S. HRG. 113–616

FREIGHT RAIL SERVICE: IMPROVING THE PERFORMANCE OF AMERICA'S RAIL SYSTEM

HEARING

BEFORE THE

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

SEPTEMBER 10, 2014

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SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

ONE HUNDRED THIRTEENTH CONGRESS

SECOND SESSION

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CONTENTS

FREIGHT RAIL SERVICE: IMPROVING THE PERFORMANCE OF AMERICA'S RAIL SYSTEM

WEDNESDAY, SEPTEMBER 10, 2014

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
Washington, DC.

The Committee met, pursuant to notice, at 2:32 p.m. in room SR–253, Russell Senate Office Building, Hon. John D. Rockefeller IV, Chairman of the Committee, presiding.

OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER IV, U.S. SENATOR FROM WEST VIRGINIA

The CHAIRMAN. Good afternoon, everyone. We're having a hearing, which is going to be led off by two bright lights from Hollywood, and they're both from North Dakota and they both have very strong feelings. I know one of them particularly well because she's right next to me in my office, and I've never seen her without strong feelings. And John Hoeven, I know you do, too.

So in order for you to speak, you've got to try and hold it to 3 minutes, which for Senator Heitkamp is going to be really tough. But we're going to start with you, Senator.

Senator HOEVEN. Are you starting with me?

Senator HEITKAMP. Which one?

The CHAIRMAN. I don't care.

STATEMENT OF HON. JOHN HOEVEN, U.S. SENATOR FROM NORTH DAKOTA

Senator HOEVEN. Thank you, Mr. Chairman. I appreciate being here with my colleague Senator Heitkamp, and also to Ranking Member Thune from our sister state of South Dakota. Great to be here with you. Thanks to both of you for holding this hearing. I think it's very, very important.

We just had the Surface Transportation Board, Chairman Dan Elliott and the commissioners, out in Fargo, North Dakota, on this very same subject. So STB is working on the issue now, as they should be. We appreciate the Commerce Committee of the Senate doing the same. So again our thanks.

I'll try to stay within the three minutes you specified, except the timekeeper has given me five. So already I'm a little confused as to whether I get three or five.

The CHAIRMAN. That person is going to be looking for a job.

[Laughter.]

Senator HOEVEN. Understood.

It's amazing how my clock suddenly went to three.

[Laughter.]

Senator HOEVEN. I can make my point in three minutes. The point I want to make is this: The railroads need to bring more resources to meet the needs in North Dakota. We have a growing state and we're moving not only ag products right now—we've got the harvest that's under way, so we've got more coming—but with energy and with growth in other areas, manufacturing and so forth in our State, we need more capacity on the part of the railroads.

This is the point that I've made to them directly. This is the point I made to the STB. This is the point I want to make to you here today. They need to bring more cars, more locomotives, more people. And they need to build more track.

We're the fastest growing state in the country and the railroads need to bring the resources, which not only serves our shippers, but ultimately the railroads. They're going to have more business, so they'll benefit as well.

But right now the need is particularly critical for our ag shippers, both because of the current backlog and because we've got harvest under way. So we need it for coal and for oil and gas and for other commodities as well, but it is a very acute problem right now for our farmers.

Now, BNSF has put forward a very substantial resource plan to address the need. That includes $5 billion of investment this year all in for the whole system. It means about 500 locomotives, 5,000 new railcars, 125 people at least in North Dakota—excuse me, 250 more workers in North Dakota, about $400 million in additional track in North Dakota. So it is a substantial commitment. So we need to monitor that and make sure that that happens and that that investment does meet the need. They cover about, I would say, 75 percent of the volume in our state.

CP needs to make that same commitment. I've had the CEO of CP in Minot, North Dakota. We had a meeting. They talked about investing $150 million over the next year. But they have not provided us with a specific resource plan. Also, they're working on changing their ordering system for shippers ordering cars. That may work, but it's got to be fair. They can't cancel orders on shippers, and it needs to be a transparent process so that we understand how it works and so that we have accurate reporting.

So that still needs more work. That's got to happen. Time is a critical factor because, as I say, we are in harvest right now. So it is my request that the Commerce Committee here of the U.S. Senate work with the STB and with us and others, our shippers, to make sure that the railroads follow through with these resource plans, that BNSF continues literally on the track that they're headed down, which means a bigger railroad in our State. And we need to see that same kind of commitment from CP with substantially more detail and better reporting and a better ordering system, particularly for our ag shippers.

Again, I want to thank you, Mr. Chairman, and also the Ranking Member and the members of this committee, for working on this very important issue at this time. We look forward to continuing to work with you.

The CHAIRMAN. Excellent, excellent. And you came within the seven minutes precisely.

Senator Heitkamp.

STATEMENT OF HON. HEIDI HEITKAMP, U.S. SENATOR FROM NORTH DAKOTA

Senator HEITKAMP. Mr. Chairman and Ranking Member Thune——

The CHAIRMAN. Say that again.

Senator HEITKAMP.—thank you so much——

The CHAIRMAN. You called me "Mr. Chairman." What you usually call me is not repeatable.

[Laughter.]

Senator HEITKAMP. Are you going to take that off my three minutes?

The first thing I want to say is thank you. Our producers in North Dakota and I know South Dakota, because we hear from those folks just over the border and we know that this continues to be a problem in Montana as well, Minnesota as well, our producers are in dire straits. I talked to a Minnesota farmer yesterday who told me that his basis adjustment on his corn brings him down to $2.25 a bushel. His cost of production is four dollars. And half of that or at least a dollar-plus of that is because of transportation.

So we have a very real impact in North Dakota. I was with six shippers just standing around talking and those six agricultural entrepreneurs, those farmers, I will tell you told me that collectively they have suffered a half a million dollar loss to their bottom line because they haven't been able to move crops timely.

So this isn't just about who gets preference and having your feelings hurt. This is about the very real economic consequences of what's happening in farm country in our state and across the Northern Tier across the board. So we need to somehow achieve some kind of balance.

I will tell you I think our producers have been tremendously patient about what they're willing to kind of understand, given the tremendous infrastructure demands in North Dakota. But that patience is wearing thin.

So one of the problems that we've had is getting accurate information on exactly where we are in terms of the 2013 crop, what's going to happen with 2014, and how much it will cost our producers. But beyond that, the one thing that I will tell you I am most concerned about is that we will be back here in another year having the exact same discussion, only we'll have 3 years of crop that will be either on the ground or in bins in my state, with producers struggling to try and figure out how they're going to get the money to put in next year's crop. This isn't make-believe. This is real, and it's a very real problem.

So I want to applaud you for the work that you are doing here. But one thing that I do want to say is that from this process, engaging the STB as we have, I think we've come to learn that the STB does not have very many tools at its disposal for addressing shipping delays. And I'm glad that your reauthorization bill allows for STB to initially instigate an investigation without a complaint or without a lot of Senators saying we need attention to this problem. But I believe the STB could use more authority and use more

power to resolve the issues beyond demanding reports and more data.

Obviously, we want to know exactly where we're at, and we're very appreciative, especially for the resources Burlington Northern has brought to this crisis and this problem. Burlington Northern I think in many ways gets it, that this is a permanent problem, we're going to continue to ship crude by rail, we're going to continue to see bumper crops and increased yields in our state, which is going to put more stress on track time.

I believe that we need to have the same kind of reaction and the same kind of response in terms of dollars, as Senator Hoeven has said, and where those dollars are going to be deployed from CP if we're truly going to resolve this for all of the ag producers in my state.

So I want to thank you again for your attention to this issue. It's critical. It is very timely as we entering the 2014 harvest. I'd be glad to answer any questions about what we have seen in North Dakota.

The CHAIRMAN. With your permission, this [indicating] is a John Thune masterpiece and it shows—[indicating] this was the pile of wheat and this is now. But I had one of John's staff people draw in where it probably is now. In other words, it's here, but actually it's up to here, and it was probably higher before that. And you can't see the building where it's meant to be stored or anything. It's just symbolic of the kinds of things that happen in a smaller state when you depend on certain things and then the STB isn't there for you.

Senator HEITKAMP. Mr. Chairman, if I could add to that, we're looking at wheat there, but soybeans denigrate very quickly, and we've got to get them to market. So as dire as that is, as that pile of wheat is, if those were soybeans basically what you've done is you've condemned that crop. So, understanding that we go into freeze with that pile, that has huge economic consequences to those producers.

The CHAIRMAN. You've both been excellent and I totally——

Senator THUNE. Could I, while we still have them here, just quickly direct a question to them?

The CHAIRMAN. Of course.

Senator THUNE. Generally, I know you both had an STB hearing, as you mentioned, last week in North Dakota. You've been tracking this issue very carefully for a long time. The question really has to do with whether you believe action would have been taken as quickly this year by the railroads to address this crisis had it not been for Members of Congress and the STB working to help address and deal with those service challenges?

I ask that question because one of the things that we hear is that the industry is making investment, which they are, but I find it hard to believe that we would have seen the kind of action that we needed to see taken had it not been for the agency and for the attention, obviously, the Congress has paid to this issue.

Senator HOEVEN. We've been pretty aggressive on this issue, and BNSF has responded and they have given us a very detailed plan. Their CEO, Matt Rose, has been up to our state on multiple occasions and has been—even back in February when we were working

on catching up on moving fertilizer, they changed their hauling system. They assigned unit trains to move fertilizer and so forth. They came forward with a detailed resource plan. They started reporting their delinquencies on the website. They've reduced their delinquencies to about 1,000 cars right now about 10 days past due.

So they have responded. They have been proactive. That's the concern—and of course they need to continue to do more, so we're continuing to work with them.

But on the CP side we're not seeing that. Their reporting up until recently is not transparent. We can't tell what their delinquencies are. Now they're reporting about a 7,500-car delinquency, but an average of 13 weeks. So we still can't decipher exactly what that means. They're changing their ordering system. Some of our shippers are worried that they're getting orders canceled. They've talked about a $150 million resource plan this year to catch up, but we don't have the details or the time lines on that.

So what we're saying is we need—not only do we need to continue to be proactive until we get that, but so does the STB. That's why what you're doing here is on the mark, is to make sure that we're able to take, all of us, including STB, a proactive stance if somebody is not responding proactively to solve what has been a problem, an ongoing problem for a period of time.

We get that if the problem just happened somebody has to react. This has been going on long enough now that that reaction should be in place already.

Senator HEITKAMP. If I can just add a couple comments to that, I think it's a matter of whether the STB believes this is permanent, whether this is a one-time glitch in the system or whether we're going to have a need for a permanent increased buildout. I happen to believe we need a permanent increased buildout.

Given the history of siting pipelines in this country, we're going to continue to move oil on the rails. Your committees have already discussed the safety issues. But we're at 1.1 million barrels a day pretty much in North Dakota. We think that's going to grow another 20, 30 percent. Where is that oil going to move? It's going to move on the tracks. It's going to move in pipelines, but it's also still going to move on the tracks.

So we need to accommodate all the captive shippers. I believe that without the attention of the Congressional delegations in the Northern Tier, without the focus of the STB at least as it relates to one railroad, we would not be as far as where we are. But I will tell you that the big concern that I have is that still what we're hearing is they don't get that this is a permanent problem and needs huge amounts of capital infusion in order to solve it.

The CHAIRMAN. I thank you. They will claim that they don't have the money and John Thune and I will jump up and down vigorously and protest that they do.

Thank you both for coming.

Senator HEITKAMP. Thank you, Mr. Chairman.

The CHAIRMAN. You made excellent presentations.

Senator HOEVEN. Thanks to the Committee.

The CHAIRMAN. As we all knew you would.

In the regular order now. Before I begin, I want to heartily and vigorously commend Senator Thune for his leadership on rail serv-

ice issues. It's one of those instances where we each come from two small states and we have not that great a variety of major products, and in each case we're watching our products get clobbered by a system which nobody chooses to either initiate improvements or to regulate improvements.

I know these past several months have been really hard on your constituents, Senator Thune. I look forward to continuing to work easily and well with you, as we have in the past.

I initially took an interest in rail policy after hearing from West Virginia shippers who expressed frustration with high rates and poor service. That began 30 years ago and my progress has been measured in quarter-inch segments. That's how much progress we've made on this. They have been highly frustrated about high rates and poor service. What you probably don't know, however, is that these complaints were in place 30 years ago, as they are today. And yet here we are today trying to confront the same issues that have plagued shippers for several decades.

The rail industry looks far different than it did 30 years ago. Competition in the industry has decreased. Before enactment of the Staggers Act in 1980, there were approximately 40 large railroad companies. Today that figure would be closer to seven, so competition is down, and profits are up.

In passing the Staggers Act, Congress recognized the need for a robust freight rail system. The Staggers Act was a big favor in many respects to the industry because it recognized that they had to spend capital in order to be able to do the system properly. Well, they got the capital, but they haven't necessarily used it properly.

That law made sweeping regulatory changes which gave the railroad industry an opportunity to improve its finances and the ability to compete against other transportation modes. So that part they like a lot. The Staggers Act also sought to provide, and I quote, "the opportunity for railroads to obtain adequate earnings to restore, maintain, and improve their physical facilities while achieving the financial stability of the national rail system." Well, make no mistake; in that regard, the Staggers Act has worked.

In 2010, I released a Commerce Committee majority staff report which found four Class I railroads that dominate the railroad rail shipping market and that they are achieving returns on revenue and recognizing operating ratios that rank them among the most profitable businesses in the entire United States economy.

I released a follow-up majority staff report last November which corroborated the 2010 findings: that freight railroads continue to set new financial records on a quarterly basis, and these companies continue to raise their dividends and buy back record amounts of stock. So cash is not the problem.

But not everybody is as well as they are. In this world we're meant to have sort of a balance, those who transport, those who are shipping. There has to be some kind of balance. The STB hasn't found a way to do it. We can't get anything to do it to pass. But again, not everybody is doing so well. Many of the witnesses here today have struggled to remain competitive as rail service declines and rates increase, and the situation continues to get worse.

For several months now, the agricultural, coal, chemical, and automotive industries, among others, have been experiencing seri-

ous service delays on rail, sometimes on the order of months. You can't blame everything on the winter. You just can't do that, sorry. It's not just industry. Passengers are also feeling the effects. Amtrak's long distance trains around the country are being severely delayed.

Whether it has been extreme winter weather, a surge in Bakken crude oil production, a recovering economy, or a combination of factors, we must do more to move our grain to market, coal to power plants, automobiles to consumers, and passengers to their destinations than we currently are. For many shippers this is their livelihood and it's too important to not do anything. Therefore I look forward to hearing from the railroads on what is being done to alleviate these freight logjams as soon as possible, and I hope I don't hear the phrase "We need more money in order to build better infrastructure for the future," because I already have that, buddy.

Don't get me wrong. That's incredibly important for our Nation's long-term economic prosperity. But we need all hands on deck to address this problem now.

The Surface Transportation Board has taken some steps to address these issues, especially the service hardships faced by many shippers in the last year. Having talked to constituents in my home state and Ranking Member Thune, I know it has been truly appreciated. However, these efforts—I believe STB needs to change its fundamental perspective. We know that the railroads are financially strong. It's time for the STB to refocus its mission on providing regulatory balance to support the businesses and the people who use the rail network.

That is why earlier this week I introduced, along with my good friend and distinguished Ranking Member John Thune, a bill aimed at increasing the efficiency and effectiveness of the board. It's a good bill. That means it probably won't pass. I say that with practiced cynicism. But it's still a good bill and it will pass. I look forward to working with interested stakeholders as we move forward this legislation.

This is a huge, huge topic for me. It's sort of a matter of integrity of our states, Ranking Member Thune, and the floor is yours.

STATEMENT OF HON. JOHN THUNE, U.S. SENATOR FROM SOUTH DAKOTA

Senator THUNE. Thank you, Mr. Chairman. Thanks for holding the hearing and I appreciate hearing from our colleagues in North Dakota. I only wish we could figure out a way to directionally drill up into the oil in North Dakota to bring it down into South Dakota. But I have often said that North Dakota has oil, Wyoming has coal, Montana has some of both, and in South Dakota we have pheasants. But we also raise a lot of agricultural commodities. We raise corn, wheat, and soybeans, and we have to have a way to get that to the marketplace, and that requires railroads. It's the most efficient way to move freight like agricultural commodities.

Our state has been so interested over the years in this subject that back in the late 1970s when the railroads were abandoning South Dakota, the Milwaukee Road and the Chicago and North Western Railroad, our state had to take some pretty drastic action. They imposed a temporary sales tax and actually acquired the rail-

road, not the power and the rolling stock, but the track, the rails, the ties, the right of way, and all that, and then contracted for operations with the Burlington Northern, at that time Burlington Northern, now BNSF Railroad, to operate that railroad.

So it has been since then privatized to the Burlington Northern. But it's an example, I think, of what states like ours have to do to maintain viable railroad and freight transportation. As I will mention, I did serve as State Rail Director back in the 1990s and have an interest in railroading that goes back a lot farther than that. My grandfather on my dad's side came here from Norway back in 1906 and worked on building the railroads as they were moving across South Dakota, and my grandfather on my mom's side actually was killed in a railroading accident. He was a railroader as well.

So it's very important to the history of our state. It's very important to the present of our state and it's going to be very important to the future of our state, because our number one industry is agriculture.

So I appreciate you holding this hearing. I want to thank all the witnesses for being here and willing to testify today. I especially want to thank Jerry Cope from Dakota Mill and Grain in Rapid City, South Dakota, who will be testifying on behalf of the National and South Dakota Feed Associations.

Since the beginning of this year, South Dakota and many other states have been particularly challenged by rail service delays, network congestion, and locomotive and railcar shortages which have affected a wide range of shippers, including the agricultural community. From farmers and grain elevators to auto manufacturers, energy providers, retailers of all kinds, rail transportation challenges have affected the economy nationwide. Higher transportation costs can also increase the cost of products to market and at the point of export, decreasing our global competitiveness.

As a former South Dakota rail director under the late Governor George S. Mickelson in the early 1990s, I know firsthand the importance of effective rail access for not only agricultural producers, but other shippers. In all my years of working on rail matters, I've never seen producers more concerned than they are now regarding the restricted capability to move grain to the marketplace. It's my hope that this hearing will continue to bring attention to the rail service backlog that South Dakota shippers and shippers nationwide are currently facing and encourage continued discussion about both short-term and long-term solutions to address these issues.

I also want to know that not all of the blame should be placed on the rail carriers, because some events have been outside of their control. That being said, these issues did not arise overnight and some railroads have been better than others at addressing the challenge head-on.

In South Dakota alone, this year's harvest and what remains of last year's is expected to exceed the statewide grain storage capacity by as much as 18 percent. Grain has already been stored on the ground, as you noted from this particular picture right here. That was the wheat harvest that occurred earlier this year. What's so alarming about that photo is that it happened early in the crop

year and we've got much larger corn and soybean harvests coming on this fall.

Projections from the U.S. Department of Agriculture estimate that South Dakota's 2014 wheat harvest is going to be at 108 million bushels, a 14 percent increase over the three-year average, and soybean and corn crops are also expected to be unusually large, potentially record-setting. Even with these high yields the increased negative basis due to inadequate transportation and the inability to timely move these crops from grain-handlers could result in more than $300 million in lost value to South Dakota corn, wheat, and soybean producers.

As winter approaches, ethanol plants will also become vulnerable to rail delays. Because of the nature of ethanol production, plants cannot simply be shut down during winter months. South Dakota ethanol producers, like Glacial Lakes and Redfield, rely on adequate services to prevent pipes from freezing and major structural damage to their operations.

In addition, South Dakota's Big Stone Power plant has indicated that they're running below capacity because they simply can't get enough coal to fuel the most efficient operation. Coal stockpiles are alarmingly low and rail service simply hasn't provided adequate coal supplies.

The Surface Transportation Board has taken several steps to address these rail service challenges, including issuing a number of orders designed to increase transparency. On June 20, the Board issued a grain order to provide additional transparency and ensure both Canadian Pacific and Burlington Northern Santa Fe Railroads had plans for reducing their grain car backlogs.

While the STB has been working hard to address the current rail service issues facing South Dakota and other states in the Northern Tier of the United States, this crisis has highlighted some of the inefficiencies that currently exist at the STB. On Monday, Chairman Rockefeller and I introduced Senate Bill 2777, the Surface Transportation Board Reauthorization Act, which is a first step in addressing these inefficiencies so that the STB can better assist shippers and railroads when problems arise.

This hearing marks a continuation of my ongoing efforts to work not only with the STB, but with the railroads and the shippers directly, to address the challenges that agricultural producers and other businesses have experienced beginning last winter when the harsh cold snarled the movement of trains and caused the significant delays that shippers and railroads are still working to remedy.

Mr. Chairman, thank you, and thanks to our witnesses for being here today and testifying and having what I think is a very important hearing, particularly in light of the economic impacts and consequences that will occur if we aren't able to effectively and in a timely way move the harvest that's coming this fall.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let's go to our panel: Mr. Arthur Neal—are we all in place here and I can just go right down the list—is the Deputy Administrator of Transportation and Marketing Programs at the Agricultural Marketing Service, U.S. Department of Agriculture. Mr. Jerry Cope, who I think is not a 100 percent happy person on this par-

ticular subject, is the Vice President of Marketing at the Dakota Mill and Grain, Inc. You indicated that's a South Dakota company.

Mr. Calvin Dooley is President and Chief Executive Officer of the American Chemistry Council. Mr. Shane Karr; Mr. Karr is the President of Federal Government Affairs of The Alliance of Automobile Manufacturers; and Mr. Ed Hamberger is President and Chief Executive Officer of the Association of American Railroads.

So let's start, Mr. Neal, with you.

STATEMENT OF ARTHUR NEAL, DEPUTY ADMINISTRATOR, TRANSPORTATION AND MARKETING PROGRAM, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Mr. NEAL. Chairman Rockefeller, Ranking Member Thune, and members of the Committee: thank you for the opportunity to submit this statement on behalf of the U.S. Department of Agriculture for today's hearing on "Freight Rail Service: Improving the Performance of America's Rail System." It is our hope that the information we provide will prove helpful as you examine the current state of U.S. freight rail service.

I serve as the Deputy Administrator of the Transportation and Marketing Program for USDA's Agricultural Marketing Service, whose mission is to facilitate the efficient, fair marketing of U.S. agricultural products, including food, fiber, and specialty crops. Within AMS, the Transportation Services Division serves as the expert source for economic analysis on agricultural transportation from farm to markets. As a part of USDA, we inform, represent, and assist agricultural shippers and government policymakers through market reports, regulatory representation, economic analysis, transportation disruption reports, technical assistance, outreach to stakeholders, and responding to inquiries.

AMS does not have regulatory authority over transportation issues. However, the Secretary of Agriculture is charged with the responsibility under the Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 to represent the interests of agricultural producers and shippers in improving the transportation services and facilities, among other things by initiating and participating in Surface Transportation Board proceedings involving rates, charges, tariffs, practices, and services.

Since October 2013, AMS has reported that railroad service to railroad grain shippers has been inadequate, characterized by long delays, missed shipments, burgeoning backlogs, and higher costs. The problems have centered on Canadian Pacific Railway Company and BNSF Railway Company. Service problems have been widespread in Minnesota, Montana, North Dakota, and South Dakota. As a result, STB held a public hearing on April 10, 2014, to hear how shippers have been impacted and how BNSF and CP railroad executives will address the problems.

USDA submitted comments about adverse impacts on grain shippers, including grain piling up on the ground outside elevators awaiting rail transportation and some grain shippers either paying ocean vessel demurrage charges or missing vessels that departed before the delayed grain shipments could be loaded.

On June 20, 2014, based on concerns about the slow pace of progress, STB directed CP and BNSF to publicly file plans to resolve their backlogs of grain car orders, as well as provide weekly status reports until the backlogs were eliminated.

Last week, STB held a field hearing in Fargo, North Dakota, to further review the current state of the issue. Based on the testimony provided by nine panels and the questions and answers between STB and panelists, issues still remain with railcar shortages and service delays.

USDA's current analysis indicates grain production and grain stocks this harvest season are expected to exceed permanent grain storage capacity by an estimated 694 million bushels in seven States, which include South Dakota, Indiana, Missouri, Illinois, Ohio, Michigan, and Kentucky. This level of storage capacity shortage is higher than any year since 2010, which had an 805 million bushel shortfall in permanent storage capacity distributed throughout the top 14 grain-producing states. Because 2013 grain is reportedly still in storage and waiting to be moved before the 2014 harvest, it is critical to move as much of the 2013 grain crop as quickly and efficiently as possible.

USDA is concerned that railroad service to grain shippers may not recover in time for the 2014 harvest. Should this happen, grain elevators could run out of storage capacity, grain could be stored on the ground and run the risk of spoiling, and the costs of inadequate rail service would continue to accrue.

In conclusion, U.S. agricultural producers rely on a transportation network that is reliable, efficient, and safe. USDA will continue to monitor and report on the rail challenges faced by U.S. agricultural producers and shippers, and I would be happy to answer any questions on the record that you may have.

Thank you.

[The prepared statement of Mr. Neal follows:]

PREPARED STATEMENT OF ARTHUR NEAL, DEPUTY ADMINISTRATOR, TRANSPORTATION AND MARKETING PROGRAM, AGRICULTURAL MARKETING SERVICE, U.S. DEPARTMENT OF AGRICULTURE

Chairman Rockefeller, Ranking Member Thune, and members of the Committee, thank you for the opportunity to submit this statement on behalf of the U.S. Department of Agriculture (USDA) for today's hearing on "Freight Rail Service: Improving the Performance of America's Rail System." It is our hope that the information we provide will prove helpful as you examine the current state of U.S. freight rail service.

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STB is the agency that Congress charged with resolving railroad rate and service disputes and reviewing proposed railroad mergers. STB is an independent regulatory adjudicatory agency, although it is administratively affiliated with the Department of Transportation.

A Building Problem

Since October 2013, AMS has reported that railroad service to U.S. grain shippers has been inadequate, characterized by long delays, missed shipments, burgeoning backlogs, and higher costs. The problems have centered on Canadian Pacific Railway Company (CP) and BNSF Railway Company (BNSF). Service problems have been widespread in Minnesota, Montana, North Dakota, and South Dakota.

As a result, STB held a public hearing on April 10, 2014, to hear how shippers have been impacted and how BNSF and CP railroad executives will address the problems. USDA submitted comments about adverse impacts on grain shippers, including grain piling up on the ground outside elevators awaiting rail transportation, and some grain shippers either paying ocean vessel demurrage charges or missing vessels that departed before the delayed grain shipments could be loaded. Later in April, STB issued an order to the rail companies to reduce the backlog of fertilizer deliveries in order to meet spring planting timeframes.

On June 20, 2014, based on concerns about the slow pace of progress, STB directed CP and BNSF to publicly file plans to resolve their backlogs of grain car orders, as well as provide weekly status reports until the backlogs are eliminated.

Last week, STB held a field hearing in Fargo, North Dakota, to further review the current state of the issue. Based on the testimony provided by nine panels and the questions and answers between STB and panelists, issues remain with railcar shortages and service delays. As stated previously, STB is the only regulatory body with the authority to act on freight rail economic issues. During the field hearing, several participants requested that the STB issue a service order. Under the Interstate Commerce Commission Termination Act (ICCTA), the Board has the authority to take temporary action to restore rail service, including direct service orders on the movement of traffic, requiring joint or common use of railroad facilities, or prescribing temporary routes establishing priority preference.

Current Situation

USDA's current analysis indicates grain production and grain stocks this harvest season are expected to exceed permanent grain storage capacity by an estimated 694 million bushels (about 3.5 percent of the expected U.S. record harvest) in seven states, which include—in decreasing order of storage capacity shortage—South Dakota, Indiana, Missouri, Illinois, Ohio, Michigan, and Kentucky. This quantity is the equivalent of 173,500 jumbo covered-hopper rail cars, 13,219 barges, 881 15-barge tows, or 762,600 truckloads. Some of the impact could be mitigated by temporary storage; under special circumstances with unusually large crops, USDA sometimes allows emergency and temporary storage of grain, with the storing entity continuing to be financially responsible for the quantity and quality of the grain.

South Dakota could be short of grain storage capacity by 197 million bushels (20 percent of storage capacity); it is estimated to have the greatest grain storage shortage in addition to continued rail service delays due to competition for rail capacity. Indiana is estimated to be short by 196 million bushels (15 percent), Missouri by 109 million bushels (15 percent), Illinois by 83 million bushels (3 percent), Ohio by 55 million bushels (6 percent), Michigan by 33 million bushels (7 percent), and Kentucky by 20 million bushels (7 percent).

These levels of storage capacity shortage are higher than any year since 2010, which had an 805 million bushel shortfall in permanent storage capacity distributed throughout the top 14 grain-producing states. Because 2013 grain is reportedly still in storage and waiting to be moved before the 2014 harvest, it is critical to move as much of the 2013 grain crop as quickly and efficiently as possible.

Of particular concern is the area served by the former Dakota, Minnesota, and Eastern Railroad (DM&E) that traverses South Dakota between Tracy, MN, and Rapid City, SD, and provides the main rail service to the state. This section of track was purchased by CP in 2007 and sold on May 31, 2014, to Genessee & Wyoming Inc. (G&W). G&W created a new short line railroad, the Rapid City, Pierre, and Eastern Railroad (RCP&E), to serve this section of track, which includes many grain shippers. AMS does not have access to the terms of the sale but understands that CP agreed to provide a certain number of grain cars and locomotives to RCP&E during a transitional period after the sale.

USDA is concerned that railroad service to grain shippers may not recover in time for harvest of the 2014 crops. Should this happen, grain elevators could run out of

storage capacity, grain stored on the ground would run the risk of spoiling, and the costs of inadequate rail service would continue to accrue.

According to its September 5 report to STB, BNSF had 2,231 grain cars past due an average of 8.9 days, up 10 percent from the 2,029 it reported the prior week. Forty-two percent of the past due grain cars are located in North Dakota and are 8 days late. BNSF also reported 599 past due grain cars in Montana and 268 in South Dakota. Canadian Pacific (CP) reports that customers have removed 23,968 open requests for grain cars from its system, leaving open requests of 6,762 as of September 5. Grain car requests in North Dakota were reported to be 12.54 weeks late, while those in Minnesota were 18.76 weeks late. CP fulfilled 2,331 grain car orders during the week and reported that new requests for grain cars totaled 2,010. Of the fulfilled orders, only 384 grain car orders were moved on the Rapid City, Pierre & Eastern Railroad (RCP&E) line in South Dakota.

This lack of rail capacity is having effects on other U.S. transportation modes. For example, barge operators expect strong demand for their services during this year's harvest, especially in October, when there is widespread harvesting of the corn and soybean crops. As of September 2, the average barge rate from the Illinois River to the Mississippi River Gulf for October delivery was 773 percent of tariff ($35.84 per ton), 43 percent higher than the 5-year average. The October St. Louis barge rate was 763 percent of tariff ($30.42 per ton), 56 percent higher than the 5-year average. Grain shippers may decide to buy barge freight for October now, or wait until then and buy at the weekly rate, which could be higher or lower than the October rate being quoted now. The last time rates exceeded these levels was in 2008, when flooding interfered with barge logistics on the Upper Mississippi and Illinois Rivers.

On a positive note, on August 27, 2014, the Port of Vancouver and the North Dakota Department of Agriculture signed a memorandum of understanding (MOU) to ship products such as lumber, paper, cement, and fertilizer east to North Dakota and return them to the Port filled with North Dakota products such as wheat, corn, soybeans, peas, flax, and other specialty crops. This MOU addresses railcars that are often returned to the Port empty and helps alleviate the railcar shortage in North Dakota. The Port has indicated it plans to purchase 180 railcars and ship two shuttle trains per month, with the first full railcars returning to the Port from North Dakota as early as mid-September. The Port is working with BNSF Railway on the project and may expand service under the MOU if demand grows.

Conclusion

U.S. agricultural producers rely on a transportation network that is reliable, efficient, and safe. USDA will continue to monitor and report on the rail challenges faced by U.S. agricultural producers and shippers. I would be happy to answer any questions for the record you may have. Thank you.

The CHAIRMAN. Thank you, Mr. Neal.

Mr. Jerry Cope, as I indicated, Vice President of Marketing, Dakota Mill and Grain, South Dakota.

STATEMENT OF JERRY D. COPE, PRESIDENT, SOUTH DAKOTA GRAIN AND FEED ASSOCIATION AND MARKETING MANAGER, DAKOTA MILL & GRAIN

Mr. COPE. Thank you, Chairman Rockefeller, Ranking Member Thune, members of the Committee. I'm honored to be here on behalf of South Dakota Grain and Feed Association, the company I work for, and the National Grain and Feed Association.

