

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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ENTERED  
Office of Proceedings  
April 29, 2015  
Part of  
Public Record

DOCKET NO. EP 724 (Sub-No. 4)

UNITED STATES RAIL SERVICE ISSUES –  
PERFORMANCE DATA REPORTING

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REPLY COMMENTS OF

ALLIANCE FOR RAIL COMPETITION  
MONTANA WHEAT & BARLEY COMMITTEE  
COLORADO WHEAT ADMINISTRATIVE COMMITTEE  
IDAHO BARLEY COMMISSION  
IDAHO GRAIN PRODUCERS ASSOCIATION  
IDAHO WHEAT COMMISSION  
MONTANA FARMERS UNION  
NORTH DAKOTA GRAIN DEALERS ASSOCIATION  
NEBRASKA WHEAT BOARD  
OKLAHOMA WHEAT COMMISSION  
OREGON WHEAT COMMISSION  
SOUTH DAKOTA WHEAT COMMISSION  
TEXAS WHEAT PRODUCERS BOARDUSA  
DRY PEA AND LENTIL COUNCIL (USADPLC)  
U.S. PEA AND LENTIL TRADE ASSOCIATION (USPLTA)  
WASHINGTON GRAIN COMMISSION  
WYOMING WHEAT MARKETING COMMISSION

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April 29, 2015

In their Opening Comments in this proceeding, the AAR and large member railroads argue against maintaining, let alone extending indefinitely, the performance data reporting that the Board currently requires. The Railroads present a number of arguments against the permanent service data reporting the Board proposes. One notable omission from their comments is any claim that the service problems that became so severe in the winter of 2013-2014 are now over, as we approach the summer of 2015.

ARC, et al. urge the Board to reject the Railroads' arguments. We also urge the Board to implement its proposed rules, and to expand them by requiring reasonable reporting of service data the Railroads already gather as to shipments involving less than 50 cars. Serious service problems continue to adversely affect many shippers represented by ARC, et al., including many shippers whose businesses depend on rail shipments of 49 carloads or less. These problems are particularly acute in the Upper Great Plains states, despite small improvements in service quality here and there.

As the Opening Comments of ARC, et al., USDA<sup>1</sup>, and other shipper interests show, service performance has not returned to prior levels, and rail

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<sup>1</sup> The Board's attention is respectfully called to the January 2015 report of USDA's Office of Chief Economist and the Agricultural Marketing Service entitled "Rail Service Challenges in the Upper Midwest: Implications for Agricultural Sectors –

capacity may be tight for years to come, as the economy expands and as the US population grows. These problems call, at a minimum, for increased reporting of data on service performance of Class I rail carriers. Without such data it is difficult, if not impossible, to consider remedies beyond performance reporting.

The Board should know that, since the filing of opening comments in this proceeding, BNSF has published one of its largest ever freight rate increases on wheat shipments to Pacific Northwest and Gulf Coast destinations, effective May 1, 2015, thus adding new cost pressures to the service problems that wheat producers and shippers were already facing.

BNSF wheat rates from Montana origins will rise \$271-\$390 per car for shuttle service, while less-than-shuttle Montana wheat rates will go up \$443-\$690 per car. Less-than-shuttle wheat rates to the Gulf Coast from Colorado and Kansas origins are being increased by more than 10% (\$550 to more than \$600 per car from Colorado, and more than \$550 per car from Kansas). Evidently, BNSF believes it should raise wheat rates at the same time it (and the other Class Is) are resisting calls by the Board and by shippers for performance data showing whether and where service problems are being addressed.

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Preliminary Analysis of the 2013-2014 Situation”, prepared at the request of Senators John Thune and Amy Klobuchar.

Not only are significant rate increases being imposed, but BNSF is widening the spread between rates for service in 110-120 car shuttle trains, and rates for service in non-shuttle service, including 48-car, 24-car and single car volumes, as to which existing performance data is not being reported. BNSF may believe that the best way to respond to rail service problems is to drive down demand for service through massive wheat rate increases, so that it is effectively rewarded for its failure to meet shipper needs during the last 15-18 months.

These widening spreads are occurring at a time when the need for less-than-shuttle rail service is growing, so farm producers can move their rotational, pulse, barley and durum crops, and crops such as white wheat's and increasingly marketable identity preserved (IP) grains. Under the circumstances, it is more important than ever for the Board to require Class I Railroads to disclose needed service performance data, and to do so not just for unit train volumes but also for smaller volumes.

The Railroads begin their comments by noting the effort and expense they have devoted to addressing their service shortcomings. ARC, et al., appreciate these efforts, but they have not restored service to prior (or adequate) levels, or remedied the losses experienced by underserved shippers (such as captive and smaller and more isolated shippers, including non-unit train shippers). Grain and coal shippers in the Upper Midwest, in particular, continue to experience problems.

In any event, there is a clear disconnect between the Railroads' requests for commendation for their efforts (e.g., AAR Opening Comments at 6), and their reluctance to provide data that could confirm or call into question their characterizations of the effectiveness of their corrective actions.

This is not the only fallacy in the Railroads' arguments. At page 13, the AAR notes that the Board acts with great caution when confronted with major rail service problems, for fear of making a bad situation worse. Shippers, including ARC, et al., are painfully aware of this fact. However, contrary to the Railroads' implication, the Board's concerns about exacerbating service problems affecting the rail network is not a reason for gathering less, rather than more, information about these problems. Requiring increased performance data may be the most important first step the Board can take in these situations, and one of the few it can take with little or no danger of making things worse.

Better data enables the Board to better employ such limited remedies at it feels comfortable imposing. The risks of overreach, or destructive interference, or mismatches between cures and problems are reduced, not increased, when more extensive and precise service metrics are available.

