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BEFORE THE
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Docket No. EP 724 (Sub-No. 4)

UNITED STATES RAIL SERVICE ISSUES—PERFORMANCE DATA REPORTING

OPENING COMMENTS OF
UNION PACIFIC RAILROAD COMPANY

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Union Pacific Railroad Company (“Union Pacific”) respectfully submits these comments in response to the Board’s Notice of Proposed Rulemaking served on December 30, 2015 (“Notice” or “NPRM”).¹ In the Notice, the Board requested comments on the proposed rules that would require Class I railroads to file weekly data reports pertaining to service performance. Such reports would be public and would continue indefinitely regardless of the actual performance of railroads. In addition, Class I railroads would be required to submit quarterly updates of capital spending with detailed status reports.

Union Pacific recognizes the Board’s goals in seeking rail performance data. Before imposing weekly reporting obligations permanently, however, the Board should confirm that the proposed reports are the best available means to achieve those goals with the least possible burden. In order to have utility to the Board and rail shippers data must be valid and meaningful. We appreciate this opportunity to offer suggestions on improving the utility of the data requested while minimizing the burden of its collection. Part I identifies limitations in the data to be reported and includes suggestions to remedy some of these concerns. Part II addresses specific

¹ Union Pacific also adopts the opening comments of the AAR.

issues raised by individual service metrics. Part III provides information necessary for review of the proposed rule under the Paperwork Reduction Act (“PRA”).

I. BETTER MEANS EXIST TO ACHIEVE THE STATED GOALS

A. Network Data Provides Most Useful Indicator of Rail Carrier Condition.

The proposed rules contain commodity-specific data requirements that will not further the stated goals of allowing the Board to more rapidly identify and respond to service performance issues or of enabling customers to adjust their operating or transportation plans. NPRM at 3. Commodity-specific metrics are susceptible to misinterpretation that changes in metrics signal a service disruption instead of normal variation. A difference in origin dwell (Data Element No. 4²) among train types on a single railroad or the same train type among different railroads is more likely to reflect a difference in operations than a service performance issue. For example, locomotives remain with Powder River Basin (“PRB”) coal trains while they are being loaded and all of the UP-served mines are clustered within 50-miles or less of where our crews report in. This allows PRB trains to depart more promptly than other bulk trains that do not share those characteristics. Because such operating characteristics drive much of the difference in origin dwell among train types and among railroads, longer origin dwell times for some train types or on different railroads do not indicate that service problems exist.

Similarly, a reduction in grain cars loaded does not necessarily indicate a looming service disruption. The number of grain cars loaded by state (as directed by Data Element No. 7) offers little useful information about actual service levels over time or between railroads. Harvest volumes vary from one year to the next and the timing of harvests differs by state and crop. Even

² Data Element” refers to the data elements proposed in the NPRM to be included in § 1205.3(a).

if the volume of grain available to be shipped were more constant market conditions such as the value of the dollar and the size of foreign harvests drives demand and causes variability in grain loadings by state on a railroad more often than rail service disruptions.

Such differences in operations and transportation markets severely limit the usefulness of weekly reports by train type, car type or for particular commodities as an early indicator of potential service issues. Performance reports focused on macro metrics instead of commodity-specific reporting will save the Board and other stakeholders from the time and effort sifting through extra data looking for differences that may or may not mean something. And, as illustrated above, it will also avoid misleading comparisons that suggest looming service problems where no serious issue exists.

Data Element Nos. 1 (Train Speed), 2 (Terminal Dwell) and 3 (Total Cars on Line) provide network-wide data that are better monitoring tools for potential service disruptions without triggering false alarms. The report for Train Speed would be improved, however, if system average train speed for all trains were added to the reports. Substituting “All through freight trains” for “All other” in proposed §1250.3(a)1.h would accomplish this improvement with no increase in reporting burden since the Class I railroads already publish weekly system average velocity for all trains. Moreover, it would make reported Train Speed more consistent with the report for Average Terminal Dwell Time, which already includes both the average for the carrier’s system as well as for its 10 largest terminals. See Proposed §1250.3(a)2.

