

December 8, 2022

The Honorable Martin Oberman
Chairman
Surface Transportation Board
395 E Street Southwest
Washington DC 20423

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RE: EP 772 – Supply chain problems from embargoes, and network constraints imposed by Union Pacific Railroad.

Dear Chairman Oberman and honorable members of the board,

Two quarters have passed since the eye-opening EP770 hearings on problems in the railroad industry. Yet shippers, employees, and the public still have received little clarity from the board about the measures being implemented to ensure a growing, modernizing, effective railroad network that powers our economy into the future. This puzzle has many pieces that will one day need to fit together, but for the EP772 hearings, the appalling number of embargoes, and their causes and effects are the purpose of my writing today.

Since the gilded age and beyond, many large companies have enriched their owners and shareholders without regard for the very real costs they were externalizing onto other companies and average Americans. When a company is allowed to pollute a river or indiscriminately dump waste, profitability levels rise as the company itself is not paying for the cost it is imposing on society. Teflon (C8) pollution, Tetra-ethyl lead pollution, and CFC pollution are just three examples of times when large companies profited heavily at the expense of everyone else, eventually requiring massive regulatory action that forced them to cease a business practice or to internalize the cost of its pollution onto its balance sheet.

Today we are seeing a very different kind of pollution in our supply chain, but the externalized costs are still causing immense harm to shippers, suppliers, and average people. This supply chain pollution results when giant monopolies such as Union Pacific intentionally restrict the rail supply to lower operating ratios, increase share buyback programs and raise dividends. They have driven customers away from rail and redirected them to expensive, taxpayer-subsidized highway infrastructure, and punished their remaining captive customers with rate increases, demurrage, and fuel surcharges. Instead of using their capital to eliminate bottlenecks, increase capacity and modernize the system, quarter after quarter has shown increasing congestion and bottlenecks on dwindling traffic numbers which have declined since 2006. While working together to restrict supply and offering a less reliable service product, these rail entities have all shown record profitability to the extent that they have speculated on Wall Street through the repurchase of over 100 billion of their own shares since 2010. The culmination of all of these factors has led to the unimaginable number of embargoes against customers seen this year, as fewer rail cars traversed our networks at slower speeds and non-captive shippers flee to trucks. Figuratively speaking, when the toxic waste of a 15,000 foot train is indiscriminately dumped into a rail system of 8,000 foot sidings, velocity and capacity decreases and supply chain pollution occurs. The railroads could, of course, add scrubbers to mitigate their pollution, such as additional crossovers, more double tracking, and longer sidings, but why would they invest in their system when the taxpayers will backstop their profits and pollution by allowing overflow traffic to destroy our subsidized highway system instead. Today I humbly ask the board to look at the industry not as purely private companies, but as entities that actively externalize their costs onto other

businesses and taxpayers in their crusade to lower the operating ratio. Whatever regulatory decisions are made in the future should take this into account if we are to ever achieve a fast, efficient, world-class railroad network again.

The following are some examples of supply chain pollution externalized onto consumers that I have observed this year:

While working a grain train of customer loads in Wyoming, we encountered air problems. This was no ordinary grain train, however. Behind the grain train DPU was an entire added train of manifest cars to be set out in Pocatello, making the train just shy of 12,000 feet. Due to high flow and low rear-end brake pressure, we determined that the train would not even pass a class 1 air test and had to be stopped and inspected. For hours my conductor walked among the biting mosquitos, finding two bad order, high leakage cars in the very rear portion of the train and setting out these cars to the only track available which involved a 2-mile-long shove with 15,000 tons of grain plus the additional manifest tonnage in tow. At least five re-crews were called that day on our subdivision as our train polluted the entire Pacific Northwest corridor to Portland. Trains were delayed and tied down as far west as Oregon. Even the high-priority UPS train behind us needed to be re-crewed, costing vital time, locomotive,s and crew resources. The railroad externalized the cost of delayed freight on customers so that they could save a crew start and haul manifest cars for free on a grain train paid for by a grain shipper.

