

Surface Transportation Board
395 E Street Southwest
Washington, DC 20423

RE: EP 770 Rail Service Hearing

April 19, 2022

Dear Chairman Oberman and Board Members,

The United Nations Intergovernmental Panel on Climate Change (IPCC) has stated in several reports that greenhouse gas emissions must be reduced by about fifty percent by 2030 to prevent irreversible climate damage. Rail transportation generates only one-third of the emissions of equivalent highway transportation. Nationwide, highway transportation is responsible for 82 percent of greenhouse gas emissions; rail is responsible for two percent.

Rail uses one-third the energy of highway vehicles, important when considering the immense amount of new electric power generation needed to electrify highway vehicles.

The rail safety record is substantially better than that of highways. There are typically ten million highway accidents and ten thousand railroad accidents annually. The number of injuries in highway accidents is about 396% of the number of injuries in rail accidents. The number of fatalities is about 732% of rail accident fatalities.

Rail transportation should play a substantial and important role in the US transportation system, but it does not.

- Measured by weight, trains carry 9.3 percent of the freight; trucks carry 71.5 percent.
- Measured by value, trains carry 1.4 percent of the shipments; trucks carry 73 percent.
- Measured in train miles per mile of track, the US is 40th in the world.
- By any measurement, US passenger rail transportation is last (e.g., level of service, punctuality, convenience, utilization).
- US railroads are second in the world in ton miles carried. That is not surprising since the US has the largest rail network in the world, the Class 1 railroads discourage shipments of under about 700 miles, and they discourage shipments of less than the maximum permissible weight per car.
- The US Class 1 railroads are the subject of almost continual complaints about service.

- The US railroads are the subject of many complaints about working conditions. Employees are leaving the industry because they feel that the wages and retirement benefits are no longer worth accepting the conditions.

The railroad industry operates generally as a regional monopoly. Freight customers have limited choice of carriers if they have any choice at all. Labor is placed in the same position.

The Railway Labor Act effectively keeps union agreements in effect long after they have expired. There is no change in wages or working conditions. Workers are generally prohibited from labor action and the companies use that to their full advantage. Railroad employees are regularly subjected to violations of their union agreements. Employees are often paid less than the amount to which they are entitled. No matter the severity, grievances are declared to be minor, requiring resolution by arbitration. BNSF conductors recently prevailed in an arbitration that was initiated six years ago. The conditions under arbitration were not only a violation of the agreement, but they were also unsafe. The employees were required to work under those conditions during the arbitration process. Employees who work on trains never know when they will be called to work. The only time that they know they will not be on duty is the eight to ten hours immediately after a trip. They are required to be on call otherwise and are often prohibited from scheduling any time off. However, workers are regularly furloughed for months and expected to report promptly when called back to work. Many railroad workers carry job insurance for protection against unjust disciplinary action. Railroad operating positions have job skills and requirements that do not easily transfer to other industries. Railroad workers generally have no choice but to accept the working conditions their employers give them.

As long as trucks are considered to be competition, railroads are free to charge transportation fees or provide a level of service that is unacceptable for any shipment that is deemed insufficiently profitable or too much work to be worthwhile. If shippers don't like the terms, they can always ship by truck, which is seemingly the same arrangement that applies to any competitive enterprise. Railroads manage to ignore Common Carrier obligations without technically violating them.

As corporations, railroad companies have the fiduciary responsibility to act in the best interests of the stockholders. That is accepted to mean making the greatest possible amount of profit in the shortest time. There is no meaningful requirement to consider the public interest in their business practices. The industry is currently using the buzzwords Precision Scheduled Railroading (PSR) to represent that effort. However, the associated practices have nothing to do with precision, schedule, or what anyone who was employed in the industry before the 21st Century would call railroading. PSR is a way to minimize the cost of traffic the industry wants and discourage traffic that it doesn't want.

The Staggers Act rescued rail corporations but severely damaged rail transportation.

Some people have suggested nationalization as the only solution. Throughout the world, rail transportation was nationalized because nations determined that rail transportation was too important to entrust to corporations. That is not a feasible solution in the US. Railroad corporations own an immense amount of property. Fair compensation would need to be determined, which would involve a great amount of non-productive expense in litigation. The litigation and negotiation process would take a very long time.

Nationalization is not a good solution. The European Union determined that a government monopoly is as detrimental as a private sector monopoly.

