

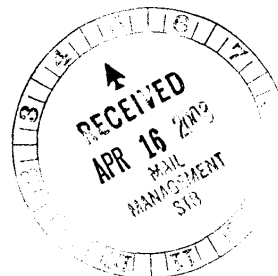
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**American
Chemistry
Council**

April 16, 2003

Vernon A. Williams
Secretary
Surface Transportation Board
Attn: STB Ex Parte No. 646
1925 K Street, N.W.
Washington, D.C. 20423-0001

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Re: STB Ex Parte Docket No. 646, Rail Rate Challenges in Small Cases

Dear Mr. Williams:

Enclosed are the original and 10 copies of the Comments of the American Chemistry Council (the Council) in this docket. Scott J. Jensen, Associate Counsel at Basell, will make the presentation at the public hearing on April 22, 2003.

If you have any questions about these comments, please contact me at 703-741-5172.

Sincerely,

Thomas E. Schick
Distribution Counsel



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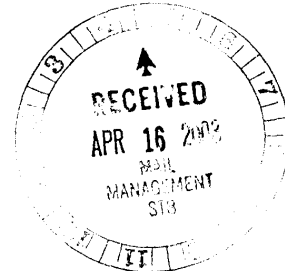
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BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 646

RAIL RATE CHALLENGES IN SMALL CASES

COMMENTS OF THE
AMERICAN CHEMISTRY COUNCIL



My name is Scott J. Jensen, Associate Counsel at Basell USA Inc. ("Basell"). Basell is a member of the American Chemistry Council (the "Council"). Today I am appearing as the Council's representative. Basell is also a member of Consumers United for Rail Equity ("CURE"), which supports these comments.

Basell is part of a global, 50-50 joint venture owned by The Royal Dutch Shell Group of Companies and BASF AG. Worldwide, the joint venture employs approximately 6,800 people and has annual sales of approximately \$6 billion. Basell manufactures polypropylene, polyethylene and other advanced polyolefins. More simply put, Basell makes raw-material plastic that our customers mold into numerous items for the consumer market such as household goods, textiles and automotive parts. Our product is also incorporated into items such as electronics equipment.

In the United States, Basell owns production facilities in Bayport (Houston), TX; West Lake Charles, LA; and Jackson, TN. Basell also markets product from a plant located in Linden, NJ. From those plants Basell serves customers throughout the United States and North America. Basell depends upon the railroads for delivery of its product to customers from these plants. Indeed, Basell's rail dependency is highlighted by the fact that, like other members of our industry, Basell is heavily invested in rail infrastructure (for example, Basell's hopper car fleet has a replacement value of approximately \$260 million). Our customers demand delivery by railcar and ninety-two percent (92%) of our ton-miles are by rail.

The American Chemistry Council represents the leading companies engaged in the business of chemistry – a \$462 billion enterprise and a key element of the nation's economy. The business of chemistry is America's #1 exporter, with \$81 billion in exports in 2002. Council members account for more than 90% of the productive capacity of basic industrial chemicals in the United States.

Although chemicals are transported by various modes, in many instances they must move by rail due to product characteristics, distance, customer preference, shipment size, and other factors. The chemical industry therefore depends on railroads for the safe and efficient delivery of a wide array of raw materials and finished products. Each year, about 150 million tons of chemicals and allied products are shipped by rail, providing railroads with \$5 billion in freight revenue. The Council's members also invest directly in the nation's rail infrastructure by maintaining their own tank car fleets (with an estimated replacement value of \$7 billion) as well as hopper cars and other types of specialized rail equipment and facilities.

Consistent and reliable rail service is vital to the Council's members, who must meet the needs of their customers in extremely competitive domestic, North American and overseas markets. The Council believes that the United States must enhance the economic viability of the freight rail industry by assuring that it has adequate resources to meet the service needs of rail customers, while also restoring balance to the commercial relationship between the railroads and their customers.

Congress has charged the Surface Transportation Board ("the Board") with determining whether rail rates are "just and reasonable" and deciding other shipper-carrier disputes. Indeed, the Board is the exclusive forum for resolving such matters between captive rail customers and the carriers on which they depend.

