

Attachment 2

Part 1 of 9

Minnesota Power's response to DOC discovery related to rail delivery issues.

State of Minnesota
DEPARTMENT OF COMMERCE
DIVISION OF ENERGY RESOURCES

Utility Information Request

Docket Number: E999/AA-14-579

Date of Request: March 18, 2015

Requested From: Xcel, MP, IPL, OTP

Response Due: March 30, 2015

Analyst Requesting Information: Craig Addonizio

Type of Inquiry: Financial Rate of Return Rate Design
 Engineering Forecasting Conservation
 Cost of Service CIP Other:

If you feel your responses are trade secret or privileged, please indicate this on your response.

Request No.	
21	<p>Reference: Coal Procurement Strategy</p> <p>a. How does the utility forecast its coal needs?</p> <p>b. Please explain the utility's strategy for purchasing coal to meet its anticipated needs with respect to the timing of coal purchases for its coal-fired plants. In other words, on January 1, 2014, what percentage of anticipated coal needs for 2014 did the utility have secured? As of January 1, 2014, what percentage of anticipated coal needs for 2015 did the utility have secured? Etc. To the extent there are plant-specific considerations, please explain them.</p> <p>c. If a particular coal-fired plant were dispatched less than expected during a given year (and thus burned less coal than expected), would the utility attempt to adjust coal deliveries in real-time, or simply allow coal inventory to build up at the plant and adjust deliveries at a later date</p>

RESPONSE:

a. The utility forecasts its future coal needs based on the amount of coal needed to produce a forecasted amount of generation and meet its designated inventory target. The generation is forecasted for a given time period using a production cost model called RTSim; coal needs are forecasted based on these output forecasted using an in-house Excel fuel delivery model. The main modeling assumptions used to

Response by: Kathy Benham
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List sources of information:

determine the estimated amount of coal generation include the following: expected generator availability (based on planned outages and estimated unplanned outages), customer demand, forecasted energy market prices, and estimated coal costs. The generation is forecasted for two time periods: short-term (one year out) and long-term (two to ten years out). The short-term forecast for generation is typically updated each month throughout the year, while the long-term forecast for generation is typically updated annually. Multiple generation scenarios are analyzed to determine the coal needed to meet forecasted generation as well as maintain coal inventories at desired levels.

Minnesota Power forecasts its coal needs for each of its thermal units: Boswell Energy Center ("Boswell"); Laskin Energy Center ("Laskin"); Taconite Harbor Energy Center ("Taconite Harbor"); Rapids Energy Center ("Rapids"); and Hibbard Renewable Energy Center ("Hibbard"). Minnesota Power discusses its coal inventory in terms of "days of burn" for each facility as further described on our response to IR 28d.

b. Minnesota Power's coal procurement guidelines are as follows:

Minnesota Power Coal Procurement Guidelines

Purpose: The key to a successful coal portfolio approach is its flexibility, which allows Minnesota Power to position itself to purchase coal when market conditions are favorable to either short-term (one year or less) or long-term (greater than one year) market softening.

When market prices are extremely favorable, Minnesota Power takes advantage of this pricing and enters into long-term agreements. Conversely, when markets are high, Minnesota Power does not enter into long-term agreements unless there is a real risk of that coal being unavailable when needed in the future. Constant monitoring of both the physical and Over-the-Counter coal markets and a good understanding of historical price trends and how that may affect future prices allows Minnesota Power to take advantage of favorable market changes.

Flexibility also allows performance of test burns from time to time as needed. Test burns are designed to expand Minnesota Power's coal portfolio to improve competitive procurement pricing and mitigate risk by expanding the number of suppliers from which Minnesota Power can procure coal.

Guidelines for Minnesota Power's coal contracts are as follows:

- One Year Out: Target is 90% – 100% of total estimated deliveries*
- Two Years Out: Target is 60% of total estimated deliveries*
- Three Years Out: Target is 30% of total estimated deliveries*
- Later Years: 10% of total estimated deliveries*

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PUBLIC DOCUMENT
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** based on process described in 21a*

These guidelines were approved in 2013 by Minnesota Power's Fuel Strategy Group, which consists of executives from Regulatory & Public Affairs, Finance, Generation, Strategy & Planning, Government Affairs, Energy Supply, Fuel Operations, and Legal Services.

These guidelines are used by Minnesota Power to aide in the decision of how much coal to procure from year-to-year. As stated in the guidelines above, there is consideration given to issues such as pricing and test burns.

Given 2013 coal delivery challenges, Minnesota Power started 2014 approximately 350,000 tons below targeted inventory levels. In addition, Minnesota Power is required to make nominations for rail delivery by October 31 of the previous year, without knowing the rate of which deliveries will come in November to December. Because of rail challenges late in 2013, the pace of deliveries in November and December was slower than anticipated and Minnesota Power was not able to nominate properly for the inventory shortfalls that occurred in November - December of 2013.

In terms of coal procured for 2014's estimated burn, Minnesota Power had approximately 68% of the estimated burn procured on January 1, 2014. In addition, Minnesota Power was in the process of finalizing several other agreements on January 1, 2014, which were signed in the first quarter of 2014. These additional agreements, along with the tons secured by January 1, 2014, represented approximately 90% of the estimated burn.

Even though Minnesota Power had a significant portion of the 2014 estimated burn secured, Minnesota Power purposely did not secure additional tons to cover the inventory shortfall caused by the 2013 coal deliveries challenges because BNSF repeatedly told Minnesota Power that it would not ship the tons needed to make-up for the inventory shortfall in 2013. If Minnesota Power had secured the coal to make up for the inventory shortfalls in 2013 and BNSF had not delivered these tons, as Minnesota Power was repeatedly told, Minnesota Power would have incurred liquated damage charges from mines under its coal supply contracts that could have been as high as \$1.2 million.

On January 1, 2014, approximately 44% of the estimated burn of 2015 was secured. However, Minnesota Power was also in the process of finalizing several other agreements on January 1, 2014, which were signed in the first quarter of 2014. These additional agreements along with the tons secured by January 1, 2014, represented approximately 61% of 2015's estimated burn.

With regard to plant specific considerations, Minnesota Power converted the Laskin plant to natural gas. The last coal delivery to Laskin was received on February 12, 2015. Taconite Harbor receives coal via shipping vessel from Midwest Energy Resources Company ("MERC"). [TRADE SECRET DATA EXCISED]

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List sources of information:

c. Due to requirements in coal and coal transportation contracts surrounding coal procurement and ratable deliveries, when possible we will allow coal inventory to build up at the plant until a later date – likely the next calendar year - to avoid any potential contractual liquidated damages charged in these contracts for not shipping the coal contracted in the current year. The two exceptions are: a) if the physical area of the stockpile cannot safely hold the additional tons, or b) if there is a catastrophic event that significantly affects coal burn; in that situation, we would utilize the force majeure provision of the relevant contracts to excuse the company from contractual performance.

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 Cost of Service CIP Other:

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Request No.	
22	<p>Reference: Strategy for Procuring Rail Transportation of Coal</p> <p>a. Please provide a general discussion describing the utility's strategy for procuring rail transportation for coal, and how that strategy relates to the utility's strategy for procuring coal. Please address the following questions, but also provide any other relevant information.</p> <p>b. Is it the utility's goal to transport all of its coal via multi-year rail transportation contracts? Or does the utility rely on rail contracts for only a portion of its coal transportation needs, and rely on shorter-term solutions for a portion (e.g. rail transportation at tariffed, common carrier rates).</p> <p>c. Are coal deliveries by rail to each coal-fired plant governed by separate rail contracts? Or can one contract cover deliveries to multiple plants?</p> <p>d. For each plant, does the utility typically have one rail transportation contract in place at a time? Or are plants served under multiple rail transportation contracts with differing terms (e.g. volumes and expiration dates)?</p> <p>e. How does the utility's procurement of rail transportation accommodate changes to its forecasted coal needs?</p>

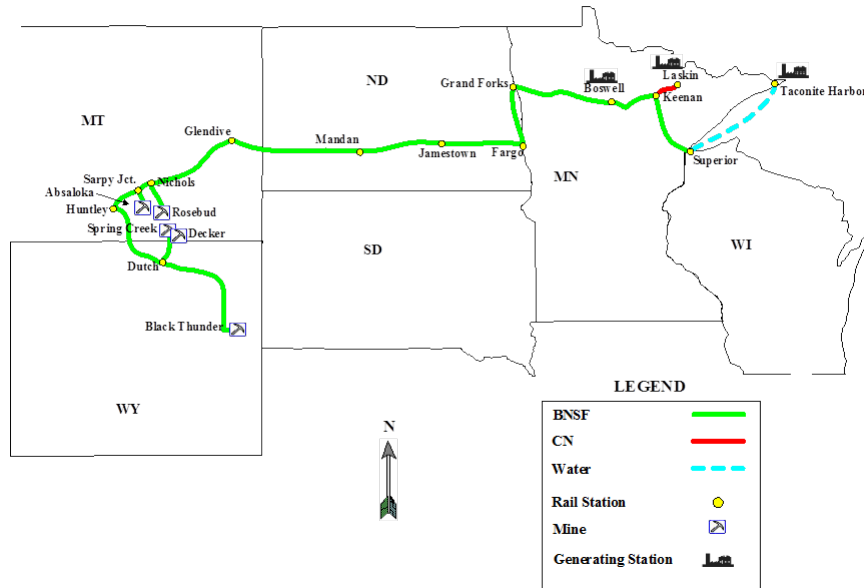
Response by: Kathy Benham
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List sources of information:

RESPONSE:

a. Minnesota Power currently burns approximately 5.5 million tons of coal per year at its thermal plants; 36% of this coal comes from Montana and 64% from Wyoming. All Montana coal is captive, meaning it is served by only one Class I railroad, the BNSF Railway. The three southern Wyoming Powder River Basin (“PRB”) coal mines are served by both BNSF Railway and Union Pacific Railroad (“UP”). Minnesota Power Coal routes are depicted in the map below.

Schematic of Current Routes to Minnesota Power Generating Stations



Minnesota Power’s Boswell Energy Center (“Boswell”) is captive to the BNSF Railway, meaning it has access to only one railroad for its coal transportation at its destination. Coal is shipped directly from the PRB via BNSF directly to Boswell.

When burning coal, the Laskin Energy Center (“Laskin”) transported coal from Wyoming via the BNSF to a rail yard in Keenan, Minnesota, at which point the Canadian National (“CN”) railroad delivered the trains the remaining short distance to the plant; Laskin was captive to the CN for the final movement into the plant.

The Taconite Harbor Energy Center (“Taconite Harbor”) rails coal from the PRB (Montana and Wyoming) via BNSF to the Midwest Energy Resource Center (“MERC”) in Superior, Wisconsin, where coal is unloaded and stored for transshipment via lake vessel to the plant.

Hibbard Renewable Energy Center (“Hibbard”) receives coal via truck from MERC. Rapids Energy Center (“Rapids”) receives coal via truck from Boswell.

[TRADE SECRET DATA EXCISED]

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Please refer to IR-21b regarding Minnesota Power's coal procurement strategy.

- b. [TRADE SECRET DATA EXCISED]
- c. [TRADE SECRET DATA EXCISED]
- d. [TRADE SECRET DATA EXCISED]
- e. [TRADE SECRET DATA EXCISED]

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Request No.	
23	<p>Reference: Rail Contracts</p> <p>a. Please provide copies of all rail transportation contracts the utility has been party to at any time since the January 1, 2011 (including contracts that were signed prior to January 1, 2011, but still in effect on that date).</p> <p>b. Please describe, in non-technical terms, the terms of the contracts provided in response to part (a), including pricing, annual volumes, the responsibilities of the rail carriers, the responsibilities of the utility, etc.</p> <p>c. Please explain whether the contracts provided in response to part (a) govern <i>all</i> coal deliveries by rail to the utility's plants, or if any coal gets delivered by rail pursuant to any other transactions or agreements?</p>

RESPONSE:

- a. See Attachment IR-23

- b. See Attachment IR-23

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List sources of information:

c. The BNSF contract covers all Minnesota Power coal shipped out of the Powder River Basin ("PRB"). Minnesota Power shipped on a tariff for coal received from BNSF Railway at Keenan, transferred to Canadian National ("CN") and then shipped to Laskin Energy Center ("Laskin").

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List sources of information:



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Assistant General Attorney

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(817) 352-2437 Phone
(817) 352-2399 Fax
teena.kilian@bnsf.com

April 7, 2015

Via Email

Christopher Anderson
Minnesota Power
30 W. Superior Street
Duluth, MN 55802-2191
canderson@allete.com

RE: Coal Transportation Agreement BNSF-C-12309 (the "Agreement")

Dear Mr. Anderson:

Thank you for forwarding to me a copy of the Minnesota Department of Commerce's Utility Information Request Docket No. E999/AA-14-579 dated March 18, 2015, requesting a copy of the current coal transportation agreement that Minnesota Power has with BNSF.

As we discussed, due to the confidential nature of the Agreement and the specific business terms contained therein, BNSF does not consent to Minnesota Power disclosing or filing a copy of the Agreement in either a public or trade secret format. However, BNSF will consent to an in camera review by a representative of the Minnesota Department of Commerce of a redacted version of the Agreement provided by BNSF at an office of your choosing in Minneapolis or St. Paul. A representative of BNSF will be available via phone during the review.

I will provide a redacted version of the Agreement for your use in a mailing under separate cover. Thank you for your cooperation.

Sincerely,

A handwritten signature in purple ink that reads "Teena S. Kilian".

Teena S. Kilian



Teena S. Kilian
Assistant General Attorney

BNSF Railway Company
2500 Lou Menk Drive, AOB-3
Fort Worth, TX 76131-2828
(817) 352-2437 Phone
(817) 352-2399 Fax
teena.kilian@bnsf.com

April 9, 2015

Via Email

Christopher Anderson
Minnesota Power
30 W. Superior Street
Duluth, MN 55802-2191
canderson@allete.com

RE: Coal Transportation Agreement BNSF-C-12309 (the "Agreement")

Dear Mr. Anderson:

Further to my letter to you dated April 7, 2015, enclosed is a redacted version of the Agreement for your use in complying with the Minnesota Department of Commerce's Utility Information Request Docket No. E999/AA-14-579 dated March 18, 2015, requesting a copy of the current coal transportation agreement that Minnesota Power has with BNSF.

Please let me know the date and time of the in camera review of the redacted version of the Agreement by a representative of the Minnesota Office of Attorney General, and I will make myself available via phone during the review.

Sincerely,

A handwritten signature in blue ink that reads "Teena S. Kilian".

Teena S. Kilian

Enclosure

State of Minnesota

DEPARTMENT OF COMMERCE

DIVISION OF ENERGY RESOURCES

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Request No.	
24	<p>Reference: Rail Deliveries</p> <p>a. For each of the contracts provided in response to the prior Information Request, please provide the utility's desired level of deliveries each year. If a contract required (or requires) the utility to nominate a specific level of deliveries for a calendar year prior to the start of that calendar year, please provide the nominated amount of deliveries, and explain how the nominated amount was derived.</p> <p>b. Please provide actual deliveries pursuant to each contract by month since January 2011.</p> <p>c. Please provide actual coal deliveries to each of the utility's coal plants by month since 2011.</p> <p>d. If the delivery data provided in response to part (c) does not reconcile with the delivery data provided in response to part (b), please explain why.</p>

RESPONSE:

a. The process used to determine the company's desired level of deliveries each year is described in IR-22a.

[TRADE SECRET DATA EXCISED]

Response by: Kathy Benham
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List sources of information:

- b. See Attachment 24-B
- c. See Attachment 24-C.
- d. Delivery Data:
 - In 2013 and 2014, coal for a test burn was sourced from the Black Butte mine, which routes via the UP railroad, is transloaded at the KCBX dock in Chicago, Illinois, and shipped via lake vessel to Taconite Harbor, therefore not utilizing BNSF system.
 - In January 2014, 742 tons of coal was shipped via truck from the Midwest Energy Resource Company ("MERC") facility in Superior, Wisconsin, to Laskin Energy Center ("Laskin") due to a shortfall of inventory at Laskin.
 - In 2014, Minnesota Power also received coal from TraxEnergy, considered a "coal broker". TraxEnergy assists railroads in delivering coal cars that have become separated from unit trains, for a variety of reasons, to utilities that are willing to accept these coal types. TraxEnergy shipments are not considered contracted tons with the BNSF.

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List sources of information:

BNSF Contract Delivered Tons

PUBLIC DOCUMENT - TRADE SECRET EXCISED

Coal Deliveries to MP Facilities per Month

PUBLIC DOCUMENT - TRADE SECRET EXCISED

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 Engineering Forecasting Conservation
 Cost of Service CIP Other:

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Request No.	
25	<p>Reference: Railroad Performance</p> <p>a. Please explain whether, under the terms of each of the utility's rail transportation contracts, the railroad has met its delivery obligations.</p> <p>b. Please explain whether any railroads have faced any penalties, financial or otherwise, pursuant to a contract with the utility. If any railroads have paid a financial penalty, please explain whether this penalty was credited to ratepayers via the fuel clause adjustment.</p> <p>c. If the railroads have met their delivery obligations as specified in the contracts, please explain why coal inventories were or are low.</p>

RESPONSE:

a. As discussed in the preceding Information Requests 22 and 23, Minnesota Power is a captive shipper for coal sourced from the Powder River Basin ("PRB") located in Wyoming and Montana and has one rail contract with BNSF Railway Company ("BNSF") in place for coal transportation. [TRADE SECRET DATA EXCISED]

b. [TRADE SECRET DATA EXCISED]

Response by: Kathy Benham
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List sources of information:

While not “penalties” for the railroads, Minnesota Power has been very active in regulatory and political venues attempting to obtain relief on rail service issues. In 2014, Minnesota Power worked tirelessly and diligently to increase the visibility of railroad service deficiencies and the impact on Minnesota Power’s coal inventory. Minnesota Power requested action and assistance in addressing coal delivery concerns with the Surface Transportation Board, the Federal Energy Regulatory Commission, Senator Klobuchar, Senator Franken, Congressman Nolan, Governor Dayton, the Minnesota Department of Commerce ("DOC") and Minnesota Attorney General.

Federal Activity – Surface Transportation Board.

While rail carriers are regulated by the Surface Transportation Board (the “STB”), the STB’s role in service matters has been limited. As a member of the Western Coal Traffic League (“WCTL”), Minnesota Power participated in the WCTL’s petition with the STB seeking a coal service recovery plan from BNSF. The WCTL’s petition was granted by the STB as Docket Ex Parte 724. As part of that Docket, ALLETE’s Senior Vice President of External Affairs and Minnesota Power’s Executive Vice President, Dave McMillan represented the WCTL at the first hearing on the petition on April 10, 2014. Mr. McMillan’s testimony is attached as Attachment 25A.

As a result of Ex Parte 724, BNSF was required to provide weekly service information (starting in October) and a coal service contingency plan (in December). The Docket continues as WCTL has requested that the STB require ongoing reporting from Class 1 railroads of information of interest to coal shippers. Pertinent documents from that Docket are attached as Attachment 25B.

Minnesota Power is currently supporting efforts to amend federal law to clarify that the STB can and should take action to address rail carrier service delivery issues. Minnesota Power and WCTL are actively supporting the Rail Shipper Fairness Act of 2015. A copy of the draft legislation and summary are attached as Attachment 25C.

Federal Activity – Department of Energy Report

Minnesota Power filed an Electric Emergency Incident and Disturbance Report (Form OE-417) with the U.S. Department of Energy on September 22, 2014. The report notified the DOE of a fuel supply deficiency that could impact system adequacy or reliability; specifically, low coal inventory levels at and lagging deliveries to Boswell Energy Center ("Boswell"). Minnesota Power’s Vice President of Regulatory and Legislative Affairs, Margaret Hodnik, provided a copy of the DOE report to Kate O’Connell, the Department’s Manager, Energy Regulation and Planning, and to Janet Gonzalez, Minnesota Public Utilities Commission, Regulatory Analysis Division Manager. A copy of the report is attached as Attachment 25D.

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List sources of information:

Federal Activity – Legislative Support

Also in late September 2014, Minnesota Power notified Governor Dayton, Senator Klobuchar, Senator Franken and Congressman Nolan of our ongoing and heightened concern with BNSF's continuing poor rail service and asked for their assistance in seeking action from BNSF to solve the problem. We requested they ask the STB to require a service recovery plan and add coal deliveries to their weekly public reporting status. A copy of the letter sent by Dave McMillan is attached as Attachment 25E. Governor Dayton, Senator Klobuchar and Senator Franken communicated the urgency of the situation and requested that the STB take responsive action in an October 13, 2014, letter to the STB. A copy of this letter is attached as Attachment 25F.

In addition, Governor Dayton, Senators Klobuchar and Franken and Congressman Nolan appealed to Federal Energy Regulatory Commission Chairman LaFleur to convene a meeting on BNSF's failure to provide adequate rail service to electric utilities in Minnesota. A copy of this letter is attached as Attachment 25G.

Federal Activity – Federal Energy Regulatory Commission ("FERC")

FERC did hold an open Commission meeting on this topic on December 18, 2014. Minnesota Power's Dave McMillan presented the dire situation that Minnesota Power found itself in due to BNSF coal service delivery issues. In addition, he acknowledged that while FERC cannot specifically order the railroads to provide service to utility coal shippers, FERC can continue to coordinate and collaborate with the STB and DOE. A copy of Mr. McMillan's testimony is attached as Attachment 25H.

Minnesota Activity - Stakeholder Communication

Minnesota Power also sought attention for these critical service delivery issues at the state level in addition to making sure that state stakeholders were pacing with federal activities.

On September 30, 2014, Al Rudeck, Minnesota Power's VP, Strategy and Planning, testified at a joint hearing of the MN House Transportation, Finance and Commerce Committees and Senate Transportation and Public Safety Policy, Commerce and Jobs, Agriculture and Rural Development Committees to discuss rail congestion. A copy of Mr. Rudeck's statement and the handouts provided to the committees is attached as Attachment 25I.

Mr. Rudeck and Chris Anderson, Assistant General Counsel, met via teleconference with Ian Dobson of the Minnesota Attorney General's Office on October 15, 2014 to provide a status update on the coal service issues.

On October 17, 2014, Minnesota Power's Al Rudeck and Margaret Hodnik met with Governor Dayton and representatives from BNSF, including BNSF's CEO, Carl Ice. The Governor requested action and assurances from BNSF that they would correct the rail service issues that Minnesota Power and others were currently experiencing.

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Discussion also included actions BNSF was taking to improve future service, such as capital infrastructure developments (e.g., double track installations) in their northern rail corridor. A copy of Ms. Hodnik's letter to Governor Dayton, thanking him for his active participation in these issues, is attached as Attachment 25J. On November 17, 2014, Minnesota Power's Margaret Hodnik, Kathy Benham, Director Fuel Strategy & Sourcing, and Steve Garvey, Director - State Legislative Affairs, participated in the Governor's Rail Summit in St. Paul with representatives from Class 1 railroads and industry shippers

c. [TRADE SECRET DATA EXCISED]

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List sources of information:

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SERVICE DATE – LATE RELEASE APRIL 9, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 724

UNITED STATES RAIL SERVICE ISSUES

Decided: April 9, 2014

By decision served on April 1, 2014, the Board scheduled a public hearing for April 10, 2014, at its offices in Washington, D.C., to provide interested persons the opportunity to report on recent service problems in the United States rail network, to hear from rail industry executives on plans to address their service problems, and to discuss additional options to improve service. In its decision, the Board indicated that the hearing would begin at 9:30 a.m.; however, in order to accommodate the large number of notices of intent to participate received, the hearing will begin at 8:30 a.m. The schedule of appearances, with allotted times, is in the Appendix to this decision. Any party wishing to file written comments may do so by April 17, 2014.

If a party wishes to enhance its presentation by using visual displays and/or handouts, it may do so. Parties may copy computer presentations to a Board-supplied laptop for viewing on the hearing room's television screens. Staff will be available to demonstrate the hearing room's screen system and to assist in the copying of visual presentations onto the hearing room laptop computer on April 9, 2014, from 2:00 p.m. to 4:00 p.m. Please call (202) 245-0238 to make arrangements.

Instructions for Attendance at Hearing

The STB requests that all persons attending the hearing use the main entrance to Patriots Plaza I at 395 E Street, S.W. (entrance on E Street closest to 4th Street). There will be no reserved seating, except for those scheduled to present comments. The building will be open to the public at 7:00 a.m., and participants are encouraged to arrive early. There is no public parking in the building. The two closest Metro stops to the Board are on the Blue and Orange Lines at Federal Center SW, 3rd and D Streets, S.W., and on the Yellow, Green, Orange and Blue Lines at L'Enfant Plaza, 6th and D Streets, S.W.

Upon arrival, check in at the 1st floor security desk in the main lobby. Be prepared to produce valid photographic identification (driver's license or local, state, or Federal government identification); sign in at the security desk; receive a hearing room pass (to be displayed at all times); submit to an inspection of all briefcases, handbags, etc.; and pass through a metal detector. Persons choosing to exit the building during the course of the hearing must surrender their hearing room passes to security personnel and will be subject to the above security procedures if they choose to re-enter the building. Hearing room passes likewise will be

collected from those exiting the hearing upon its conclusion. Those persons testifying must check in with the clerk at the front of the hearing room.

Laptops and recorders may be used in the hearing room, but no provision will be made for connecting personal computers to the internet. Cellular telephone use is not permitted in the hearing room; cell phones may be used quietly in the corridor surrounding the hearing room, or in the building's main lobby.

Members of the media should contact Dennis Watson in the Office of Public Assistance, Governmental Affairs, and Compliance at (202) 245-0234, if they plan to attend the hearing.

The Board's hearing room complies with the Americans with Disabilities Act, and persons needing such accommodations should call (202) 245-0245, by the close of business on April 9, 2014.

For further information regarding the hearing, contact Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The hearing will be held on April 10, 2014, beginning at 8:30 a.m., in the Board's hearing room, at 395 E Street, S.W., Washington, DC.
2. Time for the hearing is allotted as reflected in the Appendix to this decision.
3. Any party wishing to file written comments may file their comments with the Board by April 17, 2014.
4. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings

**APPENDIX
SCHEDULE OF APPEARANCES**

THURSDAY, APRIL 10, 2014 (COMMENCING AT 8:30 A.M.)

<u>Party</u>	<u>Time Allotted</u>
The Honorable John Thune (to speak upon arrival) United States Senate, South Dakota	as needed
Panel I	
The United States Department of Transportation and the Federal Railroad Administration (FRA) Joseph C. Szabo, FRA Administrator	as needed
State of South Dakota Lucas Lentsch, Secretary of Agriculture	7 minutes
Panel II	
Western Coal Traffic League David McMillan, Senior Vice President, ALLETE External Affairs Bob Kahn, General Manager of Texas Municipal Power Agency	15 minutes
North Dakota Grain Growers Association Bob Wisness, President	5 minutes
The American Chemistry Council Thomas E. Schick, Senior Director, Regulatory & Technical Affairs	15 minutes
National Railroad Passenger Corporation (Amtrak) DJ Stadtler, Vice President of Operations	10 minutes
Panel III	
Alliance for Rail Competition, et al. Terry C. Whiteside	15 minutes
The American Soybean Association and the Minnesota Soybean Growers Association Lance Peterson, American Soybean Association Bill Gordon, Minnesota Soybean Growers Association	15 minutes

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CHS Inc. d/b/a Midwest Cooperatives Milton Handcock, General Manager	5 minutes
Dennis Jones, farmer and producer	5 minutes
National Farmers Union Roger Johnson, President	15 minutes
The National Grain and Feed Association Kevin Thompson, Chairman, Rail Shipper/Receiver Committee	15 minutes

Panel IV

BNSF Railway Company Stevan Bobb, Executive Vice President and Chief Marketing Officer Robert Lease, Vice President, Service Design and Performance	20 minutes
Canadian Pacific Railway Keith Creel, President and Chief Operating Officer	20 minutes

Panel V

The Association of American Railroads Jeffrey Harris, Co-Chairman of the Chicago Planning Group	10 minutes
Canadian National Railway Company Jeff Liepelt, Senior Vice-President Southern Region	10 minutes
CSX Transportation, Inc. Cressie Brown, Vice President – Service Design and Advanced Technology	10 minutes
Norfolk Southern Railway Company Rush Bailey, Assistant Vice President of Service Management	10 minutes
Union Pacific Railroad Company Thomas C. Haley, Assistant Vice President – Network Planning and Design	7 minutes

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Panel VI

North Central Bean Dealers Association 15 minutes
John Berthold, Director
Brian Schanilec

Plains Grain & Agronomy 5 minutes
Keith Brandt, General Manager

South Dakota Farmers Union (SDFU) 15 minutes
DuWayne Bosse, farmer and SDFU Marshall County President

South Dakota Wheat Growers Cooperative 5 minutes
Hal Clemensen, President of the Board of Directors

United Sugars Corporation 5 minutes
John Doxsie, President

Panel VII

The National Coal Transportation Association 10 minutes
Tom Canter, Executive Director

TUCO Inc. and NexGen Coal Services, Ltd. 5 minutes
Mark L. Adkins, Vice President, NexGen Coal Services, Ltd.

Xcel Energy 5 minutes
Thomas A. Imbler, Vice-President Commercial Operations

Panel VIII

Consumers United for Rail Equity 5 minutes
Paul Gutierrez, Senior Principal, Legislative Affairs for the
National Rural Electric Cooperative Association

Growth Energy 15 minutes
Chris Bliley, Director, Regulatory Affairs

Renewable Fuels Association 5 minutes
Ed Hubbard, General Counsel

Docket No. EP 724

Northern Tier Energy LP 5 minutes
Kei Rietz, Commercial Manager
Jason Akey, Commercial Operations Manager
Charles H. Banks, President, R.L. Banks and Assoc., Inc.

Panel IX

Occidental Chemical Corporation 5 minutes
Robin A. Burns, Vice President – Supply Chain

NewPage 5 minutes
Gretchen Clark, Director of Logistics and Warehousing

West Linn Paper Company 5 minutes
Scott Dalesandro, Columbia River Logistics Inc.

Normerica Inc. and Northdown Industries Inc. 5 minutes
Adam Manna, General Counsel

AMCOL International Corporation 5 minutes
Jeff Burket, Global Supply Chain Manager

VBR Tours, LLC 5 minutes
Todd Powell, President

D. McMillan, 4-9-14
Final Draft

McMillan Statement

Chairman Elliott and Vice-Chairman Begeman:

Good morning. I'm Dave McMillan, Senior Vice-President, External Affairs for ALLETE and Executive Vice President for Minnesota Power. I am appearing here today on behalf of the Western Coal Traffic League and Minnesota Power. The Coal League is comprised of shippers of coal mined in the Western United States. Currently Coal League Members pay to transport approximately 140 million tons of coal annually.

ALLETE is a diversified energy company headquartered in Duluth, Minnesota. ALLETE's principal operating division, Minnesota Power, generates, transmits and distributes electricity in a 26,000 square mile region in northern Minnesota to 144,000 residents, 16 municipalities and some of the nation's largest industrial customers. Coal is Minnesota Power's primary fuel source for its electric generation. The company currently operates three coal-fired plants that utilize approximately 5 million tons of coal each year. This coal originates at mines located in Wyoming and Montana and is transported by BNSF either in single-carrier, or joint-carrier service.

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Minnesota Power is a long-time member of the Coal League. I am joined here today by a second Coal League Member, Bob Kahn. Bob is the General Manager of Texas Municipal Power Agency. Bob's remarks will follow mine. On behalf of the Coal League, Minnesota Power, and TMPA, I want to thank the Board for holding today's timely and important hearing.

The Coal League has submitted two filings with the Board, one dated March 13, 2014 and a second dated March 24, 2014, that graphically depict the problems faced by many coal-fired utilities in recent months due to BNSF's ongoing service issues. These problems include:

- Precariously low stockpiles – often dipping below 10 days;
- Emergency trucking of coal; and
- Reduced coal-fired generation, and its replacement with higher priced generation resources, resulting in increased wholesale and retail electric costs.

Minnesota Power has experienced all of these problems first hand.

- Our stockpiles at all three of our coal-fired plants dipped to dangerously low levels earlier this year, including levels as low as 4 days at our largest plant.
- We were also forced to begin emergency, high-cost trucking of coal we had in storage at the MERC dock in Superior, WI to our second largest plant at Taconite Harbor

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Final Draft

- We were forced to curtail generation, both last year and earlier this year and replace it with higher priced purchased power.
- Overall, our customers have incurred approximately \$10,000,000 in additional electric costs due to BNSF's service failures to date.

