The Freight Railroad Monopoly:
The Problem, The Solution

CURE
PROMOTING RAIL COMPETITION

March 14, 2014

National Academy of Sciences

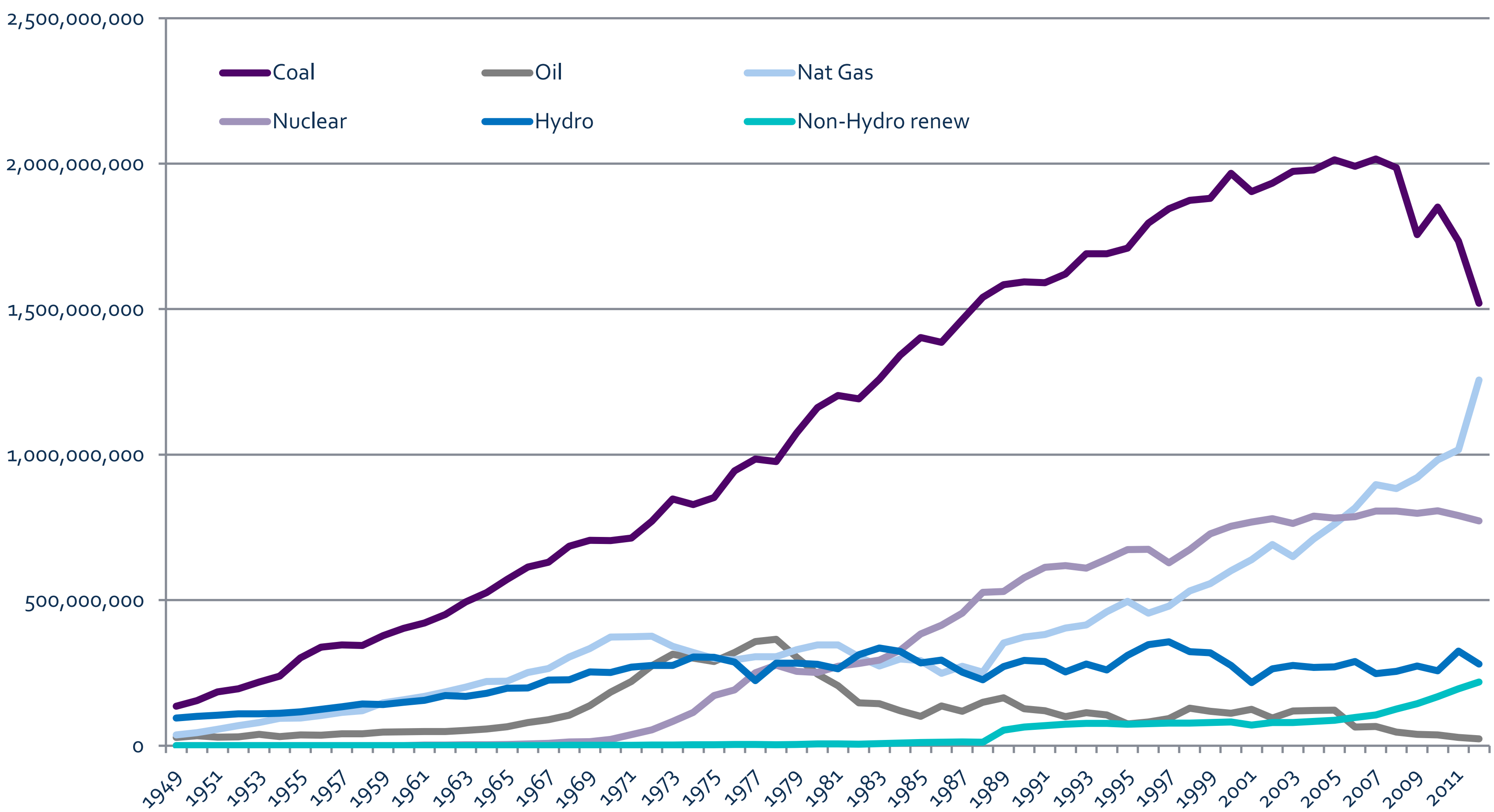
Transportation Research Board

CURE

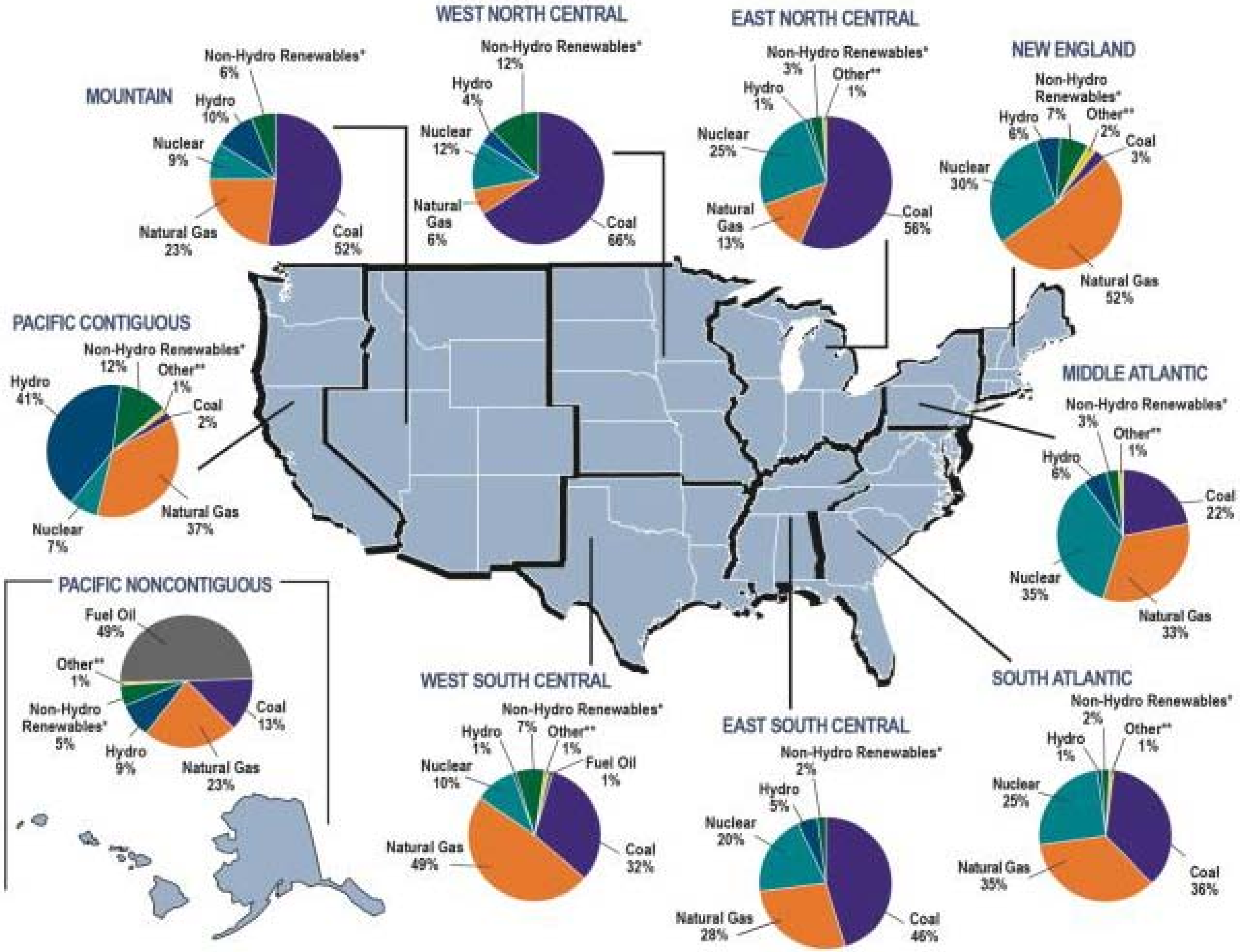
PROMOTING RAIL COMPETITION

- Consumers United for Rail Equity (CURE) is a coalition of freight rail shippers concerned about the existing unrestrained freight rail monopoly power over rail dependent shippers. We seek changes in federal law and policy that would require railroads to compete for our business, which we believe would result in more efficient pricing and more reliable service. CURE's goal is for freight rail service to be competitive as intended by Congress when it passed the Staggers Rail Act in 1980.
- CURE Membership includes electric utilities, chemical, manufacturing, agriculture and forest and paper companies and large trade associations that represent more than 3,500 members and their consumers.

