

Comments of the International Liquid Terminals Association
on
Urgent Issues in Freight Rail Services
Surface Transportation Board
Docket No. EP 770

The International Liquid Terminals Association (ILTA) appreciates the opportunity to provide comments to the Surface Transportation Board (STB) regarding Urgent Issues in Freight Rail Service, Docket Number EP 770. ILTA represents more than 85 companies operating liquid terminals in all 50 U.S. states and in 37 countries. Our members' facilities form a critical link in the transportation of a wide range of liquid commodities, including crude oil, refined fuel products, chemicals, renewable fuels, fertilizers, vegetable oils and other food grade materials.

ILTA supports policies that enhance the efficiency and reliability of supply chains. Specifically, ILTA provided comments to the STB previously in December 2021 on the issues of first-mile/last-mile and the discussion of Precision Scheduled Railroading (PSR). As ILTA Members are a vital part of the supply chain for liquid products, the impacts of PSR on ILTA members are significantly impacting the national supply chain. Delays and processing errors of railcars enroute to destinations can have cascading consequences with profound impacts on shippers and receiving facilities. Under PSR, it is common to have missed switches, partial switches or incorrectly performed switches, which have both immediate impacts and cascading ripple effects.

Issue Summary

ILTA believes that we, as Terminal companies, customers, and partners to the Class 1 rail industry, the railroad companies have the responsibility to be accountable to our members' supply chain needs, and we believe our partners should be accountable to us as well. ILTA offers these comments to further the conversation with STB, other industry stakeholders, and our railroad partners about how we can move forward together to bring greater accountability and transparency with increased functionality to supply chain operations overall.

Impact on ILTA Members

While first-mile/last-mile service issues are longstanding challenges, the adoption of cost-saving measures collectively classified as Precision Scheduled Railroading (PSR) have amplified their impacts. Since ILTA's December 2021 comments to the STB, PSR has advanced – unsuccessfully for rail shippers and rail customers. According to one Class 1 railroad's website, PSR is defined as looking “a little different from railroad to railroad, but at its core it's intended to benefit customers by providing consistent, reliable, predictable service.” Yet, as customers to the railroads, ILTA's members continue to see decreased levels of service, and with increasing costs – all while still awaiting the consistent, reliable, predictable service that was promised.

Under PSR, railroads have cut staff, closed railyards and limited locomotive availability, leaving railroads with significantly reduced capacity to allow them to respond and ameliorate disruptions. ILTA members have also seen a decrease in last-mile services from railroads, which is leading to additional negative impacts. In some instances, railroads are increasingly withholding normal last-mile services such as the “blocking” and “spotting” of railcars without explanation for the changes in service. The net effect is that the railroads gain the ability to report higher efficiencies and increased operating ratios when, in fact, they have merely shifted a portion of their operational burdens and costs to terminal operators and shippers.

The supply chain overall has not gained efficiency, if anything, the lack of accountability makes the whole supply system less efficient. With increasing frequency, railroads are initiating, or threatening to initiate, embargos more frequently than in the pre-PSR era, in what appears to be a strategy to leverage terminals to add private track capacity or in some instances acquire land and rail yard space to provide additional services that were previously performed by railroads themselves. These are not examples of consistent, reliable, nor predictable services – except that the rail service to customers, such as ILTA members, is predictably become more unreliable and inconsistent.

As an illustration of the poor service resulting from PSR, ILTA has observed from its members the following. Many ILTA members have been embargoed by several Class 1 carriers, due to labor shortages resulting in fewer than 50% of rail switches occurring within their prescribed scheduled time window. These missed switches and unpredictable schedules have also led to massive inefficiencies for Terminal operators. The inefficiencies include wasted human capital hours and financial capital for products and cargo not being delivered or picked-up timely. These performance failures also have major impacts to ILTA members and their customers – rail shippers.

