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

Via E-Filing

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

Dear Chairman Oberman:

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

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

1. Key Issues

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

A. Lack of Carrier Resources to Complete Scheduled Service

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2. Design Metrics:

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

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

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

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

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

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

3. Carrier Data Tracking

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

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

Carriers typically collect 2 main types of data

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

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

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

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

- a. shipper data collection:
 - i. In the case of receiving a load/empty
 - 1. Time of railcar release from origin facility
 - 2. Time of railcar departure from origin facility
 - 3. Time of railcar arriving serving yard
 - 4. Time of railcar placed at destination facility
 - ii. In the case of releasing a load/empty
 - 1. Time of railcar release
 - 2. Time rail crew arrives site
 - 3. Time of railcar departure from facility
 - 4. Time railcar reaches intended destination
- b. Class one carrier data made available to customers
 - i. CLM data along the route for the arriving/departing shipment
 - ii. Original trip plan ETA
 - 1. Some carriers provide data showing variances from the original trip plan, but it is not aggregated nor accessible historically by customer
 - 2. Some carrier trip plan variances will re-set each time there is a delay between CLM records
 - 3. No consistent way for shippers to easily determine actual shipment transit versus original trip plan other than keying in real time data and variances

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

I. Trade-offs.

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

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

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

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

II. Conclusion

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

Sincerely,



Robin Rorick
Vice President
Midstream

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