

BEFORE THE
SURFACE TRANSPORTATION BOARD

302993

STB Ex Parte No. 767

ENTERED
Office of Proceedings
September 13, 2021
Part of
Public Record


FIRST-MILE / LAST-MILE SERVICE

REPLY OF THE ASSOCIATION OF AMERICAN RAILROADS
TO THE MOTION TO EXTEND THE PROCEDURAL SCHEDULE

On September 2, 2021, the Surface Transportation Board ("Board") served a decision that requests comments from stakeholders on issues related to first-mile / last-mile ("FMLM") service. The decision requests that commenters address several topics, including the identification of FMLM issues, the design of metrics to measure FMLM service, the current data tracked by carriers, and the costs and benefits of any suggestions. Within each topic area the Board has set forth multiple questions it seeks information on. The decision requests comments be filed by October 18, 2021, and replies be filed by November 16, 2021. On September 7, 2021, the American Chemistry Council and The Fertilizer Institute ("ACC/TFI") filed a motion to extend those dates to December 17, 2021, and February 17, 2022, respectively. The Association of American Railroads ("AAR") supports the requested extension of time.

Additional time will facilitate a robust record that adequately responds to the wide-ranging decision that implicates millions of carloads of freight moving to and from tens of thousands of rail-served origins and destinations across the country each year. AAR and its freight railroad members are carefully reviewing the decision and beginning to formulate comments. The requested extension will aid in that effort.

Respectfully submitted,



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September 13, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**ENTERED
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DOCKET NO. EP 767

FIRST-MILE / LAST-MILE SERVICE

**REPLY OF THE AMERICAN SHORT LINE AND REGIONAL
RAILROAD ASSOCIATION TO THE MOTION TO EXTEND THE
PROCEDURAL SCHEDULE**

On September 2, 2021, the Surface Transportation Board ("Board") invited comments from stakeholders on issues regarding first-mile / last-mile ("FMLM") service. Comments are due by October 18, 2021 and reply comments by November 16, 2021. On September 7, 2021, the American Chemistry Counsel and The Fertilizer Institute ("ACC/TFI") filed a motion requesting that the Board extend those dates to December 17, 2021 and February 17, 2022, respectively. The American Short Line and Regional Railroad Association ("ASLRRA") supports the ACC/TFI motion.

ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 30% of the national freight network, connecting manufacturers, businesses and farmers in communities and small towns to larger markets, urban centers, and ports. Our railroad members operate in 49 states and in some cases account for the state's entire rail network. Class II and III railroads play a vital role in maintaining rail service over hundreds of miles of light density lines throughout the country that in many cases were candidates for abandonment by their former Class I owners. These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition from trucks, barges, and transloading operations for freight traffic.

The Decision seeks detailed information from stakeholders in three broad areas. First, the Board has asked for concrete examples of FMLM issues and has posed eight detailed questions. Second, the Board has posed over six questions about useful FMLM metrics and how they would be used. Third, the Board has asked over a half dozen questions about the data carriers maintain on FMLM and various trade-offs associated with varying degrees and scope of data reporting. ASLRRA and its member railroads are thoroughly reviewing the issue, and the requested extension will aid in our ability to meaningfully answer the questions.

ASLRRA respectfully asks the Board to grant the ACC/TFI motion for an extension of the procedural schedule.

Respectively submitted,

A handwritten signature in black ink that reads "Sarah Yurasko". The signature is written in a cursive, flowing style.

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September 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 767

FIRST-MILE / LAST-MILE SERVICE

**COMMENTS OF
THE AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

Introduction

ASLRRA is a non-profit trade association representing the interests of approximately 600 short line and regional railroad members and railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 30% of the national freight network, connecting manufacturers, businesses, and farmers in communities and small towns to larger markets, urban centers, and ports. Class II and Class III railroads play a vital role in maintaining rail service over thousands of miles of light density lines throughout the country that in many cases were candidates for abandonment by their former Class I owners. These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition from trucks, barges, and transloading operations for freight traffic.

On September 2, 2021, the Surface Transportation Board (“Board”) invited comments from stakeholders on issues regarding first-mile / last-mile (“FMLM”) service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. The Board seeks detailed information from stakeholders in three broad areas. First, the Board has asked for concrete examples of FMLM issues and has posed eight detailed

questions. Second, the Board has posed a series of questions about useful FMLM metrics and how they would be used. Third, the Board has asked a sequence of questions about the data carriers maintain on FMLM and various trade-offs associated with varying degrees and scope of data reporting. ASLRRRA will address the scope of the request and the burden that any request for metrics would be to short line railroads.

Origination of the FMLM Inquiry

The Board's venture into FMLM service originates from an inquiry from the Board's Chairman to each Class I carrier about rail service issues and supply chain issues during the COVID-19 global pandemic.¹ Following the Chairman's May 27, 2021, letters regarding rail service to the Class I carriers, the American Chemistry Council ("ACC") wrote to the Board regarding general service concerns, briefly noting local service failures,² and The Fertilizer Institute ("TFI") wrote to express general service concerns, which encompass issues such as reductions in days of service to customers, increased dwell times, and car order errors.³ Prior to the Chairman's inquiry, on August 31, 2020, the Freight Rail Customer Alliance ("FRCA"), the National Coal Transportation Association ("NCTA"), the National Industrial Transportation League ("NITL"), and the Private Railcar Food and Beverage Association, Inc. ("PRFBA") (collectively, the "Shipper Group") stated that their members have become increasingly aware of and concerned by what they describe as the gap between the service data that the Class I railroads report to the Board and the level of service that shippers receive in the real world.⁴

¹ See, e.g., Letter from Martin J. Oberman, Chairman, to Canadian Pacific (May 27, 2021), <https://prod.stb.gov/news-communications> See, e.g., Letter from Martin J. Oberman, Chairman, to Canadian Pacific (May 27, 2021), <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> (follow hyperlink "Chairman Oberman Rail Service Letter to CP, May 27, 2021" under headings "2021" and "May"); and Letter from Martin J. Oberman, Chairman, to BNSF Railway Company (July 22, 2021), <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> (follow hyperlink "Chairman Oberman Letter to BNSF Regarding Intermodal Supply Chain Issues, July 22, 2021" under headings "2021" and "July").

² "ACC letter," available at <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> then follow hyperlink "ACC Letter to STB Regarding Rail Service, June 8, 2021" under headings "2021" and "June."

³ "TFI letter," available at <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> then follow hyperlink "Fertilizer Institute Letter to STB Regarding CSX Rail Service, June 2, 2021" under headings "2021" and "June."

⁴ "Shipper Group letter," available at <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> then follow hyperlink "FRCA, NCTA, NITL, PRFBA Letter to STB regarding Rail Service Data, August 31, 2020" under headings "2020" and "August."

The correspondence from the ACC, TFI, and Shipper Group focus on frustrations from supply chain disruptions during the pandemic. For example, the Shipper Group suggests that a “reporting gap” exists between service data that Class I railroads report to the Board and the level of service that shippers receive because of: furloughed railroad employees and equipment in storage; the implementation of Precision Scheduled Railroading (“PSR”); and the fact that the aggregated data does not provide the granularity that the Shipper Group seeks.⁵ ACC also suggests that the current issues its members report are caused by “cost cutting and major operational changes over the past several years.”⁶ TFI also stated that its members experience service problems related to: crew shortages; power availability; internal administrative issues; increased transit times; reductions in service; and disputed demurrage charges.⁷ Additionally, TFI suggests that Class I carriers, in the aftermath of wide-spread implementation of PSR, are “trying to do too much with too little.”⁸ On October 8, 2020, the Shipper Group added that data reporting on FMLM issues would not be unduly burdensome, that it would be useful regardless of some inconsistencies between carriers, and that it is needed because it would help the Board better monitor carriers’ service and the data available to individual shippers does not allow the Board to “ascertain whether carriers are meeting their common carrier obligations in the aggregate.”⁹

Comments of ASLRRRA

The Board accurately describes FMLM service as the “movement of railcars between a local railroad serving yard and a shipper or receiver facility.”¹⁰ Short line railroads frequently provide the first mile and last mile of service on rail movements. The Shipper Group’s letter acknowledges that short line railroads “originate or deliver nearly one out of every five railcars.”¹¹ As small local businesses that are generally focused entirely on the first and last mile of the shipment and that are dependent for survival on the business of generally a small number of customers, short lines provide flexibility and responsiveness to the unique needs of each

⁵ *Id.*, page 4.

⁶ “ACC letter,” *supra*, at 1.

⁷ “TFI letter,” *supra*, at 2.

⁸ *Id.*

⁹ See Shipper Group Response Letter, pages 2-3; available at <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> then follow hyperlink “FRCA, NCTA, NITL, PRFBA Response Letter regarding AAR Letter to STB, October 8, 2020” under headings “2020” and “October.”

¹⁰ See Docket No. EP 767 Decision, Sept. 2, 2021.

¹¹ “Shipper Group letter,” *supra*, at 4.

customer. Short lines provide high value to their customers, as they place cars, consolidate shipments, and move goods to the main line. At junction points, it is often a short line railroad that manages adding carloads to a larger train for the next leg of a journey. At the destination, the process is reversed, and short lines deliver the cars to the customer or to another form of transportation, such as barges, container ships, or trucks. Without providing flexible local service and working closely with their customers to provide high quality and cost-effective freight service, short line railroads would lose their business to other modes of transportation, most predominantly, trucking.

It is vague what additional metrics are envisioned by the Shipper Group, ACC, and TFI. Further, it is unclear whether data relevant to such metrics currently exist, and whether such data would provide any reliable and meaningful information to the Board, especially whether carriers are meeting their common carrier obligations “in the aggregate.” Variability in data collection, reporting systems, and abilities across the national network would result in inconsistent and non-meaningful information for customers seeking to compare their service to others’. As the Association of American Railroads (“AAR”) noted in its September 10, 2020, letter to the Board, “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.”¹² For short line railroads, capturing metrics to measure performance data “in the aggregate” is made even more difficult by the fact that there are approximately 600 short line railroads and every short line captures that data somewhat differently.

Because of the difficulty in collecting uniform service data and accounting for the many variables affecting that service, ASLRRRA has endeavored to collect information on how some short line railroads capture service data and are responsive to customer concerns that is generally representative of the short line industry. Overall, short line railroads are very responsive to their customers and quickly address any identified service issues – that is in fact generally considered the very hallmark of short line service. While a number of short lines use various transportation management systems (“TMS”), our data gathering indicates that those who use a TMS do not all use these types of systems in the same way. For example, some railroads utilize the full suite of

¹² “AAR letter,” available at <https://prod.stb.gov/news-communications/non-docketed-public-correspondence/> then follow hyperlink “AAR response regarding FRCA, NCTA, NITL, PRFBA Letter to STB, September 10, 2020” under headings “2020” and “September.”

online asset management and metrics, others use only select functions of these type of programs to see only the information relevant to their particular operations, while others do not maintain any information in a TMS at all. This survey demonstrates that there is no single metric or set of metrics or data reporting process that would make sense for the STB to mandate of short line railroads.

Examples of Short Line Railroad Customer Service

Genesee & Wyoming (“G&W”) operates over 100 short line railroads in the United States and Canada. G&W is focused on customer-satisfaction and believes that close relationships are essential to thoroughly understand customers’ service needs.¹³ G&W engages a customer-satisfaction research firm to survey customers of their subsidiary railroads worldwide. Response rates to the survey are excellent and show that customers continue to be more satisfied with G&W railroads than with the trucking industry or the railroad industry as a whole. They have also begun to track service exceptions, which are manually recorded by their customer service center if a customer switch is missed for any reason.

Watco Companies (“Watco”) operates 41 short line railroads in the United States. Watco is known for listening to its rail customers and creating solutions. They have multiple channels of communication with their customers to address and solve issues on a daily basis, and they believe in and practice personalized customer service. Watco crews regularly speak with shipping/receiving docks, Watco’s customer service team communicates with the customer’s operation team, and their sales managers regularly communicate with the transportation departments at each customer that they serve. Watco’s rail properties generally track equipment movements to and from their originating and terminating customers, identifying the date and time that the rail car is placed as well as released from the customer. Watco is also able to track car inventory and has insight into the flow of railcars inbound to the customer with anticipated dates of arrival. Whenever a customer has a question or concern, it has usually been regarding a specific car, and Watco has been able to help trace said car through a TMS or with customer service as requested. However, Watco does not maintain any customer service metric reports.

¹³ See “Customer Satisfaction,” Genesee & Wyoming; available at: <https://www.gwrr.com/freight-railroads/customer-satisfaction/>.

The company no longer performs annual customer satisfaction surveys, due to the lack of response.

Pan Am Railways (“Pan Am”) owns and operates Class II regional railroads covering northern New England. Pan Am provides a daily customer service report to its operations team that tracks priority carloads and customers on their system, but do not evaluate this information to any set metric. The railroad provides paper work strips that can be tracked in a TMS. Pan Am does not have a program to match service data against scheduled service. While they do not conduct an annual customer satisfaction survey, they staff a 24/7 customer service and billing desk to provide the most up-to-date information regarding rail service issues to their customers. In addition to the customer service desk, Pan Am provides a transportation service representative to each customer based on their geographical location. The transportation service representatives communicate daily with their customers to coordinate the scheduled movement of cars, assist in any billing request, and to build a strong rapport with the customer. Pan Am also holds multiple conference calls weekly with customers to discuss forecast and movement plans on their property to limit dwell time and incidents while cars are in transit. Additionally, Pan Am crews utilize tablets with software that can access real-time car movement updates for customers. Pan Am is dedicated to anticipating, identifying, and resolving potential issues in advance.

OmniTRAX manages 24 regional and short line railroads in 16 states and two Canadian provinces. OmniTRAX utilizes a TMS to track switch percentage and on-time percentage. Switch percentage is the percent of service that occurred on the scheduled day according to the railroad’s daily operating plan. On-time percentage is the percent of service in the scheduled window according to the railroad’s daily operating plan. Both of these metrics are tracked by railroad, carload, and by customer. Service failures are monitored daily and are provided in a daily morning report. The cause of any issue is identified, and both the local management and the regional vice president of operations work to resolve the issue for the customer. Additionally, OmniTRAX has a proactive notification process they deploy via their customer service center to notify customers if there is a known, anticipated service failure. OmniTRAX surveys customers annually to gather performance feedback in several areas, including operations performance.

Transtar, LLC (“Transtar”), which owns five Class III short line railroads, tracks customer service metrics on a per carload basis through a TMS.¹⁴ The railroads are able to track data in an excel format that include the time carloads leave a customer’s tracks and are provided in interchange service. Transtar reports that it does not have the infrastructure, information technology, or staffing to be able to provide a carload’s estimated time of arrival on all of its lines. However, all of Transtar’s railroads survey their customers at least once a year, currently using Survey Monkey, to evaluate the railroads’ performance and areas of improvement, and most of Transtar’s railroads meet with their customers quarterly to review performance. When issues regarding service are identified via the surveys or other communication, such as email or phone, a face-to-face meeting is set up with the customer to review the issue, identify action items to resolve the issue, and mitigate the potential of future occurrences.

The Greenville & Western Railway Company and the Aiken Railway Company are both Class III railroads and wholly owned subsidiaries of the Western Carolina Railway Service Corporation (“WCRS”), which has been in operation since 2003. The busier of the two railroads, Greenville & Western, operates three days per week and hauls 2,400 carloads annually. The Aiken Railway operates twice a week and hauls 1,100 annual carloads. These railroads maintain records of carloads handled and customers serviced in real time – meaning that a car is delivered to destination the same day that it is received in interchange. If a customer releases a car, it is also moved that same day. As everything is accomplished in real time, issues are handled immediately and WCRS does not maintain service metrics.

The Terminal Railroad Association of St. Louis (“TRRA”) is a Class III switching and terminal railroad that handles traffic in the St. Louis, Missouri, area. The TRRA tracks carloads and commodities but does not track any performance metrics. In January 2021, the railroad surveyed its customers on its performance. While the response to the survey was limited, the feedback the railroad received was positive. The TRRA addresses any customer service issues through email, telephone, or meetings at the customer’s facility. The TRRA finds it advantageous for customer relations to be located within a 10-15-minute drive to all of its customers. The railroad is in the process of implementing software that will allow customers to

¹⁴ Transtar, LLC’s railroads are: Gary Railway Co., Indiana; The Lake Terminal Railroad Co., Ohio; Union Railroad Co., LLC, Pennsylvania; Delray Connecting Railroad Co., Michigan; and Texas & Northern Railroad Co., Texas.

collaborate with their team through a cloud-based application, which should have the ability to track service issues and measure TRRA's response time.

As shown by the examples provided in these comments, short line railroads are customer-driven and are focused on providing excellent, responsive, flexible rail service on a daily basis. As such, their service metrics are judged by customers daily, and any shortcomings are addressed and solved without delay. That daily interaction is the imperative of the short line marketplace and a new reporting requirement would not impact that imperative. Additionally, none of the commenters who brought FMLM concerns to the Board since the start of the COVID-19 global pandemic identified short line railroads as a cause of their concerns. Similarly, going back to the record of the STB Oversight Hearing on Demurrage and Accessorial Charges from May 2019, none of the concerns raised by shippers identified problems or challenges with their short line railroad service that needed fixing.

Burden on Class II and Class III Railroads

The last question posed to the public in the Board's September 2nd decision is, "how should the Board consider relative burden based on the type of carrier involved in the transportation (e.g., Class II or III railroad)?"¹⁵ The nation's 600 short line railroads come in a variety of shapes and sizes. Some are members of rail holding companies, some are large regional entities, and many are small (sometimes very small), family-owned businesses.¹⁶ Together they represent a diverse, dynamic, and entrepreneurial collection of small businesses that make wise use of resources available to them. These small businesses operate the most vulnerable segments of the railroad system and, in some cases, are the lifeline to the nation's marketplace for many rural businesses. They succeed by competing aggressively for business and investing significant revenues in rail infrastructure. They frequently partner with their customers to offer rail transportation alternatives that would otherwise be unavailable to those customers. They also generally operate very frugally and eschew any non-essential expenses so as to allow them to maintain a cost structure that allows the business to remain viable.

¹⁵ See Docket No. EP 767 Decision, Sept. 2, 2021.

¹⁶ For example, the following ASLRRRA members are railroads that have only two operating employees: Mississippi Southern Railroad, Mission Mountain Railroad, and COLT Railroad.

While short line railroads may carry the same types of freight as Class I railroads, the scope of their operations are very different. Most short line railroads meet the definition of small businesses. On average, short line railroads employ fewer than 30 people, run an average of only 79 miles, and have \$7.7 million or less in revenue.¹⁷ Most short line railroads must invest a minimum of 25% of their annual revenue back into their infrastructure, which is a percentage far higher than almost any other industry in the country.¹⁸ Further, although short line railroads participate in approximately 20% of all carload movements and have roughly 12% of the industry's employees, they earn only approximately six percent of the revenue generated on the national rail system.¹⁹

Conclusion

ASLRRA urges the Board not to require short line railroads to create systems to track and report uniform metrics. Not only is it unclear what, if any, metrics are suggested or what, if any, benefits metrics would provide, the adverse effects of imposing such a mandate would be a serious financial blow to small railroads, and thus potentially to the customers that they serve. ASLRRA suggests that there is no indication that short line railroad FMLM service to short line customers is a problem that needs fixing, and also suggests that there is no particular set of data or metrics or particular tracking or reporting system that would be feasible or realistic to require of 600 different and distinct small businesses that are already laser focused on providing excellent customer service every day.

Respectively submitted,



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December 16, 2021

¹⁷ Short Line and Regional Railroad Facts and Figures. American Short Line and Regional Railroad Association, 2017; reprint Dec. 2019. Page 1.

¹⁸ Id. at 3.

¹⁹ <https://www.aar.org/wp-content/uploads/2020/08/AAR-Railroad-101-Freight-Railroads-Fact-Sheet.pdf>

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FIRST-MILE / LAST-MILE SERVICE

COMMENTS

submitted by

NATIONAL ASSOCIATION OF CHEMICAL DISTRIBUTORS (NACD)

Dated: December 16, 2021

The National Association of Chemical Distributors (NACD) respectfully submits these comments in response to the Surface Transportation Board's request for comment on First-Mile / Last-Mile Service, Docket No. EP 767. NACD is pleased that the Board is examining the important issue of first-mile / last-mile rail service as NACD members have experienced substantial service problems at this stage of the freight rail transportation system.

Identity and Interest of the National Association of Chemical Distributors

The National Association of Chemical Distributors (NACD), established in 1971, is an international association of chemical distributors and their supply-chain partners. Member companies process, formulate, blend, re-package, warehouse, market, and transport chemical products for over 750,000 customers across the U.S. The industry that NACD represents is a major economic engine that generates \$7.5 billion in tax revenue.

NACD's members represent more than 85% of the chemical distribution capacity in the nation and 90% of the industry's gross revenue. They range from small family-owned businesses to large national and international organizations. NACD members meet the highest standards in safety and performance through mandatory participation in NACD Responsible Distribution[®], the association's third-party-verified environmental, health, safety, and security program. Through this verification, NACD members demonstrate their commitment to continuous improvement in every phase of chemical storage, handling, transportation, and disposal operations.

The availability of safe, reliable, and efficient rail transportation is critical to the chemical distribution industry. In 2020, NACD members were responsible for 4.15 million chemical shipments, totaling 32.6 million tons of product. A substantial percentage of NACD members receive products via rail cars and greatly depend on reliable and affordable rail service to meet the needs of their customers and remain competitive in the global market.

NACD is also an active member of the Rail Customer Coalition, which wrote to the Board earlier this year with a list of policy recommendations, including the adoption of new reporting metrics to provide a more complete and useful picture of rail service, including first-mile/last-mile performance.

NACD Member Examples of First-Mile / Last-Mile Issues

NACD members report numerous instances of first-mile / last-mile rail service problems that have disrupted their operations and cost their firms substantial resources.

One of the most common problems experienced is cars not being placed in a timely manner. One NACD member company reports these delays range from two days after the car is

ordered to more than five days. Between January 1 and October 1, 2021, 31 percent of all the cars this company ordered were placed more than two days after they were ordered. This company's rail carrier, CSX, usually cites the cause of the delay as "due to a railroad reason" so the actual cause is not clear. For the NACD member company, these delays have caused canceled orders, short production runs, and even plant shutdowns. If that were not bad enough, CSX has charged the NACD member company demurrage fees for the delays even though they were not the company's fault. This company has also received several inaccurate detention bills from CSX that have misstated the dates the company orders cars, creating false detention days. The company disputes each of these bills with meticulous detail, and after several months, the railroad comes back without waiving the charges. This resulted in charges of \$13,000 between January 1 and October 1, 2021, with only \$1,000-\$2,000 of this possibly being legitimate.

The company reports these problems intensified upon CSX's adoption of precision scheduled railroading (PSR), which led to the closing of multiple switching yards. This changed the time of railcar travel from Texas to Georgia from 7-10 days to 21-30 days. To attempt to have problems addressed, this company first contacts CSX customer service, then the yard master, then the yard master's boss, and finally the Board's Rail Customer and Public Assistance Program.

This is exacerbated by the rail carriers' reduction in service days over recent years. One NACD member reports that for decades, CSX served their spur four days per week, but this was reduced to two days per week upon the adoption of precision scheduled railroading (PSR). This company operates seven days per week and receives approximately 300 cars per year. The service reduction has impacted the company's ability to serve their customers.

Another NACD member reports that one of their company's facilities in North Carolina frequently experiences service delays, incomplete equipment reporting, and canceled work orders with no notification. The company reports these problems occur about once every other week without explanation from the railroad, CSX. The delays impact downstream activities, including packaging orders and sending them out on trucks. It also leads to increased labor costs resulting from delays and schedule changes. Additional financial impacts include lost business and revenue and extra trucking charges. The company attempts to have the problems addressed through the CSX automated portal.

The same company also provides another example from another facility in Ohio. The problem is that the railroad does not meet the work order and cars are not brought in even though the request was submitted in a timely manner. For example, the company placed a request for three cars on Sunday, October 10, 2021, and the railroad failed to deliver the cars on Monday, October 11, 2021. With a severe shortage of intermediate bulk containers, the company needed these railcars to continue the operation of packaging the product into drums. This facility reports that similar incidents occur about once every two months and that they do not receive an adequate explanation from the railroad on the cause of the delays. Depending on the amount of other railcar inventory the facility has onsite, these delayed car placements have the potential to shut down production. The delays also have significant impacts on the labor schedule, ultimately resulting in turnover in some cases. There is a financial impact on the facility's operations through the generation of non-revenue labor accrued and/or lost work hours for their employees, resulting in turnover and additional hiring costs. It can also result in the railroad's imposition of demurrage being assessed on the cars for sitting in the yard that will later need to be disputed, resulting in further non-revenue generating labor. The company attempts to have the problem

addressed by filing a complaint/help ticket, and the response is typically, “We will place the cars on the next switch.”

Another company, a producer affiliate of NACD, reports that missed car deliveries occur a minimum of two to four times per month. This company has service dates to bring in and take out cars from their facility on Tuesdays, Thursdays, and Sundays. The company receives an automated message from CSX customer service for any cars that are scheduled to come in from the service yard and any cars that are in the CSX system to be pulled on the day of service. The typical message is, “Our train crew reports they were unable to pull this car due to the loading or unloading not being completed. The release date on the car will be adjusted and the requested pull of this car will be rescheduled to your next service date.”

This stated reason for not pulling the car makes no sense to the company. On at least one occasion, the CSX crew serviced the plant and took some cars but not all of the cars that were in line to pull out. When asked why this problem was occurring, CSX has told the company that they are in the midst of a manpower issue with not enough crews/people trained to pull hazardous flammable products in bulk liquid cars. The missed service results in a major disruption to operations when planning to process material coming into the plant that will be going out of the plant after processing. Plans are re-done two or three times when these misses occur. The rail cars do not come in as advertised, and this is only being relayed to the company’s team after the fact, making operations extremely difficult to plan.

Similar to the previous examples, this company has gone from five service days to three service days recently, which has severely impacted their ability to turn product around. Further, CSX did not communicate this service cut in advance. The company only “found out” after the fact.

To try to address the issue, the company regularly enters issues to the CSX portal. CSX rarely corrects the problems in real time. Production must wait until the next service date with the hope that the cars will be brought into the plant or taken out of the plant. This is also difficult on the company's end users, who are located all over the U.S., Canada, and Mexico. These delays have lasted up to three weeks before cars are pulled in or picked up, and the company is consistently forced to play catch-up because of the railroad's delays.

Another NACD member reports an additional problem has recently started occurring when a shipment originates on one railroad and ends on another railroad. One of the company's customers ships from a mill in Montana on BNSF delivering to their 3PL warehouse in Houston on UP. Both railroads want the long haul. Rather than sharing the long haul move rate by handing off at a midway point, each railroad would prefer to cover the entire long haul. The railroad not covering the long haul responds with a punitive and exorbitant first-/last-mile switch fee upward of \$2,000. This unnecessarily jeopardizes the NACD member's business.

Recommendations for Metrics to Measure First-Mile / Last-Mile Service

NACD supports the establishment of additional metrics to increase transparency and measure first-mile / last-mile rail service.

It would be helpful if the local yard's schedule for the day was published online. This would give rail customers an idea where they are in the queue. In addition, information on rail transit time, improper spotting, number of days not switched, and reasons for/problems with the delayed switches would be illuminating.

NACD recommends that metrics measure both first-mile / last-mile service as well as additional information to more broadly measure service that may relate to or involve first-mile /last-mile service, such as metrics on car trip plan compliance. First-mile /last-mile information

should include the number of days a car arrives in the first-mile / last-mile and no action is taken. Information would be helpful on when a car has been requested of the customer's facility and the railroad fails to move it (resulting in demurrage bills from suppliers) or pulls the wrong car. All of these metrics would be useful to the Board which would use them to design solutions to address the problems.

Conclusion

NACD commends the Board for examining the issue of first-mile / last-mile rail service. We look forward to working with the Board to increase transparency and develop solutions to make critical rail service more dependable. If you have questions or need additional information, please do not hesitate to contact me.

Sincerely,



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP -767

FIRST MILE/LAST MILE SERVICE

RAIL UNION COMMENTS

The American Train Dispatchers Association, Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division and National Conference of Firemen and Oilers, 32BJ/SEIU (“Unions”) submit these Comments in response to the Board’s solicitation of comments and information regarding the quality and reliability of rail carrier First Mile/Last Mile service (“FMLM”), and specifically whether rail carriers should be required to report data relative to FMLM. The Unions support the Board opening a proceeding on this subject, and support requiring rail carriers to report FMLM data.

INTERESTS OF THE UNIONS

The Unions represent employees of all of the major rail carriers including all of the Class I rail carriers. These unions collectively represent Train Dispatchers; Maintenance of Way (track, right of way, bridge and structures) workers; Signalmen; rail shop Sheet Metal Workers, Laborers, Fuelers and Hostlers; and Conductors, Trainmen, Yardmen and Yardmasters—employees who work in all departments of the railroads who are familiar with all aspects of rail

operations; and they either provide or support rail service.

Up until recently, it was nearly universal that persons who became employed as rail workers stayed employed in the industry for their entire careers. That has changed as Class I railroads have moved to a new ruthless cost-cutting business model (of which so-called precision scheduled railroading is a part) which prioritizes profit maximization and shareholder returns above all else. Under this new model, operating ratio drives all decisions, and service has become a minor consideration. The drive for ever lower operating ratios has led to dramatic reductions in employment which has, in turn, led to deterioration of service to shippers, which is a significant factor in the service complaints that motivated the Board to open this proceeding.

BACKGROUND

After decades of railroad industry decline, spurred in large part by government support for motor vehicle and air transportation, Congress passed the Staggers Act of 1980 which substantially deregulated the railroads. In 1995, Congress further deregulated the railroads. But shortly after that, the ICC/STB authorized consolidations of the Class I railroads, resulting in two major carriers east of the Mississippi, two major carriers west of the Mississippi, and two carriers running down the center of the country. These transactions were expressly authorized as “consistent with the public interest”. They were approved based on representations that shippers and the public would benefit. The railroads asserted, and the ICC and STB agreed, that the mega-carriers would provide better and faster service through longer-end-to-end runs, reduced interchanges, and greater system velocity; it was said that efficiencies would be achieved that would result in savings that would be passed along to shippers and the public in general; and that the economies of scale available to larger carriers would allow for increased investment in rail

infrastructure.

For a while, the railroads followed through on their representations that service would improve, and infrastructure investments would increase. Shipper rates declined steadily from 1980 rates in real dollars but began to increase toward the end of the first decade of the 2000s, while still remaining well below 1980 rates in real dollars. The two decade-long erosion of rail employee compensation bottomed-out and there were small gains. But after twenty years of significant profit growth, rail employee compensation is only slightly above the 1980 level of compensation in real dollars. However, those who bought stock in Class I railroads in 2009 have gained a 1000% increase in share prices.

Several years ago, so-called “activist investors”, hedge funds and private equity interests took note of railroad profitability and the very light nature of rail regulation. They realized that they could drive down operating ratios without loss of business, or a regulatory response. They forced implementation of policies like inflexible scheduled railroading, running of trains exceeding three miles in length, mothballing of equipment (and cannibalizing of equipment for parts), and reduced inspection and maintenance of equipment and infrastructure to drive down costs and increase earnings for short term gains. Railroads have closed (and sold) yards which were used to sort and classify cars and arrange for delivery to local shippers; yard crews and local crews that actually delivered cars to shippers were eliminated; with train consists exceeding the lengths of sidings (sometimes by miles) Dispatchers were forced to send trains on circuitous routings to maintain system fluidity because they could not use sidings to allow oncoming or higher speed trains to pass other trains. Train crews were directed to reduce speeds below permissible levels to reduce fuel

costs, and they were told not to make deliveries they could make if doing so would incur overtime pay. The railroads now focus on easier to serve/high profit ratio customers. The railroads are no longer interested in growth; they are happy to serve fewer customers so long as the profit margin on the customers they do serve remains high. Rail operations, shipper needs, effective maintenance, safety, employee and manpower concerns, and long-term health of the industry are taking a distant back seat reducing operating ratios.

Rail employment is down by around 30% since 2015 while the amount of freight shipped is only slightly reduced. In the period since 2019 rail employment has been reduced by 20% while carloadings are down only 3%; profits have increased by 8% during that time. This has necessarily impacted service as it is the rail workers who provide and support the service.

It is in this context that the Board has received the service complaints that it has described in seeking comments on whether reporting of FMLM data should be required. Shippers complain of poor and unreliable service. Railroads respond with data on system velocity and dwell time and say all is well. But the fundamental concern of shippers is timely and appropriate delivery and pick-up of cars; not system fluidity and transit times.

POSITION OF THE UNIONS

The Unions support the Board's initiation of this proceeding and they support requiring reporting of FMLM data because the railroad industry has gone from being a customer service industry to a "customer serves us" industry. The Unions support industry growth and quality service to its customers. The Unions believe that requiring reporting of FMLM information will help shippers, the Board, the and the public better assess the quality

and timeliness of rail service and is a good first step toward restoring service to its proper place in the industry. Actual delivery and pick-up of cars is one useful measure for assessing service; that is the ultimate product the railroads are to supply for their customers. Provision of this data to the Board will allow it to better evaluate shipper service complaints and rail carrier assertions of adequacy of service. Additionally, collection and reporting of this information will help the Board assess not merely service to individual shippers, but also service provided by specific carriers, and the industry as a whole. Furthermore, the Unions submit that the data necessary to provide this information to the Board already exists and is readily available to the carriers, so it should not be burdensome for them to report what they already have.

The Unions will review comments filed by other participants in this proceeding and will respond to comments based on the unique perspective and experience of rail workers.

Respectfully submitted,

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December 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of the foregoing Allied Rail Unions' Comments by First Class Mail to the offices all Parties of Record in this Docket.

Date: December 17, 2021

/s/Richard S. Edelman
Richard S. Edelman

ENTERED
Office of Proceedings
December 17, 2021
Part of
Public Record

Docket No.767

FIRST-MILE / LAST-MILE SERVICE

Comments of the Private Railcar Food and Beverage Association

The Private Railcar Food and Beverage Association (“PRFBA”) respectfully submits its comments pursuant to the Surface Transportation Board’s (“STB” or “Board”) August 31, 2021, order in the above-captioned proceeding in support of first-mile / last mile (“FMLM”) service performance data reporting and other measures to improve rail service on the U.S. rail network.

PRFBA members have suffered from poor rail service since the initiation of precision scheduled railroading across this rail network which has become increasingly unreliable over the last six months, causing PRFBA members to believe the system may be on the brink of total collapse in the near future. As a result, PRFBA urges the Board to implement data reporting for first-mile / last-mile service and take further action deemed necessary to improve critical rail service in this country.

PRFBA AND ITS INTEREST IN THE PROCEEDING

PRFBA is comprised of 18 global food and beverage companies and manufacturers headquartered in North America. These members include PepsiCo, Inc., Molson Coors Beverage Company, KraftHeinz Food Company, General Mills, Inc. (“GMI”), McCain Foods USA, Inc., Sysco Corporation, Bonduelle America, Boardman Foods, Inc., G3 Enterprises, Inc., JD

Irving/Cavendish Farms, The Martin-Brower Corporation, Lamb Weston Holdings, Inc., Univar Solutions, Darigold, Inc., Kellogg Company, Land O' Lakes, Inc., National Sugar Marketing, LLC, and Laprino Foods. They are major rail shippers that rely on the railroads to produce and distribute their food and beverage products that are vital to the health and welfare of our nation. These companies are responsible for feeding the citizens of this nation. Without adequate rail service, their food and beverages will not be on store shelves in the US.

PRFBA members meet regularly to discuss opportunities and solutions to their "similar" challenges with railcar service. The membership also collaborates with other trade associations with regard to industry changes and legislation that directly impact the food and beverage transportation needs. PRFBA meets with the Class I North American railroads as a group to discuss its rail issues. PRFBA has provided the members with a forum to work together to harness the railroad service and ultimately provide a better foundation for private railcar food and beverage shippers in North America.

THE BOARD'S REQUEST FOR FMLM COMMENTS IN THIS PROCEEDING.

The STB has asked for comments in the above-captioned proceeding regarding FMLM service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. The Board explained that FMLM service refers to the movement of railcars between a local railroad serving yard and a shipper or receiver facility. So-called "local trains" serve customers in the vicinity of the local yard, spotting (i.e., placing for loading or unloading) inbound cars and pulling (i.e., picking up) outbound cars from each customer facility. The Board made this request for comments after hearing concerns raised by shippers across numerous industries and requests for more transparency of FMLM data. As such, the Board is now asking for information on possible FMLM service issues, the design of potential

metrics to measure such service, and the associated burdens or trade-offs with any suggestions raised by commenters.

Presently, the Board collects certain railroad performance data metrics from Class I railroads on a weekly and monthly basis.¹ Also, the Board actively monitors, on an informal basis, the national rail network, including network fluidity and service issues, through, for example, the Railroad-Shipper Transportation Advisory Council, the Rail Customer and Public Assistance Program (“RCPA”), and information requests to Class I railroads. *See, e.g.*, Surface Transportation Board, *Budget Request Fiscal Year 2022*, 14-15. Since Spring 2020, the Board noted it has focused its informal monitoring on the effects of and response to the pandemic, engaging in frequent communication with carriers, shippers, and other stakeholders. *See id.* Recently, the Board’s Chairman inquired to each Class I carrier about rail service issues in May and supply chain issues (including local service issues) in July. The Board has heard from various stakeholders, in recent months, about crew shortages and other issues stemming from the COVID-19 pandemic and worldwide supply chain complications have heightened and added to the importance of the Board exploring FMLM service.

In addition, the Board has received several shipper letters, including from PRFBA, complaining about FMLM service issues and seeking more transparency through rail carrier data. PRFBA joined the Freight Rail Customer Alliance www.railvoices.org, National Coal Transportation Association www.movecoal.org, and National Industrial Transportation League www.nitl.org, also referred to as the “Shipper Group”, in requesting that the Board require rail carrier FM/LM data reporting in their submitted letters dated August 30, 2020 and October 8,

¹ *See* 49 C.F.R. § 1250.2.

2020 that provided the impetus for this Board Notice. PRFBA understands that FRCA and NCTA will be submitting joint comments and NITL will be filing its own comments in response to this Notice. While the railroads opposed this request for transparency regarding their service, the Board decided to explore this issue further by seeking comments from its relevant stakeholders.

The Board sought comments from the shipping community, carriers, and the public concerning what, if any, FMLM issues they consider relevant. The Board also sought comment on whether further examination of FMLM issues is warranted, and what, if any, actions may help address such issues, taking into account the information shippers already receive from carriers. Of particular importance, the Board sought recommendations as to specific additional data commenters view as important to identify FMLM service concerns that is not now being reported to the Board. The Board also sought information about potential burdens of any suggested data collection and reporting. The Board suggested that shipper commenters may wish to provide context for their comments by including information about the quantity or volume of traffic they ship, their storage capacity, seasonality of their shipments (if any), work windows, and other factors that make their facilities or operations unique. The Board provided various questions that it thought would be helpful when identifying issues:

- How often does the issue arise?
- Why does the issue occur? How does the issue affect your operations?
 - How does the issue affect your operations? How does the issue affect your facilities and/or production?
 - How does the issue affect your labor schedule?
 - What is the financial impact associated with this issue?

- Has this issue changed with the implementation of operating changes generally referred to as precision scheduled railroading?
- How do you typically try to address the issue? What is communication regarding this issue like between shippers and carriers?
- What remedies are available to you?

The Board noted that some shippers have asked that the Board collect additional service metrics to measure FMLM service, and suggested that commenters may wish to further address:

- What, if any, existing information or metrics (collected by the Board or maintained by carriers) facilitate an understanding of the issue?
- What new information or metrics would illuminate the issue? The Board asks for specificity in any suggestions, including specific definitions for different types of services (e.g., transportation involving one carrier vs. multiple carriers) and facilities (e.g., open vs. closed-gate).
- How and at what level should any metrics be reported (individual shipper, local, regional, or national)?
- Should metrics only measure FMLM service, or should additional metrics more broadly measure service that may relate to or involve FMLM service, such as metrics on car trip plan compliance? Who would use any such information or measurements, and how?
- What are the specific benefits, if any, that would arise from the use of any suggested metrics?
- Would reports to the Board, shipper surveys, reports directly to individual shippers, or some other type of information be helpful to clarify the issue?

The Board mentioned that some issues that commenters may wish to comment on, if pertinent to them, include a) switching, including missed switches and/or inconsistent switches; b) modified service plans at local yards (such modified plans may reduce the number of service days per week, increase the number of service days per week, or change the timing of service (morning versus night)); c) car delivery, such as the delivery of cars carrying a different commodity, delivery of a different type of car than the cars ordered, or delivery of fewer or more cars than were ordered; d) extended dwell times at railroad facilities local to shipper/receiver locations; and e) discrepancies in information between the railroad and the rail customer as to the location of cars between the local yard and the shipper's facility.

Finally, the Board asked for comment on the trade-offs on providing this data with respect to burden on rail carriers versus the value to shippers, the government, and the public.

THE BOARD ASTUTELY REQUIRED RAILROADS TO REPORT PERFORMANCE DATA TO BETTER UNDERSTAND RAIL SERVICE ISSUES.

This initial requirement for railroads to provide service data in 49 C.F.R. § 1250.2 stemmed from the massive rail service crisis in 2013-14.² During this service crisis, the Board held a hearing regarding rail service problems on April 10, 2014, at its offices in Washington, D.C. The Board also held a public hearing on September 4, 2014, in Fargo, N.D., to give

² Rail service issues in recent history preceded this event in 2013-14. In 1997, while the operations of the merged Union Pacific ("UP") and Southern Pacific Railroads were being integrated, western rail shippers experienced extraordinary service delays as congestion at certain terminals spread into a systemwide problem. The STB intervened by ordering UP to release certain shippers from contracts and to cooperate with other railroads in relieving congestion. In 1999, while Norfolk Southern and CSX were merging the operations of the disbanded Conrail, shippers experienced delays in obtaining service and in transit times. In 2004, during a period of rapid growth in container and other rail freight traffic, the Southern California seaports experienced severe congestion that was attributed to lack of rail capacity for the transportation of arriving containers as well as to port capacity constraints. Rail shippers complained of degraded service in other regions at the same time.

interested persons the opportunity to report on rail service problems, hear from rail industry executives on plans to address those problems, and discuss additional options to improve service.

During and after the hearings, shippers expressed concerns about the lack of publicly available rail service metrics and requested access to certain performance data from the railroads to help them better understand the scope, magnitude, and impact of the service issues at that time. Following the April hearing, the Board directed BNSF and CP to provide weekly status reports on fertilizer shipments and the transportation of grain on their networks (for CP, on its United States network). See *U.S. Rail Serv. Issues—Grain*, EP 724 (Sub-No. 2), slip op. at 3 (STB served June 20, 2014); *U.S. Rail Serv. Issues*, EP 724 (Sub-No. 1), slip op. at 1 (STB served Apr. 15, 2014). At the September hearing, stakeholders expressed a need for greater industry-wide transparency with regard to rail service. Shippers asserted that performance metrics are important for rail users to plan logistics, minimize economic harm to operations and revenues, assist with business planning, and to better serve their own customers during the service crisis recovery period. Shippers also stated that information would bring transparency regarding the extent to which the railroads are improving and resolving the ongoing service issues.

The Board agreed that there is a need for broader standardized performance data from the railroad industry as it continues to address existing service challenges. *United States Rail Service Issues – Data Collection*, EP 724 (Sub-No. 3), slip op. at 2 (STB served October 8, 2014). The Board also agreed that it is necessary to apply these reporting requirements to all of the Class I carriers. *Id.*

The Board issued this interim order specifying the types of data required to be filed by the Class I railroads. The Board also noted that carriers cited congestion in Chicago as one

significant cause of the service problems. It explained that while congestion in the area was particularly acute during the last winter, it has been a recurring problem at this crucial network hub. In 2000, the freight and passenger railroad industries formed the Chicago Transportation Coordination Office (“CTCO”) to coordinate operations between the railroads operating in Chicago. CTCO members use the forum to discuss daily operations, resolve operating conflicts, and conduct long-range planning related to rail transportation issues in the Chicago area.

As a result, the Board determined that given the longstanding importance of Chicago as a hub in national rail operations, and the impact that recent extreme congestion in Chicago has had on rail service in the Upper Midwest and nationwide, it also would require the Class I railroads operating at the Chicago gateway to jointly file on a weekly basis in Docket No. EP 724 (Sub-No. 3), a narrative summary of operating conditions at the gateway that included specific data.

Specifically, with respect to the nationwide data, railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination or scheduled interchange, and loading metrics for grain and coal service, among other items. The data were intended to give both the Board and its stakeholders access to near real-time information about the operations and performance of the Class I railroads, and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating losses amid the challenging railroad operating environment.

Shortly thereafter, the Board issued a Notice of Proposed Rulemaking to require Class I railroads and CTCO to publicly file various weekly data reports pertaining to service performance. *United States Rail Service Issues – Performance Data Reporting (NPR)*, EP 724

(Sub-No. 4) (STB served December 30, 2014).³ The Board stated that permanent collection of performance data on a weekly basis would allow continuity of the current reporting and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, should they occur. Transparency would also benefit rail shippers and other stakeholders, by helping them to better plan operations and make informed decisions based on publicly available, near real-time data, and their own analysis of performance trends over time. The proposed rule followed the interim data reporting requirements with certain modifications, additions, and deletions. The Board proposed nine weekly metrics that would apply to Class I railroads: (1) system average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin and interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by state; (8) for grain cars, the total overdue car orders, average days late, total new grain car orders in the past week, total orders filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region. The Board also proposed metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects.

³ The Board issued a supplemental notice of proposed rulemaking based on meetings with stakeholders. *See U.S. Rail Serv. Issues—Performance Data Reporting (SNPR)*, EP 724 (Sub-No. 4) (STB served Apr. 29, 2016), corrected, (STB served May 13, 2016). The *SNPR* proposed changes to six of the proposed reporting metrics in the NPR (Request Nos. 1, 4, 5, 6, 8, and 9), modifications to the reporting week and definition of a unit train, and the addition of three new metrics (Request Nos. 10, 11, and 12) (grain shuttle/dedicated grain trips per month, weekly originated carloads by commodity, and car order fulfillment percentage for 10 car types). *See SNPR*, slip op. at 24-26. With regard to Request No. 7 and No. 8, KCS was not required to report information by state, but instead only system-wide data. *See SNPR*, slip op. at 28.

About eleven months later, the Board issued a Final Rule requiring all Class I railroads and the CTCO to report certain service performance metrics. *United States Rail Service Issues – Performance Data Reporting*, EP 724 (Sub-No. 4) (STB served November 30, 2016). The Board issued various Railroad Performance Data Elements that the Class I railroads must report, including train speed, dwell time, cars on line, trains holding, cars not moved in 48 hours, grain car information, coal unit train information, and carloads in interchange. *See* 49 C.F.R. § 1250.2. The rules also required reporting on Chicago rail traffic and rail infrastructure projects. *See* 49 C.F.R. § 1250.3 and 4. The initial reporting date was February 8, 2017.

Many rail shippers believed this step by the STB would lead to better service from their Class I railroads going forward. The general thinking was the reporting requirements would make the railroads more accountable which would incentivize them to be more responsive with respect to service. However, these shippers were sadly mistaken.

RAIL SERVICE PLUMMETED AFTER THE NATIONWIDE IMPLEMENTATION OF PRECISION SCHEDULED RAILROADING BY MOST CLASS I CARRIERS.

In March 2017, CSX Transportation, Inc. (“CSXT”) implemented Precision Scheduled Railroading (“PSR”) as its rail operating plan. This implementation led to countless service issues across its network almost immediately. Part of CSXT’s PSR plan involved cutting a large number of jobs across its system.⁴ By July, the Board had taken a number of actions in response to the service problems resulting from CSXT’s ongoing implementation of this new operating plan. The Board began closely monitoring CSXT’s performance, including requesting that

⁴ CSXT had 23,988 total employees in February 2017 and had 17,138 in October 2021. It had 9262 train and engine service employees in February 2017 and had 6718 in October 2021. These numbers were obtained from the STB Form C information on the STB website.

CSXT's senior management participate in weekly calls with the Board's RCPA staff and that CSXT submit weekly specific service performance data to facilitate these calls.

On October 11, 2017, service on CSXT had become so unreliable that the Board ordered executive-level officials from CSXT to appear at a listening session at the STB to discuss their ongoing and future efforts to improve service and to provide an estimated timeline for recovery of normal service levels. The Board also asked impacted shippers to appear at the public listening session to discuss their service concerns and comment on the railroad's service recovery efforts. Despite these efforts, CSXT service continues to suffer to this date.

On March 18, 2018, STB Chairman Ann Begeman individually wrote the Class I railroads about service issues across the US rail system. She stated that the Board had been closely monitoring freight rail service across the US and had become increasingly concerned about its overall state based on the weekly data collected under 49 C.F.R. pt. 1250. The data was indicating that service was deteriorating based on decreasing system average train speeds and increasing terminal dwell time. Other key metrics were also trending in a negative direction. The STB began holding weekly calls with the railroads and asked them to provide certain information with respect to their rail service.

Despite these monumental service issues on CSXT, most of the other Class I railroads who were not already operating under PSR, also adopted this rail operating plan, including Norfolk Southern Railway ("NS") in July 2019, Kansas City Southern Railway in January 2019, and UP in October 2018. These operational changes involving PSR led to further disruptions across the US rail network. Massive job cuts, like on CSXT, occurred on these new PSR

railroads as part of this plan, leading many to believe that any uptick in the need for rail service would leave them woefully unprepared.⁵ This eventually proved to be the case.

On August 24, 2020, the STB Chairman, as well as the Federal Railroad Administration Administrator, wrote the Class I railroads about their rail service concerns. These leaders of the rail regulatory agencies explained that they had been made aware of service issues, including missed industrial switches and excessively late or annulled trains due to crew availability issues. They noted that with both increasing intermodal and carload volumes and a projected robust harvest fast approaching, railroad employee availability, together with sufficient equipment resourcing, is essential for safe, fluid rail service in support of the nation's economic recovery from COVID-19. Given the challenges related to changing demand patterns and operating conditions, increased communication and transparency with rail shippers had become especially important to ensure they have the information needed to plan their businesses and meet their own customers' needs in the eyes of these two. They emphasized that it was their expectation that there would be heightened emphasis on improving employee availability, equipment resources, and robust communication to quickly resolve service issues as they arise and to prevent them from becoming widespread. The Class I railroads did not heed this warning as service issues became more rampant.

On May 27, 2021, the new Chairman of the STB, Martin Oberman, also felt compelled to write to the Class I railroads about rail service issues. He explained that the Board had received

⁵ UP had 44,652 total employees in and 18,612 train and engine service employees in October 2018. UP had 31,921 total employees and 13,554 train and engine service employees in October 2021. NS had 24,594 total employees and 10,243 train and engine service employees in July 2019. NS had 17,725 total employees and 7417 train and engine service employees in October 2021. These numbers were obtained from the STB Form C information on the STB website.

concerning reports from a meaningful number of rail customers of subpar performance, including missed switches, railcars delayed at intermediate yards or interchanges, extended out-of-route movements, and prolonged dwell at origin for some unit train traffic. Additionally, he noted that the STB had been made aware of instances of significant congestion at various intermodal facilities, which has resulted in delayed train arrivals and disruptions to container availability. He recognized that these rail service challenges, at least to some extent, had been related to workforce reductions resulting from COVID-19 cases, quarantines, and furloughs based on the temporary decline in demand and the resultant adjustments made by railroads in nearly every facet of their businesses. But he also expressed his concern about the extent to which these service issues may be related to or exacerbated by a broader trend of rail labor reductions that have been occurring over the past several years. He stated that a lack of personnel, including reserve personnel, has made it more difficult to scale-up operations to respond to increases in demand and to maintain reliable service in the face of unanticipated external events that disrupt ordinary operations or business expectations. He said labor shortages could also delay or prolong the recovery period when such network disruptions inevitably occur.

As stated in previous STB letters, he said it is vital that freight railroads continue frequent, proactive communication with the Board and customers on their ability to meet demands for service as the economy recovers from the pandemic. He requested an updated and detailed description of the railroads' preparedness to meet anticipated future demand, including (1) the availability of train crew, yard, and maintenance employees (active, reserve, and furloughed workers) and their plans and time frames for employees to return to work and any re-training, if necessary, and (2) the availability of equipment resources (active and short-term / long-term stored locomotives and rail cars). As part of this update, he specifically requested that

the railroads also address whether they have any long-term plans, including their hiring plans for 2021 and 2022, to reverse any of the diminishing workforce levels which have resulted from their strategies in recent years. He also asked them to identify any regions of their networks where they were experiencing or anticipating workforce challenges, and their plans to overcome these challenges.

Shortly thereafter, on July 22, 2021, STB Chairman Oberman again wrote the Class I railroads about significant disruptions within the international intermodal supply chain that involve the freight rail network. He stated that he was particularly concerned about significant increases in container congestion at key U.S. terminals, and substantial charges being levied by the railroads for container storage at these terminals. Specifically, in recent months, he asserted that the Board had received numerous reports related to the length of time that containers were being held in rail yards, and the sizeable storage fees some customers had been required to pay in order to obtain release of containers bearing their shipments. He said that he was particularly troubled about reports that Class I railroads were continuing to impose these charges even in circumstances when the receivers, as a practical matter, had no means to facilitate the release of their containers. Under these circumstances, he noted that demurrage fails to provide any constructive incentives, and perversely results in massive charges that can exceed the commercial value of the shipment. In order to better understand the magnitude of the current container congestion and the framework for the associated demurrage fees, he asked for information from each of the Class I railroads regarding policies and practices with respect to the assessment of demurrage fees on intermodal containers.

On October 18, 2021, Chairman Oberman focused on service issues on CSXT which again caused great concern to the Board, thereby precipitating a letter to the carrier seeking rail

service performance information. He stated his reason for this information request was that over the past several months, the Board had continued to receive a steady stream of complaints about the adequacy of rail service provided by CSXT. In both private meetings and public settings, he said CSXT customers have relayed examples of substandard performance, including missed switches, extended transit times for both manifest and bulk shipments, unfilled car orders, and the inability to contact customer service and operating personnel. He stated that customers have also reported that service problems are sometimes resolved, only to recur weeks or months later. Taken together, he noted these complaints were of grave concern as it appeared that CSXT resources were surged to assist one customer, only to have problems arise with another. And, as a result of these problems, he explained that customers incurred premium freight costs, idled production, lost sales and damaged commercial relationships, typically without meaningful recourse from CSXT. In addition to anecdotal incidents, he noted CSXT's rail service performance data reported under STB Docket No. EP 724 tended to support that CSXT's network was underperforming compared to the benchmarks set in 2019. He also noted that CSXT has approximately 1,000 fewer "transportation" employees for August 2021 compared to August 2019 (6,577 versus 7,543), as reported on STB Form C.

This was followed with a similar letter to NS the next month, emphasizing the railroad's deteriorating key operating metrics reported pursuant to EP 724. Chairman Oberman compared these numbers with the fact that NS's number of "transportation" employees had continued to decline over the prior three months (8,281, 8,269, and 8,207, respectively), as reported on STB Form C. Coinciding with the marked deterioration in NS's performance metrics, he said the Board had received an increasing number of complaints from NS's customers about poor performance, including missed switches, cars stranded at intermediate yards, longer transit times,

operating plan changes without notice, and a lack of communication from customer service. For these reasons, he requested that NS provide the Board with a review of the current state of its network, and assessment of what factors are affecting NS's ability to achieve past levels of fluidity and consistent service, and in particular the impact on customer service of previous headcount reductions for train, yard, and maintenance employees. He noted it would be most helpful if NS could provide this review as a follow up to its June 18, 2021, letter, in which a "program of targeted hiring" to meet workforce needs, referenced measures to attract and retain operating employees was outlined. In light of the declining employee headcount since June as shown by the data supplied to the STB, he asserted this program does not appear to have succeeded in obtaining a workforce level sufficient to avoid the service challenges described above.

In other words, rail service had not improved since the performance data reporting requirements had been imposed by the Board in EP 724. In fact, the Class I railroads did not appear to be overly concerned about these service issues but were apparently focused on lowering their operating ratios which included these large work force reductions. Despite these numerous letters from STB Chairmen, the railroads did not appear to be responsive to their regulator's concerns about these employment and service numbers. This lack of concern has made service across the country on the freight rail network unpredictable and has hamstrung the operations of many shippers, including members of PRFBA.

PRFBA MEMBERS HAVE SUFFERED FROM INCREDIBLY POOR FMLM SERVICE THE LAST SEVERAL MONTHS WHICH IN THE RAILROADS' OWN WORDS WAS DIRECTLY RELATED TO THEIR LACK OF EMPLOYEES.

PRFBA members have suffered from unreliable railroad service over the last few years which has become even more damaging to their businesses over the last six months. GMI has a

cereal plant in Cincinnati, Ohio, that is served by NS. 100% of its rail service is inbound ingredients, amounting to approximately 1200 cars per year of rice, flour, and sugar. The plant has capacity for 8-9 railcars with no seasonality with respect to these commodities. The plant operates with 3 shifts, 24 hours per day, seven days a week, excluding holidays.

Over the last few months, missed and erratic switches at the plant have become more prevalent in comparison to the NS published switch schedule at the plant. In the month of October, NS only was approximately at a 70% switch rate in terms of days serviced versus its schedule. NS has stated that this poor performance has occurred because of crew shortages. This unreliable switching service has led to production interruptions and/or unplanned changeovers at the plant. As a result, the plant has produced less product and has had to deal with the labor inefficiencies from these operational interruptions. It is difficult to create an efficient labor plan when NS does not deliver cars because it leaves certain employees idled and not able to perform their normal roles when production is interrupted. GMI calculates that it loses at least \$200,000 per day, conservatively, when it cannot operate due to NS's failures to deliver its railcars.

To resolve these problems, GMI has demanded that NS meet with it on a weekly or monthly basis. Service usually improves for a short time before reverting to a state where GMI is not getting the cars it requested on scheduled switch days. GMI has good access to local NS contacts in operations and marketing and sales. However, NS sales defers to customer service who defers to operations, creating a frustrating communication chain. Generally, as noted, NS states that crew shortages are causing the service issues.

This plant could survive 2-3 days by truck for the provision of some commodities, but that is not sustainable because the shortage of bulk truck drivers has resulted in limited service

availability. Ultimately, GMI shuts down, slows down or, reschedules another item for production using available ingredients, even though it might not need the product at that time.

GMI also has a cereal plant in Covington, Georgia, with similar rail service issues that is served by CSXT. 100% of its rail traffic is inbound, providing ingredients by bulk railcar which amounts to approximately 1500 cars per year of corn, flour, and oat flour. The plant has space for 16 railcars with no seasonality regarding its shipments. This plant also operates on 3 shifts, 24 hour a day and 7 days a week excluding holidays. GMI has a Trackmobile at Covington and has slated the plant for rail expansion but has hesitated due to a “lack of faith” in CSXT.

By CSXT’s own measure, it is performing at only a 76% switch rate versus its schedule and 87% car accuracy. It starts to impact the plant when the numbers get below 80% of switches performed. Moreover, GMI has rarely received its Saturday switch over the last six months. CSXT has explained this poor service is occurring due to crew shortages. Like at the Ohio plant, this poor service has caused production interruptions and labor utilization issues from the lack of ingredients due to poor switching service. GMI estimates this poor service can result in at least \$200,000 per day in damages, conservatively.

GMI believes that PSR has created this problem because of all the CSXT layoffs, resulting in these crew shortages. When these issues become chronic, GMI demands that CSXT engage in weekly/monthly meetings to discuss how to improve the situation like with NS. Service usually improves for a short time before reverting to a state where CSXT is again consistently not providing reliable switching service. Local CSXT employees are accessible for service issues but cannot provide any real results due to the crew shortages. GMI could survive 5-7 days by using truck for some commodities, but that is not sustainable at the plant due to the shortage of bulk truck drivers.

While the list of FMLM issues with PRFBA members sometimes appears to be endless over the last several years, recently, the issues have increased exponentially on all of the Class I railroads. NS consistently has been missing switches at its Manassas, Virginia yard impacting several PRFBA members. This issue was raised with local and then executive management to attempt to remedy the problems. NS did put a “Go Team” at the yard to assist with issues but still continued to miss switches. These service issues have caused these PRFBA companies to miss crucial orders to supply our nation’s food vendors. It has also caused these companies to resort to truck increasing costs by a large amount. These issues are a result of labor shortages across the NS system.

One PRFBA member calculates NS on-time performance for its rail service on a monthly basis. NS was at 56% for November down from 67% in October. These numbers use NS trip plans with an added two days as a buffer. NS has closed strategic serving yards and reduced staff resulting in these poor numbers.

Moreover, NS customer service rarely responds to service calls within 24 hours if it responds at all. This unacceptable responsiveness also seems to be related to the massive reductions in employees on the railroad.

Recently, a PRFBA member had to shut down its food plant for 8 days because CSXT would not switch its car all the way into the facility. CSXT brought the car within 150 feet of the plant, but there it sat for eight days in sight of the idled employees. Because the plant relies on rail service for its inbound ingredients, it could not operate. The PRFBA member continually called CSXT to no avail. CSXT stated the problem stemmed from labor shortages and had caused the railroad to be 1800 carloads behind and bottlenecked.

In addition, the same PRFBA member mentioned herein also ran CSXT on time performance report for its rail service which was at 33% for November, down from 49% in October. CSX has also closed strategic serving yards and has massive labor shortages, resulting in these extraordinarily poor service numbers.

Over the last 18 months, it has been incredibly difficult to speak to a live person at CSXT. Its customer service system is cumbersome and leads to few results when shippers ask for help. Presumably, this is also because of its labor shortages due to its massive reductions to its workforce.

Another PRFBA member has had numerous missed switches by UP at its facilities in Texas over a week period. When it reached out to UP, it took almost two weeks for the railroad to make a switch, resulting in orders for a major food vendor to not be filled. This eventually resulted in several railcars being bunched in Dallas overloading the receiver. UP also has these problems because of its labor shortages.

Furthermore, UP has had billing information inadvertently changed in its system causing shipments to move in the wrong direction. This issue was raised with UP, but it took time to talk to a live person. This also seems to be related to labor shortages. Similarly, UP has not been accepting railcar diversions in advance or on the weekends. This issue also was raised with UP but has not been resolved damaging the businesses of PRFBA members. UP said it did not have a sufficient workforce to process diversions on weekends in response to complaints.

The same PRFBA member mentioned herein also did an on-time performance measurement for UP which showed the railroad at 60% in November down from 62% in October. These inadequate numbers also appear to be related to crew shortages.

FMLM DATA REPORTING AND OTHER MEASURES ARE NEEDED TO ENSURE AN EFFECTIVE U.S. FREIGHT RAIL SYSTEM

As noted, the initial performance data reporting stemmed from the service crisis in 2013-

14. The Board reasoned as follows in making its determination to issue an interim order requiring railroads to temporarily provide data in 2014:

The United States rail system is an interconnected network, and one carrier's service problems can affect the performance of other carriers. Although the severity differs, shippers have reported problems on multiple carriers. Thus, the Board views the network as a whole, and seeks to better understand performance across the entire network.

The new reporting requirements will give the agency and stakeholders access to data needed for real-time understanding of regional and national service issues.

United States Rail Service Issues – Data Collection, EP 724 (Sub-No. 3), slip op. at 2.

Later, the Board explained that the primary purpose for the subsequent related rulemaking was to develop a set of performance data that will allow the agency to monitor current service conditions in the industry and to identify trends or aberrations, which may indicate problems. The cumulative data was meant to give the Board reference points for measuring an individual railroad against its past performance. A corollary benefit is that shippers and other stakeholders will have access to the reported data to assist in their business decisions and supply-chain planning. At the same time, the Board sought to make sure that any rule adopted regarding service data results in the collection of information that will be useful to the agency and its stakeholders. The Board believed that the final rule adopted an appropriate balance of considerations that would provide helpful information to both the agency and the public. *United States Rail Service Issues – Performance Data Reporting*, EP 724 (Sub-No. 4), slip op. at 3-4.

In providing the basis for its action, the Board stated that “the need and justification for a permanent reporting rule is clear.” *SNPR*, slip op. at 22.

Under the Interstate Commerce Act, the Board has broad authority to require reports by rail carriers under 49 U.S.C. §§ 1321, 11145. The statute also makes clear that service adequacy is a key part of the Board’s mandate, beginning with the provisions of the rail transportation policy (RTP) of 49 U.S.C. § 10101. *See SNPR*, slip op. at 22. The RTP states that, in regulating the railroad industry, it is policy of the United States Government to minimize the need for regulatory control, 49 U.S.C. § 10101(2), promote a safe and efficient rail transportation system, 49 U.S.C. § 10101(3), ensure the development of a sound rail transportation system to meet the needs of the public, 49 U.S.C. § 10101(4), and encourage efficient management of railroads, 49 U.S.C. § 10101(9). The Board finds that having data that will allow it to monitor service across the rail network advances these RTP goals. The data will help promote the RTP by allowing the agency, as well as shippers and other stakeholders, to more quickly identify and react to service issues than it would otherwise have the ability to do.

As also explained in the *SNPR*, slip op. at 22, the Board has the responsibility for monitoring the adequacy of service under specific statutory provisions, including service emergencies under 49 U.S.C. § 11123. The Board’s powers under § 11123 are extensive⁶ and can be initiated by the agency. The potential triggers for Board action, such as “congestion of traffic” and “other failure of traffic movement” (49 U.S.C. § 11123(a)), are clearly implicated by the collection of service metrics, and the Board has explained that reporting would “improve the Board’s ability to identify and help resolve future regional or national service disruptions more quickly.” *SNPR*, slip op. at 22. Service issues can also be relevant when the Board considers whether railroad service practices are reasonable (49 U.S.C. § 10702), whether to force a line sale in the event of inadequate service (49 U.S.C. § 10907), and whether railroads are fulfilling their common carrier obligations (49 U.S.C. § 11101) or providing safe and adequate car service (49 U.S.C. § 11121). *See SNPR*, slip op. at 22 (explaining that “permanent reporting . . . would aid the Board and industry stakeholders in

⁶ When requisite statutory criteria are met, the Board can (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; (3) prescribe temporary through routes; (4) give directions for—(A) preference or priority in transportation; (B) embargoes; or (C) movement of traffic under permits. *See* 49 U.S.C. § 11123.

identifying whether railroads are adequately meeting those statutory requirements.”)

United States Rail Service Issues – Performance Data Reporting, EP 724 (Sub-No. 4), slip op. at 5-6. Also, 49 U.S.C. § 11701 provides the Board with the power to conduct investigations if a carrier is violating the statute, including with respect to its common carrier obligation.

While the existing metrics are helpful, FMLM metrics are an important source of data because they are a truer reflection of service than these current metrics which only reflect velocities from terminal-to-terminal. FMLM data better indicate the service shippers and receivers are actually receiving. The Board did not mandate that railroads report FMLM data in its prior rulemaking on this subject. The metrics now required in 49 C.F.R. § 1250.2 are too general to allow the Board (and shippers) to assess local service.