These costs have been borne mainly by our large industrial customers. These customers, who operate global organizations and compete in international markets, include ArcelorMittal, United States Steel, Cliffs Resources, UPM Kymmene, Sappi, Gerdau Ameristeel, NewPage (who is here today) and others.

Other WCTL members have experienced similar problems. Bob Kahn will discuss TMPA's service problems, and three other WCTL members, Kansas City Power & Light Company, Wisconsin Public Service Corporation and Western Fuels Association, Inc. have asked me to briefly describe their current service problems to the Board.

- Kansas City Power & Light Company's BNSF-served stations have experienced cycle times in 2014 that are between 27% and 39% longer than comparable times in 2013, with performance worsening steadily from the Fall of 2013. Coal inventories at the BNSF-served plants have not been at target levels since July 2013, and have decreased precariously over the past 7 months. Actual BNSF deliveries during this period have been as much as 22% lower than nominations.

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- Wisconsin Public Service Corporation's Weston station is served by UP and CN. At the start of December 2013, coal inventory was at 107% of target levels. By year end, it had fallen to 72%. It kept falling in 2014, so that by March, Wisconsin Public Service had to reduce burn in order to prevent inventory from reaching zero. Over the same December to March time period, tons delivered by UP/CN fell short of nominations by more than 375,000 tons and transit times increased from 176 hours to 372 hours.
- Western Fuels purchases coal transportation for several BNSF-served cooperative utilities. WFA reports that BNSF's current cycle times are up to 50% higher than historical averages; stockpiles at many plants are extremely depleted; several of its member companies have had to engage in very expensive coal service mitigation measures including emergency coal trucking and generation curtailment; and, unless BNSF service improves soon, even with conservation efforts, some of its members may run out of coal this summer. WFA also reports that BNSF has parked trainsets and, over WFA's objections, not returned the parked trains to service and denied requests to add trainsets for service to member companies in desperate need of coal deliveries.

While the unfortunate and costly results of carrier service failures are well known to utility coal shippers, what is far less clear to Traffic League members is:

- Why did these service problems occur?
- What are the carriers doing to fix them? and
- How long will they last?

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We will be listening with great interest to hear the carrier's responses to these three basic questions. The Coal League also requests that the Board take four immediate steps:

- First, direct BNSF to publicly submit on a bi-weekly basis the coal service data we identified in our March 24th filing.
- Second, direct BNSF to publicly submit a specific service recovery plan, along with periodic bi-weekly progress reports.
- Third, closely monitor developments and exercise its broad authority, as necessary, to issue specific remedial service orders.
- Fourth, collect interchange dwell times and yard dwell times in IL and WI for UP and CN, as well as UP coal train cycle times from the PRB and Colorado to Chicago, IL, CN's average coal train speeds to and from Chicago, IL, and any restrictions on the availability of crews of coal service on UP and CN.

WCTL may supplement the record with additional specific requests following today's hearing.

Finally, at Minnesota Power, we try to approach problems with creativity and optimism; I want to end my comments in that spirit. Minnesota Power has had a long relationship with BNSF that dates back to 1968. We were BNSF's first western coal unit train shipper and we have enjoyed a long and mutually beneficial partnership with BNSF.

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In recent years, Minnesota Power and BNSF have been proactively looking for ways to address the infrastructure side of service issues. For instance, we are working together in energy rich and energy friendly states like North Dakota to support new investments aimed at reducing congestion with new infrastructure. We are also exploring loop track enhancements at our largest power station.

During the recent service crisis, we have been in constant communication with BNSF concerning its service problems, and the impact of these problems on our operations and on our customers. For example, BNSF's Chief Marketing Officer, Steve Bobb, travel to Duluth in February and spent half a day with our largest electric customers, explaining the current situation. So, while BNSF has listened to us, and has taken some steps this year to address its problems, they still have a long way to go.

Like all successful long-term relationships – sometimes one partner needs to hear frank feedback from the other.

Providing that feedback is my primary purpose for being here today. Electric consumers in Northern Minnesota depend upon Minnesota Power and BNSF for

D. McMillan, 4-9-14
Final Draft

reliable and affordable electric service. It is up to us – and this Board – to assure that our customers’ energy needs and expectations are met.

I thank the Board for the opportunity to participate in this important hearing and am happy to answer questions or provide further information.

EXPEDITED CONSIDERATION REQUESTED

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES)

) Docket No. EP 724
)

**PETITION OF THE WESTERN COAL TRAFFIC LEAGUE FOR AN ORDER
REQUIRING BNSF RAILWAY COMPANY TO SUBMIT A
COAL SERVICE RECOVERY PLAN**

WESTERN COAL TRAFFIC LEAGUE

Of Counsel:

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Dated: October 22, 2014

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES)

) Docket No. EP 724
)

**PETITION OF THE WESTERN COAL TRAFFIC LEAGUE FOR AN ORDER
REQUIRING BNSF RAILWAY COMPANY TO SUBMIT A
COAL SERVICE RECOVERY PLAN**

Members of the Western Coal Traffic League (“WCTL”) served by the BNSF Railway Company (“BNSF”) continue to face severe coal shortages caused by inadequate transportation service by BNSF. Regrettably, no immediate relief is in sight, and winter is coming. The Board must now take immediate action to ensure that the supply of electricity to the communities that WCTL’s members serve is secure, reliable and cost-effective during the winter months when electricity usage often soars. For these reasons, WCTL petitions the Board for an order requiring BNSF to submit a coal-specific service recovery plan, which the Board should then review, approve or revise, and, most importantly, enforce. In support of its petition, WCTL states as follows:

BACKGROUND

Despite assurances made by BNSF to WCTL members that no utilities will run out of coal and that it will fix its service deficiencies, BNSF has failed. Minnesota Power (Allete, Inc.), a WCTL member, has been forced to shutter four electric generating units as a last and costly resort to preserve coal stockpiles for the winter. Additionally, WCTL members, such as Texas Municipal Power Agency, have had to file emergency

notices of coal shortages with the U.S. Department of Energy (OE-417). Most BNSF-served WCTL members find their stockpiles are well below target levels. Moreover, BNSF has not transported millions of tons of coal that WCTL members have requested.

Other BNSF-served utilities have experienced similar difficulties to those faced by WCTL's members. We Energies has filed several OE-417 notices relating in part to poor BNSF service.¹ Xcel Energy has written three times to the Board concerning inadequate service.² Members of Congress sought the STB's help to improve BNSF's service to Dairyland Power Cooperative in light of critical coal shortages,³ and TUCO indicated that through August 2014, poor BNSF service resulted in a 1.7 million ton shortfall of coal deliveries.⁴

The limited coal deliveries and the uncertainty of adequate future deliveries have caused most of the WCTL membership to curtail coal-fired production. These curtailments have forced the utilities to seek alternative generation at significantly higher costs, which in turn has cost electric consumers and ratepayers hundreds of millions of dollars.

Electric utilities generally use the milder fall season to build stockpiles for increased generation required in winter and to hedge against possible service disruptions

¹ See <https://www.oe.netl.doe.gov/download.aspx?type=OE417PDF&ID=50>.

² See Letters from Xcel Energy Inc. dated Apr. 9, July 31, and Sept. 11, 2014.

³ See Letter from Hon. Cheri Bustos to Hon. Daniel R. Elliott III, STB Chairman (Aug. 6, 2014); Letter from Hon. Tim Walz and Hon. Ron Kind to Hon. Daniel R. Elliott III, STB Chairman (July 24, 2014).

⁴ See Public Statement of Mr. Mark Adkins, Vice President, TUCO, INC., Docket No. EP 724, at 2 (Sept. 4, 2014).

during severe winter weather. However, WCTL's BNSF-served members will have little or no opportunity to rebuild stockpiles in the fall given current BNSF service levels. Indeed, WCTL has just been informed that BNSF intends to remove approximately **60 coal train sets** from service. Thus, at a time when WCTL's members are in significant need of coal, BNSF is further cutting back service. This latest development combined with BNSF's service performance last winter and BNSF's public statements that service will not return to normal anytime soon, strongly supports the view that BNSF service this winter will be no better than during the last.

What is different this year from last is that many utilities will be entering the winter with less coal in storage than they had at the end of 2013. Thus, if another harsh winter occurs, WCTL's members will face a situation far worse than last winter.

WCTL's concerns were starkly echoed in a recent letter to Chairman Elliott from Governor Mark Dayton and Senators Al Franken and Amy Klobuchar wherein they expressed their grave concerns that the "railroads have not provided even minimally adequate levels of service," and that they are "hearing daily from . . . [utilities that] cannot secure delivery of enough coal to run power plants"⁵ Indeed, their letter notes that: "each of the utilities in our state are restricting the operation of coal-fired power plants for the sole reason of conserving existing stockpiles – stockpiles that have grown precipitously and dangerously low due to BNSF's ongoing system delivery problems;" that the service situation is not improving as winter approaches; and that it is

⁵ Letter from Gov. Mark Dayton, Senators Al Franken and Amy Klobuchar to the Hon. Daniel R. Elliott III, STB Chairman, at 1-2 (Oct. 13, 2014).

unacceptable to have “fuel stockpiles fall to under one week – as they did last winter.”⁶ Ultimately, the Governor and Senators recommend that the “Board immediately require carriers like BNSF to submit publicly-available coal service recovery plans to the Board, hold the carriers responsible for implementing these plans, and monitor carriers’ implementation progress through weekly public reporting.”⁷

WCTL’s concerns were also echoed just last week by Federal Energy Regulatory Commissioner Philip Moeller, who expressed concerns about the reliability of the electric transmission system if substandard rail service continues, and he queried FERC staff as to whether the Board and the railroads were doing enough to rectify the situation.⁸ Likewise, from the same FERC meeting, it appears that FERC staff have brought their reliability concerns to the Board’s attention.⁹

WCTL submits that past and ongoing amorphous claims from BNSF about service recovery that provide no recovery milestones, no specific dates for such milestones, and no true timeline for when service will return to normal are insufficient for utilities that are collectively spending billions of dollars each year on such rail service; must carefully plan each year to meet the demand of its customers; and, are obligated to

⁶ *Id.* at 1.

⁷ *Id.* at 1-2.

⁸ See FERC Commission Meeting, Oct. 16, 2014, available at http://ferc.capitolconnection.org/101614/fercarchive_flv.htm (Commissioner Moeller speaking at minute 40).

⁹ *Id.*

provide reliable and cost-effective electricity to businesses and residences across America.

REQUESTED ACTIONS

The Board is well aware of the myriad service problems that BNSF has experienced in the past year. Through hearings, filings of concerned parties,¹⁰ and through the many shippers that have sought help from the Board's Rail Customer and Public Assistance Program, the Board has repeatedly heard that coal transportation service from BNSF has been inadequate. Significantly, the Board itself has emphasized that reliable coal transportation service is critical to the nation's economic and national security:

The Board views the reliability of the nation's energy supply as crucial to this nation's economic and national security, and the transportation by rail of coal and other energy resources is a vital link in the energy supply chain.¹¹

¹⁰ WCTL, for example, has submitted a letter, a petition to institute a proceeding, and presented three witnesses at Board hearings. All of these communications expressed serious problems with BNSF's coal service. See Letter from Bette Whalen, WCTL President, to Hon. Daniel R. Elliott III, STB Chairman (Mar. 14, 2014); *Petition of the Western Coal Traffic League to Institute a Proceeding to Address the Adequacy of Coal Transportation Service Originating in the Western United States*, Docket No. EP 723 (filed Mar. 24, 2014); Testimony of David McMillan and Bob Kahn on behalf of WCTL, Allele and TMPA, *United States Rail Service Issues*, Docket No. EP 724 (filed Apr. 17, 2014); Tr. of Apr. 4, 2014 Hearing at 23-39; Testimony of Dave Wanner on behalf of WCTL and WPS, *United States Rail Service Issues*, Docket No. EP 724 (filed Sept. 5, 2014).

¹¹ See *Establishment of a Rail Energy Transportation Advisory Committee*, Docket No. EP 670, slip op. at 2 (Decision served July 17, 2007).

While the Board has recently requested that BNSF provide additional data reporting,¹² including some coal-specific reporting, the time for mere data reporting has passed. WCTL's members cannot keep waiting for the tide to turn, and the Board should no longer accept vague promises from BNSF. Therefore, WCTL requests that the Board take the following actions.

A. Coal Service Recovery Plan

WCTL requests that the Board require BNSF to publicly file a coal service recovery plan within 10 days of the issuance of an appropriate order by the Board. The service recovery plan should include, at a minimum:

1. A detailed plan describing the short-term and long-term steps the carrier is taking or will take to handle current and future demand for coal on its network. The plan should include, at a minimum, details of track maintenance and infrastructure projects, crew hiring, and equipment purchases that are designed to improve, *inter alia*, average coal train speeds or increase capacity. The plan should include specific milestones for each aspect of the plan and specific dates those milestones will be reached.
2. Detailed plans to handle severe weather events and other potential service disruptions, including holiday crew shortages.
3. Detailed schedules for the restoration of adequate coal service, including particular milestones for improved service metrics over specific, heavily-traveled coal routes such as mine origins in Wyoming and Montana to Kansas City, MO,

¹² See *United States Rail Service Issues – Data Collection*, Docket No. EP 724 (Sub-No. 3), slip op. at 3-4 (STB served Oct. 8, 2014).

Minneapolis, MN, and Ft. Worth, TX, including average coal train speed targets by date, coal car miles per day by date, and coal sets in service (private and railroad-provided), as well as plans to reduce coal sets held for more than eight hours by cause (*i.e.*, locomotives, crews, and traffic congestion) and plans to reduce recrew rates.

4. Detailed plans on how the railroad will handle seasonal variations in coal transportation requirements.

The Board has the undisputed authority to direct the submission of coal service recovery plans, and the immediate need for such plans is clear. *See, e.g., United States Rail Service Issues – Data Collection*, Docket No. EP 724 (Sub-No. 3), slip op. at 2 (STB served Oct. 14, 2014) (citing the Board’s authority under 49 U.S.C. §§ 721(b) and 11145(a) to order Canadian Pacific Railway Company to provide a similar recovery plan).

B. Board Review and Approval of the Coal Service Recovery Plan

The Board should carefully review BNSF’s service recovery plan to: (i) ensure that the plan meets the requirements of the Board’s order for specificity and transparency; (ii) ensure that the plan is aggressive, but feasible; and (iii) ensure that the plan meets the short-term and long-term needs of coal shippers. If the Board finds that any element of the coal service recovery plan is deficient, it should require appropriate revisions by BNSF. The Board should also invite public comments on the sufficiency of the plan if needed.

The Board has the power to review, revise and approve any such plan. Indeed, the Board's power extends to specific directed service orders if need be. *See* 49 U.S.C. § 11123(a) authorizing the Board to issue emergency service orders whenever it determines that any "failure of traffic movement exists which creates an emergency situation of such magnitude as to have substantial adverse effects on shippers, or on rail service in a region of the United States" and authorizing the Board to "direct the handling, routing, and movement of the traffic of a rail carrier and its distribution over its own or other railroad lines." *Accord Joint Petition for Service Order*, 2 S.T.B. 725, 729-30 (1997) (providing for directed service orders in the UP/SP service crisis and noting that while UP's service recovery plan might be "gradually breaking the logjam," it was not enough and the Board therefore "concluded that the recovery effort must be more aggressive than that proposed by UP/SP"). Thus, upon approval of the plan, the Board should issue an order directing BNSF to comply with the Board-approved plan.

C. Oversight and Enforcement of Coal Service Recovery Plan

The Board should closely monitor BNSF's compliance with the Board-approved service recovery plan by ordering BNSF to publicly file weekly compliance updates that include all the specific service metrics needed to verify compliance with the plan. If the Board finds that BNSF is not meeting its obligations under the service recovery plan, the Board should enforce compliance with the plan by using its "range of available tools,"¹³ including fines as appropriate. *See, e.g., Canadian National Railway*

¹³ *United States Rail Service Issues*, Docket No. EP 724, slip op. at 6 (STB served Aug. 18, 2014).

Co. & Grand Trunk Corp. – Control – EJ&E West Company, Docket No. FD 35087, slip op. at 1 (STB served Dec. 21, 2010) (imposing a \$250,000 fine for failing to make required reports and noting that the Board has authority under 49 U.S.C. § 11901(a) to fine railroads for failing to comply with Board orders).

The Board's willingness to enforce the service recovery plan through the application of fines and other measures is critical given the fact that, at the very time it is failing to meet the service needs of its customers, BNSF continues to realize record earnings. BNSF's owner has stated that BNSF is "the most important artery in our economy's circulatory system."¹⁴ The evidence presented herein and brought to the Board's attention elsewhere demonstrates that our economy's most important transportation artery is failing to meet the needs of the shipping public. The irony of the transportation facts and circumstances which confront the Board is that while BNSF has failed and continues to fail to render adequate coal transportation services, its owner describes it as a "sainted"¹⁵ "powerhouse"¹⁶ in its ability to generate massive profits and akin to the biblical Noah in "anticipating the needs of its customers."¹⁷

Something is very, very wrong with this picture which has BNSF generating massive profits at the same time it provides substandard service to WCTL

¹⁴ See Berkshire Hathaway Inc., Letter to Shareholders, at 11 (Feb. 28, 2014), available at <http://www.berkshirehathaway.com/letters/2013ltr.pdf>.

¹⁵ *Id.* at 4.

¹⁶ *Id.*

¹⁷ *Id.* at 12.

members and numerous other coal shippers resulting in increased costs to millions of electric ratepayers.

There must be consequences for BNSF. The Board cannot continue to countenance such an absurd situation. The Board has a responsibility to protect the public interest and Congress has given it the power to ensure that BNSF faces appropriate consequences if it fails to comply with a sound service recovery plan.

CONCLUSION

Congress has tasked the Board with ensuring that consumers of rail transportation receive adequate and efficient service. The Board is now faced with the anomalous circumstance in which a major transportation provider, subject to its jurisdiction, earns enormous profits, yet fails to meet the legitimate service needs of WCTL members as well as numerous other coal shippers. The time has come for decisive action from this agency.

Wherefore, WCTL respectfully requests that its petition be granted for the reasons set forth herein.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

Of Counsel:

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Dated: October 22, 2014

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SERVICE DATE - LATE RELEASE OCTOBER 24, 2014

SURFACE TRANSPORTATION BOARD

Docket No. EP 724

UNITED STATES RAIL SERVICE ISSUES

Decided: October 24, 2014

On October 22, 2014, the Western Coal Traffic League (WCTL) petitioned the Board to require BNSF Railway Company (BNSF) to submit to the Board a coal-specific service recovery plan, and for the Board to review, approve or revise, and enforce the recovery plan. In support of its petition, WCTL states that its members who are served by BNSF continue to experience severe service difficulties.¹ WCTL explains that one of its members has shuttered four electric generating units to preserve coal stockpiles for the winter.² Others have filed emergency notices of coal shortages with the U.S. Department of Energy.³ WCTL argues that service disruptions have prevented its BNSF-served members from rebuilding coal stockpiles during the fall in preparation for the winter season, leaving many utilities with less coal in storage than they had at the end of last year.⁴ WCTL claims that, despite these service difficulties, WCTL “has just been informed that BNSF intends to remove approximately 60 coal train sets from service.”⁵

Given the severity of the concerns raised by WCTL’s petition and the approach of winter weather conditions, the Board will direct BNSF to file a reply to the petition sooner than the Board’s typical timeframe of 20 days. See 49 C.F.R. § 1104.13(a). BNSF shall reply no later than November 3, 2014. Other interested persons are invited to comment on WCTL’s petition no later than November 3, 2014.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. BNSF shall file a reply to WCTL’s petition no later than November 3, 2014.

¹ Pet. 1.

² Id.

³ Id. at 1-2.

⁴ Id. at 2-3.

⁵ Id. at 3 (emphasis omitted).

Docket No. EP 724

2. Other interested persons may file comments on WCTL's petition no later than November 3, 2014.

3. This decision is effective on its service date.

By the Board, Rachel D. Campbell, Director, Office of Proceedings.



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October 28, 2014

236915

The Honorable Daniel R. Elliott, III
Chairman
The Honorable Deb Miller
Vice Chairman
The Honorable Ann D. Begeman
Member
United States Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

ENTERED
Office of Proceedings
October 28, 2014
Part of
Public Record

Dear Chairman Elliott, Vice Chairman Miller and Member Begeman:

I write on behalf of BNSF Railway (BNSF) in response to the Surface Transportation Board's procedural order issued October 24, 2014 directing an expedited response to the October 23, 2014 petition of Western Coal Traffic League (WCTL). In its petition, WCTL asked for an order requiring BNSF to "submit a coal-specific service recovery plan" for the Board to "approve or revise, and most importantly, enforce." In this letter I will update the Board on our efforts to restore coal service in advance of our filing on November 3, 2014. In addition, BNSF will respond more fully to the original Petition of the WCTL according to the expedited schedule directed by the Board.

Communications

At the outset, I would like to emphasize that BNSF is very much aware of the challenges that our coal customers face in light of our service challenges. That is because BNSF communicates with our coal customers every single day about stockpile levels, train and set status, day-to-day service challenges, and the short-term and long-term measures that we are undertaking to remedy those challenges. As the Board knows, BNSF has undertaken an extensive campaign to provide meaningful, real-time information to all our stakeholders around our service challenges, our short-term and long-term plans to increase network velocity, and our progress against those plans, particularly with our coal customers. We do so through targeted discussions as well as broader customer communications, service advisories, podcasts, and other regularly updated reports. BNSF is committed to providing full transparency to our customers.

BNSF has also been engaged with the Board and staff for many months specifically on coal service challenges and impacts to our customers, and our ongoing service restoration efforts. We have provided a significant amount of information to the Board through hearing testimony, formal filings and informal reporting, and weekly calls with Board staff. Most recently, on October 22, 2014 BNSF submitted its initial weekly report in response to the Board's October 8, 2014 service reporting order. As you are aware, that extensive weekly report requires a number of coal-specific metrics, including –

- (i) average train speed for coal unit trains;

- (ii) origin dwell times for coal unit trains;
- (iii) number of coal trains held for longer than 6 hours with detail on cause;
- (iv) number of cars carrying coal that have not moved in more than 48 and 120 hours; and
- (v) average daily coal loadings versus plans versus actuals for the PRB and other BNSF-served regions.

Those are in addition to all of the other reported BNSF network metrics, including as dwell times in key terminals, the total number of gondolas online, and operating conditions in the Chicago gateway like terminal inventories and trains held for delivery in Chicago. In fact, these Board-ordered metrics include many of the specific disclosures requested in the WCTL petition.

BNSF believes that none of the steps requested by WCTL would improve either the communications or service BNSF provides to coal shippers overall beyond those that BNSF has already taken. As a result, BNSF believes that the broad measures sought by WCTL in its petition (and any other BNSF coal shippers that may intervene) are unnecessary, inappropriate and will be counterproductive. BNSF is also concerned that the Board, with the issuance of the comment schedule in its October 24, 2014 order, has initiated a proceeding at the request of a trade association that seeks to affect the rights of, and BNSF's obligations to, specific shippers and receivers of coal who themselves are not parties to this or any formal proceeding.¹

BNSF Steps to Improve Coal Service

In addition to communications, BNSF is devoting all practicable capital and operating resources to ensuring timely and sufficient deliveries of coal. The most important steps we are taking to restore coal service involve the numerous short-term and long term measures that we are taking to increase velocity. While we have discussed these steps a number of times, I would like to summarize the most important, with an emphasis on those with the greatest impact to our coal customers.

- **BNSF's 2014 Infrastructure Goals to Increase Capacity:** BNSF set goals at the beginning of 2014 to add capacity in the key areas of hiring, locomotive and car acquisitions and capital investment in maintenance and expansion, representing \$5 billion. We expect to exceed each one of those and have even recently increased our 2014 targets for hiring, locomotive acquisitions and for expansion capital and replacement/maintenance capital to reflect where we expect to be at year end. On the hiring front, we have net increased our Train Yard & Engineer (TY&E) employee count by 13 percent and our engineering workforce by 11 percent year-over-year. For our entire operations department, the head count of scheduled employees has increased by more than 3,800, or 11 percent, which has significantly outpaced volume growth and attrition. We also continue to add locomotives in record numbers and year-over-year, our road locomotive count is up more than 600 (and 27 percent since October 2012), well in excess of what volumes would dictate. The additional availability of power and crew is a key part of our efforts to improve coal service.
- **Northern Corridor Infrastructure Investments:** These new resources are being focused on our most constrained areas on our network, which includes the parts of our network relied on by our coal customers. Specifically, BNSF is investing more than \$1 billion for network capacity expansion alone, with a significant emphasis on the Northern region, which impacts a number of our coal customers. Specifically, we have a multi-year project, with a total investment of \$396 million to double track almost the entire 150-miles between Minot and Snowden. This year alone, 47 miles of double track have gone into service and we

¹ While it does reference certain utilities, WCTL's petition does not identify WCTL's current members, and does not identify the individual WCTL members who have signed on to this specific petition.

expect another 8 miles in service by the end of 2014. The double track project will be substantially completed in 2015.

- **Coal Route Infrastructure Investments:** Since May, we have added new projects to our 2014 plan, including two double-track projects in Nebraska to support our coal route.
- **Additional Investments Across the Network Benefitting Coal:** Included with this letter as Attachment A is a current overview of the terminal and line capacity expansion projects for 2014 by region as well as additional details regarding projects on six core subdivisions handling coal traffic. While the Northern part of our network carries significant coal volumes, we have coal customers who rely on consistent service across all of our operating regions. We are certain that the investments we are making across our network will result in a stronger railroad and will support improved service for all our customers, including coal-fired utilities.
- **Additional Steps to Improve Fluidity on the Coal Network:** In addition to expanding our capacity, we have significant capital in 2014 aimed at maintaining our network to the highest standard. In 2014, our work gangs will replace 3.6 million railroad ties, perform 650 miles of undercutting, clean 4,900 miles of shoulder ballast, perform 8,500 track miles of division surfacing and 4,900 track miles of high-speed surfacing, and complete 205 bridge projects. While these projects may require a working track window or outage to permit crews to work safely, potentially causing longer trip plans in the short term, these investments are critical to maintaining consistent service across our coal network in the short and long term.
- **Winter Preparedness:** We have significant experience operating safely in winter conditions and have undertaken our annual measures to prepare our workforce, our locomotive fleet, and our specialized winter weather equipment and supplies. We have prepared enhanced Winter Action Plans for each division, which include division-specific processes for identifying and responding to emergency conditions. In addition, we will enter the 2014 winter season with several new resources in place to better handle extreme weather. Activities in this area include installation of switch heaters, outfitting locomotives with new winter mitigation equipment, and augmenting our snow removal equipment fleet. We have also added nine new rapid response recovery teams, six of which are strategically positioned coal-critical across the Northern region. In addition, we are keeping on over 300 additional maintenance of way employees who are traditionally furloughed during the winter season to assist with snow removal across our Northern territory. These employees will be utilized to establish 'after-hours' rapid response teams on the track side. In addition to these increases in response capabilities on the North Lines, we have also established similar after-hours MOW Rapid Response teams on key corridors across the Central coal route. These 'track' rapid response teams complement our Mechanical rapid response teams with a common goal of minimizing the impact of equipment and infrastructure-related service interruptions.
- **Role of Set Count in Driving Velocity Improvements:** In recent weeks, BNSF has seen our aggressive capital investment lead to steady gains in velocity and loadings on our coal network, but we are still challenged with fleet productivity since we have too many coal sets on our network for fluid operations. Understanding that we under-delivered against coal demand through the winter and the spring, we have grown the number of coal sets to the point where we are operating a record number of sets for any sustained period. Similar to a highway where more cars leads to more congestion, an increased number of sets running on the key coal corridors results in lower velocity and less overall coal being delivered. As a result we have determined that to better operate the network and deliver more tons of coal

overall, we need to decongest the network by strategically removing a small number of coal sets.

WCTL's petition makes much of this action, and further alleges that approximately 60 sets will be removed from service. WCTL is dramatically misinformed. It is true that BNSF has been approaching individual coal customers where we have identified an opportunity from an operational and contractual perspective to reduce fewer than 30 set counts on the most congested lanes, freeing up line capacity critical to improving overall velocity, ultimately delivering more coal for our utility customers. This is not an unfocused, across-the-board reduction as WCTL implies, but instead involves situation-focused discussions with individual customers that we have undertaken because this action will have a significant positive impact on car velocity and deliveries. We have explained the positive impact to those individual customers we have approached regarding appropriate levels of train sets in their service (most of whom do not seem to be WCTL members).

Going forward, the reporting that began last week provides data that will allow stakeholders to see improvements from these and other measures, and we will continually evaluate the appropriate numbers of coal sets in light of our system's fluidity and the needs of our customers.

- **Coal Stockpile Escalation Process:** While we are seeing network improvements from all of the resource and operational steps listed above, we know our coal customers continue to experience low stock piles. We note, however, that rail service is not the only contributing factor to stockpile levels and that our customers have a role to play here. Customer decisions to dispatch a coal fired plant at a particular level are ultimately economic decisions, and the market for coal generation and transportation has changed dramatically in the last eighteen months. Heading into 2013, demand for coal went down significantly as a result of low natural gas prices; customer conversations at the time revolved around providing relief from prior demand declarations. When gas prices rose precipitously during 2013, PRB coal burn increased significantly as coal generation became a more economically attractive option on the dispatch curve, and the heightened demand for generation only increased as a result of the extreme temperatures during the 2013/2104 winter. Stockpiles started to dwindle and the conversation with our customers transitioned, with customers seeking coal delivery volumes in excess of the annual demand declarations they provided for 2014; in some cases, customers have received deliveries at the levels identified in their annual declarations, but are experiencing critically reduced stockpiles because of increased burn demand. Some of our customers have worked with us through our current service issues by taking proactive measures to preserve stockpile by curtailing PRB burn in favor of other generation modes, while some utility customers continue to burn PRB coal at maximum levels creating severe stockpile situations.

As we have previously advised the Board, BNSF has in place an ongoing customer review process that works to balance multiple factors, such as customer demand, stockpile status, commercial obligations, and operating parameters, and includes an escalation process for critical customers, defined as at or below a 10-day stockpile. We include a discussion of the output of this process, of critical customers and responsive measures in our weekly call with Board staff.

Conclusion

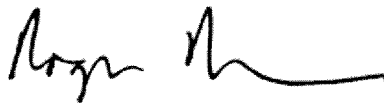
In summary, BNSF is undertaking significant efforts in the short-term and long-term to improve velocity for our coal customers and all our customers. We believe that we are taking all practical and reasonable steps to improve coal velocity and service to our customers, in light of the need to maintain appropriate levels of service to all of our other commodity groups and

customers. And these measures are working. In the current month of October we will deliver approximately 24 million tons of coal, which is our highest total since August of 2013.

In light of our extensive efforts and service recovery performance, we don't believe there is any gap in understanding, in communication, or in Board activity that a service order along the lines that WCTL has proposed proceeding would fill.² To the contrary, WCTL's proposed order on behalf of its trade association members will be counterproductive by incenting other trade association groups to petition the Board for similar measures, further stressing our network and interfering with the efficient allocation of resources. At the very least, Board action as proposed by the WCTL, focused solely on coal service, has the potential to skew service recovery towards coal shippers who are members of WCTL at the expense of shippers who are not.³ And as we will further discuss in our formal response, if the Board is inclined to take additional regulatory steps in response to the WCTL petition, BNSF asks that it be permitted to submit additional regulatory proposals that it believes would address systemic service challenges from the current set ownership, interchange and service perspectives, that would have the potential to have far greater impact on coal service than those proposed by WCTL.

We look forward to continuing to work with you on this important matter. Please do not hesitate to contact me if BNSF can provide any further information.

