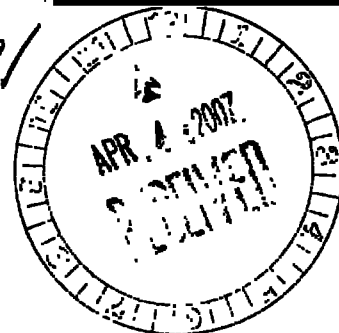


218971



April 3, 2007

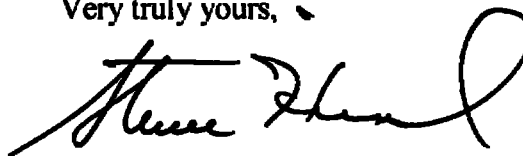
The Honorable Vernon A. Williams
Secretary
Attn.: STB Ex Parte No. 671
Surface Transportation Board
395 E Street, S.W.
Washington, D.C. 20423-0001

Re: STB Ex Parte No. 671, *Rail Capacity and Infrastructure
Requirements* - Written Testimony

Dear Secretary Williams:

Pursuant to the Board's Decision, dated March 6, 2007, the Institute of Scrap Recycling Industries, Inc. ("ISRI"), hereby submits an original and ten copies of its written testimony in the above-captioned proceeding.

Very truly yours, ✓



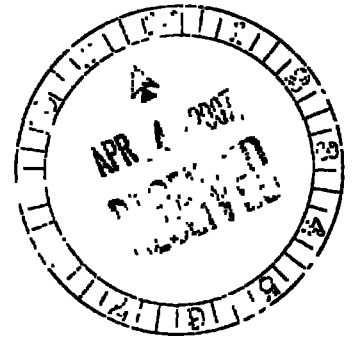
Steven F. Hirsch
Associate Counsel

ENTERED
Office of Proceedings

APR 4 - 2007

Part of
Public Record

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



Ex Parte No. 671

RAIL CAPACITY AND INFRASTRUCTURE REQUIREMENTS

**WRITTEN TESTIMONY OF THE
INSTITUTE OF SCRAP RECYCLING INDUSTRIES**

April 2007

**Steven F. Hirsch
Associate Counsel
Institute of Scrap Recycling Industries, Inc.
1615 L Street, N.W., Suite 600
Washington, D.C. 20036
(202) 662-8516**

**ENTERED
Office of Proceedings**

APR 4 - 2007

**Part of
Public Record**

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 671

RAIL CAPACITY AND INFRASTRUCTURE REQUIREMENTS

**WRITTEN TESTIMONY OF THE
INSTITUTE OF SCRAP RECYCLING INDUSTRIES**

Pursuant to the March 6, 2007. decision of the Surface Transport Board, the Institute of Scrap Recycling Industries ("ISRI") provides this written testimony on rail capacity and infrastructure requirements. ISRI appreciates the opportunity to address this critical issue.

The Institute of Scrap Recycling Industries

ISRI is the "Voice of the Recycling Industry." ISRI represents more than 1,400 companies in 21 nationwide chapters that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. With headquarters in Washington, D.C., the Institute provides education, advocacy, and compliance training, and promotes public awareness of the vital role recycling plays in the U.S. economy, global trade, and environment.

The scrap recycling industry in the United States is a sophisticated, capital-intensive industry preparing more than 145 million tons of scrap materials for reuse each year. In 2006, the industry had revenue exceeding \$65 billion as well as more than 50,000 employees. Two of every three pounds of steel manufactured in the United States is made from scrap materials. Nearly 80% of all U.S. paper mills use recovered fiber to manufacture new products. More than \$15 billion worth of scrap commodities were exported in 2006, helping the U.S. balance of trade.

The Scrap Recycling Industry and Rail

Rail service is crucially important to the scrap metal industry. Half or more of ferrous scrap travels by rail. Transportation is one of the largest costs for the scrap industry.

Although it relies heavily on rail transportation, the scrap metal industry has been frustrated by the uncertainties of and quality of rail service. Service has been unpredictable, and has deteriorated in recent years. When service is poor, scrap shippers find they have little recourse to improve service, no options to meet impending deadlines, and no practical means to resolve disputes. These uncertainties complicate transportation planning for the scrap metal industry, particularly small shippers. Free to give higher priority to more profitable services, railroads manifest the low priority of scrap metal shipments by the unpredictable pickup and drop-off of cars, and the unpredictable delivery of rail cars.

Transactions for rail services between shippers and railroads are governed by tariffs or contracts. Neither tariffs nor most contracts, however, specify many attributes of the timeliness of rail service to be provided by the railroad: the specific date for the delivery of unloaded cars; the specific date for the receipt of loaded cars; or the specific date for the delivery of loaded cars to the final destination.

In 2004, ISRI surveyed its members to gauge the types and extent of rail problems. The results present a troubling picture of rail service to the scrap industry, particularly in the areas of the supply (or more precisely, the shortage) of rail cars, and poor rail service.

Shortage of rail cars

Gondola cars carry most scrap metal shipments by rail. The railroad-owned fleets of gondola cars are substantially inadequate for current demand. The gondola fleet, which is used largely to transport ferrous metal scrap and finished steel products, has shrunk by as much as 25

percent. The current shortage of gondola cars began by mid-2003, as the economy grew. Moreover, much of the current fleet of gondola cars is old and slated for retirement in the next several years, with little or no replacement by the railroads. Consequently, the current shortage of railroad-owned gondola cars is likely to worsen. The survey results indicate a frequent disparity between the number of railcars ordered and the actual number received. Sixty-two percent of ISRI members that ship by rail report problems in getting rail cars. The reliability of rail car orders has not improved since 2004. Indeed, the problem persists and may have deteriorated.