The European Union established a system of open access to the rail network through EU Council Directive 91/440/EEC of 29 July 1991. The directive required the separation of infrastructure from service regardless of ownership. Infrastructure and service may share ownership, but only as financially separate subsidiaries. The directive also requires non-discriminatory access to the infrastructure, using a fixed fee schedule applicable to all. Railroad infrastructure has effectively become toll roads for trains, generally called *open access*. The rail infrastructure operator of each country publishes a schedule of fees that apply to all users.

The fee structure prescribed by EU regulations includes the cost of owning and operating the infrastructure and a profit margin. When an infrastructure company has a need for additional infrastructure to accommodate additional traffic, a business case is made to the government. Grants are awarded for the new infrastructure, which becomes property of the infrastructure owner upon completion. There is US precedent for this arrangement in the way that passenger rail projects, particularly for commuter and corridor service, are implemented. The freight railroad makes a business case for the infrastructure needed to support the new traffic. When the projects are complete, the new service operates, and the new infrastructure becomes property of the railroad company.

A manager of DB Netze, the German infrastructure company, told me that his job was to reliably operate the maximum number of trains the infrastructure can accommodate. There are university programs throughout Europe for the study of maximizing rail infrastructure utilization. Throughout the last two decades of my railroad industry employment, the management effort was directed at *avoiding* running trains.

There is precedent in the US for this arrangement. Baltimore & Ohio Chicago Terminal Railroad was a wholly owned subsidiary of Baltimore & Ohio Railroad. The purpose of separation was the ability to take advantage of benefits available to railroads located entirely within the Chicago Switching District. Each railroad using B&OCT, including Baltimore & Ohio, was charged a fee to use B&OCT tracks. There are numerous other

examples of joint use of tracks throughout the US, but under arrangements different from that of the EU. Generally, they are a concession that was required to complete a merger.

The EU approach to open access does not take advantage of the infrastructure owner, a concern expressed by US railroad companies when open access is discussed. On the contrary, it increases opportunities to generate additional return on infrastructure investment. The arrangement would be an advantage to the owners of greatly underutilized US rail infrastructure. The US has vast expanses of virtually empty rail lines and a relatively small number of extremely congested areas, generally due to operating and infrastructure minimalization practices.

Throughout Europe, countries contribute, in varying amounts, to the rail infrastructure company as a subsidy for social benefit. This is the same manner of subsidy as applied to highway transportation in the US.

The Constitution gives Congress the power to regulate interstate commerce and establish post roads. A subsequent Supreme Court decision stated that post roads could be used for other concurrent uses. In 1838, Congress designated all existing and future railroads as post roads. These precedents provide the perfect opportunity to vastly improve US rail transportation through a ‘toll road for trains’, or open access arrangement like that in the EU.

Similar separation of business units within a railroad corporation in the US have precedent in, for example, Burlington Northern, Inc. and Santa Fe Industries.

An open access arrangement allows the Class 1 railroad corporations to provide or discourage service as they currently do, while allowing other companies to provide the service that is now missing.

The open access arrangement would provide alternative employment opportunities for people currently trapped in an unacceptable employment arrangement because of the railroad company monopolies.

The arrangement would facilitate implementing new passenger rail service and would improve the punctuality of current passenger service.

Prior to Amtrak, passenger trains carried a significant amount of express freight, most of which was lost to the government-supported competition of trucks. From the mid-1980s into the early 2000s Amtrak operated an extensive express freight service on passenger trains, but track access, schedule restrictions, and opposition of the freight carriers caused the service to fail. Under the open access model, such service could provide the basis for new passenger rail service, improvements to existing service, and facilitate mode shift of freight traffic from highway to rail.

Effective rail transportation is in the nation's best interest. Reducing the subsidization of competing modes to improve rail transportation is in the nation's best interest. The Pentagon has declared climate change a national security issue. A rapid change in transportation emphasis to favor rail transportation can be a fast and effective climate emergency response.

Every month, the number of fatalities in highway accidents is the equivalent of the fatalities in the September 2001 attacks. The number of highway accident injuries every year exceeds the number of wounded soldiers in all conflicts since 1940. Traffic accidents cost the US economy about \$871 billion per year.

The US Department of Transportation estimated in 2009 that highway congestion costs the US \$85 billion annually. Building highway capacity has been demonstrably ineffective in reducing congestion.

There is an urgent need for substantially improved rail transportation in the US. Substantial mode shift from highway to rail as rapidly as possible is essential. Continuing with the current model will not provide that opportunity. An open access rail infrastructure model like that of the EU is needed.

Thank you for your attention.

Sincerely,

Thomas White

VTD Rail Consulting-Publishing/Climate Rail Alliance