

BEFORE THE
SURFACE TRANSPORTATION BOARD

Docket No. EP 768

ENTERED
Office of Proceedings
September 8, 2022
Part of
Public Record

PETITION FOR RULEMAKING TO ADOPT
RULES GOVERNING PRIVATE RAILCAR USE BY RAILROADS

COMMENTS OF BNSF RAILWAY COMPANY

I. Introduction

BNSF Railway Company respectfully submits these reply comments in response to the Surface Transportation Board's April 1, 2022 decision seeking comment on the petition for rulemaking proposing that the Board adopt regulations to allow private car owners or lessees to assess charges against railroads when a privately-owned car remains idle on a railroad's network for longer than 72 hours. BNSF also joins the reply comment filed by the Association of American Railroads ("AAR").

In our opening comment, BNSF discussed concerns regarding the negative incentives and network inefficiencies the proposed rule could create and the unintended consequences for rail service and growth that could result from those incentives and inefficiencies, all without any demonstration of need for the proposed rule in the first place. Following a first round of comments, there is still no evidence to show that private railcars are being used inefficiently and more reason for concern that the proposed rule inappropriately equates increased car movement with increased efficiency. This is perhaps not surprising because, as petitioners seem to indicate in their opening comment, promoting efficiency is not a priority of this proposed rule.

II. There Is No Indication That Railroads Are Handling Private Cars Inefficiently

It would be inappropriate for the Board to enact the proposed rule on the grounds that it is necessary to promote the efficient use of private railcars because there is no evidence indicating that railroads are using private railcars inefficiently. The reply comments filed by the AAR explain in detail the flaws in the data submitted by Petitioners, including their data purporting to show that 31% of their sample of car trips include an event where a car was paused for 72 hours or longer. A key failure in the Petitioners' analysis is that there is nothing indicating *why* cars were held, which is crucial to contextualize any data when considering regulatory intervention. (*See* Joint Petitioners 6–7.)¹ Dwell en route may be a necessary component of a service offering that benefits customers. (*See* BNSF 6–8.) Additionally, customers often make decisions to prioritize their receipt of cars in ways that generate dwell. For instance, customer requests for car diversions often necessitate that cars be set out at some intermediate location and await placement in a train bound for the new destination. Also, facilities that rely on rail for multiple inputs, such as feed mills and refineries, may ask for some commodities to be held to prioritize receiving other commodities. Without more detail as to the reason for the dwell, this dataset only supports the proposition that railroads are handling private cars inefficiently if one accepts the false premise that movement is the only measure of efficiency, or that non-movement is necessarily a measure of inefficiency.

Data instead demonstrates that BNSF is handling private cars at least as efficiently as system cars. Over the past 36 months, private car velocity on BNSF has been faster than system car velocity 76% of the time. During that period, there were 120 weeks out of 158 where private cars outpaced system cars. (*See* Appendix A.) This trend of private cars outpacing system cars has held during our recent service challenges. From Q3 2021 to the present, private car velocity was

¹ Unless otherwise noted, record citations are to comments submitted in response to the Board's April 1, 2022 decision.

higher than system car velocity for 39 out of 57 weeks. (*Id.*) Equally important, there is little disparity between private and system car velocity. Across the entire 36 months, average private car velocity was 192 miles per day and average system car velocity was 184 miles per day.

BNSF does not suggest that relative car velocity is the dispositive measure of whether a railroad is transporting any particular car fleet efficiently; however, this data demonstrates that BNSF is not treating private cars any differently than system cars. Thus, if one accepts the proposition that a railroad would use railroad-controlled cars as efficiently as possible to maximize the return from those assets, then data showing that railroads handle private cars in the same manner as their own cars indicate that the market already provides railroads with sufficient incentives to handle private cars efficiently.² At minimum, our data punctuates the notion that there are numerous measures that putatively speak to efficiency and that it would be rash to undertake regulatory action on the basis of the data presented. Notwithstanding shippers' valid concerns about recent railroad service levels, the record in this proceeding does not evidence a systemic inefficiency requiring further regulation to encourage the more efficient use of private railcars.

