

October 22, 2014

Via E-Filing

Ms. Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20024

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**Re: STB Ex Parte No. 724 (Sub-No. 3), United States Rail Service
Issues—Data Collection**

Dear Ms. Brown:

Union Pacific Railroad Company respectfully submits this letter in response to the Board's order served on October 8, 2014 in the above-captioned docket ("Order") requiring Union Pacific to publicly file weekly data reports.

Union Pacific is voluntarily submitting a data report that represents our best efforts to comply with the Order. However, the Order is not a valid rule. The Board issued the Order without following the procedures for notice and comment as required under the Administrative Procedure Act ("APA"), 5 U.S.C. § 553, and without complying with the Paperwork Reduction Act ("PRA"), 44 U.S.C. §§ 3501-3520. Indeed, the STB has repeatedly acknowledged that under the PRA, "an agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number." *Rail Fuel Surcharges*, EP 661 (Sub-No. 1), slip op. at 1 (STB served Jan. 26, 2007) (seeking comments on how to minimize the burden and enhance the utility of proposed reporting).

More fundamentally, Union Pacific is deeply concerned that the failure to subject these elaborate new reporting requirements to public notice and comment will sharply undermine the hoped-for benefits. The Board seeks "standardized performance data" (Order, p. 2). Yet the Order offers no guidance on how to compile the requested data from seven different rail carriers with different data systems. Had the Board engaged the railroads in a dialogue on how to enhance the quality and utility of the data, it could have crafted

standards for the data reporting, with input from those most familiar with data and its collection, that would have better ensured useful information about the rail network performance compiled in standard manner. As it stands, the public will find itself sorting through seven sets of data with no valid way to compare the performance between railroads and may find they have more questions. Any conclusions run the risk of creating more confusion and complaints that rely on inconsistent or misunderstood data.

The agency should instead engage all stakeholders through the normal notice and comment procedures and craft reporting requirements better tailored to meet the agency's objectives.

Despite our misgivings that the Order is going to foster more, not less, confusion about rail performance data, Union Pacific is providing information sought in the Order, except as follows:

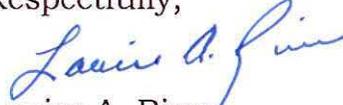
- (1) Item 4 asks for data on dwell time at origin for unit train shipments sorted by commodity. Union Pacific does not maintain data on dwell time at origin for automotive unit trains in its ordinary course of business. We are implementing a process to report this data point and will begin reporting it when we are able to consistently generate accurate and reliable data.
 - (2) Item 8.b. asks for the average number of days late for all outstanding grain car orders. This is another data point that is not maintained in the requested format in the ordinary course of business. We are implementing a process to report this data point going forward, but we are unable to provide reliable information at this time.
 - (3) Item 9 asks for data on "plan versus performance" for round trips on grain shuttle trains by region. Union Pacific cannot comply with this request because it does not have a "plan" for round trips on grain shuttles. As more fully explained in Union Pacific's filings in Ex Parte 665 (Sub-No. 1), movement of our shuttle trains is determined by our customers, not by Union Pacific. A customer can direct a shuttle train to be loaded and unloaded at numerous points across our network or in Mexico and has the freedom to direct the empty to be loaded at a different location and shipped to a different destination for every trip. We do not know where a shuttle train will go until we receive instructions from our customer. Union Pacific does track the movement of grain shuttle trains per month and is providing
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data on the actual number of trips its shuttle trains completed to different regions.

- (4) Item 10 asks for data on “daily coal unit train loadings versus plan” by region. Union Pacific receives confidential information from customers on their projected demand for coal unit trains by supplier. Union Pacific strives to meet our customers’ demand for coal unit train loadings. Information on demand received from customers is commercially sensitive and highly confidential. Union Pacific does not reveal this information publicly. This demand information is already known to our coal customers and their respective suppliers. We are providing data on actual coal unit train loadings. This will provide the Board with a basis for reviewing our performance week-to-week without jeopardizing proprietary customer data.

Despite our objections to how the Order was developed and concerns about the value of the reports, Union Pacific will supplement the information we already make available to our customers about the status of their shipments and our performance. We will continue to work with the Board, our customers and connecting carriers to improve service.

Respectfully,



Louise A. Rinn
Associate General Counsel

cc: Honorable Daniel R. Elliott, III
Honorable Deborah Miller
Honorable Ann Begeman
