Testimony on the

Taking Responsible Action for

Community Safety Act (H.R. 6707)

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Mr. Chairman and members of the committee, I am honored to have this opportunity to share my views on the Taking Responsible Action of Community Safety Act ("the Act").

I have spent a great deal of time evaluating the community impacts of rail-freight operations, having written several technical articles and a historically oriented book on the topic. In 2000, at the request of Senator Richard Durbin, I conducted a study with Professor Brett Baden on a proposed Federal Railway Administration ruling affecting the use of locomotive horns at grade crossings. We found that the proposed changes, making it more difficult to create "quiet zones," would impose significant costs on communities. I understand very well the concerns being voiced about the environmental costs of expanding rail-freight operations.

My remarks focus specifically on how the Taking Responsible Action for Community Safety Act (H.R. 6707) will affect the work of the Surface Transportation Board (STB). The Act increases the number of transactions requiring STB approval, and it requires the board to conduct more robust examinations of the environmental impacts of these transactions on communities. My remarks should not be interpreted as relating specifically to the pending review of the Canadian National Railway's proposal to acquire the Elgin, Joliet & Eastern Railroad.

Although I believe the Act's supporters have the public welfare in mind, I recommend rejecting this legislation in its current form for the following reasons.

• *Without a thorough reassessment of the STB's resources and responsibilities, asking it to more formally weight the environment costs and transportation benefits risks creating a systematic bias against railroad mergers and acquisitions. That is, the Act may focus attention on immediate, mostly negative impacts on communities without offering a balanced presentation of any offsetting benefits, which can only be understood through more comprehensive analyses.*

Transportation markets are dynamic. When one carrier acquires or merges with another to improve service, there are many indirect benefits, such as fewer trucks on the road, fewer highway accidents, less traffic on competing lines, and less pollution from mobile sources. Often, the competitive changes resulting from the transaction trigger a second round of investments which are not subject to federal approval but which nevertheless have significant implications for communities.

This puts the STB in a difficult position. If it limits its attention to the most obvious impacts, such as the environmental costs in communities along the railroad to be acquired, its assessment will be incomplete and probably skewed against the proposed transaction. Evaluating *all* the direct and indirect changes, however, will require comprehensive scenario-based analysis that is presently not part of the STB's work.

Performing an analysis properly will require elevating the scope and scale of the STB's investigation to a much higher level. For this analysis to be completed in timely fashion, however, the STB would need to make many assumptions and subjective judgments, which would make the process much less predictable.

I am not suggesting that the STB should not consider—nor deal with—community impacts in its decisions. I do believe, however, that bringing great formality to the process of weighing the environmental costs and benefits without recognizing that this could change the nature of the Board's work—requiring it to greatly lengthen its investigations—and would be a mistake.

Consider a simple example. Investigations of the environmental costs and benefits of a merger proposal would need to include a counterfactual analysis of how traffic would grow if the merger did not take place. In the case of the CN application, for example, the STB would need to consider whether (and when) congestion in Chicago would otherwise result in greater use of the Elgin, Joliet & Eastern bypass, and how this would affect traffic on other routes serving the Midwest. In order to do it right, the STB would need to make difficult assumptions and consider multiple scenarios.

If the Act passed, I suspect that systematic bias would gradually develop against railroad mergers and acquisitions that are, in fact, in the public interest. Curiously, the Act makes no mention of the need to even consider the indirect environmental costs and benefits to cities on routes not directly part of the proposed merger and acquisition.

The result would be a new barrier to investment in the industry, slowing down the industry's effort to build seamless transportation systems.

• *No other transportation mode providing intercity service in the United States—interstate trucking companies, airlines, barge operators, motor bus operators, or even Amtrak—is subject*

to the kind of criteria established in HR 6707. The unintended result would be that the Act serves as an impediment to any effort toward finding cooperative solutions to community issues involving railroads.

Since the Staggers Act of 1980 and the dissolution of the Interstate Commerce Commission in 1995, our nation has enjoyed the benefits of a more predictable and rational approach to dealing with railroad-consolidation issues. Railroads have been relieved of the burdens that for decades had stifled innovation and their consolidation. Private capital is again flowing to the carriers.

Pushing the STB in the direction of conducting a more robust cost-benefit analysis on environmental matters without further consideration of the STB's capabilities and resources sends federal policy into uncharted waters. What are some of the possible unintended consequences?

- Railroads and communities may have an incentive to be less-than-candid when discussing the impacts of a transaction. Thus the Act may serve to place the two parties in a more adversarial role.

- Railroads may sidestep the need for STB approval by negotiating trackage-rights and hauling rights agreements with other railroads rather than pursuing a merger or acquisition.

- Railroads may be more reluctant to let commuter rail agencies and intercity operators use their rights-of-way, afraid that they may be creating a new stakeholder who has an incentive to fight to preserve the status quo.

- A muddled public debate may result from the requirement in the Act that the "socioeconomic impacts" of railroad mergers and acquisitions be evaluated and weighed. Do we really think such impacts can be evaluated convincingly without opening the door to delays?

There are good reasons why we do not require privately financed transactions involving airlines, bus companies, and trucking companies to undergo such a robust assessment of the environmental impacts on communities. These same reasons apply to railroads.

• *The Act would greatly increase the number of transactions subject to STB approval. Although the implications are hard to predict, there is a risk that it will become an impediment to rail-service improvements.*

By expanding the list of transactions subject to STB approval, the Act will introduce new uncertainty into the efforts of Class I carriers to modernize their physical plant. Smaller transactions that once took days or weeks now could take months—or perhaps longer. Given that the STB already has a heavy caseload, it is unclear how the board would handle the additional work without either compromising the scope of its analysis or slowing down its decisions. The history of railroad regulation prior to the Staggers Act suggests a need for great caution here.

• *The Act risks shifting the responsibility for solving some of the problems of rail transportation from their roots—in state and federal policy—to private railroad companies.*

Much of the frustration being directed at Class I railroads would be more properly directed at public agencies who have been unable to keep up with the nation's infrastructure needs. As I am sure others will mention here today, there has been inadequate investment in CREATE, the congestion-relief program for Chicago. Public agencies have not brought forward

the funds needed to support grade-crossing separations. Communities lack practical options to abate the noise of locomotive horns through the creation of "quiet zones."

As frustration grows, more and more of the public expects railroads to pay for improvements themselves rather than seeing it as a shared responsibility with public agencies. Due to the complexity and time required to accurately weight environmental costs and transportation benefits, the Act risks shifting the burden of such improvements unfairly toward private carriers.

In summary, I urge caution in crafting any legislation that would change in midstream a policy and process that has been in place for many years and that would raise skepticism about the predictability of the STB's decisions. I believe the Act is well intended, and I have great respect for its sponsors. However, there is an important need here; it is the need for these policy changes to undergo a careful and systematic assessment so that we do not create a new set of public policy problems.

Mr. Chairman, I thank you for this opportunity to express my views.