BOARD MEMBER VIEWS ON SURFACE TRANSPORTATION BOARD REAUTHORIZATION

(117–49)

REMOTE HEARING

BEFORE THE

SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS

OF THE

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
HOUSE OF REPRESENTATIVES

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[†]An oral and prepared statement were provided solely by Chairman Oberman. All five Surface Transportation Board members were available for questioning.

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MAY 6, 2022

SUMMARY OF SUBJECT MATTER

TO:	Members, Subcommittee on Railroads, Pipelines, and Hazardous Materials
FROM:	Staff, Subcommittee on Railroads, Pipelines, and Hazardous Materials
RE:	Board Member Views on Surface Transportation Board Reauthorization

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PURPOSE

The Subcommittee on Railroads, Pipelines, and Hazardous Materials will meet on Thursday, May 12, 2022, at 10:00 a.m. ET in 2167 Rayburn House Office Building and via Zoom to hold a hearing titled "Board Member Views on Surface Transportation Board Reauthorization." The purpose of this hearing is to hear from members of the Surface Transportation Board on their ideas to improve the efficiency and authority of the Board to better resolve freight rail conflicts. The hearing participants will be the five members of the Surface Transportation Board.

BACKGROUND

I. THE SURFACE TRANSPORTATION BOARD

The Surface Transportation Board (STB or Board) is the economic regulator of freight railroads, which carry one third of the nation's freight.[1] The STB is a five-member independent agency whose members are appointed by the president with the advice and consent of the Senate, serving staggered five-year terms. The STB's predecessor, the Interstate Commerce Commission (ICC), was created in 1887 by the Interstate Commerce Act.[2] The STB was created by the ICC Termination Act of 1995 to maintain federal economic oversight of rail carriers.[3] Congress's only reauthorization of the STB came in the Surface Transportation Board Reauthorization Act of 2015, which lasted through Fiscal Year 2020.[4]

The STB's jurisdiction includes overseeing and monitoring railroad commercial practices nationally; enforcing the railroads' common carrier obligations; evaluating challenges to the reasonableness of rail rates; reviewing proposed railroad mergers; ensuring rail carriers provide fair employee protective arrangements in certain transactions; monitoring rail carriers to ensure they are able to earn revenues that are adequate for the infrastructure and investment needed to meet the present and future demand for rail services; investigating rail service matters of regional and national significance; authorizing construction, operation, discontinuance, and abandonment of rail lines and service; and more recently, passenger rail regulation.[5]

II. STAKEHOLDER REAUTHORIZATION RECOMMENDATIONS

On March 8, 2022, the subcommittee held a hearing examining STB reauthorization recommendations from the following organizations: the American Chemistry

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[1] Congressional Research Service, "The Surface Transportation Board (STB): Background and Current Issues." January 19, 2022 (R47013) and U.S. Department of Transportation, Pocket Guide to Transportation 2019, Page 3.

[2] P.L. 49–41.

[3] P.L. 104–88.

[4] P.L. 114–110.

[5] STB also has jurisdiction over certain trucking company, moving van, and noncontiguous ocean shipping company rate matters; certain intercity passenger bus company structure, financial, and operational matters; and rates and services of certain pipelines not regulated by the Federal Energy Regulatory Commission. https://www.stb.gov/about-stb/.

Council, Amtrak, the Association of American Railroads, the Brotherhood of Locomotive Engineers and Trainmen, the National Industrial Transportation League, and the Private Railcar Food & Beverage Association.[6] In addition, the National Grain and Feed Association, Portland Cement Association, the National Stone, Sand and Gravel Association, the Fertilizer Institute, the Freight Rail Customer Alliance, the American Fuel & Petrochemical Manufacturers and several rail unions including the Brotherhood of Maintenance of Way Employees, Brotherhood of Railroad Signalmen, International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division, and the National Conference of Firemen and Oilers, 32BJ, SEIU have also proposed reauthorization ideas to the Subcommittee.[7]

Furthermore, the STB held an emergency hearing, "Urgent Issues in Freight Rail Service," on April 26 and 27, 2022. The Board heard from Department of Transportation (DOT) Secretary Pete Buttigieg, Deputy Secretary of Agriculture Dr. Jewel H. Bronaugh, and Commissioner Carl W. Bentzel of the Federal Maritime Commission.[8] A number of the shipper organizations listed above also participated in this STB hearing. More than 25 companies and shipper organizations representing farmers and agri-business, consumer gas companies, petroleum and oil refiners, medical and municipal drinking water suppliers, regional and local home electricity providers, and Wall Street, among others, expressed concern with current rail service.[9] Additional union representation at the STB hearing included the Transportation Trades Department of the AFL–CIO, SMART-Transportation Division, the Transport Workers Union of America, and the Transportation Communications Union/IAM.[10]

During the STB emergency hearing, numerous shipper and union representatives outlined and offered recommendations for Congress to consider in STB reauthorization in response to the detrimental impacts of erratic and reduced rail service on their businesses and therefore increasing prices on American consumers at the grocery store, at the gas pump, and on their electric and drinking water bills.[11]

Each of the largest Class I railroads also participated in the recent STB emergency hearing—Union Pacific, Burlington Northern Sante Fe, CSX Transportation, Norfolk Southern, Canadian National, and Canadian Pacific.[12] Kansas City Southern did not participate.[13] Each railroad discussed negative impacts from COVID–19, global shipping delays, a tight labor market, and equipment shortages.[14]

Additional detail about the reauthorization suggestions that stakeholders and railroads provided to STB and this subcommittee is summarized below.

A. Administrative and Procedural Recommendations

I. Adequate Funding and Staff

The National Industrial Transportation League, the American Chemistry Council, and the Private Railcar Food and Beverage Association recommend that the reauthorization bill include adequate funding and staff for the broad range of STB re-

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[6] https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization

[7] https://www.ngfa.org/newsletter/ngfa-food-and-ag-groups-outline-transportation-priorities-to-incoming-biden-administration/ See section on Freight Rail. See also https://www.agri-pulse.com/articles/17574-ag-groups-detail-priorities-ahead-of-regulatory-hearing-on-snarled-rail-traffic.

[8] Surface Transportation Board Press Release "Secretary of Transportation Buttigieg, Deputy Secretary of Agriculture Bronaugh, FMC Commissioner Bentzel to Testify at Hearing on Urgent Issues in Freight Rail Service." April 22, 2022. https://www.stb.gov/news-communications/latest-news/pr-22-24/?aiEnableCheckShortcode=true

[9] American Farm Bureau Federation, Archer Daniels Midland, the Agricultural Transportation Working Group, Cargill, USA Rice, Growth Energy, Loop Capital Markets, JP Morgan, Delek Companies, American Forest and Paper Association, Packaging Corporation of America, National Association of Chemical Distributors, Occidental Chemical Corporation, International Liquid Terminals Association, Pilot Travel Centers, Arizona Electric Power Cooperative, the National Mining Association, the Institute of Scrap Recycling Industries, the Corn Refiners Association, TransDistribution Brookfield Railroad and Sweetener Supply Company, as examples.

[10] Surface Transportation Board Press Release "Secretary of Transportation Buttigieg, Deputy Secretary of Agriculture Bronaugh, FMC Commissioner Bentzel to Testify at Hearing on Urgent Issues in Freight Rail Service." April 22, 2022. https://www.stb.gov/news-communications/latest-news/pr-22-24/?aiEnableCheckShortcode=true

[11] https://www.stb.gov/proceedings-actions/filings/

[12] Surface Transportation Board Press Release "Secretary of Transportation Buttigieg, Deputy Secretary of Agriculture Bronaugh, FMC Commissioner Bentzel to Testify at Hearing on Urgent Issues in Freight Rail Service." April 22, 2022. https://www.stb.gov/news-communications/latest-news/pr-22-24/?aiEnableCheckShortcode=true

[13] *Id.*

[14] https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live. See STB Hearing on Urgent Issues in Freight Rail Service—April 26 and 27.

sponsibilities and to keep pace with changes to the rail network.[15] Amtrak echoed this recommendation, particularly in light of Section 22309 of P.L. 117–58, the Infrastructure Investment and Jobs Act's (IIJA) creation of a Passenger Rail Program within the STB.[16]

II. Data Collection

The American Chemistry Council recommends that the reauthorization bill require the STB to commission the Transportation Research Board to develop an economic model to determine whether rates are reasonable.[17] The National Industrial Transportation League recommends the reauthorization bill ensure data transparency for all stakeholders so the Board can make evidence-based decision-making.[18] USA Rice, the Private Railcar Food and Beverage Association and the American Fuel & Petrochemical Manufacturers, among others, recommend that the STB require railroad reporting on first-mile/last-mile data so shippers have greater visibility into when shipments are going to be picked up or delivered, akin to the information that most business-consumer shipping brands offer customers.[19]

III. Expedited STB Proceedings

According to the Board, it has ten pending regulatory proceedings.[20] One has been pending for eight years and three have been pending for six years. In addition, the National Academy of Sciences determined that the STB's rate review standards are outdated, burdensome, and proven to be unworkable for most shippers.[21] While shippers and railroads disagree on how to resolve this issue, both agree on the benefit of expedited resolution of rate cases before the STB. The American Chemistry Council and the American Fuel & Petrochemical Manufacturers suggest that the STB adopt Final Offer Rate Review which requires both parties to put forward their best and final proposals and the STB would select one.[22] This process is intended to incentivize each party to offer a reasonable proposal.[23] The National Industrial Transportation League suggested STB reauthorization include timelines or deadlines for completing a formal proceeding.[24] The Association of American Railroads (AAR) expressed concerns about Final Offer Rate Review and uncertainties with using a "more reasonable" standard for determining rates, and requested that STB reauthorization identify solutions that provide a simplified, expedited dispute reso-

[15] Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 11. Testimony of Chris Jahn, President and CEO of the American Chemistry Council, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 7. Testimony of Herman Haksteen, President of the Private Railcar Food and Beverage Association, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 16.

[16] Testimony of Dennis Newman, Executive Vice President, Strategy, Planning and Accessibility, Amtrak, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 8.

[17] Testimony of Chris Jahn, President and CEO of the American Chemistry Council, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Pages 7 and 8.

[18] Agricultural Transportation Working Group letter to the Surface Transportation Board, April 21, 2022. https://www.stb.gov/proceedings-actions/filings/ Filing ID 304349. Testimony of Brad Hildebrand, Member, National Transportation Industrial League, March 8, 2022. https://transportation.house.gov/imo/media/doc/Hildebrand%20Testimony%20-%20NITL.pdf. Page 12.

[19] Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 10. And, American Fuel and Petrochemical Manufacturers Letter to Committee, March 8, 2022.

[20] https://www.stb.gov/wp-content/uploads/1Q-Report-on-Pending-STB-Regulatory-Proceedings-4.1.22.pdf and https://www.stb.gov/news-communications/latest-news/pr-22-23/

[21] National Academy of Sciences, Transportation Research Board, "Modernizing Freight Rail Regulation", https://onlinepubs.trb.org/onlinepubs/sr/sr318highlights.pdf.

[22] Testimony of Chris Jahn, CEO, American Chemistry Council, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 6. And, American Fuel and Petrochemicals March 8, 2022 letter to the Committee.

[23] https://www.federalregister.gov/documents/2021/11/26/2021-25168/final-offer-rate-review-expanding-access-to-rate-relief

[24] Testimony of Brad Hildebrand, Member, National Transportation Industrial League, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 11.

lution procedure for rate cases less than $4 million.[25] AAR further expressed support for the STB establishing a voluntary arbitration program for small rate cases, and asserted that "[i]f structured properly, this new procedure could offer cost savings and flexibility to stakeholders."[26]

B. Freight Rail Oversight Recommendations

A common refrain from rail shippers today is summed up in the American Fuel & Petrochemical Manufacturers testimony to the STB:

> AFPM believes in free market solutions, but the free market does not work when there is no competition, or even a realistic threat of competition. Consolidation in the railroad industry has created a system of regional duopolies and the railroads understandable desire to maximize profits has come into conflict with railroads' common carrier obligations. The Staggers Act was not intended to make the railroads attractive investment targets on Wall Street; rather it was designed to 'meet the demands of interstate commerce and the national defense.' PSR has interfered with those goals.[27] A healthy, efficient rail system benefits all parties, and stakeholder concerns are meant to improve the rail network for everyone.[28]

I. Common Carrier Obligation

Rail carriers have a statutory duty to provide "transportation or service on reasonable request."[29] A rail carrier may not refuse to provide service merely because to do so would be inconvenient or unprofitable.[30] Railroads, shippers, and rail labor can disagree on how this requirement is implemented in practice. Rail labor, numerous shippers represented by the Agricultural Transportation Working Group,[31] the National Grain and Feed Association, the National Industrial Transportation League, the Private Railcar Food & Beverage Association, and the Freight Rail Customer Alliance recommend reauthorization include a review of this common carrier obligation definition.[32] This would ensure that the definition applies not only to service refusals but also material service reductions and deficiencies, combined with

[25] Testimony of Ian Jefferies, CEO, Association of American Railroads, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 6.

[26] *Id.* Page 14.

[27] American Fuel & Petrochemical Manufacturers. https://www.stb.gov/proceedings-actions/filings/ Filing ID 304461

[28] *Id.*

[29] 49 USC 11101(a)

[30] Surface Transportation Board, https://www.federalregister.gov/documents/2008/02/27/E8-3712/common-carrier-obligation-of-railroads.

[31] Agricultural Transportation Working Group. Letter to the Surface Transportation Board, April 21, 2022. The following organizations are part of the Agricultural Transportation Working Group: Agricultural Retailers Association, American Farm Bureau Federation, American Feed Industry Association, American Sheep Industry Association, American Soybean Association, American Sugar Alliance, Consumer Brands Association, Corn Refiners Association, Equipment Dealers Association, Forest Resources Association, Fresh Produce Association of the Americas, Growth Energy, Hardwood Federation, Institute of Shortening and Edible Oils, Leather and Hide Council of America, National Aquaculture Association, National Association of Wheat Growers, National Corn Growers Association, National Cotton Council, National Council of Farmer Cooperatives, National Farmers Union, National Grain and Feed Association, National Grange, National Milk Producers Federation, National Oilseed Processors Association, National Pork Producers Council, North American Meat Institute, North American Millers' Association, Pet Food Institute, Specialty Soya and Grains Alliance, The Fertilizer Institute, USA Rice, U.S. Wheat Associates.

[32] https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization, Statement for the Record of the Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers Mechanical Division; and National Conference of Firemen and Oilers, 32BJ/SEIU on March 8, 2022 and https://www.ngfa.org/newsletter/ngfa-food-and-ag-groups-outline-transportation-priorities-to-incoming-biden-administration/ See section on Freight Rail.

consequences when the obligation is not met.[33] The U.S. Department of Agriculture (USDA) echoes these comments.[34]

II. Remedies for Rail Service Failures

A significant number of shippers—30–40 percent according to Morgan Stanley—have abandoned rail service altogether in the last year and instead moved to truck.[35] Truckload and air freight tonnage are increasing while rail freight tonnage is decreasing.[36] Not all shippers have the resources to change shipping services.[37] National Grain and Feed Association members are currently experiencing losses in the tens of millions of dollars and lost or reduced operating days totaling weeks from rail service delays.[38] At rail origins, its members are unable to purchase grain from farmers because they are full while awaiting loaded trains to be moved out by the railroad.[39] At rail destinations, its members are unable to deliver feed to livestock producers.[40] The Farm Bureau reports a 47 percent increase in the number of grain rail cars that aren't delivered on time, including a 107 percent increase in rail cars that are 11 or more days overdue.[41] USA Rice states that rail service is:

> unreliable and inconsistent. This includes the carriers offering car deliveries, only for those deliveries to be cancelled hours later. The carriers are also notorious for being late or early in spotting cars—often with little to no advance notice. Weekly car orders are not being filled anywhere close to the full orders, and replacement car arrivals are unpredictable.[42]

Archer Daniels Midland submitted a letter to the STB stating that recent Class I failures to meet acceptable service requirements "result in reduced production rates at ADM processing plants, shut down of ADM customers' production facilities, and a highly underutilized private railcar fleet."[43] National Industrial Transportation League Members experienced a record number of plant shutdown cases in 2021 due to sporadic rail service.[44] Private Railcar Food and Beverage Association members are experiencing erratic railcar pick-up and delivery times.[45] In a survey of its members from July 2021–December 2021, nearly every member of the Freight Rail Customer Alliance (92 percent) experienced rail service issues, more than half (60 percent) reported service worse than 2019 or 2020, and more than half (64 percent) had to modify operations.[46] Each incurred additional costs as a result of be-

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[33] Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 7. In Mr. Hildebrand's amended testimony, he described the experience of a recent National Industrial Transportation League member who has multiple locations served by multiple Class Is. While in each location the cost of rail service was increasing by approximately 5 percent in 2022, in one location that did not have another option for transporting their goods, rates went up by 25 percent in a single year. There is potential that the Mississippi-based plant will close due to the increase in transportation costs.

[34] U.S. Department of Agriculture Written Testimony. https://www.stb.gov/proceedings-actions/filings/ Filing ID 304441.

[35] Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 5.

[36] *Id.* Pages 5–6.

[37] Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 4.

[38] https://www.stb.gov/wp-content/uploads/NGFA-Letter-to-STB-Chairman-Oberman-on-Rail-Service-and-Precision-Scheduled-Railroading-March-24-2022.pdf and https://imis.ngfa.org/ngfa/News/Pressers/2022/NGFA__testifies__on__rail__service__issues__at__the__STB__.aspx.

[39] *Id.*

[40] *Id.*

[41] Farm Bureau. https://www.fb.org/market-intel/farmers-and-ranchers-feel-crunch-of-railway-supply-chain-shortfalls

[42] USA Rice. https://www.stb.gov/proceedings-actions/filings/ Filing ID 304362.

[43] Archer Daniels Midland. https://www.stb.gov/proceedings-actions/filings/ Filing ID 304408.

[44] Attachment to Testimony of Brad Hildebrand, Member, National Industrial Transportation League, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Pages 2–5.

[45] Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Pages 8–9.

[46] Submitted Statement for the Record of Ms. Emily Regis, Vice President, Freight Rail Customer Alliance, March 8, 2022.

tween \$100,000–\$20 million.[47] The National Mining Association testified before the STB that " . . . the trains often do not show up at all." [48]

The National Grain and Feed Association and the American Chemistry Council recommend the STB have meaningful remedies for customers facing railroad service failures, including the authority to require a service recovery or assurance plan if a railroad fails to provide adequate service.[49] The National Industrial Transportation League suggests expanding the STB's ability to assess fines or penalties to recover appropriate damages for shippers and increase the current penalty from an \$8,700/violation to assess a higher amount per incident or assess this amount per day by carload.[50] The Private Railcar Food and Beverage Association echoes the National Industrial Transportation League recommendation and further recommends the ability to charge reverse demurrage, in that the railroads will pay the private railcar owners a daily fee when those private rail assets are held up due to railroad operating issues or allow charge backs to the railroads for daily car hire fees to offset the cost of additional transit days experienced by car owners.[51] In a letter to the committee, the Fertilizer Institute also encourages the ability for reverse demurrage to address the seeming lack of railroad incentive to move non-railroad owned assets.[52] The Agricultural Transportation Working Group echoed these comments.[53] Archer Daniels Midland states that reciprocity is key to the prevention of future service failures.[54] During the STB hearing, a Wall Street railroad analyst from Loop Capital Markets expressed support for the STB to assess fines or allow for reverse demurrage for rail customers after receiving poor service as a way to incentivize better service.[55] Both the DOT and USDA also expressed support for the STB to incentivize better rail service.[56]

III. Long Train Operating Plans

Due to Precision Scheduled Railroading (PSR), train lengths have been getting longer.[57] Class I railroads are operating trains as long as three miles in length which means single track mainlines face greater congestion as fewer trains fit in the sidings.[58] Shippers who own their own railcars are seeing increasing maintenance costs from the longer trains—one shipper saw a 52 percent increase in car maintenance costs and a 330 percent increase in cars that were completely destroyed over the last five years commensurate with the implementation of PSR.[59] Rail union members described the length of time it takes to build a long train, that long trains must operate more slowly, and that crew members are reaching the end of their statutorily limited hours of service without reaching final destinations

[47] *Id.*

[48] National Mining Association. https://www.stb.gov/proceedings-actions/filings/ Filing ID 304395.

[49] https://www.stb.gov/wp-content/uploads/NGFA-Letter-to-STB-Chairman-Oberman-on-Rail-Service-and-Precision-Scheduled-Railroading-March-24-2022.pdf. Testimony of Chris Jahn, President and CEO of the American Chemistry Council, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 8. Testimony of Dennis R. Pierce, National President, Brotherhood of Locomotive Engineers and Trainmen, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 7.

[50] *Id.* Page 8.

[51] *Id.* Page 12. Railroads have statutory authority to charge shippers fees called "demurrage charges" when the shipper detains rail cars beyond the time permitted for loading or unloading rail cars at 49 USC 10746. Despite owning or leasing a majority of railcars, rail shippers do not currently have this statutory authority. Class I railroads charged \$1.7 billion in demurrage fees in 2021. See March 2, 2022 Summary of Subject Matter prepared for the Subcommittee's "Stakeholder Views on Surface Transportation Board Reauthorization" March 8, 2022 hearing.

[52] Letter to the Transportation and Infrastructure Committee from Corey Rosenbusch, President and CEO, The Fertilizer Institute, March 8, 2022. Letter refers to how rail shippers own or lease 73 percent of railcars.

[53] Agricultural Working Group letter to the Surface Transportation Board, April 21, 2022. https://www.stb.gov/proceedings-actions/filings/ Filing ID 303439.

[54] Archer Daniels Midland. https://www.stb.gov/proceedings-actions/filings/ Filing 304408.

[55] https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live. April 26, 2022.

[56] *Id.*

[57] Bill Stephens, *Trains Magazine*, November 15, 2021. https://www.trains.com/trn/news-reviews/news-wire/railroads-use-of-long-trains-to-go-under-the-microscope/

[58] Testimony of Dennis Newman, Executive Vice President, Strategy, Planning and Accessibility, Amtrak, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 9.

