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STATE OF NEW YORK
DEPARTMENT OF TRANSPORTATION
ALBANY, N.Y. 12232
www.nysdot.gov

ASTRID C. GLYNN
ACTING COMMISSIONER

ELIOT SPITZER
GOVERNOR

April 11, 2007

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
1925 K Street, NW
Washington, D.C. 20423

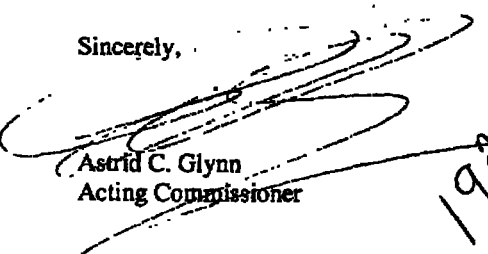
Re: Rail Capacity and Infrastructure Requirements,
STB Ex Parte No. 671

Dear Secretary Williams:

Enclosed are the original and ten copies of the comments of the New York State Department of Transportation submitted in response to the Board's March 6, 2007 decision on rail capacity and infrastructure requirements.

Please date stamp the extra copy of this letter and return it with our messenger.

Sincerely,


Astrid C. Glynn
Acting Commissioner

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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex. Parte No. 671

RAIL CAPACITY AND INFRASTRUCTURE REQUIREMENTS

COMMENTS OF THE NEW YORK STATE DEPARTMENT OF TRANSPORTATION

I. INTRODUCTION

New York State has long valued its rail system as an integral component of a multimodal transportation system needed to move both people and goods. Whether it is moving the vast quantities of containers from the Port of New York and New Jersey to points inland, connecting west coast ports with New England, serving small shippers in rural Tompkins County in the Finger Lakes region, serving as the hub of the Northeast Corridor, or carrying nearly 500,000 commuters to work each day, the railroads move the people and goods necessary for New York's economy to thrive.

It is critically important to New York that the rail industry has both a reliable infrastructure in place to meet today's needs and sufficient capital resources to meet the needs of tomorrow. The New York State Department of Transportation (NYSDOT) initiated its rail program in 1974 with voter approval of \$250 million in Rail Preservation Bonds. Those funds began to address rail freight needs even before the creation of the federal USRA Final System Plan in 1975. New York's rail program also initiated the first 110 mph rail passenger service outside the Northeast Corridor. Today, New York continues to be a leader in recognizing the public benefits that accrue from a safe and efficient rail system. Since that initial bond program, New York has invested over \$1.2 billion in freight and intercity passenger rail capital improvements.

New York recognizes the link between a strong freight transportation system and the economic health of the state. It also recognizes that the growth of freight (and estimated levels of future growth) cannot be accommodated on the highway system. Goods movement strategies must both make improvements to meet growing truck traffic and strive to increase the rail share. In order to increase the rail share, expansion of rail system capacity will be essential. For this reason, New York applauds the Surface Transportation Board (STB) for recognizing the national rail capacity problem and for providing a forum to address this important issue.

Today, New York State is served by four Class I carriers, CSX Transportation, Norfolk Southern Railway, Canadian Pacific Railway, and Canadian National Railway, as well as thirty-four regional, short line, and terminal carriers. Amtrak provides extensive intercity passenger service throughout the state, while New Jersey Transit, and the NYS Metropolitan Transportation Authority (MTA)'s two commuter railroads, MTA Metro-North Railroad and MTA Long Island Rail Road, each operate a network of commuter services around New York City on routes sometimes shared with freight carriers.

Each of these groups faces unique challenges in providing the infrastructure necessary to accommodate the growth in rail traffic.

II. ECONOMIC TRENDS

Rail freight volumes (measured in terms of ton-miles) are at historic levels, and there are a number of economic factors that have fueled the resurgence in rail transportation.

The Staggers Act was key to reviving the industry. Deregulation has enabled the industry to act and react to the transportation market, allowing the industry to provide services and rates that have returned traffic to the rail mode.

The shift to offshore manufacturing, while not necessarily beneficial to all sectors of the US economy, has brought benefit to the rail industry, as the railroads can provide the most efficient means of moving large quantities of goods from ports to inland destinations.

The rail industry has also gained from changes in the cost structure of trucking. Given increased fuel costs, new hours-of-service laws, and a shortage of drivers, the tipping point in the mode choice between truck and rail has often shifted to the benefit of the railroads.

