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## Freight Rail Customer Alliance

September 13, 2022

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Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

Re: EP 772, Railroad Revenue Adequacy

Dear Ms. Brown

The Freight Rail Customer Alliance (“FRCA”) submits this letter to express its strong support for the Petition for Administrative Action that the Western Coal Traffic League (“WCTL”) submitted August 24, 2022, in EP 722, *Railroad Revenue Adequacy*.

FRCA, [www.railvoices.org](http://www.railvoices.org), is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies, and their consumers. The mission of FRCA’s growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

As WCTL’s Petition demonstrates, no question should exist that the Class I railroad industry as a whole and its largest individual members have achieved long-term revenue adequacy. Even the carrier that comes closest to being revenue inadequate, KCS, was the subject of a bidding war, confirming its ability to attract more than adequate investment

Especially now that the railroads have achieved long-term revenue adequacy, the focus of the Surface Transportation Board (“STB” or “Board”) should be on causing the rail

transportation market to emulate the operation of a competitive market. *E.g., Coal Rate Guidelines, Nationwide*, 1 I.C.C.2d 520 (1985), *aff'd sub nom. Consol. Rail Corp. v. United States*, 812 F.2d 1444 (3d Cir. 1987).

The rail transportation market is manifestly not competitive, either as a whole or in many individual instances. A competitive market motivates producers to improve their efficiency and service, and competition ensures that those cost savings flow through to customers. The rail market is instead characterized by increasingly higher profits, lower operating ratios, inadequate service, and a lack of volume and share growth, despite what should be numerous operating advantages for railroads.

For example, the Union Pacific CEO explained at the 4Q21 earnings call that the carrier would use higher rates to divert volumes. “Item number two is, if we see volume overwhelming our ability to satisfy it, we’ve always got price as a lever that we can use that discourages some amount of that volume and helps it find a different home.” *E.g., <https://news.alphastreet.com/union-pacific-corporation-unp-q4-2021-earnings-call-transcript>*.

More recently, he explained the railroad’s commitment to rate increases exceeding inflation persists, even in the face of poor service. “Let me first state unequivocally, we can get more dollars in price yielded than we experienced inflation dollars. That's been our mantra for a long, long time, and this is a very difficult environment to make that true and we still see that it's going to be true.” He then doubled on the carrier’s commitment to and ability to extract real rate increases despite the poor level of service:

And even in an environment where our service product isn't where it needs to be. We still have to ask our customers because of the inflationary impact on our cost as well as the lack of available capacity to handle their volume. We are asking for price increases to overcome and account for those pressures. So yes, it's quite real, Jason, and it's quite difficult, but we remain confident that we're going to be able to get the pricing dollars ahead of inflation dollars.

UP CEO Lance Fritz, Cowen 2022 Global Transportation & Sustainable Mobility Conference, September 7, 2022. *E.g., [https://seekingalpha.com/article/4539425-union-pacific-corporation-unp-ceo-lance-fritz-presents-cowen-2022-global-transportation-and?mailingid=28975161&messageid=2800&serial=28975161.4912&source=email\\_2800&utm\\_campaign=rta-stock-article&utm\\_medium=email&utm\\_source=seeking\\_alpha&utm\\_term=28975161.4912](https://seekingalpha.com/article/4539425-union-pacific-corporation-unp-ceo-lance-fritz-presents-cowen-2022-global-transportation-and?mailingid=28975161&messageid=2800&serial=28975161.4912&source=email_2800&utm_campaign=rta-stock-article&utm_medium=email&utm_source=seeking_alpha&utm_term=28975161.4912)*.

A captive shipper forced to bear rate increases in excess of inflation despite – or even worse, because of -- poor service should not face the burden of having to challenge the overall reasonableness of the rate in its entirety in order to be able to obtain a measure of rate relief. Revenue adequacy represents a mechanism to cause the rail market to yield prices and service more consistent with a functional, competitive market and will result in improved consumer welfare and allocation of societal resources. The Board should be working to make revenue adequacy an effective and broadly available remedy for unreasonable rates as soon as possible.

For the reasons stated above, FRCA asks the Board to act favorably and expeditiously on the WCTL Petition.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ann Warner".

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