets where the major carriers have to be competitive with other borrowing institutions on rates of return in order to secure such capital. When you look at rates of return under

the current operating performance the rail industry certainly does not lead the way by aggregate class in returns. A further dilution in earnings would substantially move needed capital to maintain and grow our rail infrastructure into other more profitable venues for investment companies. In essence, in order to expand infrastructure and service, railroads must - like every other business in a free market economy - obtain from their customers the resources they need to support the growth their customers want and need.

There are many shippers who oppose these efforts to reregulate the industry. We know that this reregulation will force railroads, through what amounts to price controls, to lower their rates to favored shippers at the expense of other shippers and the public at large. O.K. Industries spent over $14 million last year in rail freight where we paid the freight, and through delivered purchases on grain indirectly paid over another $14 million in freight. The current system of rail regulation works. It allows shippers to pay the lowest possible rate consistent with a privately-owned rail system.

Railroads have to have the discretionary ability to price differentially. It goes back to the adage of supply and demand in a free market economy. On the cost side the railroads have huge capital infrastructure commitments that must be covered regardless of traffic level. On the demand side customers differ wildly on their willingness to pay for rail service. Unlike a power company that has to provide the capacity for full demand at any given point in time, upon which they are afforded the opportunity to bill for all of that capacity, whether it is needed at this precise point in time today, but could be needed tomorrow. In essence we pay for that privilege of flipping a switch and expecting power. This is tolerable to the consumer because there are no other options to provide that power also defined as an "obligation to serve". Within the railroad industry the consumer of their services has many options, truck, barge, or ship, and that consumer will take advantage of any price anomalies within the market place and move that freight to the cheapest alternative. In essence there is price competition in the rail industry, from other carriers that traverse similar corridors as well as from other modes of transportation. Given this demand structure railroads price differentially, those with the highest reliance on rail on the basis of demand are paying the higher costs. Differential pricing is practiced by businesses throughout the economy. It benefits all shippers because lower rates to some shippers generate revenue (covering fixed costs) that otherwise would not be realized resulting in higher rates (fewer units over fixed costs) for the carriers that require utilization of rail for the movements of their goods. In essence, they would be footing the bill for the whole system, similar to the state of the industry prior to the Staggers Act enactment.

Another huge component in the rail industry versus other modes of transportation is that their infrastructure is entirely supported by the carrier. The cost for rail, maintenance, right-of-way, etc. are all funded through internal capitalization. Unlike trucks that pay a tax for use of public right of ways, namely our interstate system. These dollars must be accounted for in the rates that we shippers pay. It is the opinion of many opponents to this legislation that earnings that are artificially restrained will not be enough to cover their cost of capital and thus the spiral to pre 1980 levels begins. It is interesting to note

that no proponent of reregulation has convincingly explained how the resulting revenue shortfall should be or could be recouped. Under these new pricing and competition restraints, over time a railroad would have to reduce its operating costs to sustain itself. This comes from foregoing maintenance, reducing frequency of service, or reducing quality of service, deferring capacity commitments, or not investing in technology.

The fact that freight railroads are far more capital intensive than most other industries makes reregulation and the limits on railroad investments it entails even more unsound. From 1996 to 2005, the average manufacturer spent 3.4 percent of revenue on capital spending. The comparable figure for freight railroads was 17.2 percent.

Besides the discretionary rate issue with the proposed legislation, the other following points need to be made regarding major policy flaws within this seemingly benign legislation.

Bottleneck cases result from one carrier serving an origination to a point where another "line haul" carrier could interchange and haul to the same destination. The issue becomes whether a carrier should be forced to short haul itself. Court decisions and regulatory precedent going back nearly a century have firmly established that railroads can determine for themselves the form of their rates and the locations (if any) of their interchanges, as long as efficient routes are not foreclosed and railroads cooperate to interchange traffic if necessary to deliver it to its final destination. In December of 1996 the STB generally reaffirmed these principles in its decisions and was subsequently upheld in February 1999 by the US Court of Appeals.

S.953 and H.R. 2125 propose the establishment of "areas of inadequate rail competition" The criteria used to define these areas are so broad and vague that most or all of the country would qualify. In addition, these two measures also try to reregulate in terms of "obligation to serve". This extends far beyond the common carrier obligations railroads already have, the bills mandate that railroads provide "reliable and efficient" service to shippers, and subject the railroads to potential damages if they don't do so. I am sure that the carriers could develop pricing strategies to meet all of these additional requirements and still create adequate retained earnings to fund capital investment but the rates necessary would be extremely inflationary to consumers and probably cost prohibitive to customers.

In addition to these challenges, the measures try to address - through renewed restrictions - reciprocal switching and interchange agreements. These, in summary with the mandatory "final-offer arbitration", make this proposed legislation extremely damaging to the current greatest rail system on earth.

Probably the best way to sum up this proposed legislation is this:
Railroads provide significant public benefits. Because a single train can take up to 500 trucks off of our highways, railroads reduce congestion. Since our economy relies so heavily on imported products, most of which once they hit the ports are converted to rail for dissemination into the interior US, the importance of a healthy, well maintained, well

capitalized rail system is vital to our economy. Couple this with the fuel consumption optimization that rail service provides, roughly one ton of freight for 423 miles on one gallon of fuel, and movements by rail suddenly reduce greenhouse gasses by two thirds compared to comparable movements by trucks.

In conclusion, I urge you to vote NO on any changes to our current rail structure and its regulation. We cannot afford to revert back to the pre Staggers-Act rail structure. Of course, if you elect to support this measure then your next supporting vote needs to be for a $1 trillion budget expenditure to build a highway system capable of moving all the necessary freight to keep America moving.

Sincerely,

Russell E. Bragg
President
O.K. Transportation, Inc.

McGEORGE CONTRACTING CO., INC.
General Contractors
P. O. Box 7008 (870) 534-7120 Pine Bluff, Arkansas 71611-7008

July 26, 2007

U.S. Representative John Boozman
1519 Longworth, House Office Building
Washington, DC 20515

Dear Rep. Boozman:

Every year McGeorge Contracting Co., Inc., through its Granite Mountain Quarries Division, and the Union Pacific Railroad cooperate on the loading, switching, and delivering to our customers of close to 18,000 cars of crushed stone materials. That is a lot of railroading for an Arkansas operation. These deliveries are normally in Texas and Louisiana.

Just a few years ago, recovering from mergers and floods, the railroad representatives admitted in private that they were not performing well as our carrier and were not prepared to handle our business expansions. Also, their earning reports indicated they might not be profitable enough to improve services noticeably without some real attention to purchasing power, cars, and in maintenance of their right of way. None of us, McGeorge Contracting Co., Inc., our carrier, or our customers was very happy the way it was. They had too much business and we could not make good on our obligations to our customers.

Then, the U.P. made some hard decisions that have affected the way all of us do business. First, in an effort to be evenhanded, they raised and published freight rates for producers who rely on the rail delivery of our products. Then they reconfigured for longer trains, and required that we learn to load and unload their trains faster. They also told us that we needed to build and ship to yards that could handle longer trains and more tonnage.

At first we did not believe they could even make these changes themselves. The railroad has been slow, almost inertial at efforts to improve in the past. But they did. Consequently, these changes forced us and our customers to become more efficient as well. The result is that we now do a better job of delivering our products to customers that have also accepted the changes within a system that is enormously expensive to upgrade.

Now, the Union Pacific is operating more efficiently than ever. They also appear to be earning enough to consider the enormous amounts of money necessary to really expand their capacity. Fortunately for us, our worries about losing business have not materialized up to now. And, our service is a lot better than in the past.

Our concerns now are centered around how to invest for the long term with our carrier when we cannot get rate or delivery commitments for over a year. This is a key to our future. But considering the other improvements in service that have been made over the last two or three years, we at Granite Mountain are happy with developments so far.

If what we hear is accurate, we are now worried that our carrier, the Union Pacific Railroad, may be forced to roll back some of its efforts, to provide better service to us, by government intrusion at this critical point in their overall improvement. It seems like a few big users are complaining about service and rates, like we did a few years ago.

Our advice is to give the railroads some more time to continue to improve their service. Perhaps, it would be better for the government to monitor these improvements themselves for a reasonable length of time before confronting railroads with controls and rules that themselves might be injurious to their overall performance.

Government doesn't always know best. Please listen to our advice in this matter and give them a couple of years to show all their customers the fruits of their latest efforts. In order to do this, I encourage you to oppose any efforts to re-regulate the railroad and to specifically oppose S. 953 and H. R. 2125.

Sincerely Yours

Haskell

Haskell L. Dickinson, II
President

JUL 09 2007 15:59 FR NORFOLK SOUTHERN 709 409 1542 TO 76292849 P.04/04
JUL 09 2007 13:21 FR
07/09/2007 MON 11:46 FAX

SUNROCK®
SUNROCK GROUP HOLDINGS CORPORATION

Bryan M. Pfohl
Chairman
PO Box 25 Butner, NC 27509

July 6, 2007

Representative Jason Altmire
1419 Longworth House Office Building
Washington, DC 20515

Re: Opposition to S. 953 and H.R. 2125

Dear Representative Altmire,

I am writing to express my concern and opposition to the Railroad Competition and Service Improvement Act of 2007, S. 953 and H.R. 2125, introduced by Senator Rockefeller and Congressman Oberstar. I am very concerned that some want to re-regulate the railroad industry. I am also concerned that this legislation appears to only benefit a few specific industries at the expense of the larger group of rail shippers. We at Carolina Sunrock ship a significant amount of goods each year on rail and our business plan calls for that volume to increase substantially over the next several years. This legislation would have a grave effect on our business and the consumers of our products.

Since the Staggers Act of 1980 de-regulated the railroad industry, we have enjoyed continued improvement in rail service at a cost that has not kept up with inflation. We have actually seen some rates for shipping our goods decline since the pre-Staggers era. The rail industry is a very capital-intensive industry. Without revenues to maintain and expand infrastructure we may see a very unhealthy rail transportation system in the near future.

As members of the construction aggregates industry we see rail transportation of our products increasing over time as existing quarries become depleted and mining permits become harder to obtain. The transportation of our products via rail will become increasingly important to the continued growth and development of major metropolitan areas. Growth requires aggregates. S. 953 and H.R. 2125 will take us back to the place we were before Staggers, where bankruptcy and disinvestment in the system were commonplace. This will likely have a direct impact not only our business as a company who benefits by extending our market area by shipping on rail, but also on the maintenance of existing infrastructure and expected growth throughout the country in as lacking natural reserves to support the demand for aggregates that exists there.

I urge you to support the current rail regulatory environment and to vote to maintain our growing and customer friendly rail network. Thank you in advance for your consideration regarding this critical issue, which would have a grave effect on businesses such as mine.

Best Regards,

Bryan M. Pfohl
Chairman

Phone: 919.575.4502
Fax: 919.575.5713
[redacted]

CC: Norfolk Southern Corporation

Representative Jason Altmire
1419 Longworth House Office Building
Washington, DC 20515

Representative Brian Baird
2443 Rayburn House Office Building
Washington, DC 20515

Representative John Boozman
1519 Longworth House Office Building
Washington, DC 20515

Representative Bruce Braley
1408 Longworth House Office Building
Washington, DC 20515

Representative Shelley Capito
1431 Longworth House Office Building
Washington, DC 20515

Representative Russ Carnahan
1710 Longworth House Office Building
Washington, DC 20515

Representative Julia Carson
2455 Rayburn House Office Building
Washington, DC 20515

Representative Stephen Cohen
1004 Longworth House Office Building
Washington, DC 20515

Representative Elijah Cummings
2235 Rayburn House Office Building
Washington, DC 20515

Representative Charles Dent
116 Cannon House Office Building
Washington, DC 20515

Representative Michael Arcuri
327 Cannon House Office Building
Washington, DC 20515

Representative Timothy Bishop
225 Cannon House Office Building
Washington, DC 20515

Representative Leonard Boswell
1427 Longworth House Office Building
Washington, DC 20515

Representative Vern Buchanan
1516 Longworth House Office Building
Washington, DC 20515

Representative Michael Capuano
1530 Longworth House Office Building
Washington, DC 20515

Representative Christopher Carney
416 Cannon House Office Building
Washington, DC 20515

Representative Howard Coble
2468 Rayburn House Office Building
Washington, DC 20515

Representative Jerry Costello
2408 Rayburn House Office Building
Washington, DC 20515

Representative Peter DeFazio
2134 Rayburn House Office Building
Washington, DC 20515

Representative Thelma Drake
1208 Longworth House Office Building
Washington, DC 20515

Representative Mary Fallin
1432 Longworth House Office Building
Washington, DC 20515

Representative James Gerlach
308 Cannon House Office Building
Washington, DC 20515

Representative John Hall
1217 Longworth House Office Building
Washington, DC 20515

Representative Brian Higgins
431 Cannon House Office Building
Washington, DC 20515

Representative Steve Kagen
1232 Longworth House Office Building
Washington, DC 20515

Representative Nick Lampson
436 Cannon House Office Building
Washington, DC 20515

Representative Daniel Lipinski
1717 Longworth House Office Building
Washington, DC 20515

Representative Connie Mack
115 Cannon House Office Building
Washington, DC 20515

Representative Jerry McNerney
312 Cannon House Office Building
Washington, DC 20515

Representative Candice Miller
228 Cannon House Office Building
Washington, DC 20515

Representative Bob Filner
2428 Rayburn House Office Building
Washington, DC 20515

Representative Wayne Gilchrest
2245 Rayburn House Office Building
Washington, DC 20515

Representative Robin Hayes
130 Cannon House Office Building
Washington, DC 20515

Representative Timothy Johnson
1207 Longworth House Office Building
Washington, DC 20515

Representative John Kuhl
1505 Longworth House Office Building
Washington, DC 20515

Representative Rick Larsen
107 Cannon House Office Building
Washington, DC 20515

Representative Frank LoBiondo
2427 Rayburn House Office Building
Washington, DC 20515

Representative Doris Matsui
222 Cannon House Office Building
Washington, DC 20515

Representative Michael Michaud
1724 Longworth House Office Building
Washington, DC 20515

Representative Harry Mitchell
2434 Rayburn House Office Building
Washington, DC 20515

Representative Jerry Moran
2202 Rayburn House Office Building
Washington, DC 20515

Representative Grace Napolitano
1610 Longworth House Office Building
Washington, DC 20515

Representative Thomas Petri
2462 Rayburn House Office Building
Washington, DC 20515

Representative Ted Poe
1605 Longworth House Office Building
Washington, DC 20515

Representative David Reichert
1223 Longworth House Office Building
Washington, DC 20515

Representative Jean Schmidt
238 Cannon House Office Building
Washington, DC 20515

Representative Zachary Space
315 Cannon House Office Building
Washington, DC 20515

Representative Gene Taylor
2269 Rayburn House Office Building
Washington, DC 20515

Representative Jerrold Nadler
2334 Rayburn House Office Building
Washington, DC 20515

Representative Eleanor Norton
2136 Rayburn House Office Building
Washington, DC 20515

Representative Todd Platts
1032 Longworth House Office Building
Washington, DC 20515

Representative Nick Rahall
2307 Rayburn House Office Building
Washington, DC 20515

Representative John Salazar
1531 Longworth House Office Building
Washington, DC 20515

Representative Heath Shuler
512 Cannon House Office Building
Washington, DC 20515

Representative Ellen Tauscher
2459 Rayburn House Office Building
Washington, DC 20515

Representative Donald Young
2111 Rayburn House Office Building
Washington, DC 20515

NS

Lindley Mills Inc.
7763 Lindley Mill Rd.
Graham NC 27253

July 2, 2007

Dear Representative Coble,

I am writing to express my concern and opposition to the Railroad Competition and Service Improvement Act of 2007, S. 953 and H.R. 2125, introduced by Senator Rockefeller and Congressman Oberstar. I am very concerned that some want to re-regulate the railroad industry. I am also concerned that this legislation appears to only benefit a few specific industries at the expense of the larger group of rail shippers. We at Lindley Mills ship approximately five million dollars of goods each year. This legislation would have a grave effect on our business and the consumers of our products.

Since the Staggers Act of 1980 de-regulated the railroad industry, we have enjoyed continued improvement in rail service at a cost that has not kept up with inflation. We have actually seen some rates for shipping our goods decline since the pre-Staggers era. The rail industry is a very capital-intensive industry. Without revenues to maintain and expand infrastructure we may see a very unhealthy rail transportation system in the near future. S. 953 and H.R. 2125 will take us back to the place we were before Staggers, where bankruptcy and disinvestment in the system were commonplace.

I urge you to support the current rail regulatory environment and to vote to maintain our growing and customer friendly rail network. Thank you in advance for your consideration regarding this critical issue, which would have a grave effect on businesses such as mine.

Sincerely,

Joe Lindley
President Lindley Mills Inc.

Larry Miller
Alliance Coal Corporation
153 West Main Street
Abingdon, VA 24210

Alliance Coal Corporation

July 31, 2007

Congressman Jim Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Transmitted Via Fax: 202-225-0699

Dear Congressman Oberstar:

I am writing to express my concern regarding your consideration of S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. Our company, Alliance Coal Corporation, with operations in Eastern Kentucky and Western Virginia, ships roughly nine million tons of coal annually to utility customers in the eastern United States and to Metallurgical customers overseas. Our business (and therefore our contribution to the betterment of our employees and the states in which we operate) has grown quite considerably since the Staggers Act.

It is my understanding that the rationale behind S. 953 and H.R. 2125 is to create greater competition, wider access and better service in the rail industry. Certainly we are supportive of those goals, and we feel that considerable progress has been made in that direction since the deregulation of the Railroads in 1980. We have entered negotiated agreements with both the CSX and the NS since the Act, which have greatly facilitated our business expansion. Those mutually beneficial arrangements would not have been possible under the regulated system that existed before the current legislation.

It is with these understandings and concerns that we ask you to be careful in deliberating S. 953 and H.R. 2125, as we would not want to loose the ability to make further such agreements for the good of all involved. There is no question the rail industry is better now for producers, customers and the general citizenry than it was in the Pre-Staggers time period. Any legislation that would impede investment in more locomotives, quality railcars, and expanded rail infrastructure would obviously be counter productive, as was the case pre-Staggers. Under the regulated system, it just was not economically feasible for the Railroads to make the major investments necessary to build and maintain an efficient Railroad network.

History has proven that many more times than not, governmental regulation in the private sector, while well intentioned, has been disastrously detrimental to industry and to the economy -- and therefore to our country and its people. I request that you oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our Railroads.

Respectfully,

Auto Port INC.

203 Pigeon Point Road
New Castle, DE 19720
Phone: (302) 658-5100
Fax: (302) 658-2372

July 25, 2007

Senator Joseph R. Biden Jr.
201 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Biden,

I write to express concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberster.

Our Company, AutoPort, Inc. in New Castle, Delaware (adjacent to the Port of Wilmington) handled in excess of 120,000 vehicles via inbound/outbound rail through our facility in calendar year 2006. In calendar year 2007, we expect this volume to exceed 135,000 units.

We are currently working in partnership with Norfolk Southern on rail infrastructure improvements in Wilmington to position our organizations for added growth through our mutual operations and through the Port of Wilmington. The objective is to position AutoPort, Inc., Norfolk Southern and the Port of Wilmington for continued growth in the automotive sector vis-à-vis additional inbound/outbound vehicle volumes through our Rail Terminal Operations.

The rail industry is essential to our business. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our business grows. S. 953 and H.R. 2125 legislation recently introduced by Senator Rockefeller and Congressman Oberstar would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result, the railroads revenue may well fall below the level of capital needed to maintain their system and services into and out of Wilmington, Delaware.

Our organization has experienced tremendous growth since the departure of Ford Motor Company beginning calendar year 2003. As you know, Ford departed our organization and the Port of Wilmington beginning January 1, 2003 and relocated their Middle East Export Operations to Baltimore, MD. Since Ford's departure, we have devoted numerous resources towards re-growth through diversification, with a heavy emphasis on developing new business with the Norfolk Southern Railroad Corporation. As you are

aware, NS is a single source supplier to the Port and surrounding private sector businesses.

In calendar year 2003 (post Ford departure) we handled just over 57,000 units through our Rail Terminal. As I stated previously, in calendar year 2007 we will exceed 135,000 vehicles through our Rail Terminal, a growth rate of 137% in just five (5) years, a result of the combined effort between AutoPort, Inc. and NS Corporation.

It is my understanding that the rational behind S. 953 and H.R. 2125 is to create greater competition, access and service in the rail industry. AutoPort is now, more than ever, able to compete in the automotive sector with cost effective freight transportation rates, on time service and damage free delivery. This has been accomplished by working closely with Norfolk Southern Corporation and includes infrastructure improvements already made to our Auto Terminal and the planned infrastructure improvement in partnership with NS to further expand our operations in an effort to attract new business.

In conclusion, I request that you oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our railroads. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Roy A. Kirchner
President

CC: Wilmington Office

Martin Marietta Materials

P. O. Box 30013
Raleigh, North Carolina 27622-0013
Telephone (919) 783-4545

C. Howard Nye
President and Chief Operating Officer

August 7, 2007

The Honorable Shelley Capito
1431 Longworth House Office Building
Washington, DC 20515

Dear Congresswoman Capito:

I represent Martin Marietta Materials Inc., with headquarters based in Raleigh, North Carolina. Martin Marietta is one of the largest producers of construction aggregates in the United States. Much of these aggregates are delivered by rail, particularly in the high-growth areas of the Southeast and Southwestern United States.

Strong economic growth generally and in our industry in particular, together with limitations of the existing rail transportation system, has in recent years on occasion constrained Martin Marietta's ability to ship its products to its customers and disrupted our business. However, the railroads have responded to this challenge with significant investments and improvements in their rail systems. The current de-regulated market system encourages such investments by the railroads and, as a shipper, Martin Marietta benefits from such improvements.

At the present time we believe Martin Marietta and the general public is best served by the existing de-regulated market approach, rather than by an effort to in effect "re-regulate" railroads through legislation such as that proposed in S. 953 and H.R.2125, *The Railroad Competition and Service Improvement Act of 2007.*

I thank you in advance for considering our company's views on this important matter.

Sincerely,

C. Howard Nye
President & COO

CSXT
10-R
8-S

July 13, 2007

Representative Peter J. Visclosky
2256 Rayburn House Office Building
Washington, DC 20515

Dear Representative Visclosky,

I am writing to express my opposition to the Railroad Competition and Service Improvement Act of 2007, S. 953 and H.R. 2125, introduced by Senator Rockefeller and Congressman Oberstar.

Bulkmatic Transport Company works with all the major railroads to transload 30,000 railroad cars of bulk products per year. This translates into 120,000 long haul truckloads being taken off the highways. Our rail service today is much better than it was in the '70's. Why would you want to reregulate an industry that is showing as much improvement as the rail industry has in the last 20 years? Our rail service is continuing to improve.

Basically, Bulkmatic is a bulk trucker. I am old enough to remember the 1970's when trucking and the rails were more regulated. While the regulations were well intended, both trucking and the railroads evolved into high cost, non-competitive businesses. Today's global economy requires that we all create value or get run over. Please don't get in the way of the railroad's value creation.

Finally, it has been our experience that when shippers are asking for reregulation, they are really looking for a competitive advantage. Right now the railroads are creating an efficient, level playing field for all of their customers. Please do not interfere with the process of supply and demand.

Yours truly,

A.Y. Bingham, Jr.
President

Senators

Burr, Richard - NC
~~Casey, Robert - PA~~
Clinton, Hillary Rodham - NY
Dole, Elizabeth - NC
Lautenberg, Frank - NJ
Menendez, Robert - NJ
Schumer, Charles - NY
Specter, Arlen - PA

Representatives

Brady, Robert - PA
Carney, Christopher - PA
Dent, Charlie - PA
Higgins, Brian - NY
Murphy, Tim - PA
Myrick, Sue - NC
Platts, Todd Russell - PA
Sires, Albio - NJ
Watt, Mel - NC

Matson
Integrated Logistics

July 19, 2007

The Honorable Ellen Tauscher
2459 Rayburn House Office Building
Washington, D.C. 20515

Dear Congresswoman Tauscher:

I understand that policymakers in Washington are considering legislation that would re-regulate the railroad industry and undo the progress made since the Staggers Act in 1980. Matson Integrated Logistics is a railroad customer shipping approximately $190 million worth of container and trailer business within the U.S. I am writing to express our strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

As you undoubtedly know, the history of transportation regulation in the U.S. is that it obstructed rail innovation for decades causing customers to overpay for inferior service. Regulation prevented rail carriers from operating their networks efficiently and from providing service that was competitive with highway carriers. As a result, many railroads faced bankruptcy.

Since the Staggers Act was passed in 1980, Americans have benefited from improved carrier efficiency and innovation as well as from remarkable improvements in the overall health of the railroad industry. Despite the fact that it is one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization, rail transportation prices are still lower than they were in 1980. Railroads are now viable investment opportunities and their demand for new employees continues to rise.

To continue to serve our growing economy, railroads must earn enough revenue to maintain and expand their networks. Class 1 rail carriers have invested an incredible $375 billion since deregulation. The resulting efficiencies and service innovations have enabled the industry to divert millions of shipments off our highways and into containers and trailers moved via rail. Re-regulation promises only to reduce efficiency, revenues, service, investment, and ultimately capacity. Imagine trying to move hundreds of thousands more shipments per year on already congested highways with the accompanying higher fuel consumption and degraded air quality.

As you know, our economy depends on an economically sound rail freight network. It is critical to our company's long term growth and to the customers that we serve. If these Bills were to become law, they would have a devastating impact on the rail industry and

would bring capital investment in capacity to a standstill. The subsequent negative impact on Matson Integrated Logistics and other rail customers through increased costs and reduced service would be enormous and contrary to our collective interests.

We strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Joseph A. Robledo
AVP - Carrier Relations and Yield Management
Matson Integrated Logistics

cc: R. C. Papworth

ConAgra Foods

ConAgra Foods, Inc.
Suite 950
1627 I Street, NW
Washington, DC 20006

TEL: 202-223-5115
FAX: 202-223-5118

NS
9-R
5-S

July 24, 2007

The Honorable Todd Platts
U.S. House of Representatives
1032 Longworth House Office Building
Washington, D.C. 20515-3819

Dear Congressman Platts:

On behalf of ConAgra Foods, Inc. we urge you to oppose S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. ConAgra Foods has rail-served facilities across the country and in your district(state) and relies on the services the industry provides.

It is important for ConAgra's business that the railroad industry remain vital and healthy without new and costly regulatory requirements. ConAgra Foods has benefited from railroad deregulation, as the rail network is much safer, more reliable and more efficient today than it was prior to passage of the Staggers Rail Act of 1980.

Rather than impose a new regulatory structure on railroads, we suggest that improvements be made to the STB oversight process, making it less focused on railroad revenue adequacy and more user friendly for shippers.

Thank your for your consideration of our views.

Sincerely,

Brent Baglien

Brent Baglien
VP Government Affairs

ıt to the following:

Senators:

Mark Pryor

Bill Nelson

Barbara Boxer

Kay Hutchinson

Claire McCaskill

Congressmen:

John Boozman

Bruce Braley

ry Costello

Stephen Cohen

Christopher Carney

Zachary Space

Todd Platts

Gerald McNerney

Charles Dent

From: Oldaker, Drex [mailto:dboldake@nscorp.com]
Sent: Monday, August 13, 2007 8:29 AM
To: Gustafson, Bryan (Trade Group)
Subject: RE: Rereg letter

Bryan:

ɔuld you know to whom this letter was sent? What congress person?

BNSF
2-R

CTS Cement Manufacturing Corporation
11065 Knott Avenue, Suite A, Cypress, CA 90630
Phone 800-929-3030, Fax 714-379-8270
www.ctscement.com

September 6, 2007

Via FAX: 202-225-0699

The Honorable James Oberstar
Chairman – Committee on Transportation and Infrastructure
United States House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

There are three critical risks to CTS Cement Manufacturing's business if anything close to S. 953 and H.R. 2125 is passed.

CTS Cement Manufacturing Corp. is headquartered in Cypress, California. CTS Cement ships about 900 rail carloads per year throughout the United States using all of the major railroads. CTS spends about $2,700,000 annually for rail freight shipments. CTS Cement is growing about 20% per year producing specialty cements not available from larger corporations. Much of this cement is used as a superior way to repair damaged highways.

Critical risk 1. The basic concepts behind this proposed legislation were tried and were a colossal failure.

We need to stimulate investment in additional railway infrastructure. However, prior to the Staggers Act, federal regulation was causing the exact opposite. Rail infrastructure fell apart as investment funds were not available and service declined accordingly. Restricting pricing freedom and flexibility, primarily for a privileged few with political pull, will further add costs without genuine offsetting benefits. From what we understand, this legislation is proposing to add burdens that are not needed to what should be private business transactions. History has demonstrated that this will be very costly to railway customers and ultimately to the American public with little to show in the way of positive benefits. History also indicates funding for plant and equipment investment will be reduced, leading to similar deterioration that is now showing in the federal highway system that at times produces tragic results.

Critical risk 2. The cost of shipping for CTS Cement will increase.

Our reading of S. 953 and H.R. 2125 suggests the U.S. railway system could lose $2 billion in annual revenue just to cater to well-healed companies that have disproportionate political pull. Therefore, CTS would likely bear disproportionate shipping charge increases, because we cannot afford the lawyers and consultants to argue our case every time shipping rate increases are argued.

Critical risk 3. CTS Cement would lose markets.

CTS Cement serves all areas of the country. It would be impossible to do so without rail service and the ability to work out deals with the carriers to establish our various traffic lanes. Putting faceless bureaucrats in the position of final arbitrator for deals we now do with the railroads would add a chilling effect that our investors would be reluctant to accept. To make investments that could be undermined by political whims that could change with policies that have nothing to do with mutual business decisions between CTS and the railroads will clearly be bad for a smaller business such as CTS.

In summary, various government inspired programs to bring "fairness," "level the playing field" and other nice sounding terms actually caused the opposite. Giving into a relatively few, financially successful companies that have the resouces to buy legislation that, at least in the short term, is perceived to benefit them is a great way to reverse the better service, lower shipping rates and vastly improved physical infrastructure that has been the general trend of the rail industry since the early 1980's. There is great value from having a strong rail industry, and producing that value will also require paying for it.

If Congress really wants to help the railroads' customers, it should get behind the infrastructure tax credit or some similar effort that would encourage even more funding for facility and right of way improvements. Implementing policies proposed in S. 953 and H.R. 2125 would reverse the commercial progress of the last quarter century and is not in CTS Cement's best interest and, in the long term, no other rail user either. We should learn from history, not repeat it.

Thank you for your attention to CTS Cement's perspective on this matter.

Sincerely yours,

William R. McCormick
President, CTS Cement Manufacturing Corporation

NUMMI
New United Motor Manufacturing, Inc.

45500 Fremont Boulevard Fremont, CA 94538 USA (510) 498-5500

August 21, 2007

The Honorable Doris Matsui
U.S. House of Representatives
Canon Building #222
Washington, D.C. 20515

Re: *Concern about Railroad Re-regulation*
(S. 953 and H.R. 2125)

Dear Representative Matsui:

As you know, NUMMI is the Toyota/GM venture in Fremont, California that employs about 5500 team members and produces approximately 400,000 vehicles per year. We have also attracted 23 companies to locations throughout California to support our operations. As you can imagine, NUMMI and its suppliers ship and receive hundreds of freight cars of goods each month. For this reason, we are concerned about the possible effects of legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

These pieces of legislation are a mix of measures, the final impact of which we cannot be sure. We see why remote localities would like to have improved service and understand why the idea of regulating rail pricing might seem attractive. However, the provisions of S. 953 and H.R. 2125 as a whole would appear to have a significant detrimental impact on revenues of the railroads. We are worried that this might impinge on the railroad's ability to continue to make the investments necessary to serve long haul industrial customers like NUMMI.

Our particular concern is that, due to severe restriction on their income, railroads might delay or cancel plans to improve infrastructure or improve energy efficiency. Were that to occur, both customers and the environment could lose out in the long run.

For the above reasons, we ask that you carefully analyze the potential effects of any move to re-regulate the railroads. We respectfully request that you reject any proposal that could lead the railroads to postpone capital improvements to their lines or equipment.

Thank you for considering our concerns.

Sincerely,

Kelley McKenzie

K. Kelley McKenzie
General Counsel

NS
1. R
2. S

CTT
SERVICES, LLC

August 6, 2007

Rep. James L. Oberstar (Minn.)
2165 Rayburn House Office Building
Washington, DC 20515

Dear Rep. Oberstar,

I am writing to express my concern and opposition to the Railroad Competition and Service Improvement Act of 2007, S. 593 and H.R. 2125, introduced by Senator Rockefeller and Congressman Oberstar. I am very concerned that some want to regulate the railroad industry. I am also concerned that this legislation appears to only benefit a few specific industries at the expenses of the larger group of rail shippers. We at CTT Services, LLC receive from our suppliers thousands of dollars in goods each year. This legislation would have a grave effect on our small business by the increase to rail cost from our consumer products.

Since the Staggers Act of 1980 de-regulated the railroad industry, we have enjoyed continued improvement in rail service at a cost that has not kept up with inflation. My suppliers have actually seen some rates for shipping our goods decline since the pre-Staggers era. The rail industry is a very capital-intensive industry. Without revenues to maintain and expand infrastructure we may see a very unhealthy rail transportation system in the near future. S.953 and H.R. 2125 will take us back to the place we were before Staggers, where bankruptcy and disinvestments in the system were commonplace.

I urge you to support the current rail regulatory environment and to vote to maintain our customer friendly rail network. Thank you in advance for your consideration regarding this critical issue, which would have a grave effect on small businesses such as mine.

Respectfully,

Donald McKoy

(281) 442-8402 146262 Morales Road Houston, Texas 77032 (281) 442-8111 fax

NORFOLK SOUTHERN

Chemical Marketing
616 FM 1960 West, Suite 500
Houston, TX 77090
Fax: (281) 880-3127

DATE: 8/6/07

TO: JEFF USHER, AAR Fax: 2026392439

FROM: Bill Williams

(Phone Number: 281-8803104)

The following document contains 2 pages, including this cover sheet.

ADDITIONAL INFORMATION: Letters sent to: Senators, Hutchinson, Inouye + Rep Oberstar.

If you require assistance with this fax, call Dianne Youngblood at (281) 880-3148.

CC: Charlie Brenner 629-2849
Carol Orndorf 985-6337
Brenda Poff 985-6706

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CONSOL ENERGY

CONSOL Energy Inc.
Consol Plaza
1800 Washington Road
Pittsburgh, Pa 15241-1421

CSX1
1-R
1-S

July 20, 2007

Rep. James L. Oberstar (Minn.)
2165 Rayburn House Office Building
Washington, DC 20515
Phone: (202) 225-4472
Fax: (202) 226-1270

Senator Daniel Inouye (Hawaii)
722 Hart Senate Office Building
Washington, DC 20510-1102
Phone: 202-224-3934
Fax: 202-224-6747

Subject: **H.R. 2125 and S. 953**

Dear Sirs:

CONSOL Energy is the largest coal producer east of the Mississippi River, and one of the largest shippers on both the Norfolk Southern and the CSX railroads. Almost 75% of our total annual production moves to customers by rail. Clearly, our company has a keen interest in efficient, reliable and reasonably priced rail service. As a consequence, we will carefully review any legislative or regulatory proposals that would impact the railroad industry.

In the past several years, the NS and the CSX have invested substantial capital to upgrade lines, rolling stock and locomotives, as well as making significant strides in improving the daily working relationship between themselves and shippers like CONSOL Energy. Because of these efforts, both short- and long-term planning have been improved, resulting in an overall improvement in service in our opinion. We have not reported adverse operating or financial impact because of rail service problems since CONSOL Energy became a public company in 1999.

Reliable, efficient rail service is vital to America's energy producers and to America's energy security. Like energy producers, railroads are capital-intensive enterprises that require the reinvestment of substantial capital to maintain their systems. Any change in statute that would impact the railroads' ability to generate revenue and to reinvest in their systems would have far reaching and adverse impacts on our economy.

We recognize that perhaps not all shippers have had the same experience as we have had. Nevertheless, legislative changes to the Staggers Act of 1980 should be considered only with the greatest of caution. Our experience to-date suggests that the Staggers Act, on the whole, has benefited the rail industry and the customers they serve.

Sincerely,

James Grech
CONSOL Energy Sales Company
Senior Vice President - Marketing

UP
1-E
1-S

People • Service • Environment
NORCAL WASTE SYSTEMS, INC.

August 3, 2007

The Honorable Nancy Pelosi
Speaker of the House of Representatives
235 Cannon House Office Building
Washington, DC 20515

Dear Madam Speaker:

I am writing to express my deepest concern for S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator James L. Rockefeller, IV (WV) and Representative James L. Oberstar (MN-8).

My company, Norcal Waste Systems, Inc., located in San Francisco, California, is in the solid waste industry. We are constantly exploring sustainable transportation methods that will minimize our greenhouse gas emissions (GHG). We have been working with rail transportation companies to deliver residual waste to our disposal site, thereby reducing freeway congestion and excessive GHG emissions.

The rail industry is a critical partner of our business as we move toward shipping our municipal solid waste via rail. As Norcal continues to grow and expand, it is imperative that the rail industry remains healthy and efficient in order to meet the increasing demands placed on our company and on the solid waste industry. If passed into law, S. 953 and H.R. 2125 will undermine the rail industry's incentive to provide requisite infrastructure and growth, thus leading to increased costs passed on to shippers and a decline in service alternatives.

I encourage your vigorous opposition to S. 953 and H.R. 2125 and any other legislation that attempts to re-regulate our nation's railroads. History has shown that excessive governmental railroad regulation is ineffective and has proven detrimental to our economy.

Sincerely,

Michael J. Sangiacomo
President and Chief Executive Officer

160 PACIFIC AVENUE, SUITE 200 • SAN FRANCISCO, CA 94111 • TELEPHONE (415) 875-1000

Proud to be Employee Owned

The Scoular Company
2027 Dodge Street
Omaha, NE 68102
402-342-3500
Wats 800-468-3500
Fax 402-342-5568
www.scoular.com

August 30, 2007

The Honorable Chuck Hagel
United States Senate
248 Russell Senate Office Building
Washington, D.C. 20510-2705

Re: S.953

Dear Senator Hagel:

The Scoular Company is century-old agriculture firm engaged in marketing commodities globally. Our annual rail transportation budget exceeds $200 million, with an additional $100 million spent on other modes of transportation. While we understand that selected railroad practices have led to increasing frustration among shippers, we are very concerned about the approach taken in S. 953 and believe it may well damage the ability of rail-dependent businesses to compete successfully.

We believe it is imperative for the railroads to be exposed to the forces of supply and demand just as their shippers are. In the last decade or more, we have seen rail carriers respond in a variety of ways to rapidly changing market conditions. They have done so with both infrastructure improvements and rate relationships. This is a dynamic process in which isolated instances of apparent inequality are inevitable. Yet, the efforts of government to repair this through a regulated rate-setting process is likely to cause imbalance and distortion throughout the entire system and to spread the disadvantage from a few to most.

We urge you to oppose S.953 and any other legislation designed to re-regulate the U.S. rail industry.

Sincerely,

Todd J. McQueen
Senior Vice President

TJM/kjd

Stolt-Nielsen Transportation Group Inc.

A subsidiary of
Stolt-Nielsen S.A.

Stolt Rail Services Division
15635 Jacintoport Boulevard
Houston, TX 77015-6534
U.S.A.

Tel: (281) 457-0303
Fax: (281) 860-6921

July 17, 2007
The Honorable James L. Oberstar
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Representative Oberstar:

I am writing this as a current and long time rail shipper and in reference to the pending S. 953 and H.R. 2125 on re-regulation of the U. S. Railroad Industry. Assumed, the intent of this is to have a broad, comprehensive, all encompassing bill that addresses all issues between rail shippers and rail carrier; the reality is that this will likely be an enormous, unwieldy, inefficient, and complicated bill that will neither serve, nor facilitate; it will not be in the best interests of the shipper or the rail carrier. The additional increase in direct infrastructure costs to private companies to administer, and an increase in the cost for additional Government Bureaucracy to oversee and administer would likely present an offset to the intended cost savings, and add additional indirect costs. Legislation would not manage, and this dynamic and multi- variable market system requires a dynamic 'management' system, both objective and subjective, which the free market -place provides and nurtures.

Acknowledging the obvious, the very 'normal' issues in any customer/supplier relationship for all Industries/Markets, most of these issues should be left for resolution and management in the normal course of the dynamic 'free market' place. This 'free market' relationship has been proven to be robust and healthy for businesses, consumers and the market place.

Regulation will kill entrepreneurial spirit, incentive and initiative to consistently excel and exceed at one's personal and business performance levels – stagnant and then deteriorating levels. The Railroads must have sufficient returns to reinvest for growth, infrastructure expansion and improvements to meet future demands – the shipper's needs. Regulation will not be conducive for this; instead, it will handicap the intended purpose and will likely curtail infrastructure and capital repair and renewal, and new expansion – which will be detrimental to the Shipper, Rail Industry, US Government and the general Public. Rail infrastructure will again begin to deteriorate and service levels will decline. These consequential symptoms will be chronic and will metastasize throughout the system and suddenly become acute realizing a tremendous negative effect and cost. Our economy, growth, and security is highly dependent on an efficient means of a transportation system that remains dynamic and capable of confronting the new challenges and opportunities – initiative, drive and competitiveness, (Free Market) is the basis for the 'means'.

It is believed that regulation will be detrimental to the health of the Rail Industry and the Industries that are dependent on all modes of transportation. The need and desire to excel and progress will be moot.

Please consider carefully, this 'cure' is likely to be more damaging and harmful than the 'symptom'; once implemented, difficult to halt or reverse.

This letter is against Bills S. 953 and H.R. 2125 re-regulating the Rail Industry.

Sincerely,

Judson L. Brown
Manager, Stolt Nielsen Rail Services
Stolt Nielsen Transportation Group

JUL 16 2007 11:23 FR NORFOLK SOUTHERN 708 409 1542 TO 76292849 P.02/06
07-16-'07 10:59 FROM-Norfolk Southern 2059514751 T-086 P005/006 F-645

Strada materials

July 6, 2007

The Honorable Jo Bonner
United States House of Representatives
315 Cannon Building
Washington, DC 20515

Dear Congressman Bonner:

I am a Norfolk Southern customer and I have railcars either coming in or going out on a weekly basis.

Service has been great since the beginning. However, I was a little surprised when I received a telephone call from the Atlanta Operations Center on Tuesday, July 3rd asking if I needed service on Wednesday July 4th. That's right, they called me-"the customer"-to find out if I needed rail service on a holiday.

Never in my wildest dreams would I ever expect a "service" regulated or controlled by the government to call me. Unless, of course, I neglected to file my quarterly taxes!

I believe Norfolk Southern is doing such a good job for me because that is what it takes to get and keep customers. This is the driving force behind the free enterprise system.

It has come to my attention that Senator Rockefeller and Congressman Oberstar have introduced legislation to regulate the railroad companies. I have deep concerns about S.953 and H.R. 2125 because the railroads are working better than ever. The system isn't broke. Please don't try to fix it.

In conclusion, in case there is any doubt, I request that you oppose S.953 and H.R 2125 and any other legislation that attempts to control our railroad.

Respectfully submitted,

Roger Bass
President

Jo, Thanks for all you're doing.

Strada Materials, LLC, 308 Woodward Court, Birmingham, AL 35242

NS

SENATE MARTINEZ NELSON Crenshaw

July 19, 2007

I am writing to express my concern and opposition to the Railroad Competition and Service Improvement Act of 2007, S.953 and H.R. 2125, introduced by Senator Rockefeller and Congressman Oberstar. I am very concerned that some want to re-regulate the railroad industry. I am also concerned that this legislation appears to only benefit a few specific industries at the expense of the larger group of rail shippers. We at Transload America ship over $6,500,000.00 dollars of goods each year. This legislation would have a grave effect on our business and the consumers that benefit from our services.

Since the Staggers Act of 1980 de-regulated the railroad industry, we have enjoyed continued improvement in rail service at a cost that has not kept up with inflation. We have seen many benefits derived from pricing that is driven by markets. Market driven pricing allows the railroad industry the ability to earn a fair cost of capital. Without revenues to maintain and expand the infrastructure we may see a very unhealthy rail transportation system in the near future. S. 953 and H.R. 2125 will take us back to the place we were before Staggers, where bankruptcy and disinvestment in the system were commonplace.

I urge you to support the current rail regulatory environment and vote to maintain our growing and customer friendly rail network. Thank you in advance for your consideration regarding this critical issue, which would have a grave effect on business such as mine.

Respectfully;

Jim Newell
President TLA Rail Logistics
10407 Centurion Parkway North
Jacksonville, Florida 32256

NS

July 12. 2007

2-S
3-R

The Honorable James Oberstar
United State House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515
Fax: (202) 225-0699

Dear Congressman Oberstar:

As a representative of Worthington Industries transportation interests we are strongly opposed to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act 0f 2007, introduced by you and Senator Rockefeller.

Worthington Industries processes steel for use in the construction, automotive, hardware, lawn and garden, office furniture and many other industries and spends over $18,000,000 annually on rail transportation. Due to the nature of our product line, rail has been and will continue to be a vitally needed mode for moving our product, particularly for intermediate and long haul.

We believe that this bill will neither improve competition (i. e., lower price) nor improve service (i. e., provide greater rail car availability and lower transit time). Simply put, the control of prices and other marketplace limitations have not worked well in the past (pre-Staggers) and will not work any better in the future.

The US needs a strong viable ever-improving and capacity-increasing rail system. We recognize that no system is perfect and that there are times when the railroads have not acted in the best interests of a particular shipper, even Worthington Industries. However, we believe that the marketplace, not the government, should prevail and that the specifics as articulated in this bill would be counter-productive and would ultimately lead to higher prices and deteriorating services.

Please vote NO on S953/HR2125.

Thank you for your consideration in this matter.

Steve Rodabaugh
Director Logistics & Freight
Worthington Industries
200 West Old Wilson Bridge Road
Columbus, OH 43085
Fax: (614) 840-4112

ROBERTS & DYBDAHL INC.

July 13, 2007

The Honorable Congressman Bruce Braley
UNITED STATES HOUSE OF REPRESENTATIVES
1408 Longworth Office Building
Washington, D.C. 20515

Dear Congressman Braley:

My name is Donald B. Strater, and I am Executive Vice President of Roberts & Dybdahl Inc. Roberts & Dybdahl Inc. is headquartered in West Des Moines, Iowa and operates nine distribution centers throughout the Midwest, including one in Waterloo, Iowa. Roberts & Dybdahl Inc. brokers and distributes lumber and building materials and manufactures engineered wood products. In a typical year, Roberts & Dybdahl Inc. ships several hundred million dollars of lumber and related products by rail from virtually all lumber producing regions in North America to its facilities and its customers' facilities located primarily in the Midwest. I have set forth below Roberts & Dybdahl Inc.'s views concerning S. 953 and H.R. 2125. (the "Railroad Competition and Service Improvement Act of 2007")

The Railroad Competition and Service Improvement Act of 2007 is nothing more than an attempt by certain shippers to have the government reregulate the rail industry so as to give them cheaper rail rates. We all want to reduce our costs of transportation, but this is a potentially disastrous way to go about it. If certain large shippers are able to get their rates reduced via regulatory mechanisms instead of through free market forces, we are allowing politics rather than economics to control the transportation industry. This political manipulation will have the effect of diminishing the property and contractual rights of noncomplaining shippers while detrimentally impacting the railroads' ability to maintain and attract the capital needed for improvement and expansion. It is hard to reach a conclusion other than that the proposed legislation will amount to a subsidy to certain large shippers at the expense of the shipping public.

History has shown that railroads operate better and more efficiently when the transportation industry is controlled by market forces rather than governmental regulation. Reregulation of railroads is a costly and burdensome step backwards.

ROBERTS & DYBDAHL INC.

Donald B. Strater

Donald B. Strater
Executive Vice President

DBS/d

P.O. Box 1908 • Des Moines, Iowa 50306-1908 • (515) 283-7100 • www.robertsdybdahl.com

ROSEBURG
FOREST PRODUCTS

July 26, 2007

The Honorable Peter DeFazio
U. S. House of Representatives
Washington DC 20515

Dear Congressman DeFazio:

I am writing to you to express Roseburg Forest Products' deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockfeller and Congressman Oberstar.

My name is Andrew E. Jeffers, I am Traffic Manager – Rail for Roseburg Forest Products Company. In my current position, I am in charge of all rail shipments. I am responsible for all outbound and inbound rail shipments averaging 18,000 railcars per year. Roseburg Forest Products is a manufacturer of lumber, plywood, particleboard, and engineered wood products. We have mills at Riddle, OR; Dillard, OR; Coquille, OR; Vienna, GA; Eupora, MS; Oxford, MS; Taylorsville, MS Louisville, MS; Missoula, MT; Weed, CA; Holly Hill, SC; and Russellville, SC;. We employ over 4000 in these operations.

The rail industry is very critical in helping get our product to market as competitively as possible. In some of our operations, rail is responsible for about 60% of our outbound volume.

Our annual shipments equate out to approximately 60 carloads per day and in order to get to market, we depend on competitive freight rates, a good car supply and quick transit times. Obviously we require a good strong rail transportation network in order to support this volume.

Rail Transportation was deregulated over 25 years ago because our Nation's transportation infrastructure was deteriorating rapidly and regulation was not helping. Deregulation has not been an easy path to follow but the transportation industry has turned around as a result. Railroads are now investing in equipment and working to expand capacity.

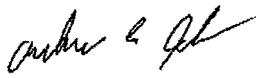
We do have issues with the railroads but we strongly feel that government sponsored regulation is not the answer to the problems we face. We feel this sort of intervention is

P.O. BOX 1088 • ROSEBURG, OREGON 97470 • (541) 679-3311 • FAX NO. (541) 679-2540

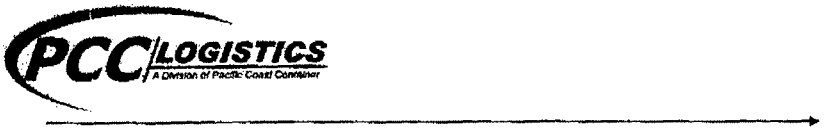
unnecessary and in the end will only put the railroads back in the same situation they were facing in the 1970's.

In conclusion, we request that you oppose S. 952 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads.

Sincerely,



Andrew E. Jeffers
Traffic Manager – Rail



July 17, 2007

The Honorable Barbara Lee
U.S. House of Representatives
1724 Longworth HOB
Washington, D.C. 20515

Dear Congresswoman Lee:

I am writing this letter on behalf of Pacific Coast Container (PCC) Logistics. Headquartered in Oakland, CA as a part of our Nation's rail network, PCC ships and receives 1,140 carloads each month at locations in Los Angeles, CA, Oakland, CA, Tacoma, WA and Seattle, WA. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroads' ability to continue to make the investments is necessary for customers like us to grow our business. Our growth and success is now being threatened by this proposed re-regulation legislation. These Bills could very easily cost the rail industry and its customers billions of dollars in lost opportunities. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels. This inefficiency would filter down to shippers and eventually consumers, in the form of increased costs, reduced service levels and inadequate transportation options.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads. The continued success of our company depends on it.

Sincerely,

Michael McDonnell
President, PCC Logistics

PAVERS SUPPLY COMPANY
"Quality Road Building Materials Since 1978"
P.O. BOX 2671
CONROE, TEXAS 77305
PHONE (936) 756-6960
FAX (936) 756-6903

Plant Locations:
Conroe (936) 756-2722 Huntsville (936) 291-6169
Montgomery (936) 597-6669 Cleveland (281) 432-2722

UP
2-R
1-S

July 26, 2007

Representative Nick Lampson
436 Cannon House Office Building
Washington, D.C. 20515

Dear Representative Lampson:

I have heard Washington policy makers, led by Senator Rockefeller and Congressman Oberstar, plan to re-regulate the railroad industry in the United States. This legislation under S. 953 or H.R.2125, the Railroad Competition and Service Improvement Act of 2007 could potentially return the railroads to the regulatory environment which existed prior to the Staggers Act of 1980. It is for this reason we believe this bill should be defeated.

Prior to 1980, we experienced the effects of an overly regulated railroad industry. Poor service, inadequate equipment and unrealistic rates were common. Since 1980, the unregulated railroads which serve us have lowered rates, increased the tons of material delivered and done so in shorter delivery cycles. The current free market control in the railroad industry is providing the needed goods and service without unnecessary and costly government regulation.

The superior highway system in the United States provides our nation a competitive advantage in the global marketplace. The railroad system is no less essential to our economy. The monetary investment required to build and maintain a quality rail transportation network is on scale similar to the highway system. The difference is railroads are privately funded. Keeping an efficient railroad system demands a high level of investment on an ongoing basis. However, the ability to make this required investment is threatened by the legislation proposed in S. 953 and H.R. 2125.

For 33 years we have relied on railroads for transportation of aggregates used in road construction. As a result, we have shipped over 9.2 million tons of material by rail over the past ten years. Railroads will continue to be the most efficient means to deliver the products we need. We strongly urge you to keep our railroad system financially self sufficient and independent of unnecessary government regulation by voting your opposition to S. 953 and H.R. 2125.

Sincerely,

Gene Smith

Gene E. Smith
Pavers Supply Company
Secretary-Treasurer

GS/gs

Cc: Senator Kay Bally Hutchinson
Rep. Ted Poe

July 10, 2007

Senator Mike Crapo
United States Senate
239 Dirksen Senate Office Building
Washington, D.C. 20510

Dear Senator Crapo:

I represent Fiesta Farms, Inc., located in Nyssa, Oregon shipping 4 carloads of onions per month, (7 months only) with an annual rail transportation budget in excess of $160,000.00. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like me to grow is now being threatened by this re-regulation legislation currently being proposed. These bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,

Garry Bybee CEO
Fiesta Farms, Inc.

NS

07/12/2007 14:26 FAX 9855364521 ASSOC TERMINALS 001

Associated Terminals

Stevedoring & Logistical Services

July 12, 2007

Congressman James Oberstar
2365 Rayburn House Office Building
Washington, D. C. 20515

Congressman Oberstar,

I represent Associated Terminals in New Orleans, Louisiana. We load approximately 250 cars per month. I understand that policymakers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act de-regulated them in 1980 minimizing returns on capital and making it difficult to invest in the infrastructure improvements, maintain railroad assets and institute 'cutting edge' safety programs.

Since the Staggers Act was passed in 1980, we have seen remarkable improvements in the overall health of the railroad industry. Freight rates have declined while service and the overall condition of rail infrastructure have dramatically improved. Increased efficiency and improved service stemming from their investments has enabled the rail industry to divert significant amounts of business from our highways to the intermodal option. Our nation's highways are severely congested and an increased reliance on freight railroads can significantly reduce the congestion problem. Through increased fuel efficiency and reduced emissions, railroads provide an environmentally sound alternative to shipping goods via highways.

However, none of this would have been possible without the billions of dollars that the railroads have invested in new technology to improve locomotive and car fleets. To maintain these high standards, railroads will need to continue that level of investment in the infrastructure. Their ability to do so is now being threatened by the re-regulation legislation currently being proposed. S. 953 and H.R. 2125 would cost the rail industry more than $2 billion per year in lost revenues. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers.

We strongly oppose any move to re-regulate the railroads.

Respectfully,

Glenn Schexnayder
Vice President of Sales

Associated Terminals, L.L.C. ■ 1342 Highway 44 ■ Reserve, Louisiana 70084
Telephone: (985) 536-4520 ■ Facsimile: (985) 536-4521 ■ www.associatedterminals.com

J.B. HUNT TRANSPORT, INC.

July 3, 2007

The Honorable John Boozman
United States House of Representatives
Washington, DC 20515

Dear Representative Boozman:

In 2007, J.B. Hunt will ship nearly 700,000 intermodal loads, with rail transportation costs approximating $850 million. I understand that policymakers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act de-regulated them in 1980.

Since the Staggers Act was passed in 1980, we have seen remarkable improvements in the overall health of the railroad industry. Freight rates have declined while service and the overall condition of rail infrastructure have dramatically improved. Increased efficiency and improved service stemming from their investments has enabled the rail industry to divert significant amounts of business from our highways to the intermodal option. Our nation's highways are severely congested and an increased reliance on freight railroads can significantly reduce the congestion problem. Through increased fuel efficiency and reduced emissions, railroads provide an environmentally sound alternative to shipping goods via highways.

However, none of this would have been possible without the billions of dollars that the railroads have invested in new technology to improve locomotive and car fleets. To maintain these high standards, railroads will need to continue that level of investment in the infrastructure. Their ability to do so is now being threatened by the re-regulation legislation currently being proposed. S. 953 and H.R. 2125 would cost the rail industry more than $2 billion per year in lost revenues. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers.

We strongly oppose any move to re-regulate the railroads.

Sincerely,

Paul Bergant

Paul Bergant,
President, J.B. Hunt Intermodal

P.O. BOX 695 • LOWELL, ARKANSAS 72745 • 501-820-0000

Levand Steel & Supply Corporation
Ferrous and Non-Ferrous Products
Ballast/Counterweight Specialists

12962 W. Washington Blvd.
Los Angeles, CA 90066
Mailing Address
P.O. Box 24846
Los Angeles, CA 90024

(310) 823-4453
(800) 442-1889
Fax: (310) 823-3583

Eastern Division:
1849 Crestwood Blvd.
Irondale, AL 35210-2049
(205) 956-1111
Fax: (205) 956-2256

July 13, 2007

The Honorable Doris Matsui
222 Cannon House Office Building
Washington, DC 20515

Dear Honorable Doris Matsui

I represent Levand Steel & Supply in Los Angeles, CA. Levand Steel & Supply ships 30 carloads per month with an annual rail transportation budget in excess of $1,000,000. I understand that policymakers in Washington are considering legislation such as S.953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like Levand Steel & Supply to grow is now being threatened by this re-regulation legislation currently being proposed. These Bills would very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S.953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,

Joseph Cordner
President
Levand Steel & Supply

MEMBER
Institute of Scrap Recycling Industries

NS

KEYWELL L.L.C.

July 6, 2007

The Honorable James Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Dear Honorable James Oberstar:

I represent Keywell L.L.C. in Chicago, IL. Keywell, L.L.C. ships 3000 carloads per year, with annual rail transportation costs in excess of $30 million. I understand that policymakers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act de-regulated them in 1980.

Since the Staggers Act was passed in 1980, we have seen remarkable improvements in the overall health of the railroad industry. Freight rates have declined while service in the overall condition of rail infrastructure has dramatically improved. Increased efficiency and improved service stemming from their investments has enabled the rail industry to divert significant amounts of business from our highways to the intermodal option. Our nation's highways are severely congested and an increased reliance on freight railroads can significantly reduce the congestion problem. Through increased fuel efficiency and reduced emissions, railroads provide an environmentally sound alternative to shipping goods via the highways.

However, none of this would have been possible without the billions of dollars that the railroads have invested in new technology to improve locomotive and car fleets. To maintain these high standards, railroads will need to continue that level of investment in the infrastructure. Their ability to do so is now being threatened by the re-regulations legislation currently being proposed. S. 953 and H.R. 2125 would cost the rail industry more than $2 billion per year in lost revenues. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers.

We strongly oppose to any move to re-regulate the railroads.

Sincerely,

E.G. Ellicott, Jr.
Keywell, L.L.C.
Senior VP Transportation

Institute of Scrap Recycling Industries, Inc.

KEYWELL L.L.C.
11900 South Cottage Grove Avenue
Chicago, IL 60628
(773) 660-2060
FAX (773) 660-2064

" The Independent Stack Train Service"

11800 S. 75th ● Suite 2N ● Palos Heights, IL 60463 ● (800) 935-0851 ● Fax (800) 935-5385

June 29, 2007

Mr. Timothy Johnson
U.S. House of Representatives
1207 Longworth House Office Building
Washington, DC 20515

Dear Mr. Johnson,

I represent Interdom Partners in Palos Heights, Illinois. Interdom Partners ships 8,000 shipments per month, with annual rail transportation costs in excess of $50,000,000.00. I understand that policymakers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act de-regulated them in 1980.

Since the Staggers Act was passed in 1980, we have seen remarkable improvement in the overall health of the railroad industry. Freight rates have declined while service and the overall condition of the rail infrastructure have dramatically improved. Increased efficiency and improved service stemming from their investments has enabled the rail industry to divert significant amounts of business from our highways to the intermodal option. Our nation's highways are severely congested and an increased reliance on freight railroads can significantly reduce the congestion problem. Through increased fuel efficiency and reduced emissions, railroads provide an environmentally sound alternative to shipping goods via highways.

However, none of this would have been possible without the billions of dollars that the railroads have invested in new technology to improve locomotive and car fleets. To maintain these high standards, railroads will need to continue that level of investment in the infrastructure. Their ability to do so is now being threatened by the re-regulation legislation currently being proposed. S.953 and H.R. 2125 would cost the rail industry more than $2 billion per year in lost revenues. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers.

We strongly oppose any move to re-regulate the railroads.

Sincerely,

Richard K. Rudie
President
Interdom Partners

CSX
T.R
T.S

Massey Energy Company

Post Office Box 26765
Richmond, Virginia 23261
4 North Fourth Street
Richmond, Virginia 23219

July 20, 2007

Congressman Jim Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Oberstar:

I represent Massey Energy Company in Richmond, VA. Massey Energy ships approximately 400,000 carloads of coal per year. Our product goes primarily to the electric utility and steel industry. It is my understanding that policy makers in Washington will soon consider legislation that would re-regulate our nations railroads. Should legislation of this type become law, the progress made in the post Staggers era would certainly be reversed.

Since the Staggers Rail Act became law in 1980, we have seen remarkable improvements in the overall health of the railroad industry. Freight rates have declined while service and the condition of infrastructure improved. Increased efficiency and improved service stemming from the carriers investment back into their systems has enabled the rail industry to divert significant amounts of business from our highways where public funding is required to the rails where private investment pays the bills. Increased reliance on freight railroads will significantly reduce congestion on our nations highways. Increased fuel efficiency and reduced emissions provide an environmentally sound alternative to shipping goods via public roads.

None of this would be possible without the billions of dollars invested by railroads in new technology to improve locomotives and car fleets. Railroads will need to continue that level of investment to maintain the gains achieved in the post Staggers era. Their ability to do so will be threatened should re-re-regulation become a reality. Senate Bill 953 and H.R. bill 2125 would

cost the nation's railroads in excess of $2 billion annually in lost revenues. The residual effect would prevent the carriers from reinvesting in infrastructure and maintaining acceptable service levels. The fallout would eventually filter down to shippers and consumers.

We strongly oppose any move to re-regulate the nation's railroads.

Sincerely,

Thomas J. Kielty

Thomas J. Kielty
Vice President
Transportation & Distribution

1300 SW Fifth Avenue, Suite 2929
Portland, OR 97201 USA

CGI
COLUMBIA GRAIN

Main Office: 503-224-8624
Fax: 503-241-0295
www.columbiagrain.com

August 21, 2007

The Honorable Earl Blumenauer
U.S. House of Representatives
1406 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Blumenauer:

I represent Columbia Grain Inc. We are headquartered in Portland. Columbia Grain loads and/or unloads approximately 4200 carloads of grain per month. We spend approximately $100 million per year for rail transportation. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like Columbia Grain to grow and prosper is being threatened by the re-regulation legislation currently being proposed. These Bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels, which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

If you or someone on your staff has any questions please do not hesitate to give me a call.

Yours truly

Thomas J. Hammond
President and CEO

July 12, 2007

The Honorable Brian Baird
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Baird:

I represent Pacific Continental Shippers, LLC in Everett, WA. Pacific Continental Shippers, LLC ships 17,000+ Intermodal units annually, with an annual transportation budget in excess of $30,000,000. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like Pacific Continental Shippers, LLC to grow is now being threatened by this re-regulation legislation currently being proposed. These Bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,

John M. Chasteen
Vice President
Pacific Continental Shippers, LLC

808 134th St SW • Suite 209 • Everett, WA 98204
Phone 425.787.8399 • Fax 425.787.8411
www.pacconshippers.com

SPECIALTY LAMINATES USA, INC.

1740 WEST 5TH EUGENE, OR 97402
(541) 343-5383 FAX: (541) 343-5717

Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeFazio:

I represent Specialty Laminates USA, Inc in Eugene, OR. Specialty Laminates ships 8 –10 rail cars per month, with a annual rail transportation budget in excess of $500,000. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like Specialty Laminates to grow is now being threatened by this re-regulation legislation currently being proposed. These Bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,

Randy Kintzley
Production Manager

Randy Kintzley

PROGRESS RAIL SERVICES
A Caterpillar Company

(20-R) BNSF TOTAL 39-R 4-S 43

August 11, 2007

The Honorable James Oberstar
2365 Rayburn HOB
Washington, DC 20515-2308

Dear Mr. Oberstar,

I represent Progress Rail Services Corporation (Progress Rail) in Fairmont, Minnesota, a company that is a major supplier of products and services to the railroads. I am writing to express my strong opposition to the Railroad Competition and Service Improvement Act of 2007, S. 953 and H.R. 2125, currently being considered by policymakers in Washington, D.C. This legislation would have a harmful impact on our business and on me personally as a citizen and employee.

Progress Rail has benefited greatly from the deregulation and competition among the railroads. Since the Staggers Act was passed, we have seen remarkable improvements in the overall health of the railroad industry. Freight rates are very competitive, and service and overall condition of rail infrastructure have improved. Productivity has increased 167 percent, train accident rates have dropped 70 percent and rail traffic has grown by 95 percent. As competition and efficiency among railroads have grown, companies such as Progress Rail have benefited from greater opportunities to provide parts and services to the railroads, helping them keep up with increasing demands.

The freight railroad industry in the United States has served as a beacon for other countries around the world. I want to see this industry continue to thrive and set the standard for rail shipping everywhere. I fear that, if passed, this legislation will cause all the advances made in the rail industry to grind to a halt. We must continue to move forward, and continued deregulation is vital to the future of railroads.

I urge you to consider the negative impact this legislation would have on our nation's economy and to vote against it. Thank you for your consideration of this critical issue.

Sincerely,

Randy Chubaty
National Sales Manager
Progress Rail Services
1720 Knollwood Dr.
Fairmont, MN 56031

WASHINGTON MILLS

September 5, 2007

The Honorable James L. Oberstar
Minnesota, Chairman
U.S. Congress
2165 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Oberstar:

I represent Washington Mills Company in Niagara Falls, New York. Washington Mills ships in excess of 500 carloads annually, with annual rail transportation costs in excess of $500K. I understand that policymakers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act de-regulated them in 1980.

Since the Staggers Act was passed in 1980, we have seen remarkable improvements in the overall health of the railroad industry. Freight rates have declined while service and overall condition of rail infrastructure has dramatically improved. Increased efficiency and improved service stemming from their investments has enabled the rail industry to divert significant amounts of business from our highways to the rails. Our nation's highways are severely congested and an increased reliance on freight railroads can significantly reduce the congestion program. Through increased fuel efficiency and reduced emissions, railroads provide an environmentally sound alternative to shipping goods via highways.

However, none of this would have been possible without the billions of dollars that the railroads have invested in new technology to improve locomotive and car fleets. To maintain these high standards, railroads will need to continue that level of investment in the future. Their ability to do so is now being threatened by the re-regulation legislation currently being proposed. S.953 and H.R. 2125 would cost the rail industry more than $2 billion per year in lost revenues. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers.

We strongly oppose any move to re-regulate the railroads.

Sincerely,

Frank Talarico

Frank Talarico
Transportation Administrator

FT/dl

P.O. Box 423 • 1801 Buffalo Ave • Niagara Falls, NY 14302-0423 • Tel: 716-278-6600 800-828-1866 Fax: 716-278-6650 • www.washingtonmills.com
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PIGGYBACK PLUS
THE COOK BUILDING
1070 NW MURRAY RD., STE. C
PORTLAND, OR 97229

503-643-2300 LOCAL
800-327-4449 USA
503-644-3116 FAX
service@piggy.com E-MAIL

UP
1-R

July 20, 2007

The Honorable Peter DeFazio,
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeFazio:

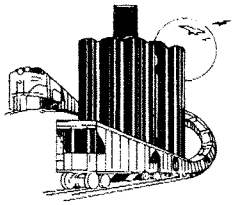
I represent Piggyback Plus in Portland, OR. Piggyback Plus ships 1000 per month, with a annual rail transportation budget in excess of 15,000,000. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like Piggyback Plus to grow is now being threatened by this re-regulation legislation currently being proposed. These Bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,
Erik Maki
Erik Maki
President

NS



Box E
Tolono, IL 61880
Phone: (217) 485-6630
Fax: (217) 485-5143

July 6, 2007

Congressman James Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Oberstar,

As a major user of our nation's railroads, Grand Prairie Coop, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Grand Prairie Coop, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Grand Prairie Coop, Inc., who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Respectfully,

Roger Miller

Roger Miller
General Manager
1 South Calhoun
Tolono, IL 61880
W 217-485-6630

UP
1-R

July 27th, 2007

The Honorable Peter De Fazio
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman De Fazio:

I represent Independent Dispatch, Inc. in Portland, OR. Independent Dispatch, Inc. ships 1700 containers by rail per month, with a annual rail transportation budget in excess of $27 million. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like Independent Dispatch, Inc. to grow is now being threatened by this re-regulation legislation currently being proposed. These Bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,

Independent Dispatch, Inc.

Gregory M. Gilbert

Gregory M. Gilbert
President

JUL 10 2007 09:59 FR NS INTERMODAL 757 533 4863 TO 98235740 P.04/08
JUL 03 2007 3:12PM DIRECTORS OFFICE 256-464-6424 p.5

HUNTSVILLE INTERNATIONAL AIRPORT • INTERNATIONAL INTERMODAL CENTER • JETPLEX INDUSTRIAL PARK

July 3, 2007

The Honorable Gene Taylor
House of Representatives
2269 Rayburn House Office Building
Washington, DC 20515

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Barbie Peek

Director - Capital Improvements
Stan Hogan

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Kevin Vandeberg, A.A.E.

Director - Finance & Admin.
Paul S. Kelly, Jr.

Dear Congressman Taylor:

As an inland port of entry, served by a Class 1 railroad, the Port of Huntsville has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

The Port of Huntsville and the companies we serve have benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the deregulated marketplace, rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for our customers who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our customer's competitive success in the domestic and global marketplace.

Sincerely,

Richard Tucker
Executive Director

/ach

HUNTSVILLE-MADISON COUNTY AIRPORT AUTHORITY
1000 Glenn Hearn Blvd. Box 30008 Huntsville, AL 35824 Tel: 256.772.9395 Fax: 256.772.0305 Web: www.hsvairport.org

JUL 09 2007 17:30

CSXT

Hub Group, Inc.
3050 Highland Parkway
Suite 100
Downers Grove, IL 60515

Telephone 630-271-3600 • Fax 630-984-5475
www.hubgroup.com

July 9, 2007

Congressman Jason Altmire
1419 Longworth House Office Building
Washington, DC 20515

Dear Congressman Altmire:

As a major user of our nation's railroads, Hub Group, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980. Hub Group utilizes rail intermodal to transport products throughput the United States. In 2006 Hub Group's revenue exceeded $1.7 billion. Hub Group, its customers and our 2500 employees nationwide are dependent upon the rails continuing their investment into their underlying infrastructure.

The rail industry is essential to our economy. It is also one of the most capital intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Hub Group, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like [company name], who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

David P. Yeager
Vice Chairman
Chief Executive Officer

cc: Jeff Usher (via fax 202-639-7439)

Hub Addresses ①

56-R
18-S

To determine the representative for a particular address or town please visit the U.S. House of Representatives website at http://www.house.gov/ and input the applicable nine digit zip code. If you don't know the nine digit zip code, please visit the US Postal Service Zip Code Lookup at http://zip4.usps.com/zip4/welcome.jsp

Member of Congress	Date	Office Address 1	Office Address 2	Fax
Altmire, Jason	D-PA-04	1419 Longworth House Office Building	Washington, DC 20515	(202) 226-2274
Arcuri, Michael	D-NY-24	327 Cannon House Office Building	Washington, DC 20515	(202) 225-1891
Baird, Brian	D-WA-03	2443 Rayburn House Office Building	Washington, DC 20515	(202) 225-3478
Bishop, Timothy	D-NY-01	225 Cannon House Office Building	Washington, DC 20515	(202) 225-3143
Boozman, John	R-AR-03	1519 Longworth House Office Building	Washington, DC 20515	(202) 225-5713
Boswell, Leonard	D-IA-03	1427 Longworth House Office Building	Washington, DC 20515	(202) 225-5608
Braley, Bruce	D-IA-01	1408 Longworth House Office Building	Washington, DC 20515	(202) 225-6666
Buchanan, Vern	R-FL-13	1516 Longworth House Office Building	Washington, DC 20515	(202) 226-0828
Capito, Shelley	R-WV-02	1431 Longworth House Office Building	Washington, DC 20515	(202) 225-7856
Capuano, Michael	D-MA-08	1530 Longworth House Office Building	Washington, DC 20515	(202) 225-9322
Carnahan, Russ	D-MO-03	1710 Longworth House Office Building	Washington, DC 20515	(202) 225-7452
Carney, Christopher	D-PA-10	416 Cannon House Office Building	Washington, DC 20515	(202) 225-9594
Carson, Julia	D-IN-07	2455 Rayburn House Office Building	Washington, DC 20515	(202) 225-5633
Coble, Howard	R-NC-06	2468 Rayburn House Office Building	Washington, DC 20515	(202) 225-8611
Cohen, Stephen	D-TN-09	1004 Longworth House Office Building	Washington, DC 20515	(202) 225-5663
Costello, Jerry	D-IL-12	2408 Rayburn House Office Building	Washington, DC 20515	(202) 225-0285
Cummings, Elijah	D-MD-07	2235 Rayburn House Office Building	Washington, DC 20515	(202) 225-3178
DeFazio, Peter	D-OR-04	2134 Rayburn House Office Building	Washington, DC 20515	(202) 225-0032
Dent, Charles	R-PA-15	116 Cannon House Office Building	Washington, DC 20515	(202) 226-0778
Drake, Thelma	R-VA-02	1208 Longworth House Office Building	Washington, DC 20515	(202) 225-4218
Fallin, Mary	R-OK-05	1432 Longworth House Office Building	Washington, DC 20515	(202) 226-1463
Filner, Bob	D-CA-51	2428 Rayburn House Office Building	Washington, DC 20515	(202) 225-9073
Gerlach, James	R-PA-06	308 Cannon House Office Building	Washington, DC 20515	(202) 225-8440
Gilchrest, Wayne	R-MD-01	2245 Rayburn House Office Building	Washington, DC 20515	(202) 225-0254
Hall, John	D-NY-19	1217 Longworth House Office Building	Washington, DC 20515	(202) 225-3289
Hayes, Robin	R-NC-08	130 Cannon House Office Building	Washington, DC 20515	(202) 225-4036
Higgins, Brian	D-NY-27	431 Cannon House Office Building	Washington, DC 20515	(202) 226-0347
Johnson, Timothy	R-IL-15	1207 Longworth House Office Building	Washington, DC 20515	(202) 226-0791
Kagen, Steve	D-WI-08	1232 Longworth House Office Building	Washington, DC 20515	(202) 225-5729
Kuhl, John	R-NY-29	1505 Longworth House Office Building	Washington, DC 20515	(202) 226-6599
Lampson, Nick	D-TX-22	436 Cannon House Office Building	Washington, DC 20515	(202) 225-5241

Hub addresses (2)

Larsen, Rick	D-WA-02	107 Cannon House Office Building	Washington, DC 20515	(202) 225-4420
Lipinski, Daniel	D-IL-03	1717 Longworth House Office Building	Washington, DC 20515	(202) 225-1012
LoBiondo, Frank	R-NJ-02	2427 Rayburn House Office Building	Washington, DC 20515	(202) 225-3318
Mack, Connie	R-FL-14	115 Cannon House Office Building	Washington, DC 20515	(202) 226-0439
Matsui, Doris	D-CA-05	222 Cannon House Office Building	Washington, DC 20515	(202) 225-0566
McNerney, Jerry	D-CA-11	312 Cannon House Office Building	Washington, DC 20515	(202) 225-4060
Michaud, Michael	D-ME-02	1724 Longworth House Office Building	Washington, DC 20515	(202) 225-2943
Miller, Candice	R-MI-10	228 Cannon House Office Building	Washington, DC 20515	(202) 226-1169
Mitchell, Harry	D-AZ-05	2434 Rayburn House Office Building	Washington, DC 20515	(202) 225-3263
Moran, Jerry	R-KS-01	2202 Rayburn House Office Building	Washington, DC 20515	(202) 225-5124
Nadler, Jerrold	D-NY-08	2334 Rayburn House Office Building	Washington, DC 20515	(202) 225-6923
Napolitano, Grace	D-CA-38	1610 Longworth House Office Building	Washington, DC 20515	(202) 225-0027
Norton, Eleanor	D-DC-DL	2136 Rayburn House Office Building	Washington, DC 20515	(202) 225-3002
Petri, Thomas	R-WI-06	2462 Rayburn House Office Building	Washington, DC 20515	(202) 225-2356
Platts, Todd	R-PA-19	1032 Longworth House Office Building	Washington, DC 20515	(202) 226-1000
Poe, Ted	R-TX-02	1605 Longworth House Office Building	Washington, DC 20515	(202) 225-5547
Rahall, Nick	D-WV-03	2307 Rayburn House Office Building	Washington, DC 20515	(202) 225-9061
Reichert, David	R-WA-08	1223 Longworth House Office Building	Washington, DC 20515	(202) 225-4282
Salazar, John	D-CO-03	1531 Longworth House Office Building	Washington, DC 20515	(202) 226-9669
Schmidt, Jean	R-OH-02	238 Cannon House Office Building	Washington, DC 20515	(202) 225-1992
Shuler, Heath	D-NC-11	512 Cannon House Office Building	Washington, DC 20515	(202) 226-6422
Space, Zachary	D-OH-18	315 Cannon House Office Building	Washington, DC 20515	(202) 225-3394
Tauscher, Ellen	D-CA-10	2459 Rayburn House Office Building	Washington, DC 20515	(202) 225-5914
Taylor, Gene	D-MS-04	2269 Rayburn House Office Building	Washington, DC 20515	(202) 225-7074
Young, Donald	R-AK-AL	2111 Rayburn House Office Building	Washington, DC 20515	(202) 225-0425

Hub Group, Inc.

3050 Highland Parkway
Suite 100
Downers Grove, IL 60515

Telephone 630-271-3600 • Fax 630-964-6475
www.hubgroup.com

NS
56 R
18-5

July 9, 2007

Senator Barack Obama
713 Hart Senate Office Building
Washington, DC 20510

Dear Senator Obama:

As a major user of our nation's railroads, Hub Group, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980. Hub Group utilizes rail intermodal to transport products throughput the United States. In 2006 Hub Group's revenue exceeded $1.7 billion. Hub Group, its customers and our 2500 employees nationwide are dependent upon the rails continuing their investment into their underlying infrastructure.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Hub Group, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like [company name], who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

David P. Yeager
Vice Chairman
Chief Executive Officer

cc: Jeff Usher (via fax 202-639-2439)

Hub Addressees (3)

18

Name	Party-State	Office Address 1	Office Address 2
Boxer, Barbara	D-CA-S2	112 Hart Senate Office Building	Washington, DC 20510
Carper, Thomas	D-DE-S2	513 Hart Senate Office Building	Washington, DC 20510
DeMint, James	R-SC-S2	340 Russell Senate Office Building	Washington, DC 20510
Hutchison, Kay	R-TX-S1	284 Russell Senate Office Building	Washington, DC 20510
Inouye, Daniel	D-HI-S1	722 Hart Senate Office Building	Washington, DC 20510
Kerry, John	D-MA-S2	304 Russell Senate Office Building	Washington, DC 20510
Lautenberg, Frank	D-NJ-S2	324 Hart Senate Office Building	Washington, DC 20510
Lott, Trent	R-MS-S2	487 Russell Senate Office Building	Washington, DC 20510
McCain, John	R-AZ-S1	241 Russell Senate Office Building	Washington, DC 20510
McCaskill, Claire	D-MO-S2	825A Hart Senate Office Building	Washington, DC 20510
Nelson, Bill	D-FL-S1	716 Hart Senate Office Building	Washington, DC 20510
Pryor, Mark	D-AR-S2	257 Dirksen Senate Office Building	Washington, DC 20510
Snowe, Olympia	R-ME-S1	154 Russell Senate Office Building	Washington, DC 20510
Stevens, Ted	R-AK-S1	522 Hart Senate Office Building	Washington, DC 20510
Sununu, John	R-NH-S2	111 Russell Senate Office Building	Washington, DC 20510

Also sent letters to Richard Durbin, Barack Obama, and Peter Roskam

74 total letters sent by Hub

HANJIN SHIPPING COMPANY, LTD.

20 EAST ROUTE 4, SUITE 490, PARAMUS, NJ 07652-0965 • TEL. (201)291-4600 • FAX [illegible]

July 2, 2007

The Honorable Howard Coble
United States Representative
House Office Building
2468 Rayburn House Office Building
Washington D.C. 20515

Dear Representative Coble:

As a major user of our nation's railroads, Hanjin Shipping has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free marketplace does not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Hanjin Shipping has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Hanjin Shipping, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. We believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

William F. Rooney
Managing Director
Hanjin Shipping

ANDERSON COLUMBIA CO., INC.
P.O. Box 1829 • Lake City, FL 32056-1829
(386) 752-7585 • (386) 755-5430 FAX

NS
R-56
S-15

August 14, 2007

Re: S. 953 and H.R. 2125,

Dear

As a major user of our nation's railroads, Anderson Columbia has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Anderson Columbia has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like [company name], who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,
Anderson Columbia Co., Inc.

Brian P. Schreiber
Vice President

Jul-27-07 08:14am From-BULL MOOSE TUBE 6365372881 T-755 P.003/003 F-793

BULL MOOSE TUBE COMPANY
1819 Clarkson Road, Suite 100 • Chesterfield, Missouri 63017
(636) 537-2600 • www.bullmoosetube.com

July 27, 2007

Congressman James Oberstor
2365 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman Oberstor:

As a major user of our nation's railroads, Bull Moose Tube Company has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Bull Moose Tube Company has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Bull Moose Tube, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Kathy Groh Canby

Kathy Groh Canby
Corporate Transportation Manager

JUL 13 2007 17:19 FR NORFOLK SOUTHERN 708 409 1542 TO 76292849 P.03/06

SHIPPING POINT—GOLD HILL N. C.

CAROLINA STALITE COMPANY

MANUFACTURERS OF LIGHTWEIGHT AGGREGATE "STALITE"

PHONE 704-637-1515 FAX 704-642-1572

DRAWER 1037 SALISBURY, N.C. 28145-1037

July 13, 2007

Jason Altmire
1419 Longworth House Office Building
Washington, DC 20515

Fax: (202) 226-2274

Dear Representative Altmire:

As a major user of our nation's railroads, Carolina Stalite Company has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Carolina Stalite Company has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Carolina Stalite Company, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Carolina Stalite Company

Paul Hoben
Transportation Manager

JUL 13 2007 16:03 704 6421572 PAGE.02

July 5, 2007

1 page, via fax to 202-225-0699

The Honorable James Oberstar
United States House of Representatives
Washington, DC 20515

Dear Representative Oberstar:

As a major user of our nation's railroads, Central States Enterprises, Inc. has interest in seeing that our nation's rail system remains healthy, viable and competitive. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must remain profitable to maintain their systems and expand them as our economy grows.

S.953 and H.R. 2125 (legislation recently introduced by Senator Rockefeller and Congressman Oberstar) would reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may potentially fall below the level of capital needed to maintain their system and services.

Central States Enterprises, Inc. has benefited from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace, rail service is safer, more reliable, far more efficient, and less costly.

Central States Enterprises, Inc. believes that while some issues may need to be addressed in regard to the current environment; S.953 and H.R. 2125 are not the answer.

We urge you to continue your support of the current rail regulatory structure.

Respectfully,

Ken R. Cupples

Ken R. Cupples
Executive Vice President
Central States Enterprise, Inc.

:lmc

CENTRAL STATES ENTERPRISES, INC
300 International Parkway, Suite 150 • Heathrow, FL 32746 • 407-333-3503 • Fax 407-333-2022

The Cline Group
3801 PGA Boulevard, Suite 903
Palm Beach Gardens, FL 33410
Telephone: 561-626-4999
Fax: 561-626-4938

July 5, 2007

Daniel Inouye, Senator
722 Hart Senate Office Building
Washington, DC 20510

Dear Senator Inouye:

As a major user of our nation's railroads, The Cline Group has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

The Cline Group has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like The Cline Group, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,
The Cline Group
Donald R. Holcomb
Donald R. Holcomb
Chief Financial Officer

CORPORATE OFFICES
9014 HERITAGE PKWY.
SUITE 300
WOODRIDGE, ILLINOIS 60517-4939
(630) 427-3001 • FAX (630) 739-1817
wwhitt@clippergroup.com

Walter D. Whitt
President and Chief Executive Officer

July 2, 2007

Mr. Jerry Costello
2408 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Costello:

As a major user of our nation's railroads, Clipper Exxpress Company has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Clipper Exxpress Company has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Unilever, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Walt Whitt
President

WW/dh

EVERYTHING YOU NEED TO GO THE DISTANCE

6813 W. Frier Drive
Glendale, Arizona 85303
(623) 842-0743 Fax (623) 842-0944
800-827-0743

July 26, 2007

The Honorable Orin Hatch
104 Hart Senate Office Building
Washington, D.C. 20510-4403

Dear Senator Hatch,

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Mountain States Contracting operates in the Southwestern U.S., primarily in the States of Arizona, California, New Mexico, Utah, and Nevada. In the last 5 years, Mountain States Contracting has designed and built approximately **62 MILES** of new railroad track, for over 400 hundred individual customers. These are all new sidings, spurs, and industry tracks built to handle literally thousands of carloads of railroad commodities. In addition, we have rehabilitated over **75 MILES** of existing rail infrastructure. From our unique position, we have developed an intimate knowledge of the railroad industry, both from the perspective of the railroads, and from the perspective of their shippers, for whom we built and repaired track.

If S. 953 and H.R. 2125 are allowed to pass, we know what a devastating impact they would have on the rail industry. They would bring the current wave of capital investment in capacity to a standstill. The negative impact on Mountain States Contracting, and it's customers, through increased costs and reduced service would be huge.

An economically sound freight rail network is crucial to our company's survival, and to the customers we serve. I strongly urge you to oppose S. 953 and H. R. 2125.

Sincerely,

Terry R. Vanderplas

Vice President, Railroad Services

MORAN INDUSTRIES, INC.

Warehouse & Distribution Services

Mailing / Billing
P. O. Box 295
Watsontown, PA 17777-0295

202 East Seventh Street
Watsontown, PA 17777
Phone: (570) 538-5558
FAX: (570) 538-1432

Olympia Snowe
154 Russell Senate Office Building
Washington, DC 20515

As a major user of our nation's railroads, Moran Industries, Inc., has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Moran Industries, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Moran Industries, Inc., who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

John D. Moran, Jr.

John D. Moran Jr.
President

Serving Central & N.E. Pennsylvania with over 2 million square feet

Mulch Manufacturing, Inc.
6747 Taylor Road S.W.
Reynoldsburg, Ohio 43068-9849
(614) 864-4004

June 25, 2007

The Honorable Bill Nelson
United States Senate
716 Hart Senate Office Building
Washington, D.C. 20510-3502

Dear Senator,

As a major user of our nation's railroads, Mulch Manufacturing has a great interest in seeing that our nation's rail system remains healthy and viable. Our largest single plant facility is in Jacksonville, Florida and we our a major user of rail from this location. We understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our company and the economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H. R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result, the railroads' revenue may well fall below the level of capital that is needed to maintain their system and services.

Mulch Manufacturing has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact,

due to the influence of the de-regulated marketplace, rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also customers like Mulch Manufacturing, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way that our company can guarantee continued access to a healthy railroad network. This network is critical to our company's success in both the domestic and the global marketplace.

Sincerely,

Charles R. Callahan
Vice President of Transportation
Mulch Manufacturing Inc.
6747 Taylor Road S.W.
Reynoldsburg, Ohio 43068
614 864 4004
ccallahan@mulchmfg.com

15 S
2 R

2025 W. State Street • P.O. Box 870 • Fremont, OH 43420-0870
Phone 419-332-6468 • Toll Free 1-800-321-5468 • Fax 419-332-7741
www.csfco-op.com

As a major user of our nation's railroads, Country Spring Farmers Co-op has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Country Spring Farmers Co-op has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Country Spring Farmers Co-op, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

George D. Secor
President/CEO

SENT BY: GEORGE D. SECOR; 419 334 5257; JUN-27-07 10:21AM; PAGE 1/2

15- senate

Name	Party-State	Office Address 1	Office Address 2	Fax
Boxer, Barbara	D-CA-S2	112 Hart Senate Office Building	Washington, DC 20510	(415) 956-6701
Carper, Thomas	D-DE-S2	513 Hart Senate Office Building	Washington, DC 20510	(202) 228-2190
DeMint, James	R-SC-S2	340 Russell Senate Office Building	Washington, DC 20510	(202) 228-5143
Hutchison, Kay	R-TX-S1	284 Russell Senate Office Building	Washington, DC 20510	(202) 224-0776
Inouye, Daniel	D-HI-S1	722 Hart Senate Office Building	Washington, DC 20510	(202) 224-6747
Kerry, John	D-MA-S2	304 Russell Senate Office Building	Washington, DC 20510	(202) 224-8525
Lautenberg, Frank	D-NJ-S2	324 Hart Senate Office Building	Washington, DC 20510	(202) 228-4054
Lott, Trent	R-MS-S2	487 Russell Senate Office Building	Washington, DC 20510	(202) 224-2262
McCain, John	R-AZ-S1	241 Russell Senate Office Building	Washington, DC 20510	(202) 228-2862
McCaskill, Claire	D-MO-S2	825A Hart Senate Office Building	Washington, DC 20510	(202) 228-6326
Nelson, Bill	D-FL-S1	716 Hart Senate Office Building	Washington, DC 20510	(202) 228-2183
Pryor, Mark	D-AR-S2	267 Dirksen Senate Office Building	Washington, DC 20510	(202) 228-0908
Snowe, Olympia	R-ME-S1	154 Russell Senate Office Building	Washington, DC 20510	(202) 224-1846
Stevens, Ted	R-AK-S1	522 Hart Senate Office Building	Washington, DC 20510	(202) 224-2354
Sununu, John	R-NH-S2	111 Russell Senate Office Building	Washington, DC 20510	(202) 228-4131

Bruce, & John Kraemer
Sent the following letter
to everyone above plus
two ~~Ohio Rep.~~ Space &
Schmidt.

Clark

JUN 27 2007 10:30 419 334 5257 PAGE 01

DIVERSIFIED ENERGY, INC.

"Coal Marketing and Contract Consulting"

8874 KINGSTON PIKE * SUITE 200 * KNOXVILLE, TENNESSEE 37923 * TELEPHONE (865) 690-8967 *
FAX (865) 691-4276

July 17, 2007

Congressman John Duncan
2458 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Duncan:

As a major user of our nation's railroads, Diversified Energy has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result, the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Diversified Energy, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace, rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Diversified Energy, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

We strongly oppose any move to re-regulate the railroads.

Congressman, I appreciate you and your Chief of Staff, Bob Griffitts, for listening to my concerns of government regulating the railroads again.

Sincerely,

DIVERSIFIED ENERGY, INC.

Randy C. Edgemon

Randy C. Edgemon
President

Shenango
INCORPORATED

200 NEVILLE ROAD
PITTSBURGH, PA 15225-1690
(412) 771-4400
www.shencoke.com

ANDREW ALOE
DIRECT DIAL 412-777-9510

COKE OVENS
NEVILLE ISLAND, PA

July 23, 2007

Congressman Jason Altmire
1419 Longworth House Office Building
Washington, DC 20515

Dear Congressman Altmire,

As a user of our nation's railroads, Shenango Incorporated has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

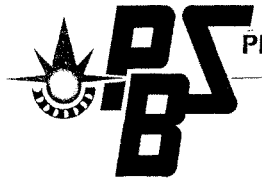
S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result, the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Shenango has benefited from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace, rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Shenango, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Andrew Aloe
Chairman and Chief Executive Officer



PBS COALS, INC.
A Mincorp Company
1576 Stoystown Road
P.O. Box 260
Friedens, PA 15541

TEL 814/443-4668
FAX 814/445-2809

NS
2 R
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July 19, 2007

Congressman James L. Oberstar
Eighth Congressional District of Minnesota
Room 231
Deluth Federal Building
Deluth, MN 55802

Dear Congressman Oberstar:

As a major user of our nation's railroads, PBS Coals, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

PBS Coals has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for PBS and the entire coal industry, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Thank you for your time and consideration.

Best regards,

Mark A. Amyot

Mark A. Amyot
Vice President - Marketing

July 19, 2007

VIA FACSIMILE

Hon. Nick Rahall
United States House of Representatives
2307 Rayburn House Office Building
Washington, D.C. 20515
Fax: (202)-225-9061

Re: Proposed S. 953/H. 2125 Legislation

Dear Representative Rahall:

As a major user of our nation's railroads, Pounding Mill Quarry Corp. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Pounding Mill Quarry Corp. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Pounding Mill Quarry Corp., who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Alex Saunders

Alexander I. Saunders
Vice President and General Counsel
Pounding Mill Quarry Corp.

PRECISION STRIP, INC.
88 S. Ohio Street • P.O. Box 104 • Minster, Ohio 45865-0104
419-628-2343, 419-628-3833 Fax 419-628-3367

August 3, 2007

Zachary Space
315 Cannon House Office Building
Washington, DC 20515

As a major user of our nation's railroads, Precision Strip, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Precision Strip, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like [company name], who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

James R Davis
CFO & Vice President
Precision Strip, Inc.

TOYOTA

James E. Finkel III
Corporate Manager Vehicle Logistics

Toyota Logistics Services, Inc.
19001 South Western Avenue
Torrance, CA 90509-2991
310 468-5029

September 18, 2007

The Honorable Jerry McNerney
U. S. House of Representatives
312 Cannon House Office Building
Washington, D.C. 20515

Re: *Concern about Railroad Re-regulation*
(S. 953 and H.R. 2125)

Dear Representative McNerney:

As a major user of our nation's railroads, Toyota Motor Sales has great interest in seeing that our nation's rail system remains healthy and viable. In 2007 alone, Toyota will spend $400 million to move nearly 2 million vehicles to its customers. It is our understanding that policy makers in Washington are considering legislation that would change the regulations governing the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, appears to have the potential to significantly reduce railroad revenues by introducing government mandated pricing. History shows that government price controls rarely work well. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

This legislation contains numerous measures, the final impact of which is not clear. Shippers which are captive to a particular railroad would certainly like to have some options. Perhaps this could be addressed by legislation that provides provisions for dual access. As an example, the Canada Transportation Act provides dual access to shippers under many situations which allows for competition. Our new plant in Woodstock, Ontario Canada will be served by both major Canadian railroads. During our discussions with these railroads regarding the Woodstock plant, both commented that the CTA generally works well, and the CTA does not appear to have undermined Canadian National's and Canadian Pacific Railroad's ability to operate profitably.

More importantly, we feel that adequate and effective competition will help create a "self-correcting" rail system, one in which railroads quickly address service issues, and actual market and operating conditions determine rates, lessening the need for governmental involvement. The current situation, with railroads controlling access to shippers located on their lines, insulates railroads from market forces when dealing with their "captive" shippers.

The two aforementioned bills as they are written do not address all the major issues while potentially reducing revenues needed for capital investments and we are not supportive of their passage. We urge you to continue your support of a market-driven rail industry. We believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

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R-4
S-4

BOX 5007 / TONAWANDA, N.Y. 14151-5007 / (716) 876-6222

July 6, 2007

The Honorable Charles E. Schumer
313 Hart Senate Office Building
United States Senate
Washington, D.C. 20515

Dear Senator:

As a major user of our nation's railroads, Tonawanda Coke Corporation has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S.953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Tonawanda Coke Corporation has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace, rail service is safer, more reliable, far more efficient and less costly. The situation has been good, not only for the industry itself, but also for many of our customers and suppliers who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Robert A. Bloom
President

Copies of the attached letter were sent today, July 9th to the following:

For Tonawanda Coke:
R Louise M. Slaughter
R Thomas M. Reynolds
S Hillary Rodham Clinton
R Brian Higgins

For Erie Coke:
R Phil English
S Robert P. Casey
S Arlen Specter

Done

NS

TRI MOR
• ROAD • BUILDERS •

June 27, 2007

We are in opposition of re-regulation! As a major user of our nation's railroads, ***Tri Mor Corporation*** has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country. Railroads spend billions each year and provide for its own ***infrastructure***, ***research*** and ***development***, and ***other capital needs*** without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows. ***Safety*** and ***innovation*** must remain our top priority for our nation's railroad.

S. 953 and H.R. 2125 legislations recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result, the railroads' revenues may well fall below the level of capital needed to maintain their system and services.

Tri Mor Corporation has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the deregulated marketplace, rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like ***Tri Mor Corporation***, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic marketplace.

Very truly yours,

TRI MOR CORPORATION

Martin E. Schlessel
President

MES/jag

8530 North Boyle Parkway • Twinsburg, Ohio 44087
(330) 963-3101 • Fax (330) 963-3097

"An Equal Opportunity Employer"

8' 56

Member of Congress	Date	Office Address 1	Office Address 2	Fax
Altmire, Jason	D-PA-04	1419 Longworth House Office Building	Washington, DC 20515	(202) 226-2274
Arcuri, Michael	D-NY-24	327 Cannon House Office Building	Washington, DC 20515	(202) 225-1891
Baird, Brian	D-WA-03	2443 Rayburn House Office Building	Washington, DC 20515	(202) 225-3478
Bishop, Timothy	D-NY-01	225 Cannon House Office Building	Washington, DC 20515	(202) 225-3143
Boozman, John	R-AR-03	1519 Longworth House Office Building	Washington, DC 20515	(202) 225-5713
Boswell, Leonard	D-IA-03	1427 Longworth House Office Building	Washington, DC 20515	(202) 225-5608
Braley, Bruce	D-IA-01	1408 Longworth House Office Building	Washington, DC 20515	(202) 225-6666
Buchanan, Vern	R-FL-13	1516 Longworth House Office Building	Washington, DC 20515	(202) 226-0828
Capito, Shelley	R-WV-02	1431 Longworth House Office Building	Washington, DC 20515	(202) 225-7856
Capuano, Michael	D-MA-08	1530 Longworth House Office Building	Washington, DC 20515	(202) 225-9322
Carnahan, Russ	D-MO-03	1710 Longworth House Office Building	Washington, DC 20515	(202) 225-7452
Carney, Christopher	D-PA-10	416 Cannon House Office Building	Washington, DC 20515	(202) 225-9594
Carson, Julia	D-IN-07	2455 Rayburn House Office Building	Washington, DC 20515	(202) 225-5633
Cobie, Howard	R-NC-06	2468 Rayburn House Office Building	Washington, DC 20515	(202) 225-8611
Cohen, Stephen	D-TN-09	1004 Longworth House Office Building	Washington, DC 20515	(202) 225-5663
Costello, Jerry	D-IL-12	2408 Rayburn House Office Building	Washington, DC 20515	(202) 225-0285
Cummings, Elijah	D-MD-07	2235 Rayburn House Office Building	Washington, DC 20515	(202) 225-3178
DeFazio, Peter	D-OR-04	2134 Rayburn House Office Building	Washington, DC 20515	(202) 225-0032
Dent, Charles	R-PA-15	116 Cannon House Office Building	Washington, DC 20515	(202) 226-0778
Drake, Thelma	R-VA-02	1208 Longworth House Office Building	Washington, DC 20515	(202) 225-4218
Fallin, Mary	R-OK-05	1432 Longworth House Office Building	Washington, DC 20515	(202) 226-1463
Filner, Bob	D-CA-51	2428 Rayburn House Office Building	Washington, DC 20515	(202) 225-9073
Gerlach, James	R-PA-06	308 Cannon House Office Building	Washington, DC 20515	(202) 225-8440
Gilchrest, Wayne	R-MD-01	2245 Rayburn House Office Building	Washington, DC 20515	(202) 225-0254
Hall, John	D-NY-19	1217 Longworth House Office Building	Washington, DC 20515	(202) 225-3289
Hayes, Robin	R-NC-08	130 Cannon House Office Building	Washington, DC 20515	(202) 225-4036
Higgins, Brian	D-NY-27	431 Cannon House Office Building	Washington, DC 20515	(202) 226-0347
Johnson, Timothy	R-IL-15	1207 Longworth House Office Building	Washington, DC 20515	(202) 226-0791
Kagen, Steve	D-WI-08	1232 Longworth House Office Building	Washington, DC 20515	(202) 225-5729
Kuhl, John	R-NY-29	1505 Longworth House Office Building	Washington, DC 20515	(202) 226-6599
Lampson, Nick	D-TX-22	436 Cannon House Office Building	Washington, DC 20515	(202) 225-5241
Larsen, Rick	D-WA-02	107 Cannon House Office Building	Washington, DC 20515	(202) 225-4420
Lipinski, Daniel	D-IL-03	1717 Longworth House Office Building	Washington, DC 20515	(202) 225-1012
LoBiondo, Frank	R-NJ-02	2427 Rayburn House Office Building	Washington, DC 20515	(202) 225-3318
Mack, Connie	R-FL-14	115 Cannon House Office Building	Washington, DC 20515	(202) 226-0439
Matsui, Doris	D-CA-05	222 Cannon House Office Building	Washington, DC 20515	(202) 225-0566
McNerney, Jerry	D-CA-11	312 Cannon House Office Building	Washington, DC 20515	(202) 225-4060
Michaud, Michael	D-ME-02	1724 Longworth House Office Building	Washington, DC 20515	(202) 225-2943
Miller, Candice	R-MI-10	228 Cannon House Office Building	Washington, DC 20515	(202) 226-1169
Mitchell, Harry	D-AZ-05	2434 Rayburn House Office Building	Washington, DC 20515	(202) 225-3263
Moran, Jerry	R-KS-01	2202 Rayburn House Office Building	Washington, DC 20515	(202) 225-5124
Nadler, Jerrold	D-NY-08	2334 Rayburn House Office Building	Washington, DC 20515	(202) 225-6923
Napolitano, Grace	D-CA-38	1610 Longworth House Office Building	Washington, DC 20515	(202) 225-0027
Norton, Eleanor	D-DC-DL	2136 Rayburn House Office Building	Washington, DC 20515	(202) 225-3002
Petri, Thomas	R-WI-06	2462 Rayburn House Office Building	Washington, DC 20515	(202) 225-2356
Platts, Todd	R-PA-19	1032 Longworth House Office Building	Washington, DC 20515	(202) 226-1000
Poe, Ted	R-TX-02	1605 Longworth House Office Building	Washington, DC 20515	(202) 225-5547
Rahall, Nick	D-WV-03	2307 Rayburn House Office Building	Washington, DC 20515	(202) 225-9061
Reichert, David	R-WA-08	1223 Longworth House Office Building	Washington, DC 20515	(202) 225-4282
Salazar, John	D-CO-03	1531 Longworth House Office Building	Washington, DC 20515	(202) 226-9669
Schmidt, Jean	R-OH-02	238 Cannon House Office Building	Washington, DC 20515	(202) 225-1992
Shuler, Heath	D-NC-11	512 Cannon House Office Building	Washington, DC 20515	(202) 226-6422
Space, Zachary	D-OH-18	315 Cannon House Office Building	Washington, DC 20515	(202) 225-3394
Tauscher, Ellen	D-CA-10	2459 Rayburn House Office Building	Washington, DC 20515	(202) 225-5914
Taylor, Gene	D-MS-04	2269 Rayburn House Office Building	Washington, DC 20515	(202) 225-7074
Young, Donald	R-AK-AL	2111 Rayburn House Office Building	Washington, DC 20515	(202) 225-0425

TRINITY CHEMICAL
INDUSTRIES INC
GLOBAL TRANSPORTATION, STORAGE & DISTRIBUTION LOGISTICS

July 12, 2007

Rep. James L. Oberstar
2165 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Oberstar

As a major user of our nation's railroads, Trinity Chemical Industries, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Trinity Chemical Industries, Inc. has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Trinity Chemical Industries, Inc., who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Best Regards,

Daniel K. Kittinger

Daniel K. Kittinger
Chief Financial Officer
Trinity Chemical Industries, Inc.
Ph. 918-495-3500
Fx. 918-495-3561

JUL 09 2007 11:35 FR NS SUPT OF DECATUR-IL TO 79856755 P.02/02
JUN-29-2007 FRI 03:55 PM TOPFLIGHT GRAIN BEMENT FAX NO. 1 217 678 8113 P. 02

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400 E BODMAN BEMENT IL 61813

ATWOOD * BEMENT * CISCO * EMERY * LAPLACE * MAROA * MILMINE * MONTICELLO * PIERSON * SEYMOUR

June 29, 2007

Congressman James Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Oberstar,

As a major user of our nation's railroads, Topflight Grain has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Topflight Grain has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself but also for customers like Topflight Grain, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Respectfully,

Scott Docherty
General Manager
400 E Bodman
Bement, IL 61813
W 217-678-2261

PHONE: 217-678-2261 FAX: 217-678-8113

JUN 29 2007 17:16 1 217 678 8113 PAGE.02
** TOTAL PAGE.02 **

JUL 09 2007 11:35 FR NS SUPT OF DECATUR-IL TO 79856755 P.02/02
JUN-29-2007 FRI 03:56 PM TOPFLIGHT GRAIN BEMENT FAX NO. 1 217 678 8113 P. 02

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400 E BODMAN BEMENT IL 61813

ATWOOD * BEMENT * CISCO * EMERY * LAPLACE * MAROA * MILMINE * MONTICELLO * PIERSON * SEYMOUR

June 29, 2007

Congressman James Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Oberstar,

As a major user of our nation's railroads, Topflight Grain has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

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We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Respectfully,

Scott Docherty
General Manager
400 E Bodman
Bement,IL 61813
W 217-678-2261

JUL 20 2007 16:31 FR NORFOLK SOUTHERN 708 489 1542 TO 76292849 P.02/03
07/18/2007 16:49 15866796583 WARNER FERTILIZER CO 271 PAGE.01

WARNER FERTILIZER COMPANY
2075 N. Hwy. 27, P.O. Box 796, Somerset, KY 42502

July 16, 2007

Congressman Jim Oberstar
2365 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Oberstar:

As a major user of our nation's railroads, Warner Fertilizer Company has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows and also to be able to continue providing service unmatched by other countries.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Warner Fertilizer Company has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like us, who use rail service extensively and have since 1965.

I urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Respectfully,

C. Richard Warner
President

(606) 679-8484 • FAX (606) 679-6583

07/20/2007 13:23 271 NORFOLK SOUTHERN LOU PAGE 01/02

NS
20 R
5 S

July 11, 2007

VIA Fax: 202-639-2439

Jeff Usher
AAR

As a major user of our nation's railroads, Solo Cup Company has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Solo Cup Company has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for customers like Solo Cup Company, who use rail service extensively.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

Tom Pasqualini
EVP Global Supply Chain

1700 OLD DEERFIELD ROAD, HIGHLAND PARK, IL 60035-3792 | (847) 831-4800 | www.solocup.com

To determine the representative for a particular address or town please visit the U.S. House of Representatives website at http://www.house.gov/ and input the applicable nine digit zip code. If you don't know the nine digit zip code, please visit the US Postal Service Zip Code Lookup at http://zip4.usps.com/zip4/welcome.jsp

20-R

Member of Congress	Date	Office Address 1	Office Address 2	Fax
Altmire, Jason	D-PA-04	1419 Longworth House Office Building	Washington, DC 20515	(202) 226-2274
Arcuri, Michael	D-NY-24	327 Cannon House Office Building	Washington, DC 20515	(202) 225-1891
Baird, Brian	D-WA-03	2443 Rayburn House Office Building	Washington, DC 20515	(202) 225-3478
Bishop, Timothy	D-NY-01	225 Cannon House Office Building	Washington, DC 20515	(202) 225-3143
Boozman, John	R-AR-03	1519 Longworth House Office Building	Washington, DC 20515	(202) 225-5713
Boswell, Leonard	D-IA-03	1427 Longworth House Office Building	Washington, DC 20515	(202) 225-5608
Braley, Bruce	D-IA-01	1408 Longworth House Office Building	Washington, DC 20515	(202) 225-6666
Buchanan, Vern	R-FL-13	1516 Longworth House Office Building	Washington, DC 20515	(202) 226-0828
Capito, Shelley	R-WV-02	1431 Longworth House Office Building	Washington, DC 20515	(202) 225-7856
Capuano, Michael	D-MA-08	1530 Longworth House Office Building	Washington, DC 20515	(202) 225-9322
Carnahan, Russ	D-MO-03	1710 Longworth House Office Building	Washington, DC 20515	(202) 225-7452
Carney, Christopher	D-PA-10	416 Cannon House Office Building	Washington, DC 20515	(202) 225-9594
Carson, Julia	D-IN-07	2455 Rayburn House Office Building	Washington, DC 20515	(202) 225-5633
Coble, Howard	R-NC-06	2468 Rayburn House Office Building	Washington, DC 20515	(202) 225-8611
Cohen, Stephen	D-TN-09	1004 Longworth House Office Building	Washington, DC 20515	(202) 225-5663
Costello, Jerry	D-IL-12	2408 Rayburn House Office Building	Washington, DC 20515	(202) 225-0285
Cummings, Elijah	D-MD-07	2235 Rayburn House Office Building	Washington, DC 20515	(202) 225-3178
DeFazio, Peter	D-OR-04	2134 Rayburn House Office Building	Washington, DC 20515	(202) 225-0032
Dent, Charles	R-PA-15	116 Cannon House Office Building	Washington, DC 20515	(202) 226-0778
Drake, Thelma	R-VA-02	1208 Longworth House Office Building	Washington, DC 20515	(202) 225-4218
Fallin, Mary	R-OK-05	1432 Longworth House Office Building	Washington, DC 20515	(202) 226-1463
Filner, Bob	D-CA-51	2428 Rayburn House Office Building	Washington, DC 20515	(202) 225-9073
Gerlach, James	R-PA-06	308 Cannon House Office Building	Washington, DC 20515	(202) 225-8440
Gilchrest, Wayne	R-MD-01	2245 Rayburn House Office Building	Washington, DC 20515	(202) 225-0254
Hall, John	D-NY-19	1217 Longworth House Office Building	Washington, DC 20515	(202) 225-3289
Hayes, Robin	R-NC-08	130 Cannon House Office Building	Washington, DC 20515	(202) 225-4036
Higgins, Brian	D-NY-27	431 Cannon House Office Building	Washington, DC 20515	(202) 226-0347
Johnson, Timothy	R-IL-15	1207 Longworth House Office Building	Washington, DC 20515	(202) 226-0791
Kagen, Steve	D-WI-08	1232 Longworth House Office Building	Washington, DC 20515	(202) 225-5729
Kuhl, John	R-NY-29	1505 Longworth House Office Building	Washington, DC 20515	(202) 226-6599
Lampson, Nick	D-TX-22	436 Cannon House Office Building	Washington, DC 20515	(202) 225-5241

Larsen, Rick	D-WA-02	107 Cannon House Office Building	Washington, DC 20515	(202) 225-4420
Lipinski, Daniel	D-IL-03	1717 Longworth House Office Building	Washington, DC 20515	(202) 225-1012
LoBiondo, Frank	R-NJ-02	2427 Rayburn House Office Building	Washington, DC 20515	(202) 225-3318
Mack, Connie	R-FL-14	115 Cannon House Office Building	Washington, DC 20515	(202) 226-0439
Matsui, Doris	D-CA-05	222 Cannon House Office Building	Washington, DC 20515	(202) 225-0566
McNerney, Jerry	D-CA-11	312 Cannon House Office Building	Washington, DC 20515	(202) 225-4060
Michaud, Michael	D-ME-02	1724 Longworth House Office Building	Washington, DC 20515	(202) 225-2943
Miller, Candice	R-MI-10	228 Cannon House Office Building	Washington, DC 20515	(202) 226-1169
Mitchell, Harry	D-AZ-05	2434 Rayburn House Office Building	Washington, DC 20515	(202) 225-3263
Moran, Jerry	R-KS-01	2202 Rayburn House Office Building	Washington, DC 20515	(202) 225-5124
Nadler, Jerrold	D-NY-08	2334 Rayburn House Office Building	Washington, DC 20515	(202) 225-6923
Napolitano, Grace	D-CA-38	1610 Longworth House Office Building	Washington, DC 20515	(202) 225-0027
Norton, Eleanor	D-DC-DL	2136 Rayburn House Office Building	Washington, DC 20515	(202) 225-3002
Petri, Thomas	R-WI-06	2462 Rayburn House Office Building	Washington, DC 20515	(202) 225-2356
Platts, Todd	R-PA-19	1032 Longworth House Office Building	Washington, DC 20515	(202) 226-1000
Poe, Ted	R-TX-02	1605 Longworth House Office Building	Washington, DC 20515	(202) 225-5547
Rahall, Nick	D-WV-03	2307 Rayburn House Office Building	Washington, DC 20515	(202) 225-9061
Reichert, David	R-WA-08	1223 Longworth House Office Building	Washington, DC 20515	(202) 225-4282
Salazar, John	D-CO-03	1531 Longworth House Office Building	Washington, DC 20515	(202) 226-9669
Schmidt, Jean	R-OH-02	238 Cannon House Office Building	Washington, DC 20515	(202) 225-1992
Shuler, Heath	D-NC-11	512 Cannon House Office Building	Washington, DC 20515	(202) 226-6422
Space, Zachary	D-OH-18	315 Cannon House Office Building	Washington, DC 20515	(202) 225-3394
Tauscher, Ellen	D-CA-10	2459 Rayburn House Office Building	Washington, DC 20515	(202) 225-5914
Taylor, Gene	D-MS-04	2269 Rayburn House Office Building	Washington, DC 20515	(202) 225-7074
Young, Donald	R-AK-AL	2111 Rayburn House Office Building	Washington, DC 20515	(202) 225-0425

Omni Rail Intermodal of Ohio, Inc.
Multi Intermodal Solutions

10235 Brecksville Rd.
Suite 103
Brecksville, Ohio 44141
(440) 740-1450
Fax: (440) 740-1451

269 Bamberg Drive
Bluffton, South Carolina 29910
(843) 757-2605
Fax (843) 757-2606

July 9, 2007

Daniel Lipinski, D-IL-03
House of Representatives
1717 Longworth House Office Building
Washington, DC 20515

As an Intermodal contractor of our nation's railroads doing business in Chicago, Illinois, Omni Rail Intermodal of Ohio, Inc. has great interest in seeing that our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would re-regulate the industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Omni Rail Intermodal of Ohio, Inc. has benefited from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the de-regulated marketplace rail service is safer, more reliable, far more efficient, and less costly.

