BEFORE THE

SURFACE TRANSPORTATION BOARD

Docket No. EP 770

URGENT ISSUES IN FREIGHT SERVICE

NATIONAL STONE, SAND AND GRAVEL ASSOCIATION COMMENTS ON URGENT ISSUES IN FREIGHT SERVICE

Submitted via e-filing at www.stb.gov.

The National Stone, Sand & Gravel Association ("NSSGA") submits these written comments to the Surface Transportation Board ("STB" or "Board") pursuant to the April 7, 2022, Notice from the STB in the proceeding referenced above, which permits "written comments by any other interested person" concerning freight service.

NSSGA is the leading voice and advocate for the aggregates industry. Our members are stone, sand, and gravel producers and the equipment manufacturers and service providers who support them. NSSGA's member companies produce more than 90 percent of the crushed stone and 70 percent of the sand and gravel consumed annually in the United States. Aggregates are the building block that builds towns and cities and the connections in between. The industry is synonymous with infrastructure, homes, schools, hospitals, and every community. Aggregates play a crucial role in everything we touch - housing, roads, railways, bridges, tunnels, ports, water supply, sewers, electrical grids, and telecommunications.

As a result, NSSGA members will play a crucial role in the success of the Infrastructure Investment and Jobs Act ("IIJA") that became effective on November 15, 2021. The IIJA will help rebuild America's roads, bridges, ports and rail and all infrastructure projects funded under this historic legislation. It will strengthen supply chains by making long overdue improvements for the nation's ports, airports, rail, and roads. The aggregates industry will supply the materials needed to make these necessary projects happen. In addition, NSSGA members build the foundations of our communities. Aggregates are the key building material used to construct affordable housing, new businesses, medical centers, schools, and every building in between.

NSSGA members use freight rail to supply aggregates, particularly in fast growing metropolitan areas. The Association of American Railroads ("AAR") estimates that freight rail moved 1.1 million rail cars of stone, sand, and gravel in 2020. The potential demand for freight rail to move aggregate is likely to increase, for several reasons: First, the demand for products is increasing, and demand will further increase as the IIJA is implemented and additional money is invested in America's long neglected infrastructure. The demand is and will be in and around "metropolitan" areas. Second, there is insufficient supply to meet existing and future demand for product, and there are limits on the ability to develop additional stone, sand, and gravel operations in metropolitan areas with high demand. Areas of high population growth and aggregates demand areas generally lack available land and reserves for development as quarries, and because of state and local land use regulations and the ever present "NIMBY" issues, which increase the costs and materially delay the development of new aggregate production in heavily populated areas, aggregate producers will seek rural areas for future production. In addition, high population growth areas are generally located along the sunbelt of the U.S. which lacks the necessary geology to produce quality building aggregates. The result is that producers are and will become more dependent on rail, particularly unit trains, to provide aggregates from quarries farther from infrastructure projects and growing communities.

The NSSGA applauds the STB for recognizing the need for the April 26 and 27, 2022 hearing on "Urgent Issues in Freight Rail Service" and its willingness to accept written comments from interested parties. As explained in the preceding paragraphs, the NSSGA and its members are interested parties and appreciate the opportunity to submit these comments. We hope that the testimony at the hearing and the comments submitted lead to policy changes to improve freight rail service so that infrastructure projects and the American economy can reach its full potential.

The comments from NSSGA members regarding freight rail service can be summed up in a short phrase – "it is the worst that it has ever been". The specific concerns are service and price (particularly price in connection with poor and deteriorating service).

- Members report that railroads are cutting service, e.g., going from 4 days a week to 2, going from 5 days a week to 2, and so on. These service changes are made even when there are agreements in place to provide, for example, 5 days of service. The railroads make these service changes with little advanced notice, and these changes are not the result of a "negotiation" between the railroad and the aggregate shipper – the railroad unilaterally announces a change in service, with limited advance notice. The reduction in service is a consistent story that our members report.
- We have reports from members that railroads don't provide sufficient power to support the size of the trains.
- Poor rail service has generated longer than planned transit times, which has created a need for more railcars. The slower the trains move, the more cars you need to keep up with business. This has produced increased costs for shippers.
- Members report that scheduled service is increasingly inconsistent. For example, a member reported that its agreed switching days are Tuesdays and Thursdays. However, the railroad that services the facility does not comply with its agreement and comes whenever it chooses, without notice and without consistency from week to week, e.g., it may come on Monday, or it may come Wednesday and Saturday. We have heard similar complaints from multiple members. The impact that the railroads' failure to move empty and loaded cars pursuant to a schedule – missing scheduled service and seemingly providing service randomly – causes facility disruption and temporary shutdowns.
- We understand from members that rail service at one facility was stopped for between 30 and 60 days because of a damaged switch, and that the failure of the railroad to serve the facility almost caused the facility to shut down. Fortunately, an alternative switch was

available, which averted the facility shutdown. The railroad took about 6 months to repair the damaged switch.