While working a 14,000 foot manifest train between Pocatello and Nampa, Idaho, we reached a part of our subdivision that goes to a single track for 57 miles. Over this section, there are no sidings long enough to support a train meet between long trains. Upon stopping and communicating with the dispatcher we were informed that we would have to wait for another excessive-length train to finish its pickup and set out work events in Nampa, then travel underpowered eastbound for 65 miles to pass us on the double track before we could move. We sat there for over 5 hours, delaying customer freight and railroad resources due to the introduction of two, toxic trains into a system that could not handle it. We were eventually re-crewed, after we hit our 12-hour limitation, costing another crew. Yet, the railroads blame crew shortages on anything in the world but themselves. This supply chain pollution could be reduced by lengthening the siding at Orchard. This has been discussed for years and is supposedly on the budget to be extended. Somehow there is always money in the budget to buy back more shares, but never enough to install scrubbers to clean up their supply chain problems. This was not an isolated event and occurs regularly.

While working a westbound manifest train between Pocatello and Nampa, we discovered that a whopping 15% of our train consisted of misrouted cars thrown carelessly throughout the train, causing at least a week of delay to many customer's loads and wasting vital capacity and manpower resources along our system. Events such as this cause the "congestion" that Union Pacific has blamed for its alarming use of embargoes this year. This single incident was bad enough that I included an entire letter on the incident to the STB. It was posted on the public record for 2 days before being censored by Union Pacific under claims of sharing "sensitive information." I have removed any allegedly sensitive information from this paper and will be re-submitting it again under the EP772 docket so that the public can actually have time to read about this incident further.

During my interaction with other railroaders and organizations around the country, I discovered a pressing, and blatant problem with the timely routing of Amtrak trains across the combined WP/SP overland route in northern Nevada. This route has been running as double track, paired operation since the World War I nationalization of the rail industry, and has been owned entirely by UP since the 90s. Traffic numbers on this corridor are relatively low, and yet the single daily Amtrak California Zephyr frequently sees hours of delay across the section from Alazon to Weso due to a lack of crossovers. The entire section is two former railroads and double-tracked, but with the introduction of excessive-length trains, there is effectively no location whatsoever for Amtrak to pass these trains and UP refuses to invest in crossovers that would allow efficient movement between the two tracks. The rare crossovers that do exist are mostly 10 mph hand throw crossovers, even after owning the Western Pacific (Main 1) since 1982 and the Southern Pacific (main 2) since 1996. It has

become common practice to run these passenger trains through the UP yard in Elko since there is no other location to pass for around 150 miles. While UP buys back far more shares than it invests into capital projects every year and pads its earnings with 15,000 foot trains, these Amtrak passengers and taxpayers are being forced to absorb these costs which are externalized by the railroad. There are countless examples around the country of delays to Amtrak due to failure to invest in modern infrastructure, however, this one seems excessively egregious since it could so easily be corrected. But without regulatory pressure, Union Pacific will happily externalize these delays at the expense of Amtrak passengers and the taxpayers.

Energy management systems are hogtying the professionalism and abilities of engineers around the country. Engineers are being threatened to utilize the system to the “fullest extent possible” and are threatened with discipline if they disengage the system for any reason, even if the system is delaying trains and operating far slower than track speed. There is nothing preventing EMS from running 32 mph on 70 mph track directly ahead of Amtrak. One factor that UP does not seem to take into account in its positive claims about such systems is that for every minute a train occupies a section of track, it cannot be occupied by another train, reducing capacity, causing congestion, and leading to embargoes and metering of traffic.

