



**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 775

GROWTH IN THE FREIGHT RAIL INDUSTRY

**WRITTEN SUBMISSION OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE**

The National Industrial Transportation League
10816 Town Center Boulevard, #516
Dunkirk, MD 20754-2708
443.975.5556

August 16, 2024

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 775

GROWTH IN THE FREIGHT RAIL INDUSTRY

**WRITTEN SUBMISSION OF
THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE**

The National Industrial Transportation League appreciates the opportunity to submit its written testimony to the Surface Transportation Board (STB or “Board”) for its public hearing on Recent Trends and Strategies for Growth in the Freight Rail Industry to be held on September 16-17. Ms. Monica Freeman, Chair of NITL’s Rail Transportation Committee, and the Director of Rail Transportation at CHS, Inc. will present NITL’s testimony at the hearing.

CHS is a diversified global agribusiness cooperative owned by farmers and member cooperatives across the United States. Its 10,000-plus dedicated employees around the globe have a singular purpose: Creating connections to empower agriculture. CHS helps drive sustainable growth for its owners and customers with a strong, efficient supply chain, access to global markets, and exceptional products and services.

NITL is a trade association whose mission includes advancing the views of shippers on industrial freight transportation policy matters since 1907. NITL members include U.S. companies across a wide variety of industries who rely on efficient, competitive, and safe maritime, rail, and highway transportation systems within the United States and beyond to meet their supply chain requirements and the needs of their customers. NITL members move billions of dollars of freight an employee millions of individuals in the supply chain.

Ms. Freeman serves as Chair of NITL’s Rail Transportation Committee and participates as an alternate on the Board’s Rail Energy Transportation Committee (RETAC).

NITL would like to acknowledge the Board’s leadership and efforts in completing several proceedings including most recently *Reciprocal Switching for Inadequate Service*, Docket No. EP 711 (Sub-No. 2). Thirteen years ago, NITL initially submitted its petition to reform the Board’s reciprocal switching rules to facilitate greater railroad competition to address inadequate service and other supply chain challenges faced by US businesses who are subject to railroad monopolies. This rule intends to incentivize Class I rail carriers to improve rail service by allowing a shipper to “switch” its traffic to an alternative railroad when the serving railroad fails to meet any one of three new service metrics adopted by the Board. NITL is also appreciative of the rule’s continuation of some of the First-Mile Last-Mile (FMLM) railroad data reporting to the Board as was required under Docket No. EP 770 (Sub-No. 1), *Urgent Issues in Freight Rail Service—Railroad Reporting*.

Although the Board’s new reciprocal switching rule does not promote rail-to-rail competition to the extent that NITL originally intended, NITL strongly supports the objectives of the rule as its members have faced serious rail service challenges in recent years. NITL is hopeful that this rule is an incremental first step to encouraging greater competition amongst railroads via reciprocal switching to help drive solutions to rail service and other challenges. NITL also looks forward to the Board moving forward on its stated intention in the reciprocal switching rule to explore at a later date whether it should partially revoke exemptions on its own initiative to allow rail shippers of exempt commodities to file reciprocal switching petitions to address inadequate rail service, without having to first pursue costly and time-consuming

litigation to revoke the exemptions. NITL urges the Board to pursue next steps as soon as possible to expeditiously revoke exemptions for the purpose of Docket No. EP 711 (Sub-No. 2).

NITL would be remiss if it did not acknowledge that this rule does not apply to contract traffic which represents the majority of all movements. NITL appreciates the Board's efforts in discussing contract traffic applicability for the purposes of this service remedy option, and looks forward to working with Board, U.S. Congress, and other stakeholders on possible statutory solutions.

MONETARY COSTS OF NOT SHIPPING BY RAIL

A NITL member, RSI Logistics (RSI), provides important insight and data as to cost comparisons notably between truck and rail. To cite RSI's [Comparing the Costs of Rail Shipping vs Truck](#):

Where pipelines and waterways are available, shipping via these modes can significantly reduce costs. However, these two options are limited by infrastructure and geography. Rail and truck however provide more versatile shipping options, especially when combined in multimodal transport. Comparing costs per ton-mile of each mode, you can see the advantages of each. Though these differences are small at first, cost savings add up quickly over longer distances and volume.

Trucking is the universal mode of transportation; every shipper can load and receive materials by truck. Rail, on the other hand, requires that both the shipper and consignee have the ability to load and unload rail directly. By comparison, the differential in cost between the two modes is \$ 0.105 per ton-mile. Reducing truck transit and choosing the optimal rail transload facility will help to maximize cost-savings through rail.