In the Notice, the Board asks that commenters requesting commodity-specific metrics explain why such metrics would be beneficial. However, the Notice offers no justification for why grain and coal, e.g. Data Element Nos. 7 (Grain Cars Loaded by State), 8 (Overdue Grain Car Orders) and 9 (Weekly Coal Train and Car Loadings), warrant permanent reporting aside

from the fact that these data or something similar were included in the October 8 Order (Notice at p. 7). Indeed, some shipper parties have expressed concern that monitoring performance metrics for some commodities and not others suggests that reported commodities have a higher priority than non-reported commodities.³ Adding more commodities to the list of metrics included in weekly reports will increase pressure from those not already included to be added to the list.

The better approach would be to include only network-level metrics in the weekly reporting under the proposed rule, specifically Data Element Nos. 1 (Train Speed), 2 (Terminal Dwell) and 3 (Total Cars on Line). These network fluidity metrics, combined with weekly carloadings as an indicator of volume, should be sufficient to alert the Board if performance is deteriorating.⁴ If the Board concludes that it wants more visibility into train delay, then it could include Data Element Nos. 4 (Average Dwell Time) and 5 (Trains Held Short), if they are modified as suggested below. Union Pacific suggests that the Board should delete subparagraphs 7, 8 and 9 from §1250.3(a).

If the Board develops concerns about performance by a specific railroad or for a particular region, it can order additional short-term reporting more focused on the specific concern until the disruption is resolved, as it did at times in 2014. More tailored reporting as needed would fulfill the Board's goals while reducing the burden on the railroads of reporting extraneous data and avoiding the risk of such data confusing or misleading stakeholders.

³ EP 724 The Fertilizer Institute 10/24/14 letter (concerned that grain would be prioritized over fertilizer because grain being monitored). See also: EP 724 National Pasta Association 12/17/14 letter at 3.

⁴ Union Pacific and each of the other Class I railroads publish weekly carloadings on their respective websites. Accordingly, there would be no incremental burden in adding this data element to the weekly report.

B. Normalized Data are More Meaningful

In evaluating the service performance of a rail carrier, metrics with absolute values have limited or no utility. In order to understand whether a particular result is cause for concern, the analyst needs normalized metrics. For example, to compare changes in train speed over time, the correct metric is average miles per hour, not the absolute number of hours a train travels. Yet several of the data to be reported are ill-suited to monitor performance or to plan operations because they are not normalized.

The Board should refine Data Element Nos. 5 (Trains Held Short) and 6 (Cars That Have Not Moved) in the proposed rule to require submission of normalized data, i.e. data presented in relation to the size and volume of each railroad. This will better allow the Board and shipping public to avoid misleading comparisons and unjustified concerns. To illustrate, if Railroad A held four grain trains and 32 coal trains and Railroad B held eight grain trains and eight coal trains, it would be incorrect to conclude either (i) that Railroad A was favoring grain over coal or (ii) that Railroad B was more fluid because it held fewer total trains. No useful conclusions can be drawn about the service provided by either railroad because the number of trains reported held is absolute, not normalized to reflect the total number of trains by type the railroads operated during that week. Yet reports in the trade press made similar invalid comparisons of service among train types and among railroads after the October 8 Order reports were released.

Further, reporting absolute instead of normalized data does not allow the Board or other stakeholders to develop a meaningful baseline, one of the Board's goals. See Notice at 3. To illustrate, if the number of grain trains-held increased from four to eight, but at the same time the volume of grain trains increased from 100 to 200 the rate at which grain trains were being held is

unchanged: only 4 percent of grain trains were held for six hours or more.⁵ If the Board continues to include metrics that attempt to monitor delay to trains or cars, it should revise § 1250.3(a) 5. and 6. to require normalized data.

C. Customers Already Have Access to Superior, Real-Time Performance Data

The Notice claims that the weekly filings since October have allowed rail stakeholders to monitor railroad performance “in near real-time” and that continued performance transparency would benefit rail shippers “by helping them to better plan operations and make informed decisions based on publicly available, near real-time data”. Notice at 3. No data is offered in support of the claim that the weekly reports have improved the planning capabilities of shippers. The Notice makes no effort to compare either the timeliness or the utility of the data in the current or the proposed weekly reports to information that rail carriers already provide to their customers.