[59] Testimony of Herman Haksteen, President, Private Railcar Food and Beverage Association, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 8.

thereby contributing to delays.[60] Amtrak recommends that the STB reauthorization bill include a requirement that Class I railroads develop Long Train Operating Plans and submit them to the STB for review and approval following public comment.[61]

IV. Commodity Exemptions

Certain commodities are exempt from the ability to seek redress and relief from the STB, though the STB has the ability to waive these exemptions.[62] Portland Cement Association sent a letter to the Committee requesting the commodity exemptions be reviewed as their commodity was exempted more than 25 years ago.[63] Within the last year, cement manufacturers have lost significant volume—one shipper lost between 60,000–100,000 tons of annual volume due to poor rail service.[64] This amount is enough cement to build 3,000 homes.[65] The American Forest & Paper Association states that they face similar "unreasonable demurrage practices, poor service, car supply issues and rising rates as the commodities which are under the STB's purview" and would like access to the STB's regulatory remedies.[66] The National Industrial Transportation League suggests these exemptions be either entirely revoked by a date certain unless the railroads can show that the exemption is still warranted or periodically review the exemptions every five years.[67]

V. Cost-Benefit Analysis

As an independent agency, STB is not required by Executive Order 12866 to conduct cost-benefit analyses of regulatory requirements that executive agencies like the DOT are required to do.[68] AAR requested that STB reauthorization include the requirement for STB regulations to undergo a cost-benefit analysis.[69]

C. Intercity Passenger Rail Responsibilities

With the passage of the IIJA, and its accompanying advanced appropriations, there will be billions of federal dollars invested in the freight railroad network to improve intercity passenger rail.[70] And yet, Amtrak accounts for approximately four percent of train-miles on Class I railroads.[71] That percentage will not significantly increase even if all the expansion contemplated in the Amtrak Connects US Plan over the next 15 years occurs.[72]

Amtrak requested the STB reauthorization bill include a number of provisions to assist with intercity passenger rail development including: allow Amtrak to seek enforcement of its preference rights in federal court, direct the STB to conduct on-time performance investigations rather than await complaints, allow the STB to issue injunctive orders to enforce on-time performance including allowing for joint dispatching by the host railroad and Amtrak or an independent third party, require all intercity passenger rail providers to be under the jurisdiction of the STB, require railroad mergers to consider passenger rail impacts, and add passenger rail to the Rail Transportation Policy at 49 U.S.C. 10101.[73]

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[60] STB Hearing on Urgent Issues in Freight Rail Service, April 26, 2022. Jeremy Furguson and Matthew Brukart, SMART-Transportation. https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live

[61] *Id.*

[62] 49 CFR 1039.11.

[63] Letter from Sean O'Neill, Senior Vice President of Government Affairs, Portland Cement Association. March 4, 2022.

[64] *Id.*

[65] *Id.*

[66] https://www.stb.gov/proceedings-actions/filings/. Filing ID 304465 in EP__770.

[67] Testimony of Brad Hildebrand, National Industrial Transportation League, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 9.

[68] Testimony of Ian Jefferies, CEO, Association of American Railroads, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Pages 14 and 15. And, https://www.everycrsreport.com/reports/R42821.html.

[69] *Id.*

[70] https://railroads.dot.gov/BIL

[71] Testimony of Dennis Newman, Executive Vice President, Strategy, Planning and Accessibility, Amtrak, March 8, 2022. https://transportation.house.gov/committee-activity/hearings/stakeholder-views-on-surface-transportation-board-reauthorization. Page 15.

[72] *Id.*

[73] *Id.*

WITNESS LIST [74]

- Martin Oberman, Chairman, Surface Transportation Board
- Patrick Fuchs, Member, Surface Transportation Board
- Robert Primus, Member, Surface Transportation Board
- Michelle Schultz, Vice-Chair, Surface Transportation Board
- Karen Hedlund, Member, Surface Transportation Board

[74] The STB will submit only one written statement with potential addendums by individual members. Only the Board Chairman will present oral testimony. The additional four members will be available for questioning.

BOARD MEMBER VIEWS ON SURFACE TRANSPORTATION BOARD REAUTHORIZATION

THURSDAY, MAY 12, 2022

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON RAILROADS, PIPELINES, AND HAZARDOUS MATERIALS,
COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:01 a.m. in room 2167 Rayburn House Office Building and via Zoom, Hon. Donald M. Payne, Jr. (Chair of the subcommittee) presiding.

Members present: Mr. Payne, Mr. DeFazio, Mr. Cohen, Mr. Carson, Ms. Wilson of Florida, Mr. García of Illinois, Mrs. Napolitano, Mr. Johnson of Georgia, Ms. Titus, Mr. Huffman, Mr. Lynch, Mr. Auchincloss, Mr. Crawford, Mr. Rodney Davis of Illinois, Mr. Bost, Mr. LaMalfa, Mr. Fitzpatrick, Mr. Balderson, Mr. Burchett, Mr. Johnson of South Dakota, Mr. Nehls, and Mrs. Steel.

Mr. PAYNE. The subcommittee will come to order.

I ask unanimous consent that the chair be authorized to declare a recess at any time during today's hearing.

Without objection, so ordered.

I also ask unanimous consent that Members not on the subcommittee be permitted to sit with the subcommittee at today's hearing and ask questions.

Without objection, so ordered.

As a reminder, please keep your microphone muted unless speaking. Should I hear any inadvertent background noise, I will request that the Member please mute their microphone.

To insert a document into the record, please have your staff email it to DocumentsT&I@mail.house.gov.

So, good morning. To continue this subcommittee's work towards reauthorization of the Surface Transportation Board, today we have an opportunity to hear from members of the Board to determine what additional authorities are needed to improve rail service across the country.

The STB is a unique independent agency that is the primary economic regulator of freight railroads, responsible for ensuring that the railroads honor their common carrier obligations.

Shippers play a critical role in the national supply chain by making the food we eat, ensuring the water that we drink is safe, providing electricity, and providing building materials.

We held a hearing with stakeholders 2 months ago who sounded the alarm on rail service issues and to get their ideas for reauthorization. Recently the STB held 2 days of emergency public testimony on the meltdown of our Nation's freight rail operations. The STB heard from many shippers, labor leaders, and even Transportation Secretary Pete Buttigieg and the Agriculture Deputy Secretary Bronaugh on the significant delays in transporting cargo by freight rail.

Chemical shippers are enduring 78 percent longer transit times, and service days have been cut nearly in half. Agriculture producers such as soybean and rice have seen a particularly sharp decline in the quality of freight rail service. The National Grain and Feed Association recently wrote to this subcommittee explaining that, and I quote, "The current inability of several Class I carriers to provide reliable rail service to their customers is impacting farmgate commodity prices and elevating food prices for customers."

Increasing prices for our food, gas prices at the pump, turning on our lights, and having safe drinking water is crucial. These are all impacted by increasing delays in freight rail service. Quite frankly, this is unacceptable. The timely and efficient movement of goods remains of paramount importance to a strong economy.

I understand that Class I freight railroads' explanation of the decline in service is due to several factors, including workforce shortages. What is maddening is that the very workforce shortage contributing to the decline in service is a result of the Class I's implementing Precision Scheduled Railroading, or PSR. By the end of last year, the Class I railroad workforce was cut by nearly one-third compared to 2015. Those cuts began years before the pandemic hit. And despite knowing it takes a number of months to return qualified workers to the rails, the railroad doubled down by cutting again in 2020.

I have been concerned to hear from workers and their unions about employees being overworked and rushed on the job. Now, the worsening working conditions, years of job insecurity, and the months required to properly train workers before they can return to service, have come home to roost in the form of severe hiring challenges the railroads currently face.

All of this is why the STB held the emergency hearing.

Last week, the STB unanimously acted to require the largest railroads—UP, BNSF, CSX, and NS—to develop service recovery plans to improve service and metrics to measure progress, including goals and measures for rail service performance, and employment training and hiring levels.

Stakeholders have also proposed new authorities, such as expanding the STB's ability to assess fines or allow for reverse delay charges that shippers can charge carriers.

I look forward to hearing Board member views on stakeholder proposals and their own proposals.

[Mr. Payne's prepared statement follows:]

Prepared Statement of Hon. Donald M. Payne, Jr., a Representative in Congress from the State of New Jersey, and Chair, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Good morning.

To continue this subcommittee's work toward reauthorization of the Surface Transportation Board, today we have an opportunity to hear from members of the Board to determine what additional authorities are needed to improve rail service across the country.

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I look forward to hearing Board member views on stakeholder proposals and their own proposals.

Mr. PAYNE. I now recognize Mr. Crawford for an opening statement.

Mr. CRAWFORD. Thank you, Mr. Chairman, and I thank you for holding this hearing today.

And for the witnesses, thank you for being here today, as well.

Today's hearing will be the first time all five Surface Transportation Board members have appeared before the committee. We will hear about their work and thoughts on a potential STB reauthorization.

The STB is an independent agency created in 1996. It has only been reauthorized one time—that was back in 2015—when changes were made to ensure that STB operated more effectively, including expanding the Board from three to five members.

This year, the STB is busier than ever as it reviews several major proposed rulemakings, a major merger between two Class I freight railroads, and the potential expansion of Amtrak service.

The STB recently held a 2-day hearing where it examined service issues involving freight railroad carriers and shippers. The STB heard testimony from several stakeholders on their concerns about the state of the industry and potential solutions.

Some of these freight service issues have arisen in my district, prompting me to submit a letter to the STB expressing my concerns and hopes that the STB can work with shippers and freight carriers to resolve these problems.

When broadly looking at a potential STB reauthorization, we must carefully and deliberatively examine the Board's needs; ensure that any proposals have a positive long-term impact on the STB's operations; and we must not interfere with, slow down, or distract from the STB's current duties and their abundant workload.

I commend the chair for holding this hearing today and look forward to hearing from our witnesses.

[Mr. Crawford's prepared statement follows:]

Prepared Statement of Hon. Eric A. "Rick" Crawford, a Representative in Congress from the State of Arkansas, and Ranking Member, Subcommittee on Railroads, Pipelines, and Hazardous Materials

Thank you, Chair Payne, for holding this hearing, and thank you to our witnesses for participating.

Today's hearing will be the first time all five Surface Transportation Board members have appeared before the Committee. We will hear about their work and thoughts on a potential STB reauthorization.

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I commend the Chair for holding this hearing today and look forward to hearing from our witnesses.

Mr. CRAWFORD. And with that, I yield back the balance of my time.

Mr. PAYNE. The gentleman yields back. We will now hear from the chairman of the full committee, Mr. DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman. Thanks for this critical hearing. Thanks to members of the Surface Transportation Board for being here. Thanks for your service.

We are at a point of crisis, and we have to deal with that crisis meaningfully. The facts are undeniable. Freight service in the United States of America—we used to have the best freight rail in the world—is abysmal. Shippers are being impacted by poor rail service. They are shifting to trucking. Of course, that is more greenhouse gas pollution. Raw material delays have actually shut factories, and there are extra labor costs to load and unload once railcars arrive. This service is forcing shippers to recoup their losses—or the manufacturers—downstream, and that is the consumers. So, this is contributing to the inflationary spike in this country.

The evil ghost of Hunter Harrison lives on. The legacy of this man is disgusting, what he did. He has addicted the CEOs of the rail industry to watching the ticker on Wall Street and using their resources to benefit their shareholders and not run railroads like railroads.

This isn't the only industry that has been infected. Boeing killed people because of the same pressure and the same infection. And it has got to stop. And you are the people who can stop it with the freight rail industry.

The freight railroad CEOs say poor service. It has nothing to do with us. Oh, no, no. It is COVID, supply chain. Oh, their workforce—oh, by the way, you laid off one hell of a lot of your workforce, and a lot of them aren't coming back to you because they have been disrespected, mistreated. And you have made it more dangerous for your workers with these cuts.

You are not looking to change. I am talking to the CEOs now. You are not looking to change. You are just bringing in—raking in record profits. Whoa, more dividends for shareholders. And oh, hey, by the way, my salary also goes up, and my stock goes up. Isn't that great? While the country suffers.

I have been talking about this for a long time, and people say, oh, that is just DeFazio carrying on. Well, now it is DeFazio joined with some very unlikely allies. That would be the chemical industry, the energy industry, the agriculture industry, and a whole host of other shippers who are bemoaning what has been done, the destruction that has been wrought on freight rail in America with so-called Precision Scheduled Railroading.

I don't have much in common with the oil industry. We don't agree on much of anything. But here is a quote from the American Fuel and Petrochemical Manufacturers testimony. And I hope the Republicans are listening, because you just listen to the damn freight railroads. Listen to your constituents, and look at what it is doing to them. "Consolidation in the railroad industry has created a system of regional duopolies and the railroads understandable desire to maximize profits has come into conflict with railroads' common carrier obligation. The Staggers Act was not intended to make the railroads attractive investment targets on Wall Street; rather it was designed to 'meet the demands of interstate commerce and national defense.' PSR"—Precision Scheduled Railroading—"has interfered with those goals."

It is a business model, cuts expenses to the bone, slows customer service, volume growth, and the freight railroads only want to take now the most profitable freight. They are not going to spend anything on growing or maintaining their businesses, because that might hurt their stock price, if they actually looked to the future and made investments. "Surplus" assets are mothballed, workers furloughed. But they are getting short-term profits. That is great.

You don't have to take my word for it. Again, former Burlington Northern Santa Fe CEO Matt Rose, he left a great legacy which is now being dismantled over there, too, which is sad that BNSF is following Hunter Harrison. This is Matt Rose, this is his exit op ed, essentially, from the industry. "The Street—I am talking about sell-side analysts—has been extremely aggressive with the publicly traded railroads. They're saying that less is better. Less capital is better. Fewer market opportunities are better. Fewer unit trains are better. It's all about lowering the operating ratio. I disagree with almost all of that. I truly believe that every industry, every business, needs growth . . . I just don't think you can shrink yourself into a virtuous-cycle model that works." That is Matt Rose, former CEO of BNSF.

Now, I am pleased that you are taking the matter seriously. I am pleased you held a hearing. But we have got to act more decisively and more quickly. And you need to do that because you have to protect the railroad network in this country. It is a vital asset. It is going to be critical, not only for supply chain issues, but for the future in terms of dealing with climate change, moving freight much more effectively and with much less pollution than trucks.

And your testimony asks for virtually nothing from this committee, suggesting you have all the powers you need. Well, if that is true, and I am not sure it is, then use them. Use them.

Some will argue, oh, it is a free-market problem, it will be resolved by the markets. But that doesn't work with duopolies or monopolies. It does not work. In fact, that is the reason you exist. That is the whole reason that you exist.

Current law lays out your responsibilities. I am not going to go through all of them, but you know what they are. But they include maintaining reasonable rates, fair wages, prohibit predatory pricing, meet the needs of public and national defense, ensure the development and continuation of a sound rail transportation system. That isn't happening in America today. It is not happening. We are going downhill here really quickly.

So, you are not there to protect the bottom line of these railroads and the CEO's bonuses. You are not there even for the shippers' bottom line. But you are there to make this system work better, keep the costs lower, and be competitive. There is very little competition. We need to re-instill competition here.

So, let me be crystal clear. If you don't move decisively, and don't rise to this occasion, which is a looming crisis, this committee will legislate. I just talked to the White House economic adviser about this last night, they are well aware of it, they are extraordinarily concerned, they are looking at what steps they can take by Executive order to deal with this mess that is being created by the leeches on Wall Street in the obeisance of these CEOs running these companies into the ground.

I want freight railroads to be successful. I do. But that success should be defined by the amount of freight they move across the Nation, the amount of greenhouse gas they prevent, and the safety of their employees and communities they traverse.

So, I urge you to incentivize the railroads to act like railroads, not Wall Street cash cows, not pawns of those leeches on Wall Street. Stock buybacks and dividends can't be the measures for success of freight rail in this country. They are the only mode with a continued decline in volume in a time of shipping crisis in this Nation, and high inflation. You have got to do something about it.

[Mr. DeFazio's prepared statement follows:]

Prepared Statement of Hon. Peter A. DeFazio, a Representative in Congress from the State of Oregon, and Chair, Committee on Transportation and Infrastructure

The facts before this committee today are undeniable. Freight railroad service is abysmal. Shippers are being severely impacted by poor rail service, which forces them to shift to trucking, raw material delays that cause factory closures, and extra labor costs to load and unload once the rail cars finally arrive. This appalling service is forcing shippers to recoup their extra costs downstream and Americans are paying for it—with increased food costs and at the gas pump.

Sadly, the freight railroad CEOs blame poor service on everyone but themselves. They blame COVID, supply chain disruptions, their workforce, and their customers. The CEOs are not looking for change. They are bringing in record profits for their shareholders, and they are not going to do anything to mess with this "winning formula."

I have been beating the drums about the dangers of precision scheduled railroading (PSR) for years, leading some to dismiss me as a grumpy old man. Today, this grumpy old man has been joined by the agriculture industry, energy industry, chemical industry, and other shippers who bemoan PSR and its impacts on their businesses. In fact, these shippers have even joined forces with the labor movement to demand a free and fair freight railroad market with the capacity to grow and meet demand.

I don't have a lot in common with the big oil executives, but this quote from the American Fuel & Petrochemical Manufacturers testimony to the STB is spot on:

"Consolidation in the railroad industry has created a system of regional duopolies and the railroads understandable desire to maximize profits has come into conflict with railroads' common carrier obligations. The Staggers Act was not intended to make the railroads attractive investment targets on Wall Street; rather it was designed to 'meet the demands of interstate commerce and the national defense.' PSR has interfered with those goals."

PSR is a business model that cuts expenses to the bone even when that slows customer and volume growth. Freight railroads accept only the most profitable freight. They are not going to spend a dime on growing their companies unless the new customer is truly captured and highly profitable to the railroad. Any "surplus" asset is mothballed and worker furloughed, making it difficult for railroads to accommodate more business. PSR delivers short-term profits, while harming the long-term success of the freight railroad industry.

You don't have to take my word for it. Former BNSF CEO Matt Rose said it when he retired back in 2019:

"The Street—I'm talking about sell-side analysts—has been extremely aggressive with the publicly traded railroads. They're saying that less is better. Less capital is better. Fewer market opportunities are better. Fewer unit trains are better. It's all about lowering the operating ratio. I disagree with almost all of that. I truly believe that every industry, every business, needs growth . . . I just don't think you can shrink yourself into a virtuous-cycle model that works."

I am pleased the Surface Transportation Board is taking this matter seriously but let me say for the record the Board is moving too slow. American businesses and consumers are needlessly suffering at the hands of duopolies, while these duopolies extract record profits. We have five witnesses before us today who are the regulators and this is occurring on their watch. The STB needs to act quickly and decisively to protect the railroad network, a vital asset to the U.S. economy.

Your testimony asks for very little from this committee, suggesting you have all the regulatory powers you need. If that is true, and I am not sure it is, how did the current freight failures get this bad under your watch?

Some will argue this is a free-market problem to be resolved by the markets. But that doesn't work with duopolies. It is, in fact, the very reason the STB exists.

Current law lays out your responsibilities in Chapter 101 of Title 49. These responsibilities include:

- "to ensure the development and continuation of a sound rail transportation system with effective competition among rail carriers and with other modes,"
- "to meet the needs of the public and the national defense,"
- "to maintain reasonable rates where there is an absence of effective competition and where rail rates provide revenues which exceed the amount necessary to maintain the rail system and to attract capital,"
- "to encourage fair wages and safe and suitable working conditions in the railroad industry," and
- "to prohibit predatory pricing and practices, to avoid undue concentrations of market power, and to prohibit unlawful discrimination."

Your mandate is not to protect the freight railroads' bottom lines or rail shippers' bottom lines, but to ensure the rail network is operating efficiently, keeping costs low for Americans, maintaining reasonable profits for the railroads, and giving American manufacturers a competitive advantage worldwide. We need the STB to do more to meet those mandates.

Let me be crystal clear that if the STB doesn't move more quickly to rise to the occasion, this committee will legislate. I urge my Republican colleagues to join me and shippers from the agriculture, energy and chemical industries (just to name a few) to bring sanity back to the freight railroad business.

My goal is simple. I want freight rail companies to be successful, but that success should be defined by the amount of freight they move across the nation, the amount of GHG emissions they prevent, the safety of their employees and the communities they traverse and serve, and the economic advantage that timely, efficient, and affordable freight rail provides the American economy.

I urge the STB to incentivize the railroads to act like railroads, and not Wall Steet cash cows. Stock buy backs and dividends cannot be the sole measures of success for freight railroads. The ability for Wall Street to extract massive capital out of the railroads will undermine the U.S. freight rail network. They are the only mode with continued decline in freight rail volume, a sure sign that the industry is unhealthy.

Congress cannot sit idle and ignore the current problems with the freight railroads. They are too important of an asset for our national economy. The rail system is broken, and it needs fixing. We need you to fix it, or we will.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Mr. PAYNE. I would like to thank the chairman. I now would like to welcome our witnesses.

First we have Martin Oberman, Chairman of the Surface Transportation Board; Michelle Schultz, Vice Chair, Surface Transportation Board; and Surface Transportation Board members Patrick Fuchs, Robert Primus, and Karen Hedlund.

Thank you for joining us today, and I look forward to your testimony.

Chairman Oberman will testify on behalf of the entire Surface Transportation Board, but all five members are available for questions.

Without objection, our witness' full statement will be included in the record.

Since your written testimony has been made a part of the record, the subcommittee requests that you limit your oral testimony to 5 minutes.

Chairman Oberman, you may proceed.

TESTIMONY OF MARTIN J. OBERMAN, CHAIRMAN, SURFACE TRANSPORTATION BOARD

Mr. OBERMAN. Thank you and good morning, Chairman DeFazio, Chairman Payne, Ranking Member Crawford, and distinguished members of the committee and subcommittee.

As Chairman of the STB, and on behalf of my fellow Board members, thank you for the opportunity to offer our views on agency reauthorization.

I will say at the outset that our five-member Board has evolved into an extraordinarily collegial and effective group which strives hard to act by consensus and generally has succeeded in doing so.

Rail network reliability is essential to the Nation's economy, and is my top priority. The industry is now facing a severe crisis in service, as described by one Wall Street analyst, a description which, in my view, is all too accurate.

I was designated Chairman by President Biden in January 2021. One of my first initiatives was to focus on the freight network, with particular attention on congestion in the intermodal supply chain.

Shortly after becoming Chairman, I sent letters to the CEOs of all Class I's, asking them to report on their preparedness to meet growing demand for rail service as freight volumes rebounded. In response, they all provided assurances, and expressed confidence they could handle freight volume as the economy continued its recovery. They were wrong.

Instead, the rail industry clearly is struggling to provide adequate and reliable rail service. Why? Over the last 6 years, the Class I railroads have cut their workforce by 29 percent, for a loss of 45,000 employees. With demand back, and against the backdrop of these significant cuts and other changes, they face major holes in their service.

