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November 23, 2020

Ann D. Begeman
Chairman

Martin J. Oberman
Vice Chairman

Patrick J. Fuchs
Member

Surface Transportation Board
395 E Street SW
Washington, DC 20423

Dear Board Members:

Rail Carriers and persons affiliated with Rail Carriers have recently sent you letters commemorating and celebrating the 40th Anniversary of passage of the Staggers Rail Act. For a different perspective on the impact of the Staggers Act, please see the attached paper signed by the chiefs of all of the Rail Unions.

Also attached for your information, are written testimony provided by the Transportation Trades Department of the AFL-CIO, and by several rail unions, to the Senate Committee on Commerce, Science and Transportation in connection with its hearing regarding the current status of the rail industry (oral testimony to the Committee was given by Dennis Pierce, President of the Brotherhood of Locomotive Engineers and Trainmen).

If you have any questions or would like to discuss the content of these papers, please contact me.

Sincerely,

/s/ Richard S. Edelman
Richard S. Edelman

ON THE 40TH ANNIVERSARY OF THE STAGGERS ACT, CONGRESS SHOULD CONSIDER THE COLLATERAL DAMAGE TO THE RAIL INDUSTRY, AND HOW TO FIX IT

The Act Had Substantial Adverse Effects On Rail Employees, And Has Facilitated The New Rail Business Model That Has Further Reduced Employment And Led To Deterioration Of Service

This year is the 40th anniversary of the Staggers Rail Act. The major railroads are celebrating this anniversary. That is not surprising because deregulation of the railroad industry, along with post-Staggers government approval of mergers and control transactions that have produced a highly concentrated, but lightly regulated, industry, have combined to produce a 20 year run of historic profits for the railroads, and record returns for their shareholders. In the recent past, shippers had no complaints about Staggers because shipping rates declined in real dollars; but they now worry about the quality of service and railroad responsiveness to their needs; as a concentrated, but deregulated, industry has little need to answer to its customers.

This is a particularly inopportune time to celebrate passage of the Staggers Act because, in recent years, finance interests have led or pressured the railroads to exploit the deregulatory regime formulated when they were in economic distress to implement so-called “precision scheduled railroading” and other cost-cutting measures that have eroded service and eliminated tens of thousands of good paying railroad jobs.

One group of major industry stakeholders never celebrated the Staggers Act: railroad workers. Between the passage of the Act and completion of the major merger and control transactions, rail industry employment was substantially reduced (from about 500,000 in 1980 to about 250,000 in the early 2000s).

Among other things, the Staggers Act facilitated sales of rail lines to smaller railroads that employed fewer workers, paid less and had less beneficial work rules. Those sales were accomplished without traditional employee protections. At first, the Interstate Commerce Commission approved these types of sales after concluding that the lines to be sold were likely to be abandoned. But then it began to approve sales of what it called “marginally profitable” lines (which, by definition, were somewhat profitable). The major rail carriers protected their own interests in these transactions; they placed restrictions on the sales (physical or contractual) so that the purchaser railroads could interchange traffic only with the seller carriers; that way the major carriers divested themselves of less profitable lines which gathered local freight, while ensuring that they retained the long haul movement of the freight generated on those lines. Rail Labor characterized these as sham transactions, but the ICC approved them citing the Staggers Act and the deregulatory spirit of the Act. The ICC also allowed companies that owned existing rail carriers to acquire new lines that often connected with the lines of their existing subsidiaries without employee protections that were required when rail carriers acquired lines from other rail carriers by using the scheme of creation of new subsidiaries that the ICC treated as non-carriers since they were new corporations, even though they were commonly owned and controlled with

existing carriers.

In approving the major merger and control transactions of the 1990s that reduced the number of Class I carriers to a mere handful, the ICC and Surface Transportation Board relied on Staggers Act amendments and the deregulatory mandate of the Staggers Act. Those transactions were approved based on the notion that shippers and the public would benefit from the consolidations. The railroads asserted, and the ICC and STB agreed, that mega-carriers would provide better and faster service through longer-end-to-end runs, reduced interchanges, and greater system velocity; that efficiencies would be achieved that would result in savings that would be passed along to shippers and the public in general; and that the economies of scale available to larger carriers would allow for increased investment in rail infrastructure.

