

United States Senate
WASHINGTON, DC 20510

October 2, 2023

EP 711 (Sub-No. 2)
307241

The Honorable Martin Oberman
Chairman
Surface Transportation Board
395 E Street SW
Washington, D.C. 20423

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Dear Chairman Oberman:

Thank you for your commitment to our nation's freight rail network. We write to express our strong support for the Surface Transportation Board (Board)'s Notice of Proposed Rulemaking (NPRM) in Reciprocal Switching for Inadequate Service.¹ This rulemaking is long overdue. We have been concerned about the prolonged service challenges facing many rail shippers in recent years and have appreciated the efforts taken by the Board to date to require service improvement plans and increased data reporting.² However, ensuring that the freight rail system works for all stakeholders will require more than just additional reporting. This proposed rulemaking is an appropriate next step that will improve rail service, and we encourage you to move ahead with the final rule. We also believe more may be needed and ask that you continue engaging with shippers as stakeholder comments are reviewed and the Board considers next actions.

The Board has been evaluating rulemaking relating to reciprocal switching since 2016, and we are encouraged by the Board's unanimous, bipartisan 5-0 decision in moving forward with the NPRM. We believe this demonstrates the Board's thoughtful consideration of stakeholder comments relating to reciprocal switching over the last decade, as well as its careful examination of the Class 1 railroads' performance since its "Urgent Issues in Freight Rail Service" hearing in April 2022. Data collection from the Board following that hearing shows continued trends of rail service unreliability. Further, recent reporting found that millions of dollars of revenue was lost in just one quarter this year for four shippers who rely on rail service.³ This rule would expand the availability of remedies for many who are currently without access to competition in rail service.

We share the Board's concerns about declines in rail service and believe the reciprocal switching and data provisions of the NPRM would take important steps in supporting many shippers. The use of several objective and measurable standards when evaluating service levels, combined with the increased data availability to shippers, will give unprecedented levels of transparency and, if necessary, recourse to some shippers should they be faced with inadequate levels of service.

¹ Docket No. EP 711 (Sub-No. 2)

² Docket No. EP 770

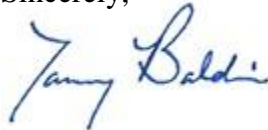
³ <https://cowboystatedaily.com/2023/07/21/poor-rail-service-costs-wyoming-trona-mines-20-million-in-first-quarter-of-2023/>

While we are supportive of Board's efforts with this rule, we believe more needs to be done to promote freight rail competition. For example, the Board should move forward with its consideration of a phased-in approach of raising the success rate to levels that ensure shippers and their customers are given the certainty they need to conduct their operations. Further, ensuring that the data provisions in the rule are implemented appropriately will be critical for shippers to be given the intended levels of transparency for their rail service.

Persistent, inadequate rail service not only harms the rail shipper, it also impacts the entire country's economy. With billions of dollars of commerce relying on rail service every year, the competitiveness of the U.S. economy depends on having an effective and reliable rail network. Indeed, freight rail accounts for roughly a third of U.S. exports by volume and 28% of freight movement by ton-miles.⁴⁵ In addition, a significant portion of our nation's energy supply depends on efficient rail service to remote areas. We simply cannot afford to have widespread rail service disruptions upending operations for thousands of rail shippers. Given the recent trends of poor rail service, now is the time for the Board to move toward a final rule.

We believe this rule takes an important step in ensuring that farmers, manufacturers, energy producers, and other shippers, and their customers, are able to receive the levels of rail service they need to succeed. We urge the Board to move swiftly to a final rule, we look forward to working with the Board on other steps that can be taken to support the resiliency of the country's rail network.

Sincerely,



Tammy Baldwin
United States Senator



Shelley Moore Capito
United States Senator

⁴ <https://www.trade.gov/freight-rail-services>

⁵ <https://railroads.dot.gov/rail-network-development/freight-rail-overview>