BEFORE THE
SURFACE TRANSPORTATION BOARD

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

OPENING JOINT COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
AND
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

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Western Coal Traffic League ("WCTL"), American Public Power Association ("APPA"), National Association of Regulatory Utility Commissioners ("NARUC"), and National Rural Electric Cooperative Association ("NRECA") (collectively "Coal Shippers/NARUC") hereby submit their Opening Joint Comments in accordance with the Board's order served December 30, 2014 in this Notice of Proposed Rulemaking ("NPRM") proceeding.

BACKGROUND

The importance of reliable rail service to electric utilities, the agricultural community, other rail shippers, and the public was once again demonstrated in 2013 and 2014. The breakdown in rail service by some of the nation's largest rail carriers during this period had a profound impact on utilities, businesses and communities across the United States and especially in the Midwest, Texas, and the Southwest. Many utilities experienced severe coal shortages that forced the idling or curtailing of coal electric generating units, which resulted in utilities and their ratepayers, members and citizens incurring millions of dollars in costs for the purchase of replacement fuel and/or power. While the railroads were publicly apologetic, they took no financial responsibility for their service failures and even resisted requests for service plans and service reporting data that were urged by shippers.

The STB held two public hearings in 2014 to address the severe service deficiencies experienced by so many rail shippers, including coal shippers. Through those hearings and public comments filed throughout 2014, it became apparent that the STB lacked in-depth data into the performance of the railroads under its jurisdiction because the Board did not collect any service-related metrics and was, instead, reliant on limited industry data disseminated by the Association of American Railroads ("AAR"). WCTL's members and many other shippers urged the Board to require the railroads to report important service-related metrics to the Board and the public on a regular basis. On June 20, 2014, the Board ordered CP and BNSF to provide certain grain shipment data.[1] However, after the second public hearing, the Board ordered, on October 8, 2014, that all the Class I railroads report a broader spectrum of data on a weekly basis, and the Board, with this proceeding, proposes to make the October 8, 2014 order permanent with certain modifications.[2]

Coal Shippers/NARUC support the Board's efforts. However, Coal Shippers/NARUC submit that certain crucial data, such as cycle times in key corridors, is

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[1] The Board had required certain grain service-related reports. *U.S. Rail Serv. Issues—Grain*, Docket No. EP 724 (Sub-No. 2) (STB served June 20, 2014).

[2] *U.S. Rail Serv. Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3) (STB served Oct. 8, 2014) ("*Interim Data Order*").

absent from the Board's proposal, and, herein, Coal Shippers/NARUC detail the additional rail performance data that the Board should collect as well as modifications the Board should make to the current proposal.

IDENTITY AND INTEREST[3]

WCTL is a voluntary association, whose membership is comprised exclusively of organizations that purchase and ship coal from origins west of the Mississippi River. WCTL members collectively consume more than 150 million tons of coal annually that is moved by rail. Its members include investor-owned electric utilities, electric cooperatives, state power authorities, municipalities, and a non-profit fuel supply cooperative.

APPA is the national service organization representing the interests of over 2,000 municipal and other state- and locally-owned electric utilities in 49 states (all but Hawaii). Collectively, public power utilities deliver electricity to one of every seven electric consumers (approximately 48 million people), serving some of the nation's largest cities, but also many of its smallest towns. Over 40% of the power generated by public power utilities is from coal.

NARUC is the national organization of State commissions responsible for economic and safety regulation of utilities. NARUC members in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may

[3] Coal Shippers/NARUC previously participated in *United States Rail Service Issues*, Docket No. EP 724. However, in the interest of full disclosure, the identity and interest of each of participant in these comments is detailed herein.

be required by the public convenience and necessity, as well as ensuring such services are provided at just and reasonable rates. NARUC is consistently recognized by Congress, the Courts, and a host of federal agencies (including the Federal Energy Regulatory Commission), as the proper entity to represent the collective interests of State utility commissions.

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million consumers in 47 states or 13% of the nation's population. Kilowatt-hour sales by rural electric cooperatives account for approximately 11% of all electric energy sold in the United States. NRECA members generate approximately 50% of the electric energy they sell and purchase the remaining 50% from non-NRECA members. The vast majority of NRECA members are not-for profit, consumer-owned cooperatives. NRECA's members also include approximately 65 generation and transmission ("G&T") cooperatives, which generate and transmit power to 668 of the 841 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

COMMENTS

I. The Need for STB Oversight of Railroad Performance

The past 20 months have provided a clear and irrefutable demonstration that the Board must require the Class I railroads to regularly provide service metrics to the Board and the public. As the service challenges facing many railroads became acute, the public and the Board had only a limited amount of data available, mostly metrics published by the AAR, namely cars online; trains speeds; train speeds by train type; and terminal dwell time. Some shippers also provided data on their specific service problems. This limited set of data severely hampered evaluation of the service problems, and the lack of data collection also allowed the crisis to build without forewarning the Board.

