BEFORE THE
SURFACE TRANSPORTATION BOARD

GROWTH IN THE FREIGHT RAIL INDUSTRY	))))	**Ex Parte No. 775**

JOINT WRITTEN SUBMISSION OF FREIGHT RAIL CUSTOMER ALLIANCE AND NATIONAL COAL TRANSPORTATION ASSOCIATION

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Dated: August 16, 2024

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AND NATIONAL COAL TRANSPORTATION ASSOCIATION

The Freight Rail Customer Alliance ("FRCA") and National Coal Transportation Association ("NCTA") respectfully submit this written submission to accompany their in-person presentation to the Surface Transportation Board ("Board" or "STB").

I. FRCA and NCTA Representatives for the Hearing

The principal representative for FRCA and NCTA at the hearing will be Emily F. Regis, the long-time Fuel Services Manager of Arizona Electric Power Cooperative, Inc., who serves as President of both FRCA and NCTA. Ms. Regis will be accompanied by Robert Rosenberg of Slover & Loftus LLP, as counsel for FRCA and NCTA.

II. Identity and Interest of FRCA and NCTA

FRCA, www.railvoices.org, is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and their consumers. The mission of FRCA's

growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

NCTA, www.moveNCTA.org, is a non-profit corporation comprised of electric utilities, coal producers, shippers of coal-related commodities, and entities that produce, repair, and manage all facets of railcar component parts and systems as well as services for railcar operations. Its primary purpose is to promote the exchange of ideas, knowledge, and technology associated with the transportation and beneficial uses of coal and related bulk commodities, including coal ash, cement, and lime, among others.

III. Summary

FRCA and NCTA commend the Board for holding this hearing on the very timely and important topic of the lack of growth in the railroad industry.

The lack of growth and decline in rail volumes is largely attributable to the lack of competition within, and the related exercise of market power by, the railroad industry. Railroads have pursued higher rates and lower operating ratios at the expense of volume growth and service quality, to the detriment of shippers and the general public interest. Those rate increases have resulted in excess or monopoly profits, as the railroads long ago began outearning their cost of capital as measured by the investment community. *E.g., When Pigs Fly III: Silk Purses from Sow's Ears*, UBS Research (Rick Paterson, analyst), dated April 18, 2006.

Coal volumes have declined in recent years due in part to environmental restrictions and market forces, particularly the rise of renewables and low-priced natural gas. However, railroads have also contributed to coal's decline in various ways,

including disproportionate rate increases, poor, unreliable, and unpredictable rail service, and poor customer support. In particular, there are substantial volumes of coal that the railroads were unable and/or unwilling to transport in 2021-2023. The railroads' failure to serve harmed their utility customers and the communities the utilities serve. The service problems that erupt recurrently show that market incentives alone, *i.e.,* the railroads' need to be paid for transportation services rendered, are not sufficient to cause the railroads to provide adequate and reliable transportation service.

Since market forces alone are insufficient to constrain rate increases and achieve reliable and adequate rail service, regulatory involvement is appropriate. In particular, the Board should implement and enforce the common carrier obligation and the revenue adequacy constraint. Meaningful application and enforcement of the common carrier obligation is needed to provide assurance that the railroads can and do provide service that is reasonably needed and should be a requisite for the railroads to enjoy their many privileges. Application of the revenue adequacy constraint is needed so that the railroads do not engage in economic withholding, such as turning down and otherwise discouraging economically profitable traffic, especially to lower their operating ratios when those ratios are already low enough for the carriers to have achieved revenue adequacy.

In addition, the railroads should be required to provide adequate customer support and adopt terms and conditions that make it easier, not more difficult, for shippers to use rail transportation for commodities such as coal.

IV. Discussion

A. Key premises of the Staggers Act and other deregulation no longer hold.

A key premise of deregulation by first the Interstate Commerce Commission and later the Board under the Staggers Rail Act of 1980, the ICC Termination Act of 1995, and related legislation is that the railroad industry needed to be freed from excessive regulation to enable it to flourish and grow in order to benefit not only the railroad industry, but also the shippers and public that the industry ostensibly serves.

The railroad industry has certainly been freed from excessive regulation. Following enactment of the Staggers Rail Act, the railroad industry generally responded at first by increasing volumes and lowering rates, and the railroads and shippers both benefited. Shippers, particularly coal shippers, have certainly contributed the revenues to enable the railroads to achieve revenue adequacy. However, railroads, beginning early in the early 2000s, following a series of major railroad mergers, became more concerned with increasing their rates and profits and, more recently, reducing their operating ratios than growing their volumes.