This conclusion was supported by findings made in a 2015 National Academy of Sciences/Transportation Research Board report and a 2008 Laurits R. Christensen Associates Inc. report.⁷ The TRB Report provided that “[s]hippers and the railroads have recognized a need for better data on freight railroad service performance that can be collected and published in a timely manner. Better data could aid shippers in planning for and coping with transportation conditions, reinforce the railroads’ accountability, and help regulators evaluate shipper complaints. P. 83. The TRB Report further explained with respect to train speed and dwell time aggregated data that “for the most part the extent of aggregation of the RPM [railroad performance measurement] data obscures any meaningful insight into the types and degree of service quality problems experienced by shippers. Furthermore, an estimate of how long

⁷ See Transp. Research Bd. of the Nat’l Acad, *Modernizing Freight Rail Regulation* (“TRB Report”), 75-88 (2015); Laurits R. Christensen Associates, *A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition*, ES-35 to ES-37 (2009), <https://www.stb.gov/stb/docs/competitionstudy/executive%20summary.pdf>.

shipments took to move between any two particular points cannot be derived from the two data series, and neither sheds any light on how long shippers at various locations had to wait for rail cars.” P. 85.

[T]he data to be collected are not specific with regard to shipment or even to origin and destination (with the exception of unit train data) in the same manner as are the on-time arrival data collected for many years by the U.S. Department of Transportation (USDOT) for airlines. Furthermore, the proposed collection effort appears to be an ad hoc response to the disturbances of the previous winter; it does not appear to have been strategically devised in the sense of there being a plan for routine use of the information in monitoring performance.

Better service-related data at the shipment level, for both common and contract carriage, would allow more objective analysis of common carrier service quality, particularly to evaluate whether this service is chronically substandard and how it changes relative to that of contract carriage when capacity is tight.

TRB Report at 87-88.

In its evaluation of the railroad performance data, Laurits R. Christensen Associates (2009a, 17–19; 2009b, 2-31–2-34) reached the same conclusion: average train speed and dwell time data are too gross to offer more than a rough indication of service performance. For example, it calculated correlations of changes in real GDP with changes in dwell time, cars on line, and train speed by railroad during the period 2006–2008 and found that the measures did not consistently change in the expected direction. Christensen Associates also pointed out that the performance features of greatest concern to shippers, such as route-specific or corridor-specific information on on-time performance and the variability of performance, are not part of the measurement system.

In other words, both of these independent research sources found that the data collected by the STB could not accurately provide how a railroad was performing or predict how it would

perform. Both studies recommend the use of on-time performance measurements like FMLM data that would provide a more accurate picture of the rail service situation.

Therefore, it is clear that FMLM data is needed to provide the Board and shippers with a better view of how the rail industry is operating. It is also clear that FMLM issues have become rampant across the US rail network, especially recently. Moreover, it is evident that these events are usually caused by crew shortages due to the job cuts by the railroads since the implementation of PSR. While this evidence is anecdotal, the railroads are telling their customers that this is the reason why they are missing switches. As a result, the basis for their service issues does not appear to be in dispute.

These FMLM issues have damaged the shippers by slowing or completely stopping production at their plants because the railroads cannot make switches or perform in a manner that gets inbound products to them. These slowdowns and shutdowns throw these plants' labor situation into complete disarray because employees are idled without the ingredients to make the food and beverage products. These shippers must pay these employees even though there is no work at the plant. The shippers generally have no recourse against the railroads because consequential damages are prohibited by most tariffs and rail contracts.

Even more frustrating for these shippers who are suffering from this poor service is the railroads are not adequately responding to their complaints about service in a timely manner or at all. PRFBA members have also reached out to RCPA for help when the circumstances become more dire. However, the railroads have not been responsive in many of these situations either despite the excellent service provided by these STB employees. Therefore, as mentioned herein, plants can be shut down, and the railroads still do not seem to want to fix the problems.

Consequently, it seems logical for the Board to require the Class I railroads to submit FMLM data regarding on-time performance and switching. The railroad should report the number of switches it commits to provide in its weekly switch service plan and the time window that the switch is to be performed. Weekly or monthly, the railroad should then report the number of missed switches against that switch service plan. A completed switch should be defined as all available cars for placement or pickup to be moved within the time windows specified. Any cars switches or time window missed would be considered a missed switch. The railroads should also provide on-time performance metrics based on their car trip plans, allowing a 24-hour delivery window. On-time performance should be measured from origin shipper release date to destination when actually placed or constructively placed. PRFBA believes these simple requirements would measure FMLM sufficiently to provide shippers and the Board with the information needed to do their jobs.

Data should be provided for each shipper and on a local, regional, and national basis for shippers to be able to properly analyze their transportation situations and for the Board to be able to monitor the rail network effectively. Moreover, it seems important to have these metrics submitted to the Board and made available to the public to incentivize railroads to achieve better service performance numbers.

Moreover, it does not seem as if these additional reporting requirements would be burdensome on the railroads because they should be or already are tracking these numbers. Even if new reporting requirements would create some burden for the railroads, which they do not appear to do, the public interest in having this information available to shippers and the Board is extremely compelling to ensure production at these companies continues to occur especially as the U.S. recovers from the economic disruption from the pandemic. The railroads are responsible

for making the US economy work as they proudly state. However, if the railroads cannot live up to this responsibility because of job cuts and other cost cutting measures, the economy will suffer. This result cannot be allowed to happen.

As noted herein, plant shutdowns and slowdowns are becoming more and more common due to poor rail service. This poor rail service appears to be related to crew shortages due to the job cuts railroads have been making over the past several years. Although they may be related, the poor rail service also occurs because the railroads are closing local yards that provide this FMLM service. The STB already tracks the railroads' employment numbers and has noted the evidence of the large difference in the number of employees since the implementation of PSR. Now, it seems necessary to track the FMLM data to analyze properly how this has impacted the network. The present metrics reported to the STB do not allow the Board or shippers to make informed decisions. It would also make sense to require railroads to compensate shippers when plants are shut down due to poor service at least in certain circumstances. In addition, the Board should consider creating regulations that identify violations of railroads common carrier obligation. Without the proper motivation and a stronger hand by the STB, railroads have not been responsive to the Board or its customers with respect to service issues.

CONCLUSION

Something needs to change. Otherwise, the country could find itself amid a rail network meltdown that could bring the economy to a halt during a time in history when there are already enough issues in play like the pandemic and the supply chain problems throughout the world. The economy does not need more transportation problems now, especially ones that should be solvable through hiring. Therefore, it is imperative that the Board require robust FMLM data reporting and make the railroads more financially responsible for their poor service.

Respectfully submitted,

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FIRST-MILE / LAST-MILE SERVICE

Comments of the Industrial Minerals Association – North America

The Industrial Minerals Association – North America (“IMA”) respectfully submits its comments pursuant to the Surface Transportation Board’s (“STB” or “Board”) August 31, 2021, order in the above-captioned proceeding in support of first-mile / last mile (“FMLM”) service performance data reporting and other measures to improve rail service on the U.S. rail network.

IMA member companies have suffered from poor rail service since the initiation of precision scheduled railroading across this rail network which has become increasingly unreliable over the last six months, causing IMA members to believe the system may be on the brink of total collapse in the near future. As a result, IMA urges the Board to implement data reporting for first-mile / last-mile service and take further action deemed necessary to improve critical rail service in this country.

IMA AND ITS INTEREST IN THE PROCEEDING

IMA is a trade association that represents companies that mine, process and sell industrial minerals throughout North America. IMA represents a diverse set of member companies engaged in mining and processing of ball clay, barite, bentonite, borates, calcium carbonate, diatomite, feldspar, industrial sand, kaolin, lithium, mica, perlite, potash, quartz, salt, soda ash, sodium

bicarbonate, talc, and wollastonite, and other minerals across North America. The industrial minerals produced by IMA member companies are the raw material feedstock that are incorporated into a broad range of products, including among other things, container, food products, flat and specialty glasses, paint and coatings, ceramics, and a broad range of building products. Additionally, industrial minerals are used to make foundry molds and cores, which are in turn used to make metal shapes used to manufacture automobiles, SUVs and trucks, rail cars and almost all other items that have metal castings. The demand for many of these minerals from manufacturers is global, and the continued pressure member companies are feeling from the railroads in the form of unreliable service are making it more difficult to compete in that global market. This poor service by the railroads is having a negative overall impact on the U.S. economy, and issues could get worse if they are not held accountable.

Industrial minerals are low margin, high volume products. Member companies are heavily dependent upon a reliable and cost-effective transportation network, especially rail, and are major shippers with the major rails. To help highlight that, in 2014, the nonmetallic minerals except fuels category, made up \$1.5 Billion in total freight rail premiums.

THE BOARD'S REQUEST FOR FMLM COMMENTS IN THIS PROCEEDING

The STB has asked for comments in the above-captioned proceeding regarding FMLM service, particularly on whether additional metrics to measure such service might have utility that exceeds any associated burden. The Board explained that FMLM service refers to the movement of railcars between a local railroad serving yard and a shipper or receiver facility. So-called "local trains" serve customers in the vicinity of the local yard, spotting (i.e., placing for loading or unloading) inbound cars and pulling (i.e., picking up) outbound cars from each customer facility. The Board made this request for comments after hearing concerns raised by shippers

across numerous industries and requests for more transparency of FMLM data. As such, the Board is now asking for information on possible FMLM service issues, the design of potential metrics to measure such service, and the associated burdens or trade-offs with any suggestions raised by commenters.

Presently, the Board collects certain railroad performance data metrics from Class I railroads on a weekly and monthly basis.¹ Also, the Board actively monitors, on an informal basis, the national rail network, including network fluidity and service issues, through, for example, the Railroad-Shipper Transportation Advisory Council, the Rail Customer and Public Assistance Program (“RCPA”), and information requests to Class I railroads. *See, e.g.*, Surface Transportation Board, *Budget Request Fiscal Year 2022*, 14-15. Since Spring 2020, the Board noted it has focused its informal monitoring on the effects of and response to the pandemic, engaging in frequent communication with carriers, shippers, and other stakeholders. *See id.* Recently, the Board’s Chairman inquired to each Class I carrier about rail service issues in May and supply chain issues (including local service issues) in July. The Board has heard from various stakeholders, in recent months, about crew shortages and other issues stemming from the COVID-19 pandemic and worldwide supply chain complications have heightened and added to the importance of the Board exploring FMLM service.

In addition, the Board has received a number of shipper letters complaining about FMLM service issues and seeking more transparency through rail carrier data. While the railroads opposed this request for transparency regarding their service, the Board decided to explore this issue further by seeking comments from its relevant stakeholders.

¹ *See* 49 C.F.R. § 1250.2.

The Board now has sought comments from the shipping community, carriers, and the public concerning what, if any, FMLM issues they consider relevant. The Board also has sought comment on whether further examination of FMLM issues is warranted, and what, if any, actions may help address such issues, taking into account the information shippers already receive from carriers. Of particular importance, the Board has sought recommendations as to specific additional data commenters view as important to identify FMLM service concerns that is not now being reported to the Board. The Board also has sought information about potential burdens of any suggested data collection and reporting. The Board has suggested that shipper commenters may wish to provide context for their comments by including information about the quantity or volume of traffic they ship, their storage capacity, seasonality of their shipments (if any), work windows, and other factors that make their facilities or operations unique. The Board has provided various questions that it thought would be helpful when identifying issues:

- How often does the issue arise?
- Why does the issue occur?
 - How does the issue affect your operations? How does the issue affect your facilities and/or production?
 - How does the issue affect your labor schedule?
 - What is the financial impact associated with this issue?
- Has this issue changed with the implementation of operating changes generally referred to as precision scheduled railroading?
- How do you typically try to address the issue? What is communication regarding this issue like between shippers and carriers?
- What remedies are available to you?

The Board has noted that some shippers have asked that the Board collect additional service metrics to measure FMLM service, and has suggested that commenters may wish to further address:

- What, if any, existing information or metrics (collected by the Board or maintained by carriers) facilitate an understanding of the issue?
- What new information or metrics would illuminate the issue? The Board asks for specificity in any suggestions, including specific definitions for different types of services (e.g., transportation involving one carrier vs. multiple carriers) and facilities (e.g., open vs. closed-gate).
- How and at what level should any metrics be reported (individual shipper, local, regional, or national)?
- Should metrics only measure FMLM service, or should additional metrics more broadly measure service that may relate to or involve FMLM service, such as metrics on car trip plan compliance? Who would use any such information or measurements, and how?
- What are the specific benefits, if any, that would arise from the use of any suggested metrics?
- Would reports to the Board, shipper surveys, reports directly to individual shippers, or some other type of information be helpful to clarify the issue?

The Board has mentioned that some issues that commenters may wish to comment on, if pertinent to them, include a) switching, including missed switches and/or inconsistent switches; b) modified service plans at local yards (such modified plans may reduce the number of service days per week, increase the number of service days per week, or change the timing of service

(morning versus night)); c) car delivery, such as the delivery of cars carrying a different commodity, delivery of a different type of car than the cars ordered, or delivery of fewer or more cars than were ordered; d) extended dwell times at railroad facilities local to shipper/receiver locations; and e) discrepancies in information between the railroad and the rail customer as to the location of cars between the local yard and the shipper's facility.

Finally, the Board has asked for comment on the trade-offs on providing this data with respect to burden on rail carriers versus the value to shippers, the government, and the public.

THE BOARD ASTUTELY HAS REQUIRED RAILROADS TO REPORT PERFORMANCE DATA TO BETTER UNDERSTAND RAIL SERVICE ISSUES.

This initial requirement for railroads to provide service data in 49 C.F.R. § pt. 1250 stemmed from the massive rail service crisis in 2013-14.² During this service crisis, the Board held a hearing regarding rail service problems on April 10, 2014, at its offices in Washington, D.C. The Board also held a public hearing on September 4, 2014, in Fargo, N.D., to give interested persons the opportunity to report on rail service problems, hear from rail industry executives on plans to address those problems, and discuss additional options to improve service.

During and after the hearings, shippers expressed concerns about the lack of publicly available rail service metrics and requested access to certain performance data from the railroads

² Rail service issues in recent history preceded this event in 2013-14. In 1997, while the operations of the merged Union Pacific ("UP") and Southern Pacific Railroads were being integrated, western rail shippers experienced extraordinary service delays as congestion at certain terminals spread into a systemwide problem. The STB intervened by ordering UP to release certain shippers from contracts and to cooperate with other railroads in relieving congestion. In 1999, while Norfolk Southern and CSX were merging the operations of the disbanded Conrail, shippers experienced delays in obtaining service and in transit times. In 2004, during a period of rapid growth in container and other rail freight traffic, the Southern California seaports experienced severe congestion that was attributed to lack of rail capacity for the transportation of arriving containers as well as to port capacity constraints. Rail shippers complained of degraded service in other regions at the same time.

to help them better understand the scope, magnitude, and impact of the service issues at that time. Following the April hearing, the Board directed BNSF and CP to provide weekly status reports on fertilizer shipments and the transportation of grain on their networks (for CP, on its United States network). See *U.S. Rail Serv. Issues—Grain*, EP 724 (Sub-No. 2), slip op. at 3 (STB served June 20, 2014); *U.S. Rail Serv. Issues*, EP 724 (Sub-No. 1), slip op. at 1 (STB served Apr. 15, 2014). At the September hearing, stakeholders expressed a need for greater industry-wide transparency with regard to rail service. Shippers asserted that performance metrics are important for rail users to plan logistics, minimize economic harm to operations and revenues, assist with business planning, and to better serve their own customers during the service crisis recovery period. Shippers also stated that information would bring transparency regarding the extent to which the railroads are improving and resolving the ongoing service issues.

The Board agreed that there is a need for broader standardized performance data from the railroad industry as it continues to address existing service challenges. *United States Rail Service Issues – Data Collection*, EP 724 (Sub-No. 3), slip op. at 2 (STB served October 8, 2014). The Board also agreed that it is necessary to apply these reporting requirements to all of the Class I carriers. *Id.*

As a result, the Board issued an interim order specifying the types of data required to be filed by the Class I railroads. The Board also noted that carriers cited congestion in Chicago as one significant cause of the service problems. It explained that while congestion in the area was particularly acute during the last winter, it has been a recurring problem at this crucial network hub. In 2000, the freight and passenger railroad industries formed the Chicago Transportation Coordination Office (“CTCO”) to coordinate operations between the railroads operating in

Chicago. CTCO members use the forum to discuss daily operations, resolve operating conflicts, and conduct long-range planning related to rail transportation issues in the Chicago area.

As a result, the Board determined that given the longstanding importance of Chicago as a hub in national rail operations, and the impact that recent extreme congestion in Chicago has had on rail service in the Upper Midwest and nationwide, it also would require the Class I railroads operating at the Chicago gateway to jointly file on a weekly basis in Docket No. EP 724 (Sub-No. 3), a narrative summary of operating conditions at the gateway that included specific data.

Specifically, with respect to the nationwide data, railroads were asked to report weekly average train speeds, weekly average terminal dwell times, weekly average cars online, number of trains held short of destination or scheduled interchange, and loading metrics for grain and coal service, among other items. The data were intended to give both the Board and its stakeholders access to near real-time information about the operations and performance of the Class I railroads, and the fluidity of the Chicago gateway. In addition, the data were expected to assist rail shippers in making logistics decisions, planning operations and production, and mitigating losses amid the challenging railroad operating environment.

Shortly thereafter, the Board issued a Notice of Proposed Rulemaking to require Class I railroads and CTCO to publicly file various weekly data reports pertaining to service performance. *United States Rail Service Issues – Performance Data Reporting (NPR)*, EP 724 (Sub-No. 4) (STB served December 30, 2014). The Board stated that permanent collection of performance data on a weekly basis would allow continuity of the current reporting and improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly, should they occur. Transparency would also benefit rail shippers and other stakeholders, by helping them to better plan operations and make informed decisions based on

publicly available, near real-time data, and their own analysis of performance trends over time. The proposed rule followed the interim data reporting requirements with certain modifications, additions, and deletions. The Board proposed nine weekly metrics that would apply to Class I railroads: (1) system average train speed; (2) weekly average terminal dwell time; (3) weekly average cars online; (4) weekly average dwell time at origin and interchange; (5) weekly total number of loaded and empty trains held short of destination or scheduled interchange; (6) daily average number of loaded and empty cars operating in normal movement which have not moved in specified periods of time; (7) weekly total number of grain cars loaded and billed, by state; (8) for grain cars, the total overdue car orders, average days late, total new grain car orders in the past week, total orders filled in the past week, and number of orders cancelled in the past week; and (9) weekly total coal unit train loadings or carloadings by region.³ The Board also proposed metrics pertaining to service in Chicago as well as reporting on major rail infrastructure projects.

About eleven months later, the Board issued a Final Rule requiring all Class I railroads and the CTCO to report certain service performance metrics. *United States Rail Service Issues – Performance Data Reporting (Final Rule)*, EP 724 (Sub-No. 4) (STB served November 30, 2016). The Board issued various Railroad Performance Data Elements that the Class I railroads must report, including train speed, dwell time, cars on line, trains holding, cars not moved in 48

³ The Board later issued a supplemental notice of proposed rulemaking based on meetings with stakeholders. *See U.S. Rail Serv. Issues—Performance Data Reporting (SNPR)*, EP 724 (Sub-No. 4) (STB served Apr. 29, 2016), corrected, (STB served May 13, 2016). The *SNPR* proposed changes to six of the proposed reporting metrics in the NPR (Request Nos. 1, 4, 5, 6, 8, and 9), modifications to the reporting week and definition of a unit train, and the addition of three new metrics (Request Nos. 10, 11, and 12) (grain shuttle/dedicated grain trips per month, weekly originated carloads by commodity, and car order fulfillment percentage for 10 car types). *See SNPR*, slip op. at 24-26. With regard to Request No. 7 and No. 8, KCS was not required to report information by state, but instead only system-wide data. *See SNPR*, slip op. at 28.

hours, grain car information, coal unit train information, and carloads in interchange. *See* 49 C.F.R. § 1250.2. The rules also required reporting on Chicago rail traffic and rail infrastructure projects. *See* 49 C.F.R. § 1250.3, 4. The initial reporting date was February 8, 2017.

Many rail shippers believed this step by the STB would lead to better service from their Class I railroads going forward. The general thinking was the reporting requirements would make the railroads more accountable which would incentivize them to be more responsive with respect to service. However, these shippers were sadly mistaken.

RAIL SERVICE PLUMMETED AFTER THE NATIONWIDE IMPLEMENTATION OF PRECISION SCHEDULED RAILROADING BY MOST CLASS I CARRIERS.

In March 2017, CSX Transportation, Inc. (“CSXT”) implemented Precision Scheduled Railroading (“PSR”) as its rail operating plan. This implementation led to countless service issues across its network almost immediately. Part of CSXT’s PSR plan involved cutting many jobs across its system.⁴ By July, the Board had taken a number of actions in response to the service problems resulting from CSXT’s ongoing implementation of this new operating plan. The Board began closely monitoring CSXT’s performance, including requesting that CSXT’s senior management participate in weekly calls with the Board’s RCPA staff and that CSXT submit weekly specific service performance data to facilitate these calls.

On October 11, 2017, service on CSXT had become so unreliable that the Board ordered executive-level officials from CSXT to appear at a listening session at the STB to discuss their ongoing and future efforts to improve service and to provide an estimated timeline for recovery

⁴ CSXT had 23,988 total employees in February 2017 and had 17,138 in October 2021. It had 9262 train and engine service employees in February 2017 and had 6718 in October 2021. These numbers were obtained from the STB Form C information on the STB website.

of normal service levels. The Board also asked impacted shippers to appear at the public listening session to discuss their service concerns and comment on the railroad's service recovery efforts. Despite these efforts by the Board, CSXT service continues to suffer to this date.

On March 18, 2018, STB Chairman Ann Begeman individually wrote the Class I railroads about service issues across the U.S. rail system. She stated that the Board had been closely monitoring freight rail service across the U.S. and had become increasingly concerned about its overall state based on the weekly data collected under 49 C.F.R. pt. 1250. The data was indicating that service was deteriorating based on decreasing system average train speeds and increasing terminal dwell time. Other key metrics were also trending in a negative direction. The STB began holding weekly calls with the railroads and asked them to provide certain information with respect to their rail service.

Despite these monumental service issues on CSXT, most of the other Class I railroads who were not already operating under PSR, also adopted this rail operating plan, including Norfolk Southern Railway ("NS") in July 2019, Kansas City Southern Railway in January 2019, and UP in October 2018. These operational changes involving PSR led to further disruptions across the U.S. rail network. Massive job cuts, like on CSXT, occurred on most of these new PSR railroads as part of this plan, leading many to believe that any uptick in the need for rail service would leave them woefully unprepared.⁵ This eventually proved to be the case.

⁵ UP had 44,652 total employees and 18,612 train and engine service employees in October 2018. UP had 31,921 total employees and 13,554 train and engine service employees in October 2021. NS had 24,594 total employees and 10,243 train and engine service employees in July 2019. NS had 17,725 total employees and 7417 train and engine service employees in October 2021. These numbers were obtained from the STB Form C information on the STB website.

On August 24, 2020, the STB Chairman, as well as the Federal Railroad Administration Administrator, wrote the Class I railroads about their rail service concerns. These leaders of the rail regulatory agencies explained that they had been made aware of service issues, including missed industrial switches and excessively late or annulled trains due to crew availability issues. They noted that with both increasing intermodal and carload volumes and a projected robust harvest fast approaching, railroad employee availability, together with sufficient equipment resourcing, is essential for safe, fluid rail service in support of the nation's economic recovery from COVID-19. Given the challenges related to changing demand patterns and operating conditions, increased communication and transparency with rail shippers had become especially important to ensure they have the information needed to plan their businesses and meet their own customers' needs in the eyes of these two. They emphasized that it was their expectation that there would be heightened emphasis on improving employee availability, equipment resources, and robust communication to quickly resolve service issues as they arise and to prevent them from becoming widespread. The Class I railroads did not heed this warning as service issues became more prevalent.

On May 27, 2021, the new Chairman of the STB, Martin Oberman, also felt compelled to write to the Class I railroads about rail service issues. He explained that the Board had received concerning reports from a meaningful number of rail customers of subpar performance, including missed switches, railcars delayed at intermediate yards or interchanges, extended out-of-route movements, and prolonged dwell at origin for some unit train traffic. Additionally, he noted that the STB had been made aware of instances of significant congestion at various intermodal facilities, which has resulted in delayed train arrivals and disruptions to container availability. He recognized that these rail service challenges, at least to some extent, had been

related to workforce reductions resulting from COVID-19 cases, quarantines, and furloughs based on the temporary decline in demand and the resultant adjustments made by railroads in nearly every facet of their businesses. But he also expressed his concern about the extent to which these service issues may be related to or exacerbated by a broader trend of rail labor reductions that have been occurring over the past several years. He stated that a lack of personnel, including reserve personnel, has made it more difficult to scale-up operations to respond to increases in demand and to maintain reliable service in the face of unanticipated external events that disrupt ordinary operations or business expectations. He said labor shortages could also delay or prolong the recovery period when such network disruptions inevitably occur.

As stated in previous STB letters, he said it is vital that freight railroads continue frequent, proactive communication with the Board and customers on their ability to meet demands for service as the economy recovers from the pandemic. He requested an updated and detailed description of the railroads' preparedness to meet anticipated future demand, including (1) the availability of train crew, yard, and maintenance employees (active, reserve, and furloughed workers) and their plans and time frames for employees to return to work and any re-training, if necessary, and (2) the availability of equipment resources (active and short-term / long-term stored locomotives and rail cars). As part of this update, he specifically requested that the railroads also address whether they have any long-term plans, including their hiring plans for 2021 and 2022, to reverse any of the diminishing workforce levels which have resulted from their strategies in recent years. He also asked them to identify any regions of their networks where they were experiencing or anticipating workforce challenges, and their plans to overcome these challenges.

Shortly thereafter, on July 22, 2021, STB Chairman Oberman again wrote the Class I railroads about significant disruptions within the international intermodal supply chain that involve the freight rail network. He stated that he was particularly concerned about significant increases in container congestion at key U.S. terminals, and substantial charges being levied by the railroads for container storage at these terminals. Specifically, in recent months, he asserted that the Board had received numerous reports related to the length of time that containers were being held in rail yards, and the sizeable storage fees some customers had been required to pay in order to obtain release of containers bearing their shipments. He said that he was particularly troubled about reports that Class I railroads were continuing to impose these charges even in circumstances when the receivers, as a practical matter, had no means to facilitate the release of their containers. Under these circumstances, he noted that demurrage fails to provide any constructive incentives, and perversely results in massive charges that can exceed the commercial value of the shipment. In order to better understand the magnitude of the current container congestion and the framework for the associated demurrage fees, he asked for information from each of the Class I railroads regarding policies and practices with respect to the assessment of demurrage fees on intermodal containers.

On October 18, 2021, Chairman Oberman focused on service issues on CSXT which again caused great concern to the Board, thereby precipitating a letter to the carrier seeking rail service performance information. He stated his reason for this information request was that over the past several months, the Board had continued to receive a steady stream of complaints about the adequacy of rail service provided by CSXT. In both private meetings and public settings, he said CSXT customers have relayed examples of substandard performance, including missed switches, extended transit times for both manifest and bulk shipments, unfilled car orders, and

the inability to contact customer service and operating personnel. He stated that customers have also reported that service problems are sometimes resolved, only to recur weeks or months later. Taken together, he noted these complaints were of grave concern as it appeared that CSXT resources were surged to assist one customer, only to have problems arise with another. And, as a result of these problems, he explained that customers incurred premium freight costs, idled production, lost sales and damaged commercial relationships, typically without meaningful recourse from CSXT. In addition to anecdotal incidents, he noted CSXT's rail service performance data reported under STB Docket No. EP 724 tended to support that CSXT's network was underperforming compared to the benchmarks set in 2019. He also noted that CSXT has approximately 1,000 fewer "transportation" employees for August 2021 compared to August 2019 (6,577 versus 7,543), as reported on STB Form C.

This was followed with a similar letter to NS the next month, emphasizing the railroad's deteriorating key operating metrics reported pursuant to EP 724. Chairman Oberman compared these numbers with the fact that NS's number of "transportation" employees had continued to decline over the prior three months (8,281, 8,269, and 8,207, respectively), as reported on STB Form C. Coinciding with the marked deterioration in NS's performance metrics, he said the Board had received an increasing number of complaints from NS's customers about poor performance, including missed switches, cars stranded at intermediate yards, longer transit times, operating plan changes without notice, and a lack of communication from customer service. For these reasons, he requested that NS provide the Board with a review of the current state of its network, and assessment of what factors are affecting NS's ability to achieve past levels of fluidity and consistent service, and in particular the impact on customer service of previous headcount reductions for train, yard, and maintenance employees. He noted it would be most

helpful if NS could provide this review as a follow up to its June 18, 2021, letter, in which a “program of targeted hiring” to meet workforce needs, referenced measures to attract and retain operating employees was outlined. In light of the declining employee headcount since June as shown by the data supplied to the STB, he asserted this program does not appear to have succeeded in obtaining a workforce level sufficient to avoid the service challenges described above.

In other words, rail service has not improved since the performance data reporting requirements had been imposed by the Board in EP 724. In fact, the Class I railroads did not appear to be overly concerned about these service issues but were apparently focused on lowering their operating ratios which included these large work force reductions. Despite these numerous letters from STB Chairmen, the railroads did not appear to be responsive to their regulator’s concerns about these employment and service numbers. This lack of concern has made service across the country on the freight rail network unpredictable and has hamstrung the operations of many shippers, including members of IMA.

FMLM DATA REPORTING AND OTHER MEASURES ARE NEEDED TO ENSURE AN EFFECTIVE U.S. FREIGHT RAIL SYSTEM

As noted, the initial performance data reporting stemmed from the service crisis in 2013-14. The Board reasoned as follows in making its determination to issue an interim order requiring railroads to temporarily provide data in 2014:

The United States rail system is an interconnected network, and one carrier’s service problems can affect the performance of other carriers. Although the severity differs, shippers have reported problems on multiple carriers. Thus, the Board views the network as a whole, and seeks to better understand performance across the entire network.

The new reporting requirements will give the agency and stakeholders access to data needed for real-time understanding of regional and national service issues.

United States Rail Service Issues – Data Collection, EP 724 (Sub-No. 3), slip op. at 2.

Later, the Board explained that the primary purpose for the subsequent related rulemaking was to develop a set of performance data that will allow the agency to monitor current service conditions in the industry and to identify trends or aberrations, which may indicate problems. The cumulative data was meant to give the Board reference points for measuring an individual railroad against its past performance. A corollary benefit is that shippers and other stakeholders will have access to the reported data to assist in their business decisions and supply-chain planning. At the same time, the Board sought to make sure that any rule adopted regarding service data results in the collection of information that will be useful to the agency and its stakeholders. The Board believed that the final rule adopted an appropriate balance of considerations that would provide helpful information to both the agency and the public. *Final Rule*, EP 724 (Sub-No. 4), slip op. at 3-4.

In providing the basis for its action, the Board stated that “the need and justification for a permanent reporting rule is clear.” *SNPR*, slip op. at 22.

Under the Interstate Commerce Act, the Board has broad authority to require reports by rail carriers under 49 U.S.C. §§ 1321, 11145. The statute also makes clear that service adequacy is a key part of the Board’s mandate, beginning with the provisions of the rail transportation policy (RTP) of 49 U.S.C. § 10101. *See SNPR*, slip op. at 22. The RTP states that, in regulating the railroad industry, it is policy of the United States Government to minimize the need for regulatory control, 49 U.S.C. § 10101(2), promote a safe and efficient rail transportation system, 49 U.S.C. § 10101(3), ensure the development of a sound rail transportation system to meet the needs of the public, 49 U.S.C. § 10101(4), and encourage efficient management of railroads, 49 U.S.C. § 10101(9). The Board finds that having data that will allow it to monitor service across the rail

network advances these RTP goals. The data will help promote the RTP by allowing the agency, as well as shippers and other stakeholders, to more quickly identify and react to service issues than it would otherwise have the ability to do.

As also explained in the *SNPR*, slip op. at 22, the Board has the responsibility for monitoring the adequacy of service under specific statutory provisions, including service emergencies under 49 U.S.C. § 11123. The Board's powers under § 11123 are extensive⁶ and can be initiated by the agency. The potential triggers for Board action, such as "congestion of traffic" and "other failure of traffic movement" (49 U.S.C. § 11123(a)), are clearly implicated by the collection of service metrics, and the Board has explained that reporting would "improve the Board's ability to identify and help resolve future regional or national service disruptions more quickly." *SNPR*, slip op. at 22. Service issues can also be relevant when the Board considers whether railroad service practices are reasonable (49 U.S.C. § 10702), whether to force a line sale in the event of inadequate service (49 U.S.C. § 10907), and whether railroads are fulfilling their common carrier obligations (49 U.S.C. § 11101) or providing safe and adequate car service (49 U.S.C. § 11121). *See SNPR*, slip op. at 22 (explaining that "permanent reporting . . . would aid the Board and industry stakeholders in identifying whether railroads are adequately meeting those statutory requirements.")

Final Rule, EP 724 (Sub-No. 4), slip op. at 5-6. Also, 49 U.S.C. § 11701 provides the Board with the power to conduct investigations if a carrier is violating the statute, including with respect to its common carrier obligation.

While the existing metrics are helpful, FMLM metrics are an important source of data because they are a truer reflection of service than these current metrics which only reflect velocities from terminal-to-terminal. FMLM data better indicate the service shippers and receivers are actually receiving. The Board did not mandate that railroads report FMLM data in

⁶ When requisite statutory criteria are met, the Board can (1) direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines; (2) require joint or common use of railroad facilities; (3) prescribe temporary through routes; (4) give directions for—(A) preference or priority in transportation; (B) embargoes; or (C) movement of traffic under permits. *See* 49 U.S.C. § 11123.

its prior rulemaking on this subject. The metrics now required in 49 C.F.R. § 1250.2 are too general to allow the Board (and shippers) to assess local service.

This conclusion was supported by findings made in a 2015 National Academy of Sciences/Transportation Research Board report and a 2008 Laurits R. Christensen Associates Inc. report.⁷ The TRB Report provided that “[s]hippers and the railroads have recognized a need for better data on freight railroad service performance that can be collected and published in a timely manner. Better data could aid shippers in planning for and coping with transportation conditions, reinforce the railroads’ accountability, and help regulators evaluate shipper complaints.” P. 83. The TRB Report further explained with respect to train speed and dwell time aggregated data that “for the most part the extent of aggregation of the RPM [railroad performance measures] data obscures any meaningful insight into the types and degree of service quality problems experienced by shippers. Furthermore, an estimate of how long shipments took to move between any two particular points cannot be derived from the two data series, and neither sheds any light on how long shippers at various locations had to wait for rail cars.” P. 85.

[T]he data to be collected are not specific with regard to shipment or even to origin and destination (with the exception of unit train data) in the same manner as are the on-time arrival data collected for many years by the U.S. Department of Transportation (USDOT) for airlines. Furthermore, the proposed collection effort appears to be an ad hoc response to the disturbances of the previous winter; it does not appear to have been strategically devised in the sense of there being a plan for routine use of the information in monitoring performance.

Better service-related data at the shipment level, for both common and contract carriage, would allow more objective analysis of

⁷ See Transp. Research Bd. of the Nat’l Acad, Modernizing Freight Rail Regulation (“TRB Report”), 75-88 (2015); Laurits R. Christensen Associates, A Study of Competition in the U.S. Freight Railroad Industry and Analysis of Proposals that Might Enhance Competition, ES-35 to ES-37 (2009), <https://www.stb.gov/stb/docs/competitionstudy/executive%20summary.pdf>.

common carrier service quality, particularly to evaluate whether this service is chronically substandard and how it changes relative to that of contract carriage when capacity is tight.

TRB Report at 87-88.

In its evaluation of the railroad performance data, Laurits R. Christensen Associates (2009a, 17–19; 2009b, 2-31–2-34) reached the same conclusion: average train speed and dwell time data are too gross to offer more than a rough indication of service performance. For example, it calculated correlations of changes in real GDP with changes in dwell time, cars on line, and train speed by railroad during the period 2006–2008 and found that the measures did not consistently change in the expected direction. Christensen Associates also pointed out that the performance features of greatest concern to shippers, such as route-specific or corridor-specific information on on-time performance and the variability of performance, are not part of the measurement system.

In other words, both of these independent research sources found that the data collected by the STB could not accurately provide how a railroad was performing or predict how it would perform. Both studies recommend the use of on-time performance measurements like FMLM data that would provide a more accurate picture of the rail service situation.

Therefore, it is clear that FMLM data is needed to provide the Board and shippers with a better view of how the rail industry is operating. It is also clear that FMLM issues have become rampant across the US rail network, especially recently. Moreover, it is evident that these events are usually caused by crew shortages due to the job cuts by the railroads since the implementation of PSR. While this evidence is anecdotal, the railroads are telling their customers that this is the reason why they are missing switches. As a result, the basis for their service issues does not appear to be in dispute.

These FMLM issues have damaged shippers by slowing or completely stopping production at their facilities because the railroads cannot make switches or adequately move railcars in congested areas. The shippers generally have no recourse against the railroads because consequential damages are prohibited by most tariffs and rail contracts.

Even more frustrating for these shippers who are suffering from this poor service is the railroads are not adequately responding to their complaints about service in a timely manner or at all.

This situation is impacting the economy of the U.S. as we speak. It is slowing the production of many crucial commodities across the country, including vital food items.

Consequently, it seems logical for the Board to require the Class I railroads to submit FMLM data regarding on-time performance and switching timeliness and accuracy. Data should be provided for each shipper and on a local, regional, and national basis for shippers to be able to properly analyze their transportation situations and for the Board to be able to monitor the rail network effectively. Moreover, it seems important to have these metrics submitted to the Board and made available to the public to incentivize railroads to achieve better service performance numbers.

Moreover, it does not seem as if these additional reporting requirements would be burdensome on the railroads because they should be or already are tracking these numbers. Even if new reporting requirements would create some burden for the railroads, which they do not appear to do, the public interest in having this information available to shippers and the Board is extremely compelling to ensure operations at these companies continue to occur without delay especially as the U.S. recovers from the economic disruption from the pandemic. The railroads are responsible for making the US economy work as they proudly state. However, if the railroads

cannot live up to this responsibility because of job cuts and other cost cutting measures, the economy will suffer. This result cannot be allowed to happen.

As noted herein, unreliable rail service is becoming more and more common. This poor rail service appears to be related to crew shortages due to the job cuts railroads have been making over the past several years. The STB already tracks the railroads' employment numbers and has noted the evidence of the large difference in the number of employees since the implementation of PSR. Now, it seems necessary to track the FMLM data to analyze properly how this has impacted the network. The present metrics reported to the STB do not allow the Board or shippers to make fully informed decisions. It would also make sense to require railroads to compensate shippers when poor service damages rail shippers at least in certain circumstances. In addition, the Board should consider creating regulations that identify violations of railroads' common carrier obligations. Without the proper motivation and a stronger hand by the STB, railroads have not been responsive to the Board or its customers with respect to service issues.

RECOMMENDATION

Something needs to change. Otherwise, the country could find itself in the midst of a rail network meltdown that could bring the economy to a halt during a time in history where there are already enough issues at play like the pandemic and the supply chain problems throughout the world. The economy does not need more transportation problems now, especially ones that should be solvable through hiring. Therefore, it is imperative that the Board require robust FMLM data reporting and make the railroads more financially responsible for their poor service.

Respectfully submitted,

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

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Public Record

Docket No. EP 767

FIRST-MILE/LAST-MILE SERVICE

**OPENING COMMENTS OF
THE NATIONAL GRAIN AND FEED ASSOCIATION**

Pursuant to the decision served in this docket on September 8, 2021 (“Decision”), the National Grain and Feed Association (“NGFA”) respectfully files these Opening Comments with the Surface Transportation Board (“Board,” “STB” or “Agency”) in response to its request for input from industry stakeholders on designs of potential metrics for measuring first-mile, last-mile (“FMLM”) rail service data.

I. Identity and Interest of NGFA

The NGFA, established in 1896, consists of more than 1,000 grain, feed, processing, exporting and other grain-related companies that operate more than 8,000 facilities handling U.S. grains and oilseeds. Its membership includes grain elevators; feed and feed ingredient manufacturers; biofuels companies; grain and oilseed processors and millers; exporters; livestock and poultry integrators; and associated firms that provide goods and services to the

nation's grain, feed, and processing industry. The NGFA also consists of 27 affiliated State and Regional Grain and Feed Associations and is co-located and has a strategic alliance with the North American Export Grain Association, and a strategic alliance with the Pet Food Institute.

II. Support for NGFA Statement from Other Collaborating Organizations

The NGFA has been authorized to convey that these opening comments are supported by the North American Millers' Association ("NAMA"), Agricultural Retailers Association ("ARA"), and National Oilseed Processors Association ("NOPA") on behalf of their members.

NAMA represents millers of wheat, corn, oats, and rye in the U.S. and Canada. NAMA has 37 members with 149 locations across 31 states, Puerto Rico, and Canada, and represents the milling industry before the White House, federal agencies, and Congress. ARA is a 501(c)(6) non-profit trade association that represents the interests of agricultural retailers and distributors across the United States on legislative and regulatory issues. ARA advocates, influences, educates, and provides services to support sellers of seeds, nutrients, crop protection products, farm equipment, precision technology and agronomic services. Organized in 1936, NOPA, a national trade association, represents the U.S. soybean, canola, flaxseed, safflower seed and sunflower seed, crushing industries. NOPA represents 12 companies that are engaged in the production of food, feed, and renewable fuels from oilseeds. NOPA's member companies process more than 1.8 billion bushels of soybeans annually at 65 plants located in 21 states throughout the country -- including 60 plants that process soybeans, accounting for approximately 94% of all soybeans that are processed (crushed) in the United States and 5 that process softseed.

III. NGFA Commends the Board for Seeking Public Comment on Metrics to Measure FMLM Rail Service

The NGFA commends the Board for seeking comments on metrics to measure rail service and believes FMLM reporting will lead to better rail performance. The absence of

FMLM data from the current rail service reporting metrics significantly reduces the data's usefulness to shipping and receiving operations.

The NGFA believes most rail carriers already collect large amounts of FMLM data as part of their operations. However, they typically do not readily share this data with their customers, which puts the onus on the customers to try to collect their own FMLM data for the purpose of convincing their rail carriers to provide more reliable FMLM service. In many businesses, enhanced performance follows data collection, review, and expectation setting. The NGFA believes this is a potential outcome of the Board requiring more production of FMLM data from the railroads. Moreover, since rail carriers already collect this data, reporting it should not be a hardship or overly burdensome.

The NGFA also submits that the collection of FMLM data should be utilized in conjunction with the Board's other avenues for monitoring network fluidity and service issues, such as the Railroad-Shipper Transportation Advisory Council ("RSTAC"), the Rail Customer and Public Assistance Program, and the use of information requests to individual Class I railroads as appropriate. These existing methods for gathering information and measuring service performance are extremely valuable and should remain in place.

In general, the NGFA believes the addition of FMLM metrics, if designed correctly, has the potential to significantly increase railroad service performance and efficiency, which will benefit rail carriers, rail customers, the nation's economy, and society at-large. The NGFA believes these benefits will far exceed any burden to the railroads in providing such information.

IV. NGFA Comments and Recommendations for FMLM Metrics

The format of these Opening Comments provides responses to the questions posed by the Board on page 4-6 of the Decision, and NGFA's recommendations on certain issues and requests

for comment. In general, “the issue” discussed in each answer is the unreliable service provided by rail carriers during the “first mile” or “last mile” of a movement, which is more accurately defined by the Board in the Decision as “the movement of railcars between a local railroad yard and a shipper or receiver facility.” Decision at 1. As such, FMLM issues can take place over distances considerably longer than a mile.

A. Identifying FMLM Issues

How often does the issue arise?

NGFA is unaware of any shipper or receiver in its membership that is presently immune from FMLM service letdowns. The NGFA believes a reduction in predictable, reliable service between local railroad yards and shipper/receiver facilities has increased significantly in recent years.

Why does the issue occur?

On an individual facility basis, FMLM service failures are due to the inability or unwillingness of the delivering carrier to provide regular, predictable service to and from local rail yards and/or interchange points. There are many contributing factors, such as the lack of adequate crews, lack of locomotives, bunching of cars and trains, lack of any financial penalties for poor service, bad communication, etc. More broadly, current FMLM issues for NGFA members reflect the market power of railroads, their built-in competitive advantage over long haul trucking, and the lack of market constraints such as competition that would incentivize railroads to operate more efficiently and use shipper assets more efficiently. Also, unlike rail customers, rail carriers do not pay monetary penalties if they do not use shipper assets efficiently and so they are not sufficiently incentivized to provide service as efficiently and as timely as possible.

These factors enable rail carriers to reduce assets and crews to maximize operating ratios at the expense of predictable, reliable service and efficient use of shipper assets. The present lack of transparency regarding the specific factors that cause FMLM service breakdowns helps insulate rail carriers from oversight and responsibility for harm to their customers.

How does the issue affect NGFA member operations?

Inadequate FMLM rail service to agricultural shippers can result in customer facilities at grain origins and destinations having to shut down, slow down, reformulate products, or incur higher freight and accessorial charge costs, which unfortunately happens too often. Unpredictable and unreliable FMLM rail service also causes rail customers to incur the costs of ordering extra trains from railroads or buying or leasing additional railcars. The addition of more trains and railcars to the rail system in turn, adversely affects the efficiency of the rail system as a whole.

How does the issue affect NGFA members' facilities and/or production?

Poor FMLM service adversely affects facilities by causing the NGFA member to incur the additional costs and operational problems associated with shutting down, slowing down, reformulating products, and incurring higher freight costs. Railroad service failures also inherently result in the inefficient utilization of rail customer assets acquired with large sums of money to receive rail service, such as rail cars and tracks.

U.S. grain and feed operations are not only competing against each other, they also are engaged in international competition. Their competitiveness is important to their local areas and to the economic health of the United States. Unreliable FMLM service that results in commodities not getting to market and/or the shipper incurring large costs diminishes the ability of NGFA members to compete.

How does the issue affect labor schedules?

Poor FMLM service that results in plant shutdowns, slowdowns, or product reformulation can adversely affect labor and workforce issues. Shutdowns and slowdowns can be accompanied by layoffs, but erratic service can mean trains arrive when there are insufficient employees to process them and return them to service, further disrupting plant operations and efficiency.

In addition, some railroads levy significant demurrage and detention fees even if they deliver cars and trains off schedule or at times when facilities cannot be prepared to load or unload trains. Under the threat of such costs, rail customers frequently are asked to load or unload trains as soon as possible no matter how inopportune the time. Reluctantly, rail customers are faced with the dilemma of asking employees to work irregular schedules or pay the demurrage and detention fees.

What is the financial impact associated with this issue?

The NGFA believes financial losses for rail customers due to poor rail performance can far exceed a rail carrier's marginal gains from further reducing its operating ratio. For example, when a feed mill that produces 1,500 tons per day of animal food valued at \$500 per ton is forced to temporarily cease operations due to poor rail service the cost is \$750,000 per day in lost output – 1,500 tons x \$500/ton = \$750,000. While offline, the feed mill saves on the cost of feed ingredients, but almost all other costs continue to be incurred, such as fixed costs and labor costs.

Further, the shipper providing ingredients to the feed mill may experience lost revenue if the rail delay leads to their assets becoming full and unable to be utilized. In addition, the feed mill's customers may be forced to shift to alternative animal food suppliers and potentially use less efficient and more expensive animal food rations (assuming alternatives are even available.) This is just an example of one feed mill for one day and usually poor rail service is not isolated

to one facility nor is the duration of the poor rail service limited to only one day.

Has this issue changed with the implementation of operating changes generally referred to as precision scheduled railroading?

Yes. From a shipper/receiver point of view, the primary negative issue with the reduction of Class I rail system capacity due to the implementation of so-called “precision scheduled railroading” (“PSR”) principles and methods is that it can exacerbate FMLM service issues, which lead to the above-described adverse results at shipper facilities.

In recent years, nearly every Class I rail carrier has attempted to reduce its operating ratio—a measure of profitability that compares operating expenses to revenues—by adopting operating strategies, like PSR, that involve trying to provide timely service with minimal equipment, locomotives, and employees. Unfortunately, the implementation of PSR has resulted in a marked increase in multi-day delayed train starts, missed switches, extended transit time, excessive dwell times, reduced train velocity, and mishandled freight.

Rationing railroad system capacity inevitably results in poor service and significant risk for rail customers, in that a sudden increase in freight demand or a severe weather event can quickly trigger a severe and long-lasting disruption to rail service because there is no “slack” in the system. The removal of system capacity through PSR may make the rail carriers more profitable, but it comes at a high cost for their rail customers, and subsequently, the American consumer. Some of the FMLM issues that NGFA believes can be traced to PSR implementation include:

1. Loaded cars that are held by carriers in rail yards awaiting locomotives or crews, or for other reasons, and are consequently not physically placed at the customer’s facility for unloading.
2. A growing trend of instances where carriers have significantly delayed pulling

railcars from facilities for which they have been notified are billed and ready to be picked up and transported to the destination or interchange point. In addition to delaying overall service from origin to destination or interchange point, this practice occupies track space at the facility, potentially preventing the loading or unloading of inbound railcars. This disrupts the overall plant operations. However, shippers seldom have the bargaining power to impose financial incentives for railroads to remove cars from shipper tracks that remain beyond a reasonable time.

3. Railroads that increasingly are not promptly returning privately owned or leased rail cars after they are released to the carrier at destination. This practice imposes significant economic losses on shippers and receivers attributable to their inability to utilize their assets, and the rail carrier's inefficiency in returning cars leads to shippers and receivers having to purchase even more cars.

4. Lastly, arbitrary reductions by the rail carrier in the number of switches, delays in providing switches, and entirely switches.

How do you typically try to address the issue?

First, rail customers may implore railroad representatives, such as the local yardmaster or the railroad's customer service department, to provide better service. Next, rail customers may contact the STB's Rail Customer and Public Assistance staff to alert them of the issue and ask them to contact the carrier. Some shippers evaluate formal complaint options at the STB or the court system. When these options are exhausted or rejected, rail customers may lease or buy additional railcars, reformulate products, utilize trucks at a higher cost, and/or slow down or shut down plant operations.

What is communication regarding this issue like between shippers and carriers?

The level of communication between shippers and carriers varies depending on a number

of disparate factors, such as the size of the shipper, the commodity being shipped, the Class I railroad involved, etc. However, as a general matter, the adoption of PSR has resulted in significant reductions in the staffing of rail customer service departments, and communication between rail carriers and rail customers has suffered. Also, the change to automated demurrage and detention billing has made it more difficult for rail customers to communicate FMLM challenges and resolve disputes.

What remedies are available to you?

Available remedies to NGFA members for FMLM service failures include contacting the STB Rail Customer and Public Assistance staff, using alternative transportation at higher transportation rates, buying or leasing additional equipment, and evaluating formal legal recourse such as an unreasonable practices case.

B. Design of Additional Service Metrics for FMLM Data.

What, if any, existing information or metrics (collected by the Board or maintained by carriers) facilitate an understanding of the issue?

The NGFA recommends the Board continue to collect the existing rail service metrics. Each of the metrics facilitate an understanding of the overall rail service issue and more proverbial “pieces of the puzzle” are needed, not less.

What new information or metrics would illuminate the issue? The Board asks for specificity in any suggestions, including specific definitions for different types of services (e.g., transportation involving one carrier vs. multiple carriers) and facilities (e.g., open- vs. closed-gate).

The NGFA recommends weekly reporting of metrics to provide timely and useful service information. Below are the service metrics the NGFA believes would be the most useful additions to assist in resolving FMLM issues. The list represents the most useful data to the NGFA and is not exhaustive. For each item, the NGFA recommends separate reporting for

manifest and unit train traffic.

- 1) For closed-gate facilities at origin and destination, the NGFA recommends measuring the time difference between constructive placement, ordered for placement, and actual placement.
- 2) For closed- and open-gate facilities, the NGFA recommends measuring the time difference between released loaded and pulled.
- 3) For closed- and open-gate facilities, the NGFA recommends measuring the time difference between released empty and pulled.
- 4) For open-gate facilities, the NGFA recommends measuring the time difference between the original estimated time of arrival on the trip plan and the actual placement.
- 5) For closed-gate facilities, the NGFA recommends measuring the time difference between the original estimated time of arrival on the trip plan and constructive placement, ordered for placement and actual placement.
- 6) For open-gate facilities, the NGFA recommends measuring the time difference between when the train is 48 hours from destination according to the trip plan versus actual placement.
- 7) For closed-gate facilities, the NGFA recommends measuring the time difference between when the train is 48 hours from destination according to the trip plan versus constructive placement, ordered for placement and actual placement.
- 8) For open-gate facilities, the NGFA recommends measuring the time difference between when the train is 24 hours from destination according to the trip plan versus actual placement.
- 9) For closed-gate facilities, the NGFA recommends measuring the time difference between

when the train is 24 hours from destination according to the trip plan versus constructive placement, ordered for placement and actual placement.

10) For closed-gate facilities, the NGFA recommends measuring daily the number of cars ordered for placement versus actual placement.

11) For closed- and open-gate facilities, the NGFA recommends measuring daily the number of cars released loaded versus pulled.

12) For closed- and open-gate facilities, the NGFA recommends measuring daily the number of cars released empty versus pulled.

How and at what level should any metrics be reported (individual shipper, local, regional, or national)?

The NGFA recommends requiring rail carriers to report aggregated statistics at the regional level to the Board. To help rail customer operations, the NGFA recommends rail carriers provide facility-level statistics to their rail customers.

Should metrics only measure FMLM service, or should additional metrics more broadly measure service that may relate to or involve FMLM service, such as metrics on car trip plan compliance?

The NGFA recommends focusing on FMLM service and car trip plan compliance. The car trip plan is another service data metric that would provide significant benefit to rail customers.

Who would use any such information or measurements, and how?

This data will be useful to shippers and receivers for more efficiently planning operations and more accurately gauging when contingency plans are needed.

What are the specific benefits, if any, that would arise from the use of any suggested metrics?

The most immediate benefits would be the opportunity to enhance the utilization of shipper and receiver assets and labor scheduling.

Would reports to the Board, shipper surveys, reports directly to individual shippers, or some other type of information be helpful to clarify the issue?

Reports to the Board and directly to individual shippers would be helpful. Aggregated data reports to the Board would provide for public data reporting and enhanced transparency for the benefit of rail customers and society. Individual facility reports to rail customers would provide shippers and receivers with the ability to assess their situations more accurately and negotiate for enhanced rail performance and increase their own performance by better aligning their assets and labor with the carrier performance.

V. Conclusion

For the reasons outlined in these comments, the NGFA believes the Board's request for data on FMLM rail service can lead to significantly enhanced rail service, if the metrics are designed correctly and service expectations are adequately communicated and enforced with rail carriers.

The NGFA appreciates the Board's consideration of its comments.

Respectfully submitted,

Sincerely,



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Comments of the International Liquid Terminals Association
on
First-Mile/Last-Mile Service Issues
Surface Transportation Board
Docket No. EP 767

The International Liquid Terminals Association (ILTA) appreciates the opportunity to provide comments to the Surface Transportation Board (STB) regarding first-mile/last-mile service issues. The first-mile/last-mile are arguably the most consequential and fragile portions of any line haul. Delays and processing errors of railcars enroute to destination can have cascading consequences with profound impacts on shippers and receiving facilities. It is not uncommon for missed switches, partial switches or incorrectly performed switches to have both immediate impacts and cascading ripple effects.

The ILTA represents more than 85 companies operating liquid terminals in all 50 U.S. states and in 37 countries. Our members' facilities form a critical link in the transportation of a wide range of liquid commodities, including crude oil, refined fuel products, chemicals, renewable fuels, fertilizers, vegetable oils and other food grade materials. ILTA supports policies that enhance the efficiency and reliability of supply chains.

Issue Summary

We believe that we, as terminal companies, have the responsibility to be accountable to our supply chain partners, and we believe our partners should be accountable to us as well. We offer these comments to initiate a discussion with the STB and our railroad partners about how we can move forward together to bring greater accountability and transparency to supply chain functions overall.

While first-mile/last-mile service issues are longstanding challenges, the adoption of cost-saving measures collectively classified as Precision Scheduled Railroading (PSR) have amplified their impacts. Under PSR, railroads have cut staff, closed railyards and limited the availability of locomotives, leaving them with significantly reduced capacity to allow them to respond and ameliorate disruptions. Moreover, railroads are initiating, or threatening to initiate, embargos more frequently than in the pre-PSR era, in what appears to be a strategy to leverage terminals to add private track capacity or services that were previously performed by railroads themselves.

Increasingly, terminal operators must expend additional resources (or charge shippers) to compensate for these frequent disruptions and the decreased ability of the railroads to "self-correct." In some instances, railroads are increasingly withholding normal last-mile services such as the "blocking" and "spotting" of railcars without explanation for the changes in service. The net effect is that the railroads gain the ability to report higher efficiencies and increased operating ratios when, in fact, they have merely shifted a portion of their operational burdens and costs to terminal operators and shippers. The supply chain overall has not gained efficiency, if anything, the lack of accountability makes the system as a whole less efficient.

The actions of the railroads impose direct costs to terminal operators in the form of additional labor requirements and other resource needs, as well as indirect costs due to the increasingly onerous tasks associated with disputing demurrage claims.

ILTA believes that only action by the STB can counteract the unintended consequences that PSR has introduced to first-mile/last-mile performance. In most interactions between private sector companies, market forces provide adequate mechanisms to incentivize performance and address non-performance. Terminal operators have very limited ability to address the non-performance of the railroads, because of their special status as regulated monopolies. If railroads are not held to account for service delays of their own making, there is no incentive for them to take corrective action.

The STB has the ability to significantly improve the visibility of the overall efficiency and reliability of supply chains by instituting a manageable number of first-mile/last-mile performance metrics. By requiring Class I carriers to be responsible for the efficiency of the entire line haul by which their tariff compensates them, the financial burdens, penalties, and claims will be placed with the accountable parties.

Discussion of Impacts on Terminals

The following section describes examples of first-mile/last-mile issues, the impacts these have on terminals, and identifies potential metrics that could be used to improve the accountability of Class I carriers in each case.

1. Issue: Railroad failed to deliver ordered railcar or train (lack of crew, power, or other cause).

Impacts: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense; increased demurrage assessed by railroad on railcars in queue behind the ones that were not delivered; railroad detains private equipment additional days; private equipment utilization decreases; just in time supply chains are jeopardized; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers, and Industry.

Tracking Metric: By track address, service date and by reason; Count of railcars not delivered during the service date immediately following railcar order deadline.

2. Issue: Railroad delivered railcar or train that was not ordered by the industry location.

Impacts: Industry may lose utilization of railcar handling asset until the wrong railcar is removed at next service; possible disruption to Industry's operation; railroad detains private equipment additional days; private equipment utilization decreases.

Tracking Metric: By track address, service date and by reason; Count of railcars delivered that were not ordered.

3. Issue: Railroad delivered railcar or train that was not destined for the industry location.

Impact: Industry may lose utilization of railcar handling asset until the wrong railcar is removed at next service; possible disruption to Industry's operation; railroad detains private equipment additional days; private equipment utilization decreases.

Tracking Metric: By track address, service date and by reason; Count of railcars delivered that were not destined for the location to which it was actually delivered.

4. Issue: Railcar or train not being available to order on the ETA date that the railroad quoted to Industry while railcar/train was in transit.

Impact: With the railroad's precision railroading, Industry must align their labor and operations more precisely to the railroad's schedule to avoid delaying railroad's operations and being assessed railroad tariff fees. When the railroad does not deliver per their precision schedule, Industry experiences the labor expense of having to be prepared for the railcars, without receiving the railcars as expected.

Tracking Metric: For each railcar delivered during the month, initial ETA date vs the actual date of Constructively Placed (or Actually Placed for open gate locations)

5. Issue: Railroad placed railcar on wrong siding/wrong spot at the industry location.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense; increased demurrage assessed by railroad on railcars in queue behind the ones that were not placed accurately if Industry is unable to re-spot the railcar prior to next railroad service; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers, and Industry.

Tracking Metric: By track address, service date, count of railcars that required re-spotting (by railroad crew or by Industry staff at the location)

6. Issue: Railroad pulled railcar or train that was not released by the industry location.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense; increased demurrage assessed by railroad on railcars in queue behind the ones pulled in error; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers, and Industry. Railcars may not be properly prepared for shipment and there are often significant delays in the returning of a railcar or train erroneously pulled in by the railroad.

Tracking Metric: By track address, service date, count of railcars that were pulled without being released by Industry.

7. Issue: Railroad crew arrived at Industry location ahead of the normal schedule or mutually agreed service window; arrival is prior to the scheduled Industry railcar cargo processing being completed.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense (including potential overtime expense); increased demurrage assessed by railroad on railcars which were affected; railroad detains private equipment additional days; private equipment utilization decreases; increased fees assessed by railroad for missed switches; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: Count of days, by track address and reason, where railroad crew arrived prior to the normal schedule or mutually agreed service window and/or did not perform full scheduled service.

8. Issue: Railroad crew arrived at Industry location late or outside of established service window, delaying the start of Industry's railcar cargo processing.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense (including potential overtime expense); increased demurrage assessed by railroad on railcars which were affected; railroad detains private equipment additional days; private equipment utilization decreases; increased fees assessed by railroad for missed switches; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: Count of days, by track address and reason, where railroad crew arrived late enough to prevent completion of the full scheduled service by the end of the normal service window.

9. Issue: Railroad cancels service with less than 24 hours' notice.

Impact: Industry experiences the labor expense of having to be prepared for the railcars, without receiving the railcars as expected; loss of Industry railcar handling productivity; increased demurrage assessed by railroad on railcars in queue behind the ones that were not delivered; railroad detains private equipment additional days; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: Count of days, by track address and reason, where railroad cancelled a scheduled service less than 24 hours prior to the expected start time of the service.

10. Issue: On scheduled days of service, without attempting to contact the industry location, railroad makes false report that the industry location was not ready for service, citing reasons such as Industry not ready for switch, Industry fence gates were closed, or Industry blue flag was displayed. Railroad does not attempt to resolve the discrepancy at the start of the service, and simply does not provide the service that day, sometimes without ever actually going to the industry location.

Impact: Industry experiences the labor expense of having to be prepared for the railcars, without receiving the railcars as expected; loss of Industry railcar handling productivity; increased demurrage assessed by railroad on railcars in queue behind the ones that were not delivered; railroad detains private equipment additional days; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: For each service that cannot be fully performed by the railroad, report the scheduled service date, the reason for no service, the date/time that the railroad identified an Industry issue which prevented the rail service from being fully performed, the person(s) contacted at the Industry to verify the report/issue, the date/time that the Industry contact person verified the report/issue, the railroad contact name that directed railroad crew to not perform full service, the physical geographic location of the railroad crew at the time they identified the issue at the Industry.

Recommended Actions

I. **Require railroads to document Issues with railroad service and communicate these to terminals and shippers.**

At times, railroads report that their crews were unable to provide a scheduled service because of industry issues. Unfortunately, this information is not always reported to Industry in a timely fashion, making it difficult or impossible to verify that the industry was in fact responsible for the service delay or inaction. Requiring the railroad to submit straightforward reporting in a timely fashion would greatly improve transparency and accountability for all parties. These reports should include the following basic information:

- the track address
- the scheduled service dates
- the reason for no service
- the date/time that the railroad identified an Industry issue which prevented the rail service from being fully performed
- the person(s) contacted at the industry to verify the report/issue
- the date/time that the industry contact person verified the report/issue
- the railroad contact name that directed railroad crew to not perform full service
- the geographic location of the railroad crew at the time they identified the issue.

II. **Establish metrics for tracking disruptions related to railroad service.**

Railroads may fail to perform a scheduled service without attributing the responsibility to Industry. Simple reporting of the count of days of delays per railcar caused by errors on the part of the railroads would provide a useful means of monitoring the railroad's performance. For example, the count of days could measure the time between the scheduled service and the arrival of the crew for early and late arrivals. Another useful metric would be counting the number of incidents when a railroad cancelled a scheduled service less than 24 hours prior to the expected start time.

The following table indicates suggested metrics.

Category	Metric
Early arrival	Number of days from crew arrival to scheduled service date, by track address
Late arrival	Number of days from crew arrival to scheduled service date, by track address
Cancellation within 24 hours of scheduled service	Number of incidents by track address

III. Create metrics to track railcar/train delivery errors.

The following table indicates suggested metrics.

Category	Metric
Railcars not delivered during the scheduled period	Number of railcars affected by track address for each service date
Railcars delivered that were not ordered	Number of railcars affected by track address for each service date
Railcars delivered to incorrect geographic location (i.e., wrong facility or destination)	Number of railcars affected by track address for each service date
Railcars that required re-spotting (i.e., wrong placement at correct facility or destination)	Number of railcars affected by track address for each service date
Railcars pulled prior to release by Industry	Number of railcars affected by track address for each service date

IV. Establish minimum first-mile/last-mile service requirements.

Establish standard first-mile/last-mile minimum service requirements to be performed by railroads. There should be no deviations from the minimum service requirements unless agreed to by the terminal and documented in writing. Such agreement should be open to periodic review initiated by the terminal or railroad, with the minimum service requirement being the default. There should be an appeal process for any disputes supported by the STB. Documentation should include:

- Period of agreement
- Track address
- Service intervals
- Special instructions
- 24-hour contact information
- Deviations from blocking requirements
- Deviations from spotting requirements
- Shipper credits for railroad deviations if any
- Terminal compensation for railroad deviations, if any.

V. Establish clear performance-based thresholds for railroads to embargo terminals.

The STB should require the establishment of clear performance-based thresholds for terminal embargos and not leave such embargos up to the indiscriminate judgment of railroads. Terminal operators approaching thresholds should consider such solutions as a) requesting the railroad increase its local serving capacity, b) improving the terminal's railcar processing capacity, and/or c) rationalizing customers and cancelling agreements with rail components. There should be an appeal/mediation process for any

embargo disputes administered by the STB that encourages collaborative solutions where railroad and terminal capital are applied equally to resolve capacity issues.

Conclusion

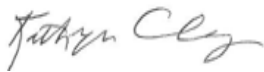
The railroad carriers may contend that these metrics would be cumbersome to track. However, the continued impact of lacking service without accountability presents an exponentially higher burden on those affected – typically destination facilities and shippers. A common set of metrics that identify the responsible party will aid in dispute resolution and force performance improvement, thus improving network fluidity and efficiency.

The reality is that the railroads' ongoing lack of performance transparency and demurrage generating performance failures have gone unchecked for far too long. Receiving facilities have long argued that accountability and financial penalties for performance failures go hand in hand. In the cases listed above, shippers and receivers incur supply chain and labor costs that are substantial – and then have inappropriate consequential demurrage charges assessed on top.

Additionally, Class I carriers may argue that the first-mile/last-mile issues listed above are due to short line railroads, not the Class I's themselves. This is a non-starter, as short line railroads typically operate as an extension of the operation and tariff of the Class I's. In fact, many short line railroads do not even maintain a customer service department.

In closing, ILTA would again like to thank the STB for the opportunity to comment on this critical issue.

Respectfully submitted,



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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

**COMMENTS OF
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

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December 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

**COMMENTS OF
INSTITUTE OF SCRAP RECYCLING INDUSTRIES, INC.**

The Institute of Scrap Recycling Industries, Inc. (“ISRI”) hereby submits its comments in response to the notice regarding First-Mile / Last-Mile (“FMLM”) service issued by Surface Transportation Board (“STB” or the “Board”) on August 31, 2021.¹ The Board’s notice seeks comments on issues regarding FMLM service, including any additional data that is critical to identify FMLM service concerns that is not now being reported to the Board. ISRI commends the Board for opening this proceeding to gather information and evaluate FMLM service issues which play an important role in recycled secondary metal supply chains. Currently, the Board’s reporting requirements do not fully capture the FMLM service performance of the railroads. ISRI strongly believes that, after considering the comments received in this proceeding, the Board should adopt FMLM reporting requirements for both Class I railroads and shortline railroads. ISRI’s comments are filed timely.²

¹ See First-Mile / Last-Mile Service, STB Docket No. Ex Parte No. 767 (STB served on September 2, 2021) (“FMLM Notice”).

