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SERVICE DATE – LATE RELEASE AUGUST 18, 2014

SURFACE TRANSPORTATION BOARD

NOTICE

Docket No. EP 724

UNITED STATES RAIL SERVICE ISSUES

Docket No. EP 724 (Sub-No. 2)¹

UNITED STATES RAIL SERVICE ISSUES—GRAIN

Decided: August 18, 2014

AGENCY: Surface Transportation Board.

ACTION: Notice of Public Hearing.

SUMMARY: The Surface Transportation Board (Board) will hold a public field hearing on September 4, 2014, at the Hilton Garden Inn in Fargo, N.D., to provide interested persons the opportunity to report on service problems in the United States rail network, to hear from rail industry executives on their efforts to address service problems, and to discuss additional options to improve service.

DATES: The hearing will be held on September 4, 2014, beginning at 8:00 AM at the Hilton Garden Inn located at 4351 17th Avenue South, Fargo, N.D. The hearing will be open for public observation. Any person wishing to speak at the hearing shall file with the Board a notice of intent to participate, identifying the party and the proposed speaker, no later than August 25, 2014. The notices are not required to be served on the parties of record; they will be posted to the Board's website when they are filed.

ADDRESSES: All notices may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the "E-FILING" link on the Board's website at "www.stb.dot.gov." Any person submitting a notice in the traditional paper format should send an original and 10 copies of the filing to: Surface Transportation Board, Attn: Docket No. EP 724, 395 E Street, S.W., Washington, DC 20423-0001.

¹ These proceedings are not consolidated. A single decision is being issued for administrative convenience.

Copies of the notices will be posted to the Board's website and will be available for viewing and self-copying in the Board's Public Docket Room, Suite 131. Copies of the notices will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Board has been closely monitoring the rail industry's performance since service problems began to emerge last year, and has taken a number of actions, both formal and informal to address those problems. The Board's Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) has been working with rail carriers to address and correct service issues as they arise. Representatives of OPAGAC have held numerous meetings and conference calls with affected parties to better understand the specific problems shippers are facing, and to help facilitate a quick resolution whenever possible. OPAGAC's outreach has included confidential, one-on-one meetings with affected stakeholders in Fargo, N.D., Sioux Falls, S.D., Bloomington, Minn., and Malta, Mont. OPAGAC also held one-on-one meetings at the National Coal Transportation Association meeting in Hilton Head, S.C., and the North American Rail Shippers Association meeting in San Francisco, Cal.²

Earlier this year, the Board Members wrote to BNSF Railway Company (BNSF) and Canadian Pacific Railway Company (CP)³ to express their concerns that poor service was negatively affecting agricultural, coal, passenger, and other traffic. At the Board's request, senior management representatives of BNSF and CP have met individually with Board Members on a number of occasions, and the Board requested certain additional reporting data from the two railroads.

On April 10, 2014, the Board held a public hearing at its offices in Washington, D.C., to address service problems affecting the United States rail network. Because service problems for many commodities have been particularly acute on the systems of CP and BNSF, the Board directed representatives of those carriers to testify at the April 10 hearing. During the hearing, representatives of the railroad industry described several factors that contributed to the

² The Board's upcoming hearing is not intended to replace the informal and confidential process facilitated by OPAGAC, and shippers and railroads are encouraged to continue communicating through that office.

³ See Letter from Daniel R. Elliott III, Chairman, and Ann D. Begeman, Vice Chairman, STB, to Carl Ice, President and Chief Exec. Officer, BNSF Ry. Co. (Feb. 5, 2014) (on file with the Board), available at <http://stb.dot.gov> (open tab at "E-Library," select "Correspondence," select "Fall Peak Letters," follow "02/05/2014" hyperlink, and select the ".pdf" icon); Letter from Daniel R. Elliott III, Chairman, and Ann D. Begeman, Vice Chairman, STB, to E. Hunter Harrison, Chief Exec. Officer and Dir., Canadian Pac. Ry. Co. (Mar. 6, 2014) (on file with the Board), available at <http://stb.dot.gov> (open tab at "E-Library," select "Correspondence," select "Fall Peak Letters," follow "03/06/2014" hyperlink, and select the ".pdf" icon).

deterioration of rail service, including strained track capacity, unexpected volume growth, crew and personnel shortages, lack of locomotives, severe weather, and congestion at major gateways, in particular, Chicago, Ill. CP's President and Chief Operating Officer estimated that CP's service would be restored to normal in four to six weeks "if everyone does their part."⁴ BNSF committed to moving last year's crop prior to the fall harvest.⁵