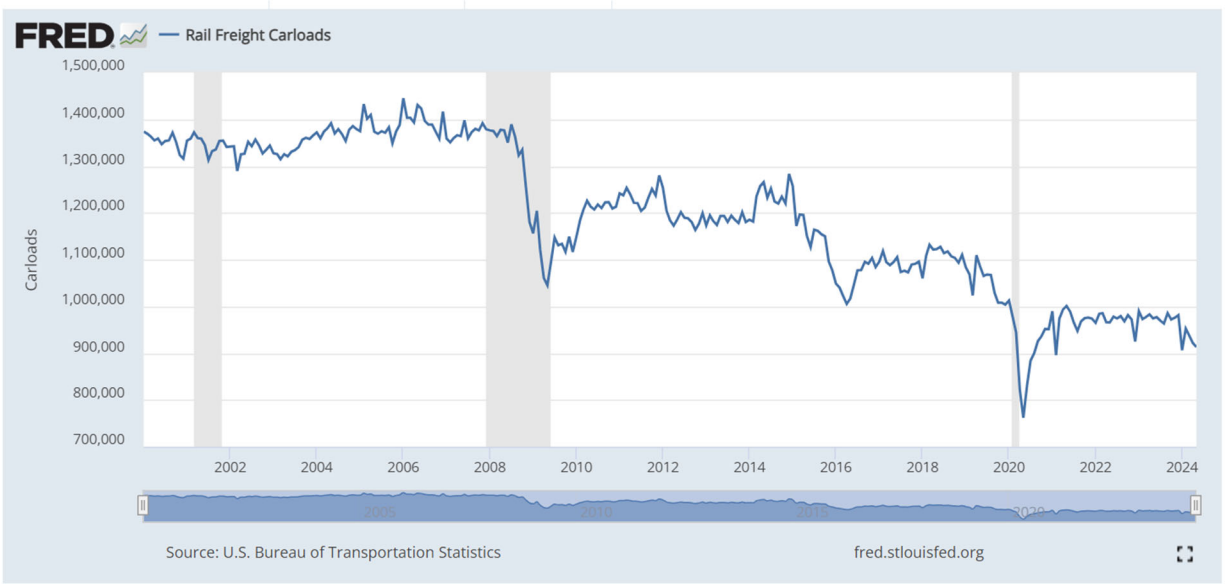
Quality of service has suffered. Railroads were to be incented to provide service because they would not be paid unless they delivered the freight. Railroads instead are now more concerned with handling traffic "efficiently" than with increasing their volumes and market share. The railroads' emphasis on reducing headcounts, running longer trains, and avoiding capital expenditures such as for lengthening passing sidings to accommodate their longer trains has led to congestion, delays, crew shortages,

unreliable and unpredictable service, poor customer relations, and foregone volumes. The railroads have benefited, as reflected in their soaring stock prices, even as service has been degraded and volumes reduced.

B. Despite projections of substantial growth, railroad volumes have not grown since 2000.

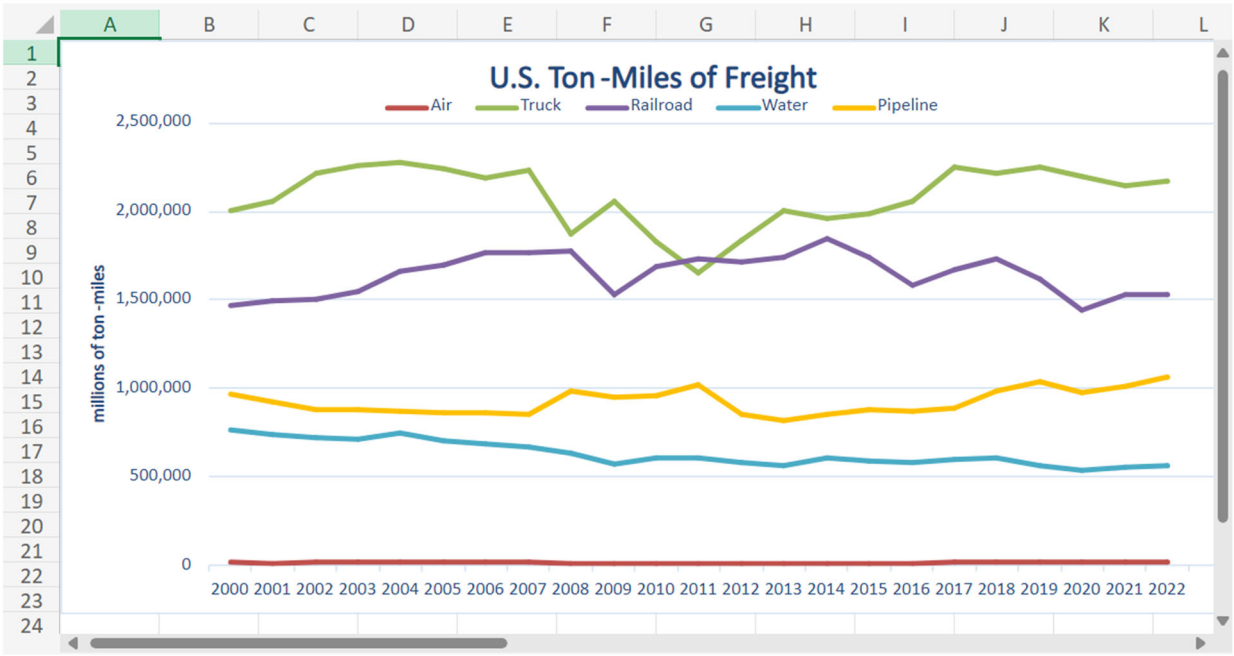
Following the enactment of the Staggers Rail Act, railroad volumes grew substantially. For example, data from the Bureau of Transportation Statistics ("BTS") shows that Class I ton-miles of freight grew from 876,984 million in 1985 to 1,595,242 million in 2001, an increase of 82%. *See* https://www.bts.gov/archive/publications/national_transportation_statistics/2004/table_01_46.

