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BEFORE THE
SURFACE TRANSPORTATION BOARD

DOCKET NO. EP 722
RAILROAD REVENUE ADEQUACY
DOCKET NO. EP 664 (Sub-No. 2)

PETITION OF THE WESTERN COAL TRAFFIC LEAGUE TO INSTITUTE A RULEMAKING
PROCEEDING TO ABOLISH THE USE OF THE MULTI-STAGE DISCOUNTED CASH FLOW
MODEL IN DETERMINING THE RAILROAD INDUSTRY'S COST OF EQUITY CAPITAL

Consumers United for Rail Equity (CURE) is a coalition representing over two dozen major individual rail shippers of various commodities, and large trade associations that represent more than 3,500 electric, utility, chemical, manufacturing, agriculture and forest and paper companies and their consumers. CURE is concerned with the undue exercise of freight rail market power over rail dependent shippers.

CURE believes there are several actions that can be taken to enhance the efficiency of the Surface Transportation Board (STB). CURE has been working to promote these concepts, including the topic of this docket, the idea of eliminating the STB's annual calculation of "revenue adequacy".

The Staggers Act's goal of restoring financial stability to the U.S. rail system has been achieved. This has been demonstrated repeatedly. Others will provide the STB with a detailed examination of the indicators that all show that in reality the Class I railroads achieved "revenue adequacy" a number of years ago. The industry's high levels of capital investment, the sizeable shareholder returns and the purchase of one of the Class I railroads at a significant premium to its stock price at the time are among the more obvious indications of this "revenue adequacy".

The method used by the STB to determine "revenue adequacy" for each of the Class I railroads fails to accurately reflect what Wall Street investors have indicated for several years now. The STB's evaluation appears to lag behind the reality of the financial strength of the railroads. This is shown again by the announcement this week that the STB has performed its most recent calculation and found 5 of the 7 Class I railroads to be "revenue adequate". In spite of a numerous service issues and a major recession in 2008 the stock price and market capitalization for the publicly traded railroads and the publicly available information on BNSF indicate that the financial community strongly believes the railroads are in excellent financial condition.

In passing the Staggers Act, Congress recognized that when the rail industry's revenues are adequate, a more careful review of railroad rates would be appropriate. That time has come. CURE suggests the STB's annual calculation of "revenue adequacy" for Class I carriers is no longer necessary and is an unacceptable waste of the STB's scarce resources. Continuing to focus on the annual determination of "revenue adequacy" seems to inappropriately shield railroads' pricing power from STB scrutiny. To provide greater balance between shippers and railroads in regulatory decisions, the STB's outdated revenue adequacy calculation should be eliminated and the Class I railroads should be declared to be revenue adequate.

In the event a railroad believes they have fallen into such a poor financial state that they can no longer attract the capital needed to operate and maintain their organization, they should be allowed to apply to the STB for such a determination.

The Staggers Act anticipated that the railroads would achieve revenue adequacy and provided that when this milestone was achieved, the STB would increase the forces of competition in the freight rail market. In reducing the exercise of rail market power, the STB can take steps in a number of areas to achieve the stated goal of the Staggers Act. These improvements have been addressed extensively in the past few years in STB proceedings and a significant volume of data has been included in filings made by shippers in these proceedings. We will not repeat those discussions here. Rather, we will list those actions that the STB should take: Implementing rate case reform; improving shipper access to competition; revisiting commodity exemptions; and reforming the process by which the STB determines the railroads' cost of capital.

CURE wishes to thank the STB for holding a proceeding on this important topic and we look forward to discussing this matter in more detail in the future.

Sincerely,



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