

BEFORE THE SURFACE TRANSPORTATION BOARD

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FIRST-MILE / LAST-MILE SERVICE

Comments of the Industrial Minerals Association – North America

The Industrial Minerals Association – North America (“IMA”) respectfully submits its comments pursuant to the Surface Transportation Board’s (“STB” or “Board”) August 31, 2021, order in the above-captioned proceeding in support of first-mile / last mile (“FMLM”) service performance data reporting and other measures to improve rail service on the U.S. rail network.

IMA member companies have suffered from poor rail service since the initiation of precision scheduled railroading across this rail network which has become increasingly unreliable over the last six months, causing IMA members to believe the system may be on the brink of total collapse in the near future. As a result, IMA urges the Board to implement data reporting for first-mile / last-mile service and take further action deemed necessary to improve critical rail service in this country.

IMA AND ITS INTEREST IN THE PROCEEDING

IMA is a trade association that represents companies that mine, process and sell industrial minerals throughout North America. IMA represents a diverse set of member companies engaged in mining and processing of ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, lithium, mica, perlite, potash, quartz, salt, soda ash, sodium

bicarbonate, talc, and wollastonite, and other minerals across North America. The industrial minerals produced by IMA member companies are the raw material feedstock that are incorporated into a broad range of products, including among other things, container, food products, flat and specialty glasses, paint and coatings, ceramics, and a broad range of building products. Additionally, industrial minerals are used to make foundry molds and cores, which are in turn used to make metal shapes used to manufacture automobiles, SUVs and trucks, rail cars and almost all other items that have metal castings. The demand for many of these minerals from manufacturers is global, and the continued pressure member companies are feeling from the railroads in the form of unreliable service are making it more difficult to compete in that global market. This poor service by the railroads is having a negative overall impact on the U.S. economy, and issues could get worse if they are not held accountable.

Industrial minerals are low margin, high volume products. Member companies are heavily dependent upon a reliable and cost-effective transportation network, especially rail, and are major shippers with the major rails. To help highlight that, in 2014, the nonmetallic minerals except fuels category, made up \$1.5 Billion in total freight rail premiums.

THE BOARD'S REQUEST FOR FMLM COMMENTS IN THIS PROCEEDING

The STB has asked for comments in the above-captioned proceeding regarding FMLM service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. The Board explained that FMLM service refers to the movement of railcars between a local railroad serving yard and a shipper or receiver facility. So-called "local trains" serve customers in the vicinity of the local yard, spotting (i.e., placing for loading or unloading) inbound cars and pulling (i.e., picking up) outbound cars from each customer facility. The Board made this request for comments after hearing concerns raised by shippers

across numerous industries and requests for more transparency of FMLM data. As such, the Board is now asking for information on possible FMLM service issues, the design of potential metrics to measure such service, and the associated burdens or trade-offs with any suggestions raised by commenters.

Presently, the Board collects certain railroad performance data metrics from Class I railroads on a weekly and monthly basis.¹ Also, the Board actively monitors, on an informal basis, the national rail network, including network fluidity and service issues, through, for example, the Railroad-Shipper Transportation Advisory Council, the Rail Customer and Public Assistance Program (“RCPA”), and information requests to Class I railroads. *See, e.g.*, Surface Transportation Board, *Budget Request Fiscal Year 2022*, 14-15. Since Spring 2020, the Board noted it has focused its informal monitoring on the effects of and response to the pandemic, engaging in frequent communication with carriers, shippers, and other stakeholders. *See id.* Recently, the Board’s Chairman inquired to each Class I carrier about rail service issues in May and supply chain issues (including local service issues) in July. The Board has heard from various stakeholders, in recent months, about crew shortages and other issues stemming from the COVID-19 pandemic and worldwide supply chain complications have heightened and added to the importance of the Board exploring FMLM service.

In addition, the Board has received a number of shipper letters complaining about FMLM service issues and seeking more transparency through rail carrier data. While the railroads opposed this request for transparency regarding their service, the Board decided to explore this issue further by seeking comments from its relevant stakeholders.

¹ *See* 49 C.F.R. § 1250.2.

