BEFORE THE SURFACE TRANSPORTATION BOARD

Ex Parte No. 705

COMPETITION IN THE RAILROAD INDUSTRY

TESTIMONY OF CURT H. WARFEL
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On Behalf Of

230175

THE NATIONAL INDUSTRIAL TRANSPORTATION LEAGUE

I. INTRODUCTION

Chairman Elliott, Vice Chairman Begeman, and Commissioner Mulvey, I am Curt Warfel, Sourcing Manager for bulk transportation for Akzo Nobel Inc.'s North American operations. I am here today on behalf of The National Industrial Transportation League, the nation's oldest and largest organization of shippers. Accompanying me is Ms. Karyn Booth, the League's General Counsel.

The League represents approximately 600 member companies that range from some of the largest to the smallest users of the nation's transportation systems. Rail transportation is vitally important for many League Members and especially for those who ship chemicals, petroleum, agricultural, cement, and paper and forest products. Some of our Members are "captive shippers" operating facilities or shipping to customers that have access to only a single rail carrier. I am very familiar with the rail competition issues that are most important to the League's members, as I have been a member of the League and its Rail Committee for 25 years. I also served as Chairman of the Rail Committee from 1998-2001; served on the League's Board of Directors from 1998 to the present; and acted as the Chairman of the League's Board of Directors from November 2006 to November 2008.

The League applauds the Board for its willingness to evaluate the effects of dramatic reductions in rail competition over the past decades, and for considering whether changes to its current policies are needed to increase competitive rail service to sole-served shippers.

II. SUBSTANTIAL CHANGES IN THE RAIL INDUSTRY

A. Loss of Rail Competition

It is beyond dispute that the railroad industry looks and operates very differently today than it did 25 years ago when the Board adopted its competitive access policies. Bankruptcies and mergers have left just 7 Class I railroads operating today, with four dominating the industry. This major structural change has provided the railroads with substantial market power over their captive customers, and resulted in steadily rising freight rates and mediocre service for many such companies.

A survey of NITL rail shippers showed our members faced rates up to 50% higher at captive facilities than at dual-served facilities. For a number of reasons, these captive companies cannot readily shift their traffic to other modes of transport. Thus, even during our recent recession, captive shippers were forced to endure rising rail rates, despite depressed freight volumes. Year-after-year rate increases prevent rail-dependent companies from competing effectively against their domestic competitors and thwart efforts to increase exports, negatively impacting job creation in the U.S. Although a shipper may file a rate case at the Board in the hopes of achieving reduced rates, for most, this is not the preferred solution. Rather, the League believes that rail rates should be established by a competitive marketplace and <u>not</u> the government. This view mirrors the policies in the Staggers Act to "minimize the need for Federal regulatory control" and "to allow, *to the maximum extent possible*, competition and the demand for services to establish reasonable rates for transportation by rail."

The lack of sufficient competition allows railroads to raise rates unchecked, for the most part, and to dictate contract terms to their customers. Although many League members use rail contracts, the railroads often are unwilling to engage in meaningful negotiations. Illustrative of their dominant market position, many railroads simply present shippers with "take it or leave it" terms.

B. Changes in the Railroads' Financial Health

Over the past 30 years, the freight rail industry has also transformed itself into one of the most prosperous industries in America, as noted in both the 2010 Senate Commerce Committee's Report on the railroad industry, and the 2009 *Fortune* magazine article ranking railroads fifth on their list of the "most profitable industries." In fact, nothing demonstrates the financial success of the railroads better than the purchase of the BNSF Railway by Berkshire Hathaway.

This Board has asked whether the competition policies created in the mid-1980s are able to effectively address the dramatic losses in rail competition that have occurred in our nation; and whether those policies have swung the pendulum too far in favor of the railroads' need to earn adequate revenues. For the League, the answer is clear: The Board's policies have not and cannot function to fulfill the pro-competitive mandates of the Staggers Act. The simple fact is that no shipper has ever obtained competitive access under the Board's rules.

III. CHANGES IN THE STB'S COMPETITION POLICIES

So what policy changes should the Board make? Despite the railroads' attempts to mischaracterize the League's and other shippers' positions, we do not desire radical open access remedies nor do we desire change that would return the railroads to a state of financial weakness.

As rail customers, we understand that the carriers need to remain vibrant and healthy and to earn revenues that will permit them to reinvest in their networks. The railroads, on the other hand, have distorted the shippers' positions as extreme, and presented doomsday scenarios if there is any policy change.

The Board has asked parties to put aside their rhetoric and to present specific recommendations that will help guide the Board in solving today's problems. The League is ready to assist you and here is how.

We recently surveyed our diverse Rail Committee members to determine what competition policies are most important to their company, and what policies should be changed by the Board. They responded that greater access to reciprocal switching and changes to the Board's bottleneck rule would help their companies achieve more efficient, reliable and cost-competitive rail transportation and improve their ability to compete. Changes to reciprocal switching policies were rated as most important.

The League's captive rail shippers want to increase their access to a second rail carrier, while still respecting the railroad revenue policies of the Staggers Act. However, given that the Board's present competitive access rules have failed to provide any captive shipper with any access to competition, we believe the Board should open a proceeding promptly after this hearing for the purpose of developing new, administratively simple reciprocal switching rules that would provide for competitive access, where appropriate.

The League also supports the other recommendations set forth in its opening comments and the Joint Comments of Interested Shipper Parties, including that the Board should open one or more future proceedings regarding bottleneck rates and merger conditions, among other potential policy changes.

IV. CONCLUSION

The time has come for this Board to modify its policies to make them more current, relevant and responsive to the competitive challenges affecting today's railroad marketplace. The League stands ready to assist you. Thank you for allowing me to provide this testimony on behalf of the League, and I would be happy to answer any questions you may have.