Electricity Generation Mix (Thousand kWh)



Different Regions of the Country Use Different Fuel Mixes to Generate



*Includes generation by agricultural waste, landfill gas recovery, municipal solid waste, wood, geothermal, non-wood waste, wind, and solar.

** Includes generation by tires, batteries, chemicals, hydrogen, pitch, purchased steam, sulfur, and miscellaneous technologies.

Sum of components may not add to 100% due to independent rounding.

Source: U.S. Department of Energy, Energy Information Administration, Power Plant Operations Report (EIA-923); 2012 preliminary generation data.

April 2013

Freight Rail Monopoly Problem

Staggers Act of 1980

- Changed railroad regulatory program from strict and pervasive regulation to presumption of deregulation.
- Regulatory program presumes access to competition and presumes no regulation of relationships between rail and its customers.
- Railroad kept their pre-Staggers Antitrust Exemptions.

Thirty-four years later – Where are we?

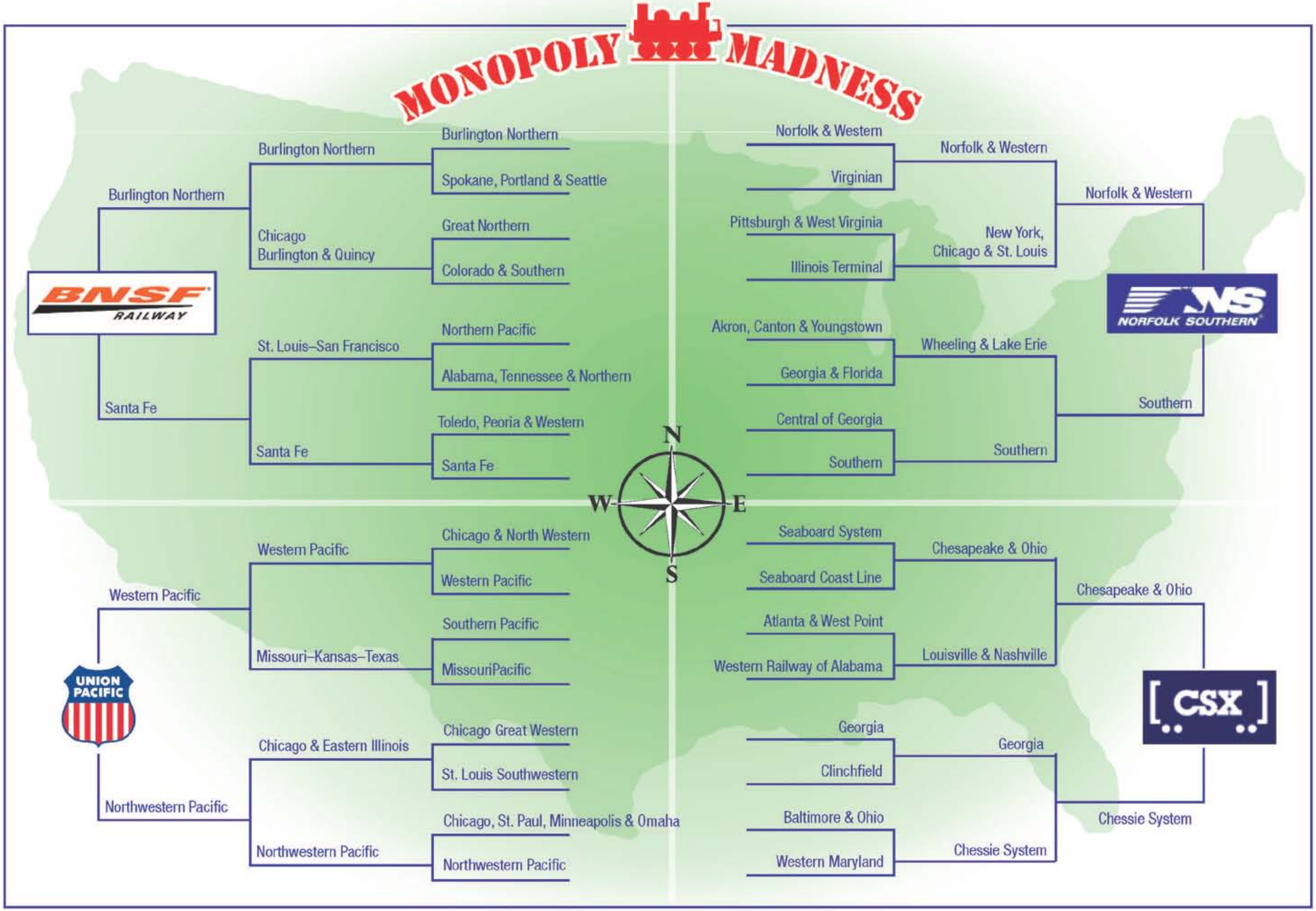
How Staggers Works Today

- No prior approval of railroad rates.