² On September 21, 2021, the Board granted the American Chemistry Council and The Fertilizer Institute’s motion to extend the due dates for comments, extending the deadline for comments from October 18, 2021 to December 17, 2021. See First-Mile / Last-Mile Service, STB Docket No. Ex Parte No. 767 (STB served on September 21, 2021).

I. ISRI Statement of Interest

ISRI is a non-profit trade association representing approximately 1,300 companies operating in nearly 4,000 locations in the United States, and 41 countries worldwide that process, broker, and consume scrap commodities, including metals, paper, plastics, glass, rubber, electronics, and textiles. The U.S. scrap recycling industry generates in excess of \$100 billion in domestic economic activity, manufacturing more than 130 million tons per year of highly valued commodities. It is estimated that the scrap recycling industry directly or indirectly supports more than 534,000 well-paying jobs, generating \$13.2 billion in federal, state and local tax revenue. The U.S. scrap recycling industry supplies the commodities that manufacturers use as raw material feedstock to make new products, with more than 70% being consumed in the United States. In addition to providing raw materials to domestic manufacturers, the U.S. scrap recycling industry exports approximately one-third of its commodities worth over \$16.5 billion annually to over 155 nations. ISRI members not only supply domestic manufacturers, including the U.S. steel industry, but the export operations of ISRI members requires an integrated transportation network vital to the global manufacturing supply chain. Recycled scrap or secondary metal is also essential towards fulfilling the mandates in the bi-partisan Infrastructure Investment and Jobs Act, as the industry is environmentally sustainable and resilient saving energy, reducing emissions and conserving natural resources.

Rail transportation is a critical mode for shipments of ferrous and nonferrous recycled secondary metals. Indeed, due to the unique characteristics of shipping bulk recycled secondary metal, there are many situations where rail is the only feasible mode for shipping this material. Many of ISRI's members are served by only one Class I rail carrier and frequently experience significant issues related to FMLM service. Accordingly, ISRI has a strong interest in the

Board's proceeding to consider whether additional reporting requirements concerning FMLM service are needed.

II. ISRI Members Are Having Significant Issues with FMLM Service

The FMLM Notice asks the commenters to provide concrete examples in identifying their FMLM issues, and explain, among other things, the frequency, reasons, and impact of the FMLM issues experienced. ISRI conducted a survey among its membership to gain a better understanding of the common issues and trends in connection with FMLM service problems. ISRI believes that the members' responses provide important context as to the significance of the problems experienced by ISRI members, and perhaps in other industries.

These responses show that ISRI members frequently experience FMLM challenges, including missed switches, reduced service days, mismatches between car orders and car deliveries, and extended dwell times at local facilities.³ While ISRI's members reported that the FMLM service problems primarily stem from Class I railroad service, some reported that they are having similar issues with shortline railroads.

These issues have become more persistent with the railroads' implementation of Precision Scheduled Railroading ("PSR") which has resulted in labor force and equipment reductions. PSR, in theory, aims to increase efficiency but, nonetheless, has sacrificed FMLM service performance for profit maximization. FMLM service performance has further deteriorated during the COVID-19 pandemic which has exacerbated workforce issues in the rail industry, like other industries.

Poor FMLM service has significant impacts on ISRI members' businesses. A number of ISRI members reported that FMLM service issues create significant operational challenges.

³ One ISRI member reported that certain Class I railroads even change the number of car orders entered by a rail customer in the system.

Generally, the recycled secondary metal processors plan their production, operations, and infrastructure around railroad service days and railcar orders. When railroads fail to provide the switches on the committed service days or at the scheduled time, or otherwise fail to deliver the number of cars ordered, ISRI members incur significant inefficiencies and costs. This is because, among other things, their recycled secondary metal processing operations depend on the timely receipt of materials in order to meet their customers' delivery requirements. Also, when they are deprived of the timely receipt of empty railcars needed to ship products to their customers, they may fail to adhere to their committed shipping deadlines, risking cancellations of their customers' orders.

Similarly, the railroads' failure to provide consistent FMLM service causes significant challenges managing labor at recycled secondary metal processing facilities. When ISRI members cannot predict when a railroad will provide switching in its facility, it is impossible for both the member and its customers to plan an efficient labor shift. Instead of being staffed at optimal production levels, employees waste significant time waiting for the delivery/pickup of the railcars and constantly having to monitor the railcar pipeline. Further, erratic railroad FMLM service forces ISRI members to work overtime due to frequent changes in service schedules. As a result, ISRI members incur unnecessary additional costs and inefficiencies as a direct result of the railroads' inconsistent FMLM service.

All of these issues have significant financial implications for ISRI members. Recycled secondary metal orders are contracted monthly. If an ISRI member fails to fulfill a contract by the end of the month due to a railroad's failure to provide consistent and reliable service, purchase orders are cancelled, and the company loses revenue. Similarly, if a railroad fails to provide the number of rail cars ordered and/or switches scheduled, ISRI members' processing

and production lines back up. Further, overtime and loss of productivity by ISRI members' employees caused by erratic FMLM service has significant financial implications. The collective impacts of unreliable FMLM service cause significant lost productivity, inefficiencies, and additional costs for recycled secondary metal processors.

III. ISRI Members are Unable to Address FMLM Service Issues with the Railroads

Importantly, it is nearly impossible for ISRI members to address these FMLM service issues with the railroads, in their contracts or otherwise, or find a long-term solution that works for both sides. Many ISRI members are captive to one railroad at their facilities. This creates significant challenges for ISRI members to address their FMLM service issues in their contracts due to a lack of negotiating leverage. In fact, some ISRI members do not contract for rail service. Many members try to address their issues directly with the railroads, either through customer service or local train masters. While the railroads sometimes take actions to address the service problems, the solutions are never long-term, and the FMLM service issues often reoccur in the next cycle. Further, with the lack of adequate public data regarding FMLM service issues, rail customers are disadvantaged to advance discussions with the railroads.

IV. Current Reporting Requirements do not Capture FMLM Service Performance

While many rail customers, including ISRI members, face significant challenges in connection with the FMLM service, the Board's current reporting requirements do not adequately capture the railroads' FMLM service performance. This makes it nearly impossible for ISRI members to predict bottlenecks in their region and plan for potential service challenges.

The Board's current rules require reporting of, among other things, system-average train speed for the overall system, weekly average terminal dwell time for the carrier's system and its

10 largest terminals, and weekly average dwell time at origin for unit trains.⁴ Nevertheless, the reported data do not provide adequate visibility on FMLM service performance to provide any meaningful assistance for the Board or the shipping community to identify FMLM service challenges. Many of the reporting requirements also are limited to unit trains, which do not necessarily involve FMLM service. The reported data has little to no relevance to FMLM issues, and provides an incomplete, if not misleading picture of the overall rail service.

V. Railroads Should be Required to Report Their FMLM Service Performance

Given the significant FMLM service issues, and the lack of any meaningful remedy available to rail customers to find long-term solutions to these issues, requiring railroads to report their FMLM service performance becomes crucial. Reporting will provide significant benefits for both the Board and rail customers and will likely lead to improvements to the overall FMLM service performance of the railroads.

First, reporting of certain metrics in connection with the FMLM service will enable the Board and rail customers to better monitor overall service performance of the railroads, and identify any areas of the network that are having significant challenges in connection with FMLM service. Without periodic reports, the Board lacks any meaningful information to accurately monitor FMLM rail performance, assess claims of poor performance, and engage stakeholders to address FMLM service issues.

Further, reporting of FMLM service data will enable rail customers to better align their expectations of local switches and car deliveries with the actual performance of the railroads. Currently, without any visibility as to how a particular railroad performs in a certain region, rail customers plan their operations and production around the railroads' purported service

⁴ See 49 C.F.R. § 1250.2.

commitments. As noted above, when the railroads fail to provide an adequate level of service, which unfortunately occurs frequently, rail customers incur significant costs and decreased productivity, loss of revenue, and opportunities. Periodic reporting of FMLM data will help rail customers mitigate these adverse impacts of below-par FMLM service by providing more visibility as to the challenges occurring in certain areas of the network.

Reporting requirements will also help rail customers to hold railroads accountable when FMLM service deteriorates. Without adequate data regarding FMLM service, rail customers are unable to have any meaningful discussions with the railroads for improvements in FMLM service. Periodic reporting regarding FMLM service will provide rail customers, at the very least, a set of railroad-generated data to start the discussions with the railroads. Further, because the data will be generated by the railroads, it will eliminate any potential railroad concerns regarding the reliability of the data, allowing the parties to focus on solutions, rather than on the selection of the correct data.

Further, adopting FMLM service reporting requirements is reasonable and will not be unduly burdensome for the railroads. As the responses of the Association of American Railroads (“AAR”) and Union Pacific (“UP”) show, railroads already collect and maintain data regarding FMLM service.⁵ Adopting a reporting requirement concerning data that carriers already possess will certainly not be an administrative burden for the carriers and will provide significant benefits for the Board and the shipping community.

At bottom, the Board should require railroads, both Class I and shortlines, to report additional metrics regarding FMLM service to increase the Board’s ability to engage in data-driven monitoring of rail service, permit rail customers to mitigate the impact of any service

⁵ See Letter from Ian N. Jeffries to the Board (September 10, 2020); Letter from Kenny Rocker to the Board (September 21, 2020).

failures, facilitate discussions with the railroads for improvements, and increase the accountability of the railroads for below-par service.

VI. Metrics to Measure FMLM Service Performance

In general, ISRI believes that the additional metrics the Board adopts as part of its FMLM service reporting requirements should be objective, standardized, and able to display an accurate picture of the FMLM service performance of the railroads. The data should be reported to the Board and the public, at the very least, on a regional level, to ensure that the Board has sufficient regional data to monitor any significant FMLM service performance issues at certain areas of the rail network. Further, rail customers should have direct access to the data for each of their facilities on a confidential basis. This will enable rail customers to have visibility to the FMLM issues impacting their businesses, without revealing important confidential commercial information.

ISRI members believe that the Board should require reporting of, at a minimum, the following metrics:

- **Switch Completion Percentage:** The railroads should be required to report the percentage of switches that a customer facility receives during a week in comparison to the number of switches the railroad identified for a customer facility. As noted above, missed switches or reduced services have significant impacts on rail customer's businesses, including loss of productivity and revenue. Switch completion percentage will permit the Board and other stakeholders identifying whether the railroads are providing the switches that they initially identified for customer facilities.

- **Car Delivery Percentage:** The railroads should be required to report the percentage of the number of cars delivered to a rail customer's facility against the number of cars ordered by the rail customer. Railroads frequently fail to provide the number of cars ordered by rail customers. Lack of sufficient railcars has significant implications for rail customers' businesses. Car delivery percentage would enable the Board and rail customers to understand whether the railroads are providing the number of cars ordered by individual shippers and to what extent car deliveries deviate from the orders.
- **On-Time Delivery Percentage:** The railroads should be required to report the percentage of their on-time deliveries. Extended dwell times of railcars at local facilities has been a significant issue for ISRI members. Collecting data regarding on-time delivery percentage of railroads on a regional/individual shipper facility level will enable the Board and rail customers to assess more accurately the FMLM performance of a railroad.
- **Monthly Turns Per Car:** The railroads should be required to report the monthly turns per car – i.e., the number of cycle turns occurring for each car per month. Having this data will provide visibility to the Board and rail customers the average time it takes for a railroad to pick up a loaded car, complete a delivery, and return the empty cars back to a shipper's facility.

Respectfully submitted,

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December 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

DOCKET NO. EP 767

FIRST-MILE / LAST-MILE SERVICE

**COMMENTS OF THE UNITED STATES DEPARTMENT OF TRANSPORTATION
AND FEDERAL RAILROAD ADMINISTRATION**

On September 2, 2021, the Board issued its decision requesting comments from stakeholders on issues related to first-mile/last-mile (“FMLM”) service, involving the movement of railcars between a local railroad serving yard and a shipper or receiver facility. After hearing concerns raised by shippers across numerous industries, along with requests for transparency of FMLM data, the Board sought information on FMLM service issues, the design of potential FMLM metrics, and the burdens or trade-offs associated with the suggestions raised by commenters. The United States Department of Transportation (DOT or the Department) and the Federal Railroad Administration (FRA), an operating administration of DOT, appreciate the Board’s consideration of these important issues, and respectfully submit these opening comments to aid in the Board’s review. DOT has an interest in this proceeding in light of the Department’s efforts to address network and supply chain issues; to ensure that meaningful metrics are established for the railroad industry; and to better understand critical service issues affecting shippers and the movement of freight goods across the Nation and beyond.

DOT has taken a leading role, in coordination with other agency partners, in carrying out the Biden-Harris Administration’s efforts to address network congestion and supply chain issues arising out of the Covid-19 public health emergency. As part of these efforts, DOT has analyzed

and targeted bottlenecks in the goods movement system with respect to all modes of transportation. While rail is only one component of the transportation system, it is a crucial factor in supply chain fluidity. FRA has engaged stakeholders to understand and address the ways in which rail contributes to and can alleviate network congestion, and railroads have taken several helpful steps, such as raising wages to hire and retain employees, providing incentives to third parties, and opening dormant yard facilities to handle traffic overflow. However, the rail industry can do more to alleviate disruptions and to provide stakeholders with additional data about service levels and performance.

In DOT's view, the currently reported freight rail service metrics are imprecise in various respects, and do not appear to be well correlated to real-world service quality as experienced by shippers. Railroads do not provide metrics for FMLM moves by rail; they only report terminal dwell and train velocity. Although FRA regularly tracks and analyzes various publicly available rail metrics, including weekly rail loadings, train velocity, and terminal dwell, the agency, and other stakeholders, lack more insightful information on such items as rail port loadings by location, inland rail terminal throughput, and other key data regarding freight rail movements.

DOT recognizes that there have been improvements in train velocity and dwell in recent years, as defined by the data measurement criteria set out by the STB in regulation. 49 C.F.R. § 1250.2(a)(2). However, although these metrics illuminate certain aspects of rail performance, there is insufficient visibility on origin and destination service delivery to provide a complete picture of the quality of service that customers actually receive. FRA has received reports from various shipper groups that they are experiencing rail service degradations and have not seen

improvements in load-to-load cycle times (load at origin, unload at destination, return to origin for reloading), which is the critical measure of service in their view.¹

To address these issues, DOT has sought to examine a variety of factors bearing upon supply chain operations and congestion. These include the interplay of intermodal and truck drayage on FMLM service, as well as the impact of embargoing at “first mile” service (primarily driven by when and where customers are not able to take in rail units at destination), in particular. In addition, the following are examples of metrics that railroads may be able to provide² to aid the Board and other stakeholders in understanding FMLM service performance:

- First-mile indicator 1: time from customer ordering an empty rail car for loading until the empty car arrives at the customer’s loading dock;
- First-mile indicator 2: time from customer’s notification of rail car loaded for pick-up until it is retrieved by the railroad;
- Last-Mile indicator 1: time from rail car arrival at the destination terminal yard until it reaches the customer’s loading dock;
- Last-Mile indicator 2: time from customer’s release of an empty rail car until the car is retrieved by the railroad;
- Indicators of what triggers demurrage charges and how they are controlled by the railroads or third parties (charge free days, cap limits, etc.);

¹ In DOT’s experience, shippers’ current concerns are more pronounced regarding Class I rail service quality; service from shortline railroads, generally speaking, is less problematic. DOT looks forward to reviewing the comments of other stakeholders on this and other relevant issues in the proceeding.

² The metric indicators discussed here are presented generically, with a “rail car” as a unit, acknowledging that an intermodal container (loaded and carried in a “well car”) and other commodity-based rail cars differ in various respects, including with regard to how they get to a rail loading dock or intermodal terminal, operational handling, and other considerations. The Board’s inquiry focuses upon the rail component of the transportation, rather than, for example, trucks or drayage.

- The number of intermodal shipments being assessed fees for storage at ports and rail terminals; and
- Increased transparency on intermodal movement data points via the Board’s EP 724 ruling, specifically focused on intermodal yards, terminals, and dwell.

DOT understands that any additional reporting that railroads are asked to provide could create burdens for railroads, particularly upon shortlines that are not required to report service metrics. Nonetheless, DOT’s view is that this additional information could be crucial to addressing supply chain concerns. DOT looks forward to hearing the views of other parties on these potential burdens, as well as on other subjects relevant to the Board’s review. The Department stands ready to work with the Board and other parties on these questions and may provide additional views to the Board at a later stage of the proceeding if appropriate.

December 17, 2021

Respectfully submitted,

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Before the U.S. Surface Transportation Board

STB Docket No. EP 767

First-Mile/Last-Mile Service

Comments of the
U.S. Department of Agriculture

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U.S. Department of Agriculture
Washington, D.C. 20250

Date: December 17, 2021

Authority and Interest

The Agricultural Adjustment Act of 1938 and the Agricultural Marketing Act of 1946 entrust the Secretary of Agriculture with representing the interests of agricultural producers and shippers in improving transportation services and facilities. As one of many ways to accomplish this mission, the U.S. Department of Agriculture (USDA) initiates and participates in Surface Transportation Board (STB or Board) proceedings involving rates, charges, tariffs, practices, and services.

Introduction

USDA appreciates the Board opening this proceeding to receive comments on first-mile/last-mile (FMLM) service issues and the design of FMLM metrics. As railroads have adopted precision scheduled railroading (PSR), agricultural shippers have increasingly voiced concern over service problems at the initial and last portions of the rail shipment. Despite generally good service metrics shown in the Board's Ex Parte (EP) 724 data, reports of poor service have persisted—e.g., in the oversight hearing on demurrage, emergency service order for the Hasa plant, recent Sanimax complaint, and recent non-docketed correspondence from shippers. These persistent reports suggest that the EP 724 data are incomplete. One key gap is FMLM—the EP 724 data do not capture all the segments of a rail shipment. USDA believes FMLM data are a necessary and valuable addition. The data will provide transparency and promote better outcomes for shippers and railroads. In these comments, USDA summarizes its main points, emphasizes the need for this data, and offers a few points for the Board to consider in designing FMLM metrics.

Summary

The key takeaways, discussed in detail in these comments, include the following:

- Markets depend on accurate and timely data. FMLM is where railroads and shippers intersect, and data are needed to measure and track the quality of service at those touchpoints.
- The Board should approach FMLM metrics with a focus on predictability. USDA suggests the Board could collect delay metrics that capture deviations between plans communicated to shippers and services provided.
- USDA encourages the Board to collect raw (facility based) FMLM data and then form aggregated delay metrics for the public. The metrics provided to the public should reflect top origin-destination routes, top origin yards, and top destination yards for the main commodities and train types.
- USDA also encourages the Board to collect measures of variability (e.g., the standard deviation and/or the range) to provide a more complete picture of the *distribution* of service experienced, as opposed to only measures of central tendency, such as the average.
- Measures on the frequency of service provided would also be valuable. Since PSR, a number of shippers have complained of reduced service frequency. USDA believes this information is relevant to railroads' fulfillment of their common carrier obligation and should be tracked more systematically.

- USDA encourages the Board to collect any FMLM data on a historical basis. In the existing service data, the data’s absolute levels are not, alone, very informative of “strong” or “weak” service. However, they could become informative if they were measured against a *historical benchmark*. Historical values would make the FMLM data immediately useful.

Discussion

Data Benefit Markets

Data form a critical component of efficient and well-functioning markets. Shippers and railroads rely on data to make decisions on where, when, and in what amounts to allocate limited resources. More and better information leads to better outcomes by making profitable opportunities more apparent, by making risk more manageable, and by reducing costs.

Especially when issued regularly, good data may even prevent or mitigate rail service issues before they become major challenges. Railroads operate interconnected networks. The more information is available, the more shippers and railroads can put contingency plans in place and respond to disruptions. Such proactive actions may lessen the severity of service issues, resulting in better outcomes for both shippers and railroads.

The Need for FMLM Data

Since at least the Board’s May 2019 oversight hearing on demurrage and accessorial charges, shippers have expressed concern over FMLM service. At the hearing, shippers and their associations described FMLM as the “challenge,” where Class I railroads are “struggling,” and the “root cause to a lot of the issues.”¹ Comprehensive FMLM data are key to understanding the nature and extent of these issues.

The data would be important to any rail operating model but are particularly pertinent with the industry’s shift to precision scheduled railroading (PSR). In its name, PSR is connected to precise scheduling. Railroads are likely already tracking many metrics in order to achieve such strict schedules, yet no data is widely available at the car pickup and dropoff points—where railroads’ schedules intersect with shipper operations. Metrics are needed to track and evaluate quality of FMLM service, especially in a highly scheduled environment.

Recent challenges across the port, trucking, and rail sectors have revealed the extent and complexity of many commodity supply chains. Disruptions have underscored the need for data and transparency on *all* links of the supply chain, including the FMLM touchpoints, not just the linehaul portions.

Delay Metrics: Plans Versus Performance and Variability Measures Matter

An essential part of performance metrics is the difference between actual performance and the service that shippers were led to expect. Of course, all shippers want improvements in actual performance. Everyone benefits if train speeds are faster and dwell times are lower. However, it is arguably much more difficult to work with unpredictable, fast service than it is to work with predictable, slow service. Unreliable service, measured by the degree to which plans differ from performance, imposes costs on users. USDA encourages the Board to design metrics that capture predictability.

¹ STB transcript, docket no. EP 754: Oversight Hearing on Demurrage and Accessorial Charges, May 22, 2019.

The biggest component of predictability is the deviation between what a railroad tells a shipper it will do and what it does. The Board's metrics should attempt to capture various aspects of railroads' communications with shippers and how that message deviates from actual performance. For instance, railroads will communicate to shippers expected service dates at various points in time. They tell shippers an initial expected service date, and then, as the date of service approaches, they convey new expectations. The Board should capture a few of these snapshots of expectations.

For instance, the Board could request railroads record a few data points on the initial communication (e.g., the date and time of the communication, the number of cars ordered, and the date and time those cars are expected to arrive), as well as time-based snapshots of what was communicated to the shipper prior to providing service. For instance, the Board could capture snapshots of communications 72, 48, and 24 hours prior to actual service. The Board's metrics would then be based around comparing the initial projection, and these snapshots, to when service was actually provided. The purpose of multiple snapshots is to capture a fuller picture of the schedule changes over time than just a single snapshot would capture.

To illustrate with an example, suppose on December 1 a railroad tells a shipper that cars will be picked up 1 week later on December 8. The railroad might then convey on December 8 that pick-up service is delayed and will be provided on December 9. Finally, suppose the railroad delays service one more time on December 9 and provides service on December 10. In this case, this shipment's delay metrics would include the wait period conveyed by the initial notification (7 days between the order date, December 1, and the expected date, December 8) and the actual wait period (9 days between the order date, December 1, and the actual service date, December 10). It would also include snapshots looking back from the actual service date. In this case, the 72-hour difference would be 2 days, the 48-hour difference would be 1 day, and the 24-hour difference would be 0 days.²

Instead of the time-based snapshots, the Board might also consider a more operations-based demarcation, attempting to capture the moment when a shipment enters FMLM status. As an analogy, consider the moment in parcel shipping when a package goes from "On its Way" to "Out for Delivery." For instance, the Board might capture the first communication to shippers after their cars enter the local yard. Alternatively, the Board might rely on the moment that a railroad coordinates with the shipper to schedule a precise day and time for service.

The Board might also consider capturing the number of cars associated with a delay, computing a "car-hours" or "car-days" delay metric by multiplying the number of cars in the order by the number of hours (or days) delayed. The benefit of such a metric is that it is then feasible to aggregate the wide number of FMLM service outcomes. For example, one shipper may have 50 cars 24-hours late and another customer might have 10 cars 48-hours late. The former would contribute a value of 1,200 car-hours (50 car-days) delayed and the latter would contribute a value of 480 car-hours (20 car-days) delayed. However, delays for small shipment sizes might be

² These are calculated as follows: (1) 72 hours prior to actual delivery, the railroad said service would be provided on December 8 with actual service on December 10, a difference of 2 days; (2) 48 hours prior to actual delivery, the railroad said service would be provided on December 9 but actual service was on December 10, a difference of 1 day; and (3) 24 hours prior to actual delivery, the railroad said service would be provided on December 10 and it was provided on December 10, or no difference.

hidden by a car-hours metric, so there is value in collecting both measures—the unweighted delay in hours and weighted delay in car-hours.

The Board should consider collecting this raw, unaggregated data from the railroads and computing any additional calculations or aggregations itself to summarize the data and remove confidentiality concerns in public FMLM metrics. There are three main benefits to this approach. The first benefit is that the Board would then have the complete data in their hands. Any reports of service issues could be directly inspected by the Board, whether the issue appeared in the aggregate data or not. The second benefit is the Board would be able to more easily discover the best ways to summarize publicly accessible data. Because this is new data, there is likely some amount of exploration required to find the aggregations that best summarize the distribution of data across locations, railroads, car types, etc. It is challenging to identify these upfront, but they could be easily identified through inspection of the full raw data. Third, it would significantly reduce the burden on railroads. Lessening this burden reduces a constraint in choosing which calculations and aggregations to distribute and ultimately leads to more and better data provided to the public.

Because it is problematic to provide service earlier than expected as well as later than expected, the metrics should be constructed to avoid early and late shipments averaging out. The Board could compute the average of the absolute value of these deviations across all shipments completed in a given week. The Board could also compute separate metrics on shipments that were early, on-time, and late.

A system-wide average would not likely be all that useful to shippers when disruptions and poor service are often localized to specific routes, regions, and commodities. Railroads will likely have very different baseline performance metrics for intermodal traffic versus carload traffic and for commodities within their carload traffic. The Board should consider grouping the delay metrics by top (on a tonnage basis) origin-destination yard pairs, top originating yards, top terminating yards, and by commodity and train types.³ That is, each week, the railroads would submit a series of tables (or the Board would compute these tables from the raw data), where each table shows delay metrics broken out by a different grouping variable (or set of variables). From the raw data, each of these tables could be generated through a relatively straightforward query. Therefore, more complicated group variables (e.g., grouping by commodity and yard) should be considered.

The figure on the last page illustrates how USDA conceives of these metrics. It shows 2 of the 4 proposed time periods—the initial and 48-hour window prior to the actual service date. The top table in the figure represents hypothetical shipment-level data owned by a railroad. Within the table, the first set of columns shows traditional shipment-attribute data, such as that seen in the Carload Waybill Sample. The next set of columns are the estimated time of arrival (ETA) communications that would be captured by the railroad.⁴ The last set of columns calculates the

³ It is worth emphasizing that these metrics would be calculated at the shipment level and would be defined as deviation between communicated estimated time of arrival and the date service is provided *at a shipper's facility*. Aggregations over shipments might then be grouped by, for instance, the originating yard as a means of summarizing data and avoiding railroad/shipper confidentiality concerns. However the data are aggregated, the metrics would be calculated at the shipper-facility level.

⁴ The Train II User Manual on the Railinc website appears to show both initial and ongoing ETA data available for a shipment: <https://public.railinc.com/sites/default/files/documents/TrainII.pdf>.

proposed delay metrics from the ETA columns. The two bottom tables illustrate the kinds of summary tables either the Board or the railroads would compute each week.

USDA encourages the Board to distribute some measures of variation, such as the standard deviation of these differences between planned and actual performance and/or the range. In computing any aggregate value, such as the average, calculating additional descriptive statistics measuring variability should be trivial. Each would just be an additional column added to the tables submitted each week.

USDA believes these delay metrics would nicely complement the Board’s existing service metrics and any other new FMLM metrics developed in this proceeding. The proposed delay metrics would capture rail performance in a more holistic manner than existing metrics, but the delay metrics would not explain why delays arose. The existing, more operational, metrics would illuminate whether delays are arising from, for instance, slower speeds or longer dwell, but the delay metrics would also show issues in FMLM service, even if speeds and dwell times were normal.

Service Frequency Should be Included in the Metrics

While shippers have expressed many concerns over the predictability of rail service, they have also expressed concerns over frequency. The Hasa and Sanimax cases are two prominent examples of railroads cutting service frequency—in these cases, from 5 to 3 days per week.⁵ USDA has heard reports of service changes like this, separate from the cases themselves, but it is difficult to know the extent of these changes without more systematic data. USDA believes this kind of data is crucial to evaluating the question of whether railroads are meeting their common carrier obligation.

USDA encourages the Board to begin collecting service frequency statistics. The delay metrics discussed above are defined at the shipment level and aggregated over variables like origin yard, commodity, or train type. In contrast, frequency metrics would be defined at the shipper facility level. The Board might count the number of times or days that service was provided to each facility in a given week and the amount of service provided, then aggregate over similar location, commodity, and train-type variables.

Conclusion

USDA appreciates the Board’s invitation for comments on FMLM service and metrics. The existing service metrics have been valuable for identifying ongoing service issues. However, there appear to be gaps between shipper accounts of service and the reported data. While a few of these may be anomalous or temporary issues, the volume of shipper complaints and their similarities indicate that there may be more systematic service issues that are missed in the existing data. USDA believes that the addition of FMLM service metrics will add significant value to the existing metrics.

The FMLM data would be especially useful if historical data could be collected, which could help gauge the extent to which railroads have cut (or raised) service as they have implemented PSR. Especially when aggregated over the entire rail network, some delays will always exist. That fact makes it difficult to gauge at what “level” these metrics become indicative of a problem

⁵ STB decision, docket no. NOR 42165: Hasa, Inc. v. Union Pacific Railroad Company, August 21, 2019; STB decision, docket no. NOR 42171: Sanimax USA LLC v. Union Pacific Railroad Company, November 2, 2021.

worthy of more scrutiny. Being able to compare current data to recent weeks and to prior years is a crucial way of establishing baseline levels of service and evaluating changes from those levels. The more historical data the Board can collect, the more immediately useful the FMLM data will be. Amid the massive shift to PSR and ongoing recent supply chain issues, the need for useable data is particularly keen now.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jennifer A. Moffitt". The signature is written in a cursive style with a large initial "J".

Jennifer Moffitt
Under Secretary
Marketing and Regulatory Programs
U.S. Department of Agriculture
Washington, D.C. 20250

Exhibit:

Example Shipment Data

Shipment Attributes						Captured ETA Info				Computed Delay Metrics				
Shipment ID	Origin Facility ID	Number of Cars	Train Type	Commodity	Shipment's Originating Yard	Initial Communication Date	Initial ETA	48-Hour ETA	Car Pick-Up Date	Initial ETA Window	Initial ETA Delay (Days)	Initial ETA Delay (Car-Days)	48-Hour ETA Delay (Days)	48-Hour ETA Delay (Car-Days)
1	AAA	10	Manifest	Grain	Kansas City	12/1	12/8	12/9	12/10	7	2	20	1	10
2	BBB	75	Unit	Intermodal	Los Angeles	12/4	12/6	12/6	12/7	2	1	75	1	75
3	AAA	110	Shuttle	Grain	Kansas City	12/3	12/12	12/13	12/13	9	1	110	0	0
4	CCC	5	Manifest	Intermodal	Chicago	12/1	12/6	12/13	12/10	5	4	20	3	15
5	DDD	110	Shuttle	Grain	Kansas City	12/1	12/12	12/15	12/20	11	8	880	5	550

Example Commodity-Aggregated Table

Commodity	Total Cars	Initial ETA Delay (Average Days)	Initial ETA Delay (Total Car-Days)	48-Hour ETA Delay (Average Days)	48-Hour ETA Delay (Total Car-Days)
Grain	230	3.67	1010	2.00	560
Intermodal	80	2.50	95	2.00	90

Example Yard-Aggregated Table

Commodity	Total Cars	Initial ETA Delay (Average Days)	Initial ETA Delay (Total Car-Days)	48-Hour ETA Delay (Average Days)	48-Hour ETA Delay (Total Car-Days)
Chicago	5	4.00	20	3.00	15
Kansas City	230	3.67	1010	2.00	560



Robin Rorick
Vice President
Midstream
200 Massachusetts Ave NW
Washington DC 20001

December 17, 2021

Hon. Martin J. Oberman
Chair
Surface Transportation Board
395 E Street SW
Washington, DC 20423

Via E-Filing

RE: The American Petroleum Institute's Comments in Response to the Surface Transportation Board request for comments on First Mile/Last Mile Service (Docket No. EP 767) (September 2, 2021)

Dear Chairman Oberman:

The American Petroleum Institute ("API") submits this letter in response to the Surface Transportation Board ("STB" or "Board") September 2, 2021 Notice Inviting Comments ("2021 STB Notice") from the shipping community, carriers, and the public concerning what, if any, first mile/last mile (FMLM) issues they consider relevant. We appreciate and support STB's decision to solicit feedback on whether further examination of FMLM issues is warranted, and what, if any actions may help address such issues. API believes that such examination is warranted and recommends that the Board move forward with such actions necessary to remedy the ongoing issues related to FMLM service. We understand STB will be considering the information shippers have already provided on this matter and to understand the current landscape more fully, the Board has set forth several questions for consideration which API address below.

API is a national trade association representing nearly 600 member companies involved in all aspects of the oil and natural gas industry. API's members include producers, refiners, suppliers, pipeline operators, marine transporters, as well as service and supply companies that support all segments of the industry. Of interest to the STB, API members also are rail shippers, moving petroleum products across our nations rail network. As part of its mission, API participates in proceedings before federal agencies, and in litigation in state and federal courts. Therefore, API has an interest in any changes to the STB's process as it relates to First Mile/Last Mile service.

1. Key Issues

API has identified three areas for STB to consider and have outlined the current landscape and practical implications to shippers per the questions posed by the Board. API shall address its concerns with the following: lack of carrier resources to complete scheduled service; carrier's sole determination of shipper's facility service schedule; and carrier decisions which result in a purposeful reduction of rail capacity.

A. Lack of Carrier Resources to Complete Scheduled Service

The first key issue identified by API involves the most common carrier response when FMLM service is not completed as intended. The most common responses involve resource constraints, usually relating to an inadequate number of crews or locomotives at the serving location.

Lack of consistent FMLM service due to resource constraints are widely variable. Some members experience this on a weekly basis while others will only face this issue a few times per year. For the multitude of members that face this challenge more often, it appears to be a systemic issue. . When attempting to narrow the FMLM service failures to specific regions, API members noted significant disruptions throughout 2021 in several different regions across the entire North American rail system.

API members observe and hear directly from carriers they have underestimated their staffing and locomotive needs. The carriers appear quick to draw down resources by furloughing crews and parking locomotives, but these actions have caused resource constraints when overall rail volumes rise thereby stressing the entire rail network. API members also noted the carriers were extremely hesitant and slow to add resources back into their networks.

FMLM service failures for either the serving yard or receiving facility creates significant fleet congestion. Some carriers have addressed the lack of resources by sending rail traffic on by-pass trains hundreds of miles out of route to a location that has an adequate crew base to classify trains. When these measures are taken by the carriers, this obviously has a significant impact on transit times which translates into a "fleet-starved" scenario whereby shippers scramble to add cars to their fleets. The next impact to be felt will be the severe bunching of the fleet and congestion once the by-pass operations have stopped which translates into increased demurrage and constructive placement charges.

API members find it difficult to acquire short notice trucking resources to avoid plant shutdowns. When railcars are inbound or outbound, and delays happen, the planning/tactical window is much shorter. As such, FMLM service failures can quickly translate into a loss of or shut down of production. Unless the shipping facility has slack in the production line and has additional labor resources to call-in on an as-needed basis, a FMLM service failure can be an impossible situation to make-up for. The first mitigation response is to assess the possibility of using alternative high-cost modes of transportation to continue production and to continue to

fulfill customer orders. Unfortunately for specialty shipments, rail may be the only feasible or practical option for shipping.

FMLM service failures reverberate throughout shippers' operations. Teams which were on duty specifically to receive railcars from the carrier may be limited on hours for safety reasons. If labor is not available when the switch does ultimately occur, shippers may have to call in labor specifically for escort or gate-opening purposes.

FMLM service failures typically equates to immediate increases in costs per unit over and above the planned transportation costs. Some general costs associated with FMLM service failures include: lost production time; overtime labor; increased transportation costs due to switching to a higher-cost mode; Increased demurrage/constructive placement cost exposure; Increased administrative burden for data gathering and disputing automated demurrage bills generated by carriers; offsite railcar storage costs to absorb extreme variability; special/extra switch fees; overall loss of immediate and future business opportunities; and increase in private rail fleets.

When carrier has a FMLM service failure due to a lack of resources, shippers are advised by the carriers to fill out a service case log to indicate a service problem. Once this case log is entered by the shipper, the carrier is supposed to respond to the shipper with a corrective action plan. Based on shipper experience, most of the case responses simply communicate the cars will be spotted/moved at the next available switch day or through train. There is rarely any sort of root cause analysis or corrective action communicated to the shippers. The burden to gain any sort of insight as to the reason of the failure or how it will be corrected in the future is on the shipper.

Shippers typically maintain data regarding railcar and train events to prove negative impacts on service. Often, the shipper's data does not coincide with the rail carrier's data or the carrier's data does not track specific metrics which directly impact shippers. An overwhelming majority of the service case log responses are either automated or generic communication that does nothing to drive down to the root cause of the FMLM service failure. In instances where there is a localized issue, such as a derailment or significant weather complication, a shipper may be able to contact a carrier representative directly. However, shippers have noticed a reduction in overall communication from carriers regarding service interruptions with shippers typically finding out after the fact on why their shipments were delayed. In most interactions with carrier's service case log system, it is a private messaging-type service. For some carriers, the case is assigned to a specific analyst so there are limited response times, and it could be several days before you receive a response due to the analyst's days-off. In certain situations, it makes sense for carriers to allow for local autonomy and customer communications to adjust service rather than through a centralized system.

The railroad acts somewhat like a continual conveyor belt. It's hard to get on and hard to get off but once your traffic is moving it usually stays moving. Shippers do not have control of

their commodities once offered to the rail carrier and there is not a practical way to get product off the railroad mid-route. Shippers are generally at the mercy of the carrier and other than service requests or speaking with the respective account managers (if you have one assigned on that carrier) that is the only remedy. There are no incentives of FMLM performance for the carriers and carriers will typically not agree to any sort of minimum service standard. Besides filing a complaint with the STB, and pursuing legal remedies, there is very little that can be done at a single service location in the short-term to improve FMLM service.

B. Carrier's sole determination of shipper's facility service schedule

The second key issue identified by API is that carriers solely determine the days of service a facility will receive.

Carriers establish internal metrics or formulas based on facility volumes and other factors to determine service frequency and each carrier uses a different rationale to determine how many days of service they will provide. Depending on the shipper and volumes, service revisions could happen several times per year. Most of the service changes come in the form of a written notification of change of service without any input or discussion with the shipper. In some instances, there is no notification of a days-of-service change at all. The shippers do not necessarily know why this issue occurs or what triggers the service reviews and changes. From a frequency perspective, API members observed facility service schedules have changed more over the past five years than years prior. If facilities inquire to carriers for additional service days, some carriers will require additional information about shippers' business and will request additional commercial concessions such as minimum volume commitments.

A reduction in service generally delays the movement of shipments and negatively impacts fleet utilization. When shipper equipment utilization is reduced, shippers must weigh the impacts of increasing fleet size. In some circumstances shippers are forced to find alternate third-party locations to transload their products because their primary facility is not receiving the needed service frequency. In other situations, shippers are forced to find offsite railcar storage to help absorb the variability of the carrier's service thereby creating additional switching movements between two separate FMLM locations.

Reduced days of service typically results in reduced throughput through facilities unless the facility has sufficient trackage or available additional onsite commodity storage to absorb the increased variability that will come with less service. Carrier's service schedules dictate when facilities schedule their shifts and may cause labor supply issues if the schedule is changed. Shippers indicate the frequency of facility schedule service changes has increased significantly over the past five years which would match up with several carriers implementing PSR.

When a facility's service is reduced, typically the burden is on the facility to make a business case to the carrier as to why it should provide a certain level of service frequency. In some situations, facilities are forced to pay a special switch fee to regain the frequency of

service it once had. If the facility location is not at least dual served by another carrier, the facility does not have recourse to find another rail service option.

There are no standard notifications by Class 1 carriers regarding changes in days of service. The short line carriers typically collaborate with the shipper facility on its service needs and work together to find the best service solution for both parties. The Class 1 carriers typically dictate any changes in service they desire based on internal metrics. Shippers are fortunate to receive notification of a change in service prior to it happening. Shippers may request extra days of service from the carrier or a change in the time of day, but the ultimate decision will be made by the carrier's marketing and operations departments. The shipper has no recourse to increase the frequency of service and must rely on other modes of transport if available.

C. Carrier decisions which result in a purposeful reduction of rail capacity.

The third key issue identified by API surrounds carrier decisions which result in a purposeful reduction of rail capacity to reduce carrier operational costs. This issue arises when there is an abrupt change to FMLM service for a shipper in a certain locale. Carriers that adopted PSR early revised their infrastructure to reduce operational costs by reducing siding and/or double track capacity, mothballing or reducing operations at classification yards and reducing their labor forces. These actions provided for a large reduction in carriers' costs structure but significantly reduced or eliminated the carrier's ability to respond and recover from service challenges.

Carriers have lauded their ability to handle an equivalent number of units with thousands of less employees however, this causes an extremely delicate balance in the rail network. This balance can be shaken quickly due to inclement weather, natural disasters, or other service interruptions. These issues, and the carriers' desire to run on marginal resources, have caused service recovery times to lag because there is essentially little to no spare capacity in the rail supply chain the way PSR operates. In addition, API members observed an appreciable difference in FMLM service degradation from Class 1 providers versus short line service providers who have not implemented PSR processes.

When the lack of carrier capacity causes inconsistent turn times, the origin and destination facilities are expected to provide the slack in the supply chain. This issue is exacerbated when coupled with inconsistent service and ultimately harms all parties in throughout the network. When abrupt changes are made to FMLM service due to the carrier's preferred operating structure, some carriers will insist shippers build incremental trackage in their facilities to help absorb the newfound variability. In addition, some carriers are reducing their four axle locomotive fleets for cost purposes and then requiring revised geometric track layouts in shipper facilities to accommodate larger locomotives for shippers to gain more consistent FMLM service.

Abrupt and structured changes to FMLM service can cause significant harm to a facility. From what seemed to be a somewhat consistent service expectation, to a structural change benefiting the carriers cost structure, facilities have been forced to adapt quickly or reduce their rail shipments. When there is an abrupt change in FMLM service, facilities may not be able to adapt quickly to new shifts/times or have the immediate flexibility to do so due to hours-of-service issues, union rules, or collective bargaining agreements.

When carriers make specific decisions that reduce overall capacity or different than normal routing or handling, it directly affects turn times. If turn times change either way, fleet sizing needs to be considered immediately to avoid lost production/shipments or impending demurrage charges. Carriers operating with an operating ratio in the 50-60s has shown to be a detriment to shippers. The purposeful reduction in spare capacity in the rail network has created an unnecessary rail operating environment whereby the rail network can be quickly plummeted into a 'meltdown' scenario in a geographic region because there are not enough crews or locomotives available to assist in the service recovery.

Shippers must quickly adapt to these service changes by adjusting fleet size, calling in additional employees and adjusting labor schedules if possible. If shippers believe the rail carriers will not provide consistent service without undertaking capital projects within their facilities, some may be forced to take on these capital projects to stay in business or find alternative locations to load/unload products at an incremental cost.

When service levels are impacted, the customer must adjust to the carriers' decisions. There is no minimum level of service expectation or requirement, so the shippers are left absorbing any impacts of the carriers' decision with little or no input to those decisions. Since carriers have been implementing PSR, carriers have advised shippers that the operations groups of the carriers are dictating which lines of business (origin/destination pair, commodities, customers) the carrier takes on. If a shipper's commodity or route does not fit within the carriers preferred operational metrics, the carriers have a lack of interest in shippers' business or make it economically impractical.

Escalating service complaints inside the carrier leadership can create organizational hardship for shipper's account managers. This action can strain relationships for the account manager who attempts to be a shipper advocate within the carrier. Shippers are continually referred to the carriers' online service case process. However, carriers have implemented internal communication processes that makes it difficult for shippers to engage with any operational decision makers. API notes that these concerns do not exist with short line carriers and shippers have much better communication and service issue resolution success with short line carriers.

2. Design Metrics:

As noted, some shippers have suggested that the Board collect additional service metrics to measure FMLM service. API suggests that the Board may wish to further review overall metrics, but notes that railroads should report the metrics and the metrics should be designed with input from the shipper community. Such shipper focused metrics design lend itself to better addressing the reality of the situation. Further, there may be a need for a neutral party to collect data from both shippers and carriers which would facilitate an unbiased overview of the service. API supports the development of additional metrics to further evaluate FMLM service. The current data reported by carriers facilitated by prior STB docket EP 724 provides a framework for additional data collection that can be used to help drill down on metrics to identify FMLM service issues.

A salient metric would be one that provides a simple snapshot of the length of time of the FMLM service. For example, the transit time to final destination facility once the railcar enters the final serving yard for the final destination facility. From the reverse point of view, a metric showing the transit time from time of release from the origin facility to the time the railcar exits the serving yard of the origin facility. By using this metric over numerous locations, the Board would have the ability to benchmark FMLM service over many different locales and geographic areas. For practical application, the metric formula would be:

The date/time between the arrival of carload to serving yard to the date/time the carload is placed at the destination, less any constructive placement time.

Starting with the individual shipper, the data could easily roll up to quickly identify regional issues or issues related to a specific carrier. API supports additional broader metrics which could encompass the variances between initial planned transit and actual transit. However, API members would caution the Board to not allow the scope of the metrics to be too broad so as not to aggregate so many thousands of carloads that FMLM system service failures get lost in the averages. On the shipper level, it would provide a starting point for discussions with serving carriers on a baseline service expectation. On the local level, it would provide business communities with a snapshot of consistent, or not consistent, rail service of the immediate area. On the regional level, it would provide an avenue to probe systemic issues and trigger root cause analysis and accountability for service failures (specific carrier, specific region, labor, weather, etc.).

As data is rolled up to the national level, it provides less insight and is less actionable but can still be a useful metric to determine overall trends. The main benefit would be the shippers would have direct input on the key metrics and data gathering. On the shipper level, the data would be between the shipper and the carrier. On the local, regional, and national levels, the data would be published weekly and allow drill down/manipulation to the local level to determine the carrier and the length of time to complete FMLM service.

API members suggest the metrics be reported by the carrier to the shipper on the shipper level and reported by the carrier to the Board on the local, regional, and national levels. The data provided to the Board should be made public for the local, regional, and national levels. Regarding shipper surveys, API members note that historically shippers have been cautious about providing data or complaints/issues directly to the Board due to the fear of complicating its degradation in rail service, negative impacts on commercial relationship with negotiations, and/or reduced communication by the carriers. API members suggest results of any shipper surveys be aggregated and the shipper's name be blind to the carriers.

3. Carrier Data Tracking

As indicated by AAR's letter, carriers track some information related to FMLM service, and the Board could consider extant data in evaluating comments on the design of metrics.

API members note there are differences between carriers and what data is tracked, what each carrier's definition of success is, and what is reported to shippers. In most cases, shippers manually track different data points to provide counter-data to the carrier's data. One valuable piece of data, which carriers track which is not provided to shippers, are reasons for delays and/or missed switches. Shippers are often kept in the dark as to why FMLM was not performed as planned. This data should be accessible to shippers, so the shipping community is aware of what reason is causing service failures such as lack of crews, lack of locomotives, carrier convenience, or customer prioritization.

Carriers typically collect 2 main types of data

- Car Location Message (CLM)
 - o CLM data is railcar movement/location data that is produced when railcars pass AEI detectors and is also sometimes tied to internal reporting of train movements between AEI detector locations such as control point or locomotive GPS records.
- Scheduled trip plan

When the carriers receive a notification of an empty or loaded release from a shipper, a baseline trip plan is created, and the trip plan will be continually updated throughout the railcar's journey and any delays or bypasses will usually be modified into the trip plan thereby erasing the original trip plan data. Historical data of this type is not typically provided by carriers to shippers. API members would recommend that carriers utilize their existing locomotive GPS technologies to provide an increase in reporting locations for railcars located within their GPS equipped trains and switch engines.

To best exemplify future data needs, it is important to highlight the realm of current data collection.

As outlined below, here are some examples for the Board's reference:

- a. shipper data collection:
 - i. In the case of receiving a load/empty
 - 1. Time of railcar release from origin facility
 - 2. Time of railcar departure from origin facility
 - 3. Time of railcar arriving serving yard
 - 4. Time of railcar placed at destination facility
 - ii. In the case of releasing a load/empty
 - 1. Time of railcar release
 - 2. Time rail crew arrives site
 - 3. Time of railcar departure from facility
 - 4. Time railcar reaches intended destination

- b. Class one carrier data made available to customers
 - i. CLM data along the route for the arriving/departing shipment
 - ii. Original trip plan ETA
 - 1. Some carriers provide data showing variances from the original trip plan, but it is not aggregated nor accessible historically by customer
 - 2. Some carrier trip plan variances will re-set each time there is a delay between CLM records
 - 3. No consistent way for shippers to easily determine actual shipment transit versus original trip plan other than keying in real time data and variances

API agrees that there may be data uniformity issues and that is why specific metrics need to be developed to communicate to the stakeholders clearly and consistently where and what issues may exist with FMLM in a certain locale, region, or carrier.

I. Trade-offs.

API notes it is difficult to identify trade-offs when carriers are the only party in the supply chain who has 100% of the information surrounding the shipment. Carriers solely determine days of service, the trip plan, and determine acceptable transit standards. Carriers are also the only party in the supply chain that knows the exact reason for delays in shipment. Because there is no minimum level of service guaranteed to rail shippers, API members believe the requested metrics for FMLM service will contribute to a positive discourse between the Board, carriers, and shippers to drive to solutions for improving FMLM service rather than just reporting aggregated results.

API believes the data and technology are available to support the requested metrics and this data collection would not create additional burdens for the carriers. It further contends that customer-level data collected should be kept confidential between the carrier and the customer. Local data (as most likely defined by the serving yard) should be produced publicly by carrier to the Board. As the data is applied in a broader fashion (regional, national, etc.) it will become less useful. API members believe the most useful data for the Board to determine what and where FMLM exists will be on the local and regional levels by carrier.

Information given directly to shippers regarding service metrics would hopefully foster conversation and collaboration to rectify systemic FMLM service failures. The board should see the new suggested metrics and can drill down to the local level. Further, a scoring mechanism could be developed based on percentage of overall carloads versus failures and be assigned to each locale, and region by carrier. This could contribute to determining a baseline level of acceptable FMLM service.

API suggests that the Board should focus on Class I reporting at this time. Traditionally the Class II and III carriers have been more responsive to shipper FMLM concerns and have fostered collaborative conversations to respond to service challenges. Once metric and reporting regimes have been established for the Class I carriers, API members suggest revisiting the FMLM discussion for Class II and III carriers.

II. Conclusion

API has identified several areas for improvement in First Mile/Last Mile service, and that the STB has several tools at its disposal to improve service. API appreciates the Board's efforts to understand these issues more fully from a shipper's perspective. We stand ready to serve as a resource in future policy development in this area and look forward to working the Board and the carriers of achieving the mutual goal of timely, efficient, and cost-effective rail freight shipping. Should you have any questions or wish to follow-up on any of these points, please do not hesitate to contact Paul Hartman at HartmanP@api.org.

Sincerely,



Robin Rorick
Vice President
Midstream

Cc: Hon. Patrick J. Fuchs
Hon. Ann D. Begeman
Hon. Michelle A. Schultz
Hon. Robert E. Primus

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 767

FIRST-MILE/LAST-MILE SERVICE

**COMMENTS OF
DIVERSIFIED CPC INTERNATIONAL, INC.**

SUBMITTED BY:

Sandra J. Dearden,
Executive Consultant
HIGHROAD Consulting, Ltd.
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(219) 838-3800

December 17, 2021

My name is Sandra J. Dearden. I am President and Executive Consultant for Highroad Consulting, Ltd. (Highroad). I am filing these comments on behalf of Diversified CPC International, Inc. (Diversified CPC). Highroad has managed rail transportation for Diversified CPC for twenty-four (24) years.

Diversified CPC commends the Board for opening this important proceeding. Rail transportation is critical to our operation, and timely delivery of our products is important to our customers, so we believe it is imperative to address the current capacity crisis and to ensure the future health of the railroad industry.

Diversified CPC is a global leader in the design, production, and distribution of high-quality aerosol propellants, high purity hydrocarbon refrigerants, and specialty applications, including biomass solvent extraction products. Our headquarter plant is located in Channahon (rail station Lorenzo), Illinois served by BNSF Railway (BNSF). Other plants are located in Anaheim, CA, served by Union Pacific Railroad (UP); Sparta, NJ, which is in the Conrail shared asset area served by the New York, Susquehanna and Western Railway (NYSW); Petal (rail station Dragon), Mississippi which is local on Norfolk Southern Railroad; and Sebring, Florida served by CSX Transportation. In 2020, we opened a new terminal in Beaumont (rail station Amelia), Texas which is jointly served by BNSF and UP.

Diversified CPC provides unique purity specifications that assist our customers in increasing plant productivity, improving product performance while decreasing environmental footprints. Our strong base of customers rely on the quality of our products, our responsible innovation mindset, competitive price terms, and steady, unique service, including timely deliveries of key products used in manufacturing. This can only be achieved if there are no disruptions in our

production because raw materials arrive on time, and when transportation carriers deliver our products to our customers on a timely basis.

1.0 FIRST MILE LAST MILE (FMLM) SERVICE AT DIVERSIFIED CPC'S PLANTS

The shortage of capacity in the transportation industry is not a new problem. In 2011, Highroad Consulting, Ltd. conducted a seminar, *Future Shock!* Even then, industry experts discussed the need for shippers and receivers of freight to drive efficiencies into their supply chains due to the developing shortage of truck drivers and regulatory changes, concurrent with increasing freight volumes as forecasted by USDOT! (Underscore for emphasis). In their most recent forecast, the Bureau of Transportation Statistics predicts freight volumes will increase 50% to 28.7 billion tons by 2050, while freight will double in value to \$36.2 trillion.¹ In prior forecasts, due to the truck driver shortage and regulatory changes, DOT predicted 90% of the growth will move on rail.

The current service/capacity issues are symptomatic of a greater underlying issue – one being the industry has not kept pace over time with the changing dynamics and requirements of the transportation network. The railroads will cite Precision Railroading (PSR); however, we have not seen any improvement in rail service attributable to PSR. If anything, PSR seems to have exacerbated the current capacity problems as the railroads, anticipating productivity gains, reduced labor forces and now, the railroads cite the labor shortage as the primary cause of poor service.

In its Decision opening this proceeding, the Board asked many good questions, so many it is not unlike opening a brisk brainstorming session.

¹ Bureau of Transportation Statistics freight flows forecast data, Freight Analysis Framework, November 22, 2021.

However, the questions seem to focus on two specific areas: (1) Rail Customer Experience, and (2) Design of Metrics, which seems to be a logical two-step approach to creating a plan, as the metrics needed will surface based on the customers' experiences.

Highroad Consulting, Ltd. (Highroad) tracks FMLM service at all of our plants. In addition to daily tracking of our inbound and outbound shipments, Highroad developed a form that is submitted by the Plant Managers weekly, to report FMLM service. Of course, this includes the obvious, which is missed switches; however, the quality of switching is as important as switching on schedule.

Diversified CPC receives various raw materials, and they order cars in, based on the products in the cars that are needed on that day for production. There have been times when cars ordered were not delivered, while other cars not ordered in were received. Also, products received and placed on our siding must be loaded and unloaded through piping, so when cars are ordered in, Diversified CPC includes instructions regarding where cars (loaded and empty) are to be placed so they are properly positioned for loading and unloading under the loading and unloading racks.

Diversified CPC does not have equipment and personnel to move railcars. Therefore, if a car is not properly placed and plant personnel cannot load or unload the car as needed, the car may as well be back in the rail yard. Therefore, when cars ordered in are not received, if the railroad pulls the wrong car, or if cars are not properly positioned, we consider the switch on that day as a FMLM error, aka, a missed switch.

The railroads' excuse for FMLM service failures during the last six months has been the industry's labor shortage. When reviewing the data that we have collected, there have been a number of missed switches, but a significant number of errors were simply the result of not following the work orders. Examples include pulling the wrong car, incorrect placement of cars on the track, and only completing part of the switch because they ran out of time.

The railroad serving our headquarter plant has cited a labor shortage as the root cause of frequent missed switches. Diversified CPC is last in line in the industrial park to be switched and the crews frequently run out of time. While the railroad has ramped up personnel, missed switches continued into December 2021.

Highroad's decision to track FMLM service on a weekly basis gives Highroad personnel the ability to proactively work with the carriers on repetitive service issues. Certainly, FMLM service is important, and it is a good first step to addressing railroad service issues. However, the fact that carriers may comply with the switching schedules 100% of the time, is not necessarily a good indication of the quality of service, as it does not take into account cars that did not arrive according to trip plans because they were delayed in transit.

2.0 REPORTING METRICS

Increasing transparency can result in clear benefits for all of the stakeholders. Customers can plan and make appropriate changes to their supply chains instead of sitting around and waiting for the problems to correct themselves, and the carriers will have enhanced flexibility needed to initiate and manage change.

The railroad sales and marketing managers that we work with on service issues have been understanding and we have mitigated demurrage in some instances. Also, when COVID first surfaced, CSX contacted us and advised they had furloughed personnel, and they were changing the switching schedule at our Sebring, Florida plant to different days, and from three days to two days/week. After we showed them the negative impact the new schedule would have on our production, they responded by restoring the original switching schedule. This is just one example of our experience addressing service issues with railroad personnel who are on line with the customers. However, in more recent weeks, the general response from all of the railroads has been they are working on it, and there is little that the railroad can do until they hire more people.

One of the questions posed by the Board in its decision is how to consider the potential burden on types of carriers, including Class II or Class III railroads. The challenge is to design reporting standards that will be meaningful, yet practical and manageable for the carriers. Diversified CPC's plant at Sparta, NJ is served by NYSW, a Class II railroad. FMLM service at the Sparta plant has been flawless; while we cannot speak on their behalf, they do an excellent job of managing their operations, but they have fewer miles and customers, so they may not view performance reports as overly burdensome.

The greater challenge is to design metrics for the Class I railroads that will provide detail needed to address repetitive problems, considering the expansive geography of the Class I's, and the extensive number of locations, yards, and customers. Averages and system-wide reports can lack meaning as service problems that may be occurring in certain regions on lines, with some customers

can become lost in the data. One example is customers that experience missed switches because they are last in line and the crews run out of time, while neighboring industries in the same industrial park do not experience missed switches.

System-wide reports, such as average train speeds continue to be meaningful. Tracking terminal dwell times can be relevant, but a report system-wide does not highlight those yards and interchanges that have repetitive delays. The railroads have this information, but it is not made available to customers. Probably the most efficient reporting system that would provide detail needed to highlight problem areas would involve exception reporting. In the case of excessive dwell times, the Board could establish a maximum standard, so the railroads would only report dwell times for those locations that exceed the standard.

Labor and locomotive power are important parts of capacity but counting numbers of new hires does not paint an accurate picture as it would not take into consideration attrition or changes in volumes handled. Also, a simple count of the number of locomotive units is not meaningful as there are different types of locomotives (switch vs. road), and technology has changed so a newer unit will replace more than one unit.

Reporting metrics to track labor could include (1) quarterly ton-miles; (2) total employees per ton-mile; and (3) T&E employees per ton-mile. A similar approach could be used to track the availability of locomotive power. Separate metrics would be submitted for locomotives in service and locomotives in storage. The railroads already track locomotive availability, which is one standard. Others include: (1) number of over-the-road locomotives in service and number of over-

the-road locomotives in storage; (2) available horsepower per ton-mile; (3) horsepower hours traded in run-through service (debit/credit, total and by connecting carrier).

Tracking FMLM service performance requires more detail, presenting a greater challenge. Again, the solution is not to create reports that lack substance simply for the sake of creating reports. Instead, it will be more meaningful if the railroads report exceptions. The trainmasters know when their crews have missed a switch, and when they have run out of time. They are also on the receiving end, when customers complain because the crews did not follow work orders. The data could be reported regionally, based on the number of customers served and the number of exceptions.

For each metric, it will be imperative for the Board to clearly define standards, such as missed switches/quality switching so there is no misinterpretation of the rules. Some years ago, we investigated higher than normal average train speeds reported by one railroad, and we learned they were not including terminal dwells in their calculations. It will be important for the railroads to comply with the rules and the standards, and any outliers that may be suspect, should be investigated.

3.0 CONCLUSION

It is not our intent to submit comments that will set standards and metrics for reporting railroad service performance. Instead, we view this as an opportunity to emphasize the significance of quality railroad service, and to submit some potential ideas for metrics to be included in the conversation. We do not view the current capacity crisis in transportation, which is of national significance, as a short-

term issue. It has been developing for more than ten years and will continue to grow, absent change.

There cannot be too much transparency. However, it's going to take more than a collection of data to solve the problem. There are some obvious inefficiencies in the transportation network (truck and rail) that consume major capacity. The purpose of today's metrics should be to identify service issues that need to be addressed but absent change, the existing network will not be adequate to accommodate future growth.

Respectfully Submitted:



Diversified CPC International, Inc.

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December 17, 2021

Surface Transportation Board
395 E Street SW
Washington, DC 20423

Re: First Mile/Last Mile Service {Docket No. EP 767}

The purpose of this letter is to provide comments from the National Propane Gas Association¹ (NPGA) in response to the Surface Transportation Board (STB) request for public input on First Mile/Last Mile (FMLM) rail service.²

As a matter of background, propane is used in millions of installations nationwide for home and commercial heating and cooking, in agriculture, in industrial processing, and as a clean air alternative engine fuel for both over-the-road vehicles and industrial lift trucks. The peak demand for propane is typically in the winter heating season for residential and commercial space heating. The transportation infrastructure of propane from its production to its end use occurs through multiple modes including pipelines, over the road trucks and rail transport. Rail transport of propane can typically be in the hundreds of millions of gallons per month during peak demand.

Although we have not experienced any significant overall rail concerns recently in the propane industry, we did receive several comments from our rail shipper members on FMLM service for which we would like to share with the Board.

First, one of our members shared they have experienced problems in seeking flexibility with diversions of railcars. Specifically, when trying to arrange pre-empty diversions of loaded railcars, they were, at times, unable to designate alternate locations (other than the point of origination) for the return of their railcars. They must wait until the cars are offloaded before they can attempt to divert railcars. About 10 percent of the diversion requests are denied, and in many of these cases, they cannot submit diversion requests until after an interchange to a Class 1 railroad. The challenges this issue presents are an inability to optimize fleet management, and their observation is that Precision Scheduled Railroading seems to have exacerbated this issue.

¹ NPGA is the national trade association of the propane industry with a membership of about 2,600 companies, and 36 state and regional associations representing members in all 50 states. NPGA's membership includes retail marketers of propane gas who deliver the fuel to the end user, propane producers, transporters and wholesalers, and manufacturers and distributors of equipment, containers, and appliances.

² Surface Transportation Board Decision – Docket No. EP 767; First Mile/Last Mile Service; Service Date – September 2, 2021.

Another issue raised is the extremely long dwell times that have occurred in some areas, most notably in the States of Michigan and New York. In Michigan, in destinations such as Alto, Cadillac and Marysville, loaded dwell times across those three destinations were reported to average 11 days on 440 loaded shipments through September of this year. In New York, average dwell times for the destinations of Clyde, Norfolk and West Albany averaged 30 days across 194 loaded shipments. These extensive dwell times to these destinations were viewed as outliers compared to other shipments and seemed related to heavy congestion along with lighter rail crews.


Also, it has been reported to us that the number of switches allowed have been reduced, and in some cases, they were cut in half. This has impacted efficiency of operations.

As a result of the above-noted issues, additional railcars are put into service, which exacerbates congestion issues on the railroad. If, for example, as referenced above, there was greater flexibility of pre-empty/advanced diversions, shippers would be able to reposition railcars across the fleets and mitigate their operational risks.

In summary, overall rail operation in the propane industry has been satisfactory in recent years, but as noted above, there are instances where improvements could be made.

Thank you for the opportunity to provide these comments and for the Board seeking input on FMLM rail service issues.

Sincerely,

A handwritten signature in cursive script that reads "Michael A. Caldarera".

Michael A. Caldarera
Senior Vice President, Regulatory & Technical Services
National Propane Gas Association

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FIRST-MILE/LAST-MILE SERVICE) Ex Parte No. 767
))
)

**OPENING COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE,
THE FREIGHT RAIL CUSTOMER ALLIANCE, NATIONAL COAL
TRANSPORTATION ASSOCIATION, PORTLAND CEMENT
ASSOCIATION, AND STEEL MANUFACTURERS ASSOCIATION**

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Manufacturers Association

Dated: December 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FIRST-MILE/LAST-MILE SERVICE)	Ex Parte No. 767
)	

**OPENING COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE,
THE FREIGHT RAIL CUSTOMER ALLIANCE, NATIONAL COAL
TRANSPORTATION ASSOCIATION, PORTLAND CEMENT
ASSOCIATION, AND STEEL MANUFACTURERS ASSOCIATION**

The Western Coal Traffic League (“WCTL”), Freight Rail Customer Alliance (“FRCA”), National Coal Transportation Association (“NCTA”), Portland Cement Association (“PCA”), and Steel Manufacturers Association (“SMA”) (collectively, “Shipper Associations”) submit these comments in response to the notice that the Surface Transportation Board (“Board” or “STB”) served on September 2, 2021, as modified September 21, 2021 (“Notice”).

I. INTRODUCTION AND SUMMARY

FRCA and NCTA are two of the original members of the Shipper Group that submitted the letters dated August 30, 2020 and October 8, 2020 that provided the impetus for the Board’s Notice. FRCA and NCTA, joined by WCTL, PCA, and SMA, strongly endorse and applaud the Board’s decision to institute a proceeding to review and address issues regarding first-mile / last mile (“FMLM”) service.¹

¹ Shipper Associations understand that the two other members of the original Shipper Group, the National Industrial Transportation League and the Private Railcar Food and Beverage Association, Inc., will be filing separate comments.

The Shipper Group letters explained that: (1) FMLM data is critical for measuring the end-to-end service being provided by the common carrier railroads; (2) without that data, shippers and the Board lack insight into the overall functioning of the rail network that shippers need for planning and operational purposes, and to assess whether any service problems are specific to them or more general, whether they are being singled out for any service problems, and whether service is improving, deteriorating, or remaining stable generally; (3) without that data, the Board lacks needed visibility as to whether railroads are properly discharging their common carrier obligation; (4) the railroads must necessarily already collect, monitor, and utilize the data, all the more so to the extent they seek to adopt the principles of so-called Precision-Scheduled Railroading (“PSR”); (5) since the railroads already collect, process, and utilize such data, the additional burden of reporting the data to the Board would not be excessive; and (6) the FMLM data is not currently being reported to the Board pursuant to *United States Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), apart from unit trains and intermodal service. Notice at 3-4, discussing Shipper Group Letters dated August 30, 2001 and October 8, 2020.

The recent service issues reinforce the need for the missing data. Reports of supply chain problems have become ubiquitous, and the problems are growing worse and more widespread, not better. Chairman Oberman has written to the Class I railroads repeatedly regarding service problems in the past few months, beginning with letters dated May 27, 2021, followed by letters regarding demurrage and accessorial charges the very next day, May 28, 2021, and letters regarding intermodal supply chain issues dated

July 22, 2021. The Chairman more recently sent a letter to CSX dated October 18, 2021, and another one to NS dated November 23, 2021.