A large number of shippers representing many different commodities expressed concerns about service during the hearing. Farmers and representatives of agricultural producers expressed concern about the negative effects of delayed fertilizer deliveries, backlogged grain car orders, and delayed shipments of loaded grain cars. Reported impacts resulting from these delays include little to no storage capacity at many grain elevators, risks of stored grain spoiling, lost sales, financial loss related to underutilization of shuttle trains, penalties incurred by grain shippers for products not delivered on time, buyers shifting to foreign suppliers, and damage to the reputation of the United States agricultural industry. Representatives of other industries described supply chain disruptions in shipments of coal, chemicals, feed, sugar, and paper, among other commodities. Amtrak's Vice President for Operations described the serious effects that rail network congestion and delays have on passenger service.

In response to testimony about delayed and curtailed fertilizer deliveries and the severe impact such delays would pose for spring planting, on April 15, 2014, the Board directed CP and BNSF to provide their plans to ensure delivery of fertilizer shipments,⁶ and to provide status reports regarding such deliveries over a six week period. The Board understands that fertilizer deliveries largely met demand for spring planting in a timely manner. Among other steps, BNSF added cars to the existing fertilizer service fleet and allowed locomotives to remain with fertilizer trains during loading and unloading to reduce potential delays and provide expedited turn around service at origin and destination. In this way, over the six week reporting period, BNSF moved 56 trainloads of fertilizer (ranging from 65-85 cars) in BNSF-direct unit train service. CP moved 2636 fertilizer carloads over the six week reporting period.

The Board has continued to monitor CP's and BNSF's progress in moving the 2013 crop. Recognizing the limited time until the next harvest, the large quantities of grain that remained to be moved, and the Board's concerns about the railroads' paths towards meeting their respective commitments, on June 20, 2014, the Board directed CP and BNSF to provide and/or update their

⁴ Hr'g Tr., at 253, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014).

⁵ Letter from Carl R. Ice, President and Chief Exec. Officer, BNSF Ry. Co., to Daniel Elliott, Chairman, Ann Begeman, Vice Chairman, and Debra Miller, Comm'r, STB (May 7, 2014), at 2, available at <http://stb.dot.gov> (open tab at "E-Library," select "Correspondence," select "Fall Peak Letters," follow "05/07/2014" hyperlink, and select the ".pdf" icon); Letter from Carl R. Ice, President and Chief Exec. Officer, BNSF Ry. Co., to Daniel Elliott, Chairman, Ann Begeman, Vice Chairman, and Debra Miller, Comm'r, STB (June 4, 2014), at 2, available at <http://stb.dot.gov> (open tab at "E-Library," select "Correspondence," select "Fall Peak Letters," follow "06/04/2014" hyperlink, and select the ".pdf" icon).

⁶ U.S. Rail Serv. Issues, EP 724 (Sub-No. 1), slip op. at 1 (STB served Apr. 15, 2014).

respective plans to reduce the backlog of unfilled grain car orders, to resolve grain car delays,⁷ and to provide weekly status reports regarding the transportation of grain⁸ on their networks (for CP, on its United States network).

BNSF has made considerable documented progress in reducing not only the number of backlogged orders, but also the average number of days late for such orders. Most of BNSF's remaining backlogged orders are now less than 20 days late, and the majority of those orders are less than 10 days late.⁹ BNSF has also committed to a substantial infrastructure investment and has reallocated resources to improve its service performance.¹⁰

CP's reporting does not substantiate similar progress. A sizeable backlog remains on CP's system, and CP does not appear to be making sufficient progress towards eliminating the backlog based on its status reports.¹¹ This problem is compounded by the fact that, according to CP, the actual size of the backlog is indeterminate.¹² CP's average days late metric, reported either in weeks or days, also has not improved.¹³ The data suggests that CP will not be able to clear the backlog prior to this year's harvest, which has already started for some commodities in some regions. In addition, the data raises concerns for the Board regarding whether CP's interchange with the Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E) has been fluid and reliable enough to reduce the grain car backlog on RCP&E's South Dakota railroad line, which CP owned until recently. RCP&E became the new operator of the western portion of the Dakota,

⁷ U.S. Rail Serv. Issues—Grain, EP 724 (Sub-No. 2), slip op. at 3 (STB served June 20, 2014).

