

Attachment 2

Part 7 of 9

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

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

wide transparency with regard to rail service.<sup>3</sup> 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.<sup>4</sup> 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,<sup>5</sup> 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.<sup>6</sup> The data requests set forth in this Order supersede the requests previously directed to CP and BNSF.<sup>7</sup>

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:

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<sup>3</sup> 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).

<sup>4</sup> 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).

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

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

<sup>7</sup> 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.

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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).<sup>8</sup> 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.<sup>9</sup> 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

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<sup>8</sup> 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.

<sup>9</sup> 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).



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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:<sup>10</sup>

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 CTCO<sup>11</sup> 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.

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<sup>10</sup> 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.

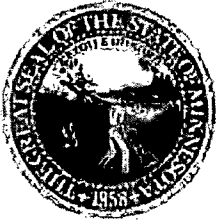
<sup>11</sup> The CTCO members may designate a member to fulfill this requirement on behalf of all of the Class I freight railroad members of CTCO.

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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.



# 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 8<sup>th</sup>, 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](mailto:Joanna.dornfeld@state.mn.us).

Thank you for your consideration.

Sincerely,



Amy Klobuchar  
United States Senator



Al Franken  
United States Senator



Mark Dayton  
Governor

RICHARD M. NOLAN  
8TH DISTRICT, MINNESOTA

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**Congress of the United States**  
**House of Representatives**  
Washington, DC 20515-2308

COMMITTEE ON TRANSPORTATION AND  
INFRASTRUCTURE

AVIATION  
HIGHWAYS & TRANSIT  
WATER RESOURCES AND ENVIRONMENT  
ECONOMIC DEVELOPMENT, PUBLIC BUILDING AND  
EMERGENCY MANAGEMENT

COMMITTEE ON AGRICULTURE  
CONSERVATION, ENERGY, AND FORESTRY  
LIVESTOCK, RURAL DEVELOPMENT, AND CREDIT

October 17, 2014

The Honorable Bill Shuster  
Chairman  
Transportation & Infrastructure Committee  
2165 Rayburn House Office Building  
Washington, DC 20515

The Honorable Nick Rahall, II  
Ranking Member  
Transportation & Infrastructure Committee  
2163 Rayburn House Office Building  
Washington, DC 20515

Dear Chairman Shuster and Ranking Member Rahall,

Recently, domestic rail customers across the country — particularly in the Midwest — have been plagued by long delays, unreliable service, and unprecedented high prices. This crisis requires examination and investigation by the full Transportation & Infrastructure Committee in order to identify commercial and industrial service problems associated with rail service, pipeline construction and maintenance, and truck freight delivery. Furthermore, the committee should examine the possible need for changes in federal regulatory authority and for additional major public and private rail, pipeline and highway infrastructure investment. I request that you schedule a public hearing on these critical matters before the conclusion of the 113<sup>th</sup> Congress.

In the Upper Midwest, demand for rail service has increased over a finite quantity of rail capacity. Clearly, the dramatic increase in oil production from the Bakken oil fields in North Dakota has been a contributing factor. In addition, weather related events have had a serious impact on our nation's propane supply. For these reasons, it is imperative that we study the lingering repercussions of extreme weather events, as well as the compounding effects of aggressive energy development and new business needs, before the cold season begins again.

The rail service problem is no longer relegated to agricultural commodities, although farmers, grain elevators, and food processors still report economic consequences of transportation difficulties. Now, the backlog has grown to include coal delivery shortages at energy utilities, mounds of iron-bearing taconite pellets waiting to be delivered to Great Lakes ports for steel mills in the Midwest and East Coast. Mines in Northern Minnesota also report accumulating rail shipment shortages of bentonite clay from Wyoming, which is essential for the production of taconite iron pellets. All of this could be exacerbated by an early winter which would freeze shipping on the Great Lakes and interrupt the nation's entire steel industry.

While truck freight or pipeline capacity could help to alleviate this problem, the current load bearing capacity of our Interstate Highway System also stands as an enormous barrier to moving forward.


Similar shortages and problems in other parts of the nation may also benefit from closer examination by the Committee. The economic damage and possible job losses may not be immediately visible but will undoubtedly be felt for months or even years to come and will put our nation at a competitive disadvantage with the world.

I believe such hearings should focus on the current supply shortages around the nation and we should look at three possible areas for Congressional action to assuage these long-term chronic problems:

1. What role does the Surface Transportation Board (STB) have in helping to address this crisis? Is it possible that they lack sufficient regulatory authority to compel shippers to address critical public needs despite economic incentives that lure these shippers to move other commodities? If they have such authority, why have they failed to exercise it thus far?
2. Does the Pipeline and Hazardous Material Safety Administration (PHMSA) have sufficient authority to expedite the review and approval of pipeline construction in the United States? Will safety concerns be mitigated by the mandate to use American steel in future pipeline construction?
3. The long lines of trains waiting at sidings outside of major metropolitan areas is one of the indications that train switching yards and available track alternatives at major metropolitan areas are a main culprit in the current rail congestion and service delay problems. Could a major program to expand and enhance the capacity of urban rail yards remedy this chronic problem?

The Senate Commerce Committee discussed some of these issues during September, and I urge you to schedule a similar opportunity for the House Transportation & Infrastructure Committee to examine them as quickly as possible.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard M. Nolan", written over a horizontal line.

Richard M. Nolan  
Member of Congress

RICHARD M. NOLAN  
8TH DISTRICT, MINNESOTA

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COMMITTEE ON TRANSPORTATION AND  
INFRASTRUCTURE

AVIATION  
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COMMITTEE ON AGRICULTURE  
CONSERVATION, ENERGY, AND FORESTRY  
LIVESTOCK, RURAL DEVELOPMENT, AND CREDIT

October 17, 2014

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

Dear Chairman Elliott:

I am in receipt of a letter addressed to you by Minnesota Governor Mark Dayton and Minnesota Senators Amy Klobuchar and Al Franken, expressing "urgency and concern" over the service failures of several railroads that supply critical industries in our state. As U.S. Congressman for the 8<sup>th</sup> Congressional District of northeastern and east central Minnesota, I fully concur with the sentiments expressed in this letter and endorse the requests made to the Surface Transportation Board (STB) by these statewide elected leaders.

The most immediate problem I foresee at this time is the transport of taconite iron pellets from the various mines on the "Iron Range" in northern Minnesota, to the Great Lakes ports of Duluth, Silver Bay, and Taconite Harbor. Enormous inventories have been built up at the mines while ore ships have left port empty because of a lack of taconite pellets to load. Several mines have resorted to establishing truck convoys to try to move these shipments to the docks in Duluth as quickly as possible. The long and severe winter of 2013-2014 resulted in Lake Superior remaining cooler than normal this summer. It is anticipated that the lake will freeze earlier than normal this year, effectively ending the shipping season until late spring. This could idle the mines in northern Minnesota, as well as the steel plants in Michigan, Indiana and Ohio.

In addition, the mines are also in need of a reliable supply of Bentonite Clay from the mines of Wyoming to each of their mining operations. Bentonite Clay is used as a base material in making the taconite iron pellet. Mines report dangerously low levels of Bentonite in recent months.

Similarly, critical to all industry in northern Minnesota is the supply of coal for Minnesota Power/ALLETE and other electric power companies and cooperatives in our region. At this point, coal inventories are at historic lows, and another severe winter is predicted to begin earlier than usual in this part of the nation.

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CENTER CITY OFFICE  
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CENTER CITY MN 55012  
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CHISHOLM OFFICE  
316 WEST LAKE STREET #7  
CHISHOLM, MN 55719  
PHONE: (218) 491-3114

Despite repeated assurances that such shortages would be addressed, BNSF Railroad and others have been unable to maintain contract minimums in all of these areas.

