

BROTHERHOOD OF LOCOMOTIVE ENGINEERS AND TRAINMEN

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March 23, 2009

The Hon. Patrick J. Leahy, Chairman
Senate Judiciary Committee
433 Russell Senate Office Building
Washington, DC 20510

The Hon. John D. Rockefeller, IV, Chairman
Senate Commerce, Science & Transportation Committee
531 Hart Senate Office Building
Washington, DC 20510

Dear Senator Leahy and Senator Rockefeller:

This letter pertains to the Railroad Antitrust Enforcement Act of 2009 (“the Act”), which has been introduced in the Senate as S. 146 and in the House of Representatives as H.R. 233. The Brotherhood of Locomotive Engineers and Trainmen, a Division of the Teamsters Rail Conference (“BLET”), represents over 56,500 men and women, and is the duly designated and recognized collective bargaining representative for the craft or class of Locomotive Engineer employed on all Class I railroads. BLET also represents operating and other employees on numerous Class II and Class III railroads. As such, the BLET and its members would be significantly and negatively impacted by enactment of the Act. Accordingly, we oppose passage of this legislation, for the reasons stated herein.

For nearly a century and a quarter, disputes between shippers and rail carriers have been subject to the exclusive jurisdiction, originally, of the Interstate Commerce Commission (“ICC”) and, for more than a decade, of the Surface Transportation Board (“STB”), who have statutory responsibility for national rail transportation policy as established by the Congress. The railroad industry has played a central role in the development of the nation’s economy and transportation under ICC/STB oversight. While carriers, labor and shippers have not been uniformly satisfied with all processes and decisions of ICC/STB, we believe that this oversight has served its public purpose well, as evidenced by the industry’s renaissance over the past decade.

As we stated last year in comments in STB Ex Parte No. 677 — the “common carrier obligation” docket — shippers should have prompt and inexpensive access to a process for redress when a carrier abuses its market power. History has shown that STB is the appropriate venue for adjudicating such disputes. For example, on May 19 of last year, the STB announced a decision that it said will require Union Pacific Railroad to grant an estimated \$30 million in rate reductions and

The Hon. Patrick J. Leahy
The Hon. John D. Rockefeller, IV
March 23, 2009
Page 2

reparations in a maximum-rate case brought before the Board by Kansas City Power & Light Co. *See* STB Docket No. NOR-42095 (May 16, 2008 Decision).

More recently, the STB found that BNSF Railway had market dominance over the shipment of coal from the Powder River Basin to the Laramie River Station power plant, and awarded the Western Fuels Association and the Basin Electric Power Cooperative rate reductions and reparations that could total \$345 million. *See* STB Docket No. NOR-42088 (February 17, 2009 Decision). Given these circumstances, we believe any argument that the STB is asleep at the switch lacks credibility.

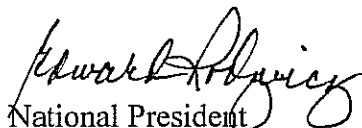
As proposed, the Act would essentially vest federal juries with jurisdiction parallel to and contemporaneous with that of STB. This would severely undermine STB oversight, because the Act would provide that “[i]n any civil action against a common carrier railroad ... the district court shall not be required to defer to the primary jurisdiction of the Surface Transportation Board.” The Act also could lead to forum shopping by shippers. Moreover, the treble damages rule would apply in such cases, which could create havoc for the economic stability of our members and their families.

The nation is in a very fragile state. Our economy is in a shambles, and our dependence upon foreign oil threatens both our national security and the global ecology. Indeed, the gravity of these threats has moved the railroad industry, once again, to the center stage of America’s transportation system. Billions of dollars of public funds have been appropriated to improve and expand passenger rail service, and the freight rail industry continues to invest record amounts in infrastructure and capacity improvement, despite the current state of the economy.

The industry is positioned to respond in this manner because of the balanced statutory and regulatory scheme in the transportation industry that has existed for nearly three decades. If passed into law, the Act would severely disturb that balance. A short-term gain for some shippers could result in crippling the industry just as the nation’s dependence on railroads becomes critical.

To the extent the Congress believes that the ability of STB to vigorously oversee the railroad industry should be strengthened, we strongly urge you to sit down with the railroads and the shippers and work out the necessary reforms. The BLET supports such a plan of action because it would address legitimate grievances shippers may have without jeopardizing the stability of the industry. Unfortunately, the Act would have the opposite effect. Under these circumstances, we have no option but to oppose passage.

Sincerely,


National President

The Hon. Patrick J. Leahy
The Hon. John D. Rockefeller, IV
March 23, 2009
Page 3

cc: The Hon. Harry Reid, Majority Leader
The Hon. Arlen Specter, Ranking Member, Senate Judiciary Committee
The Hon. Kay Bailey Hutchison, Ranking Member, Senate Commerce, Science & Transportation Committee
The Hon. Herb Kohl, Chairman, Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights
The Hon. Orrin G. Hatch, Ranking Member, Senate Subcommittee on Antitrust, Competition Policy and Consumer Rights
The Hon. Frank R. Lautenberg, Chairman, Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security
The Hon. John Thune, Ranking Member, Senate Subcommittee on Surface Transportation and Merchant Marine Infrastructure, Safety, and Security
Matthew K. Rose, Chairman, President and CEO, BNSF Railway
E. Hunter Harrison, President and CEO, Canadian National Railway
Fred Green, President and CEO, Canadian Pacific Railway
Michael J. Ward, Chairman, President and CEO, CSX Transportation
Michael R. Haverty, Chairman and CEO, Kansas City Southern Railway
Charles W. Moorman, Chairman, President and CEO, Norfolk Southern Railway
James R. Young, Chairman, President and CEO, Union Pacific Railroad
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