

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES –)	
PERFORMANCE DATA REPORTING)	Docket No. EP 724 (Sub-No. 4)

**JOINT REPLY COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND
FREIGHT RAIL CUSTOMER ALLIANCE
TO THE SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING**

Of Counsel:

Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036

Dated: June 28, 2016

William L. Slover
Robert D. Rosenberg
Peter A. Pfohl
Daniel M. Jaffe
Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

Their Attorneys

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES –)	
PERFORMANCE DATA REPORTING)	Docket No. EP 724 (Sub-No. 4)
)	

**JOINT REPLY COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, AND
FREIGHT RAIL CUSTOMER ALLIANCE
TO THE SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING**

Western Coal Traffic League (“WCTL”), American Public Power Association (“APPA”), National Association of Regulatory Utility Commissioners (“NARUC”), National Rural Electric Cooperative Association (“NRECA”), and Freight Rail Customer Alliance (“FRCA”) (collectively “Coal Shippers/NARUC”) hereby submit their Reply Comments pursuant to the Supplemental Notice of Proposed Rulemaking (“SNPRM”) of the Surface Transportation Board (“Board”) served in the above-captioned proceeding on April 29, 2016.

BACKGROUND

Pursuant to the Board’s SNPRM, Coal Shippers/NARUC submitted their comments in this supplemental proceeding on May 31, 2016. Coal Shippers/NARUC previously submitted comments in this docket on March 2, April 29, and December 23, 2015. Coal Shippers/NARUC also participated in a conference with Board staff on November 19, 2015.

REPLY COMMENTS

I. COAL SHIPPERS/NARUC CONTINUE TO SUPPORT THE BOARD'S PROPOSAL TO REQUIRE WEEKLY REPORTING OF ACTUAL COAL LOADINGS VERSUS PLANNED COAL LOADINGS

The Board proposes to make permanent the requirement adopted in the *Interim Data Order*¹ that the railroads report weekly actual coal loadings versus planned coal loadings.² As discussed in its Comments of May 31, 2016, Coal Shippers/NARUC support the Board's proposal. This metric provides direct and frequent information regarding whether the railroads are meeting the service needs of their coal customers and even the carriers' own loading plans, and whether such divergences are continuing or increasing.³ In those respects, the SNPRM constitutes an improvement to the metric proposed in the NPRM and already utilized pursuant to the *Interim Data Order*.

The Association of American Railroads ("AAR") and Union Pacific Railroad Company ("UP") were the only other entities that addressed this metric in their comments. The concerns raised by them do not outweigh the value of collecting this data.

The AAR raises the false specter that by adopting this metric, the Board is delving into confidential contracts that are beyond its jurisdiction.⁴ This is not true. First, it is well established that the Board can require the collection of data – a point the

¹ *United States Rail Service Issues – Data Collection*, EP 724 (Sub-No. 3) (STB served Oct. 8, 2014).

² SNPRM at 15.

³ NPRM Comments at 9.

⁴ AAR Comments at 9.

Board emphasized in its SNPRM.⁵ Second, there is no specific shipper information that would be divulged through this reporting. Third, the railroads have already been reporting this data for over 20 months without *any* railroad or shipper complaining that sensitive data was publicly released. Fourth, individual contracts, the service requirements under those contracts, and whether the railroad has met its obligations under them is not the issue here. Individual shippers may know how their trains are performing, but that is a far cry from understanding whether the railroads are experiencing system-level difficulties in meeting coal demand. This information is vital. Utilities are charged with keeping the lights on and electricity flowing, and many were unable to plan or advise their regulators (*i.e.*, NARUC members) accordingly because their “view” of service was limited only to their own trains.

The AAR also suggests that the coal loading versus plan data may not be valuable because plans are not static and customer needs drive the plans; UP makes similar arguments.⁶ The AAR again misses the mark. The weekly plan reporting is useful precisely because it reflects the requirements of one of the highest volume commodities on all of the railroads and whether the railroads are able to meet that demand.⁷ Over time, a consistent failure to meet demand may indicate that a railroad(s) is experiencing some operational difficulty, and this knowledge is plainly useful to the Board and the railroads’ coal customers – it may even be a valuable data point for

⁵ SNPRM at 22.

⁶ AAR Comments at 9; UP Comments at 10-11.