- Railroads can charge shippers whatever they wish.
- Very little rail-to-rail competition in the U.S. today.
- If a rate is too high, rail-dependent shippers can challenge the rate at the STB; shipper bears the burden of proof.
- Shippers must pay a minimum of 80% more than the direct cost to the railroad of moving the freight before the STB has jurisdiction to consider relief.
- Maximum rate: what the shipper would pay if it built and operated its own railroad at current costs.
- Cost of rate case is very expensive, are very lengthy and the chance of winning is low.

How Staggers Works Today (cont'd)

- The STB has approved railroad practices that:
  - Close switches that could take freight to a competing railroad.
  - Refuse to provide a rate to a point where a shipper can access a competing railroad.
  - Approve long-term "tie-in" agreements between short-line and major railroads that deny shippers access through the short-line to a second major railroad.
- Shippers that must use rail often confront a take-it-or-leave-it rate proposal.

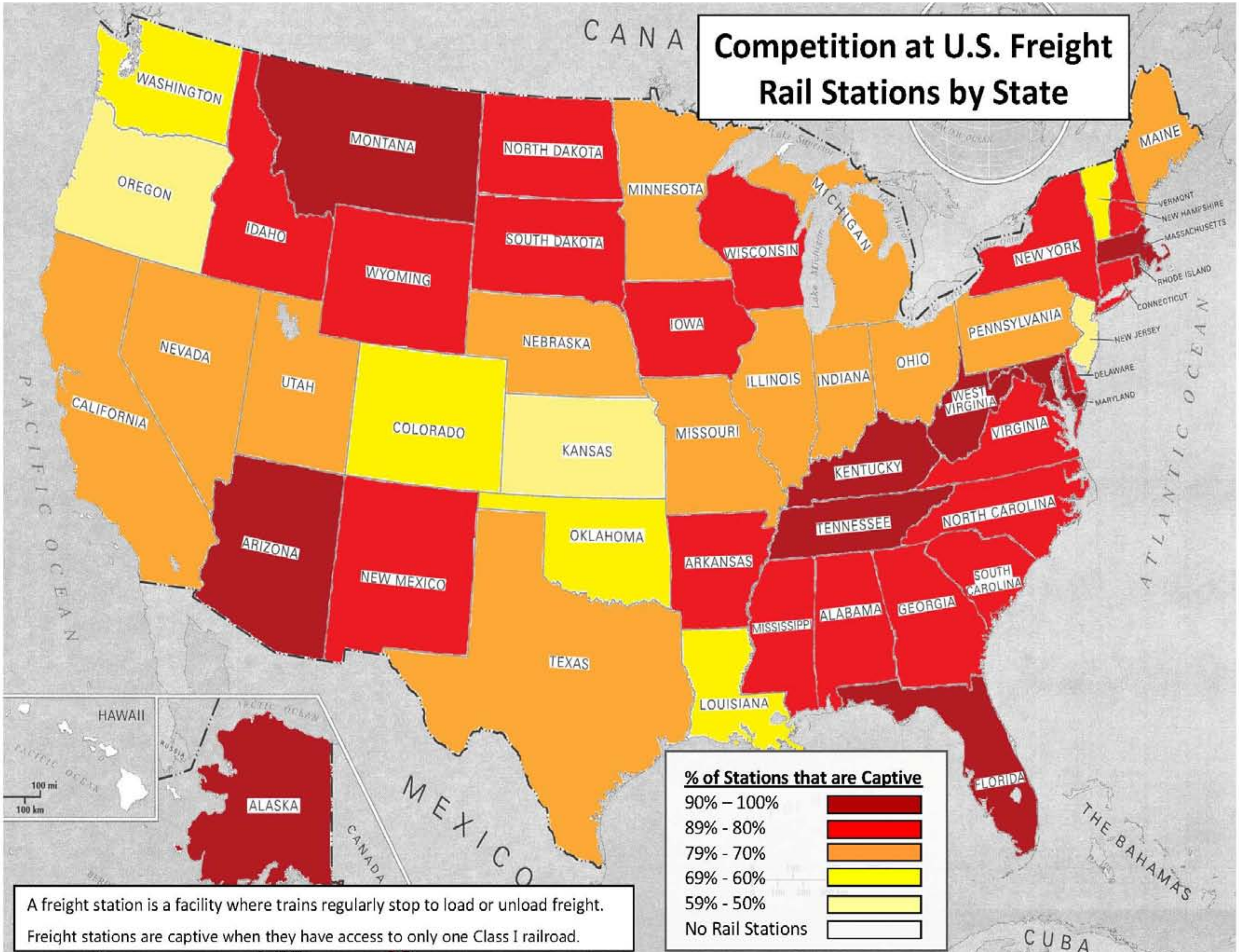
How Did This Happen?



