



ASSOCIATION OF AMERICAN RAILROADS

Law Department

Louis P. Warchot
Senior Vice President-Law
and General Counsel

April 4, 2007

The Honorable Vernon A. Williams
Secretary
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Re: STB Ex Parte No. 671, Rail Capacity and Infrastructure Requirements

Dear Secretary Williams:

Pursuant to the order of the Board served March 6, 2007, attached are the Comments of the Association of American Railroads for filing in the above proceeding.

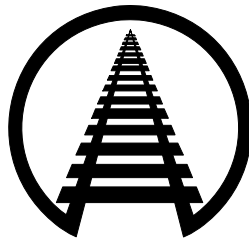
Respectfully submitted,

Louis P. Warchot
Attorney for the Association of
American Railroads

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB EX PARTE NO. 671

RAIL CAPACITY AND INFRASTRUCTURE REQUIREMENTS



**COMMENTS OF THE
ASSOCIATION OF AMERICAN RAILROADS**

**BY EDWARD R. HAMBERGER
PRESIDENT AND CEO**

APRIL 4, 2007

Introduction

The Association of American Railroads (AAR) submits these comments in response to the Surface Transportation Board's (Board) request for views on issues related to rail traffic forecasts and future rail infrastructure requirements. AAR members account for the vast majority of North American freight railroad mileage, employees, and revenue.

Comprehensive, reliable, and cost-effective freight railroad service is critical to the United States. Today, freight railroads serve nearly every industrial, wholesale, retail, agricultural, and mineral-based sector of our economy. And in the words of the former World Bank Railways Adviser, "Because of a market-based approach involving minimal government intervention, today's U.S. freight railroads add up to a network that, comparing the total cost to shippers and taxpayers, gives the world's most cost-effective rail freight service."

Looking ahead, the United States cannot prosper in an increasingly-competitive global marketplace if our freight railroads are unable to meet our growing transportation needs. Having adequate railroad capacity is critical to meeting those needs. Railroads must be able to both maintain their extensive *existing* infrastructure and equipment and build the substantial *new capacity* that will be required to transport the significant additional traffic our economy will generate.

As the Congressional Budget Office (CBO) recently noted, in this regard profits are crucial. According to the CBO, "As demand increases, the railroads' ability to generate profits from which to finance new investments will be critical. Profits are key to increasing capacity because they provide both the incentives and the means to make new investments."¹

¹ Congressional Budget Office, *Freight Rail Transportation: Long-Term Issues* (January 2006), p. 11.

Today, more than 26 years after the Staggers Act was passed, freight railroads are finally showing tangible signs that financial sustainability might be within reach. Rail earnings over the past couple of years, while less than average in comparison to most industries, have been significantly higher than their historical norm. This welcome development means that railroads can more easily justify and afford the massive investments and capacity enhancements that will be required if railroads are to meet the huge increase in freight transportation demand expected over the next 20 years.

Policymakers at the Board, in Congress, and elsewhere have critical roles to play. Indeed, policymakers should take steps that assist — and, just as importantly, not take steps that hinder — railroads in making the investments needed to provide the current and future freight transportation capacity our nation requires.

In so doing, policymakers should reject policies that unreasonably restrict future rail earnings and capital cost recovery. A swing in the regulatory or legislative environment back to unwarranted government interference in rail operations would take railroads away from the sustainability they need. As the AAR noted in its October 2005 submission to the Board on the impact, effectiveness, and future of the Staggers Rail Act of 1980, if counterproductive, artificial regulatory or legislative restraints restrict rail earnings, rail spending on infrastructure and equipment will shrink, the industry's physical plant will deteriorate, needed new capacity will not be added, and rail service will become slower, less responsive, and less reliable. Eventually, either the government will have to make up the shortfall in rail earnings in the form of major subsidies to railroads, or rail management will have to, in the words of one analyst, begin "harvesting the business."

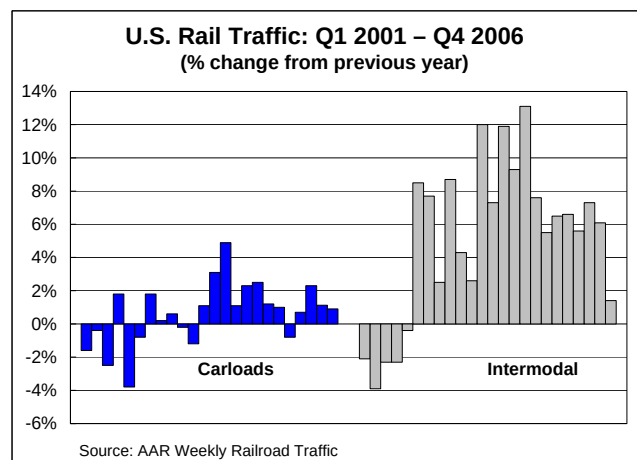
Such an outcome would be harmful at any time, but it would be especially harmful today, given that as a nation we are in dire need of *more* railroad investments and *more* railroad capacity, not less.

Capacity is a Challenge Everywhere in Transportation, Including on Railroads

“Today, too much of our country is living in the slow lane. All the rewards that once came from transportation — the freedom, opportunity, and independence — are being strangled by gridlock.”² “Every aspect of the supply chain is stretched. It’s not a question of whether [a congestion crisis] is going to happen. It’s a question of when,” notes a West Coast port terminal operator.”³ “Our highways, waterways, railroads and aviation networks are simply not keeping up with ordinary demands,” according to the head of UPS.⁴

To be sure, freight is still being delivered, and there is a tremendous amount of strength and flexibility in our nation’s transportation systems. But as these statements make clear, all freight modes in the United States are facing capacity challenges today.

Freight railroads are no exception. Through the end of 2006, year-over-year quarterly rail carload traffic has risen in 12 of the past 13 full quarters, and intermodal traffic has increased in each of the past 19



full quarters. As a result, U.S. railroads today are hauling more freight than ever before.

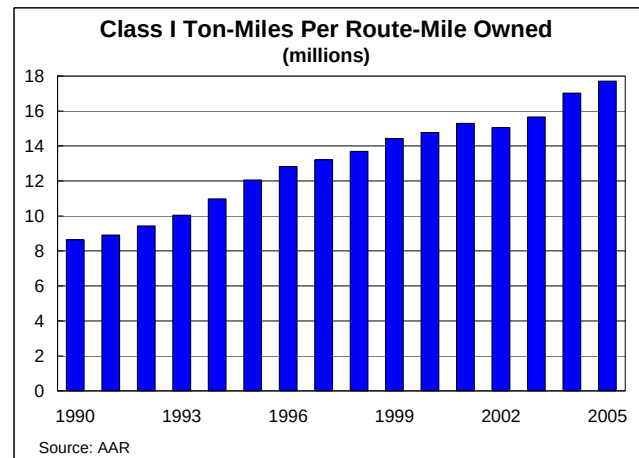
² U.S. Secretary of Transportation Mary Peters in a speech March 14, 2007.

³ Doug Tilden, CEO, Marine Terminals, quoted in *The Financial Times*, March 14, 2006.

⁴ Michael L. Eskew, Chairman and CEO, UPS, in a speech to the World Affairs Council of Philadelphia, April 6, 2006.

These traffic increases have resulted in capacity constraints at certain junctions and corridors within the rail network. In fact, excess capacity has disappeared from many critical segments of our rail system.

The reality that rail assets are being used more intensively is reflected in rail traffic density figures. From 1980 to 2005, traffic density for Class I railroads — defined as ton-miles per route-mile owned — more than tripled, and from 1990 to 2005 it has doubled. (Other measures of traffic density, such as car-miles per mile of track, have shown similar substantial increases.) Of course, different rail



corridors differ in their traffic density and their change in density over time, and individual railroads differ in the degree to which their capacity is constrained overall. Still, there is no question that there is significantly less room to spare on the U.S. rail network today than there was even a couple of years ago.

Some rail critics mistakenly argue that railroads brought this problem onto themselves by shedding too much track, equipment, and workers. It is true that over the past couple of decades, Class I railroads have shed tens of thousands of miles of unprofitable or marginal trackage and reduced their workforces significantly. But they had no choice: railroads could not afford to keep these assets, and eliminating them freed resources for use on higher-priority needs elsewhere. Most of the miles that were shed were transferred to regional and local operators, and most of these remain part of our rail network. Moreover, even if railroads

could have afforded to retain this mileage — and again, they could not — most of it was in areas that would not be of much use in ameliorating today's capacity constraints.

