

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 770 (Sub-No. 1)

URGENT ISSUES IN FREIGHT RAIL SERVICE—RAILROAD REPORTING

Digest:¹ The Board is requiring service recovery plans and progress reports from the four largest U.S. rail carriers and is directing those carriers to participate in bi-weekly conference calls to further explain efforts to correct service deficiencies. The Board is also requiring all Class I rail carriers to report more comprehensive and customer-centric performance metrics and employment data for a six-month period. In response to concerns raised at the recent hearing and related communications, the Board is taking this action to inform its assessment of further actions that may be warranted to address the acute service issues facing the rail industry and to promote industry-wide transparency, accountability, and improvements in rail service.

Decided: May 5, 2022

Rail network reliability is essential to the Nation’s economy and is a foremost priority of the Board. Recently, the Board has heard from a broad range of stakeholders about inconsistent and unreliable rail service. These challenges include tight car supply and unfilled car orders, delays in transportation for carload and bulk traffic, increased origin dwell time for released unit trains, missed switches, and ineffective customer assistance. Prior to the initiation of this proceeding, the Board received several reports, from the Secretary of Agriculture, Senator Shelley Moore Capito, and other stakeholders, about the serious impact of these service trends on rail users, particularly shippers of agricultural and energy products.² At the same time, the Board

¹ The digest constitutes no part of the decision of the Board but has been prepared for the convenience of the reader. It may not be cited to or relied upon as precedent. See Pol’y Statement on Plain Language Digs. in Decisions, EP 696 (STB served Sept. 2, 2010).

² See Honorable Thomas J. Vilsack, U.S. Dep’t of Agric. Letter, Mar. 30, 2022, Reciprocal Switching, EP 711 (Sub-No. 1); Letter from Honorable Shelley Moore Capito, to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 29, 2022), available at www.stb.gov (open tab “News & Communications” & select “Non-Docketed Public Correspondence”); Letter from the Nat’l Grain & Feed Ass’n, to Board Members Martin J. Oberman, Michelle A. Schultz, Patrick J. Fuchs, Robert E. Primus, & Karen J. Hedlund (Mar. 24, 2022), available at www.stb.gov (open tab “News & Communications” & select “Non-Docketed Public Correspondence”); Letter from

has been closely monitoring weekly rail service performance data submitted pursuant to 49 C.F.R. part 1250.³ The data validate the anecdotal information reported to the Board; key performance indicators, such as system average train speed and average number of trains holding per day, indicate performance is below historical norms. Trends in the data demonstrate that service has continued to deteriorate. Since the beginning of 2022, and through the data for the week ending April 22, 2022, there has been no material, sustained decline in trains held per day due to crew or locomotive availability for BNSF Railway Company (BNSF), CSX Transportation, Inc. (CSXT), Norfolk Southern Railway Company (NSR), or Union Pacific Railroad Company (UP). A number of these carriers have also not shown a decline in the increased use of embargos due to congestion. During this period the data submitted to the Board has shown increased terminal dwell and reduced average train speed for these four railroads. Together, these metrics indicate operational and service challenges that negatively impact the rail network.

Pursuant to notice served on April 7, 2022, Urgent Issues in Freight Rail Service (Hearing Notice), EP 770 (STB served Apr. 7, 2022), the Board held a public hearing in Washington, DC, on April 26 and 27, 2022, to discuss the recent rail service problems and the adequacy of recovery efforts involving BNSF, CSXT, NSR, and UP.⁴ The Board directed executive-level officials, including operating and human resources officials, of these four carriers to appear to discuss these rail service problems, each carrier's ongoing and planned efforts to improve service, and each carrier's estimated timeline for recovery of normal service levels. Hearing Notice, EP 770, slip op. at 3.⁵ In addition to the required participation of BNSF, CSXT, NSR, and UP, because these problems have also been occurring to some degree on an industry-wide basis, the Board invited executive-level officials, including operating and human resources officials, of Canadian National Railway Company (CN), Kansas City Southern Railway Company (KCS), and Canadian Pacific Railway Company (CP) to attend, as well as any other interested carriers that wished to participate. Id. The Board also provided rail customers, labor organizations, and other interested parties the opportunity to report on recent service issues and

SMART-Transp. Div., to Chairman Martin J. Oberman (Apr. 1, 2022), available at www.stb.gov (open tab "News & Communications" & select "Non-Docketed Public Correspondence").

³ Data collected pursuant to 49 C.F.R. part 1250 is available on the Board's website at <https://www.stb.gov/reports-data/rail-service-data/>.

⁴ The link to the recording of the hearing is available at <https://www.youtube.com/channel/UCgd2FPpKSpQZ57p771aafNg/live>; a transcript will also be made available as soon as possible on the Board's website at www.stb.gov, under the tab "News & Communications," by clicking on "Transcripts & Statements."

