



4201 Wilson Blvd., Suite 0515
Arlington, VA 22203
(703) 527-6223

308601

ENTERED
Office of Proceedings
August 16, 2024
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 775

GROWTH IN THE FREIGHT RAIL INDUSTRY

WRITTEN TESTIMONY OF
ALLIANCE FOR CHEMICAL DISTRIBUTION

Introduction

I am Richard Erstad, Vice President, General Counsel, and Secretary for Hawkins, Incorporated. Hawkins is a manufacturer, blender, and distributor of thousands of water treatment and industrial chemicals sold throughout the United States. Hawkins operates in 61 locations, 12 of which are served by rail, and serves water utility customers that provide clean water to citizens across the country. Hawkins is also a member of the Alliance for Chemical Distribution (ACD or “Alliance”), and I am providing this testimony on behalf of the Alliance.

ACD respectfully submits these comments in response to the Surface Transportation Board’s (STB or “Board”) public hearing on Recent Trends and Strategies for Growth in the Freight Rail Industry. ACD is pleased that the Board is devoting attention to and collecting information on strategies rail carriers can implement to improve the growth of freight rail across the United States.

ACD supports and champions the chemical distribution experts the world depends on to safely, reliably, responsibly, and sustainably move the chemical products essential to our daily lives. ACD’s more than 400 chemical distribution industry members are primarily small, multi-generational family-owned businesses. They provide critical chemical products used in medicine

and health care, food and agriculture, clean water and sanitation, energy production, electronics, communication, and more to over 750,000 end users.

As leaders of the over \$27 billion chemical distribution industry, ACD member companies have the extensive expertise, commitment to safety and sustainability, and access to a deep well of resources needed to ensure chemicals are moved safely and responsibly when and where they are needed. ACD owners and operators have a personal stake in the health, safety, and security of their employees, companies, and communities. They demonstrate their commitment through strict adherence to the highest standards in quality, safety, sustainability, and performance through compliance with ACD Responsible Distribution™.

Many ACD members rely on freight rail to move and receive chemicals, as rail is the safest way to transport hazardous materials and the only practical method to transport certain products such as chlorine gas. However, due to the relatively small size of ACD members on average, they tend to be smaller rail customers. In an ACD survey of members who use rail, the median respondent reported shipping 245 cars and receiving 154 cars over the covered six-month period.¹ Smaller shippers frequently experience additional challenges related to rail service. While ACD members would welcome additional opportunities to grow their use of freight rail, current market conditions and poor rail service, especially from the Class Is, make this prohibitive for many. Growth in the freight rail industry can be achieved if railroads dedicate more effort to improving customer service, increasing reliability, expanding service options for shippers and receivers, and making freight rail more affordable.

¹ Dunham, John, “Results from ACD Second Half 2023 Railroad Survey,” John Dunham & Associates

Chemical Shippers Want to Use Freight Rail

When transporting hazardous materials, shippers tend to prefer rail over trucking, air freight, ocean freight, or other means of transportation because it is the safest method. In fact, 99.99% of all hazardous materials moved by rail do not experience any release caused by a train accident en route to its destination.² This is significantly lower than the next alternative, trucking, as there were about 60 times more hazmat trucking incidents in 2021 compared to rail.³ Considering this, shippers that transport the critical hazardous materials that we rely on for uses such as water treatment, health care, semiconductor manufacturing, and more, prefer to use rail when available to avoid any unnecessary opportunities for releases involving these chemicals.

ACD members who already utilize rail service recognize its value, as about 48% of those who responded to a recent ACD rail survey question indicated they would increase rail service if it were available to them.⁴ However, it is difficult for potential rail customers to enter a dialogue with carriers to expand their rail service and/or infrastructure to accommodate more rail shipments, especially for smaller businesses. Representatives from Class I railroads do not take the time to assist shippers in planning ways to either grow existing rail use or add rail connectivity for facilities that currently only rely on trucking. This is impactful as understanding how to develop this infrastructure can be an opaque and daunting task, especially for smaller businesses that don't have a wealth of resources. This, combined with the low levels of rail service currently being offered, dissuades many potential rail customers from utilizing the service.

