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VIA E-FILE

The Honorable Cynthia T. Brown
Chief, Section of Administration
Surface Transportation Board
395 E. Street, S.W., Room #100
Washington, DC 20423-0001

RE: STB Ex Parte No. 724 (Sub-No. 4), United States Rail Service Issues—Data Collection

Dear Ms. Brown:

Union Pacific submits the attached comments in response to the Board's Supplemental Notice of Proposed Rulemaking. Attached is one copy of Union Pacific's redacted comments, to be placed on the public file, and one copy of Union Pacific's unredacted, highly confidential comments, to be filed under seal pursuant to the protective order granted in this proceeding on December 4, 2015.

Please feel free to contact me if you have any questions.

Sincerely,



Jeremy M. Berman



REDACTED – TO BE PLACED ON PUBLIC FILE

BEFORE THE
SURFACE TRANSPORTATION BOARD

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

UNITED STATES RAIL SERVICE ISSUES—PERFORMANCE DATA REPORTING

**OPENING COMMENTS OF
UNION PACIFIC RAILROAD COMPANY
TO SUPPLEMENTAL NOTICE OF PROPOSED RULEMAKING**

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May 31, 2016

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Union Pacific Railroad Company (“Union Pacific”) respectfully submits these comments in response to the Board’s Supplemental Notice of Proposed Rulemaking, as corrected, served on May 13, 2016 (“May Notice”).¹ In the May Notice, the Board proposed changes to the weekly service metric reports that Union Pacific and other railroads have been submitting under the Board’s Interim Data Order, served on October 8, 2014. Union Pacific recognizes the Board’s goals in seeking rail performance data and remains committed to assisting the Board in making available performance data that is useful to the Board in discharging its responsibilities. In many respects, the May Notice proposes improvements to the prior version of the rules; however, the May Notice also introduces or adds items to the reports that do not advance the objectives or expose confidential information.

I. OVERVIEW

The May Notice includes many changes that, in our view, will improve the accuracy and usefulness of the data. Aligning the reporting week for service metrics for Items 1 - 9 with the Saturday to Friday week that railroads have used historically will ensure that data remains comparable over time. Allowing each railroad to define “unit train” using its standard definition,

¹ Union Pacific also adopts the opening comments of the AAR.

rather than defining “unit train” as 50 cars or more in a train, ensures that data is consistent with railroad and shipper expectations. Including a report of car loadings by commodity will assist the Board in creating a complete picture of rail service.² Removing the proposed requirement for dwell at interchange removes data that would have been very difficult to calculate. Simplifying reporting of trains held and cars held removes less meaningful data that may distract from more meaningful data. The changes to rail infrastructure project reporting will reduce the burden on railroads while still providing the Board with up-to-date information on major projects. We also applaud the Board for not expanding the scope of the reporting by hundreds of additional data points as urged by some. Maintaining a smaller scope of reporting requirements helps all interested parties focus on the metrics that are most important for monitoring the health of the rail system.

That said, Union Pacific is disappointed that the May Notice fails to limit permanent reporting to only those metrics that (1) provide meaningful information; (2) are reasonably available from all railroads; and (3) do not reveal confidential or proprietary data. As with the Interim Data Order, the May Notice will require Union Pacific to report a large number of service metrics that are too narrow to provide meaningful information to assess the performance of the rail network while too broad to provide meaningful information to assist shippers in planning. The Interim Data Order was a reaction to particular service issues in 2013-14—which have been resolved. The May Notice now seeks to permanently impose these reporting requirements while offering no evidence that continued reporting is necessary in light of the current service and traffic conditions. Union Pacific remains convinced that permanent reporting should be required only for those metrics that provide a meaningful view of network health: (1)

² Union Pacific offers suggestions to make this metric even more meaningful on pages 12-13, below.

Carloading/throughput rates; (2) Average train speed; (3) Average freight car terminal dwell; and (4) Freight car inventory. More detailed metrics should be required only when service issues occur and should be targeted to the traffic or regions experiencing problems.

II. Proposed Additional Data Should Not Be Included in the Permanent Reporting.

A. The Reports Should Not Require Separate Fertilizer Reporting

The Board's only justification for separate reporting of fertilizer is that fertilizer service became an issue on certain railroads in 2013-14. May Notice at 9. The Board should not adopt new reporting requirements based on past service issues especially when those issues were not general and no longer exist. With respect to unit trains, the May Notice offered no reason why fertilizer requires additional reporting.

