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BEFORE THE
SURFACE TRANSPORTATION BOARD

EX PARTE 671

HEARING ON
RAIL INFRASTRUCTURE AND CAPACITY REQUIREMENTS

SUPPLEMENTAL STATEMENT
OF
NORFOLK SOUTHERN RAILWAY COMPANY

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Norfolk Southern Railway Company ("NS") submits these supplemental comments to highlight some of the most important themes that emerged during the Board's recent hearing on rail infrastructure and capacity requirements That hearing focused on very important and timely issues With daunting projections of freight demand facing the United States at a time when highway capacity grows more and more limited, the important and substantial role railroads can play and the policy framework that will help the railroads play that role are both important inquiries.

Charles W "Wick" Moorman testified for NS at that hearing that he hears three things from rail customers. "They want more capacity; they want better service; and they want lower rates. And I don't know how you do all three of those. Maybe there is a plan out there we haven't heard." Although all other non-railroad parties, except the Department of Transportation, testified after Mr. Moorman, his summary of the three themes he hears from rail customers was reinforced by subsequent witnesses with no one even trying to reconcile the irreconcilable.

Briefly now, we review the state of the record on those three key points: (1) the nation needs more capacity because demand for transportation is growing, (2) rail customers seek better service for themselves; (3) but rail customers are unwilling to pay for the necessary additional capacity

The United States needs more rail capacity because the demand for freight transportation is growing. Many witnesses testified to the growing demand for freight transportation Whether the source cited was the Department of Transportation or one of its modal administrations, the American Association of State Highway and Transportation Officials, Global Insight, American Trucking Association, or the Energy Information Agency, freight demand is growing and is expected to continue to grow.[1] In the words of the National Industrial Transportation League, "even if the growth rates in these studies were only 'half right,' the nation would still have to accommodate a substantial increase in rail traffic over the next decade or more."[2]

It is no surprise that railroads, including Norfolk Southern, think they will play a key role in moving future freight volumes. Importantly, however, rail customers think the same. The Concerned Captive Coal Shippers state their case for capacity as follows.

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1 *See e.g*, Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of the U.S. Dept. of Transportation, at 3 (April 4, 2007); Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of Norfolk Southern Railway Company, at 4 (April 4, 2007) ("NS Comments"); Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of Edison Electric Institute., at 3 (April 4, 2007) ("EEI Comments"); Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of National Industrial Transportation League, at 3- (April 4, 2007) ("NITL Comments"); Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of Foundation Energy Sales, Inc, at 7 (April 4, 2007).

2 NITL Comments at 8.

"It is critical, of course, that the railroads maintain adequate capacity and infrastructure to transport coal to utility power plants. As explained above, coal shippers are dependent upon rail carriers to provide needed coal transportation service, and disruptions in this service due to inadequate capacity can impose substantial damages upon electric generating utilities and their customers."[3]

Similarly UPS observes that a "lack of new rail capacity investment and network efficiency initiatives pose a significant threat to our ability to service our customers and to our nation's international competitiveness."[4] And National Grain and Feed notes that "we anticipate that truck capacity will be strained in the future in ways that will limit its ability to make up for losses or disruptions in rail service."[5] Sufficient rail capacity will be needed to reduce these potential risks. There is no other solution. As Jeffrey N Shane, Under Secretary for Policy at the United States Department of Transportation, pointed out, there likely will not be a second Eisenhower-like highway program

Rail customers want capacity and better service for themselves. Many rail customer associations that testified at the hearing stated their concern that the commodity they represent wanted better rail service.[6] For example, an association representing coal shippers wants capacity to handle present "coal traffic volumes" and wants railroads to "stay ahead of growing coal traffic demands in the future."[7] On the other hand, the same association warns that in its view "increasing levels of intermodal traffic on a capacity-

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[3] Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of Concerned Captive Coal Shippers, at 11 (April 4, 2007). *See also* EEI Comments at 3-7.

[4] Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of UPS, at 2 (April 4, 2007).

[5] Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Comments of National Grain and Feed, at 2 (April 4, 2007).

[6] EEI Comments at 12.