The unreliable rail services result in significant reductions in certain product availability, thereby negatively impacting product deliveries by Terminals. In addition to the comments filed by ILTA in December 2021, which are incorporated by reference here, there have been recent negative impacts to ILTA members. In some instances, there have been reported uses of *Force Majeure* clauses to avoid contractual obligations, due to product not being available for Terminal customers. The impacts have hit customers and shippers across all commodity classes, forcing them into inefficient and more expensive solutions to try to make ends meet, while the railroads continue to use the unreliable PSR system to reduce the railroads’ costs while negatively burdening and impacting the national supply chain. Ultimately, PSR is negatively impacting the national supply chain and its stakeholders that rely on rail services. As a result of ILTA’s members’ observations, there is a vital need to implement objective criteria and predictable and reliable metrics to honestly evaluate PSR’s success or failure.

PSR Shifts Costs to Customers While Reducing Service

The actions of the railroads impose direct costs to Terminal operators. The increased costs from PSR directly relate to a lack of reliable and predictable service. The primary form of increased costs is in additional labor requirements and other resource needs. The second leading source of costs is in the form of indirect costs, due to the increasingly onerous tasks associated with disputing demurrage claims. Finally, the other cost increase is from missed sales or inability for Terminal operators to meet market demand due to unavailability of liquid product caused by a lack of successfully implemented PSR.

ILTA believes that only action by the STB can counteract the unintended consequences that PSR has introduced to first-mile/last-mile performance. In most interactions between private sector companies, market forces provide adequate mechanisms to incentivize performance and address non-performance. Terminal operators have very limited ability to address the non-performance of the railroads, because of their special status as regulated monopolies. If railroads are not held to account for service delays of their own making, there is no incentive for them to take corrective action.

The STB has the ability to significantly improve the visibility of the overall efficiency and reliability of supply chains by instituting a manageable number of first-mile/last-mile performance metrics. By requiring Class I carriers to be responsible for the efficiency of the entire line haul by which their tariff compensates them, the financial burdens, penalties, and claims will be placed with the accountable parties.

Metrics to Measure PSR's Customer Satisfaction

In summary, as detailed in ILTA's December 2021 comments, ILTA and its members support objective metrics focused on evaluating PSR's actual delivery of customer satisfaction and consistent service. Specifically, ILTA and its members are most concerned about the cost-shifting that continues to occur due to a lack of predictable and reliable service since the implementation of PSR. ILTA and its members support an objective and quantifiable way to measure success, failures, and the shifting of additional costs to the Class 1's captive customers, such as Terminal operators and their customers.

The metrics used should be objective and based on measurable and quantifiable inputs. ILTA contends that such evaluation and measure can also begin to help the STB identify and assign costs and financial impact to the rail shipper customers. ILTA's position is that the metrics to be used should include, among others: dates of scheduled service, dates of services delivered, dates of scheduled services and services not delivered, number of missed switches, incomplete deliveries of rail cars, number of hours of personal equipment detained by the Class 1 carriers, the dates and rail addresses of any service embargoes, and the number of railroad cancellations with 24 hours or fewer notice, and other metrics. Below are more details on the issues impacting ILTA members and possible metrics the STB and industry can use to evaluate these ongoing concerns.

Examples of PSR's Cost-Shifting and Service Interruptions

1. Issue: Railroad failed to deliver ordered railcar or train (lack of crew, power, or other cause).

Impacts: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense; increased demurrage assessed by railroad on railcars in queue behind the ones that were not delivered; railroad detains private equipment additional days; private equipment utilization decreases; just in time supply chains are jeopardized; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers, and Industry.

Tracking Metric: By track address, service date and by reason; Count of railcars not delivered during the service date immediately following railcar order deadline.

2. Issue: Railroad delivered railcar or train that was not ordered by the industry location.

Impacts: Industry may lose utilization of railcar handling asset until the wrong railcar is removed at next service; possible disruption to Industry's operation; railroad detains private equipment additional days; private equipment utilization decreases.

Tracking Metric: By track address, service date and by reason; Count of railcars delivered that were not ordered.

3. Issue: Railroad delivered railcar or train that was not destined for the industry location.

Impact: Industry may lose utilization of railcar handling asset until the wrong railcar is removed at next service; possible disruption to Industry's operation; railroad detains private equipment additional days; private equipment utilization decreases.

Tracking Metric: By track address, service date and by reason; Count of railcars delivered that were not destined for the location to which it was actually delivered.

4. Issue: Railcar or train not being available to order on the ETA date that the railroad quoted to Industry while railcar/train was in transit.