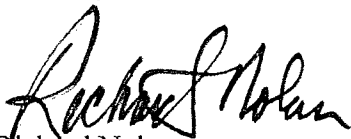
It is my sincere hope you will address these issues immediately, and use whatever regulatory power you have at your disposal to help address these critical public needs.

In addition, I have recently written to Chairman Bill Shuster and Ranking Member Nick Rahall requesting hearings by the full Committee on Transportation and Infrastructure to address, among other things, the following:

1. Does the Surface Transportation Board (STB) have the regulatory authority it needs to manage these public priorities? If not, what authorities would be helpful? If so, why has the STB not exercised them and allowed this situation to deteriorate to such a dangerous level?
2. Is there a serious infrastructure problem with urban rail shipyards that is causing inordinate delay in moving rail freight across the nation? Would a major program to provide public-private investment in new shipyard rail infrastructure be helpful in alleviating the current shipping problems facing the nation?

I would appreciate a copy of your response to Governor Mark Dayton and Senators Klobuchar and Franken, as well as a written response to the concerns I have raised in this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Nolan", written in a cursive style.

Richard Nolan  
Member of Congress

CC:

Governor Mark Dayton  
Senator Amy Klobuchar  
Senator Al Franken

Attachment



**EXPEDITED CONSIDERATION REQUESTED**

BEFORE THE  
SURFACE TRANSPORTATION BOARD

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UNITED STATES RAIL SERVICE ISSUES

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Docket No. EP 724

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**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:

Slover & Loftus LLP  
1224 Seventeenth Street, NW  
Washington, D.C. 20036

Dated: October 22, 2014

William L. Slover  
John H. LeSeur  
Peter A. Pfohl  
Daniel M. Jaffe  
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BEFORE THE  
SURFACE TRANSPORTATION BOARD

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UNITED STATES RAIL SERVICE ISSUES

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Docket No. EP 724

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**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.<sup>1</sup> Xcel Energy has written three times to the Board concerning inadequate service.<sup>2</sup> Members of Congress sought the STB's help to improve BNSF's service to Dairyland Power Cooperative in light of critical coal shortages,<sup>3</sup> and TUCO indicated that through August 2014, poor BNSF service resulted in a 1.7 million ton shortfall of coal deliveries.<sup>4</sup>

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

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

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

<sup>3</sup> 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).

<sup>4</sup> 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 . . . ."<sup>5</sup> 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

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<sup>5</sup> 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.”<sup>6</sup>

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.”<sup>7</sup>

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.<sup>8</sup> Likewise, from the same FERC meeting, it appears that FERC staff have brought their reliability concerns to the Board’s attention.<sup>9</sup>

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

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<sup>6</sup> *Id.* at 1.

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> See FERC Commission Meeting, Oct. 16, 2014, available at [http://ferc.capitolconnection.org/101614/fercarchive\\_flv.htm](http://ferc.capitolconnection.org/101614/fercarchive_flv.htm) (Commissioner Moeller speaking at minute 40).

<sup>9</sup> *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,<sup>10</sup> 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.<sup>11</sup>

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<sup>10</sup> 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).

<sup>11</sup> 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,<sup>12</sup> 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,

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<sup>12</sup> 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,"<sup>13</sup> including fines as appropriate. *See, e.g., Canadian National Railway*

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<sup>13</sup> *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."<sup>14</sup> 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"<sup>15</sup> "powerhouse"<sup>16</sup> in its ability to generate massive profits and akin to the biblical Noah in "anticipating the needs of its customers."<sup>17</sup>

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

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

<sup>15</sup> *Id.* at 4.

<sup>16</sup> *Id.*

<sup>17</sup> *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:

Slover & Loftus LLP  
1224 Seventeenth Street, NW  
Washington, D.C. 20036

Dated: October 22, 2014

William L. Slover

John H. LeSeur

Peter A. Pfohl


Daniel M. Jaffe

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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.<sup>1</sup> WCTL explains that one of its members has shuttered four electric generating units to preserve coal stockpiles for the winter.<sup>2</sup> Others have filed emergency notices of coal shortages with the U.S. Department of Energy.<sup>3</sup> 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.<sup>4</sup> WCTL claims that, despite these service difficulties, WCTL “has just been informed that BNSF intends to remove approximately 60 coal train sets from service.”<sup>5</sup>

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.

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<sup>1</sup> Pet. 1.

<sup>2</sup> Id.

<sup>3</sup> Id. at 1-2.

<sup>4</sup> Id. at 2-3.

<sup>5</sup> 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.



**Roger Nober**  
*Executive Vice President*  
*Law & Corporate Affairs*

**BNSF Railway Company**  
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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.<sup>1</sup>

#### **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

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<sup>1</sup> 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**

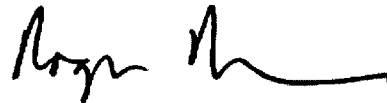
In summary, BNSF is undertaking significant efforts in the short-term and long-term to improve velocity for our coal customers and all our customers. We believe that we are taking all practical and reasonable steps to improve coal velocity and service to our customers, in light of the need to maintain 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.<sup>2</sup> 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.<sup>3</sup> 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

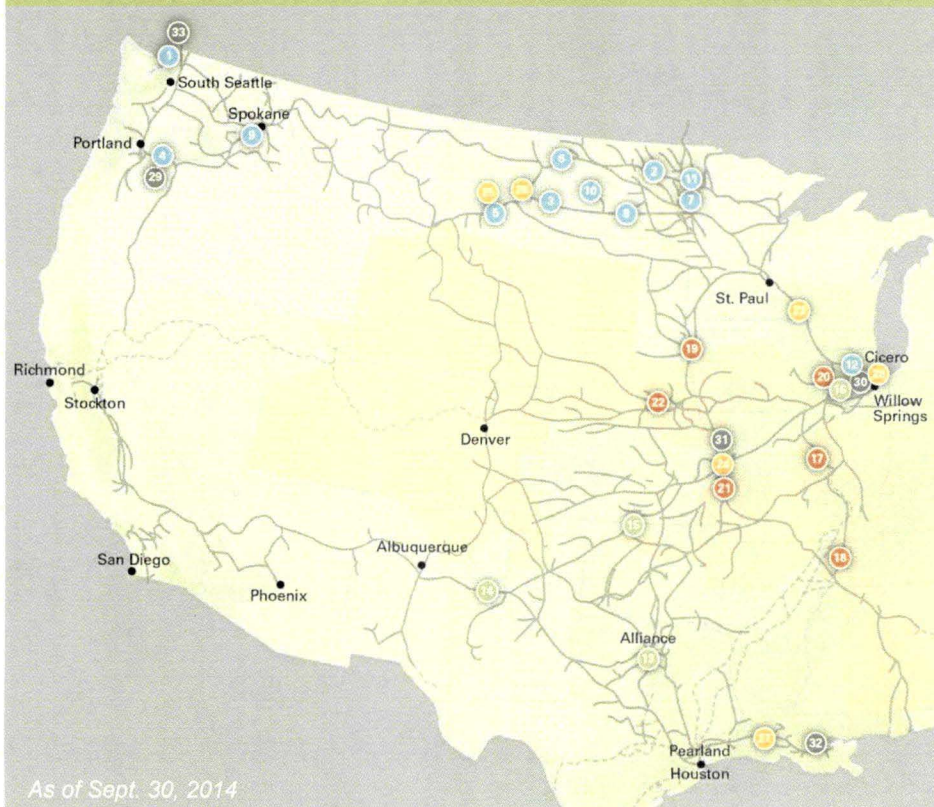
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<sup>2</sup> Because we believe that our plans and the Board's current oversight activities remove any justification for the measures outlined in WCTL's proposal, we have not addressed here the arguments that WCTL makes about the Board's authority 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.