During the same period that Congress and the ICC and STB deregulated the railroads and facilitated and approved consolidations as in the public interest, the agencies dramatically increased their regulation of Rail Labor by allowing the merging and commonly controlled rail carriers to use agency processes to gain dramatic changes in rates of pay, rules and working conditions outside the procedures of the Railway Labor Act. When the final big control transaction had been completed, railroad industry employment had been effectively halved, and rates of pay, rules and working conditions were forcibly and dramatically changed under the auspices of ICC and STB authorizations.

In the post-Staggers minimal regulation environment, after the big merger and control transactions were consummated, the profits of the new mega-carriers soared. And for a while, the railroads followed-through on their representations that service would improve, and infrastructure investments would increase. But several years ago, hedge funds and private equity interests took note of railroad profitability and the very light nature of the regulatory regime for such a concentrated industry. There were attempted hostile takeovers of major railroads, and so-called activist investors increased their stakes in railroads; these financial interests promised to institute practices to reduce operating ratios (costs relative to expenses) and increase profits by dramatically cutting costs and service, by focusing on easier to serve/high profit ratio customers, eliminating flexibility in pick-ups and deliveries of rail cars, requiring customers to conform to rigid schedules and lengthening trains (with some as long as 3 miles). This was accomplished through the so-called Precision Scheduled Railroading operating method. At the same time, capital infrastructure work was reduced to further improve operating ratios. As rail carriers that pursued this path saw their operating ratios decline, and their stock prices increased, other railroads adopted similar business models. Shipper complaints escalated. The STB held hearings and tinkered with complaint programs, but it generally was of the view that there was little it could do under the post-Staggers de-regulatory regime. In the meantime, rail employment again took a precipitous decline, from about 245,000 in 2015 to under 200,000 in January of 2020. The profits of the major railroads have skyrocketed over this several year period.

As the 40th anniversary of the Staggers Act approaches, Members of Congress, the STB and industry stakeholders should consider whether the current regulatory regime, that was developed when the railroads were in financial turmoil, and well before agency approval of the big merger

and control transactions, makes sense today. Consolidation of the industry was approved because the transactions were deemed to be in the public interest. And with those approvals and the exclusivity that flows from holding an operating certificate comes the responsibility to provide adequate and responsive service. But the financial interests that are currently driving the industry have ignored those aspects of the approvals and the certificates. While a return to the heavy regulatory scheme developed before railroads had competition from aviation and trucking on the federal interstate highway system would not be appropriate, a regulatory approach recalibrated to recognize the reality of the industry as it is today is warranted. This recalibration is necessary to ensure that rail customers receive adequate and responsive service, and that the industry continues to provide good jobs for railroad workers.

American Train Dispatchers Association

Brotherhood of Locomotive Engineers and Trainmen/IBT

Brotherhood of Maintenance of Way Employes Division/IBT

Brotherhood of Railroad Signalmen

International Association of Machinists and Aerospace Workers District 19

*International Association of Sheet Metal Air Rail and Transportation Workers-
Mechanical Division*

International Brotherhood of Boilermakers

International Brotherhood of Electrical Workers

*International Association of Sheet Metal Air Rail and Transportation Workers-
Transportation Division*

National Conference of Firemen and Oilers 32BJ/SEIU

Transportation Communications Union (TCU/IAM)

Transport Workers Union of America

**BEFORE THE SENATE COMMITTEE ON
COMMERCE, SCIENCE AND TRANSPORTATION**

**HEARING ON PASSENGER AND FREIGHT RAIL: THE CURRENT STATUS
OF THE RAIL NETWORK AND THE TRACK AHEAD (OCTOBER 21, 2020)**

Statement of: Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; National Conference of Firemen and Oilers/32BJ; and International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Department; International Brotherhood of Electrical Workers

