BEFORE THE
SURFACE TRANSPORTATION BOARD

URGENT ISSUES IN FREIGHT RAIL SERVICE	))))	Docket No. EP 770

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COMMENTS OF OLIN CORPORATION

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Pursuant to the Board's Notice of Public Hearing served on April 7, 2022 in Docket No. EP 770, *Urgent Issues in Freight Rail Service*, Olin Corporation ("Olin") submits these Comments for the Board's consideration.

IDENTITY AND INTEREST

Headquartered in Clayton, Missouri, Olin is a publicly traded company listed on the New York Stock Exchange with 8,000 employees in nearly 20 countries around the globe, including more than 20 locations in the United States. Olin was the first commercial supplier of chlorine in the United States and has been involved in the chlor alkali industry for over a century.

Olin is dependent on safe, reliable, efficient, and cost-effective railroad service to sustain its business and meet its customers' requirements. Olin ships over 46,000 railcars of chlor alkali products annually from its various North American manufacturing locations, each of which is captive to a single railroad. Olin has a substantial interest in the recent rail service problems and recovery efforts involving Class I railroads.

I.
COMMENTS

Olin welcomes the opportunity to comment on its recent experiences and recommendations for Board actions to attempt to restore rail service reliability at a time when the railroads are experiencing significant service problems.

A. Olin's Recent Service Problems

1. The Affected Essential Commodities Olin Ships by Rail

Olin is a leading producer of chlor alkali commodities including chlorine, caustic soda, and sodium hypochlorite (bleach) used for water and wastewater treatment by publicly owned systems throughout the country, construction products, plastics, textiles, pulp and paper, soaps, and food processing, to name a few. The creations of chlorine chemistry make possible clean water, safe foods, pharmaceuticals, medical equipment, consumer goods, computers and electronics, and many other diverse, critical commodities and products that are essential to modern life and the North American economy. The Department of Homeland Security has deemed chlor alkali products as essential assets to the "critical infrastructure." Also, chlorine is used in products and materials which promote and aid in our national defense, such as bullet-proof vests, helmets, parachutes, etc. used to protect the men and women serving in our armed services.

The vast majority of Olin's chlorine and caustic soda commodities are shipped by rail. Olin's manufacturing facilities were designed and built, in close consultation and cooperation with the railroads, to be served by rail. Olin has only minimal transportation service alternatives. For most of the shipments from Olin's facilities, there is no alternative to shipping by rail, for safety and security reasons, because of the large volumes of commodities and generally large distances involved with most of the shipments, and because the facilities were built to receive large-volume rail service.

2. The Common Carrier Service Obligation

As mentioned, Olin is captive to a single railroad at each of our manufacturing facilities, leaving us susceptible to competitive service and rate abuse by the serving railroads absent compliance with their common carrier service obligation. The underlying railroad common carrier obligation, at 49 U.S.C. § 11101, is of fundamental importance to Olin, and is virtually the only backstop protection Olin has as a captive shipper to ensure that the railroads meet Olin's service requirements. Olin's ability to survive and compete in today's global market is highly dependent on the railroads' compliance with their common carrier service obligations.

Olin has made considerable investments in its facilities to facilitate and improve its rail service. Olin has also invested in a considerable railcar fleet in excess of 5,000 railcars to assist the railroads in meeting their common carrier obligations. Olin actively manages its private railcar fleet to ensure that it has a sufficient railcar supply to meet daily production goals and customer demands, and to meet and exceed current railroad transit times, which are variable and often fluctuate due to the railroads' unwillingness to establish and carry out any binding service plans.

Unfortunately, Olin believes that the railroads' service issues are challenging the very foundation of their common carrier obligations to provide safe, reliable, and cost-effective service, and there appears to be little incentive for them to do so, as described below.

3. Railroad Service Failures/Forced Service Reductions

Olin has recently experienced ongoing service problems and difficulties with rail service. While Olin has experienced periodic service performance issues with all of the Class I railroads that serve it, its recent service problems have primarily involved BNSF Railway Company, Norfolk Southern Railway Company, CSX Transportation, Inc., and Union Pacific Railroad Company ("UP").

The recent threatened service reductions by UP are particularly problematic. Olin relies on UP: (1) to deliver its chlor alkali commodities to numerous critical public water and waste treatment plants in some of the largest metropolitan areas in the country that serve millions of people, and (2) to serve its other customers' industrial product requirements. In recent years, UP has been a key growth partner and has been supportive of Olin initiatives to expand. Recently, however, Olin's rail service demands have not increased, generally, and Olin has not been seeking to place any new, unexpected, or unreasonable service requests on UP.