Sincerely,

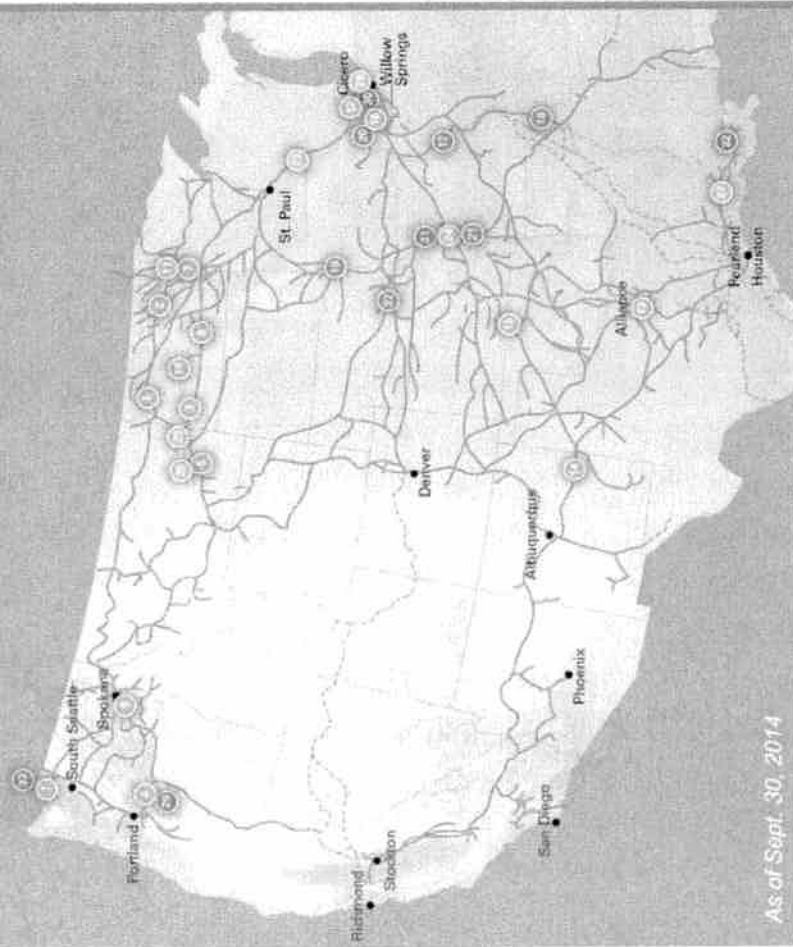


Roger Nober, Executive Vice President
Law & Corporate Affairs

² Because we believe that our plans and the Board's current oversight activities remove any justification for the measures outlined in WCTL's proposal, we have not addressed here the arguments that WCTL makes about the Board's authority to adopt the extraordinary measures in its petition. BNSF has voluntarily complied with prior Board requests to report on the measures that we have identified and undertaken to improve service on our network. While WCTL points to Board authority to gather data, its proposal goes well beyond the cited statutory provisions and contemplates that the Board would initiate a formal proceeding to determine what measures BNSF might be ordered to undertake and then fine BNSF for any failure to meet all aspects of the order. It is disingenuous for WCTL to characterize its requests as the Board simply exercising statutory authority to obtain information. WCTL also completely ignores the fact that the vast majority of BNSF's coal traffic moves under contract and has failed to address the jurisdictional issues their proposal raises.

³ In particular, the Western Coal Traffic League is a trade association comprised of several major utilities, but by no means all of BNSF's utility customers. Some of these customers receive coal in common carrier service, but most under transportation contracts. We will address the legal issues involved in seeking broad policy remedies across the spectrum more fully in our reply to the WCTL's petition, but at a minimum, even with respect to the WCTL, the Board does not have before it those actual shippers, nor information about their specific situations and needs. This would make both evaluation, let alone enactment of these purported remedies, procedurally defective, as well as raising legal and jurisdictional issues. Broadening the proceeding to invite comments of interested parties does not remedy those issues. If the Board is inclined to take additional regulatory steps in response to the WCTL petition, BNSF asks that it be permitted to submit additional regulatory proposals that it believes would address systemic service challenges from the current set ownership, interchange and service perspectives, that would have the potential to have far greater impact on coal service than those proposed by WCTL.

BNSF's 2014 Capacity Expansion Plans



As of Sept. 30, 2014

Terminal & Line Capacity Expansion Projects

Major line and terminal projects by region, route and subdivision (sub)

North Region

- 1 **Bellingham:** begin double track project and complete power switch project
- 2 **Devils Lake:** three siding projects and signal work
- 3 **Dickinson:** four siding projects
- 4 **Fallbridge:** two siding projects
- 5 **Forsyth:** six siding projects
- 6 **Glasgow:** six segments of double track (three in service, begin three others)
- 7 **Hillsboro:** four siding projects
- 8 **Jamestown:** one siding project plus begin CTC installation
- 9 **Lakeside:** five double track projects and one siding project
- 10 **Zap:** one siding project
- 11 **Noves:** interchange tracks and one siding project
- 12 **Aurora:** two siding projects

South Region

- 13 **Fort Worth:** completion of multiyear Tower 55 project
 - 14 **Clarks:** begin 10 mile double track project Vaughn - Camero
 - 15 **Parishdale:** begin 20 mile double track project Leder - Averd
 - 16 **Mendota:** interchange tracks at Clearing
- Central Region
- 17 **Hannibal:** one siding project
 - 18 **River:** one double track project
 - 19 **Sioux City:** one bypass track and one siding project
 - 20 **Barstow:** one siding project
 - 21 **Fort Scott:** begin double track project Bertha - Hillsdale
 - 22 **Bavenna:** begin 12 mile double track project

Frontiers

- 23 **Aurora:** continue double tracking and signal improvements through LaCrosse terminal
 - 24 **Emporia:** reconfigure portion of Argentine yard at Kansas City to accommodate more automotive car switching and increase overall terminal throughput
 - 25 **Forsyth:** extend track lengths at Forsyth terminal
 - 26 **Forsyth:** extend track lengths at Gladstone terminal
 - 27 **Lafayette:** complete LaCrosse, LA yard project to serve Lake Charles, LA area
 - 28 **Chicago:** extend two tracks at the Chicago Western Avenue yard
- Bridges
- Construction work is underway on some of the largest bridges on BNSF including:
- 29 **Fallbridge:** Bridge 24.8 over Washington River in Camas, Wash. - replacement of river bridge will take more than two years to complete due to the permitting and right-of-way constraints
 - 30 **Mendota:** Bridges 106.58 and 110.26 near Princeton, Ill. - replacement of both double-track bridges is being combined as one project
 - 31 **St. Joe:** Bridge 160.75 in Tecumseh, Neb. - replace bridge across North Fork of the Nemaha River
 - 32 **Lafayette:** Bridge 32.06 in Des Moines, La. - major work to the movable bridge that crosses Bayou Des Allemands
 - 33 **New Westminster:** Bridge 129.3 near Colebrook, B.C. - continue work from 2013 on bridge over Seppeltine River



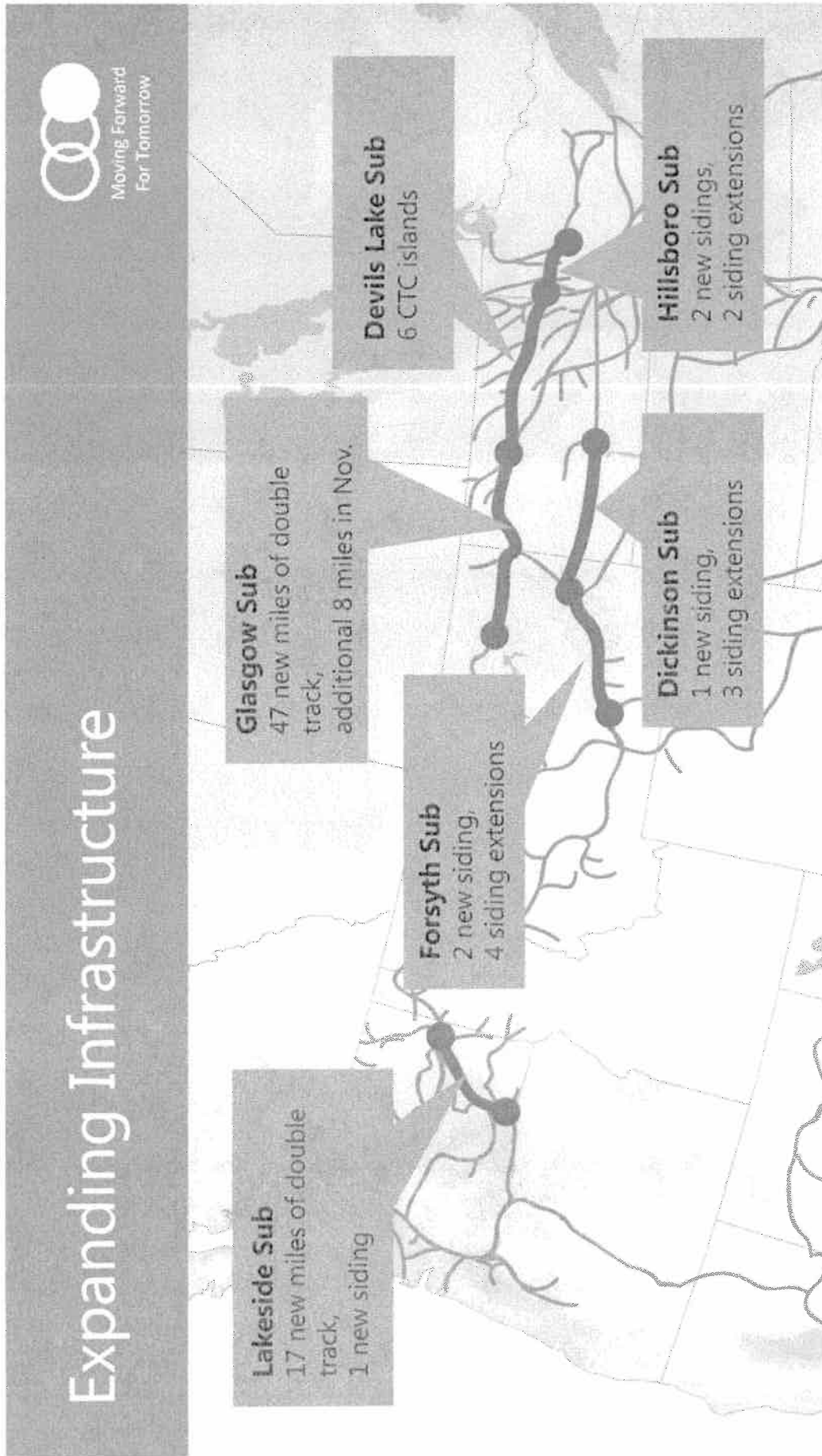
2014 Major Expansion Project Timeline



- **Expansion projects will carry through until year end.**
- **More than 70 miles of double track will be completed.**

MONTH	PROJECTS	QUANTIFIED TRACK MILES
MAY	Lakeside Sub Siding Project	Q
JUNE	Glasgow Sub 21 miles Double Track Lakeside Sub 13 miles Double Track	2
JULY	Lakeside Sub 4 miles Double Track Willow Springs IBU Parking Improvements Turner Yard Modifications Forsyth Sub 3 Siding Projects Northtown Yard Track Reconfiguration	Q
AUGUST	Glasgow Sub 20 miles Double Track Forsyth Sub 3 Siding Projects Tower 55 Project Complete San Bernardino IBU Additional Lead Track Hillsboro Sub 2 Siding Projects	3
SEPTEMBER	Forsyth Sub 3 Siding Projects Tower 55 Project Complete San Bernardino IBU Additional Lead Track Hillsboro Sub 2 Siding Projects	3
OCTOBER	Glasgow Sub 7 miles Double Track Dickinson Sub 4 Siding Projects Hillsboro Sub 2 Siding Projects	Q
NOVEMBER	Zap Sub 1 Siding Project Glasgow Sub 7 miles Double Track Jamestown Sub 1 Siding Project	Q
DECEMBER	Fallbridge Sub 2 Siding Projects LaCassine Yard In Service Alliance & Pearlland IABU Track & Parking Improvements Sioux City/ Noyes Subs 2 Siding Projects Aurora Sub 2 Siding Projects	4







STATE OF MINNESOTA

Office of Governor Mark Dayton

116 Veterans Service Building ♦ 20 West 12th Street ♦ Saint Paul, MN 55155

October 31, 2014

236944

The Honorable Daniel R. Elliott, III
Chairman
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

ENTERED
Office of Proceedings
November 3, 2014
Part of
Public Record

Dear Chairman Elliott:

On October 13, 2014, Senator Amy Klobuchar, Senator Al Franken, and I wrote you expressing our concerns with the BNSF Railway's performance meeting the needs of Minnesota customers, including coal delivery shortfalls to electric utilities in Minnesota. Despite BNSF Railway's assurances that it is working to fulfill its obligations, utilities in Minnesota are continuing to restrict operation of coal-fired power plants in order to conserve their existing coal stockpiles. This is becoming increasingly worrisome as we head into winter.

On October 22, 2014, the Western Coal Traffic League (WCTL) filed a petition with the Surface Transportation Board (STB), asking the Board to require the BNSF Railway to file a coal-specific service recovery plan to address coal shortages plaguing many of its members, which is similar to the request the Senators and I made in our letter to you on October 13th. The WCTL suggested several specific actions, which a service recovery plan should contain, and asked the STB to approve, and then enforce, the service plan.

I appreciate your recognition of this important issue by directing the BNSF to reply to the WCTL petition within 10 days, or no later than November 3, 2014. I write to you today to express my full support of the WCTL petition urging the Board to require the BNSF Railway to publicly file a coal service recovery plan within 10 days of the issuance of an appropriate order by the Board. I further urge the Board to issue such an order promptly.

If you have any questions or wish to discuss this matter further, please contact my Senior Policy Advisor, Joanna Dornfeld, at 651-201-3423, or via email at joanna.dornfeld@state.mn.us.

Thank you.

Sincerely,

A handwritten signature in black ink that reads "Mark Dayton".

Mark Dayton
Governor

cc: Deb Miller, Vice Chair, Surface Transportation Board
Anne D. Begeman, Board Member, Surface Transportation Board
Cheryl A. LaFleur, Chairman, Federal Energy Regulatory Commission



1259 nw 3rd street / cohasset, minnesota 55721 / 218-313-4402 / fax 218-313-4414 / kbenham@mnpower.com
30 west superior street / duluth, minnesota 55802 / 218-355-3692

Kathy M. Benham
Director – Fuel Strategy & Sourcing

236952
ENTERED

Office of Proceedings
November 3, 2014
Part of
Public Record

November 3, 2014

Ms. Cynthia Brown
Chief, Section of Administration
Office of Proceedings
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0111

RE: Docket No. EP 724, *United States Rail Service Issues*

ALLETE d/b/a Minnesota Power writes in support of the Western Coal Traffic League's October 22, 2014 petition asking the Board to require BNSF Railway to publicly file a coal service recovery plan.

ALLETE is a diversified energy company headquartered in Duluth, Minnesota. ALLETE's principal operating division, Minnesota Power, generates, transmits and distributes electricity in a 26,000 square mile region in northern Minnesota to 144,000 residents, 16 municipalities and some of the nation's largest industrial customers. Coal is Minnesota Power's primary fuel source for its electric generation. The company currently owns three coal-fired plants that utilize approximately 5 million tons of coal each year. This coal originates at mines located in Wyoming and Montana and is transported by BNSF Railway either in single carrier, or joint-carrier service.

Minnesota Power has previously submitted testimony to the Board, and David McMillan, Senior Vice-President, External Affairs, ALLETE and Executive Vice President Minnesota Power, appeared at the Board's April 10, 2014 hearing regarding rail service. At the hearing, Mr. McMillan emphasized the serious coal transportation issues that Minnesota Power had faced during the winter of 2013-2014, including dangerously low stockpiles and significant additional costs for alternative electricity, which costs had already exceeded \$10 million at the time of his testimony.

In the intervening months, conditions have not improved. At the end of August 2014, Minnesota Power took the extraordinary step of ceasing operations at four electric generating units in an effort to preserve the small coal stockpiles at those facilities for winter as well as boost the stockpile at our largest generating facility by diverting all of our coal deliveries to it. Minnesota Power's predicament stands in stark contrast to BNSF's assurances that no utilities would run out of coal.

Minnesota Power has also engaged in extensive curtailment of coal-fired generation throughout 2014. Alternative electricity is very costly. Minnesota Power estimates that its forced curtailment of coal-fired electric generation has cost Minnesota Power's customers well over \$20 million so far.

Minnesota Power is captive to the BNSF at most of its facilities and origins. Specifically, Minnesota Power's largest facility, the Boswell Electric Generating Station, which receives more than eighty percent of Minnesota Power's total annual coal volumes, is entirely reliant on BNSF service. Thus, as BNSF's service has dwindled, so too have the coal stockpiles at Boswell. For

Ms. Cynthia Brown
November 3, 2014
Page2

many months, Boswell coal stockpiles have lingered below 20 days and it has often dipped below 10 days, notwithstanding the curtailment policy that Minnesota Power has instituted.

The electricity that Minnesota Power generates is a key element to the economy of Minnesota and the United States. Our industrial customers operate global organizations and compete in international markets. These customers include ArcelorMittal, United States Steel, Cliffs Resources, UPM Kymmene, Sappi, Gerdau Ameristeel, NewPage and others. Affordable, reliable electricity is a must for these entities.

Minnesota Power also has the duty to make sure that the "lights stay on" for all of its customers. As a public utility, we cannot falter in that mission. We are also a part of the Midcontinent Independent System Operator ("MISO") region, which manages regional electric grid reliability as well as the economic dispatch of electric generating facilities. Thus, Minnesota Power also has a role in ensuring electric reliability for 15 states, and regular, predictable deliveries of coal are a vital element that allows Minnesota Power to fulfill its role.

As another winter approaches, Minnesota Power is deeply concerned that its ability to receive and generate electricity with coal will not be adequate. As described in the enclosed letter from Clair J. Moeller, Executive Vice President, Transmission & Technology, MISO, being without the Boswell station during the coldest part of the winter "... will make it challenging to operate the system without subjecting the load to increased risk of load shed..." BNSF's current service is insufficient to ensure that Minnesota Power can run its coal-fired generation at normal levels. Indeed, we anticipate that curtailments will continue on throughout the winter. We are especially concerned that a serious snowstorm or other weather disturbance may seriously threaten Minnesota Power's already depleted coal stockpiles.

Minnesota Power and BNSF have been in regular communication this year. BNSF is well aware of the issues that Minnesota Power has faced. While Minnesota Power is appreciative of BNSF's regular communications, we believe this service crisis has lingered on too long without a definitive coal service recovery plan. Governor Dayton, Senator Franken, Senator Klobuchar, and other officials from our state have voiced the same concerns.

Minnesota Power urges the STB to grant WCTL's petition. We believe a coal service recovery plan is long overdue, and WCTL's approach is a sound and fair one. It allows BNSF to devise a plan of its own making to which it must adhere. This is no different than the plans utilities must make and submit to their regulators.

We thank the Board for its consideration.

Sincerely,



Kathy M. Benham
Director – Fuel Strategy & Sourcing

Enclosure



November 3, 2014

Allan S. Rudeck Jr.
Minnesota Power
30 West Superior Street
Duluth, MN 55802

Allan,

In response to your inquiry regarding potential fuel issues at the Boswell plant, our System Operations group has considered the potential operational impacts of being without any units at Boswell for an extended period of time.

The roughly 1100 MW of capacity at Boswell is by far the largest resource in northern Minnesota, and is relied upon to serve the load as well as providing voltage support in the area. Being without the Boswell station will make it challenging to operate the system without subjecting the load to increased risk of load shed during the coldest part of the winter. A number of transmission facilities are already scheduled for maintenance outages that will impact the ability to support the load in northeastern Minnesota, if the Boswell plant is not available.

If coal inventories affect other units in Minnesota and western Wisconsin, MISO could enter into a Regional Emergency Energy situation, which ultimately could result in load shed over an area larger than northern Minnesota. As MISO has heard of similar delivery issues at multiple units in the region, either directly or through media reports, this has become an increasing concern for MISO.

Moving past the winter months and into spring outage season will further complicate operations. Although the loads may be coming down, the number of transmission outages increase. Again, since Boswell is relied upon for serving the load in northern Minnesota, with additional transmission outages, the import capability will be further constrained and again puts area load at risk.

Respectfully,

A handwritten signature in black ink, appearing to read "Clair J. Moeller". The signature is fluid and cursive.

Clair J. Moeller
Executive Vice President, Transmission & Technology

BEFORE THE
SURFACE TRANSPORTATION BOARD

236950
ENTERED

STB Docket No. Ex Parte 724

Office of Proceedings
November 3, 2014

UNITED STATES RAIL SERVICE ISSUES

Part of
Public Record

**BNSF RAILWAY COMPANY'S OPPOSITION TO
WESTERN COAL TRAFFIC LEAGUE'S PETITION FOR AN ORDER
REQUIRING SUBMISSION AND ENFORCEMENT OF
A COAL SERVICE RECOVERY PLAN**

Pursuant to the Board's October 24, 2014 Decision in the above-captioned proceeding, BNSF Railway Company ("BNSF") files the following Opposition to the Petition for an Order Requiring BNSF to Submit a Coal Service Recovery Plan filed by the Western Coal Traffic League on October 22, 2014 and supported by several other electricity generation and utility-focused trade associations by a letter dated October 31, 2014 (collectively the "WCTL Petition"). As BNSF indicated in its October 28, 2014 letter to the Board, which set out in detail the significant efforts that BNSF is taking in the short term and long term to improve service for its coal customers, the measures requested in the WCTL Petition are unnecessary, counterproductive and in some respects unauthorized. In this Opposition to the WCTL Petition, BNSF elaborates on the reasons that the Board should decline to take those requested steps.

I. Introduction

The WCTL Petition asks the Board to open a new chapter in its oversight of the current service problems on the U.S. rail network. Over the course of this year, the Board has been carefully monitoring BNSF's and other carriers' efforts to improve service, with the objective of ensuring the transparency of those efforts and the progress being made, while avoiding regulatory actions that would be counterproductive by interfering with a carrier's operating

decisions or that would favor one group of shippers over another. In the WCTL Petition, trade associations representing coal shippers now appear to be asking the Board to change course and become even more actively involved in regulating BNSF's service recovery efforts on behalf of their members. BNSF explains below why it believes that there is no legal authority for the expanded and interventionist role of the Board in regulating rail service that the WCTL Petition proposes.

The Board has authority under the statute to monitor railroads' efforts to better understand rail service problems. But BNSF believes that absent a Board-declared service emergency, the Board is not authorized to impose operating requirements on a railroad through Board approval and enforcement of a mandatory service recovery plan as requested in the WCTL Petition. BNSF readily acknowledges that current service has not met its customers' expectations or its own high standards in all parts of the network, and BNSF is working aggressively through its ongoing service restoration efforts to remedy these service issues and meet customer demand. However, while the proponents of the WCTL Petition claim that some of their members have been affected by a decline in rail service, none of the filings in this matter has alleged circumstances that would meet the test for a service emergency and BNSF submits that no service emergency exists. To the contrary, as discussed extensively in its October 28 Letter, BNSF coal service is improving – October was the best month for deliveries since August 2013 – and we expect service improvements to continue.

Significantly, the vast majority of BNSF's coal is transported under individually negotiated rail transportation contracts not subject to the Board's regulatory authority. There is no valid legal basis for the Board to become involved in regulating service under these transportation contracts by imposing new duties and penalties on contract service beyond those

included in individual contracts. Even in a true service emergency, which does not exist, regulation of transportation subject to an existing transportation contract would be an extraordinary step with questionable legal foundation. The concern raised in the WCTL Petition is about the *level* of service that coal shippers are receiving, but those service issues are governed by the terms of negotiated contracts, not common carrier concepts. Fundamentally, the WCTL Petition asks the Board to rewrite the contracts of virtually all of BNSF's coal shippers to impose new obligations and penalties.

Those steps are not appropriate or necessary. As the Board knows, BNSF has been working hard to resolve the service problems affecting a broad range of its shippers. In the area of coal transportation, where service needs are heavily driven by the circumstances of individual shippers, BNSF has been working extensively one-on-one with its coal shippers to understand and respond to individual needs and will continue to do so. BNSF is keeping the Board informed of its efforts to address coal service issues in weekly conference calls that address the needs and circumstances of individual shippers. Given the commercial sensitivity and confidentiality of individual shipper circumstances, as well as the unique and constantly evolving needs of individual shippers, an individualized approach is the most effective way of dealing with the current service issues affecting coal movements.

The proposal for more active regulatory intervention in coal markets proposed in the WCTL Petition is inappropriate and, if granted, could readily lead to a decline in service and overall volumes of coal shipments. The steps requested in the WCTL Petition, even if they were authorized, would not improve upon BNSF's own intensive efforts to address service issues. The WCTL Petition apparently hopes to force BNSF to devote increased resources to serving Powder River Basin ("PRB") coal shippers through the threat of penalties under a Board-

enforced service recovery plan, and BNSF submits that this Petition should not be allowed to interfere with BNSF's overall efforts to improve service on its rail network.

II. Background

The Board has been closely monitoring rail service issues in the United States since the brutal winter of 2013-14. In February 2014, the Board members met with BNSF to discuss the decreased velocity that was being experienced across BNSF's network. Since March 2014, BNSF has provided the Board with bi-weekly reporting of various metrics, including data relating to movements of coal, intermodal traffic, and agricultural commodities, as well as operating information such as train speed and dwell time.¹ The Board initiated this formal proceeding in early April 2014 to study rail service issues in the United States and subsequently held two hearings and solicited comments from shippers of all commodities, including coal. After the hearings, the Board ordered BNSF to report extensive data on transportation of fertilizer and grain and on BNSF's plans to improve service in those areas.² These data reports have allowed the Board to monitor the progress that BNSF has made in serving shippers in the important agricultural sector of the economy. As the Board observed from the extensive data reports, BNSF's fertilizer deliveries met demand for spring planting, and BNSF's service improvements were successful in reducing the number of backlogged grain car orders and reducing the average number of days late for those orders.³

¹ BNSF's bi-weekly reports are available from the Board's website. *See, e.g.*, Letters from Carl Ice, President and CEO, available at <http://www.stb.dot.gov/peakletters1.nsf>.

² *United States Rail Serv. Issues*, STB Docket No. EP 724 (Sub-No. 1), at 2 (STB served Apr. 15, 2014) (fertilizer); *United States Rail Serv. Issues—Grain*, STB Docket No. EP 724 (Sub-No. 2), at 3 (STB served June 20, 2014).

³ *United States Rail Serv. Issues*, STB Docket No. EP 724, at 3, 4 (STB served Aug. 18, 2014).

Coal shippers, along with shippers of other commodities, have responded to the Board's information requests. Coal shippers participated in the Board's public hearings in April 2014 in Washington, D.C. and in September 2014 in Fargo, North Dakota and submitted comments in this docket. Coal shippers discussed the increased demand for coal that has contributed to congestion on BNSF's rail lines and the costs associated with longer cycle times.⁴ They also acknowledged the extensive one-on-one communications they have on a regular basis with BNSF, but suggested that there was a need for increased transparency regarding efforts being taken by BNSF to improve service.⁵

In October, the Board responded to calls by coal shippers and shippers of other commodities for more transparency on service conditions across the rail network by ordering Class I railroads to submit extensive weekly reports containing service metrics and other data.⁶ Among other data, the Board required railroads to submit data specific to coal transportation, including (1) average train speed for coal unit trains; (2) origin dwell times for coal unit trains; (3) the number of coal trains held for longer than 6 hours with details on cause; (4) the number of loaded coal cars that have not moved in more than 48 hours and 120 hours; and (5) average daily coal loadings, actual versus plan, for the PRB and other BNSF-served regions. The Board also required railroads to report data on service conditions across the rail network, including dwell times in key terminals, the total number of gondolas online, and operating conditions in Chicago,

⁴ See Statement of Bob Kahn for TMPA, Public Hearing Transcript, *United States Rail Serv. Issues*, STB Docket No. EP 724, at 74:15-21, (Apr. 10, 2014) (“[O]ur usage of coal has gone up as gas prices go up.”) (“*April Hearing*”).

⁵ Statement of Mark Adkins for TUCO, *April Hearing*, at 390:6-11; Statement of Tom Canter for National Coal Transportation Association, *April Hearing*, at 379:3-9.

⁶ *United States Rail Serv. Issues—Data Collection*, STB Docket No. EP 724 (Sub-No. 3), at 2-5 (STB served Oct. 8, 2014).

such as terminal inventories and trains held for delivery in Chicago. BNSF filed its initial weekly report on October 22, 2014, and its second weekly report on October 29, 2014.

On October 22, 2014, the same day that the first expanded data reports were due, WCTL filed its Petition seeking increased Board intervention into rail operations relating to BNSF's PRB coal transportation to its members. The WCTL Petition makes general claims about "poor BNSF service" and coal "stockpiles [that] are well below target levels." WCTL Petition, at 2. However, the WCTL Petition submits no detailed evidence regarding individual shipper stockpiles or BNSF's service as it relates to particular utilities. The WCTL Petition refers generally to decisions that have been made by some electric utilities to "curtail coal-fired production" of electricity, *id.*, but offers no detail about the circumstances of particular shippers' rail service.

Based on its general claims about inadequate rail service, the WCTL Petition requests that the Board require BNSF to publicly file a "coal service recovery plan" that includes specific milestones and performance standards, including coal train speed, coal car miles, coal sets, and schedules for increasing coal service. WCTL Petition, at 6-7. The WCTL Petition also seeks "Board review and approval of the coal service recovery plan," following the submission of public comments on the sufficiency of the plan. *Id.* at 7. It calls for Board revisions to the plan if "any element ... is deficient," and it asks the Board to "issue an order directing BNSF to comply with the Board-approved plan." *Id.* at 8. The WCTL Petition requests "oversight and enforcement of [the] coal service recovery plan," which would entail weekly "compliance updates that include all the specific service metrics needed to verify compliance with the plan" as well as a proposal for the Board to "enforce compliance with the plan ... including fines...." *Id.*

On October 31, 2014, four other coal trade associations filed a joint letter in support of the WCTL Petition.⁷ The APPA Letter provided no further information regarding the individual circumstances of any of their members.

III. Further Expansion of the Board's Oversight of BNSF's Service on PRB Coal Movements as Requested in the WCTL Petition Is Unnecessary and Unwarranted.

The Board is well aware of BNSF's extensive efforts to improve service for its coal shippers. As BNSF explained in its October 28, 2014 letter, BNSF is investing record amounts to increase capacity in the most constrained portions of its network, including portions that are heavily traversed by coal traffic. BNSF has made additional investments across the network this year that benefit coal shippers, including terminal and line capacity expansion projects on core subdivisions handling coal traffic. BNSF has taken steps to improve fluidity on the coal network through critical maintenance of existing facilities, which may require short-term delays while the work is performed but will help maintain consistent service across the coal network in the short and long term. BNSF has made additional investments in preparation for winter across the Northern region, including installation of switch heaters, adding new winter mitigation equipment to locomotives, and keeping on more than 300 maintenance of way employees who are traditionally furloughed during the winter to assist with snow removal.⁸

BNSF has kept its shippers and the Board well informed about these efforts. As BNSF explained in the public hearings that the Board has held on service issues, BNSF communicates

⁷ See Letter of American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, and National Rural Electric Cooperative Association, at 1, STB Docket No. EP 724 (filed Oct. 31, 2014) ("APPA Letter").

⁸ See Letter from Steve Bobb, Executive Vice President and Chief Marketing Officer, BNSF 2014-2015 Winter Preparations and Plans (Oct. 29, 2014), available at <http://domino.bnsf.com/website/updates.nsf/updates-customer-agricultural/4D2E5B33D11BE01D86257D80006080F1?Open>.

on a daily basis with its coal shippers about issues such as the level of their coal stockpiles, the status of trains and car sets, particular service challenges affecting delivery of their coal and the range of short-term and long-term measures that BNSF is taking to improve service. In addition, BNSF provides regularly updated information to its shippers through a website that BNSF has dedicated to informing its customers about its efforts to improve service and capacity.⁹ BNSF publishes weekly service updates for its customers that include extensive data, such as total trains on the system, total trains held for power, locomotive velocity, locomotives added as compared to plan, and locomotive terminal dwell time.¹⁰ Through its website, BNSF also provides weekly information to customers regarding current track maintenance and planned track maintenance by subdivision, including estimated delays that could impact coal and other types of traffic.¹¹

Indeed, much of the information that the WCTL Petition asks that the Board require BNSF to report is already being provided on BNSF's website. For example, the WCTL Petition at 6-7 asks the Board to require BNSF to report information about BNSF's track maintenance and infrastructure projects, crew hiring, and equipment purchases, as well as plans to handle severe weather events, other potential service disruptions, and seasonal variations in demand for coal. This information is already available to coal shippers on BNSF's website. In addition, the

⁹ BNSF Service Overview, *available at* <http://www.bnsf.com/customers/service-page/index.html> (includes capacity expansion investment made, locomotives added, employees added, and railcars added thus far in 2014).

¹⁰ BNSF Service Update for Friday, October 31, 2014, *available at* <http://domino.bnsf.com/website/updates.nsf/updates-service-coal/D1CDE1BC464C4A4086257D820074ECF6?Open>; *see also* BNSF Service Update – 10/27/14, *available at* <http://www.bnsf.com/customers/service-page/pdf/bnsf-service-deck.pdf>.