We urge you to continue your support of the current rail regulatory structure. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

William A. Esplandiu
Omni Rail Intermodal of Ohio, Inc.
Chairman/CEO

Aug. 30. 2007 6:56AM MCCALL OIL 202-639-5546 No. 4616 P. 2.02

McCall
Oil and Chemical Corporation

BNSF
3 LETTERS 3-R

August 17, 2007

To: Peter DeFazio
US Congressman Representing the 4th Congressional District of Oregon
Fax: (202) 225-0032

To: David Wu
US Congressman Representing the 1st Congressional District of Oregon
Fax: (202) 225-9497

cc: James Oberstar
Chairman - Committee on Transportation and Infrastructure
Fax: (202) 225-0699

Congressman:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

McCall Oil operates in Portland, OR and we receive hundreds of carloads annually via the U.S. railroads from destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Legislation that would add additional burdensome regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and its customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Thank you,

Jim Charriere
President/CEO

5480 N.W. Front Ave., Portland, OR 97210 • Tel. (503) 221-6400 Fax (503) 221-6414

Andersen, Nichole M.

From: Michael.Mihalovich@HDRInc.com
Sent: Thursday, August 23, 2007 8:07 PM
Cc: Pugh, Jennifer
Subject: cc:

Sent via fax to: Senator Reid

I am writing to express my strong opposition to S. 953/H.R. 2125, the Railroad Competition and Service Improvement Act of 2007.

S. 953/H.R. 2125 has been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

HDR Engineering is a leading design and planning firm serving the railroad industry nationwide. Dependence on an economically sound freight rail network is vital to our nation as well as our company. I urge you not to support S. 953/H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Mr. Michael Mihalovich
Sr. Rail Engineer
HDR Engineering Inc.
4363 Alderbrook Ct.
Las vegas NV 89103
Email: Michael.Mihalovich@HDRInc.com

P. O. Box 2406, Savannah, Georgia 31402
(912) 964-3874 Toll Free: 800-342-8012 Fax: (912) 966-3615
e-mail: dmarchand@gaports.com

Doug J. Marchand
Executive Director

June 28, 2007

Rep. James L. Oberstar
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

Georgia's deepwater ports are one of our state's largest economic engines – creating more than 286,000 jobs throughout the state and billions in federal, state and local revenues. Our unprecedented growth is driving Georgia's economy and creating new opportunities for the state and her people everyday.

Dependence upon an economically sound freight rail network is vital to the Georgia Ports Authority's continued success. I understand that your committee is considering legislation that would re-regulate this industry and undo the progress made since the Staggers Act deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industries in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to maintain their systems and expand them as our economy grows.

HR 2125 would significantly reduce railroad revenues by forcing upon them governmentally mandated price "competition" which the free market would not otherwise sustain. As a result, the railroads' revenue may well fall below the level of capital needed to maintain their system and services.

Georgia has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before deregulation. In fact, due to the influence of the deregulated marketplace rail service is safer, more reliable, far more efficient, and less costly. The situation has been good, not only for the industry itself, but also for our customers and their consumers.

INTERMONT TERMINALS, INC.

P.O. BOX 1865
BRISTOL, VIRGINIA 24203

LOUIS STEVAN RAINERO
President

Phone (276) 466-2275
Fax (276) 466-2030
Plant (704) 583-1568

July 1, 2006

James L. Oberstar (MN)
2165 Rayburn House Office Bldg.
Washington, DC 20515

Dear Congressman Oberstar:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Intermont Holdings and its affiliates operate in Bristol, VA; Charlotte, NC and Gainesville, GA. We depend very heavily on the U.S. railroads to ship and receive product in a timely manner throughout the Southeast.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Louis Stevan Rainero, Jr
Intermont Terminals, Inc

Aug. 30. 2007 3:35PM No. 4621 P. 3
08/30/2007 07:48 FAX 403 264 2137 ALBERTA TUBULAR PRODUCTS 001/001

BNSF
HR

Alberta Tubular Products Ltd.

TO: James Oberstar
Chairman - Committee on Transportation and Infrastructure
Fax (202) 225-0699

Mr. Oberstar:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Legislation that would add additional burdensome regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and its customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

John Gilchrist,
Inventory and logistics Manager; _____

435 10th Avenue SE, Calgary, AB T3G 0W3 Phone: 403-264-2136 Fax: 403-264-2137

CSX
T-A
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July 24, 2007

James L. Oberstar, Minnesota, Chairman
2165 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Oberstar;

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

AluChem, Inc. operates plants in Reading and Jackson, OH. We ship 4600 carloads annually via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thanks you in advance for your consideration regarding this critical issue.

Sincerely,

Myra Glenkler-Daugherty, C.P.M.
Purchasing & CS Mgr

AluChem Inc. / One Landy Lane / Reading, OH 45215 • Tel. 513-733-8519 • Fax 513-733-3123 • http://www.aluchem.com/

ALPERT & ALPERT IRON & METAL, INC.
1815 South Soto Street • P.O. Box 23961 • Los Angeles, CA 90023-4268
Telephone: (323) 265-4040 • Telefaxes: (323) 264-9839 (323) 268-1788 • e-mail: scrap@alpertandalpert.com

July 16, 2007

The Honorable Barbara Boxer,
United States Senator - California
Washington DC Office
112 Hart Senate Office Building
Washington D.C. 20510

Dear Senator Boxer,

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Alpert & Alpert Iron and Metals operates facilities at Los Angeles and Long Beach, CA. We ship containers and railcars via the U.S. railroads. If these Bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Alpert & Alpert and other rail customers through increased costs and reduced service would be astronomical and contrary to our best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Greg Tellier,
Director – Business Development

Aug. 30. 2007 3:36PM 562 430 6763 GEMINI FOREST No. 4621 P. 5 002

10608 Los Alamitos Blvd. • P.O. Box 106 • Los Alamitos, California 90720 • Telephone: (562) 594-8948 • Fax: (562) 430-6763

August 23, 2007

To: James Oberstar
Chairman-Committee on Transportation and Infrastructure
Fax: 202/225-0699

As a major user of our nation's railroads Gemini Forest Products, Inc has great interest in seeing our nation's rail system remains healthy and viable. I understand that policy makers in Washington are considering legislation that would add additional burdensome regulation to the industry and undo the progress made since the Staggers Act partially deregulated them in 1980.

The rail industry is essential to our economy. It is also one of the most capital-intensive industrial in the country, and provides for its own infrastructure and other capital needs without major public subsidization. To do this, railroads must earn enough revenue to sustain their existing networks and invest in much needed new capacity.

S. 953 and H.R. 2125, legislation recently introduced by Senator Rockefeller and Congressman Oberstar, would significantly reduce railroad revenues by forcing upon them governmentally mandated so-called price "competition" which the free market would not otherwise sustain. As a result, railroads would likely be forced to reduce investment in infrastructure and equipment that would ultimately diminish service capability and increase shippers' costs.

Gemini Forest Products, Inc has benefited greatly from railroad deregulation, as the rail network is in much better condition today than it was before 1980. In fact, due to the influence of the deregulated marketplace, rail service is safer, more reliable, more efficient and less costly. Deregulation has benefited not only the industry itself, but also customers like Gemini Forest Products, Inc. who use rail service extensively.

I urge you to carefully consider the impact and potential unintended consequences that the Railroad Competition and Service Improvement Act of 2007 would have on the future of freight mobility. I believe this is the best way our company can guarantee continued access to a healthy railroad network, a network which is critical to our company's competitive success in the domestic and global marketplace.

Sincerely,

GEMINI FOREST PRODUCTS, INC

Ted Pollard
President

TP/je

UP
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1-R

APWP ARIZONA PACIFIC WOOD PRESERVING, INC.

P.O. Box 968, Eloy, AZ 85231 • Ph: 520-466-7801 • Fax: 520-466-3607
Email: information@pacificwood.com • Web: www.pacificwood.com

June 12, 2007

The Honorable John McCain
Committee on Transportation and Infrastructure
U.S. Senator
241 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

I am writing to express my strong opposition to S. 953 and H.R 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Port of Tucson operates in Tucson, AZ. We ship and receive a total of 9800 annually via the U.S. railroads to destinations throughout the United States. If these Bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Port of Tucson and other rail customers through increased costs and reduced service would be astronomical and contrary to Port of Tucson's best interests.

Dependence on an economically sound freight rail network is critical to our company's long-term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R 2125.

Sincerely,

Alan Levin
Owner, Port of Tucson

APWB P.O. Box 40698, Bakersfield, CA 93384 • Ph: 661-833-0429 • Fax: 661-836-0766
APWP P.O. Box 968, Eloy, AZ 85231 • Ph: 520-466-7801 • Fax: 520-466-3607
NWP P.O. Box 350, Silver Springs, NV 89429 • Ph: 775-577-2000 • Fax: 775-577-9045
PWRO P.O. Box 40, Sheridan, OR 97378 • Ph: 503-843-2122 • Fax: 503-843-7058

NS

SAME LTR-
15 SENATE
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Big River Industries, Inc.
3700 Mansell Road
Suite 250
Alpharetta, GA 30022

July 17, 2007

Senator or Representative (Name)
Office Building (Address for Senator or Representative
Washington, DC 20510 or 20515

Dear Senator or Representative (Name)

This letter expresses my strong opposition to Bills S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Big River Industries, a subsidiary of Oldcastle, has operations in Alabama, Arkansas, and Louisiana. We ship over 3000 carloads annually via the U.S. railroads to destinations throughout the United States and Mexico.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and their customers, but also on the consumers of these goods.

Dependence on an economically sound freight rail network is vital to our company and to the customers we serve. I urge you to oppose Bills S. 953 and H.R. 2125.

Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Perrin S. (Hank) Stephens
Director of Customer Relations and Logistics
Big River Industries, Inc.

July 17, 2007

TO: Jeff Usher

FROM: Perrin S. (Hank) Stephens

SUBJECT: Senate Bill 953 and H.R. Bill 2125

Total Number of Pages, including cover sheet 2

Comments:

A copy of the attached letter has been faxed to the following:

SENATOR	PARTY – STATE		REPRESENTATIVE	PARTY – STATE
Boxer, Barbara	D-CA-S2		Boozman, John	R-AR-03
Carper, Thomas	D-DE-S2		Buchanan, Vern	R-FL-13
DeMint, James	R-SC-S2		Coble, Howard	R-NC-06
Hutchison, Kay	R-TX-S1		Cohen, Stephen	D-Tn-09
Inouye, Daniel	D-HI-S1		Drake, Thelma	R-Va-02
Kerry, John	D-MA-S2		Hayes, Robin	R-NC-08
Lautenberg, Frank	D-NJ-S2		Lampson, Nick	D-TX-22
Lott, Trent	R-MS-S2		Mack, Connie	R-FL-14
McCain, John	R-AZ-S1		Poe, Ted	R-TX-02
McCaskill, Claire	D-MO-S2		Schmidt, Jean	R-OH-02
Nelson, Bill	D-FL-S1		Shuler, Heath	D-NC-11
Pryor, Mark	D-AR-S2		Space, Zachary	D-OH-18
Snowe, Olympia	R-ME-S1		Taylor, Gene	D-MS-04
Stevens, Ted	R-AK-S1		Young, Donald	R-AK-AL
Sununu, John	R-NH-S2			

Thanks,

Perrin S. (Hank) Stephens
Director of Customer Relations and Logistics
Big River Industries

P.O. Box 190 • Lovely, KY 41231
Phone (606) 298-0447 or (606) 298-0402
Fax (606) 298-0472

The Honorable Eleanor Norton
2136 Rayburn House Office Building
Washington, DC 20515

July 28, 2007

Dear Congresswoman Norton:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

The Booth Energy Group operates in Eastern Kentucky and Southern West Virginia. We ship about 3.5 Million tons of coal annually via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Yours truly,

Dennis R. Hatfield

Dennis R. Hatfield
President
Booth Energy Group

LOGISTICAL SOLUTIONS

800 Cranberry Woods Drive, Suite 450, Cranberry Township, PA 16066
Phone: 724.772.9800 Fax: 724.772.9850 Web: www.mhfls.com

UP
2.R

July 18, 2007

The Honorable Jason Altmire
1419 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Altmire:

I represent MHF Logistical Solutions, Inc (MHF-LS) a logistics provider based in Pittsburgh, Pennsylvania. MHF-LS ships several hundred carloads per month of freight from a wide variety of clients, using a fleet of privately owned and operated railcars and a network of fixed truck to rail Transload facilities. Over our 13 year history, we have grown into a company whose annual rail transportation budget exceeds $40MM. I understand that policymakers in Washington are considering legislation such as S. 953 and H.R. 2125 that would re-regulate the rail industry.

The railroad's ability to continue to make the investments necessary for customers like MHF-LS to grow is now being threatened by this re-regulation legislation currently being proposed. These bills could very easily cost the rail industry billions of dollars. The residual effect would prevent the carriers from improving infrastructure and maintaining current service levels which would eventually filter down to the shippers in the form of increased costs and reduced service levels.

We strongly oppose any move to re-regulate the railroads and ask that you oppose S. 953 and H.R. 2125 and any legislation that seeks to re-regulate our nation's railroads.

Sincerely,

Richard W. Zink
Executive Vice President

PO Box 2404
Lake Oswego, OR 97035

Date: July 9, 2007

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Oberstar;

MFP of Oregon Inc. has been in business since 1991 in Lake Oswego, Oregon. We are a forest products trading company who ship approximately 500-600 railcar loads per month. As a major user and enthusiastic supporter of our nation's railroads, **MFP of Oregon Inc.** has a considerable vested interest in the continued health and viability of the American rail industry. I understand that policy makers in Washington are considering legislation such as S.953 and H.R.2125 that would re-regulate the industry. In my opinion, this would contribute greatly to undoing the progress made since the Staggers Act deregulated the railroads in 1980.

While I understand and sympathize with the concerns of a segment of the rail shipping public who feel re-regulation is in their best interests, I submit that more government is not the answer. The rail carriers with whom MFP of Oregon deals have demonstrated to my satisfaction that S. 953 and H.R. 2125 would seriously damage their ability to retain capital adequate to maintain their infrastructure. Unless and until someone can demonstrate to my satisfaction that the rail carriers are misrepresenting the facts and probable results of any re-regulatory effort, **MFP of Oregon Inc.** opposes and will continue to oppose any such re-regulatory effort.

I personally have dealt with the nation's railroads, both directly and indirectly, for nearly 40 years. During the past several years, I have been as vocal a critic of railroad inefficiency, rate increases and poor service as anyone in the forest products industry. At the same time, I've observed the nations railroads address these matters on their own and generally solve them without intervention. I believe that oversight to some degree is desirable; however, I also believe that re-regulation is most definitely not in the best interests of **MFP of Oregon Inc.**

Sincerely,

James E. Allen
Transportation Director
MFP of Oregon Inc.

BNSF 2-R

METRO EAST INDUSTRIES INC.

September 5, 2007

VIA FACSIMILE: 202-225-0285

Mr. Jerry F. Costello
US Congressman Representing the 12th Congressional District of Illinois

Congressman:

I am writing to express my strong opposition to S.953 and H.R.2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Bills S.953 and H.R.2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Legislation that would add additional burdensome regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and its customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S.953 and H.R.2125. Thank you in advance for your consideration regarding this critical issue.

Thank you,

Gayle E. Ortyl
President

GEO/et

cc: James Oberstar
Chairman – Committee on Transportation & Infrastructure
Via Facsimile: 202-225-0699

PH. 618-271-7210 P.O. Box 3220 Fairview Heights, IL 62208 FAX ESL 618-874-3785 Alorton 618-874-8078

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1-R
2-S

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colindcon@cs.com
www.colindcon.com

P.O. Box 14097
Kansas City, MO 64152

4030 NW Van Depopulier St.
Riverside, MO 64150

August 24, 2007

The Honorable Sam Graves.
House of Representatives
Washington, D.C. 20515

Dear Congressman Graves

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Coleman Industrial Construction, Inc. operates in 16 Western States. Our company is located in your congressional district. We provide multi-million dollar locomotive service and fueling facilities to the rail industry. Growth in the rail industry is critical to our survival and a healthy robust rail industry means more business to companies such as Coleman Industrial. 100 percent of our revenues are generated from the rail industry. If these bills were allowed to pass, they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Coleman Industrial and other rail suppliers through reduced rail spending and investment would have major consequences for companies such as ours and would certainly be contrary to Coleman Industrial's and the nation's best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Richard Hausmann

Richard Hausmann
Comptroller

July 23, 2007

Representative Elijah Cummings
2235 Rayburn House Building
Washington, DC 20515

Dear Representative Cummings:

I am writing to express my opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Canusa Hershman Recycling Company operates facilities in Baltimore, MD and Springfield, VA. We ship in excess of 750 carloads annually via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,
CANUSA HERSHMAN RECYCLING CO.

Jonathan Sloan
President

JS:js07028

6401 QUAD AVENUE • BALTIMORE, MD 21205 • 410-319-0321 • FAX 410-325-1212

NS
1-S
1-R

C-E Minerals
901 East 8th Ave.
King of Prussia, Pa. 19406
(610) 768-8816
(610) 337-8122 (Fax)

7/17/07

The Honorable James Oberstar (D-MN)
2165 Rayburn House Office Building
Washington, DC 20515
FAX: (202) 226-1270

Dear Congressman Oberstar:

I am writing to express my opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

C-E Minerals Inc. uses rail transportation throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost-effective means of transporting goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Kevin P. Lydon
C-E Minerals Inc.

Mr. Jeff Usher, Sen. Dir. Bus. Serv.
Association of American Railroads
Washington, DC 20001
FAX: (202) 639-2439

Mr. Bill McCloskey, Natl. Acct. Mgr.
Norfolk Southern Corp.
FAX: (610) 832-1941

From the desk of...

Kevin P. Lydon
Traffic Manager
C-E MINERALS
901 E. 8th Avenue
King of Prussia, Pa.
19406
610-768-8816
610-337-8122 fax
klydon@cemineralls.com

Crenshaw Lumber Co.

0 W. 166th St.
P.O. Box 2436
Gardena, CA 90247-0436
310.323.1337

Lumber FAX 310.715.8444
Sash & Door FAX 310.719.191
Hardware FAX 310.719.2363
Accounting FAX 310.353.2322
www.crenshawlumber.com

August 7, 2007

The Honorable Grace Flores Napolitano
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Napolitano,

I am writing to express my strong opposition to S. 953 and H.R 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Crenshaw Lumber Co. operates in Gardena, CA. We receive 300 carloads of inventory annually via the U.S. railroads. If these Bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Crenshaw Lumber Co. and other rail customers through increased costs and reduced service would be astronomical and contrary to Crenshaw Lumber Co.'s best interests.

Dependence on an economically sound freight rail network is critical to our company's long-term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R 2125.

Sincerely,

Lawrence H. Olson
President

UP

NISSEKI

NISSEKI CHEMICAL TEXAS INC

The Honorable Eddie Bernice Johnson
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Eddie Bernice Johnson:

I am writing to express my opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Nisseki Chemical Texas operates a chemical facility in Pasadena, TX. We have an annual transportation budget of over $3 million, much of which is used to ship and receive rail cars to and from destinations throughout the United States. If these bills were allowed to pass, the short term the economic impact on Nisseki might be positive. However, the longer term effect would potentially be negative because the railroads would have less incentive to invest in capacity and infrastructure. This could certainly affect our company's profitability in the near future.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

MD Winland

Mark D. Winland
Senior Manager - Commercial

10500 Bay Area Blvd. • Pasadena, Texas 77507 • (713) 754-1000 • Fax (713) 754-1001

FROM:NORTH AMERICAN TIE & TIMBER 405 842 0545 09/19/2007 10:52 #004 P.005/010

NORTH AMERICAN TIE AND TIMBER LLC
6406B North Santa Fe
Oklahoma City, OK 73116

September 19, 2007

The Honorable Mitch McConnell
U.S. Senate
361-A Russell Senate Office Building
Washington, D.C. 20510

Dear Senator Mitch McConnell:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

North American Tie and Timber LLC has a location in Louisville, KY. We provide untreated crossties to the rail industry. Growth in the rail industry is critical to our survival and a healthy robust rail industry means more business to companies such as North American Tie and Timber LLC. 100% of our revenues are generated from the rail industry. If these bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on North American Tie and Timber LLC and other rail suppliers through reduced rail spending and investment would have major consequences for companies such as ours and would certainly be contrary to North American Tie and Timber LLC and the nation's best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Tim McHam

Tim McHam

Finance Manager
North American Tie and Timber LLC

UP
1-R

EVRAZ OREGON STEEL MILLS

Jim Declusin
President & Chief Executive Officer
503-240-5225 (direct)
declusj@osm.com

July 25, 2007

The Honorable Peter DeFazio
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeFazio,

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Evraz Oregon Steel Mills, headquartered in Portland, Oregon, is one of the most diversified steel manufacturers in North America, producing over 1.8 million tons of specialty and commodity steel products, annually.

The rail industry is obviously a very critical part of our business as Evraz Oregon Steel Mills ships approximately 70% of our products by rail and 30% by truck. As Evraz Oregon Steel Mills continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the steel industry as a whole. I am very concerned about the health of the rail industry as Evraz Oregon Steel Mills' Rocky Mountain Division is the largest U.S. rail supplier. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

J. E. Declusin

Jim Declusin
President and Chief Executive Officer
Evraz Oregon Steel Mills

1000 SW Broadway, Suite 2200, Portland, Oregon 97205
phone: 503 / 223-5228 | fax: 503/ 240-5800 | www.osm.com

P.O. BOX 460, 300 GREENBRIER RD., SUMMERSVILLE, WV 26651
PHONE: 304-872-3000 FAX: 304-872-3040

July 5, 2007

The Honorable Nick J. Rahall, II
United States House of Representatives
2307 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Rahall:

I am writing to express my concern about the Railroad Competition and Service Improvement Act of 2007, S. 953 and H.R. 2125.

The Staggers Rail Act of 1980 largely deregulated the railroad industry. Since 1981, rail traffic is up 95%, productivity is up 167%, train accidents rate is down 57%, and average inflation adjusted rail rates are down 54%.

This proposed legislation is the opposite of what the Staggers Act was all about – letting rail management, not the government, run railroads.

As a businessman, I believe that free market forces achieve better results than do more government regulation.

Thank you for your consideration.

Sincerely,

Bill Bright

William T. Bright
Chairman of the Board

WTB/alm

NS 15-R 57-S

ERGON
a company that works

August 6, 2007

The Honorable Trent Lott
487 Russell Senate Office Building
Washington, DC 20510

Dear Senator Lott:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Ergon, Inc. and its subsidiaries (Ergon Asphalt Products, Ergon Refining, Inc., Ergon West Virginia, Inc., Ergon Asphalt and Emulsions, Inc., and Lion Oil Company) depend on the rail industry nationwide. We have major rail shipping or production operations in Bakersfield, CA, Las Vegas, NV, Phoenix, AZ, Snowflake, AZ, Memphis, TN, El Dorado, AR, Vicksburg, MS, Newell, WV and Bainbridge, GA. We currently ship 9,500 carloads annually via the U.S. railroads to destinations throughout the United States. Ergon is investing capital in all segments of our business that will result in increased production and ultimately more rail traffic. If these bills were allowed to pass they would have a devastating impact on the rail industry and would bring the railroad's capital investment in capacity to a standstill. The subsequent negative impact on Ergon and other rail customers through increased costs and reduced service would be astronomical and contrary to Ergon's best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

ERGON, INC.

William W. Lampton
President, Asphalt Division

WWL:jm

15

Name	Party-State	Office Address 1
Boxer, Barbara	D-CA-S2	112 Hart Senate Office Building
Carper, Thomas	D-DE-S2	513 Hart Senate Office Building
DeMint, James	R-SC-S2	340 Russell Senate Office Building
Hutchison, Kay	R-TX-S1	284 Russell Senate Office Building
Inouye, Daniel	D-HI-S1	722 Hart Senate Office Building
Kerry, John	D-MA-S2	304 Russell Senate Office Building
Lautenberg, Frank	D-NJ-S2	324 Hart Senate Office Building
Lott, Trent	R-MS-S2	487 Russell Senate Office Building
McCain, John	R-AZ-S1	241 Russell Senate Office Building
McCaskill, Claire	D-MO-S2	825A Hart Senate Office Building
Nelson, Bill	D-FL-S1	716 Hart Senate Office Building
Pryor, Mark	D-AR-S2	257 Dirksen Senate Office Building
Snowe, Olympia	R-ME-S1	154 Russell Senate Office Building
Stevens, Ted	R-AK-S1	522 Hart Senate Office Building
Sununu, John	R-NH-S2	111 Russell Senate Office Building

State of Nebraska

OWEN INDUSTRIES

P.O. Box 1969
Omaha, NE
68101-1969
712.347.3906
712.347.4148 fax
866.811.7251 toll
www.owenind.com

August 28, 2007

The Honorable Chuck Hagel
Senator from the State of Nebraska
United States Senate
Washington, D.C. 20510

Dear Senator Hagel:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Owen Industries, Inc. has facilities in Iowa, Nebraska and North Dakota and markets its products throughout the US and Europe. We provide steel and fabricated bridge systems to the rail industry. Owen Industries is also heavily dependent on the railroads to provide an inexpensive source of transportation to deliver steel from the mills to our plants.

The US Railroad industry is already one of lowest cost suppliers of rail service in the world. American industry competing in the global market place will not be served by constraining the long term viability of the railroads.

If these bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Owen Industries through reduced rail spending and investment would have major consequences for companies such as ours and would certainly be contrary to Owen's and the nation's best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

OWEN INDUSTRIES, INC.

John R. Sunderman
President

07/30/2007 10:29 5419280014 PANOLAM IND PAGE 01/01

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ALBANY, OREGON 97321
TELEPHONE 541 928 1942
FAX 541 928 4420

UP

July 30, 2007

The Honorable Congressman Defazio
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Defazio:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Panolam Industries operates a facility in Albany, OR. In 2006 we shipped 474 carloads via the U.S. railroads to destinations throughout the United States. If these Bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Panolam and other rail customers through increased transportation costs and reduced service would be astronomical and contrary to Panolam's best interests.

Dependence on an economically sound freight rail network is critical to our company's long-term growth and to the customers that we serve. I strongly urge you to oppose S.953 and H.R. 2125.

Sincerely,

Roger Workman
Logistics Coordinator
Panolam Ind. Albany

06-28-'07 16:01 FROM-t-cubed 4049625540 T-072 P004/006 F-147

Representative James L. Oberstar
2165 Raburn House Office Building
Washington, D.C. 20515

Dear Rep. Oberstar:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Pax Industries operates in Norcross, GA. We ship 1200 carloads annually via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Regards,

Lou Nappi
President
Pax Industries

/kld

6485 Crescent Dr. Norcross, GA 30071 • Phone 770-242-8000 • Fax 770-242-8962
e-mail: paxinfo@paxind.com • www.paxind.com

P. O. Drawer E
Garyville, LA 70051
Tel: (985) 535-2000
Fax: (985) 535-1234

BNSF

Friday, July 6, 2007

Rep. James L. Oberstar
2165 Rayburn House Office Building
Washington, DC 20515

Dear Sir:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Pinnacle Polymers operates in Garyville, LA. We have annual sales of 500 million dollars and all product is shipped via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125.

Thank you in advance for your consideration regarding this critical issue.

Deneice D. Bercegeay
Vice President Distribution and Logistics

SOUTH JERSEY PORT CORPORATION

An agency of the State of New Jersey

2nd and Beckett Streets
Camden, New Jersey 08103

856.757.4927 phone
856.966.1838 fax

kcastagnola@southjerseyport.com
www.southjerseyport.com

Kevin Castagnola
Assistant Executive Director
Director of Operations

The Honorable James Oberstar (D-MN)
2165 Rayburn House Office Building
Washington, DC 20515
FAX: (202) 226-1270

July 19, 2007

Dear Congressman Oberstar:

I am writing to express my opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

South Jersey Port Corporation uses rail transportation throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost-effective means of transporting goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Kevin Castagnola
Assistant Executive Director/ Director of Operations

CC: Mr. Jeff Usher, Sen. Dir. Bus. Serv.
Association of American Railroads
Washington, DC 20001
FAX: (202) 639-2439

Mr. Joseph Balzano, Executive Director & CEO
South Jersey Port Corporation

Mr. Bill McCloskey, Nat'l Acct. Mgr.
Norfolk Southern Corp.
FAX: (610) 832-1941

PRECISION COMPONENTS INC. 1820 so. 35th ave. Phoenix, Ariz. 85009 ph. 272-6566

July 27, 2007

The Honorable John McCain
U.S. Senator
241 Russell Senate Office Building
Washington, D.C. 20510

Dear Senator McCain:

I am writing to express my strong opposition to S. 953 and H.R 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. I do not see how re-regulating an industry that has been functioning very well on its own could benefit anyone other than the few industries promoting this re-regulation agenda.

Precision Components Inc. is a reload business operating in Phoenix, AZ. We distribute materials from a very wide range of the U.S. economy, from aluminum to chemicals, lumber and steel. Over the past three years we have shipped and received an average of 7895 cars annually via the U.S. railroads to destinations throughout the United States. Since the Staggers Act of 1980, we have seen improvements in the railroad management as well as significant investment in new trackage and rail infrastructure.

If these new Bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Precision Components Inc. and other rail customers through increased costs and reduced service would be astronomical and contrary to Precision Components Inc.'s best interests. In addition, any reduction in the level of rail infrastructure investment and the resulting increase in truck traffic on our interstates could overburden a highway system that already exceeds capacity.

I feel deregulation of this particular industry has been a positive force in allowing the railroads and companies dependent to them to survive and thrive. An economically sound freight rail network is critical to our company's long-term growth, the customers that we serve and to the entire U. S. economy. Therefore, I strongly urge you to oppose S. 953 and H.R 2125.

Sincerely,

Herb Owens
Chairman of the Board

cc: Reena Ramakrishnan

Sep. 4. 2007 2:33PM Princeton Cogen No. 4628 P. 4/001

PRINCETON CO-GENERATION CORP.

Proud Manufacturer of Eagle Valley ABM

and Eagle Valley Premium Wood Pellets

#201 Old Hedley Rd., PO Box 2440, Princeton, BC, V0X 1W0, Canada
Tel: 250-295-6940, Fax: 250-295-6943

www.eaglevalleyabm.com

BNSF

To: James Oberstar
Chairman - Committee on Transportation and Infrastructure
Fax (202) 225-0699

Congressman Oberstar:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Legislation that would add additional burdensome regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and its customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Thank You,

Richard White

Toll Free Ph: 1-888-307-7878 **Toll Free Fax: 1-888-669-9191**

JUL 13 2007 17:19 FR NORFOLK SOUTHERN 709 409 1542 TO 76292849 P.02/06

BROWN
IRON SPOT
BUFF, PINK & GREY
WHITE FACE BRICK

Taylor Clay Products Company

P.O. Box 2128, Salisbury, North Carolina 28145-2128
Phone (704) 636 - 2411
Fax (704) 636 - 2413

June 1, 2007

Representative Howard Coble
2468 Rayburn House Office Building
Washington, DC 20515-3306

Dear Mr. Coble:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Taylor Clay Products operates in Salisbury, NC. We ship many carloads annually via the U.S. railroads to destinations throughout the United States.

Bills S.953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S.953 and H.R.2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Charles D. Taylor, Jr.
President
CDTjr/nom

Jul 13 07 03:28p Sara Benfield 704 636 2413 p.1

TRINITY INDUSTRIES, INC.
Construction, Energy, Marine & Components Group

Mark W. Stiles
Group President
Trinity Senior Vice President

2525 Stemmons Freeway
Dallas, TX 75207
Tel. 214.589.2503
Fax 214.589.8650
www.trinitycpg.com

UP
HR
2-5

August 23, 2007

The Honorable Eddie Bernice Johnson
U.S. House of Representatives
1511 Longworth House Office Building
Washington, D.C. 20515

Dear Congresswoman Johnson:

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Trinity Industries is headquartered in Dallas, Texas and has operations throughout the United States. Transit Mix Concrete and Materials Company, one of our many subsidiaries, ships in excess of 8,000 cars annually via the U.S. railroads to destinations throughout the United States. If these bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Trinity Industries and other rail customers through increased costs and reduced service would be astronomical and contrary to Trinity Industries' best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Mark W. Stiles

MWS/dkc

UP
1-R
2-S

August 20, 2007

The Honorable Brian Baird
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Baird:

I am writing to express my strong opposition to S.953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, which were introduced by Senator Rockefeller and Congressman Oberstar.

United Harvest LLC operates in Vancouver, Washington. Originating from at least twelve states, we receive 45,000 carloads of grain annually via U.S. railroads. If these Bills were to pass, they would have a significantly negative impact on the rail industry by reducing the capital investment incentive needed to improve rail service. The subsequent negative impact on United Harvest LLC and other rail customers through increased costs and reduced service would be extreme and contrary to United Harvest's best interests.

Dependence on an economically sound freight rail network is critical to my company's long-term health. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Gary J Schuld
President
GJS@unitedharvest.com

3201 NW Lower River Road, Suite 104 - Vancouver, WA 98660

ROBERTSON'S

ROCK • SAND • BASE MATERIALS
READY MIX CONCRETE

July 13, 2007

The Honorable Barbara Boxer,
United States Senator - California
Washington DC Office
112 Hart Senate Office Building
Washington D.C. 20510

Dear Senator Boxer,

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Robertson's Ready Mix operates rail served facilities at Cabazon and Gardena, CA. We ship approximately 13,000 railcars annually via the Union Pacific Railroad. If these Bills were allowed to pass they would have a devastating impact on the rail industry and would bring capital investment in capacity to a standstill. The subsequent negative impact on Robertson's and other rail customers through increased costs and reduced service would be astronomical and contrary to our best interests.

Dependence on an economically sound freight rail network is critical to our company's long term growth and to the customers that we serve. I strongly urge you to oppose S. 953 and H.R. 2125.

Sincerely,

Dennis Troesh

Title: President

200 S. Main St., Ste. 200 • Corona, CA 92882
P.O. Box 3600 • Corona, CA 92878-3600
(951) 685-2200 • (800) 834-7557 • Fax (951) 483-6426

BNSF
1-R

RYCOM TRADING LTD.
3374 Sundance Drive
Westbank, British Columbia, Canada V4T 2X8
Telephone (250) 768-4321
Facsimile (250) 768-4355
E-Mail: rslozka@telus.net

August 28, 2007

VIA FAX 202-225-0699

Total Number of Pages: 1

James Oberstar
Chairman
Committee on Transportation and Infrastructure

Attention: Congressman Oberstar:

Dear Sir:

Re: S. 953 and H.R. 2125, Railroad Competition and Service Improvement Act of 2007

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Rycom Trading Ltd. operates in Westbank, BC and we ship multiple cars annually via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Legislation that would add additional burdensome regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transporting goods. It will not only impose economic hardship on the railroad industry and its customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

RSL

Ryan Slozka
President

ONE CONCORD CENTER
2300 CLAYTON ROAD
CONCORD, CA 94520
(925) 680-3695

THOMAS M. KELLY
CHIEF OPERATING OFFICER

July 12, 2007

The Honorable James L. Oberstar (Minn.)
2165 Rayburn House Office Building
Washington, DC 20515
Phone: (202) 225-4472
Fax: (202) 226-1270

Dear Congressman Oberstar:

I am writing to express my deep concern over S.953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007 introduced by Senator Rockefeller and Congressman Oberstar.

MOL (America) Inc. "MOL", one of North America's largest ocean transportation companies, headquartered in Concord, California, annually ships over 200,000 teus (20' container equivalents) units via U.S. railroads.

These Rail transportation services and facilities are used in conjunction with ocean transportation services to provide seamless intermodal transportation to U.S. companies requiring global goods movement for exports and imports. The U.S. railroads are a vital component of a land transport network that has directly contributed to the growth in U.S. foreign commerce.

It is my understanding that the rationale behind S.953 and H.R. 2125 is to create greater competition, access and service in the rail industry. From my personal perspective and direct business experience before and after railroad deregulation in 1980, all of these goals have been accomplished.

MOL is now more than ever, able to compete in the global economy with an effective and efficient intermodal rail network that connects U.S. exporters and importers with customers and suppliers in all major global markets.

major global markets.

The growth of these rail services not only supports thousands of jobs for Americans in the supply chain and transportation related industries, but also provides U.S. consumers with a wide array of products that are reasonably priced and contributes to a higher standard of living for our citizens.

MOL's success in commerce and global transport services has been accomplished by working directly with the U.S. railroads who have made substantial investments in new engines, railcars, trackage and rail terminal facilities. Little of which would have been feasible for railroads prior to the Staggers Act. In my opinion rail deregulation has enabled MOL and its customers to benefit from rail transport services that are unparalleled in the global market.

We request that you oppose S.953 and H.R. 2125. Commercial results clearly demonstrate that government regulation of the US railroads does not work and will not support the continued economic growth that is so vital to our Nation.

Very truly yours,

Thomas M. Kelly

Thomas M. Kelly
Executive Vice President
Chief Operating Officer

Corporate Office

999 Main Street, Suite 1300, Boise, ID 83702
P.O.Box 27, Boise, ID 83707 208-336-2110

August 14, 2007

The Honorable Rick Larsen
104 W Magnolia, Room 206
Bellingham, WA 98225

Dear Representative Larsen:

We are writing you to express our concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. The J. R. Simplot Company is a privately held food and agribusiness corporation based in Boise, Idaho which employs approximately 10,000 people in the U.S., Canada, China, Mexico, and Australia.

These bills in current form would not benefit the railroad shipper community as a whole and quite possibly increase the system costs which ultimately would be passed to the consumer. In our opinion, this legislation would result in a weaker transportation system that would be damaging to our business. However, our position on these bills does not mean that our company is entirely satisfied with all Class I carriers concerning service and competition.

The rail industry is obviously a very critical part of our business as Simplot ships and receives a substantial amount of our products by rail with an annual spend of over 100 million dollars. As Simplot continues to grow and expand, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company. These bills will undermine the incentive to provide necessary infrastructure and capacity growth in the railroad industry, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, we respectfully request that you oppose S. 953 and H.R. 2125 and any legislation.

Sincerely,

Bill Whitacre
President
J.R. Simplot Company - Agribusiness

Kevin Storms
President
J.R. Simplot Company – Food Group

GLOVIS
AMERICA INC

July 30, 2007

Mr. Jerry Costello
U.S. Congress
2408 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Costello,

I am writing to express my strong opposition to S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

Glovis America, Inc. is based out of Costa Mesa, California. As the logistics provider for Hyundai Motor America and Kia Motors America we ship approximately 300,000 vehicles annually via the U.S. railroads to destinations throughout the United States.

Bills S. 953 and H.R. 2125 have been introduced in response to the concerns expressed by a small number of shippers. These bills are a "one size fits all" type of remedy that will not achieve the desired goal. Re-regulation of the freight rail industry will threaten the viability of many industries' most cost effective means of transportation goods. It will not only impose economic hardship on the railroad industry and their customers, but on the consumers of these goods as well.

Dependence on an economically sound freight rail network is vital to our company and to the customers that we serve. I urge you not to support S. 953 and H.R. 2125. Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Marvin P. Baisden

Marvin P. Baisden
Vice President & COO

GLOVIS America, Inc. 1665 Scenic Avenue, Suite 250 Costa Mesa, California 92626
Phone: 714.435.2960 Fax 714.427.5933

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UP

ALLIANCE shippers inc.

July 13, 2007

The Honorable Frank Lautenberg
Committee on Transportation and Infrastructure
U.S. Senate
356 Hart Senate Office Building
Washington, DC 20510

Dear Senator Lautenberg:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Alliance Shippers, Inc., located in Englewood Cliffs, NJ, is a worldwide transportation company that has sales exceeding $500 million, utilizing the nation's railroad intermodal services.

The rail industry is obviously a very critical part of our business as Alliance Shippers, Inc., ships 85% of our business by rail and 15% by truck. As Alliance Shippers, Inc. continues to grow and expand its business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the transportation industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Ronald Lefcourt
President

Corporate Headquarters: 516 Sylvan Avenue . Englewood Cliffs, NJ 07632 . (201) 227-0400 . Fax: (201) 227-1212

UP

July 11, 2007

The Honorable Jason Altmire
1419 Longworth House Office Building
Washington, D.C. 20515

Dear Congressman Altmire:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Fort Pitt Consolidators, Inc., located in Verona, PA is a transportation broker.

The rail industry is obviously a very critical part of our business as Fort Pitt ships 40 % of our products by rail and 60 % by truck. As Fort Pitt continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the transportation brokerage industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Robert DiNardo
Executive Vice President
Fort Pitt Consolidators, Inc.

fortpitt.com
412.826.1111 800.472.2769 fax 412.826.1122

08-01-2007 10:21am From-APL TERMINAL OPS SRV 5102082423 T-882 P.003/003 F-535

UP
1-R
1-S

August 1, 2007

The Honorable Barbara Lee
Oakland District Office
1301 Clay Street Suite 1000-N
Oakland, CA 94612

Dear Congresswoman,

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, American President Lines Ltd., located in Oakland, California, is an international transportation and logistics provider including rail shipments.

The rail industry is obviously a very critical part of our business as American President Lines Ltd. ships approximately 400,000 units by rail annually. As American President Lines Ltd. continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

JOHN BOWE
President, Americas Region

APL Limited
1111 Broadway
Oakland, CA 94607-5500 USA
USA
www.apl.com

September 4, 2007

Honorable U.S Senator Henry Reid
528 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Reid:

I am writing you this letter to express my deep concern over S.953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My companies are Bighorn Divide & Wyoming Railroad and BT Inc (a 135 unit trucking company), with 4 locations in Wyoming and 1 large location in Wells, Nevada Riverton, Wyoming is the headquarters for both companies, which are both privately held. Our truck to rail plus rail to truck and our short line railroad ship and receive approximately 10,500 railcars per year. Since our beginnings in 1985 our operations and the strength of our companies have been greatly enhanced with the strength of railroads since the Staggers Act was passed in 1980.

It is my understanding that the rationale behind S.953 and H.R 2125 is to create greater competition, access and service in the rail industry. From my perspective, we have accomplished all of those goals since partial deregulation in 1980. BT Inc. is now, more than ever, able to compete in the global economy with cost effective freight transportation rates, on-time service and damage-free delivery. This has been accomplished by working closely with the railroad and their tremendous investment in equipment and rail infrastructure.

In conclusion, I request that you oppose S.953 and H.R 2125 and any legislation that would add additional burdensome regulation to our railroads. Conventional wisdom and history have proven that government regulation of the railroads does not work

Thank you for you time and consideration

Sincerely,

Cliff Root

Cliff Root,
President, Bighorn Divide & WY RR
President, BT Inc

BTI • 642 South Federal Blvd. • Riverton, WY 82501 • (307) 856-7480 • Fax (307) 856-4623

DELTA DISTRIBUTION

P.O. BOX 759 STOCKTON CA. 95201-0757
PHONE 209-466-3619 FAX 209-466-3609

July 9, 2007

The Honorable, Jerry McNerney
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman McNerney:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Delta Distribution , located in Stockton, Ca , is in the business of Rail Transloading Services, primarily Building materials.

The rail industry is obviously a very critical part of our business. As Delta Distribution we receive 98% of our products by rail and 2 % by truck. As Delta continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the Forest Products industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Bill Elmore
President

JUL 05 2007 15:26 FR NORFOLK SOUTHERN 215 591 3641 TO 915409856755 P.02/02

NS

Dependable

DEPENDABLE DISTRIBUTION SERVICES, INC.

June 27, 2007

Congressman James Oberstar

2365 Rayburn House Office Building

Washington, DC 20515

Dear Congressman Oberstar

I am writing you this letter to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Dependable Distribution Services, inc., with warehouse locations in the Philadelphia and south Jersey areas, ships about 150,000 tons of freight annually. We were established in 1992 and have grown in part as a direct result of the progress made by the railroads since the passage of the Staggers Act.

It is my understanding that the rationale behind S. 953 and H.R. 2125 is to create greater competition, access and service in the rail industry. From my perspective we have accomplished all of those goals since de-regulation in 1980. Dependable Distribution is now, more than ever, able to compete in the global economy with cost effective freight transportation rates, on time service and damage free delivery. This has been accomplished by working closely with the railroad and their tremendous investment in engines, quality railcars, and rail infrastructure, all which was not economically feasible for the railroads before the Staggers Act.

In conclusion I request that you oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our railroads. Conventional wisdom and history have proven that government regulation of the railroads does not work.

Sincerely,

Harvey Weiner, President

1301 Union Avenue, Pennsauken, NJ 08110 • (856) 665-1700 • FAX (856) 488-6332
Email: dds1301@aol.com

** TOTAL PAGE.02 **

UP

NORTH AMERICAN RELOAD ARIZONA INC.
6964 East Century Park
Tucson, AZ 85706
(877) 574-0674 – Phone
(520) 574-1738 - Fax

July 27, 2007

The Honorable Harry Mitchell
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman:

Re: Railroad Re-Regulation Act S. 953 and H.R. 2125

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, North American Reload Arizona Inc., located in Tucson, Arizona, is a lumber distribution facility.

The rail industry is obviously a very critical part of our business as North American Reload ships 80 % of our products by rail and 20% by truck. As North American Reload continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the lumber industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Bradley Clarke
President

North American Reload Arizona Inc.
877-574-0674
bclarke@noramreload.com

UP

Northwest Aluminum Specialties, Inc.
FAX (541) 298-0888
3313 West Second Street The Dalles, OR 97058
Toll Free (800) 628-2241

Wednesday, July 25, 2007

The Honorable Peter A. DeFazio
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeFazio:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Northwest Aluminum Specialties, Inc., located in The Dalles, OR, is a major manufacturer of aluminum billet for the forging, impact extrusion, and direct extrusion industries. We ship product every day all over the U.S. and the world.

The rail industry is obviously a very critical part of our business as Northwest ships much of our products by multi-modal rail. As Northwest continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the aluminum industry as a whole. In the past the vast majority of our product moved by rail. Over the past 7 years our company has gone through vast changes, three owners, and is presently an ESOP on a fast growth trajectory. Our desire is to return to the point where the majority of our product moved in the most efficient manner possible, railcar. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Daniel J. Graff
VP Sales and Marketing
Northwest Aluminum Specialties, Inc.

UP

NORTHWEST TRANSLOADING

78133 Hwy 207
PO Box 921
Hermiston, OR 97838
Phone: 541.567.5040
Fax: 541.567.9074
Email: northwesttransloading.com

July 24, 2007

The Honorable Peter A. DeFazio
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman DeFazio:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Northwest Transloading, located in Hermiston, OR, is in the business of loading and unloading railcars, for shippers who are not themselves rail served.

The rail industry is obviously a very critical part of our business as Northwest Transloading loads and unloads between 250 and 500 railcars per year. As Northwest Transloading continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Michael S. Simon
Owner

Oglebay Norton Company
North Point Tower
1001 Lakeside Avenue, 15th Floor
Cleveland, OH 44114-1151

Mailing Address:
684 Parkway Drive
P. O. Box 617
Buchanan, VA 24066-0617

Hunter Allen
Direct Dial: 540.254.3430
Fax: 540. 254.2219
Email: hallen@onco.com

July 24, 2007

The Honorable Nick Rahall
2307 Rayburn House Office Building
Washington, DC 20510
Fax: (202) 225-9061

I am writing you this letter to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

My company, Oglebay Norton Company, in Cleveland, OH ships10,000 + rail carloads of freight annually. Oglebay Norton was established in 1854 and has grown as a direct result of the progress made by the railroads since the passage of the Staggers Act.

It is my understanding that the rationale behind S. 953 and H.R. 2125 is to create greater competition, access and service in the rail industry. From my perspective we have accomplished all of those goals since de-regulation in 1980. Oglebay Norton is now, more than ever, able to compete in the global economy with cost effective freight transportation rates, on time service and damage free delivery. This has been accomplished by working closely with the railroad and their tremendous investment in engines, quality railcars, and rail infrastructure, all which was not economically feasible for the railroads before the Staggers Act.

In conclusion I request that you oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our railroads. Conventional wisdom and history have proven that government regulation of the railroads does not work.

Sincerely yours,

Hunter Allen
Director Marketing & Logistics
Oglebay Norton Company

UP
1-R
1-S

07/12/2007 14:17 IFAX DOCUMENTS@SHARPFREIGHT.COM → Jim Sannebeck 001/002

FREIGHT SYSTEMS, INC.

Rail, Truck, Air and LTL Professionals Since 1965
Covering the Continental United States and Canada

July 12, 2007

Senator Barbara Boxer
U.S. Senate
112 Hart Senate Office Building
Washington, D.C. 20510

Dear Senator Boxer:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, [redacted] Inc, located in Orange, CA is an intermodal marketing company and freight broker.

The rail industry is obviously a very critical part of our business as Sharp Freight ships 60% of our products by rail and 40% by truck. As Sharp Freight continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the transportation industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

James F. Sannebeck
President
Sharp Freight Systems, Inc.

1696 North Brian Street ♦ Orange, California 92867-3406 ♦ (714) 283-7000 ♦ Fax (714) 283-7024

FROM : SKOG LOADING INC. PHONE NO. : 13607653471 Jul. 27 2007 02:19AM P1 UP 3-R

Skog Loading, Inc.
PO Box 189
799 NW Kerron St.
Winlock, WA 98596
360-785-4466, Fax 360-785-3471
skog@compprime.com

July 17, 2007

The Honorable Brian Baird
Committee on Transportation and Infrastructure
U.S. House of Representatives
2443 Rayburn House Office Building
Washington D.C. 20515

Dear Congressman:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, Introduced by Senator Rockefeller and Congressman Oberstar. My company Skog Loading Inc. located in Winlock, WA transloads lumber for lumber mills that are not rail served.

The rail industry is our only business. As Skog Loading continues to grow and expand It is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the lumber industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, deregulations in the early 80's greatly increased and simplified rail shipments for us. I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that less government regulation of the railroads has worked.

Sincerely,

Robert Axelson

Robert Axelson
President

UP
3-R
2-S

PALLADON VENTURES

August 21, 2007

The Honorable Chris Cannon
U.S. House of Representatives
2436 Rayburn House Office Building
Washington, D.C. 20515-4403

Dear Congressman Cannon:

I am writing you to express my deep concern over S. 953 and H. R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Jay Rockefeller, D-WV, and Congressman Jim Oberstar, D-MN. My company, Palladon Iron Corporation, is a producer of iron ore and related products for use in several industrial and commercial applications.

The rail industry is obviously a very critical part of our business – Palladon Iron Corporation intends to ship 95 percent of its products by rail and 5 percent by truck from its mine in Iron Springs, Utah. As Palladon Iron continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the iron industry as a whole. These bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work. If you have any questions or desire further information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Donald G. Foot
President & CEO
Palladon Ventures, Ltd.
554 South 300 East, Ste. 250
Salt Lake City, Utah 84111
801.521.5252

Corporate Office | Canadian Office
554 S 300 East, Ste. 250 | 409 Granville Street, Ste. 1500
Salt Lake City | Vancouver
Utah, 84111 | British Columbia, V6C 1T2
P: 801.521.5252 P: 604.484.7088
F: 801.521.5454 F: 604.484.7044

August 21, 2007

The Honorable Jim Matheson
U.S. House of Representatives
1323 Longworth HOB
Washington, DC 20515

Dear Congressman Matheson:

I am writing you to express my deep concern over S. 953 and H. R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Jay Rockefeller, D-WV, and Congressman Jim Oberstar, D-MN. My company, Palladon Iron Corporation, is a producer of iron ore and related products for use in several industrial and commercial applications.

The rail industry is obviously a very critical part of our business – Palladon Iron Corporation intends to ship 95 percent of its products by rail and 5 percent by truck from its mine in Iron Springs, Utah. As Palladon Iron continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the iron industry as a whole. These bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work. If you have any questions or desire further information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Donald G. Foo
President & CEO
Palladon Ventures, Ltd.
554 South 300 East, Ste. 250
Salt Lake City, Utah 84111
801.521.5252

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554 S 300 East, Ste. 250 | 409 Granville Street, Ste. 1500
Salt Lake City | Vancouver
Utah, 84111 | British Columbia, V6C 1T2
P: 801.521.5252 | P: 604.484.7088
F: 801.521.5454 | F: 604.484.7044

PALLADON VENTURES

August 21, 2007

The Honorable Rob Bishop
U.S. House of Representatives
124 Cannon Building
Washington, DC 20515

Dear Congressman Bishop:

I am writing you to express my deep concern over S. 953 and H. R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Jay Rockefeller, D-WV, and Congressman Jim Oberstar, D-MN. My company, Palladon Iron Corporation, is a producer of iron ore and related products for use in several industrial and commercial applications.

The rail industry is obviously a very critical part of our business – Palladon Iron Corporation intends to ship 95 percent of its products by rail and 5 percent by truck from its mine in Iron Springs, Utah. As Palladon Iron continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the iron industry as a whole. These bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work. If you have any questions or desire further information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Donald G. Boot
President & CEO
Palladon Ventures, Ltd.
554 South 300 East, Ste. 250
Salt Lake City, Utah 84111
801.521.5252

Corporate Office
554 S 300 East, Ste. 250
Salt Lake City
Utah, 84111
P: 801.521.5252
F: 801.521.5454

Canadian Office
409 Granville Street, Ste. 1500
Vancouver
British Columbia, V6C 1T2
P: 604.484.7089
F: 604.484.7044

PALLADON VENTURES

August 21, 2007

The Honorable Orrin Hatch
U.S. Senate
8402 Federal Building
125 South State Street
Salt Lake City, UT 84138

Dear Senator Hatch:

I am writing you to express my deep concern over S. 953 and H. R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Jay Rockefeller, D-WV, and Congressman Jim Oberstar, D-MN. My company, Palladon Iron Corporation, is a producer of iron ore and related products for use in several industrial and commercial applications.

The rail industry is obviously a very critical part of our business – Palladon Iron Corporation intends to ship 95 percent of its products by rail and 5 percent by truck from its mine in Iron Springs, Utah. As Palladon Iron continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the iron industry as a whole. These bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work. If you have any questions or desire further information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Donald G. Foot
President & CEO
Palladon Ventures, Ltd.
554 South 300 East, Ste. 250
Salt Lake City, Utah 84111
801.521.5252

Corporate Office
554 S 300 East, Ste. 250
Salt Lake City
Utah, 84111
P: 801.521.5252
F: 801.521.5454

Canadian Office
409 Granville Street, Ste. 1500
Vancouver
British Columbia, V6C 1T2
P: 604.484.7088
F: 604.484.7044

PALLADON VENTURES

August 21, 2007

The Honorable Bob Bennett
U.S. Senate
Wallace F. Bennett Federal Building
125 South State Street, Suite 4225
Salt Lake City, UT 84138-1188

Dear Senator Bennett:

I am writing you to express my deep concern over S. 953 and H. R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Jay Rockefeller, D-WV, and Congressman Jim Oberstar, D-MN. My company, Palladon Iron Corporation, is a producer of iron ore and related products for use in several industrial and commercial applications.

The rail industry is obviously a very critical part of our business – Palladon Iron Corporation intends to ship 95 percent of its products by rail and 5 percent by truck from its mine in Iron Springs, Utah. As Palladon Iron continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the iron industry as a whole. These bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work. If you have any questions or desire further information, please do not hesitate to contact me. Thank you for your consideration of this matter.

Sincerely,

Donald G. Foot
President & CEO
Palladon Ventures, Ltd.
554 South 300 East, Ste. 250
Salt Lake City, Utah 84111
801.521.5252

Corporate Office | Canadian Office
554 S 300 East, Ste. 250 | 409 Granville Street, Ste. 1500
Salt Lake City | Vancouver
Utah, 84111 | British Columbia, V6C 1T2
P: 801.521.5252 | P: 604.484.7088
F: 801.521.5454 | F: 604.484.7044

UP

PACIFIC CARGO, INC.
dba CAL CARGO

2376 Davis Avenue
Hayward, CA 94546
510-785-0951
FAX 510-785-0772

Transportation & Warehousing

July 10th, 2007

Senator, Barbara Boxer
1374 Hart Senate Building.
Washington, D.C. 21772

Dear Senator Boxer,

I am writing you to express my deep concern over S.953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller And Congressman Oberstar. My company Pacific Cargo Inc., located in Hayward, California is a Warehouse and Distribution Company.

The rail industry is obviously a very critical part of our business as Pacific Cargo receives 80% of our products by rail and 20% by truck. As Pacific Cargo Inc. continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demand of our company and the Forrest Product Industry as a whole. These bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Ross Smiley

Ross Smiley
CEO
Pacific Cargo Inc.

P. O. Box 55876, Hayward, CA 94545

August 6, 2007

The Honorable Peter DeFazio
Committee on Transportation and Infrastructure
U.S. House of Representatives
2134 Rayburn House Office Building
Washington, D.C. 20515

Dear Congressman DeFazio:

We are writing you to express our concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. The J. R. Simplot Company is a privately held food and agribusiness corporation based in Boise, Idaho which employs approximately 10,000 people in the U.S., Canada, China, Mexico, and Australia.

These bills in current form would not benefit the railroad shipper community as a whole and quite possibly increase the system costs which ultimately would be passed to the consumer. In our opinion, this legislation would result in a weaker transportation system that would be damaging to our business. However, our position on theses bills does not mean that our company is entirely satisfied with all Class I carriers concerning service and competition.

The rail industry is obviously a very critical part of our business as Simplot ships and receives a substantial amount of our products by rail with an annual spend of over 100 million dollars. As Simplot continues to grow and expand, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company. These bills will undermine the incentive to provide necessary infrastructure and capacity growth in the railroad industry, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, we respectfully request that you oppose S. 953 and H.R. 2125 and any legislation.

Sincerely,

Bill Whitacre
President
J.R. Simplot Company - Agribusiness

Kevin Storms
President
J.R. Simplot – Food Group

UP

Sun Mountain Lumber
DEER LODGE

June 27th, 2007

The Honorable Senator Max Baucus
511 Hart Senate Office Building
Washington, D.C. 20515

Dear Senator Baucus:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar.

The rail industry is obviously a very critical part of our business as Sun Mountain ships 95 % of our products by rail. That's a total of approximately 1490 rail cars per year. As we continue to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the Wood Products industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Sherman Anderson
President and Owner
Sun Mountain Lumber Company

Sun Mountain Lumber
PO Box 389, 181 Greenhouse Road, Deer Lodge, MT 59722
406-846-1800 fax: 406-846-3714

Jul-13-07 09:40am From-western buyers 916 923 7877 T-004 P.002/003 F-196

UP
1-R
1-S

Western
BUYERS
P.O. Box 255749
Sacramento, CA 95865

July 12, 2007

The Honorable Dorris O. Matsui
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Matsui:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Western Buyers , located in Elk Grove, ca., is a lumber and building materials distributor.

The rail industry is obviously a very critical part of our business as Western Buyers ships 85% of our products by rail and 15% by truck. As Western Buyers continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the building materials business as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Mark Miller
Supply Chain Manager
Western Buyers

WBR TRANSPORTATION, LLC
2240 Newport Blvd., Newport Beach, CA 92663
(949) 673-1247 Fax (949) 673-0846 * www.wbrinc.com
Registered Hazardous Waste Hauler #4250
US EPA ID# CAR000121731

July 27, 2007

The Honorable Senator Barbara Boxer
U.S. Senate
Washington, D.C. 20510

Dear Senator Boxer:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Obestar. My company, Waste By Rail, Inc, located in Paramount, CA is in the business of shipping waste materials and marketable commodities as a component of our interstate shipping business.

The rail industry is obviously a very critical part of our business as Waste By Rail, Inc ships 90% of our products by rail and 10% by truck. As Waste By Rail, Inc continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the transportation industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

John Lindsey
President

PIGGYBACK CONSOLIDATORS, INC.
THE UNCOMMON "SHIPPERS AGENT"
15501 HERON AVENUE, LA MIRADA, CALIFORNIA 90638
(714) 523-1340 (714) 670-1647 FAX www.piggybackconsolidators.com

July 11, 2007

The Honorable Grace Napolitano
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Napolitano,

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Piggyback Consolidators, located in La Mirada, CA. is Intermodal Marketing Company.

The rail industry is obviously a very critical part of our business as Piggyback Consolidators ships 90 % of our products by rail and 10 % by truck. As Piggyback Consolidators continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the Intermodal Marketing as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Brent Fawley
General Manager

07/03/2007 08:27 5013732923 UPRR PAGE 01
07/03/2007 10:02 PLANTERS COTTON + 14022332206 NO. 775 P01

UP
1-R
2-S

June 29, 2007

The Honorable Mike Ross
314 Cannon House Office Building
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Ross,

I am writing you to express my deep concern over S.953 and H.R.2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Planters Cotton Oil Mill, Inc., located in Pine Bluff, AR is a processor of cottonseed where we extract oil, meal, linters and hulls out of the whole seed and ship to users across the U.S.

The rail industry is obviously a very critical part of our business as we at Planters Cotton Oil Mill, Inc. ship 90% of our oil, 50% of meal and 100% of the linters by rail. The balance of our products is going via trucks. As we at Planters continue to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the Veg Oil business as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shipper and declining service alternatives.

In conclusion, I request that you vigorously oppose S.953 and H.R.2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

John Fricke
General Manager
Planters Cotton Oil Mill, Inc.

CORPORATE OFFICE:
2807 PLANTERS DRIVE
PINE BLUFF, AR 71601
PHONE: 870-534-3831
FAX: 870-534-1421

LAKE PROVIDENCE BRANCH:
406 PORT ROAD
LAKE PROVIDENCE, LA 71254
PHONE: 318-559-3625
FAX: 318-559-3689

FORREST CITY BRANCH:
150 E. DAVIS
FORREST CITY, AR 72335
PHONE: 870-630-0892
FAX: 870-630-0894

GRAND JUNCTION BRANCH:
645 OLD GRAND JUNCTION LANE
GRAND JUNCTION, TN 38039
PHONE: 731-764-5262
FAX: 731-764-5263

08/14/2007 14:32 626-935-7622 UNION PACIFIC LASALE PAGE 02/03
08-14-2007 02:41 PAGE1

UP
1-R
1-S

August 14, 2007

The Honorable Lucille Roybal-Allard
U.S. House of Representatives
Washington, D.C. 20515

Dear Congresswoman Roybal-Allard:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Rapid Deployment Systems., Inc, located in Los Angeles, CA, is Transload Center.

The rail industry is obviously a very critical part of our business as Rapid Deployment Systems., Inc ships 250% of our products by rail and 1000% by truck. As Rapid Deployment Systems., Inc continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company and the Industry as a whole. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

Akun Avetisyan
President

AUG 14 2007 17:55 626 935 7622 PAGE.02

NS - recorded

Re:Trans

RE Transportation, Inc.
P.O. Box 171346
Memphis, TN 38187-1346
Phone: (901) 271-8830
Fax (901) 271-8840

July 3, 2007

The Honorable Stephen Cohen
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Cohen:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Re Transportation, located in Memphis, is a third party logistics provider.

The rail industry is obviously a very critical part of our business as Re Trans ships 70% of our shipments by rail and 30% by truck. As Re Trans continues to grow and expand our business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of our company. These Bills will undermine the incentive to provide necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Sincerely,

David Wedaman
President

BOSF

2-R

RELIABLE WHOLESALE LUMBER, INC.
7600 REDONDO CIRCLE / P.O. BOX 191 / HUNTINGTON BEACH, CALIFORNIA 92648
TELEPHONES (714) 848-8222 / FAX (714) 847-1605 / SALES FAX (714) 848-5286
WEBSITE: www.rwli.net

July 13, 2007

Congressman Bob Filner
2428 Rayburn House Office Building
Washington DC 20515

Dear Congressman Filner,

I am writing you this letter to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, **Reliable Wholesale Lumber, Inc.** located in Huntington Beach California **ships 7,000 carloads of freight annually**. Reliable Wholesale Lumber, Inc. was established in 1971 and has grown significantly as a direct result of the progress made by the railroads since the passage of The Staggers Act.

It is my understanding that the rationale behind S. 953 and H.R. 2125 is to create greater competition, access and service in the rail industry. From my perspective, we have accomplished all of those goals since partial deregulation in 1980. Reliable Wholesale Lumber, Inc. is now, more than ever, **able to compete in the global economy with cost effective freight transportation rates, on-time service and damage-free delivery**. This has been accomplished by working closely with the railroad and their tremendous investment in equipment and rail infrastructure.

In conclusion, **I request that you oppose S. 953 and H.R. 2125** and any legislation that would add additional burdensome regulation to our railroads. Conventional wisdom and history have proven that **government regulation of the railroads does not work.**

Sincerely,

Will Higman
Chief Operating Officer
Reliable Wholesale Lumber, Inc.

SAVAGE
Savage Services Corporation
Industrial & Rail Services
152 E. High Street, Suite 200
Pottstown, PA 19464

(610) 970-9144
Fax (610) 970-8910

August 3, 2007

The Honorable Eddie Bernice Johnson
1511 Longworth House Office Building
Washington, DC 20515

Dear Congressman Eddie Bernice Johnson:

I am writing you to express my deep concern over S. 953 and H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, introduced by Senator Rockefeller and Congressman Oberstar. My company, Savage Services Corporation, has a terminal operation located in Dallas, and operates 28 similar transload terminals in 15 states. The terminal operation is a transloading facility, where the railroads deliver rail cars for the purpose of loading and unloading shipper's material.

The rail industry is obviously a very critical part of our business. As Savage continues to grow and expand its business, it is imperative that the rail industry remains healthy so efficiencies can meet the demands of shippers and the transloading industry as a whole. These Bills will undermine the incentive to provide the necessary infrastructure and capacity growth, thus leading to increased costs to shippers and declining service alternatives.

Since the Staggers Act of 1980 de-regulated the railroad industry, shippers have enjoyed continued improvement in rail service at a cost that has not kept up with inflation. Shippers have actually seen some rates for shipping goods decline since the pre-Staggers era. The rail industry is a very capital-intensive industry. Without revenues to maintain and expand infrastructure, shippers and the transloading industry may see a very unhealthy rail transportation system in the near future. S. 953 and H.R. 2125 will cause the rail industry to go back to pre-Staggers time, where bankruptcy and disinvestment in the system were commonplace.

In conclusion, I request that you vigorously oppose S. 953 and H.R. 2125 and any legislation that attempts to re-regulate our nation's railroads. History has proven that excess government regulation of the railroads does not work.

Thank you in advance for your consideration regarding this critical issue.

Sincerely,

Jose Fernandez

Vice President Transload Operations

DAKOTA ENERGY COOPERATIVE, INC.

HURON OFFICE • Huron, SD • Fax (605) 352-8578 • Tel (605) 352-8591
MILLER OFFICE • Miller, SD • Fax (605) 853-2454 • Tel (605) 853-2453
40294 US Hwy 14 East • PO Box 830 • Huron, SD 57350-0830

RR
John

RECEIVED
OCT 3 2007
BY

September 18, 2007

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Oberstar:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. I appreciate and encourage your efforts to correct the process on how the Surface Transportation Board handles rate cases.

The cooperative we work with for power supply – Basin Electric Power Cooperative – relies on railroads to deliver coal to its Laramie River Station near Wheatland, Wyo. There is no other viable transportation option. This provides no alternatives for competition in the current consolidated railroad industry; simply put, Basin Electric Power Cooperative finds itself in a "take it or leave it" situation. Their railroad carrier dictates – without meaningful negotiation – the price and terms of transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability.

In view of the STB's decision to deny Basin Electric Power Cooperative and Western Fuels Association Inc. rate relief even though their rates have doubled, its time for action. Your legislation, H.R. 2125 is desperately needed to provide captive shippers a reasonable process for challenging rate and service disputes.

Many people in rural areas – from farmers to small business owners – depend on reasonable power costs for their economical survival. The pricing of electricity is directly impacted by the rail rates. In our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and I applaud your efforts.

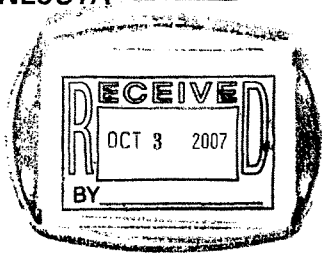
Thank you for your leadership on this issue.

Sincerely,

Kenneth J. Gates
CEO/General Manager

KJG/jkd

CITY OF BENSON MINNESOTA



September 21, 2007

The Honorable James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to express our strong support for H.R.2125, the Railroad Competition, and Service Improvement Act of 2007. I sincerely thank you for your leadership on this issue.

Our utility is a member of Missouri River Energy Services (MRES) and through that relationship our community receives much of its electric power from the Laramie River Station (LRS) generating plant in Wheatland, Wyoming. The experience with the railroads at that plant has not been favorable. In the current consolidated railroad industry, that provides limited to no options for competition, we find that we are in a take it or leave it situation. Our railroad carrier dictates to us, without meaningful negotiation, the price, and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability and has become a darling of Wall Street.

MRES along with other utilities, chemical companies, agricultural commodities, timber, and cement industries continue to pay exorbitant rates and the rate review process at the Surface Transportation Board (STB) has failed to provide effective relief. MRES is a co-owner of the LRS coal-fired power plant near Wheatland, Wyoming. Burlington Northern Santa Fe Railway Company (BNSF) currently transports some 8.3 million tons of coal per year approximately 175 miles between coal mines in Wyoming's Powder River Basin to LRS – in rail cars owned by the LRS participants. A long-standing contract for that service expired in 2004, and BNSF published new "common carrier" rates for the same service that are more than double the prior rate.

MRES member communities are paying $7 million more per year for transportation costs – and rail rates are projected to continue to spiral out of control at an estimated increased cost to LRS participants of $1 billion over the next 20 years. MRES, our plant co-owners, and coal supplier believe that BNSF is exerting its monopoly power over LRS coal deliveries by imposing unreasonably high rates. These high rates are not merely the result of rising fuel costs or capital investments: LRS owners are paying rates that are about 400 percent higher than the direct costs being charged to shippers in competitive markets.

1410 KANSAS AVE. • BENSON, MINNESOTA 56215
City Offices: 320-843-4775 City Fax: 320-842-7151 Municipal Utilities: 320-843-3707
WWW.BENSONMN.ORG E-MAIL: STAFF@BENSONMN.ORG

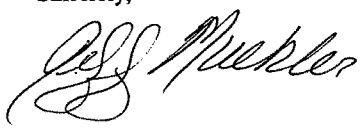
cost to LRS participants of $1 billion over the next 20 years. MRES, our plant co-owners, and coal supplier believe that BNSF is exerting its monopoly power over LRS coal deliveries by imposing unreasonably high rates. These high rates are not merely the result of rising fuel costs or capital investments: LRS owners are paying rates that are about 400 percent higher than the direct costs being charged to shippers in competitive markets.

On September 10, 2007, the Western Fuels (coal supplier to LRS) and Basin Electric Power Cooperative (LRS managing owner) rail rate complaint was rejected by the STB. The complaint was filed in 2004 and the participants in the LRS power plant spent more than $5 million on the case. After all filings were submitted, the STB put the case on hold while it developed a new rulemaking on captive shipper cases - which the STB decided to retroactively, apply to the case. As a result of changing the rules in the middle of the process, the participants incurred additional expenses and had to pay the high rates set by BNSF.

The current regulatory system is clearly broken if this obvious example of overcharges fails to get relief from the STB. The LRS experience underscores the fact that the expense and time needed to file a case, and the STB's favorable attitude toward rail companies, discourages captive shippers from even filing with the STB.

We understand that H.R.2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the Surface Transportation Board more pro-active in its oversight of the railroad industry. These improvements in the current process would be extremely important to our utility customers and will lead to the type of competitive railroad industry Congress intended.

Sincerely,



Director of Public Service
Breckenridge Public Utilities

Frank Schoonover
20 Hwy 379
Dutton, MT 59433

September 12, 2007

The Honorable James L Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets form the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Frank Schoonover

Frank Schoonover HEMSTAD FARMS, INC.

MONTANA
ASSOCIATION OF
COUNTIES

2715 Skyway Drive
Helena, MT 59602-1213
(406) 444-4360
Fax (406) 442-5238
e-mail: maco@maco.cog.mt.us

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

September 11, 2007

Dear Mr. Chairman,

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component of our business as it moves our products to domestic and international markets. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and, if competition is not possible, are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which is especially important to the agriculture industry.

On behalf of the Montana Association of Counties, I commend you for your leadership on this important issue and urge you to move this legislation through the committee and the House of Representatives as soon as possible.

Sincerely,

John E. Prinkki

John E. Prinkki, President
Montana Association of Counties

3521 Gabel Road, Suite 5
Billings, MT 59102
•
Phone: 406.294.9527
Fax: 406.294.9529

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

September 11, 2007

Dear Mr. Chairman,

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component of our business as it moves our produces to domestic and international markets. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and, if competition is not possible, are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration which are especially important to the agriculture industry.

On behalf of the Southern Montana Electric G&T, I commend you for your leadership on this important issue and urge you to move this legislation through the committee and the House of Representatives as soon as possible.

Sincerely,

John E. Prinkki

John E. Prinkki
Southern Montana Electric G&T

WASHINGTON ASSOCIATION OF WHEAT GROWERS
109 EAST FIRST AVENUE, RITZVILLE, WASHINGTON 99169-2394
TELEPHONE 509-659-0610 FAX 509-659-4302

John

September 10, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

On behalf of Washington wheat growers I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

This legislation is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service.

Efficient, competitive and reliable transportation is paramount to the wheat industry to effectively move our product to market and remain competitive. Rail transportation remains a critical component to the agriculture industry and rural communities. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Jim White

Jim White
President

WASHINGTON BARLEY COMMISSION

September 10, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

On behalf of barley producers across Washington I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

The barley industry has been hit hard as a result of poor rail service and exorbitant rates. Quite simply, the railroads seem to dictate what is produce and where the product will move by the rates they charge. This is not right.

It is time for shippers to be afforded protection from undue concentration in the transportation sector and from market power abuses. Legislation, in the form of H.R. 2125 is important to ensure that rail customers, including barley producers, have access to competitive rail service and are protected from unreasonable railroad rates and practices. The health of our rural communities is dependent upon a safe, efficient, and economical rail infrastructure system that serves all customers.

We appreciate your support of agricultural shippers and support of public policy that will ensure that rail customers benefit from the Staggers Rail Act of 1980 as intended by Congress. H.R. 2125 provides the elements necessary to achieve those intentions.

Sincerely,

Thomas G. Zwainz
Chairman

907 W. Riverside Avenue • Spokane, Washington 99201 • (509) 456-4400 • (509) 456-2807

John

WASHINGTON WHEAT COMMISSION

907 W. Riverside Avenue • Spokane, Washington 99201-1006
(509) 456-2481 • FAX (509) 456-2812
e-mail wwc@wwcspokane.com

RECEIVED
SEP 10 2007
By

September 10, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

On behalf of the Washington Wheat Commission I want to thank you for your strong support of balanced national transportation policy. We strongly support H.R. 2125, the Railroad Competition and Service Improvement Act of 2007.

We desire to see a strong, efficient rail industry, but we also want to have a strong agricultural industry and strong rural America. Agriculture does not exist for the sole benefit of the railroads. In contrast, the railroads, as transportation providers, have common carrier obligations to serve the public and provide transportation services.

This legislation is critically important to ensure that rail customers have access to competitive rail service and that those customers without access to competition are protected from unreasonable railroad rates and practices. We are working with other shipper organizations across the country in support of public policy that will ensure rail customers benefit from the Staggers Act of 1980 as intended by Congress.

H.R. 2125 will help restore essential and healthy balance to national transportation policy. The legislation includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Randall H. Suess

Randall H. Suess
Chairman

September 12, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

On behalf of the National Association of Counties (NACo), I am writing to express our strong support for H.R 2125, the Rail Competition and Service Improvement Act of 2007.

Rail transportation remains a critical part of our nation's overall transportation system. For our members in rural communities, rail is essential in moving products produced in counties to domestic and international markets. We continue to be supportive of a safe, efficient and economical rail infrastructure system. However, the lack of competition in certain regions among the freight railroads has resulted in unreasonably high rates and unreliable service, which could result in loss of market share to international competitors and economic dislocation in our rural communities.

H.R. 2125 is critically important to ensure that rail customers have access to competitive and reliable rail service and, where competition is not possible, are protected from unreasonable railroad rates and practices. The legislation also includes provisions such as final offer arbitration, which is especially important to the agriculture industry.

I commend you for your leadership on this important issue and urge you to move H.R. 2125 through the Committee and the House of Representatives as soon as possible. If you have any questions about of position on this issue, please contact Bob Fogel of the NACo staff at (202) 942-4217.

Sincerely,

Larry E. Naake

Larry E. Naake
Executive Director

September 12, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on Western Fuels-Wyoming, Inc. (WFW).

WFW exists to provide coal to consumer-owned utility members in the West and Midwest. A safe, efficient, reliable and cost effective rail infrastructure system is vital to the process of providing the most economical electrical power to every home, farm, ranch, business and institution in America. However, the combination of a lack of competition among the railroads and the lack of an effective regulatory system to remedy market place failures have resulted in unreasonably high rates and unreliable service for railroad customers and members of our business family in recent years. Consumer owned power cooperatives that are members of Western Fuels have recently experienced rate increases anywhere from 50 to 200 percent, while experiencing a decline in service. For example, in 2001 one customer was able to meet all of its coal needs with a single train set, averaging 6 to 7 train loads per month. Currently, this same train set averages 4 to 5 loads per month, resulting in a reduction of over 300,000 tons per year. New terms and conditions provided by the railroads do not include any service guarantees. Negotiation in good faith over contract terms and conditions by the railroads is no longer evident.

The original intent of the Stagger's Rail Act was competitive and regulatory balance. Unfortunately, that balance is sorely lacking in today's market environment. H.R. 2125 is intended to restore balance in the market place by providing modest corrections in the law aimed at helping to ensure that rail customers have access to competitive rail service and, if competition is not possible, customers are protected from unreasonable railroad rates and practices and have access to reliable rail service.

On behalf of Western Fuels-Wyoming, Inc., I commend you for your leadership on this important issue and urge you to move this legislation forward through the committee and the House of Representatives as soon as possible.

Sincerely,

Kenneth Gray
Technical Services Manager
Western Fuels-Wyoming, Inc.
Dry Fork Mine

KANSAS ASSOCIATION OF WHEAT GROWERS

217 Southwind Pl • Manhattan, KS 66502 • (785) 587-0007 • FAX (785) 539-8946

September 14, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

On behalf of the producers of the Kansas Association of Wheat Growers, I support H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities from rural America to domestic and international markets. A safe, efficient, and economical rail infrastructure system is a core advantage for the U.S. agriculture production sector. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service, which could result in loss of market share to international competitors.

Kansas producers and their farmer-owned grain handling facilities have experienced a number of restrictions with rail service and are far from attaining consistent and efficient rail transportation. The inability to service significant areas of grain production in a reasonable amount of time has significant impacts to our ability to transport wheat around the country and throughout the world. These companies have given every effort to work with the rail companies with little change in their service even though their service is fairly consistent and predictable from year to year. Attached is a letter from one of our grain handling facilities that describes their inability to attain service.

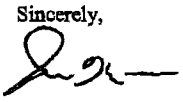
The inability to attain adequate rail service has led to higher costs for grain companies and our state as grain movement moves to trucks on our state and interstate highway system. Grain handling costs increase daily when producers and elevators can not deliver on market contracts promptly yet they currently have no recourse with their rail transportation service providers. HR 2125 allows rail customers to hold railroads liable for damages sustained due to poor service.

H.R. 2125 is critically important to rail customers who need access to competitive rail service. Additionally, for rail customers without access to competition, it gives needed protection from unreasonable railroad rates and practices and access to reliable rail service.

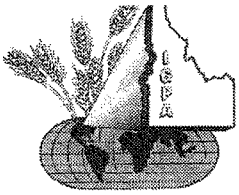
The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry. Specifically, this provision would allow for more responsiveness in delivery agricultural products to customers who increasingly have just-in time inventory systems.

Kansas wheat producers urge your support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Sincerely,



Joe Kejr, President
Brookville, Kan.



Idaho Grain Producers Association

September 12, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

I write to express the strong support of the Idaho Grain Producers Association (IGPA) for H.R. 2125, the Rail Competition and Service Improvement Act of 2007. Your consideration, and that of the U.S. House of Representatives Committee on Transportation and Infrastructure, is invaluable to Idaho's wheat and barley industry – an economic sector valued at over $600 million in state farm revenues.

Idaho is served by only two Class I railroads operating in separate regions of the state. Idaho is typically classified as a "captive shipper" state as rail access and availability is very limited, and therefore critical to the sustainability and global competitiveness of our industry.

Nearly sixty percent (60%) of Idaho's grain production is exported using rail, truck, and barge. The majority of grain production in our state occurs in the southern region, which relies heavily on truck and rail to move grain to the export market. Producers in the northern region of Idaho greatly utilize the unique inland port barge system to move the bulk of production to export due to cost and consistency efficiencies.

Idaho's grain producers, shippers, and handlers in all regions have experienced several years of unreasonably rail high rates and erosion of service directly affecting the prosperity and longevity of our grain farmers. H.R. 2125 is critically important to ensure that rail customers have access to timely, reliable, and competitive rail service. If competition is not feasible, customers should have options to protect themselves from unreasonable railroad rates practices.

I commend you for your leadership on this important issue and urge you to move this legislation through the committee and the House of Representatives as soon as possible. If we could be of any assistance on this matter, please contact Travis Jones at (208) 345-0706.

Sincerely,

Tim Dillin

Tim Dillin, President
Idaho Grain Producers Association

821 W. State Street Boise, Idaho 83702-5832 (208) 345-0706 FAX (208) 334-2505

MT DEPT OF AGRIC

MONTANA Department of AGRICULTURE

Brian Schweitzer
Governor

303 N Roberts, PO Box 200201
Helena, Montana 59620-0201

Ron de Yong
Director

406.444-3144 • Fax: 406.444.5409 • agr@mt.gov • www.agr.mt.gov

September 13, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington DC 20515

Re: **Railroad Competition and Service Improvement Act of 2007**

Dear Chairman Oberstar:

I strongly urge the advancement and passage of H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. Grain producers in Montana, North Dakota and several other states where rail service is provided by essentially one company have for many years been forced to pay as much as a third of the grain's value for rail transportation to the West Coast and access to overseas markets. For competitive reasons, BNSF Railway and other carriers have often charged less to transport grain longer distances where competition exists in a portion of their service area.

At the same time, railroads have forced consolidation of country elevators by denying service or charging exorbitant rates for stops at locations that load less than 110 rail cars at a time. This action is long overdue, and I hope you will do everything in your power to act on this legislation during the 110th Congress or at the earliest opportunity.

Sincerely,

Ron de Yong

Ron de Yong
Director

Mr. Chairman James Oberstar:

RE: HR 2125, Railroad Competition and Service Improvement Act of 2007

I own and operate a small country grain elevator in western North Dakota. We are located on the main line of the BNSF railroad. Being that we are 550 miles from our nearest market the railroad is our only real option for shipping and receiving our commodities.

Last spring about May 15 2007 the siding behind our elevator that services me and other elevator down the line (Hebron Farmers Elevator) was put out of service by the railroad. Since then we have not had rail service. They want me to fix their track on there land, they will not sell me the track or land because of the other elevator down the line. To fix the track it is going to cost about $110,000.00. It would not be a problem fixing and maintaining the track if I did not have to pay a track lease of $4,500.00 per year besides fixing their track.

The question has been asked of the BNSF at a meeting of BNSF customers last summer in Bismarck ND, why the rail rates of corn to the Pacific Northwest is about half the rate it is for wheat from the same elevator to the same elevator. The answer of a BNSF official was "BECAUSE WE CAN". This tells me that the rail rates for moving commodities has nothing to do with cost of doing business.

I would really like there to be some kind of accountability and justification for the railroad's rates and services or lack of.

Sincerely;

Tim Meuchel
Modern Grain Inc.
510 Main Ave
Hebron ND 58638
Phone 701-878-4526
Fax 701-878-4963

Date 9/13/07

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Joe Blomo
Manager

Agricore United
PO Box 188
Ray, ND 58849-0188

Minnesota Association of Wheat Growers
2600 Wheat Drive • Red Lake Falls, MN 56750
Telephone: 218/253-4311 or 800/242-6118 • FAX 218/253-4320

September 14, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Bryan Hest
President

September 11, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

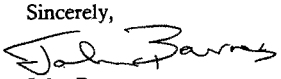
I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on the members of Western Fuels-Wyoming, Inc. (WFW).

WFW exists to provide coal to consumer-owned utility members in the West and Midwest. A safe, efficient, reliable and cost effective rail infrastructure system is vital to the process of providing the most economical electrical power to every home, farm, ranch, business and institution in America. However, the combination of a lack of competition among the railroads and the lack of an effective regulatory system to remedy market place failures have resulted in unreasonably high rates and unreliable service for railroad customers and members of our business family in recent years. New terms and conditions provided by the railroads do not include any service guarantees. Negotiation in good faith over contract terms and conditions by the railroads is no longer evident.

The original intent of the Stagger's Rail Act was competitive and regulatory balance. Unfortunately, that balance is sorely lacking in today's market environment. H.R. 2125 is intended to restore balance in the market place by providing modest corrections in the law aimed at helping to ensure that rail customers have access to competitive rail service and, if competition is not possible, customers are protected from unreasonable railroad rates and practices and have access to reliable rail service.

On behalf of Western Fuels-Wyoming, Inc., I commend you for your leadership on this important issue and urge you to move this legislation forward through the committee and the House of Representatives as soon as possible.

Sincerely,



John Barnes
Mine Superintendent
Western Fuels-Wyoming, Inc.
Dry Fork Mine

OWNED AND OPERATED BY
WESTERN FUELS-WYOMING, INC.

P.O. BOX 1809
GILLETTE, WYOMING 82717-1809

TELEPHONE 307/682-2839

September 10, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on the members of Western Fuels-Wyoming, Inc. (WFW).

WFW exists to provide coal to consumer-owned utility members in the West and Midwest. A safe, efficient, reliable and cost effective rail infrastructure system is vital to the process of providing the most economical electrical power to every home, farm, ranch, business and institution in America. However, the combination of a lack of competition among the railroads and the lack of an effective regulatory system to remedy market place failures have resulted in unreasonably high rates and unreliable service for railroad customers and members of our business family in recent years. For example, members of Western Fuels have recently experienced rate increases anywhere from 50 to 200 percent, while experiencing a decline in service. New terms and conditions provided by the railroads do not include any service guarantees. Negotiation in good faith over contract terms and conditions by the railroads is no longer evident.

The original intent of the Stagger's Rail Act was competitive and regulatory balance. Unfortunately, that balance is sorely lacking in today's market environment. H.R. 2125 is intended to restore balance in the market place by providing modest corrections in the law aimed at helping to ensure that rail customers have access to competitive rail service and, if competition is not possible, customers are protected from unreasonable railroad rates and practices and have access to reliable rail service.

On behalf of Western Fuels-Wyoming, Inc., I commend you for your leadership on this important issue and urge you to move this legislation forward through the committee and the House of Representatives as soon as possible.

Sincerely,

Brad Hanson

Brad Hanson
General Manager
Western Fuels-Wyoming, Inc.
Dry Fork Mine

bdh

4201 N. Interstate 27
Lubbock, Texas 79403
Phone: (806) [illegible]
Fax: (806) [illegible]

September 13, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

The National Sorghum Producers is writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

As you may be aware, a great deal of our domestic production of sorghum is exported to Mexico and other international markets and we rely heavily on the rail system to move our commodity to various points for distribution to these critical markets for us. Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We are supportive of safe, efficient, and economical rail infrastructure system; however, the lack of competition here in the US has resulted in unreasonably high rates and unreliable service for agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Tim Lust

Tim Lust
CEO, National Sorghum Producers

August 21, 2007

The Honorable Brian Baird
United States House of Representatives
2443 Rayburn House Office Building
Washington, DC 20515

Dear Congressman Baird:

On behalf of Washington wheat growers I am writing to express our appreciation of your strong support of agriculture and sound national transportation policy and enlist your support and co-sponsorship of H.R. **2125, the Railroad Competition and Service Improvement Act of 2007**. Please join the growing list of Representatives from across the country and particularly from here in the Pacific Northwest, supporting this legislation.

As you know, the current system for protecting rail customers from railroad monopoly power is not working. H.R. 2125 provides the reasonable changes needed to current law. The changes will ensure rail customers benefit from the Staggers Rail Act of 1980 as intended by Congress.

The bill is not re-regulation, as some would suggest. Rather, the intent is gaining access to the rail competition that was promised by the Staggers Act and the protections from railroad monopoly power that were provided in that Act. The policy changes would require the Surface Transportation Board (STB) to more effectively guard against abuse of rates set by railroads in the absence of competition –a rate situation now played out across the country. Rail customers need reasonable rates and reliable service.

The STB would also be required to protect rail customers from unreasonable rail practices such as excessive fuel surcharges, as has occurred. These are the types of changes in national rail policy vital to agriculture.

In addition, the legislation does not require one rail carrier to operate on the tracks of another rail carrier. In contrast, current law permits reciprocal switching agreements negotiated by the STB between two railroads. Reciprocal switching agreements, where one carrier pulls on their tracks the cars of another carrier, are in use and should be used when they are in the public interest.

Again, thank you for your strong support of agriculture and your consideration of this request to demonstrate strong support for improved national rail policy. Should you have any questions, please contact the Washington Grain Alliance at (509) 456-2481.

Sincerely,

Thomas B. Mick, CEO
Washington Grain Alliance

Washington Wheat Commission
907 W. Riverside Avenue
Spokane, WA 99201-1006
(509) 456-2481 · FAX (509) 456-2812

Washington Association of Wheat Growers
109 E. First Avenue
Ritzville, WA 99169-2394
(509) 659-0610 · FAX (509) 659-4302

Washington Barley Commission
907 W. Riverside Avenue
Spokane, WA 99201-1006
(509) 456-4400 · FAX (509) 456-2812

September 11, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely, Matt Christiansen

Matt Christiansen
Bar C, Inc.
3750 Christiansen Lane
Dillon, MT 59725

Paulette C. Pidcock
Vice President
Federal Government Relations
Tel. 202.326.0186 Fax 202.326.0191
E-mail: pcpidcock@pplweb.com

PPL Corporation
900 Seventh Street, NW
Suite 510
Washington, DC 20001-3886
Tel. 202.326.0180

September 11, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman:

PPL Corporation applauds your leadership in introducing H.R. 2125, the Rail Competition and Service Improvement Act of 2007. Headquartered in Allentown, Pennsylvania, PPL is an energy company that generates electricity by burning millions of tons of coal at generating stations in Pennsylvania and Montana. In both states, PPL's coal shipments are captive to a single monopoly railroad.

PPL needs rail service and supports a financially healthy rail industry. However, as a company with extensive experience with regulation, we know that the status quo is unacceptable.

For more than 20 years, PPL has participated in rate cases and other proceedings before the Interstate Commerce Commission (ICC) and the Surface Transportation Board (STB). As a result of that involvement, PPL has experienced situations in which federal policy has not been implemented effectively or fairly. Decisions across the spectrum of regulatory responsibilities – rates, service, competition, mergers, etc. – have consistently come down on the side of railroads. The cumulative effect of these decisions is ineffective regulation of abuses by railroads which face no competition in the marketplace.

An example of particular concern to us involves a rate case PPL filed in 2000, regarding coal shipments to our power plant in Billings, MT. Though a relatively small amount of coal was involved, the case cost over $4 million to litigate, and the Board ultimately dismissed our complaint based on a new test, the "segment cross-subsidy" test, that had never before been discussed or imposed.

Duane L. Richards
Chief Executive Officer

September 10, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on the members of Western Fuels Association (WFA).

WFA is a non-profit fuel supply cooperative formed in 1976 as the Nation's first fuel supply cooperative. WFA exists to assist our consumer-owned utility members in obtaining coal and coal transportation at reasonable delivered prices from mines in Montana and Wyoming to power plants in the West and Midwest. WFA continues to be supportive of a safe, efficient, and economical rail infrastructure system. However, the combination of a lack of competition among the railroads and the lack of an effective regulatory system to remedy marketplace failures have resulted in unreasonably high rates and unreliable service for railroad customers and WFA members – especially in the past several years. For instance, WFA members have recently experienced rate increases anywhere from 50 to 200 percent, while at the same time seeing a decline in service. Also, the new common carrier pricing terms and conditions provided by the railroads do not include any service guarantees. The railroads no longer negotiate in good faith with their customers over contract terms and conditions.

The original intent of the Stagger's Rail Act was competitive and regulatory balance. Unfortunately, that balance is sorely lacking in today's market environment. H.R. 2125 is intended to restore balance in the marketplace by providing modest corrections in the law aimed at helping to ensure that rail customers have access to competitive rail service and, if competition is not possible, customers are protected from unreasonable railroad rates and practices and have access to reliable rail service.

On behalf of Western Fuels Association, I commend you for your leadership on this important issue and urge you to move this legislation through the committee and the

PO Box 13424 • Denver, CO 80203-3424 • Telephone [illegible]

House of Representatives as soon as possible. If we could be of any assistance on this matter, please contact me at 303-254-3075.

Sincerely,

Duane Richards

Duane Richards

FROM : PHONE NO. : Sep. 13 2007 07:49AM P1

CALIFORNIA ASSOCIATION OF WHEAT GROWERS

1521 I Street · Sacramento, California 95814 · Phone (916)492-7066 · Fax (916)446-1063

September 13, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you on behalf of the California Association of Wheat Growers who are in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Tad Bell
Executive Director

09/12/2007 16:35 FAX 14067614606 MT GRAINGROWER 001
09-12-2007 14:11 GHJ 4067842668 PAGE1

September 12, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Ted See, Managing General Partner
See Farms
Box 154
Hinsdale, MT 59241

Date 9/12/07

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

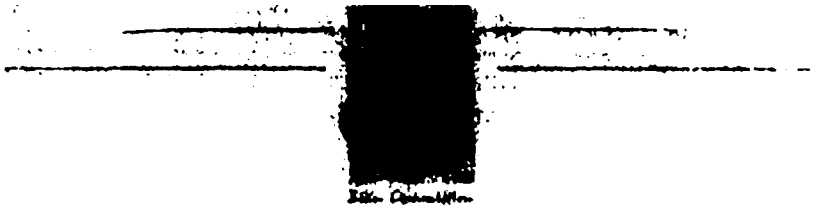
I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

John McCreedy
New York Bean LLC
2905 West Main St
Caledonia New York 14423
585-538-6110



September 13, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on Idaho's commercial bean, and dry and snap bean seed industries.

Rail transportation remains a critical component of our business as it moves our products to domestic and international markets. However, the lack of competition among the railroads has resulted in unreasonably high rates and consistently unreliable service. Our shippers tell us that, never good to begin with, for the past five to six years, service has been particularly bad.

H.R. 2125 is critically important to ensure that Idaho's rail customers have access to competitive and reliable rail service.

On behalf of the Idaho Bean Commission, I commend you for your leadership on this important issue, and urge you to move this legislation through the committee and the House of Representatives as soon as possible.

Sincerely,

Diana L. Caldwell

Diana L. Caldwell
Administrator

P.O. Box 83720 • 821 W. State Street • Boise, ID. 83720-0015
Phone: 208.334.3520 • Fax: 208.334.2442
e-mail: bean@bean.state.id.us

SEP-12-2007 14:55 MT FARMERS UNION GTF MT 1 406 727 8216 P.03/02

COOPERATION • EDUCATION • LEGISLATION

September 12, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to support a safe, efficient, and economical rail infrastructure system. The lack of competition among the railroads, however, has resulted in unreasonably high rates and unreliable service for agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Alan Merrill

Alan Merrill
President

300 River Drive North • PO Box 2447 • Great Falls, MT 59403 • PHONE 406-452-6406 • FAX 406-727-8216 • TOLL FREE 1-800-234-4[illegible]
www.montanafu[illegible]

BUSCHETTE FARMS

Tuesday, September 11, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation always has been a critical component to the agriculture industry, bringing equipment and supplies to American farms and moving grain to markets, both domestic and International. While farmers work hard to be as efficient as they can, using new genetics and production technology, their efforts are often thwarted by the railroads. For too long, railroads have sat in the catbird seat, and their power has too often intimidated those who would seek to create a fair and equitable system.

The lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which has a disastrous affect on America's farmers and the rural economy. Too often we focus on the farm bill, but we find that rail transportation is the hole in the bucket from which flows income to rural America.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Patricia Buschette

E-MAIL PATRICIABUSCHETTE@RSWB.COOP
82498 210TH STREET, RENVILLE, MN 56284 • PHONE (320) 329-3694

Nebraska Wheat Board

September 12, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you on behalf of the Nebraska Wheat Board in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007. The Nebraska Wheat Board feels this Act would be beneficial to the agricultural industry as a whole.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Royce L. Schaneman

Royce L. Schaneman, Executive Director
Nebraska Wheat Board

301 Centennial Mall South- 4th Floor • P.O. Box 94912 • Lincoln, NE 68509
Ph. 402/471-2358 • FAX 402/471-3446 • E-mail: nwb@wheat.ne.gov
www.nebraskawheat.com

The Nebraska Wheat Growers Association

PO Box 95063
Lincoln, NE 68509

Phone: 402.471.2358
Fax: 402.471.2359

September 12, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you on behalf of the Nebraska Wheat Growers Association in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Michael L. Sullivan

Michael L. Sullivan, President
Nebraska Wheat Growers Association

OKLAHOMA WHEAT GROWERS ASSOCIATION

P.O. Box 3346 Enid, OK 73702
(580) 234-3464 or 1-800-834-6942
Fax (580) 234-3474
okwheatgrwr@pldi.net
www.owga.org

September 11, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Oklahoma wheat producers pay about twice what Nebraska wheat producers pay to ship their wheat to the Texas gulf even though they go down the same rail lines and are closer to the gulf. This is due to the lack of competition. Also Oklahoma is facing major issues with the condition of our highways. A major factor of this deterioration is that since deregulation of the railroads 80% of the wheat is moved by truck instead of rail as was the case in the past. This puts a tremendous amount of traffic on Oklahoma Highways.

Sincerely,

J.T. Winters
President
Oklahoma Wheat Growers Assn

Date 4-11-2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Ryan E. McCormick
McCormick Farms
Director Montana Grain Growers Association
Chairman Young Grain Growers Committee
President Farmers Union Oil Company Kremlin, Montana

Meagher County, Montana

WHITE SULPHUR SPRINGS

OFFICE OF
BOARD OF
COUNTY COMMISSIONERS

September 7, 2007

The Honorable James L. Oberstar, Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125, the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

My constituents in Meagher County, Montana know the importance of this legislation when shipping their agricultural goods to national and international markets. They must have reasonable rates to compete in the world markets.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Jamie Doggett
Chair, Meagher County Commission
425 Camas Creek Road
White Sulphur Springs, MT 59645
406-547-2190

September 7, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125, the Railroad Competition and Service Improvement Act of 2007.

More than half of the Idaho grain crop moves to marketing positions by rail. Rail rates and service continue to be a significant concern to producers throughout our state, particularly in southern Idaho where Idaho grain, representing about 80% of the state's total production, is captive to a single railroad. Largely because of this captivity, we are paying freight rates well above those rates paid by other grain suppliers who have competitive transportation options. At times, we also face very unreliable service. Clearly, this monopoly situation is a threat to the long-term economic competitiveness of our industry and our state's future growth opportunities.

We strongly believe that H.R. 2125 will help restore balance and fairness for captive shippers like Idaho barley producers. We are especially supportive of provisions in the bill that will encourage market-based solutions to disputes between rail customers and the railroads through Final Offer Arbitration.

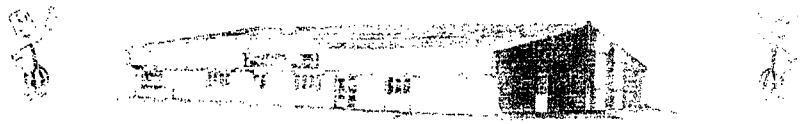
Your steadfast support of rail legislation that will provide significant regulatory reform at the STB, as well as meaningful provisions to address captive shipper concerns is greatly appreciated by Idaho barley producers.

Sincerely,

Dan Mader

Dan Mader
Chairman
821 W. State Street
Boise, ID 83702

09-07-2007 13:24 GHJ 4067842668



TONGUE RIVER ELECTRIC COOPERATIVE, INC.

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

September 7, 2007

Dear Mr. Chairman,

I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on the utility industry and especially our company, Tongue River Electric Cooperative.

Rail transportation remains a critical component of our business as it moves our produces to domestic and international markets. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers like Tongue River have access to competitive rail service and, if competition is not possible, are protected from unreasonable railroad rates and practices and have access to reliable rail service.

On behalf of Tongue River Electric Cooperative, I commend you for your leadership on this important issue and urge you to move this legislation through the committee and the House of Representatives as soon as possible. If we could be of any assistance on this matter, please contact Alan See at 406-784-2341.

Sincerely,

Alan See, General Manager

"Working to maximize profitability for Idaho wheat producers."

September 7, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Gordon Gallup
Chairman

821 W. State Street • Boise, ID 83702 • (208) 334-2353 • Fax (208) 334-2505 • www.idahowheat.org

NATIONAL FARMERS UNION

National Barley Growers Association

United States Beet Sugar Association

The Honorable James Oberstar
U.S. House of Representatives
Washington, DC 20515

September 12, 2007

Dear Mr. Chairman,

As leading national organizations representing a variety of agriculture interests whose members depend on rail for a significant portion of their transportation needs, we are writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, and to commend you for your leadership on this issue.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. Certain provisions of the legislation, such as final offer arbitration, are especially important to the agriculture industry.

As you are working to investigate rail competition and service further during your hearing in the House Transportation and Infrastructure Committee on September 20, 2007, we commend you for your leadership on this issue. We believe H.R. 2125 goes a long way toward addressing the problems U.S. agriculture has had and continue to have with lack of rail competition and unreliable service. We urge you to continue your efforts to move this legislation through Congress.

Sincerely,

Alliance for Rail Competition

American Soybean Association

American Sugarbeet Growers Association

National Associations of Wheat Growers

National Barley Growers Association

National Farmers Union

United States Beet Sugar Association

USA Dry Pea & Lentil Council

US Dry Bean Council

USA Rice Federation

Minnesota Soybean Growers Association
360 Pierce Avenue, Suite #110, North Mankato, MN 56003
Phone (507) 388-1635 • Fax (507) 388-6751
Toll-free (888) 896-9678 • www.mnsoybean.org

September 10, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural A[illegible] We continue to be supportive of safe, efficient, and economical rail infrastru[illegible] However, the lack of competition among the railroads has resulted in unreasonable rates and unreliable service for the agriculture producers, which could result in [illegible] market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to [illegible] rail service and that those rail customers without access to competition are pro[illegible] unreasonable railroad rates and practices and have access to reliable rail service. [illegible] legislation also includes provisions such as final offer arbitration, which are espe[illegible] important to the agriculture industry.

Sincerely,

Lance Peterson, President
Minnesota Soybean Growers Association

September 13, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

This letter is in regards to the support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

I support a safe, efficient, and economical rail infrastructure system. The lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors and add unfair additional costs for the moving of agricultural products.

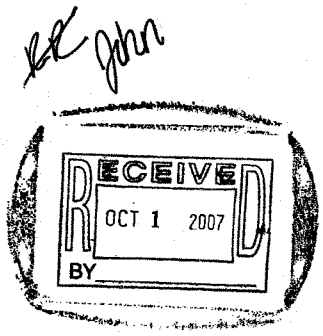
For years, the railroads have ruled the government. Maybe it's about time the government ruled the railroads.

Sincerely,

Dan Downs

1400 Minnesota Avenue, Billings, MT 59101
406.252.0012 • 1.800.252.0012 • Fax 406.245.6990
[illegible]@montana.net

TOTAL PETROCHEMICALS



September 18, 2007

Hon. James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515

Re: H.R.2125

Dear Mr. Chairman:

I am writing on behalf of TOTAL PETROCHEMICALS USA, INC. (TOTAL) to express TOTAL's strong support for H.R.2125, the Railroad Competition and Service Improvement Act of 2007. TOTAL thanks you for your leadership on this issue and is working to provide you the support necessary for important legislation to become law in this Congress.

TOTAL is headquartered in Houston, Texas and is one of the largest producers of petrochemicals (polypropylene, polyethylene, styrene, polystyrene), base chemicals and transportation fuels in the United States. TOTAL has manufacturing facilities in Texas and Louisiana as well as a research and technology facility in La Porte, Texas and a refinery in Port Arthur, Texas. With sales of $9.8 billion in 2006 and over 1,600 employees, TOTAL has built its petrochemicals business with a strong manufacturing bias, based on world-scale plants and technologically advanced operations. TOTAL manufactures petrochemicals for the plastics industry, producing plastic pellets for use in everyday household items like food containers, furniture, carpets, and beverage bottles to name just a few.

TOTAL relies on railroad transportation to conduct our business. We have no other viable transportation options for some of our movements. Our experience with the railroads has not been favorable. In the current consolidated railroad industry, that provides limited to no options for competition, we find that we are in a take it or leave it situation. Our railroad carrier dictates to us, without meaningful negotiation, the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, we recognize that the railroad industry is experiencing record profitability and has become a darling of Wall Street.

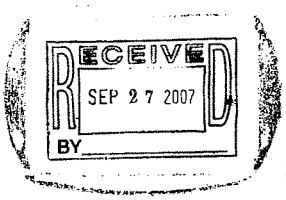
We understand that H.R.2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the Surface Transportation Board more pro-active in its oversight of the railroad industry. These improvements in the current process would be extremely important to our business and to our customers. We believe that these changes will lead to the type of competitive railroad industry Congress intended when it adopted the Staggers Rail Act of 1980.

Sincerely,

Allen Cast
Category Manager, Class I Railroads

TOTAL

TOTAL PETROCHEMICALS USA, INC.
1201 Louisiana St., Ste 1800 - Houston, TX 77002
P.O. Box 674411 - Houston, TX 77267-4411
Tel.: 713 483 5000



September 18, 2007

The Honorable James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
Room 2165, Rayburn House Office Building
Washington, DC 20515

RE: H.R. 2125

Dear Mr. Chairman:

I am writing to urge you to support H.R. 2125, the Railroad Competition and Service Act of 2007, and to commend you for your leadership on this issue.

OFFICE OF MAYOR

The City of Manitowoc and Manitowoc Public Utilities continue to be supportive of a safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service. H.R. 2125 is, therefore, critically important to ensure that rail customers have access to **competitive** rail service, and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to **reliable** rail service.

In the current consolidated railroad industry, which provides limited to no options for competition, we find that we are in a take it or leave it situation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of services has been declining. The Manitowoc Public Utilities (Manitowoc's locally owned generator of electric power), and the historic Lake Michigan Carferry (an anchor of Manitowoc's tourism industry) in addition to other large employers in the city of Manitowoc depend on rail shipment of goods such as coal and grain. Local industries and businesses who rely on the services of the Lake Michigan Carferry and depend upon the traffic it generates, in addition to all industry, business and residents who consume electricity, are experiencing undue hardship due to the much higher rates caused by the railroad's increasing cost of coal transportation.

We understand that H.R. 2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where access to competition is not available, and make the Surface Transportation Board more pro-active in its oversight of the railroad

CITY HALL • 900 Quay Street • Manitowoc, WI 54220 • Phone (920) 686-6980 • Fax (920) 686-6989
www.manitowoc.org • kcrawford@manitowoc.org

RR

NALCO

Nalco Company
Global Logistics Safety
1601 West Diehl Road
Naperville, IL 60563-1198
630 305 1134
www.nalco.com

RECEIVED
SEP 27 2007
BY

September 13, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

Nalco Company is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

Nalco Company has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, Nalco Company thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

Everett P. Gauthier
Manager of Global Logistics Safety

EPG/ng

75 years of innovation

Arkansas Electric Cooperatives, Inc.
Your Touchstone Energy Cooperative
1 Cooperative Way
P.O. Box 194208
Little Rock, Arkansas 72219-4208
(501) 570-2200

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BY

September 17, 2007

The Honorable James L. Oberstar
Chairmen, House Transportation and Infrastructure Committee
United States House of Representatives
Rayburn House Office Building, Rm 2165
Washington, D.C. 20515

Re: H.R. 2125

Dear Mr. Chairman:

On behalf of the Electric Cooperatives of Arkansas I am writing to you to express our strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007 and to thank you for your important leadership on this issue. We are working with shippers across Arkansas to provide you with the support you will need to make this legislation become law in this Congress.

Coal is a critical fuel for electric generation in Arkansas and rail transportation is the only alternative to move the coal from Wyoming to Arkansas. Our experience with the railroads has not been favorable and the results have cost electric ratepayers significant amounts of money. In the current consolidated railroad industry, with no options for competition in our case, we find that we are in a take it or leave it situation.

At a time when railroads are reporting record earnings to stockholders our cooperative members are paying fuel surcharges that the Surface Transportation Board has declared illegal but not reimbursable. And our sole rail carrier is pleased to be able to improve its delivery reliability to 90%. Can you imagine how our electric customers would feel if we told them they were only going to get 90% of the electricity they needed?

H.R. 2125 offers the opportunity to increase competition in the rail industry while ensuring that reasonable rates are available where access to competition does not exist. The Surface Transportation Board has an obligation to shippers as well as to railroads and this legislation should result in a more pro-active agency. We believe that these changes will lead to the type of competitive rail industry that the Congress intended when it adopted the Staggers Rail Act of 1980.

Sincerely,

Gary Voigt, President/CEO
Arkansas Electric Cooperative Corporation

faxed 9/17/07

Iowa Lakes Electric Cooperative

702 South 1st Street
Estherville, Iowa 51334-1890
(800) 225-4532 or (712) 362-7870
Fax: (712) 362-2819 • E-mail: ilec@ilec.coop
http://www.ilec.coop

RECEIVED
SEP 27 2007
BY

September 17, 2007

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Congressman Oberstar:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. I appreciate and encourage your efforts to correct the flawed process of how the Surface Transportation Board (STB) handles rate cases.

The cooperative I work for is Iowa Lakes Electric Cooperative, and through our wholesale electricity provider, Basin Electric Power Cooperative – who relies on the railroads to deliver coal to its Laramie River Station near Wheatland, Wyoming. There is no other viable transportation option. This transportation delivery system provides no alternatives for competition in the current highly concentrated railroad industry; simply put, we find ourselves in a "take it or leave it" situation. Basin's railroad carrier dictates to us – without meaningful or good faith negotiations – the price and terms for our transportation costs. Not surprisingly, the price for rail transportation has been increasing at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability.

In view of the STB's recent decision to deny Basin Electric Power Cooperative and Western Fuels Association Inc. fair and honest rate relief even though the rates have doubled, its time for immediate action. Your legislation, H.R. 2125 is desperately needed to provide captive rail shippers a reasonable process for challenging rate and service disputes.

