

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 680 (Sub-No. 1)

SUPPLEMENTAL REPORT ON CAPACITY
AND INFRASTRUCTURE INVESTMENT

OPENING COMMENTS
OF NASSTRAC, INC.

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I. INTRODUCTION

NASSTRAC, Inc., also known as the National Shippers Strategic Transportation Council, welcomes the opportunity to comment on the March 2009 Supplemental Report on Capacity and Infrastructure Investment in the railroad industry by Christensen Associates (“Supplemental Report”).

NASSTRAC is a leading national association of shippers of freight. It has for more than 50 years represented the interests of its members in transportation, logistics and supply chain issues before the ICC, STB, other agencies, the courts, and Congress. NASSTRAC’s regular members are shippers of freight and intermediaries who arrange freight shipments, and many carriers have joined NASSTRAC as associate members.

The focus of NASSTRAC and its members is primarily on transportation by trucking companies, which move roughly 70% of the shipments transported in the U.S. Many NASSTRAC members also ship goods by rail intermodal or (less frequently) by straight rail. NASSTRAC supports the Christensen Supplemental Report insofar as it demonstrates that concerns about a severe rail capacity shortfall are unrealistic. However, we take issue with the Report to the extent that it projects a significant diversion of freight from trucks to trains.

II. IMPORTANCE OF THIS PROCEEDING

The issues raised in this proceeding are important and timely, arising as we experience a convergence of events that are likely to affect the nation’s transportation infrastructure, and users of that infrastructure, in profound ways.

Prior to the current economic slump, the major railroads were nearing or exceeding revenue adequacy even under the old DCF-based revenue adequacy standards. Once the economy recovers, the major railroads are likely to return to the high levels of profitability they enjoyed in 2008.

These developments raise the possibility of reduced reliance on, if not the end of, differential pricing of captive traffic. *See* Coal Rate Guidelines, Nationwide, 1 I.C.C. 2d 520, 536 (1985). It is no coincidence that new arguments for differential pricing are being heard from the railroads based on claims of their need for large infusions of capital to support investments in rail infrastructure necessitated by the end of excess capacity in the rail system.

Of course, even if the capacity shortfalls were real, it would not follow that current levels of rail differential pricing of captive traffic, or *any* differential pricing of captive traffic, is necessary to fund future investments. Nor is there any assurance that captive shippers would benefit commensurately, or at all, from infrastructure investments funded by their high rates. Captive shippers may reasonably argue that, after more than 28 years of differential pricing, they have contributed enough to the financial strength of the railroad industry, and should at long last receive some relief.

However, before grappling with issues of how railroad industry revenue needs should be allocated as between captive and non-captive shippers, and among the captive shippers who are entitled by statute to reasonable rates, it obviously makes sense to ask whether the railroads' revenue need claims are accurate or overstated.

Moreover, the issues of rail revenue needs, rail infrastructure needs, and rail capacity projections that are the subject of this proceeding are important, but these issues

are not self-contained. Rather, they arise in the larger context of a national (and global) transportation system that, more and more, needs to be seen as a whole with many integrated or connecting elements.

While the Board is considering new approaches to economic regulation of the railroad industry, Congress is considering changes to the STB's governing statute, and to the antitrust laws as they relate to railroad industry exemptions. Congress is also considering a new Highway Bill to replace SAFETEA-LU and fund new highway construction, the maintenance of existing highways, and transit. In addition, it is becoming clearer that many components of the national transportation infrastructure have been underfunded for decades, and that the priorities under which funding is allocated need to be rationalized.

Even if the nation were enjoying budget surpluses, it would be inefficient to spend money on infrastructure without considering where the needs are most acute and where the spending will do the most good. In light of the scale of current budget deficits, it is all the more important to consider the best ways of investing limited resources.

Analysis of such basic national needs cannot be based solely on the self interest of carriers of the various modes. The needs of the carriers' shipper customers, of the larger economy, workers seeking jobs, passengers and commuters, urban, suburban, and rural areas, airports and seaports, system chokepoints and environmental concerns all need to be balanced, based on the best information available. Moreover, since we can't fix everything now, some projects that have merit will need to be deferred, so that more pressing requirements can be met.