However, that trend has not continued. BTS data referenced in the Board's notice for the hearing shows a 27% reduction in rail carloads over the past decade and a 33% decrease since 2000.



See https://fred.stlouisfed.org/series/RAILFRTCARLOADSD11.

While railroads have grown their rail intermodal traffic over that period by a substantial amount, the increase in that traffic has not offset the decrease in carloads. Specifically, BTS data shows that rail freight ton-miles are essentially the same as they were in 2000 and 2009, despite some increases in interim years, even as truck freight ton-miles have increased since 2000 and especially since 2011.



See https://www.bts.gov/content/us-ton-miles-freight. In other words, traffic has been available, but the railroads have not obtained it.

The lack of growth in rail freight since 2000 is especially disconcerting since well-credentialed studies from the 2000s projected substantial and sustained increases in freight traffic over the next thirty years. *See* https://store.transportation.org/Common/DownloadContentFiles?id=1821 (Executive Summary for 2002 AASHTO Study, prepared by Cambridge Systematics);

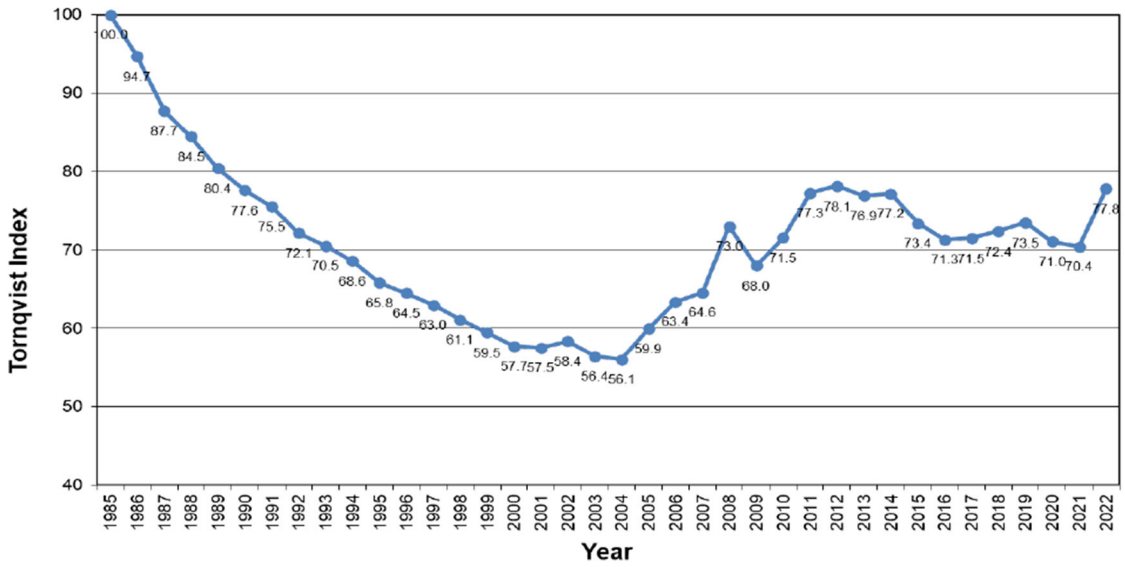
https://downloads.regulations.gov/OSM-2010-0021-0124/content.pdf (September 2007 study by Cambridge Systematics for the Association of American Railroads ("AAR")).

C. The railroads have instead focused on raising rates and profit margins at the expense of volumes.

The key question is whether this lack of growth in railroad volumes occurred despite the railroads' efforts to avoid it, or whether the railroads' actions and decisions contributed to the decline. As explained below, available data shows that railroads' actions, particularly their emphasis on raising their rates, contributed to the decline.

Data compiled and analyzed by the Board's Office of Economics shows that the Class I railroad rates, in real terms, declined substantially, while their rail volumes were increasing, until roughly 2001, and that the rates began increasing substantially in real terms circa 2004, when volumes stabilized and began decreasing.