As these letters indicate, the general systemwide service data currently being collected by the Board from the railroads under the rules adopted in EP 724 is insufficient for the Board to fully understand the severe service problems being experienced by shippers at the local level, resulting in major part from PSR changes. Nor does the EP 724 data currently available to the Board reflect problems such as reductions in days of service to customers, car order and switching errors, missed switch times, failure to meet planned trip or cycle times, general reductions in crew availability, locomotive power, and railroad cars, and the apparent shifting of crews, railroad power, and equipment by railroads across service territories to attempt to address service emergencies that are arising across the railroads' systems on a recurring basis.²

The FMLM issues are of particular concern to those Shipper Associations members that may ship via unit trains, for several reasons. First, part of PSR has entailed the forced conversion of unit train shippers to manifest service, even for large volume shippers. Second, the rail carriers are increasingly relying on "double" or "combination" trains, creating more issues as to the nature of service provided. Third, the problems with manifest and intermodal service often bleed over to unit trains. In particular, many unit

² The reported EP 724 data does provide some information on the number of trains held and the cause, but does not track the reductions in trains in service or the trainsets or cars (including shipper or private trainsets and cars) that have been parked because crew and/or locomotives shortages prevent the equipment from being in service in the first place.

train coal shippers have been subjected to mandatory train parking, even as those shippers have stable service requirements and would like to ship more coal, particularly in the face of spiking gas prices, and stockpiles have been shrinking. *E.g.*,

<https://www.wsj.com/articles/americas-power-plants-are-low-on-coal-11638268201>

(Nov. 30, 2021).

Closely related, the railroads constitute networks, and the railroads have frequently responded to substantial crew and equipment shortages by shifting resources around their systems to address recurring local service “fires.” Significantly, they have taken these measures without providing affected customers or the public with any information regarding resources are being redeployed, which types of service or service territories are being favored and for how long, and when resources will be returned and service restored to “normal.” Also, the railroads are the only party with the knowledge as to the full network, which puts them in a position to exploit their asymmetrical informational advantage to their benefit and to the detriment of shippers by leaving them completely left in the dark as to why their service is suffering and when the problems will be fixed.

Furthermore, the linkage of management compensation to reductions in the operating ratio at the behest of major shareholders incents the carriers to exploit their market power and sacrifice service. Specifically, the operating ratio reductions depict the extent to which operating savings are retained by the carriers and not passed through to customers. If the railroads were operating in a competitive market, then competitive pressures would cause a pass through of savings and efficiency gains to customers. In

that regard, it bears noting that the recent service woes have been accompanied by record railroad profits and further operating ratio reductions. While shippers, receivers, downstream customers and producers, and employment may all be suffering, the railroads are profiting.

In the remainder of this filing, Shipper Associations will address the individual matters raised by the Board in its Notice.

II. IDENTITY AND INTEREST

WCTL is a voluntary association formed in 1976, whose regular membership consists of utility shippers of coal mined west of the Mississippi River. WCTL members currently ship by rail, receive, and pay freight charges on more than 90 million tons of coal each year.³ Many WCTL members are dependent on a single railroad for the transportation and/or delivery of their essential coal fuels, and look to the Board and its regulatory regime to constrain monopoly pricing practices and service issues by their serving railroads. WCTL is the only organization whose primary purpose is protecting and advancing the interests of rail-dependent coal shippers.

The Freight Rail Customer Alliance (FRCA), www.railvoices.org, is an umbrella membership organization that includes large trade associations representing more than 3,500 electric utility, agriculture, chemical, and alternative fuel companies and

³ The members of WCTL are: Ameren Missouri, Arizona Electric Power Cooperative, Inc. CLECO Corporation, CPS Energy, Entergy Services, Inc., Evergy, Inc., Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, and Western Fuels Association, Inc.

their consumers. The mission of FRCA's growing coalition of industries and associations is to obtain changes in Federal law and policy that will provide all freight shippers with reliable rail service at competitive prices.

The National Coal Transportation Association, www.movecoal.org, is a non-profit corporation comprised of electric utilities, coal producers, shippers of coal-related commodities and entities that produce, repair, and manage all facets of railcar component parts and systems, as well as services for railcar operations. Its primary purpose is to promote the exchange of ideas, knowledge, and technology associated with the transportation and beneficial uses of coal.

PCA, www.cement.org, founded in 1916, is the leading voice for the U.S. cement manufacturing industry. Its members represent 91% of the United States' cement production capacity, with manufacturing plants in 33 states and distribution terminals in all 50 states. PCA members rely on the railroads to move hydraulic cement from manufacturing plants to distribution facilities to market and frequently have no practicable, feasible modal alternatives to railroad service. PCA ship using both unit train and carload/manifest service.

SMA, www.steelnet.org, is the largest steel industry trade association in the United States and is the primary trade association representing American EAF (electric arc furnace) steel producers. Accounting for over 70% of domestic steelmaking production, EAF producers are the most sustainable steelmakers in the world. By using an innovative, 21st century production process that is less energy-intensive, domestic steelmakers have up to 75% lower carbon emissions than traditional steelmakers. SMA's

24 producer members have operations in 35 states, and rely on the domestic railroads to efficiently and cost effectively transport inbound movements of raw materials, inter-plant movements of in-process products, and outbound movements of finished products all across the United States.

III. RESPONSES TO QUESTIONS PRESENTED BY THE NOTICE

A. Initial Questions

1. How often does the issue arise?

Shipper Associations wish that the issue of inadequate FMLM service and data arises only rarely, but the unfortunate reality is that service issues and the related need for reliable information about service arise constantly, and what varies is the intensity of the problem. There were particularly severe problems in the mid-2000s and 2013-2014, as well as currently. The current circumstance is more disturbing because it arises from a number of significant structural, operational, equipment, and personnel changes that the railroads made intentionally and that leave the railroads unable to reverse the resulting consequences of their decisions. The fact of the matter is that there were service problems even before the onset of the Covid pandemic. Indeed, PSR brought waves of disruptions, particularly as PSR amounted to , in the words of former Chairman Begeman, to “doing less with less” and entailed, among other things, the elimination of surge capacity in the interests of providing service that was neither precise nor scheduled, but good for their bottom line. *E.g.*, <https://www.railwayage.com/freight/class-i/what-psr-is-and-isnt-nears-talk/> (Oct. 14, 2019).

One indication of the severity of the issue currently is that the Railinc have recently announced an “Advanced ETA” tool to enable shippers/receivers, at least intermodal ones, to obtain updated estimates times of arrival that are compiled using artificial intelligence. See <https://www.railwayage.com/analytics/new-from-railinc-advanced-eta/> (Dec. 7, 2021). The fact that such a tool should need to be developed confirms that existing service is not being provided on a precise or scheduled basis. Significantly, the Advanced ETA is being provided only for “the more stable and higher volume intermodal rail routes.” *Id.* Such movements appear to enjoy a substantially higher on-time performance than carload traffic, presumably at least in part because truckers/drayage is responsible for the first and last miles. The problems thus appear to be pervasive.

2. Why does the issue occur?

In a narrow sense, the issue arises from the profit motive, *i.e.*, the desire of railroad investors, and management’s need and desire to serve those investors, which drives the railroads to maximize their profits, which at times can result in sacrificing service by restricting investment and reducing operating expenses. But the profit motive alone is not the problem because the profit motive leads to good and even excellent service and transparency in other markets and situations.

The rail service problems are facilitated and enabled by the combination of the market power that the railroads possess, the lack of effective competition that might limit that market power, and a lack of effective regulation that might otherwise check railroad abuses in the absence of effective competition. If competition were effective, the

railroads would lose market volume and profits when service suffers or transparency is avoided. If regulation were effective, then the railroads would face regulatory consequences if service suffered, such as regulatory fines for failing to meet the common carrier to provide service upon reasonable request.⁴

The reality is that the lack of competition and regulation (including the large segments of traffic that have been exempted and the very limited regulation that remains for traffic that has not been exempted) enables and encourages the railroads to exploit their advantages, and if incumbent management fails to do so, replacements are readily available.

Ultimately, the alignment of these incentives causes the railroads to look inward and favor their profit goals over their customers' service needs and requirements. New service plans are developed at national headquarters to meet internal PSR financial goals; plans ignore local operational needs and cooperative approaches developed over years in favor of rigid, single-factor approaches that disregard the experiences, circumstances, and complexities of individual customers' business and service requirements at the local level; and the carriers largely refuse to consult or coordinate with customers before developing and dictating new centralized service plans without any meaningful discussion of service changes ahead of time.

⁴ More effective regulation could also bring with it incentives to engage in more adequate investment, such as the Avrech-Johnson effect that the railroads have referenced with respect to the revenue adequacy constraint.

3. How does the issue affect your operations?

The impact of the operations varies by shipper. For many manifest shippers, FMLM issues have arisen or become much worse because of the adoption of PSR. PSR has not resulted in improved service reliability. Instead, the railroads have: replaced daily scheduled service in defined windows with less frequent service that is provided at random times of day; replaced experienced local crews with new crews serving multiple service territories that have little or no training or experience serving the local customers; downsized customer support staffing and implemented new software “tools” that are not followed and fail to improve service or communication regarding impaired service; failed to make pick-up or drop-off “Scheduled for Today” deliveries; and assessed unjustified demurrage charges on cars ordered, even where the railroad fails to deliver cars that the manifest shippers have ordered.

For unit train shippers, the railroads used to provide trip/cycle times that could be used for business planning purposes, including determining the number of train sets needed to cover the desired annual volume. Today, cycle times may vary substantially on a weekly, monthly, and quarterly basis, and the railroads have unilaterally parked sets, with no explanation, other than lack of power or crews, or with a further explanation that power or crews have been devoted to other parts of their systems, leaving shippers unable to predict the volume of deliveries that they will actually receive.

While PSR was depicted as providing reliable, repetitive daily service, with a focus on moving cars to meet customer needs, and not trains for the sake of moving trains, the railroads moved quickly to reduce daily service in many instances, due in part

to resource constraints of the railroads' own creation, with a focus on moving trains to customers to meet management and shareholder financial goals, instead of moving cars or trains to meet customer needs. Some shippers, such as utilities, traditionally have been able to arrange for substantial stockpiles to guard against periodic service shortages, although the carrying costs are substantial. Today, that planning strategy has largely become fruitless, as the railroads have parked trainsets, and assigned resources to other parts of their systems, thwarting any such "self-help" initiatives by customers. As of September, utility coal stockpiles had reached their lower level since 1978. *See* <https://www.eia.gov/todayinenergy/detail.php?id=50558> (Dec. 7. 2021). Some utilities have been forced to shut down their generating units and put them in full conservation mode, at considerable expense to the public and risk to system reliability.

Some manifest shippers seek to operate on a lean, just-in-time basis, and risk being forced to curtail or suspend their operations if there are inadequate deliveries of feedstock or takeaway of output. Indeed, as noted above, even coal-burning electric utilities, including FRCA and NCTA members, are being forced to curtail coal consumption and substitute more expensive natural gas or purchased power in the current environment. Such reductions become more likely when the railroads insist on parking trainsets, which is particularly punitive for those shippers that have expended substantial capital to acquire those trainsets so as to protect their supply chain. Other shippers invested heavily in unit train capability, only to have the railroads switch to manifest service.

Some so-called competitive shippers may appear to have some option to substitute truck service on a limited basis, but even that option is often illusory because plants are often primarily designed for rail service, and such alternatives are often cost-prohibitive or infeasible in the current environment in light of the shortages of truck drivers, the cost of fuel, and, at times, congestion on the highways and in cities.

Even for those shippers that do have some viable competitive options, better insight into the quality of service of the railroads would be useful in determining whether to attempt to exercise those options.

4. How does the issue affect your facilities and/or production?

As explained above, the impact on facilities and production varies by shipper and, in particular, type of shipper. Coal-burning utilities may be able to guard against impacts by attempting to stockpile coal, but the cost is considerable, and the approach is not always effective, as evidenced by the FRCA and NCTA members that have been forced to curtail coal generation even in the face of high gas prices. Some of the railroads have said they will allocate service so that plants do not run out of coal, which can create a disincentive to stockpile and punish those utilities that do curtail generation. The cost of stockpiling can include not only the delivered cost of coal in inventory and the cost of managing that inventory, but also the cost of acquiring substitute power or natural gas as well as the cost of having railcars that the railroads have idled.

Other shippers have been forced to idle production, particularly if they cannot store feedstock or output on site and/or their markets cannot absorb a more expensive alternative such as truck transportation.

The problems are particularly pernicious in that the problems could be avoided if the railroads maintained adequate capacity. For the railroads, the lack of capacity is a matter of choice as they certainly have the capital to reinvest and maintain adequate staffing and keep the equipment they already own in use, although they have chosen instead to focus on reducing their costs and to devote large portions of their profits for dividends and/or stock buybacks.

The most plausible inference is that the railroads have deliberately chosen to avoid investing in capacity and reliability in order to maximize profits and, especially, lower their operating ratios. The problem has been exacerbated by PSR, which has entailed, among other things, shifting from unit trains to manifest service and eliminating surge capacity, both of which render their systems more vulnerable to service problems, including FMLM delays.

Additionally, the railroads have singled out individual customers for reduced deliveries and consolidated service territories in order to make more efficient use of their resources, which is directly counter to the railroads' professed objective to increase next-day service. Customers are faced with more inconsistent service with new crews and are unable to discuss changes and scheduling with local trainmasters. Local trainmasters are instead focused on implementing new centralized, "data-driven" service plan changes dictated from the railroads' headquarters that largely ignore the actual

business needs of individual customers. Those models assume that the railroad's service is planned, precise, and always reliable, which is absolutely not the case.

5. How does the issue affect your labor schedule?

For utilities and coal mines such as FRCA and NCTA members, unloading and loading activities consume relatively little labor as the product can generally be stored on site with relatively little difficulty and the output consists of electrical energy that moves by wire. Many other shippers are not able to store such enormous volumes on site. Rather than provide scheduled service as they had previously in a fixed window of time, service is now often unscheduled and delivered at various random times of the day (when it is provided at all), causing significant business disruption and harm. Unreliable or unpredictable deliveries forces them to bring in labor at irregular hours and at additional cost. Still others will have to shut down production, but may be obligated to continue paying a labor force that has no work to do. For many shippers, a shortfall in deliveries translates into a loss of output or sales that can never be recovered. Furthermore, acquiring a reputation as an unreliable supplier can result in a permanent loss of customers or even a shutdown of operations altogether. Again, these problems could be avoided if the railroads invested in adequate capacity, or actually provided scheduled service, for which they have more than adequate capability.

6. What is the financial impact associated with this issue?

As noted above, the cost of having to shut down production or try to find transportation alternatives can be enormous for shippers, especially those with substantial sunk investments or other fixed costs. Customers have long worked in cooperation with

the railroads, at the local level, to design and implement infrastructure and operations to ensure that railcars are properly placed, removed, and spotted, with a focus on meeting the shippers' needs and growing the business. PSR has changed that, with service changes and reductions causing cascading complications. The railroads are thrusting their rigidly adopted new business models on customers, but in doing so, are forcing on customers fundamental business changes, many of which are simply infeasible. Many customers simply do not have the track infrastructure, staffing, and offloading capacity to withstand the railroads' erratic service performance, and there is little they can do to improve the situation. The result is to place railroad customers in significant financial and business peril with little or no meaningful recourse options.

As explained, some shippers might have options for abating service risks, but those options are usually limited and carry substantial burdens. For example, most coal-burning electric utilities, including FRCA and NCTA members, maintain coal stockpiles, but at substantial costs. For example, a stockpile with 400,000 tons with coal that costs \$14/ton and transportation that costs another \$18/ton would represent an investment of approximately \$13 million, not to mention the cost of the equipment and the cost of maintaining the stockpile. An electric utility may be able to burn other fuels or purchase power, but the cost can be substantial. At the current time, the cost of gas can be more than double the delivered cost of coal.

In practice, Shipper Group members have had little or no ability to obtain effective protections for the disruptions caused by poor service. Railroads use their market power to deny meaningful service performance standards in contracts and have

very little, if any, legal financial exposure in event of poor service. Where available, liquidated damages might be a percentage of the cost of the railroad transportation, and actual or special damages may be precluded. The same market power that enables the railroads to charge a substantial mark-up over the variable costs also enables them to limit their potential liability and put the financial risk on the shipper.

7. Has this issue changed with the implementation of operating changes generally referred to as precision scheduled railroading?

As noted in the general comments, service and reliability have often deteriorated under PSR, despite railroad claims to the contrary. Fewer crews and fewer locomotives necessarily mean cuts to service and service reliability, resulting in longer and more variable train delays and car deliveries. To the extent a schedule is adhered to, it is one that is convenient for the railroad, *e.g.*, reduced delivery days, rather than something designed or intended to meet the shipper needs. Some shippers have been forced to shift from unit train to manifest service, which leaves those shippers more exposed to the vagaries of the overall rail network. In practice, PSR has been neither precise nor scheduled, but just poor and unreliable.

Furthermore, PSR has meant the elimination of surge capacity, as the carriers have no ability to recover when things, internal or external, go wrong. In many instances, the railroads have reduced the number of weekly trips to a customer's facilities, which in turn impedes the shipper's other options at its facility. Missed switches, etc., may not be so consequential with service that is five or seven days a week, but become quite consequential when service is only three days a week or less, creating

service bottlenecks. Examples include *Hasa, Inc. v. Union Pacific R.R.*, NOR 42165 (STB served Aug. 21, 2019), and *Sanimax USA LLC v. Union Pacific R.R.*, NOR 42171 (STB served Nov. 2, 2021).

In addition, the railroads have cut back substantially on support and customer service staffing, especially at the local level, which further contributes to a lack of responsiveness. Again, the railroads have not been forced to make these changes, but have done so voluntarily in order to make more money.

8. How do you typically try to address the issue? What is communication regarding this issue like between shippers and carriers?

Shippers always try to work with the carrier first, as the railroad has the best access to the information and ultimately is the only party that can provide the needed service or remedy a problem. However, this approach has become less efficacious because the railroads have reduced support staffing as well as the service itself as part of PSR. Moreover, PSR has been implemented by the railroads unilaterally, with little or no notice of service changes. There has been no meaningful discussions with customers on potential impacts to their business requirements. The railroads have refused to provide customers any time to consider changes or to undertake measures in a manner that would allow its operations to function adequately and adjust to any service changes. Shippers are often steered to websites, rather than dealing with individuals that know the situation and have the ability to help. When railroad people are involved, they are often located further away from the local conditions, impairing their effectiveness.

OPAGAC and its Office of Rail Customer Assistance has been immensely helpful at times, despite its lack of real authority. However, OPAGAC would be less needed if the railroads had not embraced PSR so fully and/or if they maintained adequate capacity or at least support staff.

In some instances, shippers have resorted to filing unreasonable practice complaints at the Board. For contracts, court litigation and arbitration are sometimes an option as well, but the expense is considerable, as is the delay.

One of the reasons that shippers seek FMLM data is to have a better sense of the overall service situation and the likelihood that it will improve any time soon.

9. What remedies are available to you?

In general, as explained above, little in the way of effective remedies is available. The lack of leverage and the railroads' market power means that the contracts and other arrangements generally offer little in the way of legal remedies. An unreasonable practice complaint, or injunctive relief request are possible options, but only in particularly difficult circumstances.

Moreover, the railroads pursuit of efficiency, or at least lower ratios, leaves them without any ability to improve service in the short-run, or with an adverse trade-off in terms of further impairing service for others. It would be helpful if the common carrier obligation were fleshed out and/or if the Board imposed meaningful penalties or other consequences on railroads that provide poor, inadequate, and/or unreliable service.

B. Design of Metrics

1. What, if any, existing information or metrics (collected by the Board or maintained by carriers) facilitate an understanding of the issue?

The reason that the Shipper Group submitted its August 30 letter to the Board is that the data currently reported in EP 724 (Sub-No. 4) does not separately include any FMLM data, except to the extent that unit train metrics necessarily incorporate (or should incorporate) FMLM data as part of the origin to destination transit time, and intermodal trains do not incorporate FMLM data because another mode, typically truck, handles any non-rail segments where the FMLM service component occurs.⁵

The absence of the data means that shippers and the Board lack important visibility into the operation of the networks and the service that they do, or do not, provide on an end-to-end basis. Simply stated, the Board and shippers have a blind spot regarding how long it takes non-unit train, non-intermodal freight to move from origin to destination, whether such deliveries are being made on-time or not, and whether the transit time is getting better, worse, or remaining stable. This gap in knowledge is a

⁵ Yet, those explanations incorporate some oversimplification. Unit trains are subject to FMLM-like delays, *e.g.*, when a double or combination unit train needs to be formed or disassociated or when unit a unit train is interchanged. Similarly, intermodal containers may sit in a railroad's intermodal yard waiting for pickup by a motor carrier for an extended period, something that appears to happen with increasing frequency lately. The calculations for containers presumably track only the time between when a container leaves the initial rail yard and reaches the destination yard, but further confirmation or clarification would be useful.

massive one, which is made more serious by the shift from unit train to manifest service that is part of at least some carriers' implementation of PSR.

It stands to reason that carriers have and utilize that data, particularly insofar as their compensation is tied to actual deliveries, some segments of shippers are able to negotiate or demand meaningful service requirements, and the railroads have their own incentives to conduct FMLM activities effectively or at least efficiently.

Significantly, some of the carriers do publicly provide trip plan compliance data. BNSF's efforts may be the most extensive or granular, although it is still not very detailed. BNSF provides a weekly measure of "Local Service" on its website, expressed as a "percentage measuring adherence to customers' first/last mile service plan," with a comparison of the "[p]ercent change versus prior week" and "versus prior month average." BNSF provides weekly information for intermodal, industrial products, coal, and automotive, although the data appears to be identical for each traffic segment.⁶ It is unclear, at least to Shipper Associations, whether the metric reflects just FMLM or end-to-end specifically (the later seems more likely), how the customer plan is made, and how often it is adjusted, how it is weighted, etc. Also, the data is not broken down regionally. Nonetheless, the depiction of the data indicates that the carriers do maintain and have the ability to track the raw data and thus have the capability to present it and utilize it in different ways.

⁶ *E.g.*, <https://www.bnsf.com/news-media/customer-notifications/notification.page?notId=coal-network-update-for-friday-november-19-2021> (showing 88.7%).

UP also includes a figure in its weekly status of the railroad for “Manifest trip plan compliance (on-time performance).⁷ CSXT also includes carload and intermodal trip plan performance figures in its quarterly financial reports, where compliance represents the percent of cars and carloads that arrive at or ahead of the original estimate.⁸

It appears that NS once maintained a Service Delivery Index (“SDI”) as a more customer-based alternative to trip plan compliance.⁹ More recently, however, NS appears to have abandoned that metric, apparently because it was not managing to it, in order to focus on car velocity instead.¹⁰

In short, the data is being measured, but it is being depicted with very little transparency or detail. That said, the levels of trip plan compliance that the carriers are achieving for non-intermodal traffic appear highly problematic.

2. What new information or metrics would illuminate the issue? The Board asks for specificity in any suggestions, including specific definitions for different types of services (e.g., transportation involving one carrier vs. multiple carriers) and facilities (e.g., open- vs. closed-gate).

⁷ *E.g.*, <https://www.up.com/customers/announcements/customernews/generalannouncements/CN2021-65.html> (showing a figure of 56%, as contrasted with an intermodal trip compliance of 78%, for the November 23, 2021 posting).

⁸ *E.g.*, https://s2.q4cdn.com/859568992/files/doc_financials/2021/q3/Q3-2021-QFR-Final.pdf (showing 68% for carload and 88% for intermodal for 3Q21).

⁹ See <https://www.supplychaindive.com/news/norfolk-southern-psr-transition/548231/>.

¹⁰ See [1q2021_transcript.pdf \(nscorp.com\)](#) (EVP and COO Sanborn responding to Credit Suisse Analyst Landry at 12).

First, Shipper Associations submit that more transparency should be provided regarding the trip plan compliance data that the carriers, or at least some of them, make available. In particular, the definitions of compliance and noncompliance should be made explicit, and the data should be broken down beyond carload traffic, and should include manifest traffic explicitly (as UP may already do). Weighting should also be made explicit, particularly as the traffic mix is likely to change at least seasonally.

Second, the data should be provided weekly and over time.

Third, the FMLM component should be broken out specifically, rather than grouped together with the origin-destination data, although the origin-destination data should be retained.

Fourth, data should be provided about the amount of time, or percentage of time, that the traffic failed to meet the standard, for example, whether it was one minute, one hour, or one day. At some point, it may also be useful to consider to what extent deliveries were made early since an early delivery can be just as problematic as a late delivery, although that is not the most pressing issue in the current environment. Nonetheless, an issue exists whether the compliance threshold was set too generously.

Fifth, and related, data should be provided for the average time or speed for FMLM. Shippers and others are rightly interested in fluidity as well as reliability. Indeed, on-time compliance may be a function of having set an excessively low standard for compliance.

Sixth, it would be useful to subdivide the traffic by freight type or category in some way. This breakdown would be particularly useful for being able to adjust in changes in the aggregate traffic mix by season and/or by year.

Seventh, in addition to providing averages, it would also be useful to provide a standard deviation or some other measure of variance. A violin plot is also a possibility, but seems unneeded at the outset. When averages are used, the basis of averaging should be made explicit.

Eighth, in addition to the carrier-wide figure, some measure of geographical breakdown would be useful as well for the types of reasons previously noted. An overall average may not be informative for individual regions, individual regions may be influenced by different transitory factors such as weather, and use of an aggregate average may conceal or exaggerate such influences, particularly in the context of changes in the traffic mix. Discussions would be useful to determine what is the number and of locations to be aggregated for each carrier and how to account for geographic and volume disparities.

With respect to interchanged traffic, it should be much more feasible and useful to track each carrier individually, rather than attempt to require two or more carriers to combine their data for a specific category of movements. At the same time, it may prove useful to develop a separate metric for interchanges so that the data does not fall into the equivalent of a crack or a seam between two railroads. At least one Shipper Association member has experienced substantial delays while its trains sit in interchange.

In addition, the times spent in interchange will not necessarily be representative of more typical FMLM activities, and vice versa.

For open-gate traffic, separate reporting should not be needed. For closed-gate traffic, a metric for the gap between (a) when the car is ordered and the next available slot, and (b) when the car is actually delivered (or removed) may prove to be useful. At the same time, it should be recognized that bunching by the carrier may prevent the shipper from being able to order in cars that are ostensibly available.

3. How and at what level should any metrics be reported (individual shipper, local, regional, or national)?

Shipper Associations do not believe that data for the individual shipper is practicable or particularly useful for broad reporting purposes. Shippers typically are aware of their own service experience and can typically access information about their individual movements through the carrier's customer interface.

However, surprisingly, many, even most, shippers are unaware of what the railroads utilize as the actual trip plan or cycle time standard for the shipper's individual shipments, *i.e.*, the baseline that the railroads utilize for assessing trip plan compliance. As has been stated, "precision" and "scheduled" railroading is misnomer and a misrepresentation of what PSR causes in actual practice. If there is no actual trip plan or cycle time schedule, how does a railroad or customer know if its service is precise? The reason that railroads generally refrain from providing such information is obvious: not disclosing the standard prevents the railroads from being held accountable for their

actions, and providing such information would highlight the extent to which their service is anything but scheduled and precise.

Accordingly, a railroad should be required to disclose its trip plan or cycle time standard upon request as part of its common carrier obligation, and also provide data regarding its actual performance under that plan to the affected shipper. A carrier that refuses to provide such information should be presumed to be in violation of its common carrier obligation.

What the customer cannot ascertain is FMLM and related information involving other shippers, and this is the data requested, particularly to ascertain the extent to which the individual shipper's experience is typical, whether it is likely to improve or deteriorate, whether service and resources are being diverted to other places or types of service, whether the carrier is experiencing broader problems, etc. As explained above, the data should be provided for the carrier as a whole, for various categories of traffic, and for various regions and potentially other local locations.

4. Should metrics only measure FMLM service, or should additional metrics more broadly measure service that may relate to or involve FMLM service, such as metrics on car trip plan compliance? Who would use any such information or measurements, and how?

As explained above, there is value in measuring and reporting both FMLM separately and also total trip data, both in total and relative to the trip plan target. The FMLM is valuable for determining the extent to which the problems are, or are not, confined to the first-mile and last-mile. The overall trip plan is useful for measuring the

end-to-end performance. Simply measuring FMLM and not the total trip would present problems in terms of matching the data to that reported for terminals.

The data would be of immediate value to help shippers benchmark the service they receive against both local performance and performance generally. Shippers would have some insight into whether good or bad service was temporary or likely to persist, which would be valuable for planning operations (or lack thereof) and considering alternatives. The information would be useful to the Board for similar reasons and for ascertaining compliance with the common carrier obligation.

The information would also benefit the railroads themselves. To the extent they are providing quality service, they should be able to attract additional business and/or obtain premium pricing for premium service.¹¹ For example, if two railroads are competing to serve a movement, the carrier with superior FMLM service and trip plan compliance could use that as a factor to help win the business. Conversely, a carrier with inferior metrics might discount its rates to obtain or retain business. A carrier with inferior metrics would also know where it needed to be able to demonstrate improvement. The data would thus help to make transportation more efficient.

5. What are the specific benefits, if any, that would arise from the use of any suggested metrics?

¹¹ *E.g.*, <https://www.trains.com/trn/news-reviews/news-wire/the-future-of-the-rail-industry-is-up-for-grabs-consultant-says/> (Oliver Wyman partner Adriene Bailey explaining at RailTrends 2021 that growth requires a reduced focus on the operating ratio and more focus on reliability and customer friendliness).

The specific benefits of the data in the context of who would use the information and how are addressed immediately above. In a nutshell, shippers/receivers, the Board and the railroads themselves would all have improved visibility as to the level of service being provided, its compliance with targets (however they are set), whether the service is changing and how, and whether service in an individual instance is representative of larger trends. The data is useful for planning and operations of both shippers and railroads, for investors to know how to allocate their funds, and for the Board to discharge its responsibilities.

6. Would reports to the Board, shipper surveys, reports directly to individual shippers, or some other type of information be helpful to clarify the issue?

What is most needed is for the railroads to report the FMLM and trip plan compliance data directly to the Board on a weekly basis, which should then post the information so that it will be available to the public, as is currently done with other EP 724 (Sub-No. 4) data.

Otherwise, shipper surveys have the potential to supplement the railroad data and put it into context. In that regard, FRCA and NCTA have worked with their members and others to compile such data and present it in discussions with Board members and at presentations in more public forums such as meetings of the Board's Rail Energy Transportation Advisory Committee ("RETAC"). Such data is at least illuminating, although it is often a challenge to maintain consistent participation and data consistency, particularly since the information is provided individually and voluntarily and there are also concerns about preserving confidentiality, which requires aggregation

and anonymity. In contrast, the railroads are common carriers that are subject to direct Board regulation, including reporting requirements, as well as to the duty to comply with the common carrier obligation.

C. Carrier data tracking

1. What data do Class I carriers track that are relevant to FMLM service?

This question is best addressed directly by the carriers. However, the Class I carriers do, as addressed above, track enough data in order to comply with the EP 724 (Sub-No. 4) requirements, and it appears that they also track enough data to be able to calculate trip plan/cycle time compliance.

The ability of Railinc to develop its Advanced ETA tool indicates that full data regarding car and train movements does exist and is accessible. It is very difficult to imagine that the universe of available data does not encompass FMLM service. Logically, the railroads must have access to that data in order to be able to organize and conduct their local operations.

2. What aspects of these data do Class I carriers make available to their customers?

As discussed above, the reality is that railroads generally do not make information about their general or local operations available to shippers, including the railroads' own internal trip plan for the individual shipper. The lack of information is what led to the adoption of the performance data reporting in EP 724 (Sub-No. 4). As further noted above, some of the carriers do make trip compliance plan figures available,

but only at a highly aggregated level. That data has limited utility for the individual shipper.

3. To the extent that Class I carriers collect certain information, what uniformity issues may exist related to that data that may affect reporting to the Board?

Uniformity among carriers may be difficult to achieve, but appears unimportant, provided that the basis for reporting the data is made clear and explicit for each carrier. (On the other hand, the Railinc Advanced ETA appears to utilize AEI data from all of the carriers, which may support compilation of equivalent and consistent FMLM data across all nodes of all carriers.) Geography, topography, and numerous other system and local factors are going to mean that an hour delay at one location on one carrier may not be fully comparable to an hour delay at another location on the same or another carrier. Furthermore, carriers may differ in how they formulate their targets for trip plan compliance. Not all targets need be the same, especially as some shippers may be more willing to pay for faster or more on-time service, even though carriers have sometimes contended that their network operations preclude them from providing preferential service to favored customers. What is more important will be the ability to ascertain if service is improving, worsening, or remaining stable, particularly for a shipper that seeks to assess the impact of service on output or whether to pursue alternatives.

D. Trade-Offs

1. Factoring in the information that carriers already track, what additional burden would be associated with providing any suggested information or measurements?

While only the carriers know exactly what data they already track, the additional burden of tracking and reporting the additional data should not be disproportionate. In order to track trip plan compliance, the railroads must necessarily collect data on the total transit time, and they already report time between terminals. Of necessity, the first-mile/last-mile metrics must already be collected to gauge trip plan compliance. Moreover, it is very difficult to imagine that they could be running their networks and terminals effectively without having such information at their disposal, especially as they have promised that the implementation of PSR actually means that they will provide “scheduled” and “precis[e]” service.

The additional burden, if any, should not be significant, especially compared to the disruption that the adoption of PSR inflicted, and continues to inflict, on many shippers.

2. If aggregated reports are suggested, what, if any, are the drawbacks of aggregation?

The drawback of aggregation is that the reporting becomes less representative of individual or even regional experience and thus considerably less useful. Accordingly, Shipper Associations suggest a combination of carrier-wide and more local data.

3. If individual reports directly to shippers are suggested, what, if any, are the drawbacks of such approach, particularly in comparison to reporting directly to the Board, as was required in United States Rail Service Issues—Performance Data Reporting, Docket No. EP 724?

As noted, Shipper Associations believe that it would be better to report the information directly to the Board, so as to facilitate consistency (subject to individual carrier differences in reporting), accountability, and accessibility.

4. How should the Board consider relative burden based on the type of carrier involved in the transportation (e.g., Class II or III railroad)?

Shipper Associations believe that it is most important to begin with the Class I railroads since they directly handle the overwhelming portion of traffic originations and deliveries, meaning the first miles and the last miles. For Class II and Class III carriers, it is appropriate to begin with a single aggregate figure for trip plan compliance, with some opportunity for carriers to seek an exemption and for shippers to seek greater detail. Class II and III carriers are supposed to be more customer-oriented, and their activities consist more of FMLM activities to begin with, but shippers have definitely experienced problems with Class II and Class III carriers.¹² Class II carriers are sufficiently large to have the resources to be able to provide the information, and many Class III organizations are part of larger, sometimes very large, railroad families, which should also have the capability to provide the needed information.

¹² *E.g., Central Valley Ag Grinding v. Modesto & Empire Traction Co.*, NOR 42159 (STB served June 12, 2018) (enjoining a Class III carrier from conditioning train switching and interchange (FMLM) services on prepayment).

There may be some individual Class II or Class III carriers for which the information is not needed or readily available or may represent a disproportionate burden. In such cases, the carrier should be allowed to apply for an individual exemption, to which other parties would have an opportunity to reply. This waiver approach is more appropriate than a blanket exclusion, especially as Class II and Class III carriers are also subject to the common carrier obligation to provide service upon reasonable request.

IV. CONCLUSION

Shipper Associations commend the Board for issuing the Notice on this important and all too timely subject. Shipper Associations urge the Board to proceed to propose and adopt a FMLM component as part of the EP 724 (Sub-No. 4) service data reporting in accordance with the comments presented above.

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Dated: December 17, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

The Association of American Railroads ("AAR") respectfully submits these comments in response to the September 2, 2021 decision of the Surface Transportation Board ("Board") that requested comments from stakeholders on issues related to first-mile / last-mile ("FMLM") service ("September Decision" or "RFI").¹ The September Decision requested comments on several topics, including the identification of FMLM issues, the design of metrics to measure FMLM service, the current data tracked by carriers, and the costs and benefits of any suggestions. Within each topic area the Board set forth multiple questions for which it seeks information.

Much of the information requested in the RFI is specific to railroads or their customers and their individualized experiences. AAR's freight member railroads will file comments speaking to their individual practices. AAR's comments provide general information about FMLM service and raise some overarching concerns arising out of the Board's broad request for information. Part I provides information regarding numerous variables that can impact FMLM

¹ Pursuant to a decision on September 21, 2021, the procedural schedule was extended, requiring comments by December 17, 2021, and replies by February 17, 2022.

service. Part II notes that stakeholders would benefit from a better understanding of the intended purposes for any information collected by the Board. Part III notes that any information collection must account for the benefits and costs it would impose on stakeholders and the Board itself. Part IV notes that the Board must also account appropriately for competitive concerns that could arise from the collection of broad swaths of service-related information. Finally, Part V provides information regarding the types of information collected by Railinc and its limited usefulness in measuring FMLM service.

I. Many Factors Outside a Railroad’s Immediate Control Influence FMLM Rail Service.

Railroads operate as one part of an interconnected, continent-spanning network. This network leads from real origin to final destination (not just railroad origins and destinations) and likely involves more than just one railroad and more than one mode of transportation. Indeed, the first and last rail miles are often the middle miles of freight’s journey.² Now more than ever, railroads and society at large are appreciating that to function smoothly, every link in the supply chain must work in a precisely coordinated sequence. Numerous actors and variables in those movements can impact the FMLM service of the participating railroads. A disruption in one region can impact the FMLM rail service of another region. Disruptions anywhere caused by other supply chain participants could negatively affect the FMLM service provided by a Class I railroad. The Board must be able to account for these factors in any data collection or reporting regime and should consider the extent to which it can obtain information regarding other modal participants.

² See Comments of the Association of American Railroads, *America’s Supply Chains and the Transportation Industrial Base*, DOT Docket No. DOT-OST-2021-0106 (Oct. 18, 2021).

Additionally, FMLM service, like all rail service, is also impacted by the fact that railroads operate an outdoor plant. Unforeseen circumstances, like wildfires, flooding, washouts, hurricanes, accidents, or severe weather events, can arise on the railroad creating delays and unsafe operating conditions. By their very nature, such events are unpredictable and can wreak havoc on the railroad and its ability to provide service. Similarly, with trackage and facilities being outdoors, maintenance is integral to safety. The amount of maintenance or the need for maintenance depends upon factors like the usage of the line and the weather impacts of the line. Certainly, more maintenance and/or inspections are required when the line carries more volume or is in specific geographic regions or climates. These variables should also be recognized in any proposed data collection intending a fair assessment of FMLM service.

Finally, FMLM service is heavily dependent on coordination with shippers and receivers. Indeed, what makes FMLM different than line-haul transportation is the need for railroads to coordinate with a wide range of entities to tender or receive rail cars. Any metric or reporting of FMLM service issues must account for shipper's or receiver's actions that can frustrate FMLM service. For example, if a shipper notifies the railroad the cars are ready to be picked up, but the cars have not actually been set out, the railroad may come on its scheduled day to find facility gates locked and cars unavailable to be pulled. This could mean the shipper does not get service again for another day or two. A receiver may also not be prepared to take a shipment given its inability to clear space in its facility, thereby leaving the railroad to deliver at a different day or time.

Rail terminals are focused on throughput and the smooth functioning of terminals depends on receivers maintaining a consistent flow of freight out of rail facilities to make room

for other freight moving in. Rail terminals are simply not designed for, and are not physically capable of, long-term storage of cars or commodities, and it is imperative that shippers be ready to receive their cars and receivers be prepared to accept their deliveries. If they are not, the impacts can reverberate throughout the supply chain, ultimately affecting service in other regions or areas. To obtain a full understanding of FMLM service issues, the Board must measure shipper or receiver actions that impact FMLM service and tailor its reporting to incorporate that information as well.

II. The Board Should Clearly Articulate a Need for Any Additional Reporting Requirements.

A. The September Decision does not identify a regulatory problem.

The principles of good government require that regulators clearly articulate the need for action. The first step in articulating a need for action is to identify the problem. The Board defines FMLM service as “the movement of railcars between a local railroad serving yard and a shipper or receiver facility.”³ It further explains that:

So-called “local trains” serve customers in the vicinity of the local yard, spotting (i.e., placing for loading or unloading) inbound cars and pulling (i.e., picking up) outbound cars from each customer facility. A larger local yard may run numerous local trains serving many customers dispersed along separate branches; a smaller yard may run only a handful of local trains. Yard crews build outbound local trains by assembling blocks (groups of cars) for each customer on the route. Inbound local trains return to the yard with cars released from shipper facilities and, in turn, are sorted into outbound blocks for line-haul movements.⁴

While the Board explains what it believes FMLM service to be, it does not explain what aspects of FMLM it is concerned about (e.g., spotting inbound cars, pulling outbound cars, yard-crew

³ RFI at 1.

⁴ *Id.*

building, etc.). Instead, the September Decision cites to vague service concerns raised in letters from shippers' associations as justification for its information requests.⁵ No specific problem, however, was articulated by the Board. In fact the Board admits that it does not know of a particular problem with FMLM service, but instead it requests comment as to "what, *if any*, FMLM issues" exist and "what, *if any*, actions may help address such issues."⁶ The Board's request for "concrete examples, *if possible*" confirms the impression that the Board is hunting for evidence of a problem.⁷ Before embarking on a path to impose new reporting requirements on the railroads, the Board should articulate the specific problem it is trying to solve, if any. That would permit stakeholders to identify and provide relevant and useful information in response to the Board's request. AAR appreciates that the Board is "exploring" this matter, but the lack of clarity on what the agency seeks to achieve limits our ability to meaningfully comment.⁸

B. There has been no showing that the Board needs to collect data on FMLM service.

Railroads already provide tools for their customers and communicate service issues on an individualized basis. Rail customers can receive information regarding their individual FMLM service. Shipper *associations* may collect and present anonymized complaints of when something went wrong for a particular shipper, but that does not mean the customer is not

⁵ *Id.* at 2-3 (citing ACC's desire for "a more complete and useful picture of rail service, including [FMLM] performance"; ACC's "general service concerns"; TFI's "general service concerns"; and the Shipper Group's "improved transparency.").

⁶ *Id.* at 4 (emphasis added).

⁷ *Id.* (emphasis added).

⁸ *Id.* at 2.

receiving timely information from the rail carrier. Indeed, some customers do not even consistently utilize the tools available to them. In other instances, customers negotiate for different data or data formats than that offered by the carriers. Given there is already individualized service data available to shippers, mere assertions that there are unspecified “problems” with FMLM service, without more, is no justification for a broad-based rule on data collection. It is far from clear that the market has failed to provide shippers with information they need.

The Board states that “some of the issues ... raised” include “missed switches ... modified service plans ... car delivery ... extended dwell ... and discrepancies in information.”⁹ If such problems happen, and are properly within the Board’s jurisdiction, they should be addressed in individual proceedings, with specific relief prayed for. Each circumstance is fact-specific and such inquiries require case-by-case adjudication. The Board should explain how collecting FMLM service data would address individual shipper concerns better than existing remedies.¹⁰

Aggregated, public, FMLM data would not be useful. Each railroad movement has different characteristics and requirements. Whether one carrier fulfilled its common carrier obligation to one customer or not is irrelevant to whether that carrier or any other carrier is fulfilling its obligation to any other customer. If shipper A’s switch is missed for delivery of its chemicals in the South, it is not clear why reporting that information to the Board would be

⁹ *Id.* at 5.

¹⁰ See 44 U.S.C. § 3508 (“the collection of information by the agency is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.”).

relevant to shipper B who is on a separate railroad in the Midwest, moving grain. There is simply no showing of a connection between the collection of data about one shipper—much less what that data is—to another shipper’s service level. While the Shipper Group claims monitoring service data would help to understand if “carriers are meeting their common carrier obligations in the aggregate”, there is no aggregate common carrier obligation.¹¹

C. The customer specific nature of FMLM service lends itself to investigating specific service issues as needed.

The Board has successfully addressed nationwide or regional service issues as they have arisen in the past through situation-specific, limited, and temporary reporting. For example, in 2018, after becoming “increasingly concerned about the overall state of rail service” including letters from two major rail shipper trade associations, the Board requested specific information with regard to locomotive availability, employee resources, local service performance, demand expectations, communications, and capacity constraints.¹² The seven Class I railroads responded to these letters within weeks, providing the requested information and addressing the Board’s concerns. Similarly, in May 2020, as the nation began its recovery from COVID-19, Chairman Begeman preemptively wrote each Class I railroad requesting information regarding their preparedness to meet future demand, including availability of train crew, yard, and maintenance employees.¹³ Again, all railroads responded, addressing the matters of concern to the Chairman, without requiring formal action by the Board. As the year progressed, the Board,

¹¹ RFI at 4.

¹² See Letter from Ann Begeman and Deb Miller, STB, to Carl Ice, President and CEO, BNSF, at 1 (March 16, 2018) (similar letters sent to each Class I railroad).

¹³ See Letter from Ann Begeman, Chairman, STB, to Keith Creel, President and CEO, Canadian Pacific, at 1 (May 7, 2020) (similar letters sent to each Class I railroad).

jointly with FRA, noted some “service issues, including missed industrial switches and excessively late or annulled trains due to crew availability issues” and explained the need for increased transparency and communication with rail shippers to plan to meet their needs.¹⁴ Again, railroads responded, even though they were not specifically asked for any information. By simply noting specific concerns and/or requesting specific information regarding particular service-related matters, the Board has successfully addressed service concerns based on the unique facts of each situation and did so in a situation-specific manner without locking in permanent reporting requirements that might be irrelevant or unhelpful in other situations.

In some instances, such as after the harsh polar vortex in the winter of 2013-14, the Board has required temporary data reporting from all Class I railroads to provide “the agency and stakeholders access to data needed for real-time understanding of regional and national service issues.”¹⁵ The temporary data reporting, however, was only implemented after the Board held two hearings on service issues. The Board then instituted a rulemaking to require long-term reporting of service information, after taking comment, opening the record for ex parte communications, and allowing responses to written summaries of ex parte meetings.¹⁶ While the reporting requirements were modified over time, the Board built a record of what data would best suit the situation.

¹⁴ See Letter from Ronald Batory, Administrator, FRA, and Ann Begeman, Chairman, STB to Jean-Jacques Ruest, President and CEO, Canadian National Railway Company, at 1 (Aug., 24, 2020) (similar letters sent to each Class I railroad).

¹⁵ See *U.S. Rail Serv. Issues—Data Collection*, EP 724 (Sub-No. 3), at 2 (STB served Oct. 8, 2014).

¹⁶ See *U.S. Rail Serv. Issues—Data Collection*, EP 724 (Sub-No. 4) (STB served Dec. 30, 2014); *U.S. Rail Serv. Issues—Data Collection*, EP 724 (Sub-No. 4) (STB served Nov. 9, 2015); *U.S. Rail Serv. Issues—Data Collection*, EP 724 (Sub-No. 4) (STB served Nov. 16, 2015).

FMLM service, in particular, is unique to a customer, with differing circumstances for each movement. As such there may be little relevance in nationwide reporting of individual service issues. Depending on the nature of the FMLM service issues identified in the responses here and should the Board determine that some form of reporting is needed, the Board should follow a similar process to require temporary reporting that identifies helpful information, before determining whether a permanent rule is necessary.

III. The Agency Should Ensure Costs and Benefits of Any Information Collection are Properly Considered.

The Board is well-aware of AAR's outstanding request for incorporation of a formalized cost-benefit analysis into the Board's rulemaking process that was filed nearly three years ago.¹⁷ The Supreme Court has held that, even in the absence of a specific statutory requirement to prepare a cost benefit analysis, an agency's failure to consider whether a regulation "does significantly more harm than good" is inconsistent with its obligation to adopt "appropriate and necessary" regulations.¹⁸ AAR appreciates the recognition that there may be "trade-offs" related to any suggestions, as that indicates a desire to move forward in a fashion that considers the costs and benefits of any action the Board proposes to take.¹⁹

It bears noting that there could be a significant burden placed upon railroads to report vast service-related information not collected in the ordinary course of business. By its nature, FMLM data would touch each and every origin and destination on the rail network, of which

¹⁷ *Association of American Railroads' Petition for Rulemaking*, EP 752 (filed Mar. 14, 2019).

¹⁸ *Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015).

¹⁹ RFI at 6.

there are tens of thousands, and every carload, of which there are tens of millions.²⁰ This would amount to an extensive undertaking. Commenters that suggest data to be reported should include the entity required to report the information and a proposal for how that information would be collected and reported. This specificity will assist the Board, and stakeholders, to better understand the costs and benefits of proposals being made. In the past, the Board has recognized that “information filing can be burdensome ... and that it can divert resources away from the transportation issues Reporting requirements impose real world costs on railroads and service reporting diverts railroad operating personnel from their principal mission of running the railroad.”²¹ Reporting of FMLM service information in particular would require substantial involvement of operational personnel. Distracting such individuals from their principal mission of running the railroad could actually exacerbate the issues the Board is attempting to address here.

The Board should also be cognizant of the time and resources *it* would need to dedicate to collecting, storing, sorting, reporting, and protecting information it ultimately requests. For example, the broadest set of data regarding FMLM service could amount to tens of thousands of data points. As every rail movement has a first mile and a last mile, each shipment would include two sets of information. The Board should be concerned about requiring a massive data dump of dubious utility that will require substantial resources to evaluate and comb through.

²⁰ See Association of American Railroads, *Railroad Facts 2020*, 26 (2020 ed.).

²¹ *Joint Petition for a Further Service Order*, SO 1518 (Sub-No. 1), et al., slip op. at 4 (STB served July 31, 1998).

A vast collection of data on railroad movements could also present unintended risks, including the risk of disclosure of security-sensitive information or confidential information. As the Board recognized in its waybill sample collection proceeding, it should “fully assess the utility of the collection and weigh that against any identified implementation or data management issues.”²²

The burdens of any information collection undertaking should only be imposed if the benefits created exceed those costs.²³ Given the lack of an identified problem the FMLM data will help solve, it is obviously not yet possible to determine what the benefits would be to the railroads, shippers, Board, and general public. However, it is certainly the case that detailed reporting of all service at every origin and destination, even if possible, would produce little to no benefit for the Board, shippers, or railroads, much less the general public.

IV. When Collecting Service Data the Board Should Properly Account for Competitive Concerns.

The agency should “do what it can to apprise itself—and hence the public and the Congress—of the economic consequences” of a proposal before it decides how to act on that proposal.²⁴ Here, those consequences could be significant, depending on how the Board proceeds. The Board should ensure that whatever action it takes accounts for competitive and economic harms that could arise from reporting of data and making that data public.

²² *Waybill Sample Reporting*, EP 385 (Sub-No. 8), slip op. at 6 (STB served Sept. 3, 2020).

²³ *See Michigan v. EPA*, 135 S. Ct. 2699, 2707 (2015).

²⁴ *Chamber of Commerce of the U.S. v. SEC*, 412 F.3d 133, 144, (D.C. Cir. 2005); *see Bus. Roundtable v. SEC*, 647 F.3d 1144, 1148 (D.C. Cir. 2011).

As the Board knows, the provision of service information and the type of service information provided by railroads to shippers is an area in which railroads can, and do, compete. Railroads are constantly re-evaluating their service options to meet their customers' needs. The type of service information provided to customers is one such area and is one where freight railroads are developing new technologies to compete with one another and other modes. There is a wide range of practices at Class I railroads that will be detailed in individual carrier submissions, but as the Board determines whether and what information it is to collect, the Board should do so in manner that does not stifle innovation in this space.

The Board should also ensure no proprietary or competitively sensitive information is released to the public. If the Board were to collect and make public some of the railroad specific data called for in its RFI, like "concrete examples" of FMLM service issues, it could inadvertently provide insights into the markets and operations of individual railroads. As the Board has recognized in the waybill context, "release of [] information could cause a rail carrier harm by providing competitors with insights into its markets and operational methodologies. Additionally, anticompetitive effects could result."²⁵ Without the appropriate protections in place, allowing such a result would be an inappropriate use of the Board's data collection authority.

Similarly, it is also important to recognize the impacts of releasing service information on shippers and receivers. Specific information about one shipper's service could create benefits to their competitors. If one shipper is known to be suffering from service issues, then

²⁵ *Release of Waybill*, 1987 ICC LEXIS 377, *9, 4 I.C.C. 2d 194 (1987).

its competitor could market themselves as more reliable and thereby take the shipper's business. Moreover, specific shipment information, number of cars ordered, routes, and other information can be commercially sensitive if made public. As with railroad data, the Board has taken great precaution in the past regarding sensitive shipper data, noting "data such as identification of the commodity, railroad, origin and destination of the traffic and confidential contract rate may be commercially sensitive to shippers or manufacturers."²⁶ The Board should continue to recognize that revealing specific service issues about rail customers may provide an advantage in the market to that customer's competitors.

Given these concerns, in deciding what, if anything, it will collect on FMLM service, the Board should protect commercially sensitive data from the harms of release to shippers and railroads alike. First and foremost, the courts have recognized that the Board's statutory authority to collect data does not require that information to be released publicly.²⁷ So, to the extent such information is collected, the Board should protect it from release. The RFI recognizes this sensitivity, noting that "a protective order may be issued that would allow sensitive information to be filed under seal," if necessary to respond to the RFI.²⁸ However, whatever information is ultimately collected should be similarly protected, and not made public.

To the extent potentially sensitive information is determined necessary for collection, the Board may consider aggregating information at an industry or customer level. Aggregation

²⁶ *Id.*

²⁷ See *AAR v. US*, 371 F Supp. 114 (DDC 1974).

²⁸ RFI at 4.

tends to ameliorate competitive harms because it does not identify a specific shipper or railroad. For example, under the Board’s regulations for waybill releases, information may not be used by practitioners, consultants or law firms “unless the evidence is aggregated to the level of at least three shippers and will prevent the identification of an individual railroad. Non-aggregated evidence submitted to the Board will be made part of the public record only if the Board finds that it does not reveal competitively sensitive data.”²⁹ However, the trade-off for the Board’s consideration is the limitation on the utility of the information if it is aggregated. If the Board allows for the collection or the release of FMLM service data, it should do so only if the appropriate protections are in place for sensitive information in a manner that does not identify the shipper or railroad involved in any specific movement.

V. The TRAIN II Dataset Collected by Railinc is Limited in its Usefulness and Scope for Measuring FMLM Service.

The Board expressed interest in “the insights it may be able to draw from event data such as the TeleRail Automated Information Network (TRAIN II) information exchange protocol or similar datasets available to the railroads.”³⁰ Railinc’s role in the industry is, in part, to facilitate the interchange of equipment among the railroads. One tool that assists in achieving that goal is the TRAIN II system, which was designed to better understand car location and utilization, thus enabling efficient management of the car fleet.³¹ However, the event data

²⁹ 49 C.F.R. §1244.9(b)(4)(iv).

³⁰ RFI at 4, fn 15.

³¹ Railinc, TRAIN II User Manual, at 1-1 (Feb. 2021) (available at: <https://public.railinc.com/sites/default/files/documents/TrainII.pdf>).

collected by Railinc through the TRAIN II system is not intended to measure levels of service, much less FMLM service, and would be unreliable for that purpose.

The TRAIN II system operates primarily through information from railroads about events related to railcars. The event information is transmitted to Railinc using messages from a number of sources, including from automated readers along the railroads' rights-of-way. While these events assist Railinc in determining the location of the car, mileage traveled, and other car information, they are not designed to provide service-level reporting.³² Some messages are more detailed than others in the type and amount of information provided; some are direct measures and some are estimates.³³ Importantly, not all events on the network are reported to Railinc; Railinc estimates millions of events each month are *not* reported to it.

Those missed events are not evenly distributed across traffic. For instance, not every shipper has installed an event reader at its facility to report car placement or release, and so many such events are based on crew reports or automated messages. Wider installation of automated readers has not been undertaken in part because customers already know when equipment arrives or departs their facilities.

In addition, there is no standard with regard to placement of readers, nor is there a pre-determined mileage for placement of readers throughout the network. Nor is the reporting and distance of event messages standardized. Railroads vary in the frequency of reports

³² *See Id.* at 2-4.

³³ *See Id.*

submitted to Railinc and the level of detail provided in the messages.³⁴ While the TRAIN II system and other event data is useful for the purposes for which it was developed, it is simply not designed to report useful FMLM service data. Standardization and universal reporting would be significant undertakings that would require development of reader placement requirements, event message standards, and message information requirements, among other needs. It is questionable whether such an undertaking would be worth the costs, which would not properly be borne by the railroads in any event.

Conclusion

AAR respectfully suggests that as the Board proceeds further in this matter, it should articulate a need for any information collected, ensure all variables impacting FMLM service are accounted for in the collection, evaluate the costs and benefits of its actions, and implement appropriate protections for the information to be collected.

Respectfully submitted,



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December 17, 2021

³⁴ See, e.g., Railinc, TRAIN II User Manual, at 2-4 (Feb. 2021) (“**Use of the TRAIN10 syntax is encouraged.** The TRAIN10 is the most comprehensive of the event reporting messages and includes new features not available in TRAIN01/31 messages.”) (emphasis in original).



December 17, 2021

The Honorable Martin J. Oberman
Chairman
Surface Transportation Board
395 E Street, SW
Washington, DC 20423

The Honorable Robert E. Primus
Vice Chairman
Surface Transportation Board
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Washington, DC 20423

The Honorable Ann D. Begeman
Board Member
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The Honorable Michelle A. Schultz
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The Honorable Patrick J. Fuchs
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Re: The National Industrial Transportation League's Comments regarding First-Mile / Last-Mile Service - STB Docket No. *Ex Parte* 767

Dear Chairman Oberman, Vice Chairman Primus, and Board Members Begeman, Fuchs, and Schultz:

The National Industrial Transportation League ("NITL" or the "League") is pleased to submit its comments in this important proceeding concerning railroad performance with respect to First-Mile / Last-Mile ("FMLM") service. On behalf of our members, we commend the Surface Transportation Board ("STB" or the "Board") for initiating this *Ex Parte* 767 proceeding to gain an in-depth understanding of the issues currently experienced by the shipping community regarding FMLM service. Specifically, in response to concerns expressed by NITL members and other rail customers, the Board has solicited feedback on specific FMLM service challenges, as well as metrics that would be helpful in measuring FMLM service challenges that could be submitted to the Board.

The League strongly believes that adoption of a FMLM service standard and reporting requirements is warranted and would be beneficial to rail customers, the railroads, and the Board. This is because adopting such a standard and metrics would improve transparency that would facilitate supply chain planning and meaningful dialogue between railroads and their customers

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to address service shortcomings, and it would be an important tool for the Board to monitor local rail service. NITL stands ready to assist the STB and other stakeholders in the development of standards applicable to local service performance, including engaging in discussions and meetings directly with the railroads and the Board.

I. Statement of Interest

The League represents a broad cross-section of American businesses, united in their need for reliable, efficient and competitive transportation services. NITL members ship chemicals, petroleum, agricultural products, paper and forest products, and many other commodities using all modes of transportation, including rail. NITL’s rail members have developed complex supply chains to support their manufacturing and distribution operations and they depend on reliable and efficient rail service to meet both their own and their customers’ shipping and delivery needs. FMLM service is critical to maintaining the supply of goods required to meet the demand of American businesses and consumers and to allow our members to compete effectively with producers around the world.

NITL was among the organizations that notified the Board of the need for improved transparency regarding FMLM service data. Specifically, NITL joined the Freight Rail Customer Alliance (FRCA), National Coal Transportation Association (NCTA), and Private Railcar Food and Beverage Association (PRFBA) in requesting the Board to require FMLM data reporting in letters dated August 30, 2020 and October 8, 2020.¹ NITL understands that FRCA and NCTA will be submitting joint comments and PRFBA will be filing its own comments in response to this Notice.

II. There is a Need for the Board to Establish a FMLM Service Standard and Reporting Metrics

NITL has long attested that FMLM or “local” rail service is critical to the success of its members’ supply chains. Indeed, our members believe that FMLM service may be the most important metric to measure the reliability and consistency of freight rail service.

In its Notice, the Board defined FMLM service as “the movement of railcars between a local railroad serving yard and a shipper or receiver facility.”² Thus, the first mile and last mile is where railroads and their customer have actual touch points. FMLM service is the most important measure for every other mode of transportation. Shippers, for example, do not typically measure performance of trucking companies based on their average speed or terminal

¹ See Letter from Freight Rail Customer Alliance, the National Coal Transportation Association, the National Industrial Transportation League, and the Private Railcar Food and Beverage Association, Inc. to the Board “Freight Railroad First-Mile/Last-Mile Service Data - Need for Improved Transparency” (Aug. 31, 2020).

² Notice at 1.

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dwell, rather, success is measured by their on-time deliveries – i.e., did a motor carrier pickup my freight on-time and did it deliver my freight on time? Rail carriers should be held to the same or similar standards to better measure their service reliability.

Key rail metrics collected currently by the STB include “average train speed” and “terminal dwell” time. While these data points can reflect reasonable measures of the overall health trends of a rail network, and NITL supports those reporting requirements, they fall far short of measuring the actual service levels experienced by freight rail shippers/customers at the touch points. Accordingly, NITL strongly supports adoption of additional reporting requirements for FMLM service.

NITL members routinely experience significant problems with FMLM service, including missed switches and the lack of adequate railcar supply. When these types of FMLM service problems occur, they create inefficiencies in our members’ operations, and lead to significant additional costs. These costs include lost productivity of human and mechanical resources, sub-optimal freight and emissions due to unplanned modal shift to truck on time sensitive freight, and production and unloading backups that lead to demurrage and storage charges.

To gain a better understanding of the current FMLM service problems, NITL analyzed the data of 49 of its members’ freight rail shipper/receiver locations and 35 Business Economic Area designations across all Class I railroads and several short lines. The data was collected during the two-month period of September and October 2021 and addressed switching reliability. The data did not measure against the proposed 6-hour window but rather used a very generous 24-hour window to simplify the analysis. In other words, if the railroad showed up *at all* on a given day, it was given credit for an on-time delivery. Importantly, in practice, if a switch is off by even a single hour, the shipper/receiver has lost utilization of key human and mechanical resources to load/unload railcars. In addition to analyzing whether the switch arrived on the scheduled day, the study examined whether the railroads delivered the correct number of cars, either empty or loaded, that the rail customer had ordered.

NITL’s key take-aways from the analysis were as follows:

- Class I weighted average on-time switching was 93.2% under the generous 24-hour standard. In other words, 6.8% of switches did not occur at all during the day scheduled. Those days were a total loss to the rail customer. Importantly, NITL members reported that a missed switch at facilities with fewer than 5 day a week service often has more severe impacts on the business than facilities that have 5 day or more switching per week because fewer service days per week offers fewer opportunities to make up for missed service on a given day.
- The range of on-time switching by BEA location over the two months was 46.2% to 100%.

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- Only 63.6% of the BEA’s experienced Class I switching service at 95% or greater on-time; 78.6% of the BEA’s experienced a switching service at 85% or greater; and 9.1% experienced on-time switching service at less than 60%.
- When looking at car order fill-rate, Class I’s weighted average was 90.5%. In other words, for every 10 cars that freight rail customers ordered either to load or unload, they received 9.05 cars. The range on fill-rate was 56.4% to 100% meaning, in at least one case, freight rail customers in a BEA only received 5.64 cars for every 10 ordered over the two-month timeframe.

Anecdotally, we know that service has become more problematic on the Eastern railroads since our study was performed. Based on the study, NITL is convinced that STB must create a standard to measure FMLM service, and railroads must report FMLM data to allow for evaluation of their performance against the standard.

Missed switches can happen for a variety of reasons. Crew shortages has been the most notable “reason” lately, but crew hours, train failures and overall congestion have also long been cited. It appears that local service has suffered at increasing levels in the aftermath of precision scheduled railroading (“PSR”) which has caused the railroads to focus on linehaul asset utilization. PSR, in other words, has not proven to be “precise” at the origin and destination points.

Further, while NITL acknowledges that missed switches can occur due to rail customers’ mistakes, such as not releasing cars timely or not managing a blue flag appropriately, NITL strongly believes that the problems occur far more frequently because of the railroad’s performance failures. To help railroads, their customers, and the Board monitor and measure local rail service, the STB should adopt reporting requirements to improve transparency as to existence and causes of FMLM service problems.

Rail customers also lack any meaningful remedy for FMLM service problems. At times, the freight rail customer can request special or “weekend” switches to make up for a lost switch, but these remedies are very difficult and expensive to execute, making the remedy *for the railroad’s failures* penalizing to the customer. In most cases, a lost switch is just that, lost. And every car in transit has the potential to be impacted by the lost productivity.

In a hypothetical example, assume a freight rail customer (receiver) has a siding with 10 car capacity and is switched 7 days per week. And assume the customer receives (and consumes the inventory within) 9 cars per day and has average transit of 14 days. In order to maintain their inventory, this customer would need 9 x 14, or 126 cars in the pipeline. When one switch is missed and 9 cars back up, all 126 cars are impacted as they are unlikely to be unloaded within the free demurrage period. Rail carriers will often add credits to the 9 cars that did not get switched but ignore the impact on the remaining 117 cars in the pipeline.

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Typically, the freight rail customer begins with customer service and escalates through the sales representative and other railroad contacts. The rail customer may utilize the STB’s customer assistance office, but this usually only occurs in extreme cases where normal escalation does not appear to be helping.

III. FMLM Metrics

A. Switch Performance

Paramount to the success of measuring service performance is the creation of a standard. NITL implores the STB to establish the standard by which FMLM service should be measured, and such standard should be able to be uniformly and consistently applied.

NITL suggests that the FMLM service standard should be straightforward and include the following components.

- Railroads should publish a switch schedule by industry lead/customer to include specific planned switch days and times (up to 6-hour window) as the basis for the measure.
- Railroads should report actual switching at industry/customer facilities per the schedule on the day and within the 6-hour window, and report on-time switching percentage against the schedule to the STB.
- Service will be considered “on-time” if it occurred on the day scheduled and within the published 6-hour window.
- Railroads will report their on-time shipping performance to the STB by commodity groups as laid out by existing service metrics of dwell time and average train speed.
- In instances where customers did not manage the blue flag and/or the car release process per reasonable cut offs, this will not be included in the on-time delivery metric negatively nor positively.
- The data should be reported in a manner that protects customers’ commercially sensitive information. NITL recommends the data be reported in aggregate by commodity group but that the railroads keep the lane-specific customer data on hand for dispute resolution purposes for 12 months.

B. Trip Plan Compliance and Interchange Performance

In 2020, NITL’s Rail Transportation Committee organized a task force to make recommendations regarding service metrics. Based on their recommendations, in addition to the FMLM metrics described above, NITL recommends that origin/destination trip plan compliance be measured and reported on through rates as well as Rule 11. In the case of interchange traffic, the rate making carrier should report door-to-door (origin terminal to destination terminal) service. The clock should start on empty release and end on constructive or actual placement,



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whichever comes first. Trip plan compliance can be measured in hours (under or over) plan. NITL recommends a standard of +/- 2 hours which is already used by some rail carriers. Railroads that steadily perform “too far” under plan should instigate a correction plan.

In addition to trip plan compliance, NITL recommends railroads be accountable for dwell at interchanges with other railroads and that this be reported in the same manner that terminal dwell is reported currently. Often in transit, freight rail customers will experience delays in transit on interchange traffic that neither railroad claims. The “interchange delivered” and “interchange received” activity between railroads appears to lack accountability.

Again, NITL appreciates the Board’s actions to consider the important issue of FMLM rail service, including the potential development of an industry standard and metrics to measure such service. As noted at the outset, NITL stands ready to assist the STB and other stakeholders in the development of standards applicable to local service performance, including engaging in discussions and meetings directly with the railroads and the Board.