The severity of the problem has necessitated immediate Board action. Two weeks ago, the Board held public hearings which revealed beyond any debate that rail service is unacceptably poor, with acute issues in many regions. It is clear that the four largest railroads' earlier assurances about having sufficient employees, locomotives, and railcars were incorrect.

All stakeholders agree the problem is principally caused by a shortage of labor. That shortage started with the huge pre-pandemic cuts. Then, in the spring of 2020, at the onset of the pandemic, the same railroads cut their already-reduced labor forces even more, by as much as an additional 20 percent. As demand for freight rail service quickly rebounded, many of the previously laid-off workers found other careers. And as the railroads admit, they are now having difficulty recruiting and training employees.

Rail labor reports particular difficulty directly caused by increased job uncertainty, worsened working conditions, and insufficient incentives. Given these challenges, I am not optimistic about significant improvement in service in the near term.

What is clear is that the railroad industry cannot thrive without redundancy. They must maintain a workforce and equipment, particularly locomotives, at a level which provides an essential cushion to meet all the variable but not unforeseeable contingencies. When they fail to do so, then, ultimately, not only will they suffer, but, even worse, their customers and the public suffers more.

What could not be more clear is that the railroads do not have sufficient redundancy. Two weeks ago, the Board issued a proposed rule to improve our process to provide relief in times of emergency. As a followup to our rail service hearing last week, we issued an order focusing the industry's attention on the urgent need to restore reliable service. The details of that order are in my written testimony.

In addition, this past March, we held a hearing to work on updating the reciprocal switching rules. In my view, reciprocal switching can improve rail service by enhancing competition, and I personally hope the Board will act on it before this year is out.

We have also advanced two proposed rulemakings to reform our rate review process: a streamlined new idea for the U.S. called final offer, and a rule to establish a voluntary and binding arbitration process. It is also my intention that we will act on these two rules by this fall.

The Board has a number of tools in its existing statutory arsenal to enhance service. To be sure, and to be fair to some of my colleagues, not everyone on the Board agrees on the exact scope of that authority. But in my view, the Board can use its existing authority to mitigate these problems in a meaningful way.

And because my time is about up, I do want to just jump quickly to point out that we are establishing a new office to handle our new responsibility to enforce on-time performance in the passenger area, which will be up and running, and we will be able to handle any new on-time performance cases that are brought to us.

With that, I see my time is up, and I can elaborate on these points in answer to your questions. Thank you very much.

[Mr. Oberman's prepared statement follows:]

Prepared Statement of Martin J. Oberman, Chairman, Surface Transportation Board

Good morning, Chairs DeFazio and Payne, Ranking Members Graves and Crawford, and distinguished Members of the Committee and Subcommittee. As Chairman of the Surface Transportation Board and on behalf of my fellow Board members with me today, thank you for the opportunity to offer my views on agency reauthorization and answer any questions you may have. I will say at the outset that our five-member Board has evolved into an extraordinarily collegial and effective group which strives hard to act by consensus and generally has succeeded in doing so.

As you know, the STB is an independent federal agency charged by Congress with the economic oversight of the nation's interstate rail system. The Board was created in 1996 as the successor to the Interstate Commerce Commission. The Board was administratively aligned with the U.S. Department of Transportation (DOT) until enactment of the Surface Transportation Board Reauthorization Act of 2015, Pub. L. No. 114–110, which established the Board as a fully independent agency on December 18, 2015. The economics of freight rail regulation affect the national transportation network and are vital to our nation's economy. For this and other reasons, Congress gave the STB sole jurisdiction over railroad rates, practices, and service. Congress also gave the STB sole jurisdiction over rail mergers and consolidations, abandonments of existing rail lines, and new rail line constructions, exempting them from federal antitrust laws and state and municipal laws.

Rail network reliability is essential to the Nation's economy and is my top priority as Chairman. The rail industry is now facing a "severe crisis" in service, as described by one Wall Street analyst, a description which in my view is all too accurate and which I will address momentarily.

I was designated Chairman by President Biden in January 2021, as our country was beginning to emerge from the depths of the COVID–19 pandemic. One of my first initiatives was to focus on the resilience of the freight railroad network with particular attention on congestion in the rail intermodal supply chain, which was affecting shippers not only at major ports, such as Los Angeles and Long Beach, CA, but also inland gateways such as Memphis, TN and Chicago, IL. I continued the practice of holding more frequent meetings of the Rail-Shipper Transportation Advisory Council (RSTAC)—which includes rail carriers and shippers, large and small, from across the country—to help inform the Board's intensive oversight work.

In May 2021, I wrote letters to the CEOs of the Class I railroads asking them to report on their preparedness to meet growing demand for rail service, as freight volumes rebounded as part of the Nation's larger economic recovery. In July 2021, I again wrote to the Class I railroads about protracted intermodal network congestion, and significant fees that railroads were imposing on their customers, largely due to circumstances beyond shippers' control. In response, the railroads provided assurances and expressed confidence they could handle freight volume as the economy continued its recovery. Nevertheless, in the second half of 2021, rail service was erratic and inadequate for many rail customers, albeit with different Class I railroads performing better or worse at different points in time.

Moving to the present day, the rail industry clearly is struggling to provide adequate and reliable rail service. Although the rail industry has been hit by many of the problems the pandemic has visited on all businesses, the railroads and their dedicated workers delivered for the public during the pandemic's earliest and most uncertain days. Yet, as the Nation's economy has recovered, recent Class I business practices have undermined industry preparedness and service reliability. In particular, over the last 6 years, the Class I railroads have cut their work force by 29 percent—a loss of 45,000 employees. With demand back, and against the backdrop of these significant labor cuts and other changes, railroads face major holes in their service, with loaded trains sitting for days for lack of crews, factories struggling to obtain needed raw materials or deliver their finished products, farmers straining to obtain adequate fertilizer at the beginning of planting season, food producers finding it difficult to obtain grain and feed for their livestock, and on and on.

The severity of the problem, and its impact on our Nation's food and fuel supplies, is distressing and has necessitated immediate Board action. Just two weeks ago, the Board held a two-day public hearing, *Urgent Issues in Freight Rail Service*, which revealed beyond any debate that rail service is unacceptably poor, with acute issues in many regions and with certain carriers. The testimony we heard was consistent with anecdotal reports we have steadily received in recent months and was further substantiated by the rail service performance metrics the Board collects on a weekly basis. It is clear the four largest U.S. Class I railroads' earlier assurances about having sufficient employees, locomotives, and railcars to meet service demand going forward were incorrect. Here, again, it is worth noting that not all Class I railroads have had the same problems and that rail users have stated that Class II and III railroads—the smaller railroads that typically have less market power than their larger, Class I railroad counterparts—have been more responsive to their customers despite facing many of the same external forces.

Railroads, rail users, rail labor, and rail experts all attribute the current service disruptions principally to a shortage of labor. To understand the cause of that shortage one must first take into account the Class I railroads' actions in significantly cutting their labor forces in the years leading up to the pandemic. Then, in the spring of 2020, in response to a precipitous decline in economic activity that immediately followed the onset of the pandemic, the same railroads cut their already reduced labor forces even more, by as much as an additional 20 percent. They made these cuts despite the fact that neither they nor anyone else could have known at that time how long this unprecedented pandemic would last and when the economy would begin to recover, requiring the railroads to again be fully staffed. Nor could they have been confident that the laid-off workers would promptly return if asked to do so.

Keep in mind that the workers dismissed by the Class I railroads are highly skilled and held positions that require lengthy training. Replacing them is difficult and requires months of rigorous training before they can actually begin the work of moving trains. Since June 2020, as the demand for freight rail service quickly rebounded, the railroads have not been able to achieve a commensurate and appropriate increase in work force levels. Many of the previously laid-off workers had found other careers and never returned to the railroads. And, as explained at our recent hearing, the Class I railroads have found it difficult to recruit and train new employees. The railroads have noted broader economic trends in the labor market, while rail labor has reported the particular difficulty in the rail industry directly caused by increased job uncertainty, worsened working conditions, and insufficient incentives.

Given the challenges the railroads now recount regarding hiring and retaining employees, and the aforementioned difficulty in remedying the labor shortage problem quickly, I am not optimistic about significant improvement in rail service in the near term. The Board does not prescribe particular industry-wide labor levels, nor does it manage railroad labor agreements. However, I provide this information to explain what is driving a critical aspect of the Board's oversight responsibilities—service—and why the Board is taking additional steps that I will describe in a moment.

What has become clear over the past few years, and more acutely over the past few months, is that the railroad industry cannot thrive and fulfill its critical role supporting the Nation's economy without some *redundancy*—that is, the railroads must maintain a workforce and equipment, particularly locomotives, at a level which provides an essential cushion to meet all the variable, but not unforeseeable, contingencies which have been known to afflict the rail industry since its inception nearly 200 years ago. Railroads must always be ready to nimbly respond to and work around events such as the recent spate of polar vortexes, forest fires, floods, international emergencies, and, yes, the pandemic. Railroads must maintain a buffer to protect their operations against external shocks, and if they fail to do so, then ultimately, they will suffer—but even worse, their customers and the public will suffer more. What could not be more clear is that, at present—and for the past several years—the major railroads do not have sufficient redundancy to keep pace with rapid shifts in demand.

Partly in response to the growing problems with rail service reported to the Board, shortly before the rail service hearing two weeks ago, the Board issued a proposed rule to improve its process to provide relief in times of emergency and to ease the burden on rail users seeking such relief. As a follow-up to our rail service hearing, where we heard from Secretary of Transportation Pete Buttigieg and Deputy Secretary of Agriculture Jewel H. Bronaugh, in addition to representatives of many rail shippers and rail labor as well as the railroads, last week we issued an order aimed at focusing the industry's attention on the urgent need to restore reliable service by the Class I railroads as rapidly as possible. That order does the following, among other things:

- Requires the four largest U.S. Class I railroads to submit service recovery plans and bi-weekly service progress reports for a period of six months with detailed steps they are taking to restore adequate levels of service;
- Requires all Class I railroads to submit weekly performance data and monthly employment data for a period of six months; and
- Requires the four largest U.S. Class I railroads to participate in individual bi-weekly conference calls with Board staff to provide an update on progress made to improve rail service for a period of three months.

Importantly, this action requires six-month service targets, more detailed geographic data, and new customer-centric reliability metrics that will give the Board and its stakeholders heightened visibility into the extent and location of the acute service issues and labor and equipment shortages that are currently negatively affecting the rail industry. This information, which supplements the service data all Class I carriers already provide, will also help drive industry-wide transparency, accountability, and service improvement.

The Board is also considering several additional mechanisms that would help enhance rail service. While the Board's recent actions have included temporary reporting on first-mile / last-mile service issues related to the urgent service problems, and other crucial measures of whether shippers received their freight when expected, the Board is considering using its authority to permanently collect more detailed information on service reliability and has been considering comments recently filed on this topic from interested parties. In addition, this past March, the Board held a public hearing to consider updating its reciprocal switching regulations. Reciprocal switching is an arrangement whereby an incumbent carrier transports a shipper's traffic to an interchange point, where, for a fee, it switches the rail cars over to a competing carrier to enable the competing carrier to offer its own single-line service.

In my view, reciprocal switching is a potential avenue for improving rail service by enhancing competition and is an area where I personally hope the Board will be able to act before this year is out.

The Board has also recently advanced two proposed rulemakings to address the reasonableness of rates. The first, which proposes use of a streamlined final offer procedure, would utilize the Board's existing authority to create simplified and expedited methods for determining rate reasonableness in those cases where a more fulsome presentation is too costly, given the value of the case. The second, which proposes use of an expedited arbitration procedure, would utilize the Board's existing authority to establish a voluntary and binding arbitration process. The record in both of those proceedings closed last month and it is my intention that the Board will act on these two proposals by this fall. My hope is that adoption of either such procedure will add more balance to the Board's regulations, thereby helping shippers lacking effective competition to receive reasonable rates and negotiate adequate service.

As you can see, the Board has a number of tools in its existing statutory arsenal to enhance rail service. To be sure, and to be fair to some of my colleagues on the Board, not everyone agrees on the exact scope of that authority or on certain proposed regulations, and at least some of the proposals outlined have been challenged, including by the rail industry. However, while the problems facing the rail industry today are significant, in my view, the Board can use its existing authority to mitigate those problems in a meaningful way.

While much of the Board's work involves freight railroads, the STB's involvement with passenger rail matters is extremely important and continues to expand. The Board has undertaken significant steps to establish a passenger rail program as required in the Infrastructure Investment and Jobs Act, including by planning the creation of a passenger rail office and identifying the key personnel with the requisite skills and expertise needed to staff that office. In addition, the Board has entered into an interagency agreement with DOT's Volpe National Transportation Center for several data tools, including an analytic tool for handling the Federal Railroad Administration's quarterly metrics publications. I am confident in the Board's preparedness to meet its responsibility to enforce on-time passenger rail performance, and I can tell you that the agency stands ready to expeditiously handle any on-time performance cases that are filed, to fully analyze the quarterly data provided to us by FRA, and to determine whether any Board-initiated investigations may be necessary.

In addition, the Board also has responsibility to approve construction of certain new passenger rail projects that provide rail service between two states or intrastate passenger rail service that is carried out as part of the interstate rail network. We have found jurisdiction over several projects since 2007, including high-speed projects. The Board also has statutory authority to order a freight railroad to allow the operation of additional Amtrak trains over its line. We are currently completing the first proceeding brought to us by Amtrak under this provision requesting access to freight lines along the Gulf Coast. Because this is a pending proceeding, I am precluded from commenting on this matter.

As noted, my fellow Board members and I have found RSTAC an absolutely invaluable resource for information on rail and shipper issues, especially during periods of strained service like that being experienced now. Indeed, at the height of the pandemic, the Board met with RSTAC weekly to hear updates from the carriers and from shippers on how the pandemic was affecting their operations. To expand the voices on this vital informational resource, we recommend adding three additional seats to RSTAC: one each for rail car lessors, labor, and port representatives. We also suggest updating the RSTAC enacting legislation to clarify that all five Board members are members of RSTAC. Congress passed that legislation at a time when the Board consisted of three members and the statute currently refers to that smaller figure. Lastly, the Board has initiated efforts to create a committee under the Federal Advisory Committee Act (FACA) to advise it on passenger rail issues. I understand, however, that creating a new committee under FACA is not a fast-moving or easy process, so we would suggest amending FACA to make the process more user-friendly.

In my view, the Board presently has sufficient appropriations to properly carry out its mission. For each of its work force vacancies, the Board either is in the process of selecting an applicant, has issued a hiring announcement, or has initiated internal steps to fill the position. I have placed a priority on the Board's office directors hiring the employees they need to handle all that is before the Board, and we are well on our way to doing that. In addition, as I mentioned earlier, the Board is in the process of establishing a passenger rail office and expects to be adding up to ten additional staff to ensure it successfully fulfills its important passenger rail responsibilities. While we can currently absorb at least some of those employees under our budget, with those additional employees, all of the things currently before the Board, and all of the items on which I would like to take action, it is probable that we will step up our budgetary asks in the coming years to meet our staffing needs.

Thank you and I appreciate your support for the STB and the surface transportation network.

Mr. PAYNE. Thank you.

We will now move on to questions. Each Member will be recognized for 5 minutes, and I will start by recognizing the chairman of the full committee, Chairman DeFazio.

Mr. DEFAZIO. Thank you, Mr. Chairman.

Rail labor and shippers really haven't agreed on many things, but they both recommend that we do a better job of defining the common carrier obligation. So, given what the Chair just said about the abysmal service, the fact that we are forcing shippers to accept less service, not showing up, is the common carrier language too vague to prevent these reductions in service? Because we can redefine what it means.

Mr. OBERMAN. That is really the topic of the day, in my view, to some degree, Chairman.

The common carrier language in the statute is general, but we have authority by rulemaking to define it more specifically. But I will tell you, as a lawyer who has done a lot of drafting in my time myself, there are so many variables in how shippers and customers get their service from railroads, trying to come up with rulemaking language that would be enforceable in court and covers the variety of situations has been a task I have been struggling with.

Mr. DEFAZIO. OK, then maybe——

Mr. OBERMAN [interrupting]. And I think this Congress is struggling——

Mr. DEFAZIO. Then you think perhaps we need to specify.

Mr. OBERMAN. Well, I think either you or us could—I think you have the authority to——

Mr. DEFAZIO. OK. Well, but—I mean, when I hear, you might/you hope to get something done by the end of the year, that doesn't help me much here. I feel much more of a sense of urgency. So, this is really pointing toward the committee in your reauthorization to take action.

Mr. OBERMAN. I would welcome that, Mr. Chairman, and I would be happy to have me and our staff work with your experts to try to come up with those definitions. I think it is a legal challenge, but I think it is needed. I agree with you.

Mr. DEFAZIO. Great. That is good. And I am going to ask Member Primus about this one.

I mean, we all know about inflation across the economy, I already talked about what is happening with freight rail is increasing costs for manufacturers, shippers, and others, and they are passing it on to consumers.

But UP just announced $25 billion in stock buybacks. I wonder how much that is worth to the CEO and his salary. I really wonder. Norfolk Southern, $10 billion; CSX, a 7-percent hike in its dividend; and BNSF is doing very well for Berkshire Hathaway. Can you suggest something we can do to deal with this egregious behavior by these people?

Mr. PRIMUS. Thank you for the question, Mr. Chairman, and it is good to see you again.

Yes, I have the same concerns as you. I look at the first quarter of this year and the service degradation, and instead of immediately after that quarter talking about how they are going to fix the service to their customers, or how they are going to address the concerns of their employees, they turned around and gave billions of dollars in stock buybacks to investors who probably won't invest back into the network, especially when we need more investment in the network at this moment. Their capital expenditures or their investment in the network is far less than their dividends or their buybacks that they are giving these shareholders, and I think there has to be a refocus of priority.

I think, if there is anything that we need to look at, or need help on, it is these activist investors, these hedge funds that come in only for short-term gain. You can see it clearly. It has played out the last several years. This is not the same investment group that the railroads have had in the past who understand that, in order to run a railroad correctly, there has to be long-term growth, long-term investment, long-term interest. And I think you see that now.

Mr. DEFAZIO. OK.

Mr. PRIMUS. You see——

Mr. DEFAZIO [interrupting]. Well, if you have any suggestions afterwards—I would just like to ask one more question of Board Member Hedlund about passenger rail service. There was some reference to it.

I know the Board is looking at action. It is pretty clear in the law, when we took over the obligation to carry passengers from the railroads, that Amtrak is supposed to get preference. And of course, they don't. And it has been litigated many times by the industry. What can we do there, or what do you think should be done there?

I don't think your mic is on.

Ms. HEDLUND. Thank you, Mr. Chairman. We now have authority to examine on-time performance, which will, of course, implicate the issue of whether the railroads are giving them preference. And we expect we are going to get a case fairly soon, given the on-time performance percentages that Amtrak has reported for the last two quarters the last year. There was only one long-distance line that was above 80 percent. The rest were well below. Some of the shorter lines are above 80 percent, but the long-distance lines do not perform well.

And we need to look into that to see whether—one of the issues that has come up is long trains, and they are running trains that are longer than their sidings. So, when there is a 3-mile-long train in front of a little Amtrak train, the 3-mile-long train may not be able to get out of the way for many, many, many miles. So, that is something that I look forward to examining.

Mr. DEFAZIO. Thank you. And just one quick comment, Mr. Chairman, and then I will be done.

I mean, yes, my State actually partnered with Union Pacific—I hope they are listening—to do more sidings between Eugene and

Portland, where we have trains that can run faster than the freight track can handle, but it takes 3 hours or more to go 112 miles.

Ms. HEDLUND. Right.

Mr. DEFAZIO. And that is because their trains are now longer than the sidings, which was a joint investment, which is pretty sad. So, thank you.

Thank you, Mr. Chairman.

Mr. PAYNE. Thank you. Now I recognize the ranking member of the subcommittee, Mr. Crawford.

Mr. CRAWFORD. Thank you, Mr. Chairman. I want to direct this to Chair Oberman.

The Biden administration has advocated for many policies to increase competition, improve safety, reduce emissions, and the Board has considered those goals when moving forward with regulations. However, overlaid on top of those efforts have been significant disruptions to our Nation's supply chain. I think it is important to remember that the supply chain is an extremely complex system, and regulations can impose significant operational disruptions to the freight transportation sector.

Mr. Chairman, would you commit today to ensuring that the Board fully considers the impact of any potential regulations or determinations on the supply chain before taking any action?

Mr. OBERMAN. We, of course, do that every time we consider a regulation.

But I have heard this argument made, and I want to have the opportunity in answering your question to tell you that the railroads could not possibly have screwed up the system any more than they are doing on their own. There is nothing we could do to make it worse right now. It is in terrible shape, as has been indicated by members of the committee, and by everything we heard at our hearing.

But everything we are doing—and one reason that it takes some time for us to carefully enact regulations—is to do just what you said, to make sure that, if we are going to enact new regulations such as reciprocal switching, it is done with care to solve the problems, and not create them.

But a lot of what we hear from the railroads, in my view, are just excuses for what they are doing inadequately.

But yes, of course, we have that commitment, so, it is easy for me to give you that assurance.

Mr. CRAWFORD. All right. The STB has expressed concern with competition in the rail industry. However, the last update to the study of competition in the U.S. freight rail industry commissioned by the Board was completed in 2010. The dynamics of the industry's markets that the railroads serve have changed significantly over the past 12 years. Would each of you support the Board updating that study?

Mr. OBERMAN. Well, let me address that. I always welcome more data, more research. It is always helpful. But I do not need a study to know that there is woefully lacking competition in the rail——

Mr. CRAWFORD [interrupting]. I get that, Mr. Chairman. You made that point abundantly clear. But I am asking the question, would you support updating that 12-year-old study?

Mr. OBERMAN. Sure. There is no reason not to, and it will give us more information.

Mr. CRAWFORD. OK.

Mr. OBERMAN. But we don't need a study——

Mr. CRAWFORD [interrupting]. And you have also indicated in your testimony that you have a spirit of collegiality among the Board members. And so, it is safe to say that the Board would agree across the Board that they would support an update to that study, as well?

Mr. OBERMAN. One of the ways I have achieved that collegiality is to make sure they all get a chance to speak for themselves. So, I will let them address you.

Mr. CRAWFORD. Perfect. Thank you, sir. I appreciate it.

Mr. Primus, do you want to go first? We will just move from right to left, left to right, as case may be?

Mr. PRIMUS. Yes. My answer is yes.

Mr. CRAWFORD. Thank you.

Ms. SCHULTZ. Yes as well.