The Board now has sought comments from the shipping community, carriers, and the public concerning what, if any, FMLM issues they consider relevant. The Board also has sought comment on whether further examination of FMLM issues is warranted, and what, if any, actions may help address such issues, taking into account the information shippers already receive from carriers. Of particular importance, the Board has sought recommendations as to specific additional data commenters view as important to identify FMLM service concerns that is not now being reported to the Board. The Board also has sought information about potential burdens of any suggested data collection and reporting. The Board has suggested that shipper commenters may wish to provide context for their comments by including information about the quantity or volume of traffic they ship, their storage capacity, seasonality of their shipments (if any), work windows, and other factors that make their facilities or operations unique. The Board has provided various questions that it thought would be helpful when identifying issues:

- How often does the issue arise?
- Why does the issue occur?
 - How does the issue affect your operations? How does the issue affect your facilities and/or production?
 - How does the issue affect your labor schedule?
 - What is the financial impact associated with this issue?
- Has this issue changed with the implementation of operating changes generally referred to as precision scheduled railroading?
- How do you typically try to address the issue? What is communication regarding this issue like between shippers and carriers?
- What remedies are available to you?

The Board has noted that some shippers have asked that the Board collect additional service metrics to measure FMLM service, and has suggested that commenters may wish to further address:

- What, if any, existing information or metrics (collected by the Board or maintained by carriers) facilitate an understanding of the issue?
- What new information or metrics would illuminate the issue? The Board asks for specificity in any suggestions, including specific definitions for different types of services (e.g., transportation involving one carrier vs. multiple carriers) and facilities (e.g., open vs. closed-gate).
- How and at what level should any metrics be reported (individual shipper, local, regional, or national)?
- Should metrics only measure FMLM service, or should additional metrics more broadly measure service that may relate to or involve FMLM service, such as metrics on car trip plan compliance? Who would use any such information or measurements, and how?
- What are the specific benefits, if any, that would arise from the use of any suggested metrics?
- Would reports to the Board, shipper surveys, reports directly to individual shippers, or some other type of information be helpful to clarify the issue?

The Board has mentioned that some issues that commenters may wish to comment on, if pertinent to them, include a) switching, including missed switches and/or inconsistent switches; b) modified service plans at local yards (such modified plans may reduce the number of service days per week, increase the number of service days per week, or change the timing of service

(morning versus night)); c) car delivery, such as the delivery of cars carrying a different commodity, delivery of a different type of car than the cars ordered, or delivery of fewer or more cars than were ordered; d) extended dwell times at railroad facilities local to shipper/receiver locations; and e) discrepancies in information between the railroad and the rail customer as to the location of cars between the local yard and the shipper's facility.

Finally, the Board has asked for comment on the trade-offs on providing this data with respect to burden on rail carriers versus the value to shippers, the government, and the public.

THE BOARD ASTUTELY HAS REQUIRED RAILROADS TO REPORT PERFORMANCE DATA TO BETTER UNDERSTAND RAIL SERVICE ISSUES.

This initial requirement for railroads to provide service data in 49 C.F.R. § pt. 1250 stemmed from the massive rail service crisis in 2013-14.² During this service crisis, the Board held a hearing regarding rail service problems on April 10, 2014, at its offices in Washington, D.C. The Board also held a public hearing on September 4, 2014, in Fargo, N.D., to give interested persons the opportunity to report on rail service problems, hear from rail industry executives on plans to address those problems, and discuss additional options to improve service.

During and after the hearings, shippers expressed concerns about the lack of publicly available rail service metrics and requested access to certain performance data from the railroads

² Rail service issues in recent history preceded this event in 2013-14. In 1997, while the operations of the merged Union Pacific ("UP") and Southern Pacific Railroads were being integrated, western rail shippers experienced extraordinary service delays as congestion at certain terminals spread into a systemwide problem. The STB intervened by ordering UP to release certain shippers from contracts and to cooperate with other railroads in relieving congestion. In 1999, while Norfolk Southern and CSX were merging the operations of the disbanded Conrail, shippers experienced delays in obtaining service and in transit times. In 2004, during a period of rapid growth in container and other rail freight traffic, the Southern California seaports experienced severe congestion that was attributed to lack of rail capacity for the transportation of arriving containers as well as to port capacity constraints. Rail shippers complained of degraded service in other regions at the same time.