In reality, Union Pacific provides shipment-specific tracing capability for our customers, including the ability to check on the expected arrival time on a true real-time basis 24-hours a day, seven days a week. We also offer historical and current transit time and other data customized for the different service products our customers use. Employees in our National Customer Service Center (“NCSC”) are trained to use state-of-art technology to assist customers in placing orders for equipment, releasing cars, and diverting shipments, to facilitate cross-border shipments, or to develop solutions for service problems. Employees in the Harriman Dispatch Center provide similar support for bulk train customers. Additionally, we routinely notify our customers about weather events, maintenance or construction projects, labor disturbances or

⁵ The logic for normalization is the same regardless of whether “trains held” is measured by specific train regardless of how many times it may be held during the week (as could happen under the current snapshot approach) or whether every instance of a train being held is counted.

other occurrences that may disrupt or delay shipments. Account representatives meet regularly with their assigned customers to review past service and discuss ways to improve service going forward. The amount, usefulness and timeliness of the operating data we routinely provide to our customers is designed to support their operational and transportation planning.⁶

While we recognize that the Board values *public* transparency, the data available to our customers today is superior to the data that would be made available under the proposed rule because it is more specific and more useful to our customers in making or adjusting their plans. That utility rests on the specificity of private transportation that cannot be reported publicly under 49 U.S.C. § 11904(b) because it would reveal our customers' proprietary shipping information.

II. THE PROPOSED RULE CAN BE IMPROVED TO BETTER REALIZE THE BOARD'S OBJECTIVES

A. Weekly Reporting Period (§ 1250.1)

The proposed weekly reporting period does not align with the reporting period used by the AAR for similar metrics and should be adjusted to avoid confusion and to improve utility of the reports. For many years, Class I railroads and Railinc have provided the AAR with weekly reports on each railroad's velocity, terminal dwell and car inventory. These correspond to subparagraphs 1, 2 and 3 in the proposed § 1250.3(a). The reporting period for these metrics has been 12:01 AM Saturday – 11:59 PM Friday whereas the proposed rule calls for a 12:01 AM Sunday to 11:59 PM Saturday reporting period.⁷ Notice at 10. Retaining the reporting period to the current AAR Saturday - Friday period for the reports will avoid confusion of two similar

⁶ Other railroads have described the variety of ways they communicate with their customers about their service and operations in their peak season letters or in comments filed in Ex Parte No. 724 (Sub-No. 3).

⁷ Weekly carloading data are reported on a Sunday through Saturday basis.

weekly reports and prevent imposition of the burden of having to compile two similar, but separate, reports every week.

Alternatively, the AAR could stop publishing or shift to the same weekly period as the NPRM proposes. However, shippers, financial analysts and the media are used to finding weekly metrics on the AAR website and their ability to do historical analysis using earlier AAR-published data would be compromised by a change in reporting periods. The Board's interest in having transparent, reliable data would not be served by the AAR discontinuing its current reports, changing its reporting week, or filing a different (but confusingly similar) report. The NPRM has provided no rationale for its chosen reporting period. If there are no unique benefits to be gained by reporting on a Sunday-to-Saturday basis then the Board should adopt a Saturday-to-Friday reporting period, which provides clear benefits to the railroads, the Board and shippers.

The proposed rule would also require railroads to report Sunday-to-Saturday data by 5 p.m. on Tuesday. The proposed rule would allow filing on the next business day if Tuesday falls on a federal holiday, but several federal holidays are scheduled for Monday. Thus, the rule as drafted would require railroads to file the report in only one business day several times each year.

B. Definition of Unit Train (§ 1250.2)

The proposed definition of a unit train as "50 or more railcars of the same or similar type, carrying a single commodity in bulk", would create a reporting problem that does not currently exist and would impose a definition that is both too broad and too narrow. The proposed definition is also at odds with other parts of the proposed rule. Rather than defining unit trains by the number of railcars, the rules should allow railroads to rely on how they distinguish trainload from manifest service.