In recent years, the Class I railroads have adopted a number of changes in the way they operate trains, interact with shippers, maintain their property and equipment, and staff their operations. Part of this derives from implementation of so-called “scheduled railroading”; but the changes have been made organization-wide. There is an across-the-board effort by these railroads to reduce operating ratios (operating expenses as a proportion of operating income--lower ratios yield higher profits) to historic lows by ruthlessly cutting costs (and thereby dramatically increasing profits, shareholder value, and executive compensation). During this period, shipper complaints escalated, communities expressed concerns about reductions in service and longer trains, and rail employment was reduced by 20% over the four year period before the pandemic.

But scheduled railroading is not the problem; it is a symptom of the problem. Finance interests (hedge funds, private equity, so-called “activist investors”) are driving railroad business decisions. Rail operations, shipper needs, effective maintenance, safety, employee and manpower concerns, and long-term health of the railroads are taking a distant back seat reducing operating ratios. These financial interests have promoted practices designed to reduce operating ratios and increase profits by dramatically cutting costs and service, by focusing on easier to serve/high profit ratio customers, eliminating flexibility in pick-ups and deliveries of rail cars, requiring customers to conform to rigid schedules and lengthening trains. Under the new business model, the railroads have engaged in “de-marketing”, where certain customers are disincentivized from using rail. Shippers from whom the railroads cannot reap maximal profits face steeper costs when shipping by rail, or are subjected to service conditions or requirements that discourage them from using rail transportation, even if they have structured their businesses to ship by rail. These are not shippers who can only be served at a loss; the railroads can make a profit serving these shippers, just not the level of profits desired by Wall Street. This is at odds with the prior business model, where railroads sought to grow the business and increase profits by increasing revenue. Now the goal is to shrink the business and cut costs. At the same time, capital infrastructure work has been reduced to further improve operating ratios. The profits of the major railroads have skyrocketed over this several year period. Someone who bought stock in Class I railroads in 2009 have gained a 1000% increase in share prices over ten years.

The new business model has also adversely affected safety of operations. Railroad track inspectors are told to only report what the carriers are staffed to repair, maintenance of way gangs working on railroad rights of way are being pressed into smaller track windows to complete their work to fit the PSR schedule. Single maintenance of way employees are being sent out to perform work that previously required two workers; the railroads do not have the manpower or the tools and supplies to make sure that track work is done properly. Signal territories have been expanded beyond

what can reasonably be handled by the assigned employees; Signalmen are triaging, dealing only with most serious issues and not necessarily handling all issues that need to be handled. On one railroad, because of reductions in forces, Signalmen are unable to complete all of their FRA required 30 day inspections, they advise the railroad of this and are told to get to them when they can, 30 day tests are being missed by 5 days. Mechanics assigned “blue cards” for locomotive inspection and maintenance are being told to stop work on the inspections before the cards are completed; and managers are signing the cards in order to get the locomotives out to fit the PSR schedule. Railroad Carmen are being told to inspect rail cars in under 60 seconds when they can’t even walk around a car in 60 seconds; and rail brake checks being performed while trains are in motion.

Thus, under the dictates of finance interests, the carriers have gone from a customer service model, to a model where the customer serves the railroad; from a safety first model, to a profits first model; from an employees add value model, to an employees are a cost to be reduced model; and from a reinvestment in assets model to extraction of value model.

So how did this happen?

All of this has been facilitated by the combination of extreme deregulation followed by industry consolidation authorized by the STB. The Staggers Act and ICC Termination Act substantially deregulated the railroads, but the ICC/STB then authorized consolidations of the major railroads. The result was two major carriers east of the Mississippi, two major carriers west of the Mississippi and two carriers running down the center of the country. All of these transactions were expressly authorized by the ICC and STB as “in the public interest”.