Barring a successful effort to re-regulate the industry, New York anticipates that these economic trends will continue to drive growth in rail traffic into the foreseeable future.

However, there are other growing trends which will increase the pressure on the rail infrastructure, and, from the public agency's perspective, there are functional reasons to welcome that trend. Highway capacity is becoming a scarce commodity. The peak hour is lengthening and vehicle miles traveled are rising. The mature highway network in New York will not be able to accommodate the projected growth of freight movements, a limitation which will further alter the economics of truck transportation. To address this concern, New York is focusing its efforts on moving people and goods along major multimodal corridors. Without the ability to greatly expand our highway capacity, our rail system capacity must increase to accommodate a larger market share and provide levels of service.

III. INFRASTRUCTURE NEEDS

State of Good Repair:

Before beginning any discussion of infrastructure needs to accommodate future traffic, it is necessary to assess infrastructure needs for today's traffic. It is critical to New York that the railroads' infrastructure can accommodate existing traffic safely, reliably and efficiently. The Federal Railroad Administration (FRA), in response to a very serious derailment in Oneida, NY, has recently expressed concerns over track conditions and maintenance on major lines in New York State. That event and the inquiries that it prompted has underlined the fact that the four Class I railroads must dedicate the resources (personnel, material, and time) necessary to ensure a sound and well maintained track structure.

The state of affairs is somewhat different for the Class II and Class III railroads. Many of these lines were marked by years of deferred maintenance before being spun off by the larger carriers. These lines typically lack the resources of the larger railroads but are forced to play "catch-up" to bring the railroad back to a state of good repair. Unfortunately, many of these lines find it that their limited resources are expended addressing emergency repairs.

High Axle Loads:

By emphasizing the economies of scale, railroads have been able to reduce their costs and, in some cases, recapture traffic lost to other modes. One of the key elements has been the increased use of high axle load cars, which have a gross weight of 286,000 pounds or more. For Class II and III railroads to accommodate this traffic, it is critical that investments are made to return the track structure to a state of good repair and capacity necessary for efficient operations. But the infrastructure needs go much deeper. Bridges have been less of a concern for railroads, as they have lived off the structural capacity in their bridges needed for steam locomotives. However, high axle load traffic is slowly consuming the remaining fatigue life of the steel in these structures, and significant capital investments will be needed to address this need. This is particularly troublesome where freight traffic shares the right of way with the MTA commuter railroads.

Clearances:

The primary main line corridors through New York are either cleared for double-stack traffic or have ongoing capital projects to address the last remaining obstructions. However, in the congested New York metropolitan area, outdated overhead clearances hinder the ability of the railroad to serve the market with today's larger freight cars. These height restrictions must be addressed by raising bridges and lowering tracks. Both strategies present challenges in terms of impacts to surrounding local commercial and residential land uses, high initial capital investment and ongoing maintenance.

Capacity:

NYSDOT sees four distinct issues with respect to capacity constraints on the rail network. Each is discussed in detail below.

Line Haul Freight Issues:

The continued growth in rail traffic is putting a strain on the current rail infrastructure. Bottlenecks, such as CSX Transportation's single track River Subdivision (from the New Jersey port area to Selkirk, NY), can limit the economic growth of the Port of New York and New Jersey, or an entire region.

For the Class I railroads, the primary issues that need to be addressed are capacity and operating efficiency. The expansion of containerized foreign trade through the Port of New York and New Jersey has resulted in major increases of intermodal rail movements on New York's mainline rail network. This expansion is occurring on lines that were "rationalized" only twenty years ago to reduce rail operating and capital costs and attain a financially stable rail system following the massive rail bankruptcies in the Northeast.

Although New York's Class I railroads have invested substantially in additional passing sidings and signal technology (often with State financial assistance) freight growth continues to exceed the capacity gains being made. As its financial health increases, the railroad industry must commit capital to enhance capability.

Increased federal emphasis must particularly be placed on rail projects of regional and national significance. These are major projects which provide most of the project benefits outside of the project location, i.e. to other states or regions. These projects typically are too large to be financed by the railroads alone or by any combination of state and private rail funds.

