



*A bold voice for transportation workers*

June 15, 2020

Surface Transportation Board  
395 E St SW  
Washington, DC 20423

**RE: Montana Rail Link, Inc.-Petition for Rulemaking-Classification of Carriers  
Docket No. EP 763**

On behalf of the Transportation Trades Department, AFL-CIO (TTD), I am pleased to provide comments on Montana Rail Link Inc.'s petition concerning changes to revenue thresholds for the classification of rail carriers. By way of background, TTD consists of 33 affiliate unions, including unions representing freight rail workers who may be impacted by the granting of this petition.<sup>1</sup>

In its petition, MRL requests that the Surface Transportation Board (STB) increase the revenue threshold for Class I carriers to \$900 million in annual operating revenue from the current threshold of \$489,935,956 or more. MRL states that it is a "regional railroad operationally and economically but may exceed the Class I revenue threshold within two years".

TTD opposes MRL's petition and requests that STB not increase the Class I threshold in order to permit MRL to remain a Class II railroad. If granted, the petition could have substantial negative impacts for employees due to differing application of labor protections. Further, while MRL has demonstrated that it is in some manners distinct from existing Class I railroads, it has not demonstrated that raising the threshold is "necessary or appropriate" or that MRL's potential future classification as a Class I carrier would be overly burdensome.

In considering MRL's petition, STB must consider the implications it may have on employees in the context of future transactions, including mergers, consolidations, line sales, and line acquisition. The Board has a statutory obligation to "require [a] rail carrier to provide a fair arrangement at least as protective of the interests of employees who are affected by the transaction" (49 U.S.C. § 11326(a)). However, the application of these protective arrangements differs depending on the class of the railroad. For example, New York Dock conditions are imposed on consolidation and merger transactions that involve at least one Class I carrier or two Class II carriers. Conversely, they do not apply in the event of such a transaction between a Class II and Class III carrier. Therefore, increasing the Class I threshold could prevent MRL employees from benefiting from labor protective conditions that would have applied if it became

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<sup>1</sup> Attached is a list of TTD's 33 affiliated unions.

**Transportation Trades Department, AFL-CIO**

815 16<sup>th</sup> Street NW / 4<sup>th</sup> Floor / Washington DC 20006  
Tel: 202.628.9262 / Fax: 202.628.0391 / [www.ttd.org](http://www.ttd.org)  
Larry I. Willis, President / Greg Regan, Secretary-Treasurer

a Class I that engaged in a transaction with a Class III railroad. Given that MRL's petition largely relies on its claims of unique status as a large regional railroad, if STB grants its petition we urge the Board to also adopt unique conditions for the carrier. If the Board finds it necessary to relieve MRL of financial reporting requirements it should continue to maintain the application of protective arrangements that would otherwise apply if MRL were to become a Class I railroad under current thresholds.

We also reject the conclusion that the intent of the 1992 decision was to preempt large regional carriers from ever being deemed Class I carriers. Additionally, MRL's invocation of the 1979 exemption of terminal and switching railroads does not have applicability to the operations that MRL seeks to address in this petition. We do not believe that changes to the industry since 1992 necessitate an increase to the existing threshold, or that the current state of the industry should preclude the classification of MRL as a Class I railroad.

It should also be noted that MRL's position is entirely reliant on the stated conclusions of the 1992 decision. As MRL notes in its own petition, a 2000 petition to increase the Class I threshold filed by Wisconsin Central (WC) was likely to be rejected before the petition was rendered moot by Canadian National Railway Company's acquisition of WC. STB stated that "because railroads with operating revenues of more than [the current Class I revenue threshold] are clearly large entities for which financial reporting is reasonable and not unduly burdensome" it may be appropriate to consider large regional railroads as Class I carriers under existent thresholds. MRL's discussion of this determination is little more than a hasty dismissal of the Board's consideration because a similar determination would be unfavorable to the current petition. MRL has not adequately demonstrated that the Board's inclinations in 2000 should inherently be supplanted by the 1992 decision.

