BEFORE THE
SURFACE TRANSPORTATION BOARD

URGENT ISSUES IN FREIGHT RAIL SERVICE	)	Ex Parte No. 770

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COMMENTS OF THE WESTERN COAL TRAFFIC LEAGUE

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In response to the Surface Transportation Board's ("Board" or "STB") decision in the above-captioned proceeding on April 7, 2022 ("April 7 Hearing Notice"), the Western Coal Traffic League ("WCTL") submits the following comments to highlight specific concerns and issues regarding rail service, and to request that the Board take immediate action and exercise its oversight and investigative authority to ensure adequate rail service.

IDENTITY AND INTEREST

WCTL is a voluntary association, whose regular membership consists entirely of shippers of coal mined west of the Mississippi River and transported by rail.[1] WCTL is the only organization dedicated exclusively to promoting the interests of its members in reliable and cost-effective coal transportation by rail.

For more than forty-five (45) years, WCTL members have made extraordinary investments in private railcar fleets, often at the behest – or the mandate – of the railroads that they rely upon. These unit trainsets, which typically are provided at

[1] WCTL's members are Ameren Missouri, Arizona Electric Power Cooperative, Inc., Austin Energy (City of Austin, Texas), CLECO Power LLC, CPS Energy, Entergy Services, Inc., Evergy, Inc., Lower Colorado River Authority, MidAmerican Energy Company, Minnesota Power, Nebraska Public Power District, and Western Fuels Association, Inc.

no cost to the railroad, have supported the transportation of millions of tons of coal each year. Despite providing both a reliable and steady stream of profitable coal traffic for the railroads and the investments in equipment necessary to support these shipments, WCTL members have been experiencing significant rail service delays, service curtailments, and other railroad-imposed limitations that have resulted in coal delivery shortfalls that threaten the efficient operation of critical generating assets, and undermine carefully planned coal inventory practices that are needed to respond to seasonal demands for electricity and surges in coal-fired generation prompted by higher costs for alternative generating sources. WCTL thus has a strong interest in the Board taking firm action to require the Class I railroads to adopt specific remedial measures that will restore to utility coal shippers a level and quality of service to which they are legally entitled.

INTRODUCTION AND SUMMARY

WCTL members typically forecast their annual coal requirements months before a year begins, using procedures agreed upon with the railroads, and update those forecasts on a regular basis. Those forecasts are based on anticipated demand for electric generation throughout the year, as well as coal reserve requirements to assure a utility's capacity to respond to unexpected demand surges and other circumstances. Individual shipments usually are scheduled monthly, using computer platforms developed and maintained by the railroads themselves. As noted *supra*, most unit train coal shipments take place in railcars provided by the shipper, at no cost to the railroad. The shipments are some of the most straightforward on the railroads' systems – repetitive single-customer unit train shipments from a single mine origin (or group of mines) to a single

interchange or generation station destination. Despite a system designed to provide the railroads both with maximum planning capability and the equipment needed to fulfill their transportation responsibilities, WCTL members have experienced unreasonable delays in transporting both loaded and empty trains, the random and unilateral removal of trainsets from service, and interruptions in unloading processes that lead to upstream delays in returning empty trains for reloading. As shippers have explained in other Board proceedings, the Class I carriers' adoption of Precision Scheduled Railroading ("PSR") models and other operational changes have eroded unit train rail service over the past several years,[2] culminating in a largely manufactured rail service crisis that has come to a head over the last six months. Virtually without exception, WCTL members (and the consumers that they serve) experienced significant coal delivery shortfalls in 2021, and already are witnessing a continuation of the same service restrictions in 2022.

Most western electric utilities – including WCTL members – are members of regional transmission organizations or "RTOs." These organizations manage the output of the individual generating resources within their geographic jurisdiction, matching the demand for electricity during any given time period with available sources in reverse order of generation cost (i.e., lower cost first), a process known as "economic dispatch." An RTO member utility has a responsibility to provide the needed generating capacity when called upon (usually with a reserve margin as well). If – as has been the

[2] *See Opening Comments of the WCTL, the Freight Rail Customer Alliance, Nat'l Coal Transp. Ass'n, Portland Cement Ass'n, & Steel Mfrs. Ass'n*, *First-Mile/Last-Mile Serv.*, EP 767 (filed Dec. 17. 2021), at 3-4.