Poor rail service

ISRI members find that the rail system has become increasingly unresponsive. In addition to shortages of railcars, scrap dealers face other forms of poor service from railroads. When ISRI surveyed its members, nearly one-quarter of those surveyed said that railroads failed to provide the requested service more than half the time, and less than one-quarter indicated that rail carriers provided the service requested more than 90 percent of the time. Poor service and reliability led ISRI survey respondents to rate overall rail service critically: only 18 percent rated rail service as good, and none rated service as excellent.

The failure of rail transportation to provide efficient service to the scrap industry has contributed to the decline of U.S. manufacturing. A generation ago, it was more profitable to ship scrap by rail domestically. Today, it is often more profitable to ship it overseas. Inefficiencies in the rail industry also discourage the use of private rail car fleets, which with better service could improve rail operations.

Concerns about rail service are not limited to the scrap metal industry. Regardless of the causes of past and current uncertainty in freight rail service, there is substantial evidence that

future service may deteriorate as the result of projected substantial increases in demand and the resulting additional capacity shortages in the railroad network. The rail industry is making additional investments in infrastructure, but few see these investments as sufficient to keep pace with the enormous increases in demand.

Rail Capacity and Infrastructure Needs

The rail transportation system increasingly faces capacity constraints. Until recently, the rail industry was in a condition of overcapacity. Consequently, railroads aggressively downsized in both track and personnel. Since 1980, the number of miles of track at Class I railroads has decreased by more than one-third, from approximately 270,000 miles to about 170,000 miles. Over the same period, the number of employees at Class I railroads has decreased from over 450,000 to about 150,000, a two-thirds decrease.

Yet, the number of rail carloads has increased from approximately 22 million in 1980 to approximately 29 million in 2003. More significantly, the kinds of traffic carried by the nation's rail carriers has changed, with a very significant increase in rail intermodal traffic, which has placed substantial demands on the rail system, sometimes to the detriment of other traffic.

These trends, increasing traffic and decreasing physical plant and human capital, have meant that traffic density on the nation's rail system has increased dramatically, and is currently at the highest level by far in the last twenty-five years. The number of ton-miles per mile of track carried by the nation's railroads has tripled in the last twenty years. In addition, train system speed has actually declined since 1993. Accordingly, the signs of rail system capacity constraints are widespread.

Suggested Responses to Rail Capacity and Infrastructure Requirements

Increased competition would be the most effective method of increasing rail capacity and meeting growing infrastructure requirements. Bottlenecks may be addressed. The railroads seek tax incentives for increased infrastructure investments, which may be useful, but only if the railroad industry becomes more competitive. At best, these measures are long-term and of limited effect.

Efficient and responsive rail transportation is critical to the scrap recycling industry. For ISRI members, a significant portion of their goods are relatively heavy-loading, low value commodities being shipped in large quantities for significant distances. Traditionally, rail transportation has fit this profile, to the benefit of both rail carriers and their customers.

In a free market, tight supplies tempt new suppliers to enter the market, bringing the system back into balance. But the rail system is not a free market. For many ISRI members, there is no effective alternative. ISRI members report that some rail practices appear designed to chase ISRI members' traffic off the rail system altogether, as undesirable traffic. Moreover, there is very little prospect of new entrants into the market: the barriers to entry in the rail industry are so substantial as to discourage the normal workings of the market.

As noted in a recent Government Accountability Office study, the rail market has become much more concentrated than it was even fifteen years ago. There is a rail duopoly in the eastern and western United States, with two competitors in each region. But such a highly concentrated market produces little real competition, especially when many shippers' plants are served by only a single carrier. Moreover, there are relatively few movements where there is competitive rail service from origin to destination, and a monopoly carrier on any segment is in a position to extract monopoly profits from and provide monopoly service to the movement as a whole.

Finally, in the current capacity-constrained and highly concentrated rail market, there is a serious question as to how strongly rail carriers desire to substantially increase supply, when such increases in supply may threaten their new-found pricing power. Classic economics teaches that highly concentrated markets with high barriers to entry tend to be inefficient, because existing market competitors have a substantial incentive to limit supply.

To increase rail capacity and improve rail infrastructure, there is no more effective method than increasing competition. Adding track is a long, expensive process. Increasing train speed and efficiency can be done, with the right regulatory environment, much more quickly and at a much lower cost.

A new approach is needed in the area of rail-to-rail competition. The Surface Transportation Board could ensure the posting of standards for timeliness of rail service, including the delivery of empty cars, the shipping of loaded cars, and the delivery of loaded cars; clarification of the responsibility of car services, including the supply of cars; predictable, low-cost, and timely enforcement of service standards; and predictable, low-cost, and timely means to resolve disputes between railroads and shippers.

The Surface Transportation Board has consistently interpreted its statutory mandate to ensure railroad revenue adequacy, at the expense of the concurrent Staggers Act policy to encourage competitive rail service. For example, the Staggers Act provided for broadened standards for reciprocal switching, but this legislative option has been administratively foreclosed by Interstate Commerce Commission and Surface Transportation Board requirements. The agency's unbalanced policy is particularly unsound at the present time, when the rail industry is experiencing record financial returns and most financial observers believe that the rail

industry is earning its cost of capital. A more pro-competitive policy will not handicap rail carriers financially; rather, it will ensure that rail markets are efficient and responsive.

Conclusion

ISRI seeks to work with the Surface Transportation Board to create a fairer and more competitive rail industry. This, we believe, is the best method to ensure that the rail capacity and infrastructure needs of the railroads and its shippers are met.