

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. EP 767
FIRST-MILE / LAST-MILE SERVICE**

REPLY COMMENTS ON BEHALF OF CN

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The U.S. rail operating subsidiaries of Canadian National Railway Company (hereafter “CN”) respectfully submit these reply comments in response to the Board’s decision requesting comment on its Request for Information about first mile/last mile service and metrics served on September 2, 2021, in the above captioned proceeding.

Opening comments on behalf of shipper and shipper interests expressed generalized concerns with transparency concerning first mile/last mile service transparency and there were a range of different Board actions requested. As explained in CN’s opening comments, CN currently provides real-time, customer-specific information directly to its customers through its suite of eBusiness tools, CN One. CN is committed to providing its customers with consistent and transparent information about their shipments, and continues to upgrade and add features to CN One.

CN’s reply comments address two main issues. First, CN is already providing customer-specific information to its customers and CN does not believe that aggregated data reporting on first mile/last mile service is needed. Second, any form of first mile/last mile reporting would be meaningless without information as to causation.

I. Aggregated Data Reporting on First Mile/Last Mile Service is Not Needed

CN understands our customers’ desire to have transparent and reliable information about service to their facilities. That is why CN has worked hard to provide this information directly to our customers. However, CN does not believe

that aggregated first mile/last mile data reporting will provide shippers and shipper interests with helpful information.

The Board already collects a vast amount of performance data through regulations adopted in Docket No. EP 724 (Sub-No. 4) and (Sub-No. 5). The Board's decision in this docket references that reporting, as do a number of opening comments. The reporting currently in place at 49 C.F.R. pt. 1250 was the result of extensive work and careful consideration by the Board to provide a tool to identify trends and monitor potential regional or national system-wide service issues that could have ripple effects in the interconnected North American rail system.¹ The Board's proposed reporting came at the urging of shippers and after two public hearings, targeted reporting by BNSF Railway Company and Canadian Pacific Railway related to fertilizer and grain, and then interim reporting by all Class I carriers. With a specific goal and this backdrop, the Board then proposed regulations and received public comment, held meetings with the public to address technical issues, and received a second round of public comment, before adopting a final rule.

Yet now, some commenters in this proceeding suggest that the EP 724 data, which railroads have submitted on a weekly basis since 2014, are not helpful.² Any

¹ See *U.S. Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), at 22 (STB served Apr. 29, 2016) (main objective of reporting rules to identify trends and monitor potential service issues on Class I railroads).

² See, e.g., Opening Comments of the U.S. Department of Transportation, at 2 (filed Dec. 17, 2021) (EP 724 metrics are “imprecise” and “do not appear to be well correlated to real-world service quality”); Opening Comments of Institute of Scrap Recycling Industries, Inc., at 6

form of aggregated performance data will only be able to provide an overview of rail operations. For example, the reporting of terminal dwell and cars online were intended to be indicators of railroad system fluidity, but would not inform particular shippers about their level of service. Indeed, the U.S. Department of Transportation, which supported the Board's efforts in Docket No. EP 724 (Sub-No. 4), urged caution in that proceeding about drawing conclusions about the state of the industry from aggregated data.³

To the extent that parties now find flaws in the aggregated service metrics in the EP 724 data, any form of aggregated first mile/last mile data will suffer the same flaws. The Board has not identified a specific goal in this proceeding. Some shipper association comments appear to seek reporting in order to provide shippers with insight into their own level of service.⁴ But the type of aggregated reporting that has been suggested will not generate data that could be used to address service to individual shippers. Even if reporting could ultimately provide additional insight into overall service trends beyond the tools it already has available (which has not

(filed Dec. 17, 2021) (the reported EP 724 data “provides an incomplete, if not misleading picture of the overall rail service”).

³ Reply Comments of U.S. Department of Transportation, *U.S. Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), at 8 (filed Apr. 29, 2015). DOT also noted that railroads are continually faced with changes in traffic and the mix of commodities to be shipped and that railroads may act as a release valve to help address challenges that arise in other modes of transportation, and DOT agreed that the Board was appropriately concerned with weighing costs and benefits of the proposed data reporting. *Id.* at 8-9.

⁴ Some shipper associations also appear to be requesting reporting in response to anecdotes about service concerns. There are, however, more appropriate avenues to address specific service concerns, such as informal dispute resolution through the Board's Rail Customer and Public Assistance program.

been shown), then the Board must be clear about the inherent limitations associated with aggregated reporting⁵ and consider the burden of requiring railroads to report yet more data. Aggregated data will not inform shippers about their particular level of service.

Yet it is clear from many of the opening comments from shippers and shipper interests that they want to know about service to their own facilities.⁶ It is also clear that customer-specific information is already provided by many railroads, including CN, directly to the customer.⁷ To the extent shippers seek information that will be helpful to their own businesses and operations, aggregated metrics are unlikely to provide salient information.

⁵ Some comments do acknowledge the inherent limitations of such reporting. *See, e.g.*, Opening Comments of American Petroleum Institute, at 7 (filed Dec. 17, 2021) (“[a]s data is rolled up to the national level, it provides less insight and is less actionable but can still be a useful metric to determine overall trends.”); Opening Comments of Diversified CPC International, Inc., at 5 (filed Dec. 17, 2021) (“[a]verages and system-wide reports can lack meaning”); Opening Comments of the U.S. Department of Agriculture, at 5 (filed Dec. 17, 2021) (system-wide averages would not likely be all that useful when disruptions are localized to specific routes, regions, and commodities).