The proposed definition is inconsistent with the definition of unit train used for the STB's Annual Report R-1: carloads tendered as a unit for shipment on one bill of lading in a solid train for movement between origin and destination. See Instructions for Schedule 755. Moreover, Union Pacific has been relying on its train-category symbols (e.g. "C" for coal, "G" for grain) rather than the number of cars in a train to identify and classify the train types the Board has specified in its temporary report. We would have to write programs using a completely different logic than we use for either R-1 reporting or for measuring our operating performance today in order to capture the trains with at least 50 carloads, comprised of cars of the same or similar type and carrying a bulk commodity.

The NPRM's definition would not only create a reporting problem, it would result in both false positives and false negatives. Soda ash provides an excellent example of a false positive under the proposed definition of unit train. For domestic shipments of soda ash originating in Wyoming, Union Pacific typically gathers cars from several customers into a manifest train of more than 50 covered hoppers containing soda ash for movement to North Platte. The train symbol is MGRNP: Manifest from Green River to North Platte. These cars have separate waybills because they have multiple destinations throughout our network or beyond, but they move to North Platte on one train for switching and classification into multiple outbound manifest trains. The empties return separately to North Platte and move from North Platte to Green River in a number of different manifest trains. Yet the proposed definition would require soda ash to North Platte to be reported as a unit train.

The proposed definition would also result in false negatives. The proposed rules would require reporting average train speed, average dwell time and trains held short of destination or interchange for Automotive unit trains (§1250.3(a)1., 4. and 5. Currently, Union Pacific includes

data for any train with an “A” symbol for Automotive, but we run some auto trains with fewer than 50 cars. Under the proposed definition, such trains would not be reported at all since they would not qualify as either Automotive unit trains or All other unit trains.⁸

Union Pacific suggests that the definition for determining whether traffic is classified as one of the four train types for bulk commodities (i.e. grain, coal, crude oil and ethanol) or one of the premium train types (i.e. intermodal or auto) should focus on the nature of the operation rather than just the number of carloads of the same commodity in the train. As a practical matter, if a bulk commodity is moving in trainload service, the train will have a specialized symbol and if it moves in manifest service its trains will have a manifest symbol. Likewise, intermodal and automotive trains have specialized symbols and if an intermodal railcar or multilevel auto car moves in a manifest train, the train will have a manifest symbol. Such a definition would align with how Union Pacific designs and measures its service.

Union Pacific also recommends that the Board substitute “trainload” for “unit train” both in § 1250.2 and in the various subparagraphs of § 1250.3. Unit train implies a shuttle-type of service where the equipment (cars and often the locomotive as well) operate as a set dedicated to a customer. However, many of our bulk train moves require that the empty cars be gathered when the customer orders the cars, the locomotives do not remain attached during loading and unloading, and the empties are released to storage or broken apart for spotting to different customers rather than remaining as an intact train set. Yet these trainloads are more similar to

⁸ The proposed definition of unit train specifies railcars” carrying a single commodity in bulk,” but automotive vehicles are not considered bulk freight. The NPRM is also inconsistent in its usage of “unit train” in proposed § 1250.3(a). Subparagraphs 1,4 and 5 appear to distinguish between bulk commodity train types and automotive (which are also referred to as “unit trains”) and intermodal. But subparagraph 7 distinguishes between grain moving in shuttle or other dedicated train service versus cars loaded in all other car ordering systems, which on UP could include trains of more than 50 cars.

unit trains than they are to manifest service. “Trainload” would include both types of bulk trains in non-manifest service.

C. System Average Train Speed by Train Type, Terminal Dwell Time and Cars On Line (§1250.3(a) Subparagraphs 1, 2 and 3)

Union Pacific already publishes system metrics similar to those in subparagraphs 1, 2 and 3 through the AAR along with the other Class I railroads and also makes them available on our own website. As suggested by their acceptance in the industry, these metrics, in combination with 7-day carloadings, provide a meaningful measure of rail network performance especially if modified slightly to include system average speed for all trains instead of all other trains as we proposed in Part I.A. and to keep the current AAR reporting period, i.e. Saturday 12:01 am through Friday 12:00 a.m.