to help them better understand the scope, magnitude, and impact of the service issues at that time. Following the April hearing, the Board directed BNSF and CP to provide weekly status reports on fertilizer shipments and the transportation of grain on their networks (for CP, on its United States network). *See U.S. Rail Serv. Issues—Grain*, EP 724 (Sub-No. 2), slip op. at 3 (STB served June 20, 2014); *U.S. Rail Serv. Issues*, EP 724 (Sub-No. 1), slip op. at 1 (STB served Apr. 15, 2014). At the September hearing, stakeholders expressed a need for greater industry-wide transparency with regard to rail service. Shippers asserted that performance metrics are important for rail users to plan logistics, minimize economic harm to operations and revenues, assist with business planning, and to better serve their own customers during the service crisis recovery period. Shippers also stated that information would bring transparency regarding the extent to which the railroads are improving and resolving the ongoing service issues.

The Board agreed that there is a need for broader standardized performance data from the railroad industry as it continues to address existing service challenges. *United States Rail Service Issues – Data Collection*, EP 724 (Sub-No. 3), slip op. at 2 (STB served October 8, 2014). The Board also agreed that it is necessary to apply these reporting requirements to all of the Class I carriers. *Id.*

As a result, the Board issued an interim order specifying the types of data required to be filed by the Class I railroads. The Board also noted that carriers cited congestion in Chicago as one significant cause of the service problems. It explained that while congestion in the area was particularly acute during the last winter, it has been a recurring problem at this crucial network hub. In 2000, the freight and passenger railroad industries formed the Chicago Transportation Coordination Office (“CTCO”) to coordinate operations between the railroads operating in

Chicago. CTCO members use the forum to discuss daily operations, resolve operating conflicts, and conduct long-range planning related to rail transportation issues in the Chicago area.

As a result, the Board determined that given the longstanding importance of Chicago as a hub in national rail operations, and the impact that recent extreme congestion in Chicago has had on rail service in the Upper Midwest and nationwide, it also would require the Class I railroads operating at the Chicago gateway to jointly file on a weekly basis in Docket No. EP 724 (Sub-No. 3), a narrative summary of operating conditions at the gateway that included specific data.

Specifically, with respect to the nationwide data, railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination or scheduled interchange, and loading metrics for grain and coal service, among other items. The data were intended to give both the Board and its stakeholders access to near real-time information about the operations and performance of the Class I railroads, and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating losses amid the challenging railroad operating environment.

Shortly thereafter, the Board issued a Notice of Proposed Rulemaking to require Class I railroads and CTCO to publicly file various weekly data reports pertaining to service performance. *United States Rail Service Issues – Performance Data Reporting (NPR)*, EP 724 (Sub-No. 4) (STB served December 30, 2014). The Board stated that permanent collection of performance data on a weekly basis would allow continuity of the current reporting and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, should they occur. Transparency would also benefit rail shippers and other stakeholders, by helping them to better plan operations and make informed decisions based on

publicly available, near real-time data, and their own analysis of performance trends over time. The proposed rule followed the interim data reporting requirements with certain modifications, additions, and deletions. The Board proposed nine weekly metrics that would apply to Class I railroads: (1) system average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin and interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by state; (8) for grain cars, the total overdue car orders, average days late, total new grain car orders in the past week, total orders filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region.³ The Board also proposed metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects.

About eleven months later, the Board issued a Final Rule requiring all Class I railroads and the CTCO to report certain service performance metrics. *United States Rail Service Issues – Performance Data Reporting (Final Rule)*, EP 724 (Sub-No. 4) (STB served November 30, 2016). The Board issued various Railroad Performance Data Elements that the Class I railroads must report, including train speed, dwell time, cars on line, trains holding, cars not moved in 48