¹¹ *See* BNSF Customer Notifications, Planned Track Maintenance 11/2 to 11/8, *available at* <http://domino.bnsf.com/website/updates.nsf/updates-network-consumer/F63233E5FE48E88886257D8200731CB9?Open>.

coal transportation data required by the Board's October 8, 2014 order to be reported on a weekly basis includes many of the data disclosures that the WCTL Petition asks the Board to require, such as information regarding coal train speeds, coal sets in service, plans to reduce coal sets held for more than 8 hours by cause (*i.e.*, locomotives, crews, and traffic congestion). *See* WCTL Petition, at 6-7.

BNSF has kept the Board informed of its efforts to improve PRB coal transportation service in several ways. In addition to the formal data reports that BNSF provides to the Board on coal transportation, BNSF has for several months engaged on a weekly basis with Board staff in regular conference calls with the Board's Office of Public Assistance, Government Affairs and Compliance ("OPAGAC"). BNSF also responds frequently to calls from Board staff with inquiries regarding individual shippers. BNSF submits that these direct and informal discussions between BNSF and the Board staff are the best and most appropriate way for the Board to keep informed about the efforts that BNSF is taking to address the needs of its coal shippers. A major focus of BNSF's service recovery efforts in the area of coal transportation must necessarily focus on addressing the needs and circumstances of individual shippers. Public reports about these service recovery efforts would not be appropriate given the diversity of circumstances of individual shippers and the commercial sensitivity of individual shipper needs.

BNSF serves a discrete set of coal shippers, and each shipper has its own needs based on the configuration and status of its electricity generating facilities, its regulatory obligations, its commercial strategies regarding fuel usage and stockpile policies, and its rail transportation contract terms, among numerous other matters. BNSF's efforts to improve coal transportation service involve responding to the needs of particular customers based on information provided to it by each customer, information that often needs to remain confidential because of its

commercial sensitivity. The detailed weekly calls with Board staff allow the Board to remain closely informed about BNSF's service recovery efforts in a confidential setting that protects the commercial sensitivity of issues relating to individual shippers. Coal shippers have made it clear at the Board's oversight hearings that they are uncomfortable providing public information about their coal stockpiles or their commercial decisions relating to coal storage. Similarly, BNSF's production of such data on shipments, stockpiles and plans for service to individual utilities could conflict with BNSF's confidential contract obligations.

In addition, BNSF could not effectively address the service needs of its individual shippers through a rigid, formalized and public service recovery plan of the type requested by the WCTL Petition. As BNSF explained in its October 28, 2014 letter to the Board, BNSF does not believe that the steps requested in the WCTL Petition would improve upon the actions that BNSF is already taking to increase coal deliveries. As a practical matter, BNSF must have the flexibility to adjust its service recovery efforts as network conditions and the circumstances of individual shippers change. A regulatory mandate that required adherence to a formal plan could seriously impair BNSF's ability to respond to the critical needs of individual shippers or respond to constantly changing conditions on the railroad network.

As BNSF works to improve coal transportation service, a major objective is to ensure that BNSF's coal shippers do not run out of coal. As BNSF explained in its October 28, 2014 letter to the Board, an important part of BNSF's service planning for individual customers involves identifying customers with critical service needs, namely customers that have coal stockpiles at or below a 10-day supply. When BNSF identifies such a customer, it works to ensure that the customer does not run out of coal. For that process to work, BNSF has to be responsive to changing circumstances and not governed by a rigid set of requirements.

The Board has an important role in keeping informed of the efforts that BNSF is taking to address service issues affecting coal movements on its network. The data reports and information that BNSF already provides to the Board as well as the informal OPAGAC process described above gives the Board ample information about BNSF's efforts and progress in improving service for its coal shippers. Adding formality and legal rigidity to the process of providing information to the Board as proposed by the WCTL Petition would impede progress by focusing recovery efforts on plans that quickly become stale in light of continuously evolving real world circumstances. Even if the Board had authority to implement regulation of the type advocated by the WCTL Petition, and as discussed below BNSF believes it does not, such regulation would be inappropriate and unwarranted.

IV. The Extensive Regulatory Measures Requested in the WCTL Petition Are Not Authorized Under The Statute.

The WCTL Petition asks the Board to go far beyond its current oversight of service issues and become actively involved in regulating BNSF's coal transportation service through the review and approval of a detailed service recovery plan and enforcement of the plan through a new regulatory regime of data reports, plan revisions and fines. The extensive regulatory action contemplated by the WCTL Petition is unprecedented and unauthorized.

The WCTL Petition points to 49 U.S.C. § 11145 as authority for its proposed new regulatory regime. *See* WCTL Petition, at 7. But the authority given to the Board under that statutory provision is far narrower than the WCTL Petition contends. Section 11145(a)(1) authorizes the Board to require railroads "to file annual, periodic, and special reports with the Board containing answers to questions asked by it." Section 11145 authorizes data reporting under appropriate circumstances. It does not authorize the Board to involve itself in the

development of operating plans through a public comment and Board review and approval process and then to supervise the implementation of those plans and enforce their terms. The statute is designed to ensure that the Board is adequately informed about relevant developments in rail markets, not to give the Board authority to intervene in rail markets or to regulate rail conduct in any way.

The WCTL Petition also cites 49 U.S.C. § 11123, the statutory provision dealing with service emergencies, as authority for the Board to “review, revise and approve any such plan.” WCTL Petition, at 8. The Board’s authority under Section 11123 to address service emergencies extends beyond the data reporting authority in Section 11145 to require appropriate data reports. However, the authority granted to the Board under Section 11123 does not come into effect unless the Board finds that there is a service emergency. *See* 49 U.S.C. §11123(a). The trade associations that have filed and supported the WCTL Petition do not allege circumstances that meet the test of a service emergency, and there is no evidence that the service problems affecting coal shippers constitute an emergency within the meaning of Section 11123(a).

Indeed, the WCTL Petition provides information about service delays and the impact of congestion on BNSF’s coal transportation network that is selective and in some cases inaccurate and misleading. For example, the WCTL Petition erroneously claims that BNSF is planning to cut back on coal service by removing approximately 60 coal train sets from service. *See* WCTL Petition, at 3. The APPA Letter in support also misconstrues BNSF’s objectives in removing train sets from service. In fact, by controlling the volume of cars on its network, BNSF is working to *expand* coal service by freeing up line capacity that will improve overall velocity on congested lines and allow BNSF to *increase* its coal deliveries. Based on a review of operational and contractual factors, BNSF has determined that it can reduce the number of train sets (less

than 30 sets, not 60 sets), on the most congested lines. For the WCTL Petition to portray these efforts to address congestion and make the network more fluid as reflecting a desire by BNSF to reduce coal deliveries is simply incorrect.¹² Furthermore, as the operator of its network, BNSF must maintain the operational flexibility to adjust trainsets and car volumes to optimize its network. To require Board approval for such changes, as apparently sought in the WCTL Petition, would seriously undermine BNSF's – and any railroad's – ability to operate its network. As BNSF has explained in discussions with individual customers, the planned coal set reduction will have a significant positive impact on train velocity and will result in increased coal deliveries. BNSF's data reports will allow all stakeholders to assess the impact of BNSF's efforts. As BNSF indicated in its October 28, 2014 letter, BNSF will make adjustments if its actions are not effective.

Another serious flaw in the WCTL Petition is that it goes far beyond the Board's jurisdiction by asking the Board to impose service obligations and service-related remedies relating to transportation that is provided under rail transportation contracts entered into under 49 U.S.C. § 10709. The vast majority of BNSF's coal transportation is provided under contracts. The statute states unambiguously that “[a] party to a contract entered into under this section shall have no duty in connection with services provided under such contract other than those duties specified by the terms of the contract.” 49 U.S.C. § 10709(b). The Board does not have authority to impose service recovery obligations on BNSF that would over-ride any obligations and remedies that the parties have negotiated in their contracts.

¹² WCTL also selectively cites a question posed by Federal Energy Regulatory Commissioner Philip Moeller, WCTL Petition, at 4, but it omitted the response of FERC staff, available at the same location on the archived video, that the railroads and the STB are working on service issues and that improvements are expected in 2015 and 2016.

In effect, the relief sought in the WCTL Petition is to have the Board rewrite BNSF's existing contracts, contrary to the express limitations on the Board's authority over service provided under a contract. The Board has repeatedly recognized that it does not have the authority to interfere with the service provided under transportation contracts. *See e.g., Union Pac. R.R. Co.—Petition for Declaratory Order*, STB Docket No. FD 35021, at 2 (STB served May 16, 2007) (“Under 49 U.S.C. § 10709, we have no authority to regulate rail rates and services that are governed by a contract.”).¹³ Indeed, any action taken by the Board to favor transportation provided under some contracts could undermine BNSF's ability to meet its obligations under other contracts. The Board has been and should remain careful to avoid unintended consequences that would result from injecting itself into rail operations, particularly where the transportation at issue is subject to individual and confidential contracts.

Even in the context of a true service emergency, which does not exist, the Board has recognized that the statute limits its authority to regulate transportation provided under Section 10709 contracts. When the Board adopted the current regulations in 49 C.F.R. § 1146, Expedited Relief for Service Emergencies, the Board acknowledged that even in a service emergency “we cannot enforce, interpret, or disturb the contracts themselves, nor can we directly regulate transportation that is being provided under such a contract.” *Expedited Relief for Serv. Inadequacies*, STB Docket No. EP 628, at 10 (STB served Dec. 21, 1998). The Board suggested that it might have authority to take actions affecting contract service in particular emergency

¹³ *Rail Transp. Contracts Under 49 U.S.C. 10709(c)*, STB Docket No. EP 676, at 2 (STB served Jan. 6, 2009) (“Congress expressly removed all matters and disputes arising from rail transportation contracts from the Board's jurisdiction in Section 10709(c).”); *Arizona Elec. Power Coop., Inc. v. BNSF Ry. Co. & Union Pac. R.R. Co.*, STB Docket No. 42113, at 3 (STB served Apr. 23, 2009) (“If a contract exists for rail services between one or more rail carriers and one or more shippers under 49 U.S.C. 10709(c), a party to the contract may seek redress related to that contract only in an appropriate state or federal court, unless the parties otherwise agree”).

circumstances where *no* transportation was being provided as a result of a service breakdown or to avoid regional gridlock situations where no traffic can move. *Id.* Neither circumstance exists here. It is unnecessary to consider whether other circumstances might justify Board regulation of transportation covered by a contract in a service emergency, because those circumstances clearly are not present in coal transportation markets today, where BNSF's velocity and coal loadings have been improving.

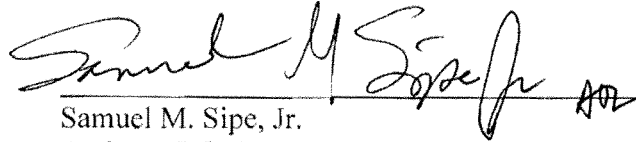
WCTL, speaking on behalf of its members, and the other organizations that have supported the WCTL Petition, are dissatisfied with the *level* of service being provided to coal shippers. While BNSF agrees that the level of coal service has not met all customer expectations, that service is governed by the terms of the transportation contracts with individual customers. When transportation is being provided under a contract, the Board does not have authority to enforce existing contractual obligations, let alone impose new service obligations on either party to a contract through fines or penalties.

In the area of coal transportation, where most transportation is provided under individually negotiated contracts that specify particular service terms and remedies, service issues cannot be effectively addressed by dealing with an association such as WCTL or the associations included in the APPA Letter. BNSF's coal transportation service is driven by circumstances related to individual shippers and other facts that are not in evidence. Even if the Board believed it had authority to consider the WCTL Petition's request, it would not be able to act without further information about circumstances of particular shippers. Any meaningful consideration of service in coal transportation markets must focus on specific facts and individual shipper circumstances, and that cannot be done in the context of the general assertions in the WCTL Petition.

V. Conclusion

The WCTL Petition apparently hopes that the establishment of new regulatory requirements enforced through fines will force BNSF to devote more resources to coal transportation for PRB shippers. But the Board knows that BNSF is working hard across its network in an even-handed way to improve service to all affected shippers. It would be inappropriate, as well as unauthorized, for the Board to respond affirmatively to a short-sighted desire for special treatment.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Samuel M. Sipe, Jr.", with a horizontal line underneath and a small mark to the right.

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November 3, 2014

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EB

SERVICE DATE – LATE RELEASE DECEMBER 30, 2014

SURFACE TRANSPORTATION BOARD

DECISION

Docket No. EP 724

UNITED STATES RAIL SERVICE ISSUES

Digest:¹ The Board directs BNSF Railway Company to submit a detailed description of the contingency plans the carrier would use to help mitigate an acute coal inventory shortage at one or more generating stations in a region.

Decided: December 30, 2014

On October 22, 2014, the Western Coal Traffic League (WCTL) petitioned the Board to require BNSF Railway Company (BNSF) to submit to the Board a coal-specific service recovery plan, and for the Board to review, approve or revise, and enforce the recovery plan. In support of its petition, WCTL states that its electric utility members who are served by BNSF continue to experience severe service difficulties. In light of the concerns raised by WCTL's petition and the approach of winter weather conditions, the Board issued an order on October 24, 2014, directing BNSF to file a reply to the petition no later than November 3, 2014. Other interested persons were invited to comment on WCTL's petition by that date.

On October 28, 2014, BNSF submitted a letter to the Board, which identifies many recently completed and planned infrastructure projects which, according to BNSF, would benefit its coal franchise. The letter also details various BNSF operational and personnel initiatives to improve its transportation of coal. Additionally, BNSF outlines several of its public outreach and communications efforts, including its reporting to the Board, to provide transparency to its customers regarding the status of its network. BNSF contends that preparing and filing a coal service recovery plan, as envisioned by WCTL, would not contribute materially to its customers' perspective on its operations.² BNSF asks that, if the Board is inclined to take additional regulatory steps, BNSF be permitted to submit additional regulatory proposals that it believes would address systemic service challenges that, according to BNSF, would have the potential to have a far greater impact on coal service than the proposal by WCTL.³

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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See BNSF Letter 2; BNSF Reply 8-10.

³ BNSF Letter 5.

On November 3, 2014, BNSF filed its reply in opposition to WCTL's petition. BNSF reiterates several of the points set forth in its October letter, and also presents several legal arguments against WCTL's request. First, BNSF argues that the Board lacks authority to mandate service requirements pursuant to 49 U.S.C. § 11145(a)(1). Second, BNSF asserts that the Board cannot compel BNSF to take specific actions related to service absent a finding of an emergency under 49 U.S.C. § 11123. Third, BNSF contends that the Board cannot grant the relief requested by WCTL because the "vast majority" of BNSF's coal traffic moves under private contracts, which are not subject to STB jurisdiction. Finally, BNSF contends that the relief requested by WCTL would detract from its overall recovery efforts as other stakeholders would seek to obtain similar relief.

The Board also received comments from several energy companies, legislators, and other interested parties generally expressing support for WCTL's petition. Dairyland Power Cooperative cites inadequate service to its Alma, Wis. coal-fired power plant that forced it to curtail electric generation and seek alternative power sources.⁴ Similarly, Minnesota Power states that it ceased operations at four electric generating units in an effort to preserve coal stockpiles.⁵ Several other power companies also comment in support of WCTL's petition and note low coal inventory and reduced deliveries.⁶ The American Public Power Association, Edison Electric Institute, National Association of Regulatory Utility Commissioners, and the National Rural Electric Cooperative Association jointly submitted comments and reiterate many of WCTL's points, citing low stockpiles and vulnerable rail service as a threat to their members.⁷ Minnesota Governor Mark Dayton, U.S. Senator Amy Klobuchar, and U.S. Senator Al Franken also submitted comments expressing support for the WCTL petition.⁸ From Wisconsin, U.S. Senator Tammy Baldwin and U.S. Representatives Ron Kind, Sean P. Duffy, Thomas E. Petri, Reid Ribble, and Paul Ryan also wrote to the Board expressing concern about coal service, requesting that, if delivery problems persist, the Board require all Class I carriers to submit publicly available coal service recovery plans and monitor carriers' progress through weekly public reporting.⁹

⁴ Dairyland Power Comment 1 (filed Nov. 3, 2014).

⁵ ALLETE d/b/a Minnesota Power Comment 1 (filed Nov. 3, 2014).

⁶ See Otter Tail Power Company Comment 1 (filed Nov. 3, 2014); and Ameren Missouri Comment 1 (filed Nov. 3, 2014); see also Consumers United for Rail Equity Comment 1 (filed Nov. 3, 2014) (citing similar concerns about low coal inventory and electric reliability).

⁷ American Public Power Association et al. Comment 1 (filed Oct. 31, 2014).

⁸ Comment from Governor Dayton (filed Nov. 3, 2014); Letter from U.S. Senators Klobuchar and Franken (filed Nov. 7, 2014).

⁹ Letter from U.S. Senator Baldwin and U.S. Representatives Kind, Duffy, Petri, Ribble, and Ryan (filed Nov. 19, 2014).

DISCUSSION AND CONCLUSIONS

Rail service performance throughout the national system continues to be a priority for the Board. At the Board's September 4, 2014 hearing in Fargo, N.D., shippers from various commodity groups and regions explained the impact that less reliable rail service has had on their operations. These concerns included significant backlogs for farmers,¹⁰ escalating costs,¹¹ inability to transport products to the marketplace in a timely manner,¹² and general concerns about the business impacts of rail congestion.¹³ Coal shippers, in particular, expressed concerns about increased cycle times, being forced to implement coal conservation measures,¹⁴ the inability to manage coal piles,¹⁵ and the potential impacts of coal shortages on electricity grid reliability.¹⁶ Many shippers also expressed concerns about a lack of regular communication with, and information sharing from, the railroads.¹⁷

During the Board's two rail service hearings, and in its recent filings, BNSF generally acknowledges that it has not met customer expectations with regard to its movement of coal.¹⁸ It also notes that it has been working aggressively towards remedying ongoing service issues to meet customer demand.¹⁹ To address these issues and improve its coal service, BNSF states that it has undertaken the following initiatives: increasing hiring, locomotive and car acquisitions, and capital investment in maintenance and capacity expansion;²⁰ investing in northern corridor infrastructure, including network capacity expansion;²¹ adding two double-track projects to its infrastructure investment plan to support its coal route;²² making network-wide investments, including terminal and capacity expansion projects that it states will result in a stronger railroad,

¹⁰ Sept. Hr'g Tr. 218, U.S. Rail Serv. Issues, EP 724 (Sept. 4, 2014).

¹¹ Id. at 219.

¹² Id. at 228.

¹³ Id. at 229, 233.

¹⁴ Id. at 127.

¹⁵ Id. at 151.

¹⁶ Sept. Hr'g Tr. 151.

¹⁷ Id. at 219.

¹⁸ BNSF Reply 2 ("BNSF readily acknowledges that current service has not met its customers' expectations or its own high standards in all parts of the network."); Sept. Hr'g Tr. 90; Apr. Hr'g Tr. 181, 190, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014) (acknowledging customer concerns generally and about coal, and describing BNSF's response to increased coal demand).

¹⁹ BNSF Reply 2.

²⁰ BNSF Letter 2.

²¹ Id.

²² Id. at 3.

improving service for all customers;²³ improving fluidity on the coal network through maintenance projects across the network;²⁴ preparing enhanced Winter Action Plans, including new resources for the 2014 winter season to better handle extreme weather;²⁵ and decongesting the network by strategically removing a small number of coal sets.²⁶

With respect to this final point, WCTL expresses concern regarding an alleged near-term plan for BNSF to withdraw 60 coal-train sets from service. In response, BNSF states that it has no plan to withdraw 60 coal-train sets; rather it says that it identified an opportunity to reduce congestion on certain lanes by removing a total of fewer than 30 coal-train sets.²⁷ BNSF asserts that, by strategically removing a small number of coal-train sets, it is decongesting the system and improving overall velocity for its utility customers.²⁸ It states that the cuts are not across-the-board, but involve specific coal customers where BNSF has identified an operational and contractual opportunity for set reductions.²⁹

WCTL's petition conveys the concern that exists among WCTL members with regard to coal rail service and the potential impacts of poor service, particularly going into the winter months. Although WCTL's petition does not specifically describe the extent of the coal supply shortage that its members have been experiencing,³⁰ relevant data regarding coal supply is prepared by U.S. energy regulatory agencies. The Board monitors developments at these agencies closely in order to assess the overall coal supply picture and augment the information we receive from rail carriers and shippers. Reports issued by the U.S. Energy Information Administration (EIA) indicate that, over the past year, approximately 75-80% of coal-fired plants nationwide maintained coal stockpiles in excess of 30 days, and a significant proportion of those plants maintained stockpiles in excess of 60 days.³¹ EIA's most recent update shows that

²³ Id.

²⁴ Id.

²⁵ Id. at 3.

²⁶ BNSF Letter 3-4.

²⁷ Id. at 4.

²⁸ Id.

²⁹ Id.

³⁰ For example, the petition does not include information regarding WCTL's members' current versus historical coal stockpile levels; historical, actual and projected burn rates; current versus historical cycle times and cycle time trends; a description of available mitigation; and the availability and costs of procuring replacement power from other sources. As noted earlier, however, two commenters, Dairyland Power and Minnesota Power, did cite specific decisions to curtail electric generation.

³¹ See U.S. Energy Information Administration, Electric Power Sector Coal Stocks: October 2014 (Dec. 23, 2014), http://www.eia.gov/electricity/monthly/update/fossil_fuel_stocks.cfm (scroll down to "Capacity by days of burn" chart).

nationwide, 52.2% of coal-fired plants maintained stockpiles in excess of 60 days; 39.8% of plants maintained stockpiles between 30 and 60 days; and 8% of plants maintained stockpiles of less than 30 days.³² Coal stockpiles in certain states, however, are lower than historical levels. At an open meeting of the Federal Energy Regulatory Commission (FERC) held on December 19, 2014, FERC staff noted that coal stockpiles in Iowa and Oklahoma are more than 40% lower than last year's level, and coal stockpiles in Minnesota, Wisconsin, Missouri, and Texas are between 25 and 40% below last year.³³ Representatives of a regional transmission organization and a utility also provided testimony at FERC's open meeting about specific coal reliability situations, most of which appeared to reflect some progress on stockpiles.³⁴

The Board has been collecting specific service performance data from Class I railroads across all commodities. U.S. Rail Serv. Issues—Data Collection (October 8 Order), EP 724 (Sub-No. 3) (STB served Oct. 8, 2014). Several categories of data collected under the October 8 Order specifically provide insight into BNSF's coal service performance, including:

- System average train speed for coal unit trains (part of Item 1). BNSF's reports to date show system average train speed for coal unit trains around 17 to 19 m.p.h. This remains below recent historical levels (2009-mid 2013), which ranged from 20 to 24 m.p.h.³⁵
- Weekly average dwell time at origin for coal unit trains (part of Item 4). BNSF's reports to date show weekly average dwell time at origin for coal unit trains around 4 to 5.5 hours.
- Average daily coal unit train loadings versus plan for the reporting week by coal production region (Item 10). BNSF's reports to date show that while its average train loadings per day in the Powder River Basin (PRB) did not meet its plan in

³² Id.

³³ Coal Delivery Issues for Electric Generation, Staff Overview (Dec. 18, 2014), slide 3, <http://www.ferc.gov/media/headlines/2014/2014-4/A-3-presentation-staff.pdf>.

³⁴ Midcontinent Independent System Operator, Inc., stated that "coal-pile drawdowns this year have not yet resulted in a significant issue from a reliability perspective on the system." FERC Open Meeting, Dec. 18, 2014 (video archive), at 00:74:15, available at http://ferc.capitolconnection.org/121814/fercarchive_flv.htm. ALLETE d/b/a Minnesota Power stated that "we enter January in much better shape than we were last year. The coal pile is full and with some certainty that it will stay full in February and March, we look good this year compared to where we've been at our biggest power plant." Id. at 00:85:35.

³⁵ See BNSF Weekly Reports in United States Rail Service Issues—Data Collection, Docket No. EP 724 (Sub-No. 3). See also Performance Measures Subcommittee Update, Rail Energy Transp. Advisory Committee, Oct. 2, 2014, slide 11 ("Historical Coal Train Speed"), available at <http://www.stb.dot.gov/stb/rail/retac.html> (select "Performance Measures" hyperlink adjacent to Oct. 2, 2014 Meeting Minutes).

reporting weeks 3 to 7, BNSF either met or exceeded its plan in weeks 1, 2, 8, 9, and 10.

With respect to BNSF and coal specifically, the totality of the information collected to date suggests that BNSF's coal service has struggled, although there has been some progress in recent weeks. It is critical that the Board continue to closely monitor BNSF's performance for indications of improving or deteriorating service. In addition to monitoring BNSF's coal service performance via the data we collect, we will continue to hold regular meetings with BNSF senior management so that we can receive first-hand information about the challenges and progress BNSF is experiencing with respect to all service issues, including coal.³⁶ Also, the Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC) will maintain its weekly calls with BNSF to discuss service issues, including the status of BNSF's coal service. OPAGAC will continue its outreach and regular communications with counterparts at the Department of Energy (DOE) and FERC in order to share information about the coal railroad supply chain as it relates to the reliability of energy production.

Moreover, we will direct BNSF to provide specific information with regard to its coal service contingency planning. BNSF's October 28 Letter and its November 3 Reply indicate that the carrier devotes particular attention to utility customers at or below a 10-day stockpile level "to ensure that the customer does not run out of coal."³⁷ However, BNSF does not provide more specific information. A key concern of the Board is the railroad's ability to promptly and effectively redeploy resources in the event that unanticipated circumstances cause one or more regionally significant generating stations to reach critical stockpile levels. So that the Board has a full understanding of how BNSF would mitigate any critical shortfalls of coal, BNSF is directed to provide to the Board its contingency plans for addressing any such shortfalls, including a detailed description of the steps it takes to identify coal-fired plants at critical levels and to remedy acute shortages in a timely fashion. BNSF's response should address equipment, infrastructure, and personnel resources used to respond to such situations. BNSF may also submit the regulatory proposals referenced in its October 28 Letter, which it stated would address systemic service challenges.

To ensure that the Board receives the full range of perspectives regarding coal service, we also invite utilities and other coal stakeholders to submit status reports in this docket. Together with the input received through the Board's continued coordination with FERC and DOE, its continued calls and meetings with BNSF,³⁸ and the coal service data collected pursuant to the October 8 Order, these reports will increase the Board's ability to monitor the status of coal service. If utilities and other coal stakeholders choose to submit such reports, we request that they address:

³⁶ See, e.g., U.S. Rail Serv. Issues, EP 724, slip op. at 2 (STB served Aug. 18, 2014) ("At the Board's request, senior management representatives of BNSF and CP have met individually with Board Members on a number of occasions . . .").

³⁷ BNSF Reply 10.

³⁸ OPAGAC holds regular, informal meetings with BNSF and the other Class I carriers.

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- Information regarding regional, state, or plant-specific stockpiles. This information (as well as any other information included in these status reports) may be filed under seal if the submitting party chooses to do so. Questions about submitting a filing under seal, including how to request a protective order, may be directed to OPAGAC at (866) 254-1792 or repa@stb.dot.gov.
- Information regarding the status of coal by rail service received from railroads (including, but not limited to, BNSF).

The Board's access to all of the information described above from a combination of carriers, shippers, and energy regulatory agencies will assist the Board in evaluating whether further regulatory steps with regard to coal service are necessary, and if so, when. As the Board is not requiring the service recovery plan enforcement requested by WCTL, we need not reach a conclusion on BNSF's legal objections to that remedy. We do note, however, that BNSF has raised a significant concern with respect to the scope of the Board's authority over contract traffic under 49 U.S.C. § 10709. Section 10709 states that transportation provided under private contract is not subject to the Board's governing statute; parties are not subject to statutory duties with respect to contract service; and the "exclusive remedy" for breach of contract is in a court of competent jurisdiction. 49 U.S.C. § 10709(b) and (c). Given that the vast majority of coal rail traffic nationwide moves under contract, § 10709 could have an impact on the scope of any prospective relief available under the Interstate Commerce Act. At the same time, however, a carrier entering contracts "remains subject to [its] common carrier obligation . . . with respect to [its non-contract] traffic" under § 10709(f). The national rail system carries both regulated and non-regulated traffic and the Board necessarily must look to the fluidity of that network.

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. WCTL's petition is granted in part and denied in part, as discussed above.
2. BNSF shall submit no later than January 29, 2015 a detailed description of the contingency plans it would use to mitigate an acute coal inventory shortage at one or more generating stations in a region.
3. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

44168
EB

SERVICE DATE- LATE RELEASE DECEMBER 30, 2014

SURFACE TRANSPORTATION BOARD

DECISION

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

UNITED STATES RAIL SERVICE ISSUES—PERFORMANCE DATA REPORTING

Digest:¹ The Board is proposing a rule to require certain railroads to publicly file various weekly data reports pertaining to service performance.

Decided: December 30, 2014

AGENCY: Surface Transportation Board (the Board or STB).

ACTION: Notice of Proposed Rulemaking.

SUMMARY: Through this Notice of Proposed Rulemaking, the Board is proposing to establish new regulations requiring all Class I railroads and the Chicago Transportation Coordination Office (CTCO), through its Class I members, to report certain service performance metrics on a weekly basis.

DATES: Comments are due by March 2, 2015. Reply comments are due by April 29, 2015.

ADDRESSES: Comments and replies may be submitted either via the Board's e-filing format or in the traditional paper format. Any person using e-filing should attach a document and otherwise comply with the instructions at the E-FILING link on the Board's website, at <http://www.stb.dot.gov>. Any person submitting a filing in the traditional paper format should send an original and 10 copies to: Surface Transportation Board, Attn: Docket No. EP 724 (Sub-No. 4), 395 E Street, S.W., Washington, DC 20423-0001.

Copies of written comments and replies will be available for viewing and self-copying at the Board's Public Docket Room, Room 131, and will be posted to the Board's website. Copies will also be available (for a fee) by contacting the Board's Chief Records Officer at (202) 245-0238 or 395 E Street, S.W., Washington, DC 20423-0001.

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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

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FOR FURTHER INFORMATION CONTACT: Valerie Quinn at (202) 245-0382. Assistance for the hearing impaired is available through the Federal Information Relay Service (FIRS) at (800) 877-8339.

SUPPLEMENTARY INFORMATION: The Surface Transportation Board has been closely monitoring the rail industry's performance since service problems began to emerge in late 2013. Service challenges have impacted a wide range of commodities, including grain, fertilizer, ethanol, coal, automobiles, chemicals, propane, consumer goods, crude oil, and industrial commodities.

In response to the service challenges affecting this broad cross-section of rail shippers, the Board held two public hearings this year, in April in Washington, D.C., and in September in Fargo, N.D., to provide the opportunity for interested persons to report on service problems, to hear from rail industry executives on plans to address rail service problems, and to explore additional options to improve service. During and after these hearings, shippers expressed concerns about the lack of publicly available information related to rail service and requested access to performance data from the railroads to better understand the scope, magnitude, and impact of the service issues,² as well as the underlying causes and the prospects for recovery.

Based on these concerns and our own need to better understand railroad operating conditions, on October 8, 2014, the Board ordered all Class I railroads and the Class I railroad members of the CTCO to file weekly reports on an interim basis, containing specific performance data. See U.S. Rail Serv. Issues—Data Collection (Interim Data Order), EP 724 (Sub-No. 3) (STB served Oct. 8, 2014). Specifically, 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.

On October 22, 2014, the Class I railroads and the Association of American Railroads (AAR) (on behalf of the CTCO) filed the first set of weekly reports in response to the Interim Data Order. As requested by the Board, each carrier also provided an explanation of its methodology for deriving performance data in response to each request. Generally, the responses corresponded to the elements of the Interim Data Order; however, some railroads approached individual requests differently, leading to variations in the reported data. The different approaches primarily were due to the railroads' disparate data-keeping systems,

² See generally National Grain and Feed Association Letter, U.S. Rail Serv. Issues, EP 724 (filed May 6, 2014); Western Coal Traffic League Letter, U.S. Rail Serv. Issues, EP 724 (filed Apr. 17, 2014); Apr. Hr'g Tr. 154-155, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014); Western Coal Traffic League Statement 5-6, U.S. Rail Serv. Issues, EP 724 (filed Sept. 5, 2014); Sept. Hr'g Tr. 48, 290, U.S. Rail Serv. Issues, EP 724 (Sept. 4, 2014).

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different railroad operating practices, and/or unintended ambiguities in certain requests. Certain railroads also departed from the Board's prescribed reporting in order to maintain consistency with their own weekly data runs and analysis. For the most part, however, railroads made reasonable efforts to respond to each request, substituting analogous data when precise information could not readily be derived.