Impact: With the railroad's precision railroading, Industry must align their labor and operations more precisely to the railroad's schedule to avoid delaying railroad's operations and being assessed railroad tariff fees. When the railroad does not deliver per their precision schedule, Industry experiences the labor expense of having to be prepared for the railcars, without receiving the railcars as expected.

Tracking Metric: For each railcar delivered during the month, initial ETA date vs the actual date of Constructively Placed (or Actually Placed for open gate locations)

5. Issue: Railroad placed railcar on wrong siding/wrong spot at the industry location.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense; increased demurrage assessed by railroad on railcars in queue behind the ones that were not placed accurately if Industry is unable to re-spot the railcar prior to next railroad service; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers, and Industry.

Tracking Metric: By track address, service date, count of railcars that required re-spotting (by railroad crew or by Industry staff at the location)

6. Issue: Railroad pulled railcar or train that was not released by the industry location.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense; increased demurrage assessed by railroad on railcars in queue behind the ones pulled in error; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers, and Industry. Railcars may not be properly prepared for shipment and there are often significant delays in the returning of a railcar or train erroneously pulled in by the railroad.

Tracking Metric: By track address, service date, count of railcars that were pulled without being released by Industry.

7. Issue: Railroad crew arrived at Industry location ahead of the normal schedule or mutually agreed service window; arrival is prior to the scheduled Industry railcar cargo processing being completed.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense (including potential overtime expense); increased demurrage assessed by railroad on railcars which were affected; railroad detains private equipment additional days; private equipment utilization decreases; increased fees assessed by railroad for missed switches; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: Count of days, by track address and reason, where railroad crew arrived prior to the normal schedule or mutually agreed service window and/or did not perform full scheduled service.

8. Issue: Railroad crew arrived at Industry location late or outside of established service window, delaying the start of Industry's railcar cargo processing.

Impact: Loss of Industry railcar handling productivity, but Industry still experiences the labor expense (including potential overtime expense); increased demurrage assessed by railroad on railcars which were affected; railroad detains private equipment additional days; private equipment utilization decreases; increased fees assessed by railroad for missed switches; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: Count of days, by track address and reason, where railroad crew arrived late enough to prevent completion of the full scheduled service by the end of the normal service window.

9. Issue: Railroad cancels service with less than 24 hours' notice.

Impact: Industry experiences the labor expense of having to be prepared for the railcars, without receiving the railcars as expected; loss of Industry railcar handling productivity; increased demurrage assessed by railroad on railcars in queue behind the ones that were not delivered; railroad detains private equipment additional days; private equipment utilization decreases; railroad's yard experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: Count of days, by track address and reason, where railroad cancelled a scheduled service less than 24 hours prior to the expected start time of the service.

10. Issue: On scheduled days of service, without attempting to contact the industry location, railroad makes false report that the industry location was not ready for service, citing reasons such as Industry not ready for switch, Industry fence gates were closed, or Industry blue flag was displayed. Railroad does not attempt to resolve the discrepancy at the start of the service, and simply does not provide the service that day, sometimes without ever actually going to the industry location.

Impact: Industry experiences the labor expense of having to be prepared for the railcars, without receiving the railcars as expected; loss of Industry railcar handling productivity; increased demurrage assessed by railroad on railcars in queue behind the ones that were not delivered; railroad detains private equipment additional days; private equipment utilization decreases; railroad's yard

experiences higher railcar counts and possible gridlock triggering embargo and incremental expense to terminals, shippers and Industry.

Tracking Metric: For each service that cannot be fully performed by the railroad, report the scheduled service date, the reason for no service, the date/time that the railroad identified an Industry issue which prevented the rail service from being fully performed, the person(s) contacted at the Industry to verify the report/issue, the date/time that the Industry contact person verified the report/issue, the railroad contact name that directed railroad crew to not perform full service, the physical geographic location of the railroad crew at the time they identified the issue at the Industry.