<sup>3</sup> 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.

ATTACHMENT A

# BNSF's 2014 Capacity Expansion Plans



## 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 Noyes: interchange tracks and one siding project
- 12 Aurora: two siding projects

### South Region

- 13 Fort Worth: completion of multiyear Tower 55 project
- 14 Clovis: begin 10 mile double track project Vaughn - Camero
- 15 Panhandle: begin 20 mile double track project Loder - Ayard
- 16 Mendota: interchange tracks at Zearing

### 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 Bonita - Hillsdale
- 22 Ravenna: begin 12 mile double track project

### Terminals

- 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 Glendive terminal
- 27 Lafayette: complete Lacassine, 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 Washougal 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 160.76 in Tecumseh, Neb.; replace bridge across North Fork of the Nemaha River
- 32 Lafayette: Bridge 32.06 in Des Allemands, La.; major work to the moveable bridge that crosses Bayou Des Allemands
- 33 New Westminster: Bridge 129.3 near Colebrook, B.C.; continue work from 2013 on bridge over Serpentine River



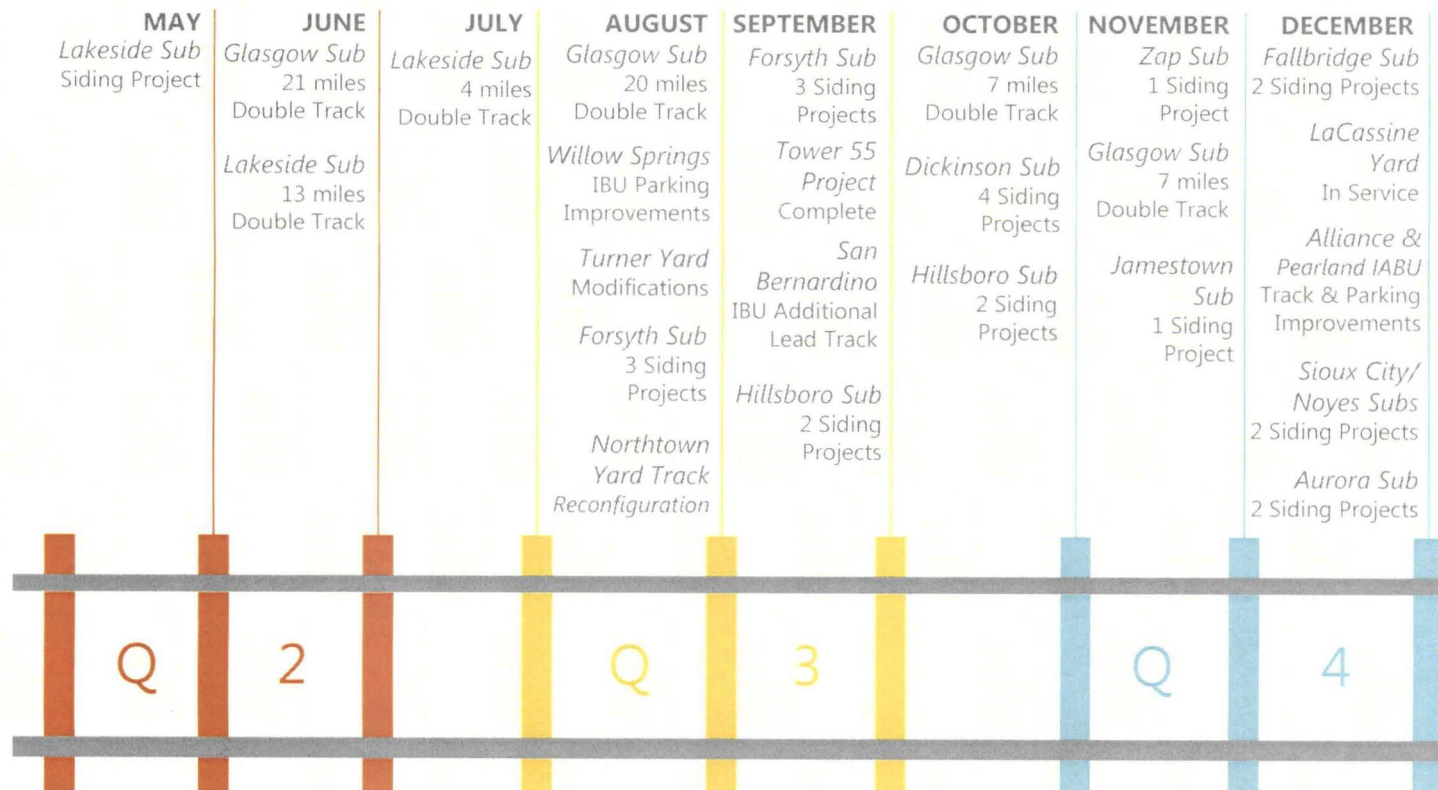


**ATTACHMENT A**

# 2014 Major Expansion Project Timeline



Moving Forward  
For Tomorrow



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



**ATTACHMENT A**

# Expanding Infrastructure



## Lakeside Sub

17 new miles of double track,  
1 new siding

## Glasgow Sub

47 new miles of double track,  
additional 8 miles in Nov.

## Forsyth Sub

2 new siding,  
4 siding extensions

## Devils Lake Sub

6 CTC islands

## Dickinson Sub

1 new siding,  
3 siding extensions

## Hillsboro Sub

2 new sidings,  
2 siding extensions





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



October 31, 2014

Hon. Daniel R. Elliott III  
Chairman  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Hon. Deb Miller  
Vice Chairman  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Hon. Ann D. Begeman  
Board Member  
Surface Transportation Board  
395 E Street, SW  
Washington, DC 20423

Dear Chairman Elliott, Vice Chairman Miller, and Board Member Begeman:

We write to express our strong support for the petition that the Western Coal Traffic League filed on October 22, 2014, asking the Board to require BNSF Railway Company to file a coal service recovery plan. In addition, the Board's prompt action through its order of October 24, 2014 is greatly appreciated.

We know and deeply appreciate that the Board has been monitoring the service problems experienced by BNSF and other carriers, holding hearings, providing assistance to customers, facilitating their interactions with their carriers, and most recently requiring the submission of weekly performance data from all the carriers as well as additional information from Canadian Pacific. We also recognize that the Board's jurisdiction and oversight over rail transportation extends to all commodities and not just coal. Nonetheless, we believe that the situation with coal service has already reached dangerous levels and is on the verge of become dire, not only imposing additional costs on consumers generally, but also posing a threat to the reliable operation of the power grid this winter.

As the Coal League's petition explains, coal deliveries have fallen short by millions of tons in the past year, and the unavailability of coal generation has cost consumers and coal producers hundreds of millions of dollars. The most immediate concern is that winter is coming soon, and utilities have been unable to build up their coal stockpiles in anticipation of higher winter loads and the usually brief coal delivery problems that can accompany major snow storms. Last year, stockpiles provided some protection from disruption, and that protection proved critical when cold weather disrupted gas deliveries.

The situation is far worse this year. Stockpiles are low, and rail service is more vulnerable. Despite pledges from carriers that no plant will run out of coal, some utilities have already had to shut generating units down in order to build up stockpiles and avoid greater problems later on. Last winter demonstrated that coal generation was essential for maintaining the operation of the grid, and the country should not be exposed to greater risks this winter.

