BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNITED STATES RAIL SERVICE ISSUES—PERFORMANCE DATA REPORTING

REPLY COMMENTS OF UNION PACIFIC RAILROAD COMPANY TO SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING

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REPLY COMMENTS OF
UNION PACIFIC RAILROAD COMPANY
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Union Pacific Railroad Company ("Union Pacific") submits these reply comments in response to the opening comments submitted by other interested parties. Given the voluminous record already established in this proceeding, we limit our comments to certain requests to add additional metrics beyond those included in the Board's Supplemental Notice of Proposed Rulemaking, as corrected, served on May 13, 2016 ("May Notice").[1]

I. NGFA's Requested Additional or Modified Items Would Not Be Useful to the Board or to Shippers and Would Create Unnecessary Burdens on the Railroads

Additional Commodities

The National Grain and Feed Association ("NGFA") renewed its request for reporting on numerous additional agricultural products.[2] NGFA asks for reporting on "all-inclusive categories for '***vegetable oils***' [to capture such products as soybean oil (STCC 20-921), corn oil (STCC 20-465), corn syrup (STCC 20-461), cottonseed oil (STCC 20-111), etc.] and '***vegetable meals'*** [to capture such products as soybean meal and hulls (STCC 20-923), oilseed meals (STCC 20-939), canola meal, cottonseed meal or by-products (STCC 20-914), vegetable oils (STCC 20-933) and

[1] Union Pacific also adopts the reply comments of the AAR.

[2] NGFA Comments, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed March 2, 2015).

other processed agricultural commodities."[3] No meaningful regulatory purpose would be advanced by reporting on unit trains of the vegetable oil commodities because Union Pacific does not operate unit trains of these commodities. The vegetable oil commodities nearly always move in manifest trains, which are already reported. Over the last three years, Union Pacific has not moved any dedicated trains of soybean oil, corn oil, cottonseed oil or any other vegetable oils and we moved only a handful of corn syrup trains. Even if these commodities were added to the unit train metrics, Union Pacific would typically have no additional data to report or on rare occasions may have only a single train for a particular customer. Nonetheless, compilation of the weekly reports would be complicated by the need to analyze additional data every week to confirm that we did not operate any trains of these commodities.

NGFA's request for reporting on car order metrics for vegetable oils and vegetable meals should be denied because, unlike grain which moves primarily in railroad-supplied cars, the majority of vegetable oils and vegetable meals moves in private cars. Vegetable oils and corn syrup move in tank cars, all of which are private, and over 75% of vegetable meals on Union Pacific move in private cars. Because of this, Union Pacific would have no data to report on the majority of these commodities for car orders placed by state in §1250.2(a)(8) and car order fulfillment in §1250.2(a)(12). Requiring Union Pacific to report car order metrics for these commodities would not accurately represent Union Pacific's service levels or Union Pacific's ability to meet customer demand because only a small minority of vegetable oil and vegetable meal traffic would be included.

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[3] NGFA Opening Comments, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed May 31, 2016) at p. 5. While NGFA's inclusion of vegetable oils (STCC 20-933) with vegetable meals might have been inadvertent, it should still be rejected. If the Board should ever consider requiring separate reporting of vegetable meals, STCC 20-933 should not be included in that category.

Finally, NGFA's request to add sub-categories for vegetable oils and vegetable meals for cars loaded and billed by state, in §1250.2(a)(7), should be denied because, as explained in our prior comments, requiring state-by-state reporting of oil and oilseeds runs the risk of revealing sensitive commercial information in weeks with few car loadings.[4]

Industry Spot and Pull

NGFA's request for an industry spot and pull ("ISP") metric should also be rejected because shippers already have access to this information for their own traffic. As explained by NGFA, ISP would measure "weekly percentage of a rail carrier's local service design plan that has been fulfilled for all single car and manifest traffic" and would be provided only "on a rail customer-specific basis contingent upon receiving a one-time written request from the rail customer."[5] As previously explained, Union Pacific already makes this information available to customers.[6] NGFA does not indicate whether it wants this data to be publicly reported or only made available to the customer. If the former, such information cannot be made publicly available without explicit consent from the customer and no public interest would be served by reporting such customer-specific information. If the latter, the information is already available directly to our customers whenever they wish it.