⁸ For purposes of this order, the term “grain” shall refer to, and include the following Standard Transportation Commodity Codes: 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines).

⁹ BNSF Status Report, Attach. C, U.S. Rail Serv. Issues—Grain, EP 724 (Sub-No. 2) (filed Aug. 8, 2014).

¹⁰ BNSF Hr'g Ex. 19, U.S. Rail Serv. Issues—Grain, EP 724 (filed Apr. 10, 2014).

¹¹ CP Status Report, App. 1, U. S. Rail Serv. Issues—Grain, EP 724 (Sub-No. 2) (filed Aug. 8, 2014).

¹² CP Status Report, U. S. Rail Serv. Issues—Grain, EP 724 (Sub-No. 2) (filed June 27, 2014); CP Status Report, U. S. Rail Serv. Issues—Grain, EP 724 (Sub-No. 2) (filed July 7, 2014) (stating that under CP's unique grain car request system, the number of car requests is not an accurate measure for demand because a customer can make unlimited car requests, which are reported as “unconstrained orders” and are considerably higher than what CP estimates to be its actual backlog).

¹³ Compare CP Status Report, App. 1, U.S. Rail Serv Issues—Grain, EP 724 (Sub-No. 2) (filed Aug. 1, 2014) with CP Status Report, at Annex 1, U.S. Rail Serv. Issues—Grain, EP 724 (Sub-No. 2) (filed June 27, 2014).

Minnesota & Eastern Railroad sold by CP through an agreement executed May 31, 2014.¹⁴ RCP&E is now the primary carrier for much of South Dakota's grain, and relies heavily on CP for locomotive power, cars, interchanges, and through service for its customers.

In addition, the U.S. Department of Agriculture has forecasted that the harvest for the 2014-2015 season will be at above average or record levels for many grains,¹⁵ meaning that the volume of grain that needs to be shipped by rail will again be above average over the coming months. As the new harvest ramps up, storage space at many elevators reportedly is already unavailable or very limited. As a result, some farmers are being forced to store grain on-site in bins, bags, or on the ground, or to truck grain to distant elevators. The Board remains very concerned about rail service to the agricultural industry going forward, particularly in the Midwest and central Northern region of the rail network.

Because of these ongoing concerns, the Board will direct CP and BNSF to provide additional information in their weekly status reports in Docket No. EP 724 (Sub-No. 2). The Board will direct CP to state in its weekly status reports the number of locomotives moving outbound from the RCP&E system onto CP's system and the number of locomotives moving inbound to the RCP&E system from CP. The Board will also direct CP to provide, together with its weekly status report due on August 22, 2014: (1) a plan to ensure that RCP&E can maintain locomotive resources on the RCP&E system sufficient to support outbound train movements, and in particular to work through backlogged grain shipments; and (2) an updated plan to reduce CP's backlog of unfilled grain car orders and resolve grain car delays on its United States network, including its timeline for doing so. In order to better track BNSF's progress with regard to grain shuttle transportation, the Board will direct BNSF to include in its weekly status reports its plan versus performance for grain shuttle trips, by region, updated to reflect the previous four weeks.

With regard to more general system metrics, based on information obtained since the hearing, it appears that the same issues continue to hinder the industry's recovery, and key measures of overall rail performance are not improving. Despite the concerted efforts of several carriers to acquire additional locomotives, expedite infrastructure improvement, augment personnel, and better coordinate seasonal maintenance, these key measures have not shown sustained improvement. Publicly available key metrics¹⁶ such as system average train speed,

¹⁴ RCP&E Consummation Notice, Rapid City, Pierre & E. R.R.—Acquis. & Operation Exemption Including Interchange Commitment—Dakota, Minn. & E. R.R., FD 35799 (filed June 2, 2014).

¹⁵ U.S. Dep't of Agric., World Agric. Supply & Demand Estimates 1-5 (Aug. 12, 2014), <http://www.usda.gov/oce/commodity/wasde/latest.pdf>.