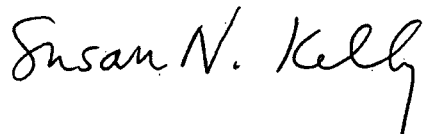
The most ominous development noted in the petition is BNSF's apparent intention to remove approximately sixty coal trainsets from service, which BNSF has now clarified as thirty sets, but which is still significant. This action raises a serious question as to whether coal service is being

Hon. Daniel R. Elliott III, Hon. Deb Miller, Hon. Ann D. Begeman  
October 31, 2014  
Page 2

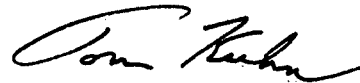
reduced at a time when it is most needed. Such action should not occur without some measure of active Board oversight and underscores the necessity for the Board to require BNSF to submit a coal service recovery plan that will provide utilities with tangible assurance that the situation is being addressed in an appropriate manner. We also are very concerned about service levels on other coal carriers and, as circumstances require, the Board may need to expand the scope of the requested relief to cover other carriers.

Accordingly, we urge the Board to grant the petition and require BNSF to submit a coal service recovery plan for the Board's review.

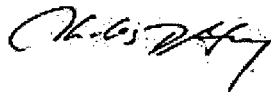
Sincerely yours,



Susan N. Kelly  
President and Chief Executive Officer  
American Public Power Association



Thomas R. Kuhn  
President  
Edison Electric Institute



Charles D. Gray  
Executive Director  
National Association of  
Regulatory Utility Commissioners



Jo Ann Emerson  
Chief Executive Officer  
National Rural Electric  
Cooperative Association



215 South Cascade Street  
PO Box 496  
Fergus Falls, Minnesota 56538-0496  
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October 31, 2014

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



236948

Re: Docket No. EP 724, United States Rail Service Issues  
Comments of Otter Tail Power Company

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

Dear Ms. Brown:

This letter provides additional written comments in the above-referenced matter. Otter Tail Power Company filed initial comments in this matter on September 11, 2014. These additional comments are being filed to describe developments that have occurred since September 11, 2014, that are further compromising the reliability of our base load electric generating capabilities, specifically at the Big Stone generating plant in Big Stone, South Dakota and now the Hoot Lake generating plant in Fergus Falls, Minnesota. Otter Tail's initial comments are attached to these additional comments for your convenience.

Our September 14, 2014, comments described the BNSF's inability to deliver sufficient coal to the 475-megawatt Big Stone Electric generating plant located at Big Stone City, South Dakota. As described in our previous comments, the Big Stone Plant has reduced its output for the purpose building up its fuel stockpile to a level that would reduce the risk of fuel-related outages going into the winter months. This was necessary because for the past five months BNSF was delivering only about eighty percent of Big Stone Plant's burn requirements even with three trains in service.

Since those comments we filed, deliveries to the Big Stone Plant have gotten worse not better. On October 20, 2014, Otter Tail was notified by the BNSF that one of our three unit coal trains used to serve our Big Stone electric generating plant would be "parked indefinitely." We understand that the unit train was then parked by BNSF on Friday, October 24, 2014. Now with only two of our trains in service, we calculate that the BNSF will need to improve cycle times by thirty five percent compared to the last five months.

We do not have confidence that the BNSF can increase cycle times by this much and we therefore are gravely concerned about further reductions in our fuel supplies which will compromise electric reliability and increase the costs that our customers will pay for energy as we go into winter.

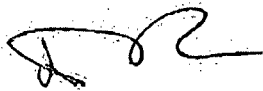
Ms. Cynthia Brown  
October 31, 2014  
Page 2

Also, since we filed our September 14, 2014, comments, BNSF deliveries have degraded significantly to another Otter Tail generating station, the Hoot Lake Plant located near Fergus Falls, Minnesota. At Hoot Lake, the facility had been off-line for a maintenance project for several weeks during the spring and summer, and therefore we were able to build up and maintain our normal coal stockpile. Since October 1, 2014, however, our train was parked for nine days and the BNSF took another seven days to move to the mine and return, resulting in a cycle time of over 384 hours—which is two and a half times longer than normal. During this period, approximately 25 percent of the Hoot Lake stockpile was consumed and we are now well below winter stockpile targets.

In our discussion with the BNSF we have been informed that the reductions in train volumes are being instituted with the intention of increasing train velocities. We have also been told that the BNSF will be equitably distributing the reductions in train volumes to all shippers. We ask for a demonstrated verification that the reductions are indeed being distributed to all shippers. Specifically, we request that the BNSF be required to report how many trains were parked and for how long and what commodity they were delivering, along with the ratio of those parked to total in service.

Additionally, and most importantly, we renew the request we made in our September 14, 2014, comments that the Board take action immediately to remedy this situation. As we indicated previously, the BNSF needs to restore cycle times to normal levels and measures need to be put in place to assess BNSF's progress toward restoring coal delivery service. We have serious concerns about system reliability and adequacy of available energy during the coldest months of the winter if these baseload electric generating plants do not have adequate fuel to produce electricity up to their full potential.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Tim Rogelstad', with a stylized flourish at the end.

Tim Rogelstad  
President  
Otter Tail Power Company

AL FRANKEN  
MINNESOTA

SUITE  
SH-309  
202-224-5641

## United States Senate

WASHINGTON, DC 20510-2309

October 31, 2014

The Honorable Mary Landrieu  
Chairwoman, Senate Committee on  
Energy and Natural Resources  
703 Hart Senate Building  
Washington, DC 20510

The Honorable Lisa Murkowski  
Ranking Member, Senate Committee  
on Energy and Natural Resources  
709 Hart Senate Office Building  
Washington, DC 20510

Dear Chairwoman Landrieu and Ranking Member Murkowski:

Thank you for your leadership on issues that impact the reliability and affordability of energy. I write to request that the Senate Committee on Energy and Natural Resources consider holding a hearing to examine the serious coal shortages that are affecting a number of areas of the United States. Utilities in my state and elsewhere are restricting the operation of coal-fired plants in order to conserve coal stockpiles – stockpiles that have grown precipitously and dangerously low due to ongoing delivery problems with rail service. 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. Unfortunately, it is electric customers who ultimately have to bear the cost of the failures of rail shippers. This problem has persisted, in varying degrees of severity, for more than a year. With winter fast approaching, utilities in Minnesota and elsewhere cannot tolerate watching fuel stockpiles fall to under one week, as they did last winter.

As Chairman of the Energy Subcommittee, I stand ready to hold a Subcommittee hearing if the Committee believes this would be appropriate, or to work with you on a full Committee hearing. I look forward to working together with the Committee to examine the causes and effects of the coal shortage, and to identify steps we can take to address it and to prevent it from happening again.

Thank you for your attention to this important matter. Please contact me, or Ali Nouri on my staff, with any questions.

Sincerely,



Al Franken  
United States Senator



# STATE OF MINNESOTA

## Office of Governor Mark Dayton

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

October 31, 2014

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

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 13<sup>th</sup>. 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](mailto:joanna.dornfeld@state.mn.us).

Thank you.

Sincerely,

A handwritten signature of Mark Dayton in black ink.

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

# United States Senate

WASHINGTON, DC 20510

2367007

ENTERED  
Office of Proceedings  
November 7, 2014  
Part of  
Public Record

October 31, 2014

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

Dear Chairman Elliott:

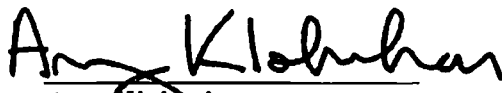
Electric utilities in Minnesota remain deeply concerned that the lack of reliable rail service is leading to dangerously low levels of coal stockpiles to make it through the long Minnesota winter.

In a letter sent to the Surface Transportation Board (STB) on October 13, 2014, Governor Dayton joined us in requesting that the STB require railroad carriers to submit publicly-available coal service plans to help ensure utilities are receiving timely and predictable shipments of coal.