The Council appreciates the opportunity to participate in this public hearing on "Rate Challenges in Small Rate Cases." The Board's policies and procedures are important to the Council because 63% of the rail-served chemical production facilities in the United States are captive to a single railroad. Companies shipping from those captive locations pay 15% to 60% more for rail service than at locations that are not captive to a one railroad. In addition, the quality of rail service provided in non-competitive circumstances often falls short of what the customer needs and deserves.

Basell and other companies in the business of chemistry prefer to deal with their service providers on a commercial basis rather than through contested rate cases before a Federal agency. But as Congress recognized in the Staggers Rail Act of 1980, a neutral decision-making agency must be available to deal with "market dominance" situations, where the absence of effective competition leaves shippers without sufficient leverage to strike a reasonable commercial balance. Unfortunately, most captive rail customers do not perceive the Board as a meaningful way to resolve rate disputes. With the railroads also understanding the impact of the Board's rate reasonableness procedures, the balance that Staggers intended does not exist, leaving shippers with little or no negotiating leverage. This, in turn, creates less-than-ideal commercial relationships.

In fact, the business of chemistry has not been using the Board's rail rate reasonableness procedures. While the Board's "coal rate guidelines" are not necessarily restricted to cases involving that commodity, the Board has long recognized that its "constrained market pricing" methodology does not work for many types of rail traffic. Plastic resins and industrial chemicals, for example, are shipped in a much more widely

“distributed” fashion, with relatively small volumes moving between any single origin-destination pair. Nor do origin-destination pairs remain static in the dynamic business of chemistry.

That leaves only the Board’s existing guidelines for “small” or “non-coal” rate cases, published in Ex Parte No. 347 (Sub-No. 2). But these procedures have yet to be used by any shipper. While the Council itself would not be in a position to bring such a case, its individual members could do so. In fact, Basell recently needed relief from a serious commercial dispute with an origin carrier at a captive facility. Rates were one aspect of a dispute that deteriorated to the point that it interfered with Basell’s operations and its ability to meet critical customer supply chain needs. Operating in highly competitive markets, companies like Basell cannot afford disruptions to critical supply chain operations. Our customers demand, and depend upon, timely delivery of product. Moreover, transportation ranks as Basell’s second-highest cost – in an industry where the difference between earning a profit or suffering a loss comes down to fractions of a cent per pound of product sold. Consequently, companies like Basell also cannot afford sudden and dramatic rail cost increases.

In search of relief from the disruption to its operations and staggering increases in its rail costs, Basell considered bringing a “small rate case” before the Board. Basell’s in-house expertise, coupled with advice from outside advisors, made the decision disappointingly easy – Basell firmly decided against bringing a “small rate case.”

While a number of factors may contribute to any particular company’s decision not to bring a rate case, the considerations are numerous. That no precedent exists only complicates the analysis. Issues of first impression will have to be addressed by the litigants, the Board, and possibly the courts. Under such circumstances, captive rail customers are unlikely to risk significant resources in litigation before the Board. The Council therefore does not believe that the Board will be able to increase significantly the use of its guidelines for “small rate cases” by merely fine-tuning its current procedures. Guidelines that do not offer any benefit to companies in the business of chemistry – the second-largest rail customer industry – are not likely to help many captive shippers.

Instead, the Council encourages the Board to be mindful of the rapid pace of the global market place. In the business of chemistry, and likely in many other industries, the market moves at blinding speed. A meaningful rate proceeding must therefore be an open, cost-effective and swift process designed to provide a level playing field and to be substantively fair. Simply streamlining a process viewed as un-winnable will not change today’s wisdom that “small rate cases” are simply not viable remedies. Absent these qualities, a new “small rate case” process will be viewed no differently than today’s option, which is, in fact, considered no option at all.

In closing, the Council notes that improving the “small rate case” process is important. Nevertheless, that would be only one aspect of the overall relationship between railroads and their captive customers. Restoring the balanced commercial

relationship envisioned by the Staggers Rail Act of 1980 will require additional measures, such as those in the recently introduced Senate Bill No. 919.

Basell and the Council appreciate the opportunity to comment in this proceeding. I would be pleased to answer any questions you may have.

April 16, 2003