It's the opposite of competition. In 1980 there were over 40 railroads. Today there are just four major railroads that have divided the country into their own regional monopolies. Congress needs to stop the Monopoly Madness by reforming the Surface Transportation Board. Because when railroads compete, consumers win.

[NOTE: Monopoly Madness chart is for illustration purposes only and is merely representative of the mergers and acquisitions that have occurred in the railroad industry.]

Results


Competition at U.S. Freight Rail Stations by State
CANADA
WASHINGTON
OREGON
IDAHO
MONTANA
WYOMING
NORTH DAKOTA
SOUTH DAKOTA
MINNESOTA
WISCONSIN
MICHIGAN
IOWA
NEBRASKA
NEVADA
CALIFORNIA
UTAH
COLORADO
KANSAS
MISSOURI
ILLINOIS
INDIANA
OHIO
PENNSYLVANIA
NEW YORK
MAINE
VERMONT
NEW HAMPSHIRE
MASSACHUSETTS
RHODE ISLAND
CONNECTICUT
NEW JERSEY
DELAWARE
MARYLAND
WEST VIRGINIA
VIRGINIA
KENTUCKY
TENNESSEE
NORTH CAROLINA
SOUTH CAROLINA
ARIZONA
NEW MEXICO
OKLAHOMA
ARKANSAS
MISSISSIPPI
ALABAMA
GEORGIA
TEXAS
LOUISIANA
FLORIDA
HAWAII
ALASKA
MEXICO
PACIFIC OCEAN
ATLANTIC OCEAN
THE BAHAMAS
CUBA
% of Stations that are Captive
90% – 100%
89% - 80%
79% - 70%
69% - 60%
59% - 50%
No Rail Stations
A freight station is a facility where trains regularly stop to load or unload freight.
Freight stations are captive when they have access to only one Class I railroad.

Rail Stations

- Place where freight railroads regularly pick up or deliver freight.
- Over 28,000 rail stations in the United States.
- Over 78% are served by a single railroad.
- Even where competition exists it may be paper competition as one railroad may control the secondary railroad serving the area.
- Every state has at least 50% of its rail stations served by one railroad, except
  - Alaska – one state owned railroad, and
  - Hawaii – no rail stations
- Map only works if you are rail dependent. Does not apply to situations where rail customers can use truck or water transportation.

Today

By the Surface Transportation Board's own studies, about 35% of the annual rail traffic, by weight, is "captive" – must move by rail and has access to only one railroad.

