News Release

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ACC Contact: Scott Jensen, (202) 249-6511
Email: scott_jensen@americanchemistry.com
CI Contact: Ben Zingman, (443) 802-8809
Email: bzingman@cl2.com

ACC & CI CALL ON STB TO FIX PROCESS FOR REVIEWING FREIGHT RAIL RATES

WASHINGTON (July 23, 2015) – In testimony today before the Surface Transportation Board (STB), the American Chemistry Council (ACC) and The Chlorine Institute (CI), along with other shippers, urged the Board to implement a more fair and realistic method to decide rate cases. The hearing was held just weeks after the National Academy of Sciences issued a nonpartisan report urging similar reforms.

“The STB’s current process for reviewing freight rail rates is completely detached from reality and unnecessarily complex,” said Thomas Schick, ACC’s Senior Director of Distribution, Regulatory & Technical Affairs. “Considering the costs, time and formidable barriers involved in pursuing a rate case, many rail customers without access to competitive service are left with no viable remedy to challenge unreasonable rates.”

The financial health of the railroads is a key factor in STB decisions about rates and other rail practices. Yet, the STB uses an outdated methodology that systematically understates the profitability of the nation’s Class I rail lines. As CI President Frank Reiner explained, “The real issue is quite simple: the STB formula used to evaluate rail rates is inherently unfair to shippers and, therefore, their employees, customers and, ultimately, America’s consumers. That’s why America needs the STB to objectively revise the formula for calculating the profitability of railroads.”

Problems with the Current Rate Review Process Continue

More than three decades ago, the STB’s current rate review standards were put in place for two purposes. First, the rules ensure that railroads are able to earn sufficient revenues to cover costs, make long-term investments and earn a reasonable profit. According to a U.S. Senate report, the railroad industry is setting records for earnings and has been outpacing the broader market for years on Wall Street. Said Mr. Reiner, “Shippers agree that America needs economically sustainable freight rail lines, and the good news is that we already have them. The bad news is that the STB formula fails to acknowledge their profitability, and the rest of the nation pays the price.”
Second, the rules should protect shippers without access to competitive rail service from paying “differentially higher rates” beyond what is necessary for a railroad to be revenue adequate. Unfortunately the STB has never developed a way to implement this revenue adequacy standard in rate reviews. Instead, the STB actually assumes that all railroads are not earning sufficient revenues.

In this hearing, the STB sought public input on how to apply a “revenue adequacy” standard in rate cases. ACC and CI testimony outlined three potential approaches that would be practical, effective, economically supportable and consistent with the STB’s congressional mandate. Furthermore, the proposed approaches would not harm rail service and investment.

Implementing these approaches would provide a more practical and fair alternative to the Board’s onerous “stand-alone cost” (SAC) method for judging rate reasonableness. Under the SAC method, the STB considers a rate to be “reasonable” unless a shipper proves that it could build and operate its own railroad for less than what the railroad currently charges. Not only is the requirement irrational, it is extremely burdensome. The STB estimates that a SAC challenge takes more than three and a half years and $5 million to complete, plus the higher tariff rates that the shipper must pay while its case is pending.

“The STB’s current policies are not only bad for shippers and the U.S. economy, but they also clearly run counter to Congress’s intent when it created the STB and charged the Board with establishing an equitable process for handling freight issues,” Mr. Schick added.

New Expert Report Echoes Calls for Reform

A nonpartisan report from the Transportation Research Board, a part of the National Academy of Sciences, concluded that “Currently, burdensome STB rate hearings compensate for an unreliable initial process for identifying unusually high rates and in effect, they safeguard railroad revenues by making it too costly for most shippers to litigate a case. So, a more credible method for identifying unusually high rates would permit the use of less burdensome arbitration procedures, while not risking the adequacy of railroad revenue.”

ACC and CI strongly agree with the report’s findings and urge the STB to recognize that railroads are financially sound and implement the revenue adequacy standard in rate cases. “CI is proud to join with ACC and other industry groups seeking a new formula that reflects the economic health of the rail lines and helps reduce the impact of excessive or abusive rail rates on the competitive needs of rail customers and the nation,” said Mr. Reiner.

“The STB can no longer ignore the fact that the current process for reviewing rates does not work,” Mr. Schick said. “The Board must adopt a more rational and straightforward approach for reviewing rates to fulfill both of the goals set forth by Congress—to ensure the economic health of the rail industry and to prevent the railroads from abusing their pricing power over their customers,” concluded Mr. Schick.

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The American Chemistry Council (ACC) represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people’s lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is an $801 billion enterprise and a key element of the nation’s economy. It is the nation’s largest exporter, accounting for fourteen percent of all U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation’s critical infrastructure.

The Chlorine Institute (CI), founded in 1924, is a technical trade association of companies that are involved in the safe production, distribution and use of chlorine, sodium and potassium hydroxides and sodium hypochlorite, and the distribution and use of hydrogen chloride.