In approving the major merger and control transactions of the 1990s that reduced the number of Class I carriers to a mere handful, the ICC and STB relied on Staggers Act amendments and the deregulatory mandate of the Staggers Act. Those transactions were approved based on the notion that shippers and the public would benefit from the consolidations. The railroads asserted, and the ICC and STB agreed, that the mega-carriers would provide better and faster service through longer-end-to-end runs, reduced interchanges, and greater system velocity; that efficiencies would be achieved that would result in savings that would be passed along to shippers and the public in general; and that the economies of scale available to larger carriers would allow for increased investment in rail infrastructure.

In the post-Staggers minimal regulation environment, after the big merger and control transactions were consummated, the profits of the new mega-carriers soared. And for a while, the railroads followed-through on their representations that service would improve, and infrastructure investments would increase. But several years ago, hedge funds and private equity interests took note of railroad profitability and the very light nature of the regulatory regime.

Once the finance interests realized that they could take control of these railroads and drive operating ratios down without loss of business, or a regulatory response, they forced implementation of policies like scheduled railroading and reduced maintenance to drive down costs and increase earnings for short term gains. While called scheduled railroading, the plan is actually a cover for extracting value from the railroads with no value added, and a reduction in quality of service—inflexible scheduled railroading, and precision looting of railroad assets. As rail carriers that pursued this path saw their operating ratios decline, and their stock prices increased, other railroads adopted similar business models. Shipper complaints escalated. The STB held hearings and tinkered with complaint

programs, but it generally was of the view that there was little it could do under the post-Staggers de-regulatory regime. In the meantime, the railroads reduced the number of rail employees (the people who provide and support rail service) by about 20% between 2015 and the end of 2019, while the profits of the major railroads have skyrocketed over this several year period.

The problems with the new business model are a feature, not a bug. Shippers, communities, legislators, and employees are distressed and looking for solutions. The unions signatory to these comments believe that Congress, the STB, and industry stake-holders should consider the consequences of the combination of the deregulatory drift in the industry and government approval of the major merger and control transactions that created the current mega Class I carriers. A key question is: Whether the public interest is being served as envisioned in the merger and control decisions under the carriers' new operating model? A good start to this process would be for the GAO to conduct an investigation and produce a report like the one envisioned in the TRAIN Act portion of H.R. 2- Section 9502. Section 9502 calls for a GAO study of changes in freight railroad operating and scheduling practices as a result of the implementation of the precision scheduled railroading model; including, at minimum:

- (1) the impacts of the operation of longer trains;
- (2) safety impacts of reduction in workforce, including occupational injury rates, impacts to inspection frequencies and repair quality, and changes in workforce demands;
- (3) the elimination or downsizing of yards, repair facilities, and other operational facilities;
- (4) increases in demurrage or accessorial charges or other costs to shippers;
- (5) capital expenditures for rail infrastructure; and
- (6) the effect of changes to dispatching practices and locations of dispatching centers on—
 - (A) the on-time performance of passenger trains, and
 - (B) the quality and reliability of service to freight shippers.

Long after the so-called activist investors are gone, rail workers, communities and shippers will remain; and they will have to deal with the results of the short-term goals of the finance interests. When hedge funds and private equity interests destroy a retail chain like Sears, Toys R Us or K-mart, it is a tragedy for the employees of the store, and an inconvenience for the store's customers; but when they damage or destroy a railroad, they are harming an essential piece of the economic infrastructure of the United States; stakeholders, the STB and Congress cannot just standby as speculators damage the industry for their own gain, leaving others (including taxpayers) to deal with the long term consequences.