Coal Shippers/NARUC note that it is common in the utility industry to collect a wide variety of data to ascertain the ability of utilities to provide reliable electric service at a reasonable cost. Given the significant regulatory protection afforded to the rail industry, it is incumbent on the Board to ensure the railroads meet the needs of the shipping public – many of whom are captive to railroads.

As the Board is charged with regulating the service of a transportation mode that is vital to our nation's economy, relying on the AAR's limited data – that could be discontinued at any time[4] – is untenable. In addition, transparency of railroad performance is important. The AAR data are not subject to independent verification. The railroads have complete discretion to disclose, or not disclose, whatever data they

[4] The AAR is responsive to its members and not the shipping public. The performance data provided by the AAR could be discontinued at any time leaving all stakeholders in the dark if the Board does not otherwise act. Already, some pertinent data has disappeared from certain railroad publications. For example, BNSF used to publish data in its online employee newsletter detailing its performance in certain categories (*e.g.*, coal car miles per day (plan vs. goal)), but it ceased publishing such data in 2014.

choose through the AAR.[5] The Board's adoption of reporting requirements will hopefully bring not only more critical information to light, but improve the way it is reported through specific standards that the railroads must meet. Coal Shippers/NARUC are, therefore, relieved that the Board has decided to formally require regular service metric reporting from the Class I railroads.

II. The Board's Proposed Regulations

The Board's service metric reporting NPRM covers nine (9) categories of service metrics:

1. System average train speed by train type;
2. Weekly average terminal dwell time for the reporting carrier's system and its 10 largest terminals;
3. Total cars on line by car type;
4. Weekly average unit train dwell time at origin and interchange by train type;
5. Weekly number of trains held short of destination or interchange for longer than six (6) hours, organized by train type and reason;
6. Weekly number of empty and loaded cars that have not moved for more than (i) 48 hours but less than or equal to 120 hours or (ii) more than 120 hours by commodity;
7. Weekly number of grain cars loaded and billed, broken down by certain STCC number;
8. For cars identified in item No. 7, additional details by state; and

[5] The railroads resisted providing more data during 2014 as well. Coal Shippers/NARUC note that increased secrecy has been a hallmark of recent actions by some railroads. For example, BNSF has moved all of its generally applicable tariff publications into a section of its website that is not publicly accessible – even the tariff publication that covers its mileage-based fuel surcharge, which is at issue, *inter alia*, in *Rail Fuel Surcharges (Safe Harbor)*, Docket No. EP 661 (Sub-No. 2).

9. Weekly coal unit train or coal car loadings.[6]

The Board's proposal tracks its *Interim Data Order* except it makes certain modifications that Coal Shippers/NARUC assert are important to better understanding the level of service provided by the railroads and identifying certain choke points that may be hindering carrier performance. Coal Shippers/NARUC also support the Board's addition of a quarterly reporting requirement on major rail infrastructure projects. *U.S. Rail Serv. Issues—Performance Data Collection*, Docket No. EP 724 (Sub-No. 4), slip op. at 13 (STB served Dec. 30, 2014) ("*NPRM*"). However, the Board's proposal also weakens certain reporting requirements from the *Interim Data Order* that should be retained.

A. Weekly Average Dwell Time and Major Interchanges

For Item No. 4, weekly average dwell time, the Board's *Interim Data Order* only applied to dwell time experienced at origin. *NPRM*, slip op. at 5. The Board's revised proposal in this proceeding correctly adds dwell time at interchange locations to the reporting requirements. *Id.*

As the Board is aware, dwell time at interchange is a potentially critical bottleneck. Major interchange locations such as Chicago and Kansas City can be a considerable source of frustration to many shippers as their trains arrive in these busy hubs and then sit, sometimes for days, awaiting a pickup or a delivery to a receiving carrier. And while a shipper can usually track its own cargo, insight into average dwell times will help shippers better understand and plan for long (or short) dwell times.

[6] The Board has also proposed certain reporting requirements for the Class I railroads operating in Chicago, which Coal Shippers/NARUC support. *NPRM*, slip op. at 12-13.

Major terminals are not the only places where interchange times can be long. For example, Wisconsin Public Service Corporation (a WCTL member) testified to the Board, at its September 4, 2014 hearing in Fargo, ND, about an increase in cycle times on a joint Union Pacific Railroad ("UP") and Canadian National Railway coal movement where some of that cycle time increase was attributable to increased interchange time in Wisconsin Rapids.

