239777

ENTERED
Office of Proceedings
December 23, 2015
Part of
Public Record

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES – PERFORMANCE DATA REPORTING	))))	Docket No. EP 724 (Sub-No. 4)

JOINT COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
EDISON ELECTRIC INSTITUTE, AND
FREIGHT RAIL CUSTOMER ALLIANCE
TO THE SUMMARIES OF MEETINGS HELD BETWEEN THE SURFACE TRANSPORTATION BOARD STAFF AND INTERESTED PARTIES

Of Counsel:

Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036

William L. Slover
Robert D. Rosenberg
Peter A. Pfohl
Daniel M. Jaffe
Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

Their Attorneys

Dated: December 23, 2015

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES – PERFORMANCE DATA REPORTING	))))	Docket No. EP 724 (Sub-No. 4)

**JOINT COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION,
EDISON ELECTRIC INSTITUTE, AND
FREIGHT RAIL CUSTOMER ALLIANCE
TO THE SUMMARIES OF MEETINGS HELD BETWEEN THE SURFACE TRANSPORTATION BOARD STAFF AND INTERESTED PARTIES**

Western Coal Traffic League ("WCTL"), American Public Power Association ("APPA"), National Association of Regulatory Utility Commissioners ("NARUC"), National Rural Electric Cooperative Association ("NRECA"), Edison Electric Institute ("EEI"), and Freight Rail Customer Alliance ("FRCA") (collectively "Coal Shippers/NARUC")[1] hereby submit their Comments in accordance with the Board's order served December 16, 2015 in the above entitled proceeding.

BACKGROUND

Following the comments filed on March 2, 2015 and April 29, 2015, by Coal Shippers/NARUC, the United States Department of Agriculture ("USDA"), other

[1] The FRCA includes shippers that move commodities other than coal. However, for convenience and consistency, this filing continues to refer to the parties as Coal Shippers/NARUC.

interested shipper groups, the Class I railroads, and the Association of American Railroads ("AAR"), the Surface Transportation Board ("Board") requested that interested parties meet in person with Board staff to discuss their specific data reporting proposals and answer questions from the staff. *See United States Rail Service Issues – Performance Data Reporting*, EP 724 (STB served Nov. 9, 2015). Coal Shippers/NARUC, represented by WCTL, APPA, and EEI members and counsel, met with the Board staff on November 19, 2015. The USDA, other shipper groups, the AAR, and certain Class I railroads had similar meetings in the days that followed. The Board posted summaries of each of the meetings on its website. On December 16, 2015, the Board requested that interested parties file written comments addressing the summaries by December 23, 2015. *Id.* at 1. Thus, Coal Shippers/NARUC present these brief comments.

COMMENTS

I. THE COAL SHIPPERS/NARUC MEETING SUMMARY ACCURATELY RELFECTS THEIR POSITION THAT THE BOARD SHOULD ADOPT ITS PROPOSAL WITH THE MODIFICATIONS PROPOSED BY COAL SHIPPERS/NARUC

In their March 2 and April 29, 2015 comments in this proceeding, Coal Shippers/NARUC urged the Board to adopt their proposed data collection plan with certain modifications and additions. Specifically, Coal Shippers/NARUC asked the Board to:

1. Modify its proposal so that carriers report interchange dwell times at each of their 10 largest interchange locations;

2. Modify its proposal so the "Other" category in the train held short reporting is more specific;
3. Modify its proposal to retain the weekly coal loadings versus plan reporting currently in effect under the *Interim Data Order*;[2]
4. Expand its proposal to include weekly average cycle times for coal trains over any portion of the carrier's ten (10) most frequently used coal train corridors (*e.g.*, Powder River Basin ("PRB") mines to Kansas City);
5. Expand its proposal to include the weekly average number of coal trainsets in service broken down between shipper-supplied (private trainsets) and carrier-supplied trainsets;
6. Expand its proposal to include any restrictions on the utilization of shipper-provided equipment in coal service;
7. Expand its proposal to include general restrictions on the availability of crews for coal service; and
8. Expand its proposal to include general restrictions on the availability of locomotives for coal service.

During the meeting with Board staff, the staff raised several questions regarding the mechanics of Coal Shippers/NARUC's proposed modifications and additions, including questions about measuring cycle times versus transit times and planned coal loadings versus actual coal loadings. In each instance, Coal Shippers/NARUC provided their feedback on the specific service metrics that the railroads should report, the mechanics of such reporting, and the importance of that data to Coal Shippers/NARUC's stakeholders. Coal Shippers/NARUC, therefore, continue to assert that such reporting is not only possible, but vital. Thus, Coal Shippers/NARUC urge the Board to include their proposed additions and modifications in its supplemental Notice of Proposed of Rulemaking ("NPRM") with further revisions as reflected in the

[2] *See, e.g.*, *United States Rail Service Issues – Data Collection*, Docket No. EP 724 (Sub-No. 3) (STB served Oct. 8, 2014) ("*Interim Data Order*").

summary of the Coal Shippers/NARUC meeting (*i.e.*, transit times versus cycle times, a yes or no option for shortages of crews and locomotives, *etc.*).

