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Ms. Cynthia T. Brown  
Chief, Section of Administration  
Office of Proceedings  
Surface Transportation Board  
395 E Street, S.W.  
Washington, DC 20423

Re: EP 724 (Sub-No. 4), *United States Rail Service Issues – Performance Data Reporting*

Dear Ms. Brown:

Pursuant to the Notice of Proposed Rulemaking served on December 30, 2014, the Association of American Railroads hereby files the attached comments in the above docketed proceeding.

Sincerely,

Timothy J. Strafford  
Counsel for the Association  
of American Railroads

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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STB Ex Parte No. 724 (Sub-No. 4)

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UNITED STATES RAIL SERVICE ISSUES –  
PERFORMANCE DATA REPORTING

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COMMENTS OF THE ASSOCIATION  
OF AMERICAN RAILROADS

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SURFACE TRANSPORTATION BOARD

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UNITED STATES RAIL SERVICE ISSUES –  
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COMMENTS OF THE ASSOCIATION  
OF AMERICAN RAILROADS

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In a Notice of Proposed Rulemaking (“NPRM”) served on December 30, 2014, the Surface Transportation Board (“Board” or “STB”) proposed to create new regulations that would obligate Class I railroads to report certain service data to the Board on a weekly basis. The Association of American Railroads (“AAR”) respectfully submits these comments on behalf of its Class I freight railroad members as a party of record in accordance with the Board’s NPRM.<sup>1</sup>

The AAR acknowledges the Board’s concerns that led to the NPRM, but respectfully submits that the reporting regulations should not be adopted as proposed because they are overbroad and may not be helpful in the long run. It is the AAR’s position that only macro-level reporting metrics that the industry has long been providing voluntarily should be made permanent by regulation. In a commitment to improve communications with its customers, the railroad industry has voluntarily published such metrics on a public website since 1999.

Currently, six of the Class I carriers provide through the AAR three weekly performance

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<sup>1</sup> The AAR is a trade association representing the interests of North America’s major freight railroads, and often presents comments and testimony in STB proceedings. The AAR and its freight member railroads have a strong interest in this proceeding and in ensuring that Board uses its authority to require reporting from rail carriers in a way that allows the Board to meet its statutory obligations without unduly burdening the railroad industry.

measures — cars on line, train speed, and terminal dwell.<sup>2</sup> These three measures provide a clear picture of the performance of the U.S. railroads as a whole and are the most useful tools for examining the trends and relative changes in service performance that should be the Board's focus.

These comments begin by reviewing the developments leading to the NPRM. Part I discusses how the legal and policy guidelines governing the collection of information by federal agencies counsel the Board to narrowly tailor any new reporting obligations to those that are necessary for the Board to carry out its statutory functions. Part II explains how the information already available to the Board is sufficient to allow the Board and the public to monitor the rail network on an ongoing basis. Part III contends that the proposed regulations that would require permanent data reporting related to the ongoing service recovery should be sunset when service returns to normal levels because they will not be relevant or useful to a future service disruption. Part IV contains technical suggestions regarding the proposed rules.

## **Background**

### Recent Service Disruption Resulted From a Unique Combination of Unforeseen Growth in Demand and Protracted Severe Weather

The U.S. railroad industry confronted a number of challenges beginning in the 2013-2014 winter that have impacted service, particularly in the upper plains region of the country. Substantial and unpredicted growth in demand for rail service across market sectors was a key factor behind the service issues. Growth occurred rapidly, in markets and locations that were, in many cases, different from where the rail industry has experienced past growth. Individual railroads experienced significant regional increases as early as October 2013, and from March

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<sup>2</sup> The performance measures are available online at <http://www.railroadpm.org/>. Canadian Pacific Railway reports cars on line, train speed, and terminal dwell on its own website, using different definitions for two of the three metrics.

2014 through August 2014, year-over-year monthly rail carload growth averaged 4.8 percent, due to (among other things) a record grain crop, recovery in demand for coal to generate electricity, and better general economic conditions. Because the U.S. railroad industry is an interconnected network, localized problems can have operational impacts throughout the system.

