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Joint Testimony of the Coalition Associations

Docket No. EP 711 (Sub No. 1)
March 15, 2022

Introduction

Coalition Associations

- American Chemistry Council
- Corn Refiners Association
- The Chlorine Institute
- The National Industrial Transportation League
- The Fertilizer Institute

Panelists

- Karyn Booth – Thompson Hine (Presenter)
- Jeff Moreno – Thompson Hine (Presenter)
- Jeff Sloan – American Chemistry Council
- Eamon Monahan – Corn Refiners Association
- Mike McBride & Frank Reiner – The Chlorine Institute
- Ross Corthell – The National Industrial Transportation League
- Justin Louchheim – The Fertilizer Institute

Key Points from prior testimony still true

Congress intended reciprocal switching to enhance rail competition

There is a “need” for the competition that reciprocal switching encourages

The Board has the authority and discretion to adopt the proposed rules

The Board has articulated rational justifications for the proposed rules

The rail industry’s apocalyptic predictions for rail operations and investment are predicated upon inaccurate, exaggerated, and unrealistic scenarios

Congress provided reciprocal switching as a tool to enhance competition

- The existing “competitive abuse” standard is not mandated
- Reciprocal switching allows competition to resolve rate and service issues beyond bottleneck segments
- Industry-wide data on competition are meaningless because reciprocal switching targets the subset of rail traffic that indisputably is not competitive

Railroads exaggerate the scope of switching

The most likely scenarios represent less than 10% of “potentially eligible” traffic

- Switches that change the interchange location without increasing car handlings
- Switches at existing interchange locations, where the switched traffic is merely incremental to other traffic already interchanged between the rail carriers

A realistic scope consists of “qualified” traffic that:

- satisfies Prongs 1 or 2,
 - has sufficient volume to justify the time, cost, and burden of an STB case,
- and**
- has an efficient switch option

■ AAR’s analysis of “potentially eligible” traffic is meaningless because

- ▣ It measures a far larger universe than “qualified” traffic,
- ▣ which itself is larger than the amount of such traffic that will request reciprocal switching,
- ▣ which is larger still than the volume of traffic that will use the switch

Rail consolidation justifies the proposed rules

AAR's strawman analysis is meaningless

Horizontal impacts are not the issue

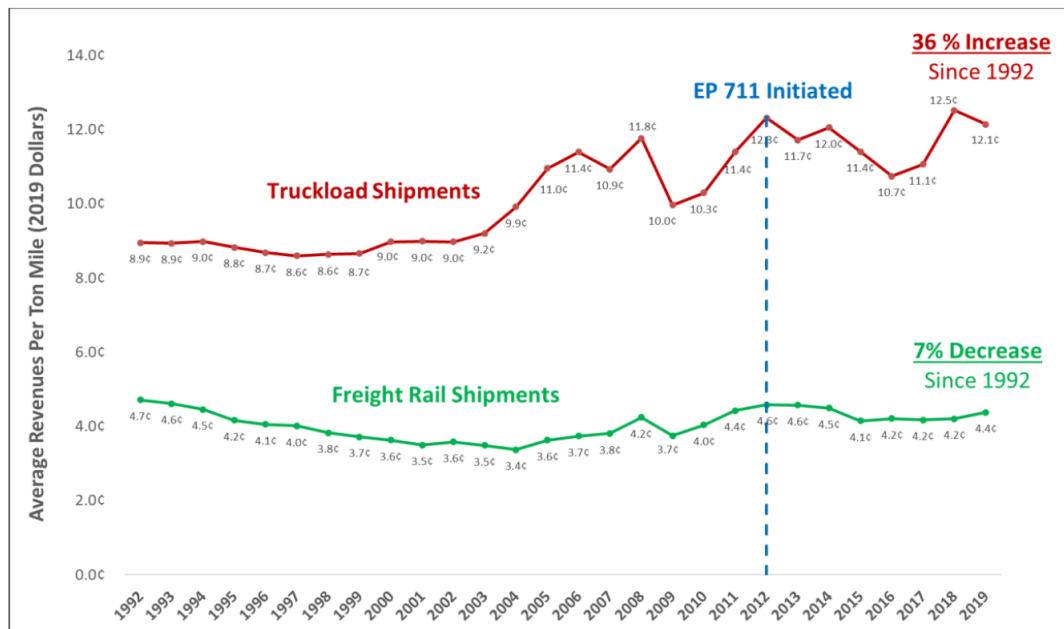


The cumulate vertical effects of mergers have facilitated the ability of bottleneck carriers to foreclose competition on downstream route segments

