BEFORE THE
SURFACE TRANSPORTATION BOARD

Ex Parte No. 706

228659

UNION PACIFIC RAILROAD COMPANY'S REPLY TO PPG INDUSTRIES' REQUEST TO EXPAND THE SCOPE OF PROPOSED RULEMAKING PROCEEDING TO ADOPT REPORTING REQUIREMENTS FOR POSITIVE TRAIN CONTROL

J. MICHAEL HEMMER
LOUISE A. RINN
Union Pacific Railroad Company
1400 Douglas Street
Omaha, Nebraska 68179
(402) 544-3309

MICHAEL L. ROSENTHAL
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-6000

Attorneys for Union Pacific Railroad Company

January 21, 2011

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On January 18, 2011, PPG Industries, Inc. ("PPG") submitted a late-filed reply to a petition by Union Pacific Railroad Company ("UP") requesting that the Board institute a rulemaking proceeding to consider the adoption of reporting requirements for positive train control ("PTC").[1] In its reply, PPG opposed UP's petition, but it also argued that, if the Board institutes a rulemaking, the Board should also ensure that the proceeding "develops reporting requirements to track the multiple benefits of PTC." PPG Reply at 1. UP would not object to a separate rulemaking to address PTC benefits. However, railroads are currently and indisputably incurring substantial costs to implement PTC. By contrast, railroads will not accrue benefits from PTC, if there are any, until sometime in the future after PTC has been installed. Accordingly, UP urges the Board to promptly institute a proceeding to address PTC costs, and not to broaden and complicate that proceeding, and likely delay its completion, by attempting to address PTC benefits in the same proceeding.

[1] PPG never explains why its reply is more than two months late. However, UP does not object, as long as the Board also considers UP's response to PPG's arguments for modifying the scope of the proposed rulemaking.

In its petition, UP identified the compelling reasons for the Board to act promptly to establish reporting rules for capital investment in PTC and costs associated with operating and maintaining PTC. *See* UP Petition at 8-10. UP also explained that proposals were simple and straightforward—they would require only minor updates to the Board's existing rules to reflect the congressional mandate to install PTC. *See id.* at 11.

PPG does not dispute that railroads are incurring substantial costs to implement PTC, or that UP's proposals for reporting those costs are simple and straightforward. Instead, PPG argues that the Board should not adopt reporting requirements for PTC costs without simultaneously adopting reporting requirements for PTC benefits. *See* PPG Reply at 4-6. However, there are practical reasons to address costs now and benefits later: namely, the costs are real, indisputable, and they are being incurred now; the benefits are hypothetical, controversial, and they will not accrue until sometime in the future, if ever. Indeed, PPG acknowledges that, in analyzing PTC costs and benefits, the Federal Railroad Administration "excluded certain benefits because of uncertainties regarding whether and when such other benefits would accrue and the potential to achieve those benefits using alternative technologies at lower costs." *Id.* at 5. When PPG asserts that "these are not simple matters," it is referring to disagreements over measuring PTC benefits, not PTC costs. *Id.*

Moreover, PPG has no basis for its only apparent concern with UP's petition—that shippers would be disadvantaged in future proceedings if the Board adopts reporting requirements for PTC costs before addressing PTC benefits. *Id.* at 5-6. UP simply asked the Board to ensure that PTC cost data are reported consistently and preserved to ensure their availability in the future. *See* UP Petition at 3. UP made clear its view that the Board should reserve for later any decisions about whether or how the data should be used in Board proceedings. *See id.* PPG suggests that UP and other railroads may try to misuse the data, but reporting data and using data are separate matters. PPG surely must recognize that the Board will ultimately determine whether and how the data may be used in future proceedings, where interested parties will have the opportunity to be heard. Indeed, as PPG acknowledges, the Board has a separate proceeding underway in which it is addressing whether and how to refine the Uniform Rail Costing System to better capture the operating costs of transporting hazardous materials.[2]

Ultimately, PPG offers no good reason for the Board to institute a broader proceeding than UP requested in its petition. Railroads are presently incurring real, substantial costs to install PTC. The benefits of PTC to railroads are speculative and will accrue only in the future, if ever. The Board should not wait until disputes about PTC benefits are resolved before adopting requirements for reporting PTC costs.

Respectfully submitted,

MICHAEL L. ROSENTHAL
Covington & Burling LLP
1201 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
(202) 662-6000

J. MICHAEL HEMMER
LOUISE A. RINN
Union Pacific Railroad Company
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[2] *See Class I Railroad Accounting & Financial Reporting – Transportation of Hazardous Materials*, STB Ex Parte No. 681 (served Jan. 5, 2008). To date, no notice of proposed rules has resulted from the record created in that proceeding. Accordingly, there is no merit to PPG's suggestion that UP's petition asking the Board to adopt modest changes in cost reporting to capture the costs imposed by a major government mandate is unnecessary or somehow conflicts with Ex Parte No. 681.

CERTIFICATE OF SERVICE

I, Michael L. Rosenthal, hereby certify that on this 21st day of January, 2011, I caused a copy of the foregoing document to be served by U.S. first-class mail, postage prepaid on:

Karen A. Booth
Thompson Hine LLP
1920 N Street, NW
Washington, DC 20036

Michael L. Rosenthal

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