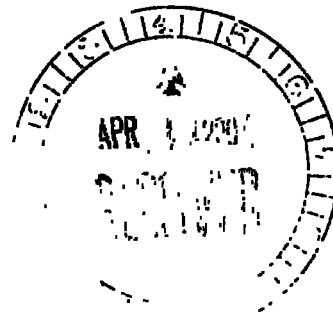




219004

April 4, 2007



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

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

Dear Secretary Williams:

Pursuant to the Notice of Public Hearing, which was issued in the above-captioned proceeding on March 6, 2007, the American Chemistry Council ("ACC") requested ten minutes to present its comments on April 11, 2007.

That same Notice called for the submission of written comments by April 4, 2007. In accordance with the Notice's provisions, the original and ten copies of ACC's comments are enclosed. Please contact me if you have any questions about ACC's comments.

Sincerely,

Thomas E. Schick
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Regulatory and Technical Affairs
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BEFORE THE SURFACE TRANSPORTATION BOARD



STB Ex Parte No. 671

RAIL CAPACITY & INFRASTRUCTURE REQUIREMENTS

COMMENTS OF THE AMERICAN CHEMISTRY COUNCIL

April 4, 2007

The American Chemistry Council ("ACC") appreciates the opportunity to participate in this public hearing on rail capacity and infrastructure requirements. As the Surface Transportation Board ("Board") knows, the business of chemistry depends on the U.S. rail system for the safe, secure and efficient transportation of approximately 170 million tons of products each year. That traffic, in turn, accounts for more than \$5 billion in annual railroad industry revenues.

ACC represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier and safer. ACC is committed to improved environmental, health and safety performance through Responsible Care[®], common sense advocacy designed to address major public policy issues, and health and environmental research and product testing. The business of chemistry is a \$635 billion enterprise and a key element of the nation's economy. It is one of the nation's largest exporters, accounting for ten cents out of every dollar in U.S. exports. Chemistry companies are among the largest investors in research and development. Safety and security have always been primary concerns of ACC members, and they have intensified their efforts, working closely with government agencies to improve security and to defend against any threat to the nation's critical infrastructure.

As the Board observed in establishing this docket, "[i]n regulating the railroad industry, the Board is called upon, among other things, to ensure the development and continuation of a sound rail transportation system with effective competition and coordination between rail carriers and other modes." The notice in Ex Parte No. 671 identified a series of five topics for examination in this public hearing:

- freight traffic forecasts;
- the extent of the capacity constraints and the ability of the railroads to meet the rising demand;

- the infrastructure investment needed to ensure that the Nation's freight rail system continues to operate in an efficient and reliable manner;
- possible solutions to the challenges presented by growing rail traffic and limited capacity; and
- the potential role of public-private partnerships and innovative financing tools in meeting these challenges.

As the representative of a major rail customer industry, ACC is pleased to provide these written comments. We also look forward to participating in a thorough discussion at the Board's upcoming public hearing.

Freight Traffic Forecasts

ACC members are well aware of the continuing growth in the demand for freight transportation services – including rail traffic – in the United States. We have no reason to doubt the validity of general projections of future freight traffic, such as those that have been cited by the Board. Because a strong economy requires a sound transportation system, ACC applauds the Board's interest in how the railroads can best meet the nation's economic needs.

Turning to the question of rail traffic trends, we note that intermodal shipments have been an area of particularly strong growth for carriers. ACC hopes, however, that the Board appreciates how important it is for the nation's railroads to continue to provide service to the more traditional types of rail traffic, including that which moves in tank cars, covered hoppers, etc. U.S. manufacturing industries, including the business of chemistry, create jobs and produce exports. While imported container shipments are certainly a significant source of rail revenue and a means to supply consumer demands, they generally do not provide the same type of underlying economic activity that is so necessary to support nation's well-being.

We therefore urge the Board and the carriers not to focus exclusively on the capacity to handle containers. To the extent that there is a shortage of capacity to serve other categories of rail traffic – especially freight that is paying the highest rates – it is important to meet those needs in the interest of maintaining a strong U.S economy.

Capacity Constraints & Ability To Meet Demand

ACC members do report that rail service has generally not been good on their inbound raw material movements and their finished product shipments. In some cases, carriers have attributed service difficulties to capacity constraints. ACC, of course, does not have information on particular rail service problems, which is a shipper-carrier matter. Nor does ACC collect data on specific railroad rates, although it would seem logical to assume that capacity constraints could be yet another factor leading to rate increases.

The rail industry's ability to meet future demand for service should be a matter of concern to the Board and to all rail-dependent sectors. But it should not become the

rationale for Board actions that would harm shippers or interfere with competitive economics.

Necessary Infrastructure Investment

The railroads, of course, are the Board's best source of information on the nature of their own infrastructure investment requirements. ACC would caution, however, that the need for railroad investment does not change the agency's statutory authority. For example, investment needs do not change the requirement that railroad rates and practices must be reasonable.

Possible Solutions to Traffic & Capacity Challenges

The Board has already noted in this docket its role in "regulating the railroad industry." ACC's concern, however, is that this docket might eventually provide the foundation for additional regulatory decisions that undermine the Board's very reason for existence.

Eighteen months ago, ACC participated in STB Ex Parte No. 658, "The 25th Anniversary of the Staggers Rail Act of 1980: A Review and Look Ahead." Our message then was that a long series of regulatory policy mistakes had been made, first by the Interstate Commerce Commission and then by the Board. The mistakes discussed in that filing included:

- the "Midtec" decision, which denies competitive access in terminal areas;
- the "bottleneck" doctrine, under which a railroad is not required to quote rates to/from points of interchange with another carrier;
- the Board's anti-competitive policy on short-line railroad paper barriers; and
- the Board's inadequate regard for rail-to-rail competition under its rail merger guidelines.

Since that anniversary in 2005, the Board has looked at paper barriers but not acted. It properly found that railroads engaged in unreasonable fuel surcharge practices, but made no provision for reparations to shippers. ACC will not comment on the Board's procedures for stand-alone-cost (coal) rate challenges. But we have expressed in Ex Parte No. 646 (Sub-No. 1) our belief that in proposing new small rate case guidelines, the agency came up with an approach that would be even worse than its existing guidelines.

The Staggers Act has unfortunately been used as the basis for denying competition. This affects not only captive shippers (including 63% of rail-served production facilities operated by ACC members), but also the rail industry itself. In the long run, protection from market forces weakens any industry. The business of chemistry competes in a fierce global marketplace, and ACC members are stronger because they must operate that way. It would be unfortunate if current concerns about rail capacity and infrastructure were to increase the Board's tendency to protect the railroads from the consequences of competing in the real world.

Potential Role of Public-Private Partnerships & Innovative Financing Tools

ACC has no comments on this factor.

Conclusion

The business of chemistry thanks the Surface Transportation Board for the chance to discuss rail capacity and infrastructure requirements in this docket. We urge the Board to take a pro-competitive approach to the many important issues that Congress has entrusted it with regulating.

Submitted on behalf of ACC by

A handwritten signature in black ink, appearing to read "Tom E. Schick", written in a cursive style.

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