Fertilizer Unit Trains

The Board should not require separate unit train reporting on fertilizer as proposed in § 1250.2(a)(1), (4) and (5). Due to the small proportion of fertilizer that moves in unit train service, separate reporting on fertilizer trains will not provide the Board with information useful in monitoring service to fertilizer shippers and fertilizer shippers already have access to far more useful information. The Fertilizer Institute's own data shows that in 2014 and 2015 only 14 percent of fertilizer movements were in unit trains.³ This data comports with Union Pacific's experience that the vast majority of fertilizer moves in manifest service.⁴ The proposed fertilizer unit train reporting would capture only one in seven fertilizer shipments. This stands in sharp contrast to the other reported unit train types (e.g. coal, grain, ethanol) where the majority of the given commodity moves in trainload service. With 86% of fertilizer shipments moving in

³ The Fertilizer Institute Letter, U.S. Rail Serv. Issues, EP 724 (Sub-No. 4) (filed December 23, 2015).

⁴ Union Pacific Letter, U.S. Rail Serv. Issues, EP 724 (filed November 3, 2014).

manifest service, breaking out fertilizer trains separately will not enable Board to draw any meaningful conclusions about service to fertilizer shippers.

Separate reporting on fertilizer unit trains also raises confidentiality concerns with respect to Union Pacific's traffic. During a typical year, only a small number of fertilizer shippers on Union Pacific move traffic in trainload service for a small number of fertilizer commodities and many of these trains move for export and do not originate on Union Pacific. However, due to the small absolute number of fertilizer trains, particularly those originated by Union Pacific by only a few customers, a shipper with access to its own train data could derive sensitive information regarding its competitors' trains using data from the Board's proposed reporting. In particular, dwell at origin, §1250.2(a)(4), and trains holding, §1250.2(a)(5), are cause for concern on this point because these metrics may divulge information concerning the nature and quantity of a shipper's fertilizer trains to other fertilizer shippers in contravention of 49 U.S.C. § 11904(b). If fertilizer trains continue to be reported in All Other Unit Trains, there is no concern that the information might reveal customer-specific volume information.

Fertilizer Carloads

Fertilizer should also not be separately reported as proposed in §1250.2(a)(6) and (11)(f). Union Pacific agrees with the Board's decision not to expand commodity-specific reporting to every commodity requested. However, the May Notice provides no justification for excluding other commodities while including fertilizer. There is no question that the U.S. rail network is fluid with ample resources to handle current demand, including fertilizer. Moreover, fertilizer accounted for only 2% of Union Pacific total carloadings in 2015. Including separate reporting of fertilizer will only further encourage shippers of other commodities to demand separate breakouts. The Board should avoid this type of commodity-specific reporting without evidence

of why the data is needed and how it would be used that separates the required commodity from other, non-reported commodities.

Breaking out fertilizer carloadings under §1250.2(a)(11) also creates an unnecessary burden.⁵ Currently, the fertilizer commodities identified in the May Notice are reported to the AAR with the chemicals (STCC 28-XXX) and non-metallic minerals (STCC 14-XXX) carloadings. Reporting the fertilizer commodities separately would require Union Pacific, and the other railroads, to reprogram our systems to remove fertilizer from chemicals and non-metallic minerals. This would introduce three inconsistencies between future weekly carloadings reports and historical carloadings data. Those inconsistencies with historical records would remain unless we performed additional work to restate prior years' carloadings data even though prior years' data were not subject to STB reporting. The amount of work required to break out fertilizer separately cannot be determined at this time because it will depend on the STCCs that are included in the final definition of fertilizer.