⁵ In addition to directing these carriers to present detailed plans outlining the steps needed to improve service, the Board directed BNSF, CSXT, NSR, and UP to address the extent to which crew shortages, particularly in the context of pre-pandemic employment reductions and pandemic-related furloughs, may have contributed to these service problems, and their plans, if any, to change and improve their hiring and employee retention policies to alleviate the acute crew shortages that appear to be among the central causes of the current service issues. Hearing Notice, EP 770, slip op. at 3.

recovery efforts. Id. The Notice stated that, given the serious nature of the reported service issues, and to provide as much visibility as possible to all aspects of the current service issues, the Board expected the information provided at the hearing to inform any potential future Board actions to ameliorate the problems that have been reported. Id.

A wide variety of stakeholders participated in the hearing, including U.S. Secretary of Transportation Pete Buttigieg, U.S. Deputy Secretary of Agriculture Jewel H. Bronaugh, Commissioner Carl W. Bentzel of the Federal Maritime Commission, rail users and their representatives, rail labor organization members and their representatives, and Class I carriers. During the hearing, and in comments and written testimony submitted in connection with the hearing, rail users described recent service deficiencies, such as increased dwell time at origins, decreased velocity, increased transit time, inadequate car supply, missed switches, increased demurrage charges, and congestion caused by trains that do not fit into existing sidings. Rail users also expressed concerns about the lack of communication and transparency from Class I carriers about existing service issues and emphasized that more visibility would help them make informed business decisions, such as right-sizing their private freight car fleets and scheduling a sufficient number of employees to load and unload freight cars. Many rail users indicated that increased visibility into first-mile / last-mile (FMLM) service and trip plan compliance (TPC) data would be particularly useful. Further, rail users suggested that service assurance or recovery plans would help provide needed transparency. Rail users and labor organization representatives also expressed concerns about whether Class I carriers would have sufficient workforce levels to adequately respond to traffic projections. Labor organization representatives opined that current workforce shortages were due, in part, to a steady increase in pre-pandemic employment reductions in addition to the significant number of employees furloughed during the pandemic, as well as reductions in extra-board employees.⁶

The Board heard testimony from BNSF, CSXT, NSR, and UP about rail service problems and their ongoing and planned efforts to improve service. The rail carriers identified current labor shortages as the primary cause of the recent service issues and referred to their plans to increase hiring and employee retention. The carriers noted that, although they were diligently pursuing hiring efforts, it would take time to reestablish sufficient workforce levels to meet the current demand for service. The Board also heard testimony from CP and CN about their current performance metrics and workforce levels, future hiring plans, and efforts to improve visibility tools for customers to track shipments and service issues.⁷ Several Class I carriers indicated that they would welcome an increase in transparency through additional reporting, including reporting on hiring efforts.

The Board appreciates the description of the efforts and timelines for recovery presented by Class I carriers at the hearing. The Board finds, however, that immediate action is needed to address the significant service problems detailed in the record in Docket No. EP 770—many of which are implicated in some fashion in other pending dockets as well. See First-Mile / Last-Mile Serv., EP 767, slip op. at 4-6 (STB served Sept. 2, 2021) (inviting comments on FMLM

⁶ Extra-board employees are workers who are available to cover for regular employees.

⁷ KCS submitted written comments but did not testify at the hearing.

service issues, the design of potential metrics to measure such service, and associated burdens or trade-offs); Revisions to Reguls. for Expedited Relief for Serv. Emergencies, EP 762, slip op. at 12-15 (STB served Apr. 22, 2022) (proposing amendments to emergency service regulations). Therefore, as an initial step, the Board will require certain service recovery reporting from BNSF, CSXT, NSR, and UP on a temporary basis.⁸ The information submitted by the carriers will help the Board better understand the current service problems, progress being made to resolve them, and whether additional regulatory action by the Board is warranted. It is also intended to promote industry-wide transparency, accountability, and improvements in rail service. Although not all Class I carriers are experiencing service problems to the same degree, the Board will also require certain reporting requirements to apply to all Class I carriers so that the Board can assess the current service issues across the rail network as a whole. Because the U.S. rail system is an interconnected network, problems in one geographic area can quickly spread elsewhere.