South Dakota and ag are very closely linked. It's our number one industry. We rank in the top ten of the major crops produced in the United States. However, our state is landlocked. The railroads are our lifeline, our link to the economy. Right now we're served by two railroads, the Burlington Northern Santa Fe and the Rapid City, Pierre, and Eastern. Without them, our farmers don't have an economy, don't have a life.

In my submitted testimony I talked about where we were, where we are today, and where we want to go, where we think we need to be. But we recognize as an organization that if we're going to

offer ideas for the future we have a responsibility to also offer ideas on how to get there.

Last winter railroad service was decreasing over time and by spring we were faced with an inventory of twice the normal both on and off farm as we faced a record harvest, which we're experiencing in South Dakota right now. What this meant to farmers is cash-flow. We had calls from banks asking when the railroad was coming because they had farmers with notes due.

In addition to that, as that went on the railroads were actually paid for poor performance. How that happened was there's a secondary market in the Burlington Northern and it ended up equaling the cost of freight to get from South Dakota to the Pacific Northwest. It ended up, once you added the car costs along with the tariff rate the cost from South Dakota to the Pacific Northwest was twice what that same bushel of grain would cost to get from the Pacific Northwest to Korea.

In the case of the Canadian Pacific, they did sell the line to Rapid City, Pierre, and Eastern that was created in May, and that was actually a bit of good news for us. The Rapid City, Pierre, and Eastern has been very forthcoming and is putting forth a lot of effort to clean out our backlog. But they still have to hand off to the Canadian Pacific, which is still in a state of disarray.

Today we're still faced with that backlog, both in the elevator and in farmers at home. I was talking to one of my fellow elevators on the way out. He told me, he said: You know, if all I get is the same amount of cars I've gotten every week through next May, I don't have to buy another bushel of grain; all I'll do is empty out my elevator, with one more penny of business for my customers or for myself. So the cash-flow still continues.

When it comes to things like quality, we're having some problems with South Dakota wheat, but if elevators are full we don't have any room to blend or clean that grain, so that grain faces a risk of not even being marketable.

We could invest in storage, but the problem we run into with that is investments of millions of dollars are made based on railroad predictability. If we have to weigh the costs versus the risk and we can't rely on the railroad, then do we actually invest the dollars?

The reality today is that BN is doing better. They're not where we think we need them to be and we think we can solve that with some reporting metrics. The CP, unfortunately, committed to providing power and cars to the RCP&E, but elected not to do it until the spotlight was shown on them by the STB.

For the future, what we think we need is transparency. We don't want to know the BN's day to day business or the CP's, but we need some pertinent facts and reporting. One thing that the BN has done, it has started to report turn times. What that means is when cars go from origin to destination and back. Now, they're reporting good turn times, except we've asked them to dig a little deeper and report turn times out of South Dakota and North Dakota to PNW and back, because their turn times that they're reporting are actually a little bit better than we're experiencing because they're lumping in stuff in Washington and western Montana that's closer. So that number is not quite true.

One thing that's happened is freight is a management tool for the elevators, but now it's become a hard limit on the amount of business we can actually do. So the effects are twofold, to the farmers and to the elevator.

We have a saying in our company: The problem with communication is the illusion that it actually happens. That sounds tongue in cheek, but it's really not, because without that clear communication and honest and factual and real-time communication we don't know what the other side is doing, which leads to a lot of uncertainty. We need the railroads at the table and we need them to have skin in the game. What I mean by that is if we get charged for not loading cars is it reasonable that they should suffer no consequences for failing to deliver?

The Surface Transportation Board reauthorization is a good thing. The board's ability to communicate to one another and having a broader base aboard is common sense in today's day and age, and to be able to investigate issues without a formal complaint will help the shippers.

In conclusion, I want to assure you we are not asking for government regulation, we're not asking for preferential treatment for grain. We want to make sure that we're not marginalized, but we need all the stakeholders—the commercials, the railroads, the government, the farmers—to stand at the crossroads, identify an action plan, decide how they're going to measure that plan, assess the measurements, and then move forward from there.

Chairman, I thank you for this opportunity today and I'd be glad to answer any questions.

[The prepared statement of Mr. Cope follows:]

PREPARED STATEMENT OF JERRY D. COPE, PRESIDENT, SOUTH DAKOTA GRAIN AND FEED ASSOCIATION AND MARKETING MANAGER, DAKOTA MILL & GRAIN

Introduction

Thank you Chairman Rockefeller, Ranking Member Senator Thune and members of the Committee for the opportunity to testify today. My name is Jerry Cope, and I am the President of the South Dakota Grain and Feed Association and am also the Marketing Manager for Dakota Mill & Grain. The South Dakota Grain and Feed Association (SDGFA) is a voluntary membership trade association that represents the grain dealers and feed manufacturers in South Dakota. SDGFA has over 300 members consisting of grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the Nation's grain, feed and processing industry. SDGFA is also one of 26 state and regional affiliates of the National Grain and Feed Association (NGFA). Dakota Mill & Grain is a private grain and agronomy company headquartered in Rapid City, South Dakota with 9 locations and over 500 customers in western and central South Dakota who primarily farm, ranch, feed livestock. I am testifying today on behalf of South Dakota Grain and Feed Association but also serve on the NGFA's Board of Directors and its Rail Shipper/Receiver Committee.

Agriculture is South Dakota's number one industry and we rank in the top ten in the Nation in nearly all crops. We are a landlocked state with only 2 rail carriers to access both domestic and foreign markets for the many agricultural products our farm customers produce. The Burlington Northern Santa Fe (BNSF) runs east to west across the top of South Dakota and north to south from Aberdeen in the northeast to Sioux City, IA. The newly formed Rapid City, Pierre & Eastern (RCP&E), a short line subsidiary of the Genesee and Wyoming (G&W), runs east to west through the center of South Dakota from Brookings to Rapid City. The RCP&E terminates in Tracy, MN, just east of the South Dakota and Minnesota border where it interchanges with the Canadian Pacific (CP). The RCP&E was formed by the sale of the old Dakota Minnesota & Eastern line from the Canadian Pacific (CP) to G&W

in May of 2014. Destination markets are often beyond the practical reach of trucks making rail service a critical lifeline for the livelihood and economic well-being of our state. South Dakota exports the majority of the crop production by rail to terminals in the Pacific Northwest, the Gulf of Mexico, livestock feeders in the Southwest and flour mills in the eastern half of the United States. Approximately 45 percent of the corn grown in SD is processed in state. The refined ethanol and corn by-products are exported by rail to population centers in the west and east and the by-products to feed markets across the country. Over 75 percent of the wheat, soybeans, sorghum, sunflowers and birdseed grains are exported by rail either to domestic markets or for export.

Rail service disruptions, delays and bottlenecks began last fall and worsened over the winter. These service disruptions over the past 12 months have impacted our state greatly, and made it necessary to identify and address problems in our rail service. Actions by the Surface Transportation Board (STB), Senator Thune, our affiliated state and national organizations have served to bring this issue to the forefront and to hold railroads accountable for restoring service to acceptable levels.

Our industry group believes that if we are going to voice concerns then we also have a responsibility to cite relevant facts on where we were before the service meltdown began last fall, where we are today, and offer a roadmap of what is wanted, expected and needed, as well as provide suggestions on how to improve rail service.

Where we were

To begin, I would like to review where we were before we began to experience serious rail service disruptions last fall—well before the harsh winter weather—and before the Surface Transportation Board (STB) initiated its rail service proceeding (EP 724) in April to look into the matter. I believe my company was typical of others in the state. We were behind by over one thousand cars, leaving farmers and elevators backlogged with over twice the normal grain inventory as we approached spring planting. South Dakota typically carries over about 20 percent of the wheat produced in a given year; 5 percent of the corn and 5 percent of the soybeans. Going into the spring the inventories both on and off farm were 25 percent or more of wheat and 20 percent of the corn. We had almost no regular communication with the railroads and if there was a plan to solve the backlog, it was not one that we could identify. The major carrier in the state, BNSF sells freight commitments in a primary market auction and shippers needing the freight buy it to procure a "deck" of freight. They often then trade the freight in a secondary market to manage storage space at elevators; timing of harvest; farmer selling and sales logistics. All types and sizes of grain rail shipments are sold in the primary freight auctions. Most common is shuttle or 110-car commitments, but larger elevators also utilize trains called Domestic Efficiency Trains (DET) which are 110 car units of usually wheat that are be loaded at one origin then split into multiple, smaller units at a central point for distribution to specific flour mills. Smaller elevators can also participate by utilizing 24-car units and single cars. Historically, the secondary market for this freight trades in a range of 15 cents a bushel below tariff to 50 cents per bushel above. However, last spring and into the summer, Secondary Freight car costs were roughly equal to the freight rate. $5,000 per car or a $1.25 per bushel was paid for cars—doubling the freight rate for corn shipped to the Pacific Northwest. These costs had escalated over time and elevators absorbed some of the cost along the way but eventually the secondary freight market costs were reflected in a lower basis and cash price paid farmers in South Dakota and the upper Midwest of 50-cents per bushel or more. Wheat costs were 75-cents to a $1.50 per bushel in lost opportunity to sell for immediate flour mill demand which required availability of railroad cars versus selling for delivery two months or more down the road. Additional risk was that exporters, processors and flour mills were depending on timely delivery of product. Sellers risked the cost of buying in obligations and end users risked running out of product. Ironically, the secondary freight car market rewarded carriers for poor performance—the bigger the delay, the larger premium was for freight. Railroads will argue that day-to-day secondary freight market premiums do not go to them but to the owner of the freight and they are right. However, the urgency to secure adequate freight for this fall's harvest resulted in some BNSF shuttles selling for up to a $2.5 million to $3 million dollar premium in the shuttle auctions. To date, total premiums paid to BNSF in auctions for their freight beginning this fall is over $160 million (table 1)—all money that DID go the railroad. Through this crisis, there was little or no communication from the railroads. Simply put, we were without a voice.

Table 1

BNSF YEAR LONG SHUTTLE AUCTIONS

Bid is for 110-car shuttle to turn between origin and destination as many times as possible in one year.
Total cars during the year is based on the number of turns.
Bids are shown in increments of the lowest and highest bid accepted

Number Of cars at:	1.5	turns per month:	1980
Number Of cars at:	2	turns per month:	2640
Number Of cars at:	2.5	turns per month:	3300

						Minimum Shuttle Auction revenue at	Cost per bushel at Cycles per month				Maximum Shuttle Auction revenue at	Cost per bushel at Cycles per month		
Date	Shuttles Sold	Duration	Starting Period	Bids	Low bid Price / shuttle	Low bid	1.5	2	2.5	High bid Price / shuttle	High Bid	1.5	2	2.5
7/16/14	3	Year Long	FP Nov	24	$2,840,640	**$8,521,920**	$0.36	$0.27	$0.22	$2,961,640	**$8,884,920**	$0.37	$0.28	$0.22
7/9/14	3	Year Long	LP Aug	26	$3,100,074	**$9,300,222**	$0.39	$0.29	$0.23	$3,457,001	**$10,371,003**	$0.44	$0.33	$0.26
7/2/14	3	Year Long	FP Sep	23	$2,653,113	**$7,959,339**	$0.33	$0.25	$0.20	$3,062,400	**$9,187,200**	$0.39	$0.29	$0.23
6/25/14	5	Year Long	LP Sep	35	$2,400,227	**$12,001,135**	$0.30	$0.23	$0.18	$2,446,640	**$12,233,200**	$0.31	$0.23	$0.19
6/18/14	5	Year Long	MP Sep	39	$2,183,280	**$10,916,400**	$0.28	$0.21	$0.17	$2,246,640	**$11,233,200**	$0.28	$0.21	$0.17
6/9/14	5	Year Long	MP Sep	43	$1,737,201	**$8,686,005**	$0.22	$0.16	$0.13	$1,811,040	**$9,055,200**	$0.23	$0.17	$0.14
6/2/14	5	Year Long	FP Sep	43	$1,533,000	**$7,665,000**	$0.19	$0.15	$0.12	$1,733,000	**$8,665,000**	$0.22	$0.16	$0.13
5/27/14	5	Year Long	FP Sep	41	$1,501,001	**$7,505,005**	$0.19	$0.14	$0.11	$1,821,555	**$9,107,775**	$0.23	$0.17	$0.14
5/19/14	5	Year Long	FP Oct	40	$1,651,000	**$8,255,000**	$0.21	$0.16	$0.13	$1,762,101	**$8,810,505**	$0.22	$0.17	$0.13
5/12/14	5	Year Long	FP Oct	38	$1,780,000	**$8,900,000**	$0.22	$0.17	$0.13	$1,799,999	**$8,999,995**	$0.23	$0.17	$0.14
5/5/14	5	Year Long	FP Oct	45	$2,100,005	**$10,500,025**	$0.27	$0.20	$0.16					
4/28/14	5	Year Long	FP Oct	44	$1,608,200	**$8,041,000**	$0.20	$0.15	$0.12	$2,316,300	**$11,581,500**	$0.29	$0.22	$0.18
1/27/14	30		FP May	79	$217,800	**$6,534,000**				$377,000	**$11,310,000**			
	3300 cars total. No cycle times						$0.50							
1/21/14	10		FP April	30	$304,920	**$3,049,200**				$575,888	**$5,758,880**			
	1100 cars total						$0.69							
	20		FP May	52	$146,520	**$2,930,400**				$440,888	**$440,888**			
	2200 cars total. No cycle times						$0.33							
					Shuttles	**$120,764,651**					**$125,639,266**			
						Potential Minimum Revenue					**Potential Maximum Revenue**			

BNSF DOMESTIC EFFICIENCY TRAIN (DET) AUCTIONS

Bid is based on 96 cars per train (24 X 4) less $200 per car refundable prepay.
Bids are shown in increments of the lowest and highest bid accepted

Date	DET's Sold	Starting Period	Bids	Price / DET	Minimum DET Auction Revenue at Low bid	Number of cars sold	Cost per bushel	Price / DET	Maximum DET Auction Revenue at High bid	Cost per bushel
8/4/14	3	October	13	$376,010	**$1,128,030**	330	$1.02	$406,340	**$1,219,020**	$1.10
	3	November	12	$355,005	**$1,065,015**	330	$0.96	$371,000	**$1,113,000**	$1.00
	3	December	13	$355,850	**$1,067,550**	330	$0.96			
7/28/14	5	September	32	$408,430	**$2,042,150**	550	$1.11	$408,540	**$2,042,700**	$1.11
	9	October	46	$375,540	**$3,379,860**	990	$1.02	$408,540	**$3,676,860**	$1.11
	9	November	38	$341,220	**$3,070,980**	990	$0.92	$353,540	**$3,181,860**	$0.95
	9	December	39	$321,000	**$2,889,000**	990	$0.86	$335,830	**$3,022,470**	$0.90
7/14/14	6	September	61	$280,500	**$1,683,000**	660	$0.75	$324,500	**$1,947,000**	$0.87
					$16,325,585				**$16,202,910**	
					Potential Minimum Revenue				**Potential Maximum Revenue**	

Table 1—Continued

BNSF 24-CAR UNIT AUCTIONS

Bid is based on 24 cars per train less $200 per car refundable prepay.
Bids are shown in increments of the lowest and highest bid accepted

Date	Units Sold	Starting Period	Bids	Price / Unit	Minimum Unit Auction Revenue at Low bid	Number of cars sold	Cost per bushel	Price / Unit	Maximum Unit Auction Revenue at High bid	Cost per bushel
8/12/14	30	November	13	$16,348	**$490,440**	720	$0.13	$55,200	**$1,656,000**	$0.58
	30	December	12	$14,019	**$420,570**	720	$0.11	$55,200	**$1,656,000**	$0.58
8/5/14	6	October	60	$68,500	**$411,000**	144	$0.73	$86,520	**$519,120**	$0.93
	30	November	141	$49,848	**$1,495,440**	720	$0.51	$79,368	**$2,381,040**	$0.85
	30	December	91	$45,048	**$1,351,440**	720	$0.46	$65,640	**$1,969,200**	$0.69
7/29/14	12	October	126	$82,032	**$984,384**	288	$0.88	$86,832	**$1,041,984**	$0.94
	30	November	187	$76,829	**$2,304,870**	720	$0.82	$79,567	**$2,387,010**	$0.85
	30	December	152	$65,555	**$1,966,650**	720	$0.69	$72,984	**$2,189,520**	$0.78
7/22/14	21	September	127	$72,264	**$1,517,544**	504	$0.77	$81,888	**$1,719,648**	$0.88
	22	October	144	$78,912	**$1,736,064**	528	$0.85	$89,088	**$1,959,936**	$0.96
	15	November	110	$73,122	**$1,096,830**	360	$0.78	$74,832	**$1,122,480**	$0.80
	15	December	99	$65,000	**$975,000**	360	$0.69	$71,424	**$1,071,360**	$0.76
7/15/14	11	September	158	$67,488	**$742,368**	264	$0.72	$72,115	**$793,265**	$0.77
	22	October	316	$69,504	**$1,529,088**	528	$0.74	$76,824	**$1,690,128**	$0.82
7/8/14	40	August	255	$40,811	**$1,632,440**	960	$0.41	$57,864	**$2,314,560**	$0.61
7/1/14	40	August	384	$33,840	**$1,353,600**	960	$0.33	$48,571	**$1,942,840**	$0.50
6/17/14	9	September	81	$22,848	**$205,632**	216	$0.21	$30,048	**$270,432**	$0.29
6/10/14	9	September	79	$21,876	**$196,884**	216	$0.19	$29,448	**$265,032**	$0.28
	9	October	84	$36,000	**$324,000**	216	$0.36			
6/3/14	9	September	123	$20,880	**$187,920**	216	$0.18	$25,104	**$225,936**	$0.23
	9	October	113	$30,048	**$270,432**	216	$0.29	$36,000	**$324,000**	$0.36
5/27/14	9	September	116	$17,472	**$157,248**	216	$0.14	$29,400	**$264,600**	$0.28
	9	October	106	$24,216	**$217,944**	216	$0.22	$33,600	**$302,400**	$0.33
1/7/14	12	April	71	$12,192	**$146,304**	288	$0.08	$15,600	**$187,200**	$0.12
	12	May	63	$8,544	**$102,528**	288	$0.04	$14,400	**$172,800**	$0.11
					$21,816,620				**$28,426,491**	
					Potential Minimum Revenue				**Potential Maximum Revenue**	
				Shuttles	**$120,764,651**			**Shuttles**	**$125,639,266**	
				DETs	**$16,325,585**			**DETs**	**$16,202,910**	
				24-car Units	**$21,816,620**			**24-car Units**	**$28,426,491**	
					$158,906,856				**$170,268,667**	
					Total Potential Minimum Revenue				**Total Potential Maximum Revenue**	

Table 1—Results of BNSF auctions since January of 2014. Taken from the BNSF website September, 2014

Table 2

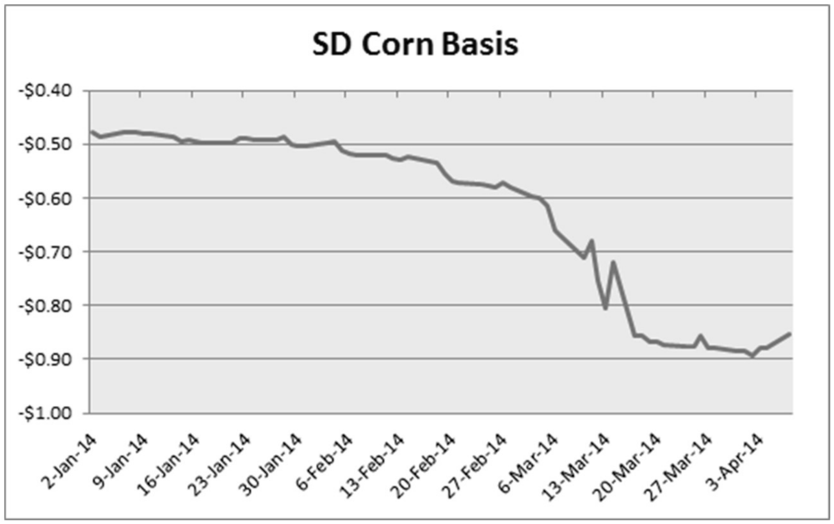


Table 3

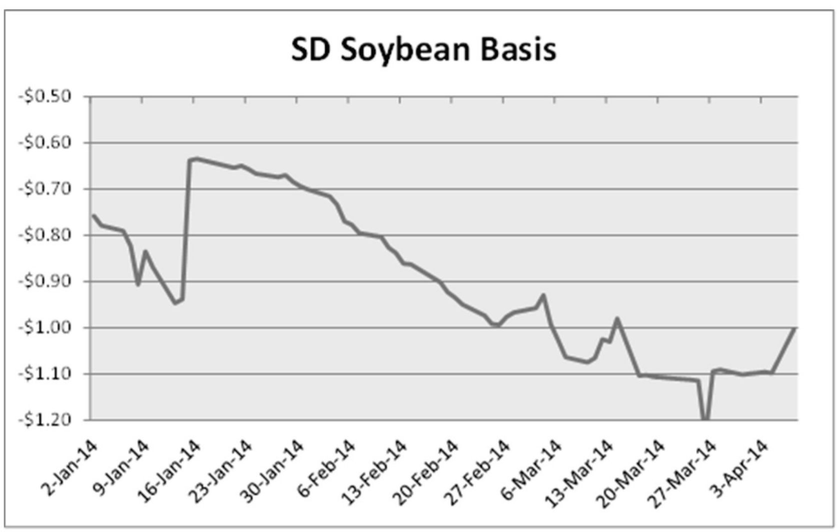


Table 4

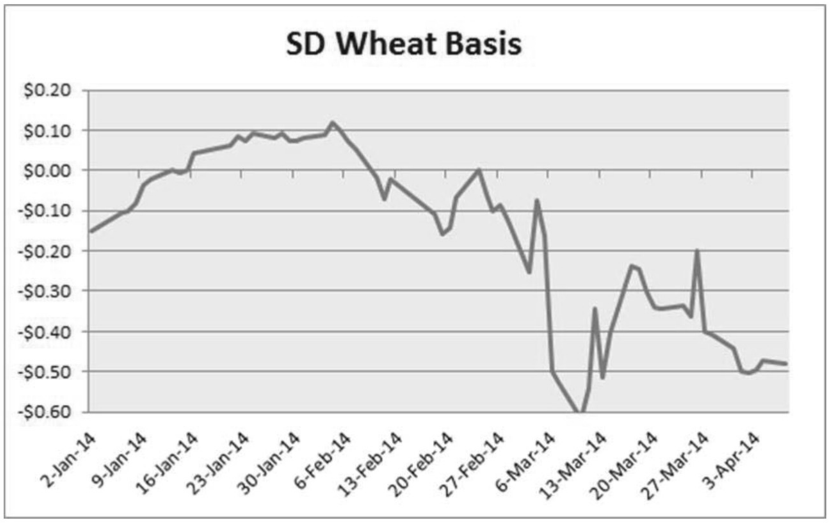


Table 2–3–4
From NGFA Testimony at STB Public Hearing on Rail Service Issues, STB Docket No. EP–724. 4/10/14

Where we are

Now, in the aftermath of the STB's involvement and advocacy, as well as the combined efforts of Senator John Thune, South Dakota Grain and Feed Association, NGFA and the state affiliated grain organizations in Montana, North Dakota and Minnesota, we are being heard when it comes to addressing what is a logistics and operations issue for all the railroads involved, especially the Class I's. As a result of this increased communication, additional reporting of service metrics required by the Board, active monitoring by the Board and actions by some of the major carriers in this region, there is some easing of fears as we are able to see the railroads plans for the long term and modifications regarding their day to day operations. It may not always be what we want to hear, but it is a first step. With the required reporting to the STB from the BNSF and Canadian Pacific, there is now more transparency to see what the carriers are doing and what they plan to do. There has also been improved communication between these two Western carriers and us, their customers. The CP's specific reporting on their performance providing power and cars to the RCPE has provided a benchmark for a weekly gauge to measure their progress doing what they committed to do when they sold the western end of the DM&E line.

Today, progress has been made towards cutting the backlog of car orders our region. While this is great news, it is still a very serious situation. Needing a train every five days in order to clean out the backlog and get ready for fall harvest but getting one every ten prohibits accomplishing either of those objectives.

In regard to the CP's performance reports, until recently, it had not provided the locomotives it had committed to under the terms of the sale of the DME line to RCP&E. (The CP had committed to providing an agreed amount of cars on weekly basis in addition to locomotive power so that the RCP&E could effectively service their new line in South Dakota.) By not fulfilling this commitment, it left the RCP&E unable to clear their rail lines of loaded cars. This resulted in loaded cars sitting at RCP&E elevators for a week or longer, causing buyers to shy away from buying more RCP&E origin cars until they see that the ones they have already bought are moving. This situation is made worse at the interchange at Tracy, MN when the CP either hasn't shown up as scheduled or didn't come with as many locomotives as it previously committed; in which case the RCP&E really had no choice but to use their locomotives to help move the loads beyond Tracy –if they were available at all. This throws the RCP&E out of balance. The RCP&E then has crews that were scheduled for RCP&E local work out moving loads on the CP. It requires more locomotive horsepower to move loads than empties which again changes the

RCP&E balance of power, crews and cars on its line. While the CP has provided a share of the cars that RCP&E has ordered, they have not until very recently provided the power promised. Although the CP has begun to fulfill its commitments and extra trains have even been added to help clear the backlog on the RCP&E, the full effect is yet to be seen in terms of cars on track to load. Unfortunately, the CP did not respond until required to do so by the STB. Until the CP honors *all* of its commitments on an on-going basis the problems will only get worse in South Dakota.

On top of that, crop yields are expected to be at record highs this year. This year's wheat yield in South Dakota is running approximately double of normal. Even though our state's total wheat acres are down from the five-year average and the final yield is yet to be determined, total production will, at worst, be slightly above the five-year average but more likely 10 to 20 percent above. The USDA forecast for South Dakota corn production is the same as 2013; however, another well respected private firm forecasts corn to be a record at 10 percent above last year's production. Production of other crops such as soybeans, sorghum, sunflowers, oats and millet look just as promising. Given these projections, and at the BNSF's and CP's current pace of service recovery, the backlog will continue and possibly even increase through next summer. There is no room for even a minor hiccup in rail service this fall and winter—including weather, competing demand or anything else.

Table 5

SOUTH DAKOTA PRODUCTION									
			2013-14						
			CORN			SOYBEANS			ALL WHEAT
CARRY IN	*Millions of bushels*		41			9			20
Acres planted	*Millions of acres*		6200			4600			
Acres Harvested	*Millions of acres*		5860			4580			
Yield	*bushels per acre*		138			40			50+? Estimated
PRODUCTION	*Millions of bushels*		809			183			120
TOTAL SUPPLY			850			192			140
TOTAL USE	*Millions of bushels*		504			30			5
Residual & Seed	*Millions of bushels*	66			5			5	
Feed	*Millions of bushels*	59			1				
Processing	*Millions of bushels*	379			24				
Export	*Millions of bushels*		289			154			110
CARRY OUT	*Millions of bushels*		57			8			25

Table 5—From USDA 6/30/14 June Acreage and Stocks Report

If there is no change in the pace of rail service, the storage of this abundant crop will create challenges. In my travels through western South Dakota, there are farmer piles of wheat ranging from 20,000 bushels to over 200,000 bushels. Elevators have open ground piles of grain waiting to be shipped. Unfortunately, the same weather that has led to doubled yields has also caused disease issues in some of the wheat. In certain instances, quality issues will require blending and cleaning of diseased wheat to make it marketable. With elevator storage capacity full and waiting for cars, space to segregate and blend does not exist, leaving open the risk that less than ideal quality wheat may not be marketable—which negatively impacts local producers who have taken the risk of planting those very crops. While secondary freight costs have relaxed from their peak levels, the bids elevators are offering consistently reflect allowances for crop-quality risks and the freight costs they are incurring. Basis cost for the risk of quality, contractual obligations and freight is a lesson learned from the experiences of the past 12 months. The risk factor is reflected in bases bids of approximately 30 to 50-cents for harvest delivery. The CP railroad, RCP&E and the processing industry do actively auction their freight but they, we shippers, buyers and the producers are all affected by the secondary market. Secondary market costs are an indicator of market pricing and risk because high freight costs are inversely proportional to freight availability—the higher the extra cost of rail freight, the less freight there is to go around which in turn impacts the elevator industry's ability to handle grain.

Table 6

APPROXIMATE FREIGHT AND RISK PREMIUM FOR CORN IN CENTRAL SOUTH DAKOTA	
FALL 2014	
Delivered Pacific North West for Export in October	$4.71
Approximate Average Cash bid for new crop 2014 Corn October delivery	-$2.61
Approximate freight and Fuel Surcharge from South Dakota	-$1.50
Typical back-to-back Margin	-$0.25
Approximate Freight and Risk Premium	-$0.35

Table 6—Representative central SD Cash bids for new crop 2014 corn posted on publicly available company websites

Table 7

FALL 2014 SECONDARY BNSF 110-car SHUTTLE FREIGHT COSTS				
			Bid	Offer
October	*Dollars per car*		$3,500	$4,800
	Cents per bushel		$0.88	$1.20
November	*Dollars per car*		$2,000	$4,000
	Cents per bushel		$0.50	$1.00
December	*Dollars per car*		No Bid	No offer
	Cents per bushel			
October	*Dollars per car*		$1,800	$3,500
November	*Cents per bushel*		$0.45	$0.88
December package				

Table 7—Secondary BNSF freight bids and offers from public TradeWest Brokerage wire 9/5/14

Is it an option for companies to expand storage? Over the past 15 years hundreds of millions of dollars have been invested in South Dakota grain and fertilizer facilities based on expectations of reasonable and predictable rail service. Investments in rail facilities at grain elevators can easily run from over $3 million dollars for a minimal amount of bins and a 25 car track upgrade to over $30 million for a state of the art shuttle shipper and fertilizer receiver. As an industry we have to ask ourselves when does the risk outweigh the reward given the unpredictability of transportation services.

Where we need to be

Moving forward, it is hoped that the stringent oversight of the agricultural rail service crisis will continue as the recovery in service hopefully continues and ultimately returns to more normal levels. In the long term, continued vigilance and the spotlight on this crucial issue will facilitate needed communication between the railroads and the state, where one did not exist before. Hopefully, this same communication can come into play when railroads are making investment decisions to increase capacity. The BNSF has responded to the heightened awareness with an-

nouncements to add locomotives and double track around North Dakota's oil fields. We hope that the CP will follow through with their commitments also.

While oversight from the STB, efforts by agricultural producer and shipper organization, and the leadership efforts of Senator John Thune, the ranking member of the Senate Committee on Commerce, Science and Transportation, has helped and will be needed moving forward, ease of doing business and safeguards against overregulation also are important. Certainly, the rail business environment can be improved by implementing reasonable processes and rules to make it easier to bring justifiable grievances regarding rail service, as well as rates and charges to a timely conclusion. Direct government intervention in railroad operations is not our goal. But this can be accomplished while still not encumbering railroads with regulatory constraints that make it uneconomic for them to invest in their systems to more efficiently handle grain and to enable our industry to continue to serve our farmer customers as their link to domestic and foreign markets.

How do we get there?

In addition to oversight, continued reporting of service metrics are important and necessary. We have a saying in our company that the problem with communication is the illusion that it actually took place. While seemingly tongue in cheek, it speaks to a real problem. Communication has to be open, honest and real. Action plans, progress reports and relevant scorecards from railroads on a real time basis are needed. Real time is defined as weekly or at least bi-weekly. Scorecards that outline targets and then follow up with a transparent analysis and frank summary of the results will not only help identify areas of improvement for the railroads but provide the affected grain industry planning tools of predicting future performance based on past results. In this region we would like to see the BNSF continue publicizing its plans and following up with the STB, affected states and customers. The CP needs to continue its reporting especially regarding the RCP&E commitments so that all stakeholders are aware and the RCP&E can make real progress addressing the backlog on their line. The recent addition for BNSF and CP to report shuttles by region (specifically the three states of ND, MN and SD) is a helpful metric and we're pleased that you followed through with the request made by Senator Thune in July, which mirrors a recommendation from NGFA. Further, NGFA is in ongoing discussion with rail carriers on how to determine additional service metrics to show that agricultural shipments are not being disadvantaged at the expense of other, higher-value products hauled by rail.

In addition to reporting, there needs to be one-on-one discussions between railroads and their customers to comprehensively outline what is needed and expected. Customers have the responsibility to honor commitments but the end goal is a team effort. We also believe additional manpower is needed to operate along the rail. Rail workers hours of service regulations are more stringent than those of trucks. Could hours of service regulations be relaxed during this period of service recovery so that while still operating in a safe and responsible manner, additional hours would help improve car movement?