To compare the costs of rail vs truck shipping, consider the movement of a bulk commodity from Houston, TX to Cleveland, OH. The truck cost in this example lane is approximately \$ 5,159 per load, whereas rail would be \$ 6,676 per car. However, when comparing the costs of rail vs truck shipping, you must apply a ratio of 1:4, since one railcar equates to four truck loads.



Many shippers understand the savings potential in shipping rail versus truck, but, in many cases, receivers may only be able to receive material by truck. To take advantage of the economies of long-haul rail transportation and the speed and flexibility of local truck delivery, shippers rely on North America’s extensive bulk terminal network. The cost to combine rail and truck using a bulk transfer terminal is approximately \$95.54 per net ton. By comparison, rail direct is \$70.27 per net ton, and over-the-road truck is \$214.96 per net ton. Using multi-modal rail and truck transit compared to truck alone, you can cut transportation costs by more than half.

In addition to transit costs, it is also important to consider the cost of railcar equipment when using rail or multi-modal transit. This equipment cost adds about \$900 per railcar shipment. However, these costs only slightly increase variable costs per net ton. Using multi-

modal transit, the cost per net ton increases to \$105.01. Compared to over-the-road trucking's \$214.96 per net ton, the savings for multi-modal transport remains significant.¹

LACK OF RAILROAD-TO-RAILROAD COMPETITION

As we discuss “how to grow freight rail volume,” it is important to consider reasons why freight rail carload volume has declined 27% over the past decade and decreased 33% since 2000 per the Bureau of Transportation Statistics (BTS) provided data referenced in the Board’s hearing announcement.²

One significant reason is the lack of railroad-to-railroad competition which is compounded by the railroad industry’s need to meet Wall Street expectations. With only six Class I rail carriers, and with four of them responsible for moving 90% of our nation’s rail freight, competitive market forces have been significantly reduced as a result of railroad mega-mergers and acquisitions. The lack of robust competition in the freight rail industry leads to high freight costs, poor service and customer relations, the inability to negotiate reasonable contract terms (including service protections), and other deterrents to increasing rail traffic. These factors have likely contributed to the decline in freight rail shipping volumes.

On top of this, the railroads opted about a decade ago to employ what is known as “Precision Scheduling Railroading (PSR)” in varying forms to meet Wall Street’s performance expectations, including maintaining low operating ratios and minimizing capital expenses to fund shareholder buyback initiatives. This operating model continues today to lower costs for

¹ RSI Blog, *Rail Rates and Logistics, Rail Transloading and Bulk Terminals*, RSI Logistics (Feb. 6, 2024).

² STB Notice, 89 Fed. Reg. 57497 (July 15, 2024), citing, [U.S. Bureau of Transportation Statistics, Rail Freight Carloads \[RAILFRTCARLOADSD11\]](https://fred.stlouisfed.org/series/RAILFRTCARLOADSD11), retrieved from FRED, Federal Reserve Bank of St. Louis; <https://fred.stlouisfed.org/series/RAILFRTCARLOADSD11>, August 12, 2024.

the railroads but has resulted in constrained and congested networks, reduced capacity, the increasing use of embargos, by-passing commodities in favor of other more revenue-generating movements, degraded velocity, and limited resiliency. The bottom line is simply dismal service, especially when compared to other transportation modes. Moreover, one element of PSR is running longer trains. Some would argue that this is adding volume. To the contrary, however, capacity is not necessarily being added to other trains or kept in service. Also, in certain cases, this practice is compromising safety by blocking crossings and requiring trains to idle along sidings that are too short to accommodate the longer trains.

UNRELIABLE SERVICE, HIGH RATES, AND LACK OF BARGAINING POWER

In preparation for this hearing, NITL surveyed its members to better understand the factors that impact their ability to ship more volumes via rail. Our members indicated that unreliable rail service is a significant issue that has caused them to ship volumes that would otherwise move by rail by other modes, including trucks, pipeline, or barges. One member reported that the volumes shifted were significant and due to reduced unit train turn times. To protect its supply chain, the company chose to ship a similar alternative commodity that could be delivered more reliably using two alternative transportation modes. While in some cases, the opportunity to ship greater rail volumes will be permanently lost where the demand was in “real time”, the good news is that in other cases, the modal shift due to inconsistent rail service could possibly return to rail when service improves. Yet, another member reported that some temporary shifts away from rail due to unreliable service could translate from temporary to permanent over time.

