BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 775

HEARING ON GROWTH IN THE FREIGHT RAIL INDUSTRY
September 16-17, 2024

TESTIMONY OF THE
AMERICAN CHEMISTRY COUNCIL

Presented by

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Thank you for holding this hearing and providing me with the opportunity to present comments on behalf of the American Chemistry Council. ACC represents more than 190 of America's leading chemical companies. Our members produce a wide variety of chemicals, polymers, and related products that make our lives and our world healthier, safer, more productive, and more sustainable. The business of chemistry supports over 25% of the U.S. Gross Domestic Product and directly touches nearly all manufactured goods. The industry is also one of the most important exporters of American-made products, accounting for 10 percent of U.S. goods exported. We rely on a strong, resilient, and efficient freight transportation network to support our domestic and international supply chains.

ACC member companies are some of the largest customers of the U.S. freight rail system. In 2022, railroads transported more than 2.3 million carloads of chemical and plastics products, and our transportation needs are growing. Thanks to new capital investments, by 2032, U.S. chemical and polymer production is expected to grow by more than 25 million metric tons. ACC estimates that this new production will lead to more than 120 thousand additional railcar shipments.

This growth is a win-win for the chemical and freight rail industries. It also benefits critical downstream sectors that we supply. For example:

- 52% of ACC member companies produce inputs to semiconductor production,
- 62% produce inputs to health care, and
- 72% produce inputs to clean energy.

ACC appreciates the Board's focus on growth in the freight rail industry. Simply put, our member companies want to ship more by rail. Rail is widely recognized as the safest way to transport hazardous materials by land. With lower fuel consumption and carbon emissions versus trucking, rail transportation can help companies achieve their sustainability goals. And for many chemical shipments, including large volume commodities and certain hazardous materials, rail is the only viable transportation option.

Chemical Industry Growth Drives Freight Rail Opportunities

The good news is that ACC members are already increasing rail shipments.

- One large company reports that it increased rail shipments by 6% from 2021 to 2022 and an additional 3% from 2022 to 2023. This company also has a major new polyethylene project coming online within the next few years that is expected to generate more than 16,000 additional rail shipments annually.
- A second company added 2 billion pounds of polypropylene capacity in the Gulf Coast and has made a concerted effort to enter the export market. This involved new rail volumes from the Gulf Coast and New England to port facilities in the Southeast. The company worked successfully with three Class I railroads to make the project work both economically and from a service perspective.
- A third large company increased its ratio of rail versus truck volume by approximately 4% from 2019 to 2023. This company continues to invest in North American production, accompanied by investments in railcars and onsite rail infrastructure to support this growth.
- Other companies cite opportunities for rail growth from strong demand in specific markets, including coatings, adhesives, and elastomers. One company notes that it is rechanneling customers from truck shipments to larger rail-served quantities.

Several promising developments offer additional opportunities to grow future rail volumes of chemical products. Elements of the *Infrastructure Investment and Jobs Act* and the *CHIPS and Science Act* are driving U.S. manufacturing investment and onshoring in key sectors such as electric vehicles and semiconductors that rely extensively on chemistry inputs.

“Circular economy” initiatives offer additional opportunities. For example, ACC members are involved in advanced recycling projects that convert plastic waste into renewable raw materials that can be used to manufacture new, more sustainable plastic products. These projects can increase rail volumes for both raw materials (pyrolysis oil) and finished products.

Challenges Limiting Rail Growth

Despite this promise, ACC is concerned that freight railroads are not fully pursuing new business. As one member company representative phrased it, “Railroads simply do not play an active part in incentivizing our growth." And in some cases, railroad actions have led shippers to switch traffic to other transportation modes.

Companies consider a wide range of factors when evaluating transportation options, including safety, sustainability, reliability, and ease of doing business, as well as costs. While rail offers some inherent advantages, ACC members cite excessive rates, unreliable service, and the unwillingness of railroads to make infrastructure investments as key barriers that limit volume growth.

One ACC member reports that it has reduced rail shipments significantly. The company has adopted an internal strategy to shift from rail to barge wherever possible, even where the change will require significant infrastructure investments. Cost is a key driver. The company notes,

> *On one lane specifically, we have determined it is more cost effective to package products, load them into dry vans, ship them internally, and offload the dry vans into product hoppers that we would normally use to offload railcars. The added packaging, trucking, and labor costs combined still justify this shift away from rail.*

Other companies cite cost as a deterrent to rail growth.

> *Every other mode of transportation has price fluctuations depending on market swings. There is NEVER a decrease in rail.*
>
> *Freight rates have been on an upward tear, and only in isolated cases have we successfully been able to lobby for competitive support on lanes where we see volume growth. This is the exception, not the rule.*
>
> *[Company has a] high potential for growth in the Gulf Coast area but limited based on rail rates. Captive moves from a manufacturing facility to local interchange points are often priced at levels that limit growth.*
>
> *Right now, railroads are eager for new business opportunities, but often times, their pricing tactics negatively impact our ability to secure new business.*

Growth opportunities often require both the railroad and the shipper to make rail infrastructure investments. Unfortunately, railroads' pursuit of new business is typically based on existing infrastructure. ACC members report that railroads are unwilling to make cost-effective investments to gain new business. In addition, when shippers are considering infrastructure investments to move traffic to rail, railroads have failed to offer advantageous rates that account for the shippers' investment.

We recognize that railroads have limited capital and require adequate returns on their investments. However, ACC believes that railroads are too often uninterested in investing for future growth and are leaving profitable opportunities on the table.