III. The Proposed Rule Incentivizes Movement at the Expense of Efficiency

The record developed through this latest round of comments shows that Petitioners and other shipper interests are not concerned with incentivizing the efficient use of railcars so much as incentivizing the movement of individual railcars. The Petitioners and other shippers ignore the reality that, in many instances, a period of inactivity en route may be the most efficient means of ensuring the economical transportation of freight. Instead, the Petitioners have crafted a proposed

² Shippers seem to recognize that railroads do have a strong incentive to handle their own cars efficiently. (ACC et al. at 12; AFPM at 12.)

rule that demands continuous movement or the payment of fees. A purportedly “reciprocal” regulatory framework that offsets shipper demurrage costs in this fashion would encourage fleet management practices that are detrimental to overall network efficiency. As BNSF discussed in our opening comment, excess car inventory has been a substantial driver of congestion and service degradation. (BNSF at 2.) Demand for rail cars to be put on-line remains high, as demonstrated by continued increases in car lease rates. *See GATX sustains rail lease rate increases*, Argus Rail Business, Issue 22-29 (Jul. 25, 2022) (attached as Exhibit B). The proposed rule would exacerbate congestion problems by undercutting the limited measures that exist to incentivize shippers not to flood the network with additional cars.

The Petitioners are explicit that the movement of their own private cars should take precedence over the efficiency of rail networks, stating they “fail to see any justification for a carrier to intentionally hold Private Railcars for 72 or more hours to improve ‘overall efficiency’ without being penalized for it.” (Joint Petitioners at 17.) Other shippers share this view, with coal shippers stating, “[t]he fact or mere possibility that holding private railcars contributes to ‘overall efficiency’ for the railroad should not excuse the railroad from providing compensation for the excessive delay.” (WCTL et al. at 21.) These statements suggest that some shippers’ views go beyond equating movement with efficiency but actually that efficiency is a secondary concern to the movement of *their* cars.

Attempting to avoid this implication, the Petitioners’ have set up the straw man argument that, in all cases, railroads hold private cars in order to resolve congestion problems the railroads caused. (Joint Petitioners at 17–18.) However, there are any number of scenarios where some period of non-movement may be a component of the service plan that is necessary to provide a shipper with an economically viable rail transportation option. (*See* BNSF at 6–8.) The Petitioners would flatten all such operating decisions under a presumption that any pause in the movement of

a private car is an inefficient use of the car that railroads must litigate to defend. (*See* Joint Petitioners at 18.)

Conflating movement with efficiency in this way only serves to create a compliance trap for railroads that will ultimately degrade overall service levels. Some shipper comments suggest that compliance scheme should be even more severe than Petitioners propose. For instance, numerous shipper comments propose cumulative delay tests that would penalize railroads for delays experienced over the course of a trip.³ Under these cumulative-delay tests, it would become difficult to move a car across a system in manifest service without incurring a penalty—either because a car dwelt longer than 24 hours at a single classification event or because the combination of intermediate dwell and dwell at origin or destination exceeded 48 or 72 hours.

The end result of this cumulative delay regime would be more extreme versions of the incentivized actions we discussed in our opening comment. Railroads will be pressured to depart cars from terminals at first opportunity regardless of the effect on the overall trip plan, resulting in more handlings of the same car as it traverses the rail network. Instead of placing a car in the next available train to the destination (with the risk of an early delivery triggering charges), the proposed rule would tell the railroad to look for the train or multi-train route with the most constant handlings between now and when the car is ready for local delivery. At the local service level, there would be even less ability to construct service plans that allow for sufficient density to economically serve shippers in remote or low-volume areas. The increased utilization of crews, equipment, and

³ The coal shippers' comment proposes a demurrage remedy when an individual car is held for more than 24 hours or when unit trains are held cumulatively for more than 72 hours over an entire round trip. (WCTL et al. at 23–24.) The Institute of Scrap Recycling Industries proposes a 36–48 hour threshold for an individual dwell even or a cumulative threshold that would allow charges to accrue if transit time exceeded 48 hours of the original ETA. (ISRI at 6–7.) The Portland Cement Association seeks a cumulative threshold of 72 hours of dwell over the course of a car's entire trip. (PCA at 7–8.)

infrastructure required by all this additional movement would increase costs, which would leave rail less able to compete for truck-competitive freight.

Large shippers who have sufficient volume to provide their own density or who move exclusively between major terminals may be able to leverage the proposed rule's inefficiencies to negotiate more favorable contract terms while spreading much of the incremental costs for their premium service across the entire community of rail shippers. However, the inevitable result of the large shippers' gain is fewer and less competitive rail service options for smaller shippers or shippers in remote areas as railroads are mandated to provide a service product based on keeping railcars in continuous movement that is not responsive to these shippers' transportation and economic needs.

IV. Conclusion

As we have stated in numerous recent STB proceedings, BNSF acknowledges that recent service performance has not met our customers' expectations. While shippers are understandably frustrated, the Board must recognize that the Petitioners are asking the Board to regulate railroad operations at a granular level under the guise of promoting the efficient use of private railcars on the basis of specious evidence of inefficient use of the same. Accordingly, BNSF again respectfully requests that the Board deny the petition for rulemaking and close this proceeding.