As decisions are made in the coming months on critical infrastructure and regulatory issues, one thing should be clear. Those decisions should be based on facts rather myths, spin, or special interest preferences. However, the importance of the decisions and the huge amounts of money at stake create enormous pressure to lobby for special favors whether they are warranted or not. In this regard, the Christensen Supplemental Report is helpful.

III. THE CHRISTENSEN SUPPLEMENTAL REPORT FURTHER UNDERMINES CLAIMS OF AN IMMINENT CAPACITY SHORTAGE

In their Supplemental Report, Christensen Associates follow up on previously expressed reservations about earlier reports on railroad capacity and infrastructure investment needs. One study of particular importance is the 2007 National Rail Freight Infrastructure Capacity and Investment Study, prepared by Cambridge Systematics for the AAR. The Cambridge Systematics study relied in large part on freight volume and commodity flow data in DOT's Freight Analysis Framework ("FAF").¹

As the Christensen Supplemental Report reminds us, even in 2007, prior to the current economic slump and increasing concerns about climate impacts of the expanded use of coal to generate electricity, the Cambridge Systematics study showed the nation's freight rail network to be relatively uncongested.

¹ At pages 6-6 and 6-10 of the Supplemental Report, Christensen Associates refer to an AASHTO "Freight Rail Bottom Line Report". It should be noted that this report, issued in 2002, was also prepared by Cambridge Systematics.

Based on the Cambridge Systematics Report, a Blue Ribbon Commission established by Congress in SAFETEA-LU, the National Surface Transportation Policy and Revenue Study Commission, found as follows in its 2008 Final Report, “Transportation for Tomorrow”:

Eighty-eight percent of today’s primary freight rail corridor mileage is operating below practical capacity (Levels of Service (LOS) A/B/C). About 12 percent is near or at practical capacity (LOS D/E), and less than 7 percent is operating above-capacity (LOS F).

Transportation for Tomorrow at pages 13-15.

The Cambridge Systematics Report also found that congestion will rise over the next three decades. However, *even without improvements*, the Cambridge Systematics Study found (at pages 5-6) that 45 percent of primary rail corridor mileage will be operating below capacity, 25 percent will be operating near or at capacity, and 30 percent will be operating above capacity. Cambridge Systematics found further that future congestion could be avoided entirely with investments in rail infrastructure, the majority of which can be funded by the railroad industry without assistance.

This is not a forecast of imminent or even eventual gridlock requiring some form of light-handed regulation of rail rates on captive traffic. Moreover, as the Christensen Supplemental Report points out, the danger of demand for rail transportation services exceeding the industry’s capacity to supply those services is significantly *lower* today than in 2007, when Cambridge Systematics issued its report, or in 2008, when Transportation for Tomorrow was issued.

The Christensen Supplemental Report is plainly correct in pointing out that the forecasts of high and increasing freight volumes underlying the Cambridge Systematics

Report and Transportation for Tomorrow have to be adjusted downward to reflect today's economic realities. As a result, those earlier conclusions about possible future congestion of the rail system, hedged as they were, must be further moderated. Aggregate rail capacity appears adequate for years to come, even if there may be pockets of congestion in certain lanes and at certain chokepoints where additional investment is warranted.

The Christensen Supplemental Report also observes that forecasts of future increases in demand for coal transportation may be exaggerated for a second reason, beyond the impact of the current recession. Climate change and other environmental and energy policy concerns could reduce the rate of growth of coal consumption by electric utilities. If this happens, the modest rail capacity concerns discussed in the Cambridge Systematics Report will need to be revised downward even further.

IV. THE CHRISTENSEN SUPPLEMENTAL REPORT OVERSTATES THE LIKELIHOOD OF INCREASED SHIFTS OF FREIGHT FROM TRUCKS TO TRAINS

At various points in the Supplemental Report, Christensen Associates suggest that some of the reduction in demand for rail transportation attributable to recession and environmental and energy policy changes may be offset by modal shifts, with freight currently moving in trucks being diverted to trains. In NASSTRAC's view, these suggestions ignore marketplace realities.

See, e.g., pages 4-13 to 4-14, where, based on certain assumptions about price elasticity, the Christensen Supplemental Report posits a 10% increase in fuel prices, driving rail rates up by .7% and truck rates up by 1.4%. The Supplemental Report proceeds to conclude that "the reduction in rail transportation due to the increase in rail

rates is exactly offset by the substitution of freight transportation from trucking to rail due to the increase in truck transportation.”