case in the recent past and is the case today – prices for natural gas drive the cost of gas-fired generation higher, an RTO will call upon lower cost coal-fired generation more often. If the member utility cannot meet the call for coal-fired power, the RTO usually will dispatch a higher cost resource, and the member utility can face an economic loss if it is forced to "buy back" the capacity that it was unable to provide. The railroads' service deficiencies and trainset limitations increasingly have put WCTL members in this position, effectively dictating whether and when their coal assets will be available to meet their RTO member obligations. For the most part, the key rail service issues can be put into one of three categories: (1) unreasonable restrictions on the number of trainsets allowed in service; (2) trains remaining on utility property for long periods of time after unloading, leading to congestion delays for incoming loaded trains (a phenomenon known as "bunching"); and (3) decreasing average unit train velocities, directly leading to increased cycle times and delivery shortfalls.

Union Pacific Railroad Company ("UP") and BNSF Railway Company ("BNSF") (collectively "Western Railroads") have acknowledged service problems to WCTL members and have offered varying assurances of imminent improvements. However, the assurances have not been backed up by action, and as noted *supra*, the serious service shortfalls experienced in 2021 have extended into 2022. As discussed further below, the ineffective response by the railroads to the service crisis and their continued failure to meet their statutory obligations to the shipping public warrant swift and effective Board action to compel the restoration of adequate rail service to utility coal shippers.

DISCUSSION

At the outset, it should be clearly established that the current need for urgent action to address the rail service crisis is a direct result of operational changes that were implemented by the railroads prior to the arrival of the COVID-19 pandemic. Simply put, the root of the problem lies in PSR, not COVID-19. With the implementation of PSR, railroads were able to "generate improvements in profitability even with declining revenue" by cutting labor and maintenance costs and shrinking physical assets in service, toward the almost singular goal of reducing operating ratios to increase stock prices.[3] This change in railroad management philosophy led to severe cuts in rail employment *prior* to COVID-19. It also was known prior to the pandemic that the railroads' adoption of PSR and their extensive operational changes were negatively impacting service to customers, particularly unit train shippers. As then-Chairman Ann Begeman stated to CSXT's representative regarding PSR, it is "doing less with less." She also observed that UP was "expecting many customers to modify their own operations, at [shipper] time and expense, to accommodate UP's new operating plan."[4]

The cuts to rail employment prior to COVID-19 were severe. Based upon publicly available information, from January of 2019 to January of 2020 more than

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[3] Lee Samaha, *Here's Why R.R. Stocks are Soaring in 2020*, Motley Fool, Feb. 6, 2020, https://www.fool.com/investing/2020/02/06/heres-why-railroad-stocks-are-soaring-in-2020.aspx.

[4] Frank N. Wilner, *STB: Nothing's the Something it Does Best*, Railway Age, Dec. 10, 2018, https://www.railwayage.com/regulatory/stb-nothings-the-something-it-does-best/. *See also See Opening Comments of the WCTL, the Freight Rail Customer Alliance, Nat'l Coal Transp. Ass'n, Portland Cement Ass'n, & Steel Mfrs. Ass'n*, *First-Mile/Last-Mile Serv.*, EP 767 (filed Dec. 17. 2021), at 7-8.

23,000 rail transportation workers lost their jobs, which was 12.7 percent of all rank-and-file rail transportation positions.[5] With COVID-19 the job losses increased, and from January of 2019 to January of 2022 there was a total loss reported of more than 39,000 rail transportation workers, a reduction of 21%.

COVID-19 exacerbated the job losses, but it was not the precipitating cause. While the railroads have pointed to difficulty in attracting furloughed employees back to their previous positions, rail labor representatives have explained that fears of a new round of layoffs once the current service crisis is met (affirmation that the problem is PSR) has made many former employees reluctant to answer call-backs.[6] It is unlikely that unit train coal service can be restored to adequate levels if the railroads do not take action to incentivize personnel cut due to PSR to return to work with assurances of long-term employment, and reverse previous decisions to reduce available locomotive and other key physical assets.

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[5] U.S. Bureau of Labor Statistics, *Databases, Tables & Calculators by Subject* (Series Id: CES4348200001, Industry: Rail transportation), https://data.bls.gov/pdq/SurveyOutputServlet.