Most all people in the Midwest – from farmers to small business owners – depend on reasonable rail rates, but in Iowa, Minnesota and the Dakotas, we are being held captive due to the lack of competition and there is no viable regulatory oversight available to us. We need a different process, and I support your legislative efforts.

Thank you for your leadership on this issue.

Sincerely,

Terry L. Bruns, CPA
President/Chief Executive Officer

C: Tim Coonan (IAEC)
Mark Glaess (MREA)

A Touchstone Energy® Cooperative
The power of human connections

Bayer

September 18, 2007

The Honorable James Oberstar
Chairman
Transportation and Infrastructure Committee
2163 Rayburn Building
Washington, DC 20515

Dr. Attila Molnar
President and
Chief Executive Officer

Dear Chairman Oberstar:

Bayer Corporation strongly supports the legislation you introduced, HR 2125, the Railroad Competition and Service Improvement Act. Approximately 90% of our shipments either leaving our manufacturing sites to arriving at our customers' locations are captive to one rail line. It adds significantly to our costs and negatively affects our service.

The deregulation of the freight rail industry in the 1980's was supposed to benefit the struggling railroads and their customers. Since then, the railroads have consolidated and greatly increased their revenues and profits. However in many areas of our country significant segments of the shipping community have experienced a decline in service while rates have skyrocketed. The deterioration of service and unreasonably high rates is the result of the monopoly powers the nation's Class I railroads hold over their customers.

Bayer Corporation
100 Bayer Road
Pittsburgh, PA 15205-9741

Phone: 412 777-3777
Fax: 412 778-4420
attila.molnar.b@bayer.com

One of the reasons these practices continue is the inability of the Surface Transportation Board (STB) to enforce the powers it has been granted. Another is the broad antitrust exemptions the railroads enjoy. The STB is unable to fine, punish or otherwise mandate restitution for violations of conduct by railroads. The violations can go on unchecked. The railroads are essentially shielded from the competitive environment the vast majority of U.S. industries face every day

A study recently conducted by Snavely King examined the issue of fuel surcharges the railroads have imposed on their customers during the period of 2003 to 2007. The study found that an estimated $6.5 billion was overcharged in the period of 2005-2007. The STB can do nothing. If the STB regulatory system was reformed and the railroads were subject to antitrust law, remedies would have been available to fine or penalize the 5 Class I railroads engaged in this practice. Similar activity in the aviation industry resulted in fines of $800 million dollars against British Airways and Korean Airways.

We are very supportive of your hearing on the competitiveness issue and strongly support your bill, HR 2125.

Sincerely,

September 19, 2007

The Honorable James Oberstar
U.S. House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Dear Representative Oberstar:

On behalf of the Wisconsin Paper Council, the trade association representing the pulp and paper industry throughout Wisconsin, I am writing to express our strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. Thank you for authoring this critical piece of legislation and we appreciate you scheduling a hearing on September 25 for this bill.

As you may know, Wisconsin is the nation's leading paper manufacturer. Our industry employs over 40,000 people, paying over $2.5 billion in wages. A robust, reliable transportation system is in many ways the backbone of our industry.

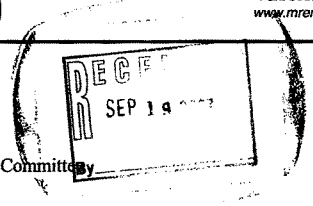
Many of our members rely on rail to transport their raw materials and finished products. Unfortunately the consolidation of the railroad industry has led to significant challenges for our members in the last several years. Indeed, without any competitive rail options, WPC members are being made "captive shippers" by Class I railroads in this state.

Over the past few years members have seen dramatic reductions in both the quantity and quality of service from the railroad. Promises of service have been unfulfilled and associated demurrage fees for paper mills have been exorbitant. In addition, member companies have been subject to rapidly escalating rates and fuel surcharges. The paper industry is already facing many competitive global challenges and the impact of railroads only exacerbates our marketplace issues.

We believe that H.R. 2125 will address these issues by making the railroad industry provide competition, improving the regulatory process regarding fees, and reforming the Surface Transportation Board as they provide oversight of the railroad industry.

250 N. Green Bay Road • P.O. Box 718 • Neenah, WI 54957-0718 • Phone: 920.722.1500 • Fax: 920.722.7541 • www.wipapercouncil.org

3724 West Avera Drive
PO Box 88920
Sioux Falls, SD 57109-8920
Telephone: 605.338.4042
Fax: 605.978.9360
www.mrenergy.com



September 19, 2007

The Honorable James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

I am writing to express our strong support for H.R.2125, the Railroad Competition and Service Improvement Act of 2007. I sincerely thank you for your leadership on this issue and are working to provide you the support necessary for H.R. 2125 to become law in this Congress.

Missouri River Energy Services' (MRES) experience with the railroads has not been favorable. In the current consolidated railroad industry, that provides limited to no options for competition, we find that we are in a take it or leave it situation. Our railroad carrier dictates to us, without meaningful negotiation, the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates, while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability and has become a darling of Wall Street.

MRES along with other utilities, chemical companies, agricultural commodities, timber, and cement industries continue to pay exorbitant rates and the rate review process at the Surface Transportation Board (STB) has failed to provide effective relief. MRES is a co-owner of the Laramie River Station (LRS) coal-fired power plant near Wheatland, Wyoming. Burlington Northern Santa Fe Railway Company (BNSF) currently transports some 8.3 million tons of coal per year approximately 175 miles between coal mines in Wyoming's Powder River Basin to LRS – in rail cars owned by the LRS participants. A long-standing contract for that service expired in 2004, and BNSF published new "common carrier" rates for the same service that are more than double the prior rate.

MRES member communities are paying $7 million more per year for transportation costs – and rail rates are projected to continue to spiral out of control at an estimated increased cost to LRS participants of $1 billion over the next 20 years. MRES, our plant co-owners, and coal supplier believe that BNSF is exerting its monopoly power over LRS coal deliveries by imposing unreasonably high rates. These high rates are not merely the result of rising fuel costs or capital investments: LRS owners are paying rates that are about 400 percent higher than the direct costs being charged to shippers in competitive markets.

On September 10, 2007, the Western Fuels (coal supplier to LRS) and Basin Electric Power Cooperative (LRS managing owner) rail rate complaint was rejected by the STB. The complaint was filed in 2004 and the participants in the LRS power plant spent more than $5 million on the case. After all filings were submitted, the STB put the case on hold while it developed a new rulemaking on captive shipper cases - which the STB decided to retroactively apply to the case. As a result of changing the rules in the middle of the process, the participants incurred additional expenses and had to pay the high rates set by BNSF.

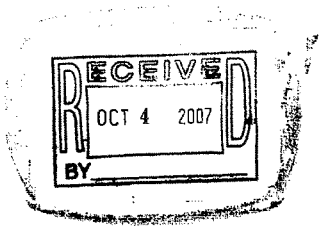
The current regulatory system is clearly broken if this obvious example of overcharges fails to get relief from the STB. The LRS experience underscores the fact that the expense and time needed to file a case, and the STB's favorable attitude toward rail companies, discourages captive shippers from even filing with the STB.

We understand that H.R.2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the STB more pro-active in its oversight of the railroad industry. These improvements in the current process would be extremely important to MRES and to its customers and will lead to the type of competitive railroad industry Congress intended.

Sincerely,

Thomas J. Heller, PE MBA
Chief Executive Officer

A Touchstone Energy® Cooperative



September 24, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

H.R. 2125 is needed because there is a lack of options available to rail customers, which has led to unreasonably high shipping prices. When complaints are filed with the Surface Transportation Board (STB) regarding these situations, the STB historically has not ruled in the shippers favor. An example of this is the STB's recent decision against Western Fuels, which supplies coal to Colorado rural electric cooperative power supplier, Tri-State Generation and Transmission Association. The STB decision allows Burlington Northern Santa Fe to charge Western Fuels over 500% of the railroad's variable costs to provide service and 4 times the average coal rate. The results hurt rural Colorado, the agricultural entities dependent on railroads and the electric cooperatives that depend on coal shipped via rail.

H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,

Dan McClendon
General Manager
Delta Montrose Electric Association

DELTA-MONTROSE ELECTRIC ASSOCIATION P.O. Box 910, Montrose,Colorado 81402-0910 www.dmea.com Telephone: 970/249-4572 - Montrose Telephone: 970/874-8081 - Read

Verendrye Electric Cooperative

615 Highway 52 W. • Velva, ND 58790-7417 701-338-2855
1225 Highway 2 Bypass E. • Minot, ND 58701-7927 701-852-0406
Fax 701-624-0353 • WATS 1-800-472-2141
E-mail: rec@verendrye.com • Website: www.verendrye.com

September 17, 2007

RECEIVED
OCT 4 2007
BY

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Oberstar:

I strongly support H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. I also applaud, appreciate and encourage your efforts to correct the process on how the Surface Transportation Board handles rate cases.

Verendrye Electric Cooperative, my employer, has an all inclusive power purchase agreement with Basin Electric Power Cooperative (BEPC). BEPC is forced to rely on railroads to deliver coal to its Laramie River Station near Wheatland, Wyo. There is no other viable transportation option. This provides no alternatives for competition in the current consolidated railroad industry; simply put, we find ourselves in a "take it or leave it" situation. Our railroad carrier dictates to us – without meaningful negotiation – the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability. This profitability comes at the expense of our members who will see a rate increase in October as a direct result of increased generation costs.

In view of the STB's decision to deny Basin Electric Power Cooperative and Western Fuels Association Inc. rate relief even though their rates have doubled, it is time for action. Your legislation, H.R. 2125 is desperately needed to provide captive shippers a reasonable process for challenging rate and service disputes.

The majority of rural Americans depend on reasonable rail rates, but in our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and I applaud your efforts.

Thank you for help and dedication to this issue.

Sincerely,

Martin D. Dahl, P.E.
Minot Service Area Manager

P.O. BOX 1373 • OKLAHOMA CITY, OKLAHOMA 73101 • 405-236-3755

September 18, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

El Dorado Chemical is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

El Dorado Chemical has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

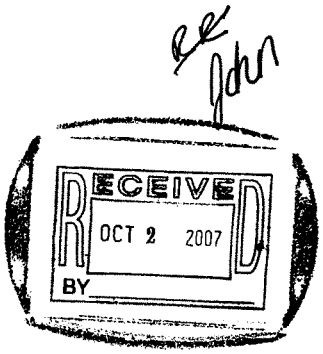
Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, El Dorado Chemical thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

Anne O. Rendon

Anne O. Rendon
Vice President

Shell Chemicals



Stacy P. Methvin
President & CEO
Shell Chemical LP
One Shell Plaza
910 Louisiana
Houston, Texas 77002
Tel 713 241 1391
Fax 713 241 6902

September 25, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar,

Shell Chemical LP is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation to amend title 49 of the U.S. code to clarify rail transportation policy, require railroads to provide transportation rates, eliminate competition barriers between Class Is, IIs and IIIs, improve the rate reasonableness standard and arbitration of rail disputes, and authorize the Surface Transportation Board (STB) to investigate and suspend certain railroad actions will help restore balanced commercial relationships among railroads and their customers.

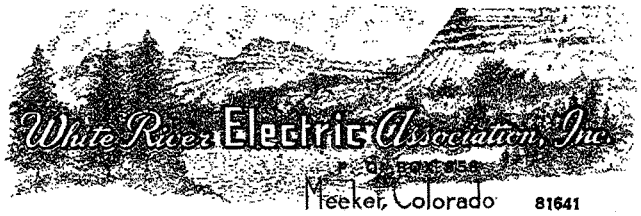
Shell shares these views with a broad coalition of rail customers that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from non-competitive practices.

The business of chemistry competes in a robust global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, Shell and other rail customers have seen deteriorating service, while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry and nation rely on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its current ability to limit competitive options to shippers in certain markets is injurious to the chemical industry and other shippers. Shell thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

TRANSMIT #0968 P.003 /012



September 16, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

H.R. 2125 is needed because there is a lack of options available to rail customers, which has led to unreasonably high shipping prices. When complaints are filed with the Surface Transportation Board (STB) regarding these situations, the STB historically has not ruled in the shippers favor. An example of this is the STB's recent decision against Western Fuels, which supplies coal to Colorado rural electric cooperative power supplier, Tri-State Generation and Transmission Association. The STB decision allows Burlington Northern Santa Fe to charge Western Fuels over 500% of the railroad's variable costs to provide service and 4 times the average coal rate. The results hurt rural Colorado, the agricultural entities dependent on railroads and the electric cooperatives that depend on coal shipped via rail.

H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,
White River Electric Assn Inc.

Richard R. Welle
General Manager

Post-it® Fax Note 7671	Date 9/24	# of pages ▶ 1
To HEIDI	From Dick Welle	
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Fax # 303 254 6007	Fax # 5766	

Phone: 970-878-5041

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email: wrea@wrea.org

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YAMPA VALLEY ELECTRIC ASSOCIATION

P.O. Box 771218
Steamboat Springs,
Colorado 80477
Phone: 970-879-1160
Fax: 970-879-7270
Internet: http://www.yvea.com

September 24, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

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H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,
Yampa Valley Electric Association, Inc.

Larry Covillo

Larry Covillo
President/General Manager

Post-It® Fax Note 7671	Date 9-24	# of pages ▶ 1
To Heidi Wagner	From Larry	
Co./Dept. Tri-State	Co. YVEA	
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Highline Electric Association

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Holyoke, Colorado 80734

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Fax: 970-854-3652

September 24, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

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H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,

Mark Farnsworth
General Manager

Your Touchstone Energy® Partner

September 24, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

H.R. 2125 is needed because there is a lack of options available to rail customers, which has led to unreasonably high shipping prices. When complaints are filed with the Surface Transportation Board (STB) regarding these situations, the STB historically has not ruled in the shippers favor. An example of this is the STB's recent decision against Western Fuels, which supplies coal to Colorado rural electric cooperative power supplier, Tri-State Generation and Transmission Association. The STB decision allows Burlington Northern Santa Fe to charge Western Fuels over 500% of the railroad's variable costs to provide service and 4 times the average coal rate. The results hurt rural Colorado, the agricultural entities dependent on railroads and the electric cooperatives that depend on coal shipped via rail.

H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,

Rick Wilson

Chief Executive Officer

City of New Prague

In the Counties of Scott & Le Sueur

118 CENTRAL AVENUE NORTH • NEW PRAGUE, MINNESOTA 56071 • PHONE (952) 758-4401
www.ci.new-prague.mn.us

Jerry Bohnsack
City Administrator

September 14, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

My name is W.A. Bender, the mayor of the City of New Prague. The City of New Prague is a municipal utility. We're proud of our municipal utility and maintaining affordable electric rates is critical to economic development and to our residents. We have learned from our utility manager that our wholesale supplier, Southern Minnesota Municipal Power Agency (SMMPA) recently received a rate increase of approximately 55% from the Burlington Northern Santa Fe Railroad. Because SMMPA is a captive shipper, and because there is no meaningful oversight by the National Surface Transportation Board, SMMPA had no option but to accept the increase and pass it on.

If rural communities like ours are to remain economically viable, we must bring competition, or at a minimum effective regulation, to the rail industry. I am writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would have a positive impact on our industry/company.

Rail transportation not only has a direct effect on the price of the electricity we supply to our businesses and customers, but it remains a critical component of all our businesses as it moves our products to and from domestic and international markets. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service

H.R. 2125 is critically important to ensure that rail customers like SMMPA have access to competitive rail service and, if competition is not possible, are protected from unreasonable railroad rates and practices and have access to reliable rail service.

On behalf of the City of New Prague, I commend you for your leadership on this important issue and urge you to move this legislation through the committee and the House of Representatives as soon as possible. If we could be of any assistance on this matter, please contact me at 952-758-4287.

Sincerely,

cc: Congressman Timothy Walz, House Transportation and Infrastructure Committee
Senator Amy Klobuchar
Senator Norm Coleman
Congressman John Kline

Minnesota Barley

2601 Wheat Drive • Red Lake Falls, MN 56750 • Phone: 218/253-4311 • FAX: 218/253-4320

RECEIVED
SEP 18 2007
BY

September 10, 2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Marvin Zutz, Executive Director
MN Barley Growers Association

RE John

OLD WORLD INDUSTRIES, INC.
4065 COMMERCIAL AVENUE
NORTHBROOK, ILLINOIS 60062-1851
847-559-2000 • FAX 847- 559-1329

RECEIVED
SEP 14 2007
BY

August 30, 2007

The Honorable Jim Oberstar
House of Representatives
2365 Rayburn House Office Building
Washington, DC 20515

Subject: Pending Legislation 'Railroad Competition and Service Improvement Act of 2007' H. 2125

Dear Representative Oberstar:

We are asking you to **support** pending legislation H. 2125. Old World Industries is a chemical manufacturer and distributor with its headquarters in Northbrook, Illinois. Old World ships hundreds of thousands of tons of chemicals annually, via rail, throughout the United States. The economic situation for many rail shippers in America, including Old World, has become desperate. It is no understatement that the survival of rail shippers, along with the jobs they create, are currently in your hands. Your constituents, comprised of the thousands of employees, stakeholders and customers of America's chemical manufacturers are countingon you to read this letter and make the right decision in support of this bill.

The Surface Transportation Board (STB), by law, is an agency unable to address shipper rate complaints or the anti-competitive nature of the rail industry. There is currently no protection or mechanism for rail shippers to fight against unreasonably high rail rates. Government has failed to prevent captive shipping markets and to ensure competition in the rail industry. Currently, there are no choices for rail shippers. If you are a captive shipper or receiver, which Old World and its customers are, there is no recourse to poor service and high freight rates.

While it is in the nations, and our, best interest that the rail industry remains financially viable, in order to maintain its infrastructure, there must be limitations. Right now there are none. The rail industry is touting this pending legislation as re-regulation, and it is not. This bill would provide rail shippers that are subject to rail market dominance with a mechanism to address unreasonable rates based on the railroad's actual costs. It would also allow for a mechanism that would address poor rail service, of which we and other rail shippers have been victim.

The indifference and anticompetitive activity by the nation's rail carriers threatens our existence. Old World simply cannot absorb unchecked rate increases, nor put up with poor service that shuts down our production facilities. This matter is not simply an Old World problem. It is a problem that threatens an entire industry, its customers and, ultimately, the American consumer. Left unchecked, the anticompetitive actions of the railroads will prevent necessary products from being produced. It will also cause companies to shut their doors and Americans to lose their jobs. Accordingly, we ask for your sponsorship of H. 2125.

The situation is critical and the time to act is now.

Sincerely,

James Bryan

James Bryan
President

110 East Spring Street
P.O. Box 579
Saratoga, WY 82331-0579

(307) 326-5206
1-800-359-0249
carbonpower.com

Member Owned. . .Service Proud

September 14, 2007

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Oberstar:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. I appreciate and encourage your efforts to correct the process on how the Surface Transportation Board handles rate cases.

The Rural Electric Cooperative I work for; Carbon Power and Light Inc.(Carbon), relies on railroads to deliver coal to the Laramie River Station near Wheatland, Wyo. Carbon is a Member Cooperative of Tri-State Generation and Transmission Association Inc., who in turn is a partner in the Laramie River Station with Basin Electric. There is no other viable transportation option. This provides no alternatives for competition in the current consolidated railroad industry; simply put, we find ourselves in a "take it or leave it" situation. Our railroad carrier dictates to us – without meaningful negotiation – the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability.

In view of the STB's decision to deny Basin Electric Power Cooperative and Western Fuels Association Inc. rate relief even though their rates have doubled, its time for action. Your legislation, H.R. 2125 is desperately needed to provide captive shippers a reasonable process for challenging rate and service disputes.

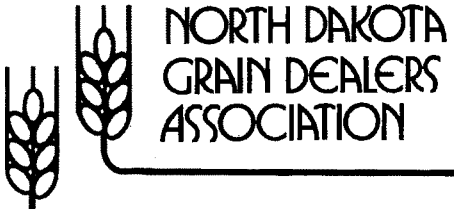
Many people in rural areas – from farmers to small business owners – depend on reasonable rail rates, but in our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and I applaud your efforts.

Thank you for your leadership on this issue.

Sincerely,

Charles A. Larsen
General Manager

Your Touchstone Energy ℠ Partner



STEVEN D. STREGE, Executive Vice President
CHERYAL WELLE, Executive Assistant
SUE BENSON, Office Assistant
Ph: 701-235-4184, Fax: 701-235-1026
118 Broadway N Ste 606, Fargo, ND 58102
Website: www.ndgda.org

STU LETCHER, Safety & Health Director
Ph: 701-543-3110, Fax: 701-543-4183
P.O. Box 314, Hatton, ND 58240

HAL GRIEVE, Safety Specialist
Ph: 701-633-5256, Fax: 701-633-5258
204 4th Avenue S., Buffalo, ND 58011

September 19, 2007

Rep. James Oberstar, Chairman
Transportation & Infrastructure Committee
U.S. House of Representatives
Washington, DC

Dear Chairman Oberstar:

Thank you for calling this important hearing and for sponsoring customer-friendly rail legislation. The North Dakota Grain Dealers Association is a member of the Alliance for Rail Competition. We join ARC and the many other rail customer groups in support of your efforts. We all believe a financially strong rail industry is important to our industries and the nation, but the concentration of so much economic power in the hands of so few huge railroads has led to unintended consequences. Short lines serve a vital role, but they are not effective competition because of their ties to the larger carriers.

Some of the things grain shippers contend with include:

- High rates on some commodities, well over the STB's threshold of challenge.
- A difficult, lengthy and expensive complaint procedure on rates and service.
- Pressure to build larger facilities to load larger trains.
- Railroad car auction programs in which they bid against each other for a car supply controlled by the railroad. The quoted tariff rate is the base and bids can go only up from there.
- Best pricing and service requiring 12 or 24-month commitments of tens of millions of bushels of grain that only a few large grain companies can make.
- Supposedly guaranteed service at premium prices running late. Grain backs up; elevators are plugged; farmers can't deliver. In the past five years service has ranged from on time to 50 days late.
- Undependable Estimated Times of Arrival for trains that must be loaded in 15 hours after arrival. Grain elevator crews are kept on call or work erratic schedules as a result.
- One –sided site leases and track agreements that shift liability to the rail customer for railroad negligence. Some leases require the lessee buy insurance that isn't even available.
- A climate in which shippers fear retaliation if they complain too much.

If the rail industry faced effective competition it would have to do better for its customers. In the absence of effective competition, effective oversight must be exercised. That's what H.R. 2125 is all about.

Sincerely,

Steven D. Strege,
Executive Vice President

12 North Railroad Street, P.O. Box 248
Garrison, North Dakota 58540
Voice 701-463-7261
Fax 612-435-4868
www.jmgrain.com

Date: 09/19/2007

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. The legislation also includes provisions such as final offer arbitration, which are especially important to the agriculture industry.

Sincerely,

Justin Flaten
President
JM Grain inc.

STEPHEN J. SHURTS
General Manager
507-446-5402
shurts@owatonnautilities.com

September 17, 2007

The Honorable James Oberstar
Chairman
Committee on Transportation & Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Mr. Chairman,

I am the General Manager of Owatonna Public Utilities (OPU) and serve on the Board of Directors of our wholesale power supplier, Southern Minnesota Municipal Power Agency (SMMPA). Recently, our Board reviewed the impacts various costs are having on our electric rates. One clearly stands out – rail transportation costs. The latest rate increase to SMMPA from the BNSF Railroad is 55%. SMMPA is a captive shipper, so the only thing SMMPA can do is pass that huge cost increase onto us and the other members of SMMPA. Of course, our only option is to then pass the costs onto our customers, which are the residents and businesses of Owatonna.

I am writing to express OPU's strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, which, if enacted, would provide some much needed relief to the electric utility industry, an industry that has experienced severe upward pressures on costs and rates the past several years. The lack of competition among the rail industry has resulted in high rates and unreliable service.

On behalf of OPU, I thank you for your leadership and persistence on this matter and ask that you continue to move H.R. 2125 through the committee and the House of Representatives as soon as possible. If I can be of assistance, please feel free to contact me at the address, number or email address provided on this letter.

We are truly pleased you are in our corner on this matter!

Sincerely,

Stephen J. Shurts
General Manager

C Congressman Timothy Walz, House Transportation and Infrastructure Committee
Senator Amy Klobuchar
Senator Norm Coleman

208 S. Walnut • P.O. Box 800 • Owatonna, Mn 55060 • (507) 451-2480 • Fax (507) 451-4940 • www.owatonnautilities.com

Entergy Services, Inc.
Parkwood II Bldg., Suite 300
10055 Grogans Mill Road
The Woodlands, TX 77380
Tel 281 297 3629

Bill Mohl
Vice President
Commercial Operations

September 17, 2007

Hon. James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515

Re: H.R.2125

Dear Mr. Chairman:

We are writing to express our strong support for H.R.2125, the Railroad Competition and Service Improvement Act of 2007. We thank you for your leadership on this issue and are working to provide you the support necessary for this important legislation to become law in this Congress.

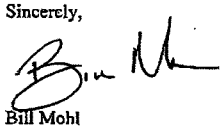
Our company relies on railroad transportation. We have no other viable transportation options for some of our movements. Our experience with the railroads has not been favorable. In the current consolidated railroad industry, that provides limited to no options for competition, we find that we are in a take it or leave it situation. Our railroad carrier dictates to us, without meaningful negotiation, the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, we recognize that the railroad industry is experiencing record profitability and has become a darling of Wall Street.

A key concern is the unwillingness of the railroads to negotiate commercially reasonable contracts for the provision of rail transportation due to their market power. The railroads refuse to provide any type of service guarantees or any penalties for failure to transport adequate amounts of coal to the plant under new contracts yet have increased the pricing for their transportation services by approximately 50%. The leverage of the railroads has created an untenable situation in which they are clearly utilizing their monopoly or market power to drive customers into "take-it or leave-it" contracts which provide no reciprocity. In other businesses, this would be considered as "anti-competitive"; however, due to the railroad's current anti-trust exemptions and lack of effective STB oversight, these conditions can be applied by the railroads with little or no consequences.

We understand that H.R.2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the Surface Transportation Board more pro-active in its

oversight of the railroad industry. These improvements in the current process would be extremely important to our business and to our customers. We believe that these changes will lead to the type of competitive railroad industry Congress intended when it adopted the Staggers Rail Act of 1980.

Sincerely,



Bill Mohl
Vice President - Commercial Operations
Entergy Services, Inc.

TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.
HEADQUARTERS: P.O. BOX 33695 DENVER, COLORADO 80233-0695 303-452-6111

September 14, 2007

Hon. James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

Tri-State Generation and Transmission Association, Inc., a wholesale electric power cooperative operating in Colorado, New Mexico, Nebraska and Wyoming, would like to express our strong support for H.R.2125, the Railroad Competition and Service Improvement Act of 2007. We thank you for your leadership on this issue and are working to provide you the support necessary for this important legislation to become law in this Congress.

Tri-State relies heavily on railroad transportation of coal to our generating facilities. We have no other viable transportation options for some of our movements. Our experience with the railroads has been a challenge at times. In the current consolidated railroad industry, that provides limited options, we find that we are in a take it or leave it situation. Our railroad carrier indicates to us, without meaningful negotiation, the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining.

We understand that H.R.2125 will increase our options with the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the Surface Transportation Board more pro-active in its oversight of the railroad industry. These improvements in the current process would be extremely important to our business and to our customers. We believe that these changes will lead to the type of competitive railroad industry Congress intended when it adopted the Staggers Rail Act of 1980.

Sincerely,

Robert "Mac" McLennan
Senior Vice President, External Affairs

Traverse Electric Cooperative, Inc.

P.O. Box 66
Wheaton, Minnesota 56296

A Touchstone Energy™ Partner
The power of human connections

Telephone 320-563-8616
Telephone 800-927-5443
FAX 320-563-4863

September 14, 2007

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Oberstar:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. I appreciate and encourage your efforts to correct the process on how the Surface Transportation Board handles rate cases.

The cooperative I work for - Traverse Electric Cooperative's power supplier, Basin Electric Cooperative - relies on railroads to deliver coal to its Laramie River Station near Wheatland, Wyo. There is no other viable transportation option. This provides no alternatives for competition in the current consolidated railroad industry; simple put, they find themselves in a "take it or leave it" situation. Our railroad carrier dictates to them - without meaningful negotiation - the price and terms of their transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability.

In view of the STB's decision to deny Basin Electric Power Cooperative and Western Fuels Association, Inc. rate relief even though their rates have doubled, it's time for action. Your legislation, H.R. 2125 is desperately needed to provide captive shippers a reasonable process for challenging rate and service disputes.

Many people in rural areas – from farmers to small business owners – depend on reasonable rail rates, but in our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and I applaud your efforts.

Thank you for your leadership on this issue.

Sincerely,

Donald O'Leary
General Manager

Supplying Electric Energy for Productive Farming and Better Living

BASF

The Chemical Company

Faced with the threat of losing half of their business, the railroad revised their offer for the business that they would retain, attaching a condition which required BASF to award the railroad all of the current business, including the competitive lanes, at the same predatory 25% rate increase, or in most cases, be faced with a revised rate increase for the captive business exceeding 100%, effectively eliminating our ability to move to the more competitive railroads.

This is a prime example of where the railroad used their monopoly power to ensure that even if they lost business to the competition, they would recapture the lost revenue and margin on the remaining business. Sounds more like the 1800's and tales about dealing with one of the famed Railroad Barron's, not the year 2007 where everyone, except the railroads, compete on a level playing field.

Of course BASF could have initiated a rate case with the STB, however what would be the likelihood of success given that the STB has publicly stated that captive price premiums are necessary for the overall good of the rail industry at the expense of individual captive shippers? Rate cases that have been filed in recent years have exceeded $3 million in cost and the duration for resolution has taken on average three years with outcomes seen as stalemates at best. As a result, we had to therefore question the value of such an effort. In our view, an STB that stands idle, contentedly awaiting shipper complaints, claiming statutory prohibition against self-initiated oversight, offers little or no value. This STB needs reform.

Sincerely,

David J. McGregor
Senior Vice President - NAFTA Logistics

LPEA
La Plata Electric Association, Inc.
A Touchstone Energy® Cooperative

La Plata Electric Association, Inc.
Greg W. Munro
Chief Executive Officer

Phone: 970-382-3530
FAX: 970-382-3519
Email: gmunro@lpea.coop

September 24, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

VIA: Fax and email

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

H.R. 2125 is needed because there is a lack of options available to rail customers, which has led to unreasonably high shipping prices. When complaints are filed with the Surface Transportation Board (STB) regarding these situations, the STB historically has not ruled in the shippers favor. An example of this is the STB's recent decision against Western Fuels, which supplies coal to Colorado rural electric cooperative power supplier, Tri-State Generation and Transmission Association. The STB decision allows Burlington Northern Santa Fe to charge Western Fuels over 500% of the railroad's variable costs to provide service and 4 times the average coal rate. The results hurt rural Colorado, the agricultural entities dependent on railroads and the electric cooperatives that depend on coal shipped via rail.

H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,

Greg W. Munro

Greg W. Munro
Chief Executive Officer

ARKEMA

September 17, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

Arkema Inc is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

Arkema, Inc has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, Arkema Inc thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

Arkema Inc

Denise L Hubbard
Director of Manufacturing, OP Americas

Arkema Inc.
18000 Crosby Eastgate Road
Crosby, TX 77532
Tel. : 281 328 3561 Fax: 281 328 4052
www.arkemagroup.com

MOUNTAIN PARKS ELECTRIC, INC.

Providing energy...and more

321 West Agate Ave. • P.O. Box 170 • Granby, CO 80446-0170
(970) 887-3378 • toll free (877) 887-3378 • fax (970) 887-3996 • mpei@mpei.com

September 19 2007

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Oberstar:

I am writing to express my strong support for H.R 2125, the Railroad Competition and Service Improvement Act of 2007. I appreciate and encourage your efforts to correct the process on how the Surface Transportation Board handles rate cases.

The cooperative I work for – Mountain Parks Electric Cooperative -- relies on railroads to deliver coal to the Laramie River Station near Wheatland, Wyo. There is no other viable transportation option. This provides no alternatives for competition in the current consolidated railroad industry: simply put, we find ourselves in a "take it or leave it" situation. Our railroad carrier dictates to us -- without meaningful negotiation – the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability.

In view of the STB's decision to deny Basin Electric Power Cooperative and Western Fuels Association Inc. rate relief even though their rates have doubled, its time for action. Your legislation, H.R. 2125 is desperately needed to provide captive shippers a reasonable process for challenging rate and service disputes.

Many people in rural areas – from farmers to small business owners – depend on reasonable rail rates, but in our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and I applaud your efforts.

Thank you for your leadership on this issue.

Sincerely,

Joe Pandy
General Manager

RR

Arizona Electric Power Cooperative, Inc.

P.O. Box 670 • Benson, Arizona 85602-0670 • Phone 520-586-3631

Via Federal Express

September 19, 2007

RECEIVED
SEP 24 2007
BY

Hon. James L. Oberstar
Chairman, House Transportation and Infrastructure Committee
United States House of Representatives
Room 2165, Rayburn House Office Building
Washington, D.C. 20515

RE: SUPPORT FOR H.R.2125, THE RAILROAD COMPETITION AND SERVICE IMPROVEMENT ACT OF 2007

Dear Mr. Chairman:

We are writing to express our strong support for H.R.2125, the Railroad Competition and Service Improvement Act of 2007. We thank you for your leadership on this issue and are working to provide you the support necessary for this important legislation to become law in this Congress.

Our company, Arizona Electric Power Cooperative, Inc., (AEPCO) is a cooperative located in Southeast Arizona that generates and transmits electricity to its rural electric cooperative members throughout the state. Eighty percent of the electricity provided to AEPCO's members (customers) comes from coal-fired generation.

AEPCO is captive to the Union Pacific for 140 miles of coal movement to its facility. Over 50% of the delivered cost of the coal burned at AEPCO's Apache Generating Station is for the transportation of the coal. AEPCO is very concerned about the potential for substantial increases to its transportation costs and expects that these costs could more than double when current contracts expire. AEPCO therefore faces a serious challenge in continuing to provide rural Arizona with reliable and reasonably priced electricity. Meanwhile, the railroad industry is experiencing record profitability.

We understand that H.R.2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the Surface Transportation Board more pro-active in its oversight of the railroad industry. These improvements in the current process would be extremely important to our business and to our customers. We believe that these changes will lead to the type of competitive railroad industry Congress intended when it adopted the Staggers Rail Act of 1980.

Thank you again for your attention to this very important legislation.

Sincerely,

Gary G. Grim
Senior Vice President and Chief Executive Officer

BR John

SLIVKA GRAIN

4126 PN Bridge Rd
Winifred MT 59489
Phone 406-462-5347
Fax 406-462-5372
E-mail lpslivka@ttc-cmc.net

September 10, 2007

RECEIVED
SEP 21 2007
BY

The Honorable James L. Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

I am writing you in support of H.R. 2125 the Railroad Competition and Service Improvement Act of 2007.

We as ag producers in Central Montana are particularly vulnerable to high rail rates as we are serviced by only one rail company. Therefore there is no competition for reasonable rail service rates and we also have a problem with unreliable rail service.

H.R. 2125 is a very important bill to us and we are in full support.

Sincerely,

Patricia Slivka

Patricia Slivka

09-14-07;03:51PM; ;651-228-1184 # 1/ 2

RR

Minnesota Association of Cooperatives
Blair Arcade West, Suite Y, 400 Selby Avenue, St. Paul, MN 55102
Phone: 651.228.0213
Toll Free (in MN, WI and ND only) 1.877.MNCOOPS
Fax 651.228.1184 www.wfcmac.coop

September 14, 2007

Representative James Oberstar
U.S. House of Representatives
2365 Rayburn Building
Washington, DC 20515

Dear Chairman Oberstar:

The Minnesota Association of Cooperatives (MAC) thanks you for authoring H.R.2125, the Rail Competition and Service Improvement Act of 2007. This important legislation aims to improve railroad competition and reasonableness at the Surface Transportation Board. We would also like to thank you for scheduling the September 20th hearing on railroad competition and service problems.

MAC is the statewide trade association representing all cooperative businesses in the state. Minnesota is the leading cooperative state in the nation and our more than 1,000 cooperative businesses are owned and led by more than 3.4 million Minnesotans. Cooperatives depend on rail shipment of goods such as coal, fertilizer, and grain. Without access to competition for freight delivery, we have become captive shippers to certain railroads and experience crippling cost increases and jeopardized service. This situation threatens the vitality of our rural economy.

Rural Minnesotans are being hard hit by the increased costs experienced by captive rail shippers. Our state's farmers are typically members of the rural electric co-ops that are experiencing much higher rates due to the railroads increasing the cost of coal transportation. These farmers are also being squeezed by costs being passed off to members of grain elevator co-ops that are having to build new rail shuttle loaders and pay higher rail fuel surcharges.

For example, Meadowland Co-op in Lamberton, a farm supply and grain cooperative, has been paying high fuel surcharges for the last several years. The co-op estimates the increased fuel costs for the railroad's service to Meadowland to be around $400,000, but the railroad has charged them $1.8 million. The company has had to absorb these large costs that significantly decrease its profitability. Service problems have also accompanied their increased rail costs; during July 2005 the railroad never sent a train to the co-op. Furthermore, the trains usually arrive on nights or weekends when the co-op must pay their staff overtime to load the cars.

Many people in rural areas – from farmers to small business owners – depend on reasonable rail rates, but in our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and again we applaud your efforts.

Thank you for your leadership and general direction on this issue.

Sincerely,

Brad Schardin,
General Manager

Cc South Dakota United States House of Representative Stephanie Herseth-Sandlin
331 Cannon House Office Building Washington, DC 20515-4136

NARC
Building Regional Communities

National Association of Regional Councils
1666 Connecticut Avenue, NW Suite 300
Washington, DC 20009
202.986.1032 (tel) 202.986.1038 (fax)
www.narc.org

September 24, 2007

The Honorable James Oberstar
Chairman
House Transportation & Infrastructure Committee
2165 Rayburn House Office Building
Washington, DC 20515

The Honorable John Mica
Ranking Member
House Transportation & Infrastructure Committee
2163 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar and Ranking Member Mica:

The National Association of Regional Councils (NARC) applauds and supports the passage of the Railroad Competition and Service Improvement Act of 2007 (HR 2125), which would increase competition in the railroad shipping industry. A safe, efficient and fair rail system is a critical component of our national, multimodal infrastructure network. Establishing new regulations and amending statues to improve transportation services to communities and businesses is necessary to bolster regional, state and national economic competitiveness. .

NARC, representing Councils of Government (COGs), Metropolitan Planning Organizations (MPOs) and Rural Planning Organizations (RPOs), serves as the national voice for regionalism – advocating regional cooperation as the most effective way to address a variety community planning, development and infrastructure issues. Regional governments are responsible for billions of dollars in transportation planning and programming each year, coordinating the overall planning and programming for projects and operations regionally throughout the country. These regional agencies are knowledgeable about the transportation issues that cut across city, county and, often times, state boundaries. Their expertise in regional transportation financing, planning and development, and new, emerging technologies will be an asset in the fight to combat congestion and improve our infrastructure.

Railroads, with their capacity to efficiently move goods and services throughout this country, play a key role in the overall transportation system. Maximizing their effectiveness is necessary not only to improve their performance, but also to strengthen our national transportation infrastructure network. NARC fully supports all efforts to improve rail capacity and service, further strengthening our transportation system. NARC strongly encourages the involvement of regional planning organizations as partners on any transportation proposals your Committee or personal office might consider.

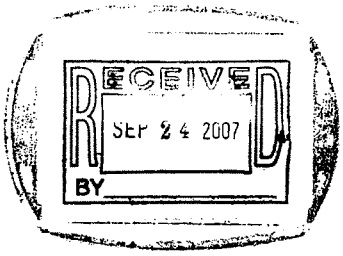
We commend your leadership on these important issues and offer our assistance for all transportation issues. Please do not hesitate to contact me if we can be of assistance. I can be reached at 202.986.1032 x 213 or cmoore@narc.org. Thank you.

Sincerely,

Cameron Moore
Executive Director

RR

OCI CHEMICAL CORPORATION
1800 West Oak Commons Court
Suite 100
Marietta, GA 30062
Phone 770/261-0400
Fax 770/261-0399



September 12, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

OCI Chemical is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

OCI Chemical has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, OCI Chemical thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Respectfully,

Brandan Huff

Brandan Huff
OCI Chemical

POUDRE VALLEY RURAL ELECTRIC ASSOCIATION, INC.

P.O. BOX 272550
FORT COLLINS, CO 80527-2550
Bus. Phone 970-226-1234
800-432-1012

7649 REA PARKWAY
FORT COLLINS, CO 80528
FAX 970-226-2123
www.pvrea.com

September 28, 2007

The Honorable James L. Oberstar
United States House of Representative
2365 Rayburn House Office Building
Washington, DC 20510

Dear Mr. Oberstar:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. I appreciate and encourage your efforts to correct the process on how the Surface Transportation Board (STB) handles rate cases.

I work for Poudre Valley Rural Electric Association, Inc., a distribution rural electric cooperative headquartered in fort Collins, CO. Our wholesale power supply cooperatives Tri-State Generation & Transmission Association, Inc. headquartered in Westminster, CO and Basin Electric Power Cooperative, headquartered in Bismarck, ND, relies on railroads to deliver coal to their Laramie River Station near Wheatland, Wyo. There is no other viable transportation option. This provides no alternatives for competition in the current consolidated railroad industry; simply put, we find ourselves in a "take it or leave it" situation. Our railroad carrier dictates to us, without meaningful negotiation, the price and terms of our coal transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, the railroad industry is experiencing record profitability.

In view of the STB's decision to deny Basin Electric Power Cooperative and Western Fuels Association Inc. rate relief even though their rates have doubled, its time for action. Your legislation, H.R. 2125 is desperately needed to provide captive shippers a reasonable process for challenging rate and service disputes.

Many people in rural areas, from farmers, to small business owners, to large manufacturers, depend on reasonable rail rates, but in our region, we are held captive due to the lack of competition and have no regulatory oversight available to us. We need a different process, and I applaud your efforts.

Thank you for your leadership on this issue.

Sincerely,

POUDRE VALLEY REA, INC.

Robert B. Gaskill
General Manager

September 25, 2007

The Honorable James Oberstar
Chairman, House Transportation & Infrastructure Committee
2365 Rayburn House Office Building
Washington, DC 20515

Dear Mr. Chairman:

I am writing to express my strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

H.R. 2125 is needed because there is a lack of options available to rail customers, which has led to unreasonably high shipping prices. When complaints are filed with the Surface Transportation Board (STB) regarding these situations, the STB historically has not ruled in the shippers favor. An example of this is the STB's recent decision against Western Fuels, which supplies coal to Colorado rural electric cooperative power supplier, Tri-State Generation and Transmission Association. The STB decision allows Burlington Northern Santa Fe to charge Western Fuels over 500% of the railroad's variable costs to provide service and 4 times the average coal rate. The results hurt rural Colorado, the agricultural entities dependent on railroads and the electric cooperatives that depend on coal shipped via rail.

H.R. 2125 will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

I thank you for addressing the captive shipper issue and respectfully request that the House Committee on Transportation & Infrastructure support this legislation and report H.R. 2125 to the full House for consideration.

Sincerely,

SAN MIGUEL POWER ASSOCIATION

Kevin L. Ritter

KEVIN L. RITTER,
General Manager / CEO

Headquarters
Box 817, Nucla, Colorado 81424
970-864-7311 • 970-864-7257 FAX

Box 547, Telluride, Colorado 81435
970-728-3825 • 970-728-5287 FAX

Box 1150, Ridgway, Colorado 81432
970-626-5549 • 970-626-5688 FAX

Box 419, Silverton, Colorado 81433
970-387-5711 • 970-387-5711 FAX

Occidental Chemical Corporation *OxyChem*
A Subsidiary of Occidental Petroleum Corporation

5005 LBJ Freeway, Suite 2200, Dallas, TX 75244-6119
P. O. Box 809050, Dallas, TX 75380-9050
Phone 972.404.4865 Fax 972.404.3350

Chuck Anderson
President

September 21, 2007

The Honorable
James L. Oberstar
2365 Rayburn House Office Building
Washington, DC 20515-2308

Dear Representative Oberstar:

Thank you for sponsoring the Rail Competition and Service Improvement Act of 2007 (HR 2125) and for scheduling a hearing on this important piece of legislation in the House Transportation and Infrastructure Committee. As President of Occidental Chemical Corporation ("OxyChem"), I offer you OxyChem's support for this legislation and for your efforts to enact it.

A safe, reliable and competitively priced rail freight system is crucial to the viability of the country's manufacturing base and the economy. We believe that as a result of significant rail industry consolidation and numerous Surface Transportation Board rulings in favor of the railroads since the Staggers Act, the railroads enjoy monopoly market power in many areas. Consider that in the 1970s there were 63 major U.S. railroads. Today there are just seven major railroads and 90 percent of the rail traffic is handled by only five of them. With this concentration of market power and dominance, the shipping community has been subject to rapidly increasing rail freight cost while at the same time service levels have been inconsistent at best.

Transportation by rail is critical to OxyChem's business because it is the safest, most efficient way to deliver our products. Yet many of our facilities and those of our customers are captive to a single rail carrier, and thus subject to the whims of the railroad. More specifically, about **76% of the product volume OxyChem ships by rail is subject to a single railroad's service and pricing at origin, destination or both**.

Due to this rail market power, it is no surprise that in just the last three and half years OxyChem's rail freight costs have increased nearly 40%. Recently quoted contract offers indicate to us that such an increase is just the beginning. We have seen some recent rate quotes reach more than $10,000 per tank car whereas our average rail freight customer per car is $3,300.

OxyChem primarily produces basic building block chemicals essential to the manufacture of thousands of finished products including medicines, electronics, disinfectants, crop protection and plastics. As you know, U.S. manufacturers have to compete in the global market. Our rail transportation system was once a competitive advantage for this country's manufacturing base. OxyChem believes it has now become a disadvantage.

Again, Mr. Chairman, thank you for your efforts to enhance competition and improve service in our nation's rail industry. Not only will rail shippers experience relief from the present practices of the railroads, but all Americans will benefit from this legislation being enacted in the form of more affordable products.

Sincerely,

B. Chuck Anderson

Responsible Care®
A Public Commitment

September 11, 2007

The Honorable James L. Oberstar, Chairman
Committee on Transportation & Infrastructure
U. S. House of Representatives
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

Air Liquide is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

Air Liquide has joined a broad coalition of rail customers from across the Nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the Nation's freight rail system, but was also intended to protect rail customers from abusive practices.

Air Liquide, headquartered in Houston, is one of the major industrial gas suppliers in the United States with plants located in every State. The company supplies oxygen, nitrogen, hydrogen, argon and many other gases and services to nearly every industry (for example: steel, oil refining, chemicals, glass, electronics, healthcare, food processing, metallurgy, paper and aerospace). Since it is generally not cost-efficient to transport industrial gases over great distances, Air Liquide manufactures virtually all of its products for its U.S. customers in the U.S. For this very reason, Air Liquide has a keen interest in encouraging the growth of the manufacturing sector in the United States and keeping domestic-based customers competitive in foreign markets.

The company's customers compete in a highly global marketplace. Vigorous competition does not exist in our Nation's freight rail industry. Rail customers have seen deteriorating service while rates have increased dramatically. The combination of poor service and increasing rates adversely impact on our customers in the global marketplace.

H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation. To that end, we thank you for addressing the issue of freight rail competition and respectfully request that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

L. Richard Pedersen
Director, National Distribution

AIR LIQUIDE INDUSTRIAL U.S. LP • 12800 West Little York, Houston, TX 77041
P.O. Box 3047, Houston, TX 77253
Phone: 713-896-2100

PPG Industries

Lynne D. Schmidt
Vice President
Government & Community Affairs
One PPG Place
Pittsburgh, PA 15272 USA
Telephone (412) 434-4397
ldschmidt@ppg.com

September 17, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Re: ***Support for H.R. 2125, the Rail Competition and Service Improvement Act***

Dear Chairman Oberstar:

On behalf of PPG Industries' 21,000 employees, thank you for introducing H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will provide competitive pricing.

PPG Industries is a global leader in the production and distribution of protective coatings, aircraft transparencies, aerospace coatings and sealants, flat and fabricated glass, continuous-strand fiber glass, chlor-alkali and specialty chemicals. Because PPG transports so many of these products by rail, a healthy, fairly priced rail system is crucial to our ability to compete. The lack of rail competition has been especially harmful to our chemicals business, as our costs for transporting some products have increased by 80 percent since 2004.

PPG has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with Surface Transportation Board (STB) decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, thank you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

Lynne D. Schmidt

Lynne D. Schmidt
Vice President
Government and Community Affairs

September 17, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

Afton Chemical Corporation is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

Afton has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, Afton thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

Damian Barnes /PK

Damian S. Barnes
Vice President
Supply Chain

Afton Chemical Corporation
500 Spring Street • Richmond, Virginia 23219 • tel: 804.788.5800 • fax: 804.788.5184 • www.aftonchemical.com

AGC

September 14, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

AGC is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. We believe that this legislation will help balance commercial relationships among railroads and their customers through much needed competition, leading to better rail service and competitive pricing.

AGC has primary flat glass manufacturing operations in West Virginia, Kentucky, Tennessee, Kansas, and California, along with smaller fabrication facilities in several other states including Pennsylvania, Michigan, & Ohio. AGC employees over 4,000 men and women in the United States.

AGC's experience with all the Class 1 railroads including the Union Pacific, BNSF, CSX, & Norfolk Southern has been that lack of competition has lead to magnified price increases, often over 25% in one year, with a take it or leave it approach by the rail carriers.

The STB has proved to be an ineffective body to ensure fair competition, with its recent ruling against the railroads unfair fuel surcharges only leading to the excess surcharges being forced permanently into rail rates. Addition measures are needed to insure that the full intent of the Staggers Act is realized, including protecting shippers against abusive practices.

AGC supports a healthy and viable freight rail system to move products safely and efficiently, and agrees that the rail industry needs to be profitable, but its unchecked market dominance is often injurious to many industries including the flat glass industry. To that end, AGC thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Sincerely,

Robert T. Gouge

Robert T. Gouge
Director of Purchasing

AGC Flat Glass North America, Inc.

P.O. Box 929
Kingsport, TN 37662

Tel (423) 229-7200 Fax (423) 229-7247
www.agc-flatglass.com

September 14, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Re: H.R. 2125

Dear Chairman Oberstar:

Akzo Nobel Chemicals Inc. operates seven (7) rail shipping sites in the U.S. All but one of these is captive to only one railroad. In the past few years we have seen numerous rate increases and significant deterioration of service at many of our locations. With no recourse to source raw materials or to move our finished products by other modes because of various factors, we have been faced with higher costs and significant lost goodwill with our customers. The railroads have 'hand-cuffed' our shipping options and we have no recourse to defend our rights. The Surface Transportation Board (STB), the vehicle that is supposed to protect these very shipper's rights, seems focused solely on protecting the railroads viability at the expense of the shipping community. We need relief now.

I am requesting yours and your respected colleagues' support for H.R. 2125; the Railroad Competition and Service Improvement Act of 2007. I fully believe this legislation will restore the needed balanced, commercial relationships between railroads and their customers. Without restoring the sorely needed competition, fully adequate rail service and necessary competitive pricing will not come to fruition.

Akzo Nobel Chemicals Inc. is a member of the American Chemistry Council and supports the broad coalition of rail customers that believe H.R. 2125 will fulfill the intended mission of the Staggers Act. Staggers not only sought to ensure the vitality of the nation's freight rail system at a time of great need, but it also intended to protect rail customers from abusive practices. At the time of Stagger's passage the U.S. rail shippers had significantly greater choice with whom they wished to do business. With the numerous mergers and acquisitions of the past 20 years, the very choice of whom to do business with has all but disappeared. The five remaining Class 1 railroads now

have overall monopolistic power that was never envisioned by the authors of Staggers and this needs immediate remedy for all affected shippers.

Akzo Nobel is a global company and competes in a fierce global marketplace. Such vigorous competition does not exist for our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, shippers have seen deteriorating service with dramatically increased rates. I firmly believe that H.R. 2125 will promote the needed competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation intended by Staggers.

I would appreciate your full support of the needs of my company and the industry as a whole. This is not purely a Chemical Industry issue; it transcends the U.S. commercial businesses that ship by rail. Many of us light our homes and businesses with electric power generated from coal. This coal is also most economically transported via rail to power plants all over the country. The very food we eat is at some point in the cycle is transported by railroads. All of these industries have the same concerns that my company has. We need fair competitive options made available to us as was intended by the authors of The Staggers Act many years ago. I fully believe that H.R. 2125 will get us the relief so badly needed.

I would be pleased to provide any other information you may need in this regard. Please feel free to contact me at the address below, and I will do what I can to address your request.

Yours very truly,

Edmund A. Stec

Edmund A. Stec
General Manager-Commercial Services
Akzo Nobel Chemicals Inc.
525 West Van Buren Street
Chicago, IL 60607
(312) 544-7401
edmund.stec@akzonobel.com

CRODA

Croda Inc
300-A Columbus Circle
Edison NJ 08837-3907
USA
Tel (732) 417-0800
Fax (732) 417-0804

September 12, 2007

Chairman Oberstar,

I am writing to thank you for your support and co-sponsorship of H.R. 2125 -Railroad Competition and Service Improvement Act of 2007 and I hope you will consider co-sponsoring H.R. 1650 - Railroad Antitrust Enforcement Act of 2007.

As you know, many of America's chemical companies are "captive customers" of individual railroad monopolies and are subject to unreliable service, exorbitant rate increases, and unreasonable rail fuel surcharges.

Reliability and fair service is crucial for chemical companies – but without competition, monopoly rail carriers have no incentive to deliver efficient, predictable service. Consider that in the 1970s there were 63 major U.S. railroads. Today, there are just seven, and 90 percent of the rail traffic is handled by only five. Federal legislation unfortunately is the necessary to ensure better rail competition and service.

Nearly two-thirds of America's chemical facilities depend on rail service are served by only one railroad. These "captive customers" are routinely subject to poor service and exorbitant prices because a single railroad has a monopoly on rail service at these sites. The Surface Transportation Board (STB), established by Congress to address these concerns, has failed to address their grievances. Congress should restore competition and balanced commercial relationships that would lead to better service at competitive prices.

In addition to H.R. 2125, passage of H.R. 1650 will allow "captive customers" to have the ability to seek a venue to override anti-competitive rulings of the STB, direct the STB to adopt pro-competitive policies, allow state Attorneys General and other private parties to bring a claim for marketplace damages and halt anti-competitive conduct, both of which are not currently allowable under federal law.

Railroad monopolies are driving a 'golden spike' through the heart of American competitiveness and are crippling America's chemical industry. Captive customers are completely at the mercy of the carrier and free and fair market forces no longer ride American rails.

As someone who is employed by a chemical company in your district – thank you for your support and leadership to pass H.R. 2125. Joining the effort to pass H.R. 1650 will further ensure the American chemical industry remains globally viable and competitive.

Regards,

Kevin Gallagher, President
Croda Inc

September 14, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

ERCO Worldwide is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

ERCO Worldwide has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, ERCO Worldwide thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

Regards,

Scott Sinclair
Logistics Manager
ERCO Worldwide
A division of Superior Plus LP

Olin
CHLOR ALKALI
PRODUCTS

490 Stuart Rd, NE, Cleveland, TN 37312
423-336-4212 • Fax: 423-336-4830

John L. McIntosh
President, Olin Chlor Alkali Products
& Vice President, Olin Corporation

September 10, 2007

The Honorable Jim Oberstar
Chairman
House Committee on Transportation & Infrastructure
2165 Rayburn House Office Building
Washington, D.C. 20510

Dear Chairman Oberstar:

Olin Corporation is writing to express its strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure competitive pricing.

Olin Corporation has joined a broad coalition of rail customers from across the nation that believes H.R. 2125 will fulfill the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

The business of chemistry competes in a fierce global marketplace, and chemical companies are stronger because they must operate that way. Such vigorous competition does not exist in our nation's freight rail industry. Coupled with STB decisions and policies that weaken market forces, rail customers have seen deteriorating service while rates have increased dramatically. H.R. 2125 promotes competition and fairness in the freight rail sector without foregoing any of the benefits of deregulation.

Our industry relies on a healthy and viable freight rail system to move our products safely and efficiently. We agree that the freight rail industry needs to be profitable, but its unchecked market dominance is often injurious to the chemical industry and many others. To that end, Olin Corporation thanks you for addressing the issue of freight rail competition and respectfully requests that the House Committee on Transportation & Infrastructure expeditiously report H.R. 2125 to the full House for consideration.

John L. McIntosh
Vice President, Olin Corporation
& President, Olin Chlor Alkali Products

OPENING STATEMENT OF
THE HONORABLE RUSS CARNAHAN (M0-3)
TRANSPORTATION AND INFRASTRUCTURE COMMITTEE
U.S. HOUSE OF REPRESENTATIVES

Hearing on
Rail Competition and Service

Tuesday, October 25, 2007, 10:00 AM
2167 Rayburn House Office Building

Chairman Oberstar and Ranking Member Mica, thank you for holding this important hearing on Rail Competition and Service.

As we all know, the strength of the railroad industry is very important to this nation. The ability to ship goods in a timely manner via rail is good for our economy and good for our environment. Every shipment which travels by rail results in less congestion on our highways and less greenhouse gases emitted into the environment. After passage of the Staggers Rail Act in 1980, the railroad industry was dramatically de-regulated. The result was consolidation of numerous freight railroads into seven companies and a return to financial prosperity for this industry.

However, I am concerned that these changes and the lack of sufficient action by the Surface Transportation Board have created a difficult situation for shippers. The Surface Transportation Board's process for shippers to obtain relief from unreasonably high rates is expensive and inefficient. In its 2006 report on the Surface Transportation Board, the GAO found that the process can cost $3 million per litigant. This is an unreasonably high fee, which affectively prevents shippers from receiving due process.

As we examine solutions to the problem of captive shippers, we must use caution to avoid re-regulating the railroads. I support finding a middle-of-the-road solution. I look forward to our witness' testimony, and specifically would like to welcome Ms. Susan M Diehl of Holcim, Inc.

######

OPENING STATEMENT OF REP. STEVE COHEN

Transportation and Infrastructure Full Committee Hearing

"Rail Competition and Service"

September 25, 2007

Today, the committee will examine rail competition and service, focusing on the Staggers Act, its long-term impacts on the rail industry as well as current legislation intended to protect rail customers from excessive rail rates. I am pleased that we have a wide variety of witnesses here representing the rail industry, various shipper groups as well as the Surface Transportation Board.

I have received correspondence from organizations from within the rail industry as well as those representing rail customers presenting differentiating views on H.R. 2125, the Railroad Competition and Service Improvement Act and its potential impact on rail service in communities across America. I have concerns with comments such as those from the American Association of Railroads, which contend that this legislation would impose unwarranted regulation and ultimately lead to "disinvestment in the rail system."

I am pleased that the Surface Transportation Board reports that it has taken actions to improve the rate relief process for shippers. Nonetheless, a recent report from the General Accountability Office noted that further actions are needed to address competition and captivity concerns. It is my hope that this hearing will be an honest and open dialogue on the issue of rail service in order to make certain that any legislative action taken by this committee serves the transportation interests of rail customers while ensuring railroads can continue to meet the nation's growing freight transportation needs.

COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE

"Rail Competition and Service"

September 24, 2007
10:00 a.m.
2167 Rayburn House Office Building

Opening Statement of Congressman Elijah E. Cummings

Mr. Chairman:

I thank you for calling today's hearing to give us the opportunity to take a comprehensive look at the state of competition in the U.S. freight railroad industry.

Obviously, the question of whether captive shippers are treated fairly under the current regulatory regime is an extremely important question. However, it is also a question that can apparently be answered only on the basis of extremely complex calculations that yield results that are still subject to interpretation.

In fact, in a report issued in 2006, the Government Accountability Office found that it was difficult to determine even how many captive shippers there are "because available proxy measures can overstate or understate captivity."

Though there may be uncertainty as to how many captive shippers there are, assuming that there are at least some, the Surface Transportation Board has established both a so-called "standard" and a so-called "simplified" method through which these shippers may seek rate relief.

The "standard" method is perhaps best described as extremely cumbersome. It is difficult to understand and expensive and time consuming to apply.

On the other hand, however, the so-called "simplified" method has not proven to be any better – in large part because no case has ever been heard using "simplified" guidelines.

The GAO has found that it can cost on the order of $3 million or more even to file a case seeking rate relief – meaning that it is clearly not a process that is equally accessible to all shippers – and it is particularly inaccessible to smaller shippers.

Nonetheless, though specific answers may be eluding us in a haze of "fuzzy math," it is of great concern to me that the GAO found in their 2006 study that there is "a reasonable possibility that shippers in selected markets may be paying excessive rates."

Resolving this issue in a manner fair to all parties is critical given the increase in freight that we can expect in the coming years – an increase for which neither our nation nor our nation's rail network is prepared.

Rail tonnage is expected to grow by some 60% by 2035 – but even with that increase, some have suggested that the percent of freight moved by rail could actually begin to decline.

The rail networks vigorously defend the rate structures currently in place – and argue that these structures have been critical to the successes they have achieved in recent decades.

Considering the state of decline to which the railroads had fallen in the 1970s, it is critical that nothing be done to threaten the railroads' stable operating position.

However, the railroads are also likely to face capital needs that they may be unable to meet with the levels of capital funding they currently generate.

They can be expected to seek federal assistance with their unmet capital needs – and as a study on rail infrastructure just completed by the GAO in response to a request issued by Chairman Oberstar and myself has reiterated, we urgently need a national policy to guide future federal investments in the rail networks.

Prior to making such investments, we must ensure that the rate structures in place are both sufficient to ensure the railroads can succeed and can make the long-term plans that are necessary to meet future freight growth – but at the same time wholly fair to shippers and particularly to captive shippers.

I thank Chairman Oberstar for calling today's hearing to enable to examine this critical issue and yield back the balance of my time.

Steve Kagen

Supporting Organizations

Alliant Energy
American Chemistry Council
Checker Logistics, Inc.
Chippewa Valley Bean Co.
Citizens Utility Board
Customers First! Coalition
Dairyland Power Cooperative
Domtar Industries
Georgia Pacific
Green Bay Area Chamber of Commerce
Green Bay Packaging
IBEW Local 2150
Leicht Transfer & Storage
Louisiana-Pacific
Madison Gas & Electric
Manitowoc Grey Iron Foundry
Manitowoc Public Utilities
Menasha Utilities
Midwest Food Processors Association
Municipal Electric Utilities of Wisconsin
Neenah Foundry
Ort Lumber
Packaging Corporation of America
Procter & Gamble
Sadoff Iron & Metal Company
Stora Enso
Timber Producers Association of Wisconsin & Michigan
Tomahawk Regional Chamber of Commerce
We Energies
WI Agri-Service Association
WI Cast Metals Association
WI Corn Growers Association
WI Farm Bureau Federation
WI Farmers Union
WI Federation of Cooperatives
WI Crop Production Assoc.
WI Industrial Energy Group
WI Manufacturers & Commerce
WI Merchants Federation
WI Paper Council
WI Professional Loggers Association
Wisconsin Public Power Inc.
WI Public Service Corp.
WI Utilities Association
Wolf River Lumber, Inc.

April 12, 2007

The Honorable Steve Kagen
U.S. House of Representatives
1232 Longworth HOB
Washington, DC 20515

Dear Congressman Kagen,

We are writing to thank your staffer, Casey Frary, for taking the time to meet with Badger-CURE members on March 21st as a part of Rail Customer Day and to **thank you** for agreeing to cosponsor H.R. 1650, the Railroad Antitrust Enforcement Act, and the Railroad Service and Improvement Act of 2007, which will soon be introduced by Rep. James Oberstar (D-MN).

As you may know, Badger-CURE consists of 45 Wisconsin businesses and organizations that joined together out of a shared concern over the impact high freight rail rates and declining service standards are having on the cost of doing business in our state. Badger-CURE has been very active over the last year in raising the awareness of elected officials and the general public about how the railroads have used their monopoly power to effectively tell their customers what will get shipped, when, and at what rate – with little or no negotiation. It is clear that the skyrocketing rate increases and unreliable service from the railroads will continue to negatively impact the state's economy unless Congress takes action.

Again, thank you for cosponsoring the rail bills sponsored by Rep. Tammy Baldwin and Rep. James Oberstar. Overall, they will encourage the railroads to be more responsive to their customers, provide a necessary check on their growing monopoly power, and will help keep Wisconsin's economy strong in the years to come. We look forward to working with you in 110th Congress and please do not hesitate to contact us if you need any assistance on this issue.

Sincerely,

Alliant Energy
Madison, Wisconsin

American Chemistry Council
St. Paul, Minnesota

Checker Logistics, Inc.
Neenah, Wisconsin

Procter & Gamble
Green Bay, Wisconsin

Sadoff Iron & Metal Company
Fond du Lac, Wisconsin

Stora Enso
Wisconsin Rapids, Wisconsin

Affiliated with Consumers United for Rail Equity (C.U.R.E.), a national coalition advancing the rights of rail customers in America.

Chippewa Valley Bean Co., Inc.
Menomonie, Wisconsin

Citizens Utility Board
Madison, Wisconsin

Customers First! Coalition
Madison, Wisconsin

Dairyland Power Cooperative
La Crosse, Wisconsin

Domtar Industries
Port Edwards/Nekoosa, Wisconsin

Georgia Pacific
Green Bay, Wisconsin

Green Bay Area Chamber of Commerce
Green Bay, Wisconsin

Green Bay Packaging
Green Bay, Wisconsin

IBEW Local 2150
Waukesha, Wisconsin

Leicht Transfer & Storage
Green Bay, Wisconsin

Louisiana-Pacific
Hayward, Wisconsin

Madison Gas & Electric
Madison, Wisconsin

Manitowoc Grey Iron Foundry
Manitowoc, Wisconsin

Manitowoc Public Utilities
Manitowoc, Wisconsin

Menasha Utilities
Menasha, Wisconsin

Midwest Food Processors Assoc.
Madison, Wisconsin

Municipal Electric Utilities of Wisconsin
Sun Prairie, Wisconsin

Neenah Foundry
Neenah, Wisconsin

Ort Lumber
New London, Wisconsin

Packaging Corporation of America
Tomahawk, Wisconsin

Timber Producers Association of
Wisconsin & Michigan

Tomahawk Region Chamber of Commerce
Tomahawk, Wisconsin

We Energies
Milwaukee, Wisconsin

Wisconsin Agri-Service Association
Madison, Wisconsin

Wisconsin Cast Metals Assoc.
Neenah, Wisconsin

Wisconsin Corn Growers Association
Palmyra, Wisconsin

Wisconsin Farm Bureau Federation
Madison, Wisconsin

Wisconsin Farmers Union
Chippewa Falls, Wisconsin

Wisconsin Federation of Cooperatives
Madison, Wisconsin

Wisconsin Crop Production Assoc.
Madison, Wisconsin

Wisconsin Industrial Energy Group
Madison, Wisconsin

Wisconsin Manufacturers & Commerce
Madison, Wisconsin

Wisconsin Merchants Federation
Madison, Wisconsin

Wisconsin Paper Council
Neenah, Wisconsin

WI Professional Loggers Association
Rhinelander, Wisconsin

Wisconsin Public Power Inc.
Sun Prairie, Wisconsin

Wisconsin Public Service Corp.
Green Bay, Wisconsin

Wisconsin Utilities Association
Madison, Wisconsin

Wolf River Lumber, Inc.
New London, Wisconsin

Replies to:

Badger-CURE c/o
Customers First! Coalition
14 W. Mifflin St. Suite 310
Madison, WI 53703

Steve Kagen MO

June 15, 2007

Representative Steve Kagen
1232 Longworth House Office Building
Washington, DC 20515

Dear Representative Kagen:

My name is Wayne Toltzman, Mayor of the City of New London, Wisconsin. I visited with some of you when I was in Washington D.C. in March of this year. I would again like to express my concern about New London's diminishing railroad service.

The State of Wisconsin, a few years ago, granted $350,000 to the City to construct a rail spur to the new Wolf River Lumber facility. The company was happily using rail for product delivery until the Canadian National assumed control of local traffic. Last year only three (3) cars shipped as the rates became so high that it was cheaper for Wolf River Lumber to containerize their products and ship them to Chicago by truck and then loading them on the cars of another railroad. The same is true of Sturms Foods, which is located 12 miles west of New London in the City of Manawa.

The branch line serving New London has its terminus in Manawa and originates 22 miles to the south at the main line serving Appleton. We have two (2) Bemis plants that receive about 250 cars of plastic resin pellets a year. The State of Wisconsin granted $200,000 for a spur into their second plant two years ago. These plants would like to increase their rail usage.

It is my sincere concern that in the near future the railroad will ask to abandon this line because of its self-caused loss of revenue. This would be a crippling blow to the industries in our City. If Bemis had to have their resin trucked in the cost increase would have to be reflected in their costs of their product making them uncompetitive. This would result in yet another loss of industry from Wisconsin to another State.

I would like to encourage you to keep rail pricing competitive, and not force all Central Wisconsin Industry to have to rely on trucking. The loss of rail would be devastating to our City.

Sincerely,

CITY OF NEW LONDON

Wayne Toltzman

Wayne Toltzman
Mayor

215 N. Shawano Street - New London, WI 54961
Phone (920) 982-8500 - Fax (920) 982-8665 - www.newlondonwi.org

Congressman Nick Lampson
Opening Statement
T&I Rail Competition Hearing
September 25, 2007

Chairman Oberstar, Chairwoman Brown, thank you for holding this important hearing to address rail competition and service. And thank you to our distinguished panel for being here. I look forward to hearing your testimony.

I am pleased to be here to hear from our Members and the panel on this issue. Rail competition is a very important topic in my district and in Southeast Texas where, as you know, is home to much of our nation's petrochemical industry and four of our top ten largest ports. In fact my district is home to over 8,000 Direct Chemical Manufacturing Industry Employees. That is the most of any other district in Texas.

I am concerned as to whether these people will be able to keep their jobs if we continue to operate under the current rail system. In most cases these companies' facilities are only served by one Railroad Company. In some cases these facilities are not owned by U.S. companies, and even if they are, they have the option to leave our country and take their jobs elsewhere. This is not the type of competition that we know works in our capitalistic system.

And it is not just the chemical companies, I have heard from the ag community in my district as well regarding their concerns over the current system.

Again, thank you for calling this hearing, and I yield back.

Statement of Rep. Harry Mitchell
House Transportation and Infrastructure Committee
Full Committee Hearing
9/25/07

--Thank you Mr. Chairman.

--As you know, freight rail is essential our nation's economy.

--According to the Association of American Railroads, more intercity fright tons are shipped across railroads than across any other mode of transportation.

--Ideally, rates would be set by competition.

--Unfortunately, many shippers find they have few, if any, competitive alternatives.

--Under the Staggers Act, the Surface Transportation Board is tasked with establishing a process to ensure that shippers can obtain relief from unreasonably high rates.

--Today we will be examining the operation of that rate relief process.

--I look forward to hearing from today's witnesses about how they think we can best ensure that rates remain reasonable for both shippers and railroads.

--I yield back.

Opening Remarks of U.S. Rep. Nick J. Rahall, II
Committee on Transportation and Infrastructure
Hearing on Rail Competition and Service
September 25, 2007

Mr. Chairman. This particular gentleman from West Virginia has had a long and intimate relationship with the Staggers Rail Act of 1980, primarily over the issue of captive shipper protections.

The publication Traffic World once described me, in my sophomore term, as coming "within a coal lump's distance of derailing the Staggers Rail Act."

Indeed, when the legislation that was to become the Staggers Rail Act was being considered by the House back in 1980, our former colleague Bob Eckhardt of Texas and I teamed up with a captive shipper amendment.

It was so successful that the bill's floor manager, Jim Florio, from what was then called the Committee on Interstate and Foreign Commerce, pulled the bill from further consideration.

Mr. Chairman, I well recall that fateful day returning to my office to see a railroad lobbyist in my front office in tears, literally, crying like a baby.

I guess those were the days when lobbyists were perhaps more in touch with their inner selves, and allowed to display emotion.

Subsequently, however, and it was not due to the tears of railroad lobbyists, a compromise was reached on the captive shipper issue in the form of the Staggers-Rahall-Lee-Loefler amendment which paved the way for House passage and ultimately the enactment of the Staggers Rail Act.

It is no secret that post-enactment I became extremely dissatisfied with the way the Interstate Commerce Commission was implementing the law.

Every railroad regardless of profitability was deemed revenue inadequate. I recall a time when the Norfolk Southern was the darling of Wall Street. But to the ICC, it was revenue inadequate.

The means for devising revenue-to-variable cost was corrupted. Determining market dominance was a joke. According to the ICC, there was always product and geographic competition.

A coal-fired powerplant conceivably could convert to oil, and a powerplant in Colorado could conceivably ship coal in from West Virginia instead of Wyoming.

During the decade of the 1980s and into the 1990s, I was the flag bearer for reregulating the railroads. Offering bill after bill, amendment after amendment, only to be stone walled by the now Energy and Commerce Committee.

By golly, if the Republicans did one thing right during their majority, it was to move the jurisdiction over railroads from the Energy and Commerce Committee to this committee.

As we got well into the 1990s, however, something happened. My shippers stopped complaining. Appalachian coal producers, and those in West Virginia, stopped being the subject of railroad predatory pricing practices.

And with that reality, I became a recovering reregulator.

I will conclude with this note. Cross-subsidization, in the parlance of the railroad regulatory scheme known as differential pricing, is part and parcel of maintaining a healthy and viable railroad network which is in the national interest.

I accepted that concept back in 1980, and throughout my efforts to re-regulate the railroads. During the course of this hearing I hope issues involving this matter are clarified, and Mr. Chairman, I thank you for scheduling this hearing.

QUESTION FOR STB CHAIRMAN NOTTINGHAM

- **Chairman Nottingham, I would appreciate it if you would expand upon what I view as one of the pillars of the Staggers Rail Act, differential pricing. In particular, how differential pricing works to insure that we have in this country a financially sound and viable railroad network, which is, as I always note, [illegible] in our national interest.**

- **As a follow-up, would you say that differential pricing is not unique in the transportation sector to the railroads. For instance, airlines sell similar seats on the same plane for different prices.**

- **Also to the STB, what are your observations in the area of coal transportation by rail – are you seeing more coal being moved, are you aware of any major capacity constraints?**

Opening Statement
Congressman John T. Salazar
T&I Full Committee
Hearing on Rail Competition and Service
September 25, 2007

Thank you, Mr. Chairman.

And thank you for calling this important hearing and inviting various affected industries to testify on this issue.

As consumers, we all want good quality and service at a fair price.

Shippers want the same thing from their carriers.

I have heard from both sides of this issue and I'm sympathetic to many of the concerns that have been raised.

A central question is whether the current statutory framework, established by the Staggers Act, represents a sound approach for today's transportation needs.

I have heard from shippers that have experienced some rail transportation problems, but have been able

to work with carriers to resolve and minimize their problems.

They fear that legislation could threaten the viability of many industries' most cost effective means of transporting goods.

Many believe that the marketplace is the surest way to guarantee that rail service is safer, more reliable, more efficient and less costly.

And they question if HR 2125 is a 'one size fits all' type of remedy.

On the other hand, I hear from folks in agriculture who are frustrated with lack of cars, poor service, and high prices.

Specifically, I've heard from Colorado wheat farmers who have experienced problems getting their wheat to storage, because there was a shortage of rail cars to transport their crop.

I have also talked to the rural electric cooperatives in my state who depend on coal shipped via rail.

One complaint I hear often is that the STB (Surface Transportation Board) has not acted in a timely or

effective manner in addressing competition and capacity concerns.

I'm glad Mr. Buttrey, Mr Nottingham is here and I hope he'll They'll speak to those concerns.

I believe our freight transportation system should be competitive, efficient, accountable, safe and reliable.

We're here to review the current situation and to determine how best to proceed in the future.

I look forward to today's hearing and thank the witnesses for being here.

Thank you.

Breslin, Cathleen

From:	Larsen, Timothy [Tim Larsen@ag state.co.us]
Sent:	Thursday, September 13, 2007 4:34 PM
To:	tate.rosenbusch@mial.house.gov; Breslin, Cathleen
Subject:	Rail transportation issue with Colorado wheat harvest
Follow Up Flag:	Follow up
Due By:	Monday, September 24, 2007 11:00 AM
Flag Status:	Red
Attachments:	Request for Executive Order.doc; transp impact on July Aug marketings.doc; rmn wheat cover photo.doc; Gov Exec Order Final 3 (2).doc; ExecutiveOrder-DisasterWheatTransportation.pdf

We continue to have problems with moving Colorado wheat from our captive shippers in eastern Colorado.

After years of drought, Colorado has had a good wheat harvest, only to find that the wheat cannot be shipped due to lack of rail service

Last month the Governor of Colorado issued an emergency order to allow farm plated trucks to haul wheat for elevators in an attempt to move some of the grain.

We have about 10 million bushels of grain on the ground (exposed to rain etc) in addition to full elevators. Now we are approaching the corn harvest and have nowhere to place the corn.

Elevators in Springfield Colorado (on BNSF line) are in particular need of more rail car availability to move their grain

Attached is some of the information we have developed

Original request for order
Gov's order
Additional statistical facts on why there is a need for more transportation (higher harvest and with record prices, higher sales in July and Aug)

Any assistance you can provide will be appreciated. Please contact me if you need additional information.

Sincerely,

Tim Larsen

Timothy J. Larsen
Senior International Marketing Spec.
Colorado Department of Agriculture, Markets Division
700 Kipling Street, Suite 4000
Lakewood, Colorado 80215, USA
303-239-4118; Fax 303-239-4125
Email: tim.larsen@ag.state.co.us
Visit our ag. exporter web portal: www.coloradoagriculture.com/exporter

Further information on Wheat harvest and impacts leading to Governor's Executive Order

I talked with the CWAC today to obtain additional information about the wheat harvest and marketing of wheat which resulted in the need for the executive order

	2006	2007
Total wheat harvested Million bushels	39.9	87.75
Wheat assessment paid through August (mil bu)	11.7	28.8
Increased wheat in 2007 Marketed above 2006		17.1 million bushels
Movements required for Marketings		
Rail cars	3,545	8,727
or		
Trucks	8,257	20,325
Increased handling Required		
Rail cars		5,182
or		
Trucks		12,068

Request for Executive Order

Issue:

- Colorado wheat farms are diversifying their wheat crop by producing Hard White Wheat in addition to the traditional Hard Red Winter Wheat.
    - Colorado is now the third largest Hard White Wheat grower in the nation.
    - This wheat cannot be stored with Hard Red Winter wheat, therefore placing additional strain on our wheat marketing infrastructure.
    - Wheat in Colorado is grown in the 32 counties covered by the Colorado Wheat Marketing Order. **(32 counties affected: Adams, Arapahoe, Baca, Bent, Boulder, Cheyenne, Crowley, Custer, Douglas, Elbert, El Paso, Fremont, Huerfano, Jefferson, Kiowa, Kit Carson, Larimer, Las Animas, Lincoln, Logan, Morgan, Moffat, Otero, Phillips, Prowers, Pueblo, Rio Blanco, Routt, Sedgwick, Washington, Weld, and Yuma.)
    - 4-6 million bushel of wheat is currently "on the ground" in temporary storage.
- Colorado grain elevators are experiencing a shortage of rail cars to move wheat to storage in addition to paying a premium for any cars allocated.
- Currently wheat is being stored on the ground and will degrade soon if it is not moved to grain elevator storage.
- Elevators are reporting that they are paying $400 per single car above tariff rates and as high as $2,000 per car above tariff rates for shuttle trains.
- The PUC issues Certificates of Temporary Conveyance to allow farmers to use their equipment for hire for a 90 day period around harvest. This year we clarified that this also applies to contract hauling from the elevator to other storage as well as from the farm.
- The Ports of Entry (Dept of Revenue) have contacted our industry and stated that this PUC action cannot override the Dept of Revenue regulations on truck licensing and the PUC permits cannot be used by trucks with "Farm Plates" on the truck.
- The Dept. of Revenue (Ports of Entry) have assisted us with identifying the only way to overcome this barrier, which is for the Governor is issue an Emergency Order" to allow the use of Farm Plates with the PUC permits to move grain.
- Colorado's corn harvest begins in late September and October which will also be impacted if we cannot move the current wheat out before the corn harvest begins. Many elevators are used for both wheat and corn.

Action required:

The Commissioner of Agriculture and the Director of Revenue concur on this action and the request the Governor issue an emergency order to allow the movement of grain by farm plated trucks for 45 days.

Timing:

This Emergency order is required immediately. Every day we risk loss of grain that is stored on the ground. In addition, without adequate options to move grain on to market, our farmers are receiving less money for their harvested wheat that they would if adequate rail and truck support was available to move the grain to storage.

September 16, 2007

The Honorable John Salazar
U.S. House of Representatives
1531 Longworth House Office Building
Washington, DC 20515

Dear Congressman Salazar:

I am writing to ask you to co-sponsor H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. This legislation fulfills the mission of the Staggers Act, which not only sought to ensure the vitality of the nation's freight rail system, but was also intended to protect rail customers from abusive practices.

This reform is needed because there is a lack of options available to rail customers, which has led to unreasonably high shipping prices. When complaints are filed with the Surface Transportation Board regarding these situations, the STB historically has not ruled in the shipper's favor. An example of this is the STB's recent decision against Western Fuels, which supplies coal to Colorado rural electric cooperative power supplier, Tri-State Generation and Transmission Association. The STB decision allows Burlington Northern Santa Fe to charge Western Fuels over 500% of the railroad's variable costs to provide service and four times the average coal rate.

There are only four major rail carriers left in the United States now and their practices are driving up energy and consumer good prices. The results have hurt rural Colorado, the agricultural entities dependant on railroads and the electric cooperatives that depend on coal shipped via rail.

I urge you to co-sponsor H.R. 2125. This legislation will restore balanced commercial relationships among railroads and their customers through much needed competition, will lead to better rail service, and will ensure fair pricing.

Thank you for your consideration and I look forward to hearing from you soon.

Sincerely,

440 Mesa Heights Dr.
Durango, CO 81303

Statement for the Record
Congressman Adrian Smith
Committee on Transportation and Infrastructure
Hearing on Rail Competition and Service
September 25, 2007

Thank you Chairman Oberstar and Ranking Member Mica for holding this important hearing on rail competition and service. This subject is certainly very timely for the Committee on Transportation and Infrastructure. Although I am not a Member of this Committee, the issue of rail competition is one of great importance to agriculture, freight transportation and our economy, and must be debated and considered carefully before Congressional intervention is taken. I certainly appreciate your willingness to allow me to participate.

The Third District of Nebraska, which I am proud to represent, relies on the rail industry to transport agricultural products, coal, and other materials. In fact, the busiest rail spur in the world is located in North Platte, NE. As agriculture is the backbone of the economy in my district, the rail industry must provide a safe and efficient method of delivering goods. With that, adequate rail capacity is critical in order for freight railroads to meet growing transportation needs. As freight demand is expected to grow in the years ahead, and with aging infrastructure concerns affecting all States, railroads must be allowed to sustain this growth and demand.

Many constituents in my district have contacted me regarding the rail competition issue this Committee is exploring today. Agriculture and freight transportation are both crucial to the Third District of Nebraska, just as they are critical to many other areas of the country. The rail industry and agricultural community rely on each other considerably and both have a great interest in this debate. I look forward to learning from all of the qualified witnesses asked to testify at this hearing and the lively dialogue sure to follow. I applaud the Committee on Transportation and Infrastructure for taking a proactive step and facilitating this discussion.

Again, thank you Chairman Oberstar and Ranking Member Mica for your leadership on transportation issues.

Statement for the Record for Congressman Walz
"T & I Committee on "Railway Competition and Service"
September 25, 2007

I want to thank Chairman Oberstar and Ranking Member Mica for calling today's hearing on "Railway Competition and Service."

America needs a vibrant, healthy rail industry. Our railroads need to be able to earn a decent profit on their operation in order to ensure that important investments in infrastructure and maintenance are made. However, I do not believe it is fair that rail customers who do not have access to competition often pay unreasonably high rates and that they must deal with a federal regulatory agency that all too often does not seem to serve their interests.

The number of Class I railroads serving the United States has fallen from more than 40 in 1980 to just four today. These four major railroads control more than 95 percent of the railroad business. As a result of this consolidation, entire states and industries are served by only one Class I railroad. We should preserve rail competition where it is working and promote competition among rail carriers where there is none.

When I am home in Minnesota—particularly in the southwestern part of my district, which is heavily agricultural—I hear people talk every day about the need for expanded rail service. I am not going to demagogue the railroad industry; we need a healthy rail industry. But people are unhappy with the service they get and the price they pay for it. I hope that today we can try to learn why.

This hearing today, to look at addressing both railway competition and service, is timely. Thank you again, Mr. Chairman, for holding this hearing and I look forward to hearing from our witnesses and to working with Committee members as we address this issue.

Testimony of W. Douglas Buttrey
Vice Chairman of the Surface Transportation Board
395 E Street, SW; Washington, D.C. 20423; (202) 245-0220
Before the
House Committee on Transportation and Infrastructure
Hearing on Rail Competition and Service
11:00 A.M., September 20, 2007
2167 Rayburn H.O.B.

Good morning Chairman Oberstar, Ranking Member Mica, and Members of the Committee.

My name is Douglas Buttrey. I have had the privilege to serve as a Member of the Surface Transportation Board since May 28, 2004, and currently I am the Board's Vice Chairman.

I appreciate the opportunity to appear before the Committee today as you conduct this hearing on rail competition and service. The Board's Chairman, Charles Nottingham, has submitted extensive testimony which discusses key issues before the Board and summarizes significant decisions that the Board has recently issued. The Chairman's testimony covers everything that I would have said, accurately and in detail. Rather than duplicating coverage of the same topics, I will instead associate myself with and endorse the Chairman's formal, filed testimony.

I stand ready to respond to any questions the Committee may wish to address to me.

Surface Transportation Board
Washington, D.C. 20423-0001

Office of the Chairman

October 24, 2007

The Honorable James L. Oberstar
Chairman
House Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

The Honorable John L. Mica
Ranking Republican
House Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Oberstar and Ranking Republican Mica:

We are writing to respond to questions posed during the hearing on September 25, 2007, before the Committee on Transportation and Infrastructure regarding Rail Competition and Service. The questions we address below pertain to user fees charged by the agency for rate cases, other agencies' authority to initiate investigations on their own motion, and the extent of the Board's authority over leveraged buyouts of rail carriers by hedge funds.

A. User Fees. Our user fees reasonably reflect our current costs. To begin, we note that we do not assess user fees because we want to. Rather, the Independent Offices Appropriation Act (IOAA) of 1952 obliges the Board to charge fees for particular services rendered to identifiable beneficiaries. Under the IOAA, "each service . . . provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible." 31 U.S.C. 9701.

Administrative guidance for implementing the IOAA, set forth in Office of Management and Budget (OMB) Circular No. A-25 (Revised) (July 8, 1993), provides that "a user charge . . . will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." Circular No. A-25 ¶ 6. A "special benefit" exists when a government service "provides special benefits to an identifiable recipient beyond those that accrue to the general public." Id. ¶ 6.a.1. User fee charges are generally to be sufficient to recover the full cost to the Federal government of providing the service. Id. at ¶ 6.a.2.(a). "Full cost" includes all direct and indirect costs to any part of the agency of providing the service; it includes, among other things, direct and indirect personnel costs (including salaries and fringe benefits), physical overhead, and management and supervisory costs. Id. ¶ 6.d.1.

In Regulations Governing Fees for Services, 1 I.C.C.2d 60, 67 (1984), the Board's predecessor, the Interstate Commerce Commission (ICC), found that the assessment of user fees is warranted in complaint proceedings, because in those cases, "the individual complainant receives the specifically identifiable benefit of having its particular rate or practice complaint resolved for it" by the agency. Therefore, in a notice-and-comment rulemaking, the ICC established procedures for determining agency costs for the purpose of assessing user fees. The basic elements of the formula (which has been modified on occasion), include direct labor costs (including government employee salaries and benefits), operations overhead, general and administrative costs, and publication costs. Each year the fees are updated based on changes in the cost data to which the formula is applied. See 49 C.F.R. 1002.3.

In 1996, the Board completed a "time and motion" study that looked at the actual work done in recent cases to determine the full cost to the agency of adjudicating major rate cases (that is, cases using the Board's Stand-Alone Cost methodology). For the year 1996, the cost was determined to be $233,240. Because that full cost was significantly higher than the then $1,000 fee for filing a formal complaint, the agency decided to soften the impact of an immediate full increase through a gradual 10% annual phase-in of the full fee. Thus, in 1996, the Board set the fee for a major rate complaint at $23,300, which was 10% of the calculated 1996 cost to the agency of adjudicating that type of complaint.

Since then, the agency has updated its cost estimates each year, based on annual incremental changes in the cost data that feed into the costing formula. In April of 2007, the Board issued its most recent annual fee update decision.[1] As detailed in that decision, the 2007 estimated cost of adjudicating a major rate case has been determined to be $356,432. The gradual phase-in of the filing fee for major rate cases has not yet been fully implemented; as a result, the 2007 filing fee is capped at 50% of that estimated agency cost, or $178,200. Although our cost estimate does not account for the significant recent changes to our rate case processes, as to which we have not yet obtained extensive experience, we should note that rate cases, as well as the litigation tactics of the parties, in general have become more complex since our time and motion study was completed, and therefore the $356,432 figure is, if anything, likely understated.

Finally, it should be noted that the major rate case filing fee applies only to a relatively small number of very large, complex cases. Most STB user fees are much smaller. Indeed, an estimated 73% of all potentially challengeable rail movements would be suitable for adjudication under the Board's new revised procedures for small- and medium-sized rate cases, under which a rail customer can seek up to $1 million in relief for a filing fee of only $150.

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[1] Regulations Governing Fees For Services Performed in Connection With Licensing And Related Services–2007 Update, STB Ex Parte No. 542 (Sub-No. 14) (served April 6, 2007) (2007 Update).

B. Own-motion Investigations. During the hearing, we were asked whether other agencies have authority to initiate investigations on their own motion. The question arose in the context of the discussion of rail fuel surcharges. As you are aware, after holding hearings on its own initiative, the Board found that surcharges based on a percentage of the base rate did not necessarily reflect actual fuel cost increases, and that railroads therefore could not fairly label such charges as fuel surcharges.

The Board did not, however, pursue damages for particular shippers, in part because no shipper filed a complaint seeking damages. Although the Board has authority to "inquire into and report on the management of the business of carriers," 49 U.S.C. 721(b)(1), the portion of the statute entitled "Enforcement: Investigations, Rights, and Remedies" now provides that the Board may institute an investigation that could lead to an award of damages only on complaint. See 49 U.S.C. 11701(a). Before 1996, section 11701(a) authorized the Board's predecessor, the ICC, to initiate an investigation on its own initiative. The deletion of the own-motion investigation provision was intentional. See H. Conf. Rept. No. 422, 104th Cong., 1st Sess. 194 (1995) (the adopted House provision changed the underlying "source of the agency's authority to investigate rail matters under its jurisdiction, [which] is now limited to action on the basis of a complaint, not on the agency's own motion").

Various other agencies have own-motion investigative authority. For example, the Federal Energy Regulatory Commission may institute own-motion investigations and take remedial actions with regard to a variety of energy-related issues under section 206 of the Federal Power Act, and under section 4 of the Natural Gas Act. The Federal Maritime Commission may investigate on its own motion whether any laws or practices of a foreign government or foreign carrier produce conditions that adversely affect the operations of U.S. carriers, 46 U.S.C. 42302, and take appropriate remedial action. The International Trade Commission, on its own motion, may investigate cost differences in producing items domestically and overseas, 19 U.S.C. 1336(a), and may instigate changes in duties on imports to equalize the cost differences. The Equal Employment Opportunity Commission may look into and remedy unlawful employment practices when "a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission," 42 U.S.C. 2000e-5. And the Secretary of Labor has "the responsibility and authority to detect and investigate" ERISA violations and to initiate civil proceedings without a complaint from a private party, 29 U.S.C. 1132.

If an expansion of the agency's existing investigative powers is contemplated in the future, it may be necessary to revisit not only 49 U.S.C. 11701(a), but other statutory sections as well, such as 49 U.S.C. 10702 and 10704.

C. Takeovers of a Rail Carrier. The Board has authority to regulate some railroad transactions, but not others. Any authority that the Board might have over the takeover of a rail carrier by a non-carrier such as an investment partnership or "hedge fund" would have to derive from either 49 U.S.C. 11323 or 49 U.S.C. 10901, which are the provisions that apply to acquisitions of rail property by non-carriers. Section 11323(a)(4), which typically applies when transfers of stock and control of a company

are involved, provides that Board approval and authorization is required for the "[a]cquisition of control of at least 2 rail carriers by a person that is not a rail carrier." This provision might apply if a non-carrier were to acquire a single rail carrier that itself owns another rail carrier (for example, a large railroad that owns a small railroad), but under agency precedent the authorization requirement would not apply if the two or more carriers being taken over operate as a single integrated transportation system. And section 10901, which generally applies to transfers of physical property, requires Board authorization if a person other than a rail carrier acquires a "railroad line." This provision appears to be focused on discrete lines, not carriers, and we do not believe that it would normally be applied if a non-carrier sought to take over a major rail carrier.

The question of the agency's jurisdiction over leveraged buy-outs arose in 1989 with respect to a proposed takeover of Chicago and Northwestern Transportation Company, then a Class I rail system, by Japonica Partners. In response to a request from the Senate Commerce Committee, the ICC prepared a report in which it analyzed the relevant statutory provisions and concluded that it would be difficult as a matter of law for the ICC to exercise jurisdiction over the proposed transaction. Reacting to the ICC's report, Congress quickly moved to give the agency responsibility for approving such transactions. In particular, the legislation would have required ICC approval for a noncarrier to acquire direct or indirect control over a Class I rail carrier. President George H.W. Bush, however, vetoed the legislation. In doing so, he specifically cited the "unprecedented new regulatory review requirement" imposed on the ICC, which he viewed as a counterproductive step backward from prior deregulatory legislation. Although not dispositive, this legislative history tends to confirm that the agency would lack approval authority over the acquisition of a large rail system by a noncarrier.

We hope this information will be helpful to you and Members of the Committee. If you have further questions or concerns, please contact us, or your staff may contact Matthew Wallen, Director of the STB's Office of Governmental and Public Affairs, at (202) 245-0238.

Sincerely,

W. Douglas Buttrey
Vice Chairman

Charles D. Nottingham
Chairman

Francis P. Mulvey
Commissioner

cc: Chairwoman Corrine Brown, Subcommittee on Railroads, Pipelines, and Hazardous Materials
Ranking Member Bill Shuster, Subcommittee on Railroads, Pipelines, and Hazardous Materials

BEFORE THE

HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

RAIL COMPETITION AND SERVICE

Kenneth C. Clayton
Associate Administrator
Agricultural Marketing Service
U.S. Department of Agriculture
Washington, D.C. 20250

Date: September 25, 2007

Mr. Chairman and members of the Committee, I am pleased to appear before you today to present the views of USDA regarding rail competition and service. As Associate Administrator of the Agricultural Marketing Service at USDA, I oversee domestic and international marketing programs for American food and fiber. Included within these program responsibilities is USDA's work on agricultural transportation.

BACKGROUND ON CONCERNS

On October 6, 2006, the United States Government Accountability Office (GAO) released a report that included observations on rates, competition, and capacity issues in the U. S. rail freight industry.[1] GAO found that most rail rates have declined since 1985, but that grain rates diverged from the trends of other industries. In addition, the GAO reported that the amount of grain traffic with comparatively high markups over variable cost increased notably between 1985 and 2004.

This year, the GAO released information updated to include data for 2005.[2] This report noted that 2005 rail rates "increased 7 percent over 2004 levels, which is the largest annual increase in the past 20 years, outpacing the rate of inflation for only the second time in 20 years." Rate changes for grain continued to outpace the rate of inflation and continued to diverge from the trends of other industries. In addition, miscellaneous railroad revenues—which include fuel surcharges—nearly tripled from $633 million in 2004 to $1.7 billion in 2005.

USDA, like GAO, is concerned about the possible effects of railroad market power in some regions of our nation. Consequently, USDA concurs with GAO's

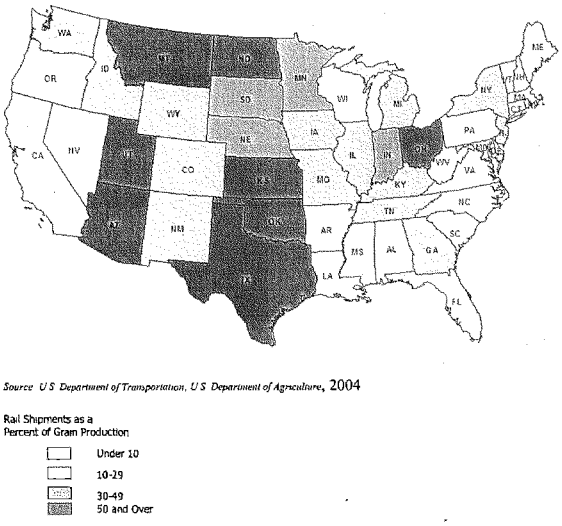
[1] Freight Railroads, United States Government Accountability Office, GAO-07-94, October 2006.
[2] Freight Railroads, United States Government Accountability Office, GAO-07-291R, August 15, 2007.

recommendation that the Surface Transportation Board (STB) conduct a rigorous analysis of competition in the freight rail industry. On September 13, STB awarded a contract to an independent analyst to conduct a study on railroad competition.

AGRICULTURE AND RAIL TRANSPORTATION

An affordable and reliable transportation network is necessary to maintain the strength and competitiveness of American agriculture and our rural communities. Rail service is a particularly important part of that network for U.S. agriculture, and it is virtually the only cost-effective bulk shipping alternative available in many rural areas. Several states - including Arizona, Kansas, Montana, North Dakota, Ohio, Oklahoma, Texas, and Utah - rely heavily on rail services for the transportation of grains. More than 50 percent of corn, wheat, and soybeans produced in these states is moved by rail (Figure 1).

Figure 1. Railroad Shipments/Production Ratio



Rapid expansion of the U.S. ethanol industry could have several implications for agricultural transportation, including increasing volumes of ethanol shipments and shifting grain and oilseed marketing patterns that could occur due to changes in production and use. In 2005, rail was the primary transportation mode for ethanol,

shipping 60 percent of ethanol production (or approximately 2.9 billion gallons of ethanol), followed by trucks at 30 percent, and barges at 10 percent.

The lack of excess transportation capacity increases the sensitivity of transportation to sudden changes in transportation demand and distribution patterns. Changes in these patterns brought on by rapidly increasing ethanol production could impact rail network performance, highway congestion, and barge traffic. For example, the increased sensitivity of transportation modes became evident in the aftermath of Hurricanes Katrina and Rita in 2005, when rail had insufficient capacity to transport displaced grain barge freight and trucks could not carry the grain economically for long distances.

Rail capacity for agricultural products has been extremely tight during the last four years, for a number of reasons, both agricultural and non-agricultural. Non-agricultural factors include general economic expansion, increased international trade, increased rail-truck intermodal traffic, increased demand for coal due to high natural gas prices, high fuel prices shifting truck traffic to railroads, and new hours of service (trucking) regulations increasing rail intermodal demand. Agricultural factors include strong grain export demand, higher prices for agricultural crops, back-to-back record or near-record grain harvests, a surge in ethanol and ethanol co-product production.

BENEFITS OF THE STAGGERS ACT

The Staggers Rail Act of 1980 (Staggers Act) significantly reduced regulation in the railroad industry. Among other reforms, the Staggers Act encouraged greater reliance on competition to set rates and gave railroads increased freedom to price their services according to market conditions, including the freedom to use differential pricing. Thus, railroads are in a position to recover a greater proportion of their costs from rates charged

to shippers with a greater dependency on rail transportation. At the same time, the Staggers Act gave the Interstate Commerce Commission, and later the Board, the authority to establish a rate appeals process so that shippers could obtain relief from unreasonably high rail rates.

Railroads have benefited from deregulation. Since deregulation, the rate of return on investment for the industry has increased from an average of almost 2.5 percent during the 1970s to over 8 percent in 2005.

Shippers have also benefited from railroad deregulation. These benefits include the preservation of railroad service, rate savings, and, in many cases, improved service. Short line railroads have been able to operate profitably on many rail lines abandoned by the major railroads and have generally provided more individualized service to shippers.

As expected, the distribution of benefits has tended to favor grain producers and shippers in regions with higher levels of transportation competition.[3] GAO also noted that rates have not declined uniformly and that rates for some commodities are significantly higher than rates for others. Despite the overall success of the Staggers Act, agricultural producers and shippers continue to express concern about decreased rail-to-rail competition, increased rail rates, poor rail service, rail capacity constraints, and the fair allocation of rail capacity.

RAIL-TO-RAIL COMPETITION

One of the key assumptions underlying the deregulation of the rail industry was that there would be sufficient transportation competition, at least in most markets, to constrain the use of railroad market power. Not only does effective competition promote

[3] John Bitzan, Kimberly Vachal, Tamara VanWechel, and Dan Vinge, The Differential Effects of Rail Rate Deregulation: U.S. Corn, Wheat, and Soybean Markets, Upper Great Plains Transportation Institute, June 2003.

reasonable rates and minimize the need for regulatory control, but it also encourages efficient management of railroads.

Rail consolidation also has led to a decline in competitive routes and options for some agricultural shippers. USDA recognizes that some regions may not have adequate freight traffic to support rail-to-rail competition. In such cases, mandated rail-to-rail competition could result in higher, rather than lower, rail prices. However, as a result of increased distances to grain elevators located on competing rail lines, some agricultural producers have lost the benefits of geographic rail-to-rail competition.

RAIL RATES

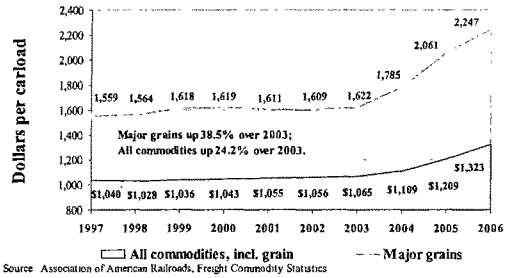
Small agricultural producers of grain and oilseed crops generally are considered "price-takers." That is, they have little or no ability to influence the price they receive for their products, and therefore, are unable to pass increases in costs forward to buyers of their products. Instead, these individual agricultural producers tend to absorb any cost increases because of their lack of market power. Consequently, increases in transportation costs can result in decreased producer incomes. In turn, lower producer incomes can adversely affect the ability of individual producers to borrow funds or purchase inputs such as fertilizer and machinery, potentially reducing economic prosperity in rural areas. Higher transportation costs can also hinder the competitive position of U.S. agricultural products in highly competitive export markets.

GAO's analysis states that although many rates have decreased, rates have not declined uniformly, and rates for some commodities are significantly higher than for

others. In fact, between 2003 and 2006, rail rates for grain shippers have increased much more rapidly than rail rates for other products. The average freight revenue per carload for major grains has increased nearly 39 percent since 2003 while the average freight revenue for all commodities (including grain) increased only 24 percent since 2003 (see figure 2).

Rates on corn, sorghum, soybeans, and wheat have gone up 41, 38, 53, and 31 percent, respectively, since 2003 (see figure 3).

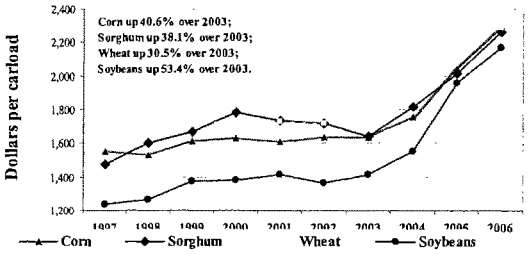
Fig. 2. Average Freight Revenue per Carload, Major Grains



Source Association of American Railroads, Freight Commodity Statistics

Grain shippers bear a greater responsibility for car supply and other functions that railroads formerly provided. Grain shippers now incur additional costs to obtain guaranteed car service, provide many of their own railcars, and pay increased demurrage penalties. Also, due to railroad emphasis upon unit-trains, shippers are making more significant capital investments in sidings, grain inventory, storage capacity, and loading facilities to retain cost-effective rail service.

Fig. 3. Average Freight Revenue per Carload, Four Top Grains



Source Association of American Railroads, Freight Commodity Statistics

USDA remains concerned about the percentage of grain tonnage and revenue moving at rates exceeding revenue-to-variable cost ratios of 300. The Staggers Act and

Interstate Commerce Commission Termination Act places "reasonableness" limits on rail rates while allowing the use of differential pricing. Consequently, when considering the reasonableness of a rail rate, the STB considers certain factors,[4] including whether the railroad is revenue adequate, evidence that may indicate a shipper is cross-subsidizing lines not used by the shipper, and how the rates compare to that paid by comparable shippers. As the railroad industry achieves revenue adequacy, those captive shippers paying rates more than 300 percent of revenue-to-variable costs expect some measure of relief from these extremely high rates.

On September 5, STB simplified the rail rate resolution process for small and medium size shipments. These simplified rules are intended to make it easier, faster, and cheaper for shippers to bring cases involving rate disputes.

RAIL SERVICE

Railroad consolidation and competitive factors have resulted in situations in which a single railroad sets the terms of rail service -- even when those service terms may not best meet the present and future needs of many agricultural shippers. At the same time, the changing nature of the grain transportation market has resulted in changes in the structure of rates and services. As some grain elevators have become equipped to handle large unit trains, for example, railroads have offered discounted rates to such elevators to reflect the railroads' lower costs of providing unit-train service. Some farmers have gained from these discounts, while others, such as those selling smaller quantities of grain with specialty characteristics or niche market uses, have been disadvantaged.

[4] The Long-Cannon factors direct the STB to give due consideration to (1) the amount of traffic which is transported at revenues which do not contribute to going concern value and the efforts made to minimize such traffic; (2) the amount of traffic which contributes only marginally to fixed costs and the extent to which, if any, rates on such traffic can be changed to maximize revenues from such traffic; and (3) the carrier's mix of rail traffic to determine whether one commodity is paying an unreasonable share of the carrier's overall revenue.

Agricultural producers and shippers have suggested that in some instances Class I railroad service terms may be at odds with their obligation as common carriers. Despite the retention of the Common Carrier Obligation[5] in the Interstate Commerce Commission Termination Act of 1995 (ICCTA), some smaller shippers perceive they have lost reliable and timely carload service while others have been required to meet railroad volume requirements to receive rail service.

The allocation of empty railcars between smaller shippers and shuttle-train shippers is an issue of importance to smaller shippers. Agricultural shippers have often voiced concerns to USDA regarding grain car allocations that seemingly favor shuttle shippers. Although the move to shuttle trains may reflect market efficiencies, public vigilance is appropriate to ensure that shippers in corridors without extensive transportation competition have reasonable access to markets.

CONCLUDING REMARKS

USDA and all interested and affected parties should continue to work together to ensure that rail transportation is affordable and reliable for the nation's grain shippers. USDA believes that healthy competition is essential for encouraging railroads to improve customer service, preserving the economic vitality of the railroad industry, and for protecting shippers from excess market power and unfair rail rates.

[5] The Common Carrier Obligation requires a for-hire carrier to serve the general public at reasonable rates and without discrimination.

TESTIMONY BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS

SUBMITTED BY

SUSAN M. DIEHL
SENIOR VICE PRESIDENT LOGISTICS
AND SUPPLY CHAIN MANAGEMENT
HOLCIM (US) INC.

HEARING ON

RAIL COMPETITION AND SERVICE

SEPTEMBER 25, 2007

SUSAN M. DIEHL
SENIOR VICE PRESIDENT LOGISTICS
AND SUPPLY CHAIN MANAGEMENT
HOLCIM (US) INC.
6211 N
ANN ARBOR ROAD
P.O. BOX 122
US-48131 DUNDEE, MI
734-529-4318

TESTIMONY OF SUSAN M. DIEHL
SENIOR VICE PRESIDENT LOGISTICS AND SUPPLY CHAIN MANAGEMENT
HOLCIM (US) INC
Before the
HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEE ON RAILROADS
HEARING ON
RAIL COMPETITION AND SERVICE
SEPTEMBER 25, 2007

Good morning Chairman Oberstar and Members of the Committee. My name is Susan Diehl and I am the Senior Vice President, Logistics and Supply Chain Management at Holcim (US) Inc., which I will refer to today as "Holcim". I am here to speak to the Committee about Holcim's experiences as a captive shipper. I commend you Mr. Chairman, and your Committee, for the leadership you are taking on this very important issue.

I sincerely appreciate the opportunity to express my deep concern over the fundamental flaws in the current rail system, which permits and indeed invites four major monopoly powers to dominate U.S. shippers, the vast majority of whom are unable to seek cost and eco-efficient competition. There exist impenetrable barriers to entry and an oversight system that is, at best, ineffective and undeniably available to only the privileged few who possess the ability to pay the high costs of access. Few if any industries can claim the benefit that the rail industry has of owning near-exclusive rights to prevent the meaningful entry of new competitors.

Holcim is a shipper of a strategic building material, namely cement. In most of the markets it serves, Holcim faces unfair and non-competitive rates, on the heels of years of massive rail consolidation and lack of effective oversight by the STB and its predecessor.

Holcim submits this testimony fully recognizing that by doing so, it assumes certain risks: the rail lobby is effective and Holcim, as a captive shipper, has few alternatives if confronted with further erosion of service and cost competitiveness. Nevertheless, we hold a deep belief that the only way to continue to supply our country with its most fundamental building material is to share our experience with you, Mr. Chairman, and your Committee. The current system is unfair and needs change.

HOLCIM IS A LEADER IN THE MANUFACTURE OF CEMENT SERVING CUSTOMERS IN MORE THAN THIRTY EIGHT STATES, WITH A FOCUS ON SUSTAINABLE DEVELOPMENT

My Company, Holcim (US) Inc., is headquartered in Waltham, Massachusetts. It is a subsidiary of Holcim Ltd, a worldwide leader in the building materials sector, with over 150 million tons of cement and almost 200 million tons of aggregates supplied annually. Holcim Ltd is a leader in sustainable development and for the last three years, has been recognized as the "Leader of Industry" by the Dow Jones Sustainability Index for the building materials sector.

As a leader in the US cement industry, Holcim produces and supplies nearly 15 million tons of cement and cementitious products annually from its 14 manufacturing and 3 import facilities. We have more than 2500 employees and over $1 billion in annual revenue. We have invested nearly $1 billion to upgrade and expand our existing U.S. facilities over the last decade, and are investing another $1 billion in Ste. Genevieve County near St. Louis, Missouri, to build the world's largest single cement production line. Still, this massive investment in capacity and efficiency upgrades is not enough to serve the Nation's need for cement, as the industry must import approximately 20 million tons of additional cement to meet the domestic demand. Cement is a critical component of concrete, which is an environmentally responsible building product used to build and repair our country's vital infrastructure, the fuel of economic growth. Nearly 50% of our product has an end use in the public sector in roads, airports, bridges and schools.

Holcim has four regions in the United States, including the Atlantic coast and southern US, the Great Lakes and Mississippi River system, Texas and Oklahoma, and the Rocky Mountains. We serve customers in 38 states from our 14 plant facilities, and from over 60 additional remote distribution sites, or terminals. Roughly 7.5 million tons of cement moves from our manufacturing facilities to these remote company terminals, for final distribution to customers; 4.5 million tons (or 60%) of that volume moves by rail. In addition, Mr. Chairman, we bring critical raw materials such as coal and gypsum to our manufacturing facilities to feed their continuous operations.

How Cement is Made

The Committee may want to understand that cement is produced from various abundant raw materials including limestone, shale, clay and silica sand. These minerals are ground and heated in large rotary kilns to temperatures as high as 3,400 degrees Fahrenheit. The heat of the combustion fuses these materials into clumps of an intermediate material called clinker. When the clinker is discharged from the kiln, it is cooled and later ground with a small amount of gypsum to produce the gray powder known as portland cement. Different types of portland cement are manufactured to meet various physical and chemical requirements.

Portland cement manufacturing facilities use an enormous amount of energy. In fact, energy is the largest cost component in the manufacture of portland cement. The U.S. cement industry is largely coal fired with over 80% percent of all plants using coal, pet coke, or some combination of the two as primary kiln fuel in 2004. The domestic cement industry is one of the largest industrial consumers of coal. Much of the coal utilized to heat cement kilns is delivered by rail.

The cement industry is regional in nature, Mr. Chairman. Most cement manufacturing plants are located in rural areas near large limestone deposits, the principal ingredient in producing cement. However, at the same time plants also must be located near markets because the cost of shipping cement quickly exceeds its value. As such, customers traditionally purchase cement from local sources.