The problem with this analysis is that an unstated assumption is presumably that there is no difference, or no meaningful difference, in service quality between truck transportation and rail transportation. Few NASSTRAC members would accept rail service and truck service as interchangeable.

It is not unusual in truck transportation contracts for shippers to be assured of 90% or more on time deliveries within a window of 1 hour or less. In fact, it is precisely this level of service quality that supports just-in-time supply chains, with their minimal inventory and inventory carrying costs, minimal warehousing expenses, and maximal efficiency.

With straight rail service, service quality guarantees of any kind are rare, let alone service quality guarantees within such tight parameters. Rail-truck intermodal service quality can be higher, but can present its own issues and will not work for shipments whose routings do not go past intermodal yards.

When transit times increase, so do shippers’ costs for inventory, inventory carrying costs, etc. And these increases occur even if transit times increase but transit time *variability* does not. Where, as is too often the case, a shift from trucks to trains means longer transit times *and* greater variability, so that needed goods may arrive when expected, or sooner, or later, the result can be disruption of production and distribution schedules. Few companies these days want to assume such risks.

The Christensen Supplemental Report appears to recognize such concerns. At page ES-3, the Report observes:

For example, if a firm cannot rely on fast and reliable transportation, it can still accommodate the demands of its customers by siting its warehouses closer to its customers, increasing its inventory levels so that it can respond to unexpected increases in final demand, and siting its production closer to the locations of its final demand.

The problem with these measures is that they are *enormously* expensive and wasteful. NASSTRAC members and other businesses in the U.S. have spent decades, and hundreds of millions of dollars, streamlining their supply chains in order to eliminate such costs.

It is not clear that Christensen Associates have included such costs when, in later chapters of their Supplemental Report, they suggest that significant diversions of truck freight to trains are a serious possibility. It is certainly hard to credit that a 1.4% increase in truck rates as compared with a .7% increase in rail rates would lead to much of a modal shift.

In fact, as found by the National Surface Transportation Policy and Revenue Commission, the trends are in the other direction. See Transportation for Tomorrow at pages 2-14 to 2-15, where, after noting that “higher growth in the future is generally expected for commodities that also have a relatively high truck market share,” the Commission stated:

Changing business practices will continue to affect freight transportation in the future. Perhaps most significant among such practices in recent decades has been the increasing adoption of just-in-time (JIT) manufacturing and construction, in which inventory stocks are kept at a

minimum and inputs are delivered immediately prior to their use. Such a structure demands speed for most goods and reliability for all, placing a premium on those qualities of freight transportation.

In light of these considerations, NASSTRAC believes the Christensen Supplemental Report overrates the likelihood of significant diversions of truck freight to rail or rail-truck intermodal service.

NASSTRAC recognizes the important contribution the railroad industry makes to meeting the nation's needs for freight transportation. Some commodities can move no other way, or are handled better – more economically, more efficiently, and sometimes more safely – by train than by truck. NASSTRAC also welcomes increased use of rail service for merchandise shipments, where the railroads are able to improve the value proposition they offer, and where the decision to use rail or rail intermodal is made voluntarily by the shipper.

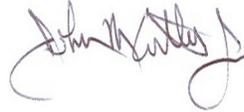
However, any recognition of the plusses of rail service in the areas of fuel consumption, energy efficiency, and relief of highway congestion must be balanced by recognition that there are also ways in which rail service remains inferior to truck service.² NASSTRAC and its members, similarly situated shippers, numerous freight transportation intermediaries, and members of the trucking industry can be counted on to oppose any efforts to force freight off trucks and onto trains. To the extent that the Christensen Supplemental Report fails to recognize such modal preferences, its analysis is flawed.

² Calculations of energy saved in transporting goods are flawed to the extent that they fail to take into account the energy costs of making and storing goods that would not be needed at all, if inventories were leaner.

V. CONCLUSION

For the foregoing reasons, NASSTRAC supports some of the findings in the Christensen Supplemental Report but questions others.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "John M. Cutler, Jr.", written in a cursive style.

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