Mr. CRAWFORD. Thank you.

Mr. FUCHS. Yes, Ranking Member Crawford.

Mr. CRAWFORD. Thank you.

Ms. HEDLUND. Absolutely, thank you.

Mr. CRAWFORD. I appreciate that.

And with that, Mr. Chairman, I will yield back.

Mr. PAYNE. The gentleman yields back. I am now recognizing myself for questions.

Chairman Oberman, I am deeply troubled by testimony I heard from both our hearing in March and the STB's recent hearing on freight rail service in the country.

I am aware that the STB recently took emergency action to require railroads to submit plans to recover service and report information. Can you elaborate on what concerns you the most from the testimony you heard?

Mr. OBERMAN. It would take a long time to tell you everything that concerned me the most. It was very, very troubling.

But it does boil down to the pressures that the railroads—Chairman DeFazio alluded to—to cut resources. They have cut labor to below the bone, really. They have thousands of locomotives they have mothballed, which slows down trains, involves less locomotives to move trains when they need to be moved. That is the big picture. That is the overview, and it concerns me the most.

And what sort of exacerbates the problem, in my view, is that we have been hearing—and I have heard since I have been on the Board, but more intensely in the last year—reports from rail labor that, in order to—in my view, what is happening is, in order to make up for the shortage of labor, they are overworking and abusing the workforces they have. Not enough days off, sudden announcements of their assignments, and so forth. And so, they are forcing an unusually—a larger-than-usual number of people—long-term employees, literally—leaving. So, you are not only a shortage of workers, but you are losing a tremendous amount of institutional knowledge.

So, I think that is the focus of it. There are lots of parts of it, but that is what really concerns me the most, this overview to—

pressure that the railroads feel. And you could argue whether the pressure is only from outside, from Wall Street, or it is internal in the C-suites. I think it is joint, that they have realized there is a way that they can make short-term profits at the expense of the public.

Mr. PAYNE. OK, and how did that inform the Board's unanimous decision to require corrective actions?

Mr. OBERMAN. I am sorry, Mr. Chairman. I didn't hear the question.

Mr. PAYNE. I said how did that inform the Board's unanimous decision to require corrective actions?

Mr. OBERMAN. Well, it certainly eliminated any debate amongst us that strong corrective action was needed. And we acted, for the Board, with lightning speed by issuing an order just, I think, a week or so, 10 days after that hearing. The details we submitted to you in the order, but it is very far-reaching in terms of requiring much more detailed reporting of on-time performance, which we have never really had. And we had been working on a longer term rule, which we are still working on, but we felt we couldn't wait.

So, we are requiring a certain amount of first-mile/last-mile reporting immediately, and we have ordered the four big U.S. railroads to give us recovery plans within, I think, 2 weeks—I don't have the timeframe in front of me—and then report to our staff every 2 weeks over the next few months, so we can monitor their progress.

Mr. PAYNE. OK. And I want to ask the question, can everyone quickly highlight what concerned them from the hearing? And let's begin with Vice Chair Schultz.

Ms. SCHULTZ. Thank you for the——

Mr. PAYNE [interrupting]. As quickly as you can.

Ms. SCHULTZ. As quickly as I can. Yes, just to echo Chairman Oberman's comments, there were so many issues brought to our attention, and they were all incredibly important.

What comes to mind immediately were the challenges that I believe that the agricultural products industry, as well as the energy industries, are experiencing at this time, and the impact that that is having on other areas of the supply chain.

Mr. PAYNE. OK, thank you.

Ms. Hedlund?

Ms. HEDLUND. When I joined this Board in January, I never thought that I would be worrying about whether we would be able to export enough grain to make up for the reduction to the world market in grain caused by the war in Ukraine. But that is where we are.

Mr. PAYNE. Thank you.

Mr. Fuchs?

Mr. FUCHS. I would say, Mr. Chairman, first-/last-mile service failures. These are missed switches. This is just before a shipper or receiver is about to receive their freight. And so, it has a disproportionate impact on their operations. So, that includes first-/last-mile service failures for both grain and energy, but across the entire network. That is what concerns me most.

Mr. PAYNE. Thank you.

Mr. Primus?

Mr. PRIMUS. Thank you, Mr. Chairman. I would say that I have been alarmed at just how comprehensive the service failures have become. It is not limited to region, it is not limited to one industry or one area. It is widespread. I think it is a national crisis, a national emergency. I think it is a national security emergency.

You look at food prices going up, you look at the cost of energy, even coal to our coal-fired powerplants. You are looking at chemicals to water treatment plants, shortages there. I think, across the board, we are in trouble. And I think that we have really got to raise this to a level to address that.

Mr. PAYNE. Thank you. My time has expired. I will now hear from Mr. Burchett for 5 minutes.

Mr. BURCHETT. Thank you, Mr. Chairman, and I will try to be brief, as well.

Mr. Oberman, freight transportation bottlenecks, they seem to continue to disrupt our national supply chains. I wonder how have these Federal mandates improved or worsened the crisis.

And also, do you foresee any recent regulatory changes negatively affecting rail freight operations in the future?

Mr. OBERMAN. I am not sure which changes, Congressman, you are talking about in terms of bottlenecks.

Mr. BURCHETT. Well, it seems that every day I pick up a paper, there are supply chain issues. And I know that a large amount of freight is traveled across our rails. And I am wondering, do those—are any Federal mandates—have they improved or have they caused problems with it?

Mr. OBERMAN. Well, I am not aware of any Federal mandate that is causing problems. The lack of mandates, I think, over the last 40 years has enabled the railroads to get to the point they are at.

There were great advantages to the Staggers Act when it was enacted and for the next 20, 25 years. But the Staggers Act—it eliminated a great many of what had been probably—I think we all agree—over-regulation. But, in my view, what has happened in the system is that the pendulum has swung too far. And once the major railroads were allowed to consolidate, which had many good aspects to it in the 1990s, it enabled, ultimately, a situation I think that Chairman DeFazio described as monopolistic and duopolistic.

And so, by the early 2000s, those railroads had begun to exercise that monopoly power, which has really brought us to the place where we are today.

Mr. BURCHETT. So, on that line of thinking, are you thinking that we need more regulations on railroads to improve their service?

Mr. OBERMAN. The way I look at it, Congressman, is that we need to change the incentives. And what I have preached since I have been on the Board, and certainly since I have been Chairman, is that I would rather the railroads solve these problems on their own so we do not have to intervene. But clearly, the incentives right now are weighed much more heavily in incentivizing the railroads to cut resources.

So, we need to do things—for example, if we set—if we could, as Chairman DeFazio was questioning, put some detailed service standards in the common carrier obligation, as an example, that is one tool to say, look, you have to meet these standards.

I have said if you can do it with an OR of 50, I don't really care what your OR is, but you have got to have decent service. I don't think you can do it with an OR that low, because it means you don't have enough workers.

So—but I—to me, the way to go is to change the incentives, and not try to micromanage how they operate the actual railroad, but just say meet these standards, and then you are fine.

Mr. BURCHETT. And do you think that is possible without any additional regulations, or do you think that is—you think they are just—you are putting them on the honor system, and if they don't you are going to pop them, is that what I understand?

Mr. OBERMAN. I have been around too long, Congressman, to put anybody on the honor system totally when there is that much money floating around on Wall Street. It is just too powerful for all of us humans. And I include myself in that remark. So, we do need to take some action.

I think—and the Board is working mightily in this direction, I can't speak for what the outcome is—that a regulation which permits—doesn't mandate, but permits—reciprocal switching will bring more competition, for example. I think, by making rate relief easier to obtain—because right now there basically isn't rate—even though we have the authority to regulate review rates, nobody brings rate cases. They cost millions of dollars and take years, and there are clearly cases where people are entitled to them. Those will incentivize, I think, the railroads and shippers to reach their own agreements, if they know we stand there, without our having to intervene. That is the hope.

But I do think we need to do more. One way would be—and it is something that has very much been on my mind, but in all honesty I haven't figured out the solution; if I had, I would have brought it to you—is to put more specifics into the common carrier obligation.

But beyond that—and I have given this a lot of thought, particularly getting ready for this hearing—that the broad economic forces that Chairman DeFazio spoke of are really matters of such fundamental business policy in this country, they are beyond what this Board was set up to do. And you wouldn't want, I don't think, our Board to be telling Wall Street how to behave. I think there is a place for the Congress to be reviewing that, but you wouldn't want to regulate stocks in just one industry.

If there is a problem, I think we may need to rethink it and reexamine it as a country, and I would certainly welcome the chance to contribute our little corner of the world—it is not so little, but our corner of it. But it may require that because, as has been mentioned, while the railroads, because of their monopolistic ability, are a particularly egregious area right now, there are other areas of the business community which we may need to be thinking about.

Mr. BURCHETT. I have run over my time. Thank you, Mr. Chairman.

Mr. OBERMAN. Sorry about that, so did I.

Mr. BURCHETT. Mr. Chairman, thank you.

Mr. PAYNE. Next we will hear from the gentleman from Tennessee, Mr. Cohen, for 5 minutes.

[Pause.]

Mr. COHEN. I am unmuted now. Thank you, Mr. Chairman. I appreciate your having this hearing. And it is an honor to follow Mr. Burchett, and I might have some time to [inaudible] into my questions.

But first, Mr. Oberman, I want to thank you for appearing before us.

I really appreciated Mr. DeFazio's comments. He is passionate, and apparently there are problems within the freight industry that the employees seem to be having and that the industry seems to be having.

But my concern is that I continue to hear from rail employees in my district, and my district has several Class I railroads going through it, including the BNSF. But they continue writing me about increasing difficulty that they have on the job.

You discussed severe job-cutting on the Class I's that—45,000 jobs, or 29 percent of the industry, in just a few short years. Demands on employees that remain have only increased, including the deployment of Hi-Viz attendance policy at the BNSF. This policy and others like it put incredible strain on employees, making it difficult, if not impossible, to take time off for doctor's appointments, care for sick children or loved ones, or even rest when an employee knows that they are too fatigued to work safely. These unreasonable, restrictive expectations are driving people out of the industry at a time when we are all hearing about the need to staff up the railroads.

So, do you believe the imposition of conditions like Hi-Viz are ultimately having an impact on the ability of railroads to deliver good services?

Mr. OBERMAN. Somebody slammed the door just as you asked the question, Congressman. Could you just state the last question again?

Mr. COHEN. Was it somebody from BNSF?

[Laughter.]

Mr. COHEN. They would do that.

Mr. OBERMAN. I only caught the back of their head as they went out of the room, so, I can't answer.

Mr. COHEN. Thank you, sir. I was asking about the Hi-Viz program that they have got, and one of the employees who has written me, a constituent, it was a very touching letter. I wasn't going to ask any questions at all, but his letter was so touching I thought I needed to ask on his behalf. He is my—he is a 13-year retired vet. He has got twins. He loves working for BNSF. But he said he has been having trouble getting time off to do doctor's appointments and take care of his health.

And I wondered if you think Hi-Viz is the problem in stopping railroads from delivering the good services that they should be doing?

Mr. OBERMAN. Well, it is not *the* problem, but I have received many, many of the same kinds of letters that you just described. And we heard from rail labor at our hearing 2 weeks ago. And I don't think BNSF is unique. They all have a different name for how they are treating their employees. But I think this effort to squeeze more work out of a smaller and smaller number of workers has become extremely oppressive, and is forcing, as I mentioned earlier, a number of people to just leave the industry, some in mid-career, leaving their pensions on the table. It is really quite remarkable.

So, I think it is a symbolic of the problem. And I—the RTP, the Rail Transportation Policy, says that we are generally to make sure that there are fair wages, a good treatment of labor. But we really do not have jurisdiction over rail labor. There are other agencies specifically set up to deal with that. And of course, there is a national bargaining session going on right now. And one would hope that rail—the Class I railroads are getting the message.

I would note, Congressman, and I don't want to concede too much at this point because it was just the beginning, but 2 days ago, Jim Foote, who is CEO of CSX, gave a relatively remarkable statement, in my view, that I read an account of in yesterday's press saying that it was time for the Class I's to completely rethink their relationships with labor, that they know they have problems.

Now, that was good rhetoric. It remains to be seen if there is any meat behind that rhetoric. But maybe they—we are, all of us who are engaged in this area, including the members of this committee, are beginning to get their attention. I would hope so.

Mr. COHEN. Well, thank you, Mr. Oberman. And I realize there are other agencies that deal with labor, but you are the closest opportunity I had to raise this issue, and the only thing that I really wanted to talk about. [Inaudible] really talk about anything, but this was just too much.

And this—Mr. Smithers contacted us back from BNSF about this particular employee. It was about a month after we contacted him, and the letter is rather vanilla, and maybe we will try again, or BNSF will help me. I mean, I was just touched by this man's letter. He is an older man. He is working as an engineer. And he gave 13 years to our Government and defense industry. And he came home to be with his twins. And he has got health problems, and he wants to stay on—it seems like they should take—they are doing the minimum which the Federal Government requires on FMLA and some other things, but they ought to be doing more than the minimum to bolster their workforce, care for their employees, and to help the rail industry in general. So, we will try to do that.

Do I have any time left?

Mr. PAYNE. The gentleman's time has expired.

Mr. COHEN. Well, I will lend that time to Mr. Burchett, and I thank you.

[Laughter.]

Mr. PAYNE. Thank you. The Chair now recognizes Mr. Bost for 5 minutes.

Mr. BOST. Thank you, Mr. Chairman.

Chairman Oberman, over the last 6 months, the Board has held 2-day hearings on reciprocal switching, a 2-day hearing on rail service, and multiday hearings on restoring Amtrak service along the gulf coast. The Board has also issued notices of proposed rulemaking for a number of different issues. The Board has also continued to attempt to address the supply chain crisis, review mergers, and engage in other regulatory activities.

Mr. Chairman, how does the level of activity for the current STB compare to the past Boards?

Mr. OBERMAN. Well, thank you for that question.

First of all, Congressman, I am really happy to see somebody here from Illinois. It makes me feel a little more at home. So—and I didn't grow up too far from you. I grew up in Springfield.

Mr. BOST. Yes, you are way north in the State.

Mr. OBERMAN. Well, my father used to say we grew up on the far South Side of Chicago.

This has been an extraordinarily busy time at the Board, probably—I have only been there 3 years, but we have a lot of people who have been there for a while, and we probably have never been this busy in the last 20 years.

A lot of it were some actions started by my predecessor, which we need to fulfill. And of course, there were many issues that were brought to us, such as the pending merger between Canadian Pacific and Kansas City Southern, the gulf coast case, which is unprecedented—it is the first time that statute has been tried—the whole supply chain meltdown. These all landed on our plate at the same time.

And I have to say that our staff, which is relatively small for a Government agency—first of all, it is a highly qualified and dedicated staff, and we have churned out an amazing amount of work. So, I know people get frustrated with the fact that it takes us a long time. But let me just take the opportunity to tell you that, with only 117 FTEs on staff now—and we are in the process of intense hiring efforts—last year the Board issued 474 decisions—and these are often lengthy, lengthy decisions—339 of those were staff-written decisions from our director's office. And our OPAGAC office, which handles relationships with Congress, but also relationships with the shipping world and our stakeholders, handled almost 1,400 matters that came in with a relatively small number of people.

So, we have, I think, risen to the occasion. I think we are all working extremely hard, and I think we are meeting the challenge. But I appreciate the question, because it has been a very busy time.

Mr. BOST. Well, my second question I was going to ask was asked by the ranking member before he left. And you did a—so, I have got that answer. But my third was this.

Last month, the Board held a 2-day hearing to discuss issues in rail service. And during that hearing, railroads admitted that service had not been at the level the customers expected. These disruptions have been severely felt by my constituents in the agricultural industry, and I don't believe that we can simply regulate our way out of the problem, but we can find a solution.

Will the STB commit to working with all stakeholders to address service issues and work to ensure that both rail carriers and shippers have a balance in that decision?

Mr. OBERMAN. We will, because we always do, Congressman.

And I will say it is a big step in the right direction. And one of the reasons to hold public hearings—and, of course, I don't have to tell the Congress about that—is to force these issues out in the open. And I think it was a big step in the right direction that the railroads did not come in and try to pretend that there was no problem.

Mr. BOST. Right.

Mr. OBERMAN. They often have in the past, but they really couldn't deny the facts that were in front of us.

Mr. BOST. I agree. And I think there is a lot of work to be done. And I think that every answer that you have given today says that you are willing to do that work. And I appreciate you being here today.

And with that, I yield back.

Mr. OBERMAN. Thank you, Congressman.

Mr. PAYNE. Thank you, the gentleman yields back. We will now hear from the gentleman from Indiana, Mr. Carson, for 5 minutes.

Mr. CARSON. Thank you, Chairman.

Thank you, Chairman.

Thank you, Commissioner Primus, Commissioner Hedlund. I would like to hear from both of you on what additional authorities are needed to limit the time that rail crossings block traffic on public roads.

And secondly, I made a request in 2018 for more data about this problem but haven't received details on the number of locations of incidents since that time. Has STB investigated the economic impact of stopped trains, and extremely long trains for that matter, that block crossings?

And if so, we would love to be briefed on what you found so far. If not, would you investigate the problem?

Mr. PRIMUS. Thank you, Congressman. And again, it is good to see you.

The problem of trains stopped at crossings actually doesn't really fall under our purview. It is more of an FRA-related issue. But it is—well, I should say the symptoms of it are something that is concerning to us, because we believe, because the railroads are building longer and longer trains, I think that lends itself to why you are seeing more train stoppages at these crossings.

In my time at the Board, while we have heard it, I don't think we have had any cases come before us or any issues come before us to take a look at it. But I think we can—we look forward to working with FRA as they move forward in looking at the issue, and addressing the issue as well.

Ms. HEDLUND. Sometimes the issue of blocked crossings will come up in the context of a merger matter, and I know that that has happened in the past. And so, possibly, in connection with that kind of proceeding, we can take that into account and ask the railroads what they intend to do about it if there is additional traffic on a certain line. So, I think that is one place where we can look at it.

But to the extent the blocked crossings is really a result of this problem that we have talked about several times this morning, which is long trains and inadequate sidings, that is certainly something that we are focused on. I don't know what we can do about it, but it is endemic.

Mr. CARSON. Thank you both, Commissioners.

I yield back, Chairman.

Mr. PAYNE. The gentleman yields back. We will now hear from the gentleman from California, Mr. LaMalfa, for 5 minutes.

Mr. LAMALFA. Thank you, Mr. Chairman.

With regard to rail shipping here, we have had some great concerns expressed on the west coast in California for being able to receive corn and corn byproducts, partly for the ethanol industry, ethanol production, which is very important for the fuel mixture we have with, I think, up to 10 percent alcohol or whether it maybe gets into E15, even E80, E85, but we have issues with getting the product out there.

And so, what do you see as—I am told there are labor problems, not enough labor. Is it track time? Is it—what is it, from the Board's perspective, do you see?

And then also I want to touch on rail rates, too, versus trucking.

Mr. OBERMAN. Did you say rail rates?

Mr. LAMALFA. Yes. My understanding is that rail has always been extremely competitive with trucking. But I have information that says it is actually—trucking has a shipping advantage these days. And so, I don't——

Mr. OBERMAN [interrupting]. You——

Mr. LAMALFA [continuing]. Know if you can elaborate on that.

Mr. OBERMAN. I assume you were directing that at me, Congressman?

Mr. LAMALFA. Yes, sir.

Mr. OBERMAN. Yes. You have covered several very crucial matters in one question. So, let me try to——

Mr. LAMALFA [interrupting]. Yes, let's just do the—yes, the first part.

Mr. OBERMAN [continuing]. Let me try to parse them out.

Among the problems that I am aware of facing California businesses are—but not unique to California—are, one, ethanol plants having to literally shut down production, either because they couldn't get raw materials—and also, one of the most acute problems we heard was that they can't get trains of empty cars to unload the finished product, so, they can't manufacture more, so, they have to stop production. And that is a problem around the country. And it is, in my view, definitely adding to the escalation in fuel prices, because 10 percent of the gasoline is ethanol.

Secondly, we had two startling reports, which I understand have not totally been resolved, of some major food producers, including poultry producers in California, who cannot get their usual load of feed that come in long unit trains. Those problems are directly the result of not enough crews.

If you look at the statistics that we collect, one of the statistics is a train is holding, meaning the train has stopped, it is not moving, either for lack of crews or lack of locomotives. Both of those numbers have been going up through the roof, across the boards. So, that is what is happening with both ethanol and with the farm matters, that they are just a matter of shortages in both areas, locomotives and crews.

In terms of rates, the complaints that I hear about people using trucks rather than trains recently are not so much rates, but complete lack of reliability. So, you have major shippers, if you just look at the port problem, the amount of containers that move by train—and a fair number do out of the ports—has been going down, despite the number of ships sitting out there on the ocean, because some of the major users—the Walmarts, the Home Depots—find it more reliable to ship cross-country by truck. At least the truck will get there, and it may be even more expensive.

So, it is a problem of reliability, of service. I remember Mr. Fuchs talked about the first-mile, last-mile——

Mr. LAMALFA [interrupting]. Could you elaborate on the either lack of locomotives, or what is going on with the crews?

Mr. OBERMAN. Well, first of all, you need crews to drive the locomotive.

Mr. LAMALFA. Yes, right, right, right.

Mr. OBERMAN. But secondly—and this came out at our hearing—well, secondly, they mothballed thousands of locomotives—when I say "they," all the railroads together. Those—you can't just—it is not like parking your car for a month, and you can just start it up. They all need maintenance, sometimes rehabilitation, before a locomotive can be returned to service.

So, when we talked about cutting 45,000 workers, that included the electricians and mechanics who they need in the shops to get the locomotives fired up. So, that has been a problem in getting more locomotives out on the lines. And then they——

Mr. LAMALFA [interrupting]. Have these workers gotten——

Mr. OBERMAN [continuing]. Compounded it——

Mr. LAMALFA [interrupting]. Have they gotten other jobs, or are they just not coming out of their COVID caves yet?

Mr. OBERMAN. Oh, I think most of this is beyond the COVID problem. I think that many of these 45,000 people have found other careers.

Mr. LAMALFA. Yes.

Mr. OBERMAN. And they did not come back. That has really been across the boards.

But the final problem with locomotives—and this is just shocking to me, and we have aimed our recent order at getting to the bottom of this—the railroads, even when they have—so, now these very long trains will have three or four locomotives on them, because you need that much to move them.