Additionally, non-competitive rates have caused some NITL members to ship products that otherwise would move by rail by other modes. Even though members would prefer to use rail, high rail rates force them to consider and select alternative modes, and to evaluate the potential to use alternative products to avoid unreasonably high shipping costs. While other members expressed frustration with high rail rates some commodities must move via rail no matter what the cost for safety or operational reasons. In those cases, the company must accept lower margins and/or attempt to pass through the costs which is not always possible. Further, railroads often refuse to compete with trucks on shorter distance moves that could move via rail since they typically favor long-haul, higher margin moves. However, this regional business could become more attractive if railroads focused more on addressing their capacity-constrained networks. There would also appear to be an opportunity to encourage greater use of short line railroads for more regional shorter-distance movements to help grow rail traffic.

Another obstacle that has disincentivized NITL members from increasing rail volumes is the lack of leverage in contract negotiations. Without more robust rail-to-rail competition, shippers have limited bargaining power in contract negotiations. This leads to one-sided contracts in the railroads' favor and prevents shippers from obtaining service protections and negotiating more reasonable rates. This phenomenon often results in rail being used for traffic that has no other choice. If another mode can be used on more reasonable terms and conditions, it very often will be used.

RAILROAD RECOMMENDATIONS

NITL members' survey responses also recommended changes that the railroads can take on their own. Some can be done immediately; others might take more time especially if the needed changes are rooted in company culture.

Specifically, when asked what specific actions would cause NITL members to ship more volumes via rail, one member stated that service reliability is critical and especially consistency to the trip plan is most important. Occasional misses are understandable due to unexpected events, such as weather, labor, disasters, and the like. But without such circumstances, once a service plan is in place, NITL members would require far more consistent service to shift greater volumes to rail. Improvements to local “first mile/last mile” service is also needed. Avoiding reduced service days and missed switches, which can create a domino of adverse impacts, would likely help to incentivize the growth of rail traffic.

Improved communications with more timely and consistent notice to shippers when a trip plan will not be met or when local service will be disrupted would go a long way to improving railroad/shipper relations. This would, in turn, help to reduce frustration caused by service disruptions and result in more positive dealings. Thus, changes to improve customer service and develop stronger partnerships between railroads and their customers would help to encourage the growth of rail traffic.

When asked what factors would cause NITL members to increase capital investment expenditures to ship by rail, members reported that lower freight rates and accessorial costs, better cycle times on equipment so shippers can better spread the monthly rental rate of private cars over more traffic, and more ratable/consistent FMLM service would help incentivize such investment.

Regarding the role of short line carriers, the survey respondents said that they generally get better service consistency and communication from short line carriers and consider them to be partners. Short lines tend to take a more active role in understanding the shipper’s business and are willing to engage in a more reasonable “give and take.” Thus, NITL members would

favor, at a minimum, increasing the role of short lines in local hauls, FMLM, and plant switches. Short lines also tend to have more reasonable accessorial charges and are more willing to make occasional extra as-needed moves to meet the needs of the customer. One member stated that “The presence of [short line] local commercial and operations management who understands the “boots-on-ground operation” is a big plus vs. someone at a Class I managing our business via an Excel spreadsheet located 1500 miles away who has never set foot on the property being served.”

STB RECOMMENDATIONS

Finally, given the lack of robust rail-to-rail competition, NITL members responding to the survey strongly believe that workable STB remedies are necessary to incentivize the railroads to offer more competitive rates and reliable service, which would help incentivize shippers to move more traffic via rail. One member noted that especially in the PSR era, carriers are testing and pushing their boundaries with their customers without meaningful repercussions from the STB and Congress, which allows the railroad to dictate plant operations, investment, and the like. It’s the tail wagging the dog.

Thus, consistent with NITL’s policy initiatives, NITL respectfully recommends that the Board should take the following actions:

1. Clarify the scope and enforcement of the railroad Common Carrier Obligation (49 U.S.C. § 11101) via a policy statement or rulemaking to assure that the railroads provide service that is reasonably needed for all commodities especially in light of the monopolistic privileges they enjoy.
2. Expedite removal of exemptions for purposes of reciprocal switching petitions to address inadequate rail service under EP 711 (Sub. No. 1) to incentive better service for

all rail shippers and allow shippers of exempt traffic who experience inadequate rail service to benefit from this remedy.

3. Expedite completion of the proceeding, EP 704 (Sub-No. 1), *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*.

In the *Railroad Revitalization and Regulatory Reform Act of 1976* and *Staggers Rail Act of 1980*, the Board's predecessor agency (Interstate Commerce Commission) was given the statutory authority by the U.S. Congress to exempt rail carriers from oversight when sufficient competition was in place to prevent abuses of market power. Congress also provided the authority to exempt certain commodities from regulatory oversight because, at the time, sufficient commodity competition was present.