[6] *See Indus. & Labor Perspectives: A Further Look at N. Am. Supply Chain Challenges: Hearing Before the House Comm. on Transp. & Infrastructure*, 117th Cong. (2021) (Written Statement of Greg Regan, President Transp. Trades Dep't, AFL-CIO), at 7 ("TTD unions have increasingly reported on the phenomenon of mid-career rail employees resigning from well-paying jobs and giving up stable retirements due to an unwillingness to continue to work in unsafe conditions where the perpetual threat of furlough looms large."), https://transportation.house.gov/imo/media/doc/2021-11-17%20Hearing%20Testimony%20-%20Greg%20Regan.pdf.

A. Inadequate Rail Service Negatively Impacts Utility Operations

1. Economic Dispatch is Key to Efficient Energy Production

As described briefly *supra*, most WCTL members have their generation dispatched by a RTO, which manages energy demand and supply within its geographic region. When the cost of one resource – such as a natural gas facility – is higher, the RTO dispatches more lower cost coal-fired generation, assuming that the coal generation is available. If the coal asset lacks sufficient fuel supply to respond, however, the RTO typically will resort to higher cost alternatives. If coal deliveries by rail were consistent with utility nominations, schedules and historic railroad performance, there would be an observable relationship between rising natural gas prices and increased coal-fired generation. However, coal delivery shortfalls upend this relationship, and have caused many WCTL members and other utilities to experience otherwise avoidable increases in energy supply costs.

The lack of reliable coal rail transportation service does not only impact real time scheduled deliveries. It also frustrates utilities' efforts to rebuild and manage coal inventories to respond to seasonal demand fluctuations and surges, and in many cases has led coal suppliers to be reluctant to enter into agreements to sell additional coal, because of concerns that the necessary transportation will not be available. This has made it more difficult for utility coal shippers to purchase coal for the inventory restoration that is essential to sound preparation for and responses to weather events and other causes of swift shifts in energy demand.

A number of WCTL members have received requests from their serving railroads for information regarding coal inventory at the member's facility(ies).[7] As an initial comment, an electric utility's fuel inventory information generally is highly confidential, for security, regulatory, and competitive reasons. But the fact that the railroads are focused on this metric at all indicates a disturbing trend away from committing assets and personnel as necessary to meet each shipper's reasonable transportation requirement in favor of a "triage" approach, where deliberately restricted resources are deployed to where the need is most acute. Additionally, the carriers' inquiries ignore the fact that different coal-fired generation facilities have different typical consumption rates and seasonal generation demand shifts, risks which the utility – not the railroad – is in the best position to assess. More important, however, the railroads' "triage" model indicates an intent to continue pursuing a constrained resources operating plan consistent with PSR, without serious regard for their statutory obligations

[7] In the context of the Board's consideration of reciprocal switching reform, UP has suggested that rail customers should not wade into the matter of railroad operations. Apparently, that concern only runs in one direction. *See* STB Hearing March 15-16, 2022- Day 1, https://www.youtube.com/watch?v=jM0N1zkQYi8 (exchange between UP's Eric Gehringer and Chairman Oberman beginning at 6:32:42, emphasis added):
Chairman Oberman: "And you're saying that adds 24 to 48 hours for that car."
Eric Gehringer, UP: "That's our current experience with customers that get reciprocally switched."
Chairman Oberman: "And the customer who has made that choice has obviously decided that's to their benefit even to buy that much extra delay, or else they would go on your train."
Eric Gehringer, UP: "The customer has made the choice for them that that's the best decision for us. But as we consider what we walked through, there are repercussions, first, to our terminal as we think about capacity…."

as federally-protected and regulated entities to prioritize the reasonable transportation needs of the shipping public over inflating railroad stock prices and dividends to shareholders.[8] WCTL members and other utility coal shippers have publicly expressed concerns that coal inventories are well below target amounts as Spring gives way to the typical Summer peak. If this situation is not remedied, there will be an increased risk of coal conservation measures that will cause utilities to incur higher costs to meet their generation commitments than would be the case if rail service was consistent with historic levels and the reasonable needs of the carriers' long-time customers. In addition, some WCTL members will be forced to resort to leasing additional trainsets because of longer cycle times, if they are fortunate enough to secure railroad authorization to put the sets in service. Delays also increase operating costs at the generation facility, as coal is stockpiled and then recovered more frequently, and ultimately can lead to generation curtailments.