But when they are not—many times the train will leave the yard, and they will instruct the engineers to turn off one or two of the locomotives, just to save fuel. That slows the train down. That congests the system. And/or they issue an order—and some of these were presented—Congressman Cohen may be interested by some of the BN workers—they presented orders to us from the railroad saying, don't go faster than 40 miles an hour, even if you are on a 70-mile-an-hour track——

Mr. PAYNE [interrupting]. Thank——

Mr. OBERMAN [continuing]. Because it saves fuel.

Mr. PAYNE. Thank you.

Mr. OBERMAN. So, it is a combination of all of those problems that are contributing to what you are hearing in California.

Mr. PAYNE. The gentleman's time has expired.

Mr. LAMALFA. It is very devastating to agriculture and our fuel supply.

Thank you.

Mr. PAYNE. Thank you. Now we will hear from the gentlelady from California, Mrs. Napolitano, for 5 minutes.

Mrs. NAPOLITANO. Thank you, Mr. Chair. I was glad to hear all the discussion of the railroads. But it seems to me that the railroad is not willing to do voluntarily what is necessary or right.

My question is regarding the rail investment and profit. Can you share what is the percentage of railroad revenue being reinvested in workers and infrastructure versus the railroad revenue going to investors, and how has this changed over the past 30 years?

Mr. OBERMAN. Congresswoman, the connection was very hard for me to hear the precise nature of the question. I only caught parts of it.

Mrs. NAPOLITANO. Can you share what the percentage of railroad revenue being invested in workers and the infrastructure versus railroad revenue going to investors, and how has this changed over the last 30 years?

Mr. OBERMAN. Well, I can't speak with personal knowledge of how it has changed over the last 30 years.

But certainly, in recent years, we have documented billions and billions of dollars. I think I gave a speech last fall documenting, in the last 11 years, about $200 billion in combined stock buybacks and dividends going to the owners at the same time, and that the ability for them to make those payments was enabled almost entirely by cutting those 45,000 workers, as well as mothballing locomotives—in my view. There is some controversy about that, but I think the line is pretty direct.

And I think our view is that the way to change that balance is to, through incentives and regulations, force the railroads to meet higher service standards. I don't think they can do it without employing more workers and locomotives, but the goal is to get the service back.

I don't know if that was responsive.

Mrs. NAPOLITANO. What can Congress do? Do we have to issue more policy to enable you to be able to hold them accountable?

Mr. OBERMAN. Well, it is a good question. If I had a very specific answer, I would have provided it to the committee already. I think it is a complex matter of how to consider reining in some of the forces of Wall Street. It is really beyond a railroad question. I think it is a broader economic question.

Mrs. NAPOLITANO. Well, we need to take a look at it, anyway.

I have significant concerns over the train length. I have been caught in about a 15- to 20-minute wait over what I considered 1½ miles, but it was really more like 2½ miles. And I could see the line of cars behind me. They are all spewing fumes, waiting to get through. And of course, some of them got out of the line and went back to some other way of getting to their destination.

What—is it possible to—and I know the railroad is trying to cut down on the number of employees by doing longer trains and et cetera, but how is that affecting business, in terms of delivery?

And the sidings are not as prevalent as they should be, or they haven't gotten as many adequate sidings to be able to take the length of trains.

Mr. OBERMAN. Well, right now we don't have the authority to just order—directly, to order railroads to limit the length of their trains, or at least I don't think we do. We do have authority to direct certain service—relief of service, but it has never been applied, nor has anybody ever asked us to apply it to just shorten a train.

Railroad operations are extraordinarily complex. And if you just try to pick out one problem, such as long trains, you may well have all kinds of unintended consequences.

The overall picture, I think, is—that you raise—is a very valid concern. I think that the extremely long trains have complicated the service problems because, as has been referred to, there are very few places, if any, in the country where the extremely long trains can fit into a siding. And in many, many corridors—since all of the merger mania of the 1980s and 1990s, the railroads have stripped out the double tracking. So, there are many long stretches where there is only a single track, and when one of these long trains gets on it, they really block everything else.

And I think it is up to the railroads to reorganize how they launch these trains in order to provide better service, because there are places where it definitely does impact service. But it is not just the simple matter of saying no train can be longer than X feet, because everything is involved in a network.

Mrs. NAPOLITANO. Thank you very much.

Mr. OBERMAN. I think my colleague, Karen Hedlund, would like to add something, Congressman, if it is OK.

Ms. HEDLUND. Thank you.

Mr. PAYNE. The gentleman's——

Ms. HEDLUND [interrupting]. Congresswoman, just one point. The irony is that, notwithstanding the fact that there are these long trains blocking crossings, what I have heard is that the Alameda Corridor is running under capacity because not enough—not—trains are going through it.

Mr. PAYNE. OK, thank——

Ms. HEDLUND. [Inaudible.]

Mr. PAYNE. The gentlelady's time has expired.

Mrs. NAPOLITANO. Thank you.

Mr. PAYNE. We will next hear from the gentleman from Texas, Mr. Nehls.

Mr. NEHLS. Thank you, sir.

Thank you, Chairman Oberman, for testifying before the committee, and thank you, all the witnesses, for being here today.

Americans are struggling with rampant inflation. The Consumer Price Index is at 8.3 percent from a year ago. If you go to the grocery store, it is common to see empty shelves, rationing of goods, and out-of-control prices. For God's sake, you have a full-blown baby formula shortage.

Supply chain issues and delays are plaguing almost every form of transportation and leading to increased costs on everyday goods. It doesn't matter what industry, whether it is aviation, trucking, rail, or shipping, they are all experiencing delays. All are trying their best to navigate higher costs, labor shortages, unprecedented regulations, massive uncertainty in energy prices.

And it wasn't long ago that President Biden and the smart folks of his administration were calling inflation transitory. Yes, transitory. It seems that reality has finally sunk in when on Tuesday, the President announced that inflation was his number-one domestic issue.

Every month there seems to be a new bogeyman for the Biden administration to blame what I see as a confluence of factors: one week it is COVID, the next it is port delays, it is the war in Ukraine, it is greedy big oil, it is corporate America price gouging. Today, the political folks in this administration want to direct their attention and energy toward the greedy Class I railroads. Never, never does this administration or this President look at themselves in the mirror and take any accountability for the problems they have largely created.

And Mr. Chairman, I want to ask you, but you talk a lot about the labor shortages and the rail industry, and in your testimony it is the rail industry has contributed to this worsening working conditions and insufficient incentives. I say it is a sad state of affairs. It is every industry. It is sad that job creators in this country, no matter what industry, are competing with the Federal Government to get their people back to work.

And when you look at salaries, I think about the salaries. Do you know what the average Class I rail employee makes a year? It is about $137,000. I know Biden's inflation is bad; $137,000 sounds like a pretty good salary to me.

Do you know what percentage of the employees are unionized for Class I railroads? It is 84 percent. So, are you saying that the industry with 84 percent unionization rate, and an average salary of $137,000, has insufficient incentives to attract talent?

Mr. OBERMAN. I do. I do, because those are the facts that are presented to us.

And I would only comment, not to get into a broader political discussion, because that is beyond my role for being here today, and I can't comment on other industries, because that is not what I have been asked to work on. But I can tell you the problems in the railroad industry are self-inflicted.

Unlike almost other—I am not aware of any other industries which have cut 30 percent of their workforce. And that began long before President Biden took office. It began, actually, when President Obama was in office, and continued all through the Trump administration. And I don't see any of those administrations had anything to do with it. It was the railroads themselves that made those choices.

And I can tell you that at the hearings we had 2 weeks ago, the railroads came in and proudly proclaimed that they were trying to hire new conductors at $52,000 a year, not $137,000. And when I asked them how they were going to compete with Walmart hiring truckdrivers at $110,000, they didn't have an answer. So, that is all I can add to this.

Mr. NEHLS. Thank you, Mr. Chairman. You have answered my question.

I yield back.

Mr. PAYNE. The gentleman yields back, and we will now hear from the gentleman from Georgia, Mr. Johnson, for 5 minutes.

Mr. JOHNSON OF GEORGIA. Thank you, Mr. Payne.

And Mr. Oberman, you nailed it, Representative Nehl's question.

And thank you, all of the witnesses, for being here. And also, thank you so much for the work that you all do.

Railroads provide efficient transportation of goods and people. They have one of the lowest carbon footprints among transportation options, and they have historically provided stable, well-paid union jobs. But today, cost-cutting strategies promoted by vulture capitalists on Wall Street have downsized railroad operations to the most basic options. And as a result, industries that depend on railroads, from agriculture to animal welfare to passenger rail, are less resilient and robust.

What is more, the lack of reliability of railroads has led freight traffic to rely more on trucks than rail, exacerbating emissions and also our looming climate crisis. And while the hard-working team at the STB is taking these issues seriously, Congress must help to ensure that the STB has the tools that it needs to conduct effective oversight and to address concerns.

Now, Mr. Oberman, animal welfare requires high-quality rail services. Delayed trains and scarce railcars are impeding crop shipments this spring. In fact, as noted in a letter from the USDA to STB, communications from industry suggest that some livestock operations face potential starvation for their animals. These disruptions pose critical threats to the American agriculture industry broadly, the livelihoods of our farmers and ranchers, and the lives of countless animals if the potential required killing of herds of animals is not addressed.

Chairman Oberman, you were quoted as saying that farmers have been hours away from de-populating herds. Will herds of animals be prematurely slaughtered because of delayed grain shipments to producers?

Mr. OBERMAN. I think we have come close to that, Congressman, based on reports I have heard. But so far it hasn't happened.

I would say that we have one, I think, very strong tool to immediately deal with these problems. And we have made it even stronger in our proposal of a couple of weeks ago to provide more emergency relief. So, in just the situation that you referred to, where a livestock producer, a chicken farm or cattle farm can't get the feed train delivered, we are proposing to make it much easier for those customers to come in and get an emergency order from us within a 2—I can't remember the time period, but 2 or 3 days, very quickly, for us to order a railroad to deliver the needed feed trains that are not getting delivered.

So, that is the concept behind this one rule that we have proposed, and we put out a very short comment period. So, hopefully, we can act on it within the next—I think at this point about 3 or 4 weeks away to being able to put that into place, although we have an emergency service rule now that shippers can use, and I have been told that there have been several instances in the last couple of weeks where shippers were on the verge of filing an emergency petition with us, and the threat of it resulted in the railroads saying, OK, we will deliver the trains.

So, sometimes we act more effectively by just being there and knowing that we are not afraid to act. And this Board is not afraid to act.

Mr. JOHNSON OF GEORGIA. Well, thank you for that.

Typically, the STB regulates the rail industry over long-time horizons, but what can the STB do immediately when a true emergency arises, such as when huge numbers of livestock and livelihoods are at risk, in addition to what you just talked about?

Mr. OBERMAN. Well, that is our primary tool for the immediate solution of these problems. But I think the order we issued last week after our hearing requiring immediate filing of service recovery plans and reporting on first-mile/last-mile service so we can publicize this, among other things, is going to, I think, bring the railroads, I hope, to a more accountable situation.

They know the spotlight is on them. This hearing helps. Our hearings helped. And the message has gone out.

It was interesting. Congressman DeFazio quoted Matt Rose's speech from about 4 years ago, who told the railroads that they really needed to shape up if they didn't want the Congress and the STB running their businesses. And I think it has taken them several years to get the message, and I am hoping they have finally gotten it.

Mr. JOHNSON OF GEORGIA. Thank you. My time has expired, and I yield back.

Mr. PAYNE. The gentleman yields back. We will now hear from the gentleman from Ohio, Mr. Balderson, for 5 minutes.

Mr. BALDERSON. Thank you, Mr. Chairman.

And Chairman Oberman, thank you for being here today. My first question, Chairman, is you note that the Board has statutory authority to order a freight railroad to allow the operation of additional Amtrak trains over its line, and the Board is currently completing a post-proceeding [inaudible] by Amtrak, which is requesting access to freight lines along the gulf coast.

When considering whether to order a freight railroad to allow the operation of Amtrak trains over its line, does the Board consider potential disruptions this may cause to freight rail networks?

Mr. OBERMAN. Very good question, Congressman. And I will have to answer it in generalities, because, as you said, we are in the middle of a contested hearing on just this question. And, in fact, whenever we get released from here we will be going back into that hearing at our office down the street.

The statute that we operate under, which has never been implemented in the last 50 years, but is the issue in this case and, I think, the issue in the situation you are referring to, provides that we shall order the Amtrak service onto a rail line. However, we must take into consideration "unreasonable impairment of freight service." So, the Congress has mandated us to do exactly what you just asked, and we are doing it.

And yes, it is very important to make sure that Amtrak and the freight railroads run cooperatively and fluidly, and there is a constant tension there, which is what we were set up to moderate.

So, I think the direct answer to your question is, yes, we consider interference with freight.

Mr. BALDERSON. OK, thank you. I had kind of a followup on that, but you pretty much answered that for the process.

I would like to follow up on some questions I asked to representatives of the rail industry and shippers during a subcommittee hearing on March 8th.

Does the Surface Transportation Board have any concerns that proposed changes to the reciprocal switching could impact future investments by the railroads into their own infrastructure?

Mr. OBERMAN. Well, I hear that concern from the railroads. It is not one that, speaking for myself, I would ignore. I think it is vastly overstated.

What came out at the hearing was the exploration, led somewhat by me, but I think all of us were interested in—is how to implement a loosened, somewhat loosened, reciprocal switching rule that would provide necessary relief and more competition to the industry with minimizing disruption of current freight.

The railroads constantly say that STB should keep our noses out of it, and let the market decide. And I have many answers, but my usual answer is, I believe in letting the market decide. But for the market to decide, there has to be a market. And in many, many parts of this country, there simply is no market. Shippers are captive to one railroad, and that is what the reciprocal switching concept is aimed at.

Mr. BALDERSON. Thank you for that answer. I appreciate your time.

Mr. Chairman, I yield back my remaining time. Thank you.

Mr. PAYNE. Thank you. The gentleman yields back. We will now hear from the gentlelady from Nevada, Ms. Titus, for 5 minutes.

Ms. TITUS. Thank you, Mr. Chairman, and I thank the witnesses for being here.

I was very interested in that last question, because we are trying to get Amtrak restored between Las Vegas and Los Angeles. And we are having trouble dealing with the private railroads and the use of some of the lines and things, because we have to import everything to Las Vegas, whether it is flowers, or lobsters, or whatever. We have got to have that freight operating effectively. So, I am curious to learn more—and we can do this offline—about the interaction between Amtrak and the freight lines in that part of the country, not just in Florida.

I wanted to ask you—or let me just say first, it used to be that the trains were the good guys, and not the truckers. They had less pollution, they didn't tear up the roads, they respected unions, they had more safety, and they were better for climate change.

We see the truck industry instead—they lack drivers, but what they want to do is hire people who are 18 years old; not have rest periods; they don't recognize many unions, some of these trucking companies; and they tear up the roads and don't pay their fair share to help to fix them. Now it seems like railroads are trying to go in the same direction as trucking, and I don't think that is a very good example to follow. So, I am like you. I hope they are hearing this, and kind of reform their ways.

I guess I would ask you if you could talk a little bit about what might have been available through the CARES Act, or some of the recovery bills, or even the bipartisan infrastructure bill that went to maybe help railroads. I know there was money there for workers who were laid off maybe to get unemployment. But was there anything in there that you see as making perhaps an improvement, or a difference in the way railroads operate if they can access some of this money, either directly or indirectly, through some of the investments in infrastructure?

Mr. OBERMAN. Congresswoman, let me say a couple of things quickly in response to what you said. And if you don't mind, I am going to then shift over to Member Hedlund, who spent a number of years at the FRA, and has a lot more knowledge about the Government handing out money to railroads than I do. And I think she could give you a more fulsome answer.

I will say that we are very conscious of our obligation under the statutes with regard to Amtrak and its service.

And I am sure you know, by the way—you didn't mention it, and I can't much talk about it because it is pending, but there is a pending proceeding before us to establish a high-speed passenger rail line between Las Vegas and Los Angeles——

Ms. TITUS [interposing]. Yes.

Mr. OBERMAN [continuing]. Which should provide, I would think, some great boon to the Las Vegas economy once that gets built, assuming it does get built.

Ms. TITUS. I want it to get built, and I want you to speed that up. We have been working on it 40 years. It is time to build that speed train.

Mr. OBERMAN. You know what? We have acted on every one of the matters that have come before us on that thing, since I have been on the Board, pretty quickly. It is really the people who are building it who are—we are waiting for them, as well. I guess that is all I could say at this point.

Let me switch it over——

Ms. TITUS [interrupting]. I will pass that word onto them. Thank you, sir.

Mr. OBERMAN. Pardon? I didn't hear that.

VOICE. She will pass it on.

Mr. OBERMAN. Oh, OK.

Ms. TITUS. I just said I will pass the word onto them.

Mr. OBERMAN. Oh, yes, please do.

Anyway, if you don't mind, I would like to switch this over to Member Hedlund.

Ms. TITUS. I appreciate it.

Mr. OBERMAN. Thank you.

Ms. HEDLUND. Thank you, Congresswoman Titus.

The money that has been made available in the IIJA for railroads, a total of $66 billion, a good share of that is going to go into the Northeast Corridor, which is owned by Amtrak, used by commuter rail and also by Conrail.

But the majority of it will probably wind up going into investments in our existing freight railroads for the benefit of passenger rail. And that was also the case with the Recovery Act when I was at the Department of Transportation.

And without question, although these investments will be made for the benefit of passenger rail—and I am sure the FRA and the Department will require agreements between the State sponsors and—or grantees and the railroads, that they guarantee that those investments will yield whatever the objective of the project is, whether it is additional round trips or reduced travel time, that they will guarantee that.

But those investments inevitably also benefit the railroads themselves. If you build additional or longer sidings, it also is going to benefit the freights because it means that two long trains can pass each other, not just that a long train can allow Amtrak to pass.

Mr. PAYNE. Thank you——

Ms. HEDLUND [interrupting]. So, I think there is a great deal of money available. It is up to the Department of Transportation——

Mr. PAYNE [interrupting]. Thank you.

Ms. HEDLUND [continuing]. To decide where that goes.

But my observation would be that it is going to benefit more than just passenger rail.

Ms. TITUS. Thank you, Mr. Chairman.

Mr. PAYNE. Thank you very much. The gentlelady's time has expired. We will now go to Mr. Johnson of South Dakota.

Mr. JOHNSON OF SOUTH DAKOTA. Thank you, Chairman Payne.

Mr. Chairman, you noted in your testimony some concern and critique of the railroads' layoffs. I think you had noted that they had reduced their labor force by 29 percent in the preceding 6 years. I think some 45,000 jobs.

When you have raised this issue with the Class I's, what response do they give you? I just want to put some further context on this issue.

Mr. OBERMAN. Congressman, I have never heard a response that made any sense. So, it is very hard for me to articulate their position.

And I have asked. And in fact, I am hoping to shed some light on this in our requirement that they give us recovery plans. I have asked repeatedly of the Class I executives when I have either met with them in public or at our hearings, "Do you have any plans to restore any portion of those 45,000 jobs?"

I have never suggested they should hire all of those positions back, but it is quite clear to me that they don't have a cushion. As I have said many times, you wouldn't send a football team out on the field without a backup quarterback. But what the railroads have done is just that: they have set the rail crew levels at levels where they have no backup. So, when there was COVID, when there is a vortex, when there is any disruption of workers getting to the job, the trains stop running.

Their attitude so far has been, well, we are just trying to fill the holes we have now. If you look at their employment levels over the last 2 years, they have barely managed to increase the levels they had after they made the additional 20-percent cut in labor at the beginning of the pandemic. So, they don't give me an answer, at least one that I could articulate.

Mr. JOHNSON OF SOUTH DAKOTA. So—and I assume, when we are talking about not hiring back, I mean, I suppose we should probably look at these workforce adjustments in two ways.

I mean, one would be the 45,000 you are talking about over 6 years. Let's call those efficiency-focused reductions. And then you have got the furloughs that were done during COVID, which I think probably would have been more market conditions, volume-driven. I mean, I assume they have recovered the workforce levels coming out of COVID, by and large.

Mr. OBERMAN. They have not. That is really why we are having the problem.

And I wouldn't call those 45,000 efficiency reductions. They call them that. But it is not efficient when you get to a workforce that is so low without a backup that the trains stop running. And we were having a lot of service complaints before COVID. They have been greatly exacerbated since COVID.

And I think what was a foolish business decision—and I have said so, and I will say it again—is that when COVID hit in March of 2020, no one knew how long it was going to last. Was it a month, a 10-year program, or somewhere in between? And no one knew when freight rail demand would come back.

And remember, when you lay off an experienced engineer or conductor—and there is no assurance they will come back, and many of them did not, they went into other industries—to replace that person under FRA restrictions and just general common sense requires 6 months of training. So, you make a precipitous business decision that I am going to cut 20 percent of my workforce, which is what most of the Class I's did between March and June of 2020, not knowing when you are going to need them back, but when you do need them you are at least 6 months away, assuming you can find them.

So, these were really irresponsible business decisions, in my view, and it is why we are suffering to today, and why they cannot restore enough workers to even, as the other congressman was saying, to get feed trains to chicken farms. They just can't do it in every situation.

Mr. JOHNSON OF SOUTH DAKOTA. Yes. I mean, Mr. Chairman, I mean, it is my understanding that, in general, after furloughs, 90 percent of those workers return in short order. Now, that has been my understanding; that has not been the case in this situation. It has been closer to 65 or 70 percent.

Might it—I mean, you used the word "irresponsible." I mean, given that 90 percent normally return, is that description a bit harsh on your part?

I mean, were they operating under reasonable assumptions, given history?

Mr. OBERMAN. I don't think so, because the pandemic was something new. No one could predict the future.

I am not aware of that figure of 90 percent, and I don't know that it is 65 percent now. I know that the rail labor have shown me statistics where hundreds of people are leaving voluntarily now because of working conditions, and I think that was a disincentive to people coming back.

One of the things that happened in late 2020 and 2021 is that they would bring workers back from furlough for a month, then they would furlough them again. And a number of workers have told me and union leaders have said that after bouncing back and forth once or twice, it was such a hardship on their families that many people just walked out the door.

So, I think it was—I don't think it is a——

Mr. JOHNSON OF SOUTH DAKOTA [interrupting]. My time has expired, sir. Thank you for your comment.

Mr. Chairman, I yield back.

Mr. PAYNE. I would like to thank the gentleman for yielding back. We next have the gentleman from California, Mr. Huffman, for 5 minutes.

Mr. HUFFMAN. Thank you, Mr. Chairman, and let me thank Chair Oberman and the members of the Surface Transportation Board for being with us here today. This is very enlightening.