- The service that is provided is increasingly slow. For example, in the case of unit trains, members report that the days to turn a unit train are increasing, in some cases taking more than twice as long today as it did previously. We have similar complaints from multiple members. There are many reasons for the delays, including the fact that railroad staffing is inadequate to meet the demands of freight rail shippers. We have also heard incidences of specific problems – for example, railroads directing cars to the wrong switch point – that cause and exacerbate delays.
- One of the shocking things that we hear from members is that the **railroads know that they are providing poor service and admit it**. The railroads admit to freight rail shippers that they are in many cases *providing a fraction of the contracted service*, and apparently have no concern in doing so.
- We have heard from members that railroads are picking "winners and losers" in the marketplace by deciding which of two competitors' cars to move. The railroad's decision making on which of two competitors to favor with service is not transparent; from the perspective of the aggregate company that didn't get service, the railroad arbitrarily decided to favor its competitor.
- In conjunction with the decline in service, the railroads are increasing prices. Again, these price increases are in the form of railroad-dictated price increases with minimal notice. Furthermore, these price increases are "excessive", i.e., greater than any price increase warranted by inflation or the railroads' needs for revenue adequacy.
- We have heard from members that railroads are imposing pricing to discourage rail shipments from facilities, i.e., railroads are attempting to "demarket" facilities, with the potential result that facilities will have to reduce production (or, in extreme cases which have not yet been reported, but are possible given railroad pricing, shut down.)
- As an addendum to this list of service issues, we have attached a "case study" from member companies describing in detail the service problems they have confronted and the consequences of these service problems to their operations and the operations of their customers. The addendum is incorporated into and is a part of our comments.

It is worth noting that most of the NSSGA members who ship via freight rail are "captive" to the railroad that services the facility. If "Railroad A" cuts services and increases prices, there is no "Railroad B" to go to as potential competitive service. Additionally, truck is not a shipping option in these cases, as it is generally not economic to ship via truck the distances that aggregate ships by rail. The percentage of NSSGA member facilities that are "captive" varies; for some companies, it is 100%, for all that ship by rail a majority of facilities are captive.

The consequences of poor and declining rail service and unwarranted price increases for aggregate shippers are delay and increased cost for essential infrastructure projects. We have already heard from members examples of specific infrastructure projects that have been delayed because of poor freight rail service. Poor service is leading to critically low to no inventory available at terminals for state and federal infrastructure projects across the country. Shipment delays continue to strain many projects, such as state DOT roads and bridges, airport resurfacing, hospital builds, and other critical infrastructure projects. If poor freight rail service continues, the success of the IIJA is at risk; as one of our members stated, "new infrastructure projects under the law [IIJA] will not get sourced if this keeps up".

We have focused on the impact of poor freight rail service on infrastructure investment and the fact that the current state of freight rail puts the success of the IIJA at risk. The NSSGA also represents industrial sand companies, the companies that provide the essential raw materials for the manufacture of glass, shape metal products (made in foundries), ceramics and other goods that we take for granted, but that are essential to our standard of living. Industrial sand is also used as a proppant in the production of oil & gas from shale; the United States **cannot produce oil and natural gas sufficiently to meet its needs (and the needs of others who may rely on Russian supplies) without industrial sand as a proppant**. While the oil & gas industry would prefer to source its sand proppants as close to the wells as possible, it is often dependent on sand proppant shipped via rail, particularly from the Upper Midwest, to bring wells into production. The entire supply chain associated with a range of businesses, whether glass manufacturing or oil & gas production, is at risk because of poor rail service, and costs that businesses incur (and ultimately the prices that consumers will pay) are negatively impacted by poor rail service and unwarranted price increases.

The NSSGA supports several steps that the STB can take to help alleviate the urgent service problems in freight rail. For example, the NSSGA supports the expanded availability of reciprocal switching, which would provide at least some competition and alternatives for freight rail shippers, and which would (presumably) result in improved service. We also support the STB's effort (STB Docket No. 767) to collect data on first mile/last mile rail movement, establish metrics and make first mile/last mile data more transparent to shippers. The NSSGA also supports increased use of the STB's powers to investigate freight rail service issues and issue fines where appropriate and pursue regulatory solutions.

In conclusion, the NSSGA again commends the STB for conducting the hearing and accepting written comments on "Urgent Issues in Freight Service". We urge the STB to take prompt action to help alleviate the crisis currently confronting freight rail shippers.