B. The Proposed Car Order Fulfillment Metric Contains Many Flaws

The concept of a car order fulfillment percentage applies only in situations where a customer orders or requests an empty car to be placed at a customer facility for loading. If a customer does not order or request a car then there is no order to be fulfilled. There are numerous situations where customers do not place car orders due to the variety of service offerings provided by and types of cars moved by Union Pacific. The Board should not require a car order fulfillment metric because the proposed §1250.2(a)(12), as drafted, is not limited to situations where car orders are used. Even if the rule is revised to apply only in situations where a car order is used, a significant number of cars, which do not operate on car orders, would be excluded

⁵ This burden will exist even if the definition of fertilizer is corrected as suggested in the AAR comments.

from the reporting and the reported data would not accurately represent Union Pacific's service levels. Below we provide specific examples of car types that do not operate on car orders, but even for the remaining car types, some portion do not use car orders and would need to be excluded from the reporting. In addition, the rule as drafted is unclear and raises questions about how to apply it.

Intermodal Cars

Intermodal cars are not ordered by customers and are not placed for loading at a customer facility.⁶ These cars are operated by Union Pacific as part of our intermodal service offering and move between intermodal ramps that are operated by Union Pacific, or another railroad. Intermodal customers bring containers to the ramp by truck where they are loaded onto flat cars. Over 80% of intermodal movements are loaded movements, meaning that movement of intermodal cars is almost entirely determined by which destination ramp a customer sends its loaded containers. Because intermodal cars do not move under car orders, Union Pacific would not be able to report a car order fulfillment percentage. If we were required to create a system to report a fulfillment percentage, any such information reported would be meaningless with respect to assessing whether UP is meeting customer demand for intermodal cars.

Autoracks

Autoracks also do not move under car orders. The majority of autoracks are in a pool that is administered by TTX. TTX distributes these autoracks between participating railroads based on forecasted demand.⁷ Railroads deliver autoracks to loading facilities based on these forecasts. Surplus autoracks, if any, are redistributed by TTX. Because autoracks are not ordered

⁶ The proposed rule is not clear on whether intermodal refers to intermodal flat railcars or containers that move on the flat cars. As used in these comments, intermodal car means intermodal flat railcar as the more likely interpretation.

⁷ All seven Class I railroads participate in the TTX pool.

by a customer and Union Pacific does not control the distribution of autoracks, we would be unable to report a car order fulfillment number as proposed.

Covered Hoppers

The proposed rules appear to require that grain covered hoppers be reported twice using different metrics. Section 1250.2(a)(8) already would require Union Pacific to report the running total of car orders placed, car orders filled and the days overdue for covered hoppers used for grain.⁸ However, 1250.2(a)(12) on its face appears to apply to all covered hoppers including those for grain, and therefore would require railroads to report two different sets of data for much of the grain fleet. Moreover, calculating a car fulfillment percentage for covered hoppers that combines cars ordered for other commodities using different car order systems and grain cars would cause confusion rather than provide meaningful information for any set of covered hoppers. Weekly reporting of order fulfillment for grain covered hoppers will not accurately reflect Union Pacific's service or operations because grain cars on Union Pacific are ordered for placement during the first half or last half of a month, not for placement during a specific week. These issues covered hoppers are another reason why the final rule should not include car order fulfillment percentage.

Private Cars

Private cars do not move under car orders. Customers do not place a car order with Union Pacific for private cars because the customer, not Union Pacific, controls where empty cars will be placed for loading. If the car fulfillment metric is retained, the rule must be clarified to indicate that it is limited to railroad-owned or railroad-leased cars. On page 16, the May Notice

⁸ The cars assigned to shuttle customers, which move the majority of our grain due to their high utilization, are not assigned using car orders. The other methods are offered and ordered for either the first half or last half of a month and appear to be subject to this proposed rule.

states that §1250.2(a)(12) applies only to railroad-owned or railroad-leased cars. However, the text of §1250.2(a)(12) does not contain this restriction. This is an oversight that must be corrected if the metric will have any relevance.

Tank cars illustrate the significance of this problem because almost all tank cars that Union Pacific moves for customers are privately owned. The few that are not railroad-owned or leased tank cars are foreign cars received in interchange, not placed for loading by Union Pacific. Thus, Union Pacific's car order fulfillment percentage for tank cars would either be zero or infinite, depending on the interpretation of the proposed rule.

Pooled Cars

Union Pacific also operates some railroad-supplied cars in customer or commodity specific pools. Some of these cars do not use car orders because they cycle back and forth between locations. Others are assigned to pools to avoid contamination. If the proposed rule is revised to include only railroad-supplied cars that are placed pursuant to car orders, the resulting data would not accurately portray car availability. The proposed rule will thus misstate Union Pacific's ability to meet customer demand because it will not be accounting for the cars that do not move on car orders but are being used by customers.