² Association of American Railroads, "Why Freight Rail is the Safest Mode for Hazmat," AAR, <https://www.aar.org/article/freight-rail-safest-mode-hazmat/>

³ Bureau of Transportation Statistics, "Hazardous Materials Fatalities, Injuries, Accidents, and Property Damage Data," BTS, <https://www.bts.gov/content/hazardous-materials-fatalities-injuries-accidents-and-property-damage-data>

⁴ Dunham, John, "Results from NACD First Half 2023 Railroad Survey," John Dunham & Associates

A substantial pool of shippers exists that are eager to begin using rail or expand their current use, especially among those shipping chemicals, because of their increased level of safety compared to other modes of transportation. By increasing outreach to shippers and showing a willingness to work with businesses as they decide whether to make significant investments to add rail capacity to their facilities, rail carriers can greatly increase the growth of freight rail.

Poor Rail Service

Beyond difficulties in acquiring additional service through infrastructure, another barrier to increasing utilization of rail is the poor service many customers receive. In the same survey of ACD members referenced earlier, over 73% of respondents reported experiencing a service issue with their rail carrier.⁵ The STB has recognized these issues, opening several dockets investigating poor rail service. These include docket EP 767 titled “First-Mile/Last-Mile Service” and docket EP 770 titled “Urgent Issues in Freight Rail Service.”

As part of EP 770, the STB required Class I rail carriers to submit data to the Board on various service metrics. While service levels may have improved more recently due to lower traffic, the data revealed in these reports has still demonstrated the poor rail service customers have been forced to experience. As described in the STB’s docket EP 711, when examining the weekly percentage success rate of rail cars being delivered within 24 hours of their original arrival estimate, the four Class I railroads analyzed were only successful an average of 58.53% of the time.⁶ This was only 48% for the lowest-performing carrier.⁷ There are also poor performance indicators for other metrics. The same docket found that local deliveries and pick-

⁵ Ibid

⁶ Surface Transportation Board, “Reciprocal Switching for Inadequate Service,” STB https://dcms-external.s3.amazonaws.com/DCMS_External_PROD/1694087963902/51803.pdf

⁷ Ibid

ups were only successful an average of 84.08% of the time across the same Class I railroads, meaning railroads do not honor local appointments more than 15% of the time.⁸ Also, data collected by the STB over the week of August 7, 2024, found that the average number of loaded and empty railcars in revenue service that had not moved for at least 48 hours was 378 among chemical or allied products.⁹ These 378 rail cars were sitting for at least two days when they should have been shipping chemicals. Chemical shippers cannot rely on freight rail to move their products when the service is this poor across the entire cycle of a typical shipment.

A leading cause of this poor rail service has been the Class I railroads' adoption of precision scheduled railroading (PSR). This business practice focuses on longer trains and fewer personnel to increase rail carrier profitability. A report published by the Government Accountability Office on PSR in December 2022 found concerning metrics related to both practices. First, the report found a decrease of at least 20% in staff in each employment classification category.¹⁰ Additionally, of the Class I railroads surveyed in the report, one reported a more than eight times increase (3% to 25%) in the percentage of trains over 10,000 feet long and another Class I reported a more than 20 times increase (0.2% to about 5%).¹¹ Fewer workers and longer trains may increase profits for rail carriers, but this significantly hurts rail service as there are fewer employees for customers to work with and fewer opportunities to load or unload product.

Hawkins has experienced such unpredictable service that we have had to make substantial infrastructure investments to deal with this. It is common for the railroads to make

⁸ Ibid

⁹ Surface Transportation Board, "Rail Service Data," STB <https://www.stb.gov/reports-data/rail-service-data/#railroads-tab-content-1->

¹⁰ Government Accountability Office, "Freight Rail: Information on Precision-Scheduled Railroads," GAO, <https://www.gao.gov/products/gao-23-105420>

¹¹ Ibid

late deliveries or miss them. On other occasions, the railroads deliver multiple cars at once. To accommodate these situations, Hawkins has increased our storage capacity to avoid running out of products our customers need in cases of late or missed rail shipments. We have also increased our yard space to accommodate more rail cars for situations when too many cars are delivered at once. While Hawkins has been able to make these investments, many smaller companies may not be able to do so, creating another disincentive to use rail.