The reporting requirements, which are delineated below, will give the agency and stakeholders access to data needed for a more timely understanding of the extent and location of the acute service issues and labor and equipment shortages. The data will be filed in Docket No. EP 770 (Sub-No. 1) and will be publicly available. Given testimony at the hearing from nearly all stakeholders that there is no quick fix to address the full extent of the current service issues, the Board will require reporting for a six-month period as it assesses the potential need for further action to help resolve the current problems. Stakeholders should take note that these temporary reporting requirements are an initial step as the Board continues to examine the record and consider other measures that may be warranted in this docket,⁹ as well as other pending dockets that implicate longer term rail service and performance issues.¹⁰

Accordingly, pursuant to 49 U.S.C. §§ 1321(b) and 11145(a), the Board will require BNSF, CSXT, NSR, and UP to file service recovery plans explaining the specific actions that each carrier will take to improve service and the specific metrics by which it will evaluate its progress toward such improvements. See e.g., U.S. Rail Serv. Issues, EP 724, slip op. at 6 (STB served Dec. 30, 2014); U.S. Rail Serv. Issues—Grain, EP 724 (Sub No. 2), slip op. at 2 (STB served June 20, 2014). Each service recovery plan must include, at a minimum, a time series of key service performance indicators for the past 36 months and, for each indicator, a target that the carrier expects to hit at the end of the six-month reporting period. Each carrier shall explain its selection of each key service performance indicator—how each is defined, what it indicates, and why it is selected—as well as how the carrier arrived at, and will meet, each target. Each carrier shall also include, at a minimum, an indicator and target for FMLM and TPC

⁸ At this time, the Board is not requiring service recovery reporting from CP, CN, or KCS. However, the Board notes that it is prepared to address service problems with respect to these carriers, as appropriate.

⁹ The Board has statutory authority to address immediate service issues. See, e.g., 49 U.S.C. § 11123.

¹⁰ See, e.g., First-Mile / Last-Mile Serv., Docket No. EP 767, and Revisions to Reguls. for Expedited Relief for Serv. Emergencies, Docket No. EP 762, referenced above.

performance, based on the requirements below (Items 5 and 7),¹¹ because the hearing record indicates that customers are facing significant service reliability issues and that these customer-centric reliability metrics provide needed transparency. The Board also expects each railroad to address its plans to remedy its current labor shortage and avoid future labor shortages. Moreover, in light of suggestions on this record that reductions in velocity have contributed to congestion and train delays, the Board expects each carrier within its service recovery plan to report on any plans it has to lift current velocity restrictions, as well as any plans it has to increase the power on its through trains—and not to limit the use of that power—so that each such train has the capacity to travel at track speed. To the extent a carrier has no such plan to lift velocity restrictions or increase power, the Board expects the carrier to explain why.

The Board will also require BNSF, CSXT, NSR, and UP to file bi-weekly service progress reports with updates for each indicator, as well as progress on, and reason for any changes to, the actions set out in the service recovery plans. In addition to the information on workforce levels described below, the Board encourages BNSF, CSXT, NSR, and UP to include in each carrier's service recovery plan and service progress reports data on the number of train, engine, and yard employees that began training and the number that completed training in 2022. (See UP Exs., April 29, 2022, Urgent Issues in Freight Rail Serv., EP 770.)

Additionally, for a three-month period, BNSF, CSXT, NSR, and UP will be required to participate in a conference call with the Board's Office of Public Assistance, Governmental Affairs and Compliance (OPAGAC) every two weeks to discuss progress made to resolve the significant rail service and labor shortage problems reflected in the record and improve rail service.¹² These calls will also provide a forum for Board staff to better understand each carrier's service progress report. This bi-weekly status conference is not intended to replace the informal and confidential process facilitated by OPAGAC to address shipper-specific problems and concerns; all stakeholders are encouraged to make use of that process as warranted and to keep the Board apprised of ongoing service issues.

The Board will also require all Class I carriers to submit the following information on a weekly basis for the next six months:

1. The weekly average terminal dwell times, measured in hours, for the carrier's 11th through 20th largest terminals (to augment the system-wide data and the data currently reported for the ten largest terminals under 49 C.F.R. § 1250.2(a)(5)).

¹¹ While other metrics may also inform FMLM and TPC performance, the Board is specifically requiring each carrier to include, at a minimum, Item 5 (a measure of FMLM performance) and Item 7 (a measure of TPC performance) as key service performance indicators with a six-month target under the weekly reporting requirements described below. Each carrier is encouraged to include other key service performance metrics by which it plans to evaluate, and that it believes the Board and the public should use to evaluate, its progress toward service improvements.

¹² OPAGAC staff will contact the rail carriers to provide details relating to the scheduling of these sessions.