The impact of increased demand on the fluidity of the rail network was exacerbated by the historically harsh winter experienced by much of the country. Extreme weather events, particularly sustained over a long period of time, can wreak havoc on rail operations. For example, extremely cold weather forces railroads to dramatically shorten the length of their trains, while snow accumulation can make it difficult to keep rail yards functioning. While the 2013-14 winter was unusually harsh in much of the country, it was especially so in the critical rail hub of Chicago, where repeated winter storms did not allow the usual time between storms to remove snow and work off the backlog of traffic that accumulated during the storm. The problems in Chicago and elsewhere in the Midwest were compounded by the fact that the severe weather also occurred unusually far south so that the geography needing relief was much larger. Usually, the southern routes serve as relief valves for rail operations during northern disruptions, and early in the 2013-2014 winter diversion of trains into this region was being planned, where possible. However, that outlet was not generally available. For example, a series of ice storms in a band between Atlanta and Memphis made it unsafe, sometimes impossible, for train crews to get to work in this region or for maintenance crews to properly tend to the many day-to-day problems requiring resolution in a properly operating railroad. The result was rail congestion in an area which has typically been available to relieve problems created by winter weather further north.

## The Railroad Industry Continues to Respond to the Service Disruption

Moving increased traffic, especially under extreme conditions, requires more resources: equipment, line and terminal capacity, and employees. That is why freight railroads have been expending, and will continue to expend, enormous resources to improve their asset base and increase and train their work forces. Class I railroads spent more than \$25 billion in each of the last three years on capital investments and maintenance expenses related to their track, signals, bridges, tunnels, terminals, locomotives, freight cars and other infrastructure and equipment. Looking ahead, carriers have announced plans to spend some \$29 billion – an all-time record – for the same purposes in 2015.<sup>3</sup> The Class I freight railroads believe this investment will help restore service to the levels that their customers have come to expect.

In addition, the railroads have been aggressively hiring and training new employees. Class I freight railroad employment totaled 170,841 in December 2014, up 8,031 employees (4.9%) from December 2013 and the highest monthly total since 1999. Freight railroads estimate they will hire 15,000 people in 2015, building on trends during the past five years. Hiring and training new employees will help to ensure that adequate resources are available in the future to properly meet customer requirements.

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<sup>3</sup> “The U.S. Department of Transportation estimates that the tonnage of freight moving by rail will increase by 88 percent through 2035. To handle this future growth, we’ve got to start preparing and improving today. Some recent events highlight challenges we will have to overcome. Over the past year, high demand and a harsh winter resulted in severe delays in several parts of the country. Railroads responded by investing record amounts to expand capacity, buy new equipment, and hire more crew.” Opening Statement of Senator Bill Nelson, Senate Committee on Commerce, Science and Technology, Hearing on Freight Rail Transportation: Enhancing Safety, Efficiency, and Commerce (Jan. 28, 2015) available at [http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord\\_id=f7f97386-494f-4a18-a6c1-ae0c39ea97dd&Statement\\_id=02d3ea34-ab82-49b4-a593-8db59bbf9f93&ContentType\\_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group\\_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=1&YearDisplay=2015](http://www.commerce.senate.gov/public/index.cfm?p=Hearings&ContentRecord_id=f7f97386-494f-4a18-a6c1-ae0c39ea97dd&Statement_id=02d3ea34-ab82-49b4-a593-8db59bbf9f93&ContentType_id=14f995b9-dfa5-407a-9d35-56cc7152a7ed&Group_id=b06c39af-e033-4cba-9221-de668ca1978a&MonthDisplay=1&YearDisplay=2015) (last accessed Feb. 9, 2015).

Railroads also continue to devote enormous resources to network and operations management. The challenge continues to design plans that optimize the thousands of competing demands placed upon the railroads each day. Railroads do their best to fine tune their operations when and where possible to respond to weather and other exigencies and to adapt to shifting traffic. Indeed, it is in the carriers' best interest to keep the system fluid and to move freight. To do so, these carriers balance the shipping needs of thousands of customers moving many commodities.

In Chicago, the Chicago Transportation Coordination Office ("CTCO") works to identify critical factors impacting rail operations within the Chicago Complex. The railroads that make up the CTCO proactively monitor critical vital signs, revise operating conditions, and implement appropriate targeted actions to maintain fluid operations to, from, and through Chicago. Through CTCO, lessons learned are compiled and reviewed for continuous process improvement following completion of each winter season. As a result of lessons learned during the recent service disruption, the CTCO has established automatic triggers based upon defined criteria for monitoring the operating conditions ("OpCon") of the various elements that make up the Chicago complex. At times, it may be appropriate for railroads to override such automatic changes due to dynamic variables that may not be captured through automated data systems. Additionally, there are some instances that railroads may request votes to implement elevated OpCon levels for conditions not captured by automation.