In part, this is so because much of the long-lived rail infrastructure installed decades ago was designed for types and quantities of traffic, and origin and destination locations, that are dramatically different from those that exist today. For example, only within the last 20 years has Powder River Basin coal taken on the enormous importance it now has. Similarly, the explosive growth of intermodal traffic is mainly a phenomenon of the past 20 years.

When business is unexpectedly strong, railroads are unable to expand capacity as quickly as they might like. Locomotives and freight cars, for example, can take a year or more to be delivered following their order; new entry-level employees take six months or more to become hired, trained, and qualified; and it can take a year or more to plan and build, say, a new siding. And, of course, before investments in these types of capacity enhancements are made, railroads must be confident that traffic and revenue levels will remain sufficiently high to justify the enhancements for the long term. In this regard, railroads are no different than the vast majority of their customers.

Railroads work diligently to help ensure that they have the appropriate assets in place to handle the traffic they will be called upon to haul. From time to time, though, demand for rail service exceeds expectations. When this happens, railroads must do the best they can to meet the needs of their customers as quickly and efficiently as possible. This goal is made immeasurably more difficult to achieve when extraordinary events occur. The nature of railroading is such that major derailments, strikes, bad weather, serious maintenance issues, and many other events can and do inhibit the ability of railroads to function effectively for days, weeks, or, in the worst cases, even months.

Railroads and an “Obligation to Serve”

When rail operations have been affected by surges in traffic and/or serious unanticipated problems, some shippers and others have blamed railroads for not having enough infrastructure, workers, or equipment in place to meet every shipper’s desires. To some rail critics, the solution is to impose an ill-defined but enforceable “obligation to serve” on railroads. This “obligation” would go beyond the common carrier obligation that railroads already have and would be modeled after the obligation of electricity providers to maintain an asset base sufficient to reliably meet electricity demand at all times, including peak times.

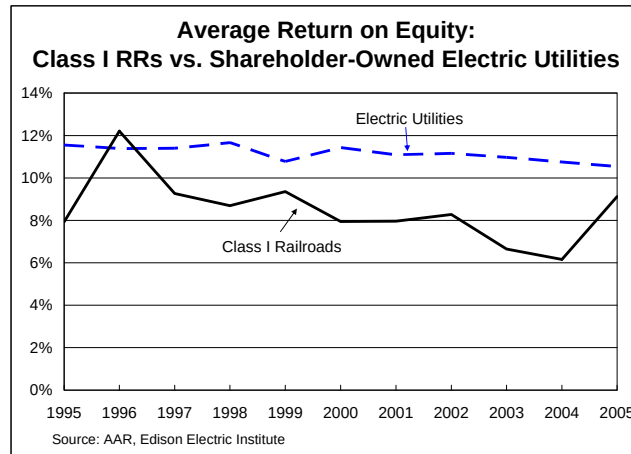
To contend that railroads can afford to have significant amounts of spare capacity on hand “just in case” is completely unrealistic. Rail shippers have never indicated a willingness to pay for “just in case” capacity. Like other companies, railroads try to build and staff for the business at hand or expected to soon be at hand. “Build it and they will come” is not a winning strategy for freight railroads any more than it is a winning strategy for most firms.

Indeed, an “obligation to serve” is feasible for traditional electric utilities only because they have peak-demand capacity built into their asset base for ratemaking purposes.⁵ In other words, as a matter of public policy utilities are entitled to rates that recover their costs (including the costs of peaking plants that might be used only a handful of times per year) and provide a reasonable opportunity to earn a fair rate of return on investment. (In this regard, it is interesting to note that electric utility profitability, as measured in this case by return on equity, has regularly exceeded rail industry profitability.)

But that’s not what proponents of an “obligation to serve” for railroads have in mind. They want railroads to build whatever capacity and have on hand whatever assets might

⁵ Some utilities, in fact, receive regulatory permission to begin recouping the costs of new generation assets years *before* those assets actually come on line.

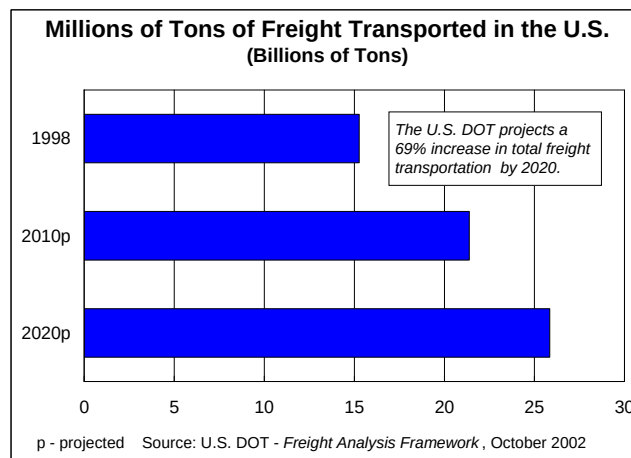
possibly be needed, but they do not want to be obligated to pay for it. The idea of imposing an “obligation to serve” on railroads is disingenuous if it does not include an entitlement by railroads — like utilities have — to recover the costs associated with that obligation.



Freight Transportation Demand Will Increase Sharply in the Years Ahead

No matter the mode, capacity constraints exert a substantial economic toll. As former Secretary of Transportation Norman Mineta noted, “Congestion and inefficiency in transportation are, in effect, hidden taxes that burden every business and every individual, and we must find ways to lighten that load.” That “load” could become much worse over the next few decades if demand for freight transportation grows as quickly as expected. Forecasts for future freight and rail transportation demand vary, but all project significant increases.

For example, a couple of years ago, the U.S. Department of Transportation (DOT) projected that overall demand for freight rail service (measured in tons) will increase 55 percent (1.3 billion tons) by 2020 from 1998 levels, equal to 2.0 percent per year. The DOT projected a 69 percent increase (10.6 billion tons) in total freight transportation demand.⁶



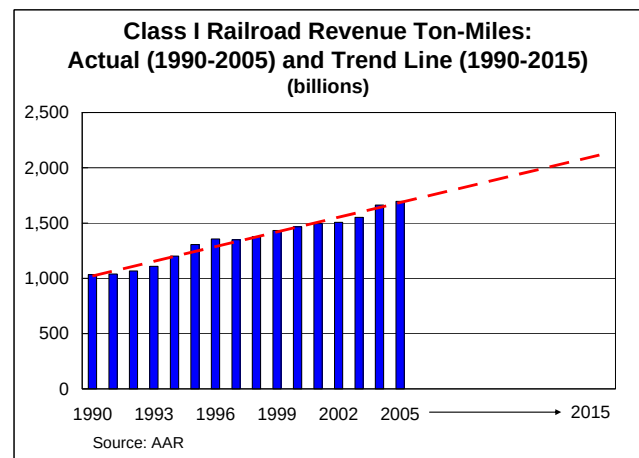
⁶ U.S. DOT, Federal Highway Administration, *Freight Analysis Framework*, October 2002.

More recently, DOT projected that total freight transportation demand would rise 92 percent from 2002 to 2035, including an 88 percent increase for railroads.⁷

Earlier this year, the American Association of State Highway and Transportation Officials (AASHTO) projected an increase in rail tonnage of 63 percent by 2035.⁸

In a 2006 forecast, economic consultant Global Insight predicted that rail carload and intermodal tonnage will increase by 32 percent (716 million tons) from 2005 to 2017, or 2.3 percent per year. Global Insight expects total freight transportation demand to rise 30 percent by 2017.⁹

If Class I ton-mile growth from 2005 through 2020 does nothing more than match the rate of growth from 1990 through 2005, rail ton-miles in 2020 will total 2.35 trillion, up 38 percent (or 2.2 percent per year, on average) from the 1.70 trillion in 2005.



These projections for increases in freight transportation demand should give all of us pause. At full or near-full capacity, transport systems become more fragile. With inadequate redundancy, there are fewer alternative routes and facilities, breakdowns and back-ups proliferate faster and further, and recovery from disruptions takes longer. Ameliorating capacity constraints across modes will entail significant costs, but in the long run the cost is likely to be far less than if we do not adequately address the issue now.

⁷ Federal Highway Administration, *Freight Facts and Figures 2006*, Table 2.1.

⁸ AASHTO, *Invest in our Future: Future Needs of the U.S. Surface Transportation System* (February 2007).

⁹ *U.S. Freight Transportation Forecast to 2017*, produced for the American Trucking Associations.