These delays pose a threat to utility operations and unnecessarily increase costs, costs which will not be borne by the railroad, but instead will be paid by the energy consumers.

[8] *See* Patrick Doyle*, Union Pacific: Falling Traffic, Rising Valuations*, Seeking Alpha, Jan. 22, 2022, https://seekingalpha.com/article/4480928-union-pacific-falling-traffic-rising-valuations (Union Pacific Stock Price chart shows that stock prices have continued to steadily increase since 2016); Jed Graham, *IBD Stock of the Day: Union Pacific Breaks Out as Fuel Price Gives Rail a Push*, Investor.com, Mar. 3, 2022, https://www.investors.com/research/ibd-stock-of-the-day/unp-stock-union-pacific-breaks-out-as-fuel-price-gives-rail-a-push/ (UP stock was reported to have a "record high").

2. Coal Shippers have Urgent Rail Service Needs that are Not being Met

The Western Railroads are not meeting their basic contract or common carrier obligations in their failure to provide adequate rail service to utility coal shippers. They are not transporting scheduled shipments on a timely basis, and they have offered no capacity to transport supplemental coal to make up for past shortages or to meet increased demand for coal-fired electric generation in the wake of consistently higher prices for natural gas. Trains are moving more slowly, resulting in longer and less predictable cycle times, and resulting irregular deliveries to utility destinations have caused increases in train bunching, all at added costs to the shipper. The evidence strongly indicates that these problems are a direct result of PSR and related operational changes, including power rationing and running double trains, which puts added stress on private railcars and exacerbates the bunching problems at plant destinations. Despite the fact that these service issues have significantly contributed to coal delivery and inventory shortages, increased operational inefficiencies and personnel costs for coal shippers, the railroads have resisted making such basic changes as adding locomotive power and accepting stored private trainsets into service to reduce or offset longer cycle times.

Data collected by the STB shows that average coal train speeds have declined in recent years. For example, train velocities for coal shippers slowed from

April 2017 to April 2022, with average speeds decreasing 6.6% on BNSF and 10.8% on UP (comparing "Average Train Speed (MPH)" for April 5, 2017 and April 6, 2022).[9]

In BNSF's March 30, 2022 response to service concerns raised by the National Grain and Feed Association ("NGFA"), filed as public comments with the Board ("BNSF Letter"), BNSF claimed that "[a]verage train speed has improved 2.5% over the course of March, and the seven-day period ending March 24 was the fastest week to date in 2022." BNSF Letter at 3. However, it is unclear what data BNSF was referring to, as the information provided to the STB elsewhere indicated that train velocity was decreasing in March, and that the system average train speed was the lowest it had been in 2022. Even if grain traffic is looked at in isolation, the average train speed in March was lower than the average train speed in February, and a single week in March that was marginally better is hardly an indication, as BNSF asserts, of "improvements in our network fluidity." BNSF Letter at 3. In fact, the average speed for the system as reported by BNSF for the first three weeks of April (24.2 MPH for 4/6/2022 and 4/13/2022; 24.0 MPF for 4/20/2022) *are the slowest average train speeds reported for the system thus far in 2022*. As summarized in the table below, the results were worse for unit train coal traffic as compared to system averages.

[9] STB Rail Service Data, available for download at https://www.stb.gov/ reports-data/rail-service-data/.

Railroad/ Region	Measure	Variable	3/2/2022	3/9/2022	3/16/2022	3/23/2022	3/30/2022
BNSF	Average Train Speed (MPH)	Coal unit	22.7	21.4	22.8	22.8	22.8
BNSF	Average Train Speed (MPH)	Grain unit	23.7	24.1	22.9	24.5	23.1
BNSF	Average Train Speed (MPH)	System	25.0	24.4	24.8	25.0	24.6