We support the Western Coal Traffic League's (WCTL) petition to the STB last week requiring BNSF to file a coal-specific service recovery plan addressing coal shortages affecting many of its customers. The STB subsequently directed BNSF to reply to the WCTL petition by November 3, 2014. With winter quickly approaching, we urge the STB to swiftly approve and enforce a service plan that would ensure delivery of adequate coal supplies needed to heat homes and businesses.

Thank you for your attention to this important matter. We look forward to working with you to help ensure electric utilities in Minnesota have access to adequate rail service.

Sincerely,

  
Amy Klobuchar  
United States Senator

  
Al Franken  
United States Senator

**BEFORE THE  
SURFACE TRANSPORTATION BOARD**

**236950  
ENTERED**

**STB Docket No. Ex Parte 724**

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

**UNITED STATES RAIL SERVICE ISSUES**

**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.<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 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>.

<sup>2</sup> *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).

<sup>3</sup> *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.<sup>4</sup> 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.<sup>5</sup>

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.<sup>6</sup> 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,

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<sup>4</sup> 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*”).

<sup>5</sup> 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.

<sup>6</sup> *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.<sup>7</sup> 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.<sup>8</sup>

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

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<sup>7</sup> 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").

<sup>8</sup> 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.<sup>9</sup> 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.<sup>10</sup> 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.<sup>11</sup>

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

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<sup>9</sup> 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).

<sup>10</sup> 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>.

<sup>11</sup> *See* BNSF Customer Notifications, Planned Track Maintenance 11/2 to 11/8, *available at* <http://domino.bnsf.com/website/updates.nsf/updates-network-consumer/F63233E5FE48E8886257D8200731CB9?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.<sup>12</sup> 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.

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<sup>12</sup> 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.”).<sup>13</sup> 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

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<sup>13</sup> *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.

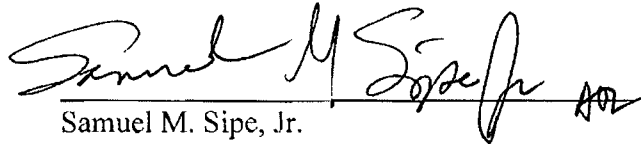
WCTL, speaking on behalf of its members, and the other organizations that have supported the WCTL Petition, are dissatisfied with the *level* of service being provided to coal shippers. While BNSF agrees that the level of coal service has not met all customer expectations, that service is governed by 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.", followed by a horizontal line and a small mark.

Richard E. Weicher  
Jill K. Mulligan  
BNSF Railway Company  
2500 Lou Menk Drive  
Fort Worth, TX 76131  
(817) 352-2353

Samuel M. Sipe, Jr.  
Anthony J. LaRocca  
Kathryn J. Gainey  
Steptoe & Johnson LLP  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-8119

Attorneys for BNSF Railway Company

November 3, 2014



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30 west superior street / duluth, minnesota 55802 / 218-355-3692

Kathy M. Benham  
Director - Fuel Strategy & Sourcing

236952  
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Office of Proceedings  
November 3, 2014  
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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



VIA EMAIL

November 3, 2014

236945

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

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

Dear Ms. Brown:

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

Dairyland Power Cooperative (DPC) writes in support of Western Coal Traffic League's (WCTL) petition to the Surface Transportation Board (STB) of October 22, 2014, asking the Board to order the BNSF Railway Company (BNSF) to submit a coal-specific service recovery plan.

DPC continues to receive inadequate service to our J.P. Madgett (JPM) coal-fired plant located in Alma, Wisconsin. JPM is captive to the BNSF. Therefore, adequate and consistent coal transportation to JPM by BNSF is critical to DPC's mission to provide reliable electric service to its cooperative members.

Poor rail service to JPM has forced DPC to curtail electric generation at JPM and seek alternative power sources, which costs are borne by our cooperative members. Unfortunately, there are no signs that BNSF's service will improve soon. DPC, therefore, encourages the STB to grant WCTL's petition.

Sincerely,

Sean L. Craig  
Manager, Fuel Supply

SLC:pls

A Touchstone Energy<sup>®</sup> Cooperative 

3200 East Ave. S. • PO Box 817 • La Crosse, WI 54602-0817 • 608-788-4000 • 608-787-1420 fax • [www.dairynet.com](http://www.dairynet.com)

Dairyland Power Cooperative is an equal opportunity provider and employer.





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

236949

ENTERED  
Office of Proceedings  
November 3, 2014  
Part of  
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Dear Ms. Brown:

SUBJECT: Docket No. EP 724. United States Rail Service Issues

Consumers United for Rail Equity (CURE) supports the Petition filed on October 22, 2014, by the Western Coal Traffic League (WCTL) in the Surface Transportation Board (STB) Docket No. EP 724. CURE's members who ship coal and other commodities on the Burlington Northern Santa Fe (BNSF) railroad have continued to see serious delivery shortfalls. As the STB is well aware these shortfalls have not been limited to coal deliveries. The delivery of grain, fertilizer and many other important products has been affected over the past year and continues.

The STB took steps to make sure that some of the agricultural needs were met earlier this year and we commend the STB for doing so. However, no such action has been taken with respect to the delivery of coal. Many coal producers and coal customers who depend upon BNSF to transport coal from the mines to the power plants have been hurt by BNSF's failure to deliver the amount of coal they had agreed to deliver. In their Petition, WCTL highlights the special need for adequate coal supplies for utilities that use a vast amount of coal in the winter. Without adequate stockpiles of coal on hand prior to the onset of severe winter weather the risk of widespread outages of electricity is greatly increased. This past weekend, the state of Maine and the Carolinas experienced the first significant snow event.

CURE and its members ask the STB to take this threat to the reliability of our electrical system seriously and take action to do what you can to help mitigate this risk. While every shipper who depends on the railroads to transport their product or commodity deserves to be treated fairly and should be able to expect reliable delivery by the railroads, not every product or commodity is as critical to the reliability of our electrical supply system as is coal. CURE asks the STB to recognize this and order the railroads to do the same.

CURE and its members thank you for taking this first step to address the problem with coal deliveries. We urge you to do everything in your power to help reduce the risk of fuel shortages this winter and to maintain the reliability of our critical electrical supply system.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Sharp", with a stylized flourish at the end.

Steve Sharp  
President of CURE



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, with the first name "Clair" being more prominent.

Clair J. Moeller  
Executive Vice President, Transmission & Technology



Ameren Services

November 3, 2014

236951

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

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

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

Dear Chairman Elliott:

Ameren Missouri is sending this letter in support of the WCTL Petition in Docket No. EP 724 to the Surface Transportation Board (the "Board").

The Midwest (including Missouri) is heavily dependent on coal generation. It is a critical fuel necessary to provide reliable electricity. Unlike some other utilities (particularly in the East), Ameren Missouri cannot substitute natural gas as an electric generation fuel in the event coal is not delivered in adequate quantities. Maintaining a reliable electric system is of the utmost importance to the Midwest; accordingly, coal deliveries must have first priority on the rail network.

At the end of August of this year, the US power plant coal inventories were at their lowest level since 2005 (when a prior railroad service disruption occurred). The correct level of coal inventories serve as a buffer to accommodate periodic delivery disruptions caused by flooding, snow, congestion or other conditions. The two Ameren Missouri BNSF served coal-fired power plants with low inventories generate approximately 32% of all of Ameren Missouri's power.

Over the last several months, ongoing crew issues, parking train sets and train rerouting have all negatively impacted deliveries. Ameren Missouri has not been provided with adequate assurances that service levels will improve and a coal delivery plan is needed. As a result of low inventory levels caused by reduced deliveries during this timeframe, Ameren Missouri now requires additional deliveries to replenish inventory levels to normal levels.

As the Board found when it established the Rail Energy Transportation Advisory Committee (RETAC) in 2007, "the reliability of the nation's energy supply [is] 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." This holds true today and a Board approved coal service recovery plan should require adequate coal delivery levels to assure electric grid reliability.