³ The Board later issued a supplemental notice of proposed rulemaking based on meetings with stakeholders. See *U.S. Rail Serv. Issues—Performance Data Reporting (SNPR)*, EP 724 (Sub-No. 4) (STB served Apr. 29, 2016), corrected, (STB served May 13, 2016). The *SNPR* proposed changes to six of the proposed reporting metrics in the NPR (Request Nos. 1, 4, 5, 6, 8, and 9), modifications to the reporting week and definition of a unit train, and the addition of three new metrics (Request Nos. 10, 11, and 12) (grain shuttle/dedicated grain trips per month, weekly originated carloads by commodity, and car order fulfillment percentage for 10 car types). See *SNPR*, slip op. at 24-26. With regard to Request No. 7 and No. 8, KCS was not required to report information by state, but instead only system-wide data. See *SNPR*, slip op. at 28.

hours, grain car information, coal unit train information, and carloads in interchange. *See* 49 C.F.R. § 1250.2. The rules also required reporting on Chicago rail traffic and rail infrastructure projects. *See* 49 C.F.R. § 1250.3, 4. The initial reporting date was February 8, 2017.

Many rail shippers believed this step by the STB would lead to better service from their Class I railroads going forward. The general thinking was the reporting requirements would make the railroads more accountable which would incentivize them to be more responsive with respect to service. However, these shippers were sadly mistaken.

RAIL SERVICE PLUMMETED AFTER THE NATIONWIDE IMPLEMENTATION OF PRECISION SCHEDULED RAILROADING BY MOST CLASS I CARRIERS.

In March 2017, CSX Transportation, Inc. (“CSXT”) implemented Precision Scheduled Railroading (“PSR”) as its rail operating plan. This implementation led to countless service issues across its network almost immediately. Part of CSXT’s PSR plan involved cutting many jobs across its system.⁴ By July, the Board had taken a number of actions in response to the service problems resulting from CSXT’s ongoing implementation of this new operating plan. The Board began closely monitoring CSXT’s performance, including requesting that CSXT’s senior management participate in weekly calls with the Board’s RCPA staff and that CSXT submit weekly specific service performance data to facilitate these calls.

On October 11, 2017, service on CSXT had become so unreliable that the Board ordered executive-level officials from CSXT to appear at a listening session at the STB to discuss their ongoing and future efforts to improve service and to provide an estimated timeline for recovery

⁴ CSXT had 23,988 total employees in February 2017 and had 17,138 in October 2021. It had 9262 train and engine service employees in February 2017 and had 6718 in October 2021. These numbers were obtained from the STB Form C information on the STB website.

of normal service levels. The Board also asked impacted shippers to appear at the public listening session to discuss their service concerns and comment on the railroad's service recovery efforts. Despite these efforts by the Board, CSXT service continues to suffer to this date.

On March 18, 2018, STB Chairman Ann Begeman individually wrote the Class I railroads about service issues across the U.S. rail system. She stated that the Board had been closely monitoring freight rail service across the U.S. and had become increasingly concerned about its overall state based on the weekly data collected under 49 C.F.R. pt. 1250. The data was indicating that service was deteriorating based on decreasing system average train speeds and increasing terminal dwell time. Other key metrics were also trending in a negative direction. The STB began holding weekly calls with the railroads and asked them to provide certain information with respect to their rail service.

Despite these monumental service issues on CSXT, most of the other Class I railroads who were not already operating under PSR, also adopted this rail operating plan, including Norfolk Southern Railway ("NS") in July 2019, Kansas City Southern Railway in January 2019, and UP in October 2018. These operational changes involving PSR led to further disruptions across the U.S. rail network. Massive job cuts, like on CSXT, occurred on most of these new PSR railroads as part of this plan, leading many to believe that any uptick in the need for rail service would leave them woefully unprepared.⁵ This eventually proved to be the case.

⁵ UP had 44,652 total employees and 18,612 train and engine service employees in October 2018. UP had 31,921 total employees and 13,554 train and engine service employees in October 2021. NS had 24,594 total employees and 10,243 train and engine service employees in July 2019. NS had 17,725 total employees and 7417 train and engine service employees in October 2021. These numbers were obtained from the STB Form C information on the STB website.

