

July 10, 2014

The Honorable Harry Reid
Majority Leader
United States Senate
Washington, DC 20510

The Honorable Mitch McConnell
Minority Leader
United States Senate
Washington, DC 20510

Dear Majority Leader Reid and Minority Leader McConnell:

In April, a broad coalition of railroad customers representing a range of U.S. manufacturing, agricultural, and energy industries wrote to your office to highlight the need for rail policy modernization. Today, we write to you in support of the attached specific reforms that would increase competition among railroad companies and make the Surface Transportation Board (STB) a more effective and efficient regulatory body.

The lack of competition for rail services has become a critical problem for American industry, as more than three-quarters of U.S. rail stations are now served by just one major rail company. This consolidation has given the remaining railroads unprecedented market power, and has denied many rail-dependent companies the benefits of cost-effective and reliable rail transportation service. Unreasonable rate increases, service breakdowns, and diminishing competition, all act as headwinds on the many industries that require rail to do business in the United States.

In the past, the rail industry has inaccurately portrayed efforts to reform rail policy as “reregulation.” This coalition does not support a return to the 1970’s when all freight rates were automatically subject to strict government scrutiny. Because the nation’s freight rail network is vital to the strength of the economy, this coalition supports policies to create a more competitive and market-based system, while ensuring the STB has procedures to settle disputes efficiently.

There is no question that the United States needs a strong rail network to compete globally. Railroads are a remarkably efficient means for transporting bulk commodities over long distances. According to the Association of American Railroads (AAR), rail companies can now move one ton of freight 476 miles on one gallon of diesel fuel. Surprisingly, these increases in productivity have coincided with sharp increases in rail rates and declining service performance.

Several factors have contributed to the increasing imbalance in railroad market power, most importantly the dramatic consolidation of the nation’s freight rail network since Congress passed the Staggers Rail Act of 1980. There were 26 Class I rail companies in 1980; now, four corporations control more than 90 percent of the market. Staggers helped the industry regain profitability, but unchecked consolidation has led to dramatic increases in rates. In fact,

July 10, 2014

Page 2 of 3

according to AAR data, rates spiked 94.8 percent from 2002 to 2012, which outpaces increases in inflation and truck rates by about a factor of three. Furthermore, the STB held an emergency hearing and intervention this spring to address systemic rail service problems, while rates increases continue.

The STB process for rate cases can and should be improved by Congress. Although railroad rates may be challenged for being “unreasonably high”, shippers large and small who desire to bring a rate case face tremendous economic barriers. A major case at the STB is extremely complex, involves a multimillion dollar investment in lawyers and consultants, and takes several years to obtain a decision. During the rate case, shippers are forced to pay extremely high tariff rates in the hopes of recouping those costs at the end of the case if they are successful. Many shippers cannot afford to challenge a rate at the STB under current procedures, and for those that can afford it, the economics of filing a complaint are dubious.

Simply put, the current policies do not achieve the goals that Congress established in 1980, including promoting effective competition between rail companies, maintaining reasonable rates where there is an absence of effective competition, and providing expeditious resolution of all proceedings. In our view, it is the responsibility of Congress to ensure that the STB is perceived as an effective and viable intermediary between railroads and their customers who currently have no truly competitive option to ship.

We hope you will take a look at the attached document where we have outlined specific policy proposals that would help to modernize the U.S. rail policy framework. We look forward to working with Congress and the rail industry to ensure the nation’s freight rail works-- both for rail companies and the large and small American businesses that rely on them.

Sincerely,

Agricultural Retailers Association

Alliance for Rail Competition

American Architectural Manufacturers Association

American Chemistry Council

American Forest & Paper Association

American Public Power Association

Chlorine Institute

Consumers United for Rail Equity (CURE)

Edison Electric Institute

July 10, 2014

Page 3 of 3

The Fertilizer Institute

Growth Energy

Institute of Scrap Recycling Industries, Inc.

