



ASSOCIATION OF AMERICAN RAILROADS

Ian N. Jefferies

Office of the President

President and Chief Executive Officer

The Honorable Ann D. Begeman

Chairman

Surface Transportation Board

395 E Street SW

Washington, DC 20423

The Honorable Martin J. Oberman

Vice-Chairman

Surface Transportation Board

395 E Street SW

Washington, DC 20423

The Honorable Patrick J. Fuchs

Board Member

Surface Transportation Board

395 E Street SW

Washington, DC 20423

September 10, 2020

Dear Chairman Begeman, Vice-Chairman Oberman, and Board Member Fuchs:

I am writing in response to the August 31, 2020, letter sent to you by the Freight Rail Customer Alliance, the National Coal Transportation Association, the National Industrial Transportation League, and the Private Railcar Food and Beverage Association, Inc., with another request for additional regulation of railroads, in this case, additional mandatory service reporting requirements (“FRCA letter”).

There is No Justification for Imposing Additional Reporting Burdens on the Railroads.

Multiple rulemaking proceedings over the last several years have resulted in railroads being required to report extensive service data to the STB on a weekly basis. The benefit obtained through imposition of those additional regulatory burdens has been far from clear. And as the Board knows, railroads also have on their own initiative invested to create a variety of tools to make data available directly to their customers. *See, e.g., CSX Transportation Reply Comments, Demurrage Billing Requirements*, EP 759 at 3-4 (filed Dec. 6, 2019); *BNSF Railway Comments in Response to Supplemental Notice of Proposed Rulemaking, Demurrage Billing Requirements*, EP 759 at 3-14 (filed June 5, 2020). The FRCA letter now seeks reporting of additional, but undefined,

“first mile/last mile” data. While the FRCA letter repeatedly invokes the COVID pandemic, the irony is that the actual data demonstrate that Class I service during the emergency has been strong and reliable. See <https://prod.stb.gov/reports-data/rail-service-data/>. From the outset of the pandemic, railroads worked in close coordination with their customers to modify schedules and adjust service as business conditions continually changed. And the railroads have engaged and shared with the Board their plans for responding to increased demand for service as the economy rebounds. There is no basis for the STB to impose additional service reporting.

The FRCA letter invites the Board to circumvent the regulatory process, which is designed to ensure that regulations are necessary and that their burdens are understood and justified by their benefits. The notice and comment aspects of the Administrative Procedure Act and the requirements of the Paperwork Reduction Act exist for a reason. (In that regard, the railroads are anxious for progress on the petition for rulemaking AAR filed nearly 18 months ago, asking the Board to formalize its consideration of costs and benefits in its rulemaking proceedings.)

Uniform Data-Collection is Not Practicable and Would Not be Meaningful.

Individual railroads collect information about their operations and service in different ways. It is unclear what additional metrics are envisioned by the FRCA letter-writers, whether data relevant to such metrics currently exist, and whether such data would provide any reliable and meaningful information to the agency. And as the letter itself points out, “first mile/last mile” service involves far more entities than just the seven Class I railroads. The imagined regulation would be sweeping in scope. Variability in data collection, reporting systems, and abilities across the national network would result in inconsistent, if any, meaningful information for customers seeking to compare their service to others’. Development of one-size-fits-all industry-wide metrics and the systems to collect, report, and analyze them will add considerable burden to both the railroads and the Board, but produce no value compared to the tools that individual railroads have already developed for their customers.

AAR has consistently raised concerns that commodity or customer-level service reporting requirements present distorted views of overall rail service. Any such requirements would incentivize litigation by interest groups seeking to prioritize certain favored business or commodities through political influence, rather than sound and safe railroad operations benefitting all members of the supply chain. See, e.g., AAR letter, EP 724 (filed Nov. 11, 2014). The utility of railroad service data is limited to identifying changes and trends; the data cannot be reliably used to understand causality, to compare rail performance across different commodities (or customers), or to compare railroads. Railroads are one link in the globalized supply chain that includes shippers, receivers, trucks, ports, ocean vessels, barges, and shipping intermediaries like warehouses. The significant differences among railroads as to geography, network, customer base, traffic volumes, resources, and operating practices make fair comparisons of service data at the carload level impossible.

Customers Have Remedies for Concerns About Service.

Customers seeking enhanced levels of service can enter into rail transportation contracts pursuant to 49 U.S.C. § 10709, and can enforce those contracts privately. For other customers, railroads remain subject to the common carrier obligation to provide service with reasonable dispatch. 49 U.S.C. § 11101; *United Transp. Sys. v. PIE Import Export*, 889 F. Supp. 94 (1995). Trying to enable customers to compare their service *at the carload level* with the service of other customers in different locations with different schedules, facilities, and business arrangements is a recipe for frustration, confusion, and endless litigation. And it is an effort that would require the Board to collect, process, and protect enormous amounts of commercially sensitive data and information. There is no reason to believe such a system will result in improved service for any customer. Indeed, such a system may create perverse incentives for railroads not to offer premium service to those customers who wish to purchase it.

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I urge the Board to resist the FRCA letter's invitation to delve into a sweeping, but extra-regulatory, effort that will benefit neither shippers or railroads.

Sincerely,



Ian N. Jefferies
President and CEO