- Rail economic testimony in CP/KCS merger shows that foreclosure inevitably has resulted from prior mergers
 - ▣ One-lump theory is no longer broadly accepted
 - ▣ Undermines prior merger determinations that vertical combinations were not anti-competitive
 - ▣ Reciprocal switching mitigates the foreclosure effects of prior mergers

Truck rate comparisons are meaningless

Chart 3: Comparison of Freight Rail and Long-Distance Truckload
Average Real Revenues Per Ton-Mile: 1992 to 2019



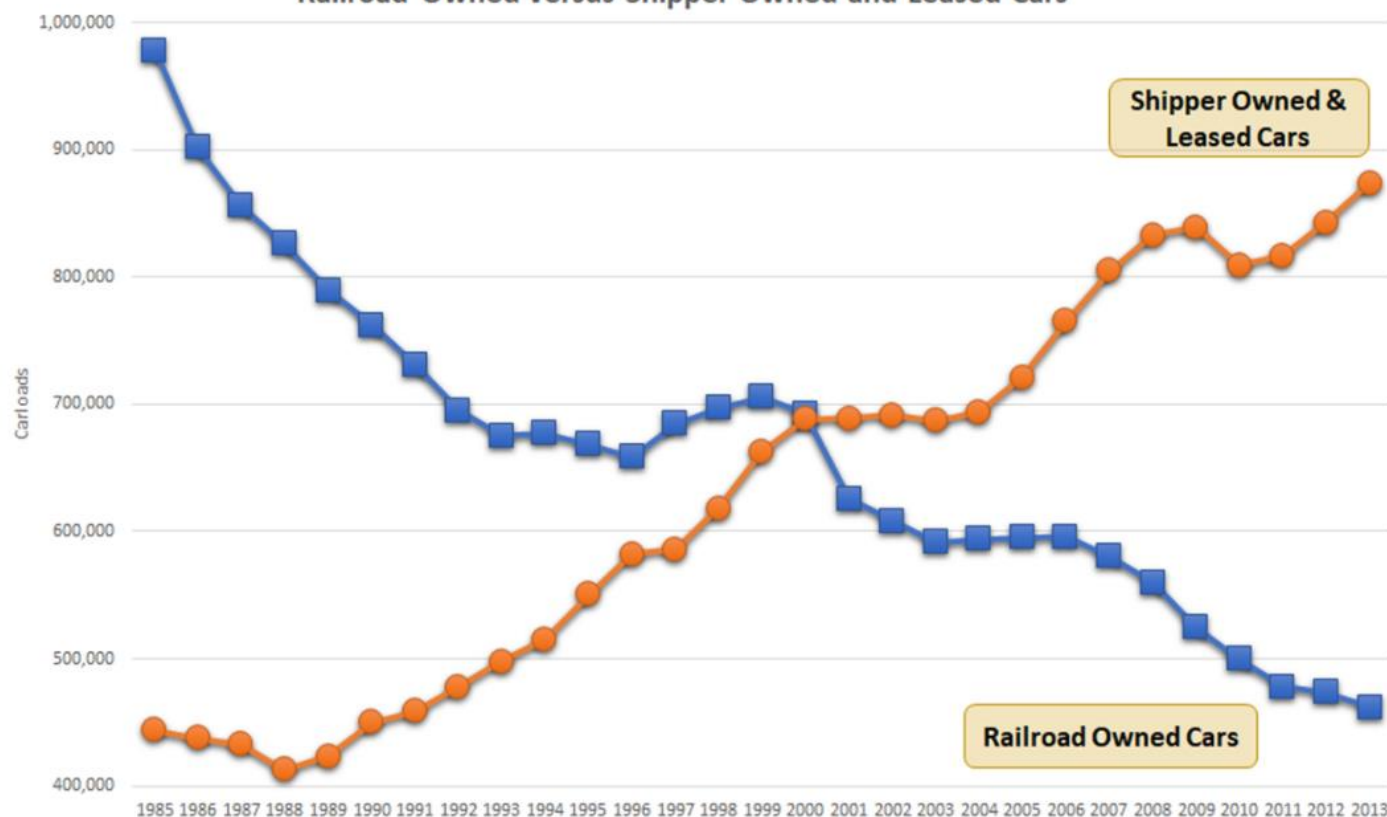
Deficiencies

- Reveals nothing about captive rates
- Ignores rail cost shifting to shippers
- RPTM decreases with average distance, which has increased 56% since 1985

Revelations

- While truck RPTM fluctuates with economic changes, rail RPTM does not
- Upward rail RPTM trend since 2004 followed the last major rail merger

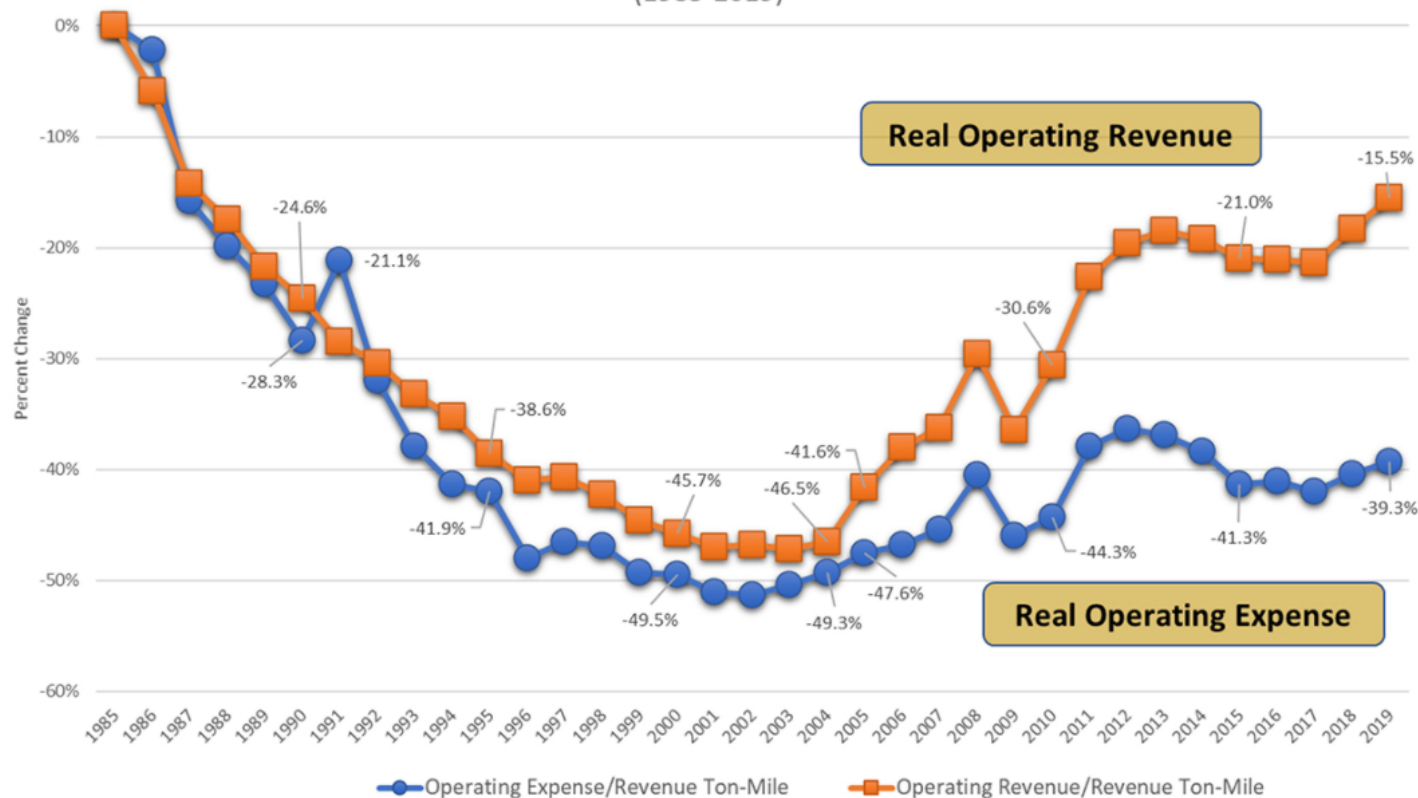
Change in Freight Cars in Service Railroad Owned versus Shipper Owned and Leased Cars