Respectfully submitted,



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September 8, 2022

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EXHIBIT A
WEEKLY CAR VELOCITY (MILES PER DAY), PRIVATE VS. SYSTEM CARS

Year	Week	Private	System
2019	28	188.6	172.4
2019	29	188.9	182.4
2019	30	189.0	185.2
2019	31	192.5	177.7
2019	32	194.3	178.4
2019	33	194.4	181.1
2019	34	192.5	181.5
2019	35	201.6	187.8
2019	36	206.7	186.9
2019	37	208.2	182.2
2019	38	203.0	180.2
2019	39	201.2	187.1
2019	40	198.2	181.2
2019	41	192.5	177.3
2019	42	191.2	179
2019	43	197.8	185.8
2019	44	192.0	182.4
2019	45	198.2	188.6
2019	46	203.6	196.6
2019	47	209.0	199.7
2019	48	208.9	196.5
2019	49	196.1	186
2019	50	215.8	194.4
2019	51	217.8	195.8
2019	52	193.6	169.7
2020	1	218.4	183.9
2020	2	223.1	190.4
2020	3	210.1	189.4
2020	4	204.4	188.4
2020	5	216.9	199
2020	6	199.6	182.1
2020	7	206.1	185
2020	8	209.0	189.5
2020	9	209.0	192.8
2020	10	205.8	187
2020	11	199.7	192.7
2020	12	202.3	189.8
2020	13	207.3	195.5
2020	14	213.2	196.2
2020	15	217.0	200.8
2020	16	211.4	200.5
2020	17	212.9	205.9

Year	Week	Private	System
2021	3	194.4	200.1
2021	4	187.9	190.5
2021	5	192.8	196.9
2021	6	169.2	166.5
2021	7	132.7	145.5
2021	8	179.7	180.1
2021	9	185.9	183.2
2021	10	192.1	185.5
2021	11	171.2	181.6
2021	12	185.7	185.6
2021	13	189.2	184.4
2021	14	188.5	179.7
2021	15	188.8	186.7
2021	16	192.5	188.2
2021	17	188.0	188.5
2021	18	191.1	188
2021	19	198.3	187.7
2021	20	199.0	186.7
2021	21	196.0	179.3
2021	22	198.3	186
2021	23	194.2	181.5
2021	24	191.5	179.7
2021	25	194.2	177.7
2021	26	197.6	180.9
2021	27	187.4	176.9
2021	28	197.0	176.8
2021	29	194.6	178.9
2021	30	190.7	169.1
2021	31	188.7	169.3
2021	32	193.2	167.8
2021	33	183.4	169
2021	34	197.1	168.9
2021	35	194.0	174.3
2021	36	199.5	170
2021	37	194.2	173.5
2021	38	195.1	181.8
2021	39	187.6	184.3
2021	40	185.5	188.9
2021	41	179.9	186.5
2021	42	180.9	189.8
2021	43	182.8	189.4
2021	44	183.7	188.3

Year	Week	Private	System
2020	18	213.6	209.7
2020	19	206.2	211.4
2020	20	212.5	208.4
2020	21	214.6	205.4
2020	22	219.2	204.5
2020	23	211.8	202.8
2020	24	204.4	202.5
2020	25	203.0	206.4
2020	26	198.7	200.2
2020	27	200.3	192.8
2020	28	183.1	183.6
2020	29	198.8	199.9
2020	30	196.3	193.7
2020	31	198.4	198.7
2020	32	197.0	196.4
2020	33	197.9	198.1
2020	34	202.1	200.8
2020	35	207.9	202.6
2020	36	203.4	200.8
2020	37	206.8	196.3
2020	38	205.0	198.5
2020	39	205.4	197.3
2020	40	207.0	204.3
2020	41	204.7	202.3
2020	42	201.7	200
2020	43	200.4	200.6
2020	44	195.4	198.8
2020	45	198.4	202.4
2020	46	203.7	197.9
2020	47	205.6	203.7
2020	48	200.1	200.3
2020	49	213.8	205.2
2020	50	208.4	207.6
2020	51	199.5	196.5
2020	52	183.5	187.5
2021	1	207.5	196.5
2021	2	195.0	199.2

