



Freight Rail  
Customer Alliance



July 11, 2017

The Honorable John Thune, Chairman  
Senate Commerce, Science & Transportation  
Committee  
U.S. Senate  
512 Dirksen Senate Office Building  
Washington, DC 20515

The Honorable Bill Nelson, Ranking Member  
Senate Commerce, Science & Transportation  
Committee  
U.S. Senate  
425 Hart Senate Office Building  
Washington, DC 20515

The Honorable Deb Fisher, Chair  
Senate Surface Transportation & Merchant  
Infrastructure, Safety & Security Subcommittee  
U.S. Senate  
454 Russell Senate Office Building  
Washington, DC 20515

The Honorable Cory Booker, Ranking Member  
Senate Surface Transportation & Merchant Marine  
Infrastructure, Safety & Security Subcommittee  
U.S. Senate  
359 Dirksen Senate Office Building  
Washington, DC 20515

Dear Chairmen Thune and Fischer, and Ranking Members Nelson and Booker,

On behalf of a broad range of freight rail shippers in the manufacturing, agricultural and energy industries, the Freight Rail Customer Alliance (FRCA) and the Western Coal Traffic League (WCTL) ask that you emphasize to President Trump the importance of nominating as soon as possible two qualified individuals to serve as Members on the Surface Transportation Board (STB or Board). Once the nominations are officially made, we also urge that the U.S. Senate move the confirmation process as expeditiously as possible. Finally, and most consequentially, we ask that you urge the Board not to further delay its consideration of pending proceedings of major consequence to rail shippers.

We are concerned in timeline changes to various proceedings as reported to the Senate Commerce, Science, and Transportation Committee and to the House Transportation and Infrastructure Committee in the Board's First Quarter and Second Quarter 2017 status reports as required by the ***STB Reauthorization Act of 2015 (Act)***, P.L. 114-110.

As noted in STB Acting Chairman Ann D. Begeman's cover letter accompanying these reports, the Board is moving forward on its proposed rules for *Expediting Rate Cases*, Docket No. EP 733, as required by the ***Act***. It is discouraging, however, that Acting Chairman Begeman's preference as relayed in the 1Q communications is to hold a hearing on stakeholders' views of the InterVISTAS rate case methodology report "when it is more likely a full complement of Members can consider these very important and challenging issues."

Thanks to your leadership, commitment, and foresight, the ***Act*** directs the STB to speed up, not slow down, its consideration of pending cases and regulatory proceedings. This law increases the Board's Members from three to five to address an anomaly in the Sunshine Act that prevented two Board members from meeting informally to discuss pending cases or regulatory proceedings. Also, the ***Act*** created a stop-gap measure allowing two Board members to engage in informal discussions, which has effectively facilitated communication and understanding without the full complement of five Board Members.



In addition to the concerns about the delay in holding a public hearing on the InterVISTAS study (STB Docket No. EP 736), these STB status reports stated either delays or non-determined timelines in other major pending rulemaking proceedings (collectively referred to as “Major Pending Rulemaking Proceedings”) including:

- Notice of Proposed Rulemaking (NPRM), Docket No. EP 704 (Sub-No. 1), *Review of Commodity, Boxcar, and TOFC/COFC Exemptions*, issued on March 23, 2016. This proceeding initially got underway in 2010 and in its NPRM the Board has proposed to remove specified commodity exemptions that are no longer in the public interest.
- The STB is considering public comments as a part of the Board’s own efforts in exploring the accuracy of methodology for determining railroad revenue adequacy, as well as how the revenue adequacy test should be used in judging the reasonableness of rail freight rates, in Docket No. EP 722, *Railroad Revenue Adequacy*. The Board received written comments and reply comments in Docket No. EP 722 in September and November 2014, respectively. The STB held a public hearing the following year in July 2015. FRCA members and WCTL have actively participated in this proceeding. The Board initially announced this proceeding would be initiated in 2013.
- Advance Notice of Proposed Rulemaking (ANPRM), providing shippers, rail carriers, and other interested parties the opportunity to comment on changing Board’s “safe harbor” standard, which, as construed by the Board, allows carriers to over-recover their actual incremental fuel cost increases. Docket No. EP 661 (Sub-No. 2), *Rail Fuel Charges (Safe Harbor)*. The ANPRM was published and the comment period ended in 2014. WCTL and FRCA members submitted extensive comments in this proceeding.
- NPRM to determine whether the Board should modify its current rules governing reciprocal switching in order to conform the rules to governing statutes in the manner envisioned by Congress. (Docket No. EP 711 (Sub No.-1), *Reciprocal Switching*). This NPRM was issued about a year ago while the original petition in this matter was filed in 2011. WCTL and FRCA are active parties in this proceeding.