Railroads Are Working on a Variety of Fronts to Increase Capacity

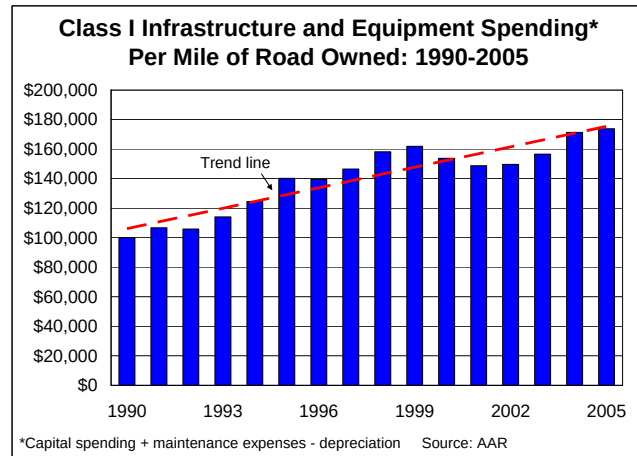
For their part, U.S. freight railroads are well aware that capacity constraints have led to service-related problems on parts of their networks, and they are committed to solving these problems by addressing the host of factors that influence the fluidity and resiliency of freight rail operations.

Spending on Infrastructure and Equipment

Of the many different factors that affect how well a rail network functions, the basic amount and quality of infrastructure and equipment is probably the most important. That is why U.S. freight railroads have been expending (and will continue to expend) enormous resources to improve their asset base. As traffic grows, railroads will have to concentrate increasingly on building new capacity to accommodate that growth — while continuing to maintain existing capacity. But if a railroad is not financially sustainable over the long term, it will not be able to attract the capital necessary to maintain its existing network in top condition or make additional investments in the replacement or expansion of infrastructure required by growing demand.

This point is especially relevant for railroads relative to other modes. In contrast to the extensive government funding for truck, barge, and airline infrastructure over the past 25 years, freight railroads have historically received little government financial assistance for infrastructure construction or maintenance. Instead, freight railroads have financed infrastructure improvements (and equipment investments, such as locomotives) almost exclusively through their own earnings and by borrowing.

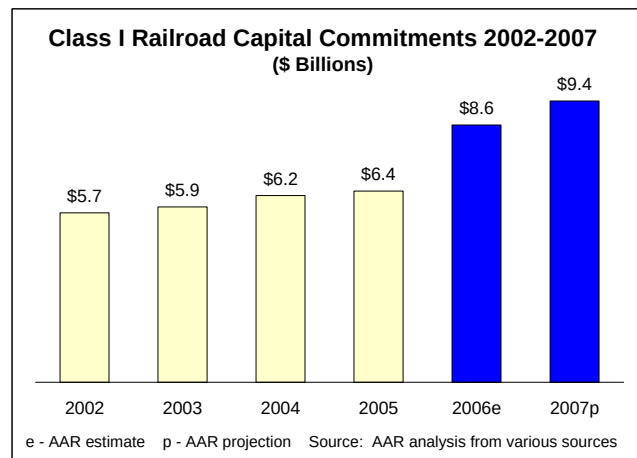
From 1980 through 2006, Class I freight railroads invested more than \$370 billion on capital spending and maintenance expenses related to infrastructure and equipment. (Non-Class I railroads have invested additional billions of dollars.) Class I railroads have



typically devoted more than 40 cents out of every revenue dollar, or \$15 billion to \$17 billion per year, toward these purposes.

That level of rail spending, which was already substantial, is rising sharply, demonstrating the diligence with which railroads are responding to the capacity issue.

Based on an analysis of recent railroad financial presentations, press releases, and other sources, it appears that Class I capital commitments in 2006 were around \$8.6 billion and will rise to \$9.4 billion in 2007. In 2003, Class I capital spending



was \$5.9 billion. In addition, substantially higher percentages of rail investments have been directed to expanding capacity.

The following is just a sampling of the diverse types of capacity-enhancing investments individual railroads have recently made or will soon make:

- BNSF plans a \$2.75 billion capital commitment program for 2007, including more than \$750 million in facilities to expand capacity. On its southern transcontinental

route, BNSF will double- or triple-track about 40 miles and continue building a second main line across Abo Canyon in New Mexico. (By the end of 2007, nearly all of this route will be double-tracked.) BNSF will also complete about 50 miles of double-track on a major coal route in Nebraska and Wyoming, and about 60 miles of third and fourth track will be added to the PRB Joint Line that BNSF shares with Union Pacific. Sidings will be built between Springfield, Missouri, and Birmingham, Alabama, and in South Dakota and Oklahoma. Numerous intermodal facilities will be expanded, and BNSF plans to lease 200 locomotives in 2007 with a cost of about \$350 million.

- In 2007, Canadian National (CN) will increase capital spending in the United States and Canada to around \$1.4 billion. According to press reports, CN is budgeting some \$300 million for equipment, including 65 locomotives, additional freight cars, and equipment. CN will upgrade sidings between Chicago and Winnipeg and will upgrade sidings and double-stack container clearances between Prince George and Prince Rupert, British Columbia. CN is preparing to open its Prince Rupert intermodal terminal later this year, which will serve as a key traffic gateway between Asia and the North American heartland. CN will also continue upgrading its freight car classification yard in Memphis, Tennessee.
- In 2007, Canadian Pacific plans to increase capital spending to around \$760 million, including approximately \$35 million to maintain and increase capacity in automotive and intermodal terminals; \$128 million for locomotive acquisitions, overhauls, and fuel saving modifications; \$50 million for information technology; and \$535 million for maintenance and upgrades to rail, ballast, crossties, signal systems, buildings, and equipment. CP will also invest in new freight cars to meet customer needs.
- Capital spending for CSX will total some \$1.4 billion in 2007, including around \$800 million for infrastructure, \$170 million for locomotives, \$250 million for capacity expansion, and \$170 million for freight cars. Some of this spending will be for intermodal projects, including an expansion of terminals in Buffalo, Tampa, and Bedford Park, Illinois. CSX is also working with the Port of Savannah, Georgia to build an on-dock loading facility.
- Kansas City Southern (KCS) is busy integrating its Kansas City Southern de Mexico subsidiary fully into the railroad's other operations. Systemwide, in 2006 KCS plans to spend some \$270 million on capital projects, including the installation of nearly 800,000 ties, relaying 120 miles of track, building 11 new sidings, laying 20 miles of double track, and purchasing 1,700 new freight cars. Some 150 new locomotives will be leased (and are not included in the \$270 million). Approximately \$85 million will be spent in 2007 on rail, ties, sidings, signaling, and other improvements on the "Meridian Speedway" joint venture with Norfolk Southern between Shreveport and Meridian, Mississippi.
- Norfolk Southern (NS) plans to spend more than \$1.3 billion in 2007 for capital improvements. Expenditures include \$610 million for rail, crosstie, ballast, and bridge programs, including \$73 million in infrastructure investments for increased capacity; \$47 million for communications, signal, and electrical projects; \$41 million for maintenance of way equipment; and \$16 million for environmental projects and public improvements such as grade crossing separations and signal upgrades. Equipment

spending includes \$60 million for computers, systems and information technology, as well as \$321 million to purchase 53 new locomotives, upgrade numerous existing locomotives, purchase 1,300 new higher-capacity coal cars and more than 700 other freight cars; and rebuild several hundred multilevel autoracks.

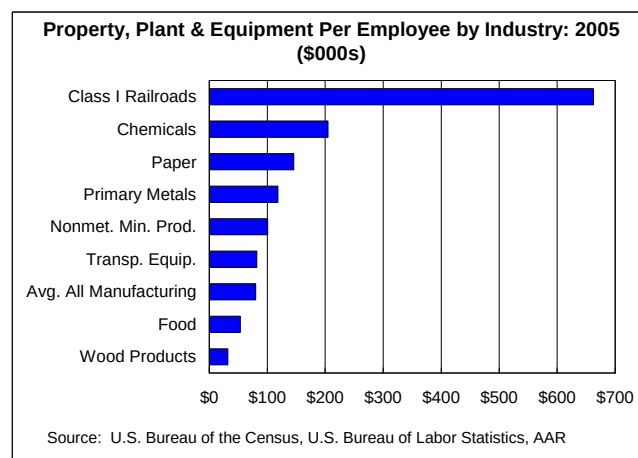
- Union Pacific (UP) plans total capital commitments of approximately \$3.2 billion in 2007. Major projects on UP's Sunset Corridor include double-tracking more than 60 miles (around 50 percent of the route is now double-tracked) and upgrading terminals in Los Angeles, Yuma, Tucson, and El Paso. UP is also upgrading signals between El Paso and Fort Worth and into the growing Shreveport gateway, and is building a new intermodal facility in San Antonio. As noted earlier, 60 miles of third and fourth track will be added to the PRB Joint Line in Wyoming that UP shares with BNSF. Since 2000, more than 2,600 new fuel-efficient, long-haul, high-horsepower locomotives have been added to UP's fleet.