[7] Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Concerned Captive Coal Shippers, at 23 (April 4, 2007).

constrained line reduces the 'share' of the capacity available for the coal traffic."[8] In other words, capacity expansion is good only if the investment directly benefits coal traffic.

As NS has said before, NS looks at its entire system and all the commodities that move across it when making investment decisions.[9] NS will continue to make investment decisions that balance all shippers competing needs and competing priorities (on such factors as transit-time, price, safety, damage-free handling, and frequency of service and switching) to maximize its entire rail system.

Railroads are investing in expensive rail capacity, but shippers want lower rates. Unchallenged at the hearing or in written comments is the fact that railroads are spending aggressively to expand rail capacity. Indeed, many parties highlighted the high levels of railroad investment[10]

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8 Id. at 20

9 NS Comments at 8 ("NS' customers have different needs and place different priorities on such factors as transit-time, price, safety, damage-free handling, and frequency of service and switching. NS tries to balance these competing needs and to invest to provide the best service to the most customers In other words, NS invests to maximize its network. If NS had only intermodal customers, its investments would be different than if there were only coal customers or only chemical customers. In fact, NS serves thousands of customers with different transportation needs for their thousands of different commodities The investments NS makes represent its best judgment as to how to strike the right balance.").

10 US DOT Comments at 4-5. The Western Coal Traffic League included in its testimony Exhibit 7 which purported to be a study by a professor at the New York University Sloan School of Management [sic]. In reality, there was no study by an NYU professor. In fact, the chart is based on data sets, which are available on the professor's web-site, taken from Value Line.

Moreover, WCTL, and its witness Mr. Thomas Crowley, provided no context or explanation for the Exhibit, which contained only a single year of data. Among the contexts and explanations that would have demonstrated the low value of this data is that there was a historically high level of truck-tractor purchases in 2006 because of the new emissions standards on truck engines that took effect in 2007. Moreover, the data sets for

Unfortunately, many parties fail to see that infrastructure investment, better service, and rates are three legs to one stool. No one wants to pay; everyone wants someone else to pay. In the view of the Concerned Captive Coal Shippers: "there is a real concern about coal traffic being asked to fund far more than its reasonable share."[11] The Alliance for Rail Competition, et al., makes the same point this way· "Some shippers have 'paid their dues' through years, or decades, of differentially higher prices than other shippers have paid "[12]

Similarly, rail customer associations qualified their support for public-private partnerships or an investment tax credit for railroad infrastructure investment -- despite the fact that such a tax credit would produce infrastructure investment that would benefit the nation's transportation network generally and the shippers who use it, would alleviate the spiraling problem of highway congestion, and have substantial environmental benefits.[13] For example, the Concerned Captive Coal Shippers qualify their support for public-private partnerships to projects that will not result in negative impacts on coal traffic [14] Similarly, support of the investment tax credit from Total Petrochemicals, Inc is limited thusly: "TPI believes that any such credit would need to be

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the trucking and maritime appear to include asset leasing companies (including rental car companies), making the comparison of little value.

Finally, the Value Line inventory assesses capital intensity on the basis of <u>all U.S. industries</u>, many of which are not in the slightest comparable to railroads. Even taking the Value Line data sets at face value, they demonstrate that railroads are 2.5 times more capital intensive than all U.S. industries.

11 Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Concerned Captive Coal Shippers, at 20 (April 4, 2007) ("Concerned Coal Shippers Comments").

12 Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Alliance for Rail Competition, at 9 (April 4, 2007).

13 NS Comments at 15-16.

14 Concerned Coal Shippers Comments at 26.

part of a comprehensive rail reliability package encompassing accountability and policy reforms to address the needs of domestic [petrochemical] producers."[15]

In conclusion. we believe that when the hearing ended, Mr Moorman's summary remained unchallenged: railroads must improve capacity and service and customers must pay for these improvements. There is no free lunch.

Respectfully Submitted,

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15 Ex Parte 671, *Rail Infrastructure and Capacity Requirements*, Total Petrochemical, Inc., 2 at 20 (April 4, 2007).