A bold voice for transportation workers

**WRITTEN STATEMENT OF
LARRY I. WILLIS, PRESIDENT
TRANSPORTATION TRADES DEPARTMENT, AFL-CIO**

**BEFORE THE
U.S. SENATE COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
HEARING ON
PASSENGER AND FREIGHT RAIL:
THE CURRENT STATUS OF THE RAIL NETWORK AND THE TRACK AHEAD**

October 21, 2020

This week, the Committee will be holding a hearing entitled “Passenger and Freight Rail: The Current Status of the Rail Network and the Track Ahead.” On behalf of the Transportation Trades Department, AFL-CIO (TTD) and our affiliated unions representing passenger and freight rail workers, we appreciate the Committee’s focus on the industry at an extremely timely moment. Across the sector, the pandemic continues to wreak havoc, threatening both the health and livelihoods of employees. At the same time, freight railroads, at the insistence of Wall Street investors and hedge fund managers, have pursued operating practices that undermine basic tenets of rail safety, ask frontline workers to do more with less, and threaten the reliable and efficient customer service that should be the hallmark of this industry. Given the critical nature of these issues, TTD would like to submit the following for your consideration.

Amtrak

COVID-19 has had severe and deleterious impacts on Amtrak’s ridership, workforce, and future. Like other modes of transportation, Amtrak has seen unprecedented drops in ridership. On the Northeast Corridor, ridership has dropped over 90% as business travel has all but vanished. Long distance routes that connect urban and rural communities across the country have lost half or more of their pre-COVID passengers. The cumulative effects of this lost revenue have put Amtrak in an unsustainable position, and despite welcome and necessary Congressional support via the CARES Act, as of October 1st Amtrak has begun to make damaging changes to its workforce and service.

Transportation Trades Department, AFL-CIO

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Larry I. Willis, President / Greg Regan, Secretary-Treasurer

Amtrak is in the process of laying off over 2,000 employees who now find themselves without a paycheck in the midst of a global pandemic. The carrier has also begun reducing frequency on its long distance routes, slashing daily service to three days per week. These routes represent critical connections and lifelines for rural communities across the nation who rely on Amtrak's daily service.

As unfortunate as these announced cuts are, they are predicated on the assumption that Amtrak will receive some level of additional federal aid in this Fiscal Year. If Amtrak does not receive further federal assistance the results may be several magnitudes direr than what has already taken place. Furloughs will not be limited to the 2,000 employees who have already received notice — Amtrak is now estimating that without additional support it will lay off at least an additional 2,400 employees beginning December 11th. Additional service cuts or even discontinuations of certain services altogether will be necessitated, and Amtrak will not be able to move forward on critical capital improvement projects that are important to many of your states and Amtrak's ability to operate as a national passenger railroad.

Even in the event that revenues return sooner than anticipated, Amtrak will face a compounding spiral that threatens its future. The carrier maintains a highly skilled and well trained (and in some cases federally qualified and certified) workforce, and recalling these employees becomes increasingly challenging as time goes on after they have been furloughed. Costs of unaddressed degrading infrastructure will only increase over time, creating self-inflicted harm as Amtrak seeks to return to full service.

These draconian cuts are avoidable. TTD strongly supports the \$2.88 billion in supplementary funding Amtrak has requested, which it claims is sufficient to maintain operations, including long distance service, and to prevent furloughs. We also support Amtrak's additional request for funding for capital projects.

Congress must provide these funds expeditiously to keep Amtrak's workforce off the unemployment rolls, and before conditions further deteriorate at the railroad. At the same time, we call on Congress to explicitly direct that these funds are used to prevent furloughs and preserve the frequency of long distance service. When testifying before the House T&I Subcommittee on Railroads, Pipelines, and Hazardous Materials, Amtrak CEO Bill Flynn was pressed on how the carrier would spend additional funding, committing only to "following Congressional instructions." If Congress intends to protect working people and Amtrak service, it cannot leave these choices up to Amtrak's discretion. We urge Congress to take action to support the carrier, its works and the important service it provides.

Freight Rail and Precision Scheduled Railroading

Over the last several years, Class I freight railroads have increasingly undergone a drastic reimagining of their operations. Today, all but one Class I has adopted this model, known as Precision Scheduled Railroading (PSR). Rail labor has long supported industry changes that allow railroads to improve how they do business — operations that improve safety protect our workers and evolutions that generate new business create new jobs that increase rail employment. In turn, these investments and expansions in rail transportation benefits the U.S.

economy and commercial competitiveness. Unfortunately, PSR meets none of those objectives. Instead, it is a shortsighted effort to increase operating ratios¹ as a means to increase share price without any regard for the impact these changes have on service quality, safety, or long-term industry viability.