If additional specifics are needed for the Board to implement WCTL's Petition, Ameren Missouri respectfully requests that the Board issue a Protective Order to establish a framework for the protection of any confidential information.

We thank you for your prompt attention to this important matter.

Please feel free to contact me (314.554.2276 or [JSobule@ameren.com](mailto:JSobule@ameren.com)).

Very truly yours,

A handwritten signature in black ink, appearing to read "James A. Sobule".

James A. Sobule  
Vice President and Deputy General Counsel  
Legal Department

**Congress of the United States**  
**Washington, DC 20515**

November 19, 2014

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

Dear Chairman Elliott:

We write to you today to express our growing concern about the economic and reliability impacts caused by continued coal delivery problems in Wisconsin and the upper Midwest. As we approach another winter—with clear memory of the challenges presented by last year's persistent rail service failures—we ask that the Surface Transportation Board prioritize its oversight activities of coal deliveries to ensure that our constituents are not subject to price hikes and service outages this winter.

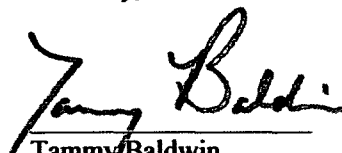
Electric utilities provide vitally needed power to homes and businesses. This demand will only increase as temperatures drop. Power plants in our region are facing dangerously low coal stockpiles – in some cases 60 to 70 percent below contracted levels – due to decreased rail service. These utilities have no choice but to take extraordinary and costly steps to conserve coal by shutting down power plants, restricting operations, and purchasing more costly power from other sources.

We recognize that the STB has recently initiated several important strategies to address this problem. 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.

We recommend that if delivery problems persist the Board require all Class I carriers to also submit publicly-available coal service recovery plans to the Board and monitor carriers' implementation progress through weekly public reporting.

We sincerely thank you for your prompt action on this important issue. We look forward to your response to our request and hope to continue working with you to ensure that our region's energy producers are able to receive the fuel supplies for which they have arranged this winter.

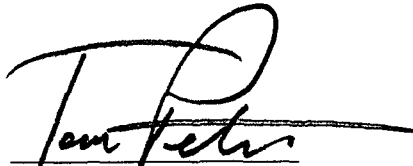
Sincerely,

  
\_\_\_\_\_  
Tammy Baldwin  
U.S. Senator

  
\_\_\_\_\_  
Ron Kind  
Member of Congress



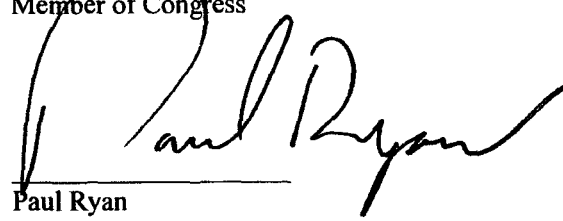
Sean P. Duffy  
Member of Congress



Thomas E. Petri  
Member of Congress



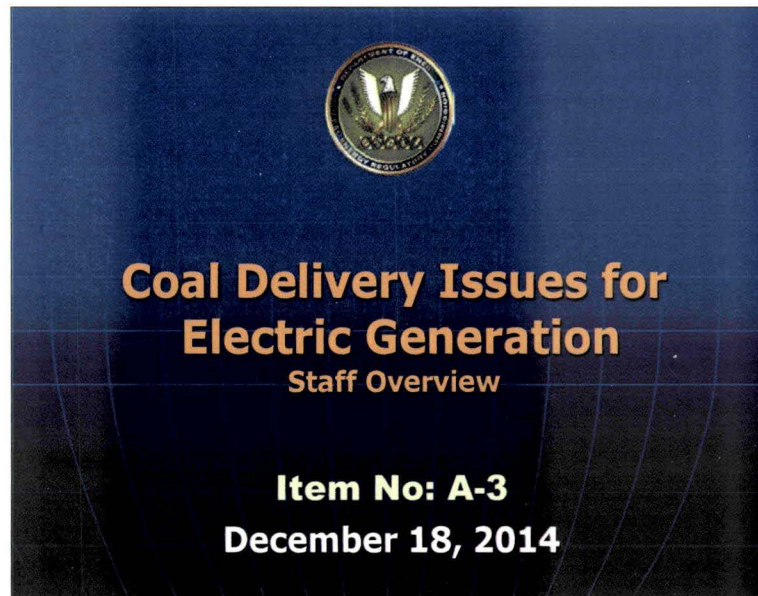
Reid Ribble  
Member of Congress



Paul Ryan  
Member of Congress



Slide 1

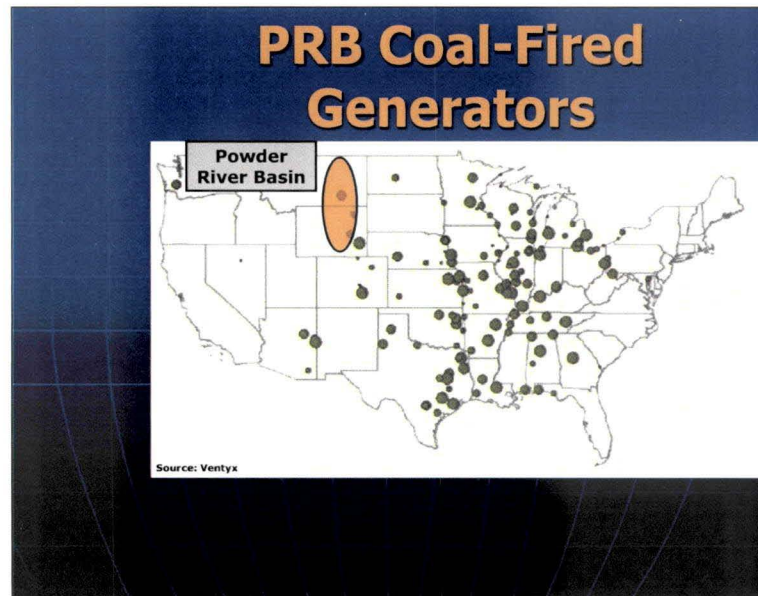


Chairman LaFleur, Commissioners, good morning.

Staff will provide an overview into the reliability and market impacts associated with coal delivery interruptions, which present challenges for some electric generators in the central part of the country.

This overview is a collaborative effort by the Office of Enforcement's Division of Energy Market Oversight, the Office of Electric Reliability, and other offices within the Commission.

Slide 2

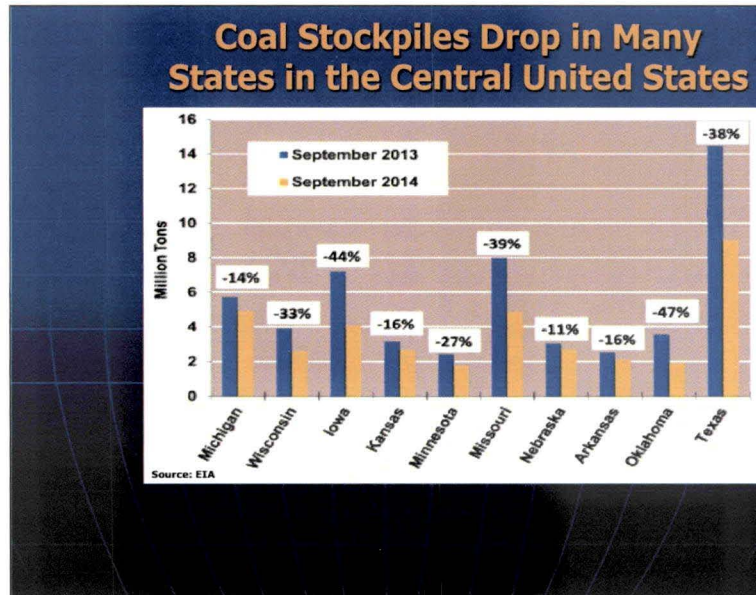


The extreme cold weather of last winter brought attention to the issue of replacing the drawdown of coal inventory in the central United States. Since the middle of 2013, many generators already have had problems getting requested delivery levels. One concern centered on the rail delivery of Powder River Basin or PRB coal by BNSF.