D. Dwell Time at Origin or Interchange Location (§1250.3(a) Subparagraph 4)

The first part of subparagraph 4 would expand the current reporting from the weekly average dwell time at origin for five specific-commodity unit trains plus “all other unit trains” sorted by commodity type by adding dwell time at interchange to be reported by the receiving carrier. The value of this information is questionable as discussed in Part I.A. It would encourage misleading comparisons among different types of traffic with different operating parameters and potentially discourage our customers from relying on more specific data for their own trains to make their plans. The proposed metric ignores the operational differences between “unit trains” of different commodities. For example, most unit coal trains on Union Pacific originate at mines in the Southern Powder River Basin (SPRB). The locomotives remain with the empty train through loading and pull the outbound train. Further, these mines have agreements with third-party rail contractors that operate trains within the mine complex. These third-parties operate trains during loading and spraying and prepare the trains for movement by Union Pacific. Often,

when a Union Pacific crew arrives at the mine to receive a loaded train they only have to “step on” the train and depart. Moreover, the ten SPRB mines are concentrated within 50 miles of one another on a line that originates no other traffic, allowing Union Pacific to maintain a dedicated and balanced crew base to originate loads and deliver empties. This enables the relatively low dwell at origin numbers incurred by unit coal trains.

Other types of bulk trainloads often require more time to load, making it too costly to leave the power with the cars during loading. A key difference between shuttle grain trains and other grain trains on Union Pacific is that shuttle customers commit to loading and unloading those trains quickly so that the power can remain with the cars. This efficiency is one reason why cars in shuttle grain service move more grain than other cars in our grain fleet. Moreover, the origins for grain, ethanol and crude oil are geographically dispersed and often located some distance from where the train crews report for duty. Additionally, our crews may perform all of the necessary pre-trip requirements prior to departing a customer facility.⁹ Thus, the differences in average dwell time between train types reflect differences in the nature of operations without providing any meaningful information on Union Pacific’s relative service performance.

Yet if a Union Pacific customer is concerned that its trains are waiting longer after they are released, that information is available already to that customer on a location and train specific basis. More importantly, the explanation for longer dwell time at origin (or at interchange) will often reflect an operating decision to protect network fluidity for all customers. Trains can be held due to congestion (actual or anticipated) along the route or at the destination. For example, the recent strike by CP train crews in Canada and the labor issues at West Coast ports required

⁹ The proposed rule defines dwell time as the “time period from release of a unit train ... until actual movement by the receiving carrier.” In general, a Union Pacific crew will not be dispatched to a customer facility before a train is released by the customer, meaning any work performed by the crew prior to moving a train will be counted in the dwell time.

Union Pacific to monitor how much traffic we brought on our network for those destinations or gateways. Similarly, when a destination such as a river terminal or customer is backed up, it frequently makes more sense to queue at origin rather than moving additional trains into a congested area and interfere with other customers' trains. Aggregate dwell statistics, as proposed in the rule, cannot provide the insight or information that our customers already have available to them from our systems and customer communication processes. When major network disruptions result in meaningful delay to our customers, we inform the Board and its staff of such developments.

The NPRM proposes to expand origin dwell by including the weekly average dwell time at interchange. The receiving railroad is to include interchange dwell with its origin dwell for the same train types. Union Pacific has concerns about how this data will be compiled and the utility of this metric.

We are uncertain about the measurement of interchange dwell for trainload traffic. If the proposed rule is intended to measure interchange dwell time from when the receiving carrier takes possession of the train at interchange until the train departs on its next line haul movement, Union Pacific can modify its current report on origin dwell to include that elapsed time when it is the receiving carrier with modest additional effort. If, however, the proposed rule contemplates measuring interchange dwell time from when the forwarding carrier considers the train offered, reporting interchange dwell time would require substantially more effort to coordinate among carriers and to develop programming for the receiving carrier to consistently capture an event that occurs on a different railroad.¹⁰ Even assuming that measuring the time between the offer by one carrier and the departure on the next carrier could be consistently captured in a weekly report

¹⁰ This would also be true if the forwarding carrier were reporting interchange dwell time. The problem lies in measuring elapsed time between two events that occur on different railroads.

for all interline trains, its usefulness is questionable. Depending on what the interchange arrangements are for different trains and which trains are interchanged during a given week, the results are likely to vary in ways that do not reflect a meaningful change in the operations of the receiving carrier.