The deteriorating rail service ACD members have experienced for decades makes it exceedingly difficult for shippers to do business with railroads as they are at risk of losing customers if they cannot provide them with reliable shipments. This is even more impactful for small rail customers who can have their entire operation disrupted if just one car is severely delayed. Each of these factors contributes to shippers being reluctant to utilize freight rail and more willing to use trucking because of its far superior reliability despite its worse safety record. This is only compounded by the monopolistic nature of freight rail, with roughly 80% of shippers being captive to one railroad,¹² meaning there are oftentimes no alternatives when receiving poor service. ACD encourages the STB to hold carriers accountable when their service metrics indicate excessively poor performance and to clarify the scope of the railroads' common carrier obligation. Additionally, ACD urges the STB to support short line rail carriers as member companies have consistently reported markedly better service when utilizing short lines.

¹² American Fuel and Petrochemical Manufacturers, "Freight Rail in America: Can a Market Be 'Free' if There's Almost No Competition?" AFPM, <https://www.afpm.org/newsroom/blog/freight-rail-america-can-market-be-free-if-theres-almost-no-competition>

Customer Service

An additional area where railroads can improve to increase freight growth is their customer service. ACD members have consistently reported issues of poor communication among Class I railroads. Member companies have reported difficulties in reaching their customer service representative, with some not even having a designated customer service representative at all, particularly since the adoption of PSR. Moreover, rail carriers have begun shifting communications with customers to centralized channels, dissuading shippers from communicating with local employees who operate in their local rail yards. This has been particularly frustrating as these individual face-to-face interactions with local employees have historically been impactful in building positive and productive working relationships with those who operate the locomotives.

Also, in addition to customer personnel shortages, U.S. Class Is have poor tracking capabilities. When using a U.S.-based carrier, shippers are often required to pay a fee in order to access tracking information. This creates additional costs for shippers and is simply not necessary, as demonstrated through the operations of Canadian National Railway and Canada Pacific Railway which do not nickel-and-dime their customers in this way. Also, it is not unusual for carriers to require companies to be shippers or consignees to track shipments. This is frustrating for ACD members when serving as brokers for their customers as they are not the shipper or consignee for these shipments but are still expected to oversee the cargo during its transit. There are also issues when product is imported through a seaport and then transferred to rail as there is typically no visibility of which carrier will take the shipment, requiring shippers to track their goods through the ocean carrier which tends to be behind and lacking detail. Again, there is evidence that this can be done in a customer-friendly manner as Canadian carriers

identify the carrier along with the arrival notice when goods are imported to a Canadian seaport. Being forced to operate with such little visibility adds to the reluctance of shippers to utilize freight rail and is especially frustrating when systems used in Canada prove that these shortcomings can be easily remedied.

ACD urges Class I railroads to dedicate additional resources and attention to improving their customer service. This should be a relatively low lift for rail carriers and can make the shipping experience significantly more beneficial, better incentivizing customers to use freight rail, and driving more growth in the industry.

Prohibitive Costs

The last factor contributing to lower usage of freight rail is the costs. In addition to high rates, ACD members utilizing rail have reported sizeable demurrage charges, many being in error. Also, an alarming new trend for many ACD members who use rail to ship or receive hazardous materials is some Class I railroads' imposition of higher insurance requirements as they attempt to shift liability from themselves to their customers.

Demurrage

In an ACD survey of members, when asked about demurrage charges imposed by rail carriers, 22.9% reported that they did not receive charges in a timely manner and 13.3% reported that these charges were made in error.¹³ These charges can be substantial, typically ranging from \$75 to \$500 per rail car per day.¹⁴ When these charges are applied to multiple cars over multiple

¹³ Dunham, John, "Results from ACD Second Half 2023 Railroad Survey," John Dunham & Associates

¹⁴ Zimmerman, Sarah & Lopez, Edwin, "'Insult to Injury': Record rail demurrage adds to shipper costs," Supply Chain Dive, <https://www.supplychaindive.com/news/insult-injury-rail-demurrage-record-shipper-costs/611667/>

days it can be a sizeable financial burden for smaller rail customers, requiring an investment in employee time to verify that the charges are accurate. This can be difficult due to how often charges are invoiced weeks or months after the charges are done accruing, and necessary when considering how often charges are made in error.