On August 24, 2020, the STB Chairman, as well as the Federal Railroad Administration Administrator, wrote the Class I railroads about their rail service concerns. These leaders of the rail regulatory agencies explained that they had been made aware of service issues, including missed industrial switches and excessively late or annulled trains due to crew availability issues. They noted that with both increasing intermodal and carload volumes and a projected robust harvest fast approaching, railroad employee availability, together with sufficient equipment resourcing, is essential for safe, fluid rail service in support of the nation's economic recovery from COVID-19. Given the challenges related to changing demand patterns and operating conditions, increased communication and transparency with rail shippers had become especially important to ensure they have the information needed to plan their businesses and meet their own customers' needs in the eyes of these two. They emphasized that it was their expectation that there would be heightened emphasis on improving employee availability, equipment resources, and robust communication to quickly resolve service issues as they arise and to prevent them from becoming widespread. The Class I railroads did not heed this warning as service issues became more prevalent.

On May 27, 2021, the new Chairman of the STB, Martin Oberman, also felt compelled to write to the Class I railroads about rail service issues. He explained that the Board had received concerning reports from a meaningful number of rail customers of subpar performance, including missed switches, railcars delayed at intermediate yards or interchanges, extended out-of-route movements, and prolonged dwell at origin for some unit train traffic. Additionally, he noted that the STB had been made aware of instances of significant congestion at various intermodal facilities, which has resulted in delayed train arrivals and disruptions to container availability. He recognized that these rail service challenges, at least to some extent, had been

related to workforce reductions resulting from COVID-19 cases, quarantines, and furloughs based on the temporary decline in demand and the resultant adjustments made by railroads in nearly every facet of their businesses. But he also expressed his concern about the extent to which these service issues may be related to or exacerbated by a broader trend of rail labor reductions that have been occurring over the past several years. He stated that a lack of personnel, including reserve personnel, has made it more difficult to scale-up operations to respond to increases in demand and to maintain reliable service in the face of unanticipated external events that disrupt ordinary operations or business expectations. He said labor shortages could also delay or prolong the recovery period when such network disruptions inevitably occur.

As stated in previous STB letters, he said it is vital that freight railroads continue frequent, proactive communication with the Board and customers on their ability to meet demands for service as the economy recovers from the pandemic. He requested an updated and detailed description of the railroads' preparedness to meet anticipated future demand, including (1) the availability of train crew, yard, and maintenance employees (active, reserve, and furloughed workers) and their plans and time frames for employees to return to work and any re-training, if necessary, and (2) the availability of equipment resources (active and short-term / long-term stored locomotives and rail cars). As part of this update, he specifically requested that the railroads also address whether they have any long-term plans, including their hiring plans for 2021 and 2022, to reverse any of the diminishing workforce levels which have resulted from their strategies in recent years. He also asked them to identify any regions of their networks where they were experiencing or anticipating workforce challenges, and their plans to overcome these challenges.

Shortly thereafter, on July 22, 2021, STB Chairman Oberman again wrote the Class I railroads about significant disruptions within the international intermodal supply chain that involve the freight rail network. He stated that he was particularly concerned about significant increases in container congestion at key U.S. terminals, and substantial charges being levied by the railroads for container storage at these terminals. Specifically, in recent months, he asserted that the Board had received numerous reports related to the length of time that containers were being held in rail yards, and the sizeable storage fees some customers had been required to pay in order to obtain release of containers bearing their shipments. He said that he was particularly troubled about reports that Class I railroads were continuing to impose these charges even in circumstances when the receivers, as a practical matter, had no means to facilitate the release of their containers. Under these circumstances, he noted that demurrage fails to provide any constructive incentives, and perversely results in massive charges that can exceed the commercial value of the shipment. In order to better understand the magnitude of the current container congestion and the framework for the associated demurrage fees, he asked for information from each of the Class I railroads regarding policies and practices with respect to the assessment of demurrage fees on intermodal containers.

