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January 28, 2020
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BEFORE THE
SURFACE TRANSPORTATION BOARD

WAYBILL SAMPLING REPORTING

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EP 385 (Sub-No. 8)

COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE

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Dated: January 28, 2020

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Pursuant to notice of proposed rulemaking that the Surface Transportation Board (“STB” or “Board”) served in EP 385 (Sub-No. 8) on November 29, 2019 (the “Notice”), the Western Coal Traffic League (“WCTL” or “League”)¹ submits the following comments.

The STB proposes to amend its regulations governing the waybill sample to “simplify” the sampling of non-intermodal carload shipments and specify separate sampling strata and rates for intermodal shipments. The primary purpose of the proposal is to have more representative movements available for application of the Three-Benchmark methodology, particularly R/VC_{COMP}. Notice at 4 & n.8. The proposal also entails reduced sampling for multi-car movements (with at least sixteen cars) and unit trains. *Id.* at 3 (Table 1), and 8 (Table 2).

¹ WCTL is a voluntary association, whose regular membership consists entirely of shippers of coal mined west of the Mississippi River that is transported by rail. WCTL members currently ship and receive in excess of 90 million tons of coal by rail each year. WCTL’s members are: Ameren Missouri, Arizona Electric Power Cooperative, Inc., Austin Energy (City of Austin, Texas), CLECO Corporation, CPS Energy, Entergy Services, Inc., Kansas City Power & Light Company, Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, and Western Fuels Association, Inc.

Making the Three-Benchmark rate reasonableness methodology more viable is a laudable objective, although whether the proposed changes will result in increased use of the rate standard is speculative. Beyond that, the League is concerned that accuracy and consistency in other matters that rely on the waybill sample may be compromised in the process. The areas of concern include the productivity adjustment of the Rail Cost Adjustment Factor (“RCAF”),² RSAM and R/VC_{>180}, which are both part of the Three-Benchmark standard, URCS Worktable A1 Part 6, which allocates carloads based on car type, and the make-whole adjustment. These calculations all reflect the sampling encompassed within the waybill sample.

Reducing the sampling of unit train and longer multicar movements will cause the waybill sample to become less representative of such movements and more representative of movements with a smaller number of railcars. Those unit train and longer multicar movements are responsible for a large portion of railroad revenues and operating margins, and reducing sampling of those movements may result in less accurate, or even merely different measurements, for productivity and other purposes that seek to capture the dynamics of the full universe of railroad movements. *Id.* at 5 n.10.

The League’s concerns in this regard are heightened by the issues that arose in conjunction with the change in the method of calculating mileages for purposes of the waybill sample in 2015. In particular, the RCAF productivity calculation relies on a

² In addition to the RCAF productivity calculation, the Board uses the waybill sample to construct a Tornqvist Index to track changes in railroad rates. *E.g.*, Appendix A to the Rate Reform Task Force Report and Recommendations (Apr. 25, 2019).

year-over-year comparison, and measuring two consecutive years differently invites distortion. RSAM, R/VC_{>180}, and the URCS worktable reflect multiple-year averages, and the averaging may be compromised if individual years within an average are measured differently. While the URCS make-whole adjustment is calculated annually, it should also reflect a consistent derivation. However, the Notice evinces no consideration of equivalency and consistency or the need for a transition.

The League recommends that the Board address this matter by collecting and processing the sample using both the existing methodology and the new methodology (assuming the proposal is adopted) for two consecutive years. In this manner, the year-over-year comparison in the RCAF productivity adjustment can be calculated using data collected under both the existing and proposed methodologies. If the two data sets yield the same results, and the same is true in the other referenced applications, then the Board would have an empirical basis for inferring that the change in methodology has no material impact. If they yield different results, then the Board could consider if the existing methodology should be retained, a linking factor should be used, additional data should be collected, or some other approach is in order. Absent such measures, the Board is both (a) inviting distortion and error, and (b) depriving itself of the basis to measure and then remediate that distortion and error.

In assessing the ostensible benefits of its proposal, the Board projects that 20.4% of the permutations with commodity, mileage rates, and terminating railroads will

have 25 or more observations, as opposed to 7.6% currently. *Id.* at 8-9.³ It follows that, even with the Board's proposed change, almost 80% (79.6%) of the movement permutations will still not have 25 or more observations, assuming that the Board's extrapolation is accurate. The Board similarly posits that 93.4% of the revenue would have at least 25 observations, as opposed to 84.2% currently. However, there is no analysis that indicates that the additional traffic with 25 or more observations (representing an additional 12.8% of movements and 13.8% of revenue) is more or less likely to bring a rate case. In particular, there is no consideration of the extent to which the additional sampled traffic may be ineligible to bring a rate case because it is covered by some exemption other than intermodal or falls below the jurisdictional threshold. The uncertainty of any actual improvement in the implementation of the Three-Benchmark methodology and R/VC_{COMP} is an additional reason for the Board to be cautious with respect to the implications for productivity and other analyses that seeks to use the waybill sample as data regarding the full universe of rail traffic.

The Board also proposes to adopt separate sampling for intermodal units. Shipments with one or two trailer or container units (TCUs) per waybill would continue to be sampled at the current 1/40 rate, and shipments with three or more TCUs per waybill would be sampled at the same 1/10 rate for non-intermodal shipments. The

³ The Board's classifications for the permutations may prove too crude in an actual rate case under the Three-Benchmark standard. In particular, mileages of 1 and 499 miles are grouped together, as are mileages of 500 and 999 miles. Also, relying on the terminating railroad ignores whether multiple carriers are involved. The Board's analysis may thus overstate the number of representative movements for purposes of R/VC_{COMP} .

Board anticipates that this sampling, in combination with the other changes, would increase the total number of waybills sampled and cause a greater portion of the sample to represent regulated traffic instead of exempt traffic. *Id.* at 4.

However, intermodal represents a growing share of railroad movements and revenues, and the reduced sampling of intermodal traffic has the potential, at least in the abstract, to distort the universe of rail traffic as reflected in the productivity calculation and similar analyses. The Board's distinction between intermodal and "regulated" traffic may also not consider that, as noted *supra*, the "regulated" traffic may include traffic that has been exempted on some other basis or that falls below the jurisdictional threshold.

Again, the Board should ensure that the change in sampling does not alter productivity and similar calculations. That analysis that should, at a minimum, entail a comparison of the results under the existing and proposed methodologies.

In addition, the Board should confirm that when intermodal traffic moves in a well car, particularly a multi-unit articulated double-stack car, the sampling will be based on the number of TCUs on a waybill, irrespective of the type or configuration of car. The Notice implies as much, *id.* at 7 n.13 (noting that intermodal TCUs often move under separate waybills, even if the TCUs are placed on flatcars that move in multiple flatcar blocks), but the treatment should be made explicit.

In summary, the Board's proposal appears well-intentioned, but it is not clear that it will deliver on its objectives, and it may entail unintended consequences. Accordingly, the Board should require that reporting be done based on the existing and proposed approaches for two years, particularly to ensure that the RCAF productivity

adjustment and other analyses that rely on the waybill sample to draw conclusions on the overall universe of railroad traffic are not affected, and that appropriate adjustments can be made if such adverse consequences materialize.

Respectfully submitted,

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