In 2006, we spent in excess of $60 million on rail freight and fuel surcharges (to move cement within our company, and even more when adding what is spent to bring raw materials into our facilities). What is interesting to note, Mr. Chairman, is that these costs cannot always be passed along to our customers, because sometimes our

competitors have a local manufacturing presence and have no need to move cement by rail. In this type of situation, we need to be as cost competitive as possible.

As evidenced by the amount of product that moves by rail, and the remote areas served (e.g., Bliss, ID, Lehi, UT, Superior, NE), we recognize the railroads as an important component of our business. Unreliable service can force our operations to shut down due to lack of raw materials and fuels, and worse yet, leave customers stranded with no cement to complete their building work.

THE CEMENT INDUSTRY IS STRATEGICALLY IMPORTANT TO REBUILDING U.S. INFRASTRUCTURE AND HOLCIM IS COMMITTED TO CONTINUING INVESTMENT TO IMPROVE ITS ENVIRONMENTAL EFFICIENCY AND INCREASE ITS CAPACITY

Considering the regional nature of the cement industry, it is critical that there are reliable and cost-effective transportation options available. Average cement shipments range between 250 to 300 miles. Truck transportation is not economical much beyond 150 miles; it is also not as environmentally friendly as rail. We are reliant on railroads to deliver our product. Only three of Holcim's fourteen cement plants have access to water transportation for domestic shipments and then only to select markets. The railroads have sometimes argued that these cement facilities are not captive since there are alternative modes of transportation available. This simply is not the case, Mr. Chairman. The US Cement Industry relies on rail transportation to move approximately 50 percent of all shipments between cement plants and distribution terminals, according to 2004 U.S. Geological Survey data, recent independent figures. It is highly important to our industry that the railroads provide reliable, efficient and cost-effective service to meet the widespread demand for our product. More than 80 percent of U.S. cement manufacturing plants are captive to a single railroad. Due to the absence of competition, these plants are unable to secure competitive rail rates and often receive poor service. On the other hand, dual rail-served facilities promote competition, leading to better rates and more reliable service.

The railroads also transport millions of tons of inbound coal shipments to fuel cement manufacturing plants each year. There are examples within the industry in which cement plants that are served by two railroads receive coal from a supplier that is captive to a single railroad. There are also instances where both the cement plant and the coal supplier are captive to a single railroad. These situations result in unnecessarily high rail rates that add to the cost of cement and, ultimately, to the cost of infrastructure.

INCREASING COMPETITION IS THE BEST WAY TO DRIVE EFFICIENCIES AND PROMOTE INVESTMENT IN RAIL INFRASTRUCTURE

Mr. Chairman, the railroads' argument that "re-regulation" will have a chilling effect on business growth is flawed and presents a false choice. H.R. 2125, currently before Congress, presents an opportunity to improve service, and increase rate competition, without impacting rail capacity.

The Staggers Act of 1980, which selectively removed regulations of the railroad industry in instances where transportation competition exists, has improved the industry's efficiency and financial stability. However, since deregulation, there has been a sharp decline from 63 Class I railroads in 1976 to just four major Class I railroads today handling 90% of the nation's rail traffic. This consolidation has contributed to diminished

competition as well as ineffective and inconsistent rail service for the cement industry and many others.

Inconsistent and unreliable service from the Class I railroads is one of the most serious problems Holcim faces in its efforts to bring an affordable and essential product to market. Service encompasses many aspects of rail transportation, including picking up rail cars (covered hoppers), on-time delivery of rail cars and providing empty rail cars. The cars supplied by the railroads are typically old, poorly maintained and frequently a safety concern.

In recent years, Mr. Chairman, Holcim has been forced to purchase private rail cars because Class I railroads have refused to add cement rail cars to their fleets. Meanwhile the railroads have added tariff provisions charging for the storage (demurrage) of Holcim-owned (private) rail cars. This results in increased costs (in the form of capital investment, maintenance and service fees) to the cement shipper while providing no incentive to the rail carriers to improve their service.

We face uncertainty daily regarding the service reliability of the railroads. The Company is also disadvantaged competitively when competitors have dual service to serve markets where we are captive. Holcim has had to take extraordinary measures to try to remedy this disadvantage.

HOLRAIL IS CREATED TO CREATE COMPETITION WITH THE RAILROADS: 3 YEARS AND HUNDREDS OF THOUSANDS OF DOLLARS LATER, AND STILL NO COMPETITION

Holcim created HolRail LLC ("HolRail") in 2003 for the purpose of constructing and operating a 2.3 mile common carrier rail line, to establish competitive rail service at Holcim's cement production facility in Holly Hill, South Carolina ("Holly Hill Facility"). The Holly Hill Facility is heavily dependent upon both inbound and outbound rail service to produce and distribute up to 2 million tons of cement annually. However, the Holly Hill Facility is captive to a single railroad, the CSXT. This captivity has allowed CSXT to provide poor and unresponsive service while charging unreasonably high rates to Holcim (comparable to truck rates for similar distances), which has placed Holcim at a competitive disadvantage in the cement market. In order to improve its rail service and obtain competitive rates, Holcim concluded that it needed competitive rail service at Holly Hill.

Although the Holly Hill Facility is closed to the CSXT, the Norfolk Southern Railway ("NSR") comes within approximately two miles of the Holly Hill Facility, at Giant, South Carolina. Therefore, Holcim determined that it could obtain competitive rail service at Holly Hill by constructing its own railroad over that distance to connect with the NSR. Holcim separately incorporated HolRail for this purpose.

Holcim has two competitors located within 5 miles of the Holly Hill Facility, both of whom are dual served by the CSXT and the NSR. So, not only must Holcim try to compete without having a level playing field, Mr. Chairman, it must commit to invest in excess of $20+ million to level that playing field, incurring more costs due to the CSXT's failure to allow a shared right of way.

HolRail identified two potential routes to connect the Holly Hill Facility with the NSR, a "Preferred" and an "Alternate" route. Both routes would extend 2.3 miles, from north to south, across the Four Hole Swamp and parallel to CSXT's existing track. The Alternate Route, however, lies approximately 105 feet east of the Preferred Route over most of that distance. The key distinction between the two routes is that the Alternate Route can be constructed almost entirely on property owned by Holcim, whereas the Preferred Route must cross over CSXT's property for 1.7 miles and would be constructed within the existing CSXT right-of-way.

Despite having a clear path across Holcim-owned property via the Alternate Route, HolRail proposed the Preferred Route across CSXT's property to minimize the environmental consequences of constructing a railroad across the Four Hole Swamp, which is a unique and environmentally sensitive wetland. Since there is an existing transportation corridor, which includes the CSXT track, State Highway 453, above ground power lines, and a buried gas line, which already constricts the flow of water through the swamp, HolRail determined that simply widening that corridor, by constructing the Preferred Route immediately adjacent to the CSXT track, would cause the least environmental harm.

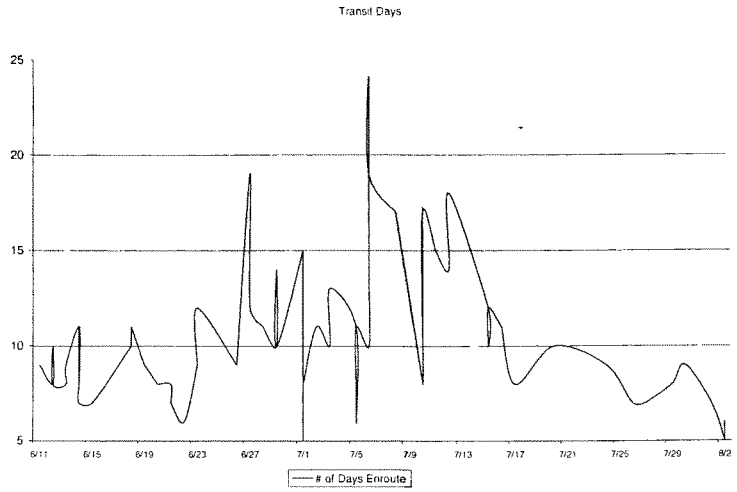
In contrast, the Alternate Route would exacerbate the harmful effects of the existing corridor by creating a second, entirely separate, transportation corridor approximately 130 feet further downstream, and deeper into the Four Hole Swamp. In addition to disturbing the portion of the swamp actually occupied by the railroad, the Alternate Route would disturb the entire area between the two corridors, which is referred to as an "island" effect. Consequently, the Alternate Route would more than double the acres of pristine wetlands that would be disturbed by the rail construction.

The Army Corps of Engineers, the South Carolina Department of Natural Resources, and The National Audubon Society submitted letters to the Surface Transportation Board independently confirming HolRail's observations and expressing their preference for the Preferred Route over the Alternate Route

The Alternative Route, which the STB ordered HolRail to pursue without legal basis, would not only disturb these precious wetlands, but will also more than double the costs of construction and would force the Company to invest well over $20 million to construct. It took over 2 years to get the denial of HolRail's crossing petition from the STB, costing hundreds of thousands of dollars in legal fees and consulting fees. While our Company has had the resources to take on this challenge, many companies do not.

DAILY OPERATIONAL ISSUES CONTINUE TO ABOUND

- During the past quarter, Holcim selectively measured transit times and found that on a key origin/destination pair in the Southeast, the times varied from 5 to almost 25 days, without warning (see chart continued on the next page).



- In May, 2007, the Canadian National Railroad utterly failed to service a distribution facility in Green Bay, WI. There was no option but to truck product from another facility in Duluth, MN. During this time, the Company paid 2.5 times more than the rail rate, a cost that cannot be passed on to customers. In addition, the truck haulage is less efficient from an environmental perspective than rail.

- In the fall of 2006, the Union Pacific Railroad threatened to stop serving a manufacturing facility for inbound coal. The Union Pacific Railroad stated that the Company did not unload cars quickly enough and insisted that Holcim share unit trains full of coal with our competitor in the area.

- Some basic analysis reveals that in 98% of all of the origins/destinations Holcim serves, either the origin or the destination is "closed" or captive on one railroad. In one instance where competition does exist in our system, the rates are over 60% less than a comparable captive haul.

- In 2007 alone, on selected hauls of less than 225 miles, trucking rates in Holcim are nearly $1.8 million *more* favorable than rail rates, despite the fact that it takes approximately 4 trucks to move the same amount of product as 1 rail car. Holcim wants to be able to leverage rail infrastructure to avoid the extra congestion and emissions occasioned by having more trucks on the road. Mr. Chairman, given that the Company moves more than 45,000 rail cars per year, converting this haulage to truck would put nearly 180,000 extra trucks on the road every year!

THE STB'S FAILURE TO PROTECT SHIPPERS AND PROVIDE LOW COST, UNBIASED ACCESS TO PURSUE CLAIMS IS A DETERRENT TO SHIPPERS AND FURTHER EMBOLDENS THE RAILROADS TO EXERT THEIR MONOPOLY POWER

As evidenced by the examples above, Holcim lives with the grim reality that there is little or no recourse when it can neither obtain favorable rates nor service from the Class I railroads. The STB has done little since it was formed to protect shippers from the increasingly consolidated rail industry, with almost impenetrable barriers to entry and few, if any options available.

The impediments to moving through the system created by the STB are evidenced by the fact that HolRail has been trying since 2004 to establish a short line; when a decision was finally issued earlier this year, the STB ordered HolRail to pursue an ecologically and environmentally inefficient option, at nearly twice the cost. In addition, to date, legal and consulting fees are in excess of $500,000.

Holcim has no recourse regarding rates since cement (officially "hydraulic cement") is classified as an exempt product from rate regulation by the STB. Since the STB has done little to address service issues, Holcim believes Congress should expand the STB's authority to promote transparency around rail service. Congress should also require the STB to submit an annual report regarding rail service complaints and describe the procedures the STB took to resolve them. Further, either party should be allowed to submit a dispute over rail service to the STB for "final offer" arbitration.

At present, the Surface Transportation Board does not fulfill its mandate "to respond to the demands of maintaining a healthy and competitive . . . national transportation infrastructure . . . . [T]he STB [is] charged with ensuring that the nation maintains a strong railroad infrastructure that serves passengers and shippers well".1 The STB has not fostered competition and improved service during its tenure and has not responded well to the needs of shippers.

CONCLUSION

As a shipper of a strategic building material, Holcim needs a vibrant and profitable rail industry to support the Nation's economic growth. Holcim must have access to a competitive rail transportation system, to ensure timely and efficient delivery of cement to those who build our nation's critical infrastructure. It simply requires the rail industry to re-invest to grow and stay competitive, like its customers. Congress must level the playing field following decades of consolidation and growth of monopoly power in the rail industry.

Cement is vital to the rebuilding of America's crumbling infrastructure. As evidenced by the tragedies of post-Katrina New Orleans, the recent I-35 Bridge collapse in your home state, Mr. Chairman, and the state of disrepair of the inland waterway systems' locks and dams, we must partner to rebuild our infrastructure, so we can attract investment to our country and stay competitive globally. Cement is a fundamental building block for this future growth.

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[1] Statement of Congressman Wise, Ranking Member, Hearing on STB Reauthorization, March 12, 1998, U.S. House of Representatives, Subcommittee on Railroads, Committee on Transportation and Infrastructure.

During the last decade, Holcim has invested over $1 billion to upgrade its capacity and better serve its customers while improving its environmental performance. Holcim is investing an additional $1 billion in Ste. Genevieve, Missouri, on the Mississippi River, to ensure cost effective, environmentally friendly and reliable transport of cement, in part based on concerns that the railroads will not have the capacity or service levels necessary to serve customer needs in the years to come. We believe that the railroads must also re-invest; however, that investment need not be conditioned on receiving a mandate to continue with monopolistic practices.

What is currently being proposed in H.R. 2125, under your leadership, Mr. Chairman and that of your Committee, has many key proposals that help strike the balance between growth and oversight. The "re-regulation" argument presents a false choice. Indeed, Mr. Chairman, we would not advocate for reform that would deter growth of our critical rail infrastructure. What we believe is that stronger competition creates incentives to become efficient operators with a strong customer focus—much like the incentives of the free market economy that drive efficiencies and competitive investment by Shippers. Competition, not monopoly power, is essential to fuel the railroads' and Shippers' growth. Continued monopoly power is by definition anti-competitive and will yield no growth. Every business must and does invest in renewing its infrastructure in order to remain competitive and railroads should be no exception.

I believe that Congress must especially consider provisions that promote rate competition and expand the STB's authority over service-related issues.

I sincerely thank you, Mr. Chairman, and Members of the Committee for your time and I again appreciate this opportunity to speak about issues vital to our national infrastructure and future growth.

Susan M. Diehl
Senior Vice President, Logistics and Supply Chain Management
Holcim (US) Inc.

BEFORE THE

House Committee on Transportation & Infrastructure

Rail Competition and Service

TESTIMONY OF

Honorable Glenn English, C.E.O.
National Rural Electric Cooperative Association

4301 Wilson Boulevard
Arlington, Virginia 22203

Thursday, September 20, 2007
11:00 a.m.
2167 Rayburn House Office Building

Mr. Chairman and Members of the Committee:

My name is Glenn English. I am the Chief Executive Officer of the National Rural Electric Cooperative Association. I also serve as Chairman of Consumers United for Rail Equity (CURE), a rail customer advocacy group representing a broad array of vital industries – chemical manufacturers and processors; paper, pulp and forest products; farmers; cement and building material suppliers; and many more. Mr. Chairman, members of this coalition have experienced deteriorating service and sharply increased rates and appreciate the leadership shown by you and Congressman Baker in the effort to address the longstanding problems facing rail customers.

As member-owned, not-for-profit organizations, the obligation of electric cooperatives is to provide an affordable and reliable supply of electricity to our consumers. We take our obligation to serve very seriously. The personal and economic health of our members and our communities depends on it.

Mr. Chairman, we believe there is also an overriding national public interest in the operation of the rail system. The railroad industry is not just another private sector industry. Railroads provide vital services important to a range of national interest activities from the movement of war material, to distribution of some of the most important domestic energy sources, to providing vital links in the supply chain that bring domestically produced commodities and manufactured products to domestic and international markets. Unfortunately, we believe the railroads are not as serious about their obligation to serve the public interest as is my industry. They have consistently failed to fulfill their basic "common carrier" obligation.

Staggers Rail Act of 1980: Not What Harley Staggers Envisioned

On this month 27 years ago, Congress passed the Staggers Rail Act of 1980. A review of the debate from this landmark legislation reveals that Members of Congress envisioned a far different regulatory regime than is in place today. Mr. Chairman, our colleagues then spoke of a bill that would "assure a healthy vibrant system of railroads across the United States, and yet it would provide timely review to the Interstate Commerce Commission (ICC) by captive shippers who feel they are facing exorbitantly high rates charged by the railroads." Upon signing the Staggers Act, President Carter announced that the proposal would "benefit shippers throughout the country by encouraging railroads to improve their equipment and better tailor their service to shipper needs."

Unfortunately for the consumers in this country, these predictions have only partly become true. This nation's few remaining major railroads are exceedingly vibrant and prosperous, thanks to their unrestrained ability to increase prices at will and transfer almost every imaginable cost to the shipper. Clearly the railroads are not tailoring their service to shipper needs. In fact, high costs and unreliable service have become the accepted norm for most railroad companies and shippers simply have nowhere to turn.

The railroad industry continues to be protected by a Surface Transportation Board (STB) that is either unable or unwilling to provide adequate oversight. Under the watch of the STB and its predecessor the ICC, the railroad industry has been allowed to consolidate from over 40 major railroads in 1980 to four major railroads today that carry over 90 percent of the nation's freight. At virtually every opportunity the STB shows bias toward the railroad industry and recent actions suggest that without major reform, shippers, and ultimately consumers, will continue to be at the mercy of a railroad industry that we believe threatens the very health of our economy.

Government Accountability Office: Concerns About Competition and Capacity

The Government Accountability Office (GAO) recently issued a report outlining a pervasive and increasing lack of competition in the rail industry. The GAO report, first issued in October 2006 and supplemented and updated on August 15, 2007, found rail prices are on the rise and an increasing number of rail customers are paying more than three times what it costs the railroads to move their freight.

The GAO concluded:

- "Concerns about competition and captivity (in the rail industry) remain as traffic is concentrated in fewer railroads."
- "[The Surface Transportation Board's] rate relief processes are largely inaccessible and rarely used."
- "We believe that an analysis of the state of competition and the possible abuse of market power, along with the range of options STB has to address competition issues, could more directly further the legislatively defined goal of ensuring effective competition among rail carriers."
- "Significant increases in freight traffic are forecast, and the industry's ability to meet them is largely uncertain."
- "Costs, such as fuel surcharges, have shifted to shippers, and STB has not clearly tracked the revenues the railroads have raised from some of these charges."

The GAO report showed that freight rail rates are continuing to rise, even as carriers shift more and more costs. Railcars owned by freight railroads no longer carry the majority of tonnage. The GAO study concluded that railcar ownership has shifted by 20 percent since 1987, with rail company cars carrying only 40 percent of the load in 2005, compared with 60 percent in 1987.

Fuel Surcharges: New Profit Centers for Railroads

Over the years, railroads took in billions of dollars in "miscellaneous revenue," a category that includes, among other things, fuel surcharges. These charges are in

addition to the cost savings realized by requiring that railcars be provided by shippers rather than the railroads. For the past several years the U.S. Class I railroads have been over-collecting for fuel increases through fuel surcharges imposed on most of their customers. While the Class I railroads have dealt with increases in their fuel costs during this period, they have used fuel surcharges aggressively, transforming cost recovery mechanisms into profit centers. The railroads have collected far more in fuel surcharge revenue than the increase in fuel costs.

Wall Street analysts have publicly and repeatedly lauded the railroads' use of the fuel surcharge fees. After several years of hearing complaints from rail customers, the STB finally agreed in January 2007 that the railroads were in fact over-collecting for their fuel costs and that these practices were unreasonable. Unfortunately, the STB board members did not order the railroads to refund or credit to rail customers any of these ill gotten gains. The STB did not even suspend this "unreasonable rail practice" on the day of their decision. Unbelievably, they permitted the fuel surcharge over-collections to continue for another 90 days.

Railroad Profitability: A Golden Age of Railroading

The major railroads have entered a golden age of railroad profitability: record profits, record share prices and enough revenue to buy back billions of dollars worth of their stock in the last few years. This mature, basic American industry has even become the darling of hedge funds and other aggressive investors.

Simply put, the railroads have turned the corner from the difficult days that led to the Staggers Act and are now clearly able to attract and retain the capital they need to run their railroads and run them profitably.

The tremendous profits the railroads are earning are the direct result of their monopolistic practices, with the bulk coming from captive shippers who are left with no recourse but to pay the freight. These costs must be absorbed by someone and it is your constituents that are paying the price for the STB's failure. The current regulatory framework is unacceptable.

STB Process is Broken

The railroads suggest they are subject to strict regulation and shippers have a right to file complaints with the STB regarding rates. It is important to understand the very limited extent to which railroad rates are subject to review by the STB.

Only a small set of railroad rates are subject to any relief from the STB and these rates are not "regulated" in the classic sense of that term. Any rail movement for which there is a rail contract is exempt from the STB's jurisdiction altogether. In addition, the STB has exempted from its jurisdiction much other traffic (including inter-modal traffic) from its rate regulation. For the small remaining category of traffic that is subject to regulation, the railroads have the initial flexibility to impose on the customer any rate

they want without filing these rates with the STB for any form of "prior approval." The rail customer may then challenge the rate, but only if the rail customer can prove to the STB that the customer has no economically viable option but to use the railroad in question (an absence of effective competition) and the rate is at least 80 percent higher than the direct cost to the railroad of moving the customer's freight (the rate exceeds the jurisdictional threshold of 180 percent of variable costs). The rail customer then has the right to rate relief from the STB, but only if the STB finds that the rate exceeds a reasonable maximum. This reasonable maximum is called "stand alone cost" – what it would cost the customer at current cost to build and operate its own railroad to move its own freight. The rail customer in a "stand alone cost" case must pay a filing fee to the STB of $178,400 to begin this process.

In recent years, it has been impossible for shippers to obtain meaningful relief at the STB. While the jurisdictional threshold (or minimum a rail customer must pay) is set at 80 percent above the railroads' direct cost, shippers have been unable to get any rate relief when their rates amount to 3 to 5 times – or more – the direct cost of moving the freight in question. We believe very strongly that extracting margins of 300 to 500 percent – or even more – from rail customers, who have no option but to use a single railroad for transportation, is not what was intended by Congress. This is not just and is not in the best interests of the nation. In addition, the cases take at least two years to get the first decision on the merits and are very expensive, costing $3 million to $5 million in consulting and legal fees.

I will let Ron Harper of Basin Electric explain the details, but the STB's recent decision against Basin Electric and Western Fuels is another example of why the STB process is fundamentally broken. After Basin invested three years and more than $6 million, the STB essentially sanctioned a $1 billion transfer from Basin's member-owners to Burlington Northern over the next 20 years. Over this time period, BNSF's revenue over variable costs will increase to more than 845 percent.

Coal Delivery Problems Adversely Impact Consumers

Mr. Chairman, for the last three years the two railroads delivering Powder River Basin (PRB) coal as far east as Georgia were falling 15 percent short on their deliveries. This forced utilities to take alternative actions, such as importing coal from Indonesia and Colombia, to replace this non-delivered coal and turning to natural gas to generate electricity, all of which cost their electric customers significantly.

NRECA has estimated that in 2006, there was a need for at least 370 million tons of PRB coal, but the railroads were able to deliver only 350 million tons of coal, reflecting a shortfall of some 5.4 percent. Replacing the 20 million tons of coal generation with natural gas translated into 340 billion cubic feet of natural gas. At an estimated average gas price in 2006 of more than $7 per thousand cubic feet, the additional cost of replacing the coal delivery deficit with gas translates to over $2 billion. The coal delivery problems had a similar impact in 2005 as well.

Moreover, these costs were exacerbated because the railroads and the coal suppliers sought to take advantage of the shortage in available coal transportation to raise rates and prices. In effect, the railroads profited from their service failure at the expense of the utilities and their customers.

The costly impacts of these rail delivery shortfalls are not a regional problem, but span the entire nation. Let me provide a specific example. From early 2005 through early 2007, Arkansas Electric Cooperative Corporation (AECC) received only 85 to 90 percent of the coal stipulated in its contracts with the two railroads that move Powder River Basin coal. The coal shortfall forced AECC to curtail coal burns. AECC's increased costs exceeded $100 million, causing it to increase bills to its customers by as much as 20 percent during the winter of 2006.

While the railroads have issued self-congratulatory news releases about coal stockpiles in 2007, this situation has not gone unnoticed by regulators. One of those regulatory bodies is the Federal Energy Regulatory Commission (FERC) which is charged by Congress to ensure reliability in the nation's electricity supply. Of course, the reliable generation of electricity depends on the reliable delivery of coal to electricity generators. In oral comments made at the May 17, 2007, open FERC meeting, Chairman Joseph Kelliher stated that although coal inventories were slightly improving, it did not mean there was not a problem. It meant that a problem could be just over the horizon. The Chairman felt that we were looking at significant coal generation additions in some parts of the country. He expressed concerns about whether the railroad investment in their coal moving capacity was adequate enough to account for that increase in coal generating capacity.

Chairman Kelliher noted, "It could be that we're one major rail line failure away from having the same situation that we looked at last year, so I think it's something we really need to keep an eye on, and keep on watching, because I don't think the fact that inventories right now are adequate means that there's no problem with coal transportation, and that it's something we don't have to show concern for anymore."

H.R. 2125 is the Solution: Reform Not Re-Regulation

Mr. Chairman, you have been a tireless advocate on behalf of rail customers for many years. We believe H.R. 2125, the Railroad Competition and Service Improvement Act of 2007 is a constructive and balanced approach to the problems facing our industries.

I want to address two allegations that are being made by opponents of this important legislation. First, many opponents charge that the legislation "re-regulates" the nation's railroads. One railroad CEO has even written a widely-distributed letter stating your legislation empowers federal bureaucrats to direct that one railroad can operate on the tracks of another, including the terms and conditions of this use of a competitor's tracks. This specific allegation is simply wrong. Nothing in your bill allows one railroad to operate on the tracks of another.

The mindless, provocative, general allegation of "re-regulation" is also flat wrong. No railroad rate that is not subject to regulation by the STB today will become subject to regulation under your bill. No provision of this bill empowers the STB to take any action that could be termed as "re-regulatory" under the most generous interpretation of that term.

H.R. 2125 does improve the process for determining if a railroad rate to a rail customer without access to competition is reasonable. But this legislation does not broaden the universe of rates eligible for this review process. The bill also does not reduce the minimum level of rate that qualifies for review by the STB. That minimum is a rate that is 80 percent more than the direct cost to the railroad of moving the freight in question.

The bill also overturns two improper interpretations of the Staggers Rail Act that allow the railroads to prevent their customers from reaching a competing railroad. One interpretation allows a railroad to refuse to provide a rate to a customer for moving across its system to a competing railroad system. A second interpretation allows major railroads to lease track to short line railroads and include provisions in the lease agreement that prevent the short line from doing business with any other major railroads. Some opponents of H.R. 2125 view these provisions as being "re-regulatory." In fact, these provisions are "pro-competitive" and will extend competitive deregulated rail service to more rail customers.

Second, opponents of H.R. 2125 like to use a graph that shows railroad rates declining significantly since 1980. This is a classic attempt to confuse the issue by introducing irrelevant information. The graph they use represents ALL railroad rates, not just the rates paid by rail customers without access to competition. Until the last few years, the majority of rail customers have had access to competition and their rates have declined significantly. The rates of the minority of customers without access to competition were not declining, but were "averaged out" by the declines in the competitive rates. If the railroads were to show a graph of captive rates over the last two decades, that graph would go in exactly the opposite direction as the graph showing declining rates.

Mr. Chairman, H.R. 2125 will provide the tools necessary to have the rail system the nation needs for the 21st Century. Your bill will bring forth the goals envisioned by Harley Staggers back in 1980. Rail customers will finally have an equitable forum to voice their concerns and a regulatory agency that is more than simply a rubber stamp for the nation's Class I railroads. Our nation's consumers deserve nothing less.

Conclusion

Mr. Chairman, thank you for conducting this hearing today. We look forward to working with you and Congressman Baker and with all of the other stakeholders involved to resolve these critical rail transportation issues in an objective and constructive manner.

Testimony of Ron Harper
Chief Executive Officer and General Manager
Basin Electric Power Cooperative

Before the
House Transportation and Infrastructure Committee

Hearing on Rail Competition and Service

September 20, 2007

Mr. Chairman and Members of the Committee, my name is Ron Harper. I am Chief Executive Officer and General Manager of Basin Electric Power Cooperative. I appreciate the Committee taking the time to hold this important hearing and for the opportunity to be here today. The railroad customer issue is vitally important to Basin Electric and the rural electric consumer-owners we serve.

Let me begin by emphasizing the seriousness of the current rail situation we are facing. Today, no protection from monopoly rail abuses exists for rail customers. Others here can speak to the need for legislative fixes. I would like to focus my testimony on the current regulatory system, which is broken and in urgent need of repair. I know this based on our direct experience.

Congress has statutorily mandated that rail rates on market dominant traffic "must be reasonable." My cooperative is engaged in a grueling, massive, and expensive ratemaking proceeding in an attempt to obtain our statutory right to reasonable rail rates. Moreover, the Surface Transportation STB (STB) imposed additional rule changes in the middle of hearing our case. In a decision released on September 10, 2007, three years after we filed our complaint, the STB upheld the challenged rates and denied us any relief.

We played by all of the rules. We submitted volumes of evidence supported by dozens of expert witnesses -- the most comprehensive rate case ever presented to the STB. We responded promptly and completely to the STB's every request and filed multiple rounds of supplemental information. We had a strong case and met all of the evidentiary requirements for establishing the unreasonableness of the involved rates.

In the end, it appears we were victims of "bait and switch" tactics by the STB. After mountains of evidence were filed, and the evidentiary record closed, the STB implemented new rules it claimed would improve the rate review process. They promised it would not prejudice our case. They were wrong. In its final decision, the STB admitted the new rule changes were prejudicial to us and may have destroyed any prospects for us to obtain rate relief.

The clear message from the STB to customers through our decision is quite simple: we are here to protect the economic interests of the railroads no matter the costs to the public. The STB has abdicated its statutory responsibility, and has made it impossible for Basin Electric to do business in a reasonable way with our railroad service providers. In regions of the country where there is often only one railroad service provider, there is nothing to stop the railroads from being the sole determiner of the economic livelihood of rural populations. This is outrageous.

Overview of Basin Electric Power Cooperative

Basin Electric is headquartered in Bismarck, North Dakota. Since its beginning in 1961, Basin Electric has evolved into a network of electric generating facilities with 3,500 megawatts of capacity and owns 1,800 miles of transmission. We provide low-cost, wholesale power to 124 member systems and other customers in nine states that, in turn, distribute electricity to 2.5 million primarily rural American consumers. More than 90 percent of this generation is coal based. Of that coal generation, we operate generating stations located at the mines and also operate facilities that depend on rail transportation for their coal.

One facility that is entirely dependent on rail is the Laramie River Station (LRS) near Wheatland, Wyoming. We own 42 percent LRS and operate the facility on behalf of five other not-for-profit partners. LRS consists of three 550-megawatt turbines. And, being this large, we need a lot of coal. The facility uses 24,000 tons of coal a day on average.

BNSF's Imposed Transportation Rates

The last generating unit at LRS was built in 1982. Rail service to the plant is provided exclusively by BNSF Railway Company (BNSF), which is the only railroad that serves LRS. There are no other transportation options. Beginning in the early 1980s, we had a contract with BNSF to haul coal the 175 miles from the Powder River Basin coal mines to LRS. The contract served both parties well, and BNSF made considerable money on it – more than $300 million in profits during the 20-year contract term.

When our contract expired in 2004, BNSF dramatically raised its rates. In fact, BNSF more than doubled the already highly profitable freight rates from the previous LRS contract, amounting to $1 billion in rate increases over the next 20 years. We had little choice but to bring a rate case at the STB to protect our consumers from this massive rate increase.

Our rate case pointed out that no coal shipper has ever faced a rate increase of this magnitude. BNSF did not dispute this. It was clear that BNSF was attempting to set an example of us with their pricing actions. BNSF stated one reason we were targeted for a rate increase was because our history as a low-cost provider of electric power to consumers. BNSF made the preposterous claim that the farmers, ranchers, and other consumers served LRS can afford to pay much more and should pay much more for their electricity.

BNSF's message is clear: if you are a low-cost provider, "watch out." We want to extract your customers' savings and transfer them to us and our shareholders. Captive electric cooperatives and rural consumers appear to be particularly vulnerable to similar railroad rate abuses.

We had a very solid case and proved the BNSF has gone too far. Unfortunately, the STB disagreed. In fact, the STB expressed no concern about monopoly railroads exploiting their customers economically. To the contrary, in its decision denying us relief, the STB ignored our undisputed evidence on the unprecedented magnitude of BNSF's rates. The STB stated our rates still appeared low compared to rail customers more than 1,000 miles further away from the same mines from which LRS obtains its coal.

The railroads are fond of saying that they are only seeking to impose "market-based" rates on captive shippers such as Basin Electric. But that is just jargon for "monopoly rates." The reality is that BNSF's unprecedented rate actions involving Laramie River produced initial rates that approached or exceeded BNSF's service costs by 500 percent -- far above BNSF's system average of 142 percent. The revenue/variable cost ratios are well in excess of 600 percent today. The STB did not even acknowledge any of this undisputed evidence. In fact, you cannot find any revenue/variable cost information anywhere in the STB's 139-page decision – likely because the STB does not want the public to know the real magnitude of rate increases it is sanctioning.

How much is enough? Where there is a lack of market competition, what is a reasonable rate for a railroad to charge a coal customer? In the case of LRS, the answer from the STB is that rates at or above 500 percent of costs are not excessive, and that $1 billion in rate increases over time are reasonable. I respectfully submit that the STB and the BNSF are completely wrong; these monopoly abuses should not be tolerated, and there is a clear need for Congress to step in and address the situation.

Withstanding the STB's Rate Case Processes

In order for the Committee to fully understand the arcane rigors of the rate case regulatory process, I must explain the process we endured over the past three years.

The LRS case was filed with the STB on October 19, 2004. The STB actively administered a procedural schedule calling for the parties to submit their evidentiary filings between April and September of 2005. We proceeded to expend $6 million to present a Stand-Alone Cost (SAC) analysis that was supported by 26 expert witnesses and more than 1,200 pages of narrative testimony and argument; 116 exhibits consisting of more than 1,050 pages; 7,223 pages of hard-copy workpapers; and numerous CDs containing tens of gigabytes of supporting electronic workpapers. Following the completion of these evidentiary filings, the parties, at the STB's express direction, submitted final briefs on December 6, 2005.

As matters stood at the end of 2005, a final decision in the case was due under the governing statute by September 6, 2006. In 1995 Congress enacted a policy "to require fair and expeditious [railroad] regulatory decisions." Because of past agency problems, Congress further imposed specific statutory deadlines requiring large rate reasonableness cases be decided within 9 months after the close of the record. These deadlines were not met in the LRS case.

After all filings were submitted, and the record was closed, on February 27, 2006, the STB issued an order that effectively suspended, and reopened a portion of, our case. The STB further implemented a new rulemaking in Ex Parte No. 657 (Sub No. 1), ostensibly to improve the rate case standards and make them easier and fairer to apply. In doing so, STB changed its long-standing practice of deciding SAC issues in individual cases, and not in rulemaking proceedings. No rail customers asked for the rulemaking, and, in fact, customers uniformly opposed the rulemaking. All of the major railroads supported the rulemaking. That clearly tells you something about the STB's intentions. By the way, this all occurred shortly after former STB Chairman Roger Nober became employed as an upper-level officer of the BNSF.

In response to the rulemaking, we submitted three rounds of comments, with final rules issued by the STB on October 30, 2006. In its final decision, the STB rejected our pleas that portions of

the rulemaking were extremely prejudicial, and that it was arbitrary and capricious to apply parts of the new rules retroactively in our case. In addition to our comments on the rulemaking, we were asked to file supplemental rounds of evidence in our case. Altogether, since "final briefs" were filed in December 2005, we were asked to file seven evidentiary submissions, which we did, with the last filing made in April 2007.

The STB's final decision in our case was served on September 10, 2007 – more than one year after the statutory deadline for deciding our case. The STB's decision gratuitously asserts that while the STB did not find our rates to be unreasonable, its mid-course change in the governing rules "clearly could have prejudiced" our case. The STB therefore is providing us with an opportunity to again modify our evidence in light of the new governing rules that they implemented during the pendency of our case. After spending more than three years on our case, the STB has given us just 30 days to decide whether to file even more supplemental evidence in an attempt to save our case. Mr. Chairman, enough is enough.

The STB made us expend the time, resources, and money to file our complete case. Then they told us that the standards would be reworked, requiring a whole new set of evidentiary filings and supplemental evidence at considerable expense. To date, Basin Electric has spent $6 million on this case. Clearly, the above actions constitute an administrative abomination. By its actions, the STB delayed our case, increased our litigation costs, and sabotaged our evidence. These actions also played into the hands of railroad lawyers who have a blank check from their employers to run-up legal costs in rate cases in order to discourage shippers from challenging railroad rates. We take little solace in the STB granting us the opportunity to file additional evidence in our case given the agency's track record.

What Can Be Done?

I respectfully submit that the Laramie River Station rates are not the type of market-based actions that Congress envisioned when enacting the Staggers Rail Act. Notwithstanding the STB's recent decision in our case, these are the very type of monopoly rate and service abuses that regulation is designed to prevent. It is not fair for consumers to bear the brunt of these monopoly rate abuses.

We played by all of the rules and presented overwhelming evidence that the challenged LRS rates were unreasonable and met the STB's test for unreasonableness. But we were still denied relief. The bottom line is that there is no longer any reason for us to believe that the STB's coal rate case standards can ever provide effective relief against monopoly railroad rate abuses. To be clear, we had serious reservations over the STB's ratemaking process and the one-sided manner in which the STB had decided its recent rate cases. In the end, our concern for our consumers outweighed our regulatory concerns. We did everything we could, and everything asked of us, to comply with the rules. Obviously, that wasn't good enough.

Mr. Chairman, something must be done to prevent railroad pricing abuses and service shortages that are causing considerable economic harm to the public. Time and time again, the STB has come to Congress and represented that it is an effective regulator that protects the rights of rail customers. However, the STB's actions don't match its words. Railroads win. Customers lose. If you do not have dedicated public servants who are willing to adhere to their statutory responsibility and protect the public interest, the process or standards in place do not matter.

Congress must take action. Something needs to be done immediately to restore balance and fairness in decision-making, and to ensure that the STB's coal rate case standards provide effective relief against monopoly railroad rate abuses. I respectfully request that this Committee demand the regulators do their job to block unwarranted and unreasonable rate demands of monopoly railroads. If the regulators are unwilling to do their jobs, which by all appearances is the case today, Congress needs to take measures to ensure the regulators are not controlled by the industry they are supposed to regulate.

I greatly appreciate this opportunity to share my views with the Committee on this important subject.

United States Government Accountability Office

GAO

Testimony

Before the Committee on Transportation and Infrastructure, House of Representatives

For Release on Delivery
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FREIGHT RAILROADS

Updated Information on Rates and Competition Issues

Statement of JayEtta Z. Hecker, Director
Physical Infrastructure Issues

GAO-07-1245T

September 25, 2007

GAO
Accountability·Integrity·Reliability

Highlights

Highlights of GAO-07-1245T, a report to House Committee on Transportation and Infrastructure

FREIGHT RAILROADS

Updated Information on Rates and Competition Issues

Why GAO Did This Study

The Staggers Rail Act of 1980 largely deregulated the freight railroad industry, giving the railroads freedom to price their services according to market conditions and encouraging greater reliance on competition to set rates. The act recognized the need for railroads to recover costs by setting higher rates for shippers with fewer transportation alternatives. The act also recognized that some shippers might not have access to competitive alternatives and might be subject to unreasonably high rates. It established a threshold for rate relief and granted the Interstate Commerce Commission and the Surface Transportation Board (STB) the authority to develop a rate relief process for those "captive" shippers. GAO's reported on rates, competition, and other industry trends in reports issued in October 2006 and August 2007. This statement is based on those reports and discusses (1) the changes that have occurred in the railroad industry since the enactment of the Staggers Rail Act, including changes in rail rates since 1985, (2) the extent of captivity in the industry and STB's efforts to protect captive shippers, and (3) STB's actions to address GAO's recent recommendations.

What GAO Recommends

In October 2006, GAO recommended that STB analyze the state of competition and consider appropriate actions. GAO also recommended that STB review their method of data collection to ensure that all freight railroads are consistently reporting all revenues collected from shippers.

To view the full product, including the scope and methodology, click on GAO-07-1245T. For more information, contact JayEtta Z. Hecker at (202) 512-2834 or heckerj@gao.gov.

What GAO Found

The changes that have occurred in the railroad industry since the enactment of the Staggers Rail Act are widely viewed as positive, since the financial health of the industry has improved and most rates have declined since 1985. The freight railroad industry's financial health improved substantially as railroads cut costs through productivity improvements and new technologies. However, rates began to increase in 2001, and in 2005 rates jumped nearly 9 percent—the largest annual increase in twenty years—and rates increased for all 13 commodities that we reviewed. Revenues that railroads report as "miscellaneous revenue"—a category that includes some fuel surcharges—increased more than ten-fold from $141 million in 2000 to over $1.7 billion in 2005.

It is difficult to precisely determine how many shippers are "captive" because available proxy measures can overstate or understate captivity. However some data indicate that potentially captive traffic appears to have decreased, while at the same time, data also indicates that traffic traveling at rates significantly above the threshold for rate relief has increased. In October 2006, we reported that STB's rate relief process to protect captive shippers have resulted in little effective relief for those shippers. We also reported that economists and shipper groups have proposed a number of alternatives to address remaining concerns about competition—however, each of these alternative approaches have costs and benefits and should be carefully considered.

STB has taken some actions to address our past recommendations, but it is too soon to determine the effect of these actions. Our October 2006 report noted that the continued existence of pockets of potentially "captive shippers" raised questions as to whether rail rates in selected markets reflected reasonable pricing practices, or an abuse of market power. We recommended that the Board undertake a rigorous analysis of competitive markets to identify the state of competition. STB has awarded a contract to conduct this study; while this is an important step, it will be important that these analysts have STB's authority and access to information to determine whether rail rates in selected markets reflect reasonable pricing practices. We also recommended that STB ensure that freight railroads are consistently reporting all revenues, including miscellaneous revenues. While STB has revised its rules on fuel surcharges, these rules did not address how fuel surcharges are reported and STB has not yet taken steps to accurately collect data on other miscellaneous revenues. STB has also taken a number of steps to revise its rate relief process. While these appear to be promising steps, it is too soon to tell what effect these changes will have and we have not evaluated them.

Mr. Chairman and Members of the Committee:

We appreciate the opportunity to testify on the freight railroad industry. As you know, over 25 years ago, Congress transformed federal regulation of the railroad industry. After almost 100 years of economic regulation, the railroad industry was in serious economic trouble in the 1970s, with rising costs, losses, and bankruptcies. In response, Congress passed the Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Rail Act of 1980. Together, these pieces of legislation substantially deregulated the railroad industry. In particular, the 1980 act encouraged greater reliance on competition to set rates and gave railroads increased freedom to price their services according to market conditions, including the freedom to use differential pricing—that is, to recover a greater proportion of their costs from rates charged to shippers with a greater dependency on rail transportation. At the same time, the 1980 act anticipated that some shippers might not have competitive alternatives—commonly referred to as "captive shippers"—and gave the Interstate Commerce Commission (ICC), and later the Surface Transportation Board (STB), the authority to establish a process so that shippers could obtain relief from unreasonably high rates. However, only a rate that produces revenue equal to at least 180 percent of the variable cost of transporting the shipment can be challenged.

Policymakers continue to believe that the federal government should provide a viable process to protect shippers against unreasonably high rates, as well as address competition issues, while still balancing the interests of both railroads and shippers. Over the past 10 years, significant consolidation has taken place in the freight railroad industry, while railroads—particularly Class I railroads[1]— have seen their productivity and financial health improve. Railroad officials express concern that any attempt to increase economic regulation will reduce carriers' ability to earn sufficient revenues and limit future infrastructure investment.

Since the passage of the Staggers Rail Act in 1980, we have issued several reports on the freight railroad industry.[2] My comments today are based on

[1]As of 2004, a Class I railroad is any railroad with operating revenue above $277.7 million.

[2]See GAO, *Freight Railroads: Industry Health Has Improved, but Concerns About Competition and Capacity Should Be Addressed*, GAO-07-94 (Washington, D.C.: Oct. 6, 2006) and *Freight Railroads: Updated Information on Rates and Other Industry Trends*, GAO-07-291R (Washington, D.C.: Aug. 15, 2007). In addition, see the list of related GAO products at the end of this report.

our most recent reports issued in August 2007 and October 2006, and cover (1) the changes that have occurred in the railroad industry since the enactment of the Staggers Rail Act, including changes in rail rates since 1985, (2) the extent of captivity in the industry and STB's efforts to protect captive shippers, and (3) STB's actions to address our recent recommendations. We reviewed STB documents to update the information in our recent reports and conducted our review in September 2007 in accordance with generally accepted government auditing standards.

In summary:

- The changes that have occurred in the railroad industry since the enactment of the Staggers Rail Act are widely viewed as positive, since the financial health of the industry has improved and most rates have declined since 1985. The freight railroad industry's financial health improved substantially as railroads cut costs through productivity improvements; streamlined and right-sized their rail networks; implemented new technologies; and expanded business into new markets, such as the intermodal market.[3] Over 20 years rates have generally declined for most shippers and most railroad rates have declined since 1985. However, they began to increase in 2001, and in 2005 rates experienced a 9 percent annual increase over 2004[4]—the largest annual increase in twenty years—and rates increased for all 13 commodities that we reviewed. In addition, over 20 years, railroad companies have shifted other costs to shippers, including railcar ownership. Revenues that railroads report as "miscellaneous revenue"—a category that includes some fuel surcharges—increased more than ten-fold from $141 million in 2000 to over $1.7 billion in 2005. We have recommended that STB revise its data collection methods to more accurately collect data on railroad revenue.

- It is difficult to precisely determine how many shippers are "captive" because available proxy measures can overstate or understate captivity. However some data indicate that potentially captive traffic appears to have decreased, while at the same time, data also indicates

[3]The intermodal market consists of containers and trailers that can be carried on ships, trucks, or rail.

[4]We constructed rate indexes to examine trends in rail rates over the 1985 to 2005 period. In our August 2007 report, we reported a 7 percentage point change in the rate index. Using 1.0 as our 1985 base we reported the change 0.8 to 0.87 from 2004-2005. This 7 percentage point change translates into an annual increase of 9 percent. In this testimony we refer to the annual increase and not the percentage change in the rate index.

that traffic traveling at rates significantly above the threshold for rate relief has increased. In October 2006, we reported that STB's efforts to protect captive shippers have resulted in little effective relief for those shippers. We also reported that economists and shipper groups have proposed a number of alternatives to address remaining concerns about competition and capacity – however, each of these alternative approaches have costs and benefits and should be carefully considered to ensure the approach will achieve the important balance set out in the Staggers Act of allowing the railroads to earn adequate revenues and invest in its infrastructure while assuring protection for captive shippers from unreasonable rates.

- STB has taken some actions to address our past recommendations, but it is too soon to determine the effect of these actions. Our October 2006 report noted that the continued existence of pockets of potentially "captive shippers" raised questions as to whether rail rates in selected markets reflected justified and reasonable pricing practices, or an abuse of market power by the railroads. Based on STB's statutory authority to adjudicate unreasonable rates and to inquire into and report on railroad practices, we recommended that the Board undertake a rigorous analysis of competitive markets to identify the state of competition nationwide and to determine in specific markets whether the inappropriate exercise of market power is occurring and, where appropriate, to consider the range of actions available to address such problems. STB has awarded a contract to conduct this study; while this is an important step, it will be important that these analysts have the ability that STB has through its statutory authority to inquire into railroad practices as well as sufficient access to information to determine whether rail rates in selected markets reflect justified and reasonable pricing practices or an abuse of market power by the railroads. We also recommended that STB review its method of data collection to ensure that all freight railroads are consistently and accurately reporting all revenues collected from shippers. While STB has revised its rules on establishing and collecting fuel surcharges, these rules did not address how surcharges are reported in the *Carload Waybill Sample* and STB has not yet taken steps to accurately collect data on other miscellaneous revenues. STB has also taken a number of steps to revise its rate relief process. Specifically, in October 2006, STB refined the rate relief process to reduce both the expense and length of the process. In September 2007, STB simplified the rate relief process for small shippers and created a separate new process for medium size shipments. It is too soon to tell what effect these changes will have and we have not evaluated the effect of these changes.

Background

In the past, the ICC regulated almost all of the rates that railroads charged shippers. The Railroad Revitalization and Regulatory Reform Act of 1976 and the Staggers Rail Act of 1980 greatly increased reliance on competition to set rates in the railroad industry. Specifically, these acts allowed railroads and shippers to enter into confidential contracts that set rates and prohibited ICC from regulating rates where railroads had either effective competition or rates negotiated between the railroad and the shipper. Furthermore, the ICC Termination Act of 1995 abolished ICC and transferred its regulatory functions to STB. Taken together, these acts anchor the federal government's role in the freight rail industry by establishing numerous goals for regulating the industry, including to

- allow, to the maximum extent possible, competition and demand for services to establish reasonable rates for transportation by rail;
- minimize the need for federal regulatory control over the rail transportation system and require fair and expeditious regulatory decisions when regulation is required;
- promote a safe and efficient rail transportation system by allowing rail carriers to earn adequate revenues, as determined by STB;
- ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes to meet the needs of the public and the national defense;
- foster sound economic conditions in transportation and ensure effective competition and coordination between rail carriers and other modes;
- maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues that exceed the amount necessary to maintain the rail system and attract capital;
- prohibit predatory pricing and practices to avoid undue concentrations of market power; and
- provide for the expeditious handling and resolution of all proceedings.

While the Staggers Rail and ICC Termination Acts reduced regulation in the railroad industry, they maintained STB's role as the economic regulator of the industry. The federal courts have upheld STB's general powers to monitor the rail industry, including its ability to subpoena witnesses and records and to depose witnesses. In addition, STB can revisit its past decisions if it discovers a material error, or new evidence, or if circumstances have substantially changed.

Two important components of the current regulatory structure for the railroad industry are the concepts of revenue adequacy and demand-based differential pricing. Congress established the concept of revenue adequacy

as an indicator of the financial health of the industry. STB determines the revenue adequacy of a railroad by comparing the railroad's return on investment with the industrywide cost of capital. For instance, if a railroad's return on investment is greater than the industrywide cost of capital, STB determines that railroad to be revenue adequate. Historically, ICC and STB have rarely found railroads to be revenue adequate—a result that many observers relate to characteristics of the industry's cost structure. Railroads incur large fixed costs to build and operate networks that jointly serve many different shippers. Some fixed costs can be attributed to serving particular shippers, and some costs vary with particular movements, but other costs are not attributable to particular shippers or movements. Nonetheless, a railroad must recover these costs if the railroad is to continue to provide service over the long run. To the extent that railroads have not been revenue adequate, they may not have been fully recovering these costs.

The Staggers Rail Act recognized the need for railroads to use demand-based differential pricing to promote a healthy rail industry and enable it to raise sufficient revenues to operate, maintain and, if necessary, expand the system in a deregulated environment. Demand-based differential pricing, in theory, permits a railroad to recover its joint and common costs—those costs that exist no matter how many shipments are transported, such as the cost of maintaining track— across its entire traffic base by setting higher rates for traffic with fewer transportation alternatives than for traffic with more alternatives. Differential pricing recognizes that some customers may use rail if rates are low—and have other options if rail rates are too high or service is poor. Therefore, rail rates on these shipments generally cover the directly attributable (variable) costs, plus a relatively low contribution to fixed costs. In contrast, customers with little or no practical alternative to rail—"captive" shippers—generally pay a much larger portion of fixed costs. Moreover, even though a railroad might incur similar incremental costs while providing service to two different shippers that move similar volumes in similar car types traveling over similar distances, the railroad might charge the shippers different rates. Furthermore, if the railroad is able to offer lower rates to the shipper with more transportation alternatives, that shipper still pays some of the joint and common costs. By paying even a small part of total fixed cost, competitive traffic reduces the share of those costs that captive shippers would have to pay if the competitive traffic switched to truck or some other alternative. Consequently, while the shipper with fewer alternatives makes a greater contribution toward the railroad's joint and common costs, the contribution is less than if the shipper with more alternatives did not ship via rail.

The Staggers Rail Act further requires that the railroads' need to obtain adequate revenues to be balanced with the rights of shippers to be free from, and to seek redress from, unreasonable rates. Railroads incur variable costs—that is, the costs of moving particular shipments—in providing service. The Staggers Rail Act stated that any rate that was found to be below 180 percent of a railroad's variable cost for a particular shipment could not be challenged as unreasonable and authorized ICC, and later STB, to establish a rate relief process for shippers to challenge the reasonableness of a rate. STB may consider the reasonableness of a rate only if it finds that the carrier has market dominance over the traffic at issue—that is, if (1) the railroad's revenue is equal to or above 180 percent of the railroad's variable cost (R/VC) and (2) the railroad does not face effective competition from other rail carriers or other modes of transportation.

Railroad Industry Is Increasingly Healthy and Rail Rates Have Generally Declined Since 1985, Despite Recent Rate Increases

The changes that have occurred in the railroad industry since the enactment of the Staggers Rail Act are widely viewed as positive. In addition, rail rates have generally declined since 1985, even though rates began to increase in 2001 and experienced a 9 percent annual increase between 2004 and 2005—the largest annual increase in 20 years. Likewise, rail rates have declined since 1985 for certain commodity groups and routes despite some increases since 2001, but rates have not declined uniformly. Railroads have also shifted other costs to shippers, such as the cost of rail car ownership, and have increased the revenue they report as miscellaneous more than 10-fold between 2000 and 2005.

Railroad Industry's Financial Health Has Improved Substantially

There is widespread consensus that the freight rail industry has benefited from the Staggers Rail Act. Various measures indicate an increasingly strong freight railroad industry. Freight railroads have also cut costs by streamlining their workforces; right-sizing their rail networks; and reducing track miles, equipment, and facilities to more closely match demand.[5] Freight railroads have also expanded their business into new markets—such as the intermodal market—and implemented new technologies, including larger cars, and are currently developing new scheduling and train control systems.

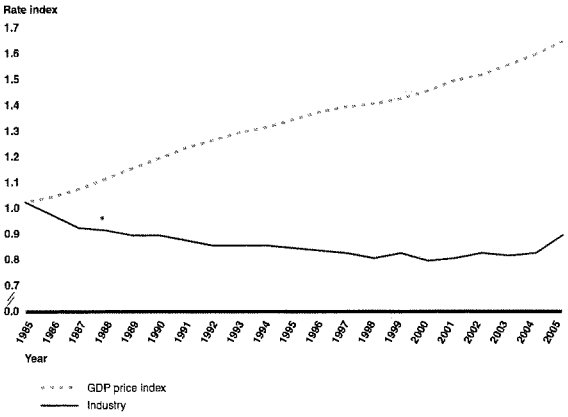
[5]Clifford Winston, *Deregulation of Network Industries – What's Next?* (Washington: AEI-Brookings Joint Center for Regulatory Studies: 2000), pp. 43-44.

Industry Rates Have Generally Declined Since 1985

Rail rates across the freight railroad industry have generally declined since 1985 despite a recent increase. Rates began to rise in 2001 and experienced a 9 percent annual increase from 2004-2005, which represents the largest annual increase in rates during the 20-year period from 1985 through 2005. This increase also outpaced inflation—about 3 percent in 2005. However, despite these increases, rates for 2005 remain below their 1985 levels and below the rate of inflation.[6] Because the set of rail rate indexes we used to examine trends in rail rates over time does not account for inflation we also included the price index for the gross domestic product (GDP) in figure 1.

[6]We constructed rate indexes to examine trends in rail rates over the 1985 to 2005 period. These indexes define traffic patterns for a given commodity in terms of census region to census region flows of that commodity, and we calculated the average revenue per ton-mile for each of these traffic flows. The index is calculated as the weighted average of these traffic flows in each year, expressed as a percentage of the value for 1985, where the weights reflect the traffic patterns in 2005. By fixing the weights as of one period of time, we attempted to measure pure price changes rather than calculating the average revenue per ton-mile in each year. Over time, changes in traffic patterns could result in a substitution of lower priced traffic for higher priced traffic, or vice versa, so that a decrease in average revenue per ton-mile might partly reflect this change in traffic patterns. The rate index for the overall industry was defined similarly, except that the traffic pattern bundle was defined in terms of broad commodity, census region of origin, and mileage block categories. For comparison, we also present the price index for gross domestic product over this period.

Figure 1: Trends in Industry Rail Rates, 1985-2005

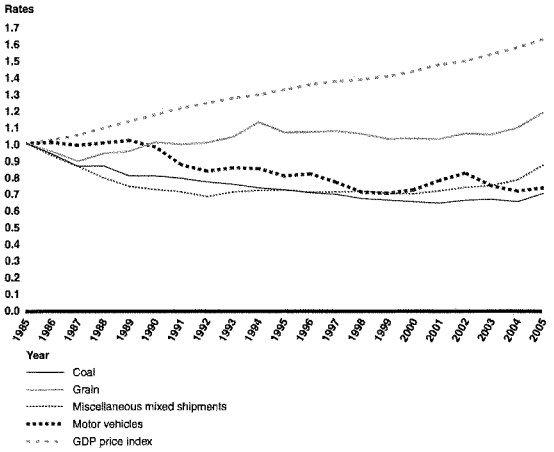


Source: GAO analysis of STB data.

While Generally Declining over the Long Term, Rates for Several Commodities Have Increased in Recent Years

Rates for several commodities in 2005 remain lower than in 1985. Similar to overall industry trends, rates for individual commodities have increased from 2004-2005. In 2005, rates increased for all 13 commodities that we reviewed. Figure 2 depicts rate changes for coal, grain, miscellaneous mixed shipments, and motor vehicles from 1985 through 2005.

Figure 2: Rate Changes for Coal, Grain, Miscellaneous Mixed Shipments, and Motor Vehicles, 1985-2005

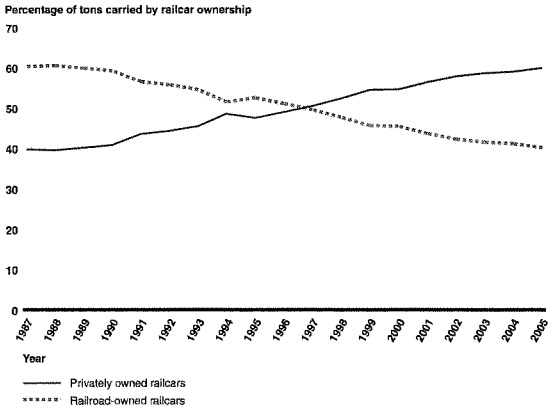


Source: GAO analysis of STB data.

Railroads Have Shifted Costs to Shippers

Over 20 years, freight railroad companies have shifted other costs to shippers. Our analysis shows a 20 percent shift in railcar ownership (measured in tons carried) since 1987. In 1987, railcars owned by freight railroad companies moved 60 percent of tons carried. In 2005, they moved 40 percent of tons carried, meaning that freight railroad company railcars no longer carry the majority of tonnage (see fig. 3).

Figure 3: Tonnage Carried by Railcar Ownership, 1987-2005



Source: GAO analysis of STB data.

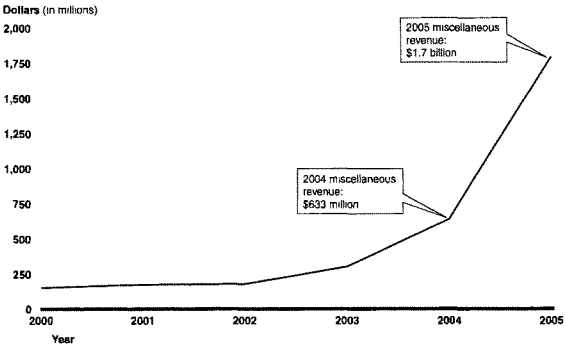
Reported Miscellaneous Revenue, Including Fuel Surcharges, Increased Ten-Fold Since 2000

In 2005 the amount of industry revenue reported as miscellaneous increased ten-fold over 2000 levels, rising from about $141 million to over $1.7 billion (see fig. 4). Miscellaneous revenue is a category in the Carload Waybill Sample for reporting revenue outside the standard rate structure. This miscellaneous revenue can include some fuel surcharges,[7] as well as revenues such as those derived from congestion fees and railcar auctions (in which the highest bidder is guaranteed a number of railcars at a

[7]Fuel surcharges are charges associated with recouping the cost of fuel.

specified date). In 2004, miscellaneous revenue accounted for 1.5 percent of freight railroad revenue reported. In 2005, this percentage had risen to 3.7 percent. Also, in 2005, 20 percent of all tonnage moved in the United States generated miscellaneous revenue.

Figure 4: Miscellaneous Revenue Tracked in Carload Waybill Sample, 2000-2005



Source: GAO analysis of STB data

Captive Shippers Are Difficult to Identify But Concerns Remain and Past STB Actions Have Led to Little Effective Relief

In October 2006, we reported that captive shippers are difficult to identify and STB's efforts to protect captive shippers have resulted in little effective relief for those shippers. We also reported that economists and shipper groups have proposed a number of alternatives to address remaining concerns about competition – however, each of these alternative approaches have costs and benefits and should be carefully considered to ensure the approach will achieve the important balance set out in the Staggers Act.

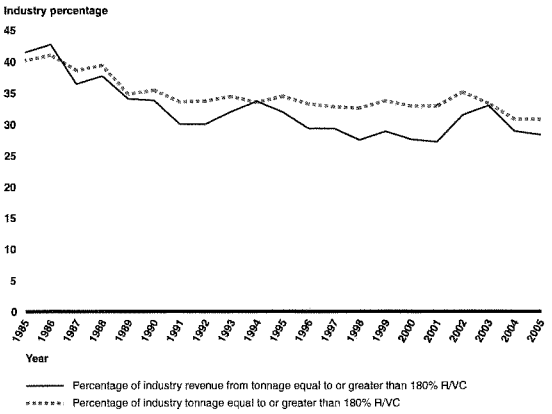
Captive Shippers Remain Difficult to Identify, but Some Measures Indicate Captivity Is Dropping in the Railroad Industry

It remains difficult to determine precisely how many shippers are "captive" to one railroad because the proxy measures that provide the best indication can overstate or understate captivity. One measure of potential captivity—traffic traveling at rates equal to or greater than 180 percent R/VC—is part of the statutory threshold for bringing a rate relief case before STB.[8] STB regards traffic at or above this threshold as "potentially captive," but, like other measures, R/VC levels can understate or overstate captivity.[9] Since 1985, tonnage and revenue from traffic traveling at rates over 180 percent R/VC have generally declined. (see fig. 5). In 2005, industry revenue generated by traffic traveling at rates over 180 percent R/VC dropped by roughly half a percent. Tonnage traveling at rates over 180 percent R/VC dropped by a smaller percentage.

[8]Another condition of bringing a rate relief case before STB is a railroad not facing effective competition from other rail carriers or other modes of transportation.

[9]For example, it is possible for the R/VC ratio to increase while the rate paid by a shipper is declining. Assume that in Year 1, a shipper is paying a rate of $20 and the railroad's variable cost is $12; the R/VC ratio—a division of the rate and the variable cost—would be 167 percent. If in Year 2, the variable costs decline by $2 from $12 to $10 and the railroad passes this cost savings directly on to the shipper in the form of a reduced rate, the shipper would pay $18 instead of $20. However, because both revenue and variable cost decline, the R/VC ratio—$18 divided by $10— increases to 180 percent.

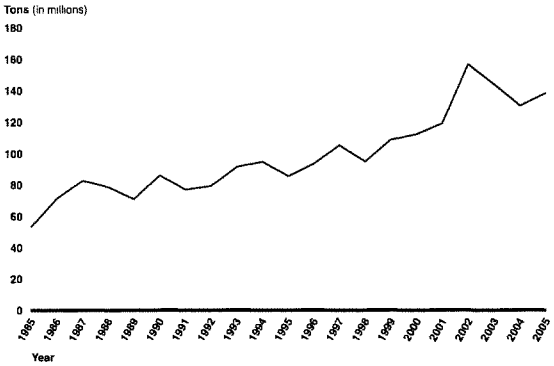
Figure 5: Tonnage and revenue generated from Traffic Traveling at Rates Equal to or Greater Than 180 percent R/VC, 1985-2005



Source: GAO analysis of STB data.

While traffic traveling at rates over 180 percent R/VC has generally declined, traffic traveling at rates substantially over the threshold for rate relief has generally increased from 1985 to 2005 (see fig. 6). This traffic declined in 2003 and 2004, but rose in 2005.

Figure 6: Tonnage Traveling at Rates over 300 Percent R/VC, 1985-2005



Source GAO analysis of STB data

Some areas with access to one Class I railroad also have more than half of their traffic traveling at rates that exceed the statutory threshold for rate relief. For example, parts of New Mexico and Idaho with access to one Class I railroad had more than half of all traffic originating in those same areas traveling at rates over 180 percent R/VC. However, we also found instances in which an economic area may have access to two or more Class I railroads and still have more than 75 percent of its traffic traveling at rates over 180 percent R/VC, as well as other instances in which an economic area may have access to one Class I railroad and have less than 25 percent of its traffic traveling at rates over 180 percent R/VC.

STB Has Taken Actions to Protect Captive Shippers but Efforts Have Led to Little Effective Relief

STB has taken a number of actions to provide relief for captive shippers. While the Staggers Rail and ICC Termination Acts encourage competition as the preferred way to protect shippers and to promote the financial health of the railroad industry, they also give STB the authority to

- *adjudicate rate cases* to resolve disputes between captive shippers and railroads upon receiving a complaint from a shipper;

- *approve rail transactions*, such as mergers, consolidations, acquisitions, and trackage rights;
- *prescribe new regulations*, such as rules for competitive access and merger approvals; and
- *inquire into and report on rail industry practices*, including obtaining information from railroads on its own initiative and holding hearings to inquire into areas of concern, such as competition.

Under its adjudicatory authority, STB has developed standard rate case guidelines, under which captive shippers can challenge a rail rate and appeal to STB for rate relief. Under the standard rate relief process, STB assesses whether the railroad dominates the shipper's transportation market and, if it finds market dominance, proceeds with further assessments to determine whether the actual rate the railroad charges the shipper is reasonable. STB requires that the shipper demonstrate how much an optimally efficient railroad would need to charge the shipper and construct a hypothetical, perfectly efficient railroad that would replace the shipper's current carrier. As part of the rate relief process, both the railroad and the shipper have the opportunity to present their facts and views to STB, as well as to present new evidence.

STB also created alternatives to the standard rate relief process, developing simplified guidelines, as Congress required, for cases in which the standard rate guidelines would be too costly or infeasible given the value of the cases. Under these simplified guidelines, captive shippers who believe that their rate is unreasonable can appeal to STB for rate relief, even if the value of the disputed traffic makes it too costly or infeasible to apply the standard guidelines.

Despite STB's efforts, we reported in 2006 that there was widespread agreement that STB's standard rate relief process was inaccessible to most shippers and did not provide for expeditious handling and resolution of complaints. The process remained expensive, time consuming, and complex. Specifically, shippers we interviewed agreed that the process could cost approximately $3 million per litigant. In addition, shippers said that they do not use the process because it takes so long for STB to reach a decision. Lastly, shippers stated that the process is both time consuming and difficult because it calls for them to develop a hypothetical competing railroad to show what the rate should be and to demonstrate that the existing rate is unreasonable.

We also reported that the simplified guidelines also had not effectively provided relief for captive shippers. Although these simplified guidelines

had been in place since 1997, a rate case had not been decided under the process set out by the guidelines when we issued our report in 2006. STB had held public hearings in April 2003 and July 2004 to examine why shippers have not used the guidelines and to explore ways to improve them. At these hearings, numerous organizations provided comments to STB on measures that could clarify the simplified guidelines, but no action was taken. STB observed that parties urged changes to make the process more workable, but disagreed on what those changes should be. We reported that several shipper organizations told us that shippers were concerned about using the simplified guidelines because they believe the guidelines will be challenged in court, resulting in lengthy litigation. STB officials told us that they—not the shippers—would be responsible for defending the guidelines in court. STB officials also said that if a shipper won a small rate case, STB could order reparations to the shipper before the case was appealed to the courts.

Since our report in October 2006, STB has taken steps to refine the rate relief process. Specifically, in October 2006, STB revised procedures for deciding large rate relief cases. By placing restraints on the evidence and arguments allowed in these cases, STB predicted that the expense and delay in resolving these rate disputes would be reduced substantially. In September 2007, STB altered its simplified guidelines for small shippers to enable shippers who are seeking up to $1 million in rate relief over a 5-year period to receive a STB decision within 8 months of filing a complaint. STB also created a new rate relief process for medium size shipments to allow shippers who are seeking up to $5 million in rate relief over a 5-year period to receive a STB decision within 17 months of filing a complaint. Additionally, STB also stated that all rail rate disputes would require nonbinding mediation.

Shipper Groups and Others Have Suggested Alternative Approaches That Have Costs and Benefits

Shipper groups, economists, and other experts in the rail industry have suggested several alternative approaches as remedies that could provide more competitive options to shippers in areas of inadequate competition or excessive market power. These groups view these approaches as more effective than the rate relief process in promoting a greater reliance on competition to protect shippers against unreasonable rates. Some

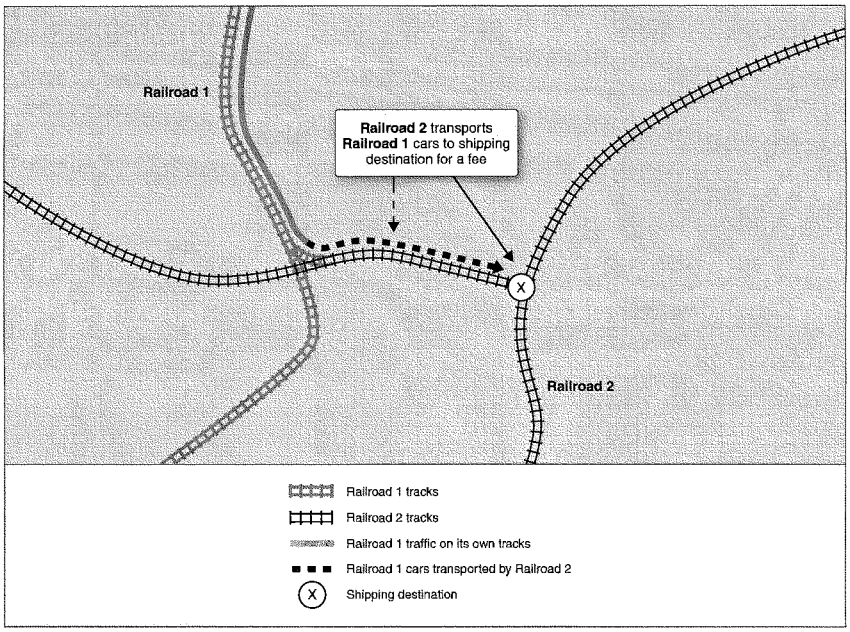
proposals would require legislative change, or a reopening of past STB decisions.[19]

These approaches each have potential costs and benefits. On the one hand, they could expand competitive options, reduce rail rates, and decrease the number of captive shippers as well as reduce the need for both federal regulation and a rate relief process. On the other hand, reductions in rail rates could affect railroad revenues and limit the railroads' ability and potential willingness to invest in their infrastructure. In addition, some markets may not have the level of demand needed to support competition among railroads. It will be important for policymakers, in evaluating these alternative approaches, to carefully consider the impact of each approach on the balance set out in the Staggers Act. The targeted approaches frequently proposed by shipper groups and others include the following:

- *Reciprocal switching*: This approach would allow STB to require railroads serving shippers that are close to another railroad to transport cars of a competing railroad for a fee. The shippers would then have access to railroads that do not reach their facilities. This approach is similar to the mandatory interswitching in Canada, which enables a shipper to request a second railroad's service if that second railroad is within approximately 18 miles. Some Class I railroads already interchange traffic using these agreements, but they oppose being required to do so. Under this approach, STB would oversee the pricing of switching agreements. This approach could also reduce the number of captive shippers by providing a competitive option to shippers with access to a proximate but previously inaccessible railroad and thereby reduce traffic eligible for the rate relief process (see fig. 7).

[19]Another proposal, articulated by economists Curtis Grimm and Cliff Winston, calls for the elimination of STB. This proposal recognizes that captive shippers have likely been hurt by a lack of competition, but it states that allowing the Department of Justice to review rail mergers instead of STB and ending the potential for reregulation of the industry could lead railroad officials and shippers to negotiate an agreement to address remaining rail competition concerns. Curtis Grimm and Clifford Winston, "Competition in the Deregulated Railroad Industry: Sources, Effects, and Policy Issues," (AEI – Brooking Institution. Washington, D.C.: 2000).

Figure 7: Reciprocal Switching

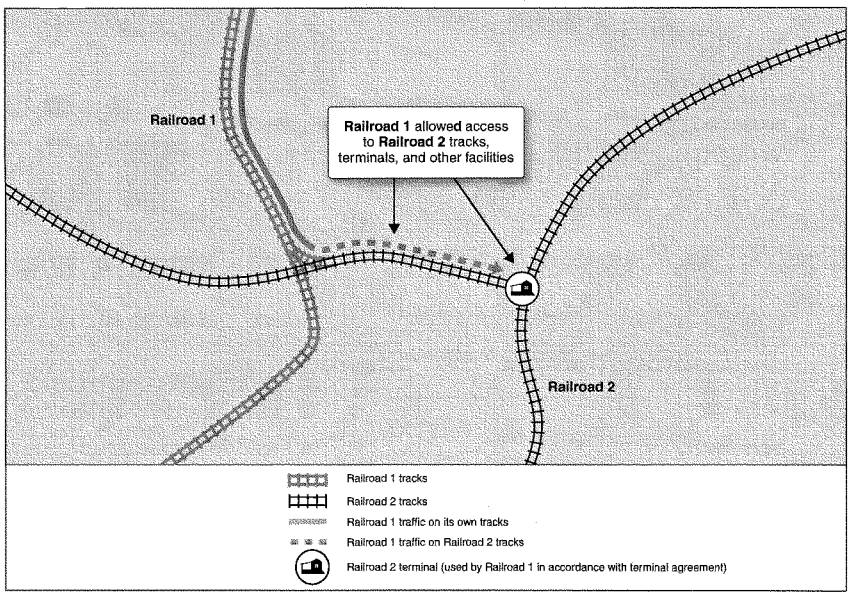


Source: GAO.

- *Terminal agreements*: This approach would require one railroad to grant access to its terminal facilities or tracks to another railroad, enabling both railroads to interchange traffic or gain access to traffic coming from shippers off the other railroad's lines for a fee. Current regulation requires a shipper to demonstrate anticompetitive conduct by a railroad before STB will grant access to a terminal by a nonowning railroad unless there is an emergency or when a shipper can demonstrate poor service and a second railroad is willing and able to

provide the service requested. This approach would require revisiting the current requirement that railroads or shippers demonstrate anticompetitive conduct in making a case to gain access to a railroad terminal in areas where there is inadequate competition. The approach would also make it easier for competing railroads to gain access to the terminal areas of other railroads and could increase competition between railroads. However, it could also reduce revenues to all railroads involved and adversely affect the financial condition of the rail industry. Also, shippers could benefit from increased competition but might see service decline (see fig. 8).

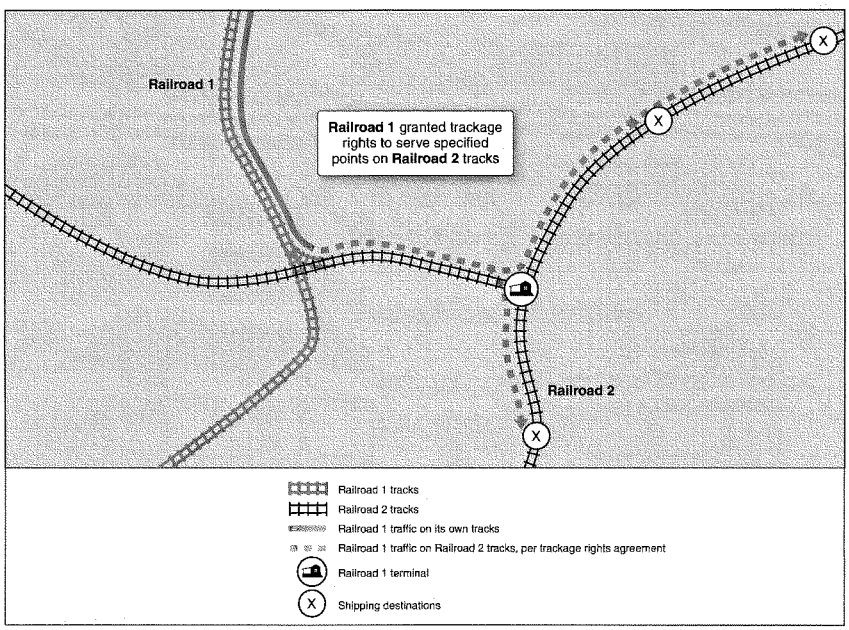
Figure 8: Terminal Agreements



Source: GAO.

- *Trackage rights*: This approach would require one railroad to grant access to its tracks to another railroad, enabling railroads to interchange traffic beyond terminal facilities for a fee. In the past, STB has imposed conditions requiring that a merging railroad must grant another railroad trackage rights to preserve competition when a merger would reduce a shipper's access to railroads from two to one. While this approach could potentially increase rail competition and decrease rail rates, it could also discourage owning railroads from maintaining the track or providing high-quality service, since the value of lost use of track may not be compensated by the user fee and may decrease return on investment (see fig. 9).

Figure 9: Trackage Rights



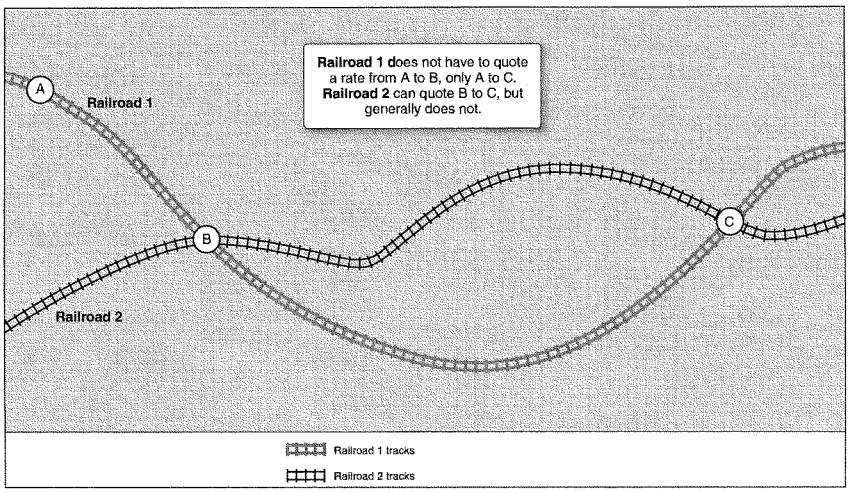
Source: GAO.

- *"Bottleneck" rates*: This approach would require a railroad to establish a rate, and thereby offer to provide service, for any two points on the railroad's system where traffic originates, terminates, or can be interchanged. Some shippers have more than one railroad that serves them at their origin and/or destination points, but have at least one portion of a rail movement for which no alternative rail route is available. This portion

is referred to as the "bottleneck segment." STB's decision that a railroad is not required to quote a rate for the bottleneck segment has been upheld in federal court.[11] STB's rationale was that statute and case law precluded it from requiring a railroad to provide service on a portion of its route when the railroad serves both the origin and destination points and provides a rate for such movement. STB requires a railroad to provide service for the bottleneck segment only if the shipper had prior arrangements or a contract for the remaining portion of the shipment route. On the one hand, requiring railroads to establish bottleneck rates would force short-distance routes on railroads when they served an entire route and could result in loss of business and potentially subject the bottleneck segment to a rate complaint. On the other hand, this approach would give shippers access to a second railroad, even if a single railroad was the only railroad that served the shipper at its origin and/or destination points, and could potentially reduce rates (see fig. 10).

[11]The U.S. Court of Appeals for the Eighth Circuit affirmed STB decision that a bottleneck carrier generally need not quote a separate rate for the bottleneck portion of the route. *Mid-American Energy Co. v. Surface Transportation Board*, 169 F. 3d 1099 (8th Cir.: Feb. 10, 1999). The D.C. Circuit affirmed STB holding that separately challengeable bottleneck rates can be required whenever a shipper has a contract over the nonbottleneck segment of a through movement. *Union Pacific Railroad v. Surface Transportation Board*, 202 F. 3d 337 (D.C. Cir.: 2000).

Figure 10: Bottleneck Rates

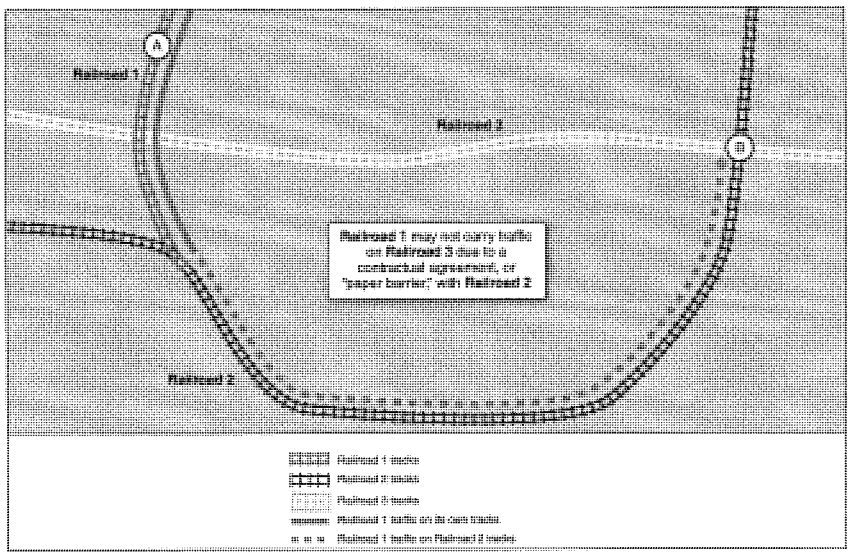


Source: GAO.

- *Paper barriers*: This approach would prevent or, put a time limit on, paper barriers, which are contractual agreements that can occur when a Class I railroad either sells or leases long term some of its track to other railroads (typically a short-line railroad and/or regional railroad). These agreements stipulate that virtually all traffic that originates on that line must interchange with the Class I railroad that originally leased the tracks or pay a penalty. Since the 1980s, approximately 500 short lines have been created by Class I railroads selling a portion of their lines; however, the extent to which paper barriers are a standard practice is unknown because they are part of confidential contracts. When this type of agreement exists, it can inhibit smaller railroads that connect with or cross two or more Class I rail systems from providing rail customers access to competitive service. Eliminating paper barriers could affect the railroad industry's overall capacity since Class I railroads may abandon lines instead of selling them to smaller railroads and thereby increase the cost of entering a market for a would-be competitor. In addition, an official from a railroad

association told us that it is unclear if a federal agency could invalidate privately negotiated contracts (see fig. 11).

Figure 11: Paper Barriers



Source: GAO.

STB Has Taken Steps to Address Problems, but Actions Are Too Recent to Be Evaluated

STB has taken some actions to address our past recommendations, but it is too soon to determine the effect of these actions. In October 2006 we reported that the continued existence of pockets of potential captivity at a time when the railroads are, for the first time in decades, experiencing increasing economic health, raises the question whether rail rates in selected markets reflect justified and reasonable pricing practices, or an abuse of market power by the railroads. While our analysis provided an important first step, we noted that STB has the statutory authority and access to information to inquire into and report on railroad practices and to conduct a more rigorous analysis of competition in the freight rail industry. As a result, we recommended that the Board undertake a rigorous analysis of competitive markets to identify the state of competition nationwide and to determine in specific markets whether the inappropriate exercise of market power is occurring and, where appropriate, to consider the range of actions available to address such problems.

STB initially disagreed with our recommendation because it believed the findings underlying the recommendation were inconclusive, their on-going efforts would address many of our concerns, and a rigorous analysis would divert resources from other efforts. However, in June 2007, STB stated that it intended to implement our recommendation using funding that was not available at the time of our October report to solicit proposals from analysts with no connection to the freight railroad industry or STB proceedings to conduct a rigorous analysis of competition in the freight railroad industry. On September 13, 2007, STB announced that it had awarded a contract for a comprehensive study on competition, capacity, and regulatory policy issues to be completed by the fall of 2008. We commend STB for taking this action. It will be important that these analysts have the ability that STB has through its statutory authority to inquire into railroad practices as well as sufficient access to information to determine whether rail rates in selected markets reflect justified and reasonable pricing practices, or an abuse of market power by the railroads.

We also recommended that STB review its method of data collection to ensure that all freight railroads are consistently and accurately reporting all revenues collected from shippers, including fuel surcharges and other costs not explicitly captured in all railroad rate structures. In January 2007, STB finalized rules that require railroads to ensure that fuel surcharges are based on factors directly affecting the amount of fuel consumed. In August 2007, STB finalized rules that require railroads to report their fuel costs and revenue from fuel surcharges. While these are

positive steps, these rules did not address how surcharges are reported in the *Carload Waybill Sample*. In addition, STB has not taken steps to address collection and reporting of other miscellaneous revenues—revenues deriving from sources other than fuel surcharges.

As stated earlier, STB has also taken steps to refine the rate relief process since our 2006 report. STB has made changes to the rate relief process that it believes will reduce the expense and delay of obtaining rate relief. While these appear to be positive steps that could address longstanding concerns with the rate relief process, it is too soon to determine the effect of these changes to the process, and we have not evaluated the effect of these changes.

Mr. Chairman, this concluded my prepared statement. I would be happy to respond to any questions you or other Members of the Committee may have at this time.

Contact and Acknowledgements

For questions regarding this testimony, please contact JayEtta Z. Hecker on (202) 512-2834 or heckerj@gao.gov. Individuals making key contributions to this testimony include Steve Cohen (Assistant Director), Yuniko Jolly, and John W. Shumann.

Related GAO Products

Freight Railroads: Industry Health Has Improved, but Concerns About Competition and Capacity Should Be Addressed. GAO-07-94. Washington, D.C.: Oct. 6, 2006).

Freight Railroads: Updated Information on Rates and Other Industry Trends. GAO-07-291R. Washington, D.C.: Aug. 15, 2007.

Freight Railroads: Preliminary Observations on Rates, Competition, and Capacity Issues. GAO-06-898T. Washington, D.C.: June 21, 2006.

Freight Transportation: Short Sea Shipping Option Shows Importance of Systematic Approach to Public Investment Decisions. GAO-05-768. Washington, D.C.: July 29, 2005.

Freight Transportation: Strategies Needed to Address Planning and Financing Limitations. GAO-04-165. Washington, D.C.: December 19, 2003.

Railroad Regulation: Changes in Freight Railroad Rates from 1997 through 2000. GAO-02-524. Washington, D.C.: June 7, 2002.

Freight Railroad Regulation: Surface Transportation Board's Oversight Could Benefit from Evidence Better Identifying How Mergers Affect Rates. GAO-01-689. Washington, D.C.: July 5, 2001.

Railroad Regulation: Current Issues Associated with the Rate Relief Process. GAO/RCED-99-46. Washington, D.C.: April 29, 1999.

Railroad Regulation: Changes in Railroad Rates and Service Quality Since 1990. GAO/RCED-99-93. Washington, D.C.: April 6, 1999.

Interstate Commerce Commission: Key Issues Need to Be Addressed in Determining Future of ICC's Regulatory Functions. GAO-T-RCED-94-261 Washington, D.C.: July 12, 1994.

Railroad Competitiveness: Federal Laws and Policies Affect Railroad Competitiveness. GAO/RCED-92-16. Washington, D.C.: November 5, 1991.

Railroad Regulation: Economic and Financial Impacts of the Staggers Rail Act of 1980. GAO/RCED-90-80. Washington, D.C.: May 16, 1990.

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Railroad Revenues: Analysis of Alternative Methods to Measure Revenue Adequacy. GAO/RCED-87-15BR. Washington, D.C.: October 2, 1986.

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National Association of Wheat Growers
415 Second St. NE, Suite 300
Washington, D.C. 20002
202-547-7800

Idaho Grain Producers Association
821 West State Street
Boise, ID
208-345-0706

Testimony of Wayne Hurst
Past President of the Idaho Grain Producers Association and
Member of National Association of Wheat Growers Budget Committee
before
the House Committee on Transportation and Infrastructure
at a Hearing to Review Rail Competition and Service
Sept. 25, 2007

Mr. Chairman and Members of this Committee, my name is Wayne Hurst. I am a wheat, sugar beet, potato, feed barley, alfalfa, silage corn and dry edible bean producer from Burley, Idaho, and a past president of the Idaho Grain Producers Association (IGPA) and a member of the National Association of Wheat Growers' Budget Committee.

I am honored and pleased to be here today on behalf of the Alliance for Rail Competition (ARC) and the agricultural community. The members of the Alliance for Rail Competition include utility, chemical, manufacturing and agricultural companies and agricultural organizations. Producers of commodities as wide ranging as soybeans, dry beans, lentils, rice, barley, peas and sugar beets all have expressed concerns similar to those I will share with you today. Together, these organizations represent growers of farm products in more than 30 states.

Wheat growers know that an effective railroad system is necessary for the success of the wheat industry. However, they continue to face many problems with rail rates and service. Over time, rail customers in the United States have grown more captive. As captivity levels have risen, a larger and larger share of the cost of transportation has been shifted to rail customers and state and local governments. Helping our members find solutions to rail freight problems remains a top priority for both IGPA and NAWG, leading to our alliances with ARC and many other commodity coalitions and to our support of H.R. 2125, which would provide a number of remedies to rail shippers.

Effects of Growing Rail Captivity

Since the passage of the Staggers Rail Act of 1980, the degree of captivity in many wheat growing regions has increased dramatically, and America's farmers continue to experience both unreliable service and higher freight rates. We have had continuing rail equipment shortages since the railroads started aggressively consolidating and merging in the early 1990s. Producers

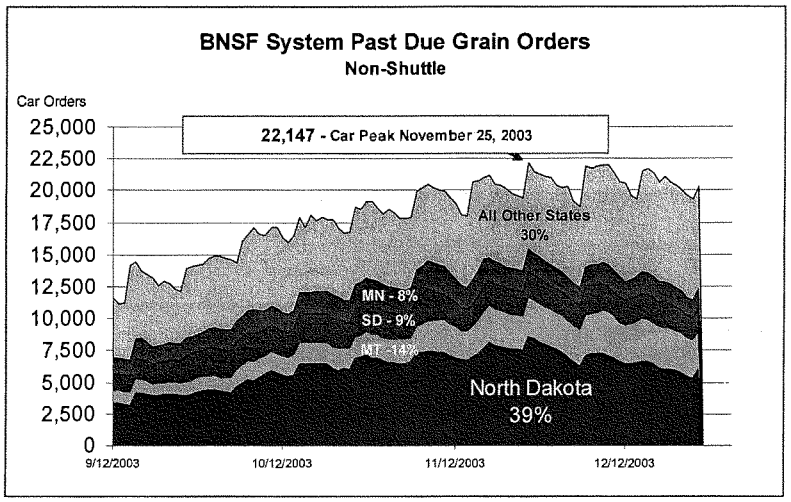
know that increasing the breadth of crop production on farms can lead to greater efficiency and higher income but, rather than a focus on diversity, railroad companies view efficiency as hauling larger and larger movements of a single grade crop from a single origin to a single destination. Rail investment in grain movement has been shifted to the grain merchandiser and farm producer while the service level for less-than-trainload movements continues to deteriorate. We see value-added agriculture having to invest in rail rolling stock to ensure adequate equipment supply, yet when railroad service levels do not meet railroad-supplied schedules, agriculture is frequently called upon to even further increase investment in railroad rolling stock.

Twenty years ago, there were multiple transcontinental railroads servicing agricultural regions. Today, however, whole states, whole regions and now whole industries have become completely captive to single railroads as a result of many railroad mergers. In the wheat industry alone there are substantial pockets of captivity in Texas, Oklahoma, Arizona, Colorado, Kansas, Nebraska, Wyoming, Idaho, South Dakota, Minnesota, North Dakota, Oregon, Washington and Montana. Because of these pockets of captivity, the cost of transporting grain can represent as much as 1/3 (or higher) of the overall price a producer receives for his or her grain. This cost comes directly from a producer's bottom line. It is important to keep in mind that producers, unlike other businesses, cannot pass their costs on; as price takers and not price makers, producers bear all transportation costs both to and from the farm and from the elevator to the processor or export terminal.

Rail captivity has led to rail rates in the Northern Plains that have increased 40 percent faster than the Rail Cost Adjustment Factor including productivity unadjusted. Rail rates in Montana and North Dakota are between 250 and 450 percent of variable cost - far above the Surface Transportation Board's "threshold of unreasonableness," currently 180 percent. Though these are among the highest freight rates in the nation, agriculture rail rates in excess of 250 percent more than variable cost can be found in virtually all of the states that have captivity issues.

Service also continues to be a major issue in farm country. During the 2003 car shortage, data produced by Burlington Northern Santa Fe (BNSF) showed that the most captive areas on the system were singled out for the highest level of past due grain orders. Of the 22,147 cars that were past due, more than 70 percent of the past due orders were in the captive northern tier states of Montana, Minnesota, North Dakota and South Dakota, though this area of the country makes up less than 20 percent of that rail system.

In October, the Government Accountability Office issued a report, GAO 07-94, *Freight Railroads – Industry Health Has Improved, But Concerns About Competition and Capacity Ought to Be Addressed*, available in full at http://www.gao.gov/new.items/d0794.pdf, confirming what we in the captive shipper industry have been stating for years: those areas that are captive pay the highest freight rates yet receive some of the worst service.



Wheat Is On The Ground In The Grain States – and More Harvesting To Do

Dusty Tallman, chairman of NAWG's Domestic Policy and Infrastructure Committee, from Brandon, Colo., who was scheduled to testify at this hearing but was unable to be here after it was rescheduled, wanted me to talk about Colorado's transportation woes for this hearing. Following wheat harvest in July of this year, there were more than 10 million bushels of Colorado wheat stored on the ground primarily in areas where there was a lack of adequate rail service - captive branch line areas. Colorado did not experience a record crop - while the 2007 Colorado winter wheat crop was above average at 87.75 million bushels, it was well below the all-time record crop of 134.55 million bushels, produced in 1985, and the most recent high of 103.2 million bushels in 1999, and was smaller than wheat crops produced in 10 of the last 28 years. Yet millions of bushels sat on the ground because they were produced in areas served by single railroads with no rail-to-rail competition - areas we call captive.

Since 80 percent of Colorado's winter wheat moves by rail to export position in the Gulf of Mexico and the Pacific Northwest - too far to truck - the railroads know wheat on the ground will still be there when they get ready to move it. While U.S. wheat prices are at record highs, Colorado producers and elevator operators are being shut out of the market because they are located on captive rail lines. Compounding this problem is that the corn and millet harvests are just beginning and these commodities cannot be stored on the ground. The lack of rail cars creates an economic embargo on Colorado wheat producers, keeping them from fully participating in these record high prices. I am advised by Darrell Hanavan, executive director of Colorado Wheat Administrative Committee, that this has resulted in wider basis than normal and a loss of 25 to 50 cents per bushel to wheat producers. I am also hearing reports that

producers cannot deliver wheat to elevators because they are plugged, and these producers are contemplating storing their millet and corn crops on the ground because their farm storage is full - and there may not be any relief in sight until December or January.

I am also advised that, along with Colorado, there is wheat being stored on the ground in South Dakota, North Dakota, Montana, Idaho and Washington. In order to create wealth for farm producers, we need to ship what we produce. In Idaho, more than 50 percent of our wheat is shipped into export channels. The elevator I sell to has told me that delays in service have threatened their existence because railroad delays cause cash flow problems. This company is one of the more progressive merchandisers around but, at times they cannot sell and deliver the wheat they buy because the railroad doesn't provide cars as promised. This company is one of the pioneers in identity-preserved wheat marketing, which matches wheat varieties and characteristics to individual customer's specific needs. Shipments in smaller lots like identity-preserved wheat are not what the railroads demand in their business model, yet the identity-preserved business practice holds one of the future keys for American agriculture to maintain market position in the world.

When the railroad decided it didn't want to haul sugar beets about 10 years ago, it just quit hauling and now, with one exception, all beets in Idaho have been forced to truck. In the potato industry, we supplied potatoes to the JR Simplot plant in Heyburn, Idaho, for many years until the plant was shut down several years ago and moved to Canada, meaning the loss of hundreds of local jobs. Mr. Simplot told us the reason was high freight costs and, indeed, most of the shipment of frozen and fresh potatoes in my area today has been forced to trucks.

It is important to realize that rural communities need access to world markets to bring wealth back to our communities. Without reliable, equitable and efficient rail service, we cannot access and compete in that world market.

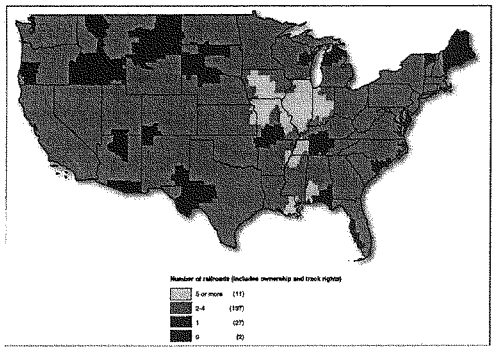
From Idaho, as the GAO report and our data show, we pay some of the highest freight rates because we are captive in our region to a single railroad. The actions of this single railroad have forced more and more farm product into trucks hauling further and further each year.

Grain Rail Rates

The GAO report I referenced earlier found that the entirety of the western United States is served by one or two railroads. Large areas shaded in black in Figure 12,[1] below, illustrate the portions of Oregon, Idaho, Montana North Dakota, South Dakota, Colorado, Texas, Oklahoma and Arkansas that are served by a single railroad.

[1] GAO Report 7-94 Freight Railroads, Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed, Page 26

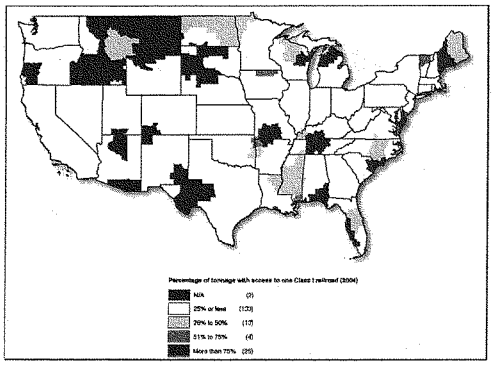
Figure 12: Number of Class I Railroads Serving Economic Areas, 2004



Source: GAO analysis of BEA and GIS data.

Additionally, the GAO showed that all industry tonnage originating with access to one Class I railroad mirrors the previous graph – Figure 13[2].

Figure 13: Percentage of All Industry Tonnage Originating in Economic with Access to One Class I Railroad, 2004



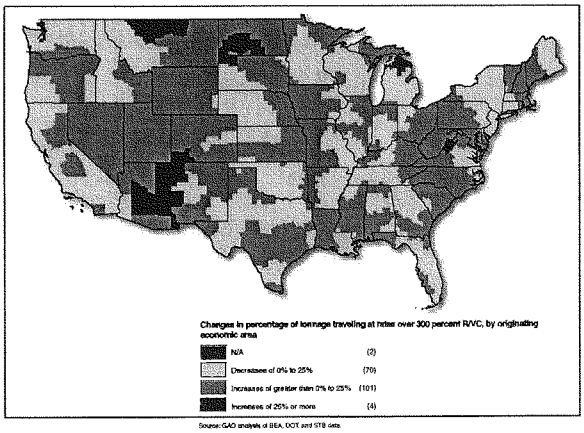
Source: GAO analysis of BEA, DOT, and STB data.

The GAO pulls these observations together with Figure 18, which shows changes in tonnage traveling at rates over 300 percent R/VC from 1985 to 2004[3].

[2] Ibid, Page 27

[3] Ibid, Page 34

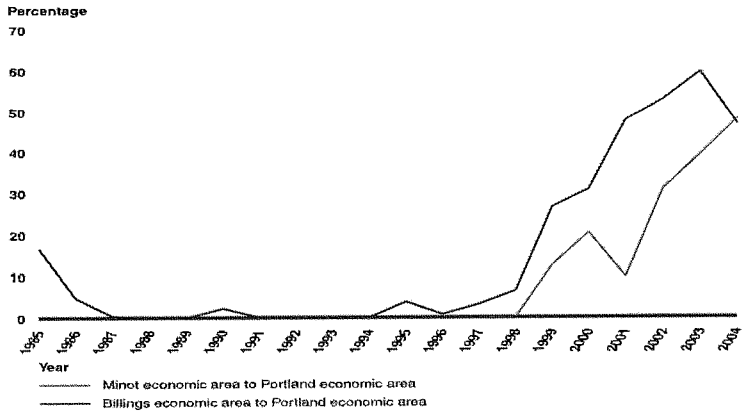
Figure 18: Changes in Percentage of Tonnage Traveling at Rates over 300 Percent R/VC, by Originating Economic Area, 1985 through 2004



Source: GAO analysis of BEA, OCT, and STB data.

Page 35 of the GAO report confirms what wheat and barley producers experience everyday.

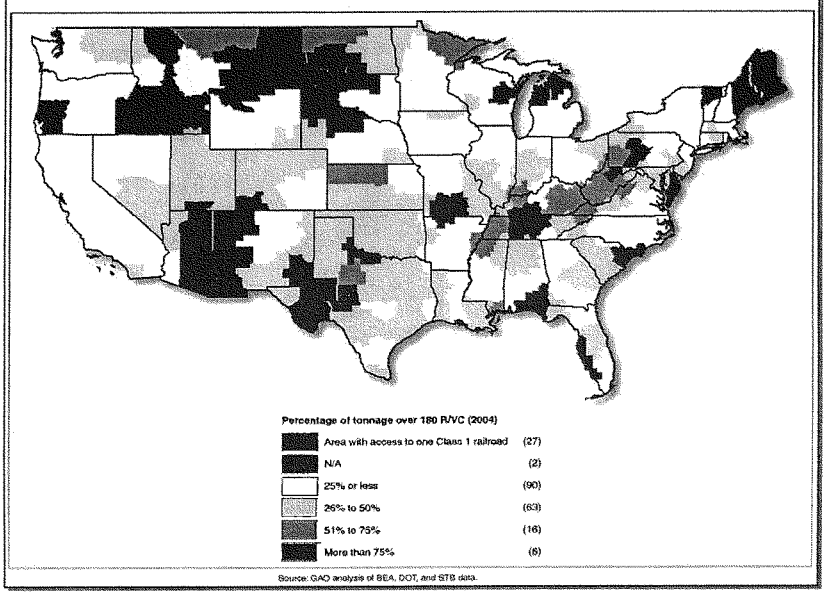
Figure 19: Long-distance Grain Route Changes in Percentage of Tonnage Traveling at Rates over 300 Percent R/VC, 1985-2004



Source: GAO analysis of STB data.

Finally, the GAO report correctly establishes the link between single railroad access and elevated percentage of tonnage above the threshold for rate relief.

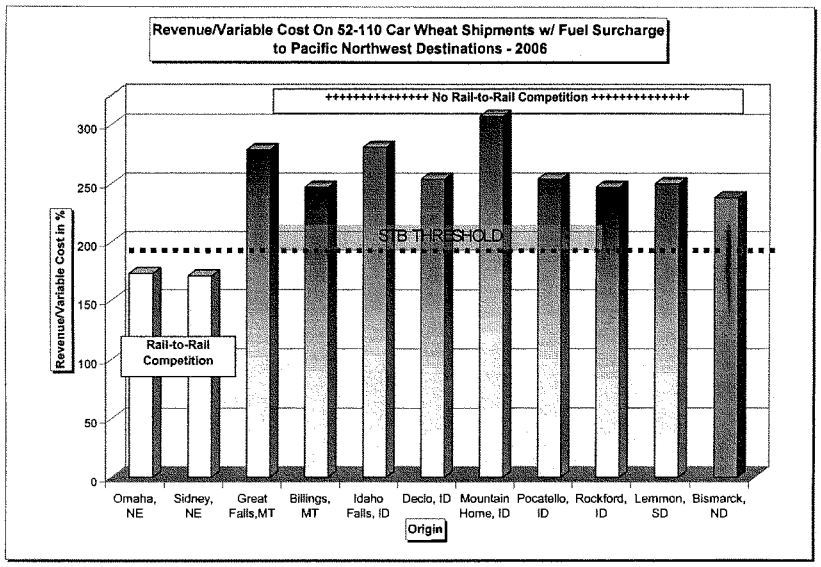
Figure 20: Overlap between Percentage of Tonnage over Threshold for Rate Relief and Access to Only One Class I Railroad



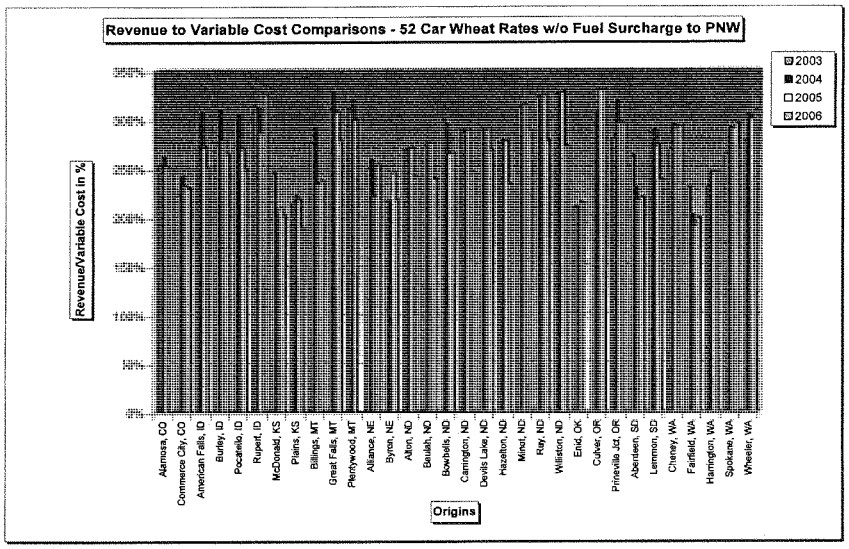
Our consultant's[4] research of R/VC levels on grain from the western growing areas confirm what the GAO found. (Please see the *2006 Montana Rail Grain Transportation Survey and Report,* prepared for the Montana Rail Service Competition Council and *A Joint Survey and Analysis* by the Montana Department of Transportation and Whiteside & Associates, at: **http://rscc.mt.gov/docs/Rail_Grain_Transp_Survey_2006_Final_05_22_07.pdf**)

In examining the R/VC levels on rates to common destinations of the Pacific Northwest, we find large areas moving at rates considerably above the threshold. The chart below shows that areas where little or no rail-to-rail competition exists are exposed to much higher R/VC, in line with the GAO study. This graph shows points in Montana, Idaho, South Dakota and North Dakota that experience R/VC levels upwards to 300 percent. This analysis can be done for points in all parts of the grain growing areas of the country.

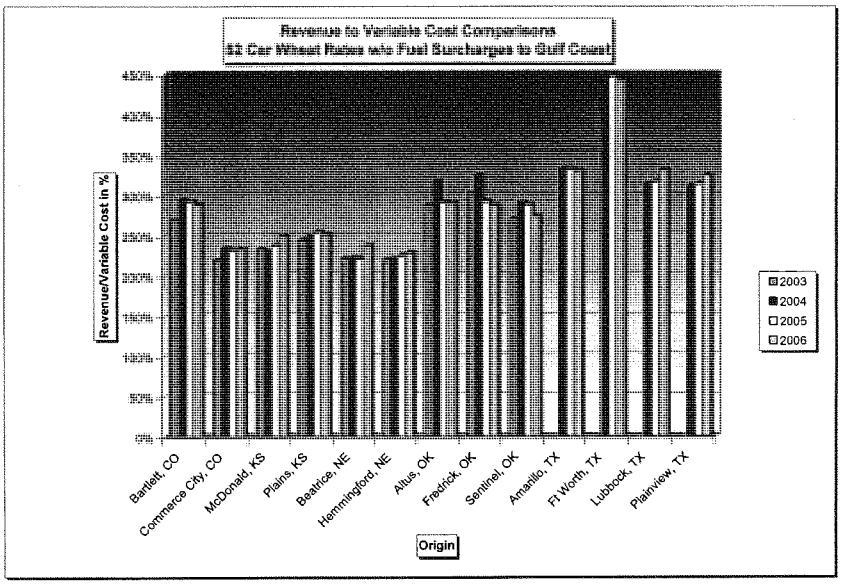
[4] Whiteside & Associates, Billings, Mont.



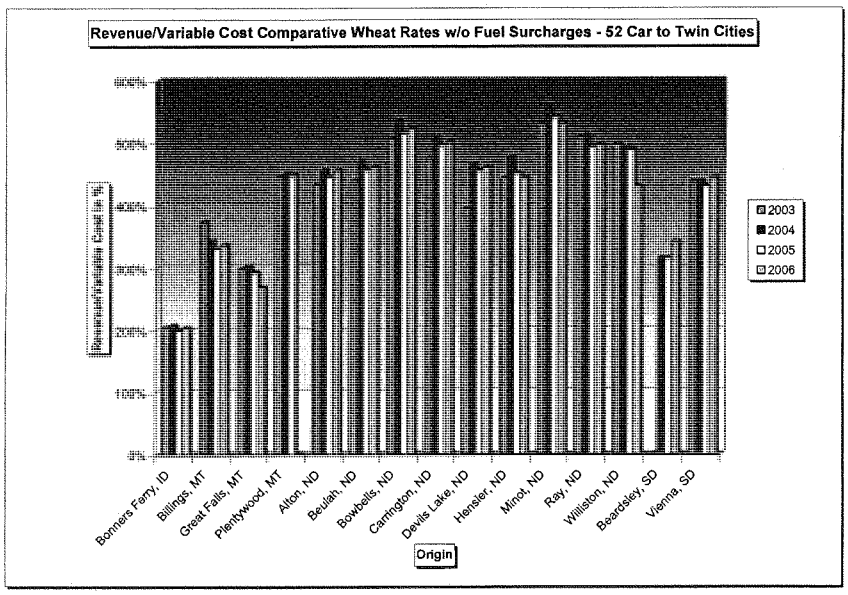
A historical look of the R/VC ratios for various markets further confirms the conclusion presented by the GAO. The chart below shows that, between 2003 and 2006, without fuel surcharges, R/VC ratios were well in excess of the threshold on movements from origins all over the Plains to the Pacific Northwest. If railroad-applied fuel surcharges were added to these states, the R/VC ratios would be even higher.



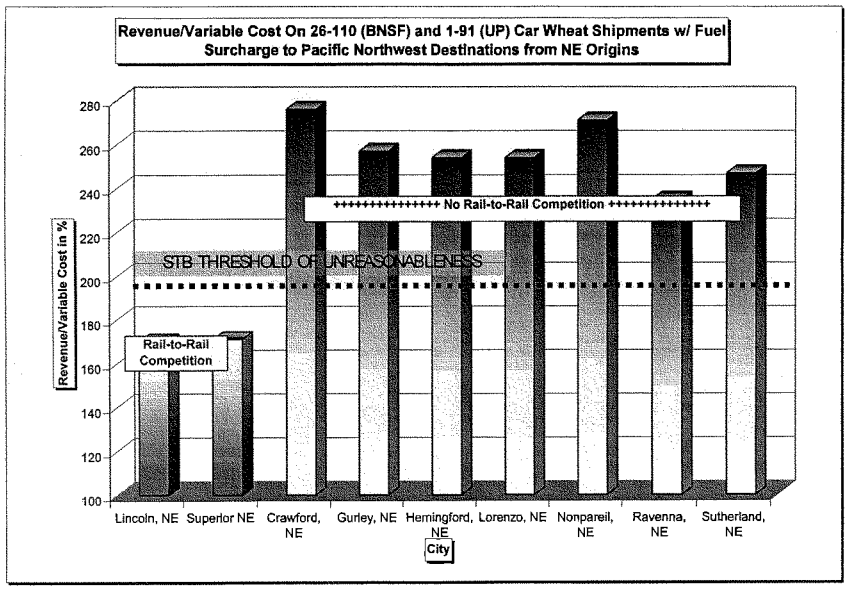
Examination of R/VCs from 2003-2006 into the Gulf Coast destinations from the states that market into these destinations finds a similar story. Origin states including Colorado, Kansas, Nebraska, Oklahoma and Texas routinely see wheat rates well above the threshold and some as twice as high as the threshold level.