Acting Chairman Begeman explained in her accompanying 1Q cover letter that “[p]ostponing action on these regulatory proceeding also creates an opportunity for the Board to focus additional attention on our large docket of cases.” Although this is one path to take as President Donald Trump continues to identify and consider qualified individuals to serve in his Administration, it negates the importance of the STB immediately continuing its work on these Major Pending Rulemaking Proceedings.

The Major Pending Rulemaking Proceedings involve the most important substantive issues pending before the Board – most of which are already years if not decades old. Stakeholders, especially rail shippers, have devoted years of time, effort, and monetary resources in participating in these proceedings. The STB should be taking actions to speed up, not slow down, its consideration of these already long-delayed regulatory proceedings of enormous importance to rail shippers. Not moving these proceedings forward is contrary to both the Board’s mission and the public interest.



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The delays suggested by the Board in its First Quarter and Second Quarter 2017 status reports defeat Congress' key objectives in the **STB Reauthorization Act of 2015** and are not in the interest of all stakeholders or the public. We respectfully request that you urge President Trump to nominate two qualified individuals to serve as Members of the STB as soon as possible and that the U.S. Senate move the confirmation process for qualified candidates as expeditiously as possible. In the interim, we ask that you urge the Board to advance its consideration of the Major Pending Rulemaking Proceedings in the timely manner Congress intended and to include in its future quarterly reports specific target dates for Board action in these proceedings.

Thank you for your continued leadership and consideration.

Sincerely,

Dave Sauer, President  
Freight Rail Customer Alliance

Bette Whalen, President  
Western Coal Traffic League

- cc: Senate Commerce, Science and Transportation Committee:
- The Honorable Roger Wicker
  - The Honorable Roy Blunt
  - The Honorable Ted Cruz
  - The Honorable Jerry Moran
  - The Honorable Dan Sullivan
  - The Honorable Dean Heller
  - The Honorable Jim Inhofe
  - The Honorable Mike Lee
  - The Honorable Ron Johnson
  - The Honorable Shelley Moore Capito
  - The Honorable Cory Gardner
  - The Honorable Christopher Young
  - The Honorable Maria Cantwell
  - The Honorable Amy Klobuchar
  - The Honorable Dick Blumenthal
  - The Honorable Brian Schatz
  - The Honorable Ed Markey
  - The Honorable Tom Udall
  - The Honorable Gary Peters
  - The Honorable Tammy Baldwin
  - The Honorable Tammy Duckworth
  - The Honorable Maggie Hassan
  - The Honorable Catherine Cortez Masto



The Honorable Bill Shuster, Chairman, House Transportation & Infrastructure Committee  
The Honorable Peter DeFazio, Ranking Member, House Transportation & Infrastructure Committee  
The Honorable Jeff Denham, Chairman, House Railroads, Pipelines, & Hazardous  
Materials Subcommittee  
The Honorable Michael Capuano, Ranking Member, House Railroads, Pipelines, & Hazardous  
Materials Subcommittee

The Honorable Ann D. Begeman, Acting Chairman, Surface Transportation Board  
The Honorable Daniel R. Elliott III, Vice Chairman, Surface Transportation Board  
The Honorable Deb Miller, Member, Surface Transportation Board

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#### About FRCA

An umbrella membership organization, the Freight Rail Customer Alliance (FRCA) includes large trade associations representing more than 3,500 electric utility, agriculture, and alternative fuel companies and their consumers. Through a growing coalition of industries and associations, the mission of FRCA is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices. [www.railvoices.org](http://www.railvoices.org)

#### About WCTL

WCTL is a voluntary association, whose membership is comprised exclusively of organizations that purchase and ship coal from origins west of the Mississippi River. WCTL members collectively consume more than 150 million tons of coal annually that is moved by rail. Its members include investor-owned electric utilities, electric cooperatives, state power authorities, municipalities, and a non-profit fuel supply cooperative.