⁶ *See, e.g.*, Opening Comments of Shipper Associations, at 31-32 (filed Dec. 17, 2021) (providing data directly to customer necessary to enable a customer to identify extent to which first mile/last mile issues are impacting its facilities); Opening Comments of American Petroleum Institute, at 7-8 (filed Dec. 17, 2021) (discussing data to be reported from carrier to the shipper at the shipper level); Opening Comments of Institute of Scrap Recycling Industries, Inc., at 8 (filed Dec. 17, 2021) (discussing benefit of rail customer access to data for their facilities); Opening Comments of National Grain and Feed Association, at 11 (filed Dec. 17, 2021) (facility-level statistics provided to customers would help rail customer operations).

⁷ *See, e.g.*, Opening Comments of CN, at 3-12 (filed Dec. 17, 2021); Opening Comments of BNSF Railway Company, at 3-9 (filed Dec. 17, 2021); Opening Comments of CSX Transportation, Inc., at 2-7 (filed Dec. 17, 2021); Opening Comments of Norfolk Southern Railway Company, at 1-9 (filed Dec. 17, 2021).

II. Any First Mile/Last Mile Reporting Would Be Meaningless Without Causation

Some shipper comments propose extensive data reporting on first mile/last mile railroad performance. Comments seek reporting so that the Board can “design solutions to address the problems”⁸ and so that customers can “better align their expectations ... with the actual performance of the railroads,”⁹ but fail to recognize that would be impossible without understanding causation. The basic and uncontroversial fact is that first mile/last mile service can be impacted by shipper actions. Although the National Industrial Transportation League acknowledges that first mile/last mile service can be impacted by shippers, it states that it “believes” that happens infrequently, though provides no support for that belief.

There are many situations in which first mile/last mile service cannot be completed due to causes outside of a railroad’s control. For example, in winter conditions, CN cannot serve a customer’s facility if the customer’s tracks are covered with ice and snow such that conditions are unsafe. That is why, as noted in opening comments, CN engages yearly in a winter preparedness campaign to promote safety and reduce avoidable delays through preparation of a customer’s facility. If CN is unable to serve a customer due to unsafe conditions at the customer facility, then CN is appropriately unable to provide service accordingly to plan. But if this and similar data points were reported without causation, the

⁸ Opening Comments National Association of Chemical Distributors, at 7 (filed Dec. 16, 2021).

⁹ Opening Comments of Institute of Scrap Recycling Industries, Inc., at 6 (filed Dec. 17, 2021).

Board and the shipping public would make inaccurate and uninformed inferences from the data.

Shipper Associations argue that first mile/last mile reporting should be “objective,” meaning that it should “not be influenced by personal opinions or interpretations, such as individual determinations of causation.”¹⁰ But data divorced from causation would be completely meaningless. Shipper Associations say that it would “advance the discussion of FMLM issues to identifying solutions,”¹¹ but there can be no discussion of solutions without understanding the root causes of a problem.

This concept is not new. The Board, in Docket No. EP 759, understood that “rail cars may not be delivered by their original ETAs due to a variety of causes, including rail users’ behavior, carrier-caused delays, or other variables.” The Board required railroads to provide an original ETA to rail users in that proceeding, but cautioned that that information alone would not allow inferences or guarantees about service.¹²

When service is committed and not performed, CN crew already assign causation through codes for business purposes. For example, certain railroad-caused categories include “locomotive failure” or “locomotive not available” while customer-caused categories include “customer rail condition” or “gates locked.”

¹⁰ Opening Comments of ACC et al., at 13 (filed Dec. 17, 2021).

¹¹ *Id.*

¹² *Demurrage Billing Requirements*, Docket No. EP 759, at 17-18 (STB served Apr. 6, 2021).

Customers are informed of these developments through service notifications developed by CN, as explained on opening.

The reality of first mile/last mile service is that it is complicated and can be impacted by a variety of factors, often location-specific.¹³ If the Board does seek first mile/last mile reporting, the data would have to have context to be meaningful. Otherwise, neither the Board nor the public could have any hope of drawing conclusions from the data.

III. Conclusion

CN appreciates the Board's effort to solicit information in response to the Request for Information. CN understands the Board's desire to examine these issues, but urges the Board not to propose data reporting requirements based on this record. Regulatory requirements should be tailored to a specific objective, and CN does not believe that the record identifies a problem for which mandatory reporting is the answer. If the Board intends to nonetheless move forward with a proposal, CN urges the Board to carefully evaluate the burdens associated with any proposed reporting and whether those burdens outweigh the benefits.

¹³ And it is likely to become even more complicated if expanded forced switching were implemented. As the Association of American Railroads explained recently: "Forced switching is also unlikely to be a helpful response to concerns about first-mile / last-mile service.... Rather, it can only make things worse: A forced switching order imposes additional points of delay and potential failure by layering another short-distance move—a switch from the serving carrier to the alternative long-haul carrier—on top of the existing operation." Supplemental Comments of the Association of American Railroads, at 26, *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1) (filed Feb. 14, 2022).

Respectfully submitted,

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