What is PSR?

Fundamentally, PSR seeks to enrich shareholders by increasing return on investment in order to reduce assets while maximizing revenue per employee. To accomplish this, railroads move away from the traditional operating model of a service industry that responds to variable demand of its customers. Instead, PSR railroads attempt to operate on a regimented schedule that is more akin to passenger rail. Put another way, instead of providing service to shippers in a manner that fits their business needs, trains will arrive at a “scheduled” time and it is then incumbent on the shipper to be prepared to load or unload cargo. Further, by eliminating on-demand response and flexibility in the construction and quantity of train consists, railroads can reduce capital assets like locomotives and cars, and eliminate jobs across the network.

Ultimately, degraded and unsafe freight rail operations stemming from PSR will have long-term and substantial negative effects for the industry. These effects are immaterial to the hedge fund managers who are desperate to usher transformation towards a short-term profit maximization enterprise, but they matter greatly to the men and women who work on our railroads, as well as to American consumers. Like other industries that have been targeted by Wall Street, investors will eventually move on to the next sector. In their wake, PSR will have left behind a rail industry that is less resilient, is less safe, and with an uncertain future.

Safety Under PSR

For freight rail employees, PSR has manifested itself in a chilling fashion. To extract every possible cent of revenue out of their operations, railroads now run with historically and dangerously thin workforces. Over the last four years, over 50,000 rail workers have lost their jobs, the vast majority of them freight rail workers, and a shockingly large number in an industry where total employment, including passenger and commuter rail, sits today at approximately 200,000 employees. In just the first two years after CSX implemented this model, the carrier fired 22% of its equipment maintenance workers, 16% of its train crews and 11% of its maintenance-of-way employees. In 2019 alone, 20,000 rail workers lost their jobs, a 10% decline in total employment in the industry, and the largest layoff since the Great Recession. Yet during that same period of catastrophic job loss, Norfolk Southern’s and Union Pacific’s share prices increased 30 percent and Kansas City Southern’s were up more than 60 percent.²

Our concerns are not simply that jobs are being lost, but that employment has been reduced in a manner that is fundamentally incompatible with safety. In fact, the Federal Railroad Administration (FRA) has done nothing in response to a massive culling of safety-sensitive

¹ Operating ratios are operating expenses as a percentage of revenue, considered to be the standard metric for railroad profitability

² “Railroads are slashing workers, cheered on by Wall Street to stay profitable amid Trump’s trade war”, Washington Post, 1/3/2020.

workers who are responsible for transporting billions of dollars in goods, including explosive, radioactive, and highly flammable products. Not only do carriers want to operate with artificially slim costs and deeply reduced employment, but they also expect the remaining workforce to run trains at a high and consistent velocity³. In this pursuit, TTD-affiliated unions continue to report a concerning de-prioritization of safety.

Last year, the Transportation Communications Union (TCU)/IAM and the International Association of Machinists and Aerospace Workers (IAMAW) conducted a survey of their members on the impacts of PSR, and the answers painted a deeply disturbing picture of day-to-day operations. One responding machinist reported being sent by himself to work with dangerous and heavy equipment that once required two workers, and expressing fear that no one would know to call for help if he was injured. TCU represented carmen reported that at certain properties management now demands brake inspections be performed at the extraordinary and unsafe pace of just 60 seconds per car, and are routinely asked to ignore FRA regulated defects. Other carmen reported entire sides of train consists going uninspected prior to departure because management needed the adjacent track occupied, a clear violation of FRA safety standards. Similarly, Transport Workers Union of America (TWU) represented carmen have reported to the FRA that railroads have allowed cars with safety defects to run after they were shopped by carmen as unsafe to run. Employees from multiple crafts have reported that critical safety rules designed to protect employees from being hit by equipment are being ignored in the name of speed and that re-shift safety briefings — a common industry practice — are being eliminated in order to focus man hours on velocity over safety.