Proposed changes in the *Surface Transportation Board Reauthorization Act of 2014* are important to help the STB keep up with changes in the transportation network we are experiencing and see going forward. The highlights of the bill include increasing STB's investigative authority so it can launch its own investigations before a complaint is filed; making it easier for Board members to communicate; and improved alternative dispute resolution practices; all of which are all positive steps.

Conclusion

Again, let me stress, we are not asking for direct government intervention and we are not asking for preferential treatment for grain. We just want to ensure that we are not disadvantaged or that grain is marginalized in the rail freight picture. Challenges faces the rail freight framework have reached the point where it is not productive to place blame, condemn or debate who was right and who was wrong. We stand at a crossroads where we need to determine a course of action that works for the benefit of all stakeholders. Thank you for your time today entertaining input from us. The members of the SD Grain & Feed Association appreciate your proactive stance and efforts to improve the dire situation of rail freight service for grain in SD.

The CHAIRMAN. Thank you, sir, very much.

Mr. Calvin Dooley is the President and Chief Executive Officer of the American Chemistry Council. Welcome.

STATEMENT OF CALVIN (CAL) DOOLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN CHEMISTRY COUNCIL

Mr. DOOLEY. Thank you, Mr. Chairman, Ranking Member Thune, members of the Committee, for allowing me to testify today. ACC and our member companies would particularly like to thank you, Mr. Rockefeller and Mr. Thune, for your introduction of the Surface Transportation Board Reauthorization Act of 2014. We would agree in your assessment that it is a very good bill because it does address numerous longstanding issues with the STB and will help make freight rail service more competitive and more reliable.

The American business of chemistry is the second largest customer of the U.S. rail freight system. Thanks to the shale gas revolution here in the United States, we're going to see the most dramatic increase in our production in history, and we're going to be even more reliant on freight rail transportation.

To succeed, we need efficient rail service, we need competitive shipping rates, and we need, importantly, a timely, effective, and an equitable way to resolve disputes between freight rail shippers, companies and shippers. We would acknowledge that the Staggers Act of 1980 has been successful in many ways and ACC and our member companies have no interest in re-regulating the rail industry. But it is time to acknowledge that the freight rail service landscape has changed dramatically in the 34 years since the adoption of the Staggers Act.

For example, the consolidation among Class I railroads has left only seven in operation today, with four rail companies controlling almost 90 percent of all shipments. Today, more than three-quarters of U.S. rail stations are served by only one rail company. And unlike the 1980s when many railroads were grappling with bankruptcy, today's railroads are in a strong financial position.

The consolidations are correlated to significant increases in rail rates. Rates increased more than 93 percent between 2002 and 2012, three times the rate of inflation. A recent study that we conducted found that in 2011, 57 percent of all rates exceeded the 180 percent recoverable variable cost, which is an important number because that is the number STB uses to determine whether or not there's legitimate cause to consider these rates as excessive.

Even more importantly is that what we also found in 2011 is 37 percent of all chemical shipments were 300 percent of the RVC. What is also more troubling to us is the trend, because in the most recent 5-year period we saw almost a 50 percent increase in our chemical shipments that were over that 300 percent of the RVC.

ACC recently joined with 23 other manufacturing, agriculture, and energy groups to outline a series of STB reforms that would ensure access to competitive rates, and many of those reforms that we suggested are dealt with in the legislation that you and Senator Thune introduced.

Just to highlight a few of those that we think are most important:

The bill will make important organizational changes to streamline processes and facilitate more timely decisions by the STB. The board itself estimates that a standalone cost challenge today takes

three and a half years to complete and can cost over $5 million. That's a financial barrier to resolution.

The legislation requires a review of rate bundling practices. Why this is important is because railroads often group tariff rates with lower tariff rates in a single contract. Because nontariff rates cannot be challenged, shippers are faced with a Catch 22, as they must accept higher tariff rates on all the contract routes in order to challenge the rates on those routes that they find excessive.

The legislation would provide STB with guidance that current revenue adequacy and standalone cost rules need review and possible revision. Both rules are based on the outdated notion that rail carriers are financially strapped. Yet by nearly all economic measures today's rail carriers are financially stable. Warren Buffett does not invest $44 billion in a company that is not revenue adequate. Yet current STB policies stack the deck against shippers' ability to successfully challenge rates, even when they have exceeded 900 percent of the RVC. Even the economist who developed the economic basis for the standalone cost rule has recently stated it has no economic viability today.

The legislation calls on STB to proceed with a competitive switching rulemaking. Shippers would then have access to competing quotes and service from other railroads which are a short distance from the point of shipment.

The bill requires that STB develop a new arbitration program and raise the caps on damages, and we are confident that an effective arbitration alternative will drive carriers and shippers to equitably resolve rate disputes.

These reforms will foster a healthy, efficient, and affordable freight rail system, which is in the interest of both rail companies and shippers. We thank you for your leadership and look forward to working with you and our transportation partners to advance the STB Reauthorization Act of 2014.

[The prepared statement of Mr. Dooley follows:]

PREPARED STATEMENT OF CALVIN (CAL) DOOLEY, PRESIDENT AND CHIEF EXECUTIVE OFFICER, AMERICAN CHEMISTRY COUNCIL

My name is Cal Dooley. I am the President and CEO of the American Chemistry Council (ACC), the national trade association representing chemical manufacturers in the United States. I am testifying today on behalf of our member companies and the nearly 800,000 men and women who make up America's business of chemistry. I am very pleased to be here to discuss steps needed to promote and improve the performance of America's freight rail system.

First, I would like to thank Chairman Rockefeller and Ranking Member Thune for their leadership on this very important issue and for introducing the "Surface Transportation Board Reauthorization Act of 2014." The legislation addresses numerous long-standing issues that have prevented the Surface Transportation Board (STB) from serving as an effective venue to resolve disputes between rail service providers and shippers.

To be clear, this legislation does not seek to reregulate America's freight rail system. In fact, it would make freight rail service more competitive, which is in the interest of large shippers, such as the chemical industry, and our economy as a whole.

The chemical industry is the second largest customer of the U.S. freight rail system. Thanks to the shale gas revolution our industry is projected to grow significantly in the coming years, with $125 billion in new factories, expansions, and restarts already announced, meaning that our reliance on the rail system will only increase in the future.

Chemistry creates the building blocks for countless consumer goods, industrial processes and specialty materials that must be transported across the country and ultimately around the world. Efficient rail service; rational shipping rates; and when necessary, a timely, effective, and equitable way to resolve disputes between freight rail companies and shippers are critical to our success. However, a review of the facts suggests that many shippers currently are not benefitting from any of the three.

A recent survey of ACC members found that rail issues factor heavily into domestic investment decisions. In fact, more than a quarter of ACC members report that rail transportation issues have hindered domestic investments.

Publicly available data from the railroad industry shows that rail rates have increased more than 93 percent between 2002 and 2012, about three times the rate of inflation. ACC recently commissioned a study (summary attached) to explore the full economic impact of these increases. The study found that in 2011, 57 percent of all rail rates exceeded 180 percent of the revenue-to-variable cost ratio (RVC)—an important measure because any rate greater than 180 percent RVC could be subject to STB review for potentially being unreasonably high. In fact, a quarter of rail rates exceeded 300 percent RVC.

This means that many commodity shippers pay a very high premium to transport their products—premiums that totaled over $16 billion in 2011. For perspective, a quick Google search will inform you that $16 billion can pay House and Senate salaries for 172 years or cover almost 100 percent of NASA's annual budget. In more relevant terms, ACC's economists project that a $16 billion chemical industry investment could support 54,000 direct and indirect jobs.

This issue deserves Congressional attention. Significant resources are being diverted from research and development, operations, investment, expansion, and hiring to pay extremely high rail shipping rates. Congress created the STB to help ensure that railroad companies reap adequate returns but also to promote effective competition in the form of fair and reasonable and accessible and efficient service. Unfortunately, the Board has been unable to meet its mission. The bill introduced by Senators Rockefeller and Thune will help change that.

The Staggers Rail Act of 1980, which deregulated the freight rail industry, has been successful in many ways, but the freight rail service landscape has changed dramatically since its passage. Consolidation has reduced the number of Class I, railroads from 26 in 1980 to only seven today, with four essentially operating like regional duopolies that control 90 percent of the market. Today, more than three-quarters of U.S. rail stations are served by only one rail company, leaving customers captive to a single freight rail provider with no alternative if service or rates are unsatisfactory.

ACC recently joined with 23 other groups representing a wide range of U.S. manufacturing, agricultural, and energy interests to express to the Committee our concern that the railroad industry is not providing the level of service we need at competitive rates. We outlined a series of reforms that will increase access to competitive freight rail service and modernize the STB to make it a more effective agency. The "Surface Transportation Board Reform Act of 2014" takes significant steps to address many of the issues that have plagued the freight rail system, including the following:

- *The STB's rate review standards are complex, overly-burdensome, and prohibitively expensive for many shippers.* The barriers for bringing a case before the STB are so high that very few of our member companies can justify the time and expense. The Board estimates that a stand-alone cost challenge takes more than three and a half years and $5 million to complete. ACC members have experienced cases that take even longer and cost much more to challenge. These costs and delays are simply prohibitive for many manufacturers, particularly small companies.

  This legislation would make important changes to the organization that will facilitate communication between commissioners and more timely action.

- *Rate bundling by railroads is a deterrent to seeking relief from the STB.* Many times, railroads "bundle" a mix of rates into a single all-or-nothing contract proposal. Contract rates are typically lower than standard tariff rates, just like the actual price of a car is typically less than the sticker price. But only tariff rates can be challenged at the STB.

  In order to challenge an unreasonable rate on one or more specific routes, a shipper has to accept much higher tariff rates on all routes covered by the contract. The premium for these tariff rates may exceed the amount the shipper would hope to recover if it wins the rate case. This bundling effectively deprives a shipper of its only recourse against unreasonable rates, and we believe it

should be corrected by the STB, as it would be a violation of antitrust laws in other industries. This legislation calls for a review of the impact of rate bundling practices.

- *The STB's stand-alone cost and revenue adequacy rules are outdated, impractical, and serve as obstacles to rational rate relief.* The Staggers Rail Act imposed two rules that today require review and possible revision. First, the Act sought to ensure that railroads were revenue adequate, meaning that returns on investment were high enough to ensure the railroads remained solvent and profitable. Unlike the circumstances in 1980, the rail industry today is more than financially sound. The industry is setting records for operating ratios, operating income, and earnings per share. Railroad stocks have outpaced the broader market for years.

  Despite their economic performance, two recent attempts by ACC members to challenge rates of the rail industry's longest-tenured revenue-adequate carrier were unsuccessful, even when rates exceeded 900 percent of the railroad's variable cost. This legislation provides guidance to the Board that progress is needed on revenue adequacy rule-makings.

  Second, current STB rules require that in order to win a rate challenge, a shipper must prove that it could build and operate its own railroad from scratch for less than the railroad is charging. Not only is this rule irrational, it is extremely burdensome. To prove such a thing, a shipper must engage a virtual army of lawyers, economists, and consultants to create an entire railroad on paper.

  This requirement has even been criticized by Professor Gerald Faulhaber, who originally defined the economic basis for stand-alone cost saying, "the economic models upon which the stand-alone cost test were developed bear no relation to the current freight industry," and the STB's use of stand-alone cost "has no economic validity." Even the current Chairman of the STB acknowledged in a recent decision that "we should never be satisfied with a process that is so expensive and time consuming for all parties."

  This legislation will streamline rate case procedures and requires a report on rate methodology. Hopefully these steps will result in a more rational approach to justifying a rate case.

- *Competitive Switching is non-existent as an option for shippers.* Competitive Switching would allow rail shippers to gain access to another Class I railroad within a short distance of their facility if they are unsatisfied with their current carrier. It would also allow shippers to obtain competing quotes from carriers, rather than forcing them to use one railroad. The Staggers Rail Act envisioned competitive switching, but it has never been allowed at the STB because of a decision in the mid-1980s that effectively precludes its use by shippers. There is currently a case pending on this issue at the STB, but it has languished for more than four years.

  We have long advocated for the STB to proceed with a rule-making to make competitive switching a more accessible solution for shippers. The legislation provides guidance to the STB from Congress that the Board should move forward with such a rule-making,

- *Current STB rules make arbitration an ineffective means to resolve disputes.* The STB's current cumbersome process does not create an incentive for parties to come to consensus and find solutions. To be more effective, the Board should move to a binding final-offer arbitration system. Similar approaches are utilized by the Canadian rail system to resolve rate disputes, as well as by professional baseball to resolve salary issues.

  Under a binding final-offer approach, the shipper and the railroad each present a final proposal for the rate in dispute. At the end of the process, the arbitrator must choose one of these proposals, giving each side the incentive to converge towards a fair and practical solution. This straightforward reform would help level the playing field, swiftly and fairly resolve rate disputes, and lower administrative costs for shippers and railroads.

  The legislation acknowledges the problems with the current arbitration program, requires the STB to develop new arbitration procedures, and raises the cap on damages to a more reasonable level.

A healthy, efficient, and affordable freight rail system is essential to the success of the chemical industry, many other manufacturers, and the U.S. economy overall. We firmly believe that greater competition and a more equitable approach to resolving rates are not mutually exclusive with a thriving, profitable freight rail system.

It is true that there are other modes of transport, but that does not preclude the freight rail system from operating in a competitive and efficient manner.

Every policy reform we support is consistent with the policy goals set forth by the Staggers Rail Act. Unfortunately, the freight rail industry routinely opposes any reforms that would allow for more competition between railroads, including any operational changes that would give customers increased access. They have even opposed rules that would make the trucking industry more competitive.

We greatly appreciate the leadership this committee has shown on this important issue. We look forward to working with you to advance the "Surface Transportation Board Reform Act of 2014," and we remain committed to cooperating with the Committee and our transportation partners to foster a strong freight rail system that serves both railroads and shippers well.

SUMMARY OF FREIGHT RAIL STUDY

ANALYSIS OF THE PREMIUM RAILROADS CHARGE SHIPPERS—March 2014

Introduction

U.S. producers depend on rail service to ship their products to their customers. Over the past decade, railroads consolidated and government rules protected railroads from competition, causing freight rail rates to skyrocket more than 76 percent—nearly three times the rate of inflation and three times as much as truck rates have increased. While a strong rail industry is vital to the U.S. economy, excessive rates can be a burden on U.S. manufacturing and provide a competitive advantage to foreign producers. To better understand these impacts, Escalation Consultants quantified the premiums railroads charge U.S. manufacturers in a report entitled, Analysis of Freight Rail Rates for U.S. Shippers.

Methodology

For this study, Escalation Consultants examined Class I railroad rate data from the Surface Transportation Board's (STB) Public Use Waybill sample for all major commodity groups shipped by rail. Data was analyzed for 2011, the most recent year available from STB, and for 2005. Escalation Consultants calculated the railroad's revenue-to-variable-cost ratio (RVC) for each shipment that originated or terminated in the U.S. RVC is an important indicator for freight rail rates because a rate greater than 180 percent RVC is subject to potential STB review for being unreasonably high.

For each group of related commodities, Escalation Consultants calculated the average rate for shipments below 180 percent RVC (those assumed to be competitive) and the average rate for shipments above 180 percent RVC (those potentially noncompetitive and subject to STB jurisdiction). The difference between these average rates is presented as the shipper's rate "premium." Escalation Consultants further broke down the potentially non-competitive rates by RVC ranges (180–240 percent, 240–300 percent, and above 300 percent) to show the impact of the highest rates on the total premium. Data are reported for all commodities combined, as well as for major commodity groups and individual products within each group.

Summary of Findings

These key findings are based on the Public Use Waybill sample provided by the railroads to the STB:

- In 2011, more than half (57 percent) of all rail rates exceeded the 180 percent RVC.
- The average rate for carloads above 180 percent RVC was $1,335 higher than the average rate for carloads below 180 percent RVC, meaning that shippers paid a 53 percent premium for these shipments.
- As a result, the total premium paid by commodity shippers in 2011 exceeded $16 billion.
- The commodity groups with the largest total rate premiums were coal ($5.2 billion), chemicals and plastics ($4.5 billion), and transportation equipment ($1.2 billion).
- Many rates were far above the STB's jurisdictional threshold of 180 percent RVC; for example, nearly one quarter (23 percent) of rates exceeded 300 percent RVC, or three times the railroad's variable cost.
- From 2005 to 2011, the total premium paid by commodity shippers increased 90 percent while the carload volume declined by 1.1 percent.

RAIL CUSTOMER LETTER TO CONGRESS

July 10, 2014

Hon. HARRY REID,
Majority Leader,
United States Senate,
Washington, DC.

Hon. MITCH MCCONNELL,
Minority Leader,
United States Senate,
Washington, DC.

Dear Majority Leader Reid and Minority Leader McConnell:

In April, a broad coalition of railroad customers representing a range of U.S. manufacturing, agricultural, and energy industries wrote to your office to highlight the need for rail policy modernization. Today, we write to you in support of the attached specific reforms that would increase competition among railroad companies and make the Surface Transportation Board (STB) a more effective and efficient regulatory body.

The lack of competition for rail services has become a critical problem for American industry, as more than three-quarters of U.S. rail stations are now served by just one major rail company. This consolidation has given the remaining railroads unprecedented market power, and has denied many rail-dependent companies the benefits of cost-effective and reliable rail transportation service. Unreasonable rate increases, service breakdowns, and diminishing competition, all act as headwinds on the many industries that require rail to do business in the United States.

In the past, the rail industry has inaccurately portrayed efforts to reform rail policy as "reregulation." This coalition does not support a return to the 1970s when all freight rates were automatically subject to strict government scrutiny. Because the Nation's freight rail network is vital to the strength of the economy, this coalition supports policies to create a more competitive and market-based system, while ensuring the STB has procedures to settle disputes efficiently.

There is no question that the United States needs a strong rail network to compete globally. Railroads are a remarkably efficient means for transporting bulk commodities over long distances. According to the Association of American Railroads (AAR), rail companies can now move one ton of freight 476 miles on one gallon of diesel fuel. Surprisingly, these increases in productivity have coincided with sharp increases in rail rates and declining service performance.

Several factors have contributed to the increasing imbalance in railroad market power, most importantly the dramatic consolidation of the Nation's freight rail network since Congress passed the Staggers Rail Act of 1980. There were 26 Class I rail companies in 1980; now, four corporations control more than 90 percent of the market. Staggers helped the industry regain profitability, but unchecked consolidation has led to dramatic increases in rates. In fact, according to AAR data, rates spiked 94.8 percent from 2002 to 2012, which outpaces increases in inflation and truck rates by about a factor of three. Furthermore, the STB held an emergency hearing and intervention this spring to address systemic rail service problems, while rates increases continue.

The STB process for rate cases can and should be improved by Congress. Although railroad rates may be challenged for being "unreasonably high", shippers large and small who desire to bring a rate case face tremendous economic barriers. A major case at the STB is extremely complex, involves a multimillion dollar investment in lawyers and consultants, and takes several years to obtain a decision. During the rate case, shippers are forced to pay extremely high tariff rates in the hopes of recouping those costs at the end of the case if they are successful. Many shippers cannot afford to challenge a rate at the STB under current procedures, and for those that can afford it, the economics of filing a complaint are dubious.

Simply put, the current policies do not achieve the goals that Congress established in 1980, including promoting effective competition between rail companies, maintaining reasonable rates where there is an absence of effective competition, and providing expeditious resolution of all proceedings. In our view, it is the responsibility of Congress to ensure that the STB is perceived as an effective and viable intermediary between railroads and their customers who currently have no truly competitive option to ship.

We hope you will take a look at the attached document where we have outlined specific policy proposals that would help to modernize the U.S. rail policy framework. We look forward to working with Congress and the rail industry to ensure

the Nation's freight rail works—both for rail companies and the large and small American businesses that rely on them.

Sincerely,

Agricultural Retailers Association
Alliance for Rail Competition
American Architectural Manufacturers Association
American Chemistry Council
American Forest & Paper Association
American Public Power Association
Chlorine Institute
Consumers United for Rail Equity (CURE)
Rdison Electric Institute
The Fertilizer Institute
Growth Energy
Institute of Scrap Recycling Industries, Inc.
Louisiana Chemical Association
Manufacture Alabama
National Association of Chemical Distributors
National Rural Electric Cooperative Association
Plastic Pipe and Fittings Association
Portland Cement Association
PVC Pipe Association
Resilient Floor Covering Institute
SPI: The Plastics Industry Trade Association
Steel Manufacturers Association
The National Industrial Transportation League
The Vinyl Institute

Enclosure

cc:

The Honorable John Boehner
The Honorable Nancy Pelosi
The Honorable John Rockefeller IV
The Honorable John Thune
The Honorable Richard Blumenthal
The Honorable Roy Blunt
The Honorable William Shuster
The Honorable Nick Rahall II
The Honorable Jeff Denham
The Honorable Corrine Brown

RAIL POLICY PROPOSALS

Enhance Efficiency of STB Operations

- Allow direct communication between STB Commissioners: Government "sunshine laws" prohibit a quorum of the STB (currently, any two members) from discussing pending matters with each other, forcing members to work via staffs. Congress should address this problem by expanding the STB to five Commissioners or by providing a limited exception that allows appropriate discussions of pending issues by STB members.
- Study STB staffing and resource requirements: Congress should initiate a study to determine whether the STB has adequate resources to fulfill its statutory mission.
- Eliminate railroad revenue adequacy determinations: As demonstrated by the industry's high levels of capital investment and shareholder returns, the STB's annual "revenue adequacy" calculations for Class I carriers are no longer necessary and may inappropriately shield railroads' pricing power from STB scrutiny. Congress should eliminate this outdated requirement.
- Publicly report the status of STB proceedings: Rail stakeholders would benefit from regular reports from the STB detailing the status of pending rate cases, rulemakings, and complaints. Reports should include key STB actions and expected timelines for final resolution.

Reform STB Rate Challenge Procedures

- Review the STB's rate-reasonableness standards: Congress should direct the STB to review its three types of rate-reasonableness reviews. Significant concerns involve not only the cost and length of STB reviews, but also the fundamental principles on which each standard is based. Reformed standards should recognize that the Staggers Rail Act's goal of restoring financial stability to the U.S. rail system has been achieved.

- Provide arbitration as an alternative means to resolve rail rate challenges: The STB's rate review procedures are costly for railroads and shippers and, therefore, are rarely used. Binding arbitration, which has been used successfully under Canadian law, could provide a quicker and less expensive approach to resolve rail rate disputes.
- Prohibit "bundling" of contract rates that can prevent rate challenges: In some instances, a railroad will "bundle" rates in a single contract proposal for a group of origin-destination pairs and refuse to quote tariff rates for individual movements. This all-or-nothing approach effectively forces a shipper to agree to the complete package of contract rates and deprives them of the ability to challenge specific rates that it believes are unreasonable. The STB must be empowered to address this problem and fulfill its mandate to resolve rate disputes.
- Review STB commodity exemptions: Since passage of the Staggers Rail Act, numerous categories of rail traffic have been exempted from STB oversight. The rail industry and the state of rail competition have changed significantly since many of these exemptions were granted. Congress should direct the STB to conduct a comprehensive review of existing commodity exemptions and remove any exemptions that are no longer appropriate.

Remove Barriers to Freight Rail Competition

- Provide competitive switching to shippers: Competitive switching agreements facilitate the efficient movement of traffic between carriers and are critical to a competitive rail system. Consistent with existing authority under the Staggers Rail Act, the STB should be directed to provide competitive switching service to shippers, without requiring evidence of anti-competitive conduct by a rail carrier from which access is sought. The availability of switching should not preempt STB authority to review rates.
- Allow shippers to obtain service between interchange points on a rail carrier's system: Current STB policies and precedents effectively block many shippers served by a single Class I railroad from obtaining competitive service. In order to provide effective competition among rail carriers, a Class I rail carrier should be required to quote a rate and provide service between points on that carrier's system where traffic originates, terminates, or may be reasonably interchanged.

The CHAIRMAN. Thank you, sir.

Mr. Shane Karr, Vice President, Federal Government Affairs of The Alliance of Automobile Manufacturers.

STATEMENT OF SHANE KARR, VICE PRESIDENT, FEDERAL GOVERNMENT AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

Mr. KARR. Thank you, Mr. Chairman, Ranking Member Thune, members of the Committee. I appreciate the invitation today to testify on behalf of the Alliance and our 12 member companies who collectively produce three out of every four new vehicles sold in the U.S. each year.

I think you invited me here because rail is an essential component of my industry's national supply chain. Seventy percent of new vehicles move by rail each year and that's roughly $5 billion a year in freight charges. Unfortunately, auto manufacturers are increasingly encountering the same persistent rail service issues that you've been hearing about. They threaten not only my sector and the 8 million jobs that auto manufacturing supports, but I would argue that they threaten the broader economic recovery as well.

Of course, there is a lot of focus on this winter, but the fact is my members have been seeing systemic problems that have been progressively worsening over the past few years. They would tell you that this winter merely exacerbated underlying service prob-

lems, and I think the evidence is the continuation of those problems well into the summer months of this year.

Let me talk about the two most common problems we're seeing: lack of available railcars to transport vehicles and then when we do have railcars, continuing significant delays in actual movement. Let me dimensionalize those two things for you for my sector.

Last year, there were over 83,000 railcar shortages over the course of the entire year in 2013. I think we would all agree that sounds like a pretty big number. But in the first 6 months of this year alone, January through June, we experienced almost 182,000 railcar shortages. What that has meant for us is that we have seen stranded basically between 140,000 and 200,000 new vehicles on an ongoing basis for roughly four and a half months, starting in March through June, so well past the winter months. For comparison, we never hit the 140,000 mark in all of 2013.

Even when we have had cars available to move, we're still seeing significant delays. Again, kind of controlling for the winter, if you just look at the summer months, June, July, and August, we have seen on an ongoing daily basis, roughly 2,100 railcars per day that are delayed 48 hours or more.

As a result of these persistent disruptions, my companies are spending tens of millions of dollars either to store new vehicles until they can move by rail or find alternative modes of transportation, which generally means trucking. For example, in my written statement I cite one of my companies at one of their facilities who has spent 13 million incremental dollars, which equates to about $184 per vehicle coming out of that facility, in order to store vehicles or move them by truck.

Unfortunately, many of my companies are sort of looking at this world and not seeing service improvements in the near future, and thus are moving to lock in alternative modes of transportation or additional storage. This is a suboptimal solution, and maybe that's a euphemism, for a number of reasons, I think, from your perspective. Number one, frankly, there just isn't sufficient long haul trucking available in the U.S. even if we wanted to make that shift en masse to handle that quantity of goods over those distances.

Number two, the increased cost of that shipping ultimately ends up being passed down to consumers.

Number three, I think the overall shipping community very clearly in that world becomes much more vulnerable to fuel price spikes and supply vulnerabilities.

In closing, I did want to mention the efforts of Senator Portman and Senator Levin, who are co-chairs of the Auto Caucus, to raise this issue and our sector's concerns in front of the STB. We attached a letter that they sent earlier this year to my written statement. I also want to reiterate again that we really appreciate being invited to this hearing and we look forward to working with you as you decide how to address this issue.

[The prepared statement of Mr. Karr follows:]

PREPARED STATEMENT OF SHANE KARR, VICE PRESIDENT, FEDERAL GOVERNMENT AFFAIRS, THE ALLIANCE OF AUTOMOBILE MANUFACTURERS

Thank you, Chairman Rockefeller, Ranking Member Thune and members of the Committee. The Alliance of Automobile Manufacturers (Alliance) is a trade associa-

tion of twelve car and light truck manufacturers comprised of BMW Group, Chrysler Group LLC, Ford Motor Company, General Motors Company, Jaguar Land Rover, Mazda, Mercedes-Benz USA, Mitsubishi Motors, Porsche Cars, Toyota, Volkswagen Group and Volvo Cars. Together, Alliance members account for roughly three out of every four new vehicles sold in the U.S. each year. Auto manufacturing is a cornerstone of the U.S. economy, supporting eight million private-sector jobs, $500 billion in annual compensation, and $70 billion in personal income-tax revenues. On behalf of the Alliance, I appreciate the opportunity to comment on the significant freight delays that have been negatively impacting the auto industry.

Rail is an essential component of the automotive industry's national supply chain. Auto manufacturers ship tens of thousands of vehicles daily in North America, primarily on U.S. railroads. According to the Association of American Railroads, railroads transport about 70 percent of finished motor vehicles, and automotive traffic represents nearly $5 billion in annual railroad freight charges.

Automakers utilize a combination of rail and trucking to transport finished vehicles from assembly plants to dealer lots and ports. Generally, shipping vehicles by rail is the more economical means of transporting vehicles over long distances, and in some instances, rail is the only feasible option to haul significant volumes of vehicles over long distances.

Over the past several years, as the auto industry has rebounded from the economic downturn, auto manufacturers unfortunately have encountered persistent rail service issues. By far, the greatest logistics problem faced by auto manufacturers is the carriers' failure to provide a sufficient supply of empty railcars to transport finished vehicles. Automakers have also incurred significant delays in the movement of railcars loaded with finished vehicles. In this regard, it appears that the priority of auto shipping has become less than that of other shippers.

The most recent rail industry service problems have caused an unprecedented disruption in the ability of auto manufacturers to deliver vehicles to their customers. As a result of the rail service disruptions, auto manufacturers are spending tens of millions of dollars a month to find other means of moving stranded vehicles or to store them until rail service is available. For example, since January one automaker has spent an incremental $13 million, or approximately $184 per vehicle, on vehicle transportation for one assembly plant alone due to the lack of available empty railcars.

These vehicles should have been transported much sooner via contracted rail services to dealerships for sale or delivery to consumers. For a significant portion of 2014, vehicle inventory worth billions of dollars sat in rented storage yards all around North America. In early April—at the height of this crisis—more than 200,000 vehicles were held in storage yards in and around automotive assembly plants. Where possible, automakers have had to look to alternate, more expensive means to move vehicles to dealers. Automakers had been optimistic that the excess vehicle backlog would be eliminated during the summer months when many assembly plants halt production for model changeover, giving the rail companies the opportunity to "play catch up." And while the backlog has been reduced, automakers continue to suffer regular railcar shortages and remain concerned that we are entering the fall and winter seasons still in a deficit position.

All automakers, regardless of which carrier they use to ship vehicles, have been adversely impacted by rail service disruptions. Additionally, this problem is not limited to the upper Midwest; rather, it is systemic throughout the country. While many auto manufacturing assembly plants are located in regions that experienced an especially severe winter (*e.g.,* Illinois, Indiana, Michigan and Ohio), auto manufacturers with assembly plants in other parts of the country, particularly in the South and Southeast, also experienced shipping delays and vehicle storage problems.

While this winter may have been more disruptive than in prior years, service problems did not start with the winter of 2014. Auto manufacturers annually encounter service delays during the winter months, and we understand that the rail network is highly connected such that severe weather in Chicago can have ripple effects throughout North America. But, in this case, extreme weather merely exacerbated underlying problems stemming from a lack of capacity—in cars, as well as crews and locomotive power. Extreme weather was not the reason that thousands of multilevel railcars that were needed for loading at automotive assembly plants throughout North America were in storage in early February.

Some maintain that the fundamental problem is the structure of the rail industry and corresponding lack of competition among the Class I railroads. There is no question that freight volume is booming. As the Committee well knows, rail shipments of crude oil have grown exponentially in the last several years and are forecasted to continue to increase. The agriculture harvest last year was particularly good, add-

ing to the demand. And, happily, the auto sector is booming again as well. Last month's seasonally adjusted sales were the highest we have seen since 2006, and many automakers are taking steps to up their North American production capacity. These are all extremely positive indicators for a recovering economy, but their potential benefit is in significant danger of being blunted by the shipping delays and high costs of storing product, or relying on alternative, more expensive forms of transportation.

In a competitive market, an influx of demand would be met by an influx of increased supply (in this case new capacity), but as previously indicated, to many in the shipper community, it seems as though supply is very slow in coming in the rail sector. The Class I railroads tout large investments in capacity, but for many in the shipper community, it is difficult to sort out what is actually new capacity for existing shippers (such as automotive) versus maintenance of existing service or service for new shippers.

Many shippers, including many Alliance members, are becoming increasingly concerned that these service problems are not going away anytime soon, and they are adjusting their logistics planning accordingly. One large Alliance member notes that in response to delays this year, it had to rebalance shipping from one of its large plants from 85 percent rail–15 percent truck to 60 percent rail–40 percent truck. In light of what that company is seeing in the rail sector, it is taking steps to lock in truck contracts, expecting a similar ratio going forward several years.