II. SUMMARIES OF MEETINGS WITH OTHER INTERESTED PARTIES

A. USDA and Other Shipper Groups

Through their meetings, USDA and other shipper groups continued to urge the Board to adopt its NPRM, and most continued to propose additional metrics that the Class I railroads should report, including commodity-specific reporting for a number of metrics. Coal Shippers/NARUC have no comments at this time with respect to the specific issues raised in those meetings. However, Coal Shippers/NARUC note that the clear and continued interest of USDA incontrovertibly demonstrates that if such metrics are valuable to a federal cabinet-level department seeking to carry out its duties, such data should be equally, if not more, valuable to the Board and the shipping community.

B. AAR and Class I Railroads

The Class I railroads' and the AAR's meeting summaries indicate that the carriers continue to strongly resist all but the most basic system-level reporting (*e.g.*, velocity, terminal/system dwell, and cars online). The carriers also suggest that (i) commodity-level and/or granular-level data would somehow muddy the picture of how their railroads are performing vis-à-vis the system-level metrics; (ii) that differences between railroads somehow diminishes the value of such data; and (iii) that reporting such data might impose unquantified and unexplained burdens on the railroads. Coal Shippers/NARUC continue to disagree with the carriers on all three points.

As Coal Shippers/NARUC pointed out in their meeting with Board staff, there is no perfect methodology for reporting performance metrics, but the perfect should not be the enemy of the good. Moreover, the railroads' claims are contradicted by the experience of shipper and governmental stakeholders; alternatively, such claims are simply unsupported. First, Coal Shippers/NARUC and USDA both noted in their meetings that the *Interim Data Order* data reporting has been helpful in understanding service conditions. As this data includes commodity-level data and other granular metrics beyond three or four system-level metrics, the carriers' insistence that specific data does not provide further insights into the health of the railroads is directly contradicted by the experience of the stakeholders. The fact is that performance is not uniform across a carrier's system or all the commodities and types of freight it handles, and individual shippers have an entirely legitimate interest in being able to ascertain how the performance they are experiencing relates to that of others.

Second, from Coal Shippers/NARUC's perspective, the fact that different railroads may have slightly different takes on how they report certain performance metric data is irrelevant. Many shippers are served by a single railroad and the data for that specific railroad, even if it is slightly different from another railroad, is what will most benefit those shippers. Even where a shipper is served by two or more railroads, the data for each individual railroad, and not a comparison of each, is likely to be the most valuable element of the data. Moreover, even if carriers maintain and report data slightly differently so that figures are not exactly identical, the changes over time in each carrier's data can still be compared and provide useful results. For example, the ability to

compare *relative* changes in the data for more than one carrier can be helpful for ascertaining if service disruptions are due to external factors (*e.g.*, weather), or internal factors. The Board should not deprive itself and the shipping public from this useful information.

Finally, the railroads continue to express concerns about the potential burdens of such reporting. However, the railroads have already been collecting most of this data for over a year, and, therefore, mechanisms are already in place to produce such reports. As for any changes or additions, the railroads have not quantified any specific burdens in their meetings, and as Coal Shippers/NARUC pointed out in their Reply Comments of April 29, BNSF, CSXT, NS and UP combined for **$71.5 billion** in revenues in 2014. Devoting a small number of man hours to supply the Board and their own shippers (who provide that massive revenue stream) with a few data points each week is imminently reasonable, and the value of such performance data greatly outweighs the *de minimis* burden.

CONCLUSION

Coal Shippers/NARUC again urge the Board to adopt the performance data reporting proposal with the modifications that Coal Shippers/NARUC proposed in their Opening and Reply Comments, with modifications as necessary based on their meeting with Board staff.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE
AMERICAN PUBLIC POWER ASSOCIATION
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
EDISON ELECTRIC INSTITUTE
FREIGHT RAIL CUSTOMER ALLIANCE

Of Counsel:

Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036

William L. Slover
Robert D. Rosenberg
Peter A. Pfohl
Daniel M. Jaffe
Slover & Loftus LLP
1224 Seventeenth Street, NW
Washington, D.C. 20036
(202) 347-7170

Dated: December 23, 2015

Their Attorneys