A brake-in-two event occurred on my train due to EMS and the desire of terminal management to push the train out of town regardless of the problems it would cause. On the day in question, I had a soda ash bulk unit train in excess of 15000 tons. Due to locomotive failure on the DPU, another unit had to be added. However, since adding another DPU would cause delays to other non-fitting trains with work events in the yard, we were told to just add this unit to the head end and fix it in Nampa. We exceeded the max coupler strength in this configuration and we informed management. We were instructed to take the train anyway. As we ascended the steepest grade on our territory, the EMS system that I was compelled by discipline to use did not stay in notch 8 as it should have. It began throttling down to save fuel. Then when the train nearly stalled out at 5mph it threw control into my lap with a “manual control required” message. I took immediate action to restore power and prevent a stall, but as soon as I advanced the throttle, the excess tonnage broke a knuckle one car behind the locomotive and placed the entire train into an emergency application. For the next few hours, my conductor tied nearly 100 hand brakes to restore air pressure and performed a dangerous shoving move back to the bottom of the hill with 15,000 tons of train on a nearly 2% descending grade. In the end, I was blamed for train handling by the faceless, and unconfontable staff at Union Pacific's Operating Practices Command Center in Omaha. This type of incident is common and not unprecedented in any way.

At the end of the day, locomotive engineers are federally licensed professionals that understand the intricacies of their territories and their judgment should be the determining factor dictating when to utilize an energy management system. These systems cause delays and externalize the cost of these delays onto shippers that need timely delivery of their products. Don't let misleading statements by Mr. Fritz and his colleagues tell you otherwise. Mr. Fritz has never operated a train, nor has he worked in a railroad craft that actually produces revenue from operations. In fact, the employees operating our trains maintain that it was our dedication and sacrifice that lead to profits, and not any contribution by railroad executives. That being said, Energy management systems can be a useful tool, but just like any industrial chemical or product, when it is dumped indiscriminately into our supply chain, the pollution that results inevitably reduces capacity causes congestion, and leads to embargoes and the metering of traffic.

Finally, I would like to touch briefly on the ability of these monopoly carriers to dictate terms upon customers with little opportunity for challenge since their commodities are considered exempted from STB regulation. Union Pacific is clearly revenue adequate in every way, and yet they are still given mostly unchecked ability to meter and ban types of traffic on their networks in pursuit of operating ratio. As an example I would like to identify the new Simplot Fertilizer facility in Aberdeen Idaho. This company invested millions of dollars to build a giant loop to handle unit fertilizer trains at great expense. It is state of the art and equipped with concrete ties to accept heavy tonnage trains. However, their facility has never received a unit train to my knowledge. Following the implementation of PSR this shipper was told that UP would not provide them with unit train service. Instead, any cars they receive are wastefully shipped from Pocatello to Idaho falls, then back to Blackfoot, then onto a local job that spots the cars at the facility. When I last worked this job, we spotted one single car at this facility,

running our two locomotives and a lonely hopper around the loop and into their building for unloading. It's my understanding that these dry fertilizers are an exempted commodity and thus not regulated by the STB. Therefore, UP can waste capacity with unnecessary switch moves to Idaho falls and externalize the cost if the shipper decides to send their freight via truck instead. If they switch to trucks, the railroad benefits because they no longer have to invest in their own infrastructure and the taxpayers will make up the difference by paying for the highway damage. Legislation such as the Freight rail shipping and fair market act should be rapidly advanced into law to start returning to your board the authority to regulate such blatant examples of supply chain pollution.

In conclusion, I would like to dispute the facetious arguments that any modifications to our present regulatory structure would nullify and reverse the positive changes made by the Staggers Rail Act. To even entertain such an argument is an insult to the intelligence of all stakeholders patiently awaiting positive changes in our industry. There are now essentially four large carriers that attempt to use their unchallenged positions to monopolize markets. This was not the case in 1980 when the current regulatory structure helped to rescue a weak and ailing industry. Over 40 years have passed and in the present day, more 1000 rail shippers have been embargoed or metered by an ultra-profitable carrier that issued a mere 27 embargoes in the entire year of 2017. This is inexcusable and is causing dangerous and toxic supply chain pollution on the networks that our economy is dependent on. I urge the board to take the steps to move us in the right direction and to work with your colleagues at various levels of government to advance needed legislation that more closely aligns with the system of cartels which presently owns, restricts, and controls the vital infrastructure our national economy depends upon.

Yours truly,

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