Source: Freight Cars in Service for Railroads and Shipper Owned Cars (includes shippers and leasing company carloads) are from AAR "Railroad Facts".

Source: <https://www.railwayage.com/financeleasing/stbs-annual-rail-rate-index-study-a-deeper-dive/?RAchannel=home>

Percent Change in Real Operating Revenue and Expense on a Revenue Per Ton-Mile Basis (1985-2019)

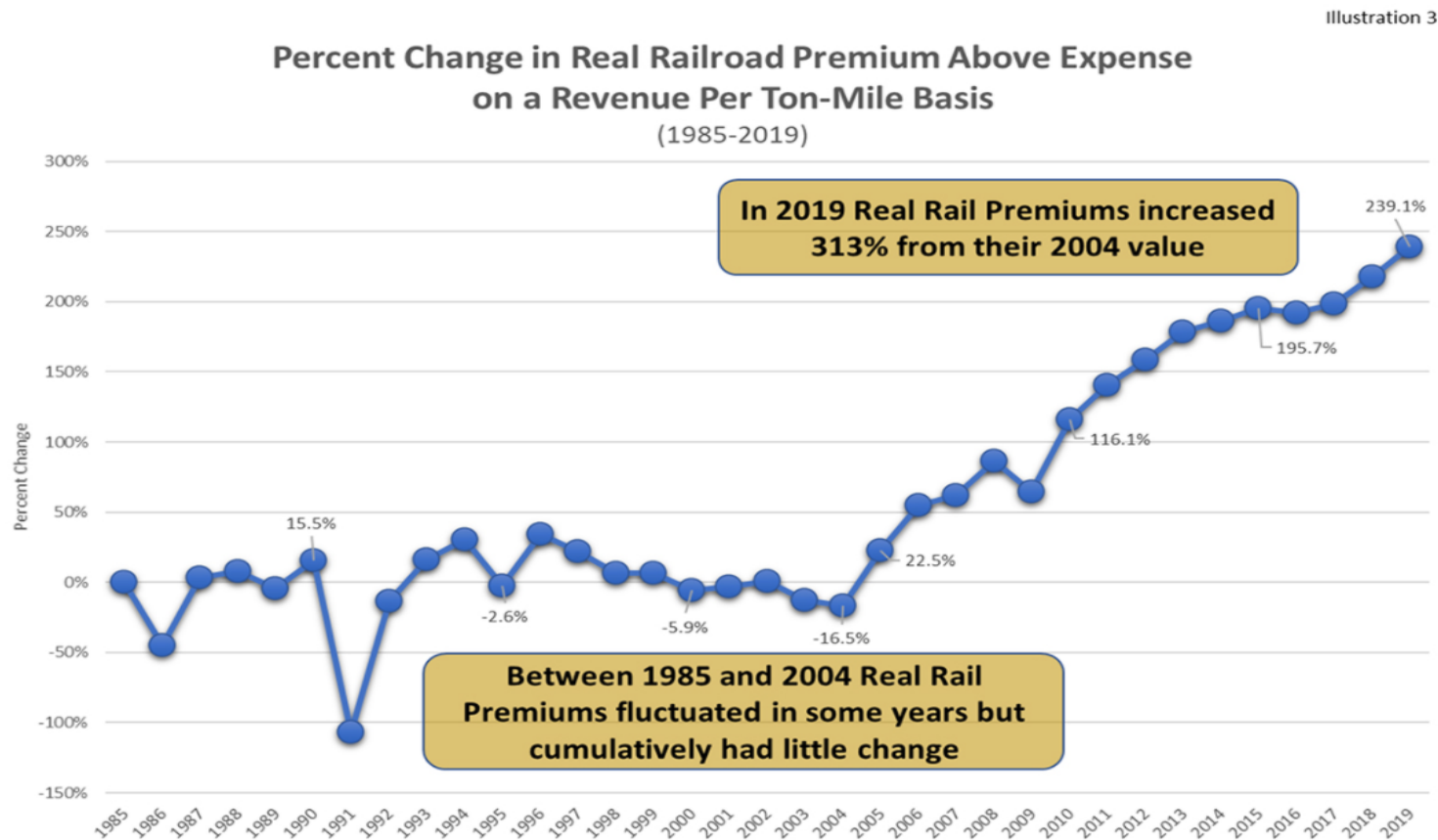


Source: AAR Operating Revenue, Operating Expense and Revenue Ton-Mile as taken from AAR "Railroad Facts."
Values deflated using the Implicit Price for the Gross Domestic Product.

Changes in rail revenue exceed expenses

Source: <https://www.railwayage.com/financeleasing/stbs-annual-rail-rate-index-study-a-deeper-dive/?RAchannel=home>

Change in premium above expense



313%
increase
since 2004

239%
increase
since 1985

Source: AAR Operating Revenue, Operating Expense and Revenue Ton-Mile as taken from AAR "Railroad Facts. The rail margin is the difference between Operating Revenue and Operating Expense on a Revenue Per Ton-Mile basis.

Source: <https://www.railwayage.com/financeleasing/stbs-annual-rail-rate-index-study-a-deeper-div/?RAchannel=home>

Rail financial strength justifies proposed rules

Dire financial conditions in 1985 established a need to maximize differential pricing over the largest segment of captive traffic to achieve revenue adequacy



Much stronger financial condition today fosters greater balance between revenue adequacy and enhanced competition

Reciprocal switching promises many non-rate benefits



Access to alternate carrier
in response to service
disruptions



Requires railroads to
consider the impact of
operating decisions on
customers they currently
take for granted



Incentivizes railroads to
