

United States Senate

WASHINGTON, DC 20510

EP 704 (Sub-No. 1)
242084

ENTERED

Office of Proceedings

November 15, 2016

Part of

Public Record

November 3, 2016

The Honorable Daniel R. Elliott III
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

Dear Chairman Elliott:

Railroads are essential to facilitate the flow of commerce in the United States. Many farmers, manufacturers, and energy producers could not do business without railroads. Our economy demands a system where railroads as well as their customers can prosper. To achieve this balance, rail service must be fair, efficient, and cost effective, especially to captive shippers or those with access to only one rail service provider. While railroads and shippers can often reach service agreements in a competitive marketplace, substantial consolidation has occurred in the industry.

In 1980, there were approximately 39 major ("Class I") railroads in the United States.¹ Today, however, there are only seven Class I railroads. Four of these handle more than 90 percent of United States rail freight and account for more than 92 percent of revenue.² As a result, the Surface Transportation Board (STB) has served an important role in resolving disputes between shippers and railroads to address cases of anti-competitive behavior. Recognizing the need to update STB procedures, in part due to consolidation in the rail marketplace, Congress passed a bill last year reauthorizing the STB with the goal of improving the efficiency and effectiveness of the agency. Following enactment of the bill, we are encouraged that the STB is making progress on several items important to shippers.

The current rate case procedures simply do not work for many rail customers and are in urgent need of reform. The complexity of the economic analysis shippers seeking relief must perform results in costly and drawn-out proceedings and discourages smaller shippers from seeking relief at all. In the last several years, members of the STB have acknowledged in their decisions and in their public comments the shortcomings of the current process.^{3,4,5} Reforming these outdated procedures should be a priority for the STB.

Captive shippers served by only one rail carrier often face anti-competitive rates. A proposal currently under consideration by the STB to permit competitive switching, a practice that would allow businesses to ship their products using multiple rail carriers in a more cost

¹ https://www.strtrade.com/media/publication/4036_2010-September-21-rail_report.pdf

² *Id.*

³ STB Docket Number NOR 42130_0); *STB Decision* June 20, 2014; pp. 30-31

⁴ *SUNBELT CHLOR ALKALI PARTNERSHIP V. NORFOLK SOUTHERN RAILWAY COMPANY* (STB Docket Number NOR 42130_0); *STB Decision* June 20, 2014; pp. 31-32

⁵ *TOTAL PETROCHEMICALS & REFINING USA, INC. V. CSX TRANSPORTATION, INC.* (STB Docket Number NOR 42121); *STB Decision* September 12, 2016; pp. 47-48

efficient way, would give captive shippers new options to move their goods. We believe this congressionally authorized practice⁶ would increase competition for captive shippers and could lead to more competitive pricing arrangements for businesses, farmers and consumers.

Another proposal before the STB to revoke commodity exemptions could bring more balance to the rail shipping industry. Class exemptions for certain commodities were put in place to provide commodity shippers with regulatory relief. However, these exemptions also limit the ability of commodity shippers to take action with the STB regarding anti-competitive shipping rates. Since these exemptions were adopted, the shipping market has changed drastically and in many parts of the country railroads have gained market power, increasing the need for STB oversight. Revoking certain commodity exemptions will provide shippers with an important path to STB review of shipping rates.

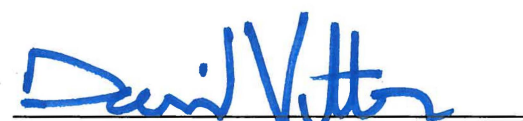
According to data from a recent study by the American Chemistry Council, the rapid increase in freight rail rates since 2000 has far outpaced increases in trucking rates⁷ and underscores the importance of these reforms. Where meaningful competition exists, the STB should let market forces play out. But because the railroads have certain exemptions from the antitrust laws, the STB must ensure rates are fair and stop anticompetitive behavior. We urge the Board to continue to advance reforms that will meet the needs of all stakeholders.

Sincerely,


Amy Klobuchar
United States Senator


Bill Cassidy, M.D.
United States Senator


Tammy Baldwin
United States Senator


David Vitter
United States Senator

⁶ 49 U.S.C. 1102(c)

⁷ <https://www.americanchemistry.com/Policy/Rail-Transportation/Full-Report-Analysis-of-Freight-Rail-Rates-for-US-Shippers.pdf>