The highest R/VC historical numbers can be found in the movements into the Twin Cities over the Northern Plains. The chart below illustrates where one can find rates as high as 500+ percent R/VC over the 2003-2006 period. In all of these examples, we did not select certain points but found that the analysis agreed with the GAO report that the trend is all over affected states. Here the affected states (which also have little or no rail-to-rail competition) are Idaho, Minnesota, Montana, North Dakota and South Dakota.



What is clear is that the areas of the country served by single and dual rail are experiencing increasing rate levels that are not found in areas that have some rail-to-rail competition.



Perhaps not noticed by the GAO, however, was the timing of the sharp increase in the percentage of tonnage traveling at rates over 300 percent of revenue to variable costs, which began rapidly increasing in 1997-1998 at the same time the Surface Transportation Board allowed the BNSF merger and the Union Pacific/Southern Pacific merger – mergers that eliminated the last vestiges of rail competition in the western U.S.

While one might debate the exact level of the R/VC costs with railroad experts, what is indisputable is the highest R/VC is found in the captive areas in Arizona, California, Colorado, Idaho, Kansas, Minnesota, North Dakota, Nebraska, South Dakota, Oklahoma, Oregon, Texas and Washington. We also know that the grain experience is mirrored in coal, silica, sand, plastics, chemicals and many other industries covering the width and breadth of this country.

I would echo what ARC wrote in comments in STB's Ex Parte 665, "At every turn, [grain producers] face Board-created barriers to reasonable rates, adequate service, and rail to rail competition that the STB shows little inclination to remedy. In these and other respects, the promise of the Staggers Rail Act is belied by the way its provisions have been interpreted by the ICC and STB, so as to insulate the railroad industry from effective regulatory oversight and from marketplace discipline."

The Transportation Cost Shift

The IGPA, NAWG, ARC and farm producers across the country recognize the need of railroads to make adequate return, but remain concerned that the Surface Transportation Board has not focused on the price being paid by producers and has not seen fit to provide reasonable remedies to guard against market abuse. The evidence presented by GAO studies in 2006, 2002 and 1999 all point to the same conclusion – that the STB is not adequately protecting large parts of the country from market abuse where no competition exists.

Railroads' claims to this Committee and to the Surface Transportation Board that their rates are falling neglect the fact that costs are being shifted to agricultural producers in captive areas. Transportation costs, therefore, for farm producers and state governments are actually rising.

One of the most comprehensive studies on the effects of this cost shifting was conducted by the Montana Department of Transportation and Whiteside & Associates in March 2006 (http://rscc.mt.gov/docs/Rail_Grain_Transp_Survey_2006_Final_05_22_07.pdf). The report came to eight conclusions:

1. Grain is being hauled farther and farther over the state and county highway systems.
2. The majority of farm producers have experienced increasing hauling distances over the past 10 to 20 years. More than 70 percent of Montana grain producers are hauling their products farther than they were 10 years ago, and 100 percent of those hauling farther than 10 years ago are also hauling farther than they were 20 years ago. This trend reflects the transition to a smaller number of elevators located in the state. Distances to local elevators continue to increase in all of the Plains states; data from all respondents shows an average one-way haul today of 37.19 miles compared to an average haul of 17.35 miles 10 years ago (an increase of 114 percent) and 9.69 miles 20 years ago (an increase of 285 percent).
3. Those farm producers experiencing increased haulage are hauling more than three times as far as those farm producers who have not experienced any increased hauling distances.
4. The non-wheat crops are experiencing significantly greater hauling distances even than wheat crops, further burdening alternative and rotational crop practices.
5. Some counties show average hauling distances upwards of 80 miles.
6. The 2006 harvest in Montana could be best described as a tale of two cities – with winter wheat showing average to above average yields and spring wheat, durum, barley, pulse, peas and lentils showing average to below average yields.
7. The vast majority of farm producers have the capability to store most, if not all, of their grain production.
8. Even with the diversity of yields, most Montana farm producers experienced elevator pluggings multiple times during harvest due to lack of rail cars.

This all adds up to an increase in the portion of transportation costs being borne by farm producers and the state as railroads continue their push to serve fewer and fewer facilities. As there are fewer, smaller elevators serving as the principal markets for rotational, pulse and non-wheat crops, farm producers have to pursue markets for their crops farther and farther away from their farms, meaning more and ever distant trucking.

Captive shippers also continue to suffer car and service disruption. Shippers that order rail cars well in advance are still experiencing delays after promised delivery dates. This can and does cause major problems during and after harvest and costs both the farm producer and elevators loss of income.

The high rates and lack of service continue to be especially frustrating for producers in our northern wheat growing states who need only look across the border to see a much more effective system. Canadian freight rates on wheat westbound - right across the border - are only 2/3 of the rail rates our growers pay in Montana. U.S. wheat growers produce some the highest quality wheat in world, yet are often rendered residual suppliers against their Canadian counterparts and find themselves at a significant competitive disadvantage in both domestic and foreign markets because of these shipping issues.

There is currently no effective regulatory body to address these frustrations and complaints. The Surface Transportation Board does not balance the needs of shippers and the railroads. In fact, we believe the STB has abandoned its lawfully designated role as a regulator of railroads.

Fixing the Problem

Railroad market power should not foreclose access to otherwise competitive grain elevators, ports, coal mines or chemical plants.

The railroads' common carrier obligation and historic concerns about discrimination are related issues that should be re-examined.

- ✓ Is it really the case that a railroad is free to decide which of two similarly-situated shippers succeeds and which one fails, so long as every mile of track over which they are served is not identical?
- ✓ Is it really in the public interest for railroads to force industry consolidation, notwithstanding the demise of smaller elevators, mines, power plants and factories nationwide, because unit train service is more efficient?
- ✓ Should inter-modal freight always displace bulk freight for an extra penny a ton in profit?

We have reports of railroads raising their rates just to drive off unwanted rail traffic, thereby abandoning common carriage. We also have reports of the railroads refusing to service locations that the railroads deem operationally unacceptable. The result appears to be that

railroad market power is being exerted to create haves and have-nots in the shipping community.

Conclusions

Agricultural growers together with the members of the Alliance for Rail Competition truly believe that a healthy and competitive railroad industry is essential for their continued viability. However, with poor service, a lack of available cars, increased rail rates and a regulatory agency that does not meet the needs of shippers, it is increasingly difficult for agricultural producers to remain competitive in a world marketplace.

We believe that the government needs to be the facilitator and the catalyst for increasing competition in this historically strong industry. We believe the railroad industry can survive and prosper in a competitive environment and, indeed, we know from history that competition breeds innovation and efficiency. In light of the horrific situation U.S. grain producers are facing with major railroads unable to meet common carrier obligations all over the nation, it is time that public policy in this area needs to be reexamined. The Alliance for Rail Competition and the agricultural community believe the STB and its predecessor, the ICC, have failed to protect the interests of the captive rail shippers as the Staggers Rail Act intended.

Wheat growers and other producers, along with members of ARC, believe that both railroads and shippers would be better off with more competition in the marketplace, and they support provisions in H.R. 2125, a bill that calls for increasing competition without increasing regulation. We fervently believe that final offer arbitration as outlined in H.R. 2125 will provide a host of benefits where competition cannot physically be created. Providing for "final offer" arbitration and the removal of "paper barriers" will restore balance to the commercial relationship between the railroads and their customers.

We in agriculture and the members in ARC believe this legislation will improve rail transportation by providing fairness and openness in the negotiations between railroads and their customers over rates and service. By simply requiring railroads to provide rates to their customers between any two points on their system, many additional rail customers will gain access to the benefits of rail transportation competition.

Name: Terry Huval
Address: 1314 Walker Road
Lafayette, LA 70506
Organization: Lafayette Utilities System and the
American Public Power Association
Phone: 337 291 5804

Testimony of Terry Huval
Director, Lafayette Utilities System
Lafayette, Louisiana
Before the
House Transportation and Infrastructure Committee

Hearing on Rail Competition and Service

Mr. Chairman and Members of the Committee, My name is Terry Huval, and I serve as the Director of the Lafayette Utilities System ("LUS"). I am also appearing here today on behalf of the American Public Power Association (APPA). I currently serve as the Chairman of APPA's Board of Directors. I appreciate the opportunity to participate in this hearing to discuss the current state of competition and service in the railroad industry.

This is the second time I've had the privilege to testify before this Committee on rail customer matters. In the spring of 2004, I testified before the Railroad Subcommittee on the significant problems LUS was facing in obtaining reasonable rail rates. I wish I could tell you today that the railroad competitive and service situation is better today than it was three years ago when I appeared before the Committee. Unfortunately, things are not better. In fact, things have

grown substantially worse, and I believe there is more need than ever for Congress to step in and address these important issues.

I. LUS'S COAL-FIRED GENERATING ASSETS AND IT'S RELIANCE ON THE RAILROADS

LUS is publicly owned and operated, and is a part of the City of Lafayette, Louisiana, a relative small community located approximately 135 miles northwest of New Orleans. LUS exists to serve the electric power and other utility service needs of the approximately 120,000 citizens and business owners in Lafayette. LUS is committed to providing electricity to the citizens and businesses of Lafayette at the lowest possible cost and the highest reliability of service.

While LUS owns a mix of coal- and gas-fired electric generation on which it relies to meet customer demand, the majority of our power is derived from the 523 Megawatt coal-fired Rodemacher Power Station Unit No. 2 located in Boyce, Louisiana. LUS is a 50 percent owner of the Rodemacher plant, the remainder of the facility is owned by CLECO Corporation, an investor-owned utility in Louisiana, and 5 municipalities in Louisiana through their membership in a joint action agency. This Rodemacher coal unit has been in operation since 1982. LUS has no other viable, economic options to replace its baseload Rodemacher power from any on- or off-system electric generating sources.

The Rodemacher plant's co-owners obtain the coal used at Rodemacher from mines in the Wyoming Powder River Basin (PRB) and collectively purchase approximately 2 million tons of coal annually for use at Rodemacher. The only practical way to transport this coal from Wyoming to Rodemacher (a distance of over 1,500 miles) is by rail. To facilitate our rail deliveries, the Rodemacher co-owners have obtained and maintain, at our own expense, four (4) train sets of coal cars (over 482 cars).[1]

II. LUS'S RAIL COMPETITION CONCERNS

LUS is a classic captive shipper. The Rodemacher station is served by only one railroad, the Union Pacific Railroad Company (UP). LUS theoretically has competition for much of its Rodemacher rail service. Two railroads originate coal in the PRB, the UP and the BNSF Railway Company (BNSF). In this respect, BNSF and Kansas City Southern Railway Company have connecting rail lines in place covering approximately 99 percent of the 1,500 miles between the PRB coal mine origins and Rodemacher. However, we are captive to UP at destination which serves the last 20 miles into the plant in Boyce.

UP uses its monopoly "bottleneck" control over rail line facilities at plant destination to extend its 20 miles of monopoly power to the entire 1,500 miles of the route from the PRB to Rodemacher. In other words, UP's exclusive

[1] Also, as explained below, in order to facilitate improved Rodemacher rail service, and mitigate against recent railroad service lapses, LUS is spending millions of additional dollars on new railcar equipment.

control of one percent of the involved essential rail lines enables UP to control 100 percent of the Rodemacher movements. How does UP do this? Rodemacher is only able to get one rate for service that locks it to the UP: a rate for the entire PRB-to-Rodemacher trip. UP's policy is to refuse to provide separate rates for the 1,480 mile competitive segment of our movement and the 20 miles of the captive movement. This renders Rodemacher captive to UP for the entire origin-to-destination trip.

A. The Price of Captivity – Then and Now

The cost of coal transportation is one of the single largest LUS electric generation cost items. In my testimony to the Railroad Subcommittee in 2004, I explained that, because LUS is subject to a railroad monopoly, LUS paid substantially higher coal transportation prices than other western coal transportation customers that enjoyed effective origin-to-destination rail competition. At the time, publicly available information suggested that our 2004 transportation prices were at least 50% higher, on a mileage adjusted basis, than rates where there is rail-to-rail competition for long-haul western coal train deliveries.

I emphasized in my prior 2004 testimony that, for Lafayette, Louisiana, this lack of railroad competition translated into approximately $5 to $6 million dollars per year (approximately 20% of the total cost of delivered coal in 2004) in "captivity payments" – the difference between what we pay our existing rail carrier compared to what we would pay if we enjoyed railroad competition.

These higher payments were and are included in LUS' customers' monthly electric bills and cause higher utility bills both for individuals and for the businesses in Lafayette.

Unfortunately, since the time of my last testimony, the economic impact of LUS's railroad captivity problem has significantly worsened. LUS's last contract with UP expired at the end of calendar year 2005. We approached UP and attempted to negotiate reasonable rates and terms for our Rodemacher service. Unfortunately, UP refused to meaningfully negotiate new terms with us. Rather, UP presented LUS with its new "Circular 111" rates and terms for Rodemacher service. These rates and terms were not negotiable. We were left with little choice but to accede to UP's demands because of their monopoly control over LUS.

LUS pays significantly higher rates today under UP's new public pricing scheme than in 2005. LUS's 2007 rates are approximately 26 percent higher than 2005 levels. Further, UP refused to provide us with any effective service guarantees, which we always had under our prior contractual arrangements with UP. To add insult to injury, our rail service has generally deteriorated since 2004, as UP has suffered well-known PRB coal delivery problems in 2005-2006. Thus, LUS is saddled with paying much higher rail rates with no service guarantees, and virtually no ability to seek compensation for UP's service failures. In response to these UP delivery failures, Lafayette has taken extraordinary measures to help ensure an adequate coal supply. As examples, LUS had to buy

barge-delivered coal from Venezuela and truck lignite from Northwest Louisiana to help shore up its fuel inventory needs.

This lack of service commitment, combined with the recurring service problems UP has experienced in recent years, has left LUS with little other choice but to spend additional public monies in an attempt to address the situation. LUS has always obtained and provided the private railcars that are utilized by UP for LUS's Rodemacher service. However, in an effort to mitigate against UP's recent service slowdowns, and to help ensure that we are in the best position possible to meet the Rodemacher plant's annual coal requirements, we are acquiring new aluminum railcars to replace our older steel railcars. By using the lighter weight aluminum cars, more coal per trainload can be shipped while staying within gross weight limits. LUS expects to spend approximately $19 million on these new railcars, which we hope will assist UP to deliver more coal to Rodemacher in a timely matter, and meet Rodemacher's annual coal volume requirements. But there are no guarantees and we are receiving little in return from UP for making these expensive changes that produce considerable operating expense savings for UP. These are significant costs for a small utility that LUS would not need to incur if it was otherwise receiving reliable service and/or was able to obtain reasonable guaranteed service standards from UP.

In sum, in 2004, LUS was paying uncompetitive high rates to its monopoly railroad service provider. Today, those rates have increased significantly, and our service situation has deteriorated. That has led LUS to

spend even more money on railroad equipment in an attempt to improve railroad service. The Citizens of Lafayette, Louisiana are essentially being asked to pay more for less service, and there does not appear to be any end in sight to the problem.

LUS is not the only railroad customer experiencing significant issues with regard to the railroads. Attached to this testimony is an Issue Brief and an Action Alert recently prepared by APPA describing the problems that many, if not all public utilities are experiencing today with regard to rail rates and service. This problem is of national significance, and it affects millions of electric utility ratepayers who must pay the monopoly rate demands being made by the railroads, and who have experienced considerable economic harm in recent years because of railroad service failures. I respectfully request that these APPA materials be included in the record along with my written testimony.

B. The Need to Address the Railroad Problems

LUS is extremely concerned that UP will continue to attempt to exploit LUS because of our captivity to the railroad. Something needs to be done. Our customers are paying unnecessarily high electricity prices because our coal-fired generating facility is served by a single railroad.

1. The Need for Effective Regulation

Actions by monopolists to restrict competition, raise prices, and remove meaningful service standards raise serious anticompetitive concerns, and inhibit our ability to achieve reasonable rate and service terms for Rodemacher.

Basic economic principles instruct that markets works best and create value where competitors openly and aggressively compete for business -- and not where carriers openly dictate rate and service terms. Where there is a lack of effective competition in the marketplace, there is a need for strong regulatory backstop protections to protect the public.

Unfortunately, the STB has effectively ignored the need for substantive administrative relief. STB rate case litigation costs are extraordinarily high, approximately $4-$5 million for the complaining customer, and rate cases take two to three years to litigate. Additionally, the recent STB rate case decisions raise serious questions about whether the regulators have skewed the governing "stand-alone cost" (SAC) standards in a manner that has eviscerated the effectiveness of regulatory backstop protections afforded under the law. For those that bring cases, the trend of STB decisions in recent years has been one-sided in the direction of sanctioning abusive rail rate practices, and there has been very little evidence of balanced decisionmaking. At best, the STB has set the bar for meaningful captive shipper relief inordinately high.

Additionally, even where partial or potential competition exists, such as bottleneck situations, regulatory policy allows railroads to neutralize it, rather than shippers to competitively utilize it. The railroads are able to get away with these anti-competitive rate practices, in part, under the STB's so-called "Bottleneck" decision. That decision sanctions the rail carriers' practice of refusing to provide separate rates over bottleneck line segments. This enables

railroads to exploit their monopoly power over bottleneck rail line facilities as described above. The result is that the Rodemacher station and in turn the citizens and businesses of Lafayette are captive to UP and is subject to UP's monopoly pricing power. Many other shippers are similarly situated.

In the past, LUS and its Rodemacher co-owners have explored constructing facilities that would allow direct alternative rail providers access to Rodemacher. In our case, any such access would most likely entail construction of a prohibitively expensive rail bridge or conveyor system across the Red River and Interstate 49. It seems absurd that current federal transportation policy would require small municipal entities like LUS to even study such projects when other alternatives make much more sense, such as, for example, requiring our existing carrier to transport our coal the 20 miles from Alexandria, Louisiana to Rodemacher at a fair price. With such a legal requirement, there would be no need for us to consider construction of costly, duplicative second carrier access facilities at a cost that would be passed on to our electric customers.

Moreover, in today's market environment, it appears that "build-out" options have been effectively neutralized. That is because UP and BNSF are no longer effectively competing for western coal service. UP and BNSF have each announced "public pricing" programs to apply on PRB coal movements upon the expiration of existing contracts, to apply on both "competitive" and captive traffic. Those programs, implemented under UP Circular 111 and BNSF Tariff 90068, are characterized by higher rates and an absence of meaningful service standards.

Through UP and BNSF's new public pricing programs, the carriers appear to have essentially adopted a "take it or leave it" approach to negotiations. Both carriers also acknowledge that the goal of these new programs is to increase carrier revenues at the expense of railroad consumers. Thus, even if LUS were to take the extraordinary step of spending millions of dollars on an expensive new build-out line to reach competitive connections, there is little reason for us to believe that our overall transportation costs would be reduced or that our investment in new rail facilities could be recovered.

III. WHAT CAN CONGRESS DO TO ADDRESS THE PROBLEM?

As explained, all appearances are that the STB today is not receptive to complaints seeking rate reductions, and that the prevailing regulatory environment is characterized by an absence of effective regulation. Under the standard "utility model" that LUS and many other electric utilities are regulated under today, any rate increase requests must be fully cost-justified and approved by regulators prior to implementation. This model is turned on its head when it comes to the regulation of railroads. Railroads are able to unilaterally impose rate increases on its monopoly customers without providing any justification for the new rates; customers must file a complaint and spend millions of dollars and several years to challenge the new rates in an attempt to block the new rates; customers must pay the railroads rate demands during the pendency of cases; and customers have all of the burdens of proof to show that the challenged rates are unreasonable.

LUS respectfully submits that this model does not make any sense and there is a compelling need for additional regulatory scrutiny of railroads. The appropriate government role must be to take all reasonable efforts to protect consumers from economic abuses by monopoly rail providers, not protect the carriers' monopoly revenue streams. Maintaining more appropriate protections for the establishment of reasonable common carrier rates to the railroads= market-dominant customers is essential. Additionally, the fact that there is the theoretical possibility of rail competition covering approximately 99 percent of the lines that could be used to serve Rodemacher from mine origin to destination is of absolutely no benefit to LUS under existing STB's bottleneck policy. LUS respectfully submits that the STB's Bottleneck decision is anti-competitive, anti-consumer, and senseless national rail policy.

H.R. 2125, the Railroad Competition and Service Improvement Act, provides a step in the right direction toward addressing the above problems. In this respect, I would like to thank Chairman Oberstar, and Congressman Baker from my home state of Louisiana, in particular for their leadership on this important initiative. Among other things, this bill includes modest corrections to address misguided STB decisions and policy determinations that are needed to restore a modicum of restraint on market dominant railroads. The bill would create a new maximum rate standard and would require carriers to quote

reasonable rates to or from the point of access to existing rail competition.[2] Mr. Chairman, this seems fair to both the railroads and to their customers.

In this respect, with the advent of railroad "public pricing" programs and recurring service lapses occurring following the recent consolidation of the railroad industry that are causing competitive harm, I believe that there is a need for Congress to consider engaging in additional oversight of the operations and marketing practices of the railroads, including being alert to possible anticompetitive effects. Congress could carry out this oversight responsibility by requiring an appropriate independent entity other than the STB (whose policies have allowed the current competitive situation to be created and persist) oversee the railroads and regularly report to Congress on its oversight and on its recommendations for competitive and regulatory improvements.

* * *

Mr. Chairman, thank you again for inviting me to testify. Our electric ratepayers are suffering from a lack of effective competition or regulation of the railroads, and LUS and APPA respectfully submits that Congress can and should address this matter as soon as possible.

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[2] As explained above, while the overturning of the STB's bottleneck decision, would, at best, leave LUS subject to duopoly competition, overturning this misguided policy is pro-consumer and a step in the right direction.

APPA American Public Power Association

ACTION ALERT

JUNE 2007

Support the Railroad Competition and Service Improvement Act of 2007

ACTION REQUESTED

Senator John Rockefeller (D-WV) and Senator Larry Craig (R-ID) have introduced S. 953, the Railroad Competition and Service Improvement Act of 2007. At the same time, House Transportation and Infrastructure Chairman James Oberstar (D-MN) and Congressman Richard Baker (R-LA) have introduced similar legislation, H.R. 2125, in the House. These bills would improve the failed policies of the Surface Transportation Board (STB) that have denied rail customers access to railroad competition. Specifically, the bills would: address the inadequacies in the rate reasonableness process of the STB; improve service to rail customers; lower fees for filing cases; and provide new remedies for rail carriers where inadequate remedies exist. *Please urge your Senators to cosponsor and support S. 953 and your House members to support H.R. 2125.*

BACKGROUND

Approximately 50 percent of the nation's electricity is generated from coal, the majority of which is shipped by rail. A substantial amount of that coal has only one railroad option available for most or a portion of its shipment. Therefore, a large amount of coal shipped for electricity generation is "captive" to a single railroad — and the costs of making that shipment are frequently unreasonable, reflecting the monopolistic power of the carrier.

Part of the STB's responsibilities are to ensure competition in the railroad industry and to provide accountability to the railroads. The STB has failed on both counts. Because railroads are exempt from antitrust laws for the purpose of collective ratemaking, a wide range of anticompetitive rail industry practices have ensued. In the last 25 years, the nation's major railroads have consolidated to the point that four major railroads provide 95% of the freight rail transportation of the nation. A Government Accountability Office (GAO) report released in October of 2006 found that "concerns about competition and captivity (in the rail industry) remain as traffic is concentrated in fewer railroads." The result has been a departure from long-term shipping contracts to very expensive short-term contracts.

Because of the entrenched policies at the STB and its long record of inaction, legislation is needed to institute stronger protective mechanisms at the STB and allow for competitively priced rates for rail customers. Both H.R. 2125 and S. 953 would require railroads to quote rates to their customers, upon request, between any two points on their system where traffic can originate, terminate or be interchanged, and to remove "paper" barriers that prevent short line railroads from connecting to more than one major railroad (e.g., ensuring that contracts between the major railroads and short-line carriers allow short-line carriers to engage in competition without being penalized). The legislation also contains a clear statement of the railroads' "obligation to serve" given that their function is essential to many sectors of the economy, and empowering and directing the STB to take action to investigate railroad practices that the STB believes to be abusive of railroad market power. Additionally, the bills will seek to develop a workable rate challenge process at the STB.

APPA American Public Power Association

ISSUE BRIEF

JUNE 2007

Railroad Competition

SUMMARY

Electric utilities must rely on rail transportation to move the vast majority of coal from the mine mouth to the power plant. While domestic coal is a relatively low-cost fuel, its economic benefits for power production are being threatened by the increasingly lower quality and higher costs of rail service resulting in part from railroad industry consolidation and the absence of effective regulatory oversight.

Many coal-burning electric utilities can receive coal shipments from only one carrier and are thus subject to the monopoly power of the railroads. As a result, these rail customers do not have the ability to negotiate the terms of their rail transportation in an open and competitive market. These rail customers are charged higher rail rates while those rail customers with competitive options are given competitively priced rates. Over the past several years, rail customers have also experienced numerous service and reliability issues. Legislative remedies are required to enhance competitive transportation and improve the rail customer protection mechanisms and enforcement implemented by the Surface Transportation Board (STB). Absent congressional action, electric utilities and the communities they serve will continue to be subject to unnecessarily higher rates and poorer service for coal transportation.

APPA supports legislation introduced in the 110th Congress – H.R. 2125 and S. 953, that addresses these issues.

BACKGROUND

Approximately 50 percent of the nation's electricity is generated from coal, the vast majority of which is transported by rail. A substantial amount of that coal has only one available railroad transportation option for at least some portion of its shipment. Thus, a large amount of the coal used to generate electricity in this country is "captive" to a single railroad for transportation, and the transportation costs for shipping that coal reflect the monopoly power of the carrier and are frequently unreasonably high.

The monopoly power of the railroads over captive shippers has grown dramatically in the last two decades. Since 1980, the industry has been reduced from 42 major carriers to five. In 1995, Congress abolished the Interstate Commerce Commission (ICC) and gave the newly created STB authority over the rail industry for mergers, rate and service disputes, and construction, operation and/or abandonment of railroad lines. Since its creation, the STB has failed to use the legal and regulatory mechanisms at its disposal to protect railroad customers from monopolistic practices by the railroads. As a result, many rail customers have simply foregone filing rate cases at the STB due to the low probability of success as well as the high costs of filing and litigation. The filing fee alone was recently raised by the STB to $178,200 (from $160,000) for a coal rate case. By comparison, federal courts only require a $150 filing fee for complaints.

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In October of 2006, the General Accountability Office (GAO) issued a report titled *"Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed"* which validated rail customer concerns. Among other things, a lack of competition in the national railroad industry; the inadequate STB efforts to ensure rail customer access to competition and to protect rail customers from monopoly abuse; the failure of the STB to collect adequate data from the railroads on all of their annual revenues from rail customers; and concerns over the ability of the national rail system to provide sufficient, reliable service in the future. While the railroads will argue that any rail customer legislation is an attempt at re-regulation, the goal of rail customers is not re-regulation, but rather a national rail policy that will ensure reliable rail transportation and reasonable rates for all rail customers — particularly for those rail customers without access to competitive transportation alternatives.

CONGRESSIONAL ACTION

Because of the entrenched policies at the STB and the long record of inaction, legislation is needed to institute stronger protective mechanisms at the STB and allow for competitively-priced rates for rail customers. Legislation to address the concerns of rail customers has been reintroduced in the 110th Congress, with some changes. H.R. 2125, the Railroad Competition and Improvement Act of 2007 was introduced in May of 2007 by House Transportation and Infrastructure Committee Chairman Jim Oberstar (D-MN) and Representative Richard Baker (R-LA). S. 953, the companion bill in the Senate of the same title, was introduced during March by a bipartisan group of Senators led by Senators John Rockefeller (D-WV), Byron Dorgan (D-ND), Larry Craig (R-ID) and David Vitter (D-LA). Both H.R. 2125 and S. 953 would require railroads to quote rates to their customers, upon request, between any two points on their system where traffic can originate, terminate or be interchanged, and to remove "paper" barriers that prevent short-line railroads from connecting to more than one major railroad (e.g., ensuring that contracts between the major railroads and short-line carriers allow short-line carriers to engage in competition without being penalized). The legislation also contains a clear statement of the railroads' "obligation to serve" given that their function is essential to many sectors of the economy, and empowers and directs the STB to take action to investigate railroad practices that the STB believes to be abusive of railroad market power. Additionally, the bills seek to develop a workable rate challenge process at the STB.

In addition, legislation has been reintroduced in both the House and Senate to eliminate the exemptions from antitrust law that the railroads currently enjoy – including those under mergers and acquisitions, collective ratemaking, and private antitrust lawsuits. H.R. 1650, the Railroad Antitrust Enforcement Act of 2007 was introduced during March of 2007 by Representative Tammy Baldwin (D-WI) and the identical companion bill in the Senate, S. 772, was introduced during the same month by Senator Herb Kohl (D-WI) and Senator David Vitter (R-LA), among others.

In the spring of 2006, the railroads began to express interest in receiving a federal Investment Tax Credit (ITC) of 25 percent to apply to new investment in rail infrastructure. Given that the railroads have reported record profits in recent months with continued service reliability problems, an additional federal subsidy for infrastructure improvement should not come without guarantees that dollars will be spent to enhance reliability, especially in captive shipper corridors. APPA and captive shipper groups like Consumers United for Rail Equity (CURE), of which APPA is a member, have indicated that we would

continued

be willing to support an ITC for the railroads only if STB reforms providing relief for rail customers are enacted at the same time. In the 110th Congress, bills have been introduced in both the House and Senate granting an ITC to the railroad without any accountability of where that funding would be directed. S. 1125, the Freight Rail Infrastructure Capacity Expansion Act of 2007, was introduced in April by Senator Trent Lott (R-MS) and others and the House companion bill, H.R. 2116 (same title) was introduced in May by Representatives Meek (D-FL) and Cantor (R-VA). These bills would give the railroads a 25% tax credit for the cost of new qualified freight rail infrastructure property and new qualified locomotive property. APPA will continue to work with CURE to ensure that these efforts do not advance without STB reform measures.

APPA POSITION

APPA supports H.R. 2125, S. 953, H.R. 1650 and S. 772, which encourages structural and policy changes to promote competitive transportation alternatives for rail customers and improvements in the rail customer protection mechanisms that are implemented by the STB as well as legislation which removes the antitrust exemptions for the railroads. APPA opposes enactment of a bill (H.R. 2116 and S. 1125) granting a federal ITC for the railroads without these STB reforms.

STATEMENT OF

CHARLES N. MARSHALL

SENIOR VICE PRESIDENT OF INDUSTRY RELATIONS

FARMRAIL

BEFORE THE

UNITED STATES HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON RAIL COMPETITION AND SERVICE

SEPTEMBER 20, 2007

American Short Line and
Regional Railroad Association
50 F Street, N.W.
Suite 7020
Washington, DC 20001
(202) 628-4500

Mr. Chairman and members of the Committee, I appreciate the opportunity to appear before you today on the subject of Rail Competition and Service. I am Senior Vice President of Industry Relations for Farmrail, a 347-mile short line serving western Oklahoma. [I have worked for eight different railroads, including both short lines and Class I's, over the past 46 years.] I am here today representing the American Short Line and Regional Railroad Association (ASLRRA). ASLRRA is composed of about 500 small railroads that employ 23,000 people to operate 50,000 miles of track serving 13,000 customers. Those customers collectively employ about 1.5 million persons.

We are not the largest interest to appear before you today, indeed in market share and annual revenues we may be the smallest. Our importance is not our size or our total market share but in who and where we serve. For large areas of the country and particularly for small town America short line rail service is the only connection to the national railroad network. For the small businesses and farmers in those areas, our ability to take a 25-car train 75 miles to the nearest Class I interchange is just as important as the Class I's ability to attach that block of traffic to a 100-car unit train and move it across the country. Our importance in agricultural areas is magnified by the nature of the business. In the Chairman's state of Minnesota, for instance, a short line is the only rail connection for the Minn-Dak Farmers Cooperative. This is just one shipper but it collects and markets the grain for over 500 family farmers. In nearby Edgeley, North Dakota a short line is the only rail connection for Dakota Prairie Ag which collects and markets grain for approximately 1,300 area farmers. I can repeat these examples across country.

In the time I have today I would like to emphasize a number of points that relate to the subject of regulation, rail competition, and shipper relationships.

First, today's short line industry is largely the product of deregulation launched by the 1980 Stagger's Act and the federal government's decision that it was better to save light density branch lines than to abandon them. Short lines have grown from 8,000 miles of track in 1980 to nearly 50,000 miles today. Those areas we serve are not inconsequential. In five states short lines operate 100 percent of the state's rail network. In 10 states they operate more than 50 percent and in 30 states they operate at least 25 percent of the rail network. Forty eight Members of the T&I Committee represent districts in these 30 states. The short line industry has preserved service and jobs because of deregulation and that success will be put in great jeopardy if we turn back the clock.

Second, from where we sit competition for business is fierce. And, where we sit is in the trenches where we compete daily, carload by carload with trucks and in some areas of the country with barges. Carload traffic is referred to as general merchandise traffic which is generally considered everything other than coal and intermodal. Nationally, short line railroads handle approximately 42 percent of all general merchandise rail traffic. In the general merchandise category short lines handle more than half of all rail shipments in five major commodity groups: pulp and paper; lumber and wood products; waste and scrap; metals; and food products. The competition for this traffic is based on price and on service and it is intense. We often win or lose business based on pennies a ton.

Short lines are the so-called "first mile-last mile" handler for over 12 million carloads annually or nearly one out of every four carloads moving on the national rail network. As such we are also exposed to competition every time we negotiate a division of rates with our Class I partners. And again, I can tell you that the competition, particularly with regard to price is intense. If, as some claim, there is a lack of competition in the railroad industry, we haven't gotten the memo.

Third, short line success is highly dependent on the success of our Class I partners. When their traffic declines, our traffic declines and because we operate light density lines to begin with, that is revenue we can ill afford to lose. As my Class I colleague points out, railroad capital needs are higher than any other industry in the country. It is high for the Class I's, but it is even higher for the Class II's and III's. We inherited the money losing branch lines of the pre-Staggers era rail network and these lines have an enormous backlog of deferred maintenance. Class I's reinvestment 17.2 percent of revenue. Short lines are spending approximately 30 percent of annual revenue on track and equipment improvements.

I believe a decline in Class I investment, of the magnitude described by the Class I's, will also have a disproportionate impact on the short line industry. In many ways short line railroads are at the outer edges of the national rail network. If the Class I's are forced to reduce investment in the billions of dollars, they will, as would any business, protect their highest density core first. The first cuts are likely to be in that infrastructure closest to the areas where the short lines connect. That will make our ability to successfully compete with trucks even more difficult.

Fourth, and finally, I would like to comment briefly on the subject of our shippers. Much of the rhetoric in Washington seems to automatically presume that this is the shippers versus the railroads and that there is a deep divide between them. While I certainly don't speak for the nation's shippers, I do want to highlight to the Committee the support that the short line railroad industry is receiving from railroad shippers. As you know our highest legislative priority is the extension of the short line rehabilitation tax credit which we believe is one of the most important things Congress can do to help make us more competitive, efficient and safe. Our current House legislation, HR 1584 has 178 co-sponsors. It has also been publicly endorsed by over 1,000 shippers and by the NIT League. Our shipper support list ranges from the smallest grain elevators to much larger facilities owned by such companies as International Paper, Kimberly-Clark, General Mills and Nucor Steel. As we have collected these endorsements we have compiled a representative sample of quotes from individual shippers which document the importance of short line railroad service to their own businesses. If you can take a few moments to go through these I think you will find that at least on the short line side of the equation shippers and railroads have a much closer relationship than the conventional Washington DC wisdom may lead you to believe.

I appreciate the opportunity to present the views of the short line industry on these important questions and I would be pleased to answer any questions you might have.

Short Line Railroad Customers Talk About Service and the Short Line Rehabilitation Tax Credit

R.A. Geurts, AVP & General Manager – Cargill, Inc., Wahpeton, North Dakota
A Customer of the Red River Valley & Western Railroad

Cargill's Wahpeton facility ships thousands of cars a year over the Red River Valley & Western (RRVW). It operates on a 24/7 basis and cannot afford any interruption in bringing in raw materials or shipping out finished product. Said Mr. Geurts, **"The RRVW was very involved in our site selection process for this facility and has provided exemplary service since the plant's inception. They understand the importance of flexible, customer-based service. They know we depend on daily high quality rail service to operate profitably. Our plant has 160 employees and I can assure you that our success as a business is important to each and every one of them."**

May-May Ng, Director – CK International, Ltd., Waukee, Iowa
A Customer of the Iowa Interstate Railroad

CK International, Ltd., exports Iowa agricultural products to Asia. Utilizing the Iowa Interstate Railroad allows them to ship heavier loads than can be accommodated by truck. **"The ability to load heavier freight cars reduces our freight costs by 2.5 cents per pound. In this very competitive market the ability to reduce costs by as little as 1/8 of a cent per pound can make the difference in getting the business."**

Warren Fisk, General Manager – Farmers' Cooperative Elevator, Manly, Iowa
A Customer of the Iowa Northern Railway

The Section 45G tax credit made it possible for the Iowa Northern Railway to complete a $1.5 million track rehabilitation between Manly and Nora Springs to better serve the Farmer's Coop Elevator at Manly, and Rock Falls Grain and Cartersville Elevator at Nora Springs. Without this upgrade, the railroad could not handle the increased volume required by the customers. **Warren Fisk of the Farmers' Coop said, "The Iowa Northern track rehabilitation project will help us increase volumes and lower transportation costs and that is good for every farmer that uses the elevator. To the extent the short line tax credit made that possible it is a real success story."**

Sonia Meehl, Owner/General Manager – Crete Grain, Crete, North Dakota
A Customer of the Red River Valley & Western Railroad

Crete Grain purchases grain from North Dakota farmers for resale to exporters and domestic end-users, mostly outside of the state. The majority of the grain is moved to the Pacific Northwest ports for export. In recent years Crete has shipped over 4,000 carloads of grain per year on the Red River Valley & Western which is the only link to the Class I railroad system. **"Truck transportation is simply not feasible for moving large volumes to the west coast ports. We collect our corn from over 200 family farmers and the railroad is what allows us to find markets for this corn. Without the short line railroad these farmers would be limited to**

what they could truck short distances within our state. For many it is what makes their farming operation viable," said Sonia Meehl, owner and general manager of Crete Grain."

David Geers, President – Michigan Agricultural Commodities, Lansing, Michigan
A Customer of the Huron & Eastern Railroad

Michigan Agricultural Commodities owns 10 grain elevators in Michigan, two of which ship some 3,000 railcars a year over the Huron & Eastern Railroad. Most of these cars are bound for processors and feed mills in the southeastern U.S. **"We purchased these two facilities in 2001 and have experienced significant growth at both. Reliable short line service has contributed to that growth. In fact, nine of our 10 locations are served exclusively by short line railroads and they are part of what has helped us make Michigan agricultural products very competitive throughout the southeastern U.S.," said David Geers, president of Michigan Agricultural Commodities.**

Ronald Harlow, Dixie Business Director – Georgia Pacific, Naheola, Alabama
A Customer of the Meridian & Bigbee Railroad

The Meridian & Bigbee Railroad serves 22 customers in central Alabama and Mississippi. Those customers in turn employ over 3,900 high quality, industrial workers. The Section 45G credit allowed the railroad to undertake an aggressive $5.6 million improvement project. With the renovations, the railroad will be able to attract new industries and jobs to the region while continuing to provide high quality service to existing customers. **"The Georgia-Pacific mill at Naheola depends on the Meridian & Bigbee Railroad to provide critical rail service," said Ronald Harlow, director of Dixie Business for Georgia-Pacific Corporation, the largest single on-line customer.**

Gene Carrier, General Manager – East Texas Asphalt Company, Lufkin, Texas
A Customer of the Timber Rock Railroad

The Timber Rock Railroad provides a crucial connection to the BNSF and KCS Railroads, necessary to deliver needed aggregate into east Texas. The Timber Rock utilized the Section 45G tax credit to make needed bridge improvements to handle long heavy trains of rock cars and deliver them safely and economically to deep east Texas. **"We count on the Timber Rock to supply multiple grades of aggregate to meet the construction needs of our region, " said Gene Carrier, General Manager of East Texas Asphalt. "Their ability to make needed repairs to the railroad allows our communities to compete economically with the urban areas that have more transportation choices."**

Gary Beachner, General Manager – Beachner Grain, St. Paul, Kansas
A Customer of the South Kansas & Oklahoma Railroad

The SKOL railroad installed more than 20,000 ties and relayed five miles of rail with a heavier, more secure type of steel to make the movement of trains safer and more reliable in Southeast Kansas. **Gary Beachner of Beachner Grain said, "Beachner Grain depends on the SKOL to move more than five million bushels of grain to market every year. It is critical for our business and for**

family farmers throughout the area that the SKOL be able to maintain an infrastructure adequate to keep Southeastern Kansas farmers competitive in the global marketplace."

Brian Whipple, Transportation Manager – Amalgamated Sugar, McMillan, Idaho
A Customer of the Eastern Idaho Railroad

The Eastern Idaho Railroad utilized the section 45G tax credit to provide for a major reconstruction of the main line between Burley and Twin Falls, Idaho. At a press conference in the summer of 2006, **Brian Whipple of Amalgamated Sugar said, "Without the Eastern Idaho Railroad, Amalgamated Sugar would not be able to be in business in the Magic Valley. We depend on the EIRR for inbound and outbound products to keep Amalgamated Sugar operating."**

Mike Purdy, Owner – Delta Trading Company, Bakersfield, California
A Customer of the San Joaquin Valley Railroad

Delta Trading is a distribution facility located on the Sunset branch of the San Joaquin Valley Railroad in Bakersfield, CA. **Mike Purdy of Delta Trading said, "The track rehabilitation made possible by the tax credit is directly responsible for Delta Trading Company's decision to invest nearly $3 million in its facility and almost triple its number of employees. We now have a short line railroad partner that can provide the volume and level of service that allows us to significantly grow our business. This tax credit was a very smart decision by the federal government and I suspect it will more than pay for itself as our experience is repeated on short lines across the country."**

Ron Walters, President – Erie Plastics, Corry, Pennsylvania
A Customer of the Western New York & Pennsylvania Railroad

The Western New York & Pennsylvania Railroad has used funds freed up by the Section 45G credit to match a Pennsylvania grant program to undertake a $3.5 million project to provide stronger and higher speed railroad track that can provide more efficient and competitively priced transportation for Pennsylvania shippers. **Ron Walters, President of Erie Plastics, said, "This facility molds 30 million plastic parts a day and we bring 80 to 90 percent of our plastic resin into the plant by rail. Rail transportation is the most economical way to get our raw materials, and anything that helps make the railroad more efficient and more viable is critically important to our success."**

Arthur Kroot, President – Kroot Corp., Columbus, Indiana
A Customer of the Louisville & Indiana Railway

Arthur Kroot and the 60 employees of Kroot Corp. are southern Indiana's principal scrap yard, working closely with the area's auto manufacturing plants and steel mills. For the past ten years, the Kroot Corp's business has heavily relied on continued investment in the Louisville & Indiana Railway, including a recent bridge replacement program made possible by Section 45G. According to Mr. Kroot, **"If we did not have this railroad, we would be out of business. The L&I has done an incredible job for us. The benefits are significant to not only industry, but the community. This is the lifeblood of our area and the auto manufacturing plants could not operate without the railroad."**

Bill Dozier, Division Logistics Rail Manager – Georgia-Pacific, Crossett, Arkansas

A Customer of the Arkansas, Louisiana & Mississippi Railroad

In Crossett, AR, the Arkansas, Louisiana, & Mississippi Railroad's aggressive tie replacement program funded by Section 45G will benefit a plywood plant, a lumber mill, a paper mill, and a chemical facility, in aggregate employing 3,000 workers. The plywood plant in Crossett is the largest softwood plant in the world and the paper mill is one of largest Georgia-Pacific plants producing tissue and other paper. **According to Bill Dozier, division logistics rail manager for Georgia-Pacific Corporation, "Our company depends on the railroad and it is important that the ALM continues to reinvest in their railroad infrastructure."**

Tony Johannesen, Manager – Dakota Prairie Ag, North Dakota

A Customer of the Red River Valley & Western Railroad

The rehabilitation of this line allows Dakota Prairie Ag, a wholesale grain, farm supplies and field bean merchant, to ship 110 pound shuttle trains to distant export and domestic markets. This marks the first time in history that the farmers in the region will have this opportunity. **"The ability to utilize these longer, heavier trains is going to reduce transportation costs by about 10 cents per bushel and that is going to make North Dakota grain more competitive in the marketplace," stated Tony Johannesen, Dakota Prairie Ag manager.**

Cliff Forrest, President – Rosebud Mining Company, Penfield, Pennsylvania

A Customer of the Buffalo & Pittsburgh Railroad

Due to the investment funds made available by the Section 45G tax credit, the Buffalo & Pittsburgh Railroad is upgrading its tracks from Dubois to Driftwood, Pennsylvania. This $2.2m investment will enable Rosebud Mining Company to expand its coal preparation and railcar loading facility in Penfield, Pennsylvania and expand its coal mining operations in the region. This project enables Rosebud Mining to open a new coal mine in the region with forecasted shipments of 8,000 railcars (800,000 tons of coal) annually. The upgrade provides a positive economic impact to the region by creating 45 new mining jobs, 5 new railroad jobs and 30 temporary construction jobs. **Cliff Forrest of Rosebud Mining Company said, "Having the Buffalo & Pittsburgh Railroad make this investment was essential in our decision to expand the coal load-out facility, which will now enable us to handle 800,000 tons by the opening of new coal mines."**

Butch Reed, Sales Manger – Columbus Brick, Columbus, Mississippi

A Customer of the Columbus & Greenville Railway

The Section 45G credit allowed the Columbus and Greenville Railway to undertake a $400,000, 2.5-mile track rehabilitation to benefit Columbus Brick. As a result of this improvement, Columbus brick has increased outbound rail from 100 cars per year in 2001 to over 550 cars per year today. For the 90 employees at the Columbus facility, it is critical to have the ability to ship via rail. **Butch Reed, sales manager of Columbus Brick noted that, "by allowing us to use 100 ton rail cars, this rehabilitation project has reduced our transportation costs and made this Mississippi company a stronger and more competitive player in our industry."**

Greg Wheelan, Plant Manager – National Gypsum, Medicine Lodge, Kansas
A Customer of the V&S Railway

The largest customer of V&S Railway is National Gypsum, a building products manufacturer and one of the leading gypsum wallboard producers in the world. Before the passage of Section 45G, track conditions limited train speed on the line to below 10 mph. Improvements made because of Section 45G have increased train speed to 25 mph. **This increase in train speed has led to improved customer service. According to Greg Wheelan, local National Gypsum plant manager. "Before the improvements, several cars of our materials would bunch up, but now we are able to get to the mainline faster. The upgrades in the track and switches provided by the short line tax credit helped speed things up, lessening delays and improving reliability to the rail line."**

Greg Gould, Vice President – Rogers Group, Inc., Bloomington, Indiana
A Customer of the Indiana Rail Road

Rogers Group, Inc. of Bloomington, IN provides customers with crushed stone, sand and gravel, asphalt, and concrete masonry. Funds made available by Section 45G have allowed Indiana Rail Road to haul 3,000 tons of stone per week from the Rogers Group limestone quarry to a Hoosier Energy electrical power plant to reduce air pollution emissions. **"This simplified the transportation dynamic for our customer, who already had existing rail infrastructure. The movement of the products by rail replaced all the truck traffic, increasing safety and reducing energy consumption. The customer service provided to the power plant improved the delivery speed and reliability of our product," continued Gould.** The dependability and sustainability of the improvements also created job security for the fifty employees at the Rogers Group location. **"Stimulating the economy, economic development and creating new jobs through the short line tax credit are the things we need to continue doing," lauded Gould.**

David Roche, President & CEO – Minn-Dak Farmers Coop, Wahpeton, North Dakota
A Customer of the Red River Valley & Western Railroad

The timely and safe rail transportation provided by the Red River Valley & Western Railroad is essential to the business of the Minn-Dak Farmers Coop and its 250 employees. The Coop ships 95% of their outbound sugar and sugar products over the RRVW and they receive 100% of their inbound coal and limestone vie the short line. According to Mr. Roche, **"Short lines excel in meeting the individual needs of their customers. They are local companies that are in daily contact with us and the work overtime tailoring their service to our particular needs. They do so overt track which requires substantial capital investment both to make up for past neglect and to meet the ever increasing requirements for heavier cars and faster turn around times.**

Steve McLaurin, Live Production Manager/Operations Manager – Peco Foods, Bay Springs, Mississippi

A Customer of the Mississippi Southern Railroad

The Mississippi Southern Railroad (MSR) was able to utilize the Section 45G tax credit to insert thousands of cross ties into their main line between Newton and Bay Springs, Mississippi. Until that point, this line had been embargoed by the previous Class I railroad owner due to poor track conditions. The MSR was able to use the tax credits to install enough ties on the line to re-open the railroad and resume service to their customers. **According to Steve McLaurin of Peco Foods "Our company feeds tens of thousands of chickens every day, and we count on the Mississippi Southern Railroad to be able to deliver the necessary corn and soybean meal in an economical fashion. Without the MSR being in business, and without their ability to rehabilitate and upgrade their track, we would have had to close our doors, which would have meant a meaningful loss of jobs and a major direct economic hit to our community."**

Roger Simon, Vice President – Alma Iron and Metal, Alma, Michigan

A Customer of the Huron & Eastern Railroad

The City of Alma worked for some time to move the Alma Iron and Metal facility from its present downtown site along the Pine River mill pond so the city could redevelop the river front. That goal was recently accomplished when the company was able to justify relocation to an industrial park site formerly occupied by Total Petroleum. **"The availability of direct rail service at the site was a major factor in making the economics of the move work. When you consider that one railcar holds four truckloads, the economics become real clear. Ours is a very price competitive business and we cannot get to the markets we need to reach without good short line rail service," said Roger Simon, VP of Alma Iron and Metal.**

Cliff Vennix, President – Auburn Bean & Grain, Auburn, Michigan

A Customer of the Huron & Eastern Railroad

Auburn Bean and Grain is a major rail shipper based in Auburn, MI. AB&G, which also has locations in Oakley, Hemlock, and Saginaw, is in the business of seed cleaning and processing and has a combined storage of 13 million bushels. ""**Auburn Bean and Grain depends on the Huron and Eastern Railroad to move some 2,200 cars a year to get its product to market. The short line operates in areas the large Class I railroads no longer serve and over track that received limited investment by previous owners. The rehabilitation tax credit has allowed the railroad to increase it annual track investment by approximately $300,000 per year. Those track improvements are critical to the success of agricultural shippers in Michigan. They improve service and help keep transportation cost down. It's a smart program that should be continued," said Cliff Vennix, president of Auburn Bean & Grain.**

David Skjaerlund, President – Liberty Renewable Fuels, LLC, Owosso, Michigan

A Customer of the Great Lakes Central Railroad

"Short line railroads like Great Lakes Central provide service over track that was going to be abandoned by the large Class I railroads. For that reason most of this track received little or no investment for many years prior to the purchase by the short line. Catching up

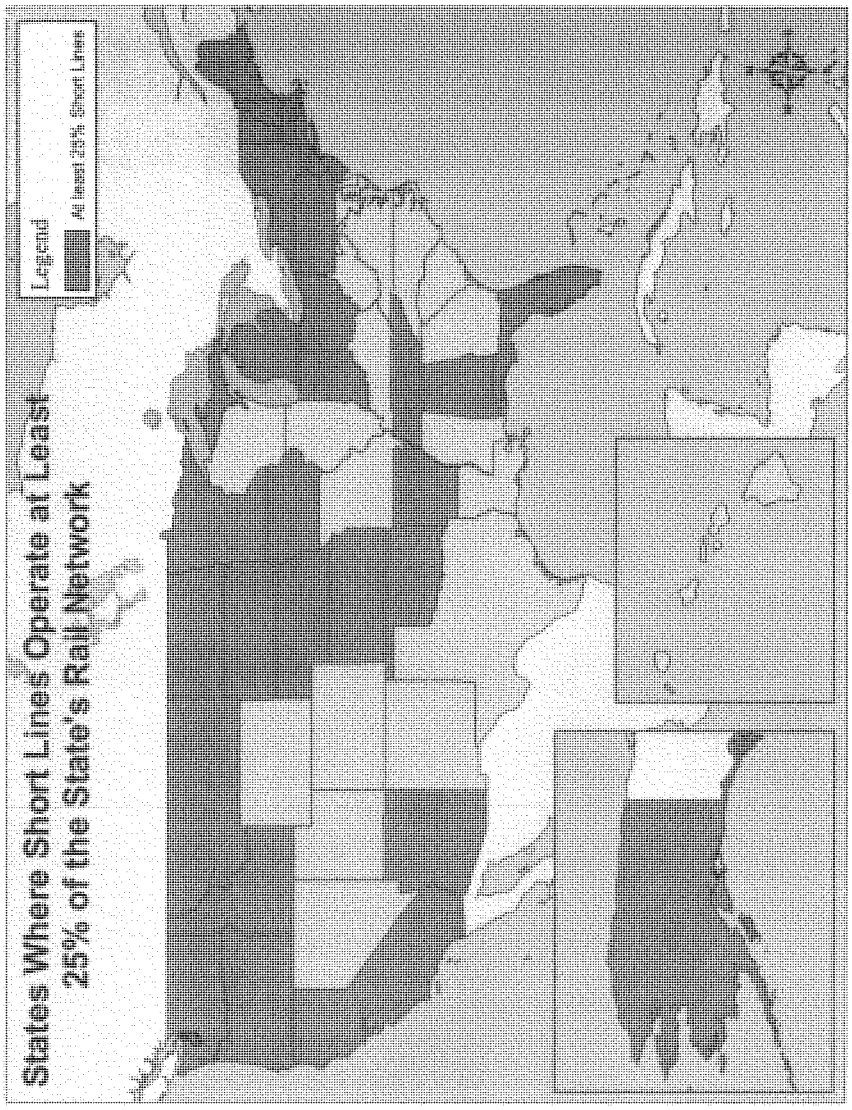
is very expensive and in rural areas such as ours small shippers do not generate enough volume to fully foot the bill. The tax credit has helped fill that gap. It allows the short line to catch up and lower operating expenses so that there is more revenue left to finish the necessary rehabilitation."

Jerry Moen, General Manager – Larson Grain Co., LaMoure, North Dakota
A Customer of the Red River Valley & Western Railroad

Larson Grain Co. collects grain from 150 family farmers in Southeastern North Dakota. **"It is not an exaggeration to say that if this railroad could not serve our facility we would have to close down. We ship approximately 10 million bushels a year and it is just not feasible to move that kind of volume by truck. Even if could, the damage that level of truck traffic would do to our local roads would be enormous."**

Brian Arnhalt, GM – Minn-Kota Ag Products, Breckenridge, Minnesota
A Customer of the Red River Valley & Western Railroad

Minn-Kota collects grain from Minnesota and North Dakota farmers and ships approximately 4,500 rail cars per year over the Red River Valley Railroad (RRVW). According to Mr. Arnhalt, **"the tax credit is more than just the credit itself. My company recently helped RRVW finance the rehabilitation of two yard tracks that were needed to load heavier, longer trains. The tax credit helped make this upgrade economically feasible for the railroad and their willingness to proceed is what convinced us to participate. It seems to me this is a very positive outcome that the government should continue to encourage in the future."**


States Where Short Lines Operate at Least
25% of the State's Rail Network
Legend
At least 25% Short Lines

Before The
U.S. House of Representatives
Committee on Transportation and Infrastructure

September 20, 2007 Hearing
11:00 A.M.
2167 Rayburn House Office Building

Testimony Of
Commissioner Francis P. Mulvey
Surface Transportation Board
395 E Street, SW, Suite 1290
Washington, DC 20423-0001
(202) 245-0210

Good afternoon Chairman Oberstar, Ranking Member Mica, and other Committee Members. Thank you for this opportunity to testify on rail competition and service matters.

Following the passage of the Staggers Rail Act of 1980, which greatly reduced economic regulation of the railroad industry, there were many who felt that the Interstate Commerce Commission should be abolished completely and that rail transportation rates and service should be determined by market forces (subject to the anti-trust laws). However, it was clear to most in Congress that the railroad industry did differ in important ways from other industries and that some degree of economic regulation needed to continue to protect the interests of those shippers who were "captive" to the railroads. The Surface Transportation Board was created to balance the needs of shippers for reasonable rates with the need of the railroads to earn adequate revenues. The overall questions we confront today are "how well has the Board met its charge to balance those interests" and "what is the state of competition in the transportation of bulk commodities that are largely captive to the railroads?"

To some extent the answers depend on where you sit, but clearly there are many who believe that the Board could do more to promote competition, ensure reasonable rates for captive shippers, and improve the reliability and quality of railroad services.

In the early years of the Surface Transportation Board, the agency continued to focus on ensuring that the railroads regained their financial health. In addition to decisions that allowed the carriers to capitalize, through differential pricing, on routes where shippers were captive, the Board also approved mergers of large railroads paying less attention to competitive concerns than to the perceived opportunities for the merging carriers. Pressure from the Congress eventually resulted in the Board's declaring a moratorium on major rail mergers and in the establishment of new merger guidelines that promised to take more account of the competitive impacts of railroad consolidations.

Over the past 3 years, the Board has held a number of hearings on issues related to railroad competition. On October 19, 2005, the Board held a hearing on the state of the railroad industry since the passage of Staggers. The testimony was near unanimous that the industry has largely recovered

from the financial malaise that plagued it during the 1960s and 1970s. The Board also has held hearings and has undertaken a number of initiatives aimed at balancing the scales between shippers and railroads. Let me briefly outline some of the areas where I believe that progress has been made.

First, fuel surcharges. The railroads were calculating fuel surcharges as a percentage of the rates they charged their customers. This meant that captive shippers, who already paid higher rates, had to also pay higher fuel surcharges despite the fact that their shipments did not necessarily require greater fuel usage. The Board found this to be an unfair practice and directed the railroads to compute the surcharges to more closely reflect actual fuel consumption.

Second, access to rate relief. Shippers have long complained that the Board's procedures were too time consuming and too costly. The Board's procedures for adjudicating rate cases (the stand alone cost test) is founded on accepted economic principles and has been approved (if indeed not required) by the courts. The cost of bringing a rate case under the Board's stand alone cost guidelines can cost a shipper several million dollars and the case can take several years to be decided. Even those shippers, who can

justify the expense of bringing a rate case before the Board, generally will either gain no rate relief or a reduction in the proposed rate much below that which they had desired. Shippers whose traffic does not justify the expense of bringing a case under the stand alone cost guidelines believe they have no access to the Board for rate relief.

The Congress more than 20 years ago directed the Board's predecessor, the ICC, to develop simplified, less costly procedures for adjudicating small rate cases. The Board has now acted to address both the cost and timeliness issues in large rate cases, as well as procedures and standards for small rate cases. In October 2006, the STB issued new large rate case guidelines that were designed to take out a significant amount of the time and cost to bring a case under the SAC process. On September 5, 2007, the Board issued new procedures for bringing cases before the Board that do not warrant the expense of a full SAC proceeding. These new rules give shippers the option of selecting how they want to proceed to challenge their rates, but set limits on recovery depending on the process selected. Hopefully, these changes will provide shippers with better access to the Board. I am committed to monitoring the results of these initiatives to see that they work as intended.

In the first test of our new guidelines for large rate cases, the shippers apparently were disadvantaged by the changes. Because of this possibility, the Board has taken the nearly unprecedented step of allowing them to refile their case.

Third, cost of capital. The Board has consistently found that the nation's railroads are "revenue inadequate" despite the fact that Wall Street has found the railroads to be profitable. One of the reasons for this disparity lies in the approach that the Board has taken to determine revenue adequacy. More than 20 years ago, the Board adopted a "Discounted Cash Flow" (DCF) methodology to determine the cost of equity capital. However, over the years, this approach has lost favor with the finance community and the DCF method has long been abandoned by most other agencies that need to make such a calculation. On August 14, 2007, the Board announced a proposed change that could, if adopted, reconcile the Board's estimation of the revenue adequacy of the railroads with that which prevails on Wall Street.

At the same time, there are other areas where the Board has not yet made as definitive a commitment to change. Several areas are of particular concern to me.

Paper Barriers. The Board has been examining the question of what to do about so-called "paper barriers," otherwise known as interchange commitments. These provisions arise when a Class I railroad sells or leases some of its light density trackage to a small or new short line railroad. Often the short line pays little or nothing for the right to haul the traffic, but it must agree to interchange the traffic only with the Class I that leased or sold it the track. Interchanging with another railroad would result in severe penalties. I find this practice to be anti-competitive and I have dissented from the majority in several cases where paper barriers were contained in the sales or lease agreements.[1] What is particularly troublesome to me is that these restrictions on the short lines' ability to interchange with other carriers, and thereby offer shippers a competitive option, go on in perpetuity. Just as new entrants have been the source of competition for legacy carriers in the airline industry, so too could these new carriers become the source of competition in the rail industry in the future.

[1] Paducah & Louisville Ry. – Acquisition – CSX Transp., Inc., STB Finance Docket No. 34738 (STB served Nov. 18, 2005) (Comm'r Mulvey dissenting, at 6-7); Columbus & Ohio River R.R. – Acquisition and Operation Exemption – Rail Lines of CSX Transp., Inc., STB Finance Docket No. 34540 (STB served Nov. 18, 2005) (Comm'r Mulvey dissenting, at 9); Indiana & Ohio Centr. R.R. – Acquisition and Operation Exemption – CSX Transp., Inc., STB Finance Docket No. 34536 (STB served Aug. 23, 2005) (Comm'r Mulvey dissenting, at 9-10); Buckingham Branch R.R. – Lease – CSX Transp., Inc., STB Finance Docket No. 34495 (STB served Nov. 5, 2004) (Vice Chr. Mulvey dissenting, at 13).

Status of Competition. I am also concerned about the state of competition overall in the railroad industry. The Government Accountability Office has recently reported on the status of competition in the rail industry, and I will not repeat its findings here. I did, however, believe that the study inaccurately claimed that the extent of captivity was declining, implying that there were fewer captive shippers than previously. Even if relative captivity (i.e., the percentage of traffic that is captive) has declined, there is no evidence that competitive options have increased for captive shippers. Although the GAO admits that the approach it took to measuring captivity left much to be desired, I believe that the implications drawn do not comport with reality. The GAO also suggested that the STB undertake a study of competitiveness in the railroad industry. The Board, rightfully I believe, initially declined to follow the GAO's recommendation because we lacked the resources. However, the Board has recently contracted to have a study done in response to GAO's suggestions by a private consulting firm, Christensen Associates. Although this is a well-regarded economic consulting firm, I regret that our resources were not committed to the study authorized in the SAFETEA-LU bill which would have focused more on how well the Board has handled its mission.2 The study requested in

[2] Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU),

SAFETEA-LU would have been undertaken by the Transportation Research Board, an arm of the National Academy of Sciences.

Investment in Railroads. The overall financial condition of the railroad industry has improved dramatically over the past few years, so much so that it has led to increased interest on the part of private equity firms or hedge funds. These types of investors are often into investments to maximize short term gains for their shareholders. What is of most concern to me would be an attempt by a hedge fund to purchase a significant stake in a railroad, followed by divestiture of the railroads' assets, deferred maintenance, and disinvestment in capital improvements. These actions could result in deterioration of service to shippers and then perhaps lead to a failing firm. The Board does not appear to have any authority under existing law to limit such investments.

Without projecting the outcome of any particular proceeding that might come before us, and aside from recent initiatives we have completed or have pending before us, I have several suggestions for improving rail competition and service.

Pub. L. No. 109-59, sec. 9007 (2005).

One common theme we do hear from all rail stakeholders – albeit expressed in different ways – is that there needs to be more investment in rail infrastructure. It seems that the railroads alone will not be capable of making the levels of investment needed, given the capital intensity of the industry. If we, as a nation, are serious about shifting traffic from our highways to rails, we need to devote more public money into our rail infrastructure. While the railroads favor an investment tax credit, I personally believe the amounts that will be needed will be far greater than what an ITC would realistically produce. A railroad trust fund of the type recommended by former Representative and T&I Committee member Bill Lipinski, could generate the monies that will be required to upgrade and build our nation's rail transportation infrastructure.

Further, I believe that the Board must adjust the focus of its operations to better reflect changing circumstances. For example, the Board currently exercises regulatory oversight over about a third of all railroad traffic. Most traffic is exempt from our regulation because it is presumed to be competitive with other modes of transportation or because it moves under contract. In the case of the latter, railroad/shipper agreements have evolved

so that the line between contract and tariff carriage has become blurred. The Board is currently examining how and whether it needs to clarify the distinction between the two. With respect to exempt traffic, it is best that traffic for which rates can be determined by the competitive marketplace not be subject to economic regulation. That type of regulation proved disastrous before the transportation industries were largely deregulated. However, times change and as they change so does the competitive landscape. I believe we need to look at existing class exemptions periodically to determine whether exemptions that are premised on the availability of intermodal competition remain warranted. Many of these exemptions were sought and granted in the 1980's when the transportation landscape was quite different than it is today.

Finally, to ensure that the Board has the requisite power to take action on issues of concern to the industry and its stakeholders, the Congress may want to consider returning a general power to investigate to the Board. Currently, under 49 U.S.C 11701, the Board may begin an investigation on a potential violation of the rail portions of its statute "only on complaint". It may be appropriate to revise this language by striking "only" and adding "or on its own initiative." If the Congress wants the Board to continue to

actively seek out problems, and to solve them, guidance in this form would be helpful.

Thank you for the opportunity to testify today. I look forward to answering any questions you may have.

TESTIMONY OF

CHARLES D. NOTTINGHAM
CHAIRMAN

SURFACE TRANSPORTATION BOARD
395 E STREET, SW
WASHINGTON, DC 20423
(202) 245-0200

BEFORE THE

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING
ON

RAIL COMPETITION AND SERVICE

SEPTEMBER 20, 2007
11:00 A.M.

September 20, 2007

Testimony of Charles D. Nottingham
Chairman of the Surface Transportation Board Before the
House Committee On Transportation and Infrastructure
Hearing on Rail Competition and Service

Good morning Chairman Oberstar, Ranking Member Mica, and Members of the Committee. My name is Charles Nottingham, and I am Chairman of the Surface Transportation Board (Board or STB). I appreciate the opportunity to appear before this Committee today to address rail competition and service. The Committee invited me to testify on the financial condition of the railroad industry, the relationship between railroads and shippers, rail competition, concerns with rail service, the role of the STB in resolving disputes between railroads and shippers, and recommendations for improving rail competition and service.

This is my first appearance before this Committee since I became Chairman of the STB in August 2006. It has been an extraordinary year for me personally, and an unusually busy year for the Board. In addition to handling its normal workload of formal actions, the Board has taken numerous steps this year to proactively monitor the rail industry and reform the Board's existing regulations to modernize and improve how we regulate the railroads.

Before elaborating on these efforts in this written testimony, I will first provide an overview of the Board and its responsibilities. I will then address the issues identified by the Committee.

Overview Of The STB

The STB is charged by statute with resolving railroad rate and service disputes and reviewing railroad restructuring transactions (mergers, line sales, line constructions, and line abandonments). In addition, the Board has limited jurisdiction over certain trucking, bus, household goods, ocean carrier, and pipeline matters.

It is important to note that the substantial deregulation effected in the Staggers Rail Act of 1980 was carried forward by the ICC Termination Act of 1995 (ICCTA), which retains the directive that the Board issue administrative "exemptions" that suspend active regulation in areas where the market is competitive. The Board's governing statute, like virtually all other modern statutes of economic regulatory agencies, assumes that aggressive regulation is not necessary where there is competition, because in such circumstances competition will discipline businesses and prevent market abuse. Our statute, at 49 U.S.C. 10101, establishes a Federal policy "to allow, to the maximum extent possible, competition and the demand for services to establish reasonable rates for transportation by rail," and to "minimize the need for Federal regulatory control over the rail transportation system," but "to maintain reasonable rates where there is an absence of effective competition." It also permits the Board to intervene with respect to railroad rates only "[i]f the Board determines . . . that a rail carrier has market dominance over the transportation to which [the] rate applies." 49 U.S.C. 10701(d)(1).

Under the law, a carrier is considered not to have market dominance where its rates produce revenues that are less than 180% of its "variable costs" of providing the service. (Variable costs are the portion of a carrier's costs that change with the amount of traffic handled, unlike the fixed portion of its costs.) Also, if there are competitive alternatives

for moving the traffic between the same points – that is, competition either from other railroads (intramodal competition) or from other modes of transportation such as trucks, pipelines, or barges (intermodal competition) – then the Board does not have authority to regulate the rate, even if the revenues exceed 180% of the variable costs of providing the service. Finally, the Board has limited jurisdiction over rail transportation contracts between shippers and carriers.

Financial Condition of The Nation's Rail System

General Observations. When Congress passed the Staggers Act in 1980, the Nation's rail system was in desperate financial straits. It was burdened with unproductive assets, forced to provide unprofitable services, and hampered by excessive government regulation. Recognizing that a sound, healthy rail transportation system is essential to the Nation's economy, Congress put in place reforms directing that railroads be treated, in most respects, more like other businesses. Since that time, the railroad industry's financial condition has steadily improved. Today the industry is considered by most independent analysts to be relatively healthy.

Unlike most businesses, however, railroads are common carriers. As common carriers, they have an obligation to provide service to the general public on reasonable request. In order to ensure that shippers receive the needed level of service, the railroads' financial resources must be sufficient to maintain a sound and sufficient infrastructure. At the same time, transportation of commodities vital to the Nation's economic wellbeing must be efficient and reasonably priced.

Capacity Constraints. I would like to address how the rail system has changed over the past several years, which is relevant to my later discussion of both rates and service. In

1980, the rail system was faced with excess capacity, which made it difficult for railroads to provide service efficiently and on a financially sustainable basis. The Staggers Act made it easier to shed excess capacity and become more efficient in other ways, and the system has now been largely rationalized and made more productive.

In recent years, however, the U.S. economy has expanded, and the rail network, like other transportation sectors, has become capacity-constrained. Unlike some other transportation sectors, however – trucking companies, for example, which can buy new equipment or hire more drivers – railroads cannot respond as readily to capacity constraints by quickly building new track and other facilities. Not only are rail construction projects expensive and time-consuming, but these projects can generate significant opposition on environmental and community-impact grounds.

On April 11, 2007, the Board held a public hearing focused on rail capacity, traffic forecasts, and infrastructure requirements. Because the Nation's freight rail system will be relied upon to handle significant increases in traffic in the years ahead, the Board wanted to get a better understanding of whether current and planned or forecasted investments will be adequate to meet rail capacity demands, and, if not, what new policies and strategies need to be pursued. That hearing, which lasted 12 hours, brought together representatives of large railroads; short-line railroads; Federal, state, regional, and local government interests; many different shipper interests; rail passenger carrier interests; and rail labor. The hearing documented widespread consensus among stakeholders that rail capacity will become increasingly constrained by traffic growth. A representative of one of the Nation's ports testified that container traffic typically carried by truck or rail entering North American ports from overseas will grow by more than 100% by the year 2020, from over 48 million

Twenty Foot Equivalent Units (TEUs) in 2005 to an anticipated 130 million TEUs. Furthermore, representatives of the large railroads that make up the Class I railroad industry testified that – despite their plans to increase investment levels in the system every year – their anticipated capacity investments will not keep up with forecasted increases in rail service demands. In sum, the rail system's capacity shortfall that we see in many markets today will dramatically worsen unless bold new policies and strategies are adopted.

Cost of Capital. In a matter related to the railroads' financial condition and the soundness of their systems, I should point out that the Board is now working on a very important rulemaking that would change how the railroad industry's cost of capital is measured. The Board is required by statute to make an annual assessment of the railroad industry's cost of capital. The cost of capital figure is used to evaluate the adequacy of individual railroads' revenues, and it is also an input in the Board's review of rail rate challenges and rail line abandonment proposals.

A railroad's cost of capital reflects the carrier's cost to raise capital both through debt and through equity arrangements. While the cost of debt is easy to determine, the cost of equity is far more difficult. Indeed, how best to calculate the cost of equity is the subject of a vast literature that sprawls over the fields of finance, economics, and regulation. Since 1981, the Board has been using the same basic approach to estimate the cost of equity, but concerns were raised recently that the approach was outdated and may be overstating the industry's cost of capital and thus the revenue needs of the industry.[1]

[1] The cost of equity for 2005 using the current methodology was calculated to be 15.2%, compared to 8.4% using the proposed methodology; similar disparities are reflected in prior years' calculations (e.g., 2003: 12.7% vs. 8.0%; 2004: 13.2% vs. 8.2%).

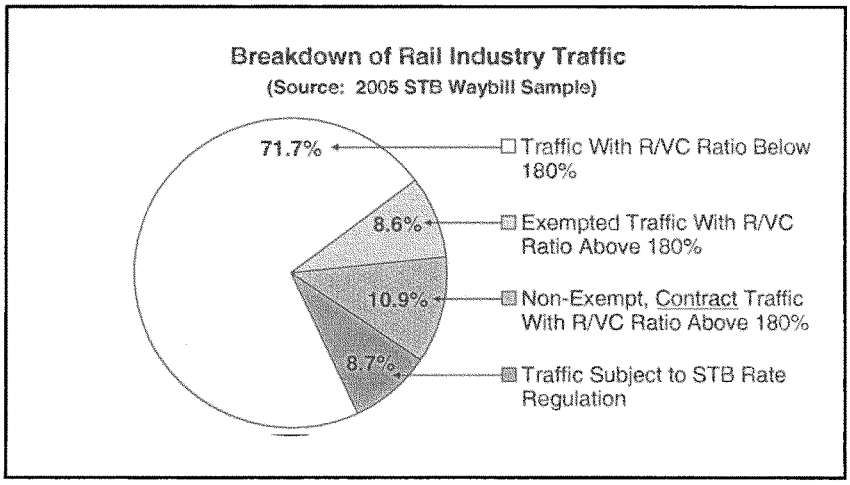
Given the importance of this cost-of-capital figure in many of our regulatory procedures, we launched a rulemaking to improve our methodology and to ensure the accuracy of this important measurement. The comment period should be completed at the end of October, and we will carefully consider all comments before issuing a final rule.

Investor Interest. Recently, there has been extraordinary interest in railroads by hedge funds and other large U.S. and international investors who have not traditionally invested heavily in railroads. This new interest in the rail industry carries with it the prospect of a takeover of a railroad by a non-railroad entity. The STB has received numerous inquiries about how we would respond to such a transaction in view of the fact that the merger and acquisition provisions of the statute address the Board's role only where two or more railroads are involved. The extent of the Board's jurisdiction over an acquisition of a single railroad by a noncarrier is unclear.

Competition

As I have noted, the statute provides that, where shippers have practical competitive choices, or where rates are set at less than 180% of variable costs, regulatory scrutiny and protection is not needed. In the year 2005 (the most recent year for which adequate data are available), over 71% of the traffic that the railroads carried moved at rates less than 180% of variable costs and thus was deemed by statute to have been competitive. Of the remaining 29% of rail traffic that moved at revenue-to-variable-cost ratios above 180% that year, some was traffic that has been exempted from regulation, pursuant to 49 U.S.C. 10502, based on findings that the particular commodities and

services involved have competitive transportation alternatives available,[2] and some was traffic that moved under contract and was therefore outside the Board's jurisdiction.[3] Accordingly, as the following pie chart illustrates, the vast majority of traffic is presumed to benefit from a competitive market (about 91%, based on 2005 data).



Significant concerns are brought to Congress, and the Board, by shippers who either do not benefit from competitive transportation or do not have contracts with their rail carriers. But as we consider policy options to address their concerns, it is important to assess the costs and benefits of those options as they impact all shippers – both the more than 90% of shippers that benefit from competition, and the less than 10% that may not.

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[2] These exemptions cover 29 different commodity groups, including transportation equipment, wood products, pulp and paper products, metal products and food products. In addition, any products moving in intermodal equipment or boxcars are also exempted.

[3] Beginning with the Staggers Act, Congress enacted legislation to ensure that railroads and shippers were free to enter into contracts for rail transportation. Congress generally removed transportation contracts from the agency's jurisdiction. 49 U.S.C. 10709.

The Government Accountability Office (GAO) prepared a report in 2006,[4] and a supplement in 2007,[5] addressing railroad rates. The 2006 Report analyzed general trends in the industry and also highlighted particular markets. The 2007 Supplement updated some of the information in the 2006 Report.

As GAO documented in the 2007 Supplement, between 1985 and 2005, rates did not keep pace with inflation for each of the four major categories of rail traffic separately tracked by GAO (coal, grain, motor vehicles, and miscellaneous mixed shipments). Moreover, GAO found that despite an uptick in recent years, rail rates overall for 2005 remained below 1985 levels even in nominal terms. At the same time, the Board's index for tracking changes in railroad costs (the Railroad Cost Adjustment Factor) shows that the costs that the railroads themselves had to pay for the goods and services that they use in their business increased by 80% from 1985 to 2005. Thus, the fact that rates overall remained at or below 1985 levels even with these recent cost increases demonstrates that, in general, rail rates have been held down for most shippers.

The 2006 GAO Report focused to some extent on concerns over higher rate levels in parts of the agriculture sector. Last November, the Board held a public hearing to obtain information from interested parties about the grain transportation market in general, and in particular about the market conditions in the grain industry that may have caused grain rates to diverge from the long-term general trend of reduced rail rates for most shippers. Because U.S. and Canadian grain producers compete, both with each other and in a global

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[4] The report is entitled *Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed.*

[5] The supplement is entitled *Freight Railroads: Updated Information on Rates and Other Industry Trends.*

marketplace, the agency also wanted to hear about the interplay between the American and Canadian wheat markets, how the Canadian regulatory system differs from the American system, and what impact those differences might have on grain production in the United States. I am pleased to see that you are hearing today directly from the U.S. Department of Agriculture and representatives of the agricultural sector on these issues.

There are of course areas – states like North Dakota and Montana – in which rail rates tend to be higher than average, as the 2006 GAO Report points out.[6] That is largely because of the economics of the railroad industry: under principles of "differential pricing," railroads, with high "sunk" costs and with fierce competition for most traffic, are expected to charge more, even substantially more, from their captive traffic than from their competitive traffic if they are to achieve enough revenues to cover their costs and invest in necessary facilities. Although differential pricing is practiced in many other industries – such as airlines, utilities, hotels, and movie theaters – we understand that shippers on the captive end of this differential pricing scale would not be satisfied with the status quo. But if differential pricing is to be substantially tempered in the industry, then revenues will have to come from some source other than captive shippers. And if other sources of revenue cannot be found, then infrastructure investment will suffer, as will rail service. Indeed, Congress has recognized that all shippers – even captive shippers – benefit when railroads are permitted to engage in differential pricing. As the House of Representatives explained in 1980 (H.R. Rep. No. 1035, 96th Cong., 2d Sess. 39-40):

> In the absence of the regulatory flexibility which permits differential pricing, all shippers would be harmed. If traffic which moved at low rates were forced to pay higher rates, the traffic would disappear to other modes.

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[6] For some areas, rates can be higher because traffic is seasonal and there is little volume during off-peak times.

> When the traffic moved to another mode, the contribution to fixed cost made by that traffic would also disappear. The result is that the remaining commodities would have to make up for the fixed cost formerly paid by the traffic which moved to another mode, resulting in higher rates for the remaining traffic.

To further address GAO's observations about areas with less competition, the Board recently commissioned an extensive study on the extent of competition in the railroad industry. The study will also assess various policy issues, including current and near-future capacity constraints in the industry; how competition and regulation impact capacity investment; how capacity constraints impact competition; and how competition, capacity constraints, and other factors affect the quality of service provided by railroads. The economic consulting firm Christensen Associates, based in Madison, Wisconsin, has signed a contract valued at approximately $1 million to deliver this study to the STB for publication in the Fall of 2008.

The Board also continually seeks to protect and promote rail competition. Its current major merger rules require an applicant to demonstrate that the transaction would enhance competition where necessary to offset negative effects of the merger, such as competitive harm or service disruptions; its earlier merger decisions protected competition by ensuring that no shippers became captive to a single carrier as a result of a merger; its approval of the "Conrail Transaction" resulted in the availability of two-carrier service for several areas that had previously been served by a single carrier; and in decisions in a variety of individual cases, the Board has prevented larger carriers from interfering with the ability of smaller carriers to meet their obligation to provide service.

The Board has also facilitated new competition with its many decisions authorizing construction of new lines. One example of how the Board worked diligently to enhance

competition is reflected in the agency's decisions authorizing the construction by the Dakota, Minnesota and Eastern Railroad (DM&E) of a line into the Powder River Basin in Wyoming designed to provide enhanced rail transportation options for coal shippers, particularly in the Midwest. In that case, the Board, after an extensive environmental review, a few years ago approved the construction of the new line. The United States Court of Appeals for the Eighth Circuit found on judicial review that, while the Board had done "a highly commendable and professional job," the agency needed to further consider four specific environmental issues. The Board issued a second decision addressing those issues, and about 9 months ago that decision was upheld by the court after again being challenged by environmental and local groups opposed to the proposed project.

One issue that is now pending before the Board involves interchange commitments that may be part of sale or lease contracts when large carriers sell or lease lighter-density portions of their lines to smaller carriers (referred to by some as the "paper barrier" issue). Some parties take the view that these arrangements have helped facilitate the growth of the short-line industry into a vibrant force in the transportation sector – with well over 500 carriers today operating nearly 46,500 miles of track with nearly 20,000 employees – while others are concerned that they have tended to freeze in place the competitive status quo, rather than allowing the development of new competitive options not available before the transaction. A Board decision addressing a request for a general rule regarding such contractual interchange commitments is imminent.

Rate Regulation

As is the case with other industries, when capacity is tight, carriers will seek to raise their rates. As a result of differential pricing, those shippers without competitive

options often see their rates rise the most. Thus, with tight capacity throughout the industry today, the Board's rate processes are particularly important, and I will now turn to that matter.

Rate Disputes. Under the statute, the Board is directed to ensure that rates are reasonable while at the same time not precluding railroads from obtaining adequate revenues. Balancing these potentially conflicting objectives is not an easy task. Rates that are too high can harm rail-dependent businesses, while rates that are held down too low will deprive railroads of the revenues needed to pay for the infrastructure investments that are in turn needed to give shippers the level and quality of service that they require. The Board has recently improved its procedures for handling rate cases, with one set of procedures for large rate cases and two other procedures for smaller cases.

Large Rate Cases. With often hundreds of millions of dollars at stake, large rate disputes raise complex questions over the value of the assets needed to serve the shipper, the operating costs to serve the shipper, and the degree of differential pricing a carrier needs to earn a reasonable return. To resolve these large disputes, in 1985 the Board created a sophisticated, although complex, approach known as "Constrained Market Pricing," or CMP. CMP provides a framework for the Board to regulate rates while affording railroads the opportunity to cover their costs. Although CMP is premised on the need for differential pricing, CMP principles also impose constraints on a railroad's ability to price, even for their captive traffic.

CMP sets up four potential constraints to railroad pricing. The constraint that is typically used is the stand-alone cost (SAC) test. Under SAC, a railroad may not charge a shipper more than what a hypothetical new, optimally efficient carrier would need to

charge the complaining shipper if such a carrier were to design, build, and operate – with no legal or financial barriers to entry into or exit from the industry – a system to serve only that shipper and whatever group of traffic that shipper selects to be included in the analysis. The ultimate objective of the SAC test is to ensure that the complaining shipper is not charged for a carrier's inefficiencies or for facilities or services from which the shipper derives no benefit. This assures that the complaining shipper is not required to unfairly subsidize other customers of the railroad.

Although the U.S. courts of appeals have affirmed every challenged SAC case issued by the Board since the agency was created in 1995[7] (whether they were challenged by the shipper or the railroad involved), during the past few years it became apparent that a loophole gave railroads the ability to "game" the outcome of future SAC determinations. Moreover, in a recent court decision, the Board was warned that part of its SAC methodology was on "shaky ground."[8] Finally, the complexity and costs of litigating a SAC case had increased over time, often costing $3-5 million and 2-4 years for a shipper to bring, or a railroad to defend, a case. For these reasons, the Board found it necessary in 2006 to make some significant changes in how we will apply the SAC test and how we

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[7] *See Otter Tail Power Co. v. BNSF Ry.*, 484 F.3d 959 (8th Cir. 2007); *Arizona Elec. Power Coop., Inc. v. STB*, 454 F.2d 359 (D.C. Cir. 2006); *BNSF Ry. v. STB*, 453 F.3d 473 (D.C. Cir. 2006); *PPL Mont., LLC v. STB*, 437 F.3d 1240 (D.C. Cir. 2006); *Wisconsin Power & Light Co. v. Union Pac. R.R.*, 62 Fed. Appx. 354 (D.C. Cir. Apr. 30, 2003); *McCarty Farms, Inc. v. STB*, 158 F.3d 1294 (D.C. Cir. 1998); *Burlington N.R.R. v. STB*, 114 F.3d 206 (D.C. Cir. 1997).

[8] In particular, the United States Court of Appeals for the District of Columbia, in affirming one of the Board's more recent SAC decisions, explicitly stated that, if the Board were "presented with a model [for allocating revenue for so-called "cross-over traffic"] that took account both of the economies of density and of the diminishing returns thereto, a decision to adhere to its [existing] model would be on shaky ground indeed." *BNSF Ry. v. STB*, 453 F.3d 473, 484 (D.C. Cir. 2006).

will calculate the amount of relief in a large rate case. The revisions reflect a significant milestone in the STB's ongoing effort to reduce litigation costs, create incentives for private settlement of disputes, and shorten the time required to develop and present large rail rate cases to the STB. These rules were completed last Fall — within 8 months of the notice of proposed rulemaking.

Small Rate Cases. In 1996, in response to a Congressional directive, the STB adopted simplified guidelines for assessing the reasonableness of challenged rail rates in cases in which a full SAC presentation is too costly. Under these guidelines, the agency established three "benchmarks" to determine the reasonableness of a challenged rate in a small rate case. The three benchmarks look at the carrier's overall revenue needs, how the railroad prices its other captive traffic, and how comparable traffic is priced.

Shippers, however, noted several shortcomings to the small rate case procedures that discouraged them from filing cases. For example, many stated that it was unclear what shippers would qualify to use the guidelines. In addition, shippers (and railroads) wanted greater clarity as to how the three benchmarks would be applied in a particular case. Shippers also expressed concerns about how railroads might use the discovery process to unreasonably prolong a case. As a result of these ambiguities, no cases have been decided under the 1996 simplified guidelines, although two cases were filed and then settled.

The agency held several public hearings on this matter from 2003 through 2007, and its staff met with staff from other economic regulatory agencies to gather information on how those agencies handle smaller disputes. On September 5, 2007, the Board issued a decision updating our process for reviewing rate complaints in cases where the cost of a

full SAC case is not warranted or practicable. The Board's decision, which makes the rate review process available to shippers of all sizes, allows smaller rate cases to proceed on one of two tracks. First, freight rail customers may seek up to $1 million in relief over a 5-year period, using a revised version of the three-benchmark test with more predictability built into it. A shipper using that approach would have a Board ruling on its case within 8 months of the filing of its complaint.

Under a second approach, freight rail customers can seek up to $5 million in relief over a 5-year period, by using a process that focuses on whether the carrier is abusing its market power by charging more than it needs to earn a reasonable return on the replacement cost of the infrastructure used to serve that shipper. This is a simpler form of the SAC test that is applied in large cases; it relies on standardization of many of the components in order to reduce the cost and complexity of litigating the case. A Board decision in a rate case brought under this approach would be issued within 17 months after the filing of the complaint.

Before the Board's recent changes, the majority of captive rail traffic had been effectively blocked from Board rate review due to the complexity and resulting high costs of the previous procedures. The Board's new procedures ensure that the rate review process will be accessible to all captive traffic that moves under common carrier rates.

In all rate cases, the Board will require mediation up front, which we have found is a good way of getting adversaries together. Indeed, earlier this year a small rate case involving Williams Olefins, LLC and Grand Trunk Corporation was resolved privately within only a few weeks pursuant to mediation by Board staff.

Fuel Surcharges. Another matter that has concerned shippers in the past few years is the way the railroads were assessing fuel surcharges. As you know, in recent years fuel costs have been unpredictable and volatile, with some sharp upward spikes. Fuel is a substantial component of railroad costs, and carriers have sought to recover their increased fuel costs through surcharges. Some shippers felt that the surcharges they were being assessed were greater than the increased fuel costs that could be attributed to their movements. Captive shippers voiced concerns that the fuel surcharge programs of the carriers, which were expressed as a percentage of the base rate, virtually guaranteed that captive shippers with high base rates would bear the increased fuel costs of other shippers. They also objected to the carriers' practices of "double dipping" by first raising the base rate using an index that includes changes in fuel costs and then adding a separate fuel surcharge to the same movement.

In May 2006, the Board held a public hearing on the matter. In January of this year we issued a decision declaring it an unlawful practice for carriers to use a fuel surcharge to recover more than the increased fuel costs attributable to the particular movement to which the surcharge is applied. This action, with industry-wide effect, demonstrates that the Board will use aggressively the authority granted to it by statute to stop unreasonable practices, thereby protecting shippers and advancing the public interest.

Service Quality and Railroad-Shipper Relationships

The Board actively monitors railroad industry performance. We receive monthly reports from each Class I railroad, tracking such indicators of congestion and efficiency as the number of freight cars on line, train speeds, and the amount of time cars spend in railroad terminals to make connections between trains (referred to as "terminal dwell"

time). Moreover, as it has done for several years now, the Board has asked each of those carriers to provide forward-looking information on how the railroads are preparing to handle end-of-year peak shipping demands in several key markets: agriculture (grain, grain products, and ethanol); coal; chemicals; and intermodal traffic. This year the Board also asked the carriers for their performance goals (with respect to cars-on-line, terminal dwell time, train speed, and employment levels), as well as information on critical capacity-related infrastructure needs this year and their capital needs for increasing capacity in 2008. The carrier's responses were due by September 14th; we are reviewing those responses and shortly will release them to the public.

On July 18, 2007, the Board held a field hearing in Kansas City, Missouri, to examine issues related to the efficiency and reliability of railroad transportation of resources critical to the Nation's energy supply, including coal, ethanol and other biofuels. Speakers at the hearing represented the interests of railroads, utilities, coal shippers, and other energy commodities such as ethanol. To address these issues further, the Board is establishing a Rail Energy Transportation Advisory Committee (RETAC) to provide advice and guidance to the agency and to serve as a forum for the discussion of emerging issues regarding the railroad transportation of energy resources such as coal and ethanol and other biofuels. RETAC is expected to address matters such as rail performance, capacity constraints, infrastructure planning and development, and effective coordination among suppliers, railroads and energy-resource users. The Board has sought public suggestions for candidates for RETAC membership, and it will announce its selections soon.

The Board has a very effective Rail Consumer Assistance Program, run by our Office of Compliance and Consumer Assistance (OCCA), which handles about 100 disputes in a typical year. A few of these informal disputes concern rate issues, but the majority relate to service. The process is easy to use and shipper-friendly. It can be engaged by a simple telephone call, fax, letter, or email. The follow-up by our staff is prompt and effective. Our consumer assistance staff has addressed a variety of issues, in addition to rates and service, including: car supply issues; claims for damages; demurrage issues (charges for holding rail cars for too long); fuel surcharges; employee complaints; and community concerns. Our staff cannot always resolve the issues informally, but they are often successful at bringing the parties closer together and getting them to talk to each other without resorting to litigation or formal Board adjudication.

During the past year, the staff working in the consumer assistance program proactively negotiated changes to the railroad industry's "embargo rules" (rules that govern temporary stoppage of railroad service due to track damage or other causes) that will do much to hold carriers to their common carrier obligation to their shippers. We also resolved two situations in which the crossing or interchange point between two railroads had been blocked, in each case getting the railroad or railroads involved to work out mutually acceptable compromises. We successfully secured rail service for a new shipper in Texas when a large railroad refused to serve it. We assisted a small grain shipper in Nebraska with a rate dispute, persuading the carrier to compromise with the shipper, and assisted a shipper in Missouri with its freight claims, persuading the carrier to honor the claims. And we assisted a shipper organization by persuading a large carrier to modify its

freight car information system to provide information that was needed for the businesses of the involved shippers.

When parties cannot resolve their differences informally, they can engage the Board's formal processes by filing a complaint. For example, the Board may temporarily substitute another carrier for a carrier that is unable or unwilling to provide adequate service on its lines. We have used those rules several times in the past few years. This past year, following up on a 2006 authorization of such alternative rail service at the request of a shipper in Texas, the Board extended the temporary relief until a long-term solution could be developed. Late last month the Board ordered the lines involved to be sold, at a price set by the Board to reflect the value of the property, to one of two prospective buyers. This particular "forced sale" case was complex and lengthy. The course of the Board's decisions demonstrates that we will use every available tool, where necessary, to protect shippers receiving inadequate service.

The Board acted to preserve shippers' service options in a case in Ohio this year involving a railroad that would not let another railroad cross its line. In that case, a Class I rail carrier had unilaterally removed the crossing diamonds that were needed for a short line to serve several potential shippers. The Board made clear that a carrier may not undercut another carrier's ability to fulfill its common carrier obligation by unilaterally severing track of the other carrier that is part of the national transportation system. The Board directed the Class I carrier to promptly reinstall the crossing.

STB Actions

The past 12 months have been noteworthy for the number of proactive steps taken by the Board to reform, streamline, and modernize our oversight and rail regulatory procedure. To summarize, some of the highlights of the past year include the following:

- In September 2006, we instituted a rulemaking proceeding to modernize the way we calculate the railroad industry's cost of capital to more accurately reflect the financial health of the rail industry;
- In October 2006, we reformed the rate review process for large rate cases to streamline and improve the accuracy of the process, to close a loophole that permitted carriers to manipulate the process, and to address a legal vulnerability;
- In September 2007, we overhauled the procedures for handling smaller rail rate cases so that all shippers will have a practical and feasible means of challenging rail rates;
- We investigated the fuel surcharge practices of the railroads, and in January 2007 concluded that their fuel-surcharge programs were unreasonable because they were misleading and because they required captive shippers to bear surcharges that were higher than the increased fuel costs attributable to their traffic;
- In November 2006, we held a hearing on issues related to the transportation of grain to explore whether further changes to the regulatory framework are necessary;
- In July 2007, we held a hearing and announced that we are establishing an advisory committee on transportation of energy commodities to monitor the ability of the railroads to handle the future energy needs of the Nation;
- In August 2007, we ordered a railroad providing inadequate service to sell its line to another carrier that would provide better service; and
- We recently contracted with an independent economic consulting firm to conduct a sweeping national study of rail competition-related issues.

Of the more important actions that will take place between now and the end of next year, the STB will:

- Issue final rules on how to calculate the cost of capital for the rail industry;
- See that the competition study is completed, and analyze the results and recommendations contained therein;

- Test the new simplified rate guidelines on three newly filed small rail rate disputes;
- Finish our investigation into the concerns about the appropriateness of certain interchange commitments that large carriers may enter into when they sell or lease light-density portions of their lines to smaller carriers;
- Consult with our new energy advisory committee for guidance on a range of significant issues that affect the public interest in a reliable delivery network for coal and liquid biofuels;
- Continue to examine the infrastructure and capacity needs of the rail network and the railroads' capital investment levels, and to emphasize the critical importance of developing new strategies to meet those challenges;
- Review the recently announced proposal by the Canadian Pacific Railroad to acquire the Dakota, Minnesota & Eastern Railroad;
- Improve the Board's ability to ensure effective regulation of rail operations that handle municipal solid waste and related materials;
- Address the current ambiguity as to whether certain types of arrangements between rail carriers and shippers reflect contracts (for which regulatory remedies are unavailable), or whether they reflect common carrier service subject to Board regulation; and
- Prepare the STB to have the capability to address potential conflicts between passenger rail and freight rail operations and to implement potential legislative proposals in this regard.

Conclusion

I appreciate the opportunity to discuss these issues today, and look forward to any questions you might have.

Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

October 15, 2007

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Oberstar:

Please find enclosed responses to questions posed by the Committee pursuant to the September 25, 2007 hearing on Rail Competition and Service. I hope this information will be helpful to you and the other Members of the Committee.

If you have any further questions or concerns, please contact me, or your staff may contact Matthew Wallen, Director of the STB's Office of Governmental and Public Affairs at (202) 245-0238.

Sincerely,

Charles D. Nottingham
Chairman

Enclosure

Responses to Questions Submitted by Congressman Rahall

Question: Chairman Nottingham, I would appreciate it if you would expand upon what I view as one of the pillars of the Staggers Rail Act, differential pricing. In particular, how differential pricing works to insure that we have in this country a financially sound and viable railroad network, which is, as I always note, in our national interest.

Answer: Differential pricing is a very common form of pricing. At bottom, it means charging a different price for a comparable product or service to different customers. Movie theaters and airlines are just a couple of the other markets besides railroads that engage in differential pricing.

While such price discrimination might seem inequitable, differential pricing can be both efficient and fair. The railroad industry has extremely high fixed costs. As a result, the marginal cost of providing rail service tends to fall well below the average cost. If a railroad were to charge the marginal cost for their products to all of its customers, it would not cover its fixed costs and would eventually go bankrupt.

Nor can railroads simply charge the average cost to each customer, for there will be some who do not value the service at that price. As a result, even those captive shippers who pay the highest prices may be better off if carriers are permitted to offer broad discounts to their demand-elastic customers. Indeed, the history of the railroad industry suggests that we must either subsidize railroad operations (as most countries do – though this creates a number of problems) or permit carriers to engage in differential pricing, subject to certain regulatory constraints. Encouraging railroads to discount some of their rates advances other positive public policy goals, such as reducing motor carrier highway traffic congestion and the safety, fuel inefficiency and air pollution problems that come with highway congestion.

Alternatives to differential pricing could include government price controls based on the mileage and weight of each freight rail trip. Such an alternative would likely increase current rates produced by differential pricing for many rail customers and could reduce the railroads' ability to compete with motor carrier traffic. In the late 1970s, Congress faced this exact choice – to subsidize (or even nationalize) the railroad industry or permit the industry to rationalize its operations and engage in differential pricing. The Staggers Rail Act explicitly chose the latter option – it permitted carriers to engage in differential pricing. Railroads are significantly healthier today than they were a generation ago. That improved health is largely a function of their ability to engage in differential pricing.

Question: As a follow-up, would you say that differential pricing is not unique in the transportation sector to the railroads. For instance, airlines sell similar seats on the same plane for different prices.

Answer: Many industries engage in wide-spread differential pricing. The airline industry, which you cited, is a very good example. The U.S. government is undoubtedly the largest single consumer of airline services and is able to use its purchasing power to

negotiate large discounts from the airlines. Were airlines unable to engage in differential pricing, government travelers would have fewer choices of flights and pay considerably higher prices.

There are other examples of differential pricing as applied to the transportation sector. There is growing interest in applying differential pricing to our road network. Variable priced tolling (where individuals willing to pay higher prices can access "HOT" lanes) may enable us to ease congestion for all travelers. Electric utilities often manage peak demand periods for electricity by charging higher rates during peak periods.

Question: Also to the STB, what are your observations in the area of coal transportation by rail – are you seeing more coal being moved, are you aware of any major capacity constraints?

Answer: According to data from the Association of American Railroads, coal traffic is running at very high levels, though a bit behind 2006 volumes. Of course, the market for coal transportation involves two different stories. In the East, coal export volumes remain at low levels and overall traffic is off the levels of a year ago. In the West, particularly in the Powder River Basin (PRB), coal volumes are running at record levels. *Rail Business* (October 8, p. 5) reported that both UP and BNSF loaded record amounts of PRB coal in September.

In both the East and the West, the major railroads are already taking steps to deal with capacity issues that will either directly or indirectly benefit coal shippers. In the East, Norfolk Southern's Heartland Corridor project, a public-private partnership, which is publicized to address intermodal access problems, will also improve one of that carrier's major coal routes. Some of the changes made there will address coal capacity issues and routing options through Virginia and West Virginia. In addition, NS has announced a new car repair facility to open in Portsmouth, OH, immediately north of important coal producing points, sometime next year.

In the West, BNSF is adding 60 miles of third and fourth main tracks to key areas of the Powder River Basin region to address immediate coal capacity problems, and is also double-tracking lines outside of the PRB to handle additional trainloads. The interchange between BNSF and Kansas City Southern, at Kansas City, MO, for coal fired plants located on the latter carrier has recently been expanded with renewed flyovers and additional track flexibility. This interchange has been a chokepoint in the past for these carriers and still bears watching for continued problems. We will consult with both carriers if we feel further attention is needed.

Union Pacific has completed a new third main track at North Platte Yard and added 38 miles of Centralized Traffic Control (CTC) main line in Eastern Nebraska, all as part of a plan to develop a double-track CTC route all the way from the Powder River Basin Mines to Chicago. UP is also double tracking the Gasconade Bridge between Kansas City and St. Louis for PRB coal traffic to the East. The carrier is also constructing a $43 million bridge at Boone IA, to be completed by October, 2008. Additional efforts are

under way to boost individual train tonnage capacity, make running repairs to coal cars in major terminals, speeding up customer notifications by use of the internet, all to reduce dwell times and increase velocity.

For future coal capacity, the Board has approved construction of a new rail line by the DM&E, which would add a third serving railroad to the Powder River Basin, and provide single line service to Chicago, and possibly beyond.

Responses to Questions Submitted by Chairman Oberstar

Question 1: The STB recently completed a large rate case rulemaking in October of last year in Ex Parte No. 657 (Sub-No. 1). In announcing the decision, you promised that the STB had "improved" the system for deciding rate cases. Further, in a letter responding to the Congressional concerns about undue prejudices brought about by the rulemaking, you promised that the results would be fair and not prejudicial. But in your two rate case decisions issued in September, you denied all relief and even admitted that the complainant shippers had been unduly prejudiced by the implementation of portions of the new standards.

The Basin Electric case involved revenue/variable cost ratios of well over 600% today, and an astonishing $1billion in rate increases over time on a single customer! Would the shipper have won if not prejudiced by the retroactive application of the new STB imposed revenue standards? Do you expect that after having already spent $6 million, the customer should take solace in the prospect of spending more time and money in follow-up proceedings? Don't these first two new decisions decided under the new standards establish that the Board's new rules are no improvement? Given these new decisions, and the clear prejudice caused as now recognized by the Board, how are we to escape the conclusions that the STB has no interest in providing effective relief against monopoly railroad rate abuses and it is failing to engage in fair, balanced, and impartial decisionmaking?

Answer: We have never stated that our new procedures prejudiced anyone. We have said that complainant shippers "could" have been prejudiced. Given the possibility of prejudice we took the unusual step of permitting complainants to modify their SAC presentations. The Board did not complete its analysis of the evidence under the old rules, so I cannot speculate on whether the shipper would have won or lost the case were it decided before the new standards took effect. The change in revenue allocation method you reference, however, was foreshadowed by a recent federal court decision, which warned the Board that continued use of the old approach was "on shaky ground indeed." BNSF Ry. v. STB, 453 F3d 473, 484 (D.C. Cir 2006). Consequently, Basin Electric would likely not have benefited from application of the old revenue allocation approach, as the use of the discredited method might not have survived judicial review. Losing on appeal would only add to a litigant's attorney and consultant expenses.

I do note that your question inquires into only the change the Board made to its revenue allocation methodology. The Board also made a number of other changes in its major rate case rulemaking including: (1) changing its method for setting maximum lawful rates to prevent unfair manipulation by the railroads; (2) changing its method for indexing operating expense to account for productivity gains (when previously no productivity gains were recognized); and (3) disallowing parties from proposing movement-specific adjustments to the agency's Uniform Railroad Costing System (URCS) when calculating the 180% revenue-to-variable cost jurisdictional floor for rate relief, saving each party to the litigation an estimated $1 million in litigation costs. All of these changes were

applied to all pending rate cases. In a particular case, some of these changes might favor the shipper and others the carrier.

You have also asked about the Board's expectations regarding the shippers' decision to invest additional resources to continue this litigation. That is a decision the shipper will have to weigh given the relative strength of its case. Our rule changes were not determined with a specific outcome in mind, but rather were meant to ensure that the Board's methodology was sound from both economic and legal perspectives. Nor can we equate the money spent on litigation with the strength of a particular party's case. One of your questions requests our opinion on whether a litigant should "take solace" at the prospect of spending more time and money in follow-up proceedings. The Board does not opine on questions of solace.

With respect to the efficacy of the new rules, I would ask that you give them some time and examine how they apply in a number of cases before you draw any conclusions. The Basin Electric and AEP Texas cases were both in a unique procedural posture as they were designed and filed under the old rules, and were already in litigation when the new rules were promulgated. While the decision to apply the new rules to the cases was the correct one, the best test of the new rules will be cases filed after the rules went into effect. Once those cases are brought, I expect we will see that the revisions will serve the intended dual purpose of improving the soundness of the Board's stand-alone cost (SAC) decisions and reducing the complexity and expense of rate proceedings.

The Board remains committed to ensuring a fair, balanced, impartial and efficient rate review process. The very actions taken by the Board in the Basin Electric case, as well as the other pending large rate case, AEP Texas, demonstrate that the Board remains dedicated to that goal. It was in the interest of fairness that the Board took the unprecedented step of permitting the complainants to modify their SAC presentations in light of the new methodology.

In addition, this Board has been exceptionally proactive in addressing the concerns of stakeholders. The Board has taken steps to make the small rate case procedures more accessible, to examine our methodology for determining the industry's cost of capital and to undertake a study on the state of competition in the rail industry. An examination of our record over the past year demonstrates this Board's commitment to providing an effective and efficient forum for dispute resolution. A review of the Board's record of success in the U.S. Court of Appeals also confirms the absence of any bias or partiality in the Board's execution of its responsibilities. We believe that a comprehensive and impartial review of the Board's record would make it quite easy for the Committee to "...escape the conclusions..." about the Board that are contained in your questions.

Question 2: In your testimony at page 8, you state that railroad rates between 1985 and 2005 "did not keep pace with inflation" and that based on the Rail Cost Adjustment Factor (RCAF) index, "the costs that the railroads themselves had to pay for the goods and services that they use in their business increased by 80% from 1985." You conclude by stating that, "the fact that rates overall remained at or below 1985 levels even with

these recent cost increases demonstrates that, in general, rail rates have been held down for most shippers."

At a minimum, this testimony is highly misleading. Isn't it true that overall railroad costs have gone down significantly, not up, because of substantial railroad productivity improvements that, in part, have been achieved because of significant customer investments (e.g. in railcars and facility improvements). Even the railroads admit that their expenses have been reduced dramatically. For example, BNSF's CEO testified to Congress in 1991 that "[f]ortunately, because railroad expenses were reduced even more deeply than rates, railroads managed to keep some of the difference, which allowed the industry to gradually shore-up its finances." Please explain how an industry can "shore-up its finances" when its rates are going down, and its costs are going up as you claim? Is the STB required by law to publish a productivity adjusted RCAF for the railroads and has the STB published this productivity adjusted rate index for almost 20 years? Why did your testimony fail to reference the significant productivity cost savings that have been experienced by the railroads using your productivity adjusted index? Please provide for the committee information summarizing productivity adjusted railroad expenses since 1985 in relation to railroad rates, and whether or not you agree with the BNSF that railroad cost savings helped the railroads to "shore-up" their finances because they did not pass through all their cost savings to customers.

Answer: In my testimony, I observed that railroad transportation rates had not kept pace with inflation, as documented by GAO. I also observed that the cost railroads paid for goods and services (such as labor, fuel, and materials and supplies) as determined by the Rail Cost Adjustment Factor (RCAF) increased by 80% from 1985 to 2005. The general increase in these costs over that time are not in dispute. The fact that railroad rates, once you control for inflation, are below the 1985 levels demonstrates that, in general, rail rates have been held down for most shippers.

You suggest that this testimony is "highly misleading" because railroads have enjoyed substantial productivity gains as a result of the Staggers Act, which is why rail rates are below the 1985 levels. Respectfully, I cannot agree with your characterization of my testimony. The point I was making is that transportation rates have not generally increased with the passage of the Staggers Act. This observation is accurate. I did not delve into the reason those transportation rates have not increased, not withstanding the rising input costs facing the railroad industry.

The decrease in rail transportation rates was one of the greatest surprises of the Staggers Act. The railroad community was known to be in grave financial health when the Staggers Act was passed. I am told it was expected that the railroads would return to profitability by raising transportation rates. This did not take place. Instead, with rail input costs rising steadily, railroads were able to reduce their expenses by being more productive. They were using their inputs more efficiently largely because of the freedoms they received with the Staggers Act. It is certainly accurate that railroad productivity improved substantially following the Staggers Act.

You then asked that I provide information summarizing the railroad productivity gains since 1985 and to discuss whether these cost savings helped the railroads shore up their finances.

To give a quick snapshot: In 1985, Class I railroads reported operating expenses of $25.2 billion, which permitted them to handle 19.4 million carloads and generate 876 billion revenue ton-miles. In 2005, Class I railroads reported operating expenses of $37.8 billion, which permitted them to handle 31.1 million carloads and generate 1,696 billion (1.7 trillion) revenue ton-miles.

One must, of course, adjust for inflation. Using the broadest measure of inflation, the Bureau of Economic Analysis' GDP Implicit Price Deflator, inflation increased 62% between 1985 and 2005. Therefore, in constant 2005 dollars: in 1985, Class I railroads reported operating expenses of $40.8 billion, which permitted them to handle 19.4 million carloads and generate 876 billion revenue ton-miles. In 2005, Class I railroads reported operating expenses of $37.8 billion, which permitted them to handle 31.1 million carloads and generate 1,696 billion (1.7 trillion) revenue ton-miles.

Overall, since 1985 railroad productivity has improved 130%, as measured annually by the Board in Ex Parte 290 (Sub-No 4), Railroad Cost Recovery Procedures-Productivity Adjustment. Indeed, it is precisely because of such large productivity improvement that railroads were able to lower their rates and improve their financial performance.

Undoubtedly, railroads would have preferred to capture all of the benefits of their improved productivity. Certainly, they did capture some of that improvement -- which enabled them, as BNSF suggested, "to shore up their financial position." The financial posture of the railroad industry has improved over the past several decades. Moreover, it is not unusual for an industry to keep some portion of its productivity gains, while passing back the bulk to consumers.

As the Board's Office of Economics reported in 2000, the bulk of the productivity improvements created by railroads were passed along to shippers in the form of lower transportation rates. This is the strongest possible evidence that competition in the railroad industry was working precisely as the framers of the Staggers Act had hoped. I am mindful that shippers themselves may not have "enjoyed" the benefits of these lower rates; shippers, too, were forced by competitive pressures to pass along the bulk of these savings to consumers in the form of lower prices. Thus, at the end of the day, the ultimate beneficiary of railroad productivity improvements was the American consumer.

In the end, the increased productivity of the railroad industry is the crowning achievement of the Staggers Act. Without those improvements, the only way the railroads could have achieved stronger financial health would have been to dramatically increase transportation rates. Fortunately, that didn't happen. Rather, the vast majority of rail shippers (and their customers) have benefited from transportation rates that are lower today than they were in 1985, adjusted for inflation. While other costs for rail

customers were rising (such as labor, fuel, and electricity costs), rail rates simply did not keep pace.

Finally, I do not agree that the cost savings were simply the result of shipper investments. There can be no doubt that shippers have made substantial investments in load-out facilities, rail cars, and other transportation-related infrastructure. These higher costs permitted them to capture lower rates, a "win-win" in most cases. But in 2000, the Board's staff estimated that shippers were spending an additional $2.5 billion per year on rail cars as a result of the shift in ownership. This is a large number, but dwarfed by the $31.7 billion in rate reductions that had been passed through to rail customers.

Office of the Chairman

Surface Transportation Board
Washington, D.C. 20423-0001

January 28, 2008

The Honorable James L. Oberstar
Chairman
House Committee on Transportation and Infrastructure
Washington, DC 20515

The Honorable John L. Mica
Ranking Republican Member
House Committee on Transportation and Infrastructure
Washington, DC 20515

Re: Analysis of H.R. 2125

Dear Chairman Oberstar and Ranking Member Mica:

At the rail competition and service hearing on September 25, 2007, I committed to provide the Committee with my analysis of H.R. 2125. In this letter, I will briefly summarize each provision of the bill and offer some views on the potential implications.

Section 101

Description: Section 101 of the bill would amend the rail transportation policy (RTP) set forth in 49 U.S.C. 10101 by adding "Implementation Directives" instructing the Board to ensure effective rail competition at origins and destinations, reasonable rates for captive traffic, and consistent, efficient and reliable service (including timely provision of rail cars).