Such metrics are also of critical and vital importance to affected shippers and their customers, who could otherwise be in the dark as to trends and timetables for

improved service in their areas that could affect their self-help measures, and their decisions concerning production, marketing, sales, purchases, car supply and contractual commitments.

Shippers who listened to arguments by railroad counsel and officials at the hearing held by the Board on April 10, 2014 in this proceeding might have thought that all would be well by the summer of 2014, when the snow in Chicago had melted. All was not well by last summer, and the reporting of service data the Board required last year helped meet shippers' need for detailed and reliable facts. That reporting, which was a step in the right direction, should be expanded, not curtailed.

Compounding their error, the Railroads argue that the Board should seek less detail covering fewer regions and commodities, and that its focus "should be on the fluidity of the national system ... or how the rail industry's network as a whole is performing". AAR Opening Comments at 15. (The AAR also argues at page 12 that even its preferred macro-level service metrics "certainly should not be used to infer that railroads necessarily are to blame for deteriorating service conditions.") See also BNSF Opening Comments at 5, stating that operations personnel "manage our traffic flows to maximize velocity across our entire network", and that additional reporting "will not change how BNSF responds to service situations."

These and similar arguments make it clear that the Railroads' main goal in this proceeding is to minimize transparency, and avoid any accountability for service problems that have left many farm producers' 2014 grain harvests stored on the ground well into 2015, and have jeopardized electric power generation at coal-fired power plants in the West.

The Railroads seem to be saying that they maximize their overall efficiency (at least in their own judgment), and that it is therefore a waste of time for the Board or any shippers or regions suffering from poor service to seek anything other than macro-level service metrics, much less to seek improved service. Better service will come when and if the Railroads decide to provide it, and the STB should get out of the way.

The Railroad industry has accomplished a great deal since 1980, and is making record revenues. However, "Trust us" is not yet an acceptable response from Class I Railroads to periodic service meltdowns, either as a matter of law or as a matter of sound public policy.

Even assuming the Railroads are operating the national rail network in a manner they regard as optimal, it does not follow that the details of their service are beyond investigation (or reproach). Providing the best possible service for favored shippers is not acceptable if less favored shippers (many of whom are among the

most captive shippers in the country) are not receiving at least reasonable levels of service.<sup>2</sup> This is the concept underlying the common carrier obligation. Without this statutory (and common law) requirement, the Railroads would be free to deny service entirely based on network efficiency goals they set, and could respond to service failures in one region by improving service elsewhere, with regulatory remedies thereby rendered unavailable to those who need them most.

It should come as no surprise that the rail carriers' common carrier obligation is mentioned in the opening comments of several shipper parties (e.g., ARC, et al., WCTL and NGFA), along with USDA. Remarkably, the common carrier obligation is mentioned in none of the Railroads' opening comments. Without performance data that extends beyond system-average or industry-wide "macro" levels, the STB cannot meet its statutory obligations, and shippers and receivers cannot run their businesses.

Finally, the AAR, citing the Paperwork Reduction Act, apparently questions whether it is even lawful for the STB to seek performance data reporting. AAR Opening Comments at 9. The Board's decision served December 30, 2014

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<sup>2</sup> Figure 1 on page 6 of the 2015 USDA report mentioned above shows that many of the states most affected by 2013-14 service failures are among the most rail-dependent in the country. See also the table in the Opening Comments of ARC, et al., showing that Upper Great Plains states representing some 20% of BNSF rail miles suffered almost 80% of backordered cars.

initiating this proceeding shows that the Board is cognizant of, and intends to respect, its obligations under the PRA.<sup>3</sup> In any event, the PRA should not shield from scrutiny the extent to which the Railroads are responding appropriately to the worst service problems since the UP-SP merger and the acquisition of Conrail by NS and CSX.

The Board and affected shippers and receivers have a clear need for the service data addressed in this proceeding, and for additional data called for in shippers' Opening Comments, including data on non-unit train shipments. To the extent that the additional data is already being collected by the Railroads, the burdens of reporting are hardly severe. And to the extent that reasonable additional efforts by Railroads are needed, at least until all shippers are once again receiving required service levels, the Railroads should not complain. Their service failures have resulted in far greater burdens for their customers and others adversely affected.

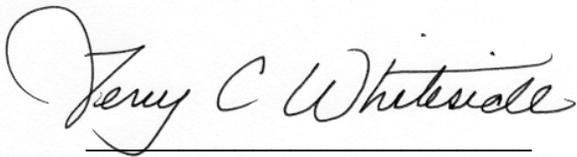
For the foregoing reasons, and for the reasons set forth in our Opening Comments, the Board should adopt its proposed rules, with the clarification that appropriate data reporting should also be required for shipments in 49 cars or less,

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<sup>3</sup> It should be noted that the PRA excludes from coverage data requests involving less than 10 "persons", and that there are only 7 Class I railroads. See 44 USC §3502(3)(A)(i). ARC, et al. are aware of the presumption of 10 for all or a substantial majority of an industry in 5 CFR §1320(c)(4)(ii), but the presumption is presumably rebuttable.

where such reporting does not entail undue burdens for Class I Railroads. The Board should also consider, and adopt as appropriate, refinements in its proposal called for in the Opening Comments filed by other shipper parties to this proceeding, and by USDA.

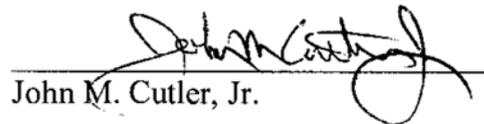
Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that I have this 29th day of April, 2015, caused copies of the foregoing document to be served by first-class mail or by electronic means on all parties of record.



A handwritten signature in cursive script, reading "Terry C Whiteside", is written over a horizontal line. The signature is enclosed in a light gray rectangular box.

Terry Whiteside