While diverting vehicles from rail to truck may provide some logistical relief, this approach has its inherent limitations; in certain situations it is simply not feasible to haul significant volumes of vehicles for very long distances via truck. Shifting goods from rail to truck is also less efficient and more costly. The increased costs of "forcing" automakers to shift goods from rail to truck will eventually be passed down to consumers. It also makes the overall shipping community more vulnerable to fuel price spikes and supply vulnerabilities. To the extent that that rail service becomes less and less reliable, these concerns will be magnified and pressure for Congress or the STB to intervene will become more acute.

Automakers are encouraged by the attention this Committee as well as the STB is giving this critical issue. Additionally, we also appreciate the efforts of Senators Levin and Portman, Co-Chairs of the Senate Auto Caucus, to draw attention to this important issue. In a July 8, 2014, letter to the STB (attached), the Senators highlighted the impact freight rail delays are having on the auto industry and urged the STB "to closely monitor this situation and work with the railroads to find a timely solution." [1]

While auto manufacturers and rail carriers communicate on a regular basis to discuss rail service issues, many of our members are growing increasingly dissatisfied with the responses (or lack thereof) that we are getting to our concerns. As Congress considers what, if any, steps it can or should take to address the concerns of other industries affected by recent rail service disruptions, automakers want to make sure our concerns are recognized and included in those considerations. We look forward to working with you on these issues.

ATTACHMENT

UNITED STATES SENATE
Washington. DC, July 8, 2014

Hon. DANIEL R. ELLIOTT III,
Chairman,
Surface Transportation Board,
Washington, DC.

Dear Chairman Elliott:

As Co-Chairs of the Senate Auto Caucus we are writing to bring to the Surface Transportation Board's attention serious freight rail delays negatively impacting the auto industry. These concerns were brought to the Surface Transportation Board's attention in a letter from the Auto Alliance dated April 17, 2014. We wish to reiterate the issues raised in the Auto Alliance letter and urge the SIB to closely monitor this situation and work with the railroads to resolve the delays.

We understand that winter weather often results in seasonal rail service delays and that this winter was particularly severe. However, additional factors have exacerbated rail service disruptions nationwide. These include a shortage of railcars and

[1] Levin, Carl and Portman, Rob. Letter to the Honorable Daniel R. Elliott, III, Chairman, Surface Transportation Board. July 8, 2014.

an inadequate response to ameliorate this shortage, the annual month-aver-month growth in auto production and auto exports as the industry rebounds from recession, and the boom in crude oil shipped by rail that is absorbing significant rail capacity.

While rail service delays are being felt across industry sectors and across the country and need to be addressed, it is a particularly urgent matter for the automotive industry. According to an April 23 *Wall Street Journal* article, the industry faces a backlog of nearly 160,000 finished automobiles on the ground awaiting rail transport. This backlog costs automakers tens of millions of dollars in storage fees and alternative means of transporting vehicles and has resulted in vehicle shortages at some dealerships across the country. This situation has significantly impacted the ability of automakers to deliver products to consumers.

We should be doing everything we can to support the resurgence of American manufacturing which is fed in large part by the comeback of the U.S. auto industry. This includes making sure the rail infrastructure on which America's manufacturers rely is operating efficiently and effectively. We urge the Surface Transportation Board to closely monitor this situation and work with the railroads to find a timely solution to the rail service deficiencies currently plaguing the U.S. transportation system.

Thank you for your consideration.

Sincerely.

Rob Portman Co-Chair. Senate Auto Caucus	Carl Levin Co-Chair. Senate Auto Caucus

The CHAIRMAN. Thank you, sir.

Finally, Mr. Ed Hamberger, who's the President and Chief Executive Officer of the Association of American Railroads, which I often refer to as the most powerful under-the-radar lobbying group in Washington, D.C. Welcome.

STATEMENT OF EDWARD R. HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Mr. HAMBERGER. Mr. Chairman, thank you. Senator Thune, Ranking Member Thune, members of the Committee, thank you for the opportunity to be here.

Senator—Mr. Chairman, rather—we were talking at a hearing last year where we agreed that we have not always seen eye to eye on the issue of economic regulation of the freight rail industry, but I observed at that time and would like to reiterate today that I appreciate your leadership in those areas where we have worked together and thank you for your years of public service. So thank you.

I hope that my written statement, and I want to emphasize it in my oral statement, conveyed to you the fact that this industry recognizes that our customers are not getting the service to which they have become accustomed and which they need to serve their customers. It is a responsibility that we undertake to restore that service. It has occurred, as Senator Thune mentioned, not just because of rail service issues, but also some issues outside of our control. Nonetheless, it is our responsibility to get back to the level we need to get back to.

I would like to address that issue and, with your permission, Mr. Chairman, also address some things not in my written testimony that I have heard here today.

Let me start with capacity and service. On the one hand, this is a good news story. In August 2014, just last month, we moved more merchandise overall than we have since October 2007, before

the recession. So the economy is coming back. We hope to move 17 million new automobiles this year. On the intermodal side, we're going to take 13 million trucks off the road as we grow intermodal at 6, 7 percent for the year.

But we have problems. We did not see the surge in traffic coming. Many of our customers did not, either. In fact, last August there were tens of thousands, over 50,000, grain cars in storage. And then in the fourth quarter the demand hit. The weather—you mentioned it, Mr. Chairman. Yes, it snows every year. But this particular year in Chicago was a record cold and record snow. We are a network industry. One-third of our traffic originates, terminates, or transits through Chicago. When Chicago has problems, the entire network—it ripples through the entire network.

Another issue that I mentioned is the commodity mix. What does that mean? Well, what it means is that for years we've been building quadruple tracking into the Powder River Basin around Gillette, Wyoming, so we can move coal. In 2013, we moved 1.4 million less carloads of coal than we did in 2008. Now, we can't just pick that track up in Gillette and move it to Minnesota, Missouri, or South Dakota, West Virginia. It takes time to go out there and build new capacity where the marketplace says we need it.

That's exactly what we're trying to do. We're spending $26 billion, 40 cents of every revenue dollar. We've hired 4,800 new employees, net new employees, in the first 6 months of this year. But it takes time for all of that to work its way into the system.

In Chicago, which I mentioned, we have had a task force looking at how to automate all the data that we collect there so that we can put in new protocols, move into higher levels of alert more quickly than we did last year, hoping that that will help alleviate some of the network fluidity issues rippling out from Chicago.

I mentioned the fact that we're putting $26 billion, 40 cents of every dollar, and that can only happen if we have the ability to invest. It is private sector money. It is not Federal money. I am not here asking for more Federal money because we invest our own money. We go into the private capital markets and we borrow it and we invest that which we earn.

I do acknowledge that Chairman Rockefeller and Senator Thune introduced your bill on Monday. We are still taking a look at it. We have several concerns as introduced, but, as we always do, we'd like to sit down and see if we can't reach common ground with you as you move to mark up next week.

I would like to take issue, however, with some of the things my good friend Cal Dooley said about how rail rates are hurting his members. It is exciting that his members have announced 197 new projects of $125 billion in the United States. Many of those plants will be served by railroads. Some of those will only be served by one railroad. But yet, the investments are going forward. We will be an enabler of those investments, not an impediment to them.

Cal mentioned average rail rates spiking and he's right. They have gone up, according to this chart, over the last several years, all the way back to where they were in 1988 in inflation-adjusted terms, 17 percent below where they were in 1981. So they've spiked all the way back to where they were in 1988.

One of his employees testified on the House side in May that the United States is currently the most attractive place in the world to invest in chemical manufacturing. All this investment occurring at the same time that our rates have gone all the way back to where they were in 1988. I would suggest that we're the most attractive place to invest for chemicals, because of—not in spite of, but because of the rail service that we provide and the rates that we charge.

There were two hearings at the STB—let me close quickly, Mr. Chairman; I apologize for running over—in March and April. The one in March was on the NITL proposal to require mandatory reciprocal switching. There was a disagreement between the railroads and the proponents of that proposal over what the magnitude of the impact would be, but both sides agreed that there would be an impact in money leaving the rail industry and going to the shipper community, there would be an impact on fluidity, a negative impact, because of the increased switching of cars.

Then a month later there was a hearing on service issues and what could be done to improve service. Well, the message coming out of that hearing was much different. The message coming out of that hearing could frankly be best summed up by the statement of Lucas Lentsch, Secretary of Agriculture for South Dakota. He said, quote: "Farmers have spent the capital to increase production. Grain companies have spent the capital to handle this new production. And now it is up to the railroads to spend the capital to get this production to export." Well said, and our members are doing just that, spending their money, $26 billion, to get grain to export, chemicals from the plant to the customers, automobiles from the manufacturing plant to the showrooms.

But that can only happen if we can earn the revenue to reinvest. I urge you to understand that the balanced regulatory system that is there at the STB is the foundation which allows those investments, and if you undermine that foundation you undermine the ability to make those investments, and that will have a negative impact on capacity and the economy. So I ask you to keep that paramount as you take a look at legislation and other issues going forward.

Thank you, Mr. Chairman. I appreciate your leniency on the time and look forward to any questions.

[The prepared statement of Mr. Hamberger follows:]

PREPARED STATEMENT OF EDWARD R. HAMBERGER, PRESIDENT AND CHIEF EXECUTIVE OFFICER, ASSOCIATION OF AMERICAN RAILROADS

Introduction

On behalf of the members of the Association of American Railroads (AAR), thank you for the opportunity to discuss the performance of America's freight rail system. AAR's freight railroad members account for the vast majority of freight railroad mileage, employees, and traffic in Canada, Mexico, and the United States. AAR's membership also includes Amtrak and commuter passenger railroads. This testimony is on behalf of the AAR's freight railroad members.

Comprehensive, reliable, and cost-effective freight rail service is critical to our Nation. Our nation's freight railroads are proud that that is exactly what they generally provide. Indeed, America's freight rail system is second to none in the world.

That said, it is also clear that, for a not insignificant group of rail customers, rail service in recent months has not been of the quality they have come to expect, or that railroads themselves expect. Rest assured, railroads are working tirelessly to

remedy these challenges. Substantial progress has been made, and while challenges remain, railroads are fully committed to maintaining progress toward restoring service levels that rail customers deserve.

And while I do not mean to minimize in any way the very real challenges that some rail customers are facing, it is important to note that U.S. railroads today are moving a tremendous amount of freight. In fact, average weekly U.S. rail volume, defined as carloads plus intermodal containers and trailers, was higher in August 2014 than in any month since October 2007. The intervening recession reduced freight traffic by about 20 percent. However, railroad spending on their networks remained comparatively high through these years, and increased over the last few years as volumes began to return.

The actions railroads are taking today will result in our Nation's rail network being stronger and more resilient than ever, providing railroads the opportunity to improve their operations and become better able to provide the efficient, reliable, and cost-effective freight transportation service that rail customers, and our nation, need in order to continue to prosper.

In the testimony below, I will discuss general issues related to the design and operation of rail networks, and discuss some of the specific factors that have contributed to recent rail service challenges. Foremost among these factors is a significant, rapid increase in demand for service—driven by commodity markets, expanding economic activity, and the related expansion of the domestic energy industry—that neither railroads nor their customers fully anticipated and that, in some cases, has proven challenging to handle with the resources available. Increasing demand included a different mix of traffic than previously, and some of this new mix has utilized areas of the rail network that had not previously seen such high traffic levels. In addition, this demand increase was accompanied by an unusually severe winter and subsequent thaw, as well as numerous spring flooding events, which continue to negatively impact rail operations in certain locations.

Network Planning and Management Complexity

Unlike other network industries that transmit fungible products (*e.g.,* electricity is the same, no matter who generates it) or products that can readily be routed to particular customers using automated equipment (*e.g.,* electronic signals for telecommunications), railroads must move specific rail cars carrying specific commodities from specific origins to specific locations and must do so outdoors, in all types of weather. To accomplish this, railroads devote enormous resources to planning and operations.

Even under the best of circumstances, day-to-day fluctuations have an impact on rail operations. Trains can be late or early for many different reasons, such as crew availability, customer facility fluidity, bad weather, grade crossing or other accidents, and even the maintenance and construction of rail infrastructure itself. Flexibility is built into plans and operations, but this flexibility is reduced as demand on the network increases, and no plan can fully predict or accommodate all eventualities for all portions of a rail network.

As volumes increase, a number of factors make rail networks exceedingly complex to plan and manage and are worth noting here:

- *Train types.* Trains of a single type can often be operated at similar speeds and with relatively uniform spacing between them. This increases the total number of trains that can operate over a particular rail corridor. This situation, however, is relatively rare. Far more common is for trains of different types—with different lengths, speeds, and braking characteristics—to share a corridor. When this happens, greater spacing is required to ensure safe braking distances and to accommodate different acceleration rates and speeds. As a result, the average speed drops and the total number of trains that can travel over a rail corridor is reduced.[1]
- *Service requirements.* Different train types and customers have different service requirements. For example, premium intermodal trains demand timeliness and speed; for bulk trains (*e.g.,* coal or grain unit trains), consistency and coordinated pick-up and delivery is the priority; customers who own their own rail cars will want railroads to implement strategies which help them minimize fleet-related costs, for example by maximizing the number of "turns" (loaded to empty to loaded again) the rail cars make; passenger trains require high speed and reliability within very specific time windows; and so on.

[1] It's no different on a highway, where efficiency is maximized when similar vehicles travel at similar speeds.

- *Maintenance.* The need for safe operations is ever present, and proper line maintenance is essential for safe rail operations. In fact, because of higher rail volumes and a trend toward heavier loaded freight cars, the maintenance of the rail network has become even more important. Railroads have no desire to return to the days when maintenance "slow orders" (speed restrictions below the track's normal speed limit) were one of the most common causes of delay on the rail network. That's why maintenance is one of the most important parts of any railroad operating plan. It necessarily consumes track time that otherwise could be used to transport freight.

- *Traffic volumes are not always foreseen.* When planning their operations, railroads use past experiences, customer-provided forecasts, economic models, and other sources to produce their best estimate of what demand for their services will be well into the future. Railroads use those traffic forecasts to gauge how much equipment, labor, and other assets they need to have on hand. As with any prediction of future events, these traffic forecasts are imprecise predictors of markets. After a certain amount of traffic growth beyond what was anticipated, available resources will be fully deployed, and additional assets (some requiring long lead times—see below) will be needed.
- *Traffic mix.* The U.S. and global economies are constantly evolving. Firms—even entire industries—can and do change rapidly and unexpectedly. The collapse of the construction industry when the housing bubble burst in 2007 and the recent rapid growth in "new energy" production are just two examples. These broad, often unanticipated economic changes are reflected in changes not only in the volumes (see above paragraph) but also in the types and locations of the commodities railroads are asked to haul. If the commodities with rail traffic declines traveled on the same routes as commodities with traffic increases, the challenges these changes presented to railroads' operating plans have less impact. However, when traffic changes occur in different areas—as is usually the case and certainly has been the pattern in recent years—the challenges to railroads' operating plans are magnified.
- *Resource limitations.* Like firms in every industry, railroads have limited resources. Their ability to meet customer requirements is constrained by the extent and location of their infrastructure (both track and terminal facilities) and by the availability of appropriate equipment and employees where they are needed.

  Terminals—where trains are sorted, built, and broken down, similar in certain respects to airline hubs—are a case in point. If a train cannot enter a terminal due to congestion or some other reason, then it must remain out on a main line or in a siding where it could block or delay other traffic. The ability of a ter-

minal to hold trains when necessary and to process them quickly is one of the key elements in preventing congestion and relieving it when it does occur. Thus, one of the most important factors in increasing capacity for the rail network is enhancing the fluidity of terminals. Unfortunately, terminals are often one of the more difficult areas in which to add capacity, in part because they are frequently in, or near, urban areas. Expansion generally means high land and, potentially, high mitigation costs. Even in less urban areas, a rail terminal is rarely considered positive by nearby residents, and its development or expansion to accommodate freight growth is usually the subject of intense debate.[2]

- *Need for long lead times.* It's an unfortunate reality that many of the constraints railroads face—particularly those involving their physical network—usually cannot be changed quickly. For example, it can take close to two years for locomotives and freight cars to be delivered following their order; six months or more to hire, train, and qualify new employees; and several years to plan, permit, and build new infrastructure. Rail managers must use their best judgment as to what resources and assets will be needed, and where, well in the future. Usually, this process works well, but when those judgments are off, serious problems can ensue. When these judgments must also deal with the uncertainties of rapid and historically unstable market changes, such as the recent emergence of energy products moving by rail, the probability of successful forecasting is even further reduced.

  On a related point, firms in every industry walk a fine line when it comes to capacity. Generally speaking, if firms take too long to bring back idled capacity or to build new capacity, they risk shortages and lost sales. That's the case in terms of some rail operations right now. On the other hand, if firms build capacity on the hope that demand will increase, they risk that the demand will not materialize and they will be saddled with added, and wasted, costs. Like other firms, railroads must balance these risks, and different railroads may come to different decisions as to how much "surge capacity" is needed and where to locate such capacity on their networks. Nonetheless, significant investment has and will be made in railroad operating assets.

- *Regulatory Requirements:* Throughout all aspects of their operations, investments, and planning, railroads must navigate the ever-growing series of Federal regulations which cumulatively can have a dragging impact and constrain railroad capacity. For example, while railroads are fully committed to implementing the requirement for positive train control (PTC) on approximately 60,000 miles of their networks, implementation of this technology comes with not only a financial, but also an operational cost. As PTC continues to be developed and implemented in the field, significant service disruptions will result, as each segment of track on which PTC will be installed must be taken out of service for periods as long as ten hours. Consider the fact that PTC is largely being installed along heavily-used main lines and it's easy to understand the dramatic reduction in capacity that will result.

  Beyond PTC, railroads continue to work through the vast number of new regulations mandated in the Rail Safety Improvement Act of 2008, including those related to hours of service and training standards which impact the availability of train crews. Further, operational restraints on certain commodities, such as speed restrictions on trains carrying crude oil, can have a reverberating effect on overall traffic movement. One only need imagine a slow truck on a two-lane highway and the traffic backups that can ensue. The fact is that, while most of these regulations in and of themselves do have some impact on operations, when taken together they can result in a substantial negative impact on capacity.

- *Railroads are networks.* Last, but not least, the significance of the network aspects of rail operations cannot be overemphasized. Disruptions in one portion of the system can quickly spread to distant points. Railroads are not unique among network industries in this regard—weather problems at one airport can quickly cause problems at many other airports, for example. But unlike airline networks, where the overnight hours can usually be used to recover from the previous day's problems, rail networks operate 24 hours a day, 7 days a week. Thus, incident recovery must be accomplished at the same time that current op-

[2] Transportation infrastructure projects across modes are often victims of interminable permitting delays. A project by CSX railroad to expand its Virginia Avenue tunnel just a few blocks from here is a case in point. We urge policymakers at all levels to implement permitting reform to improve our existing network of railroads, highways, and waterways to enhance our Nation's competitiveness and reduce unnecessary costs and delays.

erations are ongoing and while the other factors mentioned above continue to come into play. That's why, in extreme cases, recovery in rail networks can take months. The winter of 2013/2014 is one such extreme case that is discussed further below.

In light of the factors summarized above and many more, railroads try to design effective operating plans that resolve the thousands of competing customer interests that make daily use of railroad resources. They also do their best to make incremental changes to operating plans where possible—for example, by changing the routing of business through a particular railroad's network so that more traffic is routed to less congested areas. But because of the complexities involved, new operating plans often require components (for example, adding critical new infrastructure) that can take months to implement. And when capacity is constrained, as it is in certain geographic areas on the rail network today, disruptive incidents are more common and recovery takes longer than when the network is not fully utilized.

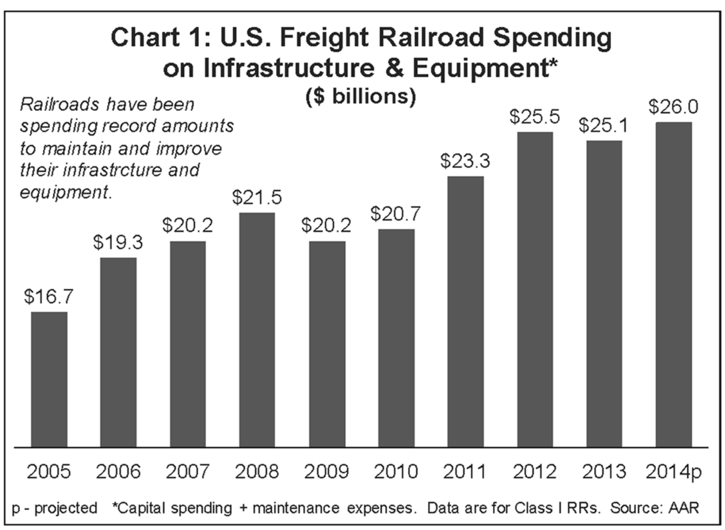
Railroads Are Working on a Variety of Fronts to Increase Capacity and Service Reliability

As noted at the outset, railroads know that, for many of their customers, rail service in recent months has not been at the level they expect. Railroads are working tirelessly to address this, including by making robust investments in equipment and employees, which are the rail assets that can be most readily adjusted to match capacity.

Massive 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 are among the most important. That's why freight railroads have been expending, and will continue to expend, enormous resources to improve their asset base.

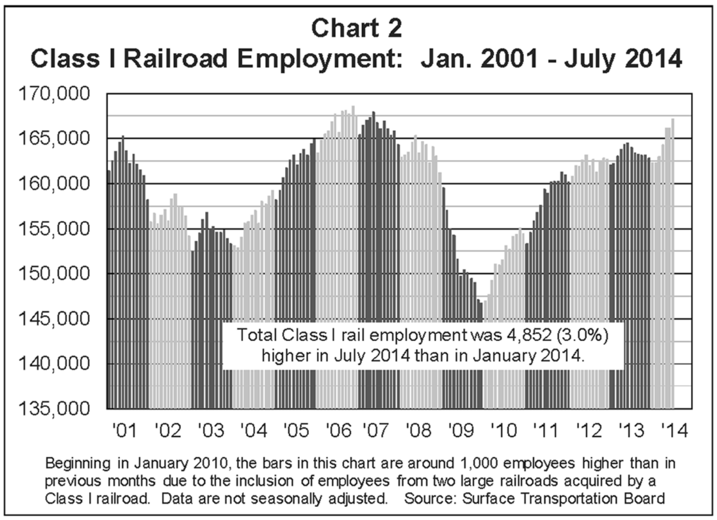
Rail spending for these purposes has never been higher than it is right now. After spending more than $25 billion in both 2012 and 2013 on capital expenditures and maintenance expenses related to their track, signals, bridges, tunnels, terminals, locomotive, freight cars, and other infrastructure and equipment—more than ever before—Class I railroads are projected to spend at least $26 billion for these purposes in 2014 (see Chart 1). Despite the "Great Recession" and slow recovery, railroads continued to plow record amounts of funds back into their networks.



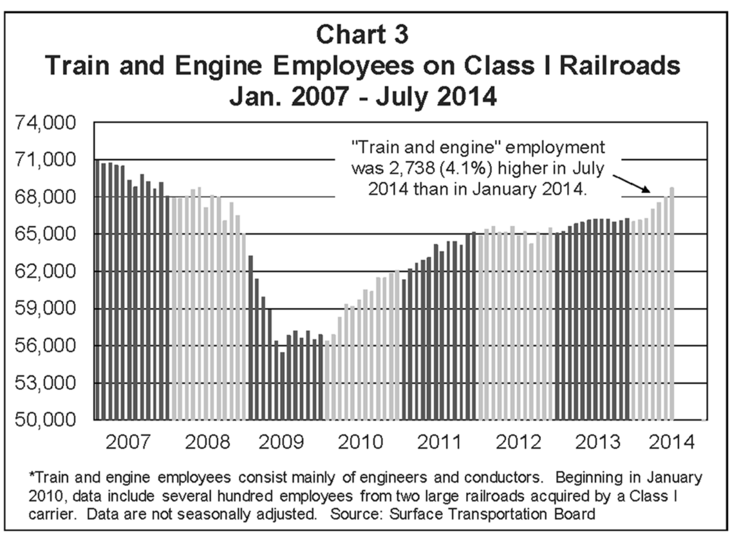
In fact, given their intense efforts to address service issues and recent announcements by several railroads that they are increasing the amounts they originally planned to spend this year, it would not be surprising if total spending in 2014 exceeded $26 billion. In aggregate, railroads have put hundreds of additional locomotives and thousands of additional freight cars in service in recent months, all with an eye toward resolving service issues and meeting customer needs.

Hiring New Employees

In addition to equipment and infrastructure, personnel are a key determinant of rail capacity and service, and railroads have been aggressively hiring and training new employees. Like every other major U.S. industry, freight railroads saw a reduction in employees during the "Great Recession," but there has been a significant recovery in rail employment since then, including a sharp surge since the beginning of 2014 when existing service problems began in earnest. Class I railroads had 4,852 more employees in July 2014 than in January 2014, a 3.0 percent increase (see Chart 2).



Rail employment growth is even more impressive in the category most relevant to resolving the service issues: the number of "train and engine" employees, which consist mainly of engineers and conductors who operate trains, was up 4.1 percent (2,738 employees) from January 2014 to July 2014 (see Chart 3).



To put the rail employment growth in perspective, employment across the U.S. economy rose just 1.1 percent from January 2014 to July 2014. To the best of our

knowledge, no major industry has seen higher employment growth since the beginning of this year than the 4.1 percent increase in train and engine employment, and only a small handful have seen employment growth greater than the 3.0 percent seen by freight railroads overall. As we have seen, even this high level of employment growth has not been sufficient to meet demand in some locations and railroads continue to hire and train additional people to ensure that the resources will be available in the future to properly meet customer requirements.

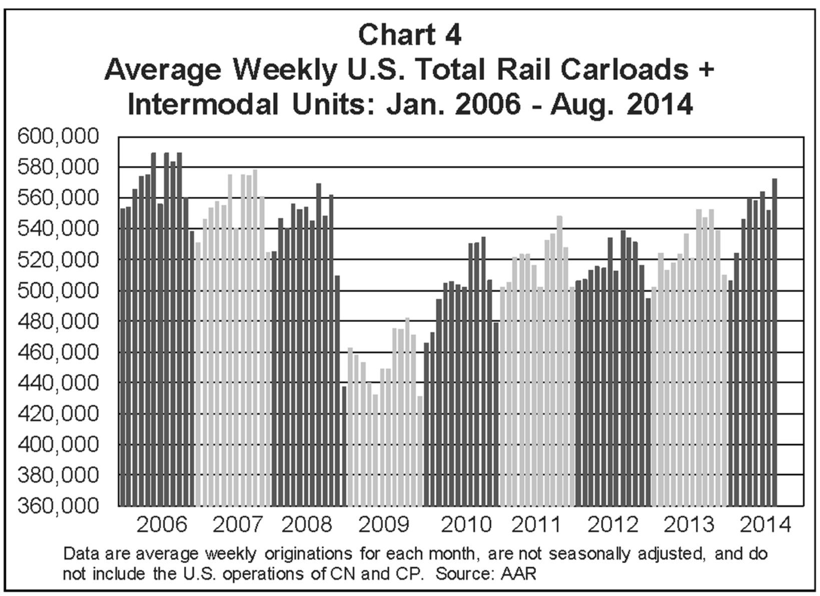
A Surge in Demand for Rail Service

In recent periods, substantial growth in demand for rail service across industrial sectors has been a key factor behind the service issues facing certain segments of the rail industry. This growth has not only occurred rapidly, it has been in markets and locations that are, in many cases, different from where the rail industry has experienced past growth. This market shift phenomenon happens in many industries, but it is particularly difficult for railroads to deal with since railroads cannot simply pick up track and move it from one location to another. Railroads must build new infrastructure from scratch to deal with these market changes.

From January 2012 through February 2014, monthly year-over-year growth in U.S. rail carload traffic averaged –1.7 percent. However, from March 2014 through August 2014, year-over-year monthly rail carload growth averaged a much more robust 4.8 percent, thanks to a variety of factors such as (among other things) the record grain crop last year, recovery in demand for coal to generate electricity (discussed further below), and better general economic conditions.

Likewise, rail intermodal traffic has surged in 2014 as well, with average monthly year-over-year growth of 7.3 percent from March 2014 through August 2014, up from an average of roughly half that from January 2012 through February 2014.

Chart 4 shows average weekly U.S. rail carloads plus intermodal units from January 2006 through August 2014. Note the dramatic increase since early 2014. Growth has been so strong, in fact, that, as noted earlier, average weekly U.S. rail volume (carloads plus intermodal containers and trailers) was higher in August 2014 than in any month since October 2007.



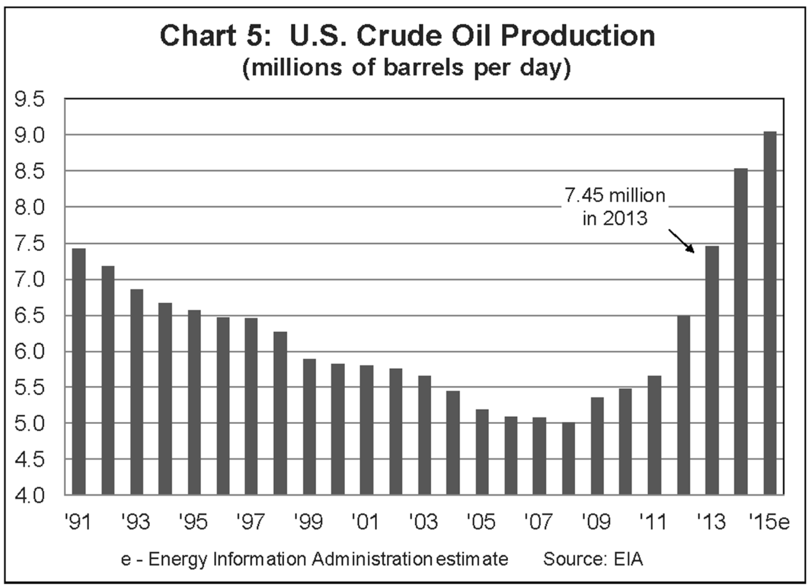
The surge in rail traffic was challenging because it was ubiquitous and largely outside the scope of forecasted demand estimates, by railroads and their customers alike, and frequently did not occur in traditional markets or geographic areas. As discussed above, railroads are like other firms in that they plan to have assets on hand sufficient to handle expected business, but in this case customer demand was underestimated. Service performance and network velocity are adversely affected when a crew base and locomotive supply are planned for lower traffic volumes than

actually occur. That's why railroads have been taking steps such as hiring significant numbers of additional train crews, providing incentives to existing employees to delay vacations and retirements, taking locomotives and freight cars out of storage, accelerating repair activity to increase the supply of locomotives and freight cars, reallocating capital budgets to support higher locomotive purchases, and much more.

Crude Oil

There has been a great deal of discussion in recent months about the growth in the movement of crude oil by rail, and how rail crude oil shipments are allegedly "crowding out" grain and other rail commodities.

As I discussed in detail in testimony to this committee on March 5, 2014, thanks to the "shale boom," U.S. crude oil output has risen sharply in recent years and is expected to continue to grow (see Chart 5). Much of the recent increase in crude oil production has occurred in North Dakota, where crude oil production rose from an average of 81,000 barrels per day in 2003 to close to a million barrels per day today. Most of North Dakota's crude oil output is transported out of the state by rail.

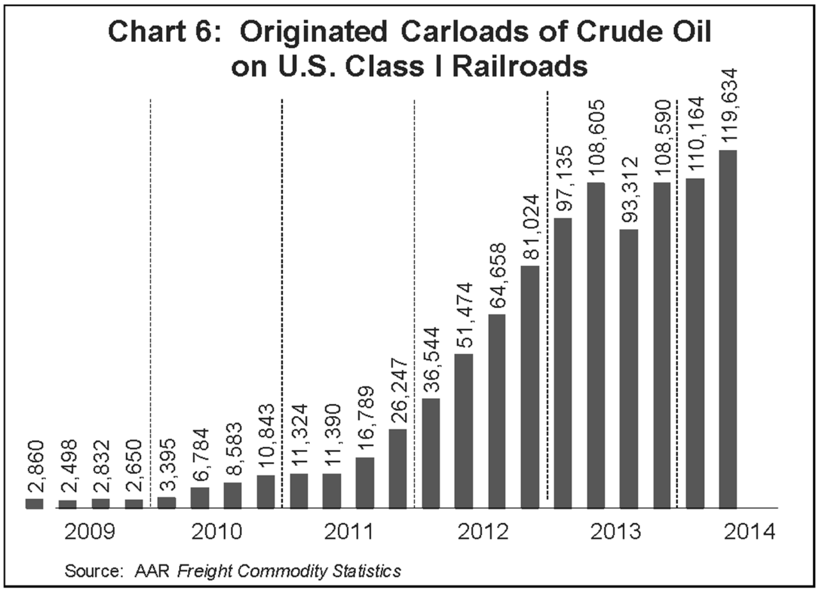


The development of shale oil represents a tremendous opportunity for our Nation to move closer to energy independence. The widespread benefits this would entail include reduced reliance on oil imports from unstable countries whose interests do not necessarily match up well with our own; increased economic development all over the country; thousands of new well-paying jobs; tens of billions in savings in our Nation's trade deficit every year; and substantial amounts of new tax revenue for governments at all levels.