Freight vs. Intercity Passenger:

Amtrak operates four distinct services within New York. Their primary main line, the Northeast Corridor (NEC), cuts across the New York City metropolitan area and includes the busiest passenger station in the country, New York's Penn Station. MTA Long Island Rail Road shares approximately six miles of Amtrak owned NEC trackage from Penn Station to Queens. East of New Rochelle to the Connecticut line (and beyond to New Haven, CT), the Northeast Corridor is operated and maintained by MTA Metro-North Railroad. Penn Station also serves as the eastern/southern terminal for three other services: Empire Corridor service, including the Maple Leaf, the Lake Shore Limited, and the state supported Adirondack (NY) and Ethan Allen (VT). All of these share the Hudson Line between New York City and Albany. The Adirondack and Ethan Allen continue north on Canadian Pacific Railway while the Lake Shore Limited and Empire Corridor services continue west on CSX Transportation.

Generally, these routes traverse the primary main lines of Class I railroads and are kept in a state of good repair by the respective carriers. However, each corridor has a unique set of physical characteristics and mix of train operations which drive the need for future infrastructure investment.

On CSX Transportation's double track main line between Albany and Buffalo, freight volumes are the top issue. This route is the busiest freight route in the state, but also accommodates four Empire Corridor trains and the Lake Shore Limited. Any disruption to the operating plan, either from scheduled maintenance, unscheduled freight train delays, or additional train volumes has a significant adverse impact on Amtrak's on time performance.

Heading north out of Albany, Amtrak's Adirondack and Ethan Allen share Canadian Pacific's single track Canadian Subdivision as far as Whitehall, NY, where the Ethan Allen heads east on the Clarendon & Pittsford into Vermont, while the Adirondack continues north on the Canadian Subdivision to the border crossing at Rouses Point. Canadian Pacific's recent haulage arrangements with Norfolk Southern and CSX Transportation (pending) represent a double edged sword for Amtrak operations in the corridor. Canadian Pacific is making investments in the corridor to enable this new traffic to move reliably, and Amtrak's operations have benefited from these investments. However, the two agreements will also bring a significant increase in the freight volumes on the line.

Freight vs. Commuter:

The economy of the New York metropolitan area relies on public transportation access more than any other city in North America. The New York metropolitan area is served by three of the four largest commuter railroads in the country: the MTA Long Island Rail Road, MTA Metro-North Railroad, and New Jersey Transit. Each weekday the LIRR and Metro-North alone provide nearly 500,000 rides. Each of these is a government-owned entity whose primary mission is to provide commuter service to and from New York City. In most cases, these entities own (or lease) the rail infrastructure and control maintenance, operations, and dispatching (the most notable exception is NJ Transit operations over Amtrak's Northeast Corridor). Generally, these operations are outside the Board's jurisdiction.

However, rail freight service continues to operate over the majority of these lines. CSX Transportation, Norfolk Southern Railway, Canadian Pacific Railway, New York Susquehanna & Western, Providence & Worcester, Housatonic Railroad, and New York & Atlantic Railway each operate at least a portion of their route mileage in the state on commuter routes. Conversely, there is little trackage in metropolitan New York that is used exclusively for freight operations. There are approximately 811 mainline track miles in the 7 counties which comprise New York City and Long Island, but only 61 mainline track miles (7.5%) are utilized exclusively for freight.

As the region's population grows and congestion delays on the region's highways and bridges move beyond tolerable, public demand for increased commuter rail service grows. Both NJ Transit and the MTA Long Island Rail Road are progressing projects for new terminal space in Manhattan (known as "THE Tunnel" and "East Side Access" respectively) to address their growth needs. Where the main line corridors in the commuter rail networks are approaching operating capacity, both the commuter and freight railroads need to explore strategies (where practicable) to permit further growth without limiting each other's public mandates and market opportunities.

One approach to this type of cooperative corridor planning can be found in the Hudson Line Joint Users Study, where MTA Metro-North, Amtrak, CSX Transportation, Canadian Pacific Railway, and NYSDOT jointly funded a study to determine what infrastructure is needed to accommodate the future operating plans and traffic projections of the four operating railroads, as well as the transportation policy goals of NYSDOT. The resultant report identified a program of specific capital investments which significantly improved operating metrics for all four railroads over the no-build scenario, quantified the anticipated benefits to each party, and recommended a cost allocation for each investment. These conclusions were fully endorsed by all five stakeholders. In fact, NYSDOT has programmed some funding to begin implementation, although the bulk of the funding must still be identified.