Figure 1. Rail Rate Index Based on Real Revenue Per Ton-Mile, 1985=100



See https://www.stb.gov/wp-content/uploads/Annual_Rail_Rate_Index_Study_2022.pdf. Notably, the Board's analysis relies on a Tornqvist index that adjusts for changes in the traffic mix, such as the growth in coal (in earlier years) and intermodal, in contrast to presentations that rely on average revenue per ton-mile often favored by the AAR. *E.g.,* https://www.aar.org/issue/freight-rail-economic-regulation/#economic-staggers.

The inflection point in railroad rates circa 2004 is no coincidence. During this period, the railroads were adopting widespread use of separate fuel surcharges, which had the effort of separating rate changes from cost changes.[1] The western railroads also sought to adopt "public pricing" for their coal transportation. All of these matters contributed to the surge in railroad rates. In addition, the railroads experienced service problems during this period, and were unable to meet utility demand for coal, especially in the face of spiking gas prices (noted *infra*).[2]

It should come as no surprise that higher prices generally result in reduced volumes, even for so-called captive traffic. Railroads have been willing to sacrifice volumes for the sake of higher rates and higher profits. Their willingness and ability to

[1] The initial fuel surcharges were based on percentage of rate, rather than actual costs. After the Boad intervened, the surcharges for non-intermodal traffic were generally linked to changes in the retail price of diesel fuel, allowing fuel surcharges to continue to function as a "profit center," despite Board policy ostensibly prohibiting that outcome.

[2] *E.g.,* FERC Docket No. AD06-8-000, *Discussions With Utility and Railroad Representatives on Market and Reliability Matters*, 71 Fed. Reg. 33746 (June 12, 2006) (notice for FERC in-person hearing held June 15, 2006).

do so is a manifestation of market power, *i.e.,* in a competitive market, the loss of volume at least offsets the increased revenues and margins from the higher prices.

In more recent years, the trends and problems have been greatly exacerbated by the railroads' devotion to Precision Scheduled Railroading ("PSR") and reducing their operating ratios. The railroads have demonstrated their willingness to forego otherwise profitable traffic to pursue those operating ratio reductions.

The railroads have also demonstrated their commitment to taking rate increases in excess of the rate of inflation. Again, in a competitive market, such actions would be self-defeating because desirable traffic would depart for lower-priced alternatives. Similarly, in a competitive market, productivity improvements would be passed through to customers, and not retained. The railroads' ability to lower their operating ratios by reducing their volumes is thus a further indication that the market is not competitive and that the railroads are exercising their market power.

The resulting harm to society and consumer welfare is not limited to forcing captive and even so-called competitive shippers to pay higher rates than necessary to enable the railroads to achieve and exceed revenue adequacy. Excess payments leave customers with fewer dollars to cover their other needs and producers with less to cover their other inputs, including employee wages. The volume reductions resulting from the imposition of higher rates constitute "deadweight" loss of output for both production and consumption, which reduces output, growth, employment, and social welfare generally.

The higher rates and even volume reductions might be tolerable if the railroads were not generating sufficient returns to sustain their operations, *i.e.,* achieve revenue adequacy, or if the forgone traffic were unprofitable. But the Staggers Rail Act was enacted 44 years ago, and the railroads have had ample opportunity to address marginal traffic and abandon unprofitable segments. The railroads have achieved revenue adequacy as measured under the STB's bloated cost of capital, and did so nearly twenty years ago as viewed the investment community, despite the substantial asset write-ups due to railroad mergers.[3]

D. The railroads have also discouraged coal volumes through high rates, poor service, and other means.

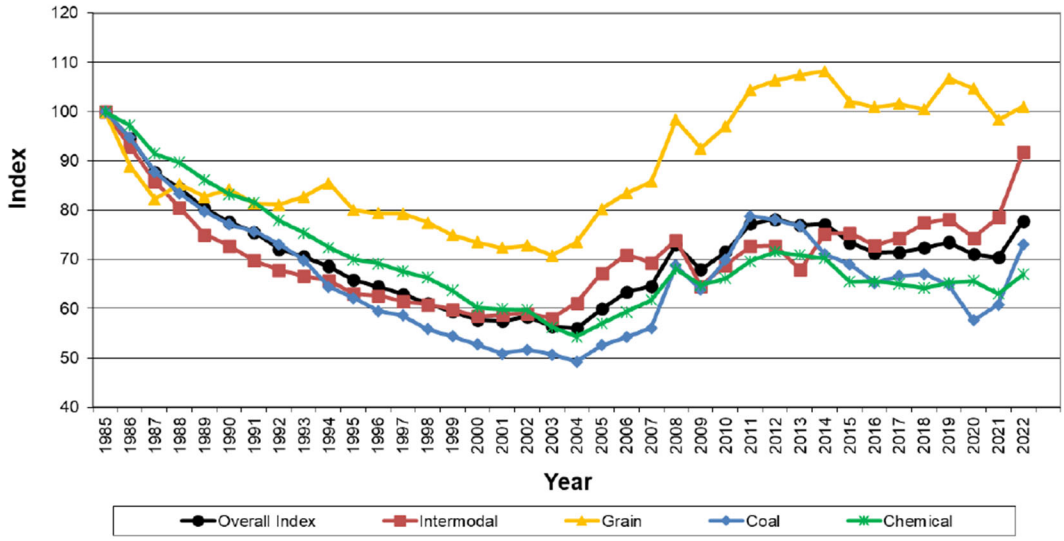
It is no secret that utility consumption of coal for generating electricity has declined in recent years. Those reductions result primarily from a combination of environmental restrictions and competitive pressures, particularly low gas prices and increased reliance on renewables. As with other commodities, coal transportation reflects a "derived demand," meaning electrical power, and electric utilities and other generators and suppliers generally supply power at the lowest cost possible consistent with other considerations, particularly reliability and, as noted, environmental restrictions. Electric utilities and generators have no control over these factors, particularly fluctuations in natural gas prices, and little ability to predict their course, despite the use of marketing and forecasting models developed by industry-wide experts.