negotiate contract service
terms



Promotes more efficient
routing decisions

Alternative switch routes may be more efficient

- Economic efficiency considers ***net*** societal costs and benefits
- Reciprocal switching includes more costs and benefits to reach a more accurate assessment of efficiency

RR efficiency claims are predicated solely on their costs

RRs do not consider shipper costs

Since 1985, RRs have shifted a growing share of their historical costs to shippers

What is a “reasonable distance”?

Coalition Position

- Resemblance to terminal operations
 - ▣ Simple scenario: The local train that serves a customer facility operates out of the same yard where the interchange occurs
 - ▣ Complex scenario: The local train that serves a customer facility operates through a yard that is served by another local train that connects to the yard where the interchange occurs
- Rule-of-Thumb: If switching can occur without movement in a road train, it is within a “reasonable distance”

Railroad Position

- Only in terminals
- Problematic
 - ▣ RRs do not clearly define terminal areas in public documents
 - ▣ Arbitrary geographic boundaries set by railroads amenable to “gaming”

Switch fee methodology

SSW Method

- Requires modifications to adapt it to reciprocal switching and reduce complexity
- Cost-based
- Supported by precedent

STB need not settle upon any method at this time

- No method exists under current rules
- No need to determine switch fee unless there is disagreement
- Switch fee disputes can be addressed in individual cases, which can be a laboratory for testing different methods

Efficient Component Pricing must not factor into switch fees

- Protects market power
- Forecloses the benefits of switching