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From: Chris Covert - Energy Policy Taskforce Intern

Number of Pages, Including Cover Sheet: 9

Mr. Kelliher

Message:

Chris C

23602

DOE024-1008
March 23, 2001

The Honorable Dick Cheney
The White House
Washington, DC 20500

Dear Mr. Vice President:

I am writing to you in your capacity as chairman of the White House Energy Policy Development Task Force. The Association of American Railroads (AAR) appreciates this opportunity to offer its observations on the impact of higher energy prices on the nation's rail sector.

I would note that AAR's comments are intended to supplement the briefing papers submitted to you earlier by the Coal-Based Generation Stakeholders group of which the railroads are leading members. Some 52 percent of our nation's electricity is generated by coal (with more than two-thirds of that coal transported by rail) and coal is one of the nation's least expensive sources of electrical energy.

In developing an effective energy strategy, it is important to remember that America — at least until recently — has enjoyed some of the lowest energy prices in the world. These low energy costs have enhanced our competitive position in all sectors of trade from agriculture to manufacturing.

Railroads applaud the Bush administration's efforts to develop a national energy strategy, and we commend you for personally taking on the responsibility for this effort. Energy improvements will contribute to the industry's bottom line due to both lower diesel fuel costs as well as their impact on railroad customers. These customers range from automobile manufacturers whose products can be affected by higher fuel prices to electric utility customers for whom railroads ship millions of tons of coal each year.

Edward R. Hamberger
President and Chief Executive Officer

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ASSOCIATION OF AMERICAN RAILROADS
50 F STREET, N.W.
WASHINGTON, D.C. 20001
Despite the fact that railroads are three times more fuel efficient than trucks, the price of diesel fuel continues to be a major challenge for the rail industry. In providing cost and energy efficient freight service, U.S. freight railroads consume huge volumes of diesel fuel—over four billion gallons annually. Because the cost of fuel is a major cost component of railroad operations—comprising 7.1 percent of industry costs—the alarming jump in fuel prices over recent periods has been a substantial hardship for railroads and their customers.

The price of railroad fuel toward the end of 2000 was the highest during the past 20 years, and likely the highest ever. As of the end of 2000, the average price paid by railroads for diesel fuel had rocketed to a level 239 percent of the price at the beginning of 1999. Long term contracts and customer agreements often limit the ability of railroads to recover major cost increases in a timely fashion. Thus, railroads are being forced to expend an additional $2.4 billion annually or $6.6 million more each and every day. Moreover, because this huge increase in costs is required to perform exactly the same level of service, these increased costs have a direct impact on the industry’s financial bottom line. In fact, they represent an amount equal to three-quarters of industry net income.

Looking ahead, future pricing policies will have to include major price increases to recover lost profitability as a result of fuel cost increases. Some shippers have indicated that they will be unable to absorb these transportation rate increases and will be forced to pass the expense on to their customers.

Because railroads have huge fixed costs to cover, it makes economic sense to move traffic that is marginally profitable (i.e., railroads handle traffic that is slightly above variable cost because it contributes to fixed cost). However, the fuel cost increases have raised our variable costs to such a degree that, in some segments, variable costs are becoming higher than the revenue, and traffic that has been historically profitable may have to be eliminated.

Moreover, higher energy prices are having a negative effect on some freight shippers, a development that affects freight railroads indirectly. For instance, eight of the ten major aluminum producers served by one leading railroad are currently shut down, and the remaining two are operating at 50 percent capacity. Instead of producing product, these companies are selling their allotted power.

Other railroads report that dramatically higher natural gas prices have led to significant traffic losses due to reductions in production and plant closures in areas such as plastics, cement, fertilizer, and intermediate gases such as propane and butane.

For these reasons, AAR encourages you to take strong and immediate action to formulate an effective national energy strategy. In addition to urging support for actions
to reduce energy prices and for the positions of the Coal-Based Generation Stakeholders group, I am pleased to enclose AAR briefing papers on the following three railroad priorities: repeal of the 4.3 cent per gallon "deficit reduction" diesel fuel tax, an acceptable resolution of the coal mine valley fill issue, and establishment of a locomotive fuel efficiency program within the Department of Energy.

AAR looks forward to working with you and the other members of the Energy Policy Development Task Force to craft a balanced and effective energy policy for our nation.

Sincerely,

Edward R. Hamberger

cc: The Honorable Norman Mineta
The Honorable Spencer Abraham
Mr. Lawrence Lindsey
Mr. Andrew Lundquist
Ms. Karen Knutson
Mr. John Frenzel
Repeal Deficit Reduction Fuel Taxes

AAR supports S. 820 and H.R. 1001 that would repeal deficit reduction fuel taxes paid by railroads and barges. AAR opposes H.R. 2060 that would create a railroad trust fund from deficit reduction fuel taxes.