[3] The BNSF and CPKC accounting records reflect goodwill, with tangible asset valuations exceeding fair market value.

Within this context, railroads have taken several actions that have contributed to the decline in coal traffic and failed to take other actions that could have mitigated the volume declines.

The first is that they have increased rates on coal disproportionately to their other traffic. This development is depicted in Figure 4.1 from the Board's Tornqvist study referenced previously:

Figure 4.1 Rail Rate Indices for Commodity Groups, 1985=100



From 2004 to 2022, the railroads increased their rates on coal by 49% (73/49), whereas they increased their overall rates by 39% (78/56).[4] The additional increase of 1,000 basis points, or 24.6%, on coal demonstrates how the railroads increased coal rates disproportionately to their other traffic, contributing to the decline in coal volumes. The

[4] The actual index values are taken from https://www.stb.gov/wp-content/uploads/Rate-Study-Workbook-Documentation-1985-2022.xlsx.

rate increases are particularly significant for coal from the Powder River Basin ("PRB") in Wyoming and Montana because the price of coal transportation often exceeds the f.o.b. mine price of the coal itself. The rate increases show how the railroads favored profits and margins over volumes.

The Board's Tornqvist analysis uses the Gross Domestic Product Implicit Price Deflator ("IPD") to state nominal rates in real (inflation-adjusted) terms. Study at 6. The IPD tends to overstate the inflation that railroads experience in terms of their actual costs, especially after accounting for productivity. For example, over the decade from 4Q12 to 4Q22, the IPD increased by 28% (120.039/93.885),[5] which equates to a compound annual growth rate of 2.5%. In contrast, the RCAF-U increased by 15% over that period (1.0/0.869), a compound annual growth rate of 1.4%.[6] More significantly, the RCAF-A increased by 7.1% (0.407/0.380), a compound annual growth rate of 0.7%. Use of the IPD in the Board's Tornqvist study thus masks the level of escalation in rail rates relative to inflation in actual railroad costs.

Accordingly, the very slight decline in real rates shown in the Tornqvist study for overall traffic (Figure 1) from the seemingly post-2000 apex in 2012 (78.1) to

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[5] *See* https://apps.bea.gov/iTable/?reqid=19&step=3&isuri=1&1921=survey&1903=13#eyJhcHBpZCI6MTksInN0ZXBzIjpbMSwyLDMsM10sImRhdGEiOltbIk5JUEFfVGFibGVfTGlzdCIsIjEzIl0sWyJDYXRlZ29yaWVzIiwiU3VydmV5Il0sWyJGaXJzdF9ZZWFyIiwiMjAyMyJdLFsiTGFzdF9ZZWFyIiwiMjAxMiJdLFsiU2NhbGUiLCIwIl0sWyJTZXJpZXMiLCJRIl1dfQ==.

[6] The RCAF-U and RCAF-A values are available at https://www.aar.org/wp-content/uploads/2024/06/RCAF-History-2024Q3.pdf.

2022 (77.7), as shown in Figure 1 of the study, is illusory. The annual increase that the railroads experienced in their costs was 0.7%, not 2.5%. Deflating the nominal index values (143.3 and 180.6) by the corresponding RCAF-A values (0.380 and 0.407), shows a real compound annual increase in railroad rates, in excess of cost inflation, of 1.6%.[7]

Second, the railroads have been unable or unwilling to ship coal that was available for transportation. This service deficiency was especially evident during the 2021-2023 time frame, as reflected in two complaints filed against BNSF at the Board.[8] However, the problems were not confined to NTEC and Evergy. To the contrary, NCTA has periodically conducted on-time surveys among its members. Those surveys, portions of which have been presented at meetings of the Board's Rail Energy Transportation Advisory Committee ("RETAC"),[9] show substantial, even massive railroad failures to meet utility nominations.[10] In particular, the presentation for the April 26, 2023 meeting showed that 20% of survey respondents for the second half of 2022 experienced more

