



Subcommittee on Railroads, Pipelines, and Hazardous Materials

of the

House Transportation and Infrastructure Committee

Hearing:

***“Stakeholder Views on Surface Transportation Board Reauthorization”***

Tuesday, March 8, 2022

10:00am Est

Attachment to

Written Testimony

Submitted by Mr. Brad Hildebrand, Member

National Industrial Transportation League

## Attachment

### COMMON CARRIER OBLIGATION DEFINITION AMBIGUITY

In the submitted written testimony, one of the recommendations made to Congress for the upcoming reauthorization of the Surface Transportation Board (Board or STB) is to provide a statutory clarification to the “common carrier definition” combined with the Board developing a meaningful standard with telling consequences when it is found that the railroads have not met the common carrier obligation.

The following example provided by a NITL member helps to illustrate the importance of this matter both from a service and rate standpoint:

“Our rail customer has five manufacturing plants, including a plant located in Mississippi which is local on NS (Norfolk Southern Railway). Our rail customer purchases raw material from a vendor that is served by CSX (CSX Transportation). The cars are interchanged at Birmingham, MS and move on Rule 11 rates\* to and from Birmingham, MS. In a recent communication from NS, the railroad announced rate increases for all rail customers’ lanes which, generally, were increased in the 5% range. The one exception was the Rule 11 rate from Birmingham, MS which was to increase **24.5%**. We, in assisting our rail customer, spent more than four hours in Zoom meetings negotiating this one lane and the best we could do was to reach an agreement for a progressive increase which involves quarterly increases; however, they held onto the 24.5% which will be completed in 2022.

Most significant was some of NS' comments when trying to justify the increase, the most egregious being NS stating that is short of capacity and, "we are trying to identify those customers who want capacity in this lane." We replied that there already is capacity in the lane, and it is called the 'Common Carrier Obligation.' NS did not seem to know what that meant."

\*A Rule 11 rail rate is when the shipper works directly with each carrier in setting up, billing, and paying that railroad's portion of the movement. According to the Association of American Railroads, "Freight Mandatory Rule 11 is intended for use by the rail industry to protect confidential prices and/or meet customer requirements by providing multiple freight bills on shipments covered by a through Bill of Lading."

## **RECIPROCAL SWITCHING IMPORTANCE**

This same example also illustrates another vital issue strongly supported by NITL and discussed in the submitted written testimony, supporting the Board's proposed new competitive switching rules, criteria, and process in EP Docket 711 (Sub.-1), *Reciprocal Switching*:

"Our vendor is the best source for these types of raw materials. We looked at other potential sourcing options but since the plant is captive on NS none of the alternatives would have worked and either way, NS would handle the business. Until recently, have always said there is no such thing as a captive customer. However, trucking is not a good option because our products require dedicated trucks and there is a shortage of truck drivers and equipment to load.

This is a problem that has been developing for more than a decade, it is not a short - term issue, and will not go away absent significant change.

The Impact? Rail costs have a direct impact on a plant's production costs and its viability, so dramatic cost increases such as that outlined above jeopardize the future of this plant and jobs. This is only one example of why competitive switching proposed in STB's Docket No. 711 (Sub.-1) is not only needed but is critically important not only to our rail customer, but also to the people who are currently employed at the plant. Another Class I railroad, Canadian National (CN), has an existing interchange with NS that is only 12 miles from the plant. This move could easily be diverted to CSX-CN if we had that option as allowed for under the Board's proposal. It would allow a shipper, such as this rail customer, with access to only one rail line to request before the Board that the carrier provide a switch for freight to be moved by a nearby rail line. This Board proposal would also provide two paths that our rail client could use when making the request: 1) switching must be practicable and in the public interest or 2) be necessary to provide competitive rail service. The current STB reciprocal switching rules are quite different and basically unattainable.

## **DICTATING CARRIAGE TERMS**

Several NITL members are frustrated with the railroads (mostly CSX, NS, UP and CP) consistently telling them how to manage their business and impose punitive restrictions, such as embargos, reduced days of service. For instance, there have been

situations with several NITL members where the railroads unilaterally decided to stop or restrict the delivery of supplier shipments when the cars in the railroads serving yards exceeds the number of cars the railroads want them to maintain. The railroads limit is a formulaic calculation, often failing to consider the shippers unique operational needs. In one instance earlier this year, UP embargoed one plant for having 4 rail cars above UP's imposed limit of 14 rail cars. UP would not lift the embargo until the NITL member reduced the inventory by 4 rail cars to meet the 14-railcar limit. The NITL member shared that there was an unnecessary and cumbersome amount emails and labor invested trying to get resolution and the necessary permits to release the cars that needed to move. This same plant had railroad service reduced to three times a week from five, even though they use 1300+ cars per year.

Limiting railcar capacity on the rail line negatively impacts operations and often results in moving rail volume to truck transport, when possible. This same NITL member, due to truck transport demands and limited rail line capacity, experienced a record number of plant shutdowns cases with the railroad in 2021.