Background: The current RTP, which was established in the Staggers Rail Act of 1980, sets forth a variety of 15 goals to guide the agency in all of its decisions. These include, among other things, allowing competition and the demand for rail services to set rates; minimizing regulatory involvement in rail matters; allowing rail carriers to earn adequate revenues; fostering sound economic conditions in transportation and ensuring effective competition and coordination between rail carriers, on the one hand, and other modes (such as trucks), on the other; and maintaining reasonable rates for captive shippers where rail rates provide revenues above those needed to maintain the rail system and attract capital. Essentially, the RTP balances a large number of sometimes competing policy considerations, such as reasonable rates for captive shippers and adequate revenues for railroads, so that the agency will not place one interest over another.

Although it is not an independent source of substantive law, the RTP serves to inform how the other, substantive provisions of the statute should be administered. Thus, courts reviewing Board decisions may look to how the Board has addressed the provisions of the RTP. And in at least one case, *Ass'n of Am. R.R. v. STB*, 237 F.3d 676 (D.C. Cir. 2001), an STB major policy decision was remanded by a court for the Board to address the RTP.

Analysis: I support the policies of promoting competition, reasonable rates, and good service. However, I believe they are already reflected in the RTP, which expresses a federal policy of protecting competition, maintaining reasonable rates, and ensuring a rail system that meets the needs of the public. See 49 U.S.C. 10101(1), (4), and (6). I am concerned that, by elevating three policies, through "implementation directives," this provision would upset the carefully crafted balance in the current law between those policies and other policies that address sound economic conditions in transportation and revenues that are sufficient to maintain the rail system and attract capital. See 49 U.S.C. 10101(3), (4), and (6).

The strength of the current RTP has been that it addresses both shipper and carrier needs and recognizes that both must be met. Changing the RTP in a manner that appears to subordinate some goals to others does not reflect the necessary balance and could ultimately weaken the effectiveness of rail regulatory policy in maintaining a sound rail system that will meet the transportation needs of this nation. A recurring theme at our infrastructure hearing held during the past year was that one of the most pressing rail transportation needs today is for additional funding for infrastructure. It goes without saying that railroads' ability to obtain adequate revenues is critical to achieving the goal of reliable service, and therefore subordinating a policy directed at adequate railroad revenues would undermine any policy of promoting reliable service.

Finally, my views on this provision are necessarily informed by my views on various other provisions of the bill, which are discussed below. I am concerned that the bill would alter how the goals of reasonable rates and quality service are to be measured in a manner that I believe could ultimately defeat those goals. And with respect to rail competition, Congress has long understood, rightly in my view, that not every shipper or community can reasonably be served by two or more carriers.

Section 102

Description: Section 102 of the bill would overrule the Board's judicially affirmed "bottleneck" policy. This policy reflects the long-established principle of railroad law that a shipper generally may not require a carrier that can provide the full "through" service from origin to destination to carry the traffic for only part of the move and turn the shipment over to a competitor for the remainder of the haul. Section 102 would require a railroad to establish a rate and provide service to any intermediate point designated by the shipper where the traffic may reasonably be interchanged.

Background: The bottleneck policy was addressed 11 years ago in response to attempts by coal shippers to limit the ability of railroads to price differentially. Under differential pricing, a railroad may charge higher rates to captive shippers with greater (more inelastic) demand. Shippers that do not have competitive alternatives, and that have less flexibility in how much rail service they need, will generally pay higher rates than those that either have transportation alternatives or that can adjust how much they ship based on how much the carrier charges. Thus, if there is only one railroad that can provide service between a coal mine and a power plant that depends upon receiving a certain number of coal shipments, the carrier may be able to charge a higher rate than it could if there were another, competing carrier that could also provide the service.

In the bottleneck cases, the utility companies sought the ability to break up their movements into separate legs, in an attempt to get a lower rate on the segment of the move where they could use a competing carrier and to be able to bring a separate rate challenge for the shorter bottleneck segment of the move.

The Board found that shippers cannot break up a through movement in this manner because ordinarily a carrier has a statutory right (in section 10705) to use a routing that protects its "long haul," and because the Supreme Court has made clear that only the entire rate from origin to destination can be challenged. *See Great Northern Ry. v. Sullivan*, 294 U.S. 458, 463 (1935) (a shipper's "only interest is that the charge shall be reasonable as a whole"). The only exception that the Board could find to these longstanding legal principles is when there is a separate rail transportation contract with another carrier for a segment of the move. The Board found that the more recently enacted provision, which entitles shippers and carriers to enter into such contracts for transportation beyond the Board's jurisdiction (section 10709), supersedes the law applicable to non-contract transportation.

Analysis: I understand the consumer-rights appeal of empowering rail customers to break up trip segments into their component parts so that they can drive down the rates. But the bottleneck policy reflects the long established legal framework under which the rail industry has operated. I do not believe that categorically changing the way that the industry operates would be appropriate without further study and analysis. We have engaged a contractor, Christensen Associates, to examine various competitive issues over the next year, and we anticipate that the contractor will examine the bottleneck issue. Implementing a change with such significant potential ramifications before that study is completed and its results known would be precipitous, in my mind.

I am particularly concerned about the potential impact on the railroad industry's ability to engage in differential pricing if a carrier's participation were limited to a very small portion of those movements that it would otherwise depend upon to cover the current portion of its fixed and common costs. Differential pricing is common in all modes of transportation, and carriers depend on differential pricing to provide enough revenue to cover the fixed and common costs that cannot be attributed to specific traffic. Under any other approach, such as an assigned weight-and-distance approach or cost-plus approach, railroads would end up losing whatever traffic could move by another carrier

or other mode of transportation offering lower rates, such as trucks, thereby adding to highway congestion and safety problems. And without the ability to make up the difference in order to obtain sufficient revenues, carriers would lack the means or incentive to reinvest sufficiently in their rail systems to continue to provide the level of rail service that our nation needs. In the end, with substantially lower revenues the size and shape of the rail system would likely change in ways contrary to the public interest. The natural outgrowth of such a scenario would be that carriers would focus their more limited revenues on their high-volume, low-cost routes, and would invest less in maintenance and service to higher-cost routes, thereby adversely impacting captive shippers and many rural and other regions.

Section 103

Description: Section 103 would sharply restrict a railroad's ability to enter into line sales or leases that include provisions limiting the ability or incentive of the purchasing/leasing carrier to interchange traffic with carriers other than the selling/lessor carrier, typically in exchange for a lower sale price or lease payments. It would not only preclude future interchange restrictions but would make existing restrictions presumptively unlawful.

Background: The Board has recently considered a request that it adopt such a policy administratively. After examining the matter, the Board concluded that it would be inappropriate to assume, as this provision would, that every contractual agreement of this sort is contrary to the public interest. Rather, because both the terms of such interchange provisions and the situations in which they are used vary so much, the Board found it better to look at these provisions on a case-by-case basis, so that any benefits of such arrangements can be examined together with the problems they may cause. The Board is in the process of revising its rules to ensure appropriate Board scrutiny of existing arrangements and arrangements that may be proposed in the future. I am enclosing a copy of the Board's decision, which was served October 30, 2007, in STB Ex Parte No. 575, *Review of Rail Access and Competition Issues – Renewed Petition of Western Coal Traffic League.*

Analysis: I am concerned that a wholesale retroactive canceling or amending of contracts agreed to by informed businesses would be troublesome from a legal, policy, and business perspective. For transactions not completely undone, there could be significant problems regarding adjustment of the compensation between the parties to the original transaction on an *ex post* basis. Because of the multifaceted, interdependent nature of provisions in sale/lease agreements, a determination of adjustments could be complex and prone to litigation, which, depending on the contracts, could take place at the Board, before an arbitrator or in the courts. In the meantime, ongoing business relationships could be disrupted *en masse,* and critical investment and marketing decisions might be put on hold. Moreover, some short lines operate with marginal cash reserves and could be significantly weakened if they had to operate under less favorable terms or provide compensatory adjustments to the seller/lessor carrier.

Section 103 assumes that these types of agreements are anticompetitive, but as the Board observed in its decision in STB Ex Parte No. 575, many of these agreements helped promote competition by empowering short lines and enabling them to enter into deals that would otherwise have been prohibitively expensive. No shipper faces less competition as a result of a paper barrier than it would have faced had the line remained in the hands of the larger railroad. Moreover, the line may have been an under-served, under-maintained branch line, with the larger railroad focusing its attention on its larger, main-line customers. If so, a more attentive short line may provide smaller shippers with better service and improved access to the national rail system than they might otherwise have had. Thus, as the Board explained in its STB Ex Parte No. 575 decision, "viewed *ex ante* (i.e., before the sale or lease of the facilities), the agreements may have been beneficial and furthered the public interest in a number of ways, including better service and/or better rates, and the creation or strengthening of short line railroads that have the potential to expand into other markets, and thereby ultimately add to competition."

Finally, I should point out that railroads would face difficulty attracting investment in a regulatory climate in which Congress rewrites the terms of contracts between railroads regardless of the circumstances.

Section 104

Description: Section 104 would override the agency's judicially approved standards for when it will order a carrier to provide "reciprocal switching" for another carrier that could not otherwise serve that traffic. Under the current standards, the agency will not force a carrier that owns and operates a rail line to share its traffic on that line with a competitor unless the carrier has abused its market power by engaging in anticompetitive conduct. Section 104 of the bill would require a carrier to provide service over its own line on behalf of another carrier without regard to whether there has been any misconduct warranting such regulatory intervention.

Background: "Reciprocal switching" is a form of "competitive access." Competitive access generally refers to a regulatory program requiring one railroad to give another railroad direct access to traffic on its line. Generally this is accomplished through either reciprocal switching or through what is known as "terminal trackage rights" (which involves physical access by one carrier onto the lines of another).

Under mandated reciprocal switching, the "incumbent" railroad would not be required to allow another carrier directly onto its property. It would, however, be required to share its facilities with its competitors indirectly, by transporting traffic over its track not in its own name but on behalf of a competing railroad instead (for a fee, which, if not agreed upon, will be prescribed by the STB). This would enable the competing railroad to offer its own (single-line) rate to a shipper whose facility is served only by the incumbent, to compete with the incumbent's (single-line) rate. The practice is called "reciprocal" switching because, historically, such agreements were entered into voluntarily under arrangements where one carrier would switch traffic at one location for

another carrier, while in a different location the second carrier would switch traffic for the first. However, there would not be such reciprocity where the Board is called upon to compel a switching arrangement.

Because freight rail service is provided by private-sector railroad companies operating over privately owned and maintained rail lines, railroads generally are not required to give such access to their competitors without a strong showing of need for such relief. The Board will prescribe temporary relief of this nature where needed to address a substantial measurable deterioration in the incumbent carrier's service. See 49 CFR Parts 1146 and 1147. For longer-term relief, the Board and its predecessor (the Interstate Commerce Commission) have concluded, with judicial approval, that a shipper or railroad seeking such access must show that the incumbent railroad has abused its position as the sole provider of service by engaging in anticompetitive conduct that the access would remedy. See *Midtec Paper Corp. v. United States*, 857 F.2d 1487 (D.C. Cir. 1988).

Analysis: Because the carrier physically providing the service to the shipper would not change in a switching arrangement, section 104 does not appear to be addressed to service problems, but rather appears designed to enable a captive shipper located near a second carrier to obtain lower rates without bringing a rate complaint. However, because the "switching" carrier would be entitled to compensation for its services, section 104 would simply have the effect of transforming a rate case into a switching fee case, without changing the ultimate issue of how much contribution to its fixed and common costs the incumbent carrier should reasonably be entitled to expect from the affected traffic on its line. And a rate case could seem simple compared to the cases that would likely ensue as an incumbent carrier demands compensation for giving its traffic to a competitor, including the diminished value of its investment. Finally, if a lower switching fee were imposed that did not take into account the value of the carrier's investment, that would discourage future investment in those lines and in new lines.

Section 105

Description: Section 105 would direct the Board to designate any State or substantial part of a State as an "area of inadequate competition" at the request of the Governor of that State, if (1) the area is served by only one Class I railroad, and (2) the shippers in that area either (a) pay rates that yield revenues greater than 180% of variable costs or (b) are at a competitive disadvantage because of high rates or poor service. Moreover, the designation could apparently be limited to specific commodities within an area. Section 105 would direct the Board to rectify the conditions that caused that designation within 60 days of making the designation. Section 105 would give the Board powers that it would not have in other areas, including ordering trackage rights beyond terminal areas, ordering haulage arrangements, and applying a more expansive definition of what constitutes unlawful rate discrimination.

Analysis: Section 105, overall, appears designed to equalize rates for many captive shippers at or near the 180% revenue-to-variable cost level. This provision could

have far-reaching impacts that would change the regulatory balance dramatically. The criteria for designation appear to be so expansive that the potentially eligible areas would be numerous and widespread. And the emphasis on rate equalization among shippers would mark a return to failed regulatory policies and practices that had resulted in a weak and financially distressed rail industry prior to the legislative reforms of 1976 and 1980.

As in that pre-reform era, without sufficient investment or adequate revenues the rail system would deteriorate and likely shrink, unless the Government were to take over the railroad industry and fund the carriers to offset the revenue losses precipitated by the 180% rate cap. Finally, the access scheme that the provision contemplates would be even more intrusive than that provided for in section 104, and would generate even more litigation as carriers demanded to be paid for being forced to give up their private property.

Section 201

Description: Section 201 would require the Board to post on its website a description of each service complaint, whether a formal complaint filed with the Board or an informal complaint received by any individual STB member or staff person, within 7 days of its receipt. It would also require the Board to promptly update its website to show when and how each complaint is resolved, and to annually report this information to Congress.

Section 201 would also provide that, where a complaint is filed within 20 days after a railroad publishes a new or revised rate, rule or practice, the Board must rule within 90 days on any request for injunctive relief. Moreover, injunctive relief could not be denied on the ground that reparations would be available if and when the complainant ultimately prevails.

Analysis: Section 201 in my view is an unnecessary procedural provision that could be counterproductive. Formal complaints are already fully publicized on the Board's website. For informal complaints, the confidentiality of the current process is a major factor in the agency's success in handling such complaints. Shippers seeking informal assistance typically request confidentiality, sometimes because they do not want their competitors to know about their problems. Moreover, publicizing such complaints could impede their resolution by placing the carrier in a more defensive posture in which it might refer the matter to its legal counsel instead of taking prompt corrective action. In short, the confidential process allows for quick and low-cost solutions.

Turning to the provision regarding injunctive relief, I have two concerns. The first relates to the disparity in relief available to carriers and shippers when a carrier has been enjoined from collecting a new or revised rate or charge. Under a longstanding ruling of the Supreme Court, if the challenged rate or charge is ultimately found to have been reasonable, the carrier cannot collect the lost revenues for the period an injunction was in place. In contrast, where the rate or charge is found to have been excessive, the shipper is entitled to reparations for any amounts overpaid. To avoid any unfairness, the

Board has found that fashioning a provision that allows either side to be made whole at the end of the process is preferable to an injunction. My second concern is that, should requests for injunctive relief once again become a routine litigation tactic whenever a carrier seeks to change a rate or rule or institute a new rate or rule (as it was prior to the legislative reforms of 1976 and 1980), a 90-day period may not afford enough time to develop a sufficient record to enable the Board to make a fully informed decision. Both shippers and railroads need ample time to gather and present the type of evidence needed for a decision with lasting consequences for the railroad.

Section 202

Description: Section 202 would add an explicit requirement in 49 U.S.C. 11101 that rail transportation be "reliable and efficient."

Analysis: The common carrier obligation has traditionally been regarded as requiring that a shipper receive adequate service upon reasonable request. It is not clear to me whether section 202 is meant to clarify what constitutes "adequate" service (which would seem capable of embracing a variety of concerns) or to impose additional service requirements. In either case, the effect of adding this provision could be to spur litigation over a wide range of operational details and circumstances (both large and small) that can impact the service that is ultimately provided to a particular customer in an individual situation. Finally, how to determine liability for problems that may be caused by events elsewhere on the rail system, that themselves may be the product of actions of another carrier, a different shipper, or events that are completely out of the control of railroads (such as severe weather), could encourage litigation rather than the cooperation that is needed in times of service disruptions.

Section 203

Description: Section 203 would establish a new separate Office of Rail Customer Advocacy within DOT (but not within the STB) to "accept" rail customer complaints; initiate or participate in STB proceedings seeking rail regulatory action; and compile and maintain information on the cost and efficiency of rail transportation. The Rail Consumer Advocate would have access to STB information and databases.

Background: A rail customer advocacy office is not unprecedented. As early as 1903, the ICC several times brought a public counsel into ICC proceedings; indeed, in 1914, the ICC contracted with Louis Brandeis, before he had been appointed to the Supreme Court, to serve as a public counsel.

Congress created a standing public counsel with authority to intervene in ICC proceedings when it established the Office of Rail Public Counsel, an independent office affiliated with the ICC, in 1976. The head of that office was to be appointed by the President with the advice and consent of the Senate, with a term of four years, and the Office was to submit its budget requests directly to Congress and the President. The duties of the office included petitioning the ICC to begin a proceeding on any rail-related

matter within the agency's jurisdiction; seeking judicial review of ICC decisions in such cases; presenting to the agency the views of under-represented communities and rail shippers; and representing the public interest in rail matters before the ICC and other federal agencies. See generally 49 U.S.C. 10381-87 (1978).

The Office of Rail Public Counsel never received adequate funding from Congress or adequate support from the President, and although it was not formally abolished until 1995, it was ineffective and not even operational during most of its existence. The ICC, in an attempt to have some sort of an independent "public interest" arm, created an Office of Special Counsel in 1978, which performed some of the activities assigned to the Rail Public Counsel. That Office, however, was also short-lived, and it was folded into the "Office of Public Assistance (Special Counsel)" in 1985. By 1993, the ICC had dropped the "Special Counsel" designation from the Office of Public Assistance's name.

Analysis: While I would naturally defer to the Secretary of Transportation to determine appropriate organization and staffing arrangements within her organization, I believe that a separate Office of Rail Customer Advocacy would largely duplicate current STB and Department of Transportation functions and processes. DOT already participates as a party in a variety of STB proceedings. The STB already accepts customer complaints, both formal and informal, and it collects information about the cost and efficiency of rail transportation. The STB already has personnel assigned to assist smaller shippers in understanding the Board's policies and procedures for handling formal complaints and in resolving disputes informally. To the extent that this provision is designed to assist small shippers in filing rate cases, I believe that the Board's new small rate guidelines (adopted in September 2007) already make that process accessible and manageable.

Section 301

Description: Section 301 would provide that a shipper of captive traffic is entitled to an STB rate review process that is accessible and cost-effective.

Background: In September 2007, the STB substantially modified and clarified rail rate review procedures and standards to be applied to small and medium-size rate disputes, in STB Ex Parte No. 646 (Sub-No. 1), *Simplified Standards for Rail Rate Cases*. Railroads have challenged certain aspects of that decision in court, and shippers have sought administrative reconsideration of some aspects of the ruling.

Analysis: I believe this provision is unnecessary in light of the recent reforms at the STB that I am confident will increase the accessibility and transparency of the rate review process for small and medium-size rate disputes and reduce the litigation costs for all concerned. Those reforms have been carefully structured to meet the legal requirements of due process and the need for the Board's rate decisions to survive judicial review. I recommend that Congress await the outcome of judicial review before considering whether further change is necessary or appropriate.

Section 302

Description: Section 302 would preclude the Board from using its stand-alone cost (SAC) test to judge the reasonableness of any rate (except in an already pending case in which the complainant elects to proceed under the SAC test), and would require the Board to adopt instead a rate reasonableness method that is based on the railroad's actual costs. The new method would need to enable a final determination within 9 months of the filing of the complaint, ensure that needed cost and operational information is available to the complainant, and not require excessive litigation costs. Section 302 (like Section 102) would also provide that a shipper can separately challenge any rate that is part of a longer through movement (even where there is no contract for the remainder of the move). Finally, a shipper could challenge a rate even if it has a contract in place governing the traffic.

Analysis: I believe that this provision is ill-advised. Railroad rate regulation, like rate regulation in other industries, is complex. The courts have concluded that the Board's sophisticated "constrained market pricing" methodology, with its SAC analysis, is an appropriate methodology that simulates the results of a competitive market in the rail industry. Under SAC the complaining shipper is required to pay for the costs of its service, plus a reasonable profit, but it is not required to bear the costs of carrier inefficiencies or of facilities that are not used for its own traffic.

Section 302 would require the Board to discard all of the rate guidelines that it now has in place, its longstanding guidelines for large rail rate cases as well as its new guidelines for small and medium-size cases, and to fundamentally alter how it judges the reasonableness of rail rates by returning to a cost-based approach that would preclude any form of demand-based differential pricing. That, in turn, would deny railroads the ability to cover all of their costs, including a reasonable return on capital, as a result of the business reality that railroads serve a customer base that includes both captive and competitive traffic. Because the competitive traffic would not pay its allocated portion of the fixed and common costs if a less expensive transportation alternative is available, the carrier has to have the ability to charge more to its captive traffic to make up the shortfall. The captive traffic is actually better off under demand-based differential pricing than it would be under a cost-based approach, because demand-based differential pricing allows the carrier to retain the traffic with competitive alternatives, which makes some contribution to the fixed and common costs, thereby reducing the amount that the remaining traffic base needs to cover.

I would note that the Board's new simplified rate procedures meet the other specific objectives for a rate reasonableness standard under this provision. A captive shipper can obtain up to $1 million in rate relief under the "Three Benchmark" test within 8 months of filing a complaint. The filing fee for this simplified process is $150. (A shipper electing to use the alternative "Simplified Stand-Alone Cost" test can obtain up to $5 million in rate relief within 17 months of filing a complaint.) The new guidelines

also ensure that needed cost and operational information will be available to the complainant and that litigation costs will be kept to a minimum.

I have already discussed the segment-rate provision, in connection with section 102 above.

I am concerned that a provision that would allow a shipper to challenge a common carrier rate at the same time that it has a contract rate in effect could lead to premature rate challenges that could tax the resources of the Board needlessly.

Section 303

Description: Section 303 would cap the STB's filing fee for complaint, protest or other request for rate relief at the same level as the Federal district court fee for a comparable filing (currently $350).

Background: The Board is required by law to assess fees in a manner that protects taxpayers from being required to subsidize government costs incurred in the process of resolving disputes between private parties. The Independent Offices Appropriation Act of 1952 obliges the Board to charge fees for particular services rendered to identifiable beneficiaries. Under the IOAA, "each service . . . provided by an agency . . . to a person . . . is to be self-sustaining to the extent possible." 31 U.S.C. 9701. This is meant to protect other taxpayers from being required to subsidize the costs to the government of resolving disputes between private parties.

The Board's fees, which were established through notice-and-comment rulemaking in the early 1980s, include direct labor costs, operations overhead, general and administrative costs, and publication costs. Each year the fees are updated based on changes in the cost data to which the formula is applied. For over 10 years, however, the Board has concluded that it is in the public interest to set fees for rail rate cases far below the Board's full cost of processing those cases. The large rate case fee for 2007 was capped at 50% of the estimated cost to the agency.

The Board's capping of that fee did not affect is net appropriation. That is because the Board's appropriation has been structured so that the Board receives its full appropriation regardless of the amount it collects in fees, with the amounts collected in fees going back to the general government treasury. In this way, the Board's ability to perform its responsibilities is not dependent on what filings it receives or how much it collects in fees for those filings.

Analysis: I would note that the identical fee cap for rate cases contained in this provision is now also in the Board's recently enacted FY 2008 appropriation. If the current fee offset structure were not continued in future appropriations, the revenue loss to the agency from not being able to collect fees that would cover this high-cost function would require us to furlough staff, and we would have difficulty meeting our mission.

Section 304

Description: Section 304 would require the Board to submit disputes involving the transportation of agricultural traffic (including timber, paper and fertilizer) to binding final-offer ("baseball-style") arbitration at the request of any party to the dispute. If the dispute concerns a rate or charge, the arbitral panel could not base its ruling on STB or ICC precedent applying the stand-alone cost test, and it would be specifically required to consider the rates charged for comparable shipments. Any rate prescription could not extend beyond 5 years. Judicial review of any arbitral ruling would be limited to extraordinarily narrow standards (such as fraud or corruption).

Background: The STB already requires non-binding mediation in various contexts, including rail rate cases.

Analysis: I do not generally favor mandatory, binding arbitration. The very "rough justice" that virtually unreviewable arbitral decisions can produce can undercut the predictability that the Board seeks to provide for shippers and railroads. Indeed, although some parties tout the Canadian system of arbitration, my understanding is that it produces inconsistent and unpredictable results.

Insofar as this particular arbitration provision is concerned, if the intent is that the arbitral panel may only consider rates on comparable traffic, without taking into account differences between carriers in their cost structures and traffic bases that would affect how much they would need to charge for particular traffic, then it would not necessarily produce an economically sound result, notwithstanding the qualifications of the members of the panel. If, on the other hand, comparable rates are only one of many factors that could be considered, then the absence of more defined standards, coupled with the absence of any meaningful substantive review of an arbitral ruling, could work against the apparent objective of uniform treatment of similarly situated traffic.

I would note that the "Three Benchmark" test in the Board's new simplified guidelines for small rate disputes incorporates a final-offer rate comparison approach, but is considerably more defined in its approach. I suggest that shippers take advantage of this STB rate review mechanism, and that the Congress wait to see if it works as well in practice as the Board expects that it will.

Moving beyond rate disputes, I would note that, because arbitral rulings have no precedential value and are not available for review or research, they would not provide a resource of knowledge to assist in resolving similar disputes. Less rigid alternative dispute resolution mechanisms, such as mediation, can be done by the STB's trained staff while still allowing parties the opportunity to bring the matter to the Board for a more formal process for resolution should the mediation fail.

Finally, I would note that this provision does not explicitly address who is to pay the arbitrators, although it does provide that the Board is to pay fees and travel

reimbursement for witnesses for whom a subpoena is secured by the arbitrators. My understanding is that arbitrator fees are typically paid by the private parties.

Section 401

Description: Section 401 would authorize the Board to begin an investigation on its own initiative. It would also require the agency to conduct an investigation when a complaint is filed against a railroad alleging a railroad violation of the statute. Finally, it would direct the Board to order a suspension of the railroad activity where the complaint is likely to have merit and complete restitution would be difficult.

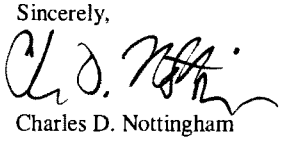
Background: The Board has the authority to look into problem areas on its own motion, as it did in the case of fuel surcharges. See 49 U.S.C. 721(a) (the Board shall carry out the Interstate Commerce Act; enumeration of a particular power does not exclude another power the Board may have to carry out the statute); 49 U.S.C. 721(b)(1) (the Board has authority "to inquire into and report on the management of the business of carriers"). The Board does not, however, have the authority to award relief for past actions except upon complaint. See 49 U.S.C. 11701(a) (the Board may institute an investigation that could lead to an award of damages only upon complaint).

Before 1996, section 11701(a) authorized the Board's predecessor, the ICC, to initiate an investigation on its own initiative. The deletion of the own-motion investigation provision was intentional. See H. Conf. Rept. No. 422, 104th Cong., 1st Sess. 194 (1995) (the adopted House provision changed the underlying "source of the agency's authority to investigate rail matters under its jurisdiction, [which] is now limited to action on the basis of a complaint, not on the agency's own motion"). See also 49 U.S.C. 10704(b) (the Board may begin rate proceedings only on complaint).

Analysis: While I do not believe that the STB requires additional statutory authority in order for the agency to accomplish its mission and implement our governing statutes, I am generally supportive of the notion that federal regulatory agencies should be able to initiate investigations under appropriate circumstances and when reasonable suspicion exists to trigger such an investigation. The power to initiate government investigations must, however, be carefully managed to prevent abuse and to prevent unreasonable costs and burdens being placed on law-abiding regulated entities. The ability of an agency to initiate investigations should never be construed as an alternative to the agency making an informed and balanced decision based on a complete record documenting the views of interested parties. The Board's current practice of largely relying on the adversarial process initiated by a complaint to build a detailed and balanced record upon which to make decisions works well and should not be abandoned. Additional authority granted to the Board should only supplement and enhance this adversarial process, not replace it. Additionally, any extension of STB powers along these lines would require additional staff and budget resources, which would necessitate a thorough workload plan and staffing assessment prior to initiating any such change in authority.

This concludes my analysis of H.R. 2125. If you have questions, or if I can provide any additional information, please do not hesitate to contact me.

Sincerely,



Charles D. Nottingham
Chairman

Enclosure

36758 SERVICE DATE – LATE RELEASE OCTOBER 30, 2007
EB

SURFACE TRANSPORTATION BOARD

DECISION

STB Ex Parte No. 575

REVIEW OF RAIL ACCESS AND COMPETITION ISSUES
– RENEWED PETITION OF THE WESTERN COAL TRAFFIC LEAGUE

STB Ex Parte No. 575 (Sub-No. 1)

DISCLOSURE OF RAIL INTERCHANGE COMMITMENTS

Decided: October 29, 2007

The Western Coal Traffic League (WCTL) has asked the Board for rules of general applicability regarding so-called "paper barriers," i.e., contractual provisions included with a sale or lease of a rail line that limit the incentive or the ability of the purchaser or tenant carrier to interchange traffic with rail carriers other than the seller or lessor railroad. WCTL has asked that the Board establish a rebuttable presumption that such an interchange commitment[1] is unreasonable and contrary to the public interest if it (a) lasts longer than 5 years, (b) includes any financial penalty for interchanging traffic with another carrier, or (c) includes a credit for interchanging traffic with the seller or lessor railroad that would provide a return in excess of the railroad industry's cost of capital. The Board sought and obtained public comments on WCTL's request, and held a public hearing on it as well.

As discussed below, we conclude that the propriety of such interchange commitments is best considered on an individual, case-by-case basis. To improve the effectiveness of that case process, we propose new disclosure requirements to assure appropriate advance regulatory scrutiny of any such agreements in connection with future proposed line sales or leases (or other changes in operators) to noncarriers and smaller Class II or Class III railroads. We also propose expedited discovery procedures for obtaining a copy of an existing interchange commitment as soon as a regulatory challenge is brought. The proposed rules, on which we seek public comment, will be published in the Federal Register in STB Ex Parte No. 575 (Sub-No. 1). The disclosure requirements will also be submitted to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3507(d) and OMB regulations at 5 CFR 1320.11.

In this decision, we first review the history and role of interchange commitments in the rail industry. We then discuss WCTL's request. Finally, we discuss in more detail our own

[1] The Board will use the more neutral term "interchange commitment" suggested by the American Association of Railroads (AAR) instead of "paper barriers."

proposal and provide general guidance regarding the factors the Board will consider in determining whether particular interchange commitments are permissible.

BACKGROUND

History and Significance of Rail Line Spin-offs

Prior to the Staggers Rail Act of 1980[2] (Staggers Act), it could be a lengthy and difficult process for a rail carrier to obtain the necessary regulatory approval to abandon, sell, or lease a line, even if that line did not generate sufficient revenue to cover the needed maintenance and infrastructure investments. The regulatory discouragement of such divestitures, in addition to regulatory policies and procedures that prevented railroads from adjusting their rates nimbly to reflect changing market or cost environments, led to financial strain in the industry, ultimately resulting in the bankruptcy of many domestic railroads by the 1970s. Facing severe resource constraints, rail carriers deferred investment on lighter-density lines, which in turn resulted in poorer service to shippers on those lines.

In partially deregulatory legislation enacted in 1976 and 1980, Congress provided for railroads to be governed more by market forces and to have more freedom to set rates for rail service. It also provided (directly or indirectly) for railroads to be able to sell, lease, or abandon rail lines more readily. Depending on their nature, transactions creating a short line or transferring ownership or a leasehold to an existing short line may now be authorized by the Board acting on a notice of exemption under 49 CFR 1150 or 1180; a request for exemption under 49 U.S.C. 10502 and 49 CFR 1121; or an application under 49 U.S.C. 10901 (noncarrier acquisition of a line), 49 U.S.C. 10902 (short line purchase by a Class II or Class III carrier) or 49 U.S.C. 11323 et seq. (multi-carrier consolidation, merger, acquisition, or acquisition of control).

These changes in the law led to a rebirth of the short line railroad industry. According to the American Short Line and Regional Railroad Association (ASLRRA), whereas in 1980 there were approximately 190 short lines operating some 8,000 miles of track, there are now more than 500 short lines operating nearly 50,000 miles of track, or approximately 30% of the national railroad system.[3] They include local carriers (defined by ASLRRA as those that operate less than 350 miles of track and have annual revenues under $40 million) and regional carriers (those that operate at least 350 miles of track and have revenues between $40 and $250 million), as well as switching and terminal carriers (those that provide only limited services). The following chart from ASLRRA shows the cumulative operations of the three types of short lines:

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[2] Pub. L. No. 96-448.

[3] ASLRRA, Short Line and Regional Railroad Facts and Figures at 6 (2005).

Type	Number	Miles	Employees
Local	314	22,713	5,340
Regional	31	17,805	7,422
Switching & Terminal	204	7,371	6,431
	549	46,889	19,193

The role of short lines continues to grow. From 2002 to 2004, the traffic carried by short lines increased from 6,489,401 rail cars annually to 8,083,579 rail cars, an increase of 24.6%.[4] And the estimated number of intermodal trailers and containers handled annually by short lines increased over that same time period from 1,531,193 to 1,652,894, an increase of 15.5%. In fact, according to ASLRRA, short lines now originate or terminate one out of every four rail cars moved by the domestic railroad industry.[5]

The benefits of this growth in short lines have been substantial. Many short lines can operate their lines at lower costs than could the larger carriers from which they acquired or leased their lines. Reduced labor costs, which reflect a more flexible workforce and lower crewing requirements, contribute to the lower operating costs. Moreover, short lines can give specialized attention to the needs of the shippers on their lines, and they have an incentive to do so because, unlike the larger carriers that spun these lines off, short lines depend on small-volume traffic.[6] Offering better service, the short lines have been able to attract new traffic to the lines. They have also been able to obtain government grants and tax benefits to rehabilitate their lines, assistance that was largely unavailable to the carriers that spun off the lines.

Since the Staggers Act, the health of the rail industry has improved dramatically and rail rates have declined.[7] The proliferation of short lines was an integral part of the restoration and improved stability of the rail industry. The role of short line railroads will continue to be

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[4] Id.

[5] Id. at 2.

[6] According to the chief operating officer of a short line holding company, "[o]ne car at a time is what we're all about." A regional railroad officer who had previously worked for Class I railroads echoed this view, saying that the threshold volume of business necessary to motivate a Class I railroad to provide equipment and take the other steps needed to service a customer can be as high as $500,000 per year, but that, for a regional or short line, the threshold is one carload. Tom Murray, "A Different Way to Run a Railroad: Regional Versus Network Carriers," J. of Transp. Law, Logistics and Policy (Vol. 71, No. 3, Spring 2004).

[7] See United States Government Accountability Office, Freight Railroads, GAO 07-94, Oct. 2006 (noting that freight rates are generally down post-Staggers).

important to the national rail network system. For example, it is expected that short line railroads will provide a vital role in the distribution of ethanol.[8]

Role of Interchange Commitments

Many of the line spin-off transactions that created or built up these new short line railroads contained contractual provisions that limited the incentive or ability of the short line railroad to interchange traffic with other connecting carriers that could compete with the seller or lessor carrier for the long-haul portion of a movement. These interchange commitments took varying forms, including credits for cars interchanged with the seller or lessor carrier, a penalty for traffic interchanged with another railroad, or a total ban on interchange with any carrier other than the seller or lessor carrier.

According to representatives of short line railroads, these interchange commitments played an important role in the rebirth of the short line industry by providing valuable consideration by the short line to acquire or lease the rail facilities, thereby permitting start-up or very small companies to purchase or lease rail facilities with little or no upfront capital investment. The large railroad was willing to sell or lease these lighter-density lines at reduced prices because it was assured of retaining a portion of the revenues from the traffic on those lines. AAR describes interchange commitments as being "core requirements without which [spin-off] transactions would not and could not take place."[9] Accordingly, without interchange commitments many of today's short lines might not exist and, as a result, many shippers might not have access to the same rail service they have today.[10]

The record reflects significant diversity among interchange commitments. Some were associated with sales; others with leases of varying duration. Apparently, many interchange commitments do not have fixed termination dates. Some permit limited interchange with other Class I carriers; some do not. Some have relatively harsh penalties for interchanging with other

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[8] See Argus Rail Business, New England Sees Boom in Biodiesel Moves, Vol. 13 (March 2007) (reporting on boom in new biodiesel refineries and storage facilities and that short lines will make most of the deliveries to and from those facilities as the primary connection to the Class I railroads).

[9] See AAR Reply Comments at 3.

[10] Several shippers have taken issue with the railroad argument that without interchange restrictions, the larger railroads would have abandoned the lines rather than sell them at below market prices. For example, Ameren Energy Fuels and Services Co. (Ameren) argues that interchange restrictions are inappropriate on lines that were eligible for abandonment because there would have been no "franchise value" or revenue stream for the selling railroad to protect. See Comments of Ameren at 9.

carriers while some have comparatively lighter consequences for non-sanctioned interchange. Some agreements contain procedures that allow a short line to seek waiver of the interchange restrictions. The specific provisions differ, as do their effect, depending on the economic situations of the particular railroads, the affected shippers and the competitive options available before and after the interchange restrictions were executed.[11]

WCTL's Request for Rulemaking

WCTL sought Board action to curb or eliminate interchange commitments in 1998 in the context of a broad umbrella proceeding initiated by the Board to examine various competition issues in the rail industry.[12] WCTL objected to interchange commitments on the grounds that they foreclose competitive long-haul options and that many of these restrictions continue in perpetuity.

In September 1998, the AAR and ASLRRA entered into a broad "Railroad Industry Agreement" (RIA) to address paper barriers (as well as other issues).[13] The RIA established some general principles regarding the enforceability of paper barriers with respect to "new" traffic (traffic that did not exist when the line involved was spun off). It also provided for non-binding arbitration between the short line and the seller or lessor carrier where a short line seeks

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[11] In its comments, Union Pacific Railroad Company (UP) discusses the types of interchange commitments that UP and its predecessor companies have entered into. For example, the UP/Missouri & Northern Arkansas Railroad Company (MNA) lease provides that MNA pay no rental fees to UP for leasing a line so long as MNA interchanges 95-100% of non-local traffic (with some exceptions) with UP. If MNA fails to interchange at least 95% of its traffic with UP, a schedule of rental fees is initiated. See Statement of Warren C. Wilson, Senior Director-Rail Line Planning, Union Pacific R.R. Co., filed Mar. 8, 2006, at 6-7. In contrast, Southern Pacific Transportation Company, prior to its merger with UP, had a practice of leasing or selling track to short lines with SP reserving the underlying real estate. SP then charged the short line a "Going Business Concern" charge for any traffic interchanged with another Class I carrier. The Chicago & Northwestern Transportation Company tended to retain sections of track in selected locations and then grant the short line trackage rights. Id. at 8-10.

[12] See Review of Rail Access and Competition Issues, 3 S.T.B. 92, 100 (1998).

[13] The Board approved the rate-related provisions of the RIA. See Ass'n of American Railroads et al. – Agreement – 49 U.S.C. 10706, 3 S.T.B. 910 (1998). Board approval was not sought for any other aspect of the RIA, including the provisions dealing with paper barriers.

a less restrictive arrangement than originally agreed to. A Rail Industry Working Group (RIWG) has also been created to interpret the RIA and provide a forum for further discussion.[14]

In 1998, WCTL argued that the RIA did not adequately address the problems raised by interchange commitments. WCTL asked the Board to institute a rulemaking to restrict the enforceability of such contracts. The Board, however, decided to defer action on WCTL's petition in order to allow for industry experience under the RIA.[15]

In March 2005, WCTL renewed its request for a rulemaking, arguing that there has been enough experience under RIA to show that Board action is necessary. WCTL also asserts that there have been significant changes since 1999 in Board policies regarding competition, including the Board's revised merger guidelines for Class I railroads.[16]

The Board sought and received public comments on WCTL's request for a rulemaking,[17] and held an oral hearing on this subject on July 27, 2006. A number of individual shippers supported WCTL's petition and urged the Board to initiate a proceeding to develop general guidelines regarding interchange commitments. Many argued that interchange commitments are inherently anticompetitive and more particularly, that their own plant operations were negatively impacted by interchange commitments.[18] Although shippers were unable to quantify the precise

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[14] The original 1998 version of the RIA is included in Attachment 2 of the renewed petition of WCTL that is the subject of this decision. The Board made no findings as to the "paper barrier" and other non-rate provisions of the broad RIA. There have been two amendments to the "paper barrier" provisions—an amendment refining the definition of the "new traffic" where interchange restrictions may be removed and an amendment establishing the RIWG.

[15] Review of Rail Access and Competition Issues, STB Ex Parte No. 575, slip op. at 3-4 (STB served Mar. 2, 1999).

[16] See Major Rail Consolidation Procedures, 5 S.T.B. 539 (2001).

[17] See notice served on February 1, 2006, published in the Federal Register on February 6, 2006, at 71 FR 6130. Comments were received from the AAR; Entergy Services, Inc.; ALSRAA; the RIWG; Arkansas Electric Cooperative; Albany & Eastern Railroad Co.; BNSF Railway Co.; Reading Blue Mountain and Northern Railroad; Nasstrac, Inc.; U.S. Department of Agriculture; Montana Wheat & Barley Committee et al.; Alliance for Rail Competition; Ameren; National Grain and Feed Association; United Transportation Union General Committee of Adjustment; Rail for Roseburg Forest Products Co.; John D. Fitzgerald; UP; and Marshall Durbin Companies et al.

[18] See, e.g., Comments of the Marshall Durbin Companies, Odom Industries, Inc., Southeast Ready Mix, Inc. and Wayne County Economic Development District (expressing

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financial impact they believe interchange restrictions have, most indicated that they believe they paid higher rates than they would if there were no restriction.[19] Several shippers argued that interchange commitments can also inhibit a short line's ability to earn adequate revenue to rehabilitate and properly maintain their lines, because the short line is foreclosed from seeking a better rate division from a competing long haul carrier.[20] Most shipper comments indicated that the RIA was ineffective because it only governs "new" traffic and does not allow shippers to challenge the enforcement of the restrictions.

The U.S. Department of Agriculture (USDA), representing the interest of farmers and agricultural shippers, argues that interchange commitments interfere with the ability of agricultural shippers to obtain the best prices for their products, and otherwise increases their transportation costs.[21] USDA advocates clear guidelines regarding the legality of interchange commitments and modification of existing interchange commitments to permit unrestricted interchange.

PROPOSED ACTION

Having carefully considered all of the evidence and argument, we conclude that the lawfulness of the terms of interchange commitments is best considered on an individualized, case-by-case basis. Generally, interchange commitments have facilitated the creation and growth of short line railroads, which in turn has benefited the public by lowering transportation costs, improving service, and in some cases preserving rail transportation to localities and communities that might otherwise have seen service over their lighter-density line deteriorate or be lost altogether.

However, not all situations are the same, nor are all agreements. A particular interchange commitment may be contrary to the public interest because it is unduly restrictive or unwarranted

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concern about apparent interchange commitments between the Kansas City Southern Railway and the Meridian Southern Railway on a 50-mile line in Mississippi); Comments of Ameren (expressing concern about interchange commitments between UP and Missouri Central Railroad affecting its Labadie Plant in Missouri); Comments of Arkansas Electric Cooperative Corp. (AECC) (describing interchange commitment limiting the MNA's ability to interchange with carriers other than UP).

[19] See AECC comments at 6.

[20] See Comments of the Marshall Durbin Companies, Odom Industries, Inc., Southeast Ready Mix, Inc. and Wayne County Economic Development District.

[21] Comments of USDA.

under the circumstances. Therefore, to assess the public interest, we must weigh the benefits of a particular interchange commitment against its potential for harm. The inquiry into whether a particular interchange commitment represents more harm than good is necessarily fact-specific. Therefore, no single rule of general applicability seems appropriate, and we will not attempt to establish such a rule.

A case-specific review would be facilitated by having in place better procedures for the disclosure of interchange commitments in future proposed sales or lease arrangements. This should better equip the Board to monitor their usage and effect over the short and long term, and better equip shippers to challenge an agreement before it takes effect. To this end, we are proposing to require parties seeking authorization for the sale or lease of a railroad line to: (a) identify the presence of any interchange commitment and the interchange points that are affected by it; and (b) submit a copy of the full agreement to the Board. We are also proposing an expedited discovery procedure for an affected party to obtain a copy of an existing interchange commitment in connection with a challenge to that agreement. The proposed regulations are set forth in the Appendix.

In this decision, we first discuss in more detail why we have concluded that broad rules of general applicability are not appropriate. Next, we provide general guidance regarding factors the Board will consider in determining the reasonableness of individual interchange commitments. We then set forth the proposed new disclosure requirement and discovery procedure.

1. Rules of General Applicability Are Not Warranted

WCTL and some shippers argue that interchange commitments are inherently anticompetitive and contrary to the public interest because they discourage or prevent short lines from offering existing shippers competitive through routes with third-party carriers. Inclusion of these terms in sale or lease agreements can have effects on shippers, but affected shippers may not have had competitive options before the sale or lease and thus may be no worse off as a result of the interchange commitment. To illustrate, assume that Carrier X sold or leased to Short Line Y a rail line extending from Point A to Point B, subject to an interchange commitment favoring Carrier X for connecting service from Point B to Point C. Also assume that Carrier Z could provide competing service from B to C were it not for the interchange commitment.

Before the transaction, Carrier X had a right to favor its long haul.[22] Unless a shipper obtained a rail transportation contract with Carrier Z for service from B to C, Carrier X was not

[22] See Central Power & Light Co. v. Southern Pac. Transp. Co., 1 S.T.B. 1059, 1064 (1996), clarified 2 S.T.B. 235 (1997), aff'd sub nom. MidAmerican Energy Co. v. STB, 169 F.3d 1099 (8th Cir. 1999).

required to provide a rate for a through movement with Carrier Z for transportation from A to C absent a showing that Carrier X had abused its market power to extract unreasonable terms, or, because of its monopoly position, had shown a disregard for the shipper's needs by rendering inadequate service.[23]

After the transaction, the competitive situation remains the same. Carrier X can retain the traffic, in combination with Short Line Y, for as far as those two railroads combined can handle the traffic, unless a shipper located on the short line enters into a rail transportation contract with Carrier Z. And, just as before the sale or lease, if the shipper enters into a contract with Carrier Z, it would have the right to use the competing through route, notwithstanding any private interchange commitment.

Moreover, just as before the lease or sale, a shipper without effective transportation alternatives can challenge what it believes to be an unreasonable through rate and seek rate relief from the Board. Prior to the lease or sale, a shipper would have sought rate relief from the through rate of Carrier X. After the sale or lease, the shipper can seek relief from the combined through rate of Carrier X and Short Line Y. The Board has revised its guidelines to make pursuing rate cases more practical for affected shippers. Major Issues in Rail Rate Cases, STB Ex Parte 657 Sub-No. 1 (STB served Oct. 30, 2006); Simplified Standards for Rail Rate Cases, STB Ex Parte No. 646 (Sub-No. 1) (STB served Sept. 5, 2007).

Thus, what WCTL seeks here is not to restore a competitive option lost due to a sale or lease with an interchange commitment, but rather to create a new competitive option that did not exist prior to the sale or lease. In other words, in arguing that these agreements are always anticompetitive, WCTL takes an entirely *ex post* view of the restrictions. But viewed *ex ante* (i.e., before the sale or lease of the facilities), the agreements may have been beneficial and furthered the public interest in a number of ways, including better service and/or better rates, and the creation or strengthening of short line railroads that have the potential to expand into other markets, and thereby ultimately add to competition.[24]

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[23] See Midtec Paper Corporation v. CNW et al., 3 I.C.C.2d 171, 181 (1986). A carrier is not required to open a through route simply because a shipper asks it to do so.

[24] WCTL's reliance on the revised merger rules is misplaced. Those rules reflect the Board's concern that future mergers or acquisitions involving more than one Class I carriers could lead to serious service disruptions during their implementation. Accordingly, to offset such impacts, the agency adopted a policy encouraging Class I carriers proposing such a major merger or acquisition to include proactive measures that promote competition. In contrast, when a short line acquires or leases a line previously operated by a large carrier, the expectation is that service will improve even without additional procompetitive measures, because the short line will be able to devote more attention to the needs of the shippers on the line.

Indeed, in the antitrust context, agreements between two companies that do not compete with each other, but rather provide services at different points in a distribution chain (so-called "vertical" agreements) usually do not raise the same kinds of competition concerns as agreements in restraint of trade between direct competitors ("horizontal" agreements).[25] As the Supreme Court has observed, the "market impact of vertical restrictions is complex" and "[s]uch restrictions, in varying forms, are widely used in our free market economy." Continental T.V., Inc. v. GTE Sylvania Inc., 433 U.S. 36, 53 & 57 (1977). Accordingly, when a court reviews such vertical restraints under the antitrust laws, it "must ordinarily consider the facts peculiar to the business to which the restraint is applied; *its condition before and after the restraint was imposed*; the nature of the restraint and its effect, actual or probable." Chicago Board of Trade v. United States, 246 U.S. 231, 238 (1918) (emphasis added).

Some shippers maintain that interchange commitments that last longer than 5 years are likely to over-compensate the seller or lessor carrier. But a carrier considering a line sale or lease of line with traffic that makes a revenue contribution presumably calculates the net present value of the stream of revenue contribution from the traffic it would be forgoing and either (a) demands an equivalent value in the sale price or rental fee, or (b) includes interchange limiting provisions in the sale or lease. The revenue stream resulting from the agreement should be no more than what the carrier would have received had it not divested or leased the rail facilities in question, or had it demanded more in the sale price or rental fee.[26] So long as that is

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[25] In the antitrust context, the Supreme Court has characterized the choice between bright-line prohibitions (*per se* rules) and case-by-case adjudication (rule of reason) as follows: "there are certain agreements or practices which because of their pernicious effect on competition and lack of any redeeming virtue are conclusively presumed to be unreasonable and therefore illegal without elaborate inquiry as to the precise harm they have caused or the business excuse for their use." Northern Pac. R. Co. v. United States, 356 U.S. 1, 5 (1958). Very few agreements in restraint of trade are considered *per se* unreasonable. Such treatment is generally restricted to price-fixing, bid-rigging, or market-allocation agreements between direct competitors. Most agreements are reviewed under a rule-of-reason analysis, where the benefits of the agreements are balanced against the possible harms.

[26] Shippers argue that, due to the passage of time, the value (at the time of the transaction) to a railroad of an interchange commitment that lasts 20 years is not materially different than that of an agreement lasting forever. For example, assume that if it sells or leases the facilities to the short line without an interchange commitment, the selling/lessing carrier expects to lose $1 million in revenue contribution every year. With a discount factor of 10%, this stream of possible lost revenue has a net present value of $10 million. Most of that $10 million flows from the value of the lost revenue in the first two decades. Specifically, in this example, the value of the revenue in years 20 and beyond is equal to roughly $1.3 million of the $10 million (or 13%).

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the case, the interchange limiting provision would not overcompensate the carrier and may shift the risk of unexpected traffic loss to the selling or leasing (Class I) carrier -- the party that was more able to assume the risk. We will not presume that short line railroads, in negotiating arms-length and voluntary contracts, are unable to protect their own financial interests or properly assess the value of an asset that they are considering for purchase. As regulators, the Board must be very wary of the temptation to override the determination of reasonable compensation as negotiated by informed private parties.

Comments by shippers describing how interchange commitments can impact service raise important issues. Shippers argue that restrictions make it impossible to shift traffic efficiently when there is a service disruption on the main line of the railroad to which their short line is tied.[27] And shippers (not the short lines themselves) argue that interchange restrictions diminish short lines' earning power, thereby reducing the revenue available for track maintenance and rehabilitation.

We do not believe that rules of general applicability are appropriate to address these particularized service concerns. Due to the variety of interchange restrictions, the condition of short lines, and the intermodal options available to shippers, we cannot devise a single rule that would address each service problem that may relate to an interchange commitment. Shippers who believe that a rail carrier is not providing adequate service due to the condition of its lines or certain other service problems have recourse before the Board, including, among other things, the emergency and alternative service rules, the feeder line provisions, and enforcement of the statutory common carrier obligation.[28] Shippers may argue in such cases than an interchange commitment contributes to the service problem.

Some shippers, going a step beyond particularized service and rate issues, argue that interchange commitments have long-term economic impact with regard to resource usage (e.g., that forced inefficient routing causes increased fuel usage), resource misallocation (including

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This argument does not reflect the fact that the time value of money is a two-way street: while $1 million in 20 years is not worth as much today, $1 million forgone 20 years ago would have grown into a considerable fortune today. So if the Board were to declare that any interchange commitment in existence for longer than 20 years were now unenforceable, it would diminish the value of the consideration provided by the short line when it acquired or leased the facilities. And the current value of that forgone consideration is not simply $1.3 million, which is only how much more the carrier would have demanded to sell or lease the facilities 20 years ago.

[27] See, e.g., Ameren comments at 6.

[28] See 49 U.S.C. 11123(a); 49 CFR parts 1146, 1147.

over- and under-production by plants to deal with capacity shortages), and economic development.[29] However, the nexus between these potential harms and particular interchange restrictions are tenuous and, in any event, do not lend themselves to quantification. At the same time, there is very little dispute that short lines, as a general matter, have benefited the overall health of the rail industry.

Perhaps as important as our theoretical concerns, there are also practical problems with WCTL's suggested presumptions and some of the other "sunset provision" recommendations made by commenters. If there were a presumption that any interchange commitment that lasts longer than 5 years is unreasonable, the practical impact of the presumption would be to call into question all of the ongoing business relationships that have been created by agreements containing interchange commitments.[30] This is because most existing interchange commitments were part of sales or leases that occurred more than 5 years ago. Universal application of such a presumption could have significant negative and unintended consequences not only for the railroads involved, but for their customers. According to ASLRRA, many short line sale or lease agreements include clauses allowing the entire transaction to be rescinded if the Board were to find the interchange limiting provision unlawful.[31] If such provisions were invoked, shippers could find themselves being served by the former operator and losing the benefits provided by the short line carrier.

For transactions not completely undone, there could be significant problems regarding adjustment of the compensation between the parties to the original transaction on an *ex post* basis. Because of the multifaceted, interdependent nature of provisions in sale/lease agreements, a determination of adjustments could be complex and prone to litigation, which, depending on the contracts, could take place at the Board, before an arbitrator or in the courts. In the meantime, ongoing business relationships could be disrupted *en masse*, and critical investment and marketing decisions might be put on hold. Moreover, some short lines operate with marginal cash reserves and could be significantly weakened if they had to operate under less favorable terms or provide compensatory adjustments to the seller/lessor carrier.[32]

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[29] See AECC comments at 9.

[30] According to ASLRRA, most of its 425 member carriers are "affected in a variety of ways by paper barriers." Comments of ASLRRA, filed Mar. 7, 2006, at 1. See also, Reply Comments of WCTL, filed Mar. 28, 2006, at 5-6.

[31] Opening comments of ASLRRA, filed on March 7, 2006, at 3.

[32] According to ASLRRA, an opponent of WCTL's approach, "[m]any class II and class III railroad companies are viable solely because of their lower cost structures." Id. at 4.

With regard to future transactions, a "one size fits all" rule for future interchange commitments could deter spin-offs of lighter-density lines. Under WCTL's approach, a seller/lessor carrier likely could not justify any interchange limiting provision that did not fall within WCTL's suggested narrow confines as to form, duration, and type of compensation, regardless of the specifics of the situation.[33] Also, were we to restrict to a particular time period all future interchange commitments in leases, parties might simply limit the lease itself to that time period. This would expose short lines to more frequent revaluation of the cost to operate, thereby heightening the risk of the transaction for the short line and decreasing the likelihood that the transaction would take place. For those transactions that did take place under shorter-term leases, we would artificially reduce the incentives of the short line to make long-term capital improvements to these lines, since they would lack the protections associated with longer-term leases.

Moreover, some line sales or leases have included both light-density segments with little traffic and segments that move more substantial and profitable traffic that the seller/lessor railroad did not want to lose. By including the more profitable segments in the track leased or sold to the short line, the seller/lessor railroad provides the short line with a reliable source of revenue to help the short line while it attempts to attract new traffic to, and rehabilitate, the remainder. This benefits the shippers that are located on, or attracted to, the less profitable line segments, while leaving other shippers no worse off competitively than they were before the lease or sale. Were we to adopt a policy that would discourage a carrier from divesting the entire line in such circumstances, larger (Class I) carriers might be encouraged to retain the profitable segments and to abandon the less profitable segments, to the detriment of the communities they serve.[34]

The foregoing should not be understood as a suggestion that all current and future interchange commitments are necessarily reasonable and in the public interest, and we emphasize that Board approval of a line sale or lease does not relieve any carrier of its statutory obligation to provide adequate service at reasonable rates, fulfill common carrier obligations, or otherwise comply with the Interstate Commerce Act.[35] But we cannot make the broad, sweeping

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[33] See WCTL's renewed petition filed Mar. 21, 2005, V.S. of Paul S. Dempsey.

[34] See, e.g., UP Reply, V.S. Wilson, at 7.

[35] Citing cases where the Board or ICC have voided contractual provisions that unduly interfere with common carrier obligations, Ameren argues that interchange restrictions may also frustrate the acquiring railroad's ability to fulfill its common carrier obligations under 49 U.S.C. 11101(b) because the short line is inhibited "from providing service to shippers along its line." Ameren comments at 15. Although the Board takes no position on how a particular interchange commitment may affect common carrier obligations, as a general matter, if a short line is

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generalizations about the lack of social utility of interchange commitments that would be a necessary predicate for the type of rules WCTL advocates.

We believe that this case-by-case approach to interchange commitments strikes the best balance with regard to the Rail Transportation Policy goals set out at 49 U.S.C. 10101. A case-by-case approach minimizes the need for Federal regulatory control over the rail industry (see section 10101(2)) by restricting contracting freedom only when a particular interchange commitment can be shown to constitute (or contribute to) a violation of the Interstate Commerce Act or can be shown to be contrary to the particular statutory provision under which transaction approval was, or is being, sought. In such case-by-case reviews, the Board will be able to examine any other implicated regulatory policies such as the fostering of sound economic conditions, the maintenance of reasonable rates in the absence of effective competition, and competition. See sections 10101(1), (4), (5), (6).

For all these reasons, we conclude that the Board should consider the propriety of interchange commitments on a case-by-case basis.[36] Depending on the particular statutory provision under which they are challenging an interchange restriction, affected parties may seek to show that enforcement of a particular interchange commitment either would violate the Interstate Commerce Act, or that a proposed sale or lease with such a commitment should not be approved unless the transaction is restructured. But we will not proscribe such commitments altogether or place generalized restrictions on their terms.

2. Factors the Board Will Consider When Determining the Propriety of an Interchange Commitment

Although interchange commitments helped foster the revitalization of the rail industry and the rebirth of the short line sector, the need for interchange commitments may diminish in future leases or sales. In the 1980s and 1990s, interchange commitments often provided an incentive to otherwise reluctant, and in some cases, cash-strapped buyers/lessees to enter into a

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providing service to a destination, the mere existence of an alternative long-haul carrier with which the short line does not interchange does not amount to a section 11101(b) violation.

[36] In Illinois Railnet, Inc. – Acquisition and Operating Exemption – BNSF Ry., STB Finance Docket No. 34549 (STB served Feb. 1, 2006), the Board suggested that it might be better to address questions about interchange commitments more broadly with the benefit of public comments. After reviewing the public comments in STB Ex Parte No. 575, we are persuaded that the best course is to review the propriety of agreements with interchange commitments on a case-by-case basis.

rail industry that was struggling financially and experiencing excess capacity.[37] Today, the improved health of the rail industry as a whole is not in dispute. As a result, the ability of Class I railroads to find smaller carriers willing to invest up-front money into viable short lines may also have improved, thus reducing the desirability of interchange commitments.

Even though we are not prohibiting the use of existing interchange commitments across the board, shippers may, on a case-by-case basis, attempt to show that a particular interchange commitment is causing, or would cause, a violation of the Interstate Commerce Act or that it is, or would be, contrary to a particular statutory provision under which approval was, or is being, sought. For example, a shipper may allege that a particular interchange commitment precludes, or would preclude, the provision of adequate, efficient through service at reasonable rates.[38] Shippers may also move, under 49 U.S.C. 722(c), to reopen a proceeding authorizing a prior transaction or to partially revoke an exemption granted under 49 U.S.C. 10502. The existence of the RIA, the private industry agreement between Class I railroads and short line railroads, does not preclude or otherwise affect the ability of shippers to seek relief from the Board.

When the Board considers whether a proposed interchange commitment is in the public interest, we will examine the relevant facts and circumstances surrounding that agreement. We will consider whether the interchange agreement is part of a lease or a sale of a line, and we will look at the duration of the restriction. We will examine the manner in which the interchange commitment discourages interchange with other carriers and the degree to which interchange is effectively foreclosed. Parties should expect a higher level of scrutiny on agreements that contain a total ban on interchange with other carriers or go on in perpetuity.

Given the diversity among transactions, interchange commitments, and affected parties, we cannot identify every factor that the Board might consider in future cases. The factors to be considered will also depend upon the type of challenge brought before the Board. Under our case-specific review, we will examine the particular facts, the competitive conditions before and after the interchange commitment, the nature of the commitment, and its actual or likely effects. The parties to the transaction and other concerned parties will have ample opportunity to present their views.

3. Proposed Disclosure Requirements

To facilitate a more informed case-by-case analysis of interchange commitments, we propose to impose a disclosure requirement for any new agreement and provide a discovery procedure for existing agreements. For future sales or leases that would include an interchange

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[37] See Marshall Durbin comments at 14 (recognizing that interchange commitments "may have had some benefit to Class I railroads and undercapitalized short line railroads").

[38] See 49 U.S.C. 10703, 10705, 10742, and 11101(a).

commitment, we propose to require the parties to the transaction to give notice of them when they seek Board authorization for the sale or lease.[39] Specifically, parties seeking Board authorization would be required: (a) to identify the presence of any interchange commitment (whether containing restrictions or incentives) and the interchange points affected; and (b) if such a commitment is present, to file with the Board a confidential, unredacted copy of the sale or lease agreement and any related documents containing the terms of the commitment. Relevant portions of those agreements could then be obtained by affected parties subject to appropriate protective orders to preserve their confidentiality. Obtaining this information should better equip the Board and affected parties to assess a particular agreement before the transaction can proceed.

For existing interchange agreements, it appears from the comments received in this proceeding that shippers on lines subject to such agreements are generally aware of the existence of such commitments, even if they do not know the precise terms. Therefore, we do not believe it necessary for carriers to gather and file with the Board information about all of their current interchange commitments. Rather, we propose to create an expedited procedure for an affected shipper to obtain a copy of such an agreement (subject to our normal protective orders) once the shipper files either (a) a petition under 49 U.S.C. 722(c) to reopen the proceeding in which the sale or lease was originally authorized or to revoke an exemption under 49 U.S.C. 10502, or (b) a complaint alleging that a carrier is violating a statutory obligation under the Interstate Commerce Act due to an interchange commitment. At that point, the shipper may file a motion seeking prompt access to the documents containing the interchange commitment, together with a signed protective order. The carrier (or carriers) involved would have an appropriate opportunity to respond, and the Board would then rule on such motions on an expedited basis.

The proposed changes to the Board's rules to implement these procedures are set forth in the Appendix attached to this decision. The Board is publishing in the Federal Register a separate notice, docketed as STB Ex Parte No. 575 (Sub-No. 1), on the service date of this decision. The notice requests public comment on the proposed rules and related matters and sets forth when and how to file comments.

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[39] We believe that notice and disclosure of interchange commitments should be provided for all proposed sales and leases, regardless of the size of the carrier or the procedure by which Board authorization is sought. Most short line transactions are accomplished under one of our exemption procedures under 49 U.S.C. 10502, but carriers may seek Board authorization for short line transactions by application. It is not necessary to propose changes to the application requirements under 49 U.S.C. 11323 et seq. or 49 U.S.C. 10901 because those requirements already include provisions that would encompass disclosure of interchange commitments. See 49 CFR 1180.6(a)(7)(i) and (ii), 1150.4(a), (e). Although we do not have specific regulations governing the content of applications under 49 U.S.C. 10902, we would expect applications under that section to provide the same interchange commitment information.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition of WCTL is granted to the extent set forth in this decision.

2. The regulations proposed in STB Ex Parte No. 575 (Sub-No. 1) as set forth in the Appendix will be published in the Federal Register and submitted to OMB.

3. The STB Ex Parte No. 575 proceeding is discontinued.

4. This decision is effective on its date of service.

By the Board, Chairman Nottingham, Vice Chairman Buttrey, and Commissioner Mulvey. Commissioner Mulvey commented with a separate statement.

Vernon A. Williams
Secretary

COMMISSIONER MULVEY, commenting:

I concur in the relief the Board had voted to propose here, although I rely on a differing rationale as the basis for this relief.

As I have expressed through my dissents in several recent lease and acquisition cases,[40] as well as through the July 2006 hearing we held in this proceeding, I generally view so-called

[40] Paducah & Louisville Ry. – Acquisition – CSX Transp., Inc., STB Finance Docket No. 34738 (STB served Nov. 18, 2005) (Comm'r Mulvey dissenting, at 6-7); Columbus & Ohio River R.R. – Acquisition and Operation Exemption – Rail Lines of CSX Transp., Inc., STB Finance Docket No. 34540 (STB served Nov. 18, 2005) (Comm'r Mulvey dissenting, at 9); Indiana & Ohio Centr. R.R. – Acquisition and Operation Exemption – CSX Transp., Inc., STB Finance Docket No. 34536 (STB served Aug. 23, 2005) (Comm'r Mulvey dissenting, at 9-10); Buckingham Branch R.R. – Lease – CSX Transp., Inc., STB Finance Docket No. 34495 (STB served Nov. 5, 2004) (Vice Chr. Mulvey dissenting, at 13).

interchange commitments as fundamentally anti-competitive. I believe the Board should review these from a public interest standpoint when they form part of the basis for large railroad spin-off transactions to new or smaller carriers. I support our statutory charge to ensure that railroads earn adequate revenues, but I do not think that permitting traffic to be locked up in perpetuity is the proper vehicle for doing so.

Several sections of our governing statute permit or require that the Board *preserve* competition in the rail industry. 49 U.S.C. 10101(4) & (5) (Rail Transportation Policy); 11102(c)(1) (reciprocal switching); 11324 (standards for approval of consolidation transactions); see also 10709(g)(2)(B)(ii) (challenge of agricultural commodity contract); 11322(a)(2) (pooling). In addition, we have the discretion to adopt policies that *promote* competition. See, e.g., Major Rail Consolidation Procedures, 5 S.T.B. 539 (2001). The Board's current position on interchange commitments, however, *prevents* competition from developing by protecting these arrangements and presuming their propriety.

That the record before us includes only anecdotal evidence of shippers' suffering harm from interchange commitments,[41] with only one shipper attempting to quantify this harm, demonstrates to me the need for the relief we propose today. While in 1998 the Board may not have had enough experience with interchange commitments to determine whether or not to preclude them, by 2007 parties have had substantial experience – but not enough disclosure of these provisions.

I do not believe that interchange commitments are the *sine qua non* of the shortline renaissance since the Staggers Act of 1980 -- despite the verified, but otherwise unsubstantiated, assertions to the contrary in the record before us. See Decision at 12, 25. Shortlines existed prior to the Staggers Act. Shortlines could have been spun into existence afterward without interchange commitments, or with commitments of limited duration, albeit under different financial terms. Shortlines could also have purchased lines slated for abandonment under our Offer of Financial Assistance provisions, 49 U.S.C. 10904.

Further, I do not agree with the Decision's characterization of the Class I-shortline relationship as "vertical." Decision at 16-17. A vertical relationship between firms generally refers to firms in different stages of the production or distribution process.[42] But both shortlines and Class I carriers provide rail haulage of freight. They are not in different stages of production but produce the same service. Because they interchange the traffic rather than compete for it does not change the fact that they engage in the same fundamental service. I would classify this

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[41] I note that it may not only be shippers who have suffered harm from interchange commitments, but rail labor as well.

[42] See, e.g., Paul A. Samuelson & William D. Nordhaus, Economics 356-57(McGraw-Hill/Irwin 2005) (definitions of horizontal and vertical mergers).

relationship as a "horizontal" one because both carriers are providing rail service – they are in the same industry – even if they are providing this service over different line segments. I also do not agree with the Decision's characterization of the relative equality in bargaining positions of shortlines and Class I carriers with respect to spin-off transactions. Decision at 18.

Our proposed rules should enable shippers who believe they are aggrieved by interchange commitments to challenge these restrictions in a more direct and expeditious manner. I expect the Board to administer these rules in such a way that they offer meaningful, as opposed to elusive, relief. This Decision is a good first step toward alleviating the anti-competitive situations perpetuated by or resulting from interchange commitments, although more might be needed in the future.

APPENDIX

For the reasons set forth in the preamble, parts 1114, 1121, 1150, and 1180, of title 49, chapter X, of the Code of Federal Regulations are proposed to be amended as follows:

§ 1114 [Revised]

1. Revise § 1114.30 by the addition of the following:

(d) Agreements Containing Interchange Commitments. In any proceeding involving the reasonableness of provisions related to a rail carrier sale or lease agreement that serve to induce a party to the agreement to interchange traffic with another party to the agreement, rather than with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means, a party to the proceeding may obtain a confidential, complete version of the agreement, with the prior approval of the Board. The party seeking such approval must file an appropriate motion containing a draft protective order and undertaking(s) that will ensure the agreement is kept confidential. The motion seeking approval may be filed at any time after the initial complaint or petition, including before the answer to the complaint or petition is due. A reply to such a motion must be filed within 10 days thereafter. The motion will be considered by the Board in an expedited manner.

§ 1121 [Revised]

2. Revise § 1121.3 by the addition of the following:

(d) Transactions Imposing Interchange Commitments. (1) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"), the following additional information must be provided: (i) the existence of that provision or agreement and the affected interchange points must be identified; and (ii) a confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to (1), above, by filing, and serving upon the petitioner, a "Motion for Access to Confidential Documents," containing (i) an explanation of the party's need for the information and (ii) an appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

§ 1150.33 [Revised]

3. Revise § 1150.33 by the addition of the following:

(h) Transactions Imposing Interchange Commitments. (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"), the following additional information must be provided: (i) the existence of that provision or agreement and the affected interchange points must be identified; and (ii) a confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to (1), above, by filing, and serving upon the petitioner, a "Motion for Access to Confidential Documents," containing (i) an explanation of the party's need for the information and (ii) an appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

§ 1150.43 [Revised]

4. Revise § 1150.43 by the addition of the following:

(h) Transactions Imposing Interchange Commitments. (1) If a proposed acquisition or operation of a rail line or change of operators involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"), the following additional information must be provided: (i) the existence of that provision or agreement and the affected interchange points must be identified; and (ii) a confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(2) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to (1), above, by filing, and serving upon the petitioner, a "Motion for Access to Confidential Documents," containing (i) an explanation of the party's need for the information and (ii) an appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

§ 1180 [Revised]

5. Revise § 1180.4(g)(4) by the addition of the following:

(4) Transactions Imposing Interchange Commitments. (i) If a proposed acquisition or operation of a rail line involves a provision or agreement that may limit future interchange with a third-party connecting carrier, whether by outright prohibition, per-car penalty, adjustment in the purchase price or rental, positive economic inducement, or other means ("interchange commitment"), the following additional information must be provided: (A) the existence of that provision or agreement and the affected interchange points must be identified; and (B) a confidential, complete version of the document(s) containing or addressing that provision or agreement, which may be filed with the Board under 49 CFR 1104.14(a) and will be kept confidential without need for the filing of an accompanying motion for a protective order under 49 CFR 1104.14(b).

(ii) To obtain information about an interchange commitment for use in a proceeding before the Board, a shipper or other affected party may be granted access to the confidential documents filed pursuant to § 1180.4(g)(4)(i) of this section by filing, and serving upon the petitioner, a "Motion for Access to Confidential Documents," containing (i) an explanation of the party's need for the information and (ii) an appropriate draft protective order and confidentiality undertaking(s) that will ensure that the documents are kept confidential.

BEFORE THE

Committee on

TRANSPORTATION

AND

INFRASTRUCTURE

U.S. House of Representatives

HEARING ON RAIL COMPETITION AND SERVICE

STATEMENT

OF

WILLIAM J. RENNICKE

DIRECTOR

OLIVER WYMAN, INC.

September 20, 2007

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I. Statement of William J. Rennicke, Director, Oliver Wyman, Inc.

Good morning. I am William J. Rennicke, a Director at Oliver Wyman. Since I started my transportation carrier over 40 years ago as a brakeman on the bankrupt New Haven Railroad, I have been an active participant both in carrier operations and management and as an advisor to the transportation industry, governments, and to users of transportation worldwide.

In the late 1970's, I was fortunate to be an active participant in the public and legislative process that led to the Staggers Act. At the time, I was the Vice President and Assistant to the President of the bankrupt Boston & Maine Railroad, which as you may recall was the only one of the "Eastern Bankrupts" that was not consolidated into Conrail. I believe that at the time the Boston & Maine's input was frequently considered, since we were the only bankrupt railroad that was able to reorganize totally within the private sector and, with the exception of one infrastructure loan, essentially without the use of any public funds.

I believe that Congress, shippers, the carriers, labor, and all other industry participants should be quite proud of the results of the Staggers Act and the subsequent restructuring of the U.S. rail industry. From the late 1960's through the mid-1970's, over half of the U.S. rail system was in bankruptcy and financial distress. The Staggers Act turned the rail industry into a self-sustaining freight network, and the U.S. regulatory and carrier model is now seen as a standard and benchmark for freight rail systems worldwide. The Staggers Act also played an important role in eliminating or mitigating the substantial risk and uncertainty penalties that the financial community placed on rail investments, saving both carriers and shippers hundreds of millions of dollars over the past 27 years.

Because of our private sector experience in the restructuring of the U.S. rail industry, both I and Oliver Wyman have been asked by governments, shippers, and carriers on six continents to take the lessons learned in the United States and apply them to improving local rail systems. Starting in the late 1980's, I participated in the privatization of the Argentine railroads – the first railway privatization since World War II. Due to our success there and elsewhere, Oliver Wyman has subsequently participated in major rail privatizations and restructurings worldwide. For example, we were asked to manage the initial restructuring process for state-owned railroads in Poland, Hungary, and the Czech Republic, only months after each saw a change in political control. I also managed the concessioning of the Mexican railway – turning it from a money-losing government enterprise into several successful private carriers – and in Canada we participated in the privatization of the Canadian National Railway.

In every country where we have worked, the objectives of restructuring have been to create a self-sustaining railway network that supports the domestic economy, facilitates international trade, is funded as much as possible by the private sector, and that improves the rail sector's risk profile and attractiveness to the capital markets. However, despite decades of effort in other parts of the world, with the exception of the United States, Canada, and to some extent Mexico (together with several private iron ore, coal, and mineral railroads), no rail system anywhere in the world survives without direct or indirect support from the government and taxpayers. The billions spent by the U.S. government to correct the Conrail situation was the last significant payment of federal funds in the United States for a freight railroad. I believe proposed provisions

of HR 2125 raise the issue of whether the United States wants the freight rail system to continue to be funded and developed by the private sector, or to run the risks, if we are willing to change the policy of the last 27 years, of selectively subsidizing certain shippers or regions, whether directly or indirectly.

The principles and policy of differential pricing are generally recognized as the most effective path to railroad pricing. There are, however, some unavoidable realities that are imbedded in the characteristics of any large transportation network that is both complex and where market-based pricing is used to maximize contribution and avoid the need for public (taxpayer) support:

1. Pricing – For any mode or sector (e.g., air, utilities, package delivery, rail) where pricing policy permits differential pricing, there will always be some users who pay more and some who pay less. In the airline industry, it is not uncommon to be sitting next to someone who paid three or four times your fare, or to have on the other side of you a person who paid a quarter to a third of your fare. As can be observed on page II-20 and in the appendix (pages II-26 and II-27) of the attached supporting data, there is a wide range of revenue to variable cost (R/VC) relationships for all traffic and for each commodity, whether one considers all U.S. railroads or one particular railroad (see UP example, page II-21).

   Human and economic nature being what it is, no one in the United States or any other economy likes to be in the differential pricing bucket that is highest or higher than others. No one celebrates paying higher prices, no traffic manager or shipping executive receives a bonus or is compensated for being at the high end of the R/VC range. R/VC ratios for some less competitive traffic movements can be two or three times those of the most competitive traffic moving at lower ratios. It is to be expected that there will be a continuous and natural tendency of those parties paying higher ratios to try and modify the pricing structure to restrict the workings of differential pricing. It has been my experience, however, that differential pricing does not work when regulation cuts off one end of the range and tries to move prices artificially to lower R/VC ratios. Eventually, the loss of contribution from higher rated traffic forces an increase in prices for competitive traffic, which often leads to a cycle of volume loss (see pages II-17 to II-19).

2. Service – The overall service and throughput of the U.S. freight rail system is the envy of the world, and many U.S. rail network planning and business practices have become global benchmarks. Unfortunately, however, service failures do occur, and far more often than the carriers and certainly the shippers would like. (One only has to look at the performance of the airline industry this summer to see how personal service failures can sometimes become.) While all carriers aspire to highly reliable service levels, there are some structural complexities that make attaining those levels a considerable challenge. For example, in the United States, there are an estimated two million origin/destination combinations, and in 2006, 1.31 million railcars[1] moved 32.1 million carloads[2] (and 1.96 trillion tons[3] in total

[1] Source: AAR Railroad Equipment Report, 2006, Association of American Railroads. Cars as of January 1, 2006. Cars with marks of U.S. railroad subsidiaries of Canadian railroads are excluded from this total

[2] Source: Freight Commodity Statistics, 2006, Association of American Railroads.

[3] Source: Freight Commodity Statistics, 2006, Association of American Railroads.

were moved by the Class I railroads). Recent network and operating improvements, coupled with access to private capital, should move the system to higher reliability levels and in some cases improve transit times.

Even in a situation where some are unhappy about being on the high end of the rate curve or have experienced the frustration of even one service failure, it is important to recognize that the U.S. freight rail system is still the best in the world – and I believe it has the opportunity to get even better. Here are some important facts, generalized somewhat to fit into my five-minute time limit:

- U.S. rail freight rates are among the lowest in the world. The cost to move one ton one mile in the U.S. can be as little as 10 percent of the cost in other countries (page II-5).
- Not only are U.S. freight rates extremely low, but virtually no taxpayer contribution is required for either service or infrastructure. In most countries, taxpayers cover some part of infrastructure variable operating cost and generally all capital expenditures; in the United States, they cover virtually none of these costs (page II-6).
- The U.S. system is the most productive in the world and consumes far fewer resources to move one ton over one mile than any other in the world (pages II-3 and II-4). All again without the need for taxpayer contribution.
- The U.S. railroads reinvest more capital in infrastructure and equipment than almost any other sector of the economy, with a low return on equity (page II-15).
- As was envisioned and hoped for at the time of the Staggers Act, the performance of the railroads is attracting private capital in large amounts to support critical growth and infrastructure replacement needs. The top 25 shareholders of the U.S. carriers have invested more than $42 billion (page II-9).

I would like to cite one recent example of the capacity of the private sector to fund growth and expansion. Some believe a third carrier and route with access to the Powder River Basin (PRB) – generating additional carrier competition in the PRB – would be a good thing. After many years of planning, permitting, and engineering work, the Dakota, Minnesota, & Eastern (DM&E) railroad was ready in late 2006 to move to the next step of line construction. I will oversimplify a bit, but as many of you know, the railroad requested public assistance in the form of a loan to assist with the building of the line into the coal fields. On February 26, 2007, Federal Railroad Administrator Joseph H. Boardman denied a $2.3 billion Railroad Rehabilitation and Improvement Financing (RRIF) loan application from the DM&E, concluding it posed an unacceptably high risk to federal taxpayers. On September 6, 2007, eight months after the government turned down participation in this infrastructure and market access project, the Canadian Pacific Railway announced its intention to purchase the DM&E, with the right to finance and build the line into the PRB.

The DM&E situation represents an example of how the system fostered by the Staggers Act was meant to work – with the private sector (CP) raising funds and accepting the risk of new line and capacity construction as part of its acquisition of the DM&E, since the government did not find it

possible to make this investment. In the future, if the country is to meet projected or new capacity requirements, the freight rail industry must continue to offer sufficient returns to attract growth capital, as well as encouraging public participation.

I believe that there are several aspects of HR 2125 that, if implemented, will likely lead to a decrease in private capital flowing to the industry and/or and increase the cost of funds. Additionally, if the revenue structure of the industry is moved away from market-based differential pricing (where approximately one-third of traffic movements support price levels above an R/VC ratio of >180), carriers will likely reduce capital spending and have less ability to support growth.

An effective differential pricing system requires higher rates on less competitive traffic (i.e., traffic in areas of less effective competition) to offset lower rates on highly competitive traffic where revenue above long-term variable cost is too low to fully support the long-term viability of private carriers.

- For example, in 2003, the STB calculated that 12.61 percent of all movements had an R/VC < 100; 54.54 percent had an R/VC of 100 to 180, and 32.86 percent had an R/VC > 180.[4] It is highly likely that traffic with an R/VC of <100 or at the low end of the 100 to 180 range moves in areas or under circumstances of higher competition. It is also likely that many of the rates for traffic with R/VC ratios of >180 arise in situations where there is less (or in the language of HR 2125, inadequate) competition.

- The same calculation made by the Interstate Commerce Commission (ICC) in 1993 found that 32.05 percent of all traffic had an R/VC of >180, suggesting that in both the early 1990's and in 2003 something close to a third of rail traffic is generally priced above 180 to offset lower priced traffic or movements with a long-term variable cost (LTVC) of less than 100.[5]

It has been my experience that the stability of the revenue profile has been an important factor in reducing the risk penalties for capital funding; attempts to move revenue from higher to lower categories will not only impact specific rail economics but likely the cost of capital as well.

There are several provisions of HR 2125 (for example, relative to the existence of areas of inadequate rail competition) that propose an actual or constructive capping of freight rates, most often at an R/VC ratio of 180. I suspect the inadequacy of the competitive structure in the eyes of the proponents of the legislation means that R/VCs are higher than in more competitive locations or situations. As I stated before, everyone would like a lower rate. I am sure, if given the choice, all shippers would like to move to the R/VC category where ratios are less than 100. The reality is that you cannot have a sustainable U.S. rail system, able to support maintenance and growth, without the full range of differential (Ramsey) pricing options. As I will comment on below, the

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[4] Class I Railroad Revenue-Variable Cost Ratios for 2003, from Waybill data. Surface Transportation Board

[5] Class I Railroad Revenue-Variable Cost Ratios for 1993, from Class I Railroad R-1 reports, memo from Walter Asmuth, Interstate Commerce Commission, May 23, 1995.

R/VC of 180 was never intended to be a determinant of railroad financial performance. It was established to set a point where, for some commodities, a regulatory review could occur. I believe there was nothing in the creation of the Staggers Act or proceedings since that have set an R/VC of 180 as a goal. A cap of 180 on movements that have fewer competitive options is not sufficient to provide funds for a healthy rail network.

To get a sense of the revenue deficiency that could occur if rates were capped at an R/VC of 180, it may be useful to consider the Revenue Shortfall Allocation Method (RSAM) used by the Surface Transportation Board (Ex Parte 347) to measure the average markup above a carrier's variable cost that a carrier would need to charge all of its potentially captive traffic (i.e., traffic priced above an R/VC of 180) in order for the carrier to recover its non-variable cost.

Currently, there is no situation, based on the RSAM calculation, where the average markup for captive traffic is below 180 and in most situations it is above 200 (page II-24). Even in these cases, the current pricing patterns as measured by the STB do not provide sufficient contribution from less competitive traffic to make the railroads fully revenue adequate. Further case by case or broad scale reclassification of movements from competitive to lower R/VCs will have the direct effect of reducing overall revenue and weakening the financial position of the carriers. Using the 2003 STB data, the proposed legislation would have reduced, or in the extreme eliminated, the 32.86 percent of R/VC>180 movements that helped offset the 12.61 percent that had R/VC ratios of less than 100 and the lower-ratio movements in the 100 to 180 category. The HR 2125 legislation is silent on how the carriers will make up this lost contribution from higher R/VC traffic and still have sufficient returns to fund growth and maintenance.

The legislation also appears to use the R/VC ratio of 180 as a performance target, with some view that 180 defines a level of pricing that is acceptable or even recommended. To my recollection, the 180 threshold (originally set at 162 in 1980), was simply the R/VC level at which certain segments of traffic could request regulatory intervention. It was in essence the gate which opened the door to regulatory review. As far as I can recall, I know of no analysis by the ICC (the STB's predecessor agency), Congress, or any other parties that suggested that 180 was an end point for revenue adequacy, proper returns, or a ceiling on rates. The very existence of the RSAM process used by the STB confirms that it was anticipated that some rates by necessity would need to be above 180.

In addition, the suggested changes to the regulations on reciprocal switching, while an understandable objective for customers who believe they have inadequate competitive options and would like to move into the range of lower R/VC rates, would disrupt the distribution of differential prices that support the current industry structure. Like the proposed revenue cap, expansion of a second and third carrier in terminal areas would have the effect of reducing the traffic that is available to balance lower-rated, more competitive movements. In their terminal and switch district analysis, carriers most often find that investment in support facilities cannot be amortized by terminal activities alone at such locations. Contribution from the linehaul movement is needed to cover both terminal operating and capital expenditures. The wholesale expansion of reciprocal switching zones could in many cases raise the risk of not recovering the investment cost and deter capacity improvements. While I do not agree with the expansion of the reciprocal switching zones,

if it is seriously considered, a requirement to compensate the terminal owner for not only local cost but lost linehaul contribution should also be considered.

Expansion of reciprocal switching also will complicate rail operations. Today, carriers are trying to consolidate the number of origins and destinations to reduce system complexity, sorting requirements, and traffic fragmentation. The HR 2125 switching provisions will have the effect of doubling the sorting activity of the carriers serving an origin or destination. What is now a single line origination with a subsequent linehaul will create a requirement for a second block or sort in the system. Multiply this times the number of new reciprocal switching options, and the expansion of operating sorting requirements could offset the efficiency efforts being pursued by the carriers.

Finally, there are many issues with Final Offer Arbitration (FOA). One of the most damaging and unexpected outcomes may be that the movement from a regulatory policy based on analysis and legal process to baseball arbitration that is largely founded on gaming theory and random outcomes will create a high degree of risk and uncertainty around carrier revenue levels. It is likely that if there are a large number of such cases, the risk of uncertainty could return some level of risk penalty to the rail cost of capital.

Thank you and I would be pleased to answer any questions now or later in the hearing.

OLIVER WYMAN

200 Clarendon Street
Boston, MA 02116
617-424-3200

September 20, 2007

Hearing on Rail Competition and Service

U.S. House of Representatives, Committee on Transportation and Infrastructure

Testimony of William J. Rennicke
Director

Oliver Wyman

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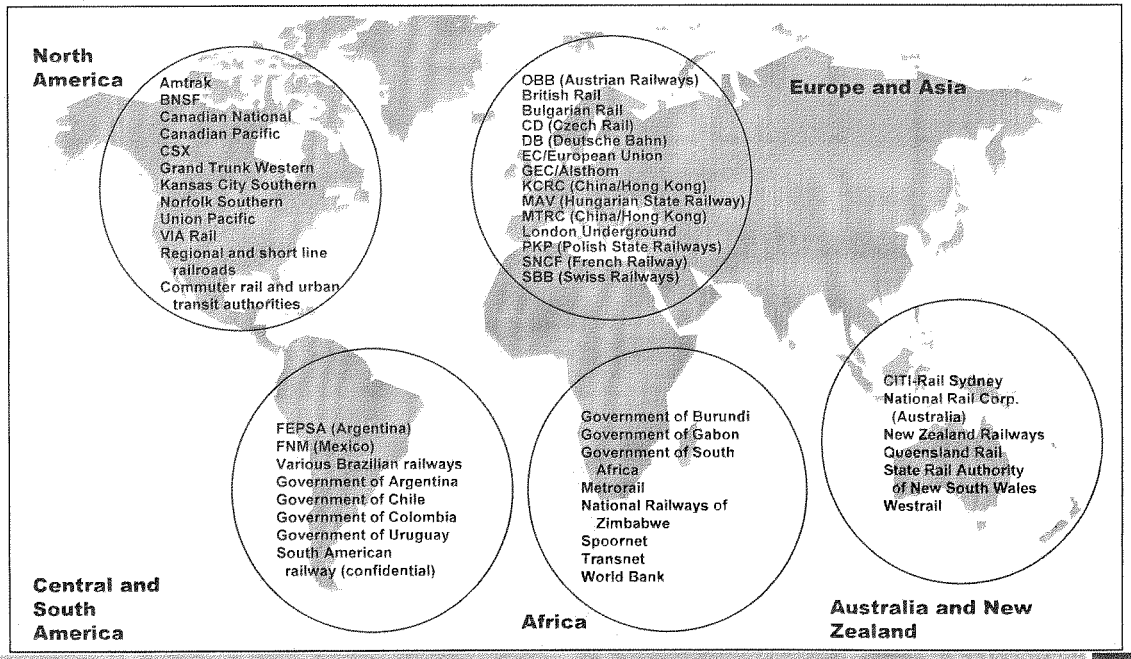
Oliver Wyman has carried out major strategic, operational, and financial planning and evaluation assignments for railroads worldwide. The experience and perspectives expressed at this hearing are based on personal domestic and international experience.



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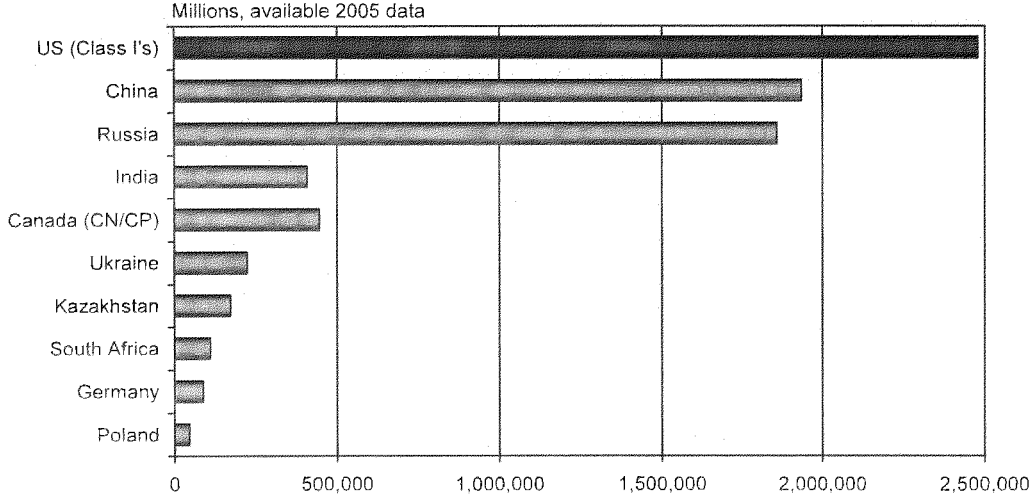
The U.S. freight rail system is one of the top-performing rail systems in the world – moving large volumes over long distances…

Top 10 World Rail Systems in Freight Tonne-Kilometers

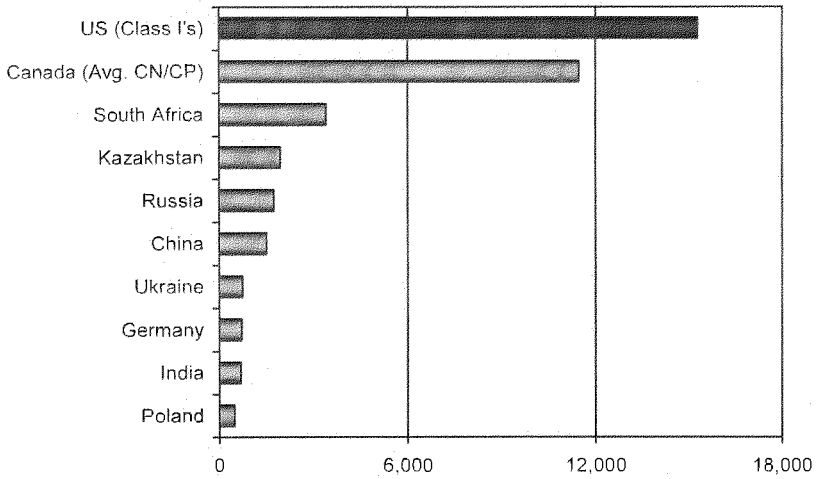
Millions, available 2005 data



Source: World Bank Railways Database, May 2007.

An unparalleled system
...At a high level of efficiency...

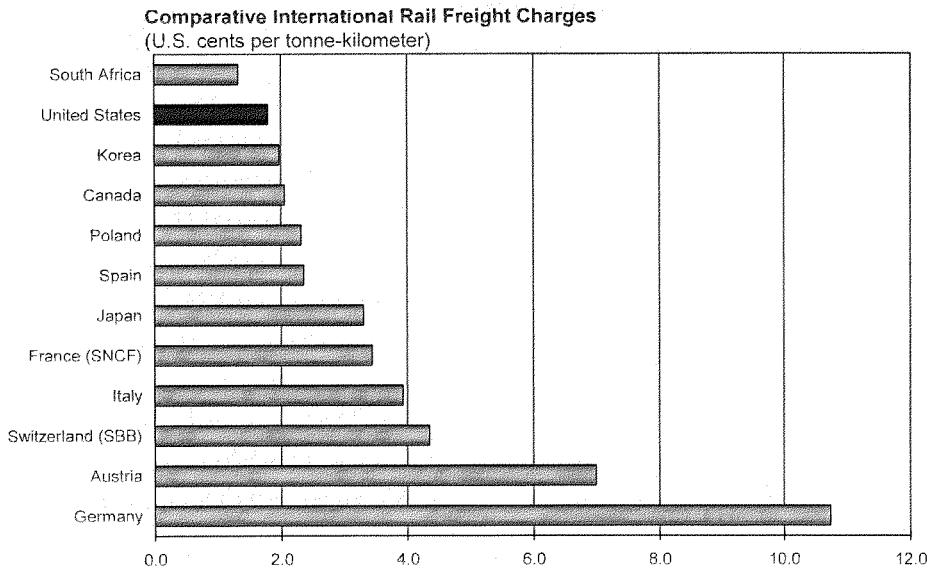
Top 10 World Rail Systems (by tkm): Employee Productivity
Available 2005 data



Source: World Bank Railways Database, May 2007. Employee productivity = tkm+pkm per employee.

Low freight rates

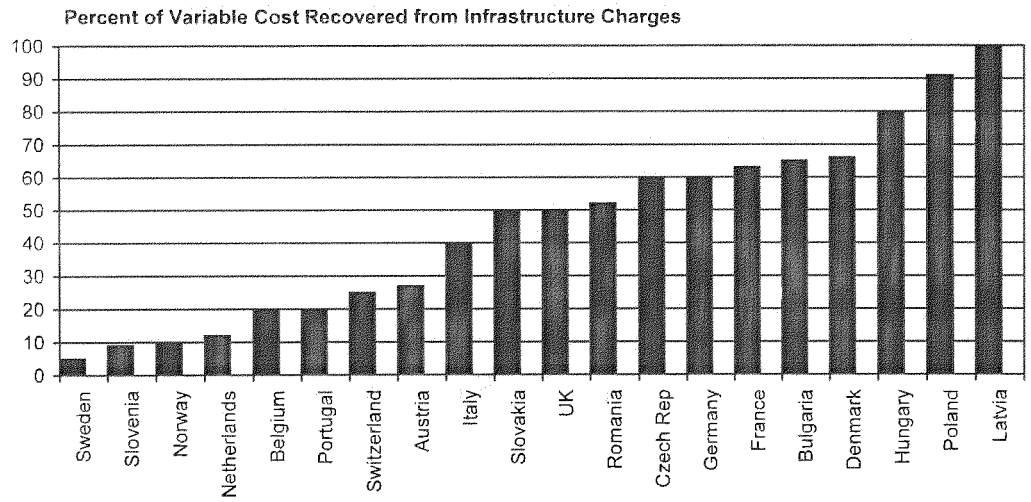
... And at some of the lowest freight rates in the world – benefiting both shippers and the economy as a whole.



Source: UIC International Railway Statistics 2005, Rail in Canada 2005, Oliver Wyman analysis.

No taxpayer funding

The U.S. freight railroads also require no taxpayer funding, unlike rail systems in most developed countries, which due to regulatory and market forces are unable to cover even their variable infrastructure costs.



Except for the United States, Canada, and to some extent Mexico, no rail system anywhere in world survives without direct or indirect support from the government and taxpayers.

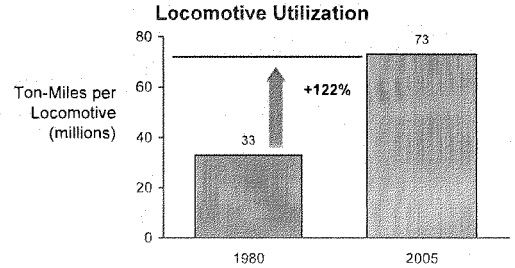
Source: Lou Thompson, Railways Advisor, The World Bank Transport Forum, Washington, DC March 10, 2005.

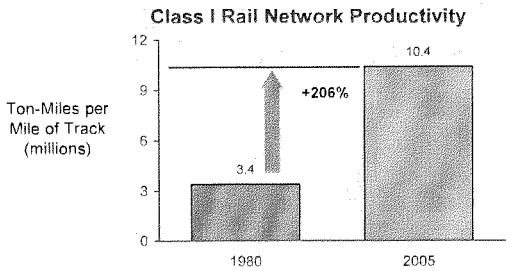
Highly productive

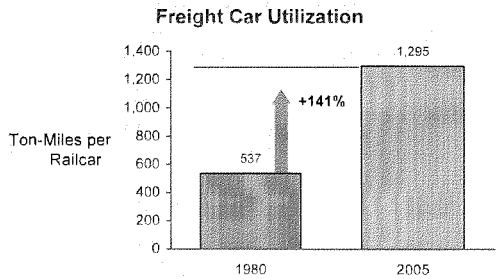
This performance is the result of aggressive efforts to improve productivity…

From 1980 to 2005:

- Railroads reduced their railcar fleets by 23 percent, while increasing railcar productivity by 141 percent.
- Railroads reduced their locomotive fleets by a third, while increasing locomotive productivity by 122 percent.
- Class I railroads reduced their networks by 39 percent, while increasing network productivity by 206 percent.
- **At the same time, rail transport performance increased by almost 85 percent, from 919 billion ton-miles in 1980 to 1,696 billion ton-miles in 2005.**

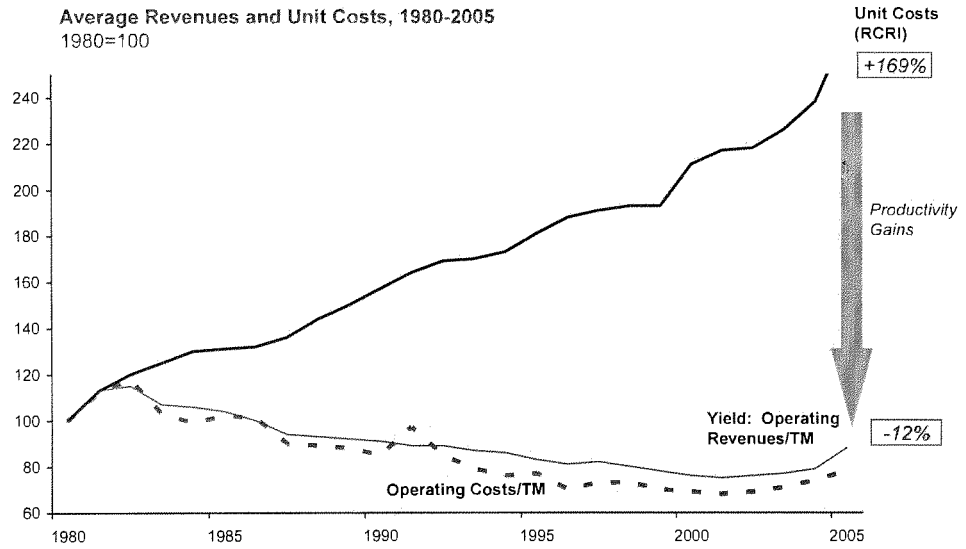






Source: AAR, Oliver Wyman analysis.

Cost efficient
...keeping operating costs and rates down, despite soaring input costs.



Most of the "low-hanging fruit" in terms of productivity has been captured, however, and significant investment will be needed to generate further productivity improvements (e.g., technology investments to move from two-man to one-man crews).

Source: AAR, Oliver Wyman analysis.

Attractive to private investment

Thanks to continuous improvement in financial performance since1980, the railroads have attracted the capital necessary to expand and improve services to shippers.

Top 25 Investors in Major U.S. Railroads

Institutional Investor	BNI	UNP	CNI	CSX	NSC	CP	GWR	KSU	Grand Total
Barclays Global Investors	$980M	$923M	$522M	$569M	$876M	$298M	$31M	$96M	$4.3B
Berkshire Hathaway, Inc	$2.8B	$1.1B			$322M				$4.2B
Marsico Capital Management, LLC	$2.3B	$1.5B					$78M		$3.9B
Dodge & Cox Inc		$2.8B				$150M			$3.B
UBS Global Asset Management	$2.5B			$529M					$3.B
The Vanguard Group, Inc.	$777M	$743M		$497M	$539M		$23M	$74M	$2.7B
State Street Corporation	$775M	$672M		$537M	$611M				$2.6B
FMR Corporation	$1.6B		$647M						$2.2B
Capital Research and Management Company	$473M	$1.2B			$557M				$2.2B
Cascade Investment, L.L.C.			$1954M						$2.B
Atticus Capital LP		$628M		$503M	$515M				$1.6B
Deutsche Bank Aasset Management				$789M	$387M				$1.2B
Jarislowsky Fraser, Ltd.			$953M						$1.B
The TCW Group, Inc.				$896M					$896M
JP Morgan Chase & Company					$809M				$809M
NWQ Investment Management Company, LLC		$799M							$799M
Goldman Sachs Group Inc				$763M					$763M
Merrill Lynch & Co., Inc.				$753M					$753M
McLean Budden Ltd.			$719M						$719M
The Children's Investment Fund				$713M					$713M
I.G. Investment Management, Ltd.			$702M						$702M
RBC Asset Management, Inc.			$695M						$695M
Mackenzie Financial Corporation			$677M						$677M
Wellington Management Company, Llp			$523M				$136M		$658M
T. Rowe Price Associates		$549M					$80M		$628M
Top 25 Institutional Investors	$12.2B	$10.9B	$7.4B	$6.5B	$4.6B	$448M	$348M	$170M	$42.6B

Source: Amounts shown are as of March 31, 2007, as reported by Yahoo Finance.

Sufficient competitive mechanisms

CP's investment in the DM&E, potentially adding a third player to the Powder River Basin, shows that the private sector has the financial wherewithal and ability to increase competition, where railroads are able to justify the investment.[1]

- **February 26, 2007** (Washington, DC): Federal Railroad Administrator Joseph H. Boardman today denied a $2.3 billion Railroad Rehabilitation and Improvement Financing (RRIF) loan application from the Dakota, Minnesota, & Eastern (DM&E) railroad, concluding it posed an unacceptably high risk to federal taxpayers.

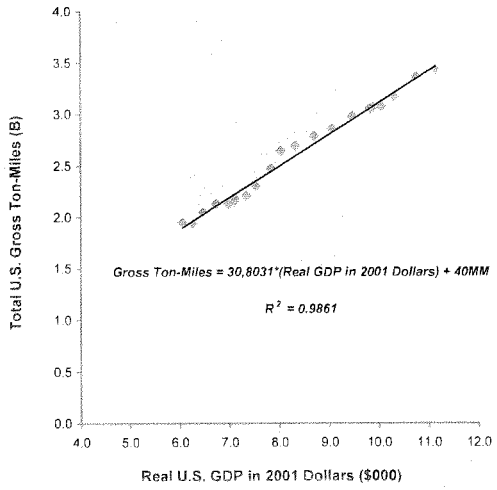
- **September 6,2007:** "CP Rail sees future in coal with U.S. railway takeover; agrees to pay $1.48 billion U.S. for DM&E Railroad in a deal that could offer access to low-sulphur coal." The Toronto Star. Canadian Pacific Railway Ltd., which barely a month ago was in the crosshairs of a potential buyer, has emerged as a hunter with a $1.48 billion (U.S.) acquisition of the Dakota, Minnesota & Eastern Railroad Corp.

[1]Note: CP has not committed to build-out into the PRB, but may do it if ROI dictates. The CP Board will ultimately decide and has sole discretion.

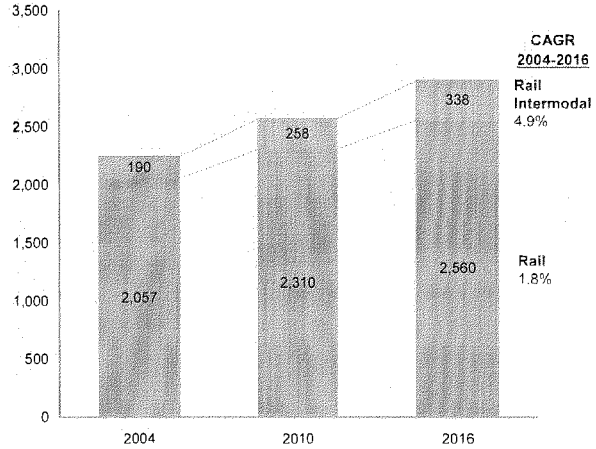
Need to meet traffic growth

The U.S. freight rail network will face unprecedented growth in coming years, however. Capacity expansion will have to be funded either privately or by government – or capacity will have to be rationed.

Gross Ton-Mileage as a Function of Real GDP
Data points from 1985-2005



Forecast Rail Freight Tonnage Growth
Millions of tons, 2004-2016

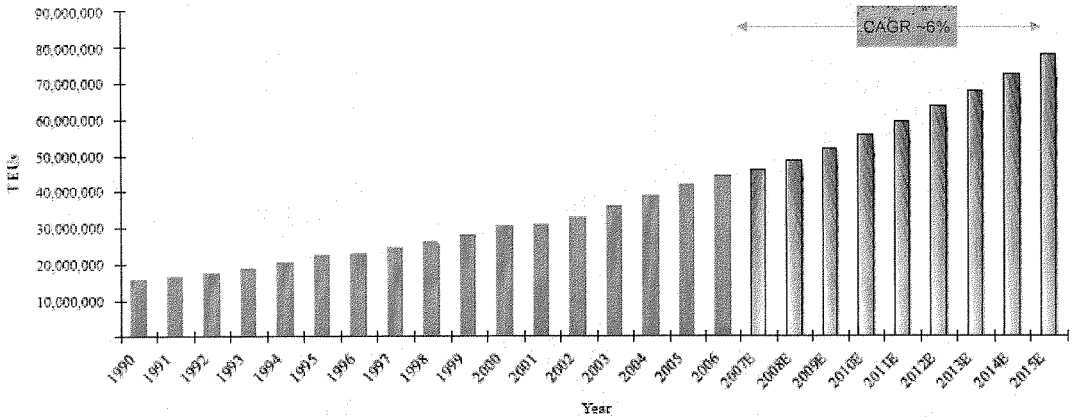


Source: U.S. Freight Transportation Forecasts to 2016; American Trucking Association, 2005; Budget and Economic Outlook, Congressional Budget Office, 2006, Oliver Wyman analysis.

Need to meet traffic growth: Intermodal

Intermodal growth (mainly container imports) is a key component of projected freight traffic. Total U.S. container traffic is projected to grow at ~6 percent annually over the near term – faster than GDP – requiring investment in infrastructure serving ports and key markets.

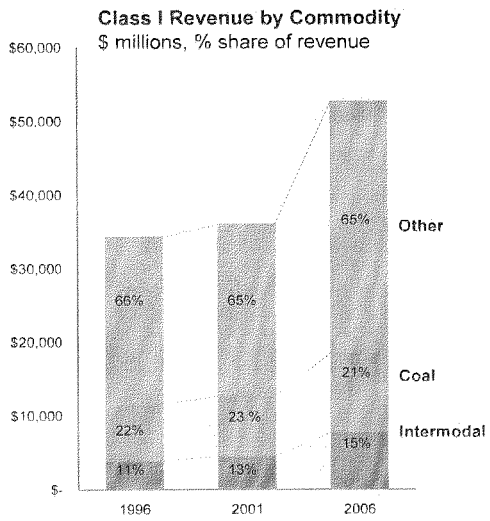
Total U.S. Container Traffic, Historical and Forecast, 1990-2015E

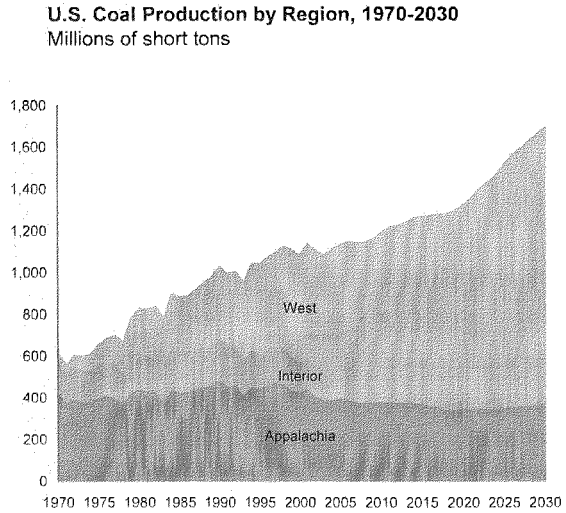


Source: American Association of Port Authorities, TTX, and Stifel Nicolaus.

Need to meet traffic growth: Coal

Coal accounted for 21 percent of Class I revenue in 2006. Coal production is projected to increase by over 45 percent from 2006 to 2030 and will require infrastructure investment not only in the PRB but at major junctions and servicing points.



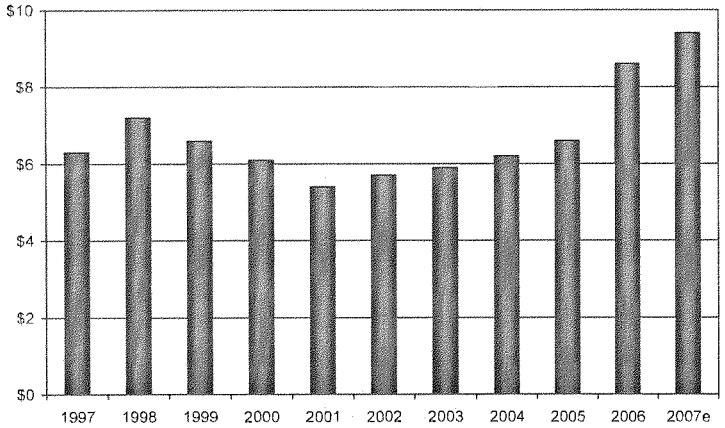


Source: Lefthand chart: 2006 Freight Commodity Statistics. Note: Intermodal is solely miscellaneous mixed shipments, additional intermodal traffic is included in other commodity groups. Righthand chart: Energy Information Administration Annual Energy Outlook 2007 with Projections to 2030.

Increasing capital investment

To deal with this growth, railroads are utilizing their improved earnings to expand reinvestment in the system – annual capital investment increased by 49 percent over the past decade.

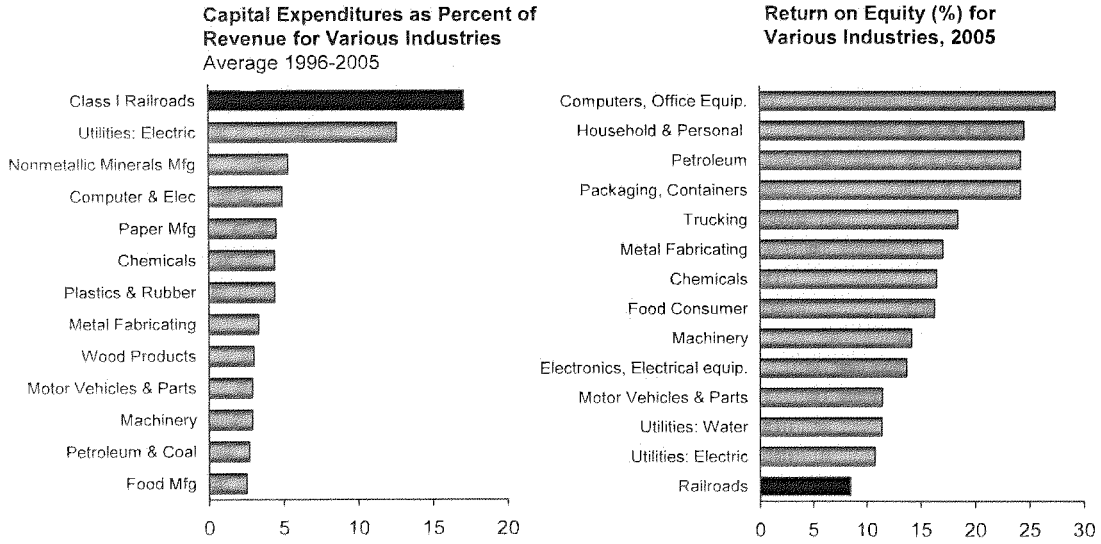
U.S. Railroad Investment, 1997-2007E
$ billions



Source: AAR, Oliver Wyman analysis.