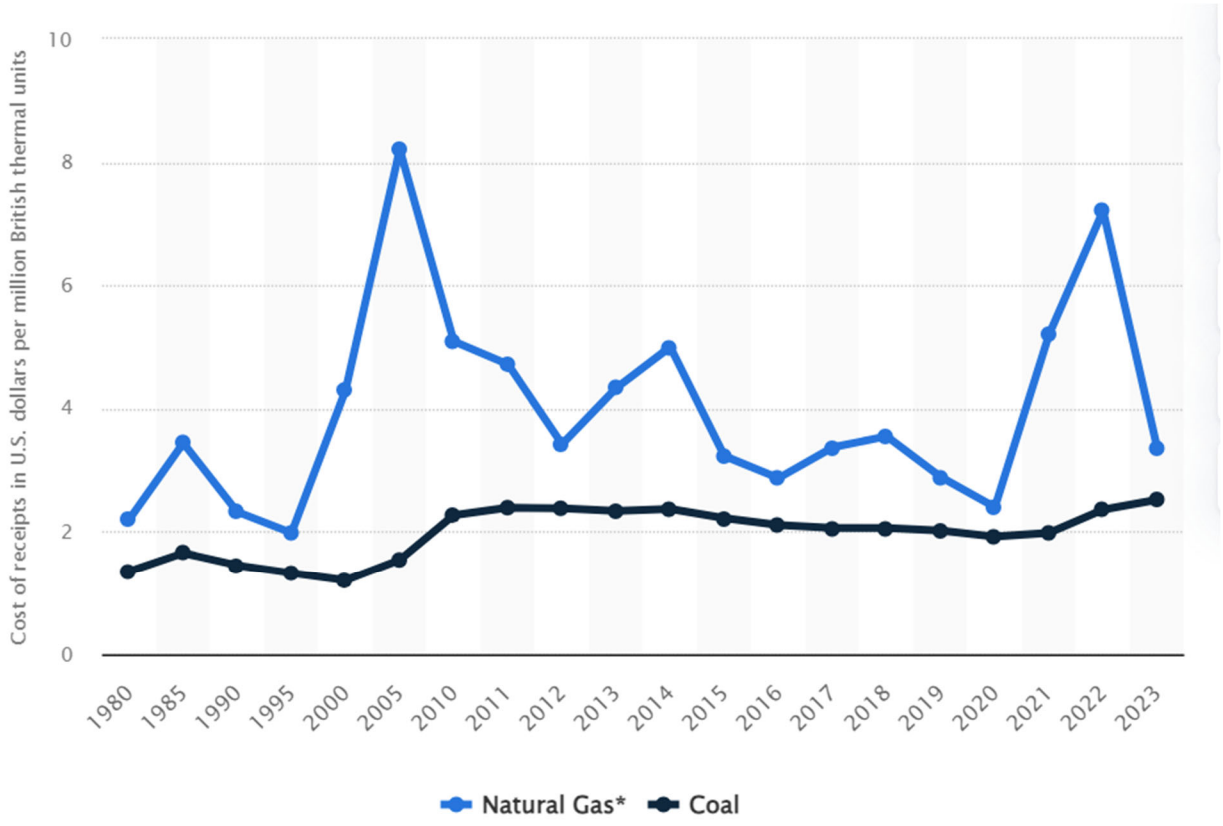
[7] (180.6/0.407)/(143.3/-0.380)=1.177, which has a tenth root of 1.016.

[8] *Navajo Transitional Energy Company, LLC—Ex Parte Petition for Emergency Service Order*, NOR 42178; *Evergy, Inc., Evergy Metro, Inc., and Evergy Kansas Central, Inc. v. BNSF Railway Company*, NOR 42180.

[9] Ms. Regis serves on RETAC and presented the survey results at some of the RETAC meetings.

[10] *E.g.,* https://www.bnsf.com/about-bnsf/financial-information/pdf/performance-summary-2q-2024.pdf (Nov. 16, 2021 meeting); https://www.stb.gov/wp-content/uploads/RETAC-UTILITIES-april-20-2022.pdf (Apr. 20, 2022 meeting); https://www.stb.gov/wp-content/uploads/STB-RETAC-utility-2022-1022.pptx (October 26, 2022 meeting); https://www.stb.gov/wp-content/uploads/Utilities-Industry-Segment-Update-PDF.pdf (Apr. 16, 2023 meeting); https://www.stb.gov/wp-content/uploads/RAILROADS-October-2023-Slide-Deck.pdf Oct. 18, 2023 meeting).

than $50 million individually in increased costs. While the railroads may have foregone profits on the unshipped volumes, the harm inflicted on utilities and their customers was far greater, as potential coal generation was displaced with natural gas generation (or purchases of power generated elsewhere with natural gas). As shown below, prices for replacement natural gas might be as much as quadruple the cost of coal.



See https://www.statista.com/statistics/189180/natural-gas-vis-a-vis-coal-prices/. The chart depicts the gap between coal-fired and natural gas-fired power from 1980 through 2023, including spikes during periods of railroad service meltdowns around 2006, 2014, and 2022. As the figures depicted are national averages, they mask the impact on Western coal, which typically has a delivered cost far lower than Eastern coal.