E. Trains Held Short of Destination or Interchange (§1250.3(a) Subparagraph 5)

As currently written, subparagraph 5 provides little meaningful information because the data captured by this request is reflected in other requests, is otherwise available, and does not accurately reflect rail network performance. The proposed change to require every instance during a week that a train is held six or more hours will not improve the utility of the data, but will increase the burden on railroads.

Other metrics already provide more useful information about network fluidity by train type. When a train moving in normal service is held outside a terminal its delay is reflected in Union Pacific's system velocity. Train speed reflects the duration of the delay and the number of trains that are held.

Union Pacific customers already have visibility as to whether their trains (or cars if in manifest service) are held short of destination or interchange and can check on their estimated time of arrival which is more useful in their transportation planning than knowing the absolute number of trains held by train type during a given week.

The absolute number of run-through trains held more than six hours would be more useful if it were normalized, i.e. the percent of active trains held.¹¹ As explained above, a fundamental problem with the proposed rule is the lack of data normalization. The trains-held

¹¹ The normalized metric would be calculated by dividing the number of events (i.e. each time run-through train of a particular type was held six hours or more) by the number of active trains of that type that operated during the week.

metric is a prime example of the deficiency of non-normalized data. To be meaningful, the number of trains held must be normalized using total train volume.

F. Cars Which Have Not Moved (§1250.3(a) Subparagraph 6)

As with the number of trains held, data required by subparagraph 6 provide little utility because the cars not moved are already reflected in other reported data, do not meaningfully reflect rail network performance and are not normalized.

The number of cars, by train type not moved partially somewhat duplicates subparagraph 5 (number of trains delayed) but without improving the value of the information. Other data will also reflect an increase in cars not moving. If the number of cars not moving increases, that will decrease train speed, increase terminal dwell and increase car count, already covered by subparagraphs 1, 2 and 3, and all of which are better indicators of whether the rail network is fluid. Moreover, customers who want data to better plan their operations or transportation, have more useful data available directly from Union Pacific systems.

In addition, the rule fails to require normalized data. And even if it were normalized, data on cars that have not moved provides little insight about network performance because there are numerous reasons why a car may not have moved in the given timeframe and those reasons often protect and improve network fluidity. We constantly monitor traffic flows to customer facilities to ensure that each facility will be able to accommodate inbound traffic. If we identify too much traffic en route to a given facility we may hold trains or cars short of destination rather than send the cars into a congested part of the network. If we identify the issue far enough upstream, the cars will be held short of the yard that serves the customer and will not register as constructively placed meaning it would be reported under subparagraph No. 6. The recent

backlog of West Coast ports arising from the PMA/ILWU negotiations is a clear example of holding cars short of destination to prevent or mitigate congestion.

This metric can also be misleading. A car may move in accordance with its transportation plan, but appear to be delayed under this metric. For example, some locations are scheduled to receive service only once or twice a week so some inbound cars may dwell three or more days for the next local. Yet those cars are being delivered in accordance with their trip plan schedules and are not delayed. Similarly, we gather cars from various points to build blocks of cars destined for other parts of the network. Depending on volume, it may take several days to build a block of cars. While this may seem inefficient to an individual customer, it allows Union Pacific to operate more efficiently throughout its network by moving more cars in fewer trains while consuming less line capacity and fewer locomotives and crews. This type of transportation planning allows us to provide better service to more customers.

The utility of data in subparagraph 6 would be improved if it required normalized data. The number of cars not moved could be normalized by shifting to car type instead of train type and using car count to normalize the data. Normalized data would better allow the Board to monitor service.

G. Grain Car Metrics (§1250.3(a) Subparagraphs 7 and 8)

The Board should eliminate data requested by subparagraphs 7 and 8 because the Board has not explained why there is a need for long-term reporting on grain service by state. As explained above, this type of commodity-specific reporting will not assist the Board in indentifying or understanding service disruptions. This is especially true with respect to grain-specific reporting due to the nature of grain transportation.