The massive investments railroads must make in their systems are a reflection of the extreme capital intensity of railroads. By any of a variety of measures, railroads are at or near the top among all U.S. industries in terms of capital intensity.

In fact, from 1996 to 2005 (the most recent year for which data are available), the average U.S. manufacturer spent 3.4 percent of revenue on capital expenditures. The comparable figure for U.S. freight railroads was 17.2 percent, or more than five times higher. Likewise, in 2005 railroad net investment in plant and equipment per employee was \$663,000 — more than eight times the average for all U.S. manufacturing (\$80,000).

Capital Expenditures as a % of Revenue for Various U.S. Industries: Avg. 1996-2005	
Average all manufacturing	3.4%
Food manufacturing	2.5%
Petroleum & coal products mfg.	2.7%
Machinery manufacturing	2.9%
Motor vehicles & parts mfg.	2.9%
Wood product mfg.	3.0%
Fabricated metal product mfg.	3.3%
Plastics & rubber products mfg.	4.4%
Chemicals manufacturing	4.4%
Paper manufacturing	4.5%
Computer & electr. product mfg.	4.9%
Nonmetallic mineral product mfg.	5.3%
Electric utilities	12.6%
Class I Railroads	17.2%

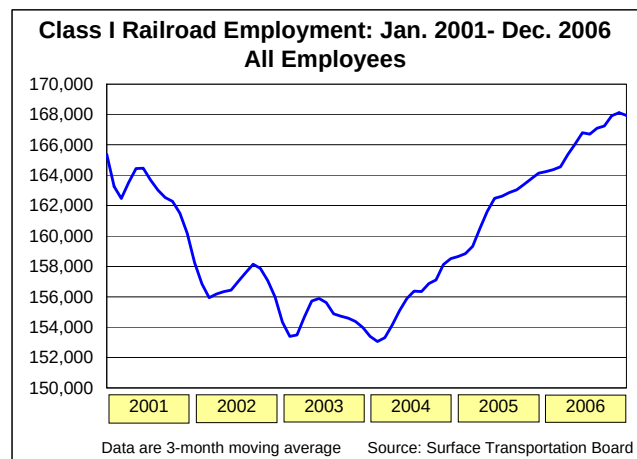
Note: Utilities are 1999-2005
Source: U.S. Bureau of the Census, AAR, EEI



The bottom line is that railroading is extraordinarily expensive and simply cannot be done “on the cheap.” Moreover, adding rail capacity can be accompanied by substantial financial risk. As the Government Accountability Office (GAO) noted in a recent report, “Rail investment involves private companies taking a substantial risk which becomes a fixed cost on their balance sheets, one on which they are accountable to stockholders and for which they must make capital charges year in and year out for the life of the investment. A railroad contemplating such an investment must be confident that the market demand for that infrastructure will hold up for 30 to 50 years. This is in sharp contrast to other modes such as highway infrastructure, which is paid for largely by public funds.”¹⁰

Aggressive Hiring

In addition to equipment and infrastructure, personnel is an important determinant of rail capacity, and railroads have been aggressively hiring and training crews to expand capacity. After decades of steady decline, rail employment has been on the increase since 2004. According to Board data, overall Class I employment in December 2006 was 2 percent higher than



in December 2005 and 9 percent higher than in December 2003.

Infusion of Technology

Technology has always played a key role in expanding rail capacity. Signaling systems have become more sophisticated; trains have become longer and heavier; locomotives

¹⁰ Government Accountability Office, *Freight Railroads: Industry Health Has Improved, but Concerns About Competition and Capacity Should Be Addressed*, October 2006, p. 56.

have become more powerful and more reliable; and track structures have become more robust and thus less prone to outages for maintenance or because of failure. Just a few of the many dramatic technological advancements that have increased railroad efficiency include:

- *Wayside detectors* that identify defects on passing rail cars — including overheated bearings and wheels, dragging hoses, deteriorating bearings, cracked axles and wheels, and excessively high and wide loads — before structural failure or other damage occurs. Some of the newest wayside detectors being developed use *machine vision* to perform higher-accuracy inspections through the use of digitized images, which are then analyzed using computer algorithms
- *Trackside acoustic detector systems* use “acoustic signatures” to evaluate the sound of internal bearings to identify those likely to fail in the near term. These systems supplement or replace existing systems that identify bearings already in the process of failing by measuring the heat they generate.
- *Advanced track geometry cars* use sophisticated electronic and optical instruments to inspect track conditions, including alignment, gauge, and curvature.
- One of the most straightforward ways to add capacity to a rail network is to pack more freight on each train, and railroads have been doing that ever more aggressively. In 1995, for example, the average coal car carried on a Class I railroad held just under 103 tons of coal. By 2005 that figure had risen to nearly 112 tons, a 9 percent increase. But heavier loads are far more damaging to track structures than lighter loads. Researchers are engaged in efforts related to this *heavy-axle load* (HAL) service. HAL-related work is underway on rail steels, insulated joints, bridges, welding, maintenance practices, and more.

Freight railroads have always been at the forefront in the use of computers and information technology, and today railroads are rapidly expanding their use of these technologies to improve overall efficiency and the fluidity of their operations, thereby adding capacity without adding infrastructure.

For example, advanced computer modeling software is used in a wide variety of rail applications, from automating rail grinding schedules¹¹ and improving customer demand forecasting to optimizing yard operations. CN, for example, is implementing what it calls “SmartYard,” complex computer software that identifies and analyzes every possible

¹¹ Rail grinding is a maintenance procedure for removing rail corrugations and surface defects, and for restoring the shape of rail to improve wheel and rail interaction and extend rail life.

combination and outcome for sequencing cars in a large classification yard and simultaneously updates and communicates the car processing plan. The result is more efficient, faster yard operations. Other railroads are engaged in similar efforts.

Recognizing that another way to add capacity is to move more trains faster over the same length of track, railroads are also working with their suppliers to design, implement, and improve innovative computerized “trip planning” systems. These highly-complex systems automatically incorporate and analyze a mix of ever-changing variables (*e.g.*, crew and locomotive availability, terminal congestion, the different priority status of loads of freight, track conditions, maintenance plans, weather, etc.) to optimize how and when cars are assembled to form trains and when those trains depart.

Trip-planning systems are just one way that railroads are trying to improve equipment “cycle time” — *i.e.*, the total time it takes for a freight car to be loaded, hauled to destination, unloaded, returned to the same or a different shipper, and loaded again.

The benefits of increased efficiency explain rail efforts to “supersize,” automate, and increase the velocity of traffic flows where practical. For example, railroads and their grain customers collaborate to consolidate grain loading at high-speed “shuttle loader” elevators. Railroads gain by improving the efficiency of their operations; shippers gain because the efficiencies produce railroad cost savings that are passed through in the form of lower rates. The efficiencies of shuttle operations can be striking. At BNSF, for example, a typical grain car in shuttle service hauls approximately three times more grain over the course of a year than a typical grain car in non-shuttle service.

Expanded over a network, operational efficiency can free up substantial capacity for other uses. At one major railroad, for example, a one mile-per-hour increase in system-wide

velocity could mean that 250 locomotives, 5,000 freight cars, and 180 train and engine employees would be freed up to move additional traffic.

