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April 21, 2022

Surface Transportation Board  
395 E Street SW  
Washington, D.C. 20423

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**Re: Public Comment on Urgent Issues in Freight Rail Service, Docket No. EP 770**

Dear Board Members,

Wolverine Fuels, LLC (“Wolverine”) herein submits comments on the “Urgent Issues in Freight Rail Service, Docket No. EP 770, notice of public hearing set by the Surface and Transportation Board (“STB”), as announced by Federal Register Publication 87FR22009 published April 14, 2022. Wolverine makes the following comments within the context of its historical experience with the Union Pacific Railroad (“UP”) and the profound rail service issues that Wolverine has encountered with the UP over the past 12 months. Wolverine appreciates the opportunity to submit written comments and the STB’s commitment to further reviewing the serious rail service performance issues Wolverine is experiencing.

**About Wolverine**

Wolverine Fuels, LLC, based in Sandy, UT, is the largest producer of high quality, low sulfur bituminous coal in the western United States' Uinta Basin. From Wolverine’s Utah based mines, it supplies the Western U.S. power industry, domestic industrial markets and seaborne export markets. The company employs over 950 staff in rural Utah, employs thousands of rural people indirectly and contributes significantly to the regional economy.

Union Pacific, as the monopoly rail carrier at Wolverine’s facilities, controls the logistic rail routes Wolverine relies on to meet the needs of key domestic and export customers which together makeup a significant component of Wolverine’s overall business activities. This is comprised of routes to two California export terminals, a route to an export terminal in Texas, domestic routes to Western US power generation customers such as Intermountain Power Agency, and other regional utilities and industrial customers. Wolverine has no other transportation options for the coal it ships by rail and has thus built its export and domestic business around the implied ability of UP to meet specific service levels.

**Rail Service Issues**

Starting in early 2021, UP’s rail service to Wolverine has been seriously deficient and unreliable, providing only 50-60% of agreed and historical service levels. For Wolverine, the decreased level of service has resulted in over \$150 million in penalties, demurrage costs and other financial and operational costs and this quantum continues to escalate for Wolverine on a weekly basis. The UP



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performance year-to-date in 2022 has worsened compared to 2021, UP's service remains unacceptable and is only getting worse. Through the first quarter of 2022, Wolverine only received 50% of the nominated trains at its facilities. Without significant and immediate improvement, this continued trend looks to be the worst performance ever by the UP in the servicing of Wolverine's business. Wolverine cannot sustain current customer obligations if these railing levels are to continue.

Wolverine relies on export market access through the two aforementioned ports in California. UP's poor performance generated Minimum Annual Guarantee penalties with those ports in 2021, and 2022 is looking worse based on UP's year to date performance levels again risking even higher Minimum Annual Guarantees to third parties owed by Wolverine. Moreover, the failure to move Wolverine's coal creates excessive demurrage costs while cargo ships wait for UP to transport sufficient coal to the two aforementioned California ports for ship-loading. Those port operators, which are strategic partners for Wolverine, are questioning Wolverine's viability as a long-term partner should UP's performance issues continue. Losing port access or export customer base would be catastrophic for Wolverine's viability and the ongoing catastrophic UP performance is challenging Wolverine's present viability.

### **Attempt to Resolve Issues**

Wolverine has repeatedly complained to UP about its poor performance levels and has also proactively offered various ideas and incentives to more effectively partner with the UP and improve the UP's poor service. A number of meetings and regular engagement with UP senior management have led to commitments being made by the UP, but the severely impacted level of service has not improved.

In meetings and discussions over the last year with Wolverine, UP stated that a lack of locomotive power has contributed to its rail service deficiencies at Wolverine's mines. But in mid-2021, Wolverine staff personally observed dozens of UP locomotives sitting idle in Colorado and Utah while service continued to deteriorate. Wolverine made UP aware of this and suggested deployment of these assets to improve service to Wolverine's Utah mines, to no avail.

UP also stated that the unavailability of crews has contributed to the service problems. Staffing the trains is entirely within UP's control. Based in part on what UP operating employees have told Wolverine personnel, not having the right train crews at the right locations is a management problem at UP and cannot be blamed on the pandemic or any other external factor. Employee furloughs and the lay down of locomotives commenced prior to the beginning of the global pandemic and were part of an efficiency initiative the UP calls Precision Railroading.

UP's management communicated that they expected rail service would resume to normal levels by September 2021. In fact, UP management stated in that meeting that Wolverine could rely on the 2021 volume commitment in the parties' agreement for business planning purposes. That did not happen, even though Wolverine based its forward operations plan on this information to its detriment and has incurred significant financial penalties and costs as a result.



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## Conclusion

The failure of UP to transport Wolverine's coal as agreed makes Wolverine constantly at risk of becoming "coal bound" as the coal builds up at Wolverine's production facilities without transportation away from the site, exceeding stockpiling capacities and forcing Wolverine to ramp down operations. During the course of the past 12 months, Wolverine has encountered over 70 days where inventory at its Skyline Mine exceeded levels that would allow normal operation. During these instances, production had to be slowed or halted until inventory could be cleared away.

Additionally, Wolverine has carefully developed an international customer base and established itself as a reliable supplier of high-quality coal into the Asian markets. Inability to meet export commitments has damaged Wolverine's relationship and longstanding reputation as a reliable exporter. The port operators that Wolverine relies on to fulfill its export business are questioning Wolverine's viability as a stable long-term partner given the UP's performance.

UP's non-performance ultimately costs Wolverine the ability to meet customer contractual obligations through lost sales and puts Wolverine's transportation reliability further into question. This impacts the reliability of the power market in Utah and in California, it is detrimental to industrial customer's activities and is risking the viability of a business which employs thousands of rural people directly and indirectly in the state of Utah. The lack of reliability from UP makes it impossible for Wolverine to sufficiently plan how to best meet customer obligations and ultimately that cost falls directly onto Wolverine. The UP continues to perform poorly and without penalty, publicly posting robust profits and with no credible plan offered to recover its service levels.

Wolverine appreciates the opportunity to submit these written comments and looks forward to the responses and solutions on how to resolve the inconsistent and unreliable rail service as a result of the STB's hearing on April 26 and 27, 2022.

Sincerely,

/s/ Marc Maglione

Marc Maglione  
Chief Financial Officer, Company Secretary  
Wolverine Fuels, LLC