⁷ Moreover, railroads often require shippers to take coal on a ratable or other basis so as to facilitate planning by the railroads.

shippers of other commodities because the fluidity of the major coal routes can impact other shippers.

UP suggests that it has no such loading plans.⁸ Yet, UP requires all coal customers to use the NCTA coal forecasting tool, which generally results in a railroad-approved monthly loading plan, which may be adjusted periodically. Likewise, UP's largest coal origin is the Powder River Basin, which it serves jointly with BNSF. The notion that UP has no "plan" for a given week strains credulity given the many trains that it and BNSF load each day, week and month of the year and the need to coordinate their operations. Even if UP lacks a formal "loading plan," UP undoubtedly estimates its anticipated coal loadings are for a given week in light of its need to plan for dispatching, moving, and staffing such trains, developing maintenance windows, etc. UP has presented no valid reason why the Board should not adopt this metric permanently; if UP operates its system, the largest in the country, without a loading plan, it could certainly indicate that the information is not applicable.

UP also suggests that revealing coal loadings in regions other than the PRB may result in confidential data being disclosed given the small number of shipments from other production regions.⁹ Coal Shippers/NARUC suggest that the simple solution to this problem is for UP or any other affected carrier to make a notation if a single shipper's data might be revealed rather than report the data. To the extent two or more shippers' data is being aggregated, the data should be reported.

⁸ *Id.*

⁹ UP Comments at 11.

In any event, the AAR and UP have only half-heartedly objected to the inclusion of this metric. As Coal Shippers/NARUC have repeatedly explained, coal loadings versus plan is a valuable tool for coal shippers, especially given the importance of coal to the U.S. economy at large. The Board and the public should be better informed about the railroads' performance with respect to these shipments.

II. COAL SHIPPERS/NARUC CONTINUE TO SUPPORT THE BOARD'S PROPOSALS TO COLLECT ADDITIONAL METRICS

In its Comments, Coal Shippers/NARUC supported the additional metrics proposed by the Board in the SNPRM, including: system-average train speed for coal unit trains; weekly average terminal dwell time; weekly average dwell time at origin for loaded unit coal trains; and weekly total number of loaded and empty trains held short of destination or interchange by train type and cause. Other commenters, including the National Industrial Transportation League and the National Grain and Feed Association, also supported the Board's proposals. Likewise, in earlier phases of the proceeding, the USDA supported similar additional metrics. The railroads naturally resist the collection of all but the most basic performance data, but the Board is keenly aware that the lack of detailed performance during the last service crisis was problematic and that more information is vital going forward.

III. COAL SHIPPERS/NARUC CONTINUE TO URGE THE BOARD TO RETAIN CERTAIN REPORTING REQUIREMENTS FROM THE *INTERIM DATA ORDER*

In its Comments, Coal Shippers/NARUC urged the Board to retain certain data reporting requirements proposed in the NPRM and adopted in the *Interim Data*

Order and, including: (i) the requirement to report the weekly average dwell time at interchange for unit coal trains; (ii) the actual reasons a train was held short of destination or interchange, rather than encourage use of the vague reporting term “other;” and (iii) detailed data on infrastructure investments exceeding \$25 million on a quarterly basis. NGFA agree with Coal Shippers/NARUC with respect to infrastructure investment. Indeed, more granular data reporting is warranted here given the importance that maintenance-of-way work, capital improvements, and greenfield track construction have on short-term disruptions and the long-term sustainability of the rail network.

The other concerns raised by Coal Shippers/NARUC were not addressed by other filers, but the Board should retain these metrics for the reasons described in Coal Shippers/NARUC’s Comments.

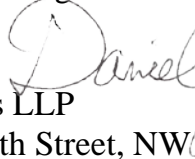
CONCLUSION

Coal Shippers/NARUC urge the Board to adopt the performance data reporting proposal with the modifications that Coal Shippers/NARUC proposed in its Comments.

Respectfully submitted,
WESTERN COAL TRAFFIC LEAGUE
AMERICAN PUBLIC POWER ASSOCIATION
NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS
NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION
FREIGHT RAIL CUSTOMER ALLIANCE

Of Counsel:

Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036

William L. Slover
Robert D. Rosenberg
Peter A. Pfohl
Daniel M. Jaffe 
Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

Dated: June 28, 2016

Their Attorneys