I would like to use my time on a slightly different subject. I would like to ask the Board about their policies relating to railbanking, and specifically when there is an abandonment filing pre-coordination for the conversion of a rail line to a trail, and another entity comes along expressing interest in acquisition. I am curious about the factors that the Surface Transportation Board applies in considering those situations, so, let me start with the local community support.

How much weight would the STB give to local community support for one of these alternatives over the other in a scenario like that?

Mr. OBERMAN. And you are talking specifically, Congressman, about conversion of an unneeded rail line to a trail use?

Mr. HUFFMAN. Correct.

Mr. OBERMAN. We always hear and listen very intently to communities.

I think there is generally a lot of support on the Board. I certainly support the concept of being able to convert rail lines for trail use. It is good for the environment, it is good for the local population. And I think we, generally, have been very supportive.

Sometimes these requests languish for years and years, and there is a certain point at which we have to act on them. We have some legal restrictions and some due process property rights restrictions, but generally we are very supportive of community input on these issues.

Mr. HUFFMAN. I appreciate that, Mr. Chairman.

I wonder also about the financial viability of an entity that might come along and oppose railbanking, suggest that they have an interest in reviving a functionally abandoned rail line. How important to your consideration would the financial viability of an entity like that be?

Mr. OBERMAN. You are saying of a line that has been discontinued, but then an entity wants to reinstate it for rail service?

Mr. HUFFMAN. Yes, and is opposing the railbanking alternative.

Mr. OBERMAN. Well, we listen to those requests.

We generally are mandated by statute to make it easy for rail lines to come into existence. That is one of our jobs. And there is a, I guess, a spectrum on how much we look at financial viability.

Generally speaking, we take the view that the market will determine whether a rail line is viable. But there have been cases. There was one involving a proposal to build a multibillion-dollar railroad around Chicago, but the applicant only had $150 in the bank. This preceded me. That is an example, an extreme one, where we look at financial viability. But——

Mr. HUFFMAN [interrupting]. That is very helpful.

Mr. OBERMAN [continuing]. Normally——

Mr. HUFFMAN [interposing]. Yes. Thank you.

Mr. OBERMAN [continuing]. Normally, we don't.

Mr. HUFFMAN. Mr. Chair, and then finally, in a situation like that, would the Board require that entity to engage with the community and the public in an open and transparent way?

In other words, if they are secretive about who they are, about where their funding comes from, is that a factor that you would consider?

Mr. OBERMAN. Well, it is not an issue that has come before us, but I generally believe in full disclosure. And when we get those kinds of applications, we have the ability to insist on a more fulsome application if the facts would warrant, which would include revealing the basic financial structure of the entity and so forth.

Mr. HUFFMAN. All right.

Mr. OBERMAN. So, I think the general answer to your question is yes, but I think it is very much case-specific.

Mr. HUFFMAN. Mr. Chairman, I really appreciate that. I do believe that where existing rail lines can continue to be used for rail they should be, and where abandoned lines can be brought back into rail service in a way that makes economic sense and has public support, that should happen, too.

But I ask these questions because there is a railroad in my district that abandoned that line through the Eel River Canyon a long time ago. It just cost far too much to operate it. It has fallen into terrible disrepair. And that incumbent railroad and local communities have struck a deal to do something that does make sense, to create the 320-mile Great Redwood Trail, the longest continuous railbank trail in America.

And just as the Surface Transportation Board was considering the application for abandonment, a very shadowy LLC came along to propose an interest in taking it over for a coal export scheme that is very unlikely to happen. It certainly is at odds with the climate policies expressed by the administration and Secretary Buttigieg.

So, I just hope that these factors will be on your mind as you discharge your responsibility, and very much appreciate [inaudible].

Mr. PAYNE. The gentleman's time has expired. We will now hear from Mrs. Steel from California for 5 minutes.

[No response.]

Mr. PAYNE. She is not there? OK.

Next we will hear from the gentleman from Massachusetts, Mr. Lynch, for 5 minutes.

Mr. LYNCH. Why, thank you, Mr. Chairman. I want to thank the Board members for attending and helping the committee with its work.

I do want to correct the record. So, there was an earlier statement by one of my colleagues that the average rail worker earned about $137,000 a year. I just about fell out of my chair. I was going to go apply. We are having trouble getting rail workers in Massachusetts, because we—as the Chair has mentioned, we lost—and one of my colleagues on the Republican side mentioned—we lost 45,000 rail workers over the past few years.

But according to salary.com, it lists the salary as between $48,000 and $80,000. The average salary is about $64,000. Electrical engineers, obviously, get paid on the higher end. ZipRecruiter.com, as well, lists the salary between $24,000 and

$60,000. And actually, it comes out to between $18 an hour and $28 an hour. So, that is what they are making.

And the Bureau of Labor Statistics, which does this for a living, reports that the average salary is $64,150 a year. So, I just wanted to disabuse anyone of that notion that they are making more than double that.

I met with the BLE, the Brotherhood of Locomotive Engineers, Teamsters, the other night. And they have told me that they have been 2 years without a contract, and that they were having trouble holding on to people because most people can't go a couple of years. And it may be a couple of more years before they ever see a raise.

I see there is a need for workers, and $64,000 is OK. We should be able to attract people at that salary, I wish it was more. And I see the service is going down, and I am just—it is sort of a paradox, where we need workers at a decent salary and yet we can't seem to get a collective bargaining agreement for any of these rail unions. They have all been without a contract for a couple of years.

And I am just curious if any of the members there have any sense of what is causing that reluctance on the part of the carriers, the rail companies, to come to the table and work out an agreeable solution.

Mr. OBERMAN. Well, it is the question of the hour, I think, Congressman.

And I didn't want to contradict the other congressman. There is a lot of overtime in the rail industry, and there are some workers who make——

Mr. LYNCH [interrupting]. There is not enough workers.

Mr. OBERMAN [continuing]. Yes, who make $137,000. I didn't have the average numbers at hand. I am glad you offered them, but I didn't think he was on target, but I wasn't sure I was calculating it.

We don't have jurisdiction over the rail labor contracting. And of course, there is a national bargaining session going on as we speak. And then there is an entire statutory provision that you all have created many decades ago for Presidential emergency boards, and so forth. And I am not enough of a labor expert to tell you whether that is a help or a hindrance to their reaching a contract.

But I think we have seen a general trend, where the railroads have been—they have been not spending enough money on their workforces. But what I hear——

Mr. LYNCH [interrupting]. I do want to—if you don't have a ready answer, I would rather move on.

Mr. OBERMAN. Sure.

Mr. LYNCH. Mr. Primus, it is good to see you. It has been a while, but it is good to see you doing well. I know you had comments in the press a while ago about the diminution of service and the extension of—the delays.

Some companies are saying that the delays—their delivery times are increased by 15 to 20 percent. I am just wondering if you have any thoughts about the long-term impacts of that on the supply chain, and of cost to consumers?

Mr. PRIMUS. Yes, I do. And it is good to see the delegation represented here this morning.

On your previous question, I will just say this also. You can see the attention that the railroads have given to labor when you look at how much they have cut the labor force, and how much they are not respecting and looking out for their best interests. You can see that. They are giving more money to their shareholders. There hasn't been one major bonus or pay raise in those years, those couple of years that they have been working us out of COVID and getting folks back on. No hint towards that.

With respect to service, absolutely. Service degradation is the reason why we are paying more in food prices. It is a reason why we are seeing increases, even though it dropped last month, increases in gas prices. You are going to see problems in these powerplants, these coal-fired powerplants. They are not getting coal. You can see it in water treatment plants. They are not getting the chemicals to treat the water.

So, yes, I mean, service is going directly to the consumers. It is affecting and hurting the consumers, not just in the pocketbook, but also with their health and with their safety.

Mr. LYNCH. Thank you.

Thank you, Mr. Chairman. I yield back. Thank you for your courtesy.

Mr. PAYNE. The gentleman yields back. I will now hear from my good friend, the gentleman from Illinois, Mr. Davis, for 5 minutes.

Mr. RODNEY DAVIS OF ILLINOIS. Thank you to my good friend, the chairman. It is great to see you, my friend. I appreciate being able to walk right into the hearing and come up next in questions. What a coincidence, or the chairman is giving me some preference, but I would say it is probably more a coincidence, sir.

Great to see the members here today of the Board. We appreciate the opportunity to hear from you. I am actually the lead Republication on the House Administration Committee here in Congress. And the issue I am going to bring up today relates more to some of the issues we have been facing there, but they impact many of the issues that we talked about today.

I have had discussions with folks in the election space who have serious concerns with a paper shortage in the upcoming elections. Most recently, I convened a roundtable discussion on this topic to hear from stakeholders about the critical need to use paper for ballots and for other election materials. I am committed to helping broker a solution for these concerns to ensure that elections officials have the materials they need.

As you know, several commodities are exempt from STB oversight, including forest products and paper. I understand the STB has considered revoking some or all of the commodity exemptions for a decade now.

I will start with you, Mr. Oberman, home State guy. Do you have any updates on the STB's consideration of these exemptions?

Mr. OBERMAN. Thank you, Congressman. I think the last time I was in your office I was chairman of Metra, and look what happened to me.

[Laughter.]

Mr. OBERMAN. The answer is that we have a pending rule change to lift those exemptions. And it has taken a long time because the industry wanted us to consider a much more sort of an economic analysis of how we have done it. We thought we had a solution, and it turned out not to be one. So, that rule is still pending.

But I will say that we have the ability to lift an exemption for purposes of a specific case. We just did that in a pending matter involving a different kind of commodity. And I had heard, when I first joined the Board, a number of complaints from the forestry industry, the paper industry, about a lack of service and de-marketing by railroads. But I have to say I have not heard such a complaint recently.

But if there are such concerns, those shippers can come to us right now, and ask us for relief and also to lift the exemption for the purpose of that proceeding. And it is something that we would listen to, and they won't have to wait for the overall rule if they have a valid complaint for lack of service. So, if that is going on—and I am not aware of it, but I hope that you will encourage those folks to come—bring it to our attention immediately, and we will try to deal with the problem.

Mr. RODNEY DAVIS OF ILLINOIS. Well, I certainly will. And I appreciate the opportunity to hear that update.

The election and having faith in our election systems, it is too important to be disrupted by a product shortage that, if we can address together, we can make sure that that does not happen.

Did anybody else up at the dais have any comments on this?

Mr. OBERMAN. I would say, by the way, based on the cases we are hearing right now, there doesn't seem to be a shortage of paper. You ought to see the paper that the lawyers are filing with us.

Mr. RODNEY DAVIS OF ILLINOIS. Well, and I asked the same question when we had the roundtable. But it is a certain type of paper that is not being produced as much by producers that is required for election administrators and election equipment to operate effectively. And that is what is concerning to us.

So, I appreciate being able to have the ability to work with you all to see if there is a problem remaining as we move closer to the elections this year that we can work in a very collaborative way to make sure that doesn't happen.

I don't see your name tag on the end. I apologize.

Ms. HEDLUND. Right. I am also originally from Illinois.

Mr. RODNEY DAVIS OF ILLINOIS. Oh, great. Where at?

Ms. HEDLUND. The South Side of Chicago.

Mr. RODNEY DAVIS OF ILLINOIS. OK. Well, I am really far South Side of Chicago.

Ms. HEDLUND. Yes, right.

[Laughter.]

Ms. HEDLUND. This is stunning, what you have said. As I expressed earlier, we are worrying about world famine, and now you are telling us we should be worrying about saving our democracy.

Mr. RODNEY DAVIS OF ILLINOIS. Well, and that is why we wanted to have the roundtable with the producers, and ensure that our election administrators, election equipment providers had a voice, and to really offer concerns.

And my main concern in bringing this up here today is really to be able, again, to collaborate with the STB if we see that that shortage actually happens.

Now, hopefully it won't. Hopefully, the problem, bringing it to the attention of producers months ago may have corrected it, and I certainly hope so. But it is something that I think the STB needs to be concerned about, and I will let you know what we hear, based on the feedback from Mr. Oberman.

So, thank you. I yield back the balance of my time.

Mr. PAYNE. The gentleman yields back. And we will now hear from the gentleman from Illinois, Mr. García, for 5 minutes.

Mr. GARCÍA OF ILLINOIS. Thank you, Chairman Payne and Chair DeFazio, for holding this hearing, and thank you to the STB Board for appearing today. I, of course, want to recognize my friend and STB Chairman, Marty Oberman, who is here today. Marty and I, of course, served together in the Chicago City Council during a very tumultuous period, but also historic.

So, great to see you, Marty.

Since 2015, the Class I railroads have reduced the workforce by 29 percent, resulting in tens of thousands of job losses, of course. It is clear from the recent hearings that the Surface Transportation Board had on freight rail service that these cuts have resulted in the Class I railroads being unable to provide the level or quality of rail service that we need.

I strongly support Chair Oberman and the Surface Transportation Board's plans to implement regulations and policies that will address the negative consequences that these job cuts have had on railroads, its workers, Amtrak, and shippers.

Chair Oberman, certain rail shippers complain of railroad de-marketing, meaning that railroads are refusing to serve them, or are placing onerous conditions on service because the railroads feel that these shippers cannot be served at the railroads' desired profit margin. Do you believe that this is happening?

And if so, do you believe that such practices are consistent with the common carrier obligation?

Mr. OBERMAN. Excellent question, Congressman. And you are the only congressman I can call Chuy, so, I will.

Mr. GARCÍA OF ILLINOIS. Thank you.

Mr. OBERMAN. We started life together, political life.

There is little doubt in my mind, based on a large number of anecdotal reports and some data, that the railroads have been engaged in—the Class I's—in de-marketing for a number of years.

And if you look at the statistics about carloads and growth, or lack thereof, you will see that over the last 1½ decades or so, as the economy has grown substantially, carloads on railroads have not, which means there is a negative impact on marketing many kinds of commodities which ought to be on rail, but which are not as profitable as some others, and so, the railroads have assiduously tried to avoid that kind of business because it doesn't make their numbers look as good for their stock prices.

I do think a de-marketing effort by railroad, if it can be proven, does implicate the common carrier obligation. And it is something that we have the current authority to look at.

Part of the problem is getting these affected shippers to bring their complaints to us on a case-by-case basis. They are expensive, they are time-consuming. And a lot of shippers, I think, who are de-marketed just find it easier to move their stuff on truck, rather than engage in complex litigation.

But it is one of the areas—just thinking back to Chairman DeFazio's inquiry about the common carrier obligation—that I would love to be able to explore in more detail, and see if we can't come up with a way to counter the incentives for de-marketing. But it is definitely a real phenomenon, Chuy.

Mr. GARCÍA OF ILLINOIS. Yes, sir. Well, thank you, Chairman.

Another question. Commuter railroads currently have very limited abilities to bring cases before the Surface Transportation Board when it comes to matters like negotiations with freight railroads on adding service or resolving time performance issues.

As Congress considers reauthorization of the STB, do you believe that strengthening the ability for commuter railroads to bring these matters before the Surface Transportation Board would help resolve some of these important issues?

Mr. OBERMAN. I do. I can look at this from both sides of that aisle, because I had the experience at a commuter railroad of having to interact with the Class I's. And generally, Metra had good relationships with Class I's, but there were points of contest.

But we are well suited, I think, to manage those kinds of relationships because we already are assigned to manage the interrelationships between passenger rail on Amtrak that Amtrak provides and freight rail. And while commuter rail is different from, certainly, from long-distance or intercity Amtrak service, the concepts of being cognizant, of making sure that rail service functions fluidly while still providing passenger service over the same right-of-way, is one that we are very experienced with.

And I have been asked about that. I don't think we need to lobby for more duties because we are filled up. But if the Congress wanted to ask this Board to be in the position to mediate some of those relationships, I think we would be a suitable place to do it.

Mr. GARCÍA OF ILLINOIS. Thank you so much, Marty.

And Mr. Chairman, I yield back.

Mr. PAYNE. Thank you, the gentleman yields back. We will now hear from the gentlelady from California, Mrs. Steel, for 5 minutes.

Mrs. STEEL. Thank you very much, Mr. Chairman. Thank you to the witness, Mr. Oberman.

Significant disruptions to our Nation's supply chain have had a ripple effect, hitting American families in their wallets as inflation continues its grip on our Nation.

Burdensome regulatory efforts can impose significant operational disruptions on the freight transportation sector. A recent proposal by the Board, which would require railroads to turn over traffic to competitors, would ultimately increase the complexity of moves, increase network fluidity, and exacerbate current difficulties with the supply chains. At a time when the Federal Government is investing significant resources in identifying and addressing issues that disrupt supply chains, it seems counterintuitive to pursue regulatory policies that could further slow down the flow of goods.

Mr. Oberman, will you commit to ensuring that the Board fully considers the impact of these proposals on the functioning of the supply chain before taking any action?

Mr. OBERMAN. Congressman, thank you for the question. We are in the process of doing just that, and we always consider, because it is our job, the impact of what we do on freight rail operations.

But I will just repeat what I alluded to earlier, and that is for the—currently, the supply chain has been so bollocksed up by the railroads that anything we could do, I think, would only improve the situation. And that is what we are trying to do before we act.

Mrs. STEEL. Thank you for your commitment.

As it relates to the supply chain crisis, can you share with the committee all of the data and evidence you have asserting that freight rail service has solely become both inconsistent and unreliable?

Mr. OBERMAN. All the data we have is at your command, Congressman, and I think we do supply the committee now with anything that you have asked for. But we are happy to do it. The more sunshine we can shed on this situation, the better.

Mrs. STEEL. I really appreciate that, your answer.

And I yield back, Mr. Chairman.

Mr. PAYNE. Thank you. The gentlelady yields back.

That concludes the questions that we have from Members at the hearing today.

I would like to again thank each of the witnesses for your testimony today.

And I ask unanimous consent that the record of today's hearing remain open until such time as our witnesses have provided answers to any questions that may be submitted to them in writing.

I also ask unanimous consent that the record remain open for 15 days for any additional comments and information submitted by Members or witnesses to be included in the record of today's hearing.

Without objection, so ordered.

This subcommittee stands adjourned.

[Whereupon, at 12:01 p.m., the subcommittee was adjourned.]

SUBMISSIONS FOR THE RECORD

Prepared Statement of Hon. Sam Graves, a Representative in Congress from the State of Missouri, and Ranking Member, Committee on Transportation and Infrastructure

Thank you, Chair Payne, and thank you to our witnesses for being here today.

In follow-up to the March 8th hearing, which examined stakeholder perspectives on the Surface Transportation Board's reauthorization, we will hear testimony today from the Board itself.

This year alone, the STB has multiple important issues before it, including several large rulemakings, the review of a significant merger proposal, and the potential resumption of Amtrak service on the Gulf Coast.

The Surface Transportation Board Reauthorization Act of 2015 was the STB's first reauthorization since 1996, which occurred after a thorough and deliberative analysis of ways the Board could better function based on a review of its operations in the roughly 20 years prior.

Recently, the STB has received funding through continuing resolutions. The Fiscal Year 2022 appropriations bill passed last year would provide a full year of funding for the agency.

It is important to hear from the Board on its current workload, its needs, and how Congress can potentially support its important mission without negatively impacting the STB's ample workload.

I look forward to hearing more from the STB members on these issues.

Thank you, Chair Payne. I yield back.

Prepared Statement of Hon. Eddie Bernice Johnson, a Representative in Congress from the State of Texas, Submitted for the Record by Hon. Donald M. Payne, Jr.

Thank you, Chairman Payne and Ranking Member Crawford for holding today's hearing. I would also like to thank our outstanding witnesses for testifying before us today.

I want to use my time to educate the members of the Surface Transportation Board (STB) on the proposed I–20 Corridor passenger rail project. This critically important passenger rail service will provide new transportation options for our Southern region, generate economic development and good-paying jobs, reduce highway congestion, and promote energy efficiency.

As the STB reviews the merger application filed by Canadian Pacific Railway Limited (CP) and Kansas City Southern Railway Company (KCS), I strongly encourage the STB to include the use of passenger rail on this line as a condition when deciding this case.

The I–20 Corridor Council, a multi-state coalition of mayors and other elected officials, councils of governments, business and economic development leaders, chamber and tourism representatives, college and university presidents along the route have been vocal in strong support for this passenger rail connections for many years. In fact, Members of Congress, I–20 Corridor Coalition members, and other interested parties have contacted the Surface Transportation Board (STB) to express their support for making the use of passenger rail a condition in the sale of this rail property to Canadian Pacific.

The proposed I–20 Corridor passenger rail project would not only provide an East-West connection between two of our nation's fastest-growing urban mega-regions (greater Dallas/Fort Worth, with 7.5 million in population, and greater Atlanta with 6 million), but would also connect the rural communities and smaller cities along the route to these new areas and beyond. The railroad tracks for this 815-mile route between Fort Worth and Atlanta are already in place, with Amtrak service currently operating on much of the line.

There is a 345-mile portion between Marshall, Texas and Meridian, Mississippi which, like the rest of the route, already has existing right of way but does not currently have passenger rail service. All that would be needed is relatively modest funding for rail sidings and an agreement with the host railroads in coordinating freight and passenger rail service.

Two comprehensive studies have already been completed on the I–20 Corridor rail route. The first study, completed by Amtrak, determined that the proposed route would have strong ridership numbers and be economically viable. The second study, completed by the Texas Department of Transportation and the I–20 Corridor Council, demonstrates that the capacity could be increased to allow new passenger service and improved freight along the route for a cost of less than some $100 million. The study also found that freight traffic would not be adversely affected by this expanded passenger service.

This project has the potential to provide new tourism dollars to the region, a link to other local and regional rail and transit hubs, a new emergency evacuation route, and access to numerous superb institutions of higher learning on or near the route, including more than twenty Historically Black Colleges and Universities.

In a recent meeting that I and members of the I–20 Corridor Council had with Amtrak President Stephen Garner, he expressed that this project was a good opportunity to create synergies with other long-distance routes and agreed to update the analysis done in 2015.

At the request of the freight railroads, Congress enacted the Rail Passenger Service Act of 1970 creating Amtrak, which allowed freight railroads to concentrate on their profitable freight business in return for agreeing to accommodate and facilitate Amtrak operations. Unfortunately, some freight railroads continue to thwart passenger rail's access to their lines and fail to make them a priority during operations.

Knowing how important the I–20 Amtrak project is to the Southern region of our country and knowing that freight railroads continue to violate the Rail Passenger Service Act, I strongly encourage the board to make the use of passenger rail a condition in the Canadian Pacific and Kansas City Southern merger, and advocate for passenger rail whenever possible.