Other Ambiguities and Application Issues

If the final rule continues to include a car fulfillment metric, it should also be clarified to indicate that it applies only to cars that operate on car orders. While the name of the metric, i.e. "car order fulfillment", suggests this was intended, the instructions on how to calculate this number are inconsistent with such a purpose. The proposed rule instructs that car order fulfillment should be stated "as the percentage of cars due to be placed during the reporting week ... versus cars actually placed and on constructive placement." However, draft rule does not

restrict the report to cars placed pursuant to a car order. Without this restriction, it is unclear exactly what calculation the proposed rule is asking railroads to perform because this language could be interpreted to include cars that do not move under car orders, which would distort the fulfillment percentage of cars placed pursuant to car orders.

The proposed rule appears to rely on the applicable tariff to determine how many cars are to be placed. May Notice at 30 (“...percentage of cars due to be placed during the reporting week, as determined by the governing tariff...”). Yet the majority of our traffic moves under contract or exempt circular. This raises the question of how wide a net the Board intends to cast. The Board should clarify if the car fulfillment percentage is supposed to be calculated only for cars used in regulated common carrier service. If not, then the Board should consider replacing “governing tariff” with a more general term such as “as determined by the rail carrier’s applicable terms and conditions...”.

Union Pacific suggests the following language, to remove any doubt.

Car fulfillment should be stated as the number of cars actually placed or constructively placed during the reporting week divided by the number of cars due to be placed during the reporting week, expressed as a percentage. Only cars placed and due to be placed pursuant to car orders, as determined by the rail carrier’s applicable terms and conditions, should be included in this calculation.

If retained, the proposed rule should also allow each railroad to select its own reporting period. Most of Union Pacific’s car order systems (with the exception of grain) operate on a Sunday-Saturday week. This is in contrast to the majority of the proposed service metrics that use a Saturday-Friday week. Changing the car order system would require a significant amount of work for both Union Pacific and its customers because most customers have come to rely on the Sunday-Saturday week when ordering cars. To capture an accurate picture of order

fulfillment, changing to a Saturday-Friday week would require Union Pacific to change its customer car order process to align with the Saturday-Friday week such as changing the cutoff time for customers to place orders for the following week. Allowing Union Pacific to define its own reporting week for this metric minimizes the burden to us and our customers.

C. Manifest Trains Do Not “Dwell” at Origin

Proposed § 1250.2(a)(4) would require reporting of “dwell time at origin” for manifest trains as measured by “the time period from when the train is released at the terminal until actual movement by the railroad.” This requests information Union Pacific does not currently capture because it does not reflect the nature of manifest trains. When Union Pacific builds a manifest train in a yard, it will typically not “release” the train until it is ready to be moved. Thus, a manifest train would usually not have any dwell at origin under the proposed rule. Even when Union Pacific builds a manifest train in advance of its scheduled departure time that is typically due to yard capacity and the need to coordinate yard operations with road operations. It would be inaccurate to say that this train “dwelled” at origin with the connotation that “dwell” means it sat idle when it should have been moving. If a train is built ahead of time, with planned time in the yard before its scheduled departure, the amount of planned wait time provides no meaningful information with respect to that train’s performance or yard performance. More meaningful dwell information for manifest carloads is already being reported under weekly after dwell time at terminals.

III. REPORTING ON PLANS WILL NOT PROVIDE DATA THAT FURTHERS THE BOARD’S STATED GOALS

A. Coal Loading Plan Data Belong To The Customer, Not Union Pacific

Union Pacific has not reported a coal loading plan under the Interim Data Order because to the extent we have a “loading plan”, that plan is based on confidential customer information.

Our customers tell us how much coal they project to move and we arrange resources based on customer forecasts. Union Pacific does not establish its own loading expectations and does not develop independent daily or weekly planned coal loadings. Other railroads may not share Union Pacific's concern on this issue because their business processes differ.

Including "planned" weekly loadings for each region would create additional concerns about revealing customer information. With the exception of the Powder River Basin, we have few customers that load coal trains in a given region. {

} Any information we reveal about those loading plans runs a serious risk of identifying specific customer forecast information. Union Pacific would require a waiver to allow us to aggregate regional data as necessary to prevent revealing confidential customer information.