Respectfully submitted,

Nancy O’Liddy
NITL Executive Director

Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

**Comments of BNSF Railway Company in Response
to the Board's Invitation to Comment****I. Introduction & Summary**

On September 2, 2021, the Surface Transportation Board (“Board” or “STB”) issued a decision requesting comments on issues regarding first-mile/last-mile (“FMLM”) service. The Board’s interest in FMLM service arose after hearing concerns raised by some rail customers about FMLM service by railroads, and receiving requests that the Board adopt new data reporting regulations relating to FMLM service. *First-Mile/Last-Mile Service (Sept. 2021 Decision)*, EP 767, slip op. 1 (STB served Sept. 2, 2021). BNSF Railway Company (“BNSF”) appreciates the Board’s interest in FMLM service and the opportunity to assist the Board in understanding the myriad important issues relating thereto. BNSF also supports and joins the comments of the Association of American Railroads (“AAR”) regarding FMLM service.

BNSF believes that providing reliable service between our local serving yards and our customers’ facilities is a critical component of our overall competitive service offering. Market forces do not permit BNSF to ignore FMLM service issues in favor of an exclusive, or even disproportionate, focus on linehaul or overall network performance. Each railroad’s attention to its own FMLM service is important to a well-functioning national rail network, and we take seriously our role and responsibility as a business partner to our customers in relation to FMLM service. That is why, as described in more detail below, BNSF developed a sophisticated internal monitoring system to track its FMLM performance and has been sharing FMLM data, both at a

customer-specific and overall network level, since long before the Board commenced this proceeding.

Any further development and reporting of FMLM data is better left to those same market forces that spurred BNSF's current system. BNSF created its FMLM monitoring system, in part, to better compete for customer business against other railroads and competitors from across different transportation modes. FMLM service is an area in which railroads can compete for business based on metrics that each railroad develops independently to meet the needs of their own customers. BNSF believes in providing accessible and reliable shipment information to our customers. As detailed below, BNSF develops a Base Service Plan for each of its customers, monitoring individual shipments between each customer's facility and BNSF's local serving yard. BNSF then uses this information to track its performance in meeting each customer's service plan. Our individual customer performance (the "Industry Service Metric") and our network performance (the "Local Service" metric) are then reported to customers in a variety of ways. It would be counterproductive to replace BNSF's existing market-driven, individualized FMLM monitoring system with an overly burdensome one-size-fits-all regulatory reporting tool.

BNSF also respectfully cautions the Board against pursuing prescriptive FMLM data reporting obligations as the basis for formal regulatory standards governing FMLM service itself. Any regulatory standards governing FMLM service would have to take into account the particular circumstances for each shipper. From weather events that broadly affect the rail network, to yard-specific issues, to individualized shipper preferences, FMLM service is too nuanced for rigid or formulaic regulations to be effective.

BNSF believes it is particularly important that the Board recognize the limitations in using any aggregated FMLM data to potentially assess a railroad's compliance with its common carrier obligation to a particular shipper. The Board has long appropriately recognized that a

railroad's common carrier obligation is based on a reasonableness standard that must be informed by the specific facts of particular movements, and judged within the context of a carrier's need to provide service to all shippers on its rail network. The reasonableness of FMLM service in any particular case can only be assessed based on multiple factors that consider both the individual shipper's circumstances and any network-wide issues affecting local service. It is highly unlikely that aggregated FMLM data will provide meaningful or actionable information about compliance with common carrier obligations vis-à-vis any particular shipper.

Importantly, shippers already have significant regulatory recourse when they feel they are not obtaining adequate FMLM service and market forces have failed to adequately incentivize their serving carrier's behavior. As discussed below, these remedies include the Board's Rail Customer and Public Assistance ("RCPA") office and the Board's formal complaint processes. Additional regulation in this area is not needed.

II. BNSF Already Has A Monitoring Tool Related to FMLM Service and Provides Its Shippers with Data That Shippers Can Use to Monitor FMLM Performance

As mentioned above, BNSF has already developed a sophisticated internal monitoring system to both track its performance at local serving yards and shipper facilities, and share relevant data with its customers. Imposing any regulatory FMLM reporting obligations on BNSF would be overly burdensome and serve no legitimate purpose.

BNSF has always believed that active and consistent communication with our customers is essential for our business. BNSF provides as much visibility as possible to its customers regarding performance and status across the BNSF network, including with respect to individual shipments. As explained below, BNSF develops a Base Service Plan for service between each customer facility and BNSF's local serving yard. BNSF then tracks its performance against that Base Service Plan with an Industry Service Metric that records car-specific data for each customer. An online Customer Portal allows each customer to monitor BNSF's compliance with

the customer's Base Service Plan, and to track the location and progress of their shipments at all times while on the BNSF network. BNSF has also developed critical function Application Programming Interfaces (APIs) that allow BNSF's systems to interact directly and securely with its customers' own transportation management systems, thus maximizing data-exchange efficiency and increasing the value of the data BNSF provides.

Finally, BNSF aggregates its network-wide compliance with all of the individual Industry Service Metrics into a data point referred to as the Local Service Metric, which is included in regular network updates to BNSF's customers. To BNSF's knowledge, it is the only railroad that shares the information reflected in the Local Service Metric with its customers on a regular basis, thus providing BNSF an important competitive advantage.

The elements of these BNSF FMLM monitoring tools are described in more detail below.

A. Individualized Base Service Plan

The starting point for BNSF's FMLM service monitoring system is the development of an individualized Base Service Plan for each BNSF customer served by a particular yard. Each Base Service Plan includes the (i) days of service, (ii) the "spot" times (i.e., the time a car must be ordered to make same day service on a defined service day or within a specific processing time), (iii) the "pull" times (i.e., the time a car must be released from placement to make same day service on a defined service day or within a specific processing time), and (iv) the "processing time" that BNSF has allotted to complete its work with respect to a specific car.

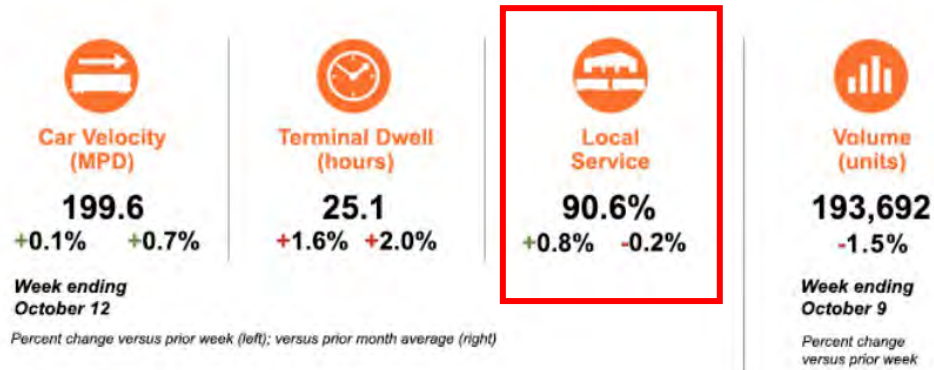
BNSF's internal data system shows the type of data that are recorded as to individual customer Base Service Plans. The data include the days of service, the time by which a customer must order car service to ensure same-day service, the train that will provide service, the identification of the track on which service will be provided, among other details.

B. Industry Service Metric

BNSF has an Industry Service Metric that measures BNSF's adherence to each customer's individualized Base Service Plan, monitoring the movement of each customer car and measuring the actual spot or pull of each car against the customer's Base Service Plan. The Industry Service Metric records car-specific data for each customer. BNSF's internal system shows identifying information about each customer's car: (1) whether a car is loaded or empty, (2) the car's destination station, (3) the destination track number and spot code, (4) the customer name, and (5) a brief description of the car contents. The internal system also shows specific event data for each customer's car such as (1) when a car departs, (2) the type of car the customer wants (i.e., does a customer want a specific car or any available car), (3) the car's scheduled delivery time and date, (4) whether the car was ordered in time for same day delivery, and (5) the car's actual delivery time and date. This event data is used to determine whether BNSF adhered to a customer's Base Service Plan. How often BNSF meets the specifications of a customer's Base Service Plan determines the Industry Service Metric for that customer.

C. BNSF's Local Service Performance Metric

BNSF also provides its customers on a bi-monthly basis with a network-wide carload "Local Service" metric – a percentage that measures adherence overall to customers' FMLM service plans – in connection with a broader update on the BNSF network. Below is a screenshot from an example of an October 2021 customer communication including BNSF's Local Service Metric, which can be found on BNSF.com at <https://www.bnsf.com/news-media/customer-notifications/notification.page?notId=industrial-products-network-update-for-friday-october-15-2021>:



Definitions for Metrics

Car Velocity: average number of miles a railcar travelled per day

Terminal Dwell: average time a car resides at a specified terminal location

Local Service: percentage measuring adherence to customers' first/last mile service plans

Volume: total number of carloads and intermodal units moved by the railroad during the week

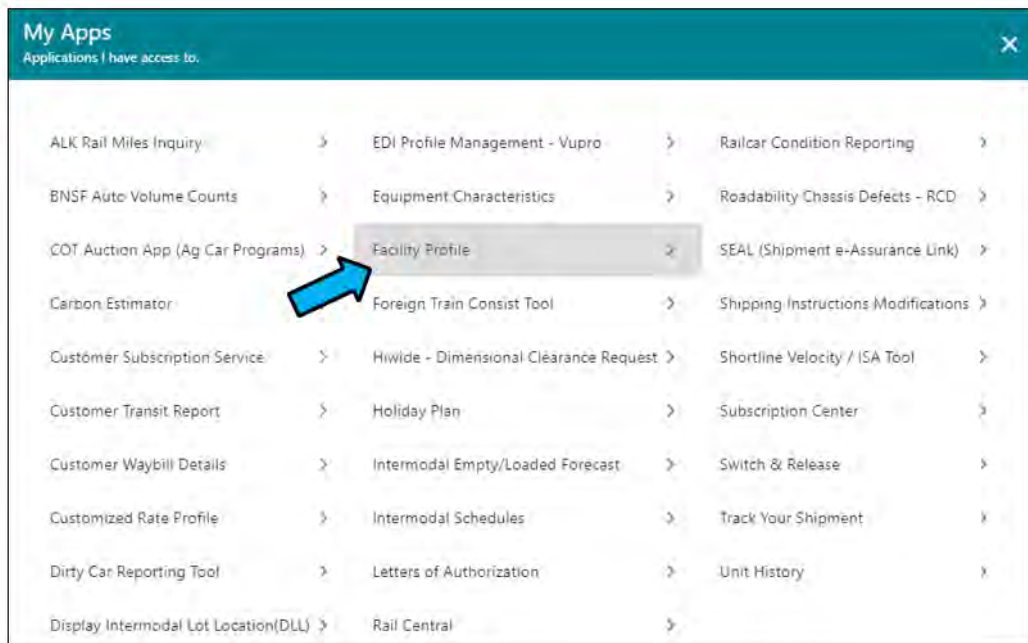
The network update also includes metrics showing the average number of miles a rail car travelled per day (car velocity), the average time a car resides at a specified terminal location (terminal dwell), and the total number of carloads and intermodal units moved by BNSF during that time period (volume). BNSF has met its Local Service performance metric in almost 90% of FMLM movements in 2021.

D. Customer View of Service Plan through Portal

BNSF has invested heavily in providing customers with up-to-date and relevant FMLM information that all BNSF customers can access via a secure Customer Portal on BNSF.com. An average of 11,000 of BNSF customers visit the Customer Portal every day. Through this portal, BNSF offers a suite of tools for customers to conduct a variety of business activities such as tracking shipments and other administrative activities. This accessibility includes viewing FMLM information for shipments and the ability to trace individual shipments in real time as they move across the BNSF network.

For example, when a customer visits the BNSF.com website, the customer can visit its personalized portal by logging into the website and clicking the “My Apps” button. A popup

window will appear and the customer can select “Facility Profile”, as reflected in the following screenshot.



Once the customer selects “Facility Profile,” the customer will access a page called “Customer Facility Information.” Here, the customer can select its name and location from the dropdown menu, which is populated with local service information. This information includes spot cut-off times and planned switch information that is derived from the specific customer’s service group information. A screen shot is set out below showing the information that a customer can see through the Portal.

BNSF RAILWAY

Customer Facility Information

Facility Summary

This application provides facility information for BNSF-served customers.

Customer : TEST CUSTOMER

Location : ANYSTN, US

Facility Diagrams

In order for BNSF to visualize your facility, you can upload up to three attachments to this page. Then, BNSF will have access to view the information, which will be helpful in conversations with you about your service, facility setup, etc. We recommend uploading facility schematics, diagrams and/or overhead pictures.

To upload an attachment simply click the Browse button and choose a document on your computer, then click Submit. For assistance with this application, please contact abichelo@bnsf.com

NOTE: Individual attachments cannot be larger than 2MB each.

Attachment 1: Choose File No file chosen

Attachment 2: Choose File No file chosen

Attachment 3: Choose File No file chosen

Comments

Local RR Contact	Track
John Doe	1871, 1872, 1873, 1874

Your company's designated contact for BNSF Railway to discuss facility questions.
Contact details are available in the Track Summary below.

Track Summary

Spot cut-off time for next planned switch

MONDAY	TUESDAY	WEDNESDAY	THURSDAY	FRIDAY	SATURDAY	SUNDAY
06:00		06:00		06:00		

If any of the following information related to your facility's tracks or shipment handling is incorrect, please contact Customer Support at 888-428-2673, options 4, 3.

Facility Facts:

Tracks for TEST CUSTOMER at ANYSTN, US [1871 1872 1873 1874](#)
(Please Right Click on the Track number for more options)

Shipment Handling Instructions

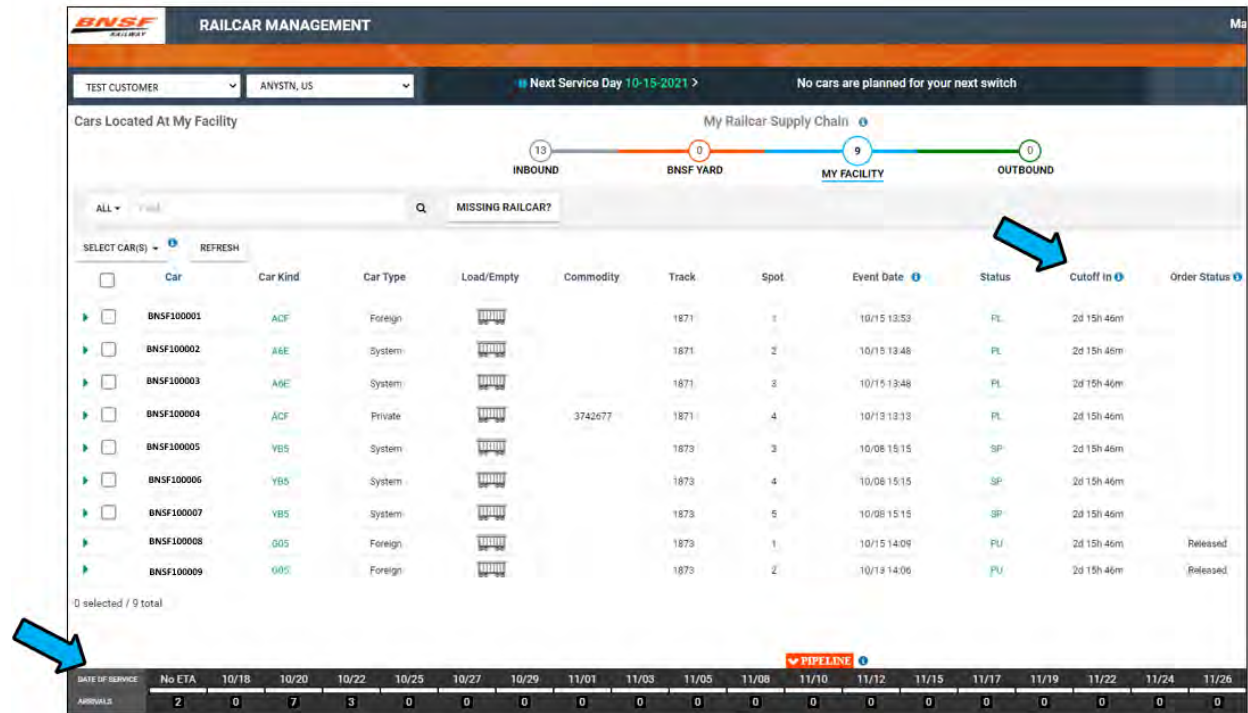
- All empty cars are routed to track 1871
- All other cars are routed to track 1873

Select a track from the dropdown menu to view detailed information about how BNSF Railway handles your facility:

Customers can also view car dwell times by selecting the “Carload” button in the Customer Portal and then selecting the “Customer Dwell Management Tool.” Here, the customer can also view FMLM information such as the spot and pull times for specific cars on specific days.

Additionally, customers can view a personalized Railcar Management Tool (“RMT”) within the Customer Portal. The RMT allows customers to view inbound cars, at BNSF serving

yards or at the customer’s facility, in order to order cars to spot or release to pull. The RMT provides (i) a “Date of Service” that correlates to the service days and (ii) a “Cutoff In” column that acts as a countdown clock to when cars need to be ordered/released to make same day service on a defined service day.



III. The Board Should Not Use This Proceeding to Impose New and Burdensome Reporting Requirements

As mentioned above, BNSF appreciates the Board’s interest in learning more about FMLM service. The Board has previously used information-gathering proceedings to seek public comment and learn about a variety of topics of interest to the railroad community. *See, e.g., Common Carrier Obligation of Railroads*, EP 677 et al. (STB served Jan. 19, 2010). While it is appropriate and beneficial for the Board to engage in information gathering efforts such as this proceeding, the premise of the shippers seeking Board action here—that additional regulation of FMLM service is needed—is misplaced.

A. Neither rail customers nor the Board has identified a problem that requires regulatory intervention.

As described in the *Sept. 2021 Decision*, the Board's interest in FMLM service is the result of correspondence from rail customers. *See Sept. 2021 Decision*, slip op. at 2-4. For example, rail customer trade groups stated that their members were concerned by "the gap between the service data that the railroads report to the Board and the level of service that shippers receive in the real world." *See id.* at 3. These trade groups seek "improved transparency regarding FMLM service issues" and suggest that "transparency could be achieved by having the rail carriers report appropriate data." *Id.*

BNSF takes concerns about FMLM service seriously, as should the Board. But the rail shippers' comments regarding FMLM service do not identify a problem that additional mandatory data reporting would solve. Any new regulatory data mandates must be based on the identification of a real and concrete problem that those mandates have a high likelihood of solving. Not only do the rail customer comments fail to identify such a problem, they ignore the multitude of factors affecting FMLM service that would undermine the utility to the Board of any generalized data reports. Nor do the shipper interests explain how new data reports would benefit actual customers. A generalized desire for more transparency into FMLM service data does not justify burdensome regulatory action, especially considering the significant amount of FMLM data that is already available to BNSF's customers. To the extent that the trade groups seek mandated data reporting to support new litigation over common carrier obligations, their objective is based on a fundamental mischaracterization of the law of common carriage, as discussed below.

Additionally, BNSF's believes that the Board's RCPA office already serves as an invaluable and effective resource for resolving service issues between railroads and their customers without the need for formal adjudication by the Board. And where intractable service

issues do arise, rail shippers have demonstrated a willingness to use the Board's formal complaint processes.¹ Requiring carriers to comply with prescriptive, top-down rules regarding FMLM service metric reporting would not improve this well-functioning regulatory system.

B. The value of aggregated FMLM metrics is limited because they would not reflect many factors affecting FMLM service.

Shippers seeking new FMLM data reporting requirements fail to acknowledge that any aggregated FMLM service metrics for any particular railroad would necessarily reflect the knock-on effects of attenuated events that may not be in that railroad's control. The U.S. rail network is part of a complicated and interconnected multi-modal supply chain with many and diverse local elements that can affect movements across the network. Indeed, the complexity and interconnections of the U.S. rail network are its defining characteristic. Congestion issues at urban hubs – such as Chicago, IL, Houston, TX, St. Louis, MO, and Kansas City, MO – can create a contagion of congestion affecting the entire rail network, including local service far from the original source of the congestion.² The importance of these external factors is evident today. Katie Farmer, BNSF's President and Chief Executive Officer, explained in two letters earlier this year to Board Chairman Oberman how the challenges facing the U.S. supply chain this year were a clear reflection of the variability and complexity of the interconnected multi-modal transportation system.³

¹ See e.g., Sanimax USA LLC Compl., Nov. 6, 2021, *Sanimax USA LLC v. Union Pac. R.R.*, NOR 42171 (shipper seeks determination that reduction in service from five days per week to three days per week constitutes a failure of common carrier service and is an unreasonable practice); Bell Oil Compl., July 10, 2020, *Bell Oil Terminal, Inc. v. BNSF Ry.*, NOR 42169 (shipper filed a complaint alleging that a reduction in service constituted a failure of common carrier service); Sherwin Alumina Co. Pet., Mar. 10, 2015, *Sherwin Alumina Co. v. Union Pac. R.R.*, NOR 42143 (shipper filed a petition alleging railroad's denial of service due to labor dispute at the facility violated the common carrier obligation).

² Examples of this dynamic include the service problems in the western United States after the UP/SP merger and congestion issues after Conrail merger. See e.g., Joint Petition for Service Order, STB Service Order No. 1518 (STB served Oct. 31, 1997); See *CSX Corp.— Control & Operating Leases/Agreements—Conrail Inc.*, FD 33388 (Sub-No. 91), Decision No. 5 (STB served Feb. 1, 2001).

³ See Response Letter from Katie Farmer, President and Chief Executive Officer, BNSF, to Martin J. Oberman, Chairman, STB (Aug. 4, 2021) available at <https://www.stb.gov/> (open tab at "News and

Moreover, local conditions and the circumstances of individual rail yards and customer facilities vary widely. BNSF has a wide variety of serving yards that perform FMLM service to customer facilities. Certain of BNSF's large hump yards, like those at Kansas City, KS or Tulsa, OK, have large footprints with multiple groupings of tracks that accommodate substantial 24/7/365 operations handling diverse commodities and train types. Flat switch yards, like those at Houston, TX or Temple, TX, are generally smaller than the large hump yards and handle a mix of traffic types that depend on geographic location and local needs. Local serving yards, like those at Bay City, TX, Crystal City, MO, or Sealy, TX, are generally even smaller and feature more narrowly focused operations. While hump yards and flat switch yards can be designated as serving stations for local service, the local serving yards are typically positioned closer to a group of customers where cars can be sent in blocks (i.e., pre-classified car groupings) to build trains for local service. Broad data reporting would not reflect these nuanced circumstances of individual rail yards.

Additionally, the circumstances of individual customer facilities and needs vary widely. A customer with low volume and irregular demand often has a small facility footprint with limited capacity to spot inbound cars or store cars onsite, likely making the customer more heavily dependent on the railroad's local serving yard or switching facility. A customer with high volume and regular demand typically has a larger facility footprint, can load and unload multiple cars throughout the day, and may have the ability for onsite storage and self-switching to move cars between facility tracks. Some shippers have less than ideal facilities for loading and unloading cars, including facilities located directly off a main line without the infrastructure to

Communications," select "Non-Docketed Public Correspondence" locate "August" select "BNSF Response Letter to Chairman Oberman Regarding Intermodal Supply Chain Issues, August 4, 2021"; Response Letter from Farmer, BNSF, to Chairman Oberman, STB (June 9, 2021) available at <https://www.stb.gov/> (open tab at "News and Communications," select "Non-Docketed Public Correspondence" locate "June" select "BNSF Response Letter to Chairman Oberman Regarding Rail Service, June 9, 2021")

allow a local serving train to clear the main track to provide service, thereby impeding through trains, and some facilities have operational requirements that require additional switching, spotting, and pulling of cars. It would be impossible—or, at best, excessively burdensome—to require aggregated FMLM data reporting that would reflect these important distinctions between customer facilities.

These varied circumstances in local serving yards and customer facilities necessarily result in FMLM service environments that differ based on the serving yard for any particular customer and based on the needs and facilities of individual shippers. Because FMLM service is particularly focused on local and individualized circumstances, the value of any new aggregated data reporting regulation to shippers or the Board would be minimal.

C. FMLM data reporting would not be a legitimate basis for assessing a railroad’s compliance with its common carrier obligation.

The comments of rail customer trade groups indicate that they believe FMLM data reporting might be relevant to assessing railroads’ compliance with their common carrier obligations. The October 8, 2020 filing made by FRCA, NCTA, NITL, and PRFBA asserted that new data reporting was necessary because the existing data does not allow the Board to “ascertain whether carriers are meeting their common carrier obligations in the aggregate.”

The assumption that new FMLM data reports could be relevant to assessing common carrier compliance is based on a misunderstanding of the common carrier obligation, and a misplaced assumption that objective and rigid standards can be used to assess compliance with common carrier obligations. To the contrary, the common carrier obligation, as developed through many years of experience by the Board and its predecessor agency with the realities of railroad operations, recognizes the complexity and variability of railroad service and the unpredictable and far-ranging effects of problems arising in the interconnected network. The trade groups’ assertion that aggregated FMLM data would provide meaningful information on

compliance with common carrier obligations disregards the realities of railroad operations and is in direct conflict with the fact-based standard that has developed for assessing common carrier obligations.

The common carrier obligation requires railroads to provide “transportation or service on reasonable request.” 49 U.S.C. § 11101(a). The statute does not set out a standard for determining when a railroad has complied with this broad obligation. Instead, the scope of the common carrier obligation has evolved through case law and regulatory developments that have, over many years, reflected and respected the realities and complexities of railroad transportation and the need to balance the needs of individual customers with the collective customers interests.

The touchstone of the common carrier obligation is that it is a highly fact-specific requirement that a railroad act reasonably under existing circumstances to provide adequate service. The scope of the common carrier obligation, as developed over time, recognizes that the reasonableness test depends on individual circumstances. Broad abstractions and aggregated metrics cannot be used to assess compliance with such a fact-specific obligation. In general, “the Board tries to avoid micromanaging a carrier’s operational decisions.” *Montana v. BNSF Ry.*, NOR 42124, slip op. at 7 n.28 (STB served Apr. 26, 2013).

Given the focus of the common carrier obligation test on the specific facts of particular cases, generalized FMLM data will not provide any meaningful information on a railroad’s compliance with the common carrier obligation standard for any particular shipper. Generalized data cannot reflect the multitude of factors that must be assessed to determine whether a railroad acted reasonably under the circumstances.

IV. Regulatory Mandates Should Not Determine Appropriate FMLM Metrics

BNSF developed the metrics described in Section II above to assist it in providing quality service that its customers demand and to provide feedback to shippers that will allow them to

make better logistical decisions. BNSF does not believe that regulatory mandates relating to FMLM service can or should replace the market as the source of incentives to develop similar performance-related metrics. A requirement for uniform standards would likely require changes to the tools and metrics that BNSF has already developed in response to the particular circumstances faced by BNSF and its customers. Instead of allowing railroads to continue developing railroad-specific reporting tools, and then allowing competition to determine which tools are most attractive and responsive to shipper demand, a new regulatory requirement would force industry-wide compliance with what would likely be less efficient and effective reporting regime. If BNSF were to be required to conform to a new industry-wide standard, BNSF would be forced to consider abandoning its existing processes and deprive its shippers the benefits of those tools BNSF has already developed with customer feedback. Allowing competition and market forces to determine shipper reporting programs will better serve shippers and produce superior reporting programs.

V. Conclusion

Uniform regulation is not appropriate for the highly variable area of FMLM service. Generalized data on FMLM service that is mandated by the Board will not provide the Board or shippers with meaningful information. Instead, railroads should be permitted to continue competing for customers' business by developing appropriate reporting systems and providing their shippers with customized service products for FMLM service. A regulatory mandate would likely inhibit the development of systems that better serve shipper needs. As demonstrated by BNSF's development of a sophisticated monitoring system, regulatory standards and requirements are not needed to ensure that customers have access to the local service data they desire regarding their shipments.

Respectfully submitted,

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BEFORE THE SURFACE TRANSPORTATION BOARD

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FIRST-MILE / LAST-MILE SERVICE

**Opening Comments of
the American Chemistry Council, American Fuel & Petrochemical
Manufacturers, and The Fertilizer Institute**

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Dated: December 17, 2021

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The American Chemistry Council (ACC), the American Fuel & Petrochemical Manufacturers (AFPM), and The Fertilizer Institute (TFI) (collectively, “Shipper Associations”) submit these comments in response to the Surface Transportation Board’s (the “Board”) decision served on September 2, 2021 that requests comments on first-mile/last-mile (FMLM) service.

Shipper Associations thank the Board for exploring whether FMLM service reporting would be helpful for identifying and addressing FMLM service issues. Breakdowns in FMLM service are highly disruptive and costly for rail customers. In fact, some of our members report 17-day dwell times and railroad-blocked sidings that prevent delivery of cars, resulting in railcar storage assessments. FMLM issues have also increased to alarming levels in recent years, following the adoption of lean operating models by many Class I railroads. Despite this, the rail service performance reporting by railroads under the Board’s current rules do not capture FMLM performance and, thus, provide an incomplete picture of rail service. Not only does this undermine the accuracy of the performance reporting, but it prevents rail customers from being able to use the reporting to identify issues related to FMLM service, to adjust their operations to help mitigate the impact of the FMLM issues, and to engage railroads in commercial discussions about FMLM service and broader service matters. Yet, FMLM is where most service issues occur. Shipper Associations and their members thus encourage the Board to adopt FMLM reporting requirements.

As explained in Part III, Shipper Associations recommend that the Board require Class I railroads to report three categories of FMLM information weekly: overall transit performance (i.e., information about the end-to-end movement of cars); FMLM operational performance (i.e., information about how cars are moving and switches are operating on FMLM segments); and FMLM service-fulfillment information (i.e., information about whether switches are handling cars awaiting switching). Within each category, Shipper Associations recommend specific metrics for reporting, as follows:

Category	Metrics
Overall Transit Performance	<i>On-Time Placement Percentage</i> : the percentage of cars constructively or actually placed at their destination within one day of the original estimated time of arrival.
	<i>On-Time Placement Variation</i> : the difference between original estimated time of arrival and time of constructive placement, actual placement, or interchange to the next railroad (as applicable), measured in hours.
	<i>Terminal Dwell Time</i> : the time a car resides at a terminal location, expressed in hours, for each railroad's 20 largest terminals.
FMLM Operational Performance	<i>Serving-Day Performance</i> : the percentage of serving days that a railroad identifies for a facility where the facility received a switch for cars released or ordered in before the cutoff time for that serving day.
	<i>First-Mile Dwell Time</i> : the difference between the time a railcar is released for shipment until the railcar leaves the local yard on a line-of-road train, measured in hours.
	<i>Last-Mile Dwell Time</i> : the difference between the time of arrival of a car at a local yard, or other hold point pending actual placement, and the time the car is actually placed at the receiving facility, measured in hours.

Category	Metrics
FMLM Service-Fulfillment Information	<i>Switch-Delivery Percentage</i> : the percentage of all cars awaiting switching to their destination facility that were delivered on the next switch.
	<i>Switch-Origination Percentage</i> : the percentage of cars that a customer released to the railroad prior to a switch's cutoff time that were actually picked up by the railroad

Railroads generally would be required to stratify reported data by manifest traffic, unit-train traffic, and all traffic, and substratify the data by loaded cars, empty private cars, and all cars. They would also report the data at two levels: to the Board in aggregate form by railroad geographic subdivision, except as noted below; and to rail customers by customer facility and by each origin-destination pair of the customer's traffic, except as noted below.

Shipper Associations also recommend that the Board require railroads to provide next-in-line reports to rail customers. These reports would advise each rail customer when its facility is the next facility that will be switched by the serving local train.

I. The Board should require railroads to report their FMLM service performance.

FMLM performance reporting has become necessary to help rail customers address FMLM service issues. FMLM service issues are highly disruptive and costly for rail customers and have become common as railroads continue to pursue ever lower operating ratios. Existing rail service reporting does not capture these issues effectively, if at all, which marginalizes the utility of the reporting for rail customers when planning their operations and adjusting them to avoid service

problems. With railroad-reported information about FMLM issues and the credibility that information affords, rail customers will be better positioned to make operational adjustments to mitigate FMLM issues and to engage railroads in commercial discussions about FMLM service.

A. Poor FMLM service is common, costly, and disruptive.

FMLM service issues pose a large problem for rail customers. Not only are they highly disruptive to customers' businesses, but they also impose unnecessary costs on rail customers, can impact manufacturing processes, and can impair a rail customer's ability to avoid storage and demurrage charges.

Among the most significant FMLM service issues are switch problems, including cancelled switches, inconsistent switches, and car delivery and pickup failures; local yard dwell; and reductions in service days.

Cancelled switches have a highly disruptive impact on rail customers' businesses. Rail customers plan their operations and infrastructure largely around the service days that railroads assign to their facilities. If a railroad does not provide a switch on days it says it would, it can interrupt a rail customer's supply of loaded cars needed to support operations, deprive a rail customer of empty cars that it may need for the goods it produces, and prevent a rail customer from fulfilling its customers' orders. The impact of these cancelled switches is exacerbated by a reduction in service days many rail customers have experienced as part of railroads shifting to lean operating models. Put simply, a cancelled switch is even more important when the number of service days has already been reduced.

Car delivery and pickup failures have a similar effect. Even when a rail customer receives a switch, if the switch does not deliver a car that it was supposed to deliver or if it delivers the wrong type of car or a car containing the wrong commodity, or if it does not pick up a car that was released for transportation, the rail customer might not receive the cars it needs to maintain its operations or originate traffic when necessary to support the rail customer's own customer. Additionally, when a switch does not remove cars that it is supposed to pick up, it can leave a facility without sufficient space to accept inbound cars, potentially leading to demurrage or storage charges.

Inconsistent switch times also place significant burdens on rail customers. When a local train arrives to perform a switch, rail customers must be ready to receive cars and must have all of their outbound cars set out in accordance with the railroad's requirements; otherwise the railroad may not perform the switch, resulting in significant fees for demurrage, storage, or not being prepared for service. Some rail customers also must stop all in-plant switching activities when receiving a switch from a railroad, which in many cases involves stopping production operations at their facility because cars cannot be moved for unloading or loading. If a switch might occur at any time of day, it forces the rail customer to stage all outbound cars the day before the switch, which might be an impediment to the customer's operations until the switch occurs and is less efficient than being able to load and set out cars until the switch arrives. Also, if the railroad requires the rail customer's facility to cease or limit operations during switching by the

railroad, the customer may need to operate in reduced capacity so that it can dial back its operations on a moment's notice when the switch arrives.

Excessive local yard dwell also has a negative impact on rail customers. Rail customers carefully time their rail shipments to ensure that they arrive at their destination with a cadence that prevents a supply disruption or, in the case of empty movements, an inability to load or ship goods, while also not exceeding the destination's capacity to handle cars. When cars dwell for excessive periods at an origin or destination local yard, the destination facility could face a supply or empty-car disruption that prevents the facility from maintaining operations at current levels. For example, a disruption in empty-car supply may cause product that a facility produces to back up, requiring a reduction of operations. Additionally, when a car dwells for an extended period, subsequent shipments in the pipeline may catch up and bunch together with it. The result is that the destination may receive more cars at one time than it has the capacity to handle, resulting in demurrage or storage charges.

Reductions in service days also are disruptive and can be costly, and they compound many of the issues discussed above. When a railroad reduces a facility's service days, the facility essentially must hold onto cars that otherwise would have been received or shipped on the service day that the railroad eliminated. Many facilities do not have the rail infrastructure to hold the additional cars and are forced to build additional track, lease storage track, or incur demurrage or storage charges.

These issues are not hypothetical. Shipper Associations' members report that FMLM issues are responsible for the vast majority of rail service disruptions that they experience. Car delivery and pickup failures occur frequently, and railroads commonly do not provide switches on every service day. Many also observe that switching windows are unreliable and that, even if they were more reliable, they would be too broad to be of any value. Also, some members report excessive FMLM dwell times, sometimes up to 17 days, and situations where railcars get stuck in yards or a railroad is unable to deliver cars for an extended period because the railroad has blocked a member's siding. These issues are particularly concerning for rail customers that do not have access to competitive transportation options, and therefore lack meaningful recourse through commercial markets.

Further, Shipper Associations fully expect that these issues will continue to be a key cause of inadequate rail service, as many railroads have recently adopted lean operating models, like Precision Scheduled Railroading, which involve reducing crews, equipment, and service events. While this may please Wall Street, it has left many FMLM operations woefully understaffed and without sufficient equipment. It also has reduced service days for many rail customers.

B. The Board's current rail performance data reporting does not adequately capture FMLM issues.

Despite the problems that rail customers commonly face involving FMLM service, the service information that railroads report under the Board's current rail performance reporting rules are inadequate for identifying FMLM issues. As a result, many rail customers and the Board itself have little, if any, insight into

FMLM service performance, and the reported data provide an incomplete and potentially misleading view of overall rail service.

For manifest traffic, the Board's performance reporting rules do not require railroads to report FMLM-specific data. Instead, they require reporting of certain middle-mile data and other data that provide little insight into overall FMLM service. For example, the rules require reporting average number of trains holding per day, average number of cars with dwell of at least 48 hours, system-average train speed, and Chicago terminal statistics intended to identify fluidity of the gateway as a hub for traffic moving across the nation.

Additionally, while the reporting rules require reporting FMLM data for unit trains, this data is limited to origin dwell time.¹ This unit-train data has little relevance outside of unit-train traffic because unit trains, which involve the movement of a fixed train of cars between a single origin and single destination, are likely to require less FMLM service than manifest traffic, which involves gathering cars from multiple origins, consolidating them for movement toward a common destination area, and distributing them to multiple nearby destination facilities.

At bottom, the lack of FMLM information under the Board's performance data reporting ensures that the reported information provides an incomplete, if not misleading, picture of actual rail service. While the data may show a fluid system with few issues, it overlooks that rail customers may be experiencing significant FMLM issues that are resulting in poor overall rail-service performance.

¹ 49 C.F.R. § 1250.2(a)(4).

C. FMLM performance information from railroads is necessary for the Board and rail customers to identify and address FMLM service issues.

As explained above, FMLM service is a critical aspect of rail-service performance, but the Board's current service-performance reporting overlooks FMLM performance. To bridge this gap and, thus, enable rail customers and the Board to identify and address FMLM issues, the Board must require railroads to report their FMLM performance.

First, by requiring railroads to report FMLM performance, the Board will facilitate discussions between railroads and their customers to address FMLM issues. Many of Shipper Associations' members report that they are unable to advance discussions with railroads over FMLM performance without data. While members can create some FMLM performance data from their own observations, this data may be insufficient because it is limited generally to a single aspect of FMLM service—switch performance. Also, railroads commonly counter customer-generated data with their own data and metrics that measure or display performance differently. Board required FMLM reporting will provide customers with a baseline set of data to identify issues. Also, because FMLM reporting would include railroad-generated information that could be standardized across the industry, it will help eliminate questions of data credibility so that railroads and their customers can focus their conversations on solving issues rather than determining whether an issue exists.

Second, by providing rail customers with a broader picture of FMLM service than they currently have, Board-required FMLM reporting will better enable rail

customers to mitigate FMLM issues. FMLM reporting will help rail customers establish more accurate expectations about rail service. This will enable them to better plan their operations and shipments to reduce the impact of FMLM issues to the extent possible.

Third, FMLM reporting will allow the Board to engage in data-driven oversight of FMLM performance. Without a formal mechanism for collecting FMLM data, the Board's ability to accurately monitor end-to-end rail performance, verify claims of poor performance, and engage stakeholders to address rail-service issues is limited. To effectively carry out its oversight functions, the Board must have reliable and sufficient FMLM data.

II. Principles for establishing FMLM reporting.

As the Board identifies appropriate FMLM performance reporting, it should be guided by the principles identified in this Part II. Shipper Associations have designed these principles to help the Board focus on reporting requirements that are useful and appropriate.

A. Reported data should be objective.

Any FMLM data reporting that the Board establishes should be objective, meaning that it should be based on direct observation and not be influenced by personal opinions or interpretations, such as individual determinations of causation. This promotes what Shipper Associations view as a key goal of FMLM reporting, which is to advance the discussion of FMLM issues to identifying solutions. Subjective data stands in the way of this goal by inviting disputes over data validity, causation, and whether an FMLM issue even exists.

B. Reporting should reflect the FMLM service performance that rail customers receive.

FMLM reporting must show the impact of FMLM issues on the rail service that customers receive. This enables the Board and rail customers to use FMLM reporting to identify and address FMLM issues that are problematic.

Understanding the difference between actual and expected service levels is of critical, if not primary, importance to rail customers. Rail customers plan shipments and rail infrastructure investment around anticipated service levels, just like an air traveler selects flights and may add an overnight stay based on expected flight departure and arrival times. If expectations are inaccurate, a rail customer might not have a car when necessary to maintain its operations or might not have space available at its facility to receive cars. Similarly, an air traveler with inaccurate expectations may wind up stuck on a delayed flight when the traveler is supposed to be walking into a meeting or may wind up having to find overnight hotel accommodations because the traveler's flight was cancelled.² But unlike rail customers, air travelers have the benefit of mandated airline end-to-end service reporting to inform their expectations.³

² Air carriers are generally required by law to compensate passengers who are denied boarding involuntarily from an oversold flight. 14 C.F.R. § 250.5. Railroads, on the other hand, face no regulatory repercussions for the costs their service failures impose on their customers.

³ The U.S. Department of Transportation requires airlines to report various data related to on-time performance, baggage handling, denied boarding, and other service matters. *E.g.*, 14 C.F.R. pt. 234.

C. Performance measures should be standardized across railroads.

Data reporting should include performance measures that are standardized across all railroads. First, standardization reduces complexity because it ensures that performance measures mean the same thing for each railroad. Second, standardization enables rail customers to compare the performance of competing railroads so that rail customers open to competition can make an informed choice between railroads. This not only promotes competition, which is a policy of the U.S. Government,⁴ but it also helps rail customers avoid disruptions.

D. Rail customers should receive performance information specific to their facilities and shipments.

Rail customers should have access to FMLM reporting for their facilities and shipments. First, customers need FMLM performance information for each of their facilities because service issues on the first mile or last mile between a facility and the serving railroad's local yard are likely to impact all traffic moving into and out of the facility. Second, rail customers need shipment reporting on an origin-destination basis to ensure they have visibility into FMLM issues impacting their traffic at origins or destinations that are not their facilities. Third, reporting to customers for their specific facilities and shipments avoids confidentiality concerns. It prevents rail customers from monitoring FMLM performance that directly impacts their competitors or third parties to whom they do not ship or receive goods by rail.

⁴ 49 U.S.C. § 10101(5).

E. The Board should have access to information that reflects a meaningful aggregation of performance.

FMLM performance data reported to the Board should be aggregated at a meaningful level that enables the Board and public to broadly locate FMLM service issues but does not disclose sensitive commercial information about rail customers.

Although requiring railroads to report FMLM service to the Board on a local-yard basis would provide the Board and the public⁵ with an accurate picture of the locations and severity of FMLM service issues, it may be impractical and could expose sensitive commercial information about rail customers. For the Board to monitor FMLM performance at this level, it would need to regularly review data for hundreds of local yards across the country. Additionally, if this yard-specific data were made public, a rail customer's competitors could easily identify whether the customer is experiencing FMLM issues and use that information to win business away from the customer.

Conversely, requiring railroads to report FMLM performance aggregated on a whole-network basis would protect sensitive commercial information about rail service to an individual rail customer, but would not provide much insight into the location and severity of FMLM service issues.

The Board should adopt an appropriate balance of confidentiality and FMLM insight by requiring reporting at the service division or subdivision level. Shipper Associations understand that railroads typically divide their networks into multiple

⁵ We assume that the Board would not want to maintain a confidential dataset.

divisions or subdivisions, and the local yards and crew staffing are managed on a division or subdivision level. For example, Union Pacific Railroad has two service regions (Northern and Southern) that comprise five-to-ten geographic service units. Reporting at the division or subdivision level would enable the Board to broadly locate FMLM service issues but should be at a high enough geographic aggregation that the service performance could not be reliably identified to a specific rail customer's facility.

III. Recommended FMLM Reporting Requirements.

As explained in this Part III, Shipper Associations recommend that the Board require railroads to report information for three categories of performance related to FMLM issues: overall shipment performance, FMLM operational performance, and FMLM service-fulfillment performance. Shipper Associations further recommend that this information be reported at two levels: to the Board in a meaningful aggregation that enables it and the public to identify the location of material FMLM service issues without revealing sensitive commercial information of rail customers; and to rail customers with information specific to their facilities and traffic. Additionally, to reduce disruption associated with waiting for a switch and help ensure that rail customers are prepared when a switch arrives, Shipper Associations suggest that the Board require next-in-line reports to inform rail customers when their facility is the next facility a local train will switch, similar to how a furniture delivery company may provide a customer with a notice when the customer's home is the next stop of a delivery truck.

Shipper Associations have designed this recommended reporting to provide information that is most relevant to identifying and addressing FMLM issues that are material. In that vein, the performance categories captured by the reporting reflect three fundamental questions that Shipper Associations' members have regarding FMLM service:

- What is the impact of FMLM performance on car arrival times at their destinations?
- Are there any FMLM operational issues that may impact a customer's facility?
- To what extent did the railroad fulfill open switching requests?

Also, the recommended reporting is consistent with the principles articulated above in Part II, which are intended to ensure that reporting is appropriate and useful.

The recommended reporting reflects that the relationship between FMLM issues and the service levels that rail customers experience is complex and is difficult to accurately understand using any single metric. The recommended reporting thus identifies metrics that complement each other such that, when viewed as a whole and alongside performance data reported under 49 C.F.R. part 1250, they provide a reliable and useful indication of how FMLM issues are impacting service levels. Additional information, however, may be necessary to establish the root cause of FMLM issues.

Shipper Associations emphasize that their recommended reporting is an initial recommendation. As indicated throughout these comments, identifying meaningful FMLM reporting that does not place an undue burden on railroads is a complex endeavor. Thus, additional stakeholder input and follow-up inquiries by the Board, as well as additional evaluation by Shipper Associations, may identify various ways in which the recommended reporting may be improved. In fact, for these reasons, Shipper Associations, in Part IV below, emphasize that obtaining a full understanding of the data that railroads currently collect is important.

A. Overall Transit Performance Information.

To help the Board and rail customers identify the relationship between FMLM issues and overall transportation service, Shipper Associations recommend that the Board require railroads to report on-time placement percentage and on-time placement variation. For similar reasons, they also recommend that the Board require railroads to report terminal dwell for a broader set of terminals than they currently report, as explained in this subpart.

1. On-Time Placement Percentage (OTPP).

a. Definition.

OTPP is the percentage of cars constructively or actually placed at their destination within one day of the original estimated time of arrival (OETA). For

upstream segments of joint-line movements, the car's destination will be the interchange location with the subsequent railroad.⁶

For calculating OTPP, OETA means the estimated time of constructive placement (for cars that will be delivered to closed-gate facilities), actual placement (for cars that will be delivered to open-gate facilities), or interchange with the next railroad (for cars moving on an upstream segment of a joint-line movement) that a railroad calculates for a car when the car is released to the railroad at origin or received in interchange by the railroad.

b. Purpose.

OTPP data is intended for use in conjunction with other measures to identify the quantity of car movements that do not meet arrival-time expectations due to FMLM issues. Because the quantity of cars whose delivery is impacted by FMLM issues relates to the overall severity of the issues, OTPP provides important context for determining whether FMLM issues warrant attention.

To use OTPP to identify the severity of FMLM issues, rail customers or the Board would view OTPP data alongside other FMLM performance data and the railroad performance data reported under Part 1250, which generally focuses on middle-mile transportation. If Part 1250 data show a fluid rail network, but OTPP shows a low percentage of on-time arrivals, an FMLM issue may be having a

⁶ The separate calculation of OTPP for each segment of a joint-line movement reflects our understanding that each participating railroad typically issues an OETA only for its segment and does not have sufficient information about the other participating carriers' networks to generate a reliable OETA for the entire joint-line movement.

material impact on a large number of car movements. Conversely, if Part 1250 data show a slow-moving network and OTPP shows a low percentage of on-time arrivals, FMLM performance would not likely be having a clear impact on a large number of car movements. Additionally, an OTPP that shows a high percentage of on-time arrivals may indicate that few car movements are experiencing material FMLM issues. Further validation using other FMLM performance data, such as those involving local-yard dwell, cancelled switches, and switch fulfillment would provide additional information about the degree to which an FMLM issue may be impacting shipments.

At bottom, OTPP is useful for evaluating the quantity of car movements that are impacted by FMLM issues.

2. On-Time Placement Variation (OTPV).

a. Definition.

OTPV is the difference between OETA and time of constructive placement, actual placement, or interchange to the next railroad (as applicable), measured in hours. It should be calculated and reported both using non-absolute values, where a negative time difference indicates an early arrival, and using absolute values.

b. Purpose.

OTPV shares the same general purpose as OTPP, which is to provide the Board and rail customers with information to identify the impact of FMLM issues on car movements. But whereas OTPP may indicate the scope of cars impacted by

FMLM issues, OTPV indicates the magnitude and direction of the impact on arrival performance.⁷ This information is important for several reasons.

First, it is a key factor in whether an FMLM issue is in fact a problem. As previously explained, cars that do not arrive at their destination when expected are likely to have a disruptive and costly impact at the destination facility because its need for and ability to handle the cars, including whether it has sufficient staff on hand to receive cars, is tied to the cars' expected arrival time. The further a car arrives from its expected arrival time (either early or late), this impact will probably be greater because the arrival will be less tied to the facility's need for and ability to accommodate the car. It is no different with airline delays, which generally cause greater disruptions to passengers as they grow longer. Thus, to understand whether an FMLM issue warrants attention, it is necessary to understand the magnitude of the issue's impact on arrival time.

Second, the magnitude and direction of on-time performance variability are both necessary to help rail customers adjust their arrival expectations to mitigate the impact of both early and late arrivals. The direction information afforded by OTPV based on non-absolute numbers helps a rail customer and the Board

⁷ To illustrate, if a railroad delivers one car 48 hours early and another 96 hours late, the non-absolute-value OTPV would be 24 hours, even though both cars were delivered far in excess of 24 hours before and after their OETA. By comparison, the absolute-value OTPV would be 76 hours, which better reflects the actual on-time variation than the non-absolute-value OTPV. Together, these values indicate a high degree of variability. In contrast, if the non-absolute-value OTPV was 76 and the absolute-value OTPV was 96, they would indicate that a customer could expect railcars to be delivered around 96 hours late.

understand if cars are arriving early or late. Without this understanding, rail customers will find it difficult to adjust their shipping activities to account for service variability. Additionally, an absolute-value OTPV would provide a more accurate indication of the magnitude of variability because early and late arrivals would not off-set each other as they would when calculating OTPV using non-absolute values. This magnitude information will both help rail customers determine the appropriate degree of activity to address variability and provide the Board a fuller picture of variability.

3. Terminal Dwell Time.

a. Definition.

Terminal Dwell Time means the time a car resides at a terminal location, expressed in hours, beginning with a customer release, received interchange, or train arrival event and ending with customer placement (actual or constructive), interchange offering or delivery, or train departure event. It excludes cars that move through the terminal on a run-through train and stored, bad-ordered, and maintenance-of-way cars.

This definition is consistent with the AAR terminal-dwell measure that railroads generally have adopted for reporting terminal dwell under 49 C.F.R. § 1250.2(a)(2). But, under Shipper Associations' recommended reporting, Terminal Dwell Time would be reported for each railroad's 20 largest terminals instead of 10 largest terminals, which is what railroads currently report under Part 1250.

b. Purpose.

Terminal Dwell Time is useful for determining whether FMLM issues or middle-mile issues are impacting delivery expectations for an entire joint-line movement. Without this information, the Board and rail customers might unwittingly focus attention on addressing FMLM issues when middle-mile issues are having a greater impact on the overall movement.

This problem arises because, for joint-line movements, arrival performance using the delivering railroad's arrival estimates may mask interchange delays. Because downstream railroads are permitted to generate their OETAs *after* interchange and any corresponding delays have occurred,⁸ their OETAs will inherently account for the preceding interchange delay. It follows that arrival performance based on these OETAs will indicate that the traffic did not experience an interchange delay. This masking of interchange delay may make any FMLM and other delays that appear when examining arrival and other performance data seem like the only delays that occurred.

The recommended terminal-dwell reporting would reveal this masking issue by providing dwell data for interchange locations. While some of this data is reported under Part 1250, the Part 1250 reporting does not include many critical terminals. For example, New Orleans is an important interchange location for

⁸ The Board's demurrage billing rules contain the only requirement that railroads provide an estimated time of arrival. *See* 49 C.F.R. § 1333.4(d)(1). Although the requirement directs railroads to provide the estimate promptly after interchange, this could be days after the interchange. *See id.*

traffic moving from the Gulf Coast to the eastern United States, but no railroad reports terminal dwell for New Orleans under Part 1250. Memphis and St. Louis are also key interchange points for traffic moving between the western and eastern United States, but of the five Class I railroads that serve each location, only two report terminal dwell for Memphis under Part 1250 and none report terminal dwell for St. Louis. The recommended terminal-dwell reporting would likely correct for these deficiencies because it effectively expands the Part 1250 reporting to each railroad's 20 largest terminals.

B. FMLM Operational Performance Information.

To help the Board and rail customers anticipate, identify, and address FMLM issues, Shipper Associations recommend that the Board require railroads to report Serving-Day Performance, First-Mile Dwell, and Last-Mile Dwell.

1. Serving-Day Performance.

a. Definition.

Serving-Day Performance means the percentage of serving days that a railroad identifies for a facility where the facility received a switch for cars released or ordered in before the cutoff time for that serving day.

This definition reflects Shipper Associations' understanding that railroads internally plan to provide switches to facilities on certain days. It also reflects that Shipper Associations' members generally do not expect to receive a switch for outbound cars that have not been released before the cutoff time for the switch, inbound cars to open-gate facilities to the extent the cars had not arrived in the local yard before the cutoff time for the switch, and inbound cars to closed-gate

facilities to the extent the cars were not ordered in before the cutoff time for the switch.

b. Purpose.

Serving-Day Performance is useful for identifying whether railroads are providing switches when they say a facility will be switched.

For Shipper Associations' members, this information is critical for multiple reasons. One, a railroad's failure to provide a switch on a serving day is highly disruptive and costly. When an expected switch does not occur, a facility might not receive a loaded or empty car that it needs to maintain its operations, and the transit times for impacted movements increase. To address these impacts, a rail customer may need to increase storage at its facility and, if it uses private cars, increase the size of its private-car fleet, both of which are costly. Two, the switch failure essentially strands cars that need to begin their transportation to reach their destination on time. Thus, the failure impacts not only the facility that failed to receive the switch, but also the facilities that receive traffic from the facility that experienced the switch failure.

2. First-Mile Dwell Time.

a. Definition.

First-Mile Dwell Time means the difference between the time a railcar is released for shipment until the railcar leaves the local yard on a line-of-road train, measured in hours.

b. Purpose.

This information provides the duration of the first mile of transportation, which has multiple uses. For one, the Board and rail customers can use this information to ascertain whether fluidity issues are developing or clearing on the first mile and, thus, anticipate changes to FMLM service levels. For another, while this data is not directly correlated to arrival delays, the Board and rail customers can use this data in conjunction with other FMLM data, like OTHP and OTHV, and with Part 1250 middle-mile service data to develop an informed estimation of delay attributable to first-mile issues. This can be useful for determining whether first-mile issues warrant attention and for quantifying the impact of these issues on rail customers, including the sizing of their private-railcar fleets.

3. Last-Mile Dwell Time.

a. Definition.

Last-Mile Dwell Time means the difference between the time of arrival of a car at a local yard, or other hold point pending actual placement,⁹ and the time the car is actually placed at the receiving facility, measured in hours.

Shipper Associations also recommend that, for closed-gate facilities, the Board consider requiring railroads to report constructive-placement dwell time—which is the time between when a railroad provides notice of a car’s constructive placement and when the rail customer orders the car into its facility—and actual-

⁹ Shipper Associations chose to define Last-Mile Dwell Time in terms of arrival at any hold point pending actual placement because we understand that, when local yards are congested, railroads may hold cars short of local yards or at alternative yards. *See, e.g.*, UP 6004-C, Item 9650-B § 9 (defining “constructive placement”).

placement dwell time—which is the time between when a rail customer orders a car into its facility and when the railroad actually places the car at the facility. These dwell metrics would help identify the extent to which last-mile dwell is attributable to the railroad versus the customer and, thus, could provide useful insight into last-mile dwell issues.

b. Purpose.

This information provides the duration of the last mile of transportation, which has multiple uses similar to the uses identified above for First-Mile Dwell Time. First, the Board and rail customers can use this information to ascertain whether fluidity issues are developing or clearing on the last mile and, thus, anticipate changes to FMLM service levels. Second, the Board and rail customers can use this, other FMLM data, and Part 1250 middle-mile service data together to develop a close approximation of delay attributable to last-mile issues. This can be useful for determining whether last-mile issues warrant attention and for quantifying the impact of these issues on rail customers, including the sizing of their private-railcar fleets.

C. FMLM Service-Fulfillment Information.

To help the Board and rail customers identify whether switches are actually picking up and delivering traffic awaiting switching, Shipper Associations recommend that the Board require reporting of Switch-Delivery Percentage and Switch-Origination Percentage.

1. Switch-Delivery Percentage (SDP).

a. Definition.

SDP means the percentage of all cars awaiting switching to their destination facility that were delivered on the next switch. For cars destined for a closed-gate facility or cars on constructive placement for an open-gate facility, the cars are awaiting switching if they have been ordered in before the cutoff time for the switch and had not already been actually placed. For cars destined to an open-gate facility that are not constructively placed, they are awaiting switching if they arrived in the local yard before the cutoff time for the switch, if applicable, and have not been actually placed.

b. Purpose.

SDP indicates the extent to which switches are delivering the cars that they should be delivering. This enables the Board and rail customers to understand whether a material last-mile issue exists even though a facility may be receiving switches on all of its service days.

2. Switch-Origination Percentage (SOP).

a. Definition.

SOP means the percentage of cars that a customer released to the railroad prior to a switch's cutoff time that were actually picked up by the railroad.

b. Purpose.

SOP indicates the extent to which switch crews are picking up the cars that they should be picking up. This enables the Board and rail customers to understand

whether a material first-mile issue exists even though a facility may be receiving switches on all its service days.

D. Reporting Periods and Elements.

Shipper Associations propose that the Board require railroads to report the overall transit performance information, FMLM operational-performance information, and FMLM service-fulfillment information identified above to the Board and to rail customers separately in accordance with the requirements in this Part III.D. These reporting specifications are intended to ensure that the information that Shipper Associations have identified for reporting are reported in a meaningful and usable manner.

1. Information should be reported on a weekly basis consistent with the rules under Part 1250.

For the Shipper Associations' recommended FMLM reporting to the Board, Shipper Associations propose that railroads report information pursuant to the Board's railroad performance data reporting rule at 49 C.F.R. § 1250.1(b). Shipper Associations also propose that the information be based on a weekly reporting period beginning on 12:01 a.m. Saturday and ending 11:59 p.m. Friday, which is the reporting period that generally applies to railroad performance data reported under 49 C.F.R. part 1250.

For Shipper Associations' recommended FMLM reporting to rail customers, Shipper Associations propose that each railroad provide rail customers the report information via its website and for download in machine-readable format by 5 p.m. Eastern Time on Wednesday of each week, which is generally consistent with the

requirement at 49 C.F.R. § 1250.1(b). The reporting period for the report information would be the same as the period applied to reporting to the Board, except that the reported information should also be provided for the 180 days ending 11:59 p.m. on the preceding Friday.

For Terminal Dwell, however, Shipper Associations recommend that each railroad report this information to the Board only and on a weekly basis consistent with the requirements at 49 C.F.R. §§ 1250.1 and 1250.2(a), except that reporting would be for each of the railroad's 20 largest terminals. Railroads would not be required to include Terminal Dwell in their FMLM reports to rail customers.

Also, for Serving-Day Performance, Shipper Associations suggest that railroads would be required to report this information to rail customers for their own facilities only, and not by origin-destination pairs of their traffic. The purpose of this is to protect the sensitive commercial information of each rail customer.

Shipper Associations have developed these reporting requirements to maintain consistency with the Board's reporting requirements under Part 1250 and to help ensure that rail customers have meaningful data. The trailing-180-day reporting is necessary to provide a calculation of OTPP that provides historical context and is meaningful for low-volume facilities and origin-destination pairs.

2. Railroads should report information to each rail customer only for its facilities and traffic.

When reporting the recommended FMLM information to rail customers, railroads should provide each customer with the information only for the customer's facilities and the customer's traffic. Additionally, the information should be

stratified by each of the customer's facilities and by each origin-destination pair of the customer's traffic.

This level of reporting is necessary to enable a customer to identify the extent to which FMLM issues are impacting its facilities and the third-party origins or destinations of traffic moving to or from its facilities. The origin-destination pair data is especially useful for identifying potential issues at a rail customer's supplier or customer facility that might result in a supply disruption for the rail customer or its own customer.

3. Information that railroads report to the STB should be aggregated and stratified by railroad operating regions.

When reporting the recommended FMLM information to the Board, railroads should aggregate and stratify the data by its geographic subdivisions.

As explained in Part II.E above, the FMLM information reported to the Board should indicate where performance issues are occurring. Reporting that is aggregated and stratified by each railroad's geographic subdivisions enables the Board to engage railroads more efficiently on FMLM performance. It would also provide useful information to rail customers for deciding where to source goods that move by rail or where to send private cars for repair.

To determine the appropriate railroad subdivision level for this stratification, Shipper Associations believe that insight from railroad stakeholders is necessary. This insight would be especially helpful if it identifies the extent to which: local-yard staffing, management, and equipment are shared within railroad operating subdivisions; and FMLM performance is uniform throughout subdivisions.

4. Information should be stratified by manifest traffic, unit-train traffic, and all traffic, and by loaded cars, empty private cars, and all cars.

The Board should require that railroads stratify the information they report to the Board by manifest traffic, unit-train traffic, and all traffic. It also should require stratification of information reported to the Board and rail customers by loaded cars, empty private cars, and all cars.

Stratifying information reported to the Board by traffic type provides at least two benefits. First, it gives the Board and the public a more accurate view of FMLM performance. FMLM performance may differ significantly between unit-train traffic and manifest traffic because unit trains move with greater efficiency than manifest traffic.¹⁰ Unit trains also do not require the same level of FMLM service at local yards since all the cars move together in a single block from origin to destination, often bypassing the local yard entirely. Thus, combined performance information for unit-train and manifest traffic probably would not accurately reflect the FMLM performance actually experienced by either unit-train or manifest traffic. Second, reporting information for all traffic alongside information for unit-train and manifest traffic may help the Board determine the extent to which FMLM issues impacting manifest or unit-train traffic warrant attention. For example, where FMLM performance for all traffic and manifest traffic are similar, but FMLM performance stratified by unit-train traffic appears materially worse, the unit-train

¹⁰ See United States Rail Service Issues-Performance Data Reporting, 81 Fed. Reg. 87,472, 87,478 (Dec. 5, 2016) (noting a railroad's statement that unit trains are built for speed and efficiency, while manifest trains require more holding time).

traffic may be a small percentage of the overall traffic. Having information stratified for all traffic thus provides important context for evaluating FMLM performance.

Stratifying reported information by car type also provides important benefits. First, it reflects that the handling of loaded cars is of prime importance for all rail customers. Second, it reflects that many rail customers do not use private cars, and thus, FMLM data for all cars, which would include private empty cars, may not be as relevant to them as data for loaded cars. Additionally, to the extent that private empty cars are experiencing poorer performance than loaded cars (or vice versa), data reported for all cars might not provide an accurate picture of FMLM performance for loaded cars. Third, it reflects that rail customers that use private cars—this includes any rail customer that uses a tank car—have a strong interest in identifying FMLM issues that are causing delay for empty-car movements. These rail customers need an accurate understanding of issues impacting the expected delivery of their empty cars to avoid maintaining oversized car fleets and associated infrastructure, which are costly.

5. Railroads should be required to disclose OETA, facility service days, and switch cutoff times to customers.

To promote rail customers' understanding of reported FMLM information and facilitate collaboration between rail customers and railroads on FMLM issues, the Board should require railroads to disclose to rail customers the underlying criteria for the reported FMLM information. These criteria would include OETA, service days for customer facilities, and cutoff times for switches, as explained below.

Without the criteria used to generate the reported FMLM information, rail customers probably would misinterpret the information or find it unhelpful. For example, if a rail customer does not know the criteria used to generate reported information, it might not understand why the information does not jibe with its perception of FMLM performance or its internal measures of FMLM performance. Similarly, if a customer has an incorrect understanding of the criteria used to generate reported information, it may misinterpret the information and form an incorrect understanding of actual FMLM performance.

Additionally, requiring disclosure of the criteria underlying reported FMLM information promotes productive collaboration between railroads and their customers. It helps to eliminate any gap in a railroad's and its customer's understanding of reported information so that they can focus their conversations about FMLM performance on solutions rather than whether performance was measured correctly.

Disclosure of the measuring criteria used to generate reported FMLM information will also help customers understand the service levels that railroads are providing them. For example, disclosure of serving days at customer facilities will indicate to customers the extent to which the railroad plans to switch their facilities. With this information, rail customers will be better prepared to engage railroads in commercial discussions about the service levels the customers receive.

E. Next-In-Line Reporting.

To help significantly reduce the disruptions and costly errors associated with switching, the Board should require railroads to provide a next-in-line report to rail

customers indicating when the rail customer's facility is the next facility that a local train is scheduled to switch. The report should be generated when the local train bound for the facility arrives at the preceding facility.

Switching can result in disruption to rail customers' facilities and to railroads for several reasons. One, because railroads often do not abide by switching windows and may refuse to receive cars that are not staged for pickup in accordance with their specifications, many customers stage cars for switching the day before the switch. While this helps ensure that cars are ready for switching when the switch arrives, it may limit a customer's internal operations until the switch is performed. Two, railroads may require a facility to slow or shut down operations during a switch. Three, if a switch takes too long, the local train will incur delay, increasing the expense for the railroad and disruption to downstream customers, especially if the train needs to skip customers to ensure the crew does not exceed its duty-time limits.

Facilitating an accurate understanding of when a switch will occur can help to reduce this disruption. Customers with an accurate understanding of when they will receive a switch do not need to stage cars well in advance of the switch. This may enable them to avoid disruption if staging limits their operations. It also enables them to essentially work up to the switch, staging cars that would not have been ready for staging further in advance of the switch. Additionally, if a customer needs to shut down or curtail operations during a switch, an accurate understanding of when the switch will occur enables the customer to avoid being in

an extended state of reduced operation so that they can shut down on a moment's notice when the switch arrives. Next-in-line reporting thus enables rail customers to conduct operations without fear of having to stop on a moment's notice or fear that they will not have enough time to add a car to the block of cars that are ready for switching.

While railroads typically provide switch windows to help customers anticipate when a switch will arrive, these are inferior to next-in-line reports. First, the switch window can be lengthy, causing the customer facility to be in a reduced operational state for long period while it awaits the local train. Second, railroads do not guarantee that their local trains will arrive during the switch window. A local train can arrive before the window, catching a facility off guard and unprepared for service.

At bottom, the Board should require next-in-line reporting to help significantly reduce the disruptions that switches impose on rail customers and to help rail customers ensure they are prepared for switches.

IV. The Board and stakeholders require a full understanding of railroads' current data practices to inform FMLM reporting requirements.