In addition to the weekly data reports, AAR, on behalf of its Class I freight railroad members (except Canadian Pacific Railway Company (CP)), submitted a letter to the Board indicating that it believes the public, the Board, and the railroads would have benefited from "[a] constructive public discourse regarding service data [which] could have led to a more productive and less burdensome collection of information that would have satisfied the Board's regulatory objectives."³ With the first several weeks of filings in response to the Interim Data Order complete, we invite public comment to determine whether to establish new regulations for permanent reporting and to receive constructive input to revise, as necessary, and improve the existing data reporting structure.

The weekly filings have allowed the Board and rail stakeholders to monitor the industry's performance in near real-time, and allowed the Board to begin to develop baseline performance data. Based on the Board's experience with the reporting to date, and as expressly contemplated in the Interim Data Order, the Board is now moving forward with a rulemaking to determine whether to establish new regulations for permanent reporting by the members of the Class I railroad industry, the Class I carriers operating in the Chicago gateway, and the CTCO through its Class I members. The 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 data requirements have been designed to impose as small a burden as possible on the carriers that would be subject to the rule, while achieving the Board's goal of continued rail service performance transparency. The Board believes that the benefit to the Board, rail shippers, and other stakeholders would outweigh the burden of reporting under the proposed rule. The data collected pursuant to the rule would continue to provide for service performance transparency in the industry and allow the Board to more rapidly identify and respond to service performance issues.

Accordingly, the Board seeks public comments on proposed new regulations to be codified at 49 C.F.R. § 1250.1-1250.3 to require Class I rail carriers, Class I carriers operating in the Chicago gateway, and the CTCO, through its Class I members, to submit to the Board weekly reports on railroad performance. The proposed reporting requirements are based on and include those contained in the Interim Data Order, but include the following modifications:

³ AAR Letter 1, U.S. Rail Serv. Issues—Data Collection, EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

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- In subsection (a), instructions have been added to Requests nos. 1 – 3 to align the requests with performance data being published by AAR;
- In subsection (a), Request no. 4 has been modified to capture average dwell time for “loaded” unit trains at origin “or interchange receipt,” and to clarify that the data is to be reported by the railroad receiving the loaded train at a shipper facility or interchange location;
- In subsection (a), Requests nos. 5 and 6 have been revised to cure ambiguities that emerged during the initial reporting periods and to clarify the data intended to be reported. Request no. 5 is intended to capture every instance during the reporting week in which specific types of loaded or empty trains are held at a location on the reporting railroad’s system short of destination or scheduled interchange for longer than six consecutive hours. Request no. 6 is intended to capture an average of daily snap shots of cars in specific services that have not moved for the specified durations (48–120 hours; greater than 120 hours);
- In subsection (a), Request no. 9 has been deleted from the proposed requirements because it appears to have limited application to the carriers’ disparate grain unit train operations; however, we ask that commenters propose an appropriate measure to capture performance data for grain unit train operations;
- In subsection (a), Request no. 10 has been renumbered as Request no. 9 and revised to allow carriers to report weekly total coal unit train loadings or weekly total coal car loadings by coal production region;
- In subsection (b), Request no. 1 has been modified to clarify that the request is for the average daily car “volume” at the key Chicago yards, meaning cars on hand, rather than cars processed;
- In subsection (b), Request no. 2 has been modified to clarify the method for deriving trains held outside the Chicago gateway;
- A new item has been added in subsection (d) to request a quarterly listing of all work-in-progress, major rail infrastructure projects, including project location by state, planned completion date for the project, percentage complete at the time of reporting, and project description and purpose. For purposes of this request, “work-in-progress” refers to projects for which ground breaking has taken place, “major” refers to any rail infrastructure project budgeted at \$25 million or more over the life of the project, and “rail infrastructure” refers to capacity expansion or enhancement projects, excluding maintenance-of-way.

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Table 1. Major changes to the data requests between the Interim Data Order and the proposed rule.

Interim Data Order	Proposed Rule	Description of Change
Subsection (a), Request nos. 1-3: Train speed, terminal dwell time, total cars on line.	Subsection (a), Request nos. 1-3 (with added instructions)	Adds instructions to align requests with performance data being published by AAR.
Subsection (a), Request no. 4: Weekly average dwell time at origin for unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains.	Subsection (a), Request no. 4: Weekly average dwell time at origin or interchange location for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. . . . The data is to be reported by the receiving carrier.	Captures average dwell time for loaded unit trains at origin or interchange receipt, and clarifies that the data is to be reported by the railroad receiving the loaded train.
Subsection (a), Request no. 5: Trains held short of destination or scheduled interchange for longer than six hours.	Subsection (a), Request no. 5 (with added instructions)	Adds instructions to cure ambiguities that emerged during the initial reporting periods.
Subsection (a), Request no. 6: The weekly total number of loaded and empty cars, stated separately, in revenue service that have not moved in . . . sorted by the following classifications (intermodal, grain, coal, crude oil, automotive, ethanol, or all other). . . .	Subsection (a), Request no. 6: The daily average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in . . . sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, or all other).	Adds instructions to cure ambiguities and clarifies data intended to be reported.
Subsection (a), Request no. 9: Plan versus performance for grain shuttle (or dedicated grain train) round trips.	Deleted	Prior request no. 9 appears to have limited application to the carriers' disparate grain unit train operations; commenters are asked to propose an appropriate measure to capture performance data for grain unit train operations.
Subsection (a), Request no. 10: Average daily coal unit train loadings versus plan for the reporting week by coal production region.	Subsection (a), Request no. 9: Weekly total coal unit train loadings or car loadings for the reporting week by coal production region.	Allows carriers to report weekly total coal unit train loadings or weekly total coal car loadings by coal production region.
Subsection (b), Request no. 1:	Subsection (b), Request no. 1:	Clarifies that the request is for

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Average daily car counts in the key Chicago terminal yards	Average daily car volume in the following Chicago area yards	the average daily car volume at the key Chicago yards.
Subsection (b), Request no. 2	Subsection (b), Request no. 2 (with added instructions)	Adds instructions for developing the average daily number of trains held for delivery to Chicago.
	New Subsection (d)	Adds quarterly request to list rail infrastructure projects.

As the Board noted in the Interim Data Order, at both hearings, carriers cited congestion in Chicago as one significant cause of the service problems.⁴ While congestion in the area was particularly acute last winter, it has been a recurring problem at this crucial network hub. The Board continues to recognize 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. CP asserts, in its response to the Interim Data Order, that if either the Belt Railway of Chicago (BRC) or the Indiana Harbor Belt Railroad (IHB) becomes congested, the Chicago Terminal then becomes congested and that congestion then “reverberates throughout the system.”⁵ CP urges the Board to require BRC and IHB to report appropriate metrics on a weekly basis.⁶ Under the Interim Data Order, AAR has been reporting average daily car counts in key Chicago area yards, including Clearing and Blue Island, which are BRC and IHB yards, respectively. Commenters are invited to propose the reporting of additional metrics, from the BRC and IHB or others, that could improve oversight and support a better understanding of service issues in the Chicago area. Finally, the Board in the Interim Data Order directed the Class I members of the CTCO to file a general summary of the CTCO’s service contingency protocols. However, given that the Chicago gateway remains a concern, we believe that having more information about how the Class I carriers are managing operations in Chicago would be beneficial. Accordingly, the Class I members of the CTCO are directed to file a detailed explanation of the CTCO’s service contingency protocols, including the protocol triggers and countermeasures. Should the members need to provide proprietary information to sufficiently explain the CTCO protocols (such as car counts and specific locations that trigger the protocols), they may request a protective order.

The Board also asks that Class I railroads comment on the capabilities of their respective internal data-keeping systems for capturing and generating data and the appropriate timeframe (i.e., starting day and ending day) for the reporting week and for filing reports. Commenters are also asked to address whether and how geographical parameters could be practically

⁴ Apr. Hr’g Tr. 186-87, 208, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014); North Dakota Public Service Commission Comments 3, U.S. Rail Serv. Issues, EP 724 (filed Sept. 4, 2014).

⁵ CP Comment 1, U.S. Rail Serv. Issues—Data Collection, EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

⁶ Id.

incorporated into the requests in order to identify parts of the freight rail network experiencing acute congestion or service issues. The proposed rules address the same specific commodities covered under the Interim Data Order. If commenters believe it would advance the Board's goals, they may include metrics focused on other commodities along with an explanation of why it would be beneficial to collect that information.⁷ Additionally, commenters may propose revised definitions for terms used in the data requests, such as "unit train," if they believe such revised definitions would be necessary or helpful to the uniform collection of data, and methodologies for deriving data.

Additionally, on October 22, 2014, Kansas City Southern Railway Company (KCS) filed a petition for a waiver from certain requirements due to the nature of its grain business and its very limited number of customers in a discrete number of states in its service territory.⁸ In response to the petition, the Board proposes to exempt KCS from filing state-specific information in response to Request nos. 7 and 8. Commenters may address whether this exemption is appropriate.

Because the Board is considering whether to implement a standardized set of weekly reporting requirements, proposals for new reporting items should take into account whether they may be obtained from data likely maintained by railroads in the ordinary course of business. Proposed items should not call for narrative responses or impose requirements that vary from week to week. Also, the Class I railroads are asked to comment on which requests can be reported through AAR or Railinc Corporation⁹ on behalf of the industry.

In seeking public comments, the Board requests that interested stakeholders evaluate the utility of each data request, offer proposed modifications, and/or propose other requests that would assist the Board and the public in gaining complete and accurate near real-time assessment of the performance of Class I railroads.

Regulatory Flexibility Act. The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. §§ 601-612, generally requires a description and analysis of new rules that would have a significant economic impact on a substantial number of small entities. In drafting a rule, an agency is required to: (1) assess the effect that its regulation will have on small entities; (2) analyze effective alternatives that may minimize a regulation's impact; and (3) make the analysis available for public comment. §§ 601-604. In its notice of proposed rulemaking, the

⁷ On October 24, 2014, The Fertilizer Institute submitted a letter asking the Board to require separate reporting with regard to fertilizer shipments. The Fertilizer Institute Letter 1-2, U.S. Rail Serv. Issues—Data Collection, EP 724 (Sub-No. 3) (filed Oct. 24, 2014).

⁸ See KCS Petition for Waiver, U.S. Rail Serv. Issues—Data Collection, EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

⁹ Railinc Corporation provides information technology, applications, and electronic data services to the North American freight railway industry. It is a wholly-owned subsidiary of AAR. See Railinc, Company Overview, <https://www.railinc.com/rportal/company-overview> (last visited Dec. 19, 2014).

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agency must either include an initial regulatory flexibility analysis, § 603(a), or certify that the proposed rule would not have a “significant impact on a substantial number of small entities.” § 605(b). The impact must be a direct impact on small entities “whose conduct is circumscribed or mandated” by the proposed rule. White Eagle Coop. v. Conner, 553 F.3d 467, 480 (7th Cir. 2009).

The rules proposed here would not have a significant economic impact upon a substantial number of small entities, within the meaning of the RFA. The reporting requirements would apply only to Class I rail carriers, which, under the Board’s regulations, have annual carrier operating revenues of \$250 million or more in 1991 dollars (adjusted for inflation using 2013 data, the revenue threshold for a Class I rail carrier is \$467,063,129). Class I carriers generally do not fall within the Small Business Administration’s definition of a small business for the rail transportation industry.¹⁰ Therefore, the Board certifies under 5 U.S.C. § 605(b) that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the RFA. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration, Washington, D.C. 20416.

Paperwork Reduction Act. Pursuant to the Paperwork Reduction Act (PRA), 44 U.S.C. §§ 3501-3549, and Office of Management and Budget (OMB) regulations at 5 C.F.R. § 1320.8(d)(3), the Board seeks comments regarding: (1) whether the collection of information in the proposed rule, and further described in Appendix B, is necessary for the proper performance of the functions of the Board, including whether the collection has practical utility; (2) the accuracy of the Board’s burden estimates; (3) ways to enhance the quality, utility, and clarity of the information collected; and (4) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology, when appropriate. Information pertinent to these issues is included in Appendix B. The collection in this proposed rule will be submitted to OMB for review as required under 44 U.S.C. § 3507(d) and 5 C.F.R. § 1320.11.

This proposal would not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 C.F.R. Part 1250

Administrative practice and procedure, Railroads, Reporting and recordkeeping requirements

It is ordered:

1. Comments are due by March 2, 2015. Reply comments are due by April 29, 2015.

¹⁰ The Small Business Administration’s Office of Size Standards has established a size standard for rail transportation, pursuant to which a line-haul railroad is considered small if its number of employees is 1,500 or less, and a short line railroad is considered small if its number of employees is 500 or less. 13 C.F.R. § 121.201 (industry subsector 482).

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2. A copy of this decision will be served upon the Chief Counsel for Advocacy, Office of Advocacy, U.S. Small Business Administration.

3. Notice of this decision will be published in the Federal Register.

4. The Class I members of the CTCO shall file a detailed explanation of the CTCO's service contingency protocols, including the protocol triggers and countermeasures, by January 14, 2015.

5. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

APPENDIX A

For the reasons set forth in the preamble, the Surface Transportation Board proposes to amend title 49, chapter X, subchapter D, of the Code of Federal Regulations by enacting Part 1250 as follows:

PART 1250 – Railroad Performance Data Reporting

Sec.

1250.1 Reporting Requirements

1250.2 Definitions

1250.3 Data Elements

Authority: 49 U.S.C. §§ 721 and 11145.

§ 1250.1 Reporting Requirements

Each Class I railroad is required to report to the Board on a weekly basis, the performance data set forth in subsection 1250.3(a)(1)-(9), below. The Class I railroads operating at the Chicago gateway are required to jointly report on a weekly basis the performance data set forth in subsection 1250.3(b)(1)-(2), below. The reports required under subsection 1250.3(b)(1)-(2) may be submitted by the Association of American Railroads (AAR). The data must be reported to the Board between 9AM and 5PM Eastern Time on Tuesday of each week, covering the previous reporting week (12:01AM Sunday-11:59PM Saturday). In the event that a particular Tuesday is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open. The data must be filed in Excel format, using an electronic spreadsheet made available by the Board's Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC), and should be emailed to data.reporting@stb.dot.gov. Each week's report must include data only for that week, and should not include data for previous weeks. Unless otherwise provided, the data will be publicly available and posted on the Board's website.

§ 1250.2 Definitions

- (a) Unit train. Unit train refers to a train comprising 50 or more railcars of the same or similar type, carrying a single commodity in bulk.

§ 1250.3 Railroad Performance Data Elements

- (a) Each Class I railroad must report the following performance data elements for the reporting week. However, with regard to elements 7 and 8, Kansas City Southern Railway Company is not required to report information by State, but instead shall report system-wide data.
1. System-average train speed by the following train types for the reporting week.
(Train speed should be measured for line-haul movements between terminals.)

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The average speed for each train type should be calculated by dividing total train-miles by total hours operated.)

- a. Intermodal
 - b. Grain unit
 - c. Coal unit
 - d. Automotive unit
 - e. Crude oil unit
 - f. Ethanol unit
 - g. Manifest
 - h. All other
2. Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (i.e., cars that arrive at, and depart from, a terminal on the same through train) for the carrier's system and its 10 largest terminals in terms of railcars processed. (Terminal dwell is the average time a car resides at a specified terminal location expressed in hours.)
 3. Weekly average cars on line by the following car types for the reporting week. (Each railroad is requested to average its daily on-line inventory of freight cars. Articulated cars should be counted as a single unit. Cars on private tracks (e.g., at a customer's facility) should be counted on the last railroad on which they were located. Maintenance-of-way cars and other cars in railroad service are to be excluded.)
 - a. Box
 - b. Covered hopper
 - c. Gondola
 - d. Intermodal
 - e. Multilevel (Automotive)
 - f. Open hopper
 - g. Tank
 - h. Other
 - i. Total
 4. Weekly average dwell time at origin or interchange location for loaded unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. (For the purposes of this data element, dwell time refers to the time period from release of a unit train at origin or interchange location until actual movement by the receiving carrier. The data is to be reported by the receiving carrier.)
 5. The weekly total number of loaded and empty trains held short of destination or scheduled interchange for longer than six consecutive hours sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance, mechanical issue, or other (explain)). (This request is intended to capture every instance during the reporting week in which a loaded or empty train is held at a location on the reporting railroad's system short of its destination or scheduled interchange for longer than six consecutive hours. For example, if, during a reporting week, a coal unit train originating from the Powder River Basin, and scheduled to be interchanged in St. Louis were held for six consecutive hours in Nebraska due to crew unavailability and held again for nine consecutive hours in Iowa due to track

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- maintenance, during the same reporting week, then this train would be reported twice in the weekly report to the STB (once for “crew” and once for “track maintenance”).)
6. The daily average number of loaded and empty cars, operating in normal movement and billed to an origin or destination, which have not moved in (a) more than 120 hours; and (b) more than 48 hours, but less than or equal to 120 hours, sorted by service type (intermodal, grain, coal, crude oil, automotive, ethanol, or all other). In order to derive the daily averages for the reporting week, carriers are requested to run a same-time snapshot each day of the reporting week, capturing cars within each category. The number of cars captured on the daily snapshot for each category should be added, and then divided by the number of days in the reporting week (typically seven days). In deriving this data, carriers should include cars in normal service anywhere on their system, but should not include cars placed at a customer facility; in constructive placement; placed for interchange to another carrier; in bad order status; in storage; or operating in railroad service (e.g., ballast).
 7. The weekly total number of grain cars loaded and billed, reported by State, aggregated for the following Standard Transportation Commodity Codes (STCCs): 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). “Total grain cars loaded and billed” includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and, private cars. Additionally, separately report the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars.
 8. For the aggregated STCCs in Item 7, report by State the following:
 - a. the total number of overdue car orders (a car order equals one car; overdue means not delivered within the delivery window);
 - b. average number of days late for all overdue grain car orders;
 - c. the total number of new orders received during the past week;
 - d. the total number of orders filled during the past week; and
 - e. the number of orders cancelled, respectively, by shipper and railroad during the past week.
 9. Weekly total coal unit train loadings or car loadings for the reporting week by coal production region.
- (b) The Class I railroads operating at the Chicago gateway (or AAR on behalf of the Class I railroads operating at the Chicago gateway) must jointly report the following performance data elements for the reporting week:
1. Average daily car volume in the following Chicago area yards: Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and
 2. Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week. The average daily number should be derived by taking a same time snapshot each day of the reporting week, capturing the trains held for each railroad at that time, and then adding those snapshots together and dividing by the days in the reporting week. (For purposes of this request, “held for delivery” refers to a train staged by the delivering railroad short of its

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scheduled arrival at the Chicago gateway at the request of the receiving railroad, and that has missed its scheduled window for arrival.)

(Note: If Chicago terminal yards not identified in Item (b)(1), above, are included in the Chicago Transportation Coordination Office's (CTCO) assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in Item (b)(1) shall also be reported for those yards.)

- (c) The Class I railroad members of the CTCO (or one Class I railroad member of the CTCO designated to file on behalf of all Class I railroad members, or AAR) must:
 - 1. File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status.
 - 2. If the CTCO revises its protocol of service contingency measures, file with the Board a detailed explanation of the new protocol, including both triggers and countermeasures, within seven days of its adoption.
- (d) On a quarterly basis, each Class I railroad must report all work-in-progress, major rail infrastructure projects, including location by State, planned completion date for each project, percentage complete for each project at the time of reporting, and project description and purpose. For purposes of this request, "work-in-progress" refers to projects for which ground-breaking has taken place; "major" refers to projects whose budget equals or exceeds \$25 million over the life of the project; and "rail infrastructure" refers to network capacity expansion or enhancement, excluding maintenance-of-way. The data must be reported to the Board between 9AM and 5PM Eastern Time on the first Tuesday of each quarter. In the event that the first Tuesday of a quarter is a Federal holiday or falls on a day when STB offices are closed for any other reason, then the data should be reported on the next business day when the offices are open.

Appendix B

The additional information below is included to assist those who may wish to submit comments pertinent to review under the Paperwork Reduction Act:

DESCRIPTION OF COLLECTION

Title: Rail Service Data Collection.

OMB Control Number: 2140-XXXX.

STB Form Number: None.

Type of Review: New collection.

Respondents: Class I railroads (on behalf of themselves and the Chicago Transportation Coordination Office (“CTCO”).

Number of Respondents: Seven.

Estimated Time per Response: The proposed rules seek three related responses, as indicated in the table below.

Table – Estimated Time per Response

<u>Type of Responses</u>	<u>Estimated Time per Response</u>
Weekly	3 hours
Quarterly	3 hours
On occasion	3 hours

Frequency: The frequencies of the three related collections sought under the proposed rules are set forth in the table below.

Table – Frequency of Responses

<u>Type of Responses</u>	<u>Frequency of Responses</u>
Weekly	52/year
Quarterly	4/year
On occasion	2/year

Total Burden Hours (annually including all respondents): The recurring burden hours are estimated to be no more than 1,182 hours per year, as derived in the table below. In addition, there are some one-time, start-up costs of approximately 2 hours for each respondent filing a

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quarterly report that must be added to the first year's total burden hours. To avoid inflating the estimated total annual hourly burden, the two-hour start-up burden has been divided by three and spread over the three-year approval period. Thus, the total annual burden hours for each of the three years are estimated at no more than 1,186.67 hours per year.

Table – Total Burden Hours (per Year)

<u>Type of Responses</u>	<u>Number of Respondents</u>	<u>Estimated Time per Response</u>	<u>Frequency of Responses</u>	<u>Total Yearly Burden Hours</u>
Weekly	7	3 hours	52/year	1,092 hours
Quarterly	7	3 hours	4/year	84 hours
On occasion	1	3 hours	2/year	6 hours
Total				1,182 hours

Total "Non-hour Burden" Cost: None identified. Reports will be submitted electronically to the Board.

Needs and Uses: The new information collections would allow the Board to better understand current service issues and potentially to identify and resolve possible future regional and national service disruptions more quickly. Transparency would also benefit rail shippers and stakeholders, by allowing them to better plan operations and make informed business decisions based on publicly-available real-time data, and their own analysis of performance trends over time.

Retention Period: Information in this report will be maintained in the Board's files for 10 years, after which it is transferred to the National Archives.



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January 29, 2015

237647

The Honorable Debra Miller, Chairman
The Honorable Ann Begeman, Vice Chairman
United States Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423

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Office of Proceedings
January 29, 2015
Part of
Public Record

Dear Members of the Board:

I write in response to the Board's December 30, 2014 order in Ex Parte No. 724, *United States Rail Service Issues* relating to BNSF's contingency plans around addressing critical coal shortfalls experienced by BNSF shippers.

Overview

As we enter the first quarter of 2015, BNSF maintains our focus on providing consistent and reliable service to our coal customers and delivering as much coal as possible into the marketplace. We continue in our efforts to maximize velocity across our network, and we have seen improvements in key performance areas like network fluidity. The most effective way to address coal stockpile fluctuations is to improve velocity across our network to a level where we are no longer managing resources to respond to critical situations. While we have seen the recent improvements in network fluidity benefit our coal customers in terms of rising stockpiles, we also continue in the immediate term to work with our coal customers to identify critical stockpile situations and to implement appropriate responsive measures.

The Board's December 30, 2014 order in the above-captioned service proceeding directed BNSF to provide a detailed description of the contingency plans that BNSF would use to mitigate critical shortfalls of coal. In this letter, I describe in more detail the various elements of BNSF's "coal customer escalation process," an existing process that BNSF has utilized to address potential concerns arising from recent service issues in coal transportation. These efforts include a process for identifying customers experiencing critical stockpile levels and various tools that BNSF has available to address critical situations. Measures that BNSF would take in the future to deal with critical coal stockpile shortages would be an outgrowth of BNSF's existing process modified to account for the specific circumstances of individual shippers.

These contingency measures are extraordinary and costly, but they have also been effective in dealing with problems that have previously arisen. BNSF has demonstrated its ability to implement measures to effectively mitigate critical stockpile situations. As shown in Attachment A, as of January 23, 2015, BNSF has been able to add coal representing 440 days of coal burn to the coal stockpiles of customers identified as having critical stockpile shortages through the processes described here. As a result of the steady improvements that have been seen, BNSF does not believe it is necessary to consider more wide-ranging changes in regulation to address the present service situation.



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In describing BNSF's contingency planning, it is important to note at the outset that there is no one-size-fits-all, pre-prescribed formula of responsive measures for every critical stockpile situation. On the contrary, when a critical coal situation at a particular plant is identified, BNSF teams review the specific circumstances, including contributing factors, and determine which responsive actions will be most effective and appropriate to address the situation while maintaining overall network fluidity. As explained in more detail below, such actions may include heightened operational focus, equipment reallocation (including both trainsets and locomotives), increased crew coverage, rerouting, and/or gateway modifications.

It may be necessary or appropriate for BNSF to activate a subset (or even just one) of these countermeasures in response to a specific critical stockpile situation. As explained in more detail below, there are a number of factors that can contribute to diminishing stockpiles, including circumstances unrelated to railroad performance. These factors can greatly impact whether responsive countermeasures adopted by BNSF will be fully effective. Frequent communication with our customers is an absolute necessity to diagnose critical situations, and to understand the driving factors and appropriate countermeasures. Moreover, the effectiveness and appropriateness of countermeasures can change over time even for a particular customer. For that reason, it is of critical importance that BNSF have the flexibility to adjust service recovery efforts as network conditions and the circumstances of individual shippers evolve. Constant change is a core characteristic of our operating environment, but even in that context we have also seen short-term flux in the demand profile of our customers. Strict adherence to pre-formulated measures could seriously impair BNSF's ability to respond to the needs of individual shippers experiencing critical shortages and be detrimental to our overall network performance.

Finally, the measures I describe here have been designed to address the specific concerns that arose over the course of the last year for our coal shippers as a result of service difficulties on BNSF's network. This process for addressing critical stockpile shortfalls is not very different from the contingency measures railroads implement in response to temporary service disruptions like flooding or a major derailment. We expect that a return to consistent performance will also mean a return to normal operational and resource planning for consistent, ratable service that supports the annual demand of our utility customers.

BNSF's Process for Identifying Coal Plants with Critical Stockpile Challenges

As the Board knows, BNSF talks regularly with our customers and, with the onset of the service challenges in 2013, we built into those conversations a discussion about our customers' stockpile levels. The first step in managing an emerging critical situation is to identify situations where responsive action might be necessary. BNSF's current coal customer escalation process starts with the information our customers provide BNSF assessing the stockpile levels at the individual coal generating facilities we serve; these assessments specifically focus on "days of burn," which is an estimate of the number of days a stockpile of coal should last based on historic consumption patterns at the plant. Days of burn appears to be the key measure that utilities use in their own industry to provide forward-looking estimates of demand.



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It is important to remember that BNSF has no direct visibility into our customers' stockpile levels. We rely entirely on our customers to provide timely and accurate information about their respective stockpiles. While the days of burn information we receive from our customers is a necessary element in our coal customer escalation process, it is an imperfect reference point even for short-term management of critical supply situations. Some customers provide stockpile information to BNSF more regularly than others. It also appears that utilities may have different methodologies for judging days of burn, and BNSF is not in a position to reconcile those differences. In addition, while rare, some utilities may seek to use the stockpile information they provide as an opportunity to secure preferential treatment or as a backdoor way to influence rail service – not to address critical stockpile shortages related to railroad service, but to respond to the utility's changing short-term demand profile (e.g., managing the coal burn in response to the rise and fall of gas prices). These same challenges make reliance on days of burn information from our customers a necessary part of our contingency planning but unworkable as a long-term tool for planning service and capacity under normal operating conditions.

BNSF's Process for Distributing Information about Critical Stockpile Situations

The second element in BNSF's contingency planning for critical stockpile shortfalls is a process for making sure that the information about critical stockpile levels is distributed to BNSF personnel that can act to address the situation. As detailed above, BNSF relies on customers to provide information about the level of coal stockpiles at their generating stations. BNSF's contingency planning involves several measures for notifying relevant personnel that special action may need to be taken in particular cases.

- When we receive information indicating that a customer stockpile is at or below 20 days, we internally designate that customer as "critical." We also specifically flag customers within that "critical" group that are experiencing single digit stockpile levels (meaning below 10 days of burn). As network service improvements result in general stockpile increases, we have seen fewer instances of burn levels hitting less than 10 days; as a result, we can adjust our efforts to focus mitigation measures and accelerate recovery for facilities at or below 20 days.
- On a going forward basis, all critical coal customers are identified in our internal daily "critical customer" broadcast communication which goes out to key operating personnel in BNSF's Fort Worth headquarters and in the field. That customer list is incorporated into the many regional and division communications that are continually distributed to the field operating teams. These teams have key responsibilities in creating and modifying trip plans for the cars and trains moving across our system.
- When a coal customer does notify BNSF that it has less than 10 days' worth of coal in its stockpile, in addition to being included on the critical customer list, there is a separate report that is generated twice a day by service design personnel manning the Coal Desk (with responsibilities for coordinating coal moves across the network and managing trainset levels) that is circulated to the same Fort Worth and field operating teams discussed above. The report identifies the physical location of each train set moving coal to that utility, as well as the current disposition



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of each train, and it provides a snapshot of the arrival pipeline of trains for the next 3 days. These communications are also provided to company leaders in all functional areas.

- We also provide the Board's staff with updates on the customers who have plants on this critical list on our weekly service call with the Board's Office of Public Assistance, Governmental Affairs, and Compliance.
- A customer's plant will be included in the critical customer communications described above until it is no longer in critical status (i.e., its stockpile levels are above 20 days).

Operational Measures Available to Address Critical Stockpile Situations

Inclusion of a coal utility on the critical customer list and the additional reporting about utilities with less than 10 days' worth of coal in their stockpiles creates visibility and focus at multiple levels within the BNSF operations groups responsible for designing and implementing service plans. Once a critical customer situation is identified, a range of operating decisions that are tied directly to existing network conditions and the specific circumstances of the customer can be made to enhance deliveries of coal. It is not possible or practicable to prescribe a set of rules or procedures to be followed. In many cases, the measures necessary to improve service involve modest changes to train schedules or maintenance plans that are based on existing operating conditions. In addition to these particular operating adjustments that can be taken to address the circumstances of individual shippers with critical stockpile concerns, several types of short-term and longer-term measures are available to address critical stockpile situations, as discussed below.

- Trainsets
 - BNSF can also adjust the number of trainsets in service to maximize velocity and coal deliveries. In a prior submission to the Board, BNSF described a recent effort to strategically remove trainsets from service to decongest the system and improve velocity. Under appropriate circumstances, this strategy can be used to improve service on particular corridors or routes.
 - One important lever available to address critical stockpile needs is to adjust the number of unit trains in service to customers on the critical list in the short term to create additional throughput. Such increases, however, must be managed in the context of the overall network and the specific corridors crossed in the route of movement, as adding trainsets can sometimes result in reduced velocity. Similar to a highway where adding more cars leads to more congestion, an increased number of sets running on the key coal corridors can result in lower velocity and less overall coal being delivered if not properly managed.
 - Because of the direct connection between the number of coal trainsets in service and overall coal velocity, adding trainsets to serve a plant on the critical list usually works best when those trainsets are borrowed from service to another plant for the same customer, thereby increasing the overall number of loaded trainsets directed towards the critical plant without



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increasing the overall number of coal sets trying to move across the system. BNSF's Coal Desk is in constant communication with utility customers to ensure that we are getting optimal use out a customer's trainsets, and in many cases can adjust trip plans for trainsets within a customer's dedicated fleet in real time.

- Making use of a customer's existing fleet is often necessary because incremental trainsets may not be available from the customer or from the railroad. In some limited instances, sets can be leased for short periods from other utilities or third-party lessors.
- Locomotives
 - BNSF may be able to adjust the allocation of locomotive resources across the network in response to localized increases in the number of trains holding for power. Yard personnel can manage available locomotives to ensure that locomotives are available for delivery of coal to critical customers.
 - Such measures may involve moving locomotives supporting one business unit into another business unit on a temporary basis. This is most effective and least disruptive when extra locomotives can be secured from business units experiencing seasonal reductions in demand.
 - While purchases of new locomotives requires significant lead time, on some limited occasions, BNSF may have the opportunity to enter into short-term locomotive leases. In 2014, in addition to these short-term temporary leases, BNSF entered into long-term leases for approximately 100 locomotives, in addition to purchasing more than 500 new locomotives.
- Route and Gateway Adjustments
 - BNSF implemented temporary rerouting of traffic at various times in 2014 to avoid congested corridors or yards, maintenance and other service disruptions. Rerouting of significant traffic volumes must be carefully reviewed because of potential negative impacts to service for other business segments and overall network fluidity.
 - In a limited number of cases, BNSF has been able to work with connecting carriers to adjust operational interchanges in order to avoid congested facilities and interchange joint traffic using alternative facilities where it will increase throughput and allow for more consistent service planning.
 - In limited circumstances where a utility can receive tons by another mode (e.g., barge or truck) or can be served directly by another rail carrier using independent facilities, BNSF has accommodated such customer requests.
 - Gateway changes may require BNSF to loosen contractual restrictions. Moreover, the circumstances must be closely reviewed to determine that throughput can be improved without a negative impact to the overall network.