There are 166 power plants throughout the U.S. that use Powder River Basin coal, representing 172 GW of capacity. The majority of these plants are in the MISO, SPP and ERCOT regions.

Rail operations in the Midwest are going through a period of adjustment and multi-faceted challenges. Coal is just one of several commodities vying for space on the rail system. Because of these developments and their implications for electric reliability and markets, Staff has paid particular attention to the coal delivery picture. Staff analyzed the fundamentals involved, monitored regulatory developments, and had discussions with a number of stakeholders. The utilities and RTOs that we spoke with relayed various levels of concern about their ability to maintain and build their stockpiles prior to the winter. While much of what Staff heard was specific to the individual entities, we heard a number of common themes. For instance, one theme was that generators who relied on BNSF for delivery of PRB coal claim to have consistently received less coal than they had requested. Generators asserted that their deliveries were being rationed, along with other commodities, on a rail system that was over-taxed and hampered by disruptions caused by construction intended to improve future capacity.

Slide 3



PRB coal deliveries in the Central U.S. have been below previous levels all year as well as for the second half of 2013. As we can see, the inventories for all types of coal in the central states lag well behind the inventories of a year ago. Coal stockpiles at U.S. power plants are below the five-year average.

At the state level, the greatest impact is on plants in MISO and SPP that rely on PRB coal, with stockpiles in Iowa and Oklahoma more than 40% below last year's level. Other heavily affected states are Minnesota, Wisconsin, Missouri, and Texas, where stockpiles are between 25 and 40% below last year.

It is likely that below-average stockpiles will persist through 2015 as railroads struggle to keep up with overall demand before system upgrades are complete. This is raising concerns among some generators that low stockpiles coming out of the winter could create challenges in the summer of 2015.



Slide 4

## Coal Delivery Effects

- Generation owners can be harmed by coal shortages if there is prolonged cold and continued delivery disruption.
- The regions involved appear to be preparing adequately for winter, even if it is colder than forecast.

Some generating utilities and independent plant operators are unable to establish the coal stockpiles that meet the targets they have set for this winter. Certain affected generators who use PRB coal delivered by BNSF have taken steps, such as reducing output and using trucks, to conserve coal and build inventories. The relatively mild summer also helped to mitigate the deficiency going into this winter.

It is possible that individual power plants could run low on coal in the event of protracted cold weather and coal deliveries, and some locations cannot count on deliveries at all once the water portion of their delivery route is frozen over.

The RTOs can rely on fuel diversity and surplus capacity to help manage any unexpected loss of generation due to coal supply shortages.

Slide 5

## Market Effects

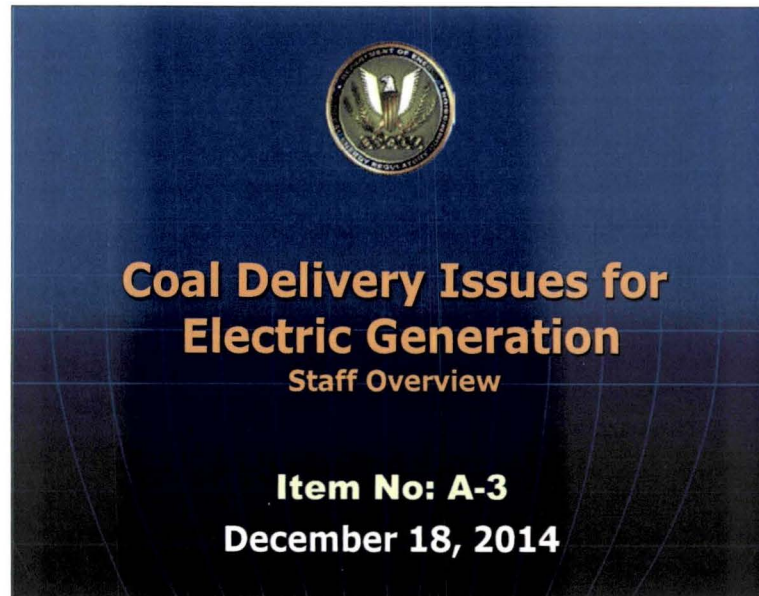
- Higher off-peak prices have occurred this past Fall season.
- Delivery disruptions and a colder than forecast winter could result in small to moderate power price increases.
- Market impacts could be significant if combined with other system disruptions.

A handful of generating companies in MISO and SPP have had their reference prices adjusted through consultation with the market monitors. A higher reference price reflects the opportunity cost of using a limited fuel supply and enables the generator to raise its offer without being subject to market power mitigation. Higher offer prices allow the generator to run less and conserve coal. These conservation measures typically reduce generation in the hours and days that load is relatively low.

These offer adjustments have been effective in reducing coal consumption by some units, resulting in minor market effects thus far. In recent months, MISO's off-peak prices have increased compared to a year ago while most peak prices have been little changed. This is a reasonable result because the RTO calls on these units only at higher load times. The higher offers price the units out of the low-load hours such as off-peak, shoulder-period hours. This can be an efficient market solution as long as the generators have estimated coal needs and offer impacts well.

If the coming winter presents challenges similar to last year's experience, the coal inventory problems could result in significant market impacts. However, Staff would expect to see a somewhat measured reduction of coal generation supply as plant operators with inventory issues take more and more conservation actions. By itself, coal inventory deficiencies should not produce significant power market dislocation. However, the inventory deficiencies could result in more significant impacts when combined with other events such as a high-level of unplanned outages or natural gas disruptions.

Slide 6



This completes our presentation. We will be happy to answer any question you may have.

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FERC Rail Service Panel  
Dave McMillan Comments

Thank you Chairman LaFleur and Commissioners Moeller, Clark and Bay for holding today's panel discussion on this very 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 (MP), which is a division of ALLETE. 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).

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 customers, 16 municipalities and, importantly, some of the nation's largest industrial customers. Our energy-intensive large power customers in the iron mining, forest and paper products, pipelines, and a refinery all compete in international markets.

Importantly, this handful of companies consumes over **one-half** of the electricity Minnesota Power produces.

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 Surface Transportation Board to remedy

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the BNSF-related service problems faced by many coal-fired utilities in the past year, as well as service problems of other railroads.

While MP has significant wind, hydropower and biomass generation assets, 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 year. This coal originates at mines located in the Powder River Basin area of Wyoming and Montana and is transported by BNSF either in single-carrier or joint-carrier service.

The Commission 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 the Commission's 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 experience confirms the staff's winter market assessment. 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 were forced to curtail coal-fired generation. Our largest generating station, the Boswell Energy Center, was forced to run at its minimum capacity on some of the highest load days of the winter. At one point we were down to

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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.

Today, thanks in part to our coal conservation efforts, our coal inventories at Boswell are – at least for now – 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 higher-priced purchases from the Midcontinent Independent System Operator (MISO) market. Given Minnesota's winters, electric service disruptions in the winter months could prove devastating. The good news is that organized markets like MISO work, and we had no electric service disruptions. The bad news is the purchased energy prices were significantly higher than our self-generation costs. We estimate the replacement energy cost at \$24 million over the past year – a cost that is ultimately borne by our wholesale and retail electric customers. These are costs they can ill afford to pay.