2. The weekly average number of train starts per day (to augment the weekly average number of trains held per day data currently reported under 49 C.F.R. § 1250.2(a)(5)), sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and manifest).
3. The following information, reported separately for privately-owned, TTX-owned, and railroad-owned cars: (i) the weekly average number of cars per day in storage; (ii) the weekly average number of cars per day in service with no mileage; (iii) the weekly average number of cars per day in service with mileage; (iv) the weekly average number of car miles per day; and (v) the aggregate number of car miles per week.
4. With respect to recrews, for each operating division and for the system: (i) the weekly number of unplanned recrews due to compliance with federal hours of service regulations, and (ii) the recrew rate measured as a percentage of total crew starts.
5. For each operating division and for the system, the percentage of scheduled spots and pulls that were fulfilled. (This is sometimes referred to in the industry as “Industry Spot and Pull.”)
6. For each operating division and for the system, the weekly average number of local trains cancelled per day, and the aggregate number of local trains cancelled per week, broken down by cause (crew, locomotive power, or other).¹³
7. (i) For rail cars moving in manifest service, the percentage of cars constructively or actually placed at destination within 24 hours of the original estimated time of arrival.¹⁴ (ii) For the following types of unit trains (grain unit, coal unit, automotive unit, crude oil unit, and ethanol unit), the percentage of trains constructively or actually placed at destination within 24 hours of the original estimated time of arrival. (iii) For intermodal traffic, the percentage of trains that arrive at destination within 24 hours of the original estimated time of arrival. For movements involving more than one rail carrier in each of the specified categories, the destination for the upstream carrier shall be treated as the interchange location with the subsequent railroad.

¹³ 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 large 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. See First-Mile / Last-Mile Serv., EP 767, slip op. at 1 (STB served Sept. 2, 2021).

¹⁴ The Board expects carriers to use the estimated and actual times for actual placement for open-gate facilities and the estimated and actual times for constructive placement for closed-gate facilities.

Finally, the Board will direct Class I rail carriers to provide the following information on a monthly basis for a six-month period:

8. For each category of employees covered in the Monthly Report of Number of Railroad Employees (Form C) submitted to the Board's Office of Economics under 49 C.F.R. § 1246.1: (i) total employee count; (ii) how many employees were added; (iii) how many employees were separated (with a breakout of those employees who separated by voluntary resignation); (iv) how many employees have been furloughed but are potentially available for recall; (v) the number of "extra-board employees"; and (vi) for categories 300, 400, 500, and 600, how many employees are working in active service (as opposed to completing training courses). Carriers should report these data for each railroad operating division to the maximum extent practicable, and should also report these data on a system-wide basis.

The data provided under Item 1 above should be reported in accordance with the methodology used for current reporting purposes under 49 C.F.R. § 1250.2(a)(2). The data provided under Items 5 through 7 are directed to service problems that are currently impacting FMLM performance. The Board recognizes that rail carriers may define and measure performance under Industry Spot and Pull in different ways based on differing methodologies, data-keeping systems, and railroad operating practices. Accordingly, for information provided under Item 5, each reporting railroad shall provide, with its initial filing, an explanation of its methodology for deriving the data and the specific criteria and definitions by which compliance is measured. Any updates or changes to the methods, criteria, or definitions used in reporting the data must be provided with the accompanying weekly report and will be posted on the Board's website.¹⁵

OPAGAC will provide carriers with a sample template that should be used to submit Items 1 through 7. Each reporting railroad must submit its weekly report as a filing to the Board, consisting of an electronic copy of the data using the template provided by OPAGAC. As noted above, each reporting railroad shall provide an explanation of its methodology for deriving the data reported under Item 5 (and other Items, as needed) with its initial filing. OPAGAC will also provide carriers with a sample template that should be used for submission of the monthly employment data. With respect to both the weekly and monthly filings, CN and CP are instructed to provide data only for their networks in the United States.

Technical questions regarding compliance with this order may be directed to OPAGAC at (202) 245-0238.

It is ordered:

1. BNSF, CSXT, NSR, and UP shall submit service recovery plans, on May 20, 2022, and service progress reports, beginning June 3, 2022, in this docket for a six-month period, as

¹⁵ Carriers should also include similar explanations, with their initial filings, insofar as they deem them necessary to facilitate an understanding of the performance data specified in Items 2, 3, 4, 6 or 7, or the employment data specified in Item 8.

described above. BNSF, CSXT, NSR, and UP shall also submit the 36 months of historical data on June 3, 2022.

2. BNSF, CSXT, NSR, and UP shall participate in individual bi-weekly conference calls with Board staff to provide an update on progress made to improve rail service for a three-month period, as described above.

3. All Class I railroads shall submit weekly performance data, beginning on May 18, 2022, and monthly employment data, beginning June 15, 2022, in this docket for a six-month period, as described above. Additionally, all Class I railroads shall supplement their April 2022 monthly employment data with the information described above in Item 8 by May 25, 2022.

4. This decision is effective on its service date.

By the Board, Board Members Fuchs, Hedlund, Oberman, Primus, and Schultz.