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Before The
Surface Transportation Board

Ex Parte 658

The 25th Anniversary of the Staggers Rail Act of 1980:
A Review And Look Ahead

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My name is Charles N. Marshall. I am Vice Chairman of Genesee & Wyoming Inc., a short-line holding company with 41 railroads operating 3,300 miles of track in the United States, plus other operations in Canada, Australia, Mexico, and Bolivia. We are a public company traded on the New York Stock Exchange.

I am particularly pleased to be here today because of the deep involvement I have had with the Staggers Act since its conception in the late 1970's and because of the great success the Act has had in fulfilling its original purposes. At the time the Act was being drafted, I was General Counsel-Commerce for Conrail and played a modest role in shaping the legislation. Later, I was Conrail's chief marketing officer at a time when we were working to accommodate the radical change of the Staggers Act to the practical needs of our shippers. More recently, I have been President, and now Vice Chairman, of a successful short line holding company that has been able to please its

customers at the same time that it has built profitable business for its Class I connections.

As I look back at the 25 years since 1980, I see four large changes in the railroad business. Prices are lower. Rail traffic is increasing. Truck competition is virulent, driven by increases in truck size and weight early in the period and by soaring federal highway subsidies. And, perhaps most important, geographic competition borne of increasing world trade has transformed domestic manufacturing into units that tend to ship smaller lots on a much more time-sensitive basis.

The challenge for the rail industry in the years ahead is to build capacity and to improve service. Significantly, neither of these issues are or can be regulatory issues. The Staggers Act did its job in that it reformed regulation to give the railroads the tools to solve their own problems. Now it is up to the railroads to do that job, something I believe that they can do if the hand of regulation continues to be stayed.

There are two particular regulatory issues where I would urge the Board to eschew regulation: Paper barriers and the definition of Class II railroads.

Paper barriers are contractual agreements that commit a short line to use the service of a single connecting Class I railroad. Sometimes these barriers take the form of additional charges if the short line uses another Class I. Typically, these agreements were made at the time that the short line acquired or leased part of the Class I's property.

Despite the limitations that paper barriers seem to impose, the agreements are similar to "requirements" contracts found everywhere in commerce. They are part of the bargain that was made to acquire a line; without a paper barrier, the acquisition would have cost the short line much more. To put it another way, the barrier is a thing of value that short lines have generally chosen not to buy.

I am concerned about the attack that some have made on paper barriers, because I am concerned that the attack could chill future sales and leases of branches to short lines. That chill is a matter of public concern because of the continuing need of the Class I industry to improve service and margins to make the necessary investment in facilities for growing traffic. The growth of trucking competition and foreign manufacturing over the last 25 years emphasize the urgency of making these efficiency improvements.

Short lines improve service and help improve margins. If short line expansion is limited, efficiency improvement in the merchandise freight business will be impeded, and the Class I industry will be increasingly tempted to focus on trainload business. Such a focus works to the detriment of many important shipping groups such as the paper, lumber, chemical, and metals industries, and it clouds the future of the short line industry itself. For this reason, the regulatory attack on paper barriers should be resisted, and paper barriers should be viewed as normal commercial relationships to be adjusted in the normal commercial course.

Let me give one example. In Oregon, we have former BNSF and UP branch lines that connect with each other and with a RailAmerica short line, the Central Oregon & Pacific. But paper barriers separated us from RailAmerica and channel the former UP and BNSF branch traffic onto the main lines of their parents. In the normal commercial course, we have made agreements that allow traffic in which BNSF and UP have no interest to flow over the three-part system that includes RailAmerica. Such "local" traffic, not involving a Class I, now accounts for 17% of G&W's Oregon business, growing from a starting point of zero. We were able to accomplish this by negotiation without regulatory intervention.

Now, I'd like to address briefly the matter of Class II railroads. These are currently defined as lines having between \$20 million and \$250 million in adjusted annual revenue. Class II railroads have more burdensome regulations than Class III railroads, such as labor protection conditions, labor notice requirements and less access to class exemption procedures. These distinctions were apparently based on a theory that Class II's are larger and therefore more able to bear these additional burdens. However, at a time when the efficiency of the entire industry needs to improve in order to build capacity and improve service, there seems little reason to continue added burdens upon the creation of Class II railroads. This is particularly so, because there have been no Class II transactions denied or made subject to conditions.

Perhaps the most efficient way to avoid the Class II regulatory burden would be to redefine Class III carriers to include those with revenue of up to \$250

million. Class II could be left as an empty set or could be redefined to some larger number. As shown by the attached diagram, Class II railroads are more closely related economically to their Class III brothers than to even the smallest Class I's. Changing the boundaries between Class III's, Class II's, and Class I's would facilitate the creation of new short lines and would increase the efficiency of the merchandise freight network.

Let me be very clear – this proposal should not be perceived in any way as an avoidance of unionized workforces. Class III railroad employees have the same right to organize as class II and class I employees, no matter what STB procedure is used in their creation. Almost all of GWI's Class III railroads have unionized workforces. And the work we do on the short lines helps preserve and build jobs on the Class I's. I am convinced that both shippers and rail labor would benefit from a vital, expanding short line railroad industry.

In conclusion, as you may have guessed, I am an ardent supporter of the Staggers Act. The past 25 years have demonstrated resounding success for the deregulation that the Act brought to us. There are challenges ahead, but they are not regulatory challenges. If regulation stands aside, the railroads have a fair chance to attract the investment that is necessary to attack the capacity and service challenges that lie ahead. I urge the Board to continue the remarkable progress of the Staggers Act by further reducing regulation, wherever possible.

2004 Revenue (\$ Millions)

