

February 12, 2015

Dear Chairman Thune:

On behalf of a broad range of manufacturing, agricultural, and energy industries, we urge you to introduce legislation to promote greater competition among major railroads and increase the efficiency and effectiveness of the Surface Transportation Board (STB).

Thanks to your leadership and efforts to generate strong bipartisan support for updating rail policies, there is no longer any doubt that Congressional action is necessary. The American industries we represent need a healthy, thriving rail network to do business in the United States. In creating the STB, Congress sought to ensure competition and provide quick dispute resolution where competition is not present. Twenty years have passed since Congress created the STB, and it is clear that reauthorization and reform are overdue.

We strongly support the Surface Transportation Board Reauthorization Act of 2014 (S. 2777) that the Committee unanimously passed last year, and we ask that you add the following proposals in future legislation:

- **Clarify Intent of National Transportation Policy to Promote Competition in the Rail Industry**  
A one word change in the National Transportation Policy to encourage competition in the rail industry is needed to demonstrate Congress' interest in promoting market forces wherever possible.
- **Change Sense of Congress Provisions to be More Explicit on Competitive Switching and Revenue Adequacy**  
These important dockets cannot linger like past proceedings. The bill's sense of Congress provisions should include timelines for the STB to complete these important proceedings. In addition, with the STB now regularly finding Class I railroads to be "revenue adequate," it is critical for the Board to establish procedures for applying revenue adequacy in rate cases to account for changes in the railroad industry.
- **Eliminate Outdated Commodity Exemptions**  
Since passage of the Staggers Rail Act of 1980, the STB has exempted numerous categories of rail traffic from oversight. This leaves many captive shippers with no recourse to challenge unreasonable rates or practices. Because the rail industry and the state of rail competition have changed significantly since many of these exemptions were adopted, the STB should review all of its exemptions and remove any that are no longer appropriate, or these exemptions should lapse.
- **Expand the Report on Rate Case Methodology**  
The scope of the report required by the bill should be expanded to cover all rate cases. Numerous filings in recent STB proceedings demonstrate that all of the Board's existing methodologies are overly complex and burdensome and that alternatives are needed in smaller rate cases as well as large ones. In addition, the bill should ensure that the Board appropriately evaluates whether its methods are economically valid and up-to-date.

- **Establish a Presumption of Market Dominance for Rates Above 300% RVC**

In a rate case before the STB, a shipper must first prove market dominance before it can proceed to the actual rate review. This provision adds significant time and cost to proceedings, even when rates are clearly higher than what would be expected in a competitive market. To make STB rate reviews more accessible, a rail carrier should be presumed to have market dominance for any movement with a rate that exceeds 300 percent of variable cost. This is a threshold nearly 70% greater than the 180% of revenue to variable cost that is the threshold for a rate complaint, and economic data shows a large percentage of rates are already above this high threshold.

- **Require Reporting of Railroad Service Metrics and Strengthen Remedies for Service Problems**

Poor and unreliable rail service continues to harm thousands of American businesses that rely on rail transportation. Rail shippers support the STB's recent proposal to require weekly reporting of performance data. Furthermore, shippers suggest that the bill include timelines for the STB to complete this rulemaking and requirements for the STB to provide quarterly reports on these metrics. We also recommend providing the STB with authority to require railroad service recovery plans and to leverage market competition as a remedy when a railroad is not meeting defined service metrics.

- **Clarify STB Jurisdiction over Rail Practices**

Because many rail practices, including various charges and penalties, are related to rates, some have asserted that the STB may review these practices only in the context of a rate case and only after a finding of market dominance. This practice has stifled challenges to the increasing use of such charges by railroads and has created unnecessary burdens in cases that do proceed. Congress should clarify that the STB has jurisdiction to review railroad practices such as charges and penalties without requiring a determination of market dominance.

The railroad industry has changed dramatically in the more than three decades since Congress acted on many of these important freight rail policy issues. These proposals will help move the STB into the 21<sup>st</sup> century by making long-overdue changes that will allow the Board to more effectively promote access to competitive service and, when necessary, act as a more efficient venue to address rate and service issues between railroads and their customers.

We look forward to working with you and your colleagues to pass legislation that will ensure our members have access to reliable, affordable freight rail service to support the needs of a growing U.S. economy.

Agricultural Retailers Association

American Chemistry Council

American Farm Bureau Federation

American Forest & Paper Association

American Iron and Steel Institute

American Public Power Association  
The Chlorine Institute  
Connecticut Business and Industry Association  
Consumers United for Rail Equity  
Edison Electric Institute  
The Fertilizer Institute  
Glass Packaging Institute  
Growth Energy  
Idaho Grain Producers Association  
Institute of Scrap Recycling Industries, Inc.  
International Liquid Terminals Association  
Louisiana Chemical Association  
Louisiana Chemical Industry Alliance  
Louisiana Industrial Development Executives Association  
Manufacture Alabama  
National Association of Chemical Distributors  
National Farmers Union  
The National Industrial Transportation League  
National Rural Electric Cooperative Association  
Nebraska Wheat Board  
Plastic Pipe and Fittings Association  
PVC Pipe Association  
Renewable Fuels Association  
Resilient Floor Covering Institute  
Society of Chemical Manufacturers and Affiliates  
Steel Manufacturers Association  
Wyoming Ag Business Association  
Wyoming Wheat Marketing Commission  
Vinyl Institute