Reporting Day

Finally, NGFA "recommends that the reports be issued no later than the following Monday."[7] NGFA provides no reason why a Monday reporting deadline is superior to

[4] Union Pacific Comments, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed December 23, 2015) at p. 5.

[5] NGFA Opening Comments at p. 6.

[6] Union Pacific Reply Comment, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed April 29, 2015) at p. 14.

[7] NGFA Opening Comments at p. 7.

Wednesday other than asserting Monday is "more timely." NGFA states that reports are currently submitted on Tuesday; however, railroads have been submitting reports on Wednesday since the Interim Order was issued. As it stands today, Union Pacific is typically not able to compile its report until Wednesday afternoon even without the additional detail NGFA and others request. This is because the information comes from a variety of sources. For each source, the raw data must be captured, validated, analyzed/processed and compiled into the report. It would be very difficult for Union Pacific to meet a Monday reporting deadline due to the work that would be required to prepare the weekly reports between Saturday at midnight and Monday.

Cars On Line

NGFA requests yet two more categories for reporting of cars on line: breaking down tank cars on line by those hauling hazardous material and those hauling non-hazardous material.[8] NGFA offers no explanation how these additional categories would provide any information that either the Board or shippers could use to evaluate rail carrier service or to make transportation decisions. NGFA's request also fails to explain why hazardous material moving in tank cars should be separately reported but not hazardous material moving in other car types. The Board should reject this unjustified suggestion.

NGFA also urges the Board to include a reporting category of "industry-placed" cars.[9] The suggestion is unclear whether it is limited to tank cars only or proposed for all car types. In either case, it should be rejected as unjustified and impracticable. Reporting car inventory on a railroad allows observers to evaluate whether changes over time may indicate congestion, but reporting cars placed at industries serves no similar purpose. Moreover, dwell at origin information that has been part of the proposed permanent reporting would be more useful for

[8] NGFA Opening Comments at pp. 8-9.

[9] *Id.*

attempting to identify congestion. Besides being unjustified, reporting industry-placed cars would require a change to the current reporting methodology because industry-placed cars are currently counted in the car inventory number for the last rail carrier that moved the car.[10] The Board should reject this suggestion because its offers no benefit in exchange for the burden required to implement.

II. Highroad's Comments Provide Another Reason Why Car Order Fulfillment Should Not Be Reported

In our opening comments, Union Pacific explained several flaws in the proposed car order fulfillment metric, §1250.2(a)(12), and provided examples of why this metric will not result in useful data.[11] The opening comments by Highroad Consulting, LTD. ("Highroad"), which urge including car order fulfillment, provide an additional reason why the metric is flawed and should not be included in the final rule. Highroad stated that "some consideration must be given to the fact that some railroads expire car orders at the end of each week. As a result, shippers are required to re-file their car orders but more important, for those railroads, the backlog of orders will be understated."[12] Although Highroad favors including this metric, it suggests no way to fix the problem. Highroad's recognition of differences in car ordering systems among railroads confirms a flaw that Union Pacific explained in our opening comments concerning car order systems: even within one railroad, car order systems are designed to meet different market demands and differences in car ordering systems among car types will result in

[10] As noted in Union Pacific's weekly data reports, the cars on line metric is calculated by the AAR using data from Railinc.

[11] Union Pacific Opening Comments, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed May 31, 2016) at pp. 5-10.

[12] Highroad Opening Comments, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed May 31, 2016) at p. 1.

misstatements of a railroad's actual ability to meet its customers' needs for empty cars.[13] Highroad's concern provides yet another reason why car order fulfillment should not be included in the final rule.

III. Conclusion

The Board should reject the proposals for more detailed reporting or to require additional metrics because there has been no showing that increasing the reporting burden on railroads would further the Board's objectives or assist the Board in meeting its statutory obligations. Instead, the Board should modify the proposed rule, as we suggested in our opening comments, to better achieve the Board's objectives while minimizing the burden on the railroads.

Respectfully submitted,

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[13] Union Pacific Opening Comments at pp. 6-8.