Inequitable Taxation In a Surplus Environment

The railroad and inland barge industries pay a 4.3 cents per gallon deficit reduction fuel tax even though there is no longer a federal deficit. Furthermore, the railroad and inland barge industries are required to pay deficit reduction fuel taxes while their competitors, the truckers, do not.

Among all U.S. industries, only transportation industries have been obligated to pay special deficit reduction fuel taxes, and today, among the different transportation modes, only railroad and barge companies continue to pay such a tax. The deficit reduction fuel tax rate has varied over time, and currently stands at 4.3 cents per gallon on diesel fuel consumed. Since inception of the tax in 1990, freight railroads have paid over $1.4 billion in deficit reduction fuel taxes.

Railroads continue to pay these taxes even though there is no longer a federal deficit.

Trucking companies, direct competitors of railroads and barge companies, do not pay a deficit reduction fuel tax. The entire revenue from the taxes paid by the truckers is paid into the Highway Trust Fund, and is used to pay for improvements and maintenance of highway infrastructure. Therefore, while railroads continue to contribute to a non-existent deficit, the truckers contribute to their own infrastructure improvement.

By contrast, the railroad industry does not have a trust fund but privately funds its own maintained rights-of-way. In 1998, freight railroads spent $7.7 billion maintaining and improving their own infrastructure. This is equivalent to a tax of $2.13 per gallon of fuel consumed by railway locomotives — an amount, which is four to ten times the equivalent of tax paid by the competing modes of transportation.

Both the House and Senate 1999 tax cut bills, acknowledged the tax inequity and included a repeal of the 4.3 cent deficit reduction fuel tax for the railroad and barge industries.
industries, but the final 1999 tax cut bill was vetoed by President Clinton for reasons other than the railroad tax repeal.

Support for an Equitable Solution

The railroads are not alone in calling for a fair and equitable solution to the current deficit reduction fuel tax problem. The U.S. Chamber of Commerce and the American Road and Transportation Builders Association (ARTBA) have adopted policies in support of repealing the 43-cent deficit reduction fuel tax. Numerous agriculture groups including the American Farm Bureau Federation, American Soybean Association, National Association of Wheat Growers, and the National Corn Growers Association are also on record supporting the repeal of this tax.

Railroad Trust Fund Proposals

AAR opposes H.R. 2060, the Railway Safety and Funding Equity Act of 1999 (RSAFE), a bill that would transfer the 43-cent deficit reduction fuel tax into a new Railroad Trust Fund for highway-rail grade crossing safety programs. H.R. 2060 would divert significant railroad resources to help solve what is fundamentally a highway safety problem. Not only is this proposed cross subsidy of highway needs by the railroads bad public policy, but these railroad fuel tax revenues are needed to meet significant railroad infrastructure needs.

AAR also opposes any effort to use the 43 cents per gallon deficit reduction fuel tax paid by the railroads to create a Railroad Trust Fund to finance short-line/regional railroad improvements, intercity or commuter passenger rail needs, or other purposes. In these scenarios, the beneficiaries of the funds, while having contributed little or nothing, would profit from a cross-subsidy from the large freight railroads. It is not appropriate to expect the large railroads to provide additional funding support for passenger rail, short-lines, or highway-rail traffic control devices. Neither do large railroads care to finance their own infrastructure needs through a Railroad Trust Fund by inefficiently sending funds to Washington, DC, simply to be returned to private sector railroads, minus bureaucratic administrative and overhead costs, and subject to political manipulation and government regulatory red tape.

Summary

The railroads' true advantage in cost, environmental impact, reduced highway damage and congestion, safety, and fuel efficiency rightfully have become important criteria in a modal choice. Artificial cost barriers to the use of freight transportation, in terms of inequitable deficit reduction taxes, can only disadvantage rail in the competitive marketplace and distort consumer choice.
AAR supports S. 820 and H.R. 1001 that would repeal the 4.3 cents per gallon deficit reduction fuel tax for the railroads and barges. This tax should be repealed because it is:

1. Discriminatory against railroads, since the trucking industry pays no deficit reduction fuel tax;

2. Economically unsound, because it artificially diverts traffic that otherwise would travel by rail; and

3. Inconsistent with national policy, because it violates the goals of economy, impartiality, energy efficiency, and environmental friendliness.