The value of comparing "planned" to actual is limited in evaluating railroad performance. If a railroad does not meet its stated "plan" for coal loadings that does not indicate a service failure by the railroad. Rail service is just one link in the coal supply chain. If actual loadings are below customers' projected loadings, it may be due to production issues at a mine, an outage at a power plant, lower demand for electricity or any number of issues completely unrelated to rail service. Currently, coal stockpiles are at or near record highs due to low natural gas prices, moderate weather and government policy encouraging shift to renewable sources. No matter how fast railroads run coal trains and how short the origin dwell is, if customers are slow in returning empty cars or they park a trainset, loadings will fall. We once again urge the Board to reconsider its requirement to provide a coal loading plan.⁹

⁹ In the interest of not over-burdening the Board with comments, Union Pacific incorporates its previously filed comments in this docket and specifically refers the Board to its explanation of

B. Customer Control of Grain Shuttles and Variability in Movement Prevents Planned Trips Per Month by Destination

The nature of our grain shuttle operations does not lend itself to a planned TPM, especially by destination region. The fundamental hurdle to creating a planned TPM is the fact that customers, not Union Pacific, control the origins and destination of shuttle trains.¹⁰ Unlike coal unit trains, which usually move between a particular coal basin and a customer destination, grain shuttle trains routinely shift origins and destinations among more than 125 origins in 11 states and more than 100 destinations in 17 states and Mexico. A shuttle train can be loaded in Oklahoma for a movement to Mexico, returned to be loaded in Nebraska for a movement to the Pacific Northwest and then returned to Minnesota for a movement to a domestic processing facility. We have no control over where a shuttle customer chooses to load an empty train or where a customer chooses to send a loaded train and thus are unable to create a planned TPM let alone a plan based on geography.

IV. THE PROPOSED CARLOADINGS METRIC SHOULD INCLUDE CARS RECEIVED IN INTERCHANGE

As indicated in our previous filings, Union Pacific agrees with the Board that carloadings provide useful, system-level information on the rail network. However, proposed § 1250.2(a)(11) calls for reporting only of “originated carloads.” As proposed, this rule would exclude carloads that Union Pacific receives in interchange from another railroad. The usefulness of the carloading metric is the fact that it provides a picture of a rail system’s throughput, i.e. how many cars are coming online. By excluding cars received in interchange, the proposed rule will

why requiring a coal loading plan does not provide meaningful information on rail service on pages 3-4 of our comments filed on December 23, 2015.

¹⁰ Union Pacific previously explained how shuttle trains operate in this proceeding and in Ex Parte 665(1). *See* Union Pacific Letter, U.S. Rail Serv. Issues, EP 724 (Sub-No. 3) (filed on October 22, 2014) at pp. 2-3; and Union Pacific Comments, Rail Transportation of Grain, EP 665 (Sub-No. 1) (filed June 26, 2014) at pp. 7-10, 12.

only capture a portion of this throughput. The Board can improve this metric by requiring reporting of weekly carloads originated *and* carloads received in interchange. That would be consistent with weekly carloadings data reported by the AAR.

V. THE BOARD SHOULD DISCONTINUE THE PEAK SEASON LETTER

The May Notice proposes permanent weekly reporting of voluminous data. Union Pacific believes that this data renders the annual Peak Season Letter unnecessary. The Peak Season Letter began in response to a dramatic increase rail traffic which began in 2004 and that challenged the nation's rail network for several years. This evolved into an annual request which persisted through the great recession and beyond. In light of the abundant weekly data and the updates on capital projects that the Board will receive, it is time to consider whether the peak season letter serves a meaningful purpose – especially in light of current conditions. The Board will be able to monitor the health of the rail network and make specific requests to a railroad if it identifies a potential problem. If the Board imposes the permanent reporting in the May Notice, it should discontinue the Peak Season Letter.

VI. CONCLUSION

Union Pacific requests that the Board adopt the changes to the supplemental proposed rule that we suggest to improve the meaningfulness of reporting data and better achieve the Board's objectives for service reporting.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Louise A. Rinn", is written over a horizontal line.

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