



**CITIZENS FOR
RAIL SAFETY**

224783

DATE: March 30, 2009

TO: Anne Quinlan, Secretary
Surface Transportation Board
395 E Street, SW
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FAX: 202-245-0458

FROM: Patricia Abbate, Executive Director
Citizens for Rail Safety, Inc.

Re: STB Finance Docket No. 35219 — STB-2009-0035
Union Pacific Railroad petition for relief from their common carrier obligation

Comments of Citizens for Rail Safety, Inc. (CRS)

In Resistance to the Petition

Citizens For Rail Safety, Inc. ("CRS"), founded and incorporated in 2005 by concerned citizens who are committed to improving rail safety in the United States, is a non-profit, public interest group dedicated to improving rail safety, security and capacity throughout the United States. It is a member-supported organization open to all citizens.

CRS is filing these comments in response to the above-referenced petition, published in the Federal Register (page 10991) on March 13, 2009, in which the Union Pacific Railroad ("UP") requests that the Board determine the extent of the common carrier obligation to quote rates for new, lengthy movements of chlorine where that transportation would require movement through High Threat Urban Areas and other communities. UP asserted that "... the risk of potential exposure from long distance shipments of chlorine is unnecessary..." because of the existence of closer and ample alternate chlorine supplies.

CRS's concern with UP's Petition is its casual understatement of the level of risk to life and property. No rational policy maker should dispute the critical need to analyze public safety and security issues related to the movement of hazardous cargo carried by various transportation modes. What is of great concern is that the petition by UP suggests that it should have the power to decide when and where cargo is too risky to haul and, when it does so, that it has no duty to present facts supporting those conclusions to the public, public entities, and shippers. Its position seems inconsistent with a genuine concern about public safety matters and it is more consistent with an approach designed to either ask for public indemnity (similar to Price-

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Anderson indemnity for nuclear accidents) and/or to be in a position to publicly announce an "I told you so" to the public in the event of a hazmat disaster in its operations.

As a matter of law, UP cannot receive the relief sought in its Petition for at least two reasons. First, what UP is required to do, if it really believes it is unsafe to carry chlorine cargo (or any other hazmat), is to file a petition for an embargo. Such a petition is required to be supported by Federal Railroad Administration findings confirming the existence of the unsafe conditions, the Board being without jurisdiction or competence to make those findings. See, *e.g.* *GS Roofing Products Company, et. al., v. Surface Transportation Board*, 143 F.3d 387 (8th Cir. 1997).

Second, UP failed to pursue its remedies with the FRA and DOT to have rules made concerning safety practices on long haul transport of hazmat, if it does not believe current rules protect the public and its workers from disaster. UP is barred from Board relief because it failed to exhaust its remedies. See, *In Re Classification Ratings On Chemicals, Conrail*, 3 I.C.C. 2d 331 (Dec. 19, 1986).

Since the Board held that there should be a declaratory proceeding, CRS believes it is incumbent on it to ask questions concerning public safety and hazmat movement by rail including but not limited to:

- What are the statistical risks for carrying hazmat ?
- On what basis are these risks, if any, acceptable ?
- On what basis do these risk/reward decisions get made ?
- Who will carry hazmats and what risks will be associated with that carriage if Class I carriers can refuse to carry hazmat ?

CRS objects to any process, such as the one selected by UP, which does not require UP to step forward and show the public and policy-makers the real risks associated with carrying hazmat as identified by own its internal analysis.

For the reasons stated above, CRS opposes granting UP relief from its common carrier obligation.

Respectfully submitted,



Patricia Abbate

Executive Director
for Rail Safety, Inc.

Citizens

CC: Service List Entries:

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