Separately, signalmen represented by the Brotherhood of Railroad Signalmen (BRS) have reported that FRA-required inspections are being delayed in clear violation of existing regulations, and that in an effort to reduce staff railroads are assigning these employees territories that are simply too geographically large to be safely inspected in the hours set by management. Ongoing efforts to reduce train crew size are also symptomatic of PSR. Despite clear and compelling evidence, provided by the International Association of Sheet Metal, Air, Rail and Transportation Workers, Transportation Division (SMART-TD), that safe freight rail operations in most cases require the presence of a qualified locomotive engineer and conductor, Class I railroads continue on a relentless effort to deploy single person crews on massive freight trains. Carriers are even pursuing ill-considered remedies in the court system to ensure that nothing can stand in their way of eliminating crewmembers in exchange for cost savings. Finally, the International Brotherhood of Electrical Workers (IBEW) members who inspect and repair locomotives report having seen substantial job losses as carriers mothball thousands of locomotives and cars and are similarly put under undue pressure to perform these duties at unsafe speeds.

As carriers take an increasing amount of trains out of service, the need of shippers to transport carloads remains. How are railroads reconciling shipper needs with less service? By increasingly turning to progressively longer, “PSR-optimized” trains. A recent Government Accountability Office (GAO) report found average train length has increased by approximately 25 percent since 2008, and carriers are regularly operating trains up to three miles long. Frontline workers told GAO they are not receiving adequate training on how to safely operate them. Current rail

³ Velocity is defined as total miles divided by total travel time, and is a key performance metric for efficiency.

networks and rail infrastructure are simply not designed for trains of this magnitude, which also cause delays to other freight and passenger services. Among other problems, members of the American Train Dispatchers Association (ATDA) report contending with increasingly difficult dispatching decisions due to the logistical challenges these trains pose, even facing disciplinary actions for circumstances beyond their control.

Long trains also cause disruptions to local communities when these trains block grade crossings for long periods. The safety of these types of operations is a real time experiment on our nation’s railways — and as railroads discover exactly how far they can push the limit on safety it will come at the expense of frontline rail workers and communities.

This FRA has taken a nonchalant approach to long trains, failing to embark on any analysis or consideration of the safety impacts on trains whose size and weight was never contemplated when FRA’s regulations were promulgated. In fact, this FRA has welcomed PSR and its deadly flaws with open arms. Over the last four years, the agency has issued a cornucopia of waivers and rules that serve to accommodate carriers’ bottom line and PSR interests. FRA has allowed railroads to [provide safety sensitive employees less rest](#) and [circumvent the critical role of highly skilled employees](#) and has issued rules which would [reduce critical inspections of equipment and track](#). When FRA began issuing safety waivers to carriers due to reduced manpower as a result of the COVID-19 pandemic, [it rejected rail labor’s simple request](#) that no manpower waiver be issued if a carrier could fill shortages with qualified employees it had previously furloughed, many due to PSR cuts. This philosophy is also reflected on the ground, where TTD unions continue to report that local FRA inspectors fail to perform due diligence or escalate safety issues raised by frontline workers, and that fear of retribution from carriers for reporting violations is endemic. While the agency paints a rosy picture of the amount and dispositions of the complaints it has received, we know that this perspective is deeply incomplete.

Our assertion is not anecdotal. Over the last four years, several Class I railroads have reported safety data to FRA that reflects substantially increased accidents/incidents over a four year timeframe.⁴

Total Accident/Incidents by Railroad	2016	2017	2018	2019	%Chg 2018	%Chg 2019
					2019	2019
Canadian National	274	333	328	309	-5.79	12.77
Kansas City Southern	152	180	172	190	10.47	25
Norfolk Southern	1,095	1,129	1,148	1,225	6.71	11.87
Union Pacific	1,578	1,654	1,788	1,820	1.79	15.34

We believe that these trends stem in part from PSR implementation and attendant unsafe operating practices. Between the data that FRA itself is reporting, and the reports from our member unions, it is clear that are serious safety issues in the freight industry that must be addressed.