On October 18, 2021, Chairman Oberman focused on service issues on CSXT which again caused great concern to the Board, thereby precipitating a letter to the carrier seeking rail service performance information. He stated his reason for this information request was that over the past several months, the Board had continued to receive a steady stream of complaints about the adequacy of rail service provided by CSXT. In both private meetings and public settings, he said CSXT customers have relayed examples of substandard performance, including missed switches, extended transit times for both manifest and bulk shipments, unfilled car orders, and

the inability to contact customer service and operating personnel. He stated that customers have also reported that service problems are sometimes resolved, only to recur weeks or months later. Taken together, he noted these complaints were of grave concern as it appeared that CSXT resources were surged to assist one customer, only to have problems arise with another. And, as a result of these problems, he explained that customers incurred premium freight costs, idled production, lost sales and damaged commercial relationships, typically without meaningful recourse from CSXT. In addition to anecdotal incidents, he noted CSXT's rail service performance data reported under STB Docket No. EP 724 tended to support that CSXT's network was underperforming compared to the benchmarks set in 2019. He also noted that CSXT has approximately 1,000 fewer "transportation" employees for August 2021 compared to August 2019 (6,577 versus 7,543), as reported on STB Form C.

This was followed with a similar letter to NS the next month, emphasizing the railroad's deteriorating key operating metrics reported pursuant to EP 724. Chairman Oberman compared these numbers with the fact that NS's number of "transportation" employees had continued to decline over the prior three months (8,281, 8,269, and 8,207, respectively), as reported on STB Form C. Coinciding with the marked deterioration in NS's performance metrics, he said the Board had received an increasing number of complaints from NS's customers about poor performance, including missed switches, cars stranded at intermediate yards, longer transit times, operating plan changes without notice, and a lack of communication from customer service. For these reasons, he requested that NS provide the Board with a review of the current state of its network, and assessment of what factors are affecting NS's ability to achieve past levels of fluidity and consistent service, and in particular the impact on customer service of previous headcount reductions for train, yard, and maintenance employees. He noted it would be most

helpful if NS could provide this review as a follow up to its June 18, 2021, letter, in which a “program of targeted hiring” to meet workforce needs, referenced measures to attract and retain operating employees was outlined. In light of the declining employee headcount since June as shown by the data supplied to the STB, he asserted this program does not appear to have succeeded in obtaining a workforce level sufficient to avoid the service challenges described above.

In other words, rail service has not improved since the performance data reporting requirements had been imposed by the Board in EP 724. In fact, the Class I railroads did not appear to be overly concerned about these service issues but were apparently focused on lowering their operating ratios which included these large work force reductions. Despite these numerous letters from STB Chairmen, the railroads did not appear to be responsive to their regulator’s concerns about these employment and service numbers. This lack of concern has made service across the country on the freight rail network unpredictable and has hamstrung the operations of many shippers, including members of IMA.

FMLM DATA REPORTING AND OTHER MEASURES ARE NEEDED TO ENSURE AN EFFECTIVE U.S. FREIGHT RAIL SYSTEM

As noted, the initial performance data reporting stemmed from the service crisis in 2013-14. The Board reasoned as follows in making its determination to issue an interim order requiring railroads to temporarily provide data in 2014:

The United States rail system is an interconnected network, and one carrier’s service problems can affect the performance of other carriers. Although the severity differs, shippers have reported problems on multiple carriers. Thus, the Board views the network as a whole, and seeks to better understand performance across the entire network.

The new reporting requirements will give the agency and stakeholders access to data needed for real-time understanding of regional and national service issues.

United States Rail Service Issues – Data Collection, EP 724 (Sub-No. 3), slip op. at 2.

Later, the Board explained that the primary purpose for the subsequent related rulemaking was to develop a set of performance data that will allow the agency to monitor current service conditions in the industry and to identify trends or aberrations, which may indicate problems. The cumulative data was meant to give the Board reference points for measuring an individual railroad against its past performance. A corollary benefit is that shippers and other stakeholders will have access to the reported data to assist in their business decisions and supply-chain planning. At the same time, the Board sought to make sure that any rule adopted regarding service data results in the collection of information that will be useful to the agency and its stakeholders. The Board believed that the final rule adopted an appropriate balance of considerations that would provide helpful information to both the agency and the public. *Final Rule*, EP 724 (Sub-No. 4), slip op. at 3-4.

In providing the basis for its action, the Board stated that “the need and justification for a permanent reporting rule is clear.” *SNPR*, slip op. at 22.