Another heavily used MTA rail corridor is the LIRR main line corridor, which is subject to both heavy city-bound and reverse commuting demands during daily peak periods. LIRR is exploring capacity enhancement strategies. Here, freight opportunities may lie more in the off peak periods, requiring daily interaction between LIRR and the freight carriers to identify specific time windows and routing strategies to meet both carriers' movement needs.

Class II and III issues:

The need for capacity improvement is not limited to the Class I railroads. Prior to being spun off to a short line, the "excess" sidings and yard tracks on many branch lines were removed in an effort to

minimize maintenance costs and property tax liabilities. Those actions may have made business sense for the railroads under the regulatory and tax framework of the time. Today, however, under the management of a new operator, rail traffic has returned to many of these light branch lines. The lack of run-around sidings and yard tracks results in inefficient operations, which increase the railroads' costs to serve the shippers and may decrease safety.

IV. NYSDOT INITIATIVES

NYSDOT has embraced five goals in its role in overseeing the state's transportation system. They include: enhancing mobility and reliability, promoting economic sustainability, improving environmental conditions, safety, and enhancing security. Rail transportation plays a key role in attaining these goals.

As noted in the introduction, over the past 30 years NYSDOT has administered over \$1.2 billion of public funds (including federal, state, and local sources) for freight and intercity passenger rail capital improvements in New York. The majority of these investments have been made in partnership with privately owned carriers on their private rights of way. Significant accomplishments include rehabilitation of the Hudson Line for Amtrak's high-speed operations; construction of the West Side Connector, which connects Amtrak's Empire Service to Penn Station; construction of the Full Freight Access Program, including the Oak Point Link, which allows modern rail cars to access New York City; rehabilitation of numerous branch lines throughout the state; clearance improvements to allow double-stack and other oversize movements in key corridors; yard and terminal improvements; and economic development opportunities.

While this represents a significant investment, there remains a need for more resources. In 2006, NYSDOT solicited New York's railroads for projects to be funded in 2007 from two capital grant programs, the Passenger and Freight Rail Assistance Program, which provides \$20 million per year, and the current Transportation Bond Act, which provides \$27 million per year for rail and port projects. Combined, NYSDOT received 113 applications requesting over \$333 million in State assistance for rail projects, over 700% of the funds available.

The Department has found that significant public benefits can accrue from these partnerships. Some of these benefits are easily quantifiable, while others are less so. Each car load of freight eliminates approximately three truck loads from the highway system, reducing wear and tear on the roads and bridges. Other investments may induce a mode shift from truck to rail and thereby free critical highway capacity in a dense urban environment.

Some public investments in rail infrastructure leverage private investment in economic development. Construction of a publicly funded industrial siding has the potential to bring new industry to a community, providing new jobs, increased property tax base, and greater economic activity.

Ultimately, the primary beneficiaries of any public investment in rail infrastructure are the shippers, the receivers, and their customers because they will reap the benefits of goods arriving to their destinations sooner, safer, and cheaper.

V. RECOMMENDATIONS FOR ACTION

- Support the establishment of a National Freight Transportation Policy which addresses the role of the railroad industry and the importance of expanding capacity to at least maintain and preferably expand its current market reach. The policy should also address means of increasing both private (railroad) and public financial resources for rail infrastructure investments, including the creation of a dedicated federal program for investments in rail infrastructure similar to those available for other modes and/or continued or expanded use of federal tax credits.
- Review rail laws, rules and regulations to ensure that while maintaining their intended safeguards (especially those pertaining to worker safety), they reflect the current state of rail and freight needs and issues and do not needlessly inhibit railroad productivity or capacity expansion.

- Conduct a study of captive and other small shippers with respect to service and rate impacts they may be exposed to primarily due to capacity shortages. Review existing regulations with regard to changes that may alleviate negative impacts short of what would be considered re-regulation of the industry.
- Review regulations regarding rail passenger service over rail lines owned by freight railroads to establish clear criteria regarding the rights of passenger providers. Establish a means to monitor freight railroad compliance with these regulations for the purpose of improving on-time performance of intercity rail passenger service.
- Monitor freight access provisions over commuter and intercity passenger railroads to determine future needs of freight carriers. Encourage joint planning, operations and investments in shared territories.
- Develop a working relationship with the Office of Homeland Security to establish procedures and infrastructure needs that will ensure that security needs at borders and other locations on the rail system are maintained and increased if necessary. These enhancements need to be implemented with as little impact as possible on the efficiency and reliability of freight or passenger movement.