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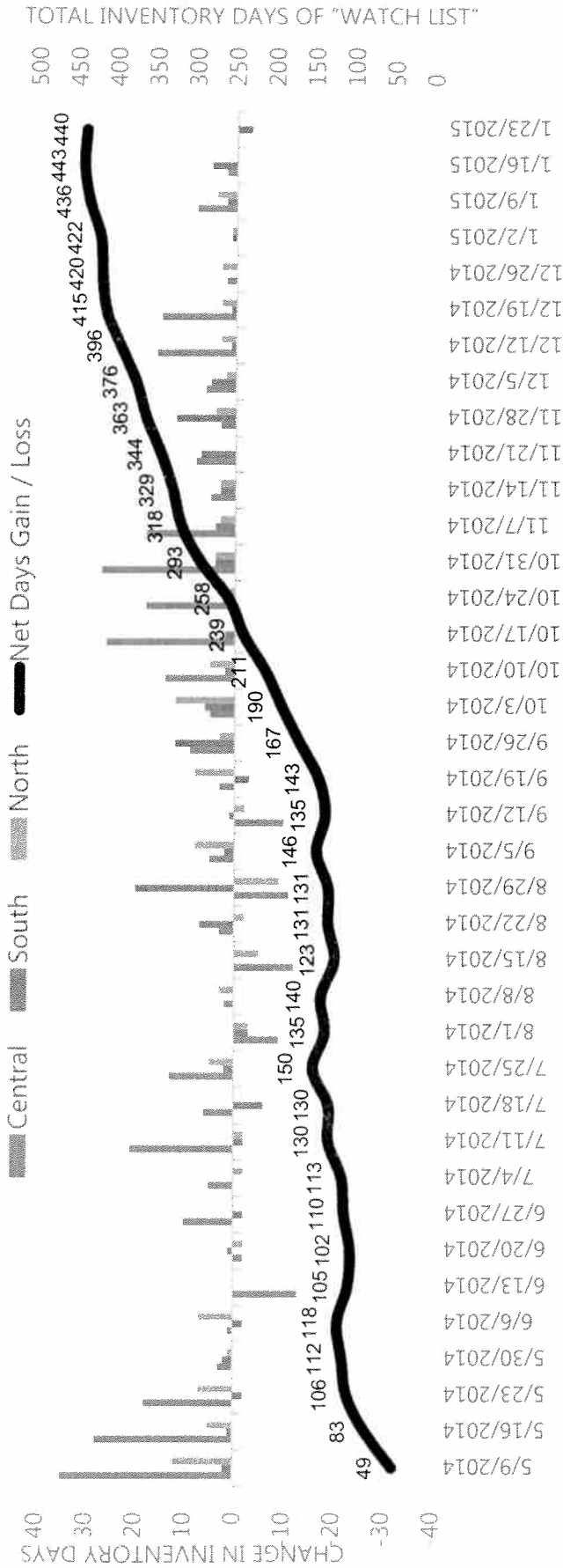
- Maintenance Planning
 - There may be options for minimizing the immediate impact of maintenance windows on shipments to utilities experiencing critical stockpile shortfalls, and that is often done through the operational focus created by the critical customer list and rerouting described above. There are obvious drawbacks to more extreme measures such as delaying essential maintenance and expansion on key coal routes in order to minimize service disruptions.
- Crew Management
 - Personnel adjustments can also be made over the longer term to address service issues. In 2014, BNSF demonstrated its ability to hire into key operating positions on a large scale, hiring and training 3,649 Train, Yard and Engine new employees and 2,779 Engineering and Mechanical new employees throughout the calendar year.
 - In addition, BNSF has some ability to move crews and other operating personnel around the network to mitigate shortages in key terminals. Generally speaking, temporary relocations can be accomplished in less than a month under our current labor agreements, which is significantly quicker than the four to five months it can take to hire and train new employees.

Additional Longer-Term Measures to Address Service Problems

- Infrastructure: In addition to the operational measures described above, BNSF has implemented and continues to implement longer-term measures to address service difficulties in coal transportation. BNSF has detailed in other submissions the large capital investment being made to support the coal network and to improve coal service. A number of key projects have or will come online in 2014 and 2015 and we are seeing the operational benefits from those investments. Included in our \$6 billion capital plan for 2015 are two multi-million dollar double track projects on the Ravenna sub that have been undertaken to address the need to move significant coal volumes in the short term. In general though, given the long timeline associated with most infrastructure projects there is limited ability to use infrastructure investments to alleviate short-term critical service situations. Thus, infrastructure investment is a much more long-term strategy for addressing coal service issues.
- Winter Preparedness: As detailed in other submissions to the Board, BNSF has implemented enhanced Winter Action Plans for each division, which include division-specific processes for identifying and responding to emergency conditions. BNSF has also added a number of resources to address service disruptions resulting from weather events, including equipment improvements, rapid response recovery teams (six of which are strategically positioned coal-critical across the Northern region), and increased numbers of maintenance of way employees.

Coal Stockpiles

CRITICAL COAL STOCKPILE CUSTOMERS NET INVENTORY DAYS GAIN / LOSS



Source: BNSF Internal Data, through Jan. 23, 2015. "Watch List" customers are defined as under 20 days of stockpile as self-reported.

BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES –)
PERFORMANCE DATA REPORTING)

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

**OPENING JOINT COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
AND
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

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BEFORE THE
SURFACE TRANSPORTATION BOARD

UNITED STATES RAIL SERVICE ISSUES –)	Docket No. EP 724 (Sub-No. 4)
PERFORMANCE DATA REPORTING)	
)	
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**OPENING JOINT COMMENTS OF
THE WESTERN COAL TRAFFIC LEAGUE,
AMERICAN PUBLIC POWER ASSOCIATION,
NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,
AND
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION**

Western Coal Traffic League (“WCTL”), American Public Power Association (“APPA”), National Association of Regulatory Utility Commissioners (“NARUC”), and National Rural Electric Cooperative Association (“NRECA”) (collectively “Coal Shippers/NARUC”) hereby submit their Opening Joint Comments in accordance with the Board’s order served December 30, 2014 in this Notice of Proposed Rulemaking (“NPRM”) proceeding.

BACKGROUND

The importance of reliable rail service to electric utilities, the agricultural community, other rail shippers, and the public was once again demonstrated in 2013 and 2014. The breakdown in rail service by some of the nation’s largest rail carriers during this period had a profound impact on utilities, businesses and communities across the United States and especially in the Midwest, Texas, and the Southwest. Many utilities experienced severe coal shortages that forced the idling or curtailing of coal electric generating units, which resulted in utilities and their ratepayers, members and citizens

incurring millions of dollars in costs for the purchase of replacement fuel and/or power. While the railroads were publicly apologetic, they took no financial responsibility for their service failures and even resisted requests for service plans and service reporting data that were urged by shippers.

The STB held two public hearings in 2014 to address the severe service deficiencies experienced by so many rail shippers, including coal shippers. Through those hearings and public comments filed throughout 2014, it became apparent that the STB lacked in-depth data into the performance of the railroads under its jurisdiction because the Board did not collect any service-related metrics and was, instead, reliant on limited industry data disseminated by the Association of American Railroads (“AAR”). WCTL’s members and many other shippers urged the Board to require the railroads to report important service-related metrics to the Board and the public on a regular basis. On June 20, 2014, the Board ordered CP and BNSF to provide certain grain shipment data.¹ However, after the second public hearing, the Board ordered, on October 8, 2014, that all the Class I railroads report a broader spectrum of data on a weekly basis, and the Board, with this proceeding, proposes to make the October 8, 2014 order permanent with certain modifications.²

Coal Shippers/NARUC support the Board’s efforts. However, Coal Shippers/NARUC submit that certain crucial data, such as cycle times in key corridors, is

¹ The Board had required certain grain service-related reports. *U.S. Rail Serv. Issues—Grain*, Docket No. EP 724 (Sub-No. 2) (STB served June 20, 2014).

² *U.S. Rail Serv. Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3) (STB served Oct. 8, 2014) (“*Interim Data Order*”).

absent from the Board's proposal, and, herein, Coal Shippers/NARUC detail the additional rail performance data that the Board should collect as well as modifications the Board should make to the current proposal.

IDENTITY AND INTEREST³

WCTL is a voluntary association, whose membership is comprised exclusively of organizations that purchase and ship coal from origins west of the Mississippi River. WCTL members collectively consume more than 150 million tons of coal annually that is moved by rail. Its members include investor-owned electric utilities, electric cooperatives, state power authorities, municipalities, and a non-profit fuel supply cooperative.

APPA is the national service organization representing the interests of over 2,000 municipal and other state- and locally-owned electric utilities in 49 states (all but Hawaii). Collectively, public power utilities deliver electricity to one of every seven electric consumers (approximately 48 million people), serving some of the nation's largest cities, but also many of its smallest towns. Over 40% of the power generated by public power utilities is from coal.

NARUC is the national organization of State commissions responsible for economic and safety regulation of utilities. NARUC members in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands have the obligation under State law to ensure the establishment and maintenance of such energy utility services as may

³ Coal Shippers/NARUC previously participated in *United States Rail Service Issues*, Docket No. EP 724. However, in the interest of full disclosure, the identity and interest of each of participant in these comments is detailed herein.

be required by the public convenience and necessity, as well as ensuring such services are provided at just and reasonable rates. NARUC is consistently recognized by Congress, the Courts, and a host of federal agencies (including the Federal Energy Regulatory Commission), as the proper entity to represent the collective interests of State utility commissions.

NRECA is the national service organization for more than 900 not-for-profit rural electric utilities that provide electric energy to approximately 42 million consumers in 47 states or 13% of the nation's population. Kilowatt-hour sales by rural electric cooperatives account for approximately 11% of all electric energy sold in the United States. NRECA members generate approximately 50% of the electric energy they sell and purchase the remaining 50% from non-NRECA members. The vast majority of NRECA members are not-for profit, consumer-owned cooperatives. NRECA's members also include approximately 65 generation and transmission ("G&T") cooperatives, which generate and transmit power to 668 of the 841 distribution cooperatives. The G&Ts are owned by the distribution cooperatives they serve. Remaining distribution cooperatives receive power directly from other generation sources within the electric utility sector. Both distribution and G&T cooperatives were formed to provide reliable electric service to their owner-members at the lowest reasonable cost.

COMMENTS

I. The Need for STB Oversight of Railroad Performance

The past 20 months have provided a clear and irrefutable demonstration that the Board must require the Class I railroads to regularly provide service metrics to

the Board and the public. As the service challenges facing many railroads became acute, the public and the Board had only a limited amount of data available, mostly metrics published by the AAR, namely cars online; trains speeds; train speeds by train type; and terminal dwell time. Some shippers also provided data on their specific service problems. This limited set of data severely hampered evaluation of the service problems, and the lack of data collection also allowed the crisis to build without forewarning the Board.

Coal Shippers/NARUC note that it is common in the utility industry to collect a wide variety of data to ascertain the ability of utilities to provide reliable electric service at a reasonable cost. Given the significant regulatory protection afforded to the rail industry, it is incumbent on the Board to ensure the railroads meet the needs of the shipping public – many of whom are captive to railroads.

As the Board is charged with regulating the service of a transportation mode that is vital to our nation's economy, relying on the AAR's limited data – that could be discontinued at any time⁴ – is untenable. In addition, transparency of railroad performance is important. The AAR data are not subject to independent verification. The railroads have complete discretion to disclose, or not disclose, whatever data they

⁴ The AAR is responsive to its members and not the shipping public. The performance data provided by the AAR could be discontinued at any time leaving all stakeholders in the dark if the Board does not otherwise act. Already, some pertinent data has disappeared from certain railroad publications. For example, BNSF used to publish data in its online employee newsletter detailing its performance in certain categories (*e.g.*, coal car miles per day (plan vs. goal)), but it ceased publishing such data in 2014.

choose through the AAR.⁵ The Board's adoption of reporting requirements will hopefully bring not only more critical information to light, but improve the way it is reported through specific standards that the railroads must meet. Coal Shippers/NARUC are, therefore, relieved that the Board has decided to formally require regular service metric reporting from the Class I railroads.

II. The Board's Proposed Regulations

The Board's service metric reporting NPRM covers nine (9) categories of service metrics:

1. System average train speed by train type;
2. Weekly average terminal dwell time for the reporting carrier's system and its 10 largest terminals;
3. Total cars on line by car type;
4. Weekly average unit train dwell time at origin and interchange by train type;
5. Weekly number of trains held short of destination or interchange for longer than six (6) hours, organized by train type and reason;
6. Weekly number of empty and loaded cars that have not moved for more than (i) 48 hours but less than or equal to 120 hours or (ii) more than 120 hours by commodity;
7. Weekly number of grain cars loaded and billed, broken down by certain STCC number;
8. For cars identified in item No. 7, additional details by state; and

⁵ The railroads resisted providing more data during 2014 as well. Coal Shippers/NARUC note that increased secrecy has been a hallmark of recent actions by some railroads. For example, BNSF has moved all of its generally applicable tariff publications into a section of its website that is not publicly accessible – even the tariff publication that covers its mileage-based fuel surcharge, which is at issue, *inter alia*, in *Rail Fuel Surcharges (Safe Harbor)*, Docket No. EP 661 (Sub-No. 2).

9. Weekly coal unit train or coal car loadings.⁶

The Board's proposal tracks its *Interim Data Order* except it makes certain modifications that Coal Shippers/NARUC assert are important to better understanding the level of service provided by the railroads and identifying certain choke points that may be hindering carrier performance. Coal Shippers/NARUC also support the Board's addition of a quarterly reporting requirement on major rail infrastructure projects. *U.S. Rail Serv. Issues—Performance Data Collection*, Docket No. EP 724 (Sub-No. 4), slip op. at 13 (STB served Dec. 30, 2014) ("*NPRM*"). However, the Board's proposal also weakens certain reporting requirements from the *Interim Data Order* that should be retained.

A. Weekly Average Dwell Time and Major Interchanges

For Item No. 4, weekly average dwell time, the Board's *Interim Data Order* only applied to dwell time experienced at origin. *NPRM*, slip op. at 5. The Board's revised proposal in this proceeding correctly adds dwell time at interchange locations to the reporting requirements. *Id.*

As the Board is aware, dwell time at interchange is a potentially critical bottleneck. Major interchange locations such as Chicago and Kansas City can be a considerable source of frustration to many shippers as their trains arrive in these busy hubs and then sit, sometimes for days, awaiting a pickup or a delivery to a receiving carrier. And while a shipper can usually track its own cargo, insight into average dwell times will help shippers better understand and plan for long (or short) dwell times.

⁶ The Board has also proposed certain reporting requirements for the Class I railroads operating in Chicago, which Coal Shippers/NARUC support. *NPRM*, slip op. at 12-13.

Major terminals are not the only places where interchange times can be long. For example, Wisconsin Public Service Corporation (a WCTL member) testified to the Board, at its September 4, 2014 hearing in Fargo, ND, about an increase in cycle times on a joint Union Pacific Railroad (“UP”) and Canadian National Railway coal movement where some of that cycle time increase was attributable to increased interchange time in Wisconsin Rapids.

Coal Shippers/NARUC, therefore, urge the Board to retain the reporting of interchange times in its final regulations.

The Board should, however, modify its proposed regulations to require the carriers to report interchange dwell times at each of their 10 largest interchange locations in addition to system-wide dwell times the proposal currently requires. This reporting requirement would track the Board’s proposal in Item No. 2, which requires the reporting of terminal dwell times at the 10 largest terminals for each carrier. In addition, for unit coal trains, where many shippers own and supply their own equipment, the Board should require the carriers to report average dwell times at individual interchanges for empty coal unit trains.

B. Trains Held Short

The Board’s NPRM requires that the carriers report the cause for trains that are held short of destination or interchange for more than six consecutive hours. *Id.*, slip op. at 11-12. Coal Shippers/NARUC support this requirement and its inclusion in the final regulations. However, Coal Shippers/NARUC note that the cause “other (explain)” is frustratingly vague. *Id.*, slip op. at 11. Indeed, a review of the weekly service reports

that UP and BNSF have filed since the *Interim Data Order* indicate that they have done little to break out the causes. For example, BNSF has simply used “Road, Terminal, Other” and UP has used “Customer, Foreign Road, Incidents/Weather, Other.”⁷

Such generic explanations – particularly “other” in a category already labeled “other” – are not especially instructive. Compounding the problem, the “other” category represents a large portion of the causes for trains being held short. Thus, Coal Shippers/NARUC urge the Board to either clarify the regulations by requiring more detailed breakdowns within the “other” category, or create more categories, such as “Foreign Road” and “Weather.”

C. Weekly Coal Unit Train Loadings

The Board’s NPRM proposes to require the railroads to report total coal unit train or car loadings for the reporting week by coal production region. The Board’s proposal unnecessarily undermines the *Interim Data Order*, which required that the railroads report the number of unit train loadings versus plan for the week. *Id.*, slip op. at 4. The Board’s revision in the NPRM makes the service metric far less informative because it would be difficult to determine if the railroads are keeping up with demand in general or even their own loading plans. BNSF, CSX Transportation (“CSXT”), and Norfolk Southern Railway (“NS”) have all been reporting this metric since October.⁸

⁷ See, e.g., BNSF’s and UP’s Weekly Service Reports filed Nov. 26, 2014 and Feb. 18, 2015.

⁸ See BNSF, NS, and CSXT weekly service reports filed in *U.S. Rail Serv. Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3).

Only UP objected to providing this data, arguing that reporting this data somehow violated its confidentiality obligations to shippers.⁹ UP's argument is a red herring. All of the data is aggregated, and no shipper-specific information is implicated. Thus, Coal Shippers/NARUC urge the Board to retain the requirement that the coal loadings be reported versus the plan for the reporting week.

D. Quarterly Reporting on the Progress of Major Rail Infrastructure Projects

The Board's proposal requires that the Class I railroads report the progress and purpose of major rail infrastructure projects exceeding \$25 million. *See, NPRM*, slip op. at 13. Coal Shippers/NARUC support this reporting requirement. The Class I railroads regularly laud their capital spending plans, but it is often difficult to determine the degree to which such work actually expands or enhances the capacity of the railroads. In addition, Coal Shippers/NARUC urge the Board to review such data with an eye towards whether the railroads' investments are sufficient to meet their common carrier obligations in the long term.¹⁰

III. Coal Shippers/NARUC Proposed Additional Data Collection

WCTL, through its testimony and written submissions to the Board, emphasized the need for the Board to collect certain information that is critical to its

⁹ See Letter of Louise A. Rinn (UP), *U.S. Rail Serv. Issues—Data Collection*, Docket No. EP 724 (Sub-No. 3) (filed Oct. 22, 2014).

¹⁰ The Board's proposed service metric data can also aid in determining whether carriers are able to meet their common carrier obligations.

members and coal shippers in general.¹¹ The Board's *Interim Data Order* and its NPRM do include, in part, some of the metrics identified by WCTL, including: (i) actual number of coal cars loaded; (ii) limitation on crews for coal trains (only partially captured in the trains holding metric); and (iii) shortages in locomotive power (only partially captured in the trains holding metric). *NPRM*, slip op. at 11-12. However, Coal Shippers/NARUC are concerned that the proposed regulations continue to omit important information that coal shippers rely on and which aid in understanding the railroads' coal shipment performance.

Before turning to the specific data the Board should collect, Coal Shippers/NARUC note that detailed reporting for coal trains is vital. The Federal Energy Regulatory Commission ("FERC"), NARUC and others have expressed concerns that the consistent supply of coal via rail is critical to the reliability of the electric grid.¹² Indeed, the Board itself has recognized its critical nature:

¹¹ See Letter from Bette Whalen, WCTL President, to Hon. Daniel R. Elliott III, STB Chairman (Mar. 14, 2014); *Petition of the Western Coal Traffic League to Institute a Proceeding to Address the Adequacy of Coal Transportation Service Originating in the Western United States*, Docket No. EP 723 (filed Mar. 24, 2014); Testimony of David McMillan (Allete) and Bob Kahn (TMPA) on behalf of WCTL, Allete and TMPA, *U.S. Rail Serv. Issues*, Docket No. EP 724 (filed Apr. 17, 2014); Testimony of Dave Wanner on behalf of WCTL and WPS, *U.S. Rail Serv. Issues*, Docket No. EP 724 (filed Sept. 5, 2014); *Petition of the Western Coal Traffic League for an Order Requiring BNSF Railway Company to Submit a Coal Service Recovery Plan*, *U.S. Rail Serv. Issues*, Docket No. EP 724 (filed Oct. 22, 2014).

¹² See FERC Meeting Agenda Item, Docket No. AD15-3-000, *Discussion on Coal Delivery* (Dec. 18, 2014); FERC Commission Meeting, Oct. 16, 2014, available at http://ferc.capitolconnection.org/101614/fercarchive_flv.htm (Commissioner Moeller speaking at minute 40); Letter of NARUC, APPA, EEI and NRECA, *U.S. Rail Serv. Issues—Data Collection*, Docket No. 724 (Sub-No. 3) (filed Oct. 31, 2014).

The Board views the reliability of the nation's energy supply as crucial to this nation's economic and national security, and the transportation by rail of coal and other energy resources as a vital link in the energy supply chain.¹³

In addition, coal shipments are, by volume, the single largest commodity handled by the nation's Class I railroads.¹⁴ The Board's proposal must better reflect the outsized impact that coal train service has on the railroads, coal shippers, and the public.¹⁵

Coal Shippers/NARUC propose that the Board's final regulations include the following coal-specific service metrics:

1. Weekly average cycle times for coal trains over any portion of the carrier's ten (10) most frequently used coal train corridors (e.g., Powder River Basin ("PRB") mines to Kansas City);
2. The weekly average number of coal trainsets in service broken down between shipper-supplied (private trainsets) and carrier-supplied trains sets;
3. Any restriction on the utilization of shipper-provided equipment in coal service;
4. General restrictions on the availability of crews for coal service; and
5. General restrictions on the availability of locomotives for coal service.

Item No. 1 is vital to coal shippers. The railroads, such as BNSF and UP, have key coal corridors. Understanding how coal trains are moving through those corridors is vital to all the stakeholders in understanding how the railroads are

¹³ See *Establishment of a Rail Energy Transportation Advisory Committee*, Docket No. EP 670, slip op. at 2 (STB served July 17, 2007).

¹⁴ See, e.g., Presentation of the AAR, slide 4, available at <http://onlinepubs.trb.org/onlinepubs/railtransreg/Gray031414.pdf> (coal represented 40% (727 million ton out of 1.8 billion tons) of the freight handled by the Class I railroads in 2012). See also <https://www.aar.org/Documents/Railroad-Statistics.pdf>.

¹⁵ Coal Shippers/NARUC note that the Board's proposal provides for detailed reporting by state for a number of grain-related service metrics. Implementing additional reporting for coal is also warranted.

performing. For example, if a railroad is struggling to reach Chicago, but is having no trouble reaching Fort Worth, attention from customers and the Board can be paid to the problem areas. In addition, coal shippers track their individual cycle times very carefully, but it is often difficult to determine if service issues are isolated or widespread. Cycle time reporting by corridor can help pinpoint isolated versus widespread problems. In addition, coal train cycle time issues identified over a specific corridor can provide insight into service difficulties that other commodities sharing that corridor may face. This information will assist the Board in evaluating whether service and resources are being allocated fairly and efficiently, and whether the carriers are able to meet their common carrier obligations.

Item Nos. 2 and 3 reflect the importance of sets in service and restrictions thereto when evaluating coal service. For example, a reduction in sets in service coupled with increased train speeds and cycle times may indicate that the railroad is performing well and less equipment will be needed. Conversely, a reduction in trainsets, coupled with decreases in train speeds and cycle times may suggest a railroad is parking sets and that a decline in coal deliveries is imminent.

Item Nos. 4 and 5 would aid in determining whether there are systemic crew or locomotive shortages for coal trains service. While the trains holding reporting requirement in the NPRM does identify crews and locomotives as possible causes for six (6) hours or longer delays, item Nos. 4 and 5 would focus on overall shortages. For example, if there are crew or locomotive shortages due to diversions to other service, such information is vital to impacted coal shippers.

CONCLUSION

The Board has recognized the urgent need for regular reporting of railroad service metrics. Coal Shippers/NARUC agree and urge the Board to adopt such metrics with the modifications proposed herein.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE
AMERICAN PUBLIC POWER ASSOCIATION
NATIONAL ASSOCIATION OF REGULATORY
UTILITY COMMISSIONERS
NATIONAL RURAL ELECTRIC COOPERATIVE
ASSOCIATION

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S.L.C.

114TH CONGRESS
1ST SESSION

S. _____

To improve the efficiency and reliability of rail transportation by reforming
the Surface Transportation Board, and for other purposes.

IN THE SENATE OF THE UNITED STATES

Ms. BALDWIN introduced the following bill; which was read twice and referred
to the Committee on _____

A BILL

To improve the efficiency and reliability of rail transportation
by reforming the Surface Transportation Board, and for
other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Rail Shipper Fairness
5 Act of 2015”.

6 **SEC. 2. IMPROVING RAIL SERVICE.**

7 (a) COMMON CARRIER OBLIGATIONS.—Section
8 11101(a) of title 49, United States Code, is amended by
9 inserting “, as necessary for the efficient and reliable

1 transportation based on the shipper's reasonable service
2 requirements," after "the transportation or service".

3 (b) EMERGENCY SERVICE ORDERS.—Section
4 11123(b) of such title is amended by adding at the end
5 the following:

6 “(4) The Board may issue emergency service orders
7 that cover shipments moving under contract if such ship-
8 ments are part of a regional service order issued in accord-
9 ance with this section.”.

10 (c) REPORTS.—Section 11145(a) of such title is
11 amended—

12 (1) in paragraph (1), by striking “and” at the
13 end;

14 (2) by redesignating paragraph (2) as para-
15 graph (3); and

16 (3) by inserting after paragraph (1) the fol-
17 lowing:

18 “(2) reports, service plans, or other documents
19 that cover shipments moving under contract if such
20 shipments are part of a general report, service plan,
21 or other document that generally covers the geo-
22 graphic area or commodity; and”.

23 (d) EQUITABLE RELIEF; DAMAGES.—Section 11704
24 of such title is amended—

1 (1) in subsection (a), by inserting “or subjected
2 to inadequate or deficient service” after “injured”;

3 (2) by amending subsection (b) to read as fol-
4 lows:

5 “(b) A rail carrier providing transportation subject
6 to the jurisdiction of the Board under this part is liable—

7 “(1) for damages sustained by a person as a re-
8 sult of an act or omission of that carrier in violation
9 of this part;

10 “(2) to a person for amounts charged to that
11 person that exceed the applicable rate for the trans-
12 portation; and

13 “(3) to a person for damages or equitable relief
14 as a result of inadequate or deficient service in viola-
15 tion of this part.”; and

16 (3) in subsection (c), by adding at the end the
17 following:

18 “(3) The Board may order a rail carrier to pay dam-
19 ages or to provide equitable relief, as appropriate, to a
20 person subjected to inadequate or deficient service as a
21 result of a violation of this part by that carrier.”.

22 (e) FINES.—Section 11901 of such title is amend-
23 ed—

24 (1) in subsection (a), by striking “\$5,000” and
25 inserting “\$25,000”;

1 (2) in subsection (c), by striking “\$5,000” and
2 inserting “\$25,000”; and

3 (3) in subsection (e), by striking “\$100” each
4 place such term appears and inserting “\$1,000”.

5 **SEC. 3. IMPROVING RAIL COMPETITION.**

6 (a) RAIL TRANSPORTATION POLICY.—Section 10101
7 of title 49, United States Code, is amended—

8 (1) by redesignating paragraphs (14) and (15)
9 as paragraphs (15) and (16), respectively; and

10 (2) by inserting after paragraph (13) the fol-
11 lowing:

12 “(14) to provide for and promote the protection
13 of the shipping public;”.

14 (b) RATES.—Section 10705 of such title is amended
15 by adding at the end the following:

16 “(d) Shippers may obtain rates to or from any inter-
17 change points of 2 or more rail carriers.”.

18 (c) MARKET DOMINANCE.—Section 10707(b) of such
19 title is amended by inserting “A rail carrier could have
20 market dominance even in circumstances in which a ship-
21 per is served by 2 carriers.” after “the rate applies.”.

22 (d) TERMINAL FACILITIES.—Section 11102(e) of
23 such title is amended to read as follows:

24 “(e)(1) Except as provided in paragraph (2), the
25 Board shall require a Class 1 rail carrier to enter into

1 a competitive switching agreement if a shipper or receiver,
2 or a group of shippers or receivers, files a petition with
3 the Board that demonstrates, to the satisfaction of the
4 Board, that—

5 “(A) the facilities of the shipper or receiver for
6 whom such switching is sought are served by rail
7 only by a single, Class I rail carrier; and

8 “(B) subject to paragraph (4), there is, or can
9 be a working interchange between—

10 “(i) the Class I rail carrier serving the
11 shipper or receiver for whom such switching is
12 sought; and

13 “(ii) another rail carrier within a reason-
14 able distance of the facilities of such shipper or
15 receiver.

16 “(2) Competitive switching may not be imposed
17 under this subsection if—

18 “(A) either rail carrier between which such
19 switching is to be established demonstrates that the
20 proposed switching is not feasible or is unsafe; or

21 “(B) the presence of reciprocal switching will
22 unduly restrict the ability of a rail carrier to serve
23 its own shippers.

1 “(3) The requirement set forth in paragraph (1)(B)
2 is satisfied if each facility of the shipper or receiver for
3 which competitive switching is sought is—

4 “(A) within the boundaries of a terminal of the
5 Class I rail carrier; or

6 “(B) within a 100-mile radius of an interchange
7 between the Class I rail carrier and another carrier
8 at which rail cars are regularly switched.”.

9 **SEC. 4. IMPROVING REASONABLE RATE STANDARDS.**

10 (a) STAND-ALONE COST CASES.—Section 10702 of
11 title 49, United States Code, is amended—

12 (1) by inserting “(a)” before “A rail carrier”;

13 and

14 (2) by adding at the end the following:

15 “(b)(1) The Board shall prohibit a rail carrier pro-
16 viding transportation subject to the jurisdiction of the
17 Board under this part to charge the challenged rate for
18 providing such transportation to rail customers while a
19 maximum reasonable rate case brought by such rail cus-
20 tomers is pending before the Board.

21 “(2) A rail customer may file a maximum reasonable
22 rate case with the Board after the date that is 2 years
23 before the date on which a common carrier shipment rate
24 is anticipated to begin.

1 “(3) The Board may not use cross-subsidy tests in
2 deciding stand-alone cost cases.

3 “(4) The Board shall use market-based revenue divi-
4 sions methodology in deciding stand-alone cost cases.

5 “(5) In a stand-alone cost case, if the Board deter-
6 mines that the rail carrier is revenue adequate, the rail
7 carrier shall have the burden of proof to demonstrate that
8 the railroad carrier is charging a reasonable rate.”.

9 (b) MARKET DOMINANCE.—Section 10707 of such
10 title, as amended by section 3(c), is further amended—

11 (1) in subsection (d)(1)(B), by adding at the
12 end the following “A shipper may introduce move-
13 ment-specific Uniform Rail Costing System cost cal-
14 culations.”; and

15 (2) by adding at the end the following:

16 “(e) In making a determination under this section,
17 the Board may not utilize a qualitative analysis in which
18 the Board attempts to identify any feasible transportation
19 alternatives that could be used by the shipper.”.

20 **SEC. 5. REVENUE ADEQUACY.**

21 (a) ELIMINATION OF REVENUE ADEQUACY TEST.—
22 Section 10704(a) of title 49, United States Code, is
23 amended by striking paragraph (3).

1 (b) RAILROAD COST OF CAPITAL.—Section 10704(a)
2 of such title, as amended by subsection (a), is further
3 amended by adding at the end the following:

4 “(3) In calculating a rail carrier’s cost of capital, the
5 Board shall multiply the value of the capital by the sum
6 of—

7 “(A) the current annual yield on a 10-year
8 United States Treasury Bond; and

9 “(B) a prospective market risk premium, which
10 shall not exceed 5 percent per year.”.