Cooperative Alliances and Collaborations

Railroads are also entering into operational alliances with each other which often rely on non-standard techniques to achieve desired results. These innovative collaborations lead to improved capacity utilization, lower costs, and better service. For example:

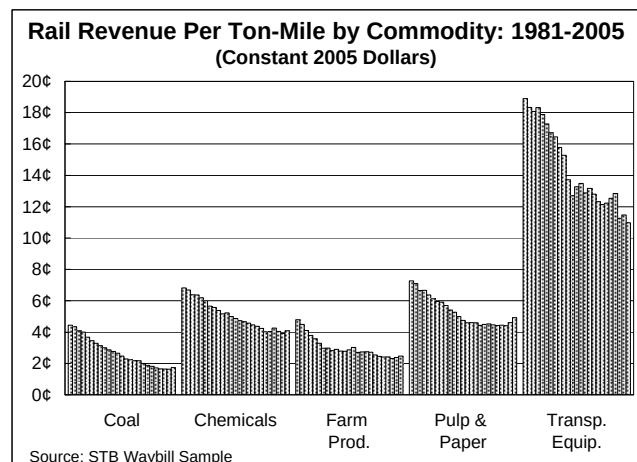
- In February 2007, UP and NS announced the launch of a new intermodal train service that will add train capacity and expand intermodal rail service between Los Angeles and the Southeast United States. Later this year, UP and NS will begin shifting traffic in this lane to a new, shorter route over the Shreveport, Louisiana gateway that will shave 150 miles from the current route.
- In October 2006, BNSF and CSX announced plans to create a high-volume intermodal corridor on lines connecting California, Atlanta, and other areas in the Southeast. The new agreement replaces and expands on the terms of an earlier agreement signed in 2001. The agreement also calls for future capacity expansion along the corridor.
- A BNSF and CN track-sharing agreement is improving network fluidity and infrastructure capacity in Vancouver, Chicago, and between Memphis and southern Illinois. Under the agreement, the railroads will exchange track and rail infrastructure, and CN will grant trackage, haulage, and other access rights to BNSF.
- CSX and UP are now operating their “Express Lane” service to haul fruits and vegetables by refrigerated rail car from California and the Pacific Northwest to population centers on the East Coast. UP and CSX offer a similar “Wine Connection” service for wine movements. These joint ventures improve the utilization of rail assets and enhance the efficiency of coast-to-coast transportation.
- KCS and NS are moving swiftly to implement their joint venture to increase capacity and improve service on the “Meridian Speedway,” a rail line between Meridian, Mississippi and Shreveport, Louisiana, that is crucial for transporting freight between the Southeast and the Southwest. KCS is contributing a 320-mile rail line between the cities, while NS is investing approximately \$300 million in cash, substantially all of which will be used for capital improvements to increase capacity over a four-year period. The capital improvements will include signal systems, extended sidings and stretches of double track.
- UP and CN have reached a routing protocol agreement to streamline their exchange of rail traffic at major gateways and reduce rail congestion in the Chicago area. Under the protocol, CN and UP are directing rail traffic flows through the most efficient interchange locations, thereby improving transit times and asset utilization.

- NS and CP are engaged in a partnership under which NS runs trains on CP trackage in New York state and then hands off the trains to CP, which hauls them across the border for further interchange or final delivery in Canada. The agreement allows NS to replace the inefficient and circuitous route it previously had to use for trans-border operations. In addition, NS hauls CP trains between other points in New York, thereby allowing CP to improve the efficiency of its own operations.
- UP and CP have strengthened their alliance at Eastport, Idaho, where CP hands off grain trains to UP for delivery to the Pacific Coast. Working with customs personnel, the railroads have improved the border clearance process, eliminating a major bottleneck that had been backing up trains at the border. The result has been a significant decrease in dwell time and a sharp increase in daily train count at the interchange.

Railroad Rate Trends

With passage of the Staggers Rail Act of 1980, U.S. freight railroads were generally freed to price their services in the open marketplace, with government price regulation (which had been pervasive prior to Staggers) remaining only where it was determined that railroads did not face effective competition. Staggers allowed railroads to enter into confidential rate and service contracts with shippers and gave railroads freedom to operate over routes they found to be most efficient. Railroads responded to their new pricing freedoms by sharply increasing productivity and competing more effectively.

Most rail productivity gains have been passed on to shippers in the form of lower rates. In inflation-adjusted terms, rail revenue per ton-mile (RPTM) was relatively flat prior to Staggers, but has fallen 57 percent since then. Similarly large rate reductions have occurred over nearly all commodity types (including coal, agricultural products, and chemicals) and across geographical areas.



RPTM is often used as a surrogate for rail rates because it measures both the actual payments made by rail customers and the bases for which the rates are assessed — weight and distance. Although RPTM can be affected by changes in length of haul, commodity mix, equipment ownership, and other shipment characteristics, studies that have controlled for such factors have confirmed that the decline in RPTM reflects a real drop in rail rates.

Numerous studies confirm the sharp drop in freight rail rates. For example:

- In October 2006, the Government Accountability Office (GAO) reported a sharp decline in rail rates over the past 20 years, finding that overall rail rates in 2004 were “20 percent below 1985 rates” in non-inflation-adjusted terms. The decline in inflation-adjusted terms is significantly higher. The GAO notes that “Without a doubt, rates have decreased for most shippers.”

A June 2002 GAO rail rate analysis covering 1997 to 2000 found that “From 1997 through 2000, rail rates generally decreased, both nationwide and for many of the specific commodities and markets that we examined.” The June 2002 report was an update to a similar April 1999 GAO report covering 1990 to 1996. In the June 2002 study, the GAO noted that “[t]hese decreases followed the general trend we previously reported on for the 1990-1996 period and, as before, tended to reflect cost reductions brought about by continuing productivity gains in the railroad industry that have allowed railroads to reduce rates in order to be competitive.”

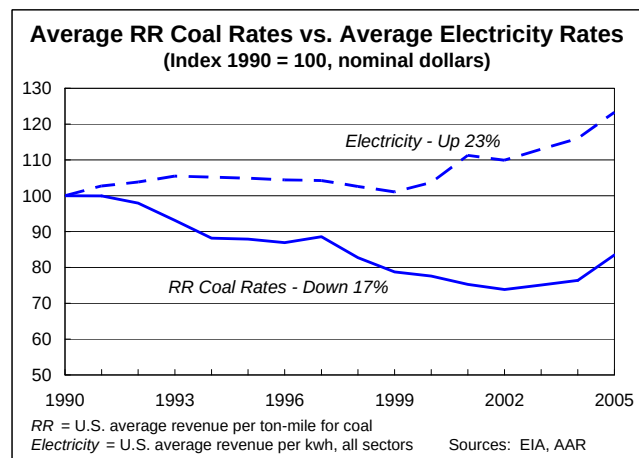
- In September 2004, the U.S. Department of Energy’s Energy Information Administration (EIA) released a report on rail rates for coal delivered under contract from 1979 through 2001. The report found that contract rail coal rates peaked in 1984 at \$17.52 per ton, then declined by nearly 42 percent, to \$10.19 per ton, by 2001. On a revenue per ton-mile basis, the EIA reported that rail rates declined 60 percent in real terms from 1979-2001, compared with a decline in barge coal rates of 38 percent and an increase in truck coal rates of 73 percent over the same period.

The September 2004 EIA report was an update to a similar October 2000 study covering 1988 to 1997. In that study, the EIA found that “Although the share of coal transported by railroads increased, the average rate per ton to ship contract coal by rail fell steadily (a 25.8 percent decline) during the study period... The general finding of declining rates was also substantiated when the rates were calculated as a rate per ton-mile, a rate per million Btu, or rates between specific supply and demand regions.” According to the EIA, on a RPTM basis, the average contract coal rate fell 41.4 percent from 1988 to 1997, and “the decline...was a response to competitive markets.”

- In December 2000, the Board released the latest in a series of periodic reports entitled “Rail Rates Continue Multi-Year Decline.” The Board found that “inflation-adjusted rail rates have fallen 45.3 percent” from 1984 to 1999. The Board continued, “[T]he very significant rate reductions...imply that shippers would have paid an additional \$31.7 billion for rail service in 1999 if revenue per ton-mile had remained equal to its

1984 inflation-adjusted level. ... It is important to note that all types of rail customers, and not just those with competitive transportation alternatives, must have received some portion of the rate reductions we have measured here.” The STB also found that “an increase in the average length of haul is not responsible for the preponderance of the rate declines that we have identified. We find that real railroad revenue per ton has fallen 43.7 percent since 1984, nearly identical to the decline of 45.3 percent obtained when using ton-miles.”

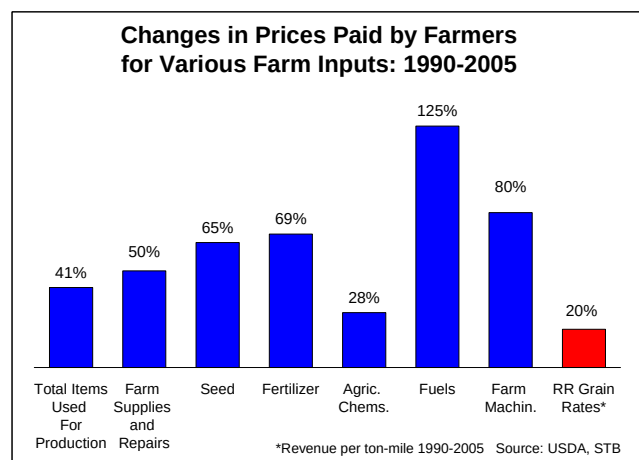
Competitive rail rates help rail users control the prices of their goods. For example, from 1990 to 2005, rail coal rates in nominal dollars fell 17 percent, while inflation-adjusted rail rates fell 40 percent. By comparison, electricity prices rose 23 percent in non-inflation-adjusted terms and fell just 11 percent in inflation-adjusted terms.