Coal Shippers/NARUC, therefore, urge the Board to retain the reporting of interchange times in its final regulations.

The Board should, however, modify its proposed regulations to require the carriers to report interchange dwell times at each of their 10 largest interchange locations in addition to system-wide dwell times the proposal currently requires. This reporting requirement would track the Board's proposal in Item No. 2, which requires the reporting of terminal dwell times at the 10 largest terminals for each carrier. In addition, for unit coal trains, where many shippers own and supply their own equipment, the Board should require the carriers to report average dwell times at individual interchanges for empty coal unit trains.

B. Trains Held Short

The Board's NPRM requires that the carriers report the cause for trains that are held short of destination or interchange for more than six consecutive hours. *Id.*, slip op. at 11-12. Coal Shippers/NARUC support this requirement and its inclusion in the final regulations. However, Coal Shippers/NARUC note that the cause "other (explain)" is frustratingly vague. *Id.*, slip op. at 11. Indeed, a review of the weekly service reports that UP and BNSF have filed since the *Interim Data Order* indicate that they have done little to break out the causes. For example, BNSF has simply used "Road, Terminal, Other" and UP has used "Customer, Foreign Road, Incidents/Weather, Other."[7]

Such generic explanations – particularly "other" in a category already labeled "other" – are not especially instructive. Compounding the problem, the "other" category represents a large portion of the causes for trains being held short. Thus, Coal Shippers/NARUC urge the Board to either clarify the regulations by requiring more detailed breakdowns within the "other" category, or create more categories, such as "Foreign Road" and "Weather."

C. Weekly Coal Unit Train Loadings

The Board's NPRM proposes to require the railroads to report total coal unit train or car loadings for the reporting week by coal production region. The Board's proposal unnecessarily undermines the *Interim Data Order*, which required that the railroads report the number of unit train loadings versus plan for the week. *Id.*, slip op. at 4. The Board's revision in the NPRM makes the service metric far less informative because it would be difficult to determine if the railroads are keeping up with demand in general or even their own loading plans. BNSF, CSX Transportation ("CSXT"), and Norfolk Southern Railway ("NS") have all been reporting this metric since October.[8]

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[7] *See, e.g.*, BNSF's and UP's Weekly Service Reports filed Nov. 26, 2014 and Feb. 18, 2015.

[8] *See* BNSF, NS, and CSXT weekly service reports filed in *U.S. Rail Serv. Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3).

Only UP objected to providing this data, arguing that reporting this data somehow violated its confidentiality obligations to shippers.[9] UP's argument is a red herring. All of the data is aggregated, and no shipper-specific information is implicated. Thus, Coal Shippers/NARUC urge the Board to retain the requirement that the coal loadings be reported versus the plan for the reporting week.

D. Quarterly Reporting on the Progress of Major Rail Infrastructure Projects

The Board's proposal requires that the Class I railroads report the progress and purpose of major rail infrastructure projects exceeding $25 million. *See, NPRM*, slip op. at 13. Coal Shippers/NARUC support this reporting requirement. The Class I railroads regularly laud their capital spending plans, but it is often difficult to determine the degree to which such work actually expands or enhances the capacity of the railroads. In addition, Coal Shippers/NARUC urge the Board to review such data with an eye towards whether the railroads' investments are sufficient to meet their common carrier obligations in the long term.[10]

III. Coal Shippers/NARUC Proposed Additional Data Collection

WCTL, through its testimony and written submissions to the Board, emphasized the need for the Board to collect certain information that is critical to its

[9] *See* Letter of Louise A. Rinn (UP), *U.S. Rail Serv. Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

[10] The Board's proposed service metric data can also aid in determining whether carriers are able to meet their common carrier obligations.

members and coal shippers in general.[11] The Board's *Interim Data Order* and its NPRM do include, in part, some of the metrics identified by WCTL, including: (i) actual number of coal cars loaded; (ii) limitation on crews for coal trains (only partially captured in the trains holding metric); and (iii) shortages in locomotive power (only partially captured in the trains holding metric). *NPRM*, slip op. at 11-12. However, Coal Shippers/NARUC are concerned that the proposed regulations continue to omit important information that coal shippers rely on and which aid in understanding the railroads' coal shipment performance.