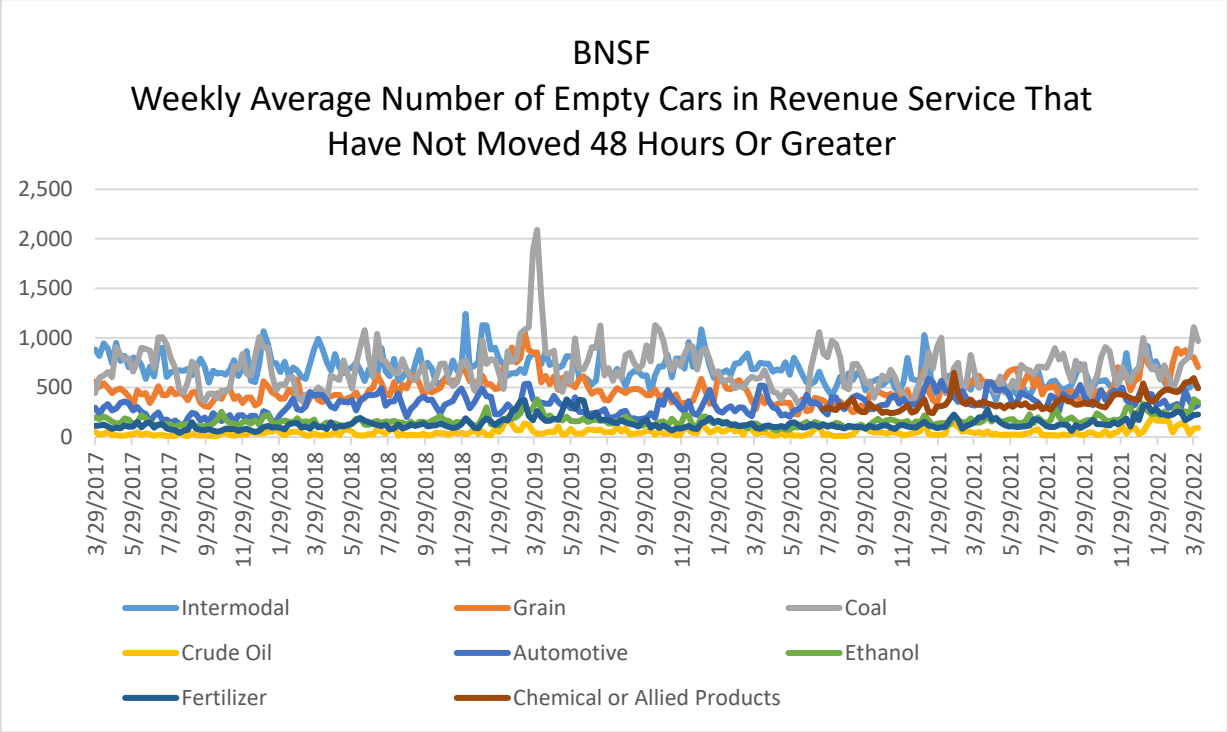
Railroad/ Region	Measure	Variable	January 2022 Average	February 2022 Average	March 2022 Average	2022 Average
BNSF	Average Train Speed (MPH)	Coal unit	22.8	23.3	22.5	22.5
BNSF	Average Train Speed (MPH)	Grain unit	23.1	23.8	23.7	23.3
BNSF	Average Train Speed (MPH)	System	25.5	25.3	24.8	25.1

Cycle times consistently are reported by coal shippers as being higher and more variable. One WCTL member reported cycle times swinging quite widely, with the range between the lowest and highest cycle times being 102 hours in January, 164 hours in February, and 96 hours in March, which is an average of 120 hours or five days. This same member reports that cycle times should be around 192 hours, which is supported by current records as easily achievable, but the average is now above 230 hours. Another member reports at one plant seeing average cycle times steadily increase, first by 24

hours in February from January, by an additional 7 hours in March, and 17 more hours so far in April. Such widely variable and inconsistent performance is in spite of the consistent efforts of shippers to facilitate reliable service; as noted *supra*, WCTL members' planned and pre-scheduled unit train coal traffic moving in customer-supplied railcars from point A to point B constitutes some of the most straightforward, predictable traffic on the railroads' systems.

Cycle time variability interrupts what otherwise would be a relatively stable flow of unit train coal traffic and disrupts normal utility coal train unloading facilities and practices. A principal reason why utilities schedule shipments on a fairly consistent monthly basis is that the unloading and coal storage process at a power plant depends on regularity of receipts, to maximize efficiency in terms of personnel and equipment utilization. When the railroads "double up" trains or otherwise deliver shipments on an erratic or unbalanced basis, trains become bunched and utility costs are increased as coal that otherwise could transition directly into a power plant must be diverted to temporary storage, which requires additional personnel and equipment. Alternatively, when a utility's shipment schedule is keyed toward inventory restoration, train congestion at the unloading facility increases costs resulting from unloading delays and the removal of empty trains for the return trip to mine origins. For example, one WCTL member who has been observing UP doubling trains directly at their site, reports that despite having five (5) train sets in service, and an average cycle time that would be expected to deliver a train every other day, they are instead receiving three (3) to four (4) trains over a span of two days, and then no trains for the next several days.

