

**BEFORE THE
SURFACE TRANSPORTATION BOARD
WASHINGTON, D.C.**

STB FINANCE DOCKET NO. 35219

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**PETITION OF THE UNION PACIFIC RAILROAD COMPANY FOR A
DECLARATORY ORDER**

**COMMENT OF THE AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION**

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The American Short Line and Regional Railroad Association ("ASLRRRA") respectfully submits its Comments concerning the Petition of the Union Pacific Railroad Company for Declaratory Order. These comments are submitted in response to the March 10, 2009 Decision by the Board soliciting public comment on the Petition.

Statement of Interest

ASLRRRA represents 464 class II and class III railroads in the United States, Canada and Mexico as well as numerous suppliers and contractors to the short line and regional railroad industry. ASLRRRA thanks the Surface Transportation Board for inviting the comments of interested parties.

Comments

ASLRRRA heartily endorses the Petition filed by Union Pacific Railroad to 'clarify' the common carrier obligation regarding the long distance transportation of toxic-by-Inhalation

hazardous materials. While Class II and Class III railroads never carry T-I-H materials over such great expanses as the Union Pacific Petition involves, the safety and security issues raised in both long and short hauls are fundamentally the same. In fact, some of them are exacerbated in the context of the kinds of movements small railroads typically operate. For example, most Class II and Class III rail carriers have only one line and no options for rerouting these materials around High Threat Urban Areas (HTUAs) or onto shorter distance lines. Also, while it is undisputable as Union Pacific points out, that "the longer [a TIH hazardous material] is in transit and the more switching and handoffs that are required, the higher the number of people put at risk and the greater the exposure to terrorist attacks that worry government security agencies" (Union Pacific Petition at 3), it is also true that switching and handoffs constitute a far greater percentage of the total movement on the much shorter routes over which small railroads transport this material, and those operations are particularly vulnerable to safety and security breaches.

The ability of small railroads to withstand the risks of carrying TIH materials varies widely. Some carriers operate very short distances in very rural areas where the danger to property or people is relatively limited. Others, such as the New York & Atlantic (New York City), Canton Railroad (Baltimore MD), Providence & Worcester (Providence, RI), Chicago SouthShore & South Bend Railroad (Chicago, IL and Gary, IN), Pacific Harbor Line (Los Angeles and Long Beach, CA), Twin Cities & Western (Minneapolis and St. Paul, MN), and Dallas, Garland & Northeastern (Dallas, TX) operate and interchange with class I railroads in densely populated urban cores with high volumes of rail traffic. Each railroad must determine whether the risk of carrying the material is reasonable in light of its ability to sustain and respond to a serious TIH unintended discharge in its operating territory, but the increased magnitude of the risks associated with transporting TIH materials in HTUAs should be readily apparent to everyone. For a detailed discussion of the risks and challenges confronting a small, urban

railroad called upon to handle TIH, ASLRRRA urges the Board to re-visit the testimony filed by Chicago SouthShore & South Bend Railroad in SIB Ex Parte 677 Common Carrier Obligation of Railroads.

In past proceedings before the Board ASLRRRA has repeatedly noted that the public policy issues associated with the transportation of TIH materials by small railroads are particularly acute. At this time there is no small railroad who could respond adequately to the damages to the public generated by a significant TIH incident. Without adequate insurance (which is prohibitively expensive for most small railroads and unavailable in any event much of the time) the small railroad confronted with the damages arising from a TIH incident would be quickly bankrupt and liquidated, and those who are physically harmed or whose property is destroyed might have no other recourse to recoup their losses. In other words, it is the public, the victims themselves, who would pay the cost of such an incident. While there may be long term solutions to the issue, none are readily available, and that is an important reason why ASLRRRA supports Board action to allow carriers – particularly small carriers- the option to decline TIH movements when the carrier believes it cannot accept the risks involved

Thus, while ASLRRRA strongly supports Union Pacific's Petition and the analysis of long haul TIH movements it contains, it is also important to note that short movements of TIH movements within HTUAs are *mile-for-mile* of transportation even more dangerous than long haul movements. ASLRRRA believes the clarification requested by Union Pacific for its long haul routes is appropriate and necessary, but were the Board to simply address the issue of long haul TIH movements without more, it would do nothing to address the risks incurred by small railroads operating within HTUAs. ASLRRRA urges the Board not only to clarify the issues presented by Union Pacific with regard to the common carrier obligation to quote rates for long haul TIH transportation, but also to take an additional step to address the plight of Class II and

Class III rail carriers who operate in HTUAs. Specifically, ASLRRRA proposes that the Board adopt policies to clarify that the common carrier obligation does not require Class II and Class III rail carriers to quote a rate to transport TIH hazardous materials within an HTUA if the carrier determines that it cannot do so without unreasonable risk to itself or the surrounding community. This action would allow each small carrier to determine on the basis of its unique circumstances whether it can safely interchange, switch and transport TIH materials without unreasonable risk to its business and to the public within a region already designated by other agencies within the federal government as particularly vulnerable to safety and security breaches. While some of the riskiest movements might be impacted by such relief, the increased safety and security of the public will more than offset the transportation dislocation, and that new balance is a worthy result for the Board to achieve.

Respectfully submitted,

American Short Line and Regional Railroad Association

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