Efforts on these three fronts – additional equipment and infrastructure, personnel, and network management – are paying dividends. Service levels improved in 2014 and railroads are working this winter to mitigate any disruptions caused by winter weather. *See, e.g.*, "Grain Shippers report Much-Improved Railroad Service," *Farm Futures* (Feb. 12, 2015) (available at

<http://farmfutures.com/story-grain-shippers-report-much-improved-railroad-service-0-123925>) (“Last year, there was widespread frustration and exasperation throughout agriculture. This year, rail service – especially in the western parts of the corn and soybean belt – is much more reliable and responsive. Railroads need to be commended for their performance thus far. We hope to see this continue,” Mike Steenhoek, executive director of the Soy Transportation Coalition, said in a statement.) When severe winter weather hit Chicago, CTCO elevated the terminal’s OpCon level, the railroads that make up CTCO implemented their contingency protocols, and CTCO was able to return the terminal to the normal OpCon level. While challenges remain, railroad service is trending in the right direction. Absent further weather disruptions, rail carriers are optimistic that service will continue to improve.

Relevant Information Has Been Available to the Board and the Public during the Service Recovery

From the outset of the recent service disruption, the Board has been informed as to the status of the national rail network and engaged in formal and informal oversight of the railroad industry as the industry managed this recovery. In response to changes evident in the metrics reported publicly and reports from rail customers, the Board engaged in communication and information-gathering from the beginning of the service disruptions at the end of 2013. The Board members wrote to two rail carriers in February of 2014 regarding service and met with senior executives. The Board's Rail Customer and Public Assistance (“RCPA”) staff has held meetings with shippers and politicians throughout the upper Midwest to better understand ongoing service issues and to explain the Board’s regulatory responsibilities. The Board has also held two public hearings on rail service issues in Washington, D.C., and Fargo, ND. In response to speculation at the hearing that there was potential for delayed fertilizer deliveries for the spring planting season, the Board issued an order on April 15, 2014 that directed two rail carriers

to provide their plans to ensure delivery of fertilizer shipments, and to provide status reports regarding such deliveries over a six week period.

Citing hearing testimony by shipper associations for disclosure of more aggregated railroad-level performance data, the Board issued an order on October 8, 2014, seeking weekly reports from all Class I railroads and the Class I railroad members of the CTCO on an interim basis, containing specific performance data. *See U.S. Rail Serv. Issues—Data Collection*, EP 724 (Sub-No. 3) (STB served Oct. 8, 2014) (“October 8 decision”). Specifically, railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination or scheduled interchange, and loading metrics for grain and coal service, and data related to Chicago, among other items.

Though the Board did not seek public comment of this modification of its reporting rules and did not submit this collection of information to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act,<sup>4</sup> each Class I railroad and the AAR, on behalf of its six freight railroad members that participate in the Chicago Transportation Coordination Office (CTCO), voluntarily filed weekly reports in response to the October 8 Decision. As requested by the Board, each carrier also provided an explanation of its methodology for deriving performance data in response to each request. Because the metrics were developed without input from the railroad industry, some railroads were unable to report certain metrics, and each railroad reported data to the best of its ability. As acknowledged in the

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<sup>4</sup> The PRA prohibits agencies from penalizing or denying a benefit to: (1) those who fail to respond to Federal Collections of information that do not display valid OMB control numbers and (2) those who have not been informed that response is not required unless the collection of information displays a valid control number. 44 U.S.C. § 3512(b); *Saco River Cellular Inc. v. FCC*, 133 F.3d 25 (D.C. Cir. 1998). As the Board has noted, “[t]he display of a currently valid OMB control number for this collection is required by law. Under the PRA and 5 C.F.R. § 1320.11, 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.” *Information Required in Notices and Petitions Containing Interchange Commitments*, EP 714 (STB served Sept. 5, 2013) slip op. at 8.

NPRM, differences in reporting approaches were primarily due to the railroads' disparate measurement and data-keeping systems.