Under the Interstate Commerce Act, the Board has broad authority to require reports by rail carriers under 49 U.S.C. §§ 1321, 11145. The statute also makes clear that service adequacy is a key part of the Board’s mandate, beginning with the provisions of the rail transportation policy (RTP) of 49 U.S.C. § 10101. *See SNPR*, slip op. at 22. The RTP states that, in regulating the railroad industry, it is policy of the United States Government to minimize the need for regulatory control, 49 U.S.C. § 10101(2), promote a safe and efficient rail transportation system, 49 U.S.C. § 10101(3), ensure the development of a sound rail transportation system to meet the needs of the public, 49 U.S.C. § 10101(4), and encourage efficient management of railroads, 49 U.S.C. § 10101(9). The Board finds that having data that will allow it to monitor service across the rail

network advances these RTP goals. The data will help promote the RTP by allowing the agency, as well as shippers and other stakeholders, to more quickly identify and react to service issues than it would otherwise have the ability to do.

As also explained in the *SNPR*, slip op. at 22, the Board has the responsibility for monitoring the adequacy of service under specific statutory provisions, including service emergencies under 49 U.S.C. § 11123. The Board's powers under § 11123 are extensive⁶ and can be initiated by the agency. The potential triggers for Board action, such as "congestion of traffic" and "other failure of traffic movement" (49 U.S.C. § 11123(a)), are clearly implicated by the collection of service metrics, and the Board has explained that reporting would "improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly." *SNPR*, slip op. at 22. Service issues can also be relevant when the Board considers whether railroad service practices are reasonable (49 U.S.C. § 10702), whether to force a line sale in the event of inadequate service (49 U.S.C. § 10907), and whether railroads are fulfilling their common carrier obligations (49 U.S.C. § 11101) or providing safe and adequate car service (49 U.S.C. § 11121). *See SNPR*, slip op. at 22 (explaining that "permanent reporting . . . would aid the Board and industry stakeholders in identifying whether railroads are adequately meeting those statutory requirements.")

Final Rule, EP 724 (Sub-No. 4), slip op. at 5-6. Also, 49 U.S.C. § 11701 provides the Board with the power to conduct investigations if a carrier is violating the statute, including with respect to its common carrier obligation.

While the existing metrics are helpful, FMLM metrics are an important source of data because they are a truer reflection of service than these current metrics which only reflect velocities from terminal-to-terminal. FMLM data better indicate the service shippers and receivers are actually receiving. The Board did not mandate that railroads report FMLM data in

⁶ When requisite statutory criteria are met, the Board can (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; (3) prescribe temporary through routes; (4) give directions for—(A) preference or priority in transportation; (B) embargoes; or (C) movement of traffic under permits. *See* 49 U.S.C. § 11123.

its prior rulemaking on this subject. The metrics now required in 49 C.F.R. § 1250.2 are too general to allow the Board (and shippers) to assess local service.

This conclusion was supported by findings made in a 2015 National Academy of Sciences/Transportation Research Board report and a 2008 Laurits R. Christensen Associates Inc. report.⁷ The TRB Report provided that “[s]hippers and the railroads have recognized a need for better data on freight railroad service performance that can be collected and published in a timely manner. Better data could aid shippers in planning for and coping with transportation conditions, reinforce the railroads’ accountability, and help regulators evaluate shipper complaints.” P. 83. The TRB Report further explained with respect to train speed and dwell time aggregated data that “for the most part the extent of aggregation of the RPM [railroad performance measures] data obscures any meaningful insight into the types and degree of service quality problems experienced by shippers. Furthermore, an estimate of how long shipments took to move between any two particular points cannot be derived from the two data series, and neither sheds any light on how long shippers at various locations had to wait for rail cars.” P. 85.

[T]he data to be collected are not specific with regard to shipment or even to origin and destination (with the exception of unit train data) in the same manner as are the on-time arrival data collected for many years by the U.S. Department of Transportation (USDOT) for airlines. Furthermore, the proposed collection effort appears to be an ad hoc response to the disturbances of the previous winter; it does not appear to have been strategically devised in the sense of there being a plan for routine use of the information in monitoring performance.