11 **SEC. 6. SURFACE TRANSPORTATION BOARD STRUCTURAL**
12 **CHANGES.**

13 Chapter 7 of title 49, United States Code, is amend-
14 ed—

15 (1) in section 701(b)—

16 (A) in paragraph (1)—

17 (i) by striking “3 members” and in-
18 sserting “5 members”; and

19 (ii) by striking “2 members” and in-
20 sserting “3 members”;

21 (B) in paragraph (2)—

22 (i) by striking “time, at least 2 mem-
23 bers” and inserting the following: “time—

24 “(A) at least 2 members”; and

1 (ii) by striking “regulation, and at
2 least one member” and inserting the fol-
3 lowing: “regulation;

4 “(B) at least 2 members shall have a back-
5 ground in shipping or consumer advocacy; and

6 “(C) at least 1 member”; and

7 (2) in section 703, by amending subsection (b)
8 to read as follows:

9 “(b) MEETINGS.—

10 “(1) REGULAR MEETINGS.—The Board shall
11 meet regularly.

12 “(2) OPEN MEETINGS.—The Board shall be
13 deemed to be an agency of the United States Gov-
14 ernment and subject to the provisions set forth in
15 section 552b of title 5.”.

Rail Shipper Fairness Act of 2015 One Page Summary

When the Staggers Act of 1980 was enacted, the railroad industry was facing dire financial circumstances that threatened the long-term viability of freight rail transportation in the United States. The Staggers Act ushered in a new era of deregulation that allowed the railroads to price their services unilaterally and rationalize their systems. It also led to massive industry consolidation and ultimately to today's duopoly rail system in the East and West.

Circumstances facing the nation's railroads have improved dramatically since the passage of the Staggers Act. Under the directives of Staggers, the financial health of the railroads was consistently placed ahead of the financial impacts of railroad customers. As the graphic below makes clear, the underpinnings for the financial practices put in place first by the Interstate Commerce Commission (ICC) and its successor agency the Surface Transportation Board (STB) no longer exist. Far from being in financial danger, railroads have emerged as one of the highest performing sectors since the financial crisis.

The Rail Shipper Fairness Act seeks to expand competition and restore balance to the regulatory environment by recognizing the significant market power enjoyed by the railroads and the public interest in reasonable rail rates and service for rail customers. The bill achieves these modest reforms by:

IMPROVING RAIL SERVICE

- Requires rail service to be "efficient and reliable."
- Clarifies STB authority to address service emergencies for shipments moving under contract.
- Expands fines and equitable damages that railroads can be forced to pay for poor service.

IMPROVING COMPETITION

- Allows competitive switching for junctions within 100 miles
- Removes the presumption that market dominance cannot exist when a shipper is served by two carriers.
- Revises rail transportation policy to reflect shippers' priorities in addition to railroads'.

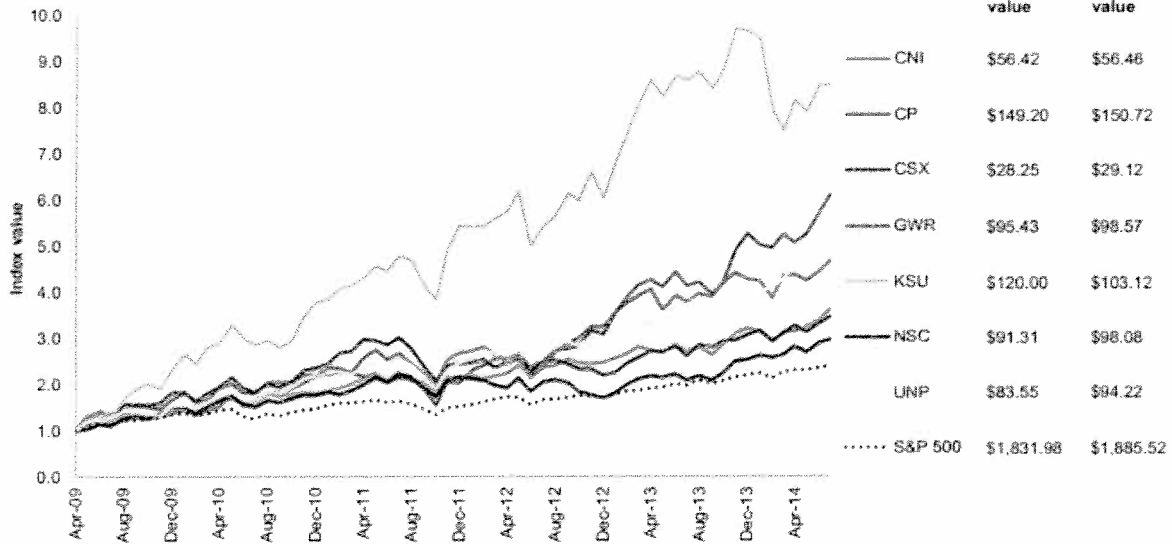
REFORM MAXIMUM RATE CASE REGULATIONS

- Suspends collection of rate increase while case is pending (or allows challenges two years in advance of when shipments are anticipated to begin).
- Require use of market-based revenue methodology in stand-alone rate cases.
- Shifts burden of proof to railroads in stand-alone cost cases.
- Eliminates the qualitative market dominance test.
- Removes the revenue adequacy test and caps railroad cost of equity at reasonable level.

STRUCTURAL REFORMS AT THE STB

- Expands STB membership from three to five and allows informal discussions.
- Requires regular public meetings.
- Two Board members must have some rail shipper or consumer advocacy background.

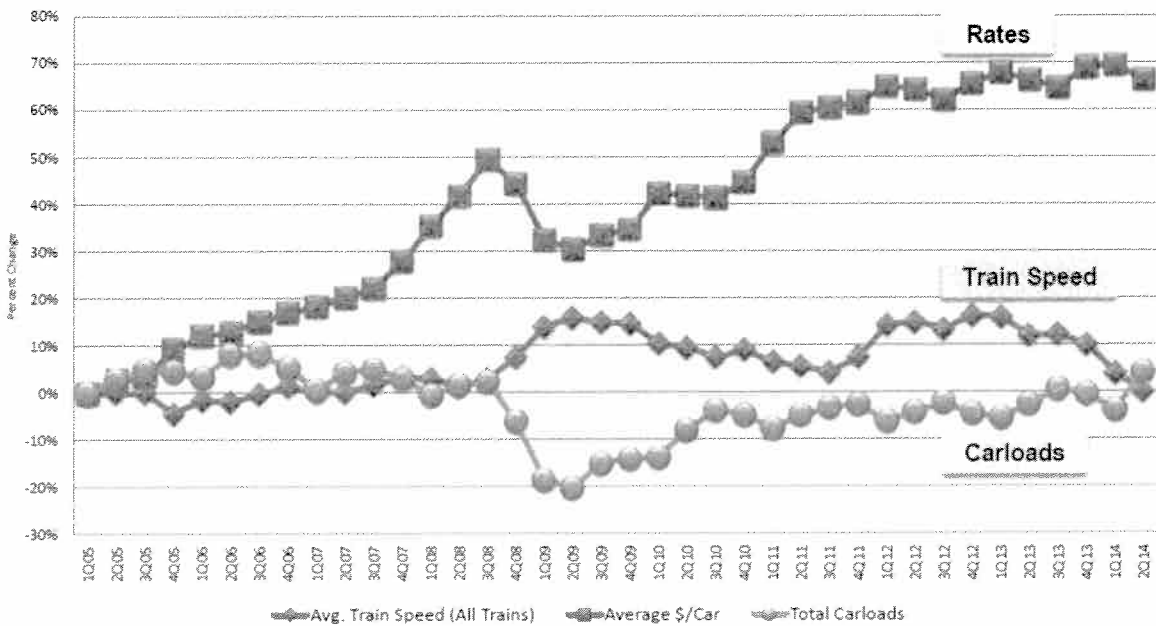
Class 1 stock price performance index
April 2009 to end of Q2 2014



Source: Publicly available stock price data.

Higher Rates and More Money Have Not Improved Rail Service

Percent Change in Big 4 US Railroads' Average Rates, Speed and Total Cars
(1Q2005 - 2Q2014)



Source: Average revenue per car and carloads come from the railroads' SEC filings and Train Speed comes from the railroads' weekly filings to the AAR.

Senator Tammy Baldwin

U.S. Senator Tammy Baldwin Introduces Bill to Help Businesses Move Made In Wisconsin Goods to Market

Rail Shipper Fairness Act Supported by Broad Coalition of Wisconsin Farmers, Manufacturers and Utilities

Tuesday, March 24, 2015

Washington, D.C. – U.S. Senator Tammy Baldwin today introduced legislation to address challenges faced by Wisconsin businesses when shipping by rail. The *Rail Shipper Fairness Act* aims to reduce costs and improve service problems faced by a broad coalition of Wisconsin rail shippers, including farmers, manufacturers and utilities.

“Our Wisconsin businesses need a quality and responsive railroad system to effectively get their goods to market,” said **Senator Baldwin**. “In order to continue building a strong *Made in Wisconsin* economy that is fair to farmers, manufacturers, and consumers, we need to give these shippers a seat at the table. This legislation will address the challenges faced by local businesses and help drive our Wisconsin economy forward.”

“Senator Baldwin’s Rail Shipper Fairness Act would make much needed reforms to the freight rail industry,” said **Casey Kelleher, President of the Wisconsin Corn Growers Association**. “These reforms will help Wisconsin’s Corn Growers better get their goods to market. We thank her for her leadership on this issue.”

“We commend Senator Baldwin for standing up for Wisconsin businesses and consumers. Efficient and reliable freight rail service at a reasonable price is vital to the economic well-being of our State,” said **Matt Bromley, Coordinator for Badger**

CURE (Wisconsin Consumers United for Rail Equity). “Senator Baldwin’s Rail Shipper Fairness Act provides more balance to our nation’s freight rail transportation policy that has for far too long been tilted against rail customers.”

Businesses and consumers throughout Wisconsin have endured years of subpar rail service. Grain elevators across the Midwest are full due to farmers being left without means to move their goods to market. Wisconsin’s paper industry routinely faces high rates and poor service on the railroads. Several Wisconsin power plants have had to reduce production or shutdown altogether because they can’t get fuel by rail. These shutdowns pass higher rates on to their consumers with electricity costs set to reach their highest levels since 1999. These additional costs add up to make *Made In Wisconsin* products less competitive internationally.

The Rail Shipper Fairness Act increases rail shipping competition, reforms rate case regulations and restructures the Surface Transportation Board (STB). The legislation will require railroads to be more responsive to their customers by honoring their contractual obligations. The bill includes provisions to implement competitive switching, which Senator Baldwin previously called for in a bipartisan letter to the STB. Additionally, the bill requires the Board membership to increase from three to five members, two of whom must have experience as a consumer or rail shipper advocate.

The Rail Shipper Fairness Act is supported by Badger CURE (Wisconsin Consumers United for Rail Equity) a coalition that includes: Alliant Energy, Checker Logistics, Inc., Chippewa Valley, Bean Co., Citizens Utility Board, Cooperative Network, Customers First! Coalition, Dairyland Power Cooperative, Domtar Industries, ERCO Worldwide (USA) Inc., Georgia Pacific, Great Lakes Timber Professionals Assoc., Green Bay Area Chamber of Commerce, Green Bay Packaging, IBEW Local 2150, Lake States Lumber Assoc., Leicht Transfer & Storage, Louisiana-Pacific, Madison Gas & Electric, Manitowoc Grey Iron Foundry, Manitowoc Public Utilities, Menasha Utilities, Midwest Food Processors Assoc., Municipal Electric Utilities of Wisconsin, Neenah Foundry, NewPage, Ort Lumber, Packaging Corporation of America, Procter & Gamble, Sadoff Iron & Metal Company, Tomahawk Regional Chamber of Commerce, Wausau Paper, We Energies, Wisconsin Cast Metals Association, Wisconsin Corn Growers Association, Wisconsin Crop Production Association, Wisconsin Electric Cooperative Association, Wisconsin Farm Bureau Federation, Wisconsin Farmers Union, Wisconsin Industrial Energy Group, Wisconsin Manufacturers & Commerce, Wisconsin Paper Council, Wisconsin Public Service Corp, Wisconsin Utilities Association and WPPI Energy. The Rail Shipper Fairness Act is also supported by the Wisconsin Soybean Growers.

U.S. Department of Energy Electricity Delivery and Energy Reliability Form OE-417	<i>ELECTRIC EMERGENCY INCIDENT AND DISTURBANCE REPORT</i>	Form Approved OMB No. 1901-0288 Approval Expires 01/31/15 Burden Per Response: 2.03 hours
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NOTICE: This report is **mandatory** under Public Law 93-275. Failure to comply may result in criminal fines, civil penalties and other sanctions as provided by law. For the sanctions and the provisions concerning the confidentiality of information submitted on this form, see General Information portion of the instructions. **Title 18 USC 1001 makes it a criminal offense for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious, or fraudulent statements as to any matter within its jurisdiction.**

RESPONSE DUE: Within 1 hour of the incident, submit Schedule 1 and lines 13-17 in Schedule 2 as an Emergency Alert report if criteria 1-8 are met. Within 6 hours of the incident, submit Schedule 1 and lines 13-17 in Schedule 2 as a Normal Report if only criteria 9-12 are met. Submit updates as needed and a final report (all of Schedules 1 and 2) within 72 hours of the incident.

METHODS OF FILING RESPONSE
(Retain a completed copy of this form for your files.)

Online: Submit your form via online submission using the link at <http://www.oe.netl.doe.gov/oe417.aspx>.
E-mail: Submit your form via e-mail as an attachment to doehgeoe@hq.doe.gov.
FAX: FAX your Form OE-417 to the following facsimile number: (202) 586-8485. (Use if e-mail is not available.)
Telephone: **If you are unable to e-mail or fax the form, please call and report the information to the following telephone number: (202) 586-8100.**

SCHEDULE 1 -- ALERT NOTICE (page 1 of 3)

Criteria for Filing (Check all that apply)

See Instructions For More Information

<p>If any box 1-8 on the right is checked, this form must be filed within 1 hour of the incident; check Emergency Alert (for the Alert Status) on Line 1 below.</p>	<p>1. <input type="checkbox"/> Physical attack that causes major interruptions or impacts to critical infrastructure facilities or to operations</p> <p>2. <input type="checkbox"/> Cyber event that causes interruptions of electrical system operations</p> <p>3. <input type="checkbox"/> Complete operational failure or shut-down of the transmission and/or distribution electrical system</p> <p>4. <input type="checkbox"/> Electrical System Separation (Islanding) where part or parts of a power grid remain(s) operational in an otherwise blacked out area or within the partial failure of an integrated electrical system</p> <p>5. <input type="checkbox"/> Uncontrolled loss of 300 Megawatts or more of firm system loads for more than 15 minutes from a single incident</p> <p>6. <input type="checkbox"/> Load shedding of 100 Megawatts or more implemented under emergency operational policy</p> <p>7. <input type="checkbox"/> System-wide voltage reductions of 3 percent or more</p> <p>8. <input type="checkbox"/> Public appeal to reduce the use of electricity for purposes of maintaining the continuity of the electric power system</p>
<p>If any box 9-12 on the right is checked AND none of the boxes 1-8 are checked, this form must be filed within 6 hours of the incident; check Normal Alert (for the Alert Status) on Line 1 below.</p>	<p>9. <input type="checkbox"/> Physical attack that could potentially impact electric power system adequacy or reliability; or vandalism which targets components of any security systems</p> <p>10. <input type="checkbox"/> Cyber event that could potentially impact electric power system adequacy or reliability</p> <p>11. <input type="checkbox"/> Loss of electric service to more than 50,000 customers for 1 hour or more</p> <p>12. <input checked="" type="checkbox"/> Fuel supply emergencies that could impact electric power system adequacy or reliability</p>

If significant changes have occurred after filing the initial report, re-file the form with the changes and check Update (for the Alert Status) on **Line 1** below.

The form must be re-filed within 72 hours of the incident with the latest information and with Final (for the Alert Status) checked on **Line 1** below

LINE NO.	ORGANIZATION FILING				
1.	Alert Status (check one)	Emergency Alert <input type="checkbox"/> 1 Hour	Normal Alert <input type="checkbox"/> 6 Hours	Update <input type="checkbox"/> As required	Final <input checked="" type="checkbox"/> 72 Hours
2.	Organization Name	Minnesota Power Inc			
3.	Address of Principal Business Office	30 West Superior Street Duluth Minnesota 55802			

U.S. Department of Energy Electricity Delivery and Energy Reliability Form OE-417	<i>ELECTRIC EMERGENCY INCIDENT AND DISTURBANCE REPORT</i>	Form Approved OMB No. 1901-0288 Approval Expires 01/31/15 Burden Per Response: 2.03 hours
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SCHEDULE 1 -- ALERT NOTICE (page 2 of 3)

INCIDENT AND DISTURBANCE DATA			
4.	Geographic Area(s) Affected	North Eastern Minnesota	Unknown <input type="checkbox"/>
5.	Date/Time Incident Began (mm-dd-yy/hh:mm) using 24-hour clock	09 - 22 - 2014 / 11 : 00 mo dd yy hh mm	<input type="checkbox"/> Eastern <input checked="" type="checkbox"/> Central <input type="checkbox"/> Mountain <input type="checkbox"/> Pacific <input type="checkbox"/> Alaska <input type="checkbox"/> Hawaii
6.	Date/Time Incident Ended (mm-dd-yy/ hh:mm) using 24-hour clock	- - - / - : - mo dd yy hh mm	<input type="checkbox"/> Eastern <input type="checkbox"/> Central <input type="checkbox"/> Mountain <input type="checkbox"/> Pacific <input type="checkbox"/> Alaska <input type="checkbox"/> Hawaii
7.	Did the incident/disturbance originate in your system/area? (check one)	Yes <input checked="" type="checkbox"/>	No <input type="checkbox"/> Unknown <input type="checkbox"/>
8.	Estimate of Amount of Demand Involved (Peak Megawatts)	1000 MW's of potential affected generation	Unknown <input type="checkbox"/>
9.	Estimate of Number of Customers Affected	144,000 of potential affected customers	Unknown <input type="checkbox"/>

10. Type of Emergency Check all that apply	11. Cause of Incident Check if known or suspected	12. Actions Taken Check all that apply
Physical Attack <input type="checkbox"/>	Complete Electrical System Failure <input type="checkbox"/>	Shed Firm Load <input type="checkbox"/>
Cyber Event <input type="checkbox"/>	Electrical System Separation – Islanding <input type="checkbox"/>	Reduced Voltage <input type="checkbox"/>
Major Transmission System Interruption <input type="checkbox"/>	Inadequate Electric Resources to Serve Load <input type="checkbox"/>	Made Public Appeals <input type="checkbox"/>
Major Generation Inadequacy <input type="checkbox"/>	Actual or Potential Attack/Event Physical Attack <input type="checkbox"/> Cyber Event <input type="checkbox"/> Vandalism <input type="checkbox"/>	Implemented a Warning, Alert, or Contingency Plan <input type="checkbox"/>
Major Distribution System Interruption <input type="checkbox"/>	Transmission Equipment <input type="checkbox"/>	Shed Interruptible Load <input type="checkbox"/>
Other <input checked="" type="checkbox"/>	Loss of Part or All of a High Voltage Substation or Switchyard (230 kV + for AC, 200 kV+ for DC). <input type="checkbox"/>	Repaired/Restored <input type="checkbox"/>
Additional Information/Comments: Anticipated fuel supply shortage due to coal delivery issues	Weather or Natural Disaster <input type="checkbox"/>	Mitigation(s) Implemented <input type="checkbox"/>
	Operator Action(s) <input type="checkbox"/>	Other <input checked="" type="checkbox"/>
	Fuel Supply Deficiency (e.g., gas, oil, water) <input checked="" type="checkbox"/>	Additional Information/Comments:
	Unknown Cause <input type="checkbox"/>	
	Other <input type="checkbox"/>	
Additional Information/Comments:		

U.S. Department of Energy Electricity Delivery and Energy Reliability Form OE-417	ELECTRIC EMERGENCY INCIDENT AND DISTURBANCE REPORT	Form Approved OMB No. 1901-0288 Approval Expires 01/31/15 Burden Per Response: 2.03 hours
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SCHEDULE 2 -- NARRATIVE DESCRIPTION (page 3 of 3)

THIS INFORMATION IS CONSIDERED PROTECTED

NAME OF OFFICIAL THAT NEEDS TO BE CONTACTED FOR FOLLOW-UP AND ANY ADDITIONAL INFORMATION		
13.	Name	Chris Bellefy
14.	Title	System Operations Sup.
15.	Telephone Number	(218)-(733)-(6138)
16.	FAX Number	()-()-()
17.	E-mail Address	cbellefy@mnpower.com

Provide a description of the incident and actions taken to resolve it. Include as appropriate, the cause of the incident/disturbance, change in frequency, mitigation actions taken, equipment damaged, critical infrastructures interrupted, effects on other systems, and preliminary results from any investigations. Be sure to identify: the estimate restoration date, the name of any lost high voltage substations or switchyards, whether there was any electrical system separation (and if there were, what the islanding boundaries were), and the name of the generators and voltage lines that were lost (shown by capacity type and voltage size grouping). If necessary, copy and attach additional sheets. Equivalent documents, containing this information can be supplied to meet the requirement; this includes the NERC EOP-004 Disturbance Report. Along with the filing of Schedule 2, a final (updated) Schedule 1 needs to be filed. Check the Final box on line 1 for Alert Status on Schedule 1 and submit this and the completed Schedule 2 no later than 72 hours after detection that a criterion was met.

18. Narrative:
 Minnesota Power's coal inventory at its Boswell Energy Center reached less than 50% of its target inventory that creates a situation that could impact electric power system adequacy or reliability. Boswell Energy Center consists of four coal fired units that produce around 1000 MW's. Minnesota Power ("MP") is a captive shipper to BNSF Railway ("BNSF") for coal supply to its Energy Centers. BNSF has encountered transportation service issues leading to a decline in Minnesota Power's coal inventory.

MP has taken the unprecedented step of shutting down four of its nine coal-fired units (both units at Laskin and two Taconite Harbor units), representing over 225 MW of power, for the three shoulder months (Sept-Nov) in order to conserve coal in efforts to build system-wide inventory to serve northeast Minnesota's electric customers reliably this winter season. Despite this action, slow coal deliveries have resulted in critically low inventory levels despite repeated appeals and demands for improved service.

Minnesota Power is coordinating generator actions and coal levels with our Reliability Coordinator, Midcontinent Independent System Operator (MISO) to ensure adequacy and reliability for the bulk power system.

Minnesota Power has been actively working to address the rail service issues that would increase inventory at all of its Energy Centers on a number of fronts:

- BNSF and MP personnel have met - both in person and via weekly calls - to discuss coal deliveries. BNSF has kept MP on their "critical" list, though without much success since June 2014.
- MP has diverted both the Laskin train and one Taconite Harbor train to Boswell in an attempt to increase inventory levels at Boswell.
- MP is fully engaged on the regulatory front. As an active, long-time member of the Western Coal Traffic League ("WCTL"), which is comprised of shippers representing approximately 140 million tons of coal annually. WCTL is involved in a number of regulatory proceedings. +

19. Estimated Restoration Date for all Affected Customers Who Can Receive Power	____ - ____ - ____ mo dd yy
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20. Name of Generator(s) and Voltage Line(s) system reference (terminal points) (For these losses, please group by generator type and voltage size)	Boswell Unit 4, Boswell Unit 3, Boswell Unit 2 and Boswell Unit 1
21. Identify Name of Lost High Voltage Substation(s) and/or Switchyards (230 kV + for AC -- 200 kV+ for DC)	
22. Identify Electrical System Separation: Islanding Boundaries (DOE needs a basic description/understanding of the linked generating resources to load pockets)	



minnesota power / 30 west superior street / duluth, minnesota 55802-2093 / 218.723.3958 / www.mnpower.com

David J. McMillan
Executive Vice President
Fax 218.723.3960
Cell 218-590-4287
dmcmillan@allete.com

October 6, 2014

The Honorable Mark Dayton
116 Veterans Service Building
20 W 12th Street
St. Paul, MN 55155

Re: Power Plant Fuel Supply Shortages

Dear Governor Dayton:

Minnesota Power is writing to share its ongoing and heightened concern about BNSF Railway Company's continuing poor rail service, particularly the delayed coal deliveries to our three electric generating stations located in Itasca, St. Louis and Cook Counties. Slow coal deliveries have resulted in critically low inventory levels and idled facilities, despite repeated appeals and demands for improved service, from all levels of our Company, to the BNSF. We are asking for your assistance to gain effective action from BNSF to solve this problem.

As part of the state's energy transition and under our *EnergyForward* Plan, Minnesota Power has evolved its power supply from one that was 95% coal in 2005 to 75% coal/25% renewable today. Our progress continues toward an ultimate balance of 1/3 renewable, 1/3 natural gas and 1/3 coal. Even within this dramatic transition, coal is and will remain a critical fuel to assure affordability and reliability for customers while being utilized in an emission-reduced and environmentally responsible way.

As we plan for the winter season and consider strong industrial customer electric demand outlooks, MP has taken the unprecedented step of shutting down four of its eight coal-fired units for several months this fall in order to conserve coal in efforts to build system-wide inventory to serve our customers reliably this winter season. Presently, we have purchased replacement energy from the wholesale market to economically cover the plant shutdowns though this is not a viable, ongoing solution to poor rail service. If the BNSF doesn't improve rail service, additional generation curtailments could result.

Minnesota Power is the region's premier energy provider, delivering reliable, safe and affordable power to residents, businesses, municipalities and some of the largest industrial customers in the nation. These customers depend on us for reliable, affordable electric power. We take our obligation to serve seriously, and have worked very hard with BNSF to turn things around in terms of coal deliveries. In fact, BNSF demonstrated they can deliver if focused on our business. After a difficult stretch last fall and winter, BNSF restored Minnesota Power's inventory levels from very low levels to normal inventory by June of this year. Since that time, inventory levels have dropped precipitously through BNSF's operating decisions, placing MP customers, once again, at risk of not having enough fuel supply to meet demand outlooks unless rail deliveries improve.

The Honorable Mark Dayton
Page Two
October 6, 2014

We believe you can help to address the serious rail service problem I have described in a couple of ways:

- We respectfully request that you write the Surface Transportation Board to ask that rail companies be required to provide a service recovery plan and that they add coal deliveries to their weekly public reporting status, as suggested by utility representatives at the STB's recent hearing, to bring greater transparency to this critically important function.
- Further, we respectfully request that you call a face-to-face meeting with BNSF's executives to discuss rail service issues as soon as possible.
- Consider competitive rail and new rail infrastructure funding priorities in the 2015 legislative session. Minnesota's mining industry, agriculture and energy sectors would all benefit from expanded rail infrastructure.
- Create an opportunity for Minnesota Power to demonstrate the benefits of creating an energy corridor in conjunction with our existing west-to-east electric transmission lines coming from North Dakota across Minnesota and into the Duluth are. Again, more rather than less energy infrastructure will benefit all Minnesotans.

Minnesota Power customers have already been harmed by poor rail service, despite extensive efforts on our part to make the BNSF perform. Your leadership and engagement on rail service issues is vitally important, as we need adequate coal supplies in order to deliver the electricity that powers our mines and paper mills, lights and heats our cities, and keeps Minnesotans safe and secure.

Sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

David J. McMillan
Executive Vice President

C: Beverly Jones Heydinger, Chair, Minnesota Public Utilities Commission
Mike Rothman, Commissioner, Department of Commerce
Lori Swanson, Attorney General
Representative Tom Anzelc, Iron Range Delegation
Craig Pagel, President, Iron Mining Association
Wayne Brandt, Minnesota Forest Industries



STATE OF MINNESOTA

Office of Governor Mark Dayton

116 Veterans Service Building • 20 West 12th Street • Saint Paul, MN 55155

October 13, 2014

Chairman Daniel R. Elliott, III
Surface Transportation Board
395 E Street, S.W.
Washington, DC 20423-0001

Dear Chairman Elliott:

We write this letter with a considerable degree of urgency and concern. As we watch winter come to the State of Minnesota, we have become increasingly alarmed by the service failures of several railroads that serve critical industries in our state.

We are hearing daily from captive shippers across the agricultural, mining, and energy sectors who cannot move products to market or transshipment locations; cannot secure delivery of enough coal to run power plants; and are forced to find extremely uneconomic alternatives, which ultimately lead to higher costs and poorer outcomes for businesses and end-use consumers. The railroads have not provided even minimally adequate levels of rail service.

The Surface Transportation Board (STB) is charged with operational and economic oversight of the nation's freight railroads. As we write this letter, each of the utilities in our state are restricting the operation of coal-fired power plants for the sole reason of conserving existing coal stockpiles — stockpiles that have grown precipitously and dangerously low due to BNSF's ongoing system delivery problems.

Perhaps most concerning, is the fact that the situation appears to be worsening as winter approaches. In one case, a utility has shuttered four power plant units in direct response to reduced coal deliveries related to service issues that began more than a year ago, and is buying replacement power to make up for plant idling. In situations like that, electric customers have had to bear the cost of BNSF's failure to perform. This is untenable and we urge you to take immediate action to drive better outcomes for rail customers, including the utilities in our state that have no transportation alternatives but to wait for the rail carriers you regulate to do better. Waiting and hoping for BNSF to improve its service are bad options in a state like Minnesota, where winter conditions often leave little room for error. Minnesota utilities cannot tolerate watching fuel stockpiles fall to under one week — as they did last winter.

On October 8th, the Board issued Order EP 724, which requires all Class I railroads to publicly file weekly data reports, to promote industry-wide transparency, accountability, and improvements in rail service. This is a step forward in better understanding the railroads' various service issues. More transparency will be useful in helping the Board and rail customers better understand current and future service disruptions.

While Order EP 724 is a step in the right direction, more is needed. We recommend that the Board immediately require carriers like BNSF to submit publicly-available coal service

Chairman Daniel R. Elliott, III
October 13, 2014
Page 2

recovery plans to the Board, hold the carriers responsible for implementing these plans, and monitor carriers' implementation progress through weekly public reporting. We also recommend that the Board convene a public hearing and invite representatives from utilities, affected States, and the Federal Energy Regulatory Commission, to address the continued impact of poor rail service on electric reliability and electricity costs to consumers, particularly as the upcoming winter fast approaches.

The STB has repeatedly said it "has a range of available tools" under its governing statute to address service problems. While a better understanding of service problems is important, the STB needs to take concrete steps to address the known, current service problems now.

If you have any questions or wish to discuss this matter further, please contact Joanna Dornfeld, Senior Policy Advisor to the Governor, at 651-201-3423, or via email at Joanna.dornfeld@state.mn.us.

Thank you for your consideration.

Sincerely,



Amy Klobuchar
United States Senator



Al Franken
United States Senator



Mark Dayton
Governor

43850
EB

SERVICE DATE – LATE RELEASE OCTOBER 8, 2014

SURFACE TRANSPORTATION BOARD

Docket No. EP 724 (Sub-No. 3)

UNITED STATES RAIL SERVICE ISSUES—DATA COLLECTION

Digest:¹ The Board is requiring all Class I railroads to publicly file weekly data reports to promote industry-wide transparency, accountability, and improvements in rail service. The Board is taking this action in response to concerns raised at the hearings held under United States Rail Service Issues, Docket No. EP 724, and in related communications.

Decided: October 8, 2014

The Board 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. The Board also held a hearing regarding rail service problems on April 10, 2014, at its offices in Washington, D.C. Because service problems for many commodities have been particularly acute on the systems of Canadian Pacific Railway Company (CP) and BNSF Railway Company (BNSF), the Board directed representatives of those carriers to testify at both hearings. Given that the service disruptions have hindered nearly all carriers, all Class I railroads and other affected carriers were also invited to appear at the hearings.

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 current service issues.² 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-

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. Policy Statement on Plain Language Digests in Decisions, EP 696 (STB served Sept. 2, 2010).

² See generally Hr'g Tr. 154-55, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014); Western Coal Traffic League Letter, U.S. Rail Serv. Issues, EP 724 (filed Apr. 17, 2014); National Grain and Feed Association Letter, U.S. Rail Serv. Issues, EP 724 (filed May 6, 2014); Western Coal Traffic League Statement 5-6, U.S. Rail Serv. Issues, EP 724 (filed Sept. 5, 2014).

Docket No. EP 724 (Sub-No. 3)

wide transparency with regard to rail service.³ Shippers assert 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-recovery period.⁴ Shippers have also stated that information would bring transparency regarding the extent to which the railroads are improving and resolving the ongoing service issues.