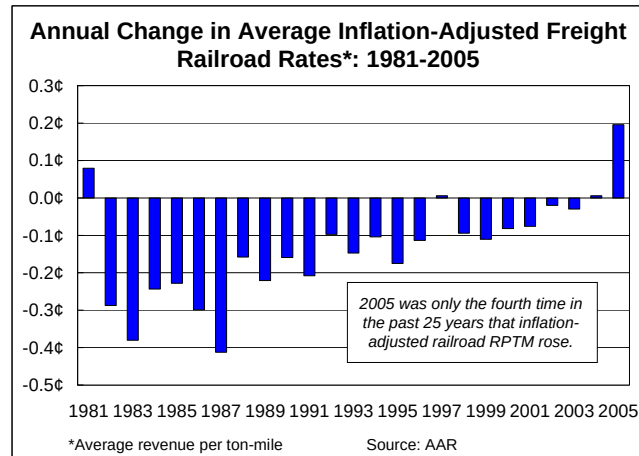
From 1990 to 2005, rail RPTM for chemicals rose just 9 percent. During this same period, prices paid by chemical companies for liquefied refinery gases, which are a major chemical industry feedstock, rose 258 percent, while the producer price for chemicals themselves (many chemicals are intermediates for other chemicals) rose 55 percent.

Likewise, from 1990 to 2005, the prices paid by farmers for most farm inputs rose: for example, up 65 percent for seed, up 69 percent for fertilizer, and up 125 percent for fuel. Prices for total items used in production rose 41 percent.

During this same period, the average rail rate for grain (as measured by grain RPTM) rose 20 percent.



The AAR has no role in railroad rate-setting, but it is true that in 2005 rail rates rose for some rail shippers, as the chart on the right shows. Some increases continued into 2006. The post-Staggers steady decline in average rail rates has saved rail shippers (and, ultimately, all of



us) hundreds of billions of dollars compared to what shippers would have paid had rail rates not declined. But while the vast majority of rail rates continue to be set by market forces in a competitive transportation marketplace, rate increases would help ensure that railroads will be able to meet future transportation needs.

Finally, in years past some rail customers (including some coal customers) entered into long-term contracts with railroads. As those contracts expire, they are typically re-priced to reflect current market conditions. The result might be a higher rate than the shipper previously paid. This situation is analogous to electricity providers who were subject to price caps or freezes in numerous states that moved to retail electricity competition. As the Edison Electric Institute (EEI) points out, “Now those caps are expiring in many states, during a time of significantly higher costs for utilities and generators across the board.” EEI notes that, “The result is that many customers now perceive that their rates are being ‘increased,’ when in fact they are gradually reflecting the costs already incurred by utilities.”¹²

¹² EEI, *Rising Electricity Costs: A Challenge For Consumers, Regulators, and Utilities*, May 2006, pp. 12-13.

The Financial Condition of Railroads

Since Congress passed the Staggers Act, railroads have only slowly made progress toward the goal of long-term financial sustainability. Financial sustainability is essential if railroads are to have any hope of meeting future rail capacity needs.

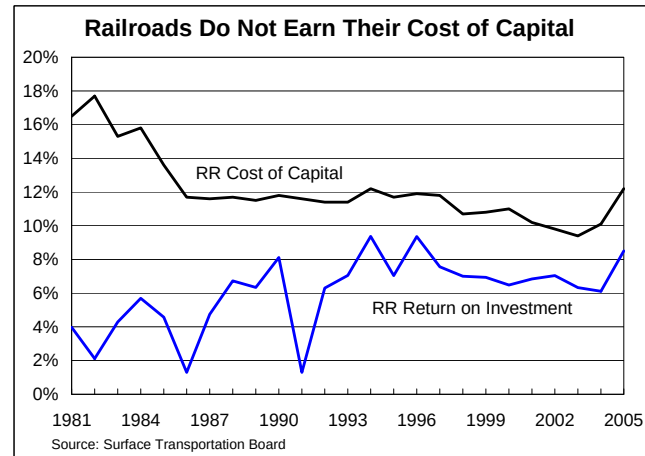
This slow progress is documented in the Board's annual revenue adequacy determinations. A railroad is "revenue adequate" — *i.e.*, it is earning enough to cover all costs of efficient operation, including a competitive return on invested capital — when its rate of return on net investment (ROI) equals or exceeds the industry's current cost of capital (COC). This standard is widely accepted, approved by the courts, and similar to that used by public utility regulators throughout the country. It is also consistent with the unassailable point that, in our economy, firms and industries must produce sufficient earnings over the long term or capital will not flow to them. As a prominent Wall Street rail analyst noted, "Earning the cost of invested capital is not the end goal, but the entry ticket to the race...without which Wall Street will squeeze investment."¹³

During the more than 25 years in which railroad revenue adequacy determinations have been made, railroads have significantly narrowed the COC vs. ROI gap. It may be that when the Board performs its cost of capital calculations for 2006 later this year, it may find that one or more railroads were "revenue adequate" in 2006. That would be excellent news, because it would mean that those railroads are closer to reaching the point of financial sustainability over a relevant period of time that will allow them to cover their costs, provide for stockholder returns and attract capital, and address future demand for their services.

¹³ Anthony Hatch, "Six for 06: Trends To Watch in Rail," *The Journal of Commerce*, January 2006.

Such a finding, though, would not signify that railroads are at the point of financial sustainability. This can only happen after revenue adequacy has been achieved for a prolonged period.

Rail customers certainly understand the importance of earning the cost of capital



— or, better yet, a premium over it — for a prolonged period. The goal of the world’s largest chemical company is “earning an average of 3 percent above the cost of capital across our economic cycle.”¹⁴ The chairman of the world’s second largest chemical company recently said that “[W]e expect to earn a premium on our cost of capital in any year.”¹⁵ At a major paper company, “We’re heavily focused on achieving above cost of capital returns.”¹⁶ At one of the world’s largest cement companies, “[W]e expect ... initiatives to generate returns well in excess of our cost of capital...”¹⁷

Railroads agree with this sentiment, which is echoed by firms in every sector of the economy. Without the ability to cover total costs and earn adequate returns, railroads — like electric utilities, chemical companies, forest products firms, or any other firm — would be unable to maintain (much less increase investment in) their networks and could not sustain themselves over the long term.

¹⁴ Andrew N. Liveris, President and CEO, Dow Chemical, at Sanford C. Bernstein & Co. Strategic Decisions Conference, June 1, 2006.

¹⁵ Dr. Jurgen Hambrecht, Chairman, BASF Corporation, during the 2006 BASF Earnings Conference Call, February 22, 2007.

¹⁶ John Luke, Chairman and CEO, MeadWestvaco, at the Morgan Stanley Basic Materials Conference Presentation, February 23, 2006.

¹⁷ Rodrigo Trevino, CFO, CEMEX, Q2 2006 CEMEX S.A. Earnings Conference Call, July 26, 2006.

In May 2006, the Edison Electric Institute (EEI) released a document that defends the sometimes substantial price increases electricity consumers are facing in many parts of the country. EEI writes:

“Clearly, electricity is an indispensable commodity that is crucial to our daily lives and to our nation’s continued economic growth. And the costs needed to reinforce the nation’s electric power system are worthy long-term investments. The bottom line is that we are living in a rising cost environment, and electricity prices have been a great deal for many years. Even with expected rate increases, electricity prices are projected to remain below the rate trends of other goods and services. In fact, the national average price for electricity today is significantly less than what it was in 1980, adjusted for inflation. Of course that is small comfort to customers who will be opening costlier electric bills in the coming months. And no one — utility, regulator, or customer — is eager to see electricity prices increase. The unavoidable reality, however, is that we all must address the fact that in order to ensure that electricity remains affordable and reliable, we must help shoulder the expense of reinforcing and upgrading our electricity infrastructure. It is the only way to be certain that electricity will be there when we need it, and at a price we can afford over the long term”¹⁸

Railroads wholeheartedly agree with this sentiment too. It is critical to our nation’s economy and standard of living that we upgrade and reinforce our electricity infrastructure.