⁴ FRA 3.01 - Accident Trends - Summary Statistics, generated 10/17/202.

Service Degradation and the Future of Freight Rail

In addition to safety risks, PSR poses threats to both current and future service. The PSR model is not always consistent with the needs of customers for whom rail transportation as a variable and demand-centric service is essential to their needs. These companies may now have to contend with locomotives arriving or departing at times when they are not prepared to load or unload products. To further exacerbate the situation, railroads are allowed by law to levy demurrage and accessorial charges — fees to shippers for the failure to move cars within an agreed upon period. While demurrage charges are not inherently harmful and can be important in reducing delays on a healthy network, freight railroads have increasingly used them as a cudgel against shippers who struggle to adapt to PSR. While the Surface Transportation Board (STB) took some initial steps earlier this year to address weaponized demurrage, these difficulties are indicative of the broader concerns shippers have raised with the effects of PSR.

At a roundtable held by the House Transportation and Infrastructure Subcommittee on Pipelines, Railroads and Hazardous Materials, a number of shippers stated that due to incompatible service changes, their ability to utilize rail shipping has become increasingly difficult.⁵ Panelists noted that under PSR, they had observed substantially degraded service and expressed concerns about their abilities to continue to move products in a way that makes sense for their businesses. It is important to note that while most businesses have no obligation to serve customers they are uninterested in serving, this is not true for freight railroads who have a statutory duty to provide “transportation or service on reasonable request” and cannot refuse to provide service merely because to do so would be inconvenient or unprofitable.⁶

This “common carrier” obligation is important given the historic consolidation and merger of large Class I railroads. Today, depending on where a shipper is located, they will have at most two Class I railroads that might serve them and may only have one. The inability to obtain reasonable service from a Class I railroad could mean a complete loss of access to the freight network and customers, and companies who lose this access may be forced to pursue financially burdensome alternatives, or close their doors altogether. Given how catastrophic this would be to businesses across the country, it is imperative that both the STB and Congress give consideration to whether railroads continue to meet their statutory obligations under PSR models.

Further, PSR’s singular focus on maintaining only the bare minimum assets and staff that are needed to maintain current service places the industry in a position where it is not able to be quickly responsive to system shocks and economic volatility. Whether that be a sudden influx in carloads, the introduction of new commodities, or a crisis like COVID-19, PSR denies carriers the ability to quickly adapt their service because they will not have the capital assets or employees to do so. Railroads should have learned this lesson by now. When Union Pacific and Southern Pacific merged in 1996, the result was a near immediate service meltdown with serious economic consequences. In part, this meltdown occurred due to the inability of UP to provide crews and locomotives as necessary, and shippers experienced weeks of delays.^{7 8} Delays of this

⁵ Railroad Shippers Roundtable, Railroads, Pipelines, and Hazardous Material Subcommittee, Thursday, July 25, 2019

⁶ 49 U.S.C. 11101(a).

⁷ Up Faces "Meltdown" In Wake Of Accident, Journal of Commerce, 8/21/1997

nature have a rippling and harmful impact across the freight network and the American economy writ large that must be avoided. Not only are we concerned about the ability of PSR railroads to respond to unplanned events, we also worry that the model artificially constrains long-term growth. Whether that manifests as reductions in business as PSR-weary shippers pursue other alternatives, or as failures to capture new markets due to lacking capacity, we believe that PSR is fundamentally trading current profits against the future of the industry.

Today, both freight and passenger rail have arrived at critical junctures. We urge the Committee to consider the issues discussed here, and to use its authority, as well as cooperation with appropriators and regulators, to ensure the continued existence of a safe and prosperous rail network that works for its employees, its customers, and the American public.

⁸ Another Rail Meltdown?, IndustryWeek, 12/21/2004