### The NPRM

The NPRM now proposes to make most of the data requests from the October 8 decision permanent by regulation. The proposal contains nine reporting requirements for Class I railroads, with many sub-parts. The first three requirements coincide with data already made public by the railroads through the AAR (train speed, terminal dwell, and cars on line). The proposal would also require reporting: (4) average dwell time at origin or interchange location; (5) total number of trains held short of destination or scheduled interchange for more than 6 hours; (6) average number of cars that have not moved in more than 120 hours and those cars that have not moved in more than 48 hours but less than 120 hours; (7) total number of grain cars loaded and billed by state; (8) data related to grain car orders; and (9) total number of coal unit train loadings or car loadings by coal production region. On a quarterly basis, each Class I would also be required to report all work in progress, major rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose. Though the term "project" is undefined by the NPRM, it proposed to define "major" to refer to projects whose budget equals or exceeds \$25 million over the life of the project.

With regard to Chicago, the NPRM would also require the Class I members of CTCO to report average daily car volume for 11 Chicago yards and average daily number of trains held for delivery to Chicago. Under the proposal, CTCO would also be required to file written notice each time the Chicago terminal changes its operating alert status within one business day of that change in status.

## Comments

### **I. Any New Rules Requiring Service Data Reporting Should Be Narrowly Tailored to Those Necessary to Allow the Board to Carry Out Its Statutory Responsibilities**

As a general rule, federal agencies should not create burdensome new information requirements without carefully balancing the usefulness of the information required with the burden imposed. Specifically, any ongoing collection of railroad service information should be limited to what is necessary for the proper performance of the Board's statutory responsibilities, consistent with the PRA. Individual railroads will detail in their submissions in this proceeding the particular burdens for their companies associated with complying with the NPRM's proposals. Carefully balancing those burdens with the practical utility of the information collected as contemplated by the PRA would ensure that the collection of the information is necessary for the proper performance of the functions of the agency. 44 U.S.C. § 3508. It would also minimize the Federal collection burden, with particular emphasis on those individuals and entities most adversely affected, and maximize the practical utility of the information collected by the Federal government. 44 U.S.C. § 3504.

Such an analysis would also align with the sound policy concerns regarding the burdens imposed by Federal information gathering that caused the President to issue Executive Order 13563, "Improving Regulation and Regulatory Review," which states that to the extent permitted by law, each agency must take into account "among other things, and to the extent practicable, the costs of cumulative regulations" and that each agency should "propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs." *See* Memorandum for the Heads of Executive Departments and Agencies, Cass R. Sunstein Administrator the Office of Information and Regulatory Affairs (March 20, 2012).

Reporting requirements impose real world costs on railroads and service reporting diverts railroad operating personnel from their principal mission of running the railroad. *See Joint Petition for a Further Service Order*, SO 1518 (Sub-No. 1) *et al.*, (STB served July 31, 1998) slip op. at 4 (“We recognize, however, that information filing can be burdensome, particularly as it is currently configured, and that it can divert resources away from the transportation issues . . . .”). If the Board adopts any new permanent reporting rules, the Board should continue to be mindful of the costs that ongoing operating data reporting imposes and how those costs can impact service. By diverting operating resources away from operations to prepare and compile reports, reporting burdens can impact the very issues that are of concern to the Board.

These costs and burdens outweigh the benefits of many of the proposals in the NPRM because of the Board’s limited ability to remedy a wide-spread service disruption caused by severe weather and capacity constraints. Though the Board has authority pursuant to 49 U.S.C. § 11123 to issue emergency service orders, that extraordinary action is limited to situations where the Board finds that a “failure of traffic movement exists which creates an emergency situation of such magnitude as to have a substantial adverse effects on shippers, or on rail service in a region of the United States.” 49 U.S.C. § 11123(a). The agency has recognized in the past that “the statute, on its face, does not give [the Board] carte blanche to direct service simply because a party would prefer to be served one way rather than another; rather, Congress intended that the power be used sparingly and in a focused way.” *Joint Petition for a Further Service Order*, SO 1518 (Sub-No. 1) *et al.*, (STB served July 31, 1998) slip op. at 4. *See also Expedited Relief for Service Inadequacies*, EP 628 (STB served May 12, 1998)(“We caution that the proposed rules are not meant to redress minor service disruptions. Access – particularly that which would compel physical access by another railroad over an incumbent's lines – is a serious

remedy with potentially significant operational, safety, and financial consequences for the involved carriers, and we intend that the rules be used to remedy only substantial service problems that cannot readily be resolved by the incumbent railroad.”).