Before turning to the specific data the Board should collect, Coal Shippers/NARUC note that detailed reporting for coal trains is vital. The Federal Energy Regulatory Commission ("FERC"), NARUC and others have expressed concerns that the consistent supply of coal via rail is critical to the reliability of the electric grid.[12] Indeed, the Board itself has recognized its critical nature:

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[11] *See* Letter from Bette Whalen, WCTL President, to Hon. Daniel R. Elliott III, STB Chairman (Mar. 14, 2014); *Petition of the Western Coal Traffic League to Institute a Proceeding to Address the Adequacy of Coal Transportation Service Originating in the Western United States*, Docket No. EP 723 (filed Mar. 24, 2014); Testimony of David McMillan (Allete) and Bob Kahn (TMPA) on behalf of WCTL, Allete and TMPA, *U.S. Rail Serv. Issues*, Docket No. EP 724 (filed Apr. 17, 2014); Testimony of Dave Wanner on behalf of WCTL and WPS, *U.S. Rail Serv. Issues*, Docket No. EP 724 (filed Sept. 5, 2014); Petition of the Western Coal Traffic League for an Order Requiring BNSF Railway Company to Submit a Coal Service Recovery Plan, *U.S. Rail Serv. Issues*, Docket No. EP 724 (filed Oct. 22, 2014).

[12] *See* FERC Meeting Agenda Item, Docket No. AD15-3-000, *Discussion on Coal Delivery* (Dec. 18, 2014); FERC Commission Meeting, Oct. 16, 2014, available at http://ferc.capitolconnection.org/101614/fercarchive_flv.htm (Commissioner Moeller speaking at minute 40); Letter of NARUC, APPA, EEI and NRECA, *U.S. Rail Serv. Issues—Data Collection*, Docket No. 724 (Sub-No. 3) (filed Oct. 31, 2014).

> The Board views the reliability of the nation's energy supply as crucial to this nation's economic and national security, and the transportation by rail of coal and other energy resources as a vital link in the energy supply chain.[13]

In addition, coal shipments are, by volume, the single largest commodity handled by the nation's Class I railroads.[14] The Board's proposal must better reflect the outsized impact that coal train service has on the railroads, coal shippers, and the public.[15]

Coal Shippers/NARUC propose that the Board's final regulations include the following coal-specific service metrics:

1. Weekly average cycle times for coal trains over any portion of the carrier's ten (10) most frequently used coal train corridors (*e.g.*, Powder River Basin ("PRB") mines to Kansas City);
2. The weekly average number of coal trainsets in service broken down between shipper-supplied (private trainsets) and carrier-supplied trains sets;
3. Any restriction on the utilization of shipper-provided equipment in coal service;
4. General restrictions on the availability of crews for coal service; and
5. General restrictions on the availability of locomotives for coal service.

Item No. 1 is vital to coal shippers. The railroads, such as BNSF and UP, have key coal corridors. Understanding how coal trains are moving through those corridors is vital to all the stakeholders in understanding how the railroads are

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[13] *See Establishment of a Rail Energy Transportation Advisory Committee*, Docket No. EP 670, slip op. at 2 (STB served July 17, 2007).

[14] *See, e.g.*, Presentation of the AAR, slide 4, available at http://onlinepubs.trb.org/onlinepubs/railtransreg/Gray031414.pdf (coal represented 40% (727 million ton out of 1.8 billion tons) of the freight handled by the Class I railroads in 2012). *See also* https://www.aar.org/Documents/Railroad-Statistics.pdf.

[15] Coal Shippers/NARUC note that the Board's proposal provides for detailed reporting by state for a number of grain-related service metrics. Implementing additional reporting for coal is also warranted.

performing. For example, if a railroad is struggling to reach Chicago, but is having no trouble reaching Fort Worth, attention from customers and the Board can be paid to the problem areas. In addition, coal shippers track their individual cycle times very carefully, but it is often difficult to determine if service issues are isolated or widespread. Cycle time reporting by corridor can help pinpoint isolated versus widespread problems. In addition, coal train cycle time issues identified over a specific corridor can provide insight into service difficulties that other commodities sharing that corridor may face. This information will assist the Board in evaluating whether service and resources are being allocated fairly and efficiently, and whether the carriers are able to meet their common carrier obligations.

Item Nos. 2 and 3 reflect the importance of sets in service and restrictions thereto when evaluating coal service. For example, a reduction in sets in service coupled with increased train speeds and cycle times may indicate that the railroad is performing well and less equipment will be needed. Conversely, a reduction in trainsets, coupled with decreases in train speeds and cycle times may suggest a railroad is parking sets and that a decline in coal deliveries is imminent.

Item Nos. 4 and 5 would aid in determining whether there are systemic crew or locomotive shortages for coal trains service. While the trains holding reporting requirement in the NPRM does identify crews and locomotives as possible causes for six (6) hours or longer delays, item Nos. 4 and 5 would focus on overall shortages. For example, if there are crew or locomotive shortages due to diversions to other service, such information is vital to impacted coal shippers.

CONCLUSION

The Board has recognized the urgent need for regular reporting of railroad service metrics. Coal Shippers/NARUC agree and urge the Board to adopt such metrics with the modifications proposed herein.

Respectfully submitted,

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