2010 Senate Commerce Committee Report

- "A review of the Class I railroads' recent financial results shows that the Staggers Act's goal of restoring financial stability to the U.S. rail system has been achieved. … The four Class I railroads that today dominate the U.S. rail shipping market are achieving returns on revenue and operating ratios that rank them among the most profitable businesses in the U.S. economy."
- "Unlike other transportation modes such as trucking, the railroads have been able to maintain their high profit margins even during the sustained economic downturn of 2008-10. Freight railroads have been assuring their investors the companies will take advantage of this 'robust pricing environment' and continue to push rate increases on their customers."
- http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=76823478-a901-4b4d-869b-9301bb43343b

- **<u>2013 Senate Commerce Committee Report – Update to 2010 Report</u>**
- "The positive financial trends identified in the 2010 Staff Report have continued in the most recent years, and the railroads appear confident they will continue for the foreseeable future."
- "These financial results are especially remarkable as they were accomplished even while overall rail volumes were still below prerecession levels, and while the two dominant railroads operating east of the Mississippi River, CSX and Norfolk Southern, experienced significant drops in the volume of their coal shipments. Each new quarter brings further evidence that the large freight railroad companies are highly profitable enterprises that have confidence that their financial success will continue."
- http://www.commerce.senate.gov/public/?a=Files.Serve&File_id=3cf1b5f2-9487-4c9c-9cea-efb9eb5499d7