The Board and rail customers face several common challenges in this proceeding. The most notable of these is that the prevalence of knowledge about the collection and existence of desirable data lies solely in the possession and control of the Class I railroads. If the Board's goal is to provide access to meaningful FMLM performance information without unduly burdening railroads, knowledge of such information is critical to the ability of stakeholders to propose, and the Board to

adopt, meaningful data requirements that are practical and reasonably attainable. To this end the Board should consider ways to gather a better understanding from the railroads of what data is currently collected and what is possible. The Board can approach this task in several ways.

First, there are traditional means such as public hearings and requests for comments. But those are dependent to a significant degree upon railroads voluntarily providing full and complete information. While we hope the railroads recognize the value in accurate FMLM reporting and thus voluntarily provide complete information, in absence of that participation, the Board itself may need to submit interrogatories to the railroads and hold hearings, or perhaps workshops, to follow up and delve deeper into the railroad responses.

Second, the Board could rely upon stakeholders to obtain relevant information from the railroads through discovery. To be effective, the Board would need to make the full panoply of discovery available to stakeholders, including interrogatories, document requests, and depositions. The principal downsides to this approach, however, are its dependence upon stakeholders' ability to expend the resources required for such discovery, the requirement that the railroads respond to discovery requests from multiple stakeholders, and the inability of the Board to directly engage with the railroads.

Third, a hybrid of the first and second approaches—whereby the Board first solicits comments on the type of information that railroads should, and can, provide, followed by a consolidated set of information requests issued by the Board itself,

leading to workshops with the railroads, and culminating in a public hearing—is favored by the Shipper Associations. This has the potential to realize the benefits of both approaches without their most significant drawbacks.

A fourth option is a negotiated rulemaking, which involves convening a committee of stakeholders to reach a consensus on the text of a proposed rule.¹¹ It facilitates discussions among the agency and stakeholders that allow agency staff to obtain a better understanding of stakeholder positions and the practical consequences of alternative approaches.¹² It also provides stakeholders an opportunity to directly question each other’s positions with the goal of reaching an agreeable solution.¹³ For example, a negotiated rulemaking could provide an understanding of the type of FMLM data that railroads track, whether internal FMLM scorecarding by railroads would be relevant for identifying and addressing FMLM issues, and the burdens associated with reporting certain FMLM data. Similarly, collaboration under a negotiated rulemaking may provide the Board and railroads with an understanding of the impact of FMLM issues on rail customers, of rail customers’ potentially differing views on the FMLM information they need to inform their operations, and of whether certain forms of reporting are burdensome to rail customers or prevent rail customers from making full use of the reported data. But the ultimate success of a negotiated rulemaking depends upon the

¹¹ 5 U.S.C. § 566.

¹² David M. Pritzker & Deborah S. Dalton, Negotiated Rulemaking Sourcebook 3, 4 (1990).

¹³ *Id.* at 4.

cooperation of the Class I railroads to participate in an open, meaningful, and constructive dialogue. If their objective is to stiff-arm all attempts to establish FMLM metrics, a negotiated rulemaking is doomed to failure. Thus, before even considering a negotiated rulemaking, the Board must be fully satisfied that railroad stakeholders would be cooperative participants.

* * *

Shipper Associations thank the Board for this opportunity to provide feedback on potential FMLM reporting and for the Board's efforts to address FMLM service issues.

Respectfully submitted,

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Dated: December 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

COMMENTS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. ("CSXT") appreciates the opportunity to provide information about first mile/last mile service in response to the Board's request for comment in the above-captioned proceeding. The Board's decision invites comments on a variety of issues relating to first mile/last mile service and metrics, some of which appear directed to shippers and shipper organizations while others appear directed to rail carriers. The Board's decision specifically seeks comment from rail carriers on data relevant to first mile/last mile service. In these comments, CSXT responds to the Board's inquiry by providing an overview of the many tools it has made available to customers for service visibility and supply chain management. CSXT also joins in the comments of the AAR.

CSXT is focused on providing high quality transportation service and customer service. The ability to provide such service is critical to CSXT's ability to compete with other transportation providers and to its overall success. CSXT's software platform, ShipCSX, is recognized as best in class, and CSXT continues to invest to upgrade and improve the tools within it. As described below, ShipCSX provides shippers with extensive information allowing them to monitor their

service throughout the movement, including first mile/last mile service. CSXT believes that this type of detailed, customer-specific information is most useful to its customers' ability to conduct business and monitor their service levels, and that today's marketplace and competitive incentives already encourage railroads to provide customer-centric informational tools that make rail an increasingly attractive option. One-size-fits-all regulation in this area is unnecessary and could be detrimental to further innovation as railroads compete to win customers and work to establish tools that are the right fit for their customers.

I. ShipCSX has a number of tools to help customers manage their supply chains and that provide visibility into first mile/last mile service

CSXT is a leader in delivering online tools to its customers through its sophisticated software platform, ShipCSX. One of the top priorities for CSXT's customers is supply chain visibility, and in that regard CSXT has developed numerous innovative tools within ShipCSX to communicate with customers and help them manage their supply chains. Last year, CSXT embarked on a multi-year effort to upgrade and rebuild the ShipCSX platform with user-friendly tools and faster quotes, and additional features continue to be rolled out to customers. As it has in the past, CSXT continues to partner with its customers in developing tools and holds customer workshops where it provides training and gathers customer feedback.

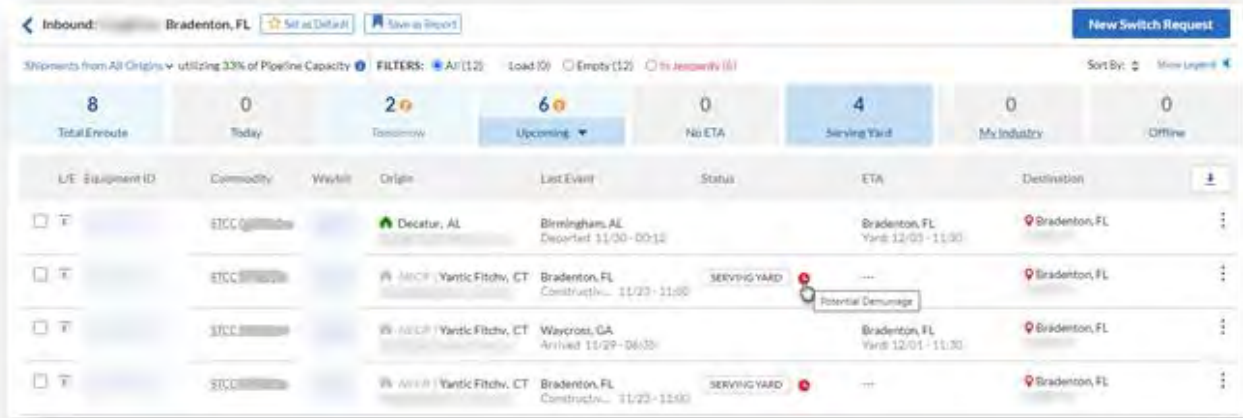
An entire section of the ShipCSX platform is devoted to tools to help customers track and trace their shipments. These tools allow customers to: (i) trace their shipments by equipment ID and location, (ii) view expected inbound and

outbound shipments, (iii) view the history and details associated with a shipment, including last event, (iv) view pipeline capacity, and (v) request actions (such as placement, switching, diversions, etc.). ShipCSX also has tools allowing customers to: (i) easily view, dispute, and pay invoices, (ii) expedite customer service complaint filing and handling, (iii) view bills of lading and provide shipping instructions, and (iv) make price inquiries and lookups, among others. The Trip Plan Performance module (discussed below) provides additional transparency. And in addition to all of these tools available within the platform, ShipCSX also notifies customers directly in a number of circumstances, including pipeline alerts, estimated arrival at customer notifications, and work order and work order exception notifications.

The screenshots below illustrate the kind of information and tools that ShipCSX provides to customers. For example, Figure 1 shows the information and tools available to customers when they choose to trace their shipments by location.¹ Customers are able to view detailed information through this tool. They are able to: (i) filter by loaded, empty, not available, and those in jeopardy of accruing charges, (ii) view total equipment that is en route with details on when the equipment is expected, (iii) view the last event relative to each equipment ID, and (iv) request actions.

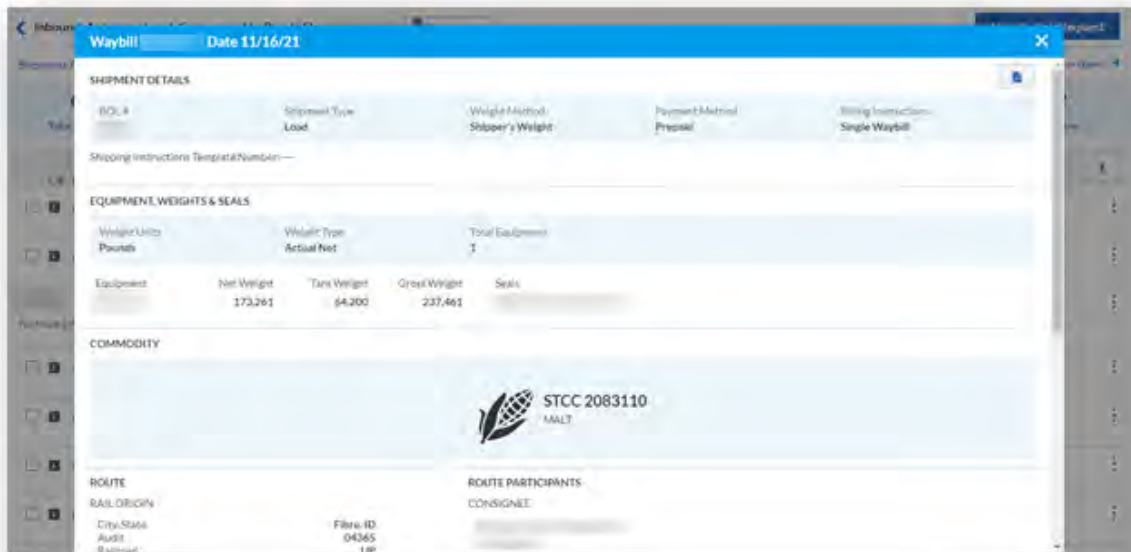
¹ The screenshots provided in Figures 1-5 have been redacted to remove any identifying customer data.

Figure 1 – Track and Trace Overview



Customers are also able to access shipment details by selecting the waybill number. As shown in Figure 2, this allows customers to view the route, route participants, and bill of lading and waybill information per shipment, among other details.

Figure 2 – Track and Trace Waybill Detail



ShipCSX also notifies customers directly in a number of circumstances. Figure 3 shows an example of a work order notification and the information it provides, including work that is planned and plant capacity.

Figure 3 – Work Order Notification

					
Work Order Notice: 4851412203					
Work Order: WO357470 Train ID: Y19629			Rev: 00 11/29/2021 04:03 Departure: 11/29/2021 07:54		
Inventory Details					
Plant Capacity			Plant Characteristics		
Plant Capacity = 9 Available Plant Capacity = 8 Inventory Summary: Industry = <u>11</u> Yard = <u>1</u> En Route = <u>5</u>			Days of Service: Mo We Fr Your location is "open gate" for all traffic. Definitions: - "Open gate" traffic will be placed directly at your location upon arrival. - "Closed gate" traffic will be constructively placed and requires a placement request to be spotted.		
Switch Summary					
Customer Switch Request			Work Order Summary		
	<u>Loads</u>	<u>Empties</u>		<u>Loads</u>	<u>Empties</u>
Places	0	0	Places	1	0
Pulls	0	1	Pulls	0	1
IntraPlants	0	0	IntraPlants	0	0
Off Spot	0	0	Off Spot	0	0
Work Order: WO357470 Rev: 00 11/29/2021 04:03					
Instruction	Equipment	L/E	Car Type	STCC	Description
PLACE TO INDUSTRY		L	C114	2046715	CORN GERM OR CORN OIL
PULL FROM INDUSTRY		E	C113	0113215	CORN (NOT POPCORN) OR
(*) Denotes car has been added to the Work Order.					

ShipCSX also includes a Trip Plan Performance module. Launched in late 2019, Trip Plan Performance measures success in meeting end-to-end customer

commitments based on the planned estimated time of arrival. CSXT believes it remains the only rail carrier (Class I or otherwise) providing customers with this level of transparency into delivery performance. Trip Plan Performance provides customers with information on how well CSXT is complying with the trip schedules it generates for each container, trailer, and carload shipped by CSXT at the system, location, and lane level. Trip Plan Performance provides unparalleled transparency to customers about service performance. For example, Figure 4 shows the type of performance reports available through Trip Plan Performance. Data is viewable in 30, 60, and 90 day periods and provides information for total shipments and shipments by receiver locations.

Figure 4 – Trip Plan Performance Report

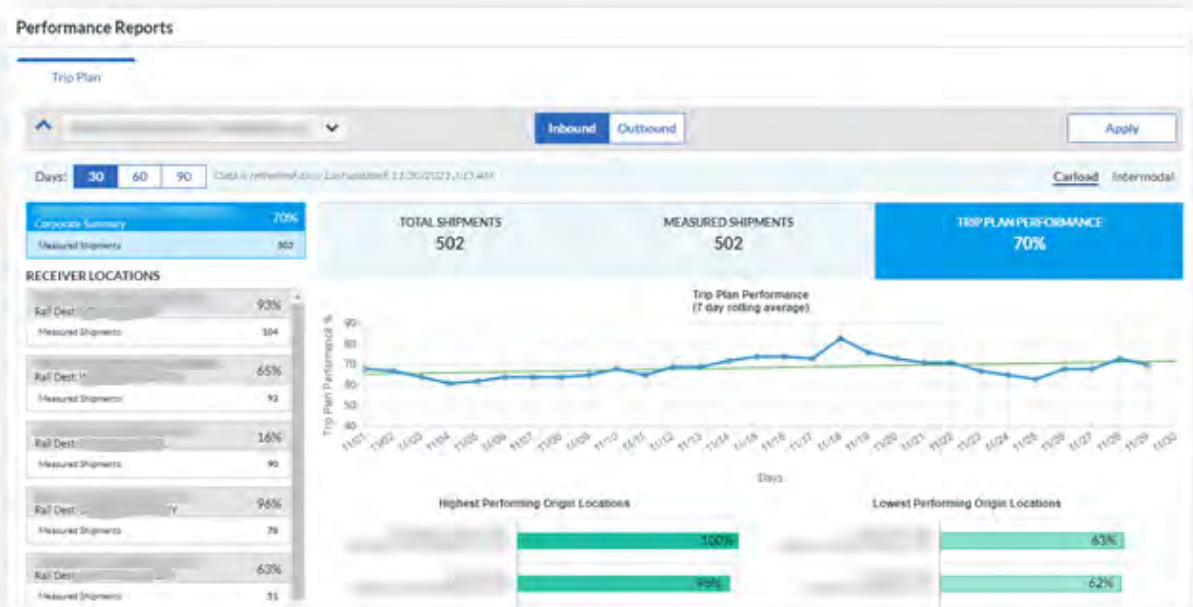
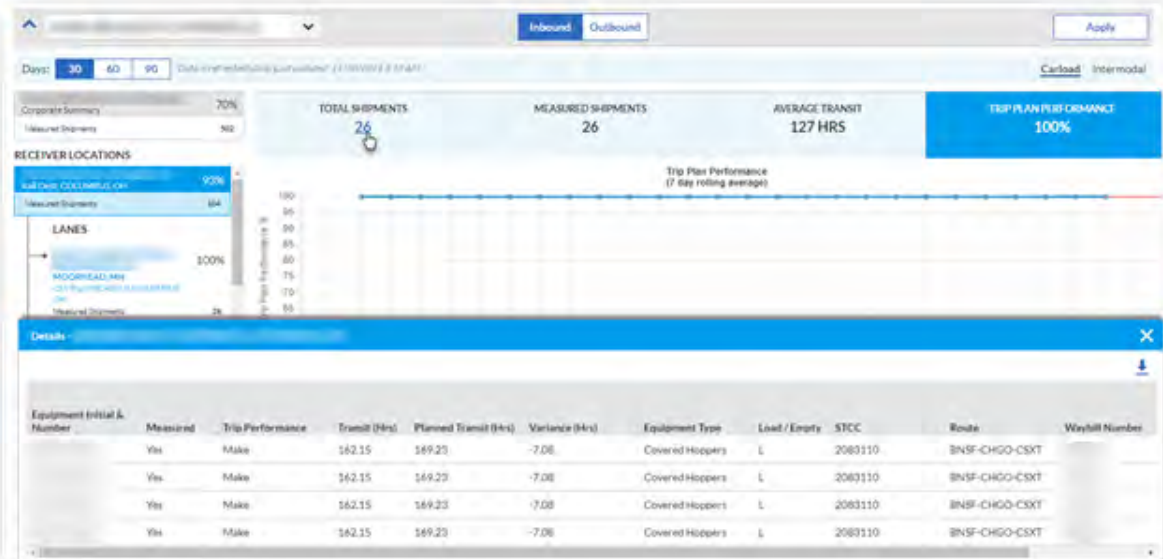


Figure 5 shows the additional level of detail available for each shipment, including the variance between planned transit time and actual transit time.

Figure 5 – Trip Plan Performance Report (Shipment Detail)



Taken together, these tools provide customers with extensive information specific to their facilities and visibility into their service, including first mile/last mile service. CSXT continues to explore and develop tools to provide information and transparency related to CSXT’s local service. CSXT provided a tutorial of some recent enhanced features to the Board’s Office of Public Assistance, Governmental Affairs, and Compliance earlier this year, and would be pleased to provide a similar demonstration of ShipCSX’s features to the Board. Customer service and the provision of service information is one of the many areas in which CSXT competes with other railroads and other modes of transportation. CSXT is committed to continued exploration of ways to enhance its customer tools.

II. Customer-specific information is more useful than aggregated metrics

As discussed above, CSXT provides up-to-date customer-specific information related to first mile/last mile service directly to the customer in a convenient online platform and through direct notifications to customers. That information, provided for each location or railcar individually, is the best source of real time performance data.

Some parties have advocated that the Board adopt some form of aggregated data reporting for first mile/last-mile service, and the Board has appropriately asked those parties to submit more concrete proposals in this proceeding. First mile/last mile service poses many complexities that make it challenging to develop an aggregated data reporting metric that would be a reliable signal of railroad performance. First mile/last-mile performance is often impacted by the actions of others in the supply chain and events outside a railroad's control. And developing a meaningful across-the-board measure is difficult because of variations in customer requirements, such as whether a facility is open or closed, and the different characteristics of merchandise, intermodal, and unit train services. CSXT will review the opening comments with care, and expects to comment on any new reporting proposals in Reply.

III. Conclusion

CSXT appreciates the Board's desire to gain fuller insight into first mile/last mile service, but does not believe that regulation in this area is necessary. CSXT is already providing detailed pipeline management information to its customers and

continues to work with customers to develop new and useful tools. This focus on providing high quality customer service is critical to CSXT's ability to compete, and the Board should allow these market processes to work. CSXT looks forward to reviewing the opening comments from other parties and to addressing those comments on reply.

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Respectfully submitted,

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Dated: December 17, 2021

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

OPENING COMMENTS ON BEHALF OF CN

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Dated: December 17, 2021

The U.S. rail operating subsidiaries of Canadian National Railway Company (hereafter “CN”)¹ respectfully submit these comments in response to the Board’s decision requesting comment about first mile/last mile service and metrics served on September 2, 2021, in the above-captioned proceeding. The decision specifically seeks comment from Class I carriers regarding data relevant to first mile/last mile service that is tracked and made available to customers.

As part of CN’s commitment to customer-centric railroading, CN surveys its customers to solicit feedback. According to CN’s customers, consistent and transparent information about their shipments is one of the most important aspects of first mile/last mile service. Our customers want to know the anticipated plan for their shipments, be able to track those shipments, and be notified of updates. CN’s eBusiness tools, described below, give carload customers the ability to monitor their first mile/last mile service for their facilities served by CN.² These tools, which provide our customers with real-time data about their service, are more useful and valuable than any form of aggregated reporting metric.

¹ These subsidiaries report to the Board on a consolidated Class I basis under the name of Grand Trunk Corporation. *See Consol. Reporting By Commonly Controlled R.Rs.*, 5 S.T.B. 1050 (2001), *codified at* 49 C.F.R. § 1201(1-1)(b)(1). They include Illinois Central Railroad Company, Wisconsin Central Ltd., Grand Trunk Western Railroad Company, Bessemer and Lake Erie Railroad Company, and Chicago, Central & Pacific Railroad Company.

² The factual information contained herein is verified in the attached verification by Jason Hilmanowski.

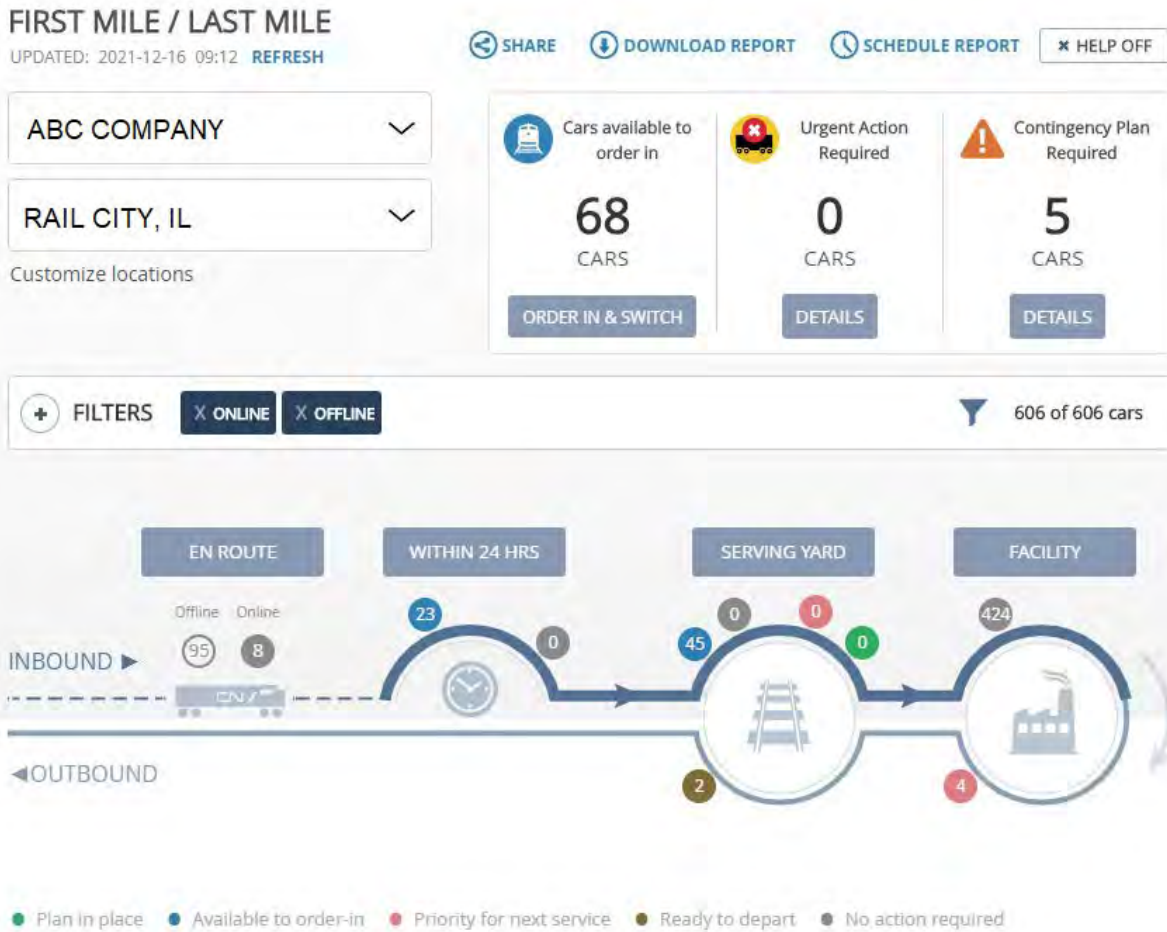
I. CN provides customers with effective real-time tools to monitor their shipments through CN's sophisticated eBusiness platform

Visibility into car movements during the first and last mile is important to our customers. For this reason, CN has developed numerous tools to provide that visibility within “CN One”—a suite of eBusiness tools that provides detailed information, notifications, and alerts.

CN One provides information related to a customer's first mile/last mile service through a number of tools. CN's First Mile/Last Mile tool was first launched in 2014, with new features and improvements being added over the years. It provides our carload customers with visibility, on an individual facility basis, into the pipeline of railcars inbound to their facility, cars currently at their facility, and cars that are outbound. This allows customers to plan in advance for rail service at their facility served by CN. The tool is interactive and allows customers to view information at the car-level for their shipment, including commodity type and shipment origin. The tool also allows customers to view select cars from their total pipeline by filtering for empty and loaded cars, for cars on and off CN's network, for commodity, and for equipment type. Figure 1 provides a screen shot of this tool.³

³ The screenshots provided in Figures 1-7 have been redacted to remove any identifying customer information.

Figure 1: First Mile/Last Mile tool



In Figure 1, the customer has 68 cars available to order in, 45 of which are in the local CN serving yard and 23 of which are slated to arrive in the serving yard within 24 hours. The customer has an additional 103 inbound cars en route to the serving yard, 8 of which are on CN’s system and 95 of which are on another railroad. For outbound service, the customer has 4 cars slated to be pulled from the customer facility and 2 cars ready to depart the CN serving yard. The customer has 424 cars spotted at its facility in the process of loading or unloading. The alerts

dashboard also provides information about cars for which a contingency plan or urgent action is required.⁴

CN's My Shipments and Quick Trace tools provide additional visibility into first mile/last mile service. The My Shipments tool provides customers with customized reports that can monitor shipments in their first mile and last mile, for all of the customer's traffic, or for specific traffic (*e.g.*, for a specific origin to destination or for a specific commodity). The tool also allows our customers to monitor specific shipment statuses, such as delayed for repair, holds, and shipments not moved in a certain number of hours. Flexible field display options allow customers to include key pieces of information that are relevant to them in these reports. Our customers can schedule to have their My Shipments report automatically emailed, at desired times of the day, in a variety of output formats up to 30 times per week per report. The Quick Trace tool provides similar information to My Shipments, but on an ad-hoc basis (rather than regular reports). Using Quick Trace, the customer can trace up to 300 shipments. Figure 2 is an example of a report generated through My Shipments.

⁴ The contingency plan category identifies cars impacted by a temporary outage/disruption. The urgent action category identifies cars that require customer action—for example, if there is a customs hold or if a car is improperly loaded.

Figure 2: My Shipments tool

My Shipments - ABC Company for Shipments Destined to Rail City, IL

Sort by: Then by: No Totals With Totals Totals Only

Order: A-Z Z-A Order: A-Z Z-A

All Shipments, Both Loads and Empties, Delivery Date View Back Print Help

Equipment	Status	Location	Destination	ETA	Delivery Date	Delivery Difference	Carrier	Links
1948	Empty Departed Aldershot, ON 13 Sep 14:35 ET	M39731 13	Rail City, IL	At Receiver Rail City, IL on 17 Sep 18:00	At Receiver Rail City, IL on Sep 21 06:00	84:00 hrs Earlier	CN	
16128	Empty Departed Aldershot, ON 13 Sep 14:35 ET	M39731 13	Rail City, IL	At Receiver Rail City, IL on 17 Sep 18:00	At Receiver Rail City, IL on Sep 21 06:00	84:00 hrs Earlier	CN	
31301	Empty Departed Aldershot, ON 13 Sep 14:35 ET	M39731 13	Rail City, IL	At Receiver Rail City, IL on 17 Sep 18:00	At Receiver Rail City, IL on Sep 21 06:00	84:00 hrs Earlier	CN	
02543	Empty Departed Aldershot, ON 13 Sep 14:35 ET	M39731 13	Rail City, IL	At Receiver Rail City, IL on 17 Sep 18:00	At Receiver Rail City, IL on Sep 21 06:00	84:00 hrs Earlier	CN	
23536	Empty Arrived Toronto Macmil Yard, ON 13 Sep 02:29 ET	M39491 12	Rail City, IL	At Receiver Rail City, IL on 17 Sep 18:00	At Receiver Rail City, IL on Sep 21 06:00	84:00 hrs Earlier	CN	
35186	Empty Departed Aldershot, ON 13 Sep 14:35 ET		Rail City, IL	At Receiver Rail City, IL on 17 Sep 18:00	At Receiver Rail City, IL on Sep 21 06:00	84:00 hrs Earlier	CN	

In this particular example, the customer can view the current ETA of each shipment, the original planned Delivery Date, and the difference between the two (with color-coded flags highlighting whether the shipment is early or late).

CN also provides tools allowing our customers to view rail cars in the first and last mile and order in or release rail cars. The “Order In Railcars” tool shows railcars that are at CN’s destination yard, within 48 hours of a customer, or held in storage at the customer’s request. Our customers can choose the desired switch window and the specific railcars they want delivered and provide special instructions for CN’s crew. The “Release Railcars” tool shows railcars currently on-site at a customer’s facility. Using this tool, our customers can release the cars back to CN following loading or unloading. Similar to the Order In Railcars tool, customers can choose the desired service window and the specific railcars to be released and can provide special instructions for CN’s crew.

Figure 3: Order In Railcars tool

Order In Railcars

Company* **Location*** [Update your personal location list](#)
Destination Track(s)*

Equipment Consigned to ABC Company, Rail City, IL Search Car: ?

Current Location: Rail Yard A, IL [Next Available Service](#)

CN TRACK - KC14

Seq ▲	Car ▲	L/E ▲	Select All	? Unloading/loading location Request Change	? Special Instructions
19	95104	L	<input checked="" type="checkbox"/>	AA1401 Company ABC (3 cars) ▼	

Current Location: Rail Yard B, IL Your next planned service date/time:

Special instructions for switch crew:

CN TRACK - OC75

Seq ▲	Car ▲	L/E ▲	Select All	? Unloading/loading location Request Change	? Special Instructions
1	638915	L	<input type="checkbox"/>	Select location ▼	
2	876497	L	<input type="checkbox"/>	Same as above ▼	
3	638244	L	<input checked="" type="checkbox"/>	AA1801 Company ABC (2 cars) ▼	Spot at door 2

Equipment En Route to ABC Company, Rail City, IL

Current location: En route To be delivered as early as possible following arrival at your CN serving station

K 58252 15 arrived Rail Town, IL

Seq ▲	Car ▲	L/E ▲	ETA ▲	Select All	? Unloading/loading location Request Change	? Special Instructions
47	247	E	2021-12-18 05:40	<input type="checkbox"/>	Select location ▼	<input type="text"/> 2 cars selected

Figure 4: Release Railcars tool

Release Railcars

Company * Location * [Update your personal location list](#)

ABC Company, Rail City, IL [TR01](#) Search Car: ?

[View equipment already released](#)

Track TR01 Switch date/time:

Seq	Car	Load / Empty	Empty ? <input type="button" value="All"/>	Load ? <input type="button" value="All"/>	Special Release ?	Links
Cars consigned to your facility located in a CN serving yard.						
	730480	Empty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="Select Special Release Type"/>	<input type="button" value=""/>
	730497	Empty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="Select Special Release Type"/>	<input type="button" value=""/>
	2137	Empty	<input type="checkbox"/>	<input type="checkbox"/>	<input type="text" value="Select Special Release Type"/>	<input type="button" value=""/>

Equipment already released for ABC Company, Rail City, IL [TR01](#) Search Car: ?

[View Equipment available for release](#)

Track TR01

Seq	Car	Load / Empty	Release Status	Release Date ?	Service Window ?	Cancel ?	Links
001	627193	Load	Released	13 Sep 12:42 MT	14 Sep 20:00-06:00 MT, Cutoff 19:00	<input type="checkbox"/>	<input type="button" value=""/>
002	127269	Load	Released	13 Sep 12:42 MT	14 Sep 20:00-06:00 MT, Cutoff 19:00	<input type="checkbox"/>	<input type="button" value=""/>

E-mail a copy of this request to jsmith@domain.com
[Update Recipients](#)

Note: Cancelling a release will void any activated Shipping Instructions that have been received for the railcar.

The Car Order tool allows customers to generate two types of reports: one to track equipment by the customer’s order date/time (Car Order Report shown in Figure 5) and the other to track equipment by the local service window (Delivery Plan Report shown in Figure 6). These reports provide information on the number of cars to be supplied, equipment IDs, the type of equipment, ETAs, and status, among other information.

Figure 5: Car Order tool (Car Order Report)

Car Order Report												
Report Criteria: ABC Company, Rail City, IL, 011111, TR01, FLAT BULKHEAD CENTERBEAM										Report Date Range: 2021-09-04 to 2021-09-24		
ABC Company Rail City, IL												
Pattern <u>011111, TR01, FLAT BULKHEAD CENTERBEAM</u>												
CCO# 011111		Track TR01		Car Type Flat Bulkhead Centerbeam		Lead Time 24 hrs		Order Cutoff Wed 14:00 ET				
Status	At receiver (start of week)		Total Ordered		Total Confirmed		Placed/CP Empty		Released			
Sep 5-Sep 11	8		40		40		30		38			
Loading Date/Time	Switch Date/Time		Ordered	Confirmed	Constructively Placed	Placed (Actual or Planned)		Released	Rejected	Shortage / Surplus		
	Empty	Reload				Total						
Sun 05 Sep			0	0	0	5	0	5	0	0	+8	
Mon 06 Sep			0	0	0	0	0	0	0	0	+13	
Tue 07 Sep	N/A	Tue 07 Sep 19:00 - 03:00	10	10	0	0	0	0	13	0	+13	
Wed 08 Sep	N/A	Wed 08 Sep 19:00 - 03:00	10	10	0	16	0	16	9	0	+3	
Thu 09 Sep	N/A	Thu 09 Sep 19:00 - 03:00	10	10	0	9	0	9	12	0	+9	
Fri 10 Sep	N/A	Fri 10 Sep 19:00 - 03:00	10	10	0	0	0	0	4	0	+8	
Sat 11 Sep			0	0	0	0	0	0	0	0	-2	
Totals for Sep 5 - Sep 11			40	40	0	30	0	30	38	0		
Shortage of 2 cars from last week was reset to 0 on Sunday. If you still require these cars, please update your orders accordingly.												
Status	At receiver (start of week)		At receiver (current)		At station		En route		CP	Ordered	Confirmed	Surplus
Sep 12-Sep 18	0		16		14		8		0	50	50	16
Loading Date/Time	Switch Date/Time		Ordered	Confirmed	Constructively Placed	Placed (Actual or Planned)		Released	Rejected	Shortage / Surplus		
	Empty	Reload				Total						
Sun 12 Sep			0	0	0	16	0	16	0	0	0	
Mon 13 Sep	N/A	Mon 13 Sep 19:00 - 03:00	10	10	0	14	0	14	0	0	+16	
Tue 14 Sep	N/A	Tue 14 Sep 19:00 - 03:00	10	10	0	8	0	8	0	0	0	
Wed 15 Sep	N/A	Wed 15 Sep 19:00 - 03:00	10	10	0	0	0	0	0	0	0	
Thu 16 Sep	N/A	Thu 16 Sep 19:00 - 03:00	10	10	0	0	0	0	0	0	0	
Fri 17 Sep	N/A	Fri 17 Sep 19:00 - 03:00	10	10	0	0	0	0	0	0	0	
Sat 18 Sep			0	0	0	0	0	0	0	0	0	
Totals for Sep 12 - Sep 18			50	50	0	38	0	38	0	0		

Figure 6: Car Order tool (Delivery Plan Report)

Delivery Plan Report												
Report Criteria: ABC Company, Rail City, IL, 011111, TR01, FLAT BULKHEAD CENTERBEAM										Report Date Range: 2021-09-04 to 2021-09-24		
ABC Company Rail City, IL												
Pattern <u>011111, TR01, FLAT BULKHEAD CENTERBEAM</u>												
CCO# 011111		Track TR01		Car Type Flat Bulkhead Centerbeam		Lead Time 24 hrs		Order Cutoff Wed 14:00 ET				
Status	At receiver (start of week)		Total Planned Delivery		Total Confirmed		Placed/CP Empty		Released			
Sep 5-Sep 11	8		40		40		30		38			
Switch Date/Time			Total Confirmed	Constructively Placed	Placed (Actual or Planned)		Released	Rejected	Shortage / Surplus			
					Empty	Reload	Total					
Sun 05 Sep	19:00 - 03:00		0	0	5	0	5	0	0	+8		
Mon 06 Sep	19:00 - 03:00		0	0	0	0	0	0	0	+13		
Tue 07 Sep	19:00 - 03:00		10	10	0	0	0	13	0	+13		
Wed 08 Sep	19:00 - 03:00		10	10	15	0	16	9	0	+3		
Thu 09 Sep	19:00 - 03:00		10	10	9	0	9	12	0	+9		
Fri 10 Sep	19:00 - 03:00		10	10	0	0	0	4	0	+8		
Sat 11 Sep	No service		0	0	0	0	0	0	0	-2		
Totals for Sep 5 - Sep 11			40	0	30	0	30	38	0			
Shortage of 2 cars from last week was reset to 0 on Sunday. If you still require these cars, please update your orders accordingly.												
Status	At receiver (start of week)		At receiver (current)		At station		En route		CP	Ordered	Confirmed	Surplus
Sep 12-Sep 18	0		16		14		8		0	50	50	16
Switch Date/Time			Total Confirmed	Constructively Placed	Placed (Actual or Planned)		Released	Rejected	Shortage / Surplus			
					Empty	Reload	Total					
Sun 12 Sep	19:00 - 03:00		0	0	16	0	16	0	0	0		
Mon 13 Sep	19:00 - 03:00		10	0	14	0	14	0	0	+16		
Tue 14 Sep	19:00 - 03:00		10	0	8	0	8	0	0	0		
Wed 15 Sep	19:00 - 03:00		10	0	0	0	0	0	0	0		
Thu 16 Sep	19:00 - 03:00		10	0	0	0	0	0	0	0		
Fri 17 Sep	19:00 - 03:00		10	0	0	0	0	0	0	0		
Sat 18 Sep	No service		0	0	0	0	0	0	0	0		
Totals for Sep 12 - Sep 18			50	0	38	0	38	0	0			

In addition to these eBusiness tools, our customers have the option to subscribe to notifications related to their service. Notification subscriptions are managed per customer location; therefore, a customer can choose to receive a specific set of notifications for one facility and a different set of notifications for another facility. All notifications support email subscription (with the option to add multiple email addresses), and the Advance Arrival Notification supports notification via text messages (SMS) as well. There are numerous notification subscriptions available, including Notify on Arrival (notifying customer that railcars have arrived at a specific location based on specific customer requirements), Constructive Placement Notification (notifying customers that railcars have been constructively placed and are available to be ordered in), and Local Service Notification (notifying customer of all work planned to be performed during the next scheduled assignment at their facility). Some of these notifications are triggered by the local CN train crew using the Mobile Reporting System (MRS) hand-held device, in which CN has invested significantly in recent years in order to facilitate timely and transparent communication of shipment status to our customers. Figure 7 shows an example of the Local Service Notification.

Figure 7: Local Service Notification

CN iAdvise - Local Service Notification

Customer: [REDACTED] Location: [REDACTED]
 Log Reference ID: 2019-0004131546 Assignment: [REDACTED]
 Track Range: [REDACTED].89 Date: Jun 05, 2019 08:37 EST

The following work will be completed on today's assignment:
 Car Summary: 0 to spot, 5 to pull, 0 requiring other work

Work Order	Car	L/E	Commodity	Destination Track
PULL	412568	L	PLPBD FBD N CORR	
PULL	412861	L	PLPBD FBD N CORR	
PULL	412085	L	PLPBD FBD N CORR	
PULL	27620	L	PLPBD FBD N CORR	
PULL	27856	L	PLPBD FBD N CORR	

For more information, please contact your Service Delivery Representative at CNSOUTH@cn.ca or 1-866-926-7245.

CN One contains additional tools as well, such as My Rail Service, which provides customers with details of the scheduled rail service for each of their CN rail-served facilities, and the Trip Plan tool, which provides customers with Estimated and Accomplished times for key events in a shipment’s cycle. This entire suite of tools provides customers with effective and efficient access to detailed and meaningful real-time information that affords them visibility into their supply chain and to first mile/last mile service at their facilities.

CN continues to upgrade and add features to CN One. One of the recent features added is application programming interface (API), which allows the data in CN's system to flow directly into the customer's own system for more automated and efficient access to real-time data about their shipment's location and status. And just this month, CN announced a seven-year strategic partnership with Google Cloud to modernize its technology infrastructure and deliver new and better customer experiences. As part of the partnership, CN will develop an intuitive digital platform, ultimately giving customers and supply chain partners more visibility into the logistics journey of planning, shipping, tracking, and payment. In addition, CN proactively works with customers to ensure they are aware of these tools that are available to them. Outside of CN One, CN also annually engages with customers as part of a winter readiness campaign to promote safe and reliable first mile/last mile service during the winter season. All of these efforts reflect CN's overall commitment to meeting the needs of our customers.

II. Real-time, facility-specific information provided directly to our customers are more useful and valuable than any aggregated reporting metric

The Board's request for comment in this docket also asked about potential reporting, noting that some shipper associations have suggested new service metrics to measure first mile/last mile service in addition to the existing reporting that the Board is already collecting about rail service. The Board seeks additional information, including specific suggestions and the benefits and tradeoffs of any potential metric. CN anticipates reviewing any such proposals carefully and commenting on reply.

CN notes that it has been providing aggregated trip plan compliance percentages for its U.S. operations to the Board, including for example annually to the National Grain Car Council.⁵ CN in addition provides the aggregated carload trip plan compliance percentages for its U.S. operations to the staff of the Board's Office of Public Assistance, Governmental Affairs, and Compliance on a monthly basis. For example, in the November 2021 update, CN's carload trip plan performance for 2021 was 92.7%. While these aggregated figures provide a high-level overview of CN's trip plan performance in the United States, they do not provide customers with insight into regional or location-specific first mile/last mile service. Further, although the decision in this proceeding does not identify the goal of any potential reporting requirement, there are inherently significant differences

⁵ Information related to National Grain Car Council meetings, including railroad metrics, are available through the Board's website.

in the individual characteristics of the traffic, customer facilities, and operations involved in first mile/last mile service at hundreds of locations across CN's system that could make an aggregated metric of limited utility. CN believes that the real-time, customer-specific information already provided in CN One are more useful and valuable than any potential form of aggregated data reporting.

III. Conclusion

As explained above, CN currently provides detailed information, notifications, and alerts to our customers through its sophisticated CN One system. Real-time, customer-specific information provided directly to customers, such as through CN One, is the best way for customers to have visibility into their first mile/last mile service. CN will review the opening comments from other parties and address those comments, including any proposed potential new reporting metrics, on reply.

Respectfully submitted,

/s/ Kathryn J. Gainey

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Dated: December 17, 2021

VERIFICATION

I, Jason Hilmanowski, declare under penalty of perjury under the laws of the United States that the factual statements in the foregoing Opening Comments on behalf of CN are true and correct to the best of my knowledge and belief.

Jason M Hilmanowski

Jason Hilmanowski
General Manager, Supply Chain

Executed on December 17, 2021



KANSAS CITY SOUTHERN

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December 17, 2021

VIA E-FILING

Cynthia T. Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, SW
Washington, DC 20423-0001

303397

ENTERED
Office of Proceedings
December 17, 2021
Part of
Public Record

Re: STB Ex Parte No. 767, First-Mile/Last-Mile Service
Opening Comments of The Kansas City Southern Railway Company

Dear Ms. Brown:

In accordance with the decisions of the Surface Transportation Board served in the above-captioned matter on September 2 and September 21, 2021, enclosed are the Opening Comments of The Kansas City Southern Railway Company. If there are any questions concerning this filing, please contact me by telephone at 816-983-1387, or by e-mail at dreeves@kcsouthern.com.

Sincerely,

/s/ David C. Reeves

David C. Reeves

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 767

FIRST-MILE/LAST-MILE SERVICE

OPENING COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

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December 17, 2021

BEFORE THE
SURFACE TRANSPORTATION BOARD

STB Ex Parte No. 767

FIRST-MILE/LAST-MILE SERVICE

OPENING COMMENTS OF THE KANSAS CITY SOUTHERN RAILWAY COMPANY

The Kansas City Southern Railway Company (“KCS”) submits these comments in response to the Surface Transportation Board’s (“Board’s”) September 2, 2021 notice in this proceeding, as amended September 21, 2021 (together, the “Decision”), requesting comments on first-mile/last-mile (“FMLM”) service issues. The Decision requested information on topics including the current data tracked by carriers and the costs and benefits of any suggestions.

KCS hereby adopts and joins the comments being filed by the Association of American Railroads. KCS adds these further brief comments on several questions posed by the Board, and reserves the right to address these and other issues as necessary in the reply comment phase of this proceeding.

Summary

FMLM data is, by definition, location specific, and Board collection of such data on a systemwide basis – even where the data may exist - is necessarily much less useful than the systemwide metrics collected pursuant to Ex Parte 724 (Sub 5). Moreover, attempts to standardize and collect FMLM data risks freezing data collection and reporting in a fashion that is less responsive to customer needs than if data is allowed to evolve as needs change. Absent a strong showing of need for discrete types of data, KCS suggests that the Board not burden the industry with unnecessary production of data.

Discussion

KCS, the smallest of the Class 1 railroads, operates a railroad system of approximately 3,300 route miles in ten midwestern and southern states, including approximately 640 miles of trackage rights on other carriers. KCS served roughly 700 separate shipping/receiving locations on its network in 2020-2021, while other locations that were inactive in that timeframe have in the past, and may in the future, ship or receive freight. Roughly 80% of KCS's shipments are interline movements with other carriers.

KCS does not have a metric that focuses particularly on FMLM. The primary data tracked by KCS that relates to FMLM are AP/Pull% and trip plan compliance. AP/Pull% measures the number of cars that were scheduled to be spotted at or pulled from a customer facility in a given day as compared to the number that actually were spotted or pulled. Trip plan compliance is based on comparing the time between the opening event and final delivery for a car or container to the shipment's initial trip plan transit time based on KCS's transportation service plan. The trip plan takes into account cut-off times, the customer's days of service, total transit time for each train in the route and scheduled yard dwell time. In other words, each trip plan is highly individualized, and data about one customer's shipments has little relevance to another shipper. Moreover, because such a high percentage of KCS's traffic is interline and because some of KCS's most important routes utilize trackage rights on other carriers, shipper experience with moves handled by KCS is often affected by matters KCS does not fully control and cannot necessarily forecast.

AP/Pull% and trip plan compliance are the data that KCS currently tracks relevant to FMLM performance. However, KCS has found that shippers often calculate AP/Pull% differently than KCS does. Accordingly, KCS is looking at whether there is a better way to provide this information to meet customer needs.

One downside to any proposal to collect FMLM data is that doing so could freeze the data in a form that is not as useful to customers as it could be, and potentially not as accurate. For example, after the Board began collecting data in Ex Parte 724, KCS determined that some of the data the Board wanted was not the most accurate reflection of our operations, so we changed how those metrics are reported on the KCS website. See <https://www.kcsouthern.com/media/news/news-releases/kansas-city-southern-announces-revised-service-metrics-to-provide-a-more-complete-view-of-customer-service-and-operational-performance> . This has resulted, however, in KCS preparing one set of metrics for the Board and another – we think more useful – for our website. Any prescribed collection by the Board risks locking in a data methodology that may later be shown to be less than optimal or less useful, or risks railroads having to do extra work to satisfy the Board while satisfying their customers.

KCS believes that there are differences among Class 1's in how they provide data to customers. For example, KCS provides trip plan compliance data to its customers, as do other carriers. However, KCS believes that differences exist among carriers on measuring intermodal performance at the container level versus by the well car; defining 'on-time' as within a certain period of the actual delivery target; whether non-revenue units are counted, and measurement of non-scheduled unit trains. Any sort of standardization of trip plan compliance data collected by the Board would require different carriers to rework their information systems, without any obvious benefit, while creating confusion for their customers who are accustomed to how their serving carrier provides performance information.

Finally, KCS notes that it and other Class 1's have regularly scheduled conference calls with the Board's Office of Public Assistance, Governmental Affairs and Compliance ("OPAGAC") staff. During KCS's calls with OPAGAC staff, KCS Operations personnel review the performance of KCS's network, and answer specific questions about interchange operations, scheduled track maintenance, weather-related issues, and even specific questions about individual customer service. These calls present the

perfect opportunity for Board staff to explore specific FMLM issues based on individual shipper concerns. KCS submits that such discussions would far better satisfy any need to remedy a specific problem than would aggregated data about hundreds or thousands of location-specific issues.

Conclusion

KCS currently has no metric that focuses particularly on FMLM. The metrics that KCS does use relating to end-to-end performance are highly individualized, and the data for one shipper has little relevance to other shippers. KCS believes that the Board's existing mechanisms through OPAGAC are the best way for individualized service issues to be addressed, and that aggregating a multitude of highly-individualized trip performance data would not yield useful information. For these reasons, KCS recommends that the Board not pursue creating standardized FMLM data.

Respectfully submitted,

/s/ David C. Reeves

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 767

ENTERED
Office of Proceedings
December 17, 2021
Part of
Public Record

FIRST-MILE / LAST-MILE SERVICE

**NORFOLK SOUTHERN RAILWAY COMPANY
COMMENTS**

Norfolk Southern Railway Company (“Norfolk Southern”) files these comments in response to the request for feedback made by the Board in its Decision published on August 31, 2021.

Norfolk Southern is keenly aware of the critical importance of first-mile/last-mile service delivery. Both customers and carriers rely on seamless first-mile/last-mile service, as local service is crucial to ensuring successful pipeline management. Customers need reliable schedules and predictability to meet their business demands. Railroads need adherence to their operating plans, network fluidity, and access to network resources on schedule. Norfolk Southern welcomes the opportunity to comment on the important issues raised by the Board.

In its Notice, the Board raised a number of questions regarding the data that Class I carriers maintain related to first-mile/last-mile service, what data Class I carriers make available to their customers, and the burden that would be associated with providing additional information related to first-mile/last-mile service to the Board. In these comments, Norfolk Southern reviews the panoply of data that it provides to its customers and identifies concerns with regards to the burden associated with additional reporting of first-mile/last-mile data.

1. Norfolk Southern has implemented customer experience tools.

Efforts by Norfolk Southern to continuously improve the customer experience reflect the importance of predictability and reliability to its customers. Norfolk Southern offers

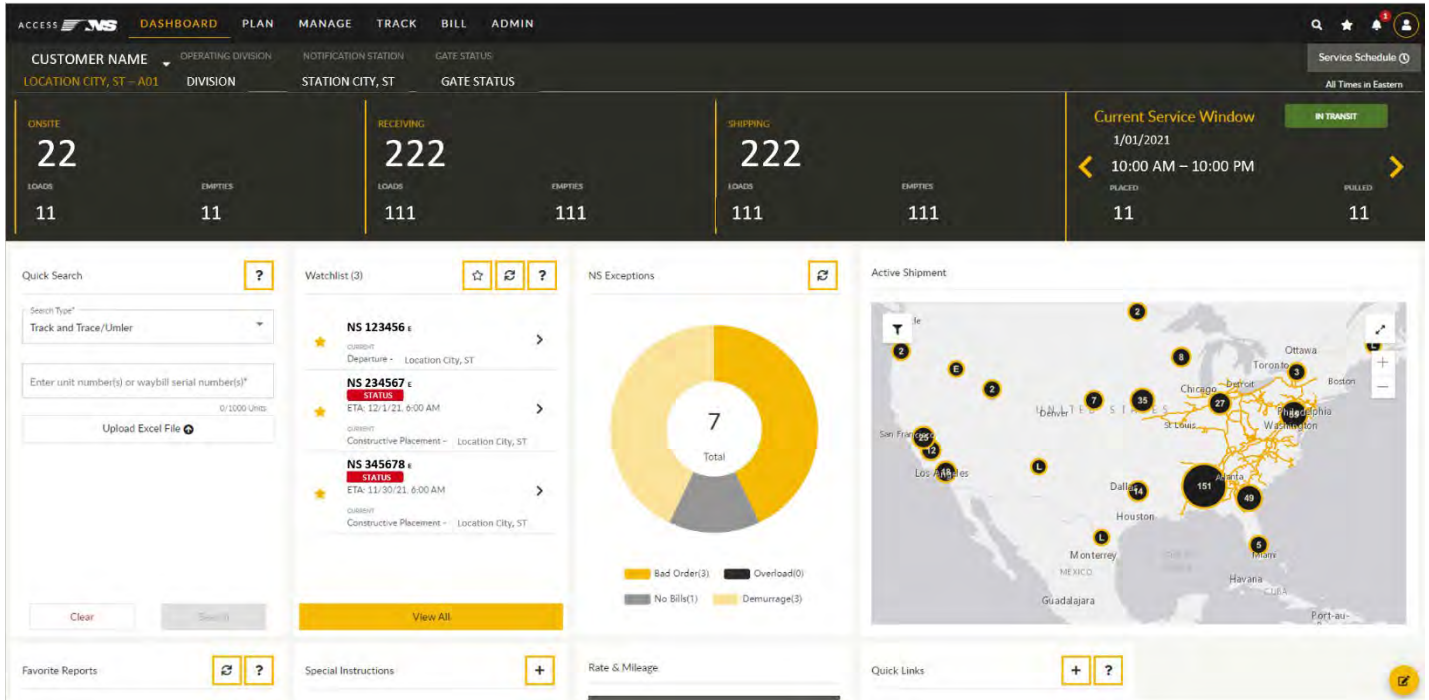
customers ever-evolving technological tools, such as AccessNS and the Trax mobile application, which provide advanced visibility into customer shipments and facilitate the identification and resolution of service issues. Norfolk Southern designed, built, and continuously improves these tools with customer feedback in mind. That feedback continues to drive Norfolk Southern's development plans. One key priority for customers is performance. To that end, Norfolk Southern considers a few key performance outcomes when developing a customer-focused platform: consistency and reliability, proactive communications, real-time accuracy, and operational transparency. AccessNS and the Trax mobile application offer Norfolk Southern's customers real-time, easy access to first-mile/last-mile data regarding each of their shipments on the Norfolk Southern system.

Norfolk Southern recently completed an extensive redesign of AccessNS, its shipment management tool, to maximize its utility and functionality for customers. Norfolk Southern relied upon customer feedback and input to make these changes. In today's digital environment, Norfolk Southern recognizes that consumers have certain expectations, and our customers are consumers. Customers need timely data, easy-to-use platforms, and functionality that meets their needs. Consequently, Norfolk Southern overhauled the AccessNS interface to ensure consistency between the website and mobile app. Today, our customers have more up-to-date, real time data available to them than ever before. In fact, customers' supply chain visibility and data timeliness match what Norfolk Southern itself has. This visibility is especially relevant to this proceeding and illustrates Norfolk Southern's commitment to offering transparency to its customers without regulatory intervention.

Several key features within AccessNS and Norfolk Southern's mobile application allow and encourage customers to manage their inventories, which can help both railroads and customers achieve first-mile/last-mile service goals. The following Figure 1 provides a

screenshot of the AccessNS Customer Dashboard, which houses many of these important first-mile/last-mile features and tools.

Figure 1: AccessNS Customer Dashboard



The Customer Dashboard displays a summary of the customer’s entire pipeline, including the cars onsite, what has been billed outbound, whether the cars are still on their property or have already left their property, and what shipments are in route to them. This includes key first-mile/last-mile data that helps facilitate and manage those movements. The top of the dashboard displays high-level information about inbound and outbound shipments, as well as real-time local service information displayed in the top right corner which details the Current Service Window, including the number of cars scheduled to be placed and pulled, and, as this example shows, the status of those cars (here, “in transit”).

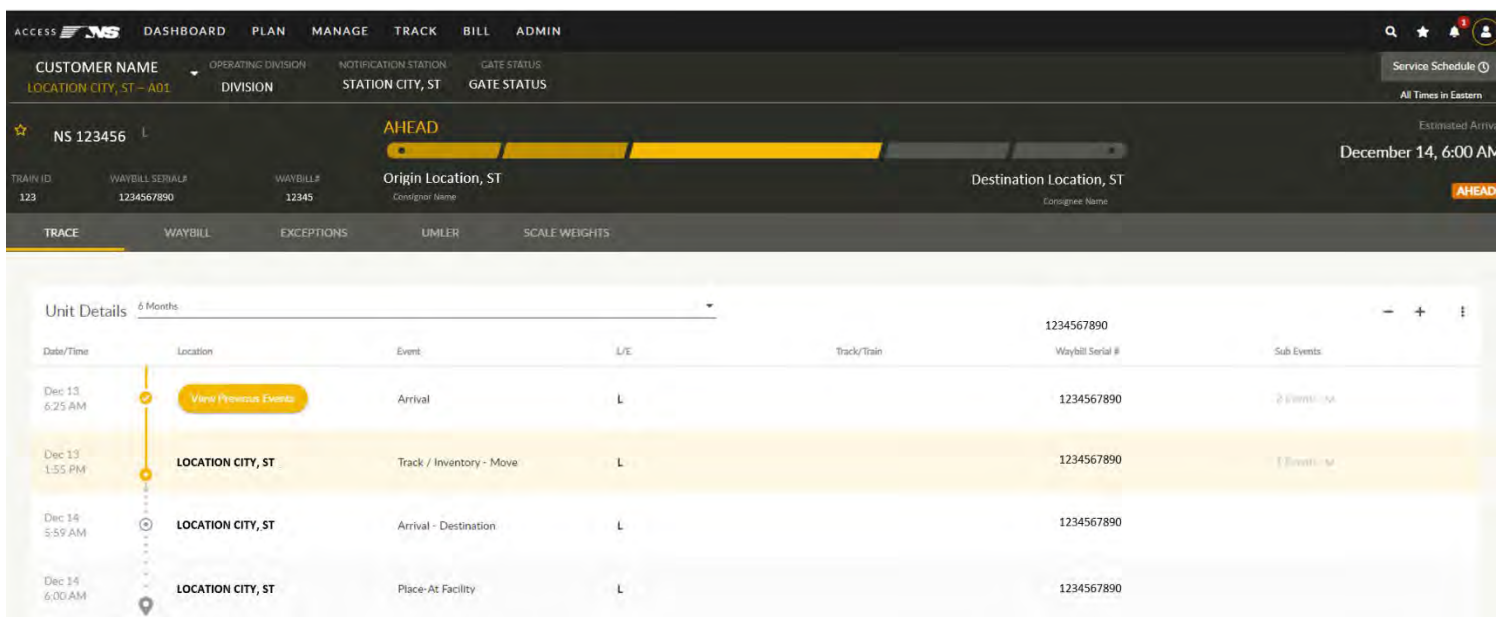
The Customer Dashboard also highlights other key information, which can be customized to suit the customer’s business needs. Several of the tools included on the Customer Dashboard facilitate pipeline management, including a shipment Watchlist, active

shipment maps, and exceptions (e.g., identification of bad ordered cars, cars which are incurring demurrage, or cars with no waybill associated).

The shipment Watchlist allows a customer to identify certain key shipments that will be displayed prominently on the Dashboard. Norfolk Southern recently introduced this functionality based on customer feedback. The Watchlist appears on the Customer Dashboard, as illustrated above in the second column, providing easy access to detailed information about those key shipments. In Figure 1 above, the customer has quick access to information regarding three cars it has identified for its Watchlist. In this example, the first car has departed its location, while the second and third cars are showing as delayed, and currently in constructive placement. The customer is also provided with an ETA for both cars in constructive placement. The customer could select any one of the cars to drill down to receive additional information as illustrated in Figure 2 below.

Figure 2 provides a screenshot of the screen displayed when a customer clicks a shipment on the Watchlist.

Figure 2: Track and Trace for Key Shipments

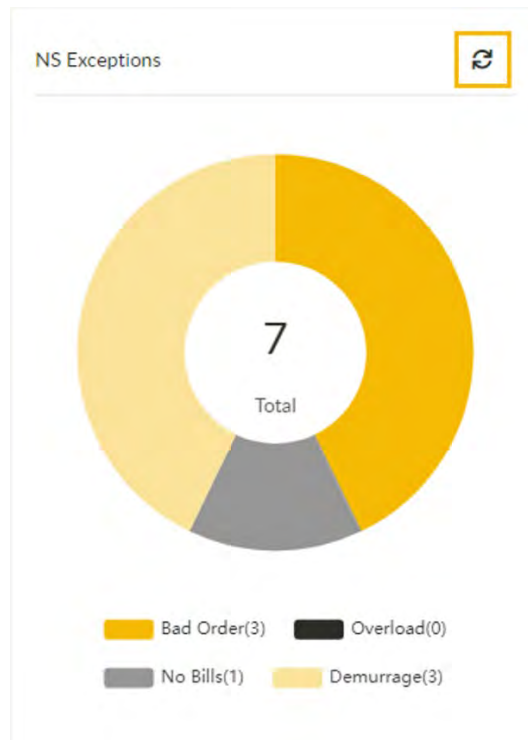


Here, a customer can view a detailed movement history of the selected car. This track and trace detail is available for all shipments in the customer's pipeline (it is not limited to those on the Watchlist). As a shipment moves through the network, its location is logged in the movement history. This allows a customer to see where the shipment is on the Norfolk Southern system throughout the move, much like the typical shipment tracking available to consumers through UPS or FedEx. This example shows a shipment in local service to its destination. On this screen, the customer can see that the shipment made certain inventory moves on the Norfolk Southern system prior to arriving at destination and was placed at the customer facility on December 14th at 6:00 AM.

The ability to track and locate incoming shipments is increasingly important to customers and is key to successful first-mile/last-mile service implementation. With the information provided on the Track and Trace page, a customer can ensure its facility is prepared to accept incoming shipments. This helps Norfolk Southern and customers meet local service goals. From this screen, customers can access additional information about the shipment, including waybill information, exceptions, and weights where applicable.

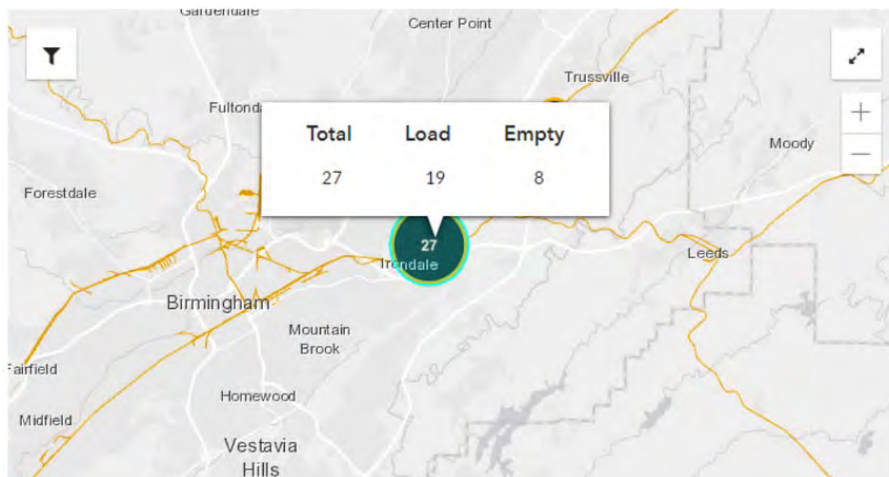
The exceptions graphic on the Customer Dashboard, see Figure 3, below, shows a snapshot of the number of current exceptions, such as cars accruing demurrage, bad ordered cars, or cars with no waybill. Clicking on this graphic will display detailed information about the shipment exceptions noted on the Dashboard, which may alert the customer to issues that could impact the next incoming shipment. The customer can then work with Norfolk Southern personnel to resolve any exceptions that could impact their shipment deliveries.

Figure 3: Exceptions



Another tracking feature available on the Customer Dashboard is the system map. The active shipment system map provides a visual summary of where the customer's shipments currently are on the Norfolk Southern network. The following Figure 4 shows the information displayed when a customer clicks a location on the system map.

Figure 4: System Map



Here, a customer can view the total number of customer shipments and the number of loaded and empty cars at that location. Viewing this network-wide summary of shipment locations allows customers to plan and prepare for incoming shipments.

In addition to this summary, easily accessible links on the Dashboard direct the customer to even more detailed information. For example, the “Receiving Inventory” link brings up key information about cars in route to the customer, such as whether individual cars are loaded or empty, the tonnage and footage of those cars, the car identifiers, and the car’s current location, current train, and the position in the train. The customer can also view both the original NS ETA and the current ETA of the cars.

Figure 5: Available for Placement Screen

Equipment ID	Current Location	Track/Train	Position	L/E	Tons	Class	Hold Cd	Lcl	Commodity	Current ETA	NS Original ETA	Car Type	Status	Request	Shipper	Consignee
NS 123456	Location City, ST	SNY01	1	L	136	A01			FRGHT	12/14/2021 06:00 AM	12/15/2021 06:00 AM	C214	NOPA		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	SNY01	5	L	138	A01			FRGHT	12/14/2021 06:00 AM	12/10/2021 06:00 AM	C214	NOPA		CONSIGNC	CONSIGNEE

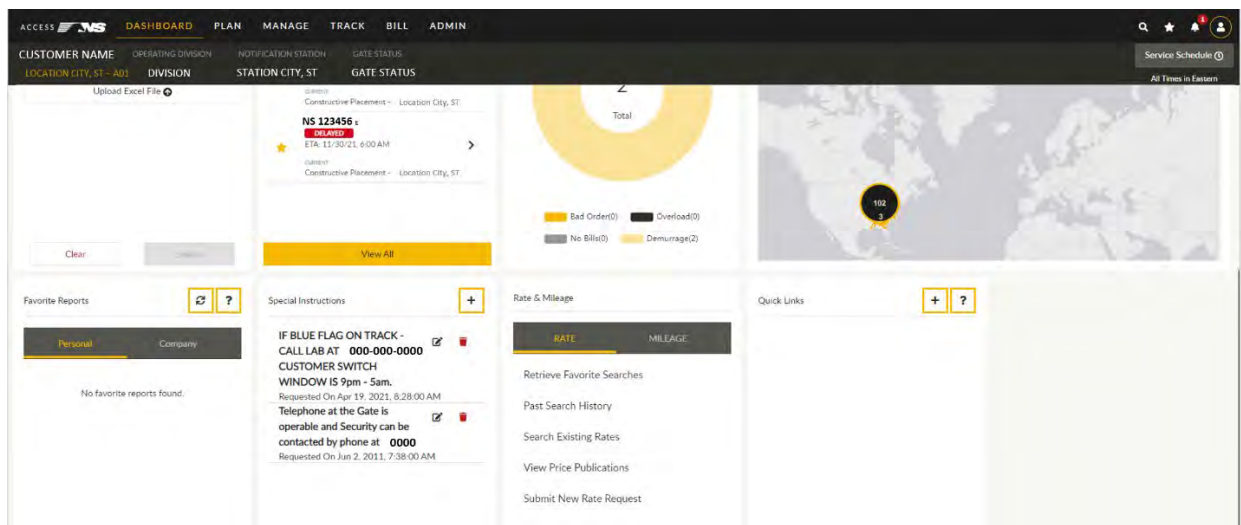
In Figure 5, the customer has two shipments in local service which are expected to arrive one day early.¹ A separate, but easily accessible, “Pipeline” screen shows detailed information about the cars near, but not yet in, local service. A customer can use this detailed information on these screens to prepare for upcoming shipments, making any necessary arrangements to ensure seamless delivery. Additionally, customers can filter this information, as well as create and schedule customizable reports to suit their needs. This visibility is important as railroads seek to be competitive with trucks, and customers seek to be competitive in their respective fields. The ability to proactively manage inbound and

¹ Note that Norfolk Southern will provide a service credit for early shipments.

outbound shipments can facilitate smoother first-mile/last-mile service for both Norfolk Southern and its customers.