Rail has a critical role in delivering these crucial benefits to our country. As recently as 2008, U.S. Class I railroads originated only 9,500 carloads of crude oil. By 2013, that had grown to 407,761, equal to around 11 percent of U.S. crude oil production.

That said, one must be careful when looking to ascribe blame to crude oil for the service problems railroads are currently facing, which, as discussed below, became especially acute during and after this past winter. As Chart 6 shows, Class I railroads originated 229,798 carloads of crude oil in the first half of 2014, up 11.7 percent (24,058 carloads) over the 205,740 carloads originated in the first half of 2013. That's a considerably slower rate of growth compared with 2011 and 2012 trends.

Crude oil accounted for just 1.6 percent of total Class I carload originations in the first half of 2014.[3]

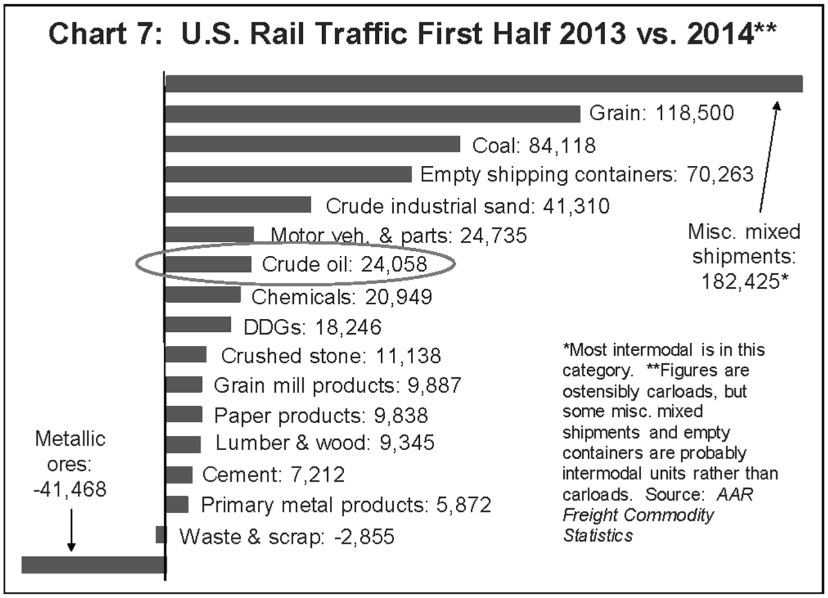


Moreover, the 24,058 more originated carloads of crude oil in the first half of 2014 works out to less than 1.5 new train starts per day, on average. Surface Transportation Board data indicates that there are approximately 5,000 train starts per day. Thus, recent new crude oil train starts are a small fraction of total train starts nationwide.

Crude oil is also a small portion of total recent traffic increases. Class I railroads originated a total of 645,704 more units in the first half of 2014 than in the first half of 2013.[4] The 24,058 additional carloads of crude oil are just 3.7 percent of the total net first-half increase. By comparison, as Chart 7 shows, in the first half of 2014 compared with the first half of 2013, Class I railroads originated 182,425 more carloads of "miscellaneous mixed shipments" (most intermodal is in this category), 118,500 more carloads of grain, 84,118 more carloads of coal, 41,310 carloads of crude industrial sand (this includes frac sand), 24,735 carloads of motor vehicles and parts, 20,949 more carloads of chemicals, and 18,246 more carloads of dried distillers grain (DDGs, a byproduct of ethanol production used as animal feed). Again, crude oil is not a significant source of overall rail traffic growth so far in 2014 over 2013.

[3] Data in this section come from a different source of rail traffic data than the source used to produce Chart 4 above. This alternative data source is not as timely as the source used for Chart 4, but it includes much more commodity detail, allowing the break out of crude oil and other commodities that is not possible using the other data source. In addition, unlike the first data source, the alternative data source used in this section includes the U.S. operations of Canadian railroads, which for grain and crude oil specifically are significant.

[4] Units consist of carloads and intermodal containers and trailers, though the exact breakdown is not clear.

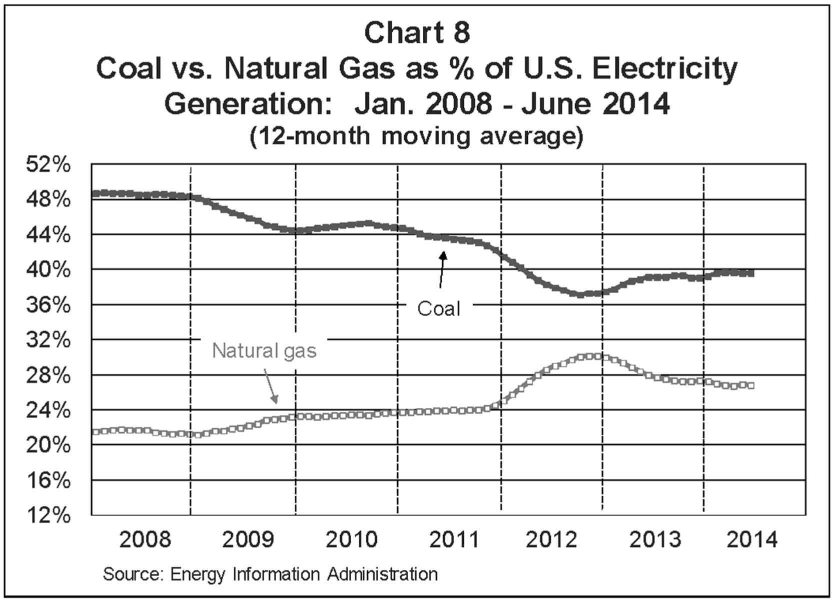


This is not to say that crude oil transport is not having an effect on the transport of other commodities, especially in certain geographic areas where crude oil volumes are much more concentrated than elsewhere. But rather than saying that crude oil is crowding out other traffic, it is more accurate to say that, right now, on some railroads, on some lines, rail capacity is a scarce resource. Railroads are doing everything they can to increase the supply of this resource. But as noted earlier, infrastructure creation takes time, even for urgent programs. For the time being, on congested rail lines, all commodities railroads are hauling are competing with each other for available capacity. Railroads do their best to address the needs and desires of all of their customers on an individual basis, but they must keep foremost in mind the need to maximize velocity across their networks, as a whole, to the benefit of all customers. Conflicting demands for the use of rail capacity are inevitable and railroads are doing what they can to minimize them, but when they occur, some rail customers are bound to prefer a different outcome. Any time there is a scarce resource and demand exceeds supply, someone is bound to be left unhappy.

Coal Traffic Has Been Higher Than Anticipated

In addition to leading to sharply higher crude oil production, the “shale boom” has also led to sharply higher natural gas production and, consequently, lower natural gas prices from what they once were. That has made electricity generated from natural gas much more competitive vis-à-vis electricity generated from coal.

However, as Chart 8 shows, over the past 18 months or so, not only has the coal share of U.S. electricity generation stopped falling, it’s actually risen, as utilities that had been generating electricity from natural gas switched back to lower-priced coal. According to the U.S. Energy Information Administration, in the first half of 2013, coal accounted for 764 million megawatthours of U.S. electricity generation, equal to 39.1 percent of the total. In the first half of 2014, coal accounted for 806 million megawatthours, or 40.1 percent of U.S. electricity generation. This past winter in particular, the price of natural gas spiked, leading to greater than expected demand for coal and the sharply higher rail coal volume shown in Chart 7.



Extreme Weather Wreaked Havoc on Railroads, Especially in Chicago

The railroad "factory floor" is outdoors and nearly 140,000 miles long. As such, railroading is arguably more susceptible to weather-related problems than any other major industry. Thanks to their experience and the skill and professionalism of their employees, railroads are usually adept at handling weather events of all types. That said, extreme weather events, particularly sustained extreme weather events, can wreak havoc on rail operations. For example, extremely cold weather can force railroads to dramatically shorten the length of their trains, while snow accumulation can make it difficult to keep rail yards functioning. In much of North America, this past winter was one very long, very severe extreme weather event, with both record cold temperatures and record precipitation.

While this past winter was unusually harsh in much of the country, it was especially so in the Chicago area. Chicago has been a crucial nexus in the North American rail network for over a century. Today, nearly 1,300 trains (500 freight and 760 passenger) pass through the region each day. In fact, around one-fourth of the Nation's freight rail traffic passes through or near Chicago. As such, when railroading becomes difficult in Chicago, it quickly becomes difficult throughout the rail network.

According to the National Weather Service, Chicago experienced its coldest four-month period on record between December 2013 and March 2014, with an average temperature of 22 degrees and a record number of days (26) at zero degrees or below. Chicago's 82 inches of snow this past winter was the third-highest in history and well over double the annual average of the previous 20 years.

Moreover, during ordinary winters, there is usually time between storms to do some clean-up. Railroads typically ensure that their winter staffing levels are adequate to deal with these problems. However, that was often not the case this year due to short intervals between storms. In Chicago, for example, once the bad weather started, there was never a real opportunity for railroads to get their operations back to normal before the next severe cold spell or winter storm hit. The problems in Chicago and elsewhere in the Midwest were compounded by the fact that the severe weather occurred unusually far south this year so that the geography needing relief was much larger. Usually, the southern regions have served as relief valves during northern disruptions, and early last winter diversion of trains into this region was being planned, where possible. However, that outlet was not generally available much of the past winter. For example, a series of ice storms in a band between Atlanta and Memphis made it unsafe, sometimes impossible, for train crews to get to work in this region or for maintenance crews to properly tend to the

many day-to-day problems requiring resolution in a properly operating railroad. The result was rail congestion in an area which has typically been available to relieve problems created by winter weather further north.

Now, it's true that, as some rail critics have charged, "winter comes every year," but to claim that this past winter was typical is to be disingenuous. I respectfully submit to you that, if we had a "normal" winter this year, the capacity challenges we have seen would likely be at a significantly lower level. We should also remember that the challenges which have faced rail operations in many key areas were further exacerbated by widespread, regional spring flooding that was largely the result of the severe winter.

As noted above, when capacity is constrained, disruptive incidents are more common and recovery takes longer than when the network is not fully utilized. In a nutshell, that explains why the events of this past winter continue to affect rail operations today.

Improving Rail Operations in Chicago

Rail capacity has long been constrained in Chicago. Indeed, improving capacity utilization and the efficiency of rail operations in the Chicago region is the reason for the Chicago Region Environmental and Transportation Efficiency Program (CREATE), which has been underway for several years. CREATE is a multi-billion dollar program of capital improvements aimed at increasing the efficiency of the region's rail infrastructure. A partnership among various railroads, the City of Chicago, the state of Illinois, and the Federal Government, CREATE includes 70 projects, including 25 new roadway overpasses or underpasses; six new rail overpasses or underpasses to separate passenger and freight train tracks; 36 freight rail projects including extensive upgrades of tracks, switches and signal systems; viaduct improvement projects; grade crossing safety enhancements; and the integration of information from dispatch systems of all major railroads in the region into a single display. To date, 20 projects have been completed, nine are under construction and 19 are in the design phase.

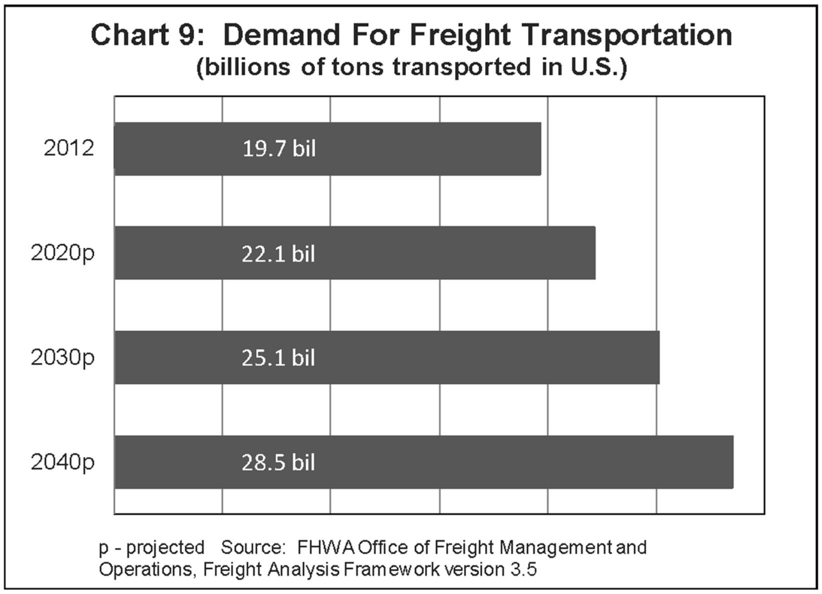
Railroads are confident that, as CREATE proceeds, rail operations in Chicago will become more fluid and better able to withstand shocks such as those presented by extreme weather. Railroads are also taking additional steps outside of the CREATE framework to add resiliency and efficiency to Chicago area rail operations.

For example, right now railroads are investigating processes that will allow them to automate and centralize the reporting of various operating metrics regarding the status of rail operations in Chicago, such as dwell time, rail car inventory, the number of trains "holding" at a particular location, the number of cars delivered per day, the number of cars en route to Chicago, and corridor velocity. The goal is to provide railroads with a common understanding of actual problems and, hopefully, provide warning of potential problems so that railroads can take steps ahead of time to minimize them.

Current Service Issues Are Not a Good Reason to Increase Government Control of Rail Operations

It is unfortunate that some groups are seeking to take advantage of the current rail service problems to advocate for far-reaching changes to the regulatory regime under which railroads operate that would result in a much greater government role in freight rail operations.

That would be a profound mistake. As described above, railroads are already working very hard to remedy the service issues they face and are confident they will succeed. Looking ahead, railroads know that they will have to continue to expand their capacity to meet growing transportation demand. Recent forecasts from the Federal Highway Administration found that total U.S. freight shipments will rise from an estimated 19.7 billion tons in 2012 to 28.5 billion tons in 2040—a 45 percent increase (see Chart 9).



Railroads are the best way to meet this demand, and they're getting ready today to meet the challenge. They will continue to reinvest huge amounts back into their systems, as long as a return to excessive regulation does not prevent them from doing so.

It is beyond the scope of this testimony to discuss in detail the many ways in which railroad reregulation is misguided. In short, it would force railroads—through what amounts, in one way or another, to price controls—to lower their rates to favored shippers at the expense of other shippers, rail employees, and the public at large. Billions of dollars in rail revenue could be lost each year. Artificially cutting rail earnings in this way would severely harm railroads' ability to reinvest in their networks. The industry's physical plant would deteriorate; essential new capacity would not be added; and rail service would become slower, less responsive, and less reliable at the very same time that rail customers are demanding *more* rail capacity and *more* reliable rail service. It makes no sense whatsoever to enact public policies that would discourage private investments in rail infrastructure when our Nation needs more of it.

Conclusion

America today has the best freight rail network in the world. That said, it is clear that, for a variety of reasons, rail service to some rail customers is not at the high level they expect. Railroads are fully aware of this, and they are taking the necessary steps to meet current capacity demands and invest for future growth. Railroads have no greater goal than to provide safe, efficient, and cost effective service to their customers.

The CHAIRMAN. Thank you very much, Mr. Hamberger. And I apologize to my colleagues. I still have to give you that book about Stanford, and I'm sorry about USC. We like sports. So does he.

I want to sort of focus on the Surface Transportation Board in my first questioning. For years I've been pushing them to be proactive and to efficiently address issues raised by shippers and to restore—a word that I care about—the balance between railroads and shippers. I think they have clearly leaned toward the railroads and I see that, one, as not their right. But when I bring things up, I'm mostly met by deaf ears.

So I have a couple questions for shippers. How have past decisions at the STB—Mr. Dooley, I might start with you, but anybody. How have those decisions limited competition for shippers, number one?

The Board has started a number of what they call proceedings, but it doesn't appear that the Board has completed many of those proceedings, which is a technique, a very good bureaucratic technique, to start something, but then not quite finish it. What actions are most important in your judgment for the board to complete? Anybody. This is to all of you.

Mr. DOOLEY. Thank you, Mr. Chairman. I first off just want to preface my remarks here, is that, to something that Mr. Hamberger said, is that there should be nothing inconsistent with ensuring that the rail industry is financially healthy and making investments in their infrastructure and having an STB that has the policies in place that can ensure that we have an effective, timely, and equitable way to resolve rate disputes.

That's what we're asking. That's what we think's embodied in your legislation. And that's why we think the legislation's important, because, to your question, STB has not taken action on a number of issues or has adopted policies that simply are no longer consistent with the landscape we find ourselves in.

Competitive switching is a good example. They have been dealing with competitive switching and investigating that for 3 years, over 3 years. They have not made one proposal on how they should fix it. So they've been continuing to gather information. They need to be directed or given guidance by Congress to allow for a simple thing as competitive switching, which works very effectively in Canada.

We would also say when you look at even the revenue adequacy challenges that require somebody that is going to be challenging a rate, that they have to do a calculation to what it would cost to build an independent rail line that could provide the service at a cost that would be different from an incumbent rail line. That is almost an impossible task.

They've also adopted policies which put caps on the amount of remedies that you can get which are so low in many instances that it doesn't make any sense for anyone to challenge.

On the case of rate bundling, they haven't even begun to address that, which is kind of like a situation where a company is subject to entering into negotiations with the rail companies, the rail companies have the opportunity to unilaterally establish tariff rates for the different routes of shipment. The company can say, we've reached a pretty good agreement on 90 percent of those rail rates, but, you know, there are these ten over here that are excessive and they're tariff rates. They are held hostage in advancing a rate challenge unless they agree on those 90 percent of those lines that they have reached an accommodation or an agreement with, to sacrifice that agreement to pay a higher tariff rate. They're held hostage in terms of the financial impediments to seeking a resolution or a fair and equitable resolution of a rate dispute.

The CHAIRMAN. I thank you for that. It was crisp and strong.

I'm not going to ask my second question because I've overrun my time. So I'm going to go to Senator Thune.

Senator THUNE. Thank you, Mr. Chairman.

Mr. Cope, can you kind of help us understand why rail is such an important part of the system for getting the grain harvest to market? What are the costs and benefits relative to other modes of transportation?

Mr. COPE. Yes, Senator. In the case of South Dakota—and I know I'm talking all about South Dakota, but I think we're indicative of the entire Upper Midwest in some respects, the whole grain system in the U.S.—the problem, if you can call it that, with rail is that it is our central link to many of the exporters. The guys in the central U.S. also have the river, the barges that they can use. But for us in South Dakota it's just cost prohibitive to go by truck. I know this year truck rates have gone up, trucks are hard to find.

In the case of some birdseed products that we handle, those are typically sold FOB, which means we sell it to the buyer, he brings—he provides the cars. Well, this year when rail got so backed up some of these plants were in danger of running out. And this also extended to some corn and ethanol plants. They're in danger of running out, so they went out and hired trucks.

We had trucks going as far away as Fort Pierre, South Dakota, to Georgia to make deadlines, at the buyer's expense. Now, it didn't directly come out of our pocket, but his effective rate was two to three times what the rail rate was. Now, what do you think happened the next time he came around to bid South Dakota grain? It does come back to haunt us. So that's the problem with the trucks.

Another thing that's happened with trucks, it extends to things like some of the DOT rules and regulations that are out. There's a real shortage of drivers and that's real, is getting qualified drivers. But when you have a continued system of more and more regulations that make it real onerous to get those drivers, that's just one more thing in the way.

When it comes to the river system, thanks for passing legislation out of the Senate and out of the House to fund some of our locks and dams on the rivers, because it's all an integrated process; trucks, rail, and barge. So we need that system as well.

But in the center part of the United States, like South Dakota, rail is the most efficient and it's really the only way to get to the market. So if we don't have that, we don't have an economy.

Senator THUNE. We had a big problem in South Dakota this last year during the spring. There was a real concern about getting fertilizer shipments there in time to plant the 2014 crop during that short planting window. Now that the focus is on the harvest this fall, I'm wondering if there are concerns about receiving your fall fertilizer shipments and if you're working with the railroads to address that?

Mr. COPE. Well, fortunately the main fertilizer season is in the spring time. But it is a concern. If you're backlogged in one commodity, you're backlogged on all. So we have been talking to our suppliers on how to best get it there in the fall. Right now that's probably the expensive truck option. But it's just something that once that backlog is started we kind of feel like we're in a 100-

meter dash here, but we're starting from the 150-yard line. How do we catch up? How do we work through that backlog?

It's going to be fertilizer. If we have any hiccups at all through the winter, it's going to be grain, and we're going to be back to ground zero again next spring.

Senator THUNE. Mr. Hamberger, you talked about Chicago. We hear about Chicago all the time. I'm wondering what lessons the railroads learned as a result of last winter's impact on rail service, especially through the major hub at Chicago, and if the railroads have implemented any best practices or found any opportunities to improve efficiency that could improve the situation if we experience a similar winter this year or next? What's being done to address this huge choke point we have in Chicago?

Mr. HAMBERGER. What we're doing is trying to coordinate in a much more automated basis the data that each railroad collects on its own. That is to say, how many trains are waiting, how many trains are held for crew, how many trains are coming in from Montana, when are they expected in? Those data will then set up metrics that will trigger automatic rerouting, automatic special handling, if they exceed a certain amount. Right now that is done orally and the protocols were not as enforceable as they will be this coming year.

Senator THUNE. Mr. Dooley, you talked about some of the rail inefficiencies in the chemical industry. Can you describe some of the financial impacts, what that means to some of the folks who you represent?

Mr. DOOLEY. The study I referenced—and it's in my written as well as my oral testimony—is that when we did an analysis in 2011, we did a calculation on those shipments that were over 180 percent of the RVC. That totaled about $4.2 billion in rates, what we would refer to as rate premiums in excess of that 180 percent of the RVC.

But what is more troubling to us, as I mentioned, is that it was almost $3 billion of that was over 300 percent of the RVC, and that trend line that showed almost a 50 percent increase in a 5-year period of shipments over 300 percent of RVC.

Now, I don't want to suggest that all those rates are inappropriate and are not justified based on market conditions. But what I do suggest is that there has got to be a meaningful recourse for shippers to avail themselves to. Right now STB has in place financial impediments to seeking recourse and regulatory impediments to seeking recourse.

A $4 billion annual hit on our industry is not insignificant, and that is money that is not going into other investments that show a return to our economy.

Senator THUNE. Thank you.

Mr. Chairman, my time has expired. We have other members who are here and want to ask questions.

The CHAIRMAN. We do, and Senator Cantwell will be next.

STATEMENT OF HON. MARIA CANTWELL, U.S. SENATOR FROM WASHINGTON

Senator CANTWELL. Thank you, Mr. Chairman. Thank you to you and the Ranking Member for holding this important hearing, because this is to me about our economy overall.

I want to start with a company in our state which was an agricultural shipper, Cold Train. They're located in Quincy, Washington, and they announced that they were suspending their service due to poor BNSF rail performance, decreased on-time reliability, reduction in train services, and nearly doubling in transit times. So from 2013 to 2014 BNSF's on-time shipments dropped—they went from 90 percent of on-time to less than 5 percent.

So this is the company. They obviously ship a lot of our apples and cherries and potatoes and carrots in refrigerated containers to the Chicago market, and they were guaranteed a fast delivery time. In fact they had such a successful business that in 2010 they shipped about a thousand of those containers. And then they went to 2013, to 7,000 containers. So they obviously were expecting to do more.

But with this very poor performance, they basically went out of business and announced that they were going to cut off 80 jobs.

So that's what's happening to us in the Northwest. So I'm very empathetic to my colleagues from the Dakotas. Clearly this isn't just about a bumper crop. We've seen a huge increase in, obviously, crude production on these rails as well.

But you were, Mr. Hamberger, talking about the increase in investment. I think you said something like $26 billion in 2014 and $25 billion in the previous years. But yet this is what's happening. We're losing jobs. So I guess I have a couple of questions for you. First, you are not interested in having—I just want to make sure I understand where the railroads are coming from. You're certainly not going to make this about price, right? You're not going to try to decrease the volume or pick customers based on price, are you? You're not going to increase the price just to disqualify customers?

You have volume, you have increased volume. So my question is are you going to raise the price to try to sort out that demand?

Mr. HAMBERGER. Senator, I'm not trying to be nonresponsive, but I'm a trade association, and we are covered by the antitrust laws. I really cannot speak about what a member's pricing policies are. So I can't really talk about price. It's something that we don't—I just can't talk about.

The CHAIRMAN. That's convenient.

Mr. HAMBERGER. I talk about average prices that we have charged looking back. But what a particular railroad is doing in the marketplace is not something that I have knowledge of or visibility into.

Senator CANTWELL. Here's what I'm going to say to that. I don't believe your investment figures are sincere figures when on the one hand, according to this committee's majority staff report that was issued last November, Class I railroads reported an approximately $68 billion in freight revenues——

Mr. HAMBERGER. Yes.

Senator CANTWELL. So you made a lot of money. And I know Mr. Dooley, even though he didn't mention it, had a report earlier this

year that showed that the commodity shipper increased their costs from 2005 to 2011, an increase of something like 90 percent. So you're sitting here telling me, I just can't invest fast enough. You're making a ton of money, and what's happening is people are losing their jobs and we can't get products to the market on time, and he's paying a ton more money.

Mr. HAMBERGER. In fact, Senator—you may have been out—he is not paying a ton more money. He's paying 1988 rates. That is way below what he paid in 1981. Yes, they went up. They also went up consistent with the input costs of what it cost us to run the railroad. So the increase is very consistent with what the increase in costs for us are. But it's still only back to 1988 rates.

We are investing 40 cents of every dollar, including maintenance, back into the network. As I also tried to mention, we have some stranded investment where we invested, for example, in quadruple tracking going into the Powder River Basin. That cannot be picked up and moved. So one railroad has announced they're spending $400 million in North Dakota alone. Some of that investment, it takes time to put the track in. It takes time to get the employees trained.

Senator CANTWELL. I appreciate your answer, but I see Mr. Dooley over there and I want to give him a shot, because I think you're not taking into consideration the rate of inflation in these costs. But the bottom line is we're losing jobs and we've got product that's not being delivered in a timely fashion. The question here is you're making a lot of money and we don't see our businesses being protected.

Mr. Dooley, am I right about that number?

Mr. DOOLEY. You are. I would just reference, we have no interest in going back to the pre-Staggers Act days when government regulation created a lot of inefficiencies and higher rates in the rail industry. We don't want to see re-regulation. But when you look at the numbers, when you see the increased consolidation in the rail industry—the last major consolidation was in 2001. After that consolidation, when you have four rail lines that are controlling 90 percent of the shipments, from 2001 to 2011—and this is very comparable to their own data that AAR puts out—there has been an increase in excess of 90 percent, three times the rate of inflation, by rail rates for shippers.

Senator CANTWELL. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Cantwell.

Senator Booker.

STATEMENT OF HON. CORY BOOKER,
U.S. SENATOR FROM NEW JERSEY

Senator BOOKER. I just want to thank the Chairman and the Ranking Member for their leadership on this issue. It's really an issue that doesn't just affect the West or the Dakotas or West Virginia, but also New Jersey. Our state is very, very freight-dependent and, with one of the third busiest ports—with the third busiest port in America, it's an issue that's of great concern.

I've introduced a bill focusing on multimodal freight investment, to try to relieve some of the congestion, not just—pressure and congestion, not just on rail lines, but also on highways. Having that

kind of broader strategy, which I know Senator Cantwell and others have been pushing, I think is really critical.

I have a lot of concerns, but don't need to repeat some of the questions and good points that were made. In the short time that I have, I just want to switch to an issue that is very much on the minds of New Jersey residents. We've seen an incredible increase in the movement of Bakken crude by rail, which is impacting communities all across the Nation. I'm really happy for the Department of Transportation for taking steps to address this movement of Bakken crude.

However, I know we can do more to provide first responders with all the information they need to respond in terms of the safety in the case of potential derailments or spills. In Paulsboro, to be very specific, in New Jersey, in 2012 we had a train derailment that released 20,000 gallons, not of the Bakken crude, but of chemicals, causing an immediate emergency evacuation all along that area, and it affected the long-term health and it has had long-term health and environmental impacts.

What the incident does for me is just underscores the importance of addressing the movement of hazardous materials by rail, not just the Bakken crude. So, Mr. Hamberger, following the Paulsboro accident the National Transportation Safety Board recommended increased disclosure of toxic substances when they travel through communities, residential communities like we see in New Jersey, with over 1,000 miles of rail in it, to equip the first responders really to respond to this. Having been a mayor and knowing, having a lot of concerns when I was there about how we would actually be able to respond adequately, especially if we didn't know what was passing through our communities, so I agree with the assessment of the urgency and have asked the DOT to provide further guidance on how to ensure critical information gets in the hands of local first responders more quickly and efficiently.

You've noted, Mr. Hamberger, that the rail industry is voluntarily taking steps, which is actually encouraging to me, to increase transparency. You're trying to make—at least you're stating that you're trying to make information about toxic substances more available on line to responders in the event of an accident. So I just applaud that a lot.

But I still have this very big concern that many of our first responders might need to know this information and have access to this information prior to an accident, especially because it better equips localities to begin to prepare for accidents should they occur or, frankly, when they occur.

So I'm just wondering if this is a change that you could be making, from reactive to giving proactive information? I'm just curious what the industry's view on that is.

Mr. HAMBERGER. Thank you very much, Senator. Our view is that it is AAR policy for our members to make available to every emergency responder all hazardous materials that are coming through that community, to go over with them what are the emergency response techniques. We trained 20,000 emergency responders last year alone, an additional 2,000 at our Emergency Response Training Center, sort of a graduate course for emergency responders, if you will, at our center in Pueblo, Colorado. Each of our mem-

bers actually has a training train that goes around and stops in different communities and gives a little bit more in-depth training. But it is certainly our goal to make sure that every emergency responder knows in advance what is coming through and what the appropriate response is, hopefully getting around to giving them hands-on training as well. And the online; we're targeting hopefully by the end of this year that that online will be up and running.

Senator BOOKER. Just last, really quickly, are there investments that we're making to prevent these kind of accidents, which unfortunately we've seen from time to time throughout the country?

Mr. HAMBERGER. Yes, sir, there are. In the area of prevention, we are doing increased inspections of rail. We're putting roadside detectors out so that when a train goes by we can actually detect acoustically if there is a bearing defect. We also have laser beam readers to try to see cracks in the wheel before the wheel splits apart. And obviously maintaining the track and maintaining the bridges is high on the agenda as well.

We are, of course, putting in Positive Train Control, which did not come into play, I don't think, in the accident in Paulsboro. Then one of the other very important things is making sure our employee base is well trained and that they would know what to do in the event of an incident as well.

Senator BOOKER. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, Senator Booker.

Now, Senator Johnson.

STATEMENT OF HON. RON JOHNSON, U.S. SENATOR FROM WISCONSIN

Senator JOHNSON. Thank you, Mr. Chairman.

Mr. Hamberger, I would like to just explore and understand the capacity crunch a little bit better. We've heard a shortage of railcars. We've heard delays, that type of thing. In your testimony on page 9, you have chart 4. It shows the average weekly U.S. total railcar loads. On this chart, it starts in 2006, which was really, it looked like, kind of a record year in terms of—at least on this chart, it was the highest year. It obviously declined dramatically in 2009 and has been steadily increasing since that point in time.

So it doesn't appear that even in 2014 we're back to 2006 levels just in terms of the rail shipments.

Mr. HAMBERGER. We are back to October 2007 when you combine intermodal and all other carloads. We are about back to where 2007 was, yes.

Senator JOHNSON. Again, I realize we're shipping a whole lot more oil by railcar. But those are specific types of cars. You mentioned there were 50,000 grain cars in storage. So where's the capacity crunch or the car shortage in terms of grain shipment?

Mr. HAMBERGER. It's not just cars. It is velocity and, as Mr. Cope talked about, how many turns do you get out of a car. The more cars out there, it actually tends to slow down the network. So you want to have a network that has a higher velocity getting through. That requires personnel as well as locomotives. So it's a combination of all four of those that affect the ability to get the service level up.