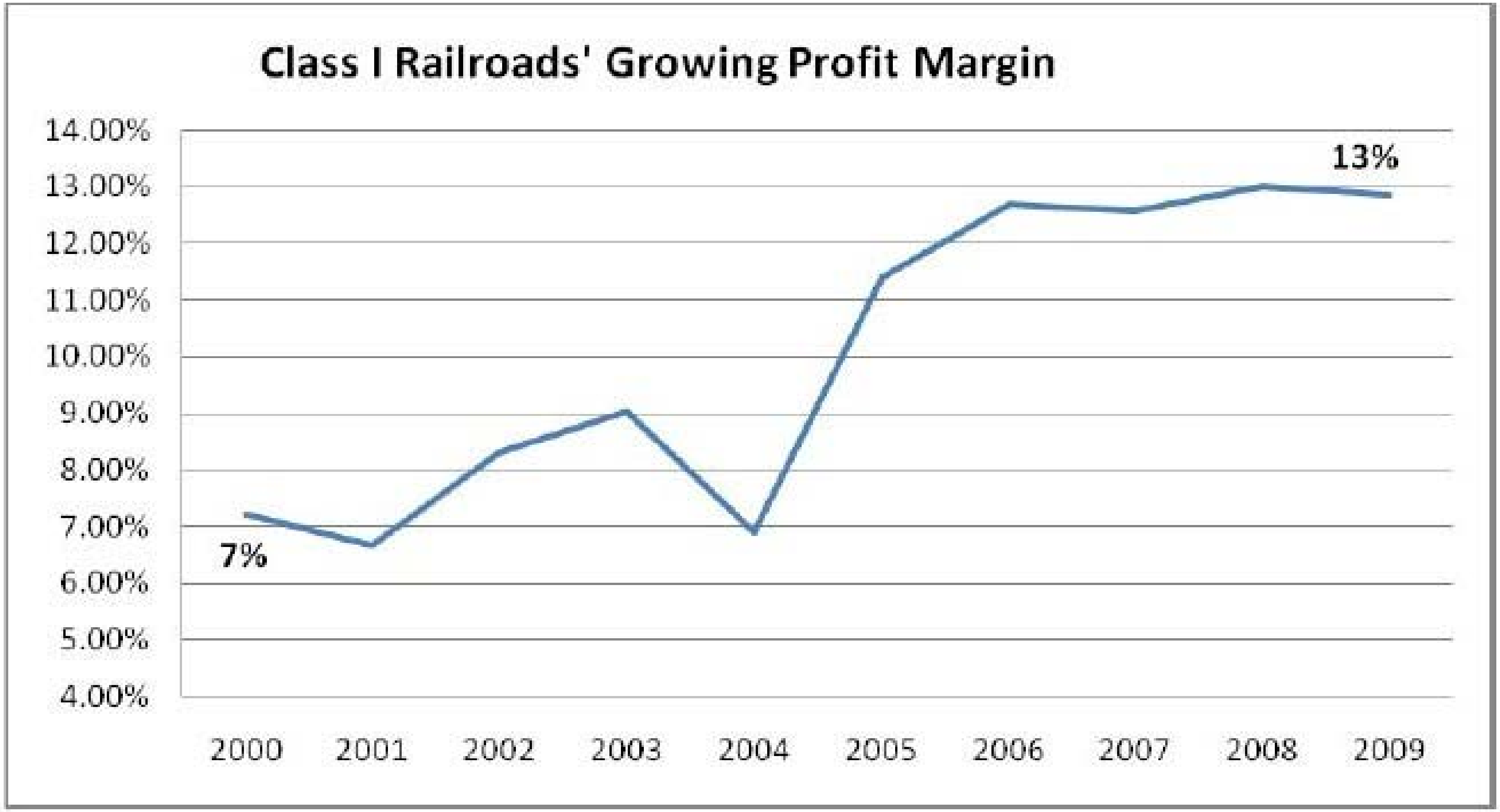
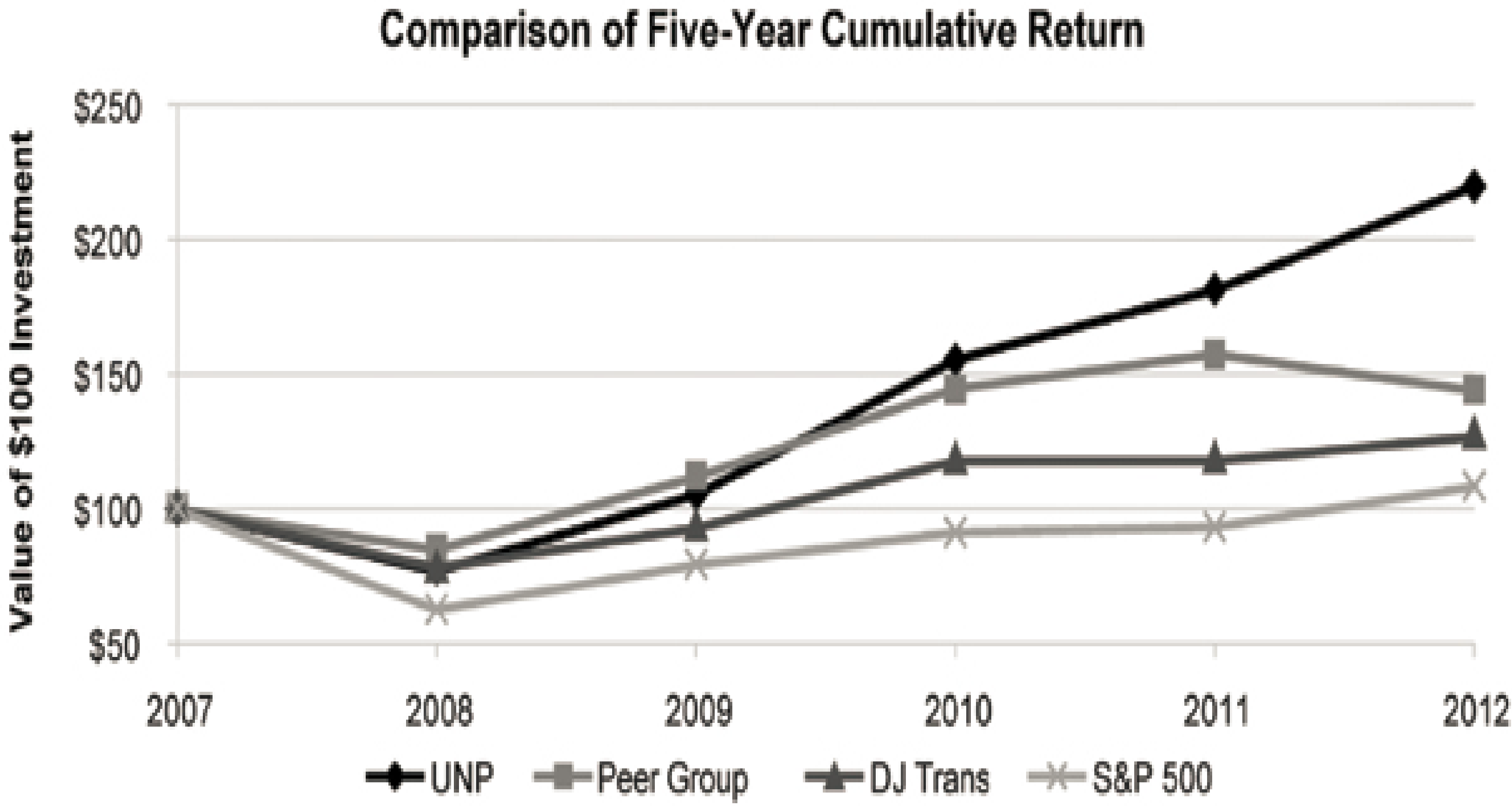