As the graphs below demonstrate, since data first began to be reported to the STB in 2017, coal shippers have experienced a significant number of empty railcars held for more than 48 hours, a key indicator of deteriorating service quality.



What is new, and what may not be captured by the data reported to the STB,[10] is that rail cars increasingly are being held longer at a utility's facility after

[10] For example, based on a review of the methodological reports provided by BNSF, it does not appear that dwell time at a utility after the empty train is released is counted towards the "dwell time at origin." *See Revised Methodological Report of BNSF Ry. Co.*, EP 724 (Sub-No. 4) (filed July 22, 2020), at 3 ("Data Element No. 4—Dwell Time at Origin for Unit Trains: Weekly average dwell time at origin for loaded unit trains by type . . . . BNSF has populated the new STB spreadsheet with data extracted from existing internal reports identifying the time between release of a loaded unit train by a customer at origin and the departure of the train from the facility, which is consistent with the Board's definition of dwell time in the Order. . . . *BNSF has also isolated non-origin interchange dwell and empty units from the weekly reporting*.") (emphasis added). UP for the same reporting requirement for "weekly average dwell time at origin for unit train shipments measured in hours" indicates that it "[i]ncludes trains . . . empty freight cars"

unloading. For example, one WCTL member reported that while the historical normal time to pick-up trains was four (4) hours, it now takes 6-58 hours, with 18 hours being the average over the past three months. Coal shippers are not being allowed to bring their shipper-owned or leased private railcars out of storage and back into service so that more coal could potentially be delivered.

Significantly, one WCTL member reports serious challenges to its generating assets as a direct result of the Western Class I railroads' service failures and unreasonable limitations on private railcar trainsets allowed on their systems. Despite decades of historic experience handling this member's coal requirements, which included detailed knowledge of the pattern of coal shipments over the course of a year, the seasonal changes in generation demand (and resulting coal consumption) for the coal-fired assets, and the private trainsets needed to deliver the member's critical fuel supplies, since March of this year BNSF has restricted the member to significantly fewer trainsets than its nominated and scheduled coal volumes require. The reasons given for these limitations – which have been imposed over strenuous objections – include alleged train crew shortages and power availability. However, these issues did not arise with any frequency under the service that the member relied on for decades, including years in which annual coal volumes were substantially higher than the 2022 requirements.

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but it "[e]xcludes trains received in interchange from another railroad and intermodal trains." *See UP Metrics – Explanation of Methodology – EP 724 (Sub 4)*, (available for download from STB's website), https://www.stb.gov/wp-content/uploads/UP-Methodology-EP-724-03.01.22.pdf.

Rather, they coincide with operational changes adopted by BNSF in implementing its PSR model, which appear to have left BNSF ill-prepared to fulfill its common carrier responsibilities during the Covid-19 supply chain disruptions or respond to surges in power plant coal requirements in response to rising prices for alternative fuels. According to BNSF, the trainset limit is expected to remain in effect into the third quarter of 2022, by which time it may be impossible for the utility to secure necessary coal deliveries for the entire year.

The adverse consequences of the service deficiencies described above are significant. As described *supra,* most WCTL members are members of a RTO, which makes them subject to resource adequacy requirements that obligates them to supply enough generating capacity to serve the demand within its operating service territory, along with a reserve margin. If rail delivery failures are experienced or coal inventories fall substantially below target levels, the utility may be required to implement coal conservation measures which may result in it having to supply higher cost, non-coal generation during certain time periods in order to preserve existing coal inventory for availability in later periods, when the cost of alternative generation would be even greater. The adverse effect on system reliability also is a serious consideration. This is not a sustainable pattern from any public utility's perspective, even over a short-term horizon, and dramatically illustrates the negative consequences of BNSF's (and other Class I carriers') movement away from customer-oriented rail operating models.