Service is another major factor impacting shipper decisions. As one ACC member phrased it, "pursuit of more volume needs to be met first with safe and reliable service of our current book of business." While overall network fluidity and railroad performance has improved greatly since the meltdowns rail shippers faced several years ago, service issues remain a nagging problem. These issues are often related to labor shortages. Recently, one ACC member, after consecutive missed switches at one of its manufacturing sites in the Gulf Coast, had to rush truck deliveries of a key raw material to prevent a shutdown at a key customer facility. In addition, companies are still concerned that Class I's lack both the resilience to handle an unforeseen crisis and the capacity to accommodate a significant uptick in rail volumes.

ACC member companies have highlighted the following examples of service issues limiting both current and future rail volumes.

> *We are exploring a growth opportunity for our [agriculture related] business that will result in additional volume to ship to domestic customers. Part of our analysis is whether we can ship additional volume by rail or will need to ship via barge. We actually might need to choose the marine option because of rail congestion and lack of storage options for railcars near our [mid-Atlantic] operations.*
>
> *Consistency and network resiliency in service and transit times is critical to modal volume shift. Service variability in rail remains a barrier in the ability to increase rail volumes.*
>
> *Based on inconsistent rail service, other modes (when available) are chosen for many key raw materials to prevent facility shutdowns.*
>
> *We have seen a reduction in rail loads and an increase in truck loads. Service delays factor greatly into these decisions.*

Shippers also consider the quality of customer support and engagement provided by their carriers. In recent years, Class I's have cut headcount in sales and customer service. As a result, doing business with railroads is harder than it should be. For example, getting information about rail incidents is overly cumbersome, requiring shippers to submit cases for incident investigations and mis-routed car inquiries.

Chlorine and other TIH Shippers Face Additional Challenges
Producers of TIH products such as chlorine have highlighted specific challenges for shipping by rail. TIH products are used to produce goods and services that are essential to clean water, stable food supplies, and reliable electric power. Rail is generally the preferred mode for transporting these materials, considering both safety and efficiency. In addition, TIH shippers have been transitioning their tank car fleets to meet updated safety standards established by the Department of Transportation to further reduce transportation risks.

However, some Class I railroads are imposing onerous new requirements that make it increasingly difficult to ship these essential materials. This includes forcing their customers to accept liability for hazardous materials incidents that are caused by third parties or events outside of the shipper's control. Some railroads are also imposing unworkable insurance conditions, including BNSF's recent decision to increase its minimum insurance requirement from $10 million to $100 million with less than a month's notice. At the same time, railroads are drastically increasing rates for transporting TIH materials.

These railroad policies can harm the viability of transporting essential materials by rail. Several years ago, one producer shut down a plant and co-located production with a customer due to unreasonable rates and terms on TIH shipments. However, most TIH shippers lack access to any competitive transportation options, forcing them to capitulate to unreasonable demands and rates.

Policy Solutions
As the Board noted in its decision announcing this hearing, rail volumes have decreased over the past ten years. At the same time, real rates have increased, and shippers have suffered through multiple service crises. These are not unrelated trends. It seems clear that railroads have greater incentives to cut costs and extract higher rates from existing customers than to provide quality service and grow volumes. This signals both a market and policy failure.

In testimony for the Board's 2010 hearing on Competition in the Rail Industry (EP 705), ACC and other shippers highlighted that rising profits in the face of declining traffic volumes strongly signal that railroads are leveraging their market dominance and pricing power in the post-merger era. We called on the Board to adopt pro-competitive policies, stating,

> *The effective competition called for by Congress in the Rail Transportation Policy should deter railroads from abusing market power by raising rates and shifting costs to shippers, and should encourage railroads to improve service quality*.

Well over a decade later, much work remains to be done. The Board's recent final rule on reciprocal switching is a small step in the right direction. Unfortunately, the rule severely limits which shippers can potentially access a competing rail carrier. The Board chose to focus reciprocal switching reform on service issues, rather than using its broader authority to provide switching where "necessary to provide competitive rail service." More troubling, the final rule excludes contract traffic, preventing most rail customers, including more than 90% of chemical and plastics shippers, from accessing reciprocal switching service after receiving inadequate service during the term of a contract.

ACC strongly believes that a more competitive marketplace is the lynchpin for growth in the freight rail industry. As it does in virtually every other industry, competition will lead to increased investment and a greater focus on attracting new business. ACC urges the Board to exercise its authority to provide reciprocal switching as a tool to promote rail-to-rail competition. Broadly implemented, reciprocal switching can help unlock market forces and incentivize railroads to provide reasonable rates and adequate service. This will drive more business to the railroads, with benefits to the nation's economy, consumer prices, and climate goals.

In addition, policy makers, rail shippers, and other stakeholders need better data on rail rates. Specifically, we need data on how much more rail shippers must pay solely because they lack competitive transportation options. In its 2015 report on *Modernizing Freight Rail Regulation*, the Transportation Research Board (TRB) developed a preliminary economic model to estimate the relationship between shipment characteristics and rates for competitive rail shipments and then to estimate the rate differentials paid by shippers who lack competitive transportation alternatives.

ACC strongly urges the Board to support expanding and refining the TRB's initial model. A fully developed economic model could provide meaningful new data on how lack of competition impacts rail rates. Understanding this relationship would provide policy makers with a more complete picture of the degree to which the lack of effective competition harms growth in the freight rail industry.

Conclusion

Thank you again for the opportunity to provide ACC's perspectives on this important issue. ACC members rely on the freight rail industry for their current business and future expansion. The chemical industry is growing, and many companies are significantly increasing rail volumes. However, we believe that potential growth in the freight rail industry is hampered by long-term challenges faced by shippers. To address these challenges, we urge the Board to actively pursue reforms that promote competition and incentivize growth.

If you have any questions regarding this submission, please contact me at 202-249-6710 or jeffrey_sloan@americanchemistry.com.