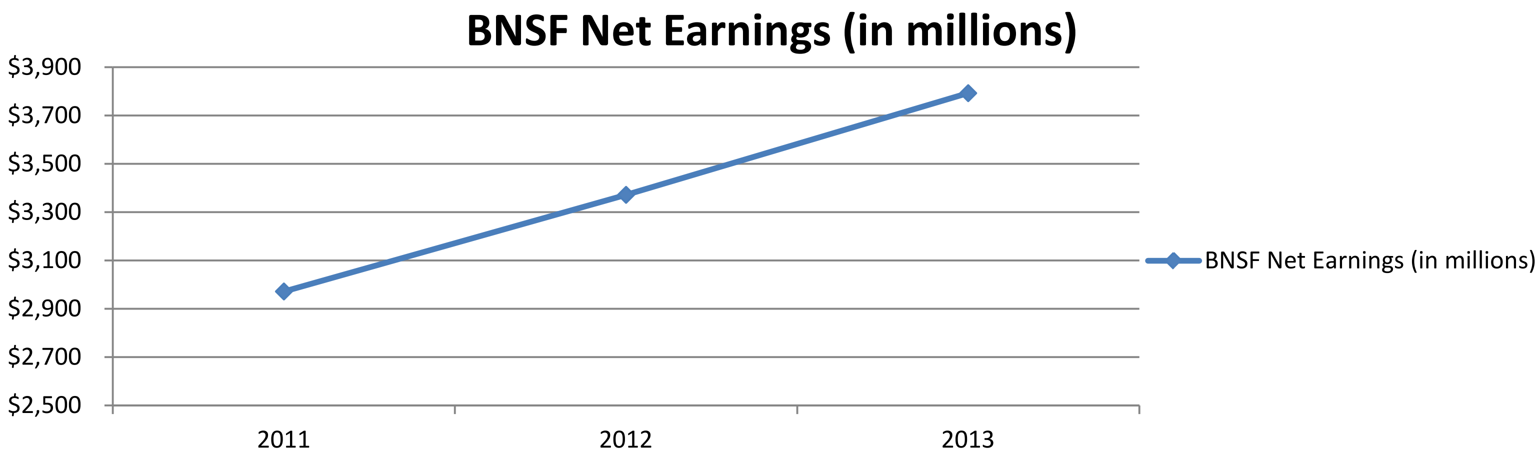