Further, in order to justify an increase in Class I thresholds, it is incumbent on MRL to demonstrate that the regulatory impact of becoming a Class I carrier would be overly burdensome. However, MRL is only able to document that it could "be required to hire a minimum of one dedicated accounting employee, at a fully burdened cost nearing \$150,000". It does not attempt to quantify further costs, but assures the Board that these costs would be untenable. Given that the Board has rarely made changes to its revenue thresholds, claims of undue regulatory burdens must be clearly substantiated. If MRL is unable to do so at this time, the Board must refuse to grant its petition.

It is also unclear that MRL has a demonstrable need for a change to the revenue threshold. In its petition, MRL reports a 2018 total revenue of approximately \$398,374,000. It does not provide its 2018 operating revenue, nor does it provide any data to support its claim that it reasonably expects to exceed the current Class I threshold within two years. If MRL does not intend to provide any additional supporting data, it is unclear on what basis the STB could determine that MRL is likely to approach the current Class I threshold and require regulatory relief.

Finally, while outside the jurisdiction of the STB, we note that multiple federal agencies make use of STB's classifications for key safety rules. For example, TSA's recent final rule "Security Training for Surface Transportation Employees" (85 FR 16456), only requires statutorily mandated security training for employees of Class I railroads. TSA states that it has done so as it

has “determined the highest risk freight railroads are those designated as Class I, based on their revenue and the Nation's dependence on these systems.” High-profile rulemakings on grade crossing safety, Amtrak performance metrics, and crew size have also invoked STB’s railroad classifications. We express concern that modifications of existing thresholds will allow MRL or like carriers to evade critical safety regulations along with the economic regulations imposed by the STB.

We call on STB to reject MRL’s petition to increase the revenue threshold for Class I classification. MRL has failed to demonstrate that becoming a Class I will induce a meaningful regulatory burden, that it has a reasonable expectation of requiring such relief, or that modifications to existing thresholds will result in promoting equitable conditions for employees. We look forward to working with the Board on this issue going forward.

Sincerely,

A handwritten signature in black ink that reads "Larry I. Willis". The signature is written in a cursive, flowing style.

Larry I. Willis  
President



Transportation Trades Department, AFL-CIO  
*A bold voice for transportation workers*

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***TTD MEMBER UNIONS***

Air Line Pilots Association (ALPA)  
Amalgamated Transit Union (ATU)  
American Federation of Government Employees (AFGE)  
American Federation of State, County and Municipal Employees (AFSCME)  
American Federation of Teachers (AFT)  
Association of Flight Attendants-CWA (AFA-CWA)  
American Train Dispatchers Association (ATDA)  
Brotherhood of Railroad Signalmen (BRS)  
Communications Workers of America (CWA)  
International Association of Fire Fighters (IAFF)  
International Association of Machinists and Aerospace Workers (IAM)  
International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers (IBB)  
International Brotherhood of Electrical Workers (IBEW)  
International Longshoremen's Association (ILA)  
International Organization of Masters, Mates & Pilots (MM&P)  
International Union of Operating Engineers (IUOE)  
Laborers' International Union of North America (LIUNA)  
Marine Engineers' Beneficial Association (MEBA)  
National Air Traffic Controllers Association (NATCA)  
National Association of Letter Carriers (NALC)  
National Conference of Firemen and Oilers, SEIU (NCFO, SEIU)  
National Federation of Public and Private Employees (NFOPAPE)  
Office and Professional Employees International Union (OPEIU)  
Professional Aviation Safety Specialists (PASS)  
Sailors' Union of the Pacific (SUP)  
Sheet Metal, Air, Rail and Transportation Workers (SMART)  
SMART-Transportation Division  
Transportation Communications Union/ IAM (TCU)  
Transport Workers Union of America (TWU)  
**UNITE HERE!**  
United Automobile, Aerospace and Agricultural Implement Workers of America (UAW)  
United Mine Workers of America (UMWA)  
United Steel, Paper and Forestry, Rubber, Manufacturing, Energy, Allied Industrial and Service  
Workers International Union (USW)

*These 33 labor organizations are members of and represented by the TTD*