Within AccessNS, customers can post special instructions to the local switch crew and view the status of their local service. The option to provide special service instructions allows for narrative text, offering customers greater flexibility and further enhancing the communication between Norfolk Southern and its customers. The following Figure 6 shows special instructions displayed on the Customer Dashboard.

Figure 6: Special Instructions on AccessNS Dashboard



In this example, the customer has provided specific contact information in the event of a blue flag on the track, contact information for access at the security gate, and information regarding the customer's switch window. These instructions are accommodated to the extent possible. This communication allows customers to tailor their local service to their business and operational needs, allowing both the customer and Norfolk Southern to meet their first-mile/last-mile service goals.

Norfolk Southern has devoted significant resources to developing and continuously improving these tools because they can facilitate network fluidity and service performance, including first-mile/last-mile service. To encourage customers to utilize these tools, Norfolk

Southern has taken steps to increase engagement. For example, although AccessNS is intuitive and user-friendly, Norfolk Southern provided extensive training to ensure that customers could leverage its full functionality, especially the features that facilitate inventory and pipeline management. AccessNS facilitates communication between the customer and Norfolk Southern and provides extensive data to Norfolk Southern's customers regarding first-mile/last-mile service. Norfolk Southern recently released functionality allowing customers to open a case directly with Norfolk Southern via AccessNS without needing to seek out contact information for appropriate Norfolk Southern personnel. This communication allows for the identification and resolution of pipeline management issues, including non-railroad supply chain issues, as well as coordination regarding local service.

Additionally, in recognition that customers need flexibility to access these important tools, Norfolk Southern updated its TRAX Mobile App to include the most sought after, most frequently used functions in AccessNS. These functions include Pipeline Management, Exception Management, Track and Trace, Order and Release, Local Service, and Watch List.

2. First-Mile/Last-Mile Service is customer-specific and should be treated accordingly.

First-mile/last-mile service is unique for each customer. Every customer facility is different: they have different hours of operation; some customers require intra-plant switching, while others simply ask that cars are left on a specific lead track within their facility. Critically, some customers are "open gate" facilities who are able to accept any and all cars in the local serving yard, while others are "closed gate," requiring specific cars, and only those specific cars, to be placed. The unique location, hours of operation, and local job requirements of any given customer will all play a factor in their first-mile/last mile service.

To be useful and provide accurate data regarding first-mile/last-mile service, each of these unique factors must be considered. A one-size-fits all data set would not provide any

stakeholder a clear picture of any particular customer’s first-mile/last-mile service experience. Indeed, one customer’s first-mile/last-mile service experience has no bearing upon the next customer’s experience. Each is guided by a unique set of operational requirements—both from the rail and customer perspective. For these reasons, first-mile/last-mile service reporting cannot be aggregated without the risk of becoming misleading and the critical context surrounding the data being lost.

The following example illustrates the challenges with taking a data-only approach to first-mile/last-mile service evaluation. Figure 7 shows the “Available for Placement” screen within AccessNS, displaying shipments in local service and available for placement at a customer facility.

Figure 7: Local Service Example

Equipment ID	Current Location	Track/Train	Position	L/E	Tons	Class	Hdg Cd	Ld	Commodity	Current ETA	NS Original ETA	Car Type	Status	Request	Shipper	Consignee
NS 123456	Location City, ST	ALOC	8	L	110	A01			FRGHT	11/30/2021 06:00 AM	11/16/2021 06:00 AM	A402	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	1	L	132	A01			FRGHT	11/30/2021 06:00 AM	11/17/2021 06:00 AM	A406	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	3	L	119	A01			FRGHT	12/15/2021 06:00 AM	11/17/2021 06:00 AM	A405	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	9	L	131	A01			FRGHT	11/30/2021 06:00 AM	11/17/2021 06:00 AM	B435	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	2	L	125	A01			FRGHT	12/15/2021 06:00 AM	11/23/2021 06:00 AM	A635	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	5	L	102	A01			FRGHT	12/15/2021 06:00 AM	11/24/2021 06:00 AM	A402	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	6	L	104	A01			FRGHT	12/15/2021 06:00 AM	11/24/2021 06:00 AM	A402	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	CT08	9	L	131	A01			FRGHT	12/14/2021 06:00 AM	12/02/2021 06:00 AM	A405	PCON		CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	CT08	10	L	120	A01			FRGHT	12/14/2021 06:00 AM	12/02/2021 06:00 AM	A605	PCON		CONSIGNOR	CONSIGNEE

In this example, the Current ETA appears very delayed compared to the Original NS ETA. For example, on the first line, the car reports an NS Original ETA of 11/16/2021 at 6:00 AM. The Current ETA for that car is reported as 11/30/2021 at 6:00 AM. Without context, someone might reasonably conclude that Norfolk Southern is several weeks behind. However, that conclusion lacks additional, important context. The following Figure 8 shows the same screen when the user hovers over the “L” icon, which indicates a local service issue.

Figure 8: Updated Local Service Example

Equipment ID	Current Location	Track/Train	Position	L/E	Tons	Class	Hdg Cd	Lcl	Commodity	Current ETA	NS Original ETA	Car Type	Status	Request	Shipper	Consignee	
NS 123456	Location City, ST	ALOC	8	L	110	A01			FRGHT	11/30/2021 06:00 AM	11/16/2021 06:00 AM	A402	PCON			CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	1	L	132	A01			FRGHT	11/30/2021 06:00 AM	11/17/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	3	L	119	A01			FRGHT	12/15/2021 06:00 AM	11/17/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	9	L	131	A01			FRGHT	11/30/2021 06:00 AM	11/17/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	2	L	125	A01			FRGHT	11/30/2021 06:00 AM	11/23/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	5	L	102	A01			FRGHT	12/15/2021 06:00 AM	11/24/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	ALOC	6	L	104	A01			FRGHT	12/15/2021 06:00 AM	11/24/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	CT08	9	L	131	A01			FRGHT	12/14/2021 06:00 AM	12/02/2021 06:00 AM					CONSIGNOR	CONSIGNEE
NS 123456	Location City, ST	CT08	10	L	120	A01			FRGHT	12/14/2021 06:00 AM	12/02/2021 06:00 AM	A605	PCON			CONSIGNOR	CONSIGNEE

Although this Figure 8 shows the same delay between the Current ETA and the NS Original ETA, it also shows that the customer’s tracks are full (“Track Full”). This additional context is crucial to understanding the data. In this example, Norfolk Southern attempted to deliver these cars multiple times but was unable to do so because the tracks at the customer facility were full. These facts are specific to these deliveries to this customer. Aggregate local service data would fail to account for this context and lead to inaccurate conclusions.

Beyond customer-related facts, such as the customer capacity issue described in the example above, many other factors impact local service. Many of those factors are beyond a carrier's control. Railroads operate as part of the global supply chain. A single shipment often involves more than one railroad carrier and multiple modes of transportation. A disruption or issue with any supply chain participant can impact a railroad’s local service. Additionally, unforeseen circumstances, like wildfires, flooding, washouts, hurricanes, or severe weather events that arise might delay or otherwise impact first-mile/last-mile service. This is true whether the unforeseen event impacts the railroad or any of the previous supply chain participants. Given that each instance of local service comes with its own individual set of facts, aggregate data would paint an incomplete picture.

In light of the unique features that drive first-mile/last-mile service, the Board should support carriers' continued efforts to innovate in this space and to seek technology-driven solutions to provide individual customers the information they may seek regarding their own service. If the Board wants carriers to provide specific information to their customers, they could direct the carriers to include that information—to the extent not already provided—on the platforms already developed to provide customers with up-to-date data regarding their shipments, such as AccessNS. This would allow carriers to continue to innovate and develop customer-friendly datasets and interfaces while also ensuring that the data the Board may decide is necessary is provided to our customers.

3. Burdens and Paperwork Reduction Act obligations should be considered.

Should the Board determine that public reporting is required in this area, the Board must be mindful of the potential burden on the regulated industry and the Board's paperwork reduction obligation. The Board's statutory obligations require it to consider the economic consequences of its regulations. The policy of the Federal government is "to minimize the need for Federal regulatory control over the rail transportation system and to require fair and expeditious regulatory decisions when regulation is required". 49 U.S.C. § 10101(2). Further, 49 U.S.C. § 10502(a) expresses Congress's policy judgment in favor of minimizing unnecessary regulatory burdens. Before the Board imposes any new burdens on the railroad industry it should consider the costs and benefits of a new rule, including an assessment of the cumulative burden existing regulations already impose, whether the burden is too great, and whether a new rule is the most effective way to achieve the Board's goals.

A rule mandating reporting of first mile last mile data would impose burdens on the industry. A new reporting regulation would impose direct and indirect compliance costs. In assessing the anticipated burden associated with potential data collection and reporting, the Ex Parte No. 724 reporting requirements serve as a useful example. Complying with those

requirements is deceptively costly for a railroad, requiring manual information gathering and confirmation, as well as highly specific formatting. And these burdens would be entirely unnecessary because railroads like Norfolk Southern already provide customers substantial information about first-mile/last-mile service as detailed in section 1, above.

The cumulative burden of adding first-mile/last-mile data reporting to the current reporting requirements also should be considered. Railroads already provide a significant amount of data to the Board. Much of it must be done manually, which is time-consuming. An additional reporting requirement would also increase the burden on the Board, particularly considering the data-intensive nature of first-mile, last-mile service metrics.

An additional reporting regulation would also require the diversion of railroad resources from customer support activities to regulatory compliance. The time and resources expended on an expanded regulatory reporting scheme could conflict with efforts to create or improve customer experience tools like those described above. The Board should not implement a rule that would require the diversion of resources from carrier-initiated projects that are designed to improve service and benefit our customers. A rigid, prescriptive regulatory scheme would stifle the technological innovation that has allowed Norfolk Southern to develop and continuously improve its customer experience tools. Given their value in planning for local service, this could have negative impacts on first-mile/last-mile service goals for Norfolk Southern and its customers.

If the Board initiates a rulemaking requiring additional reporting, it will be subject to the requirements of the Paperwork Reduction Act. *See* 44 U.S.C. 3501 et seq. The burden activities used to estimate burden pursuant to the Paperwork Reduction Act offer a useful framework here and indicate that such a rulemaking would impose excessive burden on railroads. *See* ESTIMATING BURDEN | A GUIDE TO THE PAPERWORK REDUCTION ACT, <https://pra.digital.gov/burden/> (last visited Nov 24, 2021). For example, such a rulemaking

would likely require costly and time-consuming updates to carrier technology and systems, ongoing collection and review of this information, and manual compilation and submission on the prescribed periodic basis. If the Board does order more reporting, they should allow the carriers to report the data as they maintain it in the regular course, like in Ex Parte No. 724, because each railroad keeps this data differently. Additionally, the Board should seek to modernize its data portals given the large quantity of data they would receive, and to allow carriers greater flexibility in the format of their submissions.

* * * * *

Rather than attempting to address this issue with prescriptive regulation or additional reporting, the Board should encourage carriers to continue to innovate and develop platforms that give customers real-time shipment information and provide customers with advanced tools to manage their rail pipelines. Such technological tools allow for early identification of issues, including local service issues, and facilitate customer-friendly solutions that keep the rail network moving.

December 17, 2021

Respectfully submitted,

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**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FIRST-MILE/LAST-MILE SERVICE) Ex Parte No. 767
)
)

**REPLY COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE,
THE FREIGHT RAIL CUSTOMER ALLIANCE, NATIONAL COAL
TRANSPORTATION ASSOCIATION, PORTLAND CEMENT
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Dated: February 17, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

FIRST-MILE/LAST-MILE SERVICE)	Ex Parte No. 767
)	

**REPLY COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE,
THE FREIGHT RAIL CUSTOMER ALLIANCE, NATIONAL COAL
TRANSPORTATION ASSOCIATION, PORTLAND CEMENT
ASSOCIATION, AND STEEL MANUFACTURERS ASSOCIATION**

The Western Coal Traffic League (“WCTL”), Freight Rail Customer Alliance (“FRCA”), National Coal Transportation Association (“NCTA”), Portland Cement Association (“PCA”), and Steel Manufacturers Association (“SMA”) (collectively, “Shipper Associations A” or “SAA”¹) submit these reply comments in response to the notice that the Surface Transportation Board (“Board” or “STB”) served on September 2, 2021, as modified September 21, 2021 (“Notice”).

SAA explained in its opening comments, as did a range of other commenters in their comments, that:

- (1) There is an urgent need for the public reporting and disclosure of railroad first-mile/last-mile (“FMLM”) data, particularly in light of the harm to adequate service inflicted by the combination of Precision Scheduled Railroading (“PSR”) and the pandemic; and

¹ “Shipper Associations” is such a natural and attractive name for a coalition of shipper associations that another group adopted it in its opening comments. To avoid confusion, the instant group has adopted the Shipper Associations A or SAA name in these reply comments to distinguish itself from the other group.

(2) Since the railroads already appear to compile and utilize FMLM data for their own purposes, there should be little additional burden in making the needed data available to shippers, the Board, and the public on a basis that provides useful information, while still respecting legitimate confidentiality concerns as to individual movements.

Predictably, railroad interests disagree. The Association of American Railroads (“AAR”) submitted a more general or conceptual filing, and most of its Class I railroad members (but, significantly, not Union Pacific Railroad Company or Canadian Pacific Railway Company) submitted individual filings purporting to show data that they do make available. While no doubt intending to do otherwise, the railroad filings only buttress the need for the Board to require the filing of FMLM data.

For example, the AAR first stresses that factors outside a railroad’s immediate control can influence FMLM service. AAR Comments at 2-4. Even so, the data is still useful to measure service performance generally and trends over time, and how a railroad does, or does not, rise to the challenges it faces. The data is particularly useful to the individual shipper that wants to know if its service problems are isolated or the result of a larger problem. It may also help the carriers themselves in evaluating how their FMLM service stacks up against the other carriers generally, and in determining whether corrective actions are necessary to meet and exceed their competitors’ service.

Second, the AAR claims that no “regulatory problem” has been identified and that there has been no showing that the Board needs to collect data on FMLM service. *Id.* at 4-7. The railroads’ apparent belief that shippers have been receiving

adequate service and/or that PSR has not degraded the level of service received by shippers defies credibility and makes the need for Board action even more urgent. Moreover, if customers are receiving the superior FMLM service as AAR apparently believes, then the data reported on FMLM service should help dispel any misperceptions that FMLM service is poor.

Third, the AAR asserts that the customer-specific nature of any service issues is best pursued by investigation on an *ad hoc* basis, particularly as FMLM service is unique to the customer. *Id.* at 7-9. This stratagem is another attempt to frame the problem out of existence. An individual shipper's service problems, FMLM and otherwise, seldom occur in a vacuum. Insisting on a piecemeal approach ensures that the larger picture will be ignored and incorrectly assumes there is no larger picture. The FMLM data is needed precisely in order to be able to determine and monitor whether and the extent to which the problems are or are not isolated. Furthermore, unless the Board has information about the overall level of service, it cannot know the extent to which the common carrier obligation is or is not being fulfilled. Beyond that, accumulating baseline data during the relatively "good" times is necessary in order to identify and quantify deterioration when it occurs, and evaluate whether downward service trends may require additional carrier outreach and actions to help prevent or ameliorate larger service problems.

Fourth, the AAR returns to a standard tactic, invoking the need for formal, time- and resource-consuming cost-benefit analysis as a barrier to any Board action that would start to provide some semblance of balance between shipper and railroad

knowledge of service performance. *Id.* at 9-11. However, the AAR does so in its typical whipsaw fashion, first ignoring the need to address major service issues and the Board's lack of data on a key and problematic aspect of service, and then asserting collecting the information would be burdensome without ever acknowledging that this is the very data that the railroads already collect on a routine basis (and that would be utilized were any individual service issues to be addressed on the piecemeal basis that the railroads prefer). In short, the AAR has again assumed its preferred conclusion that no performance data information need be shared because there is no "regulatory problem" in a blatant effort to avoid engaging constructively on what it should recognize is a significant issue. Furthermore, the railroad's preferred lack of transparency serves only to highlight the industry's insularity and problems, especially since worthy competitors in a true competitive market should want to highlight, and not hide information regarding their quality of service.

Fifth, the AAR claims that the Board should properly account for competitive concerns. *Id.* at 11-14. SAA agrees with the need to protect railroad and shipper trade secrets and for that reason SAA recommended that data be aggregated, but not so excessively that the data loses utility. Those objectives can be balanced with a reasonable level of aggregation, as SAA explained in its opening comments. However, what the AAR appears to have in mind is that no additional data should be made available at all because it could allegedly give another carrier an advantage or prompt a shipper to prefer one carrier over another. Efforts to suppress data on that basis are extremely disconcerting and problematic. Railroads should be expected to compete on

the basis of price as well as service, and markets work more efficiently and productively when information about service quality is available. In other words, furthering competition is an additional reason to make reasonably aggregated data available.

The AAR's final contention is that Railinc's Train II dataset is limited in its utility for measuring FMLM service. *Id.* at 14-16. However, the AAR evades a key question, namely, whether the railroads are already using Train II data to compile their trip plan compliance figures. If they are already utilizing the data to monitor FMLM and other service components, then the data should be very suitable for developing the FMLM information discussed in the Board notice and that shippers and other non-railroads discussed in their comments. On its face, the data should be entirely suitable. The second sentence of the Train II User Manual (from which the AAR quotes only the first sentence) states: "[The Train II system] is used to monitor the full movement cycle of equipment from the time it is loaded to the time it is unloaded and returned to its owner." Railinc, TRAIN II User Manual, at 1-1 (Jan 2022) (available at <https://public.railinc.com/sites/default/files/documents/TrainII.pdf>). That is precisely the relevant universe and use of data that is needed for FMLM and related purpose. The AAR members should state directly if they utilize this data for their trip plan compliance information, particularly if they are going to invoke the need for a formal cost-benefit analysis.

The filings of the individual railroads (BNSF, CN, CSX, KCS, and NS) are similar and appear to have been coordinated. The comments explain that some of the carriers post or disclose an overall trip plan compliance figure (a practice that SAA

discussed at length in its opening comments) and that carriers make data available on individual movements available to individual shippers. The main problem is that there is nothing in-between. On some (not all) systems, there is an overall percentage figure that lacks transparency, but otherwise the shipper can learn nothing about FMLM service beyond its own individual experience. The shipper has no means to learn whether its experience is typical of others located in the same region, whether service is generally improving or deteriorating, whether the fluctuations correlate with other factors such as weather, crew or equipment shortages, or congestion. In other words, the railroad maintains exclusive possession of whether service problems are due to factors within its control.

BNSF represents in its comments that the customer has access to its individual base service plan that is used for determining the network-wide carload local service metric (trip plan compliance). SAA members that ship via BNSF cannot confirm the availability of the base service plan information described by BNSF. SAA members that ship via BNSF and other carriers have confirmed that the equivalent of an estimated time of arrival (a trip plan of sorts) is available. In theory, that information is to be utilized for planning purposes, particularly to avoid demurrage for being unable to receive cars or for holding onto cars for too long. However, the estimated time of arrival information is subject to frequent updating, so much so that estimating and planning for the actual arrival becomes an exercise in trying to hit a moving target. The unpredictability and instability of deliveries are major reasons why the FMLM data is needed.

In short, the railroads have failed to provide any reason why the Board should refrain from issuing a notice of proposed rulemaking. Their comments only confirm the need for the data to be reported and made publicly available.

Respectfully submitted,

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Dated: February 17, 2022

BEFORE THE SURFACE TRANSPORTATION BOARD

Docket No.767

FIRST-MILE/LAST-MILE SERVICE

Reply Comments of the Private Railcar Food and Beverage Association

The Private Railcar Food and Beverage Association (“PRFBA”) respectfully submits its reply comments pursuant to the Surface Transportation Board’s (“STB” or “Board”) August 31 and September 21, 2021, orders in the above-captioned proceeding in support of first-mile/last mile (“FMLM”) service performance data reporting and other measures to improve rail service on the U.S. rail network.

As expected, the Class I railroads strongly oppose any FMLM data reporting to the STB. The Association of American Railroads (“AAR”) and several Class I railroads individually filed comments arguing against the need for this additional data reporting. Not surprisingly, the railroads’ customers strongly support FMLM data reporting especially because of the ongoing service issues on the U.S. rail network after the widespread adoption of Precision Scheduled Railroading and the pandemic’s massive impact on the world’s supply chains.

AAR made several points against FMLM data reporting. First, AAR notes that there are numerous variables that can impact FMLM. Second, it argues that stakeholders would benefit from a better understanding of the intended purposes for any information collected by the Board. Third, it notes that any information collection must account for the benefits and costs it would impose on stakeholders and the Board itself. Fourth, it notes that the Board must account

appropriately for competitive concerns that could arise from the collection of service-related information.

The individual railroads basically followed similar formats in arguing that they already provide their customers extensive FMLM data. Each individual railroad provided an in-depth description of these data programs. In other words, these railroads believe there is no need for the provision of additional FMLM data to the Board. They claim aggregated data would not be useful to rail customers essentially because each shipper's situation is different.

Generally, in reply to the railroads' opposition comments, PRFBA finds it to be counterintuitive that they do not want to demonstrate how they perform for their customers. If the data would show that the railroads are doing a great job providing service, this would seem to be beneficial to the railroads. It would also seem to be a great marketing tool if a railroad's on-time performance numbers were high.

With respect to the AAR point about the many variables that can impact FMLM, PRFBA does not disagree that there are a wide variety of factors that go into FMLM including weather and coordination with shippers and other transportation providers. However, that is the case with all of the data that is reported to the Board in EP 724 (Sub-No. 4). These factors, like in EP 724, can be dealt with in providing this data by making exceptions or understanding how these variables impact the data when analyzing the numbers.

Moreover, regarding the AAR point about a better understanding of the purposes for the FMLM information, this argument seems somewhat disingenuous as various shipper groups have publicly expressed why this data would be helpful to them and the Board. Foremost, rail shippers have been subjected to unreliable service since the increased use of PSR began in 2017 along

with large job cuts and need to have a better idea of how their railroads are performing through FMLM data. If one railroad has decided to make massive job cuts to its train and engine service employees, thereby resulting in unreliable service, shippers want to be aware of this situation and may want to use a railroad that has not made these drastic changes to its workforce. Absent such data, the Board, shippers, and receivers lack relevant information as to how the rail networks are actually performing and whether carriers are providing, and shippers are receiving, adequate service. The data is also particularly important for assessing the extent to which carriers should be allowed to assess demurrage charges ostensibly designed to help maintain network fluidity when the carriers may not be doing their part to provide adequate service to shipper facilities. The data is also constructive for those shippers and receivers that are forced to schedule their day-to-day and hour-to-hour activities around railroad deliveries and pick-ups, with no assurances as to when their local service will occur, but with the certainty that they will face demurrage if they are not ready to receive or supply their railcars for transport when it does occur. Importantly, the Board's major responsibility is to ensure that the entire freight rail network is performing adequately. Without this FMLM information, the Board will struggle to have a true assessment of how the rail system is operating – the Board cannot provide oversight over two segments of a movement that it cannot measure.

Third, AAR argues that any FMLM reporting requirements should take into account the costs and benefits to stakeholders and the Board. As noted in the preceding paragraph, the benefits of this information are many. In addition, the costs are limited because as the railroads point out in their comments, this information is already collected by them for the most part.

Fourth, AAR points out that the Board must consider competitive concerns that may arise from the disclosure of FMLM information. However, the Board is certainly capable of dealing

with these issues as it does with respect to waybill and the existing rail performance data. In other words, this concern is easily handled by the Board.

While PRFBA does not dispute that the railroads provide information to their customers as set forth in their individual comments, this data has proven to be insufficient and not all encompassing with respect to actual FMLM service; otherwise, shippers would not be before the Board now seeking FMLM data that is not under the sole control of the railroads.

Consequently, it seems logical for the Board to require the Class I railroads to submit FMLM data regarding on-time performance and switching. The railroad should report the number of switches it commits to provide in its weekly switch service plan and the time window that the switch is to be performed. Weekly or monthly, the railroad should then report the number of missed switches against that switch service plan. A completed switch should be defined as all available cars for placement or pickup to be moved within the time windows specified. Any car switches or time window missed would be considered a missed switch. The railroads should also provide on-time performance metrics based on their car trip plans, allowing a 24-hour delivery window. On-time performance should be measured from origin shipper release date to destination when actually placed or constructively placed. PRFBA believes these simple requirements would measure FMLM sufficiently to provide shippers and the Board with the information both need to do their jobs.

Respectfully submitted,

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BEFORE THE SURFACE TRANSPORTATION BOARD

303938

Docket No.767

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FIRST-MILE/LAST-MILE SERVICE

Reply Comments of the Industrial Minerals Association – North America

The Industrial Minerals Association – North America (“IMA”) respectfully submits its reply comments pursuant to the Surface Transportation Board’s (“STB” or “Board”) August 31, 2021, and the September 21, 2021, orders in the above-captioned proceeding in support of first-mile/last mile (“FMLM”) service performance data reporting and other measures to improve rail service on the U.S. rail network.

As expected, the Class I railroads strongly oppose any FMLM data reporting to the STB. The Association of American Railroads (“AAR”) and several Class I railroads individually filed comments arguing against the need for this additional data reporting. Not surprisingly, the railroads’ customers strongly support FMLM data reporting especially because of the ongoing service issues on the U.S. rail network after the widespread adoption of Precision Scheduled Railroading and the pandemic’s massive impact on the world’s supply chains.

AAR made several points against FMLM data reporting. First, AAR notes that there are numerous variables that can impact FMLM. Second, it argues that stakeholders would benefit from a better understanding of the intended purposes for any information collected by the Board. Third, it notes that any information collection must account for the benefits and costs it would impose on stakeholders and the Board itself. Fourth, it points out that the Board must account

appropriately for competitive concerns that could arise from the collection of service-related information.

The individual railroads basically followed similar formats in arguing that they already provide their customers extensive FMLM data. Each individual railroad provided an in-depth description of these customer data programs. In other words, these railroads believe there is no need for the provision of additional FMLM data to the Board. They claim aggregated data would not be useful to rail customers essentially because each shipper's situation is different.

Generally, in reply to the railroads' opposition comments, IMA finds it to be counterintuitive that they do not want to demonstrate how they perform for their customers. If the data would show that the railroads are doing a great job providing service, this would seem to be beneficial to the railroads. It would also seem to be a great marketing tool if a railroad's on-time performance numbers were high.

With respect to the AAR point about the many variables that can impact FMLM, IMA does not disagree that there are a wide variety of factors that go into FMLM service including weather and coordination with shippers and other transportation providers. However, that is the case with all of the performance data that is reported to the Board in EP 724 (Sub-No. 4). These factors, like in EP 724 (Sub-No. 4), can be dealt with in providing this data by making exceptions or understanding how these variables impact the data when analyzing the numbers.

Moreover, regarding the AAR point about a better understanding of the purposes for the FMLM information, this argument seems somewhat disingenuous as various shipper groups have publicly expressed why this data would be helpful to them and the Board. Foremost, rail shippers have been subjected to unreliable service since the increased use of PSR began in 2017 along

with large job cuts and need to have a better idea of how their railroads are performing. If one railroad has decided to make massive job cuts to its train and engine service employees, thereby resulting in unreliable service, shippers want to be aware of this situation and may want to use a different railroad that has not made these drastic changes to its ability to serve. Absent such data, the Board, shippers, and receivers lack relevant information as to how the rail networks are actually performing and whether carriers are providing, and shippers are receiving, adequate service. The data is also particularly important for assessing the extent to which carriers should be allowed to assess demurrage charges ostensibly designed to help maintain network fluidity when the carriers may not be doing their part to provide adequate service to shipper facilities. The data is also constructive for those shippers and receivers that are forced to schedule their day-to-day and hour-to-hour activities around railroad deliveries and pick-ups, with no assurances as to when their local service will occur, but with the certainty that they will face demurrage if they are not ready to receive or supply their railcars for transport when it does occur. Importantly, the Board's major responsibility is to ensure that the freight rail network is performing adequately. Without this FMLM information, the Board will struggle to have a true assessment of how the rail system is operating.

Third, AAR argues that any FMLM reporting requirements should consider the costs and benefits to stakeholders and the Board. As noted in the preceding paragraph, the benefits of this information are many. In addition, the costs are limited because, as the railroads point out in their comments, this information is already collected by them for the most part.

Fourth, AAR points out that the Board must consider competitive concerns that may arise from the disclosure of FMLM information. However, the Board is certainly capable of dealing

with these issues as it does with respect to waybill and the existing rail performance data. In other words, this concern can easily be handled by the Board.

While IMA does not dispute that the railroads provide information to their customers as set forth in their individual comments, this data has proven to be insufficient and not all encompassing with respect to actual FMLM service; otherwise, shippers would not be before the Board now seeking FMLM data that is not under the sole control of the railroads.

Consequently, it seems logical for the Board to require the Class I railroads to submit FMLM data. Without this information, shippers and the Board will not truly understand how the railroads are performing.

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Before the
SURFACE TRANSPORTATION BOARD

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

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Reply Comments of BNSF Railway Company

I. Introduction & Summary

BNSF Railway Company submits these Reply Comments in response to the Surface Transportation Board's September 2, 2021 decision requesting comments on issues regarding first-mile/last-mile ("FMLM") service. *First-Mile/Last-Mile Serv.*, EP 767 (STB served Sept. 2, 2021). BNSF also supports and joins the Reply Comments of the Association of American Railroads regarding FMLM service.

The Opening Comments filed by shipper groups¹ in this proceeding discuss a wide range of topics, including many unrelated to FMLM service, but still fail to identify a problem that would be addressed by imposing new FMLM reporting requirements. There is no explanation for how the Board collecting additional data would have concrete benefits for shippers seeking to improve their supply chain logistics, especially considering that railroads like BNSF already provide shippers significant, detailed FMLM data. Those seeking new regulatory requirements also fail to

¹ The record citations used in this Reply Comment are to submissions made in this docket and identify shipper comments as follows: American Chemistry Council, American Fuel & Petrochemical Manufacturers, and Fertilizer Institute ("Shipper Associations"); National Industrial Transportation League ("NITL"); Diversified CPC International, Inc. ("Diversified CPC"); Private Railcar Food and Beverage Association ("PRFBA"); Western Coal Traffic League ("WCTL"); National Grain and Feed Association ("NGFA"); National Association of Chemical Distributors ("NACD"); Institute of Scrap Recycling Industries ("ISRI"); American Petroleum Institute ("API"); International Liquid Terminals Association ("ILTA"); and Industrial Minerals Association of North America ("IMA").

address the multitude of factors affecting FMLM service that would undermine the utility of any generalized data reports.

Providing no evidence that new data reporting would actually improve FMLM service, the Opening Comments from shipper groups instead confirm that the intended objective of new data reporting is to support future litigation over common carrier obligations. But those comments fail to explain how any aggregated FMLM data could be used to assess a specific railroad's compliance with its common carrier obligation to a specific shipper. There is also no explanation why current regulatory remedies and informal Board resources available to shippers are insufficient to address any concerns about FMLM service issues.

For these reasons, as explained more fully below, BNSF respectfully urges the Board not to impose FMLM data reporting obligations. Introducing inflexible regulatory requirements relating to highly variable and location-specific FMLM service would add new regulatory costs and burdens, and possibly restrain individualized market-based initiatives without producing any tangible benefits.

II. Additional Regulatory Requirements Are Not Justified, Especially Considering That BNSF Already Provides the Core FMLM Information Requested by Shipper Groups

While many of the Opening Comments range far beyond the scope of FMLM issues, several shipper associations seek to have the Board require the reporting of what could be considered core FMLM-related data. These core-data requests cover information on metrics such as dwell times (*see, e.g.*, Shipper Associations 23-28; Diversified CPC 6; NITL 5, 6); trip plan compliance (*see, e.g.*, PRFBA 26; WCTL 22; NITL 5-6; NGFA 10-11; NACD 6); and the percentage of on-time deliveries (*see, e.g.*, ISRI 9.)

As discussed in detail in our Opening Comments, BNSF already provides this core FMLM-related data to our customers through a sophisticated internal monitoring system that tracks our

FMLM performance at local serving yards and shipper facilities. (*See* BNSF 3-9.) Through our Customer Portal on www.BNSF.com, BNSF provides its customers with data such as dwell times (*Id.* at 6, 8), trip plan compliance (*Id.* at 4-6), and on-time deliveries (*see id.* at 6-7.). BNSF also provides customers with other FMLM-related information such as days of service, the time by which a customer must order car service to ensure same-day service, and train and track delivery details. (*See id.* at 4.) An average of 11,000 BNSF customers visit the Customer Portal every day. (*Id.* at 6.)

As we also explain in our Opening Comments, BNSF uses the FMLM information it provides to customers to measure its FMLM service through two metrics: the Industry Service Metric and the Local Service Performance Metric. The Industry Service Metric measures BNSF's adherence to each customer's individualized Base Service Plan, and the network-wide carload "Local Service" metric measures BNSF's adherence overall to customers' FMLM service plans. (*Id.* at 5.) As BNSF noted, we have met our Local Service performance metric in almost 90% of FMLM movements in 2021. (*Id.* at 6.) Given that BNSF already provides shippers the type of core FMLM service data described above, there is no justification to impose uniform regulatory requirements in a highly variable area that requires local, individualized, up-to-date customer, railroad, and local yard information.

III. Other Shipper Group Requests Sprawl Beyond the Scope of FMLM Service and Would Be Overly Burdensome

While some Opening Comments request core FMLM-related data as discussed above, several comments request data that are beyond FMLM-related information and include a level of detail that would be overly burdensome. These requests reflect little more than a broad wish list that does not seek to focus on data that might be relevant or helpful in evaluating FMLM issues. Curiosity alone does not justify regulatory action.

The wide range of data requests and other suggestions proposed by several shippers reflect the shippers' apparent understanding of this proceeding as a broad "brainstorming session"² and not an effort to produce concrete benefits for shippers regarding FMLM service.³ While the Board has previously used information-gathering proceedings to seek public comment and learn about a variety of topics of interest to the railroad community, *see, e.g., Common Carrier Obligation of Railroads*, EP 677 et al. (STB served Jan. 19, 2010), many of the suggestions are far too attenuated to the Board's objective of considering providing FMLM data to customers. For instance, overall transit performance data will not help inform a customer about expected delivery of a car that has arrived in a yard. (*See, e.g., Shipper Associations* 19-25.) Overall weekly performance data at multiple locations on a railroad's network will similarly not help a particular shipper plan for the arrival or origination of particular cars. (*See, e.g., API* 7.)

The central flaw in all of the shipper group comments is that they provide no valid explanation of how data reporting will provide shippers and/or the Board any level of utility that would outweigh the significant burden associated with designing systems to compile and report it. For instance, several of the comments advance network fluidity as a reason to require uniform FMLM data collection. (*See, e.g., ILTA* 7; *NGFA* 3; *Shipper Associations* 27-28; *WCTL* 22.) BNSF takes seriously network fluidity issues, as demonstrated by the efforts undertaken to alleviate congestion on our network and in our terminals during the COVID-19 pandemic and

² Diversified CPC stated that "[i]n its Decision opening this proceeding, the Board asked many good questions, so many it is not unlike opening a brisk brainstorming session." (Diversified CPC 2, Dec. 17, 2021.)

³ For example, ILTA went beyond the subject of data reporting to suggest the establishment of rigid "first-mile/last-mile" minimum service requirements where no deviations would be permitted unless agreed to by the terminal and documented in writing, with an appeal process for any disputes supported by the STB. (*See* ILTA 6.) In addition to being beyond the scope of this proceeding, uniform "first-mile/last-mile" minimum service requirements with no deviations permitted unless in writing with appeals to the Board would create an unrealistic and unworkable regime for the highly-variable circumstances of FMLM service.

recent supply chain issues.⁴ However, commenters do not explain how collecting uniform FMLM data will lead to any improvement in the fluidity of movements in local yards or, even if it were relevant to FMLM issues, fluidity concerns across the nationwide freight rail network. Broad data reporting as suggested by many shippers and shipper associations simply imposes burdens without any plausible benefits.

IV. Shipper Group Comments Confirm That Data Reporting is Just Intended to Facilitate Common Carrier Litigation

As discussed in BNSF's Opening Comments, aggregated data, even directly related to FMLM service, cannot be used to address local, on-the-ground FMLM issues. Since the data reports would produce no credible benefits for shippers in terms of service quality, the objective of the shippers seeking broad data reporting is apparently related to their desire to facilitate litigation over common carrier service. Indeed, several of the shipper group comments specifically address this issue. (*See, e.g.*, WCTL 18 ("It would be helpful if the common carrier obligation were fleshed out and/or if the Board imposed meaningful penalties or other consequences on railroads that provide poor, inadequate, and/or unreliable service."); PRFBA 27 ("[T]he Board should consider creating regulations that identify violations of railroads common carrier obligation."); IMA 22 ("[T]he Board should consider creating regulations that identify violations of railroads' common carrier obligations.")) Not only is such an objective inappropriate for policy reasons, it is also misguided because the data they seek to have railroads report would be meaningless in assessing compliance with common carrier obligations.

⁴ *See, e.g.*, Response Letter from Katie Farmer, President and Chief Executive Officer, BNSF, to Martin J. Oberman, Chairman, STB (Aug, 4, 2021) available at <https://www.stb.gov/> (open tab at "News and Communications," select "Non-Docketed Public Correspondence" locate "August" select "BNSF Response Letter to Chairman Oberman Regarding Intermodal Supply Chain Issues, August 4, 2021").

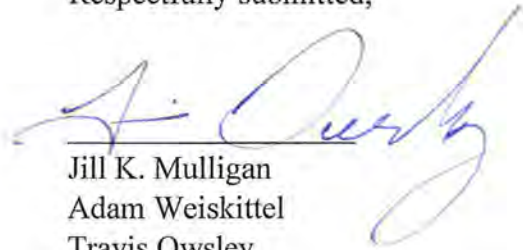
As we noted in our Opening Comments, the common carrier obligation is a highly fact-specific requirement that a railroad act reasonably under existing circumstances to provide adequate service. (BNSF 14.) Broad aggregated FMLM metrics cannot be used to assess compliance with such a fact-specific obligation. In general, “the Board tries to avoid micromanaging a carrier’s operational decisions.” *Montana v. BNSF Ry.*, NOR 42124, slip op. at 7 n. 28 (STB served Apr. 26, 2013). This longstanding precedent is based on the Board’s recognition that service quality is driven by a multitude of factors, including network issues and conditions at specific locations.

Moreover, shippers already have access to a toolbox of informal and formal remedies to address any FMLM service issues that may arise. Informal remedies include the Board’s Rail Customer and Public Assistance office and formal remedies include the Board’s formal complaint process. (*See* BNSF 10-11.) The Board should not inadvertently promote contentious and costly litigation over common carrier obligations by accepting the false premises that existing shipper remedies are inadequate or that aggregated data reporting would actually provide any value in such litigation.

V. Conclusion

Broad and burdensome regulatory data reporting provides no utility for improving highly variable and location-specific FMLM service. BNSF has already developed tools that help individual shippers manage their logistics chain and will continue to be responsive to our customers in refining those tools going forward. A separate system of FMLM data reporting will not provide the Board, shippers, or even railroads, with meaningful FMLM information. It will not benefit shippers or the Board to require railroads to devote substantial resources to the reporting of data that will not make a difference on the ground.

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FIRST-MILE / LAST-MILE SERVICE

COMMENTS OF THE ASSOCIATION OF AMERICAN RAILROADS

Pursuant to the Request for Information (“RFI”) issued on September 2, 2021, and the decision establishing a schedule for comments served on September 21, 2021, by the Surface Transportation Board (“STB” or “Board”) in this proceeding, the Association of American Railroads (“AAR”) respectfully submits these reply comments.

AAR submitted comments responsive to the RFI on December 17, 2021. AAR’s comments provided general information about first-mile/last-mile (“FMLM”) service and raised some overarching concerns arising out of the Board’s broad request for information. The comments noted that stakeholders would benefit from a better understanding of the intended purposes for any information collected by the Board. The comments also provided information regarding numerous variables that can impact FMLM service and noted that any information collection must account for the benefits and costs it would impose on stakeholders and the Board itself. The comments also cautioned that the Board must also account appropriately for competitive concerns that could arise from the collection of broad swaths of service-related information. Finally, AAR explained the types of information collected by Railinc and its limited usefulness in measuring FMLM service.

The comments filed in this proceeding confirm that railroads already provide their customers a wide range of data about the transportation of their shipments and that shippers can monitor their own service levels. The comments filed by organizations that advocate for regulatory interventions on behalf of rail customers revealed their desire for the Board to collect information that could serve to drive new litigation pathways. As explained below, the service concerns raised by those shipper organizations are better considered in the context of individual cases.

ARGUMENT

I. The Opening Comments Demonstrate that Railroads Provide, and Shippers Maintain, FMLM Service Data on Individual Movements

Railroad comments submitted in this proceeding show that carriers already provide significant amounts of data to their customers. For example, BNSF related the details of its internal monitoring system to both track its performance at local serving yards and shipper facilities and how it shares relevant data with its customers through an online portal.¹ Norfolk Southern explained how it has recently completed an extensive redesign of its shipment management tool to maximize its utility and functionality for customers.² CSX's comments set forth how its technology allows customers visibility into first-mile/last-mile service.³ KCS, like other carriers, provided trip plan compliance data to customers and is currently reworking how

¹ BNSF Ry. Co. Comments, *First-Mile/Last-Mile Service*, EP 767, at 3-9 (Dec. 17, 2021) ("BNSF Comments").

² Norfolk Southern Ry. Co. Comments, *First-Mile/Last-Mile Service*, EP 767, at 1-9 (Dec. 17, 2021) ("NS Comments").

³ CSX Transp., Inc. Comments, *First-Mile/Last-Mile Service*, EP 767, at 2-7 (Dec. 17, 2021) ("CSX Comments").

to best provide other data to customers.⁴ For its part, CN’s comments outlined the multiple tools that they provide their customers.⁵ In addition, the American Short Line and Regional Railroad Association’s comments detail how short line railroads provide information to the customers they serve.⁶ Shipper organization comments confirm that their members receive data from the railroads regarding their service.⁷

Shipper organization comments also confirmed that shippers collect their own data on service issues. For example, “[s]hippers typically maintain data regarding railcar and train events to prove negative impacts on service. Often, the shipper’s data does not coincide with the rail carrier’s data or the carrier’s data does not track specific metrics which directly impact shippers.”⁸ Similarly, WCTL notes that “[s]hippers typically are aware of their own service experience and can typically access information about their individual movements through the carrier’s customer interface.”⁹ Given railroads provide, and shippers retain, information on

⁴ Kansas City Southern Ry. Co. Comments, *First-Mile/Last-Mile Service*, EP 767, at 3 (Dec. 17, 2021) (KCS Comments).

⁵ Canadian National Ry. Co. Comments, *First-Mile/Last-Mile Service*, EP 767, at 3-12 (Dec. 17, 2021) (“CN Comments”).

⁶ American Short Line and Regional Railroad Association Comments, *First-Mile/Last-Mile Service*, EP 767, at 5-8 (Dec. 16, 2021) (“ASLRRA Comments”).

⁷ Western Coal Traffic League, et al., Comments, *First-Mile/Last-Mile Service*, EP 767, at 20-21 (Dec. 17, 2021) (“WCTL Comments”) (“Some carriers do publicly provide trip plan compliance data.”); American Petroleum Institute Comments, *First-Mile/Last-Mile Service*, EP 767, at 8 (Dec. 17, 2021) (“API Comments”).

⁸ API Comments at 3; see National Grain and Feed Association Comments, *First-Mile/Last-Mile Service*, EP 767, at 3 (Dec. 17, 2021) (“NGFA Comments”) (“...customers to try to collect their own FMLM data”); American Chemistry Council, et al., Comments, *First-Mile/Last-Mile Service*, EP 767, at 12 (Dec. 17, 2021) (“ACC Comments”) (“...members can create some FMLM performance data from their own observations”).

⁹ WCTL Comments at 24.

their specific movements, it is not clear from the record what the public need is for the Board to require further reporting of these individual movements.

II. The Record Does Not Establish a Problem to be Solved by Regulation

The Board did not identify a specific problem in the RFI that would be resolved by regulation. It only asked commenters to provide FMLM service problems “if any.”¹⁰ As railroads pointed out, issues occurring at first mile and last mile level tend to be customer specific.¹¹ Indeed, several shipper interests admit the same.¹²

There are a number of issues that can impact service, including weather, the actions of others in the supply chain, and other matters outside the railroads’ control.¹³ Shipper comments recognized the complexities of operating an outdoor plant, noting “[g]eography, topography, and numerous other system and local factors are going to mean that an hour delay at one location on one carrier may not be fully comparable to an hour delay at another location on the same or another carrier.”¹⁴ Shipper interests also understand that individual shippers can be responsible for FMLM service delays, “NITL acknowledges that missed switches can occur due to rail customers’ mistakes, such as not releasing cars timely or not managing a blue

¹⁰ See Request for Information, *First-Mile/Last-Mile Service*, EP 767, at 4 (Sept. 2, 2021); see also Association of American Railroads Comments, *First-Mile/Last-Mile Service*, EP 767, at 4-5 (Dec. 17, 2021) (“AAR Comments”).

¹¹ See CSX Comments at 8; BNSF Comments at 12-13.

¹² See WCTL Comments at 29.

¹³ See AAR Comments at 2-4.

¹⁴ WCTL Comments at 29; see also Diversified CPC International, Inc. Comments, *First-Mile/Last-Mile Service*, EP 767, at 5 (Dec. 17, 2021) (“CPC Comments”) (“...considering the expansive geography of the Class I’s, and the extensive number of locations, yards, and customers.”).

flag appropriately.”¹⁵ Because there are so many reasons for the variability in rail service, it is not clear what exact problem is trying to be solved in this proceeding or how further reporting would solve that problem.

III. No Party Has a Justifiable Need for the Agency to Collect Specific Data

While shipper interests offer a variety of ideas on types of data to collect, they provide scant explanation how additional collection of data would benefit them. Overall, shipper interests generally state more data reporting would help with individual shippers’ own planning or own service generally; however, they do not explain how aggregated data reported to the Board would help in any specific instance.¹⁶ Indeed, some recognize the limits of aggregated data.¹⁷ To the extent shipper interests just want the data reported to them by administrative fiat, that is nothing more than a desire to have a regulatory thumb on the scale of commercial dealings.¹⁸ Indeed, one shipper group admits that FMLM data requirements will allow them to “engage railroads in *commercial* discussions about FMLM service.”¹⁹ This implies that shipper interests believe the Board should use its regulatory authority to provide them free information to leverage in their commercial dealings. That would be entirely inappropriate use of the Board’s regulatory authority.

¹⁵ National Industrial Transp. League Comments, *First-Mile/Last-Mile Service*, EP 767, at 4 (Dec. 17, 2021) (“NITL Comments”).

¹⁶ See NGFA Comments at 3; Glass Packaging Institute, *First-Mile/Last-Mile Service*, EP 767, at 2 (Dec. 17, 2021) (“GPI Comments”); WCTL Comments at 24-25; ACC Comments at 14.

¹⁷ See API Comments at 7; WCTL Comments at 24.

¹⁸ See ACC Comments at 10, 14, 20, 22, 27, 28, and 33.

¹⁹ *Id.* at 7 (emphasis added); see Institute of Scrap Recycling Industries, Inc. Comments, *First-Mile/Last-Mile Service*, EP 767, at 5 (Dec. 17, 2021) (“ISRI Comments”); API Comments at 7-8; ACC Comments at 14.

Furthermore, collection of data and requirements to report do not fall on shippers, but instead create burdens that are primarily on the railroads. Shipper interests acknowledged this fact, as well.²⁰ Even the Department of Transportation (“DOT”) recognizes the burden on railroads, “DOT understands that any additional reporting that railroads are asked to provide could create burdens for railroads.”²¹ Several shipper interests suggest multiple reporting requirements and metrics on a weekly or otherwise regular basis. Not only does the actual effort of collecting, sorting, and compiling information on all metrics or requirements on all movements take tremendous resources, but it would require development of systems and software to do so – not to mention standardization of it across all railroads. While DOT and others speak in generalities about wanting more information, no one identifies a legitimate need.²² A mere desire to have more information does not justify the burden on railroads to collect, sort, analyze, and provide detailed metrics and information on every single movement a railroad undertakes.

IV. FMLM Service Data Would Not be Useful in Establishing a Minimum Service Standard

It is clear that some organizations that advocate at the STB on behalf of rail customers view this proceeding as a way to advance new litigation avenues at the Board. Indeed, some shipper groups explicitly indicate that their goal is for the Board to require more data be

²⁰ CPC Comments at 7 (“Tracking FMLM service performance requires more detail, presenting a greater challenge.”); ACC Comments at 19 (“identifying meaningful FMLM reporting that does not place an undue burden on railroads is a complex endeavor”).

²¹ Department of Transportation Comments, *First-Mile/Last-Mile Service*, EP 767, at 4 (Dec. 17, 2021) (“DOT Comments”).

²² *See, e.g., id.* at 4 (explaining that “DOT’s view is that this additional information could be crucial to addressing supply chain concern”, however DOT does not explain how more information will address supply chain concerns); WCTL Comments at 17-18; ACC Comments at 14; NGFA Comments at 3.

reported to create new right of action and to facilitate litigation.²³ Such calls misunderstand the regulatory paradigm around rail service.

When the Board was created in 1996, it was not charged with directly overseeing the tens of thousands of individual rail movements that are transported across the nation each year. As such, Congress did not empower the agency to create generalized service standards. Even in an era of greater regulatory command and control, the ICC explained with regard to setting service standards that “establishing such standards would be inconsistent with our current policy of encouraging (especially in the absence of market dominance) service competition regulated by the marketplace.”²⁴ Instead, the statutory paradigm recognizes that market forces will discipline rail service in most instances. As such, the common carrier obligation, is appropriately considered on a fact-specific, case-by-case basis.²⁵ To achieve this, the statute expects complainants to bring specific claims that rail carriers have failed to meet statutory standards and bear the burden of proof. This is because the common carrier obligation is determined based on the totality of the circumstances, not just one aspect of a move. When it comes to specific service concerns, this makes sense, as the individualized nature of rail service lends itself to a case-by-case evaluation process. Given the vast difference

²³ NITL Comments at 4-6; ISRI Comments at 7; GPI Comments at 2.

²⁴ *Reasonable Dispatch (Perishables)*, 364 I.C.C. 168, 169 (1980).

²⁵ See *Granite State Concrete Co. v. STB*, 417 F.3d 85, 92 (1st Cir. 2005) (“The STB has been given broad discretion to conduct case-by-case fact-specific inquiries to give meaning to these terms, which are not self-defining, in the wide variety of factual circumstances encountered”); *Nat’l Grain & Feed Ass’n v. United States*, 5 F.3d 306, 310 (8th Cir. 1993) (“Congress did not further elucidate the requisites of the common carrier obligations, leaving to the Commission and the courts the task of clarifying, on a case-by-case basis, a more precise definition of ‘reasonable request,’ ‘adequate car service,’ and ‘reasonable rules and practices.’”).

in factors that impact service issues, it would be inappropriate to create any service presumptions regarding the common carrier obligation, much less compare one railroad's service to another in a different location. Shippers now seek to use data collection as a first step towards circumventing that process.

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.²⁶ For other customers, railroads remain subject to the common carrier obligation to provide service with reasonable dispatch.²⁷ Efforts 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 will not do anything more than create frustration, confusion, and endless litigation. Additionally, these efforts will require the Board to collect, process, and protect enormous amounts of data, the commercially sensitive nature of which, even gives some shippers pause.²⁸ There is no reason to believe such a system will result in improved service for any customer, instead it may create perverse incentives for railroads not to offer premium service to those customers who wish to purchase it.

²⁶ See WCTL Comments at 18 (“For contracts, court litigation and arbitration are sometimes an option as well”).

²⁷ See 49 U.S.C. § 11101; *United Transp. Sys. v. PIE Import Export*, 889 F. Supp. 94 (1995).

²⁸ See NITL Comments at 5; ACC Comments at 16-17.

V. Shipper Comments Provide Generalized Anecdotal Service Concerns That Are Appropriately Considered in Specific Cases

Only one individual shipper filed comments in this matter.²⁹ Instead, in the majority of comments shipper associations relayed anecdotal, anonymous complaints or generalized service concerns as justification for regulatory intervention.³⁰ These allegedly aggrieved shippers, however, can file cases and attempt to demonstrate unreasonable service with particularized evidence. Indeed, some groups admit as much, “[u]nreasonable practice complaint or injunctive relief are possible options.”³¹ Instead of filing such case, however, shippers merely want to entice regulatory invention without incurring the time and effort to appropriately address their concerns before the Board.

Moreover, shippers can and do utilize the Board’s informal processes to resolve disputes. As noted by several shippers, the Board’s RCPA can mediate informal disputes without resorting to formal complaint processes.³² Railroad carriers always strive to work constructively with RCPA and individual shippers to resolve concerns prior to issues being elevated.

In addition, shippers can also work with their carriers directly to improve reliability. This is noted by some, “a shipper may be able to contact a carrier representative directly.”³³ Others

²⁹ See CPC Comments.

³⁰ See National Association of Chemical Distributors Comments, *First-Mile/Last-Mile Service*, EP 767, at 2-6 (Dec. 17, 2021) (“NACD Comments”); API Comments at 2-6; International Liquid Terminals Association Comments, *First-Mile/Last-Mile Service*, EP 767, at 2-4 (Dec. 17, 2021) (“ILTA Comments”); ACC Comments at 7-10.

³¹ WCTL Comments at 18.

³² See NACD Comments at 3; NGFA Comments at 3; NITL Comments at 5.

³³ API Comments at 3.

explain that “[a]t times, the freight rail customer can request special or ‘weekend’ switches to make up for a lost switch.”³⁴ Further, the only individual shipper to file comments explained how its carrier does work with them, noting that “[t]he railroad sales and marketing managers that we work with on service issues have been understanding ... [a]fter we showed [the railroad] the negative impact the new schedule would have on our production, they responded by restoring the original switching schedule. This is just one example of our experience addressing service issues with railroad personnel who are on line with the customers.”³⁵ In addition to in-person service, rail carriers have even investing significantly in technology to address shippers’ needs, which some shipper associations recognize, “[i]n most interactions with carrier’s service case log system, it is a private messaging-type service. For some carriers, the case is assigned to a specific analyst.”³⁶ Simply put, railroads communicate with their customers.³⁷

There are a variety of other ways that the Board and its staff gain visibility into rail service issues, including FMLM service. For example, as KCS notes, OPAGAC meets with Class Is on a regular basis.³⁸ During the pandemic, the Board was able to hear directly from railroads regarding service matters through scheduled joint calls with the Federal Railroad Administration. In addition, when specific matters arise, the Board does not hesitate to request

³⁴ NITL Comments at 4.

³⁵ CPC Comments at 6.

³⁶ API Comments at 3.

³⁷ CN Comments at 2.

³⁸ See KCS Comments at 5.

information through publicly available correspondence with Class Is.³⁹ These efforts ensure the right information can be elicited depending upon the unique nature of the issues being experienced. But, there is no evidence of individual service concerns being resolved through generalized ongoing data collection.

CONCLUSION

The record compiled thus far in this proceeding confirms that rail customers have access to a large amount of data regarding their service, including service over the first and last mile. AAR respectfully suggests that before the Board pursues any regulatory requirements, it should articulate a need for any information collected, narrowly tailor any collection to those needs, ensure all variables impacting FMLM service are accounted for in the collection, evaluate the costs and benefits of its actions, and implement appropriate protections for the information collection and stored by the Board.

Respectfully submitted,



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³⁹ See Surface Transportation Board, *Non-Docketed Public Correspondence*, available at: <https://www.stb.gov/news-communications/non-docketed-public-correspondence/>.

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

303942

STB Ex Parte No. 767

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FIRST-MILE / LAST-MILE SERVICE

**NORFOLK SOUTHERN RAILWAY COMPANY
REPLY COMMENTS**

Norfolk Southern Railway Company (“Norfolk Southern”) files these reply comments in response to the feedback provided by shippers and railroads in opening comments to the Board’s request for comment published on August 31, 2021 regarding First-Mile/Last-Mile (FMLM) Service. Norfolk Southern reaffirms its opening comments of December 17, 2021 and additionally files these reply comments to address concerns with the wide-ranging proposals made by shippers. In these reply comments, Norfolk Southern explains why market-based solutions to data sharing between railroads and their customers are more appropriate and reiterates its concern that the collection of the proposed data would conflict with the Paperwork Reduction Act and would not ultimately address the issues raised by the Board.

1. Shippers Failed to Justify Their Extensive Data Requests.

The Board asked parties to identify FMLM service issues and to develop and suggest metrics around those service issues. *See* Decision, *First-Mile/Last-Mile Service*, Ex Parte 767 (decided Aug. 31, 2021) at 4 (requesting comment “from the shipping community, carriers, and the public concerning what, if any, FMLM issues they consider relevant” and seeking “recommendations as to specific additional data

commenters view as important to identify FMLM service concerns that is not now being reported to the Board”). Given the broad invitation, shippers requested high volumes of wide-ranging data. Many of the requested data points are highly specific and narrowly defined, spanning a broad spectrum of service metrics. *See, e.g.,* The International Liquid Terminals Association Opening Comments, Ex Parte 767 (requesting railroads report ten (10) additional data points); American Chemistry Council, American Fuel & Petrochemical Manufacturers, and The Fertilizer Institute Opening Comments, Ex Parte 767 (requesting eight (8) additional metrics and a complex reporting scheme); The National Industrial Transportation League Opening Comments, Ex Parte 767 (suggesting railroads should publish set schedules and report data about trip performance, trip plan compliance and interchange performance with respect to those published schedules).

As a threshold matter, shippers did not explain why the myriad proposed data would be more useful than information already available to them. Shippers’ requests are generally rooted in pipeline and inventory management. As stated in its opening comments, Norfolk Southern already provides information and tools to our customers which serve these important goals. This is generally consistent with the information provided by other carriers. *See generally,* BNSF Opening Comments, Ex Parte 767; CN Opening Comments, Ex Parte 767; CSX Opening Comments, Ex Parte 767. Shippers did not explain how the various proposed metrics would meet their needs better than the information already provided by Norfolk Southern and other carriers.

Additionally, much of the requested information is outside the scope of local, or FMLM service. For example, the Institute of Scrap Recycling Industries requested that carriers report on-time delivery percentage. *See* Institute of Scrap Recycling Industries Opening Comments, Ex Parte 767 at 9. However, on-time delivery percentage would not offer a complete, accurate picture of local service. A carrier can fail on on-time delivery for a variety of reasons, but experience smooth local service, so that data point would be misleading in the context of FMLM service.

In short, the wide-ranging requests are not clearly rooted in any justified need for more data that would solve service issues. As customers have noted, service problems are the result of a wide variety of factors, many of which are customer specific. *See, e.g.*, WCTL Opening Comments, Ex Parte 767 at 29. Thus, customer-specific data, such as that provided by Norfolk Southern's customer experience platforms, is what is likely to be most useful. That data is already provided to customers; and the commenters have not explained how publicizing and aggregating what is inherently customer-specific data points would enhance service. Data for data's sake should not justify burdensome regulation.

2. The Board Should Consider The Anticipated Burdens And Its Paperwork Reduction Act Obligations.

In its opening comments, Norfolk Southern observed the Board's obligation to comply with Paperwork Reduction Act requirements. Having now reviewed and considered the various proposals, Norfolk Southern urges the Board to honor this obligation by declining to adopt a new reporting requirement.

The Paperwork Reduction Act aims to “minimize the paperwork burden” on certain entities, including corporations, and to “ensure the greatest possible benefit from and maximize the utility of information created, collected, maintained, used, shared and disseminated by or for the Federal Government”. *Paperwork Reduction Act*, § 3501 (1995). To comply with this statutory directive, the Board must consider both the utility of the requested information and the estimated burden on the industry. As discussed above, the utility of the information requested is not well established. Further, the anticipated burden is quite high.

A new reporting requirement including even a small portion of the information requested by shippers and similarly aligned parties in their opening comments would unreasonably burden carriers. Norfolk Southern tracks almost none of the suggested metrics in the form suggested by the commenters. Even if the underlying data is available, it would require costly, time-consuming, and labor-intensive internal changes. The various reporting schemes proposed would further compound this burden by requiring various sets of the same data packaged differently.

The Board must be mindful of the cumulative burden on the industry. To emphasize a point made in Norfolk Southern’s opening comments, carriers already report a significant volume of service-related data to the Board. Given the Board’s technological infrastructure, this data must be pulled, assembled, and submitted manually. This is a time and labor-intensive process. An additional requirement would further increase the cumulative burden on carriers to an impermissible degree.

In its opening comments, BNSF stated that “[a] generalized desire for more transparency into FMLM data does not justify burdensome regulatory action, especially considering the significant amount of FMLM data that is already available to [] customers.” BNSF Opening Comments, Ex Parte 767 at 10. Norfolk Southern agrees. Especially in light of the proposals and explanations offered by the shippers, a new reporting requirement would not be appropriate and would be inconsistent with the directives in the Paperwork Reduction Act.

3. Carrier-Driven Customer Experience Platforms Allow For Innovative Data Solutions.

There is a better approach than government-mandated service reporting. Innovative carrier solutions can address shifting service-related needs more effectively than additional reporting requirements. Prescriptive regulatory requirements are inherently fixed and inflexible, subject to lengthy procedural hurdles if modifications are needed. In contrast, a carrier can nimbly adapt its customer experience offerings to changing customer needs. As explained in opening comments, Norfolk Southern regularly solicits customer feedback into its customer experience platform and responds to that feedback through platform updates. *See* Norfolk Southern Opening Comments, Ex Parte 767 at 2 (discussing the ways Norfolk Southern solicits and incorporates feedback into its customer experience tools). This continuous improvement ensures Norfolk Southern and customers are aligned in working towards more efficient pipeline and inventory management.

Norfolk Southern's approach works. Recent internal survey results indicate that customers are satisfied with the customer experience tools offered by Norfolk Southern. These results further illustrate that carrier-customer collaboration is the best way to optimize the delivery of service-related data, without the need for further regulatory intervention. Further, these non-regulatory solutions pair customer-specific information with actionable tools within the customer experience platform. This can have a more meaningful impact on service than data alone.

* * * * *

After reviewing the suggestions submitted by other parties in their opening comments, Norfolk Southern maintains that the Board should not require additional reporting. If the Board takes any action at all, the Board should encourage carriers to continue to innovate and develop platforms that enable customers to receive real-time information about their shipments, thereby providing those customers with advanced tools to manage their rail pipelines.

February 17, 2022

Respectfully submitted,

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**BEFORE THE
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FIRST-MILE/LAST-MILE

**REPLY COMMENTS OF THE
AMERICAN SHORT LINE AND REGIONAL RAILROAD ASSOCIATION**

Introduction and Background

ASLRRA is a non-profit trade association representing the interests of approximately 500 short line and regional railroad members and 500 more railroad supply company members in legislative and regulatory matters. Short lines operate 50,000 miles of track in 49 states, or approximately 30% of the national freight network, connecting manufacturers, businesses and farmers in communities and small towns to larger markets, urban centers, and ports. Class II and Class III railroads play a vital role in maintaining rail service over thousands of miles of light density lines throughout the country that in many cases were candidates for abandonment by their former Class I owners. These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. They also face pervasive competition from trucks, barges, and transloading operations for freight traffic.

On September 2, 2021, the Surface Transportation Board ("Board") invited comments from stakeholders on issues regarding first-mile/last-mile ("FMLM") service, particularly on whether additional metrics to measure such service might have utility that exceeds any

associated burden. The Board seeks detailed information from stakeholders in three broad areas: (1) concrete examples of FMLM issues with eight related questions; (2) a series of questions about useful FMLM metrics and how they would be used; and (3) a sequence of questions about the data carriers maintain on FMLM and various trade-offs associated with varying degrees and scope of data reporting.

ASLRRA Initial Comments

On December 17, 2021, ASLRRA filed its Comments, addressing the scope of the STB’s request and the burden that any request for metrics would be to Class II and III railroads (“short lines”). In its Comments, ASLRRA set forth the functions short lines perform relating to FMLM operations, frequently providing the first mile and last mile of service on rail movements. Short lines are small businesses focused on the first and last mile of the shipment. Since they are dependent for survival generally from a small number of customers, short lines provide flexibility and responsiveness to the unique needs of each customer. Short lines provide high value to their customers, as they place cars, consolidate shipments, and move goods to and from Class I main lines. Without providing flexible local service and working closely with their customers to provide high quality and cost-effective freight service, short line railroads would lose their business to other modes of transportation, most predominantly, trucking.

In addition to describing the operations of short lines in the provision of FMLM services, ASLRRA’s Comments also addressed the issue of metrics vis-à-vis short lines. For short line railroads, capturing metrics to measure performance data “in the aggregate” is exceptionally difficult. Variability in data collection, reporting systems, and abilities across the approximately 600 short lines would result in inconsistent and non-meaningful information. Because of the difficulty in collecting uniform service data and accounting for the many variables affecting

FMLM service, ASLRRA collected information on how some representative short line railroads capture service data and are responsive to customer concerns. As a result of that survey, ASLRRA found that while some short lines use various transportation management systems (“TMS”), of those that use a TMS, not all use these types of systems in the same way. For example, some railroads utilize the full suite of online asset management and metrics, while others use only select functions of these type of programs to see only the information relevant to their particular operations. Moreover, other short lines do not maintain any information in a TMS at all.

This survey demonstrated that there is no single metric or set of metrics or data reporting process that would make sense for the STB to mandate of 600 different small business short lines. Overall, short lines are very responsive to their customers and quickly address any identified service issues, particularly in the provision of FMLM services – that is in fact generally considered the hallmark of short line service.

Finally, ASLRRA addressed the question posed by the Board regarding the burden on short lines. We pointed out that while short lines may carry the same types of freight as Class I railroads, the scope of their operations are very different. Most short line railroads meet the definition of small businesses. On average, short line railroads employ fewer than 30 people, run an average of only 79 miles, and have \$7.7 million or less in revenue. Most short lines must invest a minimum of 25% of their annual revenue back into their infrastructure, which is a percentage far higher than almost any other industry in the country. Further, although short line railroads participate in approximately 20% of all carload movements and have roughly 12% of the industry’s employees, they earn only approximately six percent of the revenue generated on the national rail system.

These small railroads have short lengths of haul, high fixed costs, and large capital needs for infrastructure investment, including the task of upgrading bridges and track to handle heavier freight cars. Requiring them to adopt and institute the kinds of reporting regimes suggested by the shippers and shipper associations set forth in their letters to the Board would be extremely expensive and burdensome. Short lines simply do not have the staff, the expertise, nor the funds to adopt the processes that would be required to produce the reports. Additionally, as shown in ASLRRA's Comments, the suggested reports would not produce any reliable or meaningful data or metrics or information to the Board or shippers, especially whether carriers are meeting their common carrier obligations "in the aggregate." Further, given the service that short lines pride themselves on providing their customers, any new requirement on short lines would be solving a problem that largely does not appear to exist.