Figure 1 – Combined Profit Margins (Net Income/Revenue) for BNSF, Union Pacific, CSX, and Norfolk Southern, 2000-09 (Source: SEC filings)

Union Pacific Five Year Shareholder Return 2007 – 2012



Berkshire Hathaway



Berkshire Hathaway Annual Report 2011

- "Massive investments of the sort that BNSF is making would be foolish if it could not earn appropriate returns on the incremental sums it commits. But I am confident it will do so because of the value it delivers."

The Solution

Improve and Strengthen the STB

- Address the Government Sunshine Act Problem.
- Ensure that the STB has Adequate Resources.
- Eliminate annual determinations of railroad revenue adequacy.
- Provide arbitration as an alternative means to resolve rail rate challenges.

Remove Railroad Antitrust Exemption

- Enact S. 638, the Railroad Antitrust Enforcement Act (CRS Summary)
  - Railroad Antitrust Enforcement Act of 2013 - Amends the Clayton Act to grant the United States exclusive authority to bring suit for injunctive relief against a common carrier that is not a rail common carrier subject to the jurisdiction of the Surface Transportation Board (STB).
  - Provides that, in any civil action against a rail common carrier, the U.S. district court shall not be required to defer to the primary jurisdiction of the STB.
  - Amends federal transportation law to terminate the exemptions from antitrust laws for collective ratemaking agreements.
  - Requires the STB, when reviewing a proposed agreement, to take into account its impact upon shippers, consumers, and affected communities.

Thank you

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