Senator JOHNSON. Again going back to 2006, we've experienced these rail volumes in the past, correct?

Mr. HAMBERGER. Yes, sir. But there has been——

Senator JOHNSON. Did we have the type of disruptions, the types of delays, back then?

Mr. HAMBERGER. We were investing at that time and since that time to address that kind of shipment. One of the big increases here is intermodal, which is a different pattern of shipment. As I mentioned, the railcar—the 1.4 million less coal cars coming out of the Powder River Basin. There is an increase in grain. I think we're moving more grain than we ever have.

Senator JOHNSON. Is that also intermodal, then? Is that one of the capacity constraints, is the intermodal transfer terminals?

Mr. HAMBERGER. Terminals are a big issue, absolutely. Having some of the investments that we are trying to make, like one right down here on Virginia Avenue—it's taken CSX 6 years and they haven't quite yet gotten the final environmental impact statement. It is their biggest pinch point on their north-south line. It is a one-track tunnel that cannot accommodate double-stacked intermodal trains. There are no Federal dollars going into it. The Federal interest is that for one week during construction they will close a ramp onto 295. It has been 6 years to get that.

Senator JOHNSON. That's one anecdotal example, but isn't basically what you're saying since 2006–2007 there has just been a change in the mix?

Mr. HAMBERGER. Change in the mix has played a role, yes, sir.

Senator JOHNSON. And it's a less efficient mix from the standpoint of being able to move cars around?

Mr. HAMBERGER. It's a different mix. I don't know if I'd say less efficient. It's a different mix. Another example might be when the ethanol burst onto the scene that was a change in shipping patterns. I'm told that Iowa became a net importer of corn, which changed shipping patterns as well. So you just have to address your operating plans and address——

Senator JOHNSON. Let's go back to your pricing chart. I've seen that, from 1988. Explain what happened? Explain that chart?

Mr. HAMBERGER. Well, the chart indicates that as the industry was able to achieve efficiencies once Staggers passed in 1980, that we were able to pass along those productivity increases to our customers. Rates went down dramatically. Then as——

Senator JOHNSON. How did they go down in relationship to inflation? Did they actually decline?

Mr. HAMBERGER. This is inflation-adjusted, so——

Senator JOHNSON. OK, so you totally adjusted, inflation-adjusted. You've taken that into consideration.

Mr. HAMBERGER. Yes, sir.

Senator JOHNSON. So rates declined by what percentage point before they started to go back up?

Mr. HAMBERGER. I don't have it memorized, but it went down at one point 50 percent, inflation-adjusted. And it's still overall in the 40 percent range. I don't know what it was for chemicals per se. But then the market was able to bear some increase coming back. The productivity increases also helped improve service. So that is where the market is right now.

Senator JOHNSON. Mr. Dooley, were rates wildly out of whack in the eighties?

Mr. DOOLEY. Well, what I would say is that you had a railroad infrastructure landscape then, because of very heavy-handed government regulatory approach, that we would contend precluded some level of productivity and efficiencies, that resulted in rates that were higher than they should be.

We think the Staggers Act has a lot of good aspects to it in terms of contributing to a more competitive environment in the rail industry, that has contributed to enhanced productivity. But when you get to a point, though, is when you see that increased consolidation that allows for greater market dominance, that we are concerned now that we are seeing some of the impacts of that, which is requiring that we revisit the STB and those policies to allow for an effective and equitable and timely rate dispute process.

Senator JOHNSON. Just yes or no: Are you disputing Mr. Hamberger's characterization of the rates, inflation-adjusted——

Mr. DOOLEY. I wouldn't dispute that, but I would say that you can go look at a lot of industries and products that consumers are consuming and services they're consuming and you go back to 1980 and you do an inflation-adjusted, you would see a chart that wouldn't be that much different in a whole lot of industries. I mean, this is not dramatically different.

Senator JOHNSON. I'm just trying to get the facts, because there seems like there was disparity in the information. But you're both—depending on what time period you pick, you're both correct in terms of what the pricing is.

Mr. DOOLEY. Yes.

Senator JOHNSON. OK, thank you.

The CHAIRMAN. That's it?

Senator JOHNSON. That's it. I'm out of time, right?

The CHAIRMAN. Senator Klobuchar.

STATEMENT OF HON. AMY KLOBUCHAR, U.S. SENATOR FROM MINNESOTA

Senator KLOBUCHAR. Thank you very much, Mr. Chairman.

This is an important issue in our state. We've been talking a lot about the Dakotas, but in fact Minnesota is the fourth largest agriculture exporting state in the country. We have seen all-time record highs, $6.8 billion in ag exports over 2012, not to mention manufacturing a lot of other goods as well. And this is starting to be a real drag on our economy.

A recent University of Minnesota study found that from March to May 2014 rail delays cost our corn growers $72 million, soybean growers $18.8 million, and wheat growers $8.5 million. In total, all of this delay, which of course can get passed on to the consumer, just for these products, corn, soybean, wheat, was $100 million.

So this is a real issue for us. I am totally aware of what we've gotten, the good out of having the more domestic oil, as well as the natural gas out of North Dakota. It's brought our manufacturing costs down. But I also think we have to find a way out of this.

Mr. Cope, I wanted to start with you on the fact that if this continues I'm afraid it's going to actually impact our export market. Do you think it's possible that the people who are using these

kinds of grains would turn to other producers, like Brazil and Argentina?

Mr. COPE. Thank you, Senator. You bring that up and just recently I know U.S. Wheat has expressed some concern. The United States has worked very hard over the last how many years to be known as a country of—not last resort, that's the wrong word—a country that could be the most dependable, the most dependable shipper. Even if other countries could buy their wheat, for instance, from other countries cheaper, they always knew that if they had to come to the United States they could get it. That's in real jeopardy right now. We've lost some business because of that very thing of exporters, either on the Gulf or in the Pacific Northwest, not being able to fill commitments.

It comes all the way back, and the same thing is true in corn and beans. We've had some exporters that have paid some huge fines or contract cancellations by not being able to perform.

Senator KLOBUCHAR. All right.

Mr. Hamberger, one of our bigger concerns next to these commodities is propane. You've probably heard about this. Not related to government, a decision was made by a company to reverse the direction of a propane pipeline. We are going to be able to use not nearly as much pipeline transport of propane. Then we're stuck with trucking, more trucking. We got the Army Corps, it's such an emergency, to give immediate authority for a transport station in Benson, Minnesota.

But this is a real problem, and I just wondered what the protocol is, if your members have a protocol in place to ensure when we're dealing with propane that's used to heat homes, not to mention dry out corn, how we're going to get it?

Mr. HAMBERGER. I know that was a major problem last winter and our members did work in several states with the Governor's office to try to make sure that capacity was available to bring propane in. We don't have an AAR protocol per se, but I'd like to get back to your office with how my members—I do know they all participated in various efforts through the Governor's office.

Senator KLOBUCHAR. I know we are really planning ahead with storage, which is good. We're storing more of it to get it in ahead of time, getting bigger storage facilities. And if the winter's mild, maybe we can make it through. But——

Mr. HAMBERGER. That's not a plan.

Senator KLOBUCHAR.—to make sure you have a plan going forward, when last winter we had a day that was colder than Mars, I think that would be helpful.

Iron Range. This is not probably what you'd think I'd be focusing on here because we've got a focus on the farm and ag, but we are a major producer of taconite. As you can imagine, the Great Lakes shipping season is very short because of weather. It's finite. It's going to close for shipping in just a few months. Yet right now we have 250,000 tons of iron ore stockpiled. Another one—that's just from one mining company. Another has 85,000 tons stockpiled as a result of rail service disruptions. In total we have 2 million tons of iron ore pellets that we want to send out and make money for our country and get more jobs, that are just sitting there in a pile.

I hope that you would be willing to look into this, because we have a situation where winter is coming and we have only a finite shipping time.

Mr. HAMBERGER. Of course, Senator. Let me go back and talk to my members and give you a report.

Senator KLOBUCHAR. All right. Thank you very much.

Mr. HAMBERGER. Thank you.

The CHAIRMAN. Thank you.

Senator Blumenthal.

STATEMENT OF HON. RICHARD BLUMENTHAL, U.S. SENATOR FROM CONNECTICUT

Senator BLUMENTHAL. Thanks, Mr. Chairman, and thank you to you and Ranking Member Thune for having this hearing on a profoundly important issue, an issue that is important not only to the Western and Midwestern states, but also to the Northeast, because it affects not only the movement of freight, but also the movement of passengers, who, after all, use the same tracks.

In fact, in some parts of the country increasingly the burdens of freight are delaying the movement of passengers. That is troubling most especially for the Northeast, where the movement of passengers, commuters, riders, is an essential feature of moving people to work. On-time performance on Amtrak's long distance routes is at 51.4 percent for the current fiscal year to date, which is a decline of over 20 percentage points compared to last year. That means people are in effect stuck on tracks waiting for freight trains to pass before an Amtrak train can move. And that's because outside of the Northeast, Amtrak operates most of its service on tracks owned by the freight railroads. Even in the Northeast, where they may be owned by the non-freight companies, there's still the danger and reality that the movement of freight may impede the movement of passengers.

When a freight train railroad network breaks down, it affects not only the movement of important goods—and a number of my colleagues have described how important it is—but it keeps real people and their families from getting to where they need to go conveniently and reliably.

So my question to all of you, but let me begin with Mr. Hamberger, is: What efforts are your members making, Mr. Hamberger, to improve the on-time performance of passenger trains operating over your track?

Mr. HAMBERGER. Thank you, Mr. Chairman, for that question. Two things that I'm aware of. One, and of course the biggest one, is that as our freight customers are impacted, so are our passenger customers, as you point out. So the first and most important thing is to get the fluidity of the network back to where it needs to be. That is, again, making the investments and hiring the personnel needed to do so.

Second, I just want to emphasize that we have a statutory obligation to make sure that Amtrak has priority in dispatch, and I know my members are focused on that. I know that Joe Boardman, Amtrak President, has been meeting with his colleagues at each of the freight railroads talking about what can be done on specific routes. So I think there's a lot of communication going back and

forth between the freight rail host railroad and the Amtrak leadership.

Senator BLUMENTHAL. Is there a body or, you put it, a framework to assure that that obligation to passengers is fulfilled? In other words, you've described an informal process of consultation or conversation between Mr. Boardman——

Mr. HAMBERGER. I don't have a direct answer for you on that. I just know that that is the marching orders given to the dispatch center, because that is the statutory obligation. I know that some railroads do have—their morning report is, how are we doing on Amtrak on-time performance. And when that morning report, when that's part of your morning report, obviously you're focused on that.

Senator BLUMENTHAL. Let me ask you in the time, the short time I have remaining, about another issue that's raised in your testimony, investment in infrastructure. Projected to be $26 billion?

Mr. HAMBERGER. Including maintenance, yes, sir.

Senator BLUMENTHAL. $25 billion in each of the——

Mr. HAMBERGER. Two previous years, yes, sir.

Senator BLUMENTHAL. Is that sufficient? And what should we be doing to support additional infrastructure, which I consider to be the challenge of our time?

Mr. HAMBERGER. Again, thank you for that. It is dramatically higher than all manufacturing. It's a 17 percent cap—cx rate, compared to about 3.5 percent for all manufacturing. So we are committed to putting money back into the infrastructure.

At one point, the industry was proposing an investment tax credit for new infrastructure for new capacity. Given the budgetary times, that didn't proceed too far.

But the third issue and the one that I mentioned to Senator Johnson would be how we can make these investments more effective. One of those ways would be to have, as the Congress did for surface transportation highways, have regulatory reform and streamlining. We'd like to see that for rail projects as well. The CSX project I was mentioning is $70 million above what they had targeted because of the delays.

Senator BLUMENTHAL. Thank you very much. I look forward to working with all the members of the panel. I think there's a lot of extraordinarily important ground that we're not going to cover today, raised by your testimony, and it has been very thoughtful and helpful. Thank you.

Thank you, Mr. Chairman.

The CHAIRMAN. Thank you, sir.

Mr. Nelson, Senator Nelson.

STATEMENT OF HON. BILL NELSON, U.S. SENATOR FROM FLORIDA

Senator NELSON. Thank you, Senator.

Mr. Hamberger, think ahead to 2016, the opening of the expanded Panama Canal, the increased cargo that will go to East Coast ports, the lessened cargo that will be shipped by rail from the West Coast to the East Coast. How's that going to either alleviate or create gridlock?

Mr. HAMBERGER. Senator, you've put your finger on an issue that Chairman Rockefeller was prescient enough to hold a hearing on

last year. That is what will that impact be? I will quote the then-Deputy Secretary of Transportation, who said: "We don't know who the winners and losers are going to be. We'll find out in 5 years."

That's one of the challenges that this industry has: Do we anticipate that there in fact will be, as some project, a 5, 10 percent shift from West Coast to the East Coast? Others say that has already occurred and that it really depends. Will the canal open on time? What will the tolls be? What will the maritime companies' decisions be on continuing the 360 around the globe?

So we are making investments. I know that the western railroads are anticipating that there still will be an increase in intermodal. I know the eastern railroads are working with their ports to try to determine what ports will have what capacity and will we be able to serve them. It is at this point still an unknown as to what the exact impact will be, and it will no doubt be what not everybody has thought, which will then create a need for quick investment and ability to adjust to the market as that comes on-line.

Senator NELSON. Well, how does this affect the gridlock in the Midwest that has been the subject of most of this hearing?

Mr. HAMBERGER. One of the issues that may arise to help would be that some of the export of grain and perhaps taconite—I don't know—could go out of the Gulf Coast rather than across the Northern Tier to the Pacific Northwest. I've read reports that that is a possibility, that then would alleviate some of the congestion going to the Pacific Northwest. But again, that is speculation at this point.

Senator NELSON. We'll talk about this later——

Mr. HAMBERGER. Yes, sir.

Senator NELSON.—because your answer is we don't know. Well, we don't want to get into the crunch in 2016.

Mr. HAMBERGER. Agreed.

Senator NELSON. So to be determined.

Mr. HAMBERGER. To be determined, yes, sir.

The CHAIRMAN. Senator Wicker.

STATEMENT OF HON. ROGER F. WICKER, U.S. SENATOR FROM MISSISSIPPI

Senator WICKER. Thank you, Mr. Chairman. Senator Nelson yielded back 2 minutes and we hardly knew what to do with ourselves.

Mr. Hamberger, let me follow up on Senator Blumenthal's line of questions with regard to Amtrak and the members of your organization. I agree with much of what he said, and I also would point out that when members of AAR can work with Amtrak they should do so, because we all have to work together.

Now, I've been trying for 20 years to get a flag stop in Marks, Mississippi, a small, rural, underserved community in Quitman County. We used to have a flag stop some 30 miles to the east in Batesville and that line closed. We now need to have it in Marks. We have encountered resistance from CN in this regard.

It would be the only stop between Memphis and Greenwood and we need to get it done. It would serve the entire North Delta region. Amtrak is for it. The Mississippi Delta Council is for it. The

state government is for it. Our entire delegation is for it. Mississippi DOT supports it.

I've met with CN and I've also visited with you about it, Mr. Hamberger. But let me bring you up to date. We sent a question for the record in following the April rail safety hearing, which got bounced over to CN. It just seems to me they don't want to fool with us on this relatively minor, 5-minute stop we'd like for Amtrak to make in Marks, Mississippi.

We got a letter on August 22, 2014, from Amtrak responding to some concerns published by CN. CN says the flag stop would impair rail operations, freight rail operations, and also they express concerns about on-time performance.

So we asked Amtrak what they thought about it. Mr. Chair, I'd like to have Amtrak's letter of August 22 placed into the record at this point.

The CHAIRMAN. So ordered.

[The information referred to follows:]

NATIONAL RAILROAD PASSENGER CORPORATION
Washington, DC, August 22, 2014

Hon. ROGER F. WICKER,
United States Senate,
Washington, DC.

Dear Senator Wicker:

Thank you for your letter of July 25 regarding your ongoing interest in establishing a stop for the *City of New Orleans* service at Marks. We are mindful of the interest you have shown in this proposal in your 20 years in Congress which, coincidentally, covers nearly the same period since the train was rerouted through Marks from the old route through Batesville (September 10, 1995).

You shared with me a letter you received from Ms. Karen Borlaug Phillips, Vice President, Public & Government Affairs, Canadian National Railway (CN), from April2, 2014. In her letter, Ms. Phillips raises two general points against the stop at Marks. First, CN's position continues to be that a stop at Marks would "impair" their freight operations on that route. Currently, the schedule for the southbound train calls for 122 minutes to run 125.2 miles from Memphis to Greenwood (average 61.6 mph), with 3 minutes extra recovery time into Greenwood. Northbound, the schedule calls for 125 minutes to run from Greenwood to Memphis (average 60.1 mph), with another 28 minutes of recovery time into Memphis. Also, the southbound train dwells at Memphis station for 23 minutes and the northbound train for 30 minutes. Based on the time needed to decelerate, stop, and accelerate at similar stations, we believe the stop at Marks would consume approximately 5 minutes. Because of the recovery and dwell time, and because the passenger speed limit over most of the segment (79 mph) is higher than the freight speed limit (60 mph), it is difficult to see exactly how a passenger stop that may total 5 minutes will impair slower freight trains, even at Marks where there is single track.

The other general concern raised in the letter had to do with CN's ability to meet the on-time performance requirements of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA). As stated above, because of the existing recovery and dwell times and the differential in train speeds, it is difficult to see how the added stop would affect CN's abilities to provide good on-time performance. CN stated that although there is a case related to PRIIA and on-time performance that may yet be heard in the Supreme Court, "Amtrak continues to issue reports each month comparing Amtrak performance on CN's lines to the [PRIIA] on-time performance standards and provides this information to the [Federal Railroad Administration] and others." It is true that on-time performance statistics are published in a Monthly Performance Report on Amtrak's website and also shared with the FRA and with Congressional authorizers and appropriators. Among the statistics published is minutes of delay per 10,000 train-miles, organized by route and by the several host railroads, including CN. In the interest of meeting Congressional directives and providing information to the public in a transparent manner, Amtrak also published delay per train-mile statistics, among host railroads, for several years prior to the passage of PRIIA in 2008. The main difference between now and then (pre-PRIIA) is that today's reports have more route-level detail and show how results compare

to the PRIIA standard of 900 minutes of delay per 10,000 train-miles. Even in the absence of that particular standard, however, it would be appropriate for us to continue publishing this information.

With your letter, you provided a timeline of activities and contacts from 1995 to 2014 relating to the proposal for the stop at Marks, apparently prepared by Quitman County. There appears to be a two-year gap in the record, from July 2012 to March 2014. It is my understanding that this gap results from a decision by the City of Marks, along with its partner, Quitman County, to investigate an alternative location proposed by the CN. However, we believe that the City now has resumed its earlier position, that it does not want the station to be at any location other than the center of Marks, and that the initial capital cost and ongoing maintenance cost of a second track, as desired by CN, is too great and is unnecessary. The renewed activity is reflected in the timeline you provided, which includes communications between Quitman County and Amtrak through June 11. Amtrak officials also met with the Quitman County representative on August 4.

Amtrak remains very interested in cooperating with the City of Marks and Quitman County for a stop at Marks. We would support, as we have done in the past, any proposal to bring representatives of the parties concerned together for a personal update on each party's position and to discuss ideas for moving the proposal forward in a way that is not unreasonably burdensome to any party.

Thank you again for your letter as well as your ongoing support for passenger rail service in Mississippi and across the Nation.

Sincerely,

JOE MCHUGH,
Vice President,
Government Affairs and Corporate Communications,
National Railroad Passenger Corporation.

Senator WICKER. Amtrak says there's validity to these concerns, and basically they support this with data. Amtrak explains that the current schedule of the route from Memphis to Greenwood, the southbound train dwells at the Memphis station for 23 minutes and the northbound train for 30 minutes, in addition to 3 minutes of recovery time on the southbound route and 28 minutes of recovery time on the northbound route.

The letter says in paragraph 2: "It is difficult to see how a passenger stop that may total 5 minutes will impair slower freight times, even at Marks, where there's a single track."

They go on to say in paragraph 3: "Because of the existing recovery and dwell times and the differential in train speeds, it is difficult to see how the added stop would affect CN's abilities to provide good on-time performance."

I want to continue visiting about this. I'm determined to get it done and it seems to me that your member, CN, should be willing to work with us on that. So I want to ask you, if you can answer it now, fine. But if you need to answer it on the record, that would be just fine, too, because I appreciate the way that you work with us on this committee. Why can the Marks flag stop not be accommodated, given that it would take just 5 minutes of the ample dwell time and ample recovery time on both the south and northbound routes?

I know you don't speak for CN, but they're a member of AAR, and, if you would, please respond to the data provided by Amtrak so that we can come to some positive resolution of this issue, which has been plaguing my state for almost two decades.

Mr. HAMBERGER. Let me respond partially here today, if I may. I did touch base with CN in anticipation of this hearing and they of course said they are well aware of your desire to establish this and they're very willing to establish a flag stop at Marks and want

to work with you and Amtrak to see how that can be done. I don't have the data that you're requesting. Let me work with CN and respond for the record if I may.

[The information referred to follows:]

RESPONSE TO SENATOR WICKER'S QUESTION ON THE PROPOSED AMTRAK FLAG STOP AT MARKS, MS

As Senator Wicker notes, AAR is not a party to the discussions that have been taking place between CN, Amtrak, and the City of Marks, MS regarding the creation of an Amtrak flag stop in Marks on CN's single main line track.

CN does not maintain that the Marks flag stop would definitely impair its operations on this line. Instead, I understand that CN is concerned that sustained impairment of CN's freight or Amtrak's passenger operations on this line could occur and CN wants to have in place a mechanism for determining if such impairment occurs and, if so, a solution for remedying that impairment.

With respect to freight operations, rail traffic on CN and throughout the entire North American rail industry has increased significantly in recent years. The flag stop at Marks would be established on CN's single-track main line—instead of on a separate track or siding, as CN normally requires—on CN's important corridor between Memphis and New Orleans. CN must ensure its continued ability to provide timely and efficient freight service to its customers on this line, including its customers in Mississippi.

Likewise, CN must meet Amtrak's on-time performance requirements under the terms of CN's operating agreement with Amtrak as well as the joint FRA/Amtrak on-time performance metrics issued pursuant to the Passenger Rail Investment and Infrastructure Act of 2008 (which are under Supreme Court review). Amtrak continues to assess host carrier performance under these metrics, and CN believes it must ensure that any new Amtrak service on its lines—including the Marks flag stop—is structured so that CN is able to meet these on-time performance requirements.

Therefore, given the potentially significant consequences of any impairment of CN's freight or Amtrak's passenger operations on this line, CN believes it is essential that a mutually agreed upon remedy be in place to address any impairment that may occur once the flag stop comes into effect. If no systemic impairment of freight or passenger operations occurs, the remedy will not prove necessary.

I understand that representatives of CN, Amtrak, the City of Marks, and Quitman County met on September 15, 2014 with Senator Wicker to discuss how to progress this matter. CN informs me that Amtrak provided proposed changes to the northbound and southbound schedules for its City of New Orleans service to accommodate this flag stop. CN and Amtrak have agreed upon the new schedules, and CN has provided to Amtrak a proposal for metrics to determine any impairment of freight or passenger operations that may occur as a result of the Marks flag stop and the process for dealing with any such impairment. Amtrak is currently reviewing CN's proposal.

Senator WICKER. Well, that's very welcome news. So I would hope that perhaps you and CN and Amtrak could visit with me. We're not real active on the floor these next few days. Perhaps we could meet and accommodate their desire to move forward on this very needed stop.

I thank you, Mr. Chairman.

The CHAIRMAN. No, I thank you. I think that is just a gorgeous pursuit, and I'm betting that you're going to get that.

Senator WICKER. It's a very small thing to ask in 20 years, Mr. Chairman.

The CHAIRMAN. Yes.

Senator WICKER. And I would hope that the Chair and the Ranking Member would come and visit us in the Mississippi Delta and see all that we have to offer. We'd take you to the B.B. King Museum. We'd take you to the Shack-Up Inn. We'd fry you some catfish or grill you a steak.

Senator THUNE. That's what I'm talking about.

The CHAIRMAN. I come from a strong Baptist family and this guy is Norwegian.

[Laughter.]

Senator WICKER. Is this a great country or what?

The CHAIRMAN. All right. Senator, I really thank you for that because it's sort of classic—a little ask, a ton of money, no response.

Mr. Hamberger, last fall my staff prepared a report, as I indicated, on the financial condition of the largest Class I freight rail companies. It was based on the public financial information that your companies share with your investors. It found that your companies are setting records for earnings and operating ratios almost every quarter. It found that your companies are generating record higher earnings for your shareholders. It also found that your companies are buying back record amounts of stock shares, which also rewards your shareholders.

You pretty much get what you want and stop what you want around here, it has been my experience over 30 years. So the question I'm going to ask you is, you're doing a great job for your shareholders. What about these folks sitting to your right? Why can't your companies do a better job for their customers? Why are shippers not benefiting from the excellent, extraordinary financial condition of freight railroads?

Mr. HAMBERGER. Thank you, Mr. Chairman, for allowing me to respond to that, because there is a disagreement in some of the findings of that study that we have. We believe that the appropriate study, the appropriate metric of profitability, of how well you're doing economically, is the return on invested capital. We are an incredibly asset-rich, asset-based industry, $180 billion, and that's just book value, of assets in the ground in the network. So we believe that the appropriate metric is a return on invested capital.

We are at 7.74 percent return on invested capital. The Fortune 500 is 12.93. So we are not even halfway, a little bit over halfway, toward what the Fortune 500 average is of 12.93 percent return on invested capital. That's what we have to go to the capital markets to say, give us money to invest and buy more assets, and here's your return, 7.74. We need to be able to improve that return on invested capital.

With respect to the dividends and share repurchases—and this is material that was just filed last Friday over at the STB by Union Pacific, so I'm using Union Pacific data—for their free cash-flow, 63.2 percent of it's going to capital expenditures, 14.7 percent is going to dividends, 22.1 percent to share repurchases.

For the S&P 500, those numbers are 44.8 percent for capital expenditures, 21.7, fully 50 percent more, for dividends, and share repurchases of 33.6 versus 22, again 50 percent more, and that's the S&P 500. So we think that we are in fact spending 63.2, at least for Union Pacific, on investments to serve our customers.

The CHAIRMAN. I have noticed over the years the techniques that you all use to disperse collated Congressional negative reaction, which you richly deserve, by techniques that you use. And I've told you this before, but it hasn't gotten through very well. I can remember a number of—I've been working on this for 30 years and

you only have 3 more months of me, so you can be happy about that—but individual presidents of major railroads who would come to me and, because I was really upset, for example—and I've used this example in this chamber before—of Weirton Steel. They were losing a ton of money. They only had one railroad going in. They were charging them amazing amounts of money.

So what the president, who later became Secretary of the Treasury—I think in the last hearing I said I voted for him three times just to make sure he was out of CSX—granted my request, solved my problem. It's a very good technique. It's like if you solve Mr. Wicker's problem, which you could do, then the world is fine.

The problem, of course, is the world isn't fine. In a sense, you're buying off individual troublemakers by settling their problems. I remember when a whole bunch of coal mines, which is sort of like your wheat and soybeans, in central West Virginia closed down because the railroads involved there just declined to participate in moving the product because they didn't feel they could get enough money for it. And that put a lot of people out of business.

So what I want to ask you is that the Surface Transportation Board is supposed to assess whether or not you have adequate revenue. We've been discussing this for 30 years. Rail companies are enjoying record earnings and record margins. Do you believe that you have adequate revenue?

Mr. HAMBERGER. I believe the board determined for 2013 that five of the Class I's had achieved revenue adequacy for 2013.

The CHAIRMAN. I did not understand the last part.

Mr. HAMBERGER. That five Class I railroads were deemed revenue adequate for 2013.

The CHAIRMAN. Were deemed revenue adequate?

Mr. HAMBERGER. Yes, sir.

The CHAIRMAN. OK. Could I get a response to that from some of the other members, panelists? In a sense, he's saying the wherewithal is there.

Mr. DOOLEY. Yes, but I think that's one of the—and even in the legislation that you've introduced, it's really calling on STB to evaluate the way that revenue adequacy is utilized in resolving a rate dispute. That is a hurdle for a company to challenge a rate or to go to STB for rate dispute resolution, because part of the revenue adequacy requires them, again, to do this calculation in terms of what would be the cost to construct a whole new rail line, put together a rail operation, and can you do that at a cost less than an incumbent railroad?

Well, of course you probably cannot do that. And that almost becomes, again, a regulatory impediment, let alone the cost to construct that study, which becomes a financial impediment, to accessing a rate dispute process that can be concluded in a timely and in an equitable manner.

So the whole issue on revenue adequacy—we think that back in 1980 when the Staggers Act was implemented, when the rail industry was struggling, revenue adequacy was a good policy probably. It was probably something that was pretty thoughtful about the Members of Congress to include that in the STB and the Staggers Act. It has changed. The rail industry has changed. It is now finan-

cially solvent. They're making a lot of money. And STB needs to change their policies.

Unfortunately, they haven't been willing to do that independently, and that's why we think it's so incumbent and why we so applaud you and Senator Thune for introducing legislation that will ensure that Congress is demanding that they make some of these modest reforms that can again ensure that shippers have access to a timely, effective, and equitable rate resolution process.

The CHAIRMAN. Mr. Hamberger says he has problems with that legislation.

Mr. HAMBERGER. Yes, sir. Specifically on the arbitration provision, one of the issues there is you're providing arbitration of service, which means an individual arbitrator will be making decisions about service options and service, directing a railroad to do something in the service area without taking a look at the entire network. We don't think that that is going to lead to increased service and increased fluidity, but just the opposite. That would be one of the areas.

But let me also respond, if I might, to what Mr. Dooley has said several times. He has mentioned the full standalone cost ratemaking procedure. About half of those that have gone to conclusion have been decided for the shipper, about half for the railroads. There are two additional ways that a shipper can come and seek relief. One is a simplified standalone cost and the other is known as the three-benchmark. They are much less expensive to do and have much quicker timeframes.

In addition, the board has voluntary arbitration, which no shipper has taken advantage of, and they also have another arbitration process that they've adopted recently, where either a shipper or a railroad can say: I am making myself available; I am opting in for arbitration. One of our railroads has done that and since having done that, has not gotten any arbitrations filed against it.

So there are any number of other options available through the Board, including the informal processes that the Board has, to allow a shipper to bring a case or to go to the board for relief.

The CHAIRMAN. You've got the money. The world is working exactly as you want it. You're doing better than you ever have before. And jobs are a big problem in America. Efficiency, the Panama Canal thing, is actually a big issue. You can't go to trucks because it would destroy the highway system. I know that from coal trucks in West Virginia.

To you, sir: The railroads have you where they want you and there's not much that I've been able to do about it. And I regret that greatly. I consider it a failure on my part to expose certain things and techniques. I can talk about them, but it doesn't seem to make that much difference. And you've done very well, Mr. Hamberger.

So what I want to do is to wish myself a very interesting retirement, which I'm going to have. I've already worked on that. And I think that the world is gradually going to shift against thinking like yours, and I think that when that does happen that you will be surprised and you will be unready. You'll have the money to be ready, but you won't have the willingness to do something about

it. And I think we'll have a different situation here. So that is my hope.

Senator Thune.

Senator THUNE. Thank you, Mr. Chairman.

With respect to the legislation, I think that we had discussed this previously, that the arbitration provisions are voluntary, and I think that's been made explicit. So that should alleviate some of the concerns that were expressed by Mr. Hamberger about our bill.

I do think that my observation has been, and as I acted once in this arbitration process between serving in the House and serving in the Senate, that the standalone cost model is an extremely time-consuming, expensive, complicated, and difficult process to undertake for a shipper or a shipper group, and particularly small shippers.

And most shippers, as was pointed out, are served by one railroad. When you have competition, obviously, the rate structure is very different. But when you're served by one railroad, that's the mechanism that was put in place to ensure that STB could be a referee, so to speak, and make sure that nobody is gaming the system.

So I think trying to simplify that, trying to come up with a streamlined way in which shippers could gain access to that process and at least have some of these issues addressed, hopefully resolved, is what we're trying to accomplish with the legislation. And I hope in the end we can get some broad, bipartisan support for it, because I do think the STB is in need of reform. I think expanding the number of members on the Board, allowing for different and better ways in which they can communicate in trying to resolve issues, perhaps anticipate, troubleshoot ahead of time. There are some things that we can fix and that I would hope everybody could get on board with.