Better service-related data at the shipment level, for both common and contract carriage, would allow more objective analysis of

⁷ See Transp. Research Bd. of the Nat’l Acad, Modernizing Freight Rail Regulation (“TRB Report”), 75-88 (2015); Laurits R. Christensen Associates, A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition, ES-35 to ES-37 (2009), <https://www.stb.gov/stb/docs/competitionstudy/executive%20summary.pdf>.

common carrier service quality, particularly to evaluate whether this service is chronically substandard and how it changes relative to that of contract carriage when capacity is tight.

TRB Report at 87-88.

In its evaluation of the railroad performance data, Laurits R. Christensen Associates (2009a, 17–19; 2009b, 2-31–2-34) reached the same conclusion: average train speed and dwell time data are too gross to offer more than a rough indication of service performance. For example, it calculated correlations of changes in real GDP with changes in dwell time, cars on line, and train speed by railroad during the period 2006–2008 and found that the measures did not consistently change in the expected direction. Christensen Associates also pointed out that the performance features of greatest concern to shippers, such as route-specific or corridor-specific information on on-time performance and the variability of performance, are not part of the measurement system.

In other words, both of these independent research sources found that the data collected by the STB could not accurately provide how a railroad was performing or predict how it would perform. Both studies recommend the use of on-time performance measurements like FMLM data that would provide a more accurate picture of the rail service situation.

Therefore, it is clear that FMLM data is needed to provide the Board and shippers with a better view of how the rail industry is operating. It is also clear that FMLM issues have become rampant across the US rail network, especially recently. Moreover, it is evident that these events are usually caused by crew shortages due to the job cuts by the railroads since the implementation of PSR. While this evidence is anecdotal, the railroads are telling their customers that this is the reason why they are missing switches. As a result, the basis for their service issues does not appear to be in dispute.

These FMLM issues have damaged shippers by slowing or completely stopping production at their facilities because the railroads cannot make switches or adequately move railcars in congested areas. The shippers generally have no recourse against the railroads because consequential damages are prohibited by most tariffs and rail contracts.

Even more frustrating for these shippers who are suffering from this poor service is the railroads are not adequately responding to their complaints about service in a timely manner or at all.

This situation is impacting the economy of the U.S. as we speak. It is slowing the production of many crucial commodities across the country, including vital food items.

Consequently, it seems logical for the Board to require the Class I railroads to submit FMLM data regarding on-time performance and switching timeliness and accuracy. Data should be provided for each shipper and on a local, regional, and national basis for shippers to be able to properly analyze their transportation situations and for the Board to be able to monitor the rail network effectively. Moreover, it seems important to have these metrics submitted to the Board and made available to the public to incentivize railroads to achieve better service performance numbers.

Moreover, it does not seem as if these additional reporting requirements would be burdensome on the railroads because they should be or already are tracking these numbers. Even if new reporting requirements would create some burden for the railroads, which they do not appear to do, the public interest in having this information available to shippers and the Board is extremely compelling to ensure operations at these companies continue to occur without delay especially as the U.S. recovers from the economic disruption from the pandemic. The railroads are responsible for making the US economy work as they proudly state. However, if the railroads

cannot live up to this responsibility because of job cuts and other cost cutting measures, the economy will suffer. This result cannot be allowed to happen.

As noted herein, unreliable rail service is becoming more and more common. This poor rail service appears to be related to crew shortages due to the job cuts railroads have been making over the past several years. The STB already tracks the railroads' employment numbers and has noted the evidence of the large difference in the number of employees since the implementation of PSR. Now, it seems necessary to track the FMLM data to analyze properly how this has impacted the network. The present metrics reported to the STB do not allow the Board or shippers to make fully informed decisions. It would also make sense to require railroads to compensate shippers when poor service damages rail shippers at least in certain circumstances. In addition, the Board should consider creating regulations that identify violations of railroads' common carrier obligations. Without the proper motivation and a stronger hand by the STB, railroads have not been responsive to the Board or its customers with respect to service issues.

RECOMMENDATION

Something needs to change. Otherwise, the country could find itself in the midst of a rail network meltdown that could bring the economy to a halt during a time in history where there are already enough issues at play like the pandemic and the supply chain problems throughout the world. The economy does not need more transportation problems now, especially ones that should be solvable through hiring. Therefore, it is imperative that the Board require robust FMLM data reporting and make the railroads more financially responsible for their poor service.

Respectfully submitted,

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