ASLRRA Reply

Most Shipper Comments Show that Short Line Service is Not the Problem

ASLRRA has reviewed each of the shipper or shipper association Comments in EP 767. It is striking to note that out of the shipper comments, the overwhelming majority either praised short lines or did not mention any concerns with service from their short line railroads.¹ Also, the Department of Transportation and Federal Railroad Administration included a footnote in its Comments that in its experience, the shippers' current concerns were more pronounced on Class I railroad and that service. US DOT Comments, FN 1, page 3. Diversified CPC International, Inc. praised the services of the Class II railroad that served its

¹ See, e.g., the Comments of Diversified CPC International, Inc., the National Association of Chemical Distributors, the Glass Packaging Institute, the National Industrial Transportation League, the U.S. Department of Agriculture, the National Propane Gas Association, the Rail Unions, the National Grain and Feed Association, the U.S. Department of Transportation and Federal Railroad Administration, and the American Chemistry Council, et al.

plant in Sparta, New Jersey, calling its services “flawless.” Diversified Comments, page 5. None of these ten, out of a total of fourteen commenters, submitted that short lines should or needed to prepare the lengthy and complicated reports they advocated should be provided by Class I railroads.

Even one of the commenters who did speak to whether short line railroads should be included in mandatory reporting metrics, the American Petroleum Institute (“API”), observed that “...short line carriers typically collaborate with the shipper facility on service needs and work together to find the best service solution for both parties,” and that “API notes that these concerns do not exist with short line carriers and shippers have much better communication and service issue resolution success with short line carriers.” API Comments, pages 5 and 6.

ASLRRA concurs with that sentiment and is gratified by the expression. It is indeed the hallmark of the services short lines provide and shows why, if the Board decides to mandate the types of reports some shippers advocate, short lines should not have to prepare and submit the same.

Shipper Comments Suggesting Short Lines Should Report Are Not Persuasive

API said because of the responsive and collaborative conversations with short lines on service, it suggested that the Board should focus first on Class I reporting at this time and suggested revisiting the FMLM discussion for short lines after that. API Comments, page 10. Although ASLRRA does not necessarily object to revisiting this discussion, the outcome will likely be the same – the proposed reports would still likely be a significant burden on short lines and not provide any benefit that would offset the burden.

Similarly, the Western Coal Traffic League, et al. (“Shipper Association”) said that if new metrics are required, the Board should start with Class I railroads but should examine the

burden on Class II and III railroads versus the benefits to shippers and that if the burden is too great, allow the short line to seek an exemption from the requirement. Shipper Association, page 31. In addition to the points ASLRRA has made regarding the burden on short lines to prepare and submit the reports suggested by the shipper Comments, the cost and time involved of seeking (and defending) a request for an exemption from the STB would be beyond the finances of many short lines and would not be a wise use of very limited resources.

The Institute of Scrap Recycling Industries, Inc., simply states it believes the reporting requirements should be adopted for both Class I railroads and short line railroads, apparently based solely on some unnumbered and unspecified “problems” with unnamed short lines. Comments of the Institute of Scrap Recycling Industries, Inc., page 7. Finally, the International Liquid Terminals Association asserted that Class I carriers “may argue” that the FMLM issues raised are all the fault of short line railroads. Comments of the International Liquid Terminals Association, page 7. With regard to both sets of Comments, such non-specific complaints and hypothetical concerns should not be nearly enough to justify the imposition of burdensome new reporting requirements on short lines.

Conclusion

Overall, the Comments filed by individual shippers and shipper groups/associations all suggested that FMLM alleged issues involved Class I railroads and argued that the Board should require the Class I railroads to compile various detailed metrics and data and then report the same to the Board and the shippers. They did not show that short lines were causing any such alleged issues and, in fact, in many cases, praised the responsive FMLM services of short lines. Setting aside whether the suggested reports would be useful in addressing any alleged issues

between shippers and Class I railroads, these Comments did not show why the proposed reports should be imposed on short lines to their financial and operational detriment.

ASLRRA urges the Board to refrain from sweeping short line railroads into any requirement to create systems to track and report uniform metrics. Not only is it unclear what, if any, metrics are suggested or what, if any, benefits metrics would provide, the adverse effects of imposing such a mandate would be a serious financial blow to short lines, and thus potentially to the customers they serve. ASLRRA submits there is no indication that short line FMLM service to short line customers is a problem that needs fixing, and also suggests that there is no particular set of data or metrics or particular tracking or reporting system that would be feasible or realistic to require of 600 different and distinct small businesses that are already laser focused on providing excellent customer service every day.

Respectfully submitted,



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**BEFORE THE
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FIRST MILE/LAST MILE SERVICE

RAIL UNION REPLY COMMENTS

The American Train Dispatchers Association, Brotherhood of Maintenance of Way Employees Division/IBT; Brotherhood of Railroad Signalmen; International Association of Sheet Metal, Air, Rail and Transportation Workers-Mechanical Division; International Association of Sheet Metal, Air, Rail and Transportation Workers-Transportation Division and National Conference of Firemen and Oilers, 32BJ/SEIU (“Unions”) submit these Reply Comments in response to the Board’s solicitation of comments and information regarding the quality and reliability of rail carrier First Mile/Last Mile service (“FMLM”), and to reply to comments submitted by the Association of American Railroads (“AAR”) and other Class I carriers.

1. AAR and BNSF assert that First Mile/Last Mile performance is affected by many factors outside the carriers’ control (“external factors”) so there is no real value in collecting FM/LM data. Among the external factors cited by AAR and BNSF are: a) that the carriers are interconnected with other rail carriers and others modes of transportation, so the FM/LM performance of individual carriers is affected by the rest of the transportation network, as well as by non-transportation events ; b) the railroads operate an “outdoor plant”, so their FM/LM performance is affected by weather and climate events; and c) carriers have to coordinate with shippers and receivers. AAR Comments at 2-3, BNSF Comments at 11-12.

These are specious arguments for opposing collection and reporting of FM/LM data. All of the cited external factors are inherent in railroading; and have been for over 150 years. And all of them are predictable aspects of railroading.

It is the responsibility of the carriers to plan for occasional events such as hurricanes and blizzards, and significant swings in the international economy; as well as for regular events such as heavy rains and run-off in the Spring, high heat and track buckling in the Summer, sustained cold and ice affecting switches in the Winter, and changes in seasonal demand such as harvest time in the Fall and demand for petroleum products in the Winter. That the railroads cite a fundamental aspect of their operations- that it is outdoors- as a reason for not collecting FM/LM data is disingenuous and insulting to the Board and other industry stakeholders.

Similarly, occasional problems with connecting carriers and connecting with other modes of transportation are also a fundamental part of the business and should be anticipated in any reasonable and responsible business plan. Likewise, that delays or issues at one shipper or receiver may affect service to other shippers is simply a fact of life in the industry. In essence, AAR and BNSF argue that FM/LM data should not be collected because it will reflect the consequences of reasonably predictable or anticipatable events that have always affected railroad performance. And, if a delay or other problem is caused by the shipper asserting inadequate service, that would be a defense to such a claim.

That external events or other actors can affect a railroad's performance has been true for as long as there have been railroads, and as long as there has been a common carrier obligation. What is new, is the comparatively high level of customer complaints regarding the service provided by the Class I railroads. And that comparatively high level of customer complaints has coincided with the implementation of the new ruthless cost-cutting business model and so-called Precision Scheduled Railroading ("PSR"), and the drive to reduce operating ratios to the sole benefit of investors. But, as common carriers, the railroads owe a duty to provide adequate

service to their customers. To assert that pick-up and delivery performance that would be measured by collection of FM/LM data would be irrelevant because factors external to the railroads affect that performance is a baseless contention because most of those factors are simply typical or reasonably foreseeable, and are inherent elements of railroading and performance as a common carrier.

It is up to the railroads as common carriers to plan for regular and reasonably foreseeable problems; to build resiliency and cushions into their operations in order to provide adequate service. One component of proper planning and ensuring resiliency is having a work force sized to be sufficient not only for when everything is going well, but also when frequently encountered, and infrequent but anticipatable, external factors come into play. That means having enough Signalmen to clear snow and ice from switches and to respond to malfunctioning crossings; enough Maintenance of Way employees to respond to right of way washouts, track obstructions and heat-buckled rails; enough shopcraft workers to do complete inspections and maintenance of equipment, especially when fleets of locomotives and cars have been reduced and much equipment has been mothballed; enough Dispatchers to handle all train movements, particularly as the railroads run longer trains and pack more cars into the same physical space; and enough operating employees so when there are delays which cause train crews to reach their Hours of Service limits, there are backup crews that can continue to move the trains to customers, and enough yard and local crews to bring cars from terminals to shippers. Some of the largest reductions of rail employment have been among yard and local crew employees and extra boards- the very employees likely to be most involved in service for the first and last miles. Declaration of SMART TD National Legislative Director Gregory Hynes ¶¶3-5. But the Class I

railroads have deliberately reduced employment. They should not be heard to complain about being assessed on FM/LM performance because external factors can affect that performance, when they have intentionally hindered their ability to respond to those external factors by reducing the work force that could mitigate the effects of the elements and actions of others.

2. AAR asserts that the Board has not identified an actual regulatory problem; that it has not described particular aspects of FM/LM service that it is concerned about (e.g. spotting inbound cars, pulling outbound cars, yard crew building); AAR claims the Board has just cited “vague” service concerns. AAR at 4-5.

The Board has explained that it has received many complaints about service from shippers and shipper associations. Apparently there has been a significant increase in those complaints and that was the impetus for this proceeding. As the regulatory agency for railroads and shippers it is entirely appropriate for the Board to investigate such complaints. The railroads’ dismissal of the mounting shipper complaints as “vague” is indicative of a cavalier attitude toward their customers and their statutory obligations.

Assessing the utility of collection of FM/LM data makes sense because the ultimate product “sold” by the railroads, and “purchased” by the shippers, is the actual pickup and delivery of cars. The railroads often deflect service complaints by citing data on system velocity and dwell time. But speed of movement between terminals does not measure performance for the shippers because transit time between terminals reveals nothing about actual pickup and delivery of cars. And dwell time can be, and is, manipulated by movement of cars out of yards and onto rail lines (so they are no longer counted as in terminals), but movement of cars out of yards is not a measure of actual service to the shippers. *See Hynes Declaration ¶6.*

3. BNSF contends that resolution of the alleged service problems should be left to the market, not handled by regulatory mandates. BNSF at 2, 14.

This contention, frequently advanced by the railroads (*e.g.* AAR letter to Chairman Oberman dated October 3, 2021), ignores some very basic characteristics of the railroad industry and the environment in which railroads operate. The Class I railroads are not actors in a free and open market. Today's Class I's are duopolies that exist as a result of ICC/STB approvals of consolidations of previously separate carriers. And creation or extension of rail lines comes at a significant capital expense. Additionally, entry to and exit from the industry requires Board approval or exemption. Furthermore, the merger and/or control transactions that created every one of the Class I railroads required ICC or STB approval based on findings that the transactions were consistent with the public interest. Accordingly, to assert that the Board has no place in assessing whether the public interest is still being served by the railroads that resulted from those transactions, when the railroads are exploiting their size and lack of competition that flowed from the authorized transactions, is to undercut the reasoning that was the basis for approval of those transactions.

Additionally, ICC/STB approval of those transactions came with exemption from anti-trust law and all other laws (which included immunity from Railway Labor Act claims) as “necessary” to the ‘carry[ing] out’ of those transactions (49 U.S.C. §11321), with the “carrying-out” and “necessity” broadly construed. *Norfolk & Western Ry v American Trains Dispatchers Ass’n*, 49 U.S. 117, 133 (1991); *American Train Dispatchers Ass’n v. ICC*, 26 F 3d 1157, 1164-65 (D.C. Cir. 1994); *United Transp. Union v. STB*, 108 F. 3d 1425, 1430-31 (D.C. Cir. 1997). Simply put, the current Class I railroads would never have been allowed to come into existence (and never would have been able to ignore anti-trust restrictions and Railway Labor Act

requirements) if the railroad industry existed in the sort of open market environment the railroads pretend they are part of when they protest Board investigation of the quality of the service they provide. In asserting that the Board should defer to market-based solutions, the railroads deny the reality that they are government sanctioned duopolies (and to some extent monopolies) that are effectively immune from many legal challenges and effectively impervious to market-based challenges and corrections. The railroads want the advantages of government permitted consolidation that would not have been allowed in most other industries, and post-transaction immunity from anti-trust claims and claims under other laws, but they then want to cabin the role of the agency that allowed those consolidations and conferred on them such immunity. Having reaped the benefits of Board approval of their creation, the railroads are in no position to tell the Board to keep its nose out of their businesses.

4. The railroads say that aggregated FM/LM data is not useful, that the issues for one shipper are not necessarily related to the issues for another shipper; and that FM/LM issues are inherently customer-specific. AAR at 6-7, BNSF at 11-12, CN at 13, CSXT at 2, NSR at 9-11.

Nearly all the Class I's dismiss the need for collection of FM/LM data by asserting that their FM/LM interactions with each shipper are specific to that shipper, so shipper allegations of FM/LM problems are not appropriately addressed by a broad-based solution like collection, aggregation and analysis of FM/LM data on a carrier basis. But this argument makes unfounded assumptions about the nature of the FM/LM problems.

The carriers contend that there are no systemic FM/LM issues, and that each shipper complaint should be separately analyzed. However, the only way to tell whether the service problems alleged by shippers and shipper associations are systemic or shipper specific is to

collect system information. Furthermore, many shippers contend that their service issues began with, or were exacerbated by, the implementation of so-called Precision Scheduled railroading and the new cost-cutting business model. If many shippers across various systems are experiencing similar problems, then that suggests that the service issues are not shipper-specific but a result of carrier policy decisions. And, if the service complaints are related to the railroads' slashing of their payrolls in recent years, then collection of data on a carrier basis will be relevant to assessment of the service complaints, since the reductions of employment have been driven by decisions at the headquarters of the carriers, not at the level of particular divisions. *See e.g.* J.J Ruest statement following termination of CN bid for KCS, *Toronto Globe and Mail* September 17, 2021; *Progressive Railroading*, September 13, 2017- "CSX Cuts Workforce 2700 Jobs So Far in 2017. In urging the Board not to collect and examine aggregated data, the carriers are attempting to artificially constrain the scope of the inquiry, effectively precluding any determination that there are systemic service problems.

5. AAR and NSR argue that the Board must make a cost/benefit assessment in deciding whether to collect FM/LM data; and they claim that such a requirement would be costly, create administrative burdens, and necessitate a lot of unproductive paperwork. AAR at 9-10, NSR at 12-13.

The railroads act as if they are still keeping track of cars with paper and pencil; and that it will take an army of clerks to organize the information for meaningful analysis. Having eliminated tens of thousands of clerk jobs over the last three decades, and having replaced those clerks with ever more sophisticated computers, the assertions of administrative burdens and costs should be given little weight. The railroads collect and manipulate all sorts of data on service (how do they calculate the system velocity and dwell time data they tout if they are not collecting

data on where cars are at what times?). In fact, the railroads know when cars are picked up and delivered because that data is entered by railroad employees. Hynes Declaration ¶ 2. Indeed, one argument the railroads make against the collection of FM/LM data is that they all have monitoring tools by which shippers can tell where trains are at any given time (BNSF at 3-10, CN at 3-12, CSXT at 2-8, and NSR at 1-8). If these programs are as informative and easy to use as the railroads claim, then it should not be burdensome to use those programs to provide the FM/LM data that the shippers seek.

And the railroads ignore the benefits side of the costs-benefits scale. Since the product that the railroads “sell” and that the shippers “buy” is pickup and delivery of rail cars, collection of data on when cars are actually picked up and delivered in relation to when they were supposed to be picked up or delivered goes to the very essence of the product; and the benefit of having that information is substantial as it is essential to assessing the quality of service.

The railroads cost/benefits argument should be discounted since it exaggerates the costs and downplays the obvious benefits of collection of this data.

6. The railroads contend that collection of FM/LM data is unnecessary because the railroads already have software that allows shippers to know the progress of the trains that will serve their facilities. BNSF at 3-10, CN at 3-12, CSXT at 2-8, and NSR at 1-8.

As is noted above, the assertion that all necessary data are available to shippers via the carriers’ software undercuts the assertion that collection of FM/LM data would be costly and burdensome. Moreover, knowing where a train is in real time is not knowledge of why the train is where it is. Learning a train is 8 hours away when it was supposed to be at a shipper’s facility does not explain why the train is late. Additionally, random checks on status of trains does not even provide aggregated data for the individual shipper. Also the argument that provision of

FM/LM information to the Board is not necessary because individual shippers can learn about the trains servicing them through the carriers' software programs has the same infirmities as the arguments discussed in points 3 and 4 above-- the carriers erroneously assume there is no legitimate role for the Board in collecting data that can provide information relevant to service complaints; and they falsely assert that there is no need for the Board to see aggregated service data to assess service issues on carrier basis.

7. BNSF argues that FM/LM performance is not a legitimate basis for assessing compliance with the common carrier obligation; and that breach of the common carrier obligation must be assessed on an individual shipper basis. BNSF at 13.

Apparently attempting to preemptively preclude use of FM/LM data to assess service, BNSF argues that such data is irrelevant to determining whether a carrier is in compliance with its common carrier obligation. This argument is absurd.

Actual pickup and delivery of cars within a reasonable time frame relative to what was promised is necessarily a key factor in assessing whether a railroad is complying with its common carrier obligation. It matters not to a shipper that a train is speeding over main lines if the train does actually arrive on time. No one cares about good system velocity if pickup or delivery is substantially delayed. And BNSF cites no authority for the assertion that a carrier's compliance with its common carrier obligation may only be determined on a specific shipper basis (BNSF cites a case in which the Board stated that it tries to avoid micro-managing a carrier's operational decisions; that statement does not support the argument advanced by BNSF).

The fundamental problem with BNSF's contention is that there can be (and indeed have been) decisions about service made at railroad headquarters levels that adversely affect service-

such as cutting the number of workers who actually provide the service on a system- wide basis, mothballing or selling equipment that is used to provide the service, and closing and selling yards that are integral to FM/LM service. A fact-specific inquiry into problems experienced by an individual shipper may reveal actions or affirmative decisions relative to that shipper that indicate breach of the common carrier obligation. But the problems of that shipper may be the result of system-wide policies or programs such as PSR and the ruthless cost-cutting business model. Since the decisions were deliberate and systemic, they might support a finding of a breach of the common carrier obligation; whereas the facts regarding an individual shipper may show only a frustrating sequence seemingly unrelated incidents of poor service. Collection of FM/LM data can be a powerful tool for shippers and the Board in common carrier obligation cases; and BNSF's objections to collection of that data on that basis are actually arguments in favor of its collection.

For the foregoing reasons, and the reasons stated in the Unions original comments, the Unions support a Board requirement that rail carriers report FMLM data.

Respectfully submitted,

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February 17, 2021

CERTIFICATE OF SERVICE

I hereby certify that I have caused to be served copies of the foregoing Rail Union Reply Comments by First Class Mail to the offices all Parties of Record in this Docket.

Date: February 17, 2021

/s/Richard S. Edelman
Richard S. Edelman

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Docket No. EP -767

FIRST MILE/LAST MILE SERVICE

DECLARATION OF GREGORY HYNES

I, Gregory Hynes, declare under penalty of perjury pursuant to 28 U.S.C. §1746, that the following is true and correct.

1. I am the National Legislative Director of the International Association of Sheet Metal, Rail, Air and Transportation Workers Transportation Division (“SMART TD”) which represents train and engine service employees of the Class I railroads including conductors, engineers, trainmen, yardmen and yardmasters. Before holding full-time positions with the Union, I was a conductor for the BNSF for 14 years. In this declaration, I will describe various positions held by employees represented by SMART TD who have historically been heavily involved in pickup of cars from, and delivery of cars to shippers, which is essentially First Mile/Last Mile (“FM/LM) service. I will also explain some basic facts about yard operations and local train movements important to FM/LM service; and I will respond to some of the points made in comments filed by railroads in this proceeding.

2. Although the railroads contend that they do not maintain FM/LM data or that it would be burdensome for them to collect and provide that data, the railroads collect such data in the regular course of business. All the major Class I's report the set outs or pick-ups from customers via electronic means (Zebra phone on UP and CN, DWORS/OBWO [via ipad] on CSXT, MTR or Mobile Train Reporting via an Ipad on BNSF and NS, and the AIR 2.0 or Automated Inventory Reporting via Ipad tablet on the CP).

3. Some of the largest cuts in rail employment have been to employees who have performed work most directly involved in FM/LM service: yard crews, local crews, yard masters and extra board crews. Yard crews and yardmasters are directly involved in assembly of trains and movement of trains out of terminals. Historically, yard crews, local crews and yardmasters have been directly involved in pickup and delivery of cars. Generally speaking, pre-PSR, when through/over the road trains arrived in a terminal, it was the yard crews that broke up those trains and either delivered cars to yards in the terminal or assembled local trains for delivery to facilities outside the terminal by local crews. The movements were overseen by a yard master. Similarly, pre-PSR, yard crews and local crews picked up cars from shippers and assembled them into through/over the road trains under the supervision of a yardmaster. And when the amount of work exceeded the capacity of the assigned workers, or if assigned crews were at or near their Hours of Service limits, extra board employees could fill in to handle pickups and delivery

4. More specifically:

Yardmasters are responsible for coordinating safe movements within a rail yard. Yardmasters are an essential part in the planning and coordinating of service with customers according to their operating needs. This is accomplished with continual communication with not only the customers and railroad management, but with the actual train crews that service the customers daily. Railroads are currently attempting to combine or abolish any and all yardmaster positions as possible.

Yard switching crews are responsible for executing the directives received from the Yardmaster to include the safe movement of cars into the proper classification tracks and servicing local customers within the immediate yard or terminal areas. The Yardmaster and the yard switching crews work in unison to ensure that customers are serviced in a timely manner all the while ensuring that safety is a top priority.

Local crews are responsible for moving rail cars to and from the customer industries (shippers) that are on the main lines outside of yard terminals, the safety inspection of cars being picked up from customers, and the reporting of activities by electronic tablet in real time at each customer.

Extra board employees are on standby to supplement any of the crafts due to manpower related issues like hours of service, vacation or personal time off and when traffic has increased to the point there are no regular crews rested and available to handle the immediate work.

5. Since the implementation of the ruthless cost-cutting business model and PSR, the railroads have closed many yards and furloughed yardmasters, yard crew employees, local crews and nearly eliminated extra boards. Indeed, one of the goals of PSR is inflexible scheduling, so extra boards are not needed, and yard crews are needed less as over the road crews are assigned to pick up from and deliver to shippers. But this means that cars or a train may be in the vicinity of a shipper, but cars are not delivered or picked-up because the railroad does not have the yard or local crews to handle the pickup or make delivery and/or because the primary responsibility of over the road crews is long

distance movements, not local service. To the extent that over the road crews have been required to make pickups and deliveries in and near terminals that affects their long distance movements. Elimination and reduction of these yard, local and extra board jobs has directly impacted FM/LM service because these employees historically handled the pickups and deliveries in and near terminals.

6. Railroads focus on statistics concerning system velocity and dwell time in deflecting complaints about service. But system velocity is based on movements between terminals, so it is not a useful statistic for assessing actual service to shippers in the form of pickups and deliveries. And dwell time measures time in terminals or yards, it does not actually measure idle time for cars. Railroads sometimes move trains out of terminals and on to a rail line just to get them out of the yards (thereby avoiding tabulation in dwell time, but that does not mean the cars in the consist are actually moving (and moving productively). FM/LM data will more accurately portray the actual service that matters- pickup and delivery of cars.



February 14, 2022

Gregory Hynes

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

Ex Parte No. 767

FIRST-MILE / LAST-MILE SERVICE

REPLY COMMENTS OF CSX TRANSPORTATION, INC.

CSX Transportation, Inc. (“CSXT”) respectfully submits these reply comments pursuant to the Board’s decision inviting comment about first mile/last mile service and metrics served on September 2, 2021 in this proceeding.¹ CSXT also joins in the reply comments of the Association of American Railroads.

As explained on opening, CSXT believes it is important to provide its customers with supply chain visibility. That is why CSXT has developed online tools to provide its customers with extensive information through ShipCSX and why it continues to explore ways to provide information and transparency related to local service.

Some opening comments expressed generalized concerns with first mile/last mile service and seek various forms of data reporting. As CSXT explained on opening, the up-to-date customer-specific information related to first mile/last mile service that it provides directly to the customer in a convenient online platform is the best source of real time performance data. CSXT continues to believe that an aggregated data reporting metric for first-mile/last-mile service would not be useful

¹ *First-Mile/Last-Mile Service*, Docket No. EP 767 (STB served Sept. 2, 2021) (“Decision”).

and that no new reporting regulations should be proposed. If, however, the Board does intend to propose new reporting for first mile/last mile, it should be narrowly tailored and should include information as to causation.

I. CSXT is committed to providing excellent service to its customers.

CSXT is focused on providing high quality transportation service and customer service. The ability to provide such service is critical to CSXT's ability to compete with other transportation providers and to its overall success.

Some comments cite anecdotal service problems as a reason for the Board to mandate new data reporting.² While CSXT takes seriously concerns from its customers about service, it is impossible for CSXT to respond to these types of anecdotes presented by shipper associations without more information.

CSXT serves more than 5,000 customer facilities. While it strives to maintain excellent service at all times, there will be inevitably be instances where local service is not performed according to plan—due to weather, shipper fault, or CSXT's own fault. Like all businesses, CSXT has been impacted by COVID and the supply chain challenges. CSXT continues to work towards the goal of delivering to its customers in the most efficient and reliable manner, and encourages its customers to reach out directly with any concerns so that CSXT can work towards resolution.

² See, e.g., Opening Comments of National Association of Chemical Distributors, at 2-6 (filed Dec. 16, 2021); Opening Comments of Private Railcar Food & Beverage Association, at 16-20 (filed Dec. 17, 2021).

But the comments have not shown that mandatory system-wide reporting is the appropriate response to anecdotes about first mile/last mile misses, and such anecdotes certainly should not form the basis for any proposed rule.

II. Customer-specific information is more useful than aggregated data.

CSXT appreciates that shippers want transparent information about service to their own facilities. As CSXT explained on opening, customer-specific information is more useful than aggregated data.

The Board already collects a significant amount of aggregated performance data through regulations adopted in Docket No. EP 724 (Sub-No. 4) and (Sub-No. 5). The Board's decision in this docket references that reporting, as do a number of opening comments. Those reporting regulations were adopted as a tool to identify trends and monitor potential regional or national system-wide service issues.³ The Board's proposed reporting came at the urging of shippers and after public hearings, interim reporting, two rounds of written comment, and meetings with the public to address technical issues.

Yet now, some commenters in this proceeding suggest that the 724 data, which the railroads submit on a weekly basis, are not useful and are imprecise.⁴ Any form of aggregated performance data, however, will by its very nature be

³ See *U.S. Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), at 22 (STB served Apr. 29, 2016) (main objective of reporting rules to identify trends and monitor potential service issues on Class I railroads).

⁴ See, e.g., Opening Comments of Institute of Scrap Recycling Industries, Inc., at 6 (filed Dec. 17, 2021) (the reported 724 data “provides an incomplete, if not misleading picture of the overall rail service”); Opening Comments of U.S. Department of Transportation, at 2 (filed Dec. 17, 2021) (current metrics are “imprecise”).

imprecise. Indeed, the U.S. Department of Transportation appropriately urged caution in Docket No. EP 724 (Sub-No. 4) about drawing conclusions about the state of the industry from aggregated data.⁵

The aggregated first mile/last mile data that some commenters seek now would suffer from the same limitations as the existing aggregated performance data, but those limitations would potentially be more pronounced due to the nature of first mile/last mile service. It is questionable whether aggregated first mile/last mile data would provide meaningful insight into trends in overall service. Indeed, some commenters acknowledge the limitations associated with an aggregated metric.⁶

If the Board ultimately determines that there is a need for additional insight into overall service trends beyond the tools it already has available, then it must be clear about the inherent limitations associated with such reporting and consider the burden of requiring railroads to report additional data.

Aggregated data will not inform shippers about their own service, yet that appears to be a common theme in many of the opening comments by shipper

⁵ Reply Comments of U.S. Department of Transportation, *U.S. Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), at 8 (filed Apr. 29, 2015). The Department of Transportation also agreed that the Board was appropriately concerned with weighing costs and benefits of the proposed data reporting. *Id.* at 8-9.

⁶ *See, e.g.*, Opening Comments of American Petroleum Institute, at 7 (filed Dec. 17, 2021) (“[a]s data is rolled up to the national level, it provides less insight and is less actionable but can still be a useful metric to determine overall trends.”); Opening Comments of Diversified CPC International, Inc., at 5 (filed Dec. 17, 2021) (“[a]verages and system-wide reports can lack meaning”).

associations.⁷ The other common theme is that customer-specific information is already provided by many railroads, including CSXT, directly to the customer.⁸ To the extent shippers seek information that will be helpful to their own businesses and operations, aggregated metrics will not provide useful information.

CSXT recently reviewed statistics regarding the number of subscribers to its online tools that provide information relating to first mile/last mile service. Other than pipeline alerts (to which CSXT automatically subscribes all of its merchandise customers), it appears that many of the subscription alerts are under-utilized. CSXT urges its customers to familiarize themselves with CSXT's available tools and will be considering ways to increase customer awareness of these tools.

III. The Board should not propose new reporting, but if it does, it must account for causation or the data would lack meaning.

Some shipper comments seek various forms of data reporting, with some commenters seeking a collection of extensive and potentially burdensome information. The Board did not identify a problem in its request for comments in this proceeding, instead seeking comment on “what, if any, [first mile/last mile]

⁷ See, e.g., Opening Comments of Shipper Associations, at 31-32 (filed Dec. 17, 2021) (providing data directly to customer necessary to enable a customer to identify extent to which first mile/last mile issues are impacting its facilities); Opening Comments of American Petroleum Institute, at 7-8 (filed Dec. 17, 2021) (discussing data to be reported from carrier to the shipper at the shipper level); Opening Comments of Institute of Scrap Recycling Industries, Inc., at 8 (filed Dec. 17, 2021) (discussing benefit of rail customer access to data for their facilities); Opening Comments of National Grain and Feed Association, at 11 (filed Dec. 17, 2021) (facility-level statistics provided to customers would help rail customer operations).

⁸ See, e.g., Opening Comments of BNSF Railway Company, at 3-9 (filed Dec. 17, 2021); Opening Comments of CN, at 3-12 (filed Dec. 17, 2021); Opening Comments of CSX Transportation, Inc., at 2-7 (filed Dec. 17, 2021); Opening Comments of Norfolk Southern Railway Company, at 1-9 (filed Dec. 17, 2021).

issues [are] relevant” and “whether further examination of [first mile/last mile issues is warranted.”⁹ The Board’s decision appears to have been prompted by letters from shipper associations relating to first mile/last mile service.¹⁰ But the Board should not impose regulatory data reporting requirements just for the sake of having more information and it needs to be mindful of weighing the costs and benefits of any proposed reporting. Before burdening the railroads with additional reporting obligations, there needs to be an identified problem and solution that is narrowly tailored to address that problem.

If the Board is inclined to propose reporting regulations, which CSXT does not believe it should, then the Board should be cognizant of the practical limitations associated with first mile/last mile data. For example, overall trip plan compliance for interline moves would be extremely difficult to provide. And it is unclear how overall trip plan compliance would provide insight into first mile or last mile service.

More importantly, many commenters fail to recognize that first mile/last mile service is often impacted by actions outside a railroad’s control, including shipper actions.¹¹ For example, CSXT might be unable to provide such service if cars are improperly loaded, if loading or unloading is not complete, or if the facility’s track

⁹ Decision, at 4.

¹⁰ *See id.*

¹¹ The National Industrial Transportation League acknowledges that missed switches can occur due to rail customers’ mistakes, but believes that that happens less frequently, though provides no evidence to support that supposition. *See* Opening Comments of the National Industrial Transportation League, at 4 (filed Dec. 17, 2021).

condition is inoperable. There are also instances where the cause of a first mile/last mile “miss” is properly attributed to CSXT—for example, engine failure or the railroad’s track condition. CSXT recognizes that these types of on-the-ground issues can arise, and when they do, it works with its customers to make real-time decisions that are in the best interest of both parties and keeps its customers informed through direct customer notifications, as discussed on opening.

All of this underscores the complicated nature of first mile/last mile operations and the fact that context is needed. For this reason, CSXT strongly disagrees with the Shipper Associations’ argument that any first mile/last mile reporting should be “objective,” meaning that it should “not be influenced by personal opinions or interpretations, such as individual determinations of causation.”¹² Any first mile/last mile data reporting without causation would be meaningless. Even worse, it would inevitably lead to inaccurate and uninformed inferences from the data. To be useful at all, causation would have to be reflected within any first mile/last mile reporting metric.

IV. Conclusion.

CSXT appreciates the Board’s desire to gain further insight into first mile/last mile service, but does not believe that regulation in this area is necessary. CSXT and other railroads are already providing detailed information to customers. The record does not identify a problem, let alone a problem for which mandatory first mile/last mile reporting is the answer. If the Board nonetheless intends to

¹² Opening Comments of Shipper Associations, at 13 (filed Dec. 17, 2021).

move forward with a proposal, CSXT urges the Board to carefully evaluate the burdens associated with any proposed reporting and whether those burdens outweigh the benefits.

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Dated: February 17, 2022

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

**Docket No. EP 767
FIRST-MILE / LAST-MILE SERVICE**

REPLY COMMENTS ON BEHALF OF CN

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Dated: February 17, 2022

The U.S. rail operating subsidiaries of Canadian National Railway Company (hereafter “CN”) respectfully submit these reply comments in response to the Board’s decision requesting comment on its Request for Information about first mile/last mile service and metrics served on September 2, 2021, in the above captioned proceeding.

Opening comments on behalf of shipper and shipper interests expressed generalized concerns with transparency concerning first mile/last mile service transparency and there were a range of different Board actions requested. As explained in CN’s opening comments, CN currently provides real-time, customer-specific information directly to its customers through its suite of eBusiness tools, CN One. CN is committed to providing its customers with consistent and transparent information about their shipments, and continues to upgrade and add features to CN One.

CN’s reply comments address two main issues. First, CN is already providing customer-specific information to its customers and CN does not believe that aggregated data reporting on first mile/last mile service is needed. Second, any form of first mile/last mile reporting would be meaningless without information as to causation.

I. Aggregated Data Reporting on First Mile/Last Mile Service is Not Needed

CN understands our customers’ desire to have transparent and reliable information about service to their facilities. That is why CN has worked hard to provide this information directly to our customers. However, CN does not believe

that aggregated first mile/last mile data reporting will provide shippers and shipper interests with helpful information.

The Board already collects a vast amount of performance data through regulations adopted in Docket No. EP 724 (Sub-No. 4) and (Sub-No. 5). The Board's decision in this docket references that reporting, as do a number of opening comments. The reporting currently in place at 49 C.F.R. pt. 1250 was the result of extensive work and careful consideration by the Board to provide a tool to identify trends and monitor potential regional or national system-wide service issues that could have ripple effects in the interconnected North American rail system.¹ The Board's proposed reporting came at the urging of shippers and after two public hearings, targeted reporting by BNSF Railway Company and Canadian Pacific Railway related to fertilizer and grain, and then interim reporting by all Class I carriers. With a specific goal and this backdrop, the Board then proposed regulations and received public comment, held meetings with the public to address technical issues, and received a second round of public comment, before adopting a final rule.

Yet now, some commenters in this proceeding suggest that the EP 724 data, which railroads have submitted on a weekly basis since 2014, are not helpful.² Any

¹ See *U.S. Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), at 22 (STB served Apr. 29, 2016) (main objective of reporting rules to identify trends and monitor potential service issues on Class I railroads).

² See, e.g., Opening Comments of the U.S. Department of Transportation, at 2 (filed Dec. 17, 2021) (EP 724 metrics are “imprecise” and “do not appear to be well correlated to real-world service quality”); Opening Comments of Institute of Scrap Recycling Industries, Inc., at 6

form of aggregated performance data will only be able to provide an overview of rail operations. For example, the reporting of terminal dwell and cars online were intended to be indicators of railroad system fluidity, but would not inform particular shippers about their level of service. Indeed, the U.S. Department of Transportation, which supported the Board's efforts in Docket No. EP 724 (Sub-No. 4), urged caution in that proceeding about drawing conclusions about the state of the industry from aggregated data.³

To the extent that parties now find flaws in the aggregated service metrics in the EP 724 data, any form of aggregated first mile/last mile data will suffer the same flaws. The Board has not identified a specific goal in this proceeding. Some shipper association comments appear to seek reporting in order to provide shippers with insight into their own level of service.⁴ But the type of aggregated reporting that has been suggested will not generate data that could be used to address service to individual shippers. Even if reporting could ultimately provide additional insight into overall service trends beyond the tools it already has available (which has not

(filed Dec. 17, 2021) (the reported EP 724 data “provides an incomplete, if not misleading picture of the overall rail service”).

³ Reply Comments of U.S. Department of Transportation, *U.S. Rail Service Issues—Performance Data Reporting*, Docket No. EP 724 (Sub-No. 4), at 8 (filed Apr. 29, 2015). DOT also noted that railroads are continually faced with changes in traffic and the mix of commodities to be shipped and that railroads may act as a release valve to help address challenges that arise in other modes of transportation, and DOT agreed that the Board was appropriately concerned with weighing costs and benefits of the proposed data reporting. *Id.* at 8-9.

⁴ Some shipper associations also appear to be requesting reporting in response to anecdotes about service concerns. There are, however, more appropriate avenues to address specific service concerns, such as informal dispute resolution through the Board's Rail Customer and Public Assistance program.

been shown), then the Board must be clear about the inherent limitations associated with aggregated reporting⁵ and consider the burden of requiring railroads to report yet more data. Aggregated data will not inform shippers about their particular level of service.

Yet it is clear from many of the opening comments from shippers and shipper interests that they want to know about service to their own facilities.⁶ It is also clear that customer-specific information is already provided by many railroads, including CN, directly to the customer.⁷ To the extent shippers seek information that will be helpful to their own businesses and operations, aggregated metrics are unlikely to provide salient information.

⁵ Some comments do acknowledge the inherent limitations of such reporting. *See, e.g.*, Opening Comments of American Petroleum Institute, at 7 (filed Dec. 17, 2021) (“[a]s data is rolled up to the national level, it provides less insight and is less actionable but can still be a useful metric to determine overall trends.”); Opening Comments of Diversified CPC International, Inc., at 5 (filed Dec. 17, 2021) (“[a]verages and system-wide reports can lack meaning”); Opening Comments of the U.S. Department of Agriculture, at 5 (filed Dec. 17, 2021) (system-wide averages would not likely be all that useful when disruptions are localized to specific routes, regions, and commodities).

⁶ *See, e.g.*, Opening Comments of Shipper Associations, at 31-32 (filed Dec. 17, 2021) (providing data directly to customer necessary to enable a customer to identify extent to which first mile/last mile issues are impacting its facilities); Opening Comments of American Petroleum Institute, at 7-8 (filed Dec. 17, 2021) (discussing data to be reported from carrier to the shipper at the shipper level); Opening Comments of Institute of Scrap Recycling Industries, Inc., at 8 (filed Dec. 17, 2021) (discussing benefit of rail customer access to data for their facilities); Opening Comments of National Grain and Feed Association, at 11 (filed Dec. 17, 2021) (facility-level statistics provided to customers would help rail customer operations).

⁷ *See, e.g.*, Opening Comments of CN, at 3-12 (filed Dec. 17, 2021); Opening Comments of BNSF Railway Company, at 3-9 (filed Dec. 17, 2021); Opening Comments of CSX Transportation, Inc., at 2-7 (filed Dec. 17, 2021); Opening Comments of Norfolk Southern Railway Company, at 1-9 (filed Dec. 17, 2021).

II. Any First Mile/Last Mile Reporting Would Be Meaningless Without Causation

Some shipper comments propose extensive data reporting on first mile/last mile railroad performance. Comments seek reporting so that the Board can “design solutions to address the problems”⁸ and so that customers can “better align their expectations ... with the actual performance of the railroads,”⁹ but fail to recognize that would be impossible without understanding causation. The basic and uncontroversial fact is that first mile/last mile service can be impacted by shipper actions. Although the National Industrial Transportation League acknowledges that first mile/last mile service can be impacted by shippers, it states that it “believes” that happens infrequently, though provides no support for that belief.

There are many situations in which first mile/last mile service cannot be completed due to causes outside of a railroad’s control. For example, in winter conditions, CN cannot serve a customer’s facility if the customer’s tracks are covered with ice and snow such that conditions are unsafe. That is why, as noted in opening comments, CN engages yearly in a winter preparedness campaign to promote safety and reduce avoidable delays through preparation of a customer’s facility. If CN is unable to serve a customer due to unsafe conditions at the customer facility, then CN is appropriately unable to provide service accordingly to plan. But if this and similar data points were reported without causation, the

⁸ Opening Comments National Association of Chemical Distributors, at 7 (filed Dec. 16, 2021).

⁹ Opening Comments of Institute of Scrap Recycling Industries, Inc., at 6 (filed Dec. 17, 2021).

Board and the shipping public would make inaccurate and uninformed inferences from the data.

Shipper Associations argue that first mile/last mile reporting should be “objective,” meaning that it should “not be influenced by personal opinions or interpretations, such as individual determinations of causation.”¹⁰ But data divorced from causation would be completely meaningless. Shipper Associations say that it would “advance the discussion of FMLM issues to identifying solutions,”¹¹ but there can be no discussion of solutions without understanding the root causes of a problem.

This concept is not new. The Board, in Docket No. EP 759, understood that “rail cars may not be delivered by their original ETAs due to a variety of causes, including rail users’ behavior, carrier-caused delays, or other variables.” The Board required railroads to provide an original ETA to rail users in that proceeding, but cautioned that that information alone would not allow inferences or guarantees about service.¹²

When service is committed and not performed, CN crew already assign causation through codes for business purposes. For example, certain railroad-caused categories include “locomotive failure” or “locomotive not available” while customer-caused categories include “customer rail condition” or “gates locked.”

¹⁰ Opening Comments of ACC et al., at 13 (filed Dec. 17, 2021).

¹¹ *Id.*

¹² *Demurrage Billing Requirements*, Docket No. EP 759, at 17-18 (STB served Apr. 6, 2021).

Customers are informed of these developments through service notifications developed by CN, as explained on opening.

The reality of first mile/last mile service is that it is complicated and can be impacted by a variety of factors, often location-specific.¹³ If the Board does seek first mile/last mile reporting, the data would have to have context to be meaningful. Otherwise, neither the Board nor the public could have any hope of drawing conclusions from the data.

III. **Conclusion**

CN appreciates the Board's effort to solicit information in response to the Request for Information. CN understands the Board's desire to examine these issues, but urges the Board not to propose data reporting requirements based on this record. Regulatory requirements should be tailored to a specific objective, and CN does not believe that the record identifies a problem for which mandatory reporting is the answer. If the Board intends to nonetheless move forward with a proposal, CN urges the Board to carefully evaluate the burdens associated with any proposed reporting and whether those burdens outweigh the benefits.

¹³ And it is likely to become even more complicated if expanded forced switching were implemented. As the Association of American Railroads explained recently: "Forced switching is also unlikely to be a helpful response to concerns about first-mile / last-mile service.... Rather, it can only make things worse: A forced switching order imposes additional points of delay and potential failure by layering another short-distance move—a switch from the serving carrier to the alternative long-haul carrier—on top of the existing operation." Supplemental Comments of the Association of American Railroads, at 26, *Reciprocal Switching*, Docket No. EP 711 (Sub-No. 1) (filed Feb. 14, 2022).

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Dated: February 17, 2022

BEFORE THE SURFACE TRANSPORTATION BOARD

303953

STB Docket No. EP 767

FIRST-MILE / LAST-MILE SERVICE

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**Reply Comments of
the American Chemistry Council, American Fuel & Petrochemical
Manufacturers, and The Fertilizer Institute**

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The American Chemistry Council (ACC), American Fuel & Petrochemical Manufacturers (AFPM), and The Fertilizer Institute (TFI) (collectively, Joint Shippers)¹ submit these reply comments pursuant to the Surface Transportation Board's decision served on September 2, 2021, that requests comments on first-mile/last-mile (FMLM) service.

FMLM reporting will provide critical insight into FMLM performance without unduly burdening railroads. FMLM performance has significant consequences for rail customers and the rail network, yet railroads provide almost no meaningful FMLM performance information. This prevents rail customers and the Board from readily identifying FMLM issues so that they can be addressed. FMLM performance reporting by railroads would address this problem while placing little additional burden on railroads because they already collect a significant portion of the data that would inform the reporting, effective reporting can be basic, and reporting would not require divulging confidential information. FMLM reporting rules thus could provide significant benefits, far outweighing any cost.

Additionally, shippers and government stakeholders are generally aligned on a workable framework for FMLM reporting. Their comments suggest that effective FMLM reporting would convey overall transit performance, FMLM operating

¹ In their opening comments, Joint Shippers and another group of trade associations each referred to themselves as Shipper Associations. To avoid confusion between the groups, ACC, AFPM, and TFI will refer to themselves as Joint Shippers in this proceeding.

performance (e.g., missed switches and dwell times), and FMLM service-fulfillment performance (e.g., switching errors and unfulfilled switches related to orders or releases). This alignment indicates that the Board could develop FMLM reporting that a wide range of rail customers would find useful. Also, since Joint Shippers' recommended reporting generally captures these areas of alignment, the Board should consider using that recommendation as a starting point for developing FMLM reporting requirements.

I. FMLM reporting is necessary.

Although FMLM service plays a critical role in rail transportation, railroads provide their customers and the Board almost no meaningful FMLM performance information to readily identify FMLM issues. To correct this problem and provide the Board and rail customers with an adequate opportunity to address FMLM issues, the Board should adopt FMLM reporting.

A. FMLM service is a critical element of rail transportation.

The Association of American Railroads (AAR) and BNSF Railway claim that FMLM reporting is unnecessary because, in their view, no material FMLM service problems exist.² This ignores the critical role that FMLM service plays in rail transportation, which alone justifies FMLM reporting. It also ignores information from shippers and rail labor identifying serious FMLM issues currently affecting the rail network.

² (AAR Comments 4, 5; BNSF 10.)

Serious FMLM service issues exist. While AAR and railroad executives and attorneys may claim that FMLM service is fine, frontline railroad employees are sounding the alarm. Rail labor groups representing employees at all the Class I railroads have filed comments explaining that railroads have cut staff and made other operational changes that have caused FMLM service to deteriorate.³ Additionally, in a recent survey by the American Chemistry Council, 60% of respondents that use rail transportation report missed switches; 46% report reduced service days.⁴

Even if current FMLM problems did not exist, the critical role that FMLM service plays in rail transportation warrants FMLM reporting that allows the Board and shippers to readily identify and address FMLM issues when they do arise. BNSF explains that FMLM service is a critical element of rail transportation, stating that “providing reliable service between our local serving yards and our customers’ facilities is a critical component of our overall competitive service offering.”⁵ As Joint Shippers have explained, FMLM service failures typically add days to expected transits and service events. These service impacts place railroad customers in jeopardy of operational disruptions while they wait for delayed cars.⁶

³ (Rail Union Comments 2-4.)

⁴ Am. Chemistry Council, *Survey Report: Supply Chain & Freight Transportation Constraints for Chemical Manufacturers* 11 (2022), <https://www.americanchemistry.com/media/files/acc/better-policy-regulation/transportation-infrastructure/infrastructure/supply-chain-and-freight-logistics-survey-findings-report>.

⁵ (BNSF Comments 1.)

⁶ (Joint Shippers Comments 7-8).

They also can inundate rail customers' facilities with railcars, causing demurrage and storage charges.⁷ And they increase shippers' railcar fleet and related infrastructure needs.⁸ Given these serious consequences of an FMLM problem, waiting to implement FMLM reporting until a problem arises would be unwise.

FMLM reporting also facilitates the Board's oversight of rail-service issues. Congress gave the Board power to direct rail service and take other actions to promote rail service if the Board determines that a "failure of traffic movement" creates an emergency situation.⁹ Also, under the Board's regulations, the Board will prescribe alternative rail service if it determines that existing service is inadequate.¹⁰ Additionally, the Rail Transportation Policy guides the Board "to ensure the development and continuation of a sound rail transportation system . . . to meet the needs of the public and the national defense" and "to encourage honest and efficient management of railroads."¹¹ It is unclear how the Board can effectively carry out its oversight role without timely and meaningful FMLM reporting that allows it to readily identify FMLM issues. Additionally, shippers will have difficulty accessing service remedies for FMLM problems without credible FMLM performance data. FMLM reporting would provide shippers with important

⁷ (*Id.* at 8.)

⁸ (*Id.* at 26, 27, 28.)

⁹ 49 U.S.C. § 11123.

¹⁰ 49 C.F.R. § 1147.1(a).

¹¹ 49 U.S.C. § 10101(4), (9).

FMLM performance information for seeking service-related remedies, and the information would have credibility because it is produced by railroads.

At bottom, FMLM reporting is warranted because it will allow the Board and rail customers to credibly identify FMLM issues, which can cause serious harm to rail customers.

B. The FMLM information railroads provide to their customers conveys little about FMLM performance levels.

Railroad commenters broadly claim that they provide their customers a panoply of FMLM data. Yet only one railroad commenter identified an FMLM data element that it provides customers and directly conveys meaningful information about FMLM performance, and it is only a single data element.

The problem with the nearly all the data that railroad commenters say they provide is that it does not directly identify switch performance.¹² Missed switches (i.e., failing to provide a switch on a serving day) and switch-fulfillment errors (i.e., switching the wrong car or not switching every car that was ordered or released) are the key FMLM events that directly impact rail customers. Yet, to show they provide

¹² Shipper Associations state that shippers are aware of their FMLM service experience and can access shipment-level information from railroad websites. (Shipper Ass'ns Comments 24.) Joint Shippers understand these statements as referring to unit-train shippers, which are a large portion of Shipper Associations' members. Because unit-train traffic is not subject to the extensive FMLM switching operations that apply to carload traffic, unit-train shippers likely have less need for FMLM switch-performance information. Regardless, the shipment-level information that railroads provide fails to include almost any direct information about FMLM switch performance. And Joint Shippers' members report that railroads generally brush off member-generated data, often making an apples-to-oranges comparison to the railroad's metrics. FMLM reporting containing standardized metrics and switch-performance data would address these issues.

FMLM performance data, railroad commenters point mainly to their track and trace data, which does not show switch performance. Railroads also point to switch cutoff times, service dates, and expected arrivals on service dates, but these data provide no information about actual service performance, let alone switch performance. For example:

- BNSF says it provides customers carload tracking information, spot cut-off times, and expected number of cars that will be delivered on future service dates.¹³ But carload tracking data does not include critical switch performance data, such as cancelled switches or switch errors. And cut-off times and expected arrivals do not indicate anything about actual service performance.
- Canadian National Railway says it offers an FMLM tool that provides a snapshot of a facility's inbound cars, outbound cars, and car inventory.¹⁴ CN also explains that its My Shipments and Quick Trace tools provide shipment-level status information.¹⁵ And it says that it provides tools that allow customers to view current order in or release status and track equipment by order and local service window. While these tools convey car location, shipment events, and cutoff dates, none of them identify CN's switch performance at a customer location.

¹³ (BNSF Comments at 8-9.)

¹⁴ (CN Comments 3-4.)

¹⁵ (*Id.* at 5.)

- CSXT says it provides track and trace tools that identify car status and events.¹⁶ But it fails to describe any tool that identifies switch performance at a customer location.
- Norfolk Southern Railroad says that it offers a customer dashboard that summarizes the status of a customer’s shipment pipeline and provides service projections.¹⁷ It also offers a track and trace tool to help customers track a shipment’s location.¹⁸ And it provides a map showing the location of a customer’s railcars.¹⁹ But NS does not identify any information it provides to customers that quantifies NS’s switch performance at a customer location.

While BNSF appears to generate two metrics directly related to FMLM service, adjustments to these metrics are necessary to convey FMLM performance to customers. BNSF states that it provides an aggregate local-service performance metric showing adherence to FMLM service plans,²⁰ but it criticizes aggregate metrics like this as having limited value.²¹ BNSF also touts its industry service metric that measures adherence to each customer’s individualized FMLM service plan, but this is an internal metric.²² Additionally, BNSF’s formulas for calculating

¹⁶ (CSXT Comments at 2-4.)

¹⁷ (NS Comments 3-4.)

¹⁸ (*Id.* at 4-5.)

¹⁹ (*Id.* at 6.)

²⁰ (BNSF Comments 5-6.)

²¹ (*Id.* at 11-13.)

²² (*Id.* at 4-5.)

these metrics are unclear, which makes these metrics ambiguous to customers. If these metrics were tied to an individual aspect of switch performance, their underlying formulas were clear, and they were facility-specific—similar to Joint Shippers’ suggested Serving Day Performance metric—they could potentially be a valuable aspect of FMLM reporting.

To CN’s, CSXT’s, and KCS’s credit, they provide on-time performance information.²³ As Joint Shippers explained, this information is helpful to understand the impact that FMLM performance has on expected overall transit.²⁴ But because this information does not directly indicate FMLM performance, it is not useful unless viewed alongside other railroad performance data. If this information is paired with other performance data and standardized across railroads—like Joint Shippers’ suggested On-Time Placement Percentage and On-Time Placement Variation metrics—it would be an important element of FMLM reporting.

KCS is the only railroad that indicated it provides switch performance information to customers. This information is “AP/Pull%,” which measures the cars that were scheduled to be spotted at or pulled from a customer facility on a particular day against the cars actually spotted or pulled.²⁵ With some adjustments, it could be suitable for broad FMLM reporting. Specifically, it should be defined to cover all cars ordered or released prior to the cutoff time for each serving day. This

²³ (CN Comments 6; CSXT Comments 5-6; KCS Comments 3.)

²⁴ (Joint Shippers Comments 19.)

²⁵ (KCS Comments 3.)

would eliminate ambiguity about whether the cars scheduled for spotting or pulling are those that the customer timely ordered or released. Additionally, it should be split to cover ordered and released cars separately because issues impacting each type of car may not impact the other. For example, a railroad might not serve a released car because of insufficient local train capacity, but this is not likely an issue for cars that will be delivered. Conversely, a railroad might select the wrong car for delivery, but this is not likely for released cars, since they are typically set out for the railroad to pull. Joint Shippers' suggested Switch-Delivery Percentage and Switch-Origination Percentage metrics are examples for how AP/Pull% could be adopted for FMLM reporting.

Ultimately, few railroads provide customers with any information that conveys FMLM performance. And most of this information indicates FMLM performance only indirectly.

C. FMLM reporting would help stakeholders identify FMLM service problems so they can be investigated and addressed.

Many railroad commenters claim that FMLM reporting is not helpful unless it accounts for non-railroad factors that contribute to the reported performance. This criticism overlooks that the primary purpose of FMLM reporting is to identify FMLM problems in the first place so that they can be investigated and addressed.

The first step toward addressing any FMLM service problem is obtaining the data necessary to identify it. Take this proceeding. AAR criticizes the Board for

issuing its request for information without articulating a problem to address.²⁶ But how is the Board supposed to determine whether and what action is warranted regarding FMLM service without first requesting information that will help it identify whether FMLM problems exist or whether FMLM service is so critical that reporting is prudent? Rail customers face a similar problem—they cannot identify and take action to address FMLM issues without FMLM information to identify them. So, if “[t]he first step in articulating a need for action is to identify the problem,”²⁷ the Board and rail customers will not be able to address an FMLM problem without FMLM reporting that identifies FMLM performance issues.

Designing FMLM reporting to account for all the factors that may impact FMLM performance, however, will detract from identifying FMLM performance issues. It inherently introduces subjective decisions into the reported data, undermining its credibility. For example, railroads observe that reporting should account for weather events that impair FMLM service.²⁸ But the extent to which weather events impair service has a large subjective component. In some cases, the key driver of FMLM performance after a weather event may be the railroad’s reaction to or preparation for the event, not the event itself. The railroad would have an incentive to underplay its own contribution to its FMLM performance, and

²⁶ (AAR Comments 5.) By suggesting that reporting may be part of the solution to FMLM service issues and seeking comments on potential reporting, the Board did not skip past determining whether a problem actually exists.

²⁷ (*Id.* at 4.)

²⁸ (BNSF Comments 2; NS Comments 11.)

this could lead to inaccurate data concerning the factors underlying the railroad's FMLM performance.

Additionally, the notion that FMLM reporting could account for all the factors that might impact FMLM performance is unrealistic. Several railroad commenters observe that a wide range of local factors impact FMLM service.²⁹ Railroads also observe that events far removed from their FMLM service may nonetheless impact it.³⁰ How any reporting could accurately account for all these factors and still fulfill its primary purpose of identifying FMLM service issues is unclear.

Ultimately, FMLM reporting will achieve its primary purpose of allowing the Board and rail customers to spot FMLM issues by identifying FMLM performance. If this performance indicates an issue, interested parties can investigate and address the cause of the issue.

II. FMLM reporting will not impose an undue burden on railroads.

The Board can implement effective FMLM reporting without imposing any undue burdens on railroads. Comments by railroad parties and rail labor indicate that railroads already collect a significant portion of the data necessary for meaningful FMLM reporting. Additionally, basic FMLM reporting would leave ample room for railroad competition and innovation to produce enhanced FMLM reporting. And the two-tiered reporting approach that Joint Shippers have

²⁹ (AAR Comments 2-4; BNSF Comments 10; NS Comments 11.)

³⁰ (AAR Comments 2; BNSF Comments 12; NS Comments 11.)

identified in its opening comments would adequately protect sensitive commercial information.

A. Railroads appear to collect the necessary underlying data in the normal course of operations.

Railroads express concern that FMLM reporting would involve reporting large amounts of data that they do not ordinarily collect. For Class I railroads, this is unlikely.

Class I railroads appear to collect most, if not all, of the data underlying Joint Shippers' suggested reporting metrics. First, railroad commenters in this proceeding identify a host of data that they collect on FMLM service. Much of this data could be used to inform meaningful FMLM performance metrics. Second, to facilitate their assessment of demurrage and storage charges, railroads have developed mechanisms for collecting a significant amount of FMLM data that could be used for FMLM reporting. Third, rail labor groups confirm that the data necessary for FMLM reporting exists and is readily available to railroads.³¹

Of course, as ASLRRRA suggests, some Class II and III carriers may not collect relevant data or have the resources to begin collecting and reporting it. The Board could address this by including an exemption process for these carriers or by adopting different reporting levels than would apply to Class I carriers.³² Joint Shippers do not oppose further consideration of this issue.

³¹ (Rail Unions Comments 5.)

³² (Shipper Ass'ns Comments 32.)

In sum, Class I railroads appear to collect the data that would be needed to provide meaningful FMLM performance reports.

B. Requiring railroads to provide basic performance information will not stifle competition or innovation.

Some railroad commenters suggest that FMLM reporting will stifle competition and innovation regarding how railroads provide service information.³³ But railroads do not compete or innovate when it comes to providing FMLM performance information. And basic FMLM reporting would still leave railroads with ample opportunity to compete and innovate. Additionally, standardized service-information reporting would actually foster competition by allowing apples-to-apples comparisons of carrier performance.

For FMLM reporting to stifle railroad competition and innovation, railroads would have to compete or innovate in this area. But they do not. As explained in Part I.B, only two railroad commenters identified meaningful FMLM performance information that they provide customers. And most of this information only indirectly conveys FMLM performance. Since railroads provide meager FMLM performance information, there is effectively no competition or innovation in this area for FMLM reporting to disrupt.

Even if railroads did provide some FMLM performance information, FMLM reporting would not stifle competition or innovation. The FMLM reporting that would help shippers and the Board involves basic performance information. With

³³ (AAR Comments 11; BNSF Comments 14-15; CSXT Comments 2; NS Comments 13.)

this reporting, railroads would still have opportunities to compete and innovate in many different ways, including by providing additional information or presenting the information in unique ways, like via a system map that uses colors to show performance levels.

FMLM reporting simply does not impair healthy competition or innovation. If anything, it spurs railroads to compete and innovate so that they differentiate themselves when it comes to providing customers with meaningful FMLM information.

C. Joint Shippers' suggested approach addresses railroads' confidentiality concerns.

AAR expressed concern that FMLM reporting will reveal confidential and commercially sensitive information.³⁴ While Joint Shippers have similar concerns, they have suggested a two-tier reporting structure that adequately maintains confidentiality of sensitive information.³⁵ Under this two-tier approach, only aggregated data would be publicly available; data about performance at specific rail-customer locations would be available only to the relevant customer. This approach keeps sensitive information related to each customer's traffic confidential

³⁴ (AAR Comments 12-13.)

³⁵ (Joint Shippers Comments 31-32.) American Petroleum Institute, the Industrial Minerals Association, the Institute of Scrap Recycling Industries, the National Grain and Feed Association, the Private Railcar Food and Beverage Association, and Shipper Associations also suggest multi-tier reporting that would protect sensitive information. (API Comments 7-8; IMA Comments 21; ISRI Comments 8; NGFA Comments 11; PRBFA Comments 26; Shipper Ass'ns Comments 24-25.)

to that customer. Also, it is consistent with AAR's suggestion that the Board could use aggregation to protect sensitive information.³⁶

While railroads suggest that aggregated performance information provides little value, the Board could aggregate data at levels that adequately protect sensitive information while still providing useful insight into FMLM performance. For example, Joint Shippers have suggested aggregation by railroads' geographic service divisions or subdivisions. Information reported at this level would cover multiple local operations involving multiple rail customers and, thus, is unlikely to reveal sensitive information about any particular customer.

III. Shipper and government comments are generally aligned on reporting principles embraced by Joint Shippers' suggested reporting.

Comments submitted by shippers and government agencies indicate general alignment on principles for FMLM reporting. This indicates that FMLM reporting can be useful to a broad cross-section of rail customers. Examples of alignment include:

- Joint Shippers, the Private Railcar Food and Beverage Association (PRFBA), Shipper Associations, and the U.S. Department of Agriculture (USDA) suggest that FMLM reporting should focus on identifying how railroads are performing to the FMLM service levels they communicate to their customers.³⁷ Joint Shippers' recommended reporting embraces this by

³⁶ (AAR Comments 13-14.)

³⁷ (Joint Shippers Comments 25, 34-35; PRFBA Comments 26; Shipper Ass'ns Comments 22; USDA 2.)

measuring performance to trip plans, serving-day schedule, and timely orders and releases.³⁸

- The Industrial Minerals Association (IMA), Institute of Scrap Recycling Industries (ISRI), Joint Shippers, National Association of Chemical Distributors (NACD), National Grain and Feed Association (NGFA), National Industrial Transportation League (NITL), PRFBA, and Shipper Associations suggest that FMLM reporting include trip plan compliance.³⁹ Joint Shippers' recommended reporting covers trip plan performance by including an Overall Transit Performance category of metrics that would measure performance to original estimated time of arrival.⁴⁰
- The American Petroleum Institute (API), Joint Shippers, NACD, NGFA, and the U.S. Department of Transportation and Federal Railroad Administration (DOT) recommend that FMLM reporting includes metrics on car dwell time.⁴¹ While DOT's and NGFA's recommended dwell metrics measure multiple aspects of dwell, Joint Shippers' recommended metrics measure only total dwell by first mile and last mile. Joint Shippers are not opposed to adopting

³⁸ (Joint Shippers Comments 5-6.)

³⁹ (IMA Comments 21; Joint Shippers Comments 19-23; ISRI Comments 9; NACD Comments 6; NGFA Comments 10-11; NITL Comments 5-6; PRFBA Comments 26; Shipper Ass'ns Comments 22.)

⁴⁰ (Joint Shippers Comments 19-24.)

⁴¹ (API Comments 7; DOT Comments 3; Joint Shippers Comments 26-28; NACD Comments 6-7; NGFA Comments 10.)

the additional dwell metrics that DOT and NGFA recommend, as explained in Joint Shippers' opening comments.⁴²

- ISRI, Joint Shippers, NACD, and PRFBA recommend that FMLM reporting indicate the number of missed switches.⁴³ Joint Shippers' recommended reporting addresses performance to railroad switch schedule through its Serving-Day Performance metric.⁴⁴
- ISRI, the International Liquid Terminals Association (ILTA), Joint Shippers, NACD, and NGFA recommend that FMLM reporting indicate the number of switches that were not properly fulfilled.⁴⁵ Joint Shippers' recommended reporting provides Switch-Delivery Percentage and Switch-Origination Percentage metrics that convey this information. While PRFBA suggests reporting this through a broad missed switch metric,⁴⁶ separate metrics would help to convey situations where a switch was provided but did not perform all expected operations. Joint Shippers believe that PRFBA would not object to Joint Shippers' proposed reporting of switch fulfillment and

⁴² (Joint Shippers Comment 27-28.) Because DOT's metrics only contemplate railroad-owned cars, they would need to be expanded to cover private cars.

⁴³ (ISRI Comments 8; Joint Shippers Comments 25-26; NACD Comments 6; PRFBA Comments 26.)

⁴⁴ (Joint Shippers Comments 25-26.)

⁴⁵ (ILTA Comments 6; ISRI Comments 9; Joint Shippers Comments 29; NACD Comments 7; NGFA Comments 11.)

⁴⁶ (PRFBA Comments 26.)

missed switches because it would provide PRFBA's members with important additional insight about switch performance.

- Joint Shippers, Shipper Associations, and USDA emphasize that reporting should indicate service variability.⁴⁷ Joint Shippers' recommended reporting reflects this principle by including a metric for trip-plan variance (i.e., On-Time Placement Variation).⁴⁸
- Joint Shippers and NGFA suggest that reporting should differentiate between manifest and unit-train traffic.⁴⁹
- NACD, PRFBA, and Shipper Associations indicate that railroads should convey service targets.⁵⁰ USDA appears to suggest a metric conveying service frequency.⁵¹ Joint Shippers do not oppose a service-frequency metric, but have suggested that a requirement to disclose certain key service targets, like serving days and original planned arrival times, would be adequate.
- Joint Shippers, Shipper Associations, and railroad commenters suggest that any data aggregation should include a meaningful geographic breakdown of FMLM performance.⁵²

⁴⁷ (Joint Shippers Comments 21-23; Shipper Ass'ns 23; USDA Comments 6.)

⁴⁸ (Joint Shippers Comments 21.)

⁴⁹ (Joint Shippers Comments 33; NGFA Comments 9-10.)

⁵⁰ (NACD Comments 6; PRFBA Comments 26; Shipper Ass'ns 25.)

⁵¹ (USDA Comments 6.)

⁵² (AAR Comments 6-7 (noting that aggregation is problematic if it does not account for regional issues); CN Comments 13 (indicating that a proper aggregation would be regional instead of railroad-wide); Joint Shippers Comments 32; Shipper Ass'ns Comments 23.)

- API, IMA, ISRI, Joint Shippers, NGFA, PRBFA, and Shipper Associations suggest that the FMLM data be reported on a multi-tier basis under which aggregated data would be made public and localized data would be made available to relevant customers.⁵³ Joint Shippers' recommended reporting requirements include multi-tier reporting.⁵⁴

This alignment on FMLM reporting principles indicates that FMLM reporting should convey the three categories of information that Joint Shippers identified in their opening comments: (1) overall transit performance; (2) FMLM operational performance, which covers dwell and serving-day performance; and (3) service-fulfillment information, which indicates whether switches are actually performing expected operations. Given this general alignment on reporting principles and that Joint Shippers' recommended reporting embraces these principles, the Board is well positioned with a starting framework for developing FMLM reporting requirements.

IV. Conclusion.

FMLM reporting would convey critical information about rail service to rail customers and the Board without posing a substantial burden on railroads. Additionally, shippers and government commenters are generally aligned on a workable reporting framework. For these reasons and those identified in Joint

⁵³ (API Comments 7-8; IMA Comments 21; ISRI Comments 8; NGFA Comments 11; PRBFA Comments 26; Shipper Ass'ns Comments 24-25.)

⁵⁴ (Joint Shippers Comments 31-32.)

Shippers' opening comments, Joint Shippers respectfully request that the Board adopt FMLM reporting.

Respectfully submitted,

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