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Surface Transportation Board
The Honorable Chairman Martin Oberman
395 E Street SW
Washington, D.C. 20423

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RE: Docket No. EP 770 (Urgent Issues in Freight Rail Service)
Public Comments Submitted on Behalf of Multiple Lumber, Paper, Non-Hazardous Bulk and
Construction Materials Shippers

Dear Chairman Oberman:

This firm represents multiple lumber, paper, non-hazardous bulk and construction materials shippers or consumers who are located, or have substantial operations, primarily in the Western United States. Each of these companies has elected to approach the Surface Transportation Board anonymously out of fear of retribution, retaliation, or other degradation of their already-poor rail service. This fact alone should be an ominous signal to the Surface Transportation Board as to the state of affairs between the major freight railroads and their customers.

The companies we represent are experiencing substantial disruptions to their rail-based distribution operations, generally categorized as one of two issues: railcar supply shortages and/or unfilled railcar orders, and generally inadequate rail service due to railroad self-created staffing issues (e.g., missed switches with no service recovery, or inadequate service delivery/insufficient number of rail switches per week). We will provide comments on each of these service matters in turn.

Issue 1: Railcar Supply Shortages and/or Unfilled Railcar Orders.

Across the American freight rail network, rail customers are experiencing a lack of available empty railcars. This is chiefly caused by reduced velocity across the rail carriers' networks due to held trains, longer-than-usual yard dwell, and average train speed being lower than historical norms. All, or almost all, of these factors are tied to railroad crew shortages. For the railroads to blame these operating phenomena on acute, "pandemic-related" labor shortages is disingenuous. For the past several years, the freight railroads have voluntarily eviscerated and emaciated their respective workforces vis a vis their chase for a "sub-60" operating ratio in a manner most closely analogous to a pack of hyenas devouring a wildebeest. Notably, these economically-motivated headcount reductions have been for the benefit of the shareholders of major freight railroads, and at great detriment to their customers.

The resulting railcar supply shortages are creating substantial negative effects for the companies we represent – unfilled customer orders, lost sales, and mode conversions (e.g. shifting from rail shipment

to truck shipment) all increase the cost of logistics. Even more than a hit to the logistics budget, these matters cause significant economic harm and lost business for the affected shippers, most of which are small or medium-sized businesses. Meanwhile, one of the major freight railroads reported a 16% net income gain for 2021. If harmonious relations between the users and providers of freight rail services is a policy priority of the Surface Transportation Board, this is *prima facie* evidence of a failure in practice.

Below is an example of a Union Pacific customer railcar order placed in Q1 2022. The railcar order number, exact date and other identifying details have been excluded to protect customer anonymity and confidentiality.

Ord	Enr	Dlv	Equipment Type	Actions
The number of cars shown differs from your original order due to current equipment demands. Original Order: 15 Current Order: 9				
9	0	9	F73CB	View

Figure 1. Customer Railcar Order for Empty Railcars from Union Pacific Railroad (Q1 2022)

At first glance, it would appear the customer ordered nine railcars for loading and received nine railcars for loading, for an order fill rate of 100%. In most circumstances, such service would warrant a “Great Work!” to the service provider. Digging deeper, however, the actual performance is different. As shown in the dialogue box, the customer’s original order was for fifteen railcars, and the customer only received nine railcars, resulting in an actual fill rate of 60%. Since January 2022, this particular customer’s order fill rate has ranged from 26% (fifteen ordered, four received) to 63% (eight ordered, five received).

In golf, playing from the youth tees but posting your score as if played from the championship tees is a great way to *look like* a tremendous golfer – yet highly unethical. Similarly, changing customer orders to feign the appearance of a higher order fill rate is a terrific way to *look like* a railroad that is providing adequate service to its customers – and questionable from an ethical perspective. This sort of statistical gymnastics prevents the customer, the public, and regulatory bodies from examining and understanding the true service performance of the major freight railroads

21/2022	Week End Date (Sun):	04/10/2022	Reset Dates
o Excel	Export All Group Details to Excel		
Equipment Group	Equip Requested	Equip Applied	E
Boxcar 100 Ton 60 ft Plate F,G 286K Capacity / LUMBER PRODUCTS / Foreign	8	0	
Boxcar 100 Ton 60 ft Plate F,G 286K Capacity / LUMBER PRODUCTS / Foreign	6	0	
Boxcar 100 Ton 60 ft Plate F,G 286K Capacity / LUMBER PRODUCTS / Foreign	6	0	
	20	0	

Figure 2. Unfilled Customer Railcar Order for Empty Railcars from BNSF Railway (Q1 2022)

In the example of the customer in Figure 2 – a rail customer in the paper products industry who also wished to approach the Surface Transportation Board anonymously for fear of railroad retaliation against their business – their order fill rate from BNSF Railway over the last 60 days is **ZERO PERCENT**.