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As I said in my testimony on this very topic at a Surface Transportation Board hearing in April of this year, Minnesota Power tries to approach problems with creativity and optimism. Minnesota Power has had a long relationship with BNSF that dates back to 1968. In recent years, we and BNSF have been proactively looking for ways to 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 their credit, BNSF has in recent months added equipment and improved service, and kept the lines of communication open.

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

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collaborate closely with the STB, and also with the Department of Energy, to assure that there will be a coordinated Federal response, if needed, to avoid adverse reliability and/or economic consequences as we enter another winter. Finally, 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 continue to closely follow electric-rail coordination issues, building upon today's panel discussion.

In closing, let me say that it is up to us - my colleagues on this panel, the Surface Transportation Board, and the FERC - to assure that electric consumer's needs and expectations are met, and at a price that does not undermine the businesses and working families of Minnesota and the nation. 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.



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SERVICE DATE – LATE RELEASE DECEMBER 30, 2014

## SURFACE TRANSPORTATION BOARD

### DECISION

Docket No. EP 724

## UNITED STATES RAIL SERVICE ISSUES

Digest:<sup>1</sup> 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.<sup>2</sup> 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.<sup>3</sup>

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<sup>1</sup> 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).

<sup>2</sup> See BNSF Letter 2; BNSF Reply 8-10.

<sup>3</sup> BNSF Letter 5.

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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.<sup>4</sup> Similarly, Minnesota Power states that it ceased operations at four electric generating units in an effort to preserve coal stockpiles.<sup>5</sup> Several other power companies also comment in support of WCTL's petition and note low coal inventory and reduced deliveries.<sup>6</sup> 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.<sup>7</sup> Minnesota Governor Mark Dayton, U.S. Senator Amy Klobuchar, and U.S. Senator Al Franken also submitted comments expressing support for the WCTL petition.<sup>8</sup> 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.<sup>9</sup>

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<sup>4</sup> Dairyland Power Comment 1 (filed Nov. 3, 2014).

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

<sup>6</sup> 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).

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

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

<sup>9</sup> 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,<sup>10</sup> escalating costs,<sup>11</sup> inability to transport products to the marketplace in a timely manner,<sup>12</sup> and general concerns about the business impacts of rail congestion.<sup>13</sup> Coal shippers, in particular, expressed concerns about increased cycle times, being forced to implement coal conservation measures,<sup>14</sup> the inability to manage coal piles,<sup>15</sup> and the potential impacts of coal shortages on electricity grid reliability.<sup>16</sup> Many shippers also expressed concerns about a lack of regular communication with, and information sharing from, the railroads.<sup>17</sup>

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.<sup>18</sup> It also notes that it has been working aggressively towards remedying ongoing service issues to meet customer demand.<sup>19</sup> 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;<sup>20</sup> investing in northern corridor infrastructure, including network capacity expansion;<sup>21</sup> adding two double-track projects to its infrastructure investment plan to support its coal route;<sup>22</sup> making network-wide investments, including terminal and capacity expansion projects that it states will result in a stronger railroad,

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

<sup>11</sup> Id. at 219.

<sup>12</sup> Id. at 228.

<sup>13</sup> Id. at 229, 233.

<sup>14</sup> Id. at 127.

<sup>15</sup> Id. at 151.

<sup>16</sup> Sept. Hr'g Tr. 151.

<sup>17</sup> Id. at 219.

<sup>18</sup> 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).

<sup>19</sup> BNSF Reply 2.

<sup>20</sup> BNSF Letter 2.

<sup>21</sup> Id.

<sup>22</sup> Id. at 3.

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

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.<sup>27</sup> 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.<sup>28</sup> 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.<sup>29</sup>

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,<sup>30</sup> 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.<sup>31</sup> EIA's most recent update shows that

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<sup>23</sup> Id.

<sup>24</sup> Id.

<sup>25</sup> Id. at 3.

<sup>26</sup> BNSF Letter 3-4.

<sup>27</sup> Id. at 4.

<sup>28</sup> Id.

<sup>29</sup> Id.

<sup>30</sup> 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.

<sup>31</sup> 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](http://www.eia.gov/electricity/monthly/update/fossil_fuel_stocks.cfm) (scroll down to "Capacity by days of burn" chart).

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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.<sup>32</sup> 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.<sup>33</sup> 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.<sup>34</sup>

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.<sup>35</sup>
- 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

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<sup>32</sup> Id.

<sup>33</sup> 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>.

<sup>34</sup> 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](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.

<sup>35</sup> 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).

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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.<sup>36</sup> 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."<sup>37</sup> 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,<sup>38</sup> 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:

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<sup>36</sup> 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 . . .").

<sup>37</sup> BNSF Reply 10.

<sup>38</sup> 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 [rcpa@stb.dot.gov](mailto:rcpa@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.

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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:<sup>1</sup> 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.

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<sup>1</sup> 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,<sup>2</sup> 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,

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<sup>2</sup> 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."<sup>3</sup> 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:

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<sup>3</sup> 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.

<u>Interim Data Order</u>	<u>Proposed Rule</u>	<u>Description of Change</u>
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 <b>or interchange location</b> for <b>loaded</b> unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. . . . <b>The data is to be reported by the receiving carrier.</b>	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 <del>weekly total</del> number of loaded and empty cars, <del>stated separately, in revenue service that</del> 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 <b>daily average</b> number of loaded and empty cars, <b>operating in normal movement and billed to an origin or destination, which</b> 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: <del>Average daily</del> coal unit train loadings versus plan for the reporting week by coal production region.	Subsection (a), Request no. 9: <b>Weekly total</b> coal unit train loadings <b>or car loadings</b> 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 <del>counts</del> in the key Chicago terminal yards . . . .	Average daily car <b>volume</b> 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.<sup>4</sup> 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.”<sup>5</sup> CP urges the Board to require BRC and IHB to report appropriate metrics on a weekly basis.<sup>6</sup> 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

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<sup>4</sup> 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).

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

<sup>6</sup> Id.

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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.<sup>7</sup> 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.<sup>8</sup> 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 Corporation<sup>9</sup> 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

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<sup>7</sup> 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).

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

<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>10</sup> 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.



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## **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](mailto: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.

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## 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*

<b><u>Type of Responses</u></b>	<b><u>Estimated Time per Response</u></b>
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*

<b><u>Type of Responses</u></b>	<b><u>Frequency of Responses</u></b>
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
<b>Total</b>				<b>1,182 hours</b>

*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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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:<sup>1</sup> 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.

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<sup>1</sup> 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,<sup>2</sup> 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,

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<sup>2</sup> 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."<sup>3</sup> 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:

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<sup>3</sup> 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.

<u>Interim Data Order</u>	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 <b>or interchange location</b> for <b>loaded</b> unit train shipments sorted by grain, coal, automotive, crude oil, ethanol, and all other unit trains. . . . <b>The data is to be reported by the receiving carrier.</b>	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 <del>weekly total</del> number of loaded and empty cars, <del>stated separately, in revenue service that</del> 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 <b>daily average</b> number of loaded and empty cars, <b>operating in normal movement and billed to an origin or destination, which</b> 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: <del>Average daily</del> coal unit train loadings versus plan for the reporting week by coal production region.	Subsection (a), Request no. 9: <b>Weekly total</b> coal unit train loadings <b>or car loadings</b> 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 <b>volume</b> 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.<sup>4</sup> 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.”<sup>5</sup> CP urges the Board to require BRC and IHB to report appropriate metrics on a weekly basis.<sup>6</sup> 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

<sup>4</sup> 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).

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

<sup>6</sup> Id.

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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.<sup>7</sup> 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.<sup>8</sup> 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 Corporation<sup>9</sup> 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

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<sup>7</sup> 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).

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

<sup>9</sup> 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.<sup>10</sup> 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.

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<sup>10</sup> 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](mailto: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.