There is a good reason why the Board has limited authority over service issues. The Board has regulatory tools to take certain actions when rail service to customers is disrupted, but those tools are designed to alleviate disruptions caused by the actions or failures of a single railroad. When confronted by the challenges posed by prolonged severe weather and rapid increases in demand in a capacity constrained environment, the Board has wisely noted that those regulatory cures may be worse than the disease. As Chairman Elliott noted at the hearing in Fargo, ND, “the Board has been and must be careful about not requiring actions that have negative, unintended consequences.” Fargo Hearing Transcript at 11. Similarly, now acting Chairman Miller noted that she was “mindful that the Board needs to be careful in whatever future actions [it] take[s]. Despite calls for the Board to take strong measures, [she was] aware that such measures are just as likely to end up doing more harm than good.” Fargo Hearing Transcript at 17. Now Vice-Chairman Begeman stated similar concerns in April, in saying that the Board doesn’t “want to cause harm, or unintended consequences despite . . . best intentions.” April Hearing Transcript at 471.

The Board has prudently taken an approach during the recovery from the most recent service disruption that did not create additional impediments to improving rail service. As detailed above, the Board has been monitoring information in a variety of forms for over a year regarding the ongoing service situation and interacting with both railroads and shippers to facilitate information flows, where it can. It has supplemented the substantial information that railroads already provide to their customers with more generalized system-wide information.

Existing regulations allowed the Board to effectively monitor the industry during the recent service disruption. As more fully explained below, there is no basis for the Board to conclude that the proposed additional regulations would substantially improve its ability to monitor the railroad industry or otherwise carry out its statutory responsibilities.

## **II. The Best Way to Leverage the Board's Scarce Administrative Resources is to Monitor Macro System-Level Metrics to Identify Areas of Concern.**

There is a substantial amount of information available to the Board and to railroad customers to allow them to monitor the railroad industry and identify service disruptions. As noted above, the rail industry has made network level metrics (cars on line, train speed, and terminal dwell) publicly available on a weekly basis since 1999. These metrics provide a baseline to compare a railroad's performance over time to know if service is improving or deteriorating.<sup>5</sup>

Cars on line is the average of the daily on-line inventory of freight cars. A spike in cars on line may indicate that network fluidity is decreasing. Train speed measures the line-haul movement between terminals. System-wide average train speeds are given for the following train types: intermodal, manifest, multilevel, coal unit, grain unit, and all trains. Velocity is a key component to a fluid network. Terminal dwell is the average time a car resides at the specified terminal location expressed in hours. Rising terminal dwell times can indicate declining service.

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<sup>5</sup> It is important to note that, although monitoring macro-level service metrics may provide some insight into how railroads are performing, these macro-level metrics are reflective of service conditions rather than being predictive of the future. Service disruptions typically are caused by conditions that are outside of the control of, and not necessarily predictable by railroads, such as general economic conditions, changes in mix or origin-destination specific demand for rail services and extreme weather. A change in macro-level service metrics can only help identify a growing service disruption, and cannot provide much insight into how or why the issue is occurring, and certainly should not be used to infer that railroads necessarily are to blame for deteriorating service conditions.

The railroad industry also provides to the Board detailed traffic reports on a weekly basis, covering 20 carload commodity categories and the two intermodal service types (containers and trailers). The AAR's Weekly Railroad Traffic report provides rail traffic statistics for all Class I and other selected railroads. Traffic is identified as either originated by the reporting railroad, or received from a connecting railroad during the week. This allows the Board to monitor trends in the level of business, another key element in assessing current network performance. Carriers also provide through-put data to the Board that is posted to the Board's website. Each carrier reports quarterly both total tons and ton-miles moved by that railroad in the Quarterly Condensed Balance Sheet (OMB Clearance No. 2140-0012).