Over the course of time, each of the major freight railroads has implemented policies that make it hard, impossible, or financially impractical for shippers to use their own freight equipment through below-market car hire rate demands, punitive marketing structures, and other constructs designed to highly disincentivize the use of private rail equipment. Accordingly, shippers who are dependent on railroad-provided equipment must be able to trust that equipment will be there to service their business. Railroads' manipulation of car supply under the auspices of "right-sizing" or "optimizing" their fleets is subterfuge and pretext for control and manipulation of supply within the market. This is a flagrant violation of basic principles of antitrust law. Moreover, these tactics prevent rail shippers from enjoying their right to reasonable rail service as prescribed by statute.¹ The concept of shippers expecting reliable access to freight cars is not unreasonable; it is a basic requirement of doing business. The Surface Transportation Board must be able to ensure a harmonious market where shippers are able to do business.

Issue 2: Generally Inadequate Service Due to Railroad Self-Created Staffing Issues

Throughout the rail shipper and rail receiver communities, one of the most prominent operational "thorns" is when rail service is not delivered as expected. While we are cognizant of the many moving parts that may affect service delivery, the matter has compounded recently due to railroad staffing challenges. Not to belabor points raised under the first issue, but these staffing challenges are largely a product of "cutting down to the bone" and other economically-motivated workforce management decisions for the financial benefit of the major freight railroads and their shareholders. These issues predate the COVID-19 pandemic. Plainly speaking, it is unacceptable and deleterious to a functioning national supply chain to permit this manner of bare-bones staffing and "scorched earth" manner of cost-cutting, all in the name of "enhancing shareholder value." The quasi-public nature of railroads entails a higher degree of public responsibility than is required of most private corporations.² When the railroads' economically-motivated headcount reductions prevent the orderly provision of rail service, and by extension inflict substantial economic harm on their customers, this is flagrantly incongruent with such a higher standard, and the Surface Transportation Board must hold the railroads to account for and swiftly remedy the behavior.

In almost every case experienced by our shippers, missed switches are not made up. This results in backlogged work, accrual of demurrage charges (in essence, a surcharge for the railroads' service failure), and other economic harms to shippers and receivers. Again, the shipper and receiver communities are empathetic and understanding of occasional service exceptions due to extenuating circumstances. However, weekly occurrences rise above the reasonable interpretation of extenuating circumstances.

¹ The common carrier obligation refers to the statutory duty of railroads to provide "transportation or service on reasonable request." See 49 U.S.C. 11101(a). A railroad may not refuse to provide service merely because to do so would be inconvenient or unprofitable. *G.S. Roofing Prods. Co. v. Surface Transp. Bd.*, 143 F.3d 387, 391 (8th Cir. 1998).

² *Ethan Allen, Inc. v. Maine Cent. R.R. Co.*, 431 F. Supp. 740, 742-43 (D. Vt. 1977)

Similar to how the Surface Transportation Board examines issues such as revenue adequacy, the Surface Transportation Board must also be able to hold the railroads under its jurisdiction accountable for maintaining commercially reasonable staffing levels to be able to provide and perform their basic “reasonable service upon reasonable request” common carrier obligations as provided under the law. Many of the major freight railroads have implemented a “not prepared for service” tariff charge when a shipper or receiver has a situation that prevents the provision of service – likewise, perhaps customers should be entitled to monetary credits when the railroads are not prepared to provide service.

Another pertinent issue is general inadequacy of service experienced by some customers, whereby their serving railroads are unable or unwilling to provide a sufficient number of switches per week for customers to handle their business volumes. The primary driver for the inadequate service is lack of available staff or “operational inconveniences.” It is a well-settled matter of law that operational inconvenience is not a viable reason for reduced or inadequate service. As detailed elsewhere in this letter, the concept of lack of staffing or headcount reductions as a driver of reduced service is flatly incompatible with the railroads’ obligation under federal law and regulation to provide sufficient service to its customers.

In summation, as a community of concerned shippers, we are hopeful that the Surface Transportation Board can illuminate and correct the many railroad behaviors that are causing substantial harm to shippers, receivers, and the general health of the supply chain. While the shareholders of the respective railroads may be raising a toast to the railroads’ financial performance, it has come at the expense of the railroads’ customers.

Respectfully Yours,

A handwritten signature in black ink, appearing to be the letters 'CSA' in a stylized, cursive font.

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