3. The Railroads' Responses have been Inadequate

A primary problem identified by WCTL members, which has been acknowledged by the railroads, is that there is a shortage of crews available to service trains, especially on weekends. Availability of power is another challenge.[11] However, both problems appear to be of the railroads' own making, as their adherence to the PSR model has meant employment reductions and storage of temporarily inactive locomotives that left the carriers unable to respond to historically normal periodic increases in demand.[12] The crew shortages also seem to be exacerbated by scheduling issues. For example, one WCTL member experienced a severe and wholly avoidable unloading delay when a crew that was in the process of unloading a coal train at the shipper's facility reached their maximum hourly work limit and had to leave before completing the unloading. A new crew did not arrive to finish the job until four days later, but that information was not available to local supervisors (another negative effect of PSR has been the centralization of information and decision-making) at the time that the first crew was released. Another WCTL member reported that its serving railroad has been holding

[11] One WCTL member reported that from January 1, 2022 to present, they have experienced seven (7) trains delayed at interchange or at the plant because of power issues or crew issues. To help make up the coal deliveries, the member leased equipment from a different utility, but then the cycle time ended up being about twice as long as normal. As a result, the utility has indicated it will not lease this equipment again to the member in 2022.

[12] Jim Blaze, *What PSR Is –and Isn't: NEARS Talk*, Oct. 4, 2019, https://www.railwayage.com/freight/class-i/what-psr-is-and-isnt-nears-talk/ (PSR "has standardized around asset minimization – leaving little business surge capability, and often reducing specific manufacturing line capacity (translated, in railroading terms, to 'traffic-per-day capability.").

trains for 48-72 hours approximately twice per month, causing unloading and empty return delays.

The railroads' principal response to these crew issues has been to remove trains from their systems to relieve "congestion." WCTL respectfully submits that removing trains from the network is not an acceptable answer.[13] It is unreasonable in the extreme to require utility coal shippers and the consumers who depend on the electricity that they generate to bear the burdens and costs of the railroads' own operations planning decisions. The real answer is for the railroads to hire and retain on a long-term basis a sufficient cadre of qualified employees to ensure that there are adequate crews available to meet the public's need for rail transportation. The Board should reject the railroads' apparent operating philosophy of allowing "demand to chase supply." As entities with a statutory responsibility to serve the public interest, railroads should be required to ensure that they maintain sufficient "supplies" of all the elements of rail transportation (including crews, facilities, locomotives and other equipment) to meet predictable demands for service.

The BNSF Letter responding to NGFA's service concerns outlined the "aggressive measures BNSF is taking" to address ongoing service problems. However, BNSF made it clear that there were limits on exactly what it was doing. For example, BNSF stated that it was "offering large monetary incentives to TY&E employees to

[13] One WCTL member reported that this practice is making it more challenging to perform necessary rail car maintenance, because it involves releasing power and shop time when there is no certainty that the railroad will pick up the train when it is ready to return to service.

transfer to our highest-demand areas." BNSF Letter at 2. However, BNSF did not quote any specific staffing goals, nor did it explain why a shortage should exist when BNSF reports that it still has "450 TY&E employees on furlough." If there are still employees on furlough, it is clear more can be done.

BNSF in its letter also referenced a "new attendance policy" which it implemented earlier this year. BNSF Letter at 2. What BNSF did not mention, however, is that this "new attendance policy" resulted in "more than 700 resignations during the first few weeks following its introduction," and that "BSNF obtained a federal court order blocking [a strike] a week prior to its implementation.[14] If policies are implemented that are viewed by rail labor as "the worst and most egregious attendance policy ever adopted by any rail carrier"[15] at the same time that BNSF supposedly is attempting to hire rail crew members, it seems that BNSF is not really trying to fix the problem, but instead is looking to stretch its existing labor force and continue to focus on profit instead of service for its customers.

4. The Board Should Require the Railroads' to Submit Service Plans and Take other Measures to Restore Rail Service

The failure by the railroads to be responsive to coal shippers' needs, and specifically the railroads' refusal to allow coal shippers to put sufficient trainsets into service to transport properly nominated and scheduled coal shipments is a significant

[14] Eric Berger, *BNSF 'Hi-Viz' Policy Under Fire as Railroaders Call it Quits*, Railfan & R.R. Magazine, Apr. 14, 2022, https://railfan.com/bnsf-hi-viz-policy-under-fire-as-railroaders-call-it-quits/.