Additionally, large freight railroads oppose the transfer of these revenues to a federal Railroad Trust Fund or any other form of a transportation trust fund.
THE COAL MINE VALLEY FILL ISSUE

DESCRIPTION: In October 1999, a federal district court in West Virginia stunned the Nation's coal industry with a decision barring the longstanding practice of building valve and hollow fills to store the dirt and rock generated during coal mining. Bragg v. Robertson, 72 F. Supp. 2d 642 (S.D. W.Va. 1999), appeal pending. No. 99-2443 (4th Cir). Notwithstanding the fact that these engineered fill structures are both a necessary part of coal mining operations and expressly authorized by federal laws regulating coal mining, the court interpreted regulations issued under those laws as prohibiting their construction in hollows and valleys that inevitably contain stream courses. While the decision remains pending on appeal, the past Administration abandoned the working men and women of America's coal industry and announced that it now agreed with the court's view. The past Administration's action in this regard is not only contrary to the laws it administers, it will have economic consequences in West Virginia alone that a Marshall University study concluded will be "as great or greater than those of the Great Depression." Earlier in the same litigation, the federal agencies (EPA, OSM & COE) settled the claims related to the use of section 404 permits to authorize these fills under the Clean Water Act. The agencies agreed to conduct a programmatic Environmental Impact Statement which addresses environmental and economic consequences of different actions, as well as evaluate the better coordination of overlapping regulatory programs.

STATUS: The appeal in the 4th Circuit has been briefed and was argued on December 7, 2000. In the meantime, the EPA, OSM and COE are preparing a Draft EIS. EPA and COE also have pending a proposed rule published on April 20, 2000 clarifying that excess spoil is fill material subject to section 404 and not section 402 of the CWA. This rule would remove the ambiguity in the agencies' programs that the district court relied on to reach its erroneous conclusion that these fills as well as other activities that have the effect of replacing waters of the United States are not authorized by section 404.

KEY DECISIONS: Should any part or form of a Draft EIS be publicly released before the completion of the underlying technical, economic and other studies?

OPTIONS: * Delay public release of Draft EIS in any form until all the underlying studies are complete and have been subject to some form of peer review. This option is completely defensible and will assure that the EIS process on this matter will not be subject to criticisms related to its credibility and integrity.

* Allow the agencies to release an executive summary or other form of a draft EIS that purports to provide an overview of the current analysis of complex technical questions. This option will appease few and invite strong criticism from industry and, perhaps, the West Virginia state legislature that has funded part of the studies.

KEY DECISIONS: Whether EPA and COE should adopt as a final rule the proposal clarifying the scope of the section 404 program with respect to excess spoil and other activities that have the effect of replacing waters of the United States.

OPTIONS: * Proceed to adopt as final the proposed rule published on April 20, 2000. The rule is an important part of maintaining the integrity of the 404 program by clarifying a longstanding ambiguity that has caused grave uncertainty for the regulated community and the agencies. It not only addresses the excess spoil issue but other activities as well, e.g. landfills.

* Await the decision of the 4th Circuit to determine whether it would require any modification of the proposal to address the central features of the rule. At some point, the EIS on mountaintop mining will have to analyze how excess spoil fills are to be addressed within the prevailing regulatory schemes under the CWA and SMCRA and whether any conflicts exist.

23609

DOE024-1015
Public-Private Fuel Efficiency
and Emissions Partnerships

ASSOCIATION OF AMERICAN RAILROADS

WHAT SHOULD
BE DONE?

Establish a public-private partnership involving the federal government, railroads, and railroad suppliers designed to increase the fuel efficiency of, and reduce emissions from, diesel locomotives. The partnership should be similar to the "21st Century Truck Initiative" now underway.

WHY?

The partnership would encourage conservation of natural resources and reduced emissions by the nation's largest freight transportation provider. Moreover, the "21st Century Truck Initiative" will use hundreds of millions of dollars of federal funds to sharply increase fuel efficiency and lower emissions for motor carriers that compete against railroads. Equity demands that railroads receive the same support.

ISSUE OVERVIEW

In April 2000, the Clinton Administration announced the creation of the "21st Century Truck Initiative," a public-private research partnership involving many of the nation's largest heavy-duty engine and truck companies; the U.S. Departments of Defense, Energy, and Transportation; and the Environmental Protection Agency.

The goals of the Truck Initiative include developing truck and bus technologies that increase fuel economy, improve safety, reduce emissions, and lower costs. The partnership is designed to lead, within 10 years, to prototypes that double existing fuel economy for long-haul trucks and significantly reduce truck emissions of nitrous oxide, particulates, and other air pollutants.

Because of the Truck Initiative, the fiscal year 2001 budget saw an increase of $31 million in truck research spending to a total of $137 million.