We also think that statement above is just as valid, if not more so, if the word “electricity” were changed to “freight railroading.” Looking ahead, the United States cannot prosper in an increasingly competitive global marketplace if our freight railroads are unable to meet our growing transportation needs, and having adequate railroad capacity is critical in meeting these needs. Like utilities, railroads must be able to both maintain their extensive existing infrastructure and equipment and build substantial new capacity. Railroads could not do this if their earnings were unreasonably restricted, any more than utilities could.

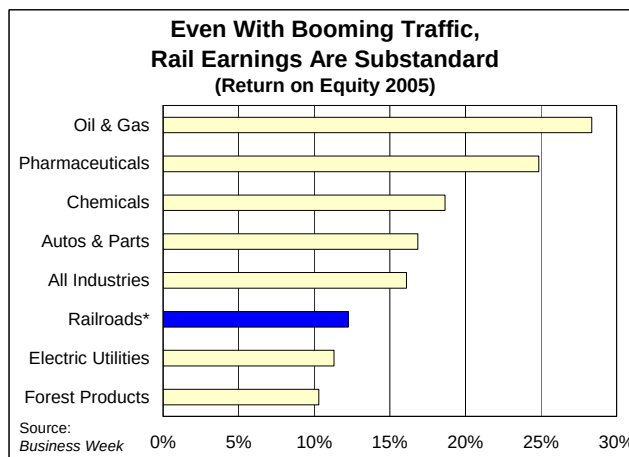
¹⁸ EEI, *Rising Electricity Costs: A Challenge For Consumers, Regulators, And Utilities*, May 2006.

Even Recently Railroads Have Had Substandard Profitability

Without question, 2005 and 2006 were good years for railroads financially — revenue and net income were both up substantially. Improved rail earnings are welcome because they mean that railroads are better able to justify and afford the massive investments in new capacity and upkeep of their existing systems that need to be made.

That said, it is important to keep in mind railroads' *relative* profitability. In 2005, for example, when railroads were hauling record levels of traffic and had sharply higher-than-historical profitability, rail industry earnings were *still* substandard compared with other industries.¹⁹

Return on equity (ROE) is commonly used as an indicator profitability. According to *Business Week* data covering the S&P 500, in 2005 the average ROE for the four largest U.S. railroads was 12.3 percent — a substantial improvement over the 7.8 percent recorded in 2004, but still well below the 16.1 percent average for all firms in the S&P 500 for 2005.



The railroad ROE was well below the median for chemical companies in the S&P 500 (18.7 percent) and only moderately higher than the median for electric utilities (10.8 percent) in the S&P 500.

¹⁹ As of this writing, comparable data for 2006 are not yet available.

Data from the *Fortune*

500 tell a similar story. In 2005, the median ROE for the railroads in the *Fortune 500* was 14.1 percent, less than the *Fortune 500* median of 14.9 percent and well below the ROE of numerous major rail customer groups.²⁰

In each of the 20 years from 1986 to 2005, the median ROE for Class I railroads was less than the median for all *Fortune 500* companies, and in 15 of the 20 years, the median railroad ROE was in the lowest quartile among *Fortune 500* industries.

Thus, even the improved rail earnings in 2005 are generally no more than (and in most cases less than) what non-regulated companies and industries earn.

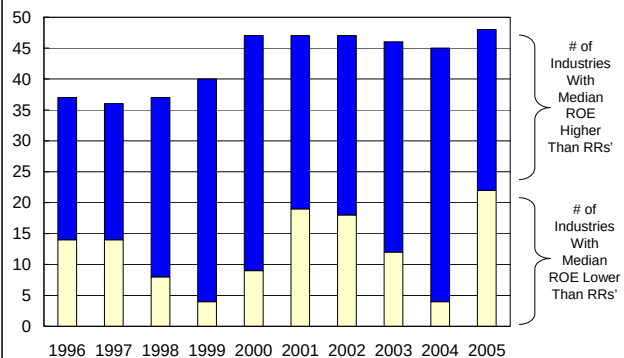
In any case, whatever may be the minimum level of earnings, profitability, or solvency considered adequate to declare a railroad “healthy” for short-term investment purposes, the primary point to remember is that only a return on investment in excess of the cost of capital over a *sustained* period can signify that railroads are financially healthy.

Fortune 500 Return on Equity: 2005

Industry	ROE	Industry	ROE
Household & Personal Prod.	41.5%	Aerospace and Defense	16.3%
Petroleum Refining	25.8%	Fortune 500 Median	14.9%
Mining, Crude-Oil Prod.	23.6%	Motor Vehicles & Parts	14.6%
Pharmaceuticals	23.4%	Railroads	14.1%
Food Consumer Products	21.8%	Pipelines	13.5%
Industrial & Farm Equip.	21.1%	Electronics, Electrical Equip.	12.1%
Computers, Office Equip.	19.7%	Engineering, Construction	11.8%
Oil & Gas Equip., Services	18.9%	Utilities: Gas & Electric	10.4%
Metals	18.3%	Energy	7.4%
Chemicals	18.1%	Food Production	6.2%
Medical Products & Equip.	17.3%	Packaging, Containers	4.6%
Beverages	16.4%	Telecommunications	4.2%

Source: Fortune 500

Median Return on Equity: RRs vs. Other Industries



Source: Fortune 500, various years

²⁰ The median railroad ROE for *Business Week* and *Fortune 500* differs because different definitions were used. *Business Week* uses net income excluding discontinued operations; *Fortune* uses net income including discontinued operations. *Business Week* uses average shareholders' equity for a year; *Fortune* uses end-of-year shareholders' equity.

Reregulation is Not the Answer to Railroad Capacity and Service Issues

Unfortunately, some will forever view the U.S. freight railroad industry from the perspective of deep and distorted historical impressions. One of these impressions is that railroads are somehow different from other types of private businesses and can survive on inadequate returns. Another is that railroads have a special public service obligation to subsidize other businesses or compensate for regional disadvantages or characteristics. Still another is that railroads are monopolies with unbridled power over the markets they serve. None of these impressions has validity in today's world.

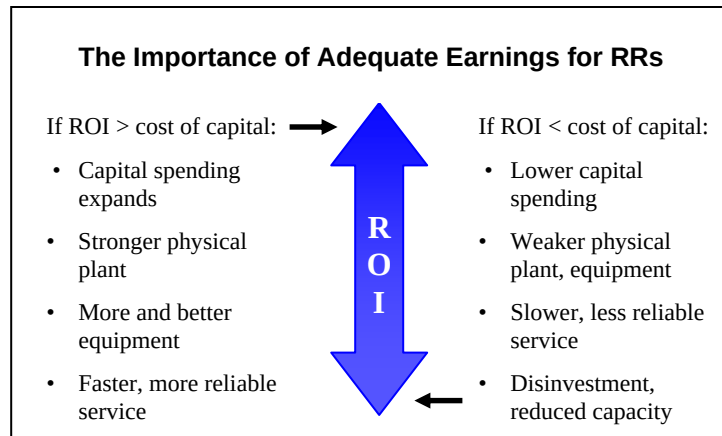
Some rail critics who cling to these false impressions have now seized upon railroads' recent "record profits" to bolster their claims that railroads should be forced to reduce their rates to favored shippers. This viewpoint — that short-term increased railroad profitability to moderate levels justifies a reinstatement of onerous restrictions on rail earnings — is exceedingly shortsighted and should be rejected.

It is beyond the scope of this submission to discuss in detail the many ways in which railroad reregulation is misguided.²¹ It should be noted, though, that the primary objective of those who call for rail reregulation is lower rail rates, which would translate directly into lower rail earnings.

But proponents of reregulation ignore the fact that rail investments in infrastructure and equipment, like most private investment decisions in our economy, are driven by expected returns. Under reregulation, rail managers could not commit, and rail stockholders

²¹ Proponents of railroad reregulation are quick to deny that what they propose is reregulation at all. In reality, though, their proposals would substantially increase government control over wide areas of rail operations in ways that could lead to the loss of billions of dollars in rail revenue each year. As just one example, rail critics support the designation of "areas of inadequate competition." In these areas, the Board could take a number of actions — including controlling rail rates and service offerings within the area, and ordering one railroad to allow another railroad access to its tracks — even if anti-competitive conduct by an incumbent railroad had not even been alleged, much less adjudicated and found to exist. The legislative definition of these areas is so broad and vague that most or all of the *country* would qualify.

would not supply, investment capital needed to improve service and expand capacity, because the railroads considering such investments would not have a reasonable opportunity to capture the benefits of those investments.



Disaster might not occur overnight, but there would be little or no capacity expansion — something that certainly would have a near-term and significant adverse effect.