Subparagraph 7 requests data on the number of grain cars loaded and billed by state. This request ignores the seasonal variation in grain shipments especially among locations. Crops are harvested at different times of the year depending on the crop and the state. Demand for grain transportation varies greatly throughout the year and from state to state as different crops are harvested. Raw data on the number of grain cars loaded and billed does not provide any insight on a railroad's performance. A railroad could perform flawlessly, but carloadings will decrease if the harvest is poor due to weather or weak export demand. Total cars demanded and the number of cars demanded by state will change during the year as the harvest moves from crop to crop and state to state. Weekly variations in the number of cars loaded will therefore not be useful in identifying potential service disruptions. The well-documented volatility of grain shipments from year-to-year and during a year was described in filings in Ex Parte 665(Sub-No. 1).¹²

Subparagraph 8, which asks for the number of overdue grain car orders and average days late, new orders, filled orders and cancelled orders by state, suffers from similar problems as subparagraph 7. This metric does not accurately reflect the operation or the service. In particular, the weekly reports will almost never correspond to when grain car orders on Union Pacific are due. Union Pacific grain car orders have 24 closing dates during the year: the 15th and the last day of each month. In contrast, the grain car order data will be reported 52 times during the year. Yet the car-order due dates will rarely match the closing day of the weekly report.

Moreover, the report would aggregate overdue car orders from a number of different programs with varying commitment levels, but will not include cars in our grain shuttle program, which transport most of the grain on Union Pacific. As a result, it will always overstate the apparent failure to meet customer demand. By focusing solely on "overdue cars", subparagraph 8

¹² NGFA Opening Comments, filed on June 26, 2014, at 8-9; AAR Opening Comments, filed on June 26, 2014, at 3-6; and, Union Pacific Opening Comments, filed on June 26, 2014, at 4-6;.

excludes grain shuttle trains. Shuttle trains do not appear as grain car orders because those cars are allocated to a customer who controls the shuttle train's movement. Through an auction, customers receive a shuttle commitment for up to a year. The customer can direct us to move the train between any shuttle origin and destination.¹³ Because the customer controls the movement of the train there are no car orders that Union Pacific must fill. Shuttle trains are the most efficient part of our grain fleet and move the majority of our grain volume.

H. Coal Unit Train Loadings (§1250.3(a) Subparagraph 9)

For all of the stated herein regarding the limited utility of commodity-specific data, the Board should eliminate subparagraph No. 9 because the Board has not explained why there is a need for long-term reporting on coal service. But if this metric is to be reported, the Board should clarify whether and how a railroad reports the production region for coal received in interchange.

I. Quarterly Reporting of Infrastructure Projects (§ 1250.3(d))

Union Pacific is willing to provide more information about its capital expenditures to increase capacity and enhance service, but the Board should clarify and simplify aspects of the proposed infrastructure reporting requirement.

First, the proposed rule does not clearly define "project." This leads to confusion what "projects" must be reported and when they must be reported. What may be colloquially referred to as a "project" is often divided into small parts each with its own budget, start date and completion date. Moreover, a small "project" may begin with the expectation that it will eventually become part of a larger "project" when the larger "project" has yet to be approved and may not have a budget. We propose instead that we describe the size of our capital expenditure

¹³ The customer can also sell its capacity to other customers in a secondary market.

plan and its proposed allocation for the coming calendar year after the Union Pacific Corporation Board has authorized the annual capital plan. This typically occurs by the middle of the first quarter.

We also propose that any status reports should be filed only for projects completed during the previous quarter based on when the track or facility was turned over to operations and that cost \$25 million or more. We would also report the total amount expended on works in progress for those projects still not completed. We believe that reporting interim progress for individual projects by state would not only be cumbersome, but frequently confusing and rarely helpful because of the uncertainty on completion dates and percent of completion due to permitting, weather, and other developments that change construction plans. Moreover, since completion of such projects may extend over years, it will be repetitive and provide little new information, yet require a significant amount of effort to capture the detail as proposed by the rule.