Following the Board's announcement of this hearing, and without warning, UP asked for an immediate discussion that occurred on April 8th (*i.e.*, the day after service of the Board's Notice) during which they asked Olin to "voluntarily" take substantial railcars out of service. In particular, UP asked us to remove roughly 20% of our railcars from an already low railcar inventory "baseline" UP arrived at by pulling data from earlier this year during a non-peak seasonal demand period for Olin. UP's service reduction request came as a complete surprise, and it asked for Olin to implement immediate, substantial service reductions within only two to three business days. UP's request was made under a threatened embargo, as UP informed us and others that it would begin "metering traffic" through the issuance of new embargoes and permit systems if Olin did not agree to UP's service reduction plan.

UP has stated that it is contributing to reducing its railcar operating inventory by removing 2% to 3% of UP-controlled cars from its network across multiple commodity groups. Such a claim is highly misleading in the case of Olin's service, and that of many other shippers like Olin that rely exclusively or primarily on tank cars for their service. Because UP has none of its own railroad-provided tank cars in service, UP is itself making no contribution to reducing systemwide tank car inventories.

What is particularly troubling to Olin is the lack of transparency of UP's forced service reduction actions and the complete lack of notice or communication of any detailed service restoration plan. UP is essentially operating in a "black box" with respect to its service restoration plans, other than generally stating that it is trying to hire more people, and is adding a few more locomotives to its system, after having removed substantial locomotives in recent years to meet its strategic goals of implementing Precision Scheduled Railroading ("PSR").

Also, UP led Olin to believe that the reductions it sought were being made consistently across the breadth of UP's network and its customer base to ensure that service reductions were being reasonably allocated. However, it appears that Olin is amongst a select group of shippers being singled out to bear a disproportionate burden. Again, UP provided no service restoration plan, nor any commitment as to when its service would be restored, even if Olin and others were to implement fully UP's requested service reduction plan. Also, while UP said it would not reduce service in a manner that might endanger water safety and public health, no verified assurances have been provided, and UP has not offered to provide make-up service at a later time or to alleviate or remedy any ongoing damages caused by its forced service reductions and service failures.

B. Impacts of PSR on Service

The railroads have promised that their recent implementation of PSR and other management changes would result in service improvements through increased car velocity, minimized car dwell time, and improved on-time train performance and trip plan compliance. In reality, PSR has not delivered on these stated improvements and has made the railroads' networks less capable of responding to the normal ebbs and flows of the businesses that they serve. The railroads seem determined to satisfy the demands of Wall Street over the service needs and requirements of their customers.

In announcing this hearing, Chairman Oberman "hit the nail on the head" about the impacts of PSR:

> During my time on the Board, I have raised concerns about the primacy Class I railroads have placed on lowering their operating ratios and satisfying their shareholders even at the cost of their customers. Part of that strategy has involved cutting their work force to the bare bones in order to reduce

> costs. Over the last 6 years, the Class Is collectively have reduced their work force by 29% – that is about 45,000 employees cut from the payrolls. In my view, all of this has directly contributed to where we are today – rail users experiencing serious deteriorations in rail service because, on too many parts of their networks, the railroads simply do not have a sufficient number of employees.

STB Release No. 22-21 (Apr. 7, 2022). Olin agrees with Chairman Oberman that the massive reductions in the numbers, skill, and experience level of crews in service, along with slashed railroad customer service personnel, have created substantial operating problems for the railroads.

The railroads' unbridled quest for ever-declining operating ratios unfortunately has resulted in a downward spiral on service. Ironically, however, the demand-inelastic nature of the market appears to have produced net economic benefits for the railroads in the form of increased revenues and elevated stock prices, notwithstanding the substantial reduction in service quality. While Olin believes that the railroads do generally strive to provide good service to their customers, PSR – which is purposely designed to reduce costs, cut services, boost profit, and maximize railroad stock prices – has stripped them of any recovery or surge capacity. That fundamental structural problem is met largely with indifference by the railroads because the economic consequences of their service lapses are essentially negligible for the railroads.

Railroads refuse to provide service standards, to make up or compensate for poor service, or to compensate shippers for private railcar use blockages or delays. On the other hand, customers who do not meet the railroads' demands are saddled with things like demurrage or potentially forced "metering" of service.

If the railroad industry truly were service-oriented, railroads would reach out to major customers like Olin to ask what they can do to establish meaningful service standards and to ensure that they are meeting Olin's service requirements. Instead, the railroads instruct Olin and other similarly situated customers to accept service parameters that the railroads have designed to meet their self-serving PSR objectives. In large part, the railroads effectively are seeking to manage and control Olin's business, but with no real knowledge or experience in our essential business needs or requirements. Often, railroad service decisions appear to be made by central dispatching managers that have no first-hand knowledge as to the commodities involved or the local service needs or conditions. Those railroad decision-makers lack key information for ensuring that service is appropriately tailored for railroad customers. The common carrier obligation from the railroads' perspective is relegated to a mere afterthought, or an inconvenience at best, and there is little or no incentive at the present time for railroads to meaningfully "fix" their service problems.