The railroad service meltdowns injured others. For example, the Wyoming Mining Association estimated a reduction in Wyoming coal production of 50 million tons in 2022 alone and a loss of about $100 million in Wyoming severance tax revenues. *See* https://cowboystatedaily.com/2023/01/22/rail-service-cost-wyoming-100-million-in-coal-revenue-in-2022/.

In that regard, it is important to understand that the loss of the coal-burning opportunity is permanent, *i.e.,* a "make up" delivery does not allow the utility to alter its dispatch decisions retroactively. Utilities make decisions whether to dispatch coal-fired plants and consume coal in real time based on cost and related factors.[11] Coal may have a favorable position in the utility's portfolio stack or the market at one time, but not at another time. If coal is not available at the earlier time, then the coal cannot be burned. Coal delivered at a later time will generally not be burned unless and until the economics are favorable.

Use of a stockpile may mitigate these problems, but only within limits. Power plants do not have unlimited space for stockpiling coal, and the cost of maintaining a stockpile is considerable, although many utilities have chosen to increase their stockpiles to guard against the rail service problems that have become more recurrent in recent years. Stockpiled coal requires paying the railroad and the coal supplier in advance of when the coal is consumed. For example, a 300,000-ton stockpile

[11] In some instances, the utility or other generator may not make its decisions on its own, particularly where dispatch is controlled by a regional authority such as an independent system operator, regional transmission organization, or power pool.

of PRB coal with an f.o.b. mine price of $15/ton plus a transportation cost of $20/ton represents an investment of $10.5 million, which translates into an annual carrying cost, at a 10% cost of capital, of $1.05 million. That $1.05 million constitutes a 17.5% additive to the cost of the coal transportation itself ($1.05 million/$6 million). Furthermore, the stockpile requires management to limit oxidization (including loss of heating value) and self-combustion.

The larger problem is that when railroad service suffers a meltdown, as it did in 2005-2007, 2013-2014, and 2021-2023, shippers are unable to receive adequate deliveries, or obtain reliable information as to what volumes are delivered, and are forced to curtail coal generation to preserve the stockpile in order to maintain reliability, that is, to ensure that the lights stay on and brownouts and blackouts are avoided. Utilities face severe consequences, such as federal penalties of up to $1.5 million per violation per day, for failing to maintain reliability. While utilities are generally able to preserve reliability, the cost of doing so can spike when the railroads do not deliver adequate volumes of coal, which results in the large economic harms reported in the NCTA surveys.[12] In that regard, it should be noted that utility coal is relatively easy for the railroads to transport compared to other commodities, *e.g.,* shippers frequently supply the railcars, the coal moves in long trainsets that reduce the number of trains required to transport the product,

[12] An exacerbating factor is that railroads may first insist on knowing the size of the plant's stockpile and then reduce coal deliveries if they deem the stockpile sufficiently adequate. Utilities seeking to manage their stockpiles responsibly in such circumstances may be caught in a Catch-22 and/or moral hazard.

the trainsets shuttle intact between origin and destination with little if any switching, the coal is generally loaded and unloaded quickly on loop tracks provided at the mine and the power plant, and the mines and receiving facilities generally operate on a 24x7 basis.

The following table summarizes responses from recent NCTA surveys regarding the level of railroad service and service problems experienced by respondents:

	Longer than typical or historic transit times	Lack of railroad crews causing delays	Delayed train pick ups	Trains being doubled in transit	Lack of locomotive power available	Poor communication from the rail carriers	Missed car switches	Increased charges by the railroads
July 2021-Dec 2021	75%	91%	68%	59%	75%	50%	32%	26%
Jan 2022-June 2022	90%	90%	90%	52%	68%	40%	32%	20%
July 2022-Dec 2022	69%	88%	82%	57%	57%	31%	25%	25%
Jan 2023-June 2023	60%	87%	53%	45%	65%	40%	20%	27%
July 2023-Dec 2023	14%	57%	85%	43%	43%	43%	28%	14%

The table shows that the vast bulk – as much as 90% of respondents in the first half of 2022 – experienced service problems as measured by transit times in the 2021-2022 time period. Those problems included delays due to lack of train crews, delayed train pick-ups, and unavailability of power. While service as measured by transit times did improve in the second half of 2023 (when natural gas prices were very low and coal consumption was reduced), problems still persisted, *e.g.,* more than half of respondents reported train crew problems and 85% reported delayed pick-ups. In short, service problems remain pervasive.

The surveys identify another frequent problem, poor communication by the rail carriers. This problem is not confined to coal and reflects the railroads' unwillingness to invest in adequate human resources. The communication problems feed into other problems, as shippers will be forced to conserve coal when they cannot obtain accurate and responsive information as to what level of service they will receive.