In addition, service information is available to the Board and customers via communications from the railroads and on individual railroad websites. Railroad submissions in this proceeding will detail the extensive information sharing that railroads provide to their customers. Railroads also make general service data available publicly. As one example, Norfolk Southern has a service website that is updated monthly.<sup>6</sup>

Taken together, this information allows the Board and the public to monitor the overall fluidity of the network and service impacts to railroad customers. Last year, the available information and public metrics indicated to the Board early on that service was being disrupted and allowed the Board to focus on the relevant issues it needed to monitor. *See* April Hearing Transcript at 7-8 (Chairman Elliott reported that “[t]he Board has been closely watching the rail industry’s performance metrics, and [the Board was] very concerned about the effects of these service issues. Shippers have also contacted the Board to express concerns.”). To meet its stated goal of monitoring for future service disruptions, the Board should continue to monitor these

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<sup>6</sup> <http://www.nscorp.com/content/nscorp/en/ship-with-norfolk-southern/service-update.html>

macro-level indicators to know that a problem may exist and when the Board should seek more burdensome granular reporting. *See Rail Service in the Western United States*, EP 573 (STB served Dec. 22, 1998) slip op. at 2. (“In light of the industry-wide data and the service improvements in the West, we are eliminating the reporting required in this proceeding effective after the first weekly industry reports are issued by the Class I carriers. We believe that it is preferable that performance measures for Class I carriers be reported on an industry-wide basis to encourage a uniform basis for the reported data. Nevertheless, we will not hesitate to impose selective reporting requirements in the future when we have reason to believe that such requirements are needed in the public interest.”).

In contrast to the first three proposed metrics in the NPRM, the other proposed metrics would create burdens on rail carriers without providing the public and the Board commensurate benefits to justify those burdens. Proposed metric numbers 4 through 6 would provide data repetitive of the published AAR metrics (or would be so tightly correlated with metrics numbers 1 through 3 so as to provide no added benefit) and would require substantial effort on the part of some carriers to measure, collect and report data that they do not so in the normal course of business. Also to the extent those metrics, like proposed metrics 7 through 9, are directly related to the commodities and regions impacted by the recent service disruptions, they should not be required to be reported in perpetuity, as explained below.

### **III. Reporting Requirements Related to Current Service Conditions Should be Temporary and Removed When Service Levels Return to Normal Levels**

Some of the data requested on a temporary basis by the Board in the October 8 decision reflected the particular service issues that were ongoing at that time. Because of the immediate impacts of this particular disruption, the Board sought extensive information related to specific commodities such as grain and grain related products, and to a lesser extent coal and related to

specific geographic regions. But as noted above, this temporary service disruption was caused by unique economic and operational factors that emerged during 2013-2014. There is no reason to believe that if there is a future service disruption that would warrant federal monitoring that it would be helpful to have reporting focused on grain and coal or information related to the northern plains. For example, had the Board adopted permanent reporting requirements in the late 1990s regarding aggregate disruptions in the Houston area, these metrics would have been worthless for the most recent service disruptions. See *Union Pacific Corp. et al. – Control and Merger – Southern Pacific Rail Corp. et al.*, FD 32760 (Sub-No. 21)(considering service disruption in aggregates service in the Houston area).

Moreover, shippers of other commodities not encompassed by the October 8 decision have rightfully noted their importance to the national economy. But rather than requiring granular reporting for every commodity and every region of the country, the focus of the Board should be on the fluidity of the national system. Commodity specific and geographic reporting may give a distorted view of the network as a whole. Different commodities move in different service and utilize different equipment. Focusing on differences in service levels between commodities may further obscure rather than clarify how a particular railroad or how the rail industry's network as a whole is performing. Similarly, geographic reporting will not allow useful comparisons of data due to capacity and weather differences. Such reporting may also incentivize litigation and interest groups seeking to prioritize certain favored businesses or commodities through political influence rather than sound and safe railroad operational decision making.

Finally, as service continues to improve, extensive temporary reporting specifically relevant to this disruption should be revisited in the near future. The Board has correctly noted

in the past, “as service improves, the appropriate government response in a service oversight proceeding such as this one ought to be to intervene less rather than more.” *Rail Service in the Western United States*, EP 573 (STB served Sept. 22, 1998) slip op. at 4 & fn. 9. Accordingly, the AAR submits that only macro metrics should be permanent. Any reporting on specific commodities or regions should be eliminated or should be automatically sunset after a specified period of time.