Capital intensive, but low returns

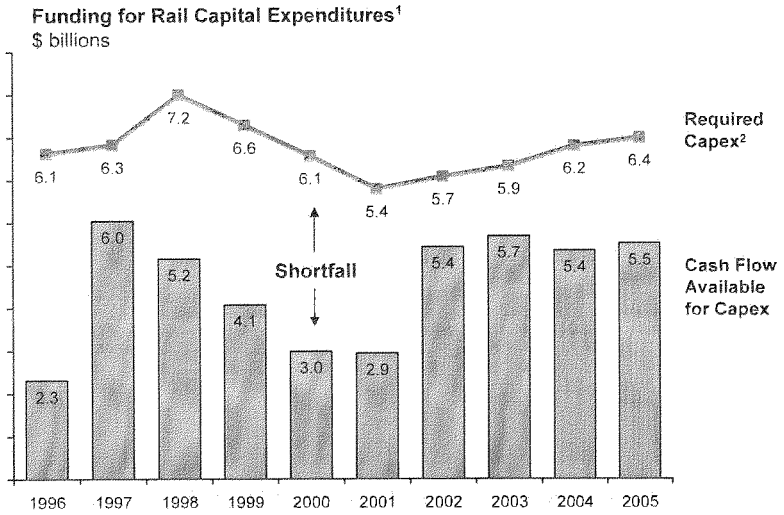
Railroads are arguably one of the most capital intensive industries in the United States, but have among the lowest return on equity.



Source: Lefthand chart: U.S. Census Bureau. Righthand chart: Value Line 2005. Industries are not exact matches across charts due to different data sources.

Funding shortfall

As a result, railroads have not been able to fund all of their capital investment requirements from cash flow, and thus must rely on third-party investment.



1 Cash Flow = Net Income + Depreciation + Deferred Taxes +/- Subsidiary Adjustment – Dividends – Debt Repayment.
2 Equipment and roadway and structures only.
Source: AAR Ten Year Trends, Oliver Wyman analysis.

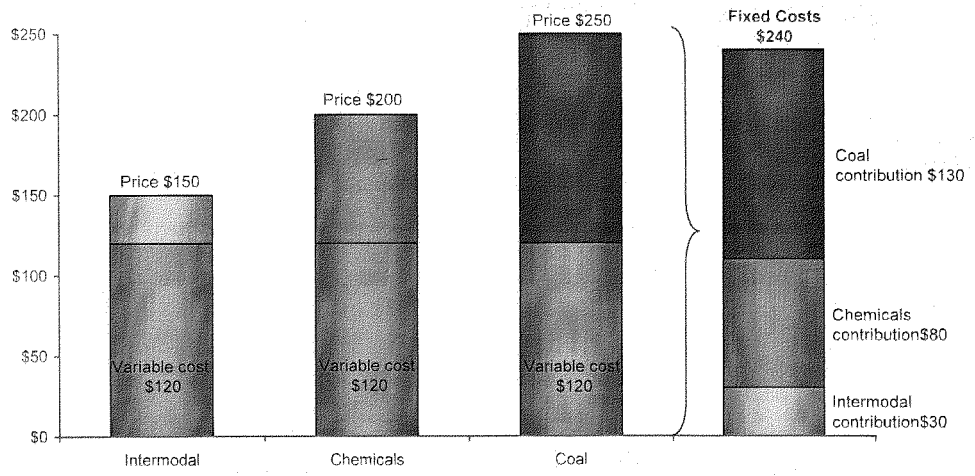
Differential pricing

Differential pricing is key to railroads' continuing ability to meet their fixed costs while generating the capital needed for reinvestment.

Currently, commodities are priced to reflect market demand and competition, and so contribute different amounts to fixed costs. Systemwide costs, however, are met.

Illustrative

Case A: Differential Pricing of Commodities

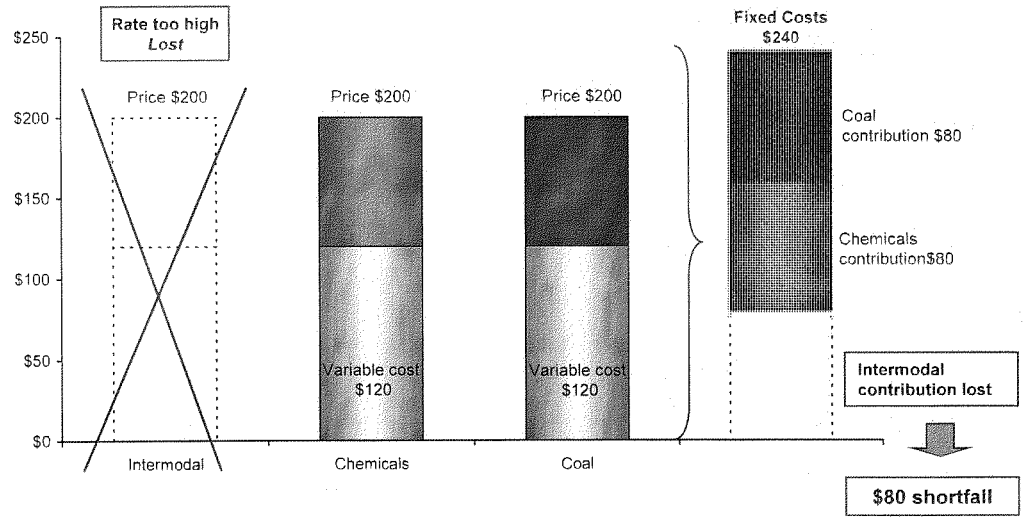


Differential pricing

If differential pricing were to be abandoned in favor of cost-based ratemaking, rates would become too high for some commodities, which would then be diverted to a competitive alternative.

Illustrative

Case B: Initial Impact of Cost-Based Ratemaking

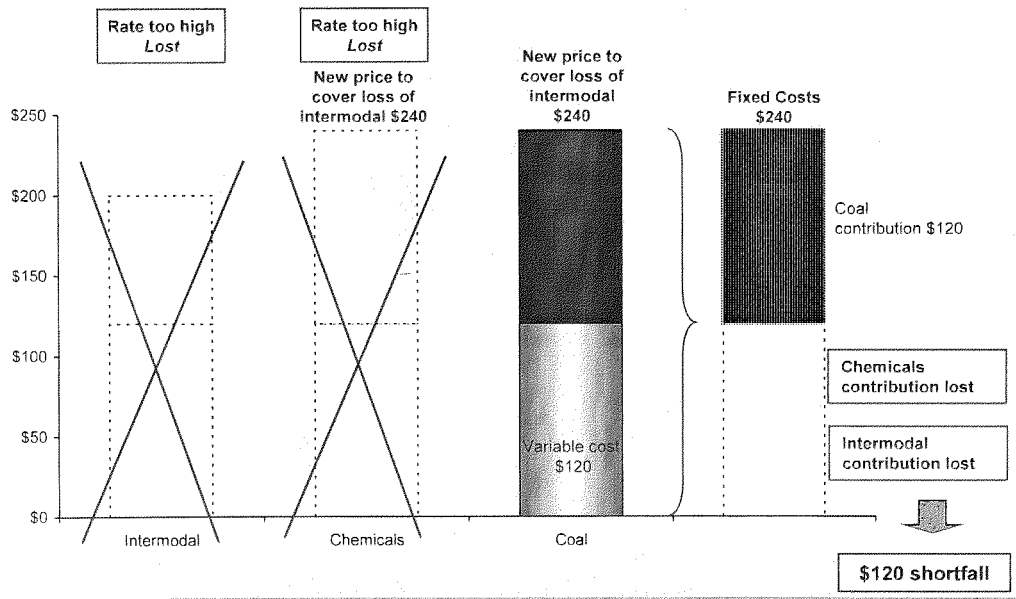


Differential pricing

A "domino effect" would then ensue, as the rate on remaining commodities would have to be raised to cover the revenue shortfall from the initial loss of traffic – resulting in even more traffic being diverted.

Illustrative

Case C: Secondary Impact of Cost-Based Ratemaking

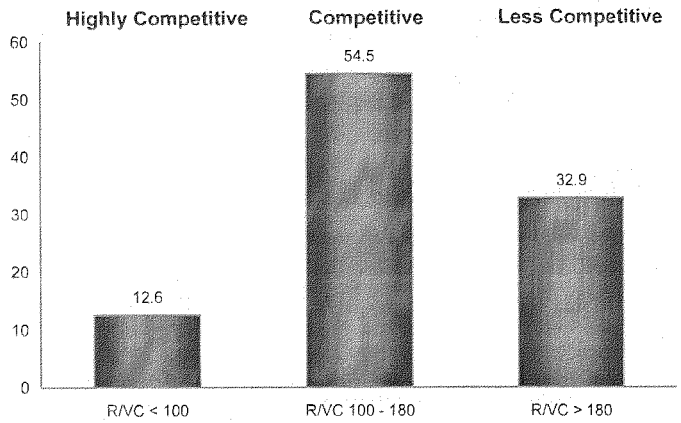


Revenue to variable cost ratio

Contribution is defined by the revenue to variable cost (R/VC) ratio. Higher R/VC ratios for less competitive traffic enable R/VC ratios to be set lower for highly competitive traffic, while ensuring railroads' revenue adequacy.

Distribution of Shipment Revenues by Revenue-to-Variable Cost Ratio[1]

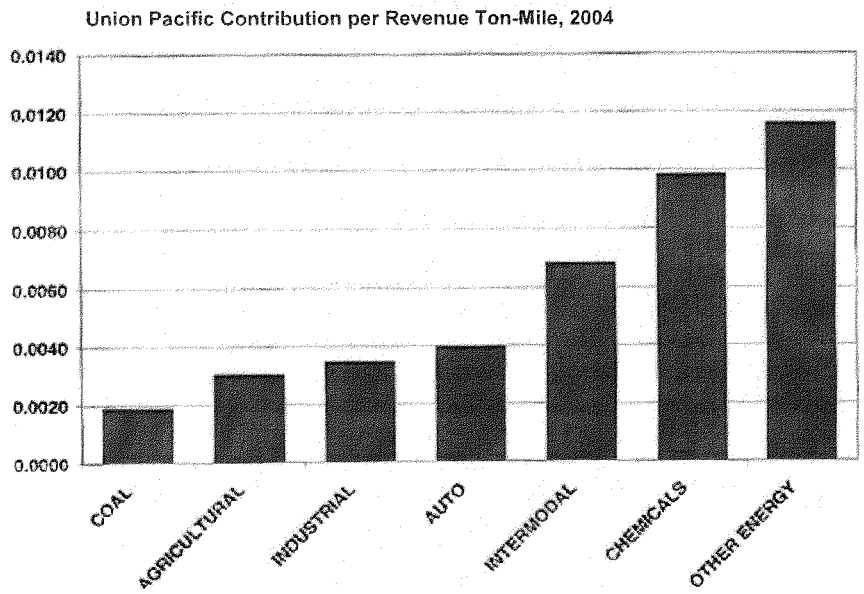
Percentage of total revenues in 2003



[1]Total U.S. Summary of Revenues, Variable Costs (URCS Costs - Utilizing Current Cost of Capital) R/VC and the Distribution of Revenues According to each Shipments' Revenue to Variable Cost Ratio for Selected Commodity Groups - Based Upon Waybill Data – 2003, Surface Transportation Board.

Contribution

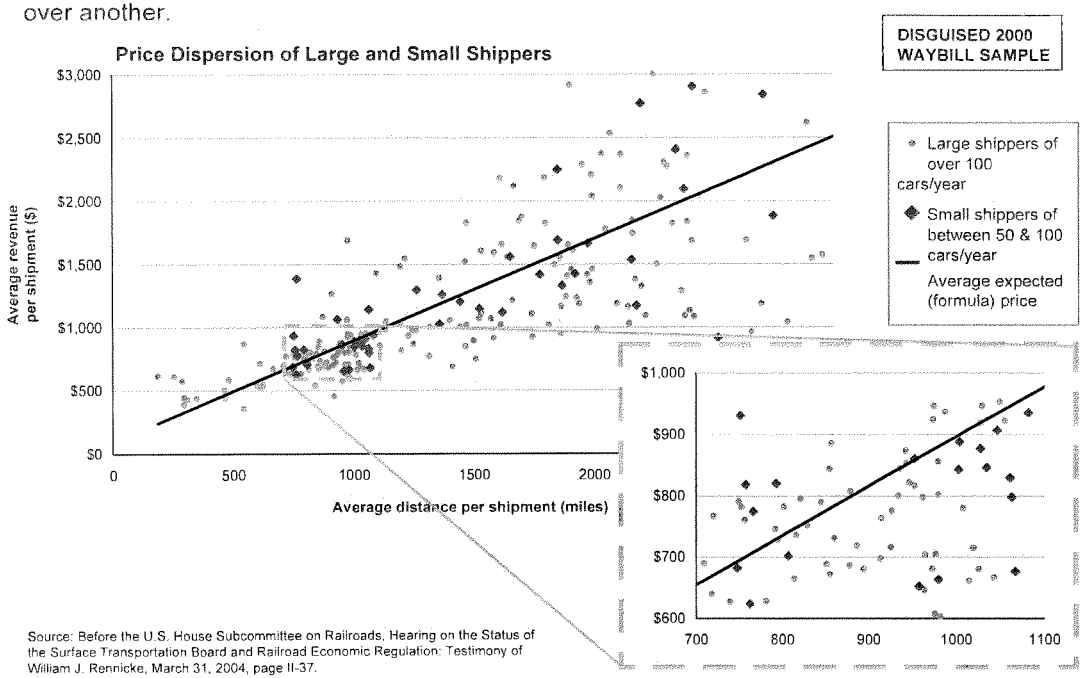
Under differential pricing, various commodities will produce different contributions, based on the unique characteristics and competitive position of each industry.



Source: STB Ex Parte No. 657 (Sub No. 1), Opening Submission of the Union Pacific Railroad Company, May 1, 2006, Exhibit TCH-6.

Non-discrimination of pricing

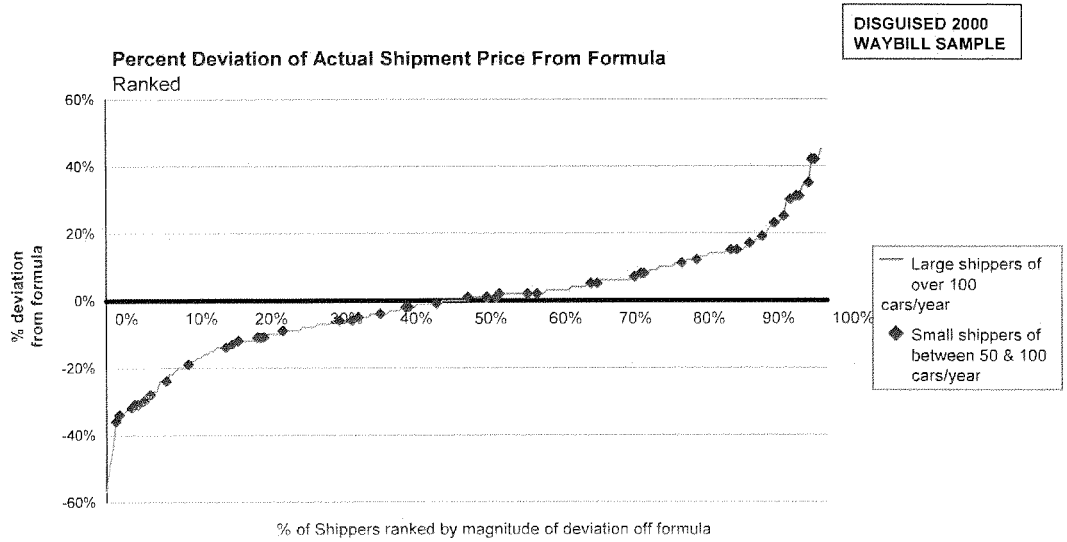
Under differential pricing practices, whether as a result of competition or the lack of it, rates charged to both large and small shippers for the same commodity group indicate that there does not seem to be a pattern of preferential or discriminatory pricing that favors one group over another.



Source: Before the U.S. House Subcommittee on Railroads, Hearing on the Status of the Surface Transportation Board and Railroad Economic Regulation: Testimony of William J. Rennicke, March 31, 2004, page II-37.

Non-discrimination of pricing

Comparison of actual freight rates with expected (formula) prices indicates that there is no pattern of preferential pricing for any one group. Any shipper, large or small, is just as likely to receive discounts or pay a premium price.



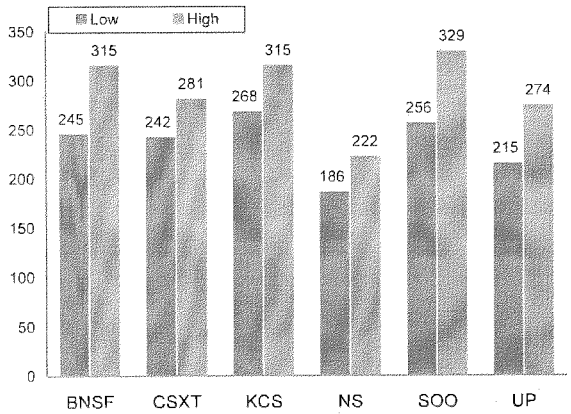
Source: Before the U.S. House Subcommittee on Railroads, Hearing on the Status of the Surface Transportation Board and Railroad Economic Regulation: Testimony of William J. Rennicke, March 31, 2004, page II-38.

Required markups

The size of markups above variable cost required on potentially captive traffic (R/VC>180) indicates that the carriers are experiencing major revenue shortfalls for traffic at or below 180.

Range of RSAM Mark-Up Percentages (2001-2004), With and Without Efficiency Adjustment

Percentage of Variable Costs



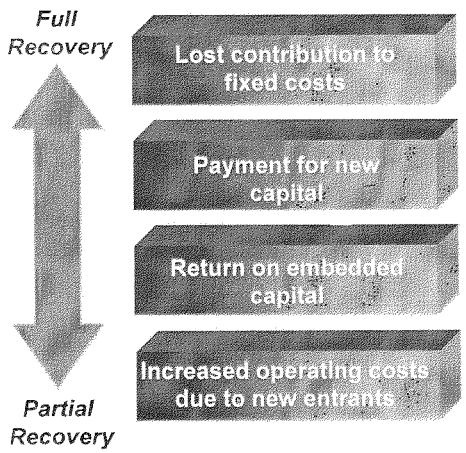
- The revenue shortfall allocation method (RSAM) is used by the STB to determine the average markup above variable cost that a carrier would need to charge potentially captive traffic (R/VC>180) to recover all of its un-attributed costs and become revenue adequate.
- RSAM demonstrates that, given the size of the markups required, there must be a substantial revenue shortfall on traffic that is at or below 180 for the major carriers.
- The HR 2125 legislation will have the effect of cutting off charges above 180, or all of the revenue covered in the RSAM consideration.

Source: STB Ex Parte No 347 (Sub-No. 2) Decided April 24, 2006.

Impact on the railroads of a rate cap

A rate cap of 180 R/VC would result in significant lost contribution, reducing the ability of railroads to recover their fixed and variable costs and to fund capital investments.

Layers of Cost and Value Recovery for Railroads



Failure to make the railroads whole for these layers could result in:

- Effective subsidization of shippers and competitors
- The need for additional government funding to maintain the rail network (or increase funding for highways as rail loses traffic to trucking)
- Reduced competitiveness for some economic sectors (rail forced to drop traffic due to rate caps, fewer transport choices for shippers)

Appendix: 2003 R/VC ratios

Total U.S. summary of revenues, variable costs (URCS costs - utilizing current cost of capital), avg. R/VC and the distribution of revenues according to each shipments' R/VC ratio for selected commodity groups – based upon Waybill data – 2003

Commodity Group	Revenue (000s)	Percent of Total	Variable Cost (000s)	Average R/VC Ratio	Percent of Commodity Revenue in Each R/VC Cell: R/VC < 100	R/VC 100-180	R/VC > 180
Farm products	2,903,486	7.32	1,947,197	149.11	8.68	56.96	34.35
Forest products	6,002	0.02	4,849	123.77	14.43	56.87	28.70
Fresh fish or other marine prod	5,725	0.01	4,546	125.93	5.12	78.91	15.97
Metallic ores	414,654	1.05	286,293	144.84	12.85	45.18	41.97
Coal	7,978,478	20.13	5,049,330	158.01	5.32	54.77	39.91
Crude petroleum nat. gas gasoline	16,624	0.04	9,702	171.34	0.00	58.69	41.31
Non metallic minerals	1,115,617	2.81	806,075	138.40	14.36	56.46	29.18
Ordinance or accessories	14,054	0.04	5,018	280.03	2.59	20.71	76.70
Food and kindred products	2,782,707	7.02	2,214,922	125.63	18.28	61.83	19.89
Tobacco products	757	0.00	914	82.82	87.30	9.29	3.40
Textile mill products	12,485	0.03	10,235	121.98	16.48	72.22	11.30
Apparel - finished textile prod.	113,307	0.29	78,919	143.57	7.40	60.32	32.28
Lumber and wood (except furniture)	1,791,389	4.52	1,517,133	118.08	21.06	65.76	13.18
Furniture and fixtures	56,030	0.14	36,715	152.61	8.27	49.14	42.59
Pulp, paper and allied products	1,811,304	4.57	1,516,435	119.44	20.64	64.84	14.52
Printed matter	26,958	0.07	16,825	160.22	6.96	42.14	50.90
Chemicals	5,027,209	12.68	2,793,333	179.97	5.58	35.44	58.98
Petroleum or coal products	1,182,199	2.98	712,081	166.02	7.45	42.12	50.44
Rubber and misc plastics	104,305	0.26	74,561	139.89	10.59	57.82	31.59
Leather or leather products	3,475	0.01	2,206	157.53	5.53	58.06	36.41
Stone, clay and glass products	1,306,355	3.30	864,388	151.13	7.72	53.72	38.56
Primary metal products	1,410,165	3.56	1,094,542	128.84	16.19	67.79	16.03
Fabricated metal products	47,376	0.12	29,380	161.25	10.58	45.11	44.32
Machinery except electrical	65,100	0.16	35,909	181.29	6.64	41.45	51.92
Electrical machinery or equipment	185,326	0.47	129,325	143.30	19.66	39.49	40.86
Transportation equipment	3,870,917	9.77	3,057,946	126.59	17.62	64.72	17.67
Instruments or photographic goods	4,913	0.01	2,605	188.59	4.55	27.87	67.58
Misc. Products of manufacturing	50,427	0.13	32,046	157.36	10.39	41.29	48.32
Waste or scrap materials	801,482	2.02	678,762	118.08	23.01	52.83	24.16
Misc. freight shipments	248,009	0.63	135,156	183.50	3.21	47.14	49.65
Containers returned empty	520,093	1.31	606,879	85.70	55.41	34.60	9.99
Freight forwarder traffic	229,483	0.58	134,818	170.22	7.02	33.29	59.69
Shipper association traffic	14,587	0.04	11,358	128.43	18.10	51.56	30.34
Misc. mixed shipments ex. forward	5,241,462	13.22	3,975,461	131.85	16.75	57.79	25.46
Less than carload traffic	134,460	0.34	64,324	209.03	0.98	17.10	81.93
All other categories	142,667	0.36	89,243	159.86	6.04	43.71	50.25
Total All Commodities	39,639,603	100.00	28,029,448	141.42	12.61	54.54	32.86

Source: Surface Transportation Board

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Appendix: 1993 R/VC ratios

Total U.S. summary of revenues, variable costs (URCS costs - utilizing current cost of capital), avg. R/VC and the distribution of revenues according to each shipments' R/VC ratio for selected commodity groups – based upon Waybill data – 1993

Commodity Group	Revenue (000s)	Percent of Total	Variable Cost (000s)	Average R/VC Ratio	Percent of Commodity Revenue in Each R/VC Cell: R/VC < 100	R/VC >100-<140	R/VC >140-<180	R/VC > 180
Farm products	2530181	8.47	1957253	129.27	19.49	34.28	20.43	25.81
Forest products	15687	0.05	16072	97.59	36.44	34.79	17.36	11.42
Fresh fish or other marine prod	2302	0.01	4831	47.63	75.30	24.70	0.00	0.00
Metallic ores	497378	1.67	312170	159.33	8.16	19.47	23.78	48.58
Coal	6325595	21.18	3628287	174.34	2.26	18.98	25.01	53.75
Crude petroleum nat. gas gasoline	33176	0.11	26985	122.92	14.74	28.69	50.22	6.35
Non metallic minerals	873511	2.93	695007	125.68	28.56	33.30	24.27	21.27
Ordinance or accessories	22172	0.07	12785	173.42	5.83	17.57	19.26	57.34
Food and kindred products	2315909	7.76	2152216	107.61	33.99	37.83	15.92	12.34
Tobacco products	2724	0.01	3537	77.45	74.24	15.71	4.05	0.00
Textile mill products	9980	0.03	10104	98.77	48.80	34.54	7.63	9.03
Apparel - finished textile prod.	13872	0.05	13921	99.65	39.17	31.06	16.89	12.89
Lumber and wood (except furniture)	1185617	3.97	1214351	106.40	32.84	40.63	18.51	8.02
Furniture and fixtures	53535	0.18	57721	92.75	47.57	36.52	9.60	5.91
Pulp, paper and allied products	1481286	4.96	1219967	121.42	18.75	43.02	26.41	11.82
Printed matter	32844	0.11	34457	95.32	44.76	34.91	9.71	10.63
Chemicals	3951463	13.23	2532426	156.03	10.65	18.91	22.97	47.46
Petroleum or coal products	907802	3.04	658366	137.89	14.97	38.38	24.10	30.54
Rubber and misc plastics	102913	0.34	115235	88.92	52.01	32.72	9.92	5.35
Leather or leather products	6488	0.02	8954	72.46	88.84	7.87	1.72	1.56
Stone, clay and glass products	993897	3.33	718996	138.23	10.74	34.17	28.95	26.15
Primary metal products	986059	3.30	798218	123.53	21.50	34.25	23.10	21.16
Fabricated metal products	51648	0.17	47612	108.46	41.62	23.73	7.60	27.05
Machinery except electrical	62933	0.21	50476	124.68	23.31	29.94	19.80	26.95
Electrical machinery or equipment	151897	0.51	151539	100.24	47.35	33.37	6.76	12.13
Transportation equipment	2980285	9.98	1851547	160.96	9.13	15.98	32.13	52.56
Instruments or photographic goods	2597	0.01	2956	87.85	57.58	31.97	8.03	2.42
Misc. Products of manufacturing	36071	0.12	42679	84.52	63.26	26.48	4.96	5.31
Waste or scrap materials	602569	2.02	531555	113.36	26.71	36.35	22.99	13.95
Misc. freight shipments	134372	0.45	88973	151.03	9.41	20.83	26.66	43.10
Containers returned empty	192617	0.65	378861	50.84	83.68	10.84	1.89	3.58
Freight forwarder traffic	55862	0.19	53398	104.61	33.25	35.73	15.67	15.35
Shipper association traffic	43732	0.15	49121	89.03	53.86	29.05	13.37	4.52
Misc. mixed shipments ex. forward	3062002	10.26	3765232	80.91	59.45	29.78	8.41	2.45
Less than carload traffic	34259	0.11	29947	114.78	26.16	31.55	21.46	20.83
All other categories	106149	0.36	76463	138.81	7.15	44.19	36.48	12.18
Total All Commodities	29862136	100.00	22232603	128.54	19.85	27.98	21.82	32.05

Source: Interstate Commerce Commission

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Testimony of

Gary W. Spitzer

Vice President/General Manager DuPont Chemical Solutions Enterprise
E. I. du Pont de Nemours and Company
1007 Market Street
Wilmington, DE 19898
302-774-1000

Before the
House Transportation
And Infrastructure Committee

"Rail Competition and Service"

September 25, 2007

Chairman Oberstar and distinguished Members of the Committee, my name is Gary Spitzer. I am the Vice President and General Manager for DuPont Chemical Solutions Enterprise. In this role, I lead a global business in a segment of our company. DuPont provides products and services to a large number of markets including agricultural products, construction, industrial chemicals, energy, manufacturing, health care, transportation, and homeland security. Thank you for this opportunity to speak today.

A competitive and efficient rail distribution system is vital to DuPont and its absence is adversely affecting our ability to operate in the United States and compete in the global market. I am here to explain why DuPont and other similar companies consider enactment of H.R. 2125, the Rail Competition and Service Improvement Act of 2007, critical to our great Nation's economic growth. DuPont also supports legislation such as H.R. 1650, which would subject the railroads to the same antitrust provisions that govern the conduct of other participants in the free enterprise system.

DuPont is a global corporation founded 205 years ago on the banks of the Brandywine River in Wilmington, Delaware. Initially, DuPont made only one product, black powder. A century later, its focus shifted to chemicals, materials and energy. In our third century, we are bringing together biology and chemistry to meet societal needs for safe and abundant food, alternative fuels, and other sustainable solutions to enable a better, safer and healthier life for people everywhere. DuPont has revenues of over $27 billion a year, with 135 manufacturing and processing sites in 70 countries and over 60,000 employees. In the United States alone, DuPont employs about 36,000 workers in 33 states.

One thing has remained unchanged throughout the history of DuPont – our uncompromising commitment to safety. Our Company's founder, E. I. du Pont, built safety into the very fabric of DuPont culture by living, and requiring managers to live, on the Company's first manufacturing sites. That culture and clear personal accountability remain just as strong today. Safety forms the foundation for every system and process, including transportation, in DuPont. Indeed, our safety culture has been the underpinning for many DuPont products through the years. Our discovery of nylon, for example, made safer parachutes for D-Day, and our development of Neoprene®, a synthetic rubber, made military transportation easier and safer. Today, products such as DuPont Kevlar® high-performance fiber, which is credited with the survival of over 3,000 law enforcement officers in the United States over the last thirty years, help save lives. In addition to being used for body armor, Kevlar® is used for vehicle armor, for aircraft parts, bridge construction, fiber optic cable and numerous other functions. Another DuPont fiber, Nomex®, is used for personal protection by first responders, including firefighters. Our Sentry-glass® technology helps to protect both private citizens in skyscrapers and other structures around the world and government employees at critical governmental installations such as the Pentagon and U.S. Embassies.

America's freight trains have been vital to DuPont operations since 1858 when the Pennsylvania Railroad first transported our products. They remain essential to our business

today. To produce Kevlar®, Nomex® and many of our other products, DuPont requires a vast array of chemicals, some regulated by the Department of Transportation (DOT) and some not. Quite often, due to their composition, characteristics or volume, these chemicals must be transported by rail. Therefore, a safe, efficient, cost-effective, and responsive rail transportation system is critical to my business, the majority of businesses within DuPont, and our country's manufacturing community as a whole. Without such a system, we run the risk of no longer being able to manufacture some products within the United States, provide jobs to your constituents, or contribute exports to help balance our Nation's trade deficit.

Our Nation's defense, international trade and domestic economy are also largely dependent on a safe, financially healthy and efficient, domestic rail system. Our economy requires carriers, in all modes of transportation, that can compete in a balanced marketplace and earn a fair return on their investment. Competitive and efficient carriers should be able to earn their cost of capital and attract investment dollars while providing real value to their customers. The railroads have, over the years, provided such value to DuPont and other customers. They have also, at times, acted in ways which harmed their customers and the economy. We are now in one of the latter periods.

When Congress passed the Staggers Act in 1980, there were over 40 Class I railroads competing for business. Today, after more than 50 mergers and consolidations, there are only seven Class I railroads in North America, and four of them control over 95 % of the railroad business. This unprecedented consolidation has resulted in entire states, regions, and industries becoming captive to a single railroad. This level of concentration and the lack of competition resulting in poor and unpredictable service and monopoly pricing were not envisioned by Congress when it reformed the applicable laws in 1980. Nor were they contemplated by companies such as DuPont.

Value is what DuPont and other rail customers expect from their supply chain participants. Value is reflected in the superior service that carriers would offer in a truly competitive environment. Value is continuous improvement and innovation. In the context of rail transportation, value is reliable, consistent transit times. Value is the delivery of services that keep customers competitive in the markets they serve. The inconsistency and lack of predictability in transit time that characterize rail service today translate into added cost and competitive disadvantage. They force shippers to add otherwise unnecessary (and expensive) rail cars to their fleets and to either hold more inventory at the point of manufacture or ship it into an already congested network. This increases costs for everyone and exacerbates the congestion problems that rail customers battle regularly and the carriers seek public funds to alleviate.

Congress also did not envision that captive rail customers would be left unprotected by the Surface Transportation Board ("STB"), the very agency charged with ensuring that the freight rail marketplace did not become the federally protected monopoly it is now. Rail customers who have sought the STB's assistance in helping them realize the fair play of competition, instead remain dependent on monopoly service. As a result, they have little if any

redress for the non-responsiveness and mediocre service provided by the railroads at exorbitant prices. This is certainly the case for DuPont, which is captive at thirty-two out of thirty-nine U.S. rail shipping sites and at many of its customers' sites. The results are increased costs that make us less competitive, and unreliable transportation of raw materials and finished products into and out of our sites.

The potential impact of mediocre rail service and cost increases is illustrated by our experiences at the DuPont Spruance facility in Virginia. DuPont Spruance is our largest manufacturing facility in North America and employs more than 2,600 people. It is where we produce Kevlar®, the life-saving fiber used for body armor for our troops now in Iraq and Afghanistan, as well as by law enforcement personnel throughout the United States. DuPont is captive to CSX at Spruance – no other railroad serves the plant and there is no practical alternative form of transport for on-time delivery of raw materials into the facility. On several occasions during the past 15 months we have seen shipments of essential raw materials run more than 5 days late. While shutdowns were avoided through collaboration between DuPont and the railroad, we came uncomfortably close to delays that could hinder production. Mr. Chairman, as I am sure you and the other members of the Committee appreciate, any curtailment in production could lead to a shortage of body armor essential to our troops as well as subject DuPont to potential penalties under the Defense Production Act of 1950.

In addition to making DuPont extremely vulnerable to transportation delays at Spruance, the Company's captivity to one rail carrier there also threatens our competitiveness and increases the costs incurred by both local governments and the Federal government to acquire Kevlar®, Nomex® and Tyvek®, the third product made at the site. Recently, CSX increased the rates it charges DuPont to transport raw materials to Spruance by 9% to 102% depending on the specific move and product being transported. Although these increases bear no rational connection to the level of service being provided, DuPont had no alternative but to accept them and the consequent rise in the cost of goods sold to the U.S. military and law enforcement and fire protection agencies around the world. Those increases amount to over $2 million annually.

Ever-escalating rail rates without any commensurate cost improvement opportunities (such as faster and more consistent transit times) have driven companies out of certain businesses or forced them to seek lower cost solutions offshore. For example, a polyester fiber manufacturer in the southeastern United States has announced the closure of a plant that employs 260 people. DuPont supplied a raw material, ethylene glycol, for that plant. Recently, a carrier imposed a 42% increase in the rail rate to that captive destination. The added cost of inbound product would have increased the manufacturing cost, making this plant even less competitive when compared to offshore producers. Our customer will now import glycols from Taiwan and weave polyester fiber at another site. Two hundred and sixty workers at the plant lost their jobs, the community lost tax revenue, DuPont lost a customer, and the carrier that imposed a 42% rate increase lost 160 carloads of business each year.

Another DuPont customer located in Pennsylvania is similarly challenged to remain competitive versus imports. The customer manufactures a product essential to tire production. Its manufacturing facility is served by a short line railroad that connects with more than one

Class I rail carrier. However, the two DuPont plants from which we can ship to the customer are both captive to the same Class I railroad. Trucking is not a viable alternative for routine shipping of the regulated material involved. Recently, the Class I railroad increased the rate it charges DuPont to move the pertinent material by 78%, resulting in a $600,000 annual cost increase to our customer without any added value or benefit to anyone. As you know, the tire industry that remains in the United States is under severe competitive pressure from offshore producers despite the many recent press reports concerning quality and safety issues with imported tires. We must avoid another case where a company will shut its doors and our Nation will pay the price in lost jobs, a reduced tax and industrial base and increased trade deficit as more and more of the tires on our passenger cars and military vehicles are made abroad.

Carriers cannot claim ignorance concerning the specific potential impact of their price increases. During recent contract discussions, DuPont invited one of its carriers to business reviews with four of our strategic business units. During those reviews, DuPont presented data concerning the effect of proposed price increases on the business of DuPont and its customers, including the customer who ultimately shut down its plant. The extreme rate increases went forward unabated.

As the examples I have discussed demonstrate, the railroads are now prepared to take full advantage of their ability to impose monopolistic pricing even if they literally drive captive shippers like DuPont out of certain businesses. Developments since the enactment of the Staggers Act and its progeny confirm what my own experiences at DuPont suggest – that our economy would be better served by changing the current regulatory framework that enables the Class I railroads to operate as legally protected regional monopolies.

Congress enacted the Staggers Act because after the end of World War II, the nation's privately owned and operated rail infrastructure was permitted to decline, costs related to inefficient work practices and poor infrastructure were extremely high, service had suffered and safety-related incidents were on the rise. Competition from motor carriage and waterborne competitors had increased and, in 1980, less than half of the Nation's domestic freight traveled by rail. This contrasted markedly with figures which showed that in 1947 railroads were hauling three times as much tonnage as motor carriers.

Congressional concern was deepened by a 1978 Department of Transportation report to Congress which predicted that: "... the (rail) industry between 1976 and 1985 would have a capital shortfall of between 13.1 and 16.1 billion dollars ($16 to $20 billion in 1980 dollars)". The House Committee on Interstate and Foreign Commerce, citing the Department's report, concluded that: "There is no reason to believe that railroad, operating in the present regulatory environment will improve their earnings. Failure to overcome [this] ... will mean a continued deterioration in the railroad service which will have the effect of driving more shippers away from railroads...".

Congress concluded that the system had to change and, with the help of the rail community and industry, including DuPont, set out to accomplish that task. After considerable debate, Congress enacted the Staggers Act with the following stated goals:

(1) to assist the railroads of the Nation in rehabilitating the rail system in order to meet the demands of interstate commerce and the national defense;
(2) to reform Federal regulatory policy so as to preserve a safe, adequate, economical, efficient, and financially stable rail system;
(3) to assist the rail system to remain viable in the private sector of the economy, and
(4) to assist in the rehabilitation and financing of the rail system...

To help balance the new rights and protection afforded the railroads, Congress recognized the right of rail carriers and shippers to enter into contracts and provided for oversight of rail rates by the Interstate Commerce Commission (later replaced by the Surface Transportation Board).

It is clear that when it enacted the Staggers Act, Congress believed that existing competition between railroads and between modes of transportation would protect the consumer. The House Conference Report, which accompanied the Act, contains the following findings and rationale in support of the 1980 legislation:

> The Conferees find that historically the enactment of the Interstate Commerce Act was essential to prevent the abuse of monopoly power by railroads and to maintain a national railroad network as an essential part of the nation's transportation system. However, today, most transportation is competitive and many of the Government regulations affecting railroads have become unnecessary and inefficient. Nearly two-thirds of inter-city freight is transported by modes of transportation other than railroads. Earnings by the railroad industry are the lowest of any transportation mode and are insufficient to generate funds for the necessary capital improvements.... The industry's failure to achieve increased earnings will result in either further deterioration of the rail system or the need for additional Federal subsidy. Modernization of economic regulation of railroads, with greater reliance on the marketplace, is essential to achieve maximum utilization of railroads....

Times and the marketplace have changed and the issue now is whether the Staggers Act has accomplished its goals. Have the railroads been financially rehabilitated? Are they safer, more efficient, and economically stable? And, if the answers to these questions are positive, has the time come to reexamine the prerogatives afforded the rail community under the Act? Should the railroads continue to enjoy government "protection"? Or, should the rules and rigors of a competitive marketplace govern? And, what of the consumer, the user of railroad services? Will the marketplace protect the user or will the monopolistic behavior the railroads exhibited in the early 20th Century reassert itself? These are the questions the members of Congress will have to

ponder. The answers lie in our history and in the changing conditions of the emerging global marketplace.

The rail industry has enjoyed a veritable rebirth as a result of the Staggers Act. Railroads, with the support of their customers and approval of the Interstate Commerce Commission, began to abandon unproductive track. Small, less productive segments with high costs and low productivity were sold to independent entrepreneurs. Labor negotiations resulted in substantially improved work rule changes and a dramatic reduction in the rail labor force. Poor and badly maintained cars and related equipment were removed from the system and customers were required to bear the cost of their replacement. The promise of improved service, greater efficiency and lower cost encouraged large rail customers to comply with these new capital requirements and to enter into long term contracts that created financial stability and brought predictability to rail balance sheets. Renewed faith by Wall Street, fostered by the passage of the Staggers Act, related work rules, and balance sheet improvements, brought capital to invest in new, more efficient locomotive power, communications and control equipment and to rehabilitate rail infrastructure. Finally, consolidation of the Nation's rail system into larger and larger Class I railroads resulted first in a more balanced of market place and later in the emergence of market dominance by an elite few.

The time has come to remove the protections afforded the rail industry by the ICC and its successor the STB. This is the time for Congress to bring more balance to the relationship between shippers – particularly captive shippers such as DuPont – and rail carriers.

By any measure, today's railroads are able to compete for capital without further governmental protection. Rail infrastructure of the Class I railroads is in better condition now than at any time in history. Rail service has stabilized although it is still inconsistent despite reported record profits for the Class I railroads. New equipment and technology hold the promise of still further productivity improvement. Earnings and the balance sheets of the Class I railroads – especially when adjusted for merger premiums – have never been better and compare favorably with those of their biggest competitor - the motor carrier industry.

Railroads have become "stocks of interest" and sophisticated investors are seeing them as having a very favorable upside for earnings. Warren Buffet, for example, has recently purchased large amounts of rail common stock, another indication of the railroad industry's favorable financial outlook.

In January 2007, Union Pacific announced that it would buy back 20 million common shares (or 7% of the company's 270 million outstanding shares) and increase its dividend payment to shareholders by 17%. Similarly, CSX reported that it would buy back an additional $1 billion dollars of shares to bring its current repurchase program to over $3 billion (or over 15% of the company's outstanding stock). CSX also announced an increase of 25% in its annual dividend. In at least some instances the railroads are spending more to repurchase stock than they invest in infrastructure. CSX, for example, is reportedly spending an aggregate of only $1.3

- $1.4 billion on infrastructure in calendar years 2006 and 2007, while it intends to reward investors with $3 billion through stock repurchases during the three-year period ending on December 31, 2008.

The railroads' attractiveness to sophisticated investors derives in part from their ability to impose unfair monopoly pricing. Morgan Stanley recently noted that based on favorable rulings on two rate cases filed before the Surface Transportation Board "rails have much more pricing upside left under current regulatory guidelines. Yet another pro-rail ruling will also leave shippers frustrated and more reluctant to pay the $5-6 million cost to file rate disputes with the STB.... We believe that rate case filings could slow from here, and captive rates will need to go much higher before reaching any regulatory limits under current guidelines." Morgan Stanley concluded that: "Railroad customers who cannot switch transportation modes acknowledged there is little they can do in the near term to combat rising railroad pricing and are thus planning for significant increases in railroad rates..." Similarly, in recent commentary (April 19, 2007), Bear Sterns analyst Ed Wolfe stated that: "Firm pricing despite signs of quickly weakening truck pricing is an important part of the rail story. CSX gave strong evidence that its pricing is holding up well. We don't expect our year EPS numbers for CSX or the sector to come down despite continued down year over year volumes into strong yields and improving productivity ...." In the view of the markets, at least, the railroads are dominant monopolies unaffected by their nearest competition. What's more, it is reasonable to conclude, that the Class I railroads are able to freely dictate prices for their services without fear of interference by any regulatory agency.

But is this the end of the inquiry? Should the railroads be permitted to determine the fate of the industries they serve? Will they, through their monopolistic rate increases, cause manufacturing sites to close, mining to be curtailed and farmer's fields to be plowed under? Will their actions exacerbate the loss of well paying, U.S. manufacturing jobs and inhibit exports while enjoying monopoly profits?

The views of the investment community concerning the state of competition are confirmed by hard data. Recent trends support the proposition that the railroads of the 21st Century bear a much closer resemblance to those of the early 20th Century than to their less powerful cousins of the 1970's. In the late 1890's emerging industry, agricultural and mining interests were completely dependent on a single railroad system to transport their products to market. The robber barons of the time used this leverage to extract "monopoly profits" from the farmers, miners and other "captive" shippers of the day. The expected balance which competition brings to the market place was missing. Government intervention was required and the Interstate Commerce Act (passed in 1887, amended in 1902) and much of the current anti-trust law was enacted to help restore balance to the marketplace.

Today, the rail industry is highly concentrated. The forty plus Class I railroads that existed in 1980 have been reduced to a mere handful. The four largest effectively control different sections of the country and any real competition among them is essentially non-existent. In the chemical industry, for example, nearly two thirds of chemical shippers are now served by only one railroad. Further, due to the characteristics of the products or the economics of

transporting the materials in bulk, no effective competition from motor carriage exists. A study by Escalation Consultants (2003) concluded that captive chemical customers pay, on average, rail rates that are 77% higher than rates for competitive chemical customers. The following chart illustrates the point:

	NS	CSX	BN	UP
Farm Products Captive Rate	$21.37	$36.74	$45.28	$37.99
Farm Products Non-Captive Rate	$11.88	$20.83	$26.09	$21.29
Coal Captive Rate	$17.56	$17.22	$16.77	$17.00
Coal Non-Captive Rate	$9.76	$9.76	$9.66	$9.53
Chemicals Captive Rate	$36.98	$34.33	$42.57	$38.94
Chemicals Non-Captive Rate	$20.56	$19.46	$24.52	$21.82
Lumber or Wood Captive Rate	$29.43	$36.13	$59.19	$59.49
Lumber or Wood Non-Captive Rate	$16.36	$20.48	$34.10	$33.34
Pulp, Paper Captive Rate	$39.48	$40.82	$62.14	$55.40
Pulp, Paper Non-Captive Rate	$21.95	$23.14	$35.80	$31.05

Source: Escalation Consultants (2003)

Additional competition from new entrants into the rail industry is highly unlikely. Current environmental rules, local ordinances and permits, land availability and cost, construction expense, and other constraints make the building of new competitive railroads virtually impossible.

Railroad dominance is even more severe in the agriculture and mining sectors than it is in my industry. In some cases, rail rates – imposed in the absence of competition and by dominant rail carriers – can determine which farmer, mining interest or manufacturer survives.

CSX President Michael Ward was quoted in Purchasing magazine as asserting that his company "only intends" to increase prices "up to 6%". DuPont has never objected to fair and reasonable rate increases provided they are tied to tangible service improvements. However, reasonable price increases is not what the Company is currently experiencing. DuPont is seeing significantly higher increases from all Class I railroads -- we have had no choice but to accept double, and in some cases triple digit increases to get our raw materials and products moved.

In today's global economy, competitive forces are accentuating the impact of cost inputs, including transportation. According to figures released by the American Chemistry Council, the chemistry sector of the U.S. economy went from a trade surplus of $20.4 billion in 1995 to a net import position of $9.0 billion in 2005. This is a reversal of U.S. production of almost $30

billion dollars in ten years. During this same time period, employment in the chemistry sector fell from 982,000 to 879,000, a loss of about 104,000 jobs. A May 2, 2005 Business Week article reported that: "... of 120 chemical plants being built around the world with price tags of $1 billion or more, just one ... is in the United States. China, by contrast has 50."

While lost jobs and closed plants are not solely attributable to the market power exercised by the railroads, poor service, inflexibility and the railroads' exercising monopoly pricing power and the inflationary impact of their actions on the price of U.S. manufactured goods plays a significant role in the decision of many businesses to expand their operations overseas instead of the United States. For example, Toyota recently conditioned its decision to build an assembly plant in the United States on whether it would receive service from more than one railroad. Toyota indicated that it would not construct the new plant at a location in the United States unless it could be assured that it would not be become a "captive shipper" of a single rail provider.

The future, if current regulatory structures are maintained and past practices are permitted to continue, will bring an even greater concentration of rail power.

The current rail policy of the United States, as expressed in section 10101 of title 49 of the United States Code states, among other things, that:

> [I]is the policy of the United States Government – (4) to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes, to meet the needs of the public and the national defense; and
>
> (6) to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital.

The STB is not currently recognizing and enforcing these provisions in its decisions. If these provisions are not recognized and enforced and if the rail industry is permitted to continue its current merger and pricing practices, these congressionally mandated policy goals will not be met. There will be no competition among rail carriers and rates will be permitted to exceed even the current monopoly levels.

Change is required and all realistic options must be considered. Congressional intervention is necessary to prevent the pendulum from returning to the 1900's. "Modernization of the economic regulation of the railroads", required in 1980, is again required. If DuPont and other manufacturers are to remain competitive in a global economy, Congress must repair our Nation's rail system and once again make it reliable, responsive, affordable and accountable.

First, reform must begin at the STB. Simply put, that agency has been ineffective and broken. While the STB is supposed to fairly mediate rate disputes between the railroads and shippers, available evidence suggests that the STB process is skewed in the railroads' favor.

In an October 2006 report, the Government Accountability Office concluded that the rate complaint process is largely inaccessible to shippers – even as the number of shippers eligible for relief has increased substantially as railroads have exercised their monopoly power. The fee for filing a large rate case at the STB is $178,200 compared to the $150 filing fee applicable in federal district court. The large rate case process is also far too lengthy and costly. The STB itself has recently indicated that it costs at least $4.5 million to litigate a case under the agency's large rate case rules, and large rate cases have required more than three years for a decision. The STB's own new rules for medium-sized cases state that such cases will require a year and a half and $1 million to litigate – far too long in a dynamic global economy and far too expensive.

The STB imposes an almost impossible burden of proof on rail customers. In "competitive access" cases (one of the pro-competitive changes made by the Staggers Act), that burden is so high that not a single case has been filed in the last eighteen years. The burden of proof on shippers filing large and medium-sized rate cases requires them to construct a hypothetical railroad and establish that the fees charged by such a railroad would be lower than the rates charged by the actual carrier. The difficulty in this burden can be shown in the results of the STB decisions. Over the past five years, of the ten large rate cases decided by the STB, eight have resulted in complete losses for the shipper. Even in the two cases in which the shipper obtained some relief, the measure of relief was far less than that sought – in one case a miniscule 1 to 3 percent reduction in the rate.

These burdens have made shippers extremely reluctant to file complaints. While the STB recently modified the process for large rate cases, rail customers believe that these changes are actually worse for them than prior rules. Indeed, two massive STB decisions issued just last week under the new large-case rules both resulted in complete losses for the shippers. The September 13, 2007, Coal and Energy Price Report stated: "[T]here is overwhelming sentiment among U.S. captive coal shippers that settling the ongoing rate issue over increasing rail rates will require more than appealing one's case to the Surface Transportation Board." The report continued: "People realize that they can't win with the current STB, so you have to take it back to Congress".

Many of the necessary reforms can be achieved through passage of H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. DuPont actively supports H.R. 2125 as it seeks to preserve existing rail-to-rail competition in areas of the country where competition is working and looks to reduce impediments to competition that adversely affect us and other rail customers.

The so-called "bottleneck" issue illustrates the type of problem and inequity that H.R. 2125 is designed to correct. The STB has ruled that carriers are not required to facilitate competition to or from captive locations by offering a rate to the nearest interchange with

another carrier. We suffer the ill-effects of this practice at our Niagara Falls, New York site where DuPont manufactures metallic sodium and ships it to customers along the Gulf coast and the Pacific Northwest. In a competitive scenario, CSXT, the only carrier with service to our plant, would be required to provide a rate for the 26 miles between our plant and the Norfolk Southern interchange in Buffalo, New York. Instead, we are forced to use CSXT to transport our shipments all the way to Chicago at much higher rates. DuPont is the only remaining producer of metallic sodium in the United States, yet we are at risk of losing this business to overseas competitors due in part to the high cost of captivity.

Among its numerous provisions, the proposed legislation would remedy the "bottleneck" problem and many of the other deficiencies at the STB. H.R. 2125 would require the agency to do what it was intended to do: promote effective competition among rail carriers at origins and destinations, enforce reasonable rates for rail customers in the absence of competition, and ensure efficient and reliable rail transportation service for all rail customers.

Second, while DuPont acknowledges that this legislation does not fall within this Committee's primary jurisdiction, we support enactment of H.R. 1650, The Railroad Antitrust Enforcement Act of 2007. We agree with the 17 state attorneys general who, on August 17, 2006, wrote to Congress urging enactment of legislation that would subject the railroads to the antitrust laws. As they noted, the "Surface Transportation Board has failed its responsibility to restrain railroad monopoly power," and some of the practices it allows are considered by the United States Department of Justice to be "of questionable legality under the nation's antitrust laws."[1] "Historically, our nation has found that the best way to ensure economic success and economic efficiency is through the discipline of competition."[2]

From time to time the courts and the Congress have granted various industries exemptions from specific applications of the antitrust laws. However, these exemptions are, in theory, issued sparingly and only when competitive markets are ensured through alternative means. Unfortunately, the American railroad industry has accumulated a very broad exemption from the nation's antitrust laws that shields the industry from antitrust enforcement even where competitive markets are not ensured through alternative means.

H.R. 1650 seeks to correct this imbalance by repealing the railroad exemptions in both the antitrust and transportation statutes, so that antitrust law fully covers railroads just as it covers other industries. Additionally, it permits the Justice Department and the Federal Trade Commission to review mergers under antitrust law, and allows state attorneys general and other private parties to sue for treble damages and sue for court orders to halt anti-competitive conduct, both of which are not currently allowable under federal law.

The major Class I railroads pushed for introduction of H.R. 2116, the Railroad Investment Tax Credit of 2007, to obtain a 25% federal investment tax credit and first year expensing provision for investments in railroad infrastructure. Some level of investment tax credit may be sound national policy, but only if it is part of a comprehensive solution to rail reliability problems and the overall infrastructure problems of the entire U.S. transportation

industry. The railroads' desire for this tax credit may also give the Congress, for the first time in decades, an opportunity to address both the concerns of the major railroads and the legitimate concerns of rail customers in such a manner that a strengthened national rail system may emerge. DuPont believes that to be effective, any investment tax credit provided to the rail industry must be focused and must be coupled with provisions in H.R. 2125, H.R. 1650 and the overall solution to the national transportation infrastructure problems.

Individual shippers and carriers have cooperated in the past to structure a solution which enhances their collective interests and well-being and which supports the national interests. DuPont has participated in such efforts and is fully prepared to participate in them again. It is time for the rail industry to join with Congress and its customers to create a balanced, market based system serving the common interests of carriers, shippers and the country at large. It is essential that this be done and done quickly. We must start now.

In closing, Chairman Oberstar, I want to thank you and the members of the committee for allowing me to share my Company's views on this important issue. We look forward to joining you in creating a legislative and regulatory framework that will help build a truly competitive transportation and supportive network – including a rail system - that will add value to United States' chemical, manufacturing, mining, energy and agricultural industries, provide jobs to our citizens and permit us to continue to compete and grow in the global marketplace. DuPont appreciates the important work of this Committee and we stand ready to work with you as you move forward.

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[1] A Communication from the State Attorneys General of Arizona, Arkansas, California, Connecticut, the District of Columbia, Iowa, Kentucky, Louisiana, Minnesota, Mississippi, Montana, New Mexico, North Carolina, North Dakota, Oklahoma, Oregon, South Dakota and Wisconsin to the Judiciary Committees of the U.S. Senate and House of Representatives in Support of H.R. 3318 and S. 3612, Applying the Nation's Antitrust Laws to Railroads, August 17, 2006.

[2] Id.

Testimony
of
James R. Young
Chairman, CEO, and President
Union Pacific Corporation
1400 Douglas Street
Omaha, Nebraska 68179

September 25, 2007

Before the
United States House of Representatives
Committee on Transportation and Infrastructure
Hearing on
Rail Competition and Service

Chairman Oberstar, Ranking Member Mica, and Members of the Committee, my name is Jim Young, and I am Chairman of Union Pacific Corporation. I appreciate the opportunity to testify today on behalf of the rail industry. Wick Moorman, the CEO of Norfolk Southern, had planned to testify today, but due to the Committee's schedule change, he was unable to be here. He had submitted testimony on behalf of the rail industry that gives a very good history of our regulatory structure, the gains we have made since the Staggers Act was passed, and the many demands we face as the only privately funded major transportation network in the country. Rather than go through a detailed restatement of his testimony, I will use my time to make a number of points from my own perspective. I have also attached a copy of Mr. Moorman's testimony for your convenience.

My message is a simple one. The results of your deliberations will determine how much investment is made in the private rail system and how much traffic gets shifted to the overburdened highway system. Let me explain why.

I became Chairman of Union Pacific in January of this year. I have been with the company since 1978, and have held a variety of positions, including Chief Financial Officer. I've seen many changes in the industry since I started, so when I became

Chairman, I took time to reflect on the challenges my predecessors faced and the challenges I would face. The challenges are really very different.

As you know, prior to 1980, our industry was in financial crisis. Government regulation prevented the industry from reacting to market demands, and the rail industry was in real trouble. In 1980, Congress passed the Staggers Act, and for the first time, we were able to differentially price our services and react to the marketplace. No matter your current view, I think we can all agree on two things – the Staggers Act helped transform the rail industry while delivering benefits to rail shippers, and with the GAO conclusion that deregulation was – and is – a success. However, these past 27 years were not easy ones, and my predecessors had a tough job on their hands. They faced an industry with huge capital needs, as well as excess capacity due to shippers switching to trucks. They inherited many inefficiencies arising from misguided regulation, an enormous amount of deferred maintenance, and a rate of return that didn't warrant investment. Their challenge was to right size the railroad to reflect the amount of revenue we could generate to support it. We gained efficiencies by consolidating traffic on key corridors, shedding unprofitable lines, and investing in technology. We were able to lower our rates and win more business to fill our capacity because we passed our efficiency gains on to our customers. It was a time in which the supply of capacity was greater than the demand for capacity. Frankly, the managers at UP and other railroads did a great job of turning around a sick and anemic industry to one that is the best freight rail system in the world and one that has a tremendous future.

Today's challenge is in many ways completely the opposite of my predecessors. We must continue to ensure that our network is efficient and well maintained, but we no longer have excess capacity in most rail corridors. On the contrary, instead of shrinking rail capacity as in the past, I see an increasing need to expand rail capacity to meet our customers' needs. Our capital needs are greater than ever, but the harsh truth is we can still only build the size network that rail customers pays for, and we are only now getting to the point where returns warrant the investment required to sustain and to grow the nation's rail network.

Clearly, the demand for freight transportation is growing. A recent DOT study projects that total freight transportation demand will increase 92 percent from 2002 to 2035 – including an 88 percent increase for railroads. Other studies predict similarly large growth numbers. The question for policymakers is how are we – as a country – going to meet this demand? I can tell you first hand that we see this demand every day on the railroad, and it will take all of us working together to meet it.

Today, you will hear from a variety of our customers who think they are paying too much for rail service, and that their prices should be lowered. They are advocating proposals that would in essence cap the rates we charge and shift railroads to a cost-plus rate regime that ignores the market, impairs service, and penalizes efficiency. I have met with the CEOs of many of those companies one on one. While I have never met a customer who has thanked me for a price increase, I can tell you that for the vast majority of our customers, their primary concern is whether or not we will be there for them in the future, and we can only be there if we can earn a fair return on the investment. Today, Union Pacific is investing for growth. Our capital budget for this year is $3.2 billion – the largest amount in history. We are making – and have made – substantial investments in growth capital during the last few years because we believed our future returns would justify these high levels of investment. The current legislative and regulatory climate threatens those returns and makes future investment in additional capacity uncertain.

The Surface Transportation Board's recent proposal on the calculation of the industry's cost of capital, its new regime for bringing rate cases, and the legislation pending before this committee – if adopted – would require us to reconsider future investment. I understand that the Board has a legal obligation to provide rate relief where warranted, but the Board's new rate case regime will undoubtedly lead to lower rates for some customers and will adversely affect our revenues to an undetermined degree. This will be compounded by the Board's new calculation of the cost of capital. The new calculation establishes a cost of equity level below similar calculations for railroads by many states and below the discounted cash flow process used by other federal regulators

for network industries such as electric utilities. This increases the amount of traffic subject to rate regulation and will force a reduction in our rates as calculated under the Board's rate review processes.

Our industry is very capital intensive. On an industry-wide basis, roughly 17 percent of our revenue goes into our capital spending programs. This year at Union Pacific over 20% of each revenue dollar goes back into the business, and I don't believe any company seeking reregulation can make that statement. So, when we make investment decisions, we have to be certain we will get an adequate rate of return on our assets. As a publicly owned company, we have a fiduciary duty to our owners (the shareholders) to operate the company in a profitable manner and make prudent decisions regarding future capital investments. The shareholders of Union Pacific will not allow management to invest capital in something that has an unreasonably low rate of return imposed on it. Shareholders would demand the company reduce capital spending, and ultimately, both debt and equity investors will send their money outside the rail industry as the free market efficiently allocates capital to companies that provide better returns.

Mr. Chairman, as you know, our nation is facing an infrastructure crisis. You and your Committee are at the very heart of this debate. Every mode is being stretched beyond its limits. Every mode has huge challenges in front of it. In the rail industry, not only must we generate enough revenue to build new capacity, but we must also replace existing infrastructure as it approaches the end of its useful life. These investments are very expensive. For example, we just started work to replace one of the highest major railroad bridges in the United States in Boone, Iowa, at a cost of over $40 million. Both capacity growth for the future and replacing assets will require significant expenditures in years ahead. Before we can prudently invest in the capacity that our customers want and our nation needs, we need some assurance that we can earn revenues sufficient to justify making new investments, as well as replacements for existing infrastructure.

Since the inception of the rail industry, many of the challenges we have faced have changed, and as I said at the beginning of my testimony, the challenges of the next

27 years will be different from those of the last 27 years. But one constant remains the same – we can only build the size rail network that shippers are willing to pay for. We can either grow our network to handle the additional freight traffic produced by our economy, relieve highway congestion by taking on more truck traffic, and hire more employees, or we can shrink, which will mean more trucks on the highways and less employment in our industry. As policymakers, you will have a crucial role in that process. The decisions you and the STB make about our regulatory structure will control how much investment we will be able to make. If you believe as we do that the demand for rail will grow, then we should be doing everything we can to accelerate investment rather than decelerate it. Our country's freight railroads are finally approaching a point where the financial returns justify new investment. It would be tragic indeed if government policy changes would step in now to stop growth potential for a significant component of our country's vital infrastructure.

Our company has demonstrated that we will invest when the market demands it and the opportunity for future earnings justify it. Today, customers on Union Pacific are seeing the benefits of our investments. In fact several of our customers have told me that our service is the best they have seen from us. My commitment to our customers is this – in return for improved returns, we will invest in growth capital, which will translate into improved service.

That concludes my testimony. Thank you again for giving me the opportunity to represent the rail industry, and I would be happy to answer any questions.

BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HEARING ON
RAIL COMPETITION AND SERVICE

SEPTEMBER 20, 2007

WRITTEN STATEMENT OF
CHARLES W. MOORMAN
ON BEHALF OF THE
ASSOCIATION OF AMERICAN RAILROADS

Chairman Oberstar, Ranking Member Mica, and Members of the Committee, thank you for the opportunity to testify about the railroad industry. I am Charles W. Moorman, Chief Executive Officer of Norfolk Southern Corporation. I am pleased to represent today the member railroads of the Association of American Railroads ("AAR").

As you know, the AAR is the world's leading railroad policy, research, and technology organization focusing on the safety and productivity of rail carriers. AAR members include the major freight railroads in the United States, Canada and Mexico, as well as Amtrak and several short line holding companies. Based in Washington, DC, the AAR is committed to keeping the railroads of North America safe, reliable, efficient, clean, technologically advanced, and secure.

Norfolk Southern Corporation is a member of the AAR. Norfolk Southern is one of the nation's premier transportation companies. Its Norfolk Southern Railway subsidiary operates approximately 21,000 route miles in 22 states, the District of Columbia and Ontario, Canada, serving every major container port in the eastern United

States and providing superior connections to western rail carriers. NS operates the most extensive intermodal network in the East.

Although I represent the AAR today, my comments will reflect to some extent the experiences of Norfolk Southern. However, I can assure you that the examples of infrastructure investment, pervasive competition in the transportation marketplace, and real-world examples of economics in practice that I provide would be similar to those experienced by other railroads.

In this testimony, I will briefly outline the importance of the rail industry to the nation and of the Staggers Act to the rail industry. Next, I will address the vital role railroads play in meeting our nation's transportation needs. Railroads absolutely must continue to play an ever-increasing role in our economy as demand for freight transportation continues to increase because of our ability to move more freight safely, with less fuel, and in a more environmentally-friendly manner. I then will discuss the substantial investment railroads have made to expand their infrastructure to handle more freight and how railroads must be able over the long-term to attract the necessary resources and to earn a return on their investment. That of course is a truism for almost any industry which wishes to maintain its infrastructure and to expand to meet the needs of customers, but it is particularly relevant given the extraordinary capital requirements of our industry. I will examine how extensive and pervasive competition is in the transportation marketplace. Finally, I will note that legislative and regulatory actions that create disincentives to railroads investing in infrastructure are bad policy because they risk returning the industry to its pre-1980 state. Even if the results of errant policy were

not that dramatic, they would undermine our national goal of having a transportation system in place to meet the growing demand for freight transportation.

I. THE STAGGERS ACT OF 1980 HAS BEEN A RESOUNDING SUCCESS.

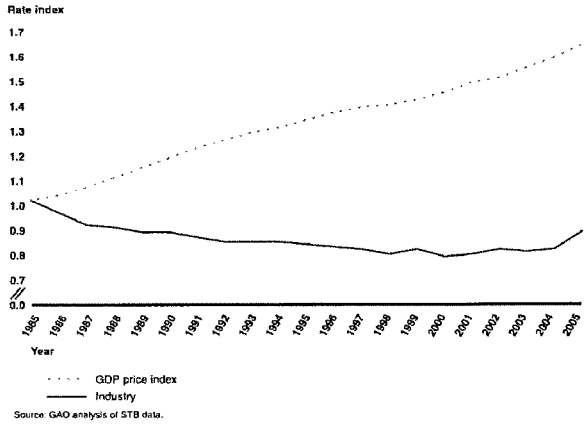
The Staggers Act was a historic piece of legislation that gave railroads the tools to become an effective component of the national transportation system. Among its important elements, the Staggers Act:

- Freed railroads and shippers to negotiate terms and rates for shipments and to enter into confidential contracts outside the regulatory regime;
- Provided for a regulatory backstop when railroads and shippers did not enter into a contract to prevent railroads from abusing any market power over the minority of shippers without effective transportation alternatives;
- Expanded the power of the Interstate Commerce Commission, and now the Surface Transportation Board, to exempt traffic from regulation and encouraged the use of that power; and
- Made it easier for railroads to shed unprofitable lines.

The results of this statute were vital, but took decades to bear fruit and put the industry on a path to greater returns. The successes were aided by population and demand growth, which are underscoring the need for more of the approaches of Staggers, not less. The fact that Staggers injected market influences into the rail industry and lightened the regulatory thumb on the industry has been widely documented. Railroads' productivity improved, and many of those productivity improvements were passed on to shippers. Railroads shed unprofitable lines and invested in infrastructure elsewhere. Railroads became safer.

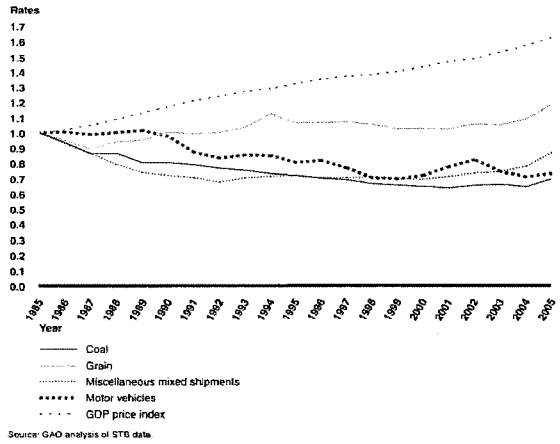
Consider the following analysis performed by the Government Accounting Office. In Figure 1, GAO looked at rail rates from 1985 to 2005 and compared it to the gross domestic product price index.

Figure 1: Trends in Industry Rail Rates, 1985-2005



Amazingly, rail rates today are about the same as they were 20 years ago, even before accounting for inflation. Moreover, as shown in Figure 2, GAO's analysis shows that rail rates for nearly all commodities are as low as they were in 1985, and rail rates for all commodities have increased substantially slower than the gross domestic product ("GDP") price index.

Figure 2: Rate Changes for Coal, Grain, Miscellaneous Mixed Shipments, and Motor Vehicles, 1985-2005



The results would be even more dramatic had GAO taken inflation into account in its analysis.

Here are my essential points today:

1. The U.S. desperately needs more transportation resources, including more railroad resources.
2. The railroads are the only transportation resource that pays its own way, and the costs are exceptionally high.
3. To keep paying our way and building to meet the nation's growing needs, we have to be able to earn fair returns on that substantial investment.
4. Re-regulation will hurt returns, prevent much new investment, and hurt service and employment.
5. Recent STB decisions have the potential for significant negative effects on railroad revenues by giving shippers more expeditious ways of reducing our rates, and in the STB's cost-of-capital decision, reducing the costs reflected in rate computations. Indeed, the long-term effects of the latter decision may be quite serious for the industry and for the American transportation system.
6. We are proud to be the safest, most fuel efficient, and environmentally friendly ground transportation by far.
7. We want to help take the load off the highways, reduce U.S. fuel demand, and remain one of the true advantages of U.S. manufacturers.

II. RAILROADS PLAY A LARGE ROLE IN THE ECONOMY AND ARE VITAL IN THIS TIME OF GROWING FREIGHT DEMAND.

A. Railroads Are a Competitive Advantage for the United States.

Railroads play a critical role in our economy, and their importance is growing. Today's freight railroads are among the few genuine advantages that U.S.-based manufacturers have compared to overseas manufacturers. The commodities the railroads transport are essential to the economy. For example, railroads transport:

- More than 70% of coal used for electric power;
- 35% of the grain harvest;
- 70% of automobiles made in America; and
- 21% of chemicals.

Railroads transport these goods efficiently as well. As the World Bank's Louis Thompson has noted, "[b]ecause of a market-based approach involving minimal government intervention, today's U.S. freight railroads add up to a network that, comparing the total cost to shipper and taxpayers, gives the world's most cost-effective freight service." Put another way, rail freight transportation is one of this country's comparative advantages that help us compete in that world economy.

B. Freight Demand Is Growing, But the Ability for Highways to Grow Is Limited.

The demand for freight transportation is growing and will continue to grow. The Department of Transportation has estimated that the demand for freight transportation

would increase by 55 percent between 1998 and 2020.[1] More recently, DOT projected that total freight transportation demand would rise 92 percent from 2002 to 2035, including an 88 percent increase for railroads.[2] Similarly, the American Association of State Highway and Transportation Officials projected that freight tonnage will grow by almost 57 percent between 2000 and 2020. Whether 88 percent, 55 percent, 57 percent, or some other percent is the exact right estimate is not what is important. What is important is that demand has been growing and is expected to continue to grow substantially. According to some of the materials circulated by Consumers United for Rail Equity ("CURE"), "We're in a perpetual rush hour for freight. It's a lot like hitting interstates in Chicago at 5:00pm, every day of the week."[3]

Railroads will be critical to meet this growing demand for freight transportation. Railroads will have to play a large role because highways will be unable to absorb that kind of growth in demand for freight transportation. There is a maintenance backlog across the highway system as recently illustrated by the tragic collapse of the highway bridge in Minnesota. The American Society of Civil Engineers ("ASCE") estimates that the annual need for bridges, roads, and transit is $94 billion, but that we spend less than $60 billion.[4] Still the highway trust fund balances continue to decline. In addition, highways are already choked in many parts of the country, which according to ASCE costs drivers $63.1 billion a year.[5] Given the issues the highway trust fund faces, the

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1 U.S. DOT, Federal Highway Administration, *Freight Analysis Framework*, October 2002.

2 Federal Highway Administration, *Freight Facts and Figures 2006*, Table 2.1.

3 Quoting Marcia Zarley Taylor, *Rush Hour on the Rails*, (Sept. 7, 2006).

4 http://www.asce.org/reportcard/2005/actionplan07.cfm

5 Id.

limited amount of the Federal budget that is available to cover all discretionary spending, of which transportation is only a small part, and the maintenance needs of our highways and bridges, highway capacity is not likely to expand to any significant degree in the future.

C. Railroads Will Have to Be Part of the Long-Term Solution to the Nation's Transportation Needs.

In short, efficient and effective rail transportation is not just a necessity today. It will continue to be vital to the health of the U.S. economy for years to come. To play that role, railroads must plan and invest years before traffic growth may materialize because of the delays involved in building rail capacity. Of course, to justify that investment, railroads must be able to look out into a predictable future and determine that their investment will be permitted to generate sufficient returns for their owners.

The need for railroads to expand is not just some railroad talking point. It is the real world – not because railroads say so and not because DOT, AASHTO, and other experts forecast large growth in freight demand – because rail customers say so. Recently, a coalition of coal shippers filed comments with the Surface Transportation Board in which they made the case for rail capacity as follows:

> "It is critical, of course, that the railroads maintain adequate capacity and infrastructure to transport coal to utility power plants. As explained above, coal shippers are dependent upon rail carriers to provide needed coal transportation service, and disruptions in this service due to inadequate capacity can impose substantial damages upon electric generating utilities and their customers."[6]

The point is that rail capacity is essential. That coal shipper association wants capacity to handle present "coal traffic volumes" and wants railroads to "stay ahead of growing coal

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[6] Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of Concerned Captive Coal Shippers, at 11 (April 4, 2007).

traffic demands in the future."[7] Shippers of all types are asking for more capacity, but that kind of investment can only be justified if adequate returns on the investment are possible.

III. THE ABILITY OF RAILROADS TO PLAY A LARGER TRANSPORTATION ROLE DEPENDS ON THE AVAILABILITY OF SUFFICIENT RESOURCES FOR A SUSTAINED PERIOD.

Let me start by pointing to the stark reality that railroads spend dramatically more than any other industry just to run their physical plant. Five times more of every incoming dollar is needed—five times.

Norfolk Southern – like other railroads -- has invested record sums to increase its capacity and improve its operations while maintaining its focus on safety. But, the biggest challenge we continually face is having the resources to maintain our existing infrastructure and to expand that infrastructure to meet the increasing demand for our service and the changing shipping patterns and needs of our customers.

U.S. freight railroads have been devoting enormous resources to maintain their existing infrastructure, to improve their operations and infrastructure and to alleviate the capacity constraints that arise from increasing freight demand. Indeed, from 1996 to 2005, the average U.S. manufacturer spent 3.4 percent of revenue on capital spending. The comparable figure for freight railroads was 17.2 percent, or more than five times higher.

Likewise, Norfolk Southern makes large capital expenditures every year to maintain and expand its infrastructure. Between 2000 and 2006, our capital expenditures

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[7] Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of Concerned Captive Coal Shippers, at 23 (April 4, 2007).

have totaled more than $6.3 billion, while our net income over the same period was only $5.2 billion. In 2007, Norfolk Southern will spend about $1.4 billion, which is almost equal to its total net income from 2006.[8]

The expenditures we make are necessary to maintain and to expand our physical plant and locomotive and car fleet so that we can serve our customers better, handle larger volumes of freight safely, and respond to our customers' changing shipping patterns. At the same time, capacity expansion projects must generate returns sufficient to justify the investment.

The facts demonstrate that railroads continue to invest to expand their capacity. Consider some of Norfolk Southern's investments in just the last two years.

In 2006, Norfolk Southern among other things:

- Closed a deal to create a joint venture with the Kansas City Southern Railway, which will result in $300 million dollars of investment mostly to upgrade the rail line between Meridian, Mississippi and Shreveport, Louisiana, so that the line can move more freight more quickly across the line. Already, 45 miles of formerly non-signaled territory have been converted to centralized train control, 100 miles of crosstie replacement has been completed, 150 miles of ballast and surfacing work has been done, and 45 miles of rail has been replaced with new rail in three locations.

- Opened a new rail line to the coal-powered Keystone Generating Station in Shelocta, Pennsylvania. The $44 million public-private partnership trims 51 miles off the trip from Saltsburg, Pennsylvania to Shelocta and increases the capacity of the plant.

- Began work on the $62 million Rickenbacker Intermodal Terminal in Columbus, Ohio, which will increase freight capacity in that region by more than 40 percent.

- Added infrastructure in the following corridors: Memphis, Tenn. to Chattanooga, Tenn.; Chattanooga, Tenn. to Atlanta, Ga.; Atlanta, Ga. to Jacksonville, Fla.; Charlotte, N.C. to Manassas, Va.; West Virginia Secondary; Columbus, Ohio to Cincinnati, Ohio; Goldsboro, N.C. to

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8 Net income for 2006 was $1.48 billion.

Morehead City, N.C.; St. Louis, Mo. to Louisville, Ky.; and our route to Albany, N.Y. and New England.

- Acquired 142 additional locomotives.

Norfolk Southern's announced 2007 capital budget includes, among other things:

- Beginning work on its Heartland Corridor project. This ambitious public-private partnership will improve 30 tunnels in four states so that they are able to handle double-stacked intermodal trains. It includes the development of a new Norfolk Southern-owned intermodal facility in Columbus, Ohio, which when fully developed will have the capacity to handle 400,000 lifts per year. When completed, Norfolk Southern will shorten the time it takes for containers to travel from port to plains by over 20 percent and the distance they travel by more than 20 percent.

- Investing in capacity by making capital roadway improvements. Norfolk Southern plans to spend $610 million for rail, crosstie, ballast and bridge programs, including $73 million in infrastructure investments for increased capacity. In addition, Norfolk Southern plans to spend $47 million for communications, signal, and electrical projects; $41 million for maintenance of way equipment; and $16 million for environmental projects and public improvements such as grade crossing separations and crossing signal upgrades.

- Making capital investments in intermodal terminals and equipment to add capacity to the Norfolk Southern intermodal network, increase access and capacity for coal traffic, bulk transfer facilities, and vehicle production and distribution facilities – all at a cost of about $97 million.

- Spending about $60 million for capital projects related to computers, systems and information technology, which will enhance safety and improve operating efficiency and equipment utilization.

- Investing approximately $321 million in capital on equipment to:

    - Purchase 53 six-axle locomotives and upgrade existing locomotives (Subsequent to the announced 2007 capital budget, Norfolk Southern also made a commitment to acquire an additional 50 locomotives, 20 of which are expected to be delivered in the fourth quarter of 2007.).

    - Purchase 1,300 new higher-capacity coal cars as part of a multiyear program to replace the existing coal car fleet.

  - Purchase 739 freight cars as their leases expire; certify and rebuild 388 multilevel automobile racks; and add supplemental restraints to multilevel racks.

- Renewing expiring equipment operating leases covering more than 2,800 cars.
- Leasing 200 additional construction debris cars.
- Repairing freight cars at a cost of $56 million. Our repair plan for 2007 reflects a 17 percent increase in repairs over the number of cars repaired in 2006. Norfolk Southern has announced a new car repair facility in Portsmouth, Ohio that will open next year.

In addition, Norfolk Southern is hiring and training 1,300 train and engine employees. Other railroads could – no doubt – provide a similarly extensive list.

Railroads try to balance their customers' competing needs and invest to maximize their network. If we had only intermodal customers, our investments would be different than if we had only coal customers or only chemical customers. In fact, Norfolk Southern serves thousands of customers with different transportation needs for their thousands of different commodities. The investments we make represent our best judgment as to how to strike the right balance, consistent with the requirement that we obtain adequate returns on our capital.

In the current and expected growth environment, it is especially important that railroads have the resources and the ability to improve their infrastructure now to meet future needs for three reasons. First, capacity is not limitless. Second, capacity is expensive. Third, it takes time to build rail infrastructure and capacity.[9] Given the time

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[9] For example, it took years for the industry to reach agreement on a plan to address rail congestion in Chicago. After several years of effort on this historic public-private partnership, the rail industry, local officials, and state leaders were able to join together to seek congressional funding for the public benefits that would flow from the project. Even today, the project is not fully-funded, and it is unclear how long it will take to make it a reality – even though it is clearly needed. Moreover, even when it is approved and fully funded, the design, permitting, engineering, environmental review, and construction

it takes to add infrastructure and the long lives of the assets required to expand capacity, it is essential for railroads to take a long view on infrastructure investments, which is how we manage our business at Norfolk Southern.

Today, railroads are investing in capacity to address the growing demand for freight transportation and have incentive to do so. Uncertainty across the regulatory and legislative landscape is making it challenging to determine whether railroads should continue to invest at current levels. If the government creates disincentives for railroad investment, then the question is who will pay for the transportation capacity the nation will need in the future.

IV. COMPETITION IN THE TRANSPORTATION MARKETPLACE IS GREATER THAN EVER.

Some shipper groups have called for legislation to re-regulate the railroads. These calls are based on a desire to artificially lower rates, not on competition. Today there is more competition in the transportation marketplace than ever, and re-regulation would hobble railroads and ultimately customers.

First , railroads face competition from other modes of transportation. Motor carriers are the railroads' largest competitor. Railroads also compete vigorously against other modes, including barges and pipelines. Motor carriers are the railroads'

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of a major project can take years. As another example, from the time Norfolk Southern started the environmental permitting process to build a new intermodal yard in Atlanta to the time it opened its $110 million facility in Austell, Georgia was about five years. Just how many years it takes to make a project a reality depends on the time required to secure the necessary permits, local opposition, resources and money available, and the railroad's ability to complete the work in a way that least impacts its ability to serve its customers whose traffic moves on those lines. However, while delivering highway and environmental relief, railroad expansion still seems to require far less time and money than highway expansion.

competition for intermodal traffic. When the railroad gains that business, trucks are removed from the highway system and less fuel is consumed. But trucks compete with railroads to transport many commodities and have the vast majority of intercity freight. There are a number of examples where railroads compete against trucks; for example in 2001 Norfolk Southern constructed a new Intermodal terminal for serving the Cleveland area. In 2000, our volume in the Chicago-Cleveland lane was 10,500 units. In 2006, we handled 75,961 unites—an increase of 621%. The response in 2001 to our new facility and train services in the lane was immediate and significant, with our monthly volumes tripling once the facility opened. Prior to this, much of this volume had been trucked to/from Chicago. Also in 2001, Norfolk Southern began serving the Georgia Port Authority's new Mason ICTF facility in Savannah, which allowed for direct ship to train transfer of containers, combined with direct line haul service to Atlanta and points beyond, and thus avoiding the delays associated with using the local port belt railroad to access the pier or a dray to our off pier terminal. Being only 250 miles to Atlanta, truck was the predominant mode in this lane. At the same time, as the new terminal opened, Norfolk Southern added additional dedicated Intermodal trains in the lane, allowing us to strongly compete with trucks in terms of transit time. As truck capacity in the Savannah area continues to tighten and container volumes moving through the port continue to increase, more and more traffic is being diverted off the highways and on to Norfolk Southern. Since 2000, volume has grown 528% in this lane. It continues to grow in 2007, despite the overall slow down in the industry. We have been able to take this traffic away from trucks because rail provides a better value. But, the bottom line is that trucks are a real constraint in the marketplace.

Barges are also a key competitor. Recently, Norfolk Southern was able to win some business from barges; however, our customers can go back and forth. Alabama Electric Cooperative, which had received coal by barge, recently awarded Norfolk Southern a coal transportation contract. In another example, we were able to move to rail chemical business that Rohm and Hass had transported by barge. Again, barges are also real and threatening competitors.

Additionally, many large railroad customers are large companies, a number with resources far in excess of the railroads. These companies know how to maximize their leverage. Most large companies have multiple rail-served facilities with some of the facilities served by one railroad, some facilities served by another railroad and some facilities served by two railroads. The customer uses its traffic at the dually served facilities to negotiate a better rate/service package on traffic at the single served facilities. That is one source of leverage. Another source is product competition. For example, assume we are the sole serving carrier at a chemical plant that ships to numerous receivers. When the receiver can use another product in lieu of the one produced at our solely served facility, if our rate is too high, we will lose the business. The STB won't allow us even to mention product competition in a rate case, but our customers "mention" it often to us. It is real. Another major source of competition is geographic competition. For example, while NS has chemical and coal plants that are served only by us, our customers often have similar facilities served by another railroad. If our rate is too high, our customer will increase production at the facility served by another railroad and we lose business. Utilities have yet another source of competition that could be viewed as a combination of product and geographic competition. Instead of producing electricity at

its coal-fired solely served facility, it has the option of producing electricity at one of its other facilities that do not use coal or purchasing electricity produced elsewhere by other utilities. In short, even where there is only one railroad serving a facility, there are market factors at play. These competitive constraints are real.

Look at the most recent GAO report. Rail rates in 2005 were at about the same level they were 20 years earlier – and that does not take inflation into account! If rail rates are increasing due to increased demand, that is what is supposed to happen. There is clearly no structural problem. If railroads had unchecked monopoly power, the numbers in the GAO report would never have occurred.

Third, competition even among railroads has increased since 1980. Shippers who have access to one railroad today have rarely been served by more than one railroad. Policymakers should understand that Staggers did not degrade historic options. If they ask any shipper who complains of having only one railroad serving its facility: "when in history did your facility get served by more than one railroad," they are likely to hear "never" in the overwhelming majority of cases.

Moreover, the Interstate Commerce Commission and the Board's merger policies have protected shippers that had access to multiple rail carriers prior to the merger and generally ensured that such shippers had access to multiple carriers after the merger.

Other areas have been opened to multiple carrier access when single carrier access was all that previously existed, such as the Bayport Loop in Houston, Texas, as a result of the Board's policies to promote build-ins where the economic sense of such a build-in is shown by private entities putting up the money. In the Union Pacific/Southern Pacific

merger, the STB created over 4,000 miles of new trackage rights and gave competitive access to every new shipper that locates on them.

Additionally, mergers have expanded single-line service, which means dramatically more shippers benefit from the inherent efficiencies that resulted from being able to ship from origin to destination on one railroad rather than having to use many railroads to get from origin to destination.[10] For example, Norfolk and Western was a coal railroad, while Southern Railway was a more diverse railroad. Given their individual geographic reaches, however, neither could have developed what has become the NS intermodal system. Neither Norfolk and Western nor Southern Railway reached New York. Norfolk and Western reached Chicago but not Atlanta. Southern Railway reached Atlanta but not Chicago -- so neither had the size, scope and density to develop an effective and competitive intermodal network. Absent the mergers, there would still be more railroads, but with fewer resources and access to fewer markets, which would not be better for rail customers.

Some shippers claim that the government should mandate access, so that customers who have never been served by more than one railroad can receive service from multiple railroads. They argue that government access -- such as mandated switching, trackage rights, terminal access, and interline rates -- is competition. Actually, it is not. Railroads require expensive infrastructure to serve a facility. There have been build-ins by railroads and build-outs by shippers at facilities that can generate enough rail

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[10] What mergers removed was the need in many instances for a customer's shipment to be moved by multiple carriers – and the inefficiencies associated with the interchanges that were needed between railroads. That is dramatically different from an assertion that mergers have lessened competition for customers who have never had their origin or destination served by more than one carrier.

traffic to justify service by two or more railroads (again, resulting in an increase in competition since 1980), but most shipper facilities simply do not generate that level of traffic. In other words, there is not enough money to support two railroads at most shipper facilities, which is why relatively few facilities have ever had service by more than one railroad. True market competition does not keep two competitors in a market -- or force more competitors into a market -- that will support only one. These shippers really want the government to force one railroad to subsidize another railroad by providing below market access to its lines, which would remove any incentive for the owning railroad to invest in such infrastructure.

V. POLICYMAKERS SHOULD REJECT LEGISLATION AND REGULATION THAT WILL CREATE DISINCENTIVES FOR RAILROADS TO INVEST IN THE INFRASTRUCTURE NEEDED TO MEET THE GROWING DEMAND FOR FREIGHT TRANSPORTATION.

Any legislation or regulatory action that would result in railroads being unable to invest would be bad transportation policy at any time. But legislation or regulatory action that would result in railroads being unable to invest would be particularly bad at this time, when the nation needs railroads to expand.

We know it is bad policy because of history. The Staggers Act was adopted because the U.S. railroads were breaking. Re-regulation of the railroad industry will result in the catastrophe the industry saw before the adoption of the Staggers Rail Act of 1980, which was marked by rail bankruptcies, decrepit infrastructure that resulted from years of inability to invest in maintenance, and government bailouts. But it will be much worse now because the entire transportation infrastructure is strained in a way it was not then.

Before the Staggers Act, regulation of the rail industry was expansive. The United States House of Representatives said: "Regulatory constraints . . . impinged upon management's ability to adjust rates, merge corporate entities, abandon facilities and services, and improve productivity."[11] Rate regulation was pervasive and regulation restricted price competition.[12] "Railroading has fallen on difficult times." That was how the Department of Transportation summed up the situation in 1978.[13]

The detrimental effects of this excessive regulation are well known, as are the successes of the Staggers Act. In the same 1978 report, the Department found that railroads were unable to attract capital from private sources and unable to maintain their physical plants.[14] Indeed, the Interstate Commerce Commission tracked standing derailments, which were railcars that were not moving but that simply fell off the tracks because the tracks were in such poor shape.

Railroads throughout the Northeast failed. The result of that expansive and invasive regulatory regime was bankrupt railroads, including the largest bankruptcy in America to that time – the bankruptcy of the Penn Central. The government had to step in and create what came to be known as Consolidated Rail Corporation or Conrail. Only

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[11] H.R. Rep. No. 96-1035 at 85 (1980).

[12] Id. at 88.

[13] Dept't of Transp., A Prospectus for Change in the Freight Railroad Industry, at 2 (Oct. 1978) ("Prospectus").

[14] "Even the healthiest industry does not rely solely upon internally generated cash to finance current capital expenditures – virtually all industries obtain additional funds through the sale of equity or debt. With some exceptions, however, railroad earnings are too low to attract new equity or debt other than for equipment purchases or rollover of old debt . . . As a result, the availability of private capital for future investments may be curtailed, because investors believe that returns generated with the investment of additional capital will not equal returns from alternative investments with similar risks." Prospectus at 69.

the Staggers Act stopped the decline of the industry, which took many years to reverse. We need to be clear that the Staggers success was hardly an overnight sensation. It has literally taken decades for the railroads to reach a level of returns that allows new investment to serve the nation's needs.

Already, recent efforts by the Surface Transportation Board, which at a minimum are injecting uncertainty into the industry and at worst could substantially impact our ability to earn our cost of capital, , are causing us to look hard at our willingness to invest in the future. In the last month, the Board has issued erroneous calculations of our industry cost-of-capital, which is based on historic costs of assets with long-lives rather than on the cost of actually replacing the assets, and expanded options for shippers to gain rate relief, which options could result in a downward rate spiral and rate compression.

Are we returning to a legal regime that restricts the railroad industry's ability to invest in infrastructure? Are we on the path to having the industry look like it did before 1980? I am very concerned that we are headed down that path. The results may not be that dramatic right away. But any policy that deters private investment in transportation capacity moves us further from the national goal of building a transportation system sufficient to handle the growing demand for freight transportation.

Legislative and regulatory threats to rail capacity will create substantial disincentives for railroads to invest. If railroads are unable to invest in their own capacity, who will make up the difference? Or, will freight just stack up around the country because there is not enough capacity to move it? Such threats would directly reduce existing capacity, which would adversely affect all rail customers. If enacted,

such legislation would adversely affect railroads' ability to justify many investments in infrastructure that will be needed to handle tomorrow's freight. Policymakers must recognize that if such threats become reality, capacity will be reduced and replacing the lost capacity will take significant time and money.

Instead, policymakers should focus on ways to make it easier for private companies to invest in infrastructure, which is why I encourage you all to support legislation to provide tax credits to railroads that invest in capacity.

VI. CONCLUSION.

A railroad's ability to transport customers' shipments is dependent on capacity. Capacity is dependent on private companies, who are responsible to their shareholders to make good investments and to provide a return on the shareholders' investment, earning returns that justify investments in capacity. Today, railroads are stepping up to meet the growing demand for freight service that is projected over the coming decades. Their investments are allowing them to not only compete against each other, but to compete against all modes of transportation, such as trucks and barges. Whether railroads will be able to continue to do so, will depend on policymakers making wise choices and not creating disincentives to such investment.

October 9, 2007

Jim Young
Chairman

The Honorable James L. Oberstar
Chairman
Committee on Transportation and
Infrastructure
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Oberstar:

Thank you for the opportunity to testify before you and your Committee on September 25, 2007 and for the additional question concerning positive train control.

Attached is my answer to the question. Please let me know if we can provide additional information.

Sincerely,

Jim Young

Attachment

UNION PACIFIC CORPORATION 1400 Douglas St. 19th Floor Omaha, NE 68179 ph. (402) 544-6655 fx. (402) 501-2112

Question for Mr. Jim Young, Chairman, President, and CEO, Union Pacific RR **(THIRD PANEL)**:

"Mr. Young, this Committee has noted the importance of positive train control and has moved forward with legislation that would require PTC implementation sooner rather than later. PTC will improve rail safety, but it can also improve efficiency on congested rail systems, such as in Chicago. That is why I drafted and worked with this Committee's leadership to include a new federal grant program to help fund PTC projects. My understanding is that the industry is supportive of PTC while there are still some differences of opinion on implementation timelines. Nonetheless, it is a good step forward that the railroad industry is prepared to continue to invest in PTC. As there are distinct benefits for railroads, commuter rail, and passenger rail, do you have any viewpoints as to whether there any benefits for shippers in train control technology?"

Answer

We are in the process of developing positive train control technology and are just now entering the testing phase. Assuming the technology works correctly, there are clearly safety benefits to having a technology that can manage and override train operations as it would take human error out of the equation. From a commercial standpoint, positive train control benefits to customers will come from operational efficiencies of network velocity. When velocity improves, our customers will see improved reliability and transit times. Having said that, implementing positive train control will be very expensive - costing the industry several billion dollars. Assuming the technology works, we will not be able to make this type of huge investment if we are not able to earn an adequate rate of return or our rates are capped through regulation.

TESTIMONY BEFORE THE
U. S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION & INFRASTRUCTURE
"RAIL COMPETITION AND SERVICE"
THURSDAY, SEPTEMBER 20, 2007
10:00 A.M.
ROOM 2167 RAYBURN HOUSE OFFICE BUILDING
SUBMITTED BY:

AIR LIQUIDE

Chairman Oberstar, Congressman Mica, Members of the committee, Air Liquide is pleased to offer testimony on this issue of great importance to the domestic manufacturing sector.

Air Liquide is headquartered in Houston and is one of the largest industrial gas companies in the United States with sales slightly less than two billion dollars. Its products are primarily based on technology that separates air into its component gases, include oxygen, nitrogen, hydrogen, carbon dioxide, carbon monoxide, helium and argon and associated services. Air Liquide provides innovative solutions to improve the performance of its customers in such industries as chemical, oil refining, steel, wood products, food processing, electronics, plastics, and medicine. In addition, the company plays a role in developing such emerging technologies as neutral emission turbines and superconductive electric power transmission lines.

The company is vitally interested in the financial health of America's railroads. Businesses simply cannot operate successfully in this country without a financially viable railroad industry and a secure railroad infrastructure. The ability of American manufacturers and producers to compete in today's global market is highly dependent on the rail freight industry. Today, unfortunately, the rail freight industry impedes -- rather than enables -- our Nation's global competitiveness. American manufacturers and producers find it more and more difficult to remain competitive against manufacturers and producers outside the United States.

An especially important aspect of our relationship with the railroads is the "common carrier obligation," under which railroads are required to transport commodities for their customers. The Interstate Commerce Clause of the Constitution grants power to the Congress to write the laws that govern our nation's commerce. Congress recognized the common carrier obligation as the framework on which the entire national railroad transportation system was founded [49 US Code, Subsection 11101(a)]. And it remains crucial today. Railroads are chartered to operate in the public interest because the public depends on safe and reliable service in the delivery of a wide range of products on which we all depend. The common carrier obligation underlines the role of railroads as a service industry that supports so many critical sectors of the U.S. economy.

A substantial proportion of domestic manufacturing facilities have no alternative to using the freight rail system to ship their products, and most of those facilities have access to only one rail carrier. Those shipments are subject to what the Staggers Act refers to as "market dominance," which is often described as being "captive" to a single railroad. (Additional monopoly conditions exist when even a non-captive shipper wishes to supply a customer location that is captive to a single railroad.) For a captive shipper, regardless of its size or location, the efficient movement of its products depends on the rates and service provided by that single railroad.

Air Liquide's customers require a constant flow of high-quality products – produced on time – delivered on time – where they want them – at competitive prices. Railroad reliability and service are critical to our economic success. However, that is not what the nation's railroads are providing, especially to captive shippers.

Railroads are experiencing capacity constraints. It appears that demand exceeds their ability to provide reliable service in key traffic corridors. There have been increases in transit time for shipments. Slower train speeds and increased dwell times for cars in terminals have led companies to add cars to their fleets at a considerable cost in order to hedge against shipment delays.

It's remarkable that this situation exists in the context of a financially healthy U.S. rail industry. In the 1970s, the rail industry was on its last legs. Regulation had hobbled its ability to respond to competitive forces and cover costs. Railroads lacked the capital to properly maintain their tracks. Eight large railroads went bankrupt during that decade. Many more faced extinction. Policymakers gave serious thought to nationalizing the rail freight system.

But cooler heads prevailed. Instead of nationalization, which would have involved a continuing cost of untold billions, Congress wisely chose deregulation. It passed the Staggers Rail Act of 1980. The legislation, in good measure, led to the success of the U.S. rail industry today.

Yet the competitive landscape in the rail industry has changed dramatically since 1980. As a result, customers have paid a very high price for U.S. rail industry gains. That's because competition – the hoped-for result sparked by Staggers – has largely fizzled out. Under the Interstate Commerce Commission (ICC) and later its successor, the Surface Transportation Board (STB), the regulatory agency that has authority to address these issues has not done the job.

One reason is that consolidation in the rail industry has reduced the number of Class I railroads (those meeting the STB definition of having operating income exceeding $277.7 million). To be competitive, railroads require competitors. In 1977, there were 63 Class I railroads in America. In 1980, there were about 40. Today, because of massive consolidation, there are just seven Class I railroads serving all of North America. And 90 percent of the nation's rail traffic is handled by only five major railroads.

Although STB has not been presented with another transaction involving two or more Class I carriers since revising its merger guidelines in 2001, railroad mergers inevitably reduce shipper options, regardless of the conditions that are applied by the agency. Bottlenecks are extended when lines serving captive shippers are acquired by connecting carriers. Efficient service from independent "bridge" carriers disappears. Competition for service to new industrial sites is reduced or eliminated. In conjunction with other ICC-STB policies that curtail competition between railroads, mergers have generally harmed captive shippers.

The inevitable result is whole regions and industries are now captive to a single railroad. You can imagine the difficulty that captive shippers face when it comes time to negotiate a rail contract or a rail rate for a captive facility. Lacking the negotiation flexibility and bargaining power that competition provides, freight rates from the monopolistic railroads continue to rise unchecked.

That explains why captive rail rates may reach or exceed twice the amount of a competitive rate.

In 2003, Escalation Consultants, Inc., which provides consulting services to the energy and rail shipper industries, studied captive versus non-captive rail rates for several commodity groups. For chemical companies the average non-captive rate for each railroad was about $16 to $20 per ton. In comparison, captive chemical rail shipments averaged $33 to $48 per ton – more than twice as much.

Heightening concern is that there is no forum other than STB in which to address issues involving railroads and captive shippers. In Staggers, Congress left those issues in the jurisdiction of the regulatory agency and did not de-regulate rail service in non-competitive situations. But STB has not lived up to that responsibility.

The STB's recent review of railroad fuel surcharge programs highlights the problem. For example, when basic freight rates are established, fuel surcharges are often calculated and applied as a percentage of those rates. As a result, captive shippers pay more in fuel surcharges because there was no competition when the basic freight rates were established. On January 25, 2007, the STB released a decision on the railroad's use of fuel surcharges. In its decision the STB noted that in many cases, the way in which the railroads collected fuel surcharges was unreasonable. Yet the STB provided no process or avenue for shippers to recoup these inappropriate fuel surcharges. Instead, it provided the railroads a 90-day transition period to adjust their fuel surcharge programs.

The American Chemistry Council commissioned a study on this issue, which found that those surcharges greatly exceeded the actual fuel costs. According to the analysis prepared by the economic and management consulting firm of Snavely, King, Majoros, O'Connor and Lee, Inc., the manner in which fuel surcharges have been calculated and applied by the railroads to all customer traffic from 2003 to 2006 has resulted in a conservatively estimated $6.4 billion in overcharges. The inability or refusal to refund these charges exemplifies why the shipping community views the STB with deep skepticism.

The irony of the STB's failure to act decisively on fuel surcharges is that Staggers was intended to protect captive shippers and promote competition. Congress wisely wanted to avoid the captive shipper conditions that exist today. That Act directed ICC, and now STB to "maintain reasonable rates where there is an absence of effective competition." Again, the STB has not lived up to its responsibility, and its regulatory interpretations have skewed the Act's intent to bring free market forces to bear on shippers and railroads.

Regrettably, the freight rail marketplace of today doesn't behave like a marketplace at all. Instead, it's dominated by five powerful monopolies. It's time to tear down the barriers to competition. Accordingly, ACC supports legislation introduced by Chairman Oberstar and Mr. Baker that would reform railroad regulation: H.R. 2125, the Railroad Competition and Service Improvement Act of 2007, is a bipartisan bill whose provisions would promote competition leading to better service at competitive prices.

- H.R. 2125 would eliminate "bottlenecks" that allow monopoly carriers to take advantage of their pricing power to prevent competition over a short, competitive portion of a route.

- H.R. 2125 would eliminate so-called "paper barriers" to competition. These are contractual agreements that require a short-line railroad to deliver all or most of its traffic to the major carrier that originally owned the short-line facilities. Such agreements prevent shippers from obtaining competitive service from other Class I carriers that connect to the same short-line.

- H.R. 2125 would remove the "public interest" hurdle (a higher standard than intended by Congress but imposed by the ICC, predecessor to the STB, in the mid-1980s) that has made the process for ordering reciprocal switching so difficult for shippers.

- H.R. 2125 would also develop a rate challenge process similar to that used by public service commissions and FERC, by shifting a greater part of the burden of proof to the railroads to prove rates are reasonable for captive shippers.

Chairman Oberstar and Mr. Baker have exhibited great leadership on this issue.
In a free market economy, monopolies – and the poor service and high prices they foster – belong in the museums of past history. Rail customers see no reason why the rail freight industry can't thrive in a competitive American marketplace like we do. The shelter from competition the freight rail industry now enjoys is unfair to rail customers and to consumers who ultimately pay the bills. It's time for Congress to end unfair and uncompetitive market practices. It's time to return to the original intent of the Staggers Act by passing H.R. 2125.

A long line of STB policy determinations is harming the competitiveness in key sectors of the American economy. Unless reversed, those policies will ultimately impair the ability of the U.S rail industry to serve all of its customers.

Congress wrote Staggers to clearly and carefully de-regulate those rail rate and service matters that take place in circumstances where shippers really do have competitive transportation alternatives. Because the marketplace works for such rail customers, Congress appropriately removed unnecessary regulatory involvement. We believe that Staggers has been successful in that regard.

But Congress also wisely recognized that railroads have what the law calls "market dominance" over certain shippers. In fact, were it not for those situations, there would have been no need for a federal regulatory agency with exclusive jurisdiction over rail industry rates and commercial practices, the construction and abandonment of rail lines, railroad mergers, etc. Staggers was clearly meant to de-regulate only those aspects of shipper-carrier commercial relationships that take place in competitive markets. ICC was retained in 1980 – and STB exists today – to deal with the non-competitive situations.

The anti-competitive policies implemented by ICC and STB are not included in statutory language. Staggers did not mandate such policies, and the agency has acknowledged that it has the statutory authority to reverse its interpretations. But STB almost invariably declines to exercise its discretion in favor of pro-competitive solutions to railroad issues, unless so directed by Congress.

The Class I railroads will not budge from the status quo in which they have complete market dominance over their captive customers – unless Congress acts. The current business model being followed by the railroads will inevitably lead to their financial doom, costing not only railroad shareholders, but also taxpayers and rail-dependent American enterprise. Even the railroads agree that the gap between their annual income needs and their annual income is expanding, not shrinking. This is despite the fact that they have been allowed to consolidate to achieve cost synergies. These synergies should have allowed them to operate more efficiently and in a fashion that permits them to recover their cost of capital. They've also had the opportunity to transfer less profitable track to short line railroads and they have been able to increase the burden on captive rail customers. According to a recent General Accounting Office report, captive rail rates substantially above the threshold for relief have increased, while costs traditionally born by the railroads are being shifted to their customers. The result is simply that those customers with no alternative pay the most.

Pursuing a strategy of continually loading more costs on captive rail customers is not a business model that will result in healthy American railroads in the long run. Captive rail customers will try to escape and the universe of captive rail customers is likely to be reduced over time. Some captive customers will construct rail line "build-outs." Some captive customers will shift their manufacturing activities to facilities that have transportation competition. Some captives will shift their manufacturing to foreign countries, exporting American jobs overseas. Some companies might be forced to close a U.S. plant or to forego an expansion without even having an offshore alternative. Under this business model, the rail industry will be required to load up even more costs on the remaining captives, thus accelerating the cycle.

Let me be very clear: we do not seek a return to the "bad old days" of the 1970's, when several of the major railroads were in bankruptcy and the industry lacked the capital necessary to maintain their systems. Unfortunately, more than a quarter of a century after passage of the Staggers Act, the rail industry apparently continues to fall short of the revenue needed to provide a first class rail system for the nation.

In fact, the railroads are proposing a 25 percent investment tax credit and first year expensing for infrastructure investments. While some level of investment tax credit for infrastructure may be appropriate, it is not at all clear that the proposal as currently constituted would improve the situation of the captive shipping community.

There must be a better way for the railroad industry to achieve long-term financial viability while providing efficient, reliable service at prices that will allow American business to compete successfully in the global market. Balanced, fair legislation, like H.R. 2125 is needed to bring about a positive relationship between the railroads and the captive customers.

Mutually dependent industries should be able to resolve their differences. But the railroad's monopoly power – enhanced by 27 years of STB decisions – precludes such resolution without congressional involvement.

Air Liquide appreciates the opportunity to present this statement.

If further information is needed, please contact:

L. Richard Pedersen
Director, National Distribution and Logistics
Air Liquide
2700 Post Oak Blvd. Suite 1800
Houston, Texas 77056
713-896-2721

NATIONAL FARMERS UNION

National Barley Growers Association

USA Dry Pea & Lentil Council

United States Beet Sugar Association

The Honorable James Oberstar
U.S. House of Representatives
Washington, DC 20515

September 12, 2007

Dear Mr. Chairman,

As leading national organizations representing a variety of agriculture interests whose members depend on rail for a significant portion of their transportation needs, we are writing to express our strong support for H.R. 2125, the Rail Competition and Service Improvement Act of 2007, and to commend you for your leadership on this issue.

Rail transportation remains a critical component to the agriculture industry as it moves commodities to domestic and international markets from the producers in rural America. We continue to be supportive of safe, efficient, and economical rail infrastructure system. However, the lack of competition among the railroads has resulted in unreasonably high rates and unreliable service for the agriculture producers, which could result in loss of market share to international competitors.

H.R. 2125 is critically important to ensure that rail customers have access to competitive rail service and that those rail customers without access to competition are protected from unreasonable railroad rates and practices and have access to reliable rail service. Certain provisions of the legislation, such as final offer arbitration, are especially important to the agriculture industry.

As you are working to investigate rail competition and service further during your hearing in the House Transportation and Infrastructure Committee on September 20, 2007, we commend you for your leadership on this issue. We believe H.R. 2125 goes a long way toward addressing the problems U.S. agriculture has had and continue to have with lack of rail competition and unreliable service. We urge you to continue your efforts to move this legislation through Congress.

Sincerely,

Alliance for Rail Competition

American Soybean Association

American Sugarbeet Growers Association

National Associations of Wheat Growers

National Barley Growers Association

National Farmers Union

United States Beet Sugar Association

USA Dry Pea & Lentil Council

US Dry Bean Council

USA Rice Federation

STATEMENT FOR THE RECORD

OF THE

ASSOCIATION OF AMERICAN RAILROADS

TO THE

U.S. HOUSE OF REPRESENTATIVES

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON

RAIL COMPETITION AND SERVICE

SEPTEMBER 25, 2007

Association of American Railroads
50 F Street NW
Washington, DC 20001
202-639-2100

Introduction

At the hearing of the House Committee on Transportation and Infrastructure's Subcommittee on Railroads on September 25, 2007, Chairman Oberstar invited the Association of American Railroads (AAR) to submit "specifically-written observations" regarding H.R. 2125, the "Railroad Competition and Service Improvement Act of 2007." This submission is in response to that invitation. This submission is somewhat lengthy because, frankly, from the point of view of the AAR, there is much in H.R. 2125 that warrants comment.

The AAR respectfully suggests that H.R. 2125 represents the wrong approach to railroad regulation. It re-injects government control over wide areas of freight rail operations, as explained below. It is based on misunderstandings or misrepresentations regarding the competition railroads face. It would affect broad swaths of rail traffic, far beyond what any reasonable definition of truly "captive" shippers would include. And most importantly, it dooms freight railroads to perpetual capital starvation. H.R. 2125 would mean less rail capacity and reduced rail service when our country needs much more.

Is It "Reregulation"?

Proponents of H.R. 2125 deny that the bill constitutes reregulation at all. CURE, for example, claims that "[n]o provision of [H.R. 2125] empowers the STB to take any action that could be termed as 're-regulatory' under the most generous interpretation of that term."

CURE is wrong. In fact, H.R. 2125 would bring back an era of pervasive regulation. Through Section 101 (which directs the STB to "ensure, to the maximum extent possible, effective competition among rail carriers at origins and destination") and other provisions, the bill re-establishes an environment in which the STB is, for all intents and purposes, actively encouraged to regulate railroads and railroad operations.

Under H.R. 2125:

- Washington would force railroads to interchange traffic with other railroads at the whim of shippers, with no regard to railroad operational efficiencies or cost recovery and even when the rail rate for the traffic is not unreasonably high (Section 102).

- Washington could, in essence, cap rates for rail service at levels below the free market rate and below what railroads need to cover their expenses (Section 102, Section 104, Section 105, Section 302, Section 304).
- Washington could unilaterally void contracts, willingly entered into by private parties, governing the sale or lease of rail lines — even if none of those parties wanted the contracts voided (Section 103).
- Washington could label regions "areas of inadequate rail competition" and, among other things, order railroads in those areas to allow other railroads to use their tracks (Section 105).
- Washington could force railroads to have on hand whatever assets they might possibly need to overcome any potential obstacle to "reliable and efficient" service, and to pay damages associated with shipping delays that occur because of those obstacles, but without imposing on rail customers any obligation to pay for those assets (Section 202).
- Washington could order railroads, alone among all industries, to resolve disputes with their customers through binding final offer arbitration (Section 304).

This isn't "competition" or "balance." It's reregulation.

H.R. 2125 also perpetuates the misperception that the only competitive force that matters is rail-to-rail competition, and that service to a shipper by a single railroad is equivalent to unconstrained market power. This misperception ignores the reality that railroads face extensive competition for the vast majority of their business, including when a customer is served by only one railroad. It also ignores the fact that rail-to-rail competition develops where the capital markets determine that there is sufficient demand to sustain multiple railroads. Claiming that every market can sustain two railroads just because some markets can is like saying that every city can support two major league baseball teams just because New York can.

Indeed, the overwhelming number of rail customer facilities are, and always have been, served by only one railroad, because the economics never justified service by more than one railroad. The world that proponents of H.R. 2125 imply once existed — multiple railroads chasing every, or nearly every, customer — has never existed.

H.R. 2125 Is an Attack on Differential Pricing

The basic complaint of proponents of H.R. 2125 is that railroads charge too much to so-called "captive shippers[1]" through the use of differential pricing.

