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The Honorable Robert E. Primus  
Chairman  
Surface Transportation Board  
395 E Street, S.W.  
Washington, D.C. 20423-0001

**Re: Growth in the Freight Rail Industry, Docket No. EP 775**

Chairman Primus:

I am writing on behalf of the CPAC Foundation's Center for Regulatory Freedom in response to the Surface Transportation Board's (STB) request for comments on "Growth in the Freight Rail Industry" in Docket No. EP 775, in advance of the STB's scheduled hearings on September 16 and 17, 2024. We appreciate the opportunity to contribute to this important discussion and offer our perspective on the future direction of the freight rail industry under the STB's regulatory framework.

The CPAC Foundation is a non-profit, 501(c)(3) charitable organization. As part of or educational function, the Center for Regulatory Freedom (founded last year) is engaged in the analysis of both proposed rules and the regulatory state at large. In particular, we evaluate how proposed (and implemented) rules impact the American economy, how the legal framework of our administrative state has transformed over time, and how those who seek to enlarge the size and scope of federal power use that administrative state to achieve ideological ends that fall well outside the mainstream of everyday Americans.

**Introduction**

The freight rail industry has long been a cornerstone of the American economy, providing an efficient, reliable, and environmentally friendly means of transporting goods across the country.

However, recent trends *seeming to* indicate a stagnation in carload volumes over the past decade have apparently prompted the STB to examine the industry's growth strategies. While the Board's interest in this issue is understandable, we believe that the focus on “growth” as an end in itself may lead to unintended consequences. The Center for Regulatory Freedom believes that the STB is required by the Staggers Rail Act of 1980 to pursue a regulatory approach that prioritizes profitability and innovation.

### **The Staggers Rail Act and the Role of the STB**

The Staggers Rail Act was enacted to revive a struggling rail industry by reducing the heavy hand of regulation and allowing market forces to drive growth and innovation. This deregulatory framework has been instrumental in the transformation of the rail industry, fostering a competitive environment that has led to significant improvements in service, safety, and efficiency.

It is essential to recognize that the primary objective of the Act is not to promote growth *per se* but to create a regulatory environment that allows rail carriers to operate profitably and efficiently. As such, the STB's role should be **to ensure that its regulations do not stifle the industry's ability to innovate and adapt to changing market conditions**. Overemphasis on growth metrics, such as carload volumes, risks diverting attention from more critical indicators of industry health, such as profitability and return on investment.

### **Growth vs. Profitability: The Right Focus**

The STB's inquiry into growth strategies raises concerns about the potential misalignment of regulatory goals with the industry's long-term viability. It is important to distinguish between growth in volume and growth in profitability. While increasing the volume of freight transported by rail can be a positive development, it should not come at the expense of profitability. In capital-intensive industries like freight rail, firms must prioritize investments that yield the highest returns on capital. This focus on profitability ensures that resources are allocated efficiently and that the industry remains financially healthy.

Moreover, a narrow focus on growth could lead to regulatory pressures that encourage unprofitable expansions, such as adding services or routes that do not align with market demand. This could undermine the industry's financial stability and hinder its ability to invest in critical infrastructure and technology.

### **The Impact of Regulation on Innovation**

The Center for Regulatory Freedom is particularly concerned about how current and potential future regulations might impede the rail industry's ability to innovate. **Innovation is crucial for the industry to adapt to changing economic conditions, improve efficiency, and enhance safety**. However, regulatory uncertainty or overly prescriptive rules can stifle experimentation and deter investment in new technologies.

For example, the regulatory environment surrounding automated train technology is a case in point. While automation has the potential to significantly reduce operating costs and improve safety, regulatory barriers have slowed its adoption.

**The STB should consider how its regulations can be modified to facilitate, rather than hinder, the deployment of such technologies.**

### **The Importance of a Stable and Predictable Regulatory Environment**

A stable and predictable regulatory environment is essential for the rail industry to make long-term investments. CRF urges the STB to carefully consider the impact of its decisions on the industry's ability to attract and retain capital. **Regulatory actions that increase uncertainty or impose new costs on the industry can have a chilling effect on investment, which in turn can limit the industry's ability to grow and innovate.**

The recent decision in the *Navajo Transitional Energy Company, LLC—Ex Parte Petition for Emergency Service Order (NTEC)* is a case in point. By altering the interpretation of the common-carrier obligation, the Board has introduced significant uncertainty into freight-rail businesses' relationships with shippers. This decision not only undermines the stability of private contracts but also risks reducing the industry's overall profitability by imposing additional costs and operational constraints.

### **Recommendations for the STB**

In light of the above concerns, the CPAC Foundation offers the following recommendations to the STB:

- **Prioritize Profitability Over Volume Growth:** The STB should focus on ensuring that its regulatory framework allows rail carriers to operate profitably. This includes minimizing regulatory burdens that could hinder innovation or lead to unprofitable growth.
- **Facilitate Technological Innovation:** The STB should work to remove regulatory barriers that impede the adoption of new technologies, such as automated trains and advanced track inspection systems. By promoting innovation, the Board can help the industry achieve sustainable growth.
- **Ensure Regulatory Stability:** The STB should strive to maintain a stable and predictable regulatory environment. This includes carefully considering the long-term implications of its decisions on the industry's ability to attract investment and innovate.
- **Reevaluate the NTEC Decision:** The STB should reconsider its approach to the common-carrier obligation in light of the concerns raised by industry stakeholders.

**The Board should ensure that its decisions align with the deregulatory intent of the Staggers Rail Act and do not impose undue burdens on the industry.**

- **Engage with Industry Stakeholders: The STB should actively engage with industry stakeholders, including rail carriers, shippers, and labor organizations, to understand the challenges they face and to develop regulations that support the industry's long-term health.**

### **Conclusion**

The Center for Regulatory Freedom believes that while the STB does have a role to play in ensuring the long-term health and viability of the freight rail industry, this role must be executed within the framework established by the Staggers Rail Act, which prioritizes market-driven growth and profitability over regulatory intervention. By focusing on these principles, the STB can help ensure an environment in which the rail industry can thrive, innovate, and continue to provide critical services to the American economy.

We appreciate the opportunity to provide our perspective on this important issue and look forward to continuing to engage with the Board as it considers these matters. I am happy to discuss this with you, any of the Committee members, or their staff. I can be reached at [ALanger@Conservative.org](mailto:ALanger@Conservative.org) or at 703-980-8989.

Thank you for considering this letter.

Sincerely,

A handwritten signature in black ink that reads "Andrew M. Langer". The signature is written in a cursive style with a large, stylized initial "A".

Andrew Langer  
*Director*  
*CPAC Foundation Center for Regulatory Freedom*