The financial community, on whom railroads depend for access to the capital they need to operate and expand, has consistently supported the view that, under reregulation, an era of capital starvation and disinvestment would return. They understand that no law or regulation can force investors to provide resources to an industry whose returns are lower than the investors can obtain in other markets with comparable risk.²²

Proponents of reregulation do not even try to explain how railroads would be able to recoup the revenue they would lose, or how railroads could possibly make the huge ongoing investments they need in the face of the capital starvation they would confront from reregulation. Given the expected huge increase in future freight transportation demand, the related increase in rail capacity requirements, and the ever-increasing demands of shippers for service improvements, it is especially important now to avoid restricting railroads' ability to invest adequately in their systems.

²² The AAR's October 2005 submission to the Board on the impact, effectiveness, and future of the Staggers Rail Act of 1980 contains numerous quotes from financial analysts that confirm this point.

The fundamental fact is that shippers must be willing to pay for the rail service and rail capacity they say they need, and the market is far superior to the government in determining who should pay.

Some in the electric power industry are among the most vocal proponents of restrictions on rail earnings. Their advocacy of restrictions on railroads are not consistent with their claims regarding the need for cost-recovery and regulatory certainty in electricity transmission — a sector of the electricity industry with some parallels to railroading.

A representative of the Edison Electric Institute, for example, wrote “I cannot overemphasize the need for FERC to establish and put into effect a durable regulatory framework that says if I prudently invest a dollar in transmission infrastructure, that I will be able to fully recover that dollar, along with my cost of capital, through electricity rates. Such a framework is essential to raising the substantial and nearly unprecedented amount of capital necessary to construct needed, cost-effective transmission facilities.”²³

Likewise, the National Rural Electric Cooperative Association has noted that it “believes that the best way to attract capital to transmission at reasonable rates is to give investors greater certainty that they will receive a return on their investment.”²⁴ The rail industry can think of no better way to create *uncertainty* for their own capital providers “that they will receive a return on their investment” than reregulatory legislation. Such legislation is bad economics and bad public policy and should be rejected. It would mean *less* rail capacity when we need *more*.

²³ Statement on behalf of the Edison Electric Institute by Alan J. Fohrer, CEO, Southern California Edison, to FERC, April 22, 2005.

²⁴ Comments of the National Rural Electric Cooperative Association Proposed Rulemaking Promoting Transmission Investment Through Pricing Reform,” FERC Docket No. RM06-4-000, January 11, 2006, p. 17.

Public Involvement in Freight Rail Infrastructure Investment

Freight railroads will continue to spend massive amounts to improve and maintain their systems. But even with their improved financial performance, funding constraints will likely prevent railroads from meeting optimal future rail infrastructure investment needs entirely on their own. As AASHTO noted in its *Freight Rail Bottom Line Report*, “The rail industry today is stable, productive, and competitive, with enough business and profit to operate but not to replenish its infrastructure quickly or grow rapidly.”²⁵

In its analysis, AASHTO estimated that railroads will need to carry an additional 888 million tons of freight annually by 2020 just to maintain their current market share.

AASHTO also found that railroads will need \$175 billion to \$195 billion of infrastructure investment over this period to accommodate this traffic growth, and projected that railroads will be able to fund the majority of this investment — \$142 billion — from their own retained earnings and borrowing. Unfortunately, according to the AASHTO analysis, the \$142 billion will be enough to enable railroads to handle only half of their expected increase in traffic.

This funding shortfall means that many rail projects that would otherwise expand capacity and improve the ability of our nation’s farms, mines, and factories to move their goods to market; speed the flow of imports and exports; relieve highway congestion; reduce pollution; lower highway costs; save fuel; and enhance safety will be delayed — or never made at all.

It is in our nation’s best interest to ensure that optimal freight railroad capacity enhancements are made. Two ways that policymakers can help make this happen is by taking greater advantage of public-private partnerships for freight-railroad infrastructure projects and by introducing tax incentives for rail infrastructure projects that enhance capacity.

²⁵ AASHTO, *Freight Rail Bottom Line Report*, p. 3.

Public participation in freight rail infrastructure projects is justified because the extensive benefits that would accrue to the general public by increasing the use of freight rail would far exceed the costs of public participation. This point was also made by AASTHO, which that “Relatively small public investments in the nation’s freight railroads can be leveraged into relatively large benefits for the nation’s highway infrastructure, highway users, and freight shippers.”²⁶ The CBO has also concluded that public investment in rail infrastructure should be considered: “Another way of addressing the underpayment of infrastructure costs by railroads’ competitors is to provide financial assistance to the railroads.” Echoing AASHTO, CBO observed that, “[p]roviding federal aid for a rail investment might be economically justified if the net social benefits were large but the net private benefits to railroads were insufficient to induce them to make such an investment.”²⁷

Public-Private Partnerships

U.S. freight railroads are, with few exceptions, privately owned and operated, and have traditionally financed their infrastructure investments overwhelmingly through their own earnings and by borrowing from outside capital providers.

Capital providers, however, insist that railroads focus their limited investment funds on projects that promise a direct financial benefit to the investing railroad. While these projects may well provide substantial public benefits — such as reduced highway congestion, cleaner air, improved safety, and enhanced mobility — from a railroad’s and capital provider’s point of view, these are secondary to the project’s financial return. This kind of imposed discipline by the financial markets is necessary and appropriate in a market

²⁶ AASHTO, *Freight Rail Bottom Line Report*, p. 1.

²⁷ Congressional Budget Office, *Freight Rail Transportation: Long-Term Issues* (January 2006), p. 22.

economy, but it discourages investments that would yield significant public benefits but only limited financial benefits to the railroad.

A way to help states and localities improve rail networks that generate public benefits is through a more pronounced use of public-private financing partnerships for rail infrastructure improvement projects. Partnerships are not “subsidies” to railroads. Rather, they are an acknowledgement that private entities should pay for private benefits and public entities should pay for public benefits.

Partnerships reflect the fact that cooperation between interested entities is far more likely to result in timely, meaningful solutions to transportation problems than a go-it-alone approach. Without a partnership, projects that promise substantial public benefits in addition to private benefits are likely to be delayed or never started at all because it would be too difficult for either side to justify the full investment needed to complete them. In contrast, if a public entity shows it is willing to devote public dollars to a project equivalent to the public benefits that will accrue, the private entity is much more likely to provide the private dollars (commensurate with private gains) necessary for the project to proceed.

Investment Tax Incentives

Another way to bridge the funding gap between the level of investment that will bring the most benefit to our economy and what railroads are likely to be able to afford on their own is to implement an investment tax credit for rail capacity enhancement projects.

Under an investment tax incentive program for rail infrastructure, projects to *expand* freight rail capacity — by increasing the volume, weight, or speed of freight that can be carried — would be eligible for a 25 percent tax credit. Examples of qualifying capacity-expanding investments include raising tunnel clearances to accommodate double-stacked

intermodal containers; upgrading single track lines to double or triple tracks; adding and lengthening sidings; and constructing intermodal terminals. In addition, new locomotives could also qualify for the credit if they met certain capacity-enhancement and other requirements.

Eligibility for the credit would extend to any taxpayer that makes a qualifying expenditure, not just railroads. For example, a shipper that built a rail spur from a distribution center to a main line would be eligible, as would the builder of a rail intermodal terminal.

Infrastructure capital expenditures that do not qualify for tax incentives would be expensed (the expensing option would not apply to locomotives). This would place capital cost recovery for rail infrastructure on the same basis as competing modes of freight transportation (*i.e.*, highway and waterway), which “expense” their infrastructure costs.

For a railroad considering whether to fund a new infrastructure project, the tax incentive would effectively reduce the cost of the project and thus lower the risk that the project will not generate the level of return needed to make it economically viable. Thus, the incentive would be enough to help worthwhile projects get built sooner, but would not be enough to cause economically unjustified-projects to go forward.

Conclusion

U.S. freight railroads do a remarkable job in meeting the needs of an extremely diverse set of shippers. On any given day, railroads are moving several hundred thousand carloads of freight. The vast majority of these shipments arrive in a timely manner, in good condition, and at rates that shippers elsewhere in the world would love to have.

Still, it is clear that transportation capacity will have to increase as the economy expands. The railroads are committed to meeting these increased capacity needs primarily

through private capital, but only if the regulatory structure gives the railroads an incentive to make the necessary investments. Policymakers can help ensure that rail capacity is adequate to meet our future freight transportation needs by ensuring that unreasonable restrictions on rail earnings are not instituted, engaging in more public-private partnerships for rail infrastructure projects, and instituting targeted tax incentives for projects that expand rail capacity.