Year	Week	Private	System
2021	45	181.6	187.6
2021	46	180.2	181.6
2021	47	184.3	187.5
2021	48	194.1	187.1
2021	49	184.2	184.1
2021	50	175.2	177
2021	51	180.2	175.2
2021	52	161.8	140.9
2021	53	192.3	186.6
2022	1	163.5	146.8
2022	2	178.0	165.1
2022	3	172.5	166.1
2022	4	178.9	174.9
2022	5	167.6	166.7
2022	6	176.4	175.7
2022	7	170.5	169.4
2022	8	161.0	162.6
2022	9	165.5	169.8
2022	10	167.7	165.6
2022	11	169.0	172.3
2022	12	163.6	175.7
2022	13	167.6	172
2022	14	163.2	166.1
2022	15	157.4	160.1
2022	16	174.7	172.6
2022	17	163.8	165.1
2022	18	174.7	170.4
2022	19	175.9	176.4
2022	20	173.0	172.9
2022	21	175.0	172.4
2022	22	182.6	173.1
2022	23	182.7	174.3
2022	24	173.5	169
2022	25	170.0	159.3
2022	26	172.6	159.5
2022	27	170.4	153.2
2022	28	178.7	159.3

ANALYSIS

GATX sustains rail lease rate increases

Railcar leasing company GATX continued raising lease rates for most of its car types in the second quarter as fleet utilization levels tightened further.

Demand for most railcar types in the company's fleet remains robust, GATX said. GATX's North American fleet utilization ticked up in the quarter to 99.4pc from 99.3pc in the previous quarter and 98.5pc a year earlier, with nearly 100,452 active railcars.

GATX lease rates have increased for eight consecutive quarters, and the pace of lease rate increases for most car types has accelerated as the number of idle railcars industry-wide continued to decline. Lease rates rose by a percentage in the teens in the second quarter, holding steady with the prior quarter's pace, GATX said.

The prospect for rising interest rates and slowing economic growth has not had a major impact on GATX's business. "Despite ongoing macroeconomic uncertainty, the operating environment remains strong across our global railcar leasing markets," GATX chief executive Robert Lyons said.

Fewer new railcars are being built and more older cars have been scrapped because of high steel prices, leading to a net shrinkage in available railcars, GATX said.

The rail industry is still recovering from the hit to the energy sector and the broader economy caused by the Covid-19 pandemic and the related slump that hit last year. Customers are more willing to commit to longer-term lease deals. GATX's North American average renewal term was 34 months, up from 30 months in the prior quarter and 29 months a year earlier.

The company's internal lease price index (LPI) – a weighted average rate for a group of railcars representative of the fleet – rose to 18.3pc in the second quarter from 9.3pc in the first quarter, when the market measure turned positive for first time since the first quarter of 2019.

GATX reported quarterly profit of \$2.6mn, down from \$5.5mn a year earlier, on revenue of \$312.7mn, down by about 1pc from a year earlier.

By Chris Baltimore

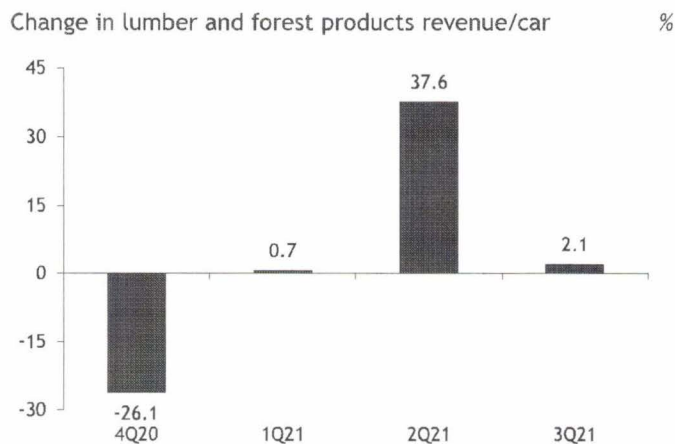
QUARTERLY COMMODITY STATISTICS

Lumber and forest products, 3Q21

	Revenues \$mn	Volumes railcars	±3Q21/ 3Q20 railcars	Revenue/ railcar \$	±3Q21/ 3Q20 \$
BNSF	137.8	22,978	-209	5,996	+299.00
Canadian National	43.8	20,453	-759	2,141	+132.00
Canadian Pacific	10.7	6,341	+51	1,694	+61.00
CSX	69.6	25,617	-75	2,717	-30.00
Kansas City Southern	7.6	3,855	+236	1,973	+285.00
Norfolk Southern	53.4	21,463	+3,165	2,489	-4.00
Union Pacific	239.8	44,068	+3,629	5,442	+213.00

– Argus rail analytics database

Change in lumber and forest products revenue/car



CONTENTS

Quarterly commodity statistics	2
Service metrics	2-3
Waybill analysis	4
Diesel fuel prices and carload fuel surcharges	5
News	6