Statement of Ian Jefferies, President and Chief Executive Officer, Association of American Railroads, Submitted for the Record by Hon. Donald M. Payne, Jr.

On behalf of the freight railroad members of the Association of American Railroads (AAR), thank you for the opportunity to submit this statement for the record. AAR's members include the seven Class I freight railroads and many other railroads that together account for the vast majority of U.S. freight railroad mileage, revenue, employees, and traffic. Amtrak is also a member of AAR, as are various commuter railroads that, in aggregate, account for more than 80 percent of U.S. commuter railroad trips. I was pleased to testify before this Subcommittee on March 8, 2022, with other Surface Transportation Board (STB) stakeholders, and I appreciate the opportunity to update the Subcommittee on several new issues that have since arisen.

Railroads are proud to play a major role in extremely complex global supply chains, working in coordination with steamship lines, truckers, ports, drayage providers, and owners of chassis, shipping containers, and warehouses, as well as manufacturers, wholesalers, and retailers of goods. To ensure freight is delivered safely, efficiently, and when expected, every stakeholder must do their part to maintain a consistent flow of freight and avoid bottlenecks, and under normal circumstances, railroads do just that. That said, current circumstances are not normal, and, for many of our customers, rail service in recent months has not been of the quality they have come to expect. Railroads recognize that poor service is not a recipe for growth and know improvement is necessary.

The causes of recent rail service issues are numerous, often overlapping, and sometimes beyond the control of any single railroad. Railroads are working tirelessly to tackle these service challenges and remain fully committed to restoring service to the high levels their customers deserve and railroads themselves expect.

It is important to note that even with these service constraints, railroads today are moving a tremendous amount of freight safely and effectively. In the first quarter of 2022, railroads moved more chemicals than in any other quarter in history, the second most grain for a first quarter since 2011, and the fourth most intermodal units for a first quarter in history. In the first 16 weeks of 2022, rail coal volumes were up 7.8 percent, food carloads were up 8.1 percent, and carloads of crushed stone, sand, and gravel were up 11.9 percent over the same period in 2021.

In this statement, I will more thoroughly discuss a few specific factors that have contributed to recent rail service challenges and steps railroads are taking to overcome them.

THE COVID–19 PANDEMIC

Over the past two years, supply chain disruptions stemming from the COVID–19 pandemic have been non-stop and cascading, with significant impacts to global manufacturing capability, demand, employment, and consumption patterns. Around the world, global trade has been disrupted as COVID–19 cases impeded vessel operations, caused slowdowns or near-complete cessation of port activities, and impacted operations at far-flung manufacturers and raw material providers. Meanwhile, variations in state and local stay-at-home orders caused further unpredictability in production and volumes for certain industries.

A rapid, unexpected shift in consumer spending patterns compounded these problems. Retailers assumed the sudden drop in consumer spending at the start of the pandemic would persist and were unprepared when the economy quickly recovered and demand for all kinds of goods rose sharply. Retailers have been playing catch-up ever since.

Like consumer spending, rail traffic fell sharply when the pandemic began but rebounded quickly thereafter; most notably rail intermodal traffic rose sharply despite predictions that such volumes would stay weak for months to come. Some weeks in late 2020 and the first half of 2021, U.S. railroads were handling more than 300,000 containers and trailers per week, levels no one expected when the pandemic began. These significant gains in rail intermodal volumes paralleled gains in activity at our nation's ports. Eventually ports, railroads, and other supply chain participants became bogged down, resulting in the current supply chain challenges our nation is facing.

For railroads, the single most problematic supply chain development over the past year has been the unwillingness or inability of many rail customers to effectively manage their flow of traffic, especially intermodal containers, into and out of rail terminals. Freight must be cleared out to make room for new freight moving in, and rail terminals were not designed for, and cannot physically accommodate, long-term storage of significant amounts of freight. Further, when rail terminals become congested, trains will back up on the mainlines serving those terminals, causing further delays that cascade across rail's highly interconnected network and that negatively impact railroads' ability to serve all their customers.

Railroads have been using various operational levers at their disposal to ameliorate congestion on their networks and enhance system fluidity, including providing financial incentives to customers to encourage weekend in-gating at certain facilities or to take a container out when containers are brought in to expedite freight flows. Railroads are working with their customers to better understand their needs and adjusting equipment use to improve their operations, including pulling equipment out of storage, prepositioning resources where needed regionally to meet customer demand, maximizing the effective utilization of truck chassis, and even re-routing traffic from one terminal to another or reopening shuttered terminals to minimize congestion.

The pandemic's ongoing impacts on commerce will require dedication and hard work to overcome. For their part, railroads will continue to work with their customers and supply chain partners and use all the tools at their disposal to ensure they continue to meet the nation's current and future freight transportation demand. This is an evolving process, but railroads know how important it is and will continue to strive for further improvements.

WORKFORCE NEEDS

Railroads greatly appreciate the skill and professionalism of their employees. But, like firms in virtually every industry today and despite offering very competitive pay and benefits, railroads face significant difficulty in attracting and retaining enough qualified employees. In 2020, the average U.S. Class I freight rail employee earned total compensation of $135,700. By contrast, the average compensation of a U.S. employee in 2020 was $87,000, just 64 percent of the rail industry's compensation.

The labor market today is as tight as it has ever been, and railroads face intense competition for potential employees. According to the Bureau of Labor Statistics, the overall national unemployment rate in March 2022 was 3.6 percent, barely above its 40-year low of 3.5 percent immediately prior to the pandemic. There were approximately 11.3 million job openings as of February 2022, more than 60 percent higher than in a typical month before the pandemic. In recent months, there have been an unprecedented 1.8 job openings for every unemployed person. The transportation, warehousing, and utilities industries had 489,000 job openings in February 2022. Manufacturing had another 808,000 job openings, and construction 381,000. Men and women drawn to these industries are often the same ones who might be interested in railroad operating jobs.

Railroads are working extremely hard to fill available openings through hiring bonuses, refer-a-friend payments, and other incentives. Railroads are also encouraging their current employees to help meet demand, including through vacation buybacks and incentive payments to move to high-demand regions of the network.

Railroads are making progress. The number of "train and engine" employees on Class I railroads—the men and women in the locomotive cabs operating trains—was higher in March 2022 than in nearly two years. Individual railroads have hundreds of people in their training pipelines and are confident that workforce issues will become increasingly less vexing in the months ahead.

Some have suggested that if railroads had employed extra workers pre-pandemic, they would not be facing labor shortages now. However, it is important to remember that the number of workers employed by railroads pre-pandemic would not have changed the number of workers needed for railroads to operate during the pandemic. Additional workers pre-pandemic would simply have increased the number of workers who were furloughed during the pandemic and would likely have little impact on current labor shortages.

Finally, the particularities of the railroad operating and regulatory environment present unique hiring, training, and retention challenges not faced by many other industries when addressing the current labor shortage. Hiring and training new railroad operating employees is a time- and resource-intensive process that is heavily regulated by the Federal Railroad Administration (FRA). Before performing duties as a qualified train crew member, prospective employees must undergo rigorous classroom, field, and on-the-job training and be able to pass applicable railroad operating and safety rules exams. They must also demonstrate to railroad managers that they can perform their real-world duties in a safe, regulatory-compliant manner and show that they are qualified on the physical characteristics of the territories over which they operate. All told, this process takes a minimum of several months, and the overall path to becoming a conductor and eventually a certified locomotive engineer could take years. Railroads need a constructive partner at the FRA in approving innovative, efficient ways to train and certify new employees without impacting safety.

Role for Regulators

Railroads understand the legitimate interest of the STB and other policymakers in current rail service issues. In fact, just two weeks ago railroads participated in the STB's two-day hearing that examined this matter, along with a broad group of stakeholders, including rail customers, rail labor, policymakers, and financial analysts. During that hearing, railroads respectfully suggested that members of the STB and other policymakers should exercise caution and refrain from taking actions in haste that could inadvertently impede the ability of railroads to be responsive to customer needs.

For example, some have claimed that implementing a "forced switching" rule would improve rail service. As I testified before this Subcommittee earlier this year, that is incorrect. There is no reason to believe forced switching would improve the service challenges railroads are facing today. Instead, forced switching would add tremendous operational complexity, negatively impact rail operations, and undermine the incentives for private infrastructure investment.

Conclusion

The most immediate task of our nation's railroads is to help our economy recover and reach its full potential. Railroads are well aware that their service levels are not currently what they, their customers, or policymakers want them to be. And as I just noted, the STB has been very engaged on service issues: in addition to the two-day rail service hearing, in the last several months, the Board proposed a revised emergency service rule and invited comments from stakeholders on first-mile/last-mile data issues, all while considering other non-service-related issues. We hope that the STB will continue to engage with the railroads in a constructive and thoughtful way as we work through this phase of recovery. Resolving these challenges will require flexibility, innovation, and determination—characteristics the rail industry and its employees have demonstrated many times in the past.

Letter of April 21, 2022, from the Agricultural Transportation Working Group to the Surface Transportation Board, Submitted for the Record by Hon. Eric A. "Rick" Crawford

APRIL 21, 2022.

Surface Transportation Board,
395 E St., S.W.,
Washington, DC 20423.

DEAR SURFACE TRANSPORTATION BOARD MEMBERS:

The undersigned members of the Agricultural Transportation Working Group (ATWG) strongly urge the Surface Transportation Board (Board) to immediately seek resolution of the current nationwide freight rail service challenges and take appropriate measures to deter, and hopefully prevent future service failures of the magnitude currently being experienced.

The farmers, ranchers, food and beverage manufacturers, processors, package suppliers, farm supply dealers and agricultural product marketers that comprise our collective memberships support and sustain millions of American jobs. Our members provide safe, abundant, affordable, and sustainably produced human and animal food, fiber and agricultural products that are essential to the health and well-being of tens of millions of U.S. and global consumers. Competitive and reliable railroad freight transportation is essential to meet these objectives.

Reliable and cost-competitive railroad freight service is essential because U.S. agricultural producers and agribusinesses compete in the global market for agricultural products ranging from raw commodities to value-added products, such as meat, poultry, dairy, cotton and biofuels. Economic multipliers associated with the U.S. food and agricultural sector accrue to the broader U.S. economy, particularly in terms of job creation and economic growth. According to data from the U.S. Department of Commerce, as well as analysis conducted by the U.S. Department of Agriculture, the food and agricultural sector contributes $1.1 trillion to the U.S. gross domestic product—a 5 percent share—and supports more than twenty-two million full- and part-time U.S. jobs—constituting 11 percent of total U.S. employment.

The current inability of several Class I carriers to provide reliable rail service to their customers is impacting farmgate commodity prices and elevating food prices for consumers. Neither of these outcomes is beneficial for individual Americans and the U.S. economy. While several factors contribute to these carriers' rail service challenges, we consistently hear that significant reductions in train crew numbers and other personnel have severely hamstrung the rail carriers' ability to maintain their prior levels of service, to overcome the typical day-to-day issues that affect railroad service plans, and to respond to changes in rail freight demand. Moreover, the mismatch between the importance of reliable and cost-effective freight rail transportation to our nation's economy and the lack of effective competition between the Class I railroads remains of great concern to the ATWG members.

The ATWG believes future service challenges can be deterred, or even prevented, through increased competition, and by implementing financial incentives for railroads to perform more efficiently utilizing the same concepts that railroads use to incentivize their customers to be more efficient. For this reason, the ATWG applauds the Board's recent decision to accept public comments on the Petition for Rulemaking in Docket No. EP 768 filed by the North America Freight Car Association, the National Grain and Feed Association, the Chlorine Institute, and the National Oilseed Processors Association. The petition asks the Board to adopt rules that will permit rail customers to levy financial penalties on railroads for their inefficient use of private railcars, which make up many of the cars that haul processed agricultural commodities. The ATWG believes the Board should also explore other ways to utilize these principles to incentivize the Class I railroads to provide more reliable service for rail carrier provided railcars that haul most of the raw agricultural commodities.

We urge the Board to expeditiously conclude its work in Docket No. EP 711 (Sub-No. 1) for the purpose of establishing reciprocal switching rules that enable the creation of rail-to-rail competition at qualifying interchanges between carriers. We also believe rail service will improve through additional data reporting, such as first-mile, last-mile rail service reporting, and by the Board developing guidance on the Board's expectations for rail carriers in meeting their statutory obligation to provide service upon reasonable request pursuant to 49 U.S.C. §11101. Lastly, we believe some rail service challenges can be forestalled by requiring all the Class I railroads to develop annual rail service assurance plans, which will provide a basis for the Board and industry stakeholders to conduct annual assessments of intended service versus actual service, and to identify and address potential issues that otherwise may result in future service deficiencies.

The ATWG urges the Board to quickly adopt these proposals to encourage better freight rail service now and in the future.

Sincerely,

AGRICULTURAL TRANSPORTATION WORKING GROUP

AGRICULTURAL RETAILERS ASSOCIATION.
AMERICAN FARM BUREAU FEDERATION.
AMERICAN FEED INDUSTRY ASSOCIATION.
AMERICAN SHEEP INDUSTRY ASSOCIATION.
AMERICAN SOYBEAN ASSOCIATION.
AMERICAN SUGAR ALLIANCE.
CONSUMER BRANDS ASSOCIATION.
CORN REFINERS ASSOCIATION.
EQUIPMENT DEALERS ASSOCIATION.
FOREST RESOURCES ASSOCIATION.
FRESH PRODUCE ASSOCIATION OF THE AMERICAS.
GROWTH ENERGY.
HARDWOOD FEDERATION.
INSTITUTE OF SHORTENING AND EDIBLE OILS.
LEATHER AND HIDE COUNCIL OF AMERICA.
NATIONAL AQUACULTURE ASSOCIATION.
NATIONAL ASSOCIATION OF WHEAT GROWERS.
NATIONAL CORN GROWERS ASSOCIATION.
NATIONAL COTTON COUNCIL.
NATIONAL COUNCIL OF FARMER COOPERATIVES.
NATIONAL FARMERS UNION.
NATIONAL GRAIN AND FEED ASSOCIATION.
NATIONAL GRANGE.
NATIONAL MILK PRODUCERS FEDERATION.
NATIONAL OILSEED PROCESSORS ASSOCIATION.
NATIONAL PORK PRODUCERS COUNCIL.
NORTH AMERICAN MEAT INSTITUTE.
NORTH AMERICAN MILLERS' ASSOCIATION.
PET FOOD INSTITUTE.
SPECIALTY SOYA AND GRAINS ALLIANCE.
THE FERTILIZER INSTITUTE.
USA RICE.
U.S. WHEAT ASSOCIATES.

CC: President Joseph R. Biden
Tom Vilsack, Secretary of U.S. Department of Agriculture
Pete Buttigieg, Secretary of U.S. Department of Transportation
Debbie Stabenow, Chair, Senate Agriculture Committee
John Boozman, Ranking Member, Senate Agriculture Committee
David Scott, Chair, House Agriculture Committee
Glenn "GT" Thompson, Ranking Member, House Agriculture Committee
Maria Cantwell, Chair, Senate Commerce Committee
Roger Wicker, Ranking Member, Senate Commerce Committee
Peter DeFazio, Chair, House Transportation and Infrastructure Committee
Sam Graves, Ranking Member, Transportation and Infrastructure Committee

Statement of Patricia Davitt Long, President, Railway Supply Institute, Submitted for the Record by Hon. Eric A. "Rick" Crawford

Chairman Payne, Ranking Member Crawford, and Members of the Subcommittee:

Thank you for convening this hearing to focus on the Board Member views on Surface Transportation Board Reauthorization and for the opportunity to submit comments for the record.

As way of background, the Railway Supply Institute (RSI) is an international trade association representing more than 160 companies involved in the manufacture of goods and services in the locomotive, freight car, maintenance of way, communications and signaling, and passenger rail industries. RSI members provide critical products to Class I and short line freight railroads, shippers, Amtrak, and transit authorities nationwide and work with these customers to create new products or services that drive enhancements in safety and efficiency across their networks.

These systems are supported by an extensive, *domestic* railway supply industry that has been a dynamic and vital part of the U.S. economy for more than 200 years, encompassing 125,000 jobs across all 50 states and paying an average wage 40 percent higher than the national average.[1] This industry also contributes billions of dollars to the national economy every year, producing $10.7 billion in federal taxes and over $6 billion in state and local taxes every year.[2] Without this robust

[1] Tracking the Power of Rail Supply, The Economic Impact of Railway Suppliers in the U.S. https://www.rsiweb.org/Files/EIS%202018/RSI-Infographic%20FINAL.pdf
[2] Id.

domestic rail supply industry, our nation's passenger and freight railroads simply could not meet their customers' needs.

As you may know, the Railroad-Shipper Transportation Advisory Council (RSTAC) is a stakeholder committee of the Surface Transportation Board (the Board) which was established pursuant to the ICC Termination Act of 1995 (*Public Law 104–88, 109 Stat. 803*). The Council consists of senior officials representing large and small shippers, and large and small railroads as well as ex-officio members including the Secretary of the Department of Transportation as well as the members of the Board.

The RSTAC also provides advice on regulatory and legislative policy matters to the Board, the Secretary of Transportation, the Senate Committee on Commerce, Science and Transportation, and the House Transportation and Infrastructure Committee.

The significant transportation policy matters upon which the RSTAC advises are focused, with particular attention, to issues of importance to small shippers and small railroads including, pursuant to the statute; car supply, rates, competition, and effective procedures for addressing legitimate shipper and other claims.

However, for nearly three decades since the forming of the RSTAC, freight railcar ownership has shifted away from railroads, with non-railroad entities now owning 74% of the entire freight railcar fleet. From time to time the RSTAC has invited freight railcar lessors to make presentations at its meetings, however discussions about car availability and other similar matters regularly take place without any representation from lessors, who as owners of 57% of the North American fleet are best informed about fleet composition. Only an Act of Congress can provide freight railcar lessors, and the RSTAC, with any regular representation.

About Independent Leasing Companies

- *57% of the 1.6 million freight railcars in North America are owned by non-railroad, independent leasing companies*. Of the remainder, 17% are owned by shippers, 16% by railroads, and 10% by TTX Company.
- Today, the replacement value of the non-railroad-owned railcar fleet is estimated to be in excess of $100 billion.

Proposed Technical Change

- The RSTAC was created by statute and as such is not subject to the Federal Advisory Committee Act. Thus, the only way for lessors to be regular participants in RSTAC meetings is to amend the statute to provide for such representation. RSI is proposing a technical change to 49 U.S. Code § 1325. Railroad-Shipper Transportation Advisory Council which *would add two non-voting seats to the RSTAC that shall be comprised of representatives of freight railcar lessors*.

This proposed change would ensure that the RSTAC's advice to the Secretary, the Board, and to Congress, consists of first-hand knowledge and input from the constituency which owns the majority of freight railcars in North America.

Conclusion

RSI members will continue investing and doing all we can to support our railroad and shipper customers in serving the mobility and economic development needs of communities across the country. We appreciate the opportunity to provide these recommendations on critical issues affecting our industry and will continue working with Members of Congress to formulate policies that enhance rail safety, security, and efficiency.

Appendix A

Proposed changes to 49 USC 1325. Railroad-Shipper Transportation Advisory Council

SEC. Railroad-Shipper Transportation Advisory Council amendments.

(a) Subsection (a) of section 1325 of title 49, United States Code, is amended by striking "19" and inserting in lieu thereof "21",

(b) Paragraph (1) of such subsection 1325 (a) of title 49, United States Code is amended by inserting "the railcar leasing," immediately before "and rail shipper industries.",

(c) Paragraph (3) of such subsection 1325 (a) of title 49 United States Code, is amended by;

(1) striking "6" and inserting in lieu thereof "8",

(2) striking "Chairman)." and inserting in lieu thereof "Chairman) and"

(3) adding at the end thereof the following new subparagraph,
"**(C)** two shall be representatives of rail car lessors.",

(d) renumbering paragraphs "(4)" and "(5)" as paragraphs "(5)" and "(6)" respectively, and—

(e) inserting the following new paragraph (4)—

"**(4)** For purposes of this section the terms "rail car leasing" and "rail car lessors" shall mean entities—

"**(A)** that own a variety of different types of rail cars and lease such rail cars to railroads or shippers under contracts that require the lessor to provide maintenance and administrative services, and

"**(B)** that are not owned or controlled by an entity or entities which are rail carriers or shippers."

Position Paper from the Railway Supply Institute, Submitted for the Record by Hon. Eric A. "Rick" Crawford

SUPPORT RAILCAR LESSOR REPRESENTATION ON THE RAILROAD-SHIPPER TRANSPORTATION ADVISORY COUNCIL (RSTAC)

ISSUE: The RSTAC currently lacks representation from independent freight railcar lessors. RSI supports the addition of *two non-voting seats to the RSTAC* to provide representation for freight railcar lessors. This would ensure the Council's advice to USDOT, the STB, and Congress has the first-hand knowledge and input from the *constituency that owns the majority of freight railcars in North America*.

BACKGROUND: The Railroad-Shipper Transportation Advisory Council (RSTAC) is a statutory Council that provides advice on regulatory, policy, and legislative matters to the Surface Transportation Board (STB), the Secretary of Transportation, the Senate Committee on Commerce, Science and Transportation, and the House Transportation and Infrastructure Committee. The Council consists of senior officials representing large and small shippers and railroads, as well as ex-officio members including the Secretary of the Department of Transportation and the five Surface Transportation Board members.

For nearly three decades since the forming of the RSTAC, freight railcar ownership has shifted away from railroads, with non-railroad entities now owning 74% of the entire freight railcar fleet. However, leasing companies still lack any form of representation on the Council. Only an Act of Congress can provide freight railcar lessors with nonvoting representation on the RSTAC.

About the RSTAC

- The Railroad-Shipper Transportation Advisory Council (RSTAC) was established pursuant to the ICC Termination Act of 1995 (Public Law 104–88, 109 Stat. 803) to advise the STB, USDOT, and relevant congressional committees on key policy issues affecting the industry.
- The RSTAC is directed by statute to provide input on "rail transportation policy issues it considers significant, with particular attention to issues of importance to small shippers and small railroads including *car supply* [emphasis added], rates, competition, and effective procedures for addressing legitimate shipper and other claims."
- The RSTAC is currently comprised of a mix of 19 voting and non-voting members. 9 voting seats are split evenly between small shippers and Class II or III railroads, while the remaining non-voting seats are currently split between the ex officio members, representatives of the Class I railroads, and representatives of large shipper organizations.