These costs serve as a barrier for prospective rail customers to begin utilizing rail service and existing customers from increasing their service. ACD urges the STB to continue to work with rail carriers to improve the accuracy and timeliness of demurrage invoices.

Insurance Requirements

Moreover, the Class I railroads have begun to impose extreme insurance requirements for products considered to be Toxic Inhalation Hazards (TIH). Rail carriers are doing this in an effort to shift the liability of transportation risks to their customers, despite the rail carriers being the parties operating the trains and ultimately responsible for the vast majority of derailments. These policy changes are excessive and unworkable. For example, carrier BNSF very recently sent a notice to shippers that as of September 1, 2024, they will begin to require minimum insurance coverage for TIH chemicals to be \$100 million, ten times the current amount. This is far beyond any liability a shipper would expect in any kind of accident. The change in policy also has extreme clauses requiring BNSF to be indemnified in certain scenarios. This includes indemnifying BNSF for any liability above \$1.8 billion, **even if the shipper was not determined to be at fault for the incident.**

BNSF is not the only railroad that has immensely increased insurance requirements as the merger between Canada Pacific (CP) and Kansas City Southern (KCS) resulted in shippers moving TIH with the newly merged entity being required to have a \$100 million minimum in

insurance and similar provisions indemnifying rail carriers. This was 10 times higher than the minimum coverage required under KCS before the merger. CP has also previously attempted to require this \$100 million insurance minimum to **move any hazardous** product, even for customers only receiving cargo. This is extremely concerning as this is not limited to TIH shipments and puts an extreme insurance cost that is not even associated with shipping the product for customers who are receiving shipments. This is unreasonable and can put egregious expenditures on small customers.

This trend of shifting the liability to the rail customer and requiring immense insurance coverage minimums considerably increases the costs of transporting goods via rail and serves as a substantial disincentive for shippers. Moreover, this trend is concerning as it shifts the liability to parties who are ultimately not responsible for maintaining the rail infrastructure which is critical to preventing derailments and other accidents. This puts the liability for an incident on a party that has little to no control over the risk. And that is a risk most prudent companies will not take. As the devastating derailment in East Palestine, Ohio, showed, the Class I railroads need to make more investments in rail safety. Shifting liability to rail customers is counterproductive to this goal and does not promote public policy of continuously improving rail safety. It is also particularly frustrating as shippers rely on rail to transit TIH and other hazardous products because of rail's superior safety record. These additional costs are extreme and essentially allow the rail carriers to skirt their common carrier obligation through a de facto refusal to ship hazardous materials as these insurance and liability shifting requirements are not economically feasible for most customers.

Emerging insurance requirements add massive costs and railroad tariffs and contracts also increase liability risks for shippers even when they are rarely at fault for rail incidents. ACD

urges the STB to work with rail carriers to prohibit railroads from requiring shippers to procure extremely high and unreasonable insurance coverages and to prohibit unreasonable tariff provisions requiring shippers to indemnify rail carriers in any circumstance where the shipper is not at fault. The STB also must ensure that the railroads abide by their common carrier obligation to transport essential products such as chlorine and are not able to thwart this obligation by disincentivizing the use of rail for hazardous materials shipments by imposing unreasonable insurance and indemnification obligations on shippers.

Conclusion

ACD appreciates the opportunity to participate in the STB's hearing examining growth in the freight rail industry. Chemical rail customers value freight rail as a method of transporting product given its impressive track record of getting materials to their end destination safely. This is especially valuable given the hazardous nature of certain chemicals upon which our country relies. ACD strongly believes that if Class I railroads and the STB address the issues raised in this testimony, customers will be more likely to utilize freight rail, growing the industry and improving service for customers. This is a crucial goal as a high-performing freight rail industry is necessary for a fluid supply chain and successful economy.

Respectfully submitted,

Richard Erstad

Vice President, General Counsel and Secretary

Hawkins, Inc.

For

The Alliance for Chemical Distribution