#### **IV. Technical Suggestions**

##### **A. Role of AAR and Railinc**

The NPRM asks for comments regarding which data requests can be reported through the AAR or Railinc. Railinc, a subsidiary of the AAR, is the leading provider of information technology, related network operations and financial services, and near real-time network data to North America's railroads. Currently, the AAR and Railinc would only have the ability to report metrics related to system-average train speed, average terminal dwell, and average cars on-line. Of those metrics, which correspond to the AAR published metrics, Railinc collects only the data necessary to report cars on-line. The individual railroads generate the data necessary for train speed and terminal dwell and populate the metrics website, which is managed by AAR. Railinc generally collects car event data and not the train data necessary for many of the proposed regulations. For example, Railinc does not have the data necessary to report the proposed metric number 4, average dwell time at origin or interchange location of loaded unit trains by train type or proposed metric number 5, number of loaded and empty trains held short of destination or scheduled interchange. Moreover, as the Railinc data is generated by event data, metrics like the proposed number 6, cars which have not moved in certain time periods, requires analysis of a

lack of an event, and as such, Railinc does not currently have the information necessary to fulfill the proposed regulation on behalf of the railroads.

#### B. Definition of unit train

Proposed 49 CFR § 1250.2 would define a unit train as “a train comprising 50 or more railcars of the same or similar type, carrying a single commodity in bulk.” The Board has likely attempted to mimic how its Uniform Railroad Costing System (“URCS”) treats unit trains, as URCS will cost movements of 50 or more cars as a “trainload.” However, that costing definition is problematic in a service metrics context because it would divorce service reporting from how railroads and their customers think about shipments in a commercial sense. Generally, unit trains refer to trains that operate for the account of a single customer operating between a single origin and a single destination. There are shipments of fewer than 50 cars that railroads and their customers regard as units and there are shipments of greater than 50 cars that railroads and their customers do not. Instead of defining unit trains based on the number of cars, the Board should rely on the designations that railroads use with their customers.

#### C. Reporting on major rail infrastructure projects

Though the NPRM would require Class I railroads to report on a quarterly basis all work in progress, major rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose, it is unclear how the Board would define “project.” Similarly, the NPRM does not define “percentage complete,” which could be measured in a variety of ways such as by percentage of total time or percentage of total cost, among others. Such ambiguity makes it difficult to analyze the burdens associated with preparing such a report. The AAR submits that the best way for the Board to stay apprised of railroad investment in infrastructure

would be to collect an annual narrative by each Class I railroad describing their plans for the year and receive periodic updates on status. For example, carriers could submit their plans in March of each year and provide narrative updates mid-year and after the end of the year. Longer term plans often change with changes to markets and the economy as a whole, and the Board should not promulgate any regulations that could have the effect of locking in spending decisions too far in advance and potentially misallocating resources.

#### D. Reporting week

The NPRM proposes to change the reporting week for data that the railroads have used since 1999 for train speed, terminal dwell and cars on line. Individual railroads will comment on their own data systems and the impact such changes would have. From the rail industry perspective, the AAR submits that Board should not change the reporting week because it would break the continuity of data that the Board has stated that it is seeking to maintain.

#### E. Reporting day

The NPRM proposes to require railroads to file weekly reports “between 9 AM and 5 PM Eastern Time on Tuesday of each week.” The AAR suggests that the Board modify this requirement to allow data to be filed on Friday of each week, covering the previous reporting week. This extra time would allow for efforts to ensure data accuracy and account for the challenges that severe weather, holidays, or the unavailability of key personnel can present to timely filing.

#### F. Method of reporting

Finally, should the Board move forward with reporting regulations, it should clarify that all reports should be submitted once by e-mail to the Office of Public Assistance, Governmental Affairs, and Compliance (“OPAGAC”). The proposed § 1250.1 states that “data must be filed

in Excel format, using an electronic spreadsheet made available by [OPAGAC], and should be e-mailed to [data.reporting@stb.dot.gov](mailto:data.reporting@stb.dot.gov).” It is unclear from that sentence if the Board intends data to be filed through its normal process and e-mailed or only e-mailed to OPAGAC. Formal filings through the Board’s e-filing system is cumbersome and doing so on a weekly basis is unnecessarily burdensome. The Board should simply require one submission via e-mail.

### Conclusion

Based on the foregoing, the Board should carefully balance the practical utility of the information it is proposing to require Class I railroads to report with the burdens that reporting will impose. As a result of that analysis, the Board should not make data reporting related to the current service recovery permanent, but should instead rely on system-level metrics to identify future service disruptions, should they occur.

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