About Independent Leasing Companies

- *57% of the 1.6 million freight railcars in North America are owned by non-railroad, independent leasing companies*. Of the remainder, 17% are owned by shippers, 16% by railroads, and 10% by TTX Company.
- Today, the replacement value of the non-railroad-owned railcar fleet is estimated to be in excess of $100 billion.

Proposed Amendment

- A proposed amendment to 49 U.S. Code § 1325. Railroad-Shipper Transportation Advisory Council would add two non-voting seats to the RSTAC that shall be comprised of representatives of freight railcar lessors.

APPENDIX

QUESTIONS FROM HON. PETER A. DEFAZIO TO MARTIN J. OBERMAN, CHAIRMAN, SURFACE TRANSPORTATION BOARD

Question 1. The Class Is finally acknowledge they have a service problem, but in statements made before us three months ago and your Board a month ago, they don't acknowledge that there is a fundamental problem with the industry as a result of Wall Street's influence. Your testimony states that the STB has sole authority over railroad mergers and acquisitions.

Question 1.a. Do you have the authority to review the acquisition if a non-railroad carrier seeks to purchase a Class I, or the ever-consolidating short-line railroad industry?

ANSWER. We do not presently have the authority to review the acquisition of a Class I carrier by a non-railroad carrier where the non-railroad carrier does not otherwise control another rail carrier. *See* 49 U.S.C. § 11323(a). Where the non-railroad carrier already controls another railroad carrier, the Board has authority to review the acquisition of other railroads by the non-railroad carrier. Accordingly, the Board has authority to review the acquisition of a short-line railroad carrier by a non-railroad carrier holding company if the holding company already controls another railroad carrier.

Question 1.b. Based on what has happened with Wall Street's focus on operating ratios and its subsequent disastrous impact to rail service, do you think that is good for railroad shippers or American consumers for the STB to not have this authority?

ANSWER. In my view, the Board should have such authority so that the Board can consider whether any such acquiror of a Class I railroad will prioritize things like shareholder returns over service when determining whether the merger is consistent with the public interest under 49 U.S.C. § 11324.

Question 2. We are now a month out from your emergency orders to require service recovery plans and additional reporting information. You stated at the time that the action to require this additional information "may not be the final result" and that the Board's decision was "an immediate step." You also highlighted the rail service problems causing inflationary pressures on both food and fuel. These are emergencies.

Question 2.a. Is the Board preparing to take additional corrective action?

ANSWER. Yes, on June 13 the Board entered a follow up order to its May 6 order critiquing the carriers "service recovery plans" and ordering corrections to the initial filings by the Class Is and additional information. We will carefully monitor the carriers' actual conduct in attempting to recover for their service deficiencies. I would like the Board to take action soon on the proposal in *Revisions to Regulations for Expedited Relief for Service Emergencies*, EP 762, which, if adopted, would make changes to the Board's processes for providing relief in times of emergency. In addition, the Board is advancing several rulemakings that could have the effect of increasing the leverage of rail users to secure better rail service: *Final Offer Rate Review*, EP 755, a rulemaking that would establish a final offer procedure for challenging railroad rates in small rate disputes; *Joint Petition for Rulemaking to Establish a Voluntary Arbitration Program for Small Rate Disputes*, EP 765, a rulemaking that would establish an arbitration procedure for challenging railroad rates in small rate disputes; and *Reciprocal Switching*, EP 711, a rulemaking that would amend the Board's regulations concerning reciprocal switching. These proposed rules, if adopted, could provide additional tools to ameliorate the recent service problems. The Board is also considering using its authority to permanently collect more detailed information on service reliability and has been considering comments recently filed on this topic from interested parties.

Question 2.b. Will you seek to use your directed service authority at 49 USC 11123?

ANSWER. As of this writing, the Board has received a petition for a directed service order under 49 U.S.C. § 11123, and on June 17 issued an order granting that petition in part. I will not hesitate to encourage the Board to utilize its authority under this statute when appropriate to remedy serious service deficiencies.

Question 2.c. Why has the Board not issued civil penalties authorized at 49 USC 11901?

ANSWER. In its June 13 order issued in Docket EP 770 (Sub-No. 1), the Board threatened civil penalties against certain carriers who violated the Board's prior order requiring the production of service recovery plans. The Board has indicated its willingness to issue penalties under 49 U.S.C. § 11901 in situations where rail carriers have violated a Board statute, regulation, or a Board order and when it determines that penalties will provide the correct incentive. Another incentive would be for rail users to seek monetary damages for violation of the common carrier obligation, unreasonable practices, or breach of contract.

Question 3. Rail labor and rail shippers have rarely agreed on things, but they both recommend that we do a better job of defining the common carrier obligation. It is my understanding that railroad tariffs and contracts do not include agreed upon service delivery metrics or remedies that can be pursued when those service delivery metrics are not met.

Question 3.a. Does erratic service constitute meeting the common carrier obligation?

ANSWER. Depending on the specific circumstances of the particular shipper and the reported service failures, in my view, erratic service over a period of time could rise to the level of violating the common carrier obligation.

Question 3.b. What about forcing shippers to accept less frequent service?

ANSWER. Similarly, in my view, this is a very fact specific inquiry and under appropriate circumstances, less frequent service forced upon a shipper could constitute a common carrier violation.

Question 3.c. How about not showing up at all?

ANSWER. Again, depending on the circumstances, a carrier's failure to provide service upon request may result in violation of the common carrier obligation.

Question 3.d. Should tariffs or contracts with railroads include service delivery requirements and agreed upon remedies when the service delivery requirements are not met?

ANSWER. Yes, provided the service delivery requirements are sufficiently detailed to meaningfully stipulate the service that must be performed. To be clear, while I support the inclusion of service requirements in rail transportation contracts, review and enforcement of those agreements is generally within the jurisdiction of the courts, not the Board.

Question 4. Both the USDOT and the USDA, along with a Wall Street analyst who testified at your emergency rail service hearing, suggested that financial incentives should be part of the solution to our current rail service problems.

Question 4.a. How often has the STB assessed fines for poor service?

ANSWER. The STB has exercised its authority to impose penalties only once since it was created in 1996. In that instance, the STB imposed a $250,000 penalty on a railroad carrier for knowingly violating Board orders requiring that the carrier provide certain information on blocked crossings. The Board imposed this penalty under 49 U.S.C. § 11901(a). The total amount of the penalty reflected the fact that the Board had imposed a penalty for multiple days during which the violation remained unabated.

Question 4.b. Why aren't you assessing these fines more often?

ANSWER. The Board can issue fines and penalties when a rail carrier has violated a Board statute, regulation, or a Board order. In some instances, which are infrequent, a carrier subject to our jurisdiction will fail to fully adhere to our licensing authority, for example, and we have used the threat of fines to help bring that carrier into compliance. Shippers and rail users, whether in service or rate complaints, are generally more interested in seeking redress through monetary damages as compensation for their injuries, not the imposition of monetary penalties, which are paid to the U.S. Treasury.

Question 4.c. Are there other financial incentives we should be considering in reauthorization, such as increasing fines or something else?

ANSWER. I would support Congress increasing the dollar amount of fines authorized under 49 U.S.C. § 11901, and providing that the Board can impose those fines for violation of the common carrier obligation without, under the appropriate circumstances, requiring a showing of intent.

Question 4.d. Railroads have the ability to assess demurrage and accessorial fines and yet two-thirds of the nation's railcars are privately-owned or leased. There does not seem to be any financial incentive for railroads to provide good service. Should railcar owners have the ability to assess damages when the railroads do not provide promised service in a timely way?

ANSWER. This very issue—whether private car owners and lessors should be entitled to compensation from railroads for delay in returning private cars—is pending before the Board. The Board issued a decision on April 1, 2022 and sought public and stakeholder comment. The comment period closes on August 1, 2022. I look forward to reviewing the comments and moving forward with this proceeding informed by the views we receive.

QUESTIONS FROM HON. STEPHEN F. LYNCH TO MARTIN J. OBERMAN, CHAIRMAN, SURFACE TRANSPORTATION BOARD

Question 1. I want to know more about the environmental impacts of rail and how the board can impact climate change. Rail is three to four times more fuel efficient than trucks, on average, meaning moving freight by rail rather than truck reduces greenhouse gas emissions by up to 75 percent. I understand several companies would like to ship by rail as a way of meeting their own environmental goals. I believe we need policies that encourage more freight to move by rail because what we hear is happening is that Wall Street is pushing the railroads to only carry the most profitable freight leaving companies scrambling to move their freight by truck.

Question 1.a. Mr. Oberman, how do we make sure we're moving more freight by rail if the freight railroads themselves aren't aggressively seeking to grow?

ANSWER. The Board can encourage moving freight by rail by providing counter incentives to the Wall Street pressures you identified in your question. While I understand the railroad carriers' efforts to provide a return to their shareholders, the carriers are nonetheless part of a regulated industry which requires that they also conduct their businesses in the public interest. They have market power with respect to certain geographies and commodities, and with that power comes important public responsibilities. There is a point where the drive for ever greater shareholder profits cannot be permitted to corrode the public interest. In my view, the carriers have gone beyond that point in recent years, and I have been encouraging the Board and its staff to explore mechanisms which will create a better balance within the railroad carriers' incentive structure so that they more appropriately consider the needs of present and potential rail customers in order to move more freight from highways to rail.

Question 1.b. What is the STB's role in that?

ANSWER. The Board's broad responsibility is to protect the public interest in having a reliable, safe, efficient, and accessible interstate rail network. The Board does so by, among other things, enforcing the carriers' common carrier obligation, by providing a forum for captive shippers to challenge unreasonable rates, by closely scrutinizing the potential competitive effects and other impacts to the public of railroad combinations, and by providing transparency where appropriate.

Question 1.c. Is it enforcing their common carrier obligation?

ANSWER. Yes, but we can and should do more and, as I stated at the hearing, I am actively exploring ways to put more teeth in the common carrier obligation through regulations and case decisions.

QUESTIONS FROM HON. PETER A. DEFAZIO TO PATRICK J. FUCHS, MEMBER, SURFACE TRANSPORTATION BOARD

Question 1. If Amazon, UPS, FedEx, and even the USPS can track a package, why can't the Class I railroads spend a little bit of their record profits and provide customers accurate tracking and arrival estimates? The technology exists, so why hasn't STB mandated that?

ANSWER. Current rail service problems are exacerbated by imprecise tracking data and inaccurate arrival estimates. Many rail customers need greater supply chain visibility to better plan their operations and mitigate the effects of delays.

I am aware of several rail carrier initiatives to improve customers' visibility. First, some carriers and suppliers have created a coalition,[1] called RailPulse, to create a neutral telematics platform with car-based GPS and other sensor-derived data. With assistance from the Federal Railroad Administration and the Commonwealth of Pennsylvania, RailPulse has recently partnered with RailInc to operate the platform and started work on its pilot iteration. Second, certain Class I rail carriers are linking locomotive-based GPS data to specific cars in the train consist. Third, some carriers, and independent companies, are building new application programming interfaces to integrate different data sources and provide an improved user experience. Finally, on a longer-term basis, some companies, in collaboration with rail carriers, are working to develop battery-electric rail cars that would provide real-time tracking data. In short, rail carriers are deploying capital and pursuing opportunities to upgrade their tracking technology.

When I have questioned carriers, suppliers, and customers as to why progress has not happened sooner, most state that carriers' automatic equipment identification (AEI) system, which uses radio frequency tags to track rolling stock as it passes trackside readers installed in many areas, reduces the marginal benefit of GPS or similar changes. To be clear, because the AEI system has gaps in coverage and therefore in the provision of real-time data, rail customers would still benefit from more comprehensive car tracking. Beyond the existence of the AEI system, many state that characteristics of the rail industry create complications for visibility enhancements, such as the frequency by which cars traverse on multiple carriers (potentially implicating separate carrier platforms), the different ownership structures of cars, and the security requirements of a mode that uses fixed guideways to transport a significant amount of hazardous chemicals. However, while these challenges may have slowed the deployment of visibility improvements, the aforementioned initiatives suggest the industry is now making progress in the absence of a mandate.

That is not to say the Board does not have an important role in overseeing rail service and practices. The Board has taken action to increase information available to customers. In response to current service problems, the Board's order on service recovery plans included a requirement that certain carriers report, for the first time, service reliability indicators—and six-month performance targets[2]—on trip plan compliance[3] and first-mile / last-mile service.[4] Separately, after considering rail customers' concerns about carriers' demurrage charges, which are affected by rail service, the Board issued a final rule requiring rail carriers to include on or with their demurrage invoices the original estimated time of arrival of each car, as well as other car information.[5] The Board is also continually examining ways to improve our data collection, and it recently requested comment on increasing the transparency of first-mile / last-mile service data.[6]

The regulatory process for an industry-wide tracking technology mandate, which would involve operational, economic, and legal considerations, would take a significant amount of time and staff resources during a period of accelerating technological

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[1] The coalition now includes: one of the two largest carriers both in the East (Norfolk Southern) and in the West (Union Pacific); two of the largest holders of short line rail carriers (Genesee & Wyoming and Watco); and three major suppliers (GATX Corporation, TrinityRail, and The Greenbrier Companies).

[2] *Urgent Issues in Freight Rail Serv.—R.R. Reporting (May 6 Order)*, EP 770 (Sub-No. 1), slip op. at 4 (STB served May 6, 2022) (requiring "BNSF, CSXT, NSR, and UP to file service recovery plans explaining the specific actions that each carrier will take to improve service and the specific metrics by which it will evaluate its progress toward such improvements . . . [and including], at a minimum, a time series of key service performance indicators for the past 36 months and, for each indicator, a target that the carrier expects to hit at the end of the six-month reporting period" (citations omitted)).

[3] The *May 6 Order* requires all Class I carriers to submit on a weekly basis for six months beginning May 18, 2022: "(i) For rail cars moving in manifest service, the percentage of cars constructively or actually placed at destination within 24 hours of the original estimated time of arrival. (ii) For the following types of unit trains (grain unit, coal unit, automotive unit, crude oil unit, and ethanol unit), the percentage of trains constructively or actually placed at destination within 24 hours of the original estimated time of arrival. (iii) For intermodal traffic, the percentage of trains that arrive at destination within 24 hours of the original estimated time of arrival. For movements involving more than one rail carrier in each of the specified categories, the destination for the upstream carrier shall be treated as the interchange location with the subsequent railroad." *May 6 Order*, EP 770 (Sub-No. 1), slip op. at 6 (footnote omitted).

[4] The *May 6 Order* requires all Class I carriers to submit on a weekly basis for six months beginning May 18, 2022: "For each operating division and for the system, the percentage of scheduled spots and pulls that were fulfilled." *May 6 Order*, EP 770 (Sub-No. 1), slip op. at 6.

[5] *Demurrage Billing Requirements*, EP 759 (STB served April 6, 2021).

[6] *First-Mile / Last-Mile Service*, EP 767 (STB served Sept. 2, 2021) (seeking information on potential first-mile / last-mile (FMLM) service issues and the design of potential metrics to measure such service).

progress in the industry as well as urgent on-going proceedings at the Board. As such, I think the Board's focus and resources are best directed at continuing to further immediate public accountability for service reliability and expeditiously and fairly adjudicating the proceedings before it, rather than mandating industry-wide tracking technology. However, I expect the Board would consider the accuracy of tracking and arrival estimates if presented in case-specific service and practice proceedings.

Question 2. A number of shippers whose commodities are currently exempt from the STB's purview would like to be able to file a complaint with the STB.

Do you think it makes sense to review the list of commodity exemptions every five years?

ANSWER. The Board is currently conducting a review of its commodity exemptions, and I have carefully considered rail customer comments on that pending proceeding.[7] As a general matter, the Board should continually evaluate market conditions and other industry changes, particularly as they relate to underlying policy rationales for existing regulations. The Board should also expeditiously and fairly consider requests for regulatory changes.

Beyond our on-going review, the Board has acted on both class and individual exemptions. For example, the Board issued a final rule that revoked, in part, the class exemption that covered rail transportation of certain agricultural commodities so that the exemption would not apply to the regulation of demurrage, thereby making the agricultural commodities exemption consistent with similar class exemptions covering non-intermodal rail transportation.[8] In response to individual rail customer requests, the Board also has enabled further consideration of complaints by finding partial revocation of certain exemptions, applicable to particular customers, necessary to carry out the rail transportation policy at 49 U.S.C. 10101.

I expect our on-going exemption review will address current circumstances, and the Board can address changing circumstances on its own initiative (based on continuous market and industry evaluation) or in response to petitions for rulemaking or individual petitions for exemption revocation. Through these available processes, the Board can ensure its effectiveness by continuing to improve its data analytics capability, transportation industry expertise, and data collection, so that the Board can respond nimbly—on a continuous basis—to changing circumstances and individual petitions. In addition, when its review is not cabined to a particular set of regulations, the Board might be more open to considering the effects of a changed circumstance on its regulations more broadly. As a result, the Board's focus and resources should be directed toward increased effectiveness in continuous market and industry evaluation, which would render unnecessary a fixed interval review on a specific set of regulations.

Question from Hon. Stephen F. Lynch to Robert E. Primus, Member, Surface Transportation Board

Question 1. For intercity rail, I want to be certain we are ensuring that intercity rail is safe and that we can expand services. Since the STB has economic and certain approval authorities for intercity passenger rail, I want to make sure that areas that the average rider would consider important are deemed important by the STB.

Will the STB conduct on-time performance investigations even without being petitioned? Which routes do you anticipate investigating?

ANSWER. As a strong supporter of passenger rail, I share both your interest in the expansion of intercity passenger rail service and concerns related to its often poor On-Time Performance (OTP) metrics. Across the country, there is a real desire to expand intercity passenger rail service, for it holds the promise of not just connecting communities, but potentially generating growth opportunities for areas that today are cut off from economic centers in their respective state and/or region. From the very beginning of his Administration, President Biden aptly prioritized the need to build a more robust national intercity passenger rail network and Congress, in a bipartisan and bicameral manner, subsequently provided the necessary funding in the Infrastructure Investment and Jobs Act, to bring this vision into reality.

However, the ultimate success of this effort will not be predicated on the President's vision, or the infusion of capital provided by Congress. Rather, it will be determined by the cooperation of the freight railroads who control most of the rail network in the country and who, by and large, have not been amicable partners when

[7] *See generally*, Docket No. EP 704 (Sub-No. 1), *Review of Commodity, Boxcar, & TOFC/COFC Exemptions*.

[8] *Exclusion of Demurrage Regulation from Certain Class Exemptions*, EP 760 (STB served Feb. 28, 2020).

it comes to allowing intercity passenger rail service to operate efficiently along its lines. At issue is preference. Though the Rail Passenger Service Act of 1970, which created Amtrak, specifically called for intercity and commuter rail service provided for or by Amtrak to be given preference over that of freight trains, to date, that has not been the case. In fact, freight train interference is the leading cause of rail passenger delays and has been so since Amtrak was brought into existence.

In the Passenger Rail Investment and Improvement Act of 2008, Congress authorized the Board to investigate and adjudicate issues as they relate to the on-time performance of Amtrak's intercity passenger rail service. Following the Federal Railroad Administration's adoption of a final rule establishing metrics and standards for measuring the performance and service quality of Amtrak's intercity passenger trains, the Board has worked to establish a new Passenger Rail Unit to better address the concerns of intercity passenger rail OTP. This Unit and the Board as a whole will use its investigatory powers in addition to responding to formal complaints brought forward by concerned parties. Certainly, there are intercity passenger routes today that have historically operated on the poorer side of the OTP spectrum, and the Board is actively addressing passenger rail OTP issues on our Nation's most troublesome routes.

QUESTION FROM HON. STEPHEN F. LYNCH TO KAREN J. HEDLUND, MEMBER, SURFACE TRANSPORTATION BOARD

Question 1. For intercity rail, I want to be certain we are ensuring that intercity rail is safe and that we can expand services. Since the STB has economic and certain approval authorities for intercity passenger rail, I want to make sure that areas that the average rider would consider important are deemed important by the STB.

Will the STB conduct on-time performance investigations even without being petitioned? Which routes do you anticipate investigating?

ANSWER. The Board is closely monitoring Amtrak's customer on-time performance (OTP) statistics, with particular attention to long-distance, Northeast Corridor, and state-supported routes. The Board is well aware that Amtrak's OTP is often poor, particularly with respect to long-distance trains, which comprise nine of the ten worst-performing routes (all below 55%). (OTP by route appears in data published by the Federal Railroad Administration (FRA) under Section 207 of the Passenger Rail Investment and Improvement Act of 2008 (PRIIA), and can be found online at https://railroads.dot.gov/elibrary/fy22-q1-customer-otp.)

Section 213 of PRIIA directs the STB "to determine whether and to what extent delays or failure to achieve minimum standards are due to causes that could reasonably be addressed by a rail carrier over whose tracks the intercity passenger train operates or reasonably addressed by Amtrak or other intercity passenger rail operators." In preparation for undertaking these responsibilities, the Board has appointed a Passenger Rail Unit (PRU) Development Team to determine and fill staffing [1] and contracting needs, develop database capabilities, and craft strategies for addressing potential OTP investigations.

While no complaint has yet been filed, the Board is analyzing the FRA data and evaluating options for investigation including actively working to develop appropriate investigative procedures "to review the accuracy of the train performance data and the extent to which scheduling and congestion contribute to delays."

Some of the issues I expect will be examined are:

(1) To what extent do the current procedures of Amtrak and the host railroads for reporting, describing, and adjudicating train delays fairly portray the predominant cause of, and entity responsible for, each such delay.
(2) With respect to freight-train interference, to what degree is the host railroad simply ignoring Amtrak's right of "preference" under 49 U.S.C. 24308(c) in dispatching trains.
(3) Is the host railroad giving Amtrak advance notice of circumstances that will result in delays to Amtrak trains.
(4) For routes on which the FRA and/or states have made investments in new infrastructure to reduce delays and/or increase frequencies, is the host railroad living up to its commitments set forth in any "Service Outcomes Agreement" entered into by the relevant parties.
(5) Why state-supported routes generally perform better than long-distance routes.

Finally, we are aware that adoption by the Class I carriers of "Precision Scheduled Railroading" and similar operating approaches, in addition to recent labor re-

[1] Section 22309 of the bipartisan Infrastructure Investment and Jobs Act authorized up to ten new positions to staff the PRU.

ductions, has created challenges for both Amtrak and shippers. *See, e.g., Urgent Issues in Freight Rail Service*, EP 770 (STB served May 5, 2022) (describing the various potential causes of the current service crisis and shipper testimony received at the Board's April 2022 rail service hearing). We endeavor to have the carriers remedy the current freight service crisis while successfully addressing the OTP requirements of intercity passenger service.

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