Recommended Actions

I. Require railroads to document Issues with railroad service and communicate these to terminals and shippers.

At times, railroads report that their crews were unable to provide a scheduled service because of industry issues. Unfortunately, this information is not always reported to Industry in a timely fashion, making it difficult or impossible to verify that the industry was in fact responsible for the service delay or inaction. Requiring the railroad to submit straightforward reporting in a timely fashion would greatly improve transparency and accountability for all parties. These reports should include the following basic information:

- the track address
- the scheduled service dates
- the reason for no service
- the date/time that the railroad identified an Industry issue which prevented the rail service from being fully performed
- the person(s) contacted at the industry to verify the report/issue
- the date/time that the industry contact person verified the report/issue
- the railroad contact name that directed railroad crew to not perform full service
- the geographic location of the railroad crew at the time they identified the issue.

II. Establish metrics for tracking disruptions related to railroad service.

Railroads may fail to perform a scheduled service without attributing the responsibility to Industry. Simple reporting of the count of days of delays per railcar caused by errors on the part of the railroads would provide a useful means of monitoring the railroad's performance. For example, the count of days could measure the time between the scheduled service and the arrival of the crew for early and late arrivals. Another useful metric would be counting the number of incidents when a railroad cancelled a scheduled service less than 24 hours prior to the expected start time.

The following table indicates suggested metrics.

Category	Metric
Early arrival	Number of days from crew arrival to scheduled service date, by track address
Late arrival	Number of days from crew arrival to scheduled service date, by track address
Cancellation within 24 hours of scheduled service	Number of incidents by track address

III. Create metrics to track railcar/train delivery errors.

The following table indicates suggested metrics.

Category	Metric
Railcars not delivered during the scheduled period	Number of railcars affected by track address for each service date
Railcars delivered that were not ordered	Number of railcars affected by track address for each service date
Railcars delivered to incorrect geographic location (i.e., wrong facility or destination)	Number of railcars affected by track address for each service date
Railcars that required re-spotting (i.e., wrong placement at correct facility or destination)	Number of railcars affected by track address for each service date
Railcars pulled prior to release by Industry	Number of railcars affected by track address for each service date

IV. Establish minimum first-mile/last-mile service requirements.

Establish standard first-mile/last-mile minimum service requirements to be performed by railroads. There should be no deviations from the minimum service requirements unless agreed to by the terminal and documented in writing. Such agreement should be open to periodic review initiated by the terminal or railroad, with the minimum service requirement being the default. There should be an appeal process for any disputes supported by the STB. Documentation should include:

- Period of agreement
- Track address
- Service intervals
- Special instructions
- 24-hour contact information
- Deviations from blocking requirements
- Deviations from spotting requirements

- Shipper credits for railroad deviations if any
- Terminal compensation for railroad deviations, if any.

V. Establish clear performance-based thresholds for railroads to embargo terminals.

The STB should require the establishment of clear performance-based thresholds for terminal embargos and not leave such embargos up to the indiscriminate judgment of railroads. Terminal operators approaching thresholds should consider such solutions as a) requesting the railroad increase its local serving capacity, b) improving the terminal's railcar processing capacity, and/or c) rationalizing customers and cancelling agreements with rail components. There should be an appeal/mediation process for any embargo disputes administered by the STB that encourages collaborative solutions where railroad and terminal capital are applied equally to resolve capacity issues.

Conclusion

The railroad carriers may contend that these metrics would be cumbersome to track. However, the continued impact of lacking service without accountability presents an exponentially higher burden on those affected – typically destination facilities and shippers. A common set of metrics that identify the responsible party will aid in dispute resolution and force performance improvement, thus improving network fluidity and efficiency.

The reality is that the railroads' ongoing lack of performance transparency and demurrage generating performance failures have gone unchecked for far too long. Receiving facilities have long argued that accountability and financial penalties for performance failures go hand in hand. In the cases listed above, shippers and receivers incur supply chain and labor costs that are substantial – and then have inappropriate consequential demurrage charges assessed on top.

Additionally, Class I carriers may argue that the first-mile/last-mile issues listed above are due to short line railroads, not the Class I's themselves. This is a non-starter, as short line railroads typically operate as an extension of the operation and tariff of the Class I's. In fact, many short line railroads do not even maintain a customer service department.

In closing, ILTA would again like to thank the STB for the opportunity to comment on this critical issue.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Kathryn Clay".

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