A fourth problem is that the railroads insist on rigorous terms and conditions for their shippers that limit or discourage coal volumes, but do not hold themselves to similar terms and conditions. Shippers are subject to charges and other penalties if they delay trains, but the railroads are not. The level of railroad service is highly variable and unpredictable, and, as noted, railroad communications are often lacking. In contrast, the railroads generally insist that shippers nominate in advance and ship volumes in monthly ratable amounts. Accordingly, when coal burns and demand fluctuate in response to market conditions that utilities do not control and cannot always accurately predict, there is often no firm commitment from the railroads to transport the coal when it is needed. Shippers become cautious and conservative in nominating volumes in advance, when future conditions are unknown. As a result, coal that shippers want to transport, and that is profitable for the railroads to handle, does not get shipped.

A very recent example is BNSF's amendment of its 6041-B Rule Book to require shippers to provide information on the stockpile level in both tons and "full burn days." This information is highly confidential and proprietary and can be difficult to assemble. Moreover, BNSF has not explained the need for this information, although it is presumably to be able to allocate service among its customers, which gives BNSF the ability to choose winners and losers. While a shipper in dire circumstances might be willing (or coerced) into providing this information as a condition of receiving service, BNSF should not be allowed to require the information as a matter of course. BNSF should certainly not be allowed to require such information when BNSF itself provides

poor, inadequate, inconsistent, and unpredictable service and also fails to provide adequate customer communications.

The core problem is that railroads have excess market power that allows them to impose onerous conditions that serve to reduce available volumes. The railroads desire to eliminate or shift risk to their customers, but the ultimate result is market dysfunction, all the more so when railroads are more motivated to lower their operating ratios and increase their efficiency than to grow their volumes.

E. The needed solutions include implementation and enforcement of the common carrier obligation and revenue adequacy rate constraint.

The regulatory responses to the railroad volume issue should include implementation and enforcement of the common carrier obligation and revenue adequacy constraint.

Enforcement of the common carrier obligation is needed to ensure that the railroads have adequate incentive and capability to provide needed service. Recent experience has shown that the railroads are willing to shun otherwise profitable traffic that does not contribute sufficiently to lowering their operating ratios. The railroads are also willing to forego investing in capacity and resiliency for the same reason. Their actions leave the railroads unable to provide service upon reasonable request, and available volumes and needs go unserved and unmet. Also distressing is that the railroads have chosen to focus their efforts instead on growing intermodal traffic, where there is at least the potential for transportation by some other mode.

Even if the Board elects to continue addressing the common carrier obligation on a case-by-case basis, the Board can and should establish both standards and an enforcement mechanism, such as clear availability of injunctive relief and penalties or damages, for failure to provide adequate service. While much of the railroads' traffic moves under contracts or exemptions, the Board should still establish a common carrier baseline that shippers can utilize in deciding whether to enter into contracts and on what terms and that the Board can utilize for determining if exemptions should be revoked or revisited. In that regard, contracts often incorporate the common carrier standard as the level of service to be provided under the contract.

In addition to adding teeth to the common carrier obligation, the Board also needs to address the rate component of the transportation equation, as the data shows that railroads can and do control and reduce their volumes by increasing rates, which can also serve to lower the operating ratio.

To that end, the Board should flesh out and enforce the revenue adequacy constraint. There should be no question that the railroad industry has generally achieved revenue adequacy as measured by the Board's own railroad industry cost of capital, and even more so utilizing the lower cost of capital recognized by the financial and investment community and even the carriers themselves, *e.g.,* the 8% that CSX presented in its most recent annual report.[13]

[13] The lone exception to revenue adequacy may have been KCS, but its perceived revenue inadequacy proved no obstacle to the CP and CN bidding war that resulted in a massive acquisition premium and large goodwill write-up.

Revenue adequacy is not an end in and of itself, but instead a means for assuring that railroads have the ability to meet the other objectives of the national transportation policy at 49 U.S.C. § 10101, provide service upon reasonable request, serve captive traffic at rates that do not exceed reasonable maximums, and follow reasonable practices. Shippers, particularly coal shippers, have provided funds to enable railroads to achieve revenue adequacy. Now that one of the prime objectives of the Staggers Act has been achieved, shippers and the public should receive an appropriate return on their investment. That return is frustrated, even negated, when railroads elevate their operating ratios over service.

IV. Conclusion

The reason that railroad volumes, especially carloads, have declined is, simply stated, that the railroads would prefer to handle less traffic at higher rates with degraded service. They wield the market power to do so, and exercising that power reduces their operating ratios and increases their profits and profit margins. Customer needs and the public interest are undercut by investor incentives.

The appropriate response for the Board is to restore the incentives that the marketplace is unable to or cannot provide. The appropriate tools available to the Board are to enforce the common carrier obligation to provide service upon reasonable request, rather than allow or encourage the carriers to withhold service, and to flesh out and apply the revenue adequate constraint.

Respectfully submitted,

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Dated: August 16, 2024