The purpose of differential pricing becomes more clear in the context of "revenue to variable cost" (R/VC) ratios. An R/VC ratio of 100 percent implies that the rate (revenue) for a given rail shipment covers all of a railroad's variable costs for that shipment, but none of the railroad's fixed and common costs[2]; an R/VC ratio of 120 percent implies that the rate covers the variable costs, and that an amount equal to 20 percent of variable costs is available to help pay for fixed and common costs; and so on.

For the most competitive traffic, a railroad would price itself out of the market if it charged much more than the variable costs it incurred in moving that traffic. In these cases, the R/VC ratio might be marginally higher than 100 percent. For traffic with fewer competitive options, the R/VC ratio might be much higher.

According to STB data, in order for railroads to cover all of their variable and fixed costs on a system-wide basis, rail traffic must move at rates that, on average, generate an R/VC ratio of approximately 137 percent. If <u>all</u> rail traffic moved at that level, railroads would break even, with revenue sufficient to maintain the infrastructure and equipment in place today. (Importantly, capacity expansion and betterment would require additional revenue.)

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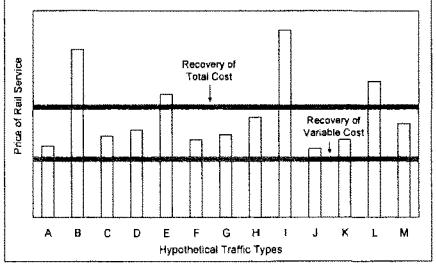
[1] Proponents of H.R. 2125 cannot seem to agree on what constitutes a "captive shipper." At the September 25, 2007 hearing, "captive" or a similar term was used to describe: 1) shippers served by just one railroad that cannot reasonably use another transportation mode; 2) shippers served by just one railroad that can and do use other transportation modes; 3) shippers that have access to two railroads but cannot reasonably use another transportation mode; 4) shippers that pay rates for which the revenue-to-variable cost ratio exceeds 180 percent; 5) the "vast majority" of shippers; and 6) a "minority" of shippers. Some complained about "captivity" without defining the term at all.

[2] "Variable costs" vary with the level of business – *e.g.*, fuel, some labor, etc. "Fixed costs" do not vary with the level of business – *e.g.*, many costs associated with track and equipment, interest on debt, etc. Even if a railroad has no traffic, its fixed costs still must be paid. "Common costs" are costs that cannot be traced to a specific segment of traffic – *e.g.*, central office operations.

However, if railroads tried to charge their highly-competitive traffic rates that generated an R/VC ratio of 137 percent, that traffic would divert from rail. Today, a substantial majority of total rail carloads are carried at rates yielding an R/VC ratio of less than 180 percent, according to STB data, and the average R/VC ratio of all traffic with an R/VC ratio under 180 percent is only around 111 percent.[3]

While highly-competitive traffic helps cover some portion of railroads' fixed and common costs (and is therefore worth transporting), a much greater portion of coverage of those costs must come from less competitive traffic. As shown in Figure 1, various traffic types contribute various amounts to railroads' costs. Railroads must cover total costs, as illustrated by the top horizontal line. But because much rail traffic moves at rates that do not reach that level, railroads rely on traffic with rates above that level to, in essence, make up the difference.

Figure 1: Policy Necessity - Differential Pricing for Railroad Cost Recovery



Absent massive government subsidies, there is no other way for railroads to cover the full costs of their systems.

Unfortunately, H.R. 2125 does not recognize this reality. Under H.R. 2125, there would no longer be a sufficient mix of high demand-high margin and low demand-low margin traffic to cover the costs railroads would incur to maintain and improve their infrastructure and provide the rail service our nation requires.

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[3] Rates with an R/VC less than 180 percent are presumed to be competitive under existing STB maximum rate regulations.

Specific Provisions of H.R. 2125

Seven of the most damaging major provisions of H.R. 2125 are discussed below. Each of them would involve a substantial increase in government control over the rail industry, and many of them would affect far more than just "captive" shippers, no matter how the term is defined.

1. "Bottleneck" Policy (Section 102)

Section 102 of H.R. 2125 states that "Upon the request of a shipper, a rail carrier shall establish a rate for transportation and provide service requested by the shipper between any two points on the system of that carrier where traffic originates, terminates, or may reasonably be interchanged." This provision completely reverses existing "bottleneck" policy.

In bottleneck situations, only one railroad (the "bottleneck railroad") can move freight from an origin to an intermediate point, or from an intermediate point to a final destination, but at least one other railroad can move the freight the rest of the way. For example, in Figure 2, only RR 1 travels from A to B (the "bottleneck segment"), but both RR 1 and RR 2 travel from B to C. Freight moving from A to C could move the entire way on RR 1, or from A to B on RR 1 and from B to C on RR 2. RR 1 is the bottleneck railroad. Because a large proportion of rail customers are served by just one railroad, bottleneck policy is enormously important.

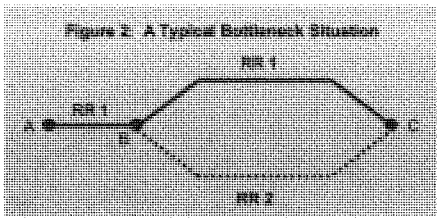

Figure 2: A Typical Bottleneck Situation

Existing bottleneck policy has been shaped by nearly a century of firmly-established judicial and regulatory precedent, including, most recently, STB decisions in 1996 and an appeals court ruling in 1999 that affirmed the STB decisions:

- As common carriers, railroads cannot refuse reasonable requests to carry freight from an origin to a final destination. If it is necessary for more than one railroad to participate in order to move freight to its final destination, the railroads must agree to interchange the freight and establish a rate for the entire "through movement" to the final destination.

- However, a railroad does not have to move freight just to a junction with another railroad if it can move the freight to the final destination by itself, unless the joint-railroad move is clearly more efficient than the single-railroad move. For example, for freight moving from A to C in Figure 2, RR 1 can hand off the freight to RR 2 at B if it wants to, but it doesn't have to. Instead, RR 1 can choose to carry the freight from A to C by itself.
- Likewise, a railroad does not have to provide a shipper with a separate rate for just a segment of a through movement. The rate for a through movement can be challenged by a shipper as unreasonable, but the reasonableness test must be based on the rate for the entire through movement (A to C in Figure 2), not segments of it (A to B or B to C).

Under H.R. 2125, though, a railroad would have to provide a rate for a movement to, and agree to interchange traffic at, any junction with another railroad that a shipper requested. In the example above, if a shipper had freight moving from A to C and wanted the freight interchanged with RR 2 at B, RR 1 would have to quote the shipper a rate for the movement from A to B and agree to interchange the traffic there with RR 2.

Normally in this circumstance, the bottleneck railroad (RR 1), recognizing that the non-bottleneck segment (B-C) of its route still needed to be paid for, could be expected to quote a rate for the bottleneck movement (A-B) that would "make it whole" — *i.e.*, the bottleneck rate would be high enough to cover the fixed and variable costs of the A-B segment plus the fixed costs of the B-C segment. In this way, the railroad would earn enough to cover its full costs.

But under H.R. 2125, the bottleneck railroad could not obtain a rate that would "make it whole." Under the bill, the rate for the bottleneck segment would be subject to STB maximum rate regulation based on the costs associated with that segment alone. In the example, RR 1 could not incorporate in the bottleneck rate any costs associated with the B-C segment, and it would have no way of covering B-C's costs.

Today, a bottleneck segment is not subject to rate regulation. Under Section 102 of H.R. 2125, it would be. That is reregulation.[4]

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[4] A representative of a shipper group that supports H.R. 2125 claims that "Not a single rate or service practice that is deregulated today will become subject to regulation" under H.R. 2125. (Whiteside & Associates, Transportation Report, April 13, 2007.) This provision of H.R. 2125 (among others) belies that claim.

This radical change is bad policy for several reasons.

First, it would force railroads to use routes and connecting points chosen by shippers without regard to efficiency or the structure of rail networks. If this happened, the current shipping patterns on the national rail network would be subject to massive dislocation.

This could have huge negative ramifications. Over the years, railroads have invested countless billions of dollars and enormous effort into concentrating traffic onto the most efficient routes. Indeed, critical facets of rail operations — such as which corridors are expanded and which are rationalized; the location and size of terminals, yards, and other facilities; crew and equipment distribution; and much more — are directly tied to these efforts. Concentrating traffic has created a much more efficient (and far less expensive) national rail system. It has also provided railroads with a reasonable degree of predictability regarding current and future traffic volumes on particular routes and at particular interchanges, enabling them to plan, with some degree of certainty, where assets should be deployed, where investments should be made, and how their networks should best be operated.

But if H.R. 2125 passed, that predictability would be lost. Shippers would be able to effectively pull the current system apart, buying bits and pieces of rail service. Network efficiencies and perspectives would be dismantled at the whim of individual shippers. Rail rates and costs that were based on efficient operating practices and economies of volume could no longer be sustained.

Second, as discussed earlier, an effective differential pricing system requires higher rates on traffic in areas of less effective competition to offset lower rates on highly-competitive traffic. But by allowing a through movement (A-C in Figure 2) to, in essence, be split into two different movements, Section 102 would gut the use of differential pricing in bottleneck movements.

The rate on the non-bottleneck portion (B-C in Figure 2) of a through movement would likely be driven down to near variable cost because of the newly-created rail-to-rail competition on that segment. Meanwhile, the rate on the bottleneck segment (A-B in Figure 2) would be subject to STB maximum rate regulation. Extended over the entire U.S. rail network, reversing

existing bottleneck policy would lead (depending on how many shippers availed themselves of their new-found open-routing freedoms) to a potential revenue loss to railroads of billions of dollars per year. Because there would be little or no accompanying reduction in expenses, most of this revenue loss would fall straight to the bottom line.

By capping the rate for the bottleneck segment of a movement at the cost of just that segment, and driving the rate for the remaining non-bottleneck segment to a lower level, the new bottleneck policy would result in a maximum rate for a through movement that is below what a railroad would need to recover its full costs. (Appendix 1 has a detailed numerical example that illustrates this point.) Eventually, disinvestment in our rail network would be inevitable.

Finally, reversing existing bottleneck policy would lead to a huge increase in STB regulatory proceedings to determine maximum rates for bottleneck segments. For both railroads and shippers, more and more resources would have to be devoted to regulatory tribunals, rather than to productively meeting freight transportation needs.

2. Interchange Commitments, a.k.a. "Paper Barriers" (Section 103)

Since 1980, Class I freight railroads have sold or leased tens of thousands of miles of rail lines to hundreds of new short line or regional railroads who could operate the lines more efficiently and/or serve customers on the line more effectively.

As part of some of these transactions, the parties involved voluntarily agreed to a lower (often zero) initial cash component in exchange for a commitment by the new railroad to interchange future traffic mostly or solely with the selling railroad. In other words, the total price for the rail line included a cash component and a future carload component.

Interchange commitments create "win-win-win" situations. They allow non-Class I railroads, in many cases, to acquire and operate lines they otherwise could not afford. They allow Class I railroads to concentrate their limited resources on higher-priority lines. And shippers too are better off, since they retain responsive rail service on lines that would otherwise receive low investment and service priority, or be abandoned altogether.

Despite these important benefits, Section 103 of H.R. 2125 would ban the future use of interchange commitments. The bill would also authorize the STB, upon request by a party to the interchange agreement or a rail shipper affected by one[5], to declare existing interchange commitments to be null and void.

The ostensible rationale for Section 103 is that interchange commitments are "anti-competitive." But interchange commitments do not diminish competition. The competitive position of shippers on a rail line sold or leased with an interchange commitment is no different after the transaction than it would have been if the transaction had never happened. In fact, absent interchange agreements, many sales and lease transactions would never have taken place. Rather, the most likely scenario would have been eventual abandonment.

Indeed, to claim that interchange commitments are anti-competitive is to fundamentally misconceive their purpose. When a Class I and a shortline railroad agree to a sale or lease involving an interchange commitment, the intent is to establish a cooperative arrangement to provide a total long-haul transportation service. The transaction is not meant to produce a competitive rivalry or create multiple-railroad competition where it did not exist before.

If interchange commitments were banned, sellers would demand a higher cash component to compensate for the loss of revenue from future traffic. This would make it more difficult for interested buyers to purchase and keep marginal rail lines in operation, since their up-front cash costs would increase. Consequently, fewer such transactions would occur.

Interchange commitments reflect contractual terms of payment voluntarily agreed to by willing buyers and willing sellers. It is bad public policy for the government to judge the fairness of the terms of such private contracts at all, much less years after they were agreed to. Indeed, few would agree that a government agency in Washington should be able to decide that the price someone sold his house for 10 years ago was too high and order him to rebate some of

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[5] There is no requirement that this shipper be "captive" under any definition of the term.

the sales price to the buyers. Yet there is essentially no difference between that and nullifying interchange commitments that are part of the sale or lease of a rail line.

Even if the STB had legal authority to retroactively ban interchange commitments, doing so would create daunting practical and commercial problems.

For example, the original underlying transaction would have to be renegotiated so that the selling railroad could be compensated for the value of the line without the interchange commitment. If the selling railroad did not receive appropriate compensation, it would raise fundamental questions regarding the "taking" of private property. It is also likely that under contract law generally, if not under the terms of the specific agreement, the selling railroad would have the right to seek to undo the underlying transaction, and the line would revert to the Class I carrier. In each individual case, someone (presumably the STB) would have to address who should pay the compensation. That would be reregulation.

Moreover, complexities would abound. What should happen in cases where the short line was either unwilling or unable to pay? What should happen in cases where neither the Class I seller nor the non-Class I buyer was the one seeking nullification of the interchange commitment? How could adequate compensation be set in the many cases in which a non-Class I lessee never paid any rent for the line?

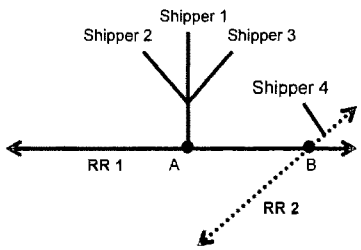
Interchange commitments are not anti-competitive. They have made a substantial contribution to the development of the U.S. shortline railroad industry and to more productive and cost-effective freight rail service in our nation.

3. Reciprocal Switching (Section 104)

In simplified terms, "reciprocal switching" refers to the transfer of traffic from one railroad's system to another. For example, in Figure 3, traffic carried by RR 2 but destined for Shipper 1, 2, or 3 could be "switched" to RR 1 at point B and then carried by RR 1 to its final destination.

Under Section 11102(c) of Title 49 of the U.S. Code as currently written, the STB "may require" rail carriers to enter into reciprocal switching agreements if the Board finds it "practicable and in the public interest, or where such agreements are necessary to provide competitive rail service." Section 104 of H.R. 2125 would change "may require" to "shall require." Although fees associated with reciprocal switching are usually privately negotiated by the railroads involved, Section 104 directs the STB to establish conditions and compensation for reciprocal switching if the railroads involved don't agree on them.

Figure 3: A Hypothetical Terminal Area



In addition, the STB, and the Interstate Commerce Commission before it, have consistently required a finding of anti-competitive conduct by a railroad before they granted reciprocal switching. Section 104 of H.R. 2125, though, explicitly prohibits the STB from requiring evidence of anti-competitive conduct before granting reciprocal switching.

The STB has granted switching agreements as a condition of approving a merger or other transaction in order to remedy potential anti-competitive impacts of the transaction, but this conditioning power has not been used to manufacture rail-to-rail competition where it did not previously exist. But that's what Section 104 of H.R. 2125 would do, and that is reregulation.

Access to rail service per se for a shipper is not the issue here. As noted earlier, if it is necessary for more than one railroad to participate in a movement in order to move freight from its origin to its final destination, the railroads must agree to interchange that freight. In Figure 3, if the only way for Shipper 1 in the terminal area to ship or receive freight is to have RR 1 and RR 2 interchange it, then the two railroads must do so.

The main problem with a switching mandate comes into play in cases where the track between the final destination and the interchange point is, in effect, a "bottleneck segment." In

these cases, under existing regulations, RR 1 can serve the shipper in the terminal area entirely by itself, or, if it chooses to, it can switch the traffic with RR 2. By mandating that the STB must order a railroad to switch traffic with another carrier, Section 104 would, in effect, overturn existing bottleneck policy when the bottleneck segment was near a terminal area. How near it would have to be is not clear, because under H.R. 2125 and existing regulations there are no clear limits as to how far outside an area switching could be ordered. Nor does H.R. 2125 limit reciprocal switching to "captive" shippers. Under the bill, a shipper paying a rate of, say, 120 percent of variable costs that uses trucks for 90 percent of its transportation could still seek it.

Consequently, all of the problems discussed above regarding overturning existing bottleneck policy would apply here as well.

Moreover, eliminating the need to demonstrate anti-competitive conduct could be interpreted as mandating switching whenever it was operationally feasible, under rates and conditions set by the STB. As with the bottleneck provision, it would use manufactured rail-to-rail competition to induce lower rail rates, and these rates would not be sustainable in the long term. Railroads would lose revenue they need to justify investment, including in and around terminal areas. Ultimately, disinvestment in these areas would occur.

Meanwhile, the STB could be inundated with requests from shippers to mandate switching. The STB would need to step in to resolve myriad disputes covering priorities for use of track, operating conditions, and a host of other issues. Complex, lengthy, and costly disputes would be inevitable as government interference replaced direct negotiation among railroads and shippers and between railroads.

4. "Areas of Inadequate Rail Competition" (Section 105)

Section 105 of H.R. 2125 proposes that the STB designate a state or part of a state to be an "area of inadequate rail competition" if any of several criteria are met. One criterion is having shippers who pay rates with a revenue-to-variable-cost ratio of more than 180 percent. Another is having shippers who "have experienced competitive disadvantage in the marketplace or other

economic adversity because of high cost or poor quality of rail service." These criteria are so broad and/or subjective that all or most of the country would qualify as "areas of inadequate rail competition."

After designating a state or part of a state to be an area of inadequate competition, the STB would have 60 days to resolve the conditions that justify the designation. To do so, the STB could order a number of different actions.

For example, in these areas, the STB could order reciprocal switching (discussed above) as well as "terminal trackage rights beyond the limits specified in section 11102(a) [of Title 49 of the U.S. Code]." In other words, the STB could order one railroad to allow another railroad access to its tracks. This provision demonstrates that Glenn English, the chairman of CURE, was wrong when he testified at the September 25, 2007 hearing, that "Nothing in [H.R. 2125] allows one railroad to operate on the tracks of another."

The STB currently has the authority to require terminal trackage rights if it "finds that use to be practicable and in the public interest without substantially impairing the ability of the rail carrier owning the facilities or entitled to use the facilities to handle its own business." However, Section 105 expressly allows the STB to order terminal trackage rights "beyond the limits specified" now. This language means that the STB would, in effect, have no limits at all as to when and to what degree it could order terminal trackage rights.

Moreover, by expressly prohibiting the STB from considering whether railroads engaged in anti-competitive conduct before ordering reciprocal switching and terminal trackage rights, Section 105 eliminates a factor the STB has long used (and properly so) to condition the use of these measures.

Another action available to the STB in "areas of inadequate rail competition" is expedited review of whether a rate violates the prohibition against discriminatory rates. Under existing law, "a rail carrier engages in unreasonable discrimination when it charges or receives from a person a different compensation for a service rendered, or to be rendered, in transportation the rail carrier may perform ... than it charges or receives from another person for

performing a like and contemporaneous service in the transportation of a like kind of traffic under substantially similar circumstances."

Today, this prohibition does not apply to (among others) rates applicable to different routes. However, under Section 105 of H.R. 2125, a review of whether unreasonable rate discrimination occurred could include a comparison of the rates charged for moving similar traffic over different routes. The STB could then force railroads to charge the same amount for movements of like commodities over different routes. That is reregulation. Since the average R/VC ratio for highly-competitive traffic is 111 percent, a shipper could likely find a lower rate and have the STB impose that rate — thereby gutting railroads' ability to price differentially according to market conditions. Again, capital starvation and disinvestment would be inevitable.

5. "Obligation to Serve" (Section 202)

Section 11101(a) of Title 49 of the U.S. Code establishes railroads' common carrier obligation. It reads: "A rail carrier providing transportation or service subject to the jurisdiction of the Board under this part shall provide the transportation or service on reasonable request." Section 202 of H.R. 2125 would append the following sentence to the end of Section 11101(a): "The transportation provided shall be reliable and efficient." Section 202 thus creates an "obligation to serve" on railroads.

At first glance, Section 202 of H.R. 2125 might seem reasonable. Who could be against reliable and efficient service? The problem is that proposals to impose an "obligation to serve" on railroads are disingenuous because they commit railroads to meeting high service and reliability standards, but impose no obligation on shippers to pay for the assets that railroads need to meet those standards.

Railroads and their customers do their best to forecast future demand to help ensure that railroads have enough assets to handle the traffic they are called upon to haul. Over the past couple of years, though, demand for rail service has exceeded expectations, creating capacity constraints and service issues at certain junctions and on certain corridors of the rail network.

Unforeseen events can make it far more difficult to overcome capacity constraints. The U.S. rail network is, in effect, a 140,000-mile outdoor assembly line: bad weather, accidents, and other unexpected problems — including many events over which railroads have little or no control, such as problems at supplier and receiver facilities like mines, factories, and ports — can inhibit rail operations for days, weeks, or, in the worst cases, even months at a time. Seasonal factors can also play a role — *e.g.*, grain harvests quickly flood the "rail pipeline."

When rail operations are affected by surges in traffic and/or serious unexpected problems, railroads may be temporarily unable to meet all shippers' requests as quickly as they would like. In 2005 and into 2006, for example, not every railroad coal customer was able to obtain all the coal as rapidly as it wanted, even though railroads moved more coal those years than ever before.[6]

Section 202 of H.R. 2125 reflects the unrealistic view that freight railroads can and should always have enough assets on hand to meet every shipper's demands, regardless of what problems or issues might arise.

Proponents of this view point to electric utilities' obligation to supply electricity to all customers at all times. They claim that if utilities have to operate under such an obligation, railroads should too. These proponents fail to consider, though, that an "obligation to serve" is feasible for electric utilities only because they have peak-demand capacity built into their asset base for ratemaking purposes. Utilities' rates are set by regulation high enough to cover their costs (including the costs of peaking plants that might be used only a handful of times per year) and provide them a reasonable rate of return on their investments.

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[6] As the Congressional Research Service (CRS) noted in a September 26, 2007 report, central to the coal delivery issue was a deliberate, long-term trend by utilities to reduce their coal stockpiles to improve financial results. As CRS noted, "By reducing inventories as more coal was shipped long distances from western coal mines, the power industry was cutting its "shock absorber" against coal supply interruptions at the same time the coal supply chain was getting longer and potentially more vulnerable to interruption."

That's very different from Section 202 of H.R. 2125. Section 202 is an unfunded mandate. It is reregulation because it would force railroads to have on hand whatever assets they might possibly need to overcome any potential obstacle to "reliable and efficient" service to any shipper (including shippers that are not "captive"), and be liable for damages associated with shipping delays that occur because of those obstacles.[7] However, Section 202 imposes no obligation on rail customers (unlike the obligation utility customers have) to pay for the assets railroads would need to meet this obligation.[8]

This is a critical point. Like most businesses, railroads build capacity for the business at hand or expected soon. Railroads cannot afford lots of "just-in-case" capacity, especially capacity that might have a useful life of many decades, because shippers are not willing to pay for the cost of producing and maintaining that stand-by capacity. An "obligation to serve" would be more likely to make rail service less reliable and less efficient for most shippers because it would force railroads to invest considerable sums in assets that would be idle much of the time.

6. New Rate Reasonableness Standard (Section 302)

Section 302 of H.R. 2125 gives the STB one year to adopt an entirely new method for determining the reasonableness of rail rates to replace the existing stand-alone-cost method. The new system is wholly undefined, except that it must be "based on the railroad's actual costs, including a portion of fixed costs and an adequate return on debt and equity."

This provision would cast aside an economically-sound process, along with 25 years of accompanying rulemakings and case law, simply because proponents want to change the rules in their favor in order to "win" more rate cases. The legislation offers virtually no guidance on how the STB is to create a new methodology; provides no certainty that the new methodology would

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[7] This liability for damages is implicit in H.R. 2125. It is explicit in S. 953, the companion bill to H.R. 2125.

[8] In fact, as discussed herein, H.R. 2125 includes many provisions that would sharply curtail rail revenue and thus make "reliable and efficient" service even more difficult to achieve.

adhere to sound economic theory; and offers no assurances that railroads would be allowed to earn enough under a new methodology to fund their massive investment requirements. The only thing that is clear, though, is that the new methodology is intended to produce rate ceilings below those produced by the existing "stand-alone" principle.

The little guidance that Section 302 provides — that the new methodology be "based on the railroad's actual costs" — is extremely troubling, because it appears to call for a "cost-plus" methodology for determining maximum allowable rail rates. Because railroads, unlike utilities, do not enjoy a guaranteed rate of return on their assets, "cost-plus" pricing would not, and could not, work in the rail context — not if railroads are to earn enough to cover the costs of their systems and pay for the new capacity and service improvements rail customers say they need.

Section 302 is particularly unnecessary in light of the new rate reasonableness guidelines for small shippers and the new cost of capital guidelines recently issued by the STB, which show that the STB is attempting to address shipper concerns in these areas.

7. Final Offer Arbitration (Section 304)

Section 304 of H.R. 2125 directs that disputes between a rail shipper and a railroad that involves the transportation of agricultural products shall be subject, upon request by either party in the dispute, to mandatory "final-offer arbitration" (FOA).

Under the bill, arbitrators' decisions cannot be based on any method using stand-alone costs of a hypothetical competitor, or on any precedent involving such methods. (Since this is the method by which the STB has determined the reasonableness of rail rates for many years, this provision means that arbitrators have no precedent to rely on at all.) Arbitrators' decisions may not result in a rate resulting in a revenue-to-variable cost ratio less than 180 percent. Arbitrators must consider rates or charges for the transportation of similar goods under similar circumstances where there is effective competition.

Section 304 is problematic in a number of ways:

- An arbitrator's decision could be completely subjective, totally divorced from sound economic principles and regulatory precedent. This would be

objectionable under any circumstance, but especially in rail rate disputes where millions of dollars could separate "final offers."

- Arbitrators would have to base rate decisions on rates paid for comparable shipments by rail customers in the most competitive markets, which by definition have lower rates. FOA would thus potentially eliminate railroads' high-margin traffic. H.R. 2125's requirement that arbitrators not order a rate creating an R/VC of less than 180 percent would be of little comfort. In effect, an R/VC of 180 could become both a floor and a ceiling for rate cases brought to an arbitrator. Effectively capping rail rates in this way would doom railroads to a perpetual inability to cover their costs.
- FOA would be available to all agricultural shippers, regardless of their competitive options. This casts aside a fundamental tenet of the economics of competition: where competition exists, there should be no regulatory intervention. As is the case with other provisions of H.R. 2125, FOA would also be available to shippers that are in far better financial condition than railroads.
- Railroads know of no other case in which private-sector companies are forced by the federal government to use binding arbitration to resolve price or service disputes with their private-sector customers. It is no more valid for the government to force binding arbitration on railroads than it is to force it on chemical companies, plumbers, supermarkets, doctors, or any other business. Indeed, proponents of mandatory FOA for railroads would never voluntarily accept it for their own businesses.

Today, railroads and shippers can (and sometimes do) voluntarily agree to use binding arbitration if both parties deem it desirable. There is a huge difference, however, between the voluntary use of binding arbitration and a mandate forced on private industry (even worse, on just one private industry) by the government. This would be reregulation.

Does H.R. 2125 Cap Rail Rates?

H.R. 2125 does not directly limit rail rates to so many cents per ton-mile, but the legislation caps rates just the same. In fact, some provisions effectively cap rail rates at 180 percent of variable costs for some shipments.

The whole purpose of H.R. 2125 is to use the power of government to force railroads to charge lower rates, and it does so in a variety of ways. For example:

- Section 102 overturning existing rail "bottleneck" policy would have the effect of capping the rate for a typically small part of a through movement at stand-alone cost and the rate for the rest of the movement at a much lower level.

- Like Section 102, Section 104, which orders the STB to grant reciprocal switching, would artificially manufacture rail-to-rail competition. This too would reduce the amount of high-margin traffic and effectively cap rates for affected shippers.
- Section 304, which mandates final offer arbitration, directs arbitrators to base rate decisions in many cases on rates paid by rail customers in highly-competitive markets. By definition, these markets have the lowest rates — most likely at a level where the R/VC ratio is well under 180 percent. Because arbitrators could not order rates with an R/VC ratio less than 180 percent, 180 percent would likely serve as both a floor and a ceiling. As noted by William Rennicke at the September 25, 2007 hearing, a cap of 180 percent on movements that have fewer competitive options is not sufficient to provide funds for a healthy rail network.[9]
- Similarly, rates paid by rail shippers in "areas of inadequate rail competition" (Section 105) would be based on (in other words, capped by) rates paid by customers in highly competitive markets. Again, these rates are likely to produce an R/VC of well under 180 percent. Although this provision of H.R. 2125 prohibits the STB from requiring rates lower than those necessary to yield recovery of 180 percent of variable costs, 180 percent would again likely serve as a floor and a ceiling in many cases.

What the Staggers Act Was All About

Proposed changes in the current railroad regulatory regime, including H.R. 2125, are based on a fundamental misrepresentation of what the Staggers Act was all about.

First, nothing in the Staggers Act is meant to imply that the only competitive force that matters is rail-to-rail competition, that service to a shipper by a single railroad is equivalent to monopoly power, and that all rail shippers therefore have a right to service by more than one railroad. Rather, Staggers was premised on the understanding that the market — not regulatory or legislative dictates — would determine which markets have sufficient demand to sustain multiple railroads and which do not. Staggers encourages the creation of additional competition through private investment and initiative, but it does not seek to artificially manufacture additional competition through governmental intervention.

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[9] Statements by proponents of H.R. 2125 make clear that capping rates at an R/VC ratio of 180 percent is a goal. For example, at the September 25 hearing, Glenn English of CURE said that, "Anything above 180 percent ought to be looked at by somebody, because the chances are pretty good that that's abusive." Another witness called a ratio of more than 180 percent to be a "zone of unreasonableness."

Second, Staggers did not bestow on railroads a special public service obligation, verging on the governmental, to subsidize other businesses, compensate for regional disadvantages or characteristics, or serve as the instrument for advancing local objectives or special interests at the railroads' expense.

Third, Staggers was not meant to force a railroad to price one shipper's movements at the same rate as another shipper's movements, or to cap rates at some percentage of variable costs. Instead, the fundamental economic principle underlying Staggers is that users of the nation's rail network should pay for that use in accordance with their demand for rail. The Staggers Act recognized that only by pricing in accordance with the varying demands for rail service (with reasonable regulatory protections against unreasonable rates) can railroads efficiently recover all of their costs, serve the largest number of rail customers, and maintain the viability of the nation's rail system. Differential pricing benefits all shippers, because lower prices to some shippers generate revenue which otherwise would have to be raised from those with the strongest demand for rail transportation. The unavoidable truth is that in order to expand infrastructure and service, railroads must — like every other business in a free market economy — obtain from their customers the resources necessary to support the growth their customers want and need.

Fourth, Staggers was not meant to be a vehicle through which one railroad could be ordered to make its facilities available for use by another railroad. Under current regulation, unless a railroad is found to have engaged in anti-competitive conduct, it is allowed to determine for itself how to utilize its assets. The experience prior to Staggers, when regulators again and again deemed their judgment superior to that of rail management in the allocation of rail assets — with dismal results — certainly should not be repeated.

Fifth, Staggers was not intended to prevent railroads from engaging in practices that improve efficiency, or from offering incentives to shippers that make efficiency improvements themselves. Thus, for example, railroads typically offer shippers incentives (in the form of lower rates) to move their product in larger and more efficient shipments. The lower rates, which reflect railroads' cost savings, result in more efficient movements and increased competitiveness

in the marketplace. Under this system, the market — not railroads — decides whether investments in facilities designed to handle more efficient shipments are appropriate.

Sixth, nothing in the Staggers Act supports efforts to cast aside the fundamental tenet of the economics of competition that says that where competition exists, there should be no regulatory intervention. Because the vast majority of rail freight movements are subject to a wide array of competitive forces — including product and geographic competition, competition from trucks and barges, countervailing power, and technological or structural changes — the vast majority of rail movements should likewise be free of governmental oversight. Proposals like those in H.R. 2125 would unjustifiably subject huge swaths of rail traffic to governmental oversight, including traffic that could not reasonably be described as "captive."

Finally, Staggers has provided, and the ICC and STB have implemented, remedies to protect shippers from abuse of market power or anti-competitive behavior. But Staggers was not designed to allow those unhappy with either the rates they are charged or STB decisions in rate cases to simply abandon the use of sound economic principles as a basis for rate decisions or to ignore the fundamental principle that railroads need to earn sustainable revenues.

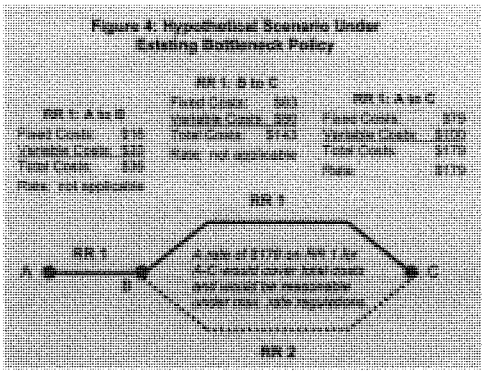
Conclusion

The partial deregulation of U.S. freight railroads brought about by the Staggers Act has worked. Railroads have been able to reinvest hundreds of billions of dollars in productive rail infrastructure and equipment, provide better service, raise traffic volumes, dramatically increase productivity, improve profitability, and improve safety — while at the same time sharply lowering average rates for shippers. H.R. 2125 would threaten all of these gains. It would severely harm rail service, the shippers that rely on that service, and the national economy.

The current system of rail regulation allows shippers to pay the lowest possible rate consistent with a privately-owned rail system. It makes no sense to destroy the best freight rail system the world has ever seen in order to move toward a discredited system that failed in the past and would fail again in the future.

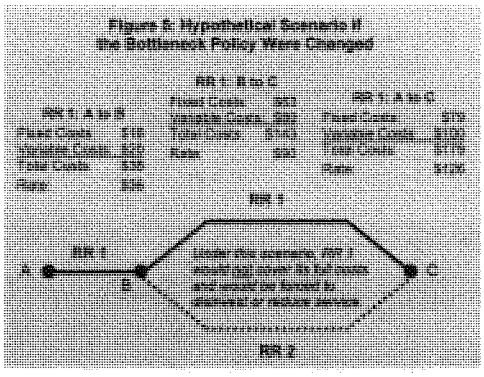
Appendix 1: Why Reversing Existing Bottleneck Policy Would Lead to a Huge Revenue Loss for Railroads

Consider a simplified example in which RR 1's fixed and common costs are $79, including $16 from A-B and $63 from B-C (see Figure 4). Assume variable costs are $20 from A-B and $80 from B-C. Assume RR 1 charges $179 to move traffic from A-C. In doing so, it covers the $79 in fixed and common costs and the $100 in variable costs for the entire route. The rate RR 1 charges for the move from A to C is automatically considered reasonable under existing STB maximum rate regulations, since the revenue-to-variable cost ratio (R/VC) for the traffic is less than 180 percent.



Now, suppose bottleneck policy is changed. Upon shipper request, RR 1 must hand off traffic moving from A-C to RR 2 at B, and the rate RR 1 can charge for A-B is based solely on the costs associated with the A-B segment.

To achieve an R/VC of 180 percent for A-B, RR 1 could charge no more than $36 (see Figure 5). Meanwhile, competition between RR 1 and RR 2 would drive down the rate for B-C to a level near variable costs. Assume RR 1 retains the traffic, but can charge no more than $90 from B-C — otherwise the shipper would use RR 2. (At a rate of $90, RR 1 gets at least something to help cover its fixed costs from B-C, which is better than the zero dollars it would receive if RR 2 got the traffic.) Under this scenario, RR 1's rate would be $36 from A-B and $90 from B-C, or $126 total. At this rate, only $126 of RR 1's total costs of $179 would be covered, leaving a $53 shortfall.



This is a hypothetical example, but in the real world a similar process would play out countless times, resulting in the loss of up to several billions of dollars in revenue each year from a rail industry that even in recent years, when traffic levels have been at record highs, has been no better than average among all industries in terms of profitability.

Statement of David McGregor, Senior Vice President
NAFTA Logistics, BASF Corporation

In Support of
H.R. 2125
The Rail Competition and Service Improvement Act

U.S. House of Representatives
Committee on Transportation & Infrastructure
September 25, 2007

The Chemical Company

NAFTA Logistics

David J. McGregor
Senior Vice President

October 4, 2007

Mr. Chairman, Ranking Member Mica, and Members of the Committee:

On behalf of BASF Corporation, I am pleased to submit this statement in support of H.R. 2125, the Rail Competition and Service Improvement Act, and respectfully request that it be made part of the record of the Transportation & Infrastructure Committee's September 25th hearing. BASF is grateful for your leadership on the matter of rail reform, Mr. Chairman, and we look forward to working with you to pass H.R. 2125.

My name is David McGregor, senior vice president of North American logistics for BASF Corporation, headquartered in Florham Park, N.J. At BASF, I have full oversight for all modes of transportation, all warehousing, and all distribution activities. It is from this vantage that I recognize rail to be one of the safest and most efficient means of freight transportation, critical to both our nation's infrastructure, and our ability to compete on a global landscape. Simultaneously however, I have growing concern with the regulatory shortcomings and deteriorating competitive environment of the railroads. Of specific issue, are the abusive rate and service practices, and more importantly, the ineffectiveness of the agency charged with their oversight, the Surface Transportation Board (STB).

About BASF's Rail Operations

As one of the largest chemical companies in North America, BASF is a responsible producer of materials for a variety of industries. With over 16,000 employees and nearly 50 U.S. production sites, we help make products better. We provide catalysts to vehicle manufacturers, ensuring trucks, buses, and automobiles run as clean as possible. We maximize home energy efficiency with formaldehyde-free insulating products. Our dispersions serve as the frame for water-based paint and coating products. The concrete additives we produce help expand the life of highway bridge decking by up to 25 years. With the highest emphasis on safety, we ship 40,000 rail cars a year to move these building blocks to market, at a cost exceeding $125 million.

Rate and Service Abuses

I would first like to address rate and service abuses by the railroads. On this subject, the Association of American Railroads (AAR) continually references declining average rail rates. This may be true in some instances, but it does not provide the entire story. The truth is, industry average rate history has little relevance to our shipments. BASF, like thousands of other rail shippers, is captive to a railroad monopoly at a significant portion of our sites. Our rail rate escalation history at these sites, which account for over half of our U.S. production, significantly exceeds the AAR's referenced declining average. As a result of these rate pressures, BASF has lost business to foreign competitors, who by the good fortune of their geography escape these monopolistic penalties. These losses not only refer to missed export opportunities, but more recently, even domestic business lost to foreign competition that are able to import material to our shore cheaper than we can move it over the U.S. rail network. The August 15, 2007 U.S. Government Accountability Office (GAO) freight railroad update lends further credence to these conclusions, referencing that industry-wide, "traffic traveling substantially over the threshold for rate relief has increased, continuing a general upward trend

since 1985."[1] This data represents that in recent years, over 150 million annual tons (approximately 1.5 million rail car loads) travel at these excessive rate levels.[2] The GAO report further highlights that between 2004 and 2005, the latest full year of data available, the railroad industry's "miscellaneous revenue" category, which includes fuel surcharge assessments, tripled from $633 million to $1.7 billion.[3]

Specific BASF Examples

Let me give you some BASF specific information. We have documented instances where freight moving from a BASF site that is captive to only one railroad monopoly, experiences average rate premiums of 50% over a neighboring non-captive site. A member of our own logistics team, with previous employment experience in pricing and operations at two of the large Class 1 railroads, confirms this is not an uncommon practice. In a very recent example of abusive railroad rate practices, consider the "take-it or leave-it" offer detailed below (Table 1). These are actual per-car rate offers, involving traffic where BASF is captive to only one railroad monopoly, including commodities in some instances, which are prohibited from moving by truck as a matter of policy. You can see that on this small sample alone, BASF will be subject to rate increases totaling $7.9 million, and exceeding 100% on average.

Table 1

Origin		Destination		Old Rate/Car	New Rate/Car	Dollar Change	Percent change	Annual Loads	Total Additional Cost
GEISMAR	LA	WASHINGTON	NJ	$6,836	$18,106	$11,270	165%	355	$4,000,850
GEISMAR	LA	WHITESTONE	SC	$5,849	$11,441	$5,592	96%	322	$1,800,624
PLAQUEMINE	LA	WHITESTONE	SC	$6,622	$10,274	$3,652	55%	137	$500,324
GEISMAR	LA	WYANDOTTE	MI	$3,240	$7,695	$4,455	138%	93	$414,315
PLAQUEMINE	LA	WASHINGTON	NJ	$5,404	$12,177	$6,773	125%	124	$839,852
BAYPORT	TX	WHITESTONE	SC	$8,631	$12,118	$3,487	40%	108	$376,596
								1139	$7,932,561

[1] GAO, Freight Railroads: Updated Information on Rates and Other Industry Trends, GAO-07-291R, p.8 (Washington, D.C.: Aug. 15, 2007).
[2] Id. at p.9, fig.6.
[3] Id. at, p.6.

Surface Transportation Board Ineffectiveness

In both statement and action, the STB repeatedly moves in tandem with the rail industry, and at odds with the shippers it is charged to protect. The Board's response to the above referenced GAO report for example, offers nothing in terms of introspection or acceptance of even the most remote possibility of shortcomings, despite the GAO's specific reference to "abuse of market power by the railroads".[4] Consider next the term "differential pricing", commonly and jointly used by the STB and the AAR. Despite the board's inference, when a railroad charges a premium to customers that are captive to only one railroad monopoly, it is not charging a *"different"* price, it is charging a *"captive"* price, a *"monopoly"* price, a *"punitive"* price. To the STB this is somehow acceptable!

The Board and AAR say that *"differential"* pricing, or lack of open access, is required for the financial well being of the industry. They argue that individual shippers must suffer against their marketplace competitors for the common good, in order to provide railroads adequate margin for their high levels of capital spending and maintenance. In 2006, BASF's North American capital and maintenance spending totaled $944 million. 2007 spending is projected at $1.1 billion. I ask this distinguished committee, why do the railroads require regulatory subsidies to fund similar capital and maintenance spending levels that BASF funds through the sale of its products and services under free market conditions?

Open access is a key provision of HR. 2125. Standing with the STB, the AAR says that Canadian-style rail regulation, which includes open access interswitching provisions that would allow captive shippers access to a second local railroad, would not work in the United States.

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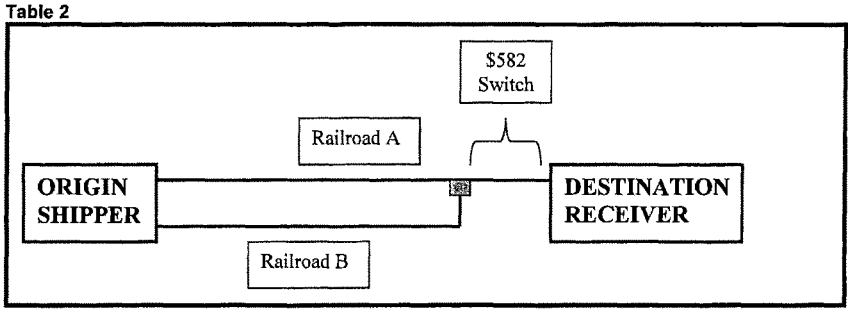
[4] Id. at p.10.

They say that interswitching rates are too low to allow for full cost recovery, and therefore would inhibit the pace of rail investment.[5] The performance of the Canadian National Railroad, similar in size to its American peers, amply challenges such a conclusion. Operating under these very open access constraints, the Canadian National not only thrives, but is the most profitable railroad in North America, and very adequately funds its capital and maintenance requirements.

Through a recent opportunity which allowed us access to two competing Class 1 railroads, BASF can offer further evidence of the viability of the concept of open access. The origin of the movement in question is jointly accessible by railroad A and railroad B (Table 2), both having tracks into the site. The destination is served by the tracks of only railroad A, while railroad B's tracks are located just a few miles away. For a reciprocal switch charge of $582, paid by B to A however, railroad A will move railcars those remaining few miles for railroad B, allowing railroad B to effectively access the destination and compete for the business. This open access arrangement, which exists in perhaps 30-50% of the U.S. rail base, is identical in theory to the Canadian model. In our example, railroad B under-bid railroad A's rate offer by 35%, willingly, and despite the additional reciprocal switch cost that railroad B incurred and railroad A did not. This demonstrates that the Canadian model of open access does indeed work in the U.S. today, and that with the establishment of reasonable and sustainable interswitching rates, it can continue to work and even thrive, on the expanded basis prescribed by H.R. 2125.

[5] AAR, The Imposition of Canadian-Style Rail Regulation in the United States, Policy and Economics Department, p.3 (www.aar.org: June 2007).

Table 2



Let me address the inadequacies of specific STB actions. Consider the Board's January 2007 ruling on unfair railroad fuel surcharges practices amounting to a $6.4 billion overcharge to their customers.[6]

First, despite the fact that Congress explicitly states, "it is the policy of the United States Government to encourage honest and efficient management of railroads,"[7] the STB took no action on this fuel scheme for a full three years after the railroads initiated it. The Board then dedicated considerable time and effort debating its jurisdiction to even consider the issue. This predisposition toward inaction and great care repeatedly exercised to avoid perception of exceeding procedural jurisdiction, lends itself to the consistent benefit of the railroads and to the consistent detriment of shippers.

Once the Board conceded that it's office, not another, was the appropriate body to review this railroad matter, only disappointment followed in the form of an ineffective decision, with astonishing failings highlighted by the following:

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[6] Rail Fuel Surcharges, STB Ex. Parte No. 661 (STB served Jan. 26, 2007).
[7] 49 U.S.C. 10101.

a. The Board recommended, but failed to mandate, the use of a consistent fuel index across railroads. In the words of dissenting Board Vice Chairman Buttrey, "the use of a single well recognized index would make fuel surcharges more transparent to the shipping community, the public, and the STB, and to impose reporting requirements without mandating a specific index seriously undercuts the effectiveness of that reporting."[8]

b. The Board failed to prescribe a consistent, best practice methodology, or peg/base level across carriers. This means one railroad can continue to charge fuel based on mileage, another on ton mileage, and another by railcar weight. Some may set the peg/base level at a WTI $64 barrel level, others at WTI $26, or any other unlimited combination of methodologies and peg/base levels. Beyond transparency concerns highlighted by Vice Chairman Buttrey, this great shortcoming clearly increases the administrative burden for shippers, and more importantly, increases the likelihood of continued carrier manipulation, such as the post-decision increase to base freight rates that several carriers applied on April 26 2007, offsetting the reduction in fuel surcharge revenues in full. While astonishing to many, this is not surprising under current Board oversight.

c. The Board prescribed that a quarterly report must be provided from each class 1 carrier regarding total fuel expenditures and consumption, keeping the report narrow "to avoid the regulatory burden."[9] Such narrow reporting is nearly useless toward achieving the end of ensuring honest and efficient management of railroads, and without some broader level of reporting, it is impossible to determine if rail shippers continue to be exploited on an individual basis. Clearly, after exposing an exploitive practice, the regulatory burden should not be the height of concern.

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[8] Rail Fuel Surcharges, supra note 6.
[9] Id..

Referring back to the $7.9 million rate increase detailed in Table 1, BASF has concluded that for the time being, filing an STB rate case, with historic average cost and duration of $3 million and 3 years, is not a worthwhile effort. The current process simply does not provide the shipping community with a meaningful remedy or relief. The Board's most recent decision on September 7, 2007 which favored the railroad over Basin Electric Corp. despite a 100% rate increase, certainly offers little help.[10] The Board is now considering a railroad's latest request to dismiss DuPont's recent filing, arguing that "rate cases involving hazardous materials should not be determined under a methodology that is less rigorous than a stand-alone cost analysis."[11] Only time will tell if the STB will accept this argument, allowing the railroad to change the rules in the middle of the game. Given these actions and decisions, we are left with the unfortunate opinion that in today's regulatory environment, a rate case filing with the STB offers no value to the shipping community.

H.R. 2125 is the Answer

The AAR will probably tell this committee to give the STB another chance, that the Board is in the process of re-working the rate case, and looking at a number of other important issues at this very moment. To that I say the Board's level of action is directly proportionate to the level of public outcry and potential risk to their office, nothing more. The STB acts only when no other alternative is available, and does so in a wholly ineffective manner. Some conclude that the failings I have described here are the result of an STB that operates under a bias for railroads, others suggest that the current statutory structure itself is to blame. Regardless of where the

[10] Decision in Western Fuels Association, Inc., and Basin Electric Power Cooperative v. BNSF Railway Company, STB NOR42088 0 (STB served Sep. 7, 2007).
[11] Filing Document in E.I DuPont De Nemours and Company v. CSX Transportation, Inc., STB NOR 42100 (STB filed Aug. 31, 2007).

failing resides, as currently structured, the STB is ineffective from the standpoint of America's shippers.

Your bill, Mr. Chairman, H.R. 2125, would fix these problems. Its open access provisions for example, would help eliminate the $7.9 million rate abuse detailed in Table 1, by permitting the STB to negotiate a practicable reciprocal switching agreement which fairly compensates the impacted railroad, while serving the public interest. The bill's concept of ensuring a newly pro-active STB would help protect rail shippers, before abuses like the fuel surcharge debacle have a chance to take root. Finally, its idea of improving the rate challenge process, offering shippers a genuine and workable relief process, would once and for all work toward reforming the STB into the effective body the Congress and the STB's predecessor, the Interstate Commerce Commission, had envisioned.

Conclusion

On behalf of BASF Corporation, I respectfully urge this committee to undertake the necessary actions to implement reform as quickly as possible, and to report H.R. 2125 to the floor of the House of Representatives for passage. Thank you for your consideration.

David McGregor

David J. McGregor
Senior Vice President – NAFTA Logistics
BASF Corporation

MMUA
Minnesota Municipal Utilities Association

STATEMENT FOR THE RECORD
MINNESOTA MUNICIPAL UTILITIES ASSOCIATION

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

HEARING ON RAIL COMPETITION AND SERVICE
SEPTEMBER 25, 2007

On behalf of the Minnesota Municipal Utilities Association (MMUA) we are writing to express our strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. MMUA is the nonprofit corporation that represents the interests of the state's 126 municipal electric and 31 natural gas utilities. Railroad transportation is the principal method of delivering coal to the electric generation facilities that provide power to Minnesota municipal electric utilities and their customers.

This heavy reliance on rail has left these utilities vulnerable to significant market power abuses caused by the absence of competitors in the railroad industry. Our utilities and other rail commodity shippers, including those who are served by only one railroad and are often referred to as captive shippers, are facing significant rate increases due to the lack of competition in the rail industry.

Our experience with the railroads has not been favorable. In the current consolidated railroad industry – an industry that provides limited or no options for competition -- we find that we are in a "take it or leave it" situation. Our railroad carrier dictates to us, without meaningful negotiation, the price and terms of our transportation. Not surprisingly, the price of rail transportation has been escalating at alarming rates while the reliability of service has been declining. Meanwhile, we recognize that the railroad industry is experiencing record profits and has become a darling of Wall Street.

Unfortunately, rail shippers and customers have nowhere to turn. For everyone but the railroads, our nation's rail system is broken: it is unresponsive and unaccountable. Indeed, the federal agency charged with "regulating" the industry, the Surface Transportation Board (STB), is wholly inadequate and ineffective. While the STB is supposed to mediate rate disputes between shippers and the railroads, the process itself is thoroughly skewed toward the railroads themselves.

For example, simple filing fees paid by customers at the STB continue to increase. Today an initial filing fee at STB is approximately $140,000, yet it costs only $350 to make a similar filing in federal district court. If the initial filing fee is not enough to dissuade a shipper for even contemplating action at STB, pursuing a rate case typically costs over $3 million and takes three years.

3025 Harbor Lane North • Suite 400 • Plymouth, MN 55447-5142 • 763.551.1230 • 800.422.0119 (MN) • Fax 763.551.0459 • www.mmua.org

Further, the burden of proof rests with the shippers and customers, who in order to obtain rate relief must prove that they can build and operate their own railroad for less than they are currently being charged by the railroad. The requirement to build this "fictitious" rail system is laughable and unwarranted, but obviously serious enough to deter even the most determined customers from seeking relief at STB. Understandably, rail customers are often reluctant to file their complaints at STB. One year ago the Government Accountability Office agreed with this assessment, declaring that the rate complaint process at STB remains largely inaccessible to rail customers, even as the number of shippers eligible for relief has more than doubled in some areas of the country.

There are a number of examples of the adverse impact caused by the lack of railroad competition on Minnesota's municipal electric utilities.

Hibbing and Virginia

Hibbing and Virginia, two small communities located on Minnesota's Iron Range, enjoy the benefits of owning and operating their own municipal electric utilities. Unfortunately, both communities have been forced to give up their rail service – they now resort to trucking their coal from Superior, Wisconsin to their respective towns to fuel small coal plants rather than deal with prohibitive costs of rail transport. The Virginia Department of Public Utilities, for example, now pays upwards of $44 per ton of coal, but only $9 is for the coal itself. The remaining $35 covers the costs of transportation.

Willmar

The city of Willmar and Willmar Municipal Utilities were informed that a new coal and transportation agreement between the city and the railroad would result in a 39 percent rate increase – and that this offer was non-negotiable.

Willmar is located on a BNSF Railway Company line approximately 100 miles west of the Minneapolis-St. Paul metropolitan area. Willmar has a local BNSF facility that provides rail services for a number of businesses in the local area, as well as providing for rail traffic that flows east/west through the city. The Willmar Municipal Utilities (WMU) serves about 9,000 electric customers and about 285 district heating customers. In addition to local generation, WMU has long-term power supply contracts in place that rely on coal as the fuel to assure our customers of an adequate supply of energy at a reasonable cost.

The Willmar municipal utility has a long history of local generation that relies on coal as its primary fuel. The local power plant is a co-generation facility that produces both electric and heat service from the same combustion process. Willmar believes that using coal as their fuel gives them access to a domestic fuel that has a projected ample supply for many years to come.

Toward the end of 2005, which represented the last year of a two-year coal and transportation agreement, Willmar was informed by their local BNSF coal company representative that, upon renewal of the coal and transportation agreement, the costs would increase substantially. Willmar immediately attempted to negotiate the prices and other terms in the proposed agreement, but was told that there would be no negotiations and that Willmar could take it or face termination of current coal deliveries. This amounted to a 39 percent increase, the cost of renewing the coal and transportation agreement for another two years (2006 and 2007). This increase has placed tremendous pressure on the Willmar Municipal Utility to increase electric rates charged to its customers.

SMMPA

Southern Minnesota Municipal Power Agency (SMMPA), the joint action agency that supplies wholesale power to several Minnesota municipal utilities, has also experienced poor service and rising costs at the hands of the railroads. SMMPA is co-owner of a large coal-fired power plant near Becker; they buy their coal from a Montana mine through the Western Fuels Association. Recently they were informed by BNSF officials that their coal transportation rates would increase 55 percent.

Laramie River Station

The Laramie River Station (LRS) is a large, 1500-megawatt coal-fired power plant located near Wheatland, Wyoming. Major owners of the plant include Basin Electric Power Cooperative, which operates the plant for its not-for-profit partners, and Missouri River Energy Services, which provides power to several western Minnesota communities. On average, the plant, which consists of three major turbines, uses 24,000 tons of coal per day.

The last generating unit at Laramie was built in 1982. Rail service to the plant from the Powder River Basin coal mines has always been provided by BNSF, the only railroad to serve LRS – there are no other transportation options. When the rail transportation contract expired in 2004, BNSF announced dramatic rate increases – amounting to $1 billion in rate increases over the next 20 years, the largest increases STB has ever seen. There was little choice: seeking relief from STB was necessary.

The Laramie River Station rate relief case, filed by Basin Electric and Western Fuels Association, unfortunately represents a classic case of why the STB needs reform. After three years and after spending millions of dollars, the petitioners got their answer: the STB declared the proposed rate increases were not unreasonable, denying any rate relief. STB did, however, give them another 30 days to revise their final comments. Adding insult to injury, the STB altered their own practices, issuing a new rulemaking in the middle of the proceeding, claiming the new rules could improve the rate review process. But the new rules proved prejudicial to the case, with STB admitting as much in its final decision.

Summary

We believe federal legislation is necessary to address several of these concerns. We understand that H.R. 2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where we do not have access to competition, and make the Surface Transportation Board more pro-active in its oversight of the railroad industry. These improvements in the current process would be extremely important to our customers. We believe that these changes will lead to the type of competitive railroad industry Congress intended when it adopted the Staggers Rail Act of 1980.

Statement for the Record
of the
National Corn Growers Association

Hearing to Review Rail Competition and Service

House Transportation and Infrastructure Committee
Washington, D.C.

September 25, 2007

The National Corn Growers Association (NCGA) represents more than 32,000 members from 25 state associations and 22 state checkoff associations as well as the hundreds of thousands of growers who contribute to state checkoff programs nationwide.

Agriculture is notorious for its uncertainty. Crops and farm income are dependent like no other industry on weather, politics and market trends beyond our control or ability to estimate. No matter the current market price, the cost to harvest and market this year's crop is on the minds of all corn growers, and consequently, we appreciate the House Transportation and Infrastructure Committee for taking a serious look at rail transportation, competition and service issues.

U.S. Corn Industry

America's corn producers continue to make a significant and important contribution to our nation's economy. From 2001 to 2006, the nation's corn crop has averaged 10.3 billion bushels resulting in an annual average farm gate value of almost $22 billion. The relatively stable production over the past ten years, made possible by innovation in production practices and technological advances, has helped ensure ample supplies of corn for livestock, an expanding ethanol industry, new biobased products and a host of other uses in the corn industry. Moreover, investments by the American taxpayer in our nation's agriculture programs have helped to produce a more stable financial environment for production agriculture and a brighter future for our rural communities. In our view, reliable, abundant, affordable and safe supplies of grain for the food on our tables to the fuel in our cars are generating benefits many times over for our national economy.

Higher production yields have created back-to-back record or near record harvests, and this year we are on par to harvest the largest corn crop in history. The U.S. Department of Agriculture (USDA) recently reported that corn producers are expected to harvest 13.3

National Corn Growers Association • 632 Copi Drive • Chesterfield, MO • 63005 • (636) 733-9004 • FAX (636) 733-9005 • corninfo@ncga.com • www.ncga.com
Washington DC Office • 122 C Street NW, Suite 510 • Washington, DC • 20001-2019 • (202) 628-7001 • FAX (202) 628-1933

billion bushels (26 percent above the 2006 crop). Yields are expected to average 155.8 bushels per acre; 6.7 bushels higher than in 2006.[1]

However, agricultural trade is hypersensitive to changes in transportation cost. Frequently, these costs are a large portion of the delivery price, particularly for raw, unprocessed commodities, like bulk corn. USDA research shows that nearly half the cost of U.S. grain at its final destination is accounted for by the cost of transportation from the farm gate to the final consumer. The accessibility and cost of transportation affects the ability of our farmers to keep and expand foreign markets.

Exportation of excess production supports domestic grain and agricultural product prices, enhancing the vitality of rural economies. Yet, our competitors in South America have a geographic advantage over us. In the U.S., points of production and consumption often are separated by long distances. The leading Corn Belt production areas are located 1,000 miles or more from the ports that serve our export customers. While we have sat idle, our major competitors – Argentina, Brazil and China – have made investments in their transportation systems and are dramatically reducing their costs for moving grain. The leading grain producing areas in Argentina and Brazil are located within 200 miles of their ports – in some cases as close as 50 miles – and with significant investments in their transportation infrastructure, they are better able to compete in the global marketplace. As a result, the U.S. advantage in world grain markets has weakened.

Growing Demand for Transportation

The Department of Transportation's (DOT) Federal Highway Administration Office of Freight Management projects a 69 percent increase in freight traffic from 1998 to 2020 for rail carriers.[2] In many agricultural regions of the country, trucks and barges compete with rail, keeping prices in check. However, barge transportation is not available to producers in the western Corn Belt, and truck transportation is cost-prohibitive for longer hauls to market. To agricultural producers located away from barge transportation, effective competition – including rail-to-rail competition – must be preserved and promoted.

Rail transportation demand has been strong and has set records for several years running – a trend that will likely continue due to several factors including: increased demand for commodities due to economic expansion; increasing intermodal demand; expansion of international trade; increased demand for coal due to high natural gas prices; high fuel prices; and new hours of service regulations on the trucking industry. Railroads are also facing internal operational issues (congestion and labor) and retirement of their workforce in substantial portions.

Compared to other commodities, corn has the highest transportation requirements due to volume. Total shipped grain tonnages increased 63 percent in 26 years – from 242 million

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[1] World Agricultural Supply and Demand Estimates, Approved by the World Agricultural Outlook Board, United States Department of Agriculture, ISSN: 1554-9089, September 12, 2007.

[2] Department of Transportation, Federal Highway Administration, Office of Freight Management, Freight News: Freight Analysis Framework, October 2002.

tons in 1978 to 394 million tons in 2004.[3] Of that total, 61 percent was corn.[4] In 2004, rail moved 33 percent of U.S. corn to export locations and 32 percent to domestic processors, feed lots and dairies.[5]

During the week ending September 15, 2007, U.S. railroads originated 24,582 carloads of grain. This is a ten percent increase over the previous week (22,271 carloads) and a fourteen percent increase from the same week one year ago (21,528 carloads), and an eleven percent increase over the 3-year average.[6]

Additionally, demand for the most fuel-efficient modes of transportation – railroads and waterways – will remain strong as fuel prices continue at their high levels for the foreseeable future. Likewise, concerns about the environment will support more environmentally friendly transportation – rail and waterways.

Capacity Limits Have Led to Poor Service

A 1998 USDA report stated that "...for the first time in a century there is too little rail capacity available to satisfy the demand of shippers."[7] Rail capacity concerns are not a new phenomenon, yet as a nation we are only now recognizing it as a problem.

All modes of transportation are facing serious capacity constraints. The Department of Transportation has estimated that "by 2020 the nation's freight tonnage is projected to increase nearly 70 percent" from 2003 levels, making the potential for additional problems in the next 15 years staggering.

We only need to look back on 2005 as an example of the catastrophic problems created by a major failure of our transportation system. The history books will declare Hurricane Katrina as one of the worst natural disasters on record. Additionally, Hurricane Katrina amplified the interconnectivity of rail with barge transportation. The inability to move grain just as the 2005 fall harvest was underway more than proves that fewer transportation alternatives mean higher transportation costs as agricultural producers lost over $1 billion in just four months.

There is very little slack in our nation's transportation system, particularly in agriculture. According to USDA's Agricultural Marketing Service (AMS), the number of railroad revenue-ton-miles increased 69 percent while route miles decreased 40 percent between

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[3] Transportation of U.S. Grains, A Modal Share Analysis, 1978-2004, Prepared by Nick Marathon, Tamara Van Wechel, and Kimberly Vacal for the Transportation Services Branch of the Agricultural Marketing Service, U.S. Department of Agriculture, October 2006.
[4] Ibid.
[5] Transportation of U.S. Grains, A Modal Share Analysis, 1978-2004, Prepared by Nick Marathon, Tamara Van Wechel, and Kimberly Vacal for the Transportation Services Branch of the Agricultural Marketing Service, U.S. Department of Agriculture, October 2006.
[6] Grain Transportation Report, Agricultural Marketing Service, U.S. Department of Agriculture September 27, 2007
[7] Agricultural Transportation Challenges for the 21st Century – A Framework for Discussion, The National Agricultural Transportation Summit, Kansas City, MO, July 27-28, 1998.

1980 and 2003.[8] As a result, each mile of rail line handles nearly three times as much volume on average as in 1980. This leads to constrained rail capacity which causes railroads to raise prices and/or apportion capacity to those shipments that are the most lucrative. Thus, agricultural shippers pay more while experiencing deteriorating service.

Various segments of the industry report complaints regarding availability of rail cars, late arriving cars, long cycling times and other service issues. Service predictability is a huge issue. Determining when rail equipment will arrive at origin for loading, when it will be furnished locomotive power and when it will reach destination are increasing uncertainties. It is common to hear reports from agricultural shippers who experience wait times for rail cars exceeding 30 days. In a world of "just-in-time" delivery, a 30-day wait for your product to be picked up is often unacceptable to your customers.

Interestingly, the trucking and barge industry have been able to better adjust to fluctuations in grain movement demand. As the cost of grain transportation increases, these industries see that as a sign for additional short-term capacity. Under similar conditions, the rail industry lessens its service options available to small rural shippers.[9] Shuttle trains are an option that moves grain efficiently. However, not all grain and grain products can be moved by shuttle shipments because either the volumes will not justify it or the shipping and receiving infrastructure cannot handle shuttles.

While railroads continue to have a common carrier obligation under the law – meaning reasonable service on a reasonable request – it seems to be redefined each year as rail service capacity becomes more limited. For example, intermodal is the fastest growing sector of rail traffic and competes with grain for limited rail capacity. By October, the fall corn harvest is in full swing. However, this is also the peak month for intermodal traffic with Christmas merchandise coming into the U.S. In this situation, grain does not have the same status as intermodal, both in the rates and the willingness to haul, which increases the cost of freight to grain shippers and undercuts the efficient marketing of grains.

As price takers and not price makers, these costs come directly from a producer's bottom line. We have little or no ability to influence the price received for our corn and are unable to pass cost increases on to buyers. Higher transportation costs result in producers receiving lower prices for our grain, which results in reduced producer income and potentially reduced economic prosperity in rural areas.

The Ethanol Dynamic

Agricultural products, particularly with respect to biofuels, have opportunities for growth with new and growing markets. Since 1976, no new oil refineries have been built in the U.S., yet over 120 ethanol production facilities have been built during this time – supplementing the gasoline market.

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[8] Feedstuff magazine, "*In 60 Seconds*," November 11, 2005.

[9] Agricultural Transportation Challenges for the 21st Century – A Framework for Discussion, The National Agricultural Transportation Summit, Kansas City, MO, July 27-28, 1998.

As of August 29, 2007, there were 128 ethanol plants with an annual production capacity of 6.78 billion gallons. An additional 85 plants are under construction. The U.S. ethanol industry is expanding rapidly and is expected to exceed 13 billion gallons per year by early 2009.[10]

Our ability to take advantage of these opportunities will be severely constrained if transportation capacity is not available. Currently, ethanol production is centered in the Midwest but 80 percent of the population, and therefore the ethanol demand, lives along the coastlines. Rail was the primary mode of transportation for ethanol in 2005, shipping approximately 60 percent of ethanol production (or 2.9 billion gallons). Rail freight is expected to increase from 1,879 million tons in 2002 to 3,525 million tons by 2035 – approximately an 88 percent increase even before ethanol production expansion is considered.[11]

Corn growers are very concerned that the current rail infrastructure appears ill-equipped to handle the potential volume increases expected to be generated by ethanol and its co-products. When ethanol production reaches 13 billion gallons, demand for rail transportation of ethanol could grow to an estimated 245,000 total ethanol carloads per year – three times the amount of ethanol shipped in 2005.[12]

With little excess capacity, all modes of transportation become hyper-sensitive to sudden changes in transportation demand and distribution patterns. Issues that could impact rail network performance include: potential shifts in grain rail transportation, location and demand changes from terminal markets, increased transportation demand for agricultural inputs, and volumetric increases of dried distillers grains (an ethanol co-product). As ethanol production expands, the consequences of these changes over a relatively short period could result in disruptions to rail service.

Increasing Rail Rates and Small Rate Case Challenges

Without question, the Staggers Act allowed a floundering rail industry to dig its way out of debt while preserving rail service to many shippers that otherwise would have lost access. The agriculture industry depends heavily on a strong and financially viable railroad system. Likewise, the availability of rail transportation at a fair price is critically important to corn growers. Unfortunately, rates have not declined uniformly since enactment of the Staggers Act and captive shippers are paying significantly higher rates than those with access to competition.

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[10] Ethanol Transportation Backgrounder: Expansion of U.S. Corn-based Ethanol from the Agricultural Transportation Perspective. Transportation Services Branch, Transportation and Marketing Programs, Agricultural Marketing Service, U.S. Department of Agriculture, September 2007.

[11] U.S. Department of Transportation, Federal Highway Administration, Office of Freight Management and Operations, Freight Analysis Framework, 2006.

[12] Statement of Bruce I. Knight, Under Secretary, Marketing and Regulatory Programs, U.S. Department of Agriculture, before the Surface Transportation Board, STB Ex Parte No. 672, Rail Transportation of Resources Critical to the Nation's Energy Supply, July 12, 2007.

Agricultural products have been subjected to an increasing number of double-digit rate increases in the past few years, which magnifies the need for agricultural shippers to have access to an expeditious, cost-effective and fair regulatory process for challenging unreasonable rates. In a 2006 study, the Government Accountability Office (GAO) found that the increases that have characterized rail rates for agricultural products since 1985 were atypical from the rate reductions that have occurred for coal, motor vehicles and other non-agricultural shipments. The GAO study, updated in 2007, found that the greatest increases in the percentage of rail tonnage shipped at rates exceeding 300 percent of a railroad's revenue-to-variable cost were occurring in rural areas where grain shipments are prevalent.[13]

Industry experts have stated that current and expected future demands on railroads, capacity constraints and greatly increased fuel costs give railroads even more reason to increase rates. For these reasons, corn growers participated in two joint-filings with respect to the STB's small rate case proposals.[14]

The STB issued new simplified rate guidelines in September 2007, modifying its procedures for small rail rate cases. The STB retained its proposed three-tiered approach for small, medium and large rail rate cases. The Stand-Alone Cost (SAC) methodology, which continues to be the Board's preferred approach, will apply to large rate cases of the type normally involving coal shipments. The Board has adopted, with some modifications, its proposal for a new Simplified-SAC for medium rate cases– an approach that is still very unworkable. Finally, the Board has retained a modified version of its three-benchmark approach for small cases.

Although the new rules are now in effect, we are digesting their implications and considering a petition to reconsider several of the decisions made that are either unfavorable for smaller shippers or unnecessarily complicated.

Even the STB's own proposal states that regulatory relief to challenge unreasonable rail rates would be limited to a small percentage of a carrier's traffic. Furthermore, these proposals are designed to improve processes available to shippers *after* they have been charged a rate they consider to be unreasonable. From the start, the rates paid for grain shipments should be at levels that promote, rather than punish, our competitiveness in the global marketplace.

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[13] Report to Congressional Requesters by the U.S. Government Accountability Office (GAO), "Freight Railroads: Industry Health Has Improved, but Concerns about Competition and Capacity Should Be Addressed," GAO-07-94, October 2006 (Updated in 2007).

[14] Joint comments filed on Ex Parte No. 646 (Sub-No. 1), Simplified Standards for Rail Rate Cases, by Andrew P. Goldstein, legal counsel on behalf of the National Grain and Feed Association and other Agricultural Organizations referred to in the comments as "The Agricultural Commenters." Joint Written Comments filed on Ex Parte No. 646 (Sub-No. 1), Simplified Standards for Rail Rate Cases, by Nicholas DiMichael and Andrew Goldstein, counsel on behalf of the American Chemistry Council and other interested parties. Supplemental filings were also submitted on our behalf by Gerald W. Fauth III and Thomas D. Crowley. October 24, 2006.

Fuel Surcharges

While recovery of unanticipated fuel expenses by railroads is justifiable, fuel surcharges have hit agriculture particularly hard. We are concerned that the calculation many railroads used to establish their surcharges are unreasonable and provide revenue beyond recovering their costs of fuel.

Earlier this year the STB adopted a rule which stated that it is an "unreasonable practice" to compute a fuel surcharge as a percentage of the base rate in addition to applying a fuel surcharge (a practice known as "double dipping"). We appreciate this ruling; however, the STB has yet to finalize rules for the rail industry to report revenues raised from fuel surcharges. We urge the Committee seek a final decision from the STB which would mandate that fuel surcharges must be reasonably related to additional fuel costs and rail carriers must be transparent in their actions.

Increasing Importance of Short lines

The GAO report touched on the hundreds of short line railroads that have come into being since enactment of the Staggers Act. Short lines provide rail service for numerous rural communities that otherwise would have lost service as a result of rail abandonment, and in many cases, short lines also provide greater customer service with lower rates. According to USDA, short line and regional railroads now operate nearly 30 percent of our railroad network and originate about 25 percent of the carloads.[15]

However, what began as a financing scheme for small railroad purchase of rail lines has turned into prohibited restrictions on competition. While railroads have partial antitrust immunity, there is concern that existing paper barriers may violate the Sherman Act,[16] which prohibits restraint of trade, because they limit the market access of shippers and restrict rail-to-rail competition. Paper barriers limit the ability to interchange traffic with other railroads, restricting our access to markets which impacts our ability to obtain the best price for our products due to increased shipping costs. Furthermore, the rates are split between Class I railroads and short line railroads. As a result, short line railroads cannot adequately support track investment or maintenance.

Paper barriers are usually confidential. Shippers are not aware of their existence until they attempt to ship products and are faced with the penalties in the paper barrier. The selling or leasing railroad should recover the fair market value of the sold or leased rail lines at the current cost of capital. However, when the fair market value of the line is inflated by accounting for the value of traffic that will travel over the lines, producers pay tariff rates higher than warranted.

We would support a comprehensive review of paper barriers that could be used to develop guidelines for reasonable paper barriers that would satisfy antitrust laws or remove them

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[12] Statement of Chuck Lambert, Acting Under Secretary, Marketing and Regulatory Programs, U.S. Department of Agriculture, Before the Surface Transportation Board on Ex Parte No. 575 – Review of Rail Access and Competition Issues: Renewed Petition of the Western Coal Traffic League, March 10, 2006.
[16] Sherman Act; 15 U.S.C. §1

altogether. We do not believe a prohibition of unreasonable paper barriers would result in desertion of rail lines. It would still allow railroads to profit by selling or leasing lines and remove the ability to extract monopoly rates.

Infrastructure Investment

Transportation infrastructure improvements expand the number of marketing options available to producers which means greater farm income. To corn growers the answer is simple: improving transportation infrastructure should be a national priority that deserves urgent attention – sooner rather than later. We can no longer stand idle, taking our transportation infrastructure for granted. Capacity constraints, structurally deficient bridges and mediocre roads, and locks and dams long past their expected useful life require our full attention as a nation.

In 2006, the rail industry reported an expected $8 billion investment in infrastructure – a 21 percent increase over 2005. However, some of this is focused on maintenance or renewal of existing capacity as opposed to capacity expansion. This only maintains the status quo and makes no long-term commitment to infrastructure investments. As the 2006 GAO report states, "Railroads do not prepare long-term capacity plans because of concern about the potential for significant economic changes."

We are appreciative that the rail industry faces the highest percentage of fixed costs when compared to all other modes of transportation. The rail industry provides its own roadbed, tracks, terminals and other facilities which are subject to depreciation, property taxes and maintenance expenses regardless of traffic value or volume.

Additionally, corn growers welcome the investment commitment by the rail industry to improve capacity, but as one industry expert has pointed out, individual railroads will concentrate their limited funds on what they perceive to be their most profitable market segments.[17] Our concern is how well corn growers compete for rail service, and in turn, rail infrastructure improvements with other sectors of the economy. Grain and grain products have not proven to be a high priority for service with the rail industry. We question whether or not these investments will be a response to the demands of Wall Street investors or reflect public benefits in terms of economic development, energy use, safety and congestion.

H.R. 2125 – A Step in the Right Direction

The Railroad Competition and Service Improvement Act of 2007 (H.R. 2125) is a big step in the right direction toward addressing many of the rail transportation problems facing agriculture as discussed in this testimony. This legislation will improve access to competitive rail service, protect those without competition from being subjected to unreasonable rates and/or practices and re-establish the reliability of rail service. In

[17] Statement of Carl D. Martland, Senior Research Associate & Lecturer, Department of Civil & Environmental Engineering, Massachusetts Institute of Technology, Before the Subcommittee on Railroads, Committee on Transportation and Infrastructure, U.S. House of Representatives, April 26, 2006.

particular, this legislation provides key improvements to issues important to agriculture including the removal of paper barriers and the use of final offer arbitration.

We look forward to working with the Committee to see that this legislation moves quickly through the congressional process.

Conclusion

Our competitive advantage is slipping due to a myriad of troublesome transportation issues. Strained capacity in all modes, increasing rates for rail service, declining barge efficiency because of outdated locks and dams and congested roadways are just a sampling of the issues that significantly affect our ability to market corn and corn by-products.

If we are to remain competitive in a very dynamic domestic and world market and be in a position to capture new market opportunities, we must have reliable, cost-effective and efficient transportation - whether by barge, truck or rail. Competition among these modes of transportation helps farmers receive their farm inputs, meet their customers' demands for timely delivery of products and successfully compete with foreign producers. Even when producers have cost-effective transportation alternatives, rail is an integral part of moving products to market.

Without investment in our transportation system, the promise of expanded trade and commercial growth is empty, job opportunities are lost, and we will be unprepared for the challenges of this new century.

This Committee has been very responsive to our nation's infrastructure needs. We value your efforts in seeking solutions that will establish a nationally-focused, comprehensive transportation strategy. Corn growers appreciate the opportunity to serve as a resource and provide input for the hearing record.

Rhodia

September 25, 2007

Hon. James L. Oberstar
Chairman
House Committee on Transportation and Infrastructure
Washington, D.C. 20515

Dear Chairman Oberstar:

Specialty chemical producer Rhodia Inc. has followed with great interest the progress of your legislation, H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. Rhodia's continuing success hinges on service to customers and that service, in turn, requires reliable rail transportation for our inbound raw materials and outbound finished products.

We support your sponsorship of H.R. 2125 and we are encouraging Members on your committee and other Members to co-sponsor or otherwise support its passage.

Rhodia is a key supplier to the petrochemical industry and other manufacturers. We produce and regenerate sulfuric acid for major refineries and other customers, from six plant sites around the country. These customers, especially refinery operators, require continuous and timely rail delivery of sulfuric acid for their own operations. Without it, refineries and other chemical manufacturers cannot operate, with associated impacts on the nation's energy infrastructure.

Rhodia is also a leading supplier of key ingredients for many consumer products. In this line of business, Rhodia accepts rail deliveries of raw materials, some of which are hazardous and cannot be transported by any other means. Poor service, escalating costs and railroads' reluctance to carry certain cargoes at all are factors which already erode our competitive position.

For example, Rhodia's Houston plant supplies TIH sulfuric acid to another chemical producer in Alabama, utilizing the shortest and most direct combination of rail routes collectively called the "coastal route" largely operated by CSXT along the U.S. Gulf Coast. Rhodia recently invested a considerable sum for six new tank cars specifically for this service, designed and built to the latest state-of-the-art safety standards.

CN 7500 Cranbury, NJ 08512, *Telephone: (609)860-4000*

As of last week, CSXT has withdrawn its participation in the coastal route—essentially canceling the safest, most direct and efficient route for this haul. The railroad's refusal to serve forced us to arrange an alternate route extending more than 200 miles longer than the coastal route, thus adding needless risk from extended transit time. Including and pre-dating last week's CSXT withdrawal, ***the costs for this service have more than quadrupled in less than four years, and service has been outright refused via the most direct route.***

In another example, confused rail service earlier this year seriously threatened sulfuric acid supply and threatened the shutdown of a major refinery in the Salt Lake City area, which uses the acid as a catalyst in the manufacture of products that boost octane. Rhodia relies on Union Pacific to maintain a consistent flow of railcars carrying fresh and spent acid between the company and the customer. Union Pacific billing problems first led to stranding rail cars at the customer's site ***15 days past their expected release date.***

After a week of attempts to rectify the shortfall, the UP misrouted the first supply train from our Los Angeles plant ***to Nebraska.*** The second and third trains out of California were then held in the local switch yard ***for over a week.*** Emergency measures to supply the customer were implemented, and only unrelated operational action prevented the refinery from shutting down. A shutdown of this refinery would have cost $1 million a day, not counting the consumer price impact during peak gasoline season—a needlessly close call that could only be attributed to poor rail service.

In other egregious pricing moves, Rhodia's plants in Charleston and Spartanburg, SC have been subjected to prices for transporting incoming raw materials that increased more than 20 percent in just two years, from 2005-2007. These plants produce ingredients for consumer cleaning products, agricultural, flame retardants and pharmaceuticals. Since 2003, CSXT prices for delivering TIH raw materials to Spartanburg ***nearly doubled;*** for the Charleston site, prices ***nearly tripled.***

Aggravating the Spartanburg experience, CSXT is no longer willing to staff its local yard sufficiently to move these same TIH raw materials through its network within regulatory time limits. Instead of properly managing its traffic, CSXT now insists that Rhodia—the customer—should be responsible for longer storage times, knowing that the company's Spartanburg site does not have siding capacity to manage the railroad's job.

The list of price hikes amid service lapses could go on. These examples provide clear evidence of declining service and escalating rates offered by our nation's railroads. They also point to the current dysfunctional federal regulatory apparatus pertaining to railroads and the indifference with which the railroads treat not only customers, but entire sectors of our nation's essential infrastructure.

Rhodia has no interest in "re-regulating" the railroads. Yet, without the changes foreseen in H.R. 2125, we see only a continuation of de-facto practices that are costly to shippers,

costly to manufacturers, costly to consumers, costly to our economy and even costly to our security.

We strongly encourage your advocacy of H.R. 2125 and we will do all we can to advocate its early passage in this Congress. Should you need additional information, please contact me at 609-860-4456 or David Klucsik of my staff at 609-860-3616.

Sincerely,

James Harton
President
Rhodia Inc.

Steel Manufacturers Association Statement

Transportation & Infrastructure Committee
U. S. House of Representatives
September 20, 2007

Steel Manufacturers Association
1150 Connecticut Avenue, NW, Suite 715
Washington, DC 20036
U.S.A.

Tel (202) 296-1515
Fax (202) 296-2506
http://www.steelnet.org

I would like to thank Chairman Oberstar for his strong leadership and commitment to promotion of a safe, efficient transportation system. We also owe a vote of thanks to the other members of the House Transportation and Infrastructure Committee for this opportunity to present our views on the subject today.

I am Thomas A. Danjczek, President of the Steel Manufacturers Association, the primary trade association for North American electric arc furnace steel producers and re-rollers. SMA's 36 member companies produce over 70 percent of the steel made in the United States, and are represented in the U.S. Congress by 122 Congressional Districts in 37 states.

SMA members produce steel almost entirely from a feedstock consisting of recycled steel scrap. We are highly dependent upon efficient rail transportation both for the shipment of incoming steelmaking materials and outbound finished steel mill products.

Although North America's railroads have increased their strength and viability in recent years, we are concerned that this same period has been marked by substantially increasing rail rates, coupled with deteriorating customer service and reliability. While key railroad investors such as Warren Buffett anticipate significant future returns on their investments in the rail transport of commodities and finished products, steel producers have been left paying more for declining

service. To quote the CEO of an SMA member company: "It's like being forced to leave a big tip for a bad meal".

Transportation costs have escalated to the point that they now account for 15-20 percent of the total cost of producing steel. Increasing rail rates challenge the ability of U.S. steelmakers to compete in global markets, as compared to our foreign competitors, particularly China.

When Congress enacted the Staggers Rail Act of 1980, there were 40 Class One railroads operating in North America; through a series of consolidations, the vast majority of the U.S. is today served by just five Class Ones, and a great number of shippers are captive to a single Class One railroad. Clearly the industry has changed over the past 27 years, since the absence of competition has had a significant impact on rail service and performance; yet the same antiquated regulatory structure remains in place.

As a result, SMA members are often faced with a "take it, or leave it" attitude from their rail carriers, a service attitude that is troubling to any service purchaser, but particularly so when a railroad company enjoys near monopolistic market dominance.

Since 2003, SMA members have seen their rail rates increase by a magnitude of 33 percent, with some steel producers citing increases in excess of 60 percent. And despite a recent decrease in railcar demand, SMA members have experienced no relief in pricing. Instead, in certain instances, railroads are removing railcars from circulation to manipulate volume and maintain exorbitant rail rates.

Monopolistic railroad control has led to a series of unsatisfactory business practices. For example, the Burlington Northern Santa Fe has responded to its own equipment shortcomings by instituting Loading Origin Guarantees (LOGS), a car auctioning program that forces shippers to bid, often against their own customers, for a future right to order railcars for service.

In addition to concerns related to the absence of competition, the regulatory structure overseeing shipper-carrier interaction is in vital need of repair. The Surface Transportation Board (STB) has viewed its primary objective as the maintenance of the financial health of railroads, with limited accounting for the adverse impact upon rail customers. The process for filing and prosecuting a rate relief case is extremely costly and time-consuming, leaving many shippers, steel companies included, feeling that they have little or no impact on the formulation of rail transportation public policy.

In the past year, the STB addressed shipper concerns related to excess railroad fuel surcharges by holding a series of hearings and accepting rounds of comments. Shippers documented over $6.5 billion in overcharges resulting from the application of these surcharges, termed by Jack Gerard, American Chemistry Council president and chief executive, as "the greatest train robbery of the 21st century". The STB's final decision substantiated shipper claims regarding over-recovery, and called for adjustments to railroad fuel surcharge methodology. Yet none of the over-recovered funds have been returned to shippers, and railroads further undermined the decision by rolling

surcharges into their normal rates, outside the general jurisdiction of the STB, under the guise of 'revenue neutrality'.

It is now time for Congress to act to promote a healthy efficient railroad system that serves the needs of shippers and carriers alike. For this reason, we ask that Members of the Transportation and Infrastructure Committee, as well as other Members of the U.S. Congress, support H.R. 2125, the Railroad Competition Service Improvement Act. SMA in no way endorses 're-regulation' or government involvement in the setting of rates; however we do support the removal of obstacles that currently prevent competition in the rail industry, as well as alterations to the regulatory structure that would provide shippers a greater chance to seek a remedy. SMA members are looking for improved service, competitive rates, and rail industry investment in the equipment servicing their mills.

Again, Mr. Chairman, thank you very much for the opportunity to present our views.

WRITTEN TESTIMONY BEFORE THE

HOUSE COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE

SUBCOMMITTEE ON RAILROADS

SUBMITTED BY

Richard L. Charter
Senior Vice President – HSSE and Governmental Affairs
TOTAL PETROCHEMICALS USA, INC.
1201 Louisiana Street, Suite 1800
Houston, Texas 77002
713-483-5041

HEARING ON

RAIL COMPETITION AND SERVICE

SEPTEMBER 25, 2007

Chairman Oberstar and distinguished Members of the Committee, my name is Rick Charter. I am the Senior Vice President – HSSE and Governmental Affairs for TOTAL PETROCHEMICALS USA, INC. (TOTAL). I appreciate the Committee taking the time to hold this important hearing and for the opportunity to share TOTAL's rail transportation experiences with the Committee today.

TOTAL is headquartered in Houston, Texas and is one of the largest producers of petrochemicals (polypropylene, polyethylene, styrene, polystyrene), base chemicals and transportation fuels in the United States. TOTAL has manufacturing facilities in Texas and Louisiana as well as a research and technology facility in La Porte, Texas and a refinery in Port Arthur, Texas. With sales of $9.8 billion in 2006 and over 1,600 employees, TOTAL has built its petrochemicals business with a strong manufacturing bias, based on world-scale plants and technologically advanced operations. We manufacture petrochemicals for the plastics industry, producing plastic pellets for use in everyday household items like food containers, furniture, carpets, and beverage bottles to name just a few.

TOTAL produces over 4.5 billion pounds of plastics pellets each year, most of which are delivered to our customers via rail transportation. TOTAL has built some of the world's most competitive manufacturing sites in the Gulf Coast Region of the United States. The success of our plants, however, is dependent upon an efficient, cost effective transportation and distribution network. TOTAL and other member companies of the American Chemistry Council (ACC) depend on the U.S. rail industry for the safe, secure and efficient transportation of approximately 170 million tons of chemical products to customers each year, accounting for more than $5 billion in annual railroad industry revenues. The U.S. chemical industry employs approximately 900,000 people and accounts for approximately 10% of U.S. exports, thus contributing to the U.S. trade balance and national economy. Railroad reliability and service are critical to our success.

Through the years, TOTAL has cut every operating dollar possible out of our manufacturing budgets yet costs to distribute our products continue to grow at alarming rates year after year. We ship our products primarily by rail, as rail, for the most part, represents the only feasible option available to accommodate the volume of product we ship from our plants to our customers. Until recently, most of our plant locations were served by one origin railroad. In addition, a large percentage of our customers' facilities are also served by only one railroad. We are captive shippers and, as such, have been subjected to excessive rail transportation charges along with poor service. We are continually required to pay more for less service and value.

As the Committee is aware, today's rail industry is highly concentrated. The forty plus Class I railroads that existed in 1980 have been reduced to just seven, four of which provide over 90% of the Nation's rail transportation. These four railroads control different areas of the country and competition amongst them is essentially non-existent. In the chemical industry, nearly two thirds of chemical shippers are now served by only one railroad and are thus, captive to that railroad. This lack of competition results in such captive chemical shippers paying, on average, rail rates that are 77% higher than those paid by chemical shippers with competitive rail

access.[1] To illustrate the point, TOTAL offers the case of shipments made to Chicago from two separate and distinct TOTAL facilities. The distance from TOTAL's La Porte, TX plant, which has competitive access, to Chicago is 1,267 miles while the distance from TOTAL's Carville, LA, a captive plant, to Chicago is 935 miles. TOTAL's rates to Chicago for the shipment of non-hazardous cargo of plastic pellets on the captive Carville-Chicago route are a whopping 225% higher than those paid by TOTAL on the competitive La Porte-Chicago route.

There is more at stake for chemical shippers than simply the monopolistic pricing by the railroads. The continued widening of the trade deficit relative to chemical industry business is also troubling. More and more of the new and existing railroad infrastructure is being consumed to support imports, and the railroads are allocating increasing percentages of their infrastructure to support intermodal traffic. Meanwhile, U.S. chemical manufacturers are increasingly unable to export due, in part, to gridlock in the existing rail infrastructure. TOTAL has experienced this difficulty first hand with respect to exports out of the Houston, Texas area. In this area, serious rail congestion has resulted in intermittent rail embargoes, which have seriously impacted TOTAL's ability to move its product to facilities for necessary pre-export packaging.

TOTAL's frustrations do not stop there. In August of this year TOTAL issued a Request for Proposal (RFP) asking three of the Nation's Class I railroads to participate in the bidding process for $35MM of freight traffic. With only 34% of open access overlap, TOTAL was defenseless to the monopolistic behavior exhibited by the railroads. One of the "participating" Class I railroads used strong-arm tactics to withhold information reasonably requested by TOTAL, thus hindering TOTAL's ability, as a consumer, to fully-evaluate the options available for satisfying our freight needs. Commonplace in the bids, were the railroads' introduction of terms, without option, that included punitive actions if TOTAL exercised choice, what little choice there was. One example: If faced with inadequate service, one of the railroads will impose punitive liquidated damages to the extent TOTAL utilizes an alternative means of delivery to meet our customer needs. The liquidated damages imposed will in most cases far exceed the variable cost of the move had that railroad actually hauled it. Overall, two Class I railroads elected to increase freight rates to some destinations as much as 200% from 2006 rates. Rates on closed lanes ended up as high as 600% of railroad variable cost, and rates on open lanes ended up as high as 350% of railroad variable cost. These increases were independent of fuel surcharges.

While the Staggers Act of 1980 was enacted by Congress to restore the financial health of the Nation's railroads by providing them with certain rights and protections, Congress recognized the need to balance these rights and protections with oversight by the Interstate Commerce Commission (later replaced by the Surface Transportation Board, "STB"). The STB was charged with the responsibility of protecting captive rail shippers from the abuse of railroad monopoly market power.

Over the years, a long line of STB policy determinations has harmed the competitiveness of the U.S. chemical industry and other key sectors of the American economy. Unless reversed, those policies will ultimately impair the ability of the U.S rail industry to serve all of its

[1] Source: Escalation Consultants 2003 Report

customers.

TOTAL, therefore, supports H.R. 2125, the Rail Competition and Service Improvement Act of 2007 and appreciates the Committee's important work toward creating the legislative and regulatory framework necessary to restore competition to the Nation's rail transportation system.

Statement of
Tyler D. Duvall
Assistant Secretary for Transportation Policy
U.S. Department of Transportation

Submitted for the Record
Committee on Transportation and Infrastructure
U.S. House of Representatives
September 25, 2007

Rail Competition and Service

The U.S. Department of Transportation appreciates the opportunity to submit this statement for the record for the House Committee on Transportation and Infrastructure's hearing on Rail Competition and Service.

In April of this year, Under Secretary for Policy Jeffrey Shane testified before the Surface Transportation Board that congestion and capacity limitations continued to be a problem on the Nation's railroad network, despite record levels of investment in new capacity. The miles-of-road owned by the Nation's railroads have fallen by almost 20 percent since 1990, primarily because of the high cost of maintaining track at a time that traffic demand did not appear to warrant such a large network. Similarly, railroad employment levels were static. Nevertheless, significant increases in productivity (measured in freight revenue ton mile per employee hour) allowed the railroads to realize record traffic gains – from 1985 to 2005, rail productivity grew nearly 240 percent, while traffic, measured in ton miles, grew by 93 percent.

However, the cushion provided by these productivity increases has been exhausted, and traffic continues to increase, partly because high fuel costs and a shortage of truck drivers has increased costs for truckers and made rail freight a more attractive option for shippers. At the same time, crew shortages have also limited capacity; only in the last few years have railroads begun to boost employment. As a consequence, the system is significantly constrained. Average train speeds have fallen by nearly 22 percent, to 18.6 train-miles per train-hour in 2006, the lowest level in 16 years, accompanied by network congestion and deterioration in service reliability.

This has happened despite record levels of investment in rail capacity. Capital investment by Class I railroads rose from roughly $3.5 - $4 billion annually during the early 1990s to $6 - $7 billion in the late 1990s to over $8 billion last year. Railroads operate in a competitive capital marketplace. They must be able to promise a competitive rate of return on the debt they incur and the equity investments their stockholders make in order to raise capital resources. If railroads are to make further investments in rail capacity and improved service, the regulatory framework within which they operate must permit them to earn competitive rates of return.

The Surface Transportation Board has worked hard within the existing statutory framework to balance the needs of the railroads for adequate revenues to support investment in new capacity with the needs of shippers to be protected from the high rates that lack of rail competition might bring. Changes to the existing statutory framework may weaken the ability of railroads

to raise the capital they need in a competitive capital marketplace. As long as we expect the railroad industry to finance its own capital investment and to innovate, we must give the industry the pricing flexibility it needs to serve as many customers as possible and to generate the revenues that will provide for competitive returns on its capital investment.

The railroad industry has enormous fixed costs relative to most other industries. Railroads invest 17.8 percent of their revenues in capital projects, compared with 3.7 percent for the average manufacturing firm. Railroads must charge more than their variable costs in order to cover these enormous costs of capital. In some rail service markets, where rail service is closely competitive with truck or barge service, railroads can only charge rates that barely cover their variable costs, and make little contribution to their capital costs. Railroads must charge higher rates on "captive" traffic, where they face less competition, in order to cover their high capital costs. If railroads could not charge higher rates on traffic where they face less competition, they would have to reduce the size of their networks even more, reducing the range of customers they could serve, thus increasing their costs for each customer served and probably increasing the rates that they would have to charge in the long run.

The statutory framework that has been in place since the Staggers Act was enacted in 1980 has worked exceptionally well to rationalize the nation's rail networks - while also meeting the needs of shippers. The flexibility permitted by the Staggers Act has allowed railroads to increase their productivity by nearly 48 percent between 1987 and 1999 (based on the Bureau of Labor Statistics multifactor productivity measure), which in turn has allowed a real, inflation-adjusted reduction in rail rates of 1.3 percent per year between 1990 and 2003, allowing more shippers to enjoy the benefits of low-cost rail service. This has resulted in huge amounts of truck traffic being carried by rail, reducing the wear and tear on our Nation's highways and bridges, and generating significant environmental benefits.

Moreover, as the U.S. Government Accountability Office pointed out in a report last year, the percentage of rail traffic that moves at rates in excess of 180 percent of variable cost (and hence, by statutory standards, potentially captive) has declined since 1985 from 41 percent of all traffic to 29 percent in 2004. While there may be isolated instances of shippers paying excessive rates, we believe those instances are rare. The GAO report found that only 6 percent of all rail tonnage was moved at rates in excess of 300 percent of variable costs. Changes in the rate structure to benefit a relatively small number of shippers could have unintended consequences for the overall rate structure, undermining the railroads' ability to earn reasonable returns on their investment, and threatening the improvements in rail capacity and efficiency that we have experienced since the Staggers Act.

The railroad industry has undergone and continues to undergo substantial changes. Economic de-regulation has been a tremendous success story. It provided the foundation for substantial efficiency improvements in the sector, and it is no coincidence that the U.S. freight rail system is by far the most productive in the world. For these and other reasons, we believe that economic re-regulation of the railroad industry is unwarranted at this time. We appreciate this opportunity to share our views with the Committee.

UPM

Blandin Paper Company

October 3, 2007

The Honorable James L. Oberstar
Chairman
Committee on Transportation and Infrastructure
United States House of Representatives
Washington, D.C. 20515

Dear Mr. Chairman:

On behalf of UPM-Kymmene, Inc., I offer our strong support for H.R. 2125, the Railroad Competition and Service Improvement Act of 2007. We greatly appreciate your leadership on the rail competition issue. We encourage you continue to advance this important legislation and to enact it into law during this Congress.

UPM is an international leader in the paper industry. We operate manufacturing facilities located around the globe, including one in Grand Rapids, Minnesota. We employ approximately 500 people in Grand Rapids, and our operations support significant secondary employment throughout Itasca County and northeastern Minnesota. Nationally, the forest products industry accounts for approximately 6 percent of total U.S. manufacturing output, employs more than one million people, and ranks among the top 10 manufacturing employers in 42 states, with an annual payroll exceeding $50 billion.

UPM relies heavily on rail for the delivery of pulp, kaolin clay and other manufacturing inputs, and to transport products to our customers throughout North America. No other viable transportation options exist for our principal transportation needs. Logistics considerations, including access to competitive transportation options, reasonable freight rates, and reliable service factor heavily into our company's competitive position in the global marketplace.

The consolidation of the railroad industry and the administrative processes put in place by the Surface Transportation Board afford no access to competitive transportation options. Under the current system, the railroad carrier determines, without meaningful negotiations, the price and terms of our company's transportation. The Surface Transportation Board stands firmly in support of the railroad carrier. Not surprisingly, the price of rail transportation has escalated at an alarming rate, while service reliability has continued to decline. While the railroad industry has experienced record profitability, there are serious economic consequences for manufacturers without access to competitive transportation options.

Member of the UPM-Kymmene Group

Blandin Paper Company
115 S.W. First Street
Grand Rapids, MN 55744-3699
USA

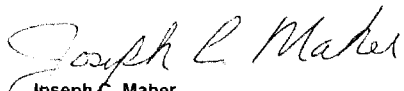
Telephone 218-327-6200
Fax 218-327-6212

The Honorable James L. Oberstar
October 3, 2007
Page 2

When enacted into law, H.R. 2125 will increase competition in the rail industry, improve the regulatory process for ensuring reasonable rates where there is no access to competition, and direct the Surface Transportation Board to carry out its mandate to protect captive rail customers. These improvements in the current system are extremely important for our company and industry, and would lead to the type of competitive railroad industry Congress envisioned when it adopted the Staggers Act in 1980.

Thank you again for your leadership on this important legislation. I respectfully request that you include this letter in the Transportation and Infrastructure Committee's hearing record on H.R. 2125.

Sincerely,



Joseph C. Maher
General Manager
UPM Blandin Paper

Statement For The
House Transportation and Infrastructure Committee
In Support of H.R. 2125

Submitted by the Washington State Potato Commission

September 2007

Washington State is the nation's second largest fresh potato producing state. We grow about 160,000 acres annually and about 15% of the crop is sold to the fresh potato market. This 15% is over 1 billion pounds of potatoes and if all were shipped by railroads this would require 8500 carloads. However, last season, only slightly more than125 carloads were shipped. The balance was shipped by truck, approximately 22,000 truckloads. About 20 years ago, when acreage and production of fresh potatoes was less, we shipped over 2250 carloads.

Although our rail volumes have declined annually we know that long-term rail shipping will be very important for our industry. We are the most distant provider of fresh potatoes to most of the large potato consuming areas of the country. Distance and freight costs are directly related, as distance increases so do freight costs. Our distance to market works against us competitively so rail transportation, which is our lowest cost per mile option, becomes essential for us to compete in the large east coast, southeast and mid-western markets. To most consumers potatoes are generic, the lowest cost potato of equal appearance is the potato of choice.

So why have our rail shipments declined steadily over the past 20 plus years? The service offered and received by our shippers and their customers has not been reasonable, reliable and efficient. Washington potato shippers are served almost exclusively by the BNSF Railway and their short-line connections. Only one potato packing facility has access to a second Class I railroad. The BNSF unilaterally establishes the rates, rules, practices and service. They then serve as judge and jury to interpret and administer the rates, rules and practices and have provided us with a take-it of leave-it attitude. The results of this attitude are reflected in our shipment volumes.

Passage of H.R. 2125 won't solve or correct all of our rail issues. We believe it will allow us to work bilaterally with the railroad to resolve our issues. Passage of H.R. 2125 will put more balance to an uneven playing field and provide us with leverage for bilateral solutions to many problems without having to file complaints with the Board.

Here are six of the largest issues facing Washington potato shippers and their customers today.

1. **Availability of Cars** – We use refrigerated railcars, the BNSF fleet of R-7 type reefer cars is becoming smaller as old cars are retired. Newer cars that were built to replace these are considerably larger and not as well received by potato shippers or their customers. The volumes required to be shipped to minimize the freight charges are somewhat difficult for the packers to accumulate for specific potato order types and many of the receivers do not want to inventory the larger volumes. The shippers understand the railroads reasons for these larger cars and have been using them, however the car size physically prevents them from entering the east coast produce markets of Boston, New York and Philadelphia – all good destinations for Washington potatoes. The BNSF stopped adding new reefer cars to their fleet in 2004, car supply will continue to decline. The new Washington Produce Railcar Pool, a pool of refrigerated cars leased by the State of Washington, will help but will not provide all the cars needed. Pooling or sharing of rail cars between railroads when one has a surplus and another a shortage, due primarily to the seasonality of agriculture, would increase the availability of cars.

2. **Origin Switching Service** – Although schedules are published indicating days of week and time of day that empty and loaded cars will be switched to/from the shippers, this service has become very erratic over the past couple of years. In the worst case scenarios packing sheds have had to be shut down because empty cars did not arrive as scheduled and floor space for holding packaged potatoes has been filled to capacity. Loaded cars not pulled on time makes deliveries to the ultimate customer more erratic than typical rail service. A lack of consistency and adherence to switching schedules makes rail shipping undesirable and this lack of consistency has had a major impact on our rail shipping volumes. More competition within rail switching terminals [reciprocal switching] would make service more reliable and consistent correcting a practice that is untenable.

3. **Demurrage** – Shippers and receivers understand the need for demurrage charges. Although no one likes to pay these penalty charges they understand the rule that if you don't promptly load or unload you have to pay for the use of the car. However, when a car is promised for loading, for example, on a Wednesday and there is uncertainty that it will be available for loading even by Friday there are several scenarios causing the car to go into a demurrage situation. Shippers do resent that they are accountable for demurrage charges when the railroad caused the problem. The Wednesday example will probably have the shipper looking for a new customer to buy the potatoes packed on Wednesday that will take truck delivery so they can be shipped before a weekend. When the car does get spotted the potatoes have already been shipped and a new order must be found for the car. The shipper has to choose whether to

hold the car for a new order and pay demurrage or reject the car and pay a non-use charge. Most of the demurrage issues are created because of railroad practices. Cars are not spotted on the day requested/promised even though they are empty in the serving yard. The demurrage charges still apply, the shipper pays a penalty for unreasonable railroad practices. Again, more railroad competition within terminal switching areas would make the railroads more responsive.

4. **Loss and Damage Claims** – With the economic deregulation of rail transportation the shipper's protection from loss and damage while lading is in railroad control has dramatically changed. It is now incumbent upon the shipper to prove that the railroad is responsible for product deterioration. As an example, the fact that the potatoes where frozen in transit is not proof that the railroad was responsible. "Carmack liability," where it is the railroads responsibility to prove that they were not responsible for the damage is a thing of the past. The BNSF has written it's own rules and has developed it's own standards of interpretation. The normal practice today is for the BNSF to reject claims when filed. Claims must then be resubmitted with additional justification to address the declination. Most often multiple declinations and resubmissions are necessary before resolution. Washington potato shippers have not experienced the prompt settlement of a filed claim from the BNSF for many years. Claim settlement has become a long arduous task ending either in claim declination or settlement at much less than claimed. Shippers today often do not bother with claim filing, claims of $1,000 to $5,000, knowing the hopelessness of the process.

5. **Rates** – Rail rates have increased 40-60% in the past 5-6 years plus the fuel surcharge has increased an additional 10-12%. These increases have added nearly $5,000 to some carload charges. Increases have been unilateral, no discussion with shippers or receivers. The concept of negotiating rates has disappeared. Consequently more potato shipments are moving via truck. Part of the reasoning in unilaterally increasing rates is that there are not enough cars available for all the available traffic therefore there is no need to negotiate rates. Being served by only one railroad allows them to establish rates that can encourage or discourage traffic without considering the impact on the agricultural shipper. H.R. 2125 provides a means to insure reasonable rates that are fair to both shipper and railroad.

6. **Consistency in Service** – Everyone accepts the fact that rail service is slower than highway service. Most shippers and receivers can live with this as well as transit times that are consistently plus or minus 2-3 days. When these times start changing by more than this customers are less accepting of rail shipments and more product price adjustments are

requested by our customers. They claim product deterioration or changed market conditions. Most fresh potatoes are sold on the basis of "subject to condition upon arrival," we therefore must allow the requested price adjustment with no recourse against the railroad. The lack of consistency leaves our customers always in an over or under inventory level. As shippers we find our best business practice is to find receivers who want truck delivery. This solution is only temporary. Washington's distance to market, farther to almost all consumers than any other potato producing area, makes rail service our most price competitive transportation option and long term we need rail service that is reasonable, reliable and efficient. The impact of an approved H.R. 2125 would make railroads diligent in their service levels to maintain their customer base.

Respectfully Submitted:

Chris Voigt, Executive Director
Paul Vander Stoep, Consultant
Washington State Potato Commission

September 24, 2007

The Hon. James Oberstar
Chairman
Committee on Transportation and Infrastructure
2165 Rayburn House Office Building
Washington, DC 20515

Dear Chairman Oberstar:

On behalf of intermodal rail users, the Waterfront Coalition (TWC) submits these comments to the House Transportation and Infrastructure Committee for its hearing on freight rail competition and service in the U.S. freight rail market. By way of background, the Waterfront Coalition represents retailers, product suppliers, manufacturers and agricultural producers moving international commerce through America's blue water ports. A significant portion of the nation's international trade transiting marine terminals ultimately moves on to its final destination by way of the freight rail network. In fact, roughly 9.4 million containers moved by rail representing about 23% of total freight rail revenue in 2006. Waterfront Coalition shippers and the U.S. economy depend on this swift delivery of cargo to fulfill orders overseas and ensure that products reach store shelves and factory floors in the U.S.

TWC would like to thank the Committee for focusing attention on freight rail service. The American economy has changed significantly over the past several decades such that the key to productivity and competitiveness is now speed to market, both here and abroad. The nation's freight rail network remains an integral component to the U.S. supply chain.

As the nation's economy continues to expand, the current capacity of track, rail yards and equipment is unable to effectively meet this growing demand for freight mobility. Many rail customers are experiencing increasing freight rates and declining service measured by costly congestion and cargo delays. Clearly, the freight railroads must expand the capacity of this network to meet the demands of all customers. Already, Class I railroads are investing a significant amount of profit into growing this network. In fact, $9.4 billion is planned for 2007. However, the railroads cannot do it alone and need access to additional finance to make all the needed investments to ensure that the nation's commerce moves efficiently.

Freight rail is one of the most capital intensive industries in the U.S. that frequently hinders railroads from receiving private sources of capital needed to expand the network. The Association of American Railroads estimates that Class I railroads spend almost forty cents on every dollar of revenue to meet capital costs making the industry on of the most capital intensive

1707 L Street NW | Suite 570 | Washington, DC 20036 | (202) 861-0825 | www.portmod.org

in the nation. These very high capital costs reduce the return on equity below that demanded by capital markets.

TWC supports policies that would help increase this return on equity enabling Class I railroads to gain access to private capital to expand the freight rail network and meet the demands of all freight rail customers. TWC, along with other industry stakeholders, urges members of Congress to support HR 2116 that would provide a twenty-five percent tax credit to investors in freight rail expansion projects. This tax credit would offset high capital costs and help improve the return on equity demanded by capital markets.

Rather than endorse policies to expand freight rail infrastructure for all rail users, a certain segment of rail customers are urging Congress to mandate certain regulations on freight rail operations in order to ensure that rates are capped and minimum service is guaranteed only on the routes that serve their interests. In fact, this segment of rail shippers claims to speak on behalf of all rail customers in urging support of these mandates as a necessary measure to promote economic growth.

TWC, along with a growing group of other rail customers, does not support this policy. Proposed re-regulation of the rail industry that only serves one segment of users could force Class I railroads to raise rates and reduce service for all other rail users just to meet these mandates. Furthermore, re-regulation will do very little to address the underlying cause of concern, namely expanding rail capacity. As a solution to this problem of under-capacity, we ask Congress to consider policies, such as investment tax credits outlined in HR 2116, that help Class I railroads expand the current network of track, railyards and equipment that serve all customers not just a certain segment of users.

In closing, TWC thanks the Committee for holding these hearings on freight rail service. If you have any questions about TWC or its positions on these issues please contact Ezra Finkin, Legislative Director at (202) 861-0825 or ezra@portmod.org

Sincerely,

Ezra Finkin
Legislative Director
The Waterfront Coalition

Statement for the Record
WASA
Wisconsin Agri-Service Association, Inc.
Before the Full Committee:
Transportation and Infrastructure
Rail Competition and Service Hearing
Tuesday, September 25, 2007

Chairman Oberstar and Members of the Committee:

I am writing on behalf of the members of Wisconsin Agri-Service Association (WASA). WASA is comprised of over 330 grain, feed, seed, processing and related businesses in the state. These businesses handle over 80% of all the corn, soybeans, wheat and other grains commercially handled in the state. Rail-shipper members of the association have, in the past year, experienced the dilemma of the captive shipper all too frequently. Part of that problem is the Class 1 railroads' lack of transparency in fuel surcharges.

Last month, the Surface Transportation Board (STB) issued a final rule that will only require quarterly data from the carriers, in concert with their current financial reporting requirements. Originally, the STB had proposed that carriers report monthly data related to fuel surcharges. But this isn't the greatest concern regarding this issue.

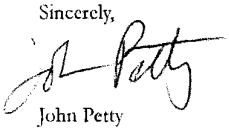
The STB is requiring only five numbers per quarter from each carrier, the first three of which are **already** contained in quarterly financial filings of the carriers: 1) total fuel cost; 2) gallons of fuel consumed; 3) change in the total cost of fuel; 4) total revenue from fuel surcharges; and 5) revenue from fuel surcharges on regulated (including grain and coal) traffic. The STB rejected industry's suggestion that the carriers report separate data for major classes of traffic (such as coal vs. grain) so that the shipper could assess whether the surcharges are equitable between classes of traffic where the mileage-based surcharges are different across such classes (such as BNSF coal and grain surcharge rates). And the STB rejected a proposal to add one other number to each major class of traffic: fuel consumption per mile, ton-mile or whatever unit of measurement on which the surcharge is based for that particular carrier.

Without the data the grain industry requested, both shippers and the STB will have minimal new information to assess whether surcharges are reasonably related to fuel cost increases. Reasons for this include: 1) reported total fuel costs includes both gains and losses from hedging which will vary over time and tend to mask the underlying spot price of fuel on which surcharges are supposedly based; 2) rail carriers changing the base for surcharges will also make identifying the relationship between surcharges and costs difficult. The STB and shippers will have no ability to determine the equity of surcharges across any variation in

6000 Gisholt Drive, Suite 208 • Madison, Wisconsin 53713-4816 • Office 608-223-1111 • Fax 608-223-1147

classes of service, except for a crude measure between regulated and total traffic. At the very best, if carriers keep a constant base for surcharges over several years, the STB can assess the rate of change in fuel surcharge revenue over time and track whether it is reasonably related to the change in market price for fuel on a system wide basis for each carrier. A blunt tool for market discipline at best.

Sincerely,



John Petty
Executive Director
Wisconsin Agri-Service Assn.

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