¹⁶ See Railroad Performance Measures, <http://www.railroadpm.org> (for each participating railroad's individual performance measures, click the railroad's name under "Performance Reports" and then click the "View 53 Week History" tab) (last updated Aug. 6, 2014) (reporting data for the four most recent weeks and historical comparisons of previous month versus year-over-year quarterly average).

dwell time at major terminals, and cars online reflect an industry that is still struggling to provide rail service at acceptable levels. System-wide train speeds are lower on average for most Class I carriers by two to three miles per hour, on a year-over-year comparison, and significantly slower than during periods of peak performance in the past. Dwell times at major terminals for most Class I railroads are up on average between three and five hours, reflecting congestion at major yards and slower interchanges. The number of cars online also remains elevated over previous years, reflecting not only growing demand for service, but also operational inefficiencies.

The Board continues to receive reports from coal-fired utilities, ethanol manufacturers, propane shippers, and others about growing cycle times, unreliable service, and the potential impact on rail shippers and receivers.¹⁷ For example, utility coal shippers have reported increased cycle times and irregular delivery of unit trains, which, in some instances, have severely strained stockpile inventories. Some coal-fired plants have incurred significant costs by purchasing replacement power from the grid, or reducing their generation. Coal-fired plants have also expressed concerns over their ability to rebuild stockpiles and manage inventory going forward.

Based on the foregoing, the Board is considering whether additional steps may be necessary to facilitate the recovery of the rail system. Under its governing statute, the Board has a range of available tools that could be used for this purpose, depending on the scope and magnitude of the ongoing service problems. Although the Board strongly favors private sector resolutions, further regulatory action may be warranted for expediting the overall recovery or alleviating particularly intractable service failures. The Board is also aware that any such action should not benefit one industry at the expense of others, or spur unintended consequences.

As part of its efforts to address service issues, the Board will hold a field hearing to discuss these issues with stakeholders from the most severely impacted regions. The hearing will be held on September 4, 2014 beginning at 8:00 AM, at the Hilton Garden Inn located at 4351 17th Avenue South, Fargo, N.D., to provide an opportunity for interested persons to report on the status of rail service and to discuss ways to remedy the current service problems. The Board will direct executive-level officials from CP and BNSF to appear at the hearing to discuss their ongoing and future efforts to improve service on their railroads and to provide an estimated timeline for a return to normal service levels. The Board particularly encourages impacted shippers and/or shipper organizations to appear at the hearing to discuss their service concerns and to comment on the railroads' progress and plans. Also, given that the service disruptions

¹⁷ See, e.g., Xcel Energy Comments, U.S. Rail Serv. Issues, EP 724 (filed July 31, 2014) (expressing concern over BNSF's ability to deliver sufficient coal to Xcel Energy's electric generating stations); Senator Grassley Letter, U.S. Rail Serv. Issues, EP 724 (filed July 25, 2014) (providing a communication from Dairyland Power Cooperative regarding power plants in Wisconsin that are short of fuel due to BNSF delivery issues); Senators Levin and Portman Letter, U.S. Rail Serv. Issues, EP 724 (filed July 8, 2014) (addressing impact of rail service problems on the auto industry); Growth Energy Letter, U.S. Rail Serv. Issues, EP 724 (filed Aug. 14, 2014) (describing concerns over efficient delivery of ethanol by rail across the country).

have hindered nearly all carriers, other Class I railroads and other affected carriers are invited to appear at the hearing.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. A public hearing will be held on September 4, 2014 at 8:00 AM, at the Hilton Garden Inn located at 4351 17th Avenue South, Fargo, N.D., as described above.

2. CP and BNSF are directed to appear at the hearing.

3. By August 25, 2014, any person wishing to speak at the hearing shall file with the Board a notice of intent to participate (identifying the party and the proposed speaker). The notices of intent to participate are not required to be served on the parties of record; they will be posted to the Board's website when they are filed.

4. CP is directed to state in its weekly status reports in Docket No. EP 724 (Sub-No. 2), the number of locomotives moving outbound from the RCP&E system onto CP's system and the number of locomotives moving inbound to the RCP&E system from CP.

5. CP is directed to provide with its weekly status report due on August 22, 2014, a plan to ensure that RCP&E can maintain locomotive resources on the RCP&E system sufficient to support outbound train movements, and in particular to work through backlogged grain shipments.

6. CP is directed to provide with its weekly status report due on August 22, 2014, an updated plan to reduce its backlog of unfilled grain car orders and resolve grain car delays on its United States network, including its timeline for doing so.

7. BNSF is directed to include in its weekly status reports in Docket No. EP 724 (Sub-No. 2), its plan versus performance for grain shuttle trips, by region, updated to reflect the previous four weeks.

8. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.