Louisiana Chemical Association

Manufacture Alabama

National Association of Chemical Distributors

National Rural Electric Cooperative Association

Plastic Pipe and Fittings Association

Portland Cement Association

PVC Pipe Association

Resilient Floor Covering Institute

SPI: The Plastics Industry Trade Association

Steel Manufacturers Association

The National Industrial Transportation League

The Vinyl Institute

Enclosure

cc: The Honorable John Boehner
The Honorable Nancy Pelosi
The Honorable John Rockefeller, IV
The Honorable John Thune
The Honorable Richard Blumenthal
The Honorable Roy Blunt
The Honorable William Shuster
The Honorable Nick Rahall, II
The Honorable Jeff Denham
The Honorable Corrine Brown

RAIL POLICY PROPOSALS

ENHANCE EFFICIENCY OF STB OPERATIONS

- **Allow direct communication between STB Commissioners:** Government “sunshine laws” prohibit a quorum of the STB (currently, any two members) from discussing pending matters with each other, forcing members to work via staffs. Congress should address this problem by expanding the STB to five Commissioners or by providing a limited exception that allows appropriate discussions of pending issues by STB members.
- **Study STB staffing and resource requirements:** Congress should initiate a study to determine whether the STB has adequate resources to fulfill its statutory mission.
- **Eliminate railroad revenue adequacy determinations:** As demonstrated by the industry’s high levels of capital investment and shareholder returns, the STB’s annual “revenue adequacy” calculations for Class I carriers are no longer necessary and may inappropriately shield railroads’ pricing power from STB scrutiny. Congress should eliminate this outdated requirement.
- **Publicly report the status of STB proceedings:** Rail stakeholders would benefit from regular reports from the STB detailing the status of pending rate cases, rulemakings, and complaints. Reports should include key STB actions and expected timelines for final resolution.

REFORM STB RATE CHALLENGE PROCEDURES

- **Review the STB’s rate-reasonableness standards:** Congress should direct the STB to review its three types of rate-reasonableness reviews. Significant concerns involve not only the cost and length of STB reviews, but also the fundamental principles on which each standard is based. Reformed standards should recognize that the Staggers Rail Act’s goal of restoring financial stability to the U.S. rail system has been achieved.
- **Provide arbitration as an alternative means to resolve rail rate challenges:** The STB’s rate review procedures are costly for railroads and shippers and, therefore, are rarely used. Binding arbitration, which has been used successfully under Canadian law, could provide a quicker and less expensive approach to resolve rail rate disputes.
- **Prohibit “bundling” of contract rates that can prevent rate challenges:** In some instances, a railroad will “bundle” rates in a single contract proposal for a group of origin-destination pairs and *refuse* to quote tariff rates for individual movements. This all-or-nothing approach effectively forces a shipper to agree to the complete package of contract rates and deprives them of the ability to challenge specific rates that it believes are unreasonable. The STB must be empowered to address this problem and fulfill its mandate to resolve rate disputes.

- **Review STB commodity exemptions:** Since passage of the Staggers Rail Act, numerous categories of rail traffic have been exempted from STB oversight. The rail industry and the state of rail competition have changed significantly since many of these exemptions were granted. Congress should direct the STB to conduct a comprehensive review of existing commodity exemptions and remove any exemptions that are no longer appropriate.

REMOVE BARRIERS TO FREIGHT RAIL COMPETITION

- **Provide competitive switching to shippers:** Competitive switching agreements facilitate the efficient movement of traffic between carriers and are critical to a competitive rail system. Consistent with existing authority under the Staggers Rail Act, the STB should be directed to provide competitive switching service to shippers, without requiring evidence of anti-competitive conduct by a rail carrier from which access is sought. The availability of switching should not preempt STB authority to review rates.
- **Allow shippers to obtain service between interchange points on a rail carrier's system:** Current STB policies and precedents effectively block many shippers served by a single Class I railroad from obtaining competitive service. In order to provide effective competition among rail carriers, a Class I rail carrier should be required to quote a rate and provide service between points on that carrier's system where traffic originates, terminates, or may be reasonably interchanged.