Although the Board currently monitors various metrics of railroad performance,⁵ the Board agrees that there is a need for broader standardized performance data from the railroad industry as it continues to address existing service challenges. The Board also agrees that it is necessary to apply these reporting requirements to all of the Class I carriers. 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. The data will be filed in Docket No. EP 724 (Sub-No. 3) and will be publicly available. The Board intends to collect the data specified in this decision on a temporary basis.⁶ The data requests set forth in this Order supersede the requests previously directed to CP and BNSF.⁷

Accordingly, pursuant to 49 U.S.C. §§ 721(b) and 11145(a), the Board will require each Class I rail carrier to file, on a weekly basis:

³ See, e.g., Minnesota Grain and Feed Association Comments 3, U.S. Rail Serv. Issues, EP 724 (filed Sept. 8, 2014) (filing a written version of the Minnesota Grain and Feed Association's hearing testimony); North Dakota Public Service Commission Comments 1, U.S. Rail Serv. Issues, EP 724 (filed Sept. 4, 2014).

⁴ See, e.g., North Dakota Public Service Commission Comments 1, U.S. Rail Serv. Issues, EP 724 (filed Sept. 4, 2014); National Grain and Feed Association Comments 2, U.S. Rail Serv. Issues, EP 724 (filed May 6, 2014).

⁵ The Board has primarily accessed information available on the websites of the Association of American Railroads and individual carriers.

⁶ The Board will initiate a rulemaking proceeding in the near future to determine whether to institute permanent data reporting requirements on service performance.

⁷ CP must continue to report the number of locomotives moving outbound from the Rapid City, Pierre & Eastern Railroad, Inc. (RCP&E) system onto the CP system and the number of locomotives moving inbound from CP to the RCP&E system. CP must also continue to report the number of grain cars requested by RCP&E and the number of cars furnished by CP to RCP&E on a weekly basis. With those two exceptions, BNSF and CP may discontinue reporting under United States Rail Service Issues—Grain, EP 724 (Sub-No. 2) (STB served June 20, 2014) and United States Rail Service Issues, EP 724 et al. (STB served Aug. 18, 2014).

Docket No. EP 724 (Sub-No. 3)

1. System-average train speed by the following train types for the reporting week:
 - a. Intermodal
 - b. Grain unit
 - c. Coal unit
 - d. Automotive unit
 - e. Crude oil unit
 - f. Ethanol unit
 - g. Manifest
 - h. All other
2. Weekly average terminal dwell time, measured in hours, excluding cars on run-through trains (i.e. cars that arrive at, and depart from, a terminal on the same through train) for that carrier's system and its 10 largest terminals in terms of railcar capacity.
3. Total cars on line by the following car types for the reporting week:
 - a. Box
 - b. Covered hopper
 - c. Gondola
 - d. Intermodal
 - e. Multilevel (Automotive)
 - f. Open hopper
 - g. Tank
 - h. Other
 - i. Total
4. Weekly average dwell time at origin for unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. (Dwell time refers to the time period from billing and release of a unit train at origin until actual movement by the carrier.)
5. The weekly total number of trains held short of destination or scheduled interchange for longer than six hours sorted by train type (intermodal, grain unit, coal unit, automotive unit, crude oil unit, ethanol unit, other unit, and all other) and by cause (crew, locomotive power, track maintenance, mechanical issue, or other (explain)).
6. The weekly total number of loaded and empty cars, stated separately, in revenue service that have not moved in (a) more than 120 hours; and (b) more than 48 hours but less than or equal to 120 hours, sorted by the following classifications (intermodal, grain, coal, crude oil, automotive, ethanol, or all other). For purposes of this item, "moved" refers to making a train movement (departure) or a spot or pull from a customer location.

Docket No. EP 724 (Sub-No. 3)

7. The weekly total number of grain cars loaded and billed, reported by State, aggregated for the following Standard Transportation Commodity Codes (STCCs): 01131 (barley), 01132 (corn), 01133 (oats), 01135 (rye), 01136 (sorghum grains), 01137 (wheat), 01139 (grain, not elsewhere classified), 01144 (soybeans), 01341 (beans, dry), 01342 (peas, dry), and 01343 (cowpeas, lentils, or lupines). “Total grain cars loaded and billed” includes cars in shuttle service; dedicated train service; reservation, lottery, open and other ordering systems; and, private cars. Additionally, please separately report the total cars loaded and billed in shuttle service (or dedicated train service) versus total cars loaded and billed in all other ordering systems, including private cars.
8. For the aggregated STCCs in Item 7, report by State the following:
 - a. the running total number (week over week) of outstanding car orders (a car order equals one car);
 - b. average number of days late for all outstanding grain car orders;
 - c. the total number of new car orders received during the past week;
 - d. the total number of car orders filled during the past week; and
 - e. the number of orders cancelled, respectively, by shipper and railroad during the past week.
9. Plan versus performance for grain shuttle (or dedicated grain train) round trips, by region, updated to reflect the previous four weeks.
10. Average daily coal unit train loadings versus plan for the reporting week by coal production region.

The data requested in Items 1 – 10, above, shall be submitted by each carrier in an electronic spreadsheet made available by the Board’s Office of Public Assistance, Governmental Affairs, and Compliance (OPAGAC).⁸ Each reporting railroad must submit its weekly report as a formal filing to the Board, including an electronic copy of the data in Excel format. Each reporting railroad shall provide an explanation of its methodology for deriving the data with its initial filing. CP and Canadian National Railway Company (CN) are instructed to provide data only for their networks in the United States.

At both hearings, carriers cited congestion in Chicago as one significant cause of the service problems.⁹ 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

⁸ Except with regard to Item 9, railroads need not file historical data. Once reporting begins, the columns for previous weeks should be populated with data starting from the date of the first reporting week.

⁹ Hr’g Tr. 186-87, 208, U.S. Rail Serv. Issues, EP 724 (Apr. 10, 2014); North Dakota Public Service Commission Comments 3, U.S. Rail Serv. Issues, EP 724 (filed Sept. 4, 2014).

Docket No. EP 724 (Sub-No. 3)

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. 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, the Board will 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 includes the following data:¹⁰

1. Average daily car counts in the key Chicago terminal yards of Barr, Bensenville, Blue Island, Calumet, Cicero, Clearing, Corwith, Gibson, Kirk, Markham, and Proviso for the reporting week; and
2. Average daily number of trains held for delivery to Chicago sorted by receiving carrier for the reporting week.

If Chicago terminal yards not identified in Item 1, above, are included in the CTCO's assessment of the fluidity of the gateway for purposes of implementing service contingency measures, then the data requested in Item 1 shall also be reported for those yards.

Additionally, the Class I railroad members of the CTCO¹¹ will be directed to:

1. File with the Board by October 22, 2014, a general summary of the current CTCO service contingency protocols, including descriptions of the Alert Levels;
2. File a written notice with the Board when the CTCO changes its operating Alert Level status, within one business day of that change in status; and
3. If the CTCO adopts a new protocol of service contingency measures, file with the Board a general summary of the new protocol within seven days of its adoption.

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

This decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

¹⁰ The Class I railroads operating at the Chicago gateway are BNSF, Union Pacific Railroad Company, CSX Transportation, Inc., Norfolk Southern Railway Company, CP, and CN.

¹¹ The CTCO members may designate a member to fulfill this requirement on behalf of all of the Class I freight railroad members of CTCO.

Docket No. EP 724 (Sub-No. 3)

It is ordered:

1. All Class I railroads shall submit weekly data in this docket, beginning October 22, 2014, as described above.
2. The Class I railroads operating at the Chicago gateway shall jointly file in this docket, on a weekly basis beginning October 22, 2014, a narrative summary of operating conditions at the Chicago gateway including the data described above.
3. The Class I railroad members of the CTCO shall comply with the additional reporting directives set forth above.
4. This decision is effective on its service date.

By the Board, Chairman Elliott, Vice Chairman Miller, and Commissioner Begeman.

October 29, 2014

The Honorable Cheryl A. LaFleur
Chairman
Federal Energy Regulatory Commission
888 First Street, N.E.
Washington, DC 20426

Dear Chairman LaFleur:

We write to express our strong concerns regarding BNSF Railway Company's (BNSF) failure to provide adequate rail service to electric utilities in Minnesota.

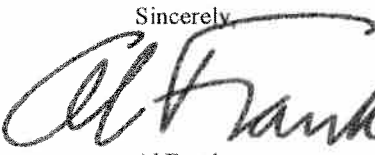
Utilities in our state are restricting the operation of coal-fired plants for the sole reason of conserving existing coal stockpiles – stockpiles that have grown dangerously low due to BNSF's ongoing delivery problems. In one case, a utility has recently shuttered four power plant units in direct response to reduced coal deliveries, forcing the utility to buy replacement power to make up for plant shutdowns. In situations such as these, it is electric customers who ultimately have to bear the cost of BNSF's failure to perform. The rail service problem has persisted, in varying degrees of severity, for more than a year. With winter fast approaching, Minnesota utilities cannot tolerate watching fuel stockpiles fall to under one week — as they did last winter. Minnesota utilities are not alone in facing these rail service problems. We are aware of utilities in other states that BNSF directly serves that are also facing coal shortages caused by BNSF's poor performance. These utilities find themselves in the same situation as Minnesota's utilities.

BNSF's service failures are driving up the cost of electricity and pose significant threats to electric system reliability. Given the Federal Energy Regulatory Commission's (FERC) mission, we request that the FERC act to protect utility consumers in Minnesota and the other impacted states from the adverse consequences of BNSF's service failures. As an immediate first step, the FERC could convene a meeting to hear from utility and railroad representatives to discuss railroad coal-delivery matters and their impact on electric markets and reliability.

We urge you to fully exercise your authorities to protect electric consumers in Minnesota and other affected states.

Sincerely,


Amy Klobuchar
United States Senator


Al Franken
United States Senator


Rick Nolan
United States Congressman


Mark Dayton
Governor

cc: Phillip D. Moeller, Commissioner, FERC
Tony Clark, Commissioner, FERC
Norman C. Bay, Commissioner, FERC

December 18, 2014
FERC Rail Service Panel
Dave McMillan Statement

Thank you Chair LaFleur and Commissioners Moeller, Clark and Bay for holding today's panel discussion on this critically important topic of coal deliveries by rail.

My name is Dave McMillan. I am a senior vice president at ALLETE and the executive vice president at Minnesota Power, ALLETE's largest division. My comments today will focus on Minnesota Power's recent experiences and challenges with coal deliveries by rail, particularly by the BNSF Railway Company (BNSF).

Minnesota Power generates, transmits and distributes electricity across a 26,000 square mile region in northern Minnesota to 144,000 customers, 16 municipalities (whose contracts are subject to FERC regulation, I might add) and, importantly, some of the nation's largest industrial customers. These iron mining, forest, paper, pipeline, and refining customers all compete in international markets. Importantly, this handful of companies consumes over one-half of the electricity we produce.

Minnesota Power also is a member of the Western Coal Traffic League (WCTL), which is a voluntary association of utility shippers of coal mined west of the Mississippi River. WCTL has actively pursued assistance from the STB to remedy the service problems faced by many coal-fired utilities in the past year.

Coal is Minnesota Power's primary fuel source for its electric generation. The company currently operates three coal-fired plants that consume over 5 million tons of coal each

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year. This coal originates in the Powder River Basin area mines in Wyoming and Montana and is transported by BNSF either in single-carrier or joint-carrier service.

Your staff's Winter 2014-2015 Energy Market Assessment highlighted concerns over low coal stockpiles going into this winter, and stresses on the rail transportation system that continue to affect the reliable deliveries of Powder River Basin coal. Quoting from the staff presentation at your October meeting, "replenishment of coal stockpiles at some power plants captive to a single supply source and transportation route has proven more challenging on the more constrained rail system."

Our rail service experiences are consistent with the FERC staff's findings. During the winter of 2013-14 we experienced severe disruptions in BNSF service to all of our coal-fired facilities, and for extended periods of time we limited or curtailed coal-fired generation. Our largest generating station, the Boswell Energy Center, was forced to run at minimum capacity on some of the highest load days of the winter. At one point we were down to four days of coal supply. We were also forced to utilize emergency trucking of coal in storage at an off-site dock facility to our second largest plant.

While our service woes temporarily subsided this spring, they came back once again in the late summer and fall. In August of this year we took the unprecedented step of temporarily shuttering four coal-fired units at other locations in an attempt to rebuild coal inventories at Boswell by diverting coal bound for those units to Boswell.

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Today, our coal inventories at Boswell are at acceptable levels. While that is good news, the inconsistency we have experienced with BNSF's service, and the lack of an enforceable BNSF service recovery plan, does not give us confidence that current inventory levels will continue.

Last winter and again this fall while our coal units were shut down, Minnesota Power was forced to replace its own generation with about \$27 million of higher-priced purchases from the MISO market. The good news is that organized markets like MISO's work, and we had no electric service disruptions. The bad news is the purchased energy prices were significantly higher than our self-generation costs. These increased costs are ultimately borne by our wholesale and retail electric customers – costs they can ill afford to pay.

As I said in my testimony on this very topic at an April STB hearing, Minnesota Power approaches problems with creativity and optimism. We have had a long relationship with BNSF that dates back to 1968. Recently, we have been proactively looking for ways to jointly address the infrastructure side of service issues. We have been in constant communication with BNSF during the service crisis, and we have regularly informed them of the impact that its service problems are having on our operations and our customers. To its credit, BNSF has in recent weeks added equipment and improved service, and kept the lines of communication open.

While the STB is charged with overseeing service provided by the nation's railroads, the potential impacts on electric reliability require the Commission's continued attention.

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The Commission demonstrated its willingness to act last year when you exercised your authority under the Interstate Commerce Act to direct priority treatment for propane shipments. While the Commission cannot specifically order the railroads to provide service to utility coal shippers, there are steps that this Commission can take consistent with its responsibility to ensure economical and reliable wholesale electric service.

Staff has committed to monitoring coal stockpiles and working with the STB. This is a good and a necessary first step. We encourage you to continue to coordinate and collaborate closely with the STB and with DOE. Just as the Commission identified the need for greater attention to gas-electric interdependency issues, we believe there is a need for the Commission to closely follow electric-rail coordination issues, building upon today's panel discussion.

We very much appreciate the Commission's interest and involvement in addressing rail service issues that affect our ability to meet our electric customers' needs.

I would be happy to answer any questions.

Rudeck Statement

(Chairs Senator Dan Sparks and Representative Frank Hornstein (or Rep Joe Atkins):

Good morning Mr. Chairmen and Committee members. Thank you for the opportunity to address this joint hearing of the MN House Transportation, Finance and Commerce Committees and Senate Transportation and Public Safety Policy, Commerce and Jobs, Agriculture and Rural Development Committees.

I'm Al Rudeck, Vice-President, Strategy and Planning for Minnesota Power, an operating division of ALLETE, which is a diversified energy company headquartered in Duluth. I am appearing today on behalf of Minnesota Power customers to share serious concerns about eroding rail service essential to upholding our obligation to provide reliable and affordable electric service to our customers in Northeastern Minnesota and Northwest Wisconsin.

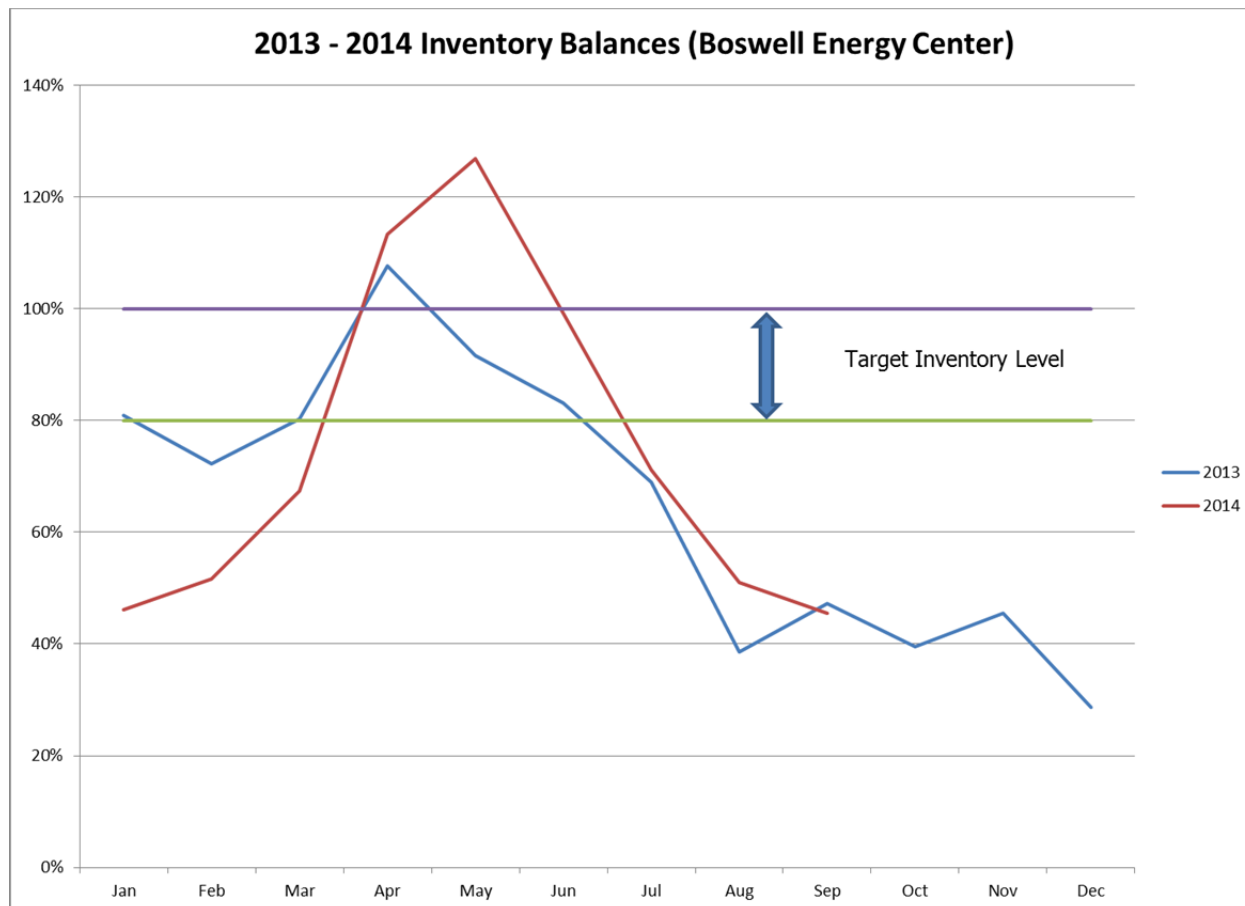
Minnesota Power, generates, transmits and distributes electricity in a 26,000 square mile region in northern Minnesota to residents, businesses, municipalities, and some of the nation's largest industrial customers as well as Superior Water Light and Power electric customers in Douglas County, Wisconsin.

Allan S. Rudeck Jr, 09-30-2014

While we are in the midst of a significant diversification of our power supply, coal presently is Minnesota Power's primary fuel source for electric generation. We operate three coal-fired facilities representing about 1,400 MW of capacity that utilize approximately 5-6 million tons of coal each year. This low sulfur, low mercury western US coal originates at mines located in Wyoming and Montana and is transported by BNSF either in single-carrier, or joint-carrier service. We are well on our way to diversifying our supply mix, moving from a 75% coal mix at year end 2014 to a balanced supply of 1/3 renewables, 1/3 gas and 1/3 coal under our *EnergyForward* resource strategy. Even as we transition our power supply mix, the fact remains that coal has been and will remain an important base-load fuel that is critical to the region's electric reliability and affordability for the foreseeable future.

Minnesota Power has experienced serious rail service problems over the past twelve months, and despite extraordinary steps we have taken to remedy BNSF's service problems, we are concerned about low fuel inventory levels as we head into another Minnesota winter. As you can see in the displayed inventory chart, not only did poor rail service create inventory shortfalls in 2013 at our 1,000 MW, Boswell Energy Center, the same pattern has developed here in 2014.

Allan S. Rudeck Jr, 09-30-2014



We take our obligation to serve seriously, and have worked diligently with BNSF to turn things around in terms of coal deliveries. In fact, BNSF demonstrated they can deliver if focused on our business. After a difficult stretch last fall and winter, BNSF restored Minnesota Power’s inventory levels **from very low levels to target levels** by June of this year. Since that time, inventory levels have dropped precipitously, placing MP ‘s units , once again, at risk of not having enough fuel to meet customer

Allan S. Rudeck Jr, 09-30-2014

demand outlooks unless rail deliveries quickly improve. This sporadic service is causing significant and unnecessary financial and reliability risk for us and our customers.

- Our stockpiles at all three of our coal-fired power plants dipped to dangerously low levels early this year, including levels as low as 4 days at Boswell, our largest plant, in January 2014.
- We were also forced to begin emergency, high-cost trucking of coal we had in storage at the MERC dock in Superior, WI to our second largest plant at Taconite Harbor throughout the winter months of 2014.
- We were forced to curtail generation in order to conserve coal, both last year and earlier this year, replacing it with higher priced purchased power.
- In an effort to conserve coal in anticipation of the upcoming 2014-15 winter, MP took the unprecedented step of idling four of our eight coal units, representing about 20% of our generating fleet, or 225

Allan S. Rudeck Jr, 09-30-2014

MW of generation, for several months this fall, and are purchasing higher priced replacement power from the market.

- Further and most recently, MP filed a required notice of fuel supply emergency with the US Department of Energy on September 22, 2014. DOE was informed via this notice that we had reached a level of fuel supply that could impact electric power system adequacy or reliability as a result of declining coal inventory levels at our 1,000 MW Boswell Energy Center.
- As a result the need for mitigating actions to address poor rail service from 2013 through February 2014, our customers have incurred approximately \$16,000,000 in additional electric purchase costs.

These costs have been borne mainly by our large industrial customers. These customers, who operate global organizations and compete in international markets, include ArcelorMittal, United States Steel, Cliffs Resources, UPM Kymmene, Sappi, Gerdau Ameristeel, Magnetation, NewPage and others. These industries support the

Allan S. Rudeck Jr, 09-30-2014

employment of thousands of people directly and indirectly in NE Minnesota and are vital to our regional economy.

While we believe the BNSF has been working hard on this problem, they have not yet turned the situation around. At Minnesota Power, we seek to solve problems with creativity and a focus on positive solutions; *I want to end my comments about rail service concerns in that spirit.* Minnesota Power has had a long relationship with BNSF that dates back to 1968. We were BNSF's first western coal unit train shipper and we have enjoyed a long and mutually beneficial partnership with BNSF.

During this rail service crisis, we have been in constant communication with BNSF concerning its service problems, and the impact of these problems on our operations and on our customers. For example, BNSF's Chief Marketing Officer, Steve Bobb, traveled to Duluth in February and spent half a day with our largest electric customers, explaining the current situation. We have met with BNSF repeatedly for many months, holding peer to peer conversations between staff at each company – ranging from logistics desks all the way to the CEO level regularly about service status and potential solutions. We have even testified at the US Surface Transportation Board about our industry rail service concerns.

Allan S. Rudeck Jr, 09-30-2014

Though BNSF has listened to us, and has taken some steps to address its problems, they still have a long way to go. They MUST focus on our business in order to ensure we have adequate fuel supplies to meet and expected customer electric demand. Otherwise, if BNSF cannot meet our needs, making arrangements for other service providers may be our only alternative.

In recent years, and prior to the more recent and urgent circumstances I described earlier, Minnesota Power and BNSF have been proactively looking for ways to address the infrastructure-side of service improvements. For instance, we are exploring ways to work together in North Dakota to support new investments aimed at reducing congestion with new infrastructure. We are also exploring loop track and siding enhancements in Minnesota at our largest power station that will aid logistics and improve cycle times. Finally, we believe the ALLETE Energy Corridor, a concept of co-locating energy infrastructure such as oil and gas pipelines adjacent to our DC Line corridor from western ND to Duluth MN would bring congestion relief and safety improvements at the same time.

We believe you can help to address the serious rail service problem I have described in a few of ways:

- 1) We respectfully request that you write the **Surface Transportation Board to ask that rail companies be required to provide a service recovery plan and that they add coal deliveries to their weekly public reporting status**, as suggested by utility representatives at the STB's recent hearing to bring greater transparency to this critically important function.

- 2) Further, we respectfully request that you make **competitive rail and rail infrastructure expansion a funding priority in the 2015** legislative session. Just like other state infrastructure, the rail system in Minnesota was built decades ago and clearly is inadequate to support the 21st century economy Minnesotans have worked hard to build and sustain. We have heard from many Minnesota Iron Range companies that would benefit from **expanding rail infrastructure and competitive rail options** for shippers.

- 3) We would ask for the DC line corridor route be evaluated as a preferred route for oil and gas pipeline routing, and work collectively with North Dakota Regulators and Legislators to advance this in parallel path in the

MN and ND 2015 legislative sessions – as a means for our states to work together to solve this energy challenge/crisis we face together.

Like all successful long-term relationships – sometimes one partner needs to hear frank feedback from the other. As you’ve heard, we have been sharing that kind of feedback constructively with BNSF. BNSF has listened and responded, though their response has not been reliable nor sustained.

We have also made federal regulators, our Congressional delegation and Minnesota Governor aware of these service issues and their impacts and we continue to keep them informed and seek their support as we work to solve this problem at multiple levels.

As key stakeholders with oversight of rail transportation in Minnesota, we appreciate the opportunity to make you aware of the challenges poor rail service is causing in the state and our ongoing pursuit of sustained solutions.

Electric consumers in Northern Minnesota depend upon Minnesota Power for reliable and affordable electric service and we, in turn have for many years relied upon and presently we continue to depend on BNSF for reliable and affordable rail service to deliver on our commitments to those customers. In our ongoing efforts

Allan S. Rudeck Jr, 09-30-2014

to ensure reliable and affordable power for all of our customers, we respectfully ask for the support of your committees in helping us to ensure adequate rail service within the state.

I thank you Chairman and Committee members for the opportunity to participate in this important hearing and am happy to answer questions you may have.



Joint Hearing of Minnesota Senate and House Freight and Passenger Rail Congestion and Safety in MN September 30th, 2014

MN Power Rail Fact Sheet

Minnesota Power has experienced serious rail service problems over the past twelve months, and despite extraordinary steps we have taken to remedy BNSF's service problems, we are concerned with low fuel inventory levels as we head into another Minnesota winter.

MP Fuel Overview

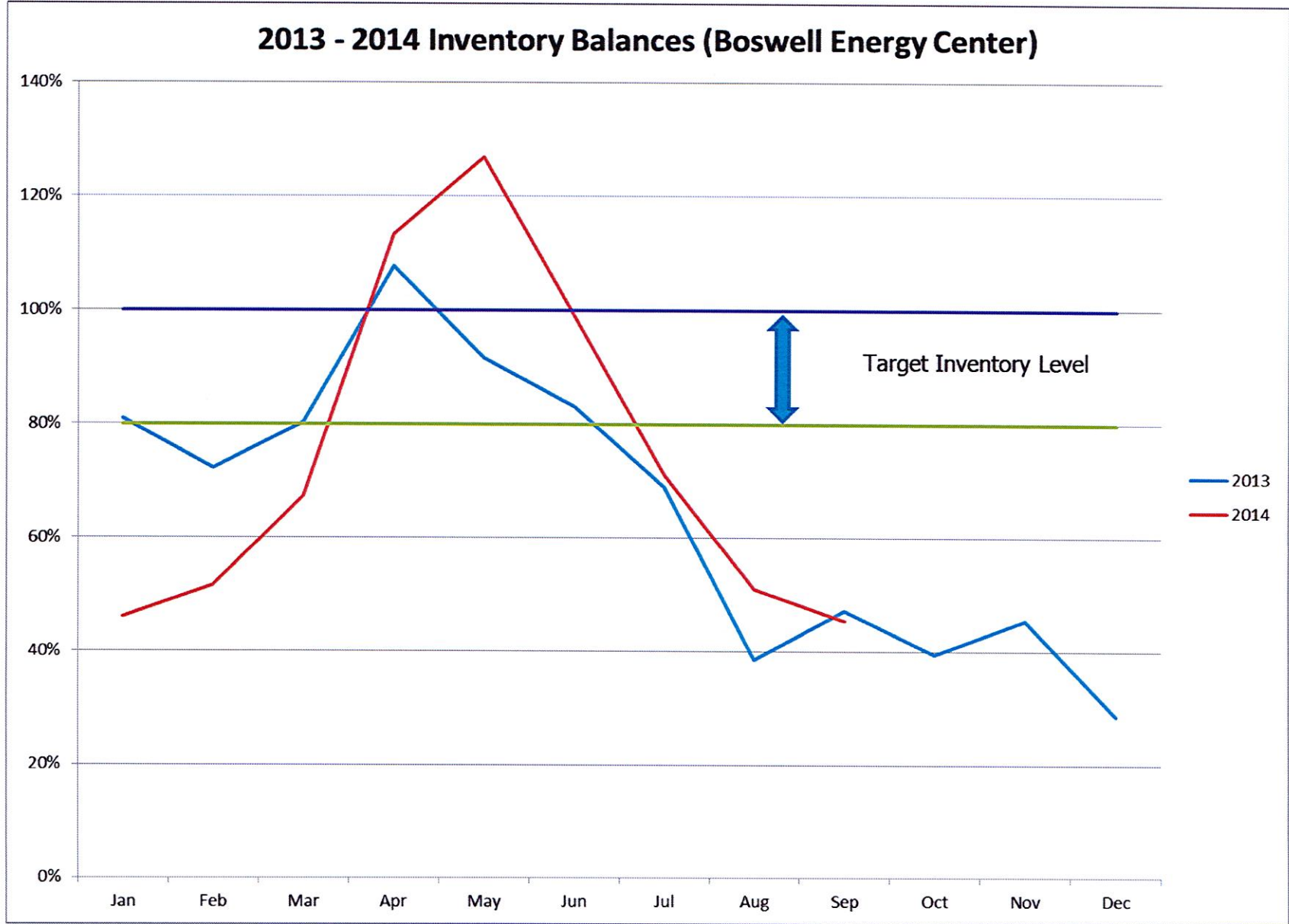
- Unit trains - 115 cars per train
- 120 tons per car
- 13,800 tons per unit train
- Use ~ 1 unit train per day
- 400 unit trains per year or 50,000 cars

Current Issues

- 250,000 tons or ~ 20 unit trains behind
- Idling 4 coal units
- Filed fuel supply emergency with DOE

Potential Solutions

- Request Surface Transportation Board to ask that rail companies be required to provide a service recovery plan and that they add coal deliveries to their weekly public reporting status.
- Make competitive rail and rail infrastructure expansion a funding priority in the 2015 legislative session.





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*Margaret Hodnik
Vice President—Regulatory and Legislative Affairs
E-mail: mhodnik@mnpower.com*

October 20, 2014

The Honorable Mark Dayton
Governor of Minnesota
116 Veterans Service Building
20 W 12th Street
St. Paul, MN 55155

Re: Thanks for Your Help on Rail Issues

Dear Governor Dayton:

On behalf of Minnesota Power and all of our customers, I want to thank you and your staff for engaging substantively on the severe and persistent problems we are experiencing with rail service. We especially appreciate you meeting with BNSF and us regarding their severely backlogged delivery of our coal supplies and the need for sustained fuel delivery in coming months as winter sets in. As you understand, we need to maintain high reliability and avoid further cost impacts especially on our region's industries that employ thousands of people directly and indirectly.

Some people could say there is nothing that can be done to change the status quo on rail regulation. We believe the problems are too serious and potentially long-lived to have that attitude, especially given the projections for a decade of oil shipment increases from the Bakken area. Nothing will change with rail service and costs and significant portions of the state's economy will be at risk for losses unless our political leaders are engaged finding solutions along with industry, agriculture and other affected parties. We greatly appreciate your leadership among elected officials advocating for Minnesota's businesses and consumers directly through public meetings, letters to authorities in Washington requesting specific action, engaging with the state's Congressional Delegation and engaging directly with the railroads.

It's obvious Northeastern Minnesota and the Iron Range in particular require reliable and competitive rail service in order to have a stable, predictable and thriving economy. So we also appreciate your willingness to discuss supporting rail investment that would increase competitive alternatives for our region's industry longer term and reduce or eliminate the stranglehold captive shipper arrangements have on the area. We will be following up with Commissioner Sertich and legislative leaders on our ideas for the Itasca rail spur and other rail investments that would improve the region's competitiveness. In the meantime, we also will keep your staff posted on any progress or worsening we might see with BNSF on current backlogs with our fuel supply.

Thank you again for your pronounced and personal attention on rail issues, Governor Dayton. We welcome any ongoing opportunity to provide information or other assistance to you or your staff in dealing with rail transportation matters.

Sincerely,

Margaret Hodnik
VP-Regulatory and Legislative Affairs

cc: Alan Hodnik, CEO-ALLETE
Dave McMillan, Executive Vice President, Minnesota Power
Al Rudeck, Vice President, Minnesota Power
Tony Sertich, Commissioner, Iron Range Resources and Rehabilitation Board
Jaime Tincher, Chief of Staff
Joanna Dornfeld, Senior Policy Advisor