[15] *Id*.

deviation from the historical norm and a failure by the Western Railroads to provide adequate rail service. To date, the railroads' response to this service crisis has been ineffective, and immediate Board action is required to ensure a reliable rail network. To this end, WCTL encourages the Board to exercise its authority and take the following steps to restore rail service:

i. Require the Railroads to Submit Service Plans to the Board and Provide Weekly Updates

The Board's April 7 Hearing Notice requires the Western Railroads, along with other select Class I railroads, "to appear to discuss the recent rail service problems, each carrier's ongoing and planned efforts to improve service, and each carrier's estimated timeline for recovery of normal service levels." *Id.* at 1. WCTL requests that the Board act pursuant to 49 U.S.C. § 1321(b) and 49 U.S.C. § 11145 to require the railroads to submit a detailed Service Plan which identifies how and when they will provide adequate service, including what specific steps they are taking for each shipper group to meet normal and historic service metrics,[16] and that these Service Plans be made publicly available and subject to public review and comment. The plans should include specific milestones for each aspect of the plan, including details on crew hiring, equipment acquisition, average train speeds, etc., and specific dates on which those

[16] The Board has previously directed rail carriers to submit service plans in response to freight service issues. *United States Rail Serv. Issues,* EP 724 (STB served Dec. 30, 2014), at 1 (Board in response to WCTL petition required BNSF to provide a "coal-specific service recovery plan); *United Rail Service Issues – Grain,* EP 724 (Sub-No. 2) (STB served June 20, 2014), at 3 (directed specific Class I railroads to provide plans "to reduce their respective backlog of unfilled grain car orders and resolve grain car delays" and weekly status reports).

milestones are expected to be reached. The railroads should then be required to update the Service Plans weekly, until such time as normal service is restored.

ii. Require the Railroads to Provide Additional Information on Number and Location of Railroad Employees

The Class I railroads currently provide a monthly report to the Board on the number of railroad employees pursuant to 49 C.F.R. § 1246.1. WCTL requests that the Board act pursuant to 49 U.S.C. § 1321(b) and 49 U.S.C. § 11145 to require that each Class I railroad also provide information on the number of rail personnel at key locations that are identified by the railroads themselves, shippers, or rail labor as having insufficient crew available, or where high dwell times are being recorded. The Class I railroads should also be required to provide information to the Board regarding the incentive plans and compensation they are providing to crew members to relocate on a temporary and permanent basis, and how many crew members each month have relocated to an area that is currently understaffed.

iii. Require the Railroads to Report Additional Service Metrics

The Class I railroads currently provide certain performance data to the Board pursuant to 49 C.F.R. § 1250.2, and this data is published on the Board's website and publicly available. WCTL requests that the Board act pursuant to its authority under 49 U.S.C. § 1321(b) and 49 U.S.C. § 11145 to require the railroads to report and provide the following additional service metrics on a weekly basis:

- Monthly Volumes of Coal Nominated but Refused;
- Total Number of Train Sets Requested by Coal Shippers that Remain Parked by Coal Production Region;
- Total Number of Cumulative Weeks the Train Sets Remain in Storage or Parked;
- Total Number of New Train Sets Requested by Shipper to Make up Missed Shipments or to Offset Longer Cycle Times;
- Number of Coal Unit Trains Ordered Parked or Out of Service; and
- Number of Cars Held at Utility for more than Eight Hours After Release.

iv. The Board Should Perform its Own Investigation

Pursuant to 49 U.S.C. § 11701, the Board should consider performing its own investigation of the freight rail service crisis to assess the railroads' response and to determine whether further action is warranted to ensure a reliable rail network. As part of its investigation, the Board should determine whether the railroads are adhering to the Service Plans, and whether the Board needs to take additional action, including issuing an emergency service order under 49 U.S.C. § 11123, to address any continuing and negative effects on shippers, and to help ensure that service lapses do not continue to reoccur. As part of its investigation, WCTL encourages the Board to reach out to shippers, as certain rail service issues are unique to the rail customer and are not always captured by the rail performance data submitted to the Board pursuant to 49 C.F.R. § 1250.2.

CONCLUSION

WCTL requests that the Board exercise its oversight and investigative authority and take immediate action to ensure a reliable rail network.

Respectfully submitted,

WESTERN COAL TRAFFIC LEAGUE

/s/

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