Respectfully submitted,

/s/ Michael Johnson
President and CEO, NSSGA
On behalf of NSSGA

April 22, 2022

Addendum

Case study of specific railroad situations experienced by members

A member has many plants on the CSX, two of those plants are scheduled to be switched three days per week. There were multiple weeks in 2021 during which the CSX did not show up at all during the week, zero switches. This lack of service shut down plants and resulted in customers being forced to send in trucks to keep their continuous processes up and running. In 2022 the service has "improved" where we have not gone an entire week without service, but service is still very unreliable. The CSX rarely shows up on the scheduled switch days. Often, they come in for a switch but either only take loads or only drop off empties. In these cases, plants have been forced to shut down due to receiving only a partial switch. In March at one facility, the CSX gave us a full switch on the correct day 2 out of 14 planned days. We received 7 partial switches. The switches arrived between the hours of 9 AM and 4 PM which also hurts our productivity not knowing when in the day they will arrive. We've worked countless weekend overtime hours at our CSX plants either expecting them to come with a make-up switch that does not happen, or to load customer trucks because of railroad failures. The CSX's lack of precision in their operations has been very costly to us and our customers. In 2021, this member's customers paid over $1.5M for emergency trucks to cover shipments that should've been carried by the CSX. YTD in 2022, customers have incurred over $500k in emergency trucking costs attributed to CSX service.

Norfolk Southern's (NS) performance in the State of New York also is adversely affecting companies' operations. Multiple customers that have seen average transit times on loaded cars increase by seven days. A customer advised that they spent $500,000 in Q1 2022 on unplanned trucks because of failures in freight rail service. The customer has a continuous process, so a seven-day disruption in supply caused by the NS forces them to use trucks to keep running.

The Union Pacific has (UP) been a company's most reliable carrier the last nine months. They have been competent at servicing the plants, the only problem being that transit times have crept up a couple of days. Then, in April, the UP called and informed the company that that at midnight the next business day they wanted the company to curtail shipments by 40%! The UP was not able to explain why this was happening to the company, how they came up with the 40% reduction or how it would work mechanically. They stated that the company would only be able to ship a set number of cars per day but were not able to answer how that would work considering that the plants all had varying switch days. One plant is only switched once per week and their output exceeded the daily limit. On the date the curtailment was set to begin, the UP called and said the curtailment was going to be delayed by a week so they could better answer customer questions. Then, the UP called and said they no longer planned to curtail the company's shipments. However, the company had just leased 300 additional cars for the UP business, which is seeing a forecasted surge in demand. The UP informed us that if we brought these cars online, we could be subject to embargo. At this time, they are not able to tell us when we could start shipping these additional carloads. The company estimates that it is losing $1.7M in revenue each month until the UP allows it to increase its shipments to the forecasted levels. A forecast that was shared with the UP at the start of the year, this is planned growth, yet they are not able to handle it.

In early Q4 2021, A member company started sharing with the BNSF its forecast for 2022. Towards the end of the quarter, the company informed them of its plans to expand its capacity to capture demand and started leasing additional railcars to move the products. The company also committed to a contract with Minimum Volume Commitments (MVC). That contract requires the company to ship a minimum number of cars or face stiff penalties. However, the railroad was not willing to provide any commitment of service. In 2020, the company paid a multi-million dollar penalty for missing one of these BNSF MVC's during the global pandemic. This demonstrated that the BNSF is willing to enforce these penalties when we fall short. Yet the company is currently losing millions of dollars a month due to their lack of service and have no recourse.

In February 2022, a member company started to see shipments on the BNSF be delayed by 48 hours. The BNSF they revealed that they were going to do a "Network Reset" which would be completed by April of 2022. Shipments started to be delayed by 48 – 96 hours, and the companies' plants were starting to frequently shut down due to lack of empties or loads not being pulled. The narrative soon changed, and the BNSF was now communicating it would be early June before they could return to normal service levels. In April 2022, the BNSF announced that the "network reset" would now last until the end of September! The service levels have been so poor in April that the company is losing its current levels of business. Delays now are up to a week, and weekend service has been particularly poor causing the company to lose many hours at our plants. The company has spent over $500,000 in trucking to keep customers running in April and estimate at least $250,000 will be spent in May. The company cancelled a capital expansion project due to the BNSF not being able to handle additional volume. YTD, the company has lost $2M in revenue due to BNSF service. The impact will increase significantly the longer that the BNSF cannot serve the forecasted volume. A forecast was shared with the BNSF months in advance, and it is consistently updated and provided to them. The company business heading west travels great distances so replacing rail service with trucks is not possible. Until the BNSF can get their operations in order, the company cannot move our products.