I just wanted to sort of close this out, for the record to have Mr. Cope explain, because I think this is important and sometimes I think it gets lost in translation, how the freight cost factors into a typical shipper. I'll use agriculture because that's what we're most familiar with and that's what you're most familiar with.

But in a state like South Dakota, where we've got sort of historically low commodity prices, the cash price of corn is under $3.00, what, $2.75. On the board it might be $3.50, but what you're able to pay a farmer who brings in a truckload of corn, of soybeans, to put on the rail to move to its ultimate destination, that's the price that you're going to pay them. And the basis, the transportation or freight cost is the difference.

We did just a back of the envelope calculation for this year based on the number of bushels we think we're going to produce in South Dakota this year; combined wheat, corn, and soybeans, and what the basis is today or for delivery in September of this year versus September of 2013, is 28 cents a bushel more for the freight cost, which means that's about $311 million less that's staying in the farm economy and the farmers' pockets, at a time when we have historically low commodity prices to start with.

So you can see the economic angst that gets created in a state like South Dakota or other states who are experiencing similar dif-

ficulties. I don't confine this just to grain movements. I think it's true for a lot of commodity movements.

But if you could, Mr. Cope, sort of explain how that process works when you as a shipper, how the basis works and what that means in terms of actual dollars and cents going back, staying in the pockets of the farmer, versus going into transportation costs. And I might add, when there is shortage of supply of cars or locomotives, high demand, the price goes up, and so you're going to pay more for transportation costs, which means again less that stays in the farmers' pockets.

So could you again, for many of us who don't understand exactly how the economics of this all works, explain how this impacts a typical farmer in a state like South Dakota.

Mr. COPE. Sure. Thank you, Senator. Well, as you aptly put it, your basis—it's complicated, but it's simple, all at once. It's the difference between the underlying futures market and the cash price. Where that comes from, it's basically transportation, it's the elevator's margin, and those are really the two things, transportation all along the way. But anything that affects transportation's going to go into that bucket.

So you're right, there are a lot of things that affect basis—weather, demand, time of year. But I think it's pretty clear that, if you look back over time or even look not even at the last year, just from April until now, that the overall basis level has widened. I wouldn't want to get into an argument about hard numbers. I think the important things are the trends, the trends of that.

So the basis has widened, and that means less price paid to the farmer, because if you've got your futures market here and you've got your cash price here, the difference is the basis. So if the cost of freight goes up relative to everything else, that has to lower the cash price. That's less price in the farmer's pocket.

It depends on the day. I guess you used the figure of 28. I did some looking when putting this testimony together, pretty quickly come up with 30 to 35 cents. It's ranged as much as 50 or 60, it's ranged as little as 10. I will say that the commercial elevators absorbed a lot of that increase in cost of freight in the winter and spring in general, because uncertainty on when's it going to snap back, competitive issues, a whole host of things, and some just trying to be fair.

So as the cost of freight went up, the basis has to go down to account for that. Now, when I talk about cost of freight there are two things in there. One is the tariff rates, and on grain in particular it's all tariff-based. You can go onto any railroad's website and see what the rates are from point A to point B. They also charge a fuel surcharge based on highway fuel that is tacked onto that rate.

Then in the case of the Burlington Northern, people will buy freight commitments for a year or maybe a shorter time. Most commonly they'll buy freight commitments for a year, and they'll pay—and that's an auction. You can go on BN's website and see what the history of their auctions were.

As you own that freight—when I talked about freight being a tool and now it's become a hard limit that impacts your ability to do business, companies would buy that deck of freight thinking, I

know I'm going to need some over the course of a year, but I don't know exactly when I'm going to need it, so I'm going to tie into this bucket of freight, and I'll trade in and out of it as time goes. So if I come to a time where you need it, I don't, I might sell you that train commitment, and vice versa, I'd buy it back from you when I need it.

That price fluctuates up and down, and the main thing that drives that is car availability. Weather will impact it, but car availability is what drove it this last winter. We had cars—when I said cars traded in the secondary market the same as the tariff rate, they're trading up to $5,000 a car.

We were talking about it the other day. That's like every car you see in that train is like buying an acre of land in central South Dakota. It's a lot of money. You're talking millions just for the right to ship that train. So somebody has got to pay that. Now, it might be the commercial elevator, it might be the farmer. In this case it has been a combination of both. Somebody's got to account for that, because no matter what you paid for that commitment, that's a check you write, but you also have to pay the STB their tariff rate.

So if that makes sense, that's kind of how that cost of freight can fluctuate. Now, the railroads will argue that that secondary market doesn't go to them, that $5,000 a car did not go to them. And they're absolutely correct, it didn't. But what it did do when it rolled around to this summer and the freight for this next year was up for auction, people were nervous, they were scared: Are we going to get freight, are we not? So what they've done is translated that secondary cost of freight into the primary auction that went back to the railroad.

Looking back just since January 1, the Burlington Northern I know has collected over $160 million in that. Now, I'm not going to argue that that's bad. That's a free market, it's a free world. People bid that. But the underlying thing is the uncertainty and unpredictability of railroad performance is what drove that.

Now, somebody's got to pay that bill and, like I said, it ended up being a shared cost. If those premiums are being paid for trains, that's either something grain companies have to absorb—I can guarantee you that grain margins aren't good enough to handle all that. So it gets passed back to the farmer.

So I think those costs are real. I said I wouldn't get hung up on whether it's 28 cents or 30 or 40, but I think in general we ballparked it at 30 to 50 cents a bushel. That's a real impact and that's out of the farmer's pocket.

Senator THUNE. And that's an increase, when you say 30 to 50 cents?

Mr. COPE. Yes, increase in effective freight, decrease in effective cash price paid to the farmer.

Senator THUNE. The numbers I used were based on a September delivery for corn to an elevator in central South Dakota, based on 2013 rates and what we think the 2014 rate is going to be. That's the 28-cent number I came up with.

But at that rate, you're talking again about $311 million less in the farm economy, in the farmers' pockets, and more in transportation, which again, as you point out, there are lots of factors that contribute to that.

That's what we're talking about here. When you have a shortage, you don't have the availability of cars, the price goes up, and that has very real-world consequences, which is why so many of my constituents and the others who are represented here today spoke out, because they're hearing the same things that we are. And they're particularly concerned about car availability with what we expect is going to be a bumper crop coming in here in the next few weeks, and what that might mean to the basis, again, and how that's going to impact the ultimate return that a farmer receives.

Mr. Chairman, I thank you.

I appreciate all of you sharing your thoughts today. I hope that we can work in a constructive way to try and resolve some of these issues. I think our legislation and the STB reforms are an attempt to do that, perhaps not a perfect attempt. It never is, but if we can get folks to work with us I think we can come up with a more efficient, hopefully, system that better recognizes some of these issues in advance and hopefully avoids and prevents some of the disruptions that we've seen in the last year in my state and other states.

So thank you.

The CHAIRMAN. Well said.

Hearing is adjourned.

[Whereupon, at 4:43 p.m., the hearing was adjourned.]

APPENDIX

WRITTEN TESTIMONY ON BEHALF OF THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Chairman Jay Rockefeller, Ranking Member John Thune and members of the Senate Committee on Commerce, Science and Transportation, thank you for allowing the National Rural Electric Cooperative Association (NRECA) to submit testimony on the hearing, "Freight Rail Service: Improving the Performance of America's Rail System.

NRECA is the national service organization for more than 850 Distribution and 65 Generation and Transmission (G&T) not-for-profit rural electric utilities that provide electric energy to over 42 million people in 47 states. Kilowatt-hour sales by rural electric cooperatives account for approximately 11 percent of all electric energy sold in the United States. Coal accounts for approximately 74 percent of the power produced by G&T members and 55 percent of all electric cooperatives electricity requirements.

As you know, a wide range of commodity shippers have experienced rail delays in the last year. Dependable rail service is critical to all commodities, and congestion drives up the costs of products and hurts local economies. We all want a strong, robust rail network. We recognize the challenges facing railroads, including weather, higher than normal grain harvest, and the recent increased demand for crude oil. We appreciate the steps the Surface Transportation Board (STB) has taken to address these delays by holding two hearings on rail service issues in Washington, D.C. and most recently in Fargo, ND.

The testimony to follow provides background on rail service delivery issues from Dairyland, Sunflower and Arkansas Electric Cooperative Corporation. It incorporates previous testimony provided to the STB on behalf of NRECA and Consumers United for Rail Equity and at the Department of Energy Quadrennial Energy Review Panel by Sean Craig, Fuel Manager at Dairyland Power Cooperative. We are providing accounts of experiences of our members from this past year.

Dairyland Power Cooperative

Dairyland, like other electric cooperatives, operates as not-for-profit. Dairyland's directive from its member-owners is to provide affordable and reliable electric service not profits to investors. They are responsible to ensure that energy is delivered reliably and at the lowest reasonable cost.

Electricity in the Dairyland system is generated primarily at coal facilities but the co-op has a diverse energy portfolio that includes natural gas, hydro, wind, solar, biomass, and biogas. Dairyland's generation resources allow its members to supply over 14 percent of their consumers' retail load from renewable sources.

Recent Rail Service Issues

Low sulfur Powder River Basin (PRB) coal is the primary fuel source for Dairyland and a number of other base-load generation facilities (see attached map). These facilities are essential to provide reliable electric service year round. Fuel delivery to these facilities is dependent upon reliable rail service. Burlington Northern Santa Fe Railroad (BNSF) delivers coal for Dairyland to the John P. Madgett (JPM) facility in Alma, Wisconsin, on lines that are captive to the BNSF. BSNF also delivers coal to a Mississippi River terminal in southeast Iowa, which is then loaded on barges and delivered to Dairyland's Genoa Station #3 facility (Genoa).

Reliable delivery service is necessary to ensure coal is available in sufficient quantities to produce power to meet demand. Coal delivery problems require Dairyland to use higher cost generation and/or purchase power on the open market, often at a premium, to meet members' energy needs.

Dairyland currently owns 250 rail cars and leases six more. They lease a full train set (about 125 rail cars) for shipments to the Mississippi River terminal in Iowa. The combined coal deliveries in any given year range from 2.0–2.4 million tons, or roughly 130–160 train loads.

Approximately 90–100 train loads are delivered to JPM annually. Average turn-around time (ATT) is defined as the time it takes for a train to make a round trip from the mine to the offload site and back again to the mine. Prior to 2014, ATT averaged six to eight days, which generally meets the fuel needs for the JPM plant. The station can unload an average train set in about six hours which provides three to four days of generation. In preparation for supply disruptions, the goal is to have between 30 and 50 available days of operation on hand to sustain reliable generation.

Annual deliveries range from 50–65 train loads to the Southeast Iowa Mississippi River terminal for the Genoa Plant. One train fills nine to ten barges. ATT for shipments to this terminal prior to 2014 averaged five to seven days, fulfilling the shipping goals to meet the annual need for generation.

Two barges provide one day of generation. In order to meet Dairyland's generation needs for its' members throughout the year it is critical to have reliable rail and barge transportation from carriers. To prepare for supply disruptions Dairyland's goal is to have 165–195 available days of operation on hand prior to the end of October to provide generation for the winter. Since the Upper Mississippi River usually freezes, the typical barge delivery season is from March through October, roughly 30 to 35 weeks. Once winter is over and the river thaws, inventories can be rebuilt at Genoa again for the next season.

2013–2014: Unsatisfactory Rail Performance

Earlier this year, Dairyland staff was in frequent communications with BNSF staff about delivery shortfalls. BNSF acknowledged Dairyland's concerns, acknowledged they (BNSF) were not meeting expectations, but were slow to provide a solution.

In July, Dairyland contacted both the Surface Transportation Board and members of the Congressional Delegations in the four states in which they operate. Without exception, every delegation member responded by communicating to the STB and/or the BNSF of the need to quickly accelerate coal deliveries for the Genoa plant.

In 2012 Dairyland experienced a six to eight day ATT at the JPM plant and an ATT of five to seven days at the Genoa Plant. Since August 2013 service has been inconsistent and failed to match the 2012 ATT at both plants. The BNSF year-to-date through September at the JPM plant has been 11 days ATT and the ATT has averaged about nine days at Genoa.

Through August of this year, the BNSF has failed to deliver 30 percent of Dairyland's expected fuel needs. Dairyland did not increase their expected fuel needs from 2013, therefore, their expectations for 2014 deliveries did not change.

Trucking PRB coal from Wyoming to either location is not a viable alternative. To equal one train set of coal 630 truckloads would need to be delivered, equating to 87,000–104,500 truckloads to deliver their annual supply. This is logistically and financially unworkable with a nonprofit electric cooperative's mission to provide affordable service to its members and would cause a tremendous burden on the already overtaxed interstate, state and local highway systems.

Dairyland continues to work with the railroad in an attempt to resolve these issues. It is in the best interest of Dairyland and their members to have a good working relationship with BNSF since they play a very important role in helping to provide reliable and reasonably priced electricity to the region. Since the beginning of August, the BNSF has worked to address deliveries at the river terminal serving Genoa and JPM.

2014: Poor Rail Performance Impacts Dairyland's Operations

JPM

Since January 1, monthly average coal inventory on hand for Dairyland has ranged from 12–33 days, and dipped to as low as nine days—well below the Dairyland target of 30–50 available days of operation on hand. Dairyland was forced to find solutions to ensure they had enough coal on the ground to meet generation load and reliable electric service for the Midcontinent Independent System Operator (MISO). Unfortunately, rail service to the Alma site has continued to deteriorate. August deliveries were less than any prior month this year, even less than during the polar vortex of last winter. At the end of August, coal inventory at Alma is 50–70 percent below the target range.

Genoa

Rail shipments to the Southeast Iowa Mississippi River terminal since March had not built inventory at a rate to keep pace with barge shipments to Genoa needed to meet power generation. If this trend had continued, Dairyland's Genoa power plant would have run out of coal and would be unable to generate power after Janu-

ary 2015. Dairyland is pleased to report that BNSF service to the Mississippi River terminal for barge loading to Genoa has improved and the BNSF should be commended for its response. There were more trains delivered in the month of August than during the months of May, June, and July combined. Due to the BNSF's efforts to increase deliveries to the terminal in August and September the inventory shortage has been reduced from 50 percent to approximately 10 percent.

In the previous years, during reduced demand periods, Dairyland was able to shift train sets for several deliveries to the Mississippi River terminal rather than JPM. This year, Dairyland was not able to do this because JPM's inventory were also low and they did not want to risk the inventory going even lower which would have left Dairyland with two plants with insufficient coal supplies.

Sunflower Electric Cooperative

Sunflower Electric Cooperative (Sunflower) is located in Holcomb, Kansas, and is a consumer-owned, nonprofit corporation operated cooperatively by six rural electric distribution cooperatives that serve people located in 32 central and western Kansas counties. Sunflower provides wholesale power to its members generated by six power plants including the only base load coal-fired electric generating unit (EGU) in the area, the Holcomb EGU.

Holcolm EGU is captive to BNSF for its coal supply deliveries; there are no other reasonable options to transport coal from the PRB. Since September of 2013, Sunflower has seen ATT for its coal deliveries rise dramatically, sometimes over 11 days. Considering one train load provides Holcomb with only three-to-four days of coal, Sunflower's inventory pile is continuously decreasing.

Sunflower's Board policy and Risk Management strategy is to have a 30 day minimum inventory of coal. To maintain these best practices, Sunflower curtailed generation from March 14, 2014, through June 17, 2014 to save inventory for the summer peak period. As of mid-July, Sunflower had approximately 20 days of inventory.

If rail service for the remainder of the year does not improve, Sunflower could be required to limit generation again this fall and its coal inventory will still reach zero days by the end of December, creating a potential reliability issue for the Southwest Power Pool (SPP), of which Sunflower is a member. Without substantial improvement, this delivery service problem will affect electric generation reliability well into 2015.

Arkansas Electric Cooperative Corporation

Arkansas Electric (AECC) is a membership-based generation and transmission cooperative that provides wholesale electric power to electric cooperatives, which in turn serve over 500,000 consumer member/owners, located in each of the 75 counties in Arkansas and surrounding states. In order to serve its 17 member distribution cooperatives, AECC has entered into arrangements with other utilities within the state of Arkansas to share generation and transmission facilities. For example, AECC holds ownership interests in the White Bluff plant at Redfield and the Independence plant at Newark, each of which typically uses in excess of 6 million tons of PRB coal each year. In addition, AECC holds ownership interests in the Flint Creek plant at Gentry and the Turk plant at Fulton, each of which typically uses about two million tons of PRB coal each year. Because of the large volume of coal consumed by these plants, the need for long-distance rail transportation to move this coal, and the rail captivity of three of these plants, AECC and its members are very dependent on rail service in order to provide reliable and economical electrical service.

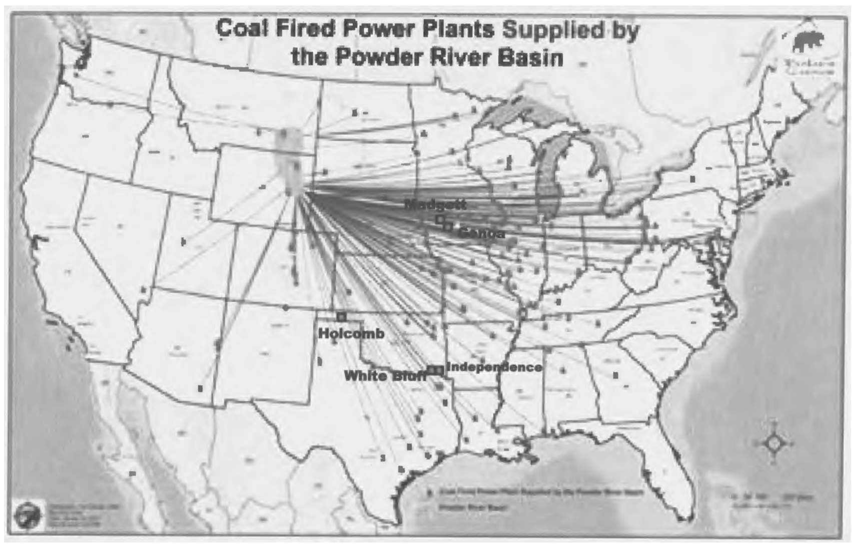
In 2013 through the severe winter weather of 2013–2014, the major freight rail service problems seemed to be somewhat confined to the upper Midwestern portion of the United States. BNSF and Canadian Pacific (CP) seemed to be most affected. Certainly Arkansas did not see coal shipments affected at that point. However, as 2014 began to unfold AECC started seeing slower ATT and lower throughput of coal to its power plants. AECC experienced ATT increases of as much as 30 percent and coal inventories drop by up to 50 percent. At one point an AECC plant had just 16 days of coal inventory.

Conclusion

We are grateful that the Committee on Commerce, Science, and Transportation held this timely hearing on current rail service issues. Furthermore we thank Chairman Rockefeller and Thune for introducing S. 2777 the Surface Transportation Board Reauthorization Act of 2014. Although the bill will not address the immediate concern with coal deliveries for our members outlined in the examples above, in the long run, if enacted, the bill will make freight rail carriers more responsive and rail service more competitive. We believe this legislation is a good first step in the right

direction for practical reforms without adding regulation. It should help the STB to be more efficient, thus making a more robust and responsive freight rail network.

The bill does not require direct government intervention and *doesn't reregulate* (emphasis added) America's freight rail system. The bill allows the STB to be proactive and grants them investigatory authority therefore the Board doesn't have to rely solely on shipper complaints. Other provisions include establishing a voluntary alternative dispute resolution process as presented in the managers amendment; required complaints be compiled at the STB; streamline rate cases; and require quarterly reports of unfinished proceedings. One provision agreed upon by both shippers and the railroads would allow board members to talk to each other so long as they disclose those discussions with two days of meeting. NRECA supports S. 2777 the Surface Transportation Board Reauthorization Act of 2014.



PORTLAND CEMENT ASSOCIATION
Washington, DC, September 10, 2014

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
Committee on Commerce, Science, and Transportation,
Washington, DC.

Hon. JOHN THUNE,
Ranking Member,
Committee on Commerce, Science, and Transportation,
Washington, DC

Hon. RICHARD BLUMENTHAL,
Chairman,
Subcommittee on Surface Transportation,
Washington, DC.

Hon. ROY BLUNT,
Ranking Member,
Subcommittee on Surface Transportation,
Washington, DC.

Dear Chairman Rockefeller, Ranking Member Thune, Subcommittee Chairman Blumenthal, and Ranking Member Blunt:

Thank you for holding today's hearing, entitled "Freight Rail Service—Improving the Performance of America's Rail System." On behalf of the Portland Cement Association (PCA), I wish to share the views of America's cement manufacturers.

Our industry is hopeful that this hearing will lead to improvements in service levels from the railroads. Current service levels are delaying the delivery of our products, impacting construction jobs that could have a ripple effect in our Nation's economic recovery.

Cement is to concrete what nails are to wood. It acts as the glue that builds our bridges, roads, dams, schools and hospitals. The distribution of cement often occurs over hundreds of miles, and it must be done with carefully timed precision. A disruption in rail transportation and distribution can greatly influence the efficient de-

livery of cement; this can result in projects being delayed or cancelled. Rail carriers are vital to the movement of cement, representing approximately 65 percent of cement movements on a per ton basis. Steep increases in rail rates, particularly over the past decade, have impacted cement shippers negatively wiping out efficiency and other gains.

Since passage of the Staggers Rail Act of 1980, the rail industry has dramatically changed. In 1986, there were 23 Class I rail carriers in the United States. Today, there are seven Class I rail carriers of which four control over 90 percent of the U.S. market. About 80 percent of rail stations are now served by just one Class I carrier. Rail industry consolidation and a lack of competition amongst rail carriers and from other modes of transportation have given the rail industry very strong market power. For shippers that need to transport their products over long distances, motor carriers; for example, are typically a noncompetitive option, especially as fuel prices have risen over the decades.

As the market power of the rail industry has grown, the importance of the Surface Transportation Board (STB) being able to provide a counterbalance has also increased. Yet rate and service cases are so expensive and cumbersome that many shippers often do not have the time or money to file a case.

It also is unfortunate that so many commodities are forbidden from even having a rate or service case come before the STB. This is due to antiquated commodity exemptions, which no longer make any sense in today's marketplace. For a variety of reasons that made sense in the 1980s, the Board's predecessor, the Interstate Commerce Commission (ICC), engaged in a broad campaign to exempt certain goods from the protections of the law. Among these were exemptions for the rail transportation of cement, paper and forest products, clay, concrete, glass, stone products, and motor vehicles. In the decades since these exemptions were imposed, much has changed, both in the law and in the rail transportation marketplace. This is why the STB has been actively reviewing the issue of exempt commodities (Ex Parte 704) since 2011. PCA strongly supports the STB moving forward to modernize its list of exempt commodities.

Thank you again for holding today's hearing. Please feel free to contact me by e-mail at *ccohrs@americancementcompany.com* or Justin Louchheim at *jlouchheim @cement.org*.

Sincerely,

CARY COHRS,
Chairman of the Board,
Portland Cement Association,
President,
American Cement Company, LLC.

Cc: Members of the Committee on Commerce, Science, and Transportation

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AMERICAN BAKERS ASSOCIATION
Washington, DC, September 24, 2014

Hon. JOHN ROCKEFELLER,
United States Senate,
Washington, DC.

Hon. JOHN THUNE,
United States Senate,
Washington, DC.

RE: U.S. Senate Committee on Commerce, Science, and Transportation Hearing: Freight Rail Service: Improving the Performance of America's Rail System

Chairman Rockefeller and Ranking Member Thune:

The American Bakers Association (ABA) would like to thank you for holding a hearing to scrutinize the lack of adequate rail service in the Northern Mid-West. While this issue has definitely impacted the ability of farmers and grain elevators in this area to ship wheat and other farm commodities in a timely and efficient manner, the effect of the backlog in grain shipments does not end there. Bakers have also struggled in receiving flour shipments in a timely fashion, which is of major concern for an industry that depends heavily on certainty in transportation in order to provide a variety of baked products for America's families.

The American Bakers Association (ABA) is the Washington D.C.-based voice of the wholesale baking industry. Since 1897, ABA has represented the interests of bakers before the U.S. Congress, Federal agencies and international regulatory authorities. ABA advocates on behalf of more than 1,000 baking facilities and baking company suppliers. The baking industry generates more than $102 billion in economic activity annually and employs more than 706,000 highly skilled people.

Impact to the Baking Industry

Beginning fall 2013, railroad service in the Northern Mid-West states was characterized by long delays, missed shipments, increasing backlogs and higher costs for those industries captive to rail. While shipping slowed dramatically due to extreme winter weather, the backlog has not improved since then. Joining with the concerns still held by farmers, grain elevators and millers, bakers too do not see an adequate response by the railroads to ensure that delivery concerns are addressed before a record fall harvest puts more pressure on capacity or winter weather returns.

Bakers are dramatically affected by the decrease in efficiency as they depend on timely shipments from millers for their flour needs. Hard Red Spring Wheat is used as a primary ingredient to most breads and specialty baked goods. The majority of Hard Red Spring Wheat is grown in Montana, North Dakota, South Dakota and Minnesota, all states that are land locked and dependent upon the railroads for shipping grain to end users across the country. While shipping wheat by truck is always suggested as an alternative, it would take four trucks to equal the capacity of one grain rail car, making trucking much less efficient than rail service. In addition, there is not enough trucking capacity in the U.S. today to make up for rail inefficiencies, making rail a critical lifeline for the baking industry. Bakers are captive to the railroads due to the inability of grain millers to gain access to Hard Red Spring Wheat by any means other than rail.

In addition, Bakers typically only have two to three days' worth of flour storage on premises. When shipments of flour from millers are delayed due to backlogs in wheat shipments by rail to the milling facility, bakers struggle to find alternative flour sources. In some cases, bakers have shut down lines and reduced staff to accommodate for a lack of flour to bake products. Finished product has also been delayed when being shipped to the marketplace due to delays in fulfilling product orders and in intermodal transport.

Conservative estimates show that the railway shipping crisis may cost the baking industry millions of dollars this year alone if concerns are not addressed. Unfortunately with the current pace of service recovery, the backlog will most likely continue and possibly even increase in severity and impact on the industry through next summer.

Solutions to Address the Shipping Crisis

ABA strongly supports the efforts by Chairman Rockefeller and Ranking Member Thune to pass the Surface Transportation Board Reauthorization Act of 2014. Giving the Surface Transportation Board (STB) authority to launch investigations before a costly complaint is filed is a critical step in holding railroads accountable for the lack of adequate service. In addition, making it easier for STB members to communicate and improving the dispute resolution process are necessary to improve the STB's ability to serve all parties reliant upon railway shipping.

ABA supports recent steps by the STB to increase transparency, requiring Burlington Northern Santa Fe and Canadian Pacific to offer weekly progress reports on backlogs and plans for improvement. Specifically, ABA believes more transparent information on rail cars that are past due, the average number of days late and unit train turnaround times are critical to solving the shipping crisis. This includes information on all shipping categories, including agriculture, coal, intermodal, energy and automotive. In addition to reporting, ABA urges the railroads to adopt a more open line of communication with its customers to ensure that all parties are working together to ensure proper and timely delivery of goods. Moving forward, it is ABA's hope that stringent oversight will continue until the shipments return to more normal levels.

Conclusion

U.S. bakers rely upon a transportation network that is reliable and efficient. Unfortunately, this network has failed the baking industry in the past year. While progress has been made towards cutting the backlog of rail car orders in the region, it remains a very serious situation.

ABA appreciates the proactive leadership of the Senate Committee on Commerce, Science, and Transportation to address freight rail service concerns in the U.S. ABA stands ready to serve as a resource and assist the Committee and the STB in solving the continuing shipping crisis.

Sincerely,

CORY MARTIN,
Director, Government Relations,
American Bakers Association.

M&G POLYMERS USA, LLC

Hon. JOHN D. ROCKEFELLER IV,
Chairman,
U.S. Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Hon. JOHN THUNE,
Ranking Minority Member,
U.S. Senate Committee on Commerce,
Science, and Transportation,
Washington, DC.

Dear Chairman Rockefeller and Senator Thune:

I am writing today on behalf of M & G Polymers in strong support of legislation you have both sponsored, S. 2777, the Surface Transportation Board Reauthorization Act of 2014. Our recent experience pursuing a rate remedy at the Surface Transportation Board convinces us that the reforms you have recommended in this legislation are needed if the Board is to be an accessible forum for resolving commercial disputes between the railroads and their customers.

M&G Polymers is a leading producer of polyethylene terephthalate ("PET") resin in North America with our principle domestic production facility located in Apple Grove, WV. We employ 144 and generate circa $500,000,000 in annual revenues at our Apple Grove facility. Unfortunately, we are served at our facility by a single railroad, the CSX Railroad. Our customers want to receive our PET "pellets", which are used to make plastic bottles by soft drink manufacturers and others, by rail and penalize us significantly economically if our products cannot be delivered by rail.

Several years ago, shortly before our rail transportation contract with the CSX expired, we attempted to negotiate a new contract that would allow is to remain competitive in our markets and for our plant to remain economically viable. Having very little negotiating leverage, the CSX demanded a steep increase in our contract transportation rates. Since the proposed contract rates would cripple the economic viability of our Apple Grove facility, we requested that the CSX provide a tariff rate that we could challenge at the STB as being unreasonably high. As normally happens in such cases, the tariff rate provided by the CSX was even higher than the proposed contract rate and we were required to pay the tariff rate while we challenged its reasonableness at the STB.

The rate challenge became extremely costly, including not only the cost of the litigation but the additional cost of paying the high tariff rate during the pendency of the challenge, and extremely lengthy. After four years, with only a decision in hand that we were indeed subject to the market dominance of the CSX—in other words we proved we were captive to that single railroad for our transportation—and facing another year or more of litigation on the reasonableness of the rate, we were forced to settle the complaint and move on. This experience convinced us not to expand our operations at Apple Grove and, indeed, our high rail transportation costs at Apple Grove remain a cloud over the economic viability of that plant.

Based on this experience and our ongoing experiences with those of our railroad carriers that hold us captive, we are particularly interested in and supportive of Sections 6, 7, 8, 9 and 10 of the proposed legislation. These provisions strengthen the investigative authority of the Board and address some of the shortcomings of the current rate challenge processes of the Board. We also support Sections 12 and 13 of the legislation that will inform Congress and the public of some of the important activities of the Board with regard to complaints about service and the status of unfinished Board regulatory proceedings. Finally, we support the proposed "Sense of the Congress" provision in Section 14 of the Act.

Freight railroads exist to transport products and commodities to market reliably and on reasonable terms. Freight railroads serve no other purpose. Where a market exists for railroad services, commercial negotiations can be expected to result in reasonable service and reasonable terms. Where a railroad is the sole provider of a necessary service, as in our case in West Virginia, then the shipper often cannot negotiate reasonable terms and an independent forum reasonably accessible by shippers is required to ensure reasonable service at reasonable rates. We believe that the Board, under its current rules, processes and precedents, is not reasonably accessible to shippers to resolve in a reasonable period of time our commercial disputes with those railroads to whom we are captive. S. 2777 addresses some of the shortcomings of the Board today and would make the Board more reasonably accessible to shippers.

Thank you, Chairman Rockefeller and Senator Thune, for your leadership on this issue. We stand ready to help you in any way we can to make the needed changes in law and policy that are contained in S. 2777.

Sincerely,

FRED FOURNIER,
Executive Director.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. AMY KLOBUCHAR TO ARTHUR NEAL

Question. During the reauthorization of the Farm Bill I worked to include a provision that would authorize a joint rural transportation study expanding upon a similar study mandated by the 2008 bill. My study language directs the USDA and Department of Transportation to examine rural transportation issues, including captive shipping, so that we can identify ways to help farmers and ranchers move their products more quickly and efficiently. Mr. Neal, does the USDA have an expected timeline for finishing the report?

Answer. USDA believes an efficient and effective transportation system is critical to supporting our Nation's economy. The 2014 Farm Bill mandated that USDA and the Department of Transportation complete an updated study on rural transportation issues, including freight transportation of agricultural products, renewable fuels, and other issues of importance to the economies of rural communities. The update of this study has been assigned to USDA's Agricultural Marketing Service. Similar to the previous study, AMS has entered into a cooperative agreement with Washington State University to assist with development of the study update. The study team has been assembled and work has begun to conduct the update. Provided there are no unexpected difficulties that arise during the update process, USDA hopes to complete the study in 2016.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO JERRY D. COPE

Question 1. I have worked for years to have the Surface Transportation Board (STB) proactively and efficiently address issued raised by shippers and to restore balance to a network that I believe favors the freight railroads. Unfortunately, I don't believe the STB has done enough on this front. How have past decisions at the STB limited competition for shippers?