Congress also provided the statutory authority to revoke exemptions when restoring oversight is necessary to meet the nation's freight transportation needs for adequate and competitive rail service. However, this process has resulted in the shipper of an exempt commodity having to first pursue costly and time-consuming litigation to revoke the exemption before it can then pursue another costly process of seeking service relief or rate remedies. This has resulted in few exempt shippers seeking redress at the STB to address the same or similar rail service, rate, and other challenges that are experienced by non-exempt rail shippers.

Also, despite significant market changes that have occurred since the exemptions were adopted by the Board's predecessor, the ICC, over 30 years ago, including rail carrier consolidation, operational changes from precision-scheduled railroading, and geographical changes as to where products are sourced, fabricated, or manufactured, there have been few modifications to the exemptions. NITL believes there is

considerable evidence to support making changes to allow for more direct Board oversight for exempt rail shippers who have few, if any, competitive options for their rail-dependent traffic, and would eliminate cumbersome and costly litigation to access the Board for redress.

4. Apply the revenue adequacy constraint so that the railroads do not engage in “economic withholding” or picking and choosing more profitable traffic especially to help lower their respective operating ratios when most of the Class I carriers enjoy low enough operating ratios to have consistently achieved revenue adequacy over the last several years.³
5. Work with Congress in identifying new statutory authority that the Board requires to provide effective oversight for rail traffic that is based on today’s market conditions instead of market conditions from over 40 years ago.

In the post-Staggers era, the railroads’ revenues have increased exponentially to result in the majority of the Class I carriers becoming revenue adequate. However, this is not the case for rail traffic volumes. Regarding traffic volumes, per the BTS, railroad ton-miles of freight grew from 876,209 million in 1985 to 1,551,438 million in 2003, an increase of 56%.⁴ However, this growth trend has not continued. The BTS statistics show that rail volumes peaked in 2014 at 1,851,229 ton-miles but have declined since then with ton-miles in 2022 at 1,533,416—nearly the same level as 2003.⁵

³ *Railroad Revenue Adequacy—2022 Determination*, STB Docket EP 522 (Sub. No. 27), slip op, served Sept. 5, 2023; *Railroad Revenue Adequacy—2021 Determination*, STB Docket EP 522 (Sub. No. 26), slip op, served Sept. 6, 2023; *Railroad Revenue Adequacy—2020 Determination*, STB Docket EP 522 (Sub. No. 25), slip op, served Sept. 7, 2023.

⁴ <https://www.bts.gov/content/us-ton-miles-freight> (Table 1-50).

⁵ *Id.*

In the past decade, railroads began focusing more on moving volume more “efficiently” notably as seen with PSR rather than growing volumes. The continued railroad consolidation combined with PSR implementation shows the railroads’ priority to lowering operating ratios – along with pleasing Wall Street and its investors – rather than meeting the public good by competing aggressively with other railroads and transportation modes to grow rail traffic and to provide timely and efficient service. The result is stagnant to declining growth and service for all shippers but particularly for rail-dependent or captive shippers. This is the opposite of the overarching aim of *Staggers*.

Especially considering the last *STB Reauthorization Act of 2015* expired in September 2019, the Board is encouraged to work with Congress on several policy items to meet today’s market challenges. These include, but are not limited to:

- Applying EP 711 (Sub – No.2) to contract traffic.
- Clarifying the distinction between railroad tariff and contract terms.
- Increasing civil penalties for service and other regulatory violations to incentivize significantly better rail service and reasonable rates and practices.
- Allowing private rail car owners or lessors to obtain compensation from railroads for unreasonable delays with respect to their rail cars, which undermines asset utilization and efficiency. The railcar ownership market has changed during the past few decades, and shippers own or lease two-thirds of the freight rail cars in use today. In addition to the costs incurred in owning or leasing the railcars, shippers are harmed when railroads unreasonably hold or delay these cars yet they lack the bargaining power to negotiate compensation for such delays,

similar to demurrage collected by rail carriers when shippers hold railroad cars beyond a free time period.

CONCLUSION

NITL commends the Board for scheduling the hearing on “trends and strategies for growth in the freight rail industry” and for evaluating how the U.S. Congress, the administration (notably the Board), and the railroads can work together in “growing freight rail volume.” NITL greatly appreciates both the opportunity to participate in the hearing and your consideration of this submission.

Respectfully submitted,

The National Industrial Transportation League
10816 Town Center Boulevard, #516
Dunkirk, MD 20754-2708
443.975.5556