Railroads account for more than 40 percent of the nation's freight ton-miles, considerably more than trucks' 29 percent share. Therefore, increases in rail fuel efficiency would significantly benefit our economy and environment. However, there is no public-private program involving railroad locomotives similar to the Truck Initiative. Instead, railroads and their suppliers must fund research and development efforts aimed at increasing fuel efficiency and reducing emissions on their own. For example, the Burlington Northern and Santa Fe Railway and the Union Pacific Railroad are spending more than $1 million apiece on these issues, while the Association of American Railroads is funding an industry-wide emissions research program.

23610

DOE024-1016

Obtained and made public by the Natural Resources Defense Council, March/April 2002
A federal program to increase fuel efficiency and reduce emissions from diesel locomotives will provide public benefits to the environment similar to those of the 21st Century Truck Initiative.

By providing motor carriers a major federal subsidy through the Truck Initiative, the federal government will artificially reduce motor carrier costs. This imbalance between trucks and railroads will encourage shippers to use trucks, even where railroads provide more efficient services.

The U.S. Department of Transportation's Moving America: New Directions, New Opportunities — A Statement of National Transportation Policy notes that "Federal programs and policies must treat modes and carriers fairly." This condition is clearly violated if motor carriers receive federal benefits not made available to their competitors.

A federal program will magnify the substantial strides in both fuel efficiency and emissions control already accomplished by the railroads. Railroad fuel efficiency is up 16 percent since 1990 and 58 percent since 1980. Railroads are also committed to substantial reductions in atmospheric emissions, having endorsed an EPA proposal that calls for a 60 percent reduction in nitrogen oxide emissions from locomotives manufactured beginning in 2005. With federal support, the railroad industry can build on its own voluntary achievements and foster improved conservation and emissions control.

![Graph showing Revenue Ton-Miles Per Gallon of Fuel Used from 1981 to 1996](image-url)
From: Ball, Crystal A - KN-DC [mailto:caball@bpa.gov]
Sent: Friday, March 23, 2001 12:35 PM
To: Anderson, Margot; Carrier, Paul
Cc: Stier, Jeffrey K - KN-DC; Seifert, Roger - KN-DC
Subject: RE: BPA DSI information
Importance: High

Please use the revised one-page summary.

Thanks!

> <DSI paul info.doc> <McCook pr final.doc>
Date: April 18, 2001
To: Joe Kelliher
Fax: 586-7210
Re: Mercury Document for Meeting with Steve Griles, Marc Himmelstein, et. al.
Sender: Holly Hopkins

YOU SHOULD RECEIVE 2 PAGES, INCLUDING THIS COVER SHEET. IF YOU DO NOT RECEIVE ALL THE PAGES, PLEASE CALL (202) 333-2524.

Please note attached.
Resolution of EPA Mercury Regulatory Determination

**Problem:** On December 14, 2000, EPA issued a “regulatory determination” under the Clean Air Act (CAA) that regulation of mercury and possibly other hazardous air pollutants (HAPs) is “appropriate and necessary” for coal- and oil-based power plants. This decision automatically triggers a formal rulemaking. EPA is scheduled to issue a proposed rule in late 2003, a final rule in late 2004, and to require compliance by late 2007. Because of the specific language EPA used in the regulatory determination, the pending rulemaking must result in the imposition of “maximum achievable control technology” (MACT) standards for mercury and possibly other HAPs. Effective immediately, before EPA has determined through rulemaking what level of control should be required on a national basis, new and reconstructed plants must undergo case-by-case MACT review for mercury and other HAPs.

**Status:** The utility industry has filed a Petition for Review in the D.C. Circuit. The industry is not challenging the basic decision to regulate mercury emissions, but just the two MACT-related issues. On April 9, EPA filed a motion arguing the court has no jurisdiction to review these issues because the agency’s decision has “no regulatory impact.” The utility industry also has filed an administrative petition with EPA, requesting the reconsideration of that portion of the regulatory determination that prescribes a MACT program and immediately impacts new and reconstructed plants. EPA has not yet responded to this petition.

**Implications:** EPA’s announcement is inconsistent with national energy policy objectives because it will limit fuel choices, impede the construction of new power plants during the next four years, and increase the cost of electricity. Several studies have estimated mercury control costs of $5 - $15 billion annually. In addition, recent analysis shows that the MACT program contemplated by the regulatory determination would impact utilities in the same manner as a Kyoto-type CO₂ program, in that it would cause significant fuel switching from coal to natural gas (50 percent decline in coal use in 2020).

**Possible Resolution:** EPA’s regulatory determination should be modified to remove the legal bias in favor of a MACT requirement and to clarify that the agency intends to consider all available regulatory and policy options during the pending mercury rulemaking. This could be accomplished through a brief Federal Register notice issued within the next two months to ensure that (1) no new planned electricity generation is impeded by the case-by-case MACT review process; (2) this issue is addressed administratively rather than in court, and (3) the clarification can be explained in the context of the Administration’s energy policy.