Answer. The STB has previously been viewed as a rubber stamp for the RR's. Many past board members went from the STB to working for a Class I. Fuel Surcharge issues were reluctantly addressed and then after extensive lobbying from National Grain and Feed Association and a suit by one of the major grain companies. Addressing rate challenges and other issues such as competitive switching and bottleneck rates still need to be taken up by the Board.

Question 2. The STB has started several proceedings, but it doesn't appear that they have completed many. What actions are most important for the Board to complete?

Answer. That is hard to answer because the STB website doesn't list actions or proceedings as completed. It requires knowledge of the case and what signals completion rather than categorizing actions as pending, in progress or complete. (I verified this through a staffer).

Question 3. I continue to have concerns that the Surface Transportation Board has not used its full authority to identify and address problems. The ongoing service crisis is a prime example of this problem, where the STB has held hearings and required reports but has not changed underlying regulations to provide meaningful relief. Meanwhile, crops are lying on the ground, coal shipments aren't being made, and businesses are suffering. A lack of responsiveness by the STB can be disastrous for businesses in our communities that rely on rail service. How have inefficiencies and delays at the STB damaged businesses in your industries?

Answer. The commercial grain handlers lost opportunity when we couldn't handle grain last winter and spring. Both farmers and commercial grain handlers lacked cash flow which increased credit lines, interest costs and forced expensive short term storage decisions. Total cost was in the millions to the affected states.

Question 4. What could the Board have done to address rail service issues before the problem became critical?

Answer. Under the current rules the board couldn't address the rail service problems until a complaint was officially filed. A complaint was not filed right away because when problems are just starting to develop, it is hard to know if it is short term or the beginning of something longer. The grain and fertilizer industry typically takes a conservative approach and does not blow the whistle at every turn. However, the RR's overall lack of communication and transparency that created the uncertainty in the beginning was a root cause of the problems that developed. Would the board of had the ability to investigate without a complaint being filed and had there been more board members so the outreach could be more broadly

based, the problem could have been addressed earlier and some of the issues perhaps avoided or at the very least worked through with more understanding.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO CALVIN (CAL) DOOLEY

Question 1. I have worked for years to have the Surface Transportation Board (STB) proactively and efficiently address issued raised by shippers and to restore balance to a network that I believe favors the freight railroads. Unfortunately, I don't believe the STB has done enough on this front. How have past decisions at the STB limited competition for shippers?

Answer. To provide just one example, the STB's outdated and misguided rules on competitive switching actually run counter to the Staggers Rail Act of 1980 and prevent shippers from obtaining service from a second railroad. While Congress has long envisioned competitive switching as a way to promote a competitive rail system, no shipper has ever obtained competitive switching since the STB's rules were adopted. It is extremely frustrating for shippers that depend on a single carrier to be prevented from seeking competitive service—not by a statutory provision, but because of the way the Board has chosen to interpret the law.

Question 2. The STB has started several proceedings, but it doesn't appear that they have completed many. What actions are most important for the Board to complete?

Answer. The STB has the authority to take on these issues and already has begun to do so, but it is simply moving too slowly. Competitive switching is a clear priority. The STB has been evaluating this issue in its Docket Ex Parte 711 for more than three years, receiving extensive data and stakeholder input. But the STB has yet to issue even a notice of proposed rulemaking.

Another major priority is the development of a workable rate-reasonableness process based on a revenue adequacy standard. The STB has long recognized that when a railroad is revenue adequate, the railroad should not be allowed to continually charge much higher rates to its captive shippers.

The Board, however, has never applied this revenue adequacy standard in rate cases. The STB continues to rely on the stand-alone cost process, which is overly complex, burdensome, and expensive. This process shields highly profitable railroads from market forces and shippers are left with no competition and no effective remedy for unreasonable rates.

ACC strongly supports legislative changes and the ongoing efforts at the STB to promote competition in the rail industry and to make the Board and its procedures more accessible to shippers for all sectors of the U.S. economy. We think that the provisions in the "Surface Transportation Board Reauthorization Act of 2014" would help keep the STB focused on resolving many of the key issues that are important to shippers.

Question 3. I continue to have concerns that the Surface Transportation Board has not used its full authority to identify and address problems. The ongoing service crisis is a prime example of this problem, where the STB has held hearings and required reports but has not changed underlying regulations to provide meaningful relief. Meanwhile, crops are lying on the ground, coal shipments aren't being made, and businesses are suffering. A lack of responsiveness by the STB can be disastrous for businesses in our communities that rely on rail service. How have inefficiencies and delays at the STB damaged businesses in your industries?

Answer. The business of chemistry is set to expand dramatically in the United States. The discovery of vast new supplies of shale gas has changed the economics of chemical manufacturing in this country. As a result of this competitive advantage for the chemical industry, it is anticipated that the U.S. will gain more than 700,000 new jobs and $274 billion in new economic output.

If the United States is to fully realize these potential investments, it is imperative that chemistry companies have access to a reliable and competitive freight rail networks that will effectively move our products along the supply chain and throughout the economy.

Sharply rising freight rail rates are taking a heavy toll on American producers. According to research conducted by Escalation Consultants, the total rate premium for all commodity shippers in 2011 exceeded $16 billion. These premiums are having a big impact on our industry in the U.S. For example, a survey of ACC members found that more than a quarter of ACC members report that rail issues have hindered domestic investments.

A key driver for rate increases over the last decade is the lack of a competitive market for rail service. Massive consolidation and railroad practices have allowed

the railroads to exert market dominance over their customers. These practices include "bundling" rates as a way to preclude shippers from exercising their right to ask the STB to review rates. And, in some instances, railroads protect each other's market power by not bidding on traffic that they could carry. Another factor is the inability of shippers to make use of the STB as a workable venue to handle rate issues.

If businesses have to absorb these freight rail costs, it cuts into their ability to create jobs, products, and exports. If consumers have to bear those costs, they have less to spend and to put into the economy.

Companies in the business of chemistry operate in a highly competitive global industry that operates on tight margins. According to ACC's survey of chemical manufacturers, the soaring cost of rail shipping is driving investment decisions and negatively impacting a company's ability to compete in a global economy. Furthermore, an economic analysis conducted by ACC found that, if the $3.9 billion freight rail premium on chemical shipments were eliminated, the chemical sector could create up to 25,000 more jobs with $1.5 billion in new wages and $6.8 billion in new economic output.

The U.S. chemical industry needs a financially strong private rail industry, and Congress agrees. Congress has tasked the Board with overseeing many important aspects of the railroad sector. ACC member companies are hampered by the many difficulties and the high costs of bringing matters to the Board for resolution. For chemical shippers, STB cases are complex, expensive, and time-consuming to resolve. In fact, the barriers for bringing a case before the STB are so high that very few of our member companies can justify the time and expense. The Board itself estimates that a stand-alone cost challenge takes more than three and a half years and $5 million to complete. This predicament is daunting for a large company and nearly insurmountable for a small or medium-sized company. ACC members have experienced cases that take even longer and cost much more to challenge. More competition and the introduction of free market forces can help pre-empt the need to file a rate case, reduce the need for government intervention, and improve rail service overall.

Question 4. What could the Board have done to address rail service issues before the problem became critical?

Answer. A number of ACC member companies experienced rail service delays during the past winter of 2013–14. When the Board held its public hearing on "U.S. Rail Service Issues" on April 10, the chemical industry spoke about the effects, which were not limited to the two carriers that were the primary focus of that hearing. ACC also addressed rail service at this Committee's hearing on September 10, as well as in meetings with STB officials.

The Board has remained engaged on rail service issues, and it also held a public hearing in North Dakota in September. We realize that the Board cannot resolve rail service issues itself. Moreover, we appreciate that the Board has ordered the Class I railroads to provide various kinds of additional data in a timely manner.

While ACC applauds those efforts, we remain concerned for several reasons. First, what were initially characterized as winter problems did not clear up with warm weather. In fact, the carriers are indicating that their difficulties are of a longer-term nature. While our members are very concerned about the upcoming winter, throughout this year many chemical companies have been experiencing difficulties receiving raw materials, shipping products to customers, and/or getting freight cars back for reloading.

Second, despite the Board's early focus on two carriers, there have been problems with every Class I railroad. The Board has expanded its attention beyond those two carriers, but our members are troubled by the persistence of these service issues and the length of time that they might last. In addition, some carriers have not been transparent about their problems and their plans, which makes it even more difficult for chemical shippers and their downstream customers.

In short, ACC members find themselves in the same predicament as other shippers. They continue to suffer from rail service problems and continue to have serious concerns about their ability to ship their products by rail and being able to meet their obligations to their customers. What they have experienced was not by any means confined to the issues that arose during the winter months. Quite simply, rail service has not yet recovered, and it is unlikely that it will improve soon unless the STB and Congress take action.

Question 5. The Surface Transportation Board has been far too slow in addressing important issues like competitive switching. One of the reasons is that the railroads have repeatedly raised concerns that changing pricing "adversely affects all shippers

and the Nation's economy." From your testimony, the opposite seems true. Can you explain how a lack of competitive switching is adversely impacting shippers?

Answer. Congress has long envisioned competitive switching as a way to promote rail competition. However, under outdated STB rules, no shipper has successfully obtained switching. When only one major railroad serves a facility, it can effectively block a shipper from obtaining competing service, even if a second railroad is only a few miles away. This lack of competition gives railroads dramatic market power and leaves shippers with few options. As one of our members explained during a recent STB hearing, competitive switching has the potential to improve rail service, provide better routing options, and establish competitive rates.

Question 6. Before taking action, the STB has stated that they want to make sure the railroads are able to adequately invest in their infrastructure. Would competitive shipping impair this ability?

Answer. While we do not support a return to the 1970s when all freight rates were automatically subject to strict government scrutiny, we also do not support current policies that protect railroads and override free market forces at the expense of shippers.

More than 30 years ago, Congress enacted the Staggers Rail Act of 1980 that helped the railroads thrive and, ultimately, drove down rates. Since then, railroad freight traffic has nearly doubled, investment in rail infrastructure has increased, and the economic strength of the rail industry is greatly improved. At the same time, the rail industry has consolidated, reducing the number of Class I railroads from 26 to seven, with four largely dominating the market (two in the east and two in the west).

Despite the direction of Congress, however, the full mandate of the Staggers Rail Act was not completed, and, subsequently, rail policies have not been able to keep up with the massive consolidation of the railroads. The majority of ACC member facilities have access to only one major railroad. Yet the same policies protecting railroads remain.

With these dramatic changes in the state of the rail sector, it is appropriate for Congress and the STB to re-evaluate and modernize the U.S. rail policy framework. Rail reform that increases competition and levels the playing field between shippers and railroads would help strengthen the U.S. economy and the railroad industry itself.

Question 7. Wouldn't the railroads also see benefits from competitive switching?

Answer. The best solution for all stakeholders is more free market competition, not more regulation and government protections for railroads. Consistent with the Staggers Rail Act, the STB should work to promote "effective competition among rail carriers" wherever possible. The government has always provided oversight where there is no competitive option for shippers. To provide this oversight effectively, STB processes must be more practical and less burdensome. The reforms we support will help create a more competitive and market-based freight rail system that will reduce the need for government involvement, while ensuring the STB has procedures to settle disputes efficiently. The results for the country would include more jobs, more exports, more competitiveness in global markets, and lower prices for consumers. And yes, ACC believes that the railroads themselves would thrive under the conditions of true competition.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN D. ROCKEFELLER IV TO SHANE KARR

Question 1. I have worked for years to have the Surface Transportation Board (STB) proactively and efficiently address issued raised by shippers and to restore balance to a network that I believe favors the freight railroads. Unfortunately, I don't believe the STB has done enough on this front. How have past decisions at the STB limited competition for shippers?

Answer. Two major policy decisions, in particular, have significant limiting effects upon rail competition.

Competitive Access

The first major policy decision was the agency's decision not to exercise its full discretion to grant reciprocal switching. At 49 U.S.C. 11102, Congress authorized the agency to grant trackage rights or reciprocal switching when "practicable and in the public interest" or, in the case of reciprocal switching, "where . . . necessary to provide competitive rail service." In an early decision interpreting this statute, the ICC noted that that "Congress' aim in creating section 11103(c) of the Staggers Act was to *provide a competitive counterbalance*" to the broadened rate freedom that

was also part of the Staggers Act reforms.[1] *Del. & Hudson Ry.* v. *Consol. Rail Corp.—Reciprocal Switching Agreement,* 367 I.C.C. 718, 729 (1981). In determining the "public interest," the agency noted that "[a]dditional rail competition is a clear public benefit from the proposed operation, one which is endorsed by the rail transportation policy announced in the Staggers Act."[2] But just four years later, the ICC abandoned the *D&H* precedent when it adopted rules determining that "a switching arrangement shall be established" under the statute only if the agency determined that the establishment of such a switching arrangement "(A) is necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive, and (B) otherwise satisfies the criteria of 49 U.S.C. . . . 11103. . . ." Ex Parte No. 445 (Sub-No.1), *Intramodal Rail Competition,* 1 I.C.C.2d 822, 840–41 (1985).

The very first case adjudicated under the new rules was *Midtec Paper Corp.* v. *Chicago and North Western Transp. Co. (Use of Terminal Facilities and Reciprocal Switching Agreement),* 3 I.C.C.2d 171 (1986) ["*Midtec*"], which held that whether reciprocal switching was "necessary to remedy or prevent an act that is contrary to the competition policies of 49 U.S.C. 10101a or is otherwise anticompetitive," required the agency to find "classical categories of competitive abuse: foreclosure, refusal to deal; price squeeze" or "other forms of monopolization or predation"; or "inadequate service or excessive prices."[3] Whether or not "abuse" had occurred would involve an antitrust-type inquiry.[4] In defending its decision in court, the agency argued, and the court held, that the ICC's new competitive access rules substantially narrowed the agency's discretion under the statute to grant competitiveremedies.[5] A series of four subsequent decisions denying requests for competitive access under this heightened bar has resulted in no shipper even attempting to request competitive access for more than 25 years due to perceived futility.

Bottleneck Rates

The second major policy decision was the agency's determination not to require railroads to quote bottleneck rates in *Central P. & L. Co.* v. *Southern Pac. Transp. Co.,* 1 S.T.B. 1059 (1996), *clarified* at 2 S.T.B. 235 (1997), *aff'd sub nom. MidAmerican Energy Co.* v. *STB,* 169 F.3d 1099 (8th Cir. 1999). Many shippers who are physically captive to a railroad at the origin or destination may have access to a competitive railroad over most of a route. Therefore, they only need a regulated rate for the bottleneck segment. But the STB has held that the bottleneck carrier is not required to quote a bottleneck segment rate if it has the ability to transport the shipment over a greater distance. This effectively precludes the captive shipper from taking advantage of competition to the extent it exists and relying upon regulation only for the captive segment.

The impact of this STB decision has been exacerbated by end-to-end rail mergers. Such mergers over time have created longer and longer bottleneck segments, thereby increasing the distance that a shipper is captive at the origin or destination. The STB has refused to recognize this merger effect as anti-competitive by claiming that the bottleneck railroad will capture all of the monopoly rents regardless of the length of its bottleneck, and thus a merger that creates longer bottleneck segments does not have anti-competitive effects.

Question 2. The STB has started several proceedings, but it doesn't appear that they have completed many. What actions are most important for the Board to complete?

Answer. Ex Parte No. 722 (Sub-No. 2), *Railroad Revenue Adequacy.* The STB recently began this proceeding to evaluate how it measures revenue adequacy and to determine the significance of revenue adequacy upon rail rate regulation. As more rail carriers have become achieved and maintained revenue adequacy in recent years, this provides the STB with an opportunity to adopt an alternative regulatory rate constraint to Stand-Alone Cost ("SAC"), which is far too complex, lengthy, and costly for most rail shippers to invoke efficiently. When the ICC adopted SAC, it also declared that a rail carrier should not be permitted to charge captive shippers higher rates than competitive shippers than are necessary to achieve revenue adequacy. The STB needs to complete this proceeding in order to offer an effective regulatory remedy to most captive shippers.

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[1] *Id.* at 729 [emphasis added].
[2] *Id.* at 723.
[3] *Id.* at 173–74.
[4] *Id.*
[5] *Midtec Paper Corp.* v. *United States,* 857 F.2d 1487, 1500 (D.C. Cir. 1988) ["*Midtec Court Review*"]

Ex Parte No. 711, *Pet. for Rulemaking to Adopt Revised Competitive Switching Rules.* The National Industrial Transportation League filed its petition for rulemaking on July 7, 2011. This proposal would reverse the competitive access precedent discussed in response to the preceding question by establishing a process for obtaining reciprocal switching in order to enhance competition instead of only in response to antitrust-type abuses. The STB waited a full year before taking any action on July 25, 2012. Although the League had proposed a very specific rule, including actual text, the STB did not issue a Notice of Proposed Rulemaking or even an Advanced Notice of Proposed Rulemaking. Instead, it solicited empirical analyses regarding the potential impact that the League's proposal would have on rail industry finances and operations. The public comment phase concluded on May 30, 2013 and the STB held a public hearing on March 25–26, 2014. There has been no further action from the STB in the ensuing seven months. The STB needs to complete this proceeding in order to bring head-to-head rail competition to a larger portion of the captive shipper community.

Question 3. I continue to have concerns that the Surface Transportation Board has not used its full authority to identify and address problems. The ongoing service crisis is a prime example of this problem, where the STB has held hearings and required reports but has not changed underlying regulations to provide meaningful relief. Meanwhile, crops are lying on the ground, coal shipments aren't being made, and businesses are suffering. A lack of responsiveness by the STB can be disastrous for businesses in our communities that rely on rail service. How have inefficiencies and delays at the STB damaged businesses in your industries?

Answer. The greatest logistics problem faced by auto manufacturers is the rail carriers' failure to provide a sufficient supply of empty railcars to transport finished vehicles. Automakers have also incurred significant delays in the movement of railcars loaded with finished vehicles. In this regard, it appears that the priority of auto shipping has become less than that of other shippers.

The most recent rail industry service problems have caused an unprecedented disruption in the ability of auto manufacturers to deliver vehicles to their customers. As a result of the rail service disruptions, auto manufacturers are spending tens of millions of dollars a month to find other means of moving stranded vehicles or to store them until rail service is available. For example, since January one automaker has spent an incremental $23 million, or approximately $186 per vehicle, on vehicle transportation at one assembly plant alone due to the lack of available empty railcars.

These vehicles should have been transported much sooner via contracted rail services to dealerships for sale or delivery to consumers. For a significant portion of 2014, vehicle inventory worth billions of dollars sat in rented storage yards all around North America. In early April—at the height of this crisis—more than 200,000 vehicles were held in storage yards in and around automotive assembly plants. The longer transit times have resulted in higher carrying costs and customer/dealer dissatisfaction due to missed ETAs (Estimate Time of Arrival). Where possible, automakers have had to look to alternate, more expensive means to move vehicles to dealers.

Question 4. What could the Board have done to address rail service issues before the problem became critical?

Answer. It is not clear that the STB has the statutory authority either to prevent or remedy rail service problems of the type and magnitude that we currently are experiencing. Furthermore, there are serious concerns as to how the STB might use what authority it does have.

The current service problems appear to be attributable in large part to a lack of railroad personnel and infrastructure to handle changes in traffic volumes and patterns. Those systemic problems, in turn, have been exacerbated by harsh winter conditions. Although the traffic changes were predictable, and in fact were forecast by some railroads several years in advance, they chose not to make the necessary investments to handle this traffic until after the volumes actually materialized. The STB is not in a position to know these facts, nor does it have the authority to determine which investments railroads make and when. Better reporting of operating metrics to the STB could help the agency to monitor and observe problems before they become intractable, but it is not clear what the agency could do to prevent problems from becoming worse.

Once the current service problems occurred, there was little the STB could do to fix them. The railroads already are implementing measures on their own, albeit belatedly, and it will take time to complete those measures and to feel the impacts. Although the STB theoretically could order railroads to provide service to specific customers or industries, it could do so only by favoring some shippers over others.

In a shortage situation, the best thing for the STB to do is to ensure that the railroads themselves do not favor certain shippers or industries over others. The STB should exercise its authority to direct railroad service to specific customers only in true emergencies that have broad societal effects. It is expected, however, that a railroad would take such steps on its own initiative prior to an STB order.

There is one regulatory change that the STB could implement, consistent with responses to the preceding questions, to ensure the most efficient distribution of limited rail capacity. Enhanced competition at origins and destinations through reciprocal switching would allow shippers to choose the carrier with the most efficient route and capacity in order to bypass service bottlenecks. In other words, more efficient use of existing infrastructure may reduce the need to build more.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. AMY KLOBUCHAR TO EDWARD R. HAMBERGER

Question 1. Coal Delivery—Last year every utility in my state saw its stockpiles of coal precipitously drop to crisis levels. Inventories struggled to rebound in late spring, but deliveries have fallen off again over the summer when stockpiles should be higher. Utility companies are implementing operating curtailments—shuttering coal plants that will raise electric prices in the short term—in the hope that it can preserve coal supplies for the critical winter months and head off potentially serious electricity supply shortages.

Mr. Hamberger, how can we avoid simply jumping from crisis to crisis leaving utilities and their customers with little, if any, certainty over their energy supply in the coming months?

Follow-up question: I understand record harvests and cold weather may have contributed to last year's poor service but why are we still seeing significant delays?

Answer. Reliable, cost-effective freight trail transportation service is critical to our Nation's economy. The vast majority of rail customers typically receive this high level of service. Unfortunately, there are customers that recently have not received the quality of service they have come to expect. Railroads are working diligently to improve this service. It is important to view these service challenges in the wider context of the overall rail network: U.S. railroads today are moving much higher quantities of freight than they had been: in the first nine months of 2014, U.S. railroads moved approximately 900,000 more carloads, containers, and trailers than in the first nine months of 2013. That equates to thousands of additional trains. Despite their best efforts, railroads and their customers did not fully anticipate the rapid increase in demand for service, which has been driven by commodity markets, expanding economic activity, new domestic energy production and increased domestic manufacturing output. Additionally, much of this new traffic is different both in terms of its commodity mix and origins.

Last winter, this demand increase was accompanied by unusually severe weather, followed by numerous spring flooding events. Railroads are networks—disruptions in one segment of the system can quickly spread. Unlike other networks like airlines, railroads operate 24 hours a day, 7 days a week, so incident recovery must be accomplished during ongoing operations. As a result, in cases of extreme disruptions—like this past winter—recovery can take months.

In order to remedy these specific service challenges, railroads are spending record amounts to expand capacity, hire and train new employees, and improve fluidity through effective network management. These actions will result in a stronger, more resilient rail network in the future. The best way to ensure that the rail network is able to provide effective and efficient service to customers today and in the future is to maintain a balanced economic regulatory framework that allows railroads to earn enough revenue to invest in and expand their systems in order to meet our Nation's growing freight transportation needs.

Question 2. Data and Reporting—Crude-by-rail shipments, logistics and supply data are commonly treated as confidential business information. Some shippers have indicated that making this data publically available would improve some of the railroad delay issues.

Mr. Hamberger, is there a way to release information about commodity movement in a way that provides transparent information to the public but also considers the industry's concerns about confidentiality?

Answer. Railroads recognize that communication among members of the transportation and logistics chain is important. They are committed to providing information on commodity movements to their customers and public emergency response organizations. For example, railroads for years have provided information about hazardous materials shipments to bona fide state and local emergency response organizations.

Today this information includes crude-by-rail movements. This helps those organizations plan response strategies for potential accidents. Additionally, in October the AAR began the initial rollout of a new mobile device application called *AskRail* that will allow first responders to input the placard number on the side of any railcar and instantly receive information on the commodity it contains. As the technology continues to develop, in 2015 *AskRail* will be able to provide a train's entire manifest by inputting the placard number from a single car. It is unclear how publicly reporting commodity movement information would benefit rail shippers, since railroads already maintain regular communication with their customers regarding the movement of their shipments. Furthermore, railroads are justifiably concerned that the public release of this information could have potential unintended, negative consequences in terms of the security of the rail system and business privacy among competing firms.

Status Report on Taconite Shipments

Thank you for bringing to my attention your constituents' concerns regarding the taconite industry in Minnesota. Last year's harsh winter adversely affected the state's taconite market. Lake vessels had to wait longer than usual for ice to break up in locks, resulting in service disruptions and the need for vessel convoys to be escorted by ice breakers until May.

The situation appears to have improved. Currently, vessels transporting taconite are shipping at maximum tonnage capacity. Rail service constraints, which contributed to stockpile depletion at receiving steel mills, are being addressed through increased investment in local assets, and by committing additional resources at specific facilities throughout the state. Additionally, we expect newly built and leased rail cars to continue to be added to the fleet serving the local taconite market over the coming weeks to support the efforts of our member railroads operating in the region.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO ARTHUR NEAL

Question 1. The impacts of rail shortages have been felt by farmers, grain elevator operators, and many others. Can you further describe some of the economic impacts of these shortages within the agricultural sector and in the larger U.S. economy?

Answer. Since October 2013, the Agricultural Marketing Service (AMS) has reported that railroad service to U.S. grain shippers has been inadequate, characterized by long delays, missed shipments, burgeoning backlogs, and higher costs. The impacts have been felt primarily in the States of Minnesota, Montana, North Dakota, and South Dakota.

At the request of Senators Thune and Klobuchar, USDA is currently in the process of conducting an economic analysis of the impacts to these areas due to rail service problems. However, we are aware that at the request of Senator Heidi Heitkamp, a researcher at North Dakota State University provided preliminary analysis indicating North Dakota grain producers lost an estimated $66 million due to agricultural shipment delays from January through April 2014. The preliminary analysis suggested these farmers could lose another $95 million if the delays continued. Senator Heitkamp has stated this study is in the process of being updated and that she believes the losses to producers are likely to exceed $100 million, even greater than the previous finding of $66 million. Similarly, a study by the University of Minnesota estimated farmer losses in Minnesota from March through May totaled $109 million. These studies were based upon changes in grain basis caused by increased costs of obtaining rail service.

With grain rail service in high demand and short supply over the past year, some agricultural shippers have paid additional premiums in the secondary railcar market to secure available space, guaranteeing service for grain shipments. While that practice is common in any given year, especially following a large harvest, this year's rail service disruptions have extended and intensified that practice. Instead of being the exception, it has become the norm. In typical years with above-normal demand for rail service, agricultural shippers only needed to pay additional premiums through the secondary railcar market for about 20 weeks until supply and demand are rebalanced. However, shippers have paid record high premiums, 28 to 150 percent above previous levels on average, for almost 60 consecutive weeks. That has had the effect of inflating the cost of shipping grain by rail 24 percent, on average, above what shippers would have otherwise paid for rail service over the past year if rail service had been adequate to meet agricultural shipper demand.

Question 2. In addition, please provide an analysis of the potential impacts of rail shortages on the U.S. export of agricultural products when it comes to the 2014 crop year.

Answer. Currently, there is no indication of railcar delays negatively affecting overall grain exports in 2014 because grain car unloadings in the Pacific Northwest—as well as at the other major port regions—have been above the 3-year average and above last year's levels.

RESPONSE TO WRITTEN QUESTIONS SUBMITTED BY HON. JOHN THUNE TO EDWARD R. HAMBERGER

Question 1. With the recent rise in crude oil shipments by rail, can you explain what impact this has had on the rail network as a whole, and the movement of other commodities and shipments?

Answer. Transportation of crude oil by rail in the U.S. has risen sharply in recent years. Just six years ago in 2008, U.S. Class I railroads originated only 9,500 carloads of crude oil. Last year, that number was 407,761 carloads. Although this represents a tremendous increase in traffic for this particular commodity, one must consider this change in the context of the larger railroad network. In the first half of 2014, crude oil accounted for 229,798 carloads, just 1.6 percent of total Class I originations and 24,058 more crude oil carloads than in the first half of 2013. Put another way, the 24,058 new crude oil carloads in the first half of 2014 accounted for an average of around 1.5 new train starts per day. According to Surface Transportation Board data, there are approximately 5,000 train starts per day. Thus, recent new crude oil train starts are a small fraction of total train starts nationwide. Moreover, in the first half of 2014 compared to the first half of 2013, railroads originated 118,500 more carloads of grain and 84,118 more carloads of coal, much greater increases than seen for crude oil.

From January 2012 through February 2014, monthly year-over-year growth in U.S. rail carload traffic averaged –1.7 percent. However, from March 2014 through August 2014, year-over-year monthly rail carload growth averaged a much more robust 4.8 percent, thanks to a variety of factors such as the record grain crop last year, recovery in demand for coal to generate electricity and better general economic conditions.

So while the movement of crude oil by rail has increased rapidly in recent years, even greater increases in rail transportation of other commodities have had a more significant impact on the rail network as a whole. These increases, combined with an unusually harsh 2013–2014 winter followed in many places by spring flooding, are the primary causes of increased network congestion and reduced velocity in the first half of 2014.

Nevertheless, the rail industry is committed to providing the high level of service its customers deserve and have come to expect. Railroading is a very capital intensive industry, with the industry spending approximately five times more on capital expenditures as a percentage of revenue than the average for manufacturing firms. This year railroads will likely invest more than $26 billion to improve and upgrade their systems in an effort to improve their service and prepare for additional future demands.

Question 2. Looking forward, can you please also provide comments on the potential system-wide efficiency impacts of the proposed crude by rail rule issued by the Department of Transportation earlier this summer?

Answer. The Department of Transportation's Pipeline and Hazardous Materials Safety Administration (PHMSA) Notice of Proposed Rulemaking on enhanced tank car standards and operational controls for high-hazard flammable trains contemplates a variety of potential operational restrictions for trains moving large quantities of flammable liquids, including crude oil and ethanol. The AAR has provided detailed comments on this proposal (attached). Unfortunately, several options contemplated by PHMSA could substantially impair railroad service without providing substantial safety benefits.

For instance, the NPRM contemplates a 40 mph speed restriction. A fluid rail network is in the public interest from a safety, security, economic and environmental perspective. The primary cost of a speed restriction is a decrease in network fluidity and capacity. An unnecessarily onerous speed limit for trains carrying flammable liquids has the potential to affect significantly the fluidity of the railroad network, to the detriment of freight railroads' customers, as well as the many passenger railroads that operate over freight tracks. Decreased network fluidity results in increased operating costs for all trains that must travel more slowly because of the slower network. That leads to increased capital and other costs, as railroads are

forced to expand corridors where capacity is constrained because of speed restrictions. Furthermore, decreasing the capacity and efficiency of the railroad network could mean that significant volumes of railroad traffic will be diverted to the highways. The result would be more traffic, more pollution, and an overall decrease in transportation safety. Additionally, operating restrictions that could adversely affect the railroads' ability to transport goods should be considered in the context of other regulations that affect the fluidity of the railroad network. For example, the PTC regulatory scheme also requires reduced train speeds when problems occur with the PTC system.

RESPONSE TO WRITTEN QUESTION SUBMITTED BY HON. DAN COATS TO EDWARD R. HAMBERGER

Question. In Indiana we rely heavily on railroads to efficiently transport the coal we produce and use. In 2011 coal accounted for the largest commodity picked up and dropped off by freight rail in Indiana. Looking over your testimony you talk about how natural gas prices spiked last winter, and thus the volume of cheaper coal on rails rose to fill consumers' needs to power and heat their homes. Despite coal's proven utility, the administration has continued to pursue policies to decrease and eliminate the coal industry.

Since the railroad industry is heavily reliant on demand and market projections to maintain adequate service, have you taken into account the effects on freight rail service and profitability should the demand for coal be significantly decreased by the Obama Administration's rules?

Will you continue to consider the effects of these onerous rules in the future as you plan to maintain adequate service capacity?

Answer. Railroads carry more coal than any other single commodity. Historically, coal has generated much more electricity than any other fuel source, and most coal is delivered to power plants by rail. Recent increases in natural gas prices have resulted in electric utilities using more coal this year. According to the U.S. Energy Information Administration, in the first six months of 2013, coal accounted for 764 million megawatt hours of U.S. electricity generation, equal to 39 percent of the total. In the first six months of 2014, coal accounted for 806 million megawatt hours, or 40 percent of U.S. electricity generation. In the first half of 2014, railroads originated 3,002,392 carloads of coal, 2.9 percent, or 84,118 carloads, more than in the first half of 2013.

Regulations that would reduce the use of coal as an energy source will directly impact the quantity of coal transported by rail. Freight railroads must raise their own capital and invest in their networks in the most effective way possible in order to provide safe, efficient service for their customers today and in the future. Any regulatory changes that would impact rail customers' usage of coal will be considered as railroads utilize sophisticated techniques to predict and model future customer demand in order to develop their capital investment plans.

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