



THE
NATIONAL
INDUSTRIAL
TRANSPORTATION
LEAGUE



December 7, 2006

The Honorable Charles Nottingham, Chairman
The Honorable Francis Mulvey, Vice Chairman
The Honorable Douglas Buttrey, Commissioner
Surface Transportation Board
1925 K Street N.W.
Washington, DC 20423-0001

Dear Chairman Nottingham Vice-Chairman Mulvey and Commissioner Buttrey:

On December 1, the Association of American Railroads issued a Press Release criticizing the filing of 37 associations representing shippers in the proceeding before the Board, Ex Parte 646, *Simplified Standards for Rail Rate Cases* a copy of which is attached. The Press Release charges that the shippers' filing offers no constructive suggestions in this case. The AAR's Press Release ignores the fact that, over two years ago, in July 2004 these same shipper organizations did make a series of well-balanced suggestions to the Board which were reaffirmed in our recent filings. In addition our filings on October 24 and November 30 applauded the Board for initiating this proceeding and set forth a path for the Board to follow that would provide shippers with a sound procedure for adjudicating smaller rate disputes.

We believe that the purpose of the AAR's Press Release is, simply, to pressure the Board outside of the Board's legally-constituted proceeding, instead of making reasoned and well-supported arguments directly to the Board on the record. We find it unfortunate that the AAR has chosen to take this tack, which we believe points out weaknesses in their position. We are confident that the Board will ignore this attempt to end-run its processes, and to judge the matter on the basis of its merits and the law. We fully realize that the issue of a fair and expeditious process for small rate cases is a difficult one, a solution for which has eluded the agency for ten years. We believe that it can only be dealt with in a reasoned fashion on the record, and not in "sound-bites" before the press.

Sincerely,

John B. Ficker
President
The National Industrial Transportation League

Kendell Keith
President
National Grain and Feed Association

Cc: All parties of record
Edward Hamberger, President, Association of American Railroads

Attachment



ASSOCIATION OF AMERICAN RAILROADS

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NEWS

FOR IMMEDIATE RELEASE

Railroads Express Support for STB Objective to Address Small Rate Case Issues *Say Shippers' Response Offers No Constructive Alternatives*

WASHINGTON, December 1, 2006 — The nation's major freight railroads support the Surface Transportation Board's objective to develop new and improved rules for small rate cases, and challenged major shipper groups to offer constructive alternatives rather than criticizing the proposals.

"The shippers are long on criticism and short on constructive suggestions," said Edward R. Hamberger, President and CEO of the Association of American Railroads.

Hamberger said the STB proposals "constitute a serious and thoughtful attempt" to address small rate case issues. In a filing Nov. 30 with the STB, the railroads offered suggestions and modifications to refine the Board's proposals consistent with the requirements of the Staggers Act.

But the proposals filed by the shippers "do not advance the goal of simplification" for small cases, which was the objective of the STB. The shippers "make no effort to propose procedures that would give shippers with low value cases improved access to the Board," the railroads said. Instead, they appear to be trying to avoid any STB rate relief that is consistent with federal transportation policy.

The objective of the shippers is to "shift the Board's focus from guarding against market power abuse towards insulating shippers from competitive market forces," said the railroads in their STB filing. This, the railroads noted, contradicts the basic principles laid out by Congress which established "that rail rates are to be determined by the operation of market forces and that regulation of rail rates should be the exception rather than the norm."

The railroads stated that "The Board plainly faces a daunting task in attempting to formulate *simplified* maximum rate standards...to protect shippers from paying

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unreasonable rates in the absence of effective competition and to assist railroads in attaining the revenues necessary to support viable rail networks that meet shipper needs. The shippers should acknowledge the challenge faced by the Board and seek to improve upon the Board's proposals – or suggest a superior alternative approach – rather than condemn the Board's proposals out of hand."

The AAR's filing came in Ex Parte 646 (Sub-No. 1), "Simplified Standards for Rail Rate Cases." The proceeding was initiated by the STB earlier this year in an effort to develop a procedure to challenge rail rates that was less complicated and less costly in cases where the Stand Alone Cost standards used in major rate cases is too costly given the value of the case.

This press release is available via the Internet at www.aar.org.

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