Second, the term “maintenance-of-way” may lead to unintended results. As we read the proposed rule, it is intended to require reporting only for capacity expansion or enhancement projects. The term “maintenance-of-way” may be read to include some projects that contribute to capacity expansion or enhancement. For example, if Union Pacific chose to install concrete ties instead of replacing and repairing existing wood ties, this would likely be considered maintenance-of-way work. However, concrete ties would also likely increase capacity by allowing for faster, heavier trains. This leads to confusion as to whether such a project must be included in the reporting or whether it is a “maintenance-of-way” project. We recommend replacing the phrase “excluding maintenance-of-way” with “excluding projects that are primarily intended to replace or rehabilitate existing rail facilities.” This language creates a clear divide between projects that should and should not be reported.

Finally, reporting on the first Tuesday of the quarter conflicts with Union Pacific's internal processes and capabilities. Union Pacific does not "close the books" on a quarter until the fifth business day following the end of a quarter. This means that for 2015 we would not be able to report on the first Tuesday of the new quarter in any quarter. Due to holidays, the fifth business day can fall as late the second Monday of the month in January, April, July and September. Should that occur, we may not be able to report on the second Tuesday of those quarters either. Reporting on the third Tuesday of the quarter solves this problem. It would allow us sufficient time to close the prior quarter and ensure the quarterly report is accurate and complete.¹⁴

III. THE BOARD OVERESTIMATES THE UTILITY OF THE PROPOSED RULE AND UNDERESTIMATES ITS BURDEN

The Board requested comments, consistent with the PRA, on: (1) whether the collection of information in the proposed rule is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board's burden estimates; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents. The proposed reporting rules, taken as a whole, do not deliver value commiserate with the burden.

First, the collection of information in the proposed rule, as it currently stands, is not necessary for the proper performance of the functions of the Board. The most useful information for monitoring railroad operating performance for potential service disruptions (i.e. train speed, terminal dwell, car count and weekly carloadings) are already publicly available from the AAR

¹⁴ Our estimate of the time required for the quarterly reporting is based on the assumption that deadline for filing the reports and the simplification of the report are adopted. Requiring detailed status reporting for each project while Union Pacific is closing its financial records for a quarter, will hamper the orderly preparation of a report.

or the Class I railroads. Moreover, railroads provide more timely and more useful data to customers to track their shipments and adjust their plans. The remaining service metrics as proposed offer little meaningful data for identifying and remedying service disruptions. In particular, Data Elements Nos. 4 – 9 should not be included in the final rule, or should be modified as suggested.

Second, the NPRM underestimated both the weekly burden and the one-time start-up costs of complying with the proposed rules. With respect to the weekly reporting, Union Pacific currently devotes an average of four work hours per week to comply with the October 8 Order. We anticipate compliance with the proposed rule would similarly require at least four hours per week. The start-up burden for complying with the October 8 Order should also be considered in the Board's estimate. The start-up burden, including new programming, verification and testing, exceeded 200 total hours. If the proposed rule is adopted as we suggest, we estimate at least 80 additional hours of work to modify our current weekly reporting to comply with the changes in the proposed rule. The burden would be much higher if we are required to integrate offering data from delivering carriers into the interchange dwell calculation.

Union Pacific estimates the start-up burden to comply with the quarterly infrastructure reporting will be approximately 40 hours, primarily to automate the reporting process to the extent possible. Following start-up, we estimate the burden to prepare the quarterly report will be approximately 4 hours.

The table below contains our best estimate of the ongoing burden hours Union Pacific will incur. Those hours will be higher if the Board does not reduce or clarify its proposed rules as we suggest.

<u>Type of Responses</u>	<u>Estimated Time per Response</u>	<u>Frequency of Responses</u>	<u>Total Yearly Burden Hours</u>
Weekly	4 hours	52/year	208 hours
Quarterly	4 hours	4/year	16 hours
Total Annual			224 hours

In addition Union Pacific will have incurred a total of 320 hours start-up hours.

Finally, the Board can enhance the quality, utility and clarity of the information collected and minimize the burden of the collection by adopting the modifications proposed by Union Pacific.

IV. CONCLUSION

Union Pacific recognizes the Board's objectives in issuing the proposed rule. Modifying the proposed rule as we suggest will provide more meaningful data while at the same time reducing the burden on the railroads, thereby better achieving the objectives for service reporting.

Respectfully submitted,



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