C. Addressing the Railroads' Service Problems

In the April 7 Hearing Notice, the Board states that the "trends demonstrate that service has continued to deteriorate" and that "the Board has determined that the service issues may have reached a level that requires action by the Board." Notice at 2. Olin strongly agrees. Olin also agrees with the Board that the "ongoing service problems and crew shortages indicate that the Class I carriers need to take additional steps to ensure adequate service." *Id.* at 3 n.4.

As the Board recognizes, "[r]ail network reliability is essential to the Nation's economy." *Id.* at 2. Service reliability is essential to Olin's business, and to that of its customers. Reliable service also is essential to the general public that relies on the commodities and products derived from Olin's chlor alkali business. Those commodities and products are critical to public health, safety, and well-being, and to our national economy.

The railroads have a fundamental common carrier service obligation. However, the railroads essentially have defaulted on the terms of their common carrier obligations, principally the obligation to provide service on reasonable request. Under such circumstances, it is incumbent on the Board to take meaningful and substantive formal actions to address the situation, including the following:

<u>First</u>, the Board should enter a new service order, as it has in the past in similar circumstances, directing the affected railroads to submit comprehensive service restoration plans to the Board. *E.g.*, *United States Rail Service Issues*, EP 724 (STB served Dec. 30, 2014). The service restoration plans should detail how and when service will be restored, and the Board should require the railroads to file periodic written updates, at least weekly, on service plan implementation and service restoration. As part of their service recovery plans, the affected railroads should also be required to include a detailed description of all customers whose service has been subject to "voluntary" or forced service reductions, and how each railroad is making decisions to allocate service across commodities and its customer base. They should also describe in detail (1) their contingency planning to ensure that essential, critical commodities such as chlorine are

reasonably and timely delivered, and (2) steps the railroads will take to identify shortages for critical customers and traffic lanes and to remedy shortages in a timely fashion. The affected railroads should also be required to explain how they will meaningfully address and remedy individual customer harms and damages caused by their continuing service failures, through actions such as make-up service, rate concessions, compensation for parked private-equipment, the implementation of "reverse demurrage" programs, and/or other similar measures reasonably tailored to remedy the service harms caused.

Second, to the extent that the railroads fail to provide and implement adequate service restoration plans, or such plans are otherwise incomplete or deficient, the Board itself should enter an emergency service order on its own initiative under 49 U.S.C. § 11123, to address the situation. Under this statutory provision, where the "failure of traffic movement . . . creates an emergency situation of such magnitude as to have substantial adverse effects" on a shipper, its suppliers, and/or its customers, because the railroad "cannot transport the traffic offered to it in a manner that properly serves the public," as has occurred here, the service failures establish a compelling basis for the Board to exercise the authority granted to it under the law. This would include ordering appropriate relief to remedy the deficiencies in the individual carriers' service restoration plans, including, if necessary, access relief or other remedial requirements necessary to meaningfully address customer harms and damages caused by the deficient railroad service.

Third, to the extent that individual railroads seek to impose forced reductions through large scale embargoes or systemwide "metering" of traffic, as has been threatened, the Board should require that such railroads seek Board approval before implementing any such initiatives, with the opportunity for affected stakeholder comment and involvement. Specifically, the Board should ensure that, at a minimum, any such proposed embargo is authorized only on an individual, case-by-case basis, where necessary and properly shown to be due to unavoidable physical or operational impairment of a temporary nature affecting the particular service for a particular customer. The involved railroad should be required to show that: (1) the embargo is not implemented as an improper commercial measure to restrict or control traffic or traffic growth; (2) the embargo is fairly applied and reasonably allocates available capacity amongst customers and traffic groups; (3) any permit system, including daily and weekly permit numbers, are reasonable and do not restrict shippers/receivers ability to control and coordinate their shipments; and (4) the embargo is limited in duration to no more than one week or two, at most, at a time.

Such precautions are necessary because railroads have implemented or are threatening to implement unprecedented, large-scale embargo actions which seek to force service restrictions on many customers. Those threatened actions appear to be improper or legally suspect, and could have enormous impacts on the delivery of essential commodities, including chlor alkali products, to the public. Additionally, while it may be difficult or expensive for a railroad to alleviate its service problems, that should not give it a "free pass" to block service and attempt to end run its common carrier service obligation through use of improper embargos.

II.
CONCLUSION

Olin appreciates the opportunity to provide these comments. Olin must receive continuous, reliable rail service to meet our current and future business needs, and those of our customers. The railroads' continuing failure to maintain reliable service will have significant and potentially irreparable business consequences for Olin and its customers. Olin urges the Board to undertake the above-referenced actions and other appropriate steps to ensure that rail service is